

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, May 31, 2022).

**CONSENT AGENDA – APPROVE THE FOLLOWING:**

- 1. Receive and file Gas Franchise Ordinance.
- 2. 2nd reading and final adoption of the following Ordinances; 1st reading, 5/31/22:
  - a. Annexing a Certain Parcel of Land Lying in a Portion of the Northwest Quarter of Section 10, Township 138 North, Range 49 West of the 5th Principal Meridian.
  - b. Rezoning Certain Parcels of Land Lying in Christianson 32nd Avenue South Second Addition.
  - c. Rezoning a Certain Parcel of Land Lying in Magnum North Addition.
  - d. Rezoning a Certain Parcel of Land Lying in Laverne's Second Addition.
  - e. Rezoning Certain Parcels of Land Lying in Covey Ranch Second Addition.
  - f. Rezoning Certain Parcels of Land Lying in Westrac Third Addition.
  - g. Relating to Designated Passenger Loading Areas and Relating to Classification of Ordinance Violations.
- 3. Resolution Establishing Designated Passenger Loading Areas.
- 4. Site Authorizations for Games of Chance:
  - a. West Fargo Hockey Association at Fort Noks.
  - b. North Dakota Horse Park Foundation at Legends.
- 5. Applications for Games of Chance:
  - a. ND Long Term Care Association for a raffle on 9/15/22.
  - b. Fargo Moorhead Derby Girls for a raffle on 7/9/22.
  - c. ALS Association for a raffle on 8/22/22; Public Spirited Resolution.
  - d. AO1 Foundation, Inc. for a raffle on 6/21/22.
  - e. Stomp for a raffle on 6/20/22.
  - f. North Dakota CPA Society Foundation for a raffle on 6/21/22.
  - g. Villa Nazareth d/b/a CHI Friendship for a raffle on 10/21/22.
  - h. Steve Weidner FM Junior Tour for a calendar raffle from 7/1/22 to 6/30/23.
- 6. Renewal of the Alcoholic Beverage and Live Entertainment Licenses until 6/30/23, contingent upon all essential requirements for renewal being met by 6/30/22.
- 7. Change Order No. 11 in the amount of \$54,862.70 for Project No. FM-16-A1.

8. Change Order No. 1 for a time extension to the substantial and final completion dates of 10/24/22 and 11/7/22 for Project No. MP-20-A2.

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9. Red River Water Course Setback Waiver for construction of improvements at 225 4th Avenue North.
10. Consent to Construction with Don's Car Washes, Inc. at 2727 13th Avenue South.
11. Easement (Temporary Construction Easement) with Fargo Country Club for Project No. FM-22-B1.
12. Bid advertisement for the following Projects:
  - a. No. HD-22-A.
  - b. No. UR-22-B.
13. Bid award for the GTC Elevator Refurbish (AFB22087).
14. 90-day extension of FMLA leave for Fire Captain Jesse Schmidt.
15. Purchase of Service Agreement with Mapleton Public School District.
16. Notice of Grant Award from the ND Department of Health and Human Services for the Title X Family Planning Program (CFDA #93.217).
17. Notice of Grant Award from the ND Department of Health and Human Services Family Planning Telehealth Infrastructure Enhancement and Expansion Grant (CFDA #93.217).
18. Market adjustments for equipment operators and related positions.
19. Set June 27, 2022 at 5:15 p.m. as the date and time for a hearing on a dangerous building at 1108 18th Street North.
20. Monthly rate of \$129.00/stall for reserved parking at the Mercantile Parking Ramp.
21. Resolution Approving Written Agreements for the Milton Earl Activity Home Investment Partnership Program Funds for new construction at 708 4th Avenue North (HUD Home Grant Funds).
22. Application for Appropriation from Civil Asset Forfeiture Fund in the amount of \$30,583.79 for updating/upgrading ballistic protection for Narcotics and Street Crimes Unit detectives and computer equipment for staff in Criminal Investigations Division.
23. Landfill Agreement (Use of Fargo Landfill) with Fat Man Trash, LLC, effective 6/13/22.
24. Change Order No. 1 for a decrease of -\$1,345.42 for Project No. WA2005.
25. Change Order No. 1 in the amount of \$1,142.00 for Project No. WA2012.
26. Contracts and bonds for Project Nos. FM-19-C1, FM-22-C2 and TP-21-B1.
27. Bills.
28. Documented CatEx Addendum to select the 2x1 roundabout as the preferred design modification on 52nd Avenue South Reconstruction Project (Improvement District No. BN-23-A1).

29. Agreement – Early Building Permit for The Rye at Tillstone Group, LLC (Improvement District No. BN-22-F1).

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30. Contract Amendment No. 6 with Houston Engineering in the amount of \$116,196.00 for Improvement District No. MS-17-A0.
31. Two Access Easements (Street Easement) with Southeast Cass Water Resource District (Improvement District No. BN-22-C1).
32. Permanent Easement (Street and Utility) with LaVerne A. Montplaisir Family Trust and Montplaisir Ag and Rental, LLP (Improvement District No. BN-22-C1).
33. Create Improvement District No. PN-22-M.
34. Contracts and bonds for Improvement District Nos. BN-22-L1 and UN-22-M1.

#### REGULAR AGENDA:

35. **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)).**
36. **\*Public Input Opportunity\* - PUBLIC HEARINGS - 5:15 pm:**
  - a. MHB Guardian Addition (1 2nd Street South); approval recommended by the Planning Commission on 5/3/22:
    1. Zoning Change from DMU, Downtown Mixed-Use to DMU, Downtown Mixed-Use and P/I, Public and Institutional.
    2. 1st reading of rezoning Ordinance.
    3. Plat of MHB Guardian Addition.
  - b. Renaissance Zone Project for Great Plains Block 3 Venture, LLC for a new construction project at 225 4th Avenue North and 419 3rd Street North; continued from the 5/31/22 Regular Meeting.
  - c. Development Agreement for Tax Increment Financing District No. 2021-01 (225 4th Avenue North and 419 3rd Street North); continued from the 5/31/22 Regular Meeting.
37. Construction Update.
38. Applications for Property Tax Exemptions for Improvements Made to Buildings:
  - a. David Haugrud, 901 8th Street South (5 year).
  - b. Christopher Nelson and Kyja Kristjansson-Nelson, 338 Elmwood Avenue South (5 year).
39. Recommendations for appointments to the following Commissions and Board:
  - a. Special Assessment Commission.
  - b. Native American Commission.
  - c. Library Board.

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).



**OFFICE OF THE  
CITY ATTORNEY**

**SERKLAND LAW FIRM**  
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**CITY ATTORNEY**  
Nancy J. Morris

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**ASSISTANT CITY ATTORNEYS**  
Ian R. McLean ▪ Alissa R. Farol ▪ William B. Wischer

June 9, 2022

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

**Re: Northern States Power Gas Franchise Ordinance**

Dear Mayor and Commissioners,

Presented to you today is an ordinance relating to the NSP Gas Franchise in the city of Fargo. This Ordinance mirrors the Electric Franchise Agreement approved by this Commission in October, 2021. This Ordinance also contains a similar Large Volume User provision such that should a user qualify, the City Commission may grant a lower franchise fee to that user.

Brenda Derrig, City Engineer and Bruce Grubb, City Administrator were both instrumental in the negotiations with NSP to ensure that the city of Fargo and its residents' interests were recognized, protected and advanced to arrive at the Franchise Ordinance presented today. It is thus my privilege to recommend the following motion:

**Suggested Motion:** I move to receive and file the following: (1) Gas Franchise Ordinance Granting Northern States Power Company, a Minnesota Corporation, Permission to Construct, Operate, Repair and Maintain in the city of Fargo, North Dakota a Gas Distribution System.

Please feel free to contact me if you have any questions, comments or concerns.

Regards,



Nancy J. Morris

NJM/lmw

Enclosures

cc: Bruce Grubb  
Brenda Derrig  
Tony Grindberg



**GAS FRANCHISE ORDINANCE**

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

**CITY OF FARGO, CASS COUNTY, NORTH DAKOTA**

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

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

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

WHEREAS, the board of city commissioners deems it necessary and appropriate to implement such authority by the adoption of this ordinance;

NOW, THEREFORE,

Be It Ordained by the board of city commissioners of the city of Fargo:

**AN ORDINANCE GRANTING TO NORTHERN STATES POWER COMPANY, A MINNESOTA CORPORATION, ITS SUCCESSORS AND ASSIGNS, PERMISSION TO ERECT A GAS DISTRIBUTION SYSTEM FOR THE PURPOSES OF CONSTRUCTING, OPERATING, REPAIRING AND MAINTAINING IN THE CITY OF FARGO, NORTH DAKOTA, THE NECESSARY GAS PIPES, MAINS AND APPURTENANCES FOR THE TRANSMISSION OR DISTRIBUTION OF GAS TO THE CITY AND ITS INHABITANTS AND OTHERS AND TRANSMITTING GAS INTO AND THROUGH THE CITY AND TO USE THE PUBLIC WAYS OF THE CITY FOR SUCH PURPOSES.**

**THE CITY COUNCIL OF THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA, ORDAINS:**

**SECTION 1. DEFINITIONS.**

For purposes of this Ordinance, the following capitalized terms listed in alphabetical order shall have the following meanings:

**City.** The City of Fargo, County of Cass, State of North Dakota.

**City Utility System.** Facilities used for providing non-energy related public utility service owned or operated by City or agency thereof, including sewer and water service, but excluding facilities for providing heating, lighting or other forms of energy.

**Commission.** The North Dakota Public Service Commission, or any successor agency or agencies, including an agency of the federal government which preempts all or part of the authority to regulate Gas retail rates now vested in the North Dakota Public Service Commission.

**Company.** Northern States Power Company, a Minnesota corporation, its successors and assigns.

**Gas.** "Gas" as used herein shall be held to include natural gas, manufactured gas, or other form of gaseous energy.

**Gas Facilities.** Pipes, mains, regulators, and other facilities owned or operated by Company for the purpose of providing gas service for public use.

**Notice.** A written notice served by one party on the other party referencing one or more provisions of this Ordinance. Notice to Company shall be mailed to the General Counsel, 401 Nicollet Mall, 8<sup>th</sup> Floor, Minneapolis, MN 55401. Notice to the City shall be mailed to the City Administrator, 225 4<sup>th</sup> Street, Fargo, ND 58102. Either party may change its respective address for the purpose of this Ordinance by written notice to the other party.

**Public Ground.** Land owned by the City, for whatever purpose deemed necessary and appropriate by City.

**Public Way.** Any street, walkway or other public right-of-way within City.

## **SECTION 2. ADOPTION OF FRANCHISE.**

2.1 **Grant of Franchise.** City hereby grants Company, for a period of 20 years from the date passed and approved by the City, a non-exclusive franchise ("Franchise"), except as otherwise provided by the Public Service Commission, the right to transmit and furnish Gas energy for light, heat, power and other purposes for public and private use within and through the limits of the City as its boundaries now exist or as they may be extended in the future. For these purposes, Company may construct, operate, repair and maintain Gas Facilities in, on, over, under and across the Public Ways of City, subject to the provisions of this Franchise Ordinance. Company may do all reasonable things necessary or customary to accomplish these purposes, subject, however, to such reasonable regulations as may be imposed by the City pursuant to ordinance.

2.2 **Effective Date; Written Acceptance.** This franchise Ordinance shall be in force and effect from and after passage of this Ordinance, its acceptance by Company, and its publication as required by law. City by board of city commission resolution may revoke this franchise Ordinance if Company does not file a written acceptance with the City within 90 days after publication.

2.3 **Service and Rates.** The service to be provided and the rates to be charged by Company for Gas service in City, termination provisions, assignment and merger terms, and all operational decisions that apply shall continue to be subject to the jurisdiction of the Public Service Commission of this State or its successor agency.

2.4 **Dispute Resolution.** If either party asserts that the other party is in default in the performance of any obligation hereunder, the complaining party shall notify the other party of the

default and the desired remedy. The notification shall be written. Representatives of the parties must promptly meet and attempt in good faith to negotiate a resolution of the dispute. If the dispute is not resolved within 30 days of the written notice, the parties may jointly select a mediator to facilitate further discussion. The parties will equally share the fees and expenses of this mediator. If a mediator is not used or if the parties are unable to resolve the dispute within 30 days after first meeting with the selected mediator, either party may commence an action in District Court, Cass County, North Dakota, to interpret and enforce this franchise or for such other relief as may be permitted by law or equity for breach of contract, or either party may take any other action permitted by law.

### **SECTION 3. LOCATION, OTHER REGULATIONS.**

3.1 Location of Facilities. Gas Facilities shall be located, constructed and maintained so as not to interfere with the safety and convenience of ordinary travel along and over Public Ways and so as not to disrupt normal operation of any City Utility System previously installed therein. Gas Facilities shall be located on Public Grounds as determined by the City. Company's construction, reconstruction, operation, repair, maintenance and location of Gas Facilities shall be subject to permits if required by separate ordinance and to other reasonable regulations of the City to the extent not inconsistent with the terms of this franchise agreement. Company shall be required to comply with North Dakota Century Code Ch. 49-23 One-Call Excavation Notice System as underground gas facilities may be abandoned underground in place, from time to time, provided, at City's request, Company will remove abandoned metal pipe interfering with a City improvement project, but only to the extent such metal pipe is uncovered by excavation as part of the City's improvement project. To the extent inconsistent with state law, state law shall control.

3.2 Street Openings. Company shall not open or disturb any Public Way for any purpose without first having obtained a permit from the City in accordance with Fargo Municipal Code Article 18-09, for which the City may impose a reasonable fee or otherwise giving notice thereof to the city engineer in accordance with Fargo Municipal Code §18-0912. Permit conditions, if any, imposed on Company shall not be more burdensome than those imposed on other utilities for similar facilities or work. In the event of an emergency, Company shall notify the city engineer on the first working day after such work is commenced, and shall secure such permits, if necessary.

3.3 Restoration. After undertaking any work requiring the opening of any Public Way, Company shall restore the same, including paving and its foundation, in accordance with Fargo Municipal Code Article 18-09, unless otherwise agreed to by the parties. Company shall be permitted to use non-reinforced concrete instead of cold mix asphalt for temporary restoration purposes. City hereby waives any requirement for Company to post a construction performance bond, certificate of insurance, letter of credit or any other form of security or assurance that may be required, under a separate existing or future ordinance of the City, of a person or entity obtaining the City's permission to install, replace or maintain facilities in a Public Way.

3.4 Avoid Damage to Gas Facilities. Nothing in this Ordinance relieves any person from liability arising out of the failure to exercise reasonable care to avoid damaging Gas Facilities while performing any activity.

3.5 Notice of Improvements. The City must give Company reasonable notice of plans for improvements to Public Ways where the City has reason to believe that Gas Facilities may affect or be affected by the improvement. The notice must contain: (i) the nature and character of the

improvements, (ii) the Public Ways upon which the improvements are to be made, (iii) the extent of the improvements, (iv) the time when the City will start the work, and (v) if more than one Public Way is involved, the order in which the work is to proceed. The notice must be given to Company a sufficient length of time in advance of the actual commencement of the work to permit Company to make any necessary additions, alterations or repairs to its Gas Facilities.

**SECTION 4. RELOCATIONS.**

4.1 Relocation of Gas Facilities in Public Ways. If the City determines to vacate a Public Way for a City improvement project, or at City's cost to grade, regrade, or change the line of any Public Way, or construct or reconstruct any City Utility System in any Public Way, it may order Company to relocate its Gas Facilities located therein if relocation is reasonably necessary to accomplish the City's proposed public improvement. Except as provided in Section 2, Company shall relocate its Gas Facilities at its own expense. The City shall give Company reasonable notice of plans to vacate for a City improvement project, or to grade, regrade, or change the line of any Public Way or to construct or reconstruct any City Utility System. Nothing in this Franchise Agreement requires Company to relocate, remove, replace or reconstruct at its own expense its Gas Facilities where such relocation, removal, replacement or reconstruction is solely for the convenience of the City and is not reasonably necessary for the construction or reconstruction of a Public Way or City Utility System or other City improvement.

4.2 Projects with Federal Funding. Relocation, removal, or rearrangement of any Company Gas Facilities made necessary because of the extension into or through City of a federally-aided highway project shall be governed by the provisions of North Dakota Century Code Chapter 24-01, as supplemented or amended. It is understood that the right herein granted to Company is a valuable right. City shall not order Company to remove or relocate its Gas Facilities when a Public Way is vacated, improved or realigned because of a renewal or a redevelopment plan which is financially subsidized in whole or in part by the Federal Government or any agency thereof, unless the reasonable non-betterment Costs of such relocation and the loss and expense resulting therefrom are first paid to Company, but the City need not pay those portions of such for which reimbursement to it is not available.

4.3 No Waiver. The provisions of this franchise apply only to facilities constructed in reliance on a franchise from the City and shall not be construed to waive or modify any rights obtained by Company for installations within a Company right-of-way acquired by easement or prescriptive right before the applicable Public Way was established, or Company's rights under state or county permit.

**SECTION 5. TREE TRIMMING.**

Company understands and agrees that it is also granted the permission and authority to trim shrubs, trees and other vegetation, including roots, in the Public Ways of City to the extent Company finds necessary and in accordance with City excavation permit requirements, including Emergency provisions therein, to avoid interference with the proper construction, operation, repair and maintenance of Gas Facilities, provided that Company shall save City harmless from any liability in the premises. Company agrees that if tree or vegetation impacts are possible, Company will consider alternate methods of construction when appropriate and reasonable.

**SECTION 6. INDEMNIFICATION.**

6.1 Indemnity of City. Company shall indemnify, keep and hold the City free and harmless from any and all liability on account of injury to persons or damage to property occasioned by the construction, maintenance, repair, inspection, the issuance of permits, or the operation of the Gas Facilities located in the Public Ways. The City shall not be indemnified for losses or claims occasioned through its own negligence except for losses or claims arising out of or alleging the City's negligence as to the issuance of permits for, or inspection of, Company's plans or work. The City shall not be indemnified if the injury or damage results from the performance in a proper manner of acts reasonably deemed hazardous by Company, and such performance is nevertheless ordered or directed by City after notice of Company's determination.

6.2 Defense of City. In the event a suit is brought against the City under circumstances where this agreement to indemnify applies, Company at its sole cost and expense shall defend the City in such suit if written notice thereof is promptly given to Company within a period wherein Company is not prejudiced by lack of such notice. If Company is required to indemnify and defend, it will thereafter have control of such litigation, but Company may not settle such litigation without the consent of the City, which consent shall not be unreasonably withheld. This section is not, as to third parties, a waiver of any defense or immunity otherwise available to the City; and Company, in defending any action on behalf of the City shall be entitled to assert in any action every defense or immunity that the City could assert in its own behalf.

**SECTION 7. VACATION OF PUBLIC WAYS.**

The City shall give Company at least two weeks prior written notice of a proposed vacation of a Public Way. Except where required for a City improvement project, the vacation of any Public Way, after the installation of Gas Facilities, shall not operate to deprive Company of its rights to operate and maintain such Gas Facilities, until the reasonable cost of relocating the same and the loss and expense resulting from such relocation are first paid to Company. In no case, however, shall City be liable to Company for failure to specifically preserve a right-of-way under North Dakota Century Code, Chapter 40-39.

**SECTION 8. CHANGE IN FORM OF GOVERNMENT.**

Any change in the form of government of the City shall not affect the validity of this Ordinance. Any governmental unit succeeding the City shall, without the consent of Company, succeed to all of the rights and obligations of the City provided in this Ordinance.

**SECTION 9. FRANCHISE FEE.**

9.1 Fee Schedule. During the term of the franchise hereby granted, and in lieu of any permit or other fees being imposed on the Company, the City may impose on Company a franchise fee ("Franchise Fee") as described herein.

9.2 General Franchise Fee. The franchise fee payable by the Company to the City shall be determined by a separate Resolution of the board of city commissioners as a percentage of Company's Gross Revenues. "Gross Revenues" means all sums, excluding any surcharge or similar addition to the

Company's charges to customers for the purpose of reimbursing the Company for the cost resulting from the franchise fee, received by the Company from the sale of gas to its retail customers within the corporate limits of City. The Resolution shall not be adopted until at least 90 days after written notice enclosing such proposed Resolution has been served upon Company by certified mail. The fee shall not become effective until the beginning of a Company billing month at least 90 days after written notice enclosing such adopted Resolution has been served upon Company by certified mail. Section 2.4 shall constitute the sole remedy for solving disputes between Company and the City in regard to the interpretation of, or enforcement of, the separate Resolution.

9.3 Application of franchise fee to customer. The franchise fee shall be payable monthly and shall be based on the amount collected by Company during complete billing months during the period for which payment is to be made by imposing a surcharge equal to the designated franchise fee on all customer billings for gas service. The payment shall be due the last business day of the month following the period for which the payment is made. The franchise fee may be changed by Resolution from time to time; however, each change shall meet the same notice requirements and not occur more often than annually. The time and manner of collecting the franchise fee may be subject to the approval of the Commission. No franchise fee shall be payable by Company if Company is legally unable to first collect an amount equal to the franchise fee from its customers by imposing a surcharge in Company's applicable rates for gas service. Company may pay the City the fee based upon the surcharge billed subject to subsequent reductions to account for uncollectibles, refunds and correction of erroneous billings. Company agrees to make its records available for inspection by the City at reasonable times.

9.4 Fee Adjustments. City and Company agree that City, in its sole discretion, may raise or lower the percentage Franchise Fee on a non-discriminatory basis, and Company may raise or lower the corresponding surcharge to its customers accordingly. This franchise ordinance shall not be construed as a limitation on the City's power to tax the Company, if any.

9.5 Equivalent Fee Requirement. City agrees it will not grant additional franchises for other gas providers in City on terms more favorable or less burdensome than this franchise Ordinance, provided that City has the authority to require a franchise fee.

9.6 Large Volume User Franchise Fee. Upon written approval by the board of City Commissioners determining eligibility as a Large Volume User and commensurate benefit thereto, the franchise fee for the sale or transmission of gas to large volume gas customers who are so classified by the Company because their maximum daily requirements are 200 MCF or more, shall be .75%.

9.7 Annual Franchise Performance and Planning Meeting; Annual Reporting. Company and City shall meet annually to discuss items of concern or interest related to this Franchise, including, but not limited to, collaborative infrastructure planning, vegetation management and reliability performance. Upon request of City, Company shall annually provide to City reporting information on service reliability, customer usage, program participation, outage data, and infrastructure improvements

and capital improvements, the exact format and content of which shall be mutually agreed to by City and Company, and in a manner consistent with all applicable laws, regulations and Commission orders.

**SECTION 10. INSURANCE AND WORKERS COMPENSATION.**

10.1 **Insurance.** As of the effective date of this franchise agreement Company will, at its sole expense, maintain during the entire term of this franchise agreement public liability insurance with a company licensed to do business in the State of North Dakota with a rating by Best of not less than "A" that will protect Company, the City, and the City's officials, officers, employees, and agents from claims which may arise from operations under this Franchise, whether such operations are by the Company, its officials, officers, directors, employees, or agents, or any subcontractors of Company. This liability insurance will include, but will not be limited to, protection against claims arising from bodily and personal injury, death, and damage to property resulting from the Company's automobiles, products, and completed operations. The amount of such insurance shall be subject to periodic changes as described in this Section, or as may be required by applicable law, but will be not less than the following:

- (a) General liability insurance:
  - Bodily injury and/or death per Person \$1,000,000
  - Bodily injury and/or death per occurrence \$1,000,000
  - Property damage per occurrence \$1,000,000
  - Property damage and bodily injury, aggregate \$2,000,000
- (b) Automobile insurance:
  - Combined single limit \$1,000,000
- (c) Umbrella coverage: \$2,000,000

The liability policy will provide for the following, by endorsement or otherwise:

- (a) The policy will cover personal injury as well as bodily injury.
- (b) The policy will cover blanket contractual liability subject to the standard universal exclusions of contractual liability included in the carrier's standard endorsement as to bodily injuries, personal injuries, and property damage.
- (c) Broad form property damage liability will be afforded.
- (d) The City will be included as an additional insured on the policy.
- (e) The coverage is primary insurance and no other insurance or fund of the City will be called upon to contribute to a loss under this coverage.
- (f) Standard form of cross-liability will be afforded.
- (g) The policy will not be canceled without thirty (30) days prior written notice of such cancellation to the City.



The automobile insurance policy will provide for the following, by endorsement or otherwise:

- (a) The City will be included as an additional insured on the policy.
- (b) The policy will not be canceled without thirty (30) days prior written notice of such cancellation to the City.

Upon ninety (90) days prior written notice to Company, the City reserves the right to adjust the limit coverage requirements no more than once every five (5) years. Any such adjustment by the City will be no greater than the increase in the State of North Dakota Consumer Price Index for such five (5) year period, unless otherwise required by applicable law.

Company will submit to the City documentation of the required insurance including a certificate of insurance signed by the insurance agent and companies named, as well as all properly executed endorsements required. The certificate of insurance should confirm that the required endorsements are in effect.

10.2. Self-Insurance. With the City's consent, which shall not be unreasonably withheld, the Company shall have the option of providing a program of self-insurance to meet its obligation under this Ordinance. In such event, the Company shall submit to the City a Certificate of Self-Insurance or other documents showing proof of its financial responsibility.

#### **SECTION 11. DEVELOPMENT OF ENERGY EFFICIENCIES AND RENEWABLE ENERGY.**

City and Company have demonstrated their intent to strive for energy efficiency in City. City and Company agree to further commit to collaborate, cooperate, and strive for an increase in the use of increased energy efficiencies and renewable energies. Areas of collaboration may include future agreements and activities in the areas of public education, promotion of alternative energy sources, promotion of energy efficiencies and conservation, along with the development of residential and commercial building weatherization strategies.

#### **SECTION 12. PROVISIONS OF ORDINANCE.**

12.1 Severability. Every section, provision, or part of this Ordinance is declared separate from every other section, provision, or part; and if any section, provision, or part shall be held invalid, it shall not affect any other section, provision, or part. Where a provision of any other City ordinance conflicts with the provisions of this Ordinance, the provisions of this Ordinance shall prevail.

12.2 Limitation on Applicability. This Ordinance constitutes a franchise agreement between the City and Company as the only parties and no provision of this franchise shall in any way inure to the benefit of any third person (including the public at large) so as to constitute any such person as a third party beneficiary of the agreement or of any one or more of the terms hereof, or otherwise give rise to any cause of action in any person not a party hereto.



12.3 Governing Law. This Franchise Ordinance shall be deemed to be executed in the State of North Dakota, and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with applicable laws of the State of North Dakota as applicable to contracts entered into and performed entirely within the State.

**SECTION 13. AMENDMENT PROCEDURE.**

Either party to this franchise ordinance may at any time propose that the Ordinance be amended to address a subject of concern and the other party will consider whether it agrees that the amendment is mutually appropriate. If an amendment is agreed upon, this Ordinance may be amended at any time by the City passing a subsequent ordinance declaring the provisions of the amendment, which amendatory ordinance shall become effective as provided herein.

**SECTION 14. PREVIOUS FRANCHISES SUPERSEDED.**

This Franchise Agreement supersedes any previous Gas franchise granted to Company or its predecessor. This ordinance shall be in full force and effect after passage and approval as provided by law.

**SECTION 15. EFFECTIVE DATE.**

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

Passed and approved: \_\_\_\_\_, 20\_\_.

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

Attest:

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

Introduction \_\_\_\_\_  
First Reading \_\_\_\_\_  
Second Reading and Adoption \_\_\_\_\_  
Publication \_\_\_\_\_

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA



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

1 AN ORDINANCE ANNEXING A CERTAIN PARCEL OF LAND  
2 LYING IN A PORTION OF THE NORTHWEST QUARTER OF  
3 SECTION 10, TOWNSHIP 138 NORTH, RANGE 49 WEST OF THE 5<sup>TH</sup> PRINCIPAL  
4 MERIDIAN IN CASS COUNTY, NORTH DAKOTA

5 WHEREAS, A Petition for Annexation has been submitted by the owners of not less than  
6 three-fourths in assessed value of the property described in said Petition for Annexation to the City  
7 of Fargo, Cass County, North Dakota, in accordance with Section 40-51.2-03 N.D.C.C.; and,

8 WHEREAS, Public notice of the submission of such Petition has been given by publication  
9 in The Forum as required by Section 40-51.2-05 N.D.C.C.; and,

10 WHEREAS, Said Section 40-51.2-03 N.D.C.C. requires that such annexation be  
11 accomplished by ordinance,

12 NOW, THEREFORE,

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

14 Section 1. The following described property located in Section 10, Township 138 North,  
15 Range 49 West of the 5<sup>th</sup> Principal Meridian, Cass County North Dakota, is hereby annexed to the  
16 City of Fargo, Cass County, North Dakota:

17 THAT PART OF THE NORTHWEST QUARTER OF SECTION 10, TOWNSHIP 138  
18 NORTH, RANGE 49 WEST OF THE FIFTH PRINCIPAL MERIDIAN, CASS COUNTY,  
19 NORTH DAKOTA, DESCRIBED AS FOLLOWS:

20 COMMENCING AT A FOUND IRON MONUMENT WHICH DESIGNATES THE  
21 SOUTHEAST CORNER OF COVEY RANCH FIRST ADDITION, ACCORDING TO THE  
22 RECORDED PLAT THEREOF, ON FILE AND OF RECORD IN THE OFFICE OF THE  
23 RECORDER, SAID COUNTY; THENCE SOUTH 87 DEGREES 56 MINUTES 21 SECONDS  
WEST ON A RECORD BEARING ALONG THE SOUTH LINE OF SAID COVEY RANCH  
FIRST ADDITION, ALSO BEING THE EXISTING CITY OF FARGO CORPORATE  
LIMITS, FOR A DISTANCE OF 769.50 FEET TO THE SOUTHWEST CORNER OF LOT 1,  
BLOCK 1, SAID COVEY RANCH FIRST ADDITION, THE POINT OF BEGINNING;  
THENCE CONTINUING SOUTH 87 DEGREES 56 MINUTES 21 SECONDS WEST ALONG  
THE SOUTH LINE OF SAID COVEY RANCH FIRST ADDITION AND CONTINUING

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

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

1 ALONG SAID EXISTING CITY OF FARGO CORPORATE LIMITS FOR A DISTANCE OF  
 2 70.00 FEET TO THE SOUTHWEST CORNER OF SAID COVEY RANCH FIRST  
 3 ADDITION; THENCE NORTH 01 DEGREE 52 MINUTES 55 SECONDS WEST ALONG  
 4 THE WEST LINE OF SAID COVEY RANCH FIRST ADDITION AND CONTINUING  
 5 ALONG SAID EXISTING CITY OF FARGO CORPORATE LIMITS FOR A DISTANCE OF  
 6 849.00 FEET TO A POINT ON A LINE WHICH IS 100.00 FEET SOUTHERLY OF, AS  
 7 MEASURED AT A RIGHT ANGLE TO AND PARALLEL WITH THE NORTH LINE OF  
 8 SAID NORTHWEST QUARTER; THENCE SOUTH 87 DEGREES 56 MINUTES 21  
 9 SECONDS WEST ALONG SAID PARALLEL LINE AND CONTINUING ALONG SAID  
 10 EXISTING CITY OF FARGO CORPORATE LIMITS FOR A DISTANCE OF 1647.10 FEET  
 11 TO THE WEST LINE OF SAID NORTHWEST QUARTER; THENCE SOUTH 01 DEGREE  
 12 42 MINUTES 54 SECONDS EAST ALONG SAID WEST LINE AND CONTINUING  
 13 ALONG SAID EXISTING CITY OF FARGO CORPORATE LIMITS FOR A DISTANCE OF  
 14 1100.02 FEET TO A POINT ON A LINE WHICH IS 1200.00 FEET SOUTHERLY OF, AS  
 15 MEASURED AT A RIGHT ANGLE TO AND PARALLEL WITH THE NORTH LINE OF  
 16 SAID NORTHWEST QUARTER; THENCE NORTH 87 DEGREES 56 MINUTES 21  
 17 SECONDS EAST ALONG SAID PARALLEL LINE AND LEAVING SAID EXISTING CITY  
 18 OF FARGO CORPORATE LIMITS FOR A DISTANCE OF 1720.31 FEET; THENCE NORTH  
 19 01 DEGREE 52 MINUTES 55 SECONDS WEST FOR A DISTANCE OF 251.00 FEET TO  
 20 THE POINT OF BEGINNING.

21 Said tract contains 42.04 acres, more or less.

22 Section 2. Effective Date.

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

CITY OF FARGO

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

(SEAL)

First Reading:  
Second Reading:  
Final Passage:

ATTEST:

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

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

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

26

1 AN ORDINANCE REZONING CERTAIN PARCELS OF LAND  
2 LYING IN CHRISTIANSON 32<sup>ND</sup> AVENUE SOUTH SECOND ADDITION  
3 TO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA

4 WHEREAS, the Fargo Planning Commission and the Board of City Commissioners of the  
5 City of Fargo have held hearings pursuant to published notice to consider the rezoning of certain  
6 parcels of land lying in Christianson 32<sup>nd</sup> Avenue South Second Addition to the City of Fargo, Cass  
7 County, North Dakota; and,

8 WHEREAS, the Fargo Planning Commission recommended approval of the rezoning  
9 request on April 5, 2022; and,

10 WHEREAS, the rezoning changes were approved by the City Commission on May 31,  
11 2022,

12 NOW, THEREFORE,

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

14 Section 1. The following described property:

15 All of Christianson 32<sup>nd</sup> Avenue South Second Addition to the City of Fargo, Cass  
16 County, North Dakota;

17 is hereby rezoned from "GC", General Commercial, District and "LI", Limited Industrial with a "C-  
18 O", Conditional Overlay District, as established by Fargo Municipal Ordinance No. 5015, to "GC",  
19 General Commercial, District, repealing and replacing the "C-O", Conditional Overlay, District as  
20 follows:

21 **1. Building Form and Style.**

22 1.1. All front building elevations/façades greater than 200 feet in length, measured  
23 horizontally from vertical edge to vertical edge, shall incorporate wall plane projections  
or recesses. Each projection and/or recess shall have a depth of at least two (2) feet, and  
the cumulative total horizontal width of all projections and/or recesses within a façade  
shall equate to at least an accumulated total of twenty (20) percent of the overall  
horizontal length of the façade. No uninterrupted length of any façade shall exceed 200

OFFICE OF THE CITY ATTORNEY  
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ORDINANCE NO. \_\_\_\_\_

horizontal feet. Requirements in this subsection shall apply only for views from 32<sup>nd</sup> Avenue South, 33<sup>rd</sup> Street South, and 36<sup>th</sup> Street South.

1.2. Ground floor façades that are within 200 feet of the right of way, measured from the exterior wall shall have arcades, display windows, entry areas, awnings, spandrel glass, ground level landscaping, or other such features along no less than sixty (60) percent of its horizontal length. Requirements in this subsection shall apply only for views from 32<sup>nd</sup> Avenue South, 33<sup>rd</sup> Street South, and 36<sup>th</sup> Street South.

1.3. Principal Materials. Unless otherwise deemed acceptable by the Zoning Administrator, all exterior walls shall be constructed or clad with natural stone, synthetic stone, brick, stucco, integrally-colored and textured concrete masonry units or systems, exterior insulation finishing systems (EIFS), fiber cement, architectural metal panels, curtain walls, rainscreen systems or glass. All materials shall be commercial grade, durable, and have a multigenerational life span.

1.4. Accent Materials. In conjunction with the principal materials listed above, finished wood may also be used to construct or clad exterior walls. Accent materials shall be applied to no greater than twenty (20) percent of each building façade.

1.5. Loading/unloading areas, building service entrances, loading docks and overhead doors used for shipping/receiving areas, and ground level HVAC units within 150 feet of public right of way shall be visually screened from adjacent public right-of-way and residentially-zoned property by structures and/or landscaping equal to landscaping prescribed in City of Fargo Residential Protection Standards. All structures used for visual screening shall be constructed or clad with the same materials used for the primary building.

1.6. Dumpsters and refuse containers shall be located at the side or rear of buildings and shall be visually screened from adjacent public right-of-way, when located within 150 feet of public right of way, by permanent walls. The permanent walls shall be constructed

OFFICE OF THE CITY ATTORNEY  
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ORDINANCE NO. \_\_\_\_\_

1 or clad with the same materials used for the primary building. When dumpsters and  
2 refuse containers are located in the rear of the building, the enclosure may be constructed  
3 of a metal frame and cladding that is complementary to the primary building materials.  
4 Dumpsters and refuse containers shall contain permanent walls on at least three (3) sides  
5 with the service opening not directly facing any public right-of-way or residentially  
6 zoned property. The fourth side shall incorporate a metal gate to visually screen the  
7 dumpsters or refuse containers.

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11 **1.7. Screening of Outdoor Storage Areas.**

12 1.7.1. Outdoor storage areas shall not be located within the front setback area of the  
13 development.

14 1.7.2. Outdoor storage areas shall not cover more than fifty (50) percent of the open  
15 space of the development. For the purposes of determining allowable outdoor storage  
16 area, open space shall be defined as outdoor, unenclosed area located on the ground,  
17 but not including roads, parking areas, driveways, or other areas intended for vehicular  
18 travel.

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21 **2. Site Design.**

22 2.1. A minimum of five (5) percent of the internal surface area of the parking lot shall be  
23 landscaped through the use of planter islands and peninsulas.

2.2. A vegetative buffer equal to landscaping prescribed in City of Fargo Residential  
Protection Standards shall be installed along the 31<sup>st</sup> Avenue South right-of-way.

2.3. Separate vehicular and pedestrian circulation systems shall be provided. Adjacent  
properties may share pedestrian circulation systems that connect to public sidewalks with  
Zoning Administrator approval. An on-site system of pedestrian walkways shall be provided  
between building entrances and the following:

2.3.1. Parking lots or parking structures;

2.3.2. Entrances of other buildings on the site;

2.3.3. Any public sidewalk or multi-use path system along the perimeter streets  
adjacent to the development, or along the perimeter of the lot; and

OFFICE OF THE CITY ATTORNEY  
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ORDINANCE NO. \_\_\_\_\_

2.3.4. Adjacent pedestrian origins and destinations—including, but not limited to, transit stops, residential development, office buildings, and retail shopping buildings— where deemed practical and appropriate by the Zoning Administrator.

**3. The following uses are prohibited:**

- 3.1. Group Living;
- 3.2. Adult Entertainment;
- 3.3. Detention facilities;
- 3.4. Self-service storage;
- 3.4.1. Climate controlled indoor storage facilities are permitted;
- 3.5. Aviation/Surface Transportation;
- 3.6. Entertainment Event, Major;
- 3.7. Mining;
- 3.8. Off-Premise Advertising; and
- 3.9. Industrial uses.

**4. The following signs are prohibited:**

- 4.1. Billboards – a sign advertising products not made, sold, used or served on the premises displaying the sign or that conveys an informational or ideological message.
- 4.2. Off Premise Sign – a sign directing attention to a business commodity, service, product, or property not located, sold or conducted on the same property or site as that on which the sign is located.
- 4.3. Portable Sign – any sign designed to be moved easily and not permanently affixed to the ground or to a structure or building.

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

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

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

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

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(SEAL)

Attest:

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

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

First Reading:  
Second Reading:  
Final Passage:



OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

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

20

1 AN ORDINANCE REZONING A CERTAIN PARCEL  
2 OF LAND LYING IN MAGNUM NORTH ADDITION  
3 TO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA

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

8 WHEREAS, the Fargo Planning Commission recommended approval of the rezoning  
9 request on April 5, 2022; and,

10 WHEREAS, the rezoning changes were approved by the City Commission on May 31,  
11 2022,

12 NOW, THEREFORE,

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

14 Section 1. The following described property:

15 All of Magnum North Addition to the City of Fargo, Cass County, North Dakota;  
16 is hereby rezoned from "AG", Agricultural, District to "G/I", General Industrial, District.

17 Section 2. The City Auditor is hereby directed to amend the zoning map now on file in his  
18 office so as to conform with and carry out the provisions of this ordinance.  
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OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

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

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

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

(SEAL)

Attest:

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

First Reading:  
Second Reading:  
Final Passage:

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

2d

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

1 AN ORDINANCE REZONING A CERTAIN PARCEL  
2 OF LAND LYING IN LAVERNE'S SECOND ADDITION  
3 TO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA

4 WHEREAS, the Fargo Planning Commission and the Board of City Commissioners of the  
5 City of Fargo have held hearings pursuant to published notice to consider the rezoning of certain  
6 parcels of land lying in Laverne's Second Addition to the City of Fargo, Cass County, North  
7 Dakota; and,

8 WHEREAS, the Fargo Planning Commission recommended approval of the rezoning  
9 request on March 1, 2022; and,

10 WHEREAS, the rezoning changes were approved by the City Commission on May 31,  
11 2022,

12 NOW, THEREFORE,

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

14 Section 1. The following described property:

15 Block One (1), Lots One (1) through Three (3) of Laverne's Second Addition to the  
16 City of Fargo, Cass County, North Dakota;

17 is hereby rezoned from "AG", Agricultural, District to "P/I", Public and Institutional, District.

18 Section 2. The following described property:

19 Block One (1), Lots Four (4) through Eleven (11); Block Two (2), Lots One (1)  
20 through Eight (8); Block Three (3), Lots One (1) through Six (6); Block Four (4),  
21 Lots One (1) through Four (4); and Block Five, Lots One (1) through Four (4) of  
22 Laverne's Second Addition to the City of Fargo, Cass County, North Dakota;

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

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

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1           Section 3. The City Auditor is hereby directed to amend the zoning map now on file in his  
2 office so as to conform with and carry out the provisions of this ordinance.

3           Section 4. This ordinance shall be in full force and effect from and after its passage and  
4 approval.

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

7 (SEAL)

8 Attest:

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

First Reading:  
Second Reading:  
Final Passage:

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

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

20

1 AN ORDINANCE REZONING CERTAIN PARCELS OF LAND  
2 LYING IN COVEY RANCH SECOND ADDITION  
3 TO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA

4 WHEREAS, the Fargo Planning Commission and the Board of City Commissioners of the  
5 City of Fargo have held hearings pursuant to published notice to consider the rezoning of certain  
6 parcels of land lying in Covey Ranch Second Addition to the City of Fargo, Cass County, North  
7 Dakota; and,

8 WHEREAS, the Fargo Planning Commission recommended approval of the rezoning  
9 request on April 5, 2022; and,

10 WHEREAS, the rezoning changes were approved by the City Commission on May 31,  
11 2022,

12 NOW, THEREFORE,

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

14 Section 1. The following described property:

15 Lots One (1) and Two (2), Block One (1) of Covey Ranch Second Addition to the  
16 City of Fargo, Cass County, North Dakota;

17 is hereby rezoned from "AG", Agricultural, District to "P/I", Public and Institutional, District with a  
18 "C-O", Conditional Overlay, District as follows:

19 The following uses are prohibited:

- 20 a) Detention facilities;
- 21 b) Commercial parking;
- 22 c) Industrial service;
- 23 d) Manufacturing and production;
- e) Warehouse and freight movement;
- f) Waste related uses;

OFFICE OF THE CITY ATTORNEY  
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- g) Agriculture;
- h) Aviation; and
- i) Surface transportation.

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

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

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

(SEAL)

Attest:

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

First Reading:  
Second Reading:  
Final Passage:

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

27

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

1 AN ORDINANCE REZONING CERTAIN PARCELS OF LAND  
2 LYING IN WESTRAC THIRD ADDITION  
3 TO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA

4 WHEREAS, the Fargo Planning Commission and the Board of City Commissioners of the  
5 City of Fargo have held hearings pursuant to published notice to consider the rezoning of certain  
6 parcels of land lying in Westrac Third Addition to the City of Fargo, Cass County, North Dakota;  
7 and,

8 WHEREAS, the Fargo Planning Commission recommended approval of the rezoning  
9 request on February 1, 2022; and,

10 WHEREAS, the rezoning changes were approved by the City Commission on May 31,  
11 2022,

12 NOW, THEREFORE,

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

14 Section 1. The following described property:

15 Lot One (1), Block One (1) of Westrac Third Addition to the city of Fargo, Cass County,  
16 North Dakota,

17 that is currently zoned "GC", General Commercial, District, subject to the existing "PUD", Planned  
18 Unit Development Overlay, District, as established by Fargo Municipal Ordinance No. 5278, will  
19 hereby retain the base zoning of "GC", General Commercial, District, and retain the existing  
20 "PUD", Planned Unit Development Overlay, District.  
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OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

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

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2        Section 2. The following described property:

3        Lots Two (2) and Three (3), Block One (1) of Westrac Third Addition to the city of  
4        Fargo, Cass County, North Dakota,

5        are hereby rezoned from “AG”, Agricultural, District to “LI”, Limited Industrial, District with a “C-  
6        O”, Conditional Overlay, District as follows:

7        1.        The following uses are prohibited:

- 8            a.        Detention Facilities;  
9            b.        Adult Entertainment Centers;  
10           c.        Event-Major;  
11           d.        Mining;  
12           e.        Aviation/Surface Transportation; and  
13           f.        Aggregate Storage, Concrete Batching and Asphalt Mixing.

14        2.        Outdoor Storage

- 15           a.        Outdoor storage areas shall be screened by a 6-foot-high opaque fence if  
16           directly visible from the ground level of Lot One (1), Block One (1).  
17           b.        Outdoor storage areas shall not be located in the front setback area of the  
18           development.  
19           c.        Outdoor storage areas shall not cover more than sixty (60) percent of the  
20           open space of the development.

21        3.        Gravel surfaces for outdoor storage, parking, and vehicle circulation are not allowed  
22        within fifty (50) feet of the property line of Lot One (1), Block One (1).

23        4.        No heavy truck parking will be allowed in the front setback area, or on any side of  
the development directly visible when viewed from ground level, from Lot One (1),  
Block One (1). Heavy truck parking on the south side when viewed from ground  
level, within fifty (50) feet of the property line of Lot One (1), Block One (1), is  
prohibited.



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- 5. No truck docks or unloading areas will be allowed in the front setback area. Shop bays with south facing overhead doors visible from ground level within 150 feet from Lot One (1), Block One (1) are prohibited.
- 6. Residential Protections Standards outlined in Land Development Code 20-0704 apply to the development. For the purposes of this conditional overlay:
  - a. Lot One (1), Block One (1) of Westrac Third Addition shall be considered an "MR" zoned lot.
  - b. A landscape buffer of evergreen trees spaced twenty (20) feet apart, without requirement for shrubs, is an acceptable buffer for residential protection.

Section 3. The following described property:

Lot Four (4), Block One (1) of Westrac Third Addition to the city of Fargo, Cass County, North Dakota,

is hereby rezoned from "AG", Agricultural, District to "LI", Limited Industrial, District.

Section 4. The City Auditor is hereby directed to amend the zoning map now on file in his office so as to conform with and carry out the provisions of this ordinance.

Section 5. This ordinance shall be in full force and effect from and after its passage and approval.

(SEAL)

Attest:

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

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

First Reading:  
Second Reading:  
Final Passage:

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

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



1 AN ORDINANCE ENACTING SECTION 8-1026  
2 OF ARTICLE 8-10 OF CHAPTER 8 OF THE FARGO MUNICIPAL CODE RELATING TO  
3 DESIGNATED PASSENGER LOADING AREAS

4 AND

5 AN ORDINANCE AMENDING SECTION 1-0305  
6 OF ARTICLE 1-03 OF CHAPTER 1 OF THE FARGO MUNICIPAL CODE RELATING TO  
7 CLASSIFICATION OF ORDINANCE VIOLATIONS

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

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

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

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

17 NOW, THEREFORE,

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

19 Section 1. Enactment.

20 Section 8-1026 of Article 8-10 of Chapter 8 of the Fargo Municipal code is hereby enacted as  
21 follows:  
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OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

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

SECTION 8-1026

DESIGNATED PASSENGER LOADING AREAS

- A. No owner, driver, or person operating or in charge of any vehicle may stop, stand, or park in an area designated for passenger loading for longer than 10 minutes during the following times:
  - (1) Thursday at 10:00 p.m. until Friday at 3:00 a.m.;
  - (2) Friday at 10:00 p.m. until Saturday at 3:00 a.m.; and
  - (3) Saturday at 10:00 p.m. until Sunday at 3:00 a.m.
- B. The owner, driver, or person operating or in charge of any vehicle within the designated passenger loading area must remain with the vehicle at all times.
- C. The board of city commissioners, by resolution, may establish designated passenger loading areas. The board shall cause to be erected and maintained signs designating the provisions of the resolution in each designated passenger loading area. Enforcement of the ordinance shall not be effective until signs are erected.

Section 2. Amendment.

1-0305. Classification of Ordinance Violations.

\* \* \* \*

- C. Violations of the following ordinances are noncriminal offenses and shall require payment of a fee as follows:

\* \* \* \*

- 13. The determination of the fees payable for parking violations described in articles 8-10, 8-17, and section 9-0705 shall be based upon the vehicle that is found to be in violation of said article and the owner of the vehicle shall be responsible for payment of the fees.

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

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

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a. With respect to violations in the central business district, as defined in section 8-0101, for a violation of section 8-1006, and section 8-1009, the fee for such violation shall be \$20.00 for the first violation associated with the vehicle within the prior six-month period, \$20.00 for a second violation within six months of said first violation and \$25.00 for a third violation within six months of the said second violation and \$30.00 for the fourth violation within six months of the said third violation and for every subsequent violation within six months of the next-preceding violation. As to violations of sections 8-1006 and 8-1009, the person issuing the ticket for the parking violation is authorized to waive the fee and, instead, to issue a warning ticket, for the first said violation. At such time as a period of six months or more elapses without a parking ticket for any violation of article 8-10 having been issued for a particular vehicle, the next violation shall be treated as an initial violation.

b. Violations. With respect to parking violations other than in the central business district, for a violation of sections 8-1001, 8-1002, 8-1004, 8-1005, 8-1006, 8-1006.1, 8-1007, 8-1008, 8-1009, 8-1012, 8-1014 through 8-1024, 8-1026, the fee for such violation shall be \$20.00.

\* \* \* \*

Section 3. Penalty.

A person who violates ordinance section 8-1026 shall be deemed to have committed a non-criminal offense and shall pay a fee of \$20 as provided in Section 1-0305 of the Fargo Municipal Code, as the same may be amended from time to time.

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

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

Section 4. Effective Date.

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

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

Attest:

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

First Reading:  
Second Reading:  
Final Passage:  
Publication:



3

Office of the City Prosecutor

June 9, 2022

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

RE: Resolution Establishing Designated Passenger Loading Areas

Dear Mayor Mahoney and Commissioners,

Enclosed is a resolution which establishes the actual designated passenger loading areas as required in Fargo Municipal Code § 8-1026.

As you recall, on May 16, 2022, the City Commission requested the Fargo City Attorneys' Office to work with the Fargo Police on developing a parking ordinance which would help relieve congestion in the downtown area at busy times. The Designated Passenger Loading Areas ordinance had its 1<sup>st</sup> reading on May 31, 2022, which included a presentation by Lieutenant Ahlfeldt. The ordinance will have its second reading and final adoption on June 13, 2022. Assuming passage, the ordinance requires the City Commission to designate the actual areas of designated passenger loading areas by resolution.

The attached resolution and map will designate the actual passenger loading areas. The map is a copy of the proposed locations Lieutenant Ahlfeldt had identified in his presentation on May 31, 2022.

**Suggested Motion:** I move to approve the Resolution and attached Map (June 2022) Establishing the "Designated Passenger Loading Areas" in accordance with the adopted Designated Passenger Loading Areas ordinance (FMC § 8-1026) and authorize the Mayor to sign the same.

Sincerely,

A handwritten signature in cursive script, appearing to read "William Wischer".

William Wischer

COMMISSIONER \_\_\_\_\_ introduced the following resolution and moved its adoption:

RESOLUTION

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

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

WHEREAS, Article 3(G) of the Home Rule Charter of the City of Fargo, North Dakota grants the City of Fargo power to provide for the adoption, amendment, and repeal of ordinances and resolutions, and regulations to carry out its governmental and propriety powers and to provide for public health, safety, morals, and welfare, and penalties for a violation thereof; and

WHEREAS, the Board of City Commissions, Fargo, North Dakota, pursuant to authority granted to it under Home Rule, has adopted and approved an ordinance to establish such rules and regulations as are necessary to establish designated passenger loading areas on certain days and times and certain fees for violation; and

WHEREAS, section 8-1026 of the Fargo Municipal Code provides that the designated passenger loading areas shall be established by resolution of the Board of City Commissioners, after notice and hearing.

NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE BOARD OF CITY COMMISSIONERS, that the Designated Passenger Loading Areas are established as shown by the attached Designated Passenger Loading Zone Map (dated June 2022).

The motion for the adoption of the foregoing resolution was duly seconded by COMMISSIONER \_\_\_\_\_, and upon roll call vote, the following voted in favor thereof: COMMISSIONERS \_\_\_\_\_. The following were absent and not voting: \_\_\_\_\_, and the following voted against the same: \_\_\_\_\_, whereupon the resolution was declared duly passed and adopted.



CERTIFICATE

I, Steven Sprague, the duly appointed, qualified, and acting City Auditor of the City of Fargo, North Dakota, DO HEREBY CERTIFY:

That the foregoing is a full, true, and correct copy of the original Resolution and the whole thereof, including the Official Designated Passenger Loading Area Map (June 2022), which Resolution was duly adopted by the Board of City Commissions of the City of Fargo, North Dakota, at the meeting of the board held on \_\_\_\_\_.

That such resolution and Official Designated Passenger Loading Area Map are now a part of the permanent records of the City of Fargo, as filed in the office of the City Auditor.

Dated: \_\_\_\_\_.

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



- 600 NP Ave. N. Fargo, ND;
- 400 1<sup>st</sup> Ave. N. Fargo, ND;
- 600 2<sup>nd</sup> Ave. N. Fargo, ND;
- 200 5<sup>th</sup> St. N. Fargo, ND;
- 500 6<sup>th</sup> Ave. N. Fargo, ND.



**GAMING SITE AUTHORIZATION**  
OFFICE OF ATTORNEY GENERAL  
SFN 17996 (02/2018)

*AW*

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

Full, Legal Name of Gaming Organization <b>West Fargo Hockey Association</b>
--

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

Name of Location <b>Fort Noks</b>			
Street <b>52 Broadway N</b>	City <b>Fargo</b>	ZIP Code <b>58102</b>	County <b>Cass</b>
Beginning Date(s) Authorized <b>7/1/22</b>	Ending Date(s) Authorized <b>6/30/23</b>		Number of twenty-one tables if zero, enter "0": <b>1</b>
Specific location where games of chance will be conducted and played at the site (required) <b>Northeast corner of the bar / entire bar area excluding bathrooms</b>			
If conducting <b>Raffle</b> or <b>Poker</b> activity provide date(s) or month(s) of event(s) if known			

<b>RESTRICTIONS (City/County Use Only)</b>	
Days of week of gaming operations (if restricted)	Hours of gaming (if restricted)

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

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

<b>APPROVALS</b>	
Attorney General	Date
Signature of City/County Official	Date <b>6/13/2022</b>
<b>PRINT</b> Name and official position of person signing on behalf of city/county above <b>Steve Sprague/City Auditor</b>	

**INSTRUCTIONS:**

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

**RETURN ALL DOCUMENTS TO:**

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





**GAMING SITE AUTHORIZATION**  
OFFICE OF ATTORNEY GENERAL  
SFN 17996 (02/2018)

46

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

Full, Legal Name of Gaming Organization **North Dakota Horse Park Foundation**

**The above organization is hereby authorized to conduct games of chance under the license granted by the Attorney General of the State of North Dakota at the following location**

Name of Location <b>Legends</b>			
Street <b>1500 E Rose Creek Pkwy S</b>	City <b>Fargo</b>	ZIP Code <b>58103</b>	County <b>Cass</b>
Beginning Date(s) Authorized <b>7/1/22</b>		Ending Date(s) Authorized <b>6/30/23</b>	Number of twenty-one tables if zero, enter "0": <b>0</b>
Specific location where games of chance will be conducted <u>and</u> played at the site (required) <b>games will be conducted and played in the bar area, excluding bathrooms</b>			
If conducting <b>Raffle</b> or <b>Poker</b> activity provide date(s) or month(s) of event(s) if known			

**RESTRICTIONS (City/County Use Only)**

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

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

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

**APPROVALS**

Attorney General	Date
Signature of City/County Official	Date <b>6/13/2022</b>
<b>PRINT</b> Name and official position of person signing on behalf of city/county above <b>Steve Sprague/City Auditor</b>	

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

**RETURN ALL DOCUMENTS TO:**

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



**APPLICATION FOR A LOCAL PERMIT OR RESTRICTED EVENT PERMIT**  
 NORTH DAKOTA OFFICE OF ATTORNEY GENERAL  
 LICENSING SECTION  
 SFN 9338 (09-2021)

Page 1 of 1

500

✓ 1357  
 25.00  
 5/31/22

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

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

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

*Poker, Twenty-One, and Paddlewheels may be conducted Only with a Restricted Event Permit. Only one permit allowed per year.*

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

Name of Organization or Group of People permit is issued to North Dakota Long Term Care Associaion		Dates of Activity 09/12/22-09/15/22		If raffle, provide drawing date 09/15/22	
Organization or Group Contact Person Mirranda Gross		Title or Position Education Assistant		Telephone Number 701-354-9775	
Business Address 1900 N 11th St		City Bismarck		State ND	ZIP Code 58501
Mailing Address (if different)		City		State	ZIP Code
Site Name (where gaming will be conducted) Holiday Inn					
Site Address 3803 13th Ave S		City Fargo		ZIP Code 58103	County

**Description and Retail Value of Prizes to be Awarded**

Game Type	Description of Prize	Retail Value of Prize
raffle	10 buckets valued at \$100 per bucket.	\$1,000
Total (limit \$40,000 per year)		\$1,000

Intended Uses of Gaming Proceeds  
 Proceeds from raffle goes to Cherished Hopes that grants wishes to residents living in Long Term Care Facilities.

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

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

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

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

**Organization or Group Contact Person**

Name Mirranda Gross	Title Education Assistant	Telephone Number 701-354-9775	E-mail Address Mirranda@ndltca.org
Signature of Organization or Group's Top Official 		Title President	Date 05/23/22



APPLICATION FOR A LOCAL PERMIT OR RESTRICTED EVENT PERMIT
NORTH DAKOTA OFFICE OF ATTORNEY GENERAL
LICENSING SECTION
SFN 9338 (09-2021)

4373
5/31/22

56

Applying for (check one)
[X] Local Permit [ ] Restricted Event Permit\*
Games to be Conducted [ ] Raffle by a Political or Legislative District Party
[ ] Bingo [X] Raffle [ ] Raffle Board [ ] Calendar Raffle [ ] Sports Pool [ ] Poker\* [ ] Twenty-One\* [ ] Paddlewheels\*

Poker, Twenty-One, and Paddlewheels may be conducted Only with a Restricted Event Permit. Only one permit allowed per year.

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

Name of Organization or Group of People permit is issued to: Fargo Moorhead Derby Girls
Dates of Activity:
If raffle, provide drawing date: 7/9/22
Organization or Group Contact Person: Tiffany Werre
Title or Position: Treasurer
Telephone Number: 218-770-8433
Business Address:
City: Fargo
State: ND
ZIP Code: 58106
Mailing Address (if different): PO Box 10644
City: Fargo
State: ND
ZIP Code: 58106
Site Name (where gaming will be conducted): John E. Carlson Coliseum
Site Address: 807 17th Ave N
City: Fargo
ZIP Code: 58102
County: Cass

Description and Retail Value of Prizes to be Awarded

Table with 3 columns: Game Type, Description of Prize, Retail Value of Prize. Entry: 50/50 Raffle, Cash, \$100.00. Total (limit \$40,000 per year)

Intended Uses of Gaming Proceeds: Charity

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

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

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

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

Organization or Group Contact Person

Name: Tiffany Werre, Title: Treasurer, Telephone Number: 218-770-8433, E-mail Address: fmdgoperations@gmail.com
Signature of Organization or Group's Top Official: Tiffany Werre, Title: Treasurer, Date: 5/30/2022

CC  
6/1/22



**APPLICATION FOR A LOCAL PERMIT OR RESTRICTED EVENT PERMIT**  
 NORTH DAKOTA OFFICE OF ATTORNEY GENERAL  
 LICENSING SECTION  
 SFN 9338 (09-2021)

50

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

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

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

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

Name of Organization or Group of People permit is issued to ALS Association	Dates of Activity 8/22/22	If raffle, provide drawing date 8/22/22	
Organization or Group Contact Person Annie Wrucke	Title or Position Development Manager	Telephone Number 612-455-2558	
Business Address 1919 University Ave W Ste 175	City St Paul	State MN	ZIP Code 55104
Mailing Address (if different)	City	State	ZIP Code
Site Name (where gaming will be conducted) Edgewood Golf Course			
Site Address 19 Golf Course Rd	City Fargo	ZIP Code 58102	County Cass County

**Description and Retail Value of Prizes to be Awarded**

Game Type	Description of Prize	Retail Value of Prize
Raffle	3 levels of cash prizes (\$250, \$500, \$1,000)	\$1750 total
Total (limit \$40,000 per year)		

Intended Uses of Gaming Proceeds  
 Fundraiser for the ALS Association's programs and services

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

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

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

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

**Organization or Group Contact Person**

Name Josh Nuss	Title Territory Executive	Telephone Number 515-369-2573	E-mail Address josh.nuss@als.org
Signature of Organization or Group's Top Official 		Title Territory Executive, IA/MN/ND/SD/WI	Date 5/31/2022



# APPLICATION FOR A LOCAL PERMIT OR RESTRICTED EVENT PERMIT

Page 44

NORTH DAKOTA OFFICE OF ATTORNEY GENERAL  
LICENSING SECTION  
SFN 9338 (09-2021)

50d

\$25.00

Applying for (check one)

Local Permit       Restricted Event Permit\*

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

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

*Poker, Twenty-One, and Paddlewheels may be conducted Only with a Restricted Event Permit. Only one permit allowed per year.*

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

Name of Organization or Group of People permit is issued to AO1 Foundation, Inc		Dates of Activity 6/21/22	If raffle, provide drawing date 6/21/22	
Organization or Group Contact Person Zach Wentz		Title or Position Executive Director	Telephone Number 701-391-5027	
Business Address 1630 West Oak St Suite 210		City Zionsville	State IN	ZIP Code 46075
Mailing Address (if different)		City	State	ZIP Code
Site Name (where gaming will be conducted) Newman Outdoor Field				
Site Address 1515 15th Ave N		City Fargo	ZIP Code 58102	County Cass

### Description and Retail Value of Prizes to be Awarded

Game Type	Description of Prize	Retail Value of Prize
Raffle	Carson Wentz Autographed Jersey (2)	\$750 each
Raffle	2 Lower Bowl Washington Commanders Football Tickets (2)	\$400
Total (limit \$40,000 per year)		\$2300

### Intended Uses of Gaming Proceeds

To support the AO1 Foundation's mission of "Uplifting individuals and communities around the world by demonstrating God's love for His people"

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

Yes       No

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

Yes       No

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

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

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

Yes       No

### Organization or Group Contact Person

Name Zach Wentz	Title Executive Director	Telephone Number 701-391-5027	E-mail Address zach@ao1foundation.org
Signature of Organization or Group's Top Official 		Title Executive Director	Date 6/6/22





**APPLICATION FOR A LOCAL PERMIT OR CHARITY LOCAL PERMIT**  
 OFFICE OF ATTORNEY GENERAL  
 SFN 9338 (10-2007)

52

\$25.00  
 ✓ Cash  
 6-8-22

Application for:  Local Permit \*  Charity Local Permit (one event per year)

Name of Non-profit Organization Stomp		Date(s) of Activity 6/20/2022 to 6/20/2022	
Person Responsible for the Gaming Operation, Including Disbursement of Net Income Kortney Ziemba		Title Member	Business Phone Number (218) 784-8091
Business Address Po Box 257	City West Fargo	State ND	Zip Code 58078-0257
Mailing Address (if different) Same	City	State	Zip Code
Name of Site Where Game(s) will be Conducted Osgood Golf Course		Site Address 4400 Clubhouse Drive South	
City Fargo	State ND	Zip Code 58104-3333	County Cass
Check the Game(s) to be Conducted: * Poker, Twenty-one, and Paddlewheels may be Conducted only by a Charity Local Permit. <input type="checkbox"/> Bingo <input checked="" type="checkbox"/> Raffle <input type="checkbox"/> Calendar Raffle <input type="checkbox"/> Sports Pool <input type="checkbox"/> Poker * <input type="checkbox"/> Twenty-one * <input type="checkbox"/> Paddlewheels *			

**DESCRIPTION AND RETAIL VALUE OF PRIZES TO BE AWARDED**

Game Type	Description of Prize	Retail Value of Prize	Game Type	Description of Prize	Retail Value of Prize
50/50 Raffle	Cash	\$3,000.00			
Raffle	Double ticket	\$500.00			
	Golf Bag →				

Total: (Limit \$12,000 per year)  
 \$3,500.00 ~~3,000.00~~

**Intended uses of gaming proceeds:** Proceeds will be used to support the Sheyenne Dance Team with costs associated with their 2022-2023 dance season. Examples of costs: costumes, music, choreography, transportation, hotels, etc

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

Has the organization received a charity local permit from this or another city or county for the fiscal year July 1 through June 30?  No  Yes - If "Yes," the organization does not qualify for a local permit or charity local permit.

Has the organization received a local permit from this or another city or county for the fiscal year July 1 through June 30?  No  Yes - If "Yes," indicate the total value of all prizes previously awarded: \$ 1,085.00. This amount is part of the total prize limit of \$12,000 per year.

Signature of Organization's Top Executive Official 	Date 5/27/2022	Title President	Business Phone Number (701) 799-8641
--	-------------------	--------------------	---



# APPLICATION FOR A LOCAL PERMIT OR RESTRICTED EVENT PERMIT

NORTH DAKOTA OFFICE OF ATTORNEY GENERAL  
LICENSING SECTION  
SFN 9338 (09-2021)

\$25.00  
6-9-22  
✓

5f

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

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

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

*Poker, Twenty-One, and Paddlewheels may be conducted Only with a Restricted Event Permit. Only one permit allowed per year.*

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

Name of Organization or Group of People permit is issued to North Dakota CPA Society Foundation		Dates of Activity June 20-21, 2022		If raffle, provide drawing date June 21, 2022	
Organization or Group Contact Person Sherre Sattler		Title or Position Executive Director		Telephone Number 701-775-7111	
Business Address 3100 S Columbia Rd Suite 500		City Grand Forks		State ND	ZIP Code 58201
Mailing Address (if different)		City		State	ZIP Code
Site Name (where gaming will be conducted) Holiday Inn					
Site Address 3803 13th Ave S		City Fargo		ZIP Code ND	County 58103

### Description and Retail Value of Prizes to be Awarded

Game Type	Description of Prize	Retail Value of Prize
Raffle	Yeti Roadie Cooler	\$268
Raffle	Holiday Inn Fargo - One night Stay	\$165
Raffle	Medora Prize Package	\$297
Raffle	Amazon Gift Card	\$150
Raffle	JBL Wireless Earbuds, Vale Wifi Speaker, Titleist Golfballs	\$260
<b>Total (limit \$40,000 per year)</b>		<b>\$1140.</b>

Intended Uses of Gaming Proceeds  
Scholarships for University Students who want to become CPAs

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

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

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

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

### Organization or Group Contact Person

Name Sherre Sattler	Title Executive Director	Telephone Number 701-775-7111	E-mail Address ssattler@ndcpas.org
Signature of Organization or Group's Top Official <i>Sherre Sattler</i>		Title Executive director	Date 6/6/2022



# APPLICATION FOR A LOCAL PERMIT OR RESTRICTED EVENT PERMIT

NORTH DAKOTA OFFICE OF ATTORNEY GENERAL  
LICENSING SECTION  
SFN 9338 (09-2021)

588

✓ 6136  
25.00  
6/9/22

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

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

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

*Poker, Twenty-One, and Paddlewheels may be conducted **Only** with a Restricted Event Permit. Only one permit allowed per year.*

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

Name of Organization or Group of People permit is issued to Villa Nazareth DBA CHI Friendship	Dates of Activity 9/1/2022-10/21/22	If raffle, provide drawing date 10/21/22	
Organization or Group Contact Person Dori Leslie	Title or Position President	Telephone Number 701-235-8217	
Business Address 801 Page Drive	City Fargo	State ND	ZIP Code 58103
Mailing Address (if different)	City	State	ZIP Code
Site Name (where gaming will be conducted) CHI Friendship			
Site Address 801 Page Drive	City Fargo	ZIP Code ND	County 58103

### Description and Retail Value of Prizes to be Awarded

Game Type	Description of Prize	Retail Value of Prize
Raffle	\$500 Visa Gift Card	\$500
Raffle	Two, \$250 Visa Gift Cards	\$500
Raffle	Five, \$100 Visa Gift Cards	\$500
Raffle	Ten, \$50 Visa Gift Cards	\$500
Total (limit \$40,000 per year)		\$2,000

Intended Uses of Gaming Proceeds  
Provide Christmas gifts for people with developmental disabilities

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

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

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

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

### Organization or Group Contact Person

Name Dori Leslie	Title President	Telephone Number 701-235-8217	E-mail Address dori.leslie@commonspirit.org
Signature of Organization or Group's Top Official 		Title Controller	Date 6-7-2022



Page 48 **APPLICATION FOR A LOCAL PERMIT OR RESTRICTED EVENT PERMIT**  
 NORTH DAKOTA OFFICE OF ATTORNEY GENERAL  
 LICENSING SECTION  
 SFN 9338 (09-2021)

5h

✓ 3217  
 25.00  
 6/9/22

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

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

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

Poker, Twenty-One, and Paddlewheels may be conducted **Only** with a Restricted Event Permit. Only one permit allowed per year.

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

Name of Organization or Group of People permit is issued to <i>Steve Weidner 7m Junior Tour</i>		Dates of Activity <i>July 1, 2022 - June 30, 2023</i>		If raffle, provide drawing date	
Organization or Group Contact Person <i>Shelley Weidner</i>		Title or Position <i>Chairman</i>		Telephone Number <i>701 235-8761</i>	
Business Address <i>509 26th Ave S.</i>		City <i>Fargo</i>		State <i>ND</i>	ZIP Code <i>58103</i>
Mailing Address (if different) <i>1119 26th Ave S.</i>		City <i>Fargo</i>		State <i>ND</i>	ZIP Code <i>58103</i>
Site Name (where gaming will be conducted) <i>Fargo Country Club</i>					
Site Address <i>509 26th Avenue S.</i>		City <i>Fargo ND</i>		ZIP Code <i>58103</i>	County <i>Cass</i>

Description and Retail Value of Prizes to be Awarded

Game Type	Description of Prize	Retail Value of Prize
Raffle boards	Merchandise Gift Certificates	\$20,000
	(no one prize greater than \$4,000)	
	cash prize (no one prize greater than \$2,000)	\$4,000
TOTAL OF 21	Events for Period July 1, 2022 - June 30, 2023	
Number of	Events Determined by weather	
Total (limit \$40,000 per year)		40,000

Intended Uses of Gaming Proceeds  
*Promote Junior Golf*

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

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

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

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

Organization or Group Contact Person

Name <i>Shelley Weidner</i>	Title <i>Chairman</i>	Telephone Number <i>701 235-8761</i>	E-mail Address <i>ccclerykwo@gmail.com</i>
Signature of Organization or Group's Top Official <i>Shelley Weidner</i>		Title <i>Chairman</i>	Date <i>6/8/2022</i>

6

## MEMORANDUM

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**TO:** BOARD OF CITY COMMISSIONERS  
**FROM:** STEVEN SPRAGUE, CITY AUDITOR  
**SUBJECT:** 2022-2023 ALCOHOL BEVERAGE LICENSE RENEWAL  
**DATE:** JUNE 13, 2022

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Attached is a list of 203 alcoholic beverage establishments seeking renewal of their Liquor and Live Entertainment licenses through June 30, 2023. These licenses are eligible for renewal subsequent to all requirements being fulfilled.

All food and alcohol sales ratio reports are on file in the Auditor's Office and may be reviewed upon your request.

The licenses are eligible for renewal after fulfilling the renewal requirements. The renewal requirements include:

- Completion and submission of license renewal form.
- Submission of a current roster including hiring dates and expiration of server training cards.
- Submission of a CPA statement or ND sales tax summary indicating the food percentage has been met for applicable licensees.
- All servers and wait staff must meet server training requirements.
- An owner or manager from each establishment has attended the mandatory annual meeting held on May 3, 2022.

If you have any questions regarding this matter, please feel free to contact me.

**Recommended Motion:**

Approve the renewal of the attached Liquor licenses until June 30, 2023, upon the condition that all of the essential requirements for renewal are present by June 30, 2022.

<b>DBAName</b>	<b>Class</b>
46 North Pints & Provisions	FA
701 Eateries, Prairie Kitchen & Camp Lone Tree	FA
Acapulco Mexican Restaurant, Inc	F
Adibon A & E Fusion Cuisine	GH
AmericInn Fargo	ABH-Limited
Amvets	A-Club
Applebee's 13th Ave	FA
Applebees 45th St	FA
Applebee's North	FA
Auger Inn All Ranks Club	J
Avalon Event Center West	FA
Baymont Inn & Suites	ABH
Beer and Fish Company	FA
Bernbaum's	GH
Bernie's Wines & Liquors	B
Best Western Plus Kelly Inn & Suites	ABH-Limited
Bismarck Tavern	AB
Bison Turf	AB
Black Coffee and Waffle Bar	GH
Blackbird Woodfire	GH
Blarney Stone Pub HD	ABH-RZ
Blaze Pizza	GH
Borrowed Bucks	A
Boss' Pizza	GH
Bottle Barn Liquors	B-M
Bottle Barn off Broadway	AB
Bowler	AB
Brew Bird	F
Brewtus Clubhouse	FA-Golf
Buffalo Wild Wings Grill & Bar	A
Buffalo Wild Wings Grill & Bar N	FA
Candlewood Suites North	ABH-Limited
Candlewood Suites South	ABH-Limited
Casa Mexico Mexican Restaurant	F
Cash Wise Liquor 34th St	B
Cash Wise Liquor Timber Parkway	B-Limited
Cellar 624	VWB
Chilis Grill & Bar	FA
Chipotle Mexican Grill 19 Ave N	F
Chipotle Mexican Grill 45th St	F
Chubs Pub	AB
Chuck E. Cheese	H
Concessions Management	N
Cowboy Jacks	A
Crave	FA
Crooked Pint Ale House	FA

Delta Hotels	ABH
Dempsey's Public House	Z
District 64	Z
Doolittles Woodfire Grill	FA
Drekker Brewing Company	Y
Drumconrath Brewing Company	Y
Drunken Noodle	GH
Duffys	AB
Edgewood Tavern	FA-Golf
El Zagal	A-Club
Elks	A-Club
Empire Liquors West	B
Empire Tavern	AB
Expressway Suites	ABH-Limited
Fargo Billiards	FA-Entertainment
Fargo Brewing Company	C-M
Fargo Cork	AB
Fargo Country Club	A-Club
Fargo Courtyard	ABH
Fargo HuHot Mongolian Grill	GH
Fargo Residence Inn (Aimbridge)	ABH-Limited
Fargo Stopping Center	I
Fargo Suites	ABH
FargoDome	N
Fargo-Moorhead Curling Club	A-Club
Fort Nok's	Z
Four Points by Sheraton	FA
Frank's Lounge	Z
Front Street Taproom	CW-M
Fryn Pan	GH
Garden Pavilion/One on One Catering	F
Golf Addiction	FA-Entertainment
Granite City Food & Brewery	FA-M
Happy Harry's Bottle Shop 19 Ave N	B-M
Happy Harry's Bottle Shop 45 St	B-M
Happy Harry's Bottle Shop 53 Ave S	AB-M
Hennessy's Irish Pub	A
Herd & Horns	FA
Hi-Ho South	I
Hilton Garden Inn	ABH
Himalayan Yak	GH
Holiday Inn Express I-94	ABH-Limited
Holiday Inn Express-West Acres	ABH-Limited
Holiday Inn of Fargo 13 Ave	ABH
Homewood Suites by Hilton	ABH-Limited
Hornbacher's Wine & Spirits	B-Limited
India Palace	GH

Ivy & Rose Warehouse	CW
Izumi Sushi and Hibachi All You Can Eat	F
Izumi Sushi and Hibachi Buffet	F
Jasper Hotel	ABH
Jays Smokin BBQ	GH
JL Beers	FA-RZ-M
JL Beers South	AB-M
Johnny Carino's	FA
Juice It Smoothie	F
KingPinz	FA-Entertainment
Kobe's Japanese Cuisine	F
La Fiesta Mexican and American Grill	F
La Quinta Inn & Suites	ABH-Limited
Labby's Grill & Bar	Z
Leela Thai Cuisine (Maya Thai)	GH
Legends	FA-Golf
LongHorn Steakhouse	FA
Lucky's 13 Pub	FA
Luna	FA
Mangos Mexican & American Grill	F
Men's Hair World	C
Mexican Village 45th	FA
Mexican Village Main	F
Mezzaluna	FA-RZ
Nichole's Fine Pastry	GH
Nobull Country Club	Z
Northport Liquors	B
O'Kellys	ABH
Old Broadway Food & Brewing Co	AB
Olive Garden Italian Restaurant	FA
Osaka Sushi and Hibachi	F
Pancho's Mexican Grill	H
Paradiso	A
Passage to India	GH
Peppers American Cafe	AB
Pho D'Licious	H
Pickled Parrot	AB
Pixeled Brewing Co	C-M
Pizza Ranch	H
Plains Art Museum	GH
Plaza Azteca Restaurantes Mexicanos	FA
Porter Creek Hardwood Grill	ABH
Pounds	FA-RZ
Prairie Rose Meadery LLC	P
Proof Artisan Distillers	DD
Radisson-Fargo	ABH



Ramada Hotel & Conference	ABH
Red Hawks	N
Red Lobster #309	A
Rhombus Guys	FA-RZ-M
Ricks Bar	AB
Rooter's Bar	AB
Rough Cut Social	CW
Round Up (45th St) Royal Liquors and Bar	AB
Royal Liquors & Woody's Bar (32nd Ave)	AB
Royal Liquors (25th St)	B
Royal Liquors (Main Ave)	B
Royal Liquors Village West	B
Ruby Tuesday	FA
Sammys Pizza	GH
Samurai Japanese Cuisine	GH
Sanctuary Event Center	RZ-V
Sickie's Garage Fiechtner Dr	FA
Sickie's Garage 45th St	FA
Side Show Café	H
SideStreet Grille & Pub	A-M
Simy's Bottle Shop	B
Sky Dine Services	A
Slammers Bar	A
SmashBurger	H
Soiree Victorian Tea Room	GH
Sons of Norway	A-Club
SouthTown PourHouse	FA
Space Aliens Grill & Bar	FA
Specks Bar	AB
Spicy Pie 52nd	H
Spicy Pie North	H
Spirit Shop (33 ST)	B-M
Sports Bar	AB
Square One	GH
Stamart Liquor	B-Limited
Staybridge Suites Hotel	ABH-Limited
Suite Shots	FA-Entertainment
Summit	A
Super Buffet & Mongolian Grill	GH
Taco Shop	F
Tacos Trompo	H
Tailgators	AB
Target Wine & Spirits	B-Limited
Tavern Grill	FA
Tavern Grill Grotto	I
Teddy's	FA-RZ
Texas Roadhouse	FA

The Boiler Room	FA
The Box	ABH
The Bulldog Tap	Z
The Northern	AB
The Stage at Island Park, FMCT	A-Club
Toasted Frog	FA-RZ
Touchmark at Harwood Groves	F
Twin Peaks Restaurant	Z
United States Axe	GH
VFW	A-Club
Vinyl Taco	FA-RZ
Wasabi/Poke Bowl	F
West Acres Bowl	AB
Wild Bill's Sports Saloon	FA
Wild Terra Cider and Brewing Company	CWP
Windbreak Saloon	AB
Wurst Bier Hall	FA-RZ-M
Young Blood Coffee	GH

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PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Project No. FM-16-A1 Type: Change Order #11 & Time Extension

Location: 45<sup>th</sup> Street & 64<sup>th</sup> Avenue North Date of Hearing: 6/6/2022

<u>Routing</u>	<u>Date</u>
City Commission	<u>6/13/2022</u>
PWPEC File	<u>X</u>
Project File	<u>Roger Kluck</u>

The Committee reviewed the accompanying correspondence from Project Manager, Roger Kluck, related to Change Order #11, in the amount of \$54,862.70, bringing the total contract amount to \$9,493,569.90, for additional work, along with the associated time extension as described below:

<u>Original Completion Dates</u>	<u>Revised This Memo</u>
Substantial – June 15, 2022 Final – July 1, 2022	Substantial – September 1, 2022 Final – September 15, 2022

Staff is recommending approval of Change Order #11 and the associated time extension.

On a motion by Ben Dow, seconded by Steve Sprague, the Committee voted to recommend approval of Change Order #11 and the associated time extension to Key Contracting.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve Change Order #11 in the amount of \$54,862.70, bringing the total contract amount to \$9,493,569.90 and the associated time extension to Key Contracting.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: Flood Sales Tax

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

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

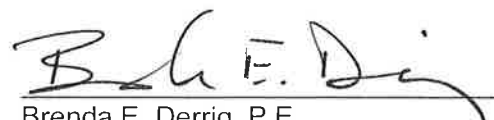
COMMITTEE

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

<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Unanimous</u>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Mark Williams
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
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ATTEST:

C: Kristi Olson

  
 Brenda E. Derrig, P.E.  
 City Engineer

## MEMORANDUM

To: Members of PWPEC

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

CC: Jody Bertrand, Division Engineer; Nathan Boerboom, Division Engineer

Date: 6/1/2022

Re: Project # FM-16-A1 North Side Flood Risk Management Levee  
Change Order No. 11

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### Background

The project was advertised in August 2020, the project was awarded to Key Contracting in September 2020, and construction began shortly thereafter. The lift station was operational in February 2022 ahead of the heavy spring runoff. This change order covers items to complete the project.

During the spring 2022 flood event, it was determined that having all three pumps running at the same time cut down on the time to empty Drain 10 and would provide an extra safeguard for higher runoffs. The cost to increase the power amperage to cover the third pump is \$26,907.10. This winter I was able to make contact with the landowner on the east side of University so that we could tie the new levee to the existing levee east of University. The benefit is that once completed all we would have to do is plug the street to provide full protection to the north side. There is no easement cost and the construction cost is \$21,590.00. Over the winter, we found that the approach slabs at the CR 31 sleeper slab had cracked. Upon investigation, it was found that the plan detail did not include rebar to tie the system together to avoid cracking. The Contractor and Engineer are covering the cost to remove and replace the approach concrete slabs and Fargo has agreed to cover the rebar, which would have been in the original bid if shown in the detail. The cost is \$2,945.60. We were able to go thru a robust spring pumping operation and found that the oilers for the pumps and gates needed to be revised at a cost of \$1,520.00 and the cover protection on the sluice gate controllers was plastic as supplied and needed to be replaced to a stronger cap to work in our extra cold winters. The cost for these two items is \$1,520.00 and \$1,900.00 respectively. The change order also has a time extension to cover the extended delivery for electrical items so the new substantial completion date is September 1, 2022 and the final completion date is revised to September 15, 2022.

The Consultant recommends approval of these changes and so does Engineering. Funding for this project will come from the Flood Sales Tax Fund 460, but this will be a no cost change order.

### Recommended Motion

Approve Change Order #11 for a cost of \$54,862.70.

RK/jmg  
Attachment



**CITY OF FARGO  
ENGINEERING DEPARTMENT  
CHANGE ORDER REPORT**

**Project No** FM-16-A1 **Change Order No** 11  
**Project Name** North Side Flood Risk Management Levee  
**Date Entered** 6/2/2022 **For** Key Contracting Inc

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

**EXPLANATION OF CHANGE:** Miscellaneous items added to finish project and revise completion date

This change order covers items to complete project. During the spring flood it was determined that having a third pump in high water times was beneficial, cost to increase amperage on transformer \$26,907.10. We received landowner approval to extend the new levee east of University to tie into the existing levee, \$21,590.00. Over the winter we found that the approach slabs at the CR 31 sleeper slab cracked. Upon investigation it was found that the original design plan did not require rebar in the approach slab. The Contractor and engineer are covering the cost of the removal and replacement of the approach slabs and Fargo is covering the cost of rebar that would have been in the current bid if had been in the plans. We went thru an extended lift station operation this spring and it was found that the specified oilers needed to be revised at a cost of \$1,520.00. We also found that the cover protection of the sluice gate controllers as specified did not stand up under the unseasonable cold weather so they are being replaced with a more robust cover for a cost of \$1,900.00

Section	Line No	Item Description	Unit	Orig Cont Qty	Prev C/O Qty	Prev Cont Qty	Curr C/O Qty	Tot Cont Qty	Unit Price (\$)	C/O Ext Price (\$)
Storm Sewer - Electrical	100	Modify Lift Station	EA	0.00	0.00	0.00	1.00	1.00	1,520.00	1,520.00
	101	Install Electrical Service	LS	0.00	0.00	0.00	1.00	1.00	26,907.10	26,907.10
	104	Modify Gatewell	EA	0.00	0.00	0.00	1.00	1.00	1,900.00	1,900.00
<b>Storm Sewer - Electrical Sub Total (\$)</b>									<b>30,327.10</b>	
Flood Mitigation	102	Site Grading	LS	0.00	0.00	0.00	1.00	1.00	21,590.00	21,590.00
Pavement	103	Repair Concrete	SY	0.00	0.00	0.00	70.00	70.00	42.08	2,945.60
<b>Pavement Sub Total (\$)</b>									<b>2,945.60</b>	

**Summary**

Sales Tax Funds - Flood Control - 460

**Net Amount Change Order # 11 (\$)**

**Previous Change Orders (\$)**

**Original Contract Amount (\$)**

**Total Contract Amount (\$)**

54,862.70  
227,170.90  
9,211,536.30  
9,493,569.90



CITY OF FARGO  
ENGINEERING DEPARTMENT  
CHANGE ORDER REPORT

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

**CONTRACT TIME**

Current Substantial Completion Date	Current Final Completion Date	Additional Days Substantial Completion	Additional Days Final Completion	New Substantial Completion Date	New Final Completion Date
08/15/2022	07/01/2022	78.00	76.00	09/01/2022	09/15/2022

Description

APPROVED

For Contractor

Title

*Steve Carr*  
VP

APPROVED DATE

Department Head

Mayor

Attest

*TRICE* 6/9/22

**Key Contracting, Inc.**

245 7th Avenue NE  
 West Fargo, North Dakota 58078  
 Phone: (701) 238-8192  
 Fax: (701) 356-0166  
 Internet: keycontracting.com

**KEY CHANGE ORDER REQUEST # 15**

Submitted To: Moore Engineering  
 Attention: Brady Woodard  
 Date: 6/2/2022  
 Project: City of Fargo FM-16-A1  
 Total Price: \$54,797.10

Key Contracting requests a time extension from June 15, 2022 to September 1, 2022 for Substantial Completion and September 15 for Final Completion. We need the 90 day extension to complete the recently proposed electrical change order - due to long lead time on parts. We also request the extension for time needed to complete our original contract. Due to heavy spring rains we have been unable to do any on-site Earthwork until last week. As of today(6/02/22) the only major work items left are the concrete slope protection and driveway - this will take about 6 weeks.

Key Contracting, Inc., hereby submits an estimate for all labor and materials for:

Description	Unit Price	Amount
Adding wire and electrical conduit for pump oilers and 4' x 10' sluice gate controller.	\$ 1,520.00	\$ 1,520.00
Upgrade Electrical to 900 amp	\$ 26,907.10	\$ 26,907.10
Extending Levee and 18" CMP East of University as per plan	\$ 21,590.00	\$ 21,590.00
Add Rebar at Sleeper Slab Approach Panels	\$ 2,880.00	\$ 2,880.00
AUMA Z104.405 Cover Protection w/o Window 5 each	\$ 380.00	\$ 1,900.00
		\$ 54,797.10

***Steve Carr***

Contact: Steve Carr Cell (701) 371-1284

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

8

Project No. MP-20-A2

Type: Time Extension (Change Order #1)

Location: Roberts Alley Power

Date of Hearing: 6/6/2022

Routing

City Commission

Date

6/13/2022

PWPEC File

X

Project File

Kristy Schmidt

The Committee reviewed the accompanying correspondence from Project Manager, Kristy Schmidt, regarding a time extension (Change Order #1) requested by Magnum Electric. This time extension to the Substantial and Final Completion Dates is needed due to manufacturing and supply issues of electrical materials.

Staff is recommending approval of the time extension (Change Order #1) as shown below.

Original Completion Dates:	Revised This Memo:
Substantial Completion: 6/14/2022	Substantial Completion: 10/24/2022
Final Completion: 6/28/2022	Final Completion: 11/7/2022

On a motion by Ben Dow, seconded by Steve Sprague, the Committee voted to recommend approval of the time extension (Change Order #1) as described above to Magnum Electric.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve the time extension (Change Order #1) to the Substantial and Final Completion Dates to October 24 and November 7, 2022 to Magnum Electric.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: Developer and Sales Tax Funds

Yes	No
<u>        </u>	<u>        </u>
<u>        </u>	<u>        </u>
<u>        </u>	<u>        </u>

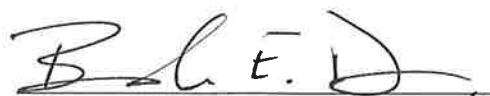
Developer meets City policy for payment of delinquent specials  
Agreement for payment of specials required of developer  
Letter of Credit required (per policy approved 5-28-13)

COMMITTEE

Present	Yes	No	Unanimous
<u>        </u>	<u>        </u>	<u>        </u>	<u>        </u>
<u>        </u>	<u>        </u>	<u>        </u>	<u>        </u>
<u>        </u>	<u>        </u>	<u>        </u>	<u>        </u>
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Tim Mahoney, Mayor  
Nicole Crutchfield, Director of Planning  
Steve Dirksen, Fire Chief  
Bruce Grubb, City Administrator  
Ben Dow, Director of Operations  
Steve Sprague, City Auditor  
Brenda Derrig, City Engineer  
Vacant, Finance Director

ATTEST:

  
Brenda E. Derrig, P.E.  
City Engineer

C: Kristi Olson



# Memorandum

**To:** Members of PWPEC  
**From:** Kristy Schmidt, Project Engineer  
**Date:** June 2, 2022  
**Re:** Project No. MP-20-A2 – Roberts Alley Power Time Extension

**Background:**

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

The General Contractor, Magnum Electric, has been delayed on this project due to manufacturing and supply issues of electrical materials.

**Recommended Motion:**

Approve changes to extend the completion date as described above and the Substantial completion date as shown below:

Original Completion Dates:	Revised This Memo:
Substantial Completion – 6/14/2022 Final – 6/28/2022	Substantial Completion – 10/24/2022 Final – 11/7/2022

KLS/jmg  
 Attachments

C: Dustin Hoffner, MBN



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

**Change Order No** 2 **Change Order Date** 6/6/2022  
**Contractor** Magnum Electric, Inc.

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

**EXPLANATION OF CHANGE** Change Order # 2  
 The Contractor has been delayed due to electrical supply manufacture delays.

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

Summary.

Source Of Funding	Street Sales Tax
Net Amount Change Order # 2 (\$)	\$0.00
Previous Change Orders (\$)	\$0.00
Original Contract Amount (\$)	\$498,660.00
Total Contract Amount (\$)	\$498,660.00

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

CONTRACT DATES

Current Substantial Completion Date	Current Final Completion Date
6/14/2022	6/28/2022
Additional Days Substantial Completion	Additional Days Final Completion
132	132
New Substantial Completion Date	New Final Completion Date
10/24/2022	11/7/2022

Interim Completion Dates

APPROVED

For Contractor

Title

Magnum Electric, Inc.

V-Pet Business Development

  
6/8/22

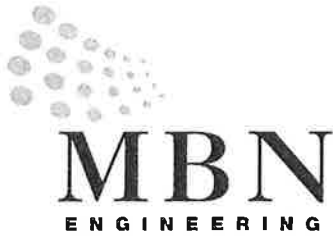
APPROVED DATE

Department Head

Mayor

Attest

  
6/9/22



**To:** Kristy Schmidt City of Fargo  
**From:** Duston Hoffner  
**Date:** 6/2/2022  
**Subject:** Roberts Alley Power – City of Fargo Project #MP-20-A2 – Change In Contract Time

---

Kristy,

Magnum Electric has requested to Change the Contract Time (per Article 11.05) from current final completion date of June 28<sup>th</sup> of 2022 to new final completion date of November 7<sup>th</sup> of 2022. After reviewing the attached information from Magnum and what I have seen in the construction world to date, I support extending the completion date as requested. Throughout various projects with in the last year we have seen numerous delays from light fixtures to main electrical gear. This project is no different from the others, and the delays in the gear are expected. Magnum has giving us some decent information and dates to help with requesting this extension. Magnum appears to be fully engaged in the project to the end, as well and is accomplishing all they can with what that have at this point. With that being said, and the attached information from Magnum Electric, I support this extension to the project. If you have any further questions please don't hesitate to ask.

Sincerely,

A handwritten signature in black ink that reads "Duston Hoffner". The signature is written in a cursive style with a prominent initial "D".

Duston Hoffner  
Electrical Designer  
MBN Engineering

**MAGNUM ELECTRIC***"Quality doesn't cost, it pays"*May 31<sup>st</sup>, 2022

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

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

Kristy -

Magnum Electric, Inc is requesting a **Change in Contract Time per Article 11.05** to complete the project due to Electrical Supply Chain delivery issues we are experiencing on the Roberts Alley Power project (City of Fargo Project Number MP-20-A2). The original final completion date of the project was June 28<sup>th</sup> of 2022. Currently most of our AMP provided main equipment has end of June and early October ship dates. We have received some product and have been installing that product as soon as it arrives. Unfortunately, some sites are missing components that will not allow us to switch the power over until all components are installed. We can continue to prepare for the arrival of the products by mounting racks and measuring/cutting wire. We have exhausted all options to improve the attached delivery dates. Supply delivery dates continue to get pushed back and are experiencing this across the board on all projects. Xcel Energy is also a part of the Roberts Alley Power project. Xcel is experiencing delays in deliveries as well. Currently Xcel's Transformer #3 will not be energized until the middle of June, due to material deliveries, which limits our timeline to complete (7) of the service upgrades. Magnum Electric, Inc is committed to completing this project as soon as possible and we will insure to do our due diligence to inform everyone involved of any future timeline changes.

**Project Timeline:**

- Bid Date 10/27/2021
- Contract Date 11/15/2021
- Approved by Commissioners 11/29/2021
- Supply Manufacture Pricing Evaluation 12/6/2021-12/28/2021
- PO issued to Supplier 12/29/2021
- Drawings back with clarifications 1/27/2022
- Additional Clarifications on JLG site 2/8/2022
- Additional site clarifications made 3/2/2022
- Release sent to Suppler (CED) 3/7/2022
- PR-1 Change Revisions 3/16/2022
- Approved changes made for PR-1 3/21/2022
- PR-2 Change Revision 4/6/2022
- Approved changes made for PR-2 4/8/2022
- CT Cabinets Shipped 5/4/2022
- SEMS's and MCT's Shipping 5/17/2022 (Now Moved to End of June)
- FMRU rated Equipment Shipping 10/7/2022

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

Jamestown  
 318 Business Loop W  
 Jamestown, ND 58401

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

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

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

# **MAGNUM ELECTRIC**

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

---

We are requesting a contract time change to 11/30/2022 to allow for the installation, testing and turnover of the final equipment that will ship on 10/7/2022.

I have attached documentation of timelines and issues we are having from the manufacturer American Midwest Power.

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

Sincerely,



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



**AMERICAN MIDWEST POWER**

*Solutions for Power*

3131 Vicksburg Lane  
Plymouth | MN | 55447

Office: 763-551-1555 | Toll free: 800-328-8658 | Fax: 763-551-9275 | [ampmfg.com](http://ampmfg.com)

5/31/22

Patrick Johnson  
Magnum Electric, Inc  
West Fargo, ND

RE: Roberts Alley Equipment/Material Delays

Attached are the timeline and supply chain issues we are having on the above-mentioned project. AMP will continue to push to improve these dates in all possible ways. We are currently having issues with shortages and lead times on components.

Timeline:

- 12/29/21      Hold for Release PO
- 1/27/22      Drawings back with notes for clarifications
- 2/8/22        Clarification on JLG
- 3/2/22        More clarifications
- 3/7/22        Release sent from CED
- 3/16/22      PR 1 change
- 3/21/22      PO revision for PR 1
- 4/6/22        PR 2
- 5/4/22        CT cabinets shipped

5/17/22      SESMs and MCTs were supposed to ship but didn't due to lug shortages from our vendor for the SESMs and main switches and fuses for the MCTs. We are supposed to have the lugs, switches, and fuses by the end of June.

As of today, all custom engineered products are slated to ship 10/7/22 barring any unforeseen issues.

This would include material for:

- 216/218
- Black Bird

Sincerely,

**Eric Spanier**  
Sr. Sales Engineer  
Mobile: 701-306-5016  
[ampmfg.com](http://ampmfg.com)



**OUR VALUES**

Integrity | Dependability | Knowledge | Dedication | Positivity | Valuing Others

*Solutions for Power* | Standard terms

**OUR VALUES**

Integrity | Dependability | Knowledge | Dedication | Positivity | Valuing Others





**AMP Manufacturing & Supply**

3131 Vicksburg Lane N  
Minneapolis, MN 55447 USA

Phone: 763 551 1555  
Fax: 763 551 9275

Acknowledgment No. 103710-01

Page 1 of 5

**Account** CONSOLIDATED ELECTRICAL DISTRIBUTOR  
**Address:** 3870 34TH AVE SOUTH  
FARGO, ND 58104

*Ship Via* BEST WAY  
*FOB* FACTORY  
*Shipping Payment* PP

**Shipping** MAGNUM ELECTRIC, INC  
**Address:** 471 CHRISTIANSON DRIVE WEST  
WEST FARGO, ND 58078  
Phone: 701-551-3240  
Fax: 701-356-3210

**MARK: 10556CS**  
**ROBERTS ALLEY**

*EST. Ship Date* *Your PO* *PaymentTerms*  
2348MAG901411D Net 30 Days

*Salesperson* ERIC SPANIER *Created By* 2200 DENIS DORION

Line	Order Qty	Part ID/Description	U/M	Unit Price	Extd Price
------	-----------	---------------------	-----	------------	------------

1.00 2.000 SESMH324VB  
SES SWITCH 200A 3PH4W HOT SEQ  
200A, 208/120V, 3PH4W, AL Bus, NEMA 3R, UL Listed, 85KAIC, SUSE  
Rated  
1 - 200A, 3P Fused Pullout Main Switch  
1 - 200A, Meter Socket  
**Fuses Included**

**Mark: 1 Chapel/Art Gallery & other Spicy Pie**

Ship Schedule: Quantity Date Ship Via Shipping Address  
2.000 5/17/2022 BEST WAY <Address on Order>

*Now end of June*

2.00 3.000 MCT366J  
MCT 600A 3PH 4W W/J FUSE  
600A 600V 3Ø4W NEMA 3R, Al bus, U/L listed, SUSE rated, 85K AIC  
1 - 600A Utility CT compartment  
1 - 600A 3P Main fused switch [J]  
Dimensions: 72"T x 33"W x 12"D

**One of the 3 to have 1 extra line side 300MCM lug tap.**

**Fuses included**

**Mark: 1 Bell Bank, 1 VFW, & 1 CB1**

Ship Schedule: Quantity Date Ship Via Shipping Address  
3.000 5/17/2022 BEST WAY <Address on Order>

*Now end of June*

Continued over .../



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3131 Vicksburg Lane N  
 Minneapolis, MN 55447 USA  
 Phone: 763 551 1555  
 Fax: 763 551 9275

Acknowledgment No. 103710-01

Page 2 of 5

**Account:** CONSOLIDATED ELECTRICAL DISTRIBUTOR  
**Address:** 3870 34TH AVE SOUTH  
 FARGO, ND 58104

*Ship Via* BEST WAY  
*FOB* FACTORY  
*Shipping Payment* PP

**Shipping:** MAGNUM ELECTRIC, INC  
**Address:** 471 CHRISTIANSON DRIVE WEST  
 WEST FARGO, ND 58078  
 Phone: 701-551-3240  
 Fax: 701-356-3210

**MARK: 10556CS**  
**ROBERTS ALLEY**

*EST. Ship Date*      *Your PO*  
 2348MAG901411D

*Payment Terms*  
**Net 30 Days**

*Salesperson* ERIC SPANIER

*Created By* 2200 DENIS DORION

Line	Order Qty	Part ID/Description	U/M	Unit Price	Extd Price
3.00	3.000	SESMH325VB SES SWITCH 400A 3PH4W HOT SEQ 400A, 208/120V, 3PH4W, AL Bus, NEMA 3R, UL Listed, 85kAIC, SUSE Rated 1 - 400A, 3P Fused Pullout Main Switch 1 - 320A, Meter Socket <b>Fuses Included</b>			
<b>Mark: 1 Fargo Linoleum, 1 Dempsey's, &amp; 1 Everetts</b>					
Ship Schedule:		Quantity	Date	Ship Via	Shipping Address
		3.000	5/17/2022	BEST WAY	<Address on Order>
4.00	2.000	CT16-4L CT CAB 1600A 600V 3PH 4W CU L108 <b>Mark: 1 White Banner &amp; 1 Loretta</b>			
Ship Schedule:		Quantity	Date	Ship Via	Shipping Address
		2.000	5/4/2022	BEST WAY	<Address on Order>
5.00	2.000	CT46-4L CT CAB 400/600A 600V 3PH 4W L110 <b>Mark: Twisted</b>			
Ship Schedule:		Quantity	Date	Ship Via	Shipping Address
		2.000	5/4/2022	BEST WAY	<Address on Order>
6.00	1.000	CT8-4L CT CAB 800A 600V 3PH 4W <b>Mark: Harolds</b>			
Ship Schedule:		Quantity	Date	Ship Via	Shipping Address

Continued over .../



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 Minneapolis, MN 55447 USA  
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Acknowledgment No. 103710-01

Page 3 of 5

**Account:** CONSOLIDATED ELECTRICAL DISTRIBUTOR  
**Address:** 3870 34TH AVE SOUTH  
 FARGO, ND 58104

Ship Via: BEST WAY  
 FOB: FACTORY  
 Shipping Payment: PP

**Shipping Address:** MAGNUM ELECTRIC, INC  
 471 CHRISTIANSON DRIVE WEST  
 WEST FARGO, ND 58078  
 Phone: 701-551-3240  
 Fax: 701-356-3210

**MARK: 10556CS**  
**ROBERTS ALLEY**

EST. Ship Date: Your PO: 2348MAG901411D Payment Terms: Net 30 Days

Salesperson: ERIC SPANIER Created By: 2200 DENIS DORION

Line	Order Qty	Part ID/Description	U/M	Unit Price	Extd Price
	1.000	5/4/2022 BEST WAY			<Address on Order>
7.00	1.000	<b>CT12-4L</b> CT CAB 1200A 600V 3PH 4W 48H" L106 <b>Mark: Atomic</b>			
	Ship Schedule:	Quantity	Date	Ship Via	Shipping Address
		1.000	5/4/2022	BEST WAY	<Address on Order>
8.00	15.000	<b>CTL2</b> CT BAR 400A/DOUGHNUT CT			
	Ship Schedule:	Quantity	Date	Ship Via	Shipping Address
		15.000	5/4/2022	BEST WAY	<Address on Order>
9.00	1.000	<b>PB72</b> PULLBOX 72",A"			
	Ship Schedule:	Quantity	Date	Ship Via	Shipping Address
		1.000	5/4/2022	BEST WAY	<Address on Order>
10.00	1.000	<b>AMP CUSTOM RMR90</b> PTRMR9082 SPECIAL 400A 120/208V 3Ø4W NEMA 3R, AI bus, U/L listed, SUSE rated, 65K AIC 1 - 400A Main T Fuse Pull Out 2 - 200A 1Ø by-pass meter sockets w/200A 2P 22KAIC CB's  <b>Mark: JLG Bldg</b>			
	Ship Schedule:	Quantity	Date	Ship Via	Shipping Address
		1.000	5/31/2022	BEST WAY	<Address on Order>

Continued over .../



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Acknowledgment No. 103710-01

Page 4 of 5

*Account*    **CONSOLIDATED ELECTRICAL DISTRIBUTOR**  
*Address:*   3870 34TH AVE SOUTH  
                   FARGO, ND 58104

*Ship Via*                    BEST WAY  
*FOB*                         FACTORY  
  
*Shipping Payment*        PP

*Shipping*    **MAGNUM ELECTRIC, INC**  
*Address:*    471 CHRISTIANSON DRIVE WEST  
                   WEST FARGO, ND 58078  
 Phone: 701-551-3240  
 Fax: 701-356-3210

**MARK: 10556CS**  
**ROBERTS ALLEY**

*EST. Ship Date*                    *Your PO*  
     **2348MAG901411D**

*Payment Terms*  
**Net 30 Days**

*Salesperson*    ERIC SPANIER

*Created By*    2200    DENIS DORION

Line	Order Qty	Part ID/Description	U/M	Unit Price	Extd Price
11.00	3.000	<b>JLLN400.XXP</b> FUSE 300V F/A CLASS T 400A PLTD			
	<i>Ship Schedule:</i>	Quantity                    Date    Ship Via		<i>Shipping Address</i>	
		3.000                    5/31/2022    BEST WAY		<Address on Order>	
12.00	2.000	<b>ED2200L</b> BREAKER 200A 2P W/LUGS ON HOLD 02-23-21			
	<i>Ship Schedule:</i>	Quantity                    Date    Ship Via		<i>Shipping Address</i>	
		2.000                    5/31/2022    BEST WAY		<Address on Order>	
13.00	1.000	<b>AMP CUSTOM RMR90</b> PTRMR9089 SPECIAL 400A 120/208V 3Ø4W NEMA 3R, AI bus, U/L listed, SUSE rated, 65K AIC 1 - 400A Main T Fuse Pull Out 9 - 100A 1Ø by-pass meter sockets w/100A 2P 10KAIC CB's			
		<b>Mark: White Banner 7</b>			
	<i>Ship Schedule:</i>	Quantity                    Date    Ship Via		<i>Shipping Address</i>	
		1.000                    5/31/2022    BEST WAY		<Address on Order>	
14.00	3.000	<b>JLLN400.XXP</b> FUSE 300V F/A CLASS T 400A PLTD			
	<i>Ship Schedule:</i>	Quantity                    Date    Ship Via		<i>Shipping Address</i>	
		3.000                    5/31/2022    BEST WAY		<Address on Order>	
15.00	9.000	<b>BRH2100</b>			

Continued over .../



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Acknowledgment No. 103710-01

Page 5 of 5

*Account* **CONSOLIDATED ELECTRICAL DISTRIBUTOR**  
*Address:* 3870 34TH AVE SOUTH  
 FARGO, ND 58104

*Ship Via* BEST WAY  
*FOB* FACTORY  
*Shipping Payment* PP

*Shipping* **MAGNUM ELECTRIC, INC**  
*Address:* 471 CHRISTIANSON DRIVE WEST  
 WEST FARGO, ND 58078  
 Phone: 701-551-3240  
 Fax: 701-356-3210

**MARK: 10556CS**  
**ROBERTS ALLEY**

*EST. Ship Date* *Your PO*  
**2348MAG901411D**

*Payment Terms*  
**Net 30 Days**

*Salesperson* ERIC SPANIER

*Created By* 2200 DENIS DORION

<i>Line</i>	<i>Order Qty</i>	<i>Part ID/Description</i>	<i>U/M</i>	<i>Unit Price</i>	<i>Extd Price</i>
-------------	------------------	----------------------------	------------	-------------------	-------------------

		BREAKER 100A 2P 22KAIC			
Ship Schedule:	Quantity	Date	Ship Via	Shipping Address	
	9.000	5/31/2022	BEST WAY	<Address on Order>	



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Acknowledgment No. 103710

Page 1 of 2

*Account* **CONSOLIDATED ELECTRICAL DISTRIBUTOR**  
*Address:* 3870 34TH AVE SOUTH  
 FARGO, ND 58104

*FOB* FACTORY  
*Shipping Payment* PP

*Shipping* **MAGNUM ELECTRIC, INC**  
*Address:* 471 CHRISTIANSON DRIVE WEST  
 WEST FARGO, ND 58078  
 Phone: 701-551-3240  
 Fax: 701-356-3210

**MARK: ROBERTS ALLEY**

<i>EST. Ship Date</i>	<i>Your PO</i>	<i>Payment Terms</i>
<b>10/7/2022</b>	<b>2348MAG901411D</b>	<b>Net 30 Days</b>
<i>Salesperson</i> ERIC SPANIER	<i>Created By</i> 2200 DENIS DORION	

<i>Line</i>	<i>Order Qty</i>	<i>Part ID/Description</i>	<i>U/M</i>	<i>Unit Price</i>	<i>Extd Price</i>
1.00	1.000	<b>AMP CUSTOM FMUR</b> 216/218 600A 120/208V 3Ø4W NEMA 3R, AI bus, U/L listed 891, SUSE rated, 85K AIC 1 - 600A Main fused switch (Class J) 5 - 200A 1Ø by-pass meter sockets w/ 150A 2P fused pullouts 1 - 200A 3Ø by-pass meter sockets w/ 200A 3P fused pullouts <b>Dimensions: 90x42x24</b>			
		Quote 32676/9			
		Ship Schedule: Quantity Date Ship Via Shipping Address			
		1.000 10/7/2022 <Address on Order>			
2.00	1.000	<b>AMP CUSTOM FMUR</b> Black Bird 400A 120/208V 3Ø4W NEMA 3R, AI bus, U/L listed 891, SUSE rated, 85K AIC 1 - 400A Main fused switch 5 - 200A 1Ø by-pass meter sockets w/ 100A 2P fused pullouts 1 - 200A 3Ø by-pass meter sockets w/ 200A 3P fused pullouts <b>Dimensions: 90x42x24</b>			
		Quote 32676/10			
		Ship Schedule: Quantity Date Ship Via Shipping Address			
		1.000 10/7/2022 <Address on Order>			
3.00	3.000	<b>OJTD600.X</b> FUSE 600V T/D CLASS J 600A			
		Quote 32676/11			
		Ship Schedule: Quantity Date Ship Via Shipping Address			
		3.000 10/7/2022 <Address on Order>			
4.00	3.000	<b>OJTD400.X</b>			

Continued over .../



**AMP Manufacturing & Supply**

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Acknowledgment No. 103710

Page 2 of 2

*Account* **CONSOLIDATED ELECTRICAL DISTRIBUTOR**  
*Address:* 3870 34TH AVE SOUTH  
FARGO, ND 58104

*FOB* FACTORY  
*Shipping Payment* PP

*Shipping* **MAGNUM ELECTRIC, INC**  
*Address:* 471 CHRISTIANSON DRIVE WEST  
WEST FARGO, ND 58078  
Phone: 701-551-3240  
Fax: 701-356-3210

**MARK: ROBERTS ALLEY**

*EST. Ship Date* **10/7/2022**      *Your PO* **2348MAG901411D**

*PaymentTerms*  
**Net 30 Days**

*Salesperson* ERIC SPANIER

*Created By* 2200 DENIS DORION

<i>Line</i>	<i>Order Qty</i>	<i>Part ID/Description</i>	<i>U/M</i>	<i>Unit Price</i>	<i>Extd Price</i>
		FUSE 600V T/D CLASS J 400A			
		Ship Schedule:    Quantity                      Date    Ship Via			Shipping Address
		3.000                      10/7/2022			<Address on Order>
5.00	<b>6.000</b>	<b>JLLN200.XXP</b>			
		FUSE 300V F/A CLASS T 200A PLTD			
		Ship Schedule:    Quantity                      Date    Ship Via			Shipping Address
		6.000                      10/7/2022			<Address on Order>
6.00	<b>10.000</b>	<b>JLLN150.XXP</b>			
		FUSE 300V F/A CLASS T 150A PLTD			
		Ship Schedule:    Quantity                      Date    Ship Via			Shipping Address
		10.000                      10/7/2022			<Address on Order>
7.00	<b>10.000</b>	<b>JLLN100.VXP</b>			
		FUSE 300V F/A CLASS T 100A PLTD			
		Ship Schedule:    Quantity                      Date    Ship Via			Shipping Address
		10.000                      10/7/2022			<Address on Order>

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

9

Type: Red River Water Course Setback Waiver

Location: 225 4<sup>th</sup> Avenue North

Date of Hearing: 6/6/2022

<u>Routing</u>	<u>Date</u>
City Commission	<u>6/13/2022</u>
PWPEC File	<u>X</u>
Project File	<u>Jody Bertrand</u>

The Committee reviewed the accompanying correspondence from Division Engineer, Jody Bertrand, regarding the approval of a Red River Water Course Setback Waiver at 225 4<sup>th</sup> Avenue North for the Limited Disturbance Zone Setback (LDZS) Area.

The Owners at 225 4th Avenue North have requested to construct a mixed-use apartment building within a portion of the LDZS. Staff has reviewed the application and associated impacts within the private parcel boundaries, along with a submitted Geotechnical Report from American Engineering Testing (AET). A street underpass retaining wall is installed to the east of this property and a portion of the City right-of-way on the west side of 2<sup>nd</sup> Street North has been proposed to be paved to allow for additional parking, which will be encumbered through an Encroachment Agreement. The Owner has been directed to evaluate the impacts of the structure and proposed parking area improvements on the existing 2<sup>nd</sup> Street North retaining wall. AET intends to gather additional soil borings for the added geotechnical analysis and Houston Engineering has been contacted to evaluate the retaining wall structurally for possible impacts due to the proposed building and parking improvements.

Staff recommends approval of the Red River Water Course Setback Waiver with the following conditions:

1. A signed and recorded Waiver of Liability with recordation
2. An Amended Geotechnical Report outlining impacts outside of the improved parcel for City right of way of 2<sup>nd</sup> Street North and the existing retaining wall within the LDZS
3. Geotechnical recommendations outlined for construction criteria and stockpiling
4. Houston Engineering’s retaining wall analysis which identifies no impacts due to the proposed structure or added paving improvements within the City right of way
5. Snow loading evaluation (storage)
6. Storm sewer improvements analyzed, which may be needed in the added parking area

On a motion by Tim Mahoney, seconded by Bruce Grubb, the Committee voted to recommend approval of the Red River Water Course Setback Waiver in the LDZS for construction of improvements at 225 4<sup>th</sup> Avenue North with conditions of a signed setback liability waiver with recordation and the other identified conditions above.

RECOMMENDED MOTION

Concur with recommendations of PWPEC and approve the Red River Water Course Setback Waiver in the LDZS for construction of improvements at 225 4<sup>th</sup> Avenue North with conditions of a signed setback liability waiver with recordation and the other identified conditions above.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: N/A

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

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



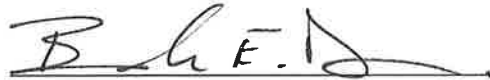
COMMITTEE

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

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

ATTEST:

C: Kristi Olson

  
Brenda E. Derrig, P.E.  
City Engineer

# Memorandum

**To:** Members of PWPEC  
**From:** Jody Bertrand, Division Engineer  
**Date:** June 6, 2022  
**Re:** Red River Water Course Setback Waiver for the Property Located at 225 4th Avenue North for the Limited Disturbance Zone Setback (LDZS) Area

---

## Background:

The Owners at 225 4th Avenue North have requested to construct a mixed-use apartment building within a portion of the LDZS. A general site plan is attached to this letter. Staff has reviewed the application and associated impacts within the private parcel boundaries, along with the submitted Geotechnical Report from American Engineering Testing (AET), which was stamped by Josh Holmes, PE dated 5-6-2022. A street underpass retaining wall is installed to the east of this property and a portion of the City right-of-way on the west side of 2<sup>nd</sup> Street North has been proposed to be paved to allow for additional parking, which will be encumbered through an Encroachment Agreement. The Owner has been directed to evaluate the impacts of the structure and proposed parking area improvements on the existing 2<sup>nd</sup> Street North retaining wall. AET intends to gather additional soil borings for the added geotechnical analysis and Houston Engineering has been contacted to evaluate the retaining wall structurally for possible impacts due to the proposed building and parking improvements.

Staff recommends approval of the Red River Water Course Setback Waiver with the following conditions:

1. A signed and recorded Waiver of Liability with recordation
2. An Amended Geotechnical Report outlining impacts outside of the improved parcel for City right of way of 2<sup>nd</sup> Street North and the existing retaining wall within the LDZS
3. Geotechnical recommendations outlined for construction criteria and stockpiling
4. Houston Engineering's retaining wall analysis which identifies no impacts due to the proposed structure or added paving improvements within the City right of way
5. Snow loading evaluation (storage)
6. Storm sewer improvements analyzed, which may be needed in the added parking area

## Recommended Motion:

Approve the Red River Setback Waiver in the LDZS for the construction of improvements at 225 4<sup>th</sup> Avenue North with the conditions of a signed setback liability waiver with recordation and the other identified conditions for analysis of impacts.

JRB/klb  
Attachments

# FIRST FLOOR / SITE PLAN

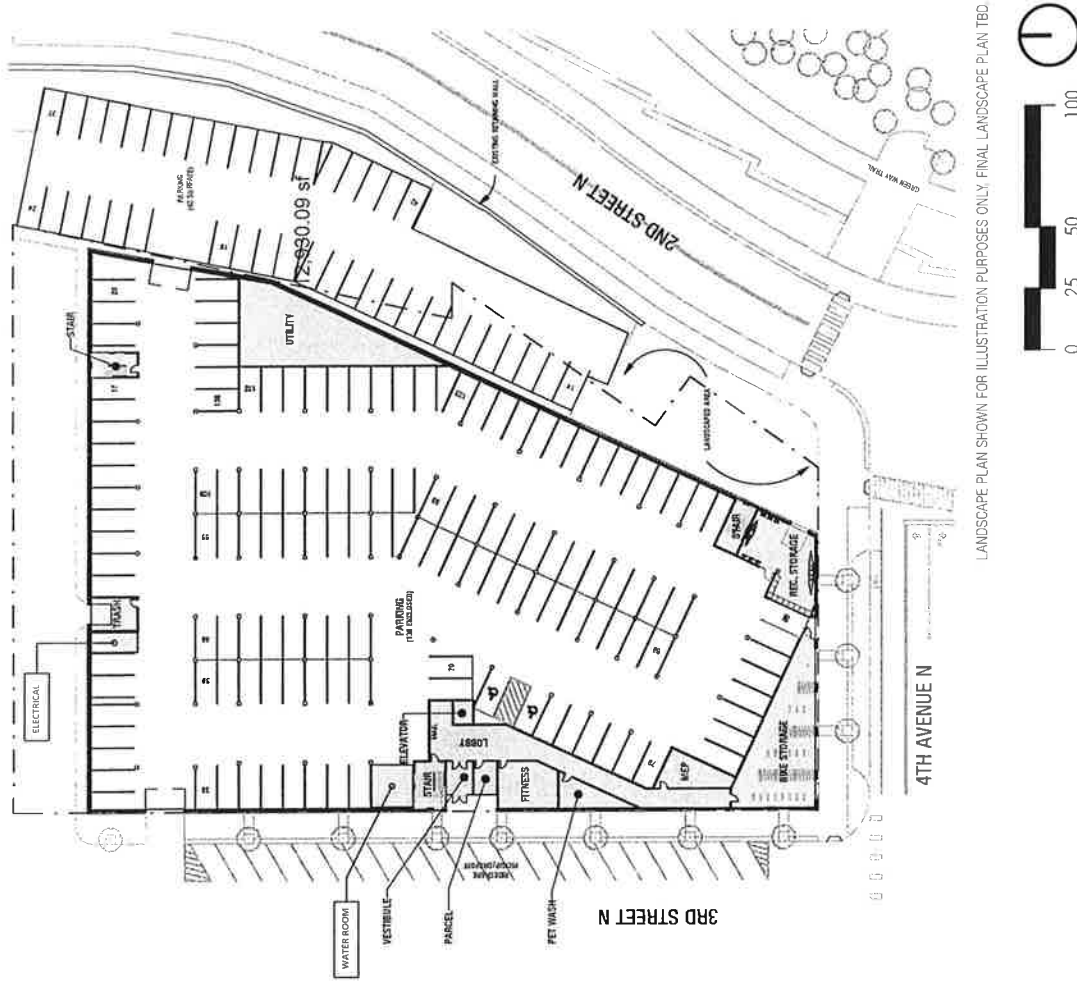
**EFFICIENCY MATRIX**

FLOOR	COMMON	RESIDENTIAL	PARKING	TOTAL AREA	EFFICIENCY
First	8,255	20,609	44,742	52,997	78.4%
Second	5,687	21,960	26,298	26,298	86.5%
Third	4,338	21,960	26,298	26,298	83.5%
Fourth	4,338	21,960	26,298	26,298	83.5%
Fifth	4,338	21,960	26,298	26,298	83.5%
Sixth	4,338	21,960	26,298	26,298	83.5%
<b>Total</b>	<b>31,294</b>	<b>108,449</b>	<b>447,42</b>	<b>184,487</b>	<b>72.2%</b>

Note: Total efficiency does not include area dedicated to parking and rentable resident storage

## LEGEND

- COMMON
- PARKING
- RESIDENTIAL



PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Type: Consent to Construction across Sanitary Sewer Easement

Location: Don's Car Wash  
2727 13<sup>th</sup> Avenue South

Date of Hearing: 6/6/2022

<u>Routing</u>	<u>Date</u>
City Commission	<u>6/13/2022</u>
PWPEC File	<u>X</u>
Project File	<u>Kevin Gorder</u>

The Committee reviewed the accompanying correspondence from Division Engineer, Kevin Gorder, regarding "Consent to Construction Agreement" across the sanitary sewer easement at Don's Car Wash at 2727 13<sup>th</sup> Avenue South.

Don's Car Wash, at 2727 13<sup>th</sup> Avenue South, was experiencing surface lot drainage. Don's hired an Engineer to develop a solution to this issue and after exploring the various options, the only viable option was to add an inlet to their lot and connect it to the City storm sewer in the north boulevard of 13<sup>th</sup> Avenue South. The final design of this storm sewer crossed an existing City sanitary sewer easement and the agreement will mitigate future issues.

On a motion by Ben Dow, seconded by Steve Sprague, the Committee voted to approve Consent to Construction Agreement across the sanitary sewer easement at Don's Car Wash at 2727 13<sup>th</sup> Avenue South.

RECOMMENDED MOTION

Concur with recommendations of PWPEC and approve the Consent to Construction Agreement across the sanitary sewer easement at Don's Car Wash at 2727 13<sup>th</sup> Avenue South.

PROJECT FINANCING INFORMATION:

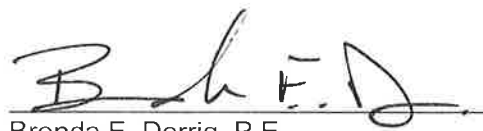
Recommended source of funding for project: N/A

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

COMMITTEE

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

ATTEST:

  
Brenda E. Derrig, P.E.  
City Engineer

C: Kristi Olson

## Memorandum

**To:** Members of PWPEC  
**From:** Kevin Gorder, Division Engineer  
**Date:** June 1, 2022  
**Re:** Consent to Construction across Sanitary Sewer Easement – Don's Car Wash

---

### Background:

Don's Car Wash, at 2727 13<sup>th</sup> Avenue South, was experiencing surface lot drainage problems that caused surface water to enter their underground gas storage tanks. Don's hired an Engineer to develop a solution to this issue and after exploring the various options, the only viable option was to add an inlet to their lot and connect it to the City storm sewer in the north boulevard of 13<sup>th</sup> Avenue South. The final design of this storm sewer crossed an existing City sanitary sewer easement. The installation of this private storm sewer could make maintaining the City sanitary sewer main more difficult. The attached document was created to define expectations in the event repairs were needed to the sanitary sewer.

### Recommended Motion:

Recommend approval of the Consent to Construction.

KOG/klb

Attachment

### CONSENT TO CONSTRUCTION

By Easement dated July 7, 1980, Alva M. Krider and Phyllis J. Krider, husband and wife, (hereinafter "Grantor") granted to the City of Fargo, a North Dakota municipal corporation (hereinafter "City" or "Grantee") a Permanent Easement, described as follows, situated within the City of Fargo, County of Cass and State of North Dakota:

The South 20 feet of Lots One and Eight (8), Block One (1), Centrac Addition to the City of Fargo, Cass County, North Dakota, according to the certified plat thereof on file and of record in the office of the Register of Deeds in and for said county and state.

Don's Car Washes, Inc. a North Dakota corporation (Don's Car Wash) is the successor in interest to Lot One, described above,

Don's Car Wash seeks permission to use the Easement Area located on Lot One ("Easement Area") in a manner inconsistent to the grant. Specifically, Don's Car Wash wishes to install a storm sewer (hereinafter ("Services")) in the Easement Area, in addition to the pavement and driveway previously installed (hereinafter "Surface Improvements").

City consents and agrees that Don's Car Wash may construct the Services, and further may retain the Surface Improvements in the Easement Area under the following terms and conditions.

1. Don's Car Wash shall be permitted to construct the Surface Improvements and Services provided herein, approved by City in advance of such installation. Don's Car Wash shall protect the sanitary sewer and customary appurtenances ("City Infrastructure") and ensure the City Infrastructure is not damaged during construction. Construction shall not occur within 5' of the Infrastructure. Don's Car Wash shall follow all North Dakota One Call requirements, N.D. Cent. Code § 49-23-01 prior to any construction activity taking place.

2. Don's Car Wash shall be responsible for the cost of any repairs, removal or relocation to the City Infrastructure for which the grant was given, damaged by construction of the Surface Improvement and Services permitted herein.
3. City shall not be responsible for any damage or repairs to the Surface Improvements and Services permitted herein in the Easement Area.
4. To the extent possible, City shall provide Don's Car Wash 30 days' written Notice of any scheduled or necessary work on City Infrastructure in the Easement Area, except in the event of an emergency. If the City, in its sole discretion, determines an emergency exists, the City will begin any necessary repairs without notice to Don's Car Wash. The City will give notice as soon as possible after emergency repairs have started.
  - a. Don's Car Wash shall remove or protect the Surface Improvements and Services. City shall fill the excavation site, if necessary, and return the Easement Area to level surface. City shall have no responsibility for damage or destruction of the Surface Improvements and Services permitted herein.
  - b. City shall have no responsibility for any costs or expenses incurred by Don's Car Wash required to engage in the Construction of the permitted Surface Improvements or Services to ensure protection of the City Infrastructure located in the Easement Area.

**Remainder of Page Intentionally Left Blank**

IN WITNESS WHEREOF, Grantor has set its hand and caused this instrument to be executed this  
23 day of May, 2022.

Don's Car Washes, Inc., a North Dakota corporation



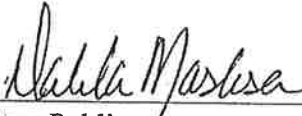
By:

Its: President

STATE OF ND )  
                          ) ss.  
COUNTY OF Cass )

On this 23 day of May, 2022, before me, a notary public in and for said county and state, personally appeared Dan Durr, the President of Don's Car Washes, Inc., the person described in and that executed the within and foregoing instrument, and acknowledged to me that said person executed the same.

DALILA MASLESA  
Notary Public  
State of North Dakota  
My Commission Expires Aug. 22, 2022



Notary Public  
Cass County, ND  
My Commission expires:

(SEAL)



IN WITNESS WHEREOF, Grantee has set its hand and caused this instrument to be executed this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

City of Fargo,  
North Dakota Municipal Corporation

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

ATTEST

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

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

On this \_\_\_\_ day of \_\_\_\_\_, 2022, before me, a notary public in and for said county and state, personally appeared DR. TIMOTHY J. MAHONEY, M.D. and STEVEN SPRAGUE, to me known to be the Mayor and City Auditor, respectively, of the City of Fargo, Cass County, North Dakota, the municipal corporation described in and that executed the within and foregoing instrument, and acknowledged to me that said municipal corporation executed the same.

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

(SEAL)

Legal Description obtained from a previously recorded document.

(11)

June 7, 2022

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

**Re: Temporary Construction Easement – #FM-22-B1**

Dear Commissioners:

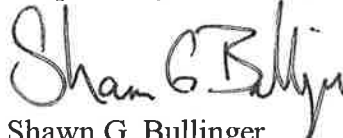
Accompanying for City Commission review and approval is a temporary construction easement from Fargo Country Club in association with Project #FM-22-B1.

RECOMMENDED MOTION:

Approve temporary construction easement from Fargo Country Club.

Please return a copy the signed original.

Respectfully submitted,



Shawn G. Bullinger  
Land Acquisition Specialist

C: Rob Hasey  
Nancy J. Morris

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

**KNOW ALL MEN BY THESE PRESENTS** that **FARGO COUNTY CLUB**, a North Dakota non-profit corporation, hereinafter referred to as "Grantor", for and in consideration of the sum of One Dollar and other valuable consideration (\$1.00), to it in hand paid the receipt whereof is hereby acknowledged, **HEREBY GRANTS UNTO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA**, a municipal corporation, its successors and assigns, hereinafter referred to as "Grantee", a temporary construction easement over, upon and in land hereinafter described for the purpose of road construction and activities appurtenant thereto, said land being more fully described, to-wit:

A strip of land in Lot 1, Block 1 of **COUNTRY CLUB 2ND ADDITION** to the City of Fargo, Cass County, North Dakota on file as document 560993 at the Cass County Recorder's Office more particularly described as follows:

A 24.00 foot wide strip of land lying northerly of and adjacent to a line commencing at the northeast corner of 26th Avenue South as shown and dedicated on said **COUNTRY CLUB 2ND ADDITION**; thence westerly, on the northerly line of said 26th Avenue South, a distance of 40.00 feet to the point of beginning; thence easterly, on said northerly line and the extension thereof, a distance of 55.00 feet and there terminating.

Said strip contains 1,320 square feet, more or less.

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

Grantor, its successors and assigns, further agrees that it will not disturb, injure, molest or in

any manner interfere with said parcel to be used for the storage of dirt and all other construction activities during the construction phase of said project and Grantor expressly warrants and states that no buildings, trees, shrubs or other obstacles of any kind shall be placed or located upon the parcel so as to interfere in any manner with the said parcel to be used for the storage of dirt and all other construction activities during the construction phase of said project, provided that Grantee, at its own expense, shall refill any excavation it makes and level the ground thereafter, leaving the premises in as good condition as it was prior to the time of storage of dirt and all other construction activities was begun.

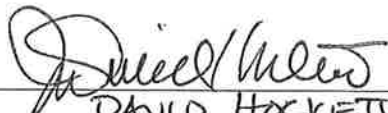
This easement shall terminate on June 30, 2023.

(Signatures on the following pages)

IN WITNESS WHEREOF, Grantor set its hand and caused this instrument to be executed this 7 day of JUNE, 2022.

GRANTOR:

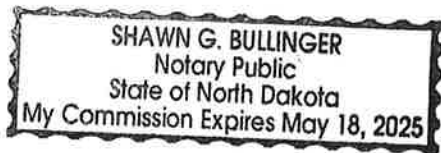
Fargo County Club,  
a North Dakota non-profit corporation

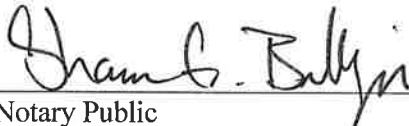
  
By: DAVID HOCKETT  
Its: GM

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

On this 7 day of JUNE, 2022, before me, a notary public in and for said county and state, personally appeared DAVID HOCKETT, to me known to be the GM of **Fargo County Club**, a North Dakota non-profit corporation, described in and who executed the within and foregoing instrument, and acknowledged to me that he/she executed the same.

(SEAL)



  
Notary Public  
County, \_\_\_\_\_

IN WITNESS WHEREOF, Grantee set its hand and caused this instrument to be executed this \_\_\_\_ day of \_\_\_\_\_, 2022.

GRANTEE:

City of Fargo, a North Dakota municipal corporation

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

ATTEST

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

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

On this \_\_\_\_ day of \_\_\_\_\_, 2022, before me, a notary public in and for said county and state, personally appeared DR. TIMOTHY J. MAHONEY, M.D. and STEVEN SPRAGUE, to me known to be the Mayor and City Auditor, respectively, of the City of Fargo, Cass County, North Dakota, the municipal corporation described in and that executed the within and foregoing instrument, and acknowledged to me that said municipal corporation executed the same.

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

(SEAL)

The legal description was prepared by:  
City of Fargo Engineering  
225 4<sup>th</sup> Street North  
Fargo, ND 58102  
(701) 241-1545

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

COVER SHEET  
CITY OF FARGO PROJECTS

1200

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

Exact, full name of project as it will appear in the contract:

Building Demolition

Project No. HD-22-A

Call For Bids	<u>June 13</u>	<u>2022</u>
Advertise Dates	<u>June 22, 29 &amp; July 6</u>	<u>2022</u>
Bid Opening Date	<u>July 20</u>	<u>2022</u>
Substantial Completion Date	<u>November 1</u>	<u>2022</u>
Final Completion Date	<u>November 30</u>	<u>2022</u>

<u>N/A</u>	PWPEC Report (Attach Copy)
<u>X</u>	Engineer's Report (Attach Copy)
<u>X</u>	Direct City Auditor to Advertise for Bids
<u>X</u>	Bid Quantities (Attach Copy for Auditor's Office Only)
<u>N/A</u>	Notice to Property Owners (Dan Eberhardt)
Project Engineer	<u>Christine Goldader</u>
Phone No.	<u>(701) 241-1545</u>

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

<u>N/A</u>	Create District (Attach Copy of Legal Description)
<u>N/A</u>	Order Plans & Specifications
<u>N/A</u>	Approve Plans & Specifications
<u>N/A</u>	Adopt Resolution of Necessity
<u>N/A</u>	Approve Escrow Agreement (Attach Copy for Commission Office Only)
<u>N/A</u>	Assessment Map (Attach Copy for Auditor's Office Only)



**ENGINEER'S REPORT  
BUILDING DEMOLITION  
PROJECT NO. HD-22-A  
12 NORTH TERRACE N & 6375 31 ST S**

**Nature & Scope**

Remove two residential structures and associated utility services.

**Purpose**

Future City operations and infrastructure.

**Feasibility**

The estimated cost of construction is \$159,114.00. The cost breakdown is as follows:

<b>Erosion &amp; Sediment Control</b>		
<b>Construction Cost</b>		<b>\$1,500.00</b>
<b>Fees</b>		
Admin	4%	\$60.00
Contingency	5%	\$75.00
Engineering	10%	\$150.00
Interest	4%	\$60.00
Legal	3%	\$45.00
<b>Total Estimated Cost</b>		<b>\$1,890.00</b>
<b>Funding</b>		
Sales Tax Funds - Infrastructure - 420	33.34%	\$630.12
Utility Funds - Water - 501	33.33%	\$629.94
Utility Funds - Wastewater - 521	33.33%	\$629.94



<b>Site #1</b>		
<b>Construction Cost</b>		<b>\$69,701.00</b>
<b>Fees</b>		
Admin	4%	\$2,788.04
Contingency	5%	\$3,485.05
Engineering	10%	\$6,970.10
Interest	4%	\$2,788.04
Legal	3%	\$2,091.03
<b>Total Estimated Cost</b>		<b>\$87,823.26</b>
<b>Funding</b>		
Sales Tax Funds - Infrastructure - 420	100.00%	\$87,823.26

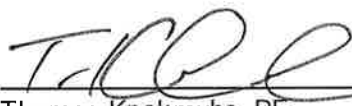
<b>Site #2</b>		
<b>Construction Cost</b>		<b>\$87,913.00</b>
<b>Fees</b>		
Admin	4%	\$3,516.52
Contingency	5%	\$4,395.65
Engineering	10%	\$8,791.30
Interest	4%	\$3,516.52
Legal	3%	\$2,637.39
<b>Total Estimated Cost</b>		<b>\$110,770.38</b>
<b>Funding</b>		
Utility Funds - Water - 501	50.00%	\$55,385.19
Utility Funds - Wastewater - 521	50.00%	\$55,385.19

<b>Project Funding Summary</b>		
Sales Tax Funds - Infrastructure - 420	44.12%	\$88,453.38
Utility Funds - Water - 501	27.94%	\$56,015.13
Utility Funds - Wastewater - 521	27.94%	\$56,015.13
<b>Total Estimated Project Cost</b>		<b>\$200,483.64</b>

This project does not have any alternate or optional containers.

We believe this project to be cost effective.



  
Thomas Knakmuhs, PE  
Assistant City Engineer

COVER SHEET  
CITY OF FARGO PROJECTS

126

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

Exact, full name of project as it will appear in the contract:

Utility Rehab/Reconstruction

Project No. UR-22-B

Call For Bids	<u>June 13</u>	, <u>2022</u>
Advertise Dates	<u>June 22, 29 &amp; July 6</u>	, <u>2022</u>
Bid Opening Date	<u>July 20</u>	, <u>2022</u>
Substantial Completion Date	<u>June 15</u>	, <u>2023</u>
Final Completion Date	<u>July 1</u>	, <u>2023</u>

- N/A PWPEC Report (Attach Copy)
- X Engineer's Report (Attach Copy)
- X Direct City Auditor to Advertise for Bids
- X Bid Quantities (Attach Copy for Auditor's Office Only)
- N/A Notice to Property Owners (Dan Eberhardt)

Project Engineer Roger Kluck

Phone No. (701) 241-1545

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

- N/A Create District (Attach Copy of Legal Description)
- N/A Order Plans & Specifications
- N/A Approve Plans & Specifications
- N/A Adopt Resolution of Necessity
- N/A Approve Escrow Agreement (Attach Copy for Commission Office Only)
- N/A Assessment Map (Attach Copy for Auditor's Office Only)



**ENGINEER'S REPORT  
UTILITY REHAB/RECONSTRUCTION  
PROJECT NO. UR-22-B**

**SITE 1: 2701 1 AVE N; SITE 2: 4020 12 AVE N; SITE 3:  
DAKOTA DR N-DRAIN 3 OUTLET REPAIR; SITE 4: 3402 43  
AVE S; SITE 5: 4475 7 AVE N LS 12; SITE 6: 3201 & 3202 4  
AVE S; SITE 7: 3 AVE N & 45 ST N LS 50; SITE 8: 9 AVE S &  
45 ST S LS 51; SITE 9: 40 AVE S & 66 ST S LS 69**

**Nature & Scope**

Utility Rehab/Reconstruction at Various Sites.

**Purpose**

To repair existing storm sewer features and to improve access to storm sewer lift stations.

**Feasibility**

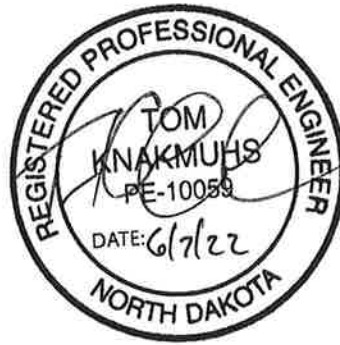
The estimated cost of construction is \$250,729.00. The cost breakdown is as follows:

<b>Storm Water Utility Funds</b>			
<b>Construction Cost</b>			<b>\$250,729.00</b>
<b>Fees</b>			
Admin	4%		\$10,029.16
Contingency	5%		\$12,536.45
Engineering	10%		\$25,072.90
Interest	4%		\$10,029.16
Legal	3%		\$7,521.87
<b>Total Estimated Cost</b>			<b>\$315,918.54</b>
<b>Funding</b>			
Utility Funds - Stormwater - 524	100.00%		\$315,918.54

<b>Project Funding Summary</b>			
Utility Funds - Stormwater - 524	100.00%		\$315,918.54
<b>Total Estimated Project Cost</b>			<b>\$315,918.54</b>

This project does not have any alternate or optional containers.

We believe this project to be cost effective.



A handwritten signature in black ink, appearing to read "TK", written over a horizontal line.

Thomas Knakmuhs, PE  
Assistant City Engineer

13

## Memorandum

**To:** Board of City Commissioners  
**From:** Bekki Majerus, Director of Facilities Management  
**Date:** June 13, 2022  
**Re:** Bid Award for GTC Elevator Refurbish

---

Dear Commissioners:

Bids were opened at 11:45 AM on Wednesday, May 25, 2022 for the Municipal Court Reroof.

A single bid was received:

Gast Construction: \$150,340.00

Engineer's Opinion of Cost: \$122,618.00

The attached Report of Action outlines the history and approval of funding for the project by the Finance Committee. Facilities recommends award of the contract to Gast Construction in the amount of \$150,340.00 as the lowest and best bid. No protests have been received.

**Recommended Action:**

Award contract for GTC Elevator Refurbish to Gast Construction in the amount of \$150,340.00.

REPORT OF ACTION

**FINANCE COMMITTEE**

Project No.            GTC Elevator Refurbish                            Type: Construction

Location:    GTC Underground Parking

Date of Hearing:    May 31, 2022

<u>Routing</u>	<u>Date</u>
City Commission	June 13, 2022

**Background**

The GTC Elevator has been inoperable since the Transit Station remodel was substantially completed in 2021. That is a significant amount of time for something that visible to be out of commission. There is also the concern of accessibility. Public concern surrounding accessibility has recently brought to the Commission’s attention as well as various Committees.

There is currently \$60,000.00 budgeted in account 241-2101-492.43-90 to refurbish the elevator. This budget number came from a 2021 proposal that did not take into account upgrades that are also needed in the adjacent electrical/mechanical room to meet current codes and support the modernization of the elevator equipment. The engineer’s estimate for the project was \$122,618.00.

Prior to bid submission, vendors expressed their concerns with inflation and supply chain issues. Ultimately, only a single bid was received in the amount of \$150,340.00. Construction costs are predicted to remain high for at least another year with supply chain issues continuing.

**Request**

Facilities strongly recommends locking in the current bid price and getting this project completed as soon as possible. The Finance Department has confirmed that the funds are currently available in the Parking Fund (account 241). Facilities is requesting an additional \$120,340.00 be allocated for the project to cover the bid price plus a 20% contingency.

**Suggested Motion:**

On a motion from Michael Redlinger, seconded by Bruce Grubb, the Finance Committee voted to approve the allocation of an additional \$120,340.00 from account 241 (Parking Fund) to cover the cost of the GTC Elevator Modernization.

<u>COMMITTEE:</u>	<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Unanimous</u>
				<u>X</u>
				<u>Proxy</u>
Tim Mahoney, Mayor	<u>X</u>			
Dave Piepkorn, City Commissioner	<u>X</u>			
Bruce Grubb, City Administrator	<u>X</u>			

Mike Redlinger, Assistant City Administrator  
Terri Gayhart, Director of Finance  
Steve Sprague, City Auditor

X  
\_\_\_\_\_  
X  
\_\_\_\_\_  
X  
\_\_\_\_\_

  
\_\_\_\_\_  
Tim Mahoney, Mayor  
Finance Committee Chair





300 23<sup>rd</sup> Ave E, Suite 100  
West Fargo, ND 58078  
701 232 5353  
KLJENG.COM

June 2, 2022

Bekki Majerus  
Director of Facilities  
City of Fargo  
225 4th Street North  
Fargo, ND 58102

**Re: Recommendation of Award for GTC Elevator Modernization Project**

Bids on the referenced project were opened on May 25, 2022. A total of one (1) bid was received. The bid was checked for mathematical accuracy and no discrepancies were found. A complete tabulation of all bids received is attached. The apparent low bidder is Gast Construction Company, Inc. with a total bid of \$150,340, which is nearly 23% higher than the Engineer's Estimate of \$122,618.

The North Dakota Century Code requirements for bidding public projects was followed for the project. The project was advertised for a minimum of 21-days prior to bid opening in the Fargo Forum. In addition, the project documents were posted to QuestCDN, a nationally recognized bid management website. The builder's exchanges in Fargo, ND, Bismarck, ND and Grand Forks, ND were also notified of the project. The on-line builder's exchanges of Dodge Data & Analytics and ConstructConnect also downloaded plans to their sites from the QuestCDN website.

Understanding there may be concerns over the low bidder response for this project, KLJ was aware of a total of four (4) bidders interested in the project prior to the bid opening. In addition to Gast Construction, there was one additional general contractor and two elevator suppliers. At the pre-bid meeting held on May 16, those in attendance raised concerns with the project schedule, long lead times, potential for liquidated damages, bonding, lack of interest from electrical contractors, and construction budget. Excluding the construction budget, the remaining items were addressed via an addendum and through additional contractor outreach to six (6) prospective electrical contractors.

It is our recommendation to move forward with the award of the contract to the apparent low bidder, Gast Construction. If the owner elects to not move forward with an award at this time, construction costs will continue to climb increasing the overall cost of the project. Material price increases and material availability will continue to be a concern for owners, contractors, and designers well into the foreseeable future.

It is our understanding the total budget for the construct of this project is \$180,408. With the as bid construction costs of \$150,340, it is our recommendation to award Gast Construction Company a contract for the GTC Elevator Modernization project. This leaves room for 20% of the current budget for contingency.



300 23<sup>rd</sup> Ave E, Suite 100  
 West Fargo, ND 58078  
 701 232 5353  
 KLJENG.COM

Based upon tabulation of the apparent low bid, the following is a revised estimate of total project cost:

<b>Construction Cost</b>	\$150,340.00
<b>20% Contingency</b>	\$30,068.00
<b>Total Estimated Construction Cost</b>	<b>\$180,408.00</b>
<b>Owner Budget</b>	<b>\$180,408.00</b>

If you elect to move forward with awarding the contract to Gast Construction, you will find the *Notice of Award* attached for your approval. Please date (top of the document), sign and return to our office. We will send to Gast Construction for their signature and then return a copy to you for your records. If you have any questions, please contact our office.

Sincerely,

**KLJ Engineering, LLC**

A handwritten signature in cursive script that reads "Cassie McNames".

Cassie McNames, PE  
 Project Manager

Project No.: 2204-00611

Copy To: File  
 Enclosure(s): (1) Bid tabulation, (1) Notice to Award

Bid Opening May 25, 2022 @ 11:30am  
 GTC Elevator Modernization  
 City of Fargo



Bidder Name	Acknowledge Addenda	Contractor License	Bid Bond	Bid Price
	#1			
Otis				\$
TK Elevator				\$
Gast Construction	X	X	X	\$ 150,340.00
				\$
				\$
				\$
				\$
				\$
				\$
				\$
				\$
				\$
				\$
				\$
				\$
				\$
				\$
				\$
				\$
				\$
				\$
Engineer's Opinion of Cost				\$ 122,618.00

Tabulation of Bids Prepared by: Cassie Miranes KLJ Engineering LLC  
 Date: 5/26/2022

**NOTICE OF AWARD**

Date of Issuance:

Owner: City of Fargo

Owner's Project No.:

Engineer: KLJ Engineering, LLC

Engineer's Project No.: 2204-00611

Project: GTC Elevator Modernization

Contract Name: Stipulated Price Contract

Bidder: Gast Construction Company, Inc.

Bidder's Address: 3410 39<sup>th</sup> St S, Fargo, ND 58104

You are notified that Owner has accepted your Bid dated **[date]** for the above Contract, and that you are the Successful Bidder and are awarded a Contract for:

**Base Bid**

The Contract Price of the awarded Contract is **\$150,340.00**. Contract Price is subject to adjustment based on the provisions of the Contract, including but not limited to those governing changes, Unit Price Work, and Work performed on a cost-plus-fee basis, as applicable.

**Three (3)** unexecuted counterparts of the Agreement accompany this Notice of Award, and one copy of the Contract Documents accompanies this Notice of Award, or has been transmitted or made available to Bidder electronically.

Drawings will be delivered separately from the other Contract Documents.

You must comply with the following conditions precedent within 15 days of the date of receipt of this Notice of Award:

1. Deliver to Owner **three (3)** counterparts of the Agreement, signed by Bidder (as Contractor).
2. Deliver with the signed Agreement(s) the Contract security (such as required performance and payment bonds) and insurance documentation, as specified in the Instructions to Bidders and in the General Conditions, Articles 2 and 6.
3. Other conditions precedent (if any): **Submit Certificate of Insurance and Certificate of Workers' Compensation Insurance**

Failure to comply with these conditions within the time specified will entitle Owner to consider you in default, annul this Notice of Award, and declare your Bid security forfeited.

Within 10 days after you comply with the above conditions, Owner will return to you one fully signed counterpart of the Agreement, together with any additional copies of the Contract Documents as indicated in Paragraph 2.02 of the General Conditions.

Owner: **City of Fargo**

By *(signature)*: \_\_\_\_\_

Name *(printed)*: Timothy Mahoney

Title: Mayor

Copy: Engineer

CITY OF  
**Fargo Fire Department**

(14)

MEMORANDUM

**TO: BOARD OF CITY COMMISSIONERS**  
**FROM: FIRE CHIEF STEVE DIRKSEN**  
**DATE: JUNE 8, 2022**  
**SUBJECT: EXTENSION OF FMLA FOR FIRE CAPTAIN**

On February 17, 2022, Fire Captain Jesse Schmidt suffered a personal injury while off duty. On May 16, 2022, Captain Schmidt exhausted his 12 weeks of FMLA. Based on reports from his physician and the City of Fargo Medical Provider, it is expected that Captain Schmidt will be able to return to his duties with the Fire Department following sufficient rehabilitation.

Per City of Fargo policy, I extended Captain Schmidt's FMLA for 30 days. He has informed me that he is not able to return to full duty at this point and will need additional time. The 30-day extension will end on June 15. He has requested that the Fargo City Commission extend his FMLA for 90 additional days. The extension will be applicable through September 12, 2022.

**Recommended motion:** Approve a 90-day extension of FMLA leave for Fire Captain Jesse Schmidt.

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**M E M O R A N D U M**

**TO: BOARD OF CITY COMMISSIONERS**

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

**DATE: MAY 18, 2021**

**RE: CONTRACT FOR SIGNATURE**  
**MAPLETON PUBLIC SCHOOL \$8,878.49**

The attached contract with Mapleton Public School for \$8,878.49 is for nursing services for the 2022-2023 school year.

No budget adjustments are required for these contracts.

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

**Suggested Motion:** Move to approve the school contract for nursing services for the coming school year.

DF/lls  
Enclosures



**PURCHASE OF SERVICE AGREEMENT  
MAPLETON PUBLIC SCHOOL DISTRICT**

**Fargo Cass**



**Public Health**  
Prevent. Promote. Protect.

Whereas the Mapleton Public School District hereinafter referred to as District, has agreed to purchase the services described in the "Scope of Service" (Attachment A); and

Whereas, Fargo Cass Public Health, 1240 25<sup>th</sup> Street South, Fargo, North Dakota 581032367 hereinafter referred to as Provider desires to provide the services described in the "Scope of Services" (Attachment A):

Now, therefore the District and the Provider enter into the following:

**I. TERMS OF CONTRACT**

The term of this contract shall be for school year 2022-2023, beginning on July 1, 2022 and ending on June 30, 2023. This contract may be renewed for subsequent school years by written agreement of the parties. Provided, that either party may terminate this contract at any time upon thirty (30) days written notice to other.

**II. TERMINATION**

In the event the agreement is terminated, the termination shall be without prejudice to any obligations or liabilities of either party for services provided prior to such termination.

**III. SCOPE OF SERVICE**

The Provider agrees to provide services in accordance with documentation in this contract.

**IV. COMPENSATION**

1. The District agrees to reimbursement for service in accordance with the agreed upon charges in this contract (Attachment B). The billing will occur monthly, at the previously determined rate of 65 percent for the district and 35 percent for the provider. The hours to be billed will include the scheduled nursing time, any annual or sick leave taken by the nursing personnel and holiday pay as determined by the City of Fargo.
2. The provider will attempt to get substitute nursing coverage, when the regularly scheduled nurse is on an extended leave.
3. Mapleton Public School District has requested an increase in school nursing hours over the original 1.5 hours a week agreement. Therefore, Mapleton Public School District agrees to pay 100% (salary and benefits) of the school nursing hours in excess of 1.5 hours per week, including any overtime accrued in lieu of this request. The school nurse hourly rate for those hours over the originally contracted amount of 1.5 hours a week with salary and benefits will be billed at \$43.15.

**V. CHANGES**

No change or amendment to this agreement may be made unless made in writing signed by the parties.

**VI. NO GRANT OF AUTHORITY TO CONTRACT ON BEHALF OF THE DISTRICT**

No part of this agreement shall be construed to grant to the Provider any authority to contract for on behalf of or incur obligations on behalf of the District.

**VII. AUTHORITY TO SUBCONTRACT**

The Provider may subcontract with qualified providers of services, provided that any subcontract must acknowledge the binding nature of this agreement and incorporate this agreement, together with its attachments. The Provider agrees to be solely responsible for the performance of any subcontractor.

**VIII. INDEPENDENT CONTRACTOR**

The Provider is performing the duties under this agreement as an independent contractor. No part of this agreement, or the arrangements made by the parties to perform this agreement, shall be construed as creating an employer/employee relationship.

**IX. COPYRIGHT**

The District reserves a right to copy or reproduce any materials created or produced, by the Provider, in performance of this agreement except with confidential information.

**X. AGREEMENT CONSTITUTES CONTRACT**

This agreement shall constitute the entire contract, between the parties, for performance of the Scope of Service. There are no other agreements, either verbal or written, that alter or affect this agreement.

**XI. PROVIDER ASSURANCES**

The Provider agrees to comply with the applicable provider Assurances hereto attached, on Attachment C.

**XII. INTEGRATION AND MODIFICATION**

This contract constitutes the entire agreement between the Provider and the District. No alteration, amendment or modification in the provisions of this agreement shall be effective unless it is reduced to writing signed by the parties and attached hereto.

**XIII. COLLATERAL CONTRACTS**

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

**XIV. ACCESS TO RECORDS**

Fargo Cass Public Health and the North Dakota State Health Department, and their duly authorized representatives, shall have access to the books, documents, paper and records of the District which are pertinent, as determined by Fargo Cass Public Health, to this contract for the purpose of making audit, examination, excerpts, and transcripts.

**XV. RETENTION OF RECORDS**



The Provider agrees to retain financial and program records. The District is responsible for student records including, all electronic health information, if applicable, and will follow their own retention policy.

**XVI. CONFIDENTIALITY**

The Provider will not, except upon the written consent of the recipient' s or their responsible parent, guardian, or custodian, use or cause to be used any information concerning such individual for any purpose not directly connected with the District or the Provider's responsibilities with respect to services purchased hereunder. The District acknowledges their role in abiding by the adherence to FERPA regulations relative to educational records confidentiality in order to protect student privacy. The consequences of failing to comply with FERPA must be borne by the School District and not Fargo Cass Public Health.

**XVII. APPLICABLE LAW**

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

**XVIII. CAPTIONS**

The captions or heading in this agreement are for convenience only and in no way define, limit, or describe the scope of intent of any provisions of this agreement.

**XIX. EXECUTION AND COUNTERPARTS**

This agreement may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one of the same instrument.

**XX. AMENDMENTS**

The terms of this agreement shall not be waived, altered, modified, supplemented, or amended, in any manner whatsoever, except by written instrument signed by the parties.

**XXI. NOTICES**

All notices, certificates or other communications shall be sufficiently given when delivered or mailed, postage prepaid, to the parties at their respective places of business as set forth in the preamble to this agreement or at a place designated hereafter in writing by the parties.

**XXII. SUCCESSORS IN INTEREST**

The provisions of this agreement shall be binding upon and shall insure to the benefit of the parties hereto, and their respective successors and assigns.

**XXIII. SEVERABILITY**

The parties agree that any term or provision of this contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular term or provision held to be invalid.

**XXIV. WAIVER**

The failure of the District to enforce any provisions of this contract shall not constitute a waiver by the District of that or any other provision.

**XXV. MERGER CLAUSE**

This agreement constitutes the entire agreement between the parties. No waiver, consent, modification or change of terms of this agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification or change, if made, shall be effective only in modification or change, if made, shall be effective only the specific instance and for the specific purpose given. There are no understandings, agreements, or representatives, oral or written, not specified herein regarding this agreement. Provider, by the signature below of its authorized representative, hereby acknowledges that the Provider has read this agreement, understands it and agrees to be bound by its terms and conditions.

**XXVI. INDEMNIFICATION AND HOLD HARMLESS**

The District hereby agrees to indemnify and hold the Provider, its officers, agents, employees, and members, harmless from any and all claims, demands and causes of action which may be asserted against the Provider as a result of the rendering of any of the services by the Provider which are described in this Agreement. The obligation of the District under the terms of this provision shall include the duty to provide a legal defense of such claims; provided that this provision shall not be construed to require reimbursement of any legal expenses incurred by the District, without prior written approval of the District.

**XXVII. COMPLIANCE WITH LAWS**

The Provider shall comply with all federal, state, and local laws and ordinances applicable to the work to be done under this agreement.

**XXVIII. NON- DISCRIMINATION**

The Provider makes available all services and assistance without regard to race, color, national origin, religion, age, sex, or handicap, and is subject to Title VI of the Civil Rights Act of 1964. Section 504 of the Rehabilitation Act of 1975 as amended. Persons who contract with or receive funds to provide services for Provider are obligated to abide by the provisions of their federal laws. Questions concerning the contractor' s or provider' s obligations under these acts may be directed to the Provider' s representative as set forth in the signature block of this agreement, at the address established in the agreement, or the Branch Chief, Officer for Civil Rights, Region VIII, Federal Office Building, 1961 Stout Street, Denver, Colorado 82094.

**SERVICES PROVIDED:** See Attachment A (Goals and Objectives)  
**REIMBURSEMENT:** See Attachment B (Budget)

PROVIDER- FARGO CASS PUBLIC HEALTH

MAPLETON PUBLIC SCHOOL DISTRICT

TIMOTHY J. MAHONEY, MAYOR, CITY OF FARGO



JENNA FARKAS

DATE

Superintendent

TITLE

Desi Fleming  
DESI FLEMING, DIRECTOR OF PUBLIC HEALTH

06/03/2022

DATE

6/3/22  
DATE

**ATTACHMENT A**

**SCHOOL HEALTH PROGRAM  
A COLLABORATIVE PROGRAM BETWEEN  
MAPLETON PUBLIC SCHOOL DISTRICT AND FARGO CASS PUBLIC HEALTH**

**PURPOSE:** The purpose of this partnership is to share expertise, time, energy, and economic resources to coordinate and provide a comprehensive health program in our school community.

**GOALS:** The goal of this program is to provide Public Health School Nurse services and/or Nurse Aide services to all components of the Mapleton Public School District health program: education, environment and services.

- A. Improve the student and family access to community health services.
- B. Improve the early identification, referral, and follow-up of students experiencing unresolved health problems.
- C. Determine the current compliance rate for follow-up on health screening results and on immunization requirements.
- D. Improve the students' access to basic health services at school for first aid symptom management and medications.

**OBJECTIVES:**

The Public Health School Nurse is a liaison between education and health care and will provide a link between the school, home and community. The nurse will:

- A. **Manage health care in the school health program**  
The nurse will participate in planning, implementation, and evaluation of the program.
- B. **Deliver health services**  
The nurse will deliver health services to the client system using systematic processes to assess needs, plan interventions, and evaluate outcomes so that high-level wellness can be achieved. The nurse will also monitor follow through related to health referrals. The nurse aide will deliver health services primarily focused on first aid, medication administration or emergencies. The nurse aide will work in conjunction with the nurse assigned to that building and will be supervised by that nurse.
- C. **Advocate for the health rights of children**  
The nurse will act as an advocate for the health rights of children and their families both within the school and between the school and community.
- D. **Provide health consult for individuals and groups**  
The nurse will provide health counseling and guidance for the client system on an individual basis or within a group setting.
- E. **Provide health education**  
The nurse will participate in health education program activities for children, youth, school personnel, and the community.

**ATTACHMENT B**  
**2022-2023**  
**SCHOOL HEALTH SERVICES BUDGET**

<b>MAPLETON SCHOOL DISTRICT PROPOSED FUNDING FOR SCHOOL HEALTH SERVICES</b>	<b>AMOUNT</b>
1.5 RN HOURS/WEEK X 35 WEEKS AT \$45.94/HOUR	\$2,411.85
12 RN HOURS/YEAR FOR EXTRA ACTIVITES AT \$45.94/HR	\$551.28
4 HOURS OF ADMINISTRATIVE NURSING SUPPORT AT \$60.13/HOUR	\$240.52
<b>TOTAL</b>	<b>\$ 3,203.65</b>
4.5 RN HOURS/WEEK X 35 WEEKS AT \$43.15 AT 100%	\$6,796.12
<b>GRAND TOTAL</b>	<b><u>\$ 9,999.77</u></b>
DISTRICT PORTION AT 65 % OF \$3,203.65	\$2,082.37
DISTRICT PORTION AT 100% OF 6,796.12	\$6,796.12
PROVIDER PORTION AT 35% OF \$3,203.65	\$1,121.28
TOTAL FOR DISTRICT OF AMOUNT AT 65%	\$2,082.37
TOTAL FOR DISTRICT OF AMOUNT AT 100%	<b><u>\$ 6,796.12</u></b>
GRAND TOTAL FOR DISTRICT (ADDED PORTION AT 100%)	<b>\$8,878.49</b>

## ATTACHMENT C

### PROVIDER ASSURANCES

- A. All licensing or other standards required by Federal and State Law and regulations and by ordinance of the City and county in which the services purchased hereunder are provided will be complied with in full for the duration of this contract.
- B. No qualified person(s) shall be denied services purchased hereunder, or be subjected to discrimination, because of race, religion, color, national origin, sex, age, or handicap.
- C. The Provider will abide by the provisions of Title VII of the Civil Rights Act of 1964 (42 USC 2000C) which prohibits discrimination against any employee or applicant for employment because of race, religion, color, national origin, sex, age, or handicap. In addition, the Provider agrees to abide by Executive Order 11246, as amended by Executive Order No. 11375, which prohibit discrimination because of sex.
- D. The Provider will comply with Section 504 of the Rehabilitation Act of 1973, as amended, and all requirements imposed by and pursuant to regulations promulgated thereunder to the end that no otherwise qualified handicapped individual shall, solely by reason of their handicap, be excluded from participation in, be denied benefits of or be subjected to discrimination under any program in the provision of services under this agreement.
- E. The Provider will not, except upon the written consent of the affected individual or their responsible parent, guardian or custodian, use or cause to be used, any information concerning such individual for any purpose not directly connected with Board or the Provider's responsibilities with respect to services purchased hereunder.
- F. Unless otherwise authorized by federal law, the charges to be made by the Provider do not include costs financed by federal monies other than those generated by this agreement.
- G. The Provider shall not assign this agreement.
- H. Provider assures that the sources from which it purchases goods and services used for the provision of the services described in the agreement will conform to applicable provisions of Executive Order 11346, Equal Opportunity.

**Signature:**

**Email:** jenna.farkas@mapletonfalcons.org

16



**M E M O R A N D U M**

**TO: BOARD OF CITY COMMISSIONERS**

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

**DATE: MAY 31, 2022**

**RE: NOTICE OF GRANT AWARD FROM THE NORTH DAKOTA  
DEPARTMENT OF HEALTH AND HUMAN SERVICES FOR  
TITLE X FAMILY PLANNING PROGRAM G21.631 CFDA NO.  
93.217, \$181,809**

This is a request to approve the funds being received from the ND Department of Health and Human Services to support the Title X Family Planning Program at Fargo Cass Public Health. The funding amount is \$181,809.

No budget adjustments.

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

**Suggested Motion:** Move to approve the grant from the North Dakota Department of Health and Human Service for Title X Family Planning funds.

DF/lls  
Enclosure



Page **106** **NOTICE OF GRANT AWARD**  
**NORTH DAKOTA DEPARTMENT OF HEALTH**  
 SFN 53771 (01-2020)

Grant Number G21.631	CFDA Name Family Planning Services	CFDA Number 93.217	
FAIN Number FPHA006519	Grant Type (Check One) <input checked="" type="checkbox"/> Program <input type="checkbox"/> R&D	Grant Start Date 4/1/2022	Grant End Date 3/31/2023
Federal Award Date 3/23/2022	Federal Awarding Agency Department of Health and Human Services		

This award is not effective and expenditures related to this award should not be incurred until all parties have signed this document.

Title of Project/Program Title X Family Planning Program	North Dakota Department of Health (NDDoH) Project Code 4551 HLH 5113 01		
Grantee Name Fargo Cass Public Health	Project Director Cora Rabenberg		
Address 1240 25 <sup>th</sup> Street S	Address 600 E. Boulevard Ave., Dept. 301		
City/State/ZIP Code Fargo, ND 58103	City/State/ZIP Code Bismarck, ND 58505-0200		
Contact Name Desi Fleming	Contact Name Cora Rabenberg		
Telephone Number 701-241-1360	Telephone Number 701-328-4535		
Email Address dfleming@fargond.gov	Email Address crabenberg@nd.gov		

	NDDoH Cost Share	Grantee Cost Share	Total Costs
Amount Awarded	\$181,809	\$0	\$181,809
Previous Funds Awarded	\$0	\$0	\$0
Total Funds Awarded	\$181,809	\$0	\$181,809
Indirect Rate (Check One)	<input checked="" type="checkbox"/> Subrecipient waived indirect costs	<input type="checkbox"/> De minimus rate of 10%	<input type="checkbox"/> Negotiated/Approved rate of %

**Scope of Service**

Grantee will provide voluntary family planning which consists of educational, comprehensive medical and social services necessary to aid individuals to determine freely the number and spacing of their children. Grantee must follow Sections 1001, 1007 and 1008 of the Title X Public Health Service Act: 42 CFR Part 59, subpart A. Grantee must follow the North Dakota Family Planning Program's Policy and Procedure and Protocol manuals as provided. Grantee must follow the approved FY2022-2023 application.

**Reporting Requirements**

Monthly, quarterly, semi-annual and annual reports are to be submitted to the Family Planning Program state office as outlined by the North Dakota Family Planning Program Policy and Procedures manual and Delegate Reporting Schedule. Failure to submit the required reports and attend delegate director meetings will result in the reevaluation of services and funding. Reimbursement will be processed upon Department approval of expenditures and reports. Request for reimbursement must be submitted using the Program Reporting System (PRS). Expenditure report for the period ending June 30, 2022, must be received by July 15, 2022. Expenditure report for the period ending March 31, 2023, must be received by April 14, 2023.

**Special Conditions**

Not applicable.

This Notice of Grant Award is subject to the terms and conditions incorporated either directly or by reference in the following: (1) Requirements Addendum and Grantee Assurances for Notice of Grant Awards issued by the NDDoH as signed by Grantee for the period of July 1, 2021 to June 30, 2023 [Fiscal Services Use Only:  Requirements Received;  Questionnaire received] and (2) applicable State and Federal regulations.

Evidence of Grantee's Acceptance		Evidence of NDDoH Acceptance	
Date 05/31/2022	Signature 	Date	Signature
Typed Name/Title of Authorized Representative Desi Fleming, Director of Public Health		Typed Name/Title of Authorized Representative Deanna Askew, Director, Division of Family Health and Wellness	
Date	Signature	Date	Signature
Typed Name/Title of Authorized Representative Timothy J. Mahoney, Mayor, City of Fargo		Typed Name/Title of Authorized Representative Dirk D. Wilke, J.D., M.B.A., Chief of Staff	

If attachments are referenced, they must be returned with the signed award.  
 If you did not receive attachments as indicated, contact the Program Director identified above.





17

**MEMORANDUM**

**TO: BOARD OF CITY COMMISSIONERS**

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

**DATE: JUNE 8, 2022**

**RE: NOTICE OF GRANT AWARD FROM THE NORTH DAKOTA  
DEPARTMENT OF HEALTH AND HUMAN SERVICES FOR  
FAMILY PLANNING TELEHEALTH INFRASTRUCTURE  
ENHANCEMENT AND EXPANSION G21.767 CFDA NO. 93.217,  
\$107,077**

This is a request to approve the funds being received from the ND Department of Health and Human Services to support the enhancement and expansion of Family Planning Telehealth services at Fargo Cass Public Health. The funding amount is \$107,077.

2022		
Revenue		
Family Planning Telehealth	101-0000-331-12-66	\$40,000
Expense		
Contract Services	101-6040-451-38-11	\$25,000

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

**Suggested Motion:** Move to approve the grant from the North Dakota Department of Health and Human Service for Family Planning telehealth infrastructure enhancement and expansion.

DF/lls  
Enclosure



# Page 1 NOTICE OF GRANT AWARD

NORTH DAKOTA DEPARTMENT OF HEALTH  
SFN 53771 (01-2020)

Grant Number G21.767	CFDA Name Family Planning Services	CFDA Number 93.217	
FAIN Number FPHPA006604	Grant Type (Check One) <input checked="" type="checkbox"/> Program <input type="checkbox"/> R&D	Grant Start Date 6/1/2022	Grant End Date 5/31/2023
Federal Award Date 5/2/2022	Federal Awarding Agency Department of Health and Human Services		

This award is not effective and expenditures related to this award should not be incurred until all parties have signed this document.

Title of Project/Program Family Planning Telehealth Infrastructure Enhancement and Expansion Grant	North Dakota Department of Health (NDDoH) Project Code 4551 HLH 5633 01
Grantee Name Fargo Cass Public Health	Project Director Cora Rabenberg
Address 1240 25 <sup>th</sup> Street S	Address 600 E. Boulevard Ave., Dept. 301
City/State/ZIP Code Fargo, ND 58103	City/State/ZIP Code Bismarck, ND 58505-0200
Contact Name Desi Fleming	Contact Name Cora Rabenberg
Telephone Number 701-241-1360	Telephone Number 701-328-4535
Email Address dfleming@fargond.gov	Email Address crabenberg@nd.gov

	NDDoH Cost Share	Grantee Cost Share	Total Costs
Amount Awarded	\$107,077	\$0	\$107,077
Previous Funds Awarded	\$0	\$0	\$0
Total Funds Awarded	\$107,077	\$0	\$107,077
Indirect Rate (Check One)	<input checked="" type="checkbox"/> Subrecipient waived indirect costs	<input type="checkbox"/> De minimus rate of 10%	<input type="checkbox"/> Negotiated/Approved rate of %

### Scope of Service

Grantee agrees to build, enhance and expand the Grantee's telehealth infrastructure and capacity for Title X family planning services. Grantee must follow Sections 1001, 1007 and 1008 of the Title X Public Health Service Act: 42 CFR Part 59, subpart A. Grantee must follow the North Dakota Family Planning Program's Policy and Procedure and Protocol manuals as provided. Grantee must follow the approved FY2022-2023 application.

### Reporting Requirements

Monthly, quarterly, semi-annual and annual reports are to be submitted to the Family Planning Program state office as outlined by the North Dakota Family Planning Program Policy and Procedures manual and Delegate Reporting Schedule. Failure to submit the required reports and attend de director meetings will result in the reevaluation of services and funding. Reimbursement will be processed upon Department approval of expenditures and reports. Request for reimbursement must be submitted using the Program Reporting System (PRS). Expenditure report for the period ending June 30, 2022, must be received by July 15, 2022. Expenditure report for the period ending May 31, 2023, must be received by June 30, 2023.

### Special Conditions

Expenditures incurred related to the scope of service of this agreement will be covered as early as 5/15/2022.

This Notice of Grant Award is subject to the terms and conditions incorporated either directly or by reference in the following: (1) Requirements Addendum and Grantee Assurances for Notice of Grant Awards issued by the NDDoH as signed by Grantee for the period of July 1, 2021 to June 30, 2023 [Fiscal Services Use Only:  Requirements Received;  Questionnaire received] and (2) applicable State and Federal regulations.

Evidence of Grantee's Acceptance		Evidence of NDDoH Acceptance	
Date 06/09/2022	Signature 	Date	Signature
Typed Name/Title of Authorized Representative Desi Fleming, Director of Public Health		Typed Name/Title of Authorized Representative Deanna Askew, Director, Division of Family Health and Wellness	
Date	Signature	Date	Signature
Typed Name/Title of Authorized Representative Timothy J. Mahoney, Mayor, City of Fargo		Typed Name/Title of Authorized Representative Dirk D. Wilke, J.D., M.B.A., Chief of Staff	

If attachments are referenced, they must be returned with the signed award.  
If you did not receive attachments as indicated, contact the Program Director identified above.

(18)

June 8, 2022

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**MEMORANDUM**

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To: Board of City Commissioners

From: Ben Dow, Terry Ludlum, and Jill Minette

Re: Public Works and Solid Waste Operator Salary Market Findings

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On May 31, 2022, the Finance Committee approved an out-of-grade market adjustment for Equipment Operators I, II and III and related positions in Public Works and Solid Waste departments due to recruitment and retention issues for these positions. We are requesting approval of the market adjustment to be effective upon approval.

At the March Finance Committee meeting, a discussion was had on the significant issues that Public Works and Solid Waste are experiencing with retaining and filling Equipment Operator positions. As discussed, it has been extremely difficult to fill Equipment Operator positions for more than a year and almost impossible in the last six months. At that time, Public Works had seven open positions, since then that number has increased to ten. Salaries for Equipment Operators and CDL drivers began ramping up a year ago and now with the start of the Diversion construction we are seeing Equipment Operator pay continue to increase.

Since the March Finance Committee meeting, the Human Resources Team collected both private and public salary data on comparable Equipment Operator positions (attached). The data clearly shows that our Equipment Operator II pay has dropped below market and a grade adjustment is warranted. In order to adjust the Equipment Operator II grade, we also need to adjust multiple pay grades for multiple positions within Public Works and Solid Waste. The market adjustment to related positions ensures internal equity is maintained. The table below shows the positions we are proposing receive a market adjustment to one grade higher.

<b>Position</b>	<b>Current Grade</b>	<b>Proposed Grade</b>
Equipment Operator I	7	8
Equipment Operator II	9	10
Equipment Operator III	10	11
Public Works Crewleader	11	12
Public Works Tech I	11	12
Public Works Tech II	13	14
Mains & Hydrants Supervisor	13	14
Assistant Utility Supervisor	11	12
Landfill Maintenance Supervisor	11	12
Leachate & Landfill Gas Tech	10	11
Scale Operator	9	10

There are approximately 100 incumbents in these positions. As shown within the data, a 5% adjustment for Equipment Operator II and other organizationally impacted operator positions within Public Works and the Solid Waste Division is necessary. Given the current pertinent job market challenges and the expected further strain on the workforce, the only option to not making salary adjustments would be to make operational adjustments to daily, weekly, and seasonal services provided by the respective Divisions.

The table below shows the annual cost of the market adjustment. We appreciate your consideration of the proposed market adjustment in order to support recruiting and retaining talent within these positions and to continue the level of service that our community has come to expect and appreciate. We request that the market adjustment is effective June 13, 2022.

<b>Fund</b>	<b>Department</b>	<b>Annual Cost of Market Adjustment</b>
General	Streets	\$170,144
Enterprise	Mains & Hydrants	\$36,733
Enterprise	Solid Waste	\$134,680
	<b>Combined Total</b>	<b>\$341,557</b>

Suggested Motion:

Approve the market adjustment for Equipment Operators and related positions as approved by the Finance Committee effective June 13.

## 2022 Equipment Operator Comp Analysis

### Equipment Operator II

	Min	Mid	Max	Average
2022 City of Fargo (Grade 9)	21.93		28.50	25.00
City of Moorhead	21.86		31.23	25.82
City of Bismarck	23.66		35.49	26.12
City of Rochester	26.05		33.80	31.27
City of Lincoln	24.57		29.73	28.55
City of West Fargo	21.62		32.43	25.95
City of St. Cloud	24.04		27.26	25.58
State of ND	20.75		29.67	26.70
Average (excludes COF)	23.22		31.37	27.14
\$ Difference	-1.29		-2.87	-2.14
% Difference	-5.9%		-10.1%	-8.6%

### Equipment Operator II / Proposed Grade 10

	Min	Mid	Max	Average
2022 City of Fargo (Grade 10)	23.66		30.78	26.75
City of Moorhead	21.22		30.32	25.82
City of Bismarck	23.66		35.49	26.12
City of Rochester	26.05		33.80	31.27
City of Lincoln	24.57		29.73	28.55
City of West Fargo	21.62		32.43	25.95
City of St. Cloud	24.04		27.26	25.58
State of ND	20.75		29.67	26.70
Average (excludes COF)	23.13		31.24	27.14
\$ Difference	0.53		-0.46	-0.39
% Difference	2.2%		-1.5%	-1.5%



## 2022 Crewleader Comp Analysis

### Crewleaders

	Min	Mid	Max	Average
2022 City of Fargo (Grade 11)	25.52		33.22	32.67
City of Rochester	27.97		35.75	35.75
City of Moorhead	25.62		36.60	31.17
City of West Fargo	25.22		37.83	
City of Lincoln	24.85		30.80	29.37
Average (excludes COF)	25.92		35.25	32.10
\$ Difference	-0.40		-2.03	0.57
% Difference	-1.5%		-6.1%	1.8%

### Crewleaders

### Proposed Grade 12

	Min	Mid	Max	Average
2022 City of Fargo (Grade 12)	27.61		35.89	32.67
City of Rochester	27.97		35.75	35.75
City of Moorhead	25.62		36.60	31.17
City of West Fargo	25.22		37.83	
City of Lincoln	24.85		30.80	29.37
Average (excludes COF)	25.92		35.25	32.10
\$ Difference	1.70		0.65	0.57
% Difference	6.1%		1.8%	1.8%

Current Indexed Postings as of April 2022

Position - Equipment Operators	Minimum Qualifications Posted	Company	Starting Rate	Max starting	Supplemental
Equipment Operator/Laborer	valid drivers license, CDL preferred	Jerry's Excavating	20	25	local work, home every night, wage negotiable depending on experience and qualifications, health, 401k, vacation and holiday pay
Heavy Equipment Operator/Laborer	CDL	Dakota Underground	25	33	401k, 8,10,12 hr shifts M-F, overtime, weekend availability
Heavy Equipment Operator	CDL preferred, travel required	Ellingson Companies	20		on the job CDL training available, competitive pay, full benefits
Equipment Operator	High school diploma or equivalent, extensive knowledge of heavy machinery operation and capabilities	Industrial Builders	29.4		Starting wage 29.40 plus fringe, wage increases based on experience. On the job training
Heavy Equipment Operator	Must have experience on track hoe, valid drivers license, CDL is bonus	Graham & Sons Inc.	27		PTO, 10 hr shifts, bonus pay
Construction Equipment Operator	CDL A or B preferred	Surface Preparation Technology	25.5		Health, dental, 401k + match, PTO, vision, life insurance
Asphalt Paver Operator	Class A CDL and healthcare	FM Asphalt	26	30	fully paid health, dental, PTO, Retirement plan, vision
Motor Grader/Blade Operator	must be able to travel, valid drivers license, previous experience operating heavy equipment, physical strength and endurance	Central Specialties	25	30	per diem, paid training, H.S.A., medical, 401k + match + company discretionary contribution, FSA, referral program, winters off, company paid training opportunities, promote from within
Heavy Equipment Operator	High School or equivalent. CDL required, must be available 24/7 for emergencies, travel is required	RJ Corman Railroad Group	16.5	30	medical, dental vision insurance with eligibility starting day one, company paid life insurance, voluntary life, STD, LTD, accident and hospital insurance, voluntary identify theft protection, FSA, paid maternity leave, 8 paid holidays, PTO, EAP, 401k, work boot allowance, Employee Referral program, annual tickets to My Old KY Dinner Train
Heavy Equipment Operator	valid drivers license, 2-5 year operating heavy equipment	Running Horse Trucking	25	30	health, dental, life, vision 10 hr shifts M-Fri
Heavy Equipment Operator	willingness to travel, CDL required	Ritterman Excavating	14.42	33.65	12 hr day shift, Monday-Friday, overtime
Boom Truck Operator	CDL and healthcare required	Sysco	24		
		Opatril Concrete Construction	22	30	health, dental, and life insurance
		Average Starting Min/Max:	\$23.06	\$30.21	
		COF (Grade 9)	\$ 21.93	\$28.50	
		COF (Proposed Grade 10)	\$ 23.66	\$30.78	

Position - Crew Leaders	Minimum Qualifications Posted	Company	Starting Rate	Max starting	Supplemental
Foreman	good communication skills, ability to motivate, basic construction/mechanical knowledge, experience leading Crews or small teams	Innovating Basement Authority	37.5		Production bonuses
Experience Tower Foreman/Crew Supervisor	work independently while supervising 4-5 coworkers, ability to communicate effectively both verbally and written, valid drivers license with clean driving record, computer skills, must be in good physical condition with stamina and ability to lift over 80 pounds 2= years in Tower Foreman role, 5+ years in wirelss industry, High school diploma or GED	Tower Systems	27.93	35.33	pay dependent on qualification, all work within FM area home each night, OT encouraged
Bury Drop Crew Leader	1 yr or more experience in drop service work, valid drivers license	Stellar Trenching	20	24	daily per diem and paid lodging for travel, group benefit options,
Concrete Finisher Foreman	2 years leadership role, ability to travel, 4 yrs experience as a skilled trades professional	Vector Construction	28	35	401k + match, professional growth opportunities
Landscape Foreman	drivers license required, supervise crew of 2-5 people, 1 year landscape required	S&S landscaping	20		pay starting at 20 based on experience, 401k + match, employee discount, flexible schedule, 8, 10, 12 hr day shifts, M-Friday
Wall Foreman	must be able to lead a crew of 6	Aspire Concrete	30	35	Monday - Friday, overtime
Parking Lot Stripping Foreman	drivers license required, high school diploma/GED	Advanced Striping and Sealco	18	24	401k + match, Monday-Friday, weekend availability,
Bricklayer Foreman	us work authorization	Showcase Masonry	30	40	bonus pay
Window Foreman	must pass DOT exam, knowledge of new construction/retro fit installs, work off ladders	ABC Seamless	21.63	33.65	experience foreman eligible for sign on bonus, Monday-Friday workweek, Saturdays when necessary, PTO, Production bonuses, healthcare insurance, 401k plan, incentive trips, all necessary tools included, company apparel
		Average Starting Min/Max	\$25.90	\$32.43	
		COF	\$ 25.52	\$33.22	
		COF (Proposed Grade 12)	\$ 27.61	\$35.89	





## Fargo Inspections

City of Fargo  
225 Fourth Street North  
701-241-1561  
fax 701-476-6779

(19)

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### Memorandum

DATE: 6/08/2022  
TO: Mayor Mahoney and Board of City Commissioners  
FROM: Shawn Ouradnik, Inspections Director  
SUBJECT: Dangerous Building Notice and Order at 1108 18 St N., Fargo, ND 58102

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This is to notify you that the property owner of 1108 18 St N Fargo ND 58102 Ross M and Heidi M Kroetch have failed to comply with the order to either obtain a permit to repair or remove the heavily damaged structure at that location within the time allowed for that removal. In accordance with Fargo Municipal Code Article 21-0405, it will now be necessary for you to set a date for a hearing of this order at which time the property owner will be able to appear and show cause why the building should not be removed and the costs of that removal assessed against this property.

The recommendation is **to make a motion, in accordance with FMC Article 21-0405, to set Monday, June 27, 2022 as the time and date for the hearing regarding the dangerous building order for the structure at 1108 18 St N., Fargo, ND 58102.**

Respectfully  
Shawn Ouradnik  
Inspections Director

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**MEMORANDUM**

**TO: BOARD OF CITY COMMISSIONERS**

**FROM: MARK WILLIAMS** 

**DATE: June 9, 2022**

**SUBJECT: MONTHLY RATE FOR RESERVED PARKING AT MERCANTILE**

The lower north side of the Mercantile Parking Ramp has 27 parking stalls and 2 Mobility Impaired stalls that are un gated. The original intent of this space was to provide parking for the newly constructed Jasper Hotel. Jasper Hotel has discovered they no longer have a need for those spaces and has terminated the parking agreement.

Interstate Parking has made a recommendation to convert those parking spaces into reserved parking stalls similar to ROCO's 37 reserved stalls. In addition, Interstate is recommending the monthly rate should be \$129.00 per stall.

The proposal was approved at Finance Committee on May 31, 2022.

**Recommended Motion:**

Approve the monthly rate of \$129.00 per stall for reserved spaces in the un gated area located in the lower north side of the Mercantile Parking Ramp as recommended by Interstate Parking.



(21)

**MEMORANDUM**

**TO: BOARD OF CITY COMMISSIONERS**

**FROM: TIA BRASETH, COMMUNITY DEVELOPMENT PLANNING COORDINATOR TB  
NICOLE CRUTCHFIELD, PLANNING DIRECTOR**

**DATE: JUNE 9, 2022**

**RE: APPROVE AGREEMENTS BETWEEN THE CITY OF FARGO, THE MILTON EARL LLLP, A BEYOND SHELTER, INC. PARTNERSHIP, AND BEYOND SHELTER, INC. FOR NEW CONSTRUCTION AT 708 4<sup>TH</sup> AVE N (HUD HOME GRANT FUNDS)**

The City Commission previously approved a total of \$547,400 under the 2021 Annual Action Plans. The activity was described to the public and City Commission as:

New construction of a multifamily rental housing complex at 708 4<sup>th</sup> Ave N. by Beyond Shelter, Inc. The proposed HOME allocation for this site is \$547,400 (\$447,400 HOME/\$100,000 HOME CHDO – Community Housing Development Organization set aside funds). The project will be carried out by Beyond Shelter, Inc. and owned and managed by a subsidiary LLLP. This activity addresses the 5-Year Plan goal of Affordable Housing for low-to-moderate income, elderly households.

As part of the federal program, there are incremental steps throughout the process in order to comply with federal regulations. At this time, staff is seeking authorization for the Mayor to execute the agreements (HOME & CHDO), which the City Attorney has reviewed and has found to be substantially complete with minimal changes needed. Upon its execution, the City will commit HOME/CHDO funds to be used on a reimbursement basis during construction of the 42-unit, affordable senior housing building at 708 4<sup>th</sup> Ave N.

**Recommended Motion:** Authorize the Mayor to execute contractual agreements with The Milton Earl, LLLP, a Beyond Shelter, Inc. partnership, and Beyond Shelter, Inc., in order to commit HOME/CHDO funds for the construction of a new affordable multifamily residential building.

**RESOLUTION APPROVING  
WRITTEN AGREEMENTS FOR THE MILTON EARL ACTIVITY  
HOME INVESTMENT PARTNERSHIP PROGRAM FUNDS**

**BE IT RESOLVED BY THE BOARD OF CITY COMMISSIONERS OF THE CITY OF FARGO:**

WHEREAS, the City of Fargo receives HOME funds from United States Department of Housing and Urban Development (HUD); and

WHEREAS, such funds are primarily made available to address housing and community development needs of people with low to moderate income; and

WHEREAS, in compliance with federal regulations and citizen participation requirements, the City of Fargo previously approved The Milton Earl activity to fund the construction of an affordable senior multifamily residential building under the 2021 Annual Action Plan;

NOW, THEREFORE, BE IT RESOLVED by the City Commission of the City of Fargo, North Dakota that the Mayor is herein authorized and directed to execute agreements between the City of Fargo, The Milton Earl, LLLP, a Beyond Shelter, Inc. partnership, and Beyond Shelter, Inc., and other documents as necessary to effectuate activities related to The Milton Earl HOME activity.

**CERTIFICATE**

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

I, Timothy J. Mahoney, the duly elected, qualified and acting Mayor of the City of Fargo, North Dakota; and

I, Steven Sprague, the duly appointed, qualified and acting City Auditor of the City of Fargo, North Dakota,

**DO HEREBY CERTIFY:**

That the foregoing is a full, true and correct copy of the original Resolution, and the whole thereof approving the agreements between the City of Fargo, The Milton Earl LLLP, a Beyond Shelter, Inc. partnership, and Beyond Shelter, Inc. for The Milton Earl HOME activity, as described in the foregoing Resolution; which Resolution was duly adopted by the Board of City Commissioners of the City of Fargo, North Dakota, at the meeting of the Board held June 13, 2022 at which Regular Meeting all members present voted in favor of the adoption of the Resolution; and

That such Resolution is now a part of the permanent records of the City of Fargo, as such records are now filed in the office of the City Auditor.

(SEAL)

\_\_\_\_\_   
 Timothy J. Mahoney, Mayor of the  
 City of Fargo, North Dakota

ATTEST:

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

On this \_\_\_\_ day of \_\_\_\_\_, 2022, before me, \_\_\_\_\_, a Notary Public in and for Cass County, in the State of North Dakota, personally appeared Timothy J. Mahoney, known to me to be the Mayor of the City of Fargo, North Dakota, and Steven Sprague, City Auditor of the City of Fargo, a municipal corporation under the laws of the State of North Dakota, and they acknowledged to me that they executed the foregoing instrument.

\_\_\_\_\_   
 Notary Public, Cass County, North Dakota



**OWNER AGREEMENT**  
**Between the City of Fargo and The Milton Earl, LLLP**

**HOME Investment Partnership (HOME)**  
**New Construction – 708 4<sup>th</sup> Ave S, Fargo, ND 58102**

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This OWNER AGREEMENT (“**Agreement**”) is made and entered into this \_\_\_\_ day of \_\_\_\_, 2022 (“**Effective Date**”), by and between the City of Fargo, a North Dakota municipal corporation (“**City**”); and The Milton Earl, LLLP a North Dakota limited liability limited partnership (“**Project Owner**”). (The City and Project Owner shall be cumulatively referred to herein as the “**Parties**” and separately as a “**Party**”).

**WHEREAS**, the City is a participating jurisdiction under the HOME Investment Partnerships Program (“**HOME**” or “**HOME Program**”), a program with the goal of expanding the supply of decent, safe, sanitary, and affordable housing for those of very low-income and low-income; and

**WHEREAS**, the City requested applications for projects to utilize HOME funds to develop housing to be affordable to low income households and Project Owner submitted an application for the project referenced in this Agreement; and

**WHEREAS**, the City and Project Owner desire to enter into this Agreement in order to memorialize certain agreements pertaining to the Project (as defined below), and their respective rights, duties and obligations relative thereto, all upon the terms and conditions hereinafter set forth.

**NOW, THEREFORE**, in consideration of the promises and the mutual representations, warranties, and covenants herein contained, the Parties hereby agree as follows:

**Section 1      Statement of Work.**

The Project Owner shall construct the project as described in the following statement of work.

- A. Project Site. The Project is located at 708 4th Ave N, Fargo, ND 58102 (Parcel #01-2382-01291-000) (“**Project Site**” or “**Property**”) and is to be constructed upon the fee simple interest of the Project Owner in the following-described property:

Lots Four, Five, and Six, in Block 10, Roberts' Second Addition to the City of Fargo, situate in the County of Cass and the State of North Dakota.

Project Owner, as buyer, has entered into a Purchase Agreement dated [XXXX], 2022, with Beyond Shelter, Inc., a North Dakota nonprofit corporation (“**BSI**”), as seller, to purchase the property described above from BSI.

- B. Pro Forma and Budget. The total estimated development cost is \$13,794,799. Project Owner’s budget is attached as Exhibit “C.” Sources and Uses is attached as Exhibit “D.”

Project Owner shall promptly notify the City of any material changes to the pro forma, including but not limited to material increases in project costs, change orders, the receipt or availability of additional sources of funds not previously disclosed, and material changes in projections of

revenue or operating expenses. The City must approve changes to the pro forma and reserves the right to reduce its HOME commitment, modify the number of HOME-assisted units, or require Project Owner to contribute additional funds needed to complete the project if the changes to the pro forma are material and result in either the over-subsidization or under-funding of the project based on a City underwriting analysis.

- C. Use of HOME Funds. The Project Owner shall develop and construct an affordable multifamily rental building to be occupied by seniors ages 62 and older. At least 90% of the units shall be leased to tenants with income at or below 60% of the Area Median Income or "AMI"; the remaining 10% of the units may have income at or below 80% of the AMI; provided, however, this provision is not intended to supersede any restrictions applicable to the Property to the extent such restrictions are more stringent than the foregoing. The Project will result in the construction of one (1) four-story building with forty-two (42) apartment units and a parking structure on the first floor within the footprint of the building.
- D. HOME-assisted Units. **Four (4)** units in the Project shall be designated as HOME-assisted units. The unit mix shall consist of:

a. **Four (4) one-bedroom units**

**All four (4)** HOME-assisted units are hereby designated as **floating HOME** units. Project Owner shall provide the apartment numbers of each HOME-assisted unit to the City no later than the time of initial occupancy. For purposes of this Agreement a "HOME-assisted unit" is deemed to be a dwelling unit within the Project that is required to meet the income and rent restrictions of the HOME program and other terms of this Agreement.

- E. Minimum Number of Low HOME Rent Units. As the Project does not consist of five or more HOME-assisted units, 24 CFR 92.252 does not apply. The Project shall consist of **four (4)** Low HOME units and **zero (0)** High HOME units.
- F. Contract & Labor Standards.
- a. Davis-Bacon Labor Standards. As the Project does not consist of twelve (12) or more HOME-assisted units, combined between the State of North Dakota and City, the Davis-Bacon Act (40 U.S.C. 3141) does not apply as it relates to the funds covered under this agreement.
- b. Section 3. The City and the entities to which it provides certain U.S. Department of Housing and Urban Development (HUD) funding must comply with Section 3 of the Housing and Urban Development Act of 1968 ("Section 3"), as mandated by law.

The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are beneficiaries of HUD-provided housing assistance or who reside in the communities where the HUD funding is expended.

Entities working on Section 3 Covered Projects must comply with HUD's Section 3 regulations at [24 CFR Part 75](#). Section 3 Covered Projects must strive, to the greatest extent feasible, to meet the following Section 3 Benchmarks:

- 25% of total labor hours are worked by Section 3 Workers; and
- 5% of total labor hours are worked by Targeted Section 3 Workers

It is required for Contractors to document and report on worker hours, based on good-faith estimates. It is also required for Subrecipients and Contractors to undertake and document efforts they made to strive to meet Section 3 Benchmarks to the greatest extent feasible

The person executing this Agreement on behalf of Project Owner hereby certifies that Project Owner has been provided with the City of Fargo's Section 3 Compliance Plan, which further defines Section 3 requirements. Project Owner shall provide this document to all parties necessary to ensure compliance.

Project Owner Representative initials here: \_\_\_\_\_

c. Minority/Women Business Enterprises (MBE/WBE).

Documentation and data must be maintained and provided on the steps taken to implement outreach to minority-owned (MBE) and female-owned (WBE) businesses including data indicating the racial/ethnic or gender character of each business entity receiving a contract or subcontract of \$25,000 or more paid, or to be paid, with HOME funds; the amount of the contract or subcontract, and documentation of the affirmative steps to assure that minority business and women's business enterprises have an equal opportunity to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction, and services.

G. Property Standards. As a new construction activity, Project Owner shall construct the Project to the following property standards to ensure the housing is safe, sanitary, and in good repair.

- a. State and local codes, ordinances, and zoning.
- b. HUD's Housing Quality Standards ("HQS"), as set forth in 24 CFR 982.401.
- c. Accessibility. The housing must meet the federal accessibility requirements of:
  - i. 24 CFR Part 8 (HUD's implementing regulations of Section 504 of the Rehabilitation Act of 1973)
  - ii. 28 CFR Parts 35 (Department of Justice's implementing regulations of Subtitle A of Title II of the Americans with Disabilities Act of 1990, as amended by the ADA Amendments Act of 2008)
  - iii. 28 CFR Part 36 (Department of Justice's implementing regulations of Subtitle A of Title III of the Americans with Disabilities Act of 1990, as amended by the ADA Amendments Act of 2008)
  - iv. The design and construction standards of the Fair Housing Act.
  - v. Architectural Barriers Act of 1968



vi. Uniform Federal Accessibility Standard ("UFAS").

- d. Physical and Sensory Units. As the Project consists of forty-two (42) units, a minimum of two (2) units must be physically accessible and a minimum number of one (1) unit must be accessible for tenants with sensory impairments, as mandated by 24 CFR 8.22(b).
- e. Broadband infrastructure. As a new construction housing project which consists of four (4) or more rental units, the construction must include installation of broadband infrastructure, as defined in 24 CFR 5.100.

H. Schedule for Completion of Work. Construction of the Project must begin within twelve (12) months of the Effective Date of this Agreement. The Project must be complete and occupied within four (4) years of the Effective Date of this Agreement. Failure to complete and occupy the project within four (4) years will require repayment of all HOME funds invested.

Project Owner shall expend all HOME Funds by May 1, 2026. The construction schedule is included as Exhibit "H."

I. Environmental Review. HUD funds may not be committed until the environmental review process has been completed and HUD has provided a release of funds (i.e., the City has received an Authority to Use Grant Funds from HUD). No choice limiting actions may be taken prior to clearance. The Project Owner will assemble information as required by the City or HUD to complete the environmental process. HUD has completed and approved a Part 50 Environmental Assessment of the Project and the City obtained its Authority to Use Grant Funds (AUGF) from HUD on the following date:

AUGF received on: \_\_\_\_\_ Verified by: \_\_\_\_\_  
Tia Braseth, City of Fargo

a. Mitigation. As part of this Environmental Assessment, mitigation is required.

- i. Radon and VOCs. A radon mitigation system must be installed in The Milton Earl building. Radon Testing is required upon completion to ensure radon levels are below the EPA threshold of 4.0 pCi/L. The radon system will also address the one VOC, naphthalene, identified as present on site by the Phase II report. To evidence mitigation, the Project Architect shall provide written certification that a radon system has been installed in the Project building, including photos of installation at various stages if required.
- ii. Contaminated Soils. Excavation is required to be monitored and any contaminated soils are required to be removed according to the Soil Management Plan prepared by Braun Intertec on 12/17/21. The project will complete the Voluntary Remediation Action (VRA) process through the North Dakota Department of Environmental Quality.

- iii. Noise. The project must be constructed with the components that achieve an STC rating of at least 33 decibels.
  - iv. Asbestos. A licensed asbestos abatement contractor will be contracted to properly remove and dispose of ACMs prior to demolition of the existing structure.
  - v. Lead-Based Paint. A certified professional is required to be consulted to identify options to comply with all applicable regulations and ensure worker protection during demolition of the existing structure
- J. The Project. The statement of work, as set forth in this Section 1, shall be referred to herein as the "Project."

**Section 2      City to Advance HOME Funds.**

- A. Amount of HOME Funds. The City will advance and remit to Project Owner the maximum sum of **FOUR HUNDRED FORTY-SEVEN THOUSAND FOUR HUNDRED and 00/100 DOLLARS (\$447,400.00)** ("HOME Funds") under terms and conditions set forth below.

- \$447,400 from the 2021 Program Year HOME allocation

- B. Source of HOME Funds. The HOME Funds are from the City's HOME Investment Partnership allocation of:

**Program Year 2021:** Program Year 2021: \$468,708 awarded to the City of Fargo on September 15, 2021; Federal Award Identification Number M-21-MC-38-0220, CFDA 14.239, UEI K2QJQZVH5PM6; and

**Program Year 2020:** \$495,115 awarded to the City of Fargo on March 2, 2021; Federal Award Identification Number M-20-MC-38-0220, CFDA 14.239, DUNS 070265871, UEI K2QJQZVH5PM6.

- C. Form and Terms of Assistance. The City will advance the HOME Funds in the form of a loan to Project Owner. The Term of the HOME loan will commence at execution of the Mortgage and Promissory Note and continue for a term of twenty (20) years.

The HOME loan will carry 0% interest (provided there is no default). Payment is deferred for the life of the loan of twenty (20) years from the date of the promissory note, with any remaining principal due at that time. The HOME Loan may be prepaid at any time by the Project Owner without penalty, however pursuant to 24 CFR 92.252(e)(1)(i), repayment of the HOME Loan prior to the end of the Affordability Period will not result in the termination of the Affordability Period.

- a. Loan Instruments and Security. The HOME Loan must be evidenced by a promissory note ("Note") and secured by a mortgage of the Project Owner's interest in the Property ("Mortgage"), an assignment of rents and leases ("Assignment of Rents and Leases"), and appropriate UCC financing statements ("Financing Statements"). It is understood and agreed that the Mortgage will be a second mortgage, meaning that it is intended to be subordinate in time and interest to a mortgage issued by the Project Owner to Wells Fargo Bank, National

Association, Bell Bank, and the Industrial Commission of North Dakota acting as the North Dakota Housing Finance Agency. Project Owner shall not use the loan proceeds attributable to the loans from Wells Fargo Bank, National Association or Bell Bank for any use that is not permitted under the respective loan documents for such loans. Project Owner must maintain a Debt Coverage Ratio of 1.15 or more throughout the affordability period, which must be verified by the City prior to any subordination.

Together, this Agreement, Note, the Mortgage, the Assignment of Rents and Leases, and the Declaration of Land Use Restrictive Agreement, described in Section 3.G., below, shall constitute the “**Loan Documents.**”

- b. Title Insurance. Prior to the making of any advance of funds under the loan by the City, the Project Owner shall provide a title insurance policy insuring the Property in standard ALTA form issued by a title company authorized to do business in the State of North Dakota and acceptable to the City. The name of the insured shall be the City of Fargo, a North Dakota municipal corporation. The policy shall show fee title to the Property, subject only to such exceptions as the City may approve, shall be in the full amount of the City’s loan, shall contain a comprehensive coverage endorsement and other such endorsements as the City may require and shall insure that the mortgage constitutes a valid second-position lien on the Property, and that the Property is free of all liens, encumbrances, restrictions, or other matters of any kind whatsoever, with only such exceptions from coverage as are satisfactory to the City.
- c. Ownership Entity. The Project Owner agrees that no sale or transfer of the Property will be made without the prior written consent of the City, except as permitted under the Mortgage. Transfers of partnership interests as permitted under the Partnership Agreement shall not require City consent or approval.

D. HOME Subsidy Limit. Upon Project Completion, the per-unit subsidy invested in the Project’s HOME-assisted units shall not be less than \$1,000 or more than the maximum HUD limit. As of the Effective Date of this Agreement, the maximum subsidy limit per HOME-assisted unit is:

- \$[183,132] for a 1-bedroom unit
- \$[222,693] for a 2-bedroom unit

E. Other Funds. The Project was awarded \$100,000 in 2021 HOME CHDO Funds and the project site/land was donated by the City to BSI, which was improved with Community Development Block Grant (CDBG) funds. There is a separate CDBG Subrecipient Agreement dated May 27, 2020 for the disposition of the land to the BSI.

The Project will receive Low Income Housing Tax Credits through the 2021 Allocation Plan of the North Dakota Housing Finance Agency, National Housing Trust Funds from the North Dakota Housing Finance Agency, Section 8(bb) housing vouchers from HUD, construction loan financing through Wells Fargo, and construction and permanent loan financing through Bell Bank.

**Section 3 HOME Program Requirements.**

As a recipient of HOME funds, Project Owner shall comply with all federal laws and regulations, now or in the future as amended listed in Exhibit "E." In addition, acceptance of HOME funds requires compliance with specific HUD regulations further described in this section.

- A. Affirmative Marketing. As the Project does not consist of five (5) or more HOME-assisted units, the Affirmative Marketing requirements does not apply. -
- B. Violence Against Women Act ("VAWA"). Project Owner shall comply with the HUD implementing regulations of the Violence Against Women Act at 24 CFR 92.359 and 24 CFR 5.2005 throughout the Affordability Period as defined in Section 6 Paragraph A.
  - a. "Notice of Occupancy Rights Under the Violence Against Women Act." This notice must be provided when an application for a HOME-assisted unit is denied or approved or with any eviction notification. Project Owner must use Form HUD-5380.
  - b. VAWA Lease Addendum. The lease for any HOME-assisted unit must incorporate the VAWA Lease Addendum required under 24 CFR 92.359(e).
  - c. Emergency Transfer Plan. Project Owner shall follow the City's Emergency Transfer Plan for victims of domestic violence, dating violence, sexual assault, or stalking under VAWA. The Project Owner has been provided a copy of the City's policy.
  - d. Bifurcation of Lease. If a family living in a HOME-assisted rental unit separates under 24 CFR 5.2009(a), the remaining tenant(s) may remain in the HOME-assisted unit.
- C. Displacement, Relocation, and Acquisition. Project Owner shall take all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of the Project. Project Owner shall comply with appropriate relocation and real property acquisition requirements as provided in 24 CFR 92.353.

This Project will be constructed on vacant land and will not result in displacement.

- D. Conflict of Interest. The following parties may not occupy a HOME-assisted affordable housing unit in the Project during the Affordability period:
  - a. The Project Owner, developer, or sponsor;
  - b. Any officer, employee, agent, elected or appointed official or consultant of the Project Owner, developer, or sponsor;
  - c. Any immediate family member of an officer, employee, agent, elected or appointed official, or consultant of the Project Owner, developer, or sponsor.
- E. Equal Access. As the Project is considered housing assisted by HUD, it shall be made available without regard to actual or perceived sexual orientation, gender identity, or marital status pursuant to 24 CFR 5.105(a)(2).

- F. Religious Activities and Faith-Based Organizations. Faith-based organizations are eligible, on the same basis as any other organization, to participate in HUD programs and activities. Project Owner is not a faith-based organization. Nevertheless, Project Owner is prohibited from using the Federal financial assistance received to support or engage in any explicitly religious activities such as, but not limited to, worship, religious instruction, or proselytization, or in any other manner prohibited by law.
- G. Land Use Restrictive Agreement. Project Owner shall execute a Land Use Restrictive Agreement (“LURA”) upon completion of the Project and the marking of the Project as complete in HUD’s disbursement and information system, and the City is hereby authorized to record the LURA against the Project Owner’s interest in the Property at the office of the Cass County Recorder. Said LURA shall be substantially in conformance with the form of LURA attached as Exhibit “A.”
- H. Historic Preservation. Project Owner shall require its contractors or subcontractors to stop construction if ground disturbance related to this Project results in the discovery of any bones, artifacts, foundations, or other indications of past human occupation and notify both the State Historic Preservation Office and the City immediately.

**Section 4      *Project Owner Responsibilities During the Award Period.***

The following section describes the responsibilities of Project Owner after the Effective Date of this Agreement and before the commencement of the Affordability Period. Project Owner shall comply with the below provisions.

- A. Report During the Development Phase. Project Owner shall report not less than quarterly on progress toward commencement of construction. Quarterly reports will be due on the 15th of the month following the end of the previous quarter. Project Owner shall submit this report regardless of whether a disbursement is requested from the City. “Report” shall mean a format determined acceptable to the City and may consist of conference calls and/or brief written reports.
- B. Report During Construction. Once construction commences, Project Owner shall report on construction progress on a monthly basis. “Report” shall mean a format determined acceptable to the City and may consist of conference calls, brief written reports, and/or copying the City on draw requests. If a draw request is not made during the month, the City reserves the right to request a verbal or written progress report or conduct a site visit.
- C. Request Disbursements During Construction. Project Owner shall make disbursement requests for HOME Funds from the City during construction no more frequently than monthly and no less frequently than quarterly; unless otherwise authorized by the City in writing. Disbursement requests must meet the criteria described in Section 5(A) “Disbursement.” Project Owner shall use the template “HOME Disbursement Request” form attached as Exhibit “F.”
- D. Report During Lease-Up. For any HOME-assisted unit leased in a calendar month, Project Owner shall submit the City’s “HOME Benefit Form” by the 7th of the next month. If no units were leased, Project Owner shall inform the City by the same date.

**Section 5 City Responsibilities During the Award Period.**

The following section describes the responsibilities of the City after the Effective Date of this Agreement and before the commencement of the Affordability Period.

- A. Disbursement. The City shall remit funds upon receiving a disbursement request from Project Owner, provided that:
- a. Funds are needed for payment of HOME-eligible costs. The amount of each request must be limited to the amount needed.
  - b. Project Owner has not already made a disbursement request during the calendar month (unless an exception has been granted in writing by the City).
  - c. Project Owner is not in material default under the terms of this Agreement or of any of the Loan Documents, and no event shall exist, which by notice, passage of time, or otherwise would constitute an event of default under this Agreement.
  - d. The Project shall not have been materially damaged by fire or other casualty.
  - e. Project Owner has provided documentation of direct costs, such as invoices or receipts, which the Project Owner certifies are true and correct copies of payments due for an activity covered by this Agreement and made in accordance with the Statement of Work.
  - f. After inspection of the Project and review and approval of the work performed, the City has approved the disbursement request.
- B. Retainage. All disbursement requests will be made in full as provided hereunder except that the final ten percent (10%) of HOME Funds, will be retained by the City without interest accrual, and be paid as a Final Disbursement upon the City's receipt of all project closeout items listed in the City of Fargo's HOME Project Completion Policy.
- C. Project Completion Inspection. To ensure the Project meets the Property Standards, the City shall conduct an HQS inspection prior to occupancy. This inspection and all corrective or remedial actions must be completed before the City will issue the Final Disbursement and mark the Project complete in HUD's disbursement and information system.

**Section 6 Owner Responsibilities During the Affordability Period.**

The following section describes the responsibilities of the Project Owner during the Affordability Period. Project Owner shall comply with the below provisions.

- A. Affordability Period. The Project Owner must comply with all HOME regulations, throughout the Affordability Period, as defined herein.

As a new construction rental project, the Affordability Period is twenty (20) years commencing with the Project Completion Date.

- a. Project Completion Date. The “**Project Completion Date**” shall be as defined in 24 CFR §92.2 when: all necessary title transfer requirements and construction work have been performed; the project complies with the requirements of this part (including the property standards under §92.251); the final drawdown of HOME funds has been disbursed for the project; and the project completion information has been entered into the disbursement and information system established by HUD; provided, however, that the term “Project Completion Date” may be deemed to be a different such date in accordance with particular federal regulations, as the same may be modified from time to time.
    - i. Six Month Deadline for Leasing HOME Units. If within six (6) months of the Project Completion Date, one hundred percent (100%) of the HOME units are not rented to qualified households, the Project Owner shall submit to the City a marketing and outreach plan detailing how it will lease the remaining HOME units before the eighteen month deadline described in the following subparagraph.
    - ii. Eighteen Month Deadline for Leasing HOME Units. If within eighteen (18) months of the Project Completion Date, one hundred percent (100%) of the HOME units are not rented to qualified households, the Project Owner must repay the City the amount of HOME funds invested in that housing unit, defined as the final per-unit subsidy for that HOME-assisted unit.
  - b. Enforcement of Affordability Period. Pursuant to 24 CFR 92.252(e)(1)(i), the affordability requirements remain in force regardless of the term of any loan or mortgage, repayment of the HOME investment, or transfer of ownership documented, and are enforced via the LURA on the assisted property. The LURA will terminate at the end of the Affordability Period, and upon request, the City will execute a release of the LURA after the end of the Affordability Period.
- B. Qualified Tenants. During the Affordability Period, HOME-Assisted Units must be occupied by tenants that are eligible as low-income as determined by HUD.
- a. Tenant Selection. Project Owner shall adopt and follow written tenant selection policies. The policy must be submitted to the City for approval prior to the marketing of units to ensure compliance with 24 CFR 92.253(d).
    - i. Tenant Selection Preference. Project Owner is hereby authorized to limit tenant eligibility to the elderly.
  - b. Tenant Income Limits. Income-eligible households are defined as households having incomes at the time the tenant moves into the HOME-assisted Unit (hereinafter such time referred to as “**move-in**”) at or below a certain amount of area median income (“**AMI**”) based on household size.

There are no High HOME units.

For all four (4) **Low HOME Units**; a household must be at or below 50% AMI at **move-in**.

AMI is adjusted annually by HUD. As of the Effective Date of this Agreement, income limits can be found online at [www.hudexchange.info/programs/home/home-income-limits/](http://www.hudexchange.info/programs/home/home-income-limits/).

c. **Tenant Income Verification**. Income verification is the Project Owner's responsibility. The City uses the definition of annual income as defined at 24 CFR 5.609.

i. **Initial Income Certification**. Project Owner shall determine a household's initial eligibility for a HOME-assisted unit by anticipating a household's income over the next twelve (12) months using two months of source documents.

ii. **Annual Income Self-Certification**. After a household's Initial Income Certification, Project Owner shall obtain on an annual basis a written statement from the household stating its anticipated annual income and household size over the next twelve (12) months. No source documentation is required for annual self-certifications.

1. **Exception**. Every sixth (6<sup>th</sup>) year of the Project's Affordability Period, Project Owner shall collect and examine two months of source documents for all HOME-assisted units.

d. **Over-Income Tenants**. If at recertification a household is over the income limit for the HOME-assisted unit, the Project Owner may not evict a household; refuse to renew a household's lease; or force a household to move buildings, projects, or units. Project Owner shall immediately contact the City regarding over-income tenants for guidance on how to obtain compliance.

C. **Affordable Rents**. HOME-assisted units must be rented at affordable rental rates as described below.

a. **Rent Limits**. The monthly rent plus utility allowance for a HOME-Assisted unit may not be higher than the maximum HOME rent limits set annually by HUD. As of the Effective Date of this Agreement, HOME rent limits may be found online at:

[www.hudexchange.info/programs/home/home-rent-limits/](http://www.hudexchange.info/programs/home/home-rent-limits/).

b. **Initial Rent Limit**. All four (4) of units in this Project are subject to Low HOME rents. Table 6C sets the Initial HOME Rents for the Project. Regardless of future HUD adjustments as reflected online at the above-described web page, the HOME rents for this project are not required to be lower than the limits established in this table.



As of the Effective Date of this Agreement, the 2022 HOME Rent Limits were in effect and are listed as follows:

Table 6C: HUD HOME 2022 Rent Limits	
	1 Bedroom
High HOME Rent	\$705
Low HOME Rent	\$705

- c. Rent Increases. On an annual basis, the Project Owner shall submit to the City its proposed HOME rent structure for the coming year. The City will reasonably approve or disapprove the proposed rents. The City will approve new HOME rents provided the rent plus applicable utility allowance (see paragraph d below) does not exceed the HUD HOME Rent Limit (or paragraph b above, if applicable).

If a rent increase is approved by the City, rent increases for HOME-assisted units are subject to the provisions of outstanding leases. At a minimum, the owner must provide tenants in HOME-assisted units not less than thirty (30) days prior written notice before implementing any increases in rents.

- d. Utility Allowances. Project Owner must deduct utility allowances from the published Rent Limits. Utility allowances for initial tenants will be determined before leasing begins by the Project Owner using HUD’s Utility Schedule Modeler or other approved method by HUD as outlined in *HOMEfires Vol. 13 No. 2, May 2016*. This schedule must be submitted to the City for approval.

Project Owner shall update Utility Allowances annually and submit them to the City for approval.

- e. Fees. Project Owner may not charge fees not customarily charged in rental housing. Project Owner may charge reasonable application fees to prospective tenants. Project Owner shall be permitted to charge parking fees only if such fees are customary for rental housing projects in the neighborhood. Project Owner may charge fees for services such as bus transportation or meals, as long as such services are voluntary.

Project Owner shall submit a Fee Schedule prior to Project Completion for review and approval by the City, and annually thereafter.

- f. Federal or State Project Based Rental Subsidy. Notwithstanding anything to the contrary contained herein, pursuant to 24 CFR 92.252(b)(2), if a HOME-assisted unit receives Federal or State project-based rental subsidy and the very low-income family pays as a contribution toward rent not more than 30 percent of the households adjusted income, then the maximum rent (i.e., tenant contribution plus project-based rental subsidy) is the rent allowable under the Federal or State project-based rental subsidy program.

- D. Tenant Leases. Project Owner shall maintain a written lease with tenants of HOME-assisted units which meets the following standards.

- a. Lease Length. The written lease must be for an initial period of not less than one (1) year, unless by mutual agreement between the tenant and the Project Owner a shorter period is specified.
- b. VAWA Lease Addendum. The lease must incorporate the VAWA lease term/addendum required pursuant to 24 CFR 92.359(e).
- c. Prohibited Lease Terms. The lease may not contain any of the federally-prohibited lease terms set forth in 24 CFR 92.253(b).
- d. Termination of Tenancy. To terminate or refuse to renew tenancy, the Project Owner shall serve written notice upon the tenant specifying the grounds for the action at least 30 days before the termination of tenancy.

An owner may not terminate the tenancy or refuse to renew the lease of a tenant of rental housing assisted with HOME funds except as permitted under 24 CFR 92.253(c).

- E. Property Standards. Project Owner shall maintain the Project so housing is in a safe and sanitary condition, and is in good repair in conformance with the Property Standards listed in Section 1 (G) of this Agreement.
- F. Reporting. Project Owner shall maintain complete and organized records. This section sets forth the manner by which the Project Owner shall maintain records and report to the City on an annual basis.
  - a. Project Records. Representatives of the City, HUD, the Comptroller General of the United States, or their designees may examine any records or information accumulated relating to this Agreement. Project Owner shall maintain administrative and financial records as required by 24 CFR 92.508.
  - b. Record Retention. All Project Records must be retained until five years after the end of the Affordability Period.

If any litigation, claim, negotiation, audit, monitoring, inspection or other action has been started before the expiration of the required record retention period, records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the required period, whichever is later.
  - c. Annual Report. Project Owner shall provide the following to the City on an annual basis on the previous calendar year's activities. The City shall annually notify the Project Owner of the specific documents required and deadlines for submission:
    - i. Occupancy Report. A list of each HOME-assisted unit with information about the household. Project Owner shall use a City-provided form.

- ii. Financial Report. Project Owner shall demonstrate the financial condition and continued financial viability of the Project. A list of these reports can be found in the City's HOME Policies and Procedures manual.

**Section 7** *City Responsibilities During the Affordability Period*. The following describes the responsibilities of the City during the Affordability Period.

A. Annual File Monitoring. Upon reasonable advance written notice to the Project Owner, the City shall conduct, and Project Owner shall allow, monitoring reviews on an annual basis to verify Project Owner is complying with all HOME rules and regulations. There are two types of such monitoring reviews:

- a. On-Site File Monitoring Reviews. An on-site review shall consist of a review of Project Records related to the previous calendar year. A representative of the City shall conduct an on-site monitoring review of the Project on the following schedule.
  - i. Once within twelve (12) months of Project Completion.
  - ii. Once every three (3) years thereafter.

The City reserves the right to conduct more frequent on-site monitoring reviews of Project Records as are reasonably necessary to ensure compliance hereunder.

- b. Desk Review of Project Records. During years when an on-site file monitoring is not required, the City shall examine copies of records and tenant files to ensure the Project Owner is in compliance with the HOME program.

B. Annual Property Standards Monitoring. The City shall verify Project Owner is maintaining Property Standards, as follows:

- a. On-Site Property Standards Inspection. Upon reasonable advance written notice, the City building inspector shall conduct, and Project Owner shall allow, an on-site property inspection of HOME-assisted units on the following schedule.
  - i. Once within twelve (12) months of Project Completion.
  - ii. Once every three (3) years thereafter assuming no health and safety deficiencies have been identified. Health and safety deficiencies will result in annual inspections for three (3) years.
- b. Property Standards Certification. In years when an on-site Property Standards inspection is not required, Project Owner shall certify to the City that each building and all HOME-assisted units associated with the Project are suitable for occupancy under the Property Standards set forth in this Agreement.

C. Yearly Updates to Tenant Income and Rent Limits. The City shall inform the Project Owner on an annual basis in writing of changes to the Tenant Income Limits and HOME Rent Limits when released by HUD.

- D. Annual Approval. The City shall review and approve the rent structure and utility allowance for HOME-assisted units.

**Section 8      Enforcement.**

- A. Default. The following shall constitute an event of default by Project Owner under this Agreement and subject to remedy if not corrected within the identified Corrective Action Period (Subsection B, below).

- a. Failure to maintain the Project or HOME-assisted Units in accordance with the Property Standards;
- b. Failure to meet the Affordability Requirements during the Affordability Period;
- c. Failure to comply with HOME Program regulations, fair housing laws, and other federal requirements;
- d. Any event of fraud, material misrepresentation, gross negligence, or willful misconduct in the execution or performance of this Agreement or in its application for participation in the HOME Program.
- e. Use of funds for activities or uses that are not HOME-eligible costs.
- f. Any other material breach of the terms and conditions of this Agreement by the Project Owner or any of its Employees, Contractors, or Agents.

- B. Corrective Action Period. In the event of default by Project Owner, Project Owner shall have thirty (30) days from the receipt of written notice by the City to initiate corrective action. Such thirty (30) day period shall be extended as the City deems necessary in City's reasonable discretion, in the event that:

- a. Project Owner has initiated and is diligently pursuing a cure to the reasonable satisfaction of the City, or;
- b. The action to cure the default reasonably requires more than thirty (30) days.

- C. Remedies. If Project Owner fails to cure the default, the City shall have the following remedies:

- a. The City may terminate this Agreement.
- b. Upon written demand by the City, the Project Owner shall remit payment to the City of all HOME Funds advanced by the City under this Agreement.
- c. The City may withhold any further payments to be made under this Agreement until such time as Project Owner's breach has been cured to the satisfaction of the City.
- d. The City may require the use of, or change in, professional property management.

- e. The City may apply to any appropriate court, State or Federal, for such other relief as may be appropriate and allowed by law.
- f. Enter upon the Property and take possession thereof, together with the Project then in the course of construction, and proceed either in its own name or in the name of the Project Owner, as the attorney-in-fact of the Project Owner (which authority is coupled with an interest and is irrevocable by the Project Owner), to complete or cause to be completed the Project, at the cost and expense of the Project Owner.
- g. Pursue the appointment of a receiver to collect rents and profits or take possession of the Project.
- h. Declare immediately due and payable all unpaid principal, accrued interest, and annual fees on the Note, together with all sums payable thereunder and the same shall thereupon be immediately due and payable without presentment of any other demand, protest, or notice of dishonor or any other notice of any kind, all of which are hereby expressly waived.
- i. Apply sanctions set forth in 24 CFR Part 92, if determined by the City to be applicable.

Any delay by the City in exercising any right or remedy provided herein or otherwise afforded by law or equity shall not be a waiver of or preclude the exercise of such remedy. All such rights and remedies shall be distinct and cumulative and may be exercised singly, serially (in any order), or concurrently, and as often as therefore arises.

The limited partner of the Project Owner shall have the right, but not the obligation to cure any event of default of Project Owner hereunder and such cure shall be deemed to have been made by the Project Owner.

**Section 9      *General Provisions.***

- A. Duration of Agreement. This Agreement shall be effective upon the Effective Date and shall remain in effect for the duration of the Affordability Period of twenty (20) years.
- B. Assignability. This Agreement will not be assigned or transferred by the Project Owner without the prior written consent of the City. Notwithstanding the foregoing or anything to the contrary set forth herein, interests in the Project Owner may be transferred without consent or restriction.
- C. Independence of Project Owner. Nothing contained in this Agreement nor the relationship of the Project Owner to other parties, shall make or be construed to make the Project Owner, or any of the Project Owner's agents or employees, the agents or employees of the City. The Project Owner shall be solely and entirely responsible for its acts and the acts of its agents, employees, and subcontractors.

- D. Assurances. The Project Owner shall use HOME Funds for the purposes authorized by the Fargo City Commission. The Project Owner shall comply with the assurances, attached as Exhibit "E" and made a part of this Agreement, which are required by the Department of Housing and Urban Development for all HOME projects.
- E. Conflict of Interest. While the conflict of interest provisions in 24 CFR 92.356 do not technically apply to the Owner's procurement of goods and services associated with the development or operation of the Project, the Owner agrees to notify the City in writing and see the City's approval prior to entering into any contract with any entity owned in whole or in part by a covered person or an entity owned or controlled in whole or in part by the Owner, the General Partner, any of the underlying individual owners of the General Partner, or any of the Guarantors. The City will review the proposed contract to ensure that the contractor is qualified and that the costs are reasonable. Approval of an identity of interest contract will be in the City's sole discretion.

Notwithstanding, the City initially acknowledges and approves the Owner's use of Metro Plains as the property manager for the Project. The City also acknowledges and approves Beyond Shelter, Inc.'s role as the manager of the General Partner, Land Lessor, and Developer.

- F. License and Insurance Requirements. Project Owner shall comply with all applicable licensing requirements and associated business regulations, whether federal, state, or local. Project Owner shall purchase and maintain the policies listed in Exhibit "G."
- G. Severability. If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.
- H. Headings. The headings of the sections and paragraphs in this Agreement are for convenience only and do not affect the meanings or interpretation of the contents.
- I. Amendments. Except as set forth in this Agreement, the Agreement and Loan Documents may only be modified or amended by written instrument signed by all the parties hereto.

Notwithstanding any terms within this Agreement, in the event that (i) HUD imposes new or modified requirements on existing HOME-assisted projects through regulation, administrative notice, publication, or other notice or (ii) HUD specifically identifies violations of HOME program requirements pertaining to this Agreement or the Project, Project Owner shall comply with any new or modified requirements to ensure the Project remains in or is brought into compliance with such requirements. Project Owner further agrees to execute an amendment to modify the terms of this Agreement in such manner as necessary to reflect and implement new HOME requirements or correct identified deficiencies. The City shall provide not less than thirty (30) days' notice to the Project Owner of any such modifications.

- J. Indemnification and Hold Harmless. Project Owner agrees to indemnify and hold harmless the City and any of its officers, employees, contractors, consultants, representatives, agents, and

assigns from and against any and all liability, damages, penalties, judgments, or claims of whatever nature arising from injury to person(s) or property resulting from the intentional or grossly negligent acts or omissions of the Project Owner, or the Project Owner's contractors, successors, or assigns in connection with the work on the Property, and the Project Owner will, at the Project Owner's own cost and expense, defend any and all suits or actions (just or unjust) which may be brought against the City or in which the City may be joined with other parties upon any such matter or claim(s). This agreement to indemnify and hold harmless will include indemnity against all costs, expenses, and liabilities, including but not limited to any repayment obligation to HUD incurred by the City under 24 CFR 92.503(b), any reasonable attorney fees, reasonably incurred in or in connection with any such claims or proceedings brought thereof, and other costs and expenses incident to monitoring, remedial actions, proceedings, or investigations and the defense of any claim, arising out of, resulting from, or related to, and to pay the City or its successor in interest, on demand, the full amount of any sum which the City or its successor has paid or becomes obligated to pay on account of:

- a. Any material misrepresentation, omission, or the breach of any representation or warranty of the Project Owner.
- b. Any failure of the Project Owner to materially perform or observe or cause to be performed or observed any term, provision, covenant, or agreement to be performed or observed by the Project Owner, or after assumption, by a subsequent to the Project Owner.
- c. Any claims, assessments, or liabilities for charges, penalties, liens, taxes, or deficiencies arising from or relating to the use and operation by the Project Owner, or after an assumption, the Project Owner's successors to the Property or Project.
- d. The manufacture, generation, storage, use, treatment, transportation, or disposal of solid waste, or any toxic or hazardous materials, substances, or pollutants either directly or indirectly by the Project Owner or any of their past or present affiliates on the Project Site described in Section 1, which occurs prior to possession passing from Project Owner pursuant to a Sheriff's Deed upon completion of a foreclosure or upon acceptance of a Deed in Lieu of Foreclosure.

This indemnification provision will survive the termination of this Agreement and any subsequent agreements of the parties contemplated herein. Notwithstanding anything to the contrary contained herein, the Project Owner's obligation hereunder shall not apply to the extent such liability, damages, penalties, judgments, or claims of whatever nature arising from injury to person(s) or property, are a result of the acts or omissions of the City and the City shall indemnify and hold harmless the Project Owner and any of their officers, employees, contractors, consultants, representatives, agents, and assigns from and against any and all liability, damages, penalties, judgments, or claims of whatever nature arising from injury to person(s) or property resulting from the intentional or grossly negligent acts or omissions of the City or any of its officers, employees, contractors, consultants, representatives, agents, and assigns

- K. Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the parties hereto and the permitted successors and assigns of the parties. The Project Owner may

not assign its interests or obligations under this Agreement without the prior written consent of the City.

- L. Form of Notices; Addresses. Except for notices of default issued pursuant to Section 8 of this Agreement, all notices, requests, consents, or other communications required under this Agreement shall be in writing and shall be deemed to have been properly given if served personally or if sent by United States mail or overnight delivery service to the Parties as follows (or at such other address as a Party may from time to time designate by notice given pursuant to this Section):

To: Project Owner

THE MILTON EARL, LLLP  
3320 Westrac Dr. S, Suite G  
Fargo, ND 58103  
Attention: General Partner

with a copy to:

WINTHROP & WEINSTINE, P.A.  
225 South Sixth Street  
Suite 3500  
Minneapolis, MN 55402  
Attention: Jon L. Peterson

with a copy to:

Wells Fargo Affordable Housing  
Community Development Corporation  
MAC D1086-239  
550 South Tryon Street, 23rd Floor  
Charlotte, NC 28202-4200  
Attention: Director of Tax Credit Asset Management

To: City

City of Fargo  
Department of Planning and Development  
Attn: HOME Program  
225 4<sup>th</sup> Street North  
Fargo, ND 58102

With respect to notices of default issued pursuant to Section 8 of this Agreement, all such notices shall be in writing and shall be deemed to have been properly given if served personally or if sent by United States registered or certified mail or overnight delivery service to the Parties at the same address as above (or at such other address as a Party may from time to time designate by notice given pursuant to this Section).



Each notice shall be deemed given and received on the date delivered if served personally or, if sent by United States mail or by overnight delivery service, then the day so sent to the address of the respective Party, as provided in this Section, postage pre-paid. Notices sent by a Party's counsel shall be deemed notices sent by such Party.

- a. Calculation of Time. Unless otherwise stated, all references to "day" or "days" shall mean calendar days. If any time period set forth in this Agreement expires on other than a Business Day, such period shall be extended to and through the next succeeding Business Day.

- M. Receipt of Manual: The person executing this Agreement on behalf of **Project Owner** hereby certifies that **Project Owner** has been provided with the City of Fargo's HOME Rental Compliance Guide. Project Owner shall provide this document to its selected property manager and to the successors of said manager.

Project Owner Representative initials here: \_\_\_\_\_

- N. Venue. In the event of a dispute or litigation arising out of this Agreement, it is understood and agreed that this Agreement was executed and performed in Cass County, North Dakota. Therefore, this Agreement shall be construed and interpreted in accordance with North Dakota law. Any lawsuit shall be brought in state or federal court in North Dakota and venued in Cass County, North Dakota.
- O. Memorandum of Agreement. Simultaneous with the execution of this Agreement, the Parties will execute a Memorandum of Agreement in recordable format, substantially in the form attached as Exhibit "B", hereto, and any of the Parties are authorized to record said instrument against the Property at the Office of the Cass County Recorder.
- P. Entire Agreement. This Agreement, Sections 1 through 9, together with Exhibits "A" – "G" and Land Use Restrictive Agreement, and proposal and application for participation in the program submitted by Project Owner, which are specifically incorporated herein, represent the entire agreement between the parties and supersede all prior representations, negotiations, or agreements whether written or oral.

*(Signature Page to Follow)*

SIGNED THE \_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_.

**THE MILTON EARL, LLLP**, a North Dakota  
Limited liability limited partnership

By: The Milton Earl, LLC

Its: General Partner

By: Beyond Shelter, Inc.

Its: Manager and Sole Member

\_\_\_\_\_  
Daniel P. Madler

Its: Chief Executive Officer

Federal ID # 86-1847281

DUNS # \_\_\_\_\_

SIGNED THE \_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_.

**CITY OF FARGO**, a North Dakota municipal  
corporation

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

Timothy J. Mahoney, M.D.

Its: Mayor

ATTEST:

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

**EXHIBIT "A"**  
**LAND USE RESTRICTIVE AGREEMENT (LURA)**

**DECLARATION OF LAND USE RESTRICTIVE AGREEMENT  
(MULTIPLE FAMILY)**

**FARGO HOME PROGRAM**

THIS "Declaration of Land Use Restrictive Agreement" (this "Declaration") is declared and established as of the [DAY] day of [MONTH], [YEAR] by The Milton Earl, LLLP, a North Dakota limited liability limited partnership ("Project Owner"), whose address is 3320 Westrac Dr. S., Suite G, Fargo, ND 58103.

**WITNESSETH:**

**WHEREAS**, Beyond Shelter, Inc., a North Dakota nonprofit corporation (the "Project Sponsor") is the sole member and manager of The Milton Earl, LLC, a North Dakota limited liability company (the "General Partner"), the managing general partner of the Project Owner;

**WHEREAS**; Project Owner owns a fee simple interest in that certain land located in Cass County, North Dakota, legally described as follows:

Lots Four, Five, and Six, in Block 10, Roberts' Second Addition to the City of Fargo, situate in the County of Cass and the State of North Dakota.

(hereinafter "Subject Property") the street address for which is 708 4<sup>th</sup> Ave. N., Fargo, ND 58102.

**WHEREAS**; Project Owner constructed upon the Subject Property an affordable residential housing development of 42 senior housing units (the "The Milton Earl Project").

**WHEREAS**; Project Sponsor applied to the City of Fargo, a North Dakota municipal corporation (the "City") for loans in the amounts of \$100,000 and \$447,400, respectively, (collectively, the "HOME Loan"), made available by funds received from the US Department of Housing and Urban Development (HUD), (said Funds hereinafter collectively referred to as the "HOME Funds"), provided through the provisions of the National Affordable Housing Act of 1990, HOME Investment Partnership Program, and pursuant to all federal rules, regulations and policies promulgated thereunder (herein said act, program, rules, regulations and policies collectively referred to as the "HOME Program"), which HOME Program is being administered by the Department of Planning and Development of the City; and

**WHEREAS**; the HOME Program, as adopted by City, requires that this Declaration be executed, delivered, and recorded with the County Recorder for the county at which said The Milton Earl Project is located in order to create certain covenants running with the leasehold interest in the Subject Property for the purpose of enforcing certain requirements which regulate and restrict the use, occupancy and transfer of the Subject Property as set forth herein; and

**WHEREAS;** the City and Project Owner entered into an Owner Agreement for the provision of 2021 HOME Funds setting forth terms by which the Project Owner will receive the proceeds of the HOME Loan (the "Owner Agreement"), and conditions and obligations of the Project Owner for receiving such loan proceeds;

**NOW, THEREFORE,** in consideration of the above recitals and the following mutual covenants and agreements, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is hereby declared:

#### SECTION 1 - RECORDING AND FILING

Upon execution and delivery of this Declaration by the Project Owner, the City may cause this Declaration and all amendments hereto to be recorded at the Office of the County Recorder in Cass County, North Dakota, and shall pay all fees and charges incurred in connection therewith. Upon recording, the City shall immediately transmit to Project Owner an executed and certified copy of the original of the recorded Declaration, showing the date, book and page of recordation.

#### SECTION 2 – HOME COMPLIANCE DEFINITIONS

A. The Project Owner, at this place, confirms that the "Term" or "Affordability Period" is twenty (20) years under the HOME Program, and will commence on [DATE], and terminate on [DATE].

B. High HOME Rent and Low HOME Rent: High HOME Rent and Low HOME Rent shall refer to the HOME Rent Limit categories which are published annually by HUD. HOME rent limits are currently available at <https://www.hudexchange.info/programs/home/home-rent-limits/>.

#### SECTION 3 - COVENANTS TO RUN WITH THE LAND

Project Owner intends, declares and covenants, on behalf of Project Owner and all future owners and operators of the Project during the Term, that this Declaration and the covenants and restrictions set forth herein which regulate and restrict the use, occupancy and transfer of the Subject Property shall be and are covenants running with the Subject Property, binding upon the Project Owner's successors in title and all subsequent owners and operators of the Subject Property, and are not merely personal covenants of the Project Owner, and shall bind the Project Owner, and the benefit shall inure to the City and any past, present or prospective tenants of the Project, and the City's respective successors and assigns during the Term hereof. The Project Owner agrees that any and all requirements of the laws of the State of North Dakota to be satisfied in order for the provisions of this Declaration to constitute deed restrictions and covenants running with the land shall be deemed to have been satisfied in full, and that any requirements or privileges of estate are intended to be satisfied, or in the alternative, that an equitable servitude has been created to insure that these restrictions run with the land. For the Term hereof, every contract, deed or other instrument hereinafter

executed, encumbering or conveying the Project or any portion thereof shall expressly provide that such Agreement is subject to this Declaration, provided however, that covenants contained herein shall survive and be effective regardless of whether such document provides that such instrument is subject to this Declaration.

#### SECTION 4 - REPRESENTATIONS, FURTHER COVENANTS AND WARRANTIES OF THE PROJECT OWNER

(A) Project Owner is a limited liability limited partnership, duly organized under the laws of the State of North Dakota (the "State"), and is qualified to transact business under the laws of the State. Project Owner has the power and authority to own its properties and assets and to carry on its business as now being conducted, and has the full legal right, power and authority to execute and deliver this Declaration.

(B) There is no action, suit or proceeding at law or in equity or by or before any governmental instrumentality or other agency now pending, or, to the knowledge of the Project Owner, threatened against or affecting it, or any of its properties or rights, which, if adversely determined, would materially impair its right to carry on business substantially as now conducted (and as now contemplated by the Declaration) or would materially adversely affect its financial condition.

(C) The Project Owner agrees to comply fully with the requirements of the HOME Program as it may from time to time be amended or modified at 24 CFR Part 92.

#### SECTION 5 - RENTAL LIMITATIONS AND RESTRICTIONS.

HOME Restrictions: HOME rents as outlined in the Agreement shall apply to a total of four (4) units for not less than the Term. All four (4) units are designated as "floating" HOME units. All four (4) units shall be one-bedroom units. All four (4) units are subject to Low HOME rents. High and Low HOME rents are published on an annual basis by HUD. Rents can be adjusted on an annual basis in accordance with rents published by HUD. Rent increases are subject to the written approval of the City of Fargo and the provisions of tenant leases.

#### SECTION 6 - TERMINATION.

The Milton Earl Project will remain affordable as provided herein, for not less than the Term, without regard to the term of any loan or mortgage, repayment of the HOME investment, or the transfer of ownership, except that upon foreclosure or transfer in lieu of foreclosure, this Declaration and the covenants and restrictions set forth herein shall terminate. However, if at any time following the transfer by foreclosure or transfer in lieu of foreclosure, but still during the Term the Project Owner of record prior to the foreclosure or transfer in lieu of foreclosure, or any newly formed entity that includes the former Project Owner, or those with whom the former Project Owner has or had family or business ties, obtains an ownership interest in the Project, the period of affordability shall be revived according to its original Term.

Notwithstanding anything to the contrary contained herein, at the conclusion of the Term, so long as Project Owner has maintained and managed The Milton Earl Project in compliance with Project Owner's obligations hereunder, the City shall issue an unconditional release and termination of this Declaration.

SECTION 7 - DEFAULT.

(A) Enforcement and Remedies. If Project Owner defaults in the performance of any of its obligations under this Declaration or breaches any covenant, declaration or restriction set forth herein or in the Owner Agreement (to the extent such Project Owner is required comply with such covenant, declaration or restriction in such Owner Agreement), and if such default remains uncured for a period of ninety (90) days after notice thereof is given by City, City shall be entitled to apply to any court having jurisdiction of the subject matter for specific performance of the Declaration, for an injunction against any violation of the Declaration, for the appointment of a receiver to take over and operate The Milton Earl Project in accordance with the terms of this Declaration, or for such other relief as may be appropriate, it being acknowledged that the beneficiaries of Project Owner's obligations hereunder cannot be adequately compensated by monetary damages in the event of Project Owner default. City shall be entitled to all its reasonable costs in any such judicial action in which City shall prevail.

(B) Remedies Cumulative. Each right, power and remedy of City provided for in this Declaration, now or hereafter existing at law or in equity by statute, or otherwise shall be cumulative and concurrent and shall be in addition to every other right, power, or remedy provided for in this Declaration, or hereafter existing at law or in equity or by statute, or otherwise, and the exercise or beginning of the exercise by City of any one or more of the rights, powers or remedies provided for in this Declaration or now or hereafter existing at law, in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by City of any or all such other rights, powers or remedies.

SECTION 8 - MISCELLANEOUS.

(A) Additional Documents. The Project Owner shall submit any other information, documents or certifications requested by the City which City deems reasonably necessary to substantiate the Project Owner's continuing compliance with the HOME program.

(B) Severability. The invalidity of any clause, part or provision of this Declaration shall not affect the validity of the remaining portions thereof.

(C) Notices. All notices to be given pursuant to this Declaration shall be in writing and shall be deemed given when mailed by certified or registered mail, return receipt requested, to the parties hereto at the addresses shown in the Owner Agreement, or to such other place as a party may from time to time designate in writing to the other(s).

(D) Applicable Laws. This Declaration is governed by the laws of the State of North Dakota.

(E) Assignment or Transfer. Project Owner may not assign or otherwise transfer or delegate any right or duty without the express written consent of City; provided that nothing contained herein shall restrict transfers of partnership interests in the Project Owner.

(F) Waivers. This Declaration may not be waived, altered, modified, supplemented, or amended, in any manner, except by written agreement signed by both parties.

(G) Compliance. Project Owner agrees to comply with all applicable laws, rules, regulations, and policies, including but not limited to those relating to non-discrimination, accessibility and civil rights. No person in the United States shall on the grounds of race, color, national origin, religion, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available by HUD. Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 or with respect to an otherwise qualified person who is disabled as provided in section 504 of the Rehabilitation Act of 1973 shall also apply to any such program or activity.

Project Owner agrees to timely file all recommended reports, make required payroll deductions, and timely pay all taxes and premium owed, including but not limited to sales and use taxes and unemployment compensation and workers compensation premiums. Project Owner shall have and keep current at all times during the term of this Declaration all licenses and permits required by law. The duties imposed by this paragraph are in addition to, and do not supplant, the duties imposed by 24 CFR part 92.

(H) Indemnity. Project Owner shall comply with all applicable federal, state, and local laws, rules, and ordinances at all times in the performance of this Declaration, and shall conduct its activities so as not to endanger any person or property. Project Owner agrees to indemnify, save, and hold harmless the City, its agents, officers, and employees, from any and all claims of any nature, including costs, expenses, and reasonable attorneys' fees which may in any matter arise out of or result from this Declaration except claims resulting from or arising out of the City's acts or failure to act.

(I) Insurance. Project Owner shall secure liability and property damage insurance and furnish a certificate of insurance or other satisfactory proof of such coverage. The policy may not be canceled without prior written notice to City. The insurance policy does not define or limit Project Owner's duty to indemnify City under Section 8 (H).

(J) Modification and Incorporation. No waiver, consent, modification, or change of any term of this Declaration is effective unless in writing and signed by both parties. There are no understandings, declarations or representations, oral or written, not specified within the Grant Agreements and the accompanying documents. The provisions of the Grant Agreements are



hereby incorporated by reference into this Declaration, as fully as if set forth and in detail herein.

20198010v2

*Signature Page Follows on Page 6 of 6*

IN WITNESS WHEREOF, the Project Owner has caused this Declaration to be signed by its duly authorized representatives, as of the day and year first above written.

**THE MILTON EARL, LLLP**

a North Dakota limited liability limited partnership

By: The Milton Earl, LLC  
Its: General Partner

By: Beyond Shelter, Inc.  
Its: Manager and Sole Member

By: \_\_\_\_\_  
Name: Daniel P. Madler  
Its: Chief Executive Officer

STATE OF NORTH DAKOTA            )  
  ) SS  
COUNTY OF CASS                    )

On this \_\_\_\_\_ day of \_\_\_\_\_, 202\_, before me, \_\_\_\_\_, the undersigned Notary Public, personally appeared Daniel P. Madler, Chief Executive Officer of Beyond Shelter, Inc., the Manager of The Milton Earl, LLC, the General Partner of The Milton Earl, LLLP, on behalf of said limited liability limited partnership and who acknowledged that he executed this Declaration.

Notary Public  
(Seal)

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

**EXHIBIT "B"**  
**MEMORANDUM OF AGREEMENT**

**MEMORANDUM OF  
AGREEMENT**

**Between the City of Fargo and The Milton Earl, LLLP**

**[HOME Investment Partnership (HOME)  
New Construction – 708 4<sup>th</sup> Ave N.]**

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This Memorandum of Agreement (“**Memorandum of Agreement**”) is made this \_\_\_\_\_ day of \_\_\_\_\_, 202\_, by and between the City of Fargo, a North Dakota municipal corporation (“**City**”); and The Milton Earl, LLLP, a North Dakota limited liability limited partnership (“**Project Owner**”). (The City and Project Owner shall be cumulatively referred to herein as the “**Parties**” and separately as a “**Party**”).

**WHEREAS**, the parties have entered into an OWNER AGREEMENT concerning that certain real property lying in Cass County, North Dakota, said property more particularly described as follows:

Four, Five, Easterly 53.5 feet of Lot Six, West 43 feet of Lot Six, and East 43.5 feet of the West 86.5 feet of Lot Six, in Block 10, Roberts' Second Addition to the City of Fargo, situate in the County of Cass and the State of North Dakota.

and,

**WHEREAS**, as part of said Owner Agreement, the City provided the land upon which the Project, as defined therein, was to be constructed and operated; and,

**WHEREAS**, said agreement further contains the following provision, among others, at section 3.H:

H. Land Use Restrictive Agreement. Project Owner shall execute a Land Use Restrictive Agreement (“LURA”) upon completion of the Project and the marking of the Project as complete in HUD’s disbursement and information system, and the City is hereby authorized to record the LURA against the Property at the office of the Cass County Recorder. Said LURA shall be substantially in conformance with the form of LURA attached as Exhibit “A.”

This Memorandum of Agreement incorporates all the other terms and provisions of the OWNER AGREEMENT between the parties the effective date of which is the \_\_\_ day of \_\_\_\_\_, 202\_, a copy of said agreement being on file at the office of the City Auditor, Fargo City Hall, 225 North Fourth Street, Fargo, North Dakota.

As provided in said OWNER AGREEMENT, all provisions of said agreement shall be deemed to be covenants running with the land and shall be binding upon the heirs, executors, administrators, assigns, designees and successors in interest of the parties.

**IN WITNESS WHEREOF**, the parties have hereunto executed this Memorandum of Agreement the day and year first above written.

**THE MILTON EARL, LLLP**  
a North Dakota limited liability limited partnership

By: The Milton Earl, LLC  
Its: General Partner

By: Beyond Shelter, Inc.  
Its: Manager and Sole Member

By: \_\_\_\_\_  
Name: Daniel P. Madler  
Its: Chief Executive Officer

STATE OF NORTH DAKOTA            )  
  ) SS  
COUNTY OF CASS                    )

On this \_\_\_\_\_ day of \_\_\_\_\_, 202\_, before me, \_\_\_\_\_, the undersigned Notary Public, personally appeared Daniel P. Madler, Chief Executive Officer of Beyond Shelter, Inc., as Manager and Sole Member of The Milton Earl, LLC, as General Partner of The Milton Earl, LLLP, on behalf of said limited liability limited partnership and who acknowledged that he executed this instrument.

Notary Public  
(Seal)

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

CITY OF FARGO,  
a North Dakota municipal corporation

By: \_\_\_\_\_  
TIMOTHY J. MAHONEY, M.D., Mayor

Attest:

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

STATE OF NORTH DAKOTA        )  
  ) SS  
COUNTY OF CASS                )

On this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_[YEAR], before me, \_\_\_\_\_, the undersigned Notary Public, personally appeared TIMOTHY J. MAHONEY, M.D., and STEVEN SPRAGUE, known to me to be the Mayor and City Auditor of the City of Fargo, a North Dakota municipal corporation, on behalf of said municipal corporation and who acknowledged that they executed this instrument.

Notary Public  
(Seal)

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

**EXHIBIT "C"**  
**Developer's Budget**

**EXHIBIT "D"**

**Project Sources and Uses**



**EXHIBIT "E"**  
**Federal Assurances**

## Assurances

### Other Applicable Federal Requirements

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- A. This contract will be conducted and administered in compliance with:
1. Title VI of the Civil Rights Acts of 1964 (Pub. L. 88-352) and implementing regulations issued at 24 CFR Part 1;
  2. Title VIII of the Civil Rights Act of 1966 (Pub. L. 90-284), as amended; and the grantee will administer all programs and activities related to housing and community development in a manner to affirmatively further fair housing;
  3. Section 109 of the Housing and Community Development Act of 1974, as amended, and the regulations issued pursuant thereto;
  4. Section 3 of the Housing and Urban Development Act of 1968, as amended;
  5. Executive Order 11246, as amended by Executive Order 11375 and 12086, and implementing regulations issued at 41 CFR Chapter 60;
  6. Executive Order 11063, as amended by Executive Order 12259, and implementing regulations at 24 CFR Part 107;
  7. Section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112), as amended, and implementing regulations when published for effect;
  8. The Age Discrimination Act of 1975 (Pub. L. 94-135), as amended, and implementing regulations when published for effect;
  9. The relocation requirements of Title II and the acquisition requirements of Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, and the implementing regulations at 24 CFR Part 42;
  10. Executive Order 11988 relating to the evaluation of flood hazards and Executive Order 11288 relating to the prevention, control and abatement of water pollution;
  11. The flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234);
  12. The Uniform Administrative requirements, set forth in 24 C.F.R. Part 570.502, and 24 C.F.R. 84, and the requirements of 2 C.F.R. Part 230, Cost Principles for Non-Profit Organizations (OMB Circular A-122) as they relate to the acceptance and use of Federal funds under this federally assisted program, including but not limited to the regulations pertaining to inventions, reporting and patent rights, and copyrights;
  13. The Clean Air Act (42 U.S.C. 7401 et. seq);
  14. HUD environmental standards (24 C.F.R. Part 51, Environmental Criteria and Standards (44 FR 40860-40866, July 12, 1979);
  15. The Safe Drinking Water Act of 1974 (42 U.S.C. 201, 300(f) et. seq., and 21 U.S.C. 349), as amended;

16. The Endangered Species Act of 1973 (16 U.S.C. 1531 et. seq.) as amended;
17. The Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et. seq.), as amended;
18. The Reservoir Salvage Act of 1960 (16 U.S.C. 469 et. seq.), as amended by the Archeological and Historical Preservation Action of 1974;
19. Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 et. seq.), as amended;
20. Executive Order 11990, Protection of Wetlands, May 24, 1977 (42 FR 26961 et. seq.);
21. The lead based paint requirements of 24 C.F.R. Part 35 issued pursuant to the Lead Based Paint Poisoning Prevention Act (42 U.S.C. 4801 et. seq.);
22. The National Historic Preservation Act of 1966 (16 U.S.C. 470 et. seq.) as amended;
23. Executive Order 11593, Protection and Enhancement of the cultural Environment, may 13, 1971 (36 F.R. 8921 et. seq.);
24. The Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented in the Department of Labor regulations (29 C.F.R., Part 3);
25. The Davis Bacon Act (40 U.S.C. 276a-276a-5; 40 USC 327 and 40 USC 276c) as supplemented by the Department of Labor regulations (29 C.F.R., Part 5); Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330), as supplemented by the Department of Labor regulations (29 CFR, Part 5), and the attached Federal Labor Standards Provisions.
26. Debarment and suspension; Drug-Free Workplace. HUD and its recipients and subrecipients shall comply with the non-procurement debarment and suspension common rule implementing E.O.s 12549 and 12689, "Debarment and Suspension," at 24 CFR part 24, Subsection 84.13. This common rule restricts sub-awards and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in Federal assistance programs or activities. HUD and its recipients and subrecipients shall comply with the certification requirements of the Drug-Free Workplace Act of 1988 (42 U.S.C. 701), as set forth at 24 CFR part 24, subpart F.

B. The Recipient certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the Recipient, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than federal appropriate funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit standard Form LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

3. The Recipient shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all Recipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**EXHIBIT "F"**

**Disbursement Request Form**

**EXHIBIT "G"**  
**Insurance Requirements**

The Project Owner shall keep and maintain the following insurance coverages:

- A. Workers Compensation Insurance. The Project Owner shall maintain workers compensation insurance with the following limits or with the minimum limits required by law, if greater:

Coverage A: Statutory

Coverage B:

\$1,000,000	Bodily injury by accident	Each accident
\$1,000,000	Bodily injury by disease	Policy limit
\$1,000,000	Bodily injury by disease	Each employee

- B. General Liability Insurance. The Project Owner shall maintain general liability insurance with coverage to include: Premises/Operations, Completed Operations and Contractual Liability (to cover the indemnification provision in Section 9-J of this Agreement). Limits of coverage shall not be less than:

\$2,000,000 per occurrence

\$5,000,000 aggregate

- C. Automobile Insurance. The Project Owner shall maintain automobile liability insurance to include all owned autos (private passenger and other than private passenger), hired, and non-owned vehicles. Limits of coverage shall not be less than:

\$2,000,000 per occurrence

- D. In addition to the named policies in A-C above, Project Owner shall cause its General Contractor to provide and maintain, at all times during the process of building the Project and from time to time at the request of the City furnish the City with proof of payment of premiums on:

- a. Builder’s Risk insurance, written on the so-called “Builder’s Risk Completed Value Basis,” in an amount equal to one hundred percent (100%) of the insurable value of the Project at the date of completion, and with coverage available on the so-called “all risk” form of policy (the Project Owner and the City’s interest shall be protected in accordance with a loss payable clause in form and content satisfactory to the City).
- b. Comprehensive general liability insurance, with the City as a named insured, including coverages for operations, contingent liability (operations of subcontractors), completed operations, and contractual liability insurance, with limits (i) against bodily injury of not less than \$1,000,000 and (ii) against property damage of not less than replacement cost (to accomplish the required limits, an umbrella excess liability policy may be used).
- c. Workers compensation insurance, with statutory coverage.

- E. Evidence of Insurance. The above insurance shall be maintained in companies lawfully authorized to do business in the State of North Dakota and which are reasonably acceptable to the City. Project Owner shall furnish City with certificates reflecting such insurance (ACORD form or equivalent) to be in force as long as this Agreement remains in effect, naming the City as an

additional insured, and providing that said insurance will not be canceled or its limits reduced by endorsement without at least 30 days prior written notice to the City.



**EXHIBIT "H"**  
**Construction Schedule**

24049645v5

**HOME CHDO SPONSOR AGREEMENT**  
**Between the City of Fargo and The Milton Earl, LLLP**

**HOME Investment Partnership (HOME)**  
**New Construction – 708 4<sup>th</sup> Ave S, Fargo, ND 58102**

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This SPONSOR AGREEMENT (“**Agreement**”) is made and entered into this \_\_\_\_ day of \_\_\_\_, 2022 (“**Effective Date**”), by and between the City of Fargo, a North Dakota municipal corporation (“**City**”); and Beyond Shelter, Inc., a North Dakota nonprofit corporation (“**Project Sponsor**”). (The City and Project Sponsor shall be cumulatively referred to herein as the “**Parties**” and separately as a “**Party**”).

**WHEREAS**, the City is a participating jurisdiction under the HOME Investment Partnerships Program (“**HOME**” or “**HOME Program**”), including funds that are reserved for the use of Community Housing Development Organizations (CHDOs); and

**WHEREAS**, the City requested applications for projects to utilize HOME CHDO funds to develop housing to be affordable to low income households and the Project Sponsor submitted an application for the project referenced in this Agreement, a CHDO-eligible project under HOME regulations; and

**WHEREAS**, Project Sponsor is the sole member and manager of The Milton Earl, LLC, a North Dakota limited liability company (the “**General Partner**”), the managing general partner of The Milton Earl, LLLP, a North Dakota limited liability limited partnership (the “**Project Owner**”);

**WHEREAS**, Project Owner will construct, own, and operate the Project (as defined below); and

**WHEREAS**, the City and Project Sponsor desire to enter into this Agreement in order to memorialize certain agreements pertaining to the Project (as defined below), and their respective rights, duties and obligations relative thereto, all upon the terms and conditions hereinafter set forth.

**NOW, THEREFORE**, in consideration of the promises and the mutual representations, warranties, and covenants herein contained, the Parties hereby agree as follows:

**Section 1      Statement of Work.**

The Project Sponsor shall cause the Project Owner to construct the project as described in the following statement of work.

- A. Project Site. The Project is located at 708 4th Ave N, Fargo, ND 58102 (Parcel #01-2382-01291-000) (“**Project Site**” or “**Property**”) and is to be constructed upon the fee interest of the Project Owner in the following-described property:

Lots Four, Five, and Six, in Block 10, Roberts’ Second Addition to the City of Fargo, situate in the County of Cass and the State of North Dakota.

Project Sponsor, as seller, has entered into a Purchase Agreement dated [XXXX], 2022, with Project Owner, as buyer, for the property described above.

- B. Pro Forma and Budget. The total estimated development cost is **\$13,794,799**. Project Owner's budget is attached as Exhibit "C." Sources and Uses is attached as Exhibit "D."

Project Sponsor shall, or shall cause Project Owner to, promptly notify the City of any material changes to the pro forma, including but not limited to material increases in project costs, change orders, the receipt or availability of additional sources of funds not previously disclosed, and material changes in projections of revenue or operating expenses. The City must approve changes to the pro forma and reserves the right to reduce its HOME commitment, modify the number of HOME-assisted units, or require Project Sponsor cause Project Owner to contribute additional funds needed to complete the project if the changes to the pro forma are material and result in either the over-subsidization or under-funding of the project based on a City underwriting analysis.

- C. Use of HOME CHDO Funds. The Project Sponsor shall cause Project Owner to develop and construct an affordable multifamily rental building to be occupied by seniors ages 62 and older. At least 90% of the units shall be leased to tenants with income at or below 60% of the Area Median Income or "AMI"; the remaining 10% of the units may have income at or below 80% of the AMI; provided, however, this provision is not intended to supersede any restrictions applicable to the Property to the extent such restrictions are more stringent than the foregoing.. The Project will result in the construction of one (1) four-story building with forty-two (42) apartment units and a parking structure on the first floor within the footprint of the building.

It is understood that the Project Sponsor has certified that it is and will maintain CHDO (Community Housing Development Organization) status for the term of the Project and Agreement in accordance with 24 CFR 92. Project Sponsor agrees to provide, or cause the Project Owner to provide, information as may be requested by the City to document its continued compliance, including but not limited to an annual board roster and certification of continued compliance.

Any funds that the Project Owner is permitted to retain as CHDO proceeds from this project shall be used in compliance with 24 CFR 92.300(a)(2) or as specified in this Agreement. As a rental project, the Project Sponsor shall cause Project Owner to create and follow a tenant participation plan as required in 24 CFR 92.303.

- D. HOME-assisted Units. **Four (4)** units in the Project shall be designated as HOME-assisted units. The unit mix shall consist of:

**a. Four (4) one-bedroom units**

**All four (4)** HOME-assisted units are hereby designated as **floating** HOME units. Project Sponsor shall, or shall cause Project Owner to, provide the apartment numbers of each HOME-assisted unit to the City no later than the time of initial occupancy. For purposes of this Agreement a "HOME-assisted unit" is deemed to be a dwelling unit within the Project that is required to meet the income and rent restrictions of the HOME program and other terms of this Agreement.

E. Minimum Number of Low HOME Rent Units. As the Project does not consist of five or more HOME-assisted units, 24 CFR 92.252 does not apply. The Project shall consist of **four (4)** Low HOME units and no High HOME units.

F. Contract & Labor Standards.

a. Davis-Bacon Labor Standards. As the Project does not consist of twelve (12) or more HOME-assisted units, combined between the State of North Dakota and City, the Davis-Bacon Act (40 U.S.C. 3141) does not apply as it relates to the funds covered under this agreement.

b. Section 3. The City and the entities to which it provides certain U.S. Department of Housing and Urban Development (HUD) funding must comply with Section 3 of the Housing and Urban Development Act of 1968 ("Section 3"), as mandated by law.

The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are beneficiaries of HUD-provided housing assistance or who reside in the communities where the HUD funding is expended.

Entities working on Section 3 Covered Projects must comply with HUD's Section 3 regulations at 24 CFR Part 75. Section 3 Covered Projects must strive, to the greatest extent feasible, to meet the following Section 3 Benchmarks:

- 25% of total labor hours are worked by Section 3 Workers; and
- 5% of total labor hours are worked by Targeted Section 3 Workers

It is required for Contractors to document and report on worker hours, based on good-faith estimates. It is also required for Subrecipients and Contractors to undertake and document efforts they made to strive to meet Section 3 Benchmarks to the greatest extent feasible

The person executing this Agreement on behalf of **Project Sponsor** hereby certifies that **Project Sponsor** has been provided with the City of Fargo's Section 3 Compliance Plan, which further defines Section 3 requirements. Project Sponsor shall provide this document to all parties necessary to ensure compliance.

Project Sponsor Representative initials here: \_\_\_\_\_

c. Minority/Women Business Enterprises (MBE/WBE).

Documentation and data must be maintained and provided on the steps taken to implement outreach to minority-owned (MBE) and female-owned (WBE) businesses including data indicating the racial/ethnic or gender character of each business entity receiving a contract or subcontract of \$25,000 or more paid, or to be paid, with HOME funds; the amount of the contract or subcontract, and documentation of the affirmative steps to assure that minority business and women's business enterprises

have an equal opportunity to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction, and services.

- G. Schedule for Completion of Work. Construction of the Project must begin within twelve (12) months of the Effective Date of this Agreement. The Project must be complete and occupied within four (4) years of the Effective Date of this Agreement. Failure to complete and occupy the project within four (4) years will require repayment of all HOME funds invested.

Project Sponsor shall cause Project Owner to expend all HOME Funds by May 1, 2026. The construction schedule is included as Exhibit "H."

- H. Environmental Review. HUD funds may not be committed until the environmental review process has been completed and HUD has provided a release of funds (i.e., the City has received an Authority to Use Grant Funds from HUD). No choice limiting actions may be taken prior to clearance. The Project Sponsor shall, or shall cause Project Owner to, assemble information as required by the City or HUD to complete the environmental process. HUD has completed and approved a Part 50 Environmental Assessment of the Project and the City obtained its Authority to Use Grant Funds (AUGF) from HUD on the following date:

AUGF received on: \_\_\_\_\_ Verified by: \_\_\_\_\_  
Tia Braseth, City of Fargo

- a. Mitigation. As part of this Environmental Assessment, mitigation is required.

- i. Radon and VOCs. A radon mitigation system must be installed in The Milton Earl building. Radon Testing is required upon completion to ensure radon levels are below the EPA threshold of 4.0 pCi/L. The radon system will also address the one VOC, naphthalene, identified as present on site by the Phase II report. To evidence mitigation, the Project Architect shall provide written certification that a radon system has been installed in the Project building, including photos of installation at various stages if required.
- ii. Contaminated Soils. Excavation is required to be monitored and any contaminated soils are required to be removed according to the Soil Management Plan prepared by Braun Intertec on 12/17/21. The project will complete the Voluntary Remediation Action (VRA) process through the North Dakota Department of Environmental Quality.
- iii. Noise. The project must be constructed with the components that achieve an STC rating of at least 33 decibels.
- iv. Asbestos. A licensed asbestos abatement contractor will be contracted to properly remove and dispose of ACMs prior to demolition of the existing structure.
- v. Lead-Based Paint. A certified professional is required to be consulted to identify options to comply with all applicable regulations and ensure worker protection during demolition of the existing structure.

- I. The Project. The statement of work, as set forth in this Section 1, shall be referred to herein as the "Project."

**Section 2 City to Advance HOME Funds.**

- A. Amount of HOME CHDO Funds. The City will advance and remit to Project Owner the maximum sum of **ONE HUNDRED THOUSAND and 00/100 DOLLARS (\$100,000.00)** ("HOME CHDO Funds") under terms and conditions set forth below.

- \$100,000 from the 2021 Program Year HOME allocation

- B. Source of HOME Funds. The HOME Funds are from the City's HOME Investment Partnership allocation of:

**Program Year 2021:** Program Year 2021: \$468,708 awarded to the City of Fargo on September 15, 2021; Federal Award Identification Number M-21-MC-38-0220, CFDA 14.239, UEI K2QJQZVH5PM6; and

- C. Form and Terms of Assistance. The City will advance the HOME Funds in the form of a loan to Project Owner. The Term of the HOME Loan and this Agreement will commence at execution of the Mortgage and Promissory Note and continue for a term of twenty (20) years.

The HOME Loan will carry 0% interest (provided there is no default). Payment is deferred for the life of the loan of twenty (20) years from the date of the promissory note, with any remaining principal due at that time. The HOME Loan may be prepaid at any time by the Project Owner without penalty, however pursuant to 24 CFR 92.252(e)(1)(i), repayment of the HOME Loan prior to the end of the Affordability Period will not result in the termination of the Affordability Period.

- a. Loan Instruments and Security. The HOME Loan must be evidenced by a promissory note ("**Note**") and secured by a mortgage of the Project Owner's interest in the Property ("**Mortgage**"), an assignment of rents and leases ("**Assignment of Rents and Leases**"), and appropriate UCC financing statements ("**Financing Statements**"). It is understood and agreed that the Mortgage will be a second mortgage, meaning that it is intended to be subordinate in time and interest to mortgages issued by the Project Owner to Wells Fargo Bank, National Association, Bell Bank, and the Industrial Commission of North Dakota acting as the North Dakota Housing Finance Agency. Project Sponsor shall ensure that Project Owner does not use the loan proceeds attributable to the loans from Wells Fargo Bank, National Association or Bell Bank for any use that is not permitted under the respective loan documents for such loans. Sponsor shall cause Project Owner to maintain a Debt Coverage Ratio of 1.15 or more throughout the affordability period, which must be verified by the City prior to any subordination.

Together, this Agreement, Note, the Mortgage, the Assignment of Rents and Leases, and the Declaration of Land Use Restrictive Agreement, described in

Section 3.G., below, shall constitute the “**Loan Documents.**”

- b. **Title Insurance.** Prior to the making of any advance of funds under the loan by the City, the Project Sponsor shall cause Project Owner to provide a title insurance policy insuring the Property in standard ALTA form issued by a title company authorized to do business in the State of North Dakota and acceptable to the City. The name of the insured shall be the City of Fargo, a North Dakota municipal corporation. The policy shall show fee title to the Property, subject only to such exceptions as the City may approve, shall be in the full amount of the City’s loan, shall contain a comprehensive coverage endorsement and other such endorsements as the City may require and shall insure that the mortgage constitutes a valid second-position lien on the Property, and that the Property is free of all liens, encumbrances, restrictions, or other matters of any kind whatsoever, with only such exceptions from coverage as are satisfactory to the City.
- c. **Ownership Entity.** The Project Sponsor agrees it shall not permit Project Owner to sale or transfer of the Property without the prior written consent of the City, except as permitted under the Mortgage. Transfers of partnership interests as permitted under the Amended and Restated Agreement of Limited Liability Limited Partnership, dated on or about the date hereof, shall not require City consent or approval.

D. **HOME Subsidy Limit.** Upon Project Completion, the per-unit subsidy invested in the Project’s HOME-assisted units shall not be less than \$1,000 or more than the maximum HUD limit. As of the Effective Date of this Agreement, the maximum subsidy limit per HOME-assisted unit is:

- \$[183,132] for a 1-bedroom unit
- \$[222,693] for a 2-bedroom unit

E. **Other Funds.** The Project was awarded \$447,400 in 2021 HOME Funds and the project site/land was donated by the City to the BSI, which was improved with Community Development Block Grant (CDBG) funds. There is a separate CDBG Subrecipient Agreement dated May 27, 2020 for the disposition of the land to the BSI.

The Project will receive Low Income Housing Tax Credits through the 2021 Allocation Plan of the North Dakota Housing Finance Agency, National Housing Trust Funds from the North Dakota Housing Finance Agency, Section 8(bb) housing vouchers from HUD, construction loan financing through Wells Fargo, and construction and permanent loan financing through Bell Bank.

**Section 3 HOME Program Requirements.**

As a recipient of HOME funds, Project Sponsor shall cause Project Owner to comply with all federal laws and regulations, now or in the future as amended listed in Exhibit “E.” In addition, acceptance of HOME funds requires compliance with specific HUD regulations further described in this section.

- A. **Affirmative Marketing.** As the Project does not consist of four (4) or more HOME-assisted units, the Affirmative Marketing requirements does not apply.

- B. Violence Against Women Act ("VAWA"). Project Sponsor shall cause Project Owner to comply with the HUD implementing regulations of the Violence Against Women Act at 24 CFR 92.359 and 24 CFR 5.2005 throughout the Affordability Period as defined in Section 6 Paragraph A.
- a. "Notice of Occupancy Rights Under the Violence Against Women Act." This notice must be provided when an application for a HOME-assisted unit is denied or approved or with any eviction notification. Project Sponsor shall cause Project Owner to use Form HUD-5380.
  - b. VAWA Lease Addendum. The lease for any HOME-assisted unit must incorporate the VAWA Lease Addendum required under 24 CFR 92.359(e).
  - c. Emergency Transfer Plan. Project Sponsor shall cause Project Owner to follow the City's Emergency Transfer Plan for victims of domestic violence, dating violence, sexual assault, or stalking under VAWA. The Project Sponsor has been provided a copy of the City's policy and has provided a copy of the same to Project Owner.
  - d. Bifurcation of Lease. If a family living in a HOME-assisted rental unit separates under 24 CFR 5.2009(a), the remaining tenant(s) may remain in the HOME-assisted unit.
- C. Displacement, Relocation, and Acquisition. Project Sponsor shall cause Project Owner to take all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of the Project. Project Sponsor shall cause Project Owner to comply with appropriate relocation and real property acquisition requirements as provided in 24 CFR 92.353.

This Project will be constructed on vacant land and will not result in displacement.

- D. Conflict of Interest. The following parties may not occupy a HOME-assisted affordable housing unit in the Project during the Affordability period:
- a. The Project Sponsor, Project Owner, developer, or sponsor;
  - b. Any officer, employee, agent, elected or appointed official or consultant of the Project Sponsor, Project Owner, developer, or sponsor;
  - c. Any immediate family member of an officer, employee, agent, elected or appointed official, or consultant of the Project Sponsor, Project Owner developer, or sponsor.
- E. Equal Access. As the Project is considered housing assisted by HUD, it shall be made available without regard to actual or perceived sexual orientation, gender identity, or marital status pursuant to 24 CFR 5.105(a)(2).
- F. Religious Activities and Faith-Based Organizations. Faith-based organizations are eligible, on the same basis as any other organization, to participate in HUD programs and activities. Neither Project Sponsor nor Project Owner is not a faith-based organization. Nevertheless, Project



Sponsor is prohibited from using, or permitting the Project Owner to use, the Federal financial assistance received to support or engage in any explicitly religious activities such as, but not limited to, worship, religious instruction, or proselytization, or in any other manner prohibited by law.

- G. Land Use Restrictive Agreement. Project Sponsor shall cause Project Owner to execute a Land Use Restrictive Agreement ("LURA") upon completion of the Project and the marking of the Project as complete in HUD's disbursement and information system, and the City is hereby authorized to record the LURA against the Project Owner's interest in the Property at the office of the Cass County Recorder. Said LURA shall be substantially in conformance with the form of LURA attached as Exhibit "A."
- H. Historic Preservation. Project Sponsor shall cause Project Owner to require its contractors or subcontractors to stop construction if ground disturbance related to this Project results in the discovery of any bones, artifacts, foundations, or other indications of past human occupation and notify both the State Historic Preservation Office and the City immediately.

**Section 4      *Project Sponsor Responsibilities During the Award Period.***

The following section describes the responsibilities of Project Sponsor after the Effective Date of this Agreement and before the commencement of the Affordability Period. Project Sponsor shall comply, and shall cause Project Owner to comply, with the below provisions.

- A. Report During the Development Phase. Project Sponsor shall cause Project Owner to report not less than quarterly on progress toward commencement of construction. Quarterly reports will be due on the 15th of the month following the end of the previous quarter. Project Sponsor shall cause Project Owner to submit this report regardless of whether a disbursement is requested from the City. "Report" shall mean a format determined acceptable to the City and may consist of conference calls and/or brief written reports.
- B. Report During Construction. Once construction commences, Project Sponsor shall cause Project Owner to report on construction progress on a monthly basis. "Report" shall mean a format determined acceptable to the City and may consist of conference calls, brief written reports, and/or copying the City on draw requests. If a draw request is not made during the month, the City reserves the right to request a verbal or written progress report or conduct a site visit.
- C. Request Disbursements During Construction. Project Sponsor shall cause Project Owner to make disbursement requests for HOME Funds from the City during construction no more frequently than monthly and no less frequently than quarterly; unless otherwise authorized by the City in writing. Disbursement requests must meet the criteria described in Section 5(A) "Disbursement." Project Sponsor shall cause Project Owner to use the template "HOME Disbursement Request" form attached as Exhibit "F."
- D. Report During Lease-Up. For any HOME-assisted unit leased in a calendar month, Project Sponsor shall cause Project Owner to submit the City's "HOME Benefit Form" by the 7th of the next month. If no units were leased, Project Sponsor shall cause Project Owner to inform the City by the same date.

**Section 5 City Responsibilities During the Award Period.**

The following section describes the responsibilities of the City after the Effective Date of this Agreement and before the commencement of the Affordability Period.

- A. Disbursement. The City shall remit funds upon receiving a disbursement request from Project Owner, provided that:
- a. Funds are needed for payment of HOME-eligible costs. The amount of each request must be limited to the amount needed.
  - b. Project Owner has not already made a disbursement request during the calendar month (unless an exception has been granted in writing by the City).
  - c. Project Sponsor and Project Owner are not in material default under the terms of this Agreement or of any of the Loan Documents, and no event shall exist, which by notice, passage of time, or otherwise would constitute an event of default under this Agreement.
  - d. The Project shall not have been materially damaged by fire or other casualty.
  - e. Project Owner has provided documentation of direct costs, such as invoices or receipts, which the Project Owner certifies are true and correct copies of payments due for an activity covered by this Agreement and made in accordance with the Statement of Work.
  - f. After inspection of the Project and review and approval of the work performed, the City has approved the disbursement request.
- B. Retainage. All disbursement requests will be made in full as provided hereunder except that the final ten percent (10%) of HOME Funds, will be retained by the City without interest accrual, and be paid as a Final Disbursement upon the City's receipt of all project closeout items listed in the City of Fargo's HOME Project Completion Policy.
- C. Project Completion Inspection. To ensure the Project meets the Property Standards, the City shall conduct an HQS inspection prior to occupancy. This inspection and all corrective or remedial actions must be completed before the City will issue the Final Disbursement and mark the Project complete in HUD's disbursement and information system.

**Section 6 Sponsor Responsibilities During the Affordability Period.**

The following section describes the responsibilities of the Project Sponsor during the Affordability Period. Project Sponsor shall cause Project Owner to comply with the below provisions.

- A. Affordability Period. The Project Sponsor shall cause Project Owner to comply with all HOME regulations, throughout the Affordability Period, as defined herein.

As a new construction rental project, the Affordability Period is twenty (20) years commencing with the Project Completion Date.

- a. Project Completion Date. The “**Project Completion Date**” shall be as defined in 24 CFR §92.2 when: all necessary title transfer requirements and construction work have been performed; the project complies with the requirements of this part (including the property standards under §92.251); the final drawdown of HOME funds has been disbursed for the project; and the project completion information has been entered into the disbursement and information system established by HUD; provided, however, that the term “Project Completion Date” may be deemed to be a different such date in accordance with particular federal regulations, as the same may be modified from time to time.
    - i. Six Month Deadline for Leasing HOME Units. If within six (6) months of the Project Completion Date, one hundred percent (100%) of the HOME units are not rented to qualified households, the Project Sponsor shall cause Project Owner to submit to the City a marketing and outreach plan detailing how it will lease the remaining HOME units before the eighteen month deadline described in the following subparagraph.
    - ii. Eighteen Month Deadline for Leasing HOME Units. If within eighteen (18) months of the Project Completion Date, one hundred percent (100%) of the HOME units are not rented to qualified households, the Project Owner must repay the City the amount of HOME funds invested in that housing unit, defined as the final per-unit subsidy for that HOME-assisted unit.
  - b. Enforcement of Affordability Period. Pursuant to 24 CFR 92.252(e)(1)(i), the affordability requirements remain in force regardless of the term of any loan or mortgage, repayment of the HOME investment, or transfer of Sponsorship documented, and are enforced via the LURA on the assisted property. The LURA will terminate at the end of the Affordability Period, and upon request, the City will execute a release of the LURA after the end of the Affordability Period.
- B. Qualified Tenants. During the Affordability Period, HOME-Assisted Units must be occupied by tenants that are eligible as low-income as determined by HUD.
- a. Tenant Selection. Project Sponsor shall cause Project Owner to adopt and follow written tenant selection policies. The policy must be submitted to the City for approval prior to the marketing of units to ensure compliance with 24 CFR 92.253(d).
    - i. Tenant Selection Preference. Project Sponsor is hereby authorized permit Project Owner to limiting tenant eligibility to the elderly.
  - b. Tenant Income Limits. Income-eligible households are defined as households having incomes at the time the tenant moves into the HOME-assisted Unit (hereinafter such time referred to as “**move-in**”) at or below a certain amount of area median income (“**AMI**”) based on household size.

There are no High HOME units.

For all four (4) **Low HOME Units**; a household must be at or below 50% AMI at **move-in**.

AMI is adjusted annually by HUD. As of the Effective Date of this Agreement, income limits can be found online at [www.hudexchange.info/programs/home/home-income-limits/](http://www.hudexchange.info/programs/home/home-income-limits/).

c. **Tenant Income Verification**. Income verification is the Project Sponsor's responsibility. The City uses the definition of annual income as defined at 24 CFR 5.609.

i. **Initial Income Certification**. Project Sponsor shall cause Project Owner to determine a household's initial eligibility for a HOME-assisted unit by anticipating a household's income over the next twelve (12) months using two months of source documents.

ii. **Annual Income Self-Certification**. After a household's Initial Income Certification, Project Sponsor shall cause Project Owner to obtain on an annual basis a written statement from the household stating its anticipated annual income and household size over the next twelve (12) months. No source documentation is required for annual self-certifications.

1. **Exception**. Every sixth (6<sup>th</sup>) year of the Project's Affordability Period, Project Sponsor shall cause Project Owner to collect and examine two months of source documents for all HOME-assisted units.

d. **Over-Income Tenants**. If at recertification a household is over the income limit for the HOME-assisted unit, the Project Sponsor may not permit the Project Owner to evict a household; refuse to renew a household's lease; or force a household to move buildings, projects, or units. Project Sponsor shall cause Project Owner to immediately contact the City regarding over-income tenants for guidance on how to obtain compliance.

C. **Affordable Rents**. HOME-assisted units must be rented at affordable rental rates as described below.

a. **Rent Limits**. The monthly rent plus utility allowance for a HOME-Assisted unit may not be higher than the maximum HOME rent limits set annually by HUD. As of the Effective Date of this Agreement, HOME rent limits may be found online at:

[www.hudexchange.info/programs/home/home-rent-limits/](http://www.hudexchange.info/programs/home/home-rent-limits/).

b. **Initial Rent Limit**. All four (4) of units in this Project are subject to Low HOME rents. Table 6C sets the Initial HOME Rents for the Project. Regardless of future HUD adjustments as reflected online at the above-described web page, the HOME rents for this project are not required to be lower than the limits established in this table.

As of the Effective Date of this Agreement, the 2022 HOME Rent Limits were in effect and are listed as follows:

Table 6C: HUD HOME 2022 Rent Limits		
	1 Bedroom	
High HOME Rent	\$705	
Low HOME Rent	\$703	

- c. Rent Increases. On an annual basis, the Project Sponsor shall cause Project Owner to submit to the City its proposed HOME rent structure for the coming year. The City will reasonably approve or disapprove the proposed rents. The City will approve new HOME rents provided the rent plus applicable utility allowance (see paragraph d below) does not exceed the HUD HOME Rent Limit (or paragraph b above, if applicable).

If a rent increase is approved by the City, rent increases for HOME-assisted units are subject to the provisions of outstanding leases. At a minimum, the Project Sponsor shall cause Project Owner to provide tenants in HOME-assisted units not less than thirty (30) days prior written notice before implementing any increases in rents.

- d. Utility Allowances. Project Sponsor shall cause Project Owner to deduct utility allowances from the published Rent Limits. Utility allowances for initial tenants will be determined before leasing begins by the Project Owner using HUD’s Utility Schedule Modeler or other approved method by HUD as outlined in *HOMEfires Vol. 13 No. 2, May 2016*. This schedule must be submitted to the City for approval.

Project Sponsor shall cause Project Owner to update Utility Allowances annually and submit them to the City for approval.

- e. Fees. Project Sponsor may not permit Project Owner to charge fees not customarily charged in rental housing. Project Sponsor may permit Project Owner to charge reasonable application fees to prospective tenants. Project Sponsor shall be permitted to cause Project Owner to charge parking fees only if such fees are customary for rental housing projects in the neighborhood. Project Sponsor may permit cause Project Owner to charge fees for services such as bus transportation or meals, as long as such services are voluntary.

Project Sponsor shall cause Project Owner to submit a Fee Schedule prior to Project Completion for review and approval by the City, and annually thereafter.

- f. Federal or State Project Based Rental Subsidy. Notwithstanding anything to the contrary contained herein, pursuant to 24 CFR 92.252(b)(2), if a HOME-assisted unit receives Federal or State project-based rental subsidy and the very low-income family pays as a contribution toward rent not more than 30 percent of the households adjusted income, then the maximum rent (i.e., tenant contribution plus project-based rental subsidy) is the rent allowable under the Federal or State project-based rental subsidy program.

D. Tenant Leases. Project Sponsor shall cause Project Owner to maintain a written lease with tenants of HOME-assisted units which meets the following standards.

- a. Lease Length. The written lease must be for an initial period of not less than one (1) year, unless by mutual agreement between the tenant and the Project Owner a shorter period is specified.
- b. VAWA Lease Addendum. The lease must incorporate the VAWA lease term/addendum required pursuant to 24 CFR 92.359(e).
- c. Prohibited Lease Terms. The lease may not contain any of the federally-prohibited lease terms set forth in 24 CFR 92.253(b).
- d. Termination of Tenancy. To terminate or refuse to renew tenancy, the Project Sponsor shall cause Project Owner to serve written notice upon the tenant specifying the grounds for the action at least 30 days before the termination of tenancy.

Project Sponsor may not permit Project Owner to terminate the tenancy or refuse to renew the lease of a tenant of rental housing assisted with HOME funds except as permitted under 24 CFR 92.253(c).

E. Property Standards. Project Sponsor shall cause Project Owner to maintain the Project so housing is in a safe and sanitary condition, and is in good repair in conformance with the Property Standards listed in Section 1 (G) of this Agreement

F. Reporting. Project Sponsor shall cause Project Owner to maintain complete and organized records. This section sets forth the manner by which the Project Sponsor shall cause Project Owner to maintain records and report to the City on an annual basis.

- a. Project Records. Representatives of the City, HUD, the Comptroller General of the United States, or their designees may examine any records or information accumulated relating to this Agreement. Project Sponsor shall cause Project Owner to maintain administrative and financial records as required by 24 CFR 92.508. Project records include but are not limited to CHDO documentation, income documentation on all assisted households, property standard compliance documents, financial records, etc.
- b. Record Retention. All Project Records must be retained until five years after the end of the Affordability Period.

If any litigation, claim, negotiation, audit, monitoring, inspection or other action has been started before the expiration of the required record retention period, records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the required period, whichever is later.

- c. Annual Report. Project Sponsor shall cause Project Owner to provide the following to the City on an annual basis on the previous calendar year's activities. The City shall annually notify the Project Sponsor and Project Owner of the specific documents required and deadlines for submission:
  - i. Occupancy Report. A list of each HOME-assisted unit with information about the household. Project Sponsor shall cause Project Owner to use a City-provided form.
  - ii. Financial Report. Project Sponsor shall cause Project Owner to demonstrate the financial condition and continued financial viability of the Project. A list of these reports can be found in the City's HOME Policies and Procedures manual.

**Section 7** *City Responsibilities During the Affordability Period*. The following describes the responsibilities of the City during the Affordability Period.

- A. Annual File Monitoring. Upon reasonable advance written notice to the Project Sponsor, the City shall conduct, and Project Sponsor shall cause Project Owner to allow, monitoring reviews on an annual basis to verify Project Owner is complying with all HOME rules and regulations. There are two types of such monitoring reviews:
  - a. On-Site File Monitoring Reviews. An on-site review shall consist of a review of Project Records related to the previous calendar year. A representative of the City shall conduct an on-site monitoring review of the Project on the following schedule.
    - i. Once within twelve (12) months of Project Completion.
    - ii. Once every three (3) years thereafter.

The City reserves the right to conduct more frequent on-site monitoring reviews of Project Records as are reasonably necessary to ensure compliance hereunder.

- b. Desk Review of Project Records. During years when an on-site file monitoring is not required, the City shall examine copies of records and tenant files to ensure the Project Owner is in compliance with the HOME program.
- B. Annual Property Standards Monitoring. The City shall verify Project Sponsor is causing Project Owner to maintain Property Standards, as follows:
  - a. On-Site Property Standards Inspection. Upon reasonable advance written notice, the City building inspector shall conduct, and Project Sponsor shall cause Project Owner to allow, an on-site property inspection of HOME-assisted units on the following schedule.
    - i. Once within twelve (12) months of Project Completion.

- ii. Once every three (3) years thereafter assuming no health and safety deficiencies have been identified. Health and safety deficiencies will result in annual inspections for three (3) years.
- b. Property Standards Certification. In years when an on-site Property Standards inspection is not required, Project Sponsor shall cause Project Owner to certify to the City that each building and all HOME-assisted units associated with the Project are suitable for occupancy under the Property Standards set forth in this Agreement.
- C. Yearly Updates to Tenant Income and Rent Limits. The City shall inform the Project Sponsor on an annual basis in writing of changes to the Tenant Income Limits and HOME Rent Limits when released by HUD.
- D. Annual Approval. The City shall review and approve the rent structure and utility allowance for HOME-assisted units.

**Section 8      Enforcement.**

- A. Default. The following shall constitute an event of default by Project Sponsor under this Agreement and subject to remedy if not corrected within the identified Corrective Action Period (Subsection B, below).
  - a. Failure to cause Project Owner to maintain the Project or HOME-assisted Units in accordance with the Property Standards;
  - b. Failure to cause Project Owner to meet the Affordability Requirements during the Affordability Period;
  - c. Failure to cause Project Owner to comply with HOME Program regulations, fair housing laws, and other federal requirements;
  - d. Any event of fraud, material misrepresentation, gross negligence, or willful misconduct in the execution or performance of this Agreement or in its application for participation in the HOME Program.
  - e. Use of funds for activities or uses that are not HOME-eligible costs.
  - f. Any other material breach of the terms and conditions of this Agreement by the Project Sponsor, Project Owner or any of their Employees, Contractors, or Agents.
- B. Corrective Action Period. In the event of default by Project Sponsor, Project Sponsor shall have thirty (30) days from the receipt of written notice by the City to initiate corrective action. Such thirty (30) day period shall be extended as the City deems necessary in City's reasonable discretion, in the event that:
  - a. Project Sponsor or Project Owner has initiated and is diligently pursuing a cure to the reasonable satisfaction of the City, or;



- b. The action to cure the default reasonably requires more than thirty (30) days.
- C. **Remedies.** If Project Sponsor or Project Owner fails to cure the default, the City shall have the following remedies:
  - a. The City may terminate this Agreement.
  - b. Upon written demand by the City, the Project Owner shall remit payment to the City of all HOME Funds advanced by the City under this Agreement and the HOME Loan documents.
  - c. The City may withhold any further payments to be made under this Agreement until such time as the applicable breach has been cured to the satisfaction of the City.
  - d. The City may require the use of, or change in, professional property management.
  - e. The City may apply to any appropriate court, State or Federal, for such other relief as may be appropriate and allowed by law.
  - f. Enter upon the Property and take possession thereof, together with the Project then in the course of construction, and proceed either in its own name or in the name of the Project Owner, as the attorney-in-fact of the Project Owner (which authority is coupled with an interest and is irrevocable by the Project Owner), to complete or cause to be completed the Project, at the cost and expense of the Project Owner.
  - g. Pursue the appointment of a receiver to collect rents and profits or take possession of the Project.
  - h. Declare immediately due and payable all unpaid principal, accrued interest, and annual fees on the Note, together with all sums payable thereunder and the same shall thereupon be immediately due and payable without presentment of any other demand, protest, or notice of dishonor or any other notice of any kind, all of which are hereby expressly waived.
  - i. Apply sanctions set forth in 24 CFR Part 92, if determined by the City to be applicable.

Any delay by the City in exercising any right or remedy provided herein or otherwise afforded by law or equity shall not be a waiver of or preclude the exercise of such remedy. All such rights and remedies shall be distinct and cumulative and may be exercised singly, serially (in any order), or concurrently, and as often as therefore arises.

The limited partner of the Project Owner shall have the right, but not the obligation to cure any event of default of Project Sponsor or Project Owner hereunder and such cure shall be deemed to have been made by the Project Sponsor or Project Owner, as applicable.

**Section 9      General Provisions.**

- A. Duration of Agreement. This Agreement shall be effective upon the Effective Date and shall remain in effect for the duration of the Affordability Period of twenty (20) years.
- B. Assignability. This Agreement will not be assigned or transferred by the Project Sponsor without the prior written consent of the City. Notwithstanding the foregoing or anything to the contrary set forth herein, interests in the Project Owner may be transferred without consent or restriction.
- C. Independence of Project Sponsor. Nothing contained in this Agreement nor the relationship of the Project Sponsor to other parties, shall make or be construed to make the Project Sponsor, or any of the Project Sponsor's agents or employees, the agents or employees of the City. The Project Sponsor shall be solely and entirely responsible for its acts and the acts of its agents, employees, and subcontractors.
- D. Assurances. The Project Sponsor shall cause Project Owner to use HOME Funds for the purposes authorized by the Fargo City Commission. The Project Sponsor shall cause Project Owner to comply with the assurances, attached as Exhibit "E" and made a part of this Agreement, which are required by the Department of Housing and Urban Development for all HOME projects.
- E. Conflict of Interest. While the conflict of interest provisions in 24 CFR 92.356 do not technically apply to the Sponsor's procurement of goods and services associated with the development or operation of the Project, the Sponsor agrees to notify the City in writing and see the City's approval prior to entering into any contract with any entity owned in whole or in part by a covered person or an entity owned or controlled in whole or in part by the Sponsor, the General Partner, any of the underlying individual Sponsors of the General Partner, or any of the Guarantors. The City will review the proposed contract to ensure that the contractor is qualified and that the costs are reasonable. Approval of an identity of interest contract will be in the City's sole discretion.

Notwithstanding, the City initially acknowledges and approves the Sponsor's use of Metro Plains as the property manager for the Project. The City also acknowledges and approves Beyond Shelter, Inc.'s role as the manager of the General Partner, Land Lessor, and Developer.

- F. License and Insurance Requirements. Project Sponsor shall cause Project Owner to comply with all applicable licensing requirements and associated business regulations, whether federal, state, or local. Project Sponsor shall cause Project Owner to purchase and maintain the policies listed in Exhibit "G."
- G. Severability. If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.
- H. Headings. The headings of the sections and paragraphs in this Agreement are for convenience only and do not affect the meanings or interpretation of the contents.

- I. Amendments. Except as set forth in this Agreement, the Agreement and Loan Documents may only be modified or amended by written instrument signed by all the parties hereto.

Notwithstanding any terms within this Agreement, in the event that (i) HUD imposes new or modified requirements on existing HOME-assisted projects through regulation, administrative notice, publication, or other notice or (ii) HUD specifically identifies violations of HOME program requirements pertaining to this Agreement or the Project, Project Sponsor shall cause Project Owner to comply with any new or modified requirements to ensure the Project remains in or is brought into compliance with such requirements. Project Sponsor further agrees to execute an amendment to modify the terms of this Agreement in such manner as necessary to reflect and implement new HOME requirements or correct identified deficiencies. The City shall provide not less than thirty (30) days' notice to the Project Sponsor of any such modifications.

- J. Indemnification and Hold Harmless. Project Sponsor agrees to indemnify and hold harmless the City and any of its officers, employees, contractors, consultants, representatives, agents, and assigns from and against any and all liability, damages, penalties, judgments, or claims of whatever nature arising from injury to person(s) or property resulting from the intentional or grossly negligent acts or omissions of the Project Sponsor, or the Project Sponsor's contractors, successors, or assigns in connection with the work on the Property, and the Project Sponsor will, at the Project Sponsor's own cost and expense, defend any and all suits or actions (just or unjust) which may be brought against the City or in which the City may be joined with other parties upon any such matter or claim(s). This agreement to indemnify and hold harmless will include indemnity against all costs, expenses, and liabilities, including but not limited to any repayment obligation to HUD incurred by the City under 24 CFR 92.503(b), any reasonable attorney fees, reasonably incurred in or in connection with any such claims or proceedings brought thereof, and other costs and expenses incident to monitoring, remedial actions, proceedings, or investigations and the defense of any claim, arising out of, resulting from, or related to, and to pay the City or its successor in interest, on demand, the full amount of any sum which the City or its successor has paid or becomes obligated to pay on account of:

- a. Any material misrepresentation, omission, or the breach of any representation or warranty of the Project Sponsor.
- b. Any failure of the Project Sponsor to materially perform or observe or cause to be performed or observed any term, provision, covenant, or agreement to be performed or observed by the Project Sponsor, or after assumption, by a subsequent to the Project Sponsor.
- c. Any claims, assessments, or liabilities for charges, penalties, liens, taxes, or deficiencies arising from or relating to the use and operation by the Project Owner, or after an assumption, the Project Owner's successors to the Property or Project.
- d. The manufacture, generation, storage, use, treatment, transportation, or disposal of solid waste, or any toxic or hazardous materials, substances, or pollutants either directly or indirectly by the Project Owner or any of their past or present affiliates on the Project Site described in Section 1, which occurs prior to possession passing from Project Owner pursuant to a Sheriff's Deed upon

completion of a foreclosure or upon acceptance of a Deed in Lieu of Foreclosure.

This indemnification provision will survive the termination of this Agreement and any subsequent agreements of the parties contemplated herein. Notwithstanding anything to the contrary contained herein, the Project Sponsor's obligation hereunder shall not apply to the extent such liability, damages, penalties, judgments, or claims of whatever nature arising from injury to person(s) or property, are a result of the acts or omissions of the City and the City shall indemnify and hold harmless the Project Sponsor and any of their officers, employees, contractors, consultants, representatives, agents, and assigns from and against any and all liability, damages, penalties, judgments, or claims of whatever nature arising from injury to person(s) or property resulting from the intentional or grossly negligent acts or omissions of the City or any of its officers, employees, contractors, consultants, representatives, agents, and assigns

- K. Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the parties hereto and the permitted successors and assigns of the parties. The Project Sponsor may not assign its interests or obligations under this Agreement without the prior written consent of the City.
  
- L. Form of Notices; Addresses. Except for notices of default issued pursuant to Section 8 of this Agreement, all notices, requests, consents, or other communications required under this Agreement shall be in writing and shall be deemed to have been properly given if served personally or if sent by United States mail or overnight delivery service to the Parties as follows (or at such other address as a Party may from time to time designate by notice given pursuant to this Section):  
To: Project Sponsor

Beyond Shelter, Inc.  
3320 Westrac Dr. S, Suite G  
Fargo, ND 58103  
Attention: General Parnter

with a copy to:

WINTHROP & WEINSTINE, P.A.  
225 South Sixth Street  
Suite 3500  
Minneapolis, MN 55402  
Attention: Jon L. Peterson

with a copy to:

Wells Fargo Affordable Housing  
Community Development Corporation  
MAC D1086-239  
550 South Tryon Street, 23<sup>rd</sup> Floor  
Charlotte, NC 28202-4200  
Attention: Director of Tax Credit Asset Management

To: City

City of Fargo  
Department of Planning and Development  
Attn: HOME Program  
225 4<sup>th</sup> Street North  
Fargo, ND 58102

With respect to notices of default issued pursuant to Section 8 of this Agreement, all such notices shall be in writing and shall be deemed to have been properly given if served personally or if sent by United States registered or certified mail or overnight delivery service to the Parties at the same address as above (or at such other address as a Party may from time to time designate by notice given pursuant to this Section).

Each notice shall be deemed given and received on the date delivered if served personally or, if sent by United States mail or by overnight delivery service, then the day so sent to the address of the respective Party, as provided in this Section, postage pre-paid. Notices sent by a Party's counsel shall be deemed notices sent by such Party.

- a. Calculation of Time. Unless otherwise stated, all references to "day" or "days" shall mean calendar days. If any time period set forth in this Agreement expires on other than a Business Day, such period shall be extended to and through the next succeeding Business Day.

- M. Receipt of Manual: The person executing this Agreement on behalf of **Project Sponsor** hereby certifies that **Project Sponsor** has been provided with the City of Fargo's HOME Rental Compliance Guide. Project Sponsor shall cause Project Owner to provide this document to its selected property manager and to the successors of said manager.

Project Sponsor Representative initials here: \_\_\_\_\_

- N. Venue. In the event of a dispute or litigation arising out of this Agreement, it is understood and agreed that this Agreement was executed and performed in Cass County, North Dakota. Therefore, this Agreement shall be construed and interpreted in accordance with North Dakota law. Any lawsuit shall be brought in state or federal court in North Dakota and venued in Cass County, North Dakota.
- O. Memorandum of Agreement. Simultaneous with the execution of this Agreement, the Parties will execute a Memorandum of Agreement (MOA) in recordable format, substantially in the form attached as Exhibit "B", hereto, and any of the Parties are authorized to record said instrument against the Property at the Office of the Cass County Recorder.
- P. Entire Agreement. This Agreement, Sections 1 through 9, together with Exhibits "A" – "G" and Land Use Restrictive Agreement, and proposal and application for participation in the program submitted by Project Sponsor, which are specifically incorporated herein, represent the entire

agreement between the parties and supersede all prior representations, negotiations, or agreements whether written or oral.

*(Signature Page to Follow)*

SIGNED THE \_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_.

**Beyond Shelter, Inc.**, a North Dakota nonprofit corporation

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

Daniel P. Madler

Its: Chief Executive Officer

SIGNED THE \_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_.

**CITY OF FARGO**, a North Dakota municipal corporation

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

Timothy J. Mahoney, M.D.

Its: Mayor

ATTEST:

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

Federal ID #45-0453966

UEI # \_\_\_\_\_

**EXHIBIT "A"**

**LAND USE RESTRICTIVE AGREEMENT (LURA)**



**DECLARATION OF LAND USE RESTRICTIVE AGREEMENT  
(MULTIPLE FAMILY)**

**FARGO HOME PROGRAM**

THIS "Declaration of Land Use Restrictive Agreement" (this "Declaration") is declared and established as of the [DAY] day of [MONTH], [YEAR] by The Milton Earl, LLLP, a North Dakota limited liability limited partnership ("Project Owner"), whose address is 3320 Westrac Dr. S., Suite G, Fargo, ND 58103.

**WITNESSETH:**

**WHEREAS**, Beyond Shelter, Inc., a North Dakota nonprofit corporation (the "Project Sponsor") is the sole member and manager of The Milton Earl, LLC, a North Dakota limited liability company (the "General Partner"), the managing general partner of the Project Owner;

**WHEREAS;** Project Owner owns a fee simple interest in that certain land located in Cass County, North Dakota, legally described as follows:

Lots Four, Five, and Six, in Block 10, Roberts' Second Addition to the City of Fargo, situate in the County of Cass and the State of North Dakota.

(hereinafter "Subject Property") the street address for which is 708 4<sup>th</sup> Ave. N., Fargo, ND 58102.

**WHEREAS;** Project Owner constructed upon the Subject Property an affordable residential housing development of 42 senior housing units (the "The Milton Earl Project").

**WHEREAS;** Project Sponsor applied to the City of Fargo, a North Dakota municipal corporation (the "City") for loans in the amounts of \$100,000 and \$447,400, respectively, (collectively, the "HOME Loan"), made available by funds received from the US Department of Housing and Urban Development (HUD), (said Funds hereinafter collectively referred to as the "HOME Funds"), provided through the provisions of the National Affordable Housing Act of 1990, HOME Investment Partnership Program, and pursuant to all federal rules, regulations and policies promulgated thereunder (herein said act, program, rules, regulations and policies collectively referred to as the "HOME Program"), which HOME Program is being administered by the Department of Planning and Development of the City; and

**WHEREAS;** the HOME Program, as adopted by City, requires that this Declaration be executed, delivered, and recorded with the County Recorder for the county at which said The Milton Earl Project is located in order to create certain covenants running with the fee interest in the Subject Property for the purpose of enforcing certain requirements which regulate and restrict the use, occupancy and transfer of the Subject Property as set forth herein; and

HOME CHDO Sponsor Agreement, The Milton Earl Project

**WHEREAS;** (i) the City and Project Sponsor entered into an Sponsor Agreement for the provision of 2021 HOME (Community Housing Development Organization) CHDO Funds (the "Sponsor Agreement"), and (ii) the City and Project Owner entered into an Owner Agreement (the "Owner Agreement", and together with the Sponsor Agreement, collectively, the "HOME Agreements") setting forth terms by which the Project Owner will receive the proceeds of the HOME Loan), and conditions and obligations of the Project Owner for receiving such loan proceeds;

**NOW, THEREFORE,** in consideration of the above recitals and the following mutual covenants and agreements, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is hereby declared:

#### SECTION 1 - RECORDING AND FILING

Upon execution and delivery of this Declaration by the Project Owner, the City may cause this Declaration and all amendments hereto to be recorded at the Office of the County Recorder in Cass County, North Dakota, and shall pay all fees and charges incurred in connection therewith. Upon recording, the City shall immediately transmit to Project Owner an executed and certified copy of the original of the recorded Declaration, showing the date, book and page of recordation.

#### SECTION 2 – HOME COMPLIANCE DEFINITIONS

A. The Project Owner, at this place, confirms that the "Term" or "Affordability Period" is twenty (20) years under the HOME Program, and will commence on [DATE], and terminate on [DATE].

B. High HOME Rent and Low HOME Rent: High HOME Rent and Low HOME Rent shall refer to the HOME Rent Limit categories which are published annually by HUD. HOME rent limits are currently available at <https://www.hudexchange.info/programs/home/home-rent-limits/>.

#### SECTION 3 - COVENANTS TO RUN WITH THE LAND

Project Owner intends, declares and covenants, on behalf of Project Owner and all future owners and operators of the Project during the Term, that this Declaration and the covenants and restrictions set forth herein which regulate and restrict the use, occupancy and transfer of the Subject Property shall be and are covenants running with the Subject Property, binding upon the Project Owner's successors in title and all subsequent owners and operators of the Subject Property, and are not merely personal covenants of the Project Owner, and shall bind the Project Owner, and the benefit shall inure to the City and any past, present or prospective tenants of the Project, and the City's respective successors and assigns during the Term hereof. The Project Owner agrees that any and all requirements of the laws of the State of North Dakota to be satisfied in order for the provisions of this Declaration to constitute deed restrictions and covenants running with the land shall be deemed to have been satisfied in full,

and that any requirements or privileges of estate are intended to be satisfied, or in the alternative, that an equitable servitude has been created to insure that these restrictions run with the land. For the Term hereof, every contract, deed or other instrument hereinafter executed, encumbering or conveying the Project or any portion thereof shall expressly provide that such Agreement is subject to this Declaration, provided however, that covenants contained herein shall survive and be effective regardless of whether such document provides that such instrument is subject to this Declaration.

#### SECTION 4 - REPRESENTATIONS, FURTHER COVENANTS AND WARRANTIES OF THE PROJECT OWNER

(A) Project Owner is a limited liability limited partnership, duly organized under the laws of the State of North Dakota (the "State"), and is qualified to transact business under the laws of the State. Project Owner has the power and authority to own its properties and assets and to carry on its business as now being conducted, and has the full legal right, power and authority to execute and deliver this Declaration.

(B) There is no action, suit or proceeding at law or in equity or by or before any governmental instrumentality or other agency now pending, or, to the knowledge of the Project Owner, threatened against or affecting it, or any of its properties or rights, which, if adversely determined, would materially impair its right to carry on business substantially as now conducted (and as now contemplated by the Declaration) or would materially adversely affect its financial condition.

(C) The Project Owner agrees to comply fully with the requirements of the HOME Program as it may from time to time be amended or modified at 24 CFR Part 92.

#### SECTION 5 - RENTAL LIMITATIONS AND RESTRICTIONS.

HOME Restrictions: HOME rents as outlined in the Agreement shall apply to a total of four (4) units for not less than the Term. All four (4) units are designated as "floating" HOME units. All four (4) units shall be one-bedroom units. All four (4) units are subject to Low HOME rents. Low HOME rents are published on an annual basis by HUD. Rents can be adjusted on an annual basis in accordance with rents published by HUD. Rent increases are subject to the written approval of the City of Fargo and the provisions of tenant leases.

#### SECTION 6 - TERMINATION.

The Milton Earl Project will remain affordable as provided herein, for not less than the Term, without regard to the term of any loan or mortgage, repayment of the HOME investment, or the transfer of ownership, except that upon foreclosure or transfer in lieu of foreclosure, this Declaration and the covenants and restrictions set forth herein shall terminate. However, if at any time following the transfer by foreclosure or transfer in lieu of foreclosure, but still during the Term the Project Owner of record prior to the foreclosure or transfer in lieu of foreclosure, HOME CHDO Sponsor Agreement, The Milton Earl Project

or any newly formed entity that includes the former Project Owner, or those with whom the former Project Owner has or had family or business ties, obtains an ownership interest in the Project, the period of affordability shall be revived according to its original Term. Notwithstanding anything to the contrary contained herein, at the conclusion of the Term, so long as Project Owner has maintained and managed The Milton Earl Project in compliance with Project Owner's obligations hereunder, the City shall issue an unconditional release and termination of this Declaration.

#### SECTION 7 - DEFAULT.

(A) Enforcement and Remedies. If Project Owner defaults in the performance of any of its obligations under this Declaration or breaches any covenant, declaration or restriction set forth herein or in the Sponsor Agreement (to the extent such Project Owner is required comply with such covenant, declaration or restriction in such Sponsor Agreement), and if such default remains uncured for a period of ninety (90) days after notice thereof is given by City, City shall be entitled to apply to any court having jurisdiction of the subject matter for specific performance of the Declaration, for an injunction against any violation of the Declaration, for the appointment of a receiver to take over and operate The Milton Earl Project in accordance with the terms of this Declaration, or for such other relief as may be appropriate, it being acknowledged that the beneficiaries of Project Owner's obligations hereunder cannot be adequately compensated by monetary damages in the event of Project Owner default. City shall be entitled to all its reasonable costs in any such judicial action in which City shall prevail.

(B) Remedies Cumulative. Each right, power and remedy of City provided for in this Declaration, now or hereafter existing at law or in equity by statute, or otherwise shall be cumulative and concurrent and shall be in addition to every other right, power, or remedy provided for in this Declaration, or hereafter existing at law or in equity or by statute, or otherwise, and the exercise or beginning of the exercise by City of any one or more of the rights, powers or remedies provided for in this Declaration or now or hereafter existing at law, in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by City of any or all such other rights, powers or remedies.

#### SECTION 8 - MISCELLANEOUS.

(A) Additional Documents. The Project Owner shall submit any other information, documents or certifications requested by the City which City deems reasonably necessary to substantiate the Project Owner's continuing compliance with the HOME program.

(B) Severability. The invalidity of any clause, part or provision of this Declaration shall not affect the validity of the remaining portions thereof.

(C) Notices. All notices to be given pursuant to this Declaration shall be in writing and shall be deemed given when mailed by certified or registered mail, return receipt requested, to the

parties hereto at the addresses shown in the Sponsor Agreement, or to such other place as a party may from time to time designate in writing to the other(s).

(D) Applicable Laws. This Declaration is governed by the laws of the State of North Dakota.

(E) Assignment or Transfer. Project Owner may not assign or otherwise transfer or delegate any right or duty without the express written consent of City; provided that nothing contained herein shall restrict transfers of partnership interests in the Project Owner.

(F) Waivers. This Declaration may not be waived, altered, modified, supplemented, or amended, in any manner, except by written agreement signed by both parties.

(G) Compliance. Project Owner agrees to comply with all applicable laws, rules, regulations, and policies, including but not limited to those relating to non-discrimination, accessibility and civil rights. No person in the United States shall on the grounds of race, color, national origin, religion, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available by HUD. Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 or with respect to an otherwise qualified person who is disabled as provided in section 504 of the Rehabilitation Act of 1973 shall also apply to any such program or activity.

Project Owner agrees to timely file all recommended reports, make required payroll deductions, and timely pay all taxes and premium owed, including but not limited to sales and use taxes and unemployment compensation and workers compensation premiums. Project Owner shall have and keep current at all times during the term of this Declaration all licenses and permits required by law. The duties imposed by this paragraph are in addition to, and do not supplant, the duties imposed by 24 CFR part 92.

(H) Indemnity. Project Owner shall comply with all applicable federal, state, and local laws, rules, and ordinances at all times in the performance of this Declaration, and shall conduct its activities so as not to endanger any person or property. Project Owner agrees to indemnify, save, and hold harmless the City, its agents, officers, and employees, from any and all claims of any nature, including costs, expenses, and reasonable attorneys' fees which may in any matter arise out of or result from this Declaration except claims resulting from or arising out of the City's acts or failure to act.

(I) Insurance. Project Owner shall secure liability and property damage insurance and furnish a certificate of insurance or other satisfactory proof of such coverage. The policy may not be canceled without prior written notice to City. The insurance policy does not define or limit Project Owner's duty to indemnify City under Section 8 (H).

(J) Modification and Incorporation. No waiver, consent, modification, or change of any term of this Declaration is effective unless in writing and signed by both parties. There are no

understandings, declarations or representations, oral or written, not specified within the Grant Agreements and the accompanying documents. The provisions of the Grant Agreements are hereby incorporated by reference into this Declaration, as fully as if set forth and in detail herein.

IN WITNESS WHEREOF, the Project Owner has caused this Declaration to be signed by its duly authorized representatives, as of the day and year first above written.

**The Milton Earl, LLLP, a North Dakota  
limited liability limited partnership**

By: The Milton Earl, LLC  
Its: General Partner

By: Beyond Shelter, Inc.  
Its: Sole member and Manager

By: \_\_\_\_\_  
Name: Daniel P. Madler  
Its: Chief Executive Officer

STATE OF NORTH DAKOTA            )  
  ) SS  
COUNTY OF    CASS                    )

On    this    \_\_\_\_\_    day    of    \_\_\_\_\_,    202\_,    before    me,  
\_\_\_\_\_, the undersigned Notary Public, personally appeared  
Daniel P. Madler, Chief Executive Officer of Beyond Shelter, Inc., the Manager of The Milton Earl,  
LLC, the General Partner of The Milton Earl, LLLP, on behalf of said limited liability limited  
partnership and who acknowledged that he executed this Declaration.

Notary Public  
(Seal)

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



**EXHIBIT "B"**

**MEMORANDUM OF AGREEMENT**



**MEMORANDUM OF  
AGREEMENT**

**Between the City of Fargo and The Milton Earl, LLLP**

**[HOME Investment Partnership (HOME)  
New Construction – 708 4<sup>th</sup> Ave N.]**

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This Memorandum of Agreement (“**Memorandum of Agreement**”) is made this \_\_\_\_\_ day of \_\_\_\_\_, 2022, by and between the City of Fargo, a North Dakota municipal corporation (“**City**”); Beyond Shelter, Inc., a North Dakota limited liability limited partnership (the “**Project Sponsor**”), and The Milton Earl, LLLP, a North Dakota limited liability limited partnership (“**Project Owner**”). (The City and Project Sponsor shall be cumulatively referred to herein as the “**Parties**” and separately as a “**Party**”).

**WHEREAS**, the parties have entered into a **HOME CHDO SPONSOR AGREEMENT** concerning that certain real property lying in Cass County, North Dakota, said property more particularly described as follows:

Lots Four, Five, and Six, in Block 10, Roberts' Second Addition to the City of Fargo, situate in the County of Cass and the State of North Dakota.

and,

**WHEREAS**, as part of said Sponsor Agreement, the City provided the land upon which the Project, as defined therein, was to be constructed and operated; and,

**WHEREAS**, said agreement further contains the following provision, among others, at section 3.H:

H. Land Use Restrictive Agreement. Project Sponsor shall cause Project Owner to execute a Land Use Restrictive Agreement (“**LURA**”) upon completion of the Project and the marking of the Project as complete in HUD’s disbursement and information system, and the City is hereby authorized to record the LURA against the Property at the office of the Cass County Recorder. Said LURA shall be substantially in conformance with the form of LURA attached as Exhibit “A.”

This Memorandum of Agreement incorporates all the other terms and provisions of the **SPONSOR AGREEMENT** between the parties the effective date of which is the \_\_\_ day of \_\_\_\_\_, 2022, a copy of said agreement being on file at the office of the City Auditor, Fargo City Hall, 225 North Fourth Street, Fargo, North Dakota.

As provided in said SPONSOR AGREEMENT, all provisions of said agreement shall be deemed to be covenants running with the land and shall be binding upon the heirs, executors, administrators, assigns, designees and successors in interest of the parties.

[Signature page to follow]

**IN WITNESS WHEREOF**, the parties have hereunto executed this Memorandum of Agreement the day and year first above written.

**Beyond Shelter, Inc.**, a North Dakota nonprofit corporation

By: \_\_\_\_\_  
Name: Daniel P. Madler  
Its: Chief Executive Officer

STATE OF NORTH DAKOTA            )  
  ) SS  
COUNTY OF CASS                    )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2022, before me, \_\_\_\_\_, the undersigned Notary Public, personally appeared Daniel P. Madler, Chief Executive Officer of Beyond Shelter, Inc., a North Dakota nonprofit corporation on behalf of said nonprofit corporation and who acknowledged that he executed this instrument.

Notary Public  
(Seal)

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

[Additional Signature Pages to follow]

**The Milton Earl, LLLP, a North Dakota limited liability limited partnership**

**By: The Milton Earl, LLC  
Its: General Partner**

**By: Beyond Shelter, Inc.  
Its: Sole member and Manager**

**By: \_\_\_\_\_  
Name: Daniel P. Madler  
Its: Chief Executive Officer**

STATE OF NORTH DAKOTA            )  
  ) SS  
COUNTY OF    CASS                 )

On    this     \_\_\_\_\_     day   of     \_\_\_\_\_,     2022,     before   me,  
\_\_\_\_\_, the undersigned Notary Public, personally appeared  
Daniel P. Madler, Chief Executive Officer of Beyond Shelter, Inc., as Manager and Sole Member  
of The Milton Earl, LLC, as General Partner of The Milton Earl, LLLP, on behalf of said limited  
liability limited partnership and who acknowledged that he executed this instrument.

Notary Public  
(Seal)

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

[Additional Signature Page to Follow]

CITY OF FARGO,  
a North Dakota municipal corporation

By: \_\_\_\_\_  
TIMOTHY J. MAHONEY, M.D., Mayor

Attest:

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

STATE OF NORTH DAKOTA        )  
  ) SS  
COUNTY OF CASS                )

On this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, 2022 before me, \_\_\_\_\_, the undersigned Notary Public, personally appeared TIMOTHY J. MAHONEY, M.D., and STEVEN SPRAGUE, known to me to be the Mayor and City Auditor of the City of Fargo, a North Dakota municipal corporation, on behalf of said municipal corporation and who acknowledged that they executed this instrument.

Notary Public  
(Seal)

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

**EXHIBIT "C"**  
**Developer's Budget**

**EXHIBIT "D"**

**Project Sources and Uses**

**EXHIBIT "E"**  
**Federal Assurances**



## Assurances

### Other Applicable Federal Requirements

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- A. This contract will be conducted and administered in compliance with:
1. Title VI of the Civil Rights Acts of 1964 (Pub. L. 88-352) and implementing regulations issued at 24 CFR Part 1;
  2. Title VIII of the Civil Rights Act of 1966 (Pub. L. 90-284), as amended; and the grantee will administer all programs and activities related to housing and community development in a manner to affirmatively further fair housing;
  3. Section 109 of the Housing and Community Development Act of 1974, as amended, and the regulations issued pursuant thereto;
  4. Section 3 of the Housing and Urban Development Act of 1968, as amended;
  5. Executive Order 11246, as amended by Executive Order 11375 and 12086, and implementing regulations issued at 41 CFR Chapter 60;
  6. Executive Order 11063, as amended by Executive Order 12259, and implementing regulations at 24 CFR Part 107;
  7. Section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112), as amended, and implementing regulations when published for effect;
  8. The Age Discrimination Act of 1975 (Pub. L. 94-135), as amended, and implementing regulations when published for effect;
  9. The relocation requirements of Title II and the acquisition requirements of Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, and the implementing regulations at 24 CFR Part 42;
  10. Executive Order 11988 relating to the evaluation of flood hazards and Executive Order 11288 relating to the prevention, control and abatement of water pollution;
  11. The flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234);
  12. The Uniform Administrative requirements, set forth in 24 C.F.R. Part 570.502, and 24 C.F.R. 84, and the requirements of 2 C.F.R. Part 230, Cost Principles for Non-Profit Organizations (OMB Circular A-122) as they relate to the acceptance and use of Federal funds under this federally assisted program, including but not limited to the regulations pertaining to inventions, reporting and patent rights, and copyrights;
  13. The Clean Air Act (42 U.S.C. 7401 et. seq);
  14. HUD environmental standards (24 C.F.R. Part 51, Environmental Criteria and Standards (44 FR 40860-40866, July 12, 1979);
  15. The Safe Drinking Water Act of 1974 (42 U.S.C. 201, 300(f) et. seq., and 21 U.S.C. 349), as amended;

16. The Endangered Species Act of 1973 (16 U.S.C. 1531 et. seq.) as amended;
17. The Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et. seq.), as amended;
18. The Reservoir Salvage Act of 1960 (16 U.S.C. 469 et. seq.), as amended by the Archeological and Historical Preservation Action of 1974;
19. Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 et. seq.), as amended;
20. Executive Order 11990, Protection of Wetlands, May 24, 1977 (42 FR 26961 et. seq.);
21. The lead based paint requirements of 24 C.F.R. Part 35 issued pursuant to the Lead Based Paint Poisoning Prevention Act (42 U.S.C. 4801 et. seq.);
22. The National Historic Preservation Act of 1966 (16 U.S.C. 470 et. seq.) as amended;
23. Executive Order 11593, Protection and Enhancement of the cultural Environment, may 13, 1971 (36 F.R. 8921 et. seq.);
24. The Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented in the Department of Labor regulations (29 C.F.R., Part 3);
25. The Davis Bacon Act (40 U.S.C. 276a-276a-5; 40 USC 327 and 40 USC 276c) as supplemented by the Department of Labor regulations (29 C.F.R., Part 5); Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330), as supplemented by the Department of Labor regulations (29 CFR, Part 5), and the attached Federal Labor Standards Provisions.
26. Debarment and suspension; Drug-Free Workplace. HUD and its recipients and subrecipients shall comply with the non-procurement debarment and suspension common rule implementing E.O.s 12549 and 12689, "Debarment and Suspension," at 24 CFR part 24, Subsection 84.13. This common rule restricts sub-awards and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in Federal assistance programs or activities. HUD and its recipients and subrecipients shall comply with the certification requirements of the Drug-Free Workplace Act of 1988 (42 U.S.C. 701), as set forth at 24 CFR part 24, subpart F.

B. The Recipient certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the Recipient, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than federal appropriate funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit standard Form LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

3. The Recipient shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all Recipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**EXHIBIT "F"**  
**Disbursement Request Form**

**EXHIBIT "G"**

**Insurance Requirements**

The Project Sponsor shall keep and maintain the following insurance coverages:

- A. Workers Compensation Insurance. The Project Sponsor shall maintain workers compensation insurance with the following limits or with the minimum limits required by law, if greater:

Coverage A: Statutory

Coverage B:

\$1,000,000	Bodily injury by accident	Each accident
\$1,000,000	Bodily injury by disease	Policy limit
\$1,000,000	Bodily injury by disease	Each employee

- B. General Liability Insurance. The Project Sponsor shall maintain general liability insurance with coverage to include: Premises/Operations, Completed Operations and Contractual Liability (to cover the indemnification provision in Section 9-J of this Agreement). Limits of coverage shall not be less than:

\$2,000,000 per occurrence

\$5,000,000 aggregate

- C. Automobile Insurance. The Project Sponsor shall maintain automobile liability insurance to include all owned autos (private passenger and other than private passenger), hired, and non-owned vehicles. Limits of coverage shall not be less than:

\$2,000,000 per occurrence

- D. In addition to the named policies in A-C above, Project Sponsor shall cause its General Contractor to provide and maintain, at all times during the process of building the Project and from time to time at the request of the City furnish the City with proof of payment of premiums on:

- a. Builder’s Risk insurance, written on the so-called “Builder’s Risk Completed Value Basis,” in an amount equal to one hundred percent (100%) of the insurable value of the Project at the date of completion, and with coverage available on the so-called “all risk” form of policy (the Project Sponsor and the City’s interest shall be protected in accordance with a loss payable clause in form and content satisfactory to the City).
- b. Comprehensive general liability insurance, with the City as a named insured, including coverages for operations, contingent liability (operations of subcontractors), completed operations, and contractual liability insurance, with limits (i) against bodily injury of not less than \$1,000,000 and (ii) against property damage of not less than replacement cost (to accomplish the required limits, an umbrella excess liability policy may be used).
- c. Workers compensation insurance, with statutory coverage.

- E. Evidence of Insurance. The above insurance shall be maintained in companies lawfully authorized to do business in the State of North Dakota and which are reasonably acceptable to the City. Project Sponsor shall furnish City with certificates reflecting such insurance (ACORD form or equivalent) to be in force as long as this Agreement remains in effect, naming the City as an

additional insured, and providing that said insurance will not be canceled or its limits reduced by endorsement without at least 30 days prior written notice to the City.

**EXHIBIT "H"**  
**Construction Schedule**

24047684v5





22

**Fargo Police Department  
Office of the Chief**

## Memo

**To:** Kember Anderson  
**From:** Chief David B. Zibolski  
**Date:** June 1, 2022  
**RE: City Commission Consent Agenda Item**

---

Kember,

For the June 13, 2022 City Commission Meeting agenda, I would like to request approval to utilize Civil Asset Forfeiture funds in the total of \$30,583.79. This would cover the purchase of updating ballistic protection for Fargo Police Department Street Crimes and Narcotics Detectives in the amount of \$14,583.79, as well as upgrade computer equipment for our Criminal Investigations Division staff in the amount of \$16,000.

I have included the application, which presents the breakdown of funds and rationale for this request. I will be happy to provide additional information or answer any questions at the meeting.

**Recommended Motion:** Approval for the Fargo Police Department to use \$30,583.79 in Civil Asset Forfeiture funds as stated above.

Please contact me if you need any additional information.

Thank you,

David B. Zibolski  
Chief of Police

## Application for Appropriation from Civil Asset Forfeiture Fund

### Applicant

David Zibolski, Chief of Police  
Fargo Police Department, 105 25<sup>th</sup> St. N., Fargo ND, 58102  
[dzibolski@fargond.gov](mailto:dzibolski@fargond.gov)  
701-476-4001

### Appropriation Requested:

\$14,583.79 for updating/upgrading ballistic protection for Narcotics and Street Crimes Unit detectives

\$16,000 for updating/upgrading computer equipment for staff in Criminal Investigations Division


Total- \$30,583.79

### Explanation and confirmation how the requested appropriation will further the public purpose of reducing criminal activity and aiding the efforts of criminal justice in support and furtherance of the Fargo Police Department's mission:

The detectives within the Criminal Investigations Division's (CID) Narcotics Unit and Street Crimes Unit are often in dangerous situations. Two of those situations include search warrants executed on the homes of suspected criminals who possess firearms and when conducting covert operations where wearing a ballistic vest is not conducive to operational success. Therefore, detectives utilize ballistic protection when serving search warrants and will often dynamically don the ballistic protection when transitioning from covert surveillance to enforcement situations. The ballistic protection currently used for this purpose is not rifle rated. The chance of this protection working against a rifle is not high. Moreover, the current equipment is difficult to deploy in dynamic situations. The purchase of a rifle rated solution with the ability to rapidly deploy is \$19,583.79. Using \$5,000 in budgeted funds, we would need the remaining \$14,583.79 to come from the civil asset forfeiture fund to complete the purchase.

The ability to work remotely and in the field is important for CID's detectives. It increases productivity and efficiency in criminal investigations. We have worked with IS to replace desktop computers scheduled to be refreshed this year with laptops using budgeted funds. In order to purchase laptops for all detectives, additional funding is necessary. Replacing old computer monitors at detective's desks is also part of this request. Working with the IS Department, using city contracts, purchasing the devices and upgraded equipment will cost up to \$16,000.

I, Chief David Zibolski, am in support of the above-stated request for appropriation from the Civil Asset Forfeiture Fund. City of Fargo procurement policies will be followed for all expenditures. Written confirmation will be provided to the City of Fargo Finance Office when the funds are expended.

  
\_\_\_\_\_  
David Zibolski, Chief of Police

06-01-22  
Date

(23)

June 9, 2022

Honorable Board of City Commissioners  
City of Fargo  
200 3<sup>rd</sup> Street North  
Fargo, ND 58102

RE: Solid Waste Landfill Agreement with Fat Man Trash

Dear Commissioners:

Attached for your approval is a Landfill Agreement between the City of Fargo and Fat Man Trash. The Agreement outlines the provisions of being a private waste hauling company and governs the collection and delivery of waste generated outside the City of Fargo, but within Cass County. The agreement also outlines the approved billing procedures, and provides a detailed list of any waste that is prohibited at the Fargo Landfill Facility.

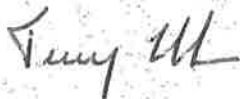
Prior to the Agreement application process, the applicant did meet the Waste Hauler provisions of the North Dakota Department of Environmental Quality. The Agreement shall have an initial term of ten years, renewable annually afterwards by mutual written consent. The agreement has been reviewed and approved by the Fargo City Attorney's office.

Your consideration in this matter is greatly appreciated.

**SUGGESTED MOTION**

Approve the Landfill Agreement between the City of Fargo and Fat Man Trash, effective June 13, 2022.

Respectfully Submitted,



Terry Ludlum  
Solid Waste Utility Director

cc: Scott Anderson, Fargo Landfill  
Sharon Johnson, Solid Waste Office Manager

Commercial/Residential Service  
701-241-1449

Household Hazardous Waste  
701-281-8915

Landfill  
701-282-2489

Recycling  
701-298-6944

Roll-off Service  
701-241-1449

**LANDFILL AGREEMENT**  
(Use of Fargo Landfill)

**THIS AGREEMENT**, made and entered into this 13<sup>TH</sup> day of JUNE, 2022, between the **CITY OF FARGO, NORTH DAKOTA**, a municipal corporation (hereinafter “Fargo”); and **FAT MAN TRASH, LLC**, a North Dakota limited liability company owned by Randy Jawaski of Kindred, North Dakota (hereinafter “FAT MAN TRASH”);

**WHEREAS**, Fargo owns and operates a sanitary landfill (the “Fargo Landfill”) located on the west side of the corporate limits of the City of Fargo; and,

**WHEREAS**, Fat Man Trash is a private waste hauling company which does not own a landfill for disposition of solid waste;

**WHEREAS**, Fargo has a substantial investment in the sanitary nature of the Fargo Landfill and related equipment; and,

**WHEREAS**, the parties have mutually agreed upon terms and conditions for use of the Fargo Landfill by Fat Man Trash as set forth below.

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

1. Fat Man Trash is hereby authorized to utilize the Fargo Landfill for disposal of certain municipal solid wastes which are generated by residents and commercial businesses of Cass County outside of the city limits of Fargo; provided that such solid wastes shall not include yard waste (grass, leaves, and similar vegetative material) or recoverable amounts of recyclable materials. Said authorized solid wastes shall further be limited to such solid wastes as will be acceptable to the North Dakota Department of Health or other relevant governmental agencies including the City of Fargo. Said disposal shall be under the terms and conditions hereinafter stated.

2. Fat Man Trash agrees to pay to Fargo the sum established from time to time through formal resolution by the Fargo City Commission (presently \$46 per ton) for the aforementioned solid wastes as described in Paragraph 1 above which is deposited in the Fargo Landfill. It is understood and agreed between the parties that the fee per ton is subject to change from time to time in the event the Fargo City Commission passes a resolution duly establishing a different fee for municipal solid waste disposal at the landfill. Fat Man Trash agrees to abide by the fee imposed by the Fargo City Commission.

3. Fargo reserves the right, at any time, to place a limitation on the amount of solid waste it accepts from Fat Man Trash. Fargo will provide at least thirty days (30) written notice to Fat Man Trash of any such limitation being imposed.

4. In the event that prohibited solid wastes (including but not limited to toxic or hazardous solid wastes) are deposited in the Fargo Landfill by Fat Man Trash (whether by negligence, inadvertence or any other reason), Fat Man Trash hereby agrees to pay for all costs of removal of the said solid wastes and further agrees to indemnify and hold Fargo harmless from any and all costs, including legal expenses, for such removal, clean-up, penalties, and any lawsuits and/or judgments which may be assessed or brought as a result of such deposit of the prohibited solid wastes.

5. In the event that prohibited solid wastes are deposited in the Fargo Landfill and the source of the prohibited solid wastes are unknown, it is agreed by and between the parties hereto that Fargo and Fat Man Trash shall share in the cost of clean-up and removal on a prorated basis. The percentage to be paid by Fat Man Trash shall be the percentage equal to the average tonnage placed in the Fargo Landfill annually by Fat Man Trash from the effective date of this agreement to the time such cost is to be prorated, divided by the average annual tonnage deposited in the Fargo Landfill for the same period. Fat Man Trash agrees to indemnify and hold Fargo harmless from any and all costs, including legal expenses of removal, clean up and any penalties, and any lawsuits and/or judgments which may be assessed, up to a maximum of its prorated share as hereinabove provided.

6. Fat Man Trash agrees to haul the aforementioned solid wastes referred to in section 1, to the Fargo Landfill for the term of this Agreement, which shall be effective for a period of ten (10) years from the date of agreement, with renewals thereafter to be by written mutual agreement. In the event any federal, state or other regulatory agency shall forbid the activities contemplated by this Agreement, Fargo will use its best efforts to afford Fat Man Trash sufficient time to find alternate sources for disposal of the materials mentioned hereinbefore. If the same is otherwise allowable, Fargo agrees to afford a reasonable time up to six (6) months, if practicable, to find such alternate sources of disposal.

7. In addition to the provisions of paragraph (5) hereof, this Agreement may be terminated by either party by the giving of six (6) months written notice thereof (or the balance of time remaining on the term if such balance is less than six months), said written notice to be delivered to the Fargo City Auditor at City Hall in Fargo or Fat Man Trash, as Randy Jawaski ~~161149~~ 54<sup>th</sup> St. SE, Kindred, ND, 58501, as the case may be. 16149 (TL)

8. Fat Man Trash agrees and understands that no part of this Agreement may be subcontracted or assigned in any way without the express written permission of Fargo.

9. Fat Man Trash agrees to abide by and follow all applicable federal, state, county, and city statutes, ordinances, regulations, laws, and rules. Fargo may terminate this Agreement with no notice if Fat Man Trash fails to abide by and follow any applicable federal, state, county, or city statute, ordinance, regulation, law, or rule.

10. Fat Man Trash agrees to secure any insurance coverage, policies, and limits Fargo deems necessary for Fat Man Trash's use of the Fargo Landfill. Fat Man Trash agrees to ensure Fargo is included as an additional insured on all insurance coverage and policies secured pursuant to this Agreement.

11. The laws of the State of North Dakota shall govern the interpretation and construction of this Agreement. The Parties also agree that Cass County North Dakota shall be the exclusive jurisdiction and venue to resolve any disputes which in any way relate to this Agreement.

12. This Agreement sets forth the entire agreement and understandings of the parties hereto, and this Agreement supersedes and nullifies all other agreements made between the parties hereto.

13. This Agreement may be supplemented, amended, or modified only by the mutual agreement of the parties. No supplement, amendment, or modification of this Agreement shall be binding unless it is in writing and signed by all parties.

Dated the day and year first above written.


THE CITY OF FARGO, NORTH DAKOTA  
a Municipal Corporation

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

ATTEST:

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

FAT MAN TRASH  
a private hauler

By  \_\_\_\_\_  
Randy Jawaski, Owner

REPORT OF ACTION

24

**UTILITY COMMITTEE**

Project No. WA2005

Type: Red River Pump Station Capacity & Flood Protection

Location: Water Treatment Plant (435 14<sup>th</sup> Avenue South)

Date of Hearing: 6/9/2022

<u>Routing</u>	<u>Date</u>
City Commission	<u>6/13/2022</u>
Project File	<u>                    </u>

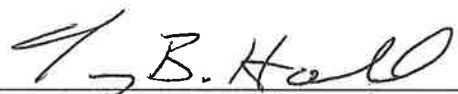
Dan Portlock, Water Utility Engineer, presented the attached AE2S letter and change order form for Project WA2005, Red River Pump Station Improvements. Approval of this change order with Sun Electric, Inc. will be a cost decrease of \$1,345.42. This will be Change Order No. 1 under Contract No. 3 (electrical) for the project. There are four individual changes under Change Order No. 1 that totaled to the \$1,345.42 decrease, reducing the contract price to \$937,654.58. This project is funded through Infrastructure Sales Tax (Fund 450) for the local portion. However, grants (cost-shares) through FEMA and the North Dakota State Water Commission have been applied to the overall project as well.

**MOTION:**

On a motion by Terry Ludlum, seconded by Mark Miller, the Utility Committee voted to approve the change order with Sun Electric, Inc for Project WA2005 resulting in a cost decrease of \$1,345.42.

<u>COMMITTEE:</u>	<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Unanimous</u>
				<u>X</u>
				<u>Proxy</u>
Anthony Gehrig, City Commissioner				
Terri Gayhart, Director of Finance	<u>X</u>			
Brian Ward, Water Plant Supt.	<u>X</u>			
Mark Miller, Wastewater Plant Supt.	<u>X</u>			
Bruce Grubb, City Administrator	<u>X</u>			
Scott Liudahl, City Forester	<u>X</u>			
Terry Ludlum, Solid Waste Utility Director	<u>X</u>			
James Hausauer, Wastewater Util. Director	<u>X</u>			
Troy Hall, Water Utility Director	<u>X</u>			
Ben Dow, Public Works Operations Director	<u>X</u>			
Brenda Derrig, City Engineer	<u>X</u>			
Dan Portlock, Water Utility Engineer	<u>X</u>			
Scott Olson, Solid Waste Utility Engineer	<u>X</u>			

ATTEST:

  
 \_\_\_\_\_  
 Troy B. Hall  
 Water Utility Director


C: Tim Mahoney, Mayor  
 Commissioner Strand  
 Commissioner Piepkorn  
 Commissioner Preston



MEMORANDUM  
June 2<sup>nd</sup>, 2022

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**To:** Utility Committee

**From:** Dan Portlock, Water Utility Engineer 

**Re:** WA2005 Change order No. 1 to Contract No. 3 – Electrical Construction Fargo Red River Pump Station Improvements.

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Attached, please find change order No. 1 to Contract No. 3 for project WA2005, Red River Pump Station Improvements. This change order has a total cost decrease of \$1,345.42. There were 4 work change directives issued throughout the project and are explained below.

Work Change Directive No. 01: Due to high flows at the Red River Pump Station, a larger generator was needed to power the raw water pumps during the duct bank rerouting process. It should be noted a larger generator was rented but additional fuel was not utilized.

-Adder of \$2,905.00.

Work Change Directive No. 02: The Automatic Transfer Switch will be receiving power from two utility sources and thus will need a source selector in order to be able to define the preferred power source,

-Adder of \$1,374.58.

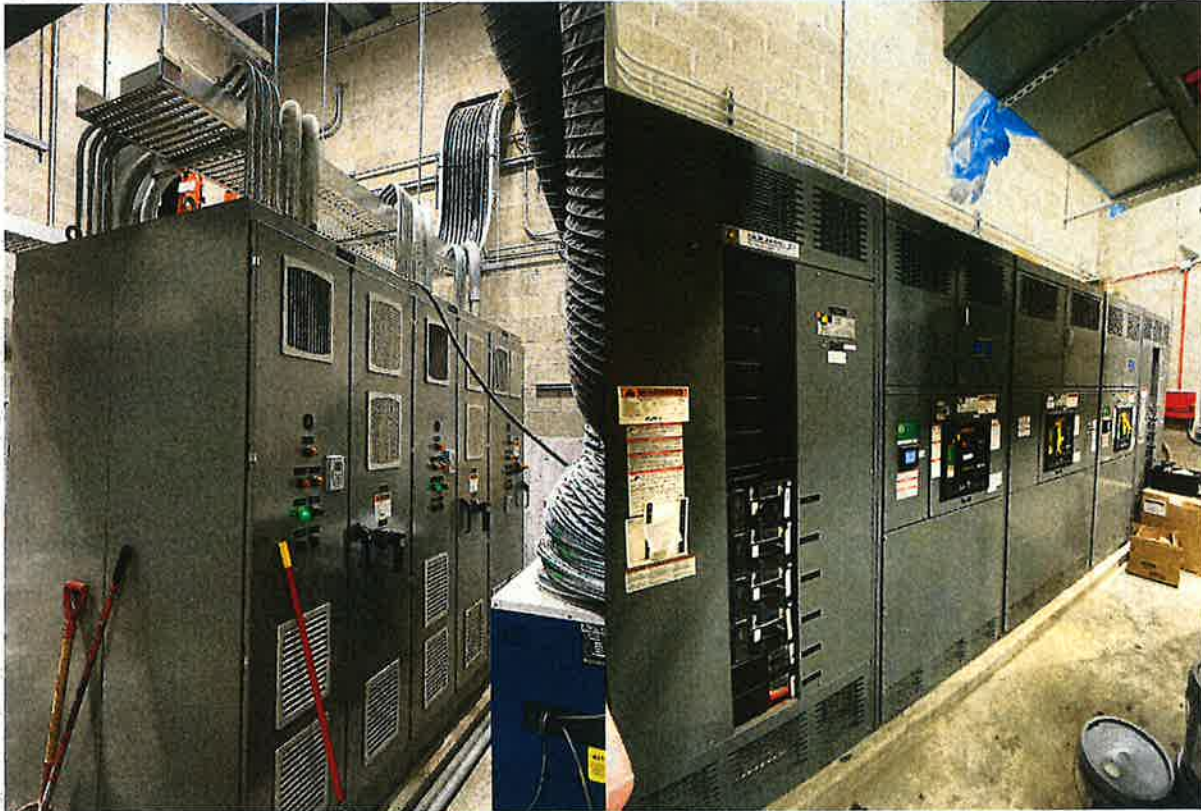
Work Change Directive No. 03: It was determined during shop drawing review that the Roxtec wall transitions are not necessary for this project and thus will be eliminated,

-Deduct of \$ 7,537.00.

Work Change Directive No. 04: The disconnects and fuses for Condensing Unit - 1 (CU-1) and Packaged Air Handling Unit - 1 (PAH-1), though originally intended to be provided by the mechanical contractor, were not ever assigned to a contract. After discussion between the Engineer and the Electrical Contractor, it was determined these disconnects and fuses shall be instead be provided by the electrical contractor,

-Adder of \$1,912.00.

Water Utility staff is seeking approval of this change order to be placed on the next City Commission agenda.



### Plan of Financing

This project will be funded through the Fargo Red River Pump Station Improvements project (WA2005). Project WA2012 is funded through Infrastructure Sales Tax (Fund 450). Grants from FEMA and the North Dakota State Water Commission (SWC) have also been applied to this project.

### **SUGGESTED MOTION:**

Approve Change Order No. 1 to Contract No. 3 as a cost decrease of \$1,345.42 for WA2005, Red River Pump Station Improvements.

Your consideration in this matter is greatly appreciated.





May 19, 2021

Mr. Dan Portlock  
Water Utility Engineer  
City of Fargo  
Water Treatment Plant  
435 14<sup>th</sup> Ave S  
Fargo, ND 58103-4306

**Re: Change Order No. 1 to Contract No. 3 – Electrical Construction  
Fargo Red River Pump Station Improvements  
City of Fargo Project #WA2005**

Dear Mr. Portlock:

Enclosed please find **Change Order No. 1 to Contract No. 3** The Change Order pertains to the following changes to the project:

**Change Order No. 1 to Contract No. 3 – Electrical Construction**

1. **Work Change Directive No. 01:** Due to high flows at the Red River Pump Station, a larger generator was needed to power the raw water pumps during the duct bank rerouting process. It should be noted a larger generator was rented but additional fuel was not utilized.
  - a. *Adder of \$2,905.00.*
2. **Work Change Directive No. 02:** The Automatic Transfer Switch will be receiving power from two utility sources and thus will need a source selector in order to be able to define the preferred power source.
  - a. *Adder of \$1,374.58.*
3. **Work Change Directive No. 03:** It was determined during shop drawing review that the Roxtec wall transitions are not necessary for this project and thus will be eliminated.
  - a. *Deduct of \$7,537.00.*
4. **Work Change Directive No. 04:** The disconnects and fuses for Condensing Unit – 1 (CU-1) and Packaged Air Handling Unit – 1 (PAH-1), though originally intended to be provided by the mechanical contractor, were not ever assigned to a contract. After discussion between the Engineer and the Electrical Contractor, it was determined these disconnects and fuses shall be instead be provided by the electrical contractor.
  - a. *Adder of \$1,912.00.*

*Contract No. 3 Change Order Amount: -\$1,345.42.*



Upon the City of Fargo's acceptance of the **Change Order No. 1 to Contract No. 3** , please sign and date each respective form. Please return a scanned copy of the formal change order forms containing all signatures to AE2S. AE2S will forward the signed copies to the contractors and will retain a copy for our records. Please contact me if you have any questions or need additional information.

Sincerely,

AE2S

A handwritten signature in blue ink, appearing to read "Kevin Johnson", written over a horizontal line.

Kevin Johnson, PE  
Project Manager

Attachments

Date of Issuance: 5/16/2022	Effective Date: 5/16/2022
Owner: City of Fargo	Owner's Contract No.: WA2005
Contractor: Sun Electric	Contractor's Project No.:
Engineer: AE2S / B&V	Engineer's Project No.: P00803-2016-055
Project: Fargo Red River Pump Station Improvements	Contract Name: Electrical Construction

The Contract is modified as follows upon execution of this Change Order:

**Description: There are cost adders for the following items: A larger generator was needed to power the raw water pumps during the duct bank rerouting process due to high flows. (It should be noted a larger generator was rented but additional fuel was not utilized); the Automatic Transfer Switch will be receiving power from two utility sources and thus will need a source selector switch in order to define the preferred source; the disconnects and fuses for CU-1 and PAH-1, though originally intended to be supplied by the mechanical contractor, were never assigned to a contract, and it was decided they shall be provided by the electrical contractor.**

**There is a cost deduct for the Roxtec wall transitions. During shop drawing review it was determined they are not needed for this project.**

Attachments: *Work Change Directive Nos. 1, 2, 3, and 4 and their respective attachments.*

CHANGE IN CONTRACT PRICE	CHANGE IN CONTRACT TIMES
Original Contract Price: \$ <u>939,000.00</u>	Original Contract Times: Substantial Completion: _____ Ready for Final Payment: _____ _____ days or dates
[Increase] [Decrease] from previously approved Change Orders No. ___ to No. ___: \$ _____	[Increase] [Decrease] from previously approved Change Orders No. ___ to No. ___: Substantial Completion: _____ Ready for Final Payment: _____ _____ days
Contract Price prior to this Change Order: \$ <u>939,000.00</u>	Contract Times prior to this Change Order: Substantial Completion: _____ Ready for Final Payment: _____ _____ days or dates
[Increase] [Decrease] of this Change Order: \$ <u>1,345.42</u>	[Increase] [Decrease] of this Change Order: Substantial Completion: _____ Ready for Final Payment: _____ _____ days or dates
Contract Price incorporating this Change Order: \$ <u>937,654.58</u>	Contract Times with all approved Change Orders: Substantial Completion: _____ Ready for Final Payment: _____ _____ days or dates

RECOMMENDED:	ACCEPTED:	ACCEPTED:
By: <u>[Signature]</u> By: _____	By: <u>[Signature]</u>	By: <u>[Signature]</u>
Engineer (if required)	Owner (Authorized Signature)	Contractor (Authorized Signature)
Title: <u>Project Manager</u>	Title _____	Title <u>Project Manager</u>

Date: 5-19-2022 Dat \_\_\_\_\_ Date: 5-20-2022

Approved by Funding Agency (if applicable)

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Title: \_\_\_\_\_

REPORT OF ACTION

25

**UTILITY COMMITTEE**

Project No. WA2012

Type: 3<sup>rd</sup> West Fargo Booster  
South Regional Connection–P2

Location: Ground Storage Reservoir Site (near 52<sup>nd</sup> Avenue South)

Date of Hearing: 6/9/2022

<u>Routing</u>	<u>Date</u>
City Commission	6/13/2022
Project File	

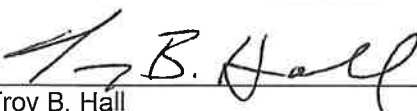
Dan Portlock, Water Utility Engineer, presented the attached AE2S letter and change order form for Project WA2012, South Regional Connection – Phase 2. This project constructed the 3<sup>rd</sup> West Fargo pump station that is now in service. This is Change Order No. 1 under Contract No. 3 (Electrical) for the project. Approval of this change order is a cost increase of \$1,142 and will allow for the close out of Contract No. 3 with John's Refrigeration and Electrical, Inc. Approval of the change order would be a 0.7 percent increase over the original bid price of \$164,746. The project is funded with Infrastructure Sales Tax (Fund 450), but was 60 percent grant fund by the State Water Commission throughout much of the project.

**MOTION:**

On a motion by Scott Liudahl, seconded by Jim Hausauer, the Utility Committee voted to approve the change order with John's Refrigeration and Electrical, Inc. for Project WA2012 resulting in a cost increase of \$1,142.

<u>COMMITTEE:</u>	<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Unanimous</u>
				X
				Proxy
Anthony Gehrig, City Commissioner				
Terri Gayhart, Director of Finance	X			
Brian Ward, Water Plant Supt.	X			
Mark Miller, Wastewater Plant Supt.	X			
Bruce Grubb, City Administrator	X			
Scott Liudahl, City Forester	X			
Terry Ludlum, Solid Waste Utility Director	X			
James Hausauer, Wastewater Util. Director	X			
Troy Hall, Water Utility Director	X			
Ben Dow, Public Works Operations Director	X			
Brenda Derrig, City Engineer	X			
Dan Portlock, Water Utility Engineer	X			
Scott Olson, Solid Waste Utility Engineer				

ATTEST:

  
 \_\_\_\_\_  
 Troy B. Hall  
 Water Utility Director


C: Tim Mahoney, Mayor  
 Commissioner Strand  
 Commissioner Piepkorn  
 Commissioner Preston



MEMORANDUM  
June 2<sup>nd</sup>, 2022

---

**To:** Utility Committee

**From:** Dan Portlock, Water Utility Engineer 

**Re:** WA2012 Change order No. 1 to Contract No. 3 – Electrical Construction Fargo South Regional Water Connection Phase 2

---

Attached, please find change order No. 1 to Contract No. 3 for project WA2012, Fargo South Regional Water Connection Phase 2. This change order has a total cost increase of \$1,142.00. Once the network rack was onsite, it was larger than initially planned and it was determined that it would be in the way especially when moving things in and out of the electrical room. The conduits and wires had already been stubbed in so Johns Refrigeration had to move the network panel to the southeast corner of the electrical room.





Water Utility staff is seeking approval of this change order to be placed on the next City Commission agenda.

**Plan of Financing**

This project will be funded through the Fargo South Regional Water Connection Phase 2 project (WA2012). Project WA2012 is funded through Infrastructure Sales Tax (Fund 450). A State Water Commission (SWC) grant has also been applied previously to this project.

**SUGGESTED MOTION:**

Approve Change Order No. 1 to Contract No. 3 as a cost increase of \$1,142.00 for WA2012, Fargo South Regional Water Connection Phase 2.

Your consideration in this matter is greatly appreciated.



May 25, 2022

City of Fargo  
Mr. Dan Portlock  
Water Utility Director  
Water Treatment Plant  
435 14th Ave S  
Fargo, ND 58103-4306

**Re: Change Order No. 1 to Contract No. 3  
Fargo South Regional Water Connection Phase 2  
City of Fargo Project #WA2012**

Dear Mr. Portlock:

Enclosed please find a copy of Change Order No. 1 to Contract No. 3 for the above referenced project for your review and approval. This Change Order pertains to the following changes to the project:

**Description:**

- Moving of the network panel from the original plan location to the southeast corner of the electrical room to allow for ample clear space in front of electrical equipment.

Upon the City of Fargo's acceptance of Change Order No. 1 to Contract No. 3, please sign and date three original copies. Retain one copy for your records and scan a copy to AE2S. AE2S will forward a copy to John's Refrigeration and Electric, Inc. and will retain a remaining copy for our records. Please contact me if you have any questions or need additional information.

Sincerely,

**AE2S**

A handwritten signature in blue ink, appearing to read "Chase Julson", is written over the printed name.

Chase Julson, PE  
Project Engineer

Attachments

Change Order No. 1

Letter from John's Refrigeration & Electric, Inc. (JRE) stating the network panel at the Fargo South Regional Water was moved into new location.



Change Order No. 1

Date of Issuance: 06/02/2022 Effective Date: 06/30/2021  
 Owner: City of Fargo Owner's Contract No.: WA2012  
 Contractor: John's Refrigeration & Electric, Inc. Contractor's Project No.: xx  
 Engineer: Advanced Engineering and Environmental Services, LLC Engineer's Project No.: P00803-2018-035  
 Project: Fargo South Regional Water Connection Phase II Contract Name: Contract No. 3

The Contract is modified as follows upon execution of this Change Order:

**Description:**

Moving of the network panel from the original plan location to the southeast corner of the electrical room to allow for ample clear space in front of electrical equipment.

**Attachments:** Letter from John's Refrigeration & Electric, Inc. (JRE) stating the network panel at the Fargo South Regional Water was moved into new location.

CHANGE IN CONTRACT PRICE	CHANGE IN CONTRACT TIMES <i>[note changes in Milestones if applicable]</i>
Original Contract Price: \$ <u>164,746.00</u>	Original Contract Times: Substantial Completion: _____ Ready for Final Payment: _____ _____ days or dates
<del>[Increase]</del> <del>[Decrease]</del> from previously approved Change Orders No. ___ to No. ___: \$ _____	<del>[Increase]</del> <del>[Decrease]</del> from previously approved Change Orders No. ___ to No. ___: Substantial Completion: _____ Ready for Final Payment: _____ _____ days
Contract Price prior to this Change Order: \$ <u>164,746.00</u>	Contract Times prior to this Change Order: Substantial Completion: _____ Ready for Final Payment: _____ _____ days or dates
<del>[Increase]</del> <del>[Decrease]</del> of this Change Order: \$ <u>1,142.00</u>	<del>[Increase]</del> <del>[Decrease]</del> of this Change Order: Substantial Completion: _____ Ready for Final Payment: _____ _____ days or dates
Contract Price incorporating this Change Order: \$ <u>165,888.00</u>	Contract Times with all approved Change Orders: Substantial Completion: _____ Ready for Final Payment: _____ _____ days or dates

RECOMMENDED:	ACCEPTED:	ACCEPTED:
By: <u><i>Chris H.</i></u>	By: _____	By: <u><i>John Lonshi</i></u>
Engineer (if required)	Owner (Authorized Signature)	Contractor (Authorized Signature)
Title: <u>Project Engineer</u>	Title: _____	Title: <u>Pres.</u>
Date: <u>05/25/2022</u>	Date: _____	Date: <u>5-25-22</u>

Approved by Funding Agency (if applicable)

By: \_\_\_\_\_ Date: \_\_\_\_\_  
 Title: \_\_\_\_\_

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

28

Improvement District No. BN-23-A1 Type: Addendum for Documented CatEx

Location: 52nd Avenue South – 63rd Street to Sheyenne Street Date of Hearing: 6/6/2022

Routing City Commission Date 6/13/2022 PWPEC File X Project File Jeremy Gorden

The Committee reviewed the accompanying correspondence from Division Engineer, Jeremy Gorden, regarding an addendum for the Documented CatEx for 52nd Avenue South Street Reconstruction Project.

The City completed the original environmental document for this project in 2018 when we constructed 52nd Avenue South between 45th Street and 63rd Street. That construction project was completed in 2019. The current project under design runs from 63rd Street to Sheyenne Street and it is set to bid this November. This addendum is needed to address West Fargo and Cass County's desire to modify the existing roundabout on Sheyenne Street. The additional cost to the project for this work will be shared between West Fargo and Cass County, which is estimated at \$961,000 and the recommended preferred design modification is the layout requested by West Fargo and Cass County.

On a motion by Bruce Grubb, seconded by Steve Dirksen, the Committee voted to approve the addendum and select the 2 x 1 roundabout as the preferred design modification to the roundabout on 52nd Avenue South and Sheyenne Street.

RECOMMENDED MOTION

Concur with recommendations of PWPEC and approve the addendum to select the 2 x 1 roundabout as the preferred design modification to the roundabout on 52nd Avenue South and Sheyenne Street.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project:

Table with 2 columns: Yes, No. Rows: Developer meets City policy for payment of delinquent specials (N/A), Agreement for payment of specials required of developer (N/A), Letter of Credit required (per policy approved 5-28-13) (N/A)

COMMITTEE

Table with 5 columns: Present, Yes, No, Unanimous. Lists committee members and their voting status.

ATTEST:

Handwritten signature of Brenda E. Derrig

Brenda E. Derrig, P.E. City Engineer

C: Kristi Olson



# Memorandum

To: PWPEC

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

Date: 5/23/2022

Re: Addendum for Documented CatEx for 52nd Ave S Street Reconstruction Project  
City of Fargo Improvement District No. BN-23-A1  
52nd Avenue S – 63<sup>rd</sup> Street to Street to Sheyenne Street

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## **Background**

I have attached an addendum to the environmental document for this project. If you recall, we completed the original environmental document for this project in 2018 when we constructed 52<sup>nd</sup> Avenue South between 45<sup>th</sup> Street and 63<sup>rd</sup> Street. That construction project was completed in 2019. The current project under design runs from 63<sup>rd</sup> Street to Sheyenne Street, and it is set to bid this November. This addendum is needed to address West Fargo and Cass County's desire to modify the existing roundabout on Sheyenne Street. The additional cost to the project for this work will be shared between West Fargo and Cass County, which is estimated at \$961,000.

## **Recommended Motion**

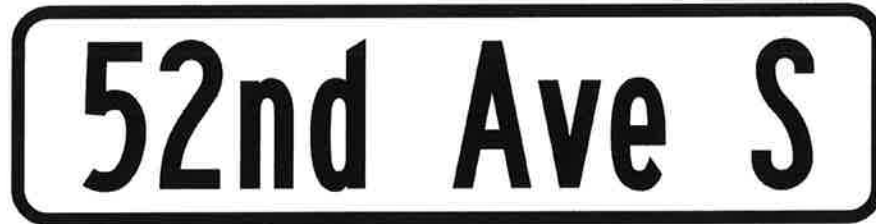
To select the 2 x 1 roundabout as the preferred design modification to the roundabout on 52<sup>nd</sup> Avenue South and Sheyenne Street.

JMG/jmg  
Attachment

# RECONSTRUCTION

<u>Project No.</u>	<u>PCN</u>
SU-8-984(164)	22007
SU-8-984(170)	23036

52<sup>nd</sup> Ave S – Sheyenne St east to 45<sup>th</sup> St S



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Prepared by

CITY OF FARGO ENGINEERING DEPARTMENT  
FARGO, NORTH DAKOTA

<http://www.fargond.gov>

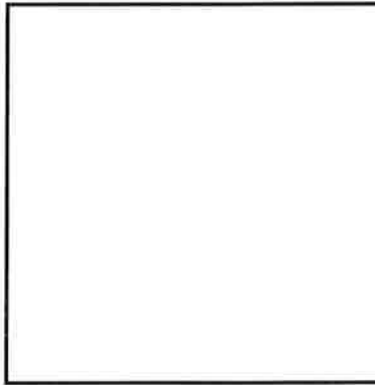
DIVISION ENGINEER - TRANSPORTATION  
Jeremy Gorden, PE

Principal Author: Houston Engineering Inc.  
Environmental Reviewer: Kent Leben, NDDOT LGD  
June 2022

## **RECONSTRUCTION**

52<sup>nd</sup> Ave S – Sheyenne St east to 45<sup>th</sup> St S

## ***CERTIFICATION***



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## Appendices

Appendix A	Endangered Species Act
Appendix B	Wetland Information
Appendix C	Comments From the Draft Documented CATEX Addendum
Appendix D	Opinion of Probable Cost

## Supporting Documents

Documented CatEx; Dated June 11, 2018  
Traffic Operations Report Addendum



A. Project Description

Highway: 52<sup>nd</sup> Ave S (Cass County Highway 6)  
 District: Fargo  
 Limits: SU-8-984(164): West of 63<sup>rd</sup> St east to 45<sup>th</sup> St S (Constructed in 2020)  
 SU-8-984(170): Sheyenne St east to West of 63<sup>rd</sup> St S (Current Project)

A Documented Categorical Exclusion (DCE) for the roadway improvements along 52<sup>nd</sup> Ave S from Sheyenne St east to 45<sup>th</sup> St S in Fargo, ND was completed in June 2018. The purpose of this addendum is to document changes to the project study area at the western limit of the project and update associated impacts and permitting requirements. Only the items affected by the proposed changes to the project are included in this document. Where items are not included, no changes have occurred since the DCE in June of 2018.

B. Project Schedule

Project:	SU-8-984(164)	SU-8-984(170)
Bid Ready:	Constructed 2020	August 2022

C. Optional Work Items

Optional Work Item 6: Sheyenne St Roundabout

Since the DCE was completed in June 2018, the reconstruction of 52<sup>nd</sup> Ave S was split into two projects. Project SU-8-984(164) was constructed in the summer of 2020 and extended from west of 63<sup>rd</sup> St S, east to 45<sup>th</sup> St S. Project SU-8-984(170) is scheduled for construction in 2023 and extends from Sheyenne St east to west of 63<sup>rd</sup> St S. Due to recent significant development in the City of West Fargo, west of Sheyenne St and south of 52<sup>nd</sup> Ave S, it was requested to amend the Traffic Operations report and reevaluate the proposed build alternative for the intersection of Sheyenne St and 52<sup>nd</sup> Ave S. This request was made by the City of Fargo, City of West Fargo, and Cass County Highway Department.

The amended Traffic Operations report evaluated five roundabout configurations:

- Existing Conditions, single lane roundabout
- 2x1 Roundabout with two northbound and two southbound lanes and a westbound right turn lane
- 2x1 Roundabout with two eastbound lanes, a northbound right turn lane and a westbound right turn lane
- 2x1 Roundabout with two southbound lanes and a northbound right turn lane
- Full Two-Lane Roundabout

All roundabout configurations were analyzed using the revised forecasted 2025 AM and PM peak hour traffic volumes. The analysis determined the existing roundabout configuration will fail by 2025. However, all 2x1 configurations and the two-lane roundabout would be acceptable based on the 2025 projected traffic volumes. The two-lane roundabout is the only alternative that provides an acceptable level of service based on the 2040 projected traffic volumes.

Through coordination with the City of Fargo, City of West Fargo, and Cass County Highway Department, it was determined two alternatives should be considered for the project:

- 2x1 Roundabout with two eastbound lanes, a northbound right turn lane and a westbound right turn lane
- Full Two-Lane Roundabout

#### 2x1 Roundabout

In order to improve the roundabout to meet projected traffic volumes until at least 2025, the roundabout at the intersection of Sheyenne St and 52<sup>nd</sup> Ave S will be expanded from the existing single lane roundabout to a 2x1 configuration including:

- Two eastbound through lanes
- Northbound dedicated right turn lane
- Westbound dedicated right turn lane

The improvements at the roundabout will also include minor work within the center island to improve obstructions as well as concrete pavement repair along the circulatory roadway, replacement of the lighting system due to the widened roadway, and mill and overlay of the asphalt through the turn lane taper in the south leg of the roundabout. It is anticipated the roundabout may need to be expanded prior to 2040 if traffic projections are met. However, due to the user complexities associated with a full two-lane roundabout, it is desirable to widen the roundabout minimally until traffic demands require expansion to the full two-lane roundabout operation. See Figure 1 for the proposed layout of the 2x1 roundabout.

The anticipated cost to construct the additional work is \$961,000.

**Figure 1 – Proposed 2x1 Roundabout Construction****2x2 Roundabout**

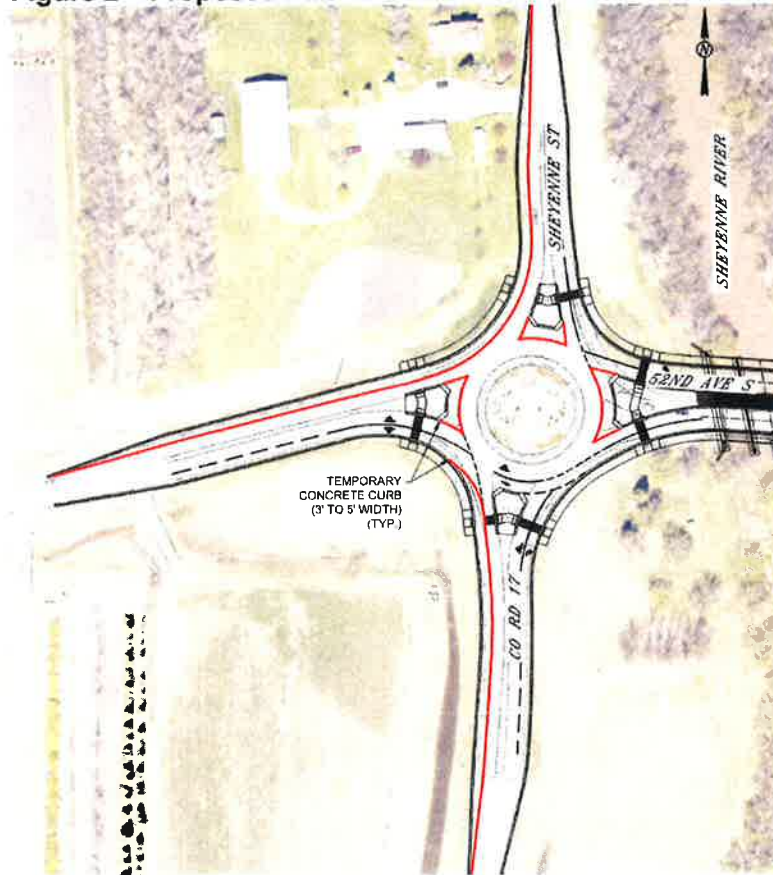
In order to minimize future disruptions to traffic along the corridor construction of the full two-lane roundabout with delineation to operate as a 2x1 roundabout with two eastbound lanes, a northbound right turn lane and a westbound right turn lane was considered. The traffic movements would be delineated utilizing 3' to 5' wide concrete curbing doweled into the pavement section with a bond breaker between the pavement section and curbing to allow for future removal. As the intersection breaks down in the future due to increased traffic volumes, the temporary concrete curbing and dowels will be removed, and the roundabout restriped and signed to operate as a full two-lane roundabout. The concrete curbing providing delineation of the 2x1 operation is anticipated to result in increased maintenance due to impacts from snow plows.

The additional quantities to construct the two-lane roundabout will be funded by the Local Sponsor's. See Figures 2 and 3 for the proposed roundabout configuration and difference in construction area between the 2x1 roundabout and the full two-lane roundabout. The red line in Figure 2 represents the temporary concrete curb alignment. The improvements at the roundabout will also include minor work within the center island to improve obstructions as well as concrete pavement repair along the circulatory roadway,

replacement of the lighting system due to the widened roadway, and mill and overlay of the asphalt through the turn lane taper in the south leg of the roundabout.

The anticipated cost to construct the additional work is \$1,755,000 (\$961,000 eligible for funding and \$794,000 City funding only).

**Figure 2 – Proposed Full Two-Lane Roundabout Construction**



**Figure 3 – Comparison of 2x1 Roundabout and Full Two-Lane Roundabout**



a. Work Zone Traffic Control

Construction of 52nd Ave S from Sheyenne St east to west of 63rd St is anticipated to be completed in two phases. The phases are anticipated to be constructed concurrently. The first phase will consist of constructing the 52nd Ave S crossing of the Sheyenne River as well as construction of 52nd Ave S from east of Sheyenne St to west of 63rd St S. During this phase, the roundabout at the intersection of 52nd Ave S and Sheyenne St will be open to traffic. Traffic will be detoured around 52nd Ave S via north on Sheyenne St to 40th Ave S and east of 40th Ave S to 45th St S and 45th St S to 52nd Ave S.

The second phase of the project will consist of the improvements to the roundabout at Sheyenne St and 52nd Ave S. A duration limit will be established for this Phase to minimize the duration the intersection is closed to traffic. During this phase, Sheyenne St traffic will be detoured via east on Cass County Road 14 to I-29 and north on I-29 to 32nd Ave S and west on 32nd Ave S to Sheyenne St. 52nd Ave S traffic will be detoured via north on 26th St W to 40th Ave S and 40th Ave S east to



45th St S and 45th St S south to 52nd Ave S. See Figures 4 and 5 for the proposed detour routes.

Figure 4 – Phase 1 Detour Route

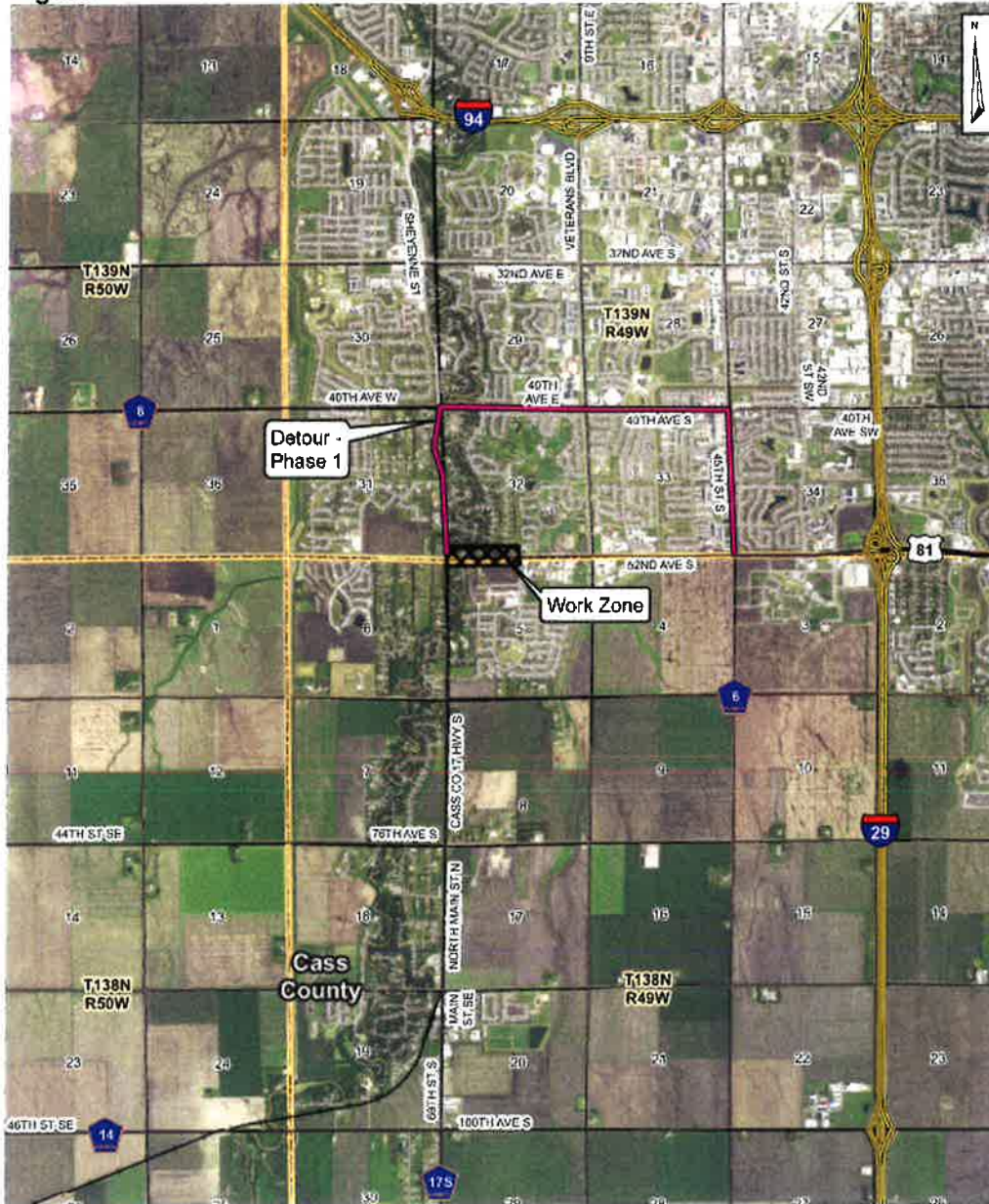
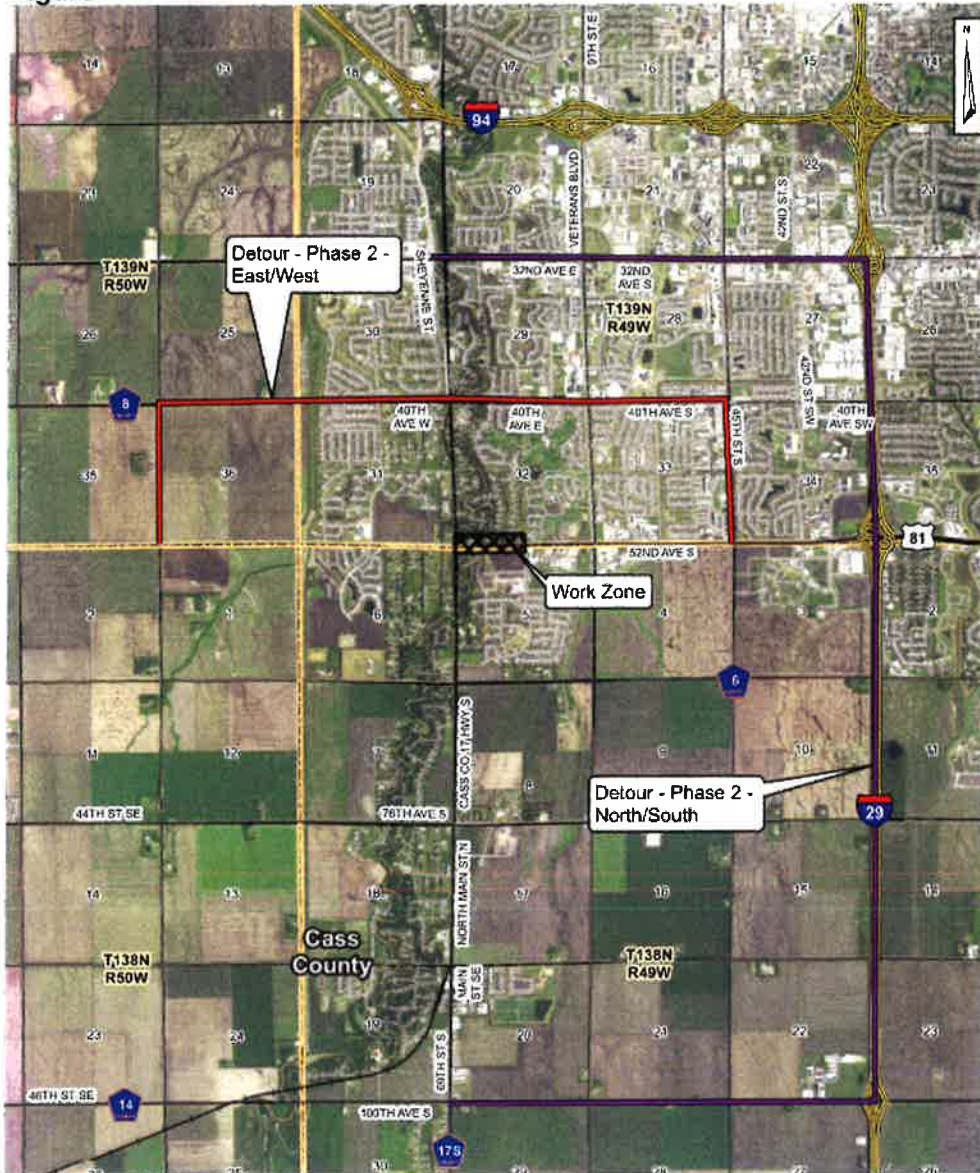


Figure 5 – Phase 2 Detour Route



b. Summary of Environmental Issues

Threatened and Endangered Species:

Due to a change in listed species located within Cass County, an updated effect determination was prepared and submitted to the USFWS. It was determined that this project will have "No Effect" on the listed species within the project area. See Appendix A for more information.

**Wetland:**

The previously completed aquatic resource delineation covered the additional work being incorporated at the roundabout at the intersection of Sheyenne St and 52<sup>nd</sup> Ave S. The expansion of the existing roundabout to a 2x1 roundabout will impact an additional 0.012 acres of wetlands permanently and 0.032 acres of wetlands temporarily. The expansion of the existing roundabout to a full two-lane roundabout will impact an additional 0.017 acres of wetlands permanently and 0.049 acres of wetlands temporarily. See Appendix B for more information.

**Right-of-Way:**

Expansion of the existing roundabout will not modify the original right of way needs presented in the DCE.

**Permits:**

In addition to the USACE Section 404 NW Permit and Department of Water Resources Floodplain Permit listed in the DCE, this project will require:

- Department of Water Resources:
  - Sovereign Lands Permit
  - Construction Permit

Due to the removal of the existing structure crossing the Sheyenne River, migratory birds may be impacted. SSP 2 will be included in the final plans to mitigate the impacts.

D. Comments from the Draft Documented CATEX

**Comment:** Please add appendix for cost estimate.

**Response:** Appendix D has been added.

**Comment:** When does this JD expire?

**Response:** The approved JD expires after 5 years (December 12, 2022).

All other comments were editorial and are included in Appendix C.



I. Executive Decisions

1. Do you concur with the project concepts as proposed?

\_\_\_\_\_ Yes

\_\_\_\_\_ No

2. Which optional work item should proceed with the project?

Optional Work Item 6: Sheyenne St Roundabout

\_\_\_\_\_ Do Nothing (\$0)

\_\_\_\_\_ 2x1 Roundabout (\$961,000)

\_\_\_\_\_ Full Two-Lane Roundabout (\$1,755,000)

Amendments/Comments for Project No. SU-8-984(164) & SU-8-984(170):

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\_\_\_\_\_  
Dr. Timothy J. Mahoney, City of Fargo Mayor

\_\_\_\_\_  
Date

## APPENDICES

**Appendix A**  
**Endangered Species Act**



## United States Department of the Interior



### FISH AND WILDLIFE SERVICE

North Dakota Ecological Services Field Office  
3425 Miriam Avenue  
Bismarck, ND 58501-7926

Phone: (701) 250-4481 Fax: (701) 355-8513

[http://www.fws.gov/northdakotafieldoffice/endspecies/  
endangered\\_species.htm](http://www.fws.gov/northdakotafieldoffice/endspecies/endangered_species.htm)

In Reply Refer To:

May 09, 2022

Project code: 2022-0040641

Project Name: 52nd Ave S Reconstruction - Sheyenne St east to 45th St S

Subject: Consistency letter for the '52nd Ave S Reconstruction - Sheyenne St east to 45th St S' project under the revised February 5, 2018, FHWA, FRA, FTA Programmatic Biological Opinion for Transportation Projects within the Range of the Indiana Bat and Northern Long-eared Bat.

To whom it may concern:

The U.S. Fish and Wildlife Service (Service) has received your request dated May 09, 2022 to verify that the **52nd Ave S Reconstruction - Sheyenne St east to 45th St S** (Proposed Action) may rely on the revised February 5, 2018, FHWA, FRA, FTA Programmatic Biological Opinion for Transportation Projects within the Range of the Indiana Bat and Northern Long-eared Bat (PBO) to satisfy requirements under Section 7(a)(2) of the Endangered Species Act of 1973 (ESA) (87 Stat.884, as amended; 16 U.S.C. 1531 *et seq.*).

Based on the information you provided (Project Description shown below), you have determined that the Proposed Action will have no effect on the endangered Indiana bat (*Myotis sodalis*) or the threatened Northern long-eared bat (*Myotis septentrionalis*). If the Proposed Action is not modified, **no consultation is required for these two species**. If the Proposed Action is modified, or new information reveals that it may affect the Indiana bat and/or Northern long-eared bat in a manner or to an extent not considered in the PBO, further review to conclude the requirements of ESA Section 7(a)(2) may be required.

**For Proposed Actions that include bridge/culvert or structure removal, replacement, and/or maintenance activities:** If your initial bridge/culvert or structure assessments failed to detect Indiana bats, but you later detect bats prior to, or during construction, please submit the Post Assessment Discovery of Bats at Bridge/Culvert or Structure Form (User Guide Appendix E) to this Service Office within 2 working days of the incident. In these instances, potential incidental take of Indiana bats may be exempted provided that the take is reported to the Service.

If the Proposed Action may affect any other federally-listed or proposed species and/or designated critical habitat, additional consultation between the lead Federal action agency and this Service Office is required. If the proposed action has the potential to take bald or golden eagles, additional coordination with the Service under the Bald and Golden Eagle Protection Act may also be required. In either of these circumstances, please advise the lead Federal action agency accordingly.

The following species may occur in your project area and **are not** covered by this determination:

- Monarch Butterfly *Danaus plexippus* Candidate

## **Project Description**

The following project name and description was collected in IPaC as part of the endangered species review process.

### ***Name***

52nd Ave S Reconstruction - Sheyenne St east to 45th St S

### ***Description***

The project consists of reconstructing 52nd Ave S from Sheyenne Street (CR 17) to 45th Street S. The reconstruction includes lane configuration modifications, intersection improvements, and utility (storm sewer, sanitary sewer, and watermain) improvements. The existing structures crossing Drain 27 and the Sheyenne River will also be replaced to accommodate the widened roadway.

## Determination Key Result

Based on the information you provided, you have determined that the Proposed Action will have no effect on the endangered Indiana bat and/or the threatened Northern long-eared bat. Therefore, no consultation with the U.S. Fish and Wildlife Service pursuant to Section 7(a)(2) of the Endangered Species Act of 1973 (ESA) (87 Stat. 884, as amended 16 U.S.C. 1531 *et seq.*) is required for these two species.

## Qualification Interview

1. Is the project within the range of the Indiana bat<sup>[1]</sup>?

[1] See [Indiana bat species profile](#)

**Automatically answered**

*No*

2. Is the project within the range of the Northern long-eared bat<sup>[1]</sup>?

[1] See [Northern long-eared bat species profile](#)

**Automatically answered**

*Yes*

3. Which Federal Agency is the lead for the action?

*A) Federal Highway Administration (FHWA)*

4. Are *all* project activities limited to non-construction<sup>[1]</sup> activities only? (examples of non-construction activities include: bridge/abandoned structure assessments, surveys, planning and technical studies, property inspections, and property sales)

[1] Construction refers to activities involving ground disturbance, percussive noise, and/or lighting.

*Yes*

## **Determination Key Description: FHWA, FRA, FTA Programmatic Consultation For Transportation Projects Affecting NLEB Or Indiana Bat**

This key was last updated in IPaC on April 28, 2022. Keys are subject to periodic revision.

This decision key is intended for projects/activities funded or authorized by the Federal Highway Administration (FHWA), Federal Railroad Administration (FRA), and/or Federal Transit Administration (FTA), which may require consultation with the U.S. Fish and Wildlife Service (Service) under Section 7 of the Endangered Species Act (ESA) for the endangered **Indiana bat** (*Myotis sodalis*) and the threatened **Northern long-eared bat** (NLEB) (*Myotis septentrionalis*).

This decision key should only be used to verify project applicability with the Service's February 5, 2018, FHWA, FRA, FTA Programmatic Biological Opinion for Transportation Projects. The programmatic biological opinion covers limited transportation activities that may affect either bat species, and addresses situations that are both likely and not likely to adversely affect either bat species. This decision key will assist in identifying the effect of a specific project/activity and applicability of the programmatic consultation. The programmatic biological opinion is not intended to cover all types of transportation actions. Activities outside the scope of the programmatic biological opinion, or that may affect ESA-listed species other than the Indiana bat or NLEB, or any designated critical habitat, may require additional ESA Section 7 consultation.



## **IPaC User Contact Information**

Agency: Houston Engineering, Inc.

Name: Hannah Passolt

Address: 1401 21st Ave N

City: Fargo

State: ND

Zip: 58102

Email [hpassolt@houstoneng.com](mailto:hpassolt@houstoneng.com)

Phone: 7014999471

**Appendix B**  
**Wetland Information**

Wetland Impact Table (2x1 Roundabout)																				
Wetland Number	Location	Wetland Type	Wetland Feature	USACE Jurisdictional Wetlands	Wetland Impacts			USFWS Assessment			Wetland Mitigation									
					Temp.	Perms. (FIBD/gh)	Perms. (Cul)	Temp.	Perms.	EO 11990	USACE	USFWS	11990 Bank	USACE/11990 Bank	USFWS Bank	Mitigation Location, Ratio	Onsite Mitigation Method	Onsite Constructed Size	Offsite Constructed Size	
1	Sec. 31, T139N, R69W	Ditch	Artificial	N																
2	Sec. 4, T139N, R69W	Ditch	Artificial	N																
3	Sec. 3, T139N, R69W	Ditch	Artificial	Y	0.012															
4a	Sec. 22, T139N, R69W	Ditch	Artificial	Y																
4b	Sec. 32, T139N, R69W	Ditch	Artificial	Y																
4c	Sec. 23, T139N, R69W	Ditch	Artificial	Y																
4d	Sec. 33, T139N, R69W	Ditch	Artificial	Y																
4e	Sec. 21, T139N, R69W	Ditch	Artificial	Y																
5a	Sec. 3, T139N, R69W	Ditch	Artificial	N																
5b	Sec. 4, T139N, R69W	Ditch	Artificial	N																
6a	Sec. 4, T139N, R69W	Ditch	Artificial	Y																
6b	Sec. 4, T139N, R69W	Ditch	Artificial	Y																
7	Sec. 33, T139N, R69W	Ditch	Artificial	Y																
8	Sec. 4, T139N, R69W	Ditch	Artificial	Y																
9	Sec. 33, T139N, R69W	Ditch	Artificial	N																
10	Sec. 4, T139N, R69W	Ditch	Artificial	N																
Totals					0.022	0.072	0.000	0.000	0.000	0.000										0.000

Other Waters Impact Table (2x1 Roundabout)																				
Number	Location	Type	Refuse	USACE Jurisdictional	Impacts to Other Waters			Mitigation Proposed			Other Water Mitigation									
					Temp.	Perms. (FIBD/gh)	Perms. (Cul)	Temp.	Perms.	EO 11990	USACE	USFWS	USACE Mitigation Bank	11990 Bank	USFWS Bank					
1	Sec. 31, T139N, R69W	River	Natural	Y																
2	Sec. 4, T139N, R69W	Municipal Ditch	Natural	Y																
Totals					0.000	0.000														0.000

Impact Summary Table (2x1 Roundabout)			
Permanent	Temporary	Impacts and additional information	Total
Wetland Type (FIBD/gh)	0.000	Wetland Type (FIBD/gh)	0.022
Natural/Non-JD (FIBD/gh)	0.000	Wetland Type (FIBD/gh)	0.017
Artificial/JD (FIBD/gh)	0.012	Wetland Type (FIBD/gh)	0.012
Artificial/Non-JD (FIBD/gh)	0.005	Wetland Type (FIBD/gh)	0.005
Total	0.017	Wetland Type (FIBD/gh)	0.000
30 Natural		Wetland Type (FIBD/gh)	0.000
30 Artificial		Wetland Type (FIBD/gh)	0.000
30 Non-JD		Wetland Type (FIBD/gh)	0.000
30 Artificial		Wetland Type (FIBD/gh)	0.000
Total	0.000	Wetland Type (FIBD/gh)	0.000

Mitigation Summary Table (2x1 Roundabout)									
Location	Ditch Shift (Acres)	11990 Bank (Acres)	USACE/11990 Bank (Acres)	USFWS Bank (Acres)	Onsite Constructed Size (Acres)	Offsite Constructed Size (Acres)	Total	Other Water Mitigation	
								USACE Mitigation Bank	11990 Bank
USACE Only	0.012	0.000	0.000	0.000	0.000	0.000	0.012	0.000	0.000
EO 11990 Only									
USACE/11990									
USFWS									
Total								0.012	0.000

A wetland Jurisdictional Determination was issued by the USACE on 12/13/2017; NWO-2017-2188-BIS.

Wetland Number	Location	Wetland Type	Wetland Feature	USACE Jurisdictional Wetlands	Wetland Impact				Wetland Mitigation									
					Wetland Impacts		USACE Easement Impacts		Mitigation Proposed		1190 Bank		USACE 1190 Bank					
					Temp.	Perm.	Perms. (Out)	Temp.	Perms.	EO 1190	USACE	Location	Acres(s)	Location	Acres(s)	Mitigation Location; Info	Ditch Shift (Acres)	Onsite Construction Location
1	Sec. 31, T138N, R66W	Ditch	Artificial	N	0.017	0.035	N	N	N	N								
2	Sec. 8, T138N, R66W	Ditch	Artificial	N	0.032	0.012	N	Y	N				Ditch Shift, 1.1	0.012				
3	Sec. 8, T138N, R66W	Ditch	Artificial	Y														
4a	Sec. 32, T138N, R66W	Ditch	Artificial	Y														
4b	Sec. 32, T138N, R66W	Ditch	Artificial	Y														
4c	Sec. 33, T138N, R66W	Ditch	Artificial	Y														
4d	Sec. 33, T138N, R66W	Ditch	Artificial	Y														
4e	Sec. 33, T138N, R66W	Ditch	Artificial	Y														
5a	Sec. 4, T138N, R66W	Ditch	Artificial	N														
5b	Sec. 4, T138N, R66W	Ditch	Artificial	N														
6a	Sec. 4, T138N, R66W	Ditch	Artificial	Y														
6b	Sec. 4, T138N, R66W	Ditch	Artificial	Y														
7	Sec. 33, T138N, R66W	Ditch	Artificial	Y														
8	Sec. 4, T138N, R66W	Ditch	Artificial	Y														
9	Sec. 33, T138N, R66W	Ditch	Artificial	N														
10	Sec. 4, T138N, R66W	Ditch	Artificial	N														
Totals					0.000	0.017	0.000	0.000	0.000	0.000	0	0	0.000	0.012	0.000			0.000

Number	Location	Type	Feature	USACE Jurisdictional	Impacts to Other Waters				Other Water Mitigation									
					Linear, Feet		Mitigation Proposed		USACE Mitigation Bank		Onsite Construction Location							
					Temp.	Perm.	EO 1190	USACE	Location	Acres(s)	Location	Acres(s)	Mitigation Location; Info	Ditch Shift (Acres)	Onsite Construction Location	Onsite Construction Size (Acres)		
1	Sec. 31, T138N, R66W	River	Natural	Y	100,000	0.268	N	Y	N									
2	Sec. 4, T138N, R66W	Municipal Drain	Natural	Y										Channel Bank	0.268			0.268
Totals					0.000	0.268				0.000	0.000			0.268				0.000

A wetland Jurisdictional Determination was issued by the USACE on 12/13/2017. NWG-2017-2186-BIS.

Impact Summary Table (2x2 Roundabout)			Temporary Impacts and additional information		
Wetland Type	Total Acres(s)	Water Type	Temporary Impacts	Non-ND	Total Acres(s)
USACE 1190 Bank	0.000	Wetland	0.000	0.000	0.000
USACE 1190 Bank	0.000	Wetland	0.000	0.017	0.017
USACE 1190 Bank	0.012	Temporary	0.012	0.000	0.012
USACE 1190 Bank	0.005	Permanent DW	0.005	0.000	0.005
<b>Total</b>	<b>0.017</b>	<b>Temporary DW</b>	<b>0.017</b>	<b>0.000</b>	<b>0.017</b>
<b>Total</b>	<b>0.000</b>	<b>Permanent DW</b>	<b>0.000</b>	<b>0.000</b>	<b>0.000</b>
<b>Total</b>	<b>0.000</b>	<b>Non-ND</b>	<b>0.000</b>	<b>0.000</b>	<b>0.000</b>
<b>Total</b>	<b>0.000</b>	<b>Artificial/Cul.</b>	<b>0.000</b>	<b>0.000</b>	<b>0.000</b>

Mitigation Summary Table (2x2 Roundabout)					
Location	Ditch Shift (Acres)	EO 1190 Bank (Acres)	USACE 1190 Bank (Acres)	USACE 1190 Bank (Acres)	Total
Channel-CU Bank	0.012	0.000	0.268	0.268	0.548
NA	0.000	0.000	0.000	0.000	0.000
NA	0.000	0.000	0.000	0.000	0.000
<b>Total</b>	<b>0.012</b>	<b>0.000</b>	<b>0.268</b>	<b>0.268</b>	<b>0.548</b>

**Appendix C**  
**Comments From the Draft Documented CATEX Addendum**

# Response to NDDOT comments SU-8-984(170) Documented CATEX (DCE) Amendment\_archive 6-3-22.pdf Markup Summary

1 (2)

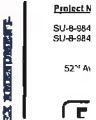
or: Houston Engineering Ir  
er: Sengaroun Marohl, ND  
May 2022

**Subject:** Cross-Out  
**Page Label:** 1  
**Author:** Sengaroun Marohl (smarohl@nd.gov)  
**Date:** 5/19/2022 2:44:50 PM  
**Status:**  
**Color:** ■  
**Layer:**  
**Space:**

Please replace with Kent Leben

**Subject:** Re: Cross-Out  
**Page Label:** 1  
**Author:** aruud  
**Date:** 6/3/2022 4:58:08 PM  
**Status:**  
**Color:** ■  
**Layer:**  
**Space:**

Revised as noted



**Subject:** Inserted Text  
**Page Label:** 1  
**Author:** Michael E. Johnson (mijohnson@nd.gov)  
**Date:** 5/20/2022 8:56:17 AM  
**Status:**  
**Color:** ■  
**Layer:**  
**Space:**

ADDENDUM

3 (3)



**Subject:** Sticky Note  
**Page Label:** 3  
**Author:** Michael E. Johnson (mijohnson@nd.gov)  
**Date:** 5/20/2022 8:57:02 AM  
**Status:**  
**Color:** ■  
**Layer:**  
**Space:**

Should the original DCE be a supporting document?

**Subject:** Re: Sticky Note  
**Page Label:** 3  
**Author:** aruud  
**Date:** 6/3/2022 5:00:03 PM  
**Status:**  
**Color:** ■  
**Layer:**  
**Space:**

Added original documented catex to list of supporting documents.



**Subject:** Sticky Note  
**Page Label:** 3  
**Author:** Sengaroun Marohl (smarohl@nd.gov)  
**Date:** 6/3/2022 7:48:30 AM  
**Status:**  
**Color:** ■  
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**Space:**

Please add appendix for cost estimate.



**Subject:** Re: Sticky Note  
**Page Label:** 3  
**Author:** aruud  
**Date:** 6/3/2022 5:01:01 PM  
**Status:**  
**Color:** ■  
**Layer:**  
**Space:**

Added Appendix D



**Subject:** Sticky Note  
**Page Label:** 3  
**Author:** Sengaroun Marohl (smarohl@nd.gov)  
**Date:** 6/3/2022 7:49:17 AM  
**Status:**  
**Color:** ■  
**Layer:**  
**Space:**

Please add City Decision for roundabout.



**Subject:** Re: Sticky Note  
**Page Label:** 3  
**Author:** aruud  
**Date:** 6/3/2022 5:04:23 PM  
**Status:**  
**Color:** ■  
**Layer:**  
**Space:**

Decision page added.

---

9 (1)



**Subject:** Sticky Note  
**Page Label:** 9  
**Author:** Sengaroun Marohl (smarohl@nd.gov)  
**Date:** 5/31/2022 2:17:23 PM  
**Status:**  
**Color:** ■  
**Layer:**  
**Space:**

Since building roundabout work at Sheyenne St is not include in original approved CatEx, therefore City Decisions page with Optional work item list out for City decision is needed.



**Subject:** Re: Sticky Note  
**Page Label:** 9  
**Author:** aruud  
**Date:** 6/3/2022 5:11:14 PM  
**Status:**  
**Color:** ■  
**Layer:**  
**Space:**

Decision page added to document.

---

19 (1)



A w

**Subject:** Sticky Note  
**Page Label:** 19  
**Author:** Michael E. Johnson (mijohnson@nd.gov)  
**Date:** 5/20/2022 9:02:27 AM  
**Status:**  
**Color:** ■  
**Layer:**  
**Space:**

When does this JD expire?



**Subject:** Re: Sticky Note  
**Page Label:** 19  
**Author:** aruud  
**Date:** 6/6/2022 6:42:12 AM  
**Status:**  
**Color:** ■  
**Layer:**  
**Space:**

The approved JD expires after 5 years (December 12, 2022).

---

20 (1)



**Subject:** Sticky Note  
**Page Label:** 20  
**Author:** Sengaroun Marohl (smarohl@nd.gov)  
**Date:** 5/31/2022 2:19:52 PM  
**Status:**  
**Color:** ■  
**Layer:**  
**Space:**

Please include appendix for estimate cost for each roundabout option.



**Subject:** Re: Sticky Note  
**Page Label:** 20  
**Author:** aruud  
**Date:** 6/3/2022 5:12:11 PM  
**Status:**  
**Color:** ■  
**Layer:**  
**Space:**

Appendix D added.



**Appendix D**  
**Opinion of Probable Cost**

Optional Work Item 6: Sheyenne St Roundabout

2x1 Roundabout

Spec	Code	Unit	Description	Unit Price	Eligible Quantity	Eligible Cost	City Quantity	City Cost	Total Cost
103	100	L SUM	CONTRACT BOND	\$ 8,000.00	1	\$ 8,000.00		\$ -	\$ 8,000.00
202	130	LF	REMOVAL OF CURB & GUTTER	\$ 12.00	574	\$ 6,888.00		\$ -	\$ 6,888.00
203	101	CY	COMMON EXCAVATION-TYPE A	\$ 20.00	50	\$ 1,000.00		\$ -	\$ 1,000.00
203	109	CY	TOPSOIL	\$ 35.00	1,210	\$ 42,350.00		\$ -	\$ 42,350.00
203	138	CY	COMMON EXCAVATION-SUBCUT	\$ 25.00	1,186	\$ 29,650.00		\$ -	\$ 29,650.00
203	140	CY	BORROW-EXCAVATION	\$ 20.00	5,000	\$ 100,000.00		\$ -	\$ 100,000.00
230	165	STA	SUBGRADE PREPARATION-TYPE A-12IN	\$ 3,000.00	22.0	\$ 66,000.00		\$ -	\$ 66,000.00
251	300	ACRE	SEEDING CLASS III	\$ 6,200.00	1.5	\$ 9,300.00		\$ -	\$ 9,300.00
251	2000	ACRE	TEMPORARY COVER CROP	\$ 150.00	1.5	\$ 225.00		\$ -	\$ 225.00
253	201	ACRE	HYDRAULIC MULCH	\$ 3,000.00	1.5	\$ 4,500.00		\$ -	\$ 4,500.00
253	301	ACRE	BONDED FIBER MATRIX	\$ 4,500.00	1.5	\$ 6,750.00		\$ -	\$ 6,750.00
260	200	LF	SILT FENCE SUPPORTED	\$ 5.00	2,000	\$ 10,000.00		\$ -	\$ 10,000.00
260	201	LF	REMOVE SILT FENCE SUPPORTED	\$ 1.50	2,000	\$ 3,000.00		\$ -	\$ 3,000.00
302	101	CY	SALVAGED BASE COURSE	\$ 55.00	1,229	\$ 67,595.00		\$ -	\$ 67,595.00
550	310	SY	10IN NON REINF CONCRETE PVMT CL AE-DOWELED	\$ 56.00	1,604	\$ 89,824.00		\$ -	\$ 89,824.00
702	100	L SUM	MOBILIZATION	\$ 30,000.00	1	\$ 30,000.00		\$ -	\$ 30,000.00
704		L SUM	TRAFFIC CONTROL	\$ 20,000.00	1	\$ 20,000.00		\$ -	\$ 20,000.00
709	151	SY	GEOSYNTHETIC MATERIAL TYPE R1	\$ 2.50	3,036	\$ 7,590.00		\$ -	\$ 7,590.00
714		L SUM	STORM SEWER	\$ 30,000.00	0.5	\$ 15,000.00		\$ -	\$ 15,000.00
714	9696	LF	EDGEDRAIN NON PERMEABLE BASE	\$ 10.00	2,171	\$ 21,710.00		\$ -	\$ 21,710.00
748	140	LF	CURB & GUTTER-TYPE I	\$ 30.00	2,171	\$ 65,130.00		\$ -	\$ 65,130.00
750	30	SY	PIGMENTED IMPRINTED CONCRETE	\$ 125.00	588	\$ 73,500.00		\$ -	\$ 73,500.00
750	125	SY	SIDEWALK CONCRETE 6IN	\$ 55.00	483	\$ 26,565.00		\$ -	\$ 26,565.00
750	140	SY	SIDEWALK CONCRETE 6IN	\$ 60.00	248	\$ 14,880.00		\$ -	\$ 14,880.00
750	210	SY	CONCRETE MEDIAN NOSE PAVING	\$ 100.00	31	\$ 3,100.00		\$ -	\$ 3,100.00
750	2115	SF	DETECTABLE WARNING PANELS	\$ 55.00	200	\$ 11,000.00		\$ -	\$ 11,000.00
754		L SUM	SIGNING	\$ 2,500.00	1	\$ 2,500.00		\$ -	\$ 2,500.00
762		L SUM	PAVEMENT MARKINGS	\$ 2,500.00	1	\$ 2,500.00		\$ -	\$ 2,500.00
770		L SUM	LIGHTING SYSTEM	\$ 62,500.00	1	\$ 62,500.00		\$ -	\$ 62,500.00
<b>Subtotal</b>						<b>\$ 801,057.00</b>		<b>\$ -</b>	<b>\$ 801,057.00</b>
Contingency (20%)						<b>\$ 160,211.40</b>		<b>\$ -</b>	<b>\$ 160,211.40</b>
<b>Total</b>						<b>\$ 961,268.40</b>		<b>\$ -</b>	<b>\$ 961,268.40</b>

Full Two-Lane Roundabout

Spec	Code	Unit	Description	Unit Price	Eligible Quantity	Eligible Cost	City Quantity	City Cost	Total Cost
103	100	L SUM	CONTRACT BOND	\$ 15,000.00	0.5	\$ 7,500.00	0.5	\$ 7,500.00	\$ 15,000.00
202	130	LF	REMOVAL OF CURB & GUTTER	\$ 12.00	574	\$ 6,888.00	217	\$ 2,604.00	\$ 9,492.00
203	101	CY	COMMON EXCAVATION-TYPE A	\$ 20.00	50	\$ 1,000.00	50	\$ 1,000.00	\$ 2,000.00
203	109	CY	TOPSOIL	\$ 35.00	1,210	\$ 42,350.00	887	\$ 31,045.00	\$ 73,395.00
203	138	CY	COMMON EXCAVATION-SUBCUT	\$ 25.00	1,186	\$ 29,650.00	653	\$ 16,325.00	\$ 45,975.00
203	140	CY	BORROW-EXCAVATION	\$ 20.00	5,000	\$ 100,000.00	3,500	\$ 70,000.00	\$ 170,000.00
230	165	STA	SUBGRADE PREPARATION-TYPE A-12IN	\$ 3,000.00	22.0	\$ 66,000.00	15	\$ 45,000.00	\$ 111,000.00
251	300	ACRE	SEEDING CLASS III	\$ 6,200.00	1.5	\$ 9,300.00	1.1	\$ 6,820.00	\$ 16,120.00
251	2000	ACRE	TEMPORARY COVER CROP	\$ 150.00	1.5	\$ 225.00	1.1	\$ 165.00	\$ 390.00
253	201	ACRE	HYDRAULIC MULCH	\$ 3,000.00	1.5	\$ 4,500.00	1.1	\$ 3,300.00	\$ 7,800.00
253	301	ACRE	BONDED FIBER MATRIX	\$ 4,500.00	1.5	\$ 6,750.00	1.1	\$ 4,950.00	\$ 11,700.00
260	200	LF	SILT FENCE SUPPORTED	\$ 5.00	2,000	\$ 10,000.00	1,500	\$ 7,500.00	\$ 17,500.00
260	201	LF	REMOVE SILT FENCE SUPPORTED	\$ 1.50	2,000	\$ 3,000.00	1,500	\$ 2,250.00	\$ 5,250.00
302	101	CY	SALVAGED BASE COURSE	\$ 55.00	1,229	\$ 67,595.00	869	\$ 47,795.00	\$ 115,390.00
550	310	SY	10IN NON REINF CONCRETE PVMT CL AE-DOWELED	\$ 56.00	1,604	\$ 89,824.00	1,701	\$ 95,256.00	\$ 185,080.00
702	100	L SUM	MOBILIZATION	\$ 30,000.00	1	\$ 30,000.00	0.5	\$ 15,000.00	\$ 45,000.00
704		L SUM	TRAFFIC CONTROL	\$ 20,000.00	1	\$ 20,000.00	0.5	\$ 10,000.00	\$ 30,000.00
709	151	SY	GEOSYNTHETIC MATERIAL TYPE R1	\$ 2.50	3,036	\$ 7,590.00	2,482	\$ 6,205.00	\$ 13,795.00
714		L SUM	STORM SEWER	\$ 30,000.00	0.5	\$ 15,000.00	0.5	\$ 15,000.00	\$ 30,000.00
714	9696	LF	EDGEDRAIN NON PERMEABLE BASE	\$ 10.00	2,171	\$ 21,710.00	1,518	\$ 15,180.00	\$ 36,890.00
748	140	LF	CURB & GUTTER-TYPE I	\$ 30.00	2,171	\$ 65,130.00	1,518	\$ 45,540.00	\$ 110,670.00
748	9999	LF	TEMPORARY CURB	\$ 55.00	0	\$ -	1,908	\$ 104,940.00	\$ 104,940.00
750	30	SY	PIGMENTED IMPRINTED CONCRETE	\$ 125.00	588	\$ 73,500.00	125	\$ 15,625.00	\$ 89,125.00
750	125	SY	SIDEWALK CONCRETE 6IN	\$ 55.00	483	\$ 26,565.00	161	\$ 8,855.00	\$ 35,420.00
750	140	SY	SIDEWALK CONCRETE 6IN	\$ 60.00	248	\$ 14,880.00	108	\$ 6,480.00	\$ 21,360.00
750	210	SY	CONCRETE MEDIAN NOSE PAVING	\$ 100.00	31	\$ 3,100.00	34	\$ 3,400.00	\$ 6,500.00
750	2115	SF	DETECTABLE WARNING PANELS	\$ 55.00	200	\$ 11,000.00	120	\$ 6,600.00	\$ 17,600.00
754		L SUM	SIGNING	\$ 5,000.00	0.5	\$ 2,500.00	0.5	\$ 2,500.00	\$ 5,000.00
762		L SUM	PAVEMENT MARKINGS	\$ 5,000.00	0.5	\$ 2,500.00	0.5	\$ 2,500.00	\$ 5,000.00
770		L SUM	LIGHTING SYSTEM	\$ 125,000.00	0.5	\$ 62,500.00	0.5	\$ 62,500.00	\$ 125,000.00
<b>Subtotal</b>						<b>\$ 800,557.00</b>		<b>\$ 661,835.00</b>	<b>\$ 1,462,392.00</b>
Contingency (20%)						<b>\$ 160,111.40</b>		<b>\$ 132,367.00</b>	<b>\$ 292,478.40</b>
<b>Total</b>						<b>\$ 960,668.40</b>		<b>\$ 794,202.00</b>	<b>\$ 1,754,870.40</b>

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REPORT OF ACTION

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Improvement District No. BN-22-F1 Type: Early Building Permit and Application

Location: The Rye at Tillstone Apartment Buildings Date of Hearing: 6/6/2022
Located within The District of Fargo Fourth Addition

Table with 2 columns: Routing, Date. Rows include City Commission (6/13/2022), PWPEC File (X), and Project File (Jason Satterlund).

The Committee reviewed the accompanying correspondence from Project Manager, Jason Satterlund, regarding an Early Building Permit and Application for The Rye at Tillstone Apartment Buildings located within the plat, The District of Fargo Fourth Addition, with proposed addresses of 3740 55th Avenue South, 3750 55th Avenue South, and 5676 38th Avenue South.

Bids for Improvement District No. BN-22-F1 (New Utility and Paving Construction) were awarded by City Commission on May 31, 2022. BN-22-F1 has a Substantial Completion Date of August 1, 2023, which includes construction of paving in front of this facility.

The applicant has filled out the application and agreement. The applicant has worked with Engineering and agreed to provide their own access throughout construction.

As part of the early building permit, the applicant has provided a check that will provide a deposit that could be used to repair any impacts from the site construction to the municipal projects. This lot has 1,653.31' of frontage; therefore, their deposit will be \$33,066.20.

The Committee discussed the request. Chief Dirksen commented that with limited access in this addition, this would be the only Early Build Permit that the Fire Department could support.

Staff is recommending approval of the Early Building Permit and Application.

On a motion by Bruce Grubb, seconded by Ben Dow, the Committee voted to recommend approval of the Early Building Permit and Application for The Rye at Tillstone Apartments Buildings located within The District of Fargo Fourth Addition.

RECOMMENDED MOTION

Concur with recommendations of PWPEC and approve the Early Building Permit request for The Rye at Tillstone Apartments located at 3740 55th Avenue South, 3750 55th Avenue South, and 5676 38th Street South located within The District of Fargo Fourth Addition.

PROJECT FINANCING INFORMATION:

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

Table with 2 columns: Question, Yes/No. Rows include Developer meets City policy for payment of delinquent specials, Agreement for payment of specials required of developer, and Letter of Credit required (per policy approved 5-28-13).

COMMITTEE

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

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

ATTEST:

C: Kristi Olson

  
Brenda E. Derrig, P.E.  
City Engineer

## Memorandum

**To:** Members of PWPEC

**From:** Jason Satterlund, Project Manager

**Date:** June 1, 2022

**Re:** Improvement District No. BN-22-F1 - Early Building Permit and Application for The Rye at Tillstone Apartment Buildings - Located within The District of Fargo Fourth Addition.

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**Background:**

Attached you will find a request for an early building permit application and early building permit agreement from the Developer for their buildings located within the plat The District of Fargo Fourth Addition with proposed addresses of 3740 55<sup>th</sup> Avenue South, 3750 55<sup>th</sup> Avenue South, and 5676 38<sup>th</sup> Avenue South.

Bids for Improvement District No. BN-22-F1 (New Utility and Paving Construction) were awarded by City Commission on May 31, 2022. BN-22-F1 has a Substantial Completion Date of August 1, 2023, which includes construction of paving in front of this facility.

The applicant has filled out the application and agreement. The applicant has worked with Engineering and agreed to provide their own access throughout construction.

As part of the early building permit, the applicant has provided a check that will provide a deposit that could be used to repair any impacts from the site construction to the municipal projects. This lot has 1,653.31' of frontage; therefore, their deposit will be \$33,066.20.

**Recommended Motion:**

I recommend that the Public Works Project Evaluation Committee approve the early building permit request for The Rye at Tillstone apartments located at 3740 55<sup>th</sup> Avenue South, 3750 55<sup>th</sup> Avenue South, and 5676 38<sup>th</sup> Street South located within The District of Fargo Fourth Addition.

JTS/klb

C: Brenda Derrig  
Christine Goldader

AGREEMENT

EARLY BUILDING PERMIT

**THIS AGREEMENT**, made and entered into this 27 day of April, 2022, by and between **THE CITY OF FARGO, NORTH DAKOTA**, a municipal corporation, 225 4<sup>th</sup> Street North, Fargo, North Dakota 58102, hereinafter referred to as "City", and the undersigned person, firm or corporation, hereinafter referred to as "Builder".

**WITNESSETH:**

**WHEREAS**, City does not ordinarily issue building permits until sewer and water main connections are functional; and,

**WHEREAS**, for large building projects (commercial, industrial and multi-family [8-plex or greater]), it has been determined that permits may be issued prior to completion of said underground utilities; and,

**WHEREAS**, installation of utilities and paving can take place during the time said building projects are under way;

**WHEREAS**, City requires a cash deposit as one of the conditions for granting early building permits, said deposit to be utilized, if necessary, to reimburse City for any costs relating to Builder's, his or its developers', agents' or subcontractors' activities under the early building permit; and,

**WHEREAS**, City requires an agreement with Builder relative to the issuance of early building permits.

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

1. City has agreed, or by execution of this agreement, does agree, that an early building permit be issued to Builder for the project therein stated and as listed below.

2. In consideration of the issuance of said early building permit for the project therein stated, Builder agrees to deposit with City a cash deposit or letter of credit in the minimum amount of Five Thousand Dollars (\$5,000.00) or \$20.00 per front foot of lot covered by the permit, whichever sum is greater. Said cash deposit may be utilized by City to reimburse City for any building site impact or any impact the building project may have on municipal projects, including utilities or paving. Said cash deposit may, among other things, be used for corrective measures such as debris removal, drain maintenance, damages caused by unauthorized access, and cleaning

adjacent streets impacted by building construction. It is specifically understood and agreed by Builder that such list is not exclusive and said deposit may be used for any costs or damages City may incur due to Builder's activities under the early building permit forming the subject of this agreement.

3. Builder expressly agrees and recognizes the City of Fargo policy on early building permit waivers. Builder recognizes and agrees that the only eligible building projects for such waivers are commercial, industrial and multi-family (8-plex or greater). Builder agrees to or has furnished to City a building site plan drawing showing access points and exact service utility connections required, such as sanitary sewer, water sewer service, storm sewer and the like. Builder has indicated or will indicate specifically the following:

- a. Site access to the building that will not impact municipal utilities/paving installation.
- b. Temporary measures to address nonfunctional sewer, water and storm sewer on the building site.
- c. Building construction and occupancy schedule.
- d. Contact person for notification including name, address and phone.

4. City agrees to provide 48-hour notification to Builder prior to project start-up for installation of utilities or paving so as to allow Builder to clear right-of-way for such public construction. Builder agrees, however, that during construction, City shall only be required to give a 2-hour notification for various aspects of the project.

5. Builder agrees to indemnify and hold City harmless for any delays in municipal projects (i.e. utilities or paving) resulting from Builder's activities including, but not limited to, site interference, storage of construction materials, or the like.

6. Builder understands and accepts all risks of proceeding with the building project in advance of the installation and operation of the municipal improvements. Builder waives, for itself and successors, any and all claims for damages against City as a result of any delay in the

installation of the municipal projects, for whatever reason. City will enter into a standard contract for the municipal project; Builder is not a third party beneficiary of that contract and has no rights thereunder.

7. Builder agrees to acquire any easements deemed necessary for site access to the building site and City shall have no responsibility in this regard. Builder further understands and agrees that without installation of streets there is limited access to the site for fire and police protection. Builder agrees to be responsible for any access limitations resulting from the same.

8. Any cash deposit or letter of credit remaining unused upon completion of the paving project (thus completing the public construction) shall be returned to Builder upon application.

9. The project and project location are as follows:

Description: Tillstone Apartments and clubhouse

Location: 3740 55<sup>th</sup> Avenue South, 3750 55<sup>th</sup> Avenue South, 5676 38<sup>th</sup> Street South

**IN WITNESS WHEREOF**, the parties have entered into this agreement the day and year first above written.

ATTEST:

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

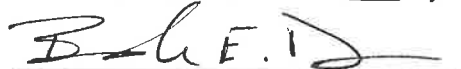
Approved by Fargo City Commission on the \_\_\_\_ day of \_\_\_\_\_, 2022.

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

Approved by Public Works Projects Evaluation Committee on the \_\_\_\_ day of \_\_\_\_, 2022.

6-6-2022

Date



\_\_\_\_\_  
Brenda Derrig, City Engineer

04/27/2022

Date

Ben Randklev, APM

Builder, Title



APPLICATION FOR EARLY BUILDING PERMIT

The City of Fargo has agreed to allow building activity prior to completion of municipal utilities as listed below:

1. General Location: 55<sup>th</sup> Ave. S., 38<sup>th</sup> St. S., Tillstone Drive
2. Utility Completion Date (Sanitary Sewer, Water, Storm): October 14, 2022
  - a. Occupancy will not be allowed prior to this date.
3. Paving Completion Date : October 14, 2022
  - a. City accepts no responsibility for site access prior to this date.
4. Site Plan Project Engineer: Brian Pattengale, Houston Engineering  
Phone: 701-499-2071  
Email: bpattengale@houstoneng.com

**Request for Building Permit**

- A. Location: Tillstone Drive & 38<sup>th</sup> Street South  
Lot: Lot 2  
Block: Block 2  
Addition: The District of Fargo 2<sup>nd</sup> Addition  
Address : 3740 & 3750 55<sup>th</sup> Ave. S. (to be platted as Lot 3, Block 1 The District of Fargo Fourth Addition, 5676 38<sup>th</sup> St. S. (to be platted as Lot 4, Block 1 The District of Fargo Fourth Addition).  
Permit Request – Footage Adjacent to Infrastructure Request (LF): 1653.31 LF
  - a. Minimum amount of Five Thousand Dollars (\$5,000.00) or \$20.00 per foot adjacent to the infrastructure request covered by the permit application, whichever is greater.

**B. Required Documents**

1. Fill out Application for Early Building Permit.
2. Submit complete site plan drawings showing detailed locations of all utility stub outs (sanitary sewer, water, and storm sewer) and driveways.
3. Building and utility stub out elevations

4. As-built drawings showing actual utility stub out locations and elevations (after installation).

C. Provisions

1. Access

- a. Access to construction sites will not be on the public right-of-way under most conditions during the sewer and water construction. The City contractor will not be required to maintain access for the builders. Also, parking on the public right-of-way will not be permitted. The City contractor will have total control of the right-of-way during sewer and water construction.
- b. City accepts no responsibility for site access prior to paving completion date.

2. Sewer and Water Services

- a. Builders will not be allowed to hook up to the City sewer and water services until after the project is complete.
- b. Builders shall stub out sewer and water services a distance of not to exceed 5-feet from building.
- c. Builders to verify depth and location of sewer and water service stub outs for buildings with City Engineering Department. As-built drawings required.
- d. After City mains have been installed and tested, the builder shall complete service installation and connections along with appropriate permits and inspections. The City contractor will not hook up sewer and water services to building stub outs. This is not part of his contract. The builder may privately negotiate such work with City contractor. Builder and contractor accept responsibility for necessary permits and inspections.

3. Occupancy will not be allowed until after utility installation is complete. Access prior to paving completion shall be the sole responsibility of builder/occupant.
4. Other utilities such as gas, electric, telephone and cable TV will not be installed until municipal utility installation is complete.

Application for Early Building Permit  
Page 3

D. Signatures (All required)

	Property Owner	Builder	Company Connecting to COF Infrastructure
Name	The Rye at Tillstone Group, LLC	Enclave Construction	Fox Underground
Address	300 23 <sup>rd</sup> Ave #, Suite 300, West Fargo, ND 58078	300 23 <sup>rd</sup> Ave #, Suite 300, West Fargo, ND 58078	1860 Sheyenne Lp N, Fargo, ND 58102
Telephone	701-478-4300	701-478-4300	701-492-2778
Email	<a href="mailto:timg@enclavecompanies.com">timg@enclavecompanies.com</a>	<a href="mailto:benr@enclavecompanies.com">benr@enclavecompanies.com</a>	<a href="mailto:guy@foxunderground.net">guy@foxunderground.net</a>
Signature			
Date	04/20/2022	04/20/2022	4-26-2022

E. Approval

City of Fargo Project Engineer:



Date: 6/9/22

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PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Improvement District No. MS-17-A0 (PN-19-B) Type: Contract Amendment #6

Location: 52 Ave S – 45 St to Sheyenne St Date of Hearing: 6/6/2022

<u>Routing</u>	<u>Date</u>
City Commission	<u>6/13/2022</u>
PWPEC File	<u>X</u>
Project File	<u>Jeremy Gorden</u>

The Committee reviewed the accompanying correspondence from Division Engineer, Jeremy Gorden, related to a Contract Amendment submitted by Houston Engineering in the amount of \$116,196.00, for additional work.

Staff is recommending approval of Contract Amendment #6 in the amount of \$116,196.00, bringing the total contract amount to \$1,296,160.99.

On a motion by Ben Dow, seconded by Steve Sprague, the Committee voted to recommend approval of Contract Amendment #6 to Houston Engineering.

RECOMMENDED MOTION

Concur with the recommendation of PWPEC and approve Contract Amendment #6 to Houston Engineering in the amount of \$116,196.00, bringing the total contract amount to \$1,296,160.99 to Houston Engineering.


PROJECT FINANCING INFORMATION:

Recommended source of funding for project: <u>Sales Tax Funds &amp; Special Assessments</u>	<u>Yes</u>	<u>No</u>
Developer meets City policy for payment of delinquent specials	<u>N/A</u>	<u>N/A</u>
Agreement for payment of specials required of developer	<u>N/A</u>	<u>N/A</u>
Letter of Credit required (per policy approved 5-28-13)	<u>N/A</u>	<u>N/A</u>

COMMITTEE

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

ATTEST:

  
 Brenda E. Derrig, P.E.  
 City Engineer

C: Kristi Olson

## Memorandum

**To:** Members of PWPEC

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

**Date:** June 3, 2022

**Re:** Project No. MS-17-A0 – Amendment #6  
52<sup>nd</sup> Avenue South – 45<sup>th</sup> Street to Sheyenne Street

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### **Background:**

Attached is Contract Amendment #6 with Houston Engineering for additional services for out-of-scope work on this project. The extra work is for additional design for the Sheyenne River Bridge. The extra work includes a variety of environmental and geometric constraints including incorporating fish passage and increasing the gate size, resulting in significantly more robust support structure for the gates and weir wall. Additional alternatives were also considered for the roundabout at 52nd Ave/Sheyenne Street including widening to a full two-lane roundabout and additional 2x1 lane configurations as requested to accommodate future growth in the area. The only active part of this contract is from 63<sup>rd</sup> Street to Sheyenne Street.

The Amendment is for **\$116,196**. I support approval of this scope of services and associated fee. This is a shared project with West Fargo and Cass County, and the funding of this additional work will be split out to all three of us at the end of the project.

Houston's contract value today is \$1,179,964, and this amendment will bring it to \$1,296,160.

### **Recommended Motion:**

Approval of Contract Amendment #6 from Houston Engineering for out of scope services associated with this project.

JMG/klb

Attachment

Fargo Corporate Office 701.237.5065 701.237.5101

1401 21st Avenue North Fargo ND 58102



PROFESSIONAL SERVICES

PROPOSAL AND AGREEMENT – AMENDMENT NO. 6

June 1, 2022

**Project:** HEI Cost Proposal Amendment 6  
52nd Ave S – West of 63<sup>rd</sup> St. to Sheyenne Street  
HE Project No. 6059-0158

**Client:** City of Fargo  
200 North 3<sup>rd</sup> Street  
Fargo, ND 58102  
Attn: Jeremy Gorden

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

**Description of Work:** This contract amendment is to provide additional services for out-of-scope work for 52<sup>nd</sup> Ave. from Sheyenne St to 63<sup>rd</sup> St. The 52<sup>nd</sup> Ave/Sheyenne River bridge has changed significantly since the original budget estimation due to a variety of environmental and geometric constraints, including incorporating fish passage and increasing the gate size, resulting in significantly more robust support structure for the gates and weir wall. Additional alternatives were also considered for the roundabout at 52<sup>nd</sup> Ave/Sheyenne St including widening to a full two-lane roundabout and additional 2x1 lane configurations as requested to accommodate future growth in the area. Due to recent growth projections in this region, most roundabout configurations are expected to fail sometime after 2025. In order to minimize impacts to traffic in the near future, it was requested to evaluate building a full two-lane roundabout as part of the project and install temporary delineation to reduce the number of lanes in the interim until the full build is needed based on traffic operations. Final decision on roundabout construction (2x1 vs. 2x2) will be determined by the City.

**Fee:** The total estimated fee for the above-described tasks is \$110,486 as summarized in Attachment 1.

**Conditions:** Services will be invoiced monthly and are due and payable upon receipt.



Limitation of Liability: Houston Engineering, Inc. agrees to indemnify and save the client harmless from any loss, cost, or expense including attorney fees, claimed by third parties for property damage or bodily injury, including death, caused by the negligence of Houston Engineering, Inc. or its employees in connection with Houston Engineering, Inc.'s services. The client agrees to indemnify and save Houston Engineering, Inc. harmless from any loss, cost, or expense, including attorney fees, claimed by third parties for property damage or bodily injury including death, caused by the negligence of the client or its employees in connection with the operations of the client. If the negligence of both Houston Engineering, Inc., and the client (or a person identified above for whom each is liable) is the cause of such damage or injury, the loss, cost, or expense shall be shared between Houston Engineering, Inc. and the client in proportion to their relative degrees of negligence and the right of indemnity shall apply for such proportion. Neither party hereto shall be liable to the other for incidental, special or indirect damages nor shall Houston Engineering, Inc. be liable for any cost or expense that provides betterment, upgrade, or enhancement of the project.

Houston Engineering, Inc. hereby proposes, and the client hereby authorizes, the above-described services to be performed by Houston Engineering, Inc. under the terms and conditions set forth.

Authorization:

Proposal: Houston Engineering, Inc.

Client: City of Fargo

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

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

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

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

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

1.0 Project Administration

Meetings and coordination with City of Fargo, West Fargo, North Dakota Department of Transportation (NDDOT) and Cass County to discuss additional roundabout alternatives and overall coordination. Expansion of the scope of work at the roundabout also required additional coordination with the NDDOT Traffic Division. Multiple meetings were added to discuss geometry and path forward for design and construction. See Section 3.0 for additional description of added work.

The original design was quoted in 2018 but much of the design was completed in 2022. Four years of inflation and rate increases eroded the available budget.

Assist City of West Fargo with ROW acquisition. Not in scope to assist with acquisition but City requested assistance to expedite process.

Due to the multiple iterations of the traffic operations report, our subconsultant was over the original budget due to the unforeseen change to constructing a 2x2 roundabout and the additional analysis required as part of that change.

Est. Cost for tasks in 1.0: : \$25,680

2.0 52nd Ave/Sheyenne River Bridge Design

2.1 Gated Control Structure

Gate size was increased in height and width over the existing gate size to aid in water intake for the City. The increased gate size resulted in a substantial increase in the substructure required to support the gate. This required advanced analysis and design to accommodate the unique loading conditions as well as plan details to integrate into the bridge plans.

Required additional coordination with gate manufacturers to verify gate availability, operations, and unique details to be incorporated in the bridge plans. Gates of this size are difficult to manufacture so required significant coordination and outreach with various suppliers to determine availability.

Required additional coordination efforts with City of Fargo Consultant and Water Department to incorporate gate controls and electrical required for gate actuators.



Page 4

Est. Cost for tasks in 2.1: : \$21,910

## 2.2 Revisions due to Fish Passage

Incorporation of fish passage over weir wall through end spans of bridge during normal gate operations (gates closed). Fish passage is not present on the existing bridge and was not anticipated during preliminary budget preparation. Incorporation of fish passage required significant detailed design and hydraulic modeling to add to the bridge.

Due to addition of significant fill in end spans, additional analysis and revisions to hydraulic model were required. Multiple iterations of the hydraulic report were required to provide additional information to the ND Department of Water incorporating fish passage after the preliminary hydraulics were already completed for the construction and sovereign lands permits.

The revised hydraulic model required additional waterway opening area in the middle span of the bridge which required significant revisions to bridge geometrics, gate sizes, and gate and weir alignment.

Due to addition of fill in end spans for fish ramps, advanced analysis was required for design of pier walls retaining the fill.

Est. Cost for tasks in 2.2: : \$22,760

Total Est. Cost for tasks 2.1 through 2.2: \$44,670

## 3.0 Roundabout Revisions

3.1 Previously it was requested to expand the existing south half of the roundabout to create additional capacity for west to east traffic. Effort associated with this task was included in Addendum 5 of the Contract. Upon review of this alternative, analysis for additional alternatives was requested. This included review of the following:

- 2x1 roundabout increasing capacity for north to south traffic
- Construction of two-lane roundabout now with temporary delineation to allow the roundabout to perform as a 2x1 with increased capacity for west to east traffic.

These requested alternatives required additional preliminary roundabout layouts to be created as well as additional work on temporary delineation methods.

Full two-lane layouts were prepared, including submitting a revised DCE with a 2x2 layout proposed. Since that time, West, Fargo, Cass County, and Fargo have requested to go back to the original 2x1 layout due to issues with maintenance with the temporary traffic control. The DCE amendment will need to be revised again along with redoing the design from the currently designed 2x2 roundabout. With the decision to evaluate the two-lane roundabout with temporary delineation, additional efforts will be required beyond those anticipated when Addendum 5 was developed to incorporate the improvements into the final design. These tasks include:

- Detailed design and grading of all four quadrants of the intersection.
- Typical sections for the additional legs of the roundabout
- Plan and profile sheets for all four quadrants of the intersection as well as inscribed circle of the roundabout
- Design of ADA facilities throughout the roundabout
- Additional storm sewer design and analysis
- Additional erosion control elements due to the expansion of the project
- Additional temporary traffic control measures required to construct the four quadrants of the intersection as well as expand the inscribed circle
- Permanent signage and pavement
- Determination of existing right of way limits on the west half of the roundabout
- Determination of right of way impacts on the west half of the roundabout
- Jointing plans, cross sections and other details required for construction of the roundabout.
- Revised Amended DCE back 2x1 recommendation after submittal with 2x2 as preferred constructed option. DCE is currently in NDDOT review.

Total Costs to date and remaining work for Task 3.1: \$45,846

**Total Amendment Request: \$ 116,196**

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June 9, 2022

Board of City Commissioners  
City of Fargo  
200 North Third Street  
Fargo, ND 58102

Re: Access Easements – Southeast Cass Water Resource District  
Improvement District #BN-22-C1

Dear Commissioners:

Accompanying for City Commission review and approval are (2) Access Easements with the Southeast Water Resource District in association with Improvement District #BN-22-C1.

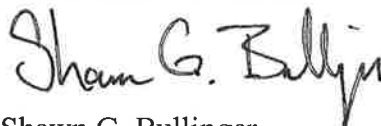
45<sup>th</sup> Street North & 32<sup>nd</sup> Avenue North

RECOMMENDED MOTION:

Approve (2) Access Easements with the Southeast Cass Water Resource District.

Please return the signed originals.

Respectfully submitted,



Shawn G. Bullinger  
Land Acquisition Specialist

C: Nathan Boerboom

**ACCESS EASEMENT**  
(Street Easement)

THIS EASEMENT is made this 10<sup>th</sup> day of MAY, 2022, by the Southeast Cass Water Resource District, a North Dakota political subdivision, with a post office address of 1201 Main Avenue West, West Fargo, North Dakota 58078-1301 (the "District"); and the City of Fargo, a North Dakota municipal corporation, with a post office address of 225 - 4th Street North, Fargo, North Dakota 58102 (the "City").

**RECITALS**

A. The District owns, operates, and maintains Cass County Drain No. 40 ("Drain 40") a legal assessment drain.

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

C. The City owns, operates, and maintains 45th Street (the "City Street"); a portion of the City Street is within LAVERNE'S 2ND ADDITION, and runs parallel to Drain 40, with portions of the City Street on the District's Drain 40 right of way.

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

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

## AGREEMENT

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

See survey attached as **Exhibit A.**

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

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

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

4. **No Unreasonable Interference.** The District will not unreasonably interfere with the City’s easement rights under this Easement. However, the District’s priority use of Drain 40 for flood protection or other emergency purposes may require and include temporary disruptions or interference with the City Street. The District will use reasonable care to avoid any damages to the City Street and related appurtenances; however, the District will not be liable or responsible for any damages resulting from any construction, cleaning, inspection, reconstruction, modification, operation, maintenance, repair, modification, or improvement of Drain 40 by the District, its officers, agents, representatives, employees, or contractors.

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

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

b. The City will operate and maintain the City Street and related appurtenances at its sole cost.

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

d. The City will design and construct any and all improvements and required maintenance on the City Street in a manner that ensures adequate drainage of the City Street, with a finished grade that drains the City Street and shoulders, and that does not result in ponding in or on Drain 40.

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

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

g. The City will promptly cease any activity and remove any structure or obstruction that interferes with Drain 40 or the District's use of the Easement Property, at the City's sole cost.

6. **Term.** The rights granted under this Easement are permanent and will only terminate if necessary to protect the integrity of Drain 40; as necessary to comply with any laws, rules, regulations, requirements, or directives of any applicable federal or state agency with regulatory jurisdiction over Drain 40; or in the event of any default by the City not remedied within a reasonable time. In the event of any termination, the District will record an Affidavit of Termination with the Cass County Recorder's Office, and the City will remove any improvements to the City Street, at the City's sole cost.

7. **Indemnity.** The City will release, defend, indemnify, protect, and hold harmless the District and the District's officers, agents, representatives, employees, and contractors from and against any and all claims, actions, administrative proceedings, judgments, damages, penalties, fines, costs, liabilities, interests, or losses, including costs, expenses, and attorneys' fees, arising out of or as a result of the construction, inspection, maintenance, operation, alteration, repair, replacement, reconstruction, removal, or use of the City Street by the City or the City's officers, agents, representatives, employees, and contractors, and other invitees; any entry upon, use of, or access, ingress, and egress upon, over, or across the Easement Property by the City or the City's officers, agents, representatives, employees, and contractors, and other invitees; or any act, error, or omission of the City or the City's officers, agents, representatives, employees, and contractors, and other invitees, including any failure to perform under this Easement.

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

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

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

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

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

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

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

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

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

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

[Signatures appear on the following pages.]



*Southeast Cass Water Resource District  
City of Fargo  
Access Easement*

SOUTHEAST CASS WATER  
RESOURCE DISTRICT

By:

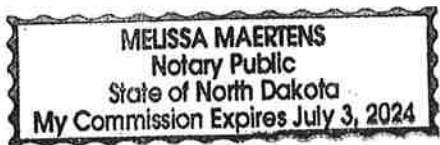
*[Handwritten Signature]*  
Dan Jacobson, Chairman

ATTEST:

*[Handwritten Signature]*  
Carol Harbeke Lewis  
Secretary-Treasurer

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

On this 10<sup>th</sup> day of May, 2022, before me, a Notary Public in and for said County and State, personally appeared Dan Jacobson and Carol Harbeke Lewis, to me known to be the Chair and Secretary-Treasurer, respectively, of the Southeast Cass Water Resource District, and who executed the foregoing instrument, and acknowledged to me that they executed the same on behalf of the Southeast Cass Water Resource District.



*[Handwritten Signature]*  
Notary Public, Cass County, ND

(SEAL)

CITY OF FARGO

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

ATTEST:

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

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

On this \_\_\_\_ day of \_\_\_\_\_, 2022, before me, a Notary Public in and for said County and State, personally appeared Timothy J. Mahoney, M.D., and Steven Sprague, to me known to be the Mayor and City Auditor, respectively, of the City of Fargo, and who executed the foregoing instrument, and acknowledged to me that they executed the same on behalf of the City of Fargo.

\_\_\_\_\_  
Notary Public, Cass County, ND

(SEAL)

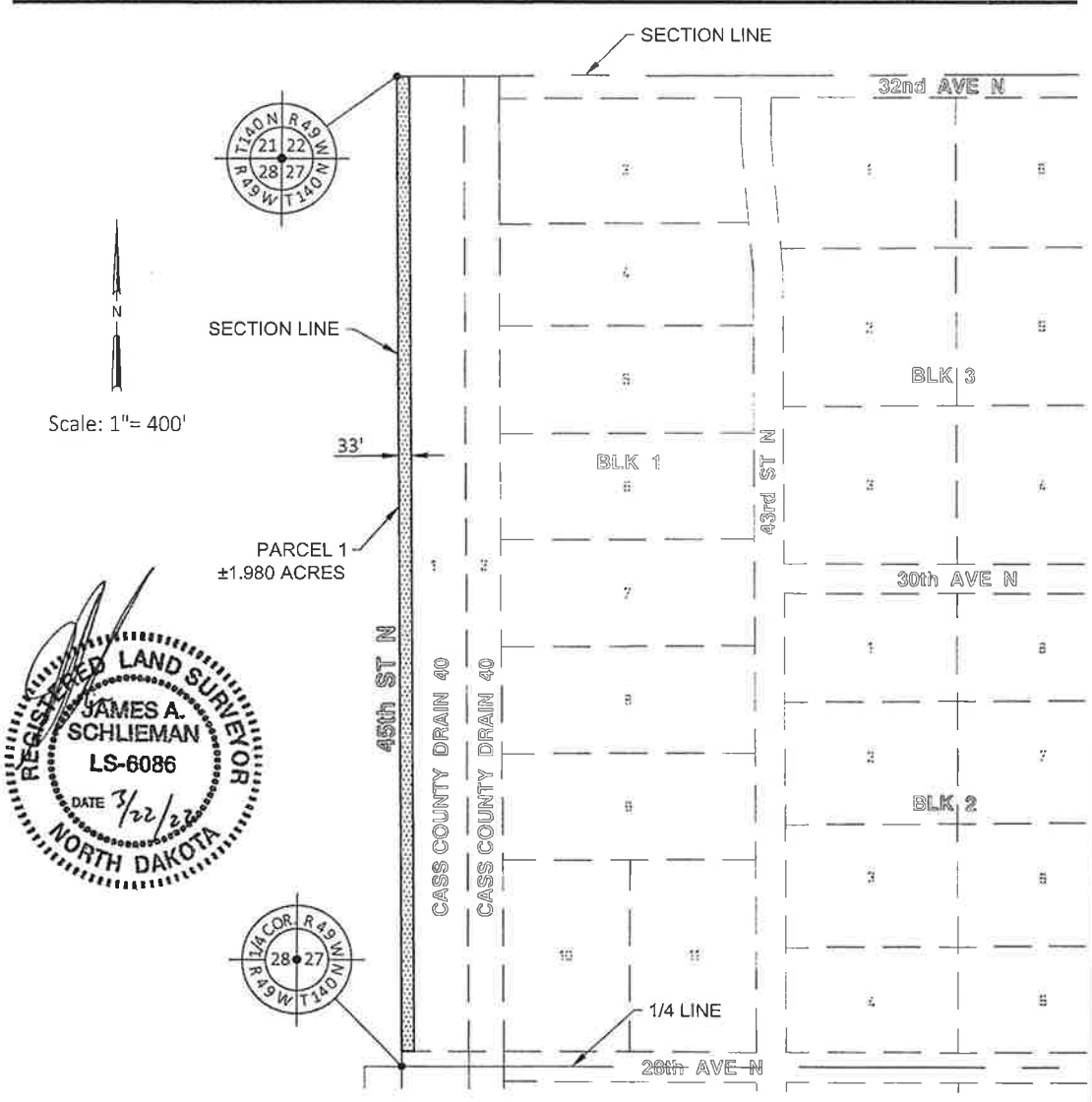
The legal descriptions contained in this document were drafted by:

James A. Schlieman, LS-6086  
Houston Engineering, Inc.  
1401 - 21st Avenue North  
Fargo, North Dakota 58102

**EXHIBIT A**

Legal Description and Survey of the Easement Property

PARCEL 1  
 PART OF LOT 1, BLOCK 1  
 LAVERNE'S 2ND ADDITION  
 CITY OF FARGO, CASS COUNTY  
 STATE OF NORTH DAKOTA



Scale: 1" = 400'

SECTION LINE

SECTION LINE

33'

PARCEL 1  
 ±1.980 ACRES

45th ST N

CASS COUNTY DRAIN 40

CASS COUNTY DRAIN 40

43rd ST N

32nd AVE N

BLK 3

30th AVE N

BLK 2

28th AVE N

1/4 LINE

REG. LAND SURVEYOR  
 JAMES A. SCHLIEMAN  
 LS-6086  
 DATE 3/22/22  
 NORTH DAKOTA

**Description: Parcel 1 (Permanent Easement):**

The West 33.00 feet of Lot 1, Block 1, Laverne's 2nd Addition to the City of Fargo, Cass County, North Dakota.  
 Said strip contains 1.980 acres, more or less.

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

NOTE: ALL BEARINGS GIVEN ARE  
 BASED ON THE CITY OF FARGO  
 GROUND COORDINATE  
 SYSTEM, DECEMBER 1992.



**EASEMENT EXHIBIT**

PROJECT NO.  
 8471-0002

PART OF LOT 1, BLOCK 1  
 LAVERNE'S 2ND ADDITION, CITY OF FARGO, CASS CO., ND

SHEET  
 1 OF 1

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**ACCESS EASEMENT**  
(Street Easement)

THIS EASEMENT is made this 10<sup>TH</sup> day of MAY, 2022, by the Southeast Cass Water Resource District, a North Dakota political subdivision, with a post office address of 1201 Main Avenue West, West Fargo, North Dakota 58078-1301 (the "District"); and the City of Fargo, a North Dakota municipal corporation, with a post office address of 225 - 4th Street North, Fargo, North Dakota 58102 (the "City").

**RECITALS**

A. The District owns, operates, and maintains Cass County Drain No. 40 ("Drain 40") a legal assessment drain.

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

C. The City owns, operates, and maintains 32nd Avenue North (the "City Street"); a portion of the City Street is within LAVERNE'S 2ND ADDITION, and intersects Drain 40 on portions of the District's Drain 40 right of way.

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

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

## AGREEMENT

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

See survey attached as **Exhibit A.**

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

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

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

4. **No Unreasonable Interference.** The District will not unreasonably interfere with the City’s easement rights under this Easement. However, the District’s priority use of Drain 40 for flood protection or other emergency purposes may require and include temporary disruptions or interference with the City Street. The District will use reasonable care to avoid any damages to the City Street and related appurtenances; however, the District will not be liable or responsible for any damages resulting from any construction, cleaning, inspection, reconstruction, modification, operation, maintenance, repair, modification, or improvement of Drain 40 by the District, its officers, agents, representatives, employees, or contractors.

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

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

b. The City will operate and maintain the City Street and related appurtenances at its sole cost.

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

d. The City will design and construct any and all improvements and required maintenance on the City Street in a manner that ensures adequate drainage of the City Street, with a finished grade that drains the City Street and shoulders, and that does not result in ponding in or on Drain 40.

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

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

g. The City will promptly cease any activity and remove any structure or obstruction that interferes with Drain 40 or the District's use of the Easement Property, at the City's sole cost.

6. **Term.** The rights granted under this Easement are permanent and will only terminate if necessary to protect the integrity of Drain 40; as necessary to comply with any laws, rules, regulations, requirements, or directives of any applicable federal or state agency with regulatory jurisdiction over Drain 40; or in the event of any default by the City not remedied within a reasonable time. In the event of any termination, the District will record an Affidavit of Termination with the Cass County Recorder's Office, and the City will remove any improvements to the City Street, at the City's sole cost.

7. **Indemnity.** The City will release, defend, indemnify, protect, and hold harmless the District and the District's officers, agents, representatives, employees, and contractors from and against any and all claims, actions, administrative proceedings, judgments, damages, penalties, fines, costs, liabilities, interests, or losses, including costs, expenses, and attorneys' fees, arising out of or as a result of the construction, inspection, maintenance, operation, alteration, repair, replacement, reconstruction, removal, or use of the City Street by the City or the City's officers, agents, representatives, employees, and contractors, and other invitees; any entry upon, use of, or access, ingress, and egress upon, over, or across the Easement Property by the City or the City's officers, agents, representatives, employees, and contractors, and other invitees; or any act, error, or omission of the City or the City's officers, agents, representatives, employees, and contractors, and other invitees, including any failure to perform under this Easement.

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

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

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

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

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



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

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

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

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

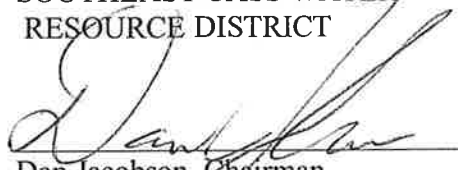
17. **Headings.** Headings in this Easement are for convenience only and will not be used to interpret or construe its provisions.

[Signatures appear on the following pages.]

*Southeast Cass Water Resource District  
City of Fargo  
Access Easement*

SOUTHEAST CASS WATER  
RESOURCE DISTRICT

By:

  
\_\_\_\_\_  
Dan Jacobson, Chairman

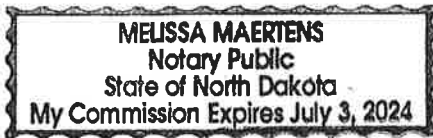
ATTEST:



Carol Harbeke Lewis  
Secretary-Treasurer

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

On this 10<sup>th</sup> day of May, 2022, before me, a Notary Public in and for said County and State, personally appeared Dan Jacobson and Carol Harbeke Lewis, to me known to be the Chair and Secretary-Treasurer, respectively, of the Southeast Cass Water Resource District, and who executed the foregoing instrument, and acknowledged to me that they executed the same on behalf of the Southeast Cass Water Resource District.



  
\_\_\_\_\_  
Notary Public, Cass County, ND

(SEAL)

CITY OF FARGO

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

ATTEST:

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

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

On this \_\_\_\_ day of \_\_\_\_\_, 2022, before me, a Notary Public in and for said County and State, personally appeared Timothy J. Mahoney, M.D., and Steven Sprague, to me known to be the Mayor and City Auditor, respectively, of the City of Fargo, and who executed the foregoing instrument, and acknowledged to me that they executed the same on behalf of the City of Fargo.

\_\_\_\_\_  
Notary Public, Cass County, ND

(SEAL)

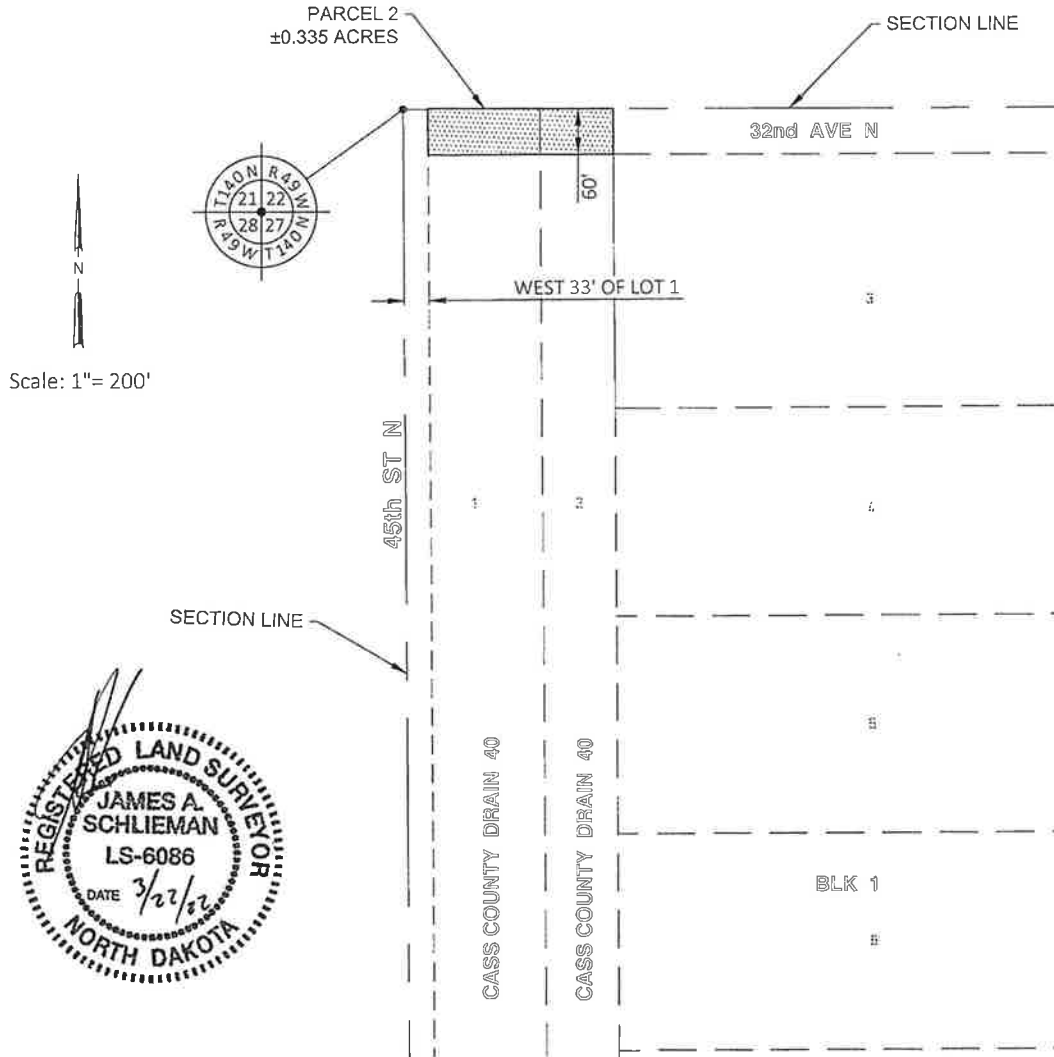
The legal descriptions contained in this document were drafted by:

James A. Schlieman, LS-6086  
Houston Engineering, Inc.  
1401 - 21st Avenue North  
Fargo, North Dakota 58102

**EXHIBIT A**

Legal Description and Survey of the Easement Property

PARCEL 2  
 PART OF LOTS 1 AND 2, BLOCK 1  
 LAVERNE'S 2ND ADDITION  
 CITY OF FARGO, CASS COUNTY  
 STATE OF NORTH DAKOTA



**Description: Parcel 2 (Permanent Easement):**

The North 60.00 feet of Lots 1 and 2, Block 1, Laverne's 2nd Addition to the City of Fargo, Cass County, North Dakota, less the West 33.00 feet of said Lot 1.

Said strip contains 0.335 acres, more or less.

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

NOTE: ALL BEARINGS GIVEN ARE BASED ON THE CITY OF FARGO GROUND COORDINATE SYSTEM, DECEMBER 1992.



# EASEMENT EXHIBIT

PROJECT NO.  
8471-0002

PART OF LOTS 1 AND 2, BLOCK 1  
 LAVERNE'S 2ND ADDITION, CITY OF FARGO, CASS CO., ND

SHEET  
1 OF 1

H:\BIN\8400\8471\8471\_0002\CAD\Easements\32nd Ave N Easement Exhibit.dwg-Layout1-3/22/2022 9:49 AM-(dbuchholtz)

32

June 9, 2022

Board of City Commissioners  
City of Fargo  
200 North Third Street  
Fargo, ND 58102

Re: Permanent Easements (Street & Utility) – Improvement District #BN-22-C1

Dear Commissioners:

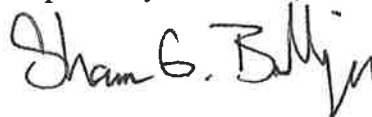
Accompanying for City Commission review and approval are (2) original Permanent Easements with the LaVerne A. Montplaisir Family Trust & Montplaisir Ag and Rental, LLP in association with Improvement District #BN-22-C1.

RECOMMENDED MOTION:

Approve (2) Permanent Easements with the LaVerne A. Montplaisir Family Trust & Montplaisir Ag and Rental, LLP.

Please return the signed originals.

Respectfully submitted,



Shawn G. Bullinger  
Land Acquisition Specialist

C: Nathan Boerboom

**PERMANENT EASEMENT**  
**(Street and Utility)**

KNOW ALL MEN BY THESE PRESENTS that **LaVerne A. Montplaisir Family Trust**, a trust created by Trust Agreement dated December 28, 2012, and **Montplaisir Ag and Rental , LLP**, a North Dakota limited liability partnership, hereinafter referred to as "Grantor", for and in consideration of the sum of One and no/100 Dollars (\$1.00) and other valuable consideration, to it in hand paid the receipt whereof is hereby acknowledged, HEREBY GRANTS UNTO THE **CITY OF FARGO, NORTH DAKOTA**, a municipal corporation, its successors and assigns, hereinafter referred to as "Grantee", a permanent and perpetual easement over, upon and in the land hereinafter described for the purpose of laying, constructing, operating, maintaining and repairing a street and all other public utilities, together with the customary appurtenances including location of any and all utilities, said parcel being more particularly described as follows:

A tract of land in LAVERNE'S SECOND ADDITION, City of Fargo, Cass County, North Dakota more particularly described as follows:

The East 100.00 feet of the South 20.00 feet of Lot 4, Block 5, Laverne's Second Addition to the City of Fargo, Cass County, North Dakota.

Said tract contains 2,000 square feet, more or less.

Said parcel is represented on an Easement Exhibit attached hereto and incorporated herein by reference as Exhibit "A".

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

Grantor, its successors and assigns, further agrees that it will not disturb, injure, molest or in any manner interfere with said street and customary appurtenances including location of any and all utilities, or with material for laying, maintaining, operating or repairing the same, in, over or upon the above-described premises, and Grantor expressly warrants and states that no buildings, trees, shrubs or other obstacles of any kind shall be placed or located upon the parcel so as to interfere in any manner with the construction, operation, maintenance or repair of said street including location of any and all utilities or customary appurtenances, provided that Grantee, at its own expense, shall refill any excavation it makes and level the ground thereafter, leaving the premises in as good condition as it was prior to the time of constructing of said street and customary appurtenances was begun.

**IN WITNESS WHEREOF**, Grantor has set its hand and caused this instrument to be executed this 9<sup>TH</sup> day of JUNE, 2022.

(Signatures on the following pages)



GRANTOR:

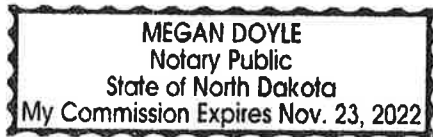
LaVerne A. Montplaisir Family Trust

Perry Montplaisir  
By: Perry Montplaisir  
Its: Trustee

STATE OF North Dakota )  
 ) ss.  
COUNTY OF Cass )

On this 9<sup>th</sup> day of June, 2022, before me, a notary public in and for said county and state, personally appeared Perry Montplaisir, Trustee of the LaVerne A. Montplaisir Family Trust created by Trust Agreement dated December 28, 2012, known to be the person who is described in and who executed the within and foregoing instrument, and acknowledged to me that he executed the same on behalf of the Trust.

(SEAL)



Megan Doyle  
Notary Public  
Cass County, North Dakota

GRANTOR:

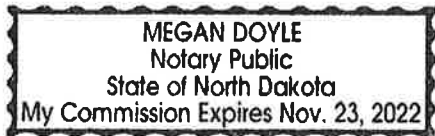
Montplaisir Ag and Rental, LLP

*Perry Montplaisir*  
By: Perry Montplaisir  
Its: General Partner

STATE OF North Dakota )  
 ) ss.  
COUNTY OF Cass )

On this 9<sup>th</sup> day of June, 2022, before me, a notary public in and for said county and state, personally appeared Perry Montplaisir, General Partner of Montplaisir Ag and Rental, LLP, a North Dakota limited liability partnership, known to be the person who is described in and who executed the within and foregoing instrument, and acknowledged to me that he executed the same on behalf of the limited liability partnership.

(SEAL)



*Megan Doyle*  
Notary Public  
Cass County, North Dakota

GRANTEE:

City of Fargo, a North Dakota municipal corporation

Timothy J. Mahoney, M.D., Mayor

ATTEST

Steve Sprague, City Auditor

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

On this \_\_\_\_ day of \_\_\_\_\_, 2022, before me, a notary public in and for said county and state, personally appeared TIMOTHY J. MAHONEY, M.D. and STEVE SPRAGUE, to me known to be the Mayor and City Auditor, respectively, of the City of Fargo, Cass County, North Dakota, the municipal corporation described in and that executed the within and foregoing instrument, and acknowledged to me that said municipal corporation executed the same.

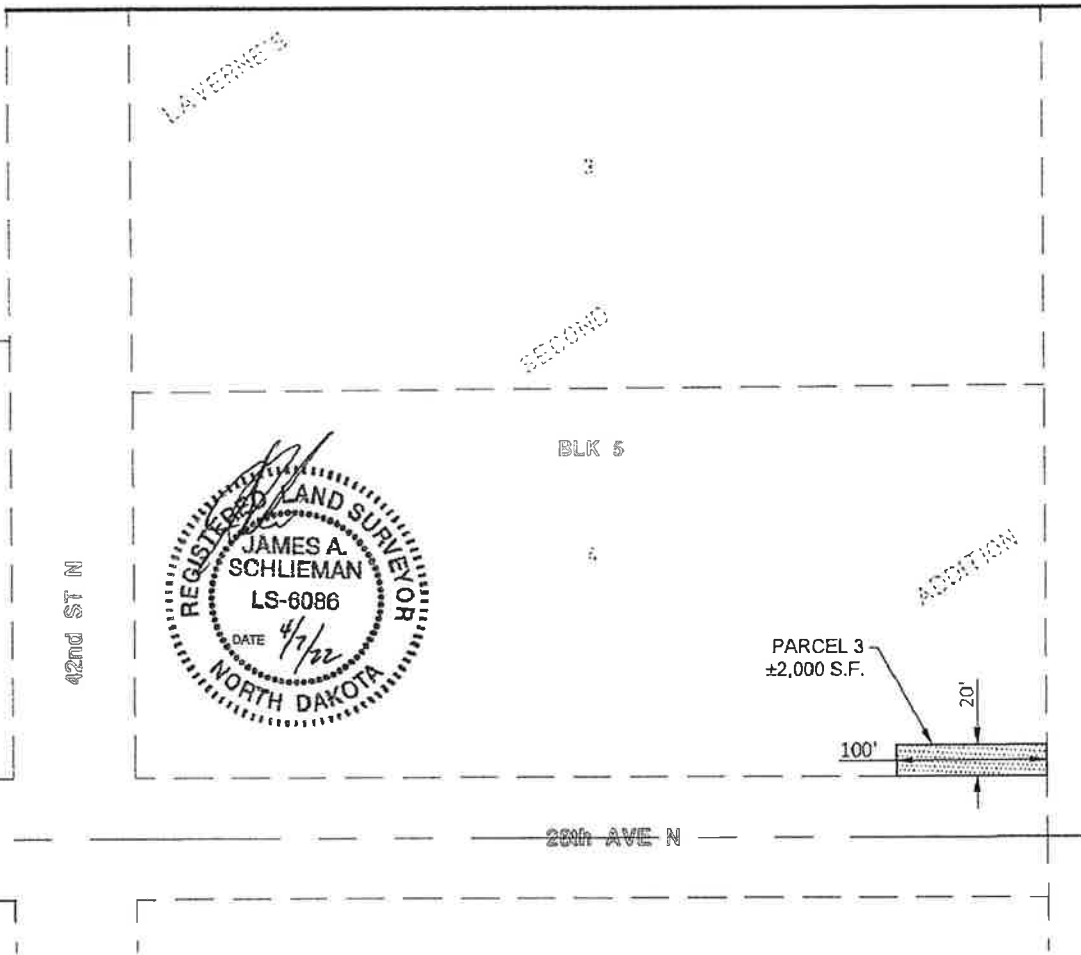
Notary Public  
Cass County, ND  
My Commission expires:

(SEAL)

The legal description was prepared by:  
James A. Schlieman  
Houston Engineering, Inc.  
1401 21st Avenue North  
Fargo, ND 58102  
(701) 237-5065

This document was prepared by:  
Kasey D. McNary  
Assistant City Attorney  
Serkland Law Firm  
10 Roberts Street  
Fargo, ND 58102  
(701) 232-8957  
[kmcnary@serklandlaw.com](mailto:kmcnary@serklandlaw.com)

PARCEL 3  
 PART OF LOT 4, BLOCK 5  
 LAVERNE'S SECOND ADDITION  
 CITY OF FARGO, CASS COUNTY  
 STATE OF NORTH DAKOTA



**Description: Parcel 3 (Easement):**

The East 100.00 feet of the South 20.00 feet of Lot 4, Block 5, Laverne's Second Addition to the City of Fargo, Cass County, North Dakota.

Said tract contains 2,000 square feet, more or less.

Scale: 1" = 100'

IRON MONUMENT FOUND	•
MEASURED BEARING	S59°27'46"E
MEASURED DISTANCE	105.00'
PERMANENT EASEMENT	
TEMPORARY EASEMENT	

NOTE: ALL BEARINGS GIVEN ARE BASED ON THE CITY OF FARGO GROUND COORDINATE SYSTEM, DECEMBER 1992.



# EASEMENT EXHIBIT

PROJECT NO.  
8471-0002

PART OF LOT 4, BLOCK 5  
LAVERNE'S SECOND ADDITION, CITY OF FARGO, CASS CO., ND

SHEET  
1 OF 1

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**PERMANENT EASEMENT**  
**(Street and Utility)**

**KNOW ALL MEN BY THESE PRESENTS** that **LaVerne A. Montplaisir Family Trust**, a trust created by Trust Agreement dated December 28, 2012, and **Montplaisir Ag and Rental , LLP**, a North Dakota limited liability partnership, hereinafter referred to as "Grantor", for and in consideration of the sum of One and no/100 Dollars (\$1.00) and other valuable consideration, to it in hand paid the receipt whereof is hereby acknowledged, **HEREBY GRANTS UNTO THE CITY OF FARGO, NORTH DAKOTA**, a municipal corporation, its successors and assigns, hereinafter referred to as "Grantee", a permanent and perpetual easement over, upon and in the land hereinafter described for the purpose of laying, constructing, operating, maintaining and repairing a street and all other public utilities, together with the customary appurtenances including location of any and all utilities, said parcel being more particularly described as follows:

A tract of land in **LAVERNE'S SECOND ADDITION**, City of Fargo, Cass County, North Dakota more particularly described as follows:

**Parcel 1**

The East 90.00 feet of the South 10.00 feet of Lot 4, Block 4, Laverne's Second Addition to the City of Fargo, Cass County, North Dakota.

Said tract contains 900 square feet, more or less.

**Parcel 2**

The East 90.00 feet of the North 10.00 feet of Lot 1, Block 5, Laverne's Second Addition to the City of Fargo, Cass County, North Dakota.

Said tract contains 900 square feet, more or less.

Said parcel is represented on an Easement Exhibit attached hereto and incorporated herein by reference as Exhibit "A".

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

Grantor, its successors and assigns, further agrees that it will not disturb, injure, molest or in any manner interfere with said street and customary appurtenances including location of any and all utilities, or with material for laying, maintaining, operating or repairing the same, in, over or upon the above-described premises, and Grantor expressly warrants and states that no buildings, trees, shrubs or other obstacles of any kind shall be placed or located upon the parcel so as to interfere in any manner with the construction, operation, maintenance or repair of said street including location of any and all utilities or customary appurtenances, provided that Grantee, at its own expense, shall refill any excavation it makes and level the ground thereafter, leaving the premises in as good condition as it was prior to the time of constructing of said street and customary appurtenances was begun.

**IN WITNESS WHEREOF**, Grantor has set its hand and caused this instrument to be executed this 9<sup>TH</sup> day of JUNE, 2022.

(Signatures on the following pages)

GRANTOR:

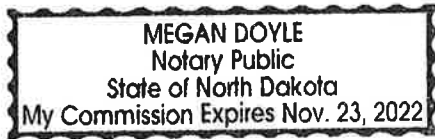
LaVerne A. Montplaisir Family Trust

Perry Montplaisir  
By: Perry Montplaisir  
Its: Trustee

STATE OF North Dakota )  
 ) ss.  
COUNTY OF Cass )

On this 9<sup>th</sup> day of June, 2022, before me, a notary public in and for said county and state, personally appeared Perry Montplaisir, Trustee of the LaVerne A. Montplaisir Family Trust created by Trust Agreement dated December 28, 2012, known to be the person who is described in and who executed the within and foregoing instrument, and acknowledged to me that he executed the same on behalf of the Trust.

(SEAL)



Megan Doyle  
Notary Public  
Cass County, North Dakota

GRANTOR:

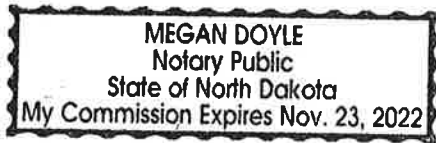
Montplaisir Ag and Rental, LLP

Perry Montplaisir  
By: Perry Montplaisir  
Its: General Partner

STATE OF North Dakota )  
 ) ss.  
COUNTY OF Cass )

On this 9<sup>th</sup> day of June, 2022, before me, a notary public in and for said county and state, personally appeared Perry Montplaisir, General Partner of Montplaisir Ag and Rental, LLP, a North Dakota limited liability partnership, known to be the person who is described in and who executed the within and foregoing instrument, and acknowledged to me that he executed the same on behalf of the limited liability partnership.

(SEAL)

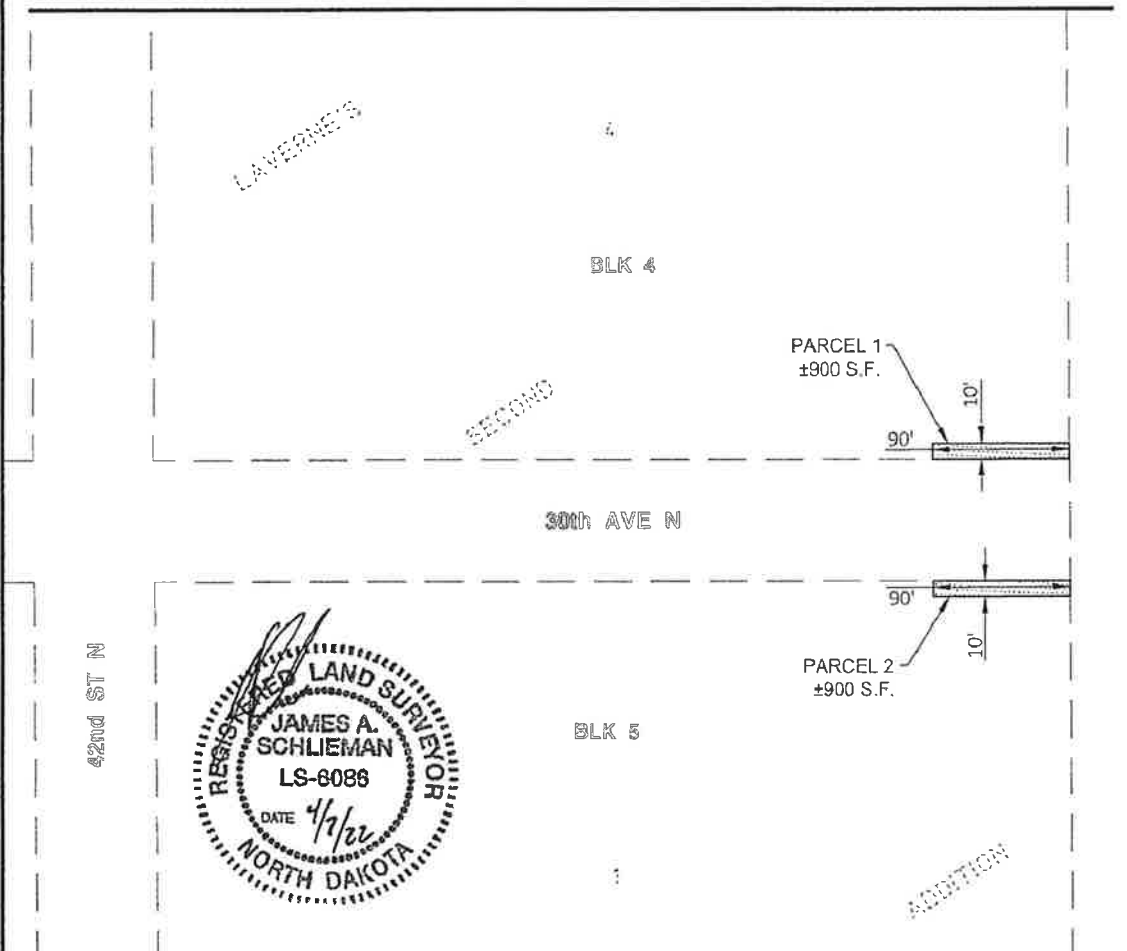


Megan Doyle  
Notary Public  
Cass County, North Dakota





PARCELS 1 & 2  
 PART OF LOT 4, BLOCK 4, AND LOT 1, BLOCK 5  
 LAVERNE'S SECOND ADDITION  
 CITY OF FARGO, CASS COUNTY  
 STATE OF NORTH DAKOTA



Description: Parcel 1 (Easement):

The East 90.00 feet of the South 10.00 feet of Lot 4, Block 4, Laverne's Second Addition to the City of Fargo, Cass County, North Dakota.  
 Said tract contains 900 square feet, more or less.

Description: Parcel 2 (Easement):

The East 90.00 feet of the North 10.00 feet of Lot 1, Block 5, Laverne's Second Addition to the City of Fargo, Cass County, North Dakota.  
 Said tract contains 900 square feet, more or less.

Scale: 1" = 100'

IRON MONUMENT FOUND  
 MEASURED BEARING S59°27'46"E  
 MEASURED DISTANCE 105.00'  
 PERMANENT EASEMENT  
 TEMPORARY EASEMENT

NOTE: ALL BEARINGS GIVEN ARE BASED ON THE CITY OF FARGO GROUND COORDINATE SYSTEM, DECEMBER 1992.



# EASEMENT EXHIBIT

PROJECT NO.  
8471-0002

PART OF LOT 4, BLOCK 4, AND LOT 1, BLOCK 5  
 LAVERNE'S SECOND ADDITION, CITY OF FARGO, CASS CO., ND

SHEET  
1 OF 1

H:\JBN\8400\8471\8471\_0002\CAD\Easements\28th & 30th Ave N Culdesac Easement Exhibits.dwg-Layout1-4/7/2022 7:50 AM-(dbuchholz)

COVER SHEET  
CITY OF FARGO PROJECTS

(34)

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

Exact, full name of improvement district as it will appear in the contract:

New Paving Construction

Improvement

District No. PN-22-M

Call For Bids	<u>June 13</u>	,	<u>2022</u>
Advertise Dates	<u>June 22 &amp; 29</u>	,	<u>2022</u>
Bid Opening Date	<u>July 20</u>	,	<u>2022</u>
Substantial Completion Date	<u>July 15</u>	,	<u>2023</u>
Final Completion Date	<u>August 15</u>	,	<u>2023</u>

- X PWPEC Report (Attach Copy)
- X Engineer's Report (Attach Copy)
- X Direct City Auditor to Advertise for Bids
- X Bid Quantities (Attach Copy for Auditor's Office Only)
- X Notice to Property Owners (Dan Eberhardt)

Project Engineer Jason Satterlund

Phone No. (701) 241-1545

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

- X Create District (Attach Copy of Legal Description)
- X Order Plans & Specifications
- X Approve Plans & Specifications
- X Adopt Resolution of Necessity
- N/A Approve Escrow Agreement (Attach Copy for Commission Office Only)
- X Assessment Map (Attach Copy for Auditor's Office Only)

REPORT OF ACTION

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Improvement District No. UN-22-M1/PN-22-M1 Type: Infrastructure Request

Location: Rocking Horse Farms 6<sup>th</sup> Addition Date of Hearing: 3/14/2022

<u>Routing</u>	<u>Date</u>
City Commission	_____
PWPEC File	<u>X</u>
Project File	<u>Jason Satterlund</u>

The Committee reviewed a communication from Project Manager, Jason Satterlund, regarding an Infrastructure Request for Rocking Horse Farms 6<sup>th</sup> Addition, requested by the Developers, Kenneth Promersberger – Rocking horse Farm, LLC and Janice Promersberger – Jetland Properties, LLC.

Engineering staff has reviewed the requirements for infrastructure requests and the Developer has met five of the seven requirements. The two remaining items are as follows:

- Plat recordation
- Fully executed amenities plan

Staff is recommending approval of the Infrastructure Request contingent upon plat recordation and fully executed amenities plan and direct Engineering to start design.

On a motion by Steve Sprague, seconded by Nicole Crutchfield, the Committee voted to recommend approval of the Infrastructure Request contingent upon plat recordation and fully executed amenities plan and direct Engineering to design.

RECOMMENDED MOTION

Approve the Request for Infrastructure contingent upon plat recordation and fully executed amenities plan and direct Engineering to start design.

PROJECT FINANCING INFORMATION:

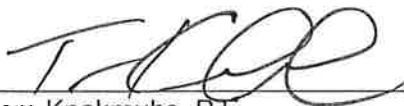
Recommended source of funding for project: Special Assessments

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

COMMITTEE

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

ATTEST:

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



**ENGINEER'S REPORT  
NEW PAVING CONSTRUCTION  
IMPROVEMENT DISTRICT NO. PN-22-M  
ROCKING HORSE FARM 6TH ADDITION**

**Nature & Scope**

Infrastructure request to facilitate construction of new paving as requested by the Developer.

**Purpose**

This project is to provide paving and incidentals for the development of a new West Fargo Elementary School within Rocking Horse Farm 6th Addition.

**Feasibility**

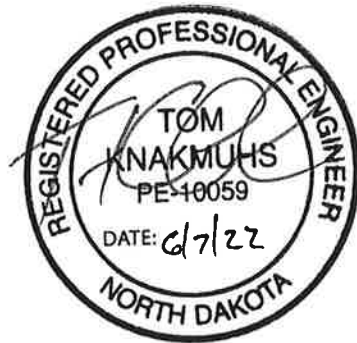
The estimated cost of construction is \$1,350,815.00. The cost breakdown is as follows:

<b>Special Assessments</b>		
<b>Construction Cost</b>		<b>\$1,350,815.00</b>
<b>Fees</b>		
Admin	4%	\$54,032.60
Contingency	5%	\$67,540.75
Engineering	10%	\$135,081.50
Interest	4%	\$54,032.60
Legal	3%	\$40,524.45
<b>Total Estimated Cost</b>		<b>\$1,702,026.90</b>
<b>Funding</b>		
Special Assessments	100.00%	\$1,702,026.90

<b>Project Funding Summary</b>		
Special Assessments	100.00%	\$1,702,026.90
<b>Total Estimated Project Cost</b>		<b>\$1,702,026.90</b>

This project does not have any alternate or optional containers.

We believe this project to be cost effective.



  
Thomas Knakmuhs, PE  
Assistant City Engineer



**LOCATION AND COMPRISING  
NEW PAVING CONSTRUCTION  
IMPROVEMENT DISTRICT NO. PN-22-M  
ROCKING HORSE FARM 6TH ADDITION**

**LOCATION:**

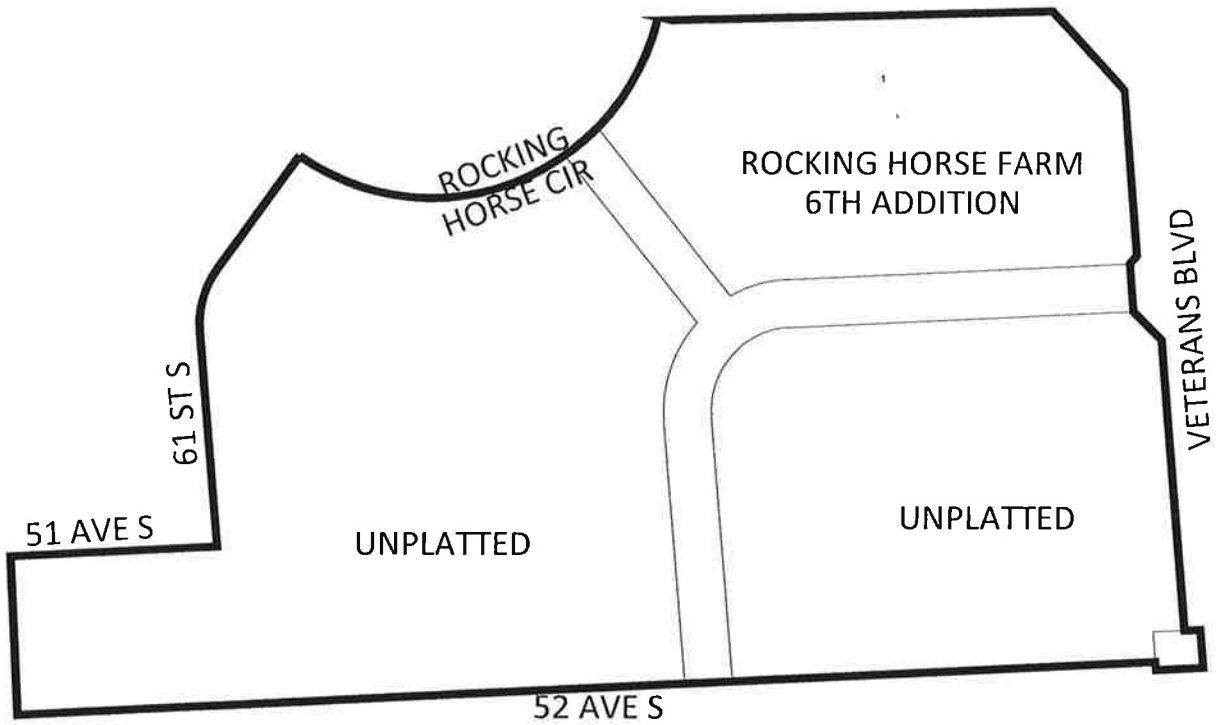
On 51st Avenue South between Rocking Horse Road South and Veteran's Boulevard.  
On 59th Street South between 51st Avenue South and 52nd Avenue South.  
On Rocking Horse Road South between Rocking Horse Circle and 51st Avenue South.

**COMPRISING:**

Lot 1, Block 1 Rocking Horse Farm 6th Addition

All the unplatted land in the southeast quarter of Section 32 T139N R49W of Cass County

All of the foregoing is located in the City of Fargo, Cass County, North Dakota.



CITY OF FARGO ENGINEERING  
DEPARTMENT

LOCATION & ASSESSMENT AREA

NEW PAVING CONSTRUCTION

IMPROVEMENT DISTRICT NO. PN-22-M