FARGO CITY COMMISSION AGENDA
Monday, June 14, 2021 - 5:00 p.m.

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

A. Pledge of Allegiance.

B. Roll Call.

C. Approve Order of Agenda.

D. Minutes (Regular Meeting, June 1, 2021).

CONSENT AGENDA – APPROVE THE FOLLOWING:

1. Receive and file an Ordinance Relating to Classification of Ordinance Violations (Minor in Possession/Consumption of Alcohol).

2. 1st reading of the following Ordinances Relating to Public Safety, Morals and Welfare:
   a. Criminal Mischief-Hate Crime.
   b. Harassment-Hate Crime.
   c. Simple Assault-Hate Crime.

3. Settlement Agreement and Release of All Claims with St. Anthony of Padua's Church of Fargo, Society of St. Vincent DePaul District Council of Fargo, Inc. and Darlene Audrey Daugherty.

4. Gaming Site Authorization for West Fargo Hockey Association at Fort Noks Bar of Gold.

5. Applications for Games of Chance:
   a. Fargo Post 2 Baseball Club for a calendar raffle from 7/1/21 to 7/31/21.
   b. Tri City United Soccer Club for a raffle on 8/29/21.
   c. Steve Weidner FM Junior Tour for a calendar raffle from 7/1/21 to 6/30/22.

6. Renewal of the Alcoholic Beverage and Live Entertainment Licenses until 6/30/22, contingent upon all essential requirements for renewal being met by 6/30/21.

7. Budget allocation for voting by mail.

8. Encroachment Agreement with Plexus Company.

9. Submission of an application for the ND Department of Commerce's Events and Support Services Grant for the FARGODOME.

10. Receive and file Financial Status Report Year to Date through 5/31/21 for major operating funds (unaudited).

11. Service Agreement with Fargo Public Schools Department of Support Services.

12. Amendment to the Agreement for Services with Annie Wood.

13. Amendment to the Agreement for Services with Gia Rassier.

14. Notice of Grant Award from the ND Department of Health for ND LPH Funding Equity and Prioritizing populations disproportionately affected by COVID-19 (CFDA #93.391).

15. Financial Award from the ND Department of Commerce/DCS for the Gladys Ray Shelter Emergency Solutions Grant-CV

16. Out-of-grade pay request for Will Bayuk in the Engineering Department.

17. City of Fargo Temporary Employment Policy COVID-19 Annual Leave (Vacation) – Maximum Accrual for 2021.

18. Amendment No. 1 of Subrecipient Agreement with New Life Center.

19. Resolution Approving Plat of Turf Tamers Addition.

20. Developer Agreement with Cass Clay Community Land Trust for acquisition, demolition and new construction of property at 1412 1st Avenue South.

21. Purchase Agreement and Developer Agreement with Cass Clay Community Land Trust for property at 1410 1st Avenue South.

22. Bid award for Public Works facility fence (RFP21209).

23. Amended Notice of Award for the GTC Exterior Renovation project and Agreement with Gast Construction Company, Inc. (AFB21101).

24. Amendment No. 8 with KLJ, Inc. in the amount of $5,882.09 for the GTC Remodel project-Exterior Renovations.

25. Agreement with KLJ, Inc. (RFQ21072).

26. Bid advertisement for Project No. WA2055.

27. Sole Source Procurement with Hawkins Water Treatment Group for chemicals and materials for the Water Treatment Plant to use during the 2021 calendar year.

28. Submission of a State Revolving Fund loan application for the Membrane Water Treatment Plant.

29. Contract and bond for Project No. BP-21-A1.

30. Bills.

31. Change Order No. 2 for an increase in the amount of $16,150.00 for Improvement District No. BN-20-E1.

32. Change Order No. 1 for an increase in the amount of $94,164.00 for Improvement District No. BN-21-A2.

33. Early Building Permit with North Dakota State College of Science at Wahpeton, North Dakota (Improvement District No. UN-20-B1).

34. Estimated payment of $25,578.69 to Xcel Energy and up to $5,000.00 to Sparklight for the relocation of utilities (Improvement District No. BR-21-E1).

35. Create Improvement District No. BN-21-K.

36. Contract and bond for Improvement District Nos. AN-20-C1, BN-21-J1, PN-21-A1 and SL-21-B1.

REGULAR AGENDA:

37. **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).**

38. ***Public Input Opportunity* - PUBLIC HEARINGS - 5:15 pm:**
    a. Hearing on a dangerous building located at 1033 5th Street North.

    b. Community Development Block Grant (CDBG) and HOME Programs 2021 Action Plan and Budget Proposal.

    c. Petition for Annexation of property described as that part of the Southeast Quarter of Section 15 and the Northeast Quarter of Section 22, Township 140 North, Range 49 West of the 5th Principal Meridian, Cass County, North Dakota.
        1. 1st reading of annexation Ordinance.

    d. Dakota Commerce Center Addition (4060, 4230, 4316 and 4416 37th Street North and 3701 40th Avenue North); approval recommended by the Planning Commission on 5/4/21:
        1. Zoning Change from AG, Agricultural to LI, Limited Industrial.
        2. 1st reading of rezoning Ordinance.
        3. Plat of Dakota Commerce Center Addition.

    e. Text Amendment to amend Section 20-0402(T)(3) and repeal Section 20-0403(C)(5) (e) of the Fargo Municipal Code (Land Development Code) relating to the prohibition of firearm and ammunition sales as a non-farm commercial use or as a home occupation.
        1. 1st reading of Ordinance.

    f. Renaissance Zone Project for a new construction project at 300 Main Avenue.

    g. Application filed by Standard Industries, Inc. for a 5-year property tax exemption for a project located at 5650 13th Avenue North where the applicant will use in the operation of metal fabrication and providing a variety of stainless steel, precision steel and aluminum products.

39. Presentation of the Fargo Police Departments 2020/2021 Annual and Mid-Year Report.

40. Receive and file an Ordinance Relating to Wildlife Management Program-Regulations; action delayed on the 6/1/21 Regular Meeting.

41. Recommendation to select Alternative B1 for Segments 1 and 2 for the 32nd Avenue South Reconstruction Project (Improvement District No. BR-22-A1).

42. Applications for property tax exemptions for improvements made to buildings:
    a. Rachel Rawley, 1619 32nd Street South (5 year).
    b. Luke Hestdalen, 101 25th Avenue North (5 year).

43. Recommendations for appointments and reappointments to the following Boards and Commissions:
    a. Special Assessment Commission.
    b. Planning Commission.

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.

THE CITY OF Fargo FAR MORE

(1)

Office of the City Attorney

City Attorney
Erik R. Johnson

Assistant City Attorney
Nancy J. Morris

June 9, 2021

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

RE: Ordinance Amendment – Minor in Possession/Consumption of Alcohol

Dear Commissioners,

I am enclosing for your consideration, amendments to city ordinance 1-0305 relating to Classification of Ordinance Violations.

The City of Fargo should update their Minor in Possession/Consumption ordinance to keep pace with the amendments the state legislature made in 2021 (effective August 1, 2021). The City of Fargo may not have an ordinance with more severe penalties or more narrow application compared to an equivalent state statute. The 2021 Legislature reduced MIP/MIC from a Class B Misdemeanor to an infraction. A Class B Misdemeanor has a maximum punishment of 30 days in jail and/or $1,500 fine. The maximum punishment for an infraction is a $1,000 fine (no jail time may be imposed). Currently, in the City of Fargo, MIP/MIC is a Class B Misdemeanor.

SUGGESTED MOTION: I move to receive and file the following ordinance amending Fargo Municipal Code section 1-0305 of Article 1-03 of Chapter 1 relating to Classification of Ordinance Violations, and to place the ordinance on for first reading at the next regularly-scheduled city commission meeting.

Sincerely,

William Wischer
Assistant City Attorney

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

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

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

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

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

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

NOW, THEREFORE,

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

Section 1. Amendment.

1-0305. Classification of ordinance violations.

A. Violations of the following ordinances are Class B misdemeanors, subject to punishment as provided in this article:

Section 1-0306(D) (failure to appear or post bond on a non-criminal, non-traffic offense), section 8-0305(A)(2) (fictitious registration), section 8-0305(A)(3) (lending registration plates), section 8-0308 (reproducing operator's or driver's license or permit), section 8-0309 (driving under suspension), section 8-0310 (driving under the influence), section 8-0314 (reckless driving), section 8-0320 (driving without liability insurance - $150.00 minimum

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fine), section 8-0803 (accidents involving damage to vehicle), section 8-0804 (duty to give information and render aid), section 8-0805 (duty upon striking fixture or other property), section 8-0809 (false reports), ~~section 10-0101 (minor using alcohol),~~ 10-0104 (curfew), section 10-0201 (indecent exposure), section 10-0301 (disorderly conduct), section 10-0317 (resisting police officer), section 10-0319 (incendiary devices), section 10-0320 (registration in schools), section 10-0321 (criminal mischief), section 10-0322 (harassment), section 10-0323 (simple assault), section 10-0324 (aiding and abetting), section 10-0601 (shoplifting), section 10-0602 (theft), section 10-0702 (order to disperse), section 10-0703 (tenant/owner cooperation required), section 10-1202(2) (≥½ oz. marijuana) and 10-1202(3) (under 21 in possession of marijuana), section 12-0117(C) and 12-0117(G) (potentially dangerous and dangerous dogs), section 13-0511 (removal of wastes), section 13-0513 (fee/permit for hauling waste), section 13-0529 (misuse of compost sites), article 13-13 (drug lab cleanup), chapter 17 (sewers and sewerage), article 18-09 (excavation code), section 25-1509(A) (selling alcoholic beverage to minor), section 25-1513(C) (minor misrepresenting age), and section 25-1513(D) (delivery of alcoholic beverage to minor), article 25-33 (tattoos, body art and body piercing), article 25-36 (tanning facilities).

* * * *

Section 2. Penalty.

A person who violates section 10-0101 is guilty of an infraction. Every person, firm, or corporation violating an ordinance which is punishable as an infraction shall be punished by a fine not to exceed $1,000; the court to have power to suspend said sentence and to revoke the suspension thereof.

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Section 3. Effective Date.

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

_____
Timothy J. Mahoney, Mayor

Attest:

_____
Steven Sprague, City Auditor

First Reading:
Second Reading:
Final Passage:

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

AN ORDINANCE ENACTING SECTION 10-0321.1 OF ARTICLE 10-03 OF CHAPTER 10 OF THE FARGO MUNICIPAL CODE RELATING TO PUBLIC SAFETY, MORALS AND WELFARE

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:

Section 1. Enactment.

Section 10-0321.1 of Article 10-03 of Chapter 10 of the Fargo Municipal Code is hereby enacted to read as follows:

10-0321.1. Criminal mischief-Hate Crime

A person is guilty of criminal mischief if he commits any of the following acts:

A. Willfully tampers with tangible property of another so as to endanger person or property.

B. Willfully damages tangible property of another. The court may, in addition to assessing any penalty for violation of this ordinance as permitted by law, order reimbursement or restitution by the offender to the person whose property has been damaged or destroyed.

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C. Commits an offense in violation of subdivision A or B in whole or in part because of the actual or perceived race, color, religion, gender, disability, sexual orientation, gender identity, national origin, or ancestry of the victim.

Section 2. Penalty.

A person who willfully violates this ordinance is guilty of a Class B misdemeanor. Every person, firm or corporation violating an ordinance which is punishable as a Class B misdemeanor shall be punished by a fine not to exceed $1,500.00, or by imprisonment not to exceed 30 days, or by both such fine and imprisonment, in the discretion of the court; the court to have power to suspend said sentence and to revoke the suspension thereof.

Section 3. Effective Date.

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

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

(SEAL)

Attest:

_____
Steven Sprague, City Auditor

First Reading:
Second Reading:
Final Passage:
Publication:

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

AN ORDINANCE ENACTING SECTION 10-0322.1 OF ARTICLE 10-03 OF CHAPTER 10 OF THE FARGO MUNICIPAL CODE RELATING TO PUBLIC SAFETY, MORALS AND WELFARE

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:

Section 1. Enactment.

Section 10-0322.1 of Article 10-03 of Chapter 10 of the Fargo Municipal Code is hereby enacted to read as follows:

10-0322.1. Harassment-Hate Crime

A. A person is guilty of an offense if, with intent to frighten or harass another, he:
   1. Makes a telephone call anonymously or in offensively coarse language;
   2. Makes repeated telephone calls or other electronic communication, whether or not a conversation ensues, with no purpose of legitimate communication; or
   3. Communicates a falsehood in writing or by electronic communication and causes mental anguish.

B. Any offense defined herein and committed by use of electronic communication may be deemed to have been committed at either the place at which the electronic

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communication was made, or at the place where the electronic communication was received.

C. Any offense defined herein is deemed communicated in writing if it is transmitted electronically, by electronic mail, facsimile, or other similar means. Electronic communication means transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photo-electronic, or photo-optical system.

D. Commits an offense in violation of subdivision A (1), (2), or (3) in whole or in part because of the actual or perceived race, color, religion, gender, disability, sexual orientation, gender identity, national origin, or ancestry of the victim.

Section 2. Penalty.

A person who willfully violates this ordinance is guilty of a Class B misdemeanor. Every person, firm or corporation violating an ordinance which is punishable as a Class B misdemeanor shall be punished by a fine not to exceed $1,500.00, or by imprisonment not to exceed 30 days, or by both such fine and imprisonment, in the discretion of the court; the court to have power to suspend said sentence and to revoke the suspension thereof.

Section 3. Effective Date.

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

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

(SEAL)

Attest:

_____
Steven Sprague, City Auditor

First Reading:
Second Reading:
Final Passage:
Publication:

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

AN ORDINANCE ENACTING SECTION 10-0323.1 OF ARTICLE 10-03 OF CHAPTER 10 OF THE FARGO MUNICIPAL CODE RELATING TO PUBLIC SAFETY, MORALS AND WELFARE

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:

Section 1. Enactment.

Section 10-0323.1 of Article 10-03 of Chapter 10 of the Fargo Municipal Code is hereby enacted to read as follows:

10-0323.1. Simple Assault-Hate Crime

A person is guilty of an offense if he:

A. Willfully causes bodily injury to another human being; or

B. Negligently causes bodily injury to another human being by means of a firearm, destructive device, or other weapon, the use of which against a human being is likely to cause death or serious bodily injury.

C. Causes bodily injury to another in whole or in part because of the victim's actual or perceived race, color, religion, gender, disability, sexual orientation, gender identity, national origin, or ancestry.

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Section 2. Penalty.

A person who willfully violates this ordinance is guilty of a Class B misdemeanor. Every person, firm or corporation violating an ordinance which is punishable as a Class B misdemeanor shall be punished by a fine not to exceed $1,500.00, or by imprisonment not to exceed 30 days, or by both such fine and imprisonment, in the discretion of the court; the court to have power to suspend said sentence and to revoke the suspension thereof.

Section 3. Effective Date.

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

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

(SEAL)

Attest:

_____
Steven Sprague, City Auditor

First Reading:
Second Reading:
Final Passage:
Publication:

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

AN ORDINANCE AMENDING SECTION 1-0305 OF ARTICLE 1-03 OF CHAPTER 1 OF THE FARGO MUNICIPAL CODE RELATING TO ORDINANCES - VIOLATION

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:

Section 1. Amendment.

Section 1-0305 of Article 1-03 of Chapter 1 of the Fargo Municipal Code is hereby amended to read as follows:

1-0305. Classification of ordinance violations.

A. Violations of the following ordinances are Class B misdemeanors, subject to punishment as provided in this article:

1. Section 1-0306(D) (failure to appear or post bond on a non-criminal, non-traffic offense), section 8-0305(A)(2) (fictitious registration), section 8-0305(A)(3) (lending registration plates), section 8-0308 (reproducing operator's or driver's license or permit), section 8-0309 (driving under suspension), section 8-0310 (driving under the influence), section 8-0314 (reckless driving), section 8-0320 (driving without liability insurance - $150.00 minimum fine), section 8-0803 (accidents involving damage to vehicle), section 8-0804 (duty to give information and render aid), section 8-0805 (duty upon striking fixture or other property),

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section 8-0809 (false reports), section 10-0101 (minor using alcohol), 10-0104 (curfew), section 10-0201 (indecent exposure), section 10-0301 (disorderly conduct), section 10-0317 (resisting police officer), section 10-0319 (incendiary devices), section 10-0320 (registration in schools), section 10-0321 (criminal mischief), section 10-0321.1 (criminal mischief-hate crime), section 10-0322 (harassment), section 10-0322.1 (harassment-hate crime), section 10-0323 (simple assault), section 10-0323.1 (simple assault-hate crime), section 10-0324 (aiding and abetting), section 10-0601 (shoplifting), section 10-0602 (theft), section 10-0702 (order to disperse), section 10-0703 (tenant/owner cooperation required), section 10-1202(2) (≥½ oz. marijuana) and 10-1202(3) (under 21 in possession of marijuana), section 12-0117(C) and 12-0117(G) (potentially dangerous and dangerous dogs), section 13-0511 (removal of wastes), section 13-0513 (fee/permit for hauling waste), section 13-0529 (misuse of compost sites), article 13-13 (drug lab cleanup), chapter 17 (sewers and sewerage), article 18-09 (excavation code), section 25-1509(A) (selling alcoholic beverage to minor), section 25-1513(C) (minor misrepresenting age), and section 25-1513(D) (delivery of alcoholic beverage to minor), article 25-33 (tattoos, body art and body piercing), article 25-36 (tanning facilities).

***

Section 2. Effective Date.

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

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

(SEAL)

Attest:

_____
Steven Sprague, City Auditor

First Reading:
Second Reading:
Final Passage:
Publication:

THE CITY OF Fargo FAR MORE

(3)

Office of the City Attorney

City Attorney
Erik R. Johnson

Assistant City Attorney
Nancy J. Morris

June 9, 2021

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

RE: Settlement Agreement – Joan Schaefer

Dear Commissioners,

As you know, longtime city of Fargo Police Department employee Joan Schaefer recently passed away. During her employment she was a member of the Police Pension. In 2006 Joan had named her mother, Darlene Daugherty, as the Primary Beneficiary of the Pension. That fully executed beneficiary form was received by the city on June 15, 2006. Several days prior to her death, Joan obtained a new beneficiary form from the city, and identified several non-profit entities as the intended recipients of the Pension funds. Unfortunately, Joan did not sign the alternate beneficiary designation form, and passed before this error could be called to her attention and corrected. Because of the possibility of competing claims to the Pension funds, the city sought to cooperate with the potential claimants in reaching an agreement for the distribution of the Pension funds and avoid any city liability to the other potential claimants. The attached Settlement Agreement and Release of All Claims is the culmination of these discussions, authorizing the city to proceed with the distribution as identified in the Pension Distribution Form completed by claimant Darlene Daugherty. Your approval of the Settlement Agreement will allow the city to proceed with the distribution in accordance with the terms of the Police Pension.

SUGGESTED MOTION: I move to approve the terms of the Settlement Agreement and Release of All Claims, and authorize the Mayor to execute the same.

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

Sincerely,

Nancy J. Morris
Assistant City Attorney

Cc: Michael Thomas
Jen Kraiter

SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS

THIS SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS ("Release") is entered into by and between the city of Fargo ("City"), a North Dakota municipal corporation, St. Anthony of Padua's Church of Fargo ("St. Anthony"), a North Dakota non-profit corporation, Society of St. Vincent DePaul District Council of Fargo, Inc., d/b/a St. Anthony of Padua St. Vincent DePaul Conference ("St. Vincent"), a North Dakota non-profit corporation and Darlene Audrey Daugherty ("Daugherty"), a single person, dated this 28th day of May, 2021.

Recitals

A. Joan M. Schaefer ("Joan") died, a resident of North Dakota, on December 21, 2020.

B. Joan was a participating member of the Police Pension of the City. By way of a Beneficiary Designation Form signed and dated June 12, 2006 ("Executed Beneficiary Form"), Joan identified the Primary Beneficiary of the Police Pension ("Pension") as her mother, Darlene Audrey Daugherty. This form was received on June 15, 2006 in the Fargo Police Department. Exhibit "A" attached hereto.

C. Several days prior to her death, Joan attempted to complete a second Beneficiary Designation Form, received by the City on December 21, 2020, the day of Joan's death. By way of the second Beneficiary Designation Form, St. Anthony and St. Vincent were each identified as a beneficiary of fifty percent (50%) of Joan's pension benefits provided by the City under its pension plan ("Plan") upon Joan's death.

D. Joan failed to sign the second Beneficiary Designation Form. A true and correct copy of the second Beneficiary Designation Form ("Unexecuted Beneficiary Form") is attached hereto as Exhibit "B".

E. The City has determined that there may be competing claims to the Pension proceeds due to the conflicting designations on the Beneficiary Designation Forms. City has advised the identified potential beneficiaries that it intends to deposit the Pension funds into court (commence an Interpleader action) in order to allow the parties to resolve the competing claims to the Pension funds.

F. In lieu of the potential litigation, the Pension fund claimants hereto, having fully considered their options, including, litigation, the prospect for success on the merits, as well as the inconvenience, expense, distress and delay that would be associated with litigation, have concluded that it is in their best interests to fully release the City from any and all claims it may have against the City in connection with the benefits payable under Joan's pension. The competing beneficiary claimants have reached an agreement regarding the dissemination of the Pension funds, and have agreed to release the City from any and all claims, known or unknown, in accordance with the terms hereof.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. St. Anthony, St. Vincent and Daugherty release and forever discharge the City of and from any and all claims, demands and causes of action of whatsoever kind, nature or description, whether arising in law or in equity or upon contract or tort or under any state or federal laws or otherwise which St. Anthony, St. Vincent or Daugherty had, now has, or may in the future claim to have against the City to, for or by reason of any act, omission, matter, cause or thing whatsoever associated with the payment of the Pension funds to beneficiary Daugherty, in accordance with the forms completed by claimant Daugherty and attached hereto as Exhibit "C".

2. St. Anthony, St. Vincent and Daugherty further waive the provisions of Section 9-13-02 of the North Dakota Century Code, or any similar or applicable state or federal provision, which states that a general release does not extend to claims the creditor does not know or suspect to exist in its favor at the time of execution their release, which if known by it must have materially affected the settlement with the debtor.

3. St. Anthony, St. Vincent and Daugherty confirm, agree and understand that the City may rely upon this Release in making the payments under the Pension Plan to Daugherty.

St. Anthony of Padua's Church of Fargo, a North Dakota non-profit corporation

By: Fr. Raymond Cournoyer

Its: Pastor

Society of St. Vincent DePaul District Council of Fargo, Inc., d/b/a St. Anthony of Padua St. Vincent DePaul Conference, a North Dakota non-profit corporation

By: Brian Hendy

Its: President

Darlene Audrey Daugherty

Darlene Audrey Daugherty, a single person

City of Fargo, a North Dakota municipal corporation

_____

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

ATTEST:

_____

Steve Sprague, City Auditor

Exhibit "A"

BENEFICIARY DESIGNATION FORM

(CHECK ONE) ___ City Pension X Police Pension

I, (name) Joan (First) Marie (M) Schaefer (Last), hereby designate the following beneficiary for the pension benefits provided by the Pension Plan.

*** PRIMARY BENEFICIARY:**

Name: Darlene (First) Audrey (M) Daugherty (Last)

Address: [redacted]

New Rockford ND 58356

Optional: To receive an annual pension estimate with joint survivorship, and if you have named your spouse as primary beneficiary, include their date of birth below:

*Date of Birth: [redacted] 1936 (MMDDYYYY)

SECONDARY BENEFICIARY:

Name: _____ (First) (M) (Last)

Address: _____

_____

RECEIVED
JUN 15 2006
FARGO POLICE DEPARTMENT

If you wish to name ***more than one*** secondary beneficiary, please designate below your beneficiaries along with the percentage of benefit they should receive.

Beneficiary Name	Beneficiary Address	Percentage
_____ (First) (M) (Last)	_____	
	_____	____%
_____ (First) (M) (Last)	_____	
	_____	____%
_____ (First) (M) (Last)	_____	
	_____	____%

(Additional secondary beneficiaries must be listed on another form)

Joan Marie Schaefer
Employee's Signature (Full Name)

June 12 2006
Date

***Primary Beneficiary Name and Date of Birth forwarded to Auditors, if applicable** JM 6/15/06 **(Date)**

Exhibit "B"

BENEFICIARY DESIGNATION FORM

(CHECK ONE) ___ City Pension ___X___ Police Pension

I, (print) Jean M Schafer, hereby designate the following
(First) (M) (Last)

RECEIVED

beneficiary for the pension benefits provided by the Pension Plan.

HUMAN RESOURCES

*** PRIMARY BENEFICIARY:**

Name: St Anthony of Padua Catholic Church
(First) (M) (Last)

Address: 710 10 St S

Fargo ND ~~58310~~ 58103

Optional: To receive an annual pension estimate with joint survivorship, **and if you have named your spouse as primary beneficiary,** include their date of birth below:

*Date of Birth: _____ (MMDDYYYY)

Primary
~~SECONDARY~~ **BENEFICIARY:**

Name: Society of St Vincent de Paul Conference of St Anthony of Padua
(First) (M) (Last)

Address: 710 10th St S

Fargo ND 58103

If you wish to name ***more than one*** secondary beneficiary, please designate below your beneficiaries along with the percentage of benefit they should receive.

Beneficiary Name	Beneficiary Address	Percentage
(First) (M) (Last)		
		____%
(First) (M) (Last)		
		____%
(First) (M) (Last)		
		____%

(Additional secondary beneficiaries must be listed on another form)

_____ _____
Employee's Signature (Full Name) **Date**

***Primary Beneficiary Name and Date of Birth forwarded to Auditors, if applicable** _____ **(Date)**

Exhibit "C"

THE CITY OF Fargo FAR MORE

RECEIVED
MAY 24 2021
HUMAN RESOURCES

Pension Option Election

Participant Name Darlene Daugherty

Employee Name Joan Schaefer

The following options are available for payment of your pension funds:

Option 1: DEATH BENEFIT AND CASH-OUT
You can elect to a cash-out of the total cash balance which is estimated at $72,782.08 and received a death benefit amount of $ 65,000. Both amounts are taxable and 20% will be withheld upon distribution unless you opt to rollover the distribution into a tax-deferred vehicle.

Option 2: 100% JOINT AND SURVIVORSHIP AND DEATH BENEFIT
You can elect to receive a 100% Joint and Survivorship pension which is estimated at $1,719.58 per month and receive a death benefit amount of $40,000. The death benefit taxable and 20% will be withheld upon distribution unless you opt to rollover the distribution into a tax-deferred vehicle.

I have reviewed and understand the pension options available to me. I elect to have my pension benefits paid under option 1. I further understand that by electing this option, I am revoking all other options on the election form.

Darlene Daugherty
Beneficiary

May 20, 2021
Date

Exhibit "C"

CITY OF Fargo

$65,000 DEATH BENEFIT and PENSION DISTRIBUTION

Pension Type (Check One) ☐ City ☒ Police

I, Darlene Daugherty am the ☒ Beneficiary and/or the ☐ Executor of the Estate

for Joan Schaefer.

Social Security Number: [redacted] Date of Birth: [redacted] 1936

Address: [redacted] City: New Rockford State: ND Zip: 58356

Telephone: [redacted]

OPTIONS: (Check One)

☒ I do not wish to rollover any of the distribution.

- Approximately **20%** will be withheld for federal income on all taxable monies not rolled over.

☐ Rollover 100% of the distribution to the following tax-deferred vehicle:

AMOUNT $ _____

FINANCIAL INSTITUTION _____

ADDRESS _____

_____

PHONE _____

ACCOUNT NUMBER _____

Darlene Daugherty
Beneficiary and/or Executor of Estate's Signature

5-20, 2021
Date

Exhibit "C"

CITY OF Fargo

General Information for $65,000 Death Benefit and Cash-out Pension Benefit

Pension Type: (Check One) ☐ City ☒ Police

Beneficiary Name: Darlene Daugherty Social Security Number: [redacted]

Date of Birth: [redacted]/1936

Address: [redacted] City: New Rockford State: ND Zip: 58356

NOTICE OF FEDERAL TAX WITHHOLDING:

The distribution you receive from the City of Fargo or Police Pension Plan is subject to federal income tax withholding unless you elect not to have withholding apply. Withholding will only apply to the portion of your distribution that is included in your income subject to federal income tax. Thus, for example, there will be no withholding on the return of your own nondeductible contributions to the Plan. If the qualified total distribution is less than $200, no withholding is required.

You may elect not to have withholding apply to your distribution by signing and dating the election below.

If you elect not to have withholding apply to your distribution, or if you do not have enough federal income tax withheld from your distribution, you may be responsible for payment of estimated tax. You may incur penalties under the estimated tax rules if your withholding and estimated tax payments are not sufficient.

WITHHOLDING INSTRUCTIONS:

☒ I elect not to have withholding deducted from my pension distribution.

☐ Please withhold an amount determined as if I were:

- ☐ Single claiming _____ exemptions.
- ☐ Married claiming _____ exemptions.

☐ Please withhold $_____from my distribution.

I acknowledge that all information and elections I have provided above are correct and detail my wishes regarding pension distribution.

Darlene Daugherty
Beneficiary and/or Executor of Estate's Signature

May 20, 2021
Date

Exhibit "C"

CITY OF Fargo

North Dakota State Tax Withholding for Cash-out Pension and Death Benefit Distribution

Pension Type: (Check One) ☐ City ☒ Police

Beneficiary: Name Darlene Daughtery
(Print)

Address: [redacted] City: New Rockford State: ND Zip: 58356

Marital Status ☐ Married ☒ Single

NOTICE OF WITHHOLDING

Effective 2008, City of Fargo retired employees were given the opportunity to begin having North Dakota state tax withheld from their monthly pension distribution. As with federal withholding, the deduction will only apply to the portion of your distribution that is included in your income subject to tax.

You may elect not to have withholding apply to your distribution by electing the option below.

WITHHOLDING INSTRUCTIONS: **(Note: Form must be signed and dated to be valid)**

☒ I elect not to have ND state withholdings deducted from my pension distribution.

☐ Please withhold an amount determined as if I were:

☐ Single claiming _____ exemptions.

☐ Married claiming _____ exemptions.

☐ Please withhold $_____from my distribution.

OR

☐ Instead of the above options, I elect to have an amount of $_____ withheld each month from my pension distribution

I acknowledge that all information and elections I have provided above are correct and detail my wishes regarding pension distribution.

Darlene Daughertey
Beneficiary and/or Executor of Estate's Signature

May 20, 2021
Date

Exhibit "C" CASH BALANCE ACCOUNT

POLICE PENSION — CITY OF FARGO — DATE 05/07/21

ESTIMATE

Employee..: SCHAEFER, JOAN M
Department: Police Department — Dept#: 101-5010

Year	Employee Contribution Interest (.06)	Contrib	Balance Ending
2006	.00	1,016.54	1,016.54
2007	60.99	2,060.68	3,138.21
2008	188.29	2,203.65	5,530.15
2009	331.81	2,454.40	8,316.36
2010	498.98	2,493.23	11,308.57
2011	678.51	2,578.88	14,565.96
2012	873.96	2,804.88	18,244.80
2013	1,094.69	3,316.97	22,656.46
2014	1,359.39	3,865.72	27,881.57
2015	1,672.89	4,036.65	33,591.11
2016	2,015.47	4,229.17	39,835.75
2017	2,390.15	4,441.44	46,667.34
2018	2,800.04	4,690.70	54,158.08
2019	3,249.48	4,903.31	62,310.87
2020	3,738.65	5,244.37	71,293.89
2021	1,488.19	.00	72,782.08
Totals..$	22,441.49	50,340.59	

SUMMARY OF CASH BALANCE ACCOUNT

Non-Taxable Employee Contribution	.00	Rollover Eligible (Conditions Apply)
Taxable Employee Contribution	50,340.59	Rollover Eligible
Taxable Interest on Employee Contribution	22,441.49	Rollover Eligible
TOTAL CASH BALANCE AVAILABLE	$ 72,782.08	

GAMING SITE AUTHORIZATION

OFFICE OF ATTORNEY GENERAL
SFN 17996 (02/2018)

(4)

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

Full, Legal Name of Gaming Organization: West Fargo Hockey Association

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: Fort Noks Bar of Gold			
Street: 52 Broadway N	City: Fargo	ZIP Code: 58102	County: Cass
Beginning Date(s) Authorized: 7/1/21	Ending Date(s) Authorized: 6/30/22		Number of twenty-one tables if zero, enter "0": 1
Specific location where games of chance will be conducted and played at the site (**required**): Northeast corner of the main bar /entire establishment excluding bathroom			
If conducting **Raffle** or **Poker** 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)

- [ ] Bingo
- [ ] **ELECTRONIC** Quick Shot Bingo
- [ ] Raffles
- [ ] **ELECTRONIC** 50/50 Raffle
- [x] Pull Tab Jar
- [ ] Pull Tab Dispensing Device
- [ ] **ELECTRONIC** Pull Tab Device
- [ ] Club Special
- [ ] Tip Board
- [ ] Seal Board
- [ ] Punchboard
- [ ] Prize Board
- [ ] Prize Board Dispensing Device
- [ ] Sports Pools
- [x] Twenty-One
- [ ] Poker
- [ ] Calcuttas
- [ ] Paddlewheels with Tickets
- [ ] Paddlewheel Table

APPROVALS

Attorney General	Date
Signature of City/County Official	Date: 6/14/2021
PRINT Name and official position of person signing on behalf of city/county above: Steve Sprague/City Auditor	

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

5a

APPLICATION FOR A LOCAL PERMIT OR RESTRICTED EVENT PERMIT

$25.00 cc

OFFICE OF ATTORNEY GENERAL
SFN 9338 (08/2019)

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

Name of Nonprofit Organization or group of people permit is issued to	Date(s) of Activity	For a raffle, provide drawing date(s):
Fargo Post 2 Baseball Club	July 1st to July 31st	7/1 - 7/31

Person Responsible for the Gaming Operation and Disbursement of Net Income	Title	Business Phone Number
Corey Thompson	Chairman	701 200 6286

Business Address	City	State	Zip Code
510 21st Ave N	Fargo	ND	58102

Mailing Address (if different)	City	State	Zip Code

Name of Site Where Game(s) will be Conducted	Site Address
Jack Williams Stadium	1137 Elm St N

City	State	Zip Code	County
Fargo	ND	58102	Cass

Check the Game(s) to be Conducted: * Poker, Twenty-one, and Paddlewheels may be Conducted only by a Restricted Event Permit.

☐ Bingo ☐ Raffle ☐ Raffle Board ☒ Calendar Raffle ☐ Sports Pool ☐ Poker * ☐ Twenty-one * ☐ Paddlewheels *

DESCRIPTION AND RETAIL VALUE OF PRIZES TO BE AWARDED

Game Type	Description of Prize	Retail Value of Prize
Raffle	Cash Prize	4,000

Game Type	Description of Prize	Retail Value of Prize

Total: (Limit $40,000 per year) $ 4,000

Intended uses of gaming proceeds: Support the baseball Program

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

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

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

Signature of Organization or Group's Top Official	Date	Title	Business Phone Number
	5/28/21	Chairman	701 200 6286

56

V32724
6/1/21
25.00

APPLICATION FOR A LOCAL PERMIT OR RESTRICTED EVENT PERMIT

OFFICE OF ATTORNEY GENERAL
SFN 9338 (08/2019)

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

Name of Nonprofit Organization or group of people permit is issued to	Date(s) of Activity	For a raffle, provide drawing date(s):
Tri City United Soccer Club	~~Aug 28 to Aug 29~~	August 29, 2021
Person Responsible for the Gaming Operation and Disbursement of Net Income	**Title**	**Business Phone Number**
Lee Schwartz	Executive Director	701 205 1357
Business Address	**City**	**State / Zip Code**
2761 12TH Ave South	Fargo	ND 58103
Mailing Address (if different)	**City**	**State / Zip Code**
Name of Site Where Game(s) will be Conducted	**Site Address**	
Pepsi Soccer Complex	3101 County Road 81N	
City	**State / Zip Code**	**County**
Fargo	ND 58102	Cass

Check the Game(s) to be Conducted: * Poker, Twenty-one, and Paddlewheels may be Conducted only by a Restricted Event Permit.

☐ Bingo ☒ Raffle ☐ Raffle Board ☐ Calendar Raffle ☐ Sports Pool ☐ Poker * ☐ Twenty-one * ☐ Paddlewheels *

DESCRIPTION AND RETAIL VALUE OF PRIZES TO BE AWARDED

Game Type	Description of Prize	Retail Value of Prize
Raffle	50% of Tickets Sold	TBD
	50/50 Raffle	

Game Type	Description of Prize	Retail Value of Prize

(Limit $40,000 per year)
Total: $ 10,000

Intended uses of gaming proceeds: Scholarships

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

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

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

Signature of Organization or Group's Top Official	Date	Title	Business Phone Number
	5/27/21	EXEC. DIR.	701 205 1357

APPLICATION FOR A LOCAL PERMIT OR RESTRICTED EVENT PERMIT

OFFICE OF ATTORNEY GENERAL
SFN 9338 (08/2019)

V 3191
25.00
6/7/21
(50)

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

Name of Nonprofit Organization or group of people permit is issued to: Steve Weidner FM Junior Tour	Date(s) of Activity: July 1, 2021 to June 30 2022	For a raffle, provide drawing date(s):	
Person Responsible for the Gaming Operation and Disbursement of Net Income: Shelley Weidner	Title: Chairman	Business Phone Number: 701 237-6746	
Business Address: 509 26th Ave S.	City: Fargo	State: ND	Zip Code: 58103
Mailing Address (if different): 1119 26th Ave S.	City: Fargo	State: ND	Zip Code: 58103
Name of Site Where Game(s) will be Conducted: Fargo Country Club	Site Address: 509 26th Ave S.		
City: Fargo	State: ND / Zip Code: 58103	County: CASS	

Check the Game(s) to be Conducted: * Poker, Twenty-one, and Paddlewheels may be Conducted only by a Restricted Event Permit.

☐ Bingo ☐ Raffle ☐ Raffle Board ☒ Calendar Raffle ☐ Sports Pool ☐ Poker * ☐ Twenty-one * ☐ Paddlewheels *

DESCRIPTION AND RETAIL VALUE OF PRIZES TO BE AWARDED

Game Type	Description of Prize	Retail Value of Prize
Raffleboards	Merchandise Gift Certificates	
(no one prize greater than $4,000)		$20,000
	CASH PRIZE	$4,000
(no one prize greater than $2,000)		
TOTAL OF July 1, 2021 - June 30, 2022	21 Events	for Period
Number of Weather.	Events Determined by	

Game Type	Description of Prize	Retail Value of Prize

Total: (Limit $40,000 per year) $ 24,000

Intended uses of gaming proceeds: Promote Junior Golf

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

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

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

Signature of Organization or Group's Top Official	Date	Title	Business Phone Number
Shelley Weidner	6/8/2021	Chairman	701 237-6746

(6)

MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

FROM: STEVEN SPRAGUE, CITY AUDITOR

SUBJECT: 2021-2022 ALCOHOL BEVERAGE LICENSE RENEWAL

DATE: JUNE 14, 2021

Attached is a list of 203 alcoholic beverage establishments seeking renewal of their Liquor and Live Entertainment licenses through June 30, 2022. 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 meet 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 4, 2021.**

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

Recommended Motion:
Approve the renewal of the attached Liquor and Live Entertainment licenses until June 30, 2022, upon the condition that all of the essential requirements for renewal are present by June 30, 2021.

DBA Name	Building Location	License Class
46 North Pints & Provisions	635 2 Ave N	FA
701 Eateries, Prairie Kitchen & Camp Lone Tree	701 University Drive N	FA
Acapulco Mexican Restaurant, Inc	1150 36 St S	F
Adibon A & E Fusion Cuisine	3017 13 Ave S	GH
AmericInn Fargo	4325 23 Ave S	ABH-Limited
Amvets	1001 1st Avenue South	A-Club
Applebee's Neighborhood Grill & Bar	2350 45 St S	FA
Applebee's Neighborhood Grill & Bar	2001 16 St N	FA
Applebee's Neighborhood Grill & Bar	2800 13 Ave S	FA
Auger Inn All Ranks Club	Hector Field	J
Avalon Event Center West	2525 9th Ave S	FA
Baymont Inn & Suites	1340 21 Ave S	ABH
Beer and Fish Company	230 Roberts Alley North	FA
Bernbaum's	402 Broadway N	GH
Bernie's Wines & Liquors	1557 South University Drive	B
Best Western Plus Kelly Inn & Suites	1767 44th St S	ABH-Limited
Bismarck Tavern	522 Broadway	AB
Bison Turf	1211 North University Drive	AB
Black Coffee and Waffle Bar	550 2 Ave N	GH
Blackbird Woodfire	206 Broadway	GH
Blaze Pizza	1443 42 St S	GH
Borrowed Bucks	1201 Westrac Drive	A
Bottle Barn Liquors	2515 Univ Dr S	B-M
Bowler	2630 University Dr S	AB
Brew Bird	30 University Drive N	F
Brewtus Clubhouse	4400 Clubhouse Drive	FA-Golf
Buffalo Wild Wings Grill & Bar	1501 42 St SW	A
Buffalo Wild Wings Grill & Bar	1515 19th Avenue North	FA
Candlewood Suites	1831 NDSU Research Park Dr	ABH-Limited
Candlewood Suites	4014 17 Ave S	ABH-Limited
Casa Mexico Mexican Restaurant	4900 13 Ave S, Suite 1	F
Cash Wise Liquor	1414 34 St S	B
Cash Wise Liquor	4985 Timber Parkway S	B-Limited
Chili's Grill & Bar	3902 13th Avenue SW	FA
Chipotle Mexican Grill	1680 45 St S	F
Chipotle Mexican Grill	1204 19 Ave N	F
Chub's Pub	421 North University Drive	AB
Chuck E. Cheese	1202 Nodak Drive	H
Concessions Management	5225 31 Ave S	N
Cowboy Jacks	506 Broadway N	A
Crave	3902 13 Ave S #3643	FA
Crooked Pint Ale House	3340 13th Avenue South	FA
Delta Hotels	1635 42nd Street S	ABH
Dempsey's Public House	226 Broadway	Z
District 64	64 Broadway N	Z
Doolittles Woodfire Grill	2112 25 St S	FA

Drekker Brewing Company	1666 1 Ave N	Y
Drumconrath Brewing Company	630 1 Ave N #6	Y
Drunken Noodle	414 Broadway	GH
Duffy's	16 12th Street South	AB
Edgewood Tavern	19 Golf Course Ave N	FA-Golf
El Zagal	1429 3rd Street North	A-Club
Elks	3435 North Broadway	A-Club
Empire Liquors West	4861 13 Ave SW	B
Empire Tavern	424 Broadway	AB
Expressway Suites	4303 17 Ave S	ABH-Limited
Famous Dave's BBQ	2581 45th Street SW	F
Fargo Billiards	3234 43 St S	FA-Entertainment
Fargo Brewing Company	610 N University Dr	C-M
Fargo Cork	3301 South University Drive	AB
Fargo Country Club	509 26th Avenue South	A-Club
Fargo Courtyard	2249 55 St S	ABH
Fargo HuHot Mongolian Grill	1801 45 St S Unit J	GH
Fargo Residence Inn	4335 23 Ave S	ABH-Limited
Fargo Stopping Center	4510 19 Ave S	I
Fargo Suites	3316 13th Ave S	ABH
FargoDome	1800 North University Drive	N
Fargo-Moorhead Curling Club	4300 23 Ave S	A-Club
Fort Nok's	52 Broadway	Z
Four Points by Sheraton	5064 23 Ave S	FA
Frank's Lounge	2640 52 Ave S Suite A	Z
Front Street Taproom	614 Main Ave	CW-M
Fryn' Pan Family Restaurant	310 Main Ave, Suite 170	GH
Garden Pavilion/One on One Catering	1421 7 Ave N	F
Golf Addiction	4474 23 Ave S	FA-Entertainment
Gorkha Palace	1000 45 St S Suite 300A	GH
Granite City Food & Brewery	1636 42nd Street SW	FA-M
Happy Harry's Bottle Shop	1621 45 St SW	B-M
Happy Harry's Bottle Shop	1125 19 Ave N	B-M
Happy Harry's Bottle Shop	4001 53 Ave S	AB-M
Happy Joe's Pizza	2511 South University Drive	H
Hennessy's Irish Pub	4323 45 St S #101	A
Herd & Horns	1414 12 Ave N Suite F	FA
Hi-Ho South	3051 25th Street SW	I
Hilton Garden Inn	4351 17 Ave S	ABH
Himalayan Yak	1450 25 St S #160	GH
Holiday Inn Express I-94	4711 19 Ave S	ABH-Limited
Holiday Inn Express-West Acres	1040 40 St SW	ABH-Limited
Holiday Inn of Fargo	3803 13th Avenue South	ABH
Homewood Suites by Hilton	2021 16 St N	ABH-Limited
Hornbacher's Wine & Spirits	4265 45 St S Suite 121	B-Limited
Hotel Donaldson	101 Broadway	ABH-RZ
India Palace	5050 13th Ave S Ste #3	GH

International African Restaurant and Nightclub, L	4554 7 Ave S	A
Izumi Sushi and Hibachi All You Can Eat	5675 26 Ave S, Suite 108-112	F
Izumi Sushi and Hibachi Buffet	5050 13 Ave S Ste 5	F
Jasper Hotel	215 Broadway N	ABH
Jays Smokin BBQ	1322 Main Ave	GH
JL Beers	4240 32 Ave S	AB-M
JL Beers	518 1st Ave N	FA-RZ-M
Johnny Carino's	4410 17 Ave S	FA
Juice It Smoothie	64 Broadway N, Suite 101	F
KingPinz	3485 Jacks Way	FA-Entertainment
Kobe's Japanese Cuisine	4228 15 Ave S	F
La Fiesta Mexican and American Grill	1109 38 St S	F
La Quinta Inn & Suites	2355 46 St S	ABH-Limited
Labby's Grill & Bar	1100 19 Ave N	Z
Leela Thai Cuisine LLC	1450 25 St S	GH
Legends	1500 E Rose Creek Pkwy S	FA-Golf
LongHorn Steakhouse #5432	4410 13th Ave S	FA
Lucky's 13 Pub	4301 17 Ave S	FA
Luna	1545 University Dr S	FA
Main Liquors	4000 Main Avenue	B
Mangos Mexican & American Grill	2901 Main Ave	F
Men's Hair World	1801 45 St S Ste L1	C
Mexican Village	814 Main Avenue	F
Mexican Village	3155 45 St S	FA
Mezzaluna	309 Roberts St N	FA-RZ
Nail Deluxe	4302 13 Ave S, Suite 5	G
Nichole's Fine Pastry	13 S 8th St	G
Nobull Country Club	609 NP Ave	Z
Northport Liquors	2726 North Broadway	B
O'Kellys	3800 Main Avenue	ABH
Old Broadway Food & Brewing Co	22 Broadway N	AB
Olive Garden Italian Restaurant #1188	4339 13th Avenue SW	FA
Osaka Sushi and Hibachi	1111 38 St S	F
Panchero's Mexican Grill	4360 13 Ave S, Suite C	H
Paradiso	801 38th Street South	A
Passage to India	855 45 St S Suite A-3	GH
Pepper's American Cafe	2510 South University Drive	AB
Pho D'Licious	623 NP Ave N	H
Pickled Parrot	505 3 Ave N	AB
Pixeled Brewing Co	1100 NP Ave, Suite 101	C-M
Pizza Ranch	4480 23 Ave S Suite A	H
Plains Art Museum	704 1st Avenue North	GH
Plaza Azteca Restaurantes Mexicanos	5505 28 Ave S	FA
Porter Creek Hardwood Grill	1555 44 St S	ABH
Pounds	612 1 Ave N	FA-RZ
Prairie Rose Meadery LLC	3101 39 St S, Suite E	P
Proof Artisan Distillers	414 4 Ave N	DD

Radisson-Fargo	201 5th Street North	ABH
Ramada Hotel & Conference	3333 13th Avenue South	ABH
Red Lobster #309	4215 13th Avenue South	A
Rhombus Guys	606 Main Ave	FA-RZ-M
Rick's Bar	2721 Main Avenue	AB
Rooter's Bar	107 Broadway	AB
Rough Cut Social	1100 NP Ave S Suite102	CW
Round Up (45th St) Royal Liquors and Bar	4501 Urban Plains Dr S	AB
Royal Liquors & Woody's Bar (32nd Ave)	1550 32nd Avenue So	AB
Royal Liquors (25th St)	3051 25 St S Unit C	B
Royal Liquors (Main Ave)	1606 Main Avenue	B
Royal Liquors Village West	4101 13 Av S	B
Ruby Tuesday	2535 23 Ave S	FA
Sammy's Pizza	301 Broadway	GH
Samurai Japanese Cuisine	1775 45 St S Suite B	GH
Sanctuary Event Center	670 4 Ave N	RZ-V
Sickie's Garage	3431 Fiechtner Dr S	FA
Side Show Café	901 25 St S	H
SideStreet Grille & Pub	404 4 Ave N	A-M
Sky Dine Services	2801 32 Ave N	A
Slammer's Bar	707 28 Ave N	A
SmashBurger	1801 45 St SW	H
Soiree Victorian Tea Room	3 - 8th St S	GH
Son's of Norway	722 2nd Avenue North	A-Club
SouthTown PourHouse	4281 45 St S, Ste 104	FA
Space Aliens Grill & Bar	1840 45th Street SW	FA
Speck's Bar	2611 Main Avenue	AB
Spicy Pie	322 Broadway N Ste A	H
Spicy Pie	2640 52 Ave S	H
Spirit Shop (33 ST)	1404 33 St S	B-M
Sports Bar	619 NP Avenue	AB
Square One	1407 1 Ave N	GH
Stamart Liquor	3220 12 Ave N	B-Limited
Staybridge Suites Hotel	4300 20 Ave S	ABH-Limited
Suite Shots	3400 James Way	FA-Entertainment
Super Buffet & Mongolian Grill	1000 45 St S Ste 100	GH
Taco Shop	117 Broadway	F
Tacos Trompo	4265 45 St S Suite 113	H
Tailgator's	1322 Main Avenue	AB
Target Wine & Spirits	4202 13 Ave S	B-Limited
Tavern Grill	4504 32 Ave S	FA
Tavern Grill Grotto	3233 45 St S	I
Teddy's	212 Broadway, Suite 103	FA-RZ
Texas Roadhouse	4971 13 Ave S	FA
The Boiler Room	210 N Broadway Suite 90	FA
The Box	1025 38th Street South	ABH
The Bulldog Tap	4265 45 St S Suite 161	Z

The Northern	325 10th Street North	AB
The Stage at Island Park, Fargo Moorhead Comm	6 Broadway	A-Club
Toasted Frog	305 Broadway N	FA-RZ
Touchmark at Harwood Groves	1200 Harwood Drive S	F
Twin Peaks Restaurant	1515 42 Street South	Z
Twist	220 Broadway N	FA-RZ
VFW	202 Broadway N	A-Club
Vinyl Taco	520 1 Ave N	FA-RZ
VIP Room & Catering	624 Main Avenue, Suite 1	GH
Wasabi/Poke Bowl	560 2 Ave N	F
West Acres Bowl	3402 Interstate Boulevard SW	AB
Wild Bill's Sports Saloon	1776 45 ST S	FA
Wild Terra Cider and Brewing Company	6 12 St N	CWP
Windbreak Saloon	3150 39th Street SW	AB
Wurst Bier Hall	630 1 Ave N Suite 1	FA-RZ-M

THE CITY OF Fargo FAR MORE

(1)

ARLETTE PRESTON, CITY COMMISSIONER
Fargo City Hall
225 4th Street North
Fargo, ND 58102-4817
Phone: 701.715.2862 | Fax: 701.476.4136
www.FargoND.gov

MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

FROM: COMMISSIONER ARLETTE PRESTON

DATE: JUNE 14, 2021

RE: REPORT ON VOTING BY MAIL

As you will remember, in February of this year, a proposal came before us to meet with the County to explore continuing with mailing absentee ballot applications to voters. The experience with the 2020 elections showed an increase of almost 100% (from 11% voter participation to 21%). There are numerous factors for that increase, but voting by mail is certainly one of them. We approved moving ahead with the proposal, 5-0.

A meeting was held with the County and a suggestion was made at that meeting for the City to send out the applications to the residents of the City of Fargo. The State had used a firm – out of state – to administer the process in the spring of 2020 at an approximate cost of $125,000.00.

The following is a cost estimate from a local printer and mail service provider. If absentee ballot applications are sent out to all voters within the City of Fargo, from the 2020 General election, the total mailings will be around 56,732.

Cover letter	$1,800
Ballot app	$1,800
Return envelope	$2,300
Mailing envelope	$2,300
Mailing service	$3,400
Postage	$18,000 (top end estimate of $0.30 per piece)
Total cost	$29,600

Recommended Motion: To direct City Administration to include $32,000.00 in the 2022 budget for the purpose of mailing out absentee ballot applications to the voters who are residents of Fargo for the City election in 2022.

8

REPORT OF ACTION

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Type: Encroachment Agreement

Location: 1716 1st Avenue South

Date of Hearing: 5/10/2021

Routing	Date
City Commission	6/14/2021
PWPEC File	X
Project File	Kristy Schmidt

The Committee reviewed a communication from Civil Engineer, Kristy Schmidt, regarding an Encroachment Agreement with Plexus Company at 1716 1st Avenue South.

Staff is recommending to formalize this encroachment with the following stipulations:

- Hold the City harmless against any and all expenses, demands, claims or losses sustained by the City by use of the public right of way by the Encroacher.
- Waive Application fee for the encroachment.
- Agreement expires upon sale or transfer of the property.
- No annual fee.

On a motion by Bruce Grubb, seconded by Steve Sprague, the Committee voted to recommend approval of the Encroachment Agreement contingent upon the above criteria.

RECOMMENDED MOTION
Concur with the recommendations of PWPEC and approve the Encroachment Agreement.

PROJECT FINANCING INFORMATION:
Recommended source of funding for project: None

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

COMMITTEE	Present	Yes	No	Unanimous ☑
Tim Mahoney, Mayor	☐	☐	☐	
Nicole Crutchfield, Director of Planning	☑	☑	☐	Mark Williams
Steve Dirksen, Fire Chief	☑	☑	☐	
Bruce Grubb, City Administrator	☑	☑	☐	
Ben Dow, Director of Operations	☐	☐	☐	
Steve Sprague, City Auditor	☑	☑	☐	
Brenda Derrig, City Engineer	☑	☑	☐	
Kent Costin, Finance Director	☐	☐	☐	

ATTEST:

Brenda E. Derrig, P.E.
City Engineer

C: Kristi Olson

THE CITY OF Fargo
FAR MORE

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

Memorandum

To: Members of PWPEC

From: Kristy Schmidt, CE II

Date: May 5, 2021

Re: Encroachment Agreement for 1716 1st Avenue South – Culinex Asphalt Boulevard

---

Background:

We are requiring installation of sidewalks and ADA ramps along 18th Street from Main Avenue and 5th Avenue South as part of the Safe Routes to School Plan developed by Fargo-Moorhead Metropolitan Council of Governments. During our survey of this area, we identified an undocumented encroachment of a paved boulevard in the public right of way at 1716 1st Avenue South adjacent to 18th Street.

The property owner has asked to keep this paved surface boulevard for an employee and customer walk surface for safety reasons. This encroachment has been recently resurfaced and is in new condition.

As we discover undocumented encroachments, we require either the removal of the encroachment or an Encroachment Agreement with the City of Fargo.

Staff is recommending to formalize the existing encroachment with the following stipulation:

- Hold the City harmless against any and all expenses, demands, claims or losses sustained by the City by use of the public right of way by the Encroacher.
- Agreement expires upon sale or transfer of the property.
- Recommend to waive annual fee due to these considerations:
  -historically annuals fee have been waived (grandfather in) for encroachments in place in excess of 30 years.
- Looking for a direction from this Committee regarding $500 processing fee

Recommended Motion:

Approve the existing Encroachment Agreement at 1716 1st Avenue South.

We are looking for direction regarding waiving of the processing fee of $500 as requested by the Owner due to Covid financial difficulties. They are a restaurant supplier.

KLS/klb
Attachments

C: Kevin Bouma, Culinex

ENCROACHMENT AGREEMENT

THIS AGREEMENT, made and entered into by and between **Plexus Company,** a North Dakota Corporation ("Plexus Company" or "Owner"), and the **CITY OF FARGO,** a North Dakota municipal corporation, hereinafter referred to as "City",

WITNESSETH:

WHEREAS, Plexus Company desires to encroach on a portion of City public right of way ("PROW") (Encroachment Area, more fully described below) to maintain an asphalt paved surface encompassing the entire boulevard in lieu of replacement of the City sidewalk; and,

WHEREAS, the purpose of this encroachment agreement is to detail the parties' responsibilities with respect to the asphalt paved surface in the PROW; and,

WHEREAS, Plexus Company has requested permission to continue to encroach on the PROW; and,

WHEREAS, Plexus Company has agreed to execute this agreement required by City to permit private facilities to encroach on the PROW.

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

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

> Lot 1, 2, and the west 20' of Lot 3, of Block 4 of Arnesons Addition and 10.5' of vacated 18th Street South, to the City of Fargo, situate in the County of Cass and the State of North Dakota ("Plexus Company Property").

2. Plexus Company will be permitted to leave in place the existing asphalt paving surface on a portion of the PROW adjacent to the Plexus Company Property, such property legally described as follows:

> A tract of land in the Northwest Quarter of Section 12, Township 139 North, Range 49 West of the Fifth Principal Meridian, City of Fargo, Cass County, North Dakota, described as follows:
>
> The easterly 26.00 feet of 18th Street South right of way lying adjacent to and coincident with the following described line; commencing at the southwest corner of Lot 1, Block 4 ARNESON'S ADDITION on record as document 287385 at the Cass County Recorder's Office; thence northerly along the west line of said Lot 1 a distance of 7.00 feet to the point of beginning; thence continuing along said west line of Lot 1 and the northerly extension thereof a distance of 152.00 feet and there terminating.
>
> Said tract contains 3,952 square feet, more or less ("Encroachment Area").

3. Plexus Company agrees that it will, during any use of the PROW, inspect, maintain, clean, repair and replace the asphalt paved surface, ensuring that the asphalt is level and maintained to the proper grade to match the sidewalks on the adjoining properties, and provides a continuous, unobstructed and safe pedestrian travel path. Plexus agrees to use due care to protect city streets, utilities and all other public property, to minimize disruption to pedestrian travel, in accordance with

PROWAG (Public Rights-of-Way Accessibility Guidelines) for any and all activates undertaken by Plexus Company on the PROW.

Plexus Company shall be solely responsible for (1) snow removal; (2) sweeping and debris removal, including but not limited to gravel or other materials which may accumulate on the asphalt paved surface; (3) ensuring proper drainage; (4) repair of any surface cracks and deterioration of the asphalt surface; (5) removal of any trip hazards; and (6) any other activities necessary to ensure the safety of the traveling public.

4. Upon discontinuance of use of the PROW or removal of any of the asphalt paved surface, Plexus Company shall restore and replace the PROW by installing ADA compliant pedestrian sidewalks in accordance with City Standards and Specifications, and shall restore the remaining portion of the PROW to greenspace, including establishment of grass, at City direction.

5. Plexus Company understands and agrees that it shall be responsible for the placement of concrete bumpers adjacent to the PROW to prevent vehicle traffic on the asphalt paved surface.

6. The parties further understand and agree that the cost of any repairs to the PROW occasioned by the permitted encroachment shall be Plexus Company's sole responsibility, at its sole cost.

7. In the event Plexus Company fails to maintain the PROW to City's satisfaction, City agrees to notify Plexus Company of the deficiencies. Except in the event of an emergency, as determined by City, Plexus Company shall have 10 days in which to undertake the necessary repairs to the asphalt paving surface in the PROW. Failure to complete the repairs in a timely manner shall result in City undertaking the work. The parties understand and agree that City shall assess the costs directly to the Plexus Company Property following the Infrastructure Funding Policy in effect at the

time of repairs. City will levy special assessments against the Plexus Company Property to recover all costs of the Project, in accordance with North Dakota Century Code Chapter 40-22. Owner waives its right to protest the resolution of necessity for the improvements for which such resolutions are required pursuant to North Dakota Century Code §40-22-17, and specifically consents to the construction of the improvements and to the assessment of all costs thereof to the Plexus Company Property. Owner further waives its right to protest the amount, benefit or any other assessment attribute related to the work completed by City. Project costs, which may be assessed against the Owner's Property, include all costs of completing the project, including engineering, fiscal agent's and attorney fees, and all other costs authorized by law.

8. To the fullest extent permitted by law, Plexus Company agrees to further hold the City harmless against any and all expenses, demands, claims or suits for damages or injury of any kind that may be brought against the City, its officers, agents and employees, its property, streets, sidewalks, and any other municipal improvements arising from Plexus Company's use of the PROW. Plexus Company further agrees to pay any and all costs the City incurs to enforce this indemnity provision, including attorney's fees. Plexus Company also agrees to secure General Liability Insurance naming the City as an additional insured in an amount not less than $1,000,000, and shall present the certificate of insurance to the City indicating acceptance by its insurer of its obligation to defend and hold the City harmless.

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

10. It is specifically understood and agreed that in the event City reconstructs or repairs the roadway or existing or future above or underground infrastructure adjacent to the Plexus Company Property, City may require removal of the asphalt paved surface from the PROW. The parties understand and agree that City shall not be responsible for repair or replacement of the asphalt surface in the Encroachment Area; City shall neither repair or replace the asphalt surface nor be responsible for any costs occasioned by the City work in the vicinity of the Encroachment Area.

11. It is further understood and agreed that within ninety (90) days' written notice from City, Plexus Company shall remove the asphalt paved surface from the PROW as directed by City, allowing the City to re-take and to use the PROW. The City's request to remove, relocate, or restore the asphalt paved surface will be in the City's sole discretion, but shall not be arbitrary or without good reason. This agreement does not provide for Plexus Company use of the PROW for a guaranteed minimum duration.

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

13. In the event Plexus Company redevelops any portion of these lots, Plexus Company understand and agrees that this agreement shall terminate, and that Plexus Company shall be required to remove the asphalt paving surface and comply with Fargo Municipal Code Ch. 20. Plexus Company shall install ADA compliant pedestrian sidewalks in accordance with City Standards and Specifications, and shall restore the remaining portion of the PROW to greenspace, including establishment of grass, at City direction.

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

of any current such limitations.

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

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

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

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

19. Any modifications or amendments of this Agreement must be in writing and signed by both partiesto this Agreement.

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

(Signatures on following pages)

Dated this 10 day of June, 2021.

Plexus Company, a North Dakota Corporation

By: [signature]
Its: Chief operations officer

STATE OF NORTH DAKOTA)
) ss
COUNTY OF CASS)

On this 10th day of June, 2021, before me, a notary public in and for said county and state, personally appeared Greg Nelson, to me known to be the Chief operations officer of Plexus Company, the entity described in and who executed the within and foregoing instrument and acknowledged to me that said entity executed the same.

SHANNA K. MCARTHUR
Notary Public
State of North Dakota
My Commission Expires Mar. 14, 2022

(SEAL)

[signature]
Notary Public
Cass County, North Dakota
My Commission expires: 3-14-2022

Dated this _____ day of _____, 2021.

CITY OF FARGO,
a North Dakota municipal corporation

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

ATTEST:

_____
Steven Sprague, Auditor

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

On this _____ day of _____, 2021, before me, a notary public in and for said county and state, personally appeared Dr. Timothy J. Mahoney, M.D. and Steven Sprague, to me known to be the Mayor and Auditor, respectively, of the City of Fargo, Cass County, North Dakota, the North Dakota 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, North Dakota
My commission expires: _____

(SEAL)

Legal Description was prepared by:
Brent Wacha
Registered Land Surveyor
City of Fargo
1240 25th Street South
Fargo, ND 58103
701-476-6638
bwacha@fargond.gov

This document was prepared by:
Nancy J. Morris
Assistant City Attorney
Erik R. Johnson & Associates, Ltd.
505 North Broadway, Suite 206
Fargo, ND 58102
701-280-1901
nmorris@lawfargo.com

Culinex

www.GoCulinex.com

February 1, 2021

Kristy Schmidt
C/O City of Fargo, Engineering Dept
225 4th Street North
Fargo, ND 58102

Re: Project No. SR-21—A1 City Order Sidewalks Undocumented Encroachment in Public Right of Way At 1716 1st Avenue South

Dear Ms Schmidt:

Plexus Co dba Culinex is the owner of the parking lot referenced at the address above. Culinex is a wholesale distributor of commercial restaurant equipment and supplies and has been in business under different owners since 1947. We are writing today in hopes of reaching and documenting an encroachment agreement for the public right of way referenced in your letter of December 29, 2020.

We formally request the agreement primarily for the safety of our customers and employees. This property, across 18th Street South from our home office and showroom, is used for employee and customer parking. Our home office building has two overhead doors and two walk-thru doors up and down the east side of our building that faces the subject property. Daily, more than 40 employees and dozens of customers park at the subject property and walk across the street to the delivery door or access point that best addresses their needs.

The only sidewalk that is available to them currently is at the far North end of the property. As a matter of human nature, we can reasonably assume they will not walk to the end of the block and cross when they can cross on a direct line to the door they need even if that is across grass and between trees. Recognizing this as a customer and employee safety issue, we have kept the property and the public right of way blacktopped with a smooth and well cared for surface that allows us to keep snow removed and have access to remove snowplow furrows that would otherwise hamper access to the parking areas and create safety issues trying to traverse.

While there is daily traffic for both customers and employees, this is a neighborhood where we witness very little other pedestrian traffic. We believe the safety of the many will hopefully outweigh pleasing aesthetics to the few. We hope the City of Fargo will agree and grant our request for the encroachment agreement.

Finally, with COVID-19, we have just completed a very difficult year. Our customers...restaurants/taverns from a three-state area...were closed much of 2020 or were required to operate on reduced occupancy.

The loss of business has been very difficult for them... and now for us too. It will be several years before restaurants and taverns have recovered to the point of regular expenditures for capital spending. Capital expenditures from restaurants is the lifeblood of our business. We have been hit very hard by this and, with that, we request the application fee and annual fees be waived in our favor.

Thank you for your kind consideration.

Sincerely,

Kevin D Bouma, CEO
Plexus dba Culinex



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

Culinex Encroachment

1:1,399

5/5/2021 11:04 AM

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

THE CITY OF Fargo FAR MORE

FARGODOME

(9)

To: Board of City Commissioners
From: Rob Sobolik, FARGODOME General Manager
Subject: FARGODOME 2021 Grant Application
Date: June 8, 2021

We request approval of FARGODOME's application for a COVID-related grant through the North Dakota Department of Commerce submitted on June 10, 2021. Due to a tight application deadline, we regret that we were unable to obtain prior approval.

Events and Support Services Grant (ESSG)

Funded through the North Dakota Department of Commerce

This recently announced grant focuses on venue-based businesses. Eligible businesses must prove a 50% revenue loss from 2019 to 2020. The amount awarded will be based on 25% of lost revenue, capped at $100,000. Based on the grant criteria, FARGODOME may qualify for an award of $100,000. As noted in the grant description:

> *Many of these businesses continue to suffer from the continued impact of the COVID-19 pandemic. While these businesses face dramatic declines in revenue, they continue to be pillars in both rural and urban communities across North Dakota. This grant will help event centers and those who support such venues survive amid the COVID-19 pandemic.*

Recommended Motion:
Approve FARGODOME's application for the North Dakota Department of Commerce's Events and Support Services Grant (ESSG).

RS/sjt
cc: Kent Costin

(10)

CITY OF FARGO, NORTH DAKOTA
FINANCIAL STATUS REPORT - MAJOR OPERATING FUNDS
2021 - YEAR TO DATE ENDING THROUGH 5/31/2021
BUDGET TO ACTUAL (Unaudited)

REVENUES:	Budget	Actual	Variance	Variance Percentage	Notes
General Fund	**$ 49,576,000**	**$ 48,357,000**	**$ (1,219,000)**	**-2.5%**	
Enterprise Funds:					
Water	8,557,000	8,390,000	(167,000)	**-2.0%**	
Solid Waste	6,667,000	6,238,000	(429,000)	**-6.4%**	
Wastewater	5,999,000	5,473,000	(526,000)	**-8.8%**	
Street Lighting	1,377,000	1,367,000	(10,000)	**-0.7%**	
Storm Sewer	1,128,000	1,159,000	31,000	**2.7%**	
Forestry	996,000	1,045,000	49,000	**4.9%**	
Vector Control	289,000	290,000	1,000	**0.3%**	
Total Enterprise Funds	**25,013,000**	**23,962,000**	**(1,051,000)**	**-4.2%**	
Total Operating Funds	**$ 74,589,000**	**$ 72,319,000**	**$ (2,270,000)**	**-3.0%**	

EXPENDITURES:	Budget	Actual	Variance	Variance Percentage	Notes
General Fund	**$ 40,122,000**	**$ 38,242,000**	**$ 1,880,000**	**4.7%**	
Enterprise Funds:					
Water	$ 9,998,000	$ 9,386,483	$ 611,517	6.1%	
Solid Waste	7,570,000	5,745,000	1,825,000	24.1%	**(1)**
Wastewater	6,711,000	5,005,000	1,706,000	25.4%	**(1)**
Street Lighting	1,847,000	1,437,000	410,000	22.2%	**(1)**
Storm Sewer	963,000	836,000	127,000	13.2%	
Forestry	1,001,000	1,081,000	(80,000)	-8.0%	
Vector Control	385,000	189,000	196,000	50.9%	**(1)**
Total Enterprise Funds	**28,475,000**	**23,679,483**	**4,795,517**	**16.8%**	
Total Operating Funds	**$ 68,597,000**	**$ 61,921,483**	**$ 6,675,517**	**9.7%**	

Reporting Basis: Revised Budget, Period 05/2021

(1) Budgets have not been seasonally adjusted

THE CITY OF Fargo FAR MORE

Fargo Cass Public Health
1240 25th Street South
Fargo, ND 58103-2367
Phone: 701.241.1360 | Fax: 701.241.1366
www.FargoCassPublicHealth.com

11

Public Health
Prevent. Promote. Protect.
Fargo Cass Public Health

MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

FROM: DESI FLEMING
DIRECTOR OF PUBLIC HEALTH

DATE: JUNE 2, 2021

RE: FARGO PUBLIC SCHOOLS CONTRACT FOR $1,675.87

The attached contract of $1,675.87 with Fargo Public Schools is for nursing services for Special Education services during the 2021 summer school period ending on July 22, 2021.

No budget adjustment is required for this contract.

If you have any questions please contact me at 241.1380.

Suggested Motion: Move to approve the Service Agreement with Fargo Public Schools for Special Services.

DF/lls
Enclosure

Docusign Envelope ID: FBC75F64-F214-4E3D-B439-E126DE9DC98A

FARGO PUBLIC SCHOOLS

Department of Support Services

SERVICE AGREEMENT

AGENCY/INDIVIDUAL OFFERING SERVICE: **FARGO CASS PUBLIC HEALTH DEPARTMENT**
1240 25th STREET SOUTH, FARGO, ND 58103

General Nature Of Service To Be Provided: Extended Nursing Care Services For Special Education Students With Severe Health Related Disabilities

AGREEMENT DURATION PERIOD: JUNE 8, 2021 THROUGH JULY 22, 2021 (TUES-THURS)

IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES HERETO, THAT:

A. The agency identified above shall provide the following services:
   1. Consultation, evaluation and patient services for special education students with unique health services identified as related special education nursing services in student Individual Education Plans.
   2. Upon request, assistance with the design of health protocols for specific special education students.

B. The District shall reimburse the Agency identified above as follows for expenses associated with this agreement:
   1. Time Period/Rate – The services requested shall be limited to 9 days. Service providers may vary depending upon individual student needs or changing needs. Total service provided shall be allocated as follows:

Two RN's	4 hours x 9 days in June @ $43.50	$ 1566.00
Mileage Estimate	21.8 miles @ $0.56	$ 109.87

   2. Service Cost – The maximum cost the services provided shall not exceed ..... $ 1675.87

   3. Payment Schedule – Payments shall be made to the Provider upon receipt of monthly billing statements which contain the names of eligible students served, dates, amount and type of service provided.

   4. Medicaid Claims –The District shall process all Medicaid claims for eligible students served through this agreement.

C. The Provider agrees that all terms and conditions specified in an existing contract with the District shall be applicable to this service agreement.

APPROVED AND EXECUTED THIS 27th DAY OF MAY, 2021.

Fargo Public Schools

BY: DocuSigned by: [signature] EA62A8C85B76446...
Business Manager

BY: DocuSigned by: Patty Cummings E505E3BC3771410...
Director of Special Education and Student Support Services

Fargo / Cass Public Health

BY: _____
Tim Mahoney, Mayor, City of Fargo

BY: Desi Fleming
Desi Fleming, Director of Public Health

THE CITY OF Fargo FAR MORE

Fargo Cass Public Health
1240 25th Street South
Fargo, ND 58103-2367
Phone: 701.241.1360 | Fax: 701.241.1366
www.FargoCassPublicHealth.com

Public Health
Prevent. Promote. Protect.
Fargo Cass Public Health

12

MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

FROM: DESI FLEMING
DIRECTOR OF PUBLIC HEALTH

DATE: JUNE 2, 2021

RE0: AMENDMENT TO THE AGREEMENT FOR SERVICES WITH ANNIE WOOD FOR CASS CLAY FOOD ACTION NETWORK MEETINGS FOR AN ADDITIONAL $250

The attached amendment for Agreement for Services with Annie Wood is to add an additional event (from 5 to 6 events) for an additional $250 bringing the maximum to $1,500 for assistance in presentation creation connected with the Cass Clay Food Action Network.

No budget adjustment is required for this contract.

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

DF/lls
Enclosure

THE CITY OF Fargo FAR MORE

AGREEMENT FOR SERVICES

Public Health
Protect. Promote. Protect
Fargo Cass Public Health

THIS AGREEMENT, effective the 1st day of June 2021, by and between Fargo Cass Public Health ("FCPH"); and Annie Wood (Independent Contracting Consultant).

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

A. **Term of Agreement:** The parties entered into a written agreement for the period of October 15, 2020 through September 30, 2021. The term of the agreement has not changed.

Services to be provided by independent contractor: Independent contractor will work closely with the Cass Clay Food Partners and the Cass Clay Food Action Network Project Manager to council First Fridays event presenters on presentation creation and effective ways to "share their story". Assist with implementation of the First Fridays events as needed. Services will be provided for 6 events instead of the previously agreed upon 5 events.

B. **Reimbursement:** The independent contracting consultant shall be reimbursed at a rate of $250/event with a maximum of $1,500 paid instead of the previously agreed upon $1250 for services and will submit an invoice twice during the contract period.
D. **Termination:** This Agreement may be terminated by either party upon the giving of thirty (30) days written notice.
E. **Confidentiality:** The independent contracting consultant agrees to not, directly or indirectly, disclose, make known, divulge, publish or communicate any individually identifiable health information or other confidential information to any person, firm or corporation without consent unless that disclosure is authorized under North Dakota law.

Special Considerations:

A. It is understood and agreed that the relationship created by this Agreement shall be that of independent contractor and contractee that shall not be deemed to be an employee of Fargo Cass Public Health for any other purpose.
B. This service agreement shall be governed by the laws of the State of North Dakota. I hereby certify that the above assurances and provisions of service have been reviewed and our agency has agreed upon the conditions as set forth.
C. It is understood any forms or paperwork required by Fargo Cass Public Health and the City of Fargo to receive payment for services will be completed as needed.
D. Services including printing and other miscellaneous costs may be discussed and agreed to by the parties as needed.

In Witness thereof, this purchase of service agreement has been executed between the Consultant and Fargo Cass Public Health on the date-executed below.

FARGO CASS PUBLIC HEALTH

By Desi Fleming
Desi Fleming, Director of Public Health

Date 06/02/2021

By _____
Timothy, J. Mahoney, Mayor, City of Fargo

Date _____

Annie Wood, Independent Contractor

By _____
Annie Wood, Independent Contractor

Date 6/2/2021

Contract Originator: Kim Lipetzky

THE CITY OF Fargo FAR MORE

Fargo Cass Public Health
1240 25th Street South
Fargo, ND 58103-2367
Phone: 701.241.1360 | Fax: 701.241.1366
www.FargoCassPublicHealth.com

Public Health
Prevent. Promote. Protect.
Fargo Cass Public Health

13

MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

FROM: DESI FLEMING
DIRECTOR OF PUBLIC HEALTH

DATE: JUNE 2, 2021

RE0: AMENDMENT TO THE AGREEMENT FOR SERVICES WITH GIA RASSIER TO WORK WITH CASS CLAY FOOD PARTNERS TO WORK ON FIRST FRIDAYS @ B FOR AN ADDITIONAL $250

The attached amendment for Agreement for Services with Gia Rassier is to add an additional event (from 5 to 6 events) for an additional $250 bringing the maximum to $1,500 for assistance in implementing the First Fridays @ B events.

No budget adjustment is required for this contract.

Suggested Motion: Move to approve the amendment to the Agreement for Services with Gia Rassier.

DF/lls
Enclosure

THE CITY OF Fargo FAR MORE

AGREEMENT FOR SERVICES

Public Health
Fargo Cass Public Health

THIS AGREEMENT, effective the 1st day of June 2021, by and between Fargo Cass Public Health ("FCPH"); and Gia Rassier (Independent Contracting Consultant).

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

A. **Term of Agreement:** The parties originally entered into a written agreement for the period of October 15, 2020 through September 30, 2021. The term of the agreement has not changed.

B. **Services to be provided by independent contractor:** Independent contractor will work closely with the Cass Clay Food Partners to implement and conduct the Cass Clay Food Action Network meetings (also known as First Fridays @ B). Work includes planning the program and content for 6 events instead of previously agreed upon 5 events, work with the facility on set up and technology needs including virtual meetings, market and promote events utilizing media, social media, etc. and videotaping events.

C. **Reimbursement:** The independent contracting consultant shall be reimbursed at a rate of $250/event with a maximum of $1,500 paid instead of the previously agreed upon $1,250 for services and will submit an invoice three times instead of twice during the contract period.

D. **Termination:** This Agreement may be terminated by either party upon the giving of thirty (30) days written notice.

E. **Confidentiality:** The independent contracting consultant agrees to not, directly or indirectly, disclose, make known, divulge, publish or communicate any individually identifiable health information or other confidential information to any person, firm or corporation without consent unless that disclosure is authorized under North Dakota law.

Special Considerations:

A. It is understood and agreed that the relationship created by this Agreement shall be that of independent contractor and contractee that shall not be deemed to be an employee of Fargo Cass Public Health for any other purpose.

B. This service agreement shall be governed by the laws of the State of North Dakota. I hereby certify that the above assurances and provisions of service have been reviewed and our agency has agreed upon the conditions as set forth.

C. It is understood any forms or paperwork required by Fargo Cass Public Health and the City of Fargo to receive payment for services will be completed as needed.

D. Services including printing and other miscellaneous costs may be discussed and agreed to by the parties as needed.

In Witness thereof, this purchase of service agreement has been executed between the Consultant and Fargo Cass Public Health on the date-executed below.

FARGO CASS PUBLIC HEALTH

By Desi Fleming
Desi Fleming, Director of Public Health

Date June 2, 2021

By _____
Timothy J. Mahoney, Mayor, City of Fargo

Date _____

Gia Rassier, Independent Contractor

By Gia Rassier
Gia Rassier, Independent Contractor

Date 6-1-2021

Contract Originator: Kim Lipetzky

THE CITY OF Fargo FAR MORE

Fargo Cass Public Health
1240 25th Street South
Fargo, ND 58103-2367
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Fargo Cass Public Health

14

MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

FROM: DESI FLEMING
DIRECTOR OF PUBLIC HEALTH

DATE: JUNE 9, 2021

RE: NOTICE OF GRANT AWARD FROM NORTH DAKOTA DEPARTMENT OF HEALTH FOR ND LPH FUNDING EQUITY AND PRIORITIZING POPULATIONS DISPROPORTIONATELY AFFECTED BY COVID-19 NUMBER G19.1294, CFDA 93.268 FOR IMMZ CFDA 93.391 FOR HE

The Notice of Grant Award from the ND Department of Health is to prioritize equity and immunizations for populations that are disproportionately affected by Covid-19. The award is for a total of $2,292,000 ($2,167,000 for immunizations and $125,000 for health equity) for the time period of 6/1/2021 through 6/30/2023. Scope of service is attached to Notice of Grant Award.

2021 Revenue		
Health Equity Grant	New number	$ 77,497
2021 Expense		
Full Time	101-6020-451-11-00	$ 21,152
Benefits		$ 6,345
Contract Services	101-6020-451-38-11	$ 50,000

Budget adjustments will be requested as plans for funding are determined.

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

Suggested Motion: Move to approve the award G19.1294 from North Dakota Department of Health for immunizations and health equity priorization.

DF/lls
Enclosure

NOTICE OF GRANT AWARD

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

Grant Number G19.1294	CFDA Name Imm: Immunization Cooperative Agreement. HE: Activities to Support State, Tribal, Local and Territorial (STLT) Health Department Response to Public Health or Healthcare Crises		CFDA Number Imm: 93.268 for $2,167,000 HE: 93.391 for $125,000
FAIN Number Imm: NH23IP922623 HE: NH75OT000095	Grant Type (Check One) ☒ Program ☐ R&D	Grant Start Date 6/1/2021	Grant End Date 6/30/2023
Federal Award Date Imm: 3/31/2021. HE: 5/28/2021	Federal Awarding Agency Imm and HE: U.S. 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 ND LPH Funding Equity and Prioritizing Populations Disproportionately Affected by COVID-19	North Dakota Department of Health (NDDoH) Project Code Imm: 2201 HLH 4774 01; $2,167,000 HE: 4541 HLH 4903 01; $125,000
Grantee Name Fargo Cass Public Health	Project Director Molly Howell, Immunization Director Krissie Guerard, Office of Health Equity Director
Address: 1240 25th Street South	Address: 600 East 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 Molly Howell, Immunization Division Manager Krissie Guerard, Office of Health Equity Director
Telephone Number: 701-241-1360	Telephone Number: 701-328-4556, 701-328-4538
Email Address: dfleming@fargond.gov	Email Address: mahowell@nd.gov; kguerard@nd.gov

	NDDoH Cost Share	Grantee Cost Share	Total Costs
Amount Awarded	$2,292,000	$0	$2,292,000
Previous Funds Awarded	$0	$0	$0
Total Funds Awarded	$2,292,000	$0	$2,292,000
Indirect Rate (Check One)	☒ Subrecipient waived indirect costs	☐ De minimus rate of 10%	☐ Negotiated/Approved rate of _____%

Scope of Service:
Grantee shall provide services as outlined in Attachment A.

Reporting Requirements:
Grantee must submit expenditure reports monthly via the Program Reporting System (PRS) including the immunization monthly activity report. The required immunization monthly activity report is attached.
Reimbursement will be processed upon Department approval of expenditures and receipt of monthly activity report.
Expenditure report for the period ending June 30, 2021 must be received by July 15, 2021.
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.
Expenditure report for the period ending June 30, 2023 must be received by July 14, 2023.

Special Conditions:
This grant award includes $2,167,000 for the Immunization Initiative. At least 10% of Immunization Imitative funds must be subcontracted to faith or community-based organizations. Costs for the Immunization Initiative funds must be invoiced separately.
The Immunization Initiative funds end on June 30, 2023.
This grant award includes $125,000 for the Health Equity Initiative. Costs for the Health Equity Initiative must be invoiced separately.
The Health Equity Initiative funds end on May 31, 2023.

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, 2019 to June 30, 2021 [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 06/09/2021	Signature Desi Fleming	Date	Signature
Typed Name/Title of Authorized Representative Desi Fleming, Director of Public Health		Typed Name/Title of Authorized Representative Kirby Kruger, Section Chief, Disease Control & Forensic Pathology	
Date	Signature	Date	Signature
Typed Name/Title of Authorized Representative Timothy J. Mahoney, Mayor, City of Fargo		Typed Name/Title of Authorized Representative Brenda M. Weisz, Chief Financial Officer	

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

Fargo Cass Public Health
G19.1294
Attachment A

North Dakota Local Public Health Funding Equity and Prioritizing Populations Disproportionately Affected by COVID-19

Scope of Service

Grantee agrees to complete the activities noted below. The NDDoH will provide Technical Assistance as noted below.

Activities: Required activities are italicized and shown in **RED** font below.

1. ***Rapidly deploy resources to target communities that have not received COVID-19 vaccine based on data reports provided by the NDDOH.***
    a. Utilize up to 20% of the total funding from the NDDoH **Immunization Initiative** for rapid deployment of resources to ensure equitable access to COVID-19 vaccine.
    b. Plans and activities could include but are not limited to coordination of transportation for those with limited or no access; mobile/community-based immunization clinics in rural areas; resources to connect people to vaccine that otherwise have low access or inability to use technology; and integrate immunization services into other existing programs such as home health, Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) or other relevant delivered services with existing relationships.

    Resources available to perform this activity include
    - The NDDoH will provide Grantee a current COVID-19 immunization coverage profile that details by census tract/zip code which eligible persons have not been vaccinated. This will allow for the identification of areas and communities in rapid need of services and funding for implementation.

2. ***Conduct a Rapid Community Assessment focused on COVID-19 Immunization Needs and develop a Health Equity Strategic Plan within your jurisdiction.***
    a. ***Rapid Community Assessment for COVID-19 Vaccinations***
        i. Grantees will be expected to perform community-based assessments focused on COVID-19 vaccine. Partnerships and stakeholders should initially focus on developing a local plan aimed at increasing COVID-19 vaccination within their communities by following the provided framework:
        COVID-19 Vaccine Confidence Rapid Community Assessment Guide | CDC
        ii. Report the findings of the Rapid Community Assessment findings to the NDDoH Division of Immunization by **July 15, 2021** via template titled **COVID-19 Rapid Assessment Findings & Implementation Plan.**
            1. Plans should address populations impacted by COVID-19, including, but not limited to:

a. People in racial and ethnic minority groups
    i. Non-Hispanic American Indian
    ii. Alaska Native
    iii. Non-Hispanic Black
    iv. Hispanic
b. People living in communities with high social vulnerability index
c. People living in rural communities
d. People with disabilities
e. People who are homebound or isolated
f. People who are underinsured or uninsured
g. People who are immigrants and/or refugees
h. People with transportation limitations

iii. Criteria to prioritize your selection of communities of focus may include:
1. Communities that have experienced disproportionately high rates of SARS-CoV-2 (the virus that causes COVID-19) infection and severe COVID-19 disease or death.
2. Communities with high rates of underlying health conditions that place them at greater risk for severe COVID-19 disease (e.g., heart disease, lung disease, obesity, see CDC website for detailed list).
3. Communities likely to experience barriers to accessing COVID-19 vaccination services (e.g., geographical barriers, health system barriers).
4. Communities likely to have low acceptance of or confidence in COVID-19 vaccines.
5. Communities where COVID-19 mitigation measures (e.g., mask wearing, social distancing) have not been widely adopted.
6. Communities with historically low adult vaccination rates
7. Communities with a history of mistrust in health authorities or the medical establishment
8. Communities not well-known to health authorities or have not traditionally been the focus of immunization programs.

Resources available to you to perform this activity:

- NDDoH will provide each community with a Social Vulnerability Index by **June 15, 2021** that will provide context to the underlying determinants of the following outcomes:
    - COVID-19 death
    - COVID-19 hospitalization
    - Low-immunization rates for COVID-19 and other immunizations

  Data in these reports will detail statistically significant factors within your communities that could be utilized to explain the root causes for these outcomes to allow for conversation with community partners on how to affect change on those outcomes.
- Data Analyst support for ongoing analysis, visualization and or data collection needs.

b. **Health Equity Strategic Plan**

i. Grantee will develop a local Health Equity Strategic Plan. Partners and stakeholders should focus on developing a local plan aimed at reducing health disparities and communities identified with health equity needs within their communities.

ii. Grantee will partner with the Federally Qualified Health Center (FQHC) in their jurisdiction, if applicable, to create the Health Equity Strategic Plan. Grantee must partner with other agencies which can include but is not limited to community-based and civic organizations; tribal organizations; academic institutions; tribal colleges and universities; Asian American and Pacific Islander Serving Institutions (AAPI); New American/Foreign Born/Immigrant (NFI) community organizations; faith-based organizations; non-governmental organizations; correctional facilities and institutions; local governmental agencies and community leaders; local businesses and business community networks and organizations, (e.g., employers, local chambers of commerce, small business community groups); social services providers and organizations, including those that address social determinants of health (e.g., community transportation; anti-discrimination organizations; legal services); and health care providers.

iii. Grantee may hire an agency or staff person to conduct the development of the **Health Equity Strategic Plan**. Grantee must identify a Health Equity champion. Grantee's Health Equity Strategic Plan will aid in the development of a statewide Health Equity Strategic Plan which includes COVID-19. Local strategic plans must be developed and submitted by **October 31, 2021** to the NDDoH Health Equity Office for approval.

iv. Grantee must work on addressing identified disparities in their current emergency response plans to ensure health equity is met in future emergency response activities. Health equity components must be addressed in emergency response plans by **May 31, 2022**.

v. Funding earmarked for implementation will be available after authorization for the local plan has been procured. The expected time period to spend implementation funds is **November 1, 2021 through May 31, 2023**.

vi. The document titled LPH Strategic Plan Guidance is attached by reference and is made part of this agreement. A copy will be provided by Grantor.

Resources available to you to perform this activity:

- Access to technical assistance on how best to bring together partners and facilitate the planning process within each of your communities.
- NDDoH will provide each community with a Social Vulnerability Index by **June 15, 2021** that will provide context to the underlying determinants of the following outcomes:
  - Premature Death (death before age 75)
  - Quality of Life

  Data in these reports will take a deep dive into the root causes and significant factors driving the overall outcome of the health of a jurisdiction.
- Data Analyst support for ongoing analysis, visualization and or data collection needs.

- The NDDoH Health Equity Office will provide a template for the plan and will provide technical assistance to Grantee as needed.

3. ***Implement plans to ensure greater equity and access to COVID-19 vaccine, other immunizations, and health services.***

Activities identified in both the COVID-19 Rapid Assessment Findings & Implementation Plan and the Health Equity Strategic Plan should focus on the following themes of developing and strengthening partnerships, improving access to care and health education/communication. Activities and populations of focus for both the COVID-19 Rapid Assessment Findings & Implementation Plan and the Health Equity Strategic Plan may or may not overlap dependent on the outcomes of your local assessments. Any opportunity to partner activities to serve the purpose of both increasing COVID-19 and other immunizations and eliminating health disparities overall should be prioritized. Examples include but are not limited to:

a. ***Develop, cultivate and/or strengthen community-based partnerships to reach disproportionally affected populations.***
   i. ***Subcontract with faith or community-based organizations to educate communities and increase immunization coverage rates. (At least 10% of Immunization Initiative funding must be subcontracted to faith and/or community-based organizations).***
   ii. Coordinate with partners to implement the locally developed plans to collaborate with other (non-immunization focused) programs within the local health department or local government that have established community engagement programs, initiatives, or reach into those communities. Prioritize outreach to programs that have proven or existing community engagement capacity or reach in the identified communities and leverage insights to support service delivery.
      1. Identify additional programs within the department to plan and implement tailored outreach and use of mobile clinics to increase service delivery in sub-groups within racial and ethnic populations (e.g., human immunodeficiency virus (HIV), nutrition programs such as WIC, rural health, etc.).
      2. Fund interdepartmental educational campaigns, outreach, educational approaches and materials with programs within the local health departments to increase acceptance of COVID-19 vaccination, other immunizations and other health services among racial and ethnic minority groups.
      3. Provide subject-matter expertise during community events educating about COVID-19 vaccination, other immunizations, and other health services in racial and ethnic population sub-groups. Examples of community events include townhalls, round-tables, and question and answer sessions.
      4. Engage in existing community outreach activities and collaborate and/or contract with local community health workers, immunization coalitions, and patient navigators to improve education and outreach to prioritized communities of focus.

iii. For each identified community of focus, identify community-based organizations, community leaders, coalitions, and local health clinics/centers to support COVID-19 vaccination, other immunizations and other health services education, outreach, and/or administration in the community.

iv. Develop and implement outreach campaigns and approaches to identify and train trusted messengers that represent the diversity of affected communities to educate vaccination through local media outlets, social media, faith-based venues, community events, and other community-based, culturally appropriate venues (e.g., faith leaders, teachers, community health workers, radio DJs, local shop owners, barbers, etc.).

v. Connect providers with places of worship, community-based organizations, recreation programs, food banks/pantries, schools and colleges/universities, grocery stores, salons/barbershops/beauticians, major employers, and other key community institutions to set up temporary and/or mobile COVID-19 vaccination, other immunizations and other health services provider sites, especially in high-disparity communities.

vi. Engage and develop partnerships with leadership from correctional facilities (prisons, jails) and law enforcement to facilitate COVID-19 vaccination, other immunizations and other health services as appropriate.

b. ***Improve access to COVID-19 vaccine, other vaccines, and other health services.***

i. Ensure access to vaccination sites and other health services have appointment availability throughout the jurisdiction by using multiple types of locations and with flexible hours accessible to and frequented by the identified communities of focus.

1. Locations for vaccinations and other health services should include, but not be limited to pharmacies, healthcare facilities, community-based sites, and mobile sites, and both large-scale and small or on-site pop-up locations.
2. Hours should take into consideration a) the needs of frontline workers and communities that may not be able to leave work during core daytime hours, and b) the needs and capacity of community-based sites, as not all will be able to meet requirements of size, hours, and staffing. Some community-based sites may require additional staff/funding to stay open beyond normal operating hours.
3. ***At least one off-site vaccination clinic must be held in a community setting weekly. Settings could include but are not limited to public places with high traffic (shopping centers, community fairs/events), schools, faith based settings, senior centers, homeless shelters, etc.***
4. ***Ensure all schools in your jurisdiction are offered school-based vaccinations for COVID-19 and for routine immunizations, including influenza.***

ii. Coordinate with local community-based organizations to plan and mobile or pop-up sites/clinics during existing events for communities of high social vulnerability (e.g., HIV/ sexually transmitted disease (STD) screening services, food drives/pantries, health fairs, and adult education programs).

iii. Support increased staffing of culturally competent medical personnel that reflect the identified community who may administer services at mobile or pop-up sites/clinics organized through community-based organizations.
    1. This could include partnering with minority community health workers and/or nursing students/phlebotomy students/residents from minority focused colleges or universities in the surrounding areas.

iv. Fund efforts to increase equity of health information sharing across communities of focus. Areas of emphasis could include but are not limited to:
    1. Provide funding, staffing, and/or technological support for call center, chat, or other triage services and surge support for the increased volume of questions from community members trying to access vaccines, determine eligibility, use online scheduling platforms, or asking other common questions.
    2. Increase translation of website content into additional languages specific to those in the communities of focus (e.g., using HTML format).
    3. Increase accessibility for individuals with disabilities (e.g., 508 compliance and websites that are keyboard friendly).
    4. Support a mobile friendly version of website content for individuals without computers.

v. Partner with nutrition, HIV, and STD programs to plan and implement mobile vaccine clinics to reach homebound individuals in communities of high social vulnerability.

vi. Simplify patient registration procedures. Prioritize offering service options that do not require preregistration (e.g., at local community centers, schools, houses of worship, or other highly frequented and trusted sites in the community). Ensure patient registration options do not require the internet or digital platforms (such as phone or in-person registration). Ensure registration is accessible to those with limited English proficiency or limited literacy. It should be made clear that registration does not require nonessential documentation, such as proof of citizenship, that is likely to deter individuals from immigrant communities from seeking vaccination.

vii. Support free or subsidized transportation options to access appointments either directly or indirectly through community partners (e.g., partner with local transportation services or transportation network companies to provide no-cost transport to sites in communities of high social vulnerability).

c. ***Improve and expand messaging/education around vaccination and other health needs.***
   i. Support ongoing training of identified trusted messengers through provision of educational materials that utilize trauma-informed community engagement strategies that address vaccine hesitancy and misinformation, historical injustices, minimize mistrust, and advance health equity.
   ii. Collaborate with trusted messengers to develop testimonial campaign. Testimonials could include representation from diverse groups of people including millennials, physicians, elderly, frontline workers, someone who lost a loved one, individuals who experienced a reaction following vaccination (or did not have a reaction), local or national celebrities of color, etc.
   iii. Support grassroots-style outreach campaigns through text messages, phone-banking, and/or safely conducted in-person vaccine availability and education information sharing, appointment sign-up options, and appointment and COVID-19 safety reminders.
   iv. Support nonfunded local entities by sharing learnings and materials.
   v. Fund and hire an adult immunization coordinator to focus on COVID-19, influenza and other necessary vaccines for these populations that will serve as a safety net for at-risk individuals.
      1. Areas of focus should include quality improvement, reminder recall and other activities to improve adult coverage rates.
   vi. ***Identify a health equity champion to serve as the person responsible for the implementation of the Health Equity Strategic Plan.***
   vii. Participate in cross-jurisdictional information sharing opportunities and collaboration to support sharing of best practices and group problem-solving.
   viii. Conduct other evidence-based activities to increase immunization coverage rates.

Resources available to perform this activity:

- Technical assistance to help agencies integrate health services into non-traditional settings, (i.e. improving service delivery at jails, homeless shelters, community centers, etc.; implementation of mobile service delivery).
- Additional funding that will be available to communities and partners identified during the planning process needed to achieve local objectives.
- Additional funding to Grantee based on additional needs and challenges specifically focused on COVID-19 vaccine delivery will be available through competitive granting after the submission of Rapid Assessment Plans.
- Additional funding and resources identified to bridge gaps in COVID-19 testing services.
- Data from needs assessments focused on American Indian, NFI populations with population derived needs and barriers to health care and other social needs.
- Technical assistance to bridge partnerships to better serve the following populations: American Indian, NFI.

- Technical assistance and resources to develop health communication campaign strategies.
- Resources surrounding behavioral health gap needs as identified through the health equity strategic planning.
- Access to provide feedback and needs to newly established Rural Health Advisory Board to help drive private and other healthcare service delivery in communities.

Required Performance Measures

- Submission and acceptance of a **COVID-19 Rapid Assessment Findings & Implementation Plan** by July 15, 2021.
- Submission and acceptance of a **Health Equity Strategic Plan** by October 29, 2021.
- Describe work to identify and prioritize disproportionately affected populations for vaccination in the past month.
- Describe work to partner with local organizations to promote vaccine awareness and uptake in the past month.
- Provide description of the work and successes/challenges of partnerships in reaching the high risk and underserved populations in the past month.
- Provide description of the work and successes/challenges of local partnerships in supporting community engagement and vaccine promotion in the past month.
- Describe mobile COVID-19 vaccination efforts in communities facing disparities, including the number of events and the number of days the events were held in the past month.
- Describe the vaccination services available through local partners in the past month.
- Describe work to partner with community organizations, and other trusted sources to promote vaccine awareness and uptake in the past month.
- Describe work to simplify COVID-19 vaccine registration processes, including successes and challenges. Describe existing non-digital options for COVID-19 registration in the past month.
- Describe work with trusted messengers to develop messaging campaigns, engage their communities, and build vaccine confidence in the past month.
- Report of all community-based clinics which include location of event, population served, number of people vaccinated for COVID-19, number of people that receive other immunizations.

Funding (See Attachment B for calculations)

The 28 North Dakota local public health units will be funded per a base component and a formula component. Each health unit will receive a base amount of funding from the following sources to be utilized for the following activities:

Base Component

Health Equity Initiative

Base Funding (Per Health Unit): June 1, 2021 – May 31, 2023

• Development of a Health Equity Strategic Plan	$75,000
• Implementation of Health Equity Strategic Plan	$50,000
	Total: $125,000

Immunization Initiative

COVID-19 Vaccine Equity Base Funding (Per County Served): June 1, 2021 - June 30, 2023

- Base Allocation for Rapid Community Assessment focused on COVID-19 Immunization Needs per county served. $20,000

Formula Component

Immunization Initiative

COVID-19 Vaccine Equity: Formula funding allocates $9,828,000 (as rounded) equitably across jurisdictions based on population and the CDC's Social Vulnerability Index (https://svi.cdc.gov/map.html). Counties with a SVI score of more than 0.25 which identify them as mid-to-highly socially vulnerable had their value multiplied to their overall population allocation.

Fargo Cass Public Health
G19.1294
Attachment B
Funding Calculations

	2018 Census	Base Allotment	SVI Calculation	Per Capita Amount	Amount with SVI	Total Grant Rounded Up
Divide	2,283	20,000	1.00	27,003	$ 27,003	48,000
McKenzie	13,632	20,000	1.33	161,236	$ 214,444	235,000
Mountrail	10,218	20,000	1.28	120,856	$ 154,696	175,000
Williams	35,350	20,000	1.25	418,111	$ 522,639	543,000
Total (UMDHU)	61,483	$80,000		$727,206		1,001,000
Adams	2,294	20,000	1.00	27,133	$ 27,133	48,000
Billings	919	20,000	1.00	10,870	$ 10,870	31,000
Bowman	3,076	20,000	1.00	36,382	$ 36,382	57,000
Dunn	4,332	20,000	1.00	51,238	$ 51,238	72,000
Golden Valley	1,769	20,000	1.00	20,923	$ 20,923	41,000
Hettinger	2,514	20,000	1.00	29,735	$ 29,735	50,000
Slope	763	20,000	1.00	9,025	$ 9,025	30,000
Stark	30,997	20,000	1.00	366,625	$ 366,625	387,000
Total (SWDHU)	46,664	$160,000		$551,931		$716,000
Bottineau	6,411	20,000	1.00	75,828	$ 75,828	96,000
Burke	2,100	20,000	1.00	24,838	$ 24,838	45,000
McHenry	5,816	20,000	1.00	68,790	$ 68,790	89,000
McLean	9,541	20,000	1.00	112,849	$ 112,849	133,000
Renville	2,374	20,000	1.00	28,079	$ 28,079	49,000
Sheridan	1,349	20,000	1.00	15,956	$ 15,956	36,000
Ward	67,744	20,000	1.00	801,259	$ 801,259	822,000
Total (FDHU)	95,335	$140,000		$1,127,599		$1,270,000
Logan	1,903	20,000	1.00	22,508	$ 22,508	43,000
Dickey	4,903	20,000	1.00	57,991	$ 57,991	78,000
McIntosh	2,585	20,000	1.00	30,575	$ 30,575	51,000
LaMoure	4,062	20,000	1.00	48,044	$ 48,044	69,000
Barnes(City County)	10,542	20,000	1.00	124,688	$ 124,688	145,000
Foster	3,216	20,000	1.00	38,038	$ 38,038	59,000
Wells	3,957	20,000	1.00	46,802	$ 46,802	67,000
Stutsman	20,917	20,000	1.00	247,401	$ 247,401	268,000
Grant	2,374	20,000	1.00	28,079	$ 28,079	49,000
Mercer	8,267	20,000	1.00	97,780	$ 97,780	118,000
Burleigh	95,273	20,000	1.00	1,126,865	$ 1,126,865	1,147,000
Emmons	3,295	20,000	1.00	38,972	$ 38,972	59,000
Kidder	2,450	20,000	1.00	28,978	$ 28,978	49,000
Morton	31,095	20,000	1.00	367,784	$ 367,784	388,000
Oliver	1,952	20,000	1.00	23,088	$ 23,088	44,000
Sioux	4,358	20,000	1.88	51,545	$ 96,905	117,000
Benson	6,962	20,000	1.84	82,345	$ 151,514	172,000
Eddy	2,313	20,000	1.29	27,358	$ 35,291	56,000
Cavalier	3,829	20,000	1.00	45,288	$ 45,288	66,000
Towner	2,192	20,000	1.00	25,926	$ 25,926	46,000
Rolette	14,301	20,000	1.91	169,149	$ 323,074	344,000
Pierce	4,081	20,000	1.00	48,269	$ 48,269	69,000
Ramsey	11,481	20,000	1.35	135,794	$ 183,322	204,000
Nelson	2,869	20,000	1.00	33,934	$ 33,934	54,000
Walsh	10,667	20,000	1.37	126,167	$ 172,848	193,000
Grand Forks	70,770	20,000	1.30	837,050	$ 1,088,165	1,109,000
Pembina	6,947	20,000	1.00	82,167	$ 82,167	103,000
Griggs	2,232	20,000	1.00	26,400	$ 26,400	47,000
Fargo/Cass	181,516	20,000	1.00	2,146,926	$ 2,146,926	2,167,000
Ransom	5,237	20,000	1.00	61,942	$ 61,942	82,000
Richland	16,239	20,000	1.00	192,071	$ 192,071	213,000
Sargent	3,870	20,000	1.00	45,773	$ 45,773	66,000
Steele	1,903	20,000	1.00	22,508	$ 22,508	43,000
Traill	8,037	20,000	1.00	95,060	$ 95,060	116,000
Totals	**760,077**	**1,060,000**		**8,990,001**	**$ 9,803,288**	**$10,888,000**

THE CITY OF Fargo FAR MORE

Fargo Cass Public Health
1240 25th Street South
Fargo, ND 58103-2367
Phone: 701.241.1360 | Fax: 701.241.1366
www.FargoCassPublicHealth.com

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MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

FROM: DESI FLEMING
DIRECTOR OF PUBLIC HEALTH

DATE: JUNE 2, 2021

RE: FINANCIAL AWARD FROM NORTH DAKOTA DEPARTMENT OF COMMERCE/DCS FOR GLADYS RAY SHELTER EMERGENCY SOLUTIONS GRANT-CV FOR $1,004,680.00 FEDERAL GRANT NO. E-20-DW-38-0001 CFDA 14.231

The following Financial Award from the North Dakota Department of Commerce is to be used to prevent, prepare for and respond to coronavirus and to mitigate the impacts created by coronavirus for Gladys Ray Shelter clients. The budget adjustment request for the grant are as follows:

2021 Revenue		
ESG-CV	New Number	$207,500
2021 Expense		
Temporary/Seasonal	101-6013-451-14-00	$150,000
Benefits		$ 45,000
Contract Services	101-6013-451-38-11	$ 7,500
General Supplies	101-6013-451-61-40	$ 5,000

Budget adjustments will be requested as plans for funding are determined.

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

Suggested Motion: Move to approve the award from North Dakota Department of Commerce for Emergency Solutions Grant-CV.

DF/lls
Enclosure

FINANCIAL AWARD
NORTH DAKOTA DEPARTMENT OF COMMERCE/DCS
SFN 4623 (12/14)

PART I
BASIC INFORMATION & SIGNATORY SHEET

PROJECT TITLE
Emergency Solutions Grant-CV

INSTRUMENT TYPE
☑ Grant ☐ Contract ☐ Cooperative Agreement

INSTRUMENT NUMBER
4862-ESG20-CV

RECIPIENT NAME AND ADDRESS
FCPH/City of Fargo/Gladys Ray Shelter
1519 1st Avenue South, Suite A
Fargo, ND 58103

GRANTOR
ND Department of Commerce
Division of Community Services
1600 East Century Ave, Suite 2, PO Box 2057
Bismarck, ND 58502-2057
Phone: (701) 328-5300

RECIPIENT DUNS NUMBER
070265871

BUDGET/PROJECT PERIOD
3/1/21 - 8/31/22

DATE
05/07/21

RECIPIENT TYPE
☐ State Government ☐ Indian Tribal Government
☐ Local Government ☐ Individual
☐ Education ☐ For Profit Organization
☐ Hospital ☑ Other Nonprofit Organizations
☐ Other (Specify) _____

FUNDING SOURCE
☑ Federal _____
☐ State _____
☐ Other _____

FEDERAL AUTHORIZING LEGISLATION
P.L 116-136 and P.L. 101-625

TYPE OF AWARD
☑ New ☐ Renewal ☐ Amendment No. _____

FEDERAL GRANT NUMBER
E-20-DW-38-0001 dated 1/7/21

CFDA NUMBER
14.231

ADMINISTERING AGENCY
Gladys Ray Shelter

PROJECT ADMINISTRATOR
Jan Eliassen

TELEPHONE
(701) 364-0116

PROCUREMENT METHOD (CONTRACTS)
☐ Formal Bid ☐ Noncompetitive Negotiation ☐ Small Purchase ☐ Competitive Negotiation

FUNDING AUTHORIZATION

1. DCS Funds Awarded This Action	$ 1,004,680.00	
2. DCS Carryover Funds Authorized	$	
3. DCS Previous Awards This Project Period	$	
4. DCS Previous Deauthorizations This Project Period	$	
5. Current DCS Funds Authorized		$ 1,004,680.00
6. Recipient Share of Budget	$ 0.00	
7. Total Approved Budget		$ 1,004,680.00

REMARKS
Funds provided under this award are to be used to prevent, prepare for, and respond to coronavirus, among individuals and families who are homeless or receiving homeless assistance, and to support additional homeless assistance and homelessness prevention activities to mitigate the impacts created by coronavirus.

This award agreement is entered into by the *RECIPIENT* and *GRANTOR* specified above. The *RECIPIENT* agrees to implement the tasks delineated in this award and will comply with all incorporated and referenced terms and conditions. The award consists of this Signatory Sheet, the attached Terms and Conditions, the attached Budget, and incorporated or referenced Work Program or Application.

EVIDENCE OF RECIPIENT ACCEPTANCE	EVIDENCE OF GRANTOR ACCEPTANCE
NAME Jan Eliassen Director 6/10/21	NAME Bonnie Malo
Desi Fleming, Director of Public Health Desi Fleming 6/10/21	TITLE Director
	SIGNATURE X
	DATE

Timothy J. Mahoney, Mayor DATE

PART II
General Assistance Terms & Conditions
Updated 6/17/19

A. AVAILABILITY OF FEDERAL FUNDS - If disclosed on Part I, funds to be disbursed under this Award have been appropriated pursuant to the enabling federal legislation cited in Part I of this Award. Should federal funds become limited by the awarding federal agency, this grant may be amended accordingly.

B. STATE APPROPRIATION AUTHORITY - Funds authorized under this Award are subject to State Appropriation Authority.

C. SCOPE OF WORK - All work and activities authorized by this Award will be performed in accordance with the terms and conditions and work program attached, described, or referenced in this agreement. In addition, if a work or grant proposal was submitted, all work will comply with that which was described and requested in the work proposal unless otherwise noted as changed.

D. LIMITATIONS ON EXPENDITURES - The total cost of performing the tasks under this Award must not exceed the total funds authorized in Part I, Basic Information and Signatory Sheet, and will be limited to and in accordance with those delineated in the budget plan attached to this Award.

E. AMENDMENTS AND MODIFICATIONS - When necessary, the Recipient may request changes in the scope of services to be provided in this Award to include changes in the attached budget. These requests must be made in writing and supported with appropriate documentation. Such changes must not be undertaken until incorporated by written amendments to this Award.

F. RECORD RETENTION AND ACCESS - The DCS and duly authorized officials of the state and federal government shall have full access and the right to examine any pertinent documents, papers, records and books of the Recipient and of persons or organizations the Recipient may contract with which involve transactions related to this Award. The Recipient shall retain all documents, papers, records and books that are pertinent to this Award for a period of five (5) years following the submission of the final Financial Status Report or until all audit findings have been resolved, whichever is later unless otherwise stated in this agreement. .

G. SUBCONTRACTING - The Recipient shall not assign, transfer, or subcontract professional service responsibilities (excluding approved construction and rehabilitation services) covered under this Award without prior written approval of the DCS.

H. PROHIBITION AGAINST PAYMENTS OF BONUS OR COMMISSION - The assistance provided under this Award shall not be used in the payment of any bonus or commission for the purpose of the preparation of and/or activities associated with obtaining approval of the work proposal.

I. TERMINATION - The Recipient and the DCS may terminate this Award agreement at any time by giving written notice to the other party of such termination and specifying the effective date thereof and the cause for the termination. Unless otherwise noted in Part III of this award, the other party must receive such notice at least thirty (30) days before the effective date of termination. Cause for termination may include nonperformance of specified work activities and noncompliance with the terms and conditions of this Award. The DCS shall be liable only for work performed or services provided under this Award prior to the effective date of termination.

J. DEFAULT - If the Recipient fails to comply with the terms of this Award or fails to use the Award for only those purposes set forth herein, the DCS may, unless otherwise noted in Part III of this award:

1. After notice to the Recipient, suspend the award and withhold further payment or prohibit the Recipient from incurring additional obligations of grant funds, pending corrective action by the Recipient.

2. Terminate the Award in whole, or in part, at any time before the final award payment is made. The DCS shall promptly notify the Recipient in writing of the determination to terminate, the reason for such termination, and the effective date of the termination.

K. NONDISCRIMINATION - The Recipient agrees that it will be subject to and will comply with Title VI of the Civil Rights Act of 1964, Executive Order 11246 as amended by the Executive Orders 11375 and 12086, the Age Discrimination Act of 1975, and Title VIII of the Civil Rights Act of 1968. Under these acts, no person shall on the grounds of race, color, religion, sex, national origin or age be excluded from participation in, be denied the benefits or be otherwise subject to discrimination under this program.

L. SECTION 504 - The Recipient agrees that it will be subject to and will comply with Section 504 of the Rehabilitation Act of 1973. Under this act no person shall solely by reason of disability be excluded from participation in, be denied the benefits of or be subjected to discrimination under this program.

M. CODE OF CONDUCT - Recipients shall maintain a written code or standards of conduct which shall govern the performance of their officers, employees or agents engaged in the Award and administration of contracts supported by federal funds. No employee, officer or agent of the Recipient shall participate in selection, or in the award or administration of a contract supported by federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

1. The employee, officer or agent:

2. Any member of his immediate family:

3. His or her partner: or

4. An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award.

The Recipient's officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements.

To the extent permitted by state or local law or regulations, such standards of conduct shall provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the Recipient's officers, employees, or agents, or by contractors or their agents.

PART III - PROGRAMMATIC TERMS AND CONDITIONS
Emergency Solutions Grants Cares Act (ESG-CV)

Recipient FCPH/City of Fargo/Gladys Ray Shelter Instrument Number 4862-ESG20-CV

Funds provided under this award are federal funds received from the Department of Housing and Urban Development (HUD) under Emergency Solutions Grant Number E-20-DW-38-0001 dated 1/7/21. Funds are provided under this award are to be used to prevent, prepare for and respond to coronavirus, among individuals and families who are homeless or receiving homeless assistance, and to support additional homeless assistance and homelessness prevention activities to mitigate the impacts created by coronavirus.

The Department of Commerce, Division of Community Services (DCS), as grant recipient for grant number E-20-DW-38-0001, subgrants the amount shown in Part I of this agreement to the subrecipient (referred to as Recipient in Part I and through out this award).

1. This award is made pursuant to Subtitle B of Title IV of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11371 et seq.), as amended, the ESG Interim Rule found at 24 CFR Parts 91 and 576 and HUD CPD 20-08 Notice. Funds under this award may only be used to prevent, prepare for and respond to coronavirus among individuals and families who are homeless or receiving homeless assistance, and to support additional homeless assistance and homelessness prevention activities to mitigate the impacts created by coronavirus. Individuals and families experiencing homelessness shall not be required to receive treatment or perform any other prerequisite activities as a condition for receiving assistance.

2. The sub-recipient must spend all grant funds within the award timeline of this Financial Award. At least 20% of the funds awarded in Part I must be expended by September 20, 2021, at least 80% by March 31, 2022, and 100% by August 31, 2022. Failure to request reimbursement as specified may result in the termination of this award.

3. The sub-recipient must submit a quarterly progress report to the HMIS Lead. The quarterly report is due by the 10th working day after the end of the quarter (April, July, October and January). Within 15 days following project completion, a final progress report must be submitted to the Division of Community Services (DCS). Expenditure of funds must be reported by activity funded in Part IV – Scope of Work and Project Budget.

4. Environmental Review - Per 24 CFR 576.407(d): HUD-assisted projects are required to comply with the National Environmental Policy Act (NEPA) by conducting an environmental review to determine the potential environmental impacts of a project or, if applicable, by documenting it categorical exclusion or exemption from this requirement.

   DCS will provide an Environmental Review form to each grantee. The grantee must complete and return the form, along with the appropriate backup documentation, to DCS with the Request for Funds. This is the only action the grantee is required to take in order to be in compliance with the Environmental Review requirement.

5. The sub-recipient must submit to DCS, within 60 days, verification of ownership of the property by the subgrantee or a lease agreement giving the sub-recipient control of the property at least until the end of the project. (For rehab projects only).

6. Sub-recipients providing emergency shelter in hotels or motels or other commercial facilities must certify that leases have been negotiated which provide that the living space will be rented at substantially less than the daily room rate otherwise charged by the facility.

7. The sub-recipient is required to be readily accessible to and usable by persons with disabilities in accordance with Section 504 of the Rehabilitation Act and implementing regulations at 24 CFR Part 8; the Fair Housing Act and implementing regulations at 24 CFR Part 100; and Title II of the Americans with Disabilities Act and 28 CFR Part 35; where applicable.

8. Sub-recipients, with the exception of Domestic Violence assistance providers, must input client data into the HMIS system as required by the Grantor and the Department of HUD. Subrecipients shall consistently enter information into HMIS and strive for real-time or close to real-time data entry, this means either immediate data entry or data entry within 5 business days. Domestic Violence assistance providers must use a comparable database.
9. Sub-recipients, with the exception of Domestic Violence assistance providers, must use the centralized or coordinated assessment system.

10 The sub-recipient must provide for the participation of not less than one homeless individual or formerly homeless individual on the board of directors or other equivalent policy-making entity of the grantee, to the extent that the entity considers and makes policies and decisions regarding any facilities, services, or other assistance that receive funding under ESG-CV. If unable to meet the requirement above, it must develop and implement a plan to consult with homeless or formerly homeless individuals in considering and making policies and decisions regarding any facilities, services, or other assistance that receive funding under ESG-CV. This involvement may include employment or volunteer services.

11. The sub-recipient must comply with provisions contained in 24 CFR 576.23 and Executive Order 13559 regarding faith-based organizations as outlined in Attachment A of this award.

12. Youth aged 24 and under seeking assistance shall not be required to provide third-party documentation to establish their eligibility under 42 U.S.C. 11302(a) or (b) to receive services. Unaccompanied youth aged 24 and under or families headed by youth aged 24 or under who are living in unsafe situations may be served by youth-serving providers.

13. The sub-recipient will maintain its DUNS number and SAM registration throughout the term of this agreement.

14. Sub-recipients must have a written policy and procedures manual that identifies how the use of ESG-CV funds prevent, prepare and respond to the Coronavirus, the Administration Plan, to ensure the requirements of the ESG-CV funding are being met, which includes, but are not limited to the following:

- Documentation of eligible ESG-CV activities.
- Documentation of program participant eligibility.
- Documentation of rent reasonableness, if applicable.
- Documentation of program participant intake interview.
- Full description of each activity undertaken.
- Financial records illustrating appropriate accounting principles.
- Records and supporting documentation accounting for staff time and activities preventing, preparing and responding to the coronavirus funded through ESG-CV expenditures for draw requests (respective documentation must be submitted with each draw request, including a narrative on how the funds were used to prevent, prepare and respond to the coronavirus).
- For Rapid Rehousing Rental Assistance, a copy of the rental assistance agreement, along with a copy of the lease need to be submitted with each request for funds.
- Documentation of and justification of any ESG-CV waivers utilized.
- Any other documentation necessary to demonstrate compliance with the ESG-CV Program.

15. To ensure ESG-CV funds are being utilized and subrecipients are meeting the required expenditure deadline, subrecipients must request reimbursement at least once per month.

PART IV
SCOPE OF WORK AND PROJECT BUDGET
7/29/13

Name of Grantee FCPH/City of Fargo/Gladys Ray Shelter					Instrument Number 4862-ESG20-CV					
Activity	CDBG	HOME	ESG-CV	NDHG	HOPWA	Other Federal	State/ Local	Private	Other*	Total
Street Outreach			559,804.00							559,804.00
Street Outreach Training			5,437.00							5,437.00
Street Outreach Volunteer Activities			9,467.00							9,467.00
Emergency Shelter Operations			161,910.00							161,910.00
Emergency Shelter Essential Services			32,380.00							32,380.00
Emergency Shelter Training			10,000.00							10,000.00
Emergency Shelter Volunteer Incentives			10,000.00							10,000.00
Emergency Shelter (Temporary Emergency Shelter)			199,682.00							199,682.00
Rapid Re-Housing*			16,000.00							16,000.00
Administration			0.00							0.00
TOTAL	0.00	0.00	1,004,680.00	0.00	0.00	0.00	0.00	0.00	0.00	1,004,680.00

*Source of Other Funds *Breakdown for Rapid Re-Housing funds is as follows: Training $6,000 and Volunteer Incentives $10,000

PART V
ESG-CV STATEMENT OF ASSURANCES

Emergency Solutions Grant-Cares Act (ESG-CV)
Certifications by the Chief Executive Officer

I, Desi Fleming/ Timothy J. Mahoney / Jan Eliassen, Chief Executive Officer of FCPH/City of Fargo/Gladys Ray Shelter

certify that the grantee will comply with 24 CFR Parts 91 and 576 Emergency Solutions Grants Program Interim Regulations (see attached), HUD Notice CPD-20-08, John Gibbs, Assistant Secretary Memo dated 9-30-2020 and any additional notice and subsequent revisions.

I further certify that the grantee will not:

1. Conduct renovation, major rehabilitation, or conversion of any building: listed on the National Register of Historic Places: located in a historic district: immediately adjacent to a property listed on the National Register; or deemed to be eligible for inclusion on the National Register by the State Historic Preservation Officer;

2. Conduct any such activity taking place in a 100-year floodplain designated by map by the Federal Emergency Management Agency:

3. Conduct any such activity which will jeopardize the continued existence of an endangered or threatened species designated by the Department of the Interior's Fish and Wildlife Service, or by the Department of Commerce's National Maritime Fisheries Service, or affecting the critical habitat of such a species.

Additionally, I certify that use of emergency solutions grant amounts will comply with the following additional requirements:

1. ***Nondiscrimination and Equal Opportunity***

   a. The requirements of Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601-19 and implementing regulations; Executive Order 11063 and implementing regulations at 24 CFR Part 107; and Title VI of the Civil Rights Act of 1964 (42 U.S.C.2002d) and implementing regulations issued at 24 CFR Part 1;

   b. The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101-07) and the prohibitions against discrimination against handicapped individuals under Section 504 of the Rehabilitation Act of 1973 (20 U.S.C. 794);

   c. The requirements of Executive Order 11246 regarding anti-discrimination in employment decisions on the basis of race, color, religion, sex or national origin, and the regulations issued under the Order at 41 CFR Chapter 60: and

d. The requirements of Section 3 of Housing and Urban Development Act of 1968, 12 U.S.C. 170lu (see Section 570.607(b) of this Chapter); and

e. The requirements of Executive Orders 11625 and 12432, and 12138. Consistent with HUD's responsibilities under these Orders, the grantee must make efforts to encourage the use of minority and women's business enterprises in connection with activities funded under this part.

2. ***Applicability of OMB Circulars***. The policies, guidelines, and requirements of OMB Circular 2 CFR Part 200 Uniform Guidance as it relates to the acceptance and use of emergency solutions grant funds.

3. ***Uniform Federal Accessibility Standards***. For major rehabilitation or conversion, the Uniform Federal Accessibility Standard at 24 CFR Part 40, Appendix A.

4. ***Lead-based paint***. The requirements, as applicable, of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. Sections 4821-4846) and implementing regulations at 24 CFR Part 35. In addition, the grantee (or in the case of States, the State recipient) must also meet the following requirements relating to inspection and abatement of defective lead-based paint surfaces:

   a. Treatment of defective paint surfaces must be performed before final inspection and approval of the renovation, rehabilitation or conversion activity under this part; and

   b. Appropriate action must be taken to protect shelter occupants from the hazards associated with lead-based paint abatement procedures.

5. ***Conflicts of Interest***. In addition to conflict of interest requirements in OMB 2 CFR Part 200 Uniform Guidance, no person (1) who is an employee, agent, consultant, officer, or elected or appointed official of the grantee, State recipient, or nonprofit recipient (or of any designated public agency) that receives emergency solutions grants amounts and who exercises or has exercised any functions or responsibilities with respect to assisted activities; or (2) who is in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from the activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for him or herself or those with whom he or she has family or business ties, during his or her tenure or for one year thereafter.

6. **Use of debarred, suspended, or ineligible contractors**. The provisions of 24 CFR Part 24 relating to the employment, engagement of services, awarding of contracts, or funding of any contractors or subcontractors during any period of debarment, suspension, or placement in ineligibility status.

7. ***Flood Insurance***. No site proposed on which renovation, major rehabilitation, or conversion of a building is to be assisted under this part, other than by grant amounts allocated to the State, may be located in an area that has been identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless the community in which the area is situated is participating in the National Flood Insurance

Program and the regulations thereunder (44 CFR Parts 59-79) or less than a year has passed since FEMA notification regarding such hazards, and the grantee will ensure that flood insurance on the structure is obtained in compliance with Section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4401 et seq.).

8. ***Audit.*** The financial management system used by a State, unit of general local government or nonprofit organization that is a grantee or State recipient shall provide for audits in accordance with Subpart (F) of 2 CFR Part 200 Uniform Guidance.

9. ***Coastal Barriers.*** In accordance with the Coastal Barrier Resources Act, 16 U.S.C. 3501, no financial assistance under this part may be made available within the Coastal Barrier Resources System.

10. ***Intergovernmental Review.*** The requirements of Executive Order 12372 and the regulations issued under the order at 24 CFR Part 52, to the extent provided by FEDERAL REGISTER notice in accordance with 24 CFR 52.3.

11. ***Displacement.*** A grantee or State or nonprofit recipient may not expend ESG grant funds for any activities that would result in the displacement of persons or businesses.

I further certify that the submission of an application for an Emergency Solutions Grant-CV is authorized under State and/or local law and that the grantee possesses legal authority to carry out Emergency Solutions Grant-CV activities in accordance with the conditions of this award.

Jan Eliassen	Director of Harm Reduction Services Program
(Name)	(Title)
	06/02/21
(Signature of Chief Executive Officer)	(Date)
Desi Fleming, Director of Public Health	Timothy J. Mahoney, Mayor, City of Fargo
Desi Fleming 06/02/21	
Signature (Date)	Signature (Date)

Attachment A

EMERGENCY SOLUTIONS GRANTS-CV (ESG-CV) PROGRAM

Provisions for Inclusion in ESG-CV Agreements with Grant Recipients that are faith-based organizations or that may contract with faith-based organizations in accordance with 24 CFR 576.23.

1. The sub-recipient may not discriminate against an organization on the basis of the organization's religious character or affiliation.

2. Organizations that are directly funded under this award may not engage in inherently religious activities, such as worship, religious instruction, or proselytization as part of its programs or services funded under this award. If an organization conducts such activities, the activities must be offered separately, in time or location, from the programs or services funded under this award, and participation must be voluntary for the beneficiaries or the programs or services provided under this award.

3. A religious organization that receives ESG-CV funds will retain its independence from governmental entities and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs, provided that it does not use ESG-CV funds to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, faith-based organizations may use space in their facilities to provide ESG-CV funded services, without removing religious art, icons, scriptures, or other religious symbols. The faith-based organization may retain its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.

4. The sub-recipient will not discriminate against program beneficiaries or prospective program beneficiaries on the basis of religion or religious belief.

5. ESG-CV funds may not be used for the rehabilitation of structures to the extent that those structures are used for inherently religious activities. Funds may be used for the rehabilitation of structures that are used for conducting eligible activities under this part. Where a structure is used for both eligible and inherently religious activities, ESG-CV funds may not exceed the cost of those portions of the rehabilitation that are attributable to eligible activities in accordance with applicable cost accounting circulars. Sanctuaries, chapels, or other rooms that an ESG-CV funded religious organization uses as its principal place of worship are ineligible for ESG-CV funded improvements. Disposition of real property after the term of the grant, or any change in use of the property during the term of the grant, is subject to government-wide regulations governing real property disposition (see 24 CFR Parts 84 and 85).

Homeless Certification for the North Dakota Homeless Grant (NDHG) And Emergency Solutions Grant (ESG)

I certify that all individuals served by the North Dakota Homeless Grant are eligible beneficiaries that meet at least one of the definitions of homeless, homeless individual or homeless person as defined in Section 103 of 42 USC 11302.

UNDER THE ACT – the term "homeless", "homeless individual", and "homeless person" means –

	Category 1	Literally Homeless	(1) Individual or family who lacks a fixed, regular, and adequate nighttime residence, meaning: (i) Has a primary nighttime residence that is a public or private place not meant for human habitation; (ii) Is living in a publicly or privately operated shelter designated to provide temporary living arrangements (including congregate shelters, transitional housing, and hotels and motels paid for by charitable organizations or by federal, state and local government programs); or (iii) Is exiting an institution where (s)he has resided for 90 days or less and who resided in an emergency shelter or place not meant for human habitation immediately before entering that institution.
	Category 2	Imminent Risk of Homelessness	(2) Individual or family who will imminently lose their primary nighttime residence, provided that: (i) Residence will be lost within 14 days of the date of application for homeless assistance; (ii) No subsequent residence has been identified; and (iii) The individual or family lacks the resources or support networks needed to obtain other permanent housing.
	Category 3	Homeless under other Federal statues	(3) Unaccompanied youth under 25 years of age, or families with children and youth, who do not otherwise qualify as homeless under this definition, but who: (i) Are defined as homeless under the other listed federal statutes; (ii) Have not had a lease, ownership interest, or occupancy agreement in permanent housing during the 60 days prior to the homeless assistance application; (iii) Have experienced persistent instability as measured by two moves or more during the preceding 60 days; and (iv) Can be expected to continue in such status for an extended period of time due to special needs or barriers.
	Category 4	Fleeing/ Attempting to Flee DV	(4) Any individual or family who: (i) Is fleeing, or is attempting to flee, domestic violence; (ii) Has no other residence; and (iii) Lacks the resources or support networks to obtain other permanent housing.

Signature

06/02/2021
Date

Jan Eliassen
Printed Name

Director of Harm Reduction Services Program
Title

1519 1st Ave S
Address

Gladys Ray Shelter/Fargo Cass Public Health
Agency Name

Fargo ND 58103
City, State, Zip Code

701.476.4117
Phone # (including area code)

THE CITY OF Fargo FAR MORE

HUMAN RESOURCES DEPARTMENT
Fargo City Hall
225 4th Street North
Fargo, ND 58102
Phone: 701.241.1321 | Fax: 701.476.6707
www.FargoND.gov

16

To: Board of City Commissioners

From: Jill Minette
Director of Human Resources JM

Re: Request for Out-of-Grade Pay

Date: June 9, 2021

Brenda Derrig, City Engineer, submitted a request for Will Bayuk, Civil Engineer I (grade 15) to receive out-of-grade pay while performing the essential duties of a Civil Engineer II (grade 17/ exempt) with the exception of those duties requiring a Professional Engineer (PE). The out-of-grade pay will cost approximately $2.58 per hour in the out-of-grade assignment.

This request has been reviewed and approved by the City Administrators.

Suggested Motion:

Approve the request to award out-of-grade pay to Will Bayuk effective June 14, 2021.

THE CITY OF Fargo
FAR MORE

HUMAN RESOURCES DEPARTMENT
Fargo City Hall
225 4th Street North
Fargo, ND 58102
Phone: 701.241.1321 | Fax: 701.476.6707
www.FargoND.gov

(17)

TO: Board of City Commissioners

FROM: Jill Minette
Director of Human Resources JM

RE: City of Fargo COVID-19 Temporary Employment Policy – Annual Leave (Vacation) Maximum Accrual

DATE: June 9, 2021

Due to the impacts of COVID-19 on annual leave usage, the COVID-19 Temporary Employment Policy – Annual Leave (Vacation) Maximum Accrual adopted in 2020, increased the carryover limits by 80 hours (96 hours for fire suppression) at the end of 2020. While some employees have been able to utilize the excess vacation hours from 2020, many continue to have significantly higher balances than normal due to the increased workload of the pandemic.

A new policy for 2021 has been drafted and is attached for your approval. The temporary policy increases the carryover limits by 40 hours (48 hours for fire suppression) for 2021 as we gradually transition back to our normal limit in 2022. The increased limit will minimize the potential forfeiture of annual leave by employees who were previously unable to take vacation due to circumstances beyond their control.

RECOMMENDED MOTION:

To approve the City of Fargo COVID-19 Temporary Employment Policy – Annual Leave (Vacation) Maximum Accrual for 2021

City of Fargo

Temporary Employment Policy

COVID-19

Annual Leave (Vacation) - Maximum Accrual for 2021

Effective: June 14, 2021 through December 31, 2021

Due to impacts of COVID-19, the City of Fargo recognizes that employees may not have had the opportunity to use their annual leave (vacation) accrual as they would in a typical year. Some departments and employees continue to be impacted by higher workloads that do not allow for normal vacation usage. While employee and supervisors are strongly encouraged to work together to schedule vacation to the extent possible this year, the City of Fargo is increasing the 2021 vacation carry-over limits.

City of Fargo Employment Policy 500-001 Annual Leave establishes that employees may carry over annual leave balances of up to 256 hours (508.5 hours for fire suppression) each year. The annual leave balance, including all hours accrued by the end of the 26th pay period, minus any annual leave hours used on or before December 31 determines the year-end annual leave accrual. Normally, any hours over 256 are forfeited.

Due to the continued impacts of COVID-19, on December 31, 2021, employees will be able to carry over an additional 40 hours of annual leave (48 additional hours for fire suppression). The annual maximum carry over balance will be 296 hours (556.5 for fire suppression) for 2021. Any hours in excess of these new limits will be forfeited. In 2022, the maximum accrual will return to the levels established by City of Fargo Employment Policy 500-001 Annual Leave unless otherwise modified.

Department heads may submit a request for exemption from the temporarily increased maximum accrual for instances where the employee is unable to use their annual leave even at the increased limit due to extraordinary circumstances beyond their control. The requests will be reviewed on a case-by-case basis by the Director of Human Resources.

THE CITY OF Fargo FAR MORE

(18)

Planning & Development
225 4th Street North
Fargo, ND 58102
Office: 701.241.1474 | Fax: 701.241.1526
Email: planning@FargoND.gov
www.FargoND.gov

MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

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

DATE: JUNE 10, 2021

RE: GAP FUNDING FOR NEW LIFE CENTER OVERFLOW SHELTER

With a recent $3 million commitment from the United Way for the "Homeless Prevention Project", Fargo is on track to reducing homelessness by 90% in the metro area by the end of 2023. This evidence-based program targets resources to prevent and divert people in crisis from entering homelessness or the shelter system in the first place. This approach greatly increases their likelihood to "self-resolve" in a shorter period and avoid entering homelessness altogether.

While the Homeless Prevention Project is set up over the next three years, gap funding is necessary to ensure a healthy shelter system in the interim to ensure the best opportunity for success. Due to high demand for shelter beds and increased spacing needs for congregate living due to the pandemic, there is an increased need to fund overflow sheltering operations year-round. There is an increase in overnight shelter guests and there are sporadic surges that are somewhat unexplainable due to the uncertainty of the pandemic. It is impossible to estimate the potential surges in demand, as factors such as the federal eviction moratorium dissolving and other Covid-19 economic impacts may come into play. However, our recommendation, based on collaboration with community partners, is to be prepared to shelter an additional 50 people for any given night for the rest of 2021, 2022, and 2023.

To do so, staff believes we can capitalize on what was invested during our 2020 overflow response. Using Red River Task Force funds and other pandemic relief funds during the emergency declaration, the City Commission approved retrofitting a warehouse adjacent to the New Life Center at 2011 3rd Ave N, which can shelter up to 35 single men. These operations were funded not only for the initial building fit-up, but to also support staffing through April 2021.

Today, we know there continues to be a need for overflow beds for shelter guests; in the month of May, the nightly average was 22, which is notably higher than past spring seasons. The 2020 overflow response as a result of the pandemic has actually pointed towards a solution for the "overflow issue" created when the FM Sheltering Churches program ended in 2017.

To maximize the past investment that the City and the Red River Task Force has made in fitting up the New Life Center's overflow warehouse, staff recommends funding this site's operations in full through 2023. This activity could be a combination of federal, state, and local funds. The City Planning staff will seek funding for the 2022 and 2023 budget year as part of the budget approval process. However, to serve the gap between May and December 2021, the planning staff are seeking $375,156 in funds for New Life Center's overflow program to keep operating until the end of 2021. The recommended source of funds is through federal and state COVID response allocations and social

EQUAL HOUSING OPPORTUNITY

service funds. (Of note, both shelters are doing their own fundraising and run several concurrent programs to prevent and to end homelessness, such as rapid re-housing and a relapse prevention program; overflow sheltering is an additional, but critical, layer to their programs.)

On April 22, 2021, Finance Committee approved a commitment of up to $375,156 to support New Life Center's overflow operation and to approve a corresponding agreement.

Costs for May 1, 2021 through December 31, 2021

New Life Center additional one-time fit-up	$20,372
New Life Center overflow operations: $44,348/month	$354,784
TOTAL:	$375,156

Recommendation

Based on the recommendation from the Finance Committee on April 22, approve executing attached amendment between the City of Fargo and New Life Center to increase funding by $375,156 and to extend the agreement through December 31, 2021.

AMENDMENT #1 OF SUBRECIPIENT AGREEMENT
BETWEEN CITY OF FARGO (Grantor) AND
NEW LIFE CENTER (Subrecipient)

In reference to the Subrecipient Agreement to undertake certain activities with Covid-19 grant funds, made by and between **City of Fargo** (Grantor) and **New Life Center** (Subrecipient) and entered into on January 1, 2021, such agreement is hereby amended to include the following conditions:

The first WHEREAS clause is amended to state "WHEREAS, the City is willing to make available up to **$493,864** from various sources, including its Social Service funds and/or any COVID-19 CARES grant funds, for the purposes outlined herein, in particular for low income and vulnerable populations," an increase of $354,784 from the original agreement.

Part I(A) Program Delivery is amended to state that "The Program will include the following activities:

- **Activity One:** Hire staff to manage additional shelter space.
- **Activity Two:** Cover other operational costs including security, rent, and utilities.
- **Activity Three:** Complete necessary one-time fit-up purchases and construction, including but not limited to two computers, a vacuum, new bed mats, linens, and AC/HVAC system.

Part I(A)(2) Levels of Accomplishment – Goals & Performance Measures is amended to state:

Activity One: Employ additional staff to meet demand through 12/31/21.

Activity Two: Cover additional operational expenses to meet demand through 12/31/21.

Activity Three: Complete purchase and implementation of necessary one-time fit-up purchases and construction, including but not limited to two computers, a vacuum, new bed mats, linens, and AC/HVAC system.

In addition, the New Life Center will continue to accept referrals and participate with metro-wide shelter coordination strategies to support emergency quarantine, overflow, and decompression-related sheltering needs.

Part I(A)(4) Term of Performance is added to state, "The terms of this agreement shall be for twelve months, beginning January 1, 2021. The terms of this Agreement shall remain in effect during any period the Subrecipient has control over funds.

Part II. Budget & Use of Funds is amended to include the following:

New Life Center COVID-19 Budget

Item	Jan.-April 2021	May-Dec. 2021	Total
Labor	$108,000	$251,840	$367,400

Security	$16,400	$36,000	$52,400
Rent	$8,000	$16,000	$24,000
Other Facility Expenses (utilities, etc.)	$6,680	$43,384	$50,064
Fit-up costs		$20,372	$20,372
Admin Costs		$7,560	
TOTAL			$493,864

Part III(A)(1) Maximum Amount is amended for the total amount to be paid by the City not to exceed $493,864 from COVID19 Grant funds, an increase of $354,784 from the original agreement.

Part V(A) Final Report is amended to state, "The Subrecipient shall submit a final report within 90 days of project completion, to include the number of beneficiaries served through December 31, 2021 and the number of new jobs created."

Part VII. Exhibit A – Requirements and Subrecipient Assurances Agreement is amended to be for the period January 1, 2021 through December 31, 2021.

NEW LIFE CENTER

Rob Swiers, Executive Director — Date: 5-27-21

CITY OF FARGO

Timothy J. Mahoney, M.D., Mayor — Date

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City of Fargo Staff Report			
Title:	Turf Tamers Addition	**Date:** **Updated:**	6/30/2020 6/10/2021
Location:	4170 & 4200 24 Avenue North	**Staff Contact:**	Maggie Squyer, assistant planner / Donald Kress, current planning coordinator
Legal Description:	Lots 2 & 3, Block 4, Laverne's Addition		
Owner(s)/Applicant:	Turf Investments, LLC/ Brian Pattengale	**Engineer:**	Houston
Entitlements Requested:	**Minor Subdivision** (Replat of Lots 2 & 3, Block 4, Laverne's Addition)		
Status:	City Commission Public Hearing: June 14, 2021		

Existing
Land Use: Industrial (landscape contractor) and undeveloped
Zoning: LI, Limited Industrial
Uses Allowed: LI, Limited Industrial allows colleges, community service, day care facilities, detention facilities, health care facilities, parks and open areas, religious institutions, safety services, basic utilities, adult entertainment centers, offices, off-premise advertising, commercial parking, outdoor recreation and entertainment, retail sales and services, self-service storage, vehicle repair, limited vehicle service, industrial service, manufacturing and production, warehouse and freight movement, wholesale sales, aviation, surface transportation and telecommunications facilities.
Maximum Building Coverage 85%

Proposed
Land Use: Industrial
Zoning: Unchanged
Uses Allowed: Unchanged
Maximum Building Coverage: Unchanged

Proposal:

The applicant is requesting a minor subdivision plat, entitled **Turf Tamers Addition**, which would replat two existing lots into two new lots. Access to each lot will come from 24th Avenue North. The property is currently zoned LI, Limited Industrial, and no change in zoning is requested.

This project was reviewed by the City's Planning and Development, Engineering, Public Works, and Fire Departments ("staff"), whose comments are included in this report.

Surrounding Land Uses and Zoning Districts:

- North: Vacant LI, Limited Industrial land
- East: Vacant LI, Limited Industrial land
- South: LI, Limited Industrial with light manufacturing
- West: Vacant LI, Limited Industrial land

(continued on next page)

Area Plans:



The subject property is located within the 2007 North Fargo Tier 1 West Growth Plan. This plan identifies the subject property as part of a large industrial area.

Schools and Parks:

Schools: The subject property is located in the West Fargo School District and is served by Harwood Elementary, Cheney Middle, and West Fargo High Schools.

Neighborhood: There is no designated neighborhood in this area.

Parks: No parks exist within a mile of the subject party.

Pedestrian / Bicycle: A shared use path exists along the south side of 19th Avenue North that is part of to the metro area trail system.

Staff Analysis:

Minor Subdivision

The LDC stipulates that the following criteria is met before a minor plat can be approved:

1. **Section 20-0907.B.3 of the LDC stipulates that the Planning Commission recommend approval or denial of the application, based on whether it complies with the adopted Area Plan, the standards of Article 20-06 and all other applicable requirements of the Land Development Code. Section 20-0907.B.4 of the LDC further stipulates that a Minor Subdivision Plat shall not be approved unless it is located in a zoning district that allows the proposed development and complies with the adopted Area Plan, the standards of Article 20-06 and all other applicable requirements of the Land Development Code.**
   In accordance with Section 20-0901.F of the LDC, notices of the proposed plat have been sent to property owners within 300 feet of the subject property. To date, staff has received no comments. The zoning district allows for the proposed development and complies with the adopted area plan. The project has been reviewed by the city's Planning, Engineering, Public Works, Inspection and Fire Departments and found to meet the standards of Article 20-06 and other applicable requirements of the Land Development Code. **(Criteria Satisfied)**

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

While this section of the LDC specifically addresses only major subdivision plats, staff believes it is important to note that any improvements associated with the project (both existing and proposed) are subject to special assessments. Special assessments associated with the costs of the public infrastructure improvements are proposed to be spread by the front footage basis and storm sewer by the square footage basis as is typical with the City of Fargo assessment principals. **(Criteria Satisfied)**
Staff Recommendation:
Suggested Motion: "To accept the findings and recommendations of staff and the Planning Commission and hereby approve the proposed **Turf Tamers Addition** as presented; as the proposal complies with the adopted Area Plan, Standards of Article 20-06, and all other applicable requirements of the Land Development Code."
Planning Commission Recommendation: July 7, 2020
On July 7, 2020, with an 8-0 vote, with one Commissioner absent and two seats vacant, the Planning Commission accepted the findings and recommendations of staff and recommended approval to the City Commission of the proposed **Turf Tamers Addition** plat, as presented, as the proposal complies with the adopted Area Plan, Standards of Article 20-06, and all other applicable requirements of the LDC.
Attachments:
1. Location Map 2. Zoning Map 3. Preliminary Plat

Plat (Minor)

Turf Tamers Addition

4170 & 4200 24th Ave N



THE CITY OF Fargo FAR MORE

Legend

AG LC MHP SR-2
DMU LI NC SR-3
GC MR-1 NO SR-4
GI MR-2 P/I SR-5
GO MR-3 UMU City Limits

500 Feet

Fargo Planning Commission
July 7, 2020

Plat (Minor)

Turf Tamers Addition

4170 & 4200 24th Ave N



THE CITY OF Fargo FAR MORE

500 Feet

Fargo Planning Commission
July 7, 2020

TURF TAMERS ADDITION

A MINOR SUBDIVISION

BEING A REPLAT OF LOTS 2 AND 3, BLOCK 4, LAVERNE'S ADDITION SECTION 27, T. 140 N., R. 49 W., 5th P.M. TO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA

OWNER'S CERTIFICATE AND DEDICATION:

KNOW ALL PERSONS BY THESE PRESENTS: That Turf Investments, LLC, a North Dakota limited liability company, Montplaisir Ag and Rental, LLP, a North Dakota limited liability partnership, and Perry Montplaisir, as Trustee of the LaVerne A. Montplaisir Family Trust created by Trust Agreement dated December 28, 2012, are the owners and proprietors of the following described tract of land:

Lots 2 and 3, Block 4, Laverne's Addition to the City of Fargo, Cass County, North Dakota.

Said tract of land contains 5.992 acres, more or less.

And that said parties have caused the same to be surveyed and re-platted as **TURF TAMERS ADDITION** to the City of Fargo, Cass County, North Dakota.

OWNER:
Turf Investments, LLC
(Lot 2 and the West Half of Lot 3, Block 4, Laverne's Addition)

Michael A. Svaleson, President

State of North Dakota)
) ss
County of Cass)

On this 1st day of June, 2021, before me personally appeared Michael A. Svaleson, President of Turf Investments, LLC, a North Dakota limited liability company, known to me to be the person who is described in and who executed the within instrument and acknowledged to me that he executed the same on behalf of the said limited liability company.

Notary Public: _____

MEGAN DOYLE
Notary Public
State of North Dakota
My Commission Expires Nov. 23, 2022

OWNER:
Montplaisir Ag and Rental, LLP
(undivided 42% interest in the East Half of Lot 3, Block 4, Laverne's Addition)

Perry Montplaisir, General Partner

State of North Dakota)
) ss
County of Cass)

On this 25th day of May, 2021, before me personally appeared Perry Montplaisir, General Partner of Montplaisir Ag and Rental, LLP, a North Dakota limited liability partnership, known to me to be the person who is described in and who executed the within instrument and acknowledged to me that he executed the same on behalf of said limited liability partnership.

Notary Public: _____

MEGAN DOYLE
Notary Public
State of North Dakota
My Commission Expires Nov. 23, 2022

OWNER:
LaVerne A. Montplaisir Family Trust created by Trust Agreement dated December 28, 2012
(undivided 58% interest in the East Half of Lot 3, Block 4, Laverne's Addition)

Perry Montplaisir, Trustee

State of North Dakota)
) ss
County of Cass)

On this 25th day of May, 2021 before me personally appeared Perry Montplaisir, Trustee of the LaVerne A. Montplaisir Family Trust created by Trust Agreement dated December 28, 2012, known to me to be the person who is described in and who executed the within instrument and acknowledged to me that he executed the same on behalf of said trust.

Notary Public: _____

MEGAN DOYLE
Notary Public
State of North Dakota
My Commission Expires Nov. 23, 2022

SURVEYOR'S CERTIFICATE:
I, James A. Schlieman, Professional Land Surveyor under the laws of the State of North Dakota, do hereby certify that this plat is a true and correct representation of the survey of said subdivision; that the monuments for the guidance of future surveys have been located or placed in the ground as shown.

Dated this 23rd day of April, 20 21.

James A. Schlieman,
Professional Land Surveyor No. 6086

JAMES A. SCHLIEMAN
LS-6086
4/23/21
REGISTERED LAND SURVEYOR
NORTH DAKOTA

State of North Dakota)
) ss
County of Cass)

On this 23rd day of April, 20 21 before me personally appeared James A. Schlieman, Professional Land Surveyor, known to me to be the person who is described in and who executed the within instrument and acknowledged to me that he executed the same as his free act and deed.

Notary Public: _____

MEGAN DOYLE
Notary Public
State of North Dakota
My Commission Expires Nov. 23, 2022

CITY ENGINEER'S APPROVAL:
Approved by the Fargo City Engineer this _____ day of _____, 20____.

Brenda E. Derrig, City Engineer

State of North Dakota)
) ss
County of Cass)

On this _____ day of _____, 20____ before me personally appeared Brenda E. Derrig, Fargo City Engineer, known to me to be the person who is described in and who executed the within instrument and acknowledged to me that she executed the same as her free act and deed.

Notary Public: _____

FARGO PLANNING COMMISSION APPROVAL:
Approved by the City of Fargo Planning Commission this 3rd day of June, 20 21.

John Gunkelman, Chair
Fargo Planning Commission

State of North Dakota)
) ss
County of Cass)

On this 3rd day of June, 2021, before me personally appeared John Gunkelman, Chair, Fargo Planning Commission, known to me to be the person who is described in and who executed the within instrument and acknowledged to me that he executed the same on behalf of the Fargo Planning Commission.

Notary Public: _____

MIRANDA WOLF
Notary Public
State of North Dakota
My Commission Expires Feb. 18, 2023

FARGO CITY COMMISSION APPROVAL:
Approved by the Board of City Commissioners and ordered filed this _____ day of _____, 20____.

Timothy J. Mahoney, Mayor

Attest: _____
Steven Sprague, City Auditor

State of North Dakota)
) ss
County of Cass)

On this _____ day of _____, 20____ before me personally appeared Timothy J. Mahoney, Mayor, City of Fargo; and Steven Sprague, City Auditor, City of Fargo, known to me to be the persons who are described in and who executed the within instrument and acknowledged to me that they executed the same on behalf of the City of Fargo.

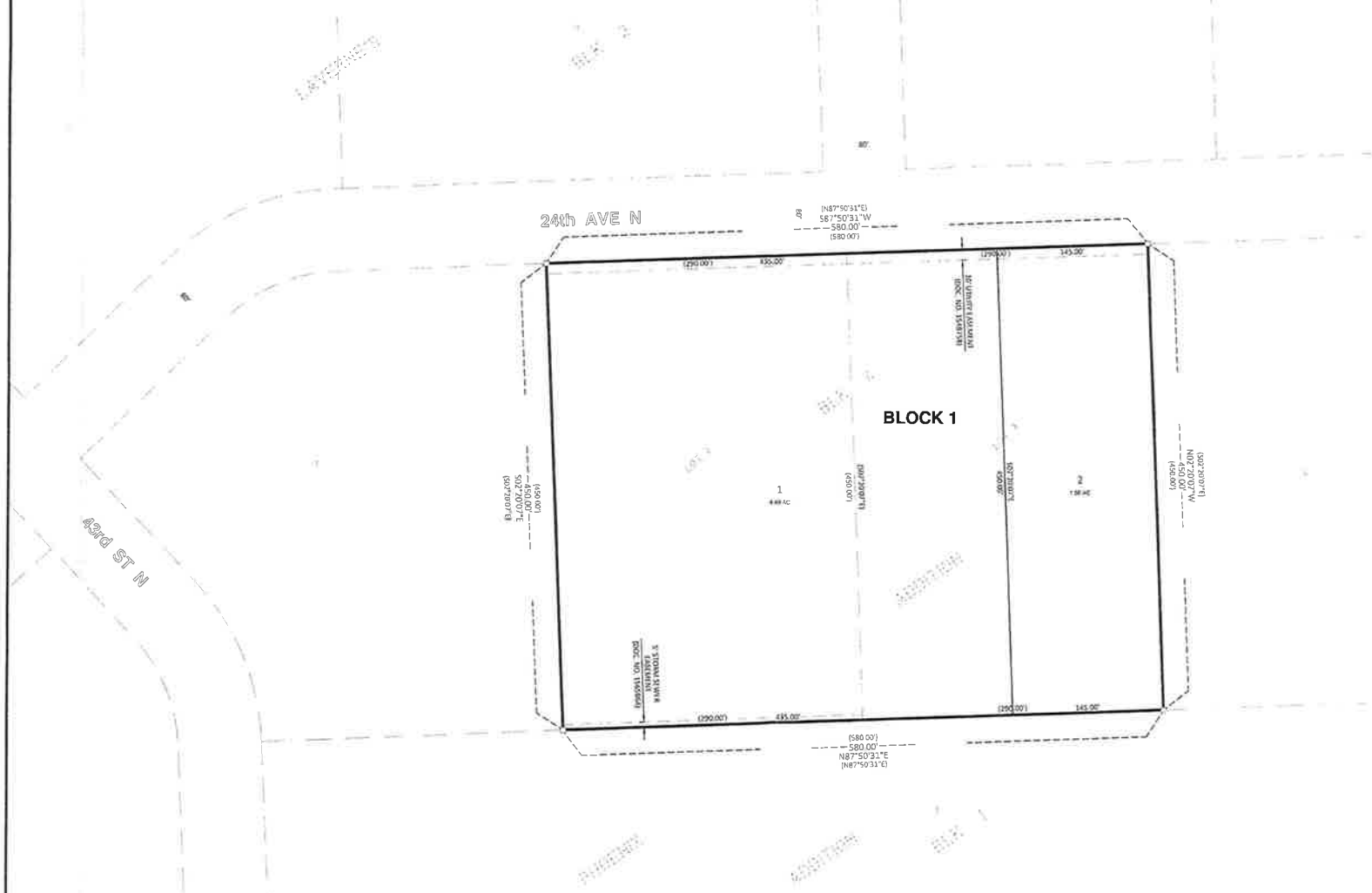
Notary Public: _____

HOUSTON ENGINEERING, INC.

TURF TAMERS ADDITION

A MINOR SUBDIVISION

BEING A REPLAT OF LOTS 2 AND 3, BLOCK 4, LAVERNE'S ADDITION
SECTION 27, T. 140 N., R. 49 W., 5th P.M.
TO THE CITY OF FARGO,
CASS COUNTY, NORTH DAKOTA



N

Scale 50 0 50 100 Feet

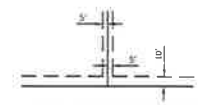
LEGEND

IRON MONUMENT FOUND	●
1/2" I.D. PIPE SET	○
MEASURED BEARING	N00°00'00"E
PLAT BEARING	(N00°00'00"E)
MEASURED DISTANCE	100.00'
PLAT DISTANCE	(100.00')
PLAT BOUNDARY	
LOT LINE	
UTILITY EASEMENT	
EXISTING LOT LINE	
EXISTING UTILITY EASEMENT	
AREA WITHIN FEMA 100-YEAR FLOODPLAIN (BFE = 895.0)	

BEARINGS SHOWN ARE BASED ON THE CITY OF FARGO HORIZONTAL DATUM

NOTE:

PROPERTY IS SITUATED IN ZONE X (SHADED - AREAS OF 0.2% ANNUAL CHANCE FLOOD; AREAS OF 1% ANNUAL CHANCE FLOOD WITH AVERAGE DEPTHS OF LESS THAN 1 FOOT OR WITH DRAINAGE AREAS LESS THAN 1 SQUARE MILE; AND AREAS PROTECTED BY LEVEES FROM 1% ANNUAL CHANCE FLOOD.)



BEING 5 FEET IN WIDTH AND ADJOINING LOT LINES, AND 10 FEET IN WIDTH AND ADJOINING RIGHT-OF-WAY LINES, UNLESS OTHERWISE INDICATED ON THE PLAT.

UTILITY EASEMENTS ARE SHOWN THUS

HOUSTON ENGINEERING, INC.

Sheet 1 of 2
Project No. 7489-0076

H:\JBN\7400\7489\7489_0076\CAD\Plat\7489 0076_PREPLAT.dwg plat 1/8/2021 2:48 PM (shanson)

THE CITY OF Fargo
FAR MORE

Planning & Development
225 4th Street North
Fargo, ND 58102
Office: 701.241.1474 | Fax: 701.241.1526
Email: planning@FargoND.gov
www.FargoND.gov

20

MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

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

DATE: JUNE 10, 2021

RE: APPROVE AGREEMENTS BETWEEN THE CITY OF FARGO CASS CLAY COMMUNITY LAND TRUST FOR ACQUISITION, DEMOLITION, & NEW CONSTRUCTION AT 1412 1ST AVENUE SOUTH (HOME GRANT FUNDS)

At the January 25, 2021 City Commission meeting, a total of $400,000 in HOME funds under the 2020 Annual Action Plan was approved for the creation of affordable, single-family housing to be occupied by low-to-moderate income households. Of this approved amount, $200,000 was awarded to the Cass Clay Community Land Trust.

A project site, activity, and budget were identified and approved at the June 1st, 2021 City Commission meeting for one of the projects that the Cass Clay Community Land Trust will be carrying out under the 2020 Annual Action Plan. The project location is at 1412 1st Avenue South in Fargo. The activity will include acquisition, demolition, and new construction of a single-family home or twin-home on this land. The proposed HOME allocation for this project site is $150,000.

As part of federally-funded projects, incremental steps must be taken in order to comply with federal regulations. At this time, staff is seeking authorization for the execution of the agreements and other documents as necessary to effectuate activities related to this project, pending final review by City Attorney. Upon its execution, the City will commit HOME funds to be used on a reimbursement basis during land acquisition, demolition of an existing structure on the land, and construction of a new single-family home or twin-home at 1412 1st Avenue South.

Recommended Motion: Authorize execution of contractual agreements with the Cass Clay Community Land Trust, a nonprofit corporation, in order to commit HOME funds for the acquisition of land, demolition of an existing structure, and construction of a new affordable single-family housing unit or twin-home at 1412 1st Avenue South.

EQUAL HOUSING OPPORTUNITY

DEVELOPER AGREEMENT
City of Fargo/Cass Clay Community Land Trust
[HOME Investment Partnership - New Construction – 1412 1st Avenue South property]

This DEVELOPER AGREEMENT ("**Agreement**") is made and entered into this _____ day of _____, 2021 ("**Effective Date**"), by and between the City of Fargo, a North Dakota municipal corporation ("**City**"); and Cass Clay Community Land Trust, a North Dakota nonprofit corporation ("**Developer**"). (The City and Developer 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, described more fully below, which is a program with the goal of expanding the supply of decent, safe, sanitary, and affordable housing for those having low to very low incomes; and

WHEREAS, the City requested applications for projects to utilize certain HOME Funds to develop home-owner housing to be affordable to low income households and Developer submitted an application for the project referenced in this Agreement; and

WHEREAS, the City and Developer 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 Developer shall construct the project as described in the following statement of work, which shall be referred to herein as the "Project":

A. Project Site. The Project consists of certain real property described as follows:

The East 45.68 feet of Lot "A", Auditor's Subdivision of Outlot Twelve, in Eddy and Fuller's Outlots to the City of Fargo, situate in the County of Cass and the State of North Dakota;

the street address for which is 1412 1st Avenue South, Fargo, ND 58103 (Parcel # 01-0700-00670-000) (the "**Project Site**" or "**Property**", herein).

B. Project Budget. The total estimated development cost is $150,000. Developer's budget is attached as Exhibit "C."

Developer shall promptly notify the City of any material changes to the Project budget, including but not limited to material increases in project costs, change orders, and the receipt or availability of additional sources of funds not previously disclosed. The City reserves the right to reduce its HOME commitment or require Developer to contribute additional funds needed to

complete the Project if the changes to the Project budget 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. Using HOME Funds, the Developer shall acquire said Property, demolish the existing structure, and develop and construct an affordable single-family home in accordance with the requirements of the National Affordable Housing Act of 1990, as the amended, HOME Investment Partnership Program, and all federal rules, regulations, and policies promulgated thereunder (said act, program, rules, regulations, and policies collectively, as amended from time to time), said requirements referred to herein as "**HOME**" or the "**HOME Program**", with said home to be occupied by an income-eligible homebuyer as defined in the HOME Program but generally described as a household earning **80% or less of the Area Median Income ("AMI")**. The term "HOME Funds" means funds received from the U.S. Department of Housing and Urban Development pursuant to the HOME Program.

D. HOME-assisted Unit. This single-family home(s) shall be designated as a HOME-assisted unit(s).

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 restrictions of the HOME program and other terms of this Agreement.

E. Environmental Review. The City has completed an Environmental Review of the Project Site. No adverse environmental impacts were identified in the Project's total environmental review. The Project is in compliance with Executive Order 12898.

F. Davis-Bacon Labor Standards. As the Project does not consist of twelve (12) or more HOME-assisted units, the Davis-Bacon Act (40 U.S.C. 3141) does not apply as it relates to the funds covered under this agreement.

G. Property Standards. As a new construction activity, Developer shall construct the Project to the following property standards (24 CFR 92.251) to ensure the housing is safe, sanitary, and in good repair.

a. State and local codes, ordinances, and zoning (including disaster mitigation in accordance with these State and local codes, ordinances, or other State and local requirements, or other requirements established by HUD as applicable).

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)

Including: Any housing units newly constructed or rehabilitated for purchase or single family (including semi-attached and attached) units to be

constructed or rehabilitated in a program or activity receiving Federal financial assistance **shall be made accessible upon request of the prospective buyer** if the nature of the handicap of an expected occupant so requires. In such case, the buyer shall consult with the seller or builder/sponsor regarding the specific design features to be provided. If accessibility features selected at the option of the homebuyer are ones covered by the standards prescribed by §8.32, those features shall comply with the standards prescribed in §8.32. The buyer shall be permitted to depart from particular specifications of these standards in order to accommodate his or her specific handicap. Reasonable accommodations must be made to any existing homes to meet the needs as specified by the buyer.

The cost of making a facility accessible under this paragraph may be included in the mortgage amount within the allowable mortgage limits, where applicable. To the extent such costs exceed allowable mortgage limits, they may be passed on to the prospective homebuyer, **subject to maximum sales price limitations** (see 24 CFR 235.320.)

ii. 28 CFR Part 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. Uniform Federal Accessibility Standard ("UFAS") – used if homeowner wants their home to be built accessible

H. Lead-Based Paint. Not applicable in new construction.

I. Schedule for Completion of Work. The Developer's schedule for completion of the Statement of Work is set forth on Exhibit "H", attached hereto and incorporated as if set forth fully herein. Notwithstanding said schedule, Developer shall in no event exceed the following mandatory deadlines:

a. Construction Commencement. Construction of the Project must begin within twelve (12) months of the Effective Date of this HOME Developer Agreement (24 CFR 92.2).

1. Project Completion. Per 24 CFR 92.205(e)(2), 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 three (4) years will require repayment of all HOME funds invested

b. Developer shall expend all HOME Funds by _____ , 2024.

J. Maximum Property Value. Per 24 CFR 92.254, the value of any homebuyer/homeowner-occupied property may not exceed 95% of the median purchase price for single-family, new construction units for the area as published by HUD for the current year. **At the time of this Agreement, the**

sales price limit for the Fargo, ND-MN MSA for a newly-constructed, one-unit property is $263,000.

K. 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:**

- $175,752 for a 1-bedroom unit
- $213,718 for a 2-bedroom unit
- $276,482 for a 3-bedroom unit
- $303,490 for a 4-bedroom unit

Section 2 ***City to Advance HOME Funds.***

A. Amount of HOME Funds. The City will advance and remit to Developer the maximum sum of up to **ONE HUNDRED FIFTY THOUSAND and 00/100 DOLLARS ($150,000.00)** ("**HOME Funds**") under terms and conditions set forth in this Agreement.

B. Source of HOME Funds. The HOME Funds are from the City's HOME Investment Partnership allocation of:

Program Year 2020: $495,115.00 awarded to the City of Fargo on March 8, 2021; Federal Award Identification Number M-20-MC-38-0220, CFDA 14.239, DUNS 07-026-5871.

C. Form of Assistance. The City will advance the HOME Funds in the form of a grant to Developer.

D. Other Non-HOME Program Funds. With respect to funds provided or advanced under any federal program, the Project will be funded only by HOME funds.

Section 3 ***HOME Program Requirements.***

As a recipient of HOME funds, Developer 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 at 24 CFR 92.351 do not apply.

B. Displacement, Relocation, and Acquisition. Developer shall take all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of the Project. Developer shall comply with appropriate relocation and real property acquisition requirements as provided in 24 CFR 92.353.

In acquiring this vacant Property, located at 1412 1st Ave S, Developer attests that they have provided the required notices and procedures under the Uniform Relocation Assistance and Real

Property Acquisition Policies Act of 1970 ("URA"). Owners of record attest that they have not rented the property within the past three months and this is a voluntary transaction. Owners of record have been notified that they are ineligible for relocation assistance under URA due to transaction being voluntary.

C. Conflict of Interest. Per 24 CFR 92.356 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 owner, developer, or sponsor;

   c. Any immediate family member of an officer, employee, agent, elected or appointed official, or consultant of the owner, developer, or sponsor.

D. 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).

E. Religious Activities and Faith-Based Organizations (92.257; 5.109). Faith-based organizations are eligible, on the same basis as any other organization, to participate in HUD programs and activities. Developer 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.

F. Land Use Restrictive Agreement. Developer shall arrange for the execution of a Land Use Restrictive Agreement ("LURA") upon completion of the Project and the City's marking of the Project as complete in the disbursement and information system established by HUD. The City is hereby authorized to record the LURA against the Project Site, as defined in Section 1(A), at the office of the Cass County Recorder. Said LURA shall be substantially in conformance with the form of LURA attached as Exhibit "A."

G. Historic Preservation. Developer 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 ***Developer Responsibilities During the Award Period.***

The following section describes the responsibilities of Developer after the Effective Date of this Agreement and before the commencement of the Affordability Period. Developer shall comply with the below provisions.

A. Report During the Development Phase. Developer 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. Developer 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, Developer shall report on construction progress on a bi-weekly basis. "Report" shall mean a format determined acceptable to the City and may consist of conference calls, and/or brief written reports with photos.

C. Request Disbursements During Construction. Developer 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." Developer shall use the template "HOME Disbursement Request" form attached as Exhibit "F."

D. Report Prior to Project Completion. Developer shall submit the City's "HOME Benefit Form" (Exhibit "B") prior to completion of the Project. This form is a part of the Project closeout items that must be submitted to the City before the Final Disbursement (10% retainage) will be paid to Developer.

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 Developer, 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. Developer has not already made a disbursement request during the calendar month (unless an exception has been granted in writing by the City).

c. Developer is not in material default under the terms of this Agreement, 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. Developer has provided documentation of direct costs, such as invoices or receipts, which the Developer 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 will approve the disbursement request. Photos of the completed work may be taken as part of disbursement request approval. The City reserves the right to conduct progress inspections at any reasonable time prior to final completion of the Project.

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.

D. Monitoring and Evaluation. The City reserves the right to monitor and evaluate the progress and performance of the Developer to assure that the terms of this agreement are being satisfactorily met in accordance with City and other applicable monitoring and evaluating criteria and standards. The Developer shall reasonably cooperate with the City relating to such monitoring and evaluation.

Section 6 Affordability Period and Resale Requirements.

The following section describes the responsibilities of the Developer during the Affordability Period. Developer shall comply with the below provisions.

A. Length of Affordability Period. The applicable periods for affordability are specified in the following table:

Homeownership Assistance HOME Amount Per-Unit	Minimum Period of Affordability in Years
Under $15,000	5
$15,000 to $40,000	10
Over $40,000	15

Source: HUD Regulation 24 CFR 92.254(a)(4)

The Property is a single-family housing project that is subject to the City's resale requirements. The affordability period requirements as described in 24 CFR Part 92 shall be applicable to the Property for a minimum period of **fifteen (15) years** (see chart above), subject to the possible extension thereof in accordance with said Part 92 as further described below. Therefore, the applicable period for affordability under the HOME Program requirements shall be deemed to commence on the date of conveyance and transfer of ownership of the Project by Developer to a HOME Program-eligible owner, and such period shall end and **terminate fifteen (15) years**

thereafter ("Affordability Period"); provided, however, that the length of the Affordability Period may be subject to extension or other modification in accordance with the HOME Program.

B. Start of Affordability Period. The Affordability Period may not be allowed to commence by Developer until after the Project Completion Date ("Project Completion Date" as defined in paragraph "a", below) and upon transfer of ownership.

   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 (construction is completed when a certificate of occupancy is issued by a building official); the project complies with the requirements of 24 CFR Part 92 (including the property standards under 24 CFR 92.251) and any accessibility requirements as outlined in Section 1 (G)(c); 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. Nine Month Sales Deadline. Per 92.254(a)(3), if there is no ratified sales contract with an eligible homebuyer for the housing and the HOME-assisted homebuyer unit is not sold within 9 months of completion of construction, the housing must be rented to an eligible tenant in accordance with the HOME rental requirements found at 24 CFR 92.252 (since this project is new construction, an Affordability Period of 20 years would be required) or the HOME funds must be repaid. If the property is converted to rental housing, the developer of the homebuyer property becomes the owner and property manager of the HOME-assisted rental project.

C. Resale Requirements *(as referenced in the City of Fargo's "Resale and Recapture Policy" for the 2020 Action Plan).* Resale requirements must ensure that if the housing does not continue to be the principal residence of the family for the duration of the affordability period, the housing is made available for subsequent purchase only to a buyer whose family qualifies as a low-income family and will use the property as the family's primary residence.

   a. Enforcement of Affordability Period. Pursuant to 24 CFR 92.254(a)(5)(i)(A), covenants running with the land, deed restrictions, or other similar mechanisms must be used as the mechanism to impose the resale requirements.

      The City enforces resale requirements through the use of a 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. Noncompliance. In the event of noncompliance where the owner is no longer occupying the property during the Affordability Period, the HOME investment that was provided directly to the developer to reduce the development costs for the HOME-assisted property must be repaid by the City to the U.S. Department of Housing and Urban Development.

c. Price at Future Sale. The resale requirement must also ensure that the price at resale provides the original HOME-assisted family a fair return on investment (including the homeowner's investment, which includes the total cash contribution plus any capital improvement credits) and ensure the housing will remain affordable to a reasonable range of low-income homebuyers.

    i. Fair Return on Investment. "**Fair Return on Investment**" means the total homeowner investment, which includes the down payment, earnest money, and any approved capital improvement credits, as described below:
        1. The amount of the down payment and earnest money paid;
        2. The cost of any capital improvements, documented with receipts provided by the homeowner, including but not limited to:
            a. Any additions to the home such as a bedroom, bathroom, or garage;
            b. Replacement of heating, ventilation, and air conditioning systems;
            c. Accessibility improvements such as bathroom modifications for disabled or elderly, installation of wheel chair ramps and grab bars, any and all of which must have been paid for directly by the owner and which were not installed through a federal, state, or locally-funded grant program; and
            d. Outdoor improvements such as a new driveway, walkway, retaining wall, or fence.
        3. The value of the owner's investment will be calculated using the Housing Price Index (HPI) Calculator of the Federal Housing Finance Agency (which can be found at FHFA HPI Calculator | Federal Housing Finance Agency). The change in HPI from the original purchase price to the time of sale will be applied to the value of the owner's investment, so that the value of the improvements is increased or decreased by the amount of increase or decrease in the housing market overall;
        4. If the market price that provides a fair return to the initial homebuyer is too high to be affordable for a subsequent eligible buyer, the City, at its discretion, may provide additional direct HOME subsidy or other funds, if available, to the subsequent buyer. Such consideration will only be given after the owner has demonstrated they have made all reasonable attempts to sell the

unit. The City cannot require the homeowner to adjust the resale price in order to achieve affordability for the subsequent Buyer.

ii. Affordability to a Range of Buyers. The Developer must work with the City to ensure continued affordability to a **range of buyers**, particularly those whose total household incomes range from 40% to no greater than 80% of the Area Median Income (AMI). **Affordability** to a range of buyers shall set the maximum sales price so that the amount of Principal, Interest, Taxes, and Insurance (PITI) does not exceed 38% of the targeted Buyer's annual gross income and the maximum sales price cannot exceed 95% of the median purchase price for single-family housing in the Fargo, ND-MN MSA for the current year. **At the time of this Agreement, the sales price limit for the Fargo, ND-MN MSA for a newly-constructed, one-unit property is $263,000.** The homeownership sales price limits change annually and are provided by HUD.

d. Approval of Sales Price and Eligible Buyer. If the owner wants to sell their property before the Affordability Period is over, the owner or real estate agent must contact the City and Developer, in writing, at least fourteen (14) days prior to listing the property and receive approval for a proposed listing price in accordance with the affordability restrictions. The listing price cannot exceed 95% of the median purchase price for single-family housing in the Fargo, ND-MN Metropolitan Statistical Area (MSA) for the current year.

After receiving approval of the proposed listing price, the seller may list the property for sale with a real estate agent or broker licensed in the State of North Dakota or the seller may market the property as so-called "for sale by owner," and may enter into a purchase agreement/contract for the sale of the property upon such terms and conditions as the seller deems acceptable, provided that: 1) the purchase price shall not exceed the Maximum Sales Price (defined below) and 2) the purchase agreement or contract must state, as a contingency, that the buyer will submit the "Notification of Intent to Purchase from Prospective Buyer(s) to the City of Fargo" (which is included in the City's Resale-Recapture Policy) within three (3) days after the purchase agreement/contract is signed by both parties and that the seller's obligations under the purchase agreement/contract are expressly contingent upon the City's determination and approval that the buyer is income eligible to purchase.

i. **"Maximum Sales Price"** means that every transfer of the property by an owner to a buyer (during the Affordability Period) shall be for a purchase price which does not exceed the Maximum Sales Price determined as follows: sales prices shall be set such that the amount of Principal, Interest, Taxes, and Insurance does not exceed 38% of the new buyer's annual gross income, adjusted to a monthly income and the Maximum Sales Price cannot exceed 95% of the median purchase price for single-

family housing in the Fargo, ND-MN Metropolitan Statistical Area for the current year. The homeownership sales price limits change annually and are provided by HUD.

e. Purchase Option. If the initial homebuyer decides to sell their property before the Affordability Period is over, Developer will have the option to buy the property from the initial homebuyer as outlined in their Ground Lease (see Exhibit I). Developer is responsible for ensuring the home will be sold to a subsequent buyer whose family qualifies as low income and will use the property as their principal residence for the remaining years of the Affordability Period. The Affordability Period will resume at the time of title transfer to the new, qualified purchaser. If the new, qualified purchaser receives direct assistance through a HOME-funded program, the Affordability Period will be reset according to the amount of assistance provided.

D. Qualified Homebuyers. During the Affordability Period, the HOME-Assisted Unit must be occupied by a household that is eligible as low-income as determined by HUD and must be the principal residence of the qualified household.

a. Income-Eligible Homebuyer. The home must be sold to an income-eligible homebuyer under the HOME Program, defined as a household earning 80% or less of the Area Median Income ("AMI") of the Fargo-Moorhead Metropolitan Statistical Area (MSA). **The income limits are adjusted annually by HUD and must be obtained from the City prior to the Developer selling to the homebuyer. Developer must provide income verification documentation to the City prior to the closing with the homebuyer.** The City will review documentation for eligibility under the HOME requirements. The income limits that are in effect at the time of the sale to the homebuyer must be used.

As of the Effective Date of this Agreement, income limits can be found online at www.hudexchange.info/programs/home/home-income-limits/.

b. Homebuyer Income Verification. **Income verification is the Developer's responsibility**. The City uses the definition of "annual income" as defined at 24 CFR 5.609.

i. Initial Income Certification. Developer 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 at least two months of source documents for all persons 18 years of age and older living in the housing.

ii. Recertification of Income. If six (6) months has elapsed from the initial income verification and before assistance is provided, Developer must re-verify the household's income by requesting updated source documents for all persons 18 years of age and older who will be living in the housing.

iii. Income Certification at Future Sale. If the housing does not continue to be the principal residence of the family for the duration of the affordability period, **Developer must work with the City before the home is listed for sale to ensure the housing is made available to a low-income family who will use the property as the family's primary residence**.

c. Homebuyer Counseling. Per 24 CFR 92.254(a)(3), the (initial and all subsequent) income-eligible homebuyers must receive housing counseling by a HUD-certified housing counselor. Documentation of this counseling will be required for the project file.

d. Fees. Per 24 CFR 92.504(c)(3)(xi), Developer is prohibited from charging fees for servicing, origination, processing, inspection, or other fees for the costs of providing homeownership assistance. Monthly ground lease fees may be charged.

Section 7 ***Reporting.***

A. Reporting. Developer shall maintain complete and organized records. This section sets forth the manner by which the Developer shall maintain records and report to the City.

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. Developer 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 (24 CFR 92.508(7)(c)(2)).

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.

Section 8 ***Enforcement.***

A. Default. The following shall constitute an event of default by Developer under this Agreement and subject to remedy if not corrected within the identified Corrective Action Period (Subsection B, below).

a. Failure to meet the Affordability Requirements during the Affordability Period;

b. Failure to comply with HOME Program regulations, fair housing laws, and other federal requirements;

c. 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.

d. Use of funds for activities or uses that are not HOME-eligible costs.

e. Any other material breach of the terms and conditions of this Agreement by the Developer or any of its Employees, Contractors, or Agents.

B. Corrective Action Period. In the event of default by Developer, Developer shall have thirty (30) days* from the receipt of written notice by the City to initiate corrective action, with the exception of failure to maintain the property in accordance with Property Standards that are impacting a safe, decent, and sanitary environment for persons onsite, which shall be corrected within a set time as indicated in written notice.

*Thirty (30) day period shall be extended as the City deems necessary in City's reasonable discretion, in the event that:

a. Developer 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 Developer fails to cure the default, the City shall have the following remedies:

a. The City may terminate this Agreement.

b. The City may require the Developer to remit repayment to the City, 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 Developer's breach has been cured to the satisfaction of the City.

d. The City may apply to any appropriate court, State or Federal, for such other relief as may be appropriate and allowed by law.

e. 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 Developer, as the attorney-in-fact of the Developer (which authority is coupled with an interest and is irrevocable by the Developer), to complete or cause to be completed the Project, at the cost and expense of the Developer.

f. 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.

Section 9 Term of Agreement.

This Agreement shall extend for a term commencing upon the Effective Date and ending upon the completion of the Affordability Period.

Section 10 General Provisions.

A. Assignability. This Agreement will not be assigned or transferred by the Developer without the prior written consent of the City. Notwithstanding the foregoing or anything to the contrary set forth herein, interests in the Developer may be transferred without consent or restriction.

B. Independence of Developer. Nothing contained in this Agreement nor the relationship of the Developer to other parties, shall make or be construed to make the Developer, or any of the Developer's agents or employees, the agents or employees of the City. The Developer shall be solely and entirely responsible for its acts and the acts of its agents, employees, and subcontractors.

C. Assurances. The Developer shall use HOME Funds for the purposes authorized by the Fargo City Commission. The Developer 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.

D. Conflict of Interest. Developer represents that it has not violated the prohibition against conflicts of interest set forth in 24 CFR 92.356 and further assures that it will not, during the duration of this Agreement, violate said prohibition.

The Developer represents that neither it nor any of its employees, agents, consultants, or officers have any financial interest in the Project to be financed under the Statement of Work, either for themselves or those with whom they have business or immediate family ties (whether by blood, marriage, or adoption and defined in 24 CFR 92.356(b)), and shall not acquire any financial interest in the Project which would conflict with the performance of the Statement of Work required under this Agreement or applicable statute, rule, or regulation during their tenure or for one year thereafter.

E. License and Insurance Requirements. Developer shall comply with all applicable licensing requirements and associated business regulations, whether federal, state, or local. Developer shall purchase and maintain the policies listed in Exhibit "G."

F. 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.

G. 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.

H. Amendments. Except as set forth in this Agreement, the Agreement 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, Developer shall comply with any new or modified requirements to ensure the Project remains in or is brought into compliance with such requirements. Developer 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 Developer of any such modifications.

I. Indemnification and Hold Harmless. Developer 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 Developer, or the Developer's contractors, successors, or assigns in connection with the work on the Property, and the Developer will, at the Developer'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 Developer.

b. Any failure of the Developer 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 Developer, or after assumption, by a subsequent

to the Developer.

c. Any claims, assessments, or liabilities for charges, penalties, liens, taxes, or deficiencies arising from or relating to the use and operation by the Developer, or after an assumption, the Developer'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 Developer or any of their past or present affiliates on the Project Site described in Section 1, which occurs prior to possession passing from Developer 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 Developer'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 Developer 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

J. 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 Developer may not assign its interests or obligations under this Agreement without the prior written consent of the City.

K. 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 Developer:

Cass Clay Community Land Trust
Attn: Trenton Gerads, Executive Director
409 7 St S
Fargo, ND 58103
ccclt@areafoundation.org

To City:

City of Fargo
Department of Planning and Development
Attn: HOME Program
225 4 Street North
Fargo, ND 58102

With respect to notices of default issued pursuant to this Agreement, including Section 8, 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.

L. 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.

M. Memorandum of Agreement. Simultaneous with the execution of this Agreement, the Parties will execute a Memorandum of Agreement in a form substantially similar to that which is attached hereto as Exhibit "D" and either Party is authorized to record said instrument against the Property at the Office of the Cass County Recorder.

N. Entire Agreement. Subject to this Agreement, Sections 1 through 10, together with Exhibits "A" – "I", including the Land Use Restrictive Agreement, and proposal and application for participation in the program submitted by Developer, which are specifically incorporated herein, represent the entire agreement between the parties and supersede all prior representations, negotiations, or agreements whether written or oral.

[Execution Page to Follow]

SIGNED THE ____ DAY OF _____, 20___.

CASS CLAY COMMUNITY LAND TRUST
a North Dakota nonprofit corporation

By: _____
Trenton Gerads
Its: Executive Director

Federal ID # _____

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) TEMPLATE

(to be signed by homebuyer at the time of the closing with the homebuyer)

DECLARATION OF LAND USE RESTRICTIVE AGREEMENT
(SINGLE FAMILY HOMEOWNERSHIP PROGRAM)

FARGO HOME PROGRAM

THIS "Declaration of Land Use Restrictive Agreement" (this "Declaration") is declared and established as of the [DAY] day of [MONTH], [2021] by [PROPERTY OWNER], [LEGAL STATUS], whether one or more ("Property Owner", whether one or more parties), and is binding upon the Property Owner's successors and assigns in interest, and is granted to CITY OF FARGO, a North Dakota municipal corporation, whose address is 225 4th Street North, Fargo, ND 58102 ("City"), on the land and improvements hereinafter described.

WITNESSETH:

WHEREAS; Property Owner owns in fee simple of residential land and improvements located in Cass County, North Dakota, legally described as follows:

> ***The East 45.68 feet of Lot "A", Auditor's Subdivision of Outlot Twelve, in Eddy and Fuller's Outlots 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 1412 1st Avenue South, Fargo, ND 58103.

WHEREAS; Cass Clay Community Land Trust, a North Dakota nonprofit corporation ("Developer"), constructed upon the Subject Property an affordable, single-family home (the "Project") pursuant to, and in accordance with, a Developer Agreement between Developer and the City; and

WHEREAS; Developer applied to the City for HOME funds 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; ownership of the Subject Property was transferred to Property Owner from Developer, which previously entered into a Developer Agreement ("Developer Agreement") with the City, concerning the Subject Property above, for the providing of certain HOME Funds

setting forth terms by which Developer will receive the proceeds of the HOME Funds, and for which a Memorandum of Agreement was recorded at the Office of the Cass County, North Dakota, Recorder on the ___ day of _____, 20___, as Document No. _____;; and

WHEREAS; the Developer will enter into a long-term Ground Lease (see Exhibit I) with Subsequent Property Owner(s) of 50 years or more in order to effectuate the intent of a land trust whereas the Property Owner/Homeowner shall own the structure and the Developer shall own the land, and

WHEREAS; the HOME Program, as adopted by City, requires that this Declaration be executed, delivered, and recorded against the Subject Property so as to create certain covenants running with the land for the purpose of enforcing certain requirements regulating and restricting the use, occupancy, income, sale and transfer of the Subject Property; and

WHEREAS; Property Owner, with this Declaration, intends, declares, and covenants that the regulatory and restrictive covenants set forth herein governing the use, income, occupancy, sale, and transfer of the Subject Property shall be and are covenants running with the land for the term of this Declaration and shall be binding upon all subsequent owners of the Subject Property for the term hereof, and are not merely personal covenants of the Property Owner, but are contractual in nature.

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 Property 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 promptly transmit to Property Owner a copy of the executed and recorded Declaration, showing the date and recordation number.

SECTION 2 – RESERVED.

SECTION 3 - COVENANTS TO RUN WITH THE LAND—AFFORDABILITY PERIOD.

Property Owner intends, declares and covenants, on behalf of Property Owner and all future owners and operators of the Project during the Affordability Period, that this Declaration and the covenants and restrictions set forth herein which regulate and restrict the use, occupancy,

income, sale and transfer of the Subject Property shall be and are covenants running with the land, binding upon the Property Owner's successors in title and all subsequent owners and operators of the Subject Property, and are not merely personal covenants of the Property Owner, and shall bind the Property Owner, and the benefit shall inure to the City and any past, present or prospective owners of the Project, and the City's respective successors and assigns during the Affordability Period hereof.

The Property 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 Affordability Period 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.

Affordability Period. The term "Affordability Period" is determined by the total amount of federal funds invested and is a minimum period of fifteen (15) years, for this project, under the HOME Program. The Affordability Period will commence on [DATE], and terminate on [DATE], with the exception that the Affordability Period may be extended by amendment of the HOME Program or in the event of the exercise by Developer of Developer's right of first refusal as set forth herein.

SECTION 4 – REPRESENTATIONS AND WARRANTIES OF THE PROPERTY OWNER.

(A) Property Owner represents and warrants that they have validly executed this Declaration and the same constitute the binding obligation of the Property Owner. The Property Owner has full power, authority, and capacity to enter into the Declaration, to carry out the Property Owner's obligations as described in this Declaration, and to assume responsibility for compliance with all applicable federal rules and regulations.

(B) To the best of the Property Owner's knowledge, the making of this Declaration and the Property Owner's obligations hereunder:

i. Will not violate any contractual covenants or restrictions between the Property Owner or any third party affecting the Subject Property;
ii. Will not conflict with any of the instruments that create or establish the Property Owner's authority;
iii. Will not conflict with any applicable public or private restriction;

iv. Do not require any consent or approval or any public or private authority which has not already been obtained, and;
v. Are not threatened with invalidity or unenforceability by any action, proceeding, or investigation pending or threatened, by or against the Property Owner, without regard to capacity, any person with whom the Property Owner may be jointly or severally liable, or the Subject Property or any part thereof.

(C) No litigation or proceedings are pending or to the best of the Property Owner's knowledge, threatened against the Property Owner which if adversely determined could individually or in the aggregate have an adverse effect on the title to or the use and enjoyment or value of the Subject Property, or any portion thereof, or which could in any way interfere with the consummation of this Declaration.

(D) The Property 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 - RESTRICTIONS AND COVENANTS.

The Property Owner agrees and covenants, that throughout the Affordability Period stated in this Declaration, and in order to satisfy the requirements of the HOME Program:

(A) Property Owner will maintain the Subject Property as their principal residence, meaning their primary residence, during the Affordability Period.

(B) Each initial and subsequent purchaser agrees that the Subject Property may not be used as rental housing or an investment property during the Affordability Period.

(C) Each initial and subsequent purchaser agrees not to change the use of the Subject Property, or any part thereof, to a use other than for single-family occupancy.

(D) Subject Property may be resold only to a subsequent purchaser who meets the qualifications set forth in the Developer Agreement.

(E) Developer will verify the income of all purchasers, initial and subsequent, within the Affordability Period.

(F) If Property Owner wants to sell the Subject Property before the Affordability Period is over, Developer must coordinate with homeowner to sell to another income eligible homebuyer. The Affordability Period will resume at the time of title transfer to the new, qualified purchaser. If the new, qualified purchaser receives direct assistance through a HOME-

funded program, the Affordability Period will be reset according to the amount of assistance provided.

(G) Property Owner or their real estate agent shall notify the City and Developer, in writing, of any potential sale, transfer or exchange of the Subject Property or any portion thereof. Property Owner or their real estate agent shall notify the City and the Cass Clay Community Land Trust at least fourteen (14) days prior to listing the Subject Property for sale if intending to sell the home before the end of the Affordability Period. Property Owner or their real estate agent must receive approval for a proposed listing price in accordance with the affordability restrictions, which provide, among other things, that a listing price for the Subject Property may not exceed 95% of the median purchase price for single-family housing in the Fargo, ND-MN Metropolitan Statistical Area for the current year.

(H) After receiving approval of the proposed listing price, the Property Owner may list the Subject Property for sale with a real estate agent or broker licensed in the State of North Dakota or the Property Owner may market the Subject Property as "for sale by owner", and the Property Owner may enter into a purchase agreement/contract for the sale of the Subject Property upon such terms and conditions as the Property Owner deems acceptable, provided that: 1) the purchase price shall not exceed the Maximum Sales Price and 2) the purchase agreement or contract must state, as a contingency, that the buyer will submit the "Notification of Intent to Purchase from Prospective Buyer(s) to the City of Fargo" (the form of which may be found in the City's Resale and Recapture Policy and available from the Office of Planning and Development, Fargo City Hall, Fargo North Dakota) within three (3) days after the purchase agreement/contract is signed by both parties and further requiring that the Property Owner's obligations under the purchase agreement/contract be expressly contingent upon the City's determination and approval that the buyer is income-eligible to purchase the Subject Property pursuant to the HOME Program. The term "Maximum Sales Price" means that every transfer of the property by an owner to a buyer (during the Affordability Period) shall be for a purchase price which does not exceed the Maximum Sales Price determined as follows: sales prices shall be set such that the amount of Principal, Interest, Taxes, and Insurance does not exceed 38% of the new buyer's annual gross income, adjusted to a monthly income and the Maximum Sales Price cannot exceed 95% of the median purchase price for single-family housing in the Fargo, ND-MN Metropolitan Statistical Area for the current year. The homeownership sales price limits change annually and are provided by HUD.

(I) The initial or subsequent purchasers may sell, transfer or exchange the Subject Property at any time, but the initial and any subsequent purchasers are hereby required to provide the aforesaid written notification to the City and to obtain the City's written consent to any such purchase, sale, transfer or exchange that the Subject Property is subject to the requirements of this Declaration and such purchasers must agree in writing that such purchase, sale, transfer or exchange is subject to the terms of this Declaration. This provision shall not act to waive any

other restriction on sale, transfer or exchange of the Subject Property. All owners agree that the City may void any sale, transfer or exchange of the Subject Property if the buyer or successor or other person fails to assume the requirements of this Declaration.

(J) The parties agree the City may void any sale, transfer or exchange of the Subject Property if the subsequent Property Owner fails to assume the requirements of this Declaration and/or for noncompliance of the terms, conditions and covenants of this Declaration by the Property Owner.

(K) The sale price shall be established as set by the resale provisions.

(L) The Property Owner, upon sale of the Subject Property pursuant to the terms, conditions and covenants of this Declaration may receive a Fair Return on Investment. The term "Fair Return on Investment" means the total Property Owner investment, which includes down payment, earnest money, and any approved capital improvement credits (as described in the City's Resale and Recapture Policy). The value of the Property Owner's investment will be calculated using the Housing Price Index (HPI) Calculator of the Federal Housing Finance Agency. The change in HPI from the original purchase price to the time of sale will be applied to the value of the Property Owner's investment, so that the value of the improvements is increased or decreased by the amount of increase or decrease in the housing market overall. If the market price that provides a fair return to the initial homebuyer is too high to be affordable for a subsequent eligible buyer, the City, at its discretion, may provide additional direct HOME subsidy or other funds, if available, to the subsequent buyer. Such consideration will only be given after the Property Owner has demonstrated they have made all reasonable attempts to sell the Subject Property. The City cannot require the homeowner to adjust the resale price in order to achieve affordability for the subsequent Property Owner.

SECTION 6 – TERMINATION.

The Project will remain affordable as provided herein, for not less than the full term of the Affordability Period, 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 Affordability Period the Property Owner of record prior to the foreclosure or transfer in lieu of foreclosure, or any newly formed entity that includes the former Property Owner, or those with whom the former Property 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 Affordability Period. Notwithstanding anything to the contrary

contained herein, at the conclusion of the Affordability Period, so long as Property Owner has maintained and managed the Project in compliance with Property Owner's obligations hereunder, the City shall issue an unconditional release and termination of this Declaration.

SECTION 7 – DEFAULT.

(A) Enforcement and Remedies. If Property 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 Developer Agreement (to the extent such Property Owner is required to comply with such covenant, declaration or restriction in such Developer Agreement), and if such default remains uncured for a period of thirty (30) 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 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 Property Owner's obligations hereunder cannot be adequately compensated by monetary damages in the event of Property Owner default. City shall be entitled to all its reasonable costs, including attorney fees, 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 Property Owner shall submit any other information, documents or certifications requested by the City which City deems reasonably necessary to substantiate the Property 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 Developer 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, and the HOME Program, not inconsistent therewith.

(E) Assignment or Transfer. Property Owner may not assign or otherwise transfer or delegate any right or duty without the express written consent of City.

(F) Reserved.

(G) Indemnity. Property 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. Property 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.

(H) Insurance. Property Owner shall maintain homeowner's insurance coverage throughout the Affordability Period as indicated in this Declaration. The homeowner's insurance shall cover the value of the property. Property Owner shall furnish a certificate of insurance or other satisfactory proof of such coverage as may be requested by the City periodically. The policy may not be canceled without prior written notice to City.

(I) 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 Developer Agreement. The provisions of the Developer Agreement are hereby incorporated by reference into this Declaration, as fully as if set forth and in detail herein.

IN WITNESS WHEREOF, the Property Owner has caused this Declaration to be signed by its duly authorized representatives, as of the day and year first above written.

"PROPERTY OWNER"

_____

By: [Property Owner]

STATE OF NORTH DAKOTA)
) SS
COUNTY OF CASS)

On this _____ day of _____, 2021, before me, _____, the undersigned Notary Public, personally appeared [Property Owner], [LEGAL STATUS], known to me to be the person described in and who executed the within and foregoing instrument, and acknowledged to me that they executed the same.

Notary Public
(Seal)

Notary Name:_____

EXHIBIT "B"

HOME BENEFIT FORM

HOME BENEFIT FORM

As a recipient of HOME funds, you are required to submit the following information to the City for HUD reporting purposes. All information is strictly confidential.

Address of Property_____

Date_____

How many people live in the home? _____

Number of bedrooms? _____

Please answer "yes" or "no" to the following:

Female Head of Household[i]	_____ Yes	_____ No
Male Head of Household	_____ Yes	_____ No
Disability[ii]	_____ Yes	_____ No

Race	**Total Number**	**Total Hispanic/Latino**
White	_____	_____
Black/African American	_____	_____
Asian	_____	_____
American Indian/Alaskan Native	_____	_____
Native Hawaiian/Other Pacific Islander	_____	_____
American Indian/Alaskan Native & White	_____	_____
Asian & White	_____	_____
Black/African American & White	_____	_____
American Indian/Alaskan Native & Black/African American	_____	_____
Other Multi-Racial	_____	_____

Household Type (choose one)
Single, Non-Elderly _____
Single Parent _____
Two Parents _____
Elderly _____
Other (specify) _____

Assistance Type (choose one)
Section 8 _____
No Assistance _____

First Time Homebuyer? _____ Yes _____ No
Coming from Subsidized Housing? _____ Yes _____ No
Received Counseling: _____ Pre-Counseling _____ Post-Counseling _____ No Counseling

Of the Total Completed Units, the Number of:
Energy Star Certified Units _____
Section 504 Accessible Units _____

Is Property FHA Insured?
Yes _____
No _____

[i] **Head of Household:** Per the IRS definition, mark "Yes" if an unmarried male or female is paying more than half the cost of keeping up a home AND a dependent person lived in the home for more than half a year. If the dependent is a parent, he or she does not have to live in the home, but the head of household must be able to claim an exemption AND pay more than half the costs of keeping up the home that is the main home of the parent for an entire year OR more than half the costs of a rest home or home for the elderly

[ii] **Disability:** Per the Fair Housing Act Section 504 definition, mark "Yes" for any person who has a physical or mental impairment that substantially limits one or more major life activities. The term physical or mental impairment may include, but is not limited to, conditions such as visual or hearing impairment, mobility impairment, HIV infection, developmental disabilities, drug addiction, or mental illness. The term major life activity may include, but is not limited to, seeing, hearing, walking, breathing, performing manual tasks, caring for one's self, learning, speaking, or working.

EXHIBIT "C"

DEVELOPER'S BUDGET

Cass Clay
COMMUNITY LAND TRUST

Cass Clay Community Land Trust 2020 Operational Budget

Category	Total Budgeted	Dec Actual	YTD Actual	% Expended	Notes
REVENUE					
2019 Operational Contribution Carry-Over	715.31		715.31		
In-Kind Contribution	5,220.00		-		
Anticipated Contribution from City of Fargo	50,000.00		50,000.00		
Anticipated Grant from Otto Bremer Foundation	50,000.00		50,000.00		
Wells Fargo Foundation	25,000.00		25,000.00		
Bush Consensus Council	10,000.00		10,000.00		
Bremer Bank	2,500.00		2,500.00		
Gate City Bank	10,000.00		10,000.00		
Alex Stern Foundation			2,000.00		
Cass County Electric Coop		2,000.00	2,000.00		
FMAF Board Approved Contribution	63,000.00		63,000.00		
FMAF Caring Catalog Proceeds		4,010.00	4,010.00		
Individual Contributions	2,796.76	1,183.34	4,430.12		
Total Revenue	**$ 219,232.07**	**$ 7,193.34**	**$ 223,655.43**		
EXPENSES					
Salary & Benefits					
Executive Director Salary (@ 90k)	60,000.00	7,916.66	55,416.62	92.36%	
Health Insurance Benefits (100% of Individual rate for HDHP Blue Saver 100 2800)	4,201.60	565.20	4,521.60	107.62%	
Life Insurance Benefits (TERM + ADD)	217.35		-	0.00%	
Retirement Benefits (Estimated as 3% of Salary to Simple IRA)	1,800.00		-	0.00%	
Dental Benefits (Individual Rate for Elite)	265.60	33.20	265.60	100.00%	
Vision Benefits (Individual Rate Essential)	84.80	10.60	84.80	100.00%	
HSA	1,000.00		-	0.00%	
Employment Tax	4,960.00	528.87	4,129.93	83.26%	
Sub total Salary and Benefits	**$ 72,529.35**	**$ 9,054.53**	**$ 64,418.55**	**88.82%**	
Equipment					
Computer	1,500.00		959.98	64.00%	
Misc cables/computer hardware	200.00		540.06	270.03%	
Monitor	200.00		275.08	137.54%	
Office Suite Software	250.00			0.00%	
Adobe Software	272.00				
Cell phone allowance	880.00	59.26	562.61	63.93%	
Sub total Equipment	**$ 3,302.00**	**$ 59.26**	**$ 2,337.73**		
Professional Development and Training					
Conference Registrations	1,000.00		170.00	17.00%	
Airfare, Hotel, Ground Transportation, Per diem	4,000.00		-	0.00%	Paid as reimbursement of actual cost
Local area travel expenses	1,200.00		-	0.00%	Reimbursement for mileage and expenses
Sub total Professional Development and Training	**$ 6,200.00**	**$ -**	**$ 170.00**		
Office Supplies & Incidentals					
Paper Products & General Office Supplies	500.00		329.80	65.96%	Thank you cards; Business Cards
Meeting Expenses	1,200.00		-	0.00%	
D&O Insurance	-		5,735.00		
Grant Watch Subscription			199.00		Conference registation
Advertising and Marketing	2,000.00		1,208.93	60.45%	Forum Communications
In-Kind Expenditures	5,220.00		-	0.00%	Detailed at bottom of page
Sub total Office Supplies & Incidentals	**$ 8,920.00**	**$ -**	**$ 7,472.73**	**83.78%**	
Professional Services and Fees					
Payroll Outsourcing	400.00	80.50	713.50	178.38%	Anticipated to begin in May
HBA Membership	675.00		675.00	100.00%	
Jobs HQ			1,359.00		
Burlington Associates	22,000.00		6,255.74	28.44%	
A. Walker Consulting	63,240.00		58,692.50	92.81%	
Credit Card fees		4.63	31.38		
Misc Fees and registrations			38.95		State annual report; charitable solicitation fee
Travel Expenses - Consultant A. Walker Consulting			592.35		
Grant Writing Services Beth Jansen	2,000.00		2,760.00	138.00%	
Background Check			104.95		
Legal Services	6,000.00		5,848.07	97.47%	
Sub total Professional Services and Fees	**$ 94,315.00**	**$ 85.13**	**$ 77,071.44**	81.72%	
Total Expenses	**$ 185,266.35**	**$ 9,198.92**	**$ 151,470.45**	**81.76%**	
REVENUE LESS EXPENSES	**$ 33,965.72**	**$ (2,005.58)**	**$ 72,184.98**		
FMAF In-Kind					
Office Space	1,200.00				
Utilities	300.00				
Network Services and Web Hosting	600.00				
Accounting	1,200.00				
Conference Room Use	1,200.00				
Printers and Copiers	600.00				
Incidentals: (Coffee)	120.00				
Total of In-Kind	$ 5,220.00				

S

EXHIBIT "D"

MEMORANDUM OF AGREEMENT

MEMORANDUM OF AGREEMENT

Between the City of Fargo and Cass Clay Community Land Trust

HOME Investment Partnership (HOME)
New Construction – 1412 1st Avenue South

This Memorandum of Agreement ("**Memorandum of Agreement**") is made this _____ day of _____, 2021, by and between the City of Fargo, a North Dakota municipal corporation ("**City**"); and Cass Clay Community Land Trust, a North Dakota nonprofit corporation ("**Developer**"). (The City and Developer shall be cumulatively referred to herein as the "**Parties**" and separately as a "**Party**").

WHEREAS, the parties have entered into an agreement ("Developer Agreement") concerning that certain real property lying in Cass County, North Dakota, said property more particularly described as follows:

The East 45.68 feet of Lot "A", Auditor's Subdivision of Outlot Twelve, in Eddy and Fuller's Outlots to the City of Fargo, situate in the County of Cass and the State of North Dakota

(the "Property"), the street address for which is 1412 1st Avenue South, Fargo, North Dakota; and,

WHEREAS, the Developer Agreement called for the Developer to construct said single-family home upon the Property and thereafter sell and convey the home to an income-eligible homebuyer under the federal HOME Program as described more fully therein; and,

WHEREAS, the Developer Agreement further contained the following provision, among others, at Section 3.F:

> F. Land Use Restrictive Agreement. Developer shall arrange for the execution of 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 Site, as defined in Section 1(A) [of the Developer Agreement], 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 **Developer Agreement** between the parties the effective date of which is the _____ day of _____, 2021, 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 Developer 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.

CASS CLAY COMMUNITY LAND TRUST
a North Dakota nonprofit corporation

_____
Trenton Gerads, Executive Director

STATE OF NORTH DAKOTA)
) SS
COUNTY OF CASS)

On this _____ day of _____, 2021, before me, _____, the undersigned Notary Public, personally appeared Trenton Gerads, Executive Director of Cass Clay Community Land Trust, on behalf of said North Dakota nonprofit corporation 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 _____, 2021, 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 "E"

FEDERAL ASSURANCES

Assurances

Other Applicable Federal Requirements

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

THE CITY OF Fargo FAR MORE

REQUEST FOR PAYMENT OF HOME FUNDS

To: City of Fargo
Planning & Development Dept.
225 4th Street North
Fargo, ND 58102

Re: _____
Project Name

_____
Project Address

_____
City, State Zip

Amount of Funds Requested: _____

Attached to this Request form are (check all that apply):

- ☐ Copies of Invoices/Receipts
- ☐ Invoices/Receipts for Final Payment Request
- ☐ Lien Waivers (required upon receipt of final payment)

Remarks:

_____

_____

_____

_____

Submitted by: _____

Contact Phone Number: _____

Date Request was Submitted to City: _____

CITY OF FARGO REVIEW & APPROVAL

Approved By: _____ Date Approved: _____

Deadline to submit requests for funds is by 4:30 p.m. on Wednesdays, with checks mailed out the following Friday.

EXHIBIT "G"

INSURANCE REQUIREMENTS

The Developer shall keep and maintain the following insurance coverages:

1. Workers Compensation Insurance. The Developer 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

2. General Liability Insurance. The Developer 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

3. Automobile Insurance. The Developer 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

4. In addition to the named policies in A-C above, Developer 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 Developer 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.

5. 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. Developer 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"

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(to be provided at execution)

EXHIBIT "I"

DEVELOPER'S GROUND LEASE

CASS CLAY COMMUNITY LAND TRUST

GROUND LEASE

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Other Exhibits to be Attached, as Appropriate
Exhibit RESTRICTIONS

THIS LEASE ("this Lease" or "the Lease") entered into this _____ day of _____, 20____, between Cass Clay Community Land Trust (hereinafter "CLT" or "the CLT") and _____("Homeowner").

RECITALS

A. The CLT is organized exclusively for charitable purposes, including the purpose of providing homeownership opportunities for low- and moderate-income people who would otherwise be unable to afford homeownership.

B. A goal of the CLT is to preserve affordable homeownership opportunities through the long-term leasing of land under owner-occupied homes.

C. The Leased Land described in this Lease has been acquired and is being leased by the CLT in furtherance of this goal.

D. The Homeowner shares the purposes of the CLT and has agreed to enter into this Lease not only to obtain the benefits of homeownership, but also to further the charitable purposes of the CLT.

E. Homeowner and CLT recognize the special nature of the terms of this Lease, and each of them accepts these terms, including those terms that affect the marketing and resale price of the property now being purchased by the Homeowner.

F. Homeowner and CLT agree that the terms of this Lease further their shared goals over an extended period of time and through a succession of owners.

NOW THEREFORE, Homeowner and CLT agree on all of the terms and conditions of this Lease as set forth below.

DEFINITIONS: Homeowner and CLT agree on the following definitions of key terms used in this Lease.

Leased Land: the parcel of land, described in Exhibit: LEASED LAND, which is leased to the Homeowner.

Home: the residential structure and other permanent improvements located on the Leased Land and owned by the Homeowner, including both the original Home described in Exhibit: DEED, and all permanent improvements added thereafter by Homeowner at Homeowner's expense.

Base Price: the total price that is paid for the Home by the Homeowner (including the amount provided by a first mortgage loan but not including subsidy in the form of deferred loans to the Homeowner).

Purchase Option Price: the maximum price the Homeowner is allowed to receive for the sale of the Home and the Homeowner's right to possess, occupy and use the Leased Land, as defined in Article 10 of this Lease.

Lease Fee: The monthly fee that the Homeowner pays to the CLT for the continuing use of the Leased Land and any additional amounts that the CLT charges to the Homeowner for reasons permitted by this Lease.

Permitted Mortgage: A mortgage or deed of trust on the Home and the Homeowner's right to possess, occupy and use the Leased Land granted to a lender by the Homeowner with the CLT's Permission. The Homeowner may not mortgage the CLT's interest in the Leased Land, and may not grant any mortgage or deed of trust without CLT's Permission.

Event of Default: Any violation of the terms of the Lease unless it has been corrected ("cured") by Homeowner or the holder of a Permitted Mortgage in the specified period of time after a written Notice of Default has been given by CLT.

ARTICLE 1: Homeowner's Letter of Agreement and Attorney's Letter of Acknowledgment are Attached as Exhibits.

Attached as Exhibit HOMEOWNER'S LETTER OF AGREEMENT AND ATTORNEY'S LETTER OF ACKNOWLEDGMENT and made part of this Lease by reference are a Letter of Agreement from the Homeowner, describing the Homeowner's understanding and acceptance of this Lease (including the parts of the Lease that affect the resale of the Home) and a Letter of Acknowledgment from the Homeowner's attorney, describing the attorney's review of the Lease with the Homeowner.

ARTICLE 2: Leasing of Rights to the Land

2.1 CLT LEASES THE LAND TO HOMEOWNER: The CLT hereby leases to the Homeowner, and Homeowner hereby accepts, the right to possess, occupy and use the Leased Land (described in the attached Exhibit LEASED LAND) in accordance with the terms of this Lease. CLT has furnished to Homeowner a copy of the most current title report, if any, obtained by CLT for the Leased Land, and Homeowner accepts title to the Leased Land in its condition "as is" as of the signing of this Lease.

2.2 MINERAL RIGHTS NOT LEASED TO HOMEOWNER: CLT does not lease to Homeowner the right to remove from the Leased Land any minerals lying beneath the Leased Land's surface. Ownership of such minerals remains with the CLT, but the CLT shall not remove any such minerals from the Leased Land without the Homeowner's written permission.

ARTICLE 3: Term of Lease, Change of Land Owner

3.1 TERM OF LEASE IS 99 YEARS: This Lease shall remain in effect for 99 years, beginning on the ___ day of _____, 20__, and ending on the _____ day of _____, 20____, unless ended sooner or renewed as provided below.

3.2 HOMEOWNER CAN RENEW LEASE FOR ANOTHER 99 YEARS: Homeowner may renew this Lease for one additional period of 99 years. The CLT may change the terms of the Lease for the renewal period prior to the beginning of the renewal period but only if these changes do not materially and adversely interfere with the rights possessed by Homeowner under the Lease. Not more than 365 nor less than 180 days before the last day of the first 99-year period, CLT shall give Homeowner a written notice that states the date of the expiration of the first 99-year period and the conditions for renewal as set forth in the following paragraph ("the Expiration Notice"). The Expiration Notice shall also describe any changes CLT intends to make in the Lease for the renewal period as permitted above.

The Homeowner shall then have the right to renew the Lease only if the following conditions are met: (a) within 60 days of receipt of the Expiration Notice, the Homeowner shall give CLT written notice stating the Homeowner's desire to renew ("the Renewal Notice"); (b) this Lease shall be in effect on the last day of the original 99-year term, and (c) the Homeowner shall not be in default under this Lease or under any Permitted Mortgage on the last day of the original 99-year term.

When Homeowner has exercised the option to renew, Homeowner and CLT shall sign a memorandum stating the option has been exercised. The memorandum shall comply with the requirements for a notice of lease as stated in Section 14.12 below. The CLT shall record this memorandum in accordance with the requirements of law promptly after the beginning of the renewal period.

3.3 WHAT HAPPENS IF CLT DECIDES TO SELL THE LEASED LAND: If ownership of the Leased Land is ever transferred by CLT (whether voluntarily or involuntarily) to any other person or institution, this Lease shall not cease, but shall remain binding on the new land-owner as well as the Homeowner. If CLT agrees to transfer the Leased Land to any person or institution other than a non-profit corporation, charitable trust, government agency or other similar institution sharing the goals described in the Recitals above, the Homeowner shall have a right of first refusal to purchase the Leased Land. The details of this right shall be as stated in the attached Exhibit FIRST REFUSAL. Any sale or other transfer contrary to this Section 3.3 shall be null and void.

ARTICLE 4: Use of Leased Land

4.1 HOMEOWNER MAY USE THE HOME ONLY FOR RESIDENTIAL AND RELATED PURPOSES: Homeowner shall use, and allow others to use, the Home and Leased Land only for residential purposes and any activities related to residential use that are permitted by local zoning law.

4.2 HOMEOWNER MUST USE THE HOME AND LEASED LAND RESPONSIBILY AND IN COMPLIANCE WITH THE LAW: Homeowner shall use the Home and Leased Land in a way that will not cause harm to others or create any public nuisance. Homeowner shall dispose of all waste in a safe and sanitary manner. Homeowner shall maintain all parts of the Home and Leased Land in safe, sound and habitable condition, in full compliance with all laws and regulations, and in the condition that is required to maintain the insurance coverage required by Section 9.4 of this Lease.

4.3 HOMEOWNER IS RESPONSIBLE FOR USE BY OTHERS: Homeowner shall be responsible for the use of the Home and Leased Land by all residents and visitors and anyone else using the Leased Land with Homeowner's permission and shall make all such people aware of the restrictions on use set forth in this Lease.

4.4 HOMEOWNER MUST OCCUPY THE HOME FOR AT LEAST Ten (10) MONTHS EACH YEAR: Homeowner shall occupy the Home for at least Ten (10) months of each year of this Lease, unless otherwise agreed by CLT. Occupancy by Homeowner's child, spouse, domestic partner or other persons approved by CLT shall be considered occupancy by Homeowner. Neither compliance with the occupancy requirement nor CLT's permission for an extended period of non-occupancy constitutes permission to sublease the Leased Land and Home, which is addressed in Section 4.5 below.

4.5 LEASED LAND MAY NOT BE SUBLEASED WITHOUT CLT'S PERMISSION: Except as otherwise provided in Article 8 and Article 10, Homeowner shall not sublease, sell or otherwise convey any of Homeowner's

rights under this Lease, for any period of time, without the written permission of CLT. Homeowner agrees that CLT shall have the right to withhold such consent in order to further the purposes of this Lease.

If permission for subleasing is granted, the sublease shall be subject to the following conditions.

a) Any sublease shall be subject to all of the terms of this Lease.
b) The rental or occupancy fee charged the sub-lessee shall not be more than the amount of the Lease Fee charged the Homeowner by the CLT, plus an amount approved by CLT to cover Homeowner's costs in owning the Home, including but not limited to the cost of taxes, insurance and mortgage interest.

4.6 CLT HAS A RIGHT TO ENTER THE LEASED LAND: The CLT may enter any part of the Leased Land including the interiors of fully enclosed buildings, at any reasonable time, after notifying the Homeowner at least 48 hours before the planned entrance. No more than one (1) entrance may be carried out in a single year, except in the case of a follow up to a previous entry or an emergency. In an emergency, the CLT may enter any part of the Leased Land including the interiors of fully enclosed buildings, after making reasonable efforts to inform the Homeowner before entering.

If the CLT has received an Intent-To-Sell Notice (as described in Section 10.4 below), then the CLT has the right to inspect the interiors of all fully enclosed buildings to determine their condition prior to the sale. The CLT must notify the Homeowner at least 48 hours before carrying out such inspection.

4.7 HOMEOWNER HAS A RIGHT TO QUIET ENJOYMENT: Homeowner has the right to quiet enjoyment of the Leased Land. The CLT has no desire or intention to interfere with the personal lives, associations, expressions, or actions of the Homeowner in any way not permitted by this Lease.

ARTICLE 5: Lease Fee

5.1 AMOUNT OF LEASE FEE: The Homeowner shall pay a monthly Lease Fee in the amount of Fifty _ dollars ($ 50.00) to be paid in return for the continuing right to possess, occupy and use the Leased Land.

5.2 WHEN THE LEASE FEE IS TO BE PAID (DUE DATE): The Lease Fee shall be payable to CLT on the first day of each month for as long as this Lease remains in effect, unless the Lease Fee is to be escrowed and paid by a Permitted Mortgagee, in which case payment shall be made as directed by that Mortgagee.

5.3 HOW THE AMOUNT OF THE LEASE FEE HAS BEEN DETERMINED: The amount of the Land Use Fee stated in Section 5.1 above has been determined as follows. First, the approximate monthly fair rental value of the Leased Land has been established, as of the beginning of the Lease term, recognizing the fair rental value is reduced by certain restrictions imposed by the Lease on the use of the Land. Then the affordability of this monthly amount for the Homeowner has been analyzed and, if necessary, the Land Use Fee has been reduced to an amount considered to be affordable for Homeowner.

5.4 CLT MAY REDUCE OR SUSPEND THE LEASE FEE TO IMPROVE AFFORDABILITY: CLT may reduce or suspend the total amount of the Lease Fee for a period of time for the purpose of improving the affordability of the Homeowner's monthly housing costs. Any such reduction or suspension must be in writing and signed by CLT.

5.5 FEES MAY BE INCREASED FROM TIME TO TIME: The CLT may increase the amount of the Land Use Fee from time to time. The fee shall not be modified for a period of three (3) months from the date of the lease and then not more often than once each one (1) year.

5.6 LAND USE FEE WILL BE INCREASED IF RESTRICTIONS ARE REMOVED: If, for any reason, the provisions of Article 10 regarding transfers of the Home or Sections 4.4 and 4.5 regarding occupancy and subleasing are suspended or invalidated for any period of time, then during that time the Land Use Fee shall be increased to an amount calculated by CLT to equal the fair rental value of the Leased Land for use not restricted by the suspended provisions, but initially an amount not exceeding five hundred dollars ($500). Such increase shall become effective upon CLT's written notice to Homeowner. Thereafter, for so long as these restrictions are not reinstated in the Lease, the CLT may, from time to time, further increase the amount of such Land Use Fee, provided the amount of the Land Use Fee does not exceed the fair rental value of the property, and provided such increases do not occur more often than once every year.

5.7 IF PAYMENT IS LATE, $5.00 LATE FEE CAN BE CHARGED: If the CLT has not received any monthly installment of the Lease Fee on or before the date on which the such installment first becomes payable under this Lease (the "Due Date"), the CLT may require Homeowner to pay interest on the unpaid amount from the Due Date through and including the date such payment or installment is received by CLT, at a rate not to exceed the interest rate of the primary mortgage at the time of the signing of this lease. Such interest shall be deemed additional Lease Fee and shall be paid by Homeowner to CLT upon demand; provided, however, that CLT shall waive any such interest that would otherwise be payable to CLT if such payment of the Lease Fee is received by CLT on or before the thirtieth (30th) day after the Due Date.

5.8 CLT CAN COLLECT UNPAID FEES WHEN HOME IS SOLD: In the event that any amount of payable Lease Fee remains unpaid when the Home is sold, the outstanding amount of payable Lease Fee, including any interest as provided above, shall be paid to CLT out of any proceeds from the sale that would otherwise be due to Homeowner. The CLT shall have, and the Homeowner hereby consents to, a lien upon the Home for any unpaid Lease Fee. Such lien shall be prior to all other liens and encumbrances on the Home except (a) liens and encumbrances recorded before the recording of this Lease, (b) Permitted Mortgages as defined in section 8.1 below; and (c) liens for real property taxes and other governmental assessments or charges against the Home.

ARTICLE 6: Taxes and Assessments

6.1 HOMEOWNER IS RESPONSIBLE FOR PAYING ALL TAXES AND ASSESSMENTS: Homeowner shall pay directly, when due, all taxes and governmental assessments that relate to the Home and the Leased Land (including any taxes relating to the CLT's interest in the Leased Land).

6.2 CLT WILL PASS ON ANY TAX BILLS IT RECEIVES TO HOMEOWNER: In the event the local taxing authority bills CLT for any portion of the taxes on the Home or Leased Land, CLT shall pass the bill to Homeowner and Homeowner shall promptly pay this bill.

6.3 HOMEOWNER HAS A RIGHT TO CONTEST TAXES: Homeowner shall have the right to contest the amount or validity of any taxes relating to the Home and Leased Land. Upon receiving a reasonable request from Homeowner for assistance in this matter, CLT shall join in contesting such taxes. Homeowner shall pay all costs of such proceedings.

6.4 IF HOMEOWNER FAILS TO PAY TAXES, CLT MAY INCREASE LEASE FEE: In the event that Homeowner fails to pay the taxes or other charges described in Section 6.1 above, CLT may increase Homeowner's Lease Fee to offset the amount of taxes and other charges owed by Homeowner. Upon collecting any such amount, CLT shall pay the amount collected to the taxing authority in a timely manner.

6.5 PARTY THAT PAYS TAXES MUST SHOW PROOF: When either party pays taxes relating to the Home or Leased Land, that party shall furnish satisfactory evidence of the payment to the other party. A photocopy of a receipt shall be the usual method of furnishing such evidence.

ARTICLE 7: The Home

7.1 HOMEOWNER OWNS THE HOUSE AND ALL OTHER IMPROVEMENTS ON THE LEASED LAND: All structures, including the house, fixtures, and other improvements purchased, constructed, or installed by the Homeowner on any part of the Leased Land at any time during the term of this Lease (collectively, the "Home") shall be property of the Homeowner. Title to the Home shall be and remain vested in the Homeowner. However, Homeowner's rights of ownership are limited by certain provisions of this Lease, including provisions regarding the sale or leasing of the Home by the Homeowner and the CLT's option to purchase the Home. In addition, Homeowner shall not remove any part of the Home from the Leased Land without CLT's prior written consent.

7.2 HOMEOWNER PURCHASES HOME WHEN SIGNING LEASE: Upon the signing of this Lease, Homeowner is simultaneously purchasing the Home located at that time on the Leased Land, as described in the Deed, a copy of which is attached to this Lease as Exhibit: DEED.

7.3 CONSTRUCTION CARRIED OUT BY HOMEOWNER MUST COMPLY WITH CERTAIN REQUIREMENTS: Any construction in connection with the Home is permitted only if the following requirements are met: (a) all costs shall be paid for by the Homeowner; (b) all construction shall be performed in a professional manner and shall comply with all applicable laws and regulations; (c) all changes in the Home shall be consistent with the permitted uses described in Article 4; (d) the footprint, square-footage, or height of the house shall not be increased and new structures shall not be built or installed on the Leased Land without the prior written consent of CLT.

For any construction requiring CLT's prior written consent, Homeowner shall submit a written request to the CLT. Such request shall include:

a) a written statement of the reasons for undertaking the construction;
b) a set of drawings (floor plan and elevations) showing the dimensions of the proposed construction;
c) a list of the necessary materials, with quantities needed;
d) a statement of who will do the work;

If the CLT finds it needs additional information it shall request such information from Homeowner within two weeks of receipt of Homeowner's request. The CLT then, within two weeks of receiving all necessary information (including any additional information it may have requested) shall give Homeowner either its written consent or a written statement of its reasons for not consenting. Before construction can begin, Homeowner shall provide CLT with copies of all necessary building permits, if not previously provided.

7.4 HOMEOWNER MAY NOT ALLOW STATUTORY LIENS TO REMAIN AGAINST LEASED LAND OR HOME: No lien of any type shall attach to the CLT's title to the Leased Land. Homeowner shall not permit any statutory or similar lien to be filed against the Leased Land or the Home that remains more than 60 days after it has been filed. Homeowner shall take action to discharge such lien, whether by means of payment, deposit, bond, court order, or other means permitted by law. If Homeowner fails to discharge such lien within the 60-day period, then Homeowner shall immediately notify CLT of such failure. CLT shall have the right to discharge the lien by paying the amount in question. Homeowner may, at Homeowner's expense, contest the validity of any such asserted lien, provided Homeowner has furnished a bond or other acceptable surety in an amount sufficient to release the Leased Land from such lien. Any amounts paid by CLT to discharge such liens shall be treated as an additional Lease Fee payable by Homeowner upon demand.

7.5 HOMEOWNER IS RESPONSIBLE FOR SERVICES, MAINTENANCE AND REPAIRS: Homeowner hereby assumes responsibility for furnishing all services or facilities on the Leased Land, including but not limited to heat, electricity, air conditioning and water. CLT shall not be required to furnish any services or facilities or to make any repairs to the Home. Homeowner shall maintain the Home and Leased Land as required by Section 4.2 above and shall see that all necessary repairs and replacements are accomplished when needed.

7.6 WHEN LEASE ENDS, OWNERSHIP REVERTS TO CLT, WHICH SHALL REIMBURSE HOMEOWNER: Upon the expiration or termination of this Lease, ownership of the Home shall revert to CLT. Upon thus assuming title to the Home, CLT shall promptly pay Homeowner and Permitted Mortgagee(s), as follows:

FIRST, CLT shall pay any Permitted Mortgagee(s) the full amount owed to such mortgagee(s) by Homeowner;

SECOND, CLT shall pay the Homeowner the balance of the Purchase Option Price calculated in accordance with Article 10 below, as of the time of reversion of ownership, less the total amount of any unpaid Lease Fee and any other amounts owed to the CLT under the terms of this Lease. The Homeowner shall be responsible for any costs necessary to clear any additional liens or other charges related to the Home that may be assessed against the Home. If the Homeowner fails to clear such liens or charges, the balance due the Homeowner shall also be reduced by the amount necessary to release such liens or charges, including reasonable attorney's fees incurred by the CLT.

ARTICLE 8: Financing

8.1 HOMEOWNER CANNOT MORTGAGE THE HOME WITHOUT CLT's PERMISSION: The Homeowner may mortgage the Home only with the written permission of CLT. Any mortgage or deed of trust permitted in writing by the CLT is defined as a Permitted Mortgage, and the holder of such a mortgage or deed of trust is defined as a Permitted Mortgagee.

8.2 BY SIGNING LEASE, CLT GIVES PERMISSION FOR ORIGINAL MORTGAGE. By signing this Lease, CLT gives written permission for any mortgage or deed of trust signed by the Homeowner effective on the day this Lease is signed for the purpose of financing Homeowner's purchase of the Home.

8.3 HOMEOWNER MUST GET SPECIFIC PERMISSION FOR REFINANCING OR OTHER SUBSEQUENT MORTGAGES. If, at any time subsequent to the purchase of the Home and signing of the Lease, the Homeowner seeks a loan that is to be secured by a mortgage on the Home (to refinance an existing

Permitted Mortgage or to finance home repairs or for any other purpose), Homeowner must inform CLT, in writing, of the proposed terms and conditions of such mortgage loan at least 30 days prior to the expected closing of the loan. The information to be provided to the CLT must include:

a) the name of the proposed lender;
b) Homeowner's reason for requesting the loan;
c) the principal amount of the proposed loan and the total mortgage debt that will result from the combination of the loan and existing mortgage debt, if any;
d) expected closing costs;
e) the rate of interest;
f) the repayment schedule;
g) a copy of the appraisal commissioned in connection with the loan request.

CLT may also require Homeowner to submit additional information. CLT will not permit such a mortgage loan if the loan increases Homeowner's total mortgage debt to an amount greater than 80% of the then current Purchase Option Price, calculated in accordance with Article 10 below, or if the terms of the transaction otherwise threaten the interests of either the Homeowner or the CLT.

8.4 CLT IS REQUIRED TO PERMIT A "STANDARD PERMITTED MORTGAGE." The CLT shall be required to permit any mortgage for which the mortgagee has signed a "Standard Permitted Mortgage Agreement" as set forth in "Exhibit: Permitted Mortgages, Part C," and for which the loan secured thereby does not increase Homeowner's total mortgage debt to an amount greater than any paid in equity +25% of appreciation. Appreciation will be determined by the then current Purchase Option Price, calculated in accordance with Article 10 below minus the original purchase price.

8.5 A PERMITTED MORTGAGEE HAS CERTAIN OBLIGATIONS UNDER THE LEASE. Any Permitted Mortgagee shall be bound by each of the requirements stated in "Exhibit: Permitted Mortgages, Part A, Obligations of Permitted Mortgagee," which is made a part of this Lease by reference, unless the particular requirement is removed, contradicted or modified by a Rider to this Lease signed by the Homeowner and the CLT to modify the terms of the Lease during the term of the Permitted Mortgage.

8.6 A PERMITTED MORTGAGEE HAS CERTAIN RIGHTS UNDER THE LEASE. Any Permitted Mortgagee shall have all of the rights and protections stated in "Exhibit: Permitted Mortgages, Part B, Rights of Permitted Mortgagee," which is made a part of this Lease by reference.

8.7 IN THE EVENT OF FORECLOSURE, ANY PROCEEDS IN EXCESS OF THE PURCHASE OPTION PRICE WILL GO TO CLT. Homeowner and CLT recognize that it would be contrary to the purposes of this agreement if Homeowner could receive more than the Purchase Option Price as the result of the foreclosure of a mortgage. Therefore, Homeowner hereby irrevocably assigns to CLT all net proceeds of sale of the Home that would otherwise have been payable to Homeowner and that exceed the amount of net proceeds that Homeowner would have received if the property had been sold for the Purchase Option Price, calculated as described in Section 10.10 below. Homeowner authorizes and instructs the Permitted Mortgagee, or any party conducting any sale, to pay such excess amount directly to CLT. If, for any reason, such excess amount is paid to Homeowner, Homeowner hereby agrees to promptly pay such amount to CLT.

ARTICLE 9: Liability, Insurance, Damage and Destruction, Eminent Domain

9.1 HOMEOWNER ASSUMES ALL LIABILITY. Homeowner assumes all responsibility and liability related to Homeowner's possession, occupancy and use of the Leased Land.

9.2 HOMEOWNER MUST DEFEND CLT AGAINST ALL CLAIMS OF LIABILITY. Homeowner shall defend, indemnify and hold CLT harmless against all liability and claims of liability for injury or damage to person or property from any cause on or about the Leased Land. Homeowner waives all claims against CLT for injury or damage on or about the Leased Land. However, CLT shall remain liable for injury or damage due to the grossly negligent or intentional acts or omissions of CLT or CLT's agents or employees.

9.3 HOMEOWNER MUST REIMBURSE CLT. In the event the CLT shall be required to pay any sum that is the Homeowner's responsibility or liability, the Homeowner shall reimburse the CLT for such payment and for reasonable expenses caused thereby.

9.4 HOMEOWNER MUST INSURE THE HOME AGAINST LOSS AND MUST MAINTAIN LIABILITY INSURANCE ON HOME AND LEASED LAND. Homeowner shall, at Homeowner's expense, keep the Home continuously insured against "all risks" of physical loss, using Insurance Services Office (ISO) Form HO 00 03, or its equivalent, for the full replacement value of the Home, and in any event in an amount that will not incur a coinsurance penalty. The amount of such insured replacement value must be approved by the CLT prior to the commencement of the Lease. Thereafter, if the CLT determines if the replacement value to be insured should be increased, the CLT shall inform the Homeowner of such required increase at least 30 days prior to the next date on which the insurance policy is to be renewed, and the Homeowner shall assure the renewal includes such change. If Homeowner wishes to decrease the amount of replacement value to be insured, Homeowner shall inform the CLT of the proposed change at least 30 days prior to the time such change would take effect. The change shall not take effect without CLT's approval.

Should the Home lie in a flood hazard zone as defined by the National Flood Insurance Plan, the Homeowner shall keep in full force and effect flood insurance in the maximum amount available.

The Homeowner shall also, at its sole expense, maintain in full force and effect public liability insurance covering the Home and the Leased Land using ISO Form HO 00 03 or its equivalent in the amount of Five hundred thousand dollars ($500,000) per occurrence and in the aggregate. The CLT shall be named as an additional insured using ISO Form HO 04 41 or its equivalent, and certificates of insurance shall be delivered to the CLT prior to the commencement of the Lease and at each anniversary date thereof.

The dollar amounts of such coverage may be increased from time to time at the CLT's request but not more often than once in any one-year period. CLT shall inform the Homeowner of such required increase in coverage at least 30 days prior to the next date on which the insurance policy is to be renewed, and the Homeowner shall assure that the renewal includes such change. The amount of such increase in coverage shall be based on current trends in homeowner's liability insurance coverage in the area in which the Home is located.

9.5 WHAT HAPPENS IF HOME IS DAMAGED OR DESTROYED. Except as provided below, in the event of fire or other damage to the Home, Homeowner shall take all steps necessary to assure the repair of such damage and the restoration of the Home to its condition immediately prior to the damage. All such repairs and restoration shall be completed as promptly as possible. Homeowner shall also promptly take all steps necessary to assure the Leased Land is safe and the damaged Home does not constitute a danger to persons or property.

If Homeowner, based on professional estimates, determines either (a) that full repair and restoration is physically impossible, or (b) that the available insurance proceeds will pay for less than the full cost of necessary repairs and that Homeowner cannot otherwise afford to cover the balance of the cost of repairs, then Homeowner shall notify CLT of this problem, and CLT may then help to resolve the problem. Methods used to resolve the problem may include efforts to increase the available insurance proceeds, efforts to reduce the cost of necessary repairs, efforts to arrange affordable financing covering the costs of repair not covered by insurance proceeds, and any other methods agreed upon by both Homeowner and CLT.

If Homeowner and CLT cannot agree on a way of restoring the Home in the absence of adequate insurance proceeds, then Homeowner may give CLT written notice of intent to terminate the Lease. The date of actual termination shall be no less than 60 days after the date of Homeowner's notice of intent to terminate. Upon termination, any insurance proceeds payable to Homeowner for damage to the Home shall be paid as follows.

FIRST, to the expenses of their collection;
SECOND, to any Permitted Mortgagee(s), to the extent required by the Permitted Mortgage(s);
THIRD, to the expenses of enclosing or razing the remains of the Home and clearing debris;
FOURTH, to the CLT for any amounts owed under this Lease;
FIFTH, to the Homeowner, up to an amount equal to the Purchase Option Price, as of the day prior to the loss, less any amounts paid with respect to the second, third, and fourth clauses above;

SIXTH, the balance, if any, to the CLT.

9.6 WHAT HAPPENS IF SOME OR ALL OF THE LAND IS TAKEN FOR PUBLIC USE. If all of the Leased Land is taken by eminent domain or otherwise for public purposes, or if so much of the Leased Land is taken that the Home is lost or damaged beyond repair, the Lease shall terminate as of the date when Homeowner is required to give up possession of the Leased Land. Upon such termination, the entire amount of any award(s) paid shall be allocated in the way described in Section 9.5 above for insurance proceeds.

In the event of a taking of a portion of the Leased Land that does not result in damage to the Home or significant reduction in the usefulness or desirability of the Leased Land for residential purposes, then any monetary compensation for such taking shall be allocated entirely to CLT.

In the event of a taking of a portion of the Leased Land that results in damage to the Home only to such an extent that the Home can reasonably be restored to a residential use consistent with this Lease, then the damage shall be treated as damage is treated in Section 9.5 above, and monetary compensation shall be allocated as insurance proceeds are to be allocated under Section 9.5.

9.7 IF PART OF THE LAND IS TAKEN, THE LEASE FEE MAY BE REDUCED. In the event of any taking that reduces the size of the Leased Land but does not result in the termination of the Lease, CLT shall reassess the fair rental value of the remaining Land and shall adjust the Lease Fee if necessary to assure the monthly fee does not exceed the monthly fair rental value of the Land for use as restricted by the Lease.

9.8 IF LEASE IS TERMINATED BY DAMAGE, DESTRUCTION OR TAKING, CLT WILL TRY TO HELP HOMEOWNER BUY ANOTHER CLT HOME. If this Lease is terminated as a result of damage, destruction or taking, CLT shall take reasonable steps to allow Homeowner to purchase another home on another parcel of leased land owned by CLT if such home can reasonably be made available. If Homeowner purchases such a home, Homeowner agrees to apply any proceeds or award received by Homeowner to the purchase of the home. Homeowner understands that there are numerous reasons why it may not be possible to make such a home available and shall have no claim against CLT if such a home is not made available.

ARTICLE 10: Transfer of the Home

10.1 INTENT OF THIS ARTICLE IS TO PRESERVE AFFORDABILITY: Homeowner and CLT agree that the provisions of this Article 10 are intended to preserve the affordability of the Home for lower income households and expand access to homeownership opportunities for such households.

10.2 HOMEOWNER MAY TRANSFER HOME ONLY TO CLT OR QUALIFIED PERSONS: Homeowner may transfer the Home only to the CLT or an Income-Qualified Person as defined below or otherwise only as explicitly permitted by the provisions of this Article 10. All such transfers are to be completed only in strict compliance with this Article 10. Any purported transfer that does not follow the procedures set forth below, except in the case of a transfer to a Permitted Mortgagee in lieu of foreclosure, shall be null and void.

"Income-Qualified Person" shall mean a person or group of persons whose household income does not exceed one hundred percent (100%) of the median household income for the applicable Standard Metropolitan Statistical Area or County as calculated and adjusted for household size from time to time by the U.S. Department of Housing and Urban Development (HUD) or any successor.

10.3 THE HOME MAY BE TRANSFERRED TO CERTAIN HEIRS OF HOMEOWNER: If Homeowner dies (or if the last surviving co-owner of the Home dies), the executor or personal representative of Homeowner's estate shall notify CLT within ninety (90) days of the date of the death. Upon receiving such notice CLT shall consent to a transfer of the Home and Homeowner's rights to the Leased Land to one or more of the possible heirs of Homeowner listed below as "a," "b," or "c," provided that a Letter of Agreement and a Letter of Attorney's Acknowledgement (as described in Article 1 above) are submitted to CLT to be attached to the Lease when it is transferred to the heirs.

a) the spouse of the Homeowner; or
b) the child or children of the Homeowner; or
c) member(s) of the Homeowner's household who have resided in the Home for at least one year immediately prior to Homeowner's death.

Any other heirs, legatees or devisees of Homeowner, in addition to submitting Letters of Agreement and Acknowledgment as provided above, must demonstrate to CLT's satisfaction that they are Income-Qualified Persons as defined above. If they cannot demonstrate they are Income-Qualified Persons, they shall not be entitled to possession of the Home but must transfer the Home in accordance with the provisions of this Article 10.

10.4 HOMEOWNER'S NOTICE OF INTENT TO SELL: In the event that Homeowner wishes to sell Homeowner's Property, Homeowner shall notify CLT in writing of such wish (the Intent-to-Sell Notice). This Notice shall include a statement as to whether Homeowner wishes to recommend a prospective buyer as of the date of the Notice.

10.5 AFTER RECEIVING NOTICE, CLT SHALL COMMISSION AN APPRAISAL: No later than ten (10) days after CLT's receipt of Homeowner's Intent-to-Sell Notice, CLT shall commission a market valuation of the Leased Land and the Home (The Appraisal) to be performed by a duly licensed appraiser who is acceptable to CLT and Homeowner. CLT shall pay the cost of such Appraisal. The Appraisal shall be conducted by analysis and comparison of comparable properties as though title to Leased Land and Home were held in fee simple absolute by a single party, disregarding all of the restrictions of this Lease on the use, occupancy and transfer of the property. Copies of the Appraisal are to be provided to both CLT and Homeowner.

10.6 CLT HAS AN OPTION TO PURCHASE THE HOME. Upon receipt of an Intent-to-Sell Notice from Homeowner, CLT shall have the option to purchase the Home at the Purchase Option Price calculated as set forth below. The Purchase Option is designed to further the purpose of preserving the affordability of the Home for succeeding Income-Qualified Persons while taking fair account of the investment by the Homeowner.

If CLT elects to purchase the Home, CLT shall exercise the Purchase Option by notifying Homeowner, in writing, of such election (the Notice of Exercise of Option) within forty-five (45) days of the receipt of the Appraisal, or the Option shall expire. Having given such notice, CLT may either proceed to purchase the Home directly or may assign the Purchase Option to an Income-Qualified Person.

The purchase (by CLT or CLT's assignee) must be completed within sixty (60) days of CLT's Notice of Exercise of Option, or Homeowner may sell the Home and Homeowner's rights to the Leased Land as provided in Section 10.7 below. The time permitted for the completion of the purchase may be extended by mutual agreement of CLT and Homeowner.

Homeowner may recommend to CLT a prospective buyer who is an Income-Qualified Person and is prepared to submit a Letter of Agreement indicating informed acceptance of the terms of this Lease. CLT shall make reasonable efforts to arrange for the assignment of the Purchase Option to such person, unless CLT determines that its charitable mission is better served by retaining the Home for another purpose or transferring the Home to another party.

10.7 IF PURCHASE OPTION EXPIRES, HOMEOWNER MAY SELL ON CERTAIN TERMS: If the Purchase Option has expired or if CLT has failed to complete the purchase within the sixty-day period allowed by Section 10.6 above, Homeowner may sell the Home to any Income-Qualified Person for not more than the then applicable Purchase Option Price. If Homeowner has made diligent efforts to sell the Home for at least six months after the expiration of the Purchase Option (or six months after the expiration of such sixty-day period) and the Home still has not been sold, Homeowner may then sell the Home, for a price no greater than the then applicable Purchase Option Price, to any party regardless of whether that party is an Income-Qualified Person.

10.8 AFTER ONE YEAR CLT SHALL HAVE POWER OF ATTORNEY TO CONDUCT SALE: If CLT does not exercise its option and complete the purchase of Homeowner's Property as described above, and if Homeowner (a) is not then residing in the Home and (b) continues to hold Homeowner's Property out for sale but is unable to locate a buyer and execute a binding purchase and sale agreement within one year of the date of the Intent to Sell Notice, Homeowner does hereby appoint CLT its attorney in fact to seek a buyer, negotiate a reasonable price that furthers the purposes of this Lease, sell the property,

and pay to the Homeowner the proceeds of sale, minus CLT's costs of sale and any other sums owed CLT by Homeowner.

10.9 PURCHASE OPTION PRICE EQUALS LESSER OF APPRAISED VALUE OR FORMULA PRICE: In no event may the Home be sold for a price that exceeds the Purchase Option Price. The Purchase Option Price shall be the lesser of (a) the value of the Home and Leased Land as determined by the Appraisal commissioned and conducted as provided in 10.5 above or (b) the price calculated in accordance with the formula described below (the Formula Price).

10.10 HOW THE FORMULA PRICE IS CALCULATED: The Formula Price shall be equal to Homeowner's Base Price, as stated below, plus 25% of the increase in market value of the Home and Leased Land, if any, calculated in the way described below.

Homeowner's Base Price: The parties agree that the Homeowner's Base Price for Homeowner's Property as of the signing of this Lease is $_____.

Initial Appraised Value: The parties agree that the appraised value of the Home at the time of Homeowner's purchase (the Initial Appraised Value) is $ _____, as documented by the appraiser's report attached to this Lease as Exhibit INITIAL APPRAISAL.

Increase in Market Value: The increase in market value of the Home equals the appraised value of the Home and Leased Land at time of sale, calculated according to Section 10.5 above, minus the Initial Appraised Value.

Homeowner's share of Increase in Market Value: Homeowner's share of the increase in the market value of the Home and Leased Land equals twenty-five percent (25%) of the increase in market value as calculated above.

Summary of Formula Price: The Formula Price equals Homeowner's Base Price plus Homeowner's Share of Increase in Market Value.

10.11 QUALIFIED PURCHASER SHALL RECEIVE NEW LEASE: The CLT shall issue a new lease to any person who purchases the Home in accordance with the terms of this Article 10. The terms of such lease shall be the same as those of new leases issued to homebuyers at that time for land not previously leased by the CLT.

10.12 PURCHASER MAY BE CHARGED A TRANSFER FEE. In the event that Homeowner sells the home to a party other than the CLT (whether directly to such party or as a result of CLT's assignment of its Purchase Option to such party), the price to be paid by such purchaser shall include in addition to the Purchase Option Price, at the discretion of the CLT, a transfer fee to compensate the CLT for carrying out its responsibilities with regard to the transaction. The amount of the transfer fee shall be no more than 5% of the Purchase Option Price.

10.13 HOMEOWNER REQUIRED TO MAKE NECESSARY REPAIRS AT TRANSFER: The Homeowner is required to make necessary repairs when they voluntarily transfer the Home as follows:

a) The person purchasing the Home ("Buyer") shall, prior to purchasing the Home, hire at their sole expense a home inspector with a current Home Inspector license to assess the condition of the

Home and prepare a written report of the condition ("Inspection Report"). The Homeowner shall cooperate fully with the inspection.

b) The Buyer shall provide a copy of the Inspection Report to Buyer's lender (if any), the Homeowner, and the CLT within 10 days after receiving the Inspection Report.
c) Homeowner shall repair specific reported defects or conditions necessary to bring the Home into full compliance with Sections 4.2 and 7.5 above prior to transferring the Home.
d) Homeowner shall bear the full cost of the necessary repairs and replacements. However, upon Homeowner's written request, the CLT may allow the Homeowner to pay all or a portion of the repair costs after transfer, from Homeowner's proceeds of sale, if Homeowner cannot afford to pay such costs prior to the transfer. In such event, either (i) 150% of the unpaid estimated cost of repairs or (ii) 100% of the unpaid cost of completed repairs shall be withheld from Homeowner's proceeds of sale in a CLT-approved escrow account. Homeowner shall allow CLT, Buyer, and Buyer's building inspector and lender's representative to inspect the repairs prior to closing to determine that the repairs have been satisfactorily completed.
e) Upon sale or other transfer, Homeowner shall either (i) transfer the Home with all originally purchased appliances or replacements in the Home in good working order or (ii) reduce the Purchase Option Price by the market value of any such appliances that are not left with the Home in good working order.

ARTICLE 11: RESERVED

ARTICLE 12: DEFAULT

12.1 WHAT HAPPENS IF HOMEOWNER FAILS TO MAKE PAYMENTS TO THE CLT THAT ARE REQUIRED BY THE LEASE: It shall be an event of default if Homeowner fails to pay the Lease Fee or other charges required by the terms of this Lease and such failure is not cured by Homeowner or a Permitted Mortgagee within thirty (30) days after notice of such failure is given by CLT to Homeowner and Permitted Mortgagee. However, if Homeowner makes a good faith partial payment of at least two-thirds (2/3) of the amount owed during the 30-day cure period, then the cure period shall be extended by an additional 30 days.

12.2 WHAT HAPPENS IF HOMEOWNER VIOLATES OTHER (NONMONETARY) TERMS OF THE LEASE: It shall be an event of default if Homeowner fails to abide by any other requirement or restriction stated in this Lease, and such failure is not cured by Homeowner or a Permitted Mortgagee within sixty (60) days after notice of such failure is given by CLT to Homeowner and Permitted Mortgagee. However, if Homeowner or Permitted Mortgagee has begun to cure such default within the 60-day cure period and is continuing such cure with due diligence but cannot complete the cure within the 60-day cure period, the cure period shall be extended for as much additional time as may be reasonably required to complete the cure.

12.3 WHAT HAPPENS IF HOMEOWNER DEFAULTS AS A RESULT OF JUDICIAL PROCESS: It shall be an event of default if the estate hereby created is taken on execution or by other process of law, or if Homeowner is judicially declared bankrupt or insolvent according to law, or if any assignment is made of the property of Homeowner for the benefit of creditors, or if a receiver, trustee in involuntary bankruptcy or other similar officer is appointed to take charge of any substantial part of the Home or Homeowner's interest in the Leased Land by a court of competent jurisdiction, or if a petition is filed for

the reorganization of Homeowner under any provisions of the Bankruptcy Act now or hereafter enacted, or if Homeowner files a petition for such reorganization, or for arrangements under any provision of the Bankruptcy Act now or hereafter enacted and providing a plan for a debtor to settle, satisfy or extend the time for payment of debts.

12.4 A DEFAULT (UNCURED VIOLATION) GIVES CLT THE RIGHT TO TERMINATE THE LEASE OR EXERCISE ITS PURCHASE OPTION:

a) TERMINATION: In the case of any of the events of default described above, CLT may terminate this lease and initiate summary proceedings under applicable law against Homeowner, and CLT shall have all the rights and remedies consistent with such laws and resulting court orders to enter the Leased Land and Home and repossess the entire Leased Land and Home, and expel Homeowner and those claiming rights through Homeowner. In addition, CLT shall have such additional rights and remedies to recover from Homeowner arrears of rent and damages from any preceding breach of any covenant of this Lease. If this Lease is terminated by CLT pursuant to an Event of Default, then, as provided in Section 7.7 above, upon thus assuming title to the Home, CLT shall pay to Homeowner and any Permitted Mortgagee an amount equal to the Purchase Option Price calculated in accordance with Section 10.9 above, as of the time of reversion of ownership, less the total amount of any unpaid Lease Fee and any other amounts owed to the CLT under the terms of this Lease and all reasonable costs (including reasonable attorneys' fees) incurred by CLT in pursuit of its remedies under this Lease.

If CLT elects to terminate the Lease, then the Permitted Mortgagee shall have the right (subject to Article 8 above and the attached Exhibit: Permitted Mortgages) to postpone and extend the specified date for the termination of the Lease for a period sufficient to enable the Permitted Mortgagee or its designee to acquire Homeowner's interest in the Home and the Leased Land by foreclosure of its mortgage or otherwise.

b) EXERCISE OF OPTION: In the case of any of the events of default described above, Homeowner hereby grants to the CLT (or its assignee) the option to purchase the Home for the Purchase Option Price as such price is defined in Article 10 above. Within thirty (30) days after the expiration of any applicable cure period as established in Sections 12.1 or 12.2 above or within 30 days after any of the events constituting an Event of Default under Section 12.3 above, CLT shall notify the Homeowner and the Permitted Mortgagee(s) of its decision to exercise its option to purchase under this Section 12.4(b). Not later than ninety (90) days after the CLT gives notice to the Homeowner of the CLT's intent to exercise its option under this Section 12.4(a), the CLT or its assignee shall purchase the Home for the Purchase Option Price.

12.5 WHAT HAPPENS IF CLT DEFAULTS: CLT shall in no event be in default in the performance of any of its obligations under the Lease unless and until CLT has failed to perform such obligations within sixty (60) days, or such additional time as is reasonably required to correct any default, after notice by Homeowner to CLT properly specifying CLT's failure to perform any such obligation.

ARTICLE 13: Mediation and Arbitration

13.1 Nothing in this Lease shall be construed as preventing the parties from utilizing any process of mediation or arbitration in which the parties agree to engage for the purpose of resolving a dispute.

13.2 Homeowner and CLT shall each pay one half (50%) of any costs incurred in carrying out mediation or arbitration in which the parties have agreed to engage.

ARTICLE 14: GENERAL PROVISIONS

14.1 NOTICES: Whenever this Lease requires either party to give notice to the other, the notice shall be given in writing and delivered in person or mailed, by certified or registered mail, return receipt requested, to the party at the address set forth below, or such other address designated by like written notice:

If to CLT Cass Clay Community Land Trust 409 7th St South Fargo, ND 58103

If to Homeowner: _____ (name of Homeowner)

All notices, demands and requests shall be effective upon being deposited in the United States Mail or, in the case of personal delivery, upon actual receipt.

14.2 NO BROKERAGE: Homeowner warrants that it has not dealt with any real estate broker other than _____ in connection with the purchase of the Home. If any claim is made against CLT regarding dealings with brokers other than _____, Homeowner shall defend CLT against such claim with counsel of CLT's selection and shall reimburse CLT for any loss, cost or damage which may result from such claim.

14.3 SEVERABILITY AND DURATION OF LEASE: If any part of this Lease is unenforceable or invalid, such material shall be read out of this Lease and shall not affect the validity of any other part of this Lease or give rise to any cause of action of Homeowner or CLT against the other, and the remainder of this Lease shall be valid and enforced to the fullest extent permitted by law. It is the intention of the parties that CLT's option to purchase and all other rights of both parties under this Lease shall continue in effect for the full term of this Lease and any renewal thereof, and shall be considered to be coupled with an interest. In the event any such option or right shall be construed to be subject to any rule of law limiting the duration of such option or right, the time period for the exercising of such option or right shall be construed to expire twenty (20) years after the death of the last survivor of the following persons:

14.4 RIGHT OF FIRST REFUSAL IN LIEU OF OPTION: If the provisions of the purchase option set forth in Article 10 of this Lease shall, for any reason, become unenforceable, CLT shall nevertheless have a right of first refusal to purchase the Home at the highest documented bona fide purchase price offer made to Homeowner. Such right shall be as specified in Exhibit FIRST REFUSAL. Any sale or transfer contrary to this Section, when applicable, shall be null and void.

14.5 WAIVER: The waiver by CLT at any time of any requirement or restriction in this Lease, or the failure of CLT to take action with respect to any breach of any such requirement or restriction, shall not be deemed to be a waiver of such requirement or restriction with regard to any subsequent breach of such requirement or restriction, or of any other requirement or restriction in the Lease. CLT may grant waivers in the terms of this Lease, but such waivers must be in writing and signed by CLT before being effective.

The subsequent acceptance of Lease Fee payments by CLT shall not be deemed to be a waiver of any preceding breach by Homeowner of any requirement or restriction in this Lease, other than the failure

of the Homeowner to pay the particular Lease Fee so accepted, regardless of CLT's knowledge of such preceding breach at the time of acceptance of such Lease Fee payment.

14.6 CLT'S RIGHT TO PROSECUTE OR DEFEND: CLT shall have the right, but shall have no obligation, to prosecute or defend, in its own or the Homeowner's name, any actions or proceedings appropriate to the protection of its own or Homeowner's interest in the Leased Land. Whenever requested by CLT, Homeowner shall give CLT all reasonable aid in any such action or proceeding.

14.7 CONSTRUCTION: Whenever in this Lease a pronoun is used it shall be construed to represent either the singular or the plural, masculine or feminine, as the case shall demand.

14.8 HEADINGS AND TABLE OF CONTENTS: The headings, subheadings and table of contents appearing in this Lease are for convenience only, and are not a part of this Lease and do not in any way limit or amplify the terms or conditions of this Lease.

14.9 PARTIES BOUND: This Lease sets forth the entire agreement between CLT and Homeowner with respect to the leasing of the Land; it is binding upon and inures to the benefit of these parties and, in accordance with the provisions of this Lease, their respective successors in interest. This Lease may be altered or amended only by written notice executed by CLT and Homeowner or their legal representatives or, in accordance with the provisions of this Lease, their successors in interest.

14.10 GOVERNING LAW: This Lease shall be interpreted in accordance with and governed by the laws of the State of North Dakota or Minnesota. The language in all parts of this Lease shall be, in all cases, construed according to its fair meaning and not strictly for or against CLT or Homeowner.

14.11 RECORDING: The parties agree, as an alternative to the recording of this Lease, to execute a so-called Notice of Lease or Short Form Lease in form recordable and complying with applicable law and reasonably satisfactory to CLT's attorneys. In no event shall such document state the rent or other charges payable by Homeowner under this Lease; and any such document shall expressly state that it is executed pursuant to the provisions contained in this Lease, and is not intended to vary the terms and conditions of this Lease

IN WITNESS WHEREOF, the parties have executed this lease at _____ on the day and year first above written.

Hometown Community Land Trust

_____ By: _____

Witness Its duly authorized agent

_____ (Homeowner):

_____
Witness

[notarize signatures]

Exhibit LETTER OF AGREEMENT

To: Hometown Community Land Trust ("the CLT")

Date: _____

This letter is given to the CLT to become an exhibit to a Lease between the CLT and me. I will be leasing a parcel of land from the CLT and will be buying the home that sits on that parcel of land. I will therefore become what is described in the Lease as a "the Homeowner."

I have reviewed the terms and conditions of the Lease and other legal documents that are part of this transaction and have had the opportunity to have my legal counsel, if any, review the same.

I understand the way these terms and conditions will affect my rights as a CLT homeowner, now and in the future.

In particular I understand and agree with the following points.

- One of the goals of the CLT is to keep CLT homes affordable for lower income households from one CLT homeowner to the next. I support this goal as a CLT homeowner and as a member of the CLT.
- The terms and conditions of my Lease will keep my home affordable for future "income-qualified persons" (as defined in the Lease). If and when I want to sell my home, the lease requires that I sell it either to the CLT or to another income-qualified person. The terms and conditions of the lease also limit the price for which I can sell the home, in order to keep it affordable for such income-qualified persons.
- It is also a goal of the CLT to promote resident ownership of CLT homes. For this reason, my Lease requires that, if my family and I move out of our home permanently, we must sell it. We cannot continue to own it as absentee owners.
- I understand that I can leave my home to my child or children or other members of my household and that, after my death, they can own the home for as long as they want to live in it and abide by the terms of the Lease, or they can sell it on the terms permitted by the Lease.
- As a CLT homeowner and a member of the CLT, it is my desire to see the terms of the Lease and related documents honored. I consider these terms fair to others and me.

Sincerely

Sample

Exhibit LETTER OF ATTORNEYS ACKNOWLEDGMENT

I, _____, have been independently employed by _____ (hereinafter "the Client") who intends to purchase a house and other Home (the "Home") on land to be leased from Community Land Trust. The house and land are located at _____.

In connection with the contemplated purchase of the Home and the leasing of the land, I reviewed with the Client the following documents:

a) this Letter of Attorney's Acknowledgment and a Letter of Agreement from the Client;

b) a proposed Deed conveying the Home to the Client;

c) a proposed Ground Lease conveying the "Leased Land" to the Client;

d) other written materials provided by the CLT.

The Client has received full and complete information and advice regarding this conveyance and the foregoing documents. In my review of these documents my purpose has been to reasonably inform the Client of the present and foreseeable risks and legal consequences of the contemplated transaction.

The Client is entering the aforesaid transaction in reliance on her own judgment and upon her investigation of the facts. The advice and information provided by me was an integral element of such investigation.

Name Date

Title

Firm/Address

Exhibit LAND

Correct legal description of area of Leased Land and appurtenant title rights and obligations

Exhibit DEED

Use actual deed

Exhibit: PERMITTED MORTGAGES

The rights and provisions set forth in this Exhibit shall be understood to be provisions of Section 8.2 of the Lease. All terminology used in this Exhibit shall have the meaning assigned to it in the Lease.

A. OBLIGATIONS OF PERMITTED MORTGAGEE. Any Permitted Mortgagee shall be bound by each of the following requirements unless the particular requirement is removed, contradicted or modified by a rider to this Lease signed by the Homeowner and the CLT to modify the terms of the Lease during the term of the Permitted Mortgage.

1. If Permitted Mortgagee sends a notice of default to the Homeowner because the Homeowner has failed to comply with the terms of the Permitted Mortgage, the Permitted Mortgagee shall, at the same time, send a copy of that notice to the CLT. Upon receiving a copy of the notice of default and within that period of time in which the Homeowner has a right to cure such default (the "cure period"), the CLT shall have the right to cure the default on the Homeowner's behalf, provided that all current payments due the Permitted Mortgagee since the notice of default was given are made to the Permitted Mortgagee.

2. If, after the cure period has expired, the Permitted Mortgagee intends to accelerate the note secured by the Permitted Mortgage or begin foreclosure proceedings under the Permitted Mortgage, the Permitted Mortgagee shall first notify CLT of its intention to do so, and CLT shall then have the right, upon notifying the Permitted Mortgagee within thirty (30) days of receipt of such notice, to acquire the Permitted Mortgage by paying off the debt secured by the Permitted Mortgage.

3. If the Permitted Mortgagee acquires title to the Home through foreclosure or acceptance of a deed in lieu of foreclosure, the Permitted Mortgagee shall give CLT written notice of such acquisition and CLT shall then have an option to purchase the Home from the Permitted Mortgagee for the full amount owing to the Permitted Mortgagee under the Permitted Mortgage. To exercise this option to purchase, CLT must give written notice to the Permitted Mortgagee of CLT's intent to purchase the Home within thirty (30) days following CLT's receipt of the Permitted Mortgagee's notice. CLT must then complete the purchase of the Home within sixty (60) days of having given written notice of its intent to purchase. If CLT does not complete the purchase within this 60-day period, the Permitted Mortgagee shall be free to sell the Home to another person.

4. Nothing in the Permitted Mortgage or related documents shall be construed as giving Permitted Mortgagee a claim on CLT's interest in the Leased Land, or as assigning any form of liability to the CLT with regard to the Leased Land, the Home, or the Permitted Mortgage.

5. Nothing in the Permitted Mortgage or related documents shall be construed as rendering CLT or any subsequent Mortgagee of CLT's interest in this Lease, or their respective heirs, executors, successors or assigns, personally liable for the payment of the debt secured by the Permitted Mortgage or any part thereof.

6. The Permitted Mortgagee shall not look to CLT or CLT's interest in the Leased Land, but will look solely to Homeowner, Homeowner's interest in the Leased Land, and the Home for the payment of the debt secured thereby or any part thereof. (It is the intention of the parties hereto that CLT's consent to such the Permitted Mortgage shall be without any liability on the part of CLT for any deficiency judgment.)

7. In the event any part of the Security is taken in condemnation or by right of eminent domain, the proceeds of the award shall be paid over to the Permitted Mortgagee in accordance with the provisions of ARTICLE 9 hereof.

8. CLT shall not be obligated to execute an assignment of the Lease Fee or other rent payable by Homeowner under the terms of this Lease.

B. RIGHTS OF PERMITTED MORTGAGEE. The rights of a Permitted Mortgagee as referenced under Section 8.6 of the Lease to which this Exhibit is attached shall be as set forth below.

1. Any Permitted Mortgagee shall, without further consent by CLT, have the right to (a) cure any default under this Lease, and perform any obligation required under this Lease, such cure or performance being effective as if it had been performed by Homeowner; (b) acquire and convey, assign, transfer and exercise any right, remedy or privilege granted to Homeowner by this Lease or otherwise by law, subject to the provisions, if any, in the Permitted Mortgage, which may limit any exercise of any such right, remedy or privilege; and (c) rely upon and enforce any provisions of the Lease to the extent that such provisions are for the benefit of a Permitted Mortgagee.

2. A Permitted Mortgagee shall not be required, as a condition to the exercise of its rights under the Lease, to assume personal liability for the payment and performance of the obligations of the Homeowner under the Lease. Any such payment or performance or other act by Permitted Mortgagee under the Lease shall not be construed as an agreement by Permitted Mortgagee to assume such personal liability except to the extent Permitted Mortgagee actually takes possession of the Home and Leased Land. In the event Permitted Mortgagee does take possession of the Home and Leased Land and thereupon transfers such property, any such transferee shall be required to enter into a written agreement assuming such personal liability and upon any such assumption the Permitted Mortgagee shall automatically be released from personal liability under the Lease.

3. In the event that title to the estates of both CLT and Homeowner are acquired at any time by the same person or persons, no merger of these estates shall occur without the prior written declaration of merger by Permitted Mortgagee, so long as Permitted Mortgagee owns any interest in the Security or in a Permitted Mortgage.

4. If the Lease is terminated for any reason, or in the event of the rejection or disaffirmance of the Lease pursuant to bankruptcy law or other law affecting creditors' rights, CLT shall enter into a new lease for the Leased Land with the Permitted Mortgagee (or with any party designated by the Permitted Mortgagee, subject to CLT's approval, which approval shall not be unreasonably withheld), not more than thirty (30) days after the request of the Permitted Mortgagee. Such lease shall be for the remainder of the term of the Lease, effective as of the date of such termination, rejection or disaffirmance, and upon all the terms and provisions contained in the Lease. However, the Permitted Mortgagee shall make a written request to CLT for such new lease within sixty (60) days after the effective date of such termination, rejection or disaffirmance, as the case may be. Such written request shall be accompanied by a copy of such new lease, duly executed and acknowledged by the Permitted Mortgagee or the party designated by the Permitted Mortgagee to be the Homeowner thereunder. Any new lease made pursuant to this Section shall have the same priority with respect to other interests in the Land as the Lease. The provisions of this Section shall survive the termination, rejection or disaffirmance of the Lease and shall continue in full effect thereafter to the same extent as if this Section

were independent and an independent contract made by CLT, Homeowner and the Permitted Mortgagee.

5. The CLT shall have no right to terminate the Lease during such time as the Permitted Mortgagee has commenced foreclosure in accordance with the provisions of the Lease and is diligently pursuing the same.

6. In the event that CLT sends a notice of default under the Lease to Homeowner, CLT shall also send a notice of Homeowner's default to Permitted Mortgagee. Such notice shall be given in the manner set forth in Section 14.2 of the Lease to the Permitted Mortgagee at the address which has been given by the Permitted Mortgagee to CLT by a written notice to CLT sent in the manner set forth in said Section 14.2 of the Lease.

7. In the event of foreclosure sale by a Permitted Mortgagee or the delivery of a deed to a Permitted Mortgagee in lieu of foreclosure in accordance with the provisions of the Lease, at the election of the Permitted Mortgagee the provisions of Article 10, Sections 10.1 through 10.11 shall be deleted and thereupon shall be of no further force or effect as to only so much of the Security so foreclosed upon or transferred.

8. Before becoming effective, any amendments to this Lease must be approved in writing by Permitted Mortgagee, which approval shall not be unreasonably withheld. If Permitted Mortgagee has neither approved nor rejected a proposed amendment within 60 days of its submission to Permitted Mortgagee, then the proposed amendment shall be deemed to be approved.

C. STANDARD PERMITTED MORTGAGE AGREEMENT. A Standard Permitted Mortgage Agreement, as identified in Section 8.4 of this Lease, shall be written as follows, and shall be signed by Mortgagee and Homeowner.

This Agreement is made by and among:

_____ *(Mortgagee) and*

_____ *("Homeowner"),*

***Whereas**:*

a) _____*CLT (the "CLT") and Homeowner have entered, or are entering, into a ground lease ("the Lease"), conveying to Homeowner a leasehold interest in the Land located at* _____ *("the Leased Land"); and Homeowner has purchased, or is purchasing, the Home located on the Leased Land ("the Home").*

b) The Mortgagee has been asked to provide certain financing to the Homeowner, and is being granted concurrently herewith a mortgage and security interest (the "Mortgage") in the Leased Land and Home, all as more particularly set forth in the Mortgage, attached hereto as Schedule A.

c) The Ground Lease states that the Homeowner may mortgage the Leased Land only with the written consent of CLT. The Ground Lease further provides that CLT is required to give such consent only if the Mortgagee signs this Standard Permitted Mortgage Agreement and thereby agrees to certain conditions that are stipulated herein ("the Stipulated Conditions").

Now, therefore, *the Homeowner/Mortgagor and the Mortgagee hereby agree that the terms and conditions of the Mortgage shall include the Stipulated Conditions stated below.*

Stipulated Conditions:

1) If Mortgagee sends a notice of default to the Homeowner because the Homeowner has failed to comply with the terms of the Mortgage, the Mortgagee shall, at the same time, send a copy of that notice to the CLT. Upon receiving a copy of the notice of default and within that period of time in which the Homeowner has a right to cure such default (the "cure period"), the CLT shall have the right to cure the default on the Homeowner's behalf, provided that all current payments due the Permitted Mortgagee since the notice of default was given are made to the Mortgagee.

2) If, after such cure period, the Mortgagee intends to accelerate the note secured by the Mortgage or initiate foreclosure proceedings under the Mortgage, in accordance with the provisions of the Lease, the Mortgagee shall first notify CLT of its intention to do so and CLT shall have the right, but not the obligation, upon notifying the Mortgagee within thirty (30) days of receipt of said notice, to purchase the Mortgagee loans and to take assignment of the Mortgage.

3) If the Mortgagee acquires title to the Home and Homeowner's interest in the Leased Land through foreclosure or acceptance of a deed in lieu of foreclosure, the Mortgagee shall give the CLT written notice of such acquisition and the CLT shall have an option to purchase the Home and Homeowner's interest in the Leased Land from the Mortgagee for the full amount owing to the Mortgagee; provided, however, that the CLT notifies the Mortgagee in writing of the CLT's intent to make such purchase within thirty (30) days following the CLT's receipt of the Mortgagee's notice of such acquisition of the Home and Homeowner's interest in the Leased Land; further provided that CLT shall complete such purchase within sixty (60) days of having given written notice of its intent to purchase; and provided that, if the CLT does not complete the purchase within such period, the Mortgagee shall be free to sell the Home and Homeowner's interest in the Leased Land to another person;

4) Nothing in the Mortgage or related documents shall be construed as giving the Mortgagee a claim on CLT's interest in the Leased Land, or as assigning any form of liability to the CLT with regard to the Leased Land, the Home, or the Mortgage.

5) Nothing in the Mortgage shall be construed as rendering CLT or any subsequent holder of the CLT's interest in and to the Lease, or their respective heirs, executors, successors or assigns, personally liable for the payment of the debt evidenced by such note and such Mortgage or any part thereof.

6) The Mortgagee shall not look to CLT or CLT's interest in the Leased Land, but will look solely to Homeowner and Homeowner's interest in the Leased Land and the Home for the payment of the debt secured by the Mortgage. (It is the intention of the parties hereto that CLT's consent to the Mortgage shall be without any liability on the part of CLT for any deficiency judgment.)

7) In the event that any part of the Leased Land is taken in condemnation or by right of eminent domain, the proceeds of the award shall be paid over to the Mortgagee in accordance with the provisions of Article 9 of the Lease.

8) Nothing in the Mortgage shall obligate CLT to execute an assignment of the Lease Fee or other rent payable by Homeowner under the terms of this Lease.

By:

_____ *for Mortgagee* *Date:* _____

_____ *for Homeowner/Mortgagor* *Date:* _____

Exhibit FIRST REFUSAL

Whenever any party under the Lease shall have a right of first refusal as to certain property, the following procedures shall apply. If the owner of the property offering it for sale ("Offering Party") shall within the term of the Lease receive a bona fide third party offer to purchase the property which such Offering Party is willing to accept, the holder of the right of first refusal (the "Holder") shall have the following rights:

a) Offering Party shall give written notice of such offer ("the Notice of Offer") to Holder setting forth (a) the name and address of the prospective purchaser of the property, (b) the purchase price offered by the prospective purchaser and (c) all other terms and conditions of the sale. Holder shall have a period of forty-five (45) days after the receipt of the Notice of Offer ("the Election Period") within which to exercise the right of first refusal by giving notice of intent to purchase the property ("the Notice of Intent to Purchase") for the same price and on the same terms and conditions set forth in the Notice of Offer. Such Notice of Intent to Purchase shall be given in writing to the Offering Party within the Election Period.

b) If Holder exercises the right to purchase the property, such purchase shall be completed within sixty (60) days after the Notice of Intent to Purchase is given by Holder (or if the Notice of Offer shall specify a later date for closing, such date) by performance of the terms and conditions of the Notice of Offer, including payment of the purchase price provided therein.

c) Should Holder fail to exercise the right of first refusal within the Election Period, then the Offering Party shall have the right (subject to any other applicable restrictions in the Lease) to go forward with the sale which the Offering Party desires to accept, and to sell the property within one (1) year following the expiration of the Election Period on terms and conditions which are not materially more favorable to the purchaser than those set forth in the Notice. If the sale is not consummated within such one-year period, the Offering Party's right so to sell shall end, and all of the foregoing provisions of this section shall be applied again to any future offer, all as aforesaid. If a sale is consummated within such one-year period, the purchaser shall purchase subject to the Holder having a renewed right of first refusal in said property.

Exhibit ZONING

Attach copy of ZONING classification for property, as of the commencement of the Lease

Exhibit INITIAL APPRAISAL

Attach copy of initial appraisal

Exhibit STANDARD PERMITTED MORTGAGE AGREEMENT

Attach agreement signed by lender and by homeowner, as specified section 8.c of the 'Permitted Mortgage Agreement' exhibit above.

Other Exhibits to be Attached, as Appropriate

Exhibit RESTRICTIONS *[To be attached in the event that SRBCLT stipulates use restrictions that are above and beyond those included under Zoning]*

THE CITY OF Fargo
FAR MORE

Planning & Development
225 4th Street North
Fargo, ND 58102
Office: 701.241.1474 | Fax: 701.241.1526
Email: planning@FargoND.gov
www.FargoND.gov

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MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

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

DATE: JUNE 10, 2021

RE: APPROVE AGREEMENTS BETWEEN THE CITY OF FARGO AND CASS CLAY COMMUNITY LAND TRUST FOR A LAND TRANSFER AND NEW CONSTRUCTION AT 1410 1 AVENUE SOUTH (HOME GRANT FUNDS)

At the January 25, 2021 City Commission meeting, a total of $400,000 in HOME funds under the 2020 Annual Action Plan was approved for the creation of affordable, single-family housing to be occupied by low-to-moderate income households. Of this approved amount, $200,000 was awarded to Cass Clay Community Land Trust.

A project site, activity, and budget were identified and approved at the May 3, 2021 City Commission meeting for this project site that Cass Clay Community Land Trust will be carrying out under the 2020 Annual Action Plan.

The project location is at 1410 1 Avenue South in Fargo. The City of Fargo acquired the property via tax forfeiture from Cass County. The activity will include new construction of a single-family home on this land which will be donated by the City of Fargo. The proposed HOME allocation for new construction on this project site is up to $50,000.

As part of federally-funded projects, incremental steps must be taken in order to comply with federal regulations. At this time, staff is seeking authorization for the execution of the agreements and other documents as necessary to effectuate activities related to this project, pending final review by City Attorney. Upon its execution, the City will transfer the property and commit HOME funds to be used on a reimbursement basis during construction of the single-family home at 1410 1 Avenue South.

Recommended Motion: Authorize execution of contractual agreements with Cass Clay Community Land Trust, a North Dakota nonprofit corporation, in order to complete the land transfer and commit HOME funds for the construction of a new affordable single-family housing unit at 1410 1 Avenue South.

EQUAL HOUSING OPPORTUNITY

PURCHASE AGREEMENT

City of Fargo/Cass Clay Community Land Trust
[1410 1st Avenue South property]

THIS PURCHASE AGREEMENT (the "Agreement") is made and entered into as of _____, 2021 by and between the CITY OF FARGO, a North Dakota municipal corporation ("Seller"), and CASS CLAY COMMUNITY LAND TRUST, a North Dakota nonprofit corporation ("Buyer").

RECITALS:

A. Seller is the owner of real property located in the City of Fargo, North Dakota and legally described on Exhibit A attached hereto and hereby made a part hereof, together with all rights, title and interest appurtenant thereto (the "Real Property"), the street address for which is 1410 1st Avenue South, Fargo, North Dakota.

B. Seller desires to sell and assign to Buyer, and Buyer agrees to purchase and accept from Seller, the Real Property under the terms and conditions hereunder.

NOW, THEREFORE, in consideration of mutual covenants set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer agree as follows:

1. Sale and Purchase. Subject to the terms, conditions, representations and warranties set forth in this Agreement, Seller agrees to sell and assign to Buyer, and Buyer agrees to purchase and accept from Seller, good and marketable title to the Real Property free of all encumbrances, unless otherwise agreed herein.

2. Purchase Price. The purchase price for the Real Property shall be One and no/100 Dollar ($1.00) (the "Purchase Price") and shall be payable as cash, certified check, cashier check or by wire transfer of funds on the Closing Date.

3. Real Estate Taxes and Special Assessments. Taxes and special assessment installments, if any, for the year 2021 that are due and payable in 2022 shall be prorated to the date of closing. Real estate taxes and special assessment installments for the year 2020 due and payable in 2021 and for all prior years are the responsibility of the Seller. Real estate taxes and special assessments for the year 2022 that are due and payable in 2023 and subsequent years are the responsibility of the Buyer.

4. Personal Property. Personal Property included in this transaction is: NONE. Any Personal Property currently on the Real Property shall be removed by Seller prior to the Closing Date.

5. Closing Costs. It is understood and agreed that as part of this purchase, Seller shall be responsible for all and any closing costs, including, but not limited to: updating the abstract of title, the cost of preparation of the deed, the cost of preparation of and recording fees for any documents necessary to remove any liens or encumbrances or to clear title, and the fee for any closing agent or company. In addition, Seller shall pay the cost of recording the deed, the cost of a title opinion, and the cost of an appraisal.

6. Covenants of Seller. Between the date of this Agreement and the Closing Date, Seller shall:

a. comply with all laws, ordinances, regulations and restrictions affecting the Real Property and its use;

b. without first obtaining the prior written consent of Buyer, refrain from creating any mortgage, easement, lien, pledge or any other encumbrance against or in any way affecting the Real Property, and refrain from conveying any leasehold or other interest in the Real Property, with the exception of any permitted encumbrances listed on Exhibit B attached hereto (the "Permitted Encumbrances");

c. refrain from committing any waste or nuisance upon the Real Property; and

d. without first obtaining the prior written consent of Buyer, refrain from entering into any contracts or agreements pertaining to the Real Property, except contracts or agreements which are consistent with Buyer's rights hereunder and which may be terminated prior to the Closing Date.

7. Contingencies.

a. *Contingencies for Benefit of Buyer.* Buyer's obligation to consummate this agreement at closing is contingent upon the following conditions being met to the satisfaction of Buyer on or before closing:

i) Buyer shall be satisfied that Buyer will be receiving marketable record title to the Subject Property, as evidenced by a title opinion issued by a North Dakota licensed attorney or by a commitment for title insurance for the Subject Property.

ii) Buyer and Seller having agreed upon a form of Developer Agreement, as described herein, to be signed and executed by Buyer and Seller at the Closing.

iii) The contingencies set forth in this Agreement benefit Buyer and Buyer reserves the right to waive performance of any or all of the conditions. Buyer shall provide Seller with written notice of the failure of any contingency as of the closing and, in such event, this Agreement shall be terminated. If Buyer does not provide Seller with written notice of the failure of any contingency as of the closing, said contingency shall be deemed waived and the parties shall proceed to consummate the closing.

b. *Contingencies for Benefit of Seller.* Seller's obligation to consummate this agreement at closing is contingent upon the following conditions being met to the satisfaction of Seller on or before closing:

i) Seller and Buyer having agreed upon a form of Developer Agreement, as described herein, to be signed and executed by Seller and Buyer at the Closing.

ii) The contingencies set forth in this Agreement benefit Seller and Seller reserves the right to waive performance of any or all of the conditions. Seller shall provide Buyer with written notice of the failure of any contingency as of the closing and, in such event, this Agreement shall be terminated. If Seller does not provide Buyer with written notice of the failure of any contingency as of the closing, said contingency shall be deemed waived and the parties shall proceed to consummate the closing.

8. Closing.

a. General; Possession. The closing of the transaction contemplated hereby (the "Closing") shall occur on or before _____, 2021 (the "Closing Date") or at such other date, time as

the parties shall agree in writing and shall occur at _____, Fargo, ND 58102 (the "Closing Agent"). Possession of the Real Property shall be transferred by Seller to Buyer on the Closing Date.

b. Deliveries by Seller at Closing. At the closing, Seller shall deliver to Buyer:
   i) A Quitclaim Deed, in recordable form, duly executed by Seller, conveying good and marketable title to the Real Property to Buyer;
   ii) A signed Developer Agreement, as described herein;
   iii) Such other documents as may be reasonably required by Buyer, by the Closing Agent, or by the Buyer's title insurance company in order to convey good and marketable title to Buyer and to allow for Buyer to obtain an owner's policy of title insurance in a form reasonably acceptable to Buyer;

(Said documents collectively referred to as the "Seller Closing Documents").

c. Deliveries by Buyer at Closing. At the Closing, Buyer shall deliver to Seller:
   i) The entire Purchase Price;
   ii) A signed Developer Agreement, as described herein;
   iii) Such other documents as may be reasonably required by Seller or by the Closing Agent.

(Said documents collectively referred to as the "Buyer Closing Documents")

9. Representations and Warranties of Seller. Seller represents and warrants to and covenants with Buyer that: (i) Seller is a municipal corporation under the laws of the State of North Dakota; (ii) Seller has the power to enter into this Agreement and all the Seller's Closing Documents signed or to be signed by it; (iii) each of the Seller's Closing Documents has been or will be duly authorized on the part of Seller prior to its execution executed; and (iv) such documents are or will be valid and binding obligations of Seller, and are or will be enforceable in accordance with their terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium, creditor's rights and other similar laws. No consents or approvals from any third parties are required for Seller to perform its obligations under this Agreement.

EXCEPT AS EXPRESSLY SET FORTH HEREIN, SELLER MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND TO BUYER, INCLUDING, WITHOUT LIMITATION, THE PHYSICAL CONDITION OF THE REAL PROPERTY OR ITS SUITABILITY FOR ANY PARTICULAR PURPOSE. Buyer acknowledges that Buyer has already (or, prior to the Closing Date, will have) independently inspected or is otherwise familiar with the Real Property and that Buyer has entered into this Agreement based upon such examination, inspection, familiarity and Buyer's right to conduct the inspections. Buyer agrees that the Real Property is to be sold to and accepted by Buyer at Closing in its then present physical condition, "AS IS, WITH ALL FAULTS, IF ANY, AND WITHOUT ANY WARRANTY WHATSOEVER, EXPRESS OR IMPLIED;" specifically (without limiting the generality of the foregoing) without any warranty of (i) the nature or quality of the construction, structural design and/or engineering of any improvements, (ii) the quality of the labor and materials included in the any improvements, (iii) the soil conditions existing at the Real Property for any particular purpose or developmental potential, (iv) the presence or absence of any petroleum or petroleum by-products, hazardous substance, matter or waste in or on the Real Property, and (v) compliance of the Real Property with any applicable environmental laws or regulations.

10. Governing Law. This Agreement shall be construed as to both validity and performance and enforced in accordance with and governed by the laws of the State of North Dakota.

11. Counterparts. This Agreement may be executed in any number of counterparts, all of which

taken together shall constitute one, complete Agreement. A copy of this Agreement delivered as or by .pdf, facsimile or other electronic means containing a party's signature shall be deemed such party's original, binding signature.

IN WITNESS WHEREOF, the undersigned have signed this Purchase Agreement as of the day and year first written above.

SELLER:

CITY OF FARGO,
a North Dakota municipal corporation

By:_____
Name: Mark Williams
Its: Planning and Development Department
Assistant Director

BUYER:

CASS CLAY COMMUNITY LAND TRUST,
a North Dakota nonprofit corporation

By:_____
Name: Trenton Gerads
Its: Executive Director

EXHIBIT A

Address and Legal Description

Address: 1410 1st Avenue South, Fargo, ND 58103

Legal Description: Lot B of Auditor's Subdivision of Outlot Thirteen (13), Eddy and Fuller's Outlots of the City of Fargo, County of Cass, and the State of North Dakota

EXHIBIT B

Permitted Encumbrances

None.

EXHIBIT C

FORM OF
DEVELOPER AGREEMENT

[attached]

DEVELOPER AGREEMENT
City of Fargo/Cass Clay Community Land Trust
[HOME Investment Partnership - New Construction – 1410 1st Avenue South property]

This DEVELOPER AGREEMENT ("**Agreement**") is made and entered into this _____ day of _____, 2021 ("**Effective Date**"), by and between the City of Fargo, a North Dakota municipal corporation ("**City**"); and Cass Clay Community Land Trust, a North Dakota nonprofit corporation ("**Developer**"). (The City and Developer 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, described more fully below, which is 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 certain HOME Funds to develop housing to be affordable to low income households and Developer submitted an application for the project referenced in this Agreement; and

WHEREAS, some time ago the City acquired certain real property located at 1410 1 Avenue South in Fargo, ND, (the "Property" as described more fully below) via tax forfeiture from Cass County, North Dakota, for the purpose of promoting affordable homeownership for predominantly low to moderate income residents; and,

WHEREAS, the City and Developer have entered into a Purchase Agreement for the sale and conveyance of said Property from the City to Developer, which sale and conveyance occurred at a closing held simultaneous with the execution of this Agreement; and,

WHEREAS, the City and Developer 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 Developer shall construct the project as described in the following statement of work, which shall be referred to herein as the "Project":

A. Project Site. The Project consists of certain real property described as follows:

Lot B of Auditor's Subdivision of Outlot Thirteen (13), Eddy and Fuller's Outlots of the City of Fargo, County of Cass, and the State of North Dakota;

the street address for which is 1410 1st Avenue South, Fargo, ND 58103 (Parcel #01-0700-00750-000) (the "**Project Site**" or "**Property**", herein).

B. Project Budget. The total estimated development cost is $50,000. Developer's budget is attached as Exhibit "C."

Developer shall promptly notify the City of any material changes to the Project budget, including but not limited to material increases in project costs, change orders, and the receipt or availability of additional sources of funds not previously disclosed. The City reserves the right to reduce its HOME commitment or require Developer to contribute additional funds needed to complete the Project if the changes to the Project budget 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. Using HOME Funds, the Developer shall develop and construct an affordable single-family or twin home in accordance with the requirements of the National Affordable Housing Act of 1990, as the amended, HOME Investment Partnership Program, and all federal rules, regulations, and policies promulgated thereunder (said act, program, rules, regulations, and policies collectively, as amended from time to time), said requirements referred to herein as "**HOME**" or the "**HOME Program**", with said home to be occupied by an income-eligible homebuyer as defined in the HOME Program but generally described as a household earning 80% or less of the Area Median Income ("AMI"). The term "HOME Funds" means funds received from the U.S. Department of Housing and Urban Development pursuant to the HOME Program.

D. HOME-assisted Unit. This single-family home shall be designated as a HOME-assisted unit.

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 restrictions of the HOME program and other terms of this Agreement.

E. Environmental Review. The City has completed an Environmental Review of the Project Site. No adverse environmental impacts were identified in the Project's total environmental review. The Project is in compliance with Executive Order 12898.

F. Davis-Bacon Labor Standards. As the Project does not consist of twelve (12) or more HOME-assisted units, the Davis-Bacon Act (40 U.S.C. 3141) does not apply as it relates to the funds covered under this agreement.

G. Property Standards. As a new construction activity, Developer shall construct the Project to the following property standards (24 CFR 92.251) to ensure the housing is safe, sanitary, and in good repair.

a. State and local codes, ordinances, and zoning (including disaster mitigation in accordance with these State and local codes, ordinances, or other State and local requirements, or other requirements established by HUD as applicable).

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)

Including: Any housing units newly constructed or rehabilitated for purchase or single family (including semi-attached and attached) units to be constructed or rehabilitated in a program or activity receiving Federal financial assistance **shall be made accessible upon request of the prospective buyer** if the nature of the handicap of an expected occupant so requires. In such case, the buyer shall consult with the seller or builder/sponsor regarding the specific design features to be provided. If accessibility features selected at the option of the homebuyer are ones covered by the standards prescribed by §8.32, those features shall comply with the standards prescribed in §8.32. The buyer shall be permitted to depart from particular specifications of these standards in order to accommodate his or her specific handicap. Reasonable accommodations must be made to any existing homes to meet the needs as specified by the buyer.

The cost of making a facility accessible under this paragraph may be included in the mortgage amount within the allowable mortgage limits, where applicable. To the extent such costs exceed allowable mortgage limits, they may be passed on to the prospective homebuyer, **subject to maximum sales price limitations** (see 24 CFR 235.320.)

ii. 28 CFR Part 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. Uniform Federal Accessibility Standard ("UFAS") – used if homeowner wants their home to be built accessible

H. Lead-Based Paint. Not applicable in new construction.

I. Schedule for Completion of Work. The Developer's schedule for completion of the Statement of Work is set forth on Exhibit "H", attached hereto and incorporated as if set forth fully herein. Notwithstanding said schedule, Developer shall in no event exceed the following mandatory deadlines:

a. Construction Commencement. Construction of the Project must begin within twelve (12) months of the Effective Date of this HOME Developer Agreement (24 CFR 92.2).

b. Project Completion. Per 24 CFR 92.205(e)(2), 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 three (4) years will:

1. Require repayment of all HOME funds invested

c. Developer shall expend all HOME Funds by _____, 2024.

J. Maximum Property Value. Per 24 CFR 92.254, the value of any homebuyer/homeowner-occupied property may not exceed 95% of the median purchase price for single-family, new construction units for the area as published by HUD for the current year. At the time of this Agreement, the

sales price limit for the Fargo, ND-MN MSA for a newly-constructed, one-unit property is $263,000.

K. 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:

- $175,752 for a 1-bedroom unit
- $213,718 for a 2-bedroom unit
- $276,482 for a 3-bedroom unit
- $303,490 for a 4-bedroom unit

Section 2 City to Advance HOME Funds.

A. Amount of HOME Funds. The City will advance and remit to Developer the maximum sum of up to **FIFTY THOUSAND and 00/100 DOLLARS ($50,000.00)** ("**HOME Funds**") under terms and conditions set forth in this Agreement.

B. Source of HOME Funds. The HOME Funds are from the City's HOME Investment Partnership allocation of:

Program Year 2020: $495,115.00 awarded to the City of Fargo on March 8, 2021; Federal Award Identification Number M-20-MC-38-0220, CFDA 14.239, DUNS 07-026-5871.

C. Form of Assistance. The City will advance the HOME Funds in the form of a grant to Developer.

D. Other Non-HOME Program Funds. Developer received the Property (land parcel at 1410 1st Avenue South) which was acquired by the City via tax forfeiture from Cass County, North Dakota for the purposes of promoting the construction of single-family or twin-home homeowner affordable housing.

With respect to funds provided or advanced under any federal program, the Project will be funded only by HOME funds.

Section 3 HOME Program Requirements.

As a recipient of HOME funds, Developer 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 at 24 CFR 92.351 do not apply.

B. Displacement, Relocation, and Acquisition. Developer shall take all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of the Project. Developer 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.

C. Conflict of Interest. Per 24 CFR 92.356 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 owner, developer, or sponsor;

   c. Any immediate family member of an officer, employee, agent, elected or appointed official, or consultant of the owner, developer, or sponsor.

D. 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).

E. Religious Activities and Faith-Based Organizations (92.257; 5.109). Faith-based organizations are eligible, on the same basis as any other organization, to participate in HUD programs and activities. Developer 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.

F. Land Use Restrictive Agreement. Developer shall arrange for the execution of 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 Site, as defined in Section 1(A), at the office of the Cass County Recorder. Said LURA shall be substantially in conformance with the form of LURA attached as Exhibit "A."

G. Historic Preservation. Developer 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 Developer Responsibilities During the Award Period.

The following section describes the responsibilities of Developer after the Effective Date of this Agreement and before the commencement of the Affordability Period. Developer shall comply with the below provisions.

A. Report During the Development Phase. Developer 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. Developer 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, Developer 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, and/or brief written reports with photos.

C. Request Disbursements During Construction. Developer 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." Developer shall use the template "HOME Disbursement Request" form attached as Exhibit "F."

D. Report Prior to Project Completion. Developer shall submit the City's "HOME Benefit Form" (Exhibit "B") prior to completion of the Project. This form is a part of the Project closeout items that must be submitted to the City before the Final Disbursement (10% retainage) will be paid to Developer.

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 Developer, 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. Developer has not already made a disbursement request during the calendar month (unless an exception has been granted in writing by the City).

c. Developer is not in material default under the terms of this Agreement, 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. Developer has provided documentation of direct costs, such as invoices or receipts, which the Developer 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 will approve the disbursement request. Photos of the completed work may be taken as part of disbursement request approval. The City reserves the right to conduct progress inspections at any reasonable time prior to final completion of the Project.

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.

D. Monitoring and Evaluation. The City reserves the right to monitor and evaluate the progress and performance of the Developer to assure that the terms of this agreement are being satisfactorily met in accordance with City and other applicable monitoring and evaluating criteria and standards. The Developer shall reasonably cooperate with the City relating to such monitoring and evaluation.

Section 6 Affordability Period and Resale Requirements.

The following section describes the responsibilities of the Developer during the Affordability Period. Developer shall comply with the below provisions.

A. Length of Affordability Period. The applicable periods for affordability are specified in the following table:

Homeownership Assistance HOME Amount Per-Unit	Minimum Period of Affordability in Years
Under $15,000	5
$15,000 to $40,000	10
Over $40,000	15

Source: HUD Regulation 24 CFR 92.254(a)(4)

The Property is a single-family housing project that is subject to the City's resale requirements. The affordability period requirements as described in 24 CFR Part 92 shall be applicable to the Property for a minimum period of **fifteen (15) years** (see chart above), subject to the possible extension thereof in accordance with said Part 92 as further described below. Therefore, the applicable period for affordability under the HOME Program requirements shall be deemed to commence on the date of conveyance and transfer of ownership of the Project by Developer to a HOME Program-eligible owner, and such period shall end and **terminate fifteen (15) years thereafter ("Affordability Period")**; provided, however, that the length of the Affordability Period may be subject to extension or other modification in accordance with the HOME Program.

B. Start of Affordability Period. The Affordability Period may not be allowed to commence by Developer until after the Project Completion Date ("Project Completion Date" as defined in paragraph "a", below) and upon transfer of ownership.

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 (construction is completed when a certificate of occupancy is issued by a building official); the project complies with the requirements of 24 CFR Part 92 (including the property standards under 24 CFR 92.251) and any accessibility requirements as outlined in Section 1 (G)(c); 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. Nine Month Sales Deadline. Per 92.254(a)(3), if there is no ratified sales contract with an eligible homebuyer for the housing and the HOME-assisted homebuyer unit is not sold within 9 months of completion of construction, the housing must be rented to an eligible tenant in accordance with the HOME rental requirements found at 24 CFR 92.252 (since this project is new construction, an Affordability Period of 20 years would be required) or the HOME funds must be repaid. If the property is converted to rental housing, the developer of the homebuyer property becomes the owner and property manager of the HOME-assisted rental project.

C. Resale Requirements *(as referenced in the City of Fargo's "Resale and Recapture Policy" for the 2020 Action Plan).* Resale requirements must ensure that if the housing does not continue to be the principal residence of the family for the duration of the affordability period, the housing is made available for subsequent purchase only to a buyer whose family qualifies as a low-income family and will use the property as the family's primary residence.

a. Enforcement of Affordability Period. Pursuant to 24 CFR 92.254(a)(5)(i)(A), covenants running with the land, deed restrictions, or other similar mechanisms must be used as the mechanism to impose the resale requirements.

The City enforces resale requirements through the use of a 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. Noncompliance. In the event of noncompliance where the owner is no longer occupying the property during the Affordability Period, the HOME investment that was provided directly to the developer to reduce the development costs for the HOME-assisted property must be repaid by the City to the U.S. Department of Housing and Urban Development.

c. Price at Future Sale. The resale requirement must also ensure that the price at resale provides the original HOME-assisted family a fair return on investment (including the homeowner's investment, which includes the total cash contribution plus any capital improvement credits) and ensure the housing will remain affordable to a reasonable range of low-income homebuyers.

i. Fair Return on Investment. "**Fair Return on Investment**" means the total homeowner investment, which includes the down payment, earnest money, and any approved capital improvement credits, as described below:

1. The amount of the down payment and earnest money paid;

2. The cost of any capital improvements, documented with receipts provided by the homeowner, including but not limited to:
    a. Any additions to the home such as a bedroom, bathroom, or garage;
    b. Replacement of heating, ventilation, and air conditioning systems;
    c. Accessibility improvements such as bathroom modifications for disabled or elderly, installation of wheel chair ramps and grab bars, any and all of which must have been paid for directly by the owner and which were not installed through a federal, state, or locally-funded grant program; and
    d. Outdoor improvements such as a new driveway, walkway, retaining wall, or fence.
3. The value of the owner's investment will be calculated using the Housing Price Index (HPI) Calculator of the Federal Housing Finance Agency (which can be found at FHFA HPI Calculator | Federal Housing Finance Agency). The change in HPI from the original purchase price to the time of sale will be applied to the value of the owner's investment, so that the value of the improvements is increased or decreased by the amount of increase or decrease in the housing market overall;
4. If the market price that provides a fair return to the initial homebuyer is too high to be affordable for a subsequent eligible buyer, the City, at its discretion, may provide additional direct HOME subsidy or other funds, if available, to the subsequent buyer. Such consideration will only be given after the owner has demonstrated they have made all reasonable attempts to sell the unit. The City cannot require the homeowner to adjust the resale price in order to achieve affordability for the subsequent Buyer.

ii. Affordability to a Range of Buyers. The Developer must work with the City to ensure continued affordability to a **range of buyers**, particularly those whose total household incomes range from 40% to no greater than 80% of the Area Median Income (AMI). **Affordability** to a range of buyers shall set the maximum sales price so that the amount of Principal, Interest, Taxes, and Insurance (PITI) does not exceed 38% of the targeted Buyer's annual gross income and the maximum sales price cannot exceed 95% of the median purchase price for single-family housing in the Fargo, ND-MN MSA for the current year. **At the time of this Agreement, the sales price limit for the Fargo, ND-MN MSA for a newly-constructed, one-unit property is $263,000.** The homeownership sales price limits change annually and are provided by HUD.

d. Approval of Sales Price and Eligible Buyer. If the owner wants to sell their property before the Affordability Period is over, the owner or real estate agent must contact the City and Developer, in writing, at least fourteen (14) days prior to listing the property and receive approval for a proposed listing price in

accordance with the affordability restrictions. The listing price cannot exceed 95% of the median purchase price for single-family housing in the Fargo, ND-MN Metropolitan Statistical Area (MSA) for the current year.

After receiving approval of the proposed listing price, the seller may list the property for sale with a real estate agent or broker licensed in the State of North Dakota or the seller may market the property as so-called "for sale by owner," and may enter into a purchase agreement/contract for the sale of the property upon such terms and conditions as the seller deems acceptable, provided that: 1) the purchase price shall not exceed the Maximum Sales Price (defined below) and 2) the purchase agreement or contract must state, as a contingency, that the buyer will submit the "Notification of Intent to Purchase from Prospective Buyer(s) to the City of Fargo" (which is included in the City's Resale-Recapture Policy) within three (3) days after the purchase agreement/contract is signed by both parties and that the seller's obligations under the purchase agreement/contract are expressly contingent upon the City's determination and approval that the buyer is income eligible to purchase.

i. **"Maximum Sales Price"** means that every transfer of the property by an owner to a buyer (during the Affordability Period) shall be for a purchase price which does not exceed the Maximum Sales Price determined as follows: sales prices shall be set such that the amount of Principal, Interest, Taxes, and Insurance does not exceed 38% of the new buyer's annual gross income, adjusted to a monthly income and the Maximum Sales Price cannot exceed 95% of the median purchase price for single-family housing in the Fargo, ND-MN Metropolitan Statistical Area for the current year. The homeownership sales price limits change annually and are provided by HUD.

e. Purchase Option. If the initial homebuyer decides to sell their property before the Affordability Period is over, Developer will have the option to buy the property from the initial homebuyer as outlined in their Ground Lease (see Exhibit I). Developer is responsible for ensuring the home will be sold to a subsequent buyer whose family qualifies as low income and will use the property as their principal residence for the remaining years of the Affordability Period. The Affordability Period will resume at the time of title transfer to the new, qualified purchaser. If the new, qualified purchaser receives direct assistance through a HOME-funded program, the Affordability Period will be reset according to the amount of assistance provided.

D. Qualified Homebuyers. During the Affordability Period, the HOME-Assisted Unit must be occupied by a household that is eligible as low-income as determined by HUD and must be the principal residence of the qualified household.

a. Income-Eligible Homebuyer. The home must be sold to an income-eligible homebuyer under the HOME Program, defined as a household earning 80% or less of the Area Median Income ("AMI") of the Fargo-Moorhead Metropolitan Statistical Area (MSA). **The income limits are adjusted annually by HUD and must be obtained**

from the City prior to the Developer selling to the homebuyer. Developer must provide income verification documentation to the City prior to the closing with the homebuyer. The City will review documentation for eligibility under the HOME requirements. The income limits that are in effect at the time of the sale to the homebuyer must be used.

As of the Effective Date of this Agreement, income limits can be found online at www.hudexchange.info/programs/home/home-income-limits/.

b. Homebuyer Income Verification. **Income verification is the Developer's responsibility**. The City uses the definition of "annual income" as defined at 24 CFR 5.609.

i. Initial Income Certification. Developer 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 at least two months of source documents for all persons 18 years of age and older living in the housing.

ii. Recertification of Income. If six (6) months has elapsed from the initial income verification and before assistance is provided, Developer must re-verify the household's income by requesting updated source documents for all persons 18 years of age and older who will be living in the housing.

iii. Income Certification at Future Sale. If the housing does not continue to be the principal residence of the family for the duration of the affordability period, **Developer must work with the City before the home is listed for sale to ensure the housing is made available to a low-income family who will use the property as the family's primary residence.**

c. Homebuyer Counseling. Per 24 CFR 92.254(a)(3), the (initial and all subsequent) income-eligible homebuyers must receive housing counseling by a HUD-certified housing counselor. Documentation of this counseling will be required for the project file.

d. Fees. Per 24 CFR 92.504(c)(3)(xi), Developer is prohibited from charging fees for servicing, origination, processing, inspection, or other fees for the costs of providing homeownership assistance. Monthly ground lease fees may be charged.

Section 7 ***Reporting.***

A. Reporting. Developer shall maintain complete and organized records. This section sets forth the manner by which the Developer shall maintain records and report to the City.

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. Developer 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 (24 CFR 92.508(7)(c)(2)).

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.

Section 8 Enforcement.

A. Default. The following shall constitute an event of default by Developer under this Agreement and subject to remedy if not corrected within the identified Corrective Action Period (Subsection B, below).

a. Failure to meet the Affordability Requirements during the Affordability Period;

b. Failure to comply with HOME Program regulations, fair housing laws, and other federal requirements;

c. 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.

d. Use of funds for activities or uses that are not HOME-eligible costs.

e. Any other material breach of the terms and conditions of this Agreement by the Developer or any of its Employees, Contractors, or Agents.

B. Corrective Action Period. In the event of default by Developer, Developer shall have thirty (30) days* from the receipt of written notice by the City to initiate corrective action, with the exception of failure to maintain the property in accordance with Property Standards that are impacting a safe, decent, and sanitary environment for persons onsite, which shall be corrected within a set time as indicated in written notice.

*Thirty (30) day period shall be extended as the City deems necessary in City's reasonable discretion, in the event that:

a. Developer 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 Developer fails to cure the default, the City shall have the following remedies:

a. The City may terminate this Agreement.

b. The City may require the Developer to remit repayment to the City, 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 Developer's breach has been cured to the satisfaction of the City.

d. The City may apply to any appropriate court, State or Federal, for such other relief as may be appropriate and allowed by law.

e. 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 Developer, as the attorney-in-fact of the Developer (which authority is coupled with an interest and is irrevocable by the Developer), to complete or cause to be completed the Project, at the cost and expense of the Developer.

f. 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.

Section 9 Term of Agreement.

This Agreement shall extend for a term commencing upon the Effective Date and ending upon the completion of the Affordability Period.

Section 10 General Provisions.

A. Assignability. This Agreement will not be assigned or transferred by the Developer without the prior written consent of the City. Notwithstanding the foregoing or anything to the contrary set forth herein, interests in the Developer may be transferred without consent or restriction.

B. Independence of Developer. Nothing contained in this Agreement nor the relationship of the Developer to other parties, shall make or be construed to make the Developer, or any of the Developer's agents or employees, the agents or employees of the City. The Developer shall be solely and entirely responsible for its acts and the acts of its agents, employees, and subcontractors.

C. Assurances. The Developer shall use HOME Funds for the purposes authorized by the Fargo City Commission. The Developer 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.

D. Conflict of Interest. Developer represents that it has not violated the prohibition against conflicts of interest set forth in 24 CFR 92.356 and further assures that it will not, during the duration of this Agreement, violate said prohibition.

The Developer represents that neither it nor any of its employees, agents, consultants, or officers have any financial interest in the Project to be financed under the Statement of Work, either for themselves or those with whom they have business or immediate family ties (whether by blood, marriage, or adoption and defined in 24 CFR 92.356(b)), and shall not acquire any financial interest in the Project which would conflict with the performance of the Statement of Work required under this Agreement or applicable statute, rule, or regulation during their tenure or for one year thereafter.

E. License and Insurance Requirements. Developer shall comply with all applicable licensing requirements and associated business regulations, whether federal, state, or local. Developer shall purchase and maintain the policies listed in Exhibit "G."

F. 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.

G. 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.

H. Amendments. Except as set forth in this Agreement, the Agreement 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, Developer shall comply with any new or modified requirements to ensure the Project remains in or is brought into compliance with such requirements. Developer 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 Developer of any such modifications.

I. Indemnification and Hold Harmless. Developer 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 Developer, or the Developer's contractors, successors, or assigns in connection with the work on the Property, and the Developer will, at the Developer'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 Developer.

b. Any failure of the Developer 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 Developer, or after assumption, by a subsequent to the Developer.

c. Any claims, assessments, or liabilities for charges, penalties, liens, taxes, or deficiencies arising from or relating to the use and operation by the Developer, or after an assumption, the Developer'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 Developer or any of their past or present affiliates on the Project Site described in Section 1, which occurs prior to possession passing from Developer 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 Developer'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 Developer 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

J. 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 Developer may not assign its interests or obligations under this Agreement without the prior written consent of the City.

K. 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 Developer:

Cass Clay Community Land Trust
Attn: Trenton Gerads, Executive Director
409 7 St S
Fargo, ND 58103
ccclt@areafoundation.org

To City:

City of Fargo
Department of Planning and Development
Attn: HOME Program
225 4 Street North
Fargo, ND 58102

With respect to notices of default issued pursuant to this Agreement, including Section 8, 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.

L. 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.

M. Memorandum of Agreement. Simultaneous with the execution of this Agreement, the Parties will execute a Memorandum of Agreement in a form substantially similar to that which is attached hereto as Exhibit "D" and either Party is authorized to record said instrument against the Property at the Office of the Cass County Recorder.

N. Entire Agreement. Subject to this Agreement, Sections 1 through 10, together with Exhibits "A" – "I", including the Land Use Restrictive Agreement, and proposal and application for participation in the program submitted by Developer, which are specifically incorporated herein, represent the

entire agreement between the parties and supersede all prior representations, negotiations, or agreements whether written or oral.

SIGNED THE ____ DAY OF _____, 20___.

CASS CLAY COMMUNITY LAND TRUST
a North Dakota nonprofit corporation

By: _____
Trenton Gerads
Its: Executive Director

Federal ID # _____

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) TEMPLATE

(to be signed by homebuyer at the time of the closing with the homebuyer)

DECLARATION OF LAND USE RESTRICTIVE AGREEMENT
(SINGLE FAMILY HOMEOWNERSHIP PROGRAM)

FARGO HOME PROGRAM

THIS "Declaration of Land Use Restrictive Agreement" (this "Declaration") is declared and established as of the [DAY] day of [MONTH], [2021] by [PROPERTY OWNER], [LEGAL STATUS], whether one or more ("Property Owner", whether one or more parties), and is binding upon the Property Owner's successors and assigns in interest, and is granted to CITY OF FARGO, a North Dakota municipal corporation, whose address is 225 4th Street North, Fargo, ND 58102 ("City"), on the land and improvements hereinafter described.

WITNESSETH:

WHEREAS; Property Owner owns in fee simple of residential land and improvements located in Cass County, North Dakota, legally described as follows:

Lot B of Auditor's Subdivision of Outlot Thirteen (13), Eddy and Fuller's Outlots of the City of Fargo, County of Cass, and the State of North Dakota

(hereinafter "Subject Property") the street address for which is 1410 1st Avenue South, Fargo, ND 58103.

WHEREAS; Cass Clay Community Land Trust, a North Dakota nonprofit corporation ("Developer"), constructed upon the Subject Property an affordable, single-family home (the "Project") pursuant to, and in accordance with, a Developer Agreement between Developer and the City; and

WHEREAS; Developer applied to the City for HOME funds 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; ownership of the Subject Property was transferred to Property Owner from Developer, which previously entered into a Developer Agreement ("Developer Agreement") with the City, concerning the Subject Property above, for the providing of certain HOME Funds setting forth terms by which Developer will receive the proceeds of the HOME Funds, and for which a Memorandum of Agreement was recorded at the Office of the Cass County, North

Dakota, Recorder on the ___ day of _____, 20___, as Document No. _____; and

WHEREAS; the Developer will enter into a long-term Ground Lease (see Exhibit I) with Subsequent Property Owner(s) of 50 years or more in order to effectuate the intent of a land trust whereas the Property Owner/Homeowner shall own the structure and the Developer shall own the land, and

WHEREAS; the HOME Program, as adopted by City, requires that this Declaration be executed, delivered, and recorded against the Subject Property so as to create certain covenants running with the land for the purpose of enforcing certain requirements regulating and restricting the use, occupancy, income, sale and transfer of the Subject Property; and

WHEREAS; Property Owner, with this Declaration, intends, declares, and covenants that the regulatory and restrictive covenants set forth herein governing the use, income, occupancy, sale, and transfer of the Subject Property shall be and are covenants running with the land for the term of this Declaration and shall be binding upon all subsequent owners of the Subject Property for the term hereof, and are not merely personal covenants of the Property Owner, but are contractual in nature.

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 Property 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 promptly transmit to Property Owner a copy of the executed and recorded Declaration, showing the date and recordation number.

SECTION 2 – RESERVED.

SECTION 3 - COVENANTS TO RUN WITH THE LAND—AFFORDABILITY PERIOD.

Property Owner intends, declares and covenants, on behalf of Property Owner and all future owners and operators of the Project during the Affordability Period, that this Declaration and the covenants and restrictions set forth herein which regulate and restrict the use, occupancy, income, sale and transfer of the Subject Property shall be and are covenants running with the land, binding upon the Property Owner's successors in title and all subsequent owners and operators of the Subject Property, and are not merely personal covenants of the Property Owner, and shall bind the Property Owner, and the benefit shall inure to the City and any past, present or prospective owners of the Project, and the City's respective successors and assigns during the Affordability Period hereof.

The Property 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 Affordability Period 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.

Affordability Period. The term "Affordability Period" is determined by the total amount of federal funds invested and is a minimum period of fifteen (15) years, for this project, under the HOME Program. The Affordability Period will commence on [DATE], and terminate on [DATE], with the exception that the Affordability Period may be extended by amendment of the HOME Program or in the event of the exercise by Developer of Developer's right of first refusal as set forth herein.

SECTION 4 – REPRESENTATIONS AND WARRANTIES OF THE PROPERTY OWNER.

(A) Property Owner represents and warrants that they have validly executed this Declaration and the same constitute the binding obligation of the Property Owner. The Property Owner has full power, authority, and capacity to enter into the Declaration, to carry out the Property Owner's obligations as described in this Declaration, and to assume responsibility for compliance with all applicable federal rules and regulations.

(B) To the best of the Property Owner's knowledge, the making of this Declaration and the Property Owner's obligations hereunder:

i. Will not violate any contractual covenants or restrictions between the Property Owner or any third party affecting the Subject Property;
ii. Will not conflict with any of the instruments that create or establish the Property Owner's authority;
iii. Will not conflict with any applicable public or private restriction;
iv. Do not require any consent or approval or any public or private authority which has not already been obtained, and;
v. Are not threatened with invalidity or unenforceability by any action, proceeding, or investigation pending or threatened, by or against the Property Owner, without regard to capacity, any person with whom the Property Owner may be jointly or severally liable, or the Subject Property or any part thereof.

(C) No litigation or proceedings are pending or to the best of the Property Owner's knowledge, threatened against the Property Owner which if adversely determined could individually or in the aggregate have an adverse effect on the title to or the use and enjoyment

or value of the Subject Property, or any portion thereof, or which could in any way interfere with the consummation of this Declaration.

(D) The Property 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 - RESTRICTIONS AND COVENANTS.

The Property Owner agrees and covenants, that throughout the Affordability Period stated in this Declaration, and in order to satisfy the requirements of the HOME Program:

(A) Property Owner will maintain the Subject Property as their principal residence, meaning their primary residence, during the Affordability Period.

(B) Each initial and subsequent purchaser agrees that the Subject Property may not be used as rental housing or an investment property during the Affordability Period.

(C) Each initial and subsequent purchaser agrees not to change the use of the Subject Property, or any part thereof, to a use other than for single-family occupancy.

(D) Subject Property may be resold only to a subsequent purchaser who meets the qualifications set forth in the Developer Agreement.

(E) Developer will verify the income of all purchasers, initial and subsequent, within the Affordability Period.

(F) If Property Owner is going to sell the Subject Property before the Affordability Period is over, Developer will have the option to buy the property from the initial Property Owner ("Purchase Option"). The Affordability Period will resume at the time of title transfer to the new, qualified purchaser. If the new, qualified purchaser receives direct assistance through a HOME-funded program, the Affordability Period will be reset according to the amount of assistance provided.

(G) Property Owner or their real estate agent shall notify the City and Developer, in writing, of any potential sale, transfer or exchange of the Subject Property or any portion thereof. Property Owner or their real estate agent shall notify the City and the Cass Clay Community Land Trust at least fourteen (14) days prior to listing the Subject Property for sale if intending to sell the home before the end of the Affordability Period. Property Owner or their real estate agent must receive approval for a proposed listing price in accordance with the affordability restrictions, which provide, among other things, that a listing price for the Subject Property may not exceed 95% of the median purchase price for single-family housing in the Fargo, ND-MN Metropolitan Statistical Area for the current year.

(H) After receiving approval of the proposed listing price, the Property Owner may list the Subject Property for sale with a real estate agent or broker licensed in the State of North Dakota or the Property Owner may market the Subject Property as "for sale by owner", and the Property Owner may enter into a purchase agreement/contract for the sale of the Subject Property upon such terms and conditions as the Property Owner deems acceptable, provided that: 1) the purchase price shall not exceed the Maximum Sales Price and 2) the purchase agreement or contract must state, as a contingency, that the buyer will submit the "Notification of Intent to Purchase from Prospective Buyer(s) to the City of Fargo" (the form of which may be found in the City's Resale and Recapture Policy and available from the Office of Planning and Development, Fargo City Hall, Fargo North Dakota) within three (3) days after the purchase agreement/contract is signed by both parties and further requiring that the Property Owner's obligations under the purchase agreement/contract be expressly contingent upon the City's determination and approval that the buyer is income-eligible to purchase the Subject Property pursuant to the HOME Program. The term "Maximum Sales Price" means that every transfer of the property by an owner to a buyer (during the Affordability Period) shall be for a purchase price which does not exceed the Maximum Sales Price determined as follows: sales prices shall be set such that the amount of Principal, Interest, Taxes, and Insurance does not exceed 38% of the new buyer's annual gross income, adjusted to a monthly income and the Maximum Sales Price cannot exceed 95% of the median purchase price for single-family housing in the Fargo, ND-MN Metropolitan Statistical Area for the current year. The homeownership sales price limits change annually and are provided by HUD.

(I) The initial or subsequent purchasers may sell, transfer or exchange the Subject Property at any time, but the initial and any subsequent purchasers are hereby required to provide the aforesaid written notification to the City and to obtain the City's written consent to any such purchase, sale, transfer or exchange that the Subject Property is subject to the requirements of this Declaration and such purchasers must agree in writing that such purchase, sale, transfer or exchange is subject to the terms of this Declaration. This provision shall not act to waive any other restriction on sale, transfer or exchange of the Subject Property. All owners agree that the City may void any sale, transfer or exchange of the Subject Property if the buyer or successor or other person fails to assume the requirements of this Declaration.

(J) The parties agree the City may void any sale, transfer or exchange of the Subject Property if the subsequent Property Owner fails to assume the requirements of this Declaration and/or for noncompliance of the terms, conditions and covenants of this Declaration by the Property Owner.

(K) The sale price shall be established as set by the resale provisions.

(L) The Property Owner, upon sale of the Subject Property pursuant to the terms, conditions and covenants of this Declaration may receive a Fair Return on Investment. The term "Fair Return on Investment" means the total Property Owner investment, which includes down payment, earnest money, and any approved capital improvement credits (as described in

the City's Resale and Recapture Policy). The value of the Property Owner's investment will be calculated using the Housing Price Index (HPI) Calculator of the Federal Housing Finance Agency. The change in HPI from the original purchase price to the time of sale will be applied to the value of the Property Owner's investment, so that the value of the improvements is increased or decreased by the amount of increase or decrease in the housing market overall. If the market price that provides a fair return to the initial homebuyer is too high to be affordable for a subsequent eligible buyer, the City, at its discretion, may provide additional direct HOME subsidy or other funds, if available, to the subsequent buyer. Such consideration will only be given after the Property Owner has demonstrated they have made all reasonable attempts to sell the Subject Property. The City cannot require the homeowner to adjust the resale price in order to achieve affordability for the subsequent Property Owner.

SECTION 6 – TERMINATION.

The Project will remain affordable as provided herein, for not less than the full term of the Affordability Period, 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 Affordability Period the Property Owner of record prior to the foreclosure or transfer in lieu of foreclosure, or any newly formed entity that includes the former Property Owner, or those with whom the former Property 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 Affordability Period. Notwithstanding anything to the contrary contained herein, at the conclusion of the Affordability Period, so long as Property Owner has maintained and managed the Project in compliance with Property Owner's obligations hereunder, the City shall issue an unconditional release and termination of this Declaration.

SECTION 7 – DEFAULT.

(A) Enforcement and Remedies. If Property 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 Developer Agreement (to the extent such Property Owner is required to comply with such covenant, declaration or restriction in such Developer Agreement), and if such default remains uncured for a period of thirty (30) 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 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 Property Owner's obligations hereunder cannot be adequately compensated by monetary damages in the event of Property Owner default. City shall be

entitled to all its reasonable costs, including attorney fees, 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 Property Owner shall submit any other information, documents or certifications requested by the City which City deems reasonably necessary to substantiate the Property 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 Developer 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, and the HOME Program, not inconsistent therewith.

(E) Assignment or Transfer. Property Owner may not assign or otherwise transfer or delegate any right or duty without the express written consent of City.

(F) Reserved.

(G) Indemnity. Property 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. Property 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.

(H) Insurance. Property Owner shall maintain homeowner's insurance coverage throughout the Affordability Period as indicated in this Declaration. The homeowner's insurance shall cover

the value of the property. Property Owner shall furnish a certificate of insurance or other satisfactory proof of such coverage as may be requested by the City periodically. The policy may not be canceled without prior written notice to City.

(l) 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 Developer Agreement. The provisions of the Developer Agreement are hereby incorporated by reference into this Declaration, as fully as if set forth and in detail herein.

[Signature Page Follows on Next Page]

IN WITNESS WHEREOF, the Property Owner has caused this Declaration to be signed by its duly authorized representatives, as of the day and year first above written.

"PROPERTY OWNER"

_____

By: [Property Owner]

STATE OF NORTH DAKOTA)
) SS
COUNTY OF CASS)

On this _____ day of _____, 2021, before me, _____, the undersigned Notary Public, personally appeared [Property Owner], [LEGAL STATUS], known to me to be the person described in and who executed the within and foregoing instrument, and acknowledged to me that they executed the same.

Notary Public
(Seal)

Notary Name:_____

EXHIBIT "B"

HOME BENEFIT FORM

HOME BENEFIT FORM

As a recipient of HOME funds, you are required to submit the following information to the City for HUD reporting purposes. All information is strictly confidential.

Address of Property_____

Date_____

How many people live in the home? _____

Number of bedrooms? _____

Please answer "yes" or "no" to the following:

Female Head of Household[i]	_____ Yes	_____ No
Male Head of Household	_____ Yes	_____ No
Disability[ii]	_____ Yes	_____ No

Race	**Total Number**	**Total Hispanic/Latino**
White	_____	_____
Black/African American	_____	_____
Asian	_____	_____
American Indian/Alaskan Native	_____	_____
Native Hawaiian/Other Pacific Islander	_____	_____
American Indian/Alaskan Native & White	_____	_____
Asian & White	_____	_____
Black/African American & White	_____	_____
American Indian/Alaskan Native & Black/African American	_____	_____
Other Multi-Racial	_____	_____

Household Type (choose one)

Single, Non-Elderly _____
Single Parent _____
Two Parents _____
Elderly _____
Other (specify) _____

Assistance Type (choose one)

Section 8 _____
No Assistance _____

First Time Homebuyer?	_____ Yes	_____ No
Coming from Subsidized Housing?	_____ Yes	_____ No
Received Counseling: _____ Pre-Counseling	_____ Post-Counseling	_____ No Counseling

Of the Total Completed Units, the Number of:

Energy Star Certified Units _____
Section 504 Accessible Units _____

Is Property FHA Insured?

Yes _____
No _____

---

[i] **Head of Household:** Per the IRS definition, mark "Yes" if an unmarried male or female is paying more than half the cost of keeping up a home AND a dependent person lived in the home for more than half a year. If the dependent is a parent, he or she does not have to live in the home, but the head of household must be able to claim an exemption AND pay more than half the costs of keeping up the home that is the main home of the parent for an entire year OR more than half the costs of a rest home or home for the elderly

[ii] **Disability:** Per the Fair Housing Act Section 504 definition, mark "Yes" for any person who has a physical or mental impairment that substantially limits one or more major life activities. The term physical or mental impairment may include, but is not limited to, conditions such as visual or hearing impairment, mobility impairment, HIV infection, developmental disabilities, drug addiction, or mental illness. The term major life activity may include, but is not limited to, seeing, hearing, walking, breathing, performing manual tasks, caring for one's self, learning, speaking, or working.

EXHIBIT "C"

DEVELOPER'S BUDGET

Cass Clay
COMMUNITY LAND TRUST

Cass Clay Community Land Trust 2020 Operational Budget

Category	Total Budgeted	Dec Actual	YTD Actual	% Expended	Notes
REVENUE					
2019 Operational Contribution Carry-Over	715.31		715.31		
In-Kind Contribution	5,220.00		-		
Anticipated Contribution from City of Fargo	50,000.00		50,000.00		
Anticipated Grant from Otto Bremer Foundation	50,000.00		50,000.00		
Wells Fargo Foundation	25,000.00		25,000.00		
Bush Consensus Council	10,000.00		10,000.00		
Bremer Bank	2,500.00		2,500.00		
Gate City Bank	10,000.00		10,000.00		
Alex Stern Foundation			2,000.00		
Cass County Electric Coop		2,000.00	2,000.00		
FMAF Board Approved Contribution	63,000.00		63,000.00		
FMAF Caring Catalog Proceeds		4,010.00	4,010.00		
Individual Contributions	2,796.76	1,183.34	4,430.12		
Total Revenue	**$ 219,232.07**	**$ 7,193.34**	**$ 223,655.43**		
EXPENSES					
Salary & Benefits					
Executive Director Salary (@ 90k)	60,000.00	7,916.66	55,416.62	92.36%	
Health Insurance Benefits (100% of individual rate for HDHP Blue Saver 100 2800)	4,201.60	565.20	4,521.60	107.62%	
Life Insurance Benefits (TERM + ADD)	217.35		-	0.00%	
Retirement Benefits (Estimated as 3% of Salary to Simple IRA)	1,800.00		-	0.00%	
Dental Benefits (Individual Rate for Elite)	265.60	33.20	265.60	100.00%	
Vision Benefits (Individual Rate Essential)	84.80	10.60	84.80	100.00%	
HSA	1,000.00		-	0.00%	
Employment Tax	4,960.00	528.87	4,129.93	83.26%	
Sub total Salary and Benefits	**$ 72,529.35**	**$ 9,054.53**	**$ 64,418.55**	**88.82%**	
Equipment					
Computer	1,500.00		959.98	64.00%	
Misc cables/computer hardware	200.00		540.06	270.03%	
Moniter	200.00		275.08	137.54%	
Office Suite Software	250.00			0.00%	
Adobe Software	272.00				
Cell phone allowance	880.00	59.26	562.61	63.93%	
Sub total Equipment	**$ 3,302.00**	**$ 59.26**	**$ 2,337.73**		
Professional Development and Training					
Conference Registrations	1,000.00		170.00	17.00%	
Airfare, Hotel, Ground Transportation, Per diem	4,000.00		-	0.00%	Paid as reimbursement of actual cost
Local area travel expenses	1,200.00		-	0.00%	Reimbursement for mileage and expenses
Sub total Professional Development and Training	**$ 6,200.00**	**$ -**	**$ 170.00**		
Office Supplies & Incidentals					
Paper Products & General Office Supplies	500.00		329.80	65.96%	Thank you cards; Business Cards
Meeting Expenses	1,200.00		-	0.00%	
D&O Insurance	-		5,735.00		
Grant Watch Subscription			199.00		Conference registation
Advertising and Marketing	2,000.00		1,208.93	60.45%	Forum Communications
In-Kind Expenditures	5,220.00		-	0.00%	Detailed at bottom of page
Sub total Office Supplies & Incidentals	**$ 8,920.00**	**$ -**	**$ 7,472.73**	**83.78%**	
Professional Services and Fees					
Payroll Outsourcing	400.00	80.50	713.50	178.38%	Anticipated to begin in May
HBA Membership	675.00		675.00	100.00%	
Jobs HQ			1,359.00		
Burlington Associates	22,000.00		6,255.74	28.44%	
A. Walker Consulting	63,240.00		58,692.50	92.81%	
Credit Card fees		4.63	31.38		
Misc Fees and registrations			38.95		State annual report; charitable solicitation fee
Travel Expenses - Consultant A. Walker Consulting			592.35		
Grant Writing Services Beth Jansen	2,000.00		2,760.00	138.00%	
Background Check			104.95		
Legal Services	6,000.00		5,848.07	97.47%	
Sub total Professional Services and Fees	**$ 94,315.00**	**$ 85.13**	**$ 77,071.44**	**81.72%**	
Total Expenses	**$ 185,266.35**	**$ 9,198.92**	**$ 151,470.45**	**81.76%**	
REVENUE LESS EXPENSES	**$ 33,965.72**	**$ (2,005.58)**	**$ 72,184.98**		
FMAF In-Kind					
Office Space	1,200.00				
Utilities	300.00				
Network Services and Web Hosting	600.00				
Accounting	1,200.00				
Conference Room Use	1,200.00				
Printers and Copiers	600.00				
Incidentals: (Coffee)	120.00				
Total of In-Kind	$ 5,220.00				

EXHIBIT "D"

MEMORANDUM OF AGREEMENT

MEMORANDUM OF AGREEMENT

Between the City of Fargo and Cass Clay Community Land Trust

HOME Investment Partnership (HOME)
New Construction – 1410 1st Avenue South

This Memorandum of Agreement ("**Memorandum of Agreement**") is made this _____ day of _____, 2021, by and between the City of Fargo, a North Dakota municipal corporation ("**City**"); and Cass Clay Community Land Trust, a North Dakota nonprofit corporation ("**Developer**"). (The City and Developer shall be cumulatively referred to herein as the "**Parties**" and separately as a "**Party**").

WHEREAS, the parties have entered into an agreement ("Developer Agreement") concerning that certain real property lying in Cass County, North Dakota, said property more particularly described as follows:

Lot B of Auditor's Subdivision of Outlot Thirteen (13), Eddy and Fuller's Outlots of the City of Fargo, County of Cass, and the State of North Dakota;

(the "Property"), the street address for which is 1410 1st Avenue South, Fargo, North Dakota; and,

WHEREAS, the Developer Agreement called for the Developer to construct said single-family home upon the Property and thereafter sell and convey the home to an income-eligible homebuyer under the federal HOME Program as described more fully therein; and,

WHEREAS, the Developer Agreement further contained the following provision, among others, at Section 3.F:

> F. Land Use Restrictive Agreement. Developer shall arrange for the execution of 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 Site, as defined in Section 1(A) [of the Developer Agreement], 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 **Developer Agreement** between the parties the effective date of which is the _____ day of _____, 2021, 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 Developer 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 Pages Follow]

IN WITNESS WHEREOF, the parties have hereunto executed this Memorandum of Agreement the day and year first above written.

CASS CLAY COMMUNITY LAND TRUST
a North Dakota nonprofit corporation

_____
Trenton Gerads, Executive Director

STATE OF NORTH DAKOTA)
) SS
COUNTY OF CASS)

On this _____ day of _____, 2021, before me, _____, the undersigned Notary Public, personally appeared Trenton Gerads, Executive Director of Cass Clay Community Land Trust, on behalf of said North Dakota nonprofit corporation 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 _____, 2021, 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 "E"

FEDERAL ASSURANCES

Assurances

Other Applicable Federal Requirements

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

REQUEST FOR PAYMENT OF HOME FUNDS

To: City of Fargo
Planning & Development Dept.
225 4th Street North
Fargo, ND 58102

Re: _____
Project Name

_____
Project Address

_____
City, State Zip

Amount of Funds Requested: _____

Attached to this Request form are (check all that apply):

- ☐ Copies of Invoices/Receipts
- ☐ Invoices/Receipts for Final Payment Request
- ☐ Lien Waivers (required upon receipt of final payment)

Remarks:

_____

_____

_____

_____

Submitted by: _____

Contact Phone Number: _____

Date Request was Submitted to City: _____

CITY OF FARGO REVIEW & APPROVAL

Approved By: _____ Date Approved: _____

Deadline to submit requests for funds is by 4:30 p.m. on Wednesdays, with checks mailed out the following Friday.

EXHIBIT "G"

INSURANCE REQUIREMENTS

The Developer shall keep and maintain the following insurance coverages:

1. Workers Compensation Insurance. The Developer 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

2. General Liability Insurance. The Developer 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

3. Automobile Insurance. The Developer 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

4. In addition to the named policies in A-C above, Developer 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 Developer 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.

5. 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. Developer 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
(to be provided at execution)

EXHIBIT "I"

DEVELOPER'S GROUND LEASE

CASS CLAY COMMUNITY LAND TRUST

GROUND LEASE

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Exhibit LETTER OF AGREEMENT
Exhibit LEASED LAND

Exhibit DEED
Exhibit PERMITTED MORTGAGES
Exhibit FIRST REFUSAL

Exhibit INITIAL APPRAISAL

Exhibit ZONING

Other Exhibits to be Attached, as Appropriate

Exhibit RESTRICTIONS

THIS LEASE ("this Lease" or "the Lease") entered into this _____ day of _____, 20____, between Cass Clay Community Land Trust (hereinafter "CLT" or "the CLT") and _____("Homeowner").

RECITALS

A. The CLT is organized exclusively for charitable purposes, including the purpose of providing homeownership opportunities for low- and moderate-income people who would otherwise be unable to afford homeownership.

B. A goal of the CLT is to preserve affordable homeownership opportunities through the long-term leasing of land under owner-occupied homes.

C. The Leased Land described in this Lease has been acquired and is being leased by the CLT in furtherance of this goal.

D. The Homeowner shares the purposes of the CLT and has agreed to enter into this Lease not only to obtain the benefits of homeownership, but also to further the charitable purposes of the CLT.

E. Homeowner and CLT recognize the special nature of the terms of this Lease, and each of them accepts these terms, including those terms that affect the marketing and resale price of the property now being purchased by the Homeowner.

F. Homeowner and CLT agree that the terms of this Lease further their shared goals over an extended period of time and through a succession of owners.

NOW THEREFORE, Homeowner and CLT agree on all of the terms and conditions of this Lease as set forth below.

DEFINITIONS: Homeowner and CLT agree on the following definitions of key terms used in this Lease.

Leased Land: the parcel of land, described in Exhibit: LEASED LAND, which is leased to the Homeowner.

Home: the residential structure and other permanent improvements located on the Leased Land and owned by the Homeowner, including both the original Home described in Exhibit: DEED, and all permanent improvements added thereafter by Homeowner at Homeowner's expense.

Base Price: the total price that is paid for the Home by the Homeowner (including the amount provided by a first mortgage loan but not including subsidy in the form of deferred loans to the Homeowner).

Purchase Option Price: the maximum price the Homeowner is allowed to receive for the sale of the Home and the Homeowner's right to possess, occupy and use the Leased Land, as defined in Article 10 of this Lease.

Lease Fee: The monthly fee that the Homeowner pays to the CLT for the continuing use of the Leased Land and any additional amounts that the CLT charges to the Homeowner for reasons permitted by this Lease.

Permitted Mortgage: A mortgage or deed of trust on the Home and the Homeowner's right to possess, occupy and use the Leased Land granted to a lender by the Homeowner with the CLT's Permission. The Homeowner may not mortgage the CLT's interest in the Leased Land, and may not grant any mortgage or deed of trust without CLT's Permission.

Event of Default: Any violation of the terms of the Lease unless it has been corrected ("cured") by Homeowner or the holder of a Permitted Mortgage in the specified period of time after a written Notice of Default has been given by CLT.

ARTICLE 1: Homeowner's Letter of Agreement and Attorney's Letter of Acknowledgment are Attached as Exhibits.

Attached as Exhibit HOMEOWNER'S LETTER OF AGREEMENT AND ATTORNEY'S LETTER OF ACKNOWLEDGMENT and made part of this Lease by reference are a Letter of Agreement from the Homeowner, describing the Homeowner's understanding and acceptance of this Lease (including the parts of the Lease that affect the resale of the Home) and a Letter of Acknowledgment from the Homeowner's attorney, describing the attorney's review of the Lease with the Homeowner.

ARTICLE 2: Leasing of Rights to the Land

2.1 CLT LEASES THE LAND TO HOMEOWNER: The CLT hereby leases to the Homeowner, and Homeowner hereby accepts, the right to possess, occupy and use the Leased Land (described in the attached Exhibit LEASED LAND) in accordance with the terms of this Lease. CLT has furnished to Homeowner a copy of the most current title report, if any, obtained by CLT for the Leased Land, and Homeowner accepts title to the Leased Land in its condition "as is" as of the signing of this Lease.

2.2 MINERAL RIGHTS NOT LEASED TO HOMEOWNER: CLT does not lease to Homeowner the right to remove from the Leased Land any minerals lying beneath the Leased Land's surface. Ownership of such minerals remains with the CLT, but the CLT shall not remove any such minerals from the Leased Land without the Homeowner's written permission.

ARTICLE 3: Term of Lease, Change of Land Owner

3.1 TERM OF LEASE IS 99 YEARS: This Lease shall remain in effect for 99 years, beginning on the ___ day of _____, 20__, and ending on the _____ day of _____, 20____, unless ended sooner or renewed as provided below.

3.2 HOMEOWNER CAN RENEW LEASE FOR ANOTHER 99 YEARS: Homeowner may renew this Lease for one additional period of 99 years. The CLT may change the terms of the Lease for the renewal period prior to the beginning of the renewal period but only if these changes do not materially and adversely interfere with the rights possessed by Homeowner under the Lease. Not more than 365 nor less than 180 days before the last day of the first 99-year period, CLT shall give Homeowner a written notice that states the date of the expiration of the first 99-year period and the conditions for renewal as set forth in the following paragraph ("the Expiration Notice"). The Expiration Notice shall also describe any changes CLT intends to make in the Lease for the renewal period as permitted above.

The Homeowner shall then have the right to renew the Lease only if the following conditions are met: (a) within 60 days of receipt of the Expiration Notice, the Homeowner shall give CLT written notice stating the Homeowner's desire to renew ("the Renewal Notice"); (b) this Lease shall be in effect on the last day of the original 99-year term, and (c) the Homeowner shall not be in default under this Lease or under any Permitted Mortgage on the last day of the original 99-year term.

When Homeowner has exercised the option to renew, Homeowner and CLT shall sign a memorandum stating the option has been exercised. The memorandum shall comply with the requirements for a notice of lease as stated in Section 14.12 below. The CLT shall record this memorandum in accordance with the requirements of law promptly after the beginning of the renewal period.

3.3 WHAT HAPPENS IF CLT DECIDES TO SELL THE LEASED LAND: If ownership of the Leased Land is ever transferred by CLT (whether voluntarily or involuntarily) to any other person or institution, this Lease

shall not cease, but shall remain binding on the new land-owner as well as the Homeowner. If CLT agrees to transfer the Leased Land to any person or institution other than a non-profit corporation, charitable trust, government agency or other similar institution sharing the goals described in the Recitals above, the Homeowner shall have a right of first refusal to purchase the Leased Land. The details of this right shall be as stated in the attached Exhibit FIRST REFUSAL. Any sale or other transfer contrary to this Section 3.3 shall be null and void.

ARTICLE 4: Use of Leased Land

4.1 HOMEOWNER MAY USE THE HOME ONLY FOR RESIDENTIAL AND RELATED PURPOSES: Homeowner shall use, and allow others to use, the Home and Leased Land only for residential purposes and any activities related to residential use that are permitted by local zoning law.

4.2 HOMEOWNER MUST USE THE HOME AND LEASED LAND RESPONSIBILY AND IN COMPLIANCE WITH THE LAW: Homeowner shall use the Home and Leased Land in a way that will not cause harm to others or create any public nuisance. Homeowner shall dispose of all waste in a safe and sanitary manner. Homeowner shall maintain all parts of the Home and Leased Land in safe, sound and habitable condition, in full compliance with all laws and regulations, and in the condition that is required to maintain the insurance coverage required by Section 9.4 of this Lease.

4.3 HOMEOWNER IS RESPONSIBLE FOR USE BY OTHERS: Homeowner shall be responsible for the use of the Home and Leased Land by all residents and visitors and anyone else using the Leased Land with Homeowner's permission and shall make all such people aware of the restrictions on use set forth in this Lease.

4.4 HOMEOWNER MUST OCCUPY THE HOME FOR AT LEAST Ten (10) MONTHS EACH YEAR: Homeowner shall occupy the Home for at least Ten (10) months of each year of this Lease, unless otherwise agreed by CLT. Occupancy by Homeowner's child, spouse, domestic partner or other persons approved by CLT shall be considered occupancy by Homeowner. Neither compliance with the occupancy requirement nor CLT's permission for an extended period of non-occupancy constitutes permission to sublease the Leased Land and Home, which is addressed in Section 4.5 below.

4.5 LEASED LAND MAY NOT BE SUBLEASED WITHOUT CLT'S PERMISSION: Except as otherwise provided in Article 8 and Article 10, Homeowner shall not sublease, sell or otherwise convey any of Homeowner's rights under this Lease, for any period of time, without the written permission of CLT. Homeowner agrees that CLT shall have the right to withhold such consent in order to further the purposes of this Lease.

If permission for subleasing is granted, the sublease shall be subject to the following conditions.

a) Any sublease shall be subject to all of the terms of this Lease.
b) The rental or occupancy fee charged the sub-lessee shall not be more than the amount of the Lease Fee charged the Homeowner by the CLT, plus an amount approved by CLT to cover Homeowner's costs in owning the Home, including but not limited to the cost of taxes, insurance and mortgage interest.

4.6 CLT HAS A RIGHT TO ENTER THE LEASED LAND: The CLT may enter any part of the Leased Land including the interiors of fully enclosed buildings, at any reasonable time, after notifying the Homeowner at least 48 hours before the planned entrance. No more than one (1) entrance may be carried out in a single year, except in the case of a follow up to a previous entry or an emergency. In an emergency, the CLT may enter any part of the Leased Land including the interiors of fully enclosed buildings, after making reasonable efforts to inform the Homeowner before entering.

If the CLT has received an Intent-To-Sell Notice (as described in Section 10.4 below), then the CLT has the right to inspect the interiors of all fully enclosed buildings to determine their condition prior to the sale. The CLT must notify the Homeowner at least 48 hours before carrying out such inspection.

4.7 HOMEOWNER HAS A RIGHT TO QUIET ENJOYMENT: Homeowner has the right to quiet enjoyment of the Leased Land. The CLT has no desire or intention to interfere with the personal lives, associations, expressions, or actions of the Homeowner in any way not permitted by this Lease.

ARTICLE 5: Lease Fee

5.1 AMOUNT OF LEASE FEE: The Homeowner shall pay a monthly Lease Fee in the amount of Fifty _ dollars ($ 50.00) to be paid in return for the continuing right to possess, occupy and use the Leased Land.

5.2 WHEN THE LEASE FEE IS TO BE PAID (DUE DATE): The Lease Fee shall be payable to CLT on the first day of each month for as long as this Lease remains in effect, unless the Lease Fee is to be escrowed and paid by a Permitted Mortgagee, in which case payment shall be made as directed by that Mortgagee.

5.3 HOW THE AMOUNT OF THE LEASE FEE HAS BEEN DETERMINED: The amount of the Land Use Fee stated in Section 5.1 above has been determined as follows. First, the approximate monthly fair rental value of the Leased Land has been established, as of the beginning of the Lease term, recognizing the fair rental value is reduced by certain restrictions imposed by the Lease on the use of the Land. Then the affordability of this monthly amount for the Homeowner has been analyzed and, if necessary, the Land Use Fee has been reduced to an amount considered to be affordable for Homeowner.

5.4 CLT MAY REDUCE OR SUSPEND THE LEASE FEE TO IMPROVE AFFORDABILITY: CLT may reduce or suspend the total amount of the Lease Fee for a period of time for the purpose of improving the affordability of the Homeowner's monthly housing costs. Any such reduction or suspension must be in writing and signed by CLT.

5.5 FEES MAY BE INCREASED FROM TIME TO TIME: The CLT may increase the amount of the Land Use Fee from time to time. The fee shall not be modified for a period of three (3) months from the date of the lease and then not more often than once each one (1) year.

5.6 LAND USE FEE WILL BE INCREASED IF RESTRICTIONS ARE REMOVED: If, for any reason, the provisions of Article 10 regarding transfers of the Home or Sections 4.4 and 4.5 regarding occupancy and subleasing are suspended or invalidated for any period of time, then during that time the Land Use Fee shall be increased to an amount calculated by CLT to equal the fair rental value of the Leased Land for use not restricted by the suspended provisions, but initially an amount not exceeding five hundred dollars ($500). Such increase shall become effective upon CLT's written notice to Homeowner. Thereafter, for so long as these restrictions are not reinstated in the Lease, the CLT may, from time to time, further increase the amount of such Land Use Fee, provided the amount of the Land Use Fee does not exceed the fair rental value of the property, and provided such increases do not occur more often than once every year.

5.7 IF PAYMENT IS LATE, $5.00 LATE FEE CAN BE CHARGED: If the CLT has not received any monthly installment of the Lease Fee on or before the date on which the such installment first becomes payable under this Lease (the "Due Date"), the CLT may require Homeowner to pay interest on the unpaid amount from the Due Date through and including the date such payment or installment is received by CLT, at a rate not to exceed the interest rate of the primary mortgage at the time of the signing of this lease. Such interest shall be deemed additional Lease Fee and shall be paid by Homeowner to CLT upon demand; provided, however, that CLT shall waive any such interest that would otherwise be payable to

CLT if such payment of the Lease Fee is received by CLT on or before the thirtieth (30th) day after the Due Date.

5.8 CLT CAN COLLECT UNPAID FEES WHEN HOME IS SOLD: In the event that any amount of payable Lease Fee remains unpaid when the Home is sold, the outstanding amount of payable Lease Fee, including any interest as provided above, shall be paid to CLT out of any proceeds from the sale that would otherwise be due to Homeowner. The CLT shall have, and the Homeowner hereby consents to, a lien upon the Home for any unpaid Lease Fee. Such lien shall be prior to all other liens and encumbrances on the Home except (a) liens and encumbrances recorded before the recording of this Lease, (b) Permitted Mortgages as defined in section 8.1 below; and (c) liens for real property taxes and other governmental assessments or charges against the Home.

ARTICLE 6: Taxes and Assessments

6.1 HOMEOWNER IS RESPONSIBLE FOR PAYING ALL TAXES AND ASSESSMENTS: Homeowner shall pay directly, when due, all taxes and governmental assessments that relate to the Home and the Leased Land (including any taxes relating to the CLT's interest in the Leased Land).

6.2 CLT WILL PASS ON ANY TAX BILLS IT RECEIVES TO HOMEOWNER: In the event the local taxing authority bills CLT for any portion of the taxes on the Home or Leased Land, CLT shall pass the bill to Homeowner and Homeowner shall promptly pay this bill.

6.3 HOMEOWNER HAS A RIGHT TO CONTEST TAXES: Homeowner shall have the right to contest the amount or validity of any taxes relating to the Home and Leased Land. Upon receiving a reasonable request from Homeowner for assistance in this matter, CLT shall join in contesting such taxes. Homeowner shall pay all costs of such proceedings.

6.4 IF HOMEOWNER FAILS TO PAY TAXES, CLT MAY INCREASE LEASE FEE: In the event that Homeowner fails to pay the taxes or other charges described in Section 6.1 above, CLT may increase Homeowner's Lease Fee to offset the amount of taxes and other charges owed by Homeowner. Upon collecting any such amount, CLT shall pay the amount collected to the taxing authority in a timely manner.

6.5 PARTY THAT PAYS TAXES MUST SHOW PROOF: When either party pays taxes relating to the Home or Leased Land, that party shall furnish satisfactory evidence of the payment to the other party. A photocopy of a receipt shall be the usual method of furnishing such evidence.

ARTICLE 7: The Home

7.1 HOMEOWNER OWNS THE HOUSE AND ALL OTHER IMPROVEMENTS ON THE LEASED LAND: All structures, including the house, fixtures, and other improvements purchased, constructed, or installed by the Homeowner on any part of the Leased Land at any time during the term of this Lease (collectively, the "Home") shall be property of the Homeowner. Title to the Home shall be and remain vested in the Homeowner. However, Homeowner's rights of ownership are limited by certain provisions of this Lease, including provisions regarding the sale or leasing of the Home by the Homeowner and the CLT's option to purchase the Home. In addition, Homeowner shall not remove any part of the Home from the Leased Land without CLT's prior written consent.

7.2 HOMEOWNER PURCHASES HOME WHEN SIGNING LEASE: Upon the signing of this Lease, Homeowner is simultaneously purchasing the Home located at that time on the Leased Land, as described in the Deed, a copy of which is attached to this Lease as Exhibit: DEED.

7.3 CONSTRUCTION CARRIED OUT BY HOMEOWNER MUST COMPLY WITH CERTAIN REQUIREMENTS: Any construction in connection with the Home is permitted only if the following requirements are met: (a) all costs shall be paid for by the Homeowner; (b) all construction shall be performed in a professional

manner and shall comply with all applicable laws and regulations; (c) all changes in the Home shall be consistent with the permitted uses described in Article 4; (d) the footprint, square-footage, or height of the house shall not be increased and new structures shall not be built or installed on the Leased Land without the prior written consent of CLT.

For any construction requiring CLT's prior written consent, Homeowner shall submit a written request to the CLT. Such request shall include:

a) a written statement of the reasons for undertaking the construction;
b) a set of drawings (floor plan and elevations) showing the dimensions of the proposed construction;
c) a list of the necessary materials, with quantities needed;
d) a statement of who will do the work;

If the CLT finds it needs additional information it shall request such information from Homeowner within two weeks of receipt of Homeowner's request. The CLT then, within two weeks of receiving all necessary information (including any additional information it may have requested) shall give Homeowner either its written consent or a written statement of its reasons for not consenting. Before construction can begin, Homeowner shall provide CLT with copies of all necessary building permits, if not previously provided.

7.4 HOMEOWNER MAY NOT ALLOW STATUTORY LIENS TO REMAIN AGAINST LEASED LAND OR HOME: No lien of any type shall attach to the CLT's title to the Leased Land. Homeowner shall not permit any statutory or similar lien to be filed against the Leased Land or the Home that remains more than 60 days after it has been filed. Homeowner shall take action to discharge such lien, whether by means of payment, deposit, bond, court order, or other means permitted by law. If Homeowner fails to discharge such lien within the 60-day period, then Homeowner shall immediately notify CLT of such failure. CLT shall have the right to discharge the lien by paying the amount in question. Homeowner may, at Homeowner's expense, contest the validity of any such asserted lien, provided Homeowner has furnished a bond or other acceptable surety in an amount sufficient to release the Leased Land from such lien. Any amounts paid by CLT to discharge such liens shall be treated as an additional Lease Fee payable by Homeowner upon demand.

7.5 HOMEOWNER IS RESPONSIBLE FOR SERVICES, MAINTENANCE AND REPAIRS: Homeowner hereby assumes responsibility for furnishing all services or facilities on the Leased Land, including but not limited to heat, electricity, air conditioning and water. CLT shall not be required to furnish any services or facilities or to make any repairs to the Home. Homeowner shall maintain the Home and Leased Land as required by Section 4.2 above and shall see that all necessary repairs and replacements are accomplished when needed.

7.6 WHEN LEASE ENDS, OWNERSHIP REVERTS TO CLT, WHICH SHALL REIMBURSE HOMEOWNER: Upon the expiration or termination of this Lease, ownership of the Home shall revert to CLT. Upon thus assuming title to the Home, CLT shall promptly pay Homeowner and Permitted Mortgagee(s), as follows:

FIRST, CLT shall pay any Permitted Mortgagee(s) the full amount owed to such mortgagee(s) by Homeowner;

SECOND, CLT shall pay the Homeowner the balance of the Purchase Option Price calculated in accordance with Article 10 below, as of the time of reversion of ownership, less the total amount of any unpaid Lease Fee and any other amounts owed to the CLT under the terms of this Lease. The

Homeowner shall be responsible for any costs necessary to clear any additional liens or other charges related to the Home that may be assessed against the Home. If the Homeowner fails to clear such liens or charges, the balance due the Homeowner shall also be reduced by the amount necessary to release such liens or charges, including reasonable attorney's fees incurred by the CLT.

ARTICLE 8: Financing

8.1 HOMEOWNER CANNOT MORTGAGE THE HOME WITHOUT CLT's PERMISSION: The Homeowner may mortgage the Home only with the written permission of CLT. Any mortgage or deed of trust permitted in writing by the CLT is defined as a Permitted Mortgage, and the holder of such a mortgage or deed of trust is defined as a Permitted Mortgagee.

8.2 BY SIGNING LEASE, CLT GIVES PERMISSION FOR ORIGINAL MORTGAGE. By signing this Lease, CLT gives written permission for any mortgage or deed of trust signed by the Homeowner effective on the day this Lease is signed for the purpose of financing Homeowner's purchase of the Home.

8.3 HOMEOWNER MUST GET SPECIFIC PERMISSION FOR REFINANCING OR OTHER SUBSEQUENT MORTGAGES. If, at any time subsequent to the purchase of the Home and signing of the Lease, the Homeowner seeks a loan that is to be secured by a mortgage on the Home (to refinance an existing Permitted Mortgage or to finance home repairs or for any other purpose), Homeowner must inform CLT, in writing, of the proposed terms and conditions of such mortgage loan at least 30 days prior to the expected closing of the loan. The information to be provided to the CLT must include:

a) the name of the proposed lender;
b) Homeowner's reason for requesting the loan;
c) the principal amount of the proposed loan and the total mortgage debt that will result from the combination of the loan and existing mortgage debt, if any;
d) expected closing costs;
e) the rate of interest;
f) the repayment schedule;
g) a copy of the appraisal commissioned in connection with the loan request.

CLT may also require Homeowner to submit additional information. CLT will not permit such a mortgage loan if the loan increases Homeowner's total mortgage debt to an amount greater than 80% of the then current Purchase Option Price, calculated in accordance with Article 10 below, or if the terms of the transaction otherwise threaten the interests of either the Homeowner or the CLT.

8.4 CLT IS REQUIRED TO PERMIT A "STANDARD PERMITTED MORTGAGE." The CLT shall be required to permit any mortgage for which the mortgagee has signed a "Standard Permitted Mortgage Agreement" as set forth in "Exhibit: Permitted Mortgages, Part C," and for which the loan secured thereby does not increase Homeowner's total mortgage debt to an amount greater than any paid in equity +25% of appreciation. Appreciation will be determined by the then current Purchase Option Price, calculated in accordance with Article 10 below minus the original purchase price.

8.5 A PERMITTED MORTGAGEE HAS CERTAIN OBLIGATIONS UNDER THE LEASE. Any Permitted Mortgagee shall be bound by each of the requirements stated in "Exhibit: Permitted Mortgages, Part A, Obligations of Permitted Mortgagee," which is made a part of this Lease by reference, unless the particular requirement is removed, contradicted or modified by a Rider to this Lease signed by the Homeowner and the CLT to modify the terms of the Lease during the term of the Permitted Mortgage.

8.6 A PERMITTED MORTGAGEE HAS CERTAIN RIGHTS UNDER THE LEASE. Any Permitted Mortgagee shall have all of the rights and protections stated in "Exhibit: Permitted Mortgages, Part B, Rights of Permitted Mortgagee," which is made a part of this Lease by reference.

8.7 IN THE EVENT OF FORECLOSURE, ANY PROCEEDS IN EXCESS OF THE PURCHASE OPTION PRICE WILL GO TO CLT. Homeowner and CLT recognize that it would be contrary to the purposes of this agreement if Homeowner could receive more than the Purchase Option Price as the result of the foreclosure of a mortgage. Therefore, Homeowner hereby irrevocably assigns to CLT all net proceeds of sale of the Home that would otherwise have been payable to Homeowner and that exceed the amount of net proceeds that Homeowner would have received if the property had been sold for the Purchase Option Price, calculated as described in Section 10.10 below. Homeowner authorizes and instructs the Permitted Mortgagee, or any party conducting any sale, to pay such excess amount directly to CLT. If, for any reason, such excess amount is paid to Homeowner, Homeowner hereby agrees to promptly pay such amount to CLT.

ARTICLE 9: Liability, Insurance, Damage and Destruction, Eminent Domain

9.1 HOMEOWNER ASSUMES ALL LIABILITY. Homeowner assumes all responsibility and liability related to Homeowner's possession, occupancy and use of the Leased Land.

9.2 HOMEOWNER MUST DEFEND CLT AGAINST ALL CLAIMS OF LIABILITY. Homeowner shall defend, indemnify and hold CLT harmless against all liability and claims of liability for injury or damage to person or property from any cause on or about the Leased Land. Homeowner waives all claims against CLT for injury or damage on or about the Leased Land. However, CLT shall remain liable for injury or damage due to the grossly negligent or intentional acts or omissions of CLT or CLT's agents or employees.

9.3 HOMEOWNER MUST REIMBURSE CLT. In the event the CLT shall be required to pay any sum that is the Homeowner's responsibility or liability, the Homeowner shall reimburse the CLT for such payment and for reasonable expenses caused thereby.

9.4 HOMEOWNER MUST INSURE THE HOME AGAINST LOSS AND MUST MAINTAIN LIABILITY INSURANCE ON HOME AND LEASED LAND. Homeowner shall, at Homeowner's expense, keep the Home continuously insured against "all risks" of physical loss, using Insurance Services Office (ISO) Form HO 00 03, or its equivalent, for the full replacement value of the Home, and in any event in an amount that will not incur a coinsurance penalty. The amount of such insured replacement value must be approved by the CLT prior to the commencement of the Lease. Thereafter, if the CLT determines if the replacement value to be insured should be increased, the CLT shall inform the Homeowner of such required increase at least 30 days prior to the next date on which the insurance policy is to be renewed, and the Homeowner shall assure the renewal includes such change. If Homeowner wishes to decrease the amount of replacement value to be insured, Homeowner shall inform the CLT of the proposed change at least 30 days prior to the time such change would take effect. The change shall not take effect without CLT's approval.

Should the Home lie in a flood hazard zone as defined by the National Flood Insurance Plan, the Homeowner shall keep in full force and effect flood insurance in the maximum amount available.

The Homeowner shall also, at its sole expense, maintain in full force and effect public liability insurance covering the Home and the Leased Land using ISO Form HO 00 03 or its equivalent in the amount of Five hundred thousand dollars ($500,000) per occurrence and in the aggregate. The CLT shall be named as an additional insured using ISO Form HO 04 41 or its equivalent, and certificates of insurance shall be delivered to the CLT prior to the commencement of the Lease and at each anniversary date thereof.

The dollar amounts of such coverage may be increased from time to time at the CLT's request but not more often than once in any one-year period. CLT shall inform the Homeowner of such required

increase in coverage at least 30 days prior to the next date on which the insurance policy is to be renewed, and the Homeowner shall assure that the renewal includes such change. The amount of such increase in coverage shall be based on current trends in homeowner's liability insurance coverage in the area in which the Home is located.

9.5 WHAT HAPPENS IF HOME IS DAMAGED OR DESTROYED. Except as provided below, in the event of fire or other damage to the Home, Homeowner shall take all steps necessary to assure the repair of such damage and the restoration of the Home to its condition immediately prior to the damage. All such repairs and restoration shall be completed as promptly as possible. Homeowner shall also promptly take all steps necessary to assure the Leased Land is safe and the damaged Home does not constitute a danger to persons or property.

If Homeowner, based on professional estimates, determines either (a) that full repair and restoration is physically impossible, or (b) that the available insurance proceeds will pay for less than the full cost of necessary repairs and that Homeowner cannot otherwise afford to cover the balance of the cost of repairs, then Homeowner shall notify CLT of this problem, and CLT may then help to resolve the problem. Methods used to resolve the problem may include efforts to increase the available insurance proceeds, efforts to reduce the cost of necessary repairs, efforts to arrange affordable financing covering the costs of repair not covered by insurance proceeds, and any other methods agreed upon by both Homeowner and CLT.

If Homeowner and CLT cannot agree on a way of restoring the Home in the absence of adequate insurance proceeds, then Homeowner may give CLT written notice of intent to terminate the Lease. The date of actual termination shall be no less than 60 days after the date of Homeowner's notice of intent to terminate. Upon termination, any insurance proceeds payable to Homeowner for damage to the Home shall be paid as follows.

FIRST, to the expenses of their collection;
SECOND, to any Permitted Mortgagee(s), to the extent required by the Permitted Mortgage(s);
THIRD, to the expenses of enclosing or razing the remains of the Home and clearing debris;
FOURTH, to the CLT for any amounts owed under this Lease;
FIFTH, to the Homeowner, up to an amount equal to the Purchase Option Price, as of the day prior to the loss, less any amounts paid with respect to the second, third, and fourth clauses above;

SIXTH, the balance, if any, to the CLT.

9.6 WHAT HAPPENS IF SOME OR ALL OF THE LAND IS TAKEN FOR PUBLIC USE. If all of the Leased Land is taken by eminent domain or otherwise for public purposes, or if so much of the Leased Land is taken that the Home is lost or damaged beyond repair, the Lease shall terminate as of the date when Homeowner is required to give up possession of the Leased Land. Upon such termination, the entire amount of any award(s) paid shall be allocated in the way described in Section 9.5 above for insurance proceeds.

In the event of a taking of a portion of the Leased Land that does not result in damage to the Home or significant reduction in the usefulness or desirability of the Leased Land for residential purposes, then any monetary compensation for such taking shall be allocated entirely to CLT.

In the event of a taking of a portion of the Leased Land that results in damage to the Home only to such an extent that the Home can reasonably be restored to a residential use consistent with this Lease, then the damage shall be treated as damage is treated in Section 9.5 above, and monetary compensation shall be allocated as insurance proceeds are to be allocated under Section 9.5.

9.7 IF PART OF THE LAND IS TAKEN, THE LEASE FEE MAY BE REDUCED. In the event of any taking that reduces the size of the Leased Land but does not result in the termination of the Lease, CLT shall reassess the fair rental value of the remaining Land and shall adjust the Lease Fee if necessary to assure the monthly fee does not exceed the monthly fair rental value of the Land for use as restricted by the Lease.

9.8 IF LEASE IS TERMINATED BY DAMAGE, DESTRUCTION OR TAKING, CLT WILL TRY TO HELP HOMEOWNER BUY ANOTHER CLT HOME. If this Lease is terminated as a result of damage, destruction or taking, CLT shall take reasonable steps to allow Homeowner to purchase another home on another parcel of leased land owned by CLT if such home can reasonably be made available. If Homeowner purchases such a home, Homeowner agrees to apply any proceeds or award received by Homeowner to the purchase of the home. Homeowner understands that there are numerous reasons why it may not be possible to make such a home available and shall have no claim against CLT if such a home is not made available.

ARTICLE 10: Transfer of the Home

10.1 INTENT OF THIS ARTICLE IS TO PRESERVE AFFORDABILITY: Homeowner and CLT agree that the provisions of this Article 10 are intended to preserve the affordability of the Home for lower income households and expand access to homeownership opportunities for such households.

10.2 HOMEOWNER MAY TRANSFER HOME ONLY TO CLT OR QUALIFIED PERSONS: Homeowner may transfer the Home only to the CLT or an Income-Qualified Person as defined below or otherwise only as explicitly permitted by the provisions of this Article 10. All such transfers are to be completed only in strict compliance with this Article 10. Any purported transfer that does not follow the procedures set forth below, except in the case of a transfer to a Permitted Mortgagee in lieu of foreclosure, shall be null and void.

"Income-Qualified Person" shall mean a person or group of persons whose household income does not exceed one hundred percent (100%) of the median household income for the applicable Standard Metropolitan Statistical Area or County as calculated and adjusted for household size from time to time by the U.S. Department of Housing and Urban Development (HUD) or any successor.

10.3 THE HOME MAY BE TRANSFERRED TO CERTAIN HEIRS OF HOMEOWNER: If Homeowner dies (or if the last surviving co-owner of the Home dies), the executor or personal representative of Homeowner's estate shall notify CLT within ninety (90) days of the date of the death. Upon receiving such notice CLT shall consent to a transfer of the Home and Homeowner's rights to the Leased Land to one or more of the possible heirs of Homeowner listed below as "a," "b," or "c," provided that a Letter of Agreement and a Letter of Attorney's Acknowledgement (as described in Article 1 above) are submitted to CLT to be attached to the Lease when it is transferred to the heirs.

a) the spouse of the Homeowner; or
b) the child or children of the Homeowner; or
c) member(s) of the Homeowner's household who have resided in the Home for at least one year immediately prior to Homeowner's death.

Any other heirs, legatees or devisees of Homeowner, in addition to submitting Letters of Agreement and Acknowledgment as provided above, must demonstrate to CLT's satisfaction that they are Income-

Qualified Persons as defined above. If they cannot demonstrate they are Income-Qualified Persons, they shall not be entitled to possession of the Home but must transfer the Home in accordance with the provisions of this Article 10.

10.4 HOMEOWNER'S NOTICE OF INTENT TO SELL: In the event that Homeowner wishes to sell Homeowner's Property, Homeowner shall notify CLT in writing of such wish (the Intent-to-Sell Notice). This Notice shall include a statement as to whether Homeowner wishes to recommend a prospective buyer as of the date of the Notice.

10.5 AFTER RECEIVING NOTICE, CLT SHALL COMMISSION AN APPRAISAL: No later than ten (10) days after CLT's receipt of Homeowner's Intent-to-Sell Notice, CLT shall commission a market valuation of the Leased Land and the Home (The Appraisal) to be performed by a duly licensed appraiser who is acceptable to CLT and Homeowner. CLT shall pay the cost of such Appraisal. The Appraisal shall be conducted by analysis and comparison of comparable properties as though title to Leased Land and Home were held in fee simple absolute by a single party, disregarding all of the restrictions of this Lease on the use, occupancy and transfer of the property. Copies of the Appraisal are to be provided to both CLT and Homeowner.

10.6 CLT HAS AN OPTION TO PURCHASE THE HOME. Upon receipt of an Intent-to-Sell Notice from Homeowner, CLT shall have the option to purchase the Home at the Purchase Option Price calculated as set forth below. The Purchase Option is designed to further the purpose of preserving the affordability of the Home for succeeding Income-Qualified Persons while taking fair account of the investment by the Homeowner.

If CLT elects to purchase the Home, CLT shall exercise the Purchase Option by notifying Homeowner, in writing, of such election (the Notice of Exercise of Option) within forty-five (45) days of the receipt of the Appraisal, or the Option shall expire. Having given such notice, CLT may either proceed to purchase the Home directly or may assign the Purchase Option to an Income-Qualified Person.

The purchase (by CLT or CLT's assignee) must be completed within sixty (60) days of CLT's Notice of Exercise of Option, or Homeowner may sell the Home and Homeowner's rights to the Leased Land as provided in Section 10.7 below. The time permitted for the completion of the purchase may be extended by mutual agreement of CLT and Homeowner.

Homeowner may recommend to CLT a prospective buyer who is an Income-Qualified Person and is prepared to submit a Letter of Agreement indicating informed acceptance of the terms of this Lease. CLT shall make reasonable efforts to arrange for the assignment of the Purchase Option to such person, unless CLT determines that its charitable mission is better served by retaining the Home for another purpose or transferring the Home to another party.

10.7 IF PURCHASE OPTION EXPIRES, HOMEOWNER MAY SELL ON CERTAIN TERMS: If the Purchase Option has expired or if CLT has failed to complete the purchase within the sixty-day period allowed by Section 10.6 above, Homeowner may sell the Home to any Income-Qualified Person for not more than the then applicable Purchase Option Price. If Homeowner has made diligent efforts to sell the Home for at least six months after the expiration of the Purchase Option (or six months after the expiration of such sixty-day period) and the Home still has not been sold, Homeowner may then sell the Home, for a price no greater than the then applicable Purchase Option Price, to any party regardless of whether that party is an Income-Qualified Person.

10.8 AFTER ONE YEAR CLT SHALL HAVE POWER OF ATTORNEY TO CONDUCT SALE: If CLT does not exercise its option and complete the purchase of Homeowner's Property as described above, and if Homeowner (a) is not then residing in the Home and (b) continues to hold Homeowner's Property out for sale but is unable to locate a buyer and execute a binding purchase and sale agreement within one year of the date of the Intent to Sell Notice, Homeowner does hereby appoint CLT its attorney in fact to seek a buyer, negotiate a reasonable price that furthers the purposes of this Lease, sell the property, and pay to the Homeowner the proceeds of sale, minus CLT's costs of sale and any other sums owed CLT by Homeowner.

10.9 PURCHASE OPTION PRICE EQUALS LESSER OF APPRAISED VALUE OR FORMULA PRICE: In no event may the Home be sold for a price that exceeds the Purchase Option Price. The Purchase Option Price shall be the lesser of (a) the value of the Home and Leased Land as determined by the Appraisal commissioned and conducted as provided in 10.5 above or (b) the price calculated in accordance with the formula described below (the Formula Price).

10.10 HOW THE FORMULA PRICE IS CALCULATED: The Formula Price shall be equal to Homeowner's Base Price, as stated below, plus 25% of the increase in market value of the Home and Leased Land, if any, calculated in the way described below.

Homeowner's Base Price: The parties agree that the Homeowner's Base Price for Homeowner's Property as of the signing of this Lease is $_____.

Initial Appraised Value: The parties agree that the appraised value of the Home at the time of Homeowner's purchase (the Initial Appraised Value) is $ _____, as documented by the appraiser's report attached to this Lease as Exhibit INITIAL APPRAISAL.

Increase in Market Value: The increase in market value of the Home equals the appraised value of the Home and Leased Land at time of sale, calculated according to Section 10.5 above, minus the Initial Appraised Value.

Homeowner's share of Increase in Market Value: Homeowner's share of the increase in the market value of the Home and Leased Land equals twenty-five percent (25%) of the increase in market value as calculated above.

Summary of Formula Price: The Formula Price equals Homeowner's Base Price plus Homeowner's Share of Increase in Market Value.

10.11 QUALIFIED PURCHASER SHALL RECEIVE NEW LEASE: The CLT shall issue a new lease to any person who purchases the Home in accordance with the terms of this Article 10. The terms of such lease shall be the same as those of new leases issued to homebuyers at that time for land not previously leased by the CLT.

10.12 PURCHASER MAY BE CHARGED A TRANSFER FEE. In the event that Homeowner sells the home to a party other than the CLT (whether directly to such party or as a result of CLT's assignment of its Purchase Option to such party), the price to be paid by such purchaser shall include in addition to the Purchase Option Price, at the discretion of the CLT, a transfer fee to compensate the CLT for carrying out its responsibilities with regard to the transaction. The amount of the transfer fee shall be no more than 5% of the Purchase Option Price.

10.13 HOMEOWNER REQUIRED TO MAKE NECESSARY REPAIRS AT TRANSFER: The Homeowner is required to make necessary repairs when they voluntarily transfer the Home as follows:

a) The person purchasing the Home ("Buyer") shall, prior to purchasing the Home, hire at their sole expense a home inspector with a current Home Inspector license to assess the condition of the Home and prepare a written report of the condition ("Inspection Report"). The Homeowner shall cooperate fully with the inspection.
b) The Buyer shall provide a copy of the Inspection Report to Buyer's lender (if any), the Homeowner, and the CLT within 10 days after receiving the Inspection Report.
c) Homeowner shall repair specific reported defects or conditions necessary to bring the Home into full compliance with Sections 4.2 and 7.5 above prior to transferring the Home.
d) Homeowner shall bear the full cost of the necessary repairs and replacements. However, upon Homeowner's written request, the CLT may allow the Homeowner to pay all or a portion of the repair costs after transfer, from Homeowner's proceeds of sale, if Homeowner cannot afford to pay such costs prior to the transfer. In such event, either (i) 150% of the unpaid estimated cost of repairs or (ii) 100% of the unpaid cost of completed repairs shall be withheld from Homeowner's proceeds of sale in a CLT-approved escrow account. Homeowner shall allow CLT, Buyer, and Buyer's building inspector and lender's representative to inspect the repairs prior to closing to determine that the repairs have been satisfactorily completed.
e) Upon sale or other transfer, Homeowner shall either (i) transfer the Home with all originally purchased appliances or replacements in the Home in good working order or (ii) reduce the Purchase Option Price by the market value of any such appliances that are not left with the Home in good working order.

ARTICLE 11: RESERVED

ARTICLE 12: DEFAULT

12.1 WHAT HAPPENS IF HOMEOWNER FAILS TO MAKE PAYMENTS TO THE CLT THAT ARE REQUIRED BY THE LEASE: It shall be an event of default if Homeowner fails to pay the Lease Fee or other charges required by the terms of this Lease and such failure is not cured by Homeowner or a Permitted Mortgagee within thirty (30) days after notice of such failure is given by CLT to Homeowner and Permitted Mortgagee. However, if Homeowner makes a good faith partial payment of at least two-thirds (2/3) of the amount owed during the 30-day cure period, then the cure period shall be extended by an additional 30 days.

12.2 WHAT HAPPENS IF HOMEOWNER VIOLATES OTHER (NONMONETARY) TERMS OF THE LEASE: It shall be an event of default if Homeowner fails to abide by any other requirement or restriction stated in this Lease, and such failure is not cured by Homeowner or a Permitted Mortgagee within sixty (60) days after notice of such failure is given by CLT to Homeowner and Permitted Mortgagee. However, if Homeowner or Permitted Mortgagee has begun to cure such default within the 60-day cure period and is continuing such cure with due diligence but cannot complete the cure within the 60-day cure period, the cure period shall be extended for as much additional time as may be reasonably required to complete the cure.

12.3 WHAT HAPPENS IF HOMEOWNER DEFAULTS AS A RESULT OF JUDICIAL PROCESS: It shall be an event of default if the estate hereby created is taken on execution or by other process of law, or if Homeowner is judicially declared bankrupt or insolvent according to law, or if any assignment is made of the property of Homeowner for the benefit of creditors, or if a receiver, trustee in involuntary bankruptcy or other similar officer is appointed to take charge of any substantial part of the Home or

Homeowner's interest in the Leased Land by a court of competent jurisdiction, or if a petition is filed for the reorganization of Homeowner under any provisions of the Bankruptcy Act now or hereafter enacted, or if Homeowner files a petition for such reorganization, or for arrangements under any provision of the Bankruptcy Act now or hereafter enacted and providing a plan for a debtor to settle, satisfy or extend the time for payment of debts.

12.4 A DEFAULT (UNCURED VIOLATION) GIVES CLT THE RIGHT TO TERMINATE THE LEASE OR EXERCISE ITS PURCHASE OPTION:

a) TERMINATION: In the case of any of the events of default described above, CLT may terminate this lease and initiate summary proceedings under applicable law against Homeowner, and CLT shall have all the rights and remedies consistent with such laws and resulting court orders to enter the Leased Land and Home and repossess the entire Leased Land and Home, and expel Homeowner and those claiming rights through Homeowner. In addition, CLT shall have such additional rights and remedies to recover from Homeowner arrears of rent and damages from any preceding breach of any covenant of this Lease. If this Lease is terminated by CLT pursuant to an Event of Default, then, as provided in Section 7.7 above, upon thus assuming title to the Home, CLT shall pay to Homeowner and any Permitted Mortgagee an amount equal to the Purchase Option Price calculated in accordance with Section 10.9 above, as of the time of reversion of ownership, less the total amount of any unpaid Lease Fee and any other amounts owed to the CLT under the terms of this Lease and all reasonable costs (including reasonable attorneys' fees) incurred by CLT in pursuit of its remedies under this Lease.

If CLT elects to terminate the Lease, then the Permitted Mortgagee shall have the right (subject to Article 8 above and the attached Exhibit: Permitted Mortgages) to postpone and extend the specified date for the termination of the Lease for a period sufficient to enable the Permitted Mortgagee or its designee to acquire Homeowner's interest in the Home and the Leased Land by foreclosure of its mortgage or otherwise.

b) EXERCISE OF OPTION: In the case of any of the events of default described above, Homeowner hereby grants to the CLT (or its assignee) the option to purchase the Home for the Purchase Option Price as such price is defined in Article 10 above. Within thirty (30) days after the expiration of any applicable cure period as established in Sections 12.1 or 12.2 above or within 30 days after any of the events constituting an Event of Default under Section 12.3 above, CLT shall notify the Homeowner and the Permitted Mortgagee(s) of its decision to exercise its option to purchase under this Section 12.4(b). Not later than ninety (90) days after the CLT gives notice to the Homeowner of the CLT's intent to exercise its option under this Section 12.4(a), the CLT or its assignee shall purchase the Home for the Purchase Option Price.

12.5 WHAT HAPPENS IF CLT DEFAULTS: CLT shall in no event be in default in the performance of any of its obligations under the Lease unless and until CLT has failed to perform such obligations within sixty (60) days, or such additional time as is reasonably required to correct any default, after notice by Homeowner to CLT properly specifying CLT's failure to perform any such obligation.

ARTICLE 13: Mediation and Arbitration

13.1 Nothing in this Lease shall be construed as preventing the parties from utilizing any process of mediation or arbitration in which the parties agree to engage for the purpose of resolving a dispute.

13.2 Homeowner and CLT shall each pay one half (50%) of any costs incurred in carrying out mediation or arbitration in which the parties have agreed to engage.

ARTICLE 14: GENERAL PROVISIONS

14.1 NOTICES: Whenever this Lease requires either party to give notice to the other, the notice shall be given in writing and delivered in person or mailed, by certified or registered mail, return receipt requested, to the party at the address set forth below, or such other address designated by like written notice:

If to CLT Cass Clay Community Land Trust 409 7th St South Fargo, ND 58103

If to Homeowner: _____ (name of Homeowner)

All notices, demands and requests shall be effective upon being deposited in the United States Mail or, in the case of personal delivery, upon actual receipt.

14.2 NO BROKERAGE: Homeowner warrants that it has not dealt with any real estate broker other than _____ in connection with the purchase of the Home. If any claim is made against CLT regarding dealings with brokers other than _____, Homeowner shall defend CLT against such claim with counsel of CLT's selection and shall reimburse CLT for any loss, cost or damage which may result from such claim.

14.3 SEVERABILITY AND DURATION OF LEASE: If any part of this Lease is unenforceable or invalid, such material shall be read out of this Lease and shall not affect the validity of any other part of this Lease or give rise to any cause of action of Homeowner or CLT against the other, and the remainder of this Lease shall be valid and enforced to the fullest extent permitted by law. It is the intention of the parties that CLT's option to purchase and all other rights of both parties under this Lease shall continue in effect for the full term of this Lease and any renewal thereof, and shall be considered to be coupled with an interest. In the event any such option or right shall be construed to be subject to any rule of law limiting the duration of such option or right, the time period for the exercising of such option or right shall be construed to expire twenty (20) years after the death of the last survivor of the following persons:

14.4 RIGHT OF FIRST REFUSAL IN LIEU OF OPTION: If the provisions of the purchase option set forth in Article 10 of this Lease shall, for any reason, become unenforceable, CLT shall nevertheless have a right of first refusal to purchase the Home at the highest documented bona fide purchase price offer made to Homeowner. Such right shall be as specified in Exhibit FIRST REFUSAL. Any sale or transfer contrary to this Section, when applicable, shall be null and void.

14.5 WAIVER: The waiver by CLT at any time of any requirement or restriction in this Lease, or the failure of CLT to take action with respect to any breach of any such requirement or restriction, shall not be deemed to be a waiver of such requirement or restriction with regard to any subsequent breach of such requirement or restriction, or of any other requirement or restriction in the Lease. CLT may grant waivers in the terms of this Lease, but such waivers must be in writing and signed by CLT before being effective.

The subsequent acceptance of Lease Fee payments by CLT shall not be deemed to be a waiver of any preceding breach by Homeowner of any requirement or restriction in this Lease, other than the failure of the Homeowner to pay the particular Lease Fee so accepted, regardless of CLT's knowledge of such preceding breach at the time of acceptance of such Lease Fee payment.

14.6 CLT'S RIGHT TO PROSECUTE OR DEFEND: CLT shall have the right, but shall have no obligation, to prosecute or defend, in its own or the Homeowner's name, any actions or proceedings appropriate to

the protection of its own or Homeowner's interest in the Leased Land. Whenever requested by CLT, Homeowner shall give CLT all reasonable aid in any such action or proceeding.

14.7 CONSTRUCTION: Whenever in this Lease a pronoun is used it shall be construed to represent either the singular or the plural, masculine or feminine, as the case shall demand.

14.8 HEADINGS AND TABLE OF CONTENTS: The headings, subheadings and table of contents appearing in this Lease are for convenience only, and are not a part of this Lease and do not in any way limit or amplify the terms or conditions of this Lease.

14.9 PARTIES BOUND: This Lease sets forth the entire agreement between CLT and Homeowner with respect to the leasing of the Land; it is binding upon and inures to the benefit of these parties and, in accordance with the provisions of this Lease, their respective successors in interest. This Lease may be altered or amended only by written notice executed by CLT and Homeowner or their legal representatives or, in accordance with the provisions of this Lease, their successors in interest.

14.10 GOVERNING LAW: This Lease shall be interpreted in accordance with and governed by the laws of the State of North Dakota or Minnesota. The language in all parts of this Lease shall be, in all cases, construed according to its fair meaning and not strictly for or against CLT or Homeowner.

14.11 RECORDING: The parties agree, as an alternative to the recording of this Lease, to execute a so-called Notice of Lease or Short Form Lease in form recordable and complying with applicable law and reasonably satisfactory to CLT's attorneys. In no event shall such document state the rent or other charges payable by Homeowner under this Lease; and any such document shall expressly state that it is executed pursuant to the provisions contained in this Lease, and is not intended to vary the terms and conditions of this Lease

IN WITNESS WHEREOF, the parties have executed this lease at _____ on the day and year first above written.

Hometown Community Land Trust

_____ By: _____

Witness Its duly authorized agent

_____ (Homeowner):

_____

Witness

[notarize signatures]

Exhibit LETTER OF AGREEMENT

To: Hometown Community Land Trust ("the CLT")

Date: _____

This letter is given to the CLT to become an exhibit to a Lease between the CLT and me. I will be leasing a parcel of land from the CLT and will be buying the home that sits on that parcel of land. I will therefore become what is described in the Lease as a "the Homeowner."

I have reviewed the terms and conditions of the Lease and other legal documents that are part of this transaction and have had the opportunity to have my legal counsel, if any, review the same.

I understand the way these terms and conditions will affect my rights as a CLT homeowner, now and in the future.

In particular I understand and agree with the following points.

- One of the goals of the CLT is to keep CLT homes affordable for lower income households from one CLT homeowner to the next. I support this goal as a CLT homeowner and as a member of the CLT.
- The terms and conditions of my Lease will keep my home affordable for future "income-qualified persons" (as defined in the Lease). If and when I want to sell my home, the lease requires that I sell it either to the CLT or to another income-qualified person. The terms and conditions of the lease also limit the price for which I can sell the home, in order to keep it affordable for such income-qualified persons.
- It is also a goal of the CLT to promote resident ownership of CLT homes. For this reason, my Lease requires that, if my family and I move out of our home permanently, we must sell it. We cannot continue to own it as absentee owners.
- I understand that I can leave my home to my child or children or other members of my household and that, after my death, they can own the home for as long as they want to live in it and abide by the terms of the Lease, or they can sell it on the terms permitted by the Lease.
- As a CLT homeowner and a member of the CLT, it is my desire to see the terms of the Lease and related documents honored. I consider these terms fair to others and me.

Sincerely

Sample

Exhibit LETTER OF ATTORNEYS ACKNOWLEDGMENT

I, _____, have been independently employed by _____ (hereinafter "the Client") who intends to purchase a house and other Home (the "Home") on land to be leased from Community Land Trust. The house and land are located at _____.

In connection with the contemplated purchase of the Home and the leasing of the land, I reviewed with the Client the following documents:

a) this Letter of Attorney's Acknowledgment and a Letter of Agreement from the Client;

b) a proposed Deed conveying the Home to the Client;

c) a proposed Ground Lease conveying the "Leased Land" to the Client;

d) other written materials provided by the CLT.

The Client has received full and complete information and advice regarding this conveyance and the foregoing documents. In my review of these documents my purpose has been to reasonably inform the Client of the present and foreseeable risks and legal consequences of the contemplated transaction.

The Client is entering the aforesaid transaction in reliance on her own judgment and upon her investigation of the facts. The advice and information provided by me was an integral element of such investigation.

Name Date

Title

Firm/Address

Exhibit LAND

Correct legal description of area of Leased Land and appurtenant title rights and obligations

Exhibit DEED

Use actual deed

Exhibit: PERMITTED MORTGAGES

The rights and provisions set forth in this Exhibit shall be understood to be provisions of Section 8.2 of the Lease. All terminology used in this Exhibit shall have the meaning assigned to it in the Lease.

A. OBLIGATIONS OF PERMITTED MORTGAGEE. Any Permitted Mortgagee shall be bound by each of the following requirements unless the particular requirement is removed, contradicted or modified by a rider to this Lease signed by the Homeowner and the CLT to modify the terms of the Lease during the term of the Permitted Mortgage.

1. If Permitted Mortgagee sends a notice of default to the Homeowner because the Homeowner has failed to comply with the terms of the Permitted Mortgage, the Permitted Mortgagee shall, at the same time, send a copy of that notice to the CLT. Upon receiving a copy of the notice of default and within that period of time in which the Homeowner has a right to cure such default (the "cure period"), the CLT shall have the right to cure the default on the Homeowner's behalf, provided that all current payments due the Permitted Mortgagee since the notice of default was given are made to the Permitted Mortgagee.

2. If, after the cure period has expired, the Permitted Mortgagee intends to accelerate the note secured by the Permitted Mortgage or begin foreclosure proceedings under the Permitted Mortgage, the Permitted Mortgagee shall first notify CLT of its intention to do so, and CLT shall then have the right, upon notifying the Permitted Mortgagee within thirty (30) days of receipt of such notice, to acquire the Permitted Mortgage by paying off the debt secured by the Permitted Mortgage.

3. If the Permitted Mortgagee acquires title to the Home through foreclosure or acceptance of a deed in lieu of foreclosure, the Permitted Mortgagee shall give CLT written notice of such acquisition and CLT shall then have an option to purchase the Home from the Permitted Mortgagee for the full amount owing to the Permitted Mortgagee under the Permitted Mortgage. To exercise this option to purchase, CLT must give written notice to the Permitted Mortgagee of CLT's intent to purchase the Home within thirty (30) days following CLT's receipt of the Permitted Mortgagee's notice. CLT must then complete the purchase of the Home within sixty (60) days of having given written notice of its intent to purchase. If CLT does not complete the purchase within this 60-day period, the Permitted Mortgagee shall be free to sell the Home to another person.

4. Nothing in the Permitted Mortgage or related documents shall be construed as giving Permitted Mortgagee a claim on CLT's interest in the Leased Land, or as assigning any form of liability to the CLT with regard to the Leased Land, the Home, or the Permitted Mortgage.

5. Nothing in the Permitted Mortgage or related documents shall be construed as rendering CLT or any subsequent Mortgagee of CLT's interest in this Lease, or their respective heirs, executors, successors or assigns, personally liable for the payment of the debt secured by the Permitted Mortgage or any part thereof.

6. The Permitted Mortgagee shall not look to CLT or CLT's interest in the Leased Land, but will look solely to Homeowner, Homeowner's interest in the Leased Land, and the Home for the payment of the debt secured thereby or any part thereof. (It is the intention of the parties hereto that CLT's consent to such the Permitted Mortgage shall be without any liability on the part of CLT for any deficiency judgment.)

7. In the event any part of the Security is taken in condemnation or by right of eminent domain, the proceeds of the award shall be paid over to the Permitted Mortgagee in accordance with the provisions of ARTICLE 9 hereof.

8. CLT shall not be obligated to execute an assignment of the Lease Fee or other rent payable by Homeowner under the terms of this Lease.

B. RIGHTS OF PERMITTED MORTGAGEE. The rights of a Permitted Mortgagee as referenced under Section 8.6 of the Lease to which this Exhibit is attached shall be as set forth below.

1. Any Permitted Mortgagee shall, without further consent by CLT, have the right to (a) cure any default under this Lease, and perform any obligation required under this Lease, such cure or performance being effective as if it had been performed by Homeowner; (b) acquire and convey, assign, transfer and exercise any right, remedy or privilege granted to Homeowner by this Lease or otherwise by law, subject to the provisions, if any, in the Permitted Mortgage, which may limit any exercise of any such right, remedy or privilege; and (c) rely upon and enforce any provisions of the Lease to the extent that such provisions are for the benefit of a Permitted Mortgagee.

2. A Permitted Mortgagee shall not be required, as a condition to the exercise of its rights under the Lease, to assume personal liability for the payment and performance of the obligations of the Homeowner under the Lease. Any such payment or performance or other act by Permitted Mortgagee under the Lease shall not be construed as an agreement by Permitted Mortgagee to assume such personal liability except to the extent Permitted Mortgagee actually takes possession of the Home and Leased Land. In the event Permitted Mortgagee does take possession of the Home and Leased Land and thereupon transfers such property, any such transferee shall be required to enter into a written agreement assuming such personal liability and upon any such assumption the Permitted Mortgagee shall automatically be released from personal liability under the Lease.

3. In the event that title to the estates of both CLT and Homeowner are acquired at any time by the same person or persons, no merger of these estates shall occur without the prior written declaration of merger by Permitted Mortgagee, so long as Permitted Mortgagee owns any interest in the Security or in a Permitted Mortgage.

4. If the Lease is terminated for any reason, or in the event of the rejection or disaffirmance of the Lease pursuant to bankruptcy law or other law affecting creditors' rights, CLT shall enter into a new lease for the Leased Land with the Permitted Mortgagee (or with any party designated by the Permitted Mortgagee, subject to CLT's approval, which approval shall not be unreasonably withheld), not more than thirty (30) days after the request of the Permitted Mortgagee. Such lease shall be for the remainder of the term of the Lease, effective as of the date of such termination, rejection or disaffirmance, and upon all the terms and provisions contained in the Lease. However, the Permitted Mortgagee shall make a written request to CLT for such new lease within sixty (60) days after the effective date of such termination, rejection or disaffirmance, as the case may be. Such written request shall be accompanied by a copy of such new lease, duly executed and acknowledged by the Permitted Mortgagee or the party designated by the Permitted Mortgagee to be the Homeowner thereunder. Any new lease made pursuant to this Section shall have the same priority with respect to other interests in the Land as the Lease. The provisions of this Section shall survive the termination, rejection or disaffirmance of the Lease and shall continue in full effect thereafter to the same extent as if this Section were independent and an independent contract made by CLT, Homeowner and the Permitted Mortgagee.

5. The CLT shall have no right to terminate the Lease during such time as the Permitted Mortgagee has commenced foreclosure in accordance with the provisions of the Lease and is diligently pursuing the same.

6. In the event that CLT sends a notice of default under the Lease to Homeowner, CLT shall also send a notice of Homeowner's default to Permitted Mortgagee. Such notice shall be given in the manner set forth in Section 14.2 of the Lease to the Permitted Mortgagee at the address which has been given by the Permitted Mortgagee to CLT by a written notice to CLT sent in the manner set forth in said Section 14.2 of the Lease.

7. In the event of foreclosure sale by a Permitted Mortgagee or the delivery of a deed to a Permitted Mortgagee in lieu of foreclosure in accordance with the provisions of the Lease, at the election of the Permitted Mortgagee the provisions of Article 10, Sections 10.1 through 10.11 shall be deleted and thereupon shall be of no further force or effect as to only so much of the Security so foreclosed upon or transferred.

8. Before becoming effective, any amendments to this Lease must be approved in writing by Permitted Mortgagee, which approval shall not be unreasonably withheld. If Permitted Mortgagee has neither approved nor rejected a proposed amendment within 60 days of its submission to Permitted Mortgagee, then the proposed amendment shall be deemed to be approved.

C. STANDARD PERMITTED MORTGAGE AGREEMENT. A Standard Permitted Mortgage Agreement, as identified in Section 8.4 of this Lease, shall be written as follows, and shall be signed by Mortgagee and Homeowner.

This Agreement is made by and among:

_____ *(Mortgagee) and*

_____ *("Homeowner"),*

***Whereas**:*

a) _____*CLT (the "CLT") and Homeowner have entered, or are entering, into a ground lease ("the Lease"), conveying to Homeowner a leasehold interest in the Land located at* _____ *("the Leased Land"); and Homeowner has purchased, or is purchasing, the Home located on the Leased Land ("the Home").*

b) *The Mortgagee has been asked to provide certain financing to the Homeowner, and is being granted concurrently herewith a mortgage and security interest (the "Mortgage") in the Leased Land and Home, all as more particularly set forth in the Mortgage, attached hereto as Schedule A.*

c) *The Ground Lease states that the Homeowner may mortgage the Leased Land only with the written consent of CLT. The Ground Lease further provides that CLT is required to give such consent only if the Mortgagee signs this Standard Permitted Mortgage Agreement and thereby agrees to certain conditions that are stipulated herein ("the Stipulated Conditions").*

***Now, therefore,** the Homeowner/Mortgagor and the Mortgagee hereby agree that the terms and conditions of the Mortgage shall include the Stipulated Conditions stated below.*

Stipulated Conditions:

1) If Mortgagee sends a notice of default to the Homeowner because the Homeowner has failed to comply with the terms of the Mortgage, the Mortgagee shall, at the same time, send a copy of that notice to the CLT. Upon receiving a copy of the notice of default and within that period of time in which the Homeowner has a right to cure such default (the "cure period"), the CLT shall have the

right to cure the default on the Homeowner's behalf, provided that all current payments due the Permitted Mortgagee since the notice of default was given are made to the Mortgagee.

2) If, after such cure period, the Mortgagee intends to accelerate the note secured by the Mortgage or initiate foreclosure proceedings under the Mortgage, in accordance with the provisions of the Lease, the Mortgagee shall first notify CLT of its intention to do so and CLT shall have the right, but not the obligation, upon notifying the Mortgagee within thirty (30) days of receipt of said notice, to purchase the Mortgagee loans and to take assignment of the Mortgage.

3) If the Mortgagee acquires title to the Home and Homeowner's interest in the Leased Land through foreclosure or acceptance of a deed in lieu of foreclosure, the Mortgagee shall give the CLT written notice of such acquisition and the CLT shall have an option to purchase the Home and Homeowner's interest in the Leased Land from the Mortgagee for the full amount owing to the Mortgagee; provided, however, that the CLT notifies the Mortgagee in writing of the CLT's intent to make such purchase within thirty (30) days following the CLT's receipt of the Mortgagee's notice of such acquisition of the Home and Homeowner's interest in the Leased Land; further provided that CLT shall complete such purchase within sixty (60) days of having given written notice of its intent to purchase; and provided that, if the CLT does not complete the purchase within such period, the Mortgagee shall be free to sell the Home and Homeowner's interest in the Leased Land to another person;

4) Nothing in the Mortgage or related documents shall be construed as giving the Mortgagee a claim on CLT's interest in the Leased Land, or as assigning any form of liability to the CLT with regard to the Leased Land, the Home, or the Mortgage.

5) Nothing in the Mortgage shall be construed as rendering CLT or any subsequent holder of the CLT's interest in and to the Lease, or their respective heirs, executors, successors or assigns, personally liable for the payment of the debt evidenced by such note and such Mortgage or any part thereof.

6) The Mortgagee shall not look to CLT or CLT's interest in the Leased Land, but will look solely to Homeowner and Homeowner's interest in the Leased Land and the Home for the payment of the debt secured by the Mortgage. (It is the intention of the parties hereto that CLT's consent to the Mortgage shall be without any liability on the part of CLT for any deficiency judgment.)

7) In the event that any part of the Leased Land is taken in condemnation or by right of eminent domain, the proceeds of the award shall be paid over to the Mortgagee in accordance with the provisions of Article 9 of the Lease.

8) Nothing in the Mortgage shall obligate CLT to execute an assignment of the Lease Fee or other rent payable by Homeowner under the terms of this Lease.

By:

_____ *for Mortgagee* *Date:* _____

_____ *for Homeowner/Mortgagor* *Date:* _____

Exhibit FIRST REFUSAL

Whenever any party under the Lease shall have a right of first refusal as to certain property, the following procedures shall apply. If the owner of the property offering it for sale ("Offering Party") shall within the term of the Lease receive a bona fide third party offer to purchase the property which such Offering Party is willing to accept, the holder of the right of first refusal (the "Holder") shall have the following rights:

a) Offering Party shall give written notice of such offer ("the Notice of Offer") to Holder setting forth (a) the name and address of the prospective purchaser of the property, (b) the purchase price offered by the prospective purchaser and (c) all other terms and conditions of the sale. Holder shall have a period of forty-five (45) days after the receipt of the Notice of Offer ("the Election Period") within which to exercise the right of first refusal by giving notice of intent to purchase the property ("the Notice of Intent to Purchase") for the same price and on the same terms and conditions set forth in the Notice of Offer. Such Notice of Intent to Purchase shall be given in writing to the Offering Party within the Election Period.

b) If Holder exercises the right to purchase the property, such purchase shall be completed within sixty (60) days after the Notice of Intent to Purchase is given by Holder (or if the Notice of Offer shall specify a later date for closing, such date) by performance of the terms and conditions of the Notice of Offer, including payment of the purchase price provided therein.

c) Should Holder fail to exercise the right of first refusal within the Election Period, then the Offering Party shall have the right (subject to any other applicable restrictions in the Lease) to go forward with the sale which the Offering Party desires to accept, and to sell the property within one (1) year following the expiration of the Election Period on terms and conditions which are not materially more favorable to the purchaser than those set forth in the Notice. If the sale is not consummated within such one-year period, the Offering Party's right so to sell shall end, and all of the foregoing provisions of this section shall be applied again to any future offer, all as aforesaid. If a sale is consummated within such one-year period, the purchaser shall purchase subject to the Holder having a renewed right of first refusal in said property.

Exhibit ZONING

Attach copy of ZONING classification for property, as of the commencement of the Lease

Exhibit INITIAL APPRAISAL

Attach copy of initial appraisal

Exhibit STANDARD PERMITTED MORTGAGE AGREEMENT

Attach agreement signed by lender and by homeowner, as specified section 8.c of the 'Permitted Mortgage Agreement' exhibit above.

Other Exhibits to be Attached, as Appropriate

Exhibit RESTRICTIONS *[To be attached in the event that SRBCLT stipulates use restrictions that are above and beyond those included under Zoning]*

EXHIBIT "E"

FEDERAL ASSURANCES

Assurances

Other Applicable Federal Requirements

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

REQUEST FOR PAYMENT OF HOME FUNDS

To: City of Fargo
Planning & Development Dept.
225 4th Street North
Fargo, ND 58102

Re: _____
Project Name

_____
Project Address

_____
City, State Zip

Amount of Funds Requested: _____

Attached to this Request form are (check all that apply):

- ☐ Copies of Invoices/Receipts
- ☐ Invoices/Receipts for Final Payment Request
- ☐ Lien Waivers (required upon receipt of final payment)

Remarks:

_____

_____

_____

_____

Submitted by: _____

Contact Phone Number: _____

Date Request was Submitted to City: _____

CITY OF FARGO REVIEW & APPROVAL

Approved By: _____ Date Approved: _____

Deadline to submit requests for funds is by 4:30 p.m. on Wednesdays, with checks mailed out the following Friday.

EXHIBIT "G"

INSURANCE REQUIREMENTS

The Developer shall keep and maintain the following insurance coverages:

1. Workers Compensation Insurance. The Developer 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

2. General Liability Insurance. The Developer 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

3. Automobile Insurance. The Developer 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

4. In addition to the named policies in A-C above, Developer 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 Developer 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.

5. 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. Developer 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"

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(to be provided at execution)

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DEVELOPER'S GROUND LEASE

CASS CLAY COMMUNITY LAND TRUST

GROUND LEASE

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Exhibit FIRST REFUSAL

Exhibit INITIAL APPRAISAL

Exhibit ZONING

Other Exhibits to be Attached, as Appropriate

Exhibit RESTRICTIONS

THIS LEASE ("this Lease" or "the Lease") entered into this _____ day of _____, 20____, between Cass Clay Community Land Trust (hereinafter "CLT" or "the CLT") and _____("Homeowner").

RECITALS

A. The CLT is organized exclusively for charitable purposes, including the purpose of providing homeownership opportunities for low- and moderate-income people who would otherwise be unable to afford homeownership.

B. A goal of the CLT is to preserve affordable homeownership opportunities through the long-term leasing of land under owner-occupied homes.

C. The Leased Land described in this Lease has been acquired and is being leased by the CLT in furtherance of this goal.

D. The Homeowner shares the purposes of the CLT and has agreed to enter into this Lease not only to obtain the benefits of homeownership, but also to further the charitable purposes of the CLT.

E. Homeowner and CLT recognize the special nature of the terms of this Lease, and each of them accepts these terms, including those terms that affect the marketing and resale price of the property now being purchased by the Homeowner.

F. Homeowner and CLT agree that the terms of this Lease further their shared goals over an extended period of time and through a succession of owners.

NOW THEREFORE, Homeowner and CLT agree on all of the terms and conditions of this Lease as set forth below.

DEFINITIONS: Homeowner and CLT agree on the following definitions of key terms used in this Lease.

Leased Land: the parcel of land, described in Exhibit: LEASED LAND, which is leased to the Homeowner.

Home: the residential structure and other permanent improvements located on the Leased Land and owned by the Homeowner, including both the original Home described in Exhibit: DEED, and all permanent improvements added thereafter by Homeowner at Homeowner's expense.

Base Price: the total price that is paid for the Home by the Homeowner (including the amount provided by a first mortgage loan but not including subsidy in the form of deferred loans to the Homeowner).

Purchase Option Price: the maximum price the Homeowner is allowed to receive for the sale of the Home and the Homeowner's right to possess, occupy and use the Leased Land, as defined in Article 10 of this Lease.

Lease Fee: The monthly fee that the Homeowner pays to the CLT for the continuing use of the Leased Land and any additional amounts that the CLT charges to the Homeowner for reasons permitted by this Lease.

Permitted Mortgage: A mortgage or deed of trust on the Home and the Homeowner's right to possess, occupy and use the Leased Land granted to a lender by the Homeowner with the CLT's Permission. The Homeowner may not mortgage the CLT's interest in the Leased Land, and may not grant any mortgage or deed of trust without CLT's Permission.

Event of Default: Any violation of the terms of the Lease unless it has been corrected ("cured") by Homeowner or the holder of a Permitted Mortgage in the specified period of time after a written Notice of Default has been given by CLT.

ARTICLE 1: Homeowner's Letter of Agreement and Attorney's Letter of Acknowledgment are Attached as Exhibits.

Attached as Exhibit HOMEOWNER'S LETTER OF AGREEMENT AND ATTORNEY'S LETTER OF ACKNOWLEDGMENT and made part of this Lease by reference are a Letter of Agreement from the Homeowner, describing the Homeowner's understanding and acceptance of this Lease (including the parts of the Lease that affect the resale of the Home) and a Letter of Acknowledgment from the Homeowner's attorney, describing the attorney's review of the Lease with the Homeowner.

ARTICLE 2: Leasing of Rights to the Land

2.1 CLT LEASES THE LAND TO HOMEOWNER: The CLT hereby leases to the Homeowner, and Homeowner hereby accepts, the right to possess, occupy and use the Leased Land (described in the attached Exhibit LEASED LAND) in accordance with the terms of this Lease. CLT has furnished to Homeowner a copy of the most current title report, if any, obtained by CLT for the Leased Land, and Homeowner accepts title to the Leased Land in its condition "as is" as of the signing of this Lease.

2.2 MINERAL RIGHTS NOT LEASED TO HOMEOWNER: CLT does not lease to Homeowner the right to remove from the Leased Land any minerals lying beneath the Leased Land's surface. Ownership of such minerals remains with the CLT, but the CLT shall not remove any such minerals from the Leased Land without the Homeowner's written permission.

ARTICLE 3: Term of Lease, Change of Land Owner

3.1 TERM OF LEASE IS 99 YEARS: This Lease shall remain in effect for 99 years, beginning on the ___ day of _____, 20__, and ending on the _____ day of _____, 20____, unless ended sooner or renewed as provided below.

3.2 HOMEOWNER CAN RENEW LEASE FOR ANOTHER 99 YEARS: Homeowner may renew this Lease for one additional period of 99 years. The CLT may change the terms of the Lease for the renewal period prior to the beginning of the renewal period but only if these changes do not materially and adversely interfere with the rights possessed by Homeowner under the Lease. Not more than 365 nor less than 180 days before the last day of the first 99-year period, CLT shall give Homeowner a written notice that states the date of the expiration of the first 99-year period and the conditions for renewal as set forth in the following paragraph ("the Expiration Notice"). The Expiration Notice shall also describe any changes CLT intends to make in the Lease for the renewal period as permitted above.

The Homeowner shall then have the right to renew the Lease only if the following conditions are met: (a) within 60 days of receipt of the Expiration Notice, the Homeowner shall give CLT written notice stating the Homeowner's desire to renew ("the Renewal Notice"); (b) this Lease shall be in effect on the last day of the original 99-year term, and (c) the Homeowner shall not be in default under this Lease or under any Permitted Mortgage on the last day of the original 99-year term.

When Homeowner has exercised the option to renew, Homeowner and CLT shall sign a memorandum stating the option has been exercised. The memorandum shall comply with the requirements for a notice of lease as stated in Section 14.12 below. The CLT shall record this memorandum in accordance with the requirements of law promptly after the beginning of the renewal period.

3.3 WHAT HAPPENS IF CLT DECIDES TO SELL THE LEASED LAND: If ownership of the Leased Land is ever transferred by CLT (whether voluntarily or involuntarily) to any other person or institution, this Lease

shall not cease, but shall remain binding on the new land-owner as well as the Homeowner. If CLT agrees to transfer the Leased Land to any person or institution other than a non-profit corporation, charitable trust, government agency or other similar institution sharing the goals described in the Recitals above, the Homeowner shall have a right of first refusal to purchase the Leased Land. The details of this right shall be as stated in the attached Exhibit FIRST REFUSAL. Any sale or other transfer contrary to this Section 3.3 shall be null and void.

ARTICLE 4: Use of Leased Land

4.1 HOMEOWNER MAY USE THE HOME ONLY FOR RESIDENTIAL AND RELATED PURPOSES: Homeowner shall use, and allow others to use, the Home and Leased Land only for residential purposes and any activities related to residential use that are permitted by local zoning law.

4.2 HOMEOWNER MUST USE THE HOME AND LEASED LAND RESPONSIBILY AND IN COMPLIANCE WITH THE LAW: Homeowner shall use the Home and Leased Land in a way that will not cause harm to others or create any public nuisance. Homeowner shall dispose of all waste in a safe and sanitary manner. Homeowner shall maintain all parts of the Home and Leased Land in safe, sound and habitable condition, in full compliance with all laws and regulations, and in the condition that is required to maintain the insurance coverage required by Section 9.4 of this Lease.

4.3 HOMEOWNER IS RESPONSIBLE FOR USE BY OTHERS: Homeowner shall be responsible for the use of the Home and Leased Land by all residents and visitors and anyone else using the Leased Land with Homeowner's permission and shall make all such people aware of the restrictions on use set forth in this Lease.

4.4 HOMEOWNER MUST OCCUPY THE HOME FOR AT LEAST Ten (10) MONTHS EACH YEAR: Homeowner shall occupy the Home for at least Ten (10) months of each year of this Lease, unless otherwise agreed by CLT. Occupancy by Homeowner's child, spouse, domestic partner or other persons approved by CLT shall be considered occupancy by Homeowner. Neither compliance with the occupancy requirement nor CLT's permission for an extended period of non-occupancy constitutes permission to sublease the Leased Land and Home, which is addressed in Section 4.5 below.

4.5 LEASED LAND MAY NOT BE SUBLEASED WITHOUT CLT'S PERMISSION: Except as otherwise provided in Article 8 and Article 10, Homeowner shall not sublease, sell or otherwise convey any of Homeowner's rights under this Lease, for any period of time, without the written permission of CLT. Homeowner agrees that CLT shall have the right to withhold such consent in order to further the purposes of this Lease.

If permission for subleasing is granted, the sublease shall be subject to the following conditions.

a) Any sublease shall be subject to all of the terms of this Lease.
b) The rental or occupancy fee charged the sub-lessee shall not be more than the amount of the Lease Fee charged the Homeowner by the CLT, plus an amount approved by CLT to cover Homeowner's costs in owning the Home, including but not limited to the cost of taxes, insurance and mortgage interest.

4.6 CLT HAS A RIGHT TO ENTER THE LEASED LAND: The CLT may enter any part of the Leased Land including the interiors of fully enclosed buildings, at any reasonable time, after notifying the Homeowner at least 48 hours before the planned entrance. No more than one (1) entrance may be carried out in a single year, except in the case of a follow up to a previous entry or an emergency. In an emergency, the CLT may enter any part of the Leased Land including the interiors of fully enclosed buildings, after making reasonable efforts to inform the Homeowner before entering.

If the CLT has received an Intent-To-Sell Notice (as described in Section 10.4 below), then the CLT has the right to inspect the interiors of all fully enclosed buildings to determine their condition prior to the sale. The CLT must notify the Homeowner at least 48 hours before carrying out such inspection.

4.7 HOMEOWNER HAS A RIGHT TO QUIET ENJOYMENT: Homeowner has the right to quiet enjoyment of the Leased Land. The CLT has no desire or intention to interfere with the personal lives, associations, expressions, or actions of the Homeowner in any way not permitted by this Lease.

ARTICLE 5: Lease Fee

5.1 AMOUNT OF LEASE FEE: The Homeowner shall pay a monthly Lease Fee in the amount of Fifty _ dollars ($ 50.00) to be paid in return for the continuing right to possess, occupy and use the Leased Land.

5.2 WHEN THE LEASE FEE IS TO BE PAID (DUE DATE): The Lease Fee shall be payable to CLT on the first day of each month for as long as this Lease remains in effect, unless the Lease Fee is to be escrowed and paid by a Permitted Mortgagee, in which case payment shall be made as directed by that Mortgagee.

5.3 HOW THE AMOUNT OF THE LEASE FEE HAS BEEN DETERMINED: The amount of the Land Use Fee stated in Section 5.1 above has been determined as follows. First, the approximate monthly fair rental value of the Leased Land has been established, as of the beginning of the Lease term, recognizing the fair rental value is reduced by certain restrictions imposed by the Lease on the use of the Land. Then the affordability of this monthly amount for the Homeowner has been analyzed and, if necessary, the Land Use Fee has been reduced to an amount considered to be affordable for Homeowner.

5.4 CLT MAY REDUCE OR SUSPEND THE LEASE FEE TO IMPROVE AFFORDABILITY: CLT may reduce or suspend the total amount of the Lease Fee for a period of time for the purpose of improving the affordability of the Homeowner's monthly housing costs. Any such reduction or suspension must be in writing and signed by CLT.

5.5 FEES MAY BE INCREASED FROM TIME TO TIME: The CLT may increase the amount of the Land Use Fee from time to time. The fee shall not be modified for a period of three (3) months from the date of the lease and then not more often than once each one (1) year.

5.6 LAND USE FEE WILL BE INCREASED IF RESTRICTIONS ARE REMOVED: If, for any reason, the provisions of Article 10 regarding transfers of the Home or Sections 4.4 and 4.5 regarding occupancy and subleasing are suspended or invalidated for any period of time, then during that time the Land Use Fee shall be increased to an amount calculated by CLT to equal the fair rental value of the Leased Land for use not restricted by the suspended provisions, but initially an amount not exceeding five hundred dollars ($500). Such increase shall become effective upon CLT's written notice to Homeowner. Thereafter, for so long as these restrictions are not reinstated in the Lease, the CLT may, from time to time, further increase the amount of such Land Use Fee, provided the amount of the Land Use Fee does not exceed the fair rental value of the property, and provided such increases do not occur more often than once every year.

5.7 IF PAYMENT IS LATE, $5.00 LATE FEE CAN BE CHARGED: If the CLT has not received any monthly installment of the Lease Fee on or before the date on which the such installment first becomes payable under this Lease (the "Due Date"), the CLT may require Homeowner to pay interest on the unpaid amount from the Due Date through and including the date such payment or installment is received by CLT, at a rate not to exceed the interest rate of the primary mortgage at the time of the signing of this lease. Such interest shall be deemed additional Lease Fee and shall be paid by Homeowner to CLT upon demand; provided, however, that CLT shall waive any such interest that would otherwise be payable to

CLT if such payment of the Lease Fee is received by CLT on or before the thirtieth (30th) day after the Due Date.

5.8 CLT CAN COLLECT UNPAID FEES WHEN HOME IS SOLD: In the event that any amount of payable Lease Fee remains unpaid when the Home is sold, the outstanding amount of payable Lease Fee, including any interest as provided above, shall be paid to CLT out of any proceeds from the sale that would otherwise be due to Homeowner. The CLT shall have, and the Homeowner hereby consents to, a lien upon the Home for any unpaid Lease Fee. Such lien shall be prior to all other liens and encumbrances on the Home except (a) liens and encumbrances recorded before the recording of this Lease, (b) Permitted Mortgages as defined in section 8.1 below; and (c) liens for real property taxes and other governmental assessments or charges against the Home.

ARTICLE 6: Taxes and Assessments

6.1 HOMEOWNER IS RESPONSIBLE FOR PAYING ALL TAXES AND ASSESSMENTS: Homeowner shall pay directly, when due, all taxes and governmental assessments that relate to the Home and the Leased Land (including any taxes relating to the CLT's interest in the Leased Land).

6.2 CLT WILL PASS ON ANY TAX BILLS IT RECEIVES TO HOMEOWNER: In the event the local taxing authority bills CLT for any portion of the taxes on the Home or Leased Land, CLT shall pass the bill to Homeowner and Homeowner shall promptly pay this bill.

6.3 HOMEOWNER HAS A RIGHT TO CONTEST TAXES: Homeowner shall have the right to contest the amount or validity of any taxes relating to the Home and Leased Land. Upon receiving a reasonable request from Homeowner for assistance in this matter, CLT shall join in contesting such taxes. Homeowner shall pay all costs of such proceedings.

6.4 IF HOMEOWNER FAILS TO PAY TAXES, CLT MAY INCREASE LEASE FEE: In the event that Homeowner fails to pay the taxes or other charges described in Section 6.1 above, CLT may increase Homeowner's Lease Fee to offset the amount of taxes and other charges owed by Homeowner. Upon collecting any such amount, CLT shall pay the amount collected to the taxing authority in a timely manner.

6.5 PARTY THAT PAYS TAXES MUST SHOW PROOF: When either party pays taxes relating to the Home or Leased Land, that party shall furnish satisfactory evidence of the payment to the other party. A photocopy of a receipt shall be the usual method of furnishing such evidence.

ARTICLE 7: The Home

7.1 HOMEOWNER OWNS THE HOUSE AND ALL OTHER IMPROVEMENTS ON THE LEASED LAND: All structures, including the house, fixtures, and other improvements purchased, constructed, or installed by the Homeowner on any part of the Leased Land at any time during the term of this Lease (collectively, the "Home") shall be property of the Homeowner. Title to the Home shall be and remain vested in the Homeowner. However, Homeowner's rights of ownership are limited by certain provisions of this Lease, including provisions regarding the sale or leasing of the Home by the Homeowner and the CLT's option to purchase the Home. In addition, Homeowner shall not remove any part of the Home from the Leased Land without CLT's prior written consent.

7.2 HOMEOWNER PURCHASES HOME WHEN SIGNING LEASE: Upon the signing of this Lease, Homeowner is simultaneously purchasing the Home located at that time on the Leased Land, as described in the Deed, a copy of which is attached to this Lease as Exhibit: DEED.

7.3 CONSTRUCTION CARRIED OUT BY HOMEOWNER MUST COMPLY WITH CERTAIN REQUIREMENTS: Any construction in connection with the Home is permitted only if the following requirements are met: (a) all costs shall be paid for by the Homeowner; (b) all construction shall be performed in a professional

manner and shall comply with all applicable laws and regulations; (c) all changes in the Home shall be consistent with the permitted uses described in Article 4; (d) the footprint, square-footage, or height of the house shall not be increased and new structures shall not be built or installed on the Leased Land without the prior written consent of CLT.

For any construction requiring CLT's prior written consent, Homeowner shall submit a written request to the CLT. Such request shall include:

a) a written statement of the reasons for undertaking the construction;
b) a set of drawings (floor plan and elevations) showing the dimensions of the proposed construction;
c) a list of the necessary materials, with quantities needed;
d) a statement of who will do the work;

If the CLT finds it needs additional information it shall request such information from Homeowner within two weeks of receipt of Homeowner's request. The CLT then, within two weeks of receiving all necessary information (including any additional information it may have requested) shall give Homeowner either its written consent or a written statement of its reasons for not consenting. Before construction can begin, Homeowner shall provide CLT with copies of all necessary building permits, if not previously provided.

7.4 HOMEOWNER MAY NOT ALLOW STATUTORY LIENS TO REMAIN AGAINST LEASED LAND OR HOME: No lien of any type shall attach to the CLT's title to the Leased Land. Homeowner shall not permit any statutory or similar lien to be filed against the Leased Land or the Home that remains more than 60 days after it has been filed. Homeowner shall take action to discharge such lien, whether by means of payment, deposit, bond, court order, or other means permitted by law. If Homeowner fails to discharge such lien within the 60-day period, then Homeowner shall immediately notify CLT of such failure. CLT shall have the right to discharge the lien by paying the amount in question. Homeowner may, at Homeowner's expense, contest the validity of any such asserted lien, provided Homeowner has furnished a bond or other acceptable surety in an amount sufficient to release the Leased Land from such lien. Any amounts paid by CLT to discharge such liens shall be treated as an additional Lease Fee payable by Homeowner upon demand.

7.5 HOMEOWNER IS RESPONSIBLE FOR SERVICES, MAINTENANCE AND REPAIRS: Homeowner hereby assumes responsibility for furnishing all services or facilities on the Leased Land, including but not limited to heat, electricity, air conditioning and water. CLT shall not be required to furnish any services or facilities or to make any repairs to the Home. Homeowner shall maintain the Home and Leased Land as required by Section 4.2 above and shall see that all necessary repairs and replacements are accomplished when needed.

7.6 WHEN LEASE ENDS, OWNERSHIP REVERTS TO CLT, WHICH SHALL REIMBURSE HOMEOWNER: Upon the expiration or termination of this Lease, ownership of the Home shall revert to CLT. Upon thus assuming title to the Home, CLT shall promptly pay Homeowner and Permitted Mortgagee(s), as follows:

FIRST, CLT shall pay any Permitted Mortgagee(s) the full amount owed to such mortgagee(s) by Homeowner;

SECOND, CLT shall pay the Homeowner the balance of the Purchase Option Price calculated in accordance with Article 10 below, as of the time of reversion of ownership, less the total amount of any unpaid Lease Fee and any other amounts owed to the CLT under the terms of this Lease. The

Homeowner shall be responsible for any costs necessary to clear any additional liens or other charges related to the Home that may be assessed against the Home. If the Homeowner fails to clear such liens or charges, the balance due the Homeowner shall also be reduced by the amount necessary to release such liens or charges, including reasonable attorney's fees incurred by the CLT.

ARTICLE 8: Financing

8.1 HOMEOWNER CANNOT MORTGAGE THE HOME WITHOUT CLT's PERMISSION: The Homeowner may mortgage the Home only with the written permission of CLT. Any mortgage or deed of trust permitted in writing by the CLT is defined as a Permitted Mortgage, and the holder of such a mortgage or deed of trust is defined as a Permitted Mortgagee.

8.2 BY SIGNING LEASE, CLT GIVES PERMISSION FOR ORIGINAL MORTGAGE. By signing this Lease, CLT gives written permission for any mortgage or deed of trust signed by the Homeowner effective on the day this Lease is signed for the purpose of financing Homeowner's purchase of the Home.

8.3 HOMEOWNER MUST GET SPECIFIC PERMISSION FOR REFINANCING OR OTHER SUBSEQUENT MORTGAGES. If, at any time subsequent to the purchase of the Home and signing of the Lease, the Homeowner seeks a loan that is to be secured by a mortgage on the Home (to refinance an existing Permitted Mortgage or to finance home repairs or for any other purpose), Homeowner must inform CLT, in writing, of the proposed terms and conditions of such mortgage loan at least 30 days prior to the expected closing of the loan. The information to be provided to the CLT must include:

a) the name of the proposed lender;
b) Homeowner's reason for requesting the loan;
c) the principal amount of the proposed loan and the total mortgage debt that will result from the combination of the loan and existing mortgage debt, if any;
d) expected closing costs;
e) the rate of interest;
f) the repayment schedule;
g) a copy of the appraisal commissioned in connection with the loan request.

CLT may also require Homeowner to submit additional information. CLT will not permit such a mortgage loan if the loan increases Homeowner's total mortgage debt to an amount greater than 80% of the then current Purchase Option Price, calculated in accordance with Article 10 below, or if the terms of the transaction otherwise threaten the interests of either the Homeowner or the CLT.

8.4 CLT IS REQUIRED TO PERMIT A "STANDARD PERMITTED MORTGAGE." The CLT shall be required to permit any mortgage for which the mortgagee has signed a "Standard Permitted Mortgage Agreement" as set forth in "Exhibit: Permitted Mortgages, Part C," and for which the loan secured thereby does not increase Homeowner's total mortgage debt to an amount greater than any paid in equity +25% of appreciation. Appreciation will be determined by the then current Purchase Option Price, calculated in accordance with Article 10 below minus the original purchase price.

8.5 A PERMITTED MORTGAGEE HAS CERTAIN OBLIGATIONS UNDER THE LEASE. Any Permitted Mortgagee shall be bound by each of the requirements stated in "Exhibit: Permitted Mortgages, Part A, Obligations of Permitted Mortgagee," which is made a part of this Lease by reference, unless the particular requirement is removed, contradicted or modified by a Rider to this Lease signed by the Homeowner and the CLT to modify the terms of the Lease during the term of the Permitted Mortgage.

8.6 A PERMITTED MORTGAGEE HAS CERTAIN RIGHTS UNDER THE LEASE. Any Permitted Mortgagee shall have all of the rights and protections stated in "Exhibit: Permitted Mortgages, Part B, Rights of Permitted Mortgagee," which is made a part of this Lease by reference.

8.7 IN THE EVENT OF FORECLOSURE, ANY PROCEEDS IN EXCESS OF THE PURCHASE OPTION PRICE WILL GO TO CLT. Homeowner and CLT recognize that it would be contrary to the purposes of this agreement if Homeowner could receive more than the Purchase Option Price as the result of the foreclosure of a mortgage. Therefore, Homeowner hereby irrevocably assigns to CLT all net proceeds of sale of the Home that would otherwise have been payable to Homeowner and that exceed the amount of net proceeds that Homeowner would have received if the property had been sold for the Purchase Option Price, calculated as described in Section 10.10 below. Homeowner authorizes and instructs the Permitted Mortgagee, or any party conducting any sale, to pay such excess amount directly to CLT. If, for any reason, such excess amount is paid to Homeowner, Homeowner hereby agrees to promptly pay such amount to CLT.

ARTICLE 9: Liability, Insurance, Damage and Destruction, Eminent Domain

9.1 HOMEOWNER ASSUMES ALL LIABILITY. Homeowner assumes all responsibility and liability related to Homeowner's possession, occupancy and use of the Leased Land.

9.2 HOMEOWNER MUST DEFEND CLT AGAINST ALL CLAIMS OF LIABILITY. Homeowner shall defend, indemnify and hold CLT harmless against all liability and claims of liability for injury or damage to person or property from any cause on or about the Leased Land. Homeowner waives all claims against CLT for injury or damage on or about the Leased Land. However, CLT shall remain liable for injury or damage due to the grossly negligent or intentional acts or omissions of CLT or CLT's agents or employees.

9.3 HOMEOWNER MUST REIMBURSE CLT. In the event the CLT shall be required to pay any sum that is the Homeowner's responsibility or liability, the Homeowner shall reimburse the CLT for such payment and for reasonable expenses caused thereby.

9.4 HOMEOWNER MUST INSURE THE HOME AGAINST LOSS AND MUST MAINTAIN LIABILITY INSURANCE ON HOME AND LEASED LAND. Homeowner shall, at Homeowner's expense, keep the Home continuously insured against "all risks" of physical loss, using Insurance Services Office (ISO) Form HO 00 03, or its equivalent, for the full replacement value of the Home, and in any event in an amount that will not incur a coinsurance penalty. The amount of such insured replacement value must be approved by the CLT prior to the commencement of the Lease. Thereafter, if the CLT determines if the replacement value to be insured should be increased, the CLT shall inform the Homeowner of such required increase at least 30 days prior to the next date on which the insurance policy is to be renewed, and the Homeowner shall assure the renewal includes such change. If Homeowner wishes to decrease the amount of replacement value to be insured, Homeowner shall inform the CLT of the proposed change at least 30 days prior to the time such change would take effect. The change shall not take effect without CLT's approval.

Should the Home lie in a flood hazard zone as defined by the National Flood Insurance Plan, the Homeowner shall keep in full force and effect flood insurance in the maximum amount available.

The Homeowner shall also, at its sole expense, maintain in full force and effect public liability insurance covering the Home and the Leased Land using ISO Form HO 00 03 or its equivalent in the amount of Five hundred thousand dollars ($500,000) per occurrence and in the aggregate. The CLT shall be named as an additional insured using ISO Form HO 04 41 or its equivalent, and certificates of insurance shall be delivered to the CLT prior to the commencement of the Lease and at each anniversary date thereof.

The dollar amounts of such coverage may be increased from time to time at the CLT's request but not more often than once in any one-year period. CLT shall inform the Homeowner of such required

increase in coverage at least 30 days prior to the next date on which the insurance policy is to be renewed, and the Homeowner shall assure that the renewal includes such change. The amount of such increase in coverage shall be based on current trends in homeowner's liability insurance coverage in the area in which the Home is located.

9.5 WHAT HAPPENS IF HOME IS DAMAGED OR DESTROYED. Except as provided below, in the event of fire or other damage to the Home, Homeowner shall take all steps necessary to assure the repair of such damage and the restoration of the Home to its condition immediately prior to the damage. All such repairs and restoration shall be completed as promptly as possible. Homeowner shall also promptly take all steps necessary to assure the Leased Land is safe and the damaged Home does not constitute a danger to persons or property.

If Homeowner, based on professional estimates, determines either (a) that full repair and restoration is physically impossible, or (b) that the available insurance proceeds will pay for less than the full cost of necessary repairs and that Homeowner cannot otherwise afford to cover the balance of the cost of repairs, then Homeowner shall notify CLT of this problem, and CLT may then help to resolve the problem. Methods used to resolve the problem may include efforts to increase the available insurance proceeds, efforts to reduce the cost of necessary repairs, efforts to arrange affordable financing covering the costs of repair not covered by insurance proceeds, and any other methods agreed upon by both Homeowner and CLT.

If Homeowner and CLT cannot agree on a way of restoring the Home in the absence of adequate insurance proceeds, then Homeowner may give CLT written notice of intent to terminate the Lease. The date of actual termination shall be no less than 60 days after the date of Homeowner's notice of intent to terminate. Upon termination, any insurance proceeds payable to Homeowner for damage to the Home shall be paid as follows.

FIRST, to the expenses of their collection;
SECOND, to any Permitted Mortgagee(s), to the extent required by the Permitted Mortgage(s);
THIRD, to the expenses of enclosing or razing the remains of the Home and clearing debris;
FOURTH, to the CLT for any amounts owed under this Lease;
FIFTH, to the Homeowner, up to an amount equal to the Purchase Option Price, as of the day prior to the loss, less any amounts paid with respect to the second, third, and fourth clauses above;

SIXTH, the balance, if any, to the CLT.

9.6 WHAT HAPPENS IF SOME OR ALL OF THE LAND IS TAKEN FOR PUBLIC USE. If all of the Leased Land is taken by eminent domain or otherwise for public purposes, or if so much of the Leased Land is taken that the Home is lost or damaged beyond repair, the Lease shall terminate as of the date when Homeowner is required to give up possession of the Leased Land. Upon such termination, the entire amount of any award(s) paid shall be allocated in the way described in Section 9.5 above for insurance proceeds.

In the event of a taking of a portion of the Leased Land that does not result in damage to the Home or significant reduction in the usefulness or desirability of the Leased Land for residential purposes, then any monetary compensation for such taking shall be allocated entirely to CLT.

In the event of a taking of a portion of the Leased Land that results in damage to the Home only to such an extent that the Home can reasonably be restored to a residential use consistent with this Lease, then the damage shall be treated as damage is treated in Section 9.5 above, and monetary compensation shall be allocated as insurance proceeds are to be allocated under Section 9.5.

9.7 IF PART OF THE LAND IS TAKEN, THE LEASE FEE MAY BE REDUCED. In the event of any taking that reduces the size of the Leased Land but does not result in the termination of the Lease, CLT shall reassess the fair rental value of the remaining Land and shall adjust the Lease Fee if necessary to assure the monthly fee does not exceed the monthly fair rental value of the Land for use as restricted by the Lease.

9.8 IF LEASE IS TERMINATED BY DAMAGE, DESTRUCTION OR TAKING, CLT WILL TRY TO HELP HOMEOWNER BUY ANOTHER CLT HOME. If this Lease is terminated as a result of damage, destruction or taking, CLT shall take reasonable steps to allow Homeowner to purchase another home on another parcel of leased land owned by CLT if such home can reasonably be made available. If Homeowner purchases such a home, Homeowner agrees to apply any proceeds or award received by Homeowner to the purchase of the home. Homeowner understands that there are numerous reasons why it may not be possible to make such a home available and shall have no claim against CLT if such a home is not made available.

ARTICLE 10: Transfer of the Home

10.1 INTENT OF THIS ARTICLE IS TO PRESERVE AFFORDABILITY: Homeowner and CLT agree that the provisions of this Article 10 are intended to preserve the affordability of the Home for lower income households and expand access to homeownership opportunities for such households.

10.2 HOMEOWNER MAY TRANSFER HOME ONLY TO CLT OR QUALIFIED PERSONS: Homeowner may transfer the Home only to the CLT or an Income-Qualified Person as defined below or otherwise only as explicitly permitted by the provisions of this Article 10. All such transfers are to be completed only in strict compliance with this Article 10. Any purported transfer that does not follow the procedures set forth below, except in the case of a transfer to a Permitted Mortgagee in lieu of foreclosure, shall be null and void.

"Income-Qualified Person" shall mean a person or group of persons whose household income does not exceed one hundred percent (100%) of the median household income for the applicable Standard Metropolitan Statistical Area or County as calculated and adjusted for household size from time to time by the U.S. Department of Housing and Urban Development (HUD) or any successor.

10.3 THE HOME MAY BE TRANSFERRED TO CERTAIN HEIRS OF HOMEOWNER: If Homeowner dies (or if the last surviving co-owner of the Home dies), the executor or personal representative of Homeowner's estate shall notify CLT within ninety (90) days of the date of the death. Upon receiving such notice CLT shall consent to a transfer of the Home and Homeowner's rights to the Leased Land to one or more of the possible heirs of Homeowner listed below as "a," "b," or "c," provided that a Letter of Agreement and a Letter of Attorney's Acknowledgement (as described in Article 1 above) are submitted to CLT to be attached to the Lease when it is transferred to the heirs.

a) the spouse of the Homeowner; or
b) the child or children of the Homeowner; or
c) member(s) of the Homeowner's household who have resided in the Home for at least one year immediately prior to Homeowner's death.

Any other heirs, legatees or devisees of Homeowner, in addition to submitting Letters of Agreement and Acknowledgment as provided above, must demonstrate to CLT's satisfaction that they are Income-

CITY OF Fargo

PUBLIC WORKS OPERATIONS

22

Fleet Management, Forestry,
Streets & Sewers,
Watermains & Hydrants
402 23rd STREET NORTH
FARGO, NORTH DAKOTA 58102
PHONE: (701) 241-1453
FAX: (701) 241-8100

June 10, 2021

The Honorable Board of City Commissioners
225 4th Street N.
City of Fargo
Fargo, ND 58102

RE: RFP21109, Authorization to contract with Dakota Fence for Public Works Facility Fence.

Commissioners:

Capital funding has been allocated for construction of a fence at the BSE IT Building at 2401 3rd Avenue North. The fence will provide privacy and security along the 25th and 24th Street corridors where Public Works equipment is currently stored.

A Request for Proposal (RFP), "Public Works Facility Fence" was issued and one proposal was received on Wednesday, May 26, 2021. Public Works staff evaluated the proposal based on previous work experience, proposed work plan, and fee schedule. The proposal, submitted by Dakota Fence, meets all of the requirements of the RFP.

Public Works staff has verified the details of the project with Dakota Fence and we are requesting authorization to contract with Dakota Fence for the Public Works Facility Fence under the terms of RFP 21109.

RECOMMENDED MOTION: I/we hereby move based on the request for proposal (RFP21209) to contract with Dakota Fence for the Public Works Facility Fence at a cost of $64,331.00.

Respectfully submitted,

Paul Fiechtner
Services Manager
Fargo Public Works

Dakota Fence®

1110 25th Ave N • PO Box 1408 • Fargo, ND 58107-1408
800-726-4064 • Office 701-237-6181 • Fax 701-293-7811
Email sales@dakotafence.com

May 26, 2021

City of Fargo:

I would like to take a moment to introduce DAKOTA FENCE and give you a glimpse of our capabilities as a company.

Dakota Fence was started as a local fence company in Fargo, ND in 1972. At the time we started with small residential/commercial projects, with a small group of friends and family. Today, we have expanded to over 300 employees and have full-service offices in the Cities of Fargo, Minot, Bismarck and Williston ND. Our service area includes ND, SD, MT, MN and parts of WY. Our retail sales of fence, signs, sign posts and Playground continue to grow, reaching thru out the United States.

We are not a company to sit still and become complacent. Over the years we have expanded to include highway guardrail, the manufacture and installation of aluminum backed reflective signs and sign posts. We have any traffic control device your project may need as a rental item or installed by our certified traffic specialists. We also carry a line of Playground equipment and recreation items. **Most recently we have improved/enlarged our sign manufacturing to include 3M certified digital printed signs, banners and stickers. Your design, our capabilities are endless. We will be opening our new sign manufacturing company "Sign Solutions U.S.A" in 2022.**

Each office of Dakota Fence has a management team that has been built from within. The people bidding your project and managing your project have been on the front lines of the fence industry and have installed the fence. Why is this important? To us, being able to train our foreman and have the knowledge and experience to solve a problem when it occurs, is paramount to being an informed, well- functioning fence contractor.

Dakota Fence has become a very well- respected company in our industry. We pride ourselves on installing the best product, on time, on budget and above all in a safe manner. A small sample of the companies that we have worked for in the past are:

- Dept. of Defense, USACE, USAF, ND Dept. of Corrections.
- Hess, Halliburton, DAPL, Enbridge, Marathon, TransCanada, Equinor, Kinder Morgan.....
- Montana Dakota Utilities, Minnkota Power, Excel Energy, WAPA....
- ND DOT, SD DOT, Cities and Counties within the surrounding States....
- City of Fargo projects include Hector Airport, Fargo Parks facilities, Fargo Land fill, and many more...

Companies that work with us once, look forward to working with us again!

We thank you for the opportunity to provide pricing on this project. We look forward to working with you on this project and many others in the future. We want to expand on the list of many projects we have worked with the city of Fargo on.

SINCERELY,

DOUG BAKER

DAKOTA FENCE
Doug Baker / Vice President of Eastern Sales

Dakota Fence®

1110 25th Ave N • PO Box 1408 • Fargo, ND 58107-1408
800-726-4064 • Office 701-237-6181 • Fax 701-293-7811
Email sales@dakotafence.com

May 26, 2021

Proposed Work Plan

Start Date: June 21 - 25, 2021

1. Remove existing fence at both locations on the plan sheet as per Map "A".
2. All concrete footings to be removed and hauled off site at 5th Ave location.
3. Posts along 25th street may need to be cut off at grade due to fiber line in the area of post footings.
4. All old fence materials and gates to be disposed of off site.

June 28 – July 4, 2021

1. Set new posts at 5th Ave location for new fence.
2. There is a fiber underground utility line running along 25th street just east of the sidewalk. Fence may need to be moved back in this area due to utility lines. We have given a deduct on proposal to move fence back. If fence is to stay in this location all holes will be hydro Vac excavated to protect utilities. Although we do have concerns that if utility is in the fence line we cannot concrete utility line into post footings. We did utility locate before bid to clarify our concerns.
3. Gate along 25th street is listed as a 40' double swing gate. We have proposed a 40' slide gate as an alternate add on. We have concerns the swing gate could swing into the street with oncoming traffic and the approach to the east of the gate is uphill so the gate would need to be hung high off the ground to allow it to swing in. This gate has slats in it which would make a swing gate of this size very difficult to handle in the wind.
4. Finish setting posts at 25th Ave parking area both 6' and 8' high Fence.

July 6 – 9, 2021

1. Stretch fence fabric in all locations.
2. Hang gates at all locations.

July 12 - 16 2021

1. Install privacy slats based on delivery time. (Slats may take 4 week for delivery)
2. We have all other fence materials in stock.

Tentative Completion Date – July 16, 2021 (based on delivery of slats).

Dakota Fence®

1110 25th Ave N • PO Box 1408 • Fargo, ND 58107-1408
800-726-4064 • Office 701-237-6181 • Fax 701-293-7811
Email sales@dakotafence.com

May 26, 2021

CONTRACTOR: Dakota Fence

PROJECT: Public Works Facility Fence

LOCATION: Fargo

DATE OF SUBSTANTIAL COMPLETION: July 16, 2021

RE: Workmanship Warranty

Dakota Fence will warranty all products installed on the above mentioned project, per approved submittals. These items will be free of defects for a period of one year from the date of substantial completion.

Defects to the product or workmanship will not include Acts of God or damage and destruction by the Public enemy.

Sincerely,

DAKOTA FENCE

Doug Baker – Director of Eastern Sales

BOTTOM LOCK

PEXCO



The Bottom Lock Slat provides an economical and attractive way to enhance any chain link fence.

Pexco is the largest manufacturer of Bottom Locking Slats, which are marketed under the PDS® brand name. With over 40 years of experience extruding this product and an exclusive, proprietary, locking design, you can be assured of the highest standards in quality—from the raw materials used in manufacturing to the finished product in your fence.

This design utilizes a bottom locking system that provides an easy "snap-in" locking effect for securtiy and deters vandalism.

Design
Bottom Lock Slats are flat and tubular in shape, with two "legs" inside the rigid, hollow body of the slat, for extra durability.

Standard Heights
4, 5, 6, 7, 8, 10 and 12 feet. Special heights available upon request.

Slat Length
3½" shorter than the overall height of fence.

Bottom Locking Channel
10 feet provided in each bag.

Wind Load & Privacy Factor
Approximately 75%.

SLAT PROFILE: 

LOCKING CHANNEL: 

Colors*

White | Green | Brown | Black | Beige | Gray | Redwood | Royal Blue | Light Blue

* Exact representation of slat colors in printing is difficult. Please refer to actual color samples for final matching.
Covered by one or more of the following patents: US Patent 6,068,243 / 5,165,664 / 5,234,199

PDS FENCE PRODUCTS

PDS ® is a registered trademark of Pexco.

Made in the USA

PRODUCT SPECIFICATIONS

Slat Type	Slat Width	Mesh Size	Wire Gauge	Slats Per Bag	Approx. Coverage Per Box
Bottom Lock 2"	1 3/32"	2"	8, 9 or 11	82	10 linear feet
Bottom Lock 2¼"	1¼"	2¼" or 2⅜"	11½ or 12½	78	10 linear feet
Bottom Lock 1¾"	7/8"	1¾"	8, 9 or 11	100	10 linear feet

Materials

The Bottom Lock product is extruded from High Density Polyethylene (HDPE), color pigments and ultra violet (UV) inhibitors, specifically designed to retard the harmful effects of the sun and lengthen the life of the product.

Durability

Pexco PDS® HDPE Fence Products are resistant to: severe weather conditions, salt water, sand, road dirt, most acids, alcohol, alkaline, ammonia, petroleum distillates and common environmental pollutants.

Maintenance

Pressure cleaning of surface contaminants is quickly accomplished with plain water.

Wind Load Disclaimer

Pexco will not be responsible for fence damage resulting from wind load conditions due to insufficient structural support.

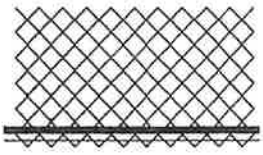
Limited Warranty

Bottom Lock carries a 25-year, pro-rata warranty against breakage under normal conditions. Write Pexco for full warranty information.

Installation Instructions

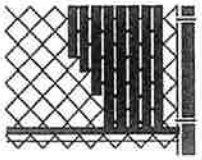
Step 1

Insert rail horizontally in first full diamond at bottom of fence with open side facing up.



Step 2

Insert vertical slats with beveled/notched end downward. Slat engages and interlocks with bottom rail.



Step 3

Push the vertical slat into the horizontal channel to lock-in place.



PDS FENCE PRODUCTS

HDPE Technical Properties

Property	Value
Melt Idex	(.35) Optimum extrusion processing conditions for Fence Slats
Density	(.945) Polyethylene ranges anywhere from .914 to .960 in density
Minimum Temp.	(-70°) Under no stress, HDPE remains flexible at this temperature
Maximum Temp.	(180°) Under no stress, HDPE will not distort at this temperature
Tensile Strength	(3,700 psi) HDPE will not distort at lesser loads or impacts

PEXCO LLC

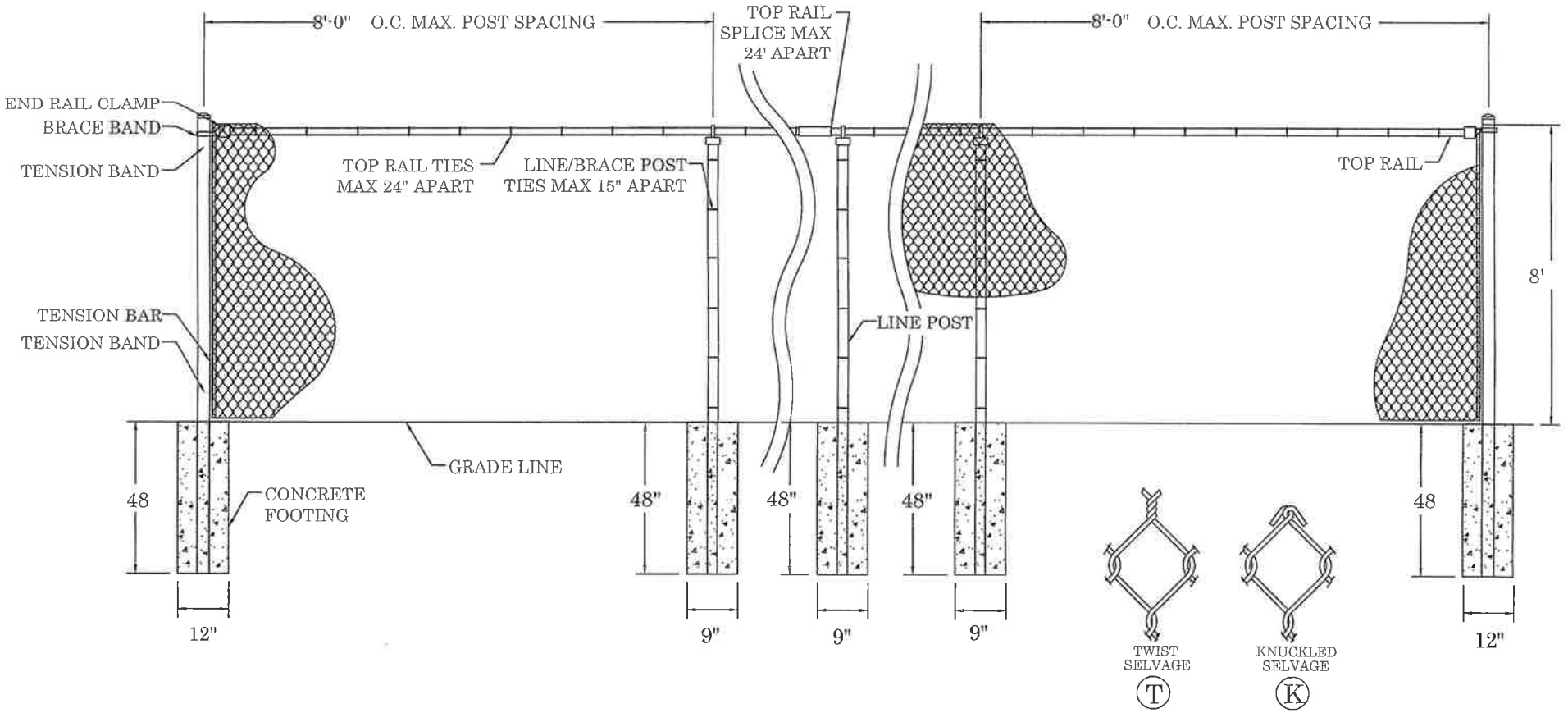
Tacoma, WA 98424 | Athol, MA 01331
800.822.SLAT (7528) | 800.755.SLAT (7528)

VISIT US AT:
www.pexco.com/fence

EMAIL US AT:
fence.sales@pexco.com

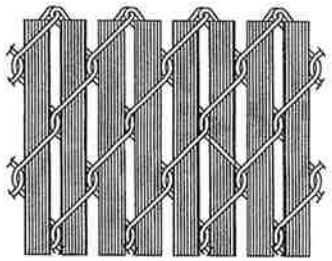
Contact your local fence professional for more information about our complete line of enhancement products.





FABRIC SELVAGE

Project:	Public Works Facility Fence				Top Rail:	1 5/8"	O.D.	1.83	lbs p.l.f.
Owner:	City Of Fargo				Mid Rail:		O.D.		lbs p.l.f.
Arch. - Eng.:					Bottom Rail:		O.D.		lbs p.l.f.
General Contractor:	Dakota Fence				Brace Rail:		O.D.		lbs p.l.f.
Submitted By:	Doug Baker		Date:	5/26/21	Top Tension Wire		Gauge		
Chain Link Fabric:	9	Gauge:	2"	Mesh:	Bottom Tension Wire		Gauge		
Top Selvage	T	Btm Selvage		K	Barbed Wire				
Terminal Posts:	2 7/8"	O.D.	4.64	lbs p.l.f.	Razor Wire				
Line Posts:	2 3/8"	O.D.	3.12	lbs p.l.f.	Terminal Anchor Size		Line Anchor Size		
Terminal Base Plates		Line Base Plate			Chain Link Slats Color				



FENCE SLATS

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DATE: 1/31/20
DRAWN BY: CJB

Dakota Fence®

FARGO, BISMARCK, MINOT, WILLISTON

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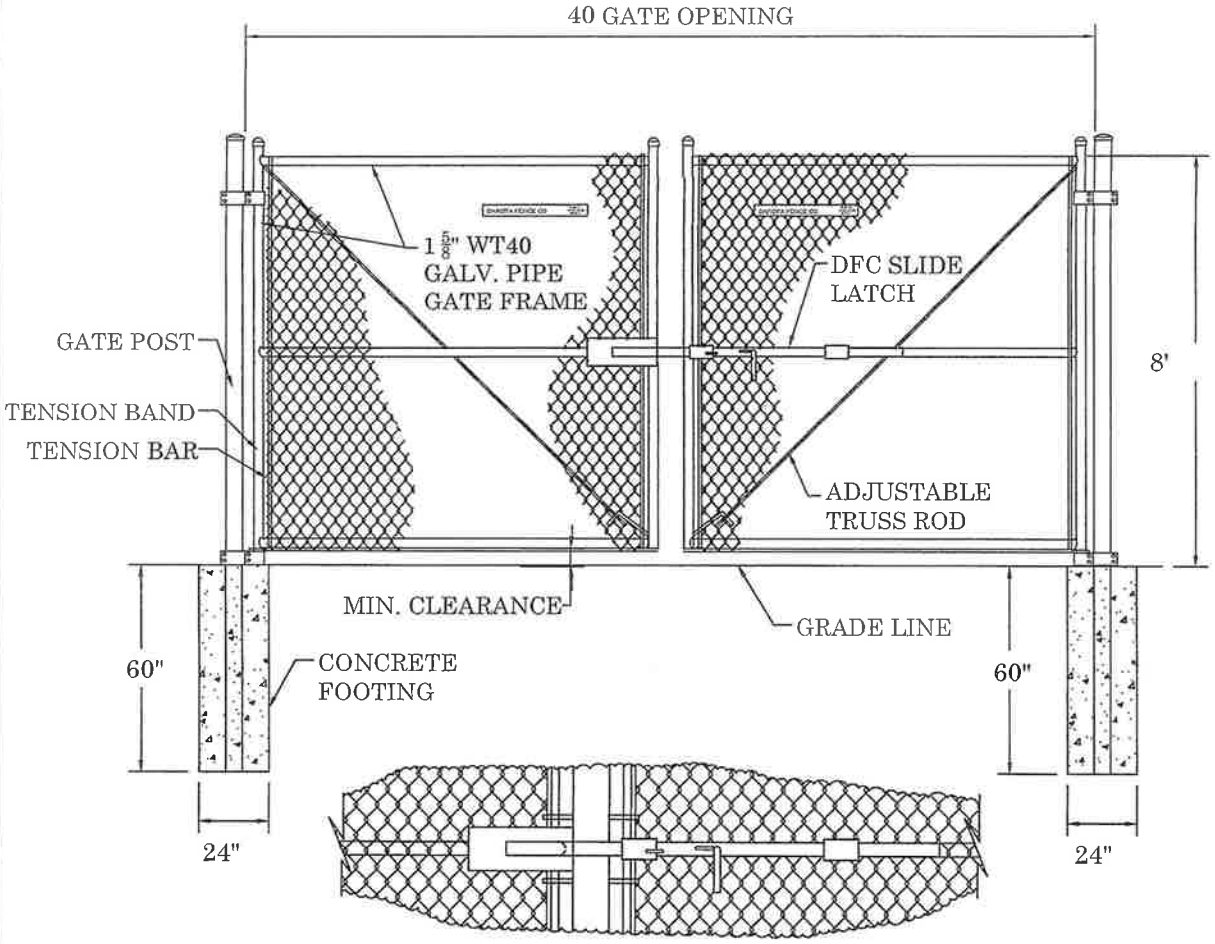
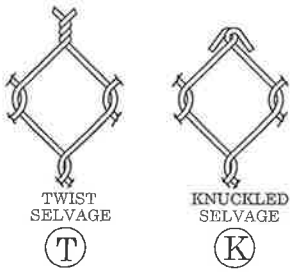
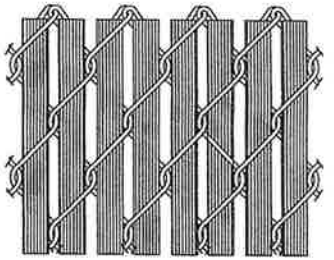




FABRIC SELVAGE

DFC SLIDE LATCH

Project:	Public Works Facility Fence				Gate Posts:	6 5/8"	O.D. 18.97	lbs p.l.f.
Owner:	City Of Fargo				Gate Post Plates		Gate Anchor Size	
Arch. - Eng.:					Barbed Wire			
General Contractor:	Dakota Fence				Razor Wire			
Submitted By:	Doug Baker		Date:	5/26/21	Gate Latch	DFC Slide Latch		
Chain Link Fabric:	9	Gauge:	2"	Mesh:	Gate Hinges	Bulldog Hinges		
Top Selvage	T	Btm Selvage		K	Chain Link Slats Color			



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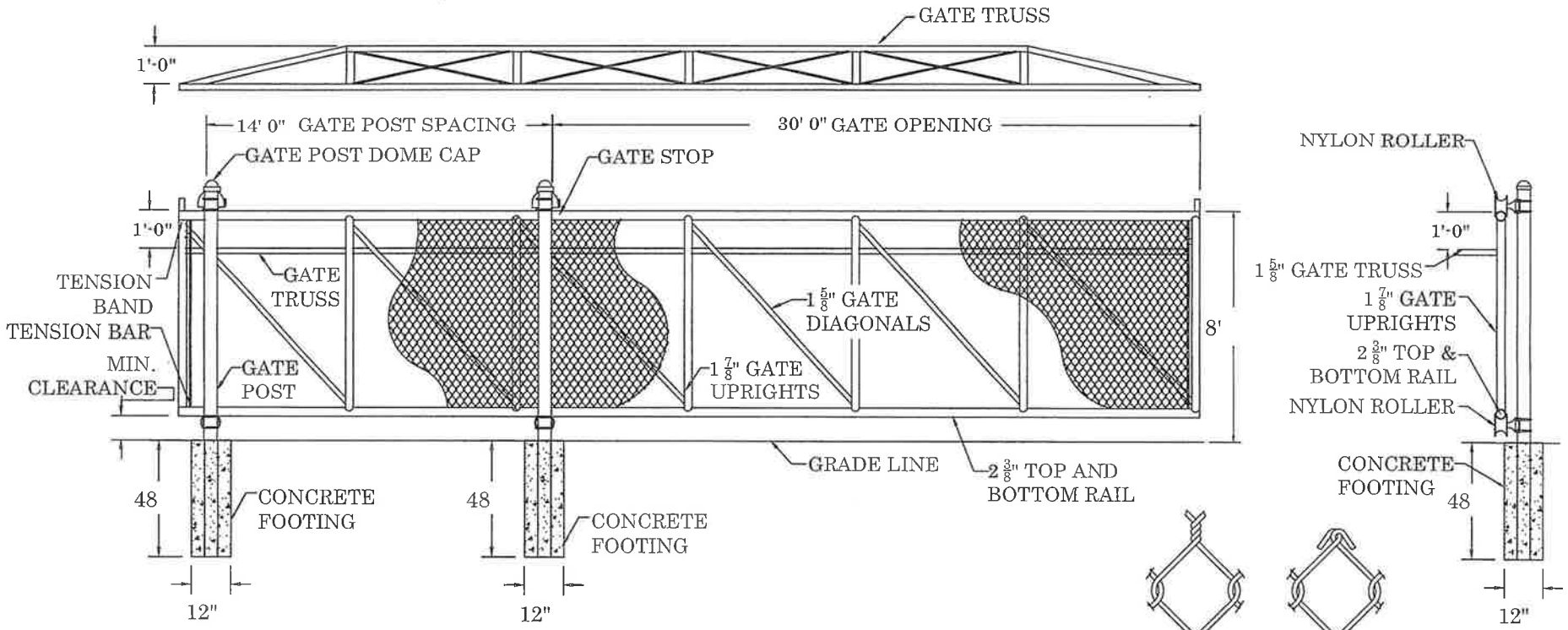
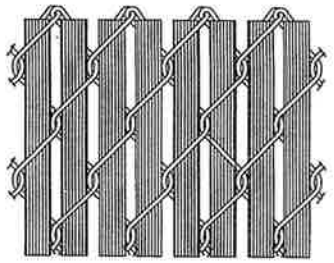


FABRIC SELVAGE

Project:	Public Works Facility Fence			Gate Posts:	4"	O.D.	6.56	lbs p.l.f.
Owner:	City Of Fargo			Gate Base Plates				
Arch. - Eng.:				Gate Post Anchor				
General Contractor:	Dakota Fence			Barbed Wire				
Submitted By:	Doug Baker	Date:	5/26/21	Razor Wire				
Chain Link Fabric:	9	Gauge:	2" Mesh:	Chain Link Slats Color				
Top Selvage	T	Btm Selvage	K					



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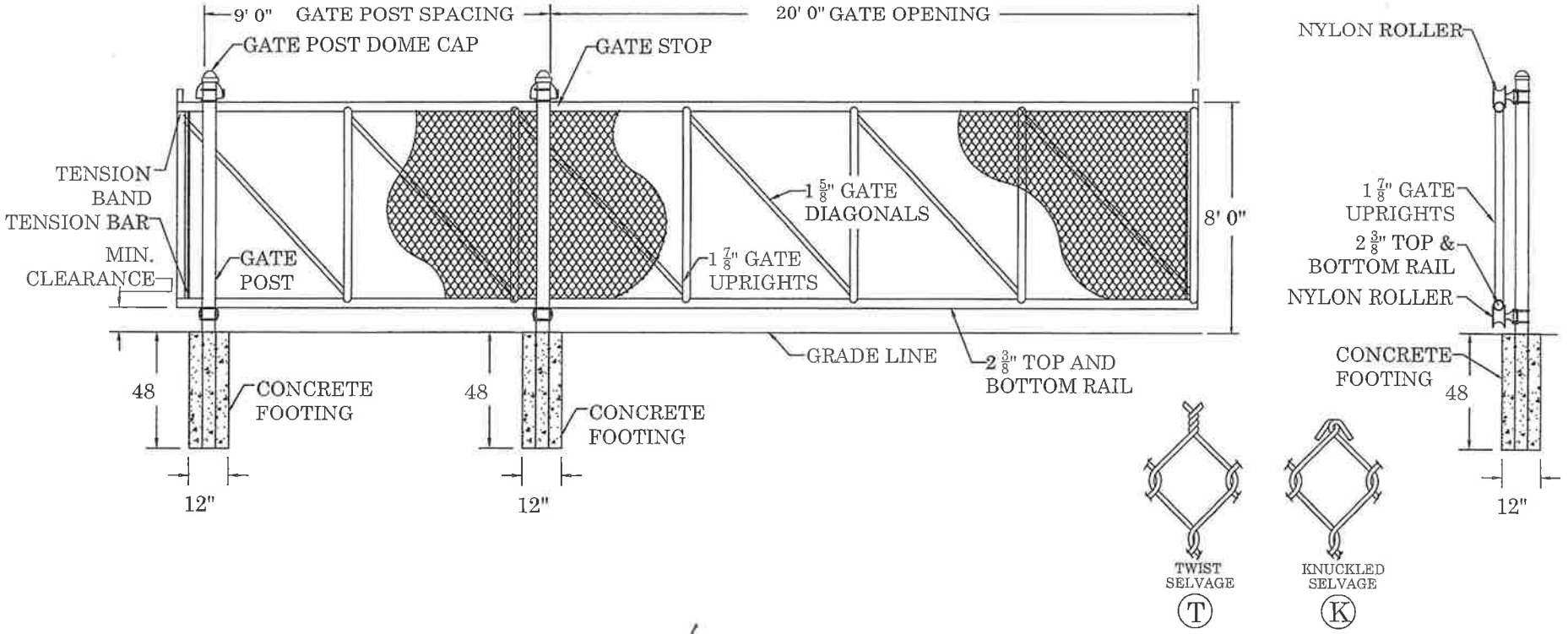

FABRIC SELVAGE

Alternate 40' Double Slide

Project:	Public Works Facility Fence			Gate Posts:	4"	O.D.	6.56	lbs p.l.f.
Owner:	City Of Fargo			Gate Base Plates				
Arch. - Eng.:				Gate Post Anchor				
General Contractor:	Dakota Fence			Barbed Wire				
Submitted By:	Doug Baker	Date:	5/26/21	Razor Wire				
Chain Link Fabric:	9	Gauge:	2" Mesh:	Chain Link Slats Color				
Top Selvage	T	Btm Selvage	K					

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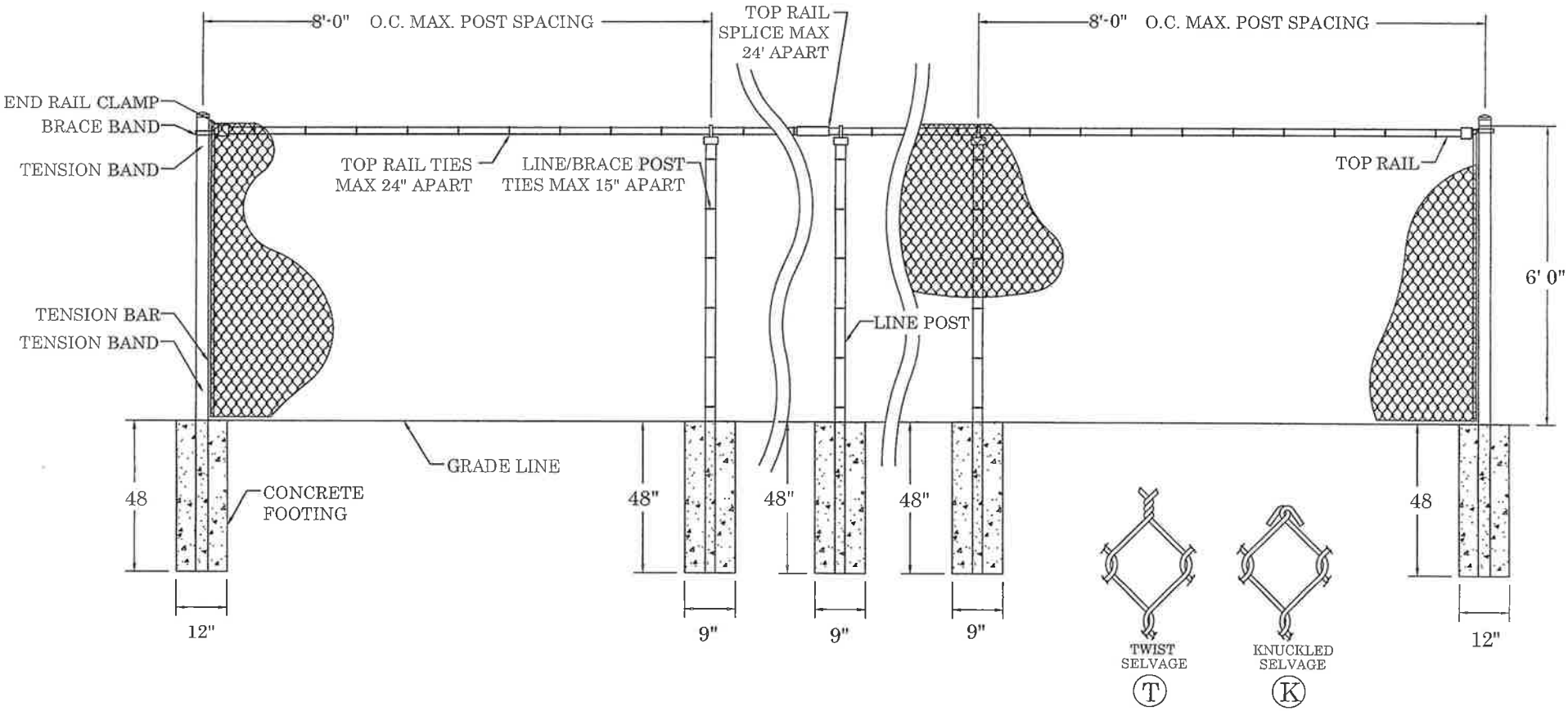

FABRIC SELVAGE

Project:	Public Works Facility Fence				Top Rail:	1 5/8"	O.D.	1.83	lbs p.l.f.
Owner:	City Of Fargo				Mid Rail:		O.D.		lbs p.l.f.
Arch. - Eng.:					Bottom Rail:		O.D.		lbs p.l.f.
General Contractor:	Dakota Fence				Brace Rail:		O.D.		lbs p.l.f.
Submitted By:	Doug Baker		Date:	5/26/21	Top Tension Wire		Gauge		
Chain Link Fabric:	9	Gauge:	2"	Mesh:	Bottom Tension Wire		Gauge		
Top Selvage	T	Btm Selvage		K	Barbed Wire				
Terminal Posts:	2 7/8"	O.D.	4.64	lbs p.l.f.	Razor Wire				
Line Posts:	2 3/8"	O.D.	3.12	lbs p.l.f.	Terminal Anchor Size		Line Anchor Size		
Terminal Base Plates		Line Base Plate			Chain Link Slats Color				

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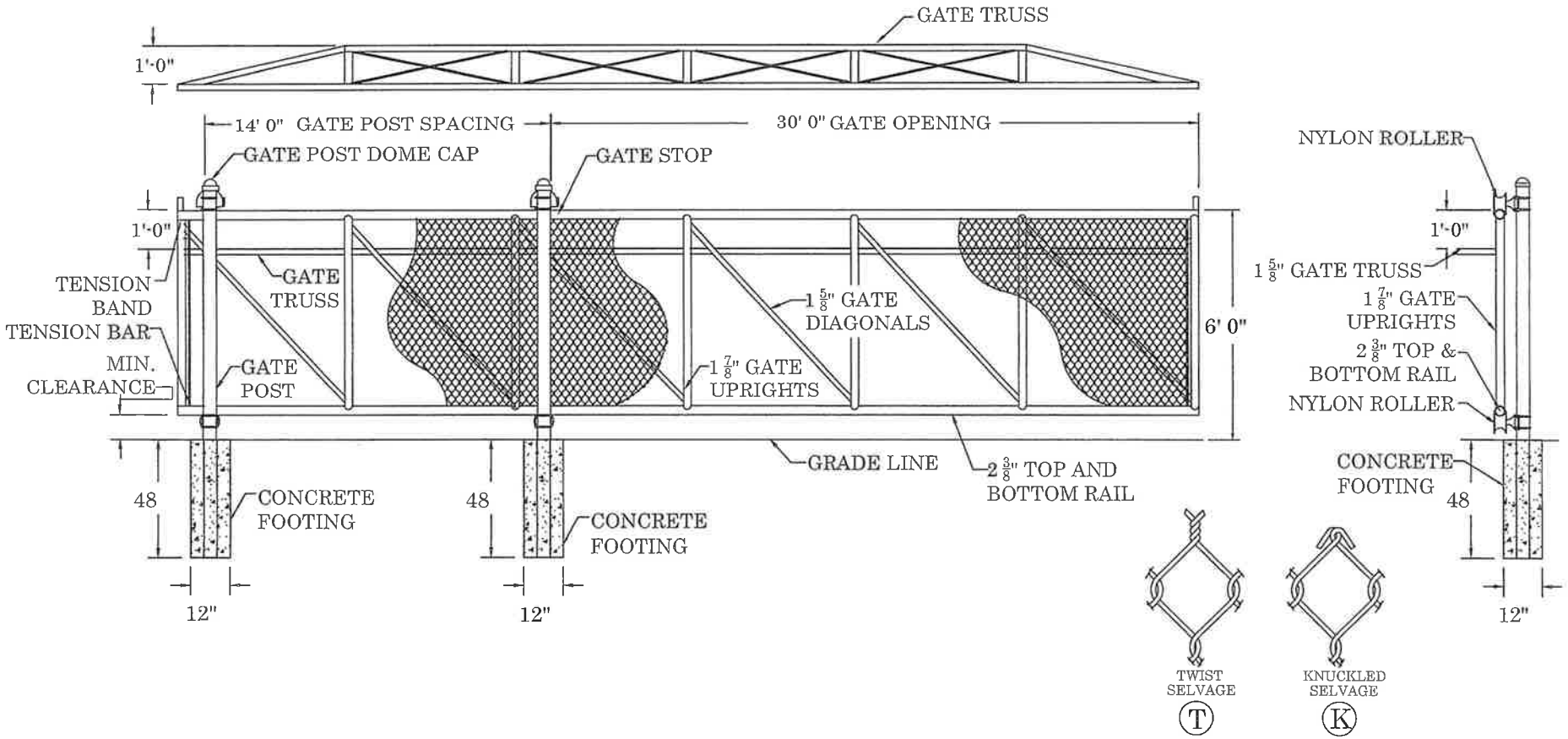

FABRIC SELVAGE

Project:	Public Works Facility Fence				Gate Posts:	4"	O.D.	6.56 lbs p.l.f.
Owner:	City Of Fargo				Gate Base Plates			
Arch. - Eng.:					Gate Post Anchor			
General Contractor:	Dakota Fence				Barbed Wire			
Submitted By:	Doug Baker		Date:	5/26/21	Razor Wire			
Chain Link Fabric:	9	Gauge:	2"	Mesh:	Chain Link Slats Color			
Top Selvage	T	Btm Selvage		K				

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ATTACHMENT A

CITY OF FARGO
FEE PROPOSAL FORM
Public Works Facility Fence Project

Vendor proposes to furnish and install a fence system in accordance with this Request for Proposal:

$ $64,331.00

Includes Slide Gate / in Lieu of Swing Gate at 25th St. location.
Includes Moving fence away from Power Lines / Fiber.
Hydrovac Holes Near building & 6' high Gate.

Option: Additional fence may be installed upon request

Additional Fence (Cost per foot) $ 85.00 per ft.

Additional Posts (Cost per post) $ Included in Per ft. Price.

Signature: Douglas D. Baker

Title: V.P.

Date: 5-26-21

THE CITY OF Fargo
FAR MORE

23

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

June 14, 2021

Board of City Commissioners
224 N 4th Street
Fargo, ND 58102

Dear Commissioners:

On June 1, 2021, the City Commission approved (1) award of the Ground Transportation Center Phase 2 project to Gast, (2) included four (4) alternates as options to be exercised based upon available funding and (3) issue the Notice to Proceed. It has been determined the Notice to Proceed from the June 1 meeting needs to be modified to include only alternate 4, but not alternate 1 due to funding availability. An updated notice to proceed is attached for execution.

In addition, the contract for the award of the project is attached for execution.

Recommended Action:
Approve and execute the attached Notice to Proceed.
Approve and execute the attached contract.

Thank you,

Julie Bommelman
Fargo Transit Director

/Attachment

NOTICE OF AWARD

Date of Issuance:	June 8, 2021		
Owner:	City of Fargo	Owner's Project No.:	F21001
Engineer:	KLJ Engineering, LLC	Engineer's Project No.:	1804-00689
Project:	GTC Exterior Renovations		
Contract Name:	Single Prime Stipulated Sum		
Bidder:	Gast Construction Company, Inc.		
Bidder's Address:	3410 39th Street SW, Fargo, ND 58104		

You are notified that Owner has accepted your Bid dated **May 19, 2021** for the above Contract, and that you are the Successful Bidder and are awarded a Contract for:

Base Bid and Alternate #4

The Contract Price of the awarded Contract is $1,747,500. 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 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 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): Deliver certificate of insurance prior to issuance of notice to proceed.

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 J. Mahoney

Title: Mayor

Copy: Engineer

AGREEMENT
BETWEEN OWNER AND CONTRACTOR
FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)

THIS AGREEMENT is by and between City of Fargo ("Owner") and Gast Construction Company, Inc. ("Contractor").
Owner and Contractor hereby agree as follows:

ARTICLE 1 – THE WORK

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

A. The renovations to the transit facility include, but are not limited to, concrete overlay replacement, canopy reconfiguration, re-roofing, smoking shelter, unit heater, fencing, A/V equipment, and other miscellaneous improvements.

ARTICLE 2 – THE PROJECT

2.01 The Project for, of which the Work under the Contract Documents is a part, is generally described as follows:

A. GTC Exterior Renovations (F21001)

ARTICLE 3 – ENGINEER

3.01 The part of the Project that pertains to the Work has been designed by KLJ Engineering, LLC and their consultants.

3.02 The Owner has retained KLJ Engineering, LLC ("Engineer") to act as Owner's representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

ARTICLE 4 – CONTRACT TIMES

4.01 *Time of the Essence*

A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.02 *Contract Times: Dates*

A. The Work will be substantially completed on or before November 5, 2021 for the remaining portion of the project and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before November 19, 2021.

B. Parts of the Work shall be substantially completed on or before the following Milestone(s):

1. Milestone 1: Audio visual equipment shall be substantially complete within 60 days after the date when the Contract Times commence to run as provided in Paragraph 4.01 of the General Conditions.

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2. Milestone 2 (Base Bid including Alternates 1 and 4): All concrete overlay associated with the base bid and Alternate No. 1 and canopy construction (including re-roofing and façade) shall be substantially complete prior to September 1, 2021.

4.03 *Liquidated Damages*

A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with the Contract. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty):

1. Substantial Completion: Contractor shall pay Owner $1600 for each day that expires after the time (as duly adjusted pursuant to the Contract) specified in Paragraph 4.02 above for Substantial Completion until the Work is substantially complete.

2. Completion of Remaining Work: After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner $450 for each day that expires after such time until the Work is completed and ready for final payment. Liquidated damages for failing to timely attain Substantial Completion and final completion are not additive and will not be imposed concurrently.

3. Milestones: Contractor shall pay Owner $350 for each day that expires after the time (as duly adjusted pursuant to the Contract) specified above for achievement of Milestones 1 and 2, until Milestones are achieved.

4.04 *Special Damages*

A. In addition to the amount provided for liquidated damages, Contractor shall reimburse Owner (1) for any fines or penalties imposed on Owner as a direct result of the Contractor's failure to attain Substantial Completion according to the Contract Times, and (2) for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Substantial Completion (as duly adjusted pursuant to the Contract), until the Work is substantially complete.

B. After Contractor achieves Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times, Contractor shall reimburse Owner for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 3.02 for Work to be completed and ready for final payment (as duly adjusted pursuant to the Contract), until the Work is completed and ready for final payment.

ARTICLE 5 – CONTRACT PRICE

5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents the amounts that follow, subject to adjustment under the Contract:

A. For all Work other than Unit Price Work, a lump sum of: $1,375,234.00.

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All specific cash allowances are included in the above price in accordance with Paragraph 13.02 of the General Conditions.

B. For all Unit Price Work, an amount equal to the sum of the extended prices (established for each separately identified item of Unit Price Work by multiplying the unit price times the actual quantity of that item):

Unit Price Work					
Item No.	**Description**	**Unit**	**Estimated Quantity**	**Unit Price**	**Extended Price**
1.	Class 1H Removal (1 ½" Latex/Concrete Overlay)	SY	818	$148.50	$121,473.00
2.	F&I 1-1/2" Overlay Concrete	CY	51	$3,300.00	$168,300.00
3.	F&I Penetrating Water Repellent Treatment	SY	818	$6.60	$5,400.00
4.	F&I Epoxy Crack Repair	LF	300	$8.80	$2,640.00
5.	Deck Repair Allowance	LS	1	$74,453.00	$74,453.00
Total of all Extended Prices for Unit Price Work (subject to final adjustment based on actual quantities)					$372,266.00

The extended prices for Unit Price Work set forth as of the Effective Date of the Contract are based on estimated quantities. As provided in Paragraph 13.03 of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by Engineer.

C. Total of Lump Sum Amount and Unit Price Work (subject to final Unit Price adjustment) $1,747,500.00.

D. For all Work, at the prices stated in Contractor's Bid, attached hereto as an exhibit.

ARTICLE 6 – PAYMENT PROCEDURES

6.01 *Submittal and Processing of Payments*

A. Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

6.02 *Progress Payments; Retainage*

A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on or about the first day of each month during performance of the Work as provided in Paragraph 6.02.A.1 below, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided elsewhere in the Contract.

1. Owner may retain five percent (5%) of the amount due Contractor until the completion of the entire Contract work. In no case will the Owner make payment to a contractor who is in default under the terms of the Contract unless expressly authorized by the Board of City Commissioners.

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2. The retained amounts will be according to the following table:

Percentage of Completion	Percent Retained
0-90%	5%
91-100%	1-5%*
* Reduction of retainage is at the discretion of the Engineer based on the progress of the contract	

6.03 *Final Payment*

A. Upon final completion and acceptance of the Work in accordance with Paragraph 15.06 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 15.06.

ARTICLE 7 – INTEREST

7.01 All amounts not paid when due shall bear interest at the rate of 1.5 percent per annum.

ARTICLE 8 – CONTRACTOR'S REPRESENTATIONS

8.01 In order to induce Owner to enter into this Contract, Contractor makes the following representations:

A. Contractor has examined and carefully studied the Contract Documents, and any data and reference items identified in the Contract Documents.

B. Contractor has had ample opportunity to visit the Site, conduct a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

C. Contractor is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.

D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings, and (2) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings.

E. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (3) Contractor's safety precautions and programs.

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F. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.

G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.

H. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.

I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

J. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

ARTICLE 9 – CONTRACT DOCUMENTS

9.01 *Contents*

A. The Contract Documents consist of the following:

1. This Agreement (pages 1 to 8, inclusive).
2. Performance bond (pages 1 to 4, inclusive).
3. Payment bond (pages 1 to 4, inclusive).
4. ~~Other bonds.~~
   a. ~~___ (pages ___ to ___, inclusive).~~
5. General Conditions (pages 1 to 72, inclusive).
6. Supplementary Conditions (pages 1 to 16, inclusive).
7. Specifications as listed in the table of contents of the Project Manual.
8. Drawings (not attached but incorporated by reference) consisting of 26 sheets with each sheet bearing the following general title: GTC Exterior Renovations
9. Addenda (numbers 1 to 3, inclusive).
10. Exhibits to this Agreement (enumerated as follows):
    a. Contractor's Bid (pages 1 to 11, inclusive).
11. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
    a. Notice to Proceed.
    b. Work Change Directives.
    c. Change Orders.
    d. Field Orders.

B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).

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C. There are no Contract Documents other than those listed above in this Article 9.

D. The Contract Documents may only be amended, modified, or supplemented as provided in the General Conditions.

ARTICLE 10 – MISCELLANEOUS

10.01 *Terms*

A. Terms used in this Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions.

10.02 *Assignment of Contract*

A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

10.03 *Successors and Assigns*

A. Owner and Contractor each binds itself, its successors, assigns, and legal representatives to the other party hereto, its successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

10.04 *Severability*

A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

10.05 *Contractor's Certifications*

A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 10.05:

1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process or in the Contract execution;

2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;

3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and

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4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

10.06 *Other Provisions*

A. Owner stipulates that if the General Conditions that are made a part of this Contract are based on EJCDC® C-700, Standard General Conditions for the Construction Contract, published by the Engineers Joint Contract Documents Committee®, and if Owner is the party that has furnished said General Conditions, then Owner has plainly shown all modifications to the standard wording of such published document to the Contractor, through a process such as highlighting or "track changes" (redline/strikeout), or in the Supplementary Conditions.

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IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement.

This Agreement will be effective on June 14, 2021 (which is the Effective Date of the Contract).

OWNER: City of Fargo	CONTRACTOR: Gast Construction Company, Inc.
Signature	Signature
By: Timothy J Mahoney	By: Jim Gast
Title: Mayor	Title: President
	(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)
Attest: Signature	Attest: Signature
By: Steve Sprague	By: Jared Pedersen
Title: City Auditor	Title: Project Manager
Address for giving notices:	Address for giving notices:
City of Fargo	Gast Construction Company, Inc.
225 4th Street North	3410 39th St S
Fargo, ND 58102	Fargo, ND 58104
	License No.: 961
(If Owner is a corporation, attach evidence of authority to sign. If Owner is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Agreement.)	*NOTE TO USER: Use in those states or other jurisdictions where applicable or required.*

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THE CITY OF Fargo
FAR MORE

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

June 14, 2021

Board of City Commissioners
Fargo City Hall
200 North Third Street
Fargo, ND 58102

Dear Commissioners:

The attached amendment to the contract between the City of Fargo and KLJ, Inc. for $5,882.09 is due to the discovery of a broken post-tensioned tendon along Grid 9. The additional scope will include a structural assessment of the deck as it relates to the broken tendon and associated coordination between design team and the City of Fargo. There are no other changes to terms of the contract.

The requested motion is to approve the attached amendment between the City of Fargo and KLJ, Inc. for $5,882.09.

Thank you.

Sincerely,

Julie Bommelman
Transit Director
City of Fargo

\Attachment

AMENDMENT TO ENGINEER-OWNER AGREEMENT
Amendment No. 8

Background Data

a. Effective Date of Engineer-Owner Agreement: April 2019

b. Engineer: KLJ Engineering, LLC

c. Owner: City of Fargo

d. Project: GTC Remodel

e. This Part of the Project: GTC Exterior Renovations

Nature of Amendment (check all that apply)

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

Description of Modifications

KLJ's scope of services have been modified as identified in the Exhibit A.8 attached.

Agreement Summary

a. Original agreement amount:	$332,740.08
b. Net change for prior amendments:	$228,308.73
c. This amendment amount:	$5,882.09
d. Adjusted Agreement amount:	$566,930.90

Engineer and Owner hereby agree to modify the above-referenced Agreement as set forth in this Amendment. All provisions of the Agreement not modified by this or previous Amendments remain in effect. The Effective Date of this Amendment is May 17, 2021.

ENGINEER: KLJ Engineering, LLC

Mark Anderson

By: Mark Anderson

Title: Vice President, EPW

Date Signed: 5/12/2021

OWNER: City of Fargo

By: Tim Mahoney, MD

Title: Mayor

Date Signed:

Exhibit A.8
Contract Amendment No. 8
May 17, 2021
Architectural/Engineering Services
GTC Remodel
GTC Design Bid Build
Fargo, ND

Engineer's Services

The following modifications have been made to the scope of work included in the original contract between city of Fargo and KLJ dated April 2019. The changes are a result of the discovery of a broken post-tensioned (P/T) tendon along Grid 9. The additional scope will include a structural assessment of the deck as it relates to the broken tendon and associated coordination between design team and owner.

I. GTC Exterior Renovations
   A. P/T Tendon Evaluation at Grid 9
      1. Kimley-Horn will analyze the impacted slabs and beams to determine if the tendon can be abandoned or if it needs to be repaired.
      2. Kimley-Horn will review existing record drawing information and site photographs to update a structural model for analysis of the required loads.
      3. Kimley-Horn will prepare a report including their findings and recommendations which will be signed by a structural engineer licensed in the state of North Dakota.
      4. KLJ will provide project management services related to this work.

II. Revised Project Schedule

Contract Amendment Execution/Notice to Proceed	January 25, 2021
Kick-Off Meeting	Week of February 8, 2021
50% Design Meeting	Week of March 1, 2021
90% Design Meeting	Week of April 5, 2021
Final Construction Documents	Week of April 26, 2021
Advertise for Bid	April 28, 2021
P/T Tendon Evaluation at Grid 9 (NTP)	May 17, 2021
Open Bids	May 19, 2021
Finalize P/T Tendon Evaluation at Grid 9	June 11, 2021
Construction Administration	June – November 2021

III. Services Not Included

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

A. Cost estimates for tendon repairs.
B. Site visits by Kimley-Horn.
C. Development of construction documents and construction administration associated with repairing the existing tendon.
D. Construction administration associated with abandoning the existing tendon.
E. Additional services, tasks, and meetings not described in tasks outlined above.

KLJ

ENGINEERING FEES

GTC REMODEL - Contract Amendment #8 (May 17, 2021)									
1.	**Direct Labor**	**Hours**	**X**	**Rate**	**=**	**Project Cost**		**Total**	
	Contract Administrator	0.5	X	30	=	$	15.00	$	15.00
	Project Manager	4	X	59	=	$	236.00	$	236.00
	Senior Project Manager	0.5	X	76	=	$	38.00	$	38.00
	Project Controls Specialist I	0.5	X	37	=	$	18.50	$	18.50
			X		=	$	-	$	-
			X		=	$	-	$	-
			X		=	$	-	$	-
			X		=	$	-	$	-
			X		=	$	-	$	-
			X		=	$	-	$	-
			X		=	$	-	$	-
			X		=	$	-	$	-
Subtotal					=	$	307.50	$	307.50
2.	**Overhead/Indirect Cost (expressed as indirect rate x direct labor)**						185.16%	$	569.37
3.	**Subcontractor Costs**					$	4,900.00	$	4,900.00
4.	**Materials and Supplies Costs**					$	-	$	-
5.	**Travel Costs**					$	-	$	-
6.	**Fixed Fee**						12%	$	105.22
7.	**Miscellaneous Costs**							$	-
Total Cost					=			**$**	**5,882.09**

CITY OF
Fargo

Metropolitan Area Transit
650 23rd Street N
Fargo, ND 58102
Phone: 701-241-8140
Fax: 701-241-8558

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June 14th, 2021

The Honorable Board of City Commissioners
City of Fargo
225 4th St N
Fargo, North Dakota 58102

RE: RFQ21072 Metro Transit Garage Hoist Replacement

Commissioners,

A Request for Qualifications issued by the Transit Department Architecture and Engineering Services for the repair of the drive-over pit and the replacement of the in-ground hoists at the Metro Transit Garage.

The project is funded by NDDOT grant contract number 38201125 which was presented to and approved by the City of Fargo Commission on September 9th, 2020.

Proposals were received on April 21st, 2021. KLJ was the only firm to submit a proposal for this project. Their submitted proposal costs was $45,716.26. KLJ will oversee the architecture and engineering services as well as perform the construction administration.

Your approval was given on May 3rd, 2021 to award the Architecture and Engineering Services to KLJ. Contract was written and approved by the City Attorney.

Attachments: Architecture and Engineering Services Contract with KLJ

Recommended Action: For RFQ21072, approve and sign contract with KLJ for the Architecture and Engineering services for the Metro Transit Garage drive-over pit repair and hoist replacement.

Respectively submitted,

Jordan Smith

Jordan Smith
Transit Fleet and Facilities Manager

AGREEMENT
BETWEEN

CITY OF FARGO
and
KADRMAS, LEE & JACKSON, INC.

This agreement is made and entered into effective by and between the **CITY OF FARGO, NORTH DAKOTA**, a North Dakota Municipal Corporation, hereinafter referred to as "City" and **KADRMAS, LEE & JACKSON, INC.**, a North Dakota Corporation, hereinafter referred to as "Engineer".

WITNESSETH

WHEREAS, City has determined that it requires architectural and engineering services to undertake assessment and repair of an existing drive-over maintenance pit and replacement of two in-ground hoists at the Metro Transit Garage located at 650 23rd Street North, Fargo; and

WHEREAS, Engineer has represented that it has the necessary expertise and personnel and is qualified to perform such services.

NOW, THEREFORE, for good and valuable consideration hereby acknowledged, it is mutually understood and agreed as follows:

I. Complete Agreement

This Agreement and the attachments and documents incorporated herein constitute the complete and exclusive statement of the terms of the Agreement between City and Engineer, and it supersedes all prior representations, understanding and communications. The invalidity in whole or in part of any provision of this Agreement shall not affect the validity of other provisions. City's failure to insist in one or more instances upon performance of any term or terms of this Agreement shall not be construed as a waiver or relinquishment of City's right to such performance by the Engineer.

II. City and Engineer Designees

The Transit Director, or her Designee, shall have the authority to act for and exercise any of the rights of City as set forth in the herein Agreement, subsequent to the authorization by the Board of city commissioners of City.

The Engineer or his/her Designee, shall have the authority to act and exercise any of the rights of Engineer as set forth in the herein Agreement.

III. Employment of the Engineer

City hereby engages the Engineer and the Engineer agrees to perform the services, hereinafter described in the connection with the condition and assessment services, design services, bidding and contracting services, as provided for in Exhibit A attached hereto.

City and Engineer agree that Engineer may engage such subconsultants as necessary from time to time, with the consent of City, to provide the services provided for hereunder. For purposes of this Agreement, all references to Engineer shall encompass Engineer's approved use of subconsultants to perform the services.

IV. Engineer's Employees

The personnel performing services under this Agreement shall at all times be under Engineer's exclusive direction and control and shall be employees of Engineer and not employees of City. Engineer shall pay all wages, salaries and other amounts due its employees in connection with the Agreement and shall be responsible for social security, income tax withholding, unemployment compensation, worker compensation insurance and similar matters.

V. Scope of Work

Engineer shall provide services in accordance with Exhibit A to this Agreement attached hereto and by reference incorporated herein, during the entire term of the Agreement.

VI. Amendment- Changes in Scope of Work

It is understood and agreed by City and Engineer that it may be necessary, from time to time during the term of this Agreement, to modify its provisions or to revise the scope. In each such instance, City and Engineer shall consult with each other and shall come to a mutually acceptable agreement as to the nature of the required modification or revision desired. Each modification or revision required shall be reduced to writing and when appropriately executed by both parties, shall constitute an amendment to this Agreement. Each amendment will be identified and sequentially numbered as "Amendment No. 1" and so forth, shall be subject to all the other applicable provisions of the Agreement, and shall be attached to the Agreement. Until an amendment has been approved in the foregoing manner, it shall have no force or effect.

Add Alternative Services as described in Exhibit A shall be agreed to by the parties and based on the estimated distribution of compensation as provided in Exhibit A attached hereto.

VII. Insurance

Engineer shall keep and maintain the following insurance coverages:

A. **Professional Liability Insurance**. Engineer shall maintain in full force and effect until at least three years subsequent to completion of the Agreement professional liability insurance covering the performance of the Services. Such insurance shall be on a "claims made" basis and in the amount of at least $1,000,000/$1,000,000 aggregate.

B. **Workers Compensation Insurance.** Engineer shall maintain workers compensation insurance with 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

C. **General Liability Insurance**. Engineer shall maintain general liability insurance with coverage to include: Premises/Operations, Completed Operations and Contractual Liability (to cover the indemnification provision in paragraph 2.1 of the Agreement). Limits of coverage shall not be less than:

$1,000,000 Per occurrence
$2,000,000 Aggregate

D. **Automobile Insurance**. Engineer 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:
$1,000,000 Per accident

E. **Evidence of Insurance**. The above insurance shall be maintained in companies lawfully authorized to do business in North Dakota and which are reasonably acceptable to City. Consultant 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 of Fargo 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 City.

F. **Excess/Umbrella Coverage**. Engineer shall secure Excess/Umbrella coverage, naming the city of Fargo as an additional insured, as follow:
$2,000,000 Umbrella/Excess

G. Engineer may meet the levels of insurance required by Section VII. B, Worker's Compensation Insurance Coverage B, and Sections VII. C and D. through a combination of Primary and Excess/Umbrella coverage.

VIII. Compensation.

City will pay to Engineer compensation for the Services as set forth in Exhibit A. Engineer shall submit itemized monthly statements for such compensation equal to the value of the Services completed throughout the preceding month, as such value is determined in accordance with the then current Schedule of Charges. All such invoices shall become due and payable by City within 45 days of the date of receipt of any such invoice. City shall notify Engineer in writing, within 15 days of the date of the invoice, if City objects to any portion of the charges on the invoice, and shall promptly pay the undisputed portion. City shall pay a finance charge fee of 1.5% per month, but not exceeding the maximum amount allowed by law, for all unpaid amounts 45 days or older. Upon receipt of each payment, Engineer shall furnish a mechanic's lien waiver reflecting all sums paid to Engineer.

IX. Changes and Adjustments.

City may issue changes consisting of additions, deletions or other revisions, with corresponding adjustments to the compensation to Engineer and the schedule. All such changes in the Services shall be authorized by written Amendment. An adjustment to the compensation to Engineer resulting from a change in the Services shall be determined by mutual acceptance of a lump sum amount, application of hourly billing rates as set forth in the current Schedule of Charges, or in such other manner as is mutually agreed upon by Engineer and City. If Engineer believes it is entitled to additional compensation or time for performing additional Services that are beyond the scope of the Task Order or Amendment, Engineer shall immediately notify City thereof and secure City's approval prior to performing such additional Services. Engineer shall not be entitled to additional compensation if additional work is the result of its errors.

X. Location of Underground Facilities.

Engineer will contact North Dakota One Call and request they notify the appropriate utility vendors to clear the underground utilities. City or its authorized representative will notify Engineer immediately of the presence and location of any underground objects or private utilities that are not the responsibility of public agencies.

XI. Third Party Reliance.

This Agreement and the Services provided are for Engineer's and City's sole benefit and exclusive use, with no third party beneficiaries intended.

XII. Conflict of Interest.

Engineer represents and warrants that it has no conflict of interest which would prevent Engineer from acting in the City's best interests, and that Engineer will guard against a conflict of interest arising or existing during the term of this Agreement.

XIII. Entire Agreement.

The terms and conditions set forth herein constitute the entire understanding of the parties relating to the provision of Services by Engineer to City. This Agreement may be amended only by a written instrument signed by both parties.

XIV. Hazardous Materials.

Engineer is responsible for compliance with any requirements regarding hazardous materials. If Engineer encounters a hazardous material or substance and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from the material defined as toxic of hazardous pursuant to federal or state statutes or regulations, encountered on the site by Engineer, Engineer shall immediately stop work in the affected area and report the condition to City.

XV. Governing Law.

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

XVI. Assignment.

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

XVII. Independence.

In performing all Services under this Agreement, Engineer shall be and remain an independent Engineer in fact and in law. City shall have no control, or right of control over the manner or means of Engineer performing its work. Engineer shall be solely responsible for the compensation, benefits, contributions and taxes, if any, of its employees, subconsultants and agents.

XVIII. Consequential Damages.

A. To the extent allowed under North Dakota Law, neither City nor the Engineer shall be responsible or held liable to the other for any indirect, incidental, special or consequential damages of any nature whatsoever, including without limitation, liability for the loss of use of property, loss of profits, or other revenue, interest, loss of product, increased expenses or business interruption, however the same may be caused.

B. This waiver shall not apply to any liability for any type of damage or loss to the extent that such loss or damages are covered by the proceeds of insurance required to be carried pursuant to this Agreement.

XVIII. Dispute Resolution.

Engineer and City will exercise good faith efforts to resolve disputes through a mutually acceptable Alternative Dispute Resolution procedure. Nothing prevents the parties from pursuing litigation in the appropriate State or Federal court.

XIX. Force Majeure.

Neither party shall be liable for damages or deemed in default of this Agreement and any Authorization for Services hereunder to the extent that any delay or failure in the performance of its obligations (other than the payment of money) results, without its fault or negligence, from any cause beyond its reasonable control, such as acts of God, acts of civil or military authority, embargoes, epidemics, war, riots, insurrections, fires, explosions, earthquakes, floods, adverse weather conditions, union activity, strikes or lock-outs, and changes in laws, statutes, regulations, or ordinances.

XX. Severability.

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

XXI. Right in Work Product.

The specific work product of Engineer for which it is reimbursed by City, including all data, documents, results, ideas, developments, and inventions that Engineer conceives or reduces to practice during the course of its performance under this Agreement, shall be the property of City, but Engineer may reuse such information in the normal course of its business and retains its rights in any standard details or drawings. City acknowledges that the work product is provided for a specific purpose and any unauthorized use, use other than for the specific purpose intended or modification of the work product by the City will be at the City's sole risk and without liability or legal exposure to Engineer.

XXII. Digital Data. Engineer shall submit reports electronically, in PDF format.

XXIII. Publication, Reproduction and Use of Material.

No custom material produced in whole or in part under the Contract shall be subject to copyright in the United States or in any country. The Federal Transit Administration shall have authority to publish, disclose, distribute and otherwise use, in whole or in part, any custom material prepared under this Agreement.

XXIV. Applicable State and Local Clauses.

The Engineer shall comply with all Federal, State, and local licensing, training, testing and/or regulatory requirements (including permits).

The Engineer shall be appropriately licensed for the work required. The cost for any required licenses or permits shall be Engineer's responsibility. Engineer is liable for any and all taxes due as a result of the Agreement.

XXV. **Applicable Federal Clauses: The Applicable Federal Clauses under this section XXV. shall apply to this agreement as noted in Exhibit B attached hereto.**

XXVI. Binding.

This Agreement shall be binding on the assignees, transferees, successors, heirs, trustees, executors and administrators of the parties hereto.

XXVII. Notice.

All notices hereunder and communications with respect to this Agreement shall be effected upon the mailing thereof registered or certified mail return receipt requested or by Federal Express and addressed as follows:

To ENGINEER	To CITY
KLJ 4585 Coleman Street Bismarck, ND 58503	City of Fargo 225 4th Street North Fargo, ND 58102 Attn: Mayor City of Fargo

XXVII. Termination.

Termination may be by either party upon 30 days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.

XXVIII. Indemnification.

To the fullest extent permitted by Laws and Regulations, Engineer and City shall indemnify and hold each other harmless from losses, damages, and judgments arising from third-party claims or actions relating to the Project, provided that any such claim, action, loss, damages, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission.

XXIX. Contract Components.

This Contract consists of the following component parts, all of which are fully made a part of this Contract as if herein set out verbatim, or if not attached, as if hereto attached, to wit:

1. Advertisement for Proposals
2. Request for Proposals Scope of Work for Transit
3. All Addendums and Attachments identified in the Request for Proposal (not specified below)
4. Engineer Proposal
5. This Contract
6. Federal Contract Clauses
7. Debarment and Suspension Certification (signed by Contractor)
8. Lobbying Certification (signed by Contractor)

Dated this 7th day of June, 2021.

KADRMAS, LEE & JACKSON, INC., A NORTH DAKOTA CORPORATION

By: Mark Anderson

Printed Name: Mark Anderson

Dated this _____ day of _____, 2021.

CITY OF FARGO, A NORTH DAKOTA MUNICIPAL CORPORATION

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

ATTEST:

By _____
Steve Sprague, City Auditor

KLJ

Exhibit A
Architectural/Engineering Services
MTG Pit Repairs & In-Ground Hoist Replacement
MTG Design Bid Build
Fargo, ND

Engineer's Services

The following scope of work has been developed for the Metro Transit Garage located at 650 23rd Street North in Fargo, ND. It is our understanding the City of Fargo Transit department has secured $420,000 in funds from the North Dakota Department of Transportation to assess and repair an existing drive-over maintenance pit (Task 1) and replace two in-ground hoists (Task 2). It is anticipated the design, bidding and construction of both Task 1 and Task 2 will run concurrently. Below is a summary of the scope of services to be provided by KLJ and our subconsultants.

I. Task 1: Drive-Over Pit Repairs
   A. Preliminary Engineering
      1. Review existing plans prepared for the MTG and review the site to become familiar with existing conditions as it relates to the proposed changes associated with this phase of the project.
      2. Obtain up to three (3) hand auger borings to identify soil conditions adjacent to and below the pit.
      3. Meeting #1: Meet with MATBUS at the onset of the project to discuss existing conditions, brainstorm potential options to repair the pit that align with the current and future needs of the facility, and discuss construction phasing requirements to maintain operations.
      4. Assemble feasible options developed in Meeting #1 and prepare preliminary plans, including construction phasing and opinions of cost, for review with MATBUS during Meeting #2. It is anticipated a preferred option will be selected by MATBUS to move forward into the next phase of the project, Construction Documents.
      5. Consult with NDDOT and FTA on the class of action for the environmental assessment and document. It is anticipated the project will be classified as a Categorical Exclusion (CATEX) to secure NEPA approvals for the construction of the project. KLJ will prepare environmental documentation if necessary.
      6. Scope of pit repairs to be considered are as follows:
         a. Provide recommendations for repairing the pit to continue to operate as built.
         b. Provide recommendations for modifying the pit to a slab on grade with provisions to accommodate future wash bay.
         c. Provide recommendations for modifying the pit to accommodate a new in-ground hoist.
   B. Construction Documents:
      1. Upon selection of a preferred repair option by MATBUS at Meeting #2, KLJ's team will integrate feedback from Meeting #2 into the 50% progress submittal to include plans, specifications and opinions of cost.
      2. Meeting #3: KLJ will meet with MATBUS upon completion of the 50% submittal to review progress and provide updates to any scope, schedule or budget concerns.
      3. Feedback from the 50% submittal will be integrated into a 95% progress submittal to be reviewed with MATBUS.
      4. Meeting #4: Review progress and provide updates to scope, schedule or budget concerns with MATBUS.

5. Prepare final plans and specifications stamped and signed by design professionals licensed in the State of North Dakota. Deliver one electronic set of documents and one original signed set of documents to MATBUS.
6. Submit final plans to city of Fargo building inspections for plan review and permitting. Permits will be the responsibility of the contractor.

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

D. Construction Administration:
1. Administer pre-construction meeting.
2. Answer questions and issue RFI's as necessary to clarify drawings or specifications.
3. Davis-Bacon wage rate interviews and submittals.
4. LCP Tracker weekly payroll certification review.
5. Shop drawing review.
6. Review of pay requests, preparation of change orders and review of proposal requests.
7. Attendance & administration of up to four (4) construction meetings.
8. Up to six (6) site visits by KLJ during construction to review progress.
9. Preparation of a punch list prior to substantial completion.
10. Final walkthrough.
11. Project Closeout.

II. Task 2: In-Ground Hoist Replacement

A. Preliminary Engineering
1. Services identified herein are assumed to be provided in conjunction with Task 1.
2. Review existing plans prepared for the MTG and review the site to become familiar with existing conditions as it relates to the proposed changes associated with this phase of the project.
3. Meeting #1: Meet with MATBUS at the onset of the project to discuss existing conditions, brainstorm potential options for replacement of two in-ground hoists that align with the current and future needs of the facility, and discuss construction phasing requirements to maintain operations.
4. Assemble feasible options developed in Meeting #1 and prepare preliminary plans, including construction phasing and opinions of cost, for review with MATBUS during

Meeting #2. It is anticipated a preferred option will be selected by MATBUS to move forward into the next phase of the project, Construction Documents.

5. Consult with NDDOT and FTA on the class of action for the environmental assessment and document. It is anticipated the project will be classified as a Categorical Exclusion (CATEX) to secure NEPA approvals for the construction of the project. KLJ will prepare environmental documentation if necessary.
6. Scope of in-ground hoist replacement options to be considered are as follows:
   a. Provide recommendations for integrating in-ground hoist selected by MATBUS into existing building.
   b. Provide recommendations for alternate hoist system if in-ground hoist is not cost effective or transferrable to new facility.

B. Construction Documents:
   1. Services identified herein are assumed to be provided in conjunction with Task 1.
   2. Upon selection of a preferred repair option by MATBUS at Meeting #2, KLJ's team will integrate feedback from Meeting #2 into the 50% progress submittal to include plans, specifications and opinions of cost. Alternates will be suggested if project budget does not align with proposed scope of replacement.
   3. Meeting #3: KLJ will meet with MATBUS upon completion of the 50% submittal to review progress and provide updates to any scope, schedule or budget concerns.
   4. Feedback from the 50% submittal will be integrated into a 95% progress submittal to be reviewed with MATBUS.
   5. Meeting #4: Review progress and provide updates to scope, schedule or budget concerns with MATBUS.
   6. Prepare final plans and specifications, to be integrated with Task 1 plans and specifications, stamped and signed by design professionals licensed in the State of North Dakota. Deliver one electronic set of documents and one original signed set of documents to MATBUS.
   7. Submit final plans to city of Fargo building inspections for plan review and permitting. Permits will be the responsibility of the contractor.

C. Bidding Assistance
   1. Provide bidding assistance in conjunction with Task 1 services.

D. Construction Administration:
   1. Provide construction administration in conjunction with Task 1 services.

III. Team Responsibilities:
   A. KLJ – Project Management, environmental planning, structural design, bidding assistance, and construction administration
   B. Foss Architecture + Interiors – Architectural code review
   C. MBN Engineering – Electrical/Mechanical/Plumbing design, bidding assistance and construction administration
   D. Braun Intertec – Geotechnical engineering
   E. Q-CAD – AutoCAD drafting services

IV. Anticipated Project Schedule

The following schedule has been prepared based on the milestone schedule included in the RFQ. The schedule will be reviewed and finalized with MATBUS upon selection of our team. Please note it is an extremely volatile market in the construction industry today. We are experiencing higher prices, limited material availability, extremely long lead times, and limited construction resources. As was

addressed in the RFQ Addendum 1 issued by MATBUS on April 16, 2021, the proposed in-ground hoists have lead times of 120 to 150 days. If replacement of the in-ground hoists moves forward, the schedule will need to be adjusted to accommodate material availability or alternate vehicle hoists will need to be identified to align with the schedule included in the RFQ. Our team will continue to monitor all of these items as the project develops and the scope of repairs is finalized. We will keep MATBUS apprised of any potential impacts to the schedule as soon as they are known.

Contract Execution	June 2021
Notice to Proceed	June 29, 2021
Preliminary Engineering	June 29, 2021 – July 19, 2021
50% Submittal	Week of August 9, 2021
95% Submittal	Week of August 23, 2021
Final Construction Documents	September 3, 2021
Advertise for Bid	September 8, 2021
Open Bids	September 29, 2021
Award Contracts	October 4, 2021
Construction Administration	October - December 2021

V. Services Not Included

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

A. Preparation of multiple bid packages or repackaging the project to be rebid.
B. Preparation of as-built drawings.
C. Advertisement and plan review fees.
D. Material testing services.
E. Additional services, tasks, and meetings not described in tasks outlined above.
F. Extended construction administration for construction duration in excess of the timelines included in the tasks outlined above.
G. Construction observation beyond those services identified above.

KLJ

ENGINEERING FEES

MTG Design Build - Task 1: Drive-Over Pit Repairs									
1.	Direct Labor	Hours	X	Rate	=	Project Cost		Total	
	Contract Administrator	1	X	30	=	$	30.00	$	30.00
	Project Assistant II	26	X	30	=	$	780.00	$	780.00
	Project Manager	54	X	59	=	$	3,186.00	$	3,186.00
	Engineer	2	X	45	=	$	90.00	$	90.00
	Associate Engineer	60	X	38	=	$	2,280.00	$	2,280.00
	CAD Technician I	4	X	25	=	$	100.00	$	100.00
			X		=	$	-	$	-
			X		=	$	-	$	-
			X		=	$	-	$	-
			X		=	$	-	$	-
			X		=	$	-	$	-
			X		=	$	-	$	-
Subtotal					=	$	6,466.00	$	6,466.00
2.	Overhead/Indirect Cost (expressed as indirect rate x direct labor)						185.16%	$	11,972.45
3.	Subcontractor Costs					$	10,805.33	$	10,805.33
4.	Materials and Supplies Costs					$	-	$	-
5.	Travel Costs					$	-	$	-
6.	Fixed Fee						12%	$	2,212.61
7.	Miscellaneous Costs							$	-
Total Cost					=			$	31,456.39

KLJ

ENGINEERING FEES

MTG Design Build - Task 2: In-Ground Hoist Replacement								
1.	Direct Labor	Hours	X	Rate	=	Project Cost	Total	
	Contract Administrator	1	X	30	=	$ 30.00	$	30.00
	Project Assistant II	4	X	30	=	$ 120.00	$	120.00
	Project Manager	10	X	59	=	$ 590.00	$	590.00
	Engineer	2	X	45	=	$ 90.00	$	90.00
	Associate Engineer	32	X	38	=	$ 1,216.00	$	1,216.00
	CAD Technician I	4	X	25	=	$ 100.00	$	100.00
			X		=	$ -	$	-
			X		=	$ -	$	-
			X		=	$ -	$	-
			X		=	$ -	$	-
			X		=	$ -	$	-
			X		=	$ -	$	-
	Subtotal				=	$ 2,146.00	$	2,146.00
2.	Overhead/Indirect Cost (expressed as indirect rate x direct labor)					185.16%	$	3,973.53
3.	Subcontractor Costs					$ 7,406.00	$	7,406.00
4.	Materials and Supplies Costs					$ -	$	-
5.	Travel Costs					$ -	$	-
6.	Fixed Fee					12%	$	734.34
7.	Miscellaneous Costs						$	-
	Total Cost				=		$	14,259.87

THE CITY OF Fargo
FAR MORE

Water Treatment Plant
435 14th Avenue South
Fargo, ND 58103
Office: 701.241.1469 | Fax: 701.241.8110
www.FargoND.gov

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June 10, 2021

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

Subject: Advertisement for Bid – Project WA2055 – WTP Ozone Improvements – Phase 2

Dear Commissioners:

Water Utility staff is seeking approval for advertising bidding of Project WA2055: Water Treatment Plant Ozone System Improvements – Phase 2. The project will include the following major components:

- Installation of a Vacuum Swing Adsorption (VSA) to supply oxygen to ozone generators
- Installation of a new, low-capacity Ozone Generator for WTP winter operation
- Installation of electric vaporizing system for liquid oxygen (LOX) system to improve reliability

This project is funded through a low-interest State Revolving Fund (SRF) loan with the State of North Dakota. Completion of this project will provide some operational cost reduction and better fit the ozone system to include Membrane Water Treatment Plant operations. Due to long equipment lead times, the VSA system and new Ozone Generator have already been ordered and are being manufactured. All new systems with this project are expected to be operational this coming winter.

Your consideration is greatly appreciated in this matter.

Sincerely,

Troy B. Hall
Water Utility Director

SUGGESTED MOTION:

Approve the Advertisement for Bid of Project WA2055, Ozone System Improvements – Phase 2.

THE CITY OF Fargo FAR MORE

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Office: 701.241.1469 | Fax: 701.241.8110
www.FargoND.gov

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June 10, 2021

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

Subject: Sole Source Request with Hawkins Water Treatment Group for Product in 2021 Calendar Year

Dear Commissioners:

Water Utility staff is seeking approval of a sole source request with Hawkins Water Treatment Group (Hawkins) for the 2021 Calendar Year. It is predicted that the cumulative cost of all proprietary chemicals and equipment will exceed $50,000 and need City Commission approval per policy. The attached sole source request was approved by the Finance Committee on June 2, 2021. Hawkins has won 2021 bids for several chemicals used in water treatment processes, but some chemicals and equipment supplied by Hawkins needs to be sole sourced. The following are general items that Hawkins will be utilized for in 2021:

- Proprietary zebra mussel control chemical called EarthTec.
- Proprietary scale softening chemical in the lime softening process for the 1997 WTP.
- Chlorine feed system parts.
- Chemical feed system pumps and parts.

The estimate 2021 total for sole sourced chemicals and materials with Hawkins is 2021. Water Utility personnel are always trying to be efficient with costs.

Your consideration is greatly appreciated in this matter.

Sincerely,

T. B. Hall

Troy B. Hall
Water Utility Director

SUGGESTED MOTION:

Approve a sole source with Hawkins Water Treatment Group for chemicals and materials for the Water Treatment Plant use during the 2021 Calendar Year.

Sole Source and Piggyback Procurement Form

Sole Source and Piggyback Justification for Procurement

The following information is offered for the sole source acquisition of goods or services described below. The purchase has been thoroughly researched and it has been determined that the vendor/brand is the only acceptable vendor/brand for the product or services that will fit the particular need.

Vendor Name:

Hawkins Water Treatment Group (Hawkins)

Estimated Dollar Amount of Purchase:

$65,000 for 2021 Calendar Year

The project/service is required to:

This sole source request is primarily to purchase a proprietary copper-based chemical (call EarthTec QZ) for Zebra Mussel control from Hawkins. However, Hawkins is a also a supplier of other product lines standard for standard equipment used in the Fargo Water Treatment Plant: chlorine feed system parts, peristaltic chemical feed pumps, and other chemicals in relatively small quanities. For calendar year 2021, this sole source request s intended to cover all of these items from Hawkins other than bulk water treatment chemicals usually bid in November each year.

Chemical costs are a specific budget line the 2021 budget under Fund 501. Cost for items such as chemical feed pumps and part will be charged to the appropriate account or Project Code.

Description of features or capabilities unique to the vendor/brand being requested as related to project requirements:

EarthTec QZ worked very well to prevent zebra mussel buildup in both Fargo WTPs for 2020 warm weather season. Prior to use at Fargo WTP, EarthTec QZ had been successfully used for zebra mussel control by St. Paul Regional Water System for 4 consecutive years. EarthTec QZ appears not as tricky to feed as other zebra mussel control methods. Also, there are not significant disadvantages with EarthTec QZ as there are with other approaches.

Hawkins is a distributor for standard equipment used by the Water Utility for some peristaltic chemical feed pumps and chlorine chemical feed equipment. We can't get replacement parts elsewhere.

Under this sole source request, we intend to try a proprietary chemical from Hawkins to soften up the scale formed in our softening basins. If this works, it will help reduce man-hours and equipment damage when annual maintenance is performed. We are submitting this chemical feed approach to the North Dakota Department of Environmental Quality for review and comments at this time.

There are other lab and online instrumentation chemicals that we also purchase from Hawkins because they are local and have the chemical readily available in more bulk quantities.

Provide a brief description of how your investigation was conducted. (Internet, publications, consultations) List all sources identified and investigated to determine that no other source exists for similar products capable of meeting requirements (Must be exhaustive of all sources for the commodity being purchased. **)

For EarthTec QZ, the investigation was as follows:

*Houston Engineering Evaluation (2016) - engineering report for Fargo WTP - 3 zebra mussel control options made final in-depth cost analysis

*Pembina Valley Water Cooperative (2019-20): correspondence and site visit

*St. Paul Regional Water Service (2020): phone communications

For other chemical feed equipment and chemicals, investigation over years has shown Hawkins to the best or only choice for the items used.

****If all sources are not investigated a competitive solicitation must be issued.**

Provide a side-by-side comparison of the features/service of all other vendors/brands considered. (List the features or capabilities required for your project and how each vendor investigated does or does not meet those requirements. A table format is recommended)

For EarthTec QZ, the side-by-side comparison is as follows:

*Houston Engineering Evaluation (2016) - engineering report for Fargo WTP - 3 zebra mussel control options made final in-depth cost analysis

*Pembina Valley Water Cooperative (2019-20): correspondence and site visits

*St. Paul Regional Water Service (2020): phone communications

Options evaluated

*Free chlorine addition: downside is EPA regulated disinfection by-product formation
*Potassium Permanganate addition: dosing challenges, potential WTP process interference
*Zequanox: not proven or robust at full-scale implementation

EarthTec QZ: excellent success in St. Paul for zebra mussel control

If the piggyback procurement method is being used, please provide a copy of the piggyback contract.

N/A

Signature: _____
(Requestor)

Printed Name: Troy B. Hall

Department: Water Treatment Plant

Title: Water Utility Director

Date: 5/31/2021

I, hereby, certify that this justification for other than full and open competition is accurate and complete to the best of my knowledge and belief.

TBH **(Requestor initials)**

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REPORT OF ACTION

FINANCE COMMITTEE

Project: Membrane Water Treatment Plant **Type:** SRF Loan Repayment Sources

Location: 435 14th Avenue South

Date of Hearing: June 2, 2021

Routing	Date
City Commission	June 14, 2021

The Committee reviewed and discussed a memorandum submitted by Water Utility staff regarding repayment sources with the State Revolving Fund (SRF) loan for the Membrane Water Treatment Plant (MWTP). The current loan agreement only allows Rate Revenue (Fund 501) to be used as a repayment source for the SRF loan payments, which are large payments totaling about $4.7 million dollars annually. Water Utility staff believe it is of high importance to add Infrastructure Sales Tax (Fund 450) to supplement rates in MWTP loan repayment.

For many years, the financial model for the Water Utility has assumed for many years both Fund 501 and Fund 450 were available for loan payments. However, only Rate Revenue (Fund 501) was listed in the final SRF loan agreement, approved by the City Commission in 2018. Approval of a new loan agreement – including Infrastructure Sales Tax (Fund 450) as a repayment source – will provide flexibility in managing balances of both funds (Fund 501 and Fund 450) used by the Water Utility and avoid a significant rate increase in the near term. A final agreement resulting from a new application will be brought back to the City Commission for approval.

MOTION:
With a motion and a second, the Finance Committee voted to approve submitting a new State Revolving Fund loan application for the Membrane Water Treatment Plant to allow Infrastructure Sales Tax (Fund 450) to be used as repayment source.

COMMITTEE:	Present	Yes	No	Unanimous
				Proxy
Tim Mahoney, Mayor	X	X		
Dave Piepkorn, City Commissioner	X	X		
Bruce Grubb, City Administrator	X	X		
Mike Redlinger, Assistant City Administrator	X	X		
Kent Costin, Director of Finance	X	X		
Steve Sprague, City Auditor	X	X		

ATTEST:

Troy Hall, Water Utility Director

THE CITY OF Fargo FAR MORE

Water Treatment Plant
435 14th Avenue South
Fargo, ND 58103
Office: 701.241.1469 | Fax: 701.241.8110
www.FargoND.gov

MEMORANDUM
May 27, 2021

To: Finance Committee

From: Troy B. Hall, Water Utility Director TBH

Re: State Revolving Fund (SRF) Loan Application
Membrane WTP Repayment Source

The Water Utility currently has a low-interest State Revolving Fund (SRF) for the Membrane Water Treatment Plant (MWTP) through the North Dakota Public Finance Authority (PFA). The loan terms are 1.5 percent interest plus 0.5 percent Administrative Fee, totaling 2.0 percent over 30 years. The annual principle plus interest payment for 2021 is $4,742,125 and is similar for future years. Currently, the approved loan agreement pledges only Rate Revenue (Fund 501) as a repayment source.

Infrastructure Sales Tax (Fund 450) has been used to supplement rate revenue and pay for water infrastructure since implemented. The financial model for the Water Utility – called a Revenue Adequacy model – has always assumed both Rate Revenue (Fund 501) and Infrastructure Sales Tax (Fund 450) would be available for loan repayment. The ability to only use Fund 501 for such a large annual payment was not planned for and is causing fund imbalance, an unsustainable drawdown of Fund 501 and quicker growth of Fund 450.

In communications with the PFA, the Water Utility will need to submit a new SRF loan application to officially change the repayment source. Also, it has been state by the PFA that a second repayment source is a stronger application than only pledging rate revenue. From a timing perspective, Water Utility staff has a goal of having a new loan agreement fully approved by August, 2021. This will be ahead of formal approval of the 2022 budget and ahead of the September 2021 principal payment on the MWTP

If approved by the Finance Committee, Water Utility staff would submit the front-end SRF application to a future City Commission meeting for approval and then to the PFA. The final agreement would need City Commission approval once approved by the PFA. The original agreement loan amount was $98 million dollars.

SUGGESTED MOTION:

Approve Water Utility staff to submit a new State Revolving Fund (SRF) loan application pledging both Water Rate Revenue (Fund 501) and Infrastructure Sales Tax (Fund 450) as repayment sources for the Membrane Water Treatment Plant.

Your consideration in this matter is greatly appreciated.

REPORT OF ACTION

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE (31)

Improvement District No. BN-20-E1 Type: Change Order #2

Location: Madelyn's Meadows 2nd Addition Date of Hearing: 6/7/2021

Routing	Date
City Commission	6/14/2021
PWPEC File	X
Project File	Jason Satterlund

The Committee reviewed the accompanying correspondence from Project Manager, Jason Satterlund, for Change Order #2 in the amount of $16,150.00, for the installation of two additional storm sewer rear yard inlets.

Staff is recommending approval of Change Order #2 in the amount of $16,150.00, bringing the total contract amount to $2,344,780.10.

On a motion by Bruce Grubb, seconded by Steve Sprague, the Committee voted to recommend approval of Change Order #2 to Fox Underground.

RECOMMENDED MOTION
Concur with recommendations of PWPEC and approve Change Order #2 in the amount of $16,150.00, bringing the total contract amount to $2,344,780.10 to Fox Underground.

PROJECT FINANCING INFORMATION:
Recommended source of funding for project: CRWUD & Special Assessments

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

COMMITTEE	Present	Yes	No	Unanimous
				☑
Tim Mahoney, Mayor	☐	☐	☐	
Nicole Crutchfield, Director of Planning	☐	☐	☐	
Steve Dirksen, Fire Chief	☑	☑	☐	
Bruce Grubb, City Administrator	☑	☑	☐	
Ben Dow, Director of Operations	☑	☑	☐	
Steve Sprague, City Auditor	☑	☑	☐	
Brenda Derrig, City Engineer	☑	☑	☐	
Kent Costin, Finance Director	☐	☐	☐	

ATTEST:

Brenda E. Derrig, P.E.
City Engineer

C: Kristi Olson

THE CITY OF Fargo FAR MORE

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

Memorandum

To: Members of PWPEC

From: Jason Satterlund, Project Manager

Date: June 2, 2021

Re: Improvement District No. BN-20-E1 – Change Order #2

Background:

Improvement District No. BN-20-E1 provides new development infrastructure for the second phase of Madelyn's Meadows Addition. It consists of underground utilities, concrete curb and gutter, asphalt paving, and street lighting on 27th, 28th, 29th, and 30th Streets between 72nd and 73rd Avenues South.

Fox Underground, Inc. is the Prime Contractor for this project.

Change Order # 2 is for the installation of two additional storm sewer rear yard inlets. At the time of plan design and during construction of the public infrastructure, the Developer planned to install a privately constructed concrete alley in Block 2 of Madelyn's Meadows Second Addition. The twenty lots that make up Block 2 were sold over the winter to one homebuilder who decided not to install the alley. Additional storm sewer and inlets are required to provide adequate rear yard drainage.

The project achieved substantial completion in fall of 2020. No additional time is required for this request.

Recommended Motion:

Approve Change Order #2 in the amount of $16,150.00.

JTS/klb
Attachments

THE CITY OF Fargo FAR MORE

CITY OF FARGO
ENGINEERING DEPARTMENT
CHANGE ORDER REPORT

Improvement District No	BN-20-E1	**Change Order No**	2
Project Name	Sanitary Sewer, Water Main, Storm Sewer, Paving, Site Grading, Lighting & Incidentals		
Date Entered	4/27/2021	**For**	Fox Underground

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: Rear Yard storm sewer Block 2

Install rear yard storm sewer Block 2, Madelyn's Meadows 2nd Addition

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 ($)	C/O Ext Price ($)
Miscellaneous	7	Inlet Protection - New Inlet	EA	29.00	0.00	29.00	2.00	31.00	225.00	450.00
									Miscellaneous Sub Total ($)	450.00
Storm Sewer	37	F&I Inlet - Round (RDI) Reinf Conc	EA	7.00	0.00	7.00	2.00	9.00	1,300.00	2,600.00
	99	Mobilization	LS	0.00	0.00	0.00	1.00	1.00	1,500.00	1,500.00
	100	Connect Pipe to Exist Pipe	EA	0.00	0.00	0.00	2.00	2.00	1,200.00	2,400.00
	101	F&I Pipe 12" Dia PVC	LF	0.00	0.00	0.00	120.00	120.00	60.00	7,200.00
	102	Relocate Stockpile	LS	0.00	0.00	0.00	1.00	1.00	2,000.00	2,000.00
									Storm Sewer Sub Total ($)	15,700.00

Summary	
Source Of Funding	Special Assessments
Net Amount Change Order # 2 ($)	16,150.00
Previous Change Orders ($)	51,766.20
Original Contract Amount ($)	2,276,863.90
Total Contract Amount ($)	2,344,780.10

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

CONTRACT TIME			

THE CITY OF Fargo FAR MORE

CITY OF FARGO
ENGINEERING DEPARTMENT
CHANGE ORDER REPORT

Current Substantial Completion Date	Current Final Completion Date	Additional Days Substantial Completion	Additional Days Final Completion	New Substantial Completion Date	New Final Completion Date
10/02/2020		0.00	0.00	10/02/2020	
Description	Items added after substantial completion has been met.				

APPROVED	6-2-21	APPROVED DATE	
For Contractor	Fox Underground	Department Head	6/9/21
Title	VP	Mayor	
		Attest	

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REPORT OF ACTION

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Improvement District No. BN-21-A2

Type: Change Order #1

Location: 64th Ave S, 33rd St – 38th St

Date of Hearing: 6/7/2021

Routing	Date
City Commission	6/14/2021
PWPEC File	X
Project File	Jason Leonard

The Committee reviewed the accompanying correspondence from Project Manager, Jason Leonard, for Change Order #1 in the amount of $94,164.00, for additional work.

Staff is recommending approval of Change Order #1 in the amount of $94,164.00, bringing the total contract amount to $1,268,362.00.

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

RECOMMENDED MOTION

Concur with recommendations of PWPEC and approve Change Order #1 in the amount of $94,164.00, bringing the total contract amount to $1,268,362.00 to Houston Engineering.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: City, CCWRD, Federal Funds & Special Assessments

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

COMMITTEE	Present	Yes	No	Unanimous
				☑
Tim Mahoney, Mayor	☐	☐	☐	
Nicole Crutchfield, Director of Planning	☐	☐	☐	
Steve Dirksen, Fire Chief	☑	☑	☐	
Bruce Grubb, City Administrator	☑	☑	☐	
Ben Dow, Director of Operations	☑	☑	☐	
Steve Sprague, City Auditor	☑	☑	☐	
Brenda Derrig, City Engineer	☑	☑	☐	
Kent Costin, Finance Director	☐	☐	☐	

ATTEST:

Brenda E. Derrig, P.E.
City Engineer

C: Kristi Olson

THE CITY OF Fargo FAR MORE

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

Memorandum

To: PWPEC

From: Jason Leonard, Project Manager

Date: June 3, 2021

Re: Improvement District No. BN-21-A2 – Construction Administration Change Order # 1

Background:

Improvement District No. BN-21-A1 will urbanize 64th Avenue South (33rd Street South to 38th Street South) from a rural minimum maintenance roadway section to a 3-lane urban concrete street section with curb and gutter, new water distribution, storm sewer and sanitary sewer systems, bridge over I-29 and pedestrian systems. This project has Federal Funds associated and is being administrated by the NDDOT. Houston Engineering is the Consultant Engineer hired by the City of Fargo to complete the construction administration for the 64th Avenue project.

The 64th Avenue South overpass structure is a 480 foot bridge with steel welded girders. The North Dakota Department of Transportation requires and has a specification that states "The Department will not accept welded plate girders without a Department shop inspection". This girder inspection was not in the original scope of work for Houston Engineering and is needed to meet NDDOT requirements.

The City of Fargo requested Houston Engineering to contract with a professional steel girder inspection company to complete this required inspection at the Wisconsin steel girder plant. Bureau Veritas was selected to help with the girder inspection and meets all of the NDDOT requirements. The not to exceed cost to complete the girder inspection is $94,164.00.

This project will be funded by a combination of City Funds, Cass County Water Resource District, Interstate Maintenance Federal Funds, Urban Roads Federal Funds and Special Assessments to the benefiting properties. The estimated cost of construction is $ $14,777,636.08.

Recommended Motion:

Approve Change Order #1in the amount of $94,164.00

Attachments

THE CITY OF Fargo FAR MORE

CITY OF FARGO
ENGINEERING DEPARTMENT
CHANGE ORDER REPORT

Improvement District No	BN-21-A2	**Change Order No**	1
Project Name	Consultant Services		
Date Entered	6/4/2021	**For**	Houston Engineering 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 #1

The 64th Avenue South overpass structure is a 480 foot bridge with steel welded girders. The North Dakota Department of Transportation requires and has a specification that states "The Department will not accept welded plate girders without a Department shop inspection". This girder inspection was not in the original scope of work for Houston Engineering and is needed to meet NDDOT requirements.

The City of Fargo requested Houston Engineering to contract with a professional steel girder inspection company to complete this required inspection at the Wisconsin steel girder plant. Bureau Veritas was selected to help with the girder inspection and meets all of the NDDOT requirements. The not to exceed cost to complete the girder inspection is $94,164.00.

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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 ($)	C/O Ext Price ($)
Consultant Services	1	Construction Administration	EA	1,131,598.00	0.00	1,131,598.00	94,164.00	1,225,762.00	1.00	94,164.00
								Consultant Services Sub Total ($)		94,164.00

Summary

Source Of Funding	Special Assessments
Net Amount Change Order # 1 ($)	94,164.00
Previous Change Orders ($)	0.00
Original Contract Amount ($)	1,174,198.00
Total Contract Amount ($)	1,268,362.00

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
03/03/2021		0.00	0.00	03/03/2021	

THE CITY OF Fargo FAR MORE

CITY OF FARGO
ENGINEERING DEPARTMENT
CHANGE ORDER REPORT

Description

APPROVED

APPROVED DATE

For Contractor

Adam R Walker

Title

Project Engineer

Department Head

Mayor

6/9/21

Attest

Fargo Corporate Office P 701.237.5065 F 701.237.5101

1401 21st Avenue North Fargo ND 58102

HoustonEngineering Inc.

PROFESSIONAL SERVICES

AMENDMENT No. 1 - FOR ADDITIONAL ENGINEERING SERVICES

Project: City of Fargo Project BN-21-A2 – 64th Ave S Road Reconstruction
Amendment No. 1 - Steel Girder Inspection
HE Project No. 6059-0184

Client: City of Fargo
225 4th Street N.
Fargo, ND 58102
Phone (701) 241-1545
Attn: Tom Knakmuhs, Assistant City Engineer

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

Description of Work: This contract amendment is for additional Professional Engineering services to inspect the manufacturing if the weld plate girders for the 64th Ave Overpass. The DOT standard specifications states "The Department will not accept welded plate girders without a Department shop inspection". This inspection was not in the original scope of work and is needed to meet NDDOT requirements.

Houston Engineering will subcontract the weld plate girder inspection to Bureau Veritas. Bureau Veritas meets the requirements of the NDDOT Stand Specification.

The Scope of Services and Cost Estimate for this inspection is attached to this document.

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

Fee: The total fee for the above described tasks is $94,164.00. Additional work required beyond the scope listed above will be billed at Bureau Veritas current hourly rates. However, Bureau Veritas thought that the estimate is conservate and should be able to the do the work for less than the stated amount.

HoustonEngineering Inc.

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: Adam R Walker
Title: _____	Title: Project Engineer
Date: _____	Date: 6/9/2021

March 23rd, 2021

Mr. Adam Walker, P.E.
Project Engineer
Houston Engineering
1401 21st Avenue N
Fargo, ND 58102
Phone: 701-499-2066
Email: AWalker@houstoneng.com

REFERENCE: Fabrication of Structural Steel Quality Assurance Services
64th Ave S Overpass (I-29)
BV Proposal No. 3206.21.014

1 OBJECTIVE

Bureau Veritas North America, Inc. (BV) greatly appreciates your interest in our quality assurance services. We understand that *Houston Engineering (Client)* requires an Independent Inspection Agency to perform Quality Assurance (QA) for the Structural Steel Fabrication for the subject Project.

At this time, we understand the following project particulars:

- Fabrication is to take place at Veritas Steel in Wausau, WI;
- BVNA will provide QA shop inspection services for the bridge;
- Per the Veritas Steel fabrication facility, the burn start date is tentatively scheduled to begin early July 2021 and fabrication completion is tentatively scheduled for December 2021, with a ship date in March of 2022.

It is anticipated that BVNA will be utilizing a local inspector to provide these services. As such, we do not currently anticipate the need for any overnight stays. Depending on which inspector will be utilized during the inspection, Client will be billed for no more than 60 miles and 1 hour of travel each day for the inspector to travel to the fabrication shop. Further, it is anticipated that there may be periods of time where full time coverage may not be necessary when the level of fabrication work being performed may be light due to shifting operations and priorities at Veritas Steel facility. Given that BVNA has other Clients with work occurring at Veritas Steel, it's possible that the BVNA inspectors would be able to be utilized to support other projects during such periods of time on other works, providing savings to the project during any such light periods of work. BVNA inspectors continuously focus on ensuring that the time is efficiently managed to maximize the benefit to the clients and their budgets, and are often able to do so due to the benefit of having other projects that may be occurring concurrently.

2 SCOPE OF WORK

2.1 Scope of Work

BVNA will provide appropriately qualified personnel to perform Quality Assurance shop inspection at Veritas Steel in Wausau, WI as specified above. Services will include providing a qualified Quality Assurance Inspector to perform independent quality assurance services in accordance with all applicable NYSDOT structural steel plant inspection requirements, including the North Dakota DOT Standard Specifications for Road and Bridge Construction. This includes, and is not limited to, review of welder/material certs, contract drawings, approved shop drawings and approved weld procedures, providing fabrication inspection, preparation of required reports and performance of verification of specification conformance.

The proposed QA Inspectors shall be qualified and certified in accordance with the American Welding Society (AWS) Certified Welding Inspector (CWI). The intent is to have a full time inspector at the Wausau Plant to ensure all critical operations are checked and verified prior to the fabricator moving onto the next operation.

All correspondence and reports shall be directed to the parties required by Client, including the Engineer In Charge. BVNA will alert Client and the EIC immediately of the following:

- Test failure.
- Observed damage to elements that will be incorporated into the final product or work.

2.2 Service Location

Services will be provided at

- Veritas Steel Wausau Plant: 3526 Sherman St., Wausau, WI 54401

2.3 Applicable Specification / Codes

The latest edition of the following specifications:

- Client supplied drawings and specifications
- North Dakota DOT Standard Specifications for Road and Bridge Construction
- AWS D1.1 Structural Welding Code
- AWS D1.5 Bridge Welding Code (as applicable)

Other applicable specifications/codes may be required for the type of work. Please inform BVNA of any such required Specifications or Codes prior to the start of the work.

2.4 Inspector Qualifications

BVNA will make every effort to staff the project with local inspectors to reduce mobilization costs. If a local inspector is unavailable, we will strive to assign the closest, equally qualified inspector. This inspector would be on travel status, with associated travel related expenses that would need to be reimbursed. **BVNA's proposal is based on the expectation that we will be able to provide local inspector coverage.**

Should this Client project necessitate the *BVNA* Inspector to have to work in excess of 8 hours daily, then Client will be billed at the overtime rate listed in Section 3, Fees and Payment Conditions.

2.5 Deliverables

BVNA will issue/submit the following deliverables, as well as all other correspondence, directly to the Client via email:

- Inspection report to detail inspection activities and required forms (when applicable)
- Non-conformance reports (when applicable)
- Records and documents reviewed/approved by BVNA on behalf of the Client.

3 FEES AND PAYMENT CONDITIONS

3.1 Billing Rates

BVNA's proposed rates for the aforementioned services are listed in the compensation chart below.

INSPECTION LABOR RATES[1]	2021 RATE
Inspection Services	$71.00/hour
Overtime Rates [2]	$100.80/hour
Travel Time	Charged at Applicable Hourly Rate
Per Diem Meals (if on travel status)	$35/Day (Not anticipated)
Lodging [5]	Cost +5% (Not anticipated)
Additional Equipment If Required	At Cost
Mileage [4]	$ 0.56/mile

1. The rates indicated above include travel time and mileage for local inspectors. Should an overnight stay be required, additional charges will apply.
2. Overtime (OT) rates will apply to Client required labor exceeding eight (8) hours per day Monday through Friday and performed on Saturdays, Sundays, and holidays.
3. The minimum number of hours of service to be charged is 4 hours even if the duration of the service is less than 4 hours.
4. To the extent practical, the work will be performed by an inspector local to Veritas Steel. Client will be billed for no more than 60 miles and 1 hour of travel each day for the inspector to travel to the fabrication shop
5. If inspector on travel status is required, travel expenses (lodging, airfare, car rental, etc) will be reimbursed at cost + 5%. Mileage would be applicable for travel to any other locations other than the Veritas Steel facility in Wausau.

4 GENERAL CONDITIONS (Reference attachment)

Attached to this Proposal is a copy of Bureau Veritas North America, Inc.'s Consulting Agreement and Bureau Veritas North America, Inc.'s Service Conditions of the Industry Division. This Agreement and Service Conditions are incorporated into this Proposal as if fully set forth herein. Please sign below where indicated and return within a minimum of **five (5) business days'** notice for scheduling purposes. For all correspondence please reference the Bureau Veritas North America, Inc. Proposal number. Your signature represents your acceptance of the Proposal, Agreement and Conditions. Our services will not commence or staff be dispatched to the project site without our receipt of your written acceptance.

Our services will not commence or staff be dispatched to the project site without a fully executed agreement. Billing information shown below will need to be included with the Agreement.

For all correspondence please reference the *BV* Proposal number.

We thank you in advance for the opportunity to offer our services to you. Please feel free to contact us should you have any questions.

Respectfully,

Scott Mason

Scott Mason
Application Engineer Specialist

By (LaBella Associates)

_____ (Signature)

_____ (Printed Name)

By (Bureau Veritas North America, Inc.)

_____ (Signature)
Steven Barton

_____ (Printed Name)

Billing Instructions:

Company Name: *(Legal Entity)* _____

Street Address: _____

PO Box: _____

City, State: _____

ZIP / Postal Code: _____

Country: _____

Tax ID: _____

Account Payable Contact Person: _____

Phone Number: _____

Email Address: _____

Bureau Veritas North America, Inc.
Service Conditions of the Industry Division

1. Service Hours
Service hours include transportation time, document review, inspection or survey time and report preparation time.

2. Normal Working Hours
Normal working hour is an hour of service or a fraction there of, performed between 8:00 AM and 6:00 PM during weekdays, excluding national holidays, Saturdays and Sundays.

3. Working day.
A working day corresponds to no more than 8 hours of service or fraction thereof carried out during the normal working hours.

4. Working day offshore.
A working day offshore corresponds to no more than 14 hours of service carried out. If during a day more than 14 hours of service is performed, overtime applies.

5. Overtime
Service hours in excess of a working day and services not performed during normal working hours are considered as overtime. Overtime is charged at 50% over the fee applicable to the normal working hours. For contracts using daily rates or lump sum rates, overtime rates are specifically addressed in the offer.

6. Minimum working hours.
When a field service is charged by the hour the minimum number of hours of service to be charged is 4 hours even if the duration of the service is less than 4 hours. When a field service is charged by the day, no pro-rated values are allowed and a full day will apply regardless of intervention time. However, overtime fees as stated in 5 will be charged, when applicable.

7. Customer service.
Once the invoices are issued our Customer Service may contact your accounts payable service to follow-up on the quality of the services and verify if the invoice and its deliverables are in conformity with the contract and meet your approval.

8. Expenses
Unless unavailable, the following applies:

All rental vehicles are to be at least mid-size, fitted with global positioning systems.

All air flight rates within the USA and Canada are to be coach. All air flight rates from the USA and Canada to other countries are to be Business Class.

Unless expressively stated otherwise in the offer, a fixed rate of US $ 40.00 will be charged each day of field Services to cover meals.

Mileage is charged at US $ 0.70 per mile unless stated otherwise

Unless expressively stated otherwise in the offer, mail/phone/fax costs are not charged to the customer

Note: You must reference the Invoice No. on all checks submitted.

Telegraphic Transfers payable to:
Bureau Veritas North America, Inc.
Account No. 14594-11058
Branch Office: - 293
ABA Routing: 026009593
Bank Identifier Code-Swift Code: BOFAUS6S
Bank Name: Bank of America N.A.

ACH Transfers payable to:
ABA Routing Number: 121000358
Account Number: 14594-11058

Make Checks payable to:
Bureau Veritas North America, Inc.
Lockbox File 841566
PO Box 841566
Dallas, TX 75284-1566



BUREAU VERITAS NORTH AMERICA, INC.
CONSULTING AGREEMENT

This Agreement is made and entered into by and between Bureau Veritas North America, Inc., ("BVNA") and Client ("Client").

These Terms and Conditions govern the work to be performed by Bureau Veritas North America, Inc. as specified in the proposal prepared by BVNA of which these Terms and Conditions are a part thereof.

RECITALS

WHEREAS, BVNA is trained, experienced and competent to perform the services which will be required by this Agreement;

WHEREAS, BVNA is willing to render the professional services described herein on the following terms and conditions;

WHEREAS, All services will be conducted in accordance with the proposal and these attached terms and conditions.

NOW, THEREFORE, the parties agree as follows:

AGREEMENT

1. **Initiation of Services:** To initiate services, please complete and return the attached "Proposal Acceptance Agreement" form. All parties agree that any services performed by BVNA prior to the Client executing the attached "Proposal Acceptance Agreement" form are governed by these referenced terms and conditions. No subsequent amendment to this Agreement shall be binding on either BVNA or Client unless reduced to writing and signed by an authorized Representative of BVNA and Client. Any pre-printed forms including, but not limited to: purchase orders, shipping instructions, or sales acknowledgment forms of either party containing terms or conditions at variance with or in addition to those set forth herein shall not in any event be deemed to modify or vary the terms of this Consulting Agreement.

2. **Scope of Services:** BVNA shall provide its services at the time, place, and in the manner specified in the proposal.

3. **Time of Performance:** The services of BVNA are to commence upon execution of this Agreement and shall continue until all authorized work is completed. BVNA shall use commercially reasonable best efforts in performing services under these Terms and Conditions, and the Companion Documents ("Agreement"). Companion Documents shall mean any documents accompanying BVNA's Proposal, including but not limited to the Scope of Work, Fee Schedules or any other Exhibits specific to the project. BVNA shall not be responsible for failure to perform its services if i) there is a failure or delay by Client or its contractors in providing BVNA with the necessary access to properties, documentation, information, or materials; ii) Client or its contractors fail to approve or disapprove BVNA's work; or iii) if Client causes delays in any way whatsoever. In any of these events, BVNA's time for completion of its service shall be extended accordingly. BVNA shall not be responsible for failure to perform if such failure is due to any act of God, labor trouble, fire, inclement weather, act of governmental authority, failure of transportation, accident, power failure or interruption, or any other cause reasonably beyond BVNA's control. In any of these events, BVNA's time for completion of its services shall be extended accordingly.

4. **Compensation:** Compensation to be paid to BVNA shall be in accordance with the Schedule of Fees set forth in the proposal.

5. **Method of Payment:** BVNA shall submit monthly billings to Client describing the work performed during the preceding month. Client shall pay BVNA no later than thirty (30) days after receipt of the monthly invoice by Client's staff. If the invoice is not paid within such period, Client shall be liable to BVNA for a late charge accruing from the date of such invoice to the date of payment at the lower of eighteen (18) percent per annum or the maximum rate allowed by law. Further, if the invoice is not paid within such period, BVNA may, at any time, and without waiving any other rights or claims against Client and without thereby incurring any liability to Client, elect to terminate performance of services immediately following written notice from BVNA to Client. Notwithstanding any such termination of services, Client shall pay BVNA for all services rendered by BVNA up to the date of termination of services plus all interest, termination costs and expenses incurred by BVNA. Client shall reimburse BVNA for all costs and expenses of collection, including reasonable attorney's fees.

6. **Cooperation and Project Understanding:** To the extent requested by BVNA, Client will make available to BVNA all information in its possession regarding existing and proposed conditions at the Project site. Such information shall include, but not be limited to, plot plans, topographic surveys, hydrographic data, and previous soil data, including borings, field and laboratory tests and written reports. Client shall immediately transmit to BVNA any new information concerning site condition which becomes available, and any change in plans or specifications concerning the Project to the extent such information may affect BVNA's performance of the Services. Client agrees, upon 24 hours oral or written notice, to provide a representative at the job site to supervise and coordinate the Services. BVNA shall not be liable for any inaccurate or incorrect advice, judgment or decision which is based on any inaccurate information furnished by Client. Client shall indemnify BVNA against claims, demands, or liability arising out of, or contributed to, by such inaccurate information.

7. **Construction Monitoring:** If BVNA is engaged by Client to provide a site representative for the purpose of monitoring specific portions of any construction work, as set forth in the proposal, then this Section 7 shall apply. If BVNA's engagement does not include such construction monitoring, then this Section shall be null and void. In connection with construction monitoring, BVNA will report observations and professional opinions to Client. BVNA shall report to Client any observed work which, in BVNA's opinion, does not conform to plans and specifications. BVNA shall have no authority to reject or terminate the work of any agent or contractor of Client. No action, statements, or communications of BVNA, or BVNA's site representative, can be construed as modifying any agreement between Client and others. BVNA's presence on the Project site in no way guarantees the completion or quality of the performance of the work of any party retained by Client to provide construction related services. Neither the professional activities of BVNA, nor the presence of BVNA or its employees, representatives, or subcontractors on the Project Site, shall be construed to impose upon BVNA any responsibility for methods of work performance, superintendence, sequencing of construction, or safety conditions at the Project site. Client acknowledges that Client or its general contractor is solely responsible for job site safety, and warrants and agrees that such responsibility shall be made evident in any Project owner's agreement with the general contractor. Client also agrees to make BVNA an additional insured under any general contractor's General Liability insurance policy. Prior to the commencement of the Work, Client shall provide BVNA with a certificate of insurance evidencing the required insurance. Such certificates shall be issued by an insurance carrier(s) acceptable to BVNA and shall be endorsed to include: (1) BVNA as additional insured; (2) thirty (30) days prior written notice of cancellation or material change in any of the coverages; and (3) a waiver of subrogation as to BVNA. Each policy of insurance required shall be written by an insurance company with a minimum rating by A.M. Bests & Company of A-VI. This insurance shall be primary to any insurance available to BVNA. In the event BVNA expressly assumes any health and safety responsibilities for hazardous materials or other items specified in this

Agreement, the acceptance of such responsibility does not and shall not be deemed an acceptance of responsibility for any other health and safety requirements, such as, but not limited to, those relating to excavation, trenching, drilling or backfilling.

8. **Discovery of Unanticipated Hazardous Materials:** Client warrants that it has made reasonable efforts to inform Consultant of known or suspected hazardous materials on or near the Project site. The parties acknowledge that hazardous materials may exist at a site where there is no reason to believe they are present. Consultant and Client agree that the discovery of such unanticipated hazardous materials constitutes a changed condition which shall require either a re-negotiation of the scope of Consultant's Services or termination of such Services or this Agreement. Client recognizes that the discovery of hazardous materials may necessitate immediate protective measures to safeguard the public health and safety and agrees to compensate Consultant for measures that in Consultant's professional opinion are justified to preserve and protect the health and safety of site personnel and the public. Client also agrees to compensate Consultant for any equipment decontamination or other costs incident to the discovery of unanticipated hazardous materials. Consultant agrees to notify Client as soon as practicable should hazardous materials be encountered at the site that pose a threat to human health, safety and the environment. Client agrees that in the event of the discovery of hazardous materials at the site it will report such discovery to the proper authorities as required by Federal, State, and local regulations. Client agrees to make the required report at the recommendation of Consultant, or, if unable to do so, authorizes Consultant to make such report. Client also agrees to inform the Project site owner in the event that hazardous materials are encountered at the site. Notwithstanding any other provision of the agreement, Client waives any claim against Consultant, and to the maximum extent permitted by law, agrees to defend, indemnify, and save Consultant harmless from any claim, liability and/or defense costs for injury or loss arising from the presence of hazardous materials on the project site, including any costs created by delay of the project and any costs associated with possible reduction of the property's value. Client is responsible for ultimate disposal of any samples secured by Consultant which are found to be contaminated.

9. **Ownership of Documents:** All plans, studies, documents and other writings prepared by BVNA, its officers, employees and agents and subcontractors in the course of implementing this Agreement shall remain the property of BVNA. The Client acknowledges that all intellectual property rights related to the performance of the Agreement, including but not limited to the names, service marks, trademarks, inventions, logos and copyrights of BVNA and its affiliates, (collectively, the "**Rights**") are and shall remain the sole property of BVNA or its affiliates and shall not be used by the Client, except solely to the extent that the Client obtains the prior written approval of BVNA and then only in the manner prescribed by BVNA. If BVNA terminates the Agreement in accordance with the provisions of Article 32 below, any such license granted by BVNA to the Client shall automatically terminate.

10. **Use of Data or Services:** BVNA shall not be responsible for any loss, liability, damage, expense or cost arising from any use of BVNA's analyses, reports, certifications, advice or reliance upon BVNA's services, which is contrary to, or inconsistent with, or beyond the provisions and purposes set forth therein or included in these Terms and Conditions, or in the Companion Documents. Client understands and agrees that BVNA's analyses, reports, certifications and services shall be used solely by the Client, and only Client is allowed to rely on such work product. If a third party relies on the services, analyses, reports or certifications without BVNA's written permission, then Client agrees to defend and indemnify BVNA from any claims or actions that are brought as a result of such reliance.

11. **Independent Contractor:** It is understood that BVNA, in the performance of the work and services agreed to be performed, shall act as and be an independent contractor and shall not act as an agent or employee of the Client. BVNA shall obtain no rights to retirement benefits or other benefits which accrue to Client's employees, and BVNA hereby expressly waives any claim it may have to any such rights.

12. **Standard of Care: BVNA REPRESENTS THAT THE SERVICES, FINDINGS, RECOMMENDATIONS AND/OR ADVICE PROVIDED TO CLIENT WILL BE PREPARED, PERFORMED, AND RENDERED IN ACCORDANCE WITH PROCEDURES, PROTOCOLS AND PRACTICES ORDINARILY EXERCISED BY PROFESSIONALS IN BVNA'S PROFESSION FOR USE IN SIMILAR ASSIGNMENTS, AND PREPARED UNDER SIMILAR CONDITIONS AT THE SAME TIME AND LOCALITY. CLIENT ACKNOWLEDGES AND AGREES THAT BVNA HAS MADE NO OTHER IMPLIED OR EXPRESSED REPRESENTATION, WARRANTY OR CONDITION WITH RESPECT TO THE SERVICES, FINDINGS, RECOMMENDATIONS OR ADVICE TO BE PROVIDED BY BVNA PURSUANT TO THIS AGREEMENT.**

13. **Indemnity:** Subject to the Limitation of Liability included in this Agreement, BVNA shall indemnify and hold harmless Client from and against losses, liabilities, and reasonable costs and expenses (for property damage and bodily injury, including reasonable attorney's fees), to the extent directly and proximately caused by BVNA's negligent performance of services or material breach under this Agreement. BVNA shall not be obligated to defend the Client until there is an actual finding of negligence or if the parties agree otherwise. Client shall defend, indemnify and hold harmless BVNA, its employees, directors, officers, and agents, from and against claims, losses, liabilities, and reasonable costs and expenses (including reasonable attorney's fees) that are: i) related to, or caused by the negligence or willful misconduct of Client, its employees, or agents; ii) related to this Agreement or the work to be performed by BVNA for which BVNA is not expressly responsible; or iii) the expressed responsibility of the Client under this Agreement.

14. **Limitation of Liability:** To the fullest extent permitted by law and notwithstanding anything else in this Agreement to the contrary, the total aggregate liability of BVNA, its affiliates, employees, officers, directors and agents (Collectively referred to in this paragraph as "BVNA") for all claims for negligent professional acts, errors or omissions arising out of this Agreement is limited to $50,000 or the amount of the total fees hereunder, whichever is greater.

15. **Insurance:** BVNA, at BVNA's own cost and expense, shall procure and maintain, for the duration of the contract, the following insurance
Policies with insurers possessing a Best's rating of no less than A:VII:

a. **Workers' Compensation Coverage:** BVNA shall maintain Workers' Compensation and Employer's Liability Insurance for its employees in accordance with the laws of the state where the services are being performed. Any notice of cancellation or non-renewal of all Workers' Compensation policies will be sent to the Client in accordance with the policy provisions.

b. **General Liability Coverage:** BVNA shall maintain Commercial General Liability insurance in an amount not less than one million dollars ($1,000,000) per occurrence for bodily injury, personal injury and property damage.

c. **Automobile Liability Coverage:** BVNA shall maintain Automobile Liability insurance covering bodily injury and property damage for activities of BVNA employee arising out of or in connection with the work to be performed under this Agreement, including coverage for owned, hired and non-owned vehicles, in an amount not less than one million dollars ($1,000,000) combined single limit for each occurrence.

d. **Professional Liability Coverage:** BVNA shall maintain Professional Errors and Omissions Liability for protection against claims alleging negligent acts, errors or omissions which may arise from BVNA's services under this Agreement. The amount of this insurance shall not be less than one million dollars ($1,000,000) on a claims-made annual aggregate basis.

BVNA shall name Client as additional insured and other parties that it deems appropriate to be additionally insured under BVNA's Commercial General Liability policy and Automobile Liability policy, if requested to do so by Client. The Client, on its own behalf and on the behalf of any others that are named as additionally insured at Client's request, agrees that providing such insurance or the additional insured endorsement shall in no way be construed as an assumption by BVNA of any liability for the negligence or willful misconduct or any wrongful behavior on the part of Client or others that are named additionally insured.

16. **Consequential and Punitive Damages:** Neither BVNA nor Client shall be liable under any circumstances for loss of profits, loss of product, consequential damages of any kind, indirect damages of any kind or special damages of any kind to the other party, or to any third party. No punitive or exemplary damages of any kind shall be recoverable against either party under any circumstances.

17. **Cause of Action:** If Client makes a claim against BVNA, for any alleged error, omission, or other act arising out of the performance of its professional services and to the extent the Client fails to prove such claim, then the Client shall pay all costs including attorney's fees incurred by BVNA in defending the claim. Any cause of action brought against BVNA shall be brought within one (1) year of the work or services performed under this Agreement.

18. **Compliance with Laws:** BVNA shall use the standard of care in its profession to comply with all applicable federal, state and local laws, codes, ordinance and regulations in effect as of the date services are provided.

19. **Resolution of Disputes:** All claims, disputes, controversies or matters in question arising out of, or relating to, this Agreement or any breach thereof, including but not limited to disputes arising out of alleged design defects, breaches of contract, errors, omissions, or acts of professional negligence, except those disputes which arise out of or are related to collection matters or fees alone under this Agreement, (collectively "Disputes") shall be submitted to mediation before and as a condition precedent to pursuing any other remedy. Upon written request by either party to this Agreement for mediation of any dispute, Client and BVNA shall select a neutral mediator by mutual agreement. Such selection shall be made within ten (10) calendar days of the date of receipt by the other party of the written request for mediation. In the event of failure to reach such agreement or in any instance when the selected mediator is unable or unwilling to serve and a replacement mediator cannot be agreed upon by Client and BVNA within ten (10) calendar days, a mediator shall be chosen as specified in the Mediation Rules of the American Arbitration Association then in effect, or any other appropriate rules upon which the parties may agree.

Should either party to this Agreement commence any legal action against the other party arising out of this Agreement, the prevailing party shall be entitled to recover its reasonable litigation expenses, including court costs, expert witness fees, discovery expenses, and attorney's fees.

20. **Governing Law:** This Agreement shall be governed by and construed in accordance with the laws of the state where the BVNA office originating the work or proposal is located.

21. **Releases:** All lien releases will be limited to payment issues; no additional terms and conditions may be added to a release of lien.

22. **Waiver of Jury Trial:** Each party waives its right to a jury trial in any court action arising between the parties, whether under this Agreement or otherwise related to the work being performed under this Agreement.

23. **Third Party Beneficiary:** It is expressly understood and agreed that the enforcement of these terms and conditions shall be reserved to the Client and BVNA. Nothing contained in the Agreement shall give or

allow any claim or right of action whatsoever by any third person. It is the express intent of the Client and BVNA that any such person or entity, other than Client or BVNA, receiving services or benefits under this Agreement shall be deemed an incidental beneficiary.

24. **Written Notification:** Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party shall be in writing and either served personally or sent prepaid, first class mail. Any such notice, demand, etc., shall be addressed to the other party at the address set forth in the proposal. Either party may change its address by notifying the other party of the change of address. Notice shall be deemed communicated within 48 hours from the time of mailing if mailed as provided in this section.

25. **Confidential Information:** Neither party shall disclose information identified as confidential to anyone except those individuals who need such information to perform the Services; nor should either party use such confidential information, except in connection with the Work, the performance of the Services or as authorized by the other party in writing. Regardless of the term of this Agreement, each party shall be bound by this obligation until such time as the confidential information shall become part of the public domain. Confidential information shall not include information which is either: (i) known to the public; (ii) was known to the receiving party prior to its disclosure; or (iii) received in good faith from a third party. If either party is required to produce information by valid subpoena or Court order, parties agree to first provide prompt notice to other party in order to allow the party to seek a protective order or other appropriate remedy. This shall not prevent either party from disclosing information to the extent reasonably necessary to substantiate a claim or defense in any adjudicatory proceeding. Client agrees that BVNA shall be permitted to use Client's name and logos in BVNA's marketing materials unless advised or prohibited against it by the Client in writing. The technical and pricing information contained in any proposal or other documents submitted to Client by BVNA is to be considered confidential and proprietary and shall not be released or disclosed to a third party without BVNA's written consent.

26. **Assignment:** Neither party may assign this Agreement or any right or obligation hereunder without the prior written consent of the other party, which shall not be unreasonably withheld or delayed; provided, however, that no consent shall be necessary in the event of an assignment to a successor entity resulting from a merger, acquisition or consolidation by either party or an assignment to an Affiliate of either party if such successor or Affiliate assumes all obligations under this Agreement. Any attempted assignment, which requires consent hereunder, shall be void and shall constitute a material breach of this Agreement if such consent is not obtained.

27. **Non-Solicitation / Hiring of Employees:**

(a) To promote an optimum working relationship, the Client agrees in good faith that for the term of this Agreement and one year after the completion or termination of the Agreement not to directly or indirectly employ or otherwise engage any current employee of BVNA or any former employee of BVNA who left the employ of BVNA within the six (6) months prior to and including the date of the execution of the Agreement. The loss of any such employee would involve considerable financial loss of an amount that could not be readily established by BVNA. Therefore, in the event that Client should breach this provision and without limiting any other remedy that may be available to BVNA, the Client shall pay to BVNA a sum equal to the employee's current annual salary plus twelve (12) additional months of the employee's current annual salary for training of a new employee as liquidated damages.

(b) BVNA's employees shall not be retained as expert witnesses except by separate written agreement. Client agrees to pay BVNA's legal expenses, administrative costs and fees pursuant to BVNA's then current fee schedule for BVNA to respond to any subpoena.

28. **Prevailing Wage:** This Agreement and any proposals hereunder specifically exclude compliance with any project labor agreement or other union or apprenticeship requirements. In addition, unless explicitly agreed to in the body of the proposal, this Agreement and any proposals hereunder specifically exclude compliance with any State or Federal prevailing wage law or associated requirements, including the Davis Bacon Act. Due to the professional nature of its services BVNA is generally exempt from the Davis Bacon Act and other prevailing wage schemes. It is agreed that no applicable prevailing wage classification or wage rate has been provided to BVNA, and that all wages and cost estimates contained herein are based solely upon standard, no-prevailing wage rates. Should it later be determined by the Client or any applicable agency that in fact prevailing wage applies, then it is agreed that the contract value of this agreement shall be equitably adjusted to account for such changed circumstance. These exclusions shall survive the completion of the project and shall be merged into any subsequently executed documents between the parties, regardless of the terms of such agreement. Client will reimburse, defend, indemnify and hold harmless BVNA from any liability resulting from a subsequent determination that prevailing wage regulations cover the Projects, including all costs, fines and reasonable attorney's fees.

29. **Waiver:** No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder.

30. **Amendments:** This Agreement may be modified or amended only by a written document executed by both BVNA and Client.

31. **Entire Agreement:** This Agreement constitutes the complete and exclusive statement of Agreement between the Client and BVNA. All prior written and oral communications, including correspondence, drafts, memoranda, and representations, are superseded in total by this Agreement.

32. **Termination:** This Agreement may be terminated immediately for cause or by either party without cause upon fifteen (15) days written notice of termination. Upon termination, BVNA shall be entitled to compensation for services performed up to the effective date of termination.

34. **Interpretation of Agreement:** This Agreement shall be interpreted as though prepared by all parties and shall not be construed unfavorably against either party.

35. **Severability of Agreement:** If any provision or provisions of this Agreement shall be held to be invalid, illegal, unenforceable or in conflict with the laws of any jurisdiction, the validity, legality and enforceability of the remaining provisions shall not in any way be effected and shall remain in full force and effect.

36. **Compliance:** Client will perform all duties and responsibilities consistent with the policies, procedures and practices of BVNA, including Bureau Veritas Code of Ethics and Bureau Veritas Business Partner Code of Conduct. Client certifies that by accepting this Proposal it has read, understands and agrees to abide by the provisions of the Code of Ethics and Business Partner Code of Conduct.

Bureau Veritas North America, Inc.

Fabrication Inspection Estimate for Houston Engineering on 64th Ave S Overpass (I-29)
BVNA Proposal Number 3206.21.014 May 19, 2021

Task Name:	Unit of Measure	Quantity of U/M	Base Rate:	Cost:	Notes:
Inspection at Veritas Steel in Wausau, WI					
Inspector, Straight Time	Hours	1,120	$ 71.00	$ 79,520.00	1 inspector, 8 hours per weekday, 5 days, 28 Weeks (Anticipate only 26 weeks of work)
Inspector, Overtime	Hours	0	$ 100.80	$ -	Not anticipated
Expenses - Mileage	Miles	8,400	$ 0.560	$ 4,704.00	Daily Round Trip Mileage is 120 Miles. BVNA is Billing Only 60 Miles per Day, 5 Days per Week, 28 Weeks (Anticipate only 26 weeks of travel)
Travel Time	Hours	140	$ 71.00	$ 9,940.00	Daily Travel Time is 2 Hours. BVNA is Billing only 1 Hour of Travel per Day, 5 Days per Week, 28 Weeks (Anticipate only 26 weeks of travel)
Lodging	Day	0	$ -	$ -	Not anticipated
Meals	Day	0	$ -	$ -	Not anticipated
				$ 94,164.00	**Total Estimated Cost**

This estimate contains information that is privileged, confidential and exempt from disclosure under applicable law. You are hereby notified that any dissemination, distribution or copying of this list is strictly prohibited.

Clarifications / Assumptions:

1. Additional expenses associated with Mileage, Per Diem, Travel Time, etc. are subject to variances, if local inspector should not be available.
2. Travel meals, if not utilizing a local inspector (Not anticipated) would be charged at $35 per day and Lodging and other travel expenses would be charged at actual cost.
3. Currently expect utilizing a local inspector.

REPORT OF ACTION

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE (33)

Improvement District No. UN-20-B1 Type: Early Building Permit

Location: 6688 43rd Street South Date of Hearing: 5/10/2021

Routing	Date
City Commission	6/14/2021
PWPEC File	X
Project File	Jason Leonard

The Committee reviewed an Early Building Permit request submitted by NDSCS Foundation for their building at 6688 43rd Street South. Applicant will provide a deposit that could be used to repair any impacts from the site construction to the municipal project. This lot has 849' of frontage; therefore, their deposit will be $16,980.

Staff is recommending approval.

The Committee discussed that since the building is a two-year project, the adjacent public project has not been bid yet. Typically, the public project is bid prior to an early building permit and there may be issues with meeting timelines due to the need for right of way. They also discussed concerns regarding emergency access. It was agreed that both of these issues need to be added to the Agreement.

On a motion by Brenda Derrig, seconded by Steve Dirksen, the Committee voted to recommend approval of the Early Building Permit with the above additions.

RECOMMENDED MOTION
Concur with the recommendations of PWPEC and approve the Early Building Permit.

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

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

COMMITTEE	Present	Yes	No	Unanimous
				☑
Tim Mahoney, Mayor	☐	☐	☐	
Nicole Crutchfield, Director of Planning	☑	☑	☐	Mark Williams
Steve Dirksen, Fire Chief	☑	☑	☐	
Bruce Grubb, City Administrator	☑	☑	☐	
Ben Dow, Director of Operations	☐	☐	☐	
Steve Sprague, City Auditor	☑	☑	☐	
Brenda Derrig, City Engineer	☑	☑	☐	
Kent Costin, Finance Director	☐	☐	☐	

ATTEST:

Brenda E. Derrig, P.E.
City Engineer

C: Kristi Olson

THE CITY OF Fargo
FAR MORE

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

Memorandum

To: Members of PWPEC

From: Jason Leonard, Civil Engineer II

Date: April 30, 2021

Re: UN-20-B1– NDSCS Career Workforce Academy– Early Building Permit

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Background:

Attached you will find a request for an early building permit from the NDSCS Foundation for their building at 6688 43rd Street South.

Improvement District No. UN-20-B1 will be bid in the 2021 construction season with a late fall or early spring completion date. In the spring of 2022, a paving project will be bid to construct the pavement in front of this facility.

The applicant has filled out the application and agreement and the project provides access throughout construction.

As part of the early building permit, the applicant will provide a deposit that could be used to repair any impacts from the site construction to the municipal project. This lot has 849' of frontage; therefore, their deposit will be $16,980.

Recommended Motion:

I recommend that the Public Works Project Evaluation Committee approve the early building permit request for the NDSCS Career Workforce Academy building at 6688 43rd Street South.

JTL/klb

C: Brenda Derrig
Ron Solberg

AGREEMENT

EARLY BUILDING PERMIT

THIS AGREEMENT, made and entered into by and between **THE CITY OF FARGO, NORTH DAKOTA**, a municipal corporation, 225 4th Street North, Fargo, North Dakota 58102, hereinafter referred to as "City", and **NORTH DAKOTA STATE COLLEGE OF SCIENCE AT WAHPETON, NORTH DAKOTA**, a North Dakota nonprofit, hereinafter referred to as "Owner", and **COMSTOCK CONSTRUCTION, INC.,,** a North Dakota corporation, hereinafter referred to as "Builder" (hereafter "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 Owner and/or Builder's, their agents' or subcontractors' activities in the right of way permitted which may impact municipal infrastructure under the early building permit; and,

WHEREAS, City requires an agreement with Owner and Builder relative to the issuance of early building permits.

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

1. City agrees that that an early building permit may be issued to Owner and Builder for the project stated and as listed below.

2. In consideration of the issuance of said early building permit for the project Owner and Builder agree to deposit with City a cash deposit or letter of credit in the amount of Sixteen Thousand Nine Hundred Eighty Dollars ($16,980.00), which sum is determined as follows: $20.00

per front foot of lot covered by the permit. Said cash deposit may be utilized by City to reimburse City for any building site impacts or any impacts 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 Owner and Builder that such list is not exclusive and said deposit may be used for any costs or damages City may incur due to Owner and Builder's activities under the early building permit.

3. Owner and Builder have 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. Owner and Builder understand and agree the early build permit is granted, provided the following:

a. Site access to the building will not impact municipal utilities/paving installation: and

b. Owner and Builder must take approved temporary measures to address nonfunctional sewer, water and storm sewer on the building site; and

c. Owner and Builders building construction and occupancy schedule is subject to City approval; and

d. Owner and Builder must provide City a contact person for notification including name, address and phone.

4. City agrees to provide 48-hour notification to Owner and/or Builder prior to project start-up for installation of municipal infrastructure, including utilities or paving, so as to allow Owner and Builder to clear the right-of-way for such public construction. Owner and Builder agree, however, that during construction, City shall only be required to give a 2-hour notification for various aspects of the project.

5. Owner and Builder agree 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. Owner and Builder have been informed that the municipal project has not yet been bid, and that there are no guarantees of Project construction in an established time frame. Nevertheless, Owner and Builder understand and accept all risks of proceeding with the building project in advance of the installation and operation of the municipal improvements. Owner and Builder waive, 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; Owner and Builder are not third party beneficiaries of that contract and have no rights thereunder. City is working diligently to secure the necessary property interests and proceed with the Project, but Project delays are anticipated, possibly delaying the delivery of services to Owner and Builder's site.
City shall have no liability to Owner and Builder as a result of any delays in municipal infrastructure installation.

7. Owner and Builder agree to acquire any easements deemed necessary for site access to the building site and City shall have no responsibility in this regard. Owner and Builder further understand and agree that without installation of streets there is limited access to the site for fire and police protection. Owner and Builder agrees to be responsible for any access limitations resulting from the same. Nevertheless, City has constructed a temporary road that may be used for site access. Owner and Builder understand and agree that the designated haul road, as indicated on Exhibit A hereto, shall be the sole means of access to the building site until paving is completed on 38th Street, at which time the haul road route may be modified by written agreement of the parties. In addition, Owner and Builder agree to construct a road from the existing temporary road to the site, in accordance with City specifications. The road shall be not less than 24' wide, have a minimum 50' radius, be constructed of crushed concrete with appropriate Geotech fabric underlay. A turnaround

for emergency vehicles must be provided on the site. The Owner and Builder agree to maintain the access road on a weekly basis to ensure effective emergency access.

8. Owner and Builder understand and agree that the fire hydrant closest to the construction site is located on 38th Street, some 1,000 feet away. Owner and Builder agree that this hydrant shall be accessible to the site at all times, and no equipment, building materials or other obstructions may be placed so as to impede access to this fire hydrant.

9. Any cash deposit remaining unused upon completion of the paving project (thus completing the public construction) shall be returned to Builder upon application.

10. The project and project location are as follows:

NDSCS Career Workforce Academy located within the Covey Ranch First Addition south of 64th Avenue South and east of 43rd Street South

IN WITNESS WHEREOF, the parties have entered into this agreement the day and year first above written.

Dated this ____ day of _____, 2021.

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

ATTEST:

_____
Steve Sprague, City Auditor

BUILDER:

_____
Builder Name

OWNER:

_____


32 AVE S
Temp Access Road
24' Crushed Concrete Surface
Min 50 radius at intersections
Provide adequate hard surface for emergency vehicle turn around

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 – 6688 45th Street South, Fargo ND, 58102

2. Utility Completion Date (Sanitary Sewer, Water, Storm)

   a. 6/18/2021
   b. Occupancy will not be allowed prior to this date.

3. Paving Completion Date

   a. 6/30/2022
   b. City accepts no responsibility for site access prior to this date.

4. Project Engineer – Anthony Sommerfeld (Moore Engineering)

   701-551-1047

Request for Building Permit

A. Location

Lot - 1

Block - 1

Addition – Covey Ranch 1st Addition

Address – 6688 45th Street South Fargo, ND 58104

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 <u>not</u> 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 4

D. Signatures (All required)

	Owner	Builder
Name		Walker Busse
Address		4511 15th Avenue North Fargo, ND 58102
Telephone		701-640-2387
Signature		
Date		4/29/2021

E. Approval

Project Engineer _____ Date

N:\admin\earlybuild\applicationform

(34)

REPORT OF ACTION

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Improvement District No. BR-21-E1 Type: Private Utility Relocation

Location: 11th Street, NP to 1st Avenue North Date of Hearing: 6/7/2021

Routing	Date
City Commission	6/14/2021
PWPEC File	X
Project File	Kevin Gorder

The Committee reviewed a communication from Division Engineer, Kevin Gorder, regarding the relocation of three Xcel Energy power poles.

Improvement District No. BR-21-E1 is for paving and utility reconstruction of 11th Street North between NP and 1st Avenue. The existing street is approximately 56' wide and the new roadway will be approximately 48' wide. This reduction in width will allow for wider sidewalks for better walkability along this route. Xcel has three power poles that will need to be relocated to make room for the widened sidewalk. The cost for the relocation is $25,578.69.

Sparklight is also attached to these poles and Engineering is working with them to relocate when Xcel completes their work. We anticipate Sparklight's work to be under $5,000.

The following cost estimates:

- Xcel Energy **- $25,578.69**
- Sparklight **– up to $5,000**

Staff is seeking approval to pay Xcel Energy $25,578.69 for the relocation of poles to facilitate construction of the roadway and sidewalk improvements. Approval of payment not to exceed $5,000for Sparklight to relocate.

On a motion by Bruce Grubb, seconded by Nicole Crutchfield, the Committee voted to approve the estimated payment of $25,578.69 to Xcel Energy and up to $5,000 to Sparklight for the relocation of utilities.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve the estimated payment of $25,578.69 to Xcel Energy and up to $5,000 to Sparklight for the relocation of utilities.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: Sales Tax

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

COMMITTEE	Present	Yes	No	Unanimous
				☑
Tim Mahoney, Mayor	☑	☑	☐	
Nicole Crutchfield, Director of Planning	☑	☑	☐	
Steve Dirksen, Fire Chief	☑	☑	☐	
Bruce Grubb, City Administrator	☑	☑	☐	
Ben Dow, Director of Operations	☑	☑	☐	
Steve Sprague, City Auditor	☑	☑	☐	
Brenda Derrig, City Engineer	☑	☑	☐	
Kent Costin, Finance Director	☐	☐	☐	

Brenda E. Derrig, PE
City Engineer

ATTEST:

C: Kristi Olson

THE CITY OF Fargo FAR MORE

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

Memorandum

To: Members of PWPEC

From: Kevin Gorder, Division Engineer

Date: June 2, 2021

Re: Improvement District No. BR-21-E1 –Utility Relocation
Paving and Utility Reconstruction 11th Street between NP and 1st Avenue North

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Background:

This project is bid and currently under construction with a substantial completion date of August 9, 2021. The existing street is approximately 56' wide and the new roadway will be approximately 48' wide. This reduction in width allowed wider sidewalks for better walkability along this route with the ongoing and anticipated development in this area. Xcel has three power poles that need to be relocated along the way to make room for this widened sidewalk.

Attached you will find the invoice from Xcel to complete this work. It is anticipated this work would be completed after the new street is completed but prior to placing sidewalk.

The attached cost information is from Xcel for $25,578.69. Funding for this project will come from sales tax. Engineering has reviewed the proposals and feel they are reasonable and in line with other similar work.

Sparklight is also attached to these poles and Engineering is working with them to relocate when Xcel completes their work. We anticipate Sparklight's work will be under $5,000. Engineering requests approval up to $5,000 as part of this action.

Recommended Motion:

Approve payment of $25,578.69 to Xcel for the relocation of Xcel's poles to facilitate construction of the roadway and sidewalk improvements. Approve payment not to exceed $5,000 for Sparklight to relocate.

Attachment

Xcel Energy®
RESPONSIBLE BY NATURE®

NORTHERN STATES POWER COMPANY

MAILING ADDRESS	ACCOUNT NUMBER		DUE DATE
CITY OF FARGO NDNCUF 225 4TH ST N FARGO ND 58102-4817	51-0818715-7		Pay Now
	STATEMENT NUMBER	STATEMENT DATE	AMOUNT DUE
	732930779	05/21/2021	$25,578.69

QUESTIONS ABOUT YOUR BILL?

See our website: xcelenergy.com
Email us at: Customerservice@xcelenergy.com
Please Call: 1-800-481-4700
Hearing Impaired: 1-800-895-4949
Fax: 1-800-311-0050

Or write us at: XCEL ENERGY
PO BOX 8
EAU CLAIRE WI 54702-0008

SUMMARY OF CURRENT CHARGES (detailed charges begin on page 2)

Non-Recurring Charges / Credits	$25,578.69
Current Charges	**$25,578.69**

ACCOUNT BALANCE *(Balance de su cuenta)*

Previous Balance		$5,257.88
Payment Received	Check 01/11	-$5,257.88 **CR**
Balance Forward		**$0.00**
Current Charges		$25,578.69
Amount Due *(Cantidad a pagar)*		**$25,578.69**

004408 1/1

INFORMATION ABOUT YOUR BILL

Thank you for your payment.

RETURN BOTTOM PORTION WITH YOUR PAYMENT • **PLEASE DO NOT USE STAPLES, TAPE OR PAPER CLIPS**

Xcel Energy®

ACCOUNT NUMBER	DUE DATE	AMOUNT DUE	AMOUNT ENCLOSED
51-0818715-7	Pay Now	$25,578.69	

AB 01 004408 12569 B 17 E
CITY OF FARGO NDNCUF
225 4TH ST N
FARGO ND 58102-4817

XCEL ENERGY
P.O. BOX 9477
MPLS MN 55484-9477

31 51062021 08187157 00002557869000025578 69

Xcel Energy®

MAILING ADDRESS	ACCOUNT NUMBER		DUE DATE
CITY OF FARGO NDNCUF 225 4TH ST N FARGO ND 58102-4817	51-0818715-7		Pay Now
	STATEMENT NUMBER	STATEMENT DATE	AMOUNT DUE
	732930779	05/21/2021	$25,578.69

NON-RECURRING CHARGES / CREDITS DETAILS

DESCRIPTION		CHARGE
Invoice Number 902856341 05/21/21 to 05/21/21	12415096 225 4TH ST N FARGO ND 58102-4817	
RerouteElect RSSW		$25,578.69
Total		**$25,578.69**

ADVANCED PAYMENT REQUIRED. PLEASE PAY UPON RECEIPT.
CONTRACT# 2130187 225 4TH ST N FARGO ND
SN# 12415096
THIS IS THE INVOICE FOR THE POLE RELOCATION FOR THE 11TH ST N RECONSTRUCTION PROJECT
PRICE ON INVOICE VALID FOR 90 DAYS OF STATEMENT DATE.
FOR QUESTIONS REGARDING THIS INVOICE PLEASE CONTACT TRAVIS LILL AT 701-241-8663



STAY SAFE. CALL 811 BEFORE YOU DIG.

Whether it's a major project or just some gardening, be sure to call 811 before any digging. It's smart. It's easy. And it helps keep everyone safe.

For more information visit xcelenergy.com/Safety.

811 Know what's below. Call before you dig.

35

CITY OF FARGO PROJECTS

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 and Utility Construction

Improvement District No. BN-21-K

Call for Bids	June 14	, 2021
Advertise Dates	June 23 & 30	, 2021
Bid Opening Date	July 21	, 2021
Substantial Completion Date	October 15	, 2021
Final Completion Date	November 14	, 2021

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 Leonard

Phone No. (701) 241-1555

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)

CITY OF FARGO
ENGINEERING DEPARTMENT

LOCATION AND COMPRISING

NEW PAVING AND UTILITY CONSTRUCTION

IMPROVEMENT DISTRICT NO. BN-21-K

LOCATION:

This project is for new construction of underground utilities, asphalt pavement, and incidentals on 23rd Street South and 24th Street South.

COMPRISING:

Lot 8 through 9, Block 5.
Lot 1 through 2, Block 7. (To be replatted as Eagle Valley 5th Addition)

All platted within Eagle Valley Addition.

All the foregoing located in the City of Fargo, Cass County, North Dakota.

ENGINEER'S REPORT

NEW PAVING AND UTILITY CONSTRUCTION

IMPROVEMENT DISTRICT NO. BN-21-K

Nature & Scope

This project is for new construction of underground utilities, asphalt pavement and incidentals on 23rd Street South and 24th Street South.

Purpose

This project is to provide infrastructure for new residential housing in Eagle Valley Fifth Addition as requested by the Developer.

Feasibility

The estimated cost of construction is $972,316.28. The costs for the improvement district are estimated as follows:

CRWUD Special Assessment		$ 142,191.00
Plus 10% Engineering Fee:		$ 14,219.10
Plus 4% Administration Fee:		$ 5,687.64
Plus 3% Legal Fee:		$ 4,265.73
Plus 4% Interest Fee:		$ 5,687.64
Plus 5% Contingency:		$ 7,109.55
Total Estimated Water Main Cost:		**$ 179,160.66**
CRWUD Amount Special Assessed:		**$ 179,160.66**

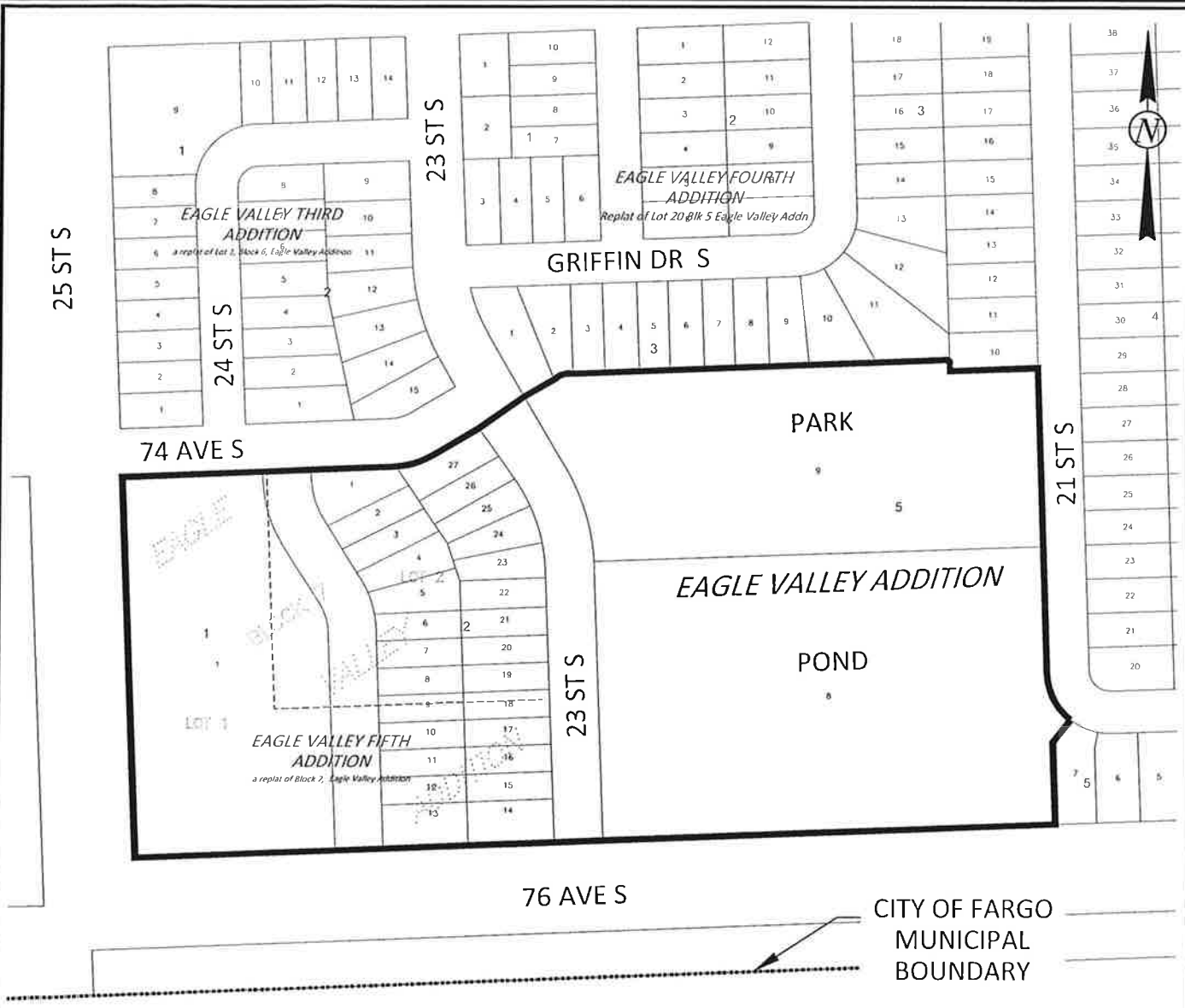
Underground & Paving Costs		$ 830,125.28
Plus 10% Engineering Fee:		$ 83,012.53
Plus 4% Administration Fee:		$ 33,205.01
Plus 3% Legal Fee:		$ 24,903.76
Plus 4% Interest Fee:		$ 33,205.01
Plus 5% Contingency:		$ 41,506.26
Total Estimated Underground & Paving Cost:		**$ 1,045,957.85**
Underground & Paving Amount Special Assessed:		**$ 1,045,957.85**

Project Funding Summary		
Cass Rural Water User District Special Assessment	14.62%	$ 179,160.66
Special Assessments	85.38%	$ 1,045,957.85
Total Estimated Project Cost		**$ 1,225,118.51**

We believe this project to be cost effective.



Tom Knakmuhs, P.E.
Assistant City Engineer



CITY OF FARGO ENGINEERING DEPARTMENT

LOCATION & ASSESSMENT AREA

NEW PAVING AND UTILITY CONSTRUCTION

IMPROVEMENT DISTRICT NO. BN-21-K

THE CITY OF Fargo FAR MORE

Tax Exempt Review Committee
Fargo City Hall
225 4th Street North
Fargo, ND 58102
Phone: 701.241.1340 | Fax: 701.241.1339
www.FargoND.gov

389

June 9, 2021

Board of City Commissioners
City Hall
Fargo, ND 58102

RE: New or Expanding Business Exemption

Dear Commissioners:

Attached is the application made by Standard Industries, Inc. for a 5 year new industry property tax incentive according to N.D.C.C. Chapter 40-57.1. This application is for a newly constructed building to expand their operation, which involves fabrication of steel and aluminum products.

Notices to competitors have been published. The Tax Exempt Review Committee has met to consider this application. No potential competitors appeared at the Tax Exempt Review meeting. This project meets our current policy. The application contains information regarding projected value of the expansion, the nature of jobs to be created, and a description of the product line. The applicant will pay the full land tax estimated at approximately $30,000 per year. The value of the building is estimated at $5,907,000 and the property tax savings would be about $82,000 per year.

The recommendation of the Tax Exempt Review Committee is to approve a 5-year property tax incentive.

SUGGESTED MOTION:
Approval of a 5-year, 100% exemption on improvements for Standard Industries, Inc. at 5650 13 Ave N.

Sincerely,

Mike Splonskowski
City Assessor

Gate Keepers
Jim Gilmore
Ryan Aashiem

-2 Meeting Process -

Application For Property Tax Incentives For New or Expanding Businesses

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

Project Operator's Application To Fargo / Cass
City or County

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

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

This application is a public record

Identification Of Project Operator

1. Name of project operator of new or expanding business: Standard Industries, Inc.
2. Address of project: 5650 13th Ave. N
   City: Fargo, ND County: Cass
3. Mailing address of project operator: 4230 14th Ave. N
   City: Fargo State: ND Zip: 58102
4. Type of ownership of project
   - ☐ Partnership
   - ☒ Corporation
   - ☐ Subchapter S corporation
   - ☐ Cooperative
   - ☐ Individual proprietorship
   - ☐ Limited liability company
5. Federal Identification No. or Social Security No. [redacted]
6. North Dakota Sales and Use Tax Permit No. [redacted]
7. If a corporation, specify the state and date of incorporation: North Dakota – 11-07-91
8. Name and title of individual to contact: Mike Lepine
   Mailing address: 4230 14th Ave. N
   City, State, Zip: Fargo ND 58102 Phone No. 701-282-7550

Project Operator's Application For Tax Incentives

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

   ☒ **Property Tax Exemption**
   - 5 Number of years
   - 100% Percent of exemption

   ☐ **Payments In Lieu of Taxes**
   - _____ Beginning year _____ Ending year
   - _____ Amount of annual payments (attach schedule if payments will vary)

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

Description of Project Property

11. Legal description of project real property
Lot one, in Block One, of Commerce on 12th Addition to the City of Fargo, situate in the County of Cass on the State of North Dakota.

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

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

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

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

If existing facility, when was it constructed? N/A

If new construction, complete the following:

a. Estimated date of commencement of construction of the project covered by this application 7-19-21

b. Description of project to be constructed including size, type and quality of construction
Construct A New Office/Manufacturing Building in the North Fargo Industrial Park. Standard Industries, Inc. will move their operations to the new facility. 120,000 Total Sq. Ft. Valor Contacting (Builder)

c. Projected number of construction employees during the project construction _____

14. Approximate date of commencement of this project's operations 10-01-22

15. Estimated market value of the property used for this project:

a. Land ..... $ 1,290,000

b. Existing buildings and structures for which an exemption is claimed ..... $ -0-

c. Newly constructed buildings and structures when completed ..... $ 5,907,000

d. Total ..... $ 7,197,000

e. Machinery and equipment ..... $ 1,200,000

16. Estimate taxable valuation of the property eligible for exemption by multiplying the market values by 5 percent:

a. Land (not eligible) ..... [redacted]

b. Eligible existing buildings and structures ..... $ -0-

c. Newly constructed buildings and structures when completed ..... $ 295,350

d. Total taxable valuation of property eligible for exemption (Add lines b and c) ..... $ 295,350

e. Enter the consolidated mill rate for the appropriate taxing district 277.19

f. Annual amount of the tax exemption (Line d multiplied by line e) ..... $ 81,868

Description of Project Business

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

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

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

- See Attached -

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

Metal fabrication equipment - Tube Laser, fiber Laser, machining centers - mills + Lathes, press brake

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

Year *(12 mo. periods)*	New/Expansion Project only Year 1	New/Expansion Project only Year 2	New/Expansion Project only Year 3	New/Expansion Project only Year 4	New/Expansion Project only Year 5
Annual revenue	7,500,000	8,300,000	9,100,000	10,000,000	11,000,000
Annual expense	7,348,000	8007,000	8,700,000	9,400,000	10,100,000
Net income	152,000	293,000	400,000	600,000	900,000

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

Current positions & positions added the initial year of project

# Current Positions		New Positions Under $13.00	New Positions $13.01-$15.00	New Positions $15.01-$20.00	New Positions $20.01-$28.00	New Positions $28.01-$35.00	New Positions Over $35.00
38					7	5	

Year		(Before project)	Year 1	Year 2	Year 3	Year 4	Year 5
No. of Employees	(1)	38	50	56	64	72	80
	(2)	-	-	-	-	-	-
Estimated payroll	(1)	1,700,000	2,300,000	2,600,000	3,000,000	3,375,000	3,750,000
	(2)	-	-	-	-	-	-

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

Previous Business Activity

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

23. Has the project operator conducted this business at this or any other location either in or outside of the state?
☐ Yes ☒ No

24. Has the project operator or any officers of the project received any prior property tax incentives? ☐ Yes ☒ No
If the answer to 22, 23, or 24 is yes, give details including locations, dates, and name of former business (attach additional sheets if necessary).

Business Competition

25. Is any similar business being conducted by other operators in the municipality? ☐ Yes ☒ No
If YES, give name and location of competing business or businesses

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

Property Tax Liability Disclosure Statement

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

27. Does the project operator own a greater than 50% interest in a business that has delinquent property tax levied against any of its North Dakota real property? ☐ Yes ☒ No
If the answer to 26 or 27 is Yes, list and explain

Use Only When Reapplying

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

Notice to Competitors of Hearing

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

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

Signature | President (Title) | 4/25/21 (Date)

PRIVACY ACT NOTIFICATION

In compliance with the Privacy Act of 1974, disclosure of a social security number or Federal Employer Identification Number (FEIN) on this form is required under N.D.C.C. §§ 40-57.1-03, 40-57.1-07, and 57-01-15, and will be used for tax reporting, identification, and administration of North Dakota tax laws. Disclosure is mandatory. Failure to provide the social security number or FEIN may delay or prevent the processing of this form.

Certification of Governing Body (To be completed by the Auditor of the City or County)

The municipality shall, after granting any property tax incentives, certify the findings to the State Tax Commissioner and Director of Tax Equalization by submitting a copy of the project operator's application with the attachments. The governing body, on the _____ day of _____, 20____, granted the following:

☐ **Property Tax Exemption**

_____ Number of years

_____ Percent of exemption

☐ **Payments in lieu of taxes**

_____ Beginning year _____ Ending year

_____ Amount of annual payments (Attach schedule if payments will vary)

_____
Auditor

Nature of Business/Structure/Evolution:
Lepine Holdings, LLC (LH) was organized in the State of ND in 2015 as an LLC and is owned 100% by Michael J. Lepine. The entity was formed to hold title to commercial property that is leased to related parties operating as Standard Industries, Inc. and Alloway Standard, Inc.

Standard Industries, Inc. (SII) is organized in the State of ND as a C-Corporation. The company is currently owned 100% by Michael J. Lepine. SII is a family-owned company that was established after WW II in Fargo, ND. In 1976, Mike's dad (Jim) acquired the company from his father & uncle and operated the company for roughly forty years. Jim was a very astute businessman and grew the company once he gained control. Mike bought out his father in 2016 and is in full control of the business operations. SII operates as a metal fabrication business and provides a variety of stainless steel, precision steel, and aluminum products to their clientele in primarily MN and ND. They work closely with some larger industrial type companies (i.e. American Crystal Sugar / True North / Cargill / Minn-Dak) and have enjoyed long-lasting relationships. At the same time, they provide various other products for job-shop based orders.

Alloway Standard, Inc. (ASI) used to operate separately but is now wholly owned by Standard Industries, Inc. and is a division within SII. All assets, business operations and financials flow through SII. In 2003, Jim and his son Mike purchased the Alloway Sugarbeet Equipment line from Woods Equipment Co., with the idea to be more diversified, grow the company's sugarbeet heritage and continue the success of the agricultural equipment line. ASI manufactures and sells cultivators, seedbedders, shredders, defoliators, sugarbeet harvesters for: organic crops, corn, cotton, sweet potatoes, vegetables, hemp, edible beans, sugarbeets, and potatoes.

NORTH Dakota | Commerce
Be Legendary.™

February 23, 2021

Robert Arends
Standard Industries Inc
4230 14th Ave N
Fargo, ND 58102-2841

Dear Robert:

Thank you for your application for primary-sector certification by the North Dakota Department of Commerce, Economic Development & Finance Division. We have reviewed your application and determined that ED&F can certify your company, **Standard Industries Inc**, as primary sector and a new wealth creator in the economy of North Dakota. This certification is valid for **four years** from today's date (expires 2/22/2025).

Most of North Dakota's economic development programs, tools and incentives are targeted toward primary-sector clients. You may be requested to provide a copy of this primary-sector certification letter when you apply for certain economic development incentive and funding programs.

This certification does not guarantee the receipt of any North Dakota business incentive. For example, there are additional qualification criteria for the Seed Capital Investment and Agricultural Business Investment personal income tax credits, and it is critical that investments **NOT** be made prior to the business receiving certification for these two credits. If you are pursuing certification for investment tax credits and need to know the criteria required for qualification, contact Joe Cicha 701-328-7283.

This certification is not the application process for the North Dakota New Jobs Training Program administered by Job Service North Dakota. To apply for the North Dakota New Jobs Training Program, you must contact Job Service North Dakota for the required application forms. Application forms for other programs that require primary sector certification are available from the agency administering the program.

Also, companies and individuals pursuing the investment tax credit incentive are reminded there is a cap on available dollars. Please visit with the ND Office of the Tax Commissioner regarding the remaining balance for investment tax credits. The credits are available on a first-come-first-serve basis until the law-defined cap is met.

North Dakota appreciates your contribution to the citizens and economy of our state. If there is anything further we can do to assist your company, please contact us at 701-328-5300.

Sincerely,

Joshua Teigen, Director
Economic Development & Finance Division

Exemption Evaluation Calculator 2020			**96.8**			**110.6**
Standard Industries Inc.			Points			Points
Project Type Code (Ctrl-C to view)		1	**38.0**		1	**38.0**
Current Number Of Employees	**Year 1**	38		**Year 3**	38	
Hourly Salary Without Benefits	**# Jobs**			**# Jobs**		
Under $13.00						
$13.01-$15.00						
$15.01-$20.00						
$20.01-$28.00	7	Pts. For # Jobs->	**6.0**	18	Pts. For # Jobs->	**20.0**
$28.01-$35.00	5	Pts. For $ Jobs->	**12.8**	8	Pts. For $ Jobs->	**12.6**
Over $35.00						
TOTAL # OF JOBS CREATED	**12**			**26**		
% GI w/ Local Competition (not downtown)			**25.0**		0%	**25.0**
Value of Proposed Buildings		$ 5,907,000	**15.0**		$ 5,907,000	**15.0**
Downtown Location (Y/N)		N	**0.0**		N	**0.0**
Exemption Needed (Y/N)					0	
Startup Firm (Y/N)		N	**0.0**		N	**0.0**
Has Const Started or Has Bldg Been Occupied If Existing (Y/N)		N	**0.0**		N	**0.0**
Number of Years (Exemption)		5			5	
Building Age (if substantial renovation)			**0.0**			**0.0**
RECOMMENDATION IS TO		**REVIEW**			**APPROVE**	
Description		Manufacturing			Manufacturing	
Estimated New Annual Payroll		$682,240			$1,431,040	
Estimated Annual Real Estate Tax		$81,868			$81,868	
Estimated PV of Exemption		$354,446			$354,446	
Payroll / PV of Exemption		1.9			4.0	
Property Value / # of Jobs		$ 492,250			$ 227,192	
Total Value Of Benefit		$ 409,340			$ 409,340	