

FARGO CITY COMMISSION AGENDA  
Monday, June 26, 2023 - 5:00 p.m.

Executive Session at 4:30 p.m.

Roll Call.

**PLEASE NOTE:** The Board of City Commissioners will convene at 4:30 p.m. and retire into Executive Session for the purpose of attorney consultation pertaining to 501 Main Avenue. To discuss the risks, strengths or weaknesses of an action of the public entity in an open meeting will have a negative fiscal effect on the bargaining and/or litigation position of the City of Fargo. Thus, an Executive Session for said matters is authorized pursuant to North Dakota Century Code §44-04-19.1 subsection 2.

Regular Meeting at 5:00 p.m.

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

- A. Pledge of Allegiance.
- B. Roll Call.
- C. Approve Order of Agenda.
- D. Minutes (Regular Meeting, June 12, 2023).

**CONSENT AGENDA – APPROVE THE FOLLOWING:**

- 1. 1st reading of an Ordinance Amending Section 19-0203 and Enacting Sections 19-0206.1 and 19-0208 of Article 19-02, Amending Section 19-0302 and Enacting Sections 19-0305, 19-0306 and 19-0307 of Article 19-03 of Chapter 19 of the Fargo Municipal Code Relating to the Department of Forestry - Trees, Parks and Boulevards.
- 2. 2nd reading and final adoption of an Ordinance Amending Section 11-0209 of Article 11-02 of Chapter 11 of the Fargo Municipal Code Relating to Noise Control and Radio Interference.
- 3. Direct the City Attorney to prepare amendments to Fargo Municipal Code Article 25-15 - Alcoholic Beverages - Relating to food sale requirements for license renewal.
- 4. Site Authorization for Games of Chance:
  - a. Metro Sports Foundation at Alibi Lounge.
  - b. West Fargo Hockey Association at Fort Noks.
- 5. Applications for Games of Chance:
  - a. Steve Weidner FM Junior Tour for a calendar raffle from 7/1/23-6/30/24.
  - b. Fargo Moorhead West Fargo Chamber for a raffle on 7/19/23.
  - c. Veterans Honor Flight of ND/MN for a raffle every Monday from 7/3/23-6/24/24.
  - d. Veterans Honor Flight of ND/MN for a raffle on 7/16/23.

- e. St. Anthony of Padua Parish Fall Bazaar for a raffle on 9/24/23.
- f. Scottish Rite Holding Company for a raffle on 8/9/23.
- g. Chiefs of Police Association of North Dakota for a raffle from 6/27/23-6/28/23.
  
6. Renewal of the Alcoholic Beverage and Live Entertainment Licenses until 6/30/24, contingent upon all essential requirements for renewal being met by 6/30/23.
7. Agreement – Project Manager with Nicolette Plante.
8. Pipeline Easement and Agreement with Cass Rural Water Users District (Project No. VF-23-B1).
9. Task Order No. 1 with Houston Engineering in the amount of \$199,501.00 for Project No. QR-23-A0.
10. Bid advertisement for Project No. FM-15-F.
11. Bid award to Ryan Contracting in the amount of \$872,126.00 for Project No. UN-23-B2.
12. Change Order No. 6 in the amount of \$5,793.55 for Improvement District No. BR-21-C1.
13. Memorandum of Offer to Landowner for a Permanent Easement (Water Main) with Huynh KHA Property LLC (Improvement District No. BR-23-A).
14. Bid award to Border States Paving, Inc. in the amount of \$1,499,056.13 for Improvement District No. PR-23-G1.
15. Bid award to SJ Louis Construction, Inc. in the amount of \$358,724.00 for Improvement District No. UR-23-A1.
16. Pipeline Easement with Municipal Airport Authority (Project No. VF-23-B1).
17. Bid award to Osgood Cleaning Services LLC in the amount of \$198,000.00 for a three-year contract for cleaning services at the Fargo Police Department Headquarters and associated Master Services Agreement (RFP23103).
18. Bid award and Contract to JLG Architects for development of a Master Facility Plan for the Fargo Police Department (RFP23078).
19. Piggyback purchase through the Sourcewell Cooperative Contract with Johnson Controls in the amount of \$137,960.00 for an upgrade to the Building Automation System at the FARGODOME (PBC070121-JHN).
20. Resolution establishing a Forestry licensing requirement.
21. Fargo Cass Public Health 2023 budget adjustments as presented.
22. Notice of Grant Award from the ND Department of Health and Human Services for Regional Environmental Health Services.
23. Notice of Grant Award from the ND Department of Health and Human Services for State Aid to Local Public Health.

24. Notice of Grant Award from the ND Department of Health and Human Services for Increasing Immunization Rates – LPH (CFDA #93.268).
25. Notice of Grant Award from the ND Department of Health and Human Services for PHEP - EPR Statewide Response Team (CFDA #93.069).
26. Notice of Grant Award from the ND Department of Health and Human Services for family planning telehealth infrastructure enhancement and expansion grant (CFDA #93.217).
27. Request from the Downtown Community Partnership (DCP) to utilize the property at 501 Main Avenue for parking during the 2023 Downtown Fargo Street Fair.
28. Resolution Approving Plat of Golden Valley Seventh Addition.
29. Sole Source Procurement with Filmtec Corporation in the amount of \$128,420.40 for the ultra-filtration membranes at the Effluent Reuse Facility (SSP23116).
30. Bid award to Peterson Mechanical, Inc. in the amount of \$78,000.00 for the tankless hot water heater project at the Water Treatment Plant (Project No. WA2206) (RFP23105).
31. Bills.

**REGULAR AGENDA:**

32. **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](https://FargoND.gov/VirtualCommission)).**

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

33. **PUBLIC HEARING** – CONTINUED to 8/21/23 - Application for a Class “GH” Alcoholic Beverage License for Five Star African Cuisine d/b/a Five Star African Cuisine to be located at 855 45th Street South, Suite 1A.
34. **PUBLIC HEARING** - Application for a Class “A-Club” Alcoholic Beverage License for the Fargo Air Museum d/b/a Fargo Air Museum to be located at 1609 19th Avenue North.
35. **PUBLIC HEARING** - Application for a Class “W” Alcoholic Beverage License for The Fargo Brewing Company, LLC d/b/a Fargo Brewing Company to be located at 610 University Drive North.
36. **PUBLIC HEARING** – CONTINUED to 7/10/23 - Hearing on a dangerous building located at 421 15th Avenue North.
37. **PUBLIC HEARING** - Hearing to consider a Renewal Plan and Developer Agreement with HN 8th Street, LLC for Tax Increment Financing District No. 2023-03 (502 8th Street South).
38. Presentation from the developers of 501 Main Avenue on proposed changes to their development plans.
39. Informational overview of the 2024 Primary Election changes.

40. Request from Kilbourne for cost share assistance for burying the overhead power line in Graver Alley.
41. Recommendation to declare the estimated population of the City of Fargo to be 131,444.
42. Recommendation to receive and file the following Ordinances:
  - a. Relating to Commercial Pedal Car Vehicles.
  - b. Relating to Regulations Governing Operators.
43. Applications for Property Tax Exemptions for Improvements Made to Buildings:
  - a. DCBA Holdings, LLC, 1348 6th Street South (5 year).
  - b. Adam Zavalney and Emma Gruber, 1401 12th Street North (5 year).
44. Recommendation to appoint Commissioner Arlette Preston as the Liaison Commissioner to the Community Development Committee.
45. Recommendations for appointments to the following Boards and Commissions:
  - a. Liquor Control Board.
  - b. Library Board.
  - c. Arts and Culture Commission.
46. Construction Update.
47. Liaison Commissioner Assignment Updates.

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

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

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**MEMORANDUM**

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TO: Liquor Control Board

FROM: Steven Sprague, City Auditor

SUBJECT: Liquor License Application – Fargo Air Museum

DATE: June 26, 2023

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

License Class: A-Club – Club must have 200 members and 20 years in existence  
Business Name: Fargo Air Museum  
Location: 1609 19<sup>th</sup> Ave North  
Applicants: Ryan Thayer

This application is for the issuance of a Class A-Club liquor license. To qualify for a Club license the organization must be in existence for 20 years and have 200 members. There are no food sales requirements and they are allowed to have a physical bar.

Being no significant concerns, staff & Liquor Control recommend approval of the issuance of a Class A-Club alcoholic beverage license to Fargo Air Museum d/b/a Fargo Air Museum. The complete application is available for review in the Auditor's Office.

**Recommended Motion:**

**Move to approve the issuance of a Class A-Club alcoholic beverage license to Fargo Air Museum, LLC d/b/a Fargo Air Museum.**



# FARGO POLICE DEPARTMENT

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

## CRIMINAL INVESTIGATIONS DIVISION

# MEMORANDUM

To: Chief David Zibolski

From: Sergeant Adam Melquist *Am*

Date: 6/6/2023

RE: Alcoholic Beverage License Application, Class "A-Club", Fargo Air Museum

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Application for a Class "A-Club" Alcoholic Beverage License from  
Fargo Air Museum, located at 1609 19<sup>th</sup> Ave N.

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

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

The following information was discovered through this investigation:

### Thayer, Ryan

#### Criminal History -

A search of Fargo Police Department criminal records, North Dakota public records ([publicsearch.ndcourts.gov](http://publicsearch.ndcourts.gov)) and Minnesota public records (<https://chs.state.mn.us/>) showed Thayer was arrested in 2002 for possession of marijuana, was arrested for possession of marijuana, marijuana paraphernalia, DUI, in 2003 (found guilty of possession of marijuana, other charges dismissed), found guilty of possession of marijuana in 2004, pled guilty to disorderly conduct in 2006. There are no criminal charges listed since 2006. Thayer wrote "please see attached" after checking "yes" when asked if he had been convicted of criminal offenses. I did not see any documents attached in relation to this question.



Thayer disclosed his driver's license was suspended back in the late 1990s. I was not able to find record of this in my search.

**Credit History -**

Ryan Thayer's credit history was reviewed. The history shows Thayer filed for Chapter 7 bankruptcy in 2020. Thayer disclosed this on his application and added "past sales jobs & layoffs put us into personal debt that we couldn't carry". All other accounts are current.

**Investigation Notes**

This application is for a class "A-Club" alcoholic beverage license (Authorizes the licensee to sell spirits, beer and wine "On-Sale" only, bar is allowed. This license is for an organization for civic, fraternal, social or business purposes with at least 200 members and in existence for at least 20 years) for Fargo Air Museum.

I spoke with Thayer over the phone about his criminal and credit history. I explained that I did not see any attached document in relation to his criminal history. Thayer said he printed off a list of the history and thought he submitted it with the application. I asked him if he remembers what was listed on the document. Thayer listed the same criminal offenses I found in my check. Thayer explained the disorderly conduct 2006 was in relation to an argument he and his girlfriend had and police were called. He was originally arrested for simple assault but was convicted of disorderly conduct. I asked Thayer if his filing for bankruptcy in 2020 was in relation to COVID. Thayer said it was not, and gave the same explanation he wrote on the application. Thayer was cooperative during the discussion.

**Business Location**

Fargo Air Museum is located at 1609 19<sup>th</sup> Ave N. Other businesses in the area with alcoholic beverage licenses include Applebees, Buffalo Wild Wings, Homewood Suites, Labby's Grill & Bar, and Happy Harry's Bottle Shop.

**Conclusion**

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

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**MEMORANDUM**

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**TO:** Liquor Control Board

**FROM:** Steven Sprague, City Auditor

**SUBJECT:** Liquor License Application – Fargo Brewing

**DATE:** June 26, 2023

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

**License Class:** W –Wine no food requirement - bar allowed (adding Wine to current Beer License)

**Business Name:** Fargo Brewing

**Location:** 610 University Drive North

**Applicants:** Jared Hardy, Jade Nielsen and James Burgum

This application is for the issuance of a Class W liquor license to be added to their existing Class C, with this addition they will be able to offer beer and wine without a food requirement. This facility will continue to operate as a brewery.

Being no significant concerns, staff & Liquor Control recommend approval of the issuance of a Class W alcoholic beverage license to Fargo Brewing Company, LLC d/b/a Fargo Brewing Company. The complete application is available for review in the Auditor's Office.

**Recommended Motion:**

**Move to approve the issuance of a Class W alcoholic beverage license to Fargo Brewing Company, LLC d/b/a Fargo Brewing Company.**





# FARGO POLICE DEPARTMENT

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

## CRIMINAL INVESTIGATIONS DIVISION

### MEMORANDUM

To: Chief David Zibolski

From: Sergeant Adam Melquist *Am*

Date: 6/1/2023

RE: Alcoholic Beverage License Application, Class "W" Fargo Brewing Company, LLC

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Application to add a class "W" Alcoholic Beverage License from  
Fargo Brewing Company, LLC d/b/a located at 610 University Drive North.

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

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

The following information was discovered through this investigation:

Hardy, Jared – General Manager

**Criminal History -**

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

**Credit History -**

Jared Hardy's credit report was reviewed. There are no prior bankruptcies, recent past due accounts or debts turned over to collections

**Nielsen, Jade**

**Criminal History –**

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

**Credit History –**

Jade Nielsen’s credit report was reviewed. There are no prior bankruptcies, or debts turned over to collections. On 5 occasions in the past, there were accounts that were 30 days past due. All of these accounts have since been paid in full and closed.

**Burgum, James**

**Criminal History -**

A search of Fargo Police Department criminal records, North Dakota public records (publicsearch.ndcourts.gov) and Minnesota public records (https://chs.state.mn.us/) showed Burgum was found guilty of a minor in possession/consumption in 1999 in Cass County, pled guilty to Guest on Premises in 2003 in Bismarck (a charge similar to a loud party in the City of Fargo), and pled guilty to Sell/Possess/Consume Alcohol in Public in 2006 in Fargo. None of these charges were disclosed on the application.

**Credit History –**

James Burgum’s credit report was reviewed. There are no prior bankruptcies, recent past due accounts or debts turned over to collections

**Investigation Notes**

This application is to add a class “W” alcoholic beverage license (authorizes the licensee to sell “on-sale” wine, bar is allowed). Fargo Brewing Company already holds a class “C-M” alcoholic beverage license at this location allowing them to sell beer “on-sale” and “off-sale” growlers. There will be no changes to the operations or licensed premises.

I spoke with James Burgum over the phone about the charges not disclosed in the application. James had to ponder about the charges and made a reference to it being his college days. James said he does not deny any of the charges and said he forgot about them when filling out the application. James was cooperative during the discussion.

I spoke with Jade Nielsen over the phone about the delinquent accounts. Jade explained there were a few bills that got missed during COVID due to trying to run businesses. He said everything is current now, which the credit report shows. Jade was cooperative during the discussion.

**Business Location**

Fargo Brewing Company is located at 610 University Drive N. Other businesses with an alcoholic beverage license in the area are Chub’s Pub, and 701 Eateries Prairie Kitchen & Camp Lone Tree.

**Conclusion**

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

RECEIVED  
FARGO POLICE DEPARTMENT

JUN 08 2023

DAVID B ZIBOLSKI  
CHIEF OF POLICE


REF: S. SPRAGUE *DZ*

- RECOMMEND APPROVAL

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## MEMORANDUM

**TO:** Fargo City Commission

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

**DATE:** June 20, 2023

**SUBJECT:** Renewal Plan for 502 8th Street South

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I have drafted a Renewal Plan for the redevelopment of 502 8th Street South. The project would demolish a small apartment building and construct 5 townhome style apartments.

The developer is requesting \$300,825 in Tax Increment Financing (TIF) to demolish the apartment building, site clean-up, infrastructure needs and to pay for a portion of the property. The estimated annual TIF income is \$26,600 a year and the length of the TIF district would be 15 years following the completion of the project. Property taxes on this property are now about \$2,500 a year.

City financial adviser PFM reviewed the project and stated, "The estimated internal rate of return is appropriate given the risk level for this type of project. Based on the information provided to PFM, the calculated internal rate of return and the coverage requirements, PFM concludes the project would not be feasible without public assistance."

A public hearing on the Renewal Plan and Developer Agreement is part of the review process. One of the purposes of the hearing is to provide potential competitors an opportunity to comment if they feel the agreement would result in unfair competition.

### Recommended Motion:

Approve the Resolution adopting the Renewal Plan and a Developer Agreement with HN 8th STREET, LLC to provide TIF funds for the project.

### Attachments

1. Resolution
2. Renewal Plan
3. Financial "But For" Report
4. Form of Developer Agreement pending final legal review

RESOLUTION  
BOARD OF CITY COMMISSIONERS OF THE  
CITY OF FARGO

TAX INCREMENT FINANCING DISTRICT 2023-03

Commissioner \_\_\_\_\_ moved for approval of the following:

WHEREAS, Certain areas within the City are in need of redevelopment in order to prevent further deterioration, to encourage investment and to preserve property values; and

WHEREAS, The Board of City Commissioners desires to avail itself of the power and authority granted by Chapter 40-58 NDCC.

NOW, THEREFORE, BE IT RESOLVED, By the Board of City Commissioners as follows:

1. That one or more slum or blighted areas, or areas consisting of industrial or commercial property, or a combination of those areas of properties, exist in the City of Fargo.
2. That the development, rehabilitation, conservation or redevelopment, or a combination thereof, of the area contained within the Renewal Plan for Tax Increment Financing District No. 2023-03, is necessary in the interest of public health, safety, morals or welfare of the residents of the City of Fargo and will afford maximum opportunity, consistent with the sound needs of the city as a whole, for the rehabilitation or redevelopment of the development area by private enterprise.
3. That there are blighted areas within the area contained within the Renewal Plan with deteriorated conditions that discourage redevelopment. The Renewal Area, as defined in the Renewal Plan, is blighted due to the presence of these conditions have substantially impaired the growth of the City, and have slowed the provision of appropriate redevelopment in this area. As a result, the Board of City Commissioners finds that a blighted condition exists in the said area.
4. That the area designated as the Renewal Plan for Tax Increment Financing District No. 2023-03 is appropriate for a development project.
5. That such development, rehabilitation, conservation or redevelopment of the area contained in the Renewal Plan for Tax Increment Financing District No. 2023-03 requires the powers and authority granted in Chapter 40-58 NDCC.
6. That the Renewal Plan for Tax Increment Financing District No. 2023-03 is hereby officially adopted by the Board.

7. That a Developer Agreement be prepared in regard to the Tax Increment Financing.
8. That the appropriate staff be directed to request the County Auditor and Treasurer to compute, certify and remit tax increments resulting from the development or renewal of the area in accordance with the plan and any modifications thereof, and that the County Auditor and Treasurer shall do so in accordance with this section.

Said motion was seconded by Commissioner \_\_\_\_\_ and, upon call of the roll, the motion carried with Commissioner(s) \_\_\_\_\_ not being present, Commissioners \_\_\_\_\_ voting aye, Commissioners \_\_\_\_\_ voting nay and Commissioner(s) \_\_\_\_\_ abstaining and the motion therefore being declared carried.



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**RENEWAL PLAN**  
**TAX INCREMENT FINANCING DISTRICT NO. 2023-03**  
**CITY OF FARGO, NORTH DAKOTA**  
**MAY 2023**

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## RENEWAL PLAN FOR TAX INCREMENT DISTRICT NO. 2023-03

### Subsection 1.1. Definitions.

For the purposes of the Renewal Plan, the following terms shall have the meanings specified below, unless the context otherwise requires:

"City" means the City of Fargo, a municipal corporation under the laws of the State of North Dakota.

"City Commission" or "Commission" means the Fargo City Commission.

"Comprehensive Plan" means the City's Go2030 Comprehensive Plan, including the objectives, policies, standards and programs to guide public and private land use, development, redevelopment and preservation for all lands and water within the City as and when such plan is adopted and finalized.

"County" means Cass County, North Dakota.

"Development" means the construction of new buildings, structures or improvements; the demolition, alteration, remodeling, repair or reconstruction of existing buildings, structures or improvements; the acquisition of equipment; and the clearing and grading of land on industrial or commercial property in the Renewal Area.

"Renewal Area" means the property described in Subsection 1.4 of this Plan.

"Renewal Plan" or "Plan" means this Plan adopted by the Commission for the Renewal Area.

"State" means the State of North Dakota.

"Tax Increment Financing Act" or "TIF Act" means North Dakota Century Code, Section 40-58-20, as amended.

"Tax Increment Bonds" means any general obligation or revenue tax increment bonds or notes issued by the City to finance the public costs associated with the TIF District as stated in this Plan, or any obligations issued to refund the Tax Increment Bonds.

"Tax Increment Financing District" or "TIF District" means Tax Increment Financing District No. 2023-03.

"Urban Renewal Law" means North Dakota Century Code, Chapter 40-58.

### Subsection 1.2. Statutory Authority.

The creation of the Renewal Area and the establishment of Tax Increment Financing District No. 2023-03 are authorized by the Urban Renewal Law. Specifically the creation of the Renewal Area is authorized under North Dakota Century Code, Sections 40-58-01.1(7) and (14), which provide that the local governing body may designate industrial or commercial property, a slum or

blighted area, or combination of these properties as appropriate for a development or renewal project.

The Urban Renewal Law provides that communities develop a “workable program” for the use of public and private resources to facilitate the development of industrial or commercial properties, eliminate and prevent the development or spread of slums and urban blight, encourage needed urban rehabilitation, provide for the redevelopment of slum and blighted areas, or undertake these activities or other feasible municipal activities as may be suitably employed to achieve the objectives of the workable program. North Dakota Century Code, Section 40-58-04.

Subsection 1.3. Statement of Public Purpose

In adopting the Renewal Plan for TIF District No. 2023-03, the City Commission intends to make the following findings:

- (a) The Renewal Area includes a blighted properties.

**Factual basis:** This Renewal Area is blighted due to the presence of a vacant and blighted apartment building. This substantially impairs the sound growth of a municipality, retards the provision of housing accommodations or constitutes an economic or social liability and is a menace to the public health, safety, morals or welfare in its present condition and use. Photos are include in Appendix D.

- (b) The Renewal Area is has one small apartment building with blighted conditions.

**Factual basis:** The renewal area is considered blighted as described in (a) above. Blighted areas are eligible for renewal.

- (c) The Renewal Area is appropriate for a development or renewal project.

**Factual basis:** The renewal area is zoned MR-3 that allows for multi-family housing.

- (d) The 6-unit apartment building is vacant.

**Factual basis:** There is no occupied housing on the site because of the poor condition of the apartment building. The redevelopment will be new housing units.

- (e) The Plan conforms to the Comprehensive Policy Plan for the City as a whole.

**Factual basis:** The proposed development is consistent with the goals that are embodied in the Go2030 Comprehensive Plan. Specifically, the Fargo Go2030 Comprehensive Plan supports infill and density within areas that are already developed, serviced with utilities, and protected by a flood resiliency strategy. The promotion of infill development is the number two ranked priority of Go2030.

The plan is consistent with Core Neighborhood Plan future land used plan. The land use plan identified this block as multi-family residential. The proposed development will use existing infrastructure; and other infrastructure can be added as needed.

Subsection 1.4. Description of Renewal Area

The Renewal Area is one lot at 502 8th Street South in the Hawthorne Neighborhood. The site is 11,764 square feet on the southeast corner of 5th Avenue and 8th Street South. It is legally described in Appendix A. A map of the Renewal Area is attached as Appendix B.

The proposed project will be five townhome style apartments or condos.

The redevelopment plan is attached as Appendix C.

Subsection 1.5. Land Acquisition, Development, Demolition and Removal of Structures, Redevelopment or Public Improvements

The Development of the Renewal Area includes the following activities:

Land Acquisition/Land Write Down. - The cost of acquisition of the properties less the value of the land.

Building Demolition and Site Clearing – This estimate is for demolition of the buildings, parking lot and any environmental cleanup.

Public Infrastructure – The estimate is for the costs to disconnect utilities in the street and reconstruction sidewalks and vehicle approaches to the property.

Administrative/TIF Fees – Other Tax Increment costs include the administrative costs.

Subsection 1.6. Land Use Attributes – TIF District

- (a) *Zoning or Planning Changes.*  
The Renewal area is zoned MR-3. No zoning changes are required for this project.
- (b) *Maximum Densities.*  
The property within the TIF District will be developed in accordance with the applicable zoning district requirements.
- (c) *Building Requirements.*  
All properties within this district are subject to the provisions of the City of Fargo Building Codes and the Land Development Code.
- (d) *Plan relationship to land use objectives (land uses, improved traffic, public transportation, public utilities, recreational and community facilities and other public imps.)*  
The physical improvements outlined in the plan meet critical needs required for the redevelopment of this property. The project complies with the zoning district and the redevelopment goals of the Go2030 Comprehensive Plan and the Core Neighborhood Plan.

Subsection 1.7. Estimate of Development Costs

The City anticipates development of the Renewal Area will involve certain public costs. Under North Dakota Century Code, Sections 40-58-20 and 40-58-20.1 allow the use of funds received from tax increments to be applied to certain specified costs. The City will provide for certain costs as listed below in a development agreement, and can use other funds to pay for city infrastructure. The primary costs involved in the development are land costs, demolition and site cleanup, and public works improvements.

Land Costs	\$104,000
Demolition and Site Cleanup	\$94,500
Public Infrastructure	\$88,000
Administration	\$14,325
<b>TOTAL</b>	<b>\$300,825</b>

These costs represent estimated costs for planning purposes, and may be different when this plan is implemented with a development agreement. The development agreement costs will be determined after a review by City financial advisers. The maximum allowed costs will be specified in the development agreement. Based on the proposed development, the present value of TIF revenue is \$280,000 over 15 years.

The City and Developer may also obtain reimbursement of interest between the time project costs are incurred and the date the Tax Increment Revenue Note is issued, such interest being capitalized and added to the foregoing costs.

Subsection 1.8. Estimate of Bonded Indebtedness

The City intends to finance certain costs of the Development through the issuance of a Tax Increment Financing Note to the Developer. In addition, the City may use general obligation bonds, special assessment warrants or refunding improvement bonds pursuant to North Dakota Century Code, Section 40-58-20 (9), and the City may specially assess all or a portion of the costs of development and apply funds received from tax increments to payment of the special assessments and other bonds.

Subsection 1.9. Tax Increment Financing.

The County Auditor is requested to compute, certify and remit tax increments resulting from the Development within the Renewal Area.

The original assessed value of the property within the Renewal Area, as last assessed and equalized before the base year of this Plan, is \$166,000.

Each year, the County Auditor will compute the amount of tax increment generated within the Renewal Area in accordance with the TIF Act. Any year in which there is an "incremental value"



as provided in the TIF Act, an increment will be payable to the City and deposited in the fund created by the County Auditor for that purpose. Any year in which there is "lost value" pursuant to the TIF Act, no increment will be payable to the City.

Subsection 1.10. Estimate of Tax Increment.

It is anticipated the Development will result in an increase in true and full value of the Renewal Area redevelopment site to \$2 million. The increase in value will be approximately \$1.9 million. Under the mill rate in effect as of the date of this Plan, the Renewal Area will generate tax increment each year in the estimated amount of \$27,000.

Subsection 1.11. Duration of the TIF District.

The City anticipates that the TIF District will continue until all development costs are reimbursed through the receipts of tax increment, or after a maximum of 15 property tax years after completion of the project.

**APPENDIX A**  
**LEGAL DESCRIPTION OF PROPERTY**



## Parcel Information Report

Parcel Number: 01-2140-01000-000

### General Information

Segment Id: 1  
 Owner 1: HN 8TH STREET LLC  
 Owner 2:  
 Property Address: 502 8 ST S  
 Mailing Address: BOX 612 FARGO, ND 58107-0612  
 Addition Name: Northern Pacific  
 Block: 44  
 Lot: BEG AT NW COR OF 3, SLY 80 FT, ELY 150 FT TO MIDPOINT OF A LN BISECTING 2 N & S, NLY ALG CENTER LN OF 2 TO N LN OF 2 WLY TO PT OF BEG

#### Additional Description:

#### Estimated Flood Stage Levels For River Flooding:

If your property is outside the city limits or your property and structure are not affected by a 25 to 44 foot flood stage data will be not available (N/A).

Property may be affected by an approximate flood stage of 38 or higher.

Structure may be affected by an approximate flood stage of 41 or higher.

Please note that this approximation does not take into account any local issues such as ice and debris jams or localized flooding from intense rainfall events.

### District Information

Cass School District: 1  
 Elem. School District: ClarHawth

### Property Valuation

	Land	Improvements	Total
Current Appraised Value:	\$71,000.00	\$95,000.00	\$166,000.00

### Building Information

Year Built:	1890	No. of Apartment Units:	6
Total Building SqFt:	4919	Residential Story Height:	()

### Lot Size

Front Width:	80.00	Land Use:	P (Apartment)
Back Width:	76.00	Property Type:	6 (Conversion)
Depth Side 1:	150.00		
Depth Side 2:	150.00	Square Footage:	11764.00

DISCLAIMER: The City of Fargo provides property information to the public "as is" without warranty of any kind, expressed or implied. Assessed values are subject to change by the City of Fargo. In no event will the City of Fargo be liable to anyone for damages arising from the use of the property data. You assume responsibility for the selection of data to achieve your intended results, and for the installation and use of the results obtained from the property data.

Assessment records are for the sole purpose of identifying the land being taxed. In some cases to attain efficiency, Assessment Department legal descriptions may be shortened yet will retain sufficient information to identify the land. Since tax statements and records are not deeds and may contain abbreviated descriptions, they should not be used as a basis for a survey or a legal document and should not be used by surveyors or others as the primary source of a property description.

**APPENDIX B**

**MAP OF THE RENEWAL AREA/TIF DISTRICT**



City of Fargo, ND

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.

## Renewal Area 2023-03

1:2,257

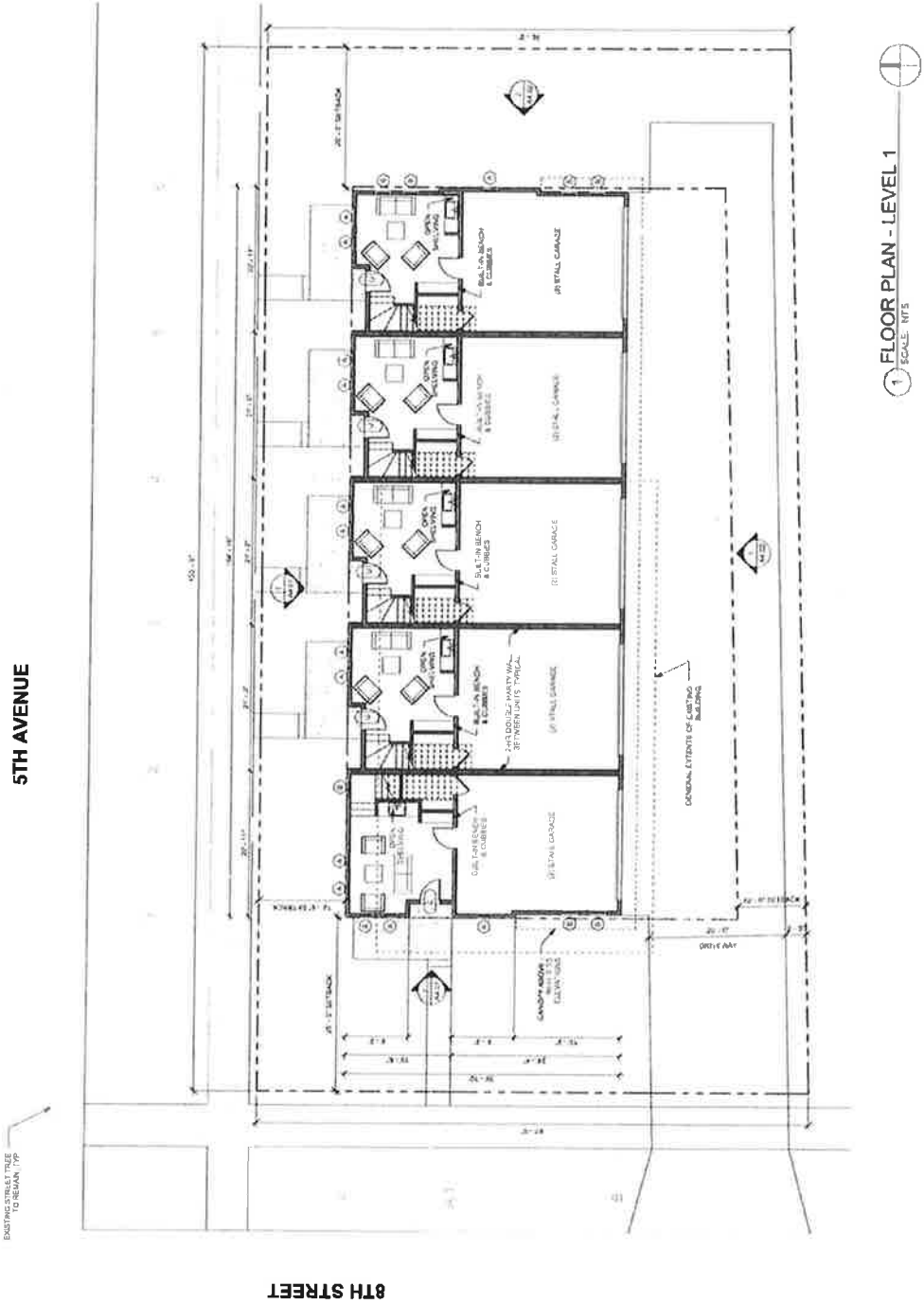
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This map is not a substitute for accurate field surveys or for locating actual property lines and any adjacent features.

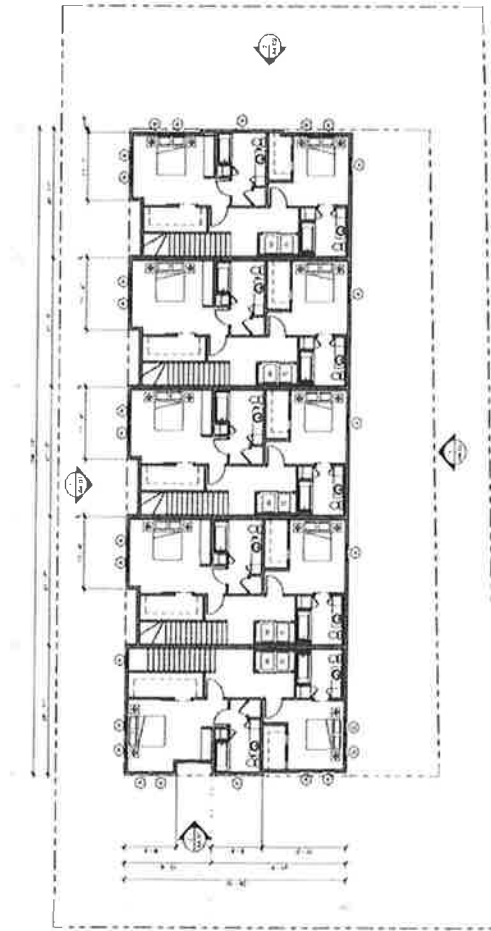


**APPENDIX C**  
**PLAN FOR REDEVELOPMENT**

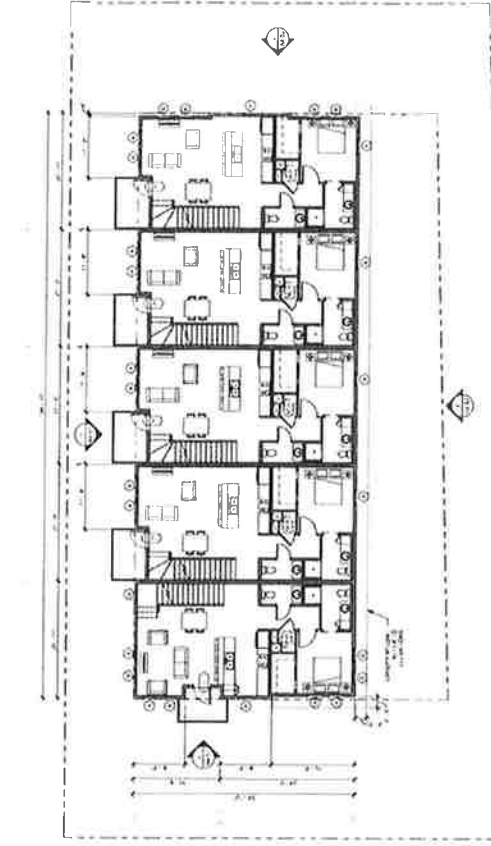




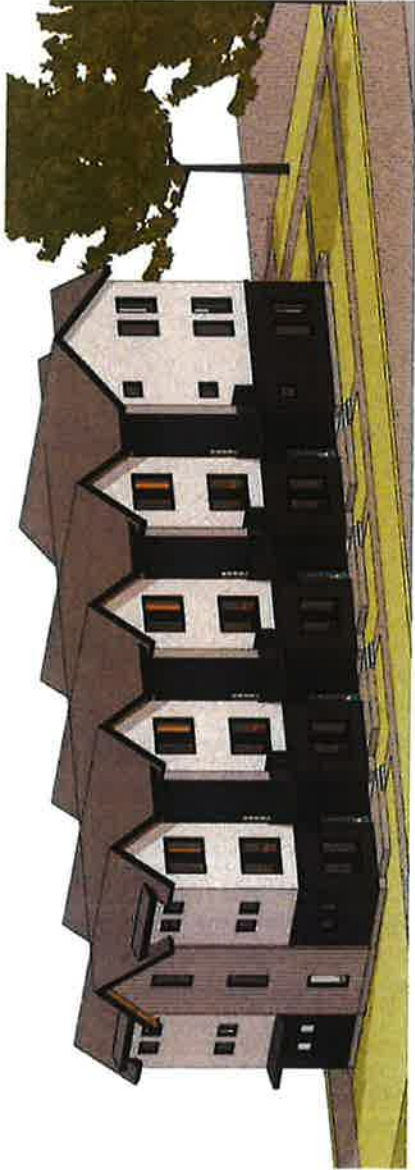
1 FLOOR PLAN - LEVEL 1  
SCALE: NTS



1 FLOOR PLAN - LEVEL 3



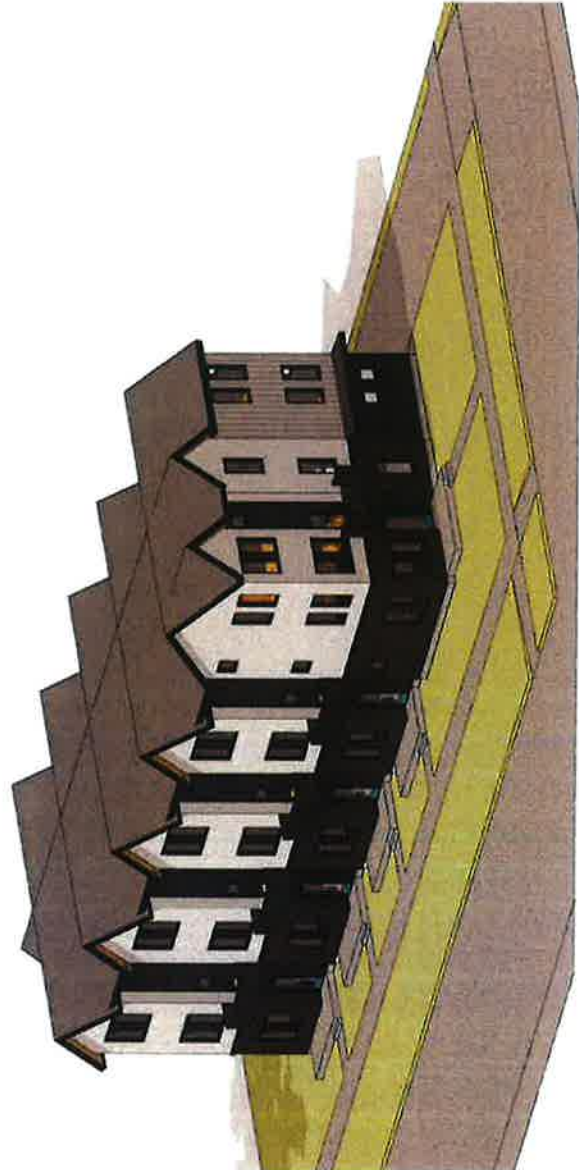
1 FLOOR PLAN - LEVEL 2



RENDERING - NORTHEAST CORNER



RENDERING - SOUTHWEST CORNER



RENDERING - NORTHWEST CORNER



RENDERING - NORTHWEST CORNER

**APPENDIX D**  
**PHOTOS OF EXISTING CONDITIONS**





EXISTING STRUCTURE



PROJECT SITE ⊕



VICINITY MAP ⊕

**8TH STREET ROWHOUSES | Economic Development Incentives Committee**

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**RENEWAL PLAN**  
**TAX INCREMENT FINANCING DISTRICT NO. 2023-03**

**CITY OF FARGO, NORTH DAKOTA**

**MAY 2023**

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## RENEWAL PLAN FOR TAX INCREMENT DISTRICT NO. 2023-03

### Subsection 1.1. Definitions.

For the purposes of the Renewal Plan, the following terms shall have the meanings specified below, unless the context otherwise requires:

"City" means the City of Fargo, a municipal corporation under the laws of the State of North Dakota.

"City Commission" or "Commission" means the Fargo City Commission.

"Comprehensive Plan" means the City's Go2030 Comprehensive Plan, including the objectives, policies, standards and programs to guide public and private land use, development, redevelopment and preservation for all lands and water within the City as and when such plan is adopted and finalized.

"County" means Cass County, North Dakota.

"Development" means the construction of new buildings, structures or improvements; the demolition, alteration, remodeling, repair or reconstruction of existing buildings, structures or improvements; the acquisition of equipment; and the clearing and grading of land on industrial or commercial property in the Renewal Area.

"Renewal Area" means the property described in Subsection 1.4 of this Plan.

"Renewal Plan" or "Plan" means this Plan adopted by the Commission for the Renewal Area.

"State" means the State of North Dakota.

"Tax Increment Financing Act" or "TIF Act" means North Dakota Century Code, Section 40-58-20, as amended.

"Tax Increment Bonds" means any general obligation or revenue tax increment bonds or notes issued by the City to finance the public costs associated with the TIF District as stated in this Plan, or any obligations issued to refund the Tax Increment Bonds.

"Tax Increment Financing District" or "TIF District" means Tax Increment Financing District No. 2023-03.

"Urban Renewal Law" means North Dakota Century Code, Chapter 40-58.

### Subsection 1.2. Statutory Authority.

The creation of the Renewal Area and the establishment of Tax Increment Financing District No. 2023-03 are authorized by the Urban Renewal Law. Specifically the creation of the Renewal Area is authorized under North Dakota Century Code, Sections 40-58-01.1(7) and (14), which provide that the local governing body may designate industrial or commercial property, a slum or



blighted area, or combination of these properties as appropriate for a development or renewal project.

The Urban Renewal Law provides that communities develop a "workable program" for the use of public and private resources to facilitate the development of industrial or commercial properties, eliminate and prevent the development or spread of slums and urban blight, encourage needed urban rehabilitation, provide for the redevelopment of slum and blighted areas, or undertake these activities or other feasible municipal activities as may be suitably employed to achieve the objectives of the workable program. North Dakota Century Code, Section 40-58-04.

Subsection 1.3. Statement of Public Purpose

In adopting the Renewal Plan for TIF District No. 2023-03, the City Commission intends to make the following findings:

- (a) The Renewal Area includes a blighted properties.

**Factual basis:** This Renewal Area is blighted due to the presence of a vacant and blighted apartment building. This substantially impairs the sound growth of a municipality, retards the provision of housing accommodations or constitutes an economic or social liability and is a menace to the public health, safety, morals or welfare in its present condition and use. Photos are include in Appendix D.

- (b) The Renewal Area is has one small apartment building with blighted conditions.

**Factual basis:** The renewal area is considered blighted as described in (a) above. Blighted areas are eligible for renewal.

- (c) The Renewal Area is appropriate for a development or renewal project.

**Factual basis:** The renewal area is zoned MR-3 that allows for multi-family housing.

- (d) The 6-unit apartment building is vacant.

**Factual basis:** There is no occupied housing on the site because of the poor condition of the apartment building. The redevelopment will be new housing units.

- (e) The Plan conforms to the Comprehensive Policy Plan for the City as a whole.

**Factual basis:** The proposed development is consistent with the goals that are embodied in the Go2030 Comprehensive Plan. Specifically, the Fargo Go2030 Comprehensive Plan supports infill and density within areas that are already developed, serviced with utilities, and protected by a flood resiliency strategy. The promotion of infill development is the number two ranked priority of Go2030.

The plan is consistent with Core Neighborhood Plan future land used plan. The land use plan identified this block as multi-family residential. The proposed development will use existing infrastructure, and other infrastructure can be added as needed.

Subsection 1.4. Description of Renewal Area

The Renewal Area is one lot at 502 8th Street South in the Hawthorne Neighborhood. The site is 11,764 square feet on the southeast corner of 5th Avenue and 8th Street South. It is legally described in Appendix A. A map of the Renewal Area is attached as Appendix B.

The proposed project will be five townhome style apartments or condos.

The redevelopment plan is attached as Appendix C.

Subsection 1.5. Land Acquisition, Development, Demolition and Removal of Structures, Redevelopment or Public Improvements

The Development of the Renewal Area includes the following activities:

Land Acquisition/Land Write Down. - The cost of acquisition of the properties less the value of the land.

Building Demolition and Site Clearing – This estimate is for demolition of the buildings, parking lot and any environmental cleanup.

Public Infrastructure – The estimate is for the costs to disconnect utilities in the street and reconstruction sidewalks and vehicle approaches to the property.

Administrative/TIF Fees – Other Tax Increment costs include the administrative costs.

Subsection 1.6. Land Use Attributes – TIF District

- (a) *Zoning or Planning Changes.*  
The Renewal area is zoned MR-3. No zoning changes are required for this project.
- (b) *Maximum Densities.*  
The property within the TIF District will be developed in accordance with the applicable zoning district requirements.
- (c) *Building Requirements.*  
All properties within this district are subject to the provisions of the City of Fargo Building Codes and the Land Development Code.
- (d) *Plan relationship to land use objectives (land uses, improved traffic, public transportation, public utilities, recreational and community facilities and other public imp.)*  
The physical improvements outlined in the plan meet critical needs required for the redevelopment of this property. The project complies with the zoning district and the redevelopment goals of the Go2030 Comprehensive Plan and the Core Neighborhood Plan.

Subsection 1.7. Estimate of Development Costs

The City anticipates development of the Renewal Area will involve certain public costs. Under North Dakota Century Code, Sections 40-58-20 and 40-58-20.1 allow the use of funds received from tax increments to be applied to certain specified costs. The City will provide for certain costs as listed below in a development agreement, and can use other funds to pay for city infrastructure. The primary costs involved in the development are land costs, demolition and site cleanup, and public works improvements.

Land Costs	\$104,000
Demolition and Site Cleanup	\$94,500
Public Infrastructure	\$88,000
Administration	\$14,325
TOTAL	\$300,825

These costs represent estimated costs for planning purposes, and may be different when this plan is implemented with a development agreement. The development agreement costs will be determined after a review by City financial advisers. The maximum allowed costs will be specified in the development agreement. Based on the proposed development, the present value of TIF revenue is \$280,000 over 15 years.

The City and Developer may also obtain reimbursement of interest between the time project costs are incurred and the date the Tax Increment Revenue Note is issued, such interest being capitalized and added to the foregoing costs.

Subsection 1.8. Estimate of Bonded Indebtedness

The City intends to finance certain costs of the Development through the issuance of a Tax Increment Financing Note to the Developer. In addition, the City may use general obligation bonds, special assessment warrants or refunding improvement bonds pursuant to North Dakota Century Code, Section 40-58-20 (9), and the City may specially assess all or a portion of the costs of development and apply funds received from tax increments to payment of the special assessments and other bonds.

Subsection 1.9. Tax Increment Financing.

The County Auditor is requested to compute, certify and remit tax increments resulting from the Development within the Renewal Area.

The original assessed value of the property within the Renewal Area, as last assessed and equalized before the base year of this Plan, is \$166,000.

Each year, the County Auditor will compute the amount of tax increment generated within the Renewal Area in accordance with the TIF Act. Any year in which there is an "incremental value"

as provided in the TIF Act, an increment will be payable to the City and deposited in the fund created by the County Auditor for that purpose. Any year in which there is "lost value" pursuant to the TIF Act, no increment will be payable to the City.

Subsection 1.10. Estimate of Tax Increment.

It is anticipated the Development will result in an increase in true and full value of the Renewal Area redevelopment site to \$2 million. The increase in value will be approximately \$1.9 million. Under the mill rate in effect as of the date of this Plan, the Renewal Area will generate tax increment each year in the estimated amount of \$27,000.

Subsection 1.11. Duration of the TIF District.

The City anticipates that the TIF District will continue until all development costs are reimbursed through the receipts of tax increment, or after a maximum of 15 property tax years after completion of the project.

**APPENDIX A**  
**LEGAL DESCRIPTION OF PROPERTY**



## Parcel Information Report

Parcel Number: 01-2140-01000-000

### General Information

Segment Id: 1  
 Owner 1: HN 8TH STREET LLC  
 Owner 2:  
 Property Address: 502 8 ST S  
 Mailing Address: BOX 612 FARGO, ND 58107-0612  
 Addition Name: Northern Pacific  
 Block: 44  
 Lot: BEG AT NW COR OF 3, SLY 80 FT, ELY 150 FT TO MIDPOINT OF A LN BISECTING 2 N & S, NLY ALG CENTER LN OF 2 TO N LN OF 2 WLY TO PT OF BEG

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 Elem. School District: ClarHawth

### Property Valuation

	Land	Improvements	Total
Current Appraised Value:	\$71,000.00	\$95,000.00	\$166,000.00

### Building Information

Year Built:	1890	No. of Apartment Units:	6
Total Building SqFt:	4919	Residential Story Height:	()

### Lot Size

Front Width:	80.00	Land Use:	P (Apartment)
Back Width:	76.00	Property Type:	6 (Conversion)
Depth Side 1:	150.00		
Depth Side 2:	150.00	Square Footage:	11764.00

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**APPENDIX B**

**MAP OF THE RENEWAL AREA/TIF DISTRICT**





City of Fargo, MN

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## Renewal Area 2023-03

1:2,257

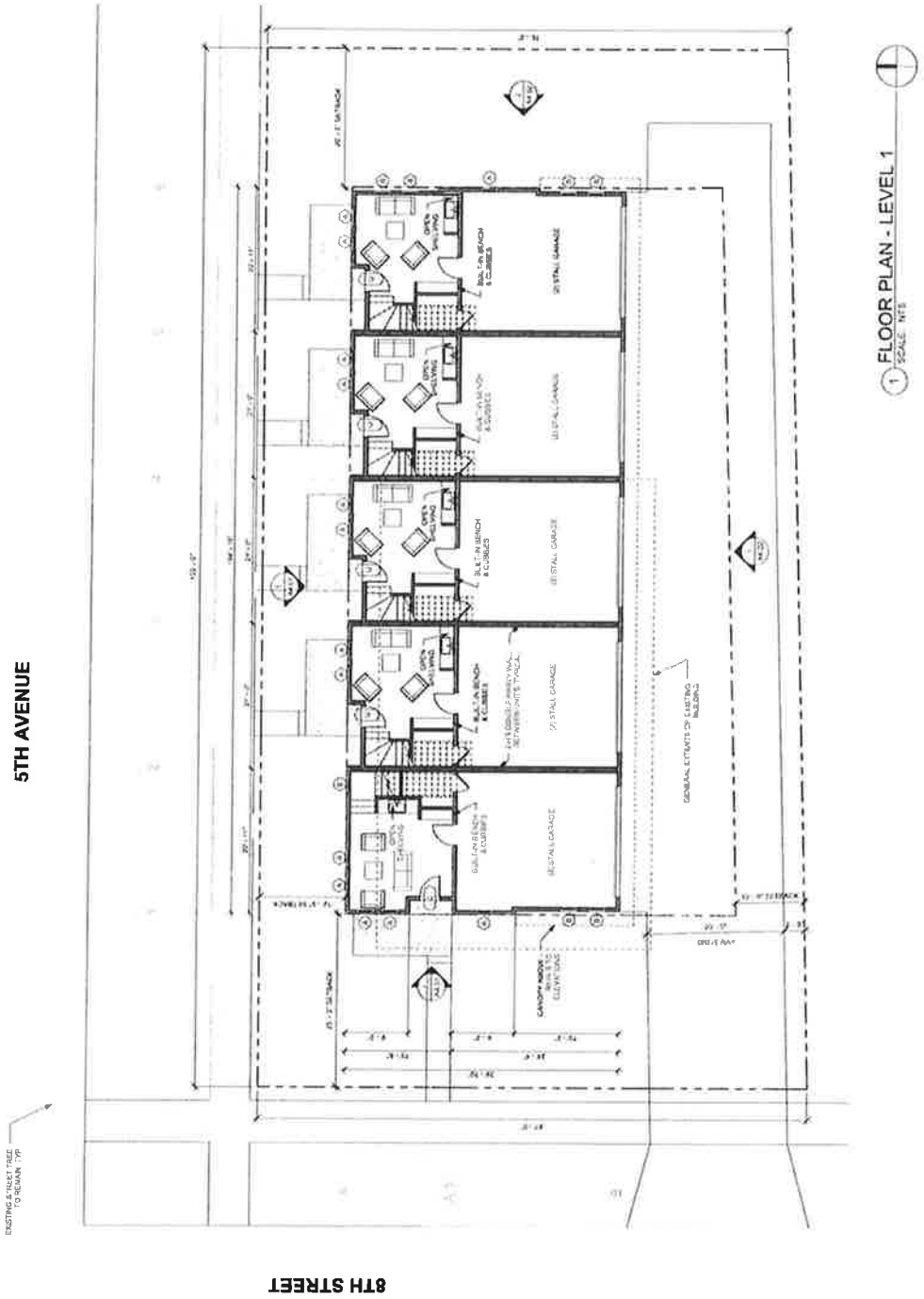
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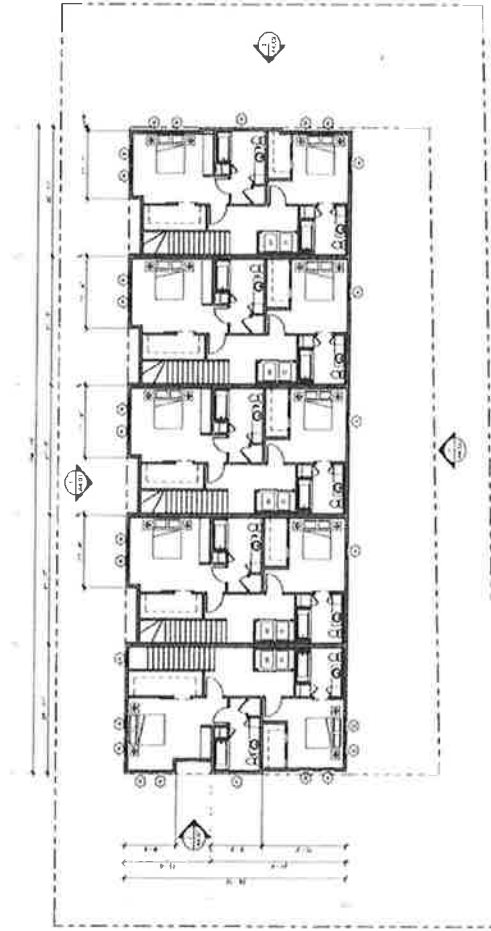
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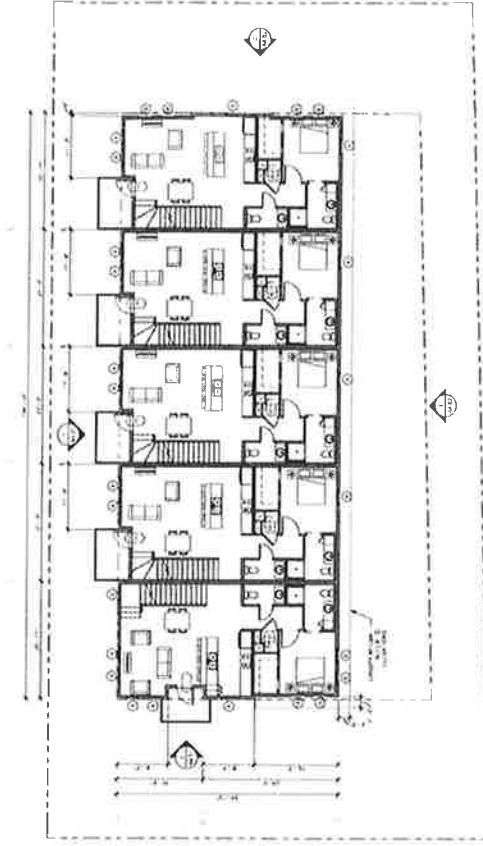


**APPENDIX C**  
**PLAN FOR REDEVELOPMENT**

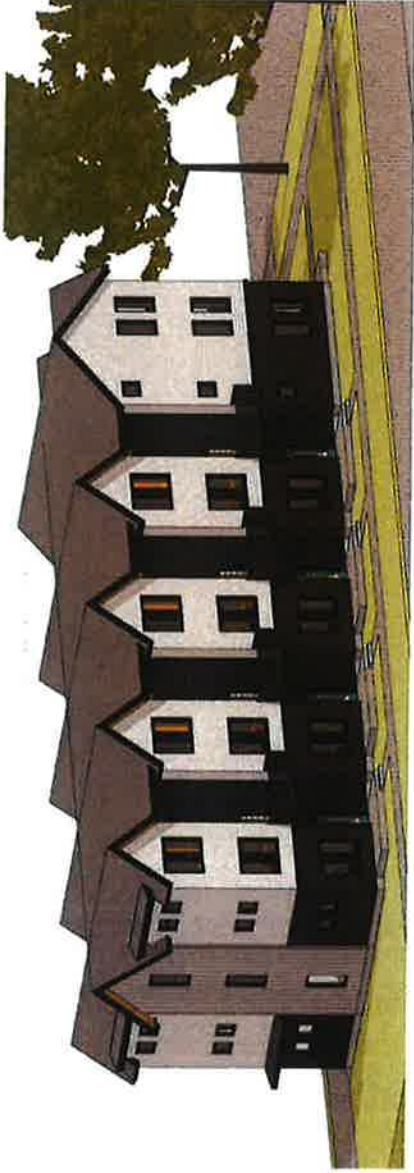




FLOOR PLAN - LEVEL 3



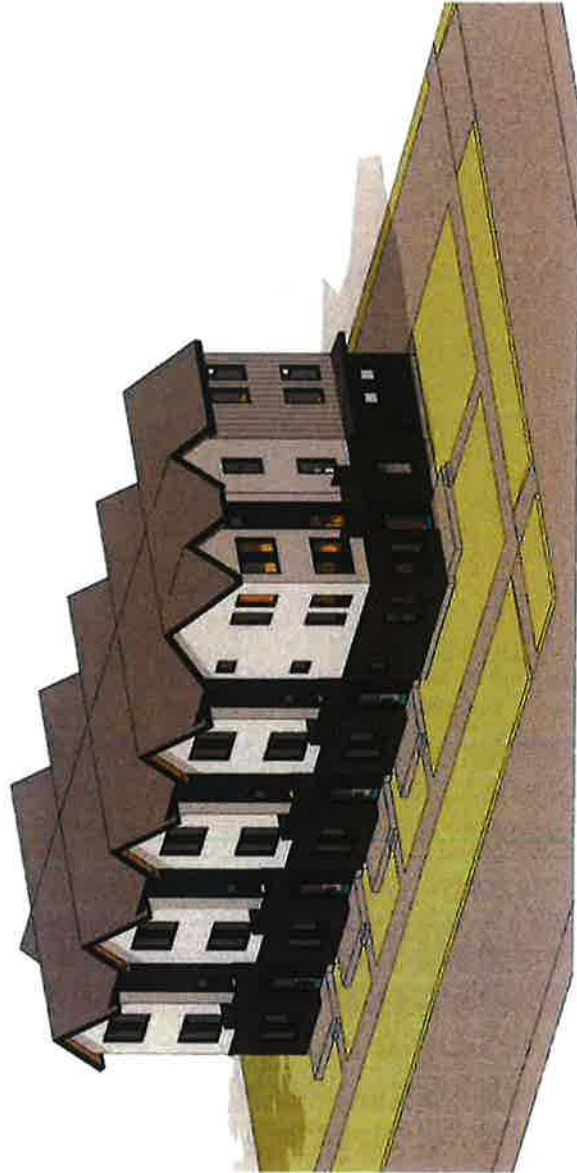
FLOOR PLAN - LEVEL 2



RENDERING - NORTHEAST CORNER



RENDERING - SOUTHWEST CORNER



RENDERING - NORTHWEST CORNER



RENDERING - NORTHWEST CORNER

**APPENDIX D**  
**PHOTOS OF EXISTING CONDITIONS**





EXISTING STRUCTURE



PROJECT SITE ⊕



VICINITY MAP ⊕

**8TH STREET ROWHOUSES | Economic Development Incentives Committee**

# City of Fargo, North Dakota

Tax Increment Financing Program

“But-For” Report

8<sup>th</sup> St. Rowhouses

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May 11, 2023



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2. Project	2
3. Assistance Request	3
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5. Return Analysis	6
6. Conclusion	7



## Purpose

The purpose of this report is to establish and determine the allowable value of the tax increment financing (TIF) for 8<sup>th</sup> St. Rowhouses, a development by HN 8<sup>th</sup> Street, LLC (the "Developer").

PFM first reviewed the application to ensure that appropriate assumptions regarding property value, rent, condo sales, vacancy, expenses, and debt were used by the Developer. Based on those assumptions, PFM projected a 10-year cash flow, calculating an internal rate of return ("IRR"). We also made sure the Developer followed the City of Fargo's (the "City") Economic Development Incentives Policies and Guidelines (the "Policy") including the allowable costs and the Developer's calculations for determining the amount of allowable subsidy financing. The following report details PFM's analysis and conclusions concerning the viability of the proposed project without the subsidy.



## Project

The project being proposed by the Developer includes the development of a 5-unit rental rowhouses located at 502 8<sup>th</sup> Street South.

The Developer estimates the construction will be completed in early 2024 with occupancy immediately following. The Developer has requested TIF assistance in the amount of \$300,825 to complete the project.



## TIF Assistance Request

The Developer is requesting assistance in the form of tax increment financing under the City's Tax Increment Financing Policy. The Policy provides public assistance to a development through tax increment financing for private development. The Developer is asking for a 15-year TIF exemption. The Policy states a 100% exemption on the increased value of the improvements for the first fifteen years.

### Eligible TIF Expenditures

Site Acquisition	104,000
Demolition & Site Clearing	94,500
Site Improvements	<u>88,000</u>
<b>Total</b>	<b>\$286,500</b>
City Administrative Fees (5%)	<u>14,325</u>
<b>Total TIF Eligible Expenses</b>	<b>\$300,825</b>

The Policy limits the TIF assistance to 15% of hard construction costs, including the costs of acquisition. Based on total hard construction costs of \$1,954,253, the Developer can receive up to \$293,137. The Developer is requesting \$286,500, which is below the maximum allowed.

### Land Cost

The Developer states the purchase price to acquire the property for the project is \$175,000. Land acquisition is reimbursable under the Policy. The Developer is requesting to be reimbursed \$104,000 for the land acquisition which complies with the Policy.



The Policy states that the maximum eligible land costs to be recouped by the Developer should be limited to the lesser of:

- 1.) **The total acquisition cost for the property, provided that the acquisition cost is no more than 150% of the assessor's market value of the property.** The Developer's cost to acquire the property is \$175,000. The assessor's market value for the property totals \$166,000. The eligible amount for reimbursement is 150% of \$166,000 which totals \$249,000.
- 2.) **The difference between what was paid by the Developer for the property less the assessor's market value for the land (as opposed to land and buildings).** The current assessor's land value is \$71,000. Based on an acquisition price of \$175,000 the maximum reimbursement is \$104,000.

The lesser of the two tests detailed above is \$104,000. The requested reimbursement amount for land acquisition of \$104,000 is equal to the amount allowed under the Policy.

### Term

The Policy states the length of the term will be limited to 15 years or less. The Developer is requesting a total of a 15-year term.

### TIF Estimate

PFM estimates that \$536,835 of TIF will be generated over the 15 years, assuming a 2% market growth rate. Based on a discount rate of 5.25%, the present value of the estimated TIF cash flow is \$330,337 for the first 15 years of the project when the TIF would be in effect. This is greater than the total eligible TIF expenditures. However, the present value of the TIF cash flows is estimated to reach the requested amount in year 14, so the TIF would end early.



## Project Financing

The Developer is investing 34.7% equity, or \$746,593, and will be privately financing \$1,406,034. The Developer is additionally requesting annual TIF assistance in the total amount of \$300,825. The private financing is estimated to be a 30-year loan with an estimated interest rate of 7% resulting in an annual principal and interest payment of \$112,253.



## Return Analysis

In calculating the internal rate of return, PFM first analyzed the Developer's assumptions including expected monthly rent, vacancy rate, and operating expenses. The Developer is proposing rents of \$2,800 for a three-bedroom unit. The Developer has proposed a reasonable amount for rent for the current market and location. Annual estimates of operating expenses for the 5-unit rental development were provided, as follows; Insurance - \$3,600, Snow and Lawn Care - \$6,000, Maintenance and Repairs - \$5,040, Capital Expenses - \$3,360, Real Estate Taxes - \$34,989 (without public assistance), Real Estate Special Assessments - \$1,607, and Management Fees - \$8,400. The total expenses are approximately 39% of gross operating income after stabilization.

The second step in determining the internal rate of return is to determine the earned incremental value of the property over a 10-year period. That value, along with the net operating income cash flows, was used to calculate the internal rate of return. PFM determined that without public assistance the Developer would have about a 5.51% internal rate of return based on a 10-year internal rate of return. The Developer would have about a 9.00% internal rate for 10 years if it received the public assistance. A reasonable rate of return for the proposed project is 10% - 15%.

Another measure of feasibility and project viability is the debt coverage ratio. PFM has projected a maximum debt coverage ratio in Year 10 of 1.16x without assistance, with a Year 6 coverage of 1.01x. If the City provided assistance to the project the maximum debt coverage is projected to be 1.49x in Year 10, with a Year 6 coverage of 1.32x.

Using PFM's "without assistance" cash flow as the base scenario, PFM ran sensitivity analyses in order to determine if the project would be likely to occur without public assistance. For the first sensitivity analysis, PFM analyzed how much project funds would have to decrease in order to produce a reasonable debt coverage ratio. We also looked at how much the rental rates would have to fluctuate in order to achieve a reasonable debt coverage. Lastly, we looked at a combination of the two scenarios. For the sensitivity analyses, we assumed a reasonable debt coverage ratio of 1.20x by year 5.

### Sensitivity Scenario 1 – Project Costs

The project would have to be reduced by \$254,979 or 18.1% in order for the project to become viable without assistance. This reduces the amount to be financed from \$1,406,034 to \$1,151,055 and reduces the annual payment from \$112,253 to \$91,896 for the loan. It is unlikely that a reduction in project costs of this magnitude would occur at this stage in the development.

### Sensitivity Scenario 2 – Rental Rates

In order for the project to be viable without public assistance, the apartment rental rates would have to increase by 13.6%. PFM believes this is a high increase to the Developer's proposed rents. This increases annual rental revenue from \$168,000 to \$190,883. PFM believes the current proposed rents are reasonable rental rates and does not believe an increase this large would occur.

### Sensitivity Scenario 3 – Combination of Project Costs and Rental Rates

The final scenario looks at both a reduction of project costs and an increase in apartment rental rates. The analysis showed that project costs would have to be reduced by \$114,472 or 8.2% and rental rates would have to increase by about 7.5%. Either of these events could occur but may be unlikely to occur together.

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



## Conclusion

The Developer will bear all the risk involved with the project. The Developer is dependent on a number of factors before and after the project is completed, including project costs, occupancy of the buildings, the rental market, and monthly expenses. The base scenario without assistance along with the sensitivity analyses demonstrates that the project would be unlikely to be feasible without assistance.

PFM has calculated that with public assistance, and based on the assumptions outlined in this report, a 10-year internal rate of return is estimated to be 9.00%. In addition, the coverage ratio in Year 10 is estimated to be 1.49x. The estimated internal rate of return is appropriate given the risk level for this type of project. Based on the information provided to PFM, the calculated internal rate of return and the coverage requirements, PFM concludes the project would not be feasible without public assistance.



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DEVELOPER AGREEMENT

By and Between

CITY OF FARGO,  
a North Dakota Municipal Corporation

and

HN 8TH STREET, LLC

TAX INCREMENT FINANCING DISTRICT 2023-03

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## DEVELOPER AGREEMENT

THIS AGREEMENT is dated as of \_\_\_\_\_, 2023; is by and between the City of Fargo, a North Dakota municipal corporation, of 425 4<sup>th</sup> Street North, Fargo, North Dakota 58102, and HN 8th Street, LLC, a North Dakota Limited Liability Company, of 3250 47<sup>th</sup> Street South, Fargo, North Dakota 58104; and provides as follows:

## ARTICLE I

**Definitions**

Section 1.1. **Definitions.** As used in this Agreement, the following terms have the following respective meanings:

"Agreement" means this Developer Agreement, as the same may be amended.

"Available Tax Increments" means the Developer Tax Increments minus the reasonable and not theretofore reimbursed actual expenses incurred by the City in establishing and maintaining the TIF District, in preparing and implementing this Agreement, and in general in administering the TIF District and this Agreement and any supplements hereto and in participating in the actions or transactions contemplated thereby and hereby.

"Certificate of Completion" means a certification in the form of the certificate attached hereto as Exhibit F and hereby made a part of this Agreement, provided to the Developer pursuant to Section 4.4 of this Agreement.

"City" means the City of Fargo, North Dakota.

"Closing Date" means the date Developer closes with its institutional lender on its financing of the Minimum Improvements.

"Condemnation Award" means the amount remaining from an award to the Developer for the acquisition of title to and possession of the Development Property, or any material part thereof, after deducting all expenses (including fees and disbursements of counsel) incurred in the collection of such award.

"County" means the County of Cass, North Dakota.

"Capitalized Interest" means the portion of the principal amount of the Tax Increment Note that represents the sum of the products of the various eligible expenses initially borne by Developer and the City that will be reimbursed by the Tax Increment Note multiplied by an interest rate of Five and One-half Percent (5-1/2%) per annum, simple interest, multiplied by the number of years, or fraction thereof, between the date such expense was incurred to the date of the Tax Increment Note.

"Developer" means HN 8TH STREET, LLC, a North Dakota limited liability company or permitted successors or assigns.

"Developer Tax Increments" means the portion of Developer's Taxes which constitutes Tax Increments, or the portion of Tax Increments derived from Developer's Taxes.

"Developer's Taxes" means taxes paid with respect to the portions of the Development Property and Improvements completed by the Developer for the fifteenth (15<sup>th</sup>) Tax Year and earlier Tax Years. Taxes for the sixteenth (16<sup>th</sup>) year following the first Tax Year, or for any subsequent year, are not included as Developer's Taxes.

"Development Costs" means those costs incurred and to be incurred by or on behalf of the Developer in acquiring the Development Property, in completing the Improvements and in financing those undertakings (including all interest charges on borrowed funds).

"Development Plan" means the Developer's development plan for the Development Property approved by the City on May 30, 2023, including all exhibits thereto, as the same may be amended from time to time.

"Development Property" means the real property described in Exhibit A to this Agreement.

"Effective Date" means the date this Agreement is actually executed and delivered.

"Environmental Laws" means the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. sec. 96.01 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. sec. 69.01 et seq., the Hazardous Materials Transportation Act, 49 U.S.C. sec. 1802 et seq., the Toxic Substances Control Act, 15 U.S.C. sec. 2601 et seq., the Federal Water Pollution Control Act, 33 U.S.C. sec. 1251 et seq., the Clean Water Act, 33 U.S.C. sec. 1321 et seq., the Clean Air Act, 42 U.S.C. sec. 7401 et seq., , and any other federal, state, county, municipal, local or other statute, law, ordinance or regulation which may relate to or deal with human health or the environment, all as may be from time to time amended.

"Event of Default" means an event of default defined in Section 9.1 of this Agreement.

"Hazardous Substances" means asbestos, urea, formaldehyde, polychlorinated biphenyls ("PCBs"), nuclear fuel or material, chemical waste, radioactive material, explosives, known carcinogens, petroleum products and by-products and other dangerous, toxic or hazardous pollutants, contaminants, chemicals, materials or substances listed or identified in, or regulated by, any Environmental Law.

"Improvements" means the improvements constructed or to be constructed by the Developer on the Development Property, including all related landscaping and other site improvements. The Improvements may exceed, but shall not be less than, the Minimum Improvements, as provided in Section 4.1.

"Maturity Date" means the date that is three (3) years from the Payment Date for the fifteenth Tax Year following the date of the issuance of the Tax Increment Note.

"Minimum Improvements" means the improvements contemplated by and in accordance with this Agreement and generally described in Section 4.1.

"Mortgage" means any mortgage or security agreement in which the Developer has granted a Mortgage or other security interest in the Development Property, or any portion or parcel thereof, or any improvements constructed thereon, and which is a permitted encumbrance pursuant to the provisions of Article VII; the term "Mortgage" shall specifically include, but shall not be limited to, leases or sale-leaseback arrangements which provide financing for the acquisition of the Development Property, or the construction of the Minimum Improvements.

"Net Proceeds" means any proceeds paid by an insurer to the Developer or City under a policy or policies of insurance required to be provided and maintained by the Developer pursuant to Article V of this Agreement and remaining after deducting all expenses (including fees and disbursements of counsel) incurred in the collection of such proceeds.

"Party" means either the Developer or City.

"Parties" mean the Developer and City.

"Project" means the project of improvements in and adjacent to the TIF District contemplated in the Development Plan.

"Specified Event of Default" means an Event of Default for which the City may withhold payment on the Tax Increment Note. Such Event of Default consists of a default of the Developer after the issuance of the Tax Increment Note in the Developer's ongoing covenants set forth in Sections 8.1, and 8.2.

"Tax Increment Note" means the City's Tax Increment Revenue Note in the initial principal amount of \$300,825 or in a lesser initial principal amount that represents reimbursement of eligible costs paid by the Developer as described in this Agreement, plus Capitalized Interest at 5-1/2% per annum, the form of which is attached as Exhibit C to this Agreement, issued when conditions set forth in Section 3.3 are met.

"Tax Increments" means those tax increments which the City shall be entitled to receive and retain, and which the City shall have actually received from Cass County, from time to time from the TIF District pursuant to the Urban Renewal Law.

"Tax Year" is one of a maximum of fifteen (15) successive calendar years, with the first year being the year that, pursuant to this Agreement, the Tax Increment Note is issued and with the subsequent years being the fourteen (14) subsequent calendar years. The fifteenth (15<sup>th</sup>) Tax Year, therefore, is the fourteenth (14<sup>th</sup>) calendar year following the first said year.

"Urban Renewal Law" means the North Dakota Urban Renewal Law, that is, North Dakota Century Code, Chapter 40-58, as the same may be amended.

"TIF District" means the area identified as the "District," or "District 2023-03" under the City's Development Plan approved by the Board of City Commissioners of the City of Fargo on May 30, 2023, as the same may be amended.

"Unavoidable Delays" means any delay outside the control of the Party claiming its occurrence which is the direct result of strikes; other labor troubles; unusually severe or prolonged bad weather; unavailability of materials; Acts of God; fire or other casualty to the Improvements; remediation of contaminants, pollutants or hazardous substances; unforeseen soil conditions, hazardous materials or concealed conditions; litigation (including without limitation bankruptcy proceedings); or the direct result of the COVID-19 epidemic or other virus-related epidemic and which directly results in delays; or acts of any federal, state or local governmental unit, including epidemic-related government lockdowns, which directly result in delays.

ARTICLE II

**Representations, Warranties and Covenants**

Section 2.1. **Representations, Warranties and Covenants by City.** The City represents and warrants that:

(a) The City has received the approval of its Board of City Commissioners to enter into and perform its obligations under this Agreement.

(b) The City herein makes no representation or warranty, either express or implied, as to the Development Property or its condition or the soil conditions thereon or that the Development Property shall be suitable for the Developer's purposes or needs.

Section 2.2. **Representations, Warranties and Covenants by Developer.** The Developer represents and warrants that:

(a) The Developer is a limited liability company duly organized and in good standing under the laws of the State of North Dakota, is not in violation of any provisions of its operating agreement or the laws of the State of North Dakota and is authorized to enter into and perform its obligations under this Agreement.

(b) The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby and the fulfillment of or compliance with the terms and conditions of this Agreement are not prevented or limited by and will not conflict with or result in a breach of any provision or requirement applicable to the Developer or of any provision of any evidence of indebtedness, agreement or instrument of whatever nature to which the Developer is now a party or by which it is bound.

(c) The Developer, with respect to its construction, operation and maintenance of the Improvements upon the Development Property, will cause the same to occur in accordance in all material respects with this Agreement and all local, state and federal laws and regulations (including without limitation environmental, zoning, building code and public health laws and regulations and including any relocation requirements under local, state or federal law).

(d) The Developer has received no notice or communication from any local, state or federal official or body that any activities of the Developer respecting the Development Property contemplated by this Agreement, including the construction of the Improvements on the Development Property, may be or will be in violation of any law or regulation.

(e) The Developer will use its reasonable efforts to obtain, in a timely manner, all required permits, licenses and approvals, and to meet, in a timely manner, all requirements of all applicable local, state and federal laws and regulations which must be obtained or met before the Improvements may be lawfully constructed and completed.



(f) To the best knowledge and belief of the Developer, the construction of the Improvements on the Development Property within the reasonably foreseeable future is conditioned on the assistance and benefit to the Developer provided for in this Agreement. The Developer would not undertake the Project without the financing provided by the City pursuant to this Agreement.

(g) The Developer represents and covenants that throughout the term of this Agreement that the tax increment assistance provided under this Agreement will be used by the Developer solely to finance those costs which are eligible costs for reimbursement of a project as defined in the Urban Renewal Law. This provision does not apply to those costs that are initially borne by the City and reimbursed to the City by Developer as provided in Section 3.3 of this Agreement.

(h) The Developer will cooperate fully with the City with respect to any litigation commenced by third parties or by the City or both against third parties with respect to the Project.

(i) The Developer will cooperate fully with the City in resolution of any traffic, parking, trash removal or public safety problems which may arise in connection with the construction and operation of the Project.

(j) The Developer has not received any notice from any local, state or federal official that the activities of the Developer with respect to the Project may or will be in violation of any Environmental Law or regulation, and the Developer, without any duty of inquiry, is not aware of any state or federal claim filed or planned to be filed by any party relating to any violation of any Environmental Law.

(k) The Developer understands that the City will or may subsidize or encourage the development of other properties in the City, including properties that compete with the Development Property and Improvements, and that such subsidies or encouragements may be more favorable than the terms of this Agreement, and that the City has not represented that development of the Development Property will be favored over the development of other properties.

(l) The Developer will spend enough in construction of the Minimum Improvements, when combined with the value of the Development Property, to generate an estimated minimum market value of One Million Eight Hundred Thousand and no/100s Dollars (\$1,800,000.00).

(m) The Developer expects that, barring Unavoidable Delays, the Project will be substantially completed by December 31, 2025.

(n) As of the Closing Date, the Developer shall have binding arrangements for all the equity and loan financing necessary to complete the Minimum Improvements.

(o) As of the Closing Date, the Developer shall have submitted to the City Construction Plans consistent with the Improvements as described in Section 4.1.

(p) As of the Closing Date, the City shall be satisfied in its reasonable judgment that the Developer has firm arrangements for financing construction or acquisition of the Project in an amount sufficient, together with equity commitments, to complete the Project in conformance with such Construction Plans, or the City shall receive such other evidence of financial ability as in the reasonable judgment of the City is required.

(q) As of the Closing Date, the Developer shall have obtained an opinion from its independent legal counsel that this Agreement is in accordance with North Dakota state law, including the provisions of N.D.C.C. Chapter 40-58, and is a binding and enforceable agreement.

(r) As of the Effective Date, the Developer has marketable record title to Developer's Property free and clear of any encumbrances or lienholders except as provided in Article VII of this Agreement or, to the extent Developer does not have marketable record title, Developer has obtained from the person, firm or entity having such title an agreement [hereinafter referred to as an "Agency Agreement"] authorizing Developer to develop Developer's Property as contemplated by this agreement and authorizing Developer to enter into this Agreement, said Agency Agreement to be in a form approved by the City.

## ARTICLE III

**Completion of Improvements; Reimbursement  
of Certain Costs**

Section 3.1. **Completion of Improvements by Developer.** Subject to Unavoidable Delays as provided in Section 4.2, below, the Developer shall have substantially completed the Improvements by December 31, 2025. The Developer's use of the Development Property shall be subject to (a) all of the conditions, covenants, restrictions and limitations imposed by this Agreement and also to (b) building and zoning laws and ordinances and all other local, state and federal laws and regulations.

Section 3.2. Intentionally Left Blank.

Section 3.3. **Reimbursement by City of Certain Costs; Terms of Tax Increment Note.** The Developer hereby represents to the City that the Developer has incurred and paid and will incur and pay significant Development Costs. The reimbursements that establish the principal balance of the Tax Increment Note whose principal and interest are payable to the Developer shall be as follows. The City hereby agrees to defray a portion of the Development Costs up to \$300,825, as follows:

1. Eligible costs of acquisition	\$104,000
2. Demolition & Site Cleanup	\$ 94,500
3. Public Works Improvements	\$ 88,000
4. Advance administrative Costs (Fees)	<u>\$ 14,325</u>
Total	\$ 300,825

For purposes of the above-described Development Costs, eligible costs for Demolition and Site Cleanup shall include, without limitation, soil remediation, building/basement removal, asbestos removal, engineering and other consultant fees, topographic, infrastructure removal, site paving removal, soil excavation and site fill, including reasonable fees and overhead charges and eligible costs for public works improvements, which shall include, without limitation, storm water infrastructure/detention, grading, including reasonable consultants' costs and fees and including reasonable overhead charges. The Demolition and Site Cleanup and public works improvement costs may be transferred between categories provided that the total costs eligible for reimbursement will not exceed \$300,825 (including the stated administrative fee of \$14,325). The advance administrative fee of \$14,325, set forth above, will be paid by Developer to the City at the time of issuance of the Tax Increment Note. In addition, an annual administrative fee equal to five percent (5%) of the annual increment received from the County Auditor shall be retained by the City prior to remittance to Developer of said increment as payment on the TIF Renewal Note.

If there is a category of expense that is deemed ineligible under the Urban Renewal Law, but there are additional eligible expenses not otherwise reimbursed under this Agreement, then such otherwise non-reimbursed, but eligible, expenses may be recognized as an eligible expense under this Agreement. In addition to the foregoing costs, Developer shall be entitled to reimbursement over and above the foregoing eligible expenses an agreed upon interest rate of Five and One-half Percent Per Annum to be paid to Developer under the Tax Increment Note. All of the said costs, and interest, meet the representation set forth at Section 2.2(g) by issuing the Tax Increment Note, substantially in the form of Exhibit C to this Agreement, subject to the following conditions:

(a) There shall be one (1) Tax Increment Note. The principal amount of the Tax Increment Note shall be determined by adding the \$300,825 (or so much thereof as shall be demonstrated as set forth in Section 3.3(d)) plus a sum equal to Capitalized Interest. The Tax Increment Note shall provide for payments to be made by the City to Developer of Developer's Tax Increment received by the City from the County for the Project for the first Tax Year and for each of fourteen (14) subsequent Tax Years, with payments to be made annually on the Payment Dates, it being further provided that Available Tax Increment exists pertaining to the fifteenth (15<sup>th</sup>) or earlier Tax Years

(b) The Tax Increment Note shall be delivered only if no Event of Default shall have occurred and be at the time continuing.

(c) This subsection intentionally left blank.

(d) If the conditions set forth in this Section are met, the Tax Increment Note shall be dated, issued and delivered when the Certificate of Completion has been delivered and when the Developer shall have demonstrated in writing to the reasonable satisfaction of the City that the Developer has incurred and paid eligible costs of the Improvements to be borne by Developer which will not be otherwise reimbursed or paid hereunder. Demonstration of eligible costs of Improvements up to the maximum amount of the Tax Increment Note shall be made pursuant to one or more certifications in form and substance satisfactory to the City that all or a portion of the costs of the Improvements have been incurred, together with evidence satisfactory to the City of the nature and amount of the costs of the Improvements and of the costs incurred by the Developer. Each certification shall demonstrate the specific purpose and amount of the costs of the Improvements and their compliance with the representation set forth at Section 2.2(g). The City's determination of a cost's compliance with the representation set forth at Section 2.2(g) shall, if based on the advice of its city attorney after consultation with the Developer or its counsel, be conclusive. The delivery of the Tax Increment Note itself constitutes reimbursement of expenditures in an amount equal to the principal amount of the Tax Increment Note; there are no monetary proceeds received by Developer upon delivery of the Tax Increment Note.

(e) Subject to the provisions of the Tax Increment Note, the principal of and interest on the Tax Increment Note shall in the aggregate be payable on May 15<sup>th</sup> following the date of issuance of the Tax Increment Note and on May 15<sup>th</sup> of each year thereafter until the Maturity

Date, said May 15<sup>th</sup> dates being referred to herein as the "Payment Date" or collectively as the "Payment Dates". The first payment on the Tax Increment Note, to become due and payable on the first Payment Date, shall be limited to all the Available Tax Increments received to said date by the City on the Project. For all payments after said first payment on the Tax Increment Note, the amounts payable on the Tax Increment Note on each Payment Date shall be limited to the Available Tax Increments received by the City since the prior year's Payment Date. All payments made on the Tax Increment Note shall be applied first to pay accrued and unpaid interest on the Tax Increment Note and second toward payment of principal. To the extent that the Available Tax Increments are insufficient, through the Maturity Date, to pay all accrued and unpaid interest on and the principal of the Tax Increment Note, said unpaid amounts shall then cease to be any debt or obligation of the City or of the City whatsoever.

(f) The unpaid principal of the Tax Increment Note shall bear interest at Three and One-half Percent (3.50%) per annum from the date of issuance, compounded annually. Interest shall be computed on the basis of a 360-day year consisting of 12 months of 30 days each.

(g) The City expresses no opinion in particular as to whether, or not, the interest income from any such TIF Revenue Note is exempt from federal income taxation, but it is assumed that the Tax Increment Note will be a "taxable" obligation.

(h) The Tax Increment Note shall be a special and limited revenue obligation of the City and not a general obligation of the City, and only Available Tax Increments received by the City shall be used to pay the principal of and interest on the Tax Increment Note. [Note: See definition of "Available Tax Increments", above.]

(i) The Tax Increment Note shall be governed by and payable pursuant to the additional terms thereof, as set forth in Exhibit C. In the event of any conflict between the terms of the Tax Increment Note and the terms of this Section 3.3, the terms of the Tax Increment Note shall govern. No payments will be made on the Tax Increment Note during such time as there is a Specified Event of Default that has not been cured by the Developer.

(j) In connection with the issuance of the Tax Increment Note, and as conditions to such issuance, the Developer shall be provided with a Private Placement Memorandum and shall execute a receipt in a form acceptable to the City stating that it has relied on its own determinations in acquiring the Tax Increment Note and not on representations or information provided by the City.

(k) For purposes of this Agreement all project values shall be as valued by the City Assessor.

#### Section 3.4. **Release and Indemnification Covenants.**

(a) The Developer releases the City and the governing body members, officers, agents, including independent contractors, consultants and legal counsel, servants and employees thereof (hereinafter, for purposes of this Section, collectively the "Indemnified Parties") from,

covenants and agrees that the Indemnified Parties shall not be liable for, and agrees to indemnify and hold harmless the Indemnified Parties against, any loss or damage to property or any injury to or death of any person for which a claim is made prior to the issuance of a Certificate of Completion and occurring at, about or in connection with the Development Property and/or Improvements, or the Developer's undertaking and completion thereof, or resulting from any defect therein, except to the extent such loss, damage or death is caused by the negligence or other wrongful acts of the Indemnified Parties. This paragraph (a) shall only apply to claims made prior to the issuance of a Certificate of Completion.

(b) Except for any willful misrepresentation or any willful or wanton misconduct or negligence of the Indemnified Parties, the Developer agrees to protect and defend the Indemnified Parties, now and forever, and further agrees to hold the aforesaid harmless from any claim, demand, suit, action or other proceeding whatsoever by any person or entity whatsoever brought prior to the issuance of a Certificate of Completion and arising or purportedly arising from this Agreement, or the transactions contemplated hereby or the acquisition, construction, installation, ownership, and operation of the Improvements; provided that this indemnification shall not apply to the warranties made or obligations undertaken by the City in this Agreement.

(c) The Indemnified Parties shall not be liable for any damage or injury to the persons or property of the Developer or its officers, agents, servants or employees or any other person who may be about the Project due to any act of negligence of any person, other than any act of negligence on the part of any such indemnified party or its officers, agents, servants or employees.

(d) All covenants, stipulations, promises, agreements and obligations of the City contained herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the City and not of any governing body member, officer, agent, servant or employee of the City.

(e) This Agreement shall not create nor be construed to create any partnership, joint venture, agency, or employment relationship between the Parties.

Section 3.5. Intentionally left blank.

**Section 3.6. Use of Tax Increments.**

The City receives the Tax Increments generated by the TIF District from the County. The City may use Tax Increments which are not Developer Tax Increments for any purpose permitted by law. Developer Tax Increments shall be used on any date of application for the following purposes in the following order of priority:

- (1) to make payments on the Tax Increment Note; and
- (2) after payment of the Tax Increment Note in full, to pay or reimburse redevelopment costs identified by the City and to pay other eligible expenses for

other projects that may be approved for the TIF District, from time to time, by the governing body of the City.



## ARTICLE IV

**Construction Of Minimum Improvements**

Section 4.1 **Construction of Minimum Improvements.** The minimum elements are five row house style housing units consistent with Attachment 1, with the site having only one driveway onto 8<sup>th</sup> Street and with no driveways onto 5<sup>th</sup> Avenue South, with four of the housing units having front doors facing 5<sup>th</sup> Avenue South, and with one housing unit will have a front door facing 8<sup>th</sup> Street (the “Minimum Improvements”). The Improvements constructed by the Developer may, and are hereby permitted to and encouraged to, exceed in scope, scale and nature the Minimum Improvements. The Minimum Improvements constitute the lowest (or minimum) extent of Improvements which meet the development required to be provided hereunder by the Developer.

Section 4.2 **Commencement and Completion of Construction.** Subject to Unavoidable Delays, by December 31, 2025, the Developer shall have substantially completed the construction of the Minimum Improvements.

Time lost as a result of Unavoidable Delays shall be added to extend the completion date beyond such date, a number of days equal to the number of days lost as a result of Unavoidable Delays.

The Developer agrees for itself, and every successor in interest to the Development Property, or any part thereof, that the Developer, and such successors and assigns, shall cause to be promptly begun and diligently prosecuted to complete construction of the Minimum Improvements thereon, and that such construction shall in any event be commenced and completed within the period specified in this Section 4.2. Until construction of the Minimum Improvements has been completed, the Developer shall make reports to the City, in such detail and at such times as may reasonably be requested by the City, as to the actual progress of the Developer with respect to construction of the Minimum Improvements.

The Developer agrees that it shall permit designated representatives of the City to enter upon the Development Property during the construction of the Minimum Improvements to inspect such construction, after reasonable notice to Developer and at City’s risk, to determine compliance with this agreement. This paragraph is not intended to apply to the customary building or code inspections by the City.

Section 4.3 **Certificate of Completion.** Promptly after completion of the Minimum Improvements in accordance with the provisions of this Agreement, the City will furnish the Developer with a Certificate of Completion, in substantially the form set forth in Exhibit F attached hereto. Such Certificate of Completion shall be a conclusive determination that the Developer has fulfilled the obligations of the Developer, and its successors and assigns, to construct the Minimum Improvements.

If the City shall refuse or fail to provide a Certificate of Completion in accordance with the provisions of this Section 4.4, the City shall, within twenty (20) days after written request by the Developer, provide the Developer with a written statement indicating in adequate detail in what respects the Developer has failed to complete the Minimum Improvements in accordance with the provisions of this Agreement, or is otherwise in default under the terms of this Agreement, and what measures or acts it will be necessary, in the opinion of the City, for the Developer to take or perform in order to obtain such Certificate of Completion.

ARTICLE V

**Insurance And Condemnation**

Section 5.1. **Insurance.**

(a) The Developer will provide and maintain or cause to be maintained at all times during the process of constructing the Minimum Improvements and, from time to time at the request of the City, furnish the City with proof of payment of premiums on:

(I) 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 Minimum Improvements at the date of completion, and with coverage available in non-reporting form on the so-called "all risk" form of policy; the interest of the City shall be protected in accordance with a clause in form and content satisfactory to the City;

(ii) Comprehensive general liability insurance (including operations, contingent liability, operations of subcontractors, completed operations and contractual liability insurance) together with an Owner's Contractor's Policy with limits against bodily injury and property damage of not less than \$500,000 for each occurrence (to accomplish the above-required limits, an umbrella excess liability policy may be used); and

(iii) Worker's compensation insurance, with statutory coverage.

(b) All insurance required in this Article V shall be taken out and maintained in responsible insurance companies selected by the Developer which are authorized under the laws of the State to assume the risks covered thereby. The Developer will deposit upon the request of the City, but no more often than annually, with the City a certificate or certificates or binders of the respective insurers stating that such insurance is in force and effect. In lieu of separate policies, the Developer may maintain a single policy, or blanket or umbrella policies, or a combination thereof, which provide the total coverage required herein, in which event the Developer shall deposit with the City a certificate or certificates of the respective insurers as to the amount of coverage in force upon the Minimum Improvements.

Section 5.2. **Condemnation.** In the event that title to and possession of the Improvements, or any material part thereof, but solely as to the Development Property and Improvements which the Developer retains ownership of, shall be taken in condemnation or by the exercise of the power of eminent domain by any governmental body or other person (except the City) prior to the Maturity Date the Developer shall, with reasonable promptness after such taking, notify the City as to the nature and extent of such taking.

ARTICLE VI

**Intentionally left blank.**

## ARTICLE VII

**Mortgage Financing**

Section 7.1. **Limitation Upon Encumbrance of Property.** Prior to the completion of the Minimum Improvements, as certified by the City, neither the Developer nor any successor in interest to the Development Property or any part thereof shall engage in any financing or any other transaction creating any mortgage or other encumbrance or lien upon the Development Property, whether by express agreement or operation of law, or suffer any encumbrance or lien to be made on or attach to the Development Property, other than:

- (a) except for the purpose of securing financing for the Development Property or Minimum Improvements, or all of them; and
- (b) if the City is given notice of such Mortgage in accordance with Sections 7.1 and 7.2.

Section 7.2. **Notice of Mortgage.** The Developer shall provide the City with a copy of the Mortgage and related note prior to the completion of the Minimum Improvements thereon.

Section 7.3. **Notice of Default; Copy to Mortgagee.** Whenever the City shall deliver any notice or demand to the Developer with respect to any breach or default by the Developer in its obligations or covenants under this Agreement for which the remedies of Sections 9.3 and 9.4 are available, the City shall at the same time forward a copy of such notice or demand to each holder of any Mortgage at the last address of such holder shown in the records of the City.

Section 7.4. **Mortgagee's Option to Cure Defaults.** After any breach or default referred to in Section 7.3, each such holder shall (insofar as the rights of the City are concerned) have the right, at its option, to cure or remedy such breach or default (or such breach or default to the extent that it relates to the part of the Development Property covered by its mortgage) and to add the cost thereof to the Mortgage debt and the lien of its Mortgage; provided, however, that if the breach or default is with respect to construction covered by the Mortgage, nothing contained in this Section or any other Section of this Agreement shall be deemed to require such holder, either before or after foreclosure or action in lieu thereof, to undertake or continue the construction or completion of the work covered by the Mortgage (beyond the extent necessary to conserve or protect the work or construction already made), provided that any such holder shall not devote the Development Property or portion thereof to a use inconsistent with the Development Plan or this Agreement without the agreement of the City.

Section 7.5. **City's Option to Cure Default on Mortgage.** In the event that the Developer is in default under any Mortgage authorized pursuant to this Article VII, whether or not the holder of the Mortgage has given the Developer notice of such default, the Developer shall notify the City in writing of:

- (a) the fact of the default;

- (b) the elements of the default; and
- (c) the actions required to cure the default.

If the default is an "Event of Default" under such Mortgage, which shall entitle such holder thereof to foreclose upon the Development Property covered by the Mortgage or any portion thereof, the Developer shall afford the City an opportunity to cure the "Event of Default" to the extent consistent with the Mortgage or permitted by the holder of the Mortgage upon request of the Developer, which request the Developer hereby covenants to make, within the time for cure provided by the Mortgage or within such longer reasonable time period as the holder shall deem appropriate. The City shall have no obligation to cure any such default.

## ARTICLE VIII

**Prohibitions Against Assignment And Transfer; Indemnification**

Section 8.1. **Status of Developer; Transfer of Substantially All Assets.** As security for the obligations of the Developer under this Agreement, the Developer represents and agrees that prior to the earlier of the issuance of the Tax Increment Note, the Developer will maintain its existence as a North Dakota limited liability company and maintain its authority to conduct business in the State of North Dakota and shall not consolidate with or merge into another entity and shall not dissolve or otherwise dispose of all or substantially all of its assets; provided that the Developer may consolidate with or merge into another entity or sell or otherwise transfer to a partnership, limited liability partnership or corporation organized under the laws of one of the United States, or an individual, all or substantially all of its assets as an entirety and thereafter dissolve and be discharged from liability hereunder if (i) the transferee partnership, corporation or individual assumes in writing all of the obligations of the Developer under this Agreement; and (ii) the City receives such new security from the successor Developer to assure completion of the Project and the fulfillment of the remaining obligations of this Agreement as the City deems necessary or desirable.

Section 8.2. **Prohibition Against Transfer of Property and Assignment of Agreement.** The Developer represents and agrees that prior to the issuance of the Tax Increment Note:

(a) Subject to Article VII and Subsections 8.2(c), 8.2(e) and 8.2(f) of this Agreement, except (i) only by way of security for, and only for, the purpose of obtaining financing (including construction loans secured by the Project, and loans secured by the Tax Increment Note) necessary to enable the Developer or any successor in interest to the Development Property, or any part thereof, to perform its obligations with respect to making the Minimum Improvements under this Agreement, (ii) for a transfer of a portion of the Development Property to a separate entity that controls, is controlled by, or is under common control with, Developer, or (iii) for any other purpose authorized by this Agreement, the Developer has not made or created and will not make or create or suffer to be made or created any total or partial sale, assignment, conveyance, or lease, or any trust or power, or transfer in any other mode or form of or with respect to the Agreement or the relevant portion of the Development Property or any part thereof or any interest therein, or any contract or agreement to do any of the same, without the prior written approval of the City.

(b) Subject to Subsections 8.2(c), 8.2(e) and 8.3(f), the City shall be entitled to require, except as otherwise provided in the Agreement, as conditions to any such approval that:

(i) Any proposed transferee shall have the qualifications and financial responsibility, in the reasonable judgment of the City, necessary and adequate to

fulfill the remaining obligations undertaken in this Agreement by the Developer with respect to the relevant portion of the Development Property.

(ii) Any proposed transferee, by instrument in writing satisfactory to the City and in form recordable among the land records, shall, for itself and its successors and assigns, and expressly for the benefit of the City, have expressly assumed with respect to the relevant portion of the Development Property all of the remaining obligations of the Developer under this Agreement and agreed to be subject to all the conditions and restrictions to which the Developer is subject (unless the Developer agrees to continue to fulfill those obligations, in which case the preceding provisions of this Section 8.2(b)(ii) shall not apply); provided, however, that the fact that any transferee of, or any other successor in interest whatsoever to, the Development Property, or any part thereof, shall not, for whatever reason, have assumed such obligations or so agreed, shall not (unless and only to the extent otherwise specifically provided in this Agreement or agreed to in writing by the City) deprive the City of any rights or remedies or controls with respect to the Development Property or any part thereof or the construction of the Minimum Improvements; it being the intent of the parties as expressed in this Agreement that (to the fullest extent permitted at law and in equity and excepting only in the manner and to the extent specifically provided otherwise in this Agreement) no transfer of, or change with respect to, ownership in the Development Property or any part thereof, or any interest therein, however consummated or occurring, and whether voluntary or involuntary, shall operate, legally or practically, to deprive or limit the City of or with respect to any rights or remedies or controls provided in or resulting from this Agreement with respect to the Minimum Improvements that the City would have had, had there been no such transfer or change. In the absence of specific written approval by the City to the contrary, no such transfer or approval by the City thereof shall be deemed to relieve the Developer, or any other party bound in any way by this Agreement or otherwise with respect to the construction of the Minimum Improvements, from any of its obligations with respect thereto.

(iii) There shall be submitted to the City for review and prior written approval all pertinent instruments and other legal documents involved in effecting the transfer of any interest in this Agreement or the Development Property governed by this Article VIII.

(c) Upon the furnishing of a Certificate of Completion pursuant to Section 4.4, notwithstanding any provisions to the contrary in this Article VIII, the Developer may sell or transfer such property or a portion thereof without any approval pursuant to Section 8.2(a) or (b).

(d) Nothing in subsections (a) or (b), above, is intended to limit the Developer's authority and right to rent or lease space in the Development Property to tenants.

Section 8.3. **Approvals.** Any approval of a transfer of interest in the Developer, this Agreement, or the Development Property or of a release of the Developer from its obligations hereunder required to be given by the City under this Article VIII may be denied only in the event that the City reasonably determines that the ability of the Developer to perform its obligations under this Agreement and its statutory duty, as owner, to pay ad valorem real property taxes assessed with respect to the Development Property, or any part thereof, or the overall financial security provided to the City under the terms of this Agreement, or the likelihood of the Minimum Improvements being successfully constructed and operated pursuant to the terms of this Agreement, will be materially impaired by the action for which approval is sought.



ARTICLE IX

**Events of Default**

Section 9.1. **Events of Default Defined.** The following are Events of Default under this Agreement:

(a) There shall have occurred a failure in the observance or performance in any material respect of any covenant, condition, obligation or agreement to be observed or performed under this Agreement.

(b) If any representation or warranty made by the Developer herein shall at any time prove to have been incorrect in any material respect as of the time made.

(c) If the Improvements are not substantially completed by December 31, 2025, as such time may be extended by Unavoidable Delays.

(d) If the holder of any mortgage on the Development Property or any portion thereof shall commence a legal action on the secured indebtedness or a foreclosure of its mortgage.

(e) If the Developer shall breach, in a material respect, any warranties, covenants or other provisions of this Agreement not referred to in the foregoing provisions of this Section 9.1.

(f) The filing by the Developer of a voluntary petition in bankruptcy or the adjudication of the Developer as a bankrupt, the insolvency of the Developer or the filing by the Developer of any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation resolution or similar relief under any present or future federal, state or other statutes, laws or regulations relating to bankruptcy, insolvency or other relief for debtors, or if the Developer seeks or consents to or acquiesces in the appointment of any trustee, receiver or liquidator for itself or its property, or makes any general assignment for the benefit of creditors, or admits in writing its inability to pay its debts generally as they become due.

(g) If the Developer shall not have available, and be able to demonstrate to the reasonable satisfaction of the City, sufficient funds to complete the Improvements and pay all costs thereof.

An Event of Default shall also include any occurrence which would with the passage of time or giving of notice become an Event of Default as defined hereinabove.

Section 9.2. **Remedies on Default.** Whenever any Event of Default occurs, in addition to all other remedies available to the City at law or in equity, the City (1) may, upon written notice, suspend its performance (other than the payment of the Tax Increment Note, except as provided below for a Specified Event of Default) under this Agreement until it receives assurances from the Developer, deemed adequate by the City, that the Developer has cured its

default and will continue its performance under this Agreement, and (2) may, after provision of sixty (60) days written notice to the Developer of the Event of Default, but only if the Event of Default has not been cured within said sixty (60) days, or, if the Event of Default cannot be cured within sixty (60) days, the Developer does not provide assurances to the City reasonably satisfactory to the City that the Event of Default will be cured as soon as reasonably possible, terminate this Agreement, without further obligation whatsoever hereunder to the Developer.

Notwithstanding anything to the contrary stated in this Agreement, the City shall not exercise any remedies at law or in equity or under this Agreement upon an Event of Default by the Developer, other than the City's right to suspend its performance under this Agreement, until after provision of sixty (60) days written notice to the Developer of the Event of Default, but only if the Event of Default has not been cured within said sixty (60) days, or, if the Event of Default cannot be cured within sixty (60) days, the Developer does not provide assurances to the City reasonably satisfactory to the City that the Event of Default will be cured as soon as reasonably possible.

As a remedy for an Event of Default:

- (a) The City may suspend or terminate payments on the Tax Increment Note, if the Event of Default is a Specified Event of Default.
- (b) The City may withhold a Certificate of Completion.
- (c) The City may take any action, including legal, equitable or administrative action, which may appear necessary or desirable to collect any payments due under this Agreement, to recover any damages or to enforce performance and observance of any obligation, agreement, or covenant of the Developer under this Agreement.

Section 9.3. **No Remedy Exclusive.** No remedy herein conferred upon or reserved to the either Party is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

Section 9.4. **No Additional Waiver Implied by One Waiver.** If any agreement contained in this Agreement should be breached by either Party and thereafter waived by the other Party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder.

Section 9.5. **Agreement to Pay Attorneys' Fees and Expenses.** Whenever any Event of Default occurs and has not been cured within sixty (60) days and the City shall employ attorneys or incur other expenses for the enforcement, performance or observance of any obligations or agreement on the part of the Developer contained herein, or for the identification

and/or pursuit of any remedies or possible workouts of such default, the Developer agrees that it shall, on demand therefor, pay to the City the reasonable fees of such attorneys and such other reasonable expenses so incurred by the City. If an Event of Default cannot be cured within sixty (60) days, but the Developer has provided assurances to the City reasonably satisfactory to the City that the Event of Default will be cured as soon as reasonably possible (as provided in Section 9.2), and the Developer does so cure said Event of Default in the manner as assured to the City, the Event of Default shall be deemed to have been cured within said sixty (60) days for purposes of this Section.

ARTICLE X

**Additional Provisions**

Section 10.1. **Titles of Articles and Sections.** Any titles of the several parts, Articles and Sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of the provisions hereof.

Section 10.2. **Notices and Demands.** Except as otherwise expressly provided in this Agreement, a notice, demand or other communication under this Agreement by either Party to the other shall be sufficiently given or delivered if sent by registered or certified mail, postage prepaid, return receipt requested, or delivered personally; and,

(a) in the case of the Developer, to \_\_\_\_\_ [[Insert Name]], HN 8TH STREET, LLC, \_\_\_\_\_, \_\_\_\_\_, North Dakota \_\_\_\_\_, and

(b) in the case of the City, to the City at 225 North 4th Street, Fargo, North Dakota 58102, Attention: Director of Strategic Planning and Research AND to the City at 225 North 4<sup>th</sup> Street, Fargo, North Dakota 58102, Attention: City Auditor;

or at such other address with respect to either such Party as that Party may, from time to time, designate in writing and forward to the other as provided in this Section.

Section 10.3. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall constitute an original hereof.

Section 10.4. **Law Governing.** The Parties agree that this Agreement shall be governed and construed in accordance with the laws of the State of North Dakota.

To the extent the ability of the City to perform any obligations under this agreement is impaired or limited by modifications in North Dakota law, as established either by the legislature or the courts, this agreement shall be interpreted and construed to maximize the fulfillment of such obligations under the law; however, no breach of this agreement may be deemed to occur as a result of such impairment or limitation.

Section 10.5. **No Filing of Agreement.** The Parties agree that this Agreement shall not be filed against the Development Property, and each Party agrees that if it shall inadvertently cause or suffer this Agreement to be so filed, it will take such actions as may be necessary to remove, satisfy and render ineffective any such filing.

Section 10.6. **Modification.** If the Developer is requested by the holder of a Mortgage or by a prospective holder of a prospective Mortgage to amend or supplement this Agreement in any manner whatsoever, the City will, in good faith, consider the request with a view to granting the same unless the City, in its reasonable judgment, concludes that such modification is not in

the public interest, or will significantly and undesirably weaken the financial security provided to the interests of the City by the terms and provisions of this Agreement.

Section 10.7. **Legal Opinions.** Upon execution of this Agreement, each party shall, upon request of the other parties, supply the other parties with an opinion of its legal counsel to the effect that this Agreement is legally issued or executed by, and valid and binding upon, such party, and enforceable in accordance with its terms.

Section 10.8. **Approvals; Officer Action.** Wherever in this Agreement the consent or approval of the City or Developer is required or requested, such consent or approval shall not be unreasonably withheld or unduly delayed (except to the extent that, as a remedy upon the occurrence of an Event of Default, the City is entitled to withhold its performance). Any approval, execution of documents, or other action to be taken by the City pursuant to this Agreement or for the purpose of determining sufficient performance by the Developer under this Agreement may be made, executed or taken by the Mayor of the City without further approval by the Board of City Commissioners of the City, to the extent permitted by law. The Mayor may, but shall not be required to, consult with other City staff with respect to such matters. Any approval, execution of documents, or other action to be taken by the City pursuant to this Agreement or for the purpose of determining sufficient performance by the Developer under this Agreement may be made, executed or taken by the Mayor without further approval by the Board of City Commissioners of the City, to the extent permitted by law. The Mayor may, but shall not be required to, consult with City staff with respect to such matters.

## ARTICLE XI

**Termination of Agreement; Expiration**

Section 11.1. **City's Option to Terminate.** As provided and under the conditions specified in Section 9.2, the City may terminate this Agreement if an uncured Event of Default shall have occurred hereunder and be continuing following notice as set forth in Section 9.2. Nothing in that or in this Section shall affect the City's right, should the City not so elect to terminate this Agreement and as recourse against the Developer, to insist on performance hereunder by the Developer.

Section 11.2. **Expiration.** This Agreement shall expire when the Tax Increment Note is paid in full or, if earlier, on the Maturity Date.

Section 11.3. **Effect of Termination or Expiration.** No termination or expiration of this Agreement pursuant to the terms hereof shall terminate (i) any rights or remedies of the City arising hereunder due to an Event of Default, or of the Developer arising hereunder due to a breach of this Agreement by the City, occurring prior to such termination or expiration or (ii) the provisions of Sections 3.5, 3.6 and 9.7 hereof.

Section 11.4. **No Third Party Beneficiaries.** There shall, as against the City, be no third party beneficiaries to this Agreement. More specifically, the City enters into this Agreement, and intends that the consummation of the City obligations contemplated hereby shall be, for the sole and exclusive benefit of the Developer, and notwithstanding the fact that any other "persons" may ultimately participate in or have an interest in the Improvements, the City does not intend that any party other than the Developer shall have, as alleged third party beneficiary or otherwise, any rights or interests hereunder as against the City, and no such other party shall have standing to complain of the City's exercise of, or alleged failure to exercise, its rights and obligations, or of the City's performance or alleged lack thereof, under this Agreement.

IN WITNESS WHEREOF, the City and Developer have caused this Agreement to be executed by their duly authorized representatives.

CITY OF FARGO, NORTH DAKOTA

(SEAL)

By \_\_\_\_\_  
Timothy Mahoney, its Mayor

ATTEST:

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

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

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2023, by Timothy Mahoney and Steven Sprague, the Mayor and City Auditor, respectively, of the City of Fargo, North Dakota, on behalf of said City.

\_\_\_\_\_  
Notary Public

This document drafted by:

Erik R. Johnson  
Assistant City Attorney  
608 24<sup>th</sup> Ave S  
Fargo, ND 58103  
(701) 371-6850  
ejohnson@lawfargo.com

HN 8TH STREET, LLC

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

STATE OF NORTH DAKOTA    )  
                                          )  
COUNTY OF CASS            )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2023, by \_\_\_\_\_, the \_\_\_\_\_ of HN 8TH STREET, LLC, a North Dakota limited liability company.

\_\_\_\_\_  
Notary Public



**EXHIBIT A**

**Legal Description:**

[[insert legal description]]

**EXHIBIT B**

INTENTIONALLY LEFT BLANK.

**EXHIBIT C**

**FORM OF TAX INCREMENT NOTE**

No. R-1

\$ \_\_\_\_\_

UNITED STATES OF AMERICA  
STATE OF NORTH DAKOTA  
CASS COUNTY  
CITY OF FARGO

TAX INCREMENT  
REVENUE NOTE OF 20\_\_  
(TAX INCREMENT DISTRICT 2023-03 PROJECT)

KNOW ALL PERSONS BY THESE PRESENTS that the City of Fargo, Cass County, North Dakota (the "City"), certifies that it is indebted and for value received promises to pay to HN 8TH STREET, LLC, a North Dakota limited liability company (the "Developer"), or the registered assign, the principal sum of \_\_\_\_\_ Million \_\_\_\_\_ Hundred \_\_\_\_\_ Thousand and no/100 Dollars (\$ \_\_, \_\_, 000.00), an amount issued in reimbursement of eligible costs paid by the Developer, unless due sooner by redemption or early payment, on the Maturity Date defined below; but only in the manner, at the times, from the sources of revenue, and to the extent hereinafter provided; and to pay interest on the unpaid principal amount of this Note at the rate of interest of Five and One-half Percent (5-1/2%) per annum, compounded annually.

Interest shall accrue from the date of this Note on the amount issued and shall be computed on the basis of a 360-day year consisting of 12 30-day months. This Note is the "Tax Increment Note" (the "Note") described and defined in that certain Developer Agreement, dated as of \_\_\_\_\_, 20\_\_ (as the same may be amended from time to time, the "Developer Agreement"), by and between the City and HN 8TH STREET, LLC, a North Dakota limited liability company, as the initial Developer under the Developer Agreement. Each capitalized term which is used but not otherwise defined in this Note shall have the meaning given to that term in the Developer Agreement or in the resolution authorizing the issuance of this Note. Principal and interest are payable at such address as shall be designated in writing by HN 8TH STREET, LLC, or other registered holder of this Note, in any coin or currency of the United States of America which at the time of payment is legal tender for public and private debts.

Payment Dates. Subject to the terms hereof, the principal of and interest on the Tax Increment Note shall in the aggregate be payable on May 15<sup>th</sup> following the date of issuance of the Tax Increment Note and on May 15<sup>th</sup> of each year thereafter until the Maturity Date, said May 15<sup>th</sup> dates being referred to herein as the "Payment Date" or collectively as the "Payment Dates".

Payment Amounts. On each Payment Date (or, if not a business day of the City, the first business day thereafter) the City shall pay by check or draft mailed to the person that was the Registered Owner of the Note at the close of the last business day of the City preceding such Payment Date an amount as follows: (a) the first payment on the Tax Increment Note, to become due and payable on the first Payment Date, shall be limited to all the Available Tax Increments received to said date by the City on the Project and (b) for all payments after said first payment on the Tax Increment Note, the amounts payable on the Tax Increment Note on each Payment Date shall be limited to the Available Tax Increments received by the City since the the prior year's Payment Date. All payments made on the Tax Increment Note shall be applied first to pay accrued and unpaid interest on the Tax Increment Note and second toward payment of principal. To the extent that the Available Tax Increments are insufficient, through the Maturity Date, to pay all accrued and unpaid interest on and the principal of the Tax Increment Note, said unpaid amounts shall then cease to be any debt or obligation of the City or of the City whatsoever. In no event shall any City be obligated to remit payment of principal in excess of the aggregate amount of the unpaid principal of the Note. The City shall have the option at any time to prepay in whole or in part the principal amount of this Note at par plus accrued interest. All payments made by the City under this Note shall be applied first to pay accrued and unpaid interest on this Note and second toward payment of principal hereof.

Redemption. In addition to the amounts of principal required to be paid by the City as hereinabove set forth, the City shall have the right to prepay on any date the entire principal amount hereof then remaining unpaid, or such lesser portion thereof as it may determine upon, in multiples of \$1,000, at par plus accrued interest. Notice of any such optional prepayment shall be given prior to the prepayment date by mailing to the registered owner of this Note a notice fixing such prepayment date and the amount of principal to be prepaid.

Available Tax Increments. "Available Tax Increments" are defined in the Developer Agreement as follows:

"Developer Tax Increments minus the reasonable and not theretofore reimbursed actual expenses incurred by the City in establishing and maintaining the TIF District, in preparing and implementing this Agreement, and in general in administering the TIF District and this Agreement and any supplements hereto and in participating in the actions or transactions contemplated thereby and hereby."

"Developer Tax Increments" are defined in the Developer Agreement as follows:

"The portion of Developer's Taxes which constitutes Tax Increments, or the portion of Tax Increments derived from Developer's Taxes."

"Tax Increments" are defined in the Developer Agreement as follows:

“Tax Increments’ means those tax increments which the City shall be entitled to receive and retain, and which the City shall have actually received from Cass County, from time to time from the TIF District pursuant to the Urban Renewal Law.

In addition, “Developer’s Taxes” are defined in the Developer Agreement as follows:

“Developer's Taxes’ means taxes paid with respect to the portions of the Development Property and Improvements completed by the Developer for the fifteenth (15<sup>th</sup>) Tax Year and earlier Tax Years. Taxes for the sixteenth (16<sup>th</sup>) year following the first Tax Year, or for any subsequent year, are not included as Developer’s Taxes..”

In addition, “Tax Year” is defined in the Developer Agreement as follows:

“Tax Year” is one of a maximum of fifteen (15) successive calendar years, with the first year being the year that, pursuant to this Agreement, the Tax Increment Note is issued and with the subsequent years being the fourteen (14) subsequent calendar years. The fifteenth (15<sup>th</sup>) Tax Year, therefore, is the fourteenth (14<sup>th</sup>) calendar year following the first said year.

In addition, “Maturity Date” is defined in the Developer Agreement as follows:

**"Maturity Date" means the date that is three (3) years from the Payment Date for the fifteenth Tax Year following the date of the issuance of the Tax Increment Note.**

In addition, Section 3.6 of the Developer Agreement provides as follows:

"The City receives the Tax Increments generated by the TIF District from the County. The City may use Tax Increments which are not Developer Tax Increments for any purpose permitted by law. Developer Tax Increments shall be used on any date of application for the following purposes in the following order of priority:

- (a) to make payments on the Tax Increment Note; and,
- (b) after payment of the City Development Costs and Tax Increment Note in full, to pay or reimburse redevelopment costs identified by the City and to pay other eligible expenses for other projects that may be approved for the TIF District, from time to time, by the governing body of the City.

**No Payment Upon Default. No payments will be made on this Note during such time as there is an Event of Default under the Developer Agreement which has not been cured by the Developer.**

Lack of Protective Covenants. The City of Fargo, North Dakota (the "City"), has not covenanted to endeavor in any fashion to cause Tax Increments to be sufficient to generate

Available Tax Increments sufficient to pay this Note, nor have they covenanted to take actions under the Developer Agreement with such sufficiency as a goal.

**Sufficiency of Revenues.** The City makes no representation or covenant, express or implied, that the revenues described herein will be sufficient to pay, in whole or in part, the amounts which are or may otherwise become due and payable hereunder. Any amounts which have not become due and payable on this Note on or before the Maturity Date shall no longer be payable, as if this Note had ceased to be any debt or obligation of the City or of the City whatsoever.

**Issuance; Purpose; Special Limited Obligation.** This Note is in the aggregate principal amount of \$ , , (the "Note"), which Note has been issued pursuant to and in full conformity with the Constitution and laws of the State of North Dakota including North Dakota Century Code Chapter 40-58, for the purpose of providing money to finance certain eligible costs within the City's Urban Renewal District 2023-03, specifically the costs identified in Section 3.3 of the Developer Agreement. The Notes are payable out of the Tax Increment Revenue Note of 2023-03(8th Street Rowhouses Project) Fund of the City, to which have been pledged amounts representing Available Tax Increments to be received by the City from the City's 2023-03 Tax Increment District in the City. This Note is not any obligation of any kind whatsoever of any public body, except that this Note is a special and limited revenue obligation but not a general obligation of the City and is payable by the City only from the sources and subject to the qualifications and limitations stated or referenced herein. Neither the full faith and credit nor the taxing powers of the City or of the City are pledged to or available for the payment of the principal of or interest on this Note, and no property or other asset of the City or of the City, save and except the above referenced Available Tax Increments, is or shall constitute a source of payment of the City's obligations hereunder.

**Limitation on Transfer.** This Note may only be transferred to a person who is (1) a successor of HN 8TH STREET, LLC, by reorganization, merger or acquisition, (2) a member of HN 8TH STREET, LLC, (3) to a lender of HN 8TH STREET, LLC, as collateral for financing as permitted by the Developer Agreement, (4) a related person to such partner or successor, (5) a "qualified institutional buyer" as defined in Rule 144A promulgated under the federal Securities Act of 1933, or (6) an "accredited investor" as defined in Rule 501(a)(1), (2), (3) or (7) promulgated under the federal Securities Act of 1933. The City shall not register any transfer of this Note unless (i) a registered owner's prospective transferee delivers a representation letter in form satisfactory to the City verifying that the transferee is a "qualified institutional buyer"; or (ii) such transferee is an "accredited investor" which has delivered a representation letter in form satisfactory to the City; or (iii) the prospective transferee demonstrates to the satisfaction of the City that it is the successor, partner or related person to HN 8TH STREET, LLC, noted above.

Any registered owner desiring to effect a transfer shall, and does hereby, agree to indemnify the City against any liability, cost or expense (including attorneys' fees) that may result if the transfer is not so made.



Registration; Transfer. This Note shall be registered in the name of the payee on the books of the City by presenting this Note for registration to the officer of the City performing the functions of the Treasurer, who will endorse his or her name and note the date of registration opposite the name of the payee in the certificate of registration on the reverse side hereof. Thereafter this Note may be transferred to a bona fide purchaser who is a permitted transferee only by delivery with an assignment duly executed by the registered owner or his, her or its legal representative, and the City may treat the registered owner as the person exclusively entitled to exercise all the rights and powers of an owner until this Note is presented with such assignment for registration of transfer, accompanied by assurance of the nature provided by law that the assignment is genuine and effective, and until such transfer is registered on said books and noted hereon by the Treasurer of the City.

Developer Agreement. The terms and conditions of the Developer Agreement are incorporated herein by reference and made a part hereof. The Developer Agreement may be attached to this Note, and shall be attached to this Note if the holder of this Note is any person other than HN 8TH STREET, LLC. No payments will be made on this Note during such time as there is a Specified Event of Default under the Developer Agreement which has not been cured by the Developer.

Taxable Obligation. This Note is intended to bear interest that is included in the gross income of the owner.

IT IS HEREBY CERTIFIED AND RECITED that all acts, conditions and things required by the Constitution and laws of the State of North Dakota to be done, to happen and to be performed, precedent to and in the issuance of this Note, have been done, have happened and have been performed, in regular and due form, time and manner as required by law; and that this Note, together with all other debts of the City outstanding on the date hereof, being the date of its actual issuance and delivery, does not exceed any constitutional or statutory limitation of indebtedness.

IN WITNESS WHEREOF, the City of Fargo, Cass County, North Dakota, by its Board of City Commissioners has caused this Note to be executed on its behalf by the signature of its Mayor and attested by the signature of the City Auditor, all as of \_\_\_\_\_, 20\_\_.

CITY OF FARGO, CASS COUNTY, NORTH DAKOTA

By: \_\_\_\_\_  
Timothy Mahoney, its Mayor

ATTEST:

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

(SEAL)



CERTIFICATE OF REGISTRATION

The transfer of ownership of the principal amount of the attached Note may be made only by the registered owner or his, her or its legal representative last noted below.

DATE OF  
REGISTRATION

REGISTERED OWNER

SIGNATURE OF  
AUTHORITY'S TREASURER

HN 8TH STREET, LLC

\_\_\_\_\_, 2023

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

EXHIBIT D  
INTENTIONALLY LEFT BLANK

**EXHIBIT E**

INTENTIONALLY LEFT BLANK.

**EXHIBIT F**

**CERTIFICATE OF COMPLETION**

WHEREAS, the City of Fargo, North Dakota, a municipal corporation, (the "City") and HN 8TH STREET, LLC, a North Dakota limited liability company (the "Developer") have entered into an agreement dated as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_; and

WHEREAS, the Developer has to the present date performed said covenants and conditions insofar as it is able in a manner deemed sufficient by the City to permit the execution and recording of this certification:

NOW, THEREFORE, this is to certify that all building construction and other physical improvements specified to be done and made by the Developer have been completed, and the above covenants and conditions in said Developer Agreement have been performed by the Developer therein, and that the Tax Increment Note, referred to in said Developer Agreement, may be issued to Developer by the City.

CITY OF FARGO, NORTH DAKOTA

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

Attest:

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

**EXHIBIT G**  
**INTENTIONALLY LEFT BLANK.**

**EXHIBIT H**

**FORM OF LEGAL OPINION OF DEVELOPER'S COUNSEL**

[Fargo]

Re: Development Agreement by and between the City of Fargo, North Dakota, and HN 8TH STREET, LLC, a North Dakota limited liability company

Ladies and Gentlemen:

As counsel for HN 8TH STREET, LLC, a North Dakota limited liability company (the "Company"), and in connection with the execution and delivery of a certain Developer Agreement (the "Development Agreement") dated as of \_\_\_\_\_, 2023, between the Company and the City of Fargo, North Dakota (the "City"), we hereby render the following opinion:

We have examined the original certified copy, or copies otherwise identified to our satisfaction as being true copies, of the following:

- (a) The Company Operating Agreement;
- (b) Minutes relating to the meetings of the members of the Company at which action was taken with respect to the transactions covered by this opinion;
- (c) The Development Agreement;
- (d) and such other documents and records as we have deemed relevant and necessary as a basis for the opinion set forth herein.

Based on the pertinent law, the foregoing examination and such other inquiries as we have deemed appropriate, we are of the opinion that:

1. The Company has been duly organized and is validly existing as a limited liability company under the laws of the State of North Dakota and is qualified to do business in the State of North Dakota. The Company has full power and authority to execute, deliver and perform in full the Development Agreement; and the Development Agreement has been duly and validly authorized, executed and delivered by the Company and, assuming due authorization, execution and delivery by the other parties thereto, is in full force and effect and is a valid and legally binding instrument of the Company enforceable in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization or other laws relating to or affecting creditors' rights generally.

2. The consummation of the transactions contemplated by the Development Agreement, and the carrying out of the terms thereof, will not result in violation of any provision of, or in default under, the operating agreement of the Company or any indenture, mortgage, deed of trust, indebtedness, agreement, judgment, decree, order, statute, rule, regulation or restriction to which the Company is a party or by which it or its property is bound or subject, and do not constitute a loan to the Company.


3. The undersigned has provided an opinion to the Company that the Development Agreement is in accordance with North Dakota state law, including N.D.C.C. Chapter 40-58, and is a binding and enforceable agreement. A copy of such opinion, fully dated and executed, is in turn attached to this opinion.

Very truly yours

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MEMORANDUM

**TO:** Fargo City Commission

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

**DATE:** June 22, 2023

**SUBJECT:** Development Agreement for 501 Main

---

The developers of 501 Main requested time to make a presentation to the City Commission on proposed changes to their development plans.



REPORT OF ACTION  
**FINANCE COMMITTEE**

(40)

**Type:** Graver Alley Power Bury Cost Share Request

**Location:** Graver Alley

**Date of Hearing:** May 22, 2023

<u>Routing</u>	<u>Date</u>
City Commission	<u>6/26/2023</u>
Project File	<u>Kevin Gorder</u>
	<u>Brenda Derrig</u>

Engineering received a request from Kilbourne in March for assistance with the cost of burying the overhead power line in Graver Alley. When the Kesler Building was built, Kilbourne set their building back about 12.5' for clearance of the power line. After construction started, Xcel notified Kilbourne that the overhead power had to be removed. The Kesler project thus incurred an additional \$209,548 in costs. Kilbourne has asked the City to split the cost. In addition, the City Engineer and Kilbourne discussed four possible options to fully fund the Roberts Street Alley power burial based on actual costs. Option 4 was agreed upon by both parties. The City's total for this cost share will be \$104,774.36 in Grave Alley and no additional money for Roberts Street Alley.

**MOTION:**

On a motion by Dave Piepkorn, seconded by Mike Redlinger, the Finance Committee voted to approve the cost share in the amount of \$104,774.36 and to forward on to the City Commission.

<u>COMMITTEE:</u>	<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Unanimous</u>
				<u>X</u>
				<u>Proxy</u>
Tim Mahoney, Mayor	<u>X</u>	<u>x</u>		
Dave Piepkorn, City Commissioner	<u>X</u>	<u>x</u>		
Mike Redlinger, City Administrator	<u>X</u>	<u>x</u>		
Vacant, Assistant City Administrator				
Vacant, Director of Finance	<u>X</u>	<u>x</u>	<u>Tanner Smedshammer</u>	
Steve Sprague, City Auditor	<u>X</u>	<u>x</u>		



## Memorandum

**To:** Finance Committee

**From:** Kevin Gorder, Division Engineer  
Brenda Derrig, City Engineer

**Date:** May 11, 2023

**Subject:** Graver Alley Power Bury City Cost Share Request

---

Kilbourne has built a new multi-use building at 624 2<sup>nd</sup> Avenue North and 621 1<sup>st</sup> Avenue North also known as the Kesler Building. Prior to construction, arrangements for the overhead power removal in Roberts Alley were made so the new building could be built to the property line along Roberts Alley. On the Graver Alley side, Kilbourne set their building back about 12.5' in an attempt to get the required clearance between their building and the overhead power. After construction started, Xcel notified Kilbourne that the overhead power had to be removed. Kilbourne worked with Xcel to remove the power and an additional \$209,548 was added to the Kesler project cost. This additional cost was not budgeted in the construction build estimate and Kilbourne has asked the City to split this cost with them. Kilbourne is the property owner on the east side of the Graver Alley and they do not own any property on the west side of this alley. If we were to use the Roberts Alley agreement as a blueprint in this area and extend the pilot project, the City would pay the cost for non-Kilbourne owned properties. This would result in 50-50 split of the overhead power removal costs.

This participation was previously approved by Finance but was not forwarded to the City Commission. We want to revisit this topic with the Finance Committee prior to requesting approval from the City Commission. The previous request and meeting minutes are attached to this memo.

The removal of overhead power in the Roberts Street Alley is nearing completion with pole removal starting as early as July 1, pending delivery of the necessary components to finish the project. We have attached 4 pages to this memo for your review. The first page is a short summary of the project timeline and a short summary of the financial commitments and expenditures to date. The second page offers more details on the differences between financial commitments and expenditures by each party. Kilbourne has expressed concern about the total cost of this project and we have met with Kilbourne to discuss four possible options to pay for this pilot project. After meeting with Kilbourne, option 4 seems to be the desired option for both parties and Kilbourne has verbally agreed to this option. Page 4 is a picture of a pole that might stay in place on the north side of 1<sup>st</sup> Avenue North in an effort to reduce the cost to SparkLight to remove their infrastructure from the poles that will be removed.

**Recommended Motion:**

Approve City participation in the Graver Alley overhead power burial in the amount of \$104,774.

Quick summary of some of the actions on the Overhead Power Burial in Roberts Alley between 1<sup>st</sup> Ave S and 4<sup>th</sup> Ave S

**April 22, 2019** City Commission approved a cost share proposal with a not to exceed amount of \$911,665

**July 29, 2019** City Commission approved a cost share agreement for the burial of the overhead power line with the City and Kilbourne Group. Signed by Mike Allmendinger on 11/27/2019

**Basic Commitments by each party**

City of Fargo	Secondary Electrical	\$551,213	Telcos	\$359,952	Total	\$911,165
Kilbourne	Secondary Electrical	\$638,852	Telcos	\$206,857	Total	\$845,709

**November 2, 2020** City Commission approves a contract with CenturyLink to reimburse the cost of necessary work to remove their items from the poles. CenturyLink and Xcel have a formal agreement to share poles regardless of ownership. Contract approval not to exceed \$336,120.

**Power 1<sup>st</sup> to 2nd**

Kilbourne contracted and completed the secondary power upgrades as required with Kilbourne paying \$209,520 and the City paying \$24,600 for the Walton Chiropractic building (only building in this stretch not owned by Kilbourne at the time).

**Power 2<sup>nd</sup> to 4th**

City of Fargo contracted with Magnum Electric to complete the secondary power upgrades as required with a contract amount of \$498,660. Three change orders have increased this amount to \$513,399. Another change order is pending with an estimated cost of \$15,000 to \$20,000 with the biggest unknown is the size of the manhole needed to splice the wires. In addition, Kilbourne has paid \$217,600 for improvements needed at the Dillard, ROCO, Lofts, and Loretta buildings. The Loretta building also needed secondary improvements under the City contract and the building owner will reimburse the City \$86,106.

**Telcos**

Century Link has completed most of their work and the latest estimate has the cost coming in at or below the agreed upon amount. Midco is very close to finishing with an estimated cost of \$85,000. SparkLight has not started yet and their estimate is \$230,000. All the utilities crossed 1<sup>st</sup> Ave in 2019 With the exception of SparkLight. Their cost includes crossing 1<sup>st</sup>.

**Next Steps**

Magnum needs to finish installing secondary power items. Xcel has a couple poles to replace along 4<sup>th</sup>. Tentative start date on pole removal is July 1.

City Power Commitment	\$ 551,213	Kilbourne Electrical Commitment	\$ 636,852
Electric 1st to 2nd	\$ (24,600)	Electric 1st to 2nd	\$ (209,520)
Electric 2nd to 4th	\$ (429,293)	Electric 2nd to 4th	\$ (217,600)
<u>Over/Under</u>	\$ 97,320	<u>Over/Under</u>	\$ 209,732
City Telco Commitment	\$ 359,952	Kilbourne Telco Commitment	\$ 206,857
Contract w/ Century Link	\$ (363,807)	<u>Just Century Link by Agreement</u>	\$ (132,964)
<u>Over/Under</u>	\$ (3,855)	<u>Over/Under</u>	\$ 73,893
<u>Total Over/Under</u>	\$ 93,465	<u>Total Over/Under</u>	\$ 283,625

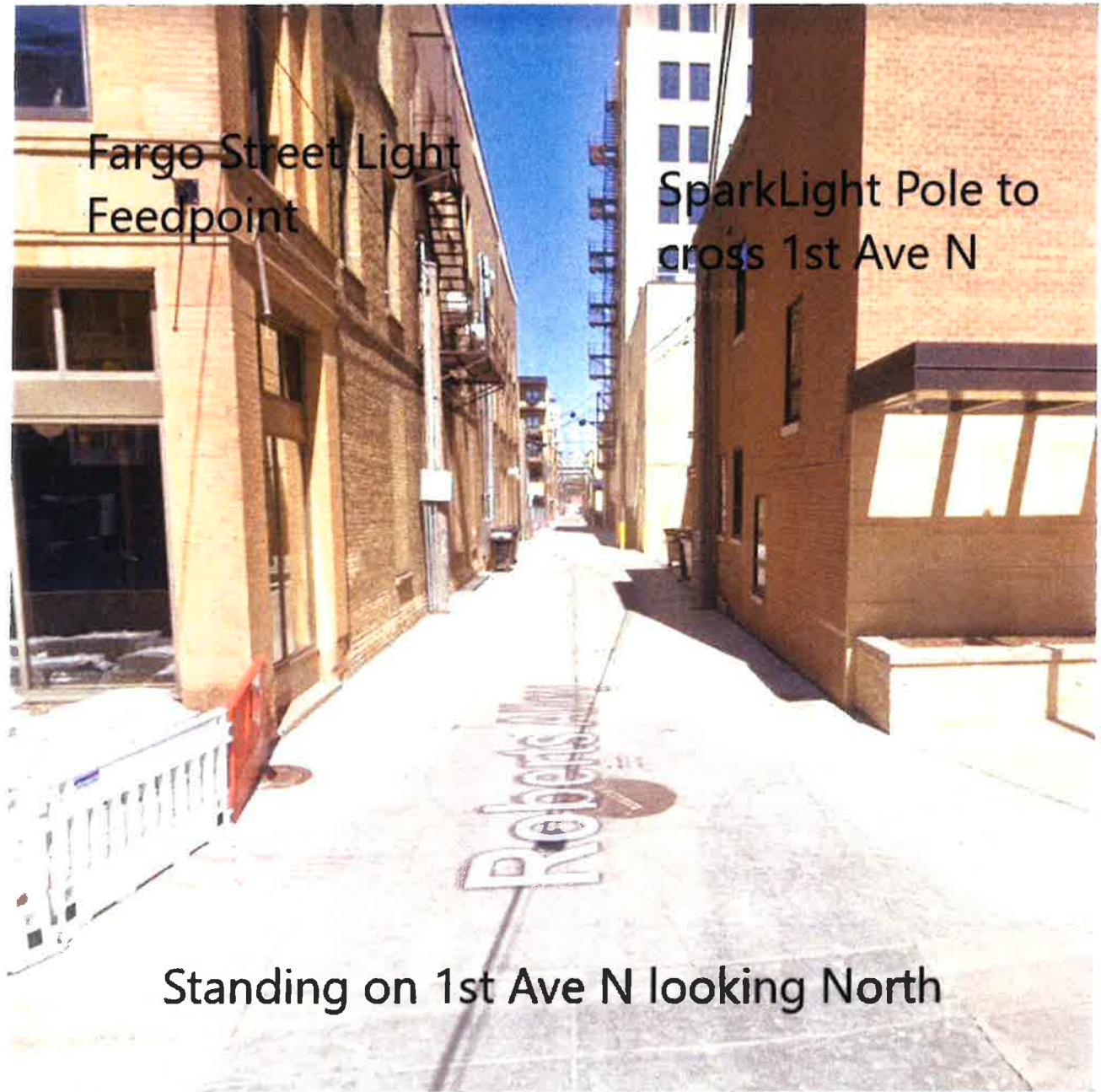
	Option 1	Option 2	Option 3	Option 4
Total City Amount Authorized	\$ 911,665	\$ 911,665	\$ 911,665	\$ 911,665
Electric 1st to 2nd (Waltons)	\$ (24,600)	\$ (24,600)	\$ (24,600)	\$ (24,600)
Electric 2nd to 4th (Magnum)	\$ (515,399)	\$ (515,399)	\$ (515,399)	\$ (515,399)
Reimbursement for Lorretta Power	\$ 86,106	\$ 86,106	\$ 86,106	\$ 86,106
Remainder for Telcos	\$ 457,772	\$ 457,772	\$ 457,772	\$ 457,772
Century Link	\$ (363,807)	\$ (363,807)	\$ (363,807)	\$ (230,843)
Remainder for Midco and SparkLight	\$ 93,965	\$ 93,965	\$ 93,965	\$ 226,929
Midco	-85000	-85000	-85000	-85000
Sparklight	-230000	-85000	-115000	-85000
Over/Under	\$ (221,035)	\$ (76,035)	\$ (106,035)	\$ 56,929
Ask for 1/2 of Graver	\$ 104,774.00	\$ 104,774.00	\$ 104,774.00	\$ 56,929
	\$ (116,261)	\$ 28,739	\$ (1,261)	\$ 56,929

Separate Action  
Ask for 1/2 of Graver \$ 104,774

Totals as of 4/21/2023

	City Funds	Specials	Kilbourne	Loretta	Totals
Alley Reconstruction 1st to 2nd		\$ 219,525			\$ 219,525
Conduits 1st to 2nd	\$ 257,983				\$ 257,983
Alley Reconstruction 2nd to 4th		\$ 209,911			\$ 209,911
Conduits 2nd to 4th	\$ 168,995				\$ 168,995
Conduit Engineering					\$ -
Secondary Electrical MBN	\$ 50,057				\$ 50,057
Secondary Power 1st to 2nd	\$ 24,600		\$ 209,520		\$ 234,120
Secondary Power 2nd to 4th	\$ 429,293		\$ 217,600	\$ 86,106	\$ 732,999
Century Link	\$ 230,843		\$ 132,964		\$ 363,807
Midco/SparkLight	\$ 170,000				\$ 170,000
	\$ 1,331,771	\$ 429,436	\$ 560,084	\$ 86,106	\$ 2,407,397

One pending change order will be added to this total when the amount is known



Fargo Street Light  
Feedpoint

SparkLight Pole to  
cross 1st Ave N

Standing on 1st Ave N looking North





## Memorandum

**To:** Finance Committee  
**From:** Brenda Derrig, City Engineer  
**Date:** March 28, 2022  
**Re:** Kilbourne request for financial assistance to bury overhead utilities on Graver Alley

---

Attached you will find a request from Kilbourne for financial assistance with the burying of the overhead power line on Graver Alley. They are requesting a 50% cost share in the amount of \$104,774.36. To clarify the request, City staff did not request that Kilbourne complete the work but it was necessary for them to complete it if they wanted to keep their building on schedule. The request from Xcel to bury the line came late in the process. The Graver Alley is just west of Robert's Alley from 1<sup>st</sup> to 2<sup>nd</sup> Avenue North.

Kilbourne led the burying of the overhead line on Roberts from 1<sup>st</sup> to 2<sup>nd</sup> Avenue North since they owned all properties but one. The City contributed to that project the cost of the one property not owned by Kilbourne. The City is the lead for the burying of utilities on Robert's Alley from 2<sup>nd</sup> to 4<sup>th</sup> Avenue North.

The Commission has approved the City to contribute \$911,665 to the burying of the Robert's Alley overhead utilities adjacent to the Graver Alley. We have bid the secondary power and that project will be completed this summer. Engineering staff have been working with the telecoms to bury their utilities. We are hopeful that this will occur this year also. As we have been receiving preliminary costs from the telecom companies, there currently are no additional funds from the approved cost share to assist with Kilbourne's request regarding the Graver Alley. In fact, with rising costs it appears that we may run over the approved cost share and will need additional approval of funds.

**Recommended Motion:**

Consider 50% cost share request for Graver Alley in the amount of \$104,774.36 from Kilbourne.

**Kilbourne request for financial assistance to bury overhead utilities on Graver Alley Approved**

Brenda Derrig spoke on a request from Kilbourne for financial assistance with the burying of the overhead power line on Graver Alley (west of Robert's Alley from 1<sup>st</sup> to 2<sup>nd</sup> Avenue North). They are requesting a 50% cost share in the amount of \$104,774.36. It was necessary for Kilbourne to complete the work to keep their building on schedule. The request from Xcel to bury the line came late in the process. The City is the lead for the burying of utilities on Robert's Alley from 2nd to 4th Avenue North.

The Commission approved the City to contribute \$911,665 to the burying of the Robert's Alley overhead utilities adjacent to the Graver Alley. We have bid the secondary power and that project will be completed this summer. Engineering staff have been working with the telecoms to bury their utilities. We are hopeful that this will occur this year also. As we have been receiving preliminary costs from the telecom companies, there currently are no additional funds from the approved cost share to assist with Kilbourne's request regarding the Graver Alley. In fact, with rising costs it appears that we may run over the approved cost share and will need additional approval of funds.

Grubb made the motion to approve. Piepkorn seconded and all voted in favor.



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**AUDITOR'S OFFICE**

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

Date: June 22, 2023  
To: Board of City Commissioners  
From: Steven Sprague, City Auditor  
RE: 2022 population estimate

Mayor Mahoney and Commissioners:

Periodically, the United States Census releases an updated estimated population. In May 2023, the US Census Bureau released an updated census listing for the City of Fargo with an estimated population of 131,444 through 2022.

The Liquor Control Board has an interest in declaring the estimated population to be 131,444, passing the 130,000 population will trigger the availability of one more on-sale (Class Z) and one more off-sale (Class B-Limited) liquor license. Fargo Municipal Code 25-1508 F states the Board of City Commissioners may recognize the most recent estimated population as determined by the Census Bureau to establish a current population. Upon declaration, the Liquor Board will direct the Auditor's office to advertise the availability of the licenses for a period of time to allow interested parties to apply, once applications are received, background checks will be completed on all the applications and qualified applications will be forwarded to the City Commission for consideration.

**Suggested Motion:** I move to declare the estimated population of the City of Fargo to be 131,444 using the population estimate generated by the United States Census Bureau.

Annual Estimates of the Resident Population for Incorporated Places in North Dakota: April 1, 2020 to July 1, 2022				
Geographic Area	April 1, 2020 Estimates Base	Population Estimate (as of July 1)		
		2020	2021	2022
Fargo city, North Dakota	125,952	125,979	129,510	131,444

**CITY ATTORNEY**  
Nancy J. Morris

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**ASSISTANT CITY ATTORNEYS**

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

June 22, 2023

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

**RE: Pedal Car Ordinance and Open Container Ordinance Amendment**

Mayor and Commissioners,

Pursuant to your directive on March 6, 2023, please find attached for your review and consideration two ordinances. The first is an entirely new Article relating to the operation of a Commercial Pedal Car Vehicle, permitting the operation of a multi-drive train bicycle on the streets of Fargo. The second ordinance is an amendment to the existing open container ordinance, exempting participants on the pedal car from the prohibition of having an open container, similar to the exclusion afforded by the statute reference pertaining to party buses and other vehicles. The new and revised ordinances, as well as the recently enacted HB 1316 make it abundantly clear that the driver of the commercial pedal cab may not consume alcohol, and further that the passengers' consumption is permitted on public streets only when actually on the commercial pedal car. I worked closely with City Auditor Steve Sprague, Captain Chris Helmick and Division Engineer Kevin Gorder in drafting the attached Commercial Pedal Car Vehicle ordinance. The ordinance was modeled after several jurisdictions, resulting in a melding of several concepts, all of which promote the safety of the traveling public and protection of the use of streets.

Some notable provisions I wish to call to your attention. First, passengers on the commercial pedal car will be able to consume alcohol, similar to a party bus. Each participant is limited to two beverages, in cans, no larger than 16 ounces. The pedal car driver is required to be server trained to verify age of the participants consuming alcohol, as well as detect over intoxication. In the event of the latter, the driver will be permitted to refuse service. The business, the pedal car(s) and the driver will all be licensed by the City, and the City Auditor has discretion to refuse or revoke, appealable directly to the board of city commissioners. There are minimum standards for the pedal car, and the operator will be required to secure a certificate of "roadworthiness" from a local bicycle repair business. The commercial pedal car business will be required to show proof of general liability insurance in an amount not less than \$2,000,000, and the driver must have a valid driver's license, among other minimum qualifications. Each commercial pedal car business may apply for up to four (4) routes, and the routes must be approved by several City departments. Finally, the ordinance defines the hours of operation. All

Board of City Commissioners

June 22, 2023

Page 2

license fees will be established by Resolution, and the City Auditor shall present license forms at the time of ordinance enactment. A person who operates a commercial pedal car without securing the necessary licenses will be guilty of a Class B misdemeanor.

**Suggested Motion:** I move to receive and file the following Ordinance Enacting Article 25-38 of Chapter 25 of the Fargo Municipal Code Relating to Commercial Pedal Car Vehicles and Ordinance Amending Article 8-03 of Chapter 8 of the Fargo Municipal Code Relating to Regulations Governing Operators and to place the ordinances on for first reading at the next regularly-scheduled City Commission meeting.

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

Regards,

A handwritten signature in black ink, appearing to read "Nancy J. Morris", with a long, sweeping flourish extending to the right.

Nancy J. Morris

NJM/lmw

Enclosures

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

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

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

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

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

6 WHEREAS, Section 40-05.1-05 of the North Dakota Century Code provides that said  
7 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

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

10 NOW, THEREFORE,

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

12 Section 1. Amendment.

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

15 8-0311. Unlawful to have opened receptacle containing beer, alcohol, or alcoholic beverages  
16 in motor vehicles, truck, or bus.

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

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

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

Section 2. Penalty.

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

Section 3. Effective Date.

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

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

12 Attest:

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

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

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

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

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

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

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

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

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

NOW, THEREFORE,

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

Section 1. Enactment.

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

ARTICLE 25-38

25-3801. Definitions.

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

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

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

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

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

25-3802. License required.

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



OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 i. Must be at least 21 years of age; and

15 ii. Must possess a valid state driver's license which is not suspended,  
16 revoked, canceled or expired; and

17 iii. Shall not have had more than three (3) moving violations in the last  
18 three (3) years and no more than two (2) moving violations in the last  
19 year; and

20 iv. Shall indicate the name of the pedal car business for which the driver  
21 works; and

22 v. Shall not have been convicted of careless or reckless driving or any  
23 moving violation within the past three (3) years; and

vi. Shall have completed mandatory server training as defined in Fargo  
Municipal Code § 25-1501 (26).

25-3803. License Denial.

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

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25-3804. Term of License.

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

2 25-3805. Fees.

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

4 25-3806. Routes.

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

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

15 25-3807. Insurance.

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

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25-3808. Advertising on commercial pedal cars.

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

25-3809. Parking.

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

25-3810. Hours of operation.

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

25-3811. Vehicle operation.

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

25-3812. Operating restrictions and conditions.

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

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

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

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

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

9 25-3813. Commercial pedal car company licenses.

10 Every licensed pedal car company shall:

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

22 25-3814. Licenses nontransferable.

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

24 25-3815. Revocation.

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

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Section 2. Penalty.

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

Section 3. Effective Date.

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

12 (SEAL)

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

13 Attest:

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

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





43a

May 9, 2023

Board of City Commissioners  
City Hall  
Fargo, ND 58102

Dear Commissioners:

Chapter 57-02.2 of the North Dakota Century Code provides for a property tax exemption for certain types of improvements made to existing buildings.

I have attached a copy of an application for real estate tax exemption of building improvements for the property at 1348 6 St S as submitted by DCBA Holdings, LLC. A description of the property involved, types of improvements to be made, and assessment information are indicated on the application.

It is my opinion that the value of some of the improvements, referred to in the application, qualifies for the exemption. This exemption would be for 5 years.

The estimated annual tax revenue lost by granting the exemption, based upon the estimated cost of the improvements, would be about \$258 with the City of Fargo's share being \$43.

Sincerely,

A handwritten signature in black ink that reads "Mike Splonskowski".

Mike Splonskowski  
City Assessor

nlb  
attachment

# Application For Property Tax Exemption For Improvements To Commercial And Residential Buildings

N.D.C.C. ch. 57-02.2

(File with the city assessor or county director of tax equalization)

### Property Identification

1. Legal description of the property for which exemption is claimed Blk 1, Lot 6, Huntingtons

2. Address of Property 1348 6 St S

3. Parcel Number 01-1400-00060-000

4. Name of Property Owner DCBA Holdings LLC Phone No. 701-799-4025

5. Mailing Address of Property Owner 1513 5 St S

### Description Of Improvements For Exemption

6. Describe type of renovating, remodeling, alteration or addition made to the building for which exemption is claimed (attach additional sheets if necessary). Remodel single family into three suites

7. Building permit No. 2111-0610 8. Year built (residential property) 1922

9. Date of commencement of making the improvements 11/4/2021

10. Estimated market value of property before the improvements \$ 224,500.00

11. Cost of making the improvement (all labor, material and overhead) \$ 60,000.00

12. Estimated market value of property after the improvements \$ 290,000.00 (appraised 5/22)

### Applicant's Certification And Signature

13. I certify that the information contained in this application is correct to the best of my knowledge.

Applicant [Signature] Date 5-8-23

### Assessor's Determination And Signature

14. The assessor/county director of tax equalization finds that the improvements described in this application do  do not  meet the qualifications for exemption for the following reason(s): \_\_\_\_\_

Assessor/Director of Tax Equalization [Signature] Date 6-6-2023

### Action Of Governing Body

15. Action taken on this application by the governing board of the county or city: Approved  Denied

Approval is subject to the following conditions: \_\_\_\_\_

Exemption is allowed for years 20\_\_\_, 20\_\_\_, 20\_\_\_, 20\_\_\_, 20\_\_\_.

Chairperson \_\_\_\_\_ Date \_\_\_\_\_



436

May 5, 2023

Board of City Commissioners  
City Hall  
Fargo, ND 58102

Dear Commissioners:

Chapter 57-02.2 of the North Dakota Century Code provides for a property tax exemption for certain types of improvements made to existing buildings.

I have attached a copy of an application for real estate tax exemption of building improvements for the property at 1401 12 St N as submitted by Adam Zavalney and Emma Gruber. A description of the property involved, types of improvements to be made, and assessment information are indicated on the application.

It is my opinion that the value of some of the improvements, referred to in the application, qualifies for the exemption. This exemption would be for 5 years.

The estimated annual tax revenue lost by granting the exemption, based upon the estimated cost of the improvements, would be about \$230 with the City of Fargo's share being \$39.

Sincerely,

A handwritten signature in black ink that reads "Mike Splonskowski".

Mike Splonskowski  
City Assessor

nlb  
attachment

# Application For Property Tax Exemption For Improvements To Commercial And Residential Buildings

N.D.C.C. ch. 57-02.2

(File with the city assessor or county director of tax equalization)

### Property Identification

1. Legal description of the property for which exemption is claimed Addition 2220  
1 & W 20 FT OF VACATED 11 1/2 ST N, COULTER'S SUBD LTS 61-64 & ADJ E 10 FT

2. Address of Property 1401 12th St N

3. Parcel Number 01-2220-04010-000

4. Name of Property Owner Adam Zavalney and Emma Gruber Phone No. 701-370-9771

5. Mailing Address of Property Owner Same as above

### Description Of Improvements For Exemption

6. Describe type of renovating, remodeling, alteration or addition made to the building for which exemption is claimed (attach additional sheets if necessary). Remodel the existing kitchen.  
Work to include cabinets and fixtures.

7. Building permit No. 21061127 8. Year built (residential property) 1930

9. Date of commencement of making the improvements 07/07/2021

10. Estimated market value of property before the improvements \$ 196,000.00

11. Cost of making the improvement (all labor, material and overhead) \$ 55,000.00

12. Estimated market value of property after the improvements \$ 239,200.00

### Applicant's Certification And Signature

13. I certify that the information contained in this application is correct to the best of my knowledge.

Applicant Emma Zavalney Date 5/4/2023

### Assessor's Determination And Signature

14. The assessor/county director of tax equalization finds that the improvements described in this application do  do not  meet the qualifications for exemption for the following reason(s): \_\_\_\_\_

Assessor/Director of Tax Equalization [Signature] Date 6-6-2023

### Action Of Governing Body

15. Action taken on this application by the governing board of the county or city: Approved  Denied

Approval is subject to the following conditions: \_\_\_\_\_


Exemption is allowed for years 20 \_\_, 20 \_\_, 20 \_\_, 20 \_\_, 20 \_\_.

Chairperson \_\_\_\_\_ Date \_\_\_\_\_



MEMORANDUM

**TO: BOARD OF CITY COMMISSIONERS**

**FROM: MAYOR TIMOTHY J. MAHONEY** 

**DATE: JUNE 26, 2023**

**SUBJECT: LIAISON COMMISSION ASSIGNMENT CHANGE**

The Community Development Committee membership currently consists of:  
Liaison Commissioner to Planning will serve as the Committee Chair  
Mayor  
Planning Commission Chair  
City Administrator  
Housing & Redevelopment Authority Director  
Three public members  
One Member of the Fargo School Board

Commissioner John Strand has been serving as the Committee Chair but is not the Liaison Commissioner to the Planning Commission. I would like to transition Commissioner Arlette Preston to that role for consistency on the Boards and Committees.

It is my recommendation to appoint Commissioner Preston as the Liaison Commissioner to the Community Development Committee.

Attached is the updated Fargo City Commission Liaison Assignments.

**RECOMMENDED MOTION:** To appoint Commissioner Arlette Preston as the Liaison Commissioner to the Community Development Committee.

Attachment

**FARGO CITY COMMISSION LIAISON ASSIGNMENTS**

	<u>KOLPACK</u>	<u>PRESTON</u>	<u>MAHONEY</u>	<u>PIEPKORN</u>	<u>STRAND</u>
<b>DEPARTMENTS:</b>	Communications & Govt. Affairs Enterprise/Utilities Fire	Health Library Planning	City Commission DEI Finance/Assessors Human Resources Police Public Works	Engineering FARGODOME Inspections Strategic Planning & Research	Facilities Mgmt. Information Services Transit/Mobility
<b>COMMITTEES:</b>	Diversion Authority (alternate) Metro Area Transit Coordinating Brd. Metro COG Vector Control	Cass Clay Food Commission Community Development Diversion Authority (alternate) Diversion Authority – Land Mgmt. Comm. Metro COG Renaissance Zone Authority	Ambulance Service Oversight Committee Cass County Planning Commission Community Development Diversion Authority Diversion Authority – Finance Comm. Economic Development Incentives Comm. GFMEDC Lake Agassiz Water Authority Position Evaluation Committee	Diversion Authority Diversion Authority-Finance Comm. Economic Development Incentives Commission Fargo Dome Authority – Finance Comm. GFMEDC Lake Agassiz Water Authority (alternate) Liquor Control Metro COG Position Evaluation Committee Renaissance Zone Authority	Diversion Authority Diversion Authority – Public Outreach Comm. Metro COG Metro Area Transit Coordinating Board Sustainability & Resiliency Committee
<b>STAFF APPOINTED COMMITTEES:</b>	Utility Committee	Core Neighborhoods	Finance Committee Public Works Projects Evaluation Committee	Finance Committee	Traffic Technical Advisory Committee Homelessness & Addiction
<b>BOARD LIAISON:</b>	Arts & Culture Commission Fargo Youth Initiative Red River Basin Board	Board of Adjustment Board of Appeals Board of Health Civil Service Commission Historic Preservation Commission Library Board	Police Advisory and Oversight Board	Auditorium Commission Fargo Dome Authority Red River Basin Board Special Assessments Commission	Airport Authority Civil Service Downtown Community Partnership/InFocus House Moving Board Housing Authority Human Rights Commission Native American Commission

4500

MEMORANDUM

**TO: BOARD OF CITY COMMISSIONERS**

**FROM: MAYOR TIMOTHY J. MAHONEY**



**DATE: JUNE 26, 2023**

**SUBJECT: APPOINTMENTS TO THE LIQUOR CONTROL BOARD**

The terms of Kay Schwarzwalter and Robert Nelson on the Liquor Control Board expire on July 1, 2023.

Scott Brekke has submitted an application indicating an interest in serving on the Board and I am recommending his appointment. I have attached a copy of his application for your information.

Your favorable consideration of these recommendations will be greatly appreciated.

**RECOMMENDED MOTION:** To approve the reappointment of Robert Nelson and the appointment of Scott Brekke for three-year terms ending July 1, 2026.

mmappt23lcb

**Kember Anderson**

---

**From:** noreply@cityoffargo.com  
**Sent:** Monday, June 12, 2023 9:27 PM  
**To:** Commissions Applications  
**Subject:** New Form Submission: Getting involved in government  
**Attachments:** Scott-Brekke.pdf

**Name:**  
*[scott brekke]*  
**Mailing Address:**  
*[REDACTED]*  
**City:**  
*[Fargo]*  
**State:**  
*[North Dakota]*  
**Zip:**  
*[58104]*  
**Work Phone:**  
*[REDACTED]*  
**Home Phone:**  
*[REDACTED]*  
**E-mail:**  
*[REDACTED]*

**Which boards of commissions would you like to be considered for?**  
*[Liquor Control Board]*

**Briefly state why you would like to be on this panel:**  
*[Would like to use my manager and leadership skills. To help and develop our city.]*

**How many hours per month could you volunteer as a panel member?**  
*[40+]*

**Please list any past experience you have with city government here or in other cities:**  
*[This would be my first as a board member. However I have assisted in several city projects. When managing big box retailers. I organized donations to flood protection, and Covid cleaning materials.]*


**Please describe any professional experience you have related to the responsibilities of the panel you are interested in:**  
*[I have been overall responsible for upholding local liquor regulations. I managed staff by teaching and training to follow liquor laws. I held a liquor license in Grand Forks. Developed plans for safety, sales and compliance.]*

**We will retain your application for three years and consider you for the board you have indicated interest in when a vacancy arises.**



456

MEMORANDUM

**TO:** BOARD OF CITY COMMISSIONERS  
**FROM:** MAYOR TIMOTHY J. MAHONEY   
**DATE:** JUNE 26, 2023  
**SUBJECT:** APPOINTMENTS TO THE LIBRARY BOARD

The terms of Wanda Mengelkoch, Don Carlton Hawley Jr. and Kristen Schipper on the Library Board expire on June 30, 2023. Ms. Mengelkoch and Ms. Schipper are willing to continue their service on the Board; however, State Law limits Library Board members to two, three-year terms and Mr. Carlton Hawley has served two terms.

Paul Jensen has submitted an application indicating interest in serving on the Board and I am therefore recommending her appointment. I have attached her web application for your information.

Your favorable consideration of this recommendation will be greatly appreciated.

**RECOMMENDED MOTION:** To approve the reappointment of Wanda Mengelkoch and Kristen Schipper and the appointment of Paul Jensen to the Library Board for three-year terms ending June 30, 2026.

mmappt23lib

**Kember Anderson**

---

**From:** noreply@cityoffargo.com  
**Sent:** Thursday, May 25, 2023 4:41 PM  
**To:** Commissions Applications  
**Subject:** New Form Submission: Getting involved in government  
**Attachments:** Paul Jensen GW2G Bio March 2022.pdf

**Name:**

[Paul Jensen]

**Mailing Address:**

[Redacted]

**City:**

[Fargo]

**State:**

[North Dakota]

**Zip:**

[58103]

**Work Phone:**

[Redacted]

**Home Phone:**

[Redacted]

**E-mail:**

[Redacted]

**Which boards or commissions would you like to be considered for?**

[Library Board]

**Briefly state why you would like to be on this panel:**

[I believe I can bring a varied cultural perspective to the library and its patrons. I was recommended to apply by Carlos Hawley who will discontinue his service soon. ]

**How many hours per month could you volunteer as a panel member?**

[~ 4 hours but more if needed. ]

**Please list any past experience you have with city government here or in other cities:**

[Human Relations Commissioner for the City of Fargo. 2016 - 2019 ]

**Please describe any professional experience you have related to the responsibilities of the panel you are interested in:**


[I have experience from being a business owner of Green Way Energy, LLC, and extensive experience with the operation of businesses from leadership positions with a multi-national corporation operating around the world. These experiences are summarized in the attached Biography document, and i hope to contribute to the library, its branches, and their service to our community with the experiences i have gained over a lifetime. ]

**We will retain your application for three years and consider you for the board you have indicated interest in when a vacancy arises.**

ASC

**MEMORANDUM**

**TO: BOARD OF CITY COMMISSIONERS**

**FROM: MAYOR TIMOTHY J. MAHONEY** 

**DATE: JUNE 26, 2023**

**SUBJECT: ARTS AND CULTURE COMMISSION APPOINTMENTS**

The terms of Ann Arbor-Miller and Monika Browne-Ecker on the Arts and Culture Commission expired on June 1, 2023. Ms. Browne-Ecker is willing to continue her service on the Board; however, Ms. Arbor-Miller is no longer willing to serve.

Danyel Moe has submitted an application indicating interest in serving on the Board and I am, therefore, recommending her appointment. I have attached her web application for you information.

Your favorable consideration of these recommendations would be greatly appreciated.

**RECOMMENDED MOTION:** To approve the reappointment of Monika Browne-Ecker and appointment of Danyel Moe to the Arts and Culture Commission for three-year terms ending June 1, 2026.

mmappt23acc

**Kember Anderson**

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**From:** noreply@cityoffargo.com  
**Sent:** Thursday, June 25, 2020 9:13 AM  
**To:** Commissions Applications  
**Subject:** New Form Submission: Getting involved in government

**Name:**

[Danyel Moe]

**Mailing Address:**

[REDACTED]

**City:**

[Fargo]

**State:**

[ND]

**Zip:**

[58102]

**Work Phone:**

[REDACTED]

**Home Phone:**

[REDACTED]

**E-mail:**

[REDACTED]

**Which boards or commissions would you like to be considered for?**

[Arts & Culture Commission]

**Briefly state why you would like to be on this panel:**

[I was born and raised in Fargo, ND. The renaissance of Fargo and the lively arts and culture seen is the reason I've stayed post-grad. During college, I interned at The Arts Partnership as a marketing and communications intern. There I learned effective advocacy for the arts in the F-M. I attended Concordia College and received a BA in both Marketing and Studio Art. I now work at Kilbourne Group, where the arts are closely tied to the mission and values of the company. In my personal life, arts are a big part of my family. My mother-in-law is a choir director at NDSU, my father-in-law was the Concordia Choir Manager for 26 years, my husband (who I met in Concordia art class) is a graphic designer and painter. We're members of the Plains Art Museum and were married there 3 years ago, as it's such a special place for us. ]

**How many hours per month could you volunteer as a panel member?**

[10]

**Please list any past experience you have with city government here or in other cities:**

[I do not have current experience with city government, but have been a very active citizen. I am a Co-Founder of Ladyboss FM, a local organization that aims to empower and connect women in the area. Two years ago we hosted a Ladyboss candidate meet and greet at Wild Terra, where all local women running for office were invited to meet constituents and talk about their initiatives. The BBC even ended up stopping by!]

**Please describe any professional experience you have related to the responsibilities of the panel you are interested in:**

[I serve on the American Advertising Federation of North Dakota board. I am familiar with the commitment and tasks that an active board takes on. Every position I've held has arts and the community at the center of it. I would be honored to join this board. Please find me on LinkedIn for a full list of professional experience: <https://www.linkedin.com/in/danyelmoe/>]

**We will retain your application for three years and consider you for the board you have indicated interest in when a vacancy arises.**