

FARGO CITY COMMISSION AGENDA  
Monday, March 22, 2021 - 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, March 8, 2021).

**CONSENT AGENDA – APPROVE THE FOLLOWING:**

- 1. 2nd reading and final adoption of the following Ordinances:
  - a. Rezoning Certain Parcels of Land Lying in the Proposed Eagle Valley Fourth Addition.
  - b. Rezoning Certain Parcels of Land Lying in the Proposed ADOC Addition.
  - c. Relating to the Electrical Code.
- 2. Applications for Games of Chance:
  - a. El Zagal Directors Staff for a raffle on 4/24/21.
  - b. Fargo North PTSA Post Prom Committee for a raffle on 4/17/21.
- 3. Agreement with Benjamin Baukol for the Multimedia Designer position in the Communications and Governmental Affairs Department for the term of 3/23/21 to 12/31/21.
- 4. Agreement with Anthony Arnold for the Engineering Technician I position.
- 5. Contract Amendment No. 7 with Houston Engineering in the amount of \$30,000.00 for Project No. FM-14-0.
- 6. Submittal of the Notice of Intent.
- 7. Consent of Owner letter for Amtrak to make improvements to the 4th Street passenger terminal and surrounding area.
- 8. Amended Engineer's Report for Project No. FM-19-F.
- 9. Bid advertisement for Project Nos. FM-19-B and FM-19-E.
- 10. Lease with First Center South, LLC.
- 11. Electronic Monitoring Services Agreements with Centre, Inc. and Alternative Corrections, Inc.
- 12. Sole Source Procurement (SSP21069) with Centre, Inc. to extend RFQ16126 for an additional five years, with a contract ending 12/31/25.

- Page 13.
2. Application for Appropriation from Civil Asset Forfeiture Fund for the Fargo Police Department Criminal Investigation Fund.
14. Bids rejected for professional auction services (RFP21049), project to be rebid.
  15. Extend the Mosquito Spraying Agreement with Airborne Vector Control, LLC for 2021 (RFP18018).
  16. Authorization Application for Airborne Vector Control.
  17. Sixty-day extension of unpaid leave for Carlos Perez.
  18. Bid award for Main Avenue Landscape Maintenance Services Contract (RFP21032).
  19. Request for Qualifications for the replacement of the in-ground hoists and repair of the drive over service bay at the Metro Transit Garage (RFQ21072).
  20. Task Order No. 4 with AE2S in the amount of \$773,600.00 for Project No. WA2005.
  21. Bid award for Project No. WA2005.
  22. Bills.
  23. Negative Final Balancing Change Order No. 1 in the amount of -\$3,633.70 for Improvement District No. SL-20-B1.
  24. Negative Final Balancing Change Order No. 1 in the amount of -\$10,293.50 for Improvement District No. SL-20-C1.
  25. Cost Participation, Construction and Maintenance Agreement with the NDDOT (Improvement District No. BN-20-A1).
  26. Create Improvement District Nos. BN-21-C, BN-21-G and UN-21-A.
  27. Contract and bond for Improvement District No. FP-19-A1 (electrical).

#### **REGULAR AGENDA:**

28. **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).**
29. **\*Public Input Opportunity\* - PUBLIC HEARINGS - 5:15 pm:**
  - a. CONTINUE to 4/5/21 – Application to transfer the Class “FA-Golf” Alcoholic Beverage License from Big Erv’s Bar and Grill, LLC d/b/a Big Erv’s at Rose Creek to Living the Dream, LLC d/b/a Legends at 1500 East Rose Creek Parkway South.
  - b. Application for a Class “CW” Alcoholic Beverage License for The White House & Vintage Rental d/b/a The Ivy & Rose Warehouse to be located at 22 14 1/2 Street North; continued from the 2/22/21 Regular Meeting.
  - c. Application for a Class “ABH” Alcoholic Beverage License for Aparium Hotel Group, LLC d/b/a Jasper Hotel to be located at 215 Broadway North.

- d. Special Assessments for Sewer Repairs.
  - e. Street Vacation Plat on a portion of 2nd Street North between 1st Avenue North and 5th Avenue North, including a portion of 4th Avenue North, bounded by portions of the North Dakota R-1 Urban Renewal Addition; approval recommended by the Planning Commission on 6/6/17.
  - f. Plat of Dedication of 2nd Street North, portions of North Dakota R-1 Urban Renewal Addition, Keeney and Devitt's Second Addition, and portions of vacated 2nd Street North, 4th Avenue North and 5th Avenue North (2nd Street North from 1st Avenue to 5th Avenue North); approval recommended by the Planning Commission on 6/6/17.
  - g. Zoning Change from SR-3, Single-Dwelling Residential to NC, Neighborhood Commercial on portions of Lots 1, 23 and 24, Block K, Chas A. Roberts Addition (615 9th Avenue South); approval recommended by the Planning Commission on 3/2/21:
    - 1. 1st reading of rezoning Ordinance.
30. COVID-19 Update:
  - a. Fargo Cass Public Health Update.
31. Drought Status Update.
32. 2020 Downtown Fargo Business Improvement District (BID) Overview.
33. Request to schedule Clean-Up Week over a two-week period.
34. 1st reading of an Ordinance Relating to Restrictions on Sale, Service or Dispensing of Alcoholic Beverages.
  - a. Recommendation from Commissioner Gehrig for amendments to the Ordinance Relating to Restrictions on Sale, Service or Dispensing of Alcoholic Beverages.
35. Request to develop a Hate Crimes Ordinance.
36. Applications for property tax exemptions for improvements made to buildings:
  - a. Mark and Nancy Wolfe, 3113 26th Avenue South (3 year).
  - b. Kasey and Anna McNary, 2956 Peterson Parkway North (3 year).
  - c. Dennis and Viola Schwind, 1520 37 1/2 Avenue South (3 year).
  - d. Neil Gruchalla, 1412 10th Street North (5 year).
  - e. Mike and Heidi Klukken, 3410 1st Street North (5 year).
  - f. Bruce and Elizabeth Thompson, 1329 10th Street South (5 year).
  - g. Brianna and Ryan Miller, 810 9th Avenue North (5 year).
37. Recommendations for appointments and reappointments to the following Boards:
  - a. Airport Authority.
  - b. Fargo Dome Authority.

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

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

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

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

1a

AN ORDINANCE REZONING CERTAIN PARCELS OF LAND  
LYING IN THE PROPOSED EAGLE VALLEY FOURTH ADDITION  
TO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA

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

WHEREAS, the Fargo Planning Commission recommended approval of the rezoning request on December 1, 2020; and,

WHEREAS, the rezoning changes were approved by the City Commission on March 8, 2021,

NOW, THEREFORE,

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

Section 1. The following described property:

All of Eagle Valley Fourth Addition to the City of Fargo, Cass County, North Dakota;

is hereby rezoned from "P/I", Public and Institutional, District to "SR-4", Single-Dwelling Residential, District;

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

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

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

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

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5  
6 (SEAL)

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

7 Attest:

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

First Reading:  
Second Reading:  
Final Passage:

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

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

16

AN ORDINANCE REZONING CERTAIN PARCELS OF LAND  
LYING IN THE PROPOSED ADOC ADDITION  
TO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA

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

WHEREAS, the Fargo Planning Commission recommended approval of the rezoning request on November 3, 2020; and,

WHEREAS, the rezoning changes were approved by the City Commission on March 8, 2021,

NOW, THEREFORE,

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

Section 1. The following described property:

All of ADOC Addition to the City of Fargo, Cass County, North Dakota;  
is hereby rezoned from "GI", General Industrial, District to "GC", General Commercial, District;

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

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

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

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

(SEAL)

Attest:

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

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

First Reading:  
Second Reading:  
Final Passage:

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

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

(10)

AN ORDINANCE AMENDING SECTIONS 23-0211 AND 23-0215  
OF ARTICLE 23-02 OF CHAPTER 23 OF THE FARGO MUNICIPAL CODE  
RELATING TO THE ELECTRICAL CODE

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; and,

WHEREAS, N.D.C.C. §43-09-21 authorizes cities to make wiring standards more stringent than those established by the state; and

NOW, THEREFORE,

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

Section 1. Amendment.

Section 23-0211 of Article 23-02 of Chapter 23 of the Fargo Municipal Code is hereby amended to read as follows:

23-0211. Installations must conform to certain regulations before certificate issued.--No certificate of approval shall be issued for electric light, power, and heating installations unless such installations are in strict conformity with the provisions of this chapter, the statutes of the state of North Dakota, the North Dakota State Wiring Standards, Article 24.1-06 of the North Dakota Administrative Code, as amended herein, the ordinances, rules and regulations issued by the board of city commissioners of the city of Fargo, under authority of the state

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

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

statutes, and unless they are in conformity with approved methods of construction for safety to life and property. The regulations as laid down in the 2017 2020 edition of the National Electrical Code as currently adopted by the State of North Dakota, as approved by the American Standards Association and in the National Electrical Safety Code, as approved by the American Standards Association, and other installation and safety regulations approved by the American Standards Association, together with the current standards as published by the National Fire Protection Association, shall be prima facie evidence of such approved methods.

Section 2. Amendment.

Section 23-0215 of Article 23-02 of Chapter 23 of the Fargo Municipal Code is hereby amended to read as follows:

23-0215. Violations.-- Every person, firm or corporation violating any of the provisions of this article shall, upon conviction thereof, be guilty of an infraction, and be punished by a fine not to exceed ~~\$500.00~~ \$1,000.00; the court to have the power to suspend said sentence and to revoke the suspension thereof.

Section 3. Penalty.

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

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

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

Section 4. Effective Date.

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

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

Attest:

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

First Reading:  
Second Reading:  
Final Passage:  
Publication:



\$25.00  
ce  
3-16-2

☒ Local Permit

Name of Nonprofit Organization or group of people permit is issued to <b>EL Zagal Directors Staff</b>		Date(s) of Activity <b>04/24 to 2021</b>		For a raffle, provide drawing date(s): <b>04/24/2021</b>	
Person Responsible for the Gaming Operation and Disbursement of Net Income <b>Casey Schoer V.P.</b>		Title		Business Phone Number <b>701-235-7521</b>	
Business Address <b>1429 3rd ST N</b>		City <b>Fargo</b>		State <b>ND</b>	Zip Code <b>58102</b>
Mailing Address (if different)		City		State	Zip Code
Name of Site Where Game(s) will be Conducted <b>EL Zagal Shrine Center</b>		Site Address <b>1429 3rd ST N</b>			
City <b>Fargo</b>		State <b>ND</b>	Zip Code <b>58102</b>	County <b>Cass</b>	
Check the Game(s) to be Conducted: * Poker, Twenty-one, and Paddlewheels may be Conducted only by a Restricted Event Permit. <input type="checkbox"/> Bingo <input checked="" type="checkbox"/> Raffle <input type="checkbox"/> Raffle Board <input type="checkbox"/> Calendar Raffle <input type="checkbox"/> Sports Pool <input type="checkbox"/> Poker * <input type="checkbox"/> Twenty-one * <input type="checkbox"/> Paddlewheels *					

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

[illegible]

Game Type	Description of Prize	Retail Value of Prize
Total:		(Limit \$40,000 per year) \$ 5,000

Total:	(Limit \$40,000 per year) \$ 5,000
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**Intended uses of gaming proceeds:**

## Shrine Temple Functions

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

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

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

Signature of Organization or Group's Top Official

Date \_\_\_\_\_

Title

Business Phone Number

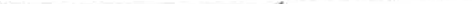
701-730-5456

(26)

V 19526  
25.00  
3/8/24

Name of Nonprofit Organization or group of people permit is issued to <b>Fargo North Ptsa Post Prom Committee</b>		Date(s) of Activity to		For a raffle, provide drawing date(s): <b>4/17/2021</b>	
Person Responsible for the Gaming Operation and Disbursement of Net Income <b>Travis Christensen And Kristi Johnson</b>		Title <b>Activity Coor</b>		Business Phone Number <b>(701) 446-2400</b>	
Business Address <b>801 17th Avenue N</b>		City <b>Fargo</b>		State <b>ND</b>	Zip Code <b>58102</b>
Mailing Address (if different) <b>4307 Riverwood Drive N</b>		City <b>Fargo</b>		State <b>ND</b>	Zip Code <b>58102</b>
Name of Site Where Game(s) will be Conducted <b>Fargo North</b>		Site Address <b>801 17th Avenue N</b>			
City <b>Fargo</b>		State <b>ND</b>	Zip Code <b>58102</b>	County <b>Cass</b>	
Check the Game(s) to be Conducted: * Poker, Twenty-one, and Paddlewheels may be Conducted only by a Restricted Event Permit.					
<input type="checkbox"/> Bingo <input checked="" type="checkbox"/> Raffle <input type="checkbox"/> Raffle Board <input type="checkbox"/> Calendar Raffle <input type="checkbox"/> Sports Pool <input type="checkbox"/> Poker* <input type="checkbox"/> Twenty-one* <input type="checkbox"/> Paddlewheels*					

Game Type	Description of Prize	Retail Value of Prize
50/50 Raffle	Money	\$500.00
<b>Total:</b>		(Limit \$40,000 per year) \$ 500.00

Signature of Organization or Group's Top Official 	Date 3-8-2021	Title Activities Coordinator	Business Phone Number 701-946-2907
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March 18, 2021

Honorable Board of City Commissioners  
Fargo City Hall  
225 Fourth Street North  
Fargo, ND 58102

Dear Commissioners,

Please find the attached copy of an agreement for a contract employment with Benjamin Baukol as a Multimedia Designer in the Communications & Governmental Affairs Department.

In the City's continuing response to the COVID-19 pandemic and an evolution into the vaccine phase, new demands are being placed on Fargo Cass Public Health (FCPH) and the Communications & Governmental Affairs Department to produce tailored outreach materials for various subsets in our community. This includes printed items, web graphics, social media pieces, etc. FCPH has requested assistance in ascertaining the best approach to quickly creating and optimizing these materials for application over the next several months. Multiple other departments within the City are inquiring about (or are already outsourcing) graphic design services for their outreach materials.

Oftentimes, other departments would benefit immensely from these services if a more cohesive and centralized approach was undertaken instead of individual departments seeking services on their own. It would also greatly reduce the number of hours necessary to complete a project by decreasing the need for the 'discovery phase' where a designer learns about the niche nuances of a department and/or the City. A more unified approach would also lead to consistent branding for the City and higher quality results. This need is assuredly not new. In fact, for the past three budgetary cycles, a designer position has been requested by the department but ultimately not funded. The circumstances of COVID-19, however, have brought about both a new urgency for this position and a new funding mechanism allowing it to be financially possible at this time.

The budget impact of the proposed contract is \$62,365, which would be fully funded by the City's COVID-19 supplementary appropriations (*no negative impact on the City's General Fund*). The contract allows for a contractual Multimedia Designer position to exist through December 31, 2021, at the City. FCPH is fully supportive of this request as it would allow for successful execution of its outreach efforts through the pandemic.

The Finance Committee voted unanimously to approve this request at its March 1, 2021 meeting.

Through a competitive job positing and interview process, Mr. Baukol was selected as the most qualified candidate by the interview team, which consisted of members of Fargo Cass Public Health, Planning & Development and Communications & Governmental Affairs. Your consideration of this matter is greatly appreciated.

**Suggested motion:**

Approve the attached contract with Benjamin Baukol to perform the duties and services of Multimedia Designer in the Communications & Governmental Affairs Department for the term of March 23 through December 31, 2021.

Sincerely,



Gregg Schildberger  
Director of Communications & Governmental Affairs

## AGREEMENT

### MULTIMEDIA DESIGNER

THIS AGREEMENT made and entered into effective the 23rd day of March 2021, by and between BENJAMIN BAUKOL and THE CITY OF FARGO, a municipal corporation, whose address is 225 Fourth Street North, Fargo, North Dakota 58102 (hereinafter referred to as "City").

WITNESSETH:

WHEREAS, the City desires to fill the position of Multimedia Designer within the Communications & Governmental Affairs Department as a contracted employee; and,

WHEREAS, the City desires to appoint BENJAMIN BAUKOL to perform the duties and services of Multimedia Designer and for purposes of the City's budgeting process, to recognize a contract employment relationship for a period beginning March 23, 2021, and ending December 31, 2021, but which is still an "at-will" employment relationship, terminable by either party with or without cause,; and,

WHEREAS, BENJAMIN BAUKOL has agreed to accept such appointment to perform the duties and services of Multimedia Designer on a contract employee basis according to the terms of this agreement; and,

WHEREAS, the parties wish to commit their agreement to writing.

NOW, THEREFORE, the parties hereto do hereby agree as follows:

1. City agrees to appoint BENJAMIN BAUKOL for the purpose of performing the duties and services of Multimedia Designer as described in Exhibit A attached hereto.

2. Term. The term of this agreement shall be for the period beginning March 23, 2021, and ending December 31, 2021, but may be terminated by either party at any time, upon written notice to the other party. This relationship is an “at-will” relationship and may be terminated by either party at any time with or without cause.

3. Compensation. City agrees to compensate BENJAMIN BAUKOL in the amount of \$28.25 per hour (salaried and exempt) for any and all duties and services performed as the Multimedia Designer during the calendar year 2021. If the City Commission awards a 2021 Cost of Living Adjustment (COLA), BENJAMIN BAUKOL is eligible to receive a COLA adjustment. To the extent this agreement is still in effect, beginning in years 2022 and thereafter, BENJAMIN BAUKOL’s compensation shall be adjusted annually, at the time of his step increase date, as well as adjusted in an amount equal to the Cost of Living Adjustment the City of Fargo approves for its employees.

4. In addition to the terms of compensation listed above, the City shall pay the employer’s share of the following:

- (a) Social Security (FICA)
- (b) Workers Compensation
- (c) Unemployment Insurance
- (d) Federal Withholding (income tax)
- (e) State Income Tax
- (f) Medicare

5. BENJAMIN BAUKOL will be full-time, salary-based and will be eligible to enroll in Health Insurance, Dental Insurance, Vision Insurance, Life Insurance and Flexible Spending and will be covered under the City’s long-term disability and North Dakota Public Employee Retirement System (NDPERS). In addition, BENJAMIN BAUKOL will accrue annual and sick leave.

6. During the term of this agreement, BENJAMIN BAUKOL agrees to comply with all employee policies of The City of Fargo and the Communications and Governmental Affairs Department, including all safety rules and procedures.

7. The parties hereto understand and agree that BENJAMIN BAUKOL shall not be part of the Civil Service of the City of Fargo, but is a contracted employee, as permitted under Fargo Municipal Code section 7.0102(D).

DATED the day and year first above written.

THE CITY OF FARGO, NORTH DAKOTA

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

ATTEST:

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

[DEPARTMENT OF COMMUNICATIONS & GOVERNMENTAL AFFAIRS]

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

GREGG SCHILDBERGER  
*Director*

  
BENJAMIN BAUKOL



<b>Job Class:</b>	Multimedia Designer
<b>Department:</b>	Communications & Governmental Affairs
<b>Supervisor:</b>	Director of Communications & Governmental Affairs, eventually to be transitioned to Community Engagement Manager
<b>FLSA Status:</b>	Exempt
<b>Grade:</b>	12
<b>Revision Date:</b>	March 2021
<b>Prepared by:</b>	Director of Communications & Governmental Affairs

### **Job Summary:**

The Multimedia Designer will actively conceptualize, design, illustrate, communicate, advance change and synthesize visual initiatives for The City of Fargo. This position provides assistance in identifying and creating the most effective means of communicating information to the public, government employees and other intended groups.

### **Scope of Responsibility:**

The Multimedia Designer supports City-wide communication efforts and marketing programs by designing, creating and maintaining a wide variety of assets and materials for use in print and digital media for both internal and external projects. The position requires a strong eye for visual composition, an incredible attention to detail and the capability of delivering creative and imaginative ideas while handling multiple priorities and meeting deadlines. The Multimedia Designer is responsible for the quality and accuracy of his or her own work with tasks being performed independently under general supervision.

### **Essential Duties & Responsibilities:**

- 1 **CONCEPTUALIZING** – Acts as a hands-on producer of impactful visual content and excels in modern design and digital marketing.
  - 1.1 Research and prepare specifications and cost estimates for design projects, including requested colors, materials and methods.
  - 1.2 Plan concepts, design rough layouts and conceptualize art.
  - 1.3 Articulate and pitch design concepts to departments, divisions and employees involved in the project.
  - 1.4 Responsible for all stages of the creative design process.
  - 1.5 Prioritize and manage multiple projects within design specifications and budget restrictions.
- 2 **DESIGNING** – Serve as the lead designer of The City of Fargo by developing custom graphics, visual aids and designs on behalf of the City and its various departments.
  - 2.1 Formulate and design a wide variety of materials on behalf of the City including, but not limited to: brochures, newsletters, posters, report covers, print advertising, annual reports, flyers, invitations, logos, forms, letterhead, business cards, signage, webpage design/graphics and multimedia presentations.
  - 2.2 Manage print production, carrying the graphics and marketing from concept, edit, approval, project bid, completion and implementation.
  - 2.3 Shoot/select photographs or create/select graphical elements to achieve intended tone, while ensuring conformance with City brand standards.
  - 2.4 Thoughtfully consider and implement colors, fonts, layouts and other design elements to communicate creative concepts.
  - 2.5 Use a variety of design elements to achieve artistic or decorative effects.
  - 2.6 Review designs for errors before printing or publishing.

- 3 **ILLUSTRATING** – Possess and execute a knowledge of the principles, methods and practices to create innovative, impactful and brand-elevating content.
  - 3.1 Create visual concepts using computer software or by hand, to communicate ideas that inspire, inform and engage members of the public.
  - 3.2 Utilize images, text and color to transform statistical data into impactful graphics and diagrams, which can make complex ideas more understandable and accessible.
  - 3.3 Conceptualize and create motion and static graphics for the City's various video walls and presentation screens across departments.
  - 3.4 Design complex infographics for webpages and software applications.
- 4 **COMMUNICATING** – Courteously and professionally establish and maintain effective working relationships with a wide range of public and private sector officials, employees and members of the public.
  - 4.1 Communicate with others in the work unit to provide information relating to work assignments and progress of work or to convey information about conditions or work-related needs.
  - 4.2 Understand how to interact with, and energize, a broad range of diverse employee groups.
  - 4.3 Possess comfort and familiarity in working independently and/or with teams.
  - 4.4 Interact with the public, vendors or across departments to exchange detailed and/or technical information where the ability to explain concepts is exercised.
  - 4.5 Exhibit and maintain confidence in all coordination efforts.
- 5 **ADVANCING CHANGE** – Strike a critical balance between change making and maintenance of City outreach efforts across the organization.
  - 5.1 Assess current outreach efforts and branding across departments to establish a thorough understanding of existing practices.
  - 5.2 Provide suggestions and ideas to improve design materials.
  - 5.3 Promote adherence to the City's branding standards by assisting with ongoing training and coaching efforts for all staff members.
  - 5.4 Under the direction of the Director of Communications & Governmental Affairs, work collaboratively to implement new and innovative strategies to improve the reach and effectiveness of City branding and outreach efforts.
  - 5.5 Research new approaches to communicating information by surveying peer government agencies and the private sector.
  - 5.6 Remain updated with new technologies, theories, practices and techniques related to graphic design.
- 6 **SYNTHESIZING** – Transform broad conceptual ideas into physical media.
  - 6.1 Gather and study the necessary materials and information to complete complex projects.
  - 6.2 Periodically submit in-progress images for approval and requesting and receiving feedback.
  - 6.3 Maintain a comprehensive database of images and graphic design and artwork for records and future reference.
- 7 **PRIORITIZING SAFETY** – Perform all job duties in compliance with safety guidelines and with an ongoing awareness of safety practices.
  - 7.1 Know and follow department and City rules as well as sound work and safety practices in order to accomplish the job objectives and avoid injury or loss.
  - 7.2 Wear proper protective equipment when policy requires or conditions indicate a need exists and utilize proper body mechanics and ergonomics while performing work.
  - 7.3 When potentially unsafe conditions are observed, make an effort to avoid or correct them if they are controllable and draw them to the attention of the responsible supervisor or safety representative in a timely manner.

8 **ADAPTING** – Perform other duties and activities as assigned.

### **Minimum Qualifications:**

This position requires graduation from an accredited college or university with a bachelor's degree in graphic design, visual communications, public relations, journalism, communications, marketing, public administration, business administration or a closely related field; at least 2.5 years of professional experiences or internships, or an equivalent combination of education and experience sufficient to successfully perform the essential duties of the job. A valid driver's license or evidence of equivalent mobility is also required.

Knowledge, skills and abilities should include:

- Extensive experience in visual and motion graphics, illustrations and animations.
- Responsible for graphic design work of considerable difficulty and complexity.
- Must possess an impeccable attention to detail.
- Compelling portfolio of work over a wide range of creative projects in required.
- Skills in digital photography and digital media.
- Strong analytical skills.
- Experience in interpersonal communication to facilitate high-level discussions with co-workers, supervisors, the general public and others sufficient to exchange or convey information, resolve disputes and receive work direction.
- The ability to handle multiple tasks with adherence to deadlines under stressful or difficult situations.
- Skills in developing and interpreting data.
- Ability to work a flexible schedule, including weekends or evening shifts as required.
- Project management experience.
- Strong troubleshooting and problem resolution capabilities.
- Fluency in computer applications used by the Communications & Governmental Affairs Department, including the Microsoft Office Suite, Adobe Creative Suite and Content Management Systems (CMS).

### **Physical Demands & Working Conditions:**

Most work is performed in a normal work environment. Work is generally light with considerable variety. Extensive use of computer, telephone and other office equipment is required. Daily work often involves moving between rooms. There is considerable attention to detail and deadlines. Intermittent driving is required to attend meetings. Occasional overnight travel may be required. The person in this position may be required to be on-call during some evenings and weekends. In an emergency situation, the person may be required to be on-site for a prolonged period of time at a designated facility.

Activities include stooping, kneeling, crouching, reaching, standing, walking, pushing, pulling, lifting, fingering, grasping, feeling, talking, hearing/listening, seeing/observing and repetitive motions.

**Sedentary Work:** Exerting up to 25 pounds of force occasionally and/or a negligible amount of force frequently or constantly to lift, carry, push, pull or otherwise move objects, including the human body. Sedentary work involves sitting most of the time. Jobs are sedentary if walking and standing are required only occasionally and all other sedentary criteria are met.

Some requirements in this job description may exclude individuals who pose a direct threat or significant risk to the health and safety of themselves or other employees. All requirements are subject to modification to reasonably accommodate individuals with disabilities.

Requirements are representative of minimum levels of knowledge, skills and experience required. To perform this job successfully, the worker must possess the abilities and aptitudes to perform each duty proficiently.

This document does not create an employment contract, implied or otherwise, other than an "at will" employment relationship. The City Administrator retains the discretion to add duties or change the duties of this position at any time.

4

March 8, 2021

Honorable Board of  
City Commissioners  
City of Fargo  
225 North Fourth Street  
Fargo, ND 58102

Re: Contract Engineering Technician I

Dear Commissioners:

The Engineering Department currently has two Engineering Technician I contract positions approved in the 2021 Budget. These staff assist with the right of way management of the Small Cell/WiFi permitting, the increase of infrastructure locating and fiber installation, building construction encroachment, and project inspection prior to our seasonal staff starting. Attached is one of the two contracts.

**Recommended Motion:**

Approve contract for Anthony Arnold.

Respectfully Submitted,



Brenda E. Derrig, P.E.  
City Engineer

Attachment

C: Kevin Gorder

## AGREEMENT

### Engineering Technician I

THIS AGREEMENT made and entered into effective the 8<sup>th</sup> day of March, 2021, by and between Anthony Arnold (hereinafter referred to as Arnold) and the CITY OF FARGO, a municipal corporation, whose address is 225 Fourth Street North, Fargo, North Dakota 58102 (hereinafter referred to as "City").

WITNESSETH:

WHEREAS, the City desires to fill the position of Engineering Technician I within the City of Fargo Engineering Department as a contracted employee; and,

WHEREAS, the City desires to appoint Arnold to perform the duties and services of Engineering Technician I and for purposes of the City's budgeting process, to recognize a contract employment relationship for a period beginning March 8, 2021 and ending December 31, 2021, but which is still an "at-will" employment relationship, terminable by either party with or without cause,; and,

WHEREAS, Arnold has agreed to accept such appointment to perform the duties and services of Engineering Technician I on a contract employee basis according to the terms of this agreement; and,

WHEREAS, the parties wish to commit their agreement to writing.

NOW, THEREFORE, the parties hereto do hereby agree as follows:

1. City agrees to appoint Arnold for the purpose of performing the duties and services of Engineering Technician I as described in Exhibit A attached hereto.
2. Term. The term of this agreement shall be for the period beginning March 8, 2021 and ending December 31, 2021, but may be terminated by either party at any time,

upon written notice to the other party. This relationship is an “At-will” relationship and may be terminated by either party at any time with or without cause.

3. Compensation. City agrees to compensate Arnold in the amount of \$23.54 per hour for any and all duties and services performed as Engineering Technician I during the year 2021. To the extent this agreement is still in effect, beginning in years 2021 and thereafter, Arnold’s compensation shall be adjusted annually, at the time of his step increase date, as well as adjusted in an amount equal to the Cost of Living Adjustment the City of Fargo approves for its employees.

4. In addition to the terms of compensation listed above, the City shall pay the employer’s share of the following:

- (a) Social Security (FICA)
- (b) Workers Compensation
- (c) Unemployment Insurance
- (d) Federal Withholding (income tax)
- (e) State Income Tax
- (f) Medicare

5. Arnold will be full-time and will be eligible to enroll in Health Insurance, Dental Insurance, Vision Insurance, Life Insurance and Flexible Spending and will be covered under the City’s long-term disability and North Dakota Public Employee Retirement System (NDPERS). In addition, Arnold will accrue annual and sick leave.

6. During the term of this agreement, Arnold agrees to comply with all employee policies of the City of Fargo and the Engineering Department, including all safety rules and procedures.

7. The parties hereto understand and agree that Arnold shall not be part of the Civil Service of the City of Fargo, but is a contracted employee, as permitted under Fargo Municipal Code section 7.0102(D).

DATED the day and year first above written.

THE CITY OF FARGO, NORTH DAKOTA

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

ATTEST:

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

Engineering

By: B.E.D.  
Brenda E. Derrig, City Engineer

Anthony Arnold  
Anthony Arnold  
Contracted Employee

5

## PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Project No. 6153 (aka FM-14-0)

Type: Contract Amendment #7

Location: 4th St S Levee 2nd St to 13th Ave S

Date of Hearing: 3/15/2021

<u>Routing</u>	<u>Date</u>
City Commission	3/22/2021
PWPEC File	X
Project File	Jody Bertrand

The Committee reviewed the accompanying correspondence from Project Engineer, Jody Bertrand, related to Contract Amendment #7 submitted by Houston Engineering in the amount of \$30,000.00 for additional work.

Staff is recommending approval of Contract Amendment #7 in the amount of \$30,000.00, bringing the total contract amount to \$1,156,357.00

On a motion by Steve Sprague, seconded by Ben Dow, the Committee voted to recommend approval of Contract Amendment #7 to Houston Engineering.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve Contract Amendment #7 in the amount of \$30,000.00, bringing the total contract amount to \$1,156,357.00 to Houston Engineering.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: Flood Sales Tax (460)

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

Yes	No
	N/A
	N/A
	N/A

COMMITTEE

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

Present	Yes	No	Unanimous
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Ryan Erickson
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<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

ATTEST:

C: Kristi Olson

  
 Brenda E. Derrig, P.E.  
 City Engineer

## Memorandum

**To:** Members of PWPEC

**From:** Jody Bertrand, Division Engineer

**Date:** March 15, 2021

**Subject:** Project No. 6153 (FM-14-0) - Amendment No. 7  
Provisionally Accredited Levee Systems

---

### **Background:**

Continued work has been taking place on the 4<sup>th</sup> Street Levee recertification with direction being received from FEMA to complete the Provisional Accreditation Levee System (PALS). The City has been completing documents and as-builts for the 2<sup>nd</sup> Street Floodwall and the Main Avenue Storm Sewer Lift Station to complete a comprehensive document for an Operations and Maintenance manual for the combined reaches for this area. FEMA has recently advised the City that a separate document should be generated for each of the smaller reaches for review and approval, which will include documents just for the PALS project area.

The proposed contract amendment provided by Houston totals \$30,000.00, which is a sufficient amount to cover the remaining interior drainage modeling (residual floodplain), riverine hydraulic analysis, the operations and maintenance manual and FEMA coordination closeout costs that are anticipated to occur within the next few months to complete the final recertification documentation of the 4<sup>th</sup> Street Levee System.

For your review, Houston Engineering has provided the Contract Amendment #7 document outlining the services to be provided and is attached to this memorandum.

### **Recommended Motion:**

Approve contract amendment #7 submitted by Houston Engineering in the amount of \$30,000.00, for recertification of the 4<sup>th</sup> Street South Levee.

JRB/klb  
Attachment

Fargo Corporate Office

701.237.5065

701.237.5101

1401 21st Avenue North Fargo ND 58102



Houston Engineering Inc.

**PROFESSIONAL SERVICES**

**PROPOSAL AND AGREEMENT**

**AMENDMENT No. 7 - FOR ADDITIONAL SERVICES**

**Project:** City of Fargo Project No. 6153 – 4<sup>th</sup> Street Levee and WSP Levee Certification  
Amendment No. 7 - Additional FEMA Accreditation related services with the 4<sup>th</sup> Street  
Levee  
HEI Project No. 6059-051

**Client:** City of Fargo  
200 North 3<sup>rd</sup> Street  
Fargo, ND 58102  
Phone (701) 241-1545  
Attn: Jody Bertrand, Division Engineer – Storm Sewer Utilities

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

**Description  
of Work:** This contract amendment is intended to provide additional engineering services  
required for levee certification and FEMA accreditation for the 4<sup>th</sup> Street Levee.  
Additional services required include a riverine hydraulic analysis and revised  
floodplain maps associated with the realigned levee, reporting of the interior drainage  
system, development of an operations and maintenance manual for the new features  
in the levee, incorporation of additional features such as the new pump station at  
Island Park and the removable floodwall at 2<sup>nd</sup> Street. This amendment will include  
coordination with FEMA during the review process.

The scope of work includes details as follows:

1. Interior drainage analysis report and residual floodplain mapping of area adjacent  
to 4<sup>th</sup> Street Levee near 12<sup>th</sup> Avenue S.
2. Riverine Hydraulic Analysis and floodplain mapping using revised guidance from  
FEMA to update model with all prior certified levees including El Zagal,  
Mickelson, Moorhead levees, and 2<sup>nd</sup> Street and 4<sup>th</sup> Street projects.
3. Final O&M Manual development for 4<sup>th</sup> Street Levee.

Bismarck

701.237.5065

701.237.5100

Minot

701.852.7921

701.555.5655

Maple Grove

701.237.5065

701.237.5100

Thief River Falls

701.852.7921

701.555.5655

Page 2

4. FEMA LOMR guidance documentation, and coordination through comment/review period (changes from PAL to LOMR).

**Fee:** The total estimated fee for the above described tasks is \$30,000 and is divided as follows:

Task No. 1 – Interior Drainage - \$10,000

Task No. 2 – Hydraulic Analysis and Mapping - \$10,000

Task No. 3 – Operations & Maintenance Manual - \$5,000

Task No. 4 – FEMA LOMR Submittal and Coordination - \$5,000

**Conditions:** Services will be invoiced monthly and are due and payable upon receipt.

Limitation of Liability: Houston Engineering, Inc. agrees to indemnify and save the client harmless from any loss, cost, or expense including attorney fees, claimed by third parties for property damage or bodily injury, including death, caused by the negligence of Houston Engineering, Inc. or its employees in connection with Houston Engineering, Inc.'s services. The client agrees to indemnify and save Houston Engineering, Inc. harmless from any loss, cost, or expense, including attorney fees, claimed by third parties for property damage or bodily injury including death, caused by the negligence of the client or its employees in connection with the operations of the client. If the negligence of both Houston Engineering, Inc. and the client (or a person identified above for whom each is liable) is the cause of such damage or injury, the loss, cost, or expense shall be shared between Houston Engineering, Inc. and the client in proportion to their relative degrees of negligence and the right of indemnity shall apply for such proportion. Neither party hereto shall be liable to the other for incidental, special or indirect damages nor shall Houston Engineering, Inc. be liable for any cost or expense that provides betterment, upgrade or enhancement of the project.

Houston Engineering, Inc. hereby proposes, and the client hereby authorizes, the above described services to be performed by Houston Engineering, Inc. under the terms and conditions set forth.

Authorization:

Client: City of Fargo

Signature: \_\_\_\_\_

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

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

Proposal: Houston Engineering, Inc.

Signature: 

Title: Project Manager

Date: 3-9-2021

## PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Type: NPDES Permit NDR04-0001 (MS4 Discharge Permit)

Location: Citywide

Date of Hearing: 3/15/2021

RoutingDate

City Commission

3/22/2021

PWPEC File

X

Project File

Jody Bertrand

The Committee reviewed a communication from Division Engineer, Jody Bertrand, regarding changes to the next Storm Water Discharge Permit, North Dakota Pollution Discharge Elimination System, for years 2021-2025.

Item changes include expanded scope criteria for some of the minimum control measures (MCM):

- New Notice of Intent that must be signed by the Mayor
- More inspections and documentation of quality assurance in ponds, grit chambers, etc.
- Added criteria for public education and outreach concerning storm water awareness

Staff is recommending approval and submittal of the Notice of Intent meeting the requirements for the general Storm Water Discharge permit from the State of North Dakota for discharge releases covered under the MS4 program.

On a motion by Bruce Grubb, seconded by Ryan Erickson, the Committee voted to recommend approval of the submittal of the Notice of Intent.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve the submittal of the Notice of Intent.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: None

Yes	No
N/A	
N/A	
N/A	

Developer meets City policy for payment of delinquent specials

N/A

Agreement for payment of specials required of developer

N/A

Letter of Credit required (per policy approved 5-28-13)

N/A

COMMITTEE

Present	Yes	No	Unanimous
			<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Ryan Erickson
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
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<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

Tim Mahoney, Mayor

Nicole Crutchfield, Director of Planning

Steve Dirksen, Fire Chief

Bruce Grubb, City Administrator

Ben Dow, Director of Operations

Steve Sprague, City Auditor

Brenda Derrig, City Engineer

Kent Costin, Finance Director

ATTEST:

Brenda E. Derrig, P.E.  
City Engineer

## Memorandum

**To:** Members of PWPEC

**From:** Jody Bertrand, PE, CFM  
Division Engineer Storm Sewer Utility

**Date:** March 15, 2021

**Subject:** Reissuance and Initial Reapplication of NPDES Permit NDR04-0001  
(MS4 Discharge Permit)

---

### Background:

The ND Department of Environmental Quality is making changes to the next Storm Water Discharge Permit, North Dakota Pollution Discharge Elimination System, for years 2021-2025. Item changes include expanded scope criteria for some of the minimum control measures (MCM):

- \* New Notice of Intent that must be signed by the Mayor
- \* More inspections and documentation of quality assurance in ponds, grit chambers, etc.
- \* Added criteria for public education and outreach concerning storm water awareness

There are 6-MCM we are required to report on annually in our Discharge Monitoring Report (DMR). We digitally submit this report outlining our progress, goals, identified pollutants, etc.

MCM 1	Public Education & Outreach
MCM 2	Public Participation / Involvement
MCM 3	Illicit Discharge Detection and Elimination
MCM 4	Construction Site Stormwater Control
MCM 5	Post Construction Stormwater Management
MCM 6	Pollution Prevention for Municipal Operations

The Notice of Intent (NOI) is attached to this memorandum, which will require signature prior to submittal.

### Recommended Motion:

Approval of the Mayor's signature and submittal of the Notice of Intent meeting the requirements for the general Storm Water Discharge Permit from the State of North Dakota for discharge releases covered under the MS4 program.

Attachment



**NOTICE OF INTENT FOR COVERAGE UNDER NDPDES  
GENERAL PERMIT NDR04-0000 FOR STORM WATER DISCHARGES  
FROM SMALL MUNICIPAL SEPARATE STORM SEWER SYSTEMS (MS4s)  
NORTH DAKOTA DEPARTMENT OF ENVIRONMENTAL QUALITY  
DIVISION OF WATER QUALITY  
SFN 53488 (01/2021)**

For Dept. Use Only

Application Number

Date Received

**GENERAL INFORMATION**

Name of Owner or Agency with Operational Control of the MS4 (City, County, NDDOT, etc.)

City of Fargo

MS4 Owner or Operator Address

225 4th Street North

Contact Person Responsible for Permit Compliance

Jody Bertrand

Telephone No.

701-241-1548

Mailing Address

225 4th Street North

City

Fargo

State

ND

Zip code

58102

Briefly describe the location/area of the MS4:

City of Fargo: City Limits and Extraterritorial Area

Provide the name or general description of the water body(s), or other MS4s, that will receive storm water from the MS4:

Red River of the North

Sheyenne River

Wild Rice River (E.T.)

Provide the location of transportation facilities with vehicle maintenance activities, public works maintenance yards and wastewater treatment works with a design flow of 1.0 mgd or greater.

Fargo Waste Water Treatment Plant - 3400 Broadway North

Public Works (Maintenance) - 402 23rd Street North

(You may attach additional sheets, if more space is needed to provide the information requested above)

**NOI REQUIREMENTS AND PREREQUISITES**

The general permit requires that a MS4 Program be developed and implemented. A summary of the program must be included as part of the NOI. The summary must include the information for each of the six minimum control measures in the general permit for storm water discharges from small MS4s. For each of the measures you must indicate the Best Management Practices (BMPs) you intend to implement, the measurable goals for the BMPs, estimated time lines for the BMPs and indicate who is responsible for implementing each measure. Continue by completing the check lists regarding your planned program and summary.

**Does your planned MS4 Program address the following minimum control measures?**

1. Public education and outreach:	Yes <input checked="" type="radio"/>	No <input type="radio"/>
2. Public participation and involvement:	Yes <input checked="" type="radio"/>	No <input type="radio"/>
3. Illicit discharge detection and elimination:	Yes <input checked="" type="radio"/>	No <input type="radio"/>
4. Construction site runoff control:	Yes <input checked="" type="radio"/>	No <input type="radio"/>
5. Post construction storm water management:	Yes <input checked="" type="radio"/>	No <input type="radio"/>
6. Pollution prevention/good housekeeping:	Yes <input checked="" type="radio"/>	No <input type="radio"/>

**Are the following items addressed for each of the control measures in the attachment to this NOI summarizing the MS4 Program?**

1. The Best Management Practices (BMPs) that you will implement for each of the minimum control measures.	Yes <input checked="" type="radio"/>	No <input type="radio"/>
2. The measurable goals for the BMPs you plan to implement, including as appropriate, a description of the planned actions, timing and frequency of actions, and milestones.	Yes <input checked="" type="radio"/>	No <input type="radio"/>
3. Estimated time line(s) (months, years) in which you will implement each Best Management Practice.	Yes <input checked="" type="radio"/>	No <input type="radio"/>
4. Person(s) responsible for implementing and/or coordinating each component of the MS4 Program (this should be the person(s) you want the department to contact regarding the overall program or the particular components).	Yes <input checked="" type="radio"/>	No <input type="radio"/>

**CERTIFICATION AND SIGNATURE**

All permit applications shall be signed by a responsible corporate officer for a corporation; a general partner or the proprietor for a partnership or sole proprietorship; or a principal executive officer or ranking elected official for a municipality, State, Federal, or other public agency.

<b>SEND COMPLETED NOI TO:</b>  North Dakota Dept. of Env. Quality Division of Water Quality, 4 <sup>th</sup> Floor 918 East Divide Avenue Bismarck, ND 58501-1947  Telephone:(701) 328-5210	I certify under penalty of law that I have personally examined and am familiar with the information submitted herein. Based on my inquiry of those individuals immediately responsible for obtaining the information, I believe the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment.	
	Printed Name of Applicant <b>Dr. Tim Mahoney</b>	Title <b>Mayor</b>
	Signature of Applicant	Date

April 1, 2021

RE: Duly Authorized Representative

Under the provision set forth in NDR04-0001 Authorization to Discharge Under the North Dakota Pollution Discharge Elimination System, Section VII, E., Compliance Responsibilities, Signatory Requirements Page 25, items 1 & 2.

The **Fargo Storm Sewer Utility Division Engineer** shall be the designated and duly authorized representative for all applications, reports or information submitted to North Dakota Department of Environmental Quality as required by this permit.

Dr. Tim Mahoney, Mayor  
City of Fargo, ND

## PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

(7)

Type: Amtrak Consent Letter

Location: 4<sup>th</sup> Street Passenger Station

Date of Hearing: 3/15/2021

Routing

City Commission

Date

3/22/2021

PWPEC File

X

Project File

Brenda Derrig

The Committee reviewed a communication from City Engineer, Brenda Derrig, regarding an Amtrak Consent Letter for improvements to the passenger terminal and surrounding area.

The consent letter is for the making of the improvements to the City's property and surrounding area. The project cost for the improvements to the passenger terminal and surrounding area is the responsibility of Amtrak. There is no cost to the City of Fargo.

Staff is recommending approval of the Amtrak Consent Letter.

On a motion by Ben Dow, seconded by Steve Sprague, the Committee voted to recommend approval of the Amtrak Consent Letter.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve the Amtrak Consent Letter for improvements to the 4<sup>th</sup> Street Passenger terminal and surrounding area.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: N/A

Developer meets City policy for payment of delinquent specials

Agreement for payment of specials required of developer

Letter of Credit required (per policy approved 5-28-13)

Yes	No
N/A	
N/A	
N/A	

COMMITTEE

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

ATTEST:



Brenda E. Derrig, P.E.  
City Engineer

## Memorandum

**To:** Members of PWPEC  
**From:** Brenda E. Derrig, P.E.  
City Engineer  
**Date:** March 9, 2021  
**Re:** Approval of Amtrak Consent Letter for Mayors Signature

---

I am requesting approval of the attached letter for the Mayors signature.

The letter is a consent letter for Amtrak, written for proposed improvements to the 4<sup>th</sup> Street passenger station. The purpose of the letter is to request the following from the City:

- (1) Consent to the making of the improvements to the City's property substantially in accordance with the Plans as approved by the City and in accordance with the City of Fargo Excavation Policy and their current Standard Specifications for Construction;
- (2) Agree to provide Amtrak and its contractors access to the City's property at the time the improvements are to be made with 48-hour notice prior to any street closures;
- (3) Confirm the City will, upon completion of the project and warranty, assume the ongoing responsibility for the maintenance, repair and replacement of the paving improvements to the City's property, with the proposed storm sewer piping remaining the responsibility of Amtrak;
- (4) Agree the City will sign any related documentation, required for Amtrak and/or its contractors to complete the project, in a timely fashion;
- (5) Agree that the City will not remove the improvements for as long as Amtrak uses or intends to use the improvements in providing rail passenger services at the Station, without the prior written consent of Amtrak; and
- (6) Agree that the City will provide Amtrak with continued access to the improvements and will ensure Amtrak's perpetual right to use the improvements for as long as Amtrak provides or intends to provide rail passenger services at the Station.

The original letter was edited by both the City Engineer and the City Attorney; Amtrak has incorporated all City requested changes into the latest revision of the letter.

There is no cost to the City of Fargo for this. The project cost for improvements to the passenger terminal and surrounding area is totally the responsibility of Amtrak.

Project plans are attached to this request.

### **Recommended Motion**

Recommend approval of the attached letter for Mayor Mahoney's signature.

NATIONAL RAILROAD PASSENGER CORPORATION  
Amtrak ADA Stations Program  
Ten Penn Center  
1801 Market Street, Suite 1450  
Philadelphia, PA 19103



Via Email  
tmahoney@cityoffargo.com

February 24, 2021

Dr. Tim Mahoney  
Mayor of Fargo, North Dakota  
225 4<sup>th</sup> Street North  
Fargo, ND 58102  
(701) 241-1310

**RE: Amtrak ADA Stations Program  
Fargo, North Dakota Rail Station ("Station")**

*(This letter has been revised from the letters sent on September 15, 2020 and December 4, 2020.)*

Dear Mayor Mahoney:

National Railroad Passenger Corporation ("Amtrak") is committed to ensuring that rail stations it serves are fully compliant with the Americans with Disabilities Act of 1990 (ADA) and accessible to all passengers. At this point, Amtrak has conducted a property survey and an ADA assessment of all portions of the Station for which Amtrak has some degree of ADA responsibility and has designed the required ADA improvements to be constructed by Amtrak.

The purpose of this letter is two-fold. First, it is to provide the City with design plans for the improvements being made as part of our ADA Stations Program ("Plans"). The Plans have progressed to the 100% (Issued for Bid or "IFB") Submission level of design and are enclosed with this letter for your review, since the improvements impact property owned by the City. The exact timing of the work is not yet known.

Improvements that impact property owned by the City include but are not limited to:

- Replacement of City installed fencing around the pedestrian signal/gate arms along the tracks at North Broadway and North 4<sup>th</sup> streets.
- Connection of new platform trench drain and platform underdrain to the City storm line under North 4th Street via an existing manhole.

The second purpose of this letter is to request that the City: (i) consent to the making of the improvements to the City's property substantially in accordance with the Plans as approved by the City and in accordance with the City of Fargo Excavation Policy and their current Standard Specifications for Construction; (ii) agree to provide Amtrak and its contractors access to the City's property at the time the improvements are to be made with 48-hour notice prior to any street closures; (iii) upon completion of the project and warranty confirm that the City will assume the ongoing responsibility for the maintenance, repair and replacement of the paving improvements to the City's property, the storm sewer pipe will remain the responsibility of Amtrak; (iv) agree that the City will timely sign any related documentation that may be required for Amtrak

*Mayor Mahoney  
City of Fargo  
February 24, 2021  
Page 2*

and its contractors to complete the project; (v) agree that the City will not remove the improvements for as long as Amtrak uses or intends to use the improvements in providing rail passenger services at the Station, without the prior written consent of Amtrak; and (vi) agree that the City will provide Amtrak with continued access to the improvements and will ensure Amtrak's perpetual right to use the improvements for as long as Amtrak provides or intends to provide rail passenger services at the Station.

Your signature below constitutes the City's consent to the improvements substantially in accordance with the Plans and the City's agreement to comply with all of Amtrak's other requests described in the above paragraph.

Please contact the following Amtrak representative if you have any questions or concerns regarding the planned improvements or the project:

Derrick L. James  
Senior Manager, State Relations and Business Development  
National Railroad Passenger Corporation  
Chicago Union Station  
500 W Jackson Blvd  
Chicago, IL 60661  
Phone. 312-544-5118; E-mail: [jamesde@amtrak.com](mailto:jamesde@amtrak.com)

The schedule associated with Amtrak's ADA Stations Program is an aggressive one. You can help us complete the design portion of the Station project quickly by having the authorized representative of the City sign and date a copy of this letter and return via email to [ellen.pannell@amtrak.com](mailto:ellen.pannell@amtrak.com) by March 5, 2021.

Thank you in advance for your cooperation. We look forward to working with you on this important initiative.

Sincerely,

**Lonnie Murray**

Digitally signed by Lonnie  
Murray  
Date: 2021.02.24 12:11:53 -05'00'

Lonnie A. Murray  
*Director Program Management,  
ADA Stations Program*

Mayor Mahoney  
City of Fargo  
February 24, 2021  
Page 3

**CONSENT OF OWNER**

As the authorized representative of the City, I hereby: (i) consent to the making of the improvements to the City's property substantially in accordance with the Plans as approved by the City and in accordance with the City of Fargo Excavation Policy and their current Standard Specifications for Construction; (ii) agree to provide Amtrak and its contractors access to the City's property at the time the improvements are to be made with 48-hour notice prior to any street closures; (iii) upon completion of the project and warranty confirm that the City will assume the ongoing responsibility for the maintenance, repair and replacement of the paving improvements to the City's property, the storm sewer pipe will remain the responsibility of Amtrak; (iv) agree that the City will timely sign any related documentation that may be required for Amtrak and its contractors to complete the project; (v) agree that the City will not remove the improvements for as long as Amtrak uses or intends to use the improvements in providing rail passenger services at the Station, without the prior written consent of Amtrak; and (vi) agree that the City will provide Amtrak with continued access to the improvements and will ensure Amtrak's perpetual right to use the improvements for as long as Amtrak provides or intends to provide rail passenger services at the Station.

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

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

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

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

cc: C. Portner  
D. James

Enclosures:

- Amtrak ADA Stations Program (ADASP), Fargo (FAR), North Dakota, 100% (IFB) Submission dated 07/24/2020 with QAQC Updates dated 01/29/2021, 19 pages

*Mayor Mahoney  
City of Fargo  
February 24, 2021  
Page 4*

bcc: J. Sears  
R. Blaine  
J. Brophy  
J. Slemons  
L. Gatlin  
J. Bender  
A. Adams  
E. Bailey  
L. Murray  
R. Kopec  
D. Sakiyabu  
E. Pannell  
K. Felder



ADA STATION PROGRAM (ADASP)  
FARGO (FAR), NORTH DAKOTA  
100% (IFB) SUBMISSION

HOST RAILROAD: BNSF  
SUBDIVISION: KO  
MILE POST: 23.35  
STATION CLASSIFICATION: STAFFED



FARGO, NORTH DAKOTA LATITUDE: 46.876961 LONGITUDE: -96.784637 (PER LAT/LONG.NET)

## PROJECT SCOPE SUMMARY

1. REMOVE APPROXIMATELY 845 FT OF EXISTING ASPHALT SIDE PLATFORM
2. REMOVE EXISTING WHEELCHAIR LIFT ENCLOSURE, SALVAGE SAVE AND STORE FOR RELOCATION.
3. REMOVAL OF MATERIALS PER HOST RAILROAD SPECIFICATIONS AND APPLICABLE REGULATIONS

## SITE WORK AREA 2012 JULY 10-11 NIGHT OF WAY (P. 10)

- [illegible]

**RE ATTENTION:**

1. PROVIDE ANKER CONCRETE IN SLAB PLATFORM 8 INCHES ABOVE TOP OF RAIL (MINIMUM 12 FEET CLEAR, APPROXIMATELY 66 FEET LONG, WITH NECESSARY HANDRAILS, EGRESS AND DETECTION).
  2. STATION LENGTH (STATION DETERMINED AS HELICAL RAILS).
  3. STATION WIDTH (STATION DETERMINED AS HELICAL RAILS).
  4. PROVIDE ANKER CONCRETE IN SLAB PLATFORM 8 INCHES ABOVE TOP OF RAIL (MINIMUM 12 FEET CLEAR, APPROXIMATELY 66 FEET LONG, WITH NECESSARY HANDRAILS, EGRESS AND DETECTION).
  5. PROVIDE NEW ELECTRICAL CIRCUITS FOR NEW LIGHTING ALONG ENTIRE PLATFORM.
- STATION EXTENSION:
1. PROVIDE NEW DOOR AND CLOSERS FOR THE PLATFORM DOOR VESTIBULE (WITH THE EXISTING AND INTERIOR DOOR FOR ADA COMPLIANCE).
  2. PROVIDE NEW DOOR ASSEMBLY AT WEST WAITING ROOM ENTRANCE.
- STATION INTERIOR:
1. STATION INTERIOR, EXISTING INCLUDES, BUT IS NOT LIMITED TO THE FOLLOWING:
    - a. ADA COMPLIANT LIGHTS FOR ADA CODE (TO BE MAINTAINED UPON COMPLIANCE PER AMTRAK STANDARDS AND OMBRE CONTROL).
    - b. ADA COMPLIANT LOCKERS FOR ADA CODE (TO BE MAINTAINED UPON COMPLIANCE PER AMTRAK STANDARDS AND OMBRE CONTROL).
    - c. ADA COMPLIANT COUNTER TO INCLUDE SECURITY FEATURES AND BULLET RESISTANT GLASSING.
    - d. ADA COMPLIANT SEATING.
    - e. ADJUST THE DOOR CLOSER TO ADA COMPLIANCE.
    - f. ADJUST THE DOOR CLOSER TO ADA COMPLIANCE.
    - g. ADJUST THE DOOR CLOSER TO ADA COMPLIANCE.
    - h. ADJUST THE DOOR CLOSER TO ADA COMPLIANCE.
    - i. ADJUST THE DOOR CLOSER TO ADA COMPLIANCE.
    - j. ADJUST THE DOOR CLOSER TO ADA COMPLIANCE.
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    - l. ADJUST THE DOOR CLOSER TO ADA COMPLIANCE.
    - m. ADJUST THE DOOR CLOSER TO ADA COMPLIANCE.
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    - o. ADJUST THE DOOR CLOSER TO ADA COMPLIANCE.
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    - q. ADJUST THE DOOR CLOSER TO ADA COMPLIANCE.
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    - v. ADJUST THE DOOR CLOSER TO ADA COMPLIANCE.
    - w. ADJUST THE DOOR CLOSER TO ADA COMPLIANCE.
    - x. ADJUST THE DOOR CLOSER TO ADA COMPLIANCE.
    - y. ADJUST THE DOOR CLOSER TO ADA COMPLIANCE.
    - z. ADJUST THE DOOR CLOSER TO ADA COMPLIANCE.
  2. PROVIDE NEW DOOR AND CLOSERS FOR THE PLATFORM DOOR VESTIBULE (WITH THE EXISTING AND INTERIOR DOOR FOR ADA COMPLIANCE).
  3. PROVIDE NEW DOOR ASSEMBLY AT WEST WAITING ROOM ENTRANCE.
  4. PROVIDE NEW DOOR AND CLOSERS FOR THE PLATFORM DOOR VESTIBULE (WITH THE EXISTING AND INTERIOR DOOR FOR ADA COMPLIANCE).
  5. PROVIDE NEW DOOR ASSEMBLY AT WEST WAITING ROOM ENTRANCE.

**SITE LOCATION PLAN**  
FARGO, NORTH DAKOTA 58107

## VICINITY PLAN



Office of Chief Engineer  
National Railroad Passenger Corporation  
10th Street Station, Philadelphia, Pennsylvania 19106



**Gannett Fleming**

**FARGO (FAR) NORTH DAKOTA  
ADA STATION PROGRAM (ADASP)**

COVER SHEET

G000



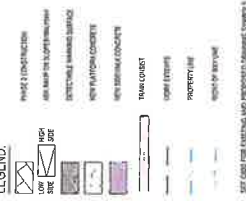
PHASE 2 KEYNOTES

1. THE CONTRACTOR SHALL MAINTAIN ALL EXISTING UTILITIES AND STRUCTURES IN PLACE AND PROTECT THEM FROM DAMAGE DURING CONSTRUCTION.
2. THE CONTRACTOR SHALL MAINTAIN ALL EXISTING UTILITIES AND STRUCTURES IN PLACE AND PROTECT THEM FROM DAMAGE DURING CONSTRUCTION.
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20. THE CONTRACTOR SHALL MAINTAIN ALL EXISTING UTILITIES AND STRUCTURES IN PLACE AND PROTECT THEM FROM DAMAGE DURING CONSTRUCTION.

GENERAL NOTES

1. PLATFORM LIGHTING SHALL BE MAINTAINED ON SITE DURING ALL PHASES OF CONSTRUCTION.
2. THE CONTRACTOR SHALL MAINTAIN ALL EXISTING UTILITIES AND STRUCTURES IN PLACE AND PROTECT THEM FROM DAMAGE DURING CONSTRUCTION.
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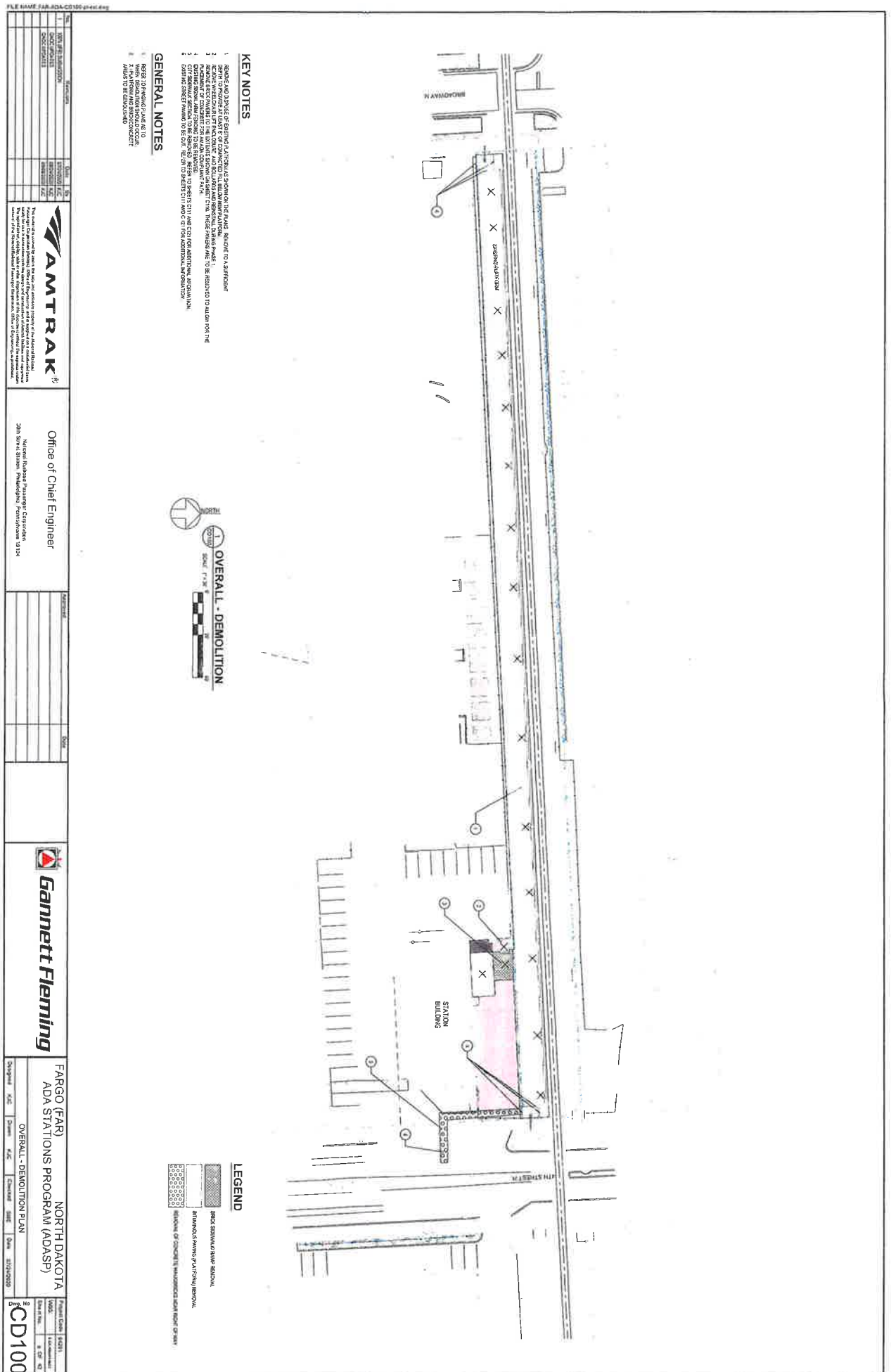
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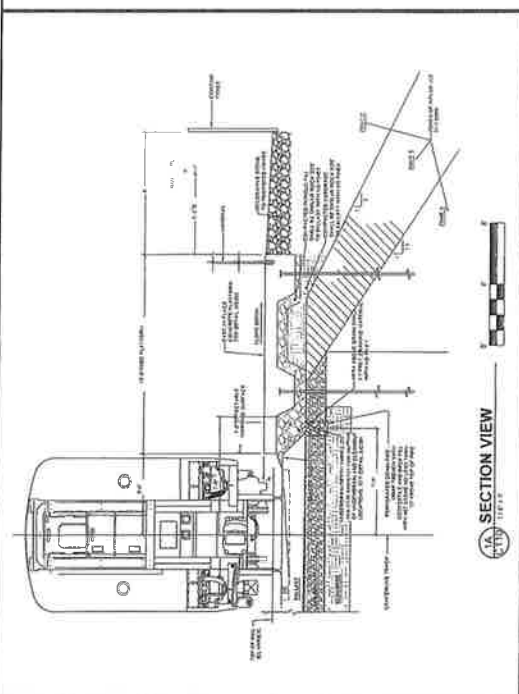


RECOMMENDED SITE PHASING AND STAGING PLAN - PHASE 2

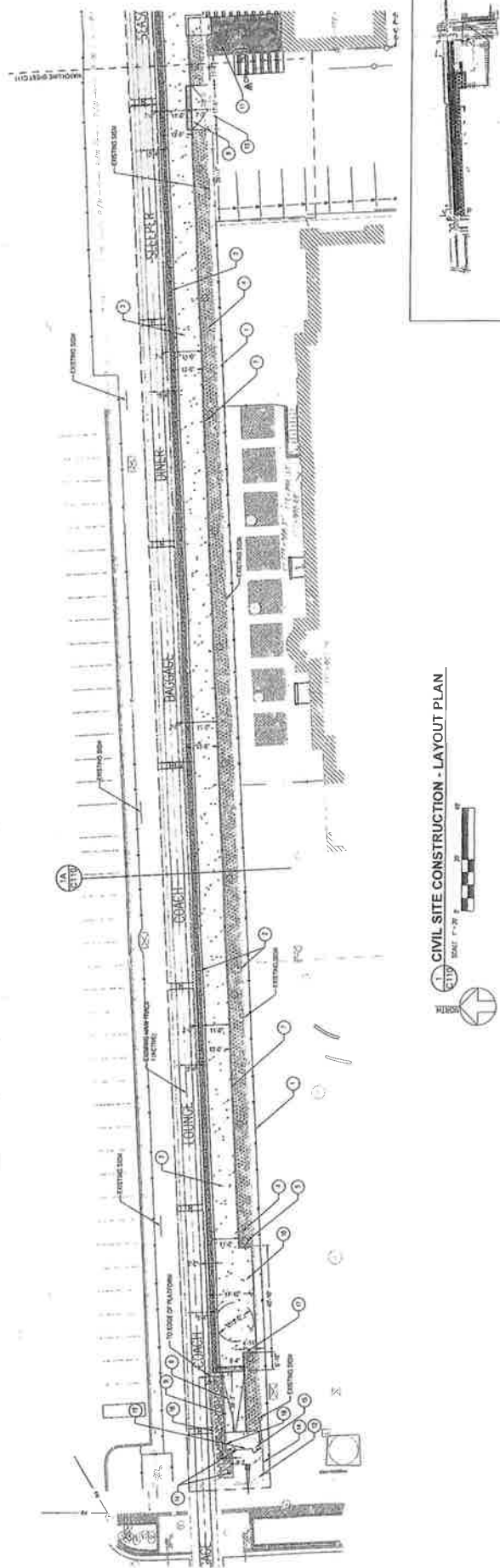


<b>AMTRAK</b>		<b>Office of Chief Engineer</b>		<b>Gannett Fleming</b>		<b>FARGO (FAR)</b>		<b>NORTH DAKOTA</b>		<b>ADA STATIONS PROGRAM (ADASP)</b>		<b>RECOMMENDED SITE PHASING AND STAGING PLAN - PHASE 2</b>		<b>G004</b>	
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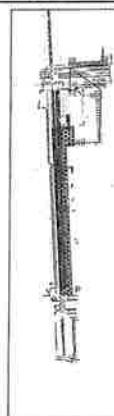




SECTION VIEW



CIVIL SITE CONSTRUCTION - LAYOUT PLAN



\_\_\_\_\_

 <p><b>AMTRAK</b></p> <p><small>The service is provided by, and is the only authorized service of the National Railroad Passenger Corporation. Amtrak is a trademark of the National Railroad Passenger Corporation. All other trademarks are the property of their respective owners. © 2004 National Railroad Passenger Corporation. All rights reserved.</small></p>		<p>Office of Chief Engineer</p> <p>National Railroad Passenger Corporation 300 North Capitol, Washington, D.C. 20541</p>		<p>North Dakota Fargo (FAR) ADA Stations Program (ADASP)</p>		<p>Project Code: 64281 DBR: 141-000000 Contract No.: 141-02-12</p>	
<p>1. <b>INTENT OF CONTRACT</b></p> <p>2. <b>SCOPE OF WORK</b></p> <p>3. <b>CONTRACT VALUE</b></p> <p>4. <b>CONTRACT DATE</b></p> <p>5. <b>CONTRACT NO.</b></p>		<p>1. <b>DATE OF CONTRACT</b></p> <p>2. <b>DATE OF WORK</b></p> <p>3. <b>DATE OF COMPLETION</b></p> <p>4. <b>DATE OF PAYMENT</b></p> <p>5. <b>DATE OF SIGNATURE</b></p>		<p>1. <b>DATE OF CONTRACT</b></p> <p>2. <b>DATE OF WORK</b></p> <p>3. <b>DATE OF COMPLETION</b></p> <p>4. <b>DATE OF PAYMENT</b></p> <p>5. <b>DATE OF SIGNATURE</b></p>		<p>1. <b>DATE OF CONTRACT</b></p> <p>2. <b>DATE OF WORK</b></p> <p>3. <b>DATE OF COMPLETION</b></p> <p>4. <b>DATE OF PAYMENT</b></p> <p>5. <b>DATE OF SIGNATURE</b></p>	
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1. Provide strong evidence of the user's ability to perform the task.
2. Provide data to compare the user's performance in the new condition to the user's performance in the old condition.
3. Provide data to compare the user's performance in the new condition to the user's performance in the old condition.
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10. Provide data to compare the user's performance in the new condition to the user's performance in the old condition.

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E 2591045.03  
EL 905.097

**SELECTED LISTING TYPE**

ARCHITECTURAL  
SECT

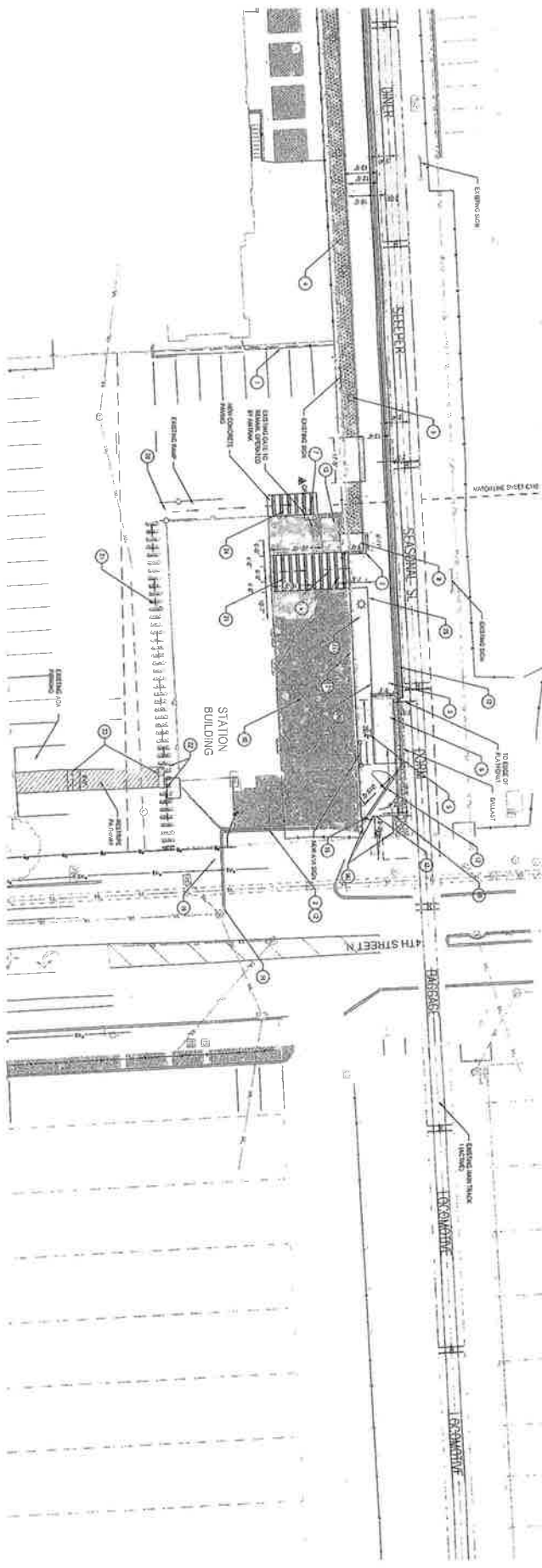
**FLOOR CONSTRUCTION**

FLOOR CONSTRUCTION  
FLOOR FINISH

ADJUST OR DELETE WALLS

WALL EXISTENCE  
# OF WALLS  
# OF WALLS  
# OF WALLS

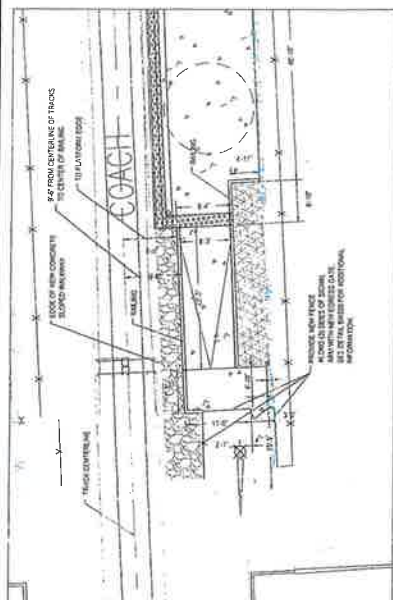
LOAD WALL

[illegible]

**CIVIL SITE CONSTRUCTION - LAYOUT PLAN**

A schematic diagram of a mechanical device for measuring impact force. It features a vertical assembly with a target at the top, a central shaft with various components, and a base with a spring and a lever arm. Labels include '1' for the target, '2' for the shaft, '3' for a spring, '4' for a lever, '5' for a weight, '6' for a scale, '7' for a support, '8' for a base, '9' for a spring, '10' for a lever, '11' for a weight, '12' for a scale, '13' for a support, '14' for a base, '15' for a spring, '16' for a lever, '17' for a weight, '18' for a scale, '19' for a support, '20' for a base, '21' for a spring, '22' for a lever, '23' for a weight, '24' for a scale, '25' for a support, '26' for a base, '27' for a spring, '28' for a lever, '29' for a weight, '30' for a scale, '31' for a support, '32' for a base, '33' for a spring, '34' for a lever, '35' for a weight, '36' for a scale, '37' for a support, '38' for a base, '39' for a spring, '40' for a lever, '41' for a weight, '42' for a scale, '43' for a support, '44' for a base, '45' for a spring, '46' for a lever, '47' for a weight, '48' for a scale, '49' for a support, '50' for a base, '51' for a spring, '52' for a lever, '53' for a weight, '54' for 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[illegible]



### 3 PLATFORM LAYOUT



FORM LAYOUT

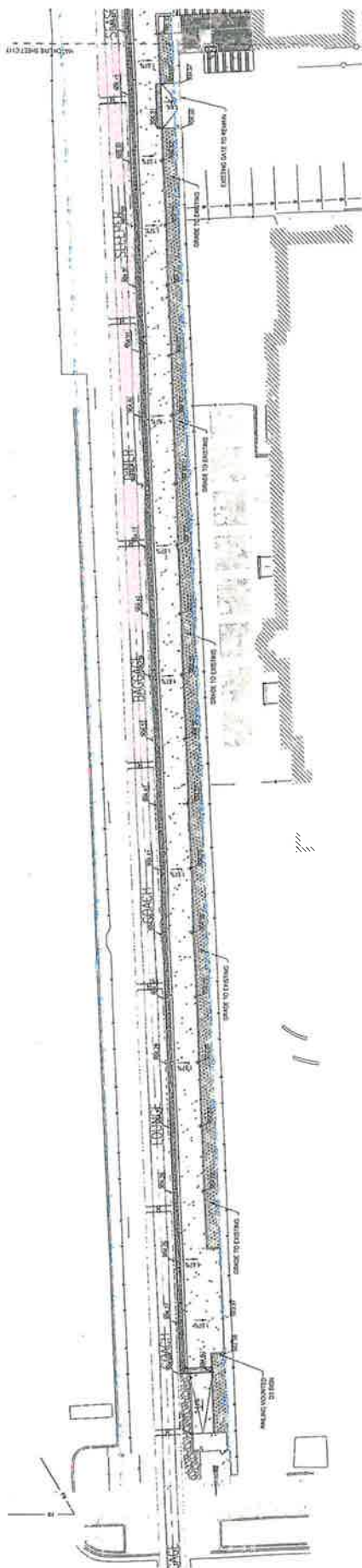
### GENERAL NOTES

- TE IN NEW ORANGE TO EXISTING SYSTEMS SHOWN. PROVIDE A 12" PLATE OF STATION ALL  
CLEARWAYS TO MATCH LOGS WITH CONCRETE WALL.
- REPLACE ALL BACK OF PLATFORMS GRATED TO EXISTING (ELEVATIONS)
- PROVIDE ADA COMPLIANT SLOPED WALKWAYS AND NEW CONCRETE  
PLATFORMS, AS SHOWN ON PLAN.
- CONSTRUCTION TO COMPLY WITH LOCAL CODES
- SLOPES SHOWN ALONG PLATFORM ARE TAKEN AT INTERVALS BETWEEN  
STREET LIGHTS. PLATFORMS (CONDITIONAL), SLOPES FOLLOW THE  
EXISTING GRADE. SLOPES ARE TO BE DETERMINED  
FROM SURVEY POINTS (SHOWN ALONG TOP OF WALL)

LEGEND:



THE COLOR FOR GENTLEMEN AND MODERNITY TRAINING MANUAL



GRADING AND DRAINAGE PLAN



Office of Chief Engineer

National Railroad Passenger Corporation  
3000 Street Station Philadelphia, Pennsylvania 19104



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	STL 981111-100000	1998-11-11	M
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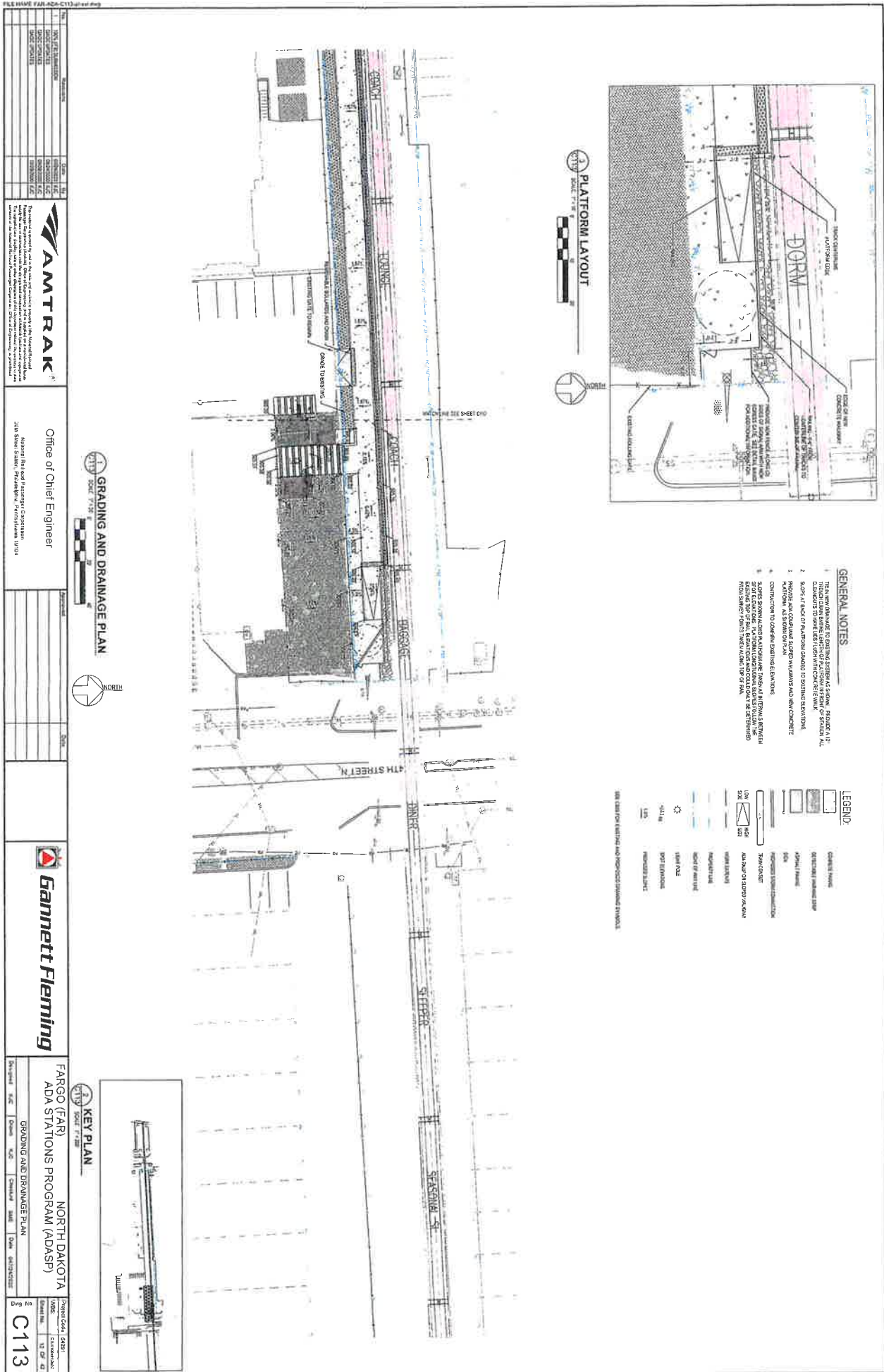
**Gannett Fleming**

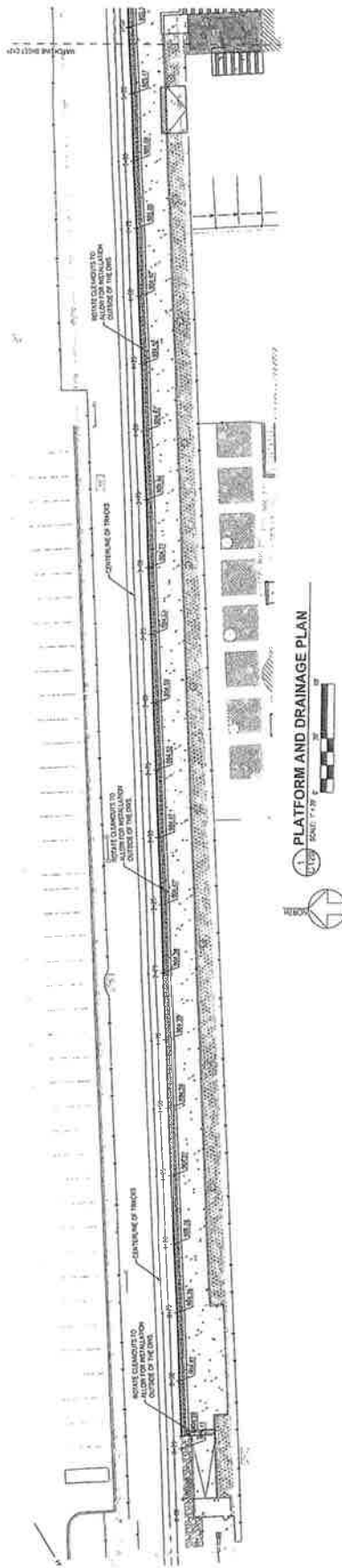


FARGO (FAR) NORTH DAKOTA  
ADA STATIONS PROGRAM (ADASP)

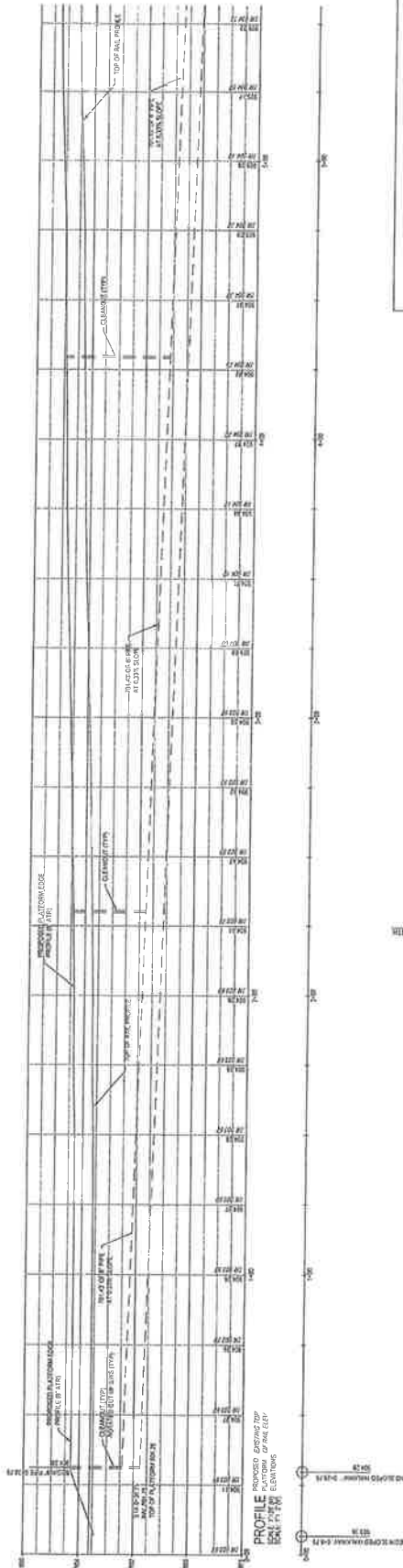
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C112





PLATFORM AND DRAINAGE PLAN  
SCALE 1/8" = 1'-0"



PLATFORM AND DRAINAGE PROFILE  
SCALE 1/8" = 1'-0"



KEY PLAN  
SCALE 1/8" = 1'-0"



**Gannett Fleming**

Office of Chief Engineer

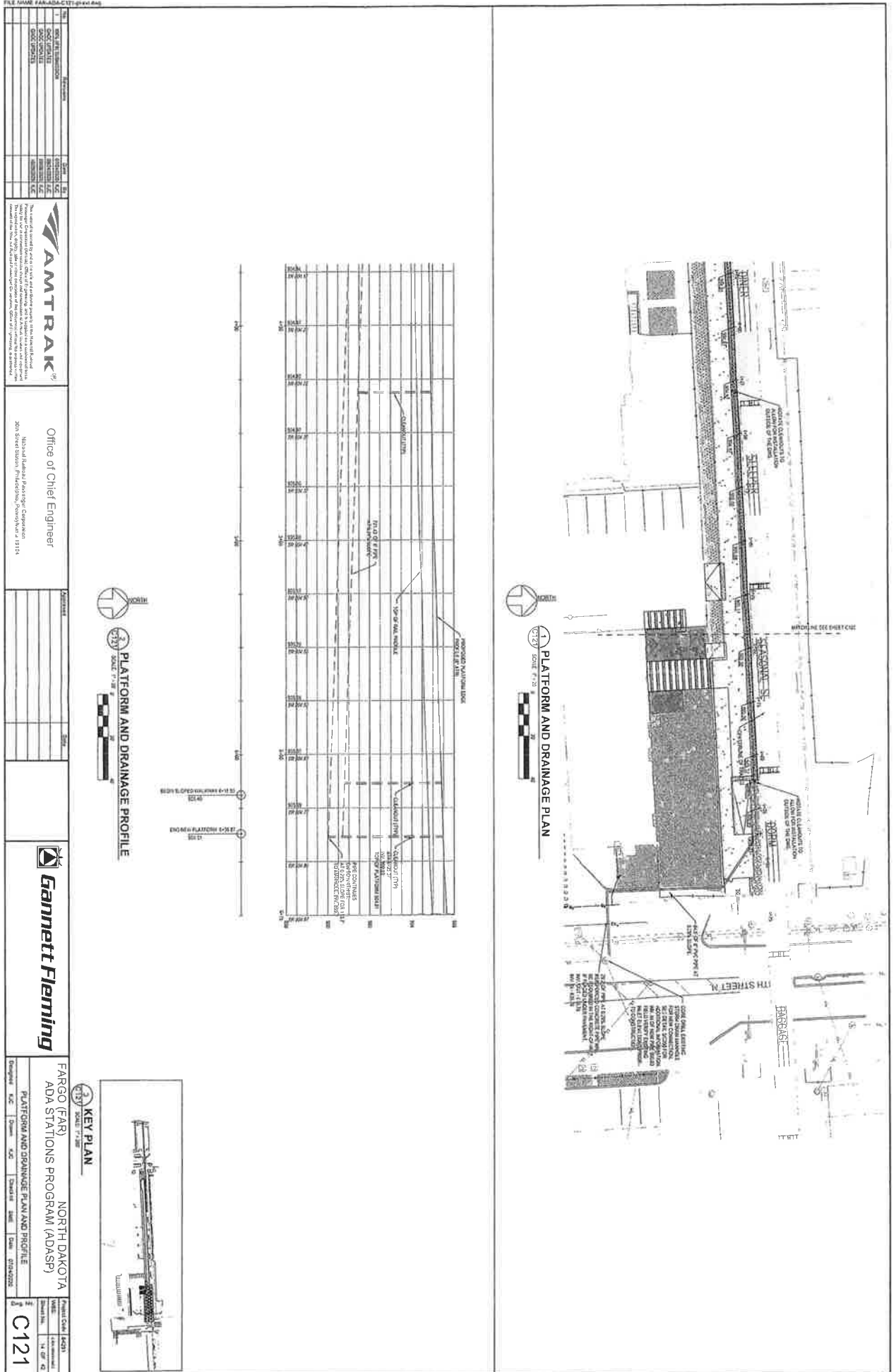
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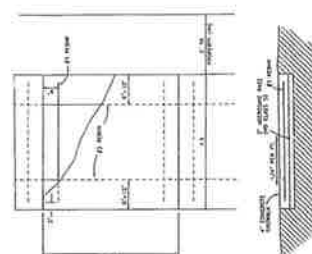
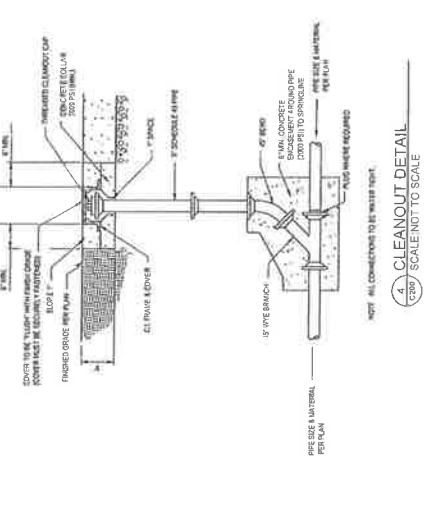
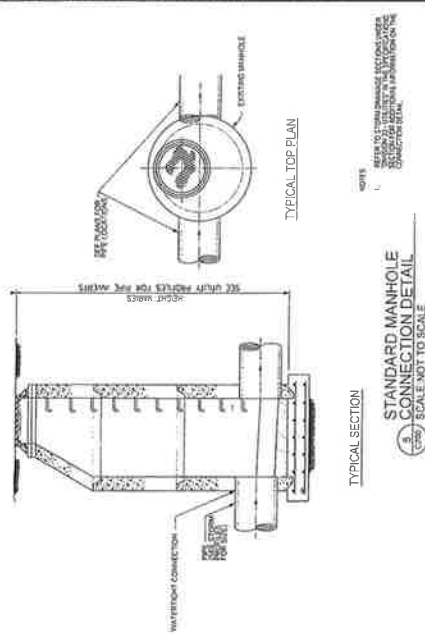
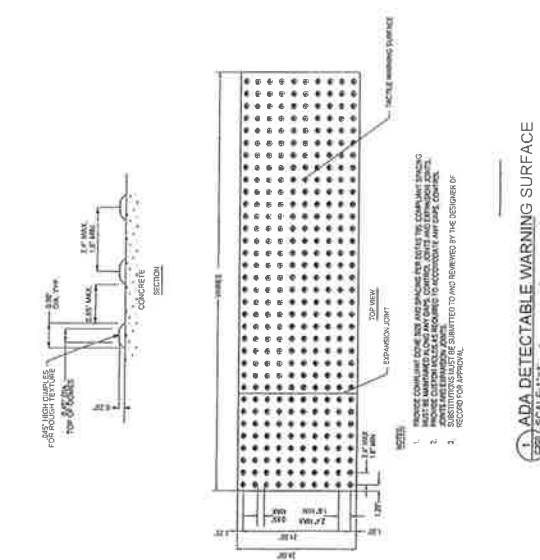
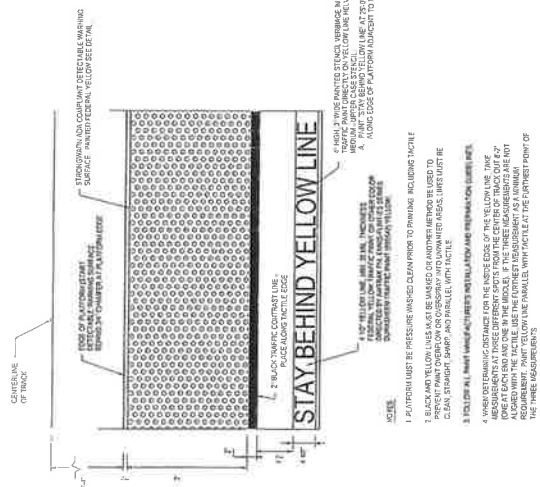


**AMTRAK**

NO.	REVISION	DATE	BY	CHKD.
1	ISSUE FOR CONSTRUCTION	10/1/00	W. J. HARRIS	W. J. HARRIS
2	ISSUE FOR CONSTRUCTION	10/1/00	W. J. HARRIS	W. J. HARRIS
3	ISSUE FOR CONSTRUCTION	10/1/00	W. J. HARRIS	W. J. HARRIS
4	ISSUE FOR CONSTRUCTION	10/1/00	W. J. HARRIS	W. J. HARRIS

Project Code	ADSP
Sheet No.	13 OF 43
Scale	AS SHOWN
Drawn	W. J. HARRIS
Checked	W. J. HARRIS
Date	10/1/00
Project Name	FARGO (FAR) NORTH DAKOTA ADA STATIONS PROGRAM (ADASP)
Platform and Drainage Plan and Profile	
Sheet No.	C120





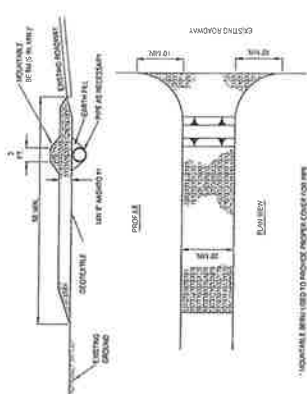
5 CITY OF FARGO SIDEWALK DETAILS  
C150 SCALE: NOT TO SCALE

STANDARD MANHOLE  
CONNECTION DETAIL  
SCALE NOT TO SCALE

4 CLEANOUT DETAIL  
200 SCALE: NOT TO SCALE

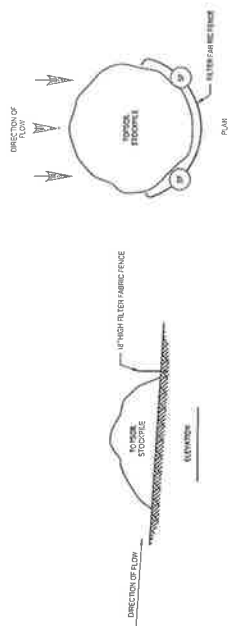
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**RESISTIVE FLOOR** IN INSTALLATION OF FLOOR CONSTRUCTION ENTRANCE. EXISTING FLOOR OVER ENTIRE WIDTH OF ENTRANCE SHALL BE REMOVED AND REPLACED WITH 4" MINIMUM THICKNESS OF PORTLAND CEMENT CONCRETE. EXISTING FLOOR CONSTRUCTION SHALL BE REBUILT PROXIMATE TO A SURFACE SEGMENT REGION, MAY BE USED TO ENTER FLOOR CONSTRUCTION.

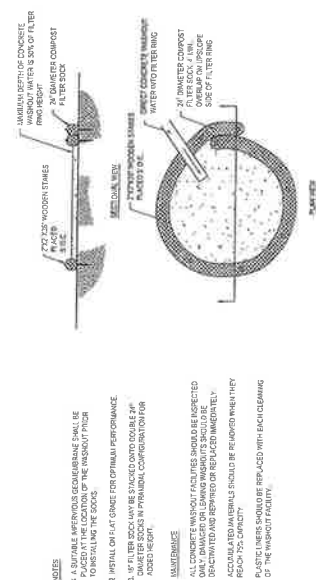
1. ROCK CONSTRUCTION ENTRANCE  
C200 SCALE NOT TO SCALE



NOTES

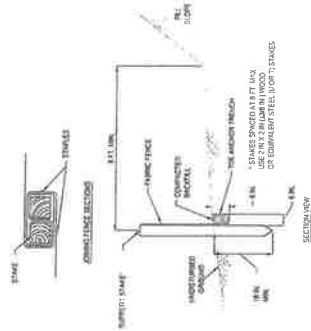
- STOCKPILE SLOPES MUST BE 2:1 OR FLATTER AND MUST NOT EXCEED 20 FEET IN HEIGHT.
- STOCKPILES TO BE STABILIZED IMMEDIATELY PER SCHEDULE OF SEEDING, MULCHING AND SOIL SUPPLEMENTS.

4 TOPSOIL STOCKPILE DETAIL  
SCALE: NOT TO SCALE



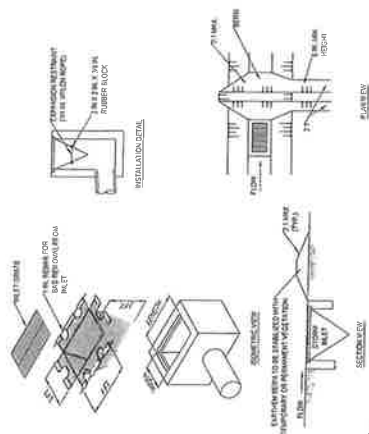
5 COMPOST SOCK WASHOUT DETAIL  
C302 SCALE NOT TO SCALE

2 STANDARD FILTER FABRIC FENCE (18" HIGH)  
SCALE NOT TO SCALE

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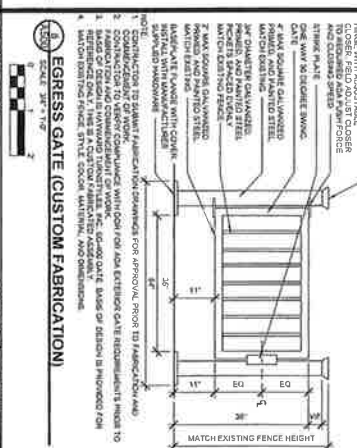
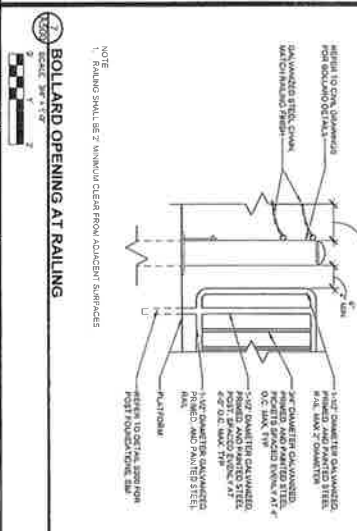
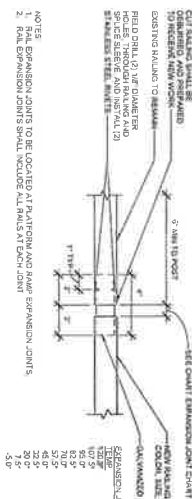
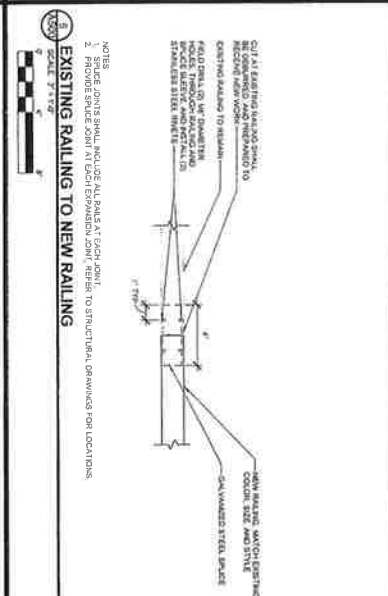
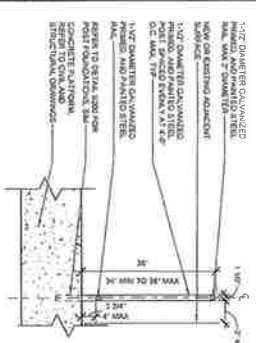
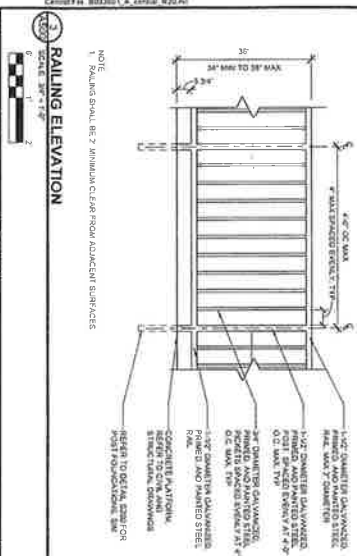
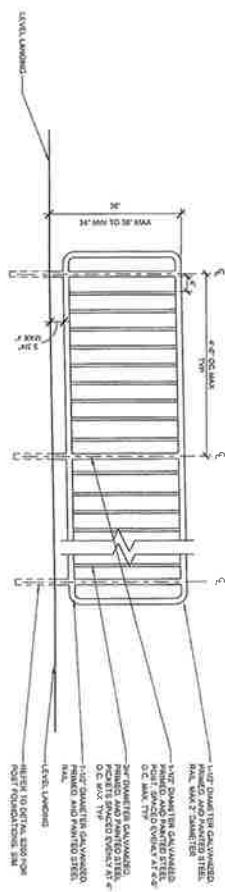
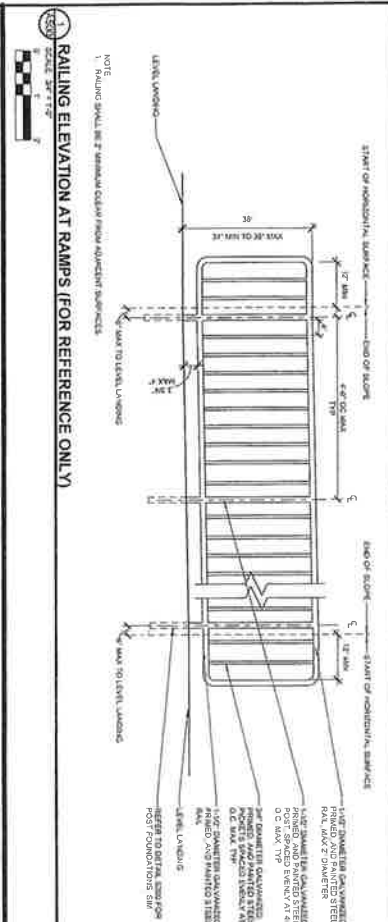
DO NOT USE ON MAJOR PAVED ROADWAYS WHERE  
OF THE INLET, EXHAUSTED OR CLOGGED BAGS MUST  
BAGS, ALL EXCESS DEBRIS SHALL BE INSTALLED  
AS ALL WASTE MUST ACCORDING TO THE PLUMBER

**3** **FILTER BAG INLET**  
C102 **SCALE NOT TO SCALE**

[illegible]

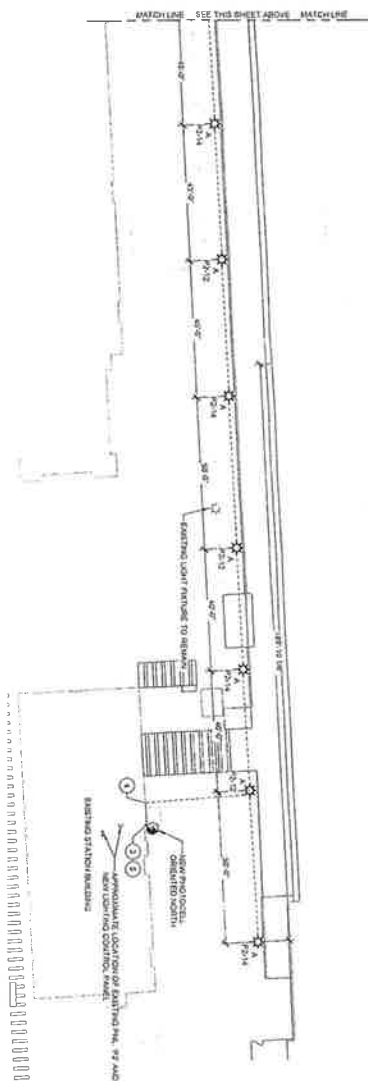
3 FILTER BAG INLET PROTECTION - TYPE 'M' INLET  
C192 SCALE: NOT TO SCALE

[illegible]



FARGO (FAR)	NORTH DAKOTA	Original Date	10/27/81
ADA STATION PROGRAM (ADASP)		Index	1 of 1
		Page No.	1 of 1
RAILING DETAILS		Sheet Title	A500
Design app	Cover type	Drawn JAL	Size 27X36X200





2 PLATFORM EAST - NEW WORK

E100 SCALE: 1" = 20'-0"



Office of Chief Engineer

4001 Street Station Philadelphia Pennsylvania 19104



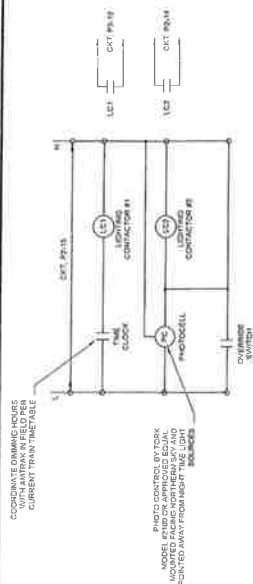
FARGO (FAR)

ADA STATIONS PROGRAM (ADASP)

ELECTRICAL SITE PLAN - NEW WORK

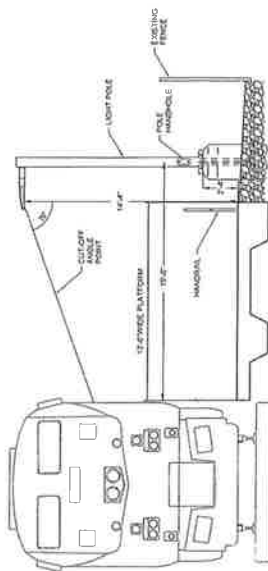
Designated Rep.	Phone (alt.)	Facsimile Cdn.	E-mail (if not design)

Engine Code	E423
WBL:	6200 series (old)
Sheet No.	25 Of 42
Dwg. No.	<b>E100</b>



## 2 LIGHTING CONTROL PANEL DETAIL

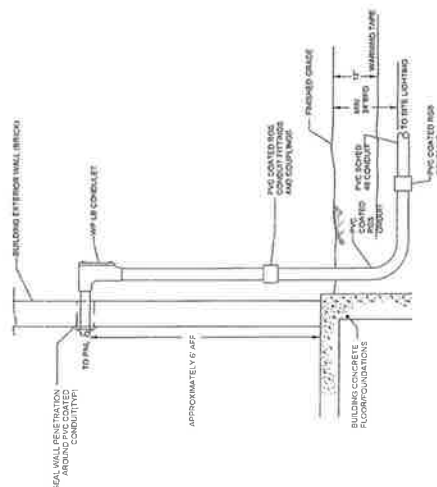
- NOTES
1. PROVIDE 07 RAISE CONTRACTS FOR EACH LIGHTING CONTRACTION
  2. ALL ELECTRICAL COMPONENTS SHOWN ARE TO BE PART OF LIGHTING CONTROL PANEL INSTALLATION UNLESS NOTED OTHERWISE



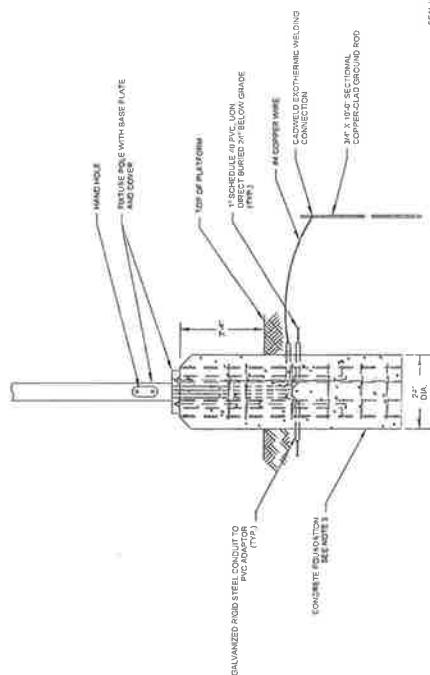
### 3 TRAIN ENVELOPE DETAIL

TYPE, BRANCH CIRCUIT NUMBER OF POLES 24 PANEL MOUNTED, SURFACE MATERIAL, 1/2" ALUMINUM MAIN BATTING, N.E.D.									
VOLTAGE, 120/240 V., 3 PHASE, 3 WIRE PANEL MOUNTED, SURFACE PANEL ENCLOSURE, IRRADIA 1									
WIRE	WIRE	BREAKING	CONDUCT	LOAD	LOAD	LOAD	LOAD	LOAD	LOAD
NO.	NO.	NO.	NO.	NO.	NO.	NO.	NO.	NO.	NO.
1	1	1	1	1	1	1	1	1	1
2	2	2	2	2	2	2	2	2	2
3	3	3	3	3	3	3	3	3	3
4	4	4	4	4	4	4	4	4	4
5	5	5	5	5	5	5	5	5	5
6	6	6	6	6	6	6	6	6	6
7	7	7	7	7	7	7	7	7	7
8	8	8	8	8	8	8	8	8	8
9	9	9	9	9	9	9	9	9	9
10	10	10	10	10	10	10	10	10	10
11	11	11	11	11	11	11	11	11	11
12	12	12	12	12	12	12	12	12	12
13	13	13	13	13	13	13	13	13	13
14	14	14	14	14	14	14	14	14	14
15	15	15	15	15	15	15	15	15	15
16	16	16	16	16	16	16	16	16	16
17	17	17	17	17	17	17	17	17	17
18	18	18	18	18	18	18	18	18	18
19	19	19	19	19	19	19	19	19	19
20	20	20	20	20	20	20	20	20	20
21	21	21	21	21	21	21	21	21	21
22	22	22	22	22	22	22	22	22	22
23	23	23	23	23	23	23	23	23	23
			TOTAL						
PANEL CONNECTED LOAD									
TOTAL									

5 PANEL SCHEDULE 'P2'

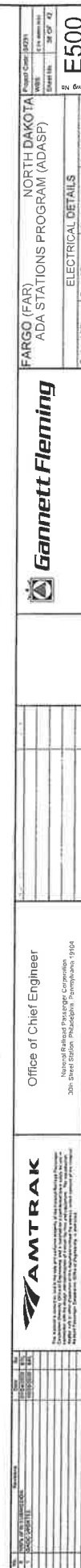


4 CONDUIT PENETRATION THROUGH EXISTING WALL



### 1 LIGHT POLE DETAIL

- NOTES.
1. COORDINATE BOLT CIRCLE AND LENGTH OF BOLT PROTRUSION FROM CONCRETE WITH POLE MANUFACTURER.
  2. CONNECT GROUND ROD TO METAL POLE AND BRANCH CIRCUIT GROUND CONDUCTOR WITH BARE #4 COPPER WIRE.
  3. SEE STRUCTURAL DRAWINGS FOR LIGHT POLE FOUNDATION AND ANCHORAGE REQUIREMENTS.



[illegible]

1 PARCEL SURVEY - WEST END  
2 PARCEL SURVEY - EAST END

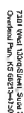
[illegible]

**LIMITED SECTOR PARTICIPATION STATEMENT:** The sponsor does not intend to identify a list of persons by whom to determine ownership or beneficial interest in any securities, rights or interests, and invites all persons who may have a beneficial interest in the securities, rights or interests to disclose such interest to the administrator of the offering. The sponsor's best estimate of the number of persons who may have a beneficial interest in the securities, rights or interests is shown in the information that has been provided to the sponsor regarding property statements. Rights or interests in the securities are being sold on a non-exclusive basis.

I HEREBY CERTIFY THAT THIS SURVEY, PLAN OR REPORT WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY REGISTERED LAND SURVEYOR UNDER THE LAWS OF THE STATE OF NORTH DAKOTA.

CLISSON - 601 P STREET, SUITE 200, LINCOLN, NEBRASKA 68508. TELEPHONE: (402) 574 6331

SOLD THIS 15<sup>TH</sup> DAY OF September 2010



**olsson**

NAME DANIEL A. THOMSON, ES  
NORTH DAKOTA REGISTERED LAND SURVEYOR NO. 55100



Section 6-11.3BN-R4B

VICINITY MAP  
Foot to Scale

Office of Chief Engineer

National Railroad Passenger Corporation  
30th Street Station, Philadelphia, Pennsylvania 19102



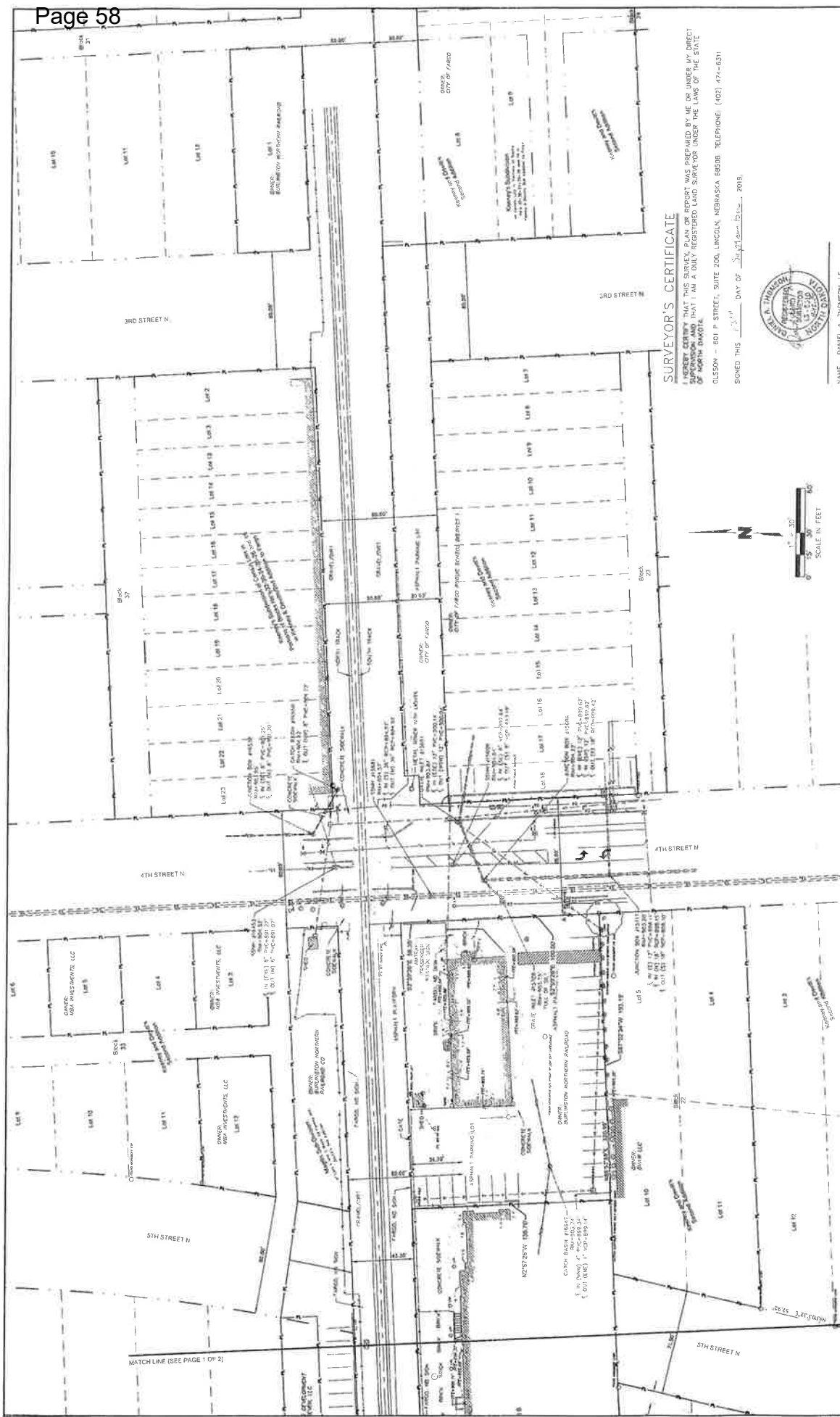
**Gannett Fleming**

FARGO (FAR) NORTH DAKOTA  
ADA STATIONS PROGRAM (ADASP)

EXISTING CONDITIONS - SURVEY			
Diameter	N.C.	Quam	Chanted

Y100





**SURVEYOR'S CERTIFICATE**

I HEREBY CERTIFY THAT THIS SURVEY, PLAN OR REPORT WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY REGISTERED LAND SURVEYOR UNDER THE LAWS OF THE STATE OF NORTH DAKOTA.

OLSSON - 601 P STREET, SUITE 200, LINCOLN, NEBRASKA 68505 TELEPHONE (402) 474-6311

SIGNED THIS 1<sup>st</sup> DAY OF September, 2019.



NAME DANIEL A. THOMSON, LS  
NORTH DAKOTA REGISTERED LAND SURVEYOR NO. 5510

FARGO (FAR) NORTH DAKOTA  
ADA STATIONS PROGRAM (ADASP)

Y101

EXISTING CONDITIONS - SURVEY

10

**Gannett Fleming**

Office of Chief Engineer

National Railroad Passenger Corporation  
1000, Great Street, Philadelphia, Pennsylvania 19104



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[illegible]

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(8)

ENGINEER'S REPORT  
OAK GROVE FLOOD RISK MANAGEMENT PROJECT

PROJECT NO. FM-19-F  
**AMENDED 3/17/2021**

**Nature & Scope**

The Oak Grove neighborhood has been identified as an area that will need permanent flood protection as a result of the Diversion Authority Plan B and the increased flow through town. Permanent levees and floodwalls will be constructed to protect the residential houses, Oak Grove School and public infrastructure for the Oak Grove neighborhood.

**Purpose**

This project has been identified as being necessary to allow the proposed 1% annual chance flood level (37-foot river gage height) to pass through Fargo, without any emergency measures, once the Fargo-Moorhead Diversion Project (Diversion) is completed. Prior to the Diversion being completed, this project will also reduce the need for emergency levees during spring flood events.

**Feasibility**

The estimated cost of construction is \$7,665,975.50.

The costs for the project are estimated as follows:

<b>Estimated Construction Cost</b>	\$ 7,665,975.50
Plus 4.00% Engineering Fee:	\$ 306,639.02
Plus 8.51% Outside Engineering Fee:	\$ 652,000.00
Plus Land Acquisition Costs:	\$ 100,000.00
Plus 10% Contingency:	\$ 766,597.55
<b>Total Estimated Cost:</b>	<b>\$ 9,491,212.07</b>

<b>Project Funding Summary</b>		
Infrastructure Sales Tax Fund 460	100.00%	\$ 9,491,212.07
<b>Total Estimated Project Cost</b>		<b>\$ 9,491,212.07</b>

We believe this project to be cost effective.



  
Tom Knakmuhs, P.E.  
Assistant City Engineer

COVER SHEET  
CITY OF FARGO PROJECTS

9-1

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

Exact, full name of Project as it will appear in the Contract:

Royal Oaks & River Drive Flood Risk Management Project

Project No. FM-19-B

Call For Bids March 22, 2021

Advertise Dates March 31, April 7 & 14, 2021

Bid Opening Date April 28, 2021

Substantial Completion Date September 15, 2021

Final Completion Date November 1, 2021

N/A PWPEC Report (**Part of 2021 CIP**)

X Engineer's Report (Attach Copy)

X Direct City Auditor to Advertise for Bids

X Bid Quantities (Attach Copy for Auditor's Office Only)

N/A Notice to Property Owners (Dan Eberhardt)

X **WIFIA (460 Fund)** Language Included

Project Engineer Rob Hasey

Phone No. (701) 476-4041

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

N/A Create District (Attach Copy of Legal Description)

N/A Order Plans & Specifications

N/A Approve Plans & Specifications

N/A Adopt Resolution of Necessity

N/A Approve Escrow Agreement (Attach Copy for Commission Office Only)

N/A Assessment Map (Attach Copy for Auditor's Office Only)

## ENGINEER'S REPORT

## ROYAL OAKS &amp; RIVER DRIVE FLOOD RISK MANAGEMENT PROJECT

PROJECT NO. FM-19-B

**Nature & Scope**

This project is for the removal of two residential structures, construction of a new earthen levee and reconstruction of a cul-de-sac in the Royal Oaks Addition located north of 37<sup>th</sup> Avenue North along the Red River. This project will also remove one residential structure on River Drive South near Kennedy Street.

**Purpose**

These projects have been identified as being necessary to allow the proposed 1% annual chance flood level (37-foot river gage height) to pass through Fargo, without any emergency measures, once the Fargo-Moorhead Diversion Project (Diversion) is completed. Prior to the Diversion being completed, this project will also reduce the need for emergency levees during spring flood events. The house on River Drive is the last remaining property along River Drive. Removing this property will allow for the completion of a continuous line of protection along River Drive from 35<sup>th</sup> Avenue South to 40<sup>th</sup> Avenue South.

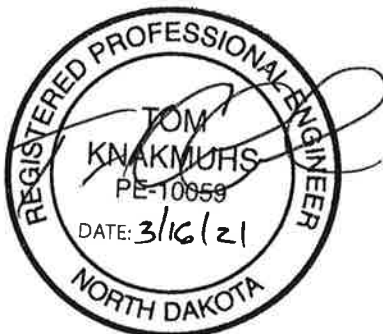
**Feasibility**

The estimated cost of construction is \$1,103,464.10. The costs for the project are estimated as follows:

<b>Estimated Construction Cost:</b>	\$ 1,103,464.10
Plus 4.00% Engineering Fee:	\$ 44,138.56
Plus 18.13% Outside Engineering Fee:	\$ 200,000.00
Plus Estimated Land Acquisition Costs:	\$ 4,550,000.00
Plus 10% Contingency:	\$ 110,346.41
<b>Total Estimated Cost:</b>	<b>\$ 6,007,949.07</b>

<b>Project Funding Summary</b>		
Infrastructure Sales Tax Fund 460:	100.00%	\$ 6,007,949.07
<b>Total Estimated Project Cost:</b>		<b>\$ 6,007,949.07</b>

We believe this project to be cost effective.



  
 Tom Knakmuhs, P.E.  
 Assistant City Engineer

COVER SHEET  
CITY OF FARGO PROJECTS

9-2

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

Exact, full name of Project as it will appear in the Contract:

Elm Circle Flood Risk Management Project

Project No. FM-19-E

Call For Bids March 22, 2021

Advertise Dates March 31, April 7 & 14, 2021

Bid Opening Date April 28, 2021

Substantial Completion Date September 15, 2021

Final Completion Date October 15, 2021

N/A PWPEC Report (**Part of 2021 CIP**)

X Engineer's Report (Attach Copy)

X Direct City Auditor to Advertise for Bids

X Bid Quantities (Attach Copy for Auditor's Office Only)

N/A Notice to Property Owners (Dan Eberhardt)

X **WIFIA (460 Fund)** Language Included

Project Engineer Rob Hasey

Phone No. (701) 476-4041

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

N/A Create District (Attach Copy of Legal Description)

N/A Order Plans & Specifications

N/A Approve Plans & Specifications

N/A Adopt Resolution of Necessity

N/A Approve Escrow Agreement (Attach Copy for Commission Office Only)

N/A Assessment Map (Attach Copy for Auditor's Office Only)

ENGINEER'S REPORT  
ELM CIRCLE FLOOD RISK MANAGEMENT PROJECT  
PROJECT NO. FM-19-E

**Nature & Scope**

This project is for the construction of a new earthen levee along the north side of Elm Circle and relocation of the asphalt road into Trefoil Park.

**Purpose**

This project has been identified as being necessary to allow the proposed 1% annual chance flood level (37-foot river gage height) to pass through Fargo, without any emergency measures, once the Fargo-Moorhead Diversion Project (Diversion) is completed. Prior to the Diversion being completed, this project will also reduce the need for emergency levees during spring flood events.

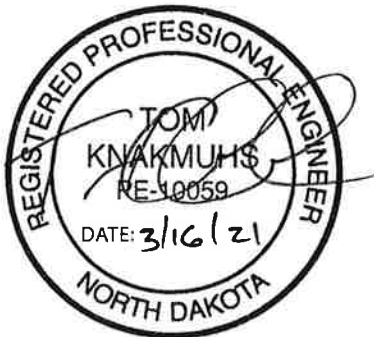
**Feasibility**

The estimated cost of construction is \$991,522.50. The costs for the project are estimated as follows:

<b>Estimated Construction Cost:</b>	\$ 991,522.50
Plus 4.00% Engineering Fee:	\$ 39,660.90
Plus 22.70% Outside Engineering Fee:	\$ 225,000.00
Plus Estimated Land Acquisition Costs:	\$ 900,000.00
Plus 10% Contingency:	\$ 99,152.25
<b>Total Estimated Cost:</b>	<b>\$ 2,255,335.65</b>

<b>Project Funding Summary</b>		
Infrastructure Sales Tax Fund 460:	100.00%	\$ 2,255,335.65
<b>Total Estimated Project Cost:</b>		<b>\$ 2,255,335.65</b>

We believe this project to be cost effective.



  
Tom Knakmuhs, P.E.  
Assistant City Engineer



(10)

## MEMORANDUM

**TO:** BOARD OF CITY COMMISSIONERS

**FROM:** DESI FLEMING ~~✗~~  
DIRECTOR OF PUBLIC HEALTH

**DATE:** MARCH 10, 2021

**RE:** CONTRACT WITH FIRST CENTER SOUTH, LLC

The attached contract is for the use of a property at 3051 25<sup>th</sup> St S, Suite K, in Fargo. This site will be used by Fargo Cass Public Health to administer COVID-19 testing. The contract will last until June 30<sup>th</sup>, 2021. The rent is \$6,000 a month and the first month is pro-rated for \$3,677.45.

There are no budget adjustments for this contract.

**Suggested Motion:**

Move to approve the lease agreement with First Center South, LLC

DF/lls  
Enclosures

## LEASE

**THIS LEASE** ("Lease") is made as of March 10, 2021, by and between First Center South, LLC a Delaware Limited Liability Company ("Landlord") and Fargo Cass Public Health ("Tenant").

1. **Demise of Leased Premises.** Landlord, in consideration of the rents, covenants and agreements to be paid and performed by Tenant, leases to Tenant and Tenant leases from Landlord that certain portions real estate located at 3051 25<sup>th</sup> St S., Suite K, Fargo, ND 58103 (the "Land"), certain portions of the building designed for the occupancy of more than one tenant and commonly known as First Center South (the "Building"). The fixtures and equipment located in the Building as identified as the "Equipment". The Building and Equipment are collectively referred to in this Lease as the "Improvements". The portion of the Building and Land leased by Tenant is referred to in this Lease as the "Leased Premises" and consists of 3,650 square feet. The Leased Premises are depicted on Exhibit A attached hereto an incorporated herein by reference. The Leased Premises are located within the Building and Tenant acknowledges that the Building contains areas intended for the use in common by all occupants of the Building. As long as Tenant occupies the Leased Premises, Tenant and its employees, agents, and invitees shall have the right to use, in common with Landlord, its successors, assigns and other Tenants, all of the common areas, except for areas reserved for the exclusive use of Landlord or other tenants or occupants of the Building.

2. **Title and Condition.** The Leased Premises are leased subject to (a) all title matters of public record, (b) all encroachments on or over any street or adjoining property, (c) any state of facts which an accurate survey or physical inspection might show, (d) all zoning and building regulations, restrictions, rules and ordinances, (e) all federal, state, county, municipal and other statutes, charters, laws, rules, orders, regulations and ordinances now in effect or hereafter adopted by any governmental authority having or acquiring jurisdiction (collectively, "Laws"), and (f) to the present state and condition of the Leased Premises (the "Permitted Encumbrances"). Landlord represents and warrants to Tenant that the Permitted Encumbrances will not materially interfere with the Tenant's contemplated use and occupation of the Building or ingress and egress to the Leased Premises.

3. **Use of Leased Premises.**

3.1 **Generally.** To be used as a Covid Testing Site. Except as hereinabove provided for, no other products/services shall be sold/delivered from the Premises and the Premises shall be used for no other purpose whatsoever. Tenant shall not, in any manner, deface any part of the Leased Premises. Tenant shall not use or occupy the Leased Premises or permit the Leased Premises to be used or occupied in a manner which would violate any certificate of occupancy affecting the Leased Premises, or would cause structural injury to the Improvements, or would cause the value or usefulness of any part of the Leased Premises to diminish in any material respect.

3.2 **Compliance with Law.** Tenant shall, at its sole cost and expense, comply with (a) all Laws affecting the Leased Premises and the occupancy, operation or use of the Leased

Premises as required by this Lease. To the extent Landlord is responsible for any obligations related to the Leased Premises, Landlord shall at its sole cost and expense comply with all Law affecting the Leased Premises as required by this Lease.,

- 3.3 **Tenant's Business.** Tenant shall observe and comply with all conditions and requirements necessary to conduct Tenant's business operations upon the Leased Premises, including any and all rights, licenses, permits (including but not limited to zoning variances, special exemptions and nonconforming uses), privileges, franchises and concessions which may be applicable to the Leased Premises. Tenant shall, at its sole cost and expense, procure any and all necessary permits, certificates, licenses or other authorizations required for its use of the Leased Premises. If the owner of the Leased Premises is required by law to join in any such application, Landlord shall allow any applications for such permits, certificates, or other authorizations to be made in Landlord's name and shall execute any documents required in connection with such applications promptly on request and shall otherwise cooperate fully with Tenant in connection with such applications.

4. **Term.**

- 4.1 **Delivery Date:** The date that the Landlord is estimated to give possession of the Leased Premises to Tenant is March 9, 2021.
- 4.2 **Initial Term and Commencement Date.** Subject to the terms, covenants, agreements and conditions contained in this Lease, Tenant shall have and hold the Leased Premises for an initial term (the "Initial Term") of 109 days, or from March 13, 2021-June 30<sup>th</sup>, 2021. Commencing on March 13, 2021 (the "Commencement Date"). This Lease shall terminate at 11:59 p.m. on a date which is June 30, 2021 after the Commencement Date (the "Termination Date"), unless the Initial Term is extended for an additional term as set forth herein.
- 4.3 **Additional Terms.** Tenant may, at its option, elect to extend this Lease for additional term (the "Additional Term"). In order to exercise this option, Tenant shall deliver notice in writing of its election to Landlord at least 45 days prior to the expiration of the Initial Term or the then current Additional Term as the case may be. Such exercise shall not be valid or effective if, as of the date of such election, Tenant is in default under the terms of this Lease. The Additional Term shall be governed by the terms and conditions of this Lease, subject to any increases in rent as set forth herein. Any reference to "Term" herein shall mean the Initial Term and the Additional Term (if Tenants elects the Additional Term).
- 4.4 **Non-Terminability.** Except as otherwise expressly provided in this Lease or as may be allowed by applicable law in the case of a Landlord default, Tenant shall not have any right to terminate this Lease or be entitled to the abatement or any reduction of rent. Landlord to provide a 45 day written termination notice to current Tenant should a new tenant for the space be secured.

5. **Rent.**

- 5.1 **Base Rent.** Tenant covenants to pay to Landlord, at such place or to such person as Landlord from time to time may designate in writing, a Monthly Base Rent on a monthly basis for the Leased Premises during the Term, the amounts set forth in the rent schedule (the "Rent Schedule") attached as **Exhibit C** hereto and incorporated herein by reference. Monthly Base Rent shall be paid in advance on the first (1st) day of the month commencing on the Commencement Date.
- 5.2 **Base Rent for Additional Term.** If Tenant elects one or both of the Additional Term, the Monthly Base Rent for the Additional Term shall be that set forth in the Rent Schedule.
- 5.3 **Net Lease.** Intentionally deleted.
- 5.4 **Additional Rent.** Intentionally deleted.
- 5.5 **Taxes.** Intentionally deleted.
- 5.5.1.1 **Tenant's Payment of Taxes** Intentionally deleted.
- 5.5.1.2 **Landlord's Taxes.** Intentionally deleted.
- 5.5.2 **Utilities.** To be paid by Landlord.
- 5.5.3 **Proof of Payment.** Tenant shall deliver to Landlord proof of payment of any tax, assessment, and other governmental or similar charge which is payable by Tenant as provided in this Section 5, which proof shall be delivered to Landlord promptly after payment is made by Tenant.
- 5.5.4 **Late Payment; Non-Payment.** Tenant shall also pay or discharge every fine, penalty, interest and cost which may be added for non-payment or late payment of such Additional Rent. If Tenant fails to pay or discharge any such Additional Rent, Landlord shall have all rights, powers and remedies provided in this Lease, by Law, equity, or otherwise in the case of non-payment of the Base Rent. Tenant will also pay to Landlord, on demand, as Additional Rent, interest at the lesser of the rate of ten percent (10%) per annum or the highest rate permitted by law (the "Default Rate") on all overdue installments of Base Rent and amounts of Additional Rent from the dates the same are due until paid in full.
- 5.5.5 **Payment by Landlord.** If Tenant defaults in the payment of any of the charges described in this Section 6 for five (5) calendar days after such charges are due, Landlord may pay the same and the amount so paid, with interest at the Default Rate, shall be deemed Additional Rent immediately payable by Tenant to Landlord on demand. Payment by Landlord of any such charges shall not be deemed to waive or release Tenant's default or the right of Landlord, at

Landlord's election, to recover possession of the Leased Premises by reason of such default as provided in this Lease.

5.6 **Tenant's Proportionate Share.** "Tenant's Proportionate Share" shall mean a fraction, the numerator of which is the total leasable area of the Leased Premises, and the denominator of which is the total leasable area of Landlord's Building, as determined by Landlord from time to time. Prior to the Commencement Date and after Landlord constructs the demising wall, Landlord shall calculate Tenant's Proportionate Share.

5.7 **Payment of Additional Rent.** Intentionally deleted.

5.8 **Limitation on Additional Rent.** Intentionally deleted.

6. **Security Deposit.** Upon full execution of this Lease, Tenant shall pay to and deposit with Landlord a security deposit in the amount of \$8,000.00 ("Security Deposit") as security for Tenant's performance of its obligations under this Lease. Landlord and Tenant agree that the Security Deposit may be commingled with other funds of Landlord and Landlord shall have no obligation or liability for payment of interest on such Security Deposit. If Tenant fails to pay Base Rent, Additional Rent or any other amount when due, or fails to perform any of the terms hereof, Landlord may use all or any portion of the Security Deposit for amounts then due and unpaid, for payment of any amount for which Landlord has become obligated as a result of Tenant's default, and for any loss sustained by Landlord as a result of Tenant's default. Landlord may use this deposit without prejudice to any other remedy Landlord may have. If Landlord uses any of the Security Deposit, Tenant shall, within ten (10) days after written demand, therefore, restore the Security Deposit to the full amount originally deposited; Tenant's failure to do so shall constitute an act of default hereunder and Landlord shall have the right to exercise any remedy provided for in this Lease. Within thirty (30) days after Tenant has vacated the Leased Premises, and provided Tenant is not then in default on any of its obligations hereunder, Landlord shall return the Security Deposit to Tenant. If Landlord sells its interest in the Premises, Landlord may deliver the Security Deposit to the purchaser of Landlord's interest and thereupon be relieved of any further liability or obligation with respect to the Security Deposit.

7. **Landlord work and Tenant's work:**

7.1 **Landlord's Work.** Landlord shall deliver the Leased Premises to Tenant in its "AS-IS" "WHERE-IS" condition. Landlord shall not be obligated to perform any improvements to the Leased Premises as a condition of the Lease.

7.2 **Tenant's Work.** Tenant shall accept the Leased Premises "as is". Tenant shall construct and install interior improvements (hereinafter referred to as "Leasehold Improvements") in the Leased Premises in accordance with Tenant's Plans and Specifications to be attached hereto as Exhibit I, and pursuant to the terms and conditions of Exhibit I of this Lease. Within thirty (30) days of the Effective Date, Tenant shall, at its expense, prepare and submit to Landlord, for Landlord's review and written approval, two (2) original and complete sets of proposed Plans and Specifications for all improvements to be completed on the Leased Premises by Tenant which shall include, but is not limited to, any additional construction required as a result of the Authorized Business, all trade fixtures and decorating, including wall and floor covering and exterior signage ("Tenant's Work"), which once finalized and approved by Landlord pursuant to the terms of this subsection, will be attached hereto and incorporated herein as Exhibit I. Tenant shall be responsible for selecting the architect(s) to complete the Tenant's Work. Tenant shall also be responsible for any costs associated with Tenant's Work. Tenant shall be responsible for completing Tenant's Work on or before the Commencement Date, which date shall be delayed if Landlord's Work is not complete. Tenant shall also install its furniture, fixtures and equipment as per Tenant's Plans and Specifications as identified on Exhibit I.

Once approved in writing by Landlord and Tenant, the Plans and Specifications shall be attached hereto as Exhibit I and shall not be modified or amended without the prior written consent of Landlord and Tenant, which consent both parties agree to give reasonably, and Tenant shall thereupon proceed diligently to construct Tenant's Work in accordance with the Plans and Specifications and in accordance with Exhibit I.

7.3 **Tenant Improvement Allowance.** Intentionally deleted.

8. **Liens.** Tenant will not create or permit to be created or to remain, and will discharge any lien, encumbrance or charge (other than a lien, encumbrance or charge created by Landlord) upon all or any part of the Leased Premises or upon Tenant's leasehold interest in the Leased Premises. Nothing contained in this Lease shall be construed as constituting the consent or request of Landlord, expressed or implied, by inference or otherwise, to any contractor, subcontractor, laborer or materialman for performance of any labor or services or the furnishing of any materials for any improvement, alteration, addition or repair of or to all or any part of the Leased Premises.

9. **Indemnification.** To the fullest extent permitted by Law, Tenant agrees to pay and protect, indemnify, defend and hold Landlord harmless from and against, any and all liabilities, damages, costs, expenses (including any and all attorneys' fees and expenses of Tenant and any and all attorneys' fees and expenses of Landlord), causes of action, suits, claims, demands or judgments of any nature whatsoever arising from (a) any work or thing done during the Term in, on or about the Leased Premises, (b) injury to, or the death of, persons or damage to property during the Term on the Leased Premises or upon adjoining sidewalks connected with the use, conditions, possession, operation, maintenance, management or occupation of the Leased Premises or resulting from the condition of the Leased Premises or of adjoining sidewalks, (c) any negligence on the part of Tenant or any of its agents, contractors, servants, employees, licensees or invitees, and (d) violation of any agreement or condition of this Lease or of Laws affecting the Leased Premises, or the ownership, use or occupancy of the Leased Premises.

10. **Maintenance and Repair.**

10.1 **Acceptance by Tenant.** Landlord represents to Tenant that, to Landlord's

knowledge, no violations of municipal codes exist with respect to the Leased Premises. Upon delivery of the Leased Premises to Tenant, Landlord represents and warrants that Landlord has completed all of Landlord's Work has been completed in a good and workmanlike manner according to the plans and specifications provided to Tenant.

10.2 **Tenant's Maintenance Obligations.** Intentionally deleted.

10.3 **Maintenance of Public Areas.** Tenant shall put, keep and maintain all portions of the Leased Premises and the sidewalks, curbs and passageways adjoining the same in a clean and orderly condition, free of dirt, rubbish, snow, ice and unlawful obstructions.

10.4 **Failure to Maintain.** If Tenant fails to comply with the provisions of this Section 9, Landlord may give Tenant written notice of such failure to comply, specifying the maintenance or repairs to be made by Tenant. If the maintenance or repairs are not completed by Tenant within thirty (30) days after said notice, Landlord may have the work done at Tenant's expense, and the cost of the same shall become Additional Rent payable by Tenant to Landlord upon written demand from Landlord. Notwithstanding the foregoing, if the maintenance or repair is not susceptible of cure within thirty (30) days or if any cause beyond Tenant's reasonable control (except for payments to be made by Tenant) delays Tenant's completion of the maintenance or repair, said thirty (30) day period shall be extended by the length of the delay so long as Tenant has commenced the cure within said thirty (30) day period and diligently prosecutes the same thereafter.

10.5 **Landlord's Repair Obligations.** Notwithstanding the provisions of Section 9.2 above, Landlord shall at, its expense, repair and maintain all of the structural elements of the Leased Premises, including the roof, the roof covering, the foundation, and all bearing and exterior walls, except that Tenant, and not Landlord, shall be responsible for the cost of any of the repairs of the aforementioned structural elements necessitated by Tenant's negligence, willful misconduct or failure to act in the manner otherwise required by this Lease. Landlord shall maintain the exterior and structural portions of the Building in good order, condition and repair, and in compliance with all Governmental Regulations. Except as specifically set forth in this Section 9.5 or as otherwise set forth in this Lease, Landlord shall have no other repair, maintenance or restoration obligations with respect to the Leased Premises.

- 10.6 **Alterations and Additions.** Except for Tenant's Work and nonstructural interior alterations costing Ten Thousand Dollars (\$10,000) or less in the aggregate during any given twelve (12) month period, Tenant may, at any time and from time to time during the term of this Lease and at its sole cost and expense, make additions to or alterations, substitutions, removals or replacements of the Improvements ("Alterations") provided, however, that (a) the total market value of the Leased Premises shall not be lessened by reason of any such Alteration, (b) any Alterations shall be done in a good and workmanlike manner, (c) all such Alterations shall be expeditiously completed and in compliance with all applicable Laws, (d) the nature, scope and effect of the Alterations shall be subject to Landlord's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed, but which consent may be conditioned upon Tenant removing the proposed Alteration at its expense at the expiration or termination of this Lease and restoring the Leased Premises to the condition existing prior to the Alteration, (e) the plans and specifications for all Alterations shall be submitted to Landlord for Landlord's review and approval, which approval shall not be unreasonably withheld, conditioned or delayed, (f) all Alterations shall be completed by contractors and subcontractors reasonably acceptable to Landlord and further, as a condition of the approval of Alterations, Landlord may specify which contractors and subcontractors must be used with respect to the Alterations, (g) Tenant is not in default hereunder, (h) if Tenant demonstrates to Landlord's reasonable satisfaction Tenant's source of funds and ability to pay for such Alterations and (i) Tenant posts notices for contractors, subcontractors, suppliers and others in a manner which complies with state law so as to prevent any mechanic's liens from being filed against Landlord's interest in the Leased Premises. Title to all Alterations made by Tenant, except trade fixtures, shall become the property of Landlord at the termination of this Lease. Tenant shall procure and pay for all required permits, certificates and licenses in connection with Alterations. Tenant may install a satellite dish on top of the Building provided such installation and operation complies in all respects with all applicable codes, rules and ordinances governing same.

11. **Condemnation.**

- 11.1 **Termination of Lease.** If the whole of the Leased Premises is taken under power of eminent domain or is sold to any entity having the power of eminent domain under threat of condemnation, this Lease shall terminate on the day on which the condemnor or buyer takes possession of the Leased Premises. In the event of such a taking or sale of only a part of the Leased Premises which shall substantially interfere with Tenant's use or occupancy of the Leased Premises and shall reduce the useable square footage of the Building by any amount Tenant may terminate this Lease by giving Landlord written notice not more than ten (10) days after the condemnor or buyer takes possession of the part taken or sold.

- 11.2 **Awards.** Landlord reserves all rights to the entire damage award or payment

for any taking by eminent domain. Tenant hereby grants and assigns to Landlord any right Tenant may now have or hereafter acquires to such damages and agrees to execute and deliver instruments of assignment that Landlord may reasonably request. Tenant shall, however, have the right to claim from the condemning authority all compensation that may be recoverable by Tenant for relocation and for any loss incurred by Tenant in removing Tenant's trade fixtures, furniture, equipment or personal property, or for damage to Tenant's business, loss of business, and/or loss of leasehold interest; provided, however, that Tenant may claim such damages only if they are awarded separately in the eminent domain proceeding and not as part of Landlord's award. Tenant shall make no claim against Landlord for damages for termination of its leasehold interest in the Premises, for interference with its business or for any loss resulting from a taking by eminent domain.

12. **Insurance.**

- 12.1 **Coverage.** Tenant will keep the Leased Premises insured continuously during the term of this Lease by the kinds of insurance and in the amounts set forth on Exhibit D. All insurance obtained by Tenant shall be written by companies of recognized standing which are authorized to do business in the state in which the property is located and shall name Landlord and Tenant as the insured parties, as their respective interests may appear. Every such policy shall contain an agreement by the insurer that it will not cancel the policy except upon ten (10) days' prior written notice to Landlord and that any loss shall be payable notwithstanding any act of negligence of Landlord or Tenant which might, absent such agreement, result in a forfeiture of all or part of such insurance payment. Notwithstanding the foregoing, Landlord may elect, in lieu of Tenant, to obtain any of the required insurance coverages, whereupon Tenant shall pay to Landlord the premium cost of such coverage. In the event that Landlord maintains an Insurance Escrow Account, Landlord shall cooperate to pay such insurance premiums out of the Insurance Escrow Account.
- 12.2 **Evidence of Insurance.** Tenant shall deliver to Landlord promptly after the execution and delivery of this Lease, original or duplicate policies, or certificates or binders evidencing such insurance ("Insurance Evidence"). Tenant shall deliver to Landlord, at least thirty (30) days prior to the expiration of any such insurance, additional Insurance Evidence regarding the renewal of such insurance and the payment of all required premiums. On each anniversary of the Commencement Date of this Lease, Tenant shall deliver Insurance Evidence to Landlord, to the effect that there is then in force all such insurance which is then required to be maintained by Tenant.
- 12.3 **Failure to Insure.** Should Tenant fail to effect, maintain or renew any kind of insurance required pursuant to this Section 12, or to deliver to Landlord any Insurance Evidence, Landlord may, upon ten (10) days' notice to Tenant of its intention so to do, procure such insurance, and any sums expended

shall be deemed Additional Rent payable by Tenant on demand to Landlord. Procurement by Landlord of any such insurance shall not be deemed to waive or release the default of Tenant, or the right of Landlord, at Landlord's option, to recover possession of the Leased Premises by reason of such default as provided in this Lease. Tenant covenants and agrees to pay to Landlord any and all damages which Landlord may sustain by reason of Tenant's failure to obtain and maintain such insurance, which damages shall not be limited to the amount of all required premiums.

- 12.4 **Separate Insurance.** Tenant shall not take out separate insurance concurrent in form or contributing in the event of loss with that required in this Section 12 unless Landlord is included as a named insured, with loss payable as provided in this Section 12. Tenant shall immediately notify Landlord whenever any such separate insurance is taken out and shall promptly deliver the policy or policies or certificates evidencing the same. Notwithstanding anything contained herein to the contrary, Tenant shall not be obligated to list Landlord as an insured on any policies for Tenant's Alterations, trade fixtures or other personal property of Tenant.

13. **Fire and Casualty Loss.**

- 13.1 **Repair.** If all or any part of the Leased Premises are damaged or destroyed by fire or any casualty covered by the insurance required under the provisions of Section 12, all insurance proceeds from said insurance shall be the property of Landlord (except insurance proceeds for Tenant's fixtures, equipment, personal property and Tenant's Alterations, which proceeds shall belong to Tenant). Subject to the remaining provisions of this Section 13, Landlord shall repair the Leased Premises as soon as reasonably possible and this Lease shall continue in full force and effect. Rent shall abate from the date of the casualty until the Landlord has completed its repairs to the Premises. Landlord shall have no obligation to repair or replace any of Tenant's fixtures, personal property or leasehold improvements. Landlord shall in good faith proceed with and consummate the settlement of the insurance claim.
- 13.2 **Termination.** Notwithstanding anything to the contrary contained in Section 12 of this Article, in the event the Premises shall be damaged or destroyed by casualty within one year of the Expiration Date and the cost to complete the repair and restoration is in excess of thirty percent (30%) of the full replacement cost of the Leased Premises (excluding the cost of excavations, footings and foundations), either party shall have the option to terminate the Lease by giving written notice to the other party within forty-five (45) days following the date of the casualty. Upon such termination, neither Landlord nor Tenant shall have any further rights or obligations under this Lease except for Tenant's obligation to pay Base Rent and Additional Rent through the date of such termination.
- 13.3 **Irreparable or Uninsured Damage.** If casualty renders the whole or any

material portion of the Leased Premises uninhabitable and the repair and restoration of the Leased Premises cannot reasonably be expected to be substantially completed within one hundred eighty (180) days from the date of the casualty, or if casualty renders the whole or any material portion of the Leased Premises untenable and the casualty is uninsurable under the property/casualty insurance policy required under this Section 12, or if the amount of insurance proceeds from the property/casualty insurance policy required under Section 12 does not equal or exceed the cost of repair and restoration, then Landlord, at its sole option, by written notice to Tenant within forty-five (45) days from the date of the casualty, may terminate the Lease. Rent shall be equitably abated from the date of the casualty until termination of the Lease. Any limitation on Landlord's obligation to rebuild following casualty based on the availability of insurance proceeds shall in no event be deemed to include a deficiency in insurance proceeds by reason of: (a) Landlord's failure to carry the insurance required by the Lease; or (b) the amount of any deductible.

- 13.4 **Uninsured Loss.** If at any time during the Term, the Leased Premises are damaged and such damage was caused by a casualty not covered under an insurance policy required to be maintained pursuant to Section 12, Landlord may, at Landlord's option, either (a) repair such damage as soon as reasonably possible at Landlord's expense, in which event this Lease shall continue in full force and effect, or (b) give written notice to Tenant within sixty (60) days after the date of the occurrence of such damage of Landlord's intention to terminate this Lease as of the date of the occurrence of such damage. In the event Landlord gives notice of termination pursuant to this Section 12.3, Tenant shall have the right within thirty (30) days after the receipt of such notice to give written notice to Landlord of Tenant's intention to repair such damage at Tenant's sole cost and expense, without reimbursement from Landlord, in which event this Lease shall continue in full force and effect, and Tenant shall proceed to make such repairs as soon as reasonably possible. If Tenant does not give such notice within such thirty (30) days, this Lease shall terminate as of the date of the occurrence of such damage.

14. **Assignment and Subletting.** Tenant shall not assign or in any manner transfer or encumber this Lease or the Leased Premises or any interest in or of the same, nor sublet all or any part of the Leased Premises, nor permit occupancy by anyone with, through or under it, without the prior written consent of Landlord which consent shall not be unreasonably withheld. Notwithstanding the foregoing, Landlord shall not be deemed to have unreasonably withheld its consent if Landlord insists that any such assignee have equal or greater financial strength than Tenant. Consent by Landlord to one or more assignment of this Lease or to one or more subletting of the Leased Premises shall not operate as a waiver of Landlord's rights under this Section 13 to any subsequent assignment or subletting. No assignment or subletting shall release Tenant or any guarantor of this Lease of any of its obligations under this Lease or be construed or taken as a waiver of any of Landlord's rights or remedies pursuant to this Lease. Notwithstanding the foregoing, provided no default exists under this Lease, Tenant may assign its interest in the Lease to a related entity in the event of a merger or sale of the entirety of Tenant's company, provide that any such purchaser agrees to assume Tenant's obligations under this Lease and that such entity has equal or greater financial strength as Tenant (a "Permitted Assignee"). Any assignment to a Permitted Assignee shall be on the condition that (a) no such assignment shall constitute a release or limitation of Tenant's liability under this Lease; (b) the Permitted Assignee shall execute such instruments reasonably requested by Landlord affirming the Permitted Assignee's obligation to pay and perform all of the obligations of Tenant hereunder and (c) the Guarantor, defined below, affirms the Guaranty provided for herein subsequent to the assignment of the Lease to the Permitted Assignee.

15. **Permitted Contests.** Tenant shall not be required to pay, discharge or remove any tax, assessment, levy, fee, charge or lien referred to in this Lease, so long as Tenant shall contest in good faith at its own expense the amount or the validity of the same by appropriate proceedings which shall operate to prevent the collection of, or realization upon, the tax, assessment, levy, fee, charge or lien so contested and the sale of all or any part of the Leased Premises to satisfy the same. Pending any such proceedings, Landlord shall not have the right to pay, remove, or cause to be discharged the tax, assessment, levy, fee, charge or lien being contested. In the event of such contest, Tenant shall furnish reasonable security as may be required by Landlord to insure payment and prevent any sale, foreclosure or forfeiture of the Leased Premises by reason of such contest. Tenant further agrees that (a) such contest shall be prosecuted to a final conclusion diligently, (b) Tenant will pay and hold Landlord harmless against any and all losses, judgments, decrees and costs (including all attorneys' fees and expenses) in connection with the same, and (c) Tenant will, promptly after the final determination of such contest, fully pay and discharge the amounts which shall be levied, assessed, charged or imposed or be determined to be payable, together with all penalties, fines, interest, cost and expenses resulting from such contest.

16. **Default.**

16.1 **Events of Default.** Any of the following occurrences or acts shall constitute an event of default under this Lease:

16.2 **Lease Terms.** Tenant (a) fails to make payment of any installment of Base Rent or Additional Rent within ten (10) days after the date when due or (b) fails to observe or perform any of Tenant's other covenants, agreements or obligations pursuant to this Lease and fails to cure such non-monetary default within thirty (30) days after Landlord's written notice to Tenant

specifying such default or defaults;

- 16.3 **Insolvency.** Tenant or any Guarantor of this Lease files a petition in bankruptcy or is adjudicated a bankrupt or insolvent or makes an assignment for the benefit of its creditors or admits in writing its inability to pay its debts generally as they become due and such petition, adjudication, assignment or admission is not discharged or denied within thirty (30) days;
- 16.4 **Appointment.** A receiver, trustee or liquidator of all or substantially all of the property of Tenant or of the Leased Premises or of any Guarantor of this Lease is appointed in any proceeding brought by Tenant and such appointment is not discharged within thirty (30) days;
- 16.5 **Death of Guarantor; Guaranty Defaults.** Intentionally deleted.
- 15.6 **Remedies Upon Default.** Upon the occurrence of an event of default, Landlord shall have the right, at its election, then or at any time thereafter and while any such event of default shall continue, either:
- (a) To give Tenant written notice of Landlord's intention to terminate this Lease on the date such notice is given or on any later date specified therein, whereupon, on the date specified in such notice, Tenant's right to possession of the Leased Premises shall cease and this Lease shall thereupon be terminated; provided however, all of Tenant's obligations, including but not limited to, the amount of Base Rent, unamortized tenant improvements and commissions, and other obligations reserved in this Lease for the balance of the term hereof, including interest at the Default Rate, shall immediately be accelerated and due and payable, discounted by an interest rate of 5% per annum.
  - (b) To re-enter and take possession of the Leased Premises or any part thereof and repossess the same as Landlord's former estate and expel Tenant and those claiming through or under Tenant, and remove the effects of both or either, using such force for such purposes as may be reasonably necessary, without being liable for prosecution thereof, without being deemed guilty of any manner of trespass and without prejudice to any remedies for arrears of rent or preceding breach of covenants or conditions. If Landlord elects to re-enter the Leased Premises as provided in this Section 15.6(b) or if Landlord takes possession pursuant to legal proceedings or pursuant to any notice provided for by law, Landlord may, from time to time, without terminating this Lease, relet the Leased Premises or any part thereof in Landlord's or Tenant's name, but for the account of Tenant, for such term or terms (which may be greater or less than the period which would otherwise have constituted the balance of the term of this Lease) and on such conditions and upon such other terms (which may include concessions of free rent and alteration and repair of the Leased Premises) as Landlord may reasonably determine, and

Landlord may collect and receive the rents therefor. All sums received by Landlord shall be applied to all amounts owed by Tenant to Landlord under the Lease. Landlord shall in no way be responsible or liable for any failure to relet the Leased Premises or any part thereof or for any failure to collect any rent due upon such reletting. No such re-entry or taking possession of the Leased Premises by Landlord shall be construed as an election on Landlord's part to terminate this Lease unless a written notice of such intention be given to Tenant. No notice from Landlord hereunder or under a forcible entry and detainer statute or similar law shall constitute an election by Landlord to terminate this Lease unless such notice specifically so states. Landlord reserves the right following any such re-entry and/or reletting, to exercise its right to terminate this Lease by giving Tenant such written notice, in which event, this Lease will terminate as specified in said notice. Landlord shall take reasonable steps to mitigate Landlord's damages

- (c) If Landlord does not elect to terminate this Lease as permitted in Section 15.6(a) hereof, but on the contrary, elects to take possession as provided in Section 15.6(b), Tenant shall pay to Landlord (i) the rent and other sums as herein provided, which would be payable hereunder if such repossession had not occurred, less (ii) the net proceeds, if any, of any reletting of the Leased Premises after deducting all Landlord's expenses in connection with such reletting, including but without limitation, all repossession costs, brokerage commissions, legal expenses, attorneys' fees, expenses of employees, alteration and repair costs and expenses of preparation for such reletting and interest on the defaulted amount at the Default Rate. If, in connection with any reletting, the new lease term extends beyond the existing Term, or the premises covered thereby include other premises not part of the Leased Premises, a fair apportionment of the rent received from such reletting and the expenses incurred in connection therewith as provided aforesaid will be made in determining the net proceeds from such reletting. Tenant shall pay such rent and other sums to Landlord monthly on the days on which the rent would have been payable hereunder if possession had not been retaken.
- (d) Suit or suits for the recovery of the amounts and damages set forth above may be brought by Landlord, from time to time, at Landlord's election and nothing herein shall be deemed to require Landlord to await the date whereon this Lease or the term hereof would have expired had there been no such default by Tenant or no such termination, as the case may be.

- (e) After an event of default by Tenant, Landlord may sue for or otherwise collect all rents, non amortized tenant improvement and commissions, issues and profits payable under all subleases on the Leased Premises, including those past due and unpaid.
- (f) No failure by Landlord to insist upon the strict performance of any agreement, term, covenant or condition hereof or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial rent during the continuance of any such breach, shall constitute a waiver of any such breach of such agreement, term, covenant or condition. No agreement, term, covenant or condition hereof to be performed or complied with by Tenant, and no breach thereof, shall be waived, altered or modified except by written instrument executed by Landlord. No waiver of any breach shall affect or alter this Lease, but each and every agreement, term, covenant and condition hereof shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.
- (g) Nothing contained in this Paragraph shall limit or prejudice the right of Landlord to prove and obtain as liquidated damages in any bankruptcy, insolvency, receivership, reorganization or dissolution proceeding, an amount equal to the maximum allowed by any statute or rule of law governing such proceeding and in effect at the time when such damages are to be proved, whether or not such amount be greater, equal to or less than the amounts recoverable, either as damages or rent, referred to in any of the preceding provisions of this Paragraph.
- (h) Each right and remedy provided for in this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease now or hereafter existing at law or in equity or by statute or otherwise, including, but not limited to, suits for injunctive or declaratory relief and specific performance. The exercise or commencement of the exercise by Landlord of any one or more of the rights or remedies provided for in this Lease now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or subsequent exercise by Landlord of any or all other rights or remedies provided for in this Lease, or now or hereafter existing at law or in equity or by statute or otherwise. All costs incurred by Landlord in connection with collecting any amounts and damages owing by Tenant pursuant to the provisions of this Lease or to enforce any provision of this Lease, including by way of example, but not limitation, reasonable attorneys' fees from the date any such matter is turned over to an attorney, shall also be recoverable by Landlord from Tenant.

In the event that Landlord defaults under the terms and conditions of this Lease, Tenant shall be permitted to exercise all rights and remedies available at law or equity, but in no event shall Tenant be permitted to terminate this Lease.

17. **Additional Rights of Landlord and Tenant.**

- 17.1 **Enforcement Rights.** No right or remedy in this Lease conferred upon or reserved to Landlord or Tenant is intended to be exclusive of any other right or remedy, and each and every right and remedy of Landlord or Tenant shall be cumulative and in addition to any other right or remedy given Landlord or Tenant pursuant to this Lease, or now or at any time existing at law or in equity. In addition to the other remedies provided by this Lease, Landlord and Tenant shall be entitled to (a) injunctive relief in case of the violation or attempted or threatened violation of any of the covenants, agreements, conditions or provisions of this Lease, (b) a decree compelling performance of any of the covenants, agreements, conditions or provisions of this Lease, or (c) any other remedy allowed to Landlord at law or in equity.
- 17.2 **Nonwaiver.** The failure of Landlord or Tenant to insist at any time upon Tenant's strict performance of any of the covenants or agreements contained in this Lease shall not be construed as a waiver or a relinquishment of such covenants or agreements for the future. Landlord's receipt of any Base Rent or Additional Rent, with knowledge of a breach by Tenant of any covenant or agreement contained in this Lease shall not be deemed a waiver of such breach. No waiver by either party of any provision of this Lease shall be deemed to have been made unless expressed in writing and signed by the party waiving the same.
- 17.3 **Waiver of Redemption.** Tenant waives for itself and all those claiming under it, any rights which it may have under any present or future Law (a) to redeem the Leased Premises after termination of Tenant's right of occupancy by order or judgment of any court or by any legal process or writ or (b) which exempts property from liability for debt or for distress for rent. For purposes of Minnesota Statutes Section 504.02, Tenant acknowledges that the Initial Term of this Lease is fifteen (15) years and six (6) months.
- 17.4 **Attorney's Fees.** In the event of any litigation (including any counterclaim, cross-claim, or claim in a bankruptcy or receivership proceeding) for the enforcement of any of the terms and conditions of the Lease, Landlord shall be entitled to recover from Tenant all third-party costs and expenses actually incurred as a result of the litigation, including, without limitation, attorneys' fees and costs.

18. **Environmental Matters.**

**Defined Terms.**

- 18.1.1.1(a)1) "Claim" shall mean and include any demand, cause of action, proceeding or suit for any one or more of the following: 1) actual or

punitive damages, losses, injuries to person or property, damages to natural resources, fines, penalties, interest, contribution or settlement; 2) the costs of any investigations, feasibility studies, information requests, health or risk assessments, or Response (as hereinafter defined) actions; and 3) enforcing insurance, contribution or indemnification agreements.

18.1.1.1(a)2) "Environmental Laws" shall mean and include all federal, state and local statutes, ordinances, regulations and rules relating to environmental quality, health, safety, contamination and clean-up, including, without limitation, the Clean Air Act, 42 U.S.C. Section 7401 et seq.; the Clean Water Act, 33 U.S.C. Section 1251 et seq. and the Water Quality Act of 1987; the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), 7 U.S.C. Section 136 et seq.; the Marine Protection, Research, and Sanctuaries Act, 33 U.S.C., Section 1401 et seq.; the National Environmental Policy Act, 42 U.S.C. Section 4321 et seq.; the Noise Control Act, 42 U.S.C. Section 4901 et seq.; the Occupational Safety and Health Act, 29 U.S.C. Section 651 et seq.; the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. Section 6901 et seq, as amended by the Hazardous and Solid Waste Amendments of 1984; the Safe Drinking Water Act, 42 U.S.C. Section 300f et seq.; the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. Section 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act; the Emergency Planning and Community Right-to-Know Act, and Radon Gas and Indoor Air Quality Research Act; the Toxic Substances Control Act ("TSCA"), 15 U.S.C. Section 2601 et seq.; the Atomic Energy Act, 42 U.S.C. Section 2011 et seq.; the Nuclear Waste Policy Act of 1982, 42 U.S.C. Section 10101 et seq. Environmental Laws shall also include all state, regional, county, municipal and other local laws, regulations, and ordinances insofar as they are equivalent or similar to the federal laws recited above or purport to regulate Hazardous Materials (as hereinafter defined).

18.1.1.1(a)3) "Hazardous Materials" shall mean and include the following, including mixtures thereof: any hazardous substance, pollutant, contaminant, waste, by-product or constituent regulated under CERCLA; oil and petroleum products and natural gas, natural gas liquids, liquefied natural gas and synthetic gas usable for fuel, pesticides regulated under the FIFRA; asbestos and asbestos containing materials, PCBS, and other substances regulated under the TSCA; source material, special nuclear material, by-product material and any other radioactive materials or radioactive wastes, however produced, regulated under the Atomic Energy Act or the Nuclear Waste Policy Act; chemicals subject to the OSHA Hazard Communication Standard, 29 C.F.R. Section 1910.1200 et seq.; and industrial process and pollution control wastes, whether or not

hazardous within the meaning of RCRA; any substance whose nature and/or quantity or existence, use, manufacture, disposal or effect render it subject to federal, state or local regulation, investigation, remediation, or removal as potentially injurious to public health or welfare.

18.1.1.1(a)4) "Use" means to manage, generate, manufacture, process, treat, store, use, re-use, refine, recycle, reclaim, blend or burn for energy recovery, incinerate, accumulate speculatively, transport, transfer, dispose of, or abandon Hazardous Materials.

18.1.1.1(a)5) "Release" or "Released" shall mean any actual or threatened spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of Hazardous Materials into the environment, as 'environment' is defined in CERCLA.

18.1.1.1(a)6) "Response" or "Respond" shall mean action taken in compliance with Environmental Laws to correct, remove, remediate, cleanup, prevent, mitigate, monitor, evaluate, investigate, assess or abate the Release of a Hazardous Material.

18.2 **Tenant's Obligations with Respect to Environmental Matters.** During the term of this Lease, Tenant shall comply at its own cost with all Environmental Laws. Tenant shall not Use, or authorize the Use of, any Hazardous Materials on the Leased Premises, including installation of any underground storage tanks, without prior written disclosure to and approval by the Landlord. Tenant shall not take any action that would subject the Leased Premises to permit requirements under RCRA for storage, treatment or disposal of Hazardous Materials. Tenant shall not dispose of Hazardous Materials in dumpsters provided for tenant use. Tenant shall not discharge Hazardous Materials into Project drains or sewers. Tenant shall not cause or allow the Release of any Hazardous Materials on, to, or from the Project. Tenant shall arrange at its own cost for the lawful transportation and off-site disposal of all Hazardous Materials that Tenant generates.

Notwithstanding the foregoing, Tenant may use cleaning solvents, medical supplies and similar products customarily used in facilities with uses similar to those uses permitted hereunder, provided Tenant complies with all Environmental Law relating to the storage, use, transport and disposal of such products.

18.3 **Copies of Notices.** During the term of this Lease, Tenant shall provide Landlord promptly with copies of all summons, citations, directives, information inquiries or requests, notices of potential responsibility, notices of violation or deficiency, orders or decrees, Claims, complaints, investigations, judgments, letters, notices of environmental liens or Response actions in progress, and other communications, written or oral, actual or threatened, from the United States Environmental Protection

Agency, Occupational Safety and Health Administration, , or other federal, state or local agency or authority, or any other entity or individual, concerning any Release of a Hazardous Material on, to or from the Leased Premises, the imposition of any lien on the Leased Premises, or any alleged violation of or responsibility under Environmental Laws. Landlord and Landlord's beneficiaries, agents and employees shall have the right to enter the Leased Premises and conduct appropriate inspections or tests in order to determine Tenant's compliance with Environmental Laws.

- 18.4 **Tests and Reports.** Upon written request by Landlord, Tenant shall provide Landlord with the results of appropriate reports and tests, with transportation and disposal contracts for Hazardous Materials, with any permits issued under Environmental Laws, and with any other applicable documents to demonstrate that Tenant complies with all Environmental Laws relating to the Leased Premises.
- 18.5 **Tenant's Obligation to Respond.** If Tenant's Use of Hazardous Materials at the Leased Premises gives rise to liability or to a Claim under any Environmental Law, causes a significant public health effect, or creates a nuisance, Tenant shall promptly, at its expense, take all applicable action in Response.
- 18.6 **Landlord's Representations about Current Conditions.** Except as set forth in any environmental reports covering the Leased Premises in Landlord's possession or under its control (the "Existing Environmental Reports"), which Environmental Reports shall be provided to Tenant, Landlord represents and warrants to Tenant that to Landlord's actual knowledge there are currently no Hazardous Materials contained upon the Leased Premises nor are there any outstanding Claims nor have there been any Releases upon the Property prior to the date of this Lease. Landlord shall be responsible for all Hazardous Materials located upon the Leased Premises prior to the date of this Lease, including all costs of a Response to such Claims. Landlord shall indemnify, defend, and hold harmless Tenant, its beneficiaries, its lenders, any managing agents, employees and customers of the Leased Premises, and their respective agents, partners, officers, directors and employees from and against any and all Claims arising from or attributable to any breach by Landlord of any of its warranties, representations or covenants in this Article. Landlord's obligations hereunder shall survive the termination or expiration of this Lease.
- 18.7 **Indemnification.** Tenant shall indemnify, defend, and hold harmless Landlord, its beneficiaries, its lenders, any managing agents and leasing agents of the Leased Premises, and their respective agents, partners, officers, directors and employees from and against any and all Claims arising from or attributable to any breach by Tenant of any of its warranties, representations or covenants in this Article. Tenant's obligations hereunder shall survive the termination or expiration of this Lease.

19. **Service of Notice.** If at any time after the execution of this Lease it shall become necessary or convenient for one of the parties hereto to serve any notices, demand, or communication (other than the transmittal of rental checks) upon the other parties, such instrument shall be in writing signed by the party serving the same, deposited in registered or certified United States mail, return receipt requested, postage prepaid, and, if intended for Tenant, shall be addressed to:

Fargo Cass Public Health  
1240 25<sup>th</sup> St S.  
Fargo, ND 58103

and if intended for the Landlord, shall be addressed to:

Dakota UPREIT LP  
3003 32<sup>nd</sup> Ave. S.  
Suite 250  
Fargo, ND 58103

or such other address as Landlord may specify.

20. **Estoppel Certificates.** Tenant shall, at any time and from time to time, upon not less than ten (10) days prior request by Landlord, execute, acknowledge and deliver to Landlord a statement certifying (a) that this Lease is unmodified and in full force and effect, (b) the dates to which the Base Rent and Additional Rent and other charges have been paid, (c) whether or not, to the knowledge of Tenant, Landlord is in default in the performance of any covenant, condition or provision of this Lease, and (d) if so, specifying each such default of which the Tenant may have knowledge. Any such statement delivered pursuant to this Section 19 may be relied upon by any prospective purchaser or mortgagee of the Leased Premises or any assignee of such mortgagee.

21. **No Merger.** There shall be no merger of this Lease or of the leasehold estate created by this Lease with the fee estate in any part of the Leased Premises by reason of the fact that the same person may acquire or hold, directly or indirectly, this Lease or the leasehold estate created by this Lease or any interest in this Lease or in such leasehold estate as well as the fee estate in the Leased Premises or any interest in such fee estate.

22. **Surrender.** Upon the expiration or sooner termination of this Lease, Tenant shall peaceably and quietly leave, yield up and surrender the Leased Premises to Landlord in the same condition in which the Leased Premises were received from Landlord as of the Commencement Date, ordinary wear and tear excepted, but clean, orderly and free of occupants. Tenant shall remove from the Leased Premises prior to such expiration or sooner termination all property situated in or on the Leased Premises which is not owned by Landlord, and Tenant shall, at its sole cost and expense, repair any damage caused by such removal. Property not so removed shall become the property of Landlord, which may thereafter cause such property to be removed from the Leased Premises and disposed of, but the cost of any such removal shall be borne by Tenant.

23. **Separability.** Each and every covenant and agreement contained in this Lease shall be for all purposes construed to be a separate and independent covenant and agreement and the breach of any covenant or agreement contained in this Lease by Landlord shall in no way or manner discharge or relieve Tenant from Tenant's obligation to perform each and every covenant and agreement contained in this Lease. If any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected and each term and provision of this Lease shall be valid and shall be enforced to the fullest extent permitted by law.

24. **Binding Effect.** All of the covenants, conditions and obligations contained in this Lease shall be binding upon and inure to the benefit of the respective heirs, legal representatives, successors and assigns of Landlord and Tenant to the same extent as if each such successor and assign were in each case named as a party to this Lease. This Lease may not be changed, modified or discharged except by a writing signed by Landlord and Tenant.

25. **Headings and Terms.** The headings to the various Sections of this Lease have been inserted for reference only and shall not in any manner be construed as modifying, amending or affecting in any way the express terms and provisions of this Lease. The term "person" when used in this Lease shall mean any individual, corporation, partnership, firm, trust, joint venture, business association, syndicate, combination, organization or any other person or entity.

26. **Right to Inspect and Enter.** Upon reasonable prior notice, Landlord and Landlord's employees, agents and contractors shall have the right to enter the Leased Premises at any time to examine the same, to show the Premises to prospective purchasers and lenders, to make repairs, alterations, improvements or additions as Landlord may deem necessary or desirable and as otherwise allowed under the terms of the Lease. Unless Tenant has exercised its renewal option under this Lease, Landlord may display signs on the Leased Premises for sale at any time and for lease during the last one hundred twenty days of each term of this Lease. Landlord shall use reasonable efforts to minimize the disturbance or inconvenience to Tenant's business at the Premises. In the event of an emergency, no prior notice shall be required.

27. **Exculpation and Limited Liability.** The term "Landlord," as used in this Lease, shall mean only the owner or owners at the time in question of the fee title to the Leased Premises, and in the event of any transfer of such title or interest, Landlord (and in case of any subsequent transfers the then grantor) shall be relieved from and after the date of such transfer of all liability as respects Landlord's obligations thereafter to be performed, provided that any funds in the hands of Landlord, or the then grantor at the time of such transfer, in which Tenant has an interest, shall be delivered to the grantee. The obligations contained in this Lease to be performed by Landlord shall, subject as aforesaid, be binding on Landlord's successors and assigns, only during their respective periods of ownership. If any judgment is rendered against Landlord arising out of this Lease, such judgment may be satisfied only from the sale of Landlord's interest in the Property and from no other source.

28. **Exclusivity.** See Exhibit E

29. **Holding Over.** If Tenant, without Landlord's written consent, hold over after the termination of this Lease and continue to pay rent, Tenant shall become a tenant from month to month only upon each and all of the terms herein provided as may be applicable to such month to month tenancy and any such holding over shall not constitute an extension of this Lease. During such holding over, Tenant shall pay monthly rent equal to one hundred fifty percent (150%) of the last monthly rental rate and the other monetary charges as provided herein. Such tenancy shall continue until terminated by Landlord, as provided by law, or until Tenant shall have given to Landlord at least thirty (30) days written notice prior to the last day of the calendar month intended as the

30. **Subordination and Attornment.**

- (a) This Lease, and all rights of Tenant hereunder, are and shall be subject and subordinate in all respects to all present and future ground leases, overriding leases and underlying leases and/or grants of term of the Leased Premises now or hereafter existing and to all deeds of trust, mortgages and building loan agreements, including leasehold mortgages and building loan agreements, which may now or hereafter affect the Leased Premises, whether or not such deeds of trust or mortgages shall also cover other lands or buildings, to each and every advance made or hereafter to be made under such deeds of trust or mortgages, and to all renewals, modifications, replacements and extension of such leases, deeds of trust and mortgages. The provisions of this Paragraph shall be self-operative, and no further instrument of subordination shall be required. However, in confirmation of such subordination, Tenant shall promptly execute and deliver to Landlord (or such other party so designated by Landlord) at Tenant's own cost and expense, within ten (10) days after request from Landlord, an instrument, in recordable form if required, that Landlord, the lessor of any such lease or the holder of any such deed of trust or mortgage or any of their respective successors in interest or assigns may request evidencing such subordination. Failure by Tenant to comply with the requirements of this Paragraph shall be a default hereunder. Notwithstanding the foregoing, in the event that Tenant does not execute such documents as may be required to confirm the subordination set forth in this Paragraph or fails to state its objections in

writing to the form of subordination within said ten (10) day period and within seven (7) days after a second request by Landlord, Tenant hereby grants to Landlord the right to execute whatever documents are necessary to evidence such subordination. The leases to which this Lease is, at the time referred to, subject and subordinate pursuant to this Paragraph are hereinafter sometimes called "superior leases" and the deeds of trust or mortgages to which this Lease is, at the time referred to, subject and subordinate are hereinafter sometimes called "superior deeds of trust" or "superior mortgages." The lessor of a superior lease or the beneficiary of a superior deed of trust or superior mortgage or their successors in interest or assigns are hereinafter sometimes collectively referred to as a "superior party." Notwithstanding the foregoing, Tenant may condition its execution of a subordination instrument upon such superior party granting to Tenant a non-disturbance agreement in the form then being used by such superior party for such purposes, providing that Tenant, notwithstanding a default by Landlord, shall be entitled to remain in possession of the Leased Premises in accordance with the terms of this Lease for so long as Tenant shall not be in default of any term, condition or covenant of this Lease. Further, Tenant shall attorn to such superior party.

- (b) Tenant shall take no steps to terminate this Lease without giving written notice to such superior party, and a reasonable opportunity to cure (without such superior party being obligated to cure), any default on the part of Landlord under this Lease.
- (c) If holder of any superior mortgage or a ground lease, or anyone claiming by, through or under such holder, shall become the lessee under the ground lease as a result of foreclosure of such superior mortgage, or by reason of an assignment of the lessee's interest under the ground lease and the giving of a deed to the Leased Premises in lieu of foreclosure, there shall be no obligation on the part of such person succeeding to the interest of the lessee under the ground lease to comply with, observe or perform any obligations as sublessor, tenant or landlord under any superior lease.
- (d) If, in connection with the procurement, continuation or renewal of any financing for which the Leased Premises or of which the interest of the lessee therein under a superior lease represents collateral in whole or in part, a lender shall request reasonable modifications of this Lease as a condition of such financing, Tenant will not unreasonably withhold its consent thereto provided that such modifications do not increase the obligations of Tenant under this Lease or adversely affect any rights of Tenant or decrease the obligations of Landlord under this Lease.

31. **Governing Law.** This Lease shall be governed by the laws of the state in which the property resides.

32. **Guaranty.** Intentionally deleted.

33. **Signage.** Tenant may, at its expense, install the signage described and depicted on Exhibit G attached hereto and incorporated herein by reference (the "Permitted Signage"), provided Tenant obtains all required permits and licenses for the Permitted Signage. Tenant shall, at its expense remove the Permitted Signage from the Leased Premises upon the expiration or termination of this Lease and shall restore and repair the Leased Premises with respect to any damage resulting from the prior installation of the Permitted Signage.

34. **Quiet Enjoyment.** Tenant, upon fully complying with and promptly performing all of the terms and conditions of the Lease, and upon the prompt and timely payment of all amounts due, shall have quiet and peaceful possession and enjoyment of the Premises for the Lease Term, subject to the terms and conditions of the Lease, without interference by any person or entity claiming by, through or under Landlord.

35. **Tenant Representations.** Tenant represents and warrants to Landlord that, as of the date hereof, Tenant is not a party to any pending litigation, proceedings, lawsuits, administrative hearings or other activities of any nature whatsoever, an adverse determination of which would reasonably be expected to materially and adversely affect Tenant's financial condition or its ability to perform its obligations under this Lease. Tenant covenants and agrees to deliver to Landlord, promptly following the date on which this Lease is executed and thereafter promptly following receipt of a request therefor, copies of its most recent financial statements; provided, that Tenant shall not be required to deliver such financial statements more frequently than once per calendar quarter.

36. **Additional Terms and Conditions.** This Lease supersedes and replaces all prior agreements, letters of intent and other understandings regarding the subject matter of this Lease. There are no other terms of the Lease which have not been incorporated herein. This Lease may be amended only by an instrument executed by both Landlord and Tenant. This Lease may be executed in multiple counterparts, which taken together, shall constitute a single instrument.

IN AGREEMENT, the parties have caused this Lease to be executed as of the date and year first above written.

Landlord:

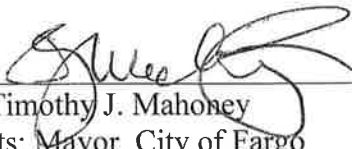
First Center South, LLC a Delaware Limited Liability  
Company

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

Tenant:

Fargo Cass Public Health

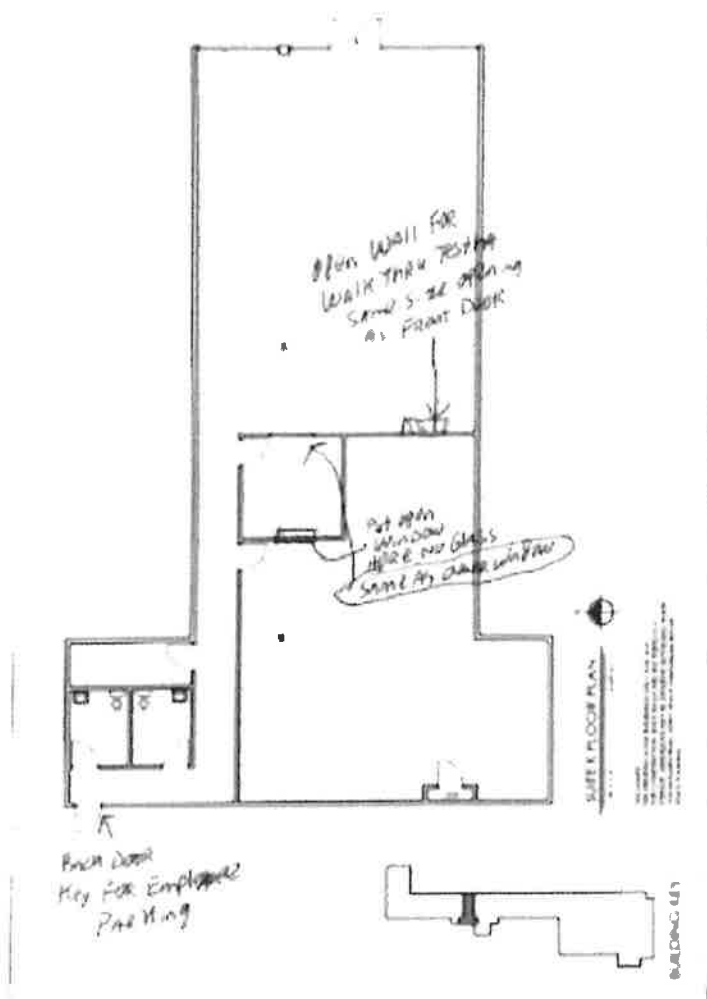
By:  \_\_\_\_\_  
Desi Fleming  
Its: Public Health Director

By:  \_\_\_\_\_  
Timothy J. Mahoney  
Its: Mayor, City of Fargo

## EXHIBIT A

Depiction of the Leased Premises

## EXHIBIT A



**EXHIBIT B**

**Landlord's Work**

Intentionally deleted.

**EXHIBIT C**

**Rent Schedule**

<b>TERM: 3 Months</b>	<b>Base Rent SF</b>	<b>Monthly Base Rent</b>
Month 1 (prorated)	\$ 19.73	\$ 3,677.45
Month 2	\$ 19.73	\$ 6,000.00
Month 3	\$ 19.73	\$ 6,000.00

## **EXHIBIT D**

### **Insurance Requirements**

1. Insurance against fire and such other hazards and risks customarily covered by the standard form of extended coverage endorsement and the risks of vandalism, malicious mischief and sprinkler leakage in an amount not less than the full replacement cost of the Improvements, and all Tenant's leasehold improvements, fixtures and personal property.
2. General public liability insurance in a single limit of not less than \$2,000,000.00 for injury or death to any one person, for injury or death for any number of persons in any one occurrence, and for damage to property, such insurance to cover the Leased Premises and all streets, alleys and sidewalks adjacent to the Leased Premises.
3. Worker's compensation insurance covering all persons employed in connection with any work done on or about the Leased Premises and with respect to which death or bodily injury claims could be asserted against the Landlord or the Leased Premises in amounts as may be required by law.

**EXHIBIT E**  
**EXCLUSIVITY**

N/A

**EXHIBIT F**  
**LEASE GUARANTY**

Intentionally deleted.

## EXHIBIT G

### PERMITTED SIGNAGE

#### SECTION I. INTENT AND PURPOSE

The Sign Criteria is intended to provide guidelines for tenant identification which will present an attractive image and compliment architectural integrity and continuity of the property. This criterion is intended to reduce clutter and provide strong, clear identification of businesses. The property shall have a consistent sign criterion governing the framework of sign plans used by each tenant to clearly and consistently identify them as part of the overall development. Of course, all signage must meet City ordinances and any other applicable regulations affecting the Premises.

#### SECTION II. SIGN APPROVAL

- A. **Landlord.** Design, content, and details of signs must be approved by the Landlord prior to fabrication and erection of signs. Although previous signage used by Tenant will be considered, it will not necessarily govern the signage to be installed at the Property.
1. Where allowed by Landlord, each Tenant is **required** to identify their premises with a sign on the exterior of the building.
  2. Tenant must submit drawings and specifications to the Landlord for all proposed sign work. The drawings shall clearly show the location of each sign on the fascia of the elevation; including graphics, color, construction, and attachment details. Full information regarding electrical load requirements is also to be included.
  3. All costs incurred in furnishing and installation of a sign and furnishing power to the sign shall be the full responsibility of the Tenant. Sign construction must be completed in compliance with the instructions specified within this criteria.
  4. Upon vacating the premises, Tenant assumes full responsibility for all costs to completely remove its signage and repair the signage area of premises to its original condition (as per city code – 60 days).
  5. All Tenant signs must be approved by Landlord, which such approval shall not be unreasonably withheld or delayed, prior to submittal for City approval.
- B. **City Approval.** Tenant shall be responsible for obtaining all City approvals and sign permits. City approval does not imply or supersede the Landlord's approval.

### SECTION III. ALLOCATED SIGN AREAS

#### A. Exterior Tenant Sign Areas.

1. Tenant's major identification shall be installed only onto Tenant's Sign Area above each primary entry, where applicable.
2. The Tenant Sign Area is not to occupy no more than 65% of the Tenant Sign Area.
3. Each Tenant is responsible for verifying maximum allowable signage for its Premises per City code.

#### B. Windows and Doors.

1. Primary Entrance. Tenant shall provide four inch (4") vinyl graphic address numerals for each Tenant's primary entry. Tenants, with prior Landlord approval, may have cut vinyl graphics of Tenant identification, surface mounted onto interior glass. All glass mounted signage to be vinyl film or adhesive vinyl.
2. Secondary Entrance. Landlord shall approve all signage used on secondary entrances.

#### C. Temporary Sign Area.

1. Temporary signs, only allowed with prior written approval from Landlord. Whereas detailed in this criteria, may be interior mounted onto glass opening, or attached to Tenant's Sign Area or as otherwise

### SECTION IV. SIGN CRITERIA

#### A. Exterior Major Identification.

1. Signs placed onto the Tenant Sign Area shall be limited to Tenant's proper name or service offered.
2. Letter style may be any type or style, upper and/or lower case letters, subject to prior written approval of Landlord, which such approval shall not be unreasonably withheld, or delayed.
3. Special logos, designs, or symbols necessary for identification of the Premises, may be permitted as part of copy, subject to prior written approval of Landlord, which such approval shall not be unreasonably withheld, or delayed, and applicable trademark law.
4. All signage to be built to U.L. codes and City codes and must carry Underwriter Laboratories labels.
5. All channel letters will be mounted to a raceway system to minimize electrical penetrations and anchoring points. Tenant signs will consist of individually illuminated aluminum/acrylic or Lexan faced letters, as specified within this criteria. Sign letters or components shall not have exposed neon or other lamps. All channel

letters will be mounted to a raceway system to minimize electrical penetrations and anchoring points.

**B. Signs Prohibited.**

1. Moving, rotating, or flashing signs.
2. Signs fabricated as a box or cabinet with translucent faces.
3. Signs employing luminous-vacuum formed type plastic letters.
4. Signs, letters, symbols or identification of any nature painted directly on exterior surface of the Premises.
5. Cloth, wood, paper, or cardboard signs, stickers, or painted signs around or on exterior surfaces (door and/or windows) or the Premises.
6. Free standing / portable signs, except as approved by Landlord and City.
7. Banners – unless approved by Landlord and mounted by approved method.
8. Roof-top signs.
9. Signs employing noise-making or air inflated devices and components.
10. Intentionally deleted. Window signs professionally made and customary to all Xfinity stores in the Minneapolis/St. Paul market.
11. Sign employing non-edged or uncapped plastic letter or letters with no returns and exposed fastenings.
12. Signs placed at right angles to any front.

**SECTION V. SIGN CONSTRUCTION SPECIFICATIONS**

**A. Illuminated Signage.** All signage must be to specifications as approved by Landlord.

1. Dimensions. All individually illuminated letters shall be a maximum height of forty-eight inches (48”), with a minimum of twenty-four inches (24”). This will depend on size of lease space. All letters on raceway system to be approved installation method (detail attached)
2. Material.
  - i. Channel Letter. All letters to be aluminum, minimum .040 returns and minimum .063 backs (.080 for larger letters.) All aluminum to be heli-arc welded, or mechanical fastened – no press type letters allowed.
  - ii. Faces to be of minimum 3/16” acrylic or polycarbonate properly fitted with a plastic trim cap or retainer system.
3. Illumination.

- i. All letters to be illuminated with either neon tubing or LED technology. In cases where Mercury/Argon neon is used, they must be illuminated by 60 m.a. transformers for optimal cold weather operation.
  - ii. Signs shall be illuminated only by steady, stationary, shielded light sources directed solely at the sign or internal to it, without causing glare for motorists, pedestrians, or neighboring Premises.
  - iii. Illuminating signs, including neon signs, shall not produce more than one foot candle of illumination four feet (4') from the sign.
4. Electrical. Tenant shall install a time clock in Tenant's electrical room for exterior signage. The Tenant must provide power from its panel to the relay/time clock and then connected to signage.
5. Finish. All face and returns of aluminum to receive either an anodized or painted finish. Painted letters must utilize acrylic enamel paint over a zinc chromate primer. The inside channel of each letter must be painted flat white for even illumination. All raceways must be put to a paint blend to match area behind signage. It is required that all raceways are to be painted using a flattened paint to aid in blending to the background color.

Installation. Letters will be centered vertically onto signage area and follow a specific installation method approved by the L

## **EXHIBIT H**

### **Building Rules & Regulations**

1. Tractor-trailers which must be unhooked or parked must use steel plates under dolly wheels to prevent damage to the asphalt paving surface. In addition, wheel blocking must be available for use. Tractor-trailers are to be removed from the loading areas after unloading. No parking or storing of such trailers will be permitted in the Building or the Retail Center.
2. Tenant shall not dispose of the following items in sinks or commodes: plastic products (plastic bags, straws, boxes); sanitary napkins; tea bags, cooking fats, cooking oils; any meat scraps or cutting residue; petroleum products (gasoline, naphtha, kerosene, lubricating oils); paint products (thinner, brushes); or any other items which the same are not designed to receive.
3. Tenant shall not permit or suffer any advertising medium to be placed on exterior walls or windows, on the sidewalks or on the parking lot areas or light poles. No permission expressed or implied is granted to exhibit or display any banner, pennant, sign and trade or seasonal decoration of any size, style or material within the Building, Retail Center, or anywhere outside the Leased Premises.
4. Tenant shall not permit or suffer the use of any advertising medium that can be heard or experienced outside of the Leased Premises, including, without limiting the generality of the foregoing, flashing lights, searchlights, loud speakers, phonographs, radios, or television. No radio, television, or other communication antenna equipment or device is to be mounted, attached, or secured to any part of the roof, exterior surface, or anywhere outside the Leased Premises, unless Landlord has previously given its written consent.
5. Tenant shall not permit or suffer any portion of the Leased Premises to be used for lodging or extended stay purposes.
6. Tenant shall not, in or on any part of the Common Area:
  - a. Vend, peddle or solicit orders for sale or distribution of any merchandise, device, service, periodical, book, pamphlet or other matter whatsoever.
  - b. Exhibit any sign, placard, banner, notice or other written material, except for activities as approved in writing by Landlord.
  - c. Distribute any circular, booklet, handbill, placard or other material, except for activities as approved in writing by Landlord. Solicit membership in any organization, group or association or contribution for any purpose.
  - e. Create a nuisance.
  - f. Throw, discard or deposit any paper, glass or extraneous matter of any kind except in designated receptacles, or create litter or hazards of any kind.
  - g. Deface, damage or demolish any sign, light standard or fixture, landscaping materials or other improvement within the Retail Center, or the property of customers, business invitees or employees situated within the Retail Center.
9. Tenant shall not locate furnishings or cabinets adjacent to mechanical or electrical access Panels or over air-conditioning outlets so as to prevent operating personnel from servicing such units as routine or emergency access may require. Cost of moving such furnishings for Landlord's access will be at Tenant's cost. The lighting and air conditioning equipment of the Building will remain in the exclusive control of the building designated personnel.
10. Tenant shall comply with parking rules and regulations as may be posted and/or distributed from time to time.
11. Prior written approval, which shall be at Landlord's sole discretion, must be obtained for installation of window shades, blinds,

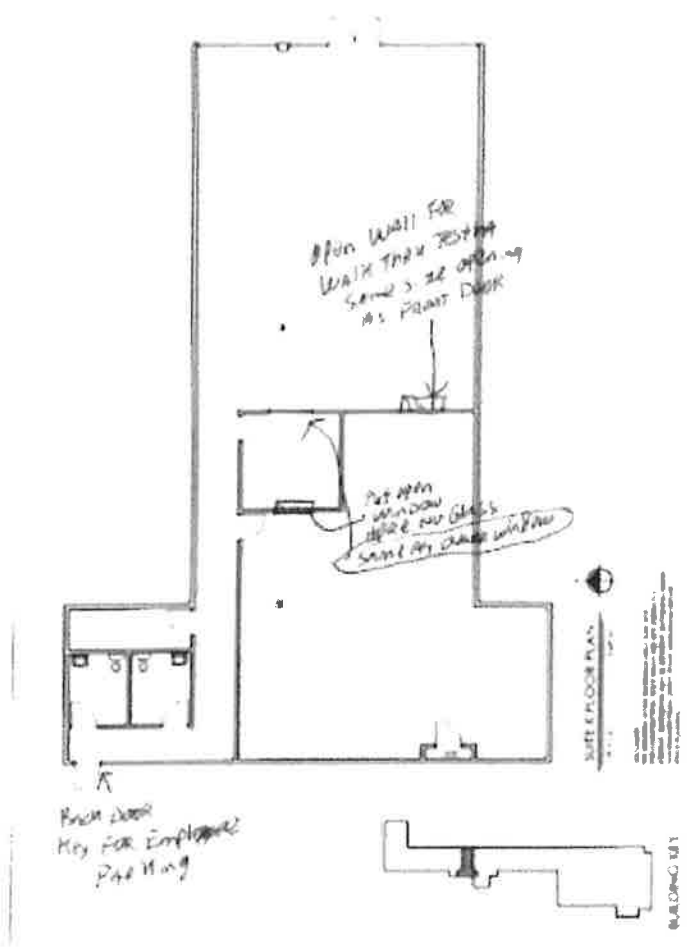
drapes or any other window treatment of any kind whatsoever.

12. Tenant shall keep the Leased Premises at a temperature compatible with comfortable occupancy during business hours and at all times sufficiently high to prevent freezing of water in pipes and fixtures.
13. Tenant shall keep the signs, exterior lights and display window lights of the Leased Premises lighted each and every day of the Term during the hours designated by Landlord.
14. No animals shall be brought into or kept in or about the Building other than as handicap aids.
15. In the event, any violation of any of the above rules and regulations continues after five (5) days following receipt of written notice by Tenant of such violation, beginning on such fifth day Tenant shall be in default of lease. In addition to all other remedies of Landlord provided in the Lease for default by Tenant, pay liquidated damages of One Hundred Dollars (\$100.00) per day for each day such violation continues.
16. Except as otherwise provided herein, Landlord reserves the right to modify or rescind any of these rules and regulations and to make such other or further reasonable rules and regulations as it deems in its reasonable judgment shall from time to time be necessary or advisable for the operation of the Retail Center, which rules and regulations shall be binding upon each such tenant in the Building or the Retail Center upon their notification of said further rules and regulations.
17. In the event of any discrepancy or inconsistency between these rules and regulations and any provision of the Lease, the provision in the Lease shall govern and control.

# **EXHIBIT I** **TENANT'S PLANS AND SPECIFICATIONS**

Tenant will take space in "as-is" condition. Tenant will cut an opening inside the space so both sides can be accessed, plus cut a window opening into the from office area, all work performed will be at tenant expense. See below for tenant exhibit:

## **EXHIBIT A**



11

**CITY OF FARGO  
MUNICIPAL COURT**

402 NP AVE N  
P.O. BOX 49  
FARGO, NORTH DAKOTA 58107-0049

TELEPHONE: 701-241-1316  
FAX: 701-241-1320

**MEMORANDUM**

TO: City Commission

FROM: Shiloh Hanson, Clerk of Court

SUBJECT: Contracts for Electronic Monitoring/Home Detention Services

DATE: March 17, 2021

Fargo Municipal Court currently uses the services of Centre Inc. and Alternative Corrections Inc. for electronic home monitoring/home detention services and has established a long standing work relationship with both of them. The City Attorney's office has drafted new contracts for these services, which are attached. It is recommended that these contracts be approved.

**Suggested Motion:**

Approve the contracts with Centre Inc. and Alternative Corrections Inc. for electronic home monitoring/home detention services through December 31, 2025.

# Centre

December 11<sup>th</sup>, 2015

City Auditor's Office  
200 3<sup>rd</sup> Street North  
Fargo, ND 58102

RE: Formal Proposal to Provide Electronic Monitoring Services (EMS)

Dear Sir or Madam,

Centre Inc. is a North Dakota Non-Profit agency who has successfully been providing Electronic Monitoring Services (EMS) to this community for over twenty years. Centre Inc.'s EMS program utilizes Omnilink's Global Positioning Satellite (GPS) equipment to maintain client accountability 24 hours per day, 365 days per year. Centre Inc.'s EMS program is staffed by on-duty personnel 24 hours per day, 365 days per year.

Centre Inc. maintains current accreditation from the American Correctional Association (ACA). ACA requires fidelity to the correctional industry's best practices. Centre Inc. employs approximately 160 people across the state of North Dakota. All employees who have EMS job responsibilities are required to complete initial and annual training as required by the American Correctional Association. All Centre employees are required to go through and pass an extensive criminal background check. Centre Inc. maintains fidelity to the Prison Rape Elimination Act's required practices.

Centre Inc. holds current contracts with the Federal Bureau of Prisons, United States Probation and Pre-Trial Offices, North Dakota Department of Corrections and Rehabilitation, and various county and city entities. Centre Inc. maintains current licensure with the North Dakota Department of Human Services to provide drug and alcohol addiction services.

## Contract Payment Terms

Defendants sentenced by Fargo Municipal Court to serve jail sentence time on Electronic Monitoring/Home Detention will be required to pay all fees directly to Centre Inc. Centre Inc. is responsible for collecting all program fees. Fargo Municipal Court will not be responsible for payment of any fees including fees or costs incurred as a result of client non-payment.

123 15th Street North  
Post Office Box 1269  
Fargo, ND 58107-1269

(701) 237-9340  
FAX (701) 237-9945

100 6th Avenue Southeast  
Mandan, ND 58554

(701) 663-8228  
FAX (701) 663-0912

220 6th Avenue North  
Fargo, ND 58102

(701) 235-1617  
FAX (701) 365-0781

201 4th Street South  
Grand Forks, ND 58201

(701) 746-6303  
FAX (701) 746-7713

**Client Paid Fee Schedule:** January 1, 2016 through December 31, 2016:

- |  |   |
|--|---|
| 1. Hookup, installation and disconnect fee:  | \$35.00 - One Time Charge   |
| 2. Electronic Monitoring Service with field surveillance<br>Initial and random alcohol testing included: | \$20.00 - Per Day<br>\$18.00 - Per Day for Cass<br>Co. 24/7 program<br>participants |
| 3. Mileage –only charged for residences located<br>out of Cass (ND) and Clay (MN) counties:              | \$current federal mileage<br>reimbursement<br>(Per Mile)                            |

Centre Inc. is capable of providing this service to Fargo Municipal Court on 1-1-16 and through the contract's duration if approved. See attached Program Handbook and Client Acknowledgment for a detailed outline of this service and the program's rules.

Please contact me at (701)373-8315 if you have additional questions.

Sincerely,



Josh Helmer  
Executive Director

**ELECTRONIC MONITORING SERVICES AGREEMENT**

Centre, Inc. and City of Fargo

This agreement, made and intended to be effective the date of last signature of the parties, by and between the City of Fargo, North Dakota, a municipal corporation, hereinafter referred to as "City," and Centre Inc., a private non-profit agency, hereinafter referred to as "Provider" or "Centre."

**WHEREAS**, City requested an updated proposal for electronic monitoring services for offenders [hereinafter referred to as "Offender" or "Offenders"] who are defendants on matters before the Fargo Municipal Court;

**WHEREAS**, Centre has proposed to provide these services;

**WHEREAS**, City has accepted this proposal and determined the services referred to hereinafter under "Scope of Service" meet its request for proposals;

**WHEREAS**, the parties wish to enter into the following agreement;

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements herein contained, City and Centre hereby agree as follows:

**I. TERM OF AGREEMENT**

This non-exclusive agreement shall be for a term commencing the date of last signature of the parties through December 31, 2025.

**II. SCOPE OF SERVICE**

- A. Centre will accept municipal court referrals of Offenders and provide electronic monitoring services, as described herein during the terms of the agreement.
- B. The electronics monitoring services to be provided shall be as set forth in the Centre letter dated December 11, 2015, a copy of which is attached as Exhibit A: EMS Services. Centre will enforce all conditions the court imposes and report any deviations, or expected deviations, from the conditions to the court immediately.

**III. COMPENSATION**

- A. As to compensation to Centre for its electronic monitoring services, Centre will look to the Offender for payment. The parties recognize that the Fargo Municipal Court may elect to refer Offender to Centre with an express statement that the City will take full responsibility for the fees for electronic monitoring services for the Offender and, in such event, the City will be responsible for payment of said fees. Such request must be in writing (or including by e-mail message) delivered to Centre by the Clerk of Fargo Municipal Court.

- B. The approved fee schedule applicable for the period of the date of last signature of the parties, through December 31, 2025 shall be set forth as follows:

Cost of service per offender, per day, Electronic Monitoring Services (GPS)

<u>Contract Periods</u>	<u>Offender</u>
1-1-2021 to 12-31-2021	\$20
1-1-2022 to 12-31-2022	TBD
1-1-2023 to 12-31-2023	TBD
1-1-2024 to 12-31-2024	TBD
1-1-2025 to 12-31-2025	TBD

There is an additional one-time charge of \$35 for equipment hookup/disconnect fee. Centre will notify the court of any rate increase prior to January 1, 2022, 2023, 2024, and 2025. In any case, the rate will not increase over 5% each year.

- C. The same fee schedule shall be applicable to any additional option periods, unless specifically agreed upon between the City and Centre.

#### IV. REPORTING REQUIREMENTS

- A. Centre shall be responsible for periodic reporting to the Clerk of Fargo Municipal Court as to referrals to Centre and as to the Offenders' compliance with the sentence of the Fargo Municipal Court. Centre shall promptly provide a written report to the Clerk of Fargo Municipal Court of the failure by an Offender to report for electronic monitoring services, said prompt reporting being no longer than 24 hours. Centre shall also promptly report to the Clerk of Fargo Municipal Court when each Offender has completed his or her electronic monitoring sentence.
- B. Centre shall compile a monthly report of the electronic monitoring services provided, including the number of days each Offender served a sentence via electronic monitoring, the amount paid by each Offender and the date of commencement and date of completion of each Offender's sentence served with electronic monitoring. Said monthly report shall be delivered to the Clerk of Fargo Municipal Court no later than the 10<sup>th</sup> day of the following month. In addition to the regular, monthly report, Centre agrees to provide additional information reporting to the Clerk of Fargo Municipal Court upon reasonable request by the court.

#### V. INDEMNIFICATION AND INSURANCE

- A. Indemnity. To the extent permitted by law, Centre shall indemnify and hold City harmless from and against all liabilities, claims, damages, losses and expenses, including reasonable attorneys' fees, to the extent caused by the act or failure to act by Centre.

- B. Insurance. Centre shall keep and maintain the following insurance coverages; Workers Compensation Insurance. Centre shall maintain workers insurance with the following limits or with minimal limits required by law, if greater:

Coverage A: Statutory

Coverage B:	\$1,000,000	Bodily Injury by accident	Each accident
	\$1,000,000	Bodily Injury by disease	Policy limit
	\$1,000,000	Bodily Injury by disease	Each accident

General Liability Insurance. Centre shall maintain general liability insurance with limits of coverage not less than \$500,000 per occurrence and one million dollars in the aggregate.

- C. The above insurance shall be maintained in companies lawfully authorized to do business in North Dakota.

#### VI. TERMINATION

If, through any cause, Centre shall fail to fulfill in a timely and proper manner the obligations agreed to herein, the City shall have the right to terminate this contract by specifying the date of termination in a written notice to Centre at least thirty (30) days prior to the termination date. Either party may terminate this agreement without cause upon sixty (60) days written notice to the other. Upon notice of termination having been delivered, the City shall be authorized to discontinue referrals of Offenders to Centre and to redirect Offenders to other electronic monitoring service providers, or to terminate electronic monitoring service orders for Offenders that have been referred to Centre, all within the sole discretion of the City, acting through the Fargo Municipal Court. Centre agrees to cooperate with the City in providing an orderly transition toward termination of the relationship between the City and Centre.

#### VII. MISCELLANEOUS

- A. Entire Agreement. The terms and conditions set forth herein constitute the entire understanding of the parties relating to the provision of services by Centre to City. This Agreement may be amended only by written amendment of the parties.
- B. Governing Law, Disputes, Venue and Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of North Dakota. Parties agree to consider mediation with respect to any dispute. The parties agree to submit to the jurisdiction of state or federal courts in Cass County, State of North Dakota for resolution of any disputes in a court of law.
- C. Assignment. This Agreement may not be assigned by either party without prior written consent of the other party.
- D. Force Majeure. Neither party shall be liable for damages or deemed in default of this Agreement to the extent that any delay or failure in the performance party's obligations results, without its fault or negligence, from any cause beyond it reasonable control, such as acts of God, acts of civil or military authority, embargoes, epidemics, war, riots,

insurrections, fires, explosions, earthquakes, floods, adverse weather conditions, union activity, strikes or lock-outs, and changes in laws, statutes, regulations, or ordinances.

- E. Severability. Should a court of law determine that any clause or section of this Agreement is invalid, all other clauses or sections shall remain in effect.
- F. This instrument may be executed in one or more counterparts, including both paper and electronic counterparts, but all such counterparts shall constitute one and the same agreement. This instrument may be in the form of an Electronic Record and may be executed using Electronic Signatures (including manually executed paper documents that are sent by facsimile, pdf, or other electronic means), which shall be considered an original and shall have the same legal effect, validity and enforceability as an original paper record. For purposes hereof, each of the terms "Electronic Record" and "Electronic Signature" has the respective meaning assigned to it in 15 USC §7006 (as the same may be amended from time to time).
- G. Effective Date - This agreement shall be deemed to take effect the date of last signature of the parties.

(Remainder of page intentionally left blank)

DATE: \_\_\_\_\_

CITY OF FARGO, NORTH DAKOTA

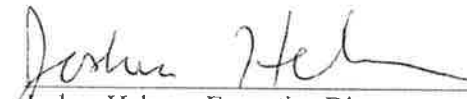
\_\_\_\_\_  
Timothy J. Mahoney, Mayor

ATTEST:

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

DATE: 01-04-2021

CENTRE, INC. - Provider

  
\_\_\_\_\_  
Joshua Helmer, Executive Director

**AGREEMENT - ELECTRONIC MONITORING SERVICES**

Alternative Corrections, Inc. and City of Fargo

**THIS AGREEMENT**, is made by and between the City of Fargo, a North Dakota municipal corporation, hereinafter referred to as "City", and Alternative Corrections, Inc., a Minnesota corporation, hereinafter referred to as "Alternative Corrections".

**WHEREAS**, City has requested an updated proposal for electronic monitoring services for offenders [hereinafter referred to as "Offender" or "Offenders"] who are defendants on matters before the Fargo Municipal Court; and

**WHEREAS**, Alternative Corrections submitted a proposal providing of the services;

**WHEREAS**, City has accepted the proposal of Alternative Corrections as well as the proposal of another electronic monitoring service provider; and

**WHEREAS**, City and Alternative Corrections wish to enter into an agreement setting forth the terms by which Alternative Corrections will provide electronic monitoring services of Offenders; and

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements herein contained, City and Alternative Corrections hereby agree as follows:

I. TERM OF AGREEMENT

This non-exclusive agreement shall be for a term commencing the date of last signature of the parties through December 31, 2025.

II. SCOPE OF SERVICE

- A. Alternative Corrections will accept municipal court referrals of Offenders and provide electronic monitoring services, as described herein during the terms of the agreement.
- B. The electronic monitoring services to be provided shall be as set forth in the proposal submitted by Alternative Corrections, a copy of which is attached hereto as Exhibit "A". Alternative Corrections will enforce all conditions the court imposes and report any deviations, or expected deviations, from the conditions to the court immediately.

III. COMPENSATION

- A. As to compensation to Alternative Corrections for its electronic monitoring services, Alternative Corrections will look to the Offender for payment. The parties recognize that the Fargo Municipal Court may elect to refer Offender to Alternative Corrections with an express statement that the City will take full responsibility for the fees for electronic monitoring services for the Offender and, in such event, the City will be responsible for

TJB

payment of said fees. Such request must be in writing (or including by e-mail message) delivered to Alternative Corrections by the Clerk of Fargo Municipal Court.

- B. The approved fee schedule applicable for the period January 1, 2021 through December 31, 2025 shall be as set forth in the Proposal, attached as Exhibit "A". The same fee schedule shall be applicable to any additional option periods, unless specifically agreed upon between the City and Alternative Corrections.

#### IV. REPORTING REQUIREMENTS

- A. Alternative Corrections shall be responsible for periodic reporting to the Clerk of Fargo Municipal Court as to referrals to Alternative Corrections of Offenders and as to the Offenders' compliance with the sentence of the Fargo Municipal Court. Alternative Corrections shall promptly provide a written report to the Clerk of Fargo Municipal Court of the failure by an Offender to report for electronic monitoring services, said prompt reporting being no longer than the next business day. Alternative Corrections shall also promptly report to the Clerk of Fargo Municipal Court when each Offender has completed his or her electronic monitoring sentence.
- B. Alternative Corrections shall compile a monthly report of the electronic monitoring services provided, including the number of days each Offender served a sentence via electronic monitoring, the amount paid by each Offender and the date of commencement and date of completion of each Offender's sentence served with electronic monitoring. Said monthly report shall be delivered to the Clerk of Fargo Municipal Court no later than the 10<sup>th</sup> day of the following month. In addition to the regular, monthly report, Alternative Corrections agrees to provide additional information reporting to the Clerk of Fargo Municipal Court upon reasonable request by the court.

#### V. INDEMNIFICATION AND INSURANCE

- A. Indemnity. To the extent permitted by law, Alternative Corrections shall indemnify and hold City harmless from and against all liabilities, claims, damages, losses and expenses, including reasonable attorneys' fees, to the extent caused by the act or failure to act by Alternative Corrections.
- B. Insurance. Alternative Corrections shall keep and maintain the following insurance coverages; Workers Compensation Insurance. Alternative Corrections shall maintain workers insurance with the following limits or with minimal limits required by law, if greater:

Coverage A:	Statutory		
Coverage B:	\$1,000,000	Bodily Injury by accident	Each accident
	\$1,000,000	Bodily Injury by disease	Policy limit
	\$1,000,000	Bodily Injury by disease	Each accident

General Liability Insurance. Alternative Corrections shall maintain general liability insurance with limits of coverage not less than \$500,000 per occurrence and one million dollars in the aggregate.

- C. The above insurance shall be maintained in companies lawfully authorized to do business in North Dakota.

## VI. TERMINATION

If, through any cause, Alternative Corrections shall fail to fulfill in a timely and proper manner the obligations agreed to herein, the City shall have the right to terminate this contract by specifying the date of termination in a written notice to Alternative Corrections at least thirty (30) days prior to the termination date. Either party may terminate this agreement without cause upon sixty (60) days written notice to the other. Upon notice of termination having been delivered, the City shall be authorized to discontinue referrals of Offenders to Alternative Corrections and to redirect Offenders to other electronic monitoring service providers, or to terminate electronic monitoring service orders for Offenders that have been referred to Alternative Corrections, all within the sole discretion of the City, acting through the Fargo Municipal Court. Alternative Corrections agrees to cooperate with the City in providing an orderly transition toward termination of the relationship between the City and Alternative Corrections.

## VII. MISCELLANEOUS

- A. Entire Agreement. The terms and conditions set forth herein constitute the entire understanding of the parties relating to the provision of services by Centre to City. This Agreement may be amended only by written amendment of the parties.
- B. Governing Law, Disputes, Venue and Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of North Dakota. Parties agree to consider mediation with respect to any dispute. The parties agree to submit to the jurisdiction of state or federal courts in Cass County, State of North Dakota for resolution of any disputes in a court of law.
- C. Assignment. This Agreement may not be assigned by either party without prior written consent of the other party.
- D. Force Majeure. Neither party shall be liable for damages or deemed in default of this Agreement to the extent that any delay or failure in the performance party's obligations results, without its fault or negligence, from any cause beyond its reasonable control, such as acts of God, acts of civil or military authority, embargoes, epidemics, war, riots, insurrections, fires, explosions, earthquakes, floods, adverse weather conditions, union activity, strikes or lock-outs, and changes in laws, statutes, regulations, or ordinances.
- E. Severability. Should a court of law determine that any clause or section of this Agreement is invalid, all other clauses or sections shall remain in effect.

- F. This instrument may be executed in one or more counterparts, including both paper and electronic counterparts, but all such counterparts shall constitute one and the same agreement. This instrument may be in the form of an Electronic Record and may be executed using Electronic Signatures (including manually executed paper documents that are sent by facsimile, pdf, or other electronic means), which shall be considered an original and shall have the same legal effect, validity and enforceability as an original paper record. For purposes hereof, each of the terms "Electronic Record" and "Electronic Signature" has the respective meaning assigned to it in 15 USC §7006 (as the same may be amended from time to time).
- G. Effective Date - This agreement shall be deemed to take effect the date of last signature of the parties.

DATE: \_\_\_\_\_, 2021

City of Fargo, North Dakota, a municipal corporation

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

ATTEST:

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

DATE: March 16, 2021

Alternative Corrections, a Minnesota corporation

Brad Borgen  
Brad Borgen

(12)

**CITY OF FARGO  
MUNICIPAL COURT**

402 NP AVE N  
P.O. BOX 49  
FARGO, NORTH DAKOTA 58107-0049

TELEPHONE: 701-241-1316  
FAX: 701-241-1320

**MEMORANDUM**

TO: City Commission

FROM: Shiloh Hanson, Clerk of Court

SUBJECT: Contract Renewal with Centre Inc for Minimum Security Prisoners

DATE: March 17, 2021

Fargo Municipal Court currently uses the services of Centre Inc for minimum security incarceration and has established a long standing work relationship with them. Their existing contract expired on 12/31/20. It is recommended that the contract be renewed for an additional five year term, making its expiration date 12/31/2025. The City Attorney's office has reviewed the proposed contract and join in with the recommendation of extending the contract.

**Suggested Motion:**

For SSP 21069 to extend RFQ16126 and approve the renewal of the contract with Centre Inc for an additional five years, ending through December 31, 2025.

**PURCHASE OF SERVICE AGREEMENT (MINIMUM SECURITY)**

Centre, Inc. and City of Fargo

This agreement, made and intended to be effective the date of last signature of the parties, by and between the City of Fargo, North Dakota, a municipal corporation, hereinafter referred to as "City," and Centre Inc., a private non-profit agency, hereinafter referred to as "Provider" or "Centre."

**WHEREAS**, City has requested an updated proposal for minimum security prisoners to be placed by Municipal Court referrals;

**WHEREAS**, Centre proposed to provide these services;

**WHEREAS**, City has accepted this proposal and determined the services referred to hereinafter under "Scope of Service" meet its request for proposals;

**WHEREAS**, the parties wish to enter into the following agreement;

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements herein contained, City and Centre hereby agree as follows:

I. TERM OF AGREEMENT

This non-exclusive agreement shall be for a term commencing the date of last signature of the parties, through December 31, 2025.

II. SCOPE OF SERVICE

- A. Provider will accept Municipal Court referrals and provide housing of prisoners placed by order of the Municipal Court.
- B. Provider will provide residential services which may include work-release, case management/counseling services, employment skills, ASAM level 2.1 chemical dependency treatment, chemical dependency aftercare/ASAM level 1, Thinking for a Change, & drug and alcohol testing.
- C. Provider agrees to manage most offenders that are referred by Municipal Court. Provider will enforce all conditions the Court imposes and report any expected deviations from the conditions to the Court immediately. If, for any reason, Provider determines that court referral is not an acceptable placement, Centre agrees to consult with Municipal Court prior to rejecting that particular referral and will explain the conditions and reasons for not accepting the placement.
- D. Provider shall have the authority to accept, deny, or modify requests from offenders who request to leave the facility.

### III. COMPENSATION

- A. Centre will charge City a rate, per person, per day, minus the amount that is collected for work release for residential minimum-security placements. Provider's staff will be responsible for collecting the correct amount of work release from the offender. This amount collected shall be subtracted from the total cost of each offender on the monthly billings. Provider will provide all the following services for residential placements at one cost. The services Provider will provide for minimum security residential placements that may include but are necessarily limited to housing, work-release, food services, & alcohol/drug testing. The following services can be provided as needed and if appropriate for the length of stay: case management/counseling services, employment skills, ASAM level 2.1 chemical dependency treatment, chemical dependency aftercare/ASAM level 1, & thinking for a change.
- B. Cost of services per offender, per day, for minimum-security residential placements is as follows:

<u>Contract Periods</u>	<u>City of Fargo Working Day</u>	<u>Offender Working Day</u>	<u>OR</u>	<u>City of Fargo Non-Working Day</u>
01-01-21 to 12-31-21	\$52	\$27		\$79
01-01-22 to 12-31-22	\$55	\$27		\$82
01-01-23 to 12-31-23	\$58	\$27		\$85
01-01-24 to 12-31-24	\$61	\$27		\$88
01-01-25 to 12-31-25	\$64	\$27		\$91

The foregoing rates are guaranteed for the five-year contract.

### IV. INDEMNIFICATION

Each party agrees to indemnify, defend and hold the other harmless from any and all claims or causes of action which may be brought that are the result of the intentional or negligent act or failure to act of the first part or the first party's officers, agents, or employees

### V. TERMINATION

If, through any cause, Provider shall fail to fulfill in a timely and proper manner the obligations agreed to, City shall have the right to terminate this contract by specifying the date of termination in a written notice to the Provider at least ninety (90) working days before the termination date. In such event, Provider shall be entitled to just and equitable compensation (determined at the rate of the contract) for any satisfactorily completed work.

## VI. PROVIDER ASSURANCES

- A. Provider agrees to comply with the applicable assurances set forth on Appendix A, attached hereto.
- B. Each of the parties agrees to execute any and all documents necessary to effectuate the purposes of this agreement.
- C. The parties agree and stipulate that Centre, Inc. is an independent contractor as regards the services to be performed under this agreement and the officers, agents, and employees of Provider shall in no way be deemed to be employees or agents of the City of Fargo.

## VII. MISCELLANEOUS

- A. Entire Agreement. The terms and conditions set forth herein constitute the entire understanding of the parties relating to the provision of services by Centre to City. This Agreement may be amended only by written amendment of the parties.
- B. Governing Law, Disputes, Venue and Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of North Dakota. Parties agree to consider mediation with respect to any dispute. The parties agree to submit to the jurisdiction of state or federal courts in Cass County, State of North Dakota for resolution of any disputes in a court of law.
- C. Assignment. Provider shall not transfer or assign any interest in this contract without the prior written consent of City.
- D. Force Majeure. Neither party shall be liable for damages or deemed in default of this Agreement to the extent that any delay or failure in the performance party's obligations results, without its fault or negligence, from any cause beyond its reasonable control, such as acts of God, acts of civil or military authority, embargoes, epidemics, war, riots, insurrections, fires, explosions, earthquakes, floods, adverse weather conditions, union activity, strikes or lock-outs, and changes in laws, statutes, regulations, or ordinances.
- E. Severability. Should a court of law determine that any clause or section of this Agreement is invalid, all other clauses or sections shall remain in effect.
- F. This instrument may be executed in one or more counterparts, including both paper and electronic counterparts, but all such counterparts shall constitute one and the same agreement. This instrument may be in the form of an Electronic Record and may be executed using Electronic Signatures (including manually executed paper documents that are sent by facsimile, pdf, or other electronic means), which shall be considered an original and shall have the same legal effect, validity and enforceability as an original paper record. For purposes hereof, each of the terms "Electronic Record" and "Electronic Signature" has the respective meaning assigned to it in 15 USC §7006 (as the same may be amended from time to time).
- G. Effective Date - This agreement shall be deemed to take effect on the date of last signature of the parties.

DATE: \_\_\_\_\_

CITY OF FARGO, NORTH DAKOTA

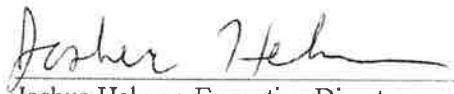
\_\_\_\_\_  
Timothy J. Mahoney, Mayor

ATTEST:

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

DATE: 01-04-21

CENTRE, INC. - Provider

  
\_\_\_\_\_  
Joshua Helmer, Executive Director

APPENDIX A: PROVIDER ASSURANCES

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

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## Application for Appropriation from Civil Asset Forfeiture Fund

### Applicant

David Zibolski, Chief of Police  
Fargo Police Department, 105 25<sup>th</sup> St. N., Fargo ND, 58102  
[dzibolski@fargond.gov](mailto:dzibolski@fargond.gov)  
701-476-4001

### Appropriation Requested:

\$5,000 for the Fargo Police Department Criminal Investigation Fund

**Explanation and confirmation of how the requested appropriation will further the public purpose of reducing criminal activity and aiding the efforts of criminal justice in support and furtherance of the Fargo Police Department's mission:**

The Fargo Police Department conducts investigations that involve purchasing illegal controlled substances/contraband from individuals. Some cooperating individuals receive monetary compensation for information or actions that assist with criminal investigations. The Fargo Police Department Criminal Investigation Fund is used for those transactions in an effort to develop criminal cases to forward to the States Attorney or United States Attorney. These criminal investigations result in a safer community and accountability for those convicted of criminal offenses.

I, Chief David Zibolski, am in support of the above-stated request for appropriation from the Civil Asset Forfeiture Fund. City of Fargo procurement policies will be followed to for all expenditures. Written confirmation will be provided to the City of Fargo Finance Office when the funds are expended.

  
\_\_\_\_\_  
David Zibolski, Chief of Police

03-11-21  
Date

March 17, 2021

The Honorable Board of City Commissioners  
City of Fargo  
225 Fourth Street North  
Fargo, ND 58102

RE: RFP21049 for Professional Auction Services

Commissioners:

The City of Fargo holds an annual auction of surplus department equipment and impounded vehicles twice each year generating favorable returns for the city's general fund. In looking to continue the promotion and success of the auctions, a request for proposals for Professional Auction Services was issued to find the auction service that most accurately fits the needs of the City. On March 12<sup>th</sup>, 2021, vendors submitted proposals for City review.

The review committee, consisted of Ben Dow and Tanner Smedshammer. During the review process it has been determined that the proposals did not meet the required specifications of the RFP.

RECOMMENDED MOTION: Approve the recommendation to reject all bids and the project to be rebid

Respectfully Submitted,

Tanner Smedshammer  
Fleet Management Specialist

March 16, 2021

The Honorable Board of City Commissioners  
City of Fargo  
Fargo, ND 58102

**RE: Authorization to extend the Aerial Mosquito Control Services Contract for the  
2021 season under RFP18018**

Commissioners:

Proposals were received and opened on Monday, November 27, 2017, in response to a Request for Proposal (RFP18018) issued by Cass County Vector Control for "Aerial Mosquito Control Services". One (1) sealed proposal was received, which was reviewed and fully analyzed by a selection committee made up Ben Prather, Steve Moore, Tina Fisk, Jason Benson and myself.

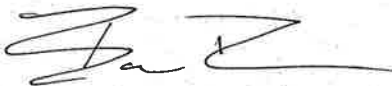
Pricing as Follows:

Fee based on spraying over 15,000 acres	\$2.05	per acre
Ferry Fee	\$500	per application
City of Fargo Retainer Fee	\$26,000	per year

Based on the RFP pricing and the previous vendor experience the 2018-2020 Aerial Mosquito Control Services three-year contract was awarded to Airborne Vector Control, LLC. As part of the 2017 RFP, language was included that allows for two (2) one (1) year extensions under the original terms of the RFP. Public Works staff has visited with the contract holder and at this time, we are requesting authorization to extend the contract for the 2021 season under the same terms and pricing of the initial 2017 RFP (RFP18018).

**RECOMMENDED MOTION:** I/we hereby move, based on the request for proposal (RFP18018), to extend the initial 2018-2020 Aerial Mosquito Control Spraying contract with Airborne Vector Control, LLC for 2021

Respectfully submitted,



Ben Dow  
Public Works Director

CITY OF FARGO - AIRBORNE VECTOR CONTROL, LLC.  
MOSQUITO SPRAYING AGREEMENT  
2021

This Mosquito Spraying Agreement ("Agreement") is made between Airborne Vector Control, LLC., a Minnesota Limited Liability Company, of Halstad, MN ("Contractor"), and the City of Fargo, North Dakota, a municipal corporation ("City"), who agree as follows:

RECITAL

The Contractor and the City hereby agree that Contractor will be retained by City for aerial spraying of pesticides over Fargo, North Dakota. In order to be retained by City, City requires the following from Contractor and its Pilot in Command:

- Minimum of 2,000 hours flight experience;
- Minimum of 50 hours night flight time with a twin-engine aircraft;
- Minimum of 200 hours flight time with a twin-engine aircraft;
- Minimum of 50 hours flight time for the make, model, and series that will be used to complete the spray mission for the City;
- Minimum of 100 hours flight time applying pesticides to a city;
- Minimum of 20 hours flight time applying pesticides to a city at night;
- Minimum of 100 takeoffs/landings at altitude typical of project area with loads similar to an average load;
- Minimum of 2 years' experience in aerial mosquito control;
- Twin engine aircraft with a spray system meeting all specifications in FAR137 and authorized by the FAA and which is based within one hundred (100) miles of the City;
- Spray system nozzles shall be equal to the rotary atomizer-Micronair, 30 micron droplet spectrum;
- Swath Guidance GPS equipment with downloading capabilities. Upon request from the City, Contractor must provide printed reports within 24 hours of application.

- Reloading equipment capable of thirty (30) minute turns; and,
- Licensed and permitted to conduct business as an aerial applicator in North Dakota by April 1, 2021.

Contractor declares it has sufficient personnel and equipment to satisfy the requirements of the above paragraph to effectively spray all areas of the City with chemical pesticides approved for residential spraying. Contractor has provided to the City a written emergency response action plan identifying action steps in the event of an accident or a chemical release/dump, which plan is in form and substance satisfactory to the City.

#### SECTION I.

City hereby engages Contractor as an independent contractor, and not as an employee, to conduct aerial spraying of pesticides of approximately 26,000 acres over the City when directed to do so by City and Cass County Vector Control (CCVC), and Contractor hereby accepts and agrees to such engagement.

#### SECTION II.

The term of this Agreement shall commence May 1, 2021 subject to Section III of Agreement and shall terminate November 1, 2021 (the "Term"), subject, however, to prior termination as hereinafter provided.

#### SECTION III.

City shall pay Contractor, and Contractor shall accept from City, in full payment of Contractor's services hereunder, compensation at a rate as follows:

- \$26,000.00 Retainer Fee paid on or before March 23 of 2021.

- The quoted rate per acre (see Appendix A) is based on the use of the chemical Permethrin 30 + 30 applied at .007 lbs. per acre and mixed with mineral oil for a finished rate of 1 oz. per acre.
- If the City determines that a different application rate of Permethrin or a chemical other than Permethrin should be used, then the rate per acre shall be renegotiated and both the City and Contractor agree to negotiate in good faith.
- City shall pay Contractor a \$500.00 Ferry Fee for each application and assessed to every release of the aircraft by the City.

The Retainer Fee will be subtracted from the billing cycles until 100% of the Retainer Fee has been assessed against Contractor by the City, therefore reducing the cost of the initial billings by \$26,000.00. If at the end of the spray season there remains any unused Retainer Fee, then the unused Retainer Fee shall be retained by and become the sole property of Contractor.

#### SECTION IV.

Contractor shall provide all chemicals and shall be responsible for any and all licenses, permits, fees, and all other items required of aerial applicators of pesticides. The chemical usage rates will be determined by CCVC and City and shall be subject to Section III of this Agreement.

#### SECTION V.

All chemicals used by Contractor must be a chemical which has been previously approved by the Environmental Protection Agency, the North Dakota State Department of Health and the Fargo Public Health Department prior to application. Further, all chemicals must be applied according to the manufacturers' label, terms and specifications.

SECTION VI.

Contractor shall comply with all applicable statutes, ordinances, rules, regulations, and orders of all public agencies and authorities relating to the aerial application of pesticides over residential areas.

SECTION VII.

No waiver or modification of this Agreement or of any covenant, condition or limitation herein contained shall be valid unless in writing and duly executed by the party to be charged therewith and no evidence of any proceeding, arbitration, or litigation between the parties hereto arising out of or affecting this Agreement, or the rights or obligations of the parties hereunder, unless such waiver or modification is in writing, duly executed as aforesaid and the parties further agree that the provisions of this section may not be waived as herein set forth.

SECTION VIII.

Contractor will secure public liability insurance in the minimum amounts as follows:

- Non-Chemical:
  - \$5,000,000 Public Liability (bodily injury and property damage) combined single limit.
- Chemical:
  - \$500,000 each person bodily;
  - \$500,000 each occurrence bodily; and,
  - \$500,000 each occurrence property.
- Chemical coverage includes "all labeled products for mosquito control"
- Chemical coverage includes "cities and towns and residential areas"

- Coverage includes the City as a fully insured additional insured

Contractor shall pay the premium on such insurance policy, and the City shall be designated as a "named insured" on such policy. Contractor shall maintain such policy in force for all months in which it performs services for the City under the provisions of this Agreement.

#### SECTION IX.

Contractor agrees to indemnify the City from any and all liability, loss or damage the City may suffer as a result of claims, demands, costs, or judgments arising from or arising against it from Contractor's negligence in services performed by the Contractor relative to this Agreement.

#### SECTION X.

Contractor agrees that, upon receiving written authorization from CCVC and City, aerial application of pesticides over the City shall be completed within a reasonable time from notification by CCVC and City, not to exceed seventy-two (72) hours, unless such performance is prevented by an act of God (such as high winds, rain or cold temperature) or unforeseen circumstances beyond the control of the Contractor pertaining to the aerial application of the City or aerial application of other clients of Contractor. However, the City reserves the right to cancel or withdraw said notice in writing delivered to Contractor prior to the scheduled application. No aerial spraying shall occur without prior written notification to Contractor by and with the approval of CCVC and City.

#### SECTION XI.

Contractor agrees that performance under this Agreement shall be completed in a satisfactory and workman-like manner, subject to prior review and approval by the City, and/or state, and/or federal agencies.

SECTION XII.

Contractor shall remain in contact with CCVC for purposes of exchanging information and receiving directives related to the performance of this Agreement. Such contacts should be made and initiated by the Contractor with the designated representatives of CCVC at the time and place agreed upon by the parties hereto.

SECTION XIII.

With respect to termination of this Agreement:

- In the event of any violation by Contractor of any of the terms of this Agreement, and after failure by Contractor to remedy such violation within fifteen (15) days after written notice of such violation by City, City therein may terminate this Agreement with written notice to Contractor and with pay for services rendered only to the time of such termination.
- In the event Contractor is not paid by the City in full within thirty (30) days after the delivery of an invoice by Contractor to the City, then Contractor may terminate this Agreement without notice and shall not be further obligated to the City for further aerial spraying.
- If the City and Contractor cannot agree on a renegotiated rate based on the change of the chemical used for spraying, as discussed under Section III of this Agreement, then Contractor may terminate this agreement with thirty (30) days written notice and shall not be further obligated to the City for further aerial spraying.
- In the event that the City terminates this Agreement prior to the end of the Term and there is no unremedied violation by Contractor, then City shall be obligated to pay the remaining unpaid Retainer Fees through the end of the existing Term of this Agreement payable as a lump sum within thirty (30) days of termination. In the event that the Contractor terminates this Agreement prior to the end of the Term, then City shall not be obligated to pay remaining unpaid Retainer Fees.

SECTION XIV.

Prior to the spraying season, CCVC and City will provide an updated map detailing the spray boundaries with the corresponding updates regarding acreage changes.

CCVC and City shall also assist in the application process for approval with the North Dakota Department of Health. City shall supply an FAA authorization application signed by the Mayor. City shall be responsible for providing this information before April 15<sup>th</sup> 2021. There shall be a \$100 processing fee after that date.

CCVC shall be responsible for making public announcements via radio, television and newspaper at least 48 hours in advance of each spray application. Contractor and CCVC shall edit the announcements in cooperation.

CCVC and City make the "go, no go decision" for the release of aircraft. The ultimate decision to spray shall be that of Contractor and shall depend upon the weather conditions at the time of arrival. Should the weather conditions become unfavorable for spraying while the aircraft is in route or while spraying, then Contractor shall coordinate with CCVC the decision to postpone the application. The Ferry Fee shall be applied to City for the release of the aircraft. CCVC and City shall then be responsible for rescheduling the application and to make further public announcements. Contractor is not responsible for changes in weather or unforeseen mechanical difficulties that may hinder the application.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have executed this Agreement at Fargo, North Dakota, on the \_\_\_\_\_ day of \_\_\_\_\_, 2021.

AIRBORNE VECTOR CONTROL, LLC.

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

Robert Aslesen,  
Vice President

CITY OF FARGO

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

Dr. Tim Mahoney, M.D.  
Mayor

ATTEST: Steven Sprague, Auditor

\_\_\_\_\_  
Steven Sprague

## APPENDIX A

### PRICING STRUCTURE

(1) Price per Acre

Combined Acres per Application	Unit Price *
Fee based on spraying over 15,000 acres	\$2.05 per acre
Fee based on 5,001-15,000 acres	\$2.40 per acre
Fee based on 0-5,000 acres	\$2.80 per acre
Retainer Fee +	See Schedule Below

\* Unit Price includes Permethrin mosquitocide at .007 pounds ai per acre.

(2) Ferry Fee per Application

Ferry Fee of \$500 per jurisdiction per application.

(3) Retainer Fee per Season

City of Fargo, ND	\$26,000.00
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+ The retainer fee will be applied as a credit to the beginning of the billing cycle each spray season until 100% of the retainer has been assessed, therefore reducing the cost of the initial billings by the amount of the retainer fee per season. If at the end of the season there remains any unused retainer fee, then the unused retainer fee shall be retained by and become the sole property of Airborne Vector Control.

March 16, 2021

The Honorable Board of City Commissioners  
City of Fargo  
Fargo, ND 58102

**Re: FAA Aerial Mosquito Spraying Authorization for Airborne Vector Control**

Commissioners:

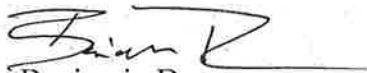
Enclosed please find the necessary authorization paperwork needed in order to comply with FAA and the North Dakota State Health Department NPDES permit for Airborne Custom Spraying to perform aerial mosquito control over the City of Fargo.

In 2009, the Sixth Circuit Court of Appeals determined that pesticide applications for both ground and aerial applications must be covered by an NPDES permit. As the contracted agent for aerial mosquito control applications for the City of Fargo, Airborne Custom Spraying is required to file a notice of intent for any possible aerial applications over the City of Fargo. The enclosed Authorization Application allows Airborne Custom Spraying to file the necessary paperwork needed in order to perform aerial spraying within the City of Fargo

**RECOMMENDED MOTION:** I/we hereby move to approve the execution of the enclosed Authorization Application for Airborne Custom Spraying.

Please return signed original.

Respectfully submitted,

  
Benjamin Dow  
Public Works Director



## AUTHORIZATION APPLICATION

I understand that Airborne Vector Control is required to obtain the approval for aerial spraying over the city of Fargo, ND by an authorized representative.

By the powers granted to me, I hereby give my approval for the low flying aircraft waivers required by the Federal Aviation Administration to Airborne Vector Control  
(This application must be signed by the Mayor of this city.)

---

City Mayor's Authorized Signature

Dr. Timothy J. Mahoney, M.D.

---

Printed Name

---

Date

Please complete application as soon as possible and return to  
Airborne Vector Control for processing and filing.

Expiration Date: *October 31, 2021*

March 18, 2021

The Honorable Board of City Commissioners  
City of Fargo  
Fargo, ND 58102

**RE: Sixty-Day Extension of Unpaid Leave for Carlos Perez**

Commissioners:

Carlos Perez, Equipment Technician II, is requesting an extension of unpaid leave for sixty-days under City of Fargo Employment Policy 500-008 – Leave Without Pay.

At this time, I am requesting commission approval to extend the unpaid leave for an additional sixty days.

RECOMMENDED MOTION: I/we hereby move to approve the sixty-day extension of unpaid leave for Carlos Perez under City of Fargo Employment Policy 500-008 – Leave Without Pay.

Respectfully submitted,



Benjamin Dow  
Public Works Director

To: Ben Dow  
Director of Operations Public Works

Ben:

I have been informed that my FMLA leave extension for the month of February 2021 has expired. With my medical treatments being unresolved and not being able to return to work at this time, I am requesting (60) day extension of unpaid leave (FMLA) to be used at this time.

Thank you for your consideration.

Sincerely,  
Carlos R. Perez

March 17, 2021

The Honorable Board of City Commissioners  
City of Fargo  
Fargo, ND 58102

**RE: Main Avenue Landscape Maintenance Services Contract  
(RFP# 21032)**

Commissioners:

Proposals were opened on Wednesday, February 17, 2021, in response to a Request for Proposal (RFP# 21032) for "Main Avenue Landscape Maintenance Services". A total of three (3) sealed responses were received.

All proposals received were reviewed and evaluated on the following criteria:

- Past Work Experience,
- Available Resources,
- Proposed Fees (Attached Bid Tab).

Based on the review of the stated criteria, we are recommending award of the Main Avenue Landscape Maintenance Services contract to All Terrain Grounds Maintenance.

RECOMMENDED MOTION: I/we hereby move based on the request for proposal (RFP# 21032) to award All Terrain Grounds Maintenance the Main Avenue Landscape Maintenance Services Contract.

Respectfully submitted,



Benjamin Dow  
Public Works Director

**Main Ave Landscape Maintenance Service RFP Bid TAB**

<b>Location</b>	<b>All Terrain</b>	<b>Turf Tamers</b>	<b>Valley Green</b>
MAIN AVE/2ND ST Initial	\$ 5,000	\$ 6,500	\$ 3,400
MAIN AVE/4TH ST Initial	\$ 225	\$ 600	\$ 300
MAIN AVE/BROADWAY Initial	\$ 500	\$ 1,250	\$ 1,275
MAIN AVE/7TH & 8TH ST Initial	\$ 500	\$ 950	\$ 1,000
MAIN AVE/9TH & 10TH ST Initial	\$ 600	\$ 750	\$ 500
NP AVE/ NUD Initial	\$ 100	\$ 250	\$ 100
<b>Initial Total</b>	<b>\$ 6,925</b>	<b>\$ 10,300</b>	<b>\$ 6,575</b>
MAIN AVE/2ND ST Weekly	\$ 80	\$ 750	\$ 425
MAIN AVE/4TH ST Weekly	\$ 30	\$ 350	\$ 45
MAIN AVE/BROADWAY Weekly	\$ 65	\$ 350	\$ 150
MAIN AVE/7TH & 8TH ST Weekly	\$ 45	\$ 350	\$ 100
MAIN AVE/9TH & 10TH ST Weekly	\$ 50	\$ 350	\$ 70
NP AVE/ NUD Weekly	\$ 25	\$ 50	\$ 35
<b>Weekly Total</b>	<b>\$ 295</b>	<b>\$ 2,200</b>	<b>\$ 825</b>
<b>Season Total</b>	<b>\$ 7,670</b>	<b>\$ 57,200</b>	<b>\$ 21,450</b>
	<b>All Terrain</b>	<b>Turf Tamers</b>	<b>Valley Green</b>
<b>Grand Total</b>	<b>\$ 14,595</b>	<b>\$ 67,500</b>	<b>\$ 28,025</b>

## SERVICES AGREEMENT

### LANDSCAPE MAINTENANCE SERVICES

#### I. Agreement

This agreement is between the City of Fargo (City) and All Terrain Grounds Maintenance (Contractor) to provide Main Avenue landscape maintenance services for the City. This agreement shall commence upon signing by both parties and expire on October 31, 2021. The term of this agreement may be extended, if accepted and signed by the Contractor and City, for two (2) additional one (1) year extensions.

#### II. Scope of Services

The contractor will perform the landscape maintenance services as set forth within this agreement and as represented in "Exhibit A" attached hereto. It will be up to the individual contractor's discretion to perform the services as weather conditions permit.

##### Main Avenue - Landscape Maintenance

- Maintain planting beds and mulch areas free of weeds.
- Initial Clean-up will include the application of a 2" layer of city provided mulch. Contractor shall be responsible for transportation of mulch from City Compost Site to designated areas. Loading of mulch at City Compost Site will be coordinated with Forestry Department Staff prior to day of need.
- Attempt to remove persistent perennial weeds by methods that will completely and permanently eliminate the weed. Contractor may utilize herbicides that are approved for and appropriate for use in the landscape setting. Take extreme care in the application of herbicides not to damage adjacent plant materials including trees, shrubs, perennials and lawn. Hand weeding may be necessary/justified at time.  
**ONLY hand weeding is allowed for Term 1, May 1 – October 31 2021.**
- Police planting bed(s) for trash, debris, and all material shall be hauled from site and properly disposed of.

#### III. Responsibility of the City

City shall oversee the execution of this agreement and disbursing of funds.

#### IV. Contractor's Compensation and Method of Payment

City will reimburse Contractor for services rendered per activity as shown in the attached Exhibit B. All final invoices shall be submitted no later than December 1 of the contract year.

#### V. Termination of the Agreement

This contract may be terminable at will by either party after giving ten (10) days written notice to the other party.

**VI. Assignability**

This agreement will not be assigned or transferred by Contractor to another party without the prior written consent of the City.

**VII. Hold Harmless and Insurance**

Contractor agrees to indemnify and hold City harmless from any and all claims, demands or causes of action resulting from the provision of services as described in this contract. All insurance (Worker's Compensation, Comprehensive General Liability, and/or Automobile) shall be maintained at the expense of the contractor during the term of this contract.

**VIII. Contractor Records**

Contractor shall maintain accurate and updated records of all reimbursable services provided to City under the terms of this agreement, and shall record the date such services are provided. Such records shall conform to generally recognized accounting principles. The City, or their authorized representatives, shall have access to any records of Contractor pertinent to the agreement.

**IX. Monitoring and Evaluation**

City may monitor and evaluate Contractor progress and performance to assure that the terms of this agreement are being satisfactorily met. Contractor shall cooperate with City relating to such monitoring and evaluation.

**X. Independence of Recipient**

Contractor is not the agent or employee of City. Contractor is solely responsible for its acts and the acts of its agents, employees and subcontractors.

**XI. Conflict of Interest**

Contractor agrees that it does not have any undisclosed influence or relationship with City staff regarding the award or performance of this contract.

**XII. Entire Agreement**

The provisions as set forth in Items I, and all attachments of this agreement constitute the entire agreement between the parties.

**IN WITNESS WHEREOF**, the undersigned enter into this agreement.

Date: 3/17/2021

All Terrain Grounds Maintenance

Matt Zo

By: Matt Longano

Its: CRM

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

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

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

ATTEST:

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

## **Landscape Maintenance Services**

**Initial Clean-up** will include the application of a 2" layer of city provided mulch, and cutting previous year's perennials to the ground. Contractor shall be responsible for transportation of mulch from City Compost Site to designated areas. Loading of mulch at City Compost Site will be coordinated with Public Works Staff prior to day of need.

<b><u>Site</u></b>	<b><u>Location</u></b>
1	Main Ave/2 <sup>nd</sup> St
2	Main Ave/4 <sup>th</sup> St
3	Main Ave/Broadway
4	Main Ave/7 <sup>th</sup> and 8 <sup>th</sup> Street
5	Main Ave/9 <sup>th</sup> and 10 <sup>th</sup> Street
6	NP Ave/North University Dr

**Routine maintenance** will include maintaining planting beds and mulch areas free of weeds. Planting bed(s) to be policed for trash, debris, and all material shall be hauled from the site and properly disposed of. **Reminder: ONLY hand weeding is allowed for Term 1, May 1 – October 31, 2021.**

<b><u>Site</u></b>	<b><u>Location</u></b>
1	Main Ave/2 <sup>nd</sup> St
2	Main Ave/4 <sup>th</sup> St
3	Main Ave/Broadway
4	Main Ave/7 <sup>th</sup> and 8 <sup>th</sup> Street
5	Main Ave/9 <sup>th</sup> and 10 <sup>th</sup> Street
6	NP Ave/North University Dr



Site 1 – Main Ave/2<sup>nd</sup> St



Site 2 – Main Ave/4<sup>th</sup> St



Site 3 – Main Ave/Broadway



#### Site 4 – Main Ave/7<sup>th</sup> and 8<sup>th</sup> Street



Site 5 – Main Ave/9<sup>th</sup> and 10<sup>th</sup> Streets



Site 6 – NP Ave/North University Dr

**EXHIBIT B**

<b>Location</b>	<b>All Terrain</b>
MAIN AVE/2ND ST Initial	\$ 5,000
MAIN AVE/4TH ST Initial	\$ 225
MAIN AVE/BROADWAY Initial	\$ 500
MAIN AVE/7TH & 8TH ST Initial	\$ 500
MAIN AVE/9TH & 10TH ST Initial	\$ 600
NP AVE/ NUD Initial	\$ 100
<b>Initial Total</b>	<b>\$ 6,925</b>
MAIN AVE/2ND ST Weekly	\$ 80
MAIN AVE/4TH ST Weekly	\$ 30
MAIN AVE/BROADWAY Weekly	\$ 65
MAIN AVE/7TH & 8TH ST Weekly	\$ 45
MAIN AVE/9TH & 10TH ST Weekly	\$ 50
NP AVE/ NUD Weekly	\$ 25
<b>Weekly</b>	<b>\$ 295</b>
<b>Total</b>	<b>\$ 7,670</b>
<b>Season Total</b>	<b>\$ 14,595</b>

19

March 22, 2021

Board of City Commissioners  
City of Fargo  
225 Fourth Street North  
Fargo, ND 58102

**RE: RFQ21072 Metro Transit Garage Hoist Replacement**

Dear Commissioners:

The City of Fargo Transit Department is requesting Architecture and Engineering services for the replacement of in-ground hoists and repair of the drive-over service bay at the Metro Transit Garage. NDDOT awarded \$420,000 in capital grant funds to replace current in-ground hoists and repair of the drive-over service bay.

The project is funded by NDDOT grant contract number 38201125 which was presented to and approved by the City of Fargo Commission on September 9<sup>th</sup>, 2020.

Local share for this project was included in Transit's 2021 budget. Project number F20002 has been assigned.

The requested motion is to authorize the Request for Qualifications to replace the in-ground hoists and repair the drive-over service bay at the Metro Transit Garage.

Sincerely,



Jordan Smith  
Transit Fleet and Facilities Manager

# Request for Qualifications (RFQ)



Jordan Smith

City of Fargo Transit (MATBUS)

3/31/2021

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**I. Agency Overview**

The City of Fargo Transit Department operates fixed route and paratransit services in the Fargo-Moorhead Metro Area. The Cities of Fargo and Moorhead currently operate the Metro Transit Garage (MTG) which is a maintenance facility. The facility is located at 650 23<sup>rd</sup> St N. Fargo, ND and was constructed in 2007.

**II. Purpose of Request**

The intent of this RFQ is to receive proposals from qualified firms to provide architectural and engineering services to complete a design build for replacement and repairs of the maintenance facility in-ground hoists and drive-over pit.

Requested services include: design services, bidding and contracting services, construction management and other associated services.

**III. Background Information**

The Metro Transit Garage was constructed in 2007 and has not had any significant updates since. The maintenance facility utilizes two in-ground hoists and one drive-over pit to perform services on the vehicles. The in-ground hoist have reached their useful life and need to be updated to maintain safe and reliable operation. The frame work of the drive-over pit has rusted and is separating from the adjacent concrete. The concrete has started to break apart and the area is not safe to use at this time.

**IV. Project Objective**

The objective is to hire one firm to design and construct all necessary improvements for the MTG. The MTG Maintenance shop will need to remain open and in operations for the duration of the project, which means the project may be broken down to individual tasks that will be done concurrently.

**V. Project Budget**

Funding identified for this project consists of funding from the North Dakota Department of Transportation and City of Fargo funds. A total project budget will not exceed \$420,000.

**VI. Proposal Security**

No proposal will be considered by the City of Fargo to be responsive to this request unless accompanied by a cashier's check payable to the City of Fargo by a responsible, solvent bank in the United States in an amount equal to five percent (5%) of the contract amount for the Fargo portion of the contract; or, a bond executed by a surety company authorized to transact business in the State of North Dakota in an amount equal to five percent (5%) of the Fargo portion of the contract amount. Such surety will be retained by the City of Fargo if the successful proposer fails, neglects or refuses to execute the contract, or fails to commence service as required under the contract. The check or

bond of the highest ranked proposer will be returned after the execution of the contract. The check or bond of the second highest ranked proposer will be returned after the execution of the contract with the successful proposer. The checks or bonds of all other proposers will be returned promptly after the award of the contract by the City of Fargo.

## **VII. Bid Protest**

Protests related to this solicitation must be submitted in writing and will only be accepted from prospective Bidder or Offerors whose direct economic interest would be affected by the award of a Contract or failure to award a Contract.

Copies of protest procedure are available on request. Contact Julie Bommelman, 650 23rd Street N, Fargo, ND 58102, for a copy, if desired.

As this procurement is Federally funded, the provisions of FTA Circular 4220.1 (as amended) apply. An appeal to FTA must be received by the cognizant FTA Regional or Headquarters Office with five (5) working days of the date the protestor knew or should have known of the violation.

FTA will review bid protests only in the following circumstances:

- a. A protestor has exhausted all administrative remedies with The City of Fargo – Transit.
- b. FTA will only review protests regarding the alleged failure of the grantee to have or follow its written protest procedures or its failure to review a complaint or protest.

Alleged violations on other grounds are under the jurisdiction of the appropriate State or local authorities. Alleged violations of Federal law or regulation that provide an applicable complaint procedure shall be submitted and processed in accordance with the Federal law or regulation.

Contractors who have exhausted all administrative remedies with the City of Fargo Transit and FTA can pursue the matter further in the ND state courts.

## **VIII. Scope of Work and Performance Tasks**

At minimum, this project will include environmental, design, plan & specification preparation, bidding/contracting and construction management services. Note that this project may require staging plan(s) to accommodate MTG operations during construction. All tasks must include electrical, plumbing and HVAC changes that may be required.

The below tasks do not need to be completed consecutively. The proposer must provide a written timeline for each task start and end date.

**Task 1 – Drive-Over Pit Repairs**

This task will include the observation of current conditions and discussions about best repair options. Some options may include repairing current conditions to original build-as specifications, design and construct a flat floor system that would eliminate the drive-over pit, installing a third in-ground hoist, or a combination of any of the previous options.

**Task 2 – In-Ground Hoist Replacement**

This task includes the demolition and removal of the current in-ground hoists and the engineering and installation of new in-ground hoists that will be supplied by the City of Fargo. The hoist manufacturer will supply a site-specific installation package which includes design and engineering specifications.

**IX. Implementation Schedule****1) Timeline/Schedule**

Advertise RFQ	3/31/2021
Pre-proposal Meeting (1:00 pm – MTG)	4/8/2021
Deadline for proposer's submittal of written requests for clarification	
Modification of the RFQ and pre-proposal meeting	4/13/2021
Due Date for Submittals (by 2:00 pm)	4/21/2021
Review Proposals/Identify Finalists	(week of) 4/19/2021
Interview Finalists	(week of) 4/26/2021
Deadline for proposer submit written protest <i>(if applicable)</i>	5/3/2021
Fargo City Commission Approval and Recommendation	
of Award Contract and notice to proceed issued	5/17/2021
Contract Negotiations	(after) 5/17/2021
Deadline for proposer's submittal for written post-award protest	5/24/2021
Cities response to Post-Award protest	5/31/2021
Deadline for proposer's submittal of written appeal of post-award	06/07/2021
Hold hearing of appeal of post-award decision	
w/ Fargo City Commission	06/14/2021
City's final written determination on appeal issued	
All decisions regarding protests shall be considered final.	06/28/2021
Successful proposer commences service	06/29/2021

**2) Project Development (Major Milestones).**

Notice to Proceed	Upon Contract Execution
Project Start-Up/Mobilization	Immediately Upon Execution
All Tasks Completed	12/31/2021

## **X. Evaluation and Selection Process**

**Selection Committee.** The City of Fargo will establish a selection committee to determine which firm, by its determination, has the best skills and approach to complete the project. The City of Fargo will not disclose the membership of the selection committee prior to the firm interviews.

The firm selection process shall be administered under the following criteria:

- 20% The firm's past experience with similar projects, including the firm's ability, familiarity, and involvement in handling similar types of activities
- 20% Specific qualifications of the firm's project manager and key staff's experience related to the development of similar studies
- 20% The firm's project understanding, proposed project approach and methodology, project work plan, and project management techniques
- 20% The firm's record of past performance on similar projects, including quality of work, ability to meet deadlines, and ability to control costs
- 20% Current workload and the availability of key personnel and other resources to perform the work within the specified timeframe

The selection committee, at the discretion of the City of Fargo and under the guidance of NDDOT policy, will entertain formal oral presentations for the top candidates to provide additional input into the evaluation process. Oral presentations will be followed by a question and answer period during which the selection committee may question the prospective consultants about their proposed approaches.

The City of Fargo reserves the right to reject any or all proposals or to waive minor irregularities in said proposal, and reserves the right to negotiate minor deviations to the proposal with the successful firm. The City of Fargo reserves the right to award a contract to the consulting firm or individual that presents the proposal, which, in the sole judgement of the City of Fargo, best accomplishes the desired results.

This RFQ does not commit the City of Fargo award a contract, to pay any costs incurred in the preparation of a response to this request, or to procure or contract for any services or supplies, the City of Fargo reserves the right to withdraw this RFQ at any time without prior notice.

All proposals, whether selected or rejected, shall become the property of the City of Fargo.

**Prohibited Contact with Proposers:** Except as otherwise provided, oral communications between Evaluators and Proposers regarding procurement in progress is prohibited. Each Evaluation Panel member shall report any such communication, in writing to the RFP Administrators, who shall determine, in consultation with the Fargo City Administrator, any appropriate remedial action.

## **XI. Proposal Content and Format**

The purpose of the proposal is to demonstrate the qualifications, competence, and capacity of the consultant seeking to provide comprehensive services specified herein for the City of Fargo, in conformity with the requirements of the RFQ. The proposal should demonstrate qualifications of the firm and its staff to undertake this project. It should also specify the proposed approach that best meets the RFQ requirements. The proposal must address each of the service specifications under the Scope of Work and Performance Tasks.

At minimum, proposals shall include the following information:

- 1) **Contact Information.** Name, telephone number, email address, mailing address, and other contact information for the consultant's project manager.
- 2) **Introduction and Executive Summary.** This section shall document the firm name, business address (including telephone, email address(es), year established, type of ownership and parent company (if any), project manager name and qualifications, and any major features that may differentiate this proposal from others, if any.
- 3) **Work Plan and Project Approach Methodology.** Proposals shall include the following, at minimum:
  - a. A detailed work plan identifying the major tasks to be accomplished relative to the requested study tasks and expected product as outlined in this RFQ. A timeline for completion of the requested services, identifying milestones for development of the project and completion of individual tasks.
  - b. List of projects of similar size, scope, type, and complexity that the proposed project team has successfully completed in the past.
  - c. List of the proposed principal(s) who will be responsible for the work, proposed project manager and project team members (with resumes).
  - d. A breakout of hours for each member of the team by major task area, and an overall indication of the level of effort (percentage of overall project team hours) allocated to each task. Note that specific budget information is to be submitted in a sealed cost proposal as described below in Section VIII. General Proposal Requirements
  - e. A list of any subcontracted agencies, the tasks they will be assigned, the percent of work to be performed, and the staff that will be assigned.
  - f. List of client references for similar projects described within the RFP.
  - g. Required Disadvantaged Business Enterprise (DBE) and/or Minority Business Enterprise (MBE) Firms participation documentation, if applicable.
  - h. Ability of firm to meet required time schedules based on current and known future workload of the staff assigned to the project.
- 4) **Signature.** Proposals shall be signed in ink by an authorized member of the firm/project team.
- 5) **Attachments.** Review, complete, and submit the completed versions of the following RFQ Attachments with the proposal:

Exhibit A – Cost Proposal Form  
Exhibit B – Debarment and Suspension Certification  
Exhibit C – Lobbying Restrictions Certification  
Exhibit D – Standard Form 330  
Exhibit E – Stertil-Koni Site Specific Drawings

## **XII. Submittal Information**

Hard copies of technical and/or cost proposals should be delivered to the contact below:

Jordan Smith  
Transit Fleet and Facilities Manager  
650 23<sup>rd</sup> St N  
Fargo ND, 58102  
[jmsmith@fargond.gov](mailto:jmsmith@fargond.gov)

Julie Bommelman  
City of Fargo Transit Director  
650 23<sup>rd</sup> St N  
Fargo ND, 58102  
[jbommelman@fargond.gov](mailto:jbommelman@fargond.gov)

All proposals received by **2:00 pm on Wednesday, April 21<sup>st</sup>, 2021** at the MATBUS office listed above, will be given equal consideration. Minority, women-owned and disadvantaged business enterprises are encouraged to participate. Respondents must submit six (6) hard copies and one (1) PDF copy of the proposal.

The City of Fargo will hold a preproposal meeting on **Thursday, April 8<sup>th</sup> at 1:00 pm in MTG conference room (650 23<sup>rd</sup> St N. Fargo ND, 58102)**, where consultants may attend and ask any questions they may have about the intent of the RFQ. The City of Fargo staff will be present at this meeting to give insight into the intricacies of the project. Upon request, the City of Fargo will provide a conference hotline to consultants who cannot be at the meeting in person. No response will be given to verbal or written questions prior to this meeting. Questions from bidders will be submitted at the meeting and we will respond in writing by April 16<sup>th</sup>, 2021. The City of Fargo reserves the right to decline a response to any question if, in the City of Fargo assessment, the information cannot be obtained and shared with all potential firms in a timely manner. A summary of the preproposal meeting will be posted on the City of Fargo and MATBUS website before proposals are due.

## **XIII. General RFQ Requirements**

- 1) **Sealed Cost Proposal.** All proposals must be clearly identified and marked with the appropriate project name, with a separately sealed cost proposal per the requirements of this RFQ. Cost proposals shall be based on an hourly "not to exceed" amount and shall follow the general format as provided within Exhibit A of this RFQ. The City of Fargo may decide, in its sole discretion, to negotiate a price for the project after the selection committee completes its final ranking. Negotiation will begin with the consultant identified as the most qualified per requirements of this RFQ, as determined in the evaluation/selection process. If the City of Fargo is unable to negotiate a contract for services, negotiations will be terminated and negotiations will begin with the next most qualified consultant. This process shall continue until a satisfactory contract has been negotiated.
- 2) **Consultant Annual Audit Information for Indirect Cost.** Consulting firms proposing to do work for the City of Fargo must have a current audit rate no older than fifteen (15) months

from the close of the firms Fiscal Year. Documentation of this audit rate must be provided with the sealed cost proposal. Firms that do not meet this requirement will not qualify to propose or contract for the City of Fargo projects until the requirement is met. Firms that have submitted all the necessary information to the City of Fargo and are waiting for the completion of the audit will be qualified to submit proposals for work. Information submitted by a firm that is incomplete will not qualify. Firms that do not have a current cognizant Federal Acquisition Regulations (FARs) audit of indirect cost rates must provide this audit prior to the interview. **This document must be attached with the sealed cost proposal.**

- 3) **Debarment and Suspension Certification and Certification of Restriction on Lobbying.** Respondents must attach signed copies of Exhibit B – Debarment and Suspension Certification and Exhibit C – Certification of Restriction on Lobbying attached to the exterior of the sealed cost proposal, as well as Exhibit D – Standard Form 330 (if required).
- 4) **Respondent Qualifications.** Respondents must submit evidence that they have relevant past experience and have previously delivered services similar to the requested services within this RFP. Each respondent may also be required to show that similar work has been performed in a satisfactory manner and that no claims of any kind are pending against such work. No proposal will be accepted from a respondent whom is engaged in any work that would impair his/her ability to perform or finance this work.
- 5) **Disadvantaged Business Enterprise.** Pursuant to U.S. Department of Transportation policy and 49 CFR Part 26, the City of Fargo supports the participation of DBE/MBE businesses in the performance of contracts financed with federal funds under this RFQ. Consultants shall make an effort to involve DBE/MBE businesses in this project. If the consultant is a DBE/MBE, a statement indicating that the business is certified DBE/MBE in North Dakota or Minnesota shall be included within the proposal. If the consultant intends to utilize a DBE/MBE to complete a portion of this work, a statement of the subcontractor's certification shall be included. The percent of the total proposed cost to be completed by the DBE/MBE shall be shown within the proposal. Respondents should substantiate (within proposal) efforts made to include DBE/MBE businesses.
- 6) **North Dakota Department of Transportation Consultant Administration Services Procedure Manual.** Consultants are advised to follow procedures contained in the *North Dakota Department of Transportation Consultant Administration Services Procedure Manual*, which includes pre-qualifications of consultants. Copies of the manual may be found on the NDDOT website at [www.dot.nd.gov](http://www.dot.nd.gov).

#### **XIV. Additional Information**

A list of additional reference documents and information may be made available for consultants upon request.

#### **XV. Contractual Information**

- 1) The City of Fargo reserves the right to reject any or all proposals or to award the contract to the next most qualified consulting firm if the successful firm does not execute a contract within forty-five (45) days after the award of the proposal. The City of Fargo shall not pay for any information contained in proposals obtained from participating firms.

- 2) The City of Fargo reserves the right to request clarification on any information submitted and additionally reserves the right to request additional information of one (1) or more applicants.
- 3) Any proposal may be withdrawn up until the proposal submission deadline. Any proposals not withdrawn shall constitute an irrevocable offer for services set forth within the RFQ for a period of ninety (90) days or until one or more of the proposals have been approved by the City of Fargo Commission.
- 4) If, through any cause, the consultant shall fail to fulfill in a timely and proper manner the obligations agreed to, the City of Fargo shall have the right to terminate its contract by specifying the date of termination in a written notice to the firm at least ninety (90) working days before the termination date. In this event, the firm shall be entitled to just and equitable compensation for any satisfactory work completed.
- 5) Any agreement or contract resulting from the acceptance of a proposal shall be on forms either supplied by or approved by the City of Fargo and shall contain, as a minimum, applicable provisions of the RFQ. The City of Fargo reserves the right to reject any agreement that does not conform to the RFQ and any the City of Fargo requirements for agreements and contracts.
- 6) The consultant shall not assign any interest in the contract and shall not transfer any interest in the same without prior written consent of the City of Fargo.

#### **XVI. Payments**

The selected firm shall submit invoices for work completed to the City of Fargo. Payments shall be made to the consultant by the City of Fargo in accordance with the contract after all required services, as well as items identified in the scope of work and performance tasks, have been completed to the satisfaction of the City of Fargo.

#### **XVII. Federal and State Funds**

A portion of this project will be grant funded through the Federal Transit Administration (FTA) 5339 (Bus and Bus Facilities) program; and the City of Fargo Enterprise Fund. Therefore, Local, federal and state requirements and corresponding contract clauses will apply to this project and any resulting contractual arrangement.

#### **XVIII. Title VI Assurances**

Prospective firms should be aware of the following contractual requirements regarding compliance with Title VI should they be selected pursuant to this RFQ:

- 1) **Compliance with Regulations.** The firm shall comply with the regulations relative to nondiscrimination in federally-assisted programs of the U.S. Department of Transportation, 49 CFR Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations).

- 2) **Nondiscrimination.** The firm, with regard to the work performed by it, shall not discriminate on the grounds of race, color, national origin, sex, age, disability/handicap, or income status\*\*, in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The firm shall not participate, either directly or indirectly, in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- 3) **Solicitations for Subcontracts, Including Procurements of Materials and Equipment.** In all solicitations, either by competitive bidding or negotiation, made by the firm for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the consultant of the contractor's obligations to the City of Fargo and the regulations relative to nondiscrimination on the grounds of race, color, national origin, sex, age, disability/handicap, or income status\*\*.
- 4) **Information and Reports.** The firm shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the City of Fargo or NDDOT to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of a firm is in the exclusive possession of another who fails or refuses to furnish this information, the consultant shall so certify to the City of Fargo, or NDDOT, as appropriate, and shall set forth what efforts it has made to obtain the information.
- 5) **Sanctions for Noncompliance.** In the event of the consultant's noncompliance with the nondiscrimination provisions as outlined herein, the City of Fargo and NDDOT shall impose such sanctions as it or FTA may determine to be appropriate, including but not limited to:
  - a) Withholding of payments to the firm under the contract until the firm complies, and/or;
  - b) Cancellation, termination, or suspensions of the contract, in part or in whole.
- 6) **Incorporation of Title VI Provisions.** The firm shall include the provisions of Section XIII, paragraphs 1 through 5 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto.

The firm shall take such action with respect to any subcontract or procurement as the City of Fargo, the U.S. Department of Transportation, or FTA may direct as a means of enforcing such provisions, including sanctions for noncompliance provided, however, that in the event a consultant becomes involved in, or is threatened with, litigation by a subcontractor or supplier as a result of such direction, the firm may request the City of Fargo enter into such litigation to protect the interests of the City of Fargo; and, in addition, the firm may request the United States to enter into such litigation to protect the interests of the United States.

\*\* The Act governs race, color, and national origin. Related Nondiscrimination Authorities

govern sex, 23 USC 324; age, 42 USC 6101; disability/handicap, 29 USC 790; and low income, EO 12898.

**XIX. Termination Provisions**

The City of Fargo reserves the right to cancel any contract for cause upon written notice to the firm. Cause for cancellation will be documented failure(s) of the firm to provide services in the quantity or quality required. Notice of such cancellation will be given with sufficient time to allow for the orderly withdrawal of the firm without additional harm to the participants or the City of Fargo.

The City of Fargo may cancel or reduce the amount of service to be rendered if there is, in the opinion of the City of Fargo, a significant increase in local costs; or if there is insufficient state or federal funding available for the service; thereby terminating the contract or reducing the compensation to be paid under the contract. In such event, the City of Fargo will notify the firm in writing ninety (90) days in advance of the date such actions are to be implemented.

In the event of any termination, the City of Fargo shall pay the agreed rate only for services delivered up to the date of termination. The City of Fargo has no obligation to the firm, of any kind, after the date of termination. The firm shall deliver all records, equipment, and materials to the City of Fargo within twenty-four (24) hours of the date of termination.

**XX. Limitation on Firm**

All reports and pertinent data or materials are the sole property of the City of Fargo and may not be used, reproduced, or released in any form without the explicit, written permission of the City of Fargo.

The firm should expect to have access only to the public reports and public files of local governmental agencies and the City of Fargo in preparing the proposal or reports. No compilation, tabulation or analysis of data, definition of opinion, etc., should be anticipated by the consultant from these agencies, unless volunteered by a responsible official in those agencies.

**XXI. Conflict of Interest**

No consultant, subcontractor, or member of any firm proposed to be employed in the preparation of this proposal shall have a past, ongoing, or potential involvement which could be deemed a conflict of interest under North Dakota Century Code or other law. During the term of this agreement, the firm shall not accept any employment or engage in any consulting work that would create a conflict of interest with the City of Fargo or in any way compromise the services to be performed under this agreement. The firm shall immediately notify the City of Fargo of any and all potential violations of this paragraph upon becoming aware of the potential violation.

**XXII. Insurance**

The firm shall provide evidence of insurance as stated in the contract prior to execution of the contract.

### **XXIII. Risk Management**

The firm agrees to defend, indemnify, and hold harmless the City of Fargo and the State of North Dakota, its agencies, officers and employees, from and against claims based on the vicarious liability of CITY OF FARGO and the State or its agents, but not against claims based on CITY OF FARGO and the State's contributory negligence, comparative and/or contributory negligence or fault, sole negligence, or intentional misconduct. The legal defense provided by the firm to CITY OF FARGO and the State under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for CITY OF FARGO and the State is necessary. The firm also agrees to defend, indemnify, and hold CITY OF FARGO and the State harmless for all costs, expenses and attorneys' fees incurred if CITY OF FARGO or the State prevails in an action against the consultant in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of the contract.

The firm shall secure and keep in force during the term of the contract, from insurance companies, government self-insurance pools or government self-retention funds authorized to do business in North Dakota, the following insurance coverage:

- 1) Commercial general liability and automobile liability insurance - minimum limits of liability required are \$250,000 per person and \$1,000,000 per occurrence.
- 2) Workforce Safety insurance meeting all statutory limits.
- 3) The City of Fargo and the State of North Dakota, its agencies, officers, and employees shall be endorsed as an additional insured on the commercial general liability and automobile liability policies.
- 4) Said endorsements shall contain a "Waiver of Subrogation" in favor of the City of Fargo and the State of North Dakota.
- 5) The policies and endorsements may not be canceled or modified without thirty (30) days prior written notice to the City of Fargo and the State Risk Management Department.

The firm shall furnish a certificate of insurance evidencing the requirements in 1, 3, and 4, above to the City of Fargo prior to commencement of this agreement.

The City of Fargo and the State reserve the right to obtain complete, certified copies of all required insurance documents, policies, or endorsements at any time. Any attorney who represents the State under this contract must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under North Dakota Century Code Section 54-12-08.

When a portion of the work under the agreement is sublet, the consultant shall obtain

insurance protection (as outlined above) to provide liability coverage to protect the consultant, the City of Fargo, and the State as a result of work undertaken by the subconsultant. In addition, the firm shall ensure that any and all parties performing work under the agreement are covered by public liability insurance as outlined above. All subconsultants performing work under the agreement are required to maintain the same scope of insurance required of the consultant. The firm shall be held responsible for ensuring compliance with those requirements by all subconsultants.

Firm's insurance coverage shall be primary (i.e., pay first) as respects any insurance, self-insurance or self-retention maintained by the City of Fargo or the State of North Dakota. Any insurance, self-insurance or self-retention maintained by the City of Fargo or the State shall be excess of the firm's insurance and shall not contribute with it. The insolvency or bankruptcy of the insured firm shall not release the insurer from payment under the policy, even when such insolvency or bankruptcy prevents the insured firm from meeting the retention limit under the policy. Any deductible amount or other obligations under the policy(ies) shall be the sole responsibility of the firm. This insurance may be in a policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and be placed with insurers rated "A-" or better by A.M. Best Company, Inc. the City of Fargo and the State will be indemnified, saved, and held harmless to the full extent of any coverage actually secured by the firm in excess of the minimum requirements set forth above.

#### XXIV. Federal Clauses

By entering into a sale with the City of Fargo, ND, and/or the City of Moorhead, MN, doing business as CITY OF FARGO, the supplier is agreeing to be bound by the following federal clauses and certifications as applicable:

- ☒ 1. **No Government Obligation to Third Parties:** *Applies to all third party contracts that are federally funded.*
- a) The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
  - b) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.
- ☒ 2. **Program Fraud & False or Fraudulent Statements & Related Acts:** *Applies to all third party contracts that are federally funded.*

- a) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.
- b) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(1) on the Contractor, to the extent the Federal Government deems appropriate.
- c) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

☒

3. **Access to Records and Reports:** *Applies to all contracts funded in whole or in part with FTA funds.*

- a) Record Retention. The Contractor will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third party agreements of any type, and supporting materials related to those records.
- b) Retention Period. The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.
- c) Access to Records. The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this contract as reasonably may be required.

- d) Access to the Sites of Performance. The Contractor agrees to permit FTA and its contractors access to the sites of performance under this contract as reasonably may be required.

☒ 4. **Federal Changes:** *Applies to all contracts.*

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Purchaser and FTA, and they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

☒ 5. **Civil Rights and Equal Opportunity:** *Applies to all contracts.*

The AGENCY is an Equal Opportunity Employer. As such, the AGENCY agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, the AGENCY agrees to comply with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

Under this Agreement, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

- a) **Nondiscrimination.** In accordance with Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- b) **Race, Color, Religion, National Origin, Sex.** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e et seq., and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including

apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

- c) Age. In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 *et seq.*, U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
- d) Disabilities. In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 *et seq.*, the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 *et seq.*, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

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6. **Termination Provisions:** *Applies to all contracts in excess of \$10,000. Those contracts must address termination for cause and for convenience, including the manner by which it will be effected and the basis for settlement.*

- a) The CITY reserves the right to cancel any contract for cause upon written notice to the Contractor. Cause for cancellation will be documented failure(s) of the contractor to provide services in the quantity and/or quality required. Notice of such cancellation will be given with sufficient time to allow for the orderly withdrawal of the Contractor without additional harm to the participants or the CITY.
- b) The CITY may cancel or reduce the amount of service to be rendered if there is, in the opinion of the City Council, a significant increase in local costs; or, in the opinion of the City Council, insufficient state or federal funding available for the service, thereby terminating the contract or reducing the compensation to be paid under the contract. In such event, the CITY will notify Contractor in writing ninety (90) days in advance of the date such actions are to be implemented.

CONTRACTOR is hereby notified that the CITY Transit system pursuant to this agreement is dependent upon the necessary receipt of local, state and federal funding.

In the event of any termination, the CITY shall pay the agreed rate only for services delivered up to the date of termination. The CITY has no obligation to Contractor, of any kind, after the date of termination. Contractor shall deliver all

records, equipment and materials to the CITY within 24 hours of the date of termination.

- X 7. **Disadvantaged and Small Business Enterprise:** *Applies to FTA recipients receiving planning, capital and/or operating assistance that will award prime contracts (excluding transit vehicle purchases) exceeding \$250,000 in FTA funds in a Federal fiscal year.*

*For all DOT-assisted contracts, each FTA recipient must include assurances that third party contractors will comply with the DBE program requirements of 49 C.F.R. part 26, when applicable. The following contract clause is required in all DOT-assisted prime and subcontracts:*

The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 C.F.R. part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- a) Withholding monthly progress payments;
- b) Assessing sanctions;
- c) Liquidated damages; and/or
- d) Disqualifying the contractor from future bidding as non-responsible. 49 C.F.R. § 26.13(b).

Further, recipients must establish a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days (payment required within 10 days or paying interest at 1 ½ percent per Minnesota State Statute 471.425 subd. 4a) from receipt of each payment the recipient makes to the prime contractor. 49 C.F.R. § 26.29(a). Finally, for contracts with defined DBE contract goals, each FTA recipient must include in each prime contract a provision stating that the contractor shall utilize the specific DBEs listed unless the contractor obtains the recipient's written consent; and that, unless the recipient's consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE. 49 C.F.R. § 26.53(f) (1).

In connection with the performance of this service, the Contractor will cooperate with the CITY in the utilization of disadvantaged business enterprises including women-owned business enterprises for the duration of the contract and will use its best efforts to insure that disadvantaged business enterprises have the maximum practicable opportunity to compete for subcontract work. In order to insure that a fair proportion of the purchases of supplies and services is placed with disadvantaged business enterprises, the Contractor agrees to take affirmative action to identify disadvantaged business firms, solicit bids or quotations from them for supplies and services related to this proposal.

The Contractor agrees to meet any goals established by CITY for purchases pertaining to this Contract to the best of the Contractor's ability and will provide

the CITY with the necessary certification and records for reporting purposes. When the majority of the contract is labor, which is not a contracting opportunity, DBE goals will not be set but Contractors are encouraged to use DBE businesses.

The CONTRACTOR will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

The contractor must promptly notify the CITY whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the CITY.

#### Fostering Small Business Participation

The CITY has established a small business element to its DBE program, pursuant to 49 CFR 26.39. This program aims to provide opportunities and foster small business enterprises (SBE)/participation in contracting with the CITY. This program is race- and gender- neutral, however SBEs can also count towards DBE goals.

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8.

#### **Incorporation of FTA Terms:** *Applies to all contracts.*

The preceding provision includes, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1 as amended, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement.

The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any CITY requests which would cause the CITY to be in violation of the FTA terms and conditions.

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9.

**Debarment, Suspension, Ineligibility and Voluntary Exclusion:** *Applies to contracts in an amount expected to equal or exceed \$25,000 or a contract award at any tier for a federally required audit (irrespective of the contract amount) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. part 180. Recipients, contractors, and subcontractors (at any level) that enter into covered transactions are required to verify that the entity (as well as its principals and affiliates) with which they propose to contract or subcontract is not excluded or disqualified. This is done by: (a) checking the SAM exclusions; (b) collecting a certification from that person; or (c) adding a clause or condition to the contract or subcontract.*

The Contractor shall comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension

(Nonprocurement),” 2 C.F.R. part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

- a) Debarred from participation in any federally assisted Award;
- b) Suspended from participation in any federally assisted Award;
- c) Proposed for debarment from participation in any federally assisted Award;
- d) Declared ineligible to participate in any federally assisted Award;
- e) Voluntarily excluded from participation in any federally assisted Award; or
- f) Disqualified from participation in any federally assisted Award.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the City of Fargo. If it is later determined by the City of Fargo that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the City of Fargo, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200, while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

- ☒ 10. **Buy America:** *Applies to projects that involve the purchase of more than \$150,000 of iron, steel, manufactured goods, or rolling stock to be delivered to the recipient to be used in an FTA assisted project.*

The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. part 661, which provide that Federal funds may not be obligated unless all steel, iron, and manufactured products used in FTA funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. § 661.11.

- ☒ 11. **Breach of Contract and Dispute Resolution:** *Applies to all contracts in excess of the Simplified Acquisition Threshold (currently set at \$150,000) and those contracts shall contain administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.*

- a) Disputes will be presented in writing to the appropriate City personnel – the Fargo Transit Director. City personnel and the Contractor will attempt to resolve any dispute arising in the performance of the Contract.

*Fargo:* If the Transit Director and Contractor cannot resolve the dispute, the issue will be presented in writing to the Assistant Fargo City Administrator within ten [10] working days of dispute. If the dispute cannot be resolved by the Assistant City Administrator, it will be submitted in writing within ten [10] working days of the Fargo City Administrator's decision to the Fargo City Commission – it is the sole responsibility of the Contractor to schedule a hearing with the Fargo City Commission. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position at the hearing.

The decision of the Fargo City Commission shall be binding upon the Contractor and the Contractor shall abide by the decision.

- b) Unless otherwise directed by the City of Fargo, Contractor shall continue performance under this Contract while matters in dispute are being resolved.
- c) Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.
- d) Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the City of Fargo and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the applicable state.

- X 12. **Lobbying Restrictions:** *Applies to all contracts and subcontracts of \$100,000 or more at any tier under a Federal grant. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this agreement, the payor must complete and submit the Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.*

49 C.F.R. part 20, Appendices A and B provide specific language for inclusion in FTA funded third party contracts as follows:

The undersigned certifies (*Note: A separate certification will be required to be signed if the contract meets this criteria*), to the best of his or her knowledge and belief, that:

- a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to

influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

- b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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13. **Clean Air and Federal Water Pollution Control Act:** *Applies to each contract and subcontract exceeding \$150,000. The Clean Air Act and Federal Water Pollution Control Act requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.*

The Contractor agrees:

- a) It will not use any violating facilities;
- b) It will report the use of facilities placed on or likely to be placed on the U.S. EPA "List of Violating Facilities;"
- c) It will report violations of use of prohibited facilities to FTA; and
- d) It will comply with the inspection and other requirements of the Clean Air Act, as amended, (42 U.S.C. §§ 7401 – 7671q); and the Federal Water Pollution Control Act as amended, (33 U.S.C. §§ 1251-1387).

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14. **Contract Work Hours & Safety Standards Act:** *Applies to all FTA funded contracts in excess of \$100,000 that involve the employment of mechanics or laborers.*

*Certain employee protections apply to all FTA funded contracts with particular emphasis on construction related projects. The recipient will ensure that each third party contractor complies with all federal laws, regulations, and requirements, including:*

- a) *Contract Work Hours and Safety Standards*
  - i. *Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 3701-3708; and supplemented by Department of Labor (DOL) regulations, 29 C.F.R. part 5; and A-38*
  - ii. *U.S. DOL regulations, "Safety and Health Regulations for Construction," 29 C.F.R. part 1926.*

**a) For construction contracts:**

- i. For all contracts in excess of \$100,000 that involve the employment of mechanics or laborers, the Contractor shall comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701-3708), as supplemented by the DOL regulations at 29 C.F.R. part 5. Under 40 U.S.C. § 3702 of the Act, the Contractor shall compute the wages of every mechanic and laborer, including watchmen and guards, on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or to contracts for transportation or transmission of intelligence.
- ii. In the event of any violation of the clause set forth herein, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, the Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of this clause in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by this clause.
- iii. The FTA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in this section.

- iv. The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this agreement.
- b) **For Awards Not Involving Construction**
  - i. The Contractor shall comply with all federal laws, regulations, and requirements providing wage and hour protections for non-construction employees, in accordance with 40 U.S.C. § 3702, Contract Work Hours and Safety Standards Act, and other relevant parts of that Act, 40 U.S.C. § 3701 et seq., and U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. part 5.
  - ii. The Contractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three (3) years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.
  - iii. Such records maintained under this paragraph shall be made available by the Contractor for inspection, copying, or transcription by authorized representatives of the FTA and the Department of Labor, and the Contractor will permit such representatives to interview employees during working hours on the job.
  - iv. The contractor shall require the inclusion of the language of this clause within subcontracts of all tiers.

- \_\_\_\_\_ 15. **Transit Employee Protective Arrangements:** *Applies to each contract for transit operations performed by employees of a Contractor recognized by FTA to be a transit operator.*

The Contractor agrees to comply with the following employee protective arrangements of 49 U.S.C. § 5333(b):

- a) **U.S. DOL Certification.** Under this Contract or any Amendments thereto that involve public transportation operations that are supported with federal assistance, a certification issued by U.S. DOL is a condition of the Contract.
- b) **Special Warranty.** When the Contract involves public transportation operations and is supported with federal assistance appropriated or made

available for 49 U.S.C. § 5311, U.S. DOL will provide a Special Warranty for its Award, including its Award of federal assistance under the Tribal Transit Program. The U.S. DOL Special Warranty is a condition of the Contract.

- c) **Special Arrangements.** The conditions of 49 U.S.C. § 5333(b) do not apply to Contractors providing public transportation operations pursuant to 49 U.S.C. § 5310. FTA reserves the right to make case-by-case determinations of the applicability of 49 U.S.C. § 5333(b) for all transfers of funding authorized under title 23, United States Code (flex funds), and make other exceptions as it deems appropriate, and, in those instances, any special arrangements required by FTA will be incorporated herein as required.

16. **Charter Service:** *Applies to contracts for operating public transportation service.*

The contractor agrees to comply with 49 U.S.C. 5323(d), 5323(r), and 49 C.F.R. part 604, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except as permitted under:

- a) Federal transit laws, specifically 49 U.S.C. § 5323(d);
- b) FTA regulations, "Charter Service," 49 C.F.R. part 604;
- c) Any other federal Charter Service regulations; or
- d) Federal guidance, except as FTA determines otherwise in writing.

The contractor agrees that if it engages in a pattern of violations of FTA's Charter Service regulations, FTA may require corrective measures or impose remedies on it. These corrective measures and remedies may include:

- a) Barring it or any subcontractor operating public transportation under its Award that has provided prohibited charter service from receiving federal assistance from FTA;
- b) Withholding an amount of federal assistance as provided by Appendix D to part 604 of FTA's Charter Service regulations; or
- c) Any other appropriate remedy that may apply.

The contractor should also include the substance of this clause in each subcontract that may involve operating public transit services.

17. **School Bus Service Operations:** *Applies to contracts for operating public transportation service.*

The contractor agrees to comply with 49 U.S.C. 5323(f), and 49 C.F.R. part 604, and not engage in school bus operations using federally funded equipment or facilities in competition with private operators of school buses, except as permitted under:

- a) Federal transit laws, specifically 49 U.S.C. § 5323(f);
- b) FTA regulations, "School Bus Operations," 49 C.F.R. part 605;
- c) Any other Federal School Bus regulations; or
- d) Federal guidance, except as FTA determines otherwise in writing.

If Contractor violates this School Bus Agreement, FTA may:

- a) Bar the Contractor from receiving Federal assistance for public transportation; or
- b) Require the contractor to take such remedial measures as FTA considers appropriate.

When operating exclusive school bus service under an allowable exemption, the contractor may not use federally funded equipment, vehicles, or facilities.

The Contractor should include the substance of this clause in each subcontract or purchase under this contract that may operate public transportation services.

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**Substance Abuse Requirements: Drug & Alcohol Testing:** *Applies to third party contractors who perform safety-sensitive functions. Contractors must comply with FTA's substance abuse management program under 49 C.F.R. part 655, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations." Under 49 C.F.R. § 655.4, Safety-sensitive function means any of the following duties, when performed by employees of recipients, subrecipients, operators, or contractors:*

- a) *Operating a revenue service vehicle, including when not in revenue service;*
- b) *Operating a nonrevenue service vehicle, when required to be operated by a holder of a Commercial Driver's License;*
- c) *Controlling dispatch or movement of a revenue service vehicle;*
- d) *Maintaining (including repairs, overhaul and rebuilding) a revenue service vehicle or equipment used in revenue service. This section does not apply to the following: an employer who receives funding under 49 U.S.C. § 5307 or § 5309, is in an area less than 200,000 in population, and contracts out such services; or an employer who receives funding under 49 U.S.C. § 5311 and contracts out such services;*
- e) *Carrying a firearm for security purposes.*

*Additionally, third party contractors providing testing services involving the performance of safety sensitive activities must also comply with 49 C.F.R. part 40, "Procedures for Transportation Workplace Drug and Alcohol Testing Programs."*

The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 C.F.R. part 655, produce any documentation necessary to establish its compliance with part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of North Dakota and/or Minnesota, or the Cities of Fargo/Moorhead, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 C.F.R. part 655 and review the testing process. The Contractor agrees further to certify annually its compliance with part 655 before February 1 and to submit the Management Information System (MIS) reports before February 1 to the City of Moorhead Transit Manager and City of Fargo Transit Director. To certify compliance, the Contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the *Federal*

Register.

- ☒ 19. **Cargo Preference:** *Applies to all contracts involving equipment, materials, or commodities that may be transported by ocean vessels.*  
The contractor agrees:
- a) to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;
  - b) to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading); and
  - c) to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.
- ☒ 20. **Davis-Bacon Act and Copeland Act – Prevailing Wage and Anti-Kickback:** *Applies to all FTA funded contracts for all prime construction, alteration or repair contracts in excess of \$2,000. The recipient will ensure that each third party contractor complies with all federal laws, regulations, and requirements, including:*
- a) Prevailing Wage Requirements
    - i. Federal transit laws, specifically 49 U.S.C. § 5333(a), (FTA's "Davis-Bacon Related Act");
    - ii. The Davis-Bacon Act, 40 U.S.C. §§ 3141 – 3144, 3146, and 3147; and
    - iii. U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. part 5.
  - b) "Anti-Kickback" Prohibitions
    - i. Section 1 of the Copeland "Anti-Kickback" Act, as amended, 18 U.S.C. § 874;
    - ii. Section 2 of the Copeland "Anti-Kickback" Act, as amended, 40 U.S.C. § 3145; and
    - iii. U.S. DOL regulations, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States," 29 C.F.R. part 3.

For all prime construction, alteration or repair contracts in excess of \$2,000 awarded by FTA, the Contractor shall comply with the Davis-Bacon Act and the Copeland "Anti-Kickback" Act. Under 49 U.S.C. § 5333(a), prevailing wage protections apply to laborers and mechanics employed on FTA assisted

construction, alteration, or repair projects. The Contractor will comply with the Davis-Bacon Act, 40 U.S.C. §§ 3141-3144, and 3146-3148 as supplemented by DOL regulations at 29 C.F.R. part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction." In accordance with the statute, the Contractor shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, the Contractor agrees to pay wages not less than once a week. The Contractor shall also comply with the Copeland "Anti-Kickback" Act (40 U.S.C. § 3145), as supplemented by DOL regulations at 29 C.F.R. part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States." The Contractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

- X 21. **Energy Conservation:** *Applies to all contracts. The Recipient agrees to, and assures that its subrecipients, if any, will comply with the mandatory energy standards and policies of its state energy conservation plans under the Energy Policy and Conservation Act, as amended, 42 U.S.C. § 6201 et seq., and perform an energy assessment for any building constructed, reconstructed, or modified with federal assistance as required under FTA regulations, "Requirements for Energy Assessments," 49 C.F.R. part 622, subpart C.*

Contractor shall recognize mandatory standards and policies relating to energy efficiency, which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 USC Section 6321 et seq).

- X 22. **Construction—Special Requirements:** *Applies to FTA assisted construction projects:*

- a) **Bonding.** The Common Grant Rules require bonds for all contracts exceeding the simplified acquisition threshold (exceeding \$150,000) unless FTA determines that other arrangements adequately protect the Federal interest. FTA's bonding policies are as follows:
  - i. **Bid Guarantee.** Both FTA and the Common Grant Rules generally require each bidder to provide a bid guarantee equivalent to 5 percent of its bid price. The "bid guarantee" must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid to ensure that the bidder will honor its bid upon acceptance.
  - ii. **Performance Bond.** Both FTA and the Common Grant Rules generally require the third party contractor to obtain a performance bond for 100 percent of the contract price. A "performance bond" is obtained to ensure completion of the obligations under the third party contract.
  - iii. **Payment Bond.** The Common Grant Rules generally require the third party contractor to obtain a standard payment bond for 100 percent of the

contract price. A “payment bond” is obtained to ensure that the contractor will pay all people supplying labor and material for the third party contract as required by law. FTA, however, has determined that payment bonds in the following amounts are adequate to protect FTA’s interest and will accept a local bonding policy that meets the following minimums:

- Less Than \$1 Million. Fifty percent of the contract price if the contract price is not more than \$1 million,
  - More Than \$1 Million but Less Than \$5 Million. Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million, or
  - More Than \$5 Million. Two and one half million dollars if the contract price is more than \$5 million.
- iv. Acceptable Sureties. The Common Grant Rule for non-governmental recipients requires the non-governmental recipient to obtain construction bonds from companies holding certificates of authority as acceptable sureties under Department of the Treasury regulations, “Surety Companies Doing Business with the United States,” 31 CFR Part 223. For a current list of approved sureties, see Department of the Treasury’s Listing of Approved Sureties (Department Circular 570), <http://fms.treas.gov/c570/c570.html>. FTA encourages each governmental recipient to require similarly acceptable sureties.
- v. Reduced Bonding. FTA recognizes that bonding costs can be expensive. FTA will accept a local bonding policy that conforms to the minimums described in this subparagraph 2.h(1) of this Chapter. FTA reserves the right to approve bonding amounts that do not conform to these minimums if the local bonding policy adequately protects the Federal interest. A recipient that wishes to adopt less stringent bonding requirements, for a specific class of projects, or for a particular project should submit its policy and rationale to the Regional Administrator for the region administering the project.
- vi. Excessive Bonding. Compliance with State and local bonding policies that are greater than FTA’s bonding requirements do not require FTA approval. FTA recognizes that in some situations bond requirements can be useful if the recipient has a material risk of loss because of a failure of the prospective contractor. This is particularly so if the risk results from the likelihood of the contractor’s bankruptcy or financial failure when the work is partially completed. Nevertheless, if the recipient’s “excessive bonding” requirements would violate the Common Grant Rules as restrictive of competition, FTA will not provide Federal assistance for procurements encumbered by those requirements. Consequently, if the recipient’s bonding policies far exceed those described in this subsection; FTA reminds the recipient that it may find it useful to submit its policy and rationale to the Regional Administrator for the region administering the project.

- \_\_\_\_\_ 23. **Bus Testing:** *Applies only to the purchase or lease of any new bus model, or any bus model with a major change in configuration or components to be acquired or leased with funds obligated by FTA. Recipients are responsible for determining whether a vehicle to be acquired requires full or partial testing or has already satisfied the bus testing requirements by achieving a passing test score in accordance with 49 C.F.R. part 665. Recipients must certify compliance with FTA's bus testing requirements in all grant applications for FTA funding for bus procurements.*

The Contractor [Manufacturer] agrees to comply with the Bus Testing requirements under 49 U.S.C. 5318(e) and FTA's implementing regulation at 49 C.F.R. part 665 to ensure that the requisite testing is performed for all new bus models or any bus model with a major change in configuration or components, and that the bus model has achieved a passing score. Upon completion of the testing, the contractor shall obtain a copy of the bus testing reports from the operator of the testing facility and make that report(s) publicly available prior to final acceptance of the first vehicle by the recipient.

- X 24. **Fly America:** *Applies to the transportation of persons or property, by air, between a place in the U.S. and a place outside the U.S., or between places outside the U.S., when the FTA will participate in the costs of such air transportation.*

a) *Definitions.* As used in this clause--

"International air transportation" means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.

"United States" means the 50 States, the District of Columbia, and outlying areas.

"U.S.-flag air carrier" means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

b) When Federal funds are used to fund travel, Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires contractors, recipients, and others use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.

c) If available, the Contractor, in performing work under this contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.

d) In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a statement on vouchers involving such transportation essentially as follows:

**Statement of Unavailability of U.S.-Flag Air Carriers**

International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons. See FAR § 47.403. *[State reasons]:*

\_\_\_\_\_  
(End of statement)

e) The Contractor shall include the substance of this clause, including this paragraph (e), in each subcontract or purchase under this contract that may involve international air transportation.

25. **Patent Rights and Rights in Data:** *Applies when entering into a contract (or subcontract) with a small business firm or nonprofit organization for the performance of experimental, developmental, or research work under the FTA award. The recipient or subrecipient must comply with the requirements of 37 C.F.R. part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency. Except in the case of an "other agreement" in which the Federal Government has agreed to take more limited rights, the Federal Government is entitled to a non-exclusive, royalty free license to use the resulting invention, or patent the invention for Federal Government purposes. The FTA has the right to:*
- a) Obtain, reproduce, publish, or otherwise use the data produced under a Federal award; and*
  - b) Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.*

**Intellectual Property Rights:** This Project is funded through a Federal award with FTA for experimental, developmental, or research work purposes. As such, certain Patent Rights and Data Rights apply to all subject data first produced in the performance of this Contract. The Contractor shall grant the AGENCY intellectual property access and licenses deemed necessary for the work performed under this Agreement and in accordance with the requirements of 37 C.F.R. part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by FTA or U.S. DOT. The terms of an intellectual property agreement and software license rights will be finalized prior to execution of this Agreement and shall, at a minimum, include the following restrictions: Except for its own internal use, the Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Contractor authorize others to do so, without the written consent of FTA, until such time as FTA may have either released or approved the release of such data to the public. This restriction on publication, however, does not apply to any contract with an academic institution. For purposes of this agreement, the term "subject data" means recorded information whether or not copyrighted, and

that is delivered or specified to be delivered as required by the Contract. Examples of "subject data" include, but are not limited to computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information, but do not include financial reports, cost analyses, or other similar information used for performance or administration of the Contract.

- a) The Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for "Federal Government Purposes," any subject data or copyright described below. For "Federal Government Purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.
  - i. Any subject data developed under the Contract, whether or not a copyright has been obtained; and
  - ii. Any rights of copyright purchased by the Contractor using Federal assistance in whole or in part by the FTA.
- b) Unless FTA determines otherwise, the Contractor performing experimental, developmental, or research work required as part of this Contract agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of the Contract, or a copy of the subject data first produced under the Contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of this Contract, is not completed for any reason whatsoever, all data developed under the Contract shall become subject data as defined herein and shall be delivered as the Federal Government may direct.
- c) Unless prohibited by state law, upon request by the Federal Government, the Contractor agrees to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. The Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.
- d) Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.
- e) Data developed by the Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying Contract is exempt from the requirements herein, provided that the Contractor identifies those data in writing at the time of delivery of the Contract work.

- f) The Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance.

26. **Pre-Award and Post-Delivery Audits of Rolling Stock Purchases:** *Applies to the purchase of revenue service rolling stock with FTA funds and must comply with the pre-award and post-delivery audit requirements set forth in 49 U.S.C. 5323(m) and supplemented by 49 C.F.R. part 663.*

The Contractor agrees to comply with 49 U.S.C. § 5323(m) and FTA's implementing regulation at 49 C.F.R. part 663. The Contractor shall comply with the Buy America certification(s) submitted with its proposal/bid. The Contractor agrees to participate and cooperate in any pre-award and post-delivery audits performed pursuant to 49 C.F.R. part 663 and related FTA guidance.

- X   27. **Recycled Products:** *Applies to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier where the value of an EPA designated item exceeds \$10,000. Applies to States and local governmental authorities to provide a competitive preference to products and services that conserve natural resources, protect the environment, and are energy efficient. Recipients are required to procure only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000.*

The Contractor agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency (U.S. EPA), "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 C.F.R. part 247.

- X   28. **Safe Operation of Motor Vehicles:** *Applies to all federally funded third party contracts.*


#### Seat Belt Use

The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles. The terms "company-owned" and "company-leased" refer to vehicles owned or leased either by the Contractor or AGENCY.

#### Distracted Driving

The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a

privately-owned vehicle when on official business in connection with the work performed under this agreement.

-  29. **Seismic Safety:** *Applies only to contracts for the construction of new buildings or additions to existing buildings.*

The contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation (DOT) Seismic Safety Regulations 49 C.F.R. part 41 and will certify to compliance to the extent required by the regulation. The contractor also agrees to ensure that all work performed under this contract, including work performed by a subcontractor, is in compliance with the standards required by the Seismic Safety regulations and the certification of compliance issued on the project.

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*Note: Information on clauses was obtained from the FTA Best Practices Procurement and Lessons Learned Manual, and Circular FTA C 4220.1 as amended Third Party Contracting Guidance.*

<https://www.transit.dot.gov/funding/procurement/third-party-procurement/best-practices-procurement-manual>

<https://www.transit.dot.gov/regulations-and-guidance/fta-circulars/third-party-contracting-guidance>

**Exhibit A – Cost Proposal Form**

**Cost Proposal Form** – Include completed cost form (see below) for each task in a sealed envelope – labeled “**Sealed Cost Form(s) – Vendor Name**” and submit concurrently with the proposal as part of the overall RFQ response. Changes in the final contract amount and contract extensions are not anticipated.

**REQUIRED BUDGET FORMAT**  
**Summary of Estimated Project Cost**

						<b>Task #:</b>	
1.	<b>Direct Labor</b>	<b>Hours</b>	<b>x</b>	<b>Rate</b>	<b>=</b>	<b>Project Cost</b>	<b>Total</b>
	Name, Title, Function	0.00	x	0.00	=	0.00	0.00
			x		=	0.00	0.00
			x		=	0.00	0.00
				<b>Subtotal</b>	=	0.00	0.00
2.	<b>Overhead/Indirect Cost (expressed as indirect rate x direct labor)</b>					0.00	0.00
3.	<b>Subcontractor Costs</b>					0.00	0.00
4.	<b>Materials and Supplies Costs</b>					0.00	0.00
5.	<b>Travel Costs</b>					0.00	0.00
6.	<b>Fixed Fee</b>					0.00	0.00
7.	<b>Miscellaneous Costs</b>					0.00	0.00
<b>Total Cost</b>					=	0.00	0.00

### **Exhibit B – DEBARMENT AND SUSPENSION CERTIFICATION**

The proposer certifies to the best of its knowledge and belief, and that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
2. Have not, within a three-year period preceding this proposal/contract, been convicted or had a civil judgment awarded against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public bribery, falsification or destruction of records, making false statement, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State or Local) with commission of any of the offenses enumerated in paragraph (2) of this certification;
4. Have not, within a three-year period preceding this application/proposal/contract, had one or more public transactions (Federal, State, Local) terminated for cause or default.

THE PARTICIPANT, CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 31 U.S.C. 3801 ET SEQ ARE APPLICABLE THERETO.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Date

### Exhibit C - LOBBYING RESTRICTIONS CERTIFICATION

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

\_\_\_\_\_ Signature of Contractor's Authorized Official

\_\_\_\_\_ Name and Title of Contractor's Authorized Official

\_\_\_\_\_ Date

## Exhibit D — Standard Form 330 ARCHITECT-ENGINEER QUALIFICATIONS

### PART 1- CONTRACT-SPECIFIC QUALIFICATIONS

#### A. CONTRACT INFORMATION

1. TITLE AND LOCATION *(City and State)*

2. PUBLIC NOTICE DATE

3. SOLICITATION OR PROJECT NUMBER

#### B. ARCHITECT-ENGINEER POINT OF CONTACT

4. NAME AND TITLE

5. NAME OF FIRM

6. TELEPHONE NUMBER

7. FAX NUMBER

8. E-MAIL ADDRESS

#### C. PROPOSED TEAM

*(Complete this section for the prime contractor and all key subcontractors.)*

	(Check)		9. FIRM NAME	10. ADDRESS	11. ROLE IN THIS CONTRACT
	PRIME J-V SUBCON- TRACTOR				
a.			<input type="checkbox"/> CHECK IF BRANCH OFFICE		
b.			<input type="checkbox"/> CHECK IF BRANCH OFFICE		
c.			<input type="checkbox"/> CHECK IF BRANCH OFFICE		
d.			<input type="checkbox"/> CHECK IF BRANCH OFFICE		
e.			<input type="checkbox"/> CHECK IF BRANCH OFFICE		
f.			<input type="checkbox"/> CHECK IF BRANCH OFFICE		

#### D. ORGANIZATIONAL CHART OF PROPOSED TEAM



*(Attached)*

AUTHORIZED FOR LOCAL REPRODUCTION

STANDARD FORM 330 (REV.

8/2016)

**E. RESUMES OF KEY PERSONNEL PROPOSED FOR THIS CONTRACT***(Complete one Section E for each key person.)*

12. NAME	13. ROLE IN THIS CONTRACT	14. YEARS EXPERIENCE a. TOTAL      b. WITH CURRENT FIRM
15. FIRM NAME AND LOCATION (City and State)		
16. EDUCATION (Degree and Specialization Discipline)		17. CURRENT PROFESSIONAL REGISTRATION (State and
18. OTHER PROFESSIONAL QUALIFICATIONS (Publications, Organizations, Training, Awards, etc.)		

**19 RELEVANT PROJECTS**

a.	(1) TITLE AND LOCATION (City and state)	(2) YEAR COMPLETED PROFESSIONAL SERVICES   CONSTRUCTION (If applicable)
	(3) BRIEF DESCRIPTION (Brief scope, size, cost, etc.) AND SPECIFIC ROLE <input type="checkbox"/> Check if project performed with current firm	
b.	(1) TITLE AND LOCATION (City and state)	(2) YEAR COMPLETED PROFESSIONAL SERVICES   CONSTRUCTION (If applicable)
	(3) BRIEF DESCRIPTION (Brief scope, size, cost, etc.) AND SPECIFIC ROLE <input type="checkbox"/> Check if project performed with current firm	
c.	(1) TITLE AND LOCATION (City and state)	(2) YEAR COMPLETED PROFESSIONAL SERVICES   CONSTRUCTION (If applicable)
	(3) BRIEF DESCRIPTION (Brief scope, size, cost, etc.) AND SPECIFIC ROLE <input type="checkbox"/> Check if project performed with current firm	
d.	(1) TITLE AND LOCATION (City and state)	(2) YEAR COMPLETED PROFESSIONAL SERVICES   CONSTRUCTION (If applicable)
	(3) BRIEF DESCRIPTION (Brief scope, size, cost, etc.) AND SPECIFIC ROLE <input type="checkbox"/> Check if project performed with current firm	
	(1) TITLE AND LOCATION (City and state)	(2) YEAR COMPLETED PROFESSIONAL SERVICES   CONSTRUCTION (If applicable)
	(3) BRIEF DESCRIPTION (Brief scope, size, cost, etc.) AND SPECIFIC ROLE <input type="checkbox"/> Check if project performed with current firm	

(3) BRIEF DESCRIPTION (Brief scope, size, cost, etc.) AND SPECIFIC ROLE
<p>1. <i>Project description</i></p>

☐ Check if project performed with current firm

## G. KEY PERSONNEL PARTICIPATION IN EXAMPLE PROJECTS

26. NAMES OF KEY PERSONNEL <i>(From Section E, Block 12)</i>	27. ROLE IN THIS CONTRACT <i>(From Section E, Block 13)</i>	28. EXAMPLE PROJECTS LISTED IN SECTION F <i>(Fill in "Example Projects Key" section below before completing table.            Place "X" under project key number for participation in same or similar role.)</i>									
		1	2	3	4	5	6	7	8	9	10

## 29. EXAMPLE PROJECTS KEY

NUMBER	TITLE OF EXAMPLE PROJECT <i>(From Section F)</i>	NUMBER	TITLE OF EXAMPLE PROJECT <i>(From Section F)</i>
1		6	
2		7	
3		8	

## H. ADDITIONAL INFORMATION

30. PROVIDE ANY ADDITIONAL INFORMATION REQUESTED BY THE AGENCY. ATTACH ADDITIONAL SHEETS AS NEEDED.

*The foregoing is a statement of facts.*

22. NAME AND TITLE	
--------------------	--

~~T. SOLICITATION NUMBER (if any)~~

*(If a firm has branch offices, complete for each specific branch office seeking work.)*

[illegible]

Request for Qualifications (RFQ)  
Metro Transit Garage (MTG) Design Build

<b>Other Employees</b>					
<b>Total</b>					

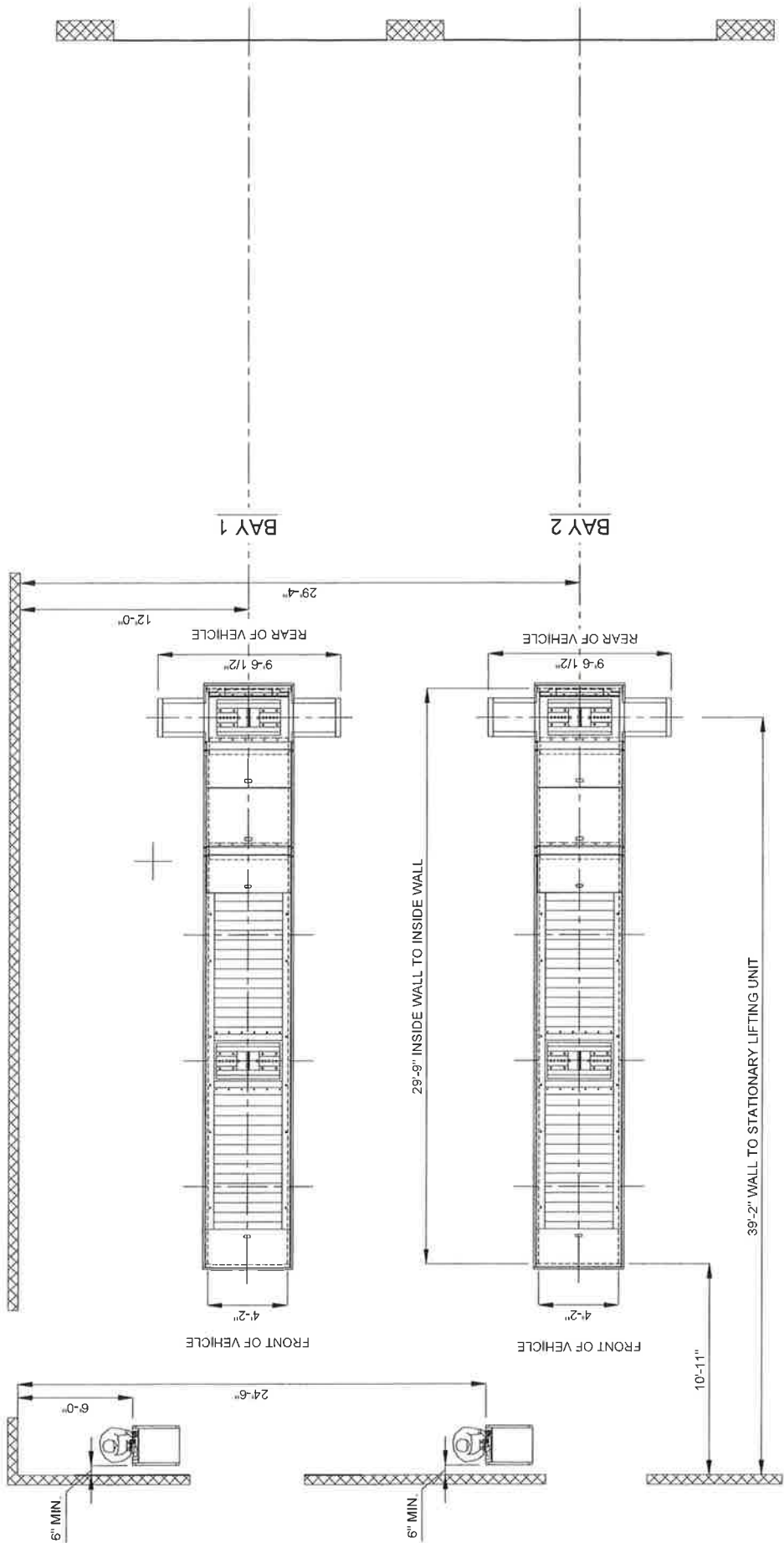
  

<b>11. ANNUAL AVERAGE PROFESSIONAL SERVICES REVENUES OF FIRM FOR LAST 3 YEARS</b> <i>(Insert revenue index number shown at right)</i>	<b>PROFESSIONAL SERVICES REVENUE INDEX NUMBER</b> <div style="display: flex; flex-wrap: wrap;"> <div style="width: 50%;"> 1. Less than \$100,000  2. \$100,000 to less than \$250,000  3. \$250,000 to less than \$500,000  4. \$500,000 to less than \$1 million  5. \$1 million to less than \$2 million </div> <div style="width: 50%;"> 6. \$2 million to less than \$5 million  7. \$5 million to less than \$10 million  8. \$10 million to less than \$25 million  9. \$25 million to less than \$50 million  10. \$50 million or greater </div> </div>
--	---

<b>12. AUTHORIZED REPRESENTATIVE</b> <i>The foregoing is a statement of facts.</i>	
a. SIGNATURE	b. DATE
c. NAME AND TITLE	

**Exhibit E – Stertil-Koni Site Specific Drawings**



ECO IN BAY PLAN

NOT FOR CONSTRUCTION



STERIL-KONI USA, INC.  
200 LOG CANOE CIRCLE, STEVENSVILLE, MD 21666  
TEL. 800-338-6637

DRAWN BY	JGP	03/11/21	NOT TO SCALE
CHECKED BY	MML	03/11/21	SHEET 1 OF 7

Fargo Transit, ND

D & J Equipment

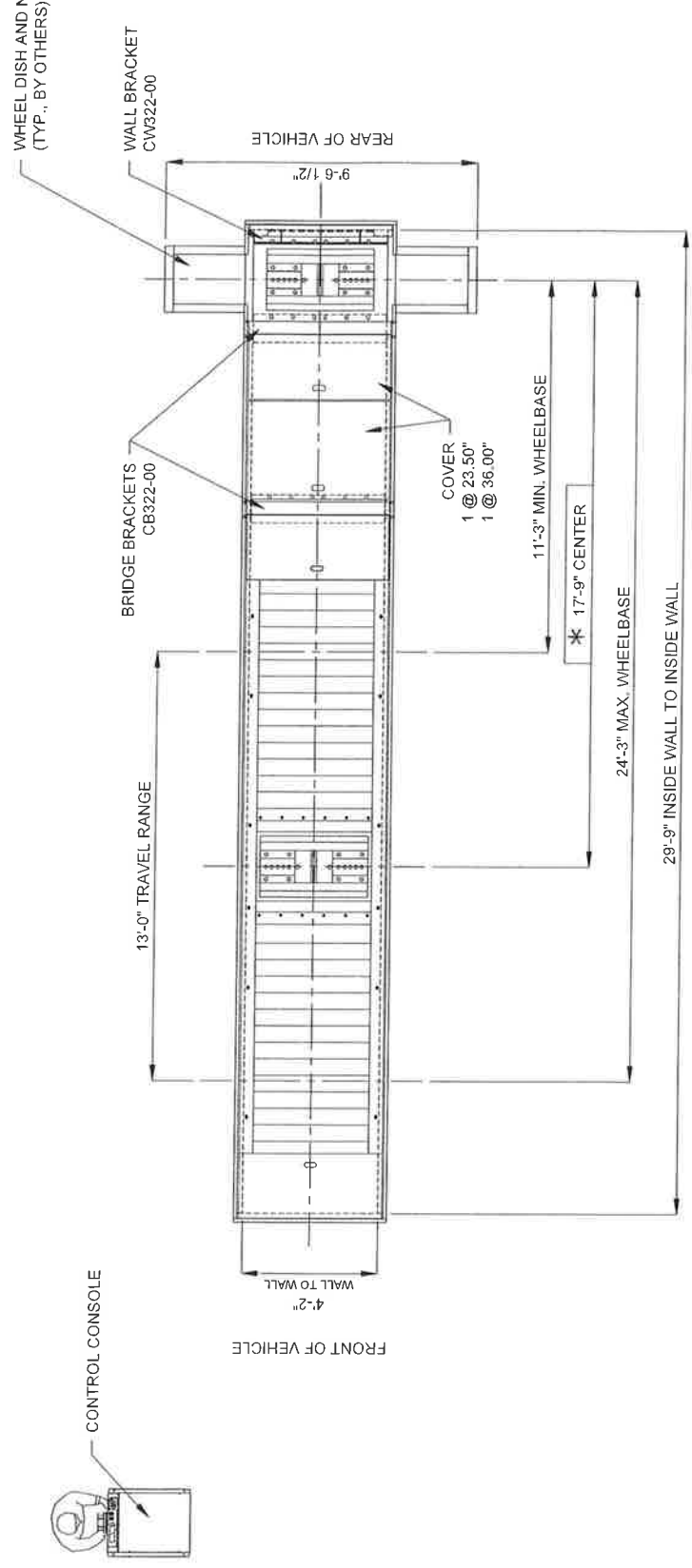
ECO 60-13 RH 135-291 (CP)

SKU-2021-0311A-JGP-P00

REVISIONS

APPROVED BY:

PRELIMINARY



\* CONTROL DIMENSION:  
C OF STATIONARY LIFTING UNIT TO  
C OF MOVABLE LIFTING UNIT

ECO PLAN

APPROVED BY:

REVISIONS

PROJECT

DATE

STERIL-KONI

STERIL-KONI USA, INC.  
200 LOG CANOE CIRCLE STEVENSVILLE, MD 21666  
TEL 800-336-6637

DRAWN BY: JGP  
CHECKED BY: MML  
DATE: 03/11/21  
SHEET 2 OF 7

Fargo Transit, ND

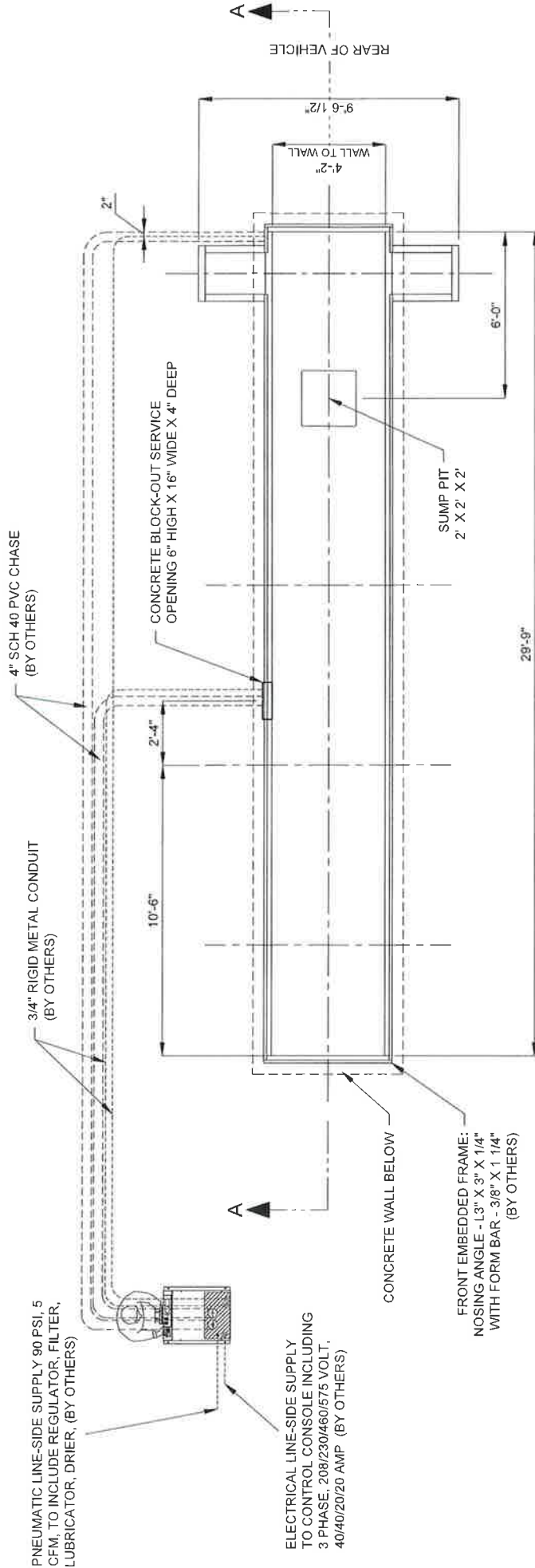
D & J Equipment

ECO 60-13 RH 135-291 (CP)

SKU-2021-0311A-JGP-P00

NOT FOR CONSTRUCTION

PRELIMINARY



PIT & CONDUIT PLAN

NOT FOR CONSTRUCTION

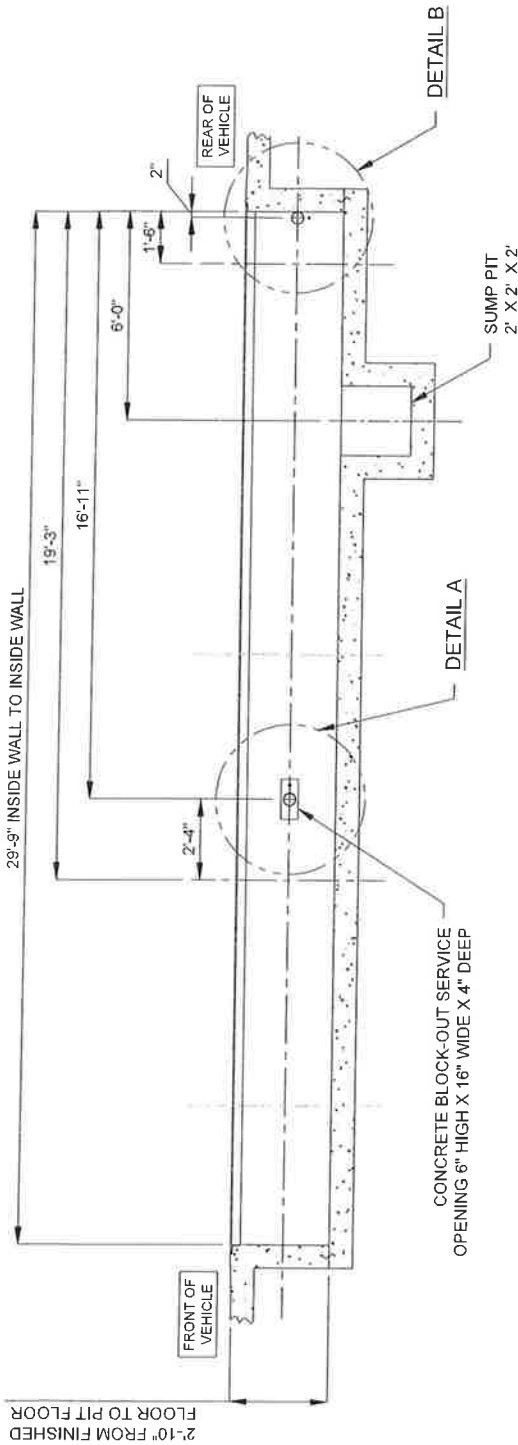
APPROVED BY:		Fargo Transit, ND	
SIGNATURE		D & J Equipment	
DATE		ECO 60-13 RH 135-291 (CP)	
PRINT NAME		SKU-2021-0311A-JGP-P00	
REVISIONS		STERTIL-KONI USA, INC.	
DESCRIPTION		200 LOG CANOE CIRCLE, STEVENSVILLE, MD 21666	
INSTALLER		TEL. 800-336-6637	
DRAWN BY		JGP	03/11/21
CHECKED BY		MML	03/11/21
NOT TO SCALE		SHEET	3 OF 7



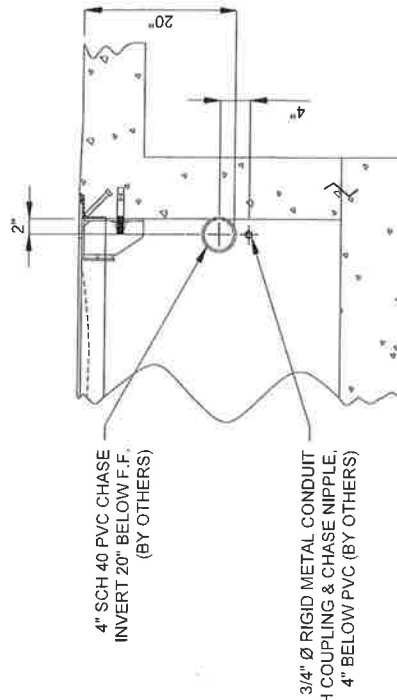
STERTIL-KONI USA, INC.  
200 LOG CANOE CIRCLE, STEVENSVILLE, MD 21666  
TEL. 800-336-6637

DRAWN BY	JGP	03/11/21	NOT TO SCALE
CHECKED BY	MML	03/11/21	SHEET 3 OF 7

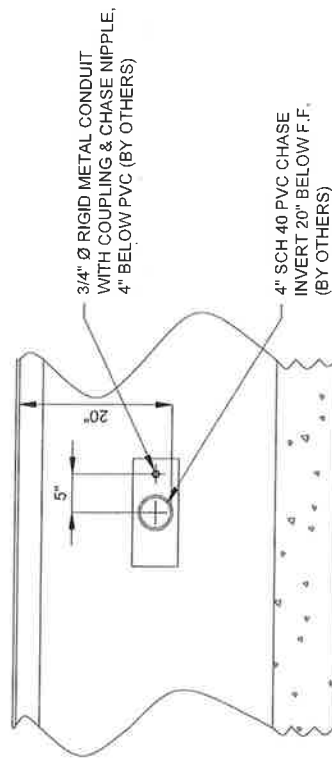




SECTION A - A LOOKING TOWARD CONTROL CONSOLE  
(CONSOLE NOT SHOWN)



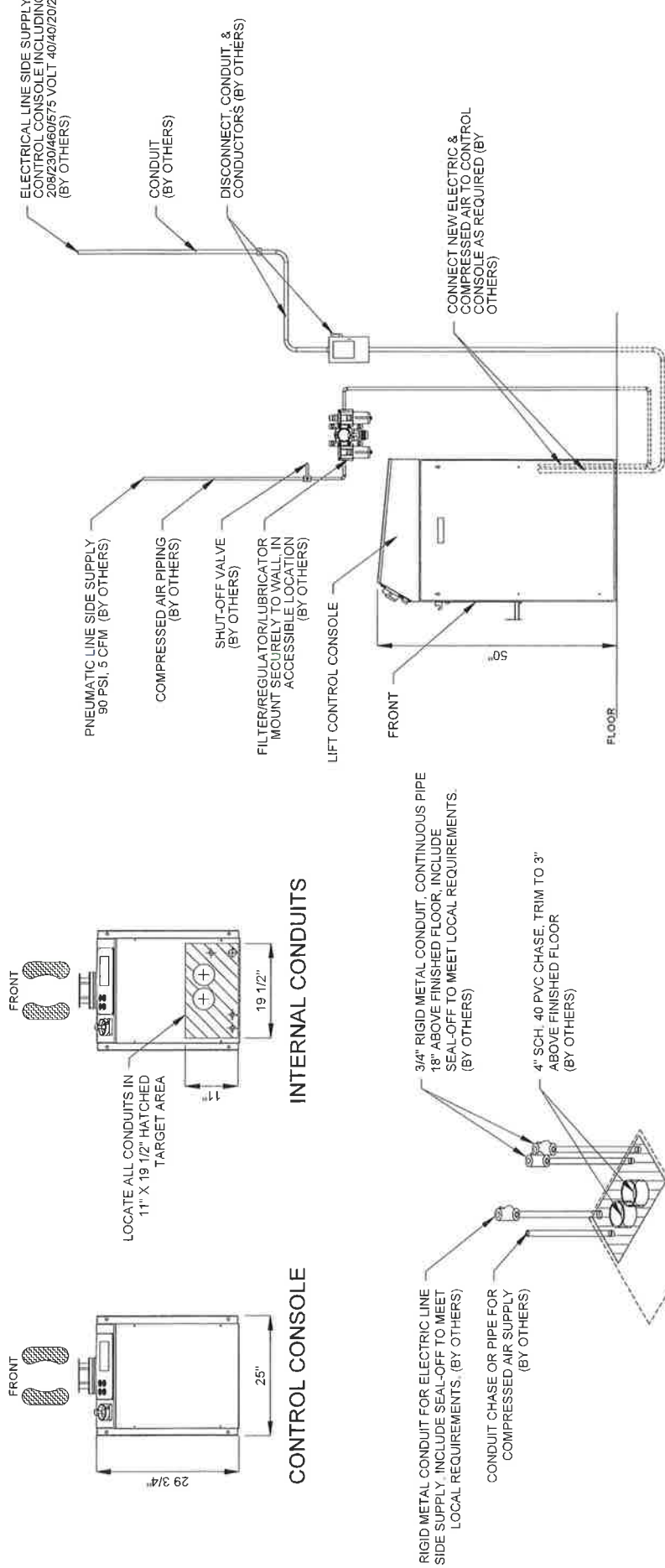
DETAIL B



DETAIL A

## ELEVATION DETAILS

APPROVED BY:	Fargo Transit, ND		NOT FOR CONSTRUCTION	
	D & J Equipment		STERIL-KONI	
SIGNATURE	ECO 60-13 RH 135-291 (CP)		STERIL-KONI USA, INC.	
PRINT NAME	SKU-2021-0311A-JGP-P00		200 LOG CANOE CIRCLE, STEVENSVILLE, MD 21666	
DATE			TEL. 800-335-6637	
		DRAWN BY	JGP	03/11/21
		CHECKED BY	MML	03/11/21
		NOT TO SCALE		SHEET 4 OF 7



AIR & ELECTRICAL SERVICES AT CONSOLE

ISOMETRIC VIEW OF CONDUITS AT CONTROL CONSOLE

*ebright* CONTROL CONSOLE DETAILS

NOT FOR CONSTRUCTION

APPROVED BY:

DATE

REVISIONS

PRELIMINARY

INSTALLER

DESCRIPTION

STERIL-KONI

STERIL-KONI USA, INC.  
200 LOG CANOE CIRCLE, STEVENSVILLE, MD 21666  
TEL 800-336-6637

DRAWN BY

CHECKED BY

JGP

MML

03/11/21

03/11/21

NOT TO SCALE

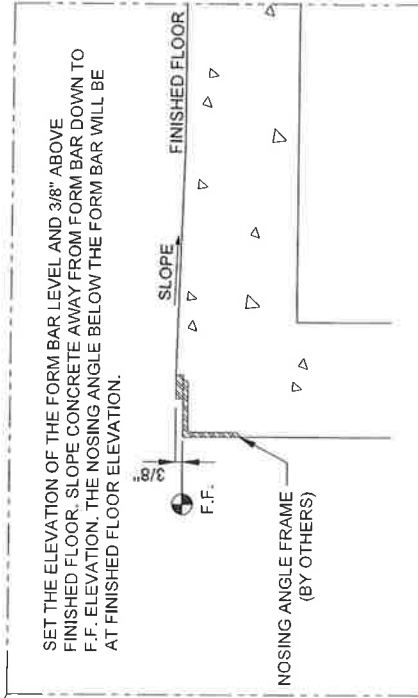
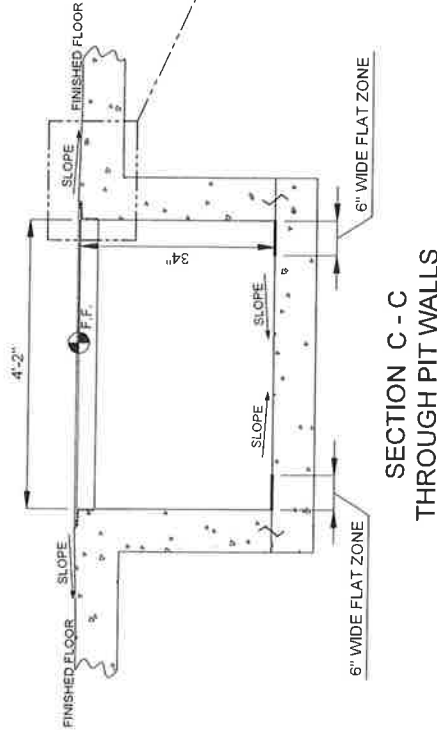
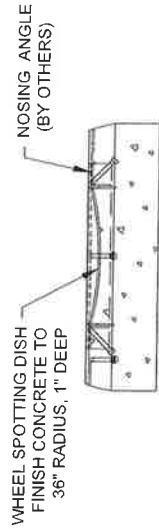
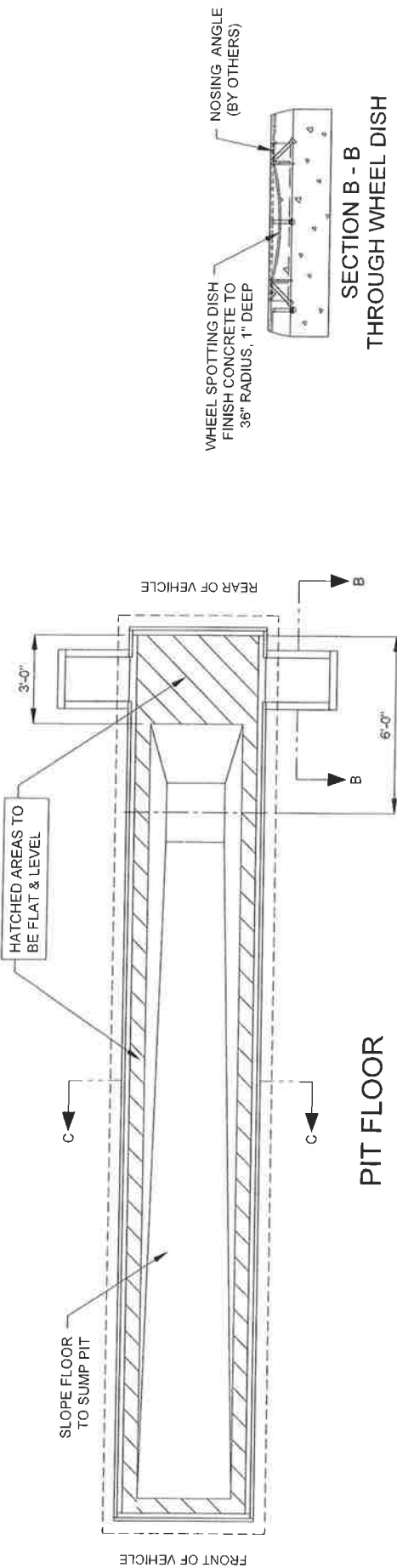
SHEET 5 OF 7

Fargo Transit, ND

D & J Equipment

ECO 60-13 RH 135-291 (CP)

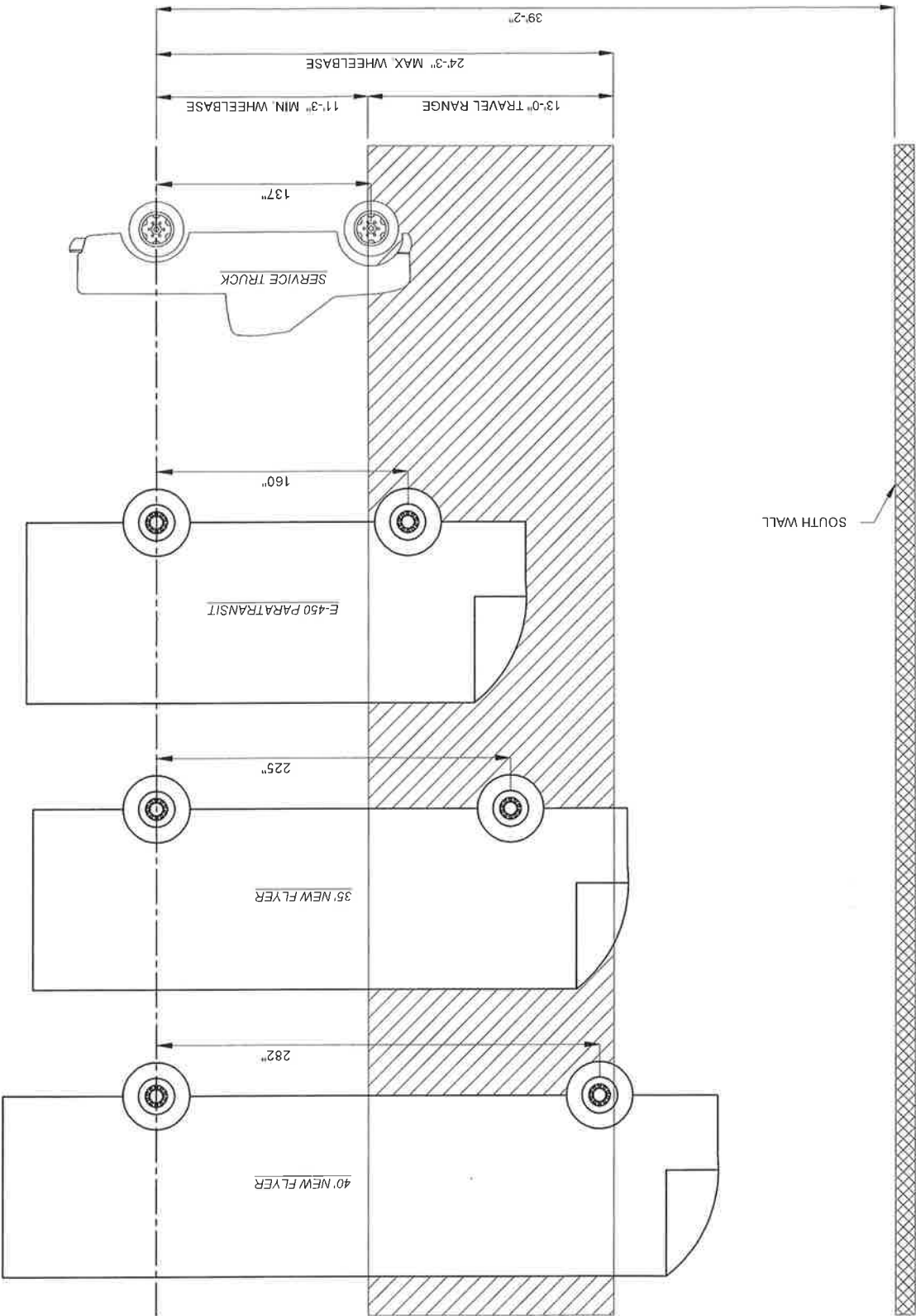
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**PIT DETAILS**

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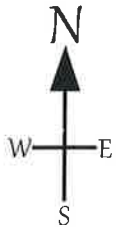
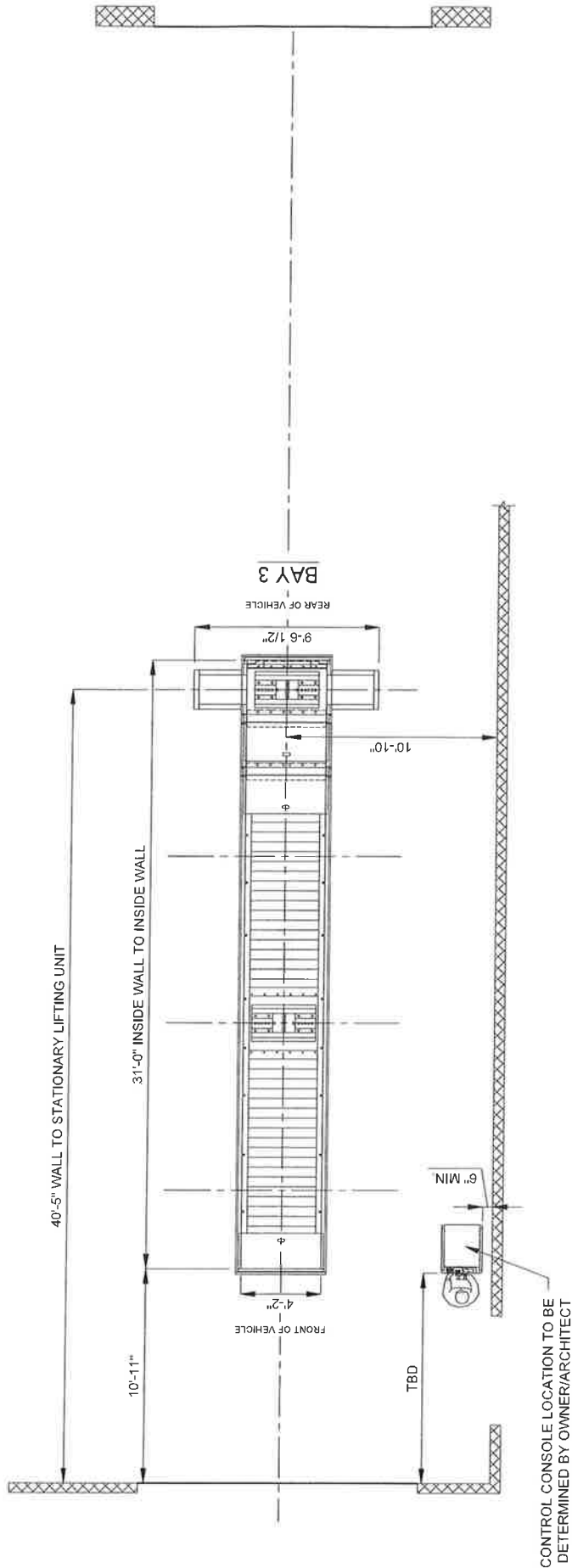
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	<div> <div>PRINT NAME</div> <div></div> </div>		<div> <div>DESCRIPTION</div> <div></div> </div>		<div> <div>LEAD INSTALLER</div> <div></div> </div>		<div> <div>PROJECT</div> <div></div> </div>	
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VEHICLE DIAGRAM

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APPROVED BY:		REVISIONS		Fargo Transit, ND		<b>stertil-koni</b>	
SIGNATURE				D & J Equipment			
DATE		DESCRIPTION		ECO 60-13 RH 135-291 (CP)		STERIL-KONI USA, INC. 200 LOG CANOE CIRCLE, STEVENSVILLE, MD 21666 TEL. 800-396-6637	
PRINT NAME		INSTALLER		JGP		DRAWN BY	
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				SHEET 7		OF 7	



ECO IN BAY PLAN

APPROVED BY:

STERIL-KONI

STERIL-KONI USA, INC.  
200 LOG CANOE CIRCLE, STEVENSVILLE, MD 21666  
TEL. 800-335-6637

NOT FOR CONSTRUCTION

REVISIONS	PROJECT	INSTALLER	DESCRIPTION
	Fargo Transit, ND	D & J Equipment	ECO 60-17 LH 102-306 (CP)
			SKU-2021-0312A-JGP-P00

PRELIMINARY

DATE

PROJECT NAME

SIGNATURE

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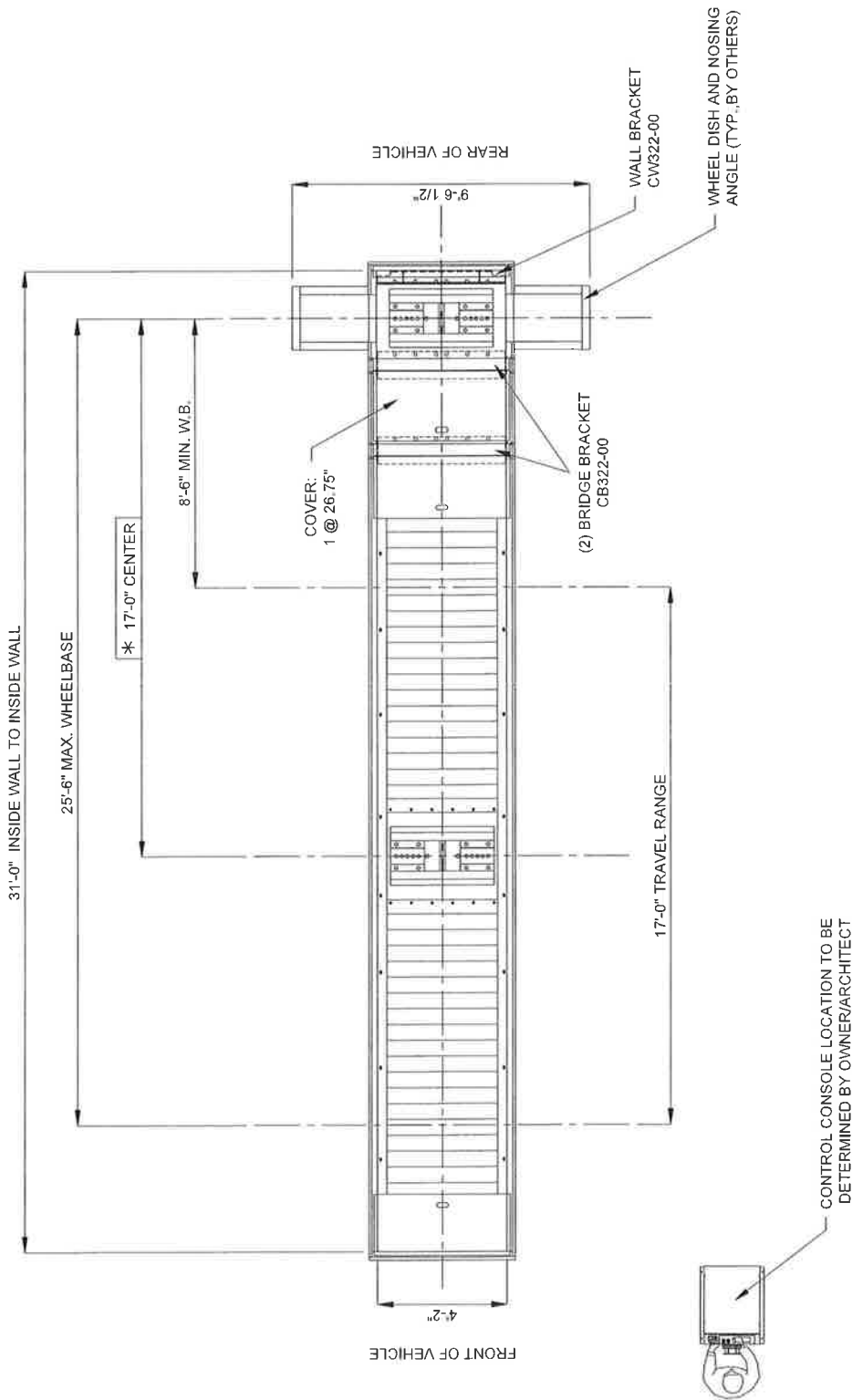
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\* CONTROL DIMENSION:  
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CL OF MOVABLE LIFTING UNIT

ECO PLAN

NOT FOR CONSTRUCTION

APPROVED BY:

STERIL-KONI

STERIL-KONI USA, INC.  
200 LOG CANOE CIRCLE STEVENSVILLE, MD 21666  
TEL 800-336-6637

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REVISIONS

PRELIMINARY

ECO 60-17 LH 102-306 (CP)

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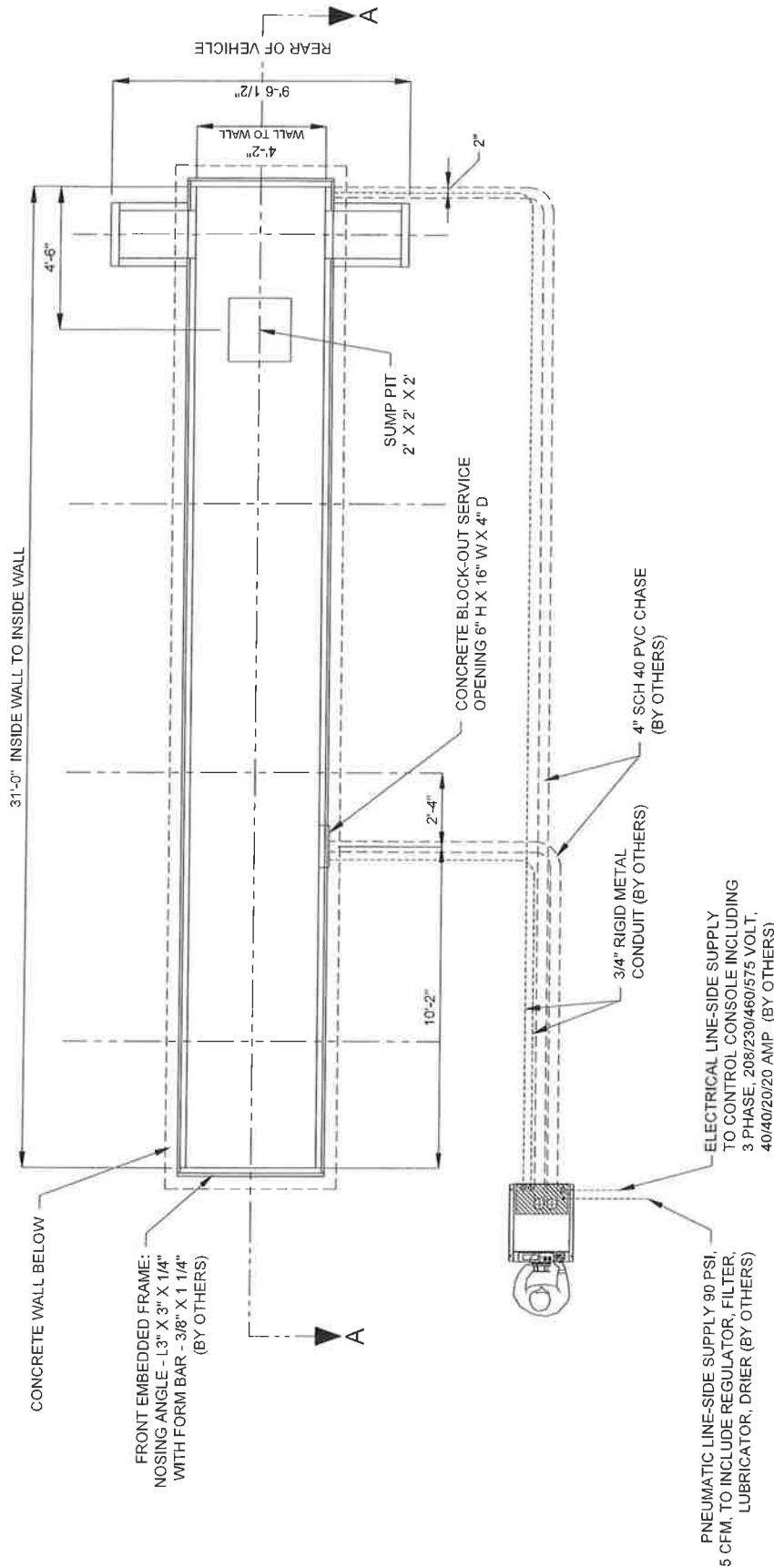
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Fargo Transit, ND

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DATE

REVISIONS

DATE

PROJECT:

CLIENT:

DESCRIPTION:

NOT FOR CONSTRUCTION

STERIL-KONI USA, INC.

200 LOG CANOE CIRCLE, STEVENSVILLE, MD 21666

TEL 800-336-6637

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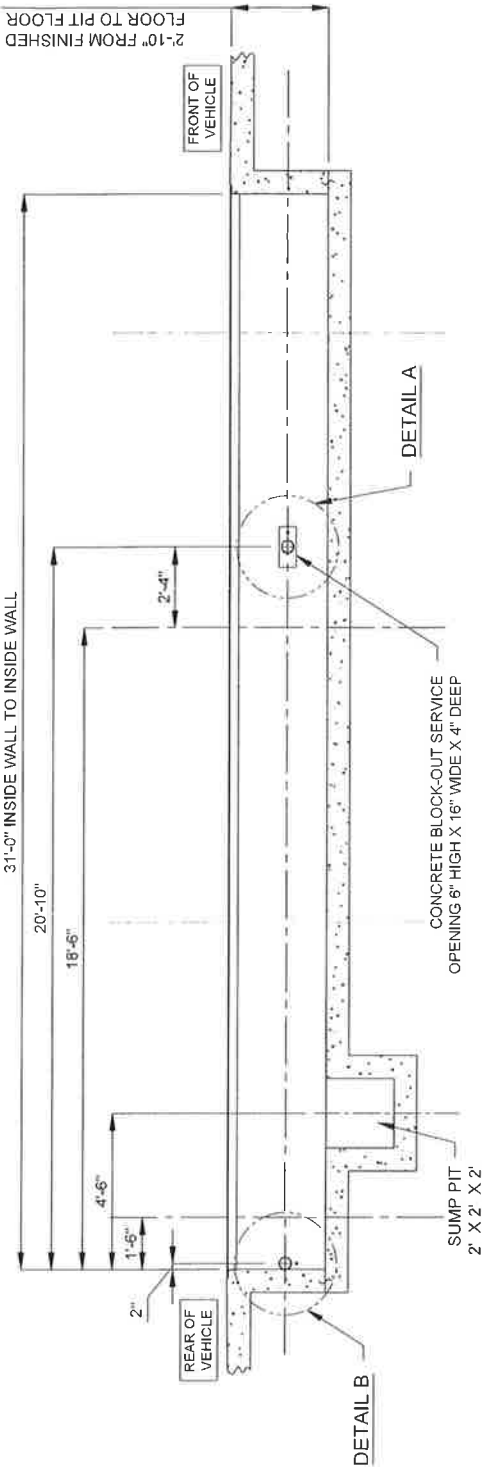
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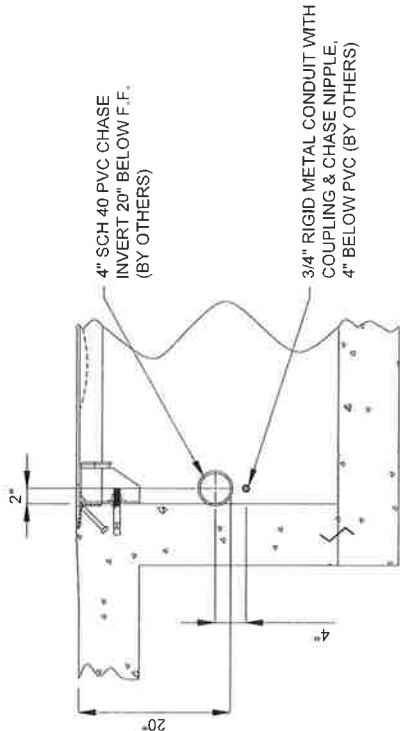
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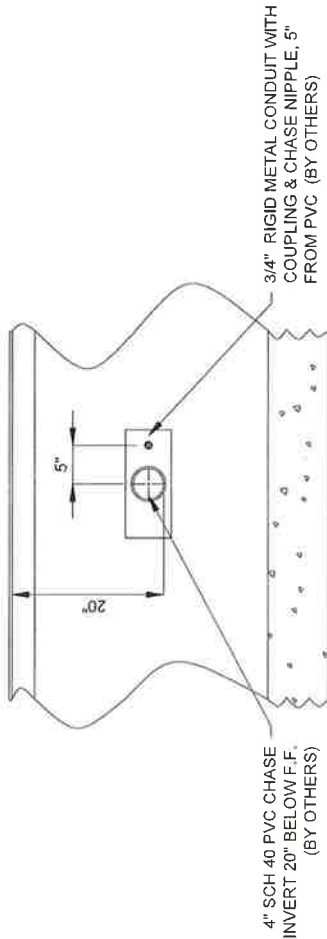
SHEET 3 OF 7



SECTION A-A LOOKING TOWARD CONTROL CONSOLE  
(CONSOLE NOT SHOWN)



DETAIL B

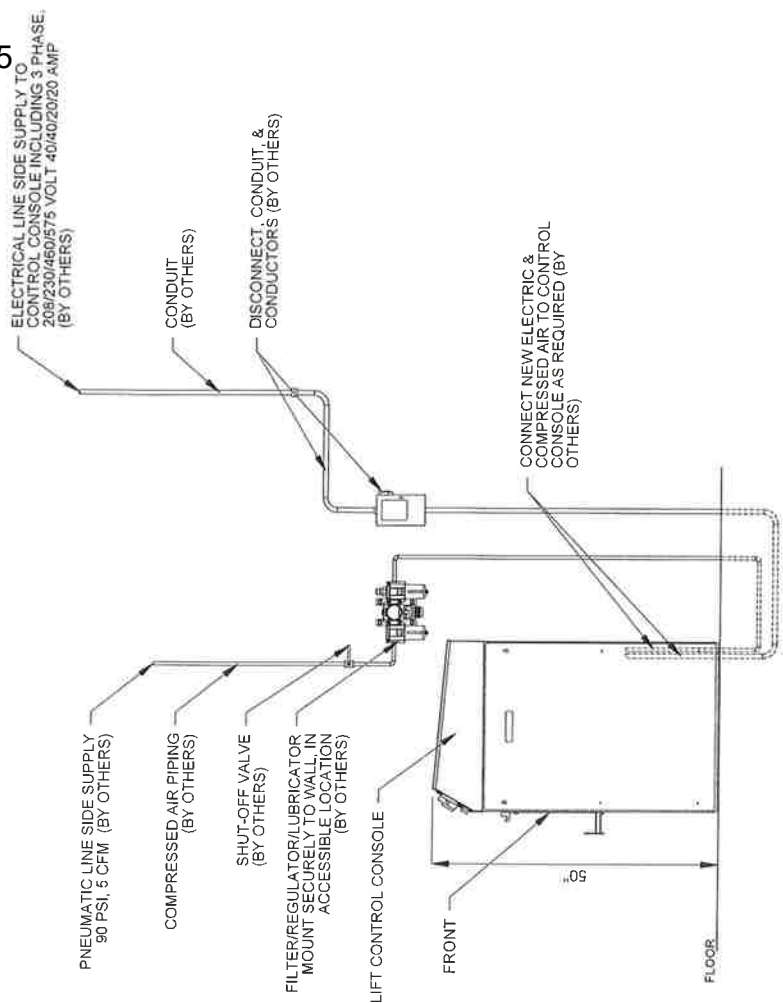
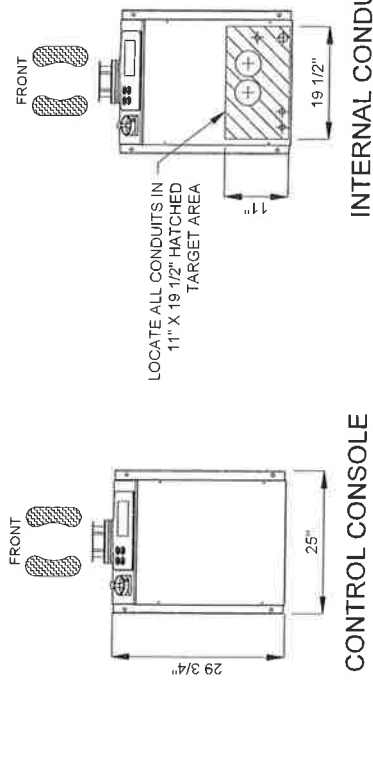


DETAIL A

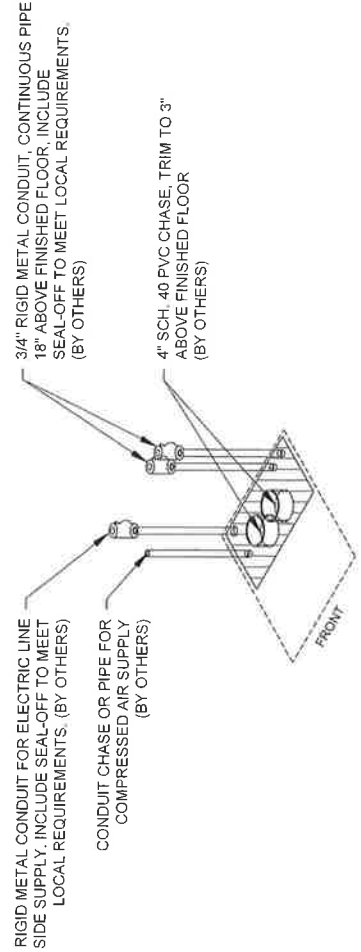
ELEVATION DETAILS

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AIR & ELECTRICAL SERVICES AT CONSOLE



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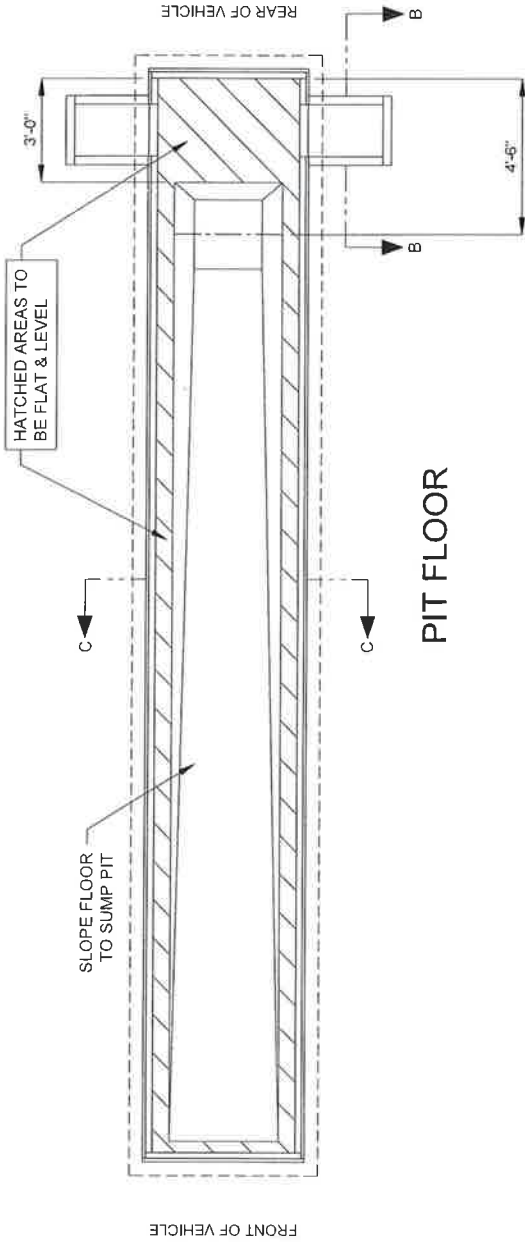
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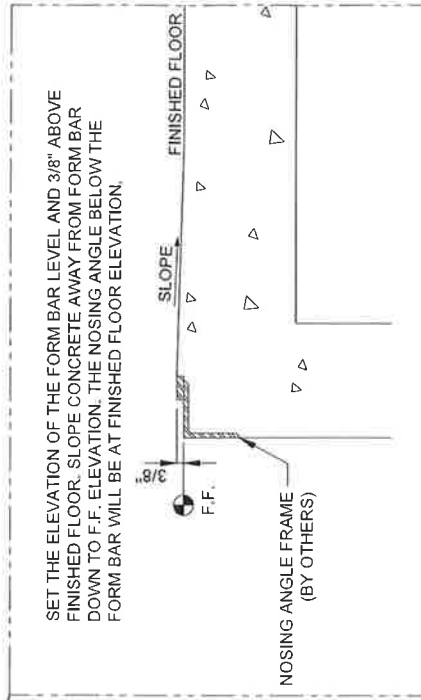
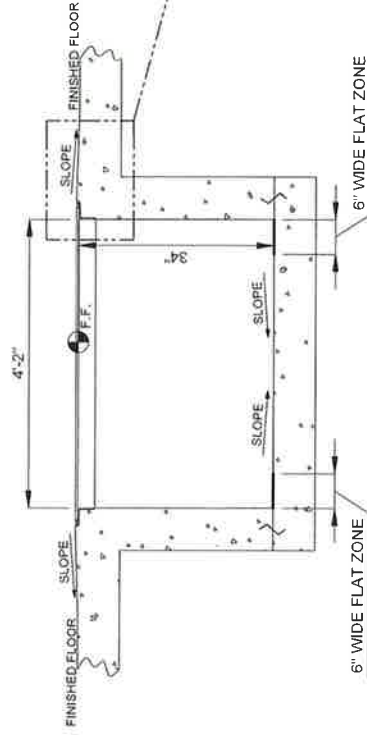
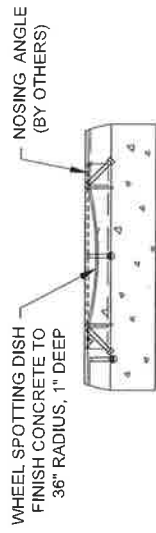
STERIL-KONI

STERIL-KONI USA, INC.  
200 LOG CANOE CIRCLE, STEVENSVILLE, MD 21666  
TEL. 800-336-6637

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DATE	ECO 60-17 LH 102-306 (CP)					
		SKU-2021-0312A-JGP-P00				



PIT FLOOR



PIT DETAILS

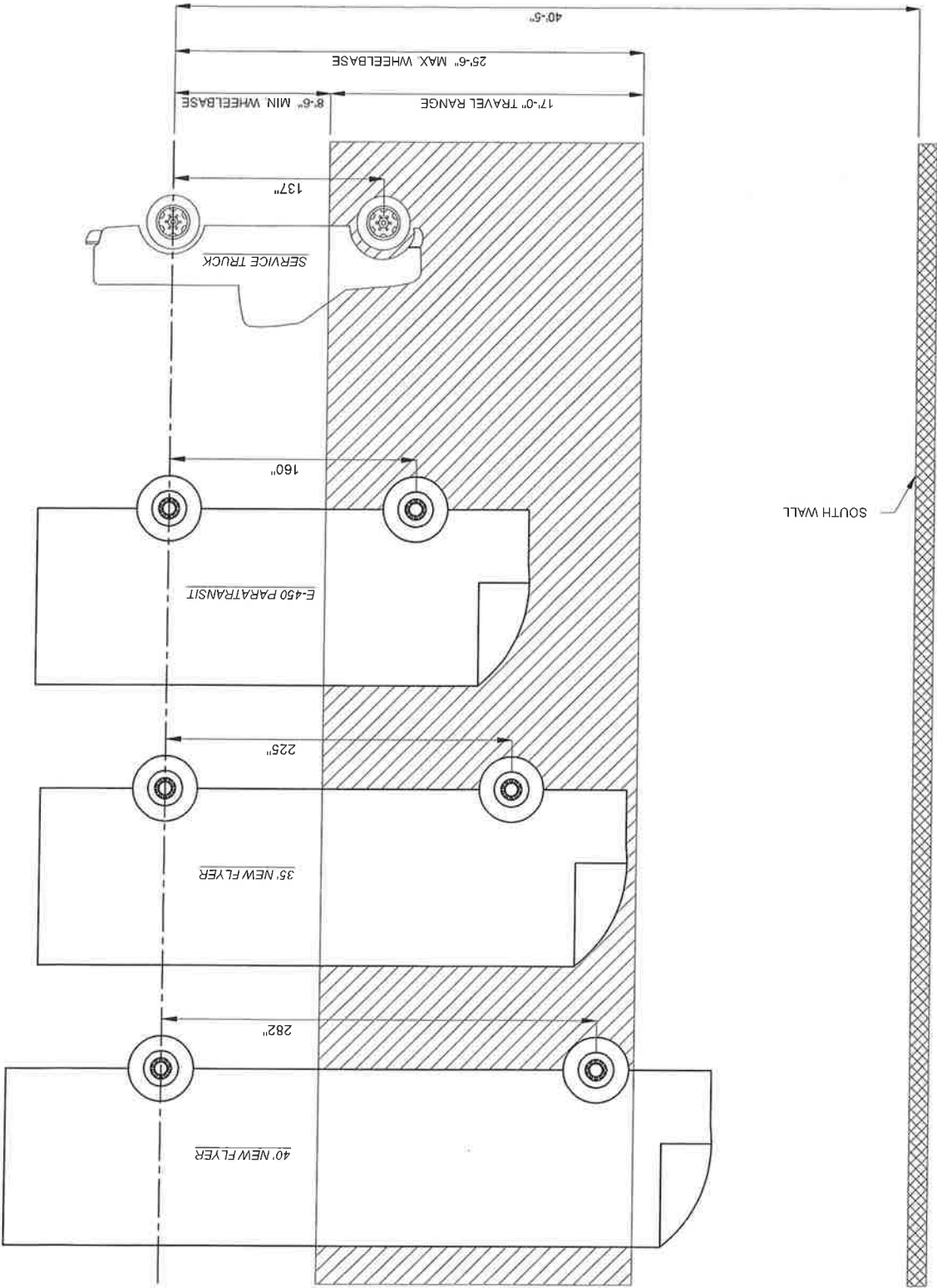
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PRELIMINARY

STERIL-KONI USA, INC.  
200 LOG CANOE CIRCLE STEVENSVILLE, MD 21666  
TEL. 800-336-6637



VEHICLE DIAGRAM

NOT FOR CONSTRUCTION



STERIL-KONI USA, INC.  
200 LOG CANOE CIRCLE, STEVENSVILLE, MD 21666  
TEL. 800-336-6637

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REVISIONS

Fargo Transit, ND

D & J Equipment

ECO 60-17 LH 102-306 (CP)

SKU-2021-0312A-JGP-P00

APPROVED BY:

SIGNATURE

PRINT NAME

DATE

PRELIMINARY

REPORT OF ACTIONUTILITY COMMITTEE

(20)

Project No. WA2005

Type: AE2S Task Order #4 – Construction  
Services: Red River Pump StationLocation: Water Treatment Plant Campus (435 14<sup>th</sup> Avenue South)

Date of Hearing: 3/4/2021

<u>Routing</u>	<u>Date</u>
City Commission	<u>3/22/2021</u>
Project File	<u>                    </u>

Troy Hall, Water Utility Director, presented the attached memo regarding a proposed AE2S task order for construction engineering services for Project WA2005, 'Red River Pump Station Improvements'. The task order is in the amount of \$773,600. This is a complex, retrofit project involving a flood wall running through the building structure with pump station equipment adapted to navigate and comply with flood certification requirements. The flood wall will protect both the local residential neighborhood and the Water Treatment Plant. The installation of a higher capacity pumps, zebra mussel mitigation equipment, and an ice removal system for intake screens are also parts of the project. This project has several funding sources involved: FEMA grant, State Water Commission grant, Diversion Authority funds, and Water Utility Infrastructure Sales Tax. While details are provided in the attached Utility Committee documents, costs are as follows:

- |                                     |           |
|-------------------------------------|-----------|
| • Construct Phase Services          | \$455,000 |
| • Construction Phase Field Services | \$318,600 |

**MOTION:**

On a motion by Kent Costin, seconded by Tom Knakmuhs, the Utility Committee voted to approve the proposed Task Order #4 with AE2S in the amount of \$773,600 for construction engineering services for Project WA2005, Red River Pump Station Improvements.

<u>COMMITTEE:</u>	<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Unanimous</u>
				<u>X</u>
				<u>Proxy</u>
Anthony Gehrig, City Commissioner				
Kent Costin, Director of Finance	<u>X</u>			
Brian Ward, Water Plant Supt.				
Mark Miller, Wastewater Plant Supt.	<u>X</u>			
Bruce Grubb, City Administrator	<u>X</u>			
Scott Liudahl, City Forester	<u>X</u>			
Terry Ludlum, Solid Waste Utility Director	<u>X</u>			
James Hausauer, Wastewater Util. Director	<u>X</u>			
Troy Hall, Water Utility Director	<u>X</u>			
Ben Dow, Public Works Operations Director				
Brenda Derrig, City Engineer (absent)	<u>X</u>	(Proxy-T Knakmuhs)		

ATTEST:

Troy B. Hall  
Troy B. Hall  
Water Utility Director

C: Tim Mahoney, Mayor  
Commissioner Strand  
Commissioner Piepkorn  
Commissioner Preston

**MEMORANDUM**

February 26, 2021

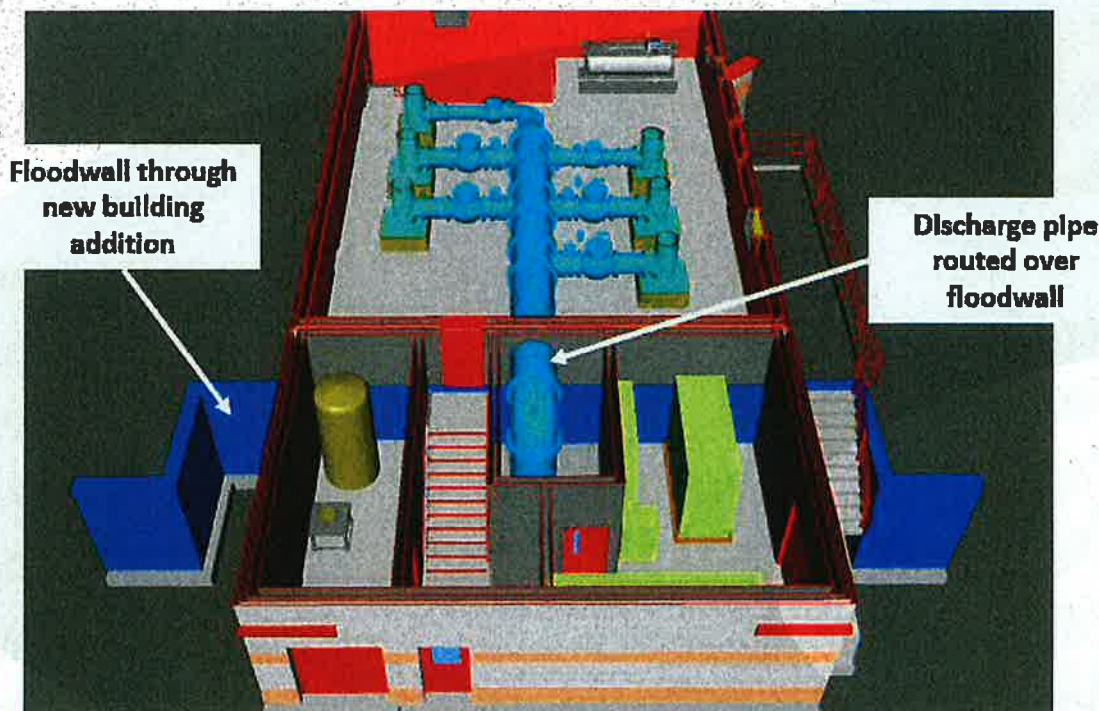
**To:** Utility Committee

**From:** Troy B. Hall, Water Utility Director *TBH*

**Re:** AE2S Task Order #4 – Red River Pump Station Construction Services

Attached, please find a proposed task order with AE2S for engineering services related to Project WA2005, Red River Pump Station Improvements. This task order is in the amount of \$773,600 for construction services with this project. WA2005 is a complex retrofit project involving flood protection, capacity improvements, and intake improvements with an estimated overall construction and equipment cost of \$6.44 million. For the flood protection, a FEMA grant will cover 75% of expenses up to \$3.565 million. The FEMA grant award is very beneficial to the project and Water Utility 20-year Capital Improvement Plan.

The overall timeline for project construction has been pushed back due to concern of driving away potential bidders. However, there is an interim milestone of May 31, 2021 to achieve some pump station capacity increase ahead of high water demands in the summer of 2021. Pumping equipment was ordered ahead of project bidding to take advantage of State Water Commission grant funding for capacity improvements and implement some capacity increase measures ahead of this summer.



A flood wall will be integral to the building in the renovated Red River Pump Station. The discharge will be route over the flood wall, helping to provide permanent flood protection to the water treatment plant and surrounding area.

Water Utility staff suggests that the following scope of service for Task Order #4 is important for successful construction of Red River Pump Station Improvements. Details regarding the scope of service can be found in the attached AE2S documents.

<u>Phase</u>	<u>Task Number and Task Name</u>	<u>Est. Hours</u>	<u>Amount</u>
<b>060</b>	<b>Construction Administration Services</b>		
	01 Project Management	250	\$ 47,300
	02 Construction Administration	2,283	\$382,000
	03 Project Closeout	120	\$ 25,700
<b>061</b>	<b>Construction Field Services</b>		
	01 Onsite Observation	1,616	\$222,500
	02 Specialty Site Visits	328	\$ 67,400
	03 Survey	40	\$ 7,000
	04 System Start-up	100	\$ 21,700
	<b>Total</b>	<b>4,737</b>	<b>\$773,600</b>

#### Plan of Financing

This project is in the 20-year CIP for the Water Utility and in the Water Utility budget. Funding for Project WA2005 is complex, having a flood protection component with grant funding and a capacity component with other grant funding. The following are funding components for the project:

- FEMA 75% Grant for Flood Protection: up to \$3.565 million
- Flood Protection Local-Share: Diversion Authority to pay remaining 25% not FEMA covered
- SWC 35%/60% Cost-share funding for Capacity Improvements (needs to be used by June 30, 2021. Pumps and valves pre-ordered for project will help fully utilize the SWC grant.
- Capacity Improvements Local-Share: Infrastructure Sales Tax (Fund 450)
- Infrastructure Sales Tax (Fund 450) to fund zebra mussel mitigation, air burst system for ice removal, and other miscellaneous project components.

#### **SUGGESTED MOTION:**

Approve Task Order #4 with AE2S in the amount of \$773,600 for construction services in Project WA2005, Red River Pump Station Improvements.

Your consideration in this matter is greatly appreciated.



March 4, 2021

Mr. Troy Hall  
Water Utility Director  
435 14<sup>th</sup> Ave S  
Fargo, ND 58103

**RE: Fargo Red River Pump Station Improvements  
Construction Phase Services  
Task Order No. 4**

Dear Troy:

Thank you for the opportunity to submit this letter proposal for professional engineering services for the Fargo Red River Pump Station Improvements. This letter and the attached Task Order No. 4 provide the proposed scope of services for Construction Phase Services. The proposed fee for these services, expenses and reimbursables \$773,600.

The City of Fargo's Red River Pump Station serves as the primary pumping facility to supply source water to its 45 million gallon per day (mgd) Water Treatment Plant (WTP). The current firm capacity, or capacity with the largest pump out of service, of the facility is 30 mgd. To accommodate the increased demands brought on by West Fargo and to allow the full capacity of the WTP to be utilized, the pumping capacity of the Red River Pump Station needs to be increased. In addition to expanding the pumping capacity, there is currently a gap in the City's permanent flood protection infrastructure near the facility and critical electrical equipment required for operation of the facility is located below the current 100-year flood elevation. This task order includes construction phase services for constructing improvements to the existing Red River Pump Station including expanding the pumping capacity from 30 mgd to 48.5 mgd, installing a new chemical feed system to the raw water intake, process piping modifications, installing a frazil ice mitigation system for the raw water intake screens, and flood protection components. The flood protection components include extending the existing floodwall along the 'dry' side of the pump station, construction of a new building addition adjacent to the existing facility, replacement and relocation of pump station electrical equipment, and structural modifications to the existing facility, and all associated architectural and mechanical improvements.

If you agree with the proposed scope of services and associated professional fees presented in the attached Task Order No. 4, please sign both copies in the spaces provided, retain one fully-executed copy for your records, and return the other fully-executed copy to AE2S. We are excited to assist the City of Fargo in completing this important critical water infrastructure project.

Submitted in Service,

A handwritten signature in blue ink, appearing to read "Ryan Grubb", is written over a faint, larger blue ink signature that is partially visible in the background.

Ryan Grubb, PE  
Assistant Operations Manager

cc: Bruce Grubb, PE

This is Water Consulting Task  
Order No. 4, consisting  
of 4 pages.

## **Water Consulting Task Order No. 4**

---

In accordance with Paragraph 1.01 of the Agreement Between Owner and Engineer for Professional Services – Task Order Edition, dated January 1, 2021 ("Agreement"), Owner and Engineer agree as follows:

### **1. Background Data**

- A. Effective Task Order Date: March 8, 2021
- B. Owner: City of Fargo (Water Utility)
- C. Engineer: Advanced Engineering and Environmental Services, LLC (AE2S)
- D. Engineer Project No.: P00803-2016-055
- E. Specific Project (title): Red River Pump Station Improvements – Construction Services
- F. Specific Project (description):

This project consists of improvements to the existing Red River Pump Station. Improvements include expanding the pumping capacity from 30 million gallons per day (mgd) to 48.5 mgd, installing a new chemical feed system to the raw water intake, process piping modifications, installing a frazil ice mitigation system for the raw water intake screens, and flood protection components. The flood protection components include extending the existing floodwall along the 'dry' side of the pump station, construction of a new building addition adjacent to the existing facility, replacement and relocation of pump station electrical equipment, and structural modifications to the existing facility, and all associated architectural and mechanical improvements. This Task Order includes construction phase services for the project.

### **2. Services of Engineer**

- A. The specific services to be provided or furnished by Engineer under this Task Order are detailed in Attachment 1 and include the services (and related terms and conditions) set forth in the following sections of Exhibit A, as attached to the Agreement referred to above, such sections being hereby incorporated by reference:
  - Construction Phase Services (Exhibit A, Paragraph A1.05)
    - including Resident Project Representative (RPR) services (A1.05.A.2)
- B. Resident Project Representative (RPR) Services:

The scope of services for this Task Order includes RPR services and Exhibit D of the Agreement is expressly incorporated in this Task Order by reference.
- C. All of the services included above comprise Basic Services for purposes of Engineer's compensation under this Task Order.

### 3. Owner's Responsibilities

Owner shall have those responsibilities set forth in Article 2, Exhibit B of the Agreement.

### 4. Task Order Schedule

In addition to any schedule provisions provided in Exhibit A or elsewhere, the parties shall meet the following approximate schedule:

- Task Order approval – *March 8, 2021*
- Start Construction – *April 2021*
- Project Completion – *July 2022*

### 5. Payments to Engineer

A. Owner shall pay Engineer for services rendered under this Task Order as follows:

<i>Phase</i>	<i>Task Number and Task Name</i>	<i>Payment Method</i>	<i>Estimated Hours</i>	<i>Amount</i>
<b>060</b>	<b>Construction Administration Services</b>	<i>Method A</i>		
	01 Project Management		250	\$47,300
	02 Construction Administration		2,283	\$382,000
	03 Project Closeout		120	\$25,700
<b>061</b>	<b>Construction Field Services</b>	<i>Method B</i>		
	01 Construction Field Services		1,616	\$222,500
	02 Specialty Site Visits		328	\$67,400
	03 Survey and Project Control		40	\$7,000
	04 Systems Start-up		100	\$21,700
<b>Total</b>			<b>4,737</b>	<b>\$773,600</b>

Compensation items and totals based in whole or in part on Hourly Rates or Direct Labor are estimates only. Lump sum amounts and estimated totals included in the breakdown by phases incorporate Engineer's labor, overhead, profit, reimbursable expenses (if any), and Consultants' charges, if any. For lump sum items, Engineer may alter the distribution of compensation between individual phases (line items) to be consistent with services actually rendered, but shall not exceed the total lump sum compensation amount unless approved in writing by the Owner.

- B. The terms of payment are set forth in Article 4 of the Agreement and in the applicable governing provisions of Exhibit C, where Method A is a Lump Sum payment and Method B is payment for Standard Hourly Rates.

**6. Consultants retained as of the Effective Date of the Task Order:**

*Black & Veatch Corporation*

**7. Other Modifications to Agreement and Exhibits: None.**

**8. Attachments:**

Attachment 1 – Scope of Services for Task Order

**9. Other Documents Incorporated by Reference: None.**

**10. Terms and Conditions**

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

The Effective Date of this Task Order is March 8, 2021.

OWNER: City of Fargo (Water Utility)

ENGINEER: Advanced Engineering and  
Environmental Services, Inc. (AE2S)

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

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

Name: Troy B. Hall

Name: Lisa Ansley, PE

Title: Water Utility Director

Title: Chief Operations Officer

DESIGNATED REPRESENTATIVE FOR  
TASK ORDER:

DESIGNATED REPRESENTATIVE FOR  
TASK ORDER:

Name: Troy B. Hall

Name: Ryan Grubb, PE

Title: Water Utility Director

Title: Assistant Operations Manager

Address: 435 14<sup>th</sup> Ave S  
Fargo, ND 58103

Address: 4170 28<sup>th</sup> Ave S  
Fargo, ND 58104

E-Mail  
Address: THall@FargoND.gov

E-Mail  
Address: Ryan.Grubb@ae2s.com

Phone: (701) 476 - 6741

Phone: (701) 364 - 9111

*Attachment 1 to Water Consulting Task Order No. 4*

*Red River Pump Station Improvements*

*March 8, 2021*

## Scope of Services

The Project consists of improvements to the existing Red River Pump Station, including expanding the pumping capacity from 30 million gallons per day (mgd) to 48.5 mgd, installing a new chemical feed system to the raw water intake, process piping modifications, installing a frazil ice mitigation system for the raw water intake screens, and flood protection components. The flood protection components include extending the existing floodwall along the 'dry' side of the pump station, construction of a new building addition adjacent to the existing facility, replacement and relocation of pump station electrical equipment, and structural modifications to the existing facility, and all associated architectural and mechanical improvements. This Scope of Services provides for Construction Phase services to support the construction of the Project. The following is a detailed breakdown of this Scope of Services to Water Consulting Task Order No. 4.

### **Phase 060 – Construction Administration Services**

***In accordance with Paragraphs A1.05 and A1.08 of Exhibit A of the Original Task Order Agreement, dated January 1, 2021, ENGINEER shall perform the following additional Construction Phase services under Water Consulting Task Order No. 4:***

#### **Task 01 – Project Management**

ENGINEER shall perform general Project management activities including progress monitoring, scheduling, general correspondence, office administration, and invoicing. These activities include maintaining contact and liaison with the OWNER and Project staff; providing OWNER with monthly Project financial status updates; ensuring that the needs of the OWNER are met in a timely manner, and monitoring Project budgets and schedules.

#### **Task 02 – Construction Administration**

ENGINEER shall perform general project administration activities for three prime Contractors in accordance with Paragraph A1.05 of Exhibit A of the Original Task Order Agreement including:

- General project coordination and correspondence with Owner and Contractors;
- Facilitation of project meetings, which are anticipated to consist of:
  - Preconstruction meeting
  - Construction progress meetings
  - Special construction coordination meetings (facility shutdowns, large concrete pours, equipment start-ups)
- Review and approval of shop drawings;
- Review of applications for payment submitted by each Contractor;
- Review and response to requests for information (RFIs);
- Prepare and issue work change directives;

- Change order review and subsequent acceptance or rejection;
- Review and approval of operation and maintenance (O&M) manuals;
- Assist Owner in the development and submittal of grant funding reimbursement requests to FEMA and the State Water Commission; and
- Prepare and submit quarterly project updates to FEMA.

This Task shall also include Construction Administration services provided during the Final Design Phase needed to accommodate the Project schedule, including:

- Review and approval of shop drawing submittals for pre-purchased pump equipment;
- Review and approval of shop drawing submittals for pre-purchased valve package;
- Development and submittal of construction permit to the State Water Commission;
- Electrical plan revisions for accommodating Water Quality Panel relocation, addition of fire suppression monitoring equipment; and heating system changes;
- Development of wetwell cleaning specification; and
- Design and drawing development of air burst system manual blowoff and protective cover at raw water intake.

#### Task 03 – Project Closeout

ENGINEER shall provide the following project closeout services upon completion of construction of the Red River Pump Station Improvements:

- Perform a preliminary final inspection walkthrough of the project with the OWNER;
- Compile a final punch list containing items identified during the initial final inspection / walkthrough;
- Perform a subsequent final inspection walkthrough to verify all punch list items have been addressed; and
- Issue final acceptance form with final pay application.

### **Phase 061 – Construction Field Services**

*In accordance with Paragraphs A1.05 and A1.08 of Exhibit A of the Original Task Order Agreement, dated January 1, 2021, ENGINEER shall perform the following additional Construction Phase services under Water Consulting Task Order No. 4:*

#### Task 01 – Construction Field Services

*In accordance with Exhibit D of the Original Task Order Agreement, dated January 1, 2021, ENGINEER shall perform the following additional Resident Project Representative (RPR) services under Water Consulting Task Order No. 4:*

ENGINEER shall provide on-site observation services of a Resident Project Representative (RPR) to observe and document construction activities in accordance with Exhibit D of the Original Task Order Agreement. The construction duration is anticipated to last approximately 15 months, beginning April 1, 2021 and ending July 1, 2022, with intermittent construction activity. ENGINEER shall provide part-time RPR services when the contractor is onsite performing the work based on the following approach:

- Provide part-time RPR services to observe and document the contractor's work, averaging 16 hours per week for the duration of construction;
- Provide part-time RPR services to observe and document key electrical construction activities;
- Provide part-time RPR services to observe and document key structural construction activities and concrete pours;
- Perform full-time RPR services to observe and document contract work during facility shutdowns; and
- Facilitate onsite weekly construction progress meetings to be attended by key representatives of the Owner and Contractors.

#### Task 02 – Specialty Site Visits

ENGINEER shall conduct specialty site visits to observe and document the following construction activities:

- Facility shutdown work for connection to existing pump station discharge piping;
- Facility shutdown work for electrical duct bank intersection and temporary transformer hookup;
- Power distribution switchover from existing transformers to new transformers;
- Wetwell construction activities including diving and pipe/equipment installations;
- Large concrete pours for new building foundation and floodwall;
- Pump removals and installation;
- Chemical feed system installation; and
- Sample masonry panel construction for new building to ensure consistency with existing facility.

#### Task 03 – Survey and Project Control

ENGINEER shall provide initial construction survey to setup project control, identify removals, and establish construction limits. ENGINEER shall also survey locations of newly installed underground utilities for future incorporation into project record drawings.

#### Task 04 – Systems Start-up

ENGINEER shall provide onsite RPR services to assist with start-up of the following systems:

- Raw water pumping system;
- Intake screen frazil ice mitigation system; and
- Chemical feed system.

REPORT OF ACTION**UTILITY COMMITTEE**

(21)

Project No. WA2005

Type: Bid Award for Red River Pump  
Station ImprovementsLocation: Water Treatment Plant Campus (435 14<sup>th</sup> Avenue South)

Date of Hearing: 3/4/2021

<u>Routing</u>	<u>Date</u>
City Commission	<u>3/22/2021</u>
Project File	<u>                    </u>

Troy Hall, Water Utility Director, presented the attached memo regarding the bid opening for Project WA2005. The bid opening took place on Wednesday, March 3, 2020. This project is titled, 'Fargo Red River Pump Station Improvements'. Per the attached AE2S Bid Award Recommendation, the lowest three (3) prime contract bids totaled \$4,603,550. This is \$436,450 below the Engineer's Estimate or 8.7% under the estimate. The contractor scope is to construct FEMA-funded flood protection features constructed to protect both the local residential neighborhood and the Water Treatment Plant. Pump station capacity increase, zebra mussel mitigation, and an ice removal system for intake screens will also be installed. This project has several funding sources involved: FEMA grant, State Water Commission grant, Diversion Authority funds, and Water Utility Infrastructure Sales Tax.

**MOTION:**

On a motion by Jim Hausauer, seconded by Terry Ludlum, the Utility Committee voted to approve the Bid Award as follows for Project WA2005, Red River Pump Station Improvements:

- Contract 1 (General): CC Steel for \$3,419,000
- Contract 2 (Mechanical): Dakota Plains for \$245,550
- Contract 3 (Electrical): Sun Electric for \$939,000

<u>COMMITTEE:</u>	<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Unanimous</u>
				<u>X</u>
				<u>Proxy</u>
Anthony Gehrig, City Commissioner				
Kent Costin, Director of Finance	<u>X</u>			
Brian Ward, Water Plant Supt.				
Mark Miller, Wastewater Plant Supt.	<u>X</u>			
Bruce Grubb, City Administrator	<u>X</u>			
Scott Liudahl, City Forester	<u>X</u>			
Terry Ludlum, Solid Waste Utility Director	<u>X</u>			
James Hausauer, Wastewater Util. Director	<u>X</u>			
Troy Hall, Water Utility Director	<u>X</u>			
Ben Dow, Public Works Operations Director				
Brenda Derrig, City Engineer	<u>X</u>			<u>Proxy-T Knakmuhs</u>

ATTEST:

Troy B. Hall  
Troy B. Hall  
Water Utility Director

C: Tim Mahoney, Mayor  
Commissioner Strand  
Commissioner Piepkorn  
Commissioner Preston

**MEMORANDUM**

March 3, 2021

**To:** Utility Committee

**From:** Troy B. Hall, Water Utility Director *TBH*

**Re:** Project WA2005 Bid Award - Red River Pump Station Improvements (Updated)

Bid opening is planned to occur on March 3, 2021, for Project WA2005, Red River Pump Station Improvements. Two (2) bids were received and opened for each to the three (3) prime contracts: General, Mechanical, and Electrical. No bids were received for the Combined Contract. Water Utility staff believe we have enough information about the bidding to recommend award for the project. The award recommendation is as follows:

- Contract 1 (General): CC Steel for \$3,419,000
- Contract 2 (Mechanical): Dakota Plains for \$245,550
- Contract 3 (Electrical): Sun Electric for \$939,000

Summing the lowest bids for the three (3) prime contracts totals \$4,603,550. The latest project estimate for this construction is \$5,040,000. Thus, the bids received were \$436,450 under the Engineer's Estimate or 8.7% under estimate. For the flood projection, a FEMA grant will cover 75% of expenses up to \$3.565 million. The FEMA grant award is very beneficial to the project and Water Utility 20-year Capital Improvement Plan.



**Pumping floor of the Red River Pump Station. This equipment will be replaced or retrofitted to match the current Water Treatment Plant capacity and be raised for flood protection.**

If the bid award is approved by the Utility Committee, an additional bidder's documentation review will be conducted by AE2S prior to submitting for the City Commission agenda.

For WA2005, the overall project involves:

- Flood Protection with FEMA grant funding
- Capacity Improvements with State Water Commission cost-share (grant) funding
- Zebra Mussel Mitigation Infrastructure
- Air Burst Equipment Installation to remove ice from intake screens.
- Other Miscellaneous Operations & Maintenance Improvements

With this construction, the pumping equipment will remain on the wet side of City of Fargo flood protection. Therefore, the equipment is being raised in the project. Raising the equipment is much lower cost than constructing a new pump station on the dry side of the flood wall and Belmont levy system. Prior to designing Project WA2005 and pursuing FEMA grant funding, several flood protection options were reviewed by HDR Engineering, COF Engineering Department, and Water Utility.

The overall timeline for project construction has been pushed back due to concern of driving away potential bidders. However, there is an interim milestone of May 31, 2021 to achieve some pump station capacity increase ahead of high water demands in the summer of 2021. Pumping equipment was ordered ahead of project bidding to take advantage of State Water Commission grant funding for capacity improvements and implement some capacity increase measures ahead of this summer. The cost for this equipment is approximately \$884,475.

#### **Plan of Financing**

This project is in the 20-year CIP for the Water Utility and in the Water Utility budget. Funding for Project WA2005 is complex, having a flood protection component with grant funding and a capacity component with other grant funding. The following are funding components for the project:

- FEMA 75% Grant for Flood Protection: up to \$3.565 million
- Flood Protection Local-Share: Diversion Authority to pay remaining 25% not FEMA covered
- SWC 35%/60% Cost-share funding for Capacity Improvements (needs to be used by June 30, 2021. Pumps and valves pre-ordered for project will help fully utilize the SWC grant.
- Capacity Improvements Local-Share: Infrastructure Sales Tax (Fund 450)
- Infrastructure Sales Tax (Fund 450) to fund zebra mussel mitigation, air burst system for ice removal, and other miscellaneous project components.

#### **SUGGESTED MOTION:**

Approve award for Project WA2005, Red River Pump Station Improvements, as follows:

- Contract 1 (General): CC Steel for \$3,419,000
- Contract 2 (Mechanical): Dakota Plains for \$245,550
- Contract 3 (Electrical): Sun Electric for \$939,000

Your consideration in this matter is greatly appreciated.



3/3/2021

Mr. Troy Hall  
Water Utility Director  
City of Fargo  
435 14th Ave S  
Fargo ND 58103-4306

**Re: Fargo Red River Pump Station Improvements  
Engineer's Bid Review and Award Recommendation  
Fargo Water Project #WA2005**

Dear Mr. Hall:

Bids were received at 11:30 a.m. on Wednesday, March 3, 2021 at the City Auditor's Office and subsequently opened at 11:45 a.m. in the Engineering Conference Room at the Fargo City Hall for the above referenced project. A total of six (6) different bidders submitted a total of six (6) sealed bids. Each of the bids that were submitted met all of the prescribed requirements and were opened and read aloud. This letter summarizes the bid results received and includes the Engineer's recommendation for award contingent upon a review of the qualifications of the bidders.

The project was bid as four (4) separate contracts. Individual bids were received for Contract No. 1 – General Construction, Contract No. 2 – Mechanical Construction, and Contract No. 3 Electrical Construction. Additionally, a combined bid for the work under these three individual contracts was bid under Contract No. 4 – Combined General, Mechanical, and Electrical Construction; however, no bids were received for Contract No. 4. A bid tabulation is attached to this letter for your review.

The recommendations to award or decline each low, responsible bid are presented below based on review of the bids and correspondence held with the project stakeholders following the conclusion of the bid opening. The project team recommends the following construction contracts:

- Contract No. 1 – General Construction: CC Steel, LLC. in the amount of \$3,419,000.
- Contract No. 2 – Mechanical Construction: Dakota Plains Mechanical in the amount of \$245,550.
- Contract No. 2 – Electrical Construction: Sun Electric, Inc. in the amount of \$939,000.

**Based on the bid results, the total bid price for the project is \$4,603,550**



Mr. Troy Hall  
Water Utility Director

**Re: Fargo Red River Pump Station Improvements  
Engineer's Bid Review and Award Recommendation  
Fargo Water Project #WA2005**

3/3/2021

Page 2 of 2

Thank you for the opportunity to assist the City of Fargo with this important project. Should you have any comments or questions regarding the bid results or the project in general, please do not hesitate to contact me at (701) 364-9111.

Respectfully Submitted,

AE2S

Ryan Grubb, PE  
Assistant Operations Manager

Attachments

**Fargo Red River Pump Station Improvements**  
**City of Fargo, North Dakota**  
**City Project No. W/A2005**  
**AE2S Project No. P00803-2016-055**  
**Bid Opening 11:45 AM CST, Wednesday, March 3, 2021**

Contractor	Acknowledge Addenda 1-2	Bid Bond	Contractor's License or Renewal	Debarment Certification	Bid Form	Contract No. 1 General Construction	Contract No. 2 Mechanical Construction	Contract No. 3 Electrical Construction	Contract No. 4 Combined General, Mechanical, & Electrical Construction
CC Steel, LLC	✓	✓	✓	✓	✓	\$3,419,000.00	No Bid	No Bid	No Bid
ICS, Inc	✓	✓	✓	✓	✓	\$5,092,336.00	No Bid	No Bid	No Bid
Dakota Plains Mechanical	✓	✓	✓	✓	✓	No Bid	\$245,550.00	No Bid	No Bid
Wrigley Mechanical, Inc	✓	✓	✓	✓	✓	No Bid	\$337,000.00	No Bid	No Bid
Sun Electric, Inc	✓	✓	✓	✓	✓	No Bid	No Bid	\$939,000.00	No Bid
JDP Electric	✓	✓	✓	✓	✓	No Bid	No Bid	\$1,041,255.00	No Bid
Engineer's Estimate						\$3,930,000.00	\$200,000.00	\$910,000.00	\$5,040,000.00



Advanced Engineering and Environmental Services, Inc.  
 4170 28th Avenue S  
 Fargo, ND 58104  
 Tel: 701-364-9111

Ryan Grubb, PE

**MEMORANDUM**

February 26, 2021

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**To:** Utility Committee

**From:** Troy B. Hall, Water Utility Director *TBH*

**Re:** Project WA2005 Bid Award - Red River Pump Station Improvements

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Bid opening is planned to occur on March 3, 2021, for Project WA2005, Red River Pump Station Improvements. Since this construction is a complex retrofit project, preliminary bid tabulations will be reviewed at the Utility Committee meeting on March 4, 2021. However, it is expected that a thorough review of contractor bid information will be needed before a final award recommendation by Water Utility staff is available. To keep the critical project timeline moving forward, it is expected that Water Utility staff will request an electronic vote. For WA2005, the overall project involves:

- Flood Protection with FEMA grant funding
- Capacity Improvements with State Water Commission cost-share (grant) funding
- Zebra Mussel Mitigation Infrastructure
- Air Burst Equipment Installation to remove ice from intake screens.
- Other Miscellaneous Operations & Maintenance Improvements

This project has an estimated overall construction and equipment cost of \$6.44 million. For the flood projection, a FEMA grant will cover 75% of expenses up to \$3.565 million. The FEMA grant award is very beneficial to the project and Water Utility 20-year Capital Improvement Plan.



Pumping floor of the Red River Pump Station. This equipment will be replaced or retrofitted to match the current Water Treatment Plant capacity and be raised for flood protection.

With this construction, the pumping equipment will remain on the wet side of City of Fargo flood protection. Therefore, the equipment is being raised in the project. Raising the equipment is much lower cost than constructing a new pump station on the dry side of the flood wall and levy system. Prior to designing Project WA2005 and pursuing FEMA grant funding, several flood protection options were reviewed by HDR Engineering, COF Engineering Department, and Water Utility.

The overall timeline for project construction has been pushed back due to concern of driving away potential bidders. However, there is an interim milestone of May 31, 2021 to achieve some pump station capacity increase ahead of high water demands in the summer of 2021. Pumping equipment was ordered ahead of project bidding to take advantage of State Water Commission grant funding for capacity improvements and implement some capacity increase measures ahead of this summer.

#### **Plan of Financing**

This project is in the 20-year CIP for the Water Utility and in the Water Utility budget. Funding for Project WA2005 is complex, having a flood protection component with grant funding and a capacity component with other grant funding. The following are funding components for the project:

- FEMA 75% Grant for Flood Protection: up to \$3.565 million
- Flood Protection Local-Share: Diversion Authority to pay remaining 25% not FEMA covered
- SWC 35%/60% Cost-share funding for Capacity Improvements (needs to be used by June 30, 2021. Pumps and valves pre-ordered for project will help fully utilize the SWC grant.
- Capacity Improvements Local-Share: Infrastructure Sales Tax (Fund 450)
- Infrastructure Sales Tax (Fund 450) to fund zebra mussel mitigation, air burst system for ice removal, and other miscellaneous project components.

#### **SUGGESTED MOTION:**

None. Electronic vote will be requested after a thorough contractor bid information review.

Your consideration in this matter is greatly appreciated.

## REPORT OF ACTION

(23)

## PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Improvement District No. SL-20-B1 Type: Negative Final Balancing Change Order #1

Location: Between 6th & 11th Ave S and  
Between 17th and 21st St S Date of Hearing: 3/15/2021

<u>Routing</u>	<u>Date</u>
City Commission	3/22/2021
PWPEC File	X
Project File	Dave Helland

The Committee reviewed the accompanying correspondence from Project Manager, Dave Helland, for Negative Final Balancing Change Order #1 in the amount of -\$3,633.70, which reconciles the measured quantities used in the field with those estimated for the contract.

Staff is recommending approval of Negative Final Balancing Change Order #1 in the amount of -\$3,633.70, bringing the total contract amount to \$257,449.00.

On a motion by Steve Sprague, seconded by Ben Dow, the Committee voted to recommend approval of Negative Final Balancing Change Order #1 to Moorhead Electric.

RECOMMENDED MOTION

Concur with recommendations of PWPEC and approve Negative Final Balancing Change Order #1 in the amount of -\$3,633.70, bringing the total contract amount to \$257,449.00 to Moorhead Electric.

PROJECT FINANCING INFORMATION:Recommended source of funding for project: Special Assessments

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

COMMITTEE

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

ATTEST:

  
Brenda E. Derrig, P.E.  
City Engineer

C: Kristi Olson



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

<b>Improvement District No</b>	SL-20-B1	<b>Change Order No</b>	1
<b>Project Name</b>	Street Lighting & Incidentals	<b>For</b>	Moorhead Electric
<b>Date Entered</b>	2/24/2021		

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

**EXPLANATION OF CHANGE: Final Balancing**

This change order reconciles the estimated quantities used in the contract with the final quantities as measured in the field.

Section	Line No	Item Description	Unit	Orig Cont Qty	Prev C/O Qty	Prev Cont Qty	Curr C/O Qty	Tot Cont Qty	Unit Price (\$)	C/O Ext Price (\$)
Street Lighting	6	F&I Conductor #6 USE Cu	LF	26,601.00	0.00	26,601.00	1,737.00	28,338.00	1.30	2,258.10
	7	F&I Innerduct 1.5" Dia	LF	9,038.00	0.00	9,038.00	579.00	9,617.00	5.80	3,358.20
	11	Rem & Repl Sidewalk 4" Thick Reinf Conc	SY	50.00	0.00	50.00	-50.00	0.00	120.00	-6,000.00
	12	Rem & Repl Driveway 6" Thick Reinf Conc	SY	25.00	0.00	25.00	-25.00	0.00	130.00	-3,250.00
<b>Street Lighting Sub Total (\$)</b>										<b>-3,633.70</b>

**Summary**

**Source Of Funding**

**Net Amount Change Order # 1 (\$)**

**Previous Change Orders (\$)**

**Original Contract Amount (\$)**

**Total Contract Amount (\$)**



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

**CONTRACT TIME**

Current Substantial Completion Date	Current Final Completion Date	Additional Days Substantial Completion	Additional Days Final Completion	New Substantial Completion Date	New Final Completion Date
11/15/2020		0.00	0.00	11/15/2020	



CITY OF FARGO  
ENGINEERING DEPARTMENT  
CHANGE ORDER REPORT

Description			
APPROVED		APPROVED DATE	
For Contractor		Department Head	
Title	Moorhead Electric	Mayor	3/17/21
	Division Manager	Attest	
	3/1/21		



**ENGINEERING DEPARTMENT  
PAY ESTIMATE SHEET**

Improvement District No. SL-20-B1  
 Project Name Street Lighting & Incidentals  
 Type Street Lighting  
 Description Between 6th Avenue South and 11th Avenue South and between 17th Street South and 21st Street South  
 Pay Estimate Number 3 - FINAL  
 From Date 09/17/2020 To Date 02/24/2021

The Honorable Board of City Commissioners

Dear Commissioners,

Be advised that Moorhead Electric has performed the work to date shown on this statement

Contract		Unit		Quantity Unit Price (\$)		Previous		Current		To Date		Percentage
						Quantity	Amount (\$)	Quantity	Amount (\$)	Quantity	Amount (\$)	Complete(%)
Street Lighting												
1	Relocate Street Light	EA	1.00	260.00		0.00	0.00	1.00	260.00	1.00	260.00	100.00
2	Remove Street Light	EA	1.00	350.00		0.00	0.00	1.00	350.00	1.00	350.00	100.00
3	F&I Feed Point	EA	1.00	8,400.00		0.00	0.00	1.00	8,400.00	1.00	8,400.00	100.00
4	F&I Base 5' Deep Reinf Conc	EA	63.00	772.00		63.00	48,636.00	0.00	0.00	63.00	48,636.00	100.00
5	Remove Base	EA	1.00	225.00		0.00	0.00	1.00	225.00	1.00	225.00	100.00
6	F&I Conductor #6 USE Cu	LF	26,601.00	1.30		0.00	0.00	28,338.00	36,839.40	28,338.00	36,839.40	106.53
7	F&I Innerduct 1.5" Dia	LF	9,038.00	5.80		8,700.00	50,460.00	917.00	5,318.60	9,617.00	55,778.60	106.41
8	F&I Luminaire Type A	EA	62.00	660.00		0.00	0.00	62.00	40,920.00	62.00	40,920.00	100.00
9	F&I Pull Box	EA	2.00	900.00		0.00	0.00	2.00	1,800.00	2.00	1,800.00	100.00
10	F&I Light Standard Type A	EA	62.00	1,020.00		0.00	0.00	62.00	63,240.00	62.00	63,240.00	100.00



## ENGINEERING DEPARTMENT

## PAY ESTIMATE SHEET

Contract	Unit	Quantity	Unit Price (\$)	Previous		Current		To Date		Percentage	
				Quantity	Amount (\$)	Quantity	Amount (\$)	Quantity	Amount (\$)	Complete (%)	Complete (%)
11 Rem & Repl Sidewalk 4" Thick Reinf SY Conc	SY	50.00	120.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
12 Rem & Repl Driveway 6" Thick Reinf Conc	SY	25.00	130.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
13 Traffic Control - Minor	LS	1.00	1,000.00	0.00	0.00	1.00	1,000.00	1.00	1,000.00	100.00	100.00
Street Lighting Sub Total					99,096.00		158,353.00		257,449.00		
<b>Summary</b>											
1. Original Contract Amount										\$ 261,082.70	
2. Net Change by Change Order										\$ 0.00	
3. Contract Amount To Date										\$ 261,082.70	
4. Total Work Completed to Date										\$ 257,449.00	
5. Retainage @ 5.00 % to Date										\$ 4,954.80	
6. Previous Retainage										\$ 4,954.80	
7. Retainage This Period										\$ 0.00	
8. Liquidated Damages										\$ 0.00	
0.00 Days to Date										\$ 0.00	
0.00 Days to Previous										\$ 0.00	
0.00 Days This Period										\$ 0.00	
9. Material on Hand (Payment)										\$ 0.00	
10. Material on Hand (Recovery)										\$ 0.00	
11. Adjustments										\$ 0.00	
12. Total Due to Date										\$ 252,494.20	



ENGINEERING DEPARTMENT  
PAY ESTIMATE SHEET

13. Previous Payments	\$ 94,141.20
14. Payment Due This Estimate	\$ 158,353.00
15. Amount allowed Pay Estimate # 3 - FINAL	\$ 158,353.00

Workflow History					
Status	Pending On	Date	User	Action	Action Notes
Draft	Administrator, Division Head, Project Manager	02/24/2021	dhelland	StageInitialized	
Draft	Administrator, Division Head, Project Manager	02/24/2021	dhelland	Complete	
Completed	Administrator, Department Head, Division Head	02/24/2021	dhelland	StageInitialized	

(24)

## PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Improvement District No. SL-20-C1 Type: Negative Final Balancing Change Order #1

Location: 19-32 Ave N & b/w Univ. Dr N & Brdwy N  
12-14 Ave N & b/w Oak St. N & Elm St N Date of Hearing: 3/15/2021

<u>Routing</u>	<u>Date</u>
City Commission	3/22/2021
PWPEC File	X
Project File	Dave Helland

The Committee reviewed the accompanying correspondence from Project Manager, Dave Helland, for Negative Final Balancing Change Order #1 in the amount of -\$10,293.50, which reconciles the measured quantities used in the field with those estimated for the contract.

Staff is recommending approval of Negative Final Balancing Change Order #1 in the amount of -\$10,293.50, bringing the total contract amount to \$726,261.50.

On a motion by Steve Sprague, seconded by Ben Dow, the Committee voted to recommend approval of Negative Final Balancing Change Order #1 to Strata Corp.

RECOMMENDED MOTION

Concur with recommendations of PWPEC and approve Negative Final Balancing Change Order #1 in the amount of -\$10,293.50, bringing the total contract amount to \$726,261.50 to Strata Corp.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: Street Light Utility Funds & Special Assessments

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

COMMITTEE

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

ATTEST:

  
Brenda E. Derrig, P.E.  
City Engineer

C: Kristi Olson



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

<b>Improvement District No</b>	SL-20-C1	<b>Change Order No</b>	1
<b>Project Name</b>	Street Lighting & Incidentals	<b>For</b>	Strala Corporation
<b>Date Entered</b>	3/1/2021		

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

**EXPLANATION OF CHANGE:** Final Balancing Change Order

This change order reconciles the estimated quantities used in the contract with the final quantities as measured in the field.

Section	Line No	Item Description	Unit	Orig Cont Qty	Prev C/O Qty	Prev Cont Qty	Curr C/O Qty	Tot Cont Qty	Unit Price (\$)	C/O Ext Price (\$)
Street Lighting 19 to 32 and Univ to Bdwy	2	F&I Base 5' Deep Reinf Conc	EA	132.00	0.00	132.00	1.00	133.00	600.00	600.00
	3	F&I Conductor #6 USE Cu	LF	61,185.00	0.00	61,185.00	1,857.00	63,042.00	1.25	2,321.25
	4	F&I Innerduct 1.5" Dia	LF	19,795.00	0.00	19,795.00	156.00	19,951.00	6.50	1,014.00
	5	F&I Luminaire Type A	EA	132.00	0.00	132.00	1.00	133.00	225.00	225.00
	6	F&I Pull Box	EA	10.00	0.00	10.00	2.00	12.00	800.00	1,600.00
	7	F&I Light Standard Type A	EA	132.00	0.00	132.00	1.00	133.00	1,200.00	1,200.00
	8	Rem & Repl Sidewalk 4" Thick Reinf Conc	SY	100.00	0.00	100.00	-100.00	0.00	105.00	-10,500.00
	9	Rem & Repl Sidewalk 6" Thick Reinf Conc	SY	50.00	0.00	50.00	-50.00	0.00	125.00	-6,250.00
<b>Street Lighting 19 to 32 and Univ to Bdwy Sub Total (\$)</b>										
Street Lighting Oak St and Elm St	12	F&I Conductor #6 USE Cu	LF	8,436.00	0.00	8,436.00	-48.00	8,388.00	1.25	-60.00
	13	F&I Innerduct 1.5" Dia	LF	2,703.00	0.00	2,703.00	-26.00	2,677.00	6.50	-169.00
	<b>Street Lighting Oak St and Elm St Sub Total (\$)</b>									
Street Lighting 12th St N	20	F&I Conductor #6 USE Cu	LF	11,580.00	0.00	11,580.00	249.00	11,829.00	1.25	311.25
	21	F&I Innerduct 1.5" Dia	LF	3,860.00	0.00	3,860.00	-87.00	3,773.00	6.50	-565.50
	<b>Street Lighting 12th St N Sub Total (\$)</b>									
Street Lighting 9-1/2 St N and 10th St N, 30 to 31 Ave N	28	F&I Conductor #6 USE Cu	LF	5,781.00	0.00	5,781.00	-6.00	5,775.00	1.25	-7.50
	29	F&I Innerduct 1.5" Dia	LF	1,927.00	0.00	1,927.00	-2.00	1,925.00	6.50	-13.00
	<b>Street Lighting 9-1/2 St N and 10th St N, 30 to 31 Ave N Sub Total (\$)</b>									



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

**Summary****Source Of Funding**

Net Amount Change Order # 1 (\$)

Previous Change Orders (\$)

Original Contract Amount (\$)

Total Contract Amount (\$)

-10,293.50
0.00
736,555.00
726,261.50

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

**CONTRACT TIME**Current Substantial  
Completion Date

10/16/2020

Current Final Completion  
DateAdditional Days Substantial  
Completion

0.00

Additional Days Final  
Completion

0.00

New Substantial  
Completion Date

10/16/2020

New Final Completion  
Date**Description****APPROVED**

For Contractor

Strata Corporation

Title

Electrical Division Manager

**APPROVED DATE**

Department Head

Mayor

Attest

*[Signature]* 3/17/21



## ENGINEERING DEPARTMENT

## PAY ESTIMATE SHEET

Improvement District No. SL-20-C1  
 Project Name Street Lighting & Incidentals  
 Type Street Lighting  
 Description 19th Avenue North to 32nd Avenue North and between University Drive North and Broadway North,  
 12th Avenue North to 14th Avenue North and between Oak Street North and Elm Street North.

Pay Estimate Number 4 - FINAL  
 From Date 10/09/2020 To Date 03/01/2021

The Honorable Board of City Commissioners

Dear Commissioners,

Be advised that Strata Corporation has performed the work to date shown on this statement

Contract	Unit	Quantity Unit Price (\$)		Previous		Current		To Date		Percentage Complete(%)
		Quantity	Unit Price (\$)	Quantity	Amount (\$)	Quantity	Amount (\$)	Quantity	Amount (\$)	
Street Lighting 19 to 32 and Univ to Bdwy										
1 Remove Feed Point	EA	1.00	100.00	0.00	0.00	1.00	100.00	1.00	100.00	100.00
2 F&I Base 5' Deep Reinf Conc	EA	132.00	600.00	132.00	79,200.00	1.00	600.00	133.00	79,800.00	100.76
3 F&I Conductor #6 USE Cu	LF	61,185.00	1.25	59,000.00	73,750.00	4,042.00	5,052.50	63,042.00	78,802.50	103.04
4 F&I Innerduct 1.5" Dia	LF	19,795.00	6.50	18,500.00	120,250.00	1,451.00	9,431.50	19,951.00	129,681.50	100.79
5 F&I Luminaire Type A	EA	132.00	225.00	132.00	29,700.00	1.00	225.00	133.00	29,925.00	100.76
6 F&I Pull Box	EA	10.00	800.00	7.00	5,600.00	5.00	4,000.00	12.00	9,600.00	120.00*
7 F&I Light Standard Type A	EA	132.00	1,200.00	132.00	158,400.00	1.00	1,200.00	133.00	159,600.00	100.76
8 Rem & Repl Sidewalk 4" Thick Reinf Conc	SY	100.00	105.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
9 Rem & Repl Sidewalk 6" Thick Reinf Conc	SY	50.00	125.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00



**ENGINEERING DEPARTMENT  
PAY ESTIMATE SHEET**

Contract	Unit	Previous		Current		To Date		Percentage Complete(%)
		Quantity	Amount (\$)	Quantity	Amount (\$)	Quantity	Amount (\$)	
10 Traffic Control - Minor	LS	1.00	2,000.00	0.00	0.00	1.00	2,000.00	100.00
<b>Street Lighting Oak St and Elm St</b>		<b>Street Lighting 19 to 32 and Univ to Bdwy Sub Total</b>		<b>466,900.00</b>		<b>22,609.00</b>		<b>489,509.00</b>
11 F&I Base 5' Deep Reinf Conc	EA	18.00	500.00	18.00	9,000.00	0.00	0.00	100.00
12 F&I Conductor #6 USE Cu	LF	8,436.00	1.25	7,800.00	9,750.00	588.00	735.00	99.43
13 F&I Innerduct 1.5" Dia	LF	2,703.00	6.50	2,600.00	16,900.00	77.00	500.50	99.04
14 F&I Luminaire Type C	EA	18.00	1,150.00	18.00	20,700.00	0.00	0.00	100.00
15 F&I Light Standard Type C	EA	18.00	1,100.00	18.00	19,800.00	0.00	0.00	100.00
<b>Street Lighting 12th St N</b>		<b>Street Lighting Oak St and Elm St Sub Total</b>		<b>76,150.00</b>		<b>1,235.50</b>		<b>77,385.50</b>
16 Remove Street Light	EA	16.00	250.00	16.00	4,000.00	0.00	0.00	100.00
17 Remove Feed Point	EA	1.00	100.00	0.00	0.00	1.00	100.00	100.00
18 F&I Base 6' Deep Reinf Conc	EA	22.00	500.00	22.00	11,000.00	0.00	0.00	100.00
19 Remove Base	EA	16.00	800.00	0.00	0.00	16.00	12,800.00	100.00
20 F&I Conductor #6 USE Cu	LF	11,580.00	1.25	10,000.00	12,500.00	1,829.00	2,286.25	102.15
21 F&I Innerduct 1.5" Dia	LF	3,860.00	6.50	3,400.00	22,100.00	373.00	2,424.50	97.75
22 F&I Luminaire Type B	EA	23.00	350.00	0.00	0.00	23.00	8,050.00	100.00
23 F&I Pull Box	EA	2.00	800.00	2.00	1,600.00	0.00	0.00	100.00
24 F&I Light Standard Type B	EA	22.00	1,250.00	22.00	27,500.00	0.00	0.00	100.00
<b>Street Lighting 12th St N Sub Total</b>		<b>Street Lighting 12th St N Sub Total</b>		<b>78,700.00</b>		<b>25,660.75</b>		<b>104,360.75</b>



**ENGINEERING DEPARTMENT  
PAY ESTIMATE SHEET**

Contract	Unit	Quantity	Unit Price (\$)	Previous		Current		To Date		Percentage Complete(%)
				Quantity	Amount (\$)	Quantity	Amount (\$)	Quantity	Amount (\$)	
Street Lighting 9-1/2 St N and 10th St N, 30 to 31 Ave N										
25 Remove Street Light	EA	9.00	250.00	9.00	2,250.00	0.00	0.00	9.00	2,250.00	100.00
26 F&I Base 5' Deep Reinf Conc	EA	13.00	500.00	13.00	6,500.00	0.00	0.00	13.00	6,500.00	100.00
27 Remove Base	EA	9.00	800.00	9.00	7,200.00	0.00	0.00	9.00	7,200.00	100.00
28 F&I Conductor #6 USE Cu	LF	5,781.00	1.25	5,000.00	6,250.00	775.00	968.75	5,775.00	7,218.75	99.90
29 F&I Innerduct 1.5" Dia	LF	1,927.00	6.50	1,500.00	9,750.00	425.00	2,762.50	1,925.00	12,512.50	99.90
30 F&I Luminaire Type A	EA	13.00	225.00	13.00	2,925.00	0.00	0.00	13.00	2,925.00	100.00
31 F&I Pull Box	EA	1.00	800.00	1.00	800.00	0.00	0.00	1.00	800.00	100.00
32 F&I Light Standard Type A	EA	13.00	1,200.00	13.00	15,600.00	0.00	0.00	13.00	15,600.00	100.00
Street Lighting 9-1/2 St N and 10th St N, 30 to 31 Ave N Sub Total					51,275.00		3,731.25		55,006.25	
Summary										
1. Original Contract Amount										
\$ 736,555.00										
2. Net Change by Change Order										
\$ 0.00										
3. Contract Amount To Date										
\$ 736,555.00										
4. Total Work Completed to Date										
\$ 726,261.50										
5. Retainage @ 0.00 % to Date										
\$ 33,651.25										
6. Previous Retainage										
\$ 33,651.25										
7. Retainage This Period										
\$ 0.00										
8. Liquidated Damages										
\$ 0.00										
0.00 Days to Date										
\$ 0.00										



**ENGINEERING DEPARTMENT**

# PAY ESTIMATE SHEET

	0.00 Days to Previous	0.00 Days This Period		\$ 0.00
9. Material on Hand (Payment)				\$ 0.00
10. Material on Hand (Recovery)				\$ 0.00
11. Adjustments				\$ 0.00
12. Total Due to Date				\$ 726,261.50
13. Previous Payments				\$ 639,373.75
14. Payment Due This Estimate				\$ 86,887.75
15. Amount allowed Pay Estimate # 4 - FINAL				\$ 86,887.75

## Workflow History

Status	Pending On	Date	User	Action	Action User	Action Date	Action Notes
Draft	Administrator, Division Head, Project Manager	02/24/2021	dhelland	StageInitialized			
Draft	Administrator, Division Head, Project Manager	02/24/2021	dhelland	Complete			
Completed	Administrator, Department Head, Division Head	02/24/2021	dhelland	StageInitialized			
Completed	Administrator, Department Head, Division Head	03/01/2021	kolson	Re-draft			
Draft	Administrator, Division Head, Project Manager	03/01/2021	dhelland	StageInitialized			
Draft	Administrator, Division Head, Project Manager	03/01/2021	jleonard	Complete			
Completed	Administrator, Department Head, Division Head	03/01/2021	dhelland	StageInitialized			



ENGINEERING DEPARTMENT  
PAY ESTIMATE SHEET

## PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

(25)

Improvement District No. BN-20-A1  
NDDOT Project # SU-8-984(165)

Type: CPM Agreement with NDDOT

Location: North University Drive, 32<sup>nd</sup> – 40<sup>th</sup> Ave N Date of Hearing: 3/15/2021RoutingDate

City Commission

3/22/2021

PWPEC File

X

Project File

Jeremy Gorden

The Committee reviewed a communication from Transportation Division Engineer, Jeremy Gorden, regarding approval of the Cost Participation and Maintenance (CPM) Agreement with NDDOT for reconstruction of North University Drive from 32<sup>nd</sup> Avenue North to 40<sup>th</sup> Avenue North.

The estimated construction cost is approximately \$6,522,649. The project's funding summary is as follows:

Urban Roads Program Funds	\$ 4,500,000
Special Assessments	\$ 3,697,149
<b>Total Estimated Project Cost</b>	<b>\$ 8,197,149</b>

This project is set to be bid in Bismarck on Friday, April 9, and the project is scheduled to have a Substantial Completion Date of November 1, 2021.

On a motion by Brenda Derrig, seconded by Nicole Crutchfield, the Committee voted to recommend approval of the Cost Participation and Maintenance Agreement.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve the Cost Participation and Maintenance Agreement with the NDDOT for the reconstruction of North University Drive from 32<sup>nd</sup> to 40<sup>th</sup> Avenue North.

PROJECT FINANCING INFORMATION:Recommended source of funding for project: NDDOT Urban Roads & Special Assessments

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

COMMITTEE

Present	Yes	No	Unanimous
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Ryan Erickson
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

Tim Mahoney, Mayor

Nicole Crutchfield, Director of Planning

Steve Dirksen, Fire Chief

Bruce Grubb, City Administrator

Ben Dow, Director of Operations


Steve Sprague, City Auditor

Brenda Derrig, City Engineer

Kent Costin, Finance Director

ATTEST:

C: Kristi Olson

  
Brenda E. Derrig, P.E.  
City Engineer

## Memorandum

**To:** Members of PWPEC

**From:** Jeremy M. Gorden, PE, PTOE  
Division Engineer - Transportation

**Date:** March 15, 2021

**Subject:** City Improvement District No. BN-20-A – NDDOT Project No. SU-8-984(165)  
Approval of Cost, Participation and Maintenance (CPM) Agreement with NDDOT  
for North University Drive Construction Project – 32<sup>nd</sup> Ave N to 40<sup>th</sup> Ave N

---

### Background:

I have attached a CPM Agreement from the Local Government Division of the NDDOT for this project on North University Drive. This project is for the reconstruction of North University Drive from 32<sup>nd</sup> Avenue North to 40<sup>th</sup> Avenue North. The project will consist of a 2-lane road section, installing a new traffic signal at 32<sup>nd</sup> Avenue North, constructing a new shared use path on the west side of the street, and installing new street lighting.

North University Drive is functionally classified as a major arterial roadway. The purpose of the project is to reconstruct and improve North University Drive to serve as an important link in the multimodal transportation system.

The estimated construction cost is approximately \$6,522,649. Funding for the project will consist of Federal Highway Funds from the NDDOT's Urban Roads Program (Federal) and Special Assessment Funds. The project's funding summary is as follows:

Federal Highway Funds – NDDOT Urban Roads Fund	\$ 4,500,000
Special Assessments – Street Construction	\$ 3,697,149

This project is set to bid in Bismarck by the NDDOT on Friday, April 9, and the project is scheduled to have a Substantial Completion Date of November 1, 2021.

### Recommended Motion:

I recommend approval of the CPM Agreement.

JMG/klb  
Attachment

**MEMO TO:** Ronald Henke  
Deputy Director for Engineering

**FROM:** Marohl, Sengaroun H., 328-4449  
Local Government Division

**DATE:** 02/23/2021

**SUBJECT:** Cost Participation, Construction and Maintenance Agreement for Project  
SU-8-984(165) PCN 22292

This contract is a Cost Participation, Construction and Maintenance (CPM) agreement with City of Fargo on N Univeristy (32<sup>nd</sup> Ave - 40<sup>th</sup> Ave) project.

Contract # 38210163

- The type of work is Grading, Salvaged Base, PCC Pavement, Storm Sewer, Watermain, Traffic Signal, Lighting, Shared Use Path.
- The SU Federal Funds for this project is limited to \$ 4,500,000.
- Any costs over the above limited amount will be City responsibility.
- No one time changes on the standard agreement template.

38/sm

Contract routing:  
Seng Marohl - Contract Owner  
Paul Benning  
Steve Salwei  
Shannon Sauer  
Brenda Derrig - Fargo City Engineer  
City of Fargo Officials  
Seng Marohl  
Legal  
Ronald Henke  
Stacey Hanson

NDDOT Contract No. 38210163

**North Dakota Department of Transportation  
COST PARTICIPATION, CONSTRUCTION, AND MAINTENANCE AGREEMENT  
LPA FEDERAL AID PROJECT**

**Federal Award Information – to be provided by NDDOT**

CFDA No: 20.205

CFDA Title: Highway Planning & Construction

Award Name: Federal Aid Highway Program

Awarding Fed. Agency: Federal Highway Admin

NDDOT Program Mgr: Marohl, Sengaroun H.

Telephone: 701-328-4449

**Notice to Subrecipients:** Federal awards may have specific compliance requirements. If you are not aware of the specific requirements for your award, please contact your NDDOT Program Manager.

**For NDDOT use only.**

**FHWA Authorization date:**

**Project No. SU-8-984(165)**

**LPA: CITY FARGO**

**Location: FARGO N UNIV DR FROM 32ND AVE N TO 40TH AVE N**

**Type of Improvement: GRADING, SALVAGED BASE, PCC PAVEMENT, STORM SEWER,  
WATERMAIN, TRAFFIC SIGNAL, LIGHTING, SHARED USE PATH**

**Length: 1.025 MILES**

This agreement is between the state of North Dakota, acting by and through its Director of Transportation, hereinafter referred to as NDDOT, whose address is 608 East Boulevard Avenue, Bismarck, North Dakota 58505-0700, and the Local Public Agency (LPA) of City Fargo, North Dakota, hereinafter referred to as the LPA, who agree that:

It is in the best interest of both parties to have the LPA construct and maintain this project according to the terms and conditions set forth in this agreement. NDDOT will assist the LPA with the preparation and distribution of the bid documents and include the project in a scheduled bid opening.

The LPA agrees to the terms and conditions required for this project by the Federal Highway Administration (FHWA).

NDDOT will procure federal funds for the construction of the project, pursuant to Title 23 of the United States Code.

Federal funds obligated for this project shall not exceed 80.93 percent of the total eligible project cost up to a maximum of \$4,500,000. The balance of the project is the obligation of the LPA.

**Additional Funding Clause**

None

The total eligible project costs include the cost of those items shown in the engineer's detailed estimate as approved for federal funds and any project changes approved by NDDOT for the use of federal funds.



Federal funds may not be obligated by the LPA, prior to FHWA approval of the program documents for the project.

## PART I

### LPA Obligation:

1. To comply with the Disadvantaged Business Enterprise (DBE) requirements established by NDDOT for the project.

The LPA shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any USDOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The LPA shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of USDOT-assisted contracts. NDDOT's DBE program, as required by 49 CFR Part 26 and as approved by USDOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the LPA of its failure to carry out its approved program, the USDOT may impose sanctions as provided for under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et. Seq.).

Include the following paragraph verbatim in any subcontracts they sign relative to this project:

The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the solicitation, award, and administration of USDOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as NDDOT deems appropriate.

2. To comply with requirements of 23 CFR Part 633, Required Contract Provisions, and 23 CFR Part 635, Construction and Maintenance.
3. To construct the project in conformity with the construction contract, changes to the plans shall meet the requirements of 23 CFR Part 625, Design Standards for Highways and the current edition of the NDDOT's *Local Government Manual*.
4. To construct the project in conformity with the approved environmental documents and provide for the implementation of any measures mitigating the environmental impact of the project.
5. To comply with the procedures outlined in the current edition of NDDOT's *Local Government Manual*.
6. To comply with the current edition of NDDOT's *Right of Way Acquisition Procedures for Local Public Agency Federal Aid Projects*.
7. The LPA will be responsible for any consideration, avoidance, and minimization of impacts upon real property related to this project, such as changes in the grades of streets, inconvenience to property or business, and any loss of light, air, view, access, egress, drainage, support, or nuisance,
8. To comply with the requirements of Appendices A and E of the Title VI Assurances, attached and incorporated by reference herein.



## PART II

### Contracting and Construction:

1. On behalf of the LPA, NDDOT will:
  - a. Prepare the bid package, solicit proposals, and include the project in a scheduled bid opening as provided in the North Dakota Century Code, Chapter 24-02.
  - b. Evaluate the bids as to the sufficiency of Disadvantaged Business Enterprise (DBE) participation and the bidder's good faith efforts in satisfying the requirements of the current edition of the DBE special provision, and 49 CFR Part 26. NDDOT shall have exclusive authority in evaluating the adequacy of DBE participation.
  - c. Tabulate the bids and send to the LPA.
  - d. Concur in the award of the contract, after the LPA has executed the contract, for the sole purpose of enabling the LPA to procure federal aid for the construction of the project.
2. The LPA will:
  - a. Review bids to determine the lowest responsible bidder.
  - b. Execute the contract.
  - c. Distribute copies of the executed contract and contract bond to NDDOT.
3. During the construction of the project, the LPA will:
  - a. Provide engineering services, material testing, and inspection of the work as required by the contract documents and the current editions of NDDOT's *Sampling and Testing Manual* and the *Standard Specifications for Road and Bridge Construction*.
  - b. Keep all project records and documentation as required in NDDOT's current editions of the *Construction Records Manual* and the *Construction Automated Records System*.
  - c. Make all records available to NDDOT and FHWA for inspection upon request. The LPA will submit all documents and records to NDDOT for review before final payment is made. NDDOT will maintain the project records for three years from the final voucher date of FHWA and then return them to the LPA.
  - d. Be responsible for any changes in plan, character of work, quantities, site conditions, or any claim for extra compensation. NDDOT will review all contract adjustments to determine if the adjustments are eligible for federal aid. Federal aid shall be limited to the amount stated on page one of this agreement.

## PART III

### Post Construction:

After the project is completed the LPA agrees to:

1. Control the length and location of curb openings for future entrances and to not permit the length of curb openings for entrances to exceed the length shown on the plans or as shown on a sketch of typical



entrances for similar entrances; and prohibit the construction or use of any entrances along the project within the LPA other than those shown on the plans, without prior approval of NDDOT.

2. Prohibit double parking and diagonal parking within the limits of the project. Additional parallel parking will be allowed within the limits of the project if designed considering the effects the added parking will have on the entire traffic corridor. The design will meet the requirements of 23 CFR Part 625, Design Standards for Highways.
3. If the traffic corridor intersects a state highway, the LPA must justify to NDDOT that any new access allowed will have minimal impact to the state highway. The design will meet the requirements of 23 CFR Part 625, Design Standards for Highways.
4. Prohibit the installation of traffic signals and pedestrian beacons on or in connection with the project, including those installed at the sole cost and expense of the LPA or by others, without NDDOT approval.
5. Maintain all traffic control devices on the project according to the current edition of the *Manual on Uniform Traffic Control Devices for Streets and Highways*, as supplemented and amended.
6. Restrict the speed limit on the project at or below the maximum design speed. Any changes to the speed limit will be pursuant to North Dakota Century Code, Chapter 39-09.
7. Provide maintenance to the completed project at its own cost and expense.
8. Prohibit access and encroachments upon the right of way pursuant to 23 CFR Part 1.23, Rights of Way, and Part 710 Subpart D, Right of Way, Real Property Management.

#### PART IV

General:

1. NDDOT will make all contract payments on behalf of the LPA. Payment will be made upon receipt of the engineer's estimate. The LPA will reimburse NDDOT for payments made less the amount paid by FHWA. No costs will be incurred by NDDOT for the construction and maintenance of this project.

If the LPA fails to reimburse NDDOT within 60 days after billing for funds advanced on behalf of the LPA, this document will constitute an assignment of funds now or hereafter coming into the hands of the state treasurer, which would otherwise be distributed to the LPA out of the highway tax distribution fund, NDCC 54-27-19. The state treasurer is hereby directed to pay NDDOT all such funds until the total equals the sum billed pursuant to this agreement.

2. The Risk Management Appendix, attached, is hereby incorporated and made a part of this agreement.
3. No official, employee, or other person performing services for the LPA who is authorized to negotiate or approve any contract or subcontract in connection with the project shall have any financial or other personal interest in any such contract or subcontract. No officer or employee of such person retained by the LPA shall have any financial or other personal interest in any real property acquired for the project unless such interest is openly disclosed upon public records of NDDOT and of the LPA, and such officer, employee, or person has not participated in such acquisition for and in behalf of the LPA.
4. The failure of the state to enforce any provisions of this contract shall not constitute a waiver by the state of that or any other provision.



5. Entities that receive federal funds through NDDOT may be required to obtain an audit in accordance with 2 C.F.R. Part 200, Subpart F. A copy of such audit shall be submitted to NDDOT. Entities that spend less than \$750,000 of federal funds from all sources may be subject to reviews by NDDOT at its discretion. Additionally, all entities receiving federal funds through NDDOT shall certify whether a Single Audit has been completed as part of the annual Federal award process. These requirements are applicable to counties, cities, state agencies, Indian tribes, colleges, hospitals, and non-profit businesses.
6. All notices, certificates, or other communications shall be sufficiently given when delivered or mailed, postage prepaid, to the parties at the respective places of business as set forth below or at a place designated hereafter in writing by the parties.

Local Government Engineer  
ND Department of Transportation  
608 East Boulevard Avenue  
Bismarck, ND 58505-0700

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7. The LPA is advised that its signature on this contract or agreement certifies that any person associated therewith is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three years; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction on any matter involving fraud or official misconduct within the past three years.
8. This agreement constitutes the entire agreement between the parties. No waiver consent, modification or change of terms of this agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this agreement. The LPA, by the signature below of its authorized representative, hereby acknowledges that the LPA has read this agreement, understands it, and agrees to be bound by its terms and conditions.



Executed by the LPA of City of Fargo, North Dakota, the date last below signed.

APPROVED:

Erik Johnson  
LPA/STATES ATTORNEY (TYPE OR PRINT)

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

LPA of City of Fargo  
\*

Dr. Timothy J. Mahoney  
NAME (TYPE OR PRINT)

\_\_\_\_\_  
SIGNATURE

\* Mayor  
TITLE

\_\_\_\_\_  
DATE

ATTEST:

Steve Sprague  
AUDITOR (TYPE OR PRINT)

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

Executed by the North Dakota Department of Transportation the date last below signed.

APPROVED as to substance:

Paul Benning  
LOCAL GOVERNMENT ENGINEER (TYPE OR PRINT)

DocuSigned by:  
Paul M. Benning  
SIGNATURE  
A411F817506247A...

2/23/2021  
DATE

NORTH DAKOTA  
DEPARTMENT OF TRANSPORTATION

\_\_\_\_\_  
DIRECTOR (TYPE OR PRINT)

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

\*Mayor, President or Chairperson of Commission

CLA 19256 (Div. 38)  
L.D. Approved 4-12-93; 9-19



Project SU-8-984(165)

### CERTIFICATION OF LOCAL MATCH

It is hereby certified that the LPA of City of Fargo will provide non-federal funds, whose source is identified below, as match for the amount the LPA is obligated to pay under the terms of the attached agreement with the North Dakota Department of Transportation. The certified amount does not duplicate any federal claims for reimbursement, nor are the funds used to match other federal funds, unless expressly allowed by federal regulation.

**Non-Federal Match Funds provided by LPA.** Please designate the source(s) of funds in the LPA budget that will be used to match the federal funds obligated for this project through the North Dakota Department of Transportation.

**Source:**

---



---

Executed at Fargo, North Dakota, the last date below signed.

ATTEST:

APPROVED:

Steve Sprague  
AUDITOR (TYPE OR PRINT)

LPA of City of Fargo

\_\_\_\_\_  
SIGNATURE

Dr. Timothy j. Mahoney  
NAME (TYPE OR PRINT)

\_\_\_\_\_  
DATE

\_\_\_\_\_  
SIGNATURE

\* Mayor  
TITLE

\_\_\_\_\_  
DATE

\*Mayor, President or Chairperson of Commission

CLA 19256 (Div. 38)  
L.D. Approved 4-12-93; 9-19



**NORTH DAKOTA DEPARTMENT OF TRANSPORTATION  
APPENDIX A OF THE TITLE VI ASSURANCES**

During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the Contractor) agrees as follows:

1. **Compliance with Regulations:** The Contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, the Federal Highway Administration, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the Contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the Federal Highway Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the Recipient or the Federal Highway Administration as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
  - a. withholding payments to the Contractor under the contract until the Contractor complies; and/or
  - b. cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the Recipient or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.



## NORTH DAKOTA DEPARTMENT OF TRANSPORTATION APPENDIX E OF THE TITLE VI ASSURANCES

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the Contractor) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

### Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 *et seq.*).



## Risk Management Appendix

### **Routine\* Service Agreements With Sovereign Entities and Political Subdivisions of the State of North Dakota:**

**Parties:** **State** – State of North Dakota, its agencies, officers and employees

**Governmental Entity** – The Governmental Entity executing the attached document, its agencies, officers and employees

**Governments** – State and Government Entity, as defined above

Each party agrees to assume its own liability for any and all claims of any nature including all costs, expenses and attorney's fees which may in any manner result from or arise out of this agreement.

Each party shall secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds, authorized to do business in North Dakota, the following insurance coverages:

- 1) **Commercial general liability and automobile liability** insurance – minimum limits of liability required of the Governmental Entity are **\$250,000 per person and \$500,000 per occurrence**. The minimum limits of liability required of the State are **\$250,000 per person and \$1,000,000 per occurrence**.
- 2) **Workers compensation** insurance meeting all statutory limits.
- 3) The policies and endorsements may not be canceled or modified without **thirty (30) days prior written notice** to the undersigned State representative.

**The State reserves the right to obtain complete, certified copies of all required insurance documents, policies, or endorsements at any time.**

Each party that hires subcontractors shall require any non-public subcontractors, prior to commencement of work set out under an agreement between that party and the non-public subcontractor, to:

Defend, indemnify, and hold harmless the Governments, its agencies, officers and employees, from and against claims based on the vicarious liability of the Governments or its agents, but not against claims based on the Government's contributory negligence, comparative and/or contributory negligence or fault, sole negligence, or intentional misconduct. The legal defense provided by the Subcontractor to the Governments under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for the Governments is necessary. Subcontractor also agrees to defend, indemnify, and hold the Governments harmless for all costs, expenses and attorneys' fees incurred if the Governments prevail in an action against Subcontractor in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this agreement.

Subcontractor shall secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds authorized to do business in North Dakota: 1) commercial general liability; 2) automobile liability; and 3) workers compensation insurance all covering the Subcontractor for any and all claims of any nature which may in any manner arise out of or result from this agreement. The minimum limits of liability required are \$250,000 per person and \$1,000,000 per occurrence for commercial general liability and automobile liability coverages, and statutory limits for workers compensation. The Governments shall be endorsed on the commercial general liability policy and automobile liability policy as additional insureds. The Governments shall have all the benefits, rights and coverages of an additional insured under these policies that shall not be limited to the minimum limits of insurance required by this agreement or by the contractual indemnity obligations of the Contractor. Said endorsement shall contain a "Waiver of Subrogation" waiving any right of recovery the insurance company may have against the Governments as well as provisions that the policy and/or endorsement may not be canceled or modified without thirty (30) days prior written notice to the undersigned representatives of the Governments, and that any attorney who represents the State under this policy must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under N.D.C.C. Section 54-12-08. Subcontractor's insurance coverage shall be primary (i.e., pay first) as respects any insurance, self-insurance or self-retention maintained by the Governments. Any insurance, self-insurance or self-retention maintained by the Governments shall be excess of the Contractor's insurance and the Subcontractor's insurance and shall not contribute with them. The insolvency or bankruptcy of the insured Subcontractor shall not release the insurer from payment under the policy, even when such insolvency or bankruptcy prevents the insured Subcontractor from meeting the retention limit under the policy. Any deductible amount or other obligations under the Subcontractor's policy(ies) shall be the sole responsibility of the Subcontractor. This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and be placed with insurers rated "A-" or better by A.M. Best Company, Inc. The Governments will be indemnified, saved, and held harmless to the full extent of any coverage actually secured by the Subcontractor in excess of the minimum requirements set forth above. The Government Entity that hired the Subcontractor shall be held responsible for ensuring compliance with the above requirements by all Subcontractors. The Governments reserve the right to obtain complete, certified copies of all required insurance documents, policies, or endorsements at any time.

\*See *North Dakota Risk Management Manual*, section 5.1 for discussion of "unique" and "routine" agreements.

RM Consulted 2007  
Revised 11-19



DocuSign Envelope ID: 0E9D5C3-8C89-45AE-46E7-17D85A013C7E

DESIGN DATA			
TRAFFIC: 32ND AVE N TO 36TH AVE N	AVERAGE DAILY		
CURRENT 2015	PASS: 4,600	TRUCKS: 300	TOTAL: 4,900
FORECAST 2040	PASS: 5,350	TRUCKS: 350	TOTAL: 5,700
TRAFFIC: 36TH AVE N TO 40TH AVE N	AVERAGE DAILY		
CURRENT 2015	PASS: 3,625	TRUCKS: 275	TOTAL: 3,900
FORECAST 2040	PASS: 4,450	TRUCKS: 350	TOTAL: 4,800
CLEAR ZONE DISTANCE: 18'	DESIGN SPEED: 40 MPH		
MINIMUM SIGHT DIST. FOR STOPPING: 305'	BRIDGES: N/A		
SIGHT DIST. FOR NO PASSING ZONE: 600'			
PAVEMENT DESIGN LIFE: 30 (YEARS)			
DESIGN ACCUMULATED ONE-WAY FLEXIBLE ESALS: N/A			

STATE	PROJECT NO	PCN	SECTION NO
ND	SU-8-984(165)	22292	1

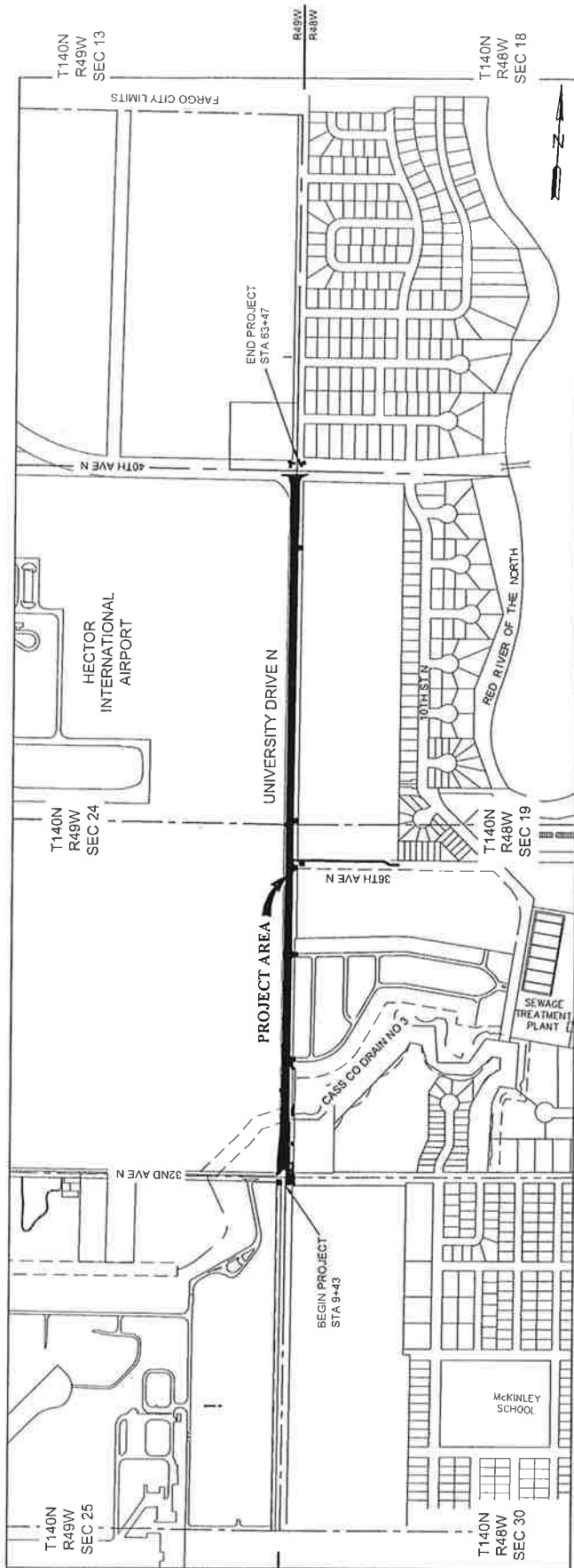
  

GOVERNING SPECIFICATIONS	
Data Published and Adopted by the North Dakota Department of Transportation	10/1/2020
Standard Specifications	NONE
Supplemental Specifications	NONE

PROJECT NUMBER   DESCRIPTION	NET MILES	GROSS MILES
SU-8-984(165)   RECONSTRUCTION	1.025	1.025

**JOB # 1**  
**CITY OF FARGO, NORTH DAKOTA**  
 ND PROJECT NO. SU-8-984(165)  
 CITY OF FARGO IMPROVEMENT DISTRICT NO. BN-20-A1  
 CASS COUNTY  
 UNIVERSITY DRIVE NORTH  
 32ND AVE N TO 40TH AVE N  
 GRADING, SALVAGED BASE, PCC PAVEMENT, STORM SEWER,  
 WATERMAIN, TRAFFIC SIGNAL, LIGHTING, SHARED USE PATH



STATE COUNTY MAP



DESIGNER	CITY OF FARGO	CITY ENGINEER	DATE
James McNeilson	Brenda E. Derrig	Is/	01/22/2021

APEX ENGINEERING GROUP	
This document was originally issued and sealed by Matthew T. Kinsella Registration Number PE-5692, on 01/22/2021 and the original document is stored at the City of Fargo	

**Certificate Of Completion**

Envelope Id: 0E09D5C38C8945AE86E717D85A013C7E

Status: Sent

Subject: Contract #38210163: Please DocuSign: Cost Participation, Construction &amp; Maintenance Agreement

Contract Number: 38210163

PCN: 22292

Source Envelope:

Document Pages: 12

Signatures: 1

Envelope Originator:

Certificate Pages: 3

Initials: 2

Sengaroun Marohl

AutoNav: Enabled

608 E Boulevard Ave

EnvelopeId Stamping: Enabled

Bismarck, ND 58505

Time Zone: (UTC-06:00) Central Time (US &amp; Canada)

smarohl@nd.gov

IP Address: 165.234.92.5

**Record Tracking**

Status: Original

Holder: Sengaroun Marohl

Location: DocuSign

2/23/2021 3:41:44 PM

smarohl@nd.gov

Security Appliance Status: Connected

Pool: StateLocal

Storage Appliance Status: Connected

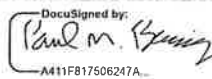
Pool: Carahsoft OBO North Dakota Department of Location: DocuSign

Transportation CLOUD

**Signer Events**

Paul Benning

pbenning@nd.gov

Security Level: Email, Account Authentication  
(None), Authentication**Signature**


DocuSigned by:  
A411F817506247A

Signature Adoption: Pre-selected Style

Using IP Address: 165.234.252.245

**Timestamp**

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Viewed: 2/23/2021 4:17:35 PM

Signed: 2/23/2021 4:17:42 PM

**Authentication Details**

SMS Auth:

Transaction: 65DF43DED22C14049194D788E99A82A5

Result: passed

Vendor ID: TeleSign

Type: SMSAuth

Performed: 2/23/2021 4:17:23 PM

Phone: +1 701-214-2502

**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

Steve Salwei

ssalwei@nd.gov

Security Level: Email, Account Authentication  
(None), Authentication


DS  
SS

Signature Adoption: Pre-selected Style

Using IP Address: 165.234.253.8

Sent: 2/23/2021 4:17:48 PM

Viewed: 2/23/2021 4:48:24 PM

Signed: 2/23/2021 4:49:11 PM

**Authentication Details**

SMS Auth:

Transaction: 65DF444FD28402049194D5238A7A93CB

Result: passed

Vendor ID: TeleSign

Type: SMSAuth

Performed: 2/23/2021 4:48:15 PM

Phone: +1 701-527-8980

**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

### Signer Events

Shannon Sauer  
ssauer@nd.gov  
Security Level: Email, Account Authentication  
(None), Authentication

### Signature

<sup>DS</sup>  
SS

Signature Adoption: Pre-selected Style  
Using IP Address: 165.234.253.12

### Timestamp

Sent: 2/23/2021 4:49:16 PM  
Viewed: 2/24/2021 3:18:30 PM  
Signed: 2/24/2021 3:18:38 PM

### Authentication Details

SMS Auth:  
Transaction: 65DF57A0806C100491946DD54FAAA136  
Result: passed  
Vendor ID: TeleSign  
Type: SMSAuth  
Performed: 2/24/2021 3:18:23 PM  
Phone: +1 701-426-9825

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Brenda Derrig

bderrig@fargond.gov

Security Level: Email, Account Authentication  
(None)

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Erik Johnson

ejohnson@lawfargo.com

Security Level: Email, Account Authentication  
(None)

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Steve Sprague

ssprague@fargond.gov

Security Level: Email, Account Authentication  
(None)

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Timothy J. Mahoney

tmahoney@fargond.gov

Security Level: Email, Account Authentication  
(None)

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Sengaroun Marohl

smarohl@nd.gov

Security Level: Email, Account Authentication  
(None)

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Clint Morgenstern

cdmorgenstern@nd.gov

Security Level: Email, Account Authentication  
(None), Authentication

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Ronald Henke

rhenke@nd.gov

Security Level: Email, Account Authentication  
(None), Authentication

Sent: 3/10/2021 2:17:01 PM

**Signer Events****Signature****Timestamp**

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Stacey Hanson

smhanson@nd.gov

Security Level: Email, Account Authentication  
(None), Authentication

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

**In Person Signer Events****Signature****Timestamp****Editor Delivery Events****Status****Timestamp**

Sengaroun Marohl

smarohl@nd.gov

Carahsoft OBO North Dakota Department of  
Transportation CLOUD

Security Level: Email, Account Authentication  
(None)

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

**VIEWED**

Using IP Address:

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Completed: 2/23/2021 3:50:59 PM

**Agent Delivery Events****Status****Timestamp**

Jeremy Gorden

jgorden@fargond.gov

Security Level: Email, Account Authentication  
(None)

**VIEWED**

Using IP Address: 165.234.255.19

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Viewed: 3/8/2021 1:51:34 PM

Completed: 3/10/2021 2:17:01 PM

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

**Intermediary Delivery Events****Status****Timestamp****Certified Delivery Events****Status****Timestamp****Carbon Copy Events****Status****Timestamp**

Legal Admin

dotlegaladmin@nd.gov

Security Level: Email, Account Authentication  
(None)

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Legal Admin

dotlegaladmin@nd.gov

Security Level: Email, Account Authentication  
(None)

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

**Witness Events****Signature****Timestamp****Notary Events****Signature****Timestamp****Envelope Summary Events****Status****Timestamps**

Envelope Sent

Hashed/Encrypted

2/23/2021 3:42:08 PM

**Payment Events****Status****Timestamps**

COVER SHEET  
CITY OF FARGO PROJECTS

26-1

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

Exact, full name of Improvement District as it will appear in the Contract:

New Paving and Utility Construction

Improvement District No. BN-21-C

Call for Bids March 22, 2021

Advertise Dates March 31 & April 7, 2021

Bid Opening Date April 28, 2021

Substantial Completion Date August 13, 2021

Final Completion Date September 13, 2021

N/A PWPEC Report (Attach Copy) – **Part of 2021 CIP**

X Engineer's Report (Attach Copy)

X Direct City Auditor to Advertise for Bids

X Bid Quantities (Attach Copy for Auditor's Office Only)

X Notice to Property Owners (Dan Eberhardt)

Project Engineer Jason Satterlund

Phone No. (701) 476-6627

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

X Create District (Attach Copy of Legal Description)

X Order Plans & Specifications

X Approve Plans & Specifications

X Adopt Resolution of Necessity

N/A Approve Escrow Agreement (Attach Copy for Commission Office Only)

X Assessment Map (Attach Copy for Auditor's Office Only)

ENGINEER'S REPORT  
NEW PAVING AND UTILITY CONSTRUCTION  
IMPROVEMENT DISTRICT NO. BN-21-C

**Nature & Scope**

This project is for new construction of underground utilities, asphalt pavement, site grading, and incidentals on 22<sup>nd</sup> Street South, Griffin Drive South, and Aquiline Drive South.

**Purpose**

This project is to provide infrastructure for new residential housing in Eagle Valley Fourth Addition as requested by the Developer.

**Feasibility**

The estimated cost of construction is \$1,080,703.20. The costs for the improvement district are estimated as follows:

<b>LOMR Costs</b>	\$ 172,180.00
Plus 4% Engineering Oversight Fee:	\$ 6,887.20
<b>Total Estimated Developer Funded Cost:</b>	<b>\$ 179,067.20</b>
<b>LOMR Amount Developer Funded:</b>	<b>\$ 179,067.20</b>

<b>CRWUD Special Assesment</b>	\$ 177,185.00
Plus 10% Engineering Fee:	\$ 17,718.50
Plus 4% Administration Fee:	\$ 7,087.40
Plus 3% Legal Fee:	\$ 5,315.55
Plus 4% Interest Fee:	\$ 7,087.40
Plus 5% Contingency:	\$ 8,859.25
<b>Total Estimated Paving Cost:</b>	<b>\$ 223,253.10</b>
<b>CRWUD Amount Special Assessed:</b>	<b>\$ 223,253.10</b>

<b>Underground &amp; Paving Costs</b>	\$	731,338.20
Plus 10% Engineering Fee:	\$	73,133.82
Plus 4% Administration Fee:	\$	29,253.53
Plus 3% Legal Fee:	\$	21,940.15
Plus 4% Interest Fee:	\$	29,253.53
Plus 5% Contingency:	\$	36,566.91
<b>Total Estimated Paving Cost:</b>	\$	<b>921,486.13</b>
<b>Underground &amp; Paving Amount Special Assessed:</b>	\$	<b>921,486.13</b>

<b>Project Funding Summary</b>			
Developer Funded - LOMR	13.53%	\$	179,067.20
Cass Rural Water User District Special Assessment	16.86%	\$	223,253.10
Special Assessments	69.61%	\$	921,486.13
<b>Total Estimated Project Cost</b>		\$	<b>1,323,806.43</b>

We believe this project to be cost effective.



  
Tom Knakmuhs, P.E.  
Assistant City Engineer

CITY OF FARGO  
ENGINEERING DEPARTMENT

LOCATION AND COMPRISING  
NEW PAVING AND UTILITY CONSTRUCTION  
IMPROVEMENT DISTRICT NO. BN-21-C

**LOCATION:**

This project is for new construction of underground utilities, asphalt pavement, site grading, and incidentals on 22nd Street South, Griffin Drive South, and Aquiline Drive South.

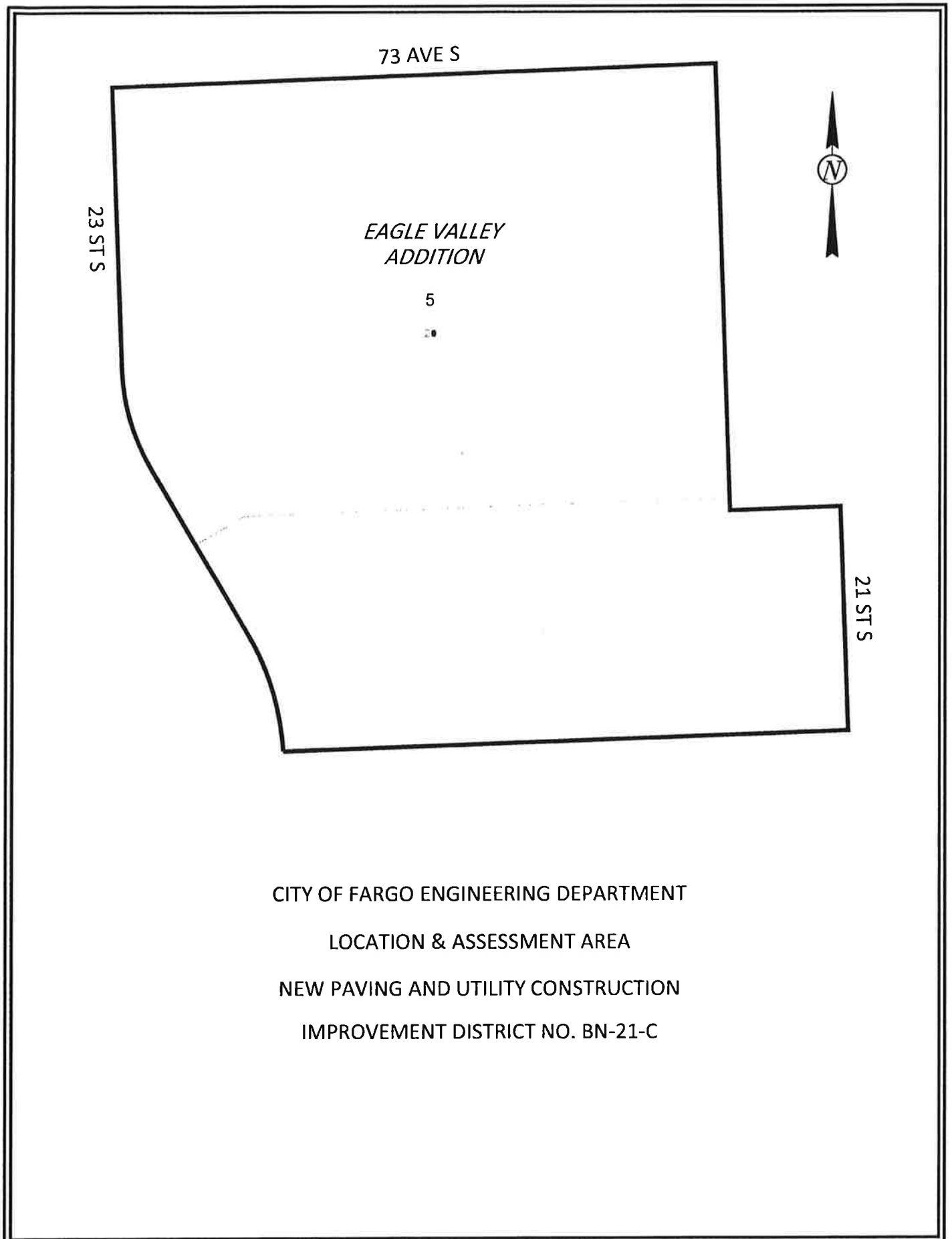
**COMPRISING:**

Lot 9, Block 5.

Lot 20, Block 5. (To be replatted as Eagle Valley 4<sup>th</sup> Addition.)

All platted within Eagle Valley Addition.

All the foregoing located in the City of Fargo, Cass County, North Dakota.



## CITY OF FARGO PROJECTS

262

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

Exact, full name of Improvement District as it will appear in the Contract:

New Paving and Utility Construction

Improvement District No. BN-21-G

Call for Bids March 22, 2021

Advertise Dates March 31 & April 7, 2021

Bid Opening Date April 28, 2021

Substantial Completion Date September 3, 2021

Final Completion Date October 1, 2021

N/A PWPEC Report (Attach Copy) – **Part of 2021 CIP**

X Engineer's Report (Attach Copy)

X Direct City Auditor to Advertise for Bids

X Bid Quantities (Attach Copy for Auditor's Office Only)

X Notice to Property Owners (Dan Eberhardt)

Project Engineer Jason Satterlund

Phone No. (701) 476-6627

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

X Create District (Attach Copy of Legal Description)

X Order Plans & Specifications

X Approve Plans & Specifications

X Adopt Resolution of Necessity

N/A Approve Escrow Agreement (Attach Copy for Commission Office Only)

X Assessment Map (Attach Copy for Auditor's Office Only)

ENGINEER'S REPORT  
NEW PAVING AND UTILITY CONSTRUCTION  
IMPROVEMENT DISTRICT NO. BN-21-G

**Nature & Scope**

This project is for the new construction of underground utilities, asphalt pavement and incidentals on 27<sup>th</sup> Street South between 65<sup>th</sup> Avenue South and 67<sup>th</sup> Avenue South, on 28<sup>th</sup> Street South between 64<sup>th</sup> Avenue South and 67<sup>th</sup> Avenue South, on 65<sup>th</sup> Avenue South between 26<sup>th</sup> Street South and 28<sup>th</sup> Street South and on 67<sup>th</sup> Avenue South between 26<sup>th</sup> Street South and Drain 53.

**Purpose**

This project is to provide infrastructure for new residential construction within Golden Valley 4<sup>th</sup> Addition as requested by the Developer.

**Feasibility**

The estimated cost of construction is \$2,083,005.05

The costs for the improvement district are estimated as follows:


<b>CRWUD Special Assessment</b>	<b>\$ 328,020.00</b>
Plus 10% Engineering Fee:	\$ 32,802.00
Plus 4% Administration Fee:	\$ 13,120.80
Plus 3% Legal Fee:	\$ 9,840.60
Plus 4% Interest Fee:	\$ 13,120.80
Plus 5% Contingency:	\$ 16,401.00
<b>Total Estimated Water Main Cost:</b>	<b>\$ 413,305.20</b>
<b>CRWUD Amount Special Assessed:</b>	<b>\$ 413,305.20</b>

<b>Underground &amp; Paving Costs</b>	<b>\$ 1,754,985.05</b>
Plus 10% Engineering Fee:	\$ 175,498.51
Plus 4% Administration Fee:	\$ 70,199.40
Plus 3% Legal Fee:	\$ 52,649.55
Plus 4% Interest Fee:	\$ 70,199.40
Plus 5% Contingency:	\$ 87,749.25
<b>Total Estimated Underground &amp; Paving Cost:</b>	<b>\$ 2,211,281.16</b>
<b>Underground &amp; Paving Amount Special Assessed:</b>	<b>\$ 2,211,281.16</b>

<u>Project Funding Summary</u>		
Cass Rural Water User District Special Assessment:	15.75%	\$ 413,305.20
Special Assessments:	84.25%	\$ 2,211,281.16
<b>Total Estimated Project Cost:</b>		<b>\$ 2,624,586.36</b>

We believe this project to be cost effective.



  
Tom Knakmuhs, P.E.  
Assistant City Engineer

CITY OF FARGO  
ENGINEERING DEPARTMENT  
LOCATION & COMPRISING  
NEW PAVING AND UTILITY CONSTRUCTION  
IMPROVEMENT DISTRICT NO. BN-21-G

**LOCATION:**

On 27<sup>th</sup> Street South and 28<sup>th</sup> Street South between 65<sup>th</sup> Avenue South and 67<sup>th</sup> Avenue South  
On 65<sup>th</sup> Avenue South from 180' west of 26<sup>th</sup> Street South to 28<sup>th</sup> Street South.  
On 67<sup>th</sup> Avenue South from 180' west of 26<sup>th</sup> Street South to Drain 53.  
On 28<sup>th</sup> Street South between 64<sup>th</sup> Avenue South and 65<sup>th</sup> Avenue South.

**COMPRISING:**

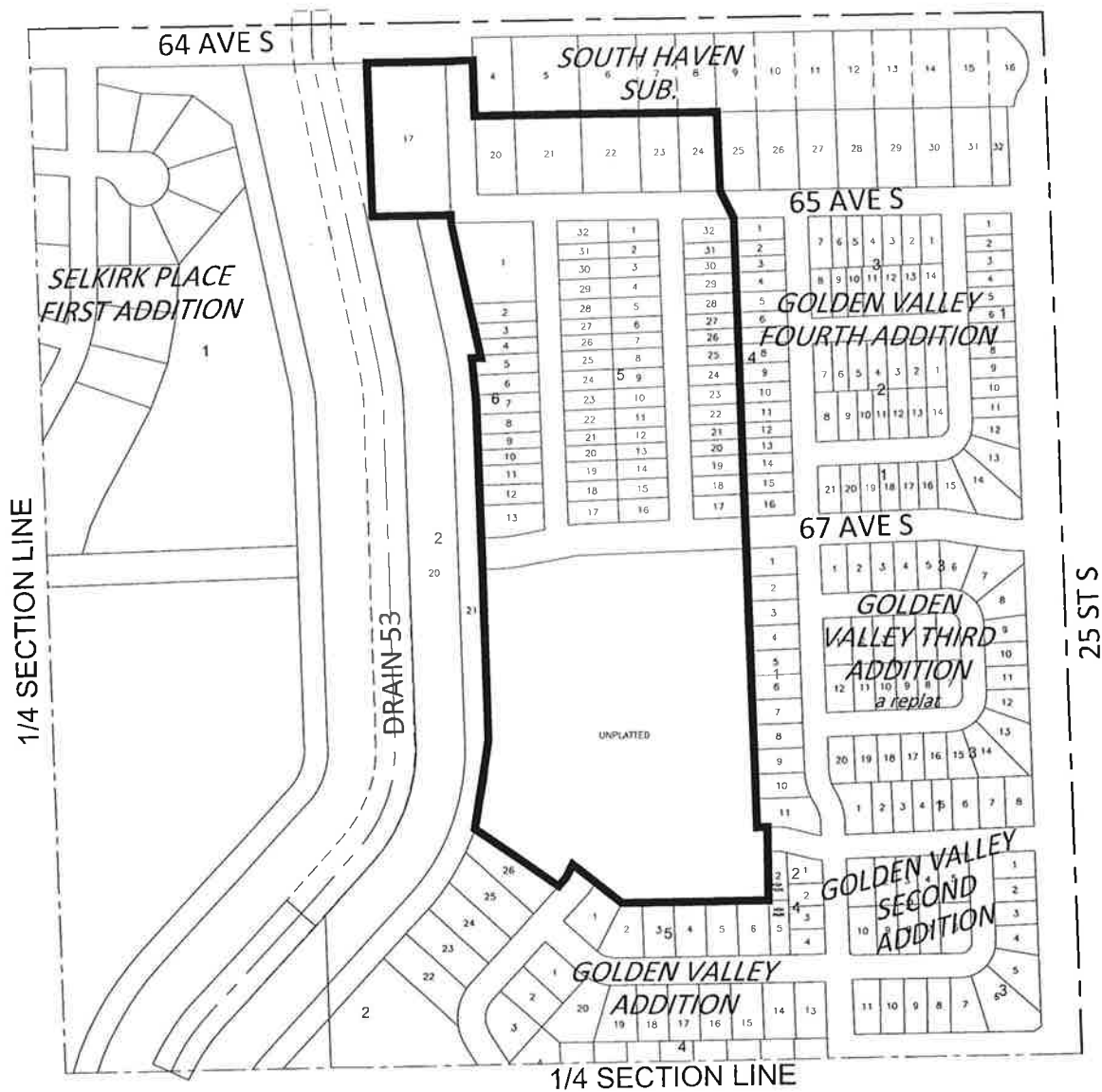
Lots 20 through 24.  
All platted within South Haven Subdivision.

Lot 17, Block 1.  
All platted within Selkirk Place 1<sup>st</sup> Addition

Lots 17 through 32, Block 4.  
Lots 1 through 32, Block 5  
Lots 1 through 13, Block 6  
All platted within Golden Valley 4<sup>th</sup> Addition

All of the unplatted land in the north east quarter of Section 11 T138N R49W lying south of 67<sup>th</sup> Avenue South and east of Drain 53.

All the foregoing located in the City of Fargo, Cass County, North Dakota.



CITY OF FARGO ENGINEERING  
DEPARTMENT

LOCATION & ASSESSMENT AREA

NEW PAVING & UTILITY CONSTRUCTION

IMPROVEMENT DISTRICT NO. BN-21-G

COVER SHEET  
CITY OF FARGO PROJECTS

26-3

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

Exact, full name of Improvement District as it will appear in the Contract:

New Utility Construction

Improvement District No. UN-21-A

Call for Bids March 22, 2021

Advertise Dates March 31 & April 7, 2021

Bid Opening Date April 28, 2021

Substantial Completion Date July 31, 2021

Final Completion Date November 15, 2021

N/A PWPEC Report (Attach Copy) **Part of 2021 CIP**

X Engineer's Report (Attach Copy)

X Direct City Auditor to Advertise for Bids

X Bid Quantities (Attach Copy for Auditor's Office Only)

X Notice to Property Owners (Dan Eberhardt)

Project Engineer Roger Kluck

Phone No. (701) 241-1537

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

X Create District (Attach Copy of Legal Description)

X Order Plans & Specifications

X Approve Plans & Specifications

X Adopt Resolution of Necessity

N/A Approve Escrow Agreement (Attach Copy for Commission Office Only)

X Assessment Map (Attach Copy for Auditor's Office Only)

ENGINEER'S REPORT  
NEW UTILITY CONSTRUCTION  
IMPROVEMENT DISTRICT NO. UN-21-A

**Nature & Scope**

This project is for the installation of new storm sewer main along 37<sup>th</sup> Street North from 44<sup>th</sup> Avenue North to 46<sup>th</sup> Avenue North and along 46<sup>th</sup> Avenue North from 37<sup>th</sup> Street to Cass County Drain 10. Water main will also be installed for connectivity along North Dakota Highway 81 from 44<sup>th</sup> Avenue North to 40<sup>th</sup> Avenue North.

**Purpose**

The purpose of this project is to provide new infrastructure that will service the area and benefit landowners.

**Feasibility**

The estimated cost of construction is \$1,940,912.00. The project will be funded by a combination of Special Assessments and Waste Water Reclamation Funds. A breakdown of costs is as follows:

<b>Sanitary Sewer Costs:</b>	<b>\$ 325,425.00</b>
Plus 10% Outside Engineering Fee:	\$ 32,542.50
Plus 4% Administration Fee:	\$ 13,017.00
Plus 3% Legal Fee:	\$ 9,762.75
Plus 4% Interest Fee:	\$ 13,017.00
Plus 5% Contingency:	\$ 16,271.25
<b>Total Estimated Sanitary Sewer Cost:</b>	<b>\$ 410,035.50</b>
Sanitary Sewer Amount Special Assessed:	\$ 0.00
Sanitary Sewer Amount City Funded:	\$ 410,035.50

<b>Water Main Costs:</b>	<b>\$ 142,257.00</b>
Plus 10% Engineering Fee:	\$ 14,225.70
Plus 4% Administration Fee:	\$ 5,690.28
Plus 3% Legal Fee:	\$ 4,267.71
Plus 4% Interest Fee:	\$ 5,690.28
Plus 5% Contingency:	\$ 7,112.85
<b>Total Estimated Water Main Cost:</b>	<b>\$ 179,243.82</b>
Water Main Amount Special Assessed:	\$ 179,243.82

<b>Storm Sewer Costs:</b>	<b>\$1,473,230.00</b>
Plus 10% Engineering Fee:	\$ 147,323.00
Plus 4% Administration Fee:	\$ 58,929.20
Plus 3% Legal Fee:	\$ 44,196.90
Plus 4% Interest Fee:	\$ 58,929.20
Plus 5% Contingency:	\$ 73,661.50
<b>Total Estimated Storm Sewer Cost:</b>	<b>\$1,856,269.80</b>
Storm Sewer Amount Special Assessed:	\$1,856,269.80


**Project Funding Summary**

<b>Project Funding Summary:</b>		
Waste Water Utility Funds	16.77%	\$ 410,035.50
Special Assessments	83.23%	\$ 2,035,513.62
<b>Total Estimated Project Cost</b>		<b>\$ 2,445,549.12</b>

The cost to the Property Owners will be per City policy.

We believe this project to be cost effective.



  
Tom Knakmuhs, P.E.  
Assistant City Engineer

CITY OF FARGO  
ENGINEERING DEPARTMENT

LOCATION & COMPRISING

NEW UTILITY CONSTRUCTION

IMPROVEMENT DISTRICT NO. UN-21-A

LOCATION:

Highway 81 from 40<sup>th</sup> Avenue North to 44<sup>th</sup> Avenue North, 37<sup>th</sup> Street from 44<sup>th</sup> Avenue North to 46<sup>th</sup> Avenue North and 46<sup>th</sup> Avenue North from 37<sup>th</sup> Street North to County Drain 10.

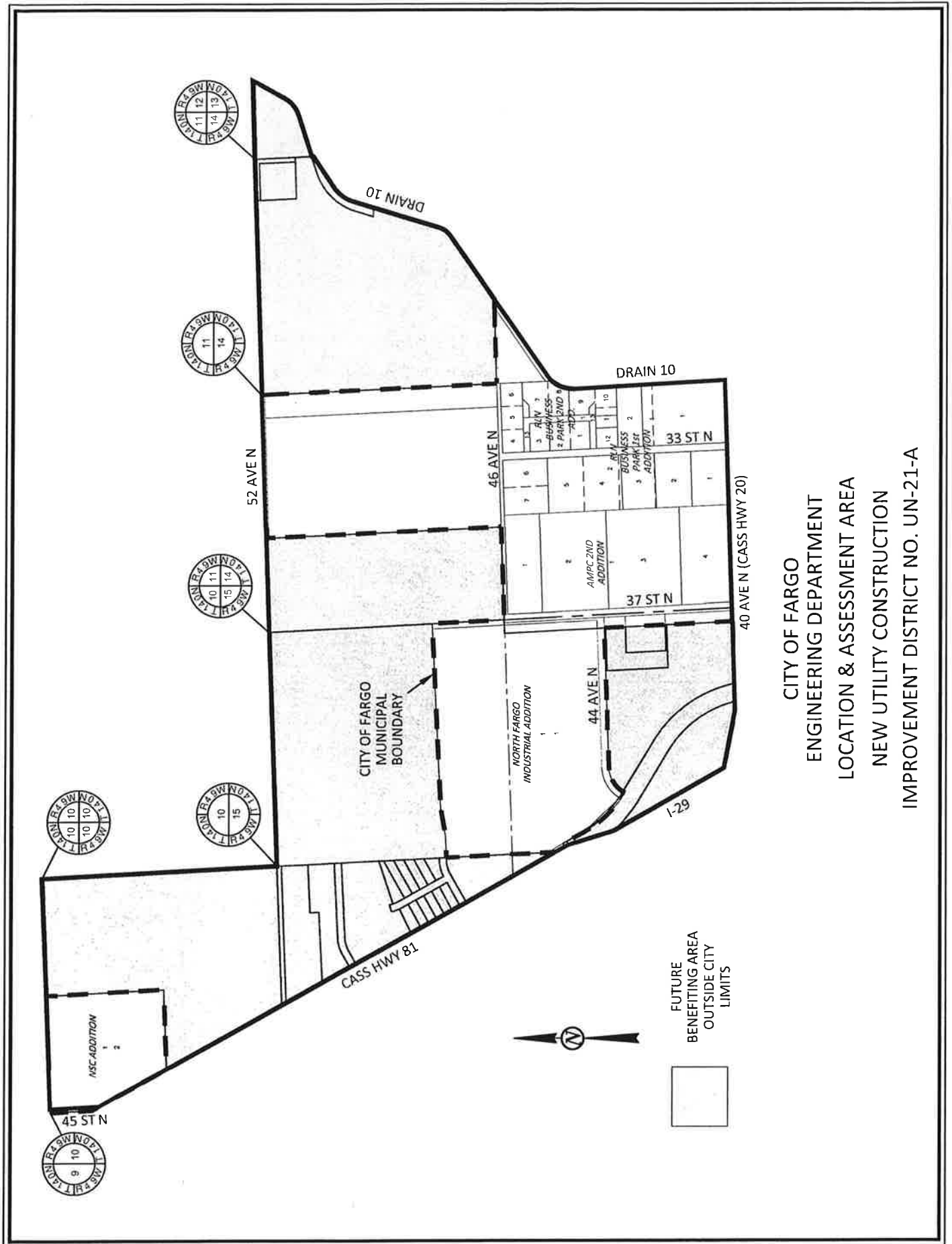
COMPRISING:

All of the platted and unplatted land in the SW Quarter of Section 10, T140N, R49W; Section 15, T140N, R49W; Section 14, T140N, R49W; and the NW Quarter of Section 13, T140N, R49W lying east of Interstate 29, west of Cass County Drain 10, and north of 40<sup>th</sup> Avenue North.

All of the foregoing is located in the City of Fargo, Cass County, North Dakota.

All of the platted and unplatted land in the SW Quarter of Section 10, T140N, R49W; Section 15, T140N, R49W; Section 14, T140N, R49W; and the NW Quarter of Section 13, T140N, R49W lying east of Interstate 29, west of Cass County Drain 10, and north of 40<sup>th</sup> Avenue North.

All of the foregoing is located in the ET area of the City of Fargo, Cass County, North Dakota.



CITY OF FARGO  
ENGINEERING DEPARTMENT  
LOCATION & ASSESSMENT AREA  
NEW UTILITY CONSTRUCTION  
IMPROVEMENT DISTRICT NO. UN-21-A