

FARGO CITY COMMISSION AGENDA  
Monday, May 12, 2025 - 5:00 p.m.

Executive Session at 4:15 p.m.

Roll Call.

**PLEASE NOTE:** The City Commission will convene at 4:15 p.m. and retire into Executive Session in the Red River Room for the purpose of attorney consultation regarding litigation pertaining to 501 Main Avenue and to discuss negotiating strategy or provide negotiation instructions to its attorney, and to receive its attorney's advice and guidance on the legal risks, strengths and weaknesses of an action of a public entity. To discuss this matter in public in an open meeting would have an adverse fiscal effect on the City. Thus, an Executive Session is authorized pursuant to North Dakota Century Code 44-04-19.1 subsections 2, 5 and 9.

Regular Meeting at 5:00 P.M.

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

- A. Pledge of Allegiance.
- B. Roll Call.
- C. Approve Order of Agenda.
- D. Minutes (Regular Meeting, April 28, 2025).

**CONSENT AGENDA – APPROVE THE FOLLOWING:**

- 1. Receive and file the following Ordinances:
  - a. Amending Section 8-1425 of Article 8-14 of Chapter 8 of the Fargo Municipal Code Relating to Traffic Code.
  - b. Amending Section 1-0305 (C)(2) & (5) of Article 1-03 of Chapter 1 of the Fargo Municipal Code Relating to Classification of Ordinance Violations.
- 2. Receive and File an Ordinance Amending Section 12-0105(E), of Article 12-01, of Chapter 12, of the Fargo Municipal Code, Relating to Running At Large Prohibited - Habitually At Large; an Ordinance Amending Section 12-0117, of Article 12-01, of Chapter 12, of the Fargo Municipal Code, Relating to Potentially Dangerous and Dangerous Dogs; and an Ordinance Amending Section 1-0305, of Article 1-03, of Chapter 1, of the Fargo Municipal Code, Relating to Classification of Ordinance Violations.
- 3. Receive and file an Ordinance Amending Section 25-1512, of Article 25-15, of Chapter 25, of the Fargo Municipal Code, Relating to Licenses - Termination, Suspension, Revocation, and Sanctions.
- 4. 2nd reading, waive reading and final adoption of an Ordinance Rezoning a Certain Parcel of Land Lying in Selkirk Place Third Addition to the City of Fargo, Cass County, North Dakota.

5. 2nd reading, waive reading and final adoption of an Ordinance Rezoning a Certain Parcel of Land Lying in Golden Valley Sixth Addition to the City of Fargo, Cass County, North Dakota.
6. Site Authorizations for Games of Chance:
  - a. Fargo Metro Baseball Association at Applebee's Grill & Bar - 13th Ave.
  - b. Fargo Metro Baseball Association at Applebee's Grill & Bar - 45th St.
  - c. Fargo Metro Baseball Association at Applebee's Grill & Bar - North Fargo.
  - d. Fargo Metro Baseball Association at Empire Tavern.
  - e. Friends of the Children Fargo-Moorhead at Crooked Pint Ale House.
  - f. Harwood Area Fire & Rescue at District 64/Las Palmas.
  - g. Horse Race North Dakota at Chub's Pub.
  - h. Horse Race North Dakota at Golf Addiction (change of charity).
  - i. Horse Race North Dakota at Labby's Bar and Grill.
  - j. Horse Race North Dakota at Sidestreet Grille and Pub.
  - k. Special Olympics North Dakota at Rooters Bar.
  - l. Team Makers Club, Inc. at Fargo Dome.
  - m. Team Makers Club, Inc. at Fort Noks.
  - n. Team Makers Club, Inc. at Frank's Lounge.
  - o. Team Makers Club, Inc. at Lucky's 13 Pub.
  - p. Team Makers Club, Inc. at Sanford Health Athletic Complex-Scheels Arena (SHAC).
7. Applications for Games of Chance:
  - a. Benefit for Maria Boyle for bingo on 5/18/25; Public Spirited Resolution.
  - b. Bethlehem Lutheran Church for a raffle on 5/28/25.
  - c. Capstone Classical Academy Colloquium for a raffle on 8/20/25; Public Spirited Resolution.
  - d. El Zagal Provost Guard for a raffle on 9/11/25.
  - e. Fargo Air Museum for bingo on 5/22/25.
  - f. Fargo North High School for a raffle from 5/5/25 to 6/7/25.
  - g. Memory Café of the Red River Valley for a raffle on 6/3/25; Public Spirited Resolution.
  - h. North Dakota Pottery Club Society for a raffle on 6/14/25.
  - i. River Keepers for a raffle on 6/9/25.
  - j. UND Alumni Association & Foundation for a raffle board on 6/25/25.
  - k. Washington Elementary School PTA for a raffle on 6/3/25.
8. Negative Final Balancing Change Order No. 1 in the amount of -\$69,322.50 for Project No. SR-24-A1.
9. Contract and bond for Project No. SR-25-B1.
10. Encroachment Agreement (Parking Stalls) with 810 Development LLP located at 802 1st Avenue North.
11. Change Order No. 4 in the amount of \$119,547.40 for Improvement District No. BN-23-F1.
12. Change Order No. 4 in the amount of \$7,133.20 for Improvement District No. BR-24-F1.
13. Change Order No. 1 in the amount of \$30,721.76 for Improvement District No. UR-24-F1.
14. Contract award for Consulting Services to WSB, LLC in the amount of \$750,659.00 for Improvement District No. BR-28-E0.

15. Bid award to KPH, Inc. in the amount of \$2,199,412.02 for Improvement District No. BR-25-B3.
16. Bid award to FM Asphalt LLC in the amount of \$1,897,626.93 for Improvement District No. PN-25-A1.
17. Bid award to Dakota Underground Co., Inc. in the amount of \$2,689,940.54 for Improvement District No. PR-25-F1.
18. Create Improvement District No. BN-25-E and adopt Resolution of Necessity (New Paving and Utility Construction).
19. Contract and bond for Improvement District No. NR-24-C.
20. Items from the FAHR Meeting:
  - a. Receive and file Sales Tax Revenue Update.
  - b. Sole Source Procurement with Kilbourne Construction Management to install gateless security equipment at the ROCO Parking Ramp at an estimated cost of \$244,002.00 (SSP25163).
  - c. Allow the existing contract with First Transit/Transdev to expire at the end of 2025 and to authorize staff to pursue the necessary steps to transition Transit staff to City of Fargo employees as outlined.
  - d. Implementation of a Donations and Contributions Policy.
21. Purchase of Service Agreement with Kindred Public School District.
22. Notice of Grant Award from ND Department of Health and Human Services for the Title X Family Planning program (CFDA #93.217).
23. Consulting Services Agreement - Employee Engagement Services with Cooperative Personnel Services d/b/a CPS HR Consulting.
24. Third Amendment to the Findings of Fact, Conclusions and Order for property located at 1011/1013 University Drive North.
25. Resolution of Annexation of a Part of Sections 10 and 15, Township 140 North, Range 49 West of the Fifth Principal Meridian, Cass County, North Dakota, containing approximately 87.89 acres, more or less: Public Hearing on the Sufficiency of Protests to be held 6/23/25.
26. Resolution approving Plat of Cottonwood Corner Addition.
27. Resolution approving Plat of The Pass at Woodhaven Addition.
28. Bid award to RADeCo in the amount of \$393,500.00 for a quadruped tactical robot (RFP25133).
29. Street Snow Plowing Services Agreement with Master Construction Co., Inc. for the 2025/2026 snow season (RFP23138).
30. Bid award to Steffes Group Inc for Professional Online Auction Services (RFP25125).
31. Elimination of LinkFM service for the events as outlined, effective 5/13/25.

32. Bills.

**REGULAR AGENDA:**

- 33. Presentation of the draft Non-Exclusive Right of Way Occupancy Agreement with Ubiquity North Dakota, LLC.
- 34. Presentation of the draft Non-Exclusive Right of Way Occupancy Agreement with Gateway Infrastructure, LLC.
- 35. Construction Update.
- 36. Recommendation for appointment to the Board of Appeals.
- 37. Presentation of the 2024 Fire Department Annual Report.
- 38. Liaison Commissioner Assignment Updates.
- 39. **RESIDENT COMMENTS (Fargo residents will be offered 2.5 minutes for comment with a maximum of 30 minutes total for all resident comments. Residents who would like to address the Commission, whether virtually or in person, must sign-up at [FargoND.gov/VirtualCommission](https://www.fargoND.gov/VirtualCommission)).**

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](https://www.fargoND.gov/CityCommission).



## PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

(33)

Type: Proposed Fiber Installation

Date of Hearing: 5/5/2025

Location: Citywide

Routing

City Commission

PWPEC File

Project File

Date

5/12/2025

X

Kevin Gorder

The Committee reviewed a communication from Division Engineer, Kevin Gorder, regarding consideration of an agreement with Ubiquity Fiber for the buildout of an open source fiber that any company could use to offer various fiber related business to our residents and property owners.

Our current ordinance would require a payment of \$1/LF of fiber installed. This would exceed our costs of working around their fibers and could be considered a financial barrier to Ubiquity as they want to service our community. We have negotiated a minimum payment of \$350,000 annually or 5% of gross revenue as the estimated costs of working around their fibers.

Permitting and route approvals will require additional staff time due to congestion in the boulevard. Additional staff and/or overtime will be needed to ensure fibers are installed in locations that minimize the impacts to our infrastructure. This additional staff could include contract employees or a consultant to assist City Staff in administering this large project. Ubiquity has indicated they would reimburse the City for the additional cost on administration as they look to develop their business in Fargo.

Ben Dow expressed concern that the fiber installation would place an increased burden on his staff to keep up with utility locates. Kevin Gorder echoed this concern. Following further discussion, the group agreed that language should be proposed to ensure the City is compensated for any additional costs associated with utility locating.

The Committee also discussed transitioning to the minimum annual payment amount of \$350,000. While there was general support for this transition, the Committee recommended phasing it in uniformly over a three-year period, independent of the amount of fiber installed in any given year.

On a motion by Brenda Derrig, seconded by Susan Thompson, the Committee voted to concur with the proposed fiber installation and Agreement and submit it to the City Commission for their review on May 12.

RECOMMENDED MOTION

None at this time.

PROJECT FINANCING INFORMATION:Recommended source of funding for project: N/A

Yes No

N/AN/AN/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)

COMMITTEE

Tim Mahoney, Mayor

Nicole Crutchfield, Director of Planning

Steve Dirksen, Fire Chief

Brenda Derrig, Assistant City Administrator

Ben Dow, Director of Operations


Steve Sprague, City Auditor

Tom Knakmuhs, City Engineer

Susan Thompson, Finance Director

Present	Yes	No	Unanimous
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ATTEST:

  
 Tom Knakmuhs, P.E.  
 City Engineer

## Memorandum

**To:** Members of PWPEC  
**From:** Kevin Gorder, Division Engineer  
**Date:** May 2, 2025  
**Re:** Proposed Citywide Fiber Installation – Ubiquity Fiber

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### Background:

Engineering has been approached by Ubiquity Fiber based in Kansas City, MO about building a full fiber to home network in the City of Fargo. This project would include approximately 3.1 million feet of fiber, above ground switch and hardware structures, at grade connection points at every parcel, and other items needed to complete their investment in Fargo. Ubiquity is proposing to build an open source fiber that any other company could use to offer various fiber related business to our residents and property owners. I am not aware of another entity currently offering a service like this in Fargo. Ubiquity is also proposing to install fiber in West Fargo, Moorhead, and Dilworth. It is my understanding that they have or will have an approved agreement with West Fargo.

The installation of fiber cable in the public right of way is governed by current municipal code along with state and federal code and law. Federal rules do not give us the option to reject this installation, but we do have some ability to recover any costs associated with working around their infrastructure on projects while maintaining our infrastructure. Our current ordinance would require a payment of \$1/LF of fiber installed. This would exceed our costs of working around their fibers and could be challenged in court as being a financial barrier to Ubiquity as they want to service our community. We have negotiated a minimum payment of \$350,000 annually or 5% of gross revenue as the estimated cost of working around their fibers. Items included in the cost to work around include street reconstruction projects where every sewer service, water service, etc. needs to be hand dug around their cable creating additional costs to our contractors performing street reconstruction projects. Another item that is included is Public Works as they need to complete emergency water main repairs or sanitary sewer main repairs. In some areas of town, water main repairs should be a simple dig operation with a backhoe, but the actual excavation may need to be completed with a vac truck that significantly increases costs to repair the failing water main.

This fiber installation will be very impactful to our residents since every parcel will be excavated to install a connection point for their residence and/or business. Many residents will have concerns and questions about what is happening and a few will struggle with getting their lawns restored and will need attention from City staff to ensure restoration is as good or better than when the work was started.

Permitting and route approvals will require additional staff time due to congestion in the boulevards. Various underground utilities currently in our right of way include our infrastructure along with gas, power, multiple fiber companies, and a few private communication networks around town. Ubiquity will provide proposed routes for their fiber and City staff will need to review and offer suggestions on where their fiber can be installed. This could include completing locates and walking the proposed route to find a path that works. Engineering has 5 employees that do this with all of the current companies and the current workload fills their work day. Additional staff and/or overtime will be needed to ensure fibers are installed in locations that minimize the impacts to our infrastructure. This staff could be contract employees or a consultant could be hired to assist City staff in administering this large project. Ubiquity has indicated they would reimburse the City for the additional cost on administration as they look to develop their business in Fargo.

Engineering along with our legal staff has developed an Agreement for the use of our right of way and we are currently working on an Agreement for the reimbursement responsibilities.

I have included the latest version of the Agreement with Ubiquity for your review. Fiber installation has been presented to PWPEC at a previous meeting and the comments at that meeting were used to develop much of the language in the attached agreement.

**Recommended Motion:**

Concur with the proposed fiber installation and Agreement and submit it to the City Commission for their review on May 12. Based on their comments and finalizing the Agreement, final approval of the Agreements would be requested at the May 27, 2025 Commission Meeting.

KOG/klb

Attachment

## NON-EXCLUSIVE RIGHT OF WAY OCCUPANCY AGREEMENT

This Non-Exclusive Right of Way Occupancy Agreement ("**Agreement**") is made and entered into by and between the **City of Fargo**, a North Dakota municipal corporation ("**City**"), and **Ubiquity North Dakota, LLC**, a Delaware limited liability company, and its direct parent, and its direct parent's subsidiaries, successors, or assigns ("**Licensee**").

WHEREAS, the City has jurisdiction over the use of the public rights-of-way in City ("**Public ROW**"); and

WHEREAS, the City adopted a Right-of-Way Occupancy Ordinance, Article 24-03 of the Fargo Municipal Code of Ordinances (the "**Ordinance**"), which authorizes the City to register any person wanting to occupy or use the Public ROW and which provides terms for using the Public ROW; and

WHEREAS, Licensee desires to use the Public ROW to provide an open access fiber optic network within the City and occupy the Public ROW to construct, install, maintain, and operate a fiber optic infrastructure network and associated appurtenances within the City for the purpose of offering communications services; and

WHEREAS, the City has determined that, upon Licensee completing the necessary registration for occupancy of the Public ROW, the Licensee can be granted access to the Public ROW in accordance with the terms of this Agreement; and

WHEREAS, the City Commission has determined that the Agreement as hereinafter set forth should be adopted.

NOW, THEREFORE, in consideration of the foregoing and the following covenants and agreements, it is hereby agreed by and between City and Licensee (collectively the "**Parties**") as follows:

### **SECTION 1 USE AND OCCUPANCY OF ROW**

#### **1.1. Permission to Use and Occupy ROW.**

- A. Pursuant to the terms of this Agreement and any exhibits thereto (which are incorporated into and made part of this Agreement), and upon Licensee's compliance with the Ordinance, City hereby grants Licensee permission to use and occupy the Public ROW ("**License**") for the purpose of constructing, installing, repairing, maintaining, operating, and, if necessary, removing an open access fiber optic infrastructure network and associated appurtenances ("**Network**") in accordance with the terms and conditions of this Agreement. The Network shall be for the purpose of offering wholesale and retail communications services, including broadband internet access service as defined in 47 C.F.R. § 8.1(b) and voice over internet protocol services ("**Services**"), but excluding multichannel video programming services that would be subject to a video services franchise.

- B. The Network may also consist of equipment and facilities that may include underground fiber optic cables, lines, wires, or strands; underground conduits, vaults, access handholes; electronic equipment; power generators; pedestals; boxes; vaults; and other similar facilities ("**Network Facilities**"). This Agreement and the License do not authorize Licensee to install or use any wireless communications facility within the Public ROW. Any installation of wireless communications facilities within the Public ROW shall be governed by Article 24-04 of the Fargo Municipal Code of Ordinances.
  - C. This Agreement and the License do not authorize Licensee to use any property other than the Public ROW as agreed herein. Licensee's use of any City owned property, including poles and conduits, must be governed under a separate agreement regarding that use, if any.
  - D. This Agreement and License are subject and subordinate to City's prior and continuing right to use the Public ROW, including but not limited to constructing, installing, operating, maintaining, repairing, or removing sewer mains, sewer lines, water mains, water lines, storm drains, utility poles, overhead and underground electric lines and related facilities, and other public utility and municipal purposes.
  - E. City's grant of the License is subject to all valid pre-existing easements, restrictions, conditions, covenants, encumbrances, superior claims of title or other property interests that may affect the Public ROW, in addition to those uses permitted by the Fargo Municipal Code. Licensee will obtain at its own cost and expense any required permission or rights as may be necessary to accommodate such pre-existing property interests, so long as such pre-existing interests do not contravene state or federal law.
  - F. Licensee hereby acknowledges that it has examined all the definitions and provisions of the Ordinance, which are incorporated herein by reference, and agrees that the provisions thereof are valid and binding upon Licensee, its contractors, subcontractors, and any person or entity performing any work on the Network or Network Facilities. Licensee agrees to abide by the provisions of the Ordinance, as it exists on the effective date of this Agreement and as thereafter amended or modified, and as may be amended from time to time as required by applicable law or agreement, and other relevant and generally applicable regulations and supplemental specifications as to construction, operation, or maintenance promulgated by the City.
- 1.2. Subject to Federal, State and Local Law. This Agreement and License are subject to City's valid authority under federal, state, and local laws as they exist now or may be amended from time-to-time, and subject to the conditions set forth in this Agreement. In the event of a material conflict between the terms of local law and the applicable provisions of this Agreement, the applicable provisions of this

Agreement will prevail. The parties hereby agree that if future modifications or amendments to federal or state law necessitate modifications to this Agreement, including but not limited to any provisions pertaining to revenue sharing or Public ROW occupancy fees, the parties will work in good faith to agree upon the modifications.

- 1.3. No Grant of Property Interests. The License does not grant or convey any property interest to Licensee.
- 1.4. Non-Exclusive License. The License granted by this Agreement is non-exclusive. City expressly reserves the right to grant licenses, permits, franchises, privileges, or other rights to any other individual, corporation, partnership, limited liability company, trust, unincorporated association, joint venture, governmental authority, or other entity of any nature whatsoever, as well as the right in its own name as a City, to use Public ROW for similar or different purposes allowed Licensee under this Agreement.
- 1.5. Police Powers. Licensee's rights afforded by this Agreement are subject to the police powers of the City to adopt and enforce ordinances of general applicability and necessary to the health, safety, and welfare of the public. Licensee will comply with all such generally applicable laws and ordinances enacted by the City pursuant to that power.
- 1.6. City's Principles and Intents. The following provisions are statements of the City's intent in entering into this Agreement and shall not supplant or modify specific provisions of this Agreement:
  - A. Provide for the installation and operation of an open access fiber network with features meeting the current and future fiber related needs and interests of the City of Fargo community;
  - B. Encourage prompt implementation of technical advances in communications technology;
  - C. Encourage the Licensee to provide high quality customer service;
  - D. Ensure that the installation and maintenance of fiber facilities comply with all applicable City regulations, and do not interfere with the City's legitimate use of its own facilities and property;
  - E. Protect the City's interests and health, safety and welfare of its citizenry;
  - F. Ensure the universal availability of high-speed fiber-based internet within the City's municipal boundaries on a non-discriminatory basis; and
  - G. Receive the maximum permissible compensation for the private commercial use of the Public ROW.



## SECTION 2 GENERAL FINANCIAL REQUIREMENTS

2.1. License and Occupancy Fees. Licensee hereby acknowledges the difficulty for City to determine the precise, actual costs of maintaining the license granted hereunder and the Public ROW, and the future added costs that will be incurred by the City for projects because of the need for contractors and City personnel to work around Licensee's Network Facilities once installed within the Public ROW. The Parties therefore agree that from the effective date of this Agreement Licensee shall pay City the greater of Three Hundred Fifty Thousand Dollars and No Cents (\$350,000.00) annually or five percent (5%) (the "**Revenue Percentage**") of Gross Revenues (as defined below) for a full calendar year, whichever is greater. Licensee shall remit quarterly payments of \$87,500 to the City within forty-five (45) days of the end of each calendar quarter. At the end of each calendar year, the Licensee shall submit a report showing the basis for the computation and such other relevant facts as may be required by the City to determine if any payment is due that exceeds the \$350,000. If additional payment is required, it shall be included in the first quarter payment of the following calendar year. Licensee and Licensor agree to increase, at the time of renewal, the minimum amount for License and Occupancy Fees based on an increase to the Municipal Cost Index (MCI), published by American City & County, from the Effective Date to the time of renewal. The increase will be calculated as the difference between the value published for the month and year of the Effective Date and the latest value published at the time of renewal divided by the value published on the Effective Date multiplied by \$350,000. The new minimum amount for License and Occupancy Fees will be the increase, as calculated, added to the prior License and Occupancy Fees amount of \$350,000. If the Municipal Cost Index is no longer published, the Consumer Price Index will be used.

2.2. Gross Revenues.

- A. The term "Gross Revenues" means all consideration of any kind or nature, including without limitation, cash, credits, property, and in-kind contributions of services or goods, received by Licensee or its affiliated companies from any customers, consumers, businesses, residents, tenants, licensees, lessees, and others resulting from Licensee's Network, Services, and Network Facilities, and any related services contemplated by this Agreement located in or provided within the City's municipal boundaries.
- B. Gross Revenues do not include:
- (1) any revenue not actually received, even if billed, such as bad debt;
  - (2) refunds, rebates, or discounts given by Licensee to its customers or to City;
  - (3) revenue received by Licensee from the sale of Services for resale in which the purchaser is required to collect and remit similar fees from the



- purchaser's customer to the City;
- (4) revenue received by Licensee from its provision of Services to customers whereby none of the Network Facilities used to provide such Services are located in the Public ROW;
  - (5) any forgone revenue from Licensee's provision of Services to customers at no charge if required by state law to provide such Services at no charge;
  - (6) any revenue received by Licensee from rental of modems or other hardware used to provide or facilitate the provision of the Services to customers;
  - (7) any tax of general applicability imposed upon Licensee or its customers by City or by any state, federal, or any other governmental entity, and required to be collected by Licensee and remitted to the taxing entity (including but not limited to sales and use tax, gross receipts tax, excise tax, utility users tax, public service tax, communications taxes, and tax-related fees);
  - (8) any forgone revenue from Licensee's provision, in Licensee's discretion, of free or reduced cost Services to employees of Licensee; provided, however, that any forgone revenue which Licensee chooses not to receive in exchange for trades, barter, services, or other items of value will be included in Gross Revenues; and
  - (9) Licensee's sales of capital assets or sales of surplus equipment.

2.3 Other Fees.

- A. Except as provided herein, Licensee shall not be relieved from its obligation to pay administrative fees, public impact fees, and inspection fees, as may be required by the City of Fargo Excavation Ordinance.
- B. Excavation and other permit fees relating to performance of work in the Public ROW shall continue to be paid by Licensee throughout its construction and installation of the Network Facilities.
- C. Licensee's affiliates, customers, clients, contractors, tenants, licensees, and lessees which utilize Licensee's Network and Network Facilities to provide services to residents and businesses of the City must be either franchised with the City or enter into a separate agreement with the City prior to providing any services to any residents or businesses of the City.

- 2.4 Alternative Charge. In the event that the occupancy fees, as described in Section 2.1 above, are preempted by law, the City may establish and apply to Licensee an alternative per linear foot charge for Licensee's use of the ROW. If the City is then applying a linear foot charge to any similar user of the ROW, the City shall apply to Licensee a linear foot charge at the rate per linear foot that it is charging any similar user. A "similar user" shall mean any entity or company that occupies the ROW and offers services similar to those that Licensee offers or provides. The City shall apply the rate per linear foot thus determined to be the actual linear feet of cables, wires, or other devices that Licensee is occupying in the ROW in the year

at issue. If no similar user exists at the time that the City establishes a linear foot charge for Licensee, the City shall determine Licensee's in accordance with the Ordinance. If no rate is provided by Ordinance, then City shall determine Licensee's charge by reference to the revenues that the City received, or should have received, in the previous twelve (12) months from Licensee. For example, if the City should have received Four Hundred Thousand Dollars (\$400,000) from Licensee for the prior twelve (12) month period and Licensee's Network Facilities occupied four hundred thousand (400,000) linear feet of ROW during that period, Licensee's rate per linear foot will be One Dollar (\$1.00). The rate will then be applied in each subsequent year to the number of linear feet that Licensee's Network Facilities occupy the ROW that year. If the City determines by audit that the revenues that it received in the base period were incorrect, the City shall make appropriate adjustments, both retroactively and prospectively. Should the above-described linear foot charge be declared invalid by a court or other body of competent authority, or in any way be preempted, relieving Licensee of the obligation to pay the linear foot charge, the City shall establish a further alternative reasonable charge or other appropriate method of compensation. To the extent permitted by law, any such further charge shall be comparable to payments Licensee would otherwise have been obligated to pay to the City under Section 2.1. No such further alternative charge shall be established without a public hearing with notice to Licensee of such hearing not less than thirty (30) days prior to the public hearing.

**2.5 Failure to Pay.** Failure to pay occupancy fees based on Gross Revenues or a charge based on a per linear foot assessment or such other charge or other compensation as set by the Fargo City Commission shall be deemed a breach of this Agreement and the Ordinance and may be enforced according to the provision of this Agreement and the Ordinance or by any other means available to City, including but not limited to, the denial of permits for work within the ROW.

**2.6 Audits.** Payments due the City under the terms of this Agreement will be computed monthly for the preceding month and will be paid and delivered to the City via wire transfer as directed by the Finance Director on or before the thirtieth (30<sup>th</sup>) calendar day from each computation date to the City. The City will be furnished via e-mail with each payment, certified as correct by the Licensee, a payment worksheet reflecting the total amount of Gross Revenues and the computations for the monthly payment period to be covered by the payment not more than once per year. Upon thirty (30) days prior written notice, the City will have the right to conduct an independent audit of Licensee's records once every two (2) years, in accordance with generally accepted accounting principles. Any additional amounts due the City as a result of such audit will be paid within thirty (30) days following written notice by the City to the Licensee, which notice will include a copy of the audit report. The audit cost will be paid by Licensee if payments have been underpaid by five percent (5%) or more. In lieu of, or in addition to, an independent audit, City shall have the right to review Licensee's records. Licensee's records shall at all times be maintained in accordance with generally accepted accounting principles (GAAP), unless Licensee clearly and specifically indicates and fully describes to the City any variation from GAAP.

- 2.7 Acceptance of Payment. No acceptance of any payment will be construed as a release or accord and satisfaction of any claim the City may have for further or additional sums payable as an occupancy fee under this Agreement or for the performance of any other obligation hereunder.
- 2.8 Failure to Pay. Failure to pay any fees required by this Section within twenty (20) days of receipt of written notice of such failure from the City will be grounds for termination of this Agreement and reinstatement thereof may be had only upon resolution by the City Commission.
- 2.9 Penalty for Late Payment. In the event that any occupancy fee payment or recomputed amount is not made on or before the dates specified herein, Licensee will pay as additional compensation a late charge, equal to five percent (5%) of the total amount of the occupancy fee payment amount which was untimely.
- 2.10 Licensee's Financial Acknowledgements.
- 2.10.1 Licensee expressly acknowledges and agrees that, except for the payments expressly required by Section 2.1, none of the payments or contributions made by, or the services, equipment, facilities, support, resources, or other activities to be provided or performed by Licensee at the direction of the City or the Ordinance pursuant to this Agreement, or otherwise in connection with the construction, operation, maintenance, or upgrade of the Network Facilities (including specifically, but not by way of limitation, such payments, contributions, services, equipment, facilities, support, resources, or other activities as described in or provided for in this Agreement) are part of the occupancy fee chargeable against the compensation payments to be paid to the City by Licensee pursuant to Section 2.1.
- 2.10.2 Licensee expressly acknowledges and agrees that the compensation payments due from the Licensee to City pursuant to Section 2.1 is separate from any other payments made for contributions, services, equipment, facilities, support, resources, permits, or other activities to be paid or supplied by Licensee pursuant to this Agreement. The compensation and other payments to be made pursuant to this Agreement shall not be deemed to be in the nature of a tax, and shall be in addition to any and all taxes or other fees or charges which Licensee shall be required to pay to the City or to any state or federal agency or authority, all of which shall be separate and distinct obligations of Licensee.
- 2.10.3 Licensee shall not have or make any claim for any deduction or other credit of all or any part of the amount of the occupancy fee in the above Section 2.1 from or against any City or other governmental taxes of general applicability, or other fees or charges which Licensee is required to pay to the City or other governmental agencies unless otherwise authorized by a change of applicable law.
- 2.10.4 Licensee shall not apply or seek to apply all or any part of the amount of the occupancy fee in the above Section 2.1 to be made pursuant to this Agreement as a deduction or other credit from or against any City or other government taxes of general applicability (other than income taxes) or other fees or charges, each of which shall be deemed to be separate

and distinct obligations of the Licensee unless otherwise authorized by a change of applicable law.

2.10.5 Licensee shall not apply or seek to apply all or any part of the amount of any City or other governmental taxes or other fees or charges of general applicability as a deduction or other credit from or against any of the occupancy fee in the above Section 2.1 to be made pursuant to this Agreement, each of which shall be deemed to be separate and distinct obligations of Licensee unless otherwise authorized by a change of applicable law.

2.10.6 Unless otherwise authorized by a future change of applicable law, in the event Licensee applies or seeks to apply all or any part of the amount of the occupancy fee to City, payments as a deduction or other credit from or against such City or other governmental taxes of general applicability or other fees or charges, or unless authorized by a change in applicable law in the event that Licensee applies or seeks to apply all or any part of the amount of such taxes or other fees or charges as a deduction or other credit from or against the occupancy fee payable to the City, then, in any such event, the City may terminate this Agreement for cause due to a material breach, and without any liability or compensation to Licensee.

### 3 SECTION 3 LICENSEE'S OBLIGATIONS

3.1 Individual Permits Required. Subject to the specific requirements of the Fargo Municipal Code and policies adopted by the Fargo City Commission, Licensee will obtain City's approval of required individual encroachment, construction, excavation, and other necessary permits before placing its Network Facilities in the Public ROW or other property of City, as may be authorized. Licensee will pay all processing, engineering, and inspection fees associated with the issuance of individual permits by City.

3.2 Bond. The Licensee shall provide a bond that shall be in effect for two years, with good and sufficient surety, conditioned, among other things, that the applicant will save harmless the City from damages caused by reason of any negligence or faulty work by the Licensee or any employee or subcontractor of the Licensee. The minimum amount of the bond shall be \$150,000 with the effective date of March 2. The bond can be provided by a contractor that is licensed by the City.

3.3 Insurance. Licensee must carry and maintain insurance in the amounts and of the types as follows:

3.3.1 Liability Insurance. As of the effective date of this Agreement and during the entire term of this Agreement, the Licensee will, at its sole expense, maintain public liability insurance with a company licensed to do business in the State of North Dakota with a rating by Best of not less than "A" that will protect the Licensee, the City, and the City's officials, officers, employees, and agents from claims which may arise from operations under this Agreement, whether such operations are by the Licensee, its officials, officers, directors, employees, or agents, or any contractors or subcontractors of Licensee. This liability insurance will include, but will not be limited to, protection against claims arising from bodily and personal injury, death, and damage to property resulting from the Licensee's automobiles,

products, construction, maintenance, installation, and other related work, and operations. The amount of such insurance shall be subject to periodic changes as described in this Section, or as may be required by applicable law, but will not be less than the following:

General Liability Insurance:

Bodily injury and/or death per person	\$5,000,000
Bodily injury and/or death per occurrence	\$5,000,000
Property damage per occurrence	\$2,000,000
Property damage and bodily injury, aggregate	\$7,000,000
Automobile Coverage	
Combined single limited	\$2,000,000
Umbrella Coverage	\$2,000,000

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

3.3.2.1 The policy will cover personal injury as well as bodily injury and death;

3.3.2.2 The policy will cover blanket contractual liability subject to the standard universal exclusions of contractual liability included in the carrier's standard endorsement as to bodily injuries, personal Sec. 8.4.1

3.3.2.3 Broad form property damage liability will be afforded;

3.3.2.4 The City will be included as an additional insured on the policy;

3.3.2.5 The coverage is primary insurance and no other insurance or fund of the City will be called upon to contribute to a loss under the coverage;

3.3.2.6 Standard form of cross-liability will be afforded; and

3.3.2.7 The policy will not be cancelled without thirty (30) days prior written notice of such cancellation to the City.

3.3.3 The automobile insurance policy will provide for the following, by endorsement or otherwise: (1) the City will be included as an additional insured on the policy; and (2) the policy will not be cancelled without thirty (30) days prior written notice of such cancellation to the City.

- 3.3.4 Upon ninety (90) days prior written notice to Licensee, the City reserves the right to adjust the limit coverage requirements no more than every three (3) years. Any such adjustment by the City will be no greater than the increase in the State of North Dakota Consumer Price Index for such three (3) year period, unless otherwise required by applicable law.
- 3.3.5 Licensee will submit to the City documentation of the required insurance including a certificate of insurance signed by the insurance agent and companies named, as well as all properly executed endorsements. The certificate of insurance should confirm that the required endorsements are in effect.
- 3.3.6 Any deductible or self-insured retention must be declared to the City.
- 3.3.7 Licensee will have insurance coverage to cover any valid claim arising before sale or transfer of the Network Facilities or termination of this Agreement.
- 3.3.8 It will be the obligation of the Licensee to notify the City promptly of any pending or threatened litigation likely to negatively impact its ability to provide the insurance coverage required herein.
- 3.3.9 Notwithstanding the foregoing, Licensee will promptly repair any damage to the ROW, City property, or private property if such damage is directly caused by Licensee's work and no other person is responsible for the damage (e.g., where a person other than Licensee fails to accurately or timely locate its underground facilities as required by applicable law). Licensee will repair the damaged property to a condition equal to or better than that which existed prior to the damage. Licensee's obligation under this provision will be limited by, and consistent with, any applicable seasonal or other restrictions on construction or restoration work.
- 3.4 Worker's Compensation Insurance. Licensee will obtain and maintain worker's compensation insurance for all Licensee's employees, and in case any work is subcontracted, Licensee will require any subcontractor similarly to provide worker's compensation insurance for all of the subcontractors' employees, in compliance with state laws, and to fully protect the City from any and all claims arising out of work-related occurrences. Licensee hereby indemnifies City for any damage resulting to it from failure of either Licensee or any subcontractor to obtain and maintain such insurance. Licensee will provide the City with a certificate of insurance indicating worker's compensation insurance prior to operations under this Agreement and the commencement of any construction, system upgrade, reconstruction, or maintenance of the Network Facilities. The certificate of insurance should confirm that the required endorsements are in effect.
- 3.5 Licensee's Sole Cost and Expense. Licensee will perform all work at its sole cost and expense.
- 3.6 Compliance with Laws. Licensee will comply with all applicable laws and regulations when performing its work. Licensee will place its Network Facilities in conformance with the required permits, plans, and drawings approved by City.



- 3.7 Reasonable Care. Licensee will exercise reasonable care when performing its work and will use commonly accepted practices and equipment to minimize the risks of personal injury, property damage, soil erosion, and pollution of surface or groundwater.
- 3.8 No Nuisance. Licensee will maintain its Network Facilities in good and safe condition.
- 3.9 Repairs. Licensee will promptly repair any damage to the Public ROW, City property, or private property if such damage is caused by Licensee's work and no other person is responsible for the damage. Licensee will repair the damaged property to a condition equal to or better than that which existed prior to the damage. Licensee's obligation under this Section will be limited by, and consistent with, any applicable seasonal or other restrictions on construction or restoration work.
- 3.10 As-Built Drawings and Maps. Licensee will maintain accurate as-built drawings and maps of its Network Facilities located in the Public ROW and will provide them to City upon reasonable request and on a mutually-agreed timetable, subject to applicable confidentiality protections.
- 3.11 Network Design. Licensee hereby agrees that it shall build, install, and construct, within five years of the effective date of this Agreement, to all areas of the City making its Network and Services available to every residence, household, and business located within the City's municipal boundaries. In the event of annexation by the City, any new territory brought into the City's municipal boundaries shall become part of the service area covered by this Agreement. If the Licensee determines any part of the city is not serviceable, it shall provide documentation to the Licensor giving the reasons why it cannot provide service. The City Engineer or designee shall make the determination of not servicing any area identified by the Licensee. The Licensee can appeal the decision to the City Commission if they disagree with the decision by the City Engineer or designee. Licensee shall retain the discretion to determine the timing, location, design, and construction of the Network Facilities. Licensee's use of Public ROW or City property shall be conducted in a manner consistent with lawful and applicable public easement rights.
- 3.12 Traffic Control. Licensee shall provide traffic control that meets all requirements of the MUTCD adopted by the State of North Dakota. All costs for traffic control will be the sole responsibility of the Licensee.
- 3.13 Reports. Licensee is required to submit to the City upon request all reports and information as provided in this Agreement or the Ordinance.

#### **4 CITY'S RESPONSIBILITIES**

- 4.1 Emergency Removal or Relocation by City. In the event of a public emergency that creates an imminent threat to the health, safety, infrastructure, or property of City or its residents, City and/or other public utilities may remove or relocate the applicable portions of the Network Facilities without prior notice to Licensee. City and any affected public utility will, however, make reasonable efforts to provide prior notice to Licensee before making an emergency removal or relocation. In any event, City and any other municipal utility benefitting from this provision will promptly provide to Licensee a written description of any emergency removals



or relocations of Licensee's Network Facilities. Licensee will reimburse City municipal utility for its actual, reasonable, and documented costs or expenses incurred for any such emergency work, the direct cause of which was Licensee's construction, installation, operation, maintenance, repair, or removal of its Network Facilities. Licensee's obligation to reimburse City and any affected public utility under this section will be separate from Licensee's obligation to reimburse City for any other reasonable expense City may incur.

- 4.2 Relocation to Accommodate Governmental Purposes. If Licensee's then-existing Network Facilities would interfere with planned use of the Public ROW or property of the City, State of North Dakota, or any other political subdivision for any governmental purpose as reasonably determined by the City, Licensee will, upon written notice from any of the foregoing entities, relocate its Network Facilities at Licensee's own expense to such other location or locations in the Public ROW as may be mutually agreed by the parties, taking into account the needs of the governmental purpose and Licensee's interest in maintaining the integrity and stability of its Network. Licensee will relocate its Network Facilities within a commercially reasonable period of time agreed to by the parties, taking into account the urgency of the need for relocation, the difficulty of the relocation, and other relevant facts and circumstances, except that City or any such public entity may not require Licensee to relocate or remove its Network Facilities with less than thirty (30) days' notice.
- 4.3 Relocation to Accommodate Non-Governmental Purposes. If Licensee's then-existing Network Facilities would interfere with a third-party's use of the Public ROW, Licensee will not be required to relocate its Network Facilities unless the City Commission reasonably determines that a failure to relocate Network Facilities will result in a material detriment or financial loss to the citizens of the City of Fargo. If there is any dispute between Licensee and the affected third party involving use of the ROW, City will attempt to mediate the dispute between the parties so as to avoid or mitigate unreasonable delays.
- 4.4 Post-Removal Restoration of Public ROW. When removal or relocation is required under this Agreement, Licensee will, after the removal or relocation of the Network Facilities, at its own cost, repair and return the Public ROW in which the facilities were located to the same or similar conditions existing prior to the Licensee's construction.

## 5 CONTRACTORS AND SUBCONTRACTORS

- 5.1 Use of Contractors and Subcontractors. Licensee may retain contractors and subcontractors to perform the work on Licensee's behalf.
- 5.2 Contractors to be Licensed, Bonded and Insured. Any contractors and subcontractors engaged or hired by Licensee to perform work under this Agreement must be licensed as a contractor with the State of North Dakota as well as bonded and insured in accordance with applicable law.
- 5.3 Authorized Individuals. Licensee's contractors and subcontractors may submit individual permit applications to City on Licensee's behalf, so long as the permit applications are signed by individuals that Licensee has authorized to act on its behalf via a letter of authorization provided to City ("**Authorized Individuals**"). City will accept permit applications under this

Agreement submitted and signed by Authorized Individuals, and will treat those applications as if they had been submitted by Licensee under this Agreement.

## 6 DEFENSE AND INDEMNITY

6.1 Obligations. Licensee will defend and indemnify the City, its Commission and the members, officers, elected representatives, agents, and employees, from and against any and all claims, and including reasonable attorney's fees and legal costs, for injury or damage to persons or property, both real and personal, caused by the negligence or willful misconduct of Licensee or its contractors related to the construction, erection, operation and maintenance of the Network and Network Facilities. It is expressly understood that the City has no control, standard, or regulation pertaining to the subject matter of programs distributed by the Licensee. The Licensee also agrees to hold harmless the City, its Commission and the members, officers, elected representatives, agents, and employees from any and all claims, suits, and actions at law or in equity, for libel, slander, patent or copyright infringements, to the extent that the City is made a party defendant in any action arising out of the subject matter of programs transmitted by Licensee. Licensee shall, at its sole cost and expense, defend such actions and appeals therefrom including those involving the City. Licensee's indemnity obligations shall require it to pay settlement amounts to resolve an indemnified claim and damages and costs finally awarded against the City by a competent tribunal in any legal proceeding filed by a third party for property damage, personal injury, or death to the extent caused by the negligence or willful misconduct of Licensee or its contractors arising from this Agreement ("**Third Party Legal Proceeding**").

6.2 Exclusions. Section 6.1 will not apply to the extent the underlying allegation arises from or is related to the negligence or willful misconduct of an indemnified party.

6.3 Notice of Claim. City agrees to provide reasonable efforts to promptly notify Licensee in writing of the Third Party Legal Proceeding and any allegations that preceded the Third Party Legal Proceeding no later than fifteen (15) days after City became aware of the Third Party Legal Proceeding. City also must reasonably cooperate in the defense at Licensee's request. City must tender sole control of the indemnified portion of the Third Party Legal Proceeding to Licensee, subject to the following: (a) City may appoint its own non-controlling counsel, at its own expense; and (b) any settlement requiring City to admit liability, pay money, or take (or refrain from taking) any action, will require City's prior written consent, not to be unreasonably withheld or delayed.

## 7 TERM AND TERMINATION

7.1 Term. This Agreement shall become effective on the date the last party to sign executes this Agreement ("**Effective Date**"). The Agreement will expire automatically on the tenth (10th) anniversary of the Effective Date ("**Original Term**"), unless earlier terminated in accordance with the provisions herein or renewed by written agreement of the parties made prior to the tenth anniversary of the Effective Date. If renewed, the Agreement will renew for a successive ten (10) year term or another term as agreed upon by the parties in writing.

7.2 Procedure for Remedying Agreement Violations. In addition to any other applicable legal remedy, if Licensee fails to perform in a timely manner any material obligation required by the Ordinance or this Agreement, following notice from the City and an opportunity to cure such nonperformance, the City may remedy such violation in accordance with the following procedures:

- 7.2.1 The City will first notify Licensee of the violation in writing, and demand a cure within a reasonable time, which will not be less than twenty (20) days in the case of the failure of the Licensee to pay any sum or other amount due the City under the Ordinance or this Agreement, and not less than thirty (30) days in all other cases. If Licensee fails to cure the violation within the time prescribed in the notice, or if Licensee fails to commence corrective action within the time prescribed and diligently remedy such violation thereafter, the Licensee will then be given a written notice of a public hearing to be held before the City Commission. The notice will specify the violations alleged to have occurred.
- 7.2.2 At the public hearing, the City Commission will hear and consider all relevant evidence, and thereafter render findings and its decision.
- 7.2.3 In the event the City Commission finds that Licensee has corrected the violation or has diligently commenced efforts to correct such violation after notice thereof from the City and is diligently proceeding to fully remedy such violation, or that no material violation has occurred, the proceedings will terminate and no penalty or other sanction will be imposed.
- 7.2.4 In the event the City Commission finds that a material violation exists and that Licensee has not corrected the same in a satisfactory manner or has not diligently commenced efforts to correct such violation, the City Commission may establish a date, no earlier than twenty (20) days after the public hearing, by which Licensee must comply with the obligation. The City Commission may also implement the termination procedures outlined in this Agreement and the Ordinance. However, any termination procedures will be stayed until a final ruling is obtained in accordance with subsection F below.
- 7.2.5 In determining whether a violation is material, the City will take into consideration the reliability of the evidence of the violation, the nature of the violation, and the damage, if any, caused to the City or the City's residents thereby, whether the violation was chronic, and any justifying or mitigating circumstances, and such other matters as the City may deem appropriate.
- 7.2.6 If the violation as proposed depends on a finding of fact, such finding of fact will be made by the City only after a hearing providing the Licensee with a full and fair opportunity to be heard. Licensee will have the right to appeal any such decision to state court and the revocation or penalty will not become effective until any such appeal has become final or the time for taking such appeal will have expired.
- 7.2.7 City has not required Licensee to furnish to City a security deposit to secure payment of liquidated damages that may be imposed by City for defaults of this Agreement. However,

City reserves the right to require a reasonable security deposit if Licensee continuously violates this Agreement or if there is a change in ownership or control of Licensee.

### 7.3 Revocation or Termination of Agreement.

- 7.3.1 Upon completion of the term of this Agreement, if a new, extended, or renewed Agreement is not granted to the Licensee by the City, the Licensee's right to occupy the ROW shall terminate, subject to applicable state and federal law.
- 7.3.2 The City shall have the right to revoke the Agreement for the Licensee's failure to construct, operate or maintain the Network and Network Facilities as required by this Agreement or the Ordinance, or for defrauding or attempting to defraud the City or its residents.
- 7.3.3 To invoke the provisions of this Section, the City shall give the Licensee written notice of the default in its performance. If, within ninety (90) days, following such written notice from the City to the Licensee, or such other period as the Licensee and the City shall agree, the Licensee has not taken corrective action to the satisfaction of the City, the City may give written notice to the Licensee of its intent to revoke the Agreement, stating its reasons.
- 7.3.4 Prior to revoking the Agreement, the City shall hold a public hearing, upon thirty (30) days advance notice to the public and written notice to Licensee, at which time the Licensee and the public shall be given an opportunity to be heard. Following the public hearing, the City may determine whether to revoke the Agreement based on the information presented at the hearing, and other information of record, or, where applicable, grant additional time to the Licensee to affect any cure. If the City determines to revoke the Agreement, it shall issue a written decision setting forth the reasons for its decision. A copy of such decision shall be transmitted to the Licensee.
- 7.3.5 If the City revokes the Agreement, or if for any other reason the Licensee abandons, terminates, or fails to operate or maintain the Network or Network Facilities, the following procedures and rights are effective:
- 7.3.5.1 The City may (a) require the Licensee to remove its above-ground facilities along with junction boxes buried in the ROW and equipment at the Licensee's sole cost and expense and restore affected sites, or (b) permit the Licensee to abandon such Network Facilities in place. If the Licensee fails to do so within a reasonable period of time, the City may have the removal done at the Licensee's expense.
  - 7.3.5.2 The City may require the Licensee to continue operating and maintaining the Network and Network Facilities for a period of time not to exceed one (1) year.
  - 7.3.5.3 If the Network Facilities is abandoned by the Licensee, the ownership of all portions of the Network and Network Facilities in the ROW and Public Utility Easements shall revert to the City and

the City may retain, sell, assign, or transfer all or part of the assets. City's assumption of ownership shall not render City liable for any claims, causes of action, injuries, disputes, lawsuits, or liabilities of Licensee accruing or arising prior to City's assumption of ownership.

7.3.6 Notwithstanding the foregoing, the Licensee may appeal a revocation decision by the City to a court of competent jurisdiction and such appeal shall stay the implementation of such revocation if a stay or injunction is obtained from the court.

## 8 NETWORK SYSTEM SERVICES

### 8.1 System Services.

8.1.1 Licensee shall have the right to provide additional facilities and equipment, expand capacity, and otherwise upgrade its Network and Network Facilities throughout the term of this Agreement, as required to incorporate improvements in technology.

8.1.2 [Intentionally left blank]

### 8.2 State-of-Art Review.

8.2.1 Subject to this section, the City may request in writing the Licensee to review the Network and Network Facilities related to routine upgrades and maintenance requirements. Such request for Licensee's review by the City shall take place no sooner than five years from the effective date of this agreement and/or not more than twice during the original term of this Agreement.

8.2.2 The following factors shall be considered in a review:

8.2.2.1 Characteristics of the Network and Network Facilities;

8.2.2.2 The State-of-Art (as defined below);

8.2.2.3 Characteristics of other systems utilizing similar State-of-Art;

8.2.2.4 The additional benefits provided to end-users by requiring the installation of State-of-Art;

8.2.2.5 The marketplace demand for the State-of-Art determined by a third-party independent research company selected by both parties;

8.2.2.6 The costs of any State-of-Art upgrades or changes;

8.2.2.7 Availability of market competition; and

8.2.2.8 Any additional factors deemed relevant by the City or the Licensee.

8.2.3 “State-of-Art” shall mean: (1) equipment that is readily available with reasonable delivery schedules from two (2) or more sources of supply; and/or; (2) equipment that is presently installed and activated to fully use existing capabilities; and (3) equipment that is in widespread, regular use throughout at least three (3) other systems controlled, maintained, or operated by the Licensee in markets with characteristics similar to the City (including but not limited to size, population, density, demographics, and infrastructure) or other systems owned by others in the State of North Dakota with characteristics similar to the City.

8.2.4 If Licensee determines after review of the factors described in this Section and discussions with the City that an upgrade is necessary, it will order a public hearing to consider such action and to receive public comment. Notice of such hearing shall be provided to Licensee and the public no later than thirty (30) days prior to such hearing. If, after such hearing, the City reasonably determines that an upgrade is necessary, the City and Licensee will negotiate in good faith to amend this Agreement as required. In examining the economic feasibility of required system improvements, the parties shall consider whether to extend the term of this Agreement to permit a lengthier recovery of the cost of the improvements in order to lessen the burden on end-users.

8.3 Dark Fiber. For the purpose of expanding City’s internal network, Licensee may provide City two (2) strands of “dark” fiber optic cable along routes specified by City or alternate locations as mutually agreed by the parties during the term, at no charge to City, upon the initial construction, modification, or expansion by Licensee of the Network Facilities along such routes. Such dark fiber shall be limited to the exclusive use of City or its governmental entity designee for any noncommercial, public purpose. All costs relating to the use, maintenance, or repair of the dark fiber shall be the responsibility of the City as calculated on a pro-rata basis with reference to the total number of fiber(s) in the strand. City and Licensee may execute an additional agreement addressing the disposition and maintenance of such dark fiber in greater detail.

8.4 Innerduct Option. [Intentionally left blank]. Conduit Option. Licensee shall provide City the option of causing the installation of additional conduit by Licensee along any and all routes upon the initial construction, modification, or expansion by Licensee of fiber optic routes within the Public ROW. Such conduit shall be and remain under the exclusive control of City, or its designated governmental entity, and shall be limited to the exclusive use of City for any noncommercial, public purpose. City shall be responsible for all marginal costs relating to the installation of such conduit and its maintenance by Licensee. Licensee shall cooperate with and assist the City in identifying likely routes, build-out schedules, and cost estimates. The parties may execute an additional agreement addressing the City's conduit option in greater detail. The foregoing limit on use shall not be construed to limit the Licensor's ability to transmit, interconnect, and otherwise enable services using such facility for noncommercial, public purpose with any other public sector entity, including federal, state, or local agencies and/ or political subdivisions.

8.5 Right of Inspection. City will have the right to inspect all construction, reconstruction, or installation work performed by Licensee under the provisions of the Agreement and other pertinent provisions of law, to ensure Licensee’s compliance and to protect the public health,



safety, and welfare of City's residents and citizens. Licensee will have the right to be present at such inspections.

8.6 [Intentionally left blank]

## 9 MISCELLANEOUS

9.1 Assignment. Neither party may assign or transfer its rights or obligations under this Agreement, in whole or in part, without the written consent of the other party. Notwithstanding this requirement, Licensee may assign or transfer its rights or obligations under this Agreement to an affiliate or subsidiary of Licensee, for which Licensee shall provide notice of such transfer or assignment. Any assignee will take the place of the assigning party, and the assigning party will be released from all of its rights and obligations upon such assignment.

9.2 Notices. All notices related to this Agreement will be in writing and sent:

9.2.1 If to Licensee:

Ubiquity North Dakota, LLC  
Attention: General Counsel  
121 W. Trade Street  
Suite 1275  
Charlotte, NC 28202

9.2.2 If to City:

City of Fargo – Engineering Department  
225 4<sup>th</sup> Street North  
Fargo, ND 58102

With a copy to:

City Auditor  
225 4th Street North  
Fargo, ND 58102

Notices are effective when actually received by the party designated above by personal delivery, registered or certified mail postage prepaid, by express mail, or by overnight courier.

The addresses of the parties may be changed upon notice to the other party given as provided in this Section.

9.3 Governing Law. This Agreement is governed by the laws of the State of North Dakota. The parties hereby agree that any and all disputes arising hereunder shall be litigated in the State



District Court for Cass County, North Dakota, and Licensee hereby consents to jurisdiction and waives any objection based upon improper venue.

- 9.4 Entire Agreement. This Agreement constitutes the entire agreement between Licensee and City relating to the subject matter hereof. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force and effect. Any amendment to this Agreement shall be of no force and effect unless it is in writing and signed by Licensee and City.
- 9.5 No Forbearance or Waiver. The failure or delay of City to insist on the timely performance or any of the terms of this Agreement, or the waiver of any particular breach of any of the terms of this Agreement, at any time, will not be construed as a continuing waiver of those terms or any subsequent breach, and all terms will continue and remain in full force and effect as if no forbearance or waiver had occurred.
- 9.6 Approval. This Agreement shall not be effective until approved by the Fargo City Commission and executed by the Mayor on behalf of City.
- 9.7 Non-Discrimination. Licensee will comply, and require compliance by its contractors) with applicable federal, state, and local laws with respect to prohibitions against discrimination on the basis of race, color, sex, age, disability, political, or religious opinions, affiliations, or national origin.
- 9.8 Reservation of Rights. The parties expressly reserve any rights either of them may have under state or federal law concerning the subject matter of this Agreement and further agree that by execution and performance of this Agreement, neither party shall be deemed to have waived any such rights.
- 9.9 Binding Effect. This Agreement is made expressly for the benefit of, and shall be binding on, the heirs, beneficiaries, personal representatives, successors, and assigns of the respective parties. This Agreement shall run with the Property and will be binding upon all successive owners of record.
- 9.10 Severability. If any part of this Agreement is deemed invalid, illegal, or unenforceable, the remainder of this Agreement will remain in effect.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2025

**Ubiquity North Dakota, LLC**

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

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

STATE OF \_\_\_\_\_ )  
 ) ss  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, 2025, before me, a notary public in and for said county and state, personally appeared \_\_\_\_\_ to me known to be the \_\_\_\_\_ of Ubiquity North Dakota, LLC, the entity described in and who executed the within and foregoing instrument and acknowledged to me that said entity executed the same.

(SEAL)

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


\_\_\_\_\_  
County, \_\_\_\_\_

My Commission expires: \_\_\_\_\_

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

ATTEST:

Steven Sprague, Auditor

STATE OF NORTH DAKOTA )  
COUNTY OF CASS ) ss. 

On this \_\_\_\_\_ day of \_\_\_\_\_, 2025, before me, a notary public in and for said county and state, personally appeared Dr. Timothy J. Mahoney, M.D. and Steven Sprague, to me known to be the Mayor and Auditor, respectively, of the City of Fargo, Cass County, North Dakota, the North Dakota municipal corporation described in and that executed the within and foregoing instrument, and acknowledged to me that said municipal corporation executed the same.

(SEAL)

Notary Public  
Cass County, North Dakota  
My commission expires: \_\_\_\_\_

## PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

3A

Type: Proposed Fiber Installation

Date of Hearing: 5/5/2025

Location: Citywide

Routing

City Commission

PWPEC File

Project File

Date5/12/2025XKevin Gorder

The Committee reviewed a communication from Division Engineer, Kevin Gorder, regarding consideration of an agreement with Gateway Infrastructure for the installation of fiber throughout the City to provide internet services to every parcel in Fargo similar to Midco, SparkLight, and Lumen.

Our current ordinance would require a payment of \$1/LF of fiber installed. This would exceed our costs of working around their fibers and could be considered a financial barrier to Gateway Infrastructure as they want to service our community. We have negotiated a minimum payment of \$350,000 annually or 5% of gross revenue as the estimated costs of working around their fibers.

Permitting and route approvals will require additional staff time due to congestion in the boulevard. Additional staff and/or overtime will be needed to ensure fibers are installed in locations that minimize the impacts to our infrastructure. This additional staff could include contract employees or a consultant to assist City Staff in administering this large project. Gateway has indicated they would reimburse the City for the additional cost on administration as they look to develop their business in Fargo.

Ben Dow expressed concern that the fiber installation would place an increased burden on his staff to keep up with utility locates. Kevin Gorder echoed this concern. Following further discussion, the group agreed that language should be proposed to ensure the City is compensated for any additional costs associated with utility locating.

The Committee also discussed transitioning to the minimum annual payment amount of \$350,000. While there was general support for this transition, the Committee recommended phasing it in uniformly over a three-year period, independent of the amount of fiber installed in any given year.

On a motion by Brenda Derrig, seconded by Susan Thompson, the Committee voted to concur with the proposed fiber installation and Agreement and submit it to the City Commission for their review on May 12.

RECOMMENDED MOTION

None at this time.

PROJECT FINANCING INFORMATION:Recommended source of funding for project: N/A

Yes No

N/AN/AN/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)

COMMITTEE

Tim Mahoney, Mayor

Nicole Crutchfield, Director of Planning

Steve Dirksen, Fire Chief

Brenda Derrig, Assistant City Administrator

Ben Dow, Director of Operations


Steve Sprague, City Auditor

Tom Knakmuhs, City Engineer

Susan Thompson, Finance Director

Present	Yes	No	Unanimous
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ATTEST:

  
Tom Knakmuhs, P.E.  
City Engineer

## Memorandum

**To:** Members of PWPEC  
**From:** Kevin Gorder, Division Engineer  
**Date:** May 2, 2025  
**Re:** Proposed Citywide Fiber Installation – Gateway Infrastructure

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### Background:

Engineering has been approached by Gateway Infrastructure based in St. Louis, MO about building a full fiber to home network in the City of Fargo. This project would include approximately 3.1 million feet of fiber, above ground switch and hardware structures, at grade connection points at every parcel, and other items needed to complete their investment in Fargo. Gateway would offer internet service to every parcel in Fargo. Similar companies that do this include Midco, SparkLight, and Lumen along with others that are not Citywide.

The installation of fiber cable in the public right of way is governed by current municipal code along with state and federal code and law. Federal rules do not give us the option to reject this installation, but we do have some ability to recover any costs associated with working around their infrastructure on projects while maintaining our infrastructure. Our current ordinance would require a payment of \$1/LF of fiber installed. This would exceed our costs of working around their fibers and could be challenged in court as being a financial barrier to Gateway as they want to service our community. We have negotiated a minimum payment of \$350,000 annually or 5% of gross revenue as the estimated cost of working around their fibers. The minimum payment would be prorated as they work for the next 3-5 years installing their fiber. Items included in the cost to work around include street reconstruction projects, where every sewer service, water service, etc. needs to be hand dug around their cable creating additional costs to our contractors performing the street reconstruction projects. Another item that is included is Public Works as they need to complete emergency water main repairs or sanitary sewer main repairs. In some areas of town, water main repairs should be a simple dig operation with a backhoe, but the actual excavation may need to be completed with a vac truck that significantly increases costs to repair the failing water main.

This fiber installation will be very impactful to our residents since every parcel will be excavated to install a connection point for their residence and/or business. Many residents will have concerns and questions about what is happening and a few will struggle with getting their lawns restored and will need attention from City staff to ensure restoration is as good or better than when the work was started.

Permitting and route approvals will require additional staff time due to congestion in the boulevards. Various underground utilities currently in our right of way include our infrastructure along with gas, power, multiple fiber companies, and a few private communication networks around town. Gateway will provide proposed routes for their fiber and City staff will need to review and offer suggestions on where their fiber can be installed. This could include completing locates and walking the proposed route to find a path that works. Engineering has 5 employees that do this with all of the current companies and the current workload fills their work day. Additional staff and/or overtime will be needed to ensure fibers are installed in locations that minimize the impacts to our infrastructure. This staff could be contract employees or a consultant could be hired to assist City staff in administering this large project. Gateway has indicated they would reimburse the City for the additional cost on administration as they look to develop their business in Fargo.

Engineering along with our legal staff has developed an Agreement for the use of our right of way and we are currently working on an Agreement for the reimbursement responsibilities.

I have included the latest version of the Agreement with Gateway for your review. Fiber installation has been presented to PWPEC at a previous meeting and the comments at that meeting were used to develop much of the language in the attached Agreement.

**Recommended Motion:**

Concur with the proposed fiber installation and agreement and submit it to the City Commission for their review on May 12. Based on their comments and finalizing the Agreement, final approval of the Agreements would be requested at the May 27, 2025 Commission Meeting.

KOG/klb  
Attachment

## NON-EXCLUSIVE RIGHT OF WAY OCCUPANCY AGREEMENT

This Non-Exclusive Right of Way Occupancy Agreement (the “**Agreement**”), dated May \_\_\_, 2025, is made and entered into by and between the **City of Fargo**, a North Dakota municipal corporation (the “**City**”), and **Gateway Infrastructure, LLC**, a Delaware limited liability company (“**Licensee**”).

WHEREAS, the City has jurisdiction over the use of the public rights-of-way in the City (the “**Public ROW**”); and

WHEREAS, the City adopted a Right-of-Way Occupancy Ordinance, Article 24-03 of the Fargo Municipal Code of Ordinances (the “**Ordinance**”), which authorizes the City to register any person wanting to occupy or use the Public ROW and which provides terms for using the Public ROW; and

WHEREAS, Licensee desires to use the Public ROW in the City and occupy the Public ROW to construct, install, maintain, and operate a fiber optic infrastructure network and associated appurtenances within the City for the purpose of offering communications services; and

WHEREAS, the City has determined that, upon Licensee completing the necessary registration for occupancy of the Public ROW, the Licensee can be granted access to the Public ROW in accordance with the terms of this Agreement; and

WHEREAS, the City Commission has determined that the Agreement as hereinafter set forth should be adopted.

NOW, THEREFORE, in consideration of the foregoing and the following covenants and agreements, it is hereby agreed by and between the City and Licensee (collectively the “**Parties**”) as follows:

### **SECTION 1** **USE AND OCCUPANCY OF ROW**

#### **1.1.** **Permission to Use and Occupy ROW.**

- A. Pursuant to the terms of this Agreement and any exhibits thereto (which are incorporated into and made part of this Agreement), and upon Licensee’s compliance with the Ordinance, City hereby grants Licensee permission to use and occupy the Public ROW (“**License**”) for the purpose of constructing, installing, repairing, maintaining, operating, and, if necessary, removing a fiber optic infrastructure network and associated appurtenances (“**Network**”) in accordance with the terms and conditions of this Agreement. The Network shall be for the purpose of offering wholesale and retail communications services, including broadband internet access service as defined in 47 C.F.R. § 8.1(b) and voice over internet protocol services (“**Services**”), but excluding multichannel video programming services that would be subject to a video services franchise.



- B. The Network may also consist of equipment and facilities that may include underground fiber optic cables, lines, wires, or strands; underground conduits, vaults, access handholes; electronic equipment; power generators; pedestals; boxes; vaults; and other similar facilities (“**Network Facilities**”). This Agreement and the License do not authorize Licensee to install or use any wireless communications facility within the Public ROW. Any installation of wireless communications facilities within the Public ROW shall be governed by Article 24-04 of the Fargo Municipal Code of Ordinances.
  - C. This Agreement and the License do not authorize Licensee to use any property other than the Public ROW as agreed herein. Licensee’s use of any City owned property, including poles and conduits, must be governed under a separate agreement regarding that use, if any.
  - D. This Agreement and License are subject and subordinate to City’s prior and continuing right to use the Public ROW, including but not limited to constructing, installing, operating, maintaining, repairing, or removing sewer mains, sewer lines, water mains, water lines, storm drains, utility poles, overhead and underground electric lines and related facilities, and other public utility and municipal purposes.
  - E. City’s grant of the License is subject to all valid pre-existing easements, restrictions, conditions, covenants, encumbrances, superior claims of title or other property interests that may affect the Public ROW, in addition to those uses permitted by the Fargo Municipal Code. Licensee will obtain at its own cost and expense any required permission or rights as may be necessary to accommodate such pre-existing property interests, so long as such pre-existing interests do not contravene state or federal law.
  - F. Licensee hereby acknowledges that it has examined all the definitions and provisions of the Ordinance, which are incorporated herein by reference, and agrees that the provisions thereof are valid and binding upon Licensee, its contractors, subcontractors, and any person or entity performing any work on the Network or Network Facilities. Licensee agrees to abide by the provisions of the Ordinance, as it exists on the effective date of this Agreement and as thereafter amended or modified, and as may be amended from time to time as required by applicable law or agreement, and other relevant and generally applicable regulations and supplemental specifications as to construction, operation, or maintenance promulgated by the City.
- 1.2. Subject to Federal, State and Local Law. This Agreement and License are subject to City’s valid authority under federal, state, and local laws as they exist now or may be amended from time-to-time, and subject to the conditions set forth in this Agreement. In the event of a material conflict between the terms of local law and the applicable provisions of this Agreement, the applicable provisions of this

Agreement will prevail. The Parties hereby agree that if future modifications or amendments to federal or state law necessitate modifications to this Agreement, including but not limited to any provisions pertaining to revenue sharing or Public ROW occupancy fees, the Parties will work in good faith to agree upon the modifications.

- 1.3. No Grant of Property Interests. The License does not grant or convey any property interest to Licensee.
- 1.4. Non-Exclusive License. The License granted by this Agreement is non-exclusive. City expressly reserves the right to grant licenses, permits, franchises, privileges, or other rights to any other individual, corporation, partnership, limited liability company, trust, unincorporated association, joint venture, governmental authority, or other entity of any nature whatsoever, as well as the right in its own name as a City, to use Public ROW for similar or different purposes allowed Licensee under this Agreement.
- 1.5. Police Powers. Licensee's rights afforded by this Agreement are subject to the police powers of the City to adopt and enforce ordinances of general applicability and necessary to the health, safety, and welfare of the public. Licensee will comply with all such generally applicable laws and ordinances enacted by the City pursuant to that power.
- 1.6. City's Principles and Intents. The following provisions are statements of the City's intent in entering into this Agreement and shall not supplant or modify specific provisions of this Agreement:
  - A. Encourage the installation and operation of a fiber network with features meeting the current and future fiber related needs and interests of the City of Fargo community;
  - B. Encourage implementation of technical advances in communications technology;
  - C. Encourage the Licensee to provide high quality customer service;
  - D. Ensure that the installation and maintenance of fiber facilities comply with all applicable City regulations, and do not interfere with the City's legitimate use of its own facilities and property;
  - E. Protect the City's interests and health, safety and welfare of its citizenry;
  - F. Encourage the universal availability of high-speed fiber-based internet within the City's municipal boundaries on a non-discriminatory basis; and
  - G. Receive compensation for the private commercial use of the Public ROW in accordance with applicable law.

- 1.7. Construction Plan. Within thirty (30) days of the date of this Agreement, Licensee and the City will memorialize in writing a mutually agreeable plan for construction of the Network (the “**Construction Plan**”), which will include, among other things, a timeline for meeting certain specified milestones established on a per linear foot basis. Any modifications to the Construction Plan must be agreed to in writing by designated representatives of both Parties.

## SECTION 2 GENERAL FINANCIAL REQUIREMENTS

- 2.1. License and Occupancy Fees. From and after the date that Licensee first commences construction of the Network Facilities in the Public ROW (the “**Construction Commencement Date**”), Licensee shall pay the City an annual license fee (the “**License Fee**”) equal to the greater of Three Hundred Fifty Thousand Dollars and No Cents (\$350,000) (the “**Minimum Fee**”) or five percent (5%) of Gross Revenues (as defined below).. Licensee shall remit payment to the City within forty-five (45) days of the end of each calendar quarter during the Term (as defined in Section 7.1 below). These payments will be accompanied by a report showing the basis for the computation and such other relevant facts as may be reasonably required by the City to determine the accuracy of such payments.
- 2.2. Minimum Fee.
- A. On each anniversary of the Construction Commencement Date, the Maximum Fee will be automatically adjusted downward by an amount, if any, equal to the percentage of linear feet then occupied by the Network Facilities in the Public ROW as compared to that number of occupied linear feet contemplated on such date under the Construction Plan. For example, if on the first anniversary of the Construction Commencement Date the Network Facilities occupied 20,000 linear feet in the Public ROW and the Construction Plan included a milestone of 25,000 feet as of such date, the Minimum Fee would be reduced to \$280,000 ( $\$350,000 \times 80\%$ ). Notwithstanding the foregoing, in no event will the Minimum Fee be adjusted if the failure to achieve any milestones in the Construction Plan are attributable to factors within Licensee’s reasonable control.
- B. In the event that at any time during the Term Licensee notifies the City it will cease construction of Network Facilities in the Public ROW (the “**Construction End Date**”), the Minimum Fee will be permanently adjusted downward by an amount equal to the percentage of linear feet occupied by the Network Facilities in the Public ROW on the Construction End Date as compared to the total number of linear feet contemplated to be constructed under the Construction Plan. For example, if on the Construction End Date, the Network Facilities occupied 180,000 linear feet in the Public ROW and the total linear feet to be constructed under the Construction Plan was 200,000, the Minimum Fee would be permanently adjusted to \$315,000 ( $\$350,000 \times 90\%$ ).

- 2.3. Gross Revenues. The term “**Gross Revenues**” means all consideration of any kind or nature, including without limitation, cash, credits, property, and in-kind contributions of services or goods, received by Licensee or its affiliated companies from any customers, consumers, businesses, residents, tenants, licensees, lessees, and others for broadband internet access services provided within the corporate boundaries of the City using Network Facilities located at least in part in the Public ROW. Gross Revenues do not include: (i) any revenue not actually received, even if billed, such as bad debt; (ii) refunds, rebates, or discounts made to Customers or the City; (iii) revenue received from the sale of broadband internet services for resale in which the purchaser is required to collect and remit a license or similar fee to the City from the purchaser’s customer; (iv) revenue derived from the provision of broadband internet services to customers where none of the Network Facilities used to provide such services are located in Public ROW; (v) any forgone revenue from Licensee’s provision of broadband internet services to customers at no charge if required by applicable law; (vi) any revenue derived from advertising; (vii) any revenue derived from voice over internet protocol services; (viii) any revenue derived from rental of modems or other equipment used to provide or facilitate the provision of the broadband internet services; (ix) any revenue derived from referral or marketing agreements with third-party providers of online services which Licensee may make available to customers; (x) any tax of general applicability imposed upon Licensee or its customers by the City or by any state, federal, or any other governmental entity, and required to be collected by Licensee and remitted to the taxing entity (including but not limited to sales and use tax, gross receipts tax, excise tax, utility users’ tax, public service tax, communications taxes, and fees not imposed by this Agreement); (xi) any forgone revenue from Licensee’s provision, in Licensee’s discretion, of free or reduced cost broadband internet services to any person, including without limitation employees of Licensee; and (xii) sales of capital assets or sales of surplus equipment.
- 2.4. Pass Through. To the extent allowed by applicable law, Licensee may identify and collect, as a separate item on the regular bill of any customer of Licensee whose broadband internet services are provided by Network Facilities located at least in the Public ROW, that customer’s pro rata amount of the License Fee.
- 2.5. Other Fees.
- A. Except as provided herein, Licensee shall not be relieved from its obligation to pay administrative fees, public impact fees, and inspection fees, as may be required by the City of Fargo Excavation Fees and Guidelines.
  - B. Excavation and other permit fees relating to performance of work in the Public ROW shall continue to be paid by Licensee throughout its construction and installation of the Network Facilities.
  - C. If the City engages an independent third-party consultant for the purpose of overseeing construction and restorative work by Licensee in the Public ROW, the Parties acknowledge and agree that quality assurance work

completed by such consultant or their sub-consultants shall be done so in accordance with a separate service order that the City will have with this consultant. Licensee will reimburse the City for any reasonable amounts paid by the City for this work no later than forty-five (45) calendar days after receipt of an invoice from the City.

- D. Licensee's affiliates, customers, clients, contractors, tenants, licensees, and lessees which utilize Licensee's Network and Network Facilities to provide services to residents and businesses of the City must be either franchised with the City or enter into a separate agreement with the City prior to providing any services to any residents or businesses of the City.
- 2.4 Alternative Charge. In the event that the occupancy fees, as described in Section 2.1 above, are preempted by applicable law, the City and Licensee will negotiate in good faith an amendment to this Agreement establishing an alternative per linear foot charge for Licensee's use of the ROW.
- 2.5 Failure to Pay. Failure by Licensee to pay the License Fee shall be deemed a breach of this Agreement and the Ordinance and may be enforced according to the provision of this Agreement and the Ordinance or by any other means available to City, including but not limited to, the denial of permits for work within the ROW.
- 2.6 Audits. Upon thirty (30) days prior written notice, the City will have the right to conduct an independent audit of Licensee's records once every two (2) years, in accordance with generally accepted accounting principles. Any undisputed additional amounts due the City as a result of such audit will be paid within thirty (30) days following written notice by the City to the Licensee, which notice will include a copy of the audit report. The audit cost will be paid by Licensee if payments have been underpaid by ten percent (10%) or more. In lieu of, or in addition to, an independent audit, City shall have the right to review Licensee's records. Licensee's records shall at all times be maintained in accordance with generally accepted accounting principles (GAAP), unless Licensee clearly and specifically indicates and fully describes to the City any variation from GAAP.
- 2.7 Acceptance of Payment. No acceptance of any payment will be construed as a release or accord and satisfaction of any claim the City may have for further or additional sums payable as an occupancy fee under this Agreement or for the performance of any other obligation hereunder.
- 2.8 Failure to Pay. Failure to pay any fees required by this Section within thirty (30) days of receipt of written notice of such failure from the City will be grounds for termination of this Agreement and reinstatement thereof may be had only upon resolution by the City Commission.
- 2.9 Penalty for Late Payment. In the event that any undisputed License Fee is not made on or before the dates specified herein, Licensee will pay as additional



compensation a late charge, equal to seven and one-half percent (7.5%) of the total amount of the License Fee payment amount which was untimely.

2.10 Licensee's Financial Acknowledgements.

- A. Licensee expressly acknowledges and agrees that, except for the payments expressly required by Section 2.1, none of the payments or contributions made by, or the services, equipment, facilities, support, resources, or other activities to be provided or performed by Licensee at the direction of the City or the Ordinance pursuant to this Agreement, or otherwise in connection with the construction, operation, maintenance, or upgrade of the Network Facilities (including specifically, but not by way of limitation, such payments, contributions, services, equipment, facilities, support, resources, or other activities as described in or provided for in this Agreement) are part of the occupancy fee chargeable against the compensation payments to be paid to the City by Licensee pursuant to Section 2.1.
- B. Licensee expressly acknowledges and agrees that the compensation payments due from the Licensee to City pursuant to Section 2.1 shall take precedence over all other payments, contributions, services, equipment, facilities, support, resources, or other activities to be paid or supplied by Licensee pursuant to this Agreement and the compensation and other payments to be made pursuant to this Section 2.1 of this Agreement shall not be deemed to be in the nature of a tax, and shall be in addition to any and all taxes or general applicability or other fees or charges which Licensee shall be required to pay to the City or to any state or federal agency or authority, all of which shall be separate and distinct obligations of Licensee.
- C. Licensee shall not have or make any claim for any deduction or other credit of all or any part of the amount of the occupancy fee in the above Section 2.1 from or against any City or other governmental taxes of general applicability, or other fees or charges which Licensee is required to pay to the City or other governmental agencies unless otherwise authorized by a change of applicable law.
- D. Licensee shall not apply or seek to apply all or any part of the amount of the occupancy fee in the above Section 2.1 to be made pursuant to this Agreement as a deduction or other credit from or against any City or other government taxes of general applicability (other than income taxes) or other fees or charges, each of which shall be deemed to be separate and distinct obligations of the Licensee unless otherwise authorized by a change of applicable law.
- E. Licensee shall not apply or seek to apply all or any part of the amount of any City or other governmental taxes or other fees or charges of general

applicability as a deduction or other credit from or against any of the occupancy fee in the above Section 2.1 to be made pursuant to this Agreement, each of which shall be deemed to be separate and distinct obligations of Licensee unless otherwise authorized by a change of applicable law.

- F. Unless otherwise authorized by a future change of applicable law, in the event Licensee applies or seeks to apply all or any part of the amount of the occupancy fee to City, payments as a deduction or other credit from or against such City or other governmental taxes of general applicability or other fees or charges, or unless authorized by a change in applicable law in the event that Licensee applies or seeks to apply all or any part of the amount of such taxes or other fees or charges as a deduction or other credit from or against the occupancy fee payable to the City, then, in any such event, the City may terminate this Agreement for cause due to a material breach, and without any liability or compensation to Licensee.

### SECTION 3 LICENSEE'S OBLIGATIONS

- 3.1. Individual Permits Required. Subject to the specific requirements of the Fargo Municipal Code and policies adopted by the Fargo City Commission, Licensee will obtain City's approval of required individual encroachment, construction, excavation, and other necessary permits before placing its Network Facilities in the Public ROW or other property of City, as may be authorized. Licensee will pay all processing, engineering, and inspection fees associated with the issuance of individual permits by City.
- 3.2. Performance Bond. Licensee must provide City with a performance bond in the amount of One Hundred Thousand Dollars (\$100,000) during construction of the Network and Network Facilities.
- 3.3. Insurance. Licensee must carry and maintain insurance in the amounts and of the types as follows:
- A. Liability Insurance. As of the effective date of this Agreement and during the entire term of this Agreement, the Licensee will, at its sole expense, maintain public liability insurance with a company licensed to do business in the State of North Dakota with a rating by A.M. Best of not less than "A" that will protect the Licensee, the City, and the City's officials, officers, employees, and agents from claims which may arise from operations under this Agreement, whether such operations are by the Licensee, its officials, officers, directors, employees, or agents, or any contractors or subcontractors of Licensee. This liability insurance will include, but will not be limited to, protection against claims arising from bodily and personal injury, death, and damage to property resulting from the Licensee's automobiles, products, construction, maintenance, installation, and other



related work, and operations. The amount of such insurance shall be subject to periodic changes as described in this Section, or as may be required by applicable law, but will not be less than the following:

General Liability Insurance:

Bodily injury and/or death per person \$1,000,000

Bodily injury and/or death per occurrence \$1,000,000

Property damage per occurrence \$1,000,000

Property damage and bodily injury, aggregate \$2,000,000

Automobile Coverage

Combined single limited \$1,000,000

Umbrella Coverage \$5,000,000

B. The liability policy will provide for the following, by endorsement of otherwise:

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

C. The automobile insurance policy will provide for the following, by endorsement or otherwise: (1) the City will be included as an additional insured on the policy; and (2) the policy will not be cancelled without thirty (30) days prior written notice of such cancellation to the City.

- D. Licensee will submit to the City documentation of the required insurance including a certificate of insurance signed by the insurance agent and companies named, as well as all properly executed endorsements. The certificate of insurance should confirm that the required endorsements are in effect.
  - E. Any deductible or self-insured retention must be declared to the City.
  - F. Licensee will have insurance coverage to cover any valid claim arising before sale or transfer of the Network Facilities or termination of this Agreement.
  - G. It will be the obligation of the Licensee to notify the City promptly of any pending or threatened litigation likely to negatively impact its ability to provide the insurance coverage required herein.
  - H. Notwithstanding the foregoing, Licensee will promptly repair any damage to the ROW, City property, or private property if such damage is directly caused by Licensee's work and no other person is responsible for the damage (e.g., where a person other than Licensee fails to accurately or timely locate its underground facilities as required by applicable law). Licensee will repair the damaged property to a condition equal to or better than that which existed prior to the damage. Licensee's obligation under this provision will be limited by, and consistent with, any applicable seasonal or other restrictions on construction or restoration work.
- 3.4. Worker's Compensation Insurance. Licensee will obtain and maintain worker's compensation insurance for all Licensee's employees, and in case any work is subcontracted, Licensee will require any subcontractor similarly to provide worker's compensation insurance for all of the subcontractors' employees, in compliance with state laws, and to fully protect the City from any and all claims arising out of work-related occurrences. Licensee hereby indemnifies the City for any damage resulting to it from failure of either Licensee or any subcontractor to obtain and maintain such insurance. Licensee will provide the City with a certificate of insurance indicating worker's compensation insurance prior to operations under this Agreement and the commencement of any construction, system upgrade, reconstruction, or maintenance of the Network Facilities. The certificate of insurance should confirm that the required endorsements are in effect.
- 3.5. Licensee's Sole Cost and Expense. Licensee will perform all work at its sole cost and expense.
- 3.6. Compliance with Laws. Licensee will comply with all applicable laws and regulations when performing its work. Licensee will place its Network Facilities in conformance with the required permits, plans, and drawings approved by the City.
- 3.7. Reasonable Care. Licensee will exercise reasonable care when performing its work and will use commonly accepted practices and equipment to minimize the risks of

personal injury, property damage, soil erosion, and pollution of surface or groundwater.

- 3.8. No Nuisance. Licensee will maintain its Network Facilities in good and safe condition, normal wear and tear excepted.
- 3.9. Repairs. Licensee will promptly repair any damage to the Public ROW, City property, or private property if such damage is caused by Licensee's work and no other person is responsible for the damage. Licensee will repair the damaged property to a condition equal to or better than that which existed prior to the damage. Licensee's obligation under this Section will be limited by, and consistent with, any applicable seasonal or other restrictions on construction or restoration work.
- 3.10. As-Built Drawings and Maps. Licensee will maintain accurate as-built drawings and maps of its Network Facilities located in the Public ROW and will provide them to the City upon reasonable request and on a mutually-agreed timetable, subject to applicable confidentiality protections.
- 3.11. Network Design. Licensee hereby agrees, to the extent commercially reasonable and technically feasible, that it shall build, install, and construct, within five years of the effective date of this Agreement, to all areas of the City making its Network and Services available to every residence, household, and business located within the City's municipal boundaries. In the event of annexation by the City, any new territory brought into the City's municipal boundaries shall become part of the service area covered by this Agreement. Licensee shall retain the discretion to determine the timing, location, design, and construction of the Network Facilities. Licensee's use of Public ROW or City property shall be conducted in a manner consistent with lawful and applicable public easement rights.
- 3.12. Traffic Control. Licensee shall provide traffic control that meets all requirements of the MUTCD adopted by the State of North Dakota. All costs for traffic control will be the sole responsibility of the Licensee.
- 3.13. Reports. Licensee is required to submit to the City upon request all reports and information as provided in this Agreement or the Ordinance.

#### SECTION 4 CITY'S RESPONSIBILITIES

- 4.1. Emergency Removal or Relocation by City. In the event of a public emergency that creates an imminent threat to the health, safety, infrastructure, or property of City or its residents, the City and/or other public utilities may remove or relocate the applicable portions of the Network Facilities without prior notice to Licensee. The City and any affected public utility will, however, make reasonable efforts to provide prior notice to Licensee before making an emergency removal or relocation. In any event, the City and any other public utility benefiting from this provision will promptly provide to Licensee a written description of any emergency removals or relocations of Licensee's Network Facilities. Licensee will reimburse

City and any affected public utility for its actual, reasonable, and documented costs or expenses incurred for any such emergency work, the direct cause of which was Licensee's construction, installation, operation, maintenance, repair, or removal of its Network Facilities. Licensee's obligation to reimburse the City and any affected public utility under this section will be separate from Licensee's obligation to reimburse the City for any other reasonable expense the City may incur.

- 4.2. Relocation to Accommodate Governmental Purposes. If Licensee's then-existing Network Facilities would interfere with planned use of the Public ROW or property of the City, State of North Dakota, or any other political subdivision for any governmental purpose as reasonably determined by the City, Licensee will, upon written notice from any of the foregoing entities, relocate its Network Facilities at Licensee's own expense to such other location or locations in the Public ROW as may be mutually agreed by the Parties, taking into account the needs of the governmental purpose and Licensee's interest in maintaining the integrity and stability of its Network. Licensee will relocate its Network Facilities within a commercially reasonable period of time agreed to by the Parties, taking into account the urgency of the need for relocation, the difficulty of the relocation, and other relevant facts and circumstances, except that City or any such public entity may not require Licensee to relocate or remove its Network Facilities with less than ninety (90) days' written notice.
- 4.3. Relocation to Accommodate Non-Governmental Purposes. If Licensee's then-existing Network Facilities would interfere with the City's planned use of the ROW for a non-governmental (i.e., commercial) purpose or a third-party's use of the Public ROW, Licensee will not be required to relocate its Network Facilities unless and until Licensee receives adequate funds for such relocation or adjustment. If there is any dispute between Licensee and the affected third party involving use of the ROW, the City will attempt to mediate the dispute between the parties so as to avoid or mitigate unreasonable delays.
- 4.4. Non-Discrimination. The City will, at all times, treat Licensee and provide access to the Public ROW in a non-discriminatory manner as compared to other similar non-incumbent holders of local or state authority to offer wired facilities-based broadband internet service.
- 4.5. Post-Removal Restoration of Public ROW. When removal or relocation is required under this Agreement, Licensee will, after the removal or relocation of the Network Facilities, at its own cost, repair and return the Public ROW in which the facilities were located to the same or similar conditions existing prior to Licensee's construction.

## SECTION 5 CONTRACTORS AND SUBCONTRACTORS

- 5.1. Use of Contractors and Subcontractors. Licensee may retain contractors and subcontractors to perform the work on Licensee's behalf.

- 5.2. Contractors to be Licensed, Bonded and Insured. Any contractors and subcontractors engaged or hired by Licensee to perform work under this Agreement must be licensed as a contractor with the State of North Dakota as well as bonded and insured in accordance with applicable law.
- 5.3. Authorized Individuals. Licensee's contractors and subcontractors may submit individual permit applications to City on Licensee's behalf, so long as the permit applications are signed by individuals that Licensee has authorized to act on its behalf via a letter of authorization provided to City ("**Authorized Individuals**"). City will accept permit applications under this Agreement submitted and signed by Authorized Individuals, and will treat those applications as if they had been submitted by Licensee under this Agreement.

## SECTION 6 DEFENSE AND INDEMNITY

- 6.1. Obligations. Licensee will defend and indemnify the City, its Commission and the members, officers, elected representatives, agents, and employees, from and against any and all claims, and including reasonable attorney's fees and legal costs, for injury or damage to persons or property, both real and personal, caused by the construction, erection, operation and maintenance of the Network and Network Facilities. It is expressly understood that the City has no control, standard, or regulation pertaining to the subject matter of programs distributed by Licensee. Licensee also agrees to hold harmless the City, its Commission and the members, officers, elected representatives, agents, and employees from any and all claims, suits, and actions at law or in equity, for libel, slander, patent or copyright infringements, to the extent that the City is made a party defendant in any action arising out of the subject matter of programs transmitted by Licensee. Licensee shall, at its sole cost and expense, defend such actions and appeals therefrom including those involving the City. Licensee's indemnity obligations shall require it to pay settlement amounts to resolve an indemnified claim and damages and costs finally awarded against the City by a competent tribunal in any legal proceeding filed by a third party for property damage, personal injury, or death to the extent caused by the negligence or willful misconduct of Licensee or its contractors arising from this Agreement ("**Third Party Legal Proceeding**").
- 6.2. Exclusions. Section 6.1 will not apply to the extent the underlying allegation arises from or is related to the negligence or willful misconduct of an indemnified party
- 6.3. Notice of Claim. The City agrees to provide reasonable efforts to promptly notify Licensee in writing of the Third Party Legal Proceeding and any allegations that preceded the Third Party Legal Proceeding no later than five (5) days after the City became aware of the Third Party Legal Proceeding. City also must reasonably cooperate in the defense at Licensee's request. The City must tender sole control of the indemnified portion of the Third Party Legal Proceeding to Licensee, subject to the following: (a) the City may appoint its own non-controlling counsel, at its own expense; and (b) any settlement requiring the City to admit liability, pay money, or



take (or refrain from taking) any action, will require the City's prior written consent, not to be unreasonably withheld or delayed.

## SECTION 7 TERM AND TERMINATION

- 7.1. Term. This Agreement shall become effective on the date the last party to sign executes this Agreement ("**Effective Date**"). The Agreement will expire automatically on the tenth (10th) anniversary of the Effective Date ("**Original Term**"), unless earlier terminated in accordance with the provisions herein. Following expiration of the Original Term, this Agreement will automatically renew for additional ten-year periods (each, a "**Renewal Term**") unless either Party provides notice of non-renewal not less than 120 days prior to expiration of the then current term. The Original Term and any Renewal Terms are sometimes collectively referred to in this Agreement as the "**Term**."
- 7.2. Procedure for Remedying Agreement Violations. In addition to any other applicable legal remedy, if Licensee fails to perform in a timely manner any material obligation required by the Ordinance or this Agreement, following notice from the City and an opportunity to cure such nonperformance, the City may remedy such violation in accordance with the following procedures:
- A. The City will first notify Licensee of the violation in writing, and demand a cure within a reasonable time, which will not be less than twenty (20) days in the case of the failure of the Licensee to pay any sum or other amount due the City under the Ordinance or this Agreement, and not less than thirty (30) days in all other cases. If Licensee fails to cure the violation within the time prescribed in the notice, or if Licensee fails to commence corrective action within the time prescribed and diligently remedy such violation thereafter, the Licensee will then be given a written notice of a public hearing to be held before the City Commission. The notice will specify the violations alleged to have occurred.
  - B. At the public hearing, the City Commission will hear and consider all relevant evidence, and thereafter render findings and its decision.
  - C. In the event the City Commission finds that Licensee has corrected the violation or has diligently commenced efforts to correct such violation after notice thereof from the City and is diligently proceeding to fully remedy such violation, or that no material violation has occurred, the proceedings will terminate and no penalty or other sanction will be imposed.
  - D. In the event the City Commission finds that a material violation exists and that Licensee has not corrected the same in a satisfactory manner or has not diligently commenced efforts to correct such violation, the City Commission may establish a date, no earlier than twenty (20) days after the public hearing, by which Licensee must comply with the obligation. The City Commission may also implement the termination procedures outlined

in this Agreement and the Ordinance. However, any termination procedures will be stayed until a final ruling is obtained in accordance with subsection F below.

- E. In determining whether a violation is material, the City will take into consideration the reliability of the evidence of the violation, the nature of the violation, and the damage, if any, caused to the City or the City's residents thereby, whether the violation was chronic, and any justifying or mitigating circumstances, and such other matters as the City may deem appropriate.
- F. If the violation as proposed depends on a finding of fact, such finding of fact will be made by the City only after a hearing providing the Licensee with a full and fair opportunity to be heard. Licensee will have the right to appeal any such decision to state court and the revocation or penalty will not become effective until any such appeal has become final or the time for taking such appeal will have expired.
- G. The City has not required Licensee to furnish to the City a security deposit to secure payment of liquidated damages that may be imposed by City for defaults of this Agreement. However, the City reserves the right to require a reasonable security deposit if Licensee continuously violates this Agreement or if there is a change in ownership or control of Licensee.

7.3. Revocation or Termination of Agreement.

- A. Upon completion of the Term, if a new Agreement is not granted to the Licensee by the City, Licensee's right to occupy the Public ROW shall terminate, subject to applicable state and federal law.
- B. The City shall have the right to revoke the Agreement for Licensee's failure to construct, operate or maintain the Network and Network Facilities as required by this Agreement or the Ordinance, or for defrauding or attempting to defraud the City or its residents.
- C. To invoke the provisions of this Section, the City shall give Licensee written notice of the default in its performance. If, within ninety (90) days, following such written notice from the City to Licensee, or such other period as Licensee and the City shall agree, Licensee has not taken corrective action to the reasonable satisfaction of the City, the City may give written notice to Licensee of its intent to revoke the Agreement, stating its reasons.
- D. Prior to revoking the Agreement, the City shall hold a public hearing, upon thirty (30) days advance notice to the public and written notice to Licensee, at which time Licensee and the public shall be given an opportunity to be heard. Following the public hearing, the City may determine whether to revoke the Agreement based on the information presented at the hearing, and other information of record, or, where applicable, grant additional time



to Licensee to affect any cure. If the City determines to revoke the Agreement, it shall issue a written decision setting forth the reasons for its decision. A copy of such decision shall be transmitted to Licensee.

E. If the City revokes the Agreement, or if for any other reason Licensee abandons, terminates, or fails to operate or maintain the Network or Network Facilities, the following procedures and rights are effective:

- The City may (a) require the Licensee to remove its above-ground facilities along with junction boxes buried in the ROW and equipment at the Licensee's sole cost and expense and restore affected sites, or (b) permit the Licensee to abandon such Network Facilities in place. If the Licensee fails to do so within a reasonable period of time, the City may have the removal done at Licensee's expense.
- If the Network Facilities is abandoned by the Licensee, the ownership of all portions of the Network and Network Facilities in the ROW shall revert to the City and the City may retain, sell, assign, or transfer all or part of the assets. City's assumption of ownership shall not render City liable for any claims, causes of action, injuries, disputes, lawsuits, or liabilities of Licensee accruing or arising prior to City's assumption of ownership.

F. Notwithstanding the foregoing, Licensee may appeal a revocation decision by the City to a court of competent jurisdiction and such appeal shall stay the implementation of such revocation.

## SECTION 8 NETWORK SYSTEM SERVICES

### 8.1. System Services.

- A. Grantee shall, to the extent commercially reasonable and technologically feasible, provide additional facilities and equipment, expand capacity, and otherwise upgrade its Network and Network Facilities throughout the Term, as required to incorporate improvements in technology to reasonably meet the needs and interests of the community in light of the costs thereof.
- B. In furtherance of the general policy of the City that Licensee's services be innovative and modern, Licensee will pursue a continuous policy of incorporating new technical developments into the Network and Network Facilities and will identify and respond to changing community interests and desires regarding services where economically and technically feasible.

8.2. Dark Fiber. For the purpose of expanding City's internal network, Licensee will provide City two (2) strands of "dark" fiber optic cable along routes requested from time to time by the City during the Term on terms and conditions mutually agreed by the Parties, upon the initial construction, modification, or expansion by Licensee

of the Network Facilities along such routes. Such dark fiber shall be limited to the exclusive use of City or its governmental entity designee for any noncommercial, public purpose. All costs relating to the use, maintenance, or repair of the dark fiber shall be the responsibility of the City as calculated on a pro-rata basis with reference to the total number of fiber(s) in the strand. City and Licensee will execute an additional agreement addressing the disposition and maintenance of such dark fiber in greater detail.

- 8.3. Innerduct Option. Licensee shall provide City the option of causing the installation of additional innerduct by Licensee along any and all routes upon the initial construction, modification, or expansion by Licensee of the Network Facilities on terms and conditions mutually agreed to by the Parties. Such innerduct shall be and remain under the exclusive control of the City, or its designated governmental entity, and shall be limited to the exclusive use of the City for any noncommercial, public purpose. The City shall be responsible for all marginal costs relating to the installation of such innerduct and its maintenance by the Licensee. The Licensee shall cooperate with and assist the City in identifying likely routes, build-out schedules, and cost estimates. The City and Licensee will execute an additional agreement addressing the City's innerduct option in greater detail. The foregoing limit on use shall not be construed to limit the City's ability to transmit, interconnect, and otherwise enable services using such facility for noncommercial, public purpose with any other public sector entity, including federal, state, or local agencies and/or political subdivisions.
- 8.4. Right of Inspection. City will have the right to inspect all construction, reconstruction, or installation work performed by Licensee under the provisions of the Agreement and other pertinent provisions of law, to ensure Licensee's compliance and to protect the public health, safety, and welfare of City's residents and citizens. Licensee will have the right to be present at such inspections.
- 8.5. Periodic Evaluation. The field of communications is rapidly changing and may see many regulatory, technical, financial, marketing, and legal changes during the term of this Agreement. Therefore, in order to provide for a maximum degree of flexibility in this Agreement, and to help achieve a continued advanced and modern Network and Network Facilities, the following evaluation provisions shall apply:
- A. Upon thirty (30) days written notice to Licensee, the City may require an evaluation session. Evaluation sessions may occur no more than once every three (3) years beginning three (3) years from the Effective Date, unless otherwise mutually agreed to by the parties.
  - B. All evaluation sessions shall be open to the public and notice of sessions published the same way as a legal notice.
  - C. Topics which may be discussed at any evaluation session may include, but are not limited to, application of new technologies, Network and Network Facilities performance, facilities and support, municipal uses of fiber,

customer complaints, amendments to this Agreement, judicial rulings, FCC rulings, line extension policies, and any other topics City and Licensee deem relevant.

- D. As part of a periodic review, the City or Licensee may contract with an independent research organization to conduct an objective survey to identify ongoing community needs.
- E. As part of a periodic evaluation, the City or Licensee may contract for or perform a technical review and performance evaluation. The City and Licensee shall be notified of all such testing and designate representatives to be in attendance and shall also be provided with the results of such tests including any recommendations resulting from such tests along with City or Licensee's proposed satisfaction of any such recommendations.
- F. As a result of a periodic review or evaluation session, the City and Licensee, in good faith, may develop such changes and modifications to the terms and conditions of the Agreement as are mutually agreed upon.

## SECTION 9 MISCELLANEOUS

9.1. Assignment. Neither party may assign or transfer its rights or obligations under this Agreement, in whole or in part, without the written consent of the other party, which consent shall not be unreasonably withheld. Notwithstanding the preceding sentence, Licensee may, without the City's consent, (i) assign its rights and obligations under this Agreement to an affiliate, (ii) assign its right to receive payments under this Agreement to any creditor, and (iii) assign its rights and obligations under this Agreement to an entity acquiring all or substantially all of Licensee's assets. Any agreed upon assignee will take the place of the assigning party, and the assigning party will be released from all of its rights and obligations upon such assignment.

9.2. Notices. All notices related to this Agreement will be in writing and sent:

A. If to Licensee:

Gateway Infrastructure, LLC  
275 N. Service Road  
Wright City, MO 63390

B. If to City:

City of Fargo – Engineering Department  
225 4<sup>th</sup> Street North  
Fargo, ND 58102

With a copy to:

City Auditor  
225 4th Street North  
Fargo, ND 58102

Notices are effective when actually received by the party designated above by personal delivery, registered or certified mail postage prepaid, by express mail, or by overnight courier.

The addresses of the parties may be changed upon notice to the other party given as provided in this Section.

- 9.3. Governing Law. This Agreement is governed by the laws of the State of North Dakota. The parties hereby agree that any and all disputes arising hereunder shall be litigated in the State District Court for Cass County, North Dakota, and Licensee hereby consents to jurisdiction and waives any objection based upon improper venue.
- 9.4. Entire Agreement. This Agreement constitutes the entire agreement between Licensee and City relating to the subject matter hereof. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force and effect. Any amendment to this Agreement shall be of no force and effect unless it is in writing and signed by Licensee and City.
- 9.5. No Forbearance or Waiver. The failure or delay of a Party to insist on the timely performance or any of the terms of this Agreement, or the waiver of any particular breach of any of the terms of this Agreement, at any time, will not be construed as a continuing waiver of those terms or any subsequent breach, and all terms will continue and remain in full force and effect as if no forbearance or waiver had occurred.
- 9.6. Approval. This Agreement shall not be effective until approved by the Fargo City Commission and executed by the Mayor on behalf of City.
- 9.7. Non-Discrimination. Licensee will comply, and require compliance by its contractors) with applicable federal, state, and local laws with respect to prohibitions against discrimination on the basis of race, color, sex, age, disability, political, or religious opinions, affiliations, or national origin.
- 9.8. Reservation of Rights. The parties expressly reserve any rights either of them may have under state or federal law concerning the subject matter of this Agreement and further agree that by execution and performance of this Agreement, neither party shall be deemed to have waived any such rights.
- 9.9. Binding Effect. This Agreement is made expressly for the benefit of, and shall be binding on, the heirs, beneficiaries, personal representatives, successors, and assigns of the respective parties. This Agreement shall run with the Network Facilities and will be binding upon all successive owners of record.

- 9.10. Severability. If any part of this Agreement is deemed invalid, illegal, or unenforceable, the remainder of this Agreement will remain in effect.

DRAFT

Dated this \_\_\_\_ day of March, 2025

**Gateway Infrastructure, LLC**

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

Name: Chris Surdo

Title: Chief Executive Officer

STATE OF \_\_\_\_\_ )  
 ) ss  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, 2024, before me, a notary public in and for said county and state, personally appeared \_\_\_\_\_ to me known to be the \_\_\_\_\_ of Ubiquity North Dakota, LLC, the entity described in and who executed the within and foregoing instrument and acknowledged to me that said entity executed the same.

(SEAL)

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

\_\_\_\_\_  
County, \_\_\_\_\_

My Commission expires: \_\_\_\_\_

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2024

## City of Fargo

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

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

ATTEST:

Steven Sprague, Auditor

STATE OF NORTH DAKOTA )

) SS.

COUNTY OF CASS

)

On this \_\_\_\_\_ day of \_\_\_\_\_, 2024, before me, a notary public in and for said county and state, personally appeared Dr. Timothy J. Mahoney, M.D. and Steven Sprague, to me known to be the Mayor and Auditor, respectively, of the City of Fargo, Cass County, North Dakota, the North Dakota municipal corporation described in and that executed the within and foregoing instrument, and acknowledged to me that said municipal corporation executed the same.

(SEAL)

Notary Public  
Cass County, North Dakota  
My commission expires: \_\_\_\_\_



May 5, 2025

(35)

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

Re: Construction Update

Dear Commissioners,

On May 12, 2025, I will be providing an update on the progress of construction projects overseen by the Engineering Department. This will be an informational update only, with no action required.

Sincerely,




Tom Knakmuhs, PE  
City Engineer

(36)

MEMORANDUM

**TO: BOARD OF CITY COMMISSIONERS**

**FROM: MAYOR TIMOTHY J. MAHONEY** 

**DATE: MAY 12, 2025**

**SUBJECT: APPOINTMENT TO THE BOARD OF APPEALS**

The term of Kevin Bartram on the Board of Appeals expires on June 30, 2025.

Mr. Bartram is willing to continue his service on the Board and I am recommending that he be reappointed for a five- year term ending June 30, 2030.

Your favorable consideration of this recommendation will be greatly appreciated.

**RECOMMENDED MOTION:** To approve the reappointment of Kevin Bartram to the Board of Appeals for a five-year term ending June 30, 2030.

mmappt25boappeals



**Fire Department**  
637 NP Avenue  
Fargo, ND 58102  
Phone: 701.241.1540 | Fax: 701.241.8125  
[www.FargoND.gov](http://www.FargoND.gov)

MEMORANDUM

**TO: FARGO CITY COMMISSION**

**FROM: FIRE CHIEF STEVE DIRKSEN**

**DATE: 05/05/2025**

**SUBJECT: FIRE DEPARTMENT 2024 ANNUAL REPORT TO COMMISSION**

The Fire chief will provide a summary of the 2024 Fire Department annual report to the Commission.

**Recommended Action:** Receive and file the Fire Department's Annual Report.

2024

# ANNUAL REPORT.







# TABLE OF CONTENTS

MESSAGE FROM THE CHIEF ..... 1

CORE VALUES ..... 2

ORGANIZATIONAL CHART ..... 3

2024 NEW HIRES ..... 4-5

2024 RETIREMENTS ..... 6

PLANNING GOAL 1 ..... 7-10

PLANNING GOAL 2 ..... 11-22

PLANNING GOAL 3 ..... 23-24

PLANNING GOAL 4 ..... 25

PLANNING GOAL 5 ..... 26

FARGO FIREFIGHTERS IAFF LOCAL 642 ..... 27-29



## MESSAGE FROM THE CHIEF



It is my honor to present the Fargo Fire Department's 2024 Annual Report, highlighting the dedication, hard work and unwavering commitment of the men and women who serve this community every day. The members of the Fargo Fire Department are the heart of our organization, and their steadfast dedication to ensuring they are trained and ready to respond at a moment's notice is nothing short of inspiring.

Whether responding to emergencies, conducting life-saving training or engaging with the community, our firefighters exemplify Professionalism, Responsibility, Integrity, Dependability and Empathy. The countless hours spent honing their skills and preparing for the unexpected are a testament to their passion for serving the residents of Fargo. Their commitment to protecting life and property is the foundation of our department's mission, and I could not be more proud of their service.

I would like to extend a heartfelt thank you to the citizens of Fargo for their support of the public safety sales tax. This investment in public safety will allow us to better serve the community and I pledge to present a budget that utilizes these funds in a manner that is fiscally responsible and will meet the needs of the department.

As I reflect on my tenure as Fire Chief, I am filled with gratitude for the opportunity to lead this incredible department for the past 13-plus years. It has been a privilege to serve alongside such dedicated professionals and to be entrusted by the community to lead this organization. Since I've already announced my retirement effective May 16th, 2025, I want to share that while this decision comes with mixed emotions, I leave with confidence knowing the Fargo Fire Department is in capable hands and well-prepared to face the challenges ahead.

Thank you to The City of Fargo and its residents for your unwavering support of our department. Your trust, encouragement and partnership have been essential to our success, and it has been my honor to serve as your Fire Chief.

With deepest gratitude,

A handwritten signature in red ink, reading "Steven Dirksen".

**STEVEN DIRKSEN**  
FARGO FIRE CHIEF

# THANK YOU





## CORE VALUES



*The Fargo Fire Department (FFD) holds its members to a high standard because our community members call us in their time of need. The department expects its members to always respond professionally and treat the public with respect and empathy. The department's values – identified as most important by the members – provide guidance in the actions we take and the decisions we make. The acronym for Fargo Fire Department's values is*

**P. R. I. D. E.**

## **P**rofessionalism

Commitment to Quality • Pride in Your Work

## **R**esponsibility

Accountability • Maturity • Ability to Respond

## **I**ntegrity

Moral Honesty • Intellectual Honesty

## **D**ependability

Worthy of Trust • Constructive Communication • Team Effort • Working Together

## **E**mpathy

Ability to Understand Others • Fairness • Straightforwardness • Sincerity



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graph TD
    FireChief[Fire Chief] --> OfficeManager[Office Manager]
    FireChief --> EmergencyManager[Emergency Manager]
    FireChief --> DivOps[Division Chief Operations]
    FireChief --> DivSupport[Division Chief Support Services]
    FireChief --> DivFireMarshal[Division Chief / Fire Marshal]
    
    DivOps --> Batt1[Battalion 1  
Battalion Chief  
(A, B, C Shifts)]
    DivOps --> Batt2[Battalion 2  
Battalion Chief  
(A, B, C Shifts)]
    
    Batt1 --> 801["801  
(Capt. & 4 FFs)"]
    Batt1 --> 803["803  
(Capt. & 4 FFs)"]
    Batt1 --> 806["806  
(Capt. & 3 FFs)"]
    Batt1 --> 804["804  
(Capt. & 2 FFs)"]
    Batt1 --> Truck1["Truck 1  
(Capt. & 2 FFs)"]
    
    Batt2 --> 802["802  
(Capt. & 3 FFs)"]
    Batt2 --> 805["805  
(Capt. & 4 FFs)"]
    Batt2 --> 808["808  
(Capt. & 3 FFs)"]
    Batt2 --> 807["807  
(Capt. & 2 FFs)"]
    Batt2 --> Truck2["Truck 2  
(Capt. & 2 FFs)"]
    
    DivSupport --> BattTraining[Battalion Chief / Training]
    BattTraining --> TC1[Training Captain]
    BattTraining --> TC2[Training Captain]
    BattTraining --> TF[Training Firefighter]
    
    DivFireMarshal --> BattFireMarshal[Battalion Chief / Assistant Fire Marshal]
    BattFireMarshal --> DFM1[Deputy Fire Marshal]
    BattFireMarshal --> DFM2[Deputy Fire Marshal]
    BattFireMarshal --> DFM3[Deputy Fire Marshal]
    BattFireMarshal --> DFM4[Deputy Fire Marshal]
    BattFireMarshal --> DFM5[Deputy Fire Marshal]
    BattFireMarshal --> DFM6[Deputy Fire Marshal]
  
```



## 2024 NEW HIRES



**JACOB BOUSHEE**  
Firefighter



**CHRISTIAN CANTORE**  
Firefighter



**CHRISTIAN FROMM**  
Firefighter



**TANER HETTINGER**  
Firefighter



**BRENNAN KESSLER**  
Firefighter



**TRAVIS MARTEL**  
Firefighter



**ZACHARY MARTINEZ**  
Firefighter



**ROSS MONSON**  
Firefighter



**JUSTIN NIMRICHTER**  
Firefighter



## 2024 NEW HIRES



**JALEN PLATH**  
Firefighter



**BROCK RELLER**  
Firefighter



**JON ROBIDEAU**  
Firefighter



**CHERYL STUBBE**  
Office Associate III



**CALEB WALTERS**  
Firefighter





## 2024 RETIREMENTS



**JASON MEHLISCH**  
Captain  
29 years of service



**JAMES GARVEY**  
Deputy Fire Marshal  
18 years of service



**WILLIAM NELSON**  
Firefighter  
15 years of service

THANK YOU  
FOR YOUR SERVICE



# »» PLANNING GOAL 1

Safeguard the community through proactive prevention, preparedness and public education programs.

## INSPECTION GOAL

Inspect  
**100%**  
of all commercial properties

including hospitals, clinics, schools, nursing homes, churches and 50% of apartment buildings.

**6,709**

Occupancies assigned for inspection

**8,918**

inspections completed

## SMOKE DETECTORS

**79%**  
Residential homes had a smoke detectors present

Smoke detectors were present in over 79% of residential occupancy fires and operated at 56% of those fires. Fires were too small to activate smoke detectors 32% of the time.

## FFD GOAL

**90%**  
Containment to room of origin

Where fire suppression is present, contain the fire to the room of origin 90% of the time.

	2023		2024	
	Suppression System Present	No Suppression System Present	Suppression System Present	No Suppression System Present
CONTAINED TO ROOM OF ORIGIN	97%	81%	94%	78%
SPREAD BEYOND ROOM OF ORIGIN	3%	19%	6%	22%





## » PLANNING GOAL 1

Safeguard the community through proactive prevention, preparedness and public education programs.

### COMPLETE PLAN REVIEWS

for all proposed construction to ensure compliance with the adopted International Fire Code.

### ACCEPTANCE TESTS AND PLAN REVIEW

of fire protection systems are conducted to ensure systems are installed properly and will be reliable. In 2024, 197 fire protection system plans were reviewed and approximately 550 acceptance tests were witnessed.

### PROVIDE EDUCATION

to special need organizations, as well as other groups.

### LEARN NOT TO BURN

We continue to reach out to the children in the community through the "Learn Not to Burn" program. In 2024, all elementary schools within the city of Fargo were provided with a lesson on fire exits and smoke alarms. Nearly 4,500 children were provided information through presentations in the classrooms of 25 schools.



## 2,500

Adult Education System Contacts were made

Our adult education system gave safety talks, presentations, fire extinguisher training and public relations events where contact was made to over 2,500 adults. The audience includes apartment building managers, building safety professionals, and childcare providers and citizens.

## 76%

Occupants fire alarm response

In 2024, occupants who were alerted by fire alarms responded appropriately 76% of the time during active fires.

### PROVIDE COMMUNICATION TO RESIDENTS

FFD maintains a Facebook, Twitter and YouTube page in addition to the communication that is provided through FargoFire.com.





## » PLANNING GOAL 1 CONTINUED

Safeguard the community through proactive prevention, preparedness and public education programs.

### INVESTIGATE TO DETERMINE ORIGIN AND CAUSE OF ALL FIRES

Investigations are conducted to determine the origin and cause of a fire. The 2024 fire investigations results are listed below.

#### CLASSIFICATION FIRES

<b>139</b>	+	<b>41</b>	+	<b>37</b>	+	<b>22</b>	=	<b>239</b>
Unintentional		Undetermined		Failure of Equip. or Heat Source		Intentional		Total

#### TYPES OF FIRES (TOP THREE)

<b>108</b>	<b>41</b>	<b>23</b>
Building fire	Passenger vehicle fire	Outside trash fire

#### STRUCTURE FIRE ORIGIN (TOP THREE)

<b>43</b>	<b>10</b>	<b>7</b>
Cooking area, kitchen	Laundry area	Garage

#### STRUCTURE FIRE CAUSE - HEAT SOURCE (TOP THREE)

<b>41</b>	<b>15</b>	<b>14</b>
Radiated, conducted heat from operating equipment	Smoking materials	Electrical arcing

#### INTENTIONALLY-SET FIRES

<b>37</b>	<b>38</b>	<b>29</b>	<b>40</b>	<b>21</b>
2020	2021	2022	2023	2024



## » PLANNING GOAL 1 CONTINUED

Safeguard the community through proactive prevention, preparedness and public education programs.

### HEART SAFE FARGO PROGRAM

The FFD provides training and direction to the public, as requested, to support the Heart Safe Fargo Program.

The PulsePoint app is free and allows users to follow incidents the FFD is dispatched to and will send a notification when CPR is needed in a public location.

3,114

followers in 2024 on FFD's

**PulsePoint**

160

devices received a  
notification that CPR  
was needed  
in 2024.







## » PLANNING GOAL 2

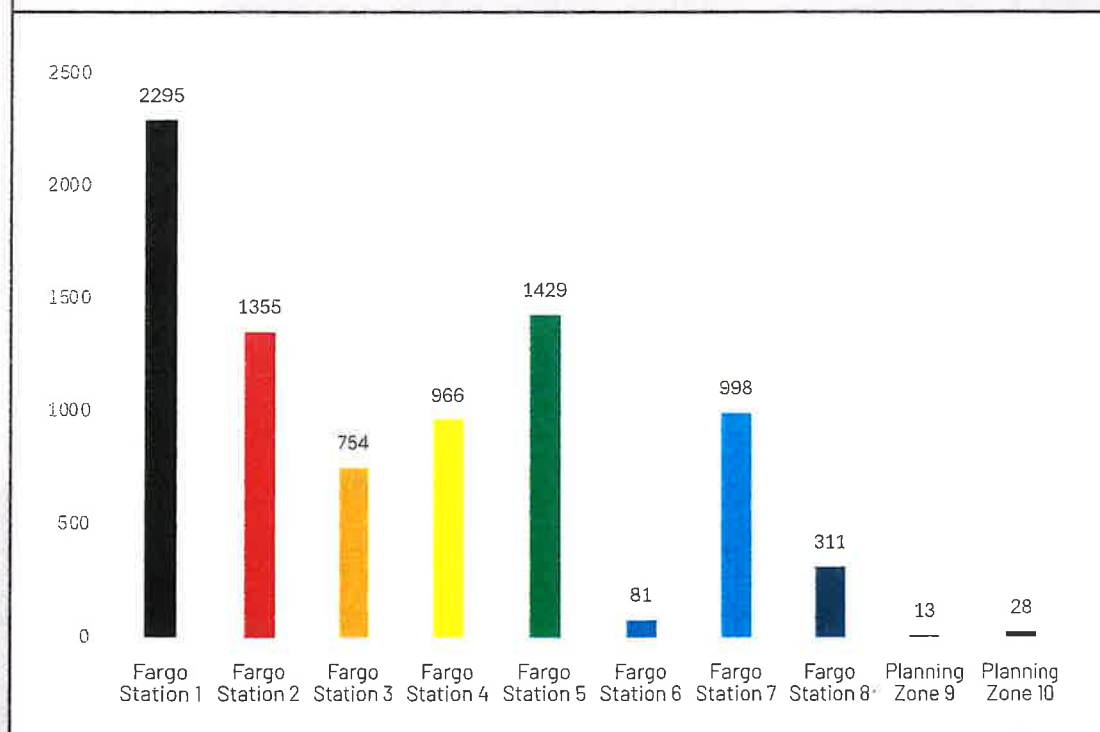
Ensure systems and processes are in place to minimize the impact on life and property from medicals, fires, disasters and other emergencies.

### EMS INCIDENTS BY STATION PLANNING ZONE

The Fargo Fire Department is an all-hazards response organization. The responses made by crews are not limited to solely fire-related incidents. Calls for service can include medical assists, motor vehicle accidents, natural gas leaks and more. The majority of all responses made by the Fargo Fire Department are in service to members of our community who are experiencing some type of medical issue. All Fargo Firefighters are certified EMT's and are well-trained to respond to citizens and visitors in emergency situations.



### NUMBER OF EMS RESPONSES





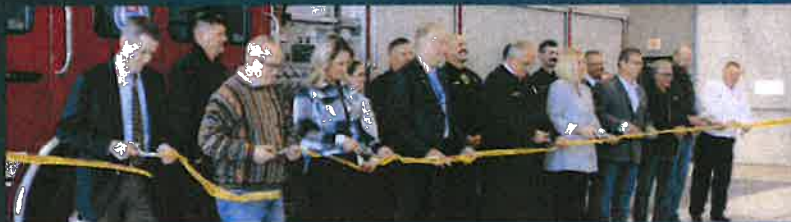
## » PLANNING GOAL 2

Ensure systems and processes are in place to minimize the impact on life and property from medicals, fires, disasters and other emergencies.

### STATION 5 RECONSTRUCTION

Station 5 temporarily closed on September 26, 2024, to begin reconstruction and renovation work after an engineering assessment found structural issues due to shifting ground beneath the building. The closure is expected to last until August 2025 and The City has allocated \$2.5 million for the project.

During this time, calls in the Station 5 coverage area will be handled by nearby stations, FFD Engine 805 operating from the West Fargo main fire station and mutual aid with the West Fargo Fire Department.



### FIRE STATION 8 GRAND OPENING

Fire Station 8 became fully operational on Monday, October 28. The community was invited to attend an open house to celebrate the grand opening and tour the facility.

Breaking ground on June 20, 2023, this \$5.3 million project was completed in just 16 months and came in under budget — an achievement that reflects the dedication of our planning team. Station 8 has been thoughtfully designed to prioritize firefighter health and safety, incorporating hot, warm and cold zones to enhance comfort and security in living and working spaces.





# » PLANNING GOAL 2

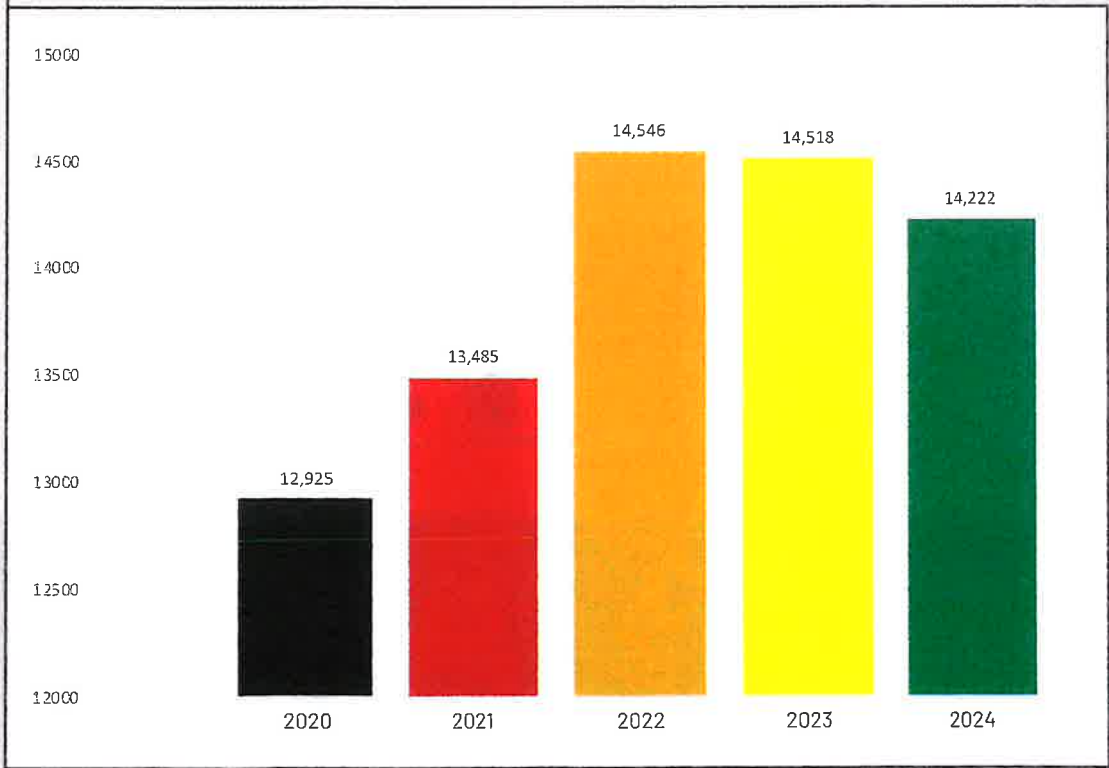
Ensure systems and processes are in place to minimize the impact on life and property from medicals, fires, disasters and other emergencies.

14,222

Calls for service in 2024. This includes mutual aid responses outside of the city of Fargo.



2020-2024 TOTAL INCIDENTS PER YEAR







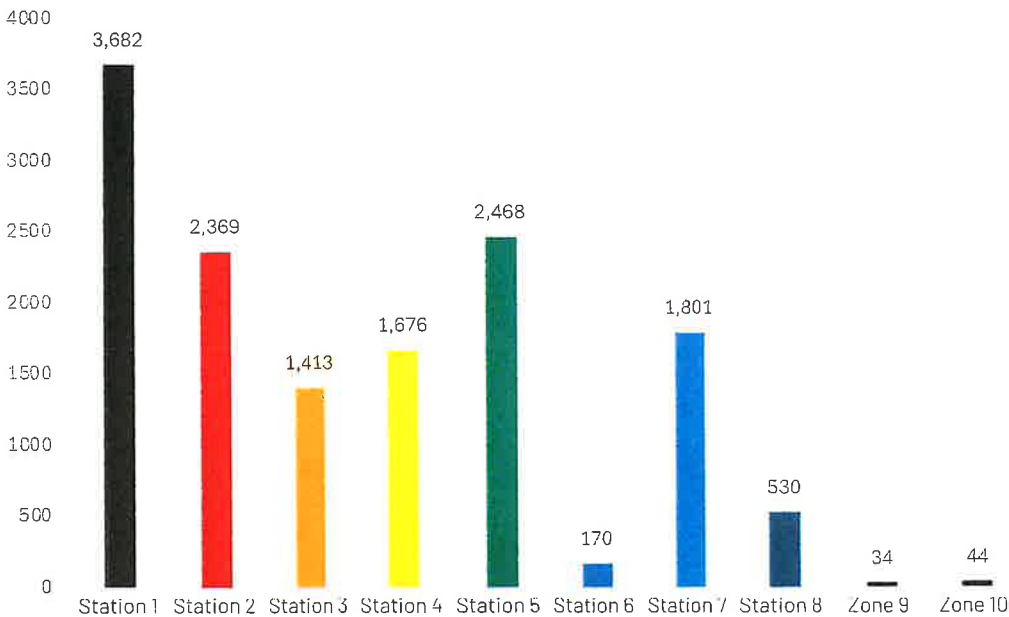
# » PLANNING GOAL 2 CONTINUED

Ensure systems and processes are in place to minimize the impact on life and property from medicals, fires, disasters and other emergencies.



## NUMBER OF INCIDENTS BY STATION PLANNING ZONE

The number of incidents by Planning Zone saw some variability in 2024 due to Station 5 closing for renovations. Planning Zones were adjusted once Station 8 became fully operational causing the size of Planning Zone 9 to be reduced.





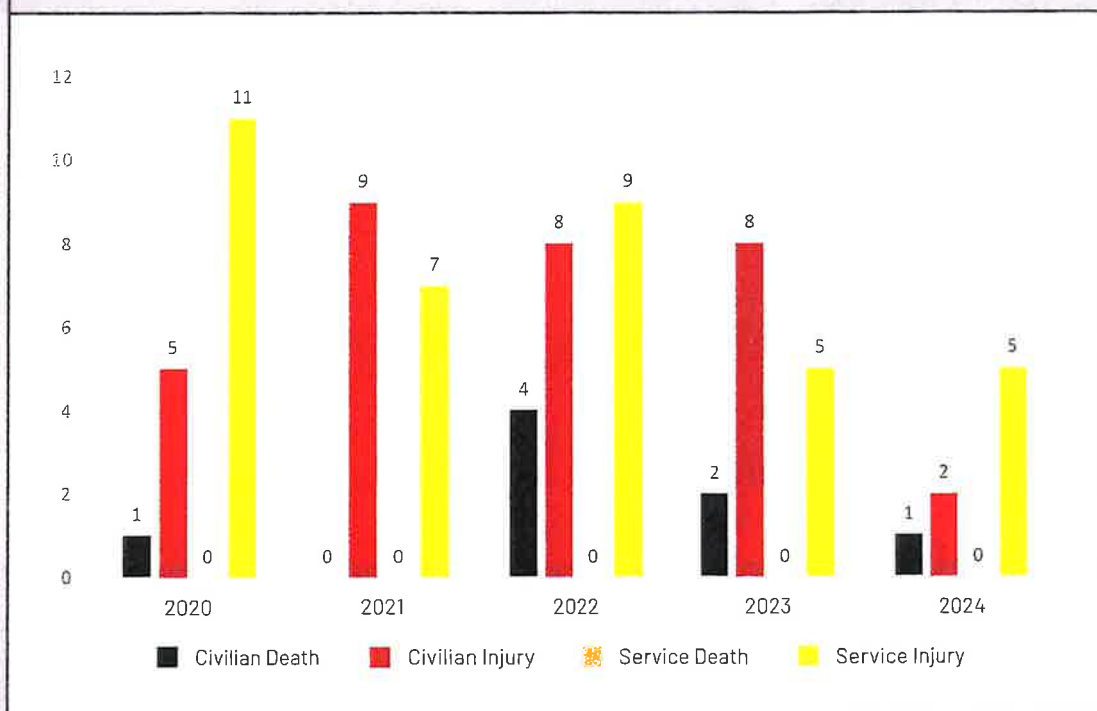


## » PLANNING GOAL 2

Ensure systems and processes are in place to minimize the impact on life and property from medicals, fires, disasters and other emergencies.



### FIRE INJURIES AND FATALITIES IN 2024, THERE WERE TWO CIVILIAN INJURIES AND ONE CIVILIAN DEATH



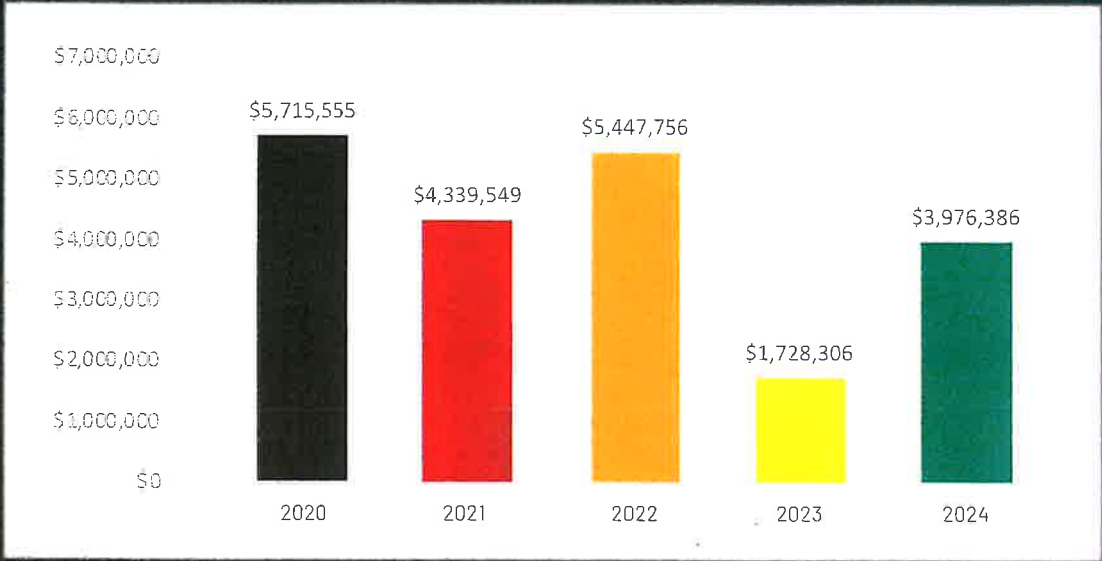


# » PLANNING GOAL 2 CONTINUED

Ensure systems and processes are in place to minimize the impact on life and property from medicals, fires, disasters and other emergencies.



2020-2024 TOTAL DOLLAR LOSS





# » PLANNING GOAL 2

Ensure systems and processes are in place to minimize the impact on life and property from medicals, fires, disasters and other emergencies.

The FFD strives to respond as quickly as possible to all incidents and follows the National Fire Protection Standard (NFPA) 1710 as a guide for response time goals. NFPA 1710 provides a nationwide standard for all size departments and cities.

## THREE COMPONENTS COMPRISE TOTAL RESPONSE TIME

**Alarm Handling Time** - The time that the dispatch center takes to answer a 911 call and dispatch the appropriate fire department unit(s).

**Turnout Time** - The time that it takes fire crews from when they are notified of an incident to when the apparatus is en route to the incident.

**Travel Time** - The time that it takes fire crews to drive to the scene of the incident.

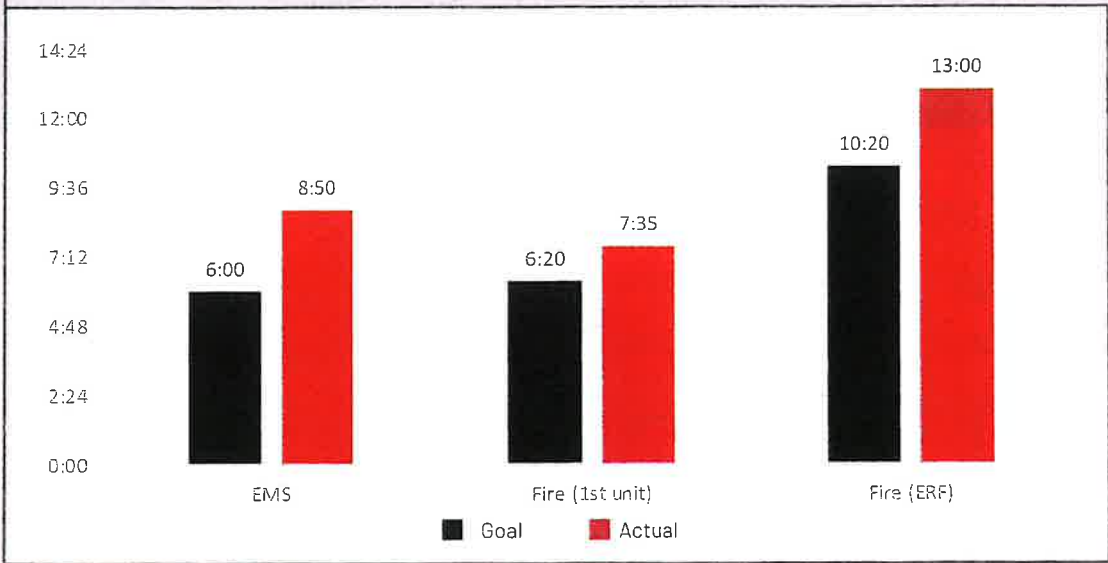
The **first unit** on Fire incidents is the first engine or truck to arrive on scene.

The **ERF** is the Effective Response Force needed to fight a fire and includes a first alarm assignment of 16 personal,



## 2024 TOTAL RESPONSE TIME

As an accredited agency, the Fargo Fire Department measures times at the 90th percentile. This means the times reported are the actual times the department responds 90 out of 100 responses.





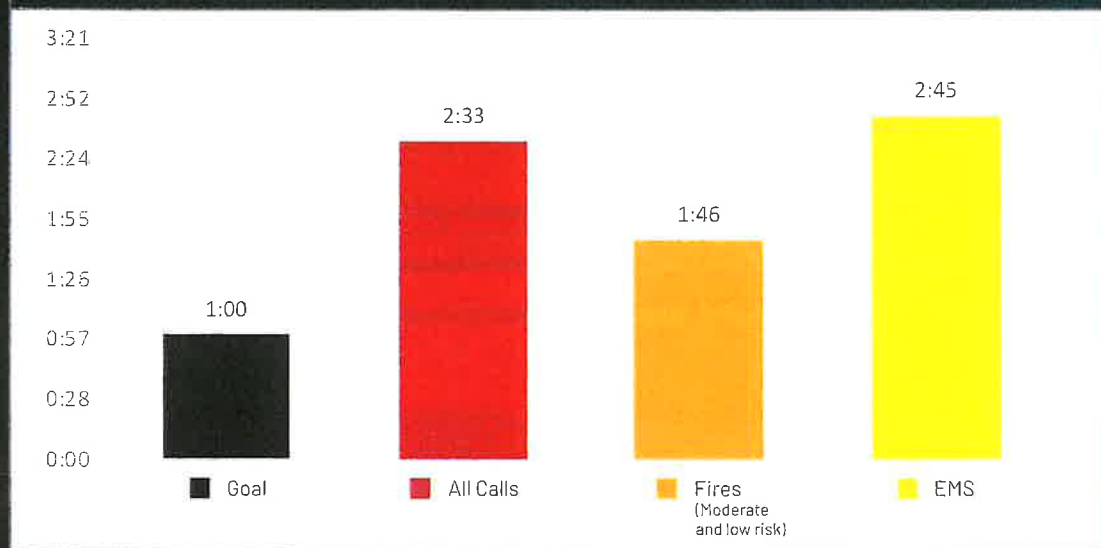
## » PLANNING GOAL 2 CONTINUED

Ensure systems and processes are in place to minimize the impact on life and property from medicals, fires, disasters and other emergencies.



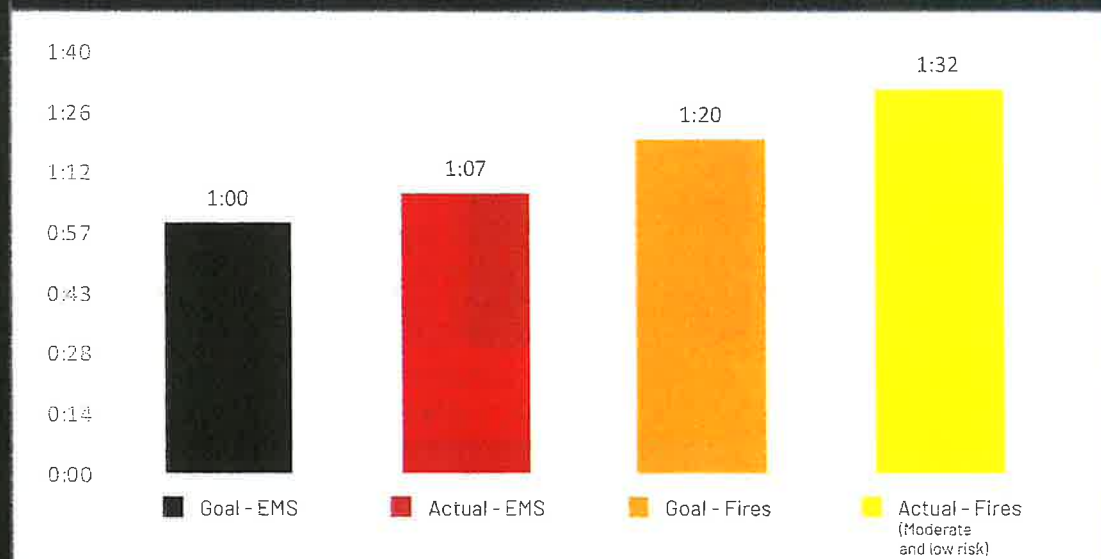
### ALARM HANDLING

Before alerting the fire department on EMS calls, dispatch has to determine what the problem is and who needs to be sent, so these times are longer than for fires.



### TURNOUT TIMES

The goal time for fires is 20 seconds longer than EMS because the crews need to put on their turnout gear before they leave the station.







# » PLANNING GOAL 2

Ensure systems and processes are in place to minimize the impact on life and property from medicals, fires, disasters and other emergencies.

## TRAVEL TIME

The goal for travel time is four minutes. Many factors affect these times including weather, traffic and station location. Travel times were affected by the closure of Station 5 while other units cover Planning Zone 5. Engine 805 was moved to West Fargo Fire Department’s main fire station until Station 5 reconstruction is complete.

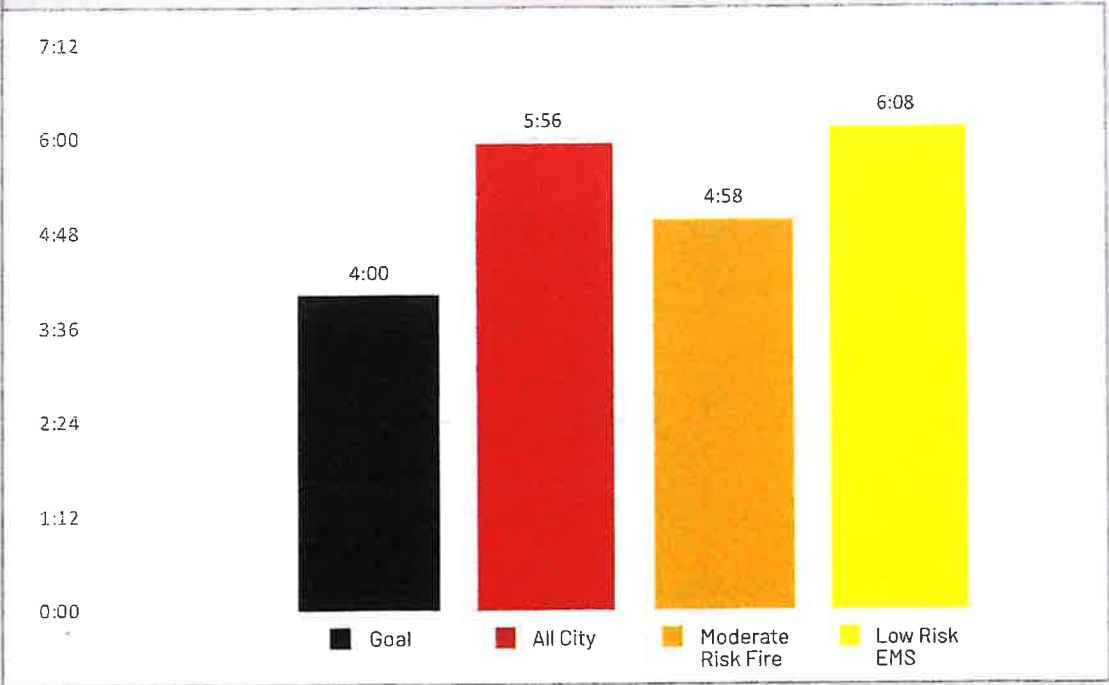
Opticomms, devices that change the traffic lights, are used at intersections so apparatus do not face delays caused by red lights.

## PZ’S ARE PLANNING ZONES

Planning Zones (PZ’s) correlates to the geographic area surrounding a fire station in The City of Fargo. For example, Planning Zone 7 correlates with Fire Station 7 in the Osgood neighborhood. PZ’s 8 and 9 have been covered by Station 8 since the grand opening in October 2024.



## TRAVEL TIME





## » PLANNING GOAL 2 CONTINUED

Ensure systems and processes are in place to minimize the impact on life and property from medicals, fires, disasters and other emergencies.

### PROVIDE EMERGENCY RESPONSE TO HAZARDOUS MATERIALS INCIDENTS WITH FIREFIGHTERS TRAINED TO THE TECHNICIAN LEVEL

The FFD has an agreement with the North Dakota Department of Emergency Services (NDDSES) to provide Hazardous Materials Response in Southeast North Dakota. NDDSES provides funding annually to support the team with equipment and training. The agreement also provides reimbursement when assistance is needed in the Southeast Region.

# 151

Number of hazardous materials incidents responded to by the FFD in 2024







## » PLANNING GOAL 2 CONTINUING

Ensure systems and processes are in place to minimize the impact on life and property from medicals, fires, disasters and other emergencies.

### MAINTAIN A TECHNICAL RESCUE TEAM WITH SPECIALIZED TRAINING IN FOUR CORE COMPETENCIES

The FFD has an agreement with the North Dakota Department of Emergency Services (NDDDES) to provide Technical Rescue Response in Southeast North Dakota. NDDDES provides annual funding to support the team with equipment and training. The agreement also provides reimbursement when assistance is needed in the Southeast Region. All responses in 2024 occurred within Fargo city limits.

# 85

Number of technical rescue incidents  
responded to by the FFD in 2024







## » PLANNING GOAL 2 CONTINUED

Ensure systems and processes are in place to minimize the impact on life and property from medicals, fires, disasters and other emergencies.

### WATER RESCUE TEAM

The primary goal of the water rescue team is to respond to and manage water rescue emergencies within the city.

15

Number of water rescue emergencies responded to by the FFD in 2024







## » PLANNING GOAL 3

Recruit, develop and retain the highest quality team members and implement a comprehensive training program that provides for continuous education and career preparation opportunities to all personnel.

### TRAINING ACADEMIES

In 2024, the Fargo Fire Department, West Fargo Fire Department and Moorhead Fire Department held two training academies. The FFD had 13 new firefighters complete the academies.

### ANNUAL TRAINING

All members of the FFD are required to completed **248 hours** annually to maintain proficiency and credentialing in different disciplines such as EMS, hazmat, and technical rescue.







## » PLANNING GOAL 3 CONTINUED

Recruit, develop and retain the highest quality team members and implement a comprehensive training program that provides for continuous education and career preparation opportunities to all personnel.

### ENCOURAGE PROFESSIONAL GROWTH OF OFFICERS AND FIREFIGHTERS THROUGH EDUCATIONAL OPPORTUNITIES

The FFD provides an in-house professional development program for personnel which includes a monthly professional development topic and presentation.

All new officers spend a week in class prior to going on shift to prepare them for their new position. Part of this class includes ride-alongs with The Fargo Police Department and Red River Regional Dispatch Center because they will be working closely with these organizations on a regular basis in their new position.

In addition to in-house training, the FFD also sends personnel to outside training classes that help ensure firefighters are using the current best practices. The department tries to maximize grant funding for many of the outside training opportunities. These include training opportunities at the following nationally recognized institutions:

- The National Fire Academy (NFA) in Emmitsburg, MD.  
Instructors are brought in to Fargo, ND annually to conduct classes.
- The Texas Engineering Extension Service (TEEX) in College Station, TX.
- The Center for Domestic Preparedness in Anniston, AL.

### PROMOTE SAFETY, HEALTH AND WELLNESS FOR EMPLOYEES BY PROVIDING ANNUAL MEDICAL EXAMINATIONS

The FFD provided all sworn personnel with annual medical checks through Employee Health in 2024. All sworn non-exempt personnel also complete an annual fitness test.

The FFD Safety Committee and the FFD Health & Wellness Committee both met quarterly in 2024 and continue to work on improving health, wellness and safety for the department.







## » PLANNING GOAL 4

Maintain an organization that effectively administers, plans and manages the physical resources of the department.

### CHECK AND EVALUATION PROCESSES

Numerous daily, weekly, monthly and yearly checks and evaluation processes are in place to manage the department's physical resources. For example, firefighters conduct daily checks on each emergency response apparatus. Weekly and monthly evaluations are conducted on items such as fire station generators and all tools and equipment located on over 20 emergency response vehicles.







## » PLANNING GOAL 5

The Fire Department will work to be dynamic and continually adjust to meet the changing fire problems, new technologies, laws, regulations and changes occurring in the community.

### MONITOR LEGISLATION THAT COULD AFFECT THE FARGO FIRE DEPARTMENT, THE CITY OF FARGO AND THE FIRE SERVICE IN NORTH DAKOTA

The Fargo Fire Department continues to reduce risk through public education, fire prevention inspections and fire investigations.

The Fargo Fire Department presented significant changes of the 2024 International Fire Code to the board of appeals. This adoption coincides with the International Building Code that is enforced by The City of Fargo Inspections Department. The 2024 codes are expected to be adopted by the City in the fall of 2025.

The department works with local, state and federal officials to ensure laws are in place to protect our community and our employees.

### THE FFD WILL WORK TO IMPROVE PUBLIC CONFIDENCE IN THE FIRE DEPARTMENT THROUGH PUBLIC RELATIONS

Station tours, truck show-n-tells, parades, block parties and other public activities have allowed the department to have direct contact with nearly **2,500 adults and over 13,300 children**.







## » FARGO FIREFIGHTERS IAFF LOCAL 642

International Association of Firefighters (IAFF) Local 642 donated their time and money to various organizations and causes in the community throughout 2024.

### FILL-THE-BOOT

<p>Members donated their time and help raise over</p> <h1 style="color: red; text-align: center;">\$17,000</h1> <p>for the Muscular Dystrophy Association (MDA) to be put towards research and to help send kids to the MDA summer camp.</p>	<p>Local 642 also donated</p> <h1 style="color: red; text-align: center;">\$1,000</h1> <p>towards this cause.</p>
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Members attended the MDA Boot Camp to learn more about fill-the-boot. Members also attended the summer camp for a day to spend time with the kids at the camp.





## » FARGO FIREFIGHTERS IAFF LOCAL 642

International Association of Firefighters (IAFF) Local 642 donated their time and money to various organizations and causes in the community throughout 2024



Rang bells for The Salvation Army's  
Red Kettle Campaign and helped raise

# > \$11,000







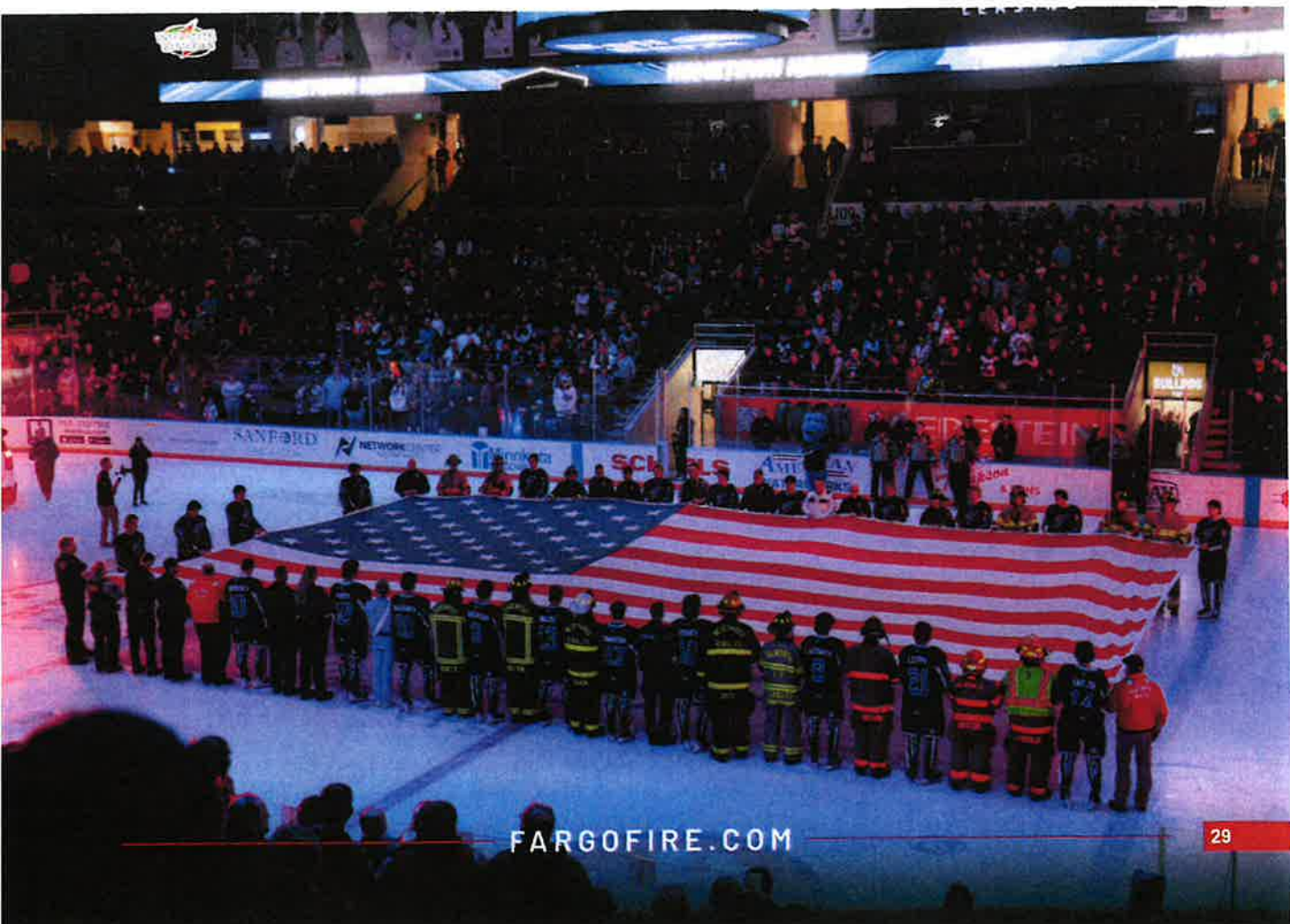
## » FARGO FIREFIGHTERS IAFF LOCAL 642

International Association of Firefighters (IAFF) Local 642 donated their time and money to various organizations and causes in the community throughout 2024.

### OTHER EVENTS

IAFF Local 642 participated in many local events which supported first responders and community members.

- Donated money to **Hometown Heroes night** at a Fargo Force game. Money raised during the game benefits regional emergency services departments.
- Donated money to sponsor teams in golf tournaments that supported **The Salvation Army** and local volunteer fire departments.
- Sponsored teams and donated money to support various other events to support community members in need.
- Participated in the **Christmas Gift Fashion Show** that benefits local families in need.
- Participated in various local events such as the **Fargo-Moorhead St. Patrick's Day Parade** and the **9/11 Stair Climb**.







**1 FIRE STATION**  
637 NP Avenue

**2 FIRE STATION**  
3020 25 Street South

**3 FIRE STATION**  
1101 25 Avenue North

**4 FIRE STATION**  
2701 1 Avenue North

**5 FIRE STATION**  
930 40 Street South

**6 FIRE STATION**  
4630 15 Ave North

**7 FIRE STATION**  
3957 Village Lane South

**8 FIRE STATION**  
6617 33 Street South



**FARGOFIRE.COM**