

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 17, 2023).

**CONSENT AGENDA – APPROVE THE FOLLOWING:**

- 1. Receive and file an Ordinance Amending Section 21.1-0102 of Article 21.1-01 of Chapter 21.1 of the Fargo Municipal Code Relating to the International Residential Code.
- 2. 1st reading of an Ordinance Amending Section 25-1509.2 of Article 25-15 of Chapter 25 of the Fargo Municipal Code Relating to Restrictions on Sale to Obviously Intoxicated Person and 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.
- 3. 1st reading of an Ordinance Amending Section 25-1501 of Article 25-15 of Chapter 25 of the Fargo Municipal Code Relating to Definitions and an Ordinance Amending Section 25-1506 of Article 25-15 of Chapter 25 of the Fargo Municipal Code Relating to Licenses – Classifications and an Ordinance Amending Section 25-1507 of Article 25-15 of Chapter 25 of the Fargo Municipal Code Relating to License – Fees – Seasonal Licenses.
- 4. 2nd reading and final adoption of an Ordinance Repealing Section 25-1504.3 of Article 25-15 of Chapter 25 of the Fargo Municipal Code Relating to Mandatory Meeting and an Ordinance Amending Section 25-1504.4 of Article 25-15 of Chapter 25 of the Fargo Municipal Code Relating to Additional Requirements for Class FA-Entertainment Licenses; 1st reading, 4/17/23.
- 5. Settlement Agreement and Release of All Claims with Northstar Property Partners, Inc. and John Bultman.
- 6. Location transfer of a Class “FA-RZ” Alcoholic Beverage License for The Beefsteak Club, LLC d/b/a Pounds from 612 1st Avenue North to 6 Broadway North.
- 7. Applications for Games of Chance:
  - a. Rebuilding Together Fargo-Moorhead Area for a raffle and raffle board on 6/1/23.
  - b. Buretta Fundraiser for a raffle and raffle board on 9/16/23; Public Spirited Resolution.
  - c. Jerome Sharratt Benefit for a raffle on 5/7/23; Public Spirited Resolution.
- 8. Site Authorizations for Games of Chance:
  - a. Prairie Public Broadcasting, Inc. at Tailgator’s.
  - b. Prairie Public Broadcasting, Inc. at Slammer’s.

- c. Prairie Public Broadcasting, Inc. at Dempsey's.
  - d. Prairie Public Broadcasting, Inc. at Pepper's.
  - e. Prairie Public Broadcasting, Inc. at Bison Turf.
  - f. Plains Art Museum at Wild Bill's Saloon.
  - g. Plains Art Museum at King Pin Casino (The Bowler).
  - h. Plains Art Museum at Big Top Bingo.
  - i. Plains Art Museum at Blue Wolf Casino (West Acres Bowl/Cactus Jack's).
  - j. Metro Sports Foundation at Mexican Village.
  - k. Metro Sports Foundation at Brewtus Clubhouse.
  - l. Metro Sports Foundation at Scheels Arena.
  - m. Red River Human Services Foundation at The Elks Lodge #260.
  - n. Red River Human Services Foundation at Sickies on 45th.
  - o. Red River Human Services Foundation at the Northern.
  - p. Fargo Metro Baseball Association at Specks Bar.
  - q. Fargo Metro Baseball Association at Empire Tavern.
  - r. Jon Greenley Amvets Post #7 at Amvets.
  - s. Jon Greenley Amvets Post #7 at Hi-Ho Burgers and Brews.
  - t. Boys and Girls Club of Red River Valley at Suite Shots.
  - u. Boys and Girls Club of Red River Valley at Fargo Billiards/Gastropub.
  - v. North Dakota Association for the Disabled, Inc. at O'Kelly's.
  - w. North Dakota Association for the Disabled, Inc. at Bulldog Tap.
  - x. North Dakota Association for the Disabled, Inc. at Cowboy Jack's.
9. Receive and file the current schedule of proposed uses for the American Rescue Plan Act funds and accept the final reconciliation of 2022 revenues and expenditures.
  10. Notice of Grant Award from the ND Department of Emergency Services, Division of Homeland Security for FY 2022 State Homeland Security Grant Program (CFDA #97.067).
  11. Application submission for the FY 2023 State Homeland Security Grant Program to fund physical security improvements at the Public Safety Building.
  12. Contracts and bonds for the following Projects:
    - a. No. PR-23-F1.
    - b. No. SR-23-A1.
    - c. No. SR-23-B1.
  13. Contract and bond for Improvement District No. AN-22-B1.
  14. ND Department of Transportation Cost Participation and Maintenance Agreement and concur with the low bid for a project on 19th Avenue North.
  15. Amendment (First) to Encroachment Agreement with Nicholas and Dawn M. Michels for property located at 2408 16th Avenue South.
  16. Encroachment Agreement with Park District of the City of Fargo for the Island Park Pool located at 616 1st Avenue South.
  17. Bid awards for Project No. NR-23-A1:
    - a. General construction contract to Key Contracting, Inc. in the amount of \$9,673,607.50.

- Page 3
- b. Electrical construction contract to Fusion Automation, Inc. in the amount of \$290,209.31.
  18. Permanent Easement (Water Main) with Matthew R. and Ashley N. Scherbenske for Project No. WA2254.
  19. Access Easement (Water Main) with Southeast Cass Water Resource District for Project No. WA2254.
  20. Access Easement with Fargo Public Schools for Project No. NR-23-A1.
  21. Permanent Easement (Storm Sewer) with 76th Street Holdings LLC for Improvement District No. BN-23-C1.
  22. Easement (Temporary Construction Easement) with Oak Grove Lutheran School for Improvement District No. BR-22-A0.
  23. Memorandum of Offer to Landowner for Permanent Easement (Street and Utility) and Easement (Temporary Construction Easement) with JASL, LLC for Improvement District No. BR-23-C1.
  24. Bid award to R & R Excavating, Inc. in the amount of \$2,947,619.97 for Improvement District No. BR-23-F1.
  25. Create Improvement District No. PN-23-E.
  26. Notice of Grant Award with the ND Department of Health and Human Services for ND LPH Funding Equity and prioritizing populations disproportionately affected by COVID-19 (CFDA #s 93.268 and 93.391).
  27. Purchase of Service Agreement with Northern Cass Public School District.
  28. Amendment to Purchase of Service Agreement with ND Department of Health and Human Services, Behavioral Health Division.
  29. Sole Source Procurement with Idemia Identity and Security USA, LLC for a LiveScan portable fingerprint machine and Application for Appropriation from Civil Asset Forfeiture Fund for payment (SSP23085).
  30. Solid Waste Management Agreement for Private Haulers in the City of Fargo with High Flying Junk.
  31. Bid award to CC Steel, Inc. in the amount of \$93,300.00 for Project No. WA2217.
  32. Bills.

**REGULAR AGENDA:**

33. **RESIDENT COMMENTS (Fargo residents will be offered 2.5 minutes for comment with a maximum of 30 minutes total for all resident comments. Residents who would like to address the Commission, whether virtually or in person, must sign-up at [FargoND.gov/VirtualCommission](https://FargoND.gov/VirtualCommission)).**

34. **PUBLIC HEARING** – CONTINUED to 5/15/23 - Dakota Commerce Center North Addition (4201 County Road 81 North and 5100 37th Street North); approval recommended by the Planning Commission on 8/2/22 and 10/4/22:
  - a. Zoning Change from AG, Agricultural to LI, Limited Industrial.
  - b. 1st reading of rezoning Ordinance.
  - c. Plat of Dakota Commerce Center North Addition.
  
35. **PUBLIC HEARING** – CONTINUED to 5/15/23 - Petition for Annexation of property in the Northeast Quarter of Section 15, Township 140 North, Range 49 West containing 112.14 acres, more or less.
  
36. **PUBLIC HEARING** – CONTINUED to 5/15/23 - Application filed by Corvent Medical, Inc. for a property tax exemption for a project to be located at 400 45th Street South, Suite 400 which the applicant will use for the manufacturing of medical ventilators, warehousing ventilators and accessories used with ventilators.
  
37. **PUBLIC HEARING** – CONTINUED to 6/12/23 - Valley View Estates Fourth Addition (3606-4890 Decorah Way South); approval recommended by the Planning Commission on 2/7/23; continued from the 4/3/23 Regular Meeting:
  - a. Zoning Change from SR-4, Single-Dwelling Residential and P/I, Public and Institutional to SR-4, Single-Dwelling Residential with a C-O, Conditional Overlay.
  - b. 1st reading of rezoning Ordinance.
  - c. Plat of Valley View Estates Fourth Addition.
  
38. Presentation of the 2022 Fire Department Annual Report.
  
39. Recommendation for awarding the bids for the construction of Fire Station No. 8 (ITB23050).
  
40. Recommendation to approve the plans for the NP Avenue Parking Garage.
  
41. Legislative Update.
  
42. Liaison Commissioner Assignment Updates.

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

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

**CITY ATTORNEY**  
Nancy J. Morris

①

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

April 27, 2023

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

**RE: An Ordinance Amending Section 21.1-0102 Relating to the International Residential Code**

Dear Commissioners,

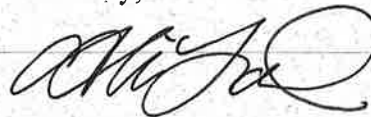
Enclosed for your approval is an Ordinance amending Section 21.1-0102 of the International Residential Code. This amendment adopts certain passive radon mitigation system requirements for new residential structures. The proposed requirements were reviewed and approved by the Board of Appeals, and at its April 3<sup>rd</sup>, 2023 meeting, the Board of City Commissioners directed the City Attorney's Office to revise the ordinance.

As a result, I am remitting to you for your approval an Ordinance amending Section 21.1-0102 of the Fargo Municipal Code.

**Suggested Motion:** I move to receive and file an Ordinance amending Section 21.1-0102 of Article 21.1-01 of Chapter 21.1 of the Fargo Municipal Code Relating to the International Residential Code and to place the Ordinance on for first reading at the next regularly-scheduled city commission meeting.

Please feel free to contact Shawn Ouradnik if you have any questions or concerns.

Sincerely,



Alissa R. Farol  
Assistant City Attorney

Enc.

cc: Shawn Ouradnik, Inspections Director

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

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

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AN ORDINANCE AMENDING SECTION 21.1-0102 OF ARTICLE 21.1-01  
OF CHAPTER 21.1 OF THE FARGO MUNICIPAL CODE  
RELATING TO THE INTERNATIONAL RESIDENTIAL CODE

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

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

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

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

NOW, THEREFORE,

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

Section 1. Amendment.

Section 21.1-0102 of Article 21.1-01 of Chapter 21.1 of the Fargo Municipal Code is hereby amended to added the following:

\* \* \* \*

Appendix AF Radon Control Methods of the International Residential Code as adopted in Section 21.1-0101 of the Fargo Municipal Code is hereby deleted in its entirety.

Section 331 Radon Control Methods is hereby added to Chapter 3 of the International Residential Code as adopted in Section 21.1-0101 as follows:

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

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

**SECTION 331**

**RADON CONTROL METHODS**

**SECTION R331 SCOPE**

**R331.1 General.** This section contains requirements for new construction in jurisdictions where radon-resistant construction is required.

**SECTION R331.2 DEFINITIONS**

**R331.2.1 General.** For the purpose of these requirements, the terms used shall be defined as follows:

**DRAIN TILE LOOP.** A continuous length of drain tile or perforated pipe extending around all or part of the internal or external perimeter of a basement or crawl space footing.

**RADON GAS.** A naturally occurring, chemically inert, radioactive gas that is not detectable by human senses. As a gas, it can move readily through particles of soil and rock, and can accumulate under the slabs and foundations of homes where it can easily enter into the living space through construction cracks and openings.

**SOIL-GAS-RETARDER.** A continuous membrane of 6-mil (0.15 mm) polyethylene or other equivalent material used to retard the flow of soil gases into a building.

**SUBMEMBRANE DEPRESSURIZATION SYSTEM.** A system designed to achieve lower submembrane air pressure relative to crawl space air pressure by use of a vent drawing air from beneath the soil-gas-retarder membrane.

**SUBSLAB DEPRESSURIZATION SYSTEM (Active).** A system designed to achieve lower subslab air pressure relative to indoor air pressure by use of a fan-powered vent drawing air from beneath the slab.

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

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

1           **SUBSLAB DEPRESSURIZATION SYSTEM (Passive).** A system designed to  
2 achieve lower subslab air pressure relative to indoor air pressure by use of a vent  
3 pipe routed through the conditioned space of a building and connecting the subslab  
4 area with outdoor air, thereby relying on the convective flow of air upward in the  
5 vent to draw air from beneath the slab.

6           **SECTION R331.3 REQUIREMENTS**

7           **R331.3.1 General.** The following construction techniques are intended to resist radon  
8 entry and prepare the building for post-construction radon mitigation, if necessary (see  
9 Figure R331.3.1). These techniques are required in areas where designated by the  
10 jurisdiction. All potential entry routes, including but not limited to joints, penetrations,  
11 gaps, cracks, and openings, shall be cleared of debris and sealed.

12           **R331.3.2 Subfloor preparation.** A layer of gas-permeable material shall be placed under  
13 all concrete slabs and other floor systems that directly contact the ground and are within  
14 the walls of the living spaces of the building, to facilitate future installation of a subslab  
15 depressurization system, if needed. The gas-permeable layer shall consist of one of the  
16 following:

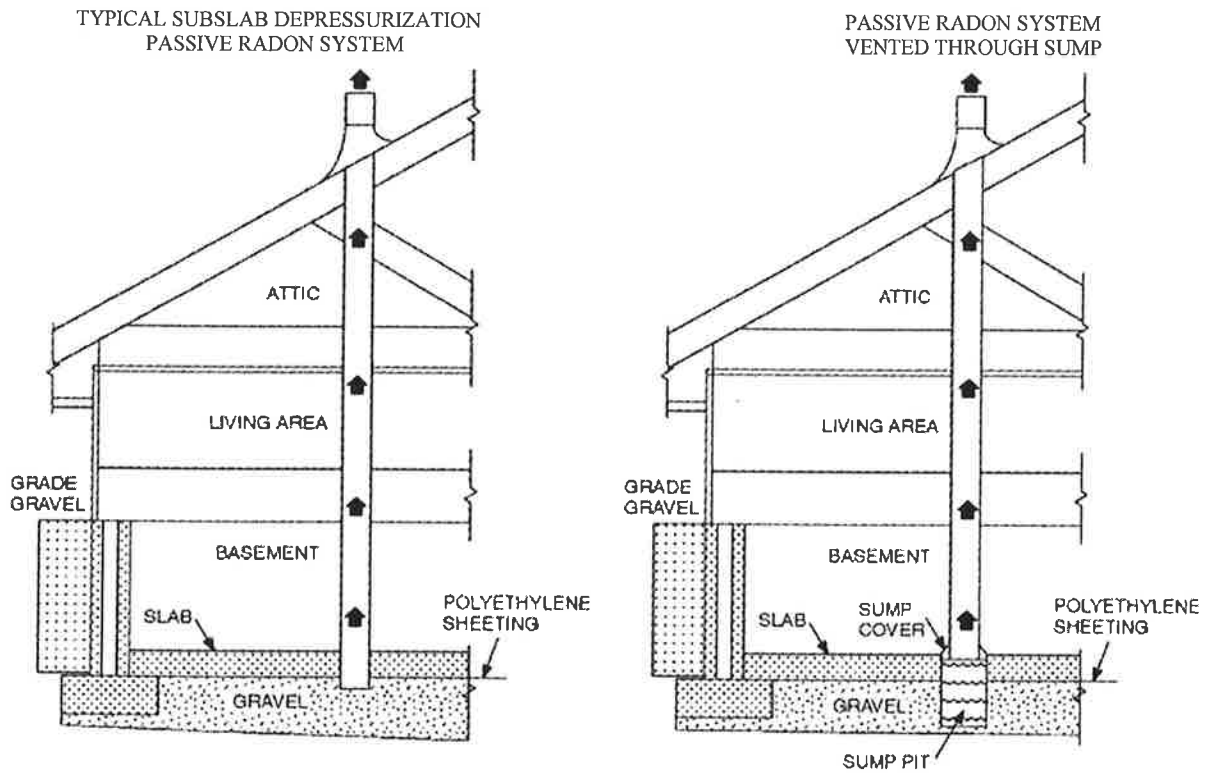
- 17           1. A uniform layer of clean aggregate, not less than 4 inches (102 mm) thick. The  
18 aggregate shall consist of material that will pass through a 2-inch (51 mm) sieve  
19 and be retained by a ¼-inch (6.4 mm) sieve.
- 20           2. A uniform layer of sand (native or fill), not less than 4 inches (102 mm) thick,  
21 overlain by a layer or strips of geotextile drainage matting designed to allow the  
22 lateral flow of soil gases.
- 23           3. Other materials, systems or floor designs with demonstrated capability to permit  
depressurization across the entire subfloor area.



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

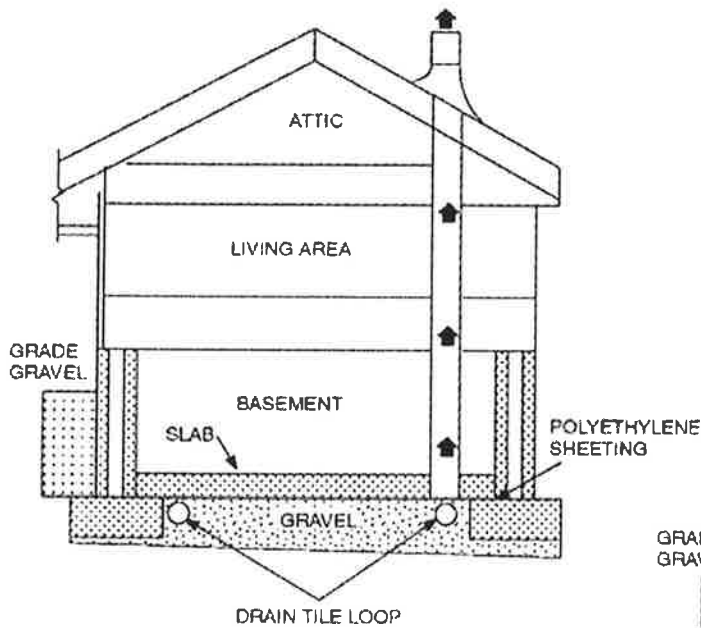
**FIGURE R331.3.1**  
**RADON-RESISTANT CONSTRUCTION DETAILS FOR FOUR FOUNDATION TYPES**



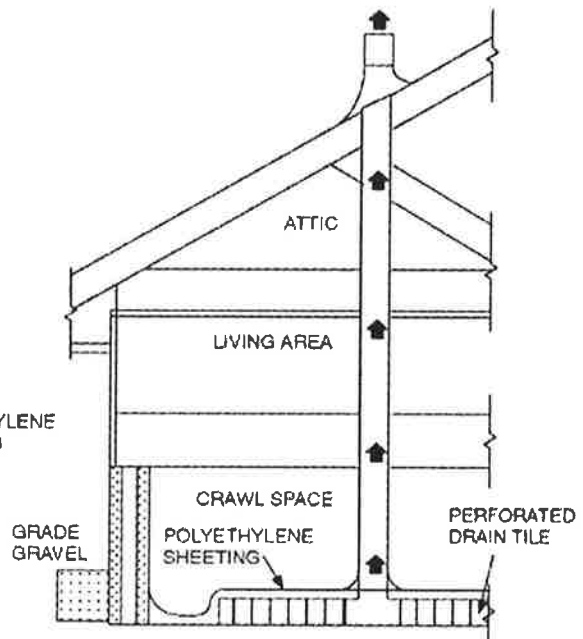
OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

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

PASSIVE RADON SYSTEM USING  
DRAIN TILE LOOP



SUBMEMBRANE DEPRESSURIZATION SYSTEM  
FOR CRAWL SPACE



**R331.3.3 Passive submembrane depressurization system.** In buildings with crawl space foundations, the following components of a passive submembrane depressurization system shall be installed during construction.

**Exception:** Buildings in which an approved mechanical crawl space ventilation system or other equivalent system is installed.

**R331.3.3.1 Ventilation.** Crawl spaces shall be provided with vents to the exterior of the building. The minimum net area of ventilation openings shall comply with Section R408.1.

**R331.3.3.2 Soil-gas-retarder.** The soil in crawl spaces shall be covered with a continuous layer of minimum 6-mil (0.15 mm) polyethylene soil-gas-retarder. The ground cover shall be lapped not less than 12 inches (305 mm) at joints and shall extend to all foundation walls enclosing the *crawl space* area.

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**R331.3.3.3 Vent pipe.** A plumbing tee or other approved connection shall be inserted horizontally beneath the sheeting and connected to a 3- or 4-inch-diameter (76 or 102 mm) fitting with a vertical vent pipe installed through the sheeting. The vent pipe shall be extended up through the building floors, and terminate not less than 12 inches (305 mm) above the roof in a location not less than 10 feet (3048 mm) away from any window or other opening into the conditioned spaces of the building that is less than 2 feet (610 mm) below the exhaust point, and 10 feet (3048 mm) from any window or other opening in adjoining or adjacent buildings.

**R331.3.4 Passive subslab depressurization system.** In basement or slab-on-grade buildings, the following components of a passive subslab depressurization system shall be installed during construction.

**R331.3.4.1 Vent pipe.** A minimum 3-inch-diameter (76 mm) ABS, PVC or equivalent gastight pipe shall be embedded vertically into the subslab aggregate or other permeable material before the slab is cast. A “T” fitting or equivalent method shall be used to ensure that the pipe opening remains within the subslab permeable material. Alternatively, the 3-inch (76 mm) pipe shall be inserted directly into an interior perimeter drain tile loop or through a sealed sump cover where the sump is exposed to the subslab aggregate or connected to it through a drainage system.

The pipe shall be extended up through the building floors, and terminate not less than 12 inches (305 mm) above the surface of the roof in a location not less than 10 feet (3048 mm) away from any window or other opening into the conditioned spaces of the building that is less than 2 feet (610 mm) below the exhaust point, and 10 feet (3048 mm) from any window or other opening in adjoining or adjacent buildings.

**R331.3.4.2 Multiple vent pipes.** In buildings where interior footings or other barriers separate the subslab aggregate or other gas-permeable material, each area shall be fitted with an individual vent pipe. Vent pipes shall connect to a single vent that terminates above the roof or each individual vent pipe shall terminate separately above the roof.

**R331.4 Vent pipe drainage.** Components of the radon vent pipe system shall be installed to provide positive drain-age to the ground beneath the slab or soil-gas-retarder.

OFFICE OF THE CITY ATTORNEY  
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1       **R331.5 Vent pipe accessibility.** Radon vent pipes shall be accessible for future fan  
2 installation through an attic or other area outside the habitable space.

3               **Exception:** The radon vent pipe need not be accessible in an attic space where an  
4 approved roof-top electrical supply is provided for future use.

5       **R331.6 Vent pipe identification.** Exposed and visible interior radon vent pipes shall be  
6 identified with not less than one label on each floor and in accessible attics. The label shall  
7 read: "Radon Reduction System."

8       **R331.7 Combination foundations.** Combination basement/crawl space or slab-on-  
9 grade/crawl space foundations shall have separate radon vent pipes installed in each type  
10 of foundation area. Each radon vent pipe shall terminate above the roof or shall be  
11 connected to a single vent that terminates above the roof.

12       **R331.8 Building depressurization.** Joints in air ducts and plenums in unconditioned  
13 spaces shall meet the requirements of Section M1601. Thermal envelope air infiltration  
14 requirements shall comply with the energy conservation provisions in Chapter 11. Fire  
15 blocking shall meet the requirements contained in Section R302.11.

16       **R331.9 Power source.** To provide for future installation of an active submembrane or  
17 subslab depressurization system, an electrical circuit terminated in an approved box shall  
18 be installed during construction in the attic or other anticipated location of vent pipe fans.  
19 An electrical supply shall be accessible in anticipated locations of system failure alarms.

20       Section 3. Penalty.

21               A person who willfully violates this ordinance is guilty of an infraction. Every person,  
22 firm or corporation violating an ordinance which is punishable as an infraction shall be punished  
23 by a fine not to exceed \$1,000.00; the court to have power to suspend said sentence and to revoke  
the suspension thereof.

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FARGO, NORTH DAKOTA

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Section 4. Effective Date.

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

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

(SEAL)  
Attest:

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

First Reading:  
Second Reading:  
Final Passage:  
Publication:

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

2

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

1  
2 AN ORDINANCE AMENDING SECTION 25-1509.2 OF ARTICLE 25-15  
3 OF CHAPTER 25 OF THE FARGO MUNICIPAL CODE  
4 RELATING TO RESTRICTIONS ON SALE TO OBVIOUSLY INTOXICATED PERSON  
5 AND

6 AN ORDINANCE AMENDING SECTION 25-1512 OF ARTICLE 25-15  
7 OF CHAPTER 25 OF THE FARGO MUNICIPAL CODE  
8 RELATING TO LICENSES—TERMINATION, SUSPENSION, REVOCATION, AND  
9 SANCTIONS

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

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

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

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

19 NOW, THEREFORE,

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

21 Section 1. Amendment.

22 Section 25-1509.2 of Article 25-15 of Chapter 25 of the Fargo Municipal Code is hereby  
23 amended to read as follows:

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

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

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3 Section 25-1509.2. - Restrictions on sale to obviously intoxicated or impaired persons.

4 No licensee, or partner, principal, agent, or employee of any licensee shall sell, serve, or  
5 furnish alcoholic beverages to, or allow possession ~~and~~ or consumption of alcoholic  
6 beverages on the licensed premises, by any person who is or has become intoxicated ~~and/or~~  
7 impaired by alcohol or drugs ~~incapacitated by the consumption of alcoholic beverages~~. A  
8 person may be considered to be obviously intoxicated or impaired when it can be plainly  
9 determined by appearance, conduct, ~~and/or~~ demeanor. The term "obviously intoxicated or  
10 impaired" shall mean that the person's obvious intoxication or impairment be reasonably  
11 discernible or evident to a person of ordinary experience." Such indicators of intoxication  
12 or impairment may include, but are not limited to, a combination of any of the following  
13 types of conditions:

- 14 A. Problems with, ~~balance,~~ or inability to maintain, balance, i.e., stumbling, swaying,  
15 staggering gait, bumping into furniture while walking, falling against bar or off  
16 stool, resting head on bar;
- 17 B. Ineffective muscular coordination, i.e., spilling and/or knocking over drinks, unable  
18 to pick up change ~~and the like~~;
- 19 C. Delayed responses, rambling, ~~D~~ disorientation, and mental confusion ~~as to~~  
20 locations, date, names and the like;
- 21 D. Strong smell of alcohol;
- 22 E. Unusual or distorted speech, i.e., slurred, thick tongue, uncontrollable voice pitch,  
23 muttering, ~~and the like~~;
- 24 F. Bloodshot, watery, and/or glassy eyes, flushed face, ~~and the like~~;
- 25 G. Condition of clothes and hair, i.e., soiled clothing, urinated upon clothing,  
disheveled and the like;

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H. Unusual behavior, i.e., vomiting, profanity, crying, hiccups, fighting, loud, boisterous, obnoxious behavior, sleeping or unconscious;

I. Anxious, scratching, paranoia, dry mouth, or dilated pupils.

Violation of this ordinance may result in sanctions as prescribed in Section 25-1512(F)(H) and (I) hereinafter. ~~Sanctions for a licensee selling, serving, or furnishing alcoholic beverages shall require a sale and a showing that the police officer observed and determined the person to be intoxicated. Sanctions for a licensee allowing the consumption of alcoholic beverages on the licensed premises shall require a showing that the police officer observed and determined the intoxicated person to be intoxicated on the licensed premises, as well as a showing that the intoxicated person was allowed to consume alcoholic beverages on the licensee's premises. Violations may be established with direct and indirect evidence.~~

~~If a licensee, partner, principal, agent or employee of any licensee shall contact law enforcement to report the presence of an obviously intoxicated patron or to obtain law enforcement assistance in removing an obviously intoxicated patron, a rebuttable presumption is created and sanctions shall not be imposed. This presumption may be overcome, however, by evidence that the licensee, partner, principal, agent or employee of any licensee did not contact law enforcement in good faith.~~

Section 2. Amendment.

Section 25-1512 of Article 25-15 of Chapter 25 of the Fargo Municipal Code is hereby amended to read as follows:

\* \* \* \*

~~F. Administrative penalties for violation of section 25-1509.2 regarding sale to an intoxicated person or person incapacitated by consumption of alcoholic beverages are as follows:~~

~~1. First offense: Warning. There will also be mandatory server training refresher course within 30 days after the offense.~~



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~~2. Second offense: \$1,000 monetary penalty, plus one day suspension of alcoholic beverage license to be determined by the liquor control committee. For Class "AB", "A" and "B" license holders, one day suspension of license (liquor sales only) with the date selected by licensee within thirty (30) days of either occurrence of the offense or final decision upon appeal. For all other classes of liquor licenses, two days suspension of liquor sales only with the dates selected by licensee within thirty (30) days of either occurrence of the offense or final decision on appeal.~~

~~3. Third offense: \$2,000 monetary penalty, plus a three day suspension of alcoholic beverage license to be determined by liquor control committee. For Class "AB", "A" and "B" license holders, three days in one week suspension of liquor license (liquor sales only) on consecutive dates chosen by licensee requiring the business to be closed. For all other classes of liquor licenses, six consecutive days suspension of liquor sales only. Such suspension shall be within thirty (30) days of either the occurrence of the offense or final decision upon appeal.~~

~~4. Fourth offense: \$2,000 monetary penalty, plus a four day day suspension of alcoholic beverage license to be determined by liquor control committee. For Class "AB", "A" and "B" license holders, four days in one week suspension of liquor license (liquor sales only) on consecutive dates chosen by licensee requiring the business to be closed. For all other classes of liquor licenses, eight consecutive days suspension of liquor sales only. Such suspension shall be within thirty (30) days of either the occurrence of the offense or final decision upon appeal.~~

~~5. Fifth offense: \$2,000 monetary penalty, plus a 10 day suspension, and a possible revocation of alcoholic beverage license to be determined by liquor control committee. For Class "AB", "A" and "B" license holders, ten days suspension of liquor license (liquor sales only) on consecutive dates chosen by licensee requiring the business to be closed. For all other classes of liquor licenses, twenty consecutive days suspension of liquor sales only. Such suspension shall be within thirty (30) days of either the occurrence of the offense or final decision upon appeal.~~

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

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

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2 The level of offenses shall be determined by reference to a 18-month period from the first  
3 offense by licensee. By way of illustration, a second offense occurring more than 18-  
4 months after a first offense would then be deemed a first offense.

5 Any suspension of alcoholic beverage license provided for herein shall relate to liquor sales  
6 only so that food sales could, if applicable, continue on the licensed premises.

7  
8 GF. Administrative penalties for violation of section 25-1509.2 regarding allowing  
9 consumption of alcoholic beverages on the licensed premises by any intoxicated  
10 person are as follows:

- 11 1. ~~First offense: Warning. There will also be mandatory server training~~  
12 ~~refresher course within 30 days after the offense.~~
- 13 2. ~~Second~~ First offense: \$500 ~~monetary~~ administrative penalty.
- 14 3. ~~Third~~ Second offense: \$1,000 ~~monetary~~ administrative penalty, plus a one-  
15 day suspension of alcoholic beverage license to be determined by liquor  
16 control ~~committee~~ board. For Class "AB", "A" and "B" license holders, one  
17 day suspension of license (liquor sales only) with the date selected by  
18 licensee ~~within thirty (30) days of either occurrence of the offense or final~~  
19 ~~decision upon appeal. Such suspension shall be within thirty (30) days of~~  
20 either the occurrence of the offense or final decision upon appeal.
- 21 4. ~~Fourth~~ Third offense: \$1,500 ~~\$2,000~~ ~~monetary~~ administrative penalty, plus  
22 a two-day day suspension of alcoholic beverage license to be determined by  
23 liquor control ~~committee~~ board. For Class "AB", "A" and "B" license  
holders, two days in one week suspension of liquor license (liquor sales  
only) on consecutive dates chosen by licensee requiring the business to be  
closed. ~~For all other classes of liquor licenses, four consecutive days~~  
~~suspension of liquor sales only.~~ Such suspension shall be within thirty (30)  
days of either the occurrence of the offense or final decision upon appeal.

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- 1  
2 5. ~~Fifth~~ Fourth offense: Revocation, \$2,000 monetary penalty, plus a four-day  
3 suspension, and a possible revocation of alcoholic beverage license to be  
4 determined by liquor control committee. For Class "AB", "A" and "B"  
5 license holders, four days in one week suspension of liquor license (liquor  
6 sales only) on consecutive dates chosen by licensee requiring the business  
7 to be closed. For all other classes of liquor licenses, eight consecutive days  
8 suspension of liquor sales only. Such suspension shall be within thirty (30)  
9 days of either the occurrence of the offense or final decision upon appeal.

10 Any suspension of alcoholic beverage license provided for herein shall relate to liquor sales  
11 only so that food sales could, if applicable, continue on the licensed premises.

12 The level of offense shall be determined by reference to an 18-month period from the first  
13 offense by licensee. A second offense occurring more than 18-months after a first offense  
14 would be deemed a first offense.

15 It is the intent of this ordinance that no multiple offenses shall be deemed to have occurred  
16 from a single incident. For example, on an officer contact with the licensed premises, if  
17 there should be two or more offenses involving intoxicated persons on the premises, the  
18 same will constitute one offense and not multiple offenses. Any subsequent officer contact  
19 with the establishment at a different time may constitute a separate offense.

20 Section 3. Penalty.

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

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FARGO, NORTH DAKOTA

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Section 4. Effective Date.

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

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

Attest:

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

First Reading:  
Second Reading:  
Final Passage:  
Publication

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

3

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

1 AN ORDINANCE AMENDING SECTION 25-1501 OF ARTICLE 25-15  
2 OF CHAPTER 25 OF THE FARGO MUNICIPAL CODE,  
3 RELATING TO DEFINITIONS;

4 AND

5 AN ORDINANCE AMENDING SECTION 25-1506 OF ARTICLE 25-15  
6 OF CHAPTER 25 OF THE FARGO MUNICIPAL CODE,  
7 RELATING TO LICENSES – CLASSIFICATIONS;

8 AND

9 AN ORDINANCE AMENDING SECTION 25-1507 OF ARTICLE 25-15  
10 OF CHAPTER 25 OF THE FARGO MUNICIPAL CODE,  
11 RELATING TO LICENSE – FEES – SEASONAL LICENSES

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

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

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

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

21 NOW, THEREFORE,

22 Be It Ordained by the Board of City Commissioners of the City of Fargo:  
23

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

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

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Section 1. Amendment.

Section 25-1501 of Article 25-15 of Chapter 25 of the Fargo Municipal Code is hereby amended as follows:

\* \* \* \*

29. "Wine bar" shall mean an establishment serving primarily on-sale wine and sparkling wine, with incidental on-sale beer, non-alcoholic beverages and food sales, but does not include any sale of alcohol or off-sale wine, sparkling wine, or beer. Such establishment shall offer patrons wines by the glass, flight, bottle and taste, and will allow for presentation of beverages at the table, as well as at the bar. A "wine bar" shall also be focused on education of wines from around the world; may occasionally offer primarily acoustical live performances in the genre of jazz, blues, and classical music; and shall be a non-smoking.

30. "Seasonal license" shall mean a period of time shorter than a year and tied to a specific activity or purpose.

Section 2. Amendment.

Section 25-1506 of Article 25-15 of Chapter 25 of the Fargo Municipal Code is hereby amended as follows:

\* \* \* \*

L. Class FA-GOLF. A Class "FA-GOLF" license shall authorize the licensee to sell "on-sale" only, subject to the following restrictions and conditions:

1. A Class "FA-GOLF" licensee may sell alcoholic beverages as the food and beverage concessionaire at a golf course which also holds a restaurant license or permit pursuant to the provisions of article 13-04 of the Fargo Municipal

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

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

Code and which derives a percentage (hereinafter stated) of its gross receipts from the sale of prepared meals and not alcoholic beverages. A recipient of "FA-GOLF" license must derive at least 25% of its gross receipts from the sale of prepared meals and food products and not alcoholic beverages during the months ~~from April through October of each year~~ when full golf course operations are open. During the remaining months of the year, said recipient must derive 50% or more of its gross receipts from the sale of prepared meals and not alcoholic beverages. It is the intention of this restriction that the purpose of a "FA-GOLF" license is to allow the sale of alcoholic beverages as an adjunct to the operation of the golf course and restaurant and not that of operating a full-time liquor establishment. Further, such licensee must be located at and serve a golf course of at least nine (9) or more holes. Said golf course must be USGA approved.

\* \* \* \*

Section 3. Amendment.

Section 25-1507 of Article 25-15 of Chapter 25 of the Fargo Municipal Code is hereby amended as follows:

\* \* \* \*

H. Class "F", "FA-GOLF", "G", "H", "I", and "N" licenses may be issued as seasonal licenses ~~for minimum periods of six months~~. Application for such licenses shall be made prior to June 30 each year and the application shall indicate the months in which the license is to be effective. Fees for such licenses shall be prorated to the nearest fractional month of the effective period and payment therefor shall accompany the application.

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Section 4. Effective Date.

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

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

Attest:

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

First Reading:  
Second Reading:  
Final Passage:  
Publication:



OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

9

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

1 AN ORDINANCE REPEALING SECTION 25-1504.3 OF ARTICLE 25-15  
2 OF CHAPTER 25 OF THE FARGO MUNICIPAL CODE  
3 RELATING TO MANDATORY MEETING

4 AND

5 AN ORDINANCE AMENDING SECTION 25-1504.4 OF ARTICLE 25-15  
6 OF CHAPTER 25 OF THE FARGO MUNICIPAL CODE RELATING TO  
7 ADDITIONAL REQUIREMENTS FOR CLASS FA-ENTERTAINMENT LICENSES

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

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

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

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

17 NOW, THEREFORE,

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

19 Section 1. Repeal.

20 Section 25-1504.3 of Article 25-15 of Chapter 25 of the Fargo Municipal Code is hereby  
21 repealed in its entirety.  
22  
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OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

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Section 2. Amendment.

Section 25-1504.4 of Article 25-15 of Chapter 25 of the Fargo Municipal Code is hereby amended to read as follows:

25-1504.4. - Renewal of combined food/business proceeds/liquor licenses.

In addition to the requirements of Articles 25-1504, 25-1504.1, and 25-1504.2 and ~~25-1504.3~~, Renewal of combined food/business proceeds/liquor licenses. - All holders of Class FA-ENTERTAINMENT licenses shall also be required to file with the City, with the request for renewal of the license, an opinion by certified public accountant indicating that he or she has audited the books and records of the licensee and that the licensee's gross revenue from the sale of food and the business income is equal to or exceeds the gross revenue from the sale of alcoholic beverages for the most recent 12 month period. At the option of the licensee, in lieu of a certified public accountant's opinion, licensee may request from the State Tax Commissioner's office and furnish to the City Auditor's office a certified copy of licensee's sales tax returns for the most recent 12 month period prior to renewal.

Notwithstanding furnishing of such sales tax returns, the City may, in its discretion, require licensee to comply with the requirement that an opinion by a certified public accountant be furnished as aforesaid. Any costs incurred in connection with the requirements of this section shall be the sole responsibility of the licensee. The City may also, or any other time during the year, in its discretion, conduct an independent investigation of the sales ratio of food and business receipts to alcoholic beverages and for such purpose, the licensee agrees to allow inspection of its business records. In the event that the results of an independent investigation by the City results in a determination that the sale of food and business income does not equal or exceed the sale of alcoholic beverages, the licensee shall be required to pay all costs of such investigation.

As part of the licensee's obligation that the licensee derive more gross receipts from the sale of prepared meals, the sale of food and business receipts than from the sale of alcoholic beverages, the licensee shall retain and keep appropriate business records concerning purchase of food, business income and alcoholic beverages and sales receipts for the same. Such business records shall be organized and maintained according to standard business practices and in such form as to be auditable for purposes of confirming that the licensee satisfies the sales ratio of food and

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business income to alcoholic beverages. A licensee who fails to maintain the business records required by this section, or to otherwise make such records available to the City upon reasonable request to do so, is subject to the penalties listed in 25-1512(D)(F).

Section 3. Effective Date.

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

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

Attest:

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

First Reading:  
Second Reading:  
Final Passage:  
Publication

**CITY ATTORNEY**

Nancy J. Morris

**ASSISTANT CITY ATTORNEYS**

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

April 27, 2023

5

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

**RE: Approval of the Settlement Agreement and Release of All Claims between Northstar Property Partners, Inc., John Bultman and the City of Fargo**

Dear Mayor and Commissioners,

Enclosed for your approval is Settlement Agreement and Release of All Claims between Northstar Property Partners, Inc., John Bultman and the City of Fargo regarding Mr. Bultman's automotive repair shop located at 1142 11<sup>th</sup> Street South, a residential property owned by Northstar.

As you may recall, in early February our office received a letter from attorney Erica Smith Ewing, on behalf of Mr. Bultman, contending that the City's actions to cease Mr. Bultman's automotive repair business by March 30, 2023 was a violation of state and federal laws and infringed upon his rights. While the City disagrees, your Board gave the authority to negotiate an amicable resolution. Northstar is in agreement with these terms as they apply to their property and tenant, Mr. Bultman.

Presented for your consideration and approval is a negotiated Settlement Agreement and Release of All Claims authorizing Mr. Bultman to continue his automotive repair business until August 1, 2023, subject to specific terms and conditions.

**Suggested Motion:** I move to approve the Settlement Agreement and Release of All Claims between the City of Fargo, Northstar Property Partners, Inc., and John Bultman.

Please feel free to contact our office if there are any questions, comments or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read 'Alissa R. Farol', written in a cursive style.

Alissa R. Farol  
Assistant City Attorney

Enc.

cc:

Dr. Timothy J. Mahoney, Mayor  
Shawn Ouradnik, Inspections Director  
Mark Williams, Assistant Planning Director  
Michael Redlinger, City Administrator

**SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS**

This Settlement Agreement and Release (hereinafter "Agreement") is made and entered into by and between the **CITY OF FARGO** (hereinafter "City"), a North Dakota municipal corporation, whose address is 225 4<sup>th</sup> Street North, Fargo, ND 58102, and **NORTHSTAR PROPERTY PARTNERS, INC.**, (hereinafter "Owner"), a North Dakota corporation, whose address is 106 South Woodcrest Drive North, Fargo, ND 58102, and **JOHN BULTMAN** (hereinafter "Tenant"), whose address is 1142 11<sup>th</sup> Street North, Fargo, ND 58102.

The above-named parties shall be collectively referred to as the "Parties."

**RECITALS**

- A. Tenant was granted a Special Use Permit (hereinafter "SUP") by the City's Planning Commission on March 14, 1984, which was recorded with the Cass County Recorder's Office as Doc. No. 614891 (attached hereto as Attachment A). The SUP permitted Tenant to operate a "small auto repair shop" on his property located at 1142 11<sup>th</sup> Street North, Fargo, ND 58102 (hereinafter "Subject Property"). The SUP was granted provided that certain conditions were strictly followed, which included: (1) access to garage (shop) will be from the alley; (2) work will be done in the garage between the hours of 7:30 a.m. to 6:30 p.m.; (3) no other employees will be working on the premises; (4) no body work and painting will be done on premises; and (5) there will be no stacking of auto's in the alley. At this time, Tenant was the owner of Subject Property.
  
- B. At the City's Planning Commission's meeting on April 8, 1992, a hearing was held for the purpose of considering a request from then-Neighboring Property owner, Tenant, for a SUP that would allow a 3-plex rental unit certain additional parking allowances and additional parking for Tenant's business at 1146 11<sup>th</sup> Street North, Fargo, ND 58102 (hereinafter "Neighboring Property"). The SUP was granted provided that certain conditions were strictly followed, which included terms such as (1) six parking spaces will be provided for the 3-plex, the remaining three spaces will be used for the business; (2) no additional signs for the business will be placed on the property or fence; (3) the parking lot will not be used as a used car lot; and (4) the Special Use Permit should have a three year sunset clause and be reviewed by the Planning Commission (meeting minutes attached hereto as Attachment B). The SUP was reviewed on October 11, 1995, and the Commission decided to place another three-year sunset clause on the Neighboring Property (meeting minutes attached hereto as Attachment C). The SUP was not reviewed any further, and the three-year sunset clause expired in October of 1995, invalidating the SUP.
  
- C. In 1998, the City adopted a new Land Development Code (LDC), which automatically converted any previously granted SUP, including Tenant's 1984 SUP, to a legal "non-conforming use." City claims that so long as the property was used in strict accordance with the conditions of an SUP, the SUP continued after the adoption of the LDC.

- D. In 2021, City claims it continued to receive citizen complaints regarding John's Repair (automotive repair) and Bass Auto Sales (automotive sales) on Subject and Neighboring Properties. City claims that through the complaint review process, City discovered that Subject Property was sold (from Tenant to Davis Estates, LLC in April of 2021, and then from Davis Estates, LLC to Owner in September of 2022), and was converted to a rental property, which City claims prompted further inspections to ensure compliance with the International Property Maintenance Code (IPMC), adopted by reference in Article 31-01 of the Fargo Municipal Code, and Chapter 20 of the Fargo Municipal Code relating to the LDC. City's Inspections Department claims that Subject Property was not being operated in a manner consistent with the 1984 SUP, including but not limited to, stacking of cars in the alley and numerous code violations. City contends that Tenant's SUP was no longer valid given he expanded and increased the use which was permitted by the SUP, therefore extinguishing the legal "non-conforming use" status. Tenant claims he has no first-hand knowledge of any citizen complaints and also disagrees with City's contentions regarding both the violations of the SUP and the extinguishment of the SUP. Tenant claims he still has a grandfathered right to continue using the property as an auto repair shop business that existed prior to the granting of the 1984 and 1992 SUPs. Nevertheless, Owner was provided notice and Tenant remedied some of the violations. Owner currently owns both the Subject and Neighboring Properties.
- E. On December 20, 2022, Tenant and his brother met with City's Mayor, Dr. Timothy J. Mahoney, and representatives of the Inspections and Planning & Development Departments to discuss Tenant's use of Subject Property. Tenant asked to be able to continue operating his repair business until he retired in August 2023, but the Mayor denied the request, and stated the operations of the repair shop had to be ceased by March 30, 2023, which would allow Tenant to complete outstanding repair work for current customers and after which Subject and Neighboring Properties would be brought into full compliance with the LDC and the Fargo Municipal Code. That day of the meeting, City's Inspections Department issued a Final Notice and Order to Davis Estates, LLC, and its successor Owner to bring Subject and Neighboring Properties into compliance no later than March 30, 2023 by ceasing any further vehicle repair, removing all alleged junk vehicles, and cleaning up and removing all vehicle parts, liquids, and equipment in the alley and around the properties (attached hereto as Attachment D).
- F. On February 6, 2023, an attorney providing assistance to the Tenant, Erica Smith Ewing, sent a letter to Assistant City Attorney Alissa Farol, contending that City's actions to shut down Tenant's business on March 30, 2023 was a violation of state and federal laws and infringed upon Tenant's grandfathering rights and constitutional rights. Ms. Smith Ewing urged City to rescind its Order and allow Tenant to continue operating his business (attached hereto as Attachment E). City vehemently disagrees, and began communicating with Ms. Smith Ewing for the purposes of resolving this matter in lieu of any potential litigation.

- G.** The Parties now desire to enter into this Agreement in order to resolve this dispute and provide for full settlement, resolution and discharge of all claims and defenses which any party may make, or could have made, by reason of the events described above and upon the terms and conditions set forth below.

**AGREEMENT**

- 1.0 The Parties agree, despite the City's position that Tenant does not have standing to challenge the finding of code violations, as follows:**
- 1.1** Owner and Tenant waive any and all claims, known or unknown, related to the code violations referenced in this agreement and further agree that all vehicle repair service operations shall cease no later than August 1, 2023 without further or additional actions necessary by the City to ensure code compliance.
- 1.2** Owner and Tenant agree to follow strict compliance with the conditions of the 1984 SUP, which include:
- 1.2.1** Access to garage (shop) will be from the alley.
- 1.2.2** Work will be done in the garage between the hours of 7:30 a.m. to 6:30 p.m.
- 1.2.3** No other employees will be working on the premises.
- 1.2.4** No body work and painting will be done on the premises.
- 1.2.5** There will be no stacking of autos in the alley.
- 1.3** Owner and Tenant further agree to strictly abide by the following conditions:
- 1.3.1** There shall only be three (3) customer vehicles total between Subject Property and Neighboring Property, and said customer vehicles shall never block the alley or any public right-of-way. In the event a fourth customer vehicle is parked on Subject or Neighboring Properties for repairs without Tenant's knowledge or permission, Tenant must inform the Inspections Director, Shawn Ouradnik at 701-476-4147 or [SOuradnik@FargoND.gov](mailto:SOuradnik@FargoND.gov) of the make, model, and license plate number of the customer vehicle which was parked. If Mr. Ouradnik is not available, Tenant must contact his authorized agent, Assistant Inspections Director, Christine Rose at 701-476-6753 or [CRose@FargoND.gov](mailto:CRose@FargoND.gov). So long as Tenant informs Mr. Ouradnik or Ms. Rose, there may be a fourth (4) customer vehicle on Subject or Neighboring Property on the condition that: (1) Tenant is actively attempting to move the vehicle off the property, and (2) the customer vehicle is removed within eight (8) hours from the time the Tenant has



knowledge of the vehicle. Otherwise, a fourth vehicle shall not be allowed, except pursuant to subsection 1.4, below.

In the event a customer vehicle is parked on Subject or Neighboring Properties without Tenant's knowledge or permission during the nighttime hours (10:00 p.m.– 6:00 a.m.), Tenant must notify Mr. Ouradnik or the Inspections Department in the same manner described above by 12:00 p.m. (noon) that day.

**1.3.2** Under no circumstance shall there be any vehicle repair work done outside of the garage on Subject or Neighboring Properties.

**1.3.3** No automotive sales shall occur on Subject and Neighboring Properties.

**1.3.4** There shall be no items outside of the garage on Subject or Neighboring Properties that relate to the business, including but not limited to, tires, vehicle parts, gas cans, any hazardous waste such as oil.

**1.3.5** Any signs relating to the business must be removed immediately and no further business signage may be erected. Tenant attests he has already removed the "Bass Auto" decal.

**1.3.6** Any and all hazardous waste and chemicals, items outside of the garage on Subject and Neighboring Properties that relate to the business, and additional vehicles over what is permitted in Section 1.3.1 must be removed immediately.

**1.4** In the event an unforeseen circumstance should occur, Owner and/or Tenant may contact the Inspections Director or Assistant Inspections Director, should Mr. Ouradnik be unavailable, in order to try to remedy the situation as soon as possible and to the best of the Parties' abilities. Owner and Tenant agree that any proposed remedy is up to the sole discretion of the Inspections Director or Assistant Inspections Director. Owner and Tenant further agree that contacting the Inspections Director or Assistant Inspections Director about an unforeseen event does not guarantee that a remedy will be reached, however the Inspections Director or Assistant Inspections Director will attempt to work with Owner and Tenant as practicably and reasonably as possible. The Parties also agree that a violation of this Agreement, including any code violations on Subject or Neighboring Properties, may still be pursued by City.

In the event an unauthorized fourth customer vehicle is on Subject or Neighboring Properties, and due to circumstances beyond his control, Tenant cannot remove the vehicle within the required eight (8) hour time limit as referenced in Section 1.3.1, Tenant shall contact the Inspections Director or Assistant Inspections Director, should Mr. Ouradnik be unavailable, to inform them of the circumstances and request additional time. The Inspections Director or Assistant Inspections Director

shall authorize Tenant to have an additional four (4) hours to remove the vehicle, which would give Tenant a total of twelve (12) hours to remove the vehicle. Any additional time beyond that of twelve (12) hours is up to the sole discretion of the Inspections Director or Assistant Inspections Director.

- 1.5 The Parties agree that if there is any violation of this Agreement, including any code violations on Subject or Neighboring Properties as determined by the Building Inspector, and after the notice procedure is followed under Section 7.0, Owner shall be subject to an administrative fee in the amount of \$25.00/day to compensate City for costs associated with enforcement of this Agreement; if the business continues to operate and full compliance with the terms of this Agreement are not accomplished after August 1, 2023, Owner shall be subject to an administrative fee in the amount of \$100.00/day.
- 1.6 Failure to comply with the terms of this Agreement shall be deemed a breach and enforcement will be immediately obtained in Cass County District Court, but does not preclude enforcement action in accordance with the Land Development Code or any other remedies available under the Fargo Municipal Code.

**2.0 Discharge and Release.**

- 2.1 In consideration of the settlement set forth above, Owner and Tenant, on behalf of itself, its owners, agents, officers, heirs, and assigns, hereby releases and forever discharges the City of Fargo and the Released Parties, identified as the City of Fargo its insurers, agents, representatives and employees, from any and all past or future claims, demands, obligations, actions, causes of action, rights, damages, costs, expenses and compensation of any nature whatsoever, which Owner and Tenant might have brought and which could, in any way, arise out of the events described in the Recitals above.
- 2.2 Owner and Tenant acknowledge and agree that the release set forth above is a waiver of all claims and defenses it might have asserted and a general release regarding causes of action they might have brought regarding the events described in the above Recitals including any obligation to pay damages, attorney's fees and costs. It is understood and agreed by the Parties that this settlement is a compromise reached in order to resolve the above-described action.
- 2.3 Owner and Tenant waive the provisions of N.D.C.C. § 9-13-02, or any similar or other applicable state or federal statute or regulation, which provides that a general release does not extend to claims a creditor does not know or suspect to exist in its favor at the time of executing the release, which if known by it, would have materially affected the settlement with the debtor.

**3.0 Representation of Comprehension of Document.**

In entering this Agreement, Owner and Tenant represent that they relied upon the advice of attorneys and advisors, who are attorneys and advisors of their own choice, concerning the legal consequences of this Agreement and have been completely read and explained to Owner and Tenant by attorneys; and that the terms of this Agreement are fully understood and voluntarily accepted by Owner and Tenant.

**4.0 Warranty of Capacity to Execute Agreement.**

Owner and Tenant represent and warrant that no other person or entity has, or has had, any interest in the causes of action referred to in this Agreement, except as otherwise set forth herein; that Owner and Tenant have the sole right and exclusive authority to execute this Agreement and that Owner and Tenant have not sold, assigned, transferred, conveyed or otherwise disposed of any of the ownership, premises or causes referred to in this Agreement.

**5.0 Governing Law.**

This Agreement shall be construed and interpreted in accordance with the laws of the State of North Dakota. Any litigation arising out of this Agreement will be venued in District Court in Cass County, North Dakota, and the Parties waive any objection to venue or personal jurisdiction.

**6.0 Notice.**

**6.1** In the event City has sufficient cause that Owner and Tenant have violated any terms of this Agreement or an alleged code violation exists, the following procedure shall be followed:

**6.1.1** City shall give Owner and Tenant seven (7) days' notice detailing the alleged violation. If the violation concerns the placement of a vehicle, City shall provide the license plate information of the vehicle. If the seven (7) day notice period has elapsed with no remedy of the violation, the \$25/day administrative fee imposed on Owner will occur retroactively from the date the violation is confirmed by City.

**6.1.2** City shall inform Owner and Tenant of the alleged violation both orally and in writing. Owner and Tenant agree to provide their respective mobile telephone numbers to Inspections Director, Shawn Ouradnik, so that an oral notification can be made. If City is unable to reach Owner and Tenant by calling their respective telephone numbers provided by Owner and Tenant, the City is to leave a voicemail on both the Owner and Tenants' phone. If a voicemail cannot be left for any reason, the City's shall leave a text message. If a text message cannot be left for any reason, City's attempt to call Owner and Tenant shall be deemed sufficient oral notice.

**6.1.3** Any notice required or permitted to be given or served by any party to this Agreement upon any other will be deemed given or served in accordance with the provisions of this Agreement if said notice is (a) delivered personally, or (b) mailed by regular U.S. Mail and also by U.S. certified mail, return receipt requested, postage prepaid, and in any case properly addressed as follows:

To City: City of Fargo  
ATTN: Shawn Ouradnik  
Inspections Department  
Fargo City Hall  
225 4<sup>th</sup> Street North  
Fargo, ND 58102

To Owner: Northstar Property Partners, Inc.  
106 S. Woodcrest Drive North  
Fargo, ND 58102

To Tenant: John Bultman  
1142 11<sup>th</sup> Street North  
Fargo, ND 58102

A Party's failure and/or refusal to claim the certified mailing will have no effect on whether the notice was provided to the Party. The City's mailing of the notice via both regular U.S. Mail and certified U.S. Mail shall constitute evidence of service.

**7.0 Entire Agreement and Successors in Interest.**

This Agreement contains the entire agreement between City, its insurers, employees, agents and representatives with regard to the matters set forth in it and shall be binding upon and inure to the benefit of the owners, officers, agents, executors, administrators, personal representatives, heirs, successors and assigns of each, and Owner, its owners, officers, agents, successors, heirs and assigns, and Tenants, his agents, successors, heirs and assigns.

**8.0 Amendments.**

No amendment, modification, or waiver of any condition, provision or term will be valid or of any effect unless made in writing signed by the Parties, or a duly authorized representative, and specifying with particularity the extent and nature of such amendment, modification or waiver.

**9.0 No Forbearance.**

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

**10.0 Severability.**

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

**11.0 Effectiveness.**

This Agreement shall become effective immediately following execution by each of the Parties.

**THIS IS A RELEASE. PLEASE READ BEFORE SIGNING.**

*[Signature pages to follow.]*

Dated this \_\_\_\_\_ day of May, 2023.

**CITY OF FARGO,**  
a North Dakota municipal corporation

---

Timothy J. Mahoney, M.D., Mayor

ATTEST:

---

Steven Sprague, City Auditor

Dated this 26 day of April, 2023.

**OWNER**

**NORTHSTAR PROPERTY PARTNERS, INC.,**  
a North Dakota corporation

By: 

Its: Owner

Dated this 26 day of April, 2023.

TENANT

  
\_\_\_\_\_  
John Bultman



**ATTACHMENT A**

RESOLUTION  
SPECIAL USE PERMIT

WHEREAS, it is not in the best interest of the City of Fargo that zoning on  
Lot 2, Block 1, College Addition be changed, and,  
(LEGAL DESCRIPTION)

WHEREAS, the restrictions imposed by existing zoning regulations create a hardship detrimental to the suitable use of the property, and,

WHEREAS, the Fargo Planning Commission has made its report concerning the attached application to the City Commission as required by Section 20-0322, Revised Ordinance, 1965 of the City of Fargo.

BE IT RESOLVED BY THE PLANNING COMMISSION, of Fargo, North Dakota, that a Special Use Permit be granted to operate a  
Small Auto Repair Shop  
(DESCRIPTION OF USE)

on the subject property with the following conditions:

- 1. Attached Drawings
- 2. Conditions Attached

BE IT FURTHER RESOLVED, that the permit will expire in accordance with the provisions of Section 20-0322, Revised Ordinances, 1965, if the use has not commenced within one year. This Special Use Permit shall be recorded with the County Register of Deeds upon approval by the City Commission. Failure to record the Special Use Permit under the provisions of Section 20-0323 may result in a penalty being imposed.

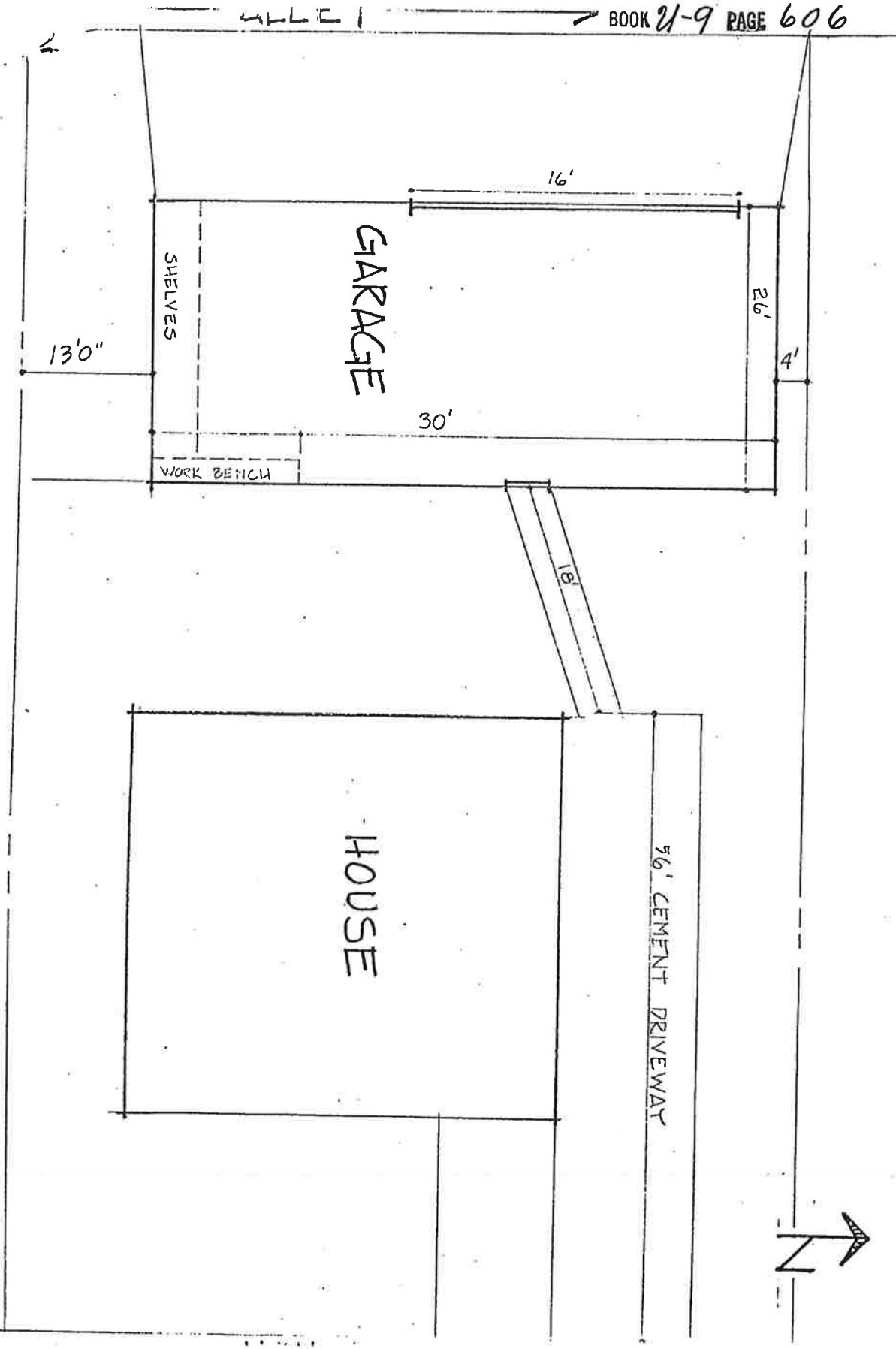
Phillis K Bancroft  
Chairman, Fargo Planning Commission

Date 3/14/84

On this 14<sup>th</sup> day of March, 1984 before me, a notary public, in and for said County and State, personally appeared PHILLIS K BANCROFT, Chairman of the Planning Commission, known to me to be the person described in and who executed the foregoing instrument and acknowledged to me that SHE executed the same in the name of the Planning Commission.



Carol J Kraft  
Notary Public, Cass County, North Dakota  
My Commission Expires Sept 11, 1985



MAR 14 1984

1. Access to garage (shop) will be from the alley.
2. Work will be done in the garage between the hours of 7:30 a.m. to 6:30 p.m.
3. No other employees will be working on the premises.
4. No body work and painting will be done on premise.
5. There will be no stacking of auto's in the alley.

DOCUMENT NO. 614891

FEES: Recording *Suppd.*

STATE OF NORTH DAKOTA }  
 COUNTY OF CASS }  
 REGISTER'S OFFICE

I hereby certify that the above instrument was filed in this office for record

on the *17* day of *March*, A. D. 19 *27*, at *8:32* o'clock, *P.M.*

and was duly recorded in Book *21-9* of *Deanna Jensen*, Page *605*

*Deanna Jensen*  
 REGISTER OF DEEDS

BOOK 21-9 PAGE 607

*John Jensen*  
*1142 W 17th St*  
*Grand Forks, N.D. 58102*

**ATTACHMENT B**

Special Use Permit to Allow a 3-Plex, Parking for the Rental Unit and Additional Parking for John's Repair at 1146 North 11th Street Approved With Conditions:

A Hearing had been held by the Fargo Planning Commission on April 8, 1992, for the purpose of considering a petition requesting a Special Use Permit to allow a 3-plex, parking for the rental unit and additional parking for John's Repair at 1146 North 11th Street (Lot 1, Block 1, College Subdivision of Chapin's Addition), and the Fargo Planning Commission at such Hearing recommended to the Board of City Commissioners as its final report that the Special Use Permit be approved with the following conditions:

1. Screening of the parking lot will be provided by a 6' cedar fence placed along 12th Avenue North and the property line to the east, to the house.
2. Six parking spaces will be provided for the 3-plex, the remaining three spaces will be used for the business.
3. The parking lot will be striped.
4. No additional signs for the business will be placed on the property or fence.
5. Drainage for the parking lot will be to the alley and the elevations for the parking lot will be reviewed by the City Engineers prior to construction.
6. The parking lot will not be used as a used car lot.
7. Site plan is approved as shown on the drawing dated April 1, 1992 on file in the City Auditor's Office.
8. The Special Use Permit should have a three year sunset clause and be reviewed by the Planning Commission.

The City Auditor's Office published a Notice of Hearing, which Notice was published in the official newspaper for the City of Fargo on April 20 and 27, 1992, stating this is the time and date set for said Hearing at which time all interested persons could appear and would be heard.

No written protest or objection to the Special Use Permit has been received or filed in the office of the City Auditor.

The Board determined that no person is present to protest or offer objection to the petition.

Commissioner Pedersen offered the following Resolution and moved its

adoption:

WHEREAS, All legal requirements in connection with the above-described request for a Special Use Permit have been complied with; and

WHEREAS, The Fargo Planning Commission approved the request on April 8, 1992 with the above-listed conditions; and

WHEREAS, There have been no written or verbal protests to the petition for a Special Use Permit and no one is present to protest thereto.

NOW, THEREFORE, BE IT RESOLVED, That the petition for a Special Use Permit to allow a 3-plex, parking for the rental unit and additional parking for John's Repair on the above-described property in the City of Fargo, Cass County, North Dakota, be granted with the aforementioned conditions.

Second by Bromenschenkel. On the vote being taken on the question of the adoption of the Resolution Commissioners Hanna, Sydness, Pedersen, Bromenschenkel and Lindgren voted aye.

No Commissioner being absent and none voting nay, the Resolution was adopted.

**ATTACHMENT C**



said that if he had been aware of the action by the City Commission, he would have continued to honor that action.

Mr. Solberg stated he doesn't disagree with Mark Bittner at all. He stated he doesn't think there is an older area in the City that would qualify for the waiver. He stated the Sidewalk Ordinances states that the Board of City Commissioners may, for good cause shown, waive the requirement for sidewalks; provided, that such waiver may not be granted for any property which is unplatted. Petitions for sidewalk waivers will be submitted and processed as spelled out in the Ordinance. Mr. Solberg stated the Ordinance refers to appropriate guidelines that are not in the Ordinance but a part of the Subdivision Regulations. He stated it is up to the City Commission to determine whether or not a sidewalk should be built in an older area.

**On call of the roll Samuel, Bernath, Nelson, Wolff, Beaton, Flakoll, Loberg, and Kosler voted aye. Absent: Paulsen, Gross, Tehven. The motion was declared carried.**

**Action: Mr. Bernath moved to amend the original motion to include that the City Commission reconsider removing the sidewalk order for this neighborhood based on the past history. Second by Mr. Flakoll. On call of the roll Flakoll, Beaton, Wolff, Nelson, Bernath, Samuel, and Loberg voted aye. Kosler voted nay. Absent: Paulsen, Tehven, Gross. The motion was declared carried.**

Item 3. Review of three year sunset clause on the Special Use Permit on Lot 1, Block 1, College Subdivision of Chapin's Addition. (Located at 1146 North 11th Street - John Bultman)

Mr. Domitrovich stated a three year sunset clause was a condition placed on the Special Use Permit located at 1146 North 11th Street. He stated the site has been checked on numerous occasions and there are no violations to the conditions. He stated John Bultman has two Special Use Permit's in this area and the other permit is for the operation of an automotive repair business. Mr. Domitrovich stated the property in question abuts up to 12th Avenue North and includes a three-plex with parking spaces. He stated the parking lot is to also provide spaces for cars that have been worked on in the repair shop.

Mr. Domitrovich stated his comments requested if this is approved that another three year sunset clause be placed on the property.

**Action: Dr. Samuel moved to approve the review and an additional three year sunset clause on the Special Use Permit on Lot 1, Block 1, College Subdivision of Chapin's Addition. Second by Mr. Bernath. On call of the roll Nelson, Wolff, Beaton, Flakoll, Samuel, Bernath, Loberg, and Kosler voted aye. Absent: Paulsen, Gross, Tehven. The motion was declared carried.**

Mr. Beaton stated when they looked at this initially they looked at a Special Use Permit as a hardship on the property and he didn't see then that this was the case and he doesn't see that

now. He stated having not been in favor of adding a commercial use to a residential neighborhood, he has watched this property over a number of years. Mr. Beaton stated John Bultman keeps this property very clean and the property is as neat as anyone in the neighborhood. He stated he doesn't agree with continued intrusion into residential neighborhoods of automobile businesses because he thinks it may cause the conversion of neighborhoods.

Mr. Domitrovich noted there is not a sunset clause on the business, only on the three-plex.

Item 4. Continued Hearing on a Petition requesting a Special Use Permit on Lot 3, a Replat of Block C, Rheault Addition. The proposed use will be a one story office complex. (Located south of 30½ Avenue South, west of 23rd Street South): Withdrawn by Petitioner.

Petitioner: Clayton Drake.

Mr. Domitrovich noted the petitioner has requested this item be withdrawn.

Item 5. Hearing on a Petition requesting a Special Use Permit on Lot 5, Block 2, Burritt Kennedy Addition. The proposed use will be a mail order business dealing in American frontier antiques and firearms. (Located at 3683 River Drive): Approved With Conditions.

Petitioner: Peter Erickson.

Reason: Mail Order Business, Antiques and Firearms.

Conditions:

1. The proposed use will be catalog and direct sales for American Western products, including guns.
2. The business will be located at 3683 River Drive.
3. No signage will be placed on the property advertising the business.
4. The location of the business activity within the home will remain restricted to the area as shown on the drawing dated October 1, 1995.

Mr. Domitrovich stated the reason this is before the Planning Commission is the Alcohol, Tobacco & Firearms (ATF) is requiring people that are applying for their license to be renewed to get approval from the City. He stated what the petitioner is doing is not permissible in a residential district without a Special Use Permit. He stated according to the list he has been provided, they may need to deal with up to 25 more of these requests. Mr. Domitrovich stated he hasn't heard anything negative from the neighbors. He stated this is a pure single family residential area.

**ATTACHMENT D**

December 20th, 2022

Davis Estates, LLC  
207 2<sup>nd</sup> Street East  
Ottertail, MN 56571-7169

Northstar Property Partners INC  
3039 Ridge DR E  
West Fargo ND 58078-7803

**RE: Notice of Land Development Code Violation FINAL NOTICE**

We have received a citizen complaint on your properties, located at 1142 and 1146 11<sup>th</sup> Street North, Fargo, North Dakota, are being utilized as an Auto repair business, which use is in violation of Fargo city ordinances.

Table 20-0401 of the Land Development Code (Fargo Municipal Code) provides:

Vehicle Repair: "Services to passenger vehicles, light & medium trucks & other consumer motor vehicles, generally, the customer does not wait at the site while the service or repair is being performed."

AND

Vehicle Service Limited: Direct services to motor vehicles where the driver or passengers generally wait in the car or nearby while the service is performed."

**Are not allowed in SR3 zoning, Single Dwelling Residential Zone.**

Violations of the Fargo Land Development Code are infractions, carrying a maximum penalty of a \$1000.00 fine. In addition, the city may seek compliance with the Land Development Code by other remedies, including injunctive relief. See generally Fargo Municipal Code Sections 20-1102.D and 20-1102.G ("It is a violation of the Land Development Code to continue any of the violation specified in this Article. Each day that a violation continues shall be considered a separate offense.")

THEREFORE, the City asks that you bring your property into full compliance no later than **MARCH 30th, 2023**, as follows:

- **Cease any further vehicle repair operations on these properties**
- **Remove all junk vehicles from the properties.**
- **Clean up and remove all vehicle parts, liquids, and equipment in the alley and around the property.**

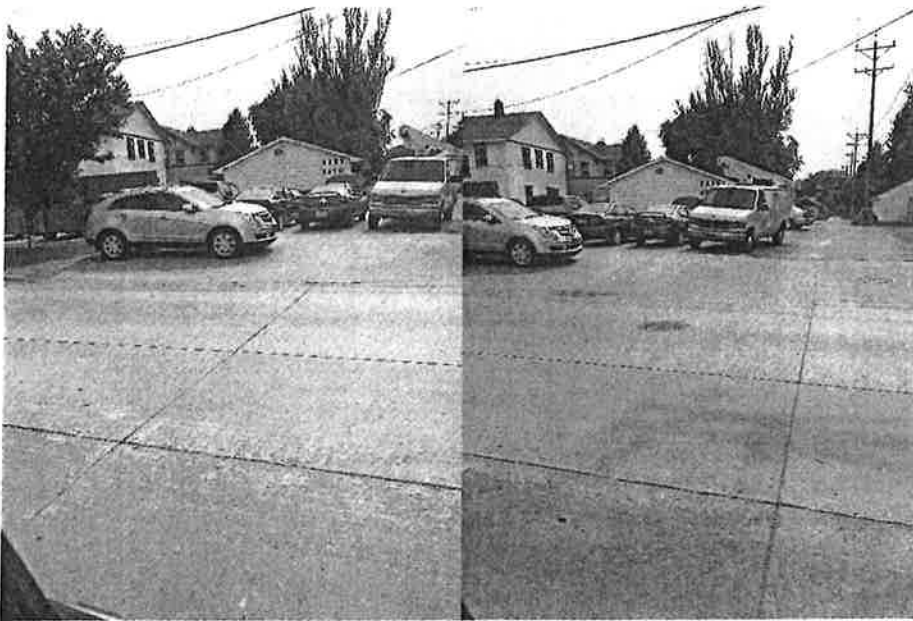
Please be advised that should you fail to bring your property and compliance by the date indicated, we will refer this matter to the Office of the City Prosecutor and/or the Office of the City Attorney for formal legal action, including, possibly, commencement of criminal charges for this violation. We sincerely hope that will not be necessary and that you will voluntarily bring your property into compliance. If you have any questions regarding this letter, please contact me at (701) 298-6945

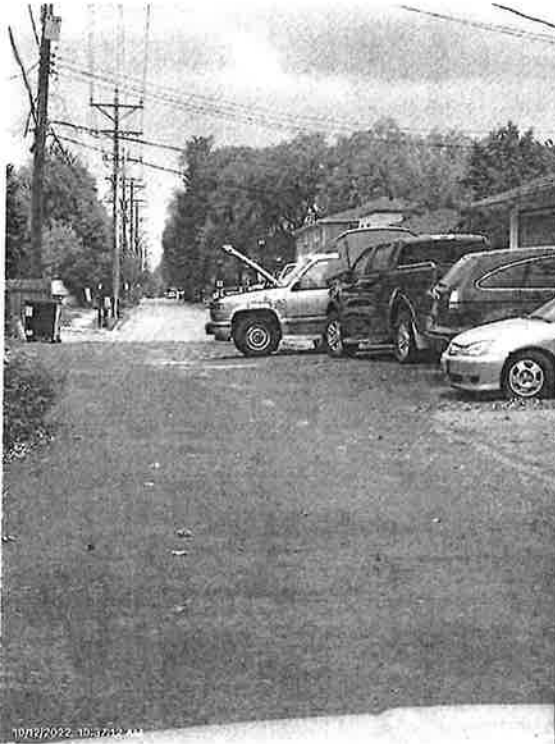
Respectfully,

Greg Conlin  
City of Fargo Code Enforcement

C.C. Donald Kress  
City of Fargo Planning

C.C. Alissa Farol  
City Attorney





**ATTACHMENT E**



INSTITUTE FOR JUSTICE

February 6, 2023

**VIA EMAIL**

Alissa Farol

Assistant City Attorney and City Prosecutor

[afarol@serklandlaw.com](mailto:afarol@serklandlaw.com)**RE: City's Illegal and Unconstitutional Attempt to Shut Down Small Business**

Ms. Farol:

This letter regards the City of Fargo's order for John Bultman to shut down his auto repair shop, John's Repair, by March 30<sup>th</sup>. The City's order states that failure to shut down the auto repair will result in Mr. Bultman's landlord suffering fines of up to \$1,000 per day. The City's order contravenes the City's own ordinances. It also likely violates the state and federal constitutional protections for substantive and procedural due process. Mr. Bultman is a 69-year-old citizen who has been operating his auto repair business for 42 years. He is the business's only employee, and should be allowed to continue operating until he wishes to retire in two years. We ask that the City allow Mr. Bultman to operate his business in peace, and immediately rescind its illegal and unconstitutional order.

The Institute for Justice (IJ) is a national nonprofit law firm that has fought to protect individuals' constitutional rights for over 30 years. We have litigated our cases at the U.S. Supreme Court ten times, as well as at state courts across the country. One of our areas of expertise is property rights. We have sued dozens of local governments for infringing on individuals' property rights, including through unreasonable and unfair zoning regulations. We have a particular interest in preventing local governments from unfairly shutting down businesses. *See, e.g., Sepulveda v. City of Pasadena*, No. 2021-80180, 2022 WL 952888 (Tex. Dist. Ct. Mar. 21, 2022) (granting a TRO against the City of Pasadena after the City tried to prevent the opening of an auto repair shop in violation of its constitutional rights).<sup>1</sup>

We have also brought successful suits against government bodies for acting outside their authority. *Mickleson v. N.D. Dep't of Health*, No. 2020-CV-01179, 2020 WL 9423187 (N.D. Dist. Ct. Dec. 10, 2020) (holding that the North Dakota Department of Health's rules were ultra vires when they tried to stop home businesses from operating in contravention of state law).<sup>2</sup>

Here, we are concerned that the City's actions are both ultra vires and unconstitutional. John Bultman has been operating his auto repair business in a residential zone, at 1142 and 1146 11th Street North, for 42 years. He received permits to do so decades ago, a fact we believe is undisputed by the City. When the City's zoning ordinance later changed to prohibit auto repair businesses in residential zones, Mr. Bultman's business was grandfathered in at these properties

<sup>1</sup> See <https://ij.org/press-release/mechanic-to-open-shop-after-parking-fight/>

<sup>2</sup> See <https://ij.org/case/north-dakota-food-freedom/>



as a non-conforming use—a fact we believe is also undisputed. The dispute seems to be whether these properties lost their grandfathered status when Mr. Bultman sold his properties to a third party in May 2021, even though Mr. Bultman continued to operate the exact same business on those properties as a tenant. We understand that the City is taking the position, according to statements by Code Enforcement Officer Greg Conlin to Mr. Bultman, that the transfer of ownership terminated the properties' grandfathered status. This is incorrect.

Transferring ownership of a property does not affect that property's grandfathered status; instead, grandfathering rights run with the land. This is true as a matter of black letter law. *See, e.g.*, 4 Edward H. Ziegler, Jr., Rathkopf's *The Law of Zoning and Planning* § 72:20 (4th ed. 2022 update) (stating "[i]t is obvious" that "the right to continue a nonconforming use" continues after the property's sale); *id.* ("A mere change in ownership does not destroy the right to continue a nonconforming use"..."If this wasn't the case, the "inability to sell and convey the rights . . . would result in the uncompensated loss of the right to use the land in nonconformity with the current ordinance and, in appropriate cases, the extent of the loss may be held an unconstitutional 'taking' of property."); Kenneth H. Young, Anderson's *American Law of Zoning* § 6:40 (4th ed. 1996) ("The right [to maintain a nonconforming use] attaches to the land itself . . . [and] can be exercised equally by the purchaser.").

This is also true under the City's own ordinances. Section 20-1001(F) of the City's Zoning Code states, "Changes of tenancy, ownership or management of an existing nonconformity are permitted, provided that no changes in the nature or character, extent or intensity of such nonconformity may occur except those allowed by this Article." For the City to declare otherwise would violate the City's ordinance, thus exceeding the City's authority and resulting in an illegal and ultra vires action.

Even if the City's ordinances did not state that grandfathered status runs with the land, the state and federal constitutions require such. Grandfathered rights are protected under the North Dakota Constitution's Substantive Due Process Clause in Article I, Section 1 of its Constitution (protecting the right to "possess[] and protect[] property."); *see also* N.D. Const. art. 1, § 12. Indeed, other courts, including state supreme courts, have already held that terminating a property's grandfathered status with a transfer of ownership violates substantive due process.<sup>3</sup>

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<sup>3</sup> *See, e.g., Budget Inn of Daphne, Inc. v. City of Daphne*, 789 So.2d 154, 159-60 (Ala. 2000) (finding ordinance which stated a nonconforming sign will lose that status upon a change in ownership to be arbitrary and capricious; "[a] change in the ownership, occupancy, or name of an operating business facility does not eliminate its status as a legal-nonconforming use." The court also stated that "a municipality may not simply divest a property owner of a vested right, without compensation, and any attempt to do so violates the most fundamental principles of due process" since "our system favors the free alienability of property" and "legal nonconforming use" "run with the land"); *Gibbons & Reed CO. v. North Salt Lake City*, 19 Utah 2d 329, 336 (1967) (finding zoning ordinance which proscribed excavation of sand and gravel to be an invalid exercise of police power as enforced against plaintiffs' property used for excavation of sand and gravel before the ordinance was enacted and noting that "[d]efendant seems disturbed over the fact that plaintiffs acquired the parcel after the 1957 ordinance went into effect. We are not sympathetic to that position since use, not ownership, of the land is the concern of the zoning authorities. Lawful existing nonconforming uses are not eradicated by a mere change in ownership.").

Other states have also found that unlawfully terminating a non-conforming use without compensation constitutes an illegal taking.<sup>4</sup> The U.S. Constitution's Substantive Due Process Clause and Takings Clause provides similar protections.

In addition, the City's order for Mr. Bultman to cease his decades-old business without an opportunity for a hearing creates serious procedural due process issues. *See* N.D. Const. art. 1, § 12 ("No person" shall "be deprived of life, liberty or property without due process of law."). For example, the final notice the City sent on December 20, 2022 states nothing about Mr. Bultman or the property owners having an opportunity to contest the City's order by a hearing or other due process. Instead, it states that if Mr. Bultman does not shut down his business by March, the property owners will face criminal prosecution and up to \$1,000 in fines per day. The state and federal constitutions do not give the City the power to shut down a business with a simple letter and no opportunity to be heard.

We thus urge the City to rescind its order and allow Mr. Bultman to continue operating. I am happy to discuss further. My number is 631-383-5302 and my email is [esmith@ij.org](mailto:esmith@ij.org).

Sincerely,



Erica Smith Ewing  
Senior Attorney  
Institute for Justice

CC: Greg Conlin, City of Fargo Code Enforcement, *via* [GConlin@FargoND.gov](mailto:GConlin@FargoND.gov)  
Dr. Tim Mahoney, City Mayor, *via* online email form

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<sup>4</sup> *See, e.g., Hooper v. City of St. Paul*, 353 N.W.2d 138, 139, 140-41 (Minn. 1984) (finding that the continuous use of property as dual family residence for approximately five years prior to zoning change entitled owner to lawful conforming use status under the zoning code; "[i]t is a fundamental principle of the law of real property that uses lawfully existing at the time of an adverse zoning change may continue to exist until they are removed or otherwise discontinued" and that "existing nonconforming uses must either be permitted to remain or be eliminated by the use of eminent domain," since they are "entitled to due process protection").



**MEMORANDUM**

---

**TO:** Board of City Commissioners  
**FROM:** Steven Sprague, City Auditor  
**SUBJECT:** Liquor License Location Transfer – Pounds  
**DATE:** April 20, 2023

The request to amend the license location was received by the Auditor's office and reviewed by the Liquor Control Board:

License Class: RA-RZ full alcohol, food sales exceed alcohol sales, bar allowed  
Business Name: Pounds  
Old Location: 612 1<sup>st</sup> Ave North  
New Location: 6 Broadway  
Applicants: Alan Kasin

The Liquor Control Board approved the location transfer.

**Recommended Motion:**

**Move to approve the location transfer of a Class FA-RZ alcoholic beverage license for Pounds from 612 1<sup>st</sup> Ave North to 6 Broadway.**

Dear Mr. Steve Sprague,

I am writing to request a transfer of our liquor license from our current location to a new building, still located within the Renaissance Zone. We currently hold an active liquor license under number FA-RZ-4 at 612 1st Ave. N, Fargo, ND.

We have recently purchased a new building located at 6 Broadway, Fargo, ND, which is also within the Renaissance Zone. We are part owners of this building and are currently renting space within it. Our plan is to occupy the new space with our restaurant and bar once our current lease expires on May 1st, 2023. It is important to note that there will be no change in ownership during this process.

Our reason for requesting the transfer is to better serve our customers and contribute to the economic growth of the area. The new location offers us more space, better parking, and increased visibility. We believe that this move will allow us to grow our business and contribute to the development of the Renaissance Zone.

The new location at 6 Broadway N, Fargo, ND meets all applicable requirements under the Municipal Code for liquor license holders. The building has the proper zoning classification, is within the population-based quota, and meets all health and safety requirements. We have attached a copy of the lease agreement and the zoning certificate of compliance with this letter.

We are committed to complying with all applicable laws and regulations related to the sale and distribution of alcohol, including those related to zoning, health and safety, and other requirements. We have a solid plan in place to ensure that all required permits, inspections, and other requirements are met prior to the transfer of the liquor license. We understand that the City of Fargo may require additional information or documentation from us, and we are prepared to provide this in a timely manner.

We kindly request that you consider our request for a transfer of our liquor license to the new location within the Renaissance Zone. We are willing to work closely with the City of Fargo to ensure that the transfer is handled smoothly and efficiently, and we look forward to the opportunity to contribute to the growth and development of the Renaissance Zone.

Thank you for your attention to this matter. If you require any further information or documentation from us, please do not hesitate to contact us.

Sincerely,

Alan Kasin  
The Beefsteak Club, LLC dba Pounds



**APPLICATION FOR A LOCAL PERMIT OR RESTRICTED EVENT PERMIT**  
 NORTH DAKOTA OFFICE OF ATTORNEY GENERAL  
 GAMING DIVISION  
 SFN 9338 (4-2023)

*Ta*

Applying for (check one)

Local Permit       Restricted Event Permit\*

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

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

\*See Instruction 2 (f) on Page 2. Poker, Twenty-One, and Paddlewheels may be conducted Only with a Restricted Event Permit. Only one permit per year.  
**LOCAL PERMIT RAFFLES MAY NOT BE CONDUCTED ONLINE AND CREDIT CARDS MAY NOT BE USED FOR WAGERS**

**ORGANIZATION INFO**

Name of Organization or Group <b>Rebuilding Together Fargo-Moorhead Area</b>		Dates of Activity (Does not include dates for the sales of tickets) <b>June 1, 2023</b>	
Organization or Group Contact Person <b>Cassie J. Skalicky</b>	E-mail <b>cassieskalicky@rebuildingtogetherfma</b>	Telephone Number <b>701-356-7836</b>	
Business Address <b>700 Main Ave Ste 10</b>	City <b>Fargo</b>	State <b>ND</b>	ZIP Code <b>58103</b>
Mailing Address (if different)	City	State	ZIP Code

**SITE INFO**

Site Name <b>Holiday Inn, Fargo</b>		County <b>Cass</b>	
Site Physical Address <b>3803 13th Avenue South</b>	City <b>Fargo</b>	State <b>ND</b>	ZIP Code <b>58103</b>
Provide the exact date(s) & frequency of each event & type (Ex. Bingo every Friday 10/1-12/31, Raffle - 10/30, 11/30, 12/31, etc.) <b>June 1, 2023 5:30-8:30 PM</b>			

**PRIZE / AWARD INFO (If More Prizes, Attach An Additional Sheet)**

Game Type	Description of Prize	Exact Retail Value of Prize
<b>Raffle Board</b>	<b>Hand crafted child's rocking motorcycle</b>	<b>\$1200</b>
<b>Raffle Board</b>	<b>Coach Purse</b>	<b>\$349</b>
<b>Raffle Board</b>	<b>Hand Crafted Planter</b>	<b>\$800</b>
Total (limit \$40,000 per year)		<b>\$ See second sheet</b>

Intended Uses of Gaming Proceeds  
**Proceeds will be used for the general operations of the non-profit organization. EIN: 27-4415410**

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

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

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

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

Name <i>See second sheet</i>	Title	Telephone Number	E-mail Address
Signature of Organization or Group's Top Official	Title	Date	



**APPLICATION FOR A LOCAL PERMIT OR RESTRICTED EVENT PERMIT**

NORTH DAKOTA OFFICE OF ATTORNEY GENERAL

GAMING DIVISION

SFN 9338 (4-2023)

Applying for (check one)

Local Permit  Restricted Event Permit\*

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

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

\*See Instruction 2 (f) on Page 2. Poker, Twenty-One, and Paddlewheels may be conducted Only with a Restricted Event Permit. Only one permit per year.

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

**ORGANIZATION INFO**

Name of Organization or Group <b>Rebuilding Together Fargo-Moorhead Area</b>		Dates of Activity (Does not include dates for the sales of tickets) <b>June 1, 2023</b>	
Organization or Group Contact Person <b>Cassie J. Skalicky</b>	E-mail <b>cassieskalicky@rebuildingtogetherfma</b>	Telephone Number <b>701-356-7836</b>	
Business Address <b>700 Main Ave Ste 10</b>	City <b>Fargo</b>	State <b>ND</b>	ZIP Code <b>58103</b>
Mailing Address (if different)	City	State	ZIP Code

**SITE INFO**

Site Name <b>Holiday Inn, Fargo</b>		County <b>Cass</b>	
Site Physical Address <b>3803 13th Avenue South</b>	City <b>Fargo</b>	State <b>ND</b>	ZIP Code <b>58103</b>
Provide the exact date(s) & frequency of each event & type (Ex. Bingo every Friday 10/1-12/31, Raffle - 10/30, 11/30, 12/31, etc.) <b>June 1, 2023 5:30-8:30 PM</b>			

**PRIZE / AWARD INFO (If More Prizes, Attach An Additional Sheet)**

Game Type	Description of Prize	Exact Retail Value of Prize
<b>Heads or Tails</b>	<b>Cash</b>	<b>\$500</b>
<b>Heads or Tails</b>	<b>Cash</b>	<b>\$350</b>
Total (limit \$40,000 per year)		<b>\$ 3,199</b>

**Intended Uses of Gaming Proceeds**

**Proceeds will be used for the general operations of the non-profit organization. EIN: 27-4415410**

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

Yes  No

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

Yes  No

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

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

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

Yes  No

Name <b>Cassie Skalicky</b>	Title <b>Executive Director</b>	Telephone Number <b>701-371-7990</b>	E-mail Address <b>cassieskalicky@rebuildingtogetherfma.org</b>
Signature of Organization or Group's Top Official 		Title <b>Executive Director</b>	Date <b>4/17/2023</b>



**APPLICATION FOR A LOCAL PERMIT OR RESTRICTED EVENT PERMIT**

NORTH DAKOTA OFFICE OF ATTORNEY GENERAL  
GAMING DIVISION  
SFN 9338 (4-2023)

916

4/25/23

Applying for (check one)

Local Permit       Restricted Event Permit\*

Games to be conducted

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

\*See Instruction 2 (f) on Page 2. Poker, Twenty-One, and Paddlewheels may be conducted Only with a Restricted Event Permit. Only one permit per year.  
**LOCAL PERMIT RAFFLES MAY NOT BE CONDUCTED ONLINE AND CREDIT CARDS MAY NOT BE USED FOR WAGERS**

**ORGANIZATION INFO**

Name of Organization or Group <b>Burette Fundraiser</b>		Dates of Activity (Does not include dates for the sales of tickets) <b>Sept 16 2023</b>	
Organization or Group Contact Person <b>Linda Haas</b>	E-mail <b>lahaas10@gmail.com</b>	Telephone Number <b>320-234-5080</b>	
Business Address	City	State	ZIP Code
Mailing Address (if different) <b>2847 7th St. N. #102</b>	City <b>West Fargo</b>	State <b>ND</b>	ZIP Code <b>58078</b>

**SITE INFO**

Site Name <b>El Zagal Shrine / Event Center</b>	County <b>Cass</b>
Site Physical Address <b>1439 N. 3rd St.</b>	City <b>Fargo</b>
State <b>ND</b>	ZIP Code <b>58102</b>
Provide the exact date(s) & frequency of each event & type (Ex. Bingo every Friday 10/1-12/31, Raffle - 10/30, 11/30, 12/31, etc.) <b>Sept. 16, 2023</b>	

**PRIZE / AWARD INFO (If More Prizes, Attach An Additional Sheet)**

Game Type	Description of Prize	Exact Retail Value of Prize
meat Raffle	Beef, Pork (20 packs)	\$15.00 per pack
Drawing Board	Carson Wentz signed Jersey	\$250.00 - \$500 \$400 average
Total (limit \$40,000 per year)		\$700.00

**Intended Uses of Gaming Proceeds**

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

Yes     No

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

Yes     No

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

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

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

Yes     No

Name <b>Linda Haas</b>	Title —	Telephone Number <b>320-234-5080</b>	E-mail Address <b>lahaas10@gmail.com</b>
Signature of Organization or Group's Top Official 		Title —	Date <b>4/21/23</b>



**APPLICATION FOR A LOCAL PERMIT OR RESTRICTED EVENT PERMIT**  
 NORTH DAKOTA OFFICE OF ATTORNEY GENERAL  
 GAMING DIVISION  
 SFN 9338 (2-2023)

4/27

(70)

Applying for (check one)

Local Permit       Restricted Event Permit\*

Games to be conducted

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

\*See Instruction 2 (f) on Page 2. Poker, Twenty-One, and Paddlewheels may be conducted Only with a Restricted Event Permit. Only one permit per year.  
**LOCAL PERMIT RAFFLES MAY NOT BE CONDUCTED ONLINE AND CREDIT CARDS MAY NOT BE USED FOR WAGERS**

**ORGANIZATION INFO**

Name of Organization or Group <b>Jerome Sharratt Bene fit</b>		Dates of Activity (Does not include dates for the sales of tickets) <b>05-07-23</b>	
Organization or Group Contact Person <b>Jackie Sharratt</b>	E-mail <b>Sisterofmany@yahoo.com</b>	Telephone Number <b>701-277-3096</b>	
Business Address <b>430 W STE #133</b>	City <b>West Fargo,</b>	State <b>ND</b>	ZIP Code <b>58078</b>
Mailing Address (if different)	City	State	ZIP Code

**SITE INFO**

Site Name <b>Specks Bar</b>	County <b>Cass</b>
Site Physical Address <b>2611 Main Ave</b>	City <b>Fargo</b>
	State <b>ND</b>
	ZIP Code <b>58103</b>

Provide the exact date(s) & frequency of each event & type (Ex. Bingo every Friday 10/1-12/31, Raffle - 10/30, 11/30, 12/31, etc.)

**PRIZE / AWARD INFO (If More Prizes, Attach An Additional Sheet)**

Game Type	Description of Prize	Exact Retail Value of Prize
<b>Meat Raffle</b>	<b>Meat bundle</b>	<b>30<sup>00</sup></b>
Total (limit \$40,000 per year)		\$

Intended Uses of Gaming Proceeds

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

Yes     No

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

Yes     No

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

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

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

Yes     No

Name <b>Jerome Sharratt</b>	Title <b>Mayor</b>	Telephone Number <b>701 436 6267</b>	E-mail Address <b>dee.wika40@gmail.com</b>
Signature of Organization or Group's Top Official <b>Jerome Sharratt</b>		Title	Date <b>04 27 23</b>



*Sa*



**GAMING SITE AUTHORIZATION**  
 ND OFFICE OF ATTORNEY GENERAL  
 SFN 17996 (2-2023)

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

Full, Legal Name of Gaming Organization  
**Prairie Public Broadcasting, Inc.**

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

Name of Location  
**Tailgator's**

Street <b>1322 Main Ave</b>	City <b>Fargo</b>	ZIP Code <b>58103</b>	County <b>Cass</b>
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Beginning Date(s) Authorized <b>7/1/23</b>	Ending Date(s) Authorized <b>6/30/24</b>	Number of Twenty-One tables, if zero, enter "0" <b>1</b>
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Specific location where games of chance will be conducted and played at the site (required)  
**entire facility, excluding restrooms**

If conducting Raffle or Poker activity provide date(s) or month(s) of the event(s) if known

**RESTRICTIONS FOR CITY/COUNTY USE ONLY**

The organization **must** provide the City/County a list of game types included in their Internal Control Manual and have the manual available upon request. The manual must thoroughly explain each game type to be conducted. The City/County can only approve these games at the site.

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

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

Days of week of gaming operations (if restricted)	Hours of gaming (if restricted)
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If any information above is false, it is subject to administrative action on behalf of the State of North Dakota Office of Attorney General

**APPROVALS**

Attorney General	Date
Signature of City/County Official	Date <b>5/1/23</b>

**PRINT** Name and official position of person signing on behalf of city/county above  
**Steven Sprague / City Auditor**

**INSTRUCTIONS:**

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

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

86



**GAMING SITE AUTHORIZATION**  
 ND OFFICE OF ATTORNEY GENERAL  
 SFN 17996 (2-2023)

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

Full, Legal Name of Gaming Organization  
**Prairie Public Broadcasting, Inc.**

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

Name of Location <b>Slammer's</b>			
Street <b>707 28th Ave N</b>	City <b>Fargo</b>	ZIP Code <b>58102</b>	County <b>Cass</b>
Beginning Date(s) Authorized <b>7/1/23</b>	Ending Date(s) Authorized <b>6/30/24</b>	Number of Twenty-One tables, if zero, enter "0" <b>1</b>	
Specific location where games of chance will be conducted and played at the site (required) <b>entire facility, excluding restrooms</b>			
If conducting Raffle or Poker activity provide date(s) or month(s) of the event(s) if known			

**RESTRICTIONS FOR CITY/COUNTY USE ONLY**

The organization **must** provide the City/County a list of game types included in their Internal Control Manual and have the manual available upon request. The manual must thoroughly explain each game type to be conducted. The City/County can only approve these games at the site.

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

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

Days of week of gaming operations (if restricted) \_\_\_\_\_ Hours of gaming (if restricted) \_\_\_\_\_

If any information above is false, it is subject to administrative action on behalf of the State of North Dakota Office of Attorney General

**APPROVALS**

Attorney General	Date
Signature of City/County Official	Date <b>5/1/23</b>
PRINT Name and official position of person signing on behalf of city/county above <b>Steven Sprague / City Auditor</b>	

**INSTRUCTIONS:**

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

**RETURN ALL DOCUMENTS TO:**

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

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**GAMING SITE AUTHORIZATION**  
 ND OFFICE OF ATTORNEY GENERAL  
 SFN 17996 (2-2023)

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

Full, Legal Name of Gaming Organization  
**Prairie Public Broadcasting, Inc.**

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

Name of Location  
**Dempsey's**

Street <b>226 Broadway</b>	City <b>Fargo</b>	ZIP Code <b>58102</b>	County <b>Cass</b>
Beginning Date(s) Authorized <b>7/1/23</b>	Ending Date(s) Authorized <b>6/30/24</b>	Number of Twenty-One tables, if zero, enter "0" <b>1</b>	

Specific location where games of chance will be conducted and played at the site (required)  
**entire facility, excluding restrooms**

If conducting Raffle or Poker activity provide date(s) or month(s) of the event(s) if known

**RESTRICTIONS FOR CITY/COUNTY USE ONLY**

The organization **must** provide the City/County a list of game types included in their Internal Control Manual and have the manual available upon request. The manual must thoroughly explain each game type to be conducted. The City/County can only approve these games at the site.

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

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

Days of week of gaming operations (if restricted) \_\_\_\_\_ Hours of gaming (if restricted) \_\_\_\_\_

If any information above is false, it is subject to administrative action on behalf of the State of North Dakota Office of Attorney General

**APPROVALS**

Attorney General	Date
Signature of City/County Official	Date <b>5/1/23</b>
PRINT Name and official position of person signing on behalf of city/county above <b>Steven Sprague / City Auditor</b>	

**INSTRUCTIONS:**

1. City/County - Retain a **copy** of the Site Authorization for your files.
2. City/County - Return the **original** Site Authorization form to the Organization.
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**RETURN ALL DOCUMENTS TO:**

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

(sd)



**GAMING SITE AUTHORIZATION**  
 ND OFFICE OF ATTORNEY GENERAL  
 SFN 17996 (2-2023)

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

Full, Legal Name of Gaming Organization  
**Prairie Public Broadcasting, Inc.**

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

Name of Location  
**Pepper's**

Street <b>2510 S University Drive</b>	City <b>Fargo</b>	ZIP Code <b>58102</b>	County <b>Cass</b>
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Beginning Date(s) Authorized <b>7/1/23</b>	Ending Date(s) Authorized <b>6/30/24</b>	Number of Twenty-One tables, if zero, enter "0" <b>0</b>
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Specific location where games of chance will be conducted and played at the site (required)  
**entire facility, excluding restrooms**

If conducting Raffle or Poker activity provide date(s) or month(s) of the event(s) if known

**RESTRICTIONS FOR CITY/COUNTY USE ONLY**

The organization **must** provide the City/County a list of game types included in their Internal Control Manual and have the manual available upon request. The manual must thoroughly explain each game type to be conducted. The City/County can only approve these games at the site.

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

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

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

If any information above is false, it is subject to administrative action on behalf of the State of North Dakota Office of Attorney General

**APPROVALS**

Attorney General	Date
Signature of City/County Official	Date <b>5/1/23</b>
PRINT Name and official position of person signing on behalf of city/county above <b>Steven Sprague / City Auditor</b>	

**INSTRUCTIONS:**

1. City/County - Retain a **copy** of the Site Authorization for your files.
2. City/County - Return the **original** Site Authorization form to the Organization.
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**RETURN ALL DOCUMENTS TO:**

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

*se*



**GAMING SITE AUTHORIZATION**  
 ND OFFICE OF ATTORNEY GENERAL  
 SFN 17996 (2-2023)

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

Full, Legal Name of Gaming Organization  
**Prairie Public Broadcasting, Inc.**

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

Name of Location <b>Bison Turf</b>			
Street <b>1211 N University Drive</b>	City <b>Fargo</b>	ZIP Code <b>58102</b>	County <b>Cass</b>
Beginning Date(s) Authorized <b>7/1/23</b>	Ending Date(s) Authorized <b>6/30/24</b>	Number of Twenty-One tables, if zero, enter "0" <b>0</b>	
Specific location where games of chance will be conducted and played at the site (required) <b>entire facility, excluding restrooms</b>			
If conducting Raffle or Poker activity provide date(s) or month(s) of the event(s) if known			

**RESTRICTIONS FOR CITY/COUNTY USE ONLY**

The organization **must** provide the City/County a list of game types included in their Internal Control Manual and have the manual available upon request. The manual must thoroughly explain each game type to be conducted. The City/County can only approve these games at the site.

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

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

Days of week of gaming operations (if restricted) \_\_\_\_\_ Hours of gaming (if restricted) \_\_\_\_\_

If any information above is false, it is subject to administrative action on behalf of the State of North Dakota Office of Attorney General

**APPROVALS**

Attorney General	Date
Signature of City/County Official	Date <b>5/1/23</b>
PRINT Name and official position of person signing on behalf of city/county above <b>Steven Sprague / City Auditor</b>	

**INSTRUCTIONS:**

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

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**GAMING SITE AUTHORIZATION**  
 ND OFFICE OF ATTORNEY GENERAL  
 SFN 17996 (2-2023)

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

Full, Legal Name of Gaming Organization  
**Plains Art Museum**

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

Name of Location  
**Wild Bill's Saloon**

Street <b>1776 45 St S</b>	City <b>Fargo</b>	ZIP Code <b>58103</b>	County <b>Cass</b>
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Beginning Date(s) Authorized <b>7/1/23</b>	Ending Date(s) Authorized <b>6/30/24</b>	Number of Twenty-One tables, If zero, enter "0" <b>1</b>
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Specific location where games of chance will be conducted and played at the site (required)  
**Entire Facility-Excluding Offices and Restrooms**

If conducting Raffle or Poker activity provide date(s) or month(s) of the event(s) if known

**RESTRICTIONS FOR CITY/COUNTY USE ONLY**

The organization **must** provide the City/County a list of game types included in their Internal Control Manual and have the manual available upon request. The manual must thoroughly explain each game type to be conducted. The City/County can only approve these games at the site.

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

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

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

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**APPROVALS**

Attorney General	Date
Signature of City/County Official	Date <b>5/1/23</b>
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 Telephone: 701-328-2329 OR 800-326-9240

✓ 8811



**GAMING SITE AUTHORIZATION**  
 ND OFFICE OF ATTORNEY GENERAL  
 SFN 17986 (2-2023)

*Sep*

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

Full, Legal Name of Gaming Organization  
**Plains Art Museum**

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

Name of Location  
**King Pin Casino (The Bowler)**

Street <b>2630 S University Dr</b>	City <b>Fargo</b>	ZIP Code <b>58103</b>	County <b>Cass</b>
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Beginning Date(s) Authorized <b>7/1/23</b>	Ending Date(s) Authorized <b>6/30/24</b>	Number of Twenty-One tables, if zero, enter "0" <b>6</b>
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Specific location where games of chance will be conducted and played at the site (required)  
**Entire Facility-Excluding Offices and Restrooms**

If conducting Raffle or Poker activity provide date(s) or month(s) of the event(s) if known

**RESTRICTIONS FOR CITY/COUNTY USE ONLY**

The organization **must** provide the City/County a list of game types included in their Internal Control Manual and have the manual available upon request. The manual must thoroughly explain each game type to be conducted. The City/County can only approve these games at the site.

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

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

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

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**APPROVALS**

Attorney General	Date
Signature of City/County Official	Date <b>5/1/23</b>

PRINT Name and official position of person signing on behalf of city/county above  
**Steven Sprague / City Auditor**

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**GAMING SITE AUTHORIZATION**  
 ND OFFICE OF ATTORNEY GENERAL  
 SFN 17996 (2-2023)

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

Full, Legal Name of Gaming Organization  
**Plains Art Museum**

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

Name of Location  
**Big Top Bingo**

Street <b>901 25 St S</b>	City <b>Fargo</b>	ZIP Code <b>58103</b>	County <b>Cass</b>
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Beginning Date(s) Authorized <b>7/1/23</b>	Ending Date(s) Authorized <b>6/30/24</b>	Number of Twenty-One tables, if zero, enter "0" <b>0</b>
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Specific location where games of chance will be conducted and played at the site (required)  
**Entire Facility-Excluding Offices and Restrooms**

If conducting Raffle or Poker activity provide date(s) or month(s) of the event(s) if known

**RESTRICTIONS FOR CITY/COUNTY USE ONLY**

The organization **must** provide the City/County a list of game types included in their Internal Control Manual and have the manual available upon request. The manual must thoroughly explain each game type to be conducted. The City/County can only approve these games at the site.

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

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

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

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**APPROVALS**

Attorney General	Date
Signature of City/County Official	Date <b>5/1/23</b>
<b>PRINT</b> Name and official position of person signing on behalf of city/county above <b>Steven Sprague / City Auditor</b>	

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 Bismarck, ND 58505-0040  
 Telephone: 701-328-2329 OR 800-326-9240

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**GAMING SITE AUTHORIZATION**  
 ND OFFICE OF ATTORNEY GENERAL  
 SFN 17996 (2-2023)

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

Full, Legal Name of Gaming Organization  
**Plains Art Museum**

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

Name of Location  
**Blue Wolf Casino (West Acres Bowl/Cactus Jack's)**

Street <b>3402 Interstate Blvd S</b>	City <b>Fargo</b>	ZIP Code <b>58103</b>	County <b>Cass</b>
Beginning Date(s) Authorized <b>7/1/23</b>	Ending Date(s) Authorized <b>6/30/24</b>	Number of Twenty-One tables, if zero, enter "0" <b>6</b>	

Specific location where games of chance will be conducted and played at the site (required)  
**Entire Facility-Excluding Offices and Restrooms**

If conducting Raffle or Poker activity provide date(s) or month(s) of the event(s) if known

**RESTRICTIONS FOR CITY/COUNTY USE ONLY**

The organization **must** provide the City/County a list of game types included in their Internal Control Manual and have the manual available upon request. The manual must thoroughly explain each game type to be conducted. The City/County can only approve these games at the site.

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

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

Days of week of gaming operations (if restricted) \_\_\_\_\_ Hours of gaming (if restricted) \_\_\_\_\_

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**APPROVALS**

Attorney General	Date
Signature of City/County Official	Date 5/1/23
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*✓ 8811*



**GAMING SITE AUTHORIZATION**  
 ND OFFICE OF ATTORNEY GENERAL  
 SFN 17996 (2-2023)

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

Full, Legal Name of Gaming Organization  
**METRO SPORTS FOUNDATION**

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

Name of Location  
**MEXICAN VILLAGE**

Street <b>3155 45TH ST S</b>	City <b>FARGO</b>	ZIP Code <b>58104</b>	County <b>CASS</b>
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Beginning Date(s) Authorized <b>7/1/23</b>	Ending Date(s) Authorized <b>6/30/24</b>	Number of Twenty-One tables, if zero, enter "0" <b>0</b>
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Specific location where games of chance will be conducted and played at the site (required)  
**MACHINES ARE LOCATED IN THE BAR AREA AND PLAYED IN BAR AREA, EXCEPT RESTROOMS**

If conducting Raffle or Poker activity provide date(s) or month(s) of the event(s) if known

**RESTRICTIONS FOR CITY/COUNTY USE ONLY**

The organization must provide the City/County a list of game types included in their Internal Control Manual and have the manual available upon request. The manual must thoroughly explain each game type to be conducted. The City/County can only approve these games at the site.

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

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

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

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**APPROVALS**

Attorney General	Date
Signature of City/County Official	Date <b>5/1/23</b>
PRINT Name and official position of person signing on behalf of city/county above <b>Steven Sprague /City Auditor</b>	

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 Bismarck, ND 58505-0040  
 Telephone: 701-328-2329 OR 800-326-9240

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**GAMING SITE AUTHORIZATION**  
 ND OFFICE OF ATTORNEY GENERAL  
 SFN 17996 (4-2023)

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

Full, Legal Name of Gaming Organization  
**METRO SPORTS FOUNDATION**

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

Name of Location  
**BREWUS CLUBHOUSE**

Street <b>4400 CLUBHOUSE DR S</b>	City <b>FARGO</b>	ZIP Code <b>58104</b>	County <b>CASS</b>
--------------------------------------	----------------------	--------------------------	-----------------------

Beginning Date(s) Authorized <b>7/1/23</b>	Ending Date(s) Authorized <b>6/30/24</b>	Number of Twenty-One tables, if zero, enter "0" <b>0</b>
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Specific location where games of chance will be conducted and played at the site (required)

**MACHINES ARE PLAYED IN THE BAR AREA, EXCEPT HALLWAYS AND RESTROOMS**

If conducting Raffle or Poker activity provide date(s) or month(s) of the event(s) if known

**RESTRICTIONS FOR CITY/COUNTY USE ONLY**

The organization must provide the City/County a list of game types included in their Internal Control Manual and have the manual available upon request. The manual must thoroughly explain each game type to be conducted. The City/County can only approve these games at the site.

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

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

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

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**APPROVALS**

Attorney General	Date
------------------	------

Signature of City/County Official	Date <b>5/1/23</b>
-----------------------------------	-----------------------

PRINT Name and official position of person signing on behalf of city/county above  
**Steven Sprague / City Auditor**

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**GAMING SITE AUTHORIZATION**  
 ND OFFICE OF ATTORNEY GENERAL  
 SFN 17996 (2-2023)

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

Full, Legal Name of Gaming Organization  
**METRO SPORTS FOUNDATION**

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

Name of Location  
**SCHEELS ARENA**

Street <b>5225 31ST AVE S</b>	City <b>FARGO</b>	ZIP Code <b>58104</b>	County <b>CASS</b>
----------------------------------	----------------------	--------------------------	-----------------------

Beginning Date(s) Authorized <b>7/1/23</b>	Ending Date(s) Authorized <b>6/30/24</b>	Number of Twenty-One tables, if zero, enter "0" <b>0</b>
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Specific location where games of chance will be conducted and played at the site (required)  
**LOBBY OF ARENA**

If conducting Raffle or Poker activity provide date(s) or month(s) of the event(s) if known  
**FARGO FORCE GAMES AND ANY OTHER UNSCHEDULED RAFFLE DRAWINGS DETERMINED BY MSF**

**RESTRICTIONS FOR CITY/COUNTY USE ONLY**

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

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

Days of week of gaming operations (if restricted)	Hours of gaming (if restricted)
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**APPROVALS**

Attorney General	Date
Signature of City/County Official	Date <b>5/1/23</b>

PRINT Name and official position of person signing on behalf of city/county above  
**Steven Sprague /City Auditor**

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✓ 2581



**GAMING SITE AUTHORIZATION**  
 ND OFFICE OF ATTORNEY GENERAL  
 SFN 17996 (2-2023)

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

Full, Legal Name of Gaming Organization  
**Red River Human Services Foundation**

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

Name of Location  
**The Elks Lodge #260**

Street <b>3435 North Broadway</b>	City <b>Fargo</b>	ZIP Code <b>58102</b>	County <b>Cass</b>
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Beginning Date(s) Authorized <b>7/1/2023</b>	Ending Date(s) Authorized <b>6/30/2024</b>	Number of Twenty-One tables, if zero, enter "0" <b>0</b>
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Specific location where games of chance will be conducted and played at the site (required)  
**Gaming Area is the entire bar (except restrooms/office/storage areas)**

If conducting Raffle or Poker activity provide date(s) or month(s) of the event(s) if known

**RESTRICTIONS FOR CITY/COUNTY USE ONLY**

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

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

Days of week of gaming operations (if restricted)	Hours of gaming (if restricted)
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**APPROVALS**

Attorney General	Date
Signature of City/County Official	Date <b>5/1/23</b>
PRINT Name and official position of person signing on behalf of city/county above <b>Steven Sprague / City Auditor</b>	

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**RETURN ALL DOCUMENTS TO:**

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

*123140*



**GAMING SITE AUTHORIZATION**  
 ND OFFICE OF ATTORNEY GENERAL  
 SFN 17996 (2-2023)

*gn*

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

Full, Legal Name of Gaming Organization  
**Red River Human Services Foundation**

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

Name of Location  
**Sickies on 45th**

Street <b>2551 45th St S</b>	City <b>Fargo</b>	ZIP Code <b>58104</b>	County <b>Cass</b>
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Beginning Date(s) Authorized <b>7/1/2023</b>	Ending Date(s) Authorized <b>6/30/2024</b>	Number of Twenty-One tables, if zero, enter "0" <b>0</b>
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Specific location where games of chance will be conducted and played at the site (required)  
**Machines are in the south west corner - Gaming Area is the entire bar (except restrooms/office/storage areas)**

If conducting Raffle or Poker activity provide date(s) or month(s) of the event(s) if known

**RESTRICTIONS FOR CITY/COUNTY USE ONLY**

The organization must provide the City/County a list of game types included in their Internal Control Manual and have the manual available upon request. The manual must thoroughly explain each game type to be conducted. The City/County can only approve these games at the site.

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

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

Days of week of gaming operations (if restricted)	Hours of gaming (if restricted)
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If any information above is false, it is subject to administrative action on behalf of the State of North Dakota Office of Attorney General

**APPROVALS**

Attorney General	Date
Signature of City/County Official	Date <b>5/1/23</b>
PRINT Name and official position of person signing on behalf of city/county above <b>Steven Sprague / City Auditor</b>	

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**GAMING SITE AUTHORIZATION**  
 ND OFFICE OF ATTORNEY GENERAL  
 SFN 17996 (2-2023)

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

Full, Legal Name of Gaming Organization  
**Red River Human Services Foundation**

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

Name of Location  
**Northern**

Street <b>325 10th St N</b>	City <b>Fargo</b>	ZIP Code <b>58102</b>	County <b>Cass</b>
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Beginning Date(s) Authorized <b>7/1/2023</b>	Ending Date(s) Authorized <b>6/30/2024</b>	Number of Twenty-One tables, if zero, enter "0" <b>3</b>
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Specific location where games of chance will be conducted and played at the site (required)  
**SW area of Bombshelter - North area of main bar / Gaming Area is the entire bar (except restrooms/office/storage areas)**

If conducting Raffle or Poker activity provide date(s) or month(s) of the event(s) if known

**RESTRICTIONS FOR CITY/COUNTY USE ONLY**

The organization must provide the City/County a list of game types included in their Internal Control Manual and have the manual available upon request. The manual must thoroughly explain each game type to be conducted. The City/County can only approve these games at the site.

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

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

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

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**APPROVALS**

Attorney General	Date
Signature of City/County Official	Date <b>5/1/23</b>
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✓ 23140



**GAMING SITE AUTHORIZATION**  
 ND OFFICE OF ATTORNEY GENERAL  
 SFN 17996 (4-2023)

SP

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

Full, Legal Name of Gaming Organization  
**Fargo Metro Baseball Association**

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

Name of Location  
**Specks Bar**

Street <b>2611 Main Ave</b>	City <b>Fargo</b>	ZIP Code <b>58103</b>	County <b>Cass</b>
Beginning Date(s) Authorized <b>7/1/2023</b>	Ending Date(s) Authorized <b>6/30/2024</b>	Number of Twenty-One tables, if zero, enter "0" <b>0</b>	

Specific location where games of chance will be conducted and played at the site (required)  
**Middle Bar**

If conducting Raffle or Poker activity provide date(s) or month(s) of the event(s) if known

**RESTRICTIONS FOR CITY/COUNTY USE ONLY**

The organization **must** provide the City/County a list of game types included in their Internal Control Manual and have the manual available upon request. The manual must thoroughly explain each game type to be conducted. The City/County can only approve these games at the site.

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

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

Days of week of gaming operations (if restricted) \_\_\_\_\_ Hours of gaming (if restricted) \_\_\_\_\_

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**APPROVALS**

Attorney General	Date
Signature of City/County Official	Date <b>5/1/23</b>
PRINT Name and official position of person signing on behalf of city/county above <b>Steven Sprague/ City Auditor</b>	

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**GAMING SITE AUTHORIZATION**  
 ND OFFICE OF ATTORNEY GENERAL  
 SFN 17996 (4-2023)

*Sg*

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

Full, Legal Name of Gaming Organization  
**Fargo Metro Baseball Association**

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

Name of Location  
**Empire Tavern**

Street <b>424 N Broadway</b>	City <b>Fargo</b>	ZIP Code <b>58102</b>	County <b>Cass</b>
Beginning Date(s) Authorized <b>7/1/2023</b>	Ending Date(s) Authorized <b>6/30/2024</b>	Number of Twenty-One tables, If zero, enter "0" <b>0</b>	

Specific location where games of chance will be conducted and played at the site (required)  
**Northwest Corner**

If conducting **Raffle** or **Poker** actively provide date(s) or month(s) of the event(s) if known

**RESTRICTIONS FOR CITY/COUNTY USE ONLY**

The organization **must** provide the City/County a list of game types included in their Internal Control Manual and have the manual available upon request. The manual must thoroughly explain each game type to be conducted. The City/County can only approve these games at the site.

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

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

Days of week of gaming operations (if restricted) \_\_\_\_\_ Hours of gaming (if restricted) \_\_\_\_\_

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**APPROVALS**

Attorney General	Date
Signature of City/County Official	Date <b>5/1/23</b>
PRINT Name and official position of person signing on behalf of city/county above <b>Steven Sprague / City Auditor</b>	

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**GAMING SITE AUTHORIZATION**  
 ND OFFICE OF ATTORNEY GENERAL  
 SFN 17996 (2-2023)

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

Full, Legal Name of Gaming Organization  
**Jon Greenley Amvets Post # 7**

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

Name of Location  
**Amvets**

Street <b>1001 1st Ave S.</b>	City <b>Fargo</b>	ZIP Code <b>58103</b>	County <b>Cass</b>
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Beginning Date(s) Authorized <b>7-1-23</b>	Ending Date(s) Authorized <b>6-30-24</b>	Number of Twenty-One tables, If zero, enter "0" <b>0</b>
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Specific location where games of chance will be conducted and played at the site (required)  
**West Wall - Where Alcohol can be Served**

If conducting Raffle or Poker activity provide date(s) or month(s) of the event(s) if known

**RESTRICTIONS FOR CITY/COUNTY USE ONLY**

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

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

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

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**APPROVALS**

Attorney General	Date
------------------	------

Signature of City/County Official	Date <b>5/1/23</b>
-----------------------------------	-----------------------

PRINT Name and official position of person signing on behalf of city/county above  
**Steven Sprague / City Auditor**

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 Bismarck, ND 58505-0040  
 Telephone: 701-328-2329 OR 800-326-9240

*✓ 2069*

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**GAMING SITE AUTHORIZATION**  
 ND OFFICE OF ATTORNEY GENERAL  
 SFN 17996 (2-2023)

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

Full, Legal Name of Gaming Organization  
**Jon Greenley Amvets Post # 7**

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

Name of Location  
**Hi - Ho Burgers & Brews**

Street <b>3051 25th St S</b>	City <b>Fargo</b>	ZIP Code <b>58103</b>	County <b>Cass</b>
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Beginning Date(s) Authorized <b>7-1-23</b>	Ending Date(s) Authorized <b>6-30-24</b>	Number of Twenty-One tables, If zero, enter "0" <b>0</b>
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Specific location where games of chance will be conducted and played at the site (required)  
**South Wall - South Addition Bar Side**

If conducting Raffle or Poker activity provide date(s) or month(s) of the event(s) if known

**RESTRICTIONS FOR CITY/COUNTY USE ONLY**

The organization **must** provide the City/County a list of game types included in their Internal Control Manual and have the manual available upon request. The manual must thoroughly explain each game type to be conducted. The City/County can only approve these games at the site.

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

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

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

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**APPROVALS**

Attorney General	Date
Signature of City/County Official	Date <b>5/1/23</b>
PRINT Name and official position of person signing on behalf of city/county above <b>Steven Sprague / City Auditor</b>	

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*Handwritten signature/initials*

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**GAMING SITE AUTHORIZATION**  
 ND OFFICE OF ATTORNEY GENERAL  
 SFN 17996 (2-2023)

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

Full, Legal Name of Gaming Organization  
Boys + Girls Club of Red River Valley  
 This organization is authorized to conduct games of chance under the license granted by the North Dakota Attorney General at the following location

Name of Location <u>Suite Shots</u>			
Street <u>3400 James Way So</u>	City <u>Fargo</u>	ZIP Code <u>58104</u>	County <u>Cass</u>
Beginning Date(s) Authorized <u>05-15-2023</u>	Ending Date(s) Authorized <u>05-15-2023</u>	Number of Twenty-One tables, if zero, enter "0" <u>0</u>	
Specific location where games of chance will be conducted and played at the site (required) <u>Entire Dining and Golfing Area</u>			
If conducting <u>Raffle</u> or <u>Poker</u> activity provide date(s) or month(s) of the event(s) if known <u>05/15/23</u>			

**RESTRICTIONS FOR CITY/COUNTY USE ONLY**

The organization **must** provide the City/County a list of game types included in their Internal Control Manual and have the manual available upon request. The manual must thoroughly explain each game type to be conducted. The City/County can only approve these games at the site.

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

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

Days of week of gaming operations (if restricted) \_\_\_\_\_ Hours of gaming (if restricted) \_\_\_\_\_

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**APPROVALS**

Attorney General	Date
Signature of City/County Official	Date <u>5/1/23</u>
PRINT Name and official position of person signing on behalf of city/county above <u>Steven Sprague / City Auditor</u>	

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**GAMING SITE AUTHORIZATION**  
 ND OFFICE OF ATTORNEY GENERAL  
 SFN 17996 (2-2023)

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

Full, Legal Name of Gaming Organization  
*Boys + Girls Club of Red River Valley*

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

Name of Location  
*Fargo Billiards / Gastropub*

Street <i>3234 43rd Ave So</i>	City <i>Fargo</i>	ZIP Code <i>58104</i>	County <i>Cass</i>
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Beginning Date(s) Authorized <i>07-01-2023</i>	Ending Date(s) Authorized <i>06-30-2024</i>	Number of Twenty-One tables, if zero, enter "0" <i>2</i>
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Specific location where games of chance will be conducted and played at the site (required)  
*Entire Bar Area Excluding Restrooms and Patio*

If conducting Raffle or Poker activity provide date(s) or month(s) of the event(s) if known

**RESTRICTIONS FOR CITY/COUNTY USE ONLY**

The organization must provide the City/County a list of game types included in their Internal Control Manual and have the manual available upon request. The manual must thoroughly explain each game type to be conducted. The City/County can only approve these games at the site.

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

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

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

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**APPROVALS**

Attorney General	Date
Signature of City/County Official	Date <i>5/1/23</i>
PRINT Name and official position of person signing on behalf of city/county above <i>Steven Sprague/City Auditor</i>	

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**GAMING SITE AUTHORIZATION**  
 ND OFFICE OF ATTORNEY GENERAL  
 SFN 17996 (4-2023)

*(Signature)*

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

Full, Legal Name of Gaming Organization  
**North Dakota Association For The Disabled, Inc.**

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

Name of Location  
**O'Kelly's**

Street <b>3800 Main Ave</b>	City <b>Fargo</b>	ZIP Code <b>58103</b>	County <b>Cass</b>
Beginning Date(s) Authorized <b>7/1/23</b>	Ending Date(s) Authorized <b>6/30/24</b>	Number of Twenty-One tables, If zero, enter "0" <b>2</b>	

Specific location where games of chance will be conducted and played at the site (required)  
**Gaming will be conducted in the entire bar (excluding restrooms).**

If conducting Raffle or Poker activity provide date(s) or month(s) of the event(s) if known

**RESTRICTIONS FOR CITY/COUNTY USE ONLY**

The organization **must** provide the City/County a list of game types included in their Internal Control Manual and have the manual available upon request. The manual must thoroughly explain each game type to be conducted. The City/County can only approve these games at the site.

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

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

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

If any information above is false, it is subject to administrative action on behalf of the State of North Dakota Office of Attorney General

**APPROVALS**

Attorney General	Date
Signature of City/County Official	Date <b>5/1/23</b>
PRINT Name and official position of person signing on behalf of city/county above <b>Steven Sprague/City Auditor</b>	

**INSTRUCTIONS:**

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

**RETURN ALL DOCUMENTS TO:**

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



**GAMING SITE AUTHORIZATION**  
 ND OFFICE OF ATTORNEY GENERAL  
 SFN 17996 (4-2023)

*SW*

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

Full, Legal Name of Gaming Organization  
**North Dakota Association For The Disabled, Inc.**

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

Name of Location  
**Bulldog Tap**

Street <b>4265 45th St S</b>	City <b>Fargo</b>	ZIP Code <b>58104</b>	County <b>Cass</b>
Beginning Date(s) Authorized <b>7/1/23</b>	Ending Date(s) Authorized <b>6/30/24</b>	Number of Twenty-One tables, if zero, enter "0" <b>2</b>	

Specific location where games of chance will be conducted and played at the site (required)  
**Gaming will be conducted in the entire bar (excluding restrooms).**

If conducting Raffle or Poker activity provide date(s) or month(s) of the event(s) if known

**RESTRICTIONS FOR CITY/COUNTY USE ONLY**

The organization **must** provide the City/County a list of game types included in their Internal Control Manual and have the manual available upon request. The manual must thoroughly explain each game type to be conducted. The City/County can only approve these games at the site.

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

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

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

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**APPROVALS**

Attorney General	Date
Signature of City/County Official	Date <b>5/1/23</b>
PRINT Name and official position of person signing on behalf of city/county above <b>Steven Sprague/City Auditor</b>	

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 Telephone: 701-328-2329 OR 800-326-9240



**GAMING SITE AUTHORIZATION**  
 ND OFFICE OF ATTORNEY GENERAL  
 SFN 17996 (4-2023)

(SX)

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

Full, Legal Name of Gaming Organization

**North Dakota Association For The Disabled, Inc.**

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

Name of Location

**Cowboy Jack's**

Street

**506 Broadway**

City

**Fargo**

ZIP Code

**58102**

County

**Cass**

Beginning Date(s) Authorized

**7/1/23**

Ending Date(s) Authorized

**6/30/24**

Number of Twenty-One  
 tables, if zero, enter "0"

**1**

Specific location where games of chance will be conducted and played at the site (required)

**Gaming will be conducted in the entire bar (excluding restrooms).**

If conducting Raffle or Poker activity provide date(s) or month(s) of the event(s) if known

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- |  |  |   |
|--|--|---|
| <input checked="" type="checkbox"/> Bingo                      | <input type="checkbox"/> Club Special                  | <input checked="" type="checkbox"/> Sports Pools      |
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| <input checked="" type="checkbox"/> Raffles                    | <input type="checkbox"/> Seal Board                    | <input type="checkbox"/> Poker                        |
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Days of week of gaming operations (if restricted)

Hours of gaming (if restricted)

If any information above is false, it is subject to administrative action on behalf of the State of North Dakota Office of Attorney General

**APPROVALS**

Attorney General

Date

Signature of City/County Official

Date

**5/1/23**

PRINT Name and official position of person signing on behalf of city/county above

**Steven Sprague/City Auditor**

**INSTRUCTIONS:**

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 Telephone: 701-328-2329 OR 800-326-9240



REPORT OF ACTION  
**FINANCE COMMITTEE**

⑨

**Project:** Receive and File Current Schedule of Proposed Uses for American Rescue Plan Act Funds and Final Reconciliation of 2022 Revenues and Expenditures

**Type:** Budget

**Location:** N/A

**Date of Hearing:** April 24, 2023

<u>Routing</u>	<u>Date</u>
City Commission	5/1/2023
Project File	N/A

The Finance Committee received a presentation from City staff regarding the original 2022 General Fund Budget, as approved in September 2021, and amendments made to the budget since adoption. The 2022 expenditure budget increased due to rolling forward unspent 2021 budgeted line items. The 2022 revenue budget required reconciliation due to events that occurred in the 2021 budget year rather than 2022, most notably the sale of the Island Park Ramp. The Finance Committee also received an estimate of the General Fund balance as of December 31, 2022 and an overview of the City's financial management and fund balance policy. The City's General Fund balance is consistent with City policy following the reconciliation of 2022 revenues and expenditures.

The Finance Committee also discussed the City of Fargo's American Rescue Plan Act (ARPA) allocation and the proposed uses of funds for projects that are underway or will commence later in 2023 or 2024. It was referenced that funds will continue to be drawn down consistent with previous Finance Committee discussion and City Commission action. As such, the City's ARPA allocation plan will remain in place to be used for specific activities as approved by the City Commission on April 18, 2022.

The Finance Committee concurred with the suggested approach to reconcile 2022 revenues and expenditures, and to maintain the City of Fargo's approved ARPA allocation plan.

**MOTION:**

On a motion by Piepkorn, seconded by Sprague, the Finance Committee voted unanimously to receive and file the current schedule of proposed uses for the American Rescue Plan Act funds and accept the final reconciliation of 2022 revenues and expenditures.

<u>COMMITTEE:</u>	<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Unanimous</u>
				<u>X</u>
				<u>Proxy</u>
Tim Mahoney, Mayor	<u>X</u>			
Dave Piepkorn, City Commissioner	<u>X</u>			
Mike Redlinger, City Administrator	<u>X</u>			
Steve Sprague, City Auditor	<u>X</u>			

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

R4.



**FINANCE OFFICE**  
**PO Box 2083**  
**225 4th Street North**  
**Fargo, ND 58102**  
**Phone: 701.241.1333 | Fax: 701.476.4188**  
**www.FargoND.gov**

TO: FINANCE COMMITTEE

FROM: FINANCE OFFICE

RE: 2022 BUDGET TO ACTUALS AND ALLOCATION OF AMERICAN RESCUE  
 PLAN BUDGET

DATE: APRIL 20, 2023

### INTRODUCTION

The original 2022 General Fund Budget, as approved in September 2021, has seen many changes to account for new projects, grants, and positions. Additionally, the originally approved expenditure budget increased due to rolling forward unspent 2021 budgeted line items to the 2022 budget. Finally, the 2022 revenue budget was approved with the expectation that the Island Park Ramp sale would occur in 2022. The sale ultimately took place in late 2021, thereby causing a notable variance in the original revenue expectations. Below is an unaudited summary of the General Fund changes in fund balance.

### ESTIMATE OF GENERAL FUND BALANCE 12.31.22

	<u>ORIGINAL BUDGET</u>	<u>FINAL BUDGET</u>	<u>ACTUAL</u>	<u>VARIANCE</u>
REVENUE	104,520,893.00	101,333,136.00	98,093,018.22	(3,240,117.78)
EXPENDITURE	104,520,893.00	106,964,962.00	106,065,807.78	899,154.22
	-	(5,631,826.00)	(7,972,789.56)	(4,139,272.00)
Fund Balance 12.31.21			38,435,934.00	
Estimated Fund Balance 12.31.22			<u>30,463,144.44</u>	

### FINANCIAL MANAGEMENT & FUND BALANCE POLICY

Per City of Fargo policy, the City strives to maintain a fund balance of 25 percent of the total year expenditures to be used for cash flow and unanticipated expenditures. For 2022, the City's estimated General Fund balance of \$30,463,144 represents 28.72 percent of the total General Fund expenditures which exceeds our management goal of 25 percent. For background, attached to this memorandum is a ten-year history of General Fund Balances.

## AMERICAN RESCUE PLAN ACT (ARPA) ALLOCATION

The Finance Office had considered redistributing unspent American Rescue Plan Act (ARPA) funds in order to complete an additional transfer to the General Fund under the Revenue Loss provision described by the US Department of the Treasury. The funding provided under ARPA provides a unique opportunity for state and local governments to make strategic investments in long-lived assets; rebuilding reserves to enhance financial stability; and to cover temporary operating shortfalls until economic conditions and operations normalize. The City received a total of \$20,205,034 in ARPA funding that is currently held in a special revenue fund.

Initially, ARPA projects were to be used for specific, targeted spend categories. Since the introduction of the program, these guidelines have been clarified and opened to additional eligible uses. Finance, in working with our consultants, has determined that all of our ARPA funds are eligible to be used under the Revenue Loss provision of the program. Essentially, the City can use the dollars however it wishes, with a few exceptions. At the April 18, 2022, City Commission meeting, a summary of projects to be funded with ARPA funds was approved. At the December 2022 Finance Committee and Personnel Evaluation Committee meetings, there were additional reallocations presented by Planning and Public Health, including the funding of three (3) new FTEs for 2023 and 2024.

Attached is a schedule of approved projects, spend to date, and remaining balance. As of December 31, 2022, \$8,080,726 of ARPA funds had been used with \$12,036,030 remaining to be spent. Of the unspent balance, approximately \$88,000 is remaining to be allocated. As of this date, there are three projects that exceeded their initial allocation, including:

- IS-24/7 Network Monitoring (IS Department);
- Water-Ultrafiltration Membrane Buildout (Water Utility); and
- Planning-Churches United (Planning Department)

These expenses can be covered in part by the remaining funds to be allocated; allocating a portion of the Water projects to that Enterprise fund; or adjusting the project allocations.

## SUMMARY

While redistributing the ARPA funds to new projects in order to expedite closing out this program would ease the administrative burden on Finance, we are seeking approval to continue with the projects as they have been approved by the City Commission as listed in the attached schedule. Funds must be encumbered by December 31, 2024 and fully spent by December 31, 2026.

**Recommended Action:** Receive and file current schedule of proposed uses for American Rescue Plan Act funds and accept final reconciliation of 2022 revenues and expenditures.

CITY OF FARGO, NORTH DAKOTA  
 FUND BALANCES - GOVERNMENTAL FUNDS  
 LAST TEN FISCAL YEARS  
 (modified accrual basis of accounting)  
 (UNAUDITED)

	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
General fund										
Nonspendable	\$ 2,396,008	\$ 3,193,345	\$ 3,077,850	\$ 3,458,574	\$ 3,407,591	\$ 3,639,923	\$ 4,080,149	\$ 3,254,912	\$ 4,562,747	\$ 3,787,630
Restricted	2,099,862	1,408,205	2,933,454	2,724,557	2,913,219	3,170,287	3,054,111	3,299,447	5,515,852	5,423,514
Committed	3,276,615	3,311,267	3,273,816	3,255,360	2,581,150	1,405,918	1,000,016	1,000,016	1,000,015	1,000,015
Assigned	1,634,896	1,542,711	2,063,907	696,286	1,639,608	1,531,414	542,423	598,370	234,832	1,079,780
Unassigned	23,280,959	22,428,922	25,881,011	29,041,175	28,854,936	28,099,032	26,862,322	25,531,980	34,629,546	27,144,995
Total general fund	\$ 32,686,340	\$ 31,884,450	\$ 37,230,038	\$ 39,176,052	\$ 39,396,504	\$ 37,846,574	\$ 35,539,021	\$ 33,684,725	\$ 45,942,992	\$ 38,435,934

**American Rescue Plan  
Summary of Planned Uses**

<u>Description</u>	<u>Category</u>	<u>ARP Project</u>		<u>2021 Expense</u>	<u>2022 Expense</u>	<u>Spent to Date</u>	<u>Budget Remaining</u>
		<u>Budget</u>	<u>Budget</u>				
Multiple factor software (cyber security)	Revenue Loss	157,494.00		45,807.00	109,914.00	155,721.00	1,773.00
24/7 Network monitoring - MSSP/MDR	Revenue Loss	125,000.00		-	168,586.16	168,586.16	(43,586.16)
Server/SAN equipment	Revenue Loss	743,106.00		37,214.91	618,630.43	711,094.44	32,011.56
Pen Tests	Revenue Loss	24,000.00		-	9,825.00	9,825.00	14,175.00
Alertus	Revenue Loss	60,000.00		-	48,502.50	48,502.50	11,497.50
ERP Software Replacement Software Vendor	Revenue Loss	1,000,000.00		-	-	-	1,000,000.00
ERP Software Project Management Consultant	Revenue Loss	250,000.00		-	58,760.00	58,760.00	191,240.00
Core Neighborhoods Implementation	Revenue Loss	350,000.00		-	-	-	350,000.00
CCLT	Revenue Loss	400,000.00		-	400,000.00	400,000.00	-
Beyond Shelter Senior Project	Revenue Loss	250,000.00		-	-	-	250,000.00
Arts & Culture	Revenue Loss	250,000.00		-	-	-	250,000.00
United Way	Revenue Loss	250,000.00		-	-	-	250,000.00
Beyond Shelter Senior Project	Revenue Loss	250,000.00		-	-	-	250,000.00
FM Area Foundation	Revenue Loss	250,000.00		-	-	-	250,000.00
Southside fueling annex	Revenue Loss	700,000.00		-	-	-	700,000.00
HVAC System - PW West	Revenue Loss	800,000.00		-	648,253.00	648,253.00	151,747.00
Ultrafiltration membrane buildout	Infrastructure	900,000.00		286,217.00	667,840.00	954,057.00	(54,057.00)
General Fund Revenue Loss	Revenue Loss	2,500,000.00		-	2,500,000.00	2,500,000.00	-
Fund 402 building capital	Revenue Loss	2,000,000.00		-	2,000,000.00	2,000,000.00	-
Churches United	Negative Economic Impact	350,000.00		-	405,430.77	405,430.77	(55,430.77)
Cyber Security	Revenue Loss	125,000.00		-	-	-	125,000.00
Beyond Shelter Senior Project	Revenue Loss	300,000.00		-	-	-	300,000.00
Fund 402 building capital	Revenue Loss	2,000,000.00		-	-	-	2,000,000.00
1st Flood PD Windows	Revenue Loss	350,000.00		-	-	-	350,000.00
Transfer to Parking Fund	Revenue Loss	1,000,000.00		-	-	-	1,000,000.00
General Fund Revenue Loss - 2023	Revenue Loss	3,500,000.00		-	-	-	3,500,000.00
2023 Budget - Specif item for Public Safety	Revenue Loss	310,000.00		-	-	-	310,000.00
Program Operations Manager	Revenue Loss	201,033.00		-	-	-	201,033.00
Community Engagement Specialist	Revenue Loss	172,265.00		-	-	-	172,265.00
Assistant Emergency Manager	Revenue Loss	201,033.00		-	-	-	201,033.00
Health-Crisis Response & Coordinator Salary	Revenue Loss	152,825.00		-	-	-	152,825.00
Winter Sheltering 2022/2023	Revenue Loss	180,000.00		-	20,495.99	20,495.99	159,504.01
Downtown Engagement Center Cameras	Revenue Loss	15,000.00		-	-	-	15,000.00
		20,116,756.00		369,238.91	7,656,237.85	8,080,725.86	12,036,030.14

**20,205,034.00** Total ARP Allocation

**88,278.00** Amount left to Allocate

(10)



## MEMORANDUM

**Date:** April 25, 2023

**To:** Board of City Commissioners

**From:** Brady Scribner, City of Fargo Emergency Manager  
Lieutenant Matthew Christensen, Fargo Police Department & Red River Valley SWAT

**Re:** Acceptance of North Dakota Department of Emergency Services FY 2022 State Homeland Security Grant

---

### Background:

The Fargo Police Department has been awarded a grant from the North Dakota Department of Emergency Services (NDDDES) in the amount of \$86,000. This is an amended award amount as it provides an additional \$50,000 to the previous grant award of \$36,000 which was approved by the Board of City Commissioners on December 27<sup>th</sup>, 2022. There is no requirement for the City of Fargo to match any of the amended grant funding provided.

The Fargo Police Department/Red River Valley SWAT team has been awarded the amended grant funding to include the purchase of a personnel vehicle for use by the SWAT team. The addition of this vehicle will help support team core capabilities necessary to prevent, prepare for, protect against, and respond to critical incidents and acts of terrorism.


### Recommended Motion:

Accept and approve the amended grant funding amount of \$86,000 and sign the amended North Dakota Department of Emergency Services Notice of Grant Award.

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Attachments: NDDDES Notice of Grant Award (amended)

North Dakota Department of Emergency Services Division of Homeland Security PO Box 5511 Bismarck, ND 58506-5511 <b>NOTICE OF GRANT AWARD</b>		<b>ND DHS Director:</b> Darin Hanson PO Box 5511 Bismarck, ND 58506-5511 <b>Recipient Contact Name:</b> Debbie LaCombe Telephone: 328-8100	
<b>Title of Grant Program:</b> FY 22 State Homeland Security Grant Program			
<b>Federal Award Identification Number:</b> EMW-2022-SS-00076		<b>Federal Award Date:</b> September 1, 2022	
<b>Federal Awarding Agency:</b> U.S. Department of Homeland Security			
<b>CFDA No.</b> 97.067 Homeland Security Grant Program		<b>Federal Award to NDDes:</b> \$4,847,500.00	

<b>Subrecipient Name and Address:</b> Fargo Police Department 105 25th St N Fargo, ND 58102 <b>Subrecipient Contact Name:</b> Mr. William Ahlfeldt Telephone: 701-241-0000 Subrecipient UEI Number: K2QJQZVH5PM6		<b>Grant Number</b> 10	<b>County/Tribe</b> Cass	<b>Performance Period</b> From: October 1, 2022 Through: August 31, 2024
<b>Financial Information</b> Amount of Financial Assistance	<b>Grant Amount</b> \$86,000.00	<b>Subrecipient Cost Share</b>	<b>Total Project Cost</b> \$86,000.00	
All Grant Award payments are processed upon receipt of expenditure reports unless otherwise specified in Special Conditions.				
<b>Scope of Service:</b> The intent of NDDes in providing this award is to enhance the capability of the subrecipient to prevent, protect against, mitigate, respond to, and recover from acts of terrorism and other catastrophic events in accordance with the Guidance for this grant program and in accordance with the subrecipient's application. This award is limited to the approved budget located online in DES Grants.				
<b>Reporting Requirements:</b> Project Status Reports on project must be submitted to NDDes on a quarterly basis through the NDDes Grants Management Software. Reports are due January 15, April 15, July 15 and October 15 for the life of the grant. A final report is due with the final reimbursement request.				
<b>Special Conditions:</b> The above grant project is approved subject to the special conditions or limitations as indicated on the attached page.				
This award is subject to the terms and conditions incorporated either directly or by reference in the following: 1) Fiscal Requirement and Other Program Rules, Regulations, Laws, and Policies for Federal Programs which can be found at <a href="https://grants.des.nd.gov/site/HSGP.cfm">https://grants.des.nd.gov/site/HSGP.cfm</a> 2) Applicable Federal and State laws and regulations 3) The recipient agrees that all allocations and use of funds under this grant will be in accordance with the Federal/State Notice of Funding Opportunity & FEMA Preparedness Grants Manual for this grant program.				
This contract is not effective until fully executed by both parties. By signing below you are accepting the terms and conditions of the award. Please make sure you read and understand these documents before signing. Maintain a copy of these documents in your official file for this award.				
<b>Evidence of Subrecipient's Acceptance</b>		<b>Evidence of DES Approval</b>		
Signature	Date	 Signature	Date: 3/22/2023	
<b>Typed Name and Title of Authorized Representative</b>		<b>Typed Name and Title of Authorized Representative</b> Darin Hanson Director		



11

## MEMORANDUM

**Date:** April 26, 2023

**To:** Board of City Commissioners

**From:** Brady Scribner, City of Fargo Emergency Manager  
Collin Gnoinsky, City of Fargo Physical Security Advisor

**Re:** Recommendation for State Homeland Security Grant Application to Fund Physical Security Improvements at the Public Safety Building

---

### Situation:

The North Dakota Department of Emergency Services (NDDDES) is soliciting project applications for the Fiscal Year 2023 State Homeland Security (SHSP) Grant. The SHSP Grant assists states, local, tribal, and territorial efforts to build, sustain, and deliver the capabilities necessary to prevent, prepare for, protect against, and respond to acts of terrorism. An applicant's project must support one of the national grant priorities which includes "enhancing the protection of soft targets/crowded places". The SHSP Grant does not require a local cost share as part of the application process which you will find in the attached copy of the SHSP Grant guidance.

### Background:

City of Fargo Emergency Management is working with our partners in Facilities Management to develop a SHSP Grant project application for security improvements at the Public Safety Building (PSB). Critical functions and assets which includes the Emergency Operations Center, Fargo Fire Station 6, and irreplaceable historical property records to name a few, are based out of the PSB and warrant sufficient prevention and detection of unauthorized access.

### Assessment:

Improvements are needed to establish a baseline of physical security measures to prevent and deter unauthorized access to the PSB. Any unauthorized access to the building places critical functions and assets at risk. Physical security improvements include additional card readers for external and internal building access control as well as establishing an external and internal security camera system.

### Recommended Motion:

Approve submission of a State Homeland Security Grant project application in the amount of \$175,000 to fund physical security improvements at the Public Safety Building.

*Attachments: FY2023 SHSP Grant Program Guidance*





FISCAL YEAR 2023  
STATE HOMELAND  
SECURITY GRANT  
PROGRAM (SHSP)  
APPLICATION  
GUIDANCE

**APPLICATION GUIDANCE**

For Local Government  
Jurisdictions and  
Departments

North Dakota Department  
of Emergency Services  
(NDDDES)

Division of Homeland Security

## Program Description

Funding for this program is provided by the U.S. Department of Homeland Security (DHS): Federal Emergency Management Agency (FEMA) Grants Program Directorate (GPD). North Dakota applicants must apply for the funding through the North Dakota Department of Emergency Services (NDDDES): Division of Homeland Security.

The State Homeland Security Program (SHSP) assists states, local, tribal, and territorial efforts to build, sustain, and deliver the capabilities necessary to prevent, prepare for, protect against, and respond to acts of terrorism.

### Assistance Listings Title and Number

State Homeland Security Grant Program (97.067)

### Federal Notice of Funding Opportunity Title and Number

Fiscal Year 2023 Homeland Security Grant Program (HSGP)

### Application Information

Local government jurisdictions/departments must apply for FY 2023 SHSP through NDDDES (the SAA). *Local government* means any unit of government within North Dakota, such as a:

- County
- City or Town
- Local public authority
- Special district (example: fire protection district)
- School district
- Any other agency or instrumentality of a local government
- Tribal government

By submitting an application to NDDDES, the applicant agrees to comply with the requirements of the Department of Homeland Security (DHS) Notice of Funding Opportunity (NOFO) for Fiscal Year (FY) 2023 Homeland Security Grant Program (HSGP) and the terms and conditions of the award, should the applicant receive an award.

Date Application Posted to NDDDES website:

March 7, 2023

Application Submission Deadline

**April 30, 2023, 5:00 p.m. CT**

Applicants must submit application to NDDDES (SAA) by Monday, April 30, 2023, no later than 5:00 p.m. CT. All applications **must** be received by the established deadline. **Applicants are solely responsible for completing their application prior to the established deadline.**

### Unique Entity Identifier

Applicants applying for SHSP funding through NDDDES (SAA) **must** have a Unique Entity Identifier (UEI) number. The applicant must provide a UEI with their application.

If you are going to apply for this funding opportunity and have not obtained a UEI, please obtain a UEI by April 13, 2023. If your organization does not yet have a UEI, visit [SAM.gov](https://sam.gov) to get a UEI and select "Get Started", then choose "Get Unique Entity ID."

Obtaining a UEI is free of charge, so if you encounter any organizations or websites soliciting a fee or charge to acquire a UEI it is likely a scam or fraudulent.

**Note:** If you do not have a UEI by the time the application is due on April 30<sup>th</sup>, then your application will not be considered for funding.

### Content and Form of Application Submission

Applying for an award under this program is a multi-step process and requires time to complete. To ensure that an application is submitted on time applicants are advised to start the required steps well in advance of their submission. Failure of the applicant to comply with any of the required steps before the application deadline may disqualify their application from funding.

The steps to apply for an award are:

1. Apply for, updating, or verifying the UEI
2. Completing application package
3. Submitting the complete application package to NDDDES by the deadline
  - a. Application (within GMS system)
  - b. Certification Regarding Lobbying form (uploaded to GMS system)
  - c. Environmental and Historic (EHP) Review form (if required)

### Authorized Organizational Representative (AOR)

The AOR should be the individual who is able to make legally binding commitments for the applicant organization.

### Electronic Signature

Applications submitted through the NDDDES Grants Management System constitute a submission as electronically signed applications. When submitting the application through GMS the applicant's AOR will type his/her name into the signature line of the application.

### PRIORITIES AND ELIGIBLE PROJECTS

Applicant's projects must support one of the following national priorities to be considered for funding:

- 1) Enhancing the protection of soft targets/crowded places
  - o Physical security enhancements
    - Closed-circuit television security cameras
    - Security screening equipment for people and baggage
    - Lighting

- Access controls
  - Fencing, gates, barriers, etc.
- 2) Enhancing community preparedness and resilience
- Establish, train, and maintain Community Emergency Response Teams (CERT) and Teen CERT, with a focus on historically underserved communities, including procurement of appropriate tools, equipment, and training aids
    - Local delivery of CERT train-the-trainer and CERT Program Manager to build local program training and maintenance capacity
  - Provide continuity training, such as FEMA’s Organizations Preparing for Emergency Needs training, to faith-based organizations, local businesses, and community-based organizations such as homeless shelters, food pantries, nonprofit medical providers, and senior care facilities to bolster their resilience to all hazards
  - Partner with local school districts to deliver the Student Tools for Emergency Planning curriculum or other educational programming to guide students on how to create emergency kits and family communications plans
  - Partner with key stakeholders to assist with completing the Emergency Financial First Aid Kit or a similar tool to bolster the disaster centric financial resilience of individuals and households
  - Execute *You are the Help Until the Help Arrives* workshops in concert with community-based organizations to bolster individual preparedness
  - Target youth preparedness using FEMA programs such as Prepare with Pedro resources and Ready2Help
  - Promote community planning, coordination, and integration of children’s needs during emergencies through workshops like FEMA’s Integrating the Needs of Children
  - Community Mapping: identify community resources and characteristics to identify gaps in resources, identify hazards and vulnerabilities, and inform action to promote resilience
- 3) Enhancing election security
- Physical security planning support
  - Physical/site security measures – e.g., locks, shatter proof glass, alarms, etc.
  - General election security navigator support
  - Cyber navigator support
  - Cybersecurity risk assessments, training, and planning
  - Projects that address vulnerabilities identified in cybersecurity risk assessments
  - Iterative backups, encrypted backups, network segmentation, software to monitor/scan, and endpoint protection
  - Distributed Denial of Service protection
  - Migrating online serves to the “.gov” internet domain.
- 4) Combating domestic violent extremism
- Open-source analysis of disinformation and misinformation campaigns, targeted violence and threats to life, including tips/leads, and online/social-media based threats
  - Sharing and leveraging intelligence and information, including open-source analysis
  - Execution and management of threat assessment programs to identify, evaluate,

- and analyze indicators and behaviors indicative of domestic violent extremists
- Training and awareness programs (e.g., through social media, suspicious activity report indicators and behaviors) to help prevent radicalization.
- Training and awareness programs (e.g., through social media, suspicious activity reporting indicators and behaviors) to educate the public on misinformation and disinformation campaigns and resources to help them identify and report potential instances of domestic violent extremism.

### Other Eligible Projects

The following Enduring Needs projects will also be considered provided they support one the national priorities listed above:

- 1) Planning
  - Development of Security Risk Management Plans
  - Threat Mitigation Plans
  - Continuity of Operations Plans
  - Response Plans
- 2) Training and Awareness
  - Active shooter training
  - Security training for employees
  - Public awareness/preparedness campaigns
  - Targeted outreach and preparedness training for underserved communities in conjunction with community-based organizations
- 3) Exercises
  - Response exercises, including exercise planning with community-based organizations

### Funding Restrictions

The following types of projects will **not** be considered:

- Emergency Communications Equipment
- Unmanned Aircraft Systems (UAS)
- Riot Suppression Gear
- Weapons/weapons accessories/ammunition
- Body Cameras/In-car Video Systems
- Covered (People's Republic of China) Telecommunications Equipment or Services ([2 CFR § 200.216](#))

### SHSP Program Specific Application Instructions

As part of the FY 2023 SHSP application, each applicant must address the following in their application:

#### **How to Apply to NDDes via NDDes Grants Management System**

Applications must be submitted to NDDes via the NDDes Grants Management System. Below are the steps to apply.

**Step 1:** Request Access to the Website by going to <http://grants.des.nd.gov>

- Underneath the login area, click the link titled “Register for Access”
- Fill out the access request form and click “Register” at the bottom of the form. This will send the request to our system administrators for approval.
  - **New Users:** In the “Request Type:” field, select “New User Requesting Access”
  - **Existing Users:** In the “Request Type:” field select, “Existing User Requesting Additional Access”
- When granted access to the website, the user will be notified by email Monday through Friday 8:00 a.m. to 5:00 p.m. Requests made after hours or on the weekends will not be addressed until the next business day.
  - **New Users** will be given a temporary password to access the site. Once logged in, the website will prompt the user to enter the temporary password to create a permanent password for future site access.
  - **Existing Users** will be able to use their existing password.

**Note: If you do not receive an email, check you Junk Email box before calling NDDDES.**

**Step 2: Starting the Application**

- Once a user is active and access to grants.des.nd.gov has been granted, the user will only have access to the jurisdiction or organization they represent. All applicants are separated to ensure privacy and prevent fraud.
- To apply for an SHSP grant, the first step is to complete the application. After logging into the website, the user’s jurisdiction or organization name will be located along the right-hand side of the screen under “Applicant You Represent”
- Under the applicant’s name will be a link that says, “Apply for Grant”. Click the “Apply for Grant” link and a new window will open that allows the choice of which specific Grant and Project Type can be applied for.
  - For the Grant, choose “FY 2023 State Homeland Security Program (SHSP)”
  - For the Project Type, the only option to choose is GEN-General SHSP
  - Once these are selected, click the “Create” button and a new application will be opened

**Note:** Be sure to **Save** the application by clicking the Save button on the top left of the page as you complete each section of the application to prevent losing the information you input. If you go out of the application and come back to complete it later the draft can be accessed from your home page in your **Inbox** which can be found on the right-hand side.

**Step 3: Completing the Application:**

Once in the application, click on the left tab entitled “Form”. The word “Form” will be in red with a red star next to it. The red color and star indicate that the form has not been completed and needs additional information before it can be submitted. The application cannot be submitted until all required information has been entered into the form.

**Introduction Page**

- Title: Use the following naming convention *Entity-National Priority-Project* (ex. Brown County-Enhancing Protection-Security Cameras)
- Primary Contact: This must be a legal representative of the jurisdiction that is applying

since the jurisdiction will be legally responsible for the project. (**Note:** To choose a name click on the down arrow. If the person isn't listed click on "create a new contact".)

- Alternate Contact: Representative of the jurisdiction other than primary contact.
- Authorized Contact: Representative of the jurisdiction other than primary contact that has the authority to act in the Primary Contacts absence.
- Work Activity: Areas that coincide with your work activity and costs. Choose Planning, Training, Exercise, and/or Equipment. *Hold the **Ctrl** key to select multiple areas.*
- Mark the appropriate statement (Yes or No) at the bottom of the page.

**Costs Page:**

This represents your budget request for the SHSP grant. The costs for a project should be broken down into direct cost categories. For each cost, click the "Add Line" button and enter the specific information for that cost item. **Note: Federal funds cannot be used to supplant local funds.**

- Cost Line Items
  - Area: Choose Planning, Training, Exercise, or Equipment
  - Type: Choose Contractor, Equipment, Materials and Supplies, Travel, Other
  - AEL Code: Enter the AEL Code. If you are unsure of the Code, you can click on the blue "List" link, and it will show you the available codes.
  - Description: When you enter the AEL Code the Description will auto-populate. **DO NOT CHANGE THE AUTO-POPULATED DESCRIPTION.** Add additional information after the auto-populated portion.
  - Quantity: Enter the Quantity of the item.
  - Price: Enter the Unit Price of the item.
  - Total: The Total column will auto-calculate.
- Funding Sources: Simply click on the "By Percent" button and enter 100 into the Estimated Federal Share.

*Federal definition of supplanting: Supplanting occurs when a unit of local government reduces funds for an activity in its local budget, specifically because federal funds are available (or expected to be available) to fund that same activity. Federal funds must never supplant funds for activities that were previously covered by local funds.*

*Example: Organization X was awarded federal funding to purchase four cameras. Organization X adjusted its local budget (originally allocated to pay for cameras) and shifted local funding, which it budgeted to purchase the four cameras, to other purposes. This would be considered supplanting and is not allowed.*

**Agreements Page**

- Check the small box stating the documentation is being electronically signed
- Enter name and date of Agency Authorized Representative (this should be the Primary Contact)

**Work Activity Pages:**

- Start Date: Enter the date the project is estimated to start. Note projects should not have a start date prior to October 1, 2023.
- End Date: Enter the date the project is estimated to be complete. Note projects should be

complete by March 31, 2025.

- Objective: Explain **what** the project is and the goal your project is intended to accomplish. Use the S.M.A.R.T philosophy when developing your objective/goal. **Be specific and detailed.**
  - Specific
  - Measurable
  - Achievable
  - Relevant
  - Time-bound

*Example: To improve community preparedness, we will conduct five (**Measurable**) Teen CERT training courses (**Specific**) by the March 31, 2025 (**Time-bound**) to increase the ability of 25% (**Achievable**) of the students in our high schools to aid their fellow students (**Relevant**) until first responders arrive following any hazard or threat.*

- Justification: Provide justification demonstrating why you need this project. Include the following: (**Note:** Create a separate objective for each proposed project by clicking on the “Add an Objective” button.) The Justification section has a maximum of 1000 characters. If your justification narrative exceeds 1000 characters attach a separate word document to your application.
  - **How** does the project help you prevent, prepare for, protect, or respond to threatened or actual act of terrorism and other hazards and threats.
  - **How** does the project address the National Priority Area. (See pages 4-6).
  - **How** does the project close gaps identified in the county Threat and Hazard Identification and Risk Assessment (THIRA). *Contact your county emergency manager for assistance to determine if a gap is identified.*
  - **How** will you measure and evaluate success, improvement, outcomes, impacts (quantitatively and/or qualitatively).
  - **How** was the budget was determined.

**Note:** The Justification section has a maximum of 1000 characters. If your justification narrative exceeds 1000 characters upload a separate word document under “Upload Documents” on the Application page.

- Action Steps: Explain the steps required for successful completion of the project. (A project schedule with clearly defined milestones.) **Note:** To add additional Action Steps, click on the “Add Action Step” button.
  - Example:
    - Q1 obtain quotes and procure equipment hardware from vendor
    - Q2 arrange installation and technical resources
    - Q3 installation begins
    - Q4 installation continues
    - Q5 Finalize install and complete testing
    - Q6 Finalize project, collect metrics, and submit final reimbursement request
- EHP Review
  - Indicate **Yes** if your project involves Training, Exercise, or the following Equipment:
    - Equipment with an AEL Code that starts with 04MD-01
    - Equipment with an AEL Code that starts with 06CP-01 or 06CP-03
    - 10GE-00-GENR – Generators



- 13LE-00-SURV – Law Enforcement Surveillance Equipment
- Equipment with an AEL Code that starts with 14SW-01 or 14SW-02
- 19GN-00-RFMN – Temperature and Humidity Monitors/Recorders
- Any other equipment that requires installation in or on a structure
- Indicate **No**, if your project does not meet the criteria above.

### **Finishing the Application**

Once you have completed the application be sure to hit the **“Save”** button at the top of the page. From there, the user will need to upload their backup documentation, including any additional forms required in the Notice of Funding Opportunity.

- Uploading documents:
  - Click on the Summary tab above the Form tab in the application.
  - Click the “Add Document” button at the bottom of the page. This will bring up a window to add files.
  - Select the “Choose Files” button, locate, and select the files needing to be uploaded and click Open.
  - Once they are added to the list, assign a document type from the drop-down list.
  - Click the Upload button

After everything is uploaded and completed, hit the **“Advance”** button. This will notify NDDDES that the application is ready for review. NDDDES will review the application for eligibility and completeness. If the application is missing documentation or needs revisions, the application will be returned to the applicant with a Request for Information (RFI) that outlines what revisions are required. Once the RFI has been completed, the applicant will need to re-submit the application to the State again for further review.

### Review and Selection Process

#### State Review

Application packages are submitted by the applicant to NDDDES (the SAA) based on the established criteria described in the NOFO.

NDDDES will review applications and recommend to DHS/FEMA which applications should be selected for funding. NDDDES’s review will include verification that each project:

- has a demonstrated nexus to preventing, preparing for, protecting against, and respond to acts of terrorism;
- aligns with at least one National Priority Area;
- demonstrates how investments support closing capability gaps or sustaining capabilities identified in the THIRA process; and
- is relevant to the program, achievable, and the cost is reasonable

NDDDES will also consider the following risk-based considerations of the applicant:

- 1) financial stability;

- 2) quality of management systems and ability to meet management standards;
- 3) history of performance in managing federal awards;
- 4) reports and findings from audits; and
- 5) ability to effectively implement statutory, regulatory, or other requirements.

Successful applicants will be notified via the Grants Management System (GMS) no later than November 15, 2023.

#### Review Criteria

State's review will include verification that the project:

- Risk-based considerations of the applicant
- Alignment to one of the National Priority Areas (NPA), nexus to Terrorism (40%)
- Defined, documentable, and measurable outcomes (15%)
- How project supports closing gaps identified in the County THIRA (30%)
- Is feasible and effective, budget is reasonable (15%)

## Award Administration Information

### Notice of Grant Award

Notification of award approval is made through the NDDDES Grants Management System (GMS) to the sub-recipient's authorized official listed in the initial application. The sub-recipient should follow the directions in the notification to confirm acceptance of the award.

Sub-recipients must accept their awards no later than 10 days from the award date. The sub-recipient shall notify NDDDES of its intent to accept and proceed with work under the award by signing the Notice of Grant Award and uploading it to the Project page in the GMS.

Funds will remain on hold until the sub-recipient accepts the award and all other conditions of award have been satisfied, or the award is otherwise rescinded. Failure to accept the grant award within the 10-day timeframe may result in a loss of funds. Sub-recipients who wish to decline the award must provide a written notice of intent to decline through the GMS.

Sub-award of sub-recipients whose project(s) require an Environmental Historic Preservation (EHP) review and who's EHP is not approved by DHS/FEMA within 30 days of the State receiving the federal award, will include the condition that the project cannot be started, or any funds expended until the EHP is approved. Projects started prior to EHP approval will result in the award being rescinded. NDDDES will notify the sub-recipient when the EHP has been approved.

**All successful applicants will be required to complete and submit the 2023 National Cybersecurity Review (NCSR). The 2023 NCSR is estimated to be open from October 2023 – February 2023.**

See the [Preparedness Grants Manual](#) for information on federal administrative and national policy requirements, including the DHS Standard Terms and Conditions.

**Before accepting the award, the AOR should carefully read the award package for instructions on administering the grant award and the terms and conditions associated with responsibilities under Federal Awards. Sub-recipients must accept all conditions in the NOFO as well as any Special Terms and Conditions in the Notice of Award to receive an award under this program.**

### Reporting

Sub-recipients are required to submit various financial and programmatic reports as a condition of their award acceptance. Future awards and funds reimbursement may be withheld if these reports are delinquent. **Reporting will be done electronically through the NDDDES Grants Management System (GMS) located at <https://grants.des.nd.gov/>.**

In addition, sub-recipients may have additional reporting requirements to the federal awarding agency. See the [Preparedness Grants Manual](#) for information on federal reporting requirements, including financial, programmatic, and closeout reporting and disclosing information per 2 C.F.R. § 180.335.

#### Financial Reporting Requirements

Sub-recipients must submit at least one reimbursement request through the NDDDES Grants Management System (GMS) upon completion of the project; however, quarterly reimbursement requests as the project progresses are preferred. See the [Reimbursement Processing Checklist](#) for a list of documentation that must be included with the reimbursement request.

NDDDES uses the Direct Deposit/Electronic Funds Transfer (DD/EFT) method of payment to sub-recipients. To enroll in the DD/EFT, the sub-recipient must complete and submit to NDDDES a Substitute IRS Form W-9 (SFN 53656) <http://www.nd.gov/eforms/Doc/sfn53656.pdf> and a voided check.

#### Program Performance Reporting Requirements

Sub-recipients are responsible for providing updated performance reports on a quarterly basis through the NDDDES Grants Management System (GMS).

#### *Program Performance Reporting Periods Due Dates*

The following reporting periods and due dates apply for the performance progress reports:

Reporting Period	Report Due Date
October 1 – December 31	January 15
January 1 – March 31	April 15
April 1 – June 30	July 15
July 1 – September 30	October 15

#### Closeout Reporting Requirements

Within 15 days after the end of the Period of Performance, sub-recipients must submit a final reimbursement request and final project status report detailing all accomplishments and a qualitative summary of the impact of those accomplishments throughout the Period of Performance, as well as other documents required by program guidance or terms and conditions of the award, to include the [tangible personal property report](#) (inventory of all equipment and software acquired using funds from the award).

The sub-recipient must liquidate all obligations incurred under the HSGP award by the end of the period of performance. Unliquidated obligations at the end of the period of performance will result in the costs being disallowed.

After these reports have been reviewed and approved by NDDDES, a close-out notice will be completed to close out the grant. The notice will indicate the Period of Performance is closed, list any remaining funds that will be de-obligated, address the requirement of maintaining the grant records for three years from the date of the final Federal Financial Report submitted by NDDDES to DHS/FEMA, and disposition and reporting requirements for any equipment purchased using HSGP funding.

Federal rules require that all equipment purchased with federal funds must be inventoried and tagged. Sub-recipients are to record equipment purchased with a value of \$5,000 or more on the [Inventory List form](#) and submit it to NDDDES. NDDDES will then issue the sub-recipient inventory tags based on the submitted form. All inventory tags must be placed on identified equipment within 30 days of receiving the tags.

#### Environmental Planning and Historic Preservation (EHP) Compliance

As a Federal agency, DHS/FEMA is required to consider the effects of its actions on the environment and/or historic properties to ensure that all activities and programs funded by the agency, including grants-funded projects, comply with federal EHP regulations, laws, and Executive Orders as applicable. Sub-recipients proposing projects that have the potential to impact the environment, including but not limited to construction of communication towers, modification or renovation of existing buildings, structures and facilities, or new construction including replacement of facilities, must participate in the DHS/FEMA EHP review process. The EHP review process involves the submission of a detailed project description ([EHP Screening Form](#)) along with supporting documentation so that DHS/FEMA may determine whether the proposed project has the potential to impact environmental resources and/or historic properties. In some cases, DHS/FEMA is also required to consult with other regulatory agencies and the public to complete the review process.

**The EHP review process must be completed before funds are released to carry out the proposed project, otherwise, NDDDES will not be able to fund the project due to non-compliance with EHP laws, executive orders, regulations, and policies.**

Additionally, all sub-recipients are required to comply with GPD EHP Policy Guidance. This EHP Policy Guidance can be found in FP 108-023-1 at <https://www.fema.gov/media-library/assets/documents/85376> and GPD EHP Compliance and Reference Documentation at:

<https://www.fema.gov/environmental-planning-and-historic-preservation-compliance>.

Costs incurred to comply with the EHP requirements are the responsibility of the sub-recipient. This includes costs associated with the preparation, collection, or assembly of the necessary documentation, the submission of the EHP clearance form, and the consultation fees for the development of an Environmental Assessment (EA) or an Environmental Impact Statement (EIS).

## NDDDES Awarding Agency Contact Information

NDDDES staff will provide programmatic support and technical assistance. A list of contacts is provided below:

- Programmatic or Administrative Questions (grant guidance, reimbursement requests, change requests, etc.)
  - Dave Rice [drice@nd.gov](mailto:drice@nd.gov)
  - Debbie LaCombe [dlacombe@nd.gov](mailto:dlacombe@nd.gov)
  - Karen Hilfer [khilfer@nd.gov](mailto:khilfer@nd.gov)
    - EHP Review Process (EHP guidance, screening form, etc.)

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

44

Project No.: NDDOT Project No. NHU-8-801(041)930 Type: Cost Participation and Maintenance Agreement

Location: 19th Ave N, I-29 – Dakota Dr. Date of Hearing: 4/24/2023

<u>Routing</u>	<u>Date</u>
City Commission	5/1/2023
PWPEC File	X
Project File	Jeremy Gorden

The Committee reviewed the accompanying correspondence from Division Engineer, Jeremy Gorden, regarding a Cost Participation and Maintenance Agreement (CPM) with NDDOT for a project on 19th Avenue North. This project will seal the asphalt roadway.

The project was bid April 14, 2023, and the low bidder was Asphalt Surface Technologies Corporation of St. Cloud, MN, in the amount of \$97,066.24. With this bid, the estimated construction cost for the City of Fargo is \$10,677.29. Funding for the project will consist of Federal Highway Funds from the NDDOT's National Highway Program and Street Sales Tax Funds.

The project is scheduled to have a Substantial Completion Date of September 1, 2023.

Staff is recommending approval of the CPM Agreement and concurrence with the low bid for the project.

On a motion by Nicole Crutchfield, seconded by Bruce Grubb, the Committee voted to recommend approval of the CPM Agreement with the NDDOT and concurrence with the low bid.

RECOMMENDED MOTION

Concur with recommendations of PWPEC and approve the CPM Agreement with the NDDOT and concur with the low bid.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: Federal Hwy Funds & Street Sales Tax

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

COMMITTEE

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

ATTEST:

*B. E. Derrig*

Brenda E. Derrig, P.E.  
City Engineer

C: Kristi Olson

# Memorandum

**To:** Members of PWPEC

**From:** Jeremy M. Gorden, PE, PTOE  
Division Engineer - Transportation

**Date:** April 20, 2023

**Re:** Approval of Cost, Participation and Maintenance (CPM) Agreement with NDDOT for 19<sup>th</sup> Avenue North Chip Seal Project – I-29 to Dakota Drive  
AND Concur with Low Bid NDDOT Project No. NHU-8-081(041)930

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## Background:

I have attached a CPM Agreement from the Local Government Division of the NDDOT for this project on 19<sup>th</sup> Avenue North. This project will seal the asphalt roadway. It is typical to complete a chip seal project two years after an overlay has been completed.

The project was bid April 14, 2023, and the low bidder was Asphalt Surface Technologies Corporation of St. Cloud, MN, in the amount of \$97,066.24. With this bid, the estimated construction cost for the City of Fargo is \$10,677.29. Funding for the project will consist of Federal Highway Funds from the NDDOT's National Highway Program and Street Sales Tax Funds.

The project is scheduled to have a substantial completion date of September 1, 2023.

## Recommended Motion

I recommend approval of the CPM Agreement AND Concur with the Low Bid for the project.

JMG/klb  
Attachments

NORTH  
**Dakota** | Transportation  
Be Legendary.™

April 18, 2023

Brenda Derrig  
City Engineer  
225 4<sup>th</sup> St. N  
Fargo, ND 58102

PROJECTS: NHU-8-081(041)930, PCN 23844 – CASS CO; US 81B (19TH AVE N), JCT  
DAKOTA DR E TO I-29 – FARGO

Bids for the construction on the above noted project were taken at our bid opening of April 14, 2023. A copy of the Contract Detail Estimate and Abstract of Bids are enclosed.

The low bid for Chip Seal was submitted by Asphalt Surface Technologies Corporation of Saint Cloud, MN, in the amount of \$97,066.24. According to the agreement with the City of Fargo, the City's share of project NHU-8-081(041)930 is estimated to be \$10,677.29. See contract detail estimates for cost breakdown and limits.

Before we can award to the low bidder, we need the City of Fargo to **concur**, in writing, in the estimated amount before April 21, 2023, if possible.

Questions should be addressed to the Construction Services Division at 701-328-2566.



PHILLIP MURDOFF, P.E. - CONSTRUCTION SERVICES ENGINEER

80/pm/jmt  
Enclosure

Via e-mail only



North Dakota **FEDERAL AID**

Bid Opening Date: **4/14/2023**

Project Number: **NHU-8-081(041)930**

PCN: **23844**

Job Number: **23844**

English/Metric: **ENGLISH**

Contract with **ASPHALT SURFACE TECHNOLOGIES CORPORATION SAINT CLOUD, MN**

Signed Date:

County(s): **CASS**

Location: **US 81B (19TH AVE N), JCT DAKOTA DR E TO I-29 - FARGO**

Roadway: **URBAN**

**US 81B, LRS\_ID U81N000B60.333\_01 RP 930.239 (10.3591) TO RP 930.850 (10.975)**

Type: **CHIP SEAL**

Participating: **Y**

Spec Code	Item Description	Quantity	Unit	Unit Price	Amount
103 0100	CONTRACT BOND	1.000	L SUM	\$200.00	\$200.00
401 0070	FOG SEAL	14.000	GAL	\$50.00	\$700.00
420 0118	CHFRS-2P EMULSIFIED ASPHALT	6,649.000	GAL	\$3.00	\$19,947.00
420 0128	COVER COAT MATERIAL CL 41-M	16,147.000	SY	\$1.40	\$22,605.80
420 0160	BLOTTER MATERIAL CL 44	20.000	TON	\$10.00	\$200.00
702 0100	MOBILIZATION	1.000	L SUM	\$34,000.00	\$34,000.00
704 1000	TRAFFIC CONTROL SIGNS	3,260.000	UNIT	\$1.05	\$3,423.00
704 1048	PORTABLE RUMBLE STRIPS	2.000	EA	\$1,100.00	\$2,200.00
704 1052	TYPE III BARRICADE	10.000	EA	\$55.00	\$550.00
704 1060	DELINEATOR DRUMS	160.000	EA	\$11.00	\$1,760.00
704 1067	TUBULAR MARKERS	212.000	EA	\$3.30	\$699.60
704 1087	SEQUENCING ARROW PANEL-TYPE C	2.000	EA	\$1,100.00	\$2,200.00
704 1500	OBLITERATION OF PAVEMENT MARKING	76.000	SF	\$20.00	\$1,520.00
762 0103	PVMT MK PAINTED-MESSAGE	48.000	SF	\$9.90	\$475.20
762 0460	SHORT TERM PAINTED LINE-SEAL JOBS	6,124.000	LF	\$0.40	\$2,449.60
762 1104	PVMT MK PAINTED 4IN LINE	9,496.000	LF	\$0.29	\$2,753.84
762 1108	PVMT MK PAINTED 8IN LINE	335.000	LF	\$1.88	\$629.80
762 1124	PVMT MK PAINTED 24IN LINE	38.000	LF	\$19.80	\$752.40
Subtotal					<b>\$97,066.24</b>
Eng and Contg					<b>\$9,706.62</b>
Total					<b>\$106,772.86</b>

Length **0.4600 Miles**

Estimated Cost		Construction
		<b>\$106,772.86</b>
<b>NHU FEDERAL FUNDS</b>	<b>80.93%</b>	<b>\$86,411.27</b>
<b>NHU STATE FUNDS</b>	<b>9.07%</b>	<b>\$9,684.30</b>
<b>NHU FARGO CITY FUNDS</b>	<b>10.00%</b>	<b>\$10,677.29</b>



ND DEPARTMENT OF TRANSPORTATION		SHEET NO. 1 OF 1		ABSTRACT OF BIDS RECEIVED			
PROJECT NO. NHU-8-081(04)930		BIDDER ENGINEERS ESTIMATE		BIDDER ASPHALT SURFACE TECH NOLOGIES CORPORATION		BIDDER ASPHALT PRESERVATION CO INC DBA APC INC	
COUNTY & DATE: CASS (017) APR 14, 2023 09:30AM		C.C. CHECK RANK 00		C.C. BOND RANK 01		C.C. BOND RANK 02	
LENGTH & TYPE: 0.460 US 81, DAKOTA DR TO I-29 - FARGO		AMOUNT		AMOUNT		AMOUNT	
COMPLETION TIME: 09/16/23 CHIP SEAL		BID PRICE		BID PRICE		BID PRICE	
SPEC. NO.	ITEM DESCRIPTION	QUANTITY	UNIT	AMOUNT	AMOUNT	AMOUNT	AMOUNT
103	CONTRACT BOND	1000	L SUM	1900000	2000000	1000000	1000000
401	FOG SEAL	14000	GAL	7000	70000	10164	10164
420	CHFRS-2P EMULSIFIED ASPHALT	6649000	GAL	2327150	1994700	2500	1662250
420	COVER COAT MATERIAL CL 41-M	16147000	SY	1114143	2260580	3000	4844100
420	BLOTTER MATERIAL CL 44	20000	TON	40220	20000	1010	2000000
702	MOBILIZATION	1000	L SUM	2500000	3400000	2000000	2000000
704	TRAFFIC CONTROL SIGNS	3260000	UNIT	815000	1050	1110	361860
704	PORTABLE RUMBLE STRIPS	2000	EA	400000	220000	1100000	220000
704	TYPE III BARRICADE	10000	EA	157500	55000	56000	56000
704	DELINEATOR DRUMS	160000	EA	632000	176000	176000	176000
704	TUBULAR MARKERS	212000	EA	39580	69960	3500	74200
704	SEQUENCING ARROW PANEL-TYPE C	76000	EA	378000	220000	1100000	220000
704	BLITZATION OF PAVEMENT MARKING	48000	SF	60800	152000	230000	190000
762	PVMT MK PAINTED-MESSAGE	6124000	SF	33600	9900	22000	105600
762	SHORT TERM PAINTED LINE-SEAL JOBS	9496000	LF	73488	47520	225	137790
762	PVMT MK PAINTED 4IN LINE	335000	LF	360848	275384	1450	427320
762	PVMT MK PAINTED 8IN LINE	38000	LF	50250	62980	1110	37185
762	PVMT MK PAINTED 24IN LINE	38000	LF	45600	75240	11500	43700
TOTAL				9352655	9706624	10666189	
				NO LIMIT	NO LIMIT	NO LIMIT	

ACTION TAKEN BY DEPARTMENT OF TRANSPORTATION Deputy Director For Engineer-Ing: **47** AWARD TO: ASPHALT SURFACE TECHNOLOGIES CORPORATION WHEN PRELIMINARY ARRANGEMENTS ARE COMPLETED.

DEPARTMENT OF TRANSPORTATION Deputy Director For Engineer-Ing

**MEMO TO:** Ron Henke  
Director

**FROM:** Wayne A. Zacher, P.E.

**DATE:** 04/14/2023

**SUBJECT:** 38230452: NHU-8-081(041)930 (PCN 23844) Cost Participation and Maintenance Agreement

This is the CPM between NDDOT and City of Fargo for a project on United States Highway 81 (19<sup>th</sup> Ave N) from Dakota Drive to I-29. The project is a Chip Seal.

If you have any questions, contact me at (701)328-4828.

38/waz

DocuSign Workflow:

Stacey Hanson;

Paul Benning;

Shannon Sauer;

Jeremy Gorden (for Brenda Derrig) - Fargo Engineering;

City Attorney;

City Auditor;

City Mayor or President of Commission;

Wayne Zacher;

Clint Morgenstern;

Chad Orn

**North Dakota Department of Transportation  
COST PARTICIPATION AND MAINTENANCE AGREEMENT**

**Federal Award Information – to be provided by NDDOT**

Assistance Listing No: 20.205	Assistance Listing Title: Highway Planning & Construction
Award Name: Federal Aid Highway Program	Awarding Fed. Agency: Federal Highway Admin
NDDOT Program Mgr: Zacher, Wayne A.	Telephone: (701)328-4828

**Notice to Subrecipients: Federal awards may have specific compliance requirements. If you are not aware of the specific requirements for your award, please contact your NDDOT Program Manager.**

**Project No. NHU-8-081(041)930                      PCN: 23844**  
**Location: FARGO, US-81 FROM DAKOTA DR TO I-29**  
**Type of Improvement: Chip Seal**  
**Point of Beginning: RP 930.239 (Sta 53+80)**  
**Point of Ending: RP 930.850 (Sta 21+54)**

In consideration of the mutual benefits to be derived therefrom, it is agreed between the state of North Dakota, acting by and through its Director of Transportation, hereinafter referred to as NDDOT, whose address is 608 East Boulevard Avenue, Bismarck, North Dakota 58505-0700, and the Local Public Agency (LPA) of Fargo, North Dakota, hereinafter referred to as the LPA, the project will be constructed in accordance with the current edition of NDDOT's *Standard Specifications for Road and Bridge Construction* and with the plans incorporated into this agreement by reference.

The LPA

- a. Will pay 10 percent of the total actual construction cost of all items which are determined eligible for funding participation; and
- b. Will pay 10 percent of the total actual construction engineering cost of all items which are determined eligible for funding participation; and
- c. Will pay 100 percent of the actual construction, preliminary engineering, construction engineering, utility relocation, right of way, and any other costs incurred of all items as requested by the LPA and determined to be non-participating or ineligible for federal aid.

**PART I**

LPA Obligation:

1. The LPA will pay to NDDOT as the work progresses or when completed its share of the total cost of the project as defined above.
2. It is specifically agreed that if at any time the LPA fails to pay the amount billed to NDDOT within 60 days after billings, this document shall constitute an assignment of funds derived from the State Highway Tax Distribution Fund now or hereafter coming into the hands of the State Treasurer to the credit of the LPA, and the State Treasurer is hereby directed to deliver and pay over to NDDOT all



funds credited to the LPA until the total thereof equals the sum billed pursuant to this agreement. The preliminary cost estimate of the project is \$102,879, with the LPA's estimated share being \$10,288.

- 3. All existing LPA right of way within the project limits will be provided by the LPA with clear title and available for use in the project.

**PART II**

Post Construction

After the project is completed the LPA agrees to:

- 1. The LPA will control the length and location of curb openings for future entrances and will not permit the length of curb openings for entrances to exceed the length shown on the plans or as shown on a sketch of typical entrances for similar entrances; and will prohibit the construction or use of any entrances along the project within the LPA other than those shown on the plans, without prior approval of NDDOT.
- 2. The LPA will not change any speed limit signs as shown on the plans without prior approval of NDDOT.
- 3. The LPA will prohibit double and diagonal parking and will control all parallel parking where allowed within the limits of the project in a manner satisfactory to NDDOT and to the Federal Highway Administration (FHWA), or both.
- 4. All signs, signals, markings, and other protective structures erected on or in connection with the project, including those installed at the sole cost and expense of the LPA or by others, shall be approved by NDDOT. All traffic control devices will be in conformance with the latest edition of the Manual on Uniform Traffic Control Devices for Streets and Highways.
- 5. All right of way for the project will be maintained free of all encroachments except utilities and others in accordance with the current edition of NDDOT's "A Policy for Accommodation of Utilities on State Highway Right-of-Way". All obstructions to, interference with, or hazards to traffic flow will be removed by the LPA at the request of NDDOT. The LPA will be responsible for any consideration, avoidance, and minimization of impacts upon real property related to this project, such as changes in the grades of the streets, inconveniences to property or business, and any loss of light, air, view, access, egress, drainage, support, or nuisance.

**PART III**

Maintenance

The maintenance responsibilities will remain as defined in the previous cost participation and maintenance agreement for S-NHU-8-081(027)930, PCN 14641. Exact limits of the project are shown on the attached map.

**PART IV**

General:

- 1. Appendices A and E of the Title VI Assurances, attached, are hereby incorporated into and made a part of this agreement.



2. The Risk Management Appendix, attached, is hereby incorporated and made a part of this agreement.
3. Entities that receive federal funds through NDDOT may be required to obtain an audit in accordance with 2 C.F.R. Part 200, Subpart F. A copy of such audit shall be submitted to NDDOT. Entities that spend less than \$750,000 of federal funds from all sources may be subject to reviews by NDDOT at its discretion. Additionally, all entities receiving federal funds through NDDOT shall certify whether a Single Audit has been completed as part of the annual Federal award process. These requirements are applicable to counties, cities, state agencies, Indian tribes, colleges, hospitals, and non profit businesses.
4. The LPA is advised that its signature on this contract or agreement certifies that any person associated therewith is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency within the past three years; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction on any matter involving fraud or official misconduct within the past three years.
5. NDDOT is not responsible for any Property Taxes or Special Assessments on property which has been acquired as part of the roadway reconstruction project. The LPA is responsible to make arrangements for deferral or payment of such Taxes and/or Special Assessments.



Executed by the LPA of \_\_\_\_\_, at \_\_\_\_\_,  
North Dakota, the last date below signed.

APPROVED:

LPA of City of Fargo

\_\_\_\_\_  
LPA ATTORNEY (TYPE OR PRINT)

Dr. Timothy J. Mahoney  
NAME (TYPE OR PRINT)

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

\* Mayor  
TITLE

\_\_\_\_\_  
DATE

ATTEST:

Steve Sprague  
AUDITOR (TYPE OR PRINT)

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

Executed for the North Dakota Department of Transportation by the Director at Bismarck, North Dakota,  
the last date below signed.

APPROVED as to substance by:

NORTH DAKOTA DEPARTMENT OF  
TRANSPORTATION

Paul Benning

\_\_\_\_\_  
DIVISION DIRECTOR (TYPE OR PRINT)

\_\_\_\_\_  
DIRECTOR (TYPE OR PRINT)

DocuSigned by:  
Paul Benning  
SIGNATURE  
A411F817506247A

DS  
St

\_\_\_\_\_  
SIGNATURE

DS  
SS

4/19/2023  
DATE

\_\_\_\_\_  
DATE

\*Mayor or President of Commission

CLA 17058 (Div. 38)  
L.D. Approved 10-17, 1-23; C.M. 04/18/2023





**CERTIFICATION OF LOCAL MATCH**

It is hereby certified that the LPA of \_\_\_\_\_ will provide non-federal funds, whose source is identified below, as match for the amount the LPA is obligated to pay under the terms of the attached agreement with the North Dakota Department of Transportation. The certified amount does not duplicate any federal claims for reimbursement, nor are the funds used to match other federal funds, unless expressly allowed by federal regulation.

**Non-Federal Match Funds provided by LPA.** Please designate the source(s) of funds in the LPA budget that will be used to match the federal funds obligated for this project through the North Dakota Department of Transportation.

**Source:**

\_\_\_\_\_  
\_\_\_\_\_

Executed at \_\_\_\_\_, North Dakota, the last date below signed.

**ATTEST:**

Steve Sprague  
\_\_\_\_\_  
AUDITOR (TYPE OR PRINT)

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

**APPROVED:**

LPA of City of Fargo  
\_\_\_\_\_

Dr. Timothy J. Mahoney  
\_\_\_\_\_  
NAME (TYPE OR PRINT )

\_\_\_\_\_  
SIGNATURE

\* Mayor  
\_\_\_\_\_  
TITLE

\_\_\_\_\_  
DATE

\*Mayor or President of Commission

CLA 17058 (Div. 38)  
L.D. Approved 02-18; Rev. 09-22; C.M. 04/18/2023



**NORTH DAKOTA DEPARTMENT OF TRANSPORTATION  
APPENDIX A OF THE TITLE VI ASSURANCES**

During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the Contractor) agrees as follows:

1. Compliance with Regulations: The Contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, the Federal Highway Administration, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. Non-discrimination: The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the Contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. Information and Reports: The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the Federal Highway Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the Recipient or the Federal Highway Administration as appropriate, and will set forth what efforts it has made to obtain the information.
5. Sanctions for Noncompliance: In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
  - a. withholding payments to the Contractor under the contract until the Contractor complies; and/or
  - b. cancelling, terminating, or suspending a contract, in whole or in part.
6. Incorporation of Provisions: The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the Recipient or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.



**NORTH DAKOTA DEPARTMENT OF TRANSPORTATION  
APPENDIX E OF THE TITLE VI ASSURANCES**

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the Contractor) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

**Pertinent Non-Discrimination Authorities:**

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.P.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).



### Risk Management Appendix

**Routine\* Service Agreements with Sovereign Entities and Political Subdivisions of the State of North Dakota:**

**Parties:** **State** – State of North Dakota, its agencies, officers and employees

**Governmental Entity** – The Governmental Entity executing the attached document, its agencies, officers and employees

**Governments** – State and Government Entity, as defined above

Each party agrees to assume its own liability for any and all claims of any nature including all costs, expenses and attorney's fees which may in any manner result from or arise out of this agreement.

Each party shall secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds, authorized to do business in North Dakota, the following insurance coverages:

- 1) **Commercial general liability and automobile liability** insurance – minimum limits of liability required of the Governmental Entity are **\$375,000 per person and \$1,000,000 per occurrence**. The minimum limits of liability required of the State are **\$375,000 per person and \$1,000,000 per occurrence**.
- 2) **Workers compensation** insurance meeting all statutory limits.
- 3) The policies and endorsements may not be canceled or modified without **thirty (30) days prior written notice** to the undersigned State representative.

**The State reserves the right to obtain complete, certified copies of all required insurance documents, policies, or endorsements at any time.**

Each party that hires subcontractors shall require any non-public subcontractors, prior to commencement of work set out under an agreement between that party and the non-public subcontractor, to:

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

Subcontractor shall secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds authorized to do business in North Dakota: 1) commercial general liability; 2) automobile liability; and 3) workers compensation insurance all covering the Subcontractor for any and all claims of any nature which may in any manner arise out of or result from this agreement. The minimum limits of liability required are \$375,000 per person and \$1,000,000 per occurrence for commercial general liability and automobile liability coverages, and statutory limits for workers compensation. The Governments shall be endorsed on the commercial general liability policy and automobile liability policy as additional insureds. The Governments shall have all the benefits, rights and coverages of an additional insured under these policies that shall not be limited to the minimum limits of insurance required by this agreement or by the contractual indemnity obligations of the Contractor. Said endorsement shall contain a "Waiver of Subrogation" waiving any right of recovery the insurance company may have against the Governments as well as provisions that the policy and/or endorsement may not be canceled or modified without thirty (30) days prior written notice to the undersigned representatives of the Governments, and that any attorney who represents the State under this policy must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under N.D.C.C. Section 54-12-08. Subcontractor's insurance coverage shall be primary (i.e., pay first) as respects any insurance, self-insurance or self-retention maintained by the Governments. Any insurance, self-insurance or self-retention maintained by the Governments shall be excess of the Contractor's insurance and the Subcontractor's insurance and shall not contribute with them. The insolvency or bankruptcy of the insured Subcontractor shall not release the insurer from payment under the policy, even when such insolvency or bankruptcy prevents the insured Subcontractor from meeting the retention limit under the policy. Any deductible amount or other obligations under the Subcontractor's policy(ies) shall be the sole responsibility of the Subcontractor. This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and be placed with insurers rated "A-" or better by A.M. Best Company, Inc. The Governments will be indemnified, saved, and held harmless to the full extent of any coverage actually secured by the Subcontractor in excess of the minimum requirements set forth above. The Government Entity that hired the Subcontractor shall be held responsible for ensuring compliance with the above requirements by all Subcontractors. The Governments reserve the right to obtain complete, certified copies of all required insurance documents, policies, or endorsements at any time.

\*See *North Dakota Risk Management Manual*, section 5.1 for discussion of "unique" and "routine" agreements.

RM Consulted 2007  
Revised 07-22



DocuSign Envelope ID: EA0EB919-02C2-4EA3-9A3D-A1B071EBED3F

STATE	PROJECT NO.	PCN	SECTION NO.	SHEET NO.
ND	NHU-8-081(041)930	23844	1	1

**JOB # 3**  
**NORTH DAKOTA**

**DEPARTMENT OF TRANSPORTATION**

NHU-8-081(041)930

GOVERNING SPECIFICATIONS:  
2022 Standard Specifications adopted by the North Dakota Department of Transportation and the Supplemental Specifications effective on the date the project is advertised.

PROJECT NUMBER, DESCRIPTION, NET MILES, GROSS MILES  
NHU-8-081(041)930 0.46 0.611

DESIGN DATA		
Traffic	Average Daily	
Current - 2022	Pass: 12,865	Trucks: 177
	Total: 12,842	
Preventive Maintenance		

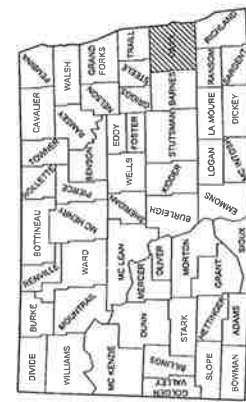
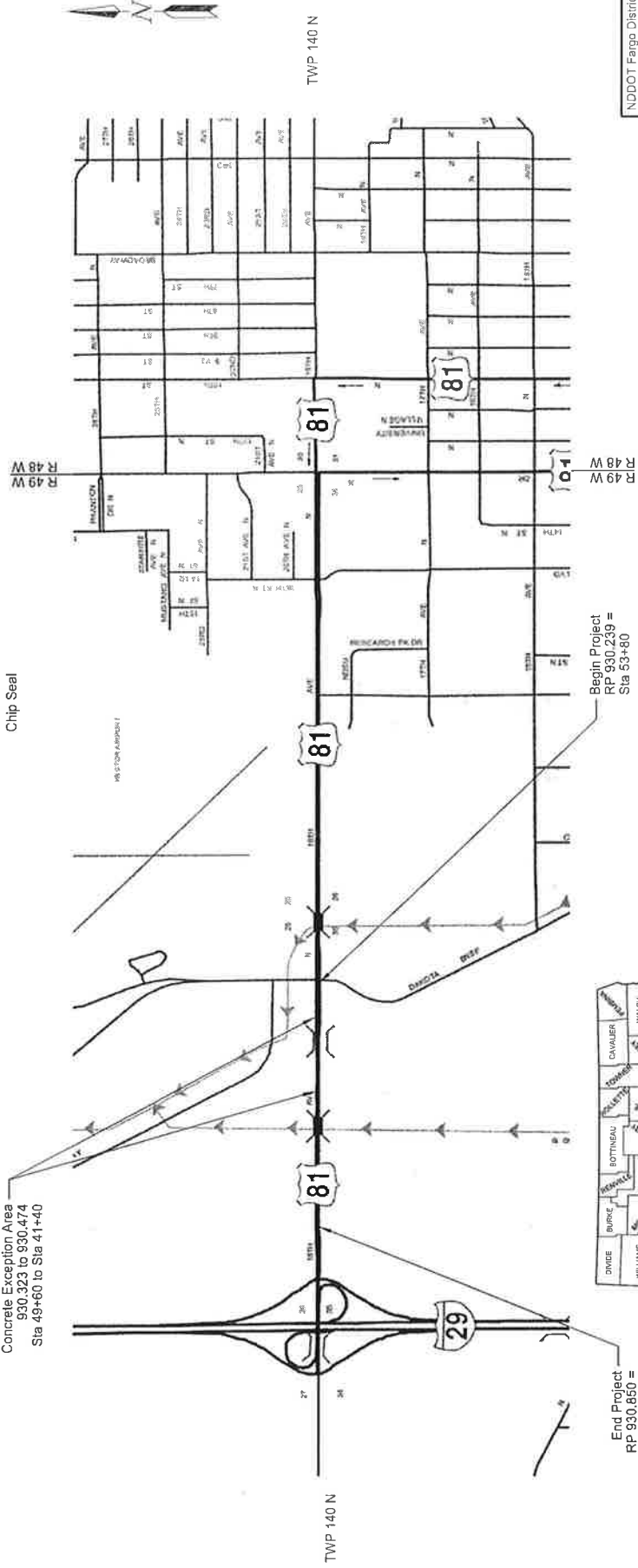
18th Ave N, (US 81) from 129 to Dakota Drive

Cass

Chip Seal

Concrete Exception Area  
930.323 to 930.474  
Sta 49+60 to Sta 41+40

R 48 W  
R 49 W



ND DEPARTMENT OF TRANSPORTATION  
Fargo District  
Peyerl, Joe X.  
2023.02.01 13:17:58  
*Joe Peyerl*  
-0600

DESIGNER	Patrick Heid
DESIGNER	
DESIGNER	

Funding Split for Fargo US 81 (19th Ave N) from Dakota Dr to I-29  
 Project: NHU-8-081(041)930, PCN 23844

Description of Cost	Engineering Estimate	Construction Engineering Cost (10%)	Total Estimate	Federal Funds	State Funds	Local Funds	Total
Construction Cost	\$ 93,527	\$ 9,353	\$ 102,879	\$ 83,260	\$ 9,331	\$ 10,288	\$ 102,879
<b>Totals</b>	<b>\$ 93,527</b>	<b>\$ 9,353</b>	<b>\$ 102,879</b>	<b>\$ 83,260</b>	<b>\$ 9,331</b>	<b>\$ 10,288</b>	<b>\$ 102,879</b>

Local Government Division: April 14, 2023  
 These costs are an estimate at the time of final plan completion, they may vary between now and final voucher.

**Certificate Of Completion**

Envelope Id: EA0EB91902C24EA39A3DA1B071EBED3F

Status: Sent

Subject: Contract #38230452: Please DocuSign: 17058.docx, Cost Participation & Maintenance Agreement

Contract Number: 38230452

PCN: 23844

Source Envelope:

Document Pages: 11

Signatures: 1

Certificate Pages: 4

Initials: 2

AutoNav: Enabled

Envelopeld Stamping: Enabled

Time Zone: (UTC-06:00) Central Time (US & Canada)

Envelope Originator:

Wayne Zacher

608 E Boulevard Ave

Bismarck, ND 58505

wzacher@nd.gov

IP Address: 165.234.92.5

**Record Tracking**

Status: Original

4/18/2023 4:58:52 PM

Holder: Wayne Zacher

wzacher@nd.gov

Location: DocuSign

Security Appliance Status: Connected

Pool: StateLocal

Storage Appliance Status: Connected

Pool: Carahsoft OBO North Dakota Department of

Transportation CLOUD

Location: DocuSign

**Signer Events**

Stacey Hanson

smhanson@nd.gov

Assistant Local Government Engineer

Carahsoft OBO North Dakota Department of

Transportation CLOUD

Security Level: Email, Account Authentication (None), Authentication

**Authentication Details**

SMS Auth:

Transaction: c4291521-366c-429a-ab66-cb4dcd4bd5c0

Result: passed

Vendor ID: TeleSign

Type: SMSAuth

Performed: 4/19/2023 7:37:54 AM

Phone: +1 701-527-8879

**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

Paul Benning

pbenning@nd.gov

Local Government Director

Security Level: Email, Account Authentication (None), Authentication

**Authentication Details**

SMS Auth:

Transaction: 877448c5-1a8c-46d8-abb5-fcc824ff7b6c

Result: passed

Vendor ID: TeleSign

Type: SMSAuth

Performed: 4/19/2023 7:47:22 AM

Phone: +1 701-214-2502

**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

**Signature**



Signature Adoption: Pre-selected Style

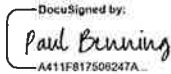
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Viewed: 4/19/2023 7:38:05 AM

Signed: 4/19/2023 7:38:52 AM



Signature Adoption: Pre-selected Style

Using IP Address: 165.234.253.12

Sent: 4/19/2023 7:38:54 AM

Viewed: 4/19/2023 7:47:30 AM

Signed: 4/19/2023 7:47:35 AM

**Signer Events**

Shannon Sauer  
ssauer@nd.gov  
Security Level: Email, Account Authentication  
(None), Authentication

**Signature**



Signature Adoption: Pre-selected Style  
Using IP Address: 165.234.253.12

**Timestamp**

Sent: 4/19/2023 7:47:39 AM  
Viewed: 4/19/2023 9:22:49 AM  
Signed: 4/19/2023 9:22:59 AM

**Authentication Details**

SMS Auth:  
Transaction: 3444b79d-a59c-49fa-958f-2ff5b8978c71  
Result: passed  
Vendor ID: TeleSign  
Type: SMSAuth  
Performed: 4/19/2023 9:22:42 AM  
Phone: +1 701-426-9825

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Jeremy Gorden  
JGorden@FargoND.gov

Security Level: Email, Account Authentication  
(None)

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Security Level: Email, Account Authentication  
(None)

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Security Level: Email, Account Authentication  
(None)

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Not Offered via DocuSign

Security Level: Email, Account Authentication  
(None)

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Wayne Zacher  
wzacher@nd.gov

Security Level: Email, Account Authentication  
(None), Authentication

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Clint Morgentstern  
cdmorgentstern@nd.gov

Security Level: Email, Account Authentication  
(None), Authentication

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Chad Orn  
corn@nd.gov

Security Level: Email, Account Authentication  
(None), Authentication



Signer Events	Signature	Timestamp
<b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign		
In Person Signer Events	Signature	Timestamp
<b>Editor Delivery Events</b> Wayne Zacher wzacher@nd.gov Carahsoft OBO North Dakota Department of Transportation CLOUD Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign	<b>Status</b> <div style="border: 1px solid black; padding: 5px; text-align: center; font-weight: bold; font-size: 1.2em;">VIEWED</div> Using IP Address:	<b>Timestamp</b> Sent: 4/18/2023 4:59:04 PM Completed: 4/18/2023 5:16:13 PM
Agent Delivery Events	Status	Timestamp
Jeremy Gorden JGorden@FargoND.gov Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign		Sent: 4/19/2023 9:23:03 AM Viewed: 4/20/2023 1:18:49 PM
Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp
Legal Admin dotlegaladmin@nd.gov Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign		
Legal Admin dotlegaladmin@nd.gov Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign		
Arron Murra amurra@nd.gov Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign		
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	4/18/2023 4:59:05 PM
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Envelope Updated	Security Checked	4/18/2023 5:16:13 PM
Envelope Updated	Security Checked	4/18/2023 5:16:13 PM

**Envelope Summary Events**

**Status**

**Timestamps**

Envelope Updated

Security Checked

4/18/2023 5:16:13 PM

Envelope Updated

Security Checked

4/18/2023 5:16:13 PM

Envelope Updated

Security Checked

4/18/2023 5:16:13 PM

**Payment Events**

**Status**

**Timestamps**

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Type: Encroachment Amendment

Location: 2408 16<sup>th</sup> Avenue South

Date of Hearing: 4/24/2023

<u>Routing</u>	<u>Date</u>
City Commission	<u>5/1/2023</u>
PWPEC File	<u>X</u>
Project File	<u>Kevin Gorder</u>

The Committee reviewed a communication from Division Engineer, Kevin Gorder, regarding an Amendment for the Encroachment Agreement with Nick and Dawn Michels at 2408 16<sup>th</sup> Avenue South.

Nick and Dawn Michels entered into an Encroachment Agreement with the City on April 28, 2014 for an existing fence along 25<sup>th</sup> Street South. They have experienced pedestrians walking over to their basement windows and throwing garbage and cigarette butts into the window wells. They would like to extend their fence so the side of their house is inside the fence. They have requested to have the application fee waived since they have paid an application fee for the original encroachment.

Engineering recommends approval of the Encroachment Amendment with or without the application fee.

On a motion by Ben Dow, seconded by Tim Mahoney, the Committee voted to recommend approval of the Encroachment Amendment, waiving all fees except the recordation fee, with the Nick and Dawn Michels at 2408 16<sup>th</sup> Avenue South.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve the Encroachment Amendment with Nick and Dawn Michels at 2408 16<sup>th</sup> Avenue South.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: N/A

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

COMMITTEE

	<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Unanimous</u>
				<input checked="" type="checkbox"/>
Tim Mahoney, Mayor	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Nicole Crutchfield, Director of Planning	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Steve Dirksen, Fire Chief	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Michael Redlinger, City Administrator	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Ben Dow, Director of Operations	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Steve Sprague, City Auditor	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Brenda Derrig, City Engineer	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Terri Gayhart, Finance Director	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

ATTEST:

Brenda E. Derrig, P.E.  
City Engineer

C: Kristi Olson

# Memorandum

**To:** Members of PWPEC  
**From:** Kevin Gorder, Division Engineer  
**Date:** April 20, 2023  
**Re:** Nick and Dawn Michels Encroachment Amendment – 2408 16<sup>th</sup> Avenue South

---

## **Background:**

Nick and Dawn Michels entered into an Encroachment Agreement with the City on April 28, 2014, for an existing fence along 25<sup>th</sup> Street South. They have experienced pedestrians walking over to their basement windows and throwing garbage and cigarette butts into the window wells. They would like to extend their fence so the side of their house is inside the fence. The blue line in the image below is the existing fence encroachment and the red line is the proposed fence addition.



Nick has also asked to have the application fee waived since they already have paid an application fee for the original encroachment.

## **Recommended Motion**

Recommend approval of the Encroachment Amendment with or without the application fee.

KOG/klb  
Attachment

**AMENDMENT (FIRST) TO ENCROACHMENT AGREEMENT (Document No. 1422926)**

**THIS AGREEMENT**, made and entered by and between **THE CITY OF FARGO, NORTH DAKOTA**, a municipal corporation, hereinafter referred to as “City”, and **NICHOLAS MICHELS** and **DAWN M. MICHELS**, hereinafter referred to as “Owner” amends that certain Encroachment Agreement (Document No. 1422926) recorded on July 28, 2014.

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

1. Owner, its successors and assigns, is hereby granted the right to further encroach and use a portion of the right-of-way, said encroachment being for the purpose of installing a residential fence on the west side of the residence located at 2408 16<sup>th</sup> Ave South, Fargo, North Dakota (hereinafter “Property”) more fully described as follows:

Lot 8, Block 5B, Replat of BLK 5, South View Villages Addition, Fargo ND, Cass County.

2. Said encroachment is more particularly described and indicated in attached Exhibit “A” showing the property involved and the location of the permitted additional fence location. Exhibit “A” is attached hereto and incorporated herein by reference.

3. Paragraph 10 of the existing Encroachment Agreement shall be amended as follows:

This Agreement is personal to Owner and cannot be sold, transferred or otherwise assigned, except as provided for herein. Notwithstanding the foregoing sentence, this Agreement is transferable to subsequent owners, successors and assigns of the Property, provided (1) City has not terminated the Agreement as provided herein; and (2) Owner, its successors or assigns, provides a notice of transfer to City prior to such transfer; and (3) Owner, its successors and assigns, provides City a certificate of insurance not more than 30 days after the transfer, evidencing continued, uninterrupted insurance as provided for herein. Failure to abide by these requirements may be cause for termination of this Agreement. This Agreement shall be binding upon subsequent owners, successors and assigns of the Property, irrespective of whether the foregoing conditions have been satisfied.

4. Owner agrees to pay City a \$500 processing fee. There shall be no annual fee for the use of the right of way.

5. The parties agree and understand that all terms of that Encroachment Agreement recorded as Document No. 1422926, attached hereto as Exhibit "B", shall remain in full force and effect unless modified herein, or as subsequently amended.

(Remainder of this page intentionally left blank)



Dated this 13<sup>th</sup> day of April, 202~~2~~<sup>3</sup>

**CITY OF FARGO, NORTH DAKOTA,  
a municipal corporation**

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

**ATTEST:**

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

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

On this \_\_\_\_ day of \_\_\_\_\_, 202~~2~~<sup>3</sup>, before me, a notary public in and for said county and state, personally appeared **TIMOTHY J. MAHONEY, M.D.** and **STEVEN SPRAGUE**, to me known to be the Mayor and Auditor, respectively, of the **CITY OF FARGO, NORTH DAKOTA**, a 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

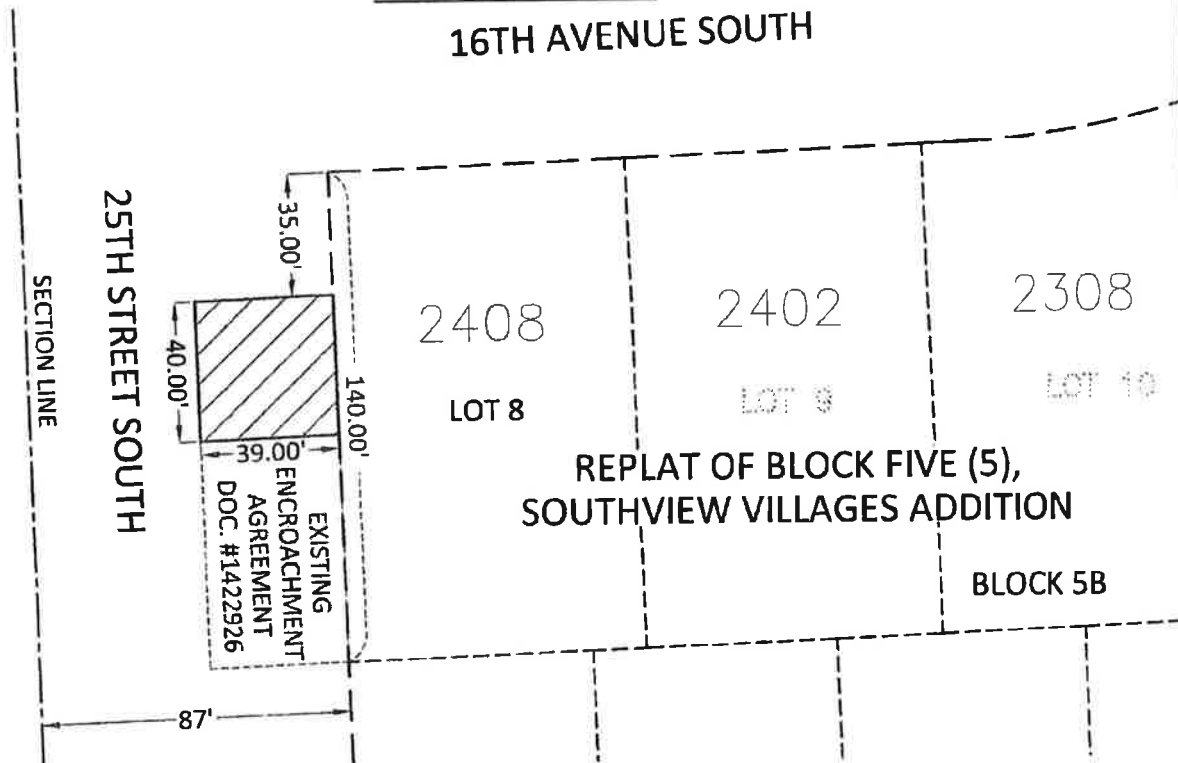
The legal description was prepared by:  
City of Fargo Engineering Dept.

This document was prepared by:  
Nancy J. Morris  
City Attorney  
Serkland Law Firm  
10 Roberts Street, P.O. Box 6017  
Fargo, ND 58108-6017  
(701) 232-8957  
[nmorris@serklandlaw.com](mailto:nmorris@serklandlaw.com)



# EXHIBIT A

16TH AVENUE SOUTH



**Description:**

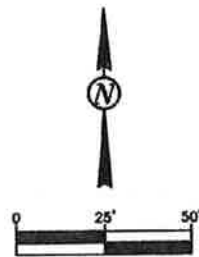
A tract of land in the REPLAT OF BLOCK FIVE (5), SOUTHVIEW VILLAGES ADDITION to the City of Fargo, Cass County, North Dakota, more particularly described as follows:

The easterly 39.00 feet of the 25th Street South right-of-way bounded on the south by the north line of an existing encroachment agreement on file at the Cass County Recorder's Office as document 1422926 and bounded on the north by a line parallel with the southerly line of the 16th Avenue South right-of-way lying 35.00 southerly of said southerly line as measured perpendicular to said southerly line.

Said tract contains 1560 square feet, more or less.

**LEGEND**

- NEW ENCROACHMENT AREA
- EXISTING ENCROACHMENT AREA
- EXISTING R/W LINE
- EXISTING LOT LINE
- SECTION LINE



BEARINGS BASED ON  
CITY OF FARGO GROUND COORDINATE  
SYSTEM, DECEMBER 1992



ENGINEERING DEPT.

## ENCROACHMENT AGREEMENT

2408 16TH AVENUE SOUTH  
CITY OF FARGO, CASS COUNTY, NORTH DAKOTA

DRAWN BY: BWV

APPROVED BY: KOG

DATE: OCTOBER 11, 2022

SHEET 1 OF 1



1422926  
Page: 1 of 6  
7/28/2014 12:30 PM  
ENCRCH \$35.00

Exhibit "B"

OFFICE OF CITY ATTORNEY

RECORDER'S OFFICE, CASS COUNTY, ND  
I CERTIFY THAT THIS INSTRUMENT WAS FILED FOR RECORD THIS DATE.  
JEWEL A. SPIES, COUNTY RECORDER

7/28/2014 12:30 PM

by Teresa A. Farley, Dep. 1422926



ENCROACHMENT AGREEMENT

**THIS AGREEMENT**, made and entered by and between **THE CITY OF FARGO, NORTH DAKOTA**, a municipal corporation, hereinafter referred to as "City", **NICHOLAS MICHELS** and **DAWN M. MICHELS**, hereinafter referred to as "Owner",

**WHEREAS**, Owner desires to encroach on a portion of City right-of-way (described below) for purposes of maintaining a fence;

**WHEREAS**, Owner has requested permission to continue to encroach on a portion of the right-of-way hereinafter particularly described, thus allowing it to utilize City right-of-way for such purpose; and

**WHEREAS**, Owner has agreed to execute this agreement required by City for encroachment on City right-of-way;

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

1. Owner is the owner of certain real property situate in the County of Cass, State of North Dakota, more fully described as:



1422926  
Page: 2 of 5  
7/28/2014 12:30 PM  
ENCRCH \$35.00

Exhibit "B"

OFFICE OF CITY ATTORNEY

A tract of land in the REPLAT OF BLOCK FIVE (5), SOUTHVIEW VILLAGES ADDITION TO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA, described as follows:

The easterly 39.00 feet of the 25<sup>th</sup> Street South right-of-way bounded on the south by the westerly extension of the south line of Lot 8, Block 5B in said Addition and bounded on the north by a line lying parallel to and 65.00 feet northerly of the south line of Lot 8, Block 5B in said Addition.

Said tract contains 2,535 square feet, more or less.

(2408 16<sup>th</sup> Avenue South, Fargo, North Dakota)

Hereafter referred to as "Owner's property".

2. Owner is hereby granted the right to encroach and use a portion of the right-of-way, said encroachment more particularly described and indicated in Exhibit "A" showing the property involved. Exhibit "A" is attached hereto and incorporated herein by reference.

3. It is the intent of this agreement that Owner may utilize City right-of-way only for the present, existing utilization, which includes the fence and City right-of-way encompassed therein, twenty two feet (39') within the right-of-way. Owner agrees no additional encroachment may occur. Owner may not increase its presence in the encroachment area.

4. It is understood and agreed by and between the parties that Owner will be responsible for the repair or replacement of the fence, and further any public property which may be damaged or destroyed as a direct or indirect result of the use of the public right-of-way. Owner accepts all maintenance responsibility for the space encompassed by the fence within the City right-of-way.



1422926

Page: 3 of 6  
7/28/2014 12:30 PM  
ENCRCH \$35.00

Exhibit "B"

OFFICE OF CITY ATTORNEY

5. Owner's failure to maintain the encroachment as stated herein shall result in the City undertaking such maintenance or alternatively, removing the encroaching fence and returning the encroachment area to green space. All existing private facilities, including sheds and other structures, must be removed from the right-of-way by Owner upon removal of the encroaching fence. Any costs incurred by the City as a result of maintaining the fence or returning the encroachment area to green space shall be Owner's responsibility. Costs incurred by the City shall be collected from the Owner, and due and payable upon demand.

6. Owner agrees to hold the City harmless against any and all expenses, demands, claims or losses of any kind that may be sustained by City, its officers, agents and employees, its property, streets, sidewalks, or any other municipal improvements by reason of the use of the public right-of-way as aforesaid. Owner also agrees to provide to the City a certificate of insurance indicating acceptance by its insurer of its obligation to defend and hold the City harmless as hereinabove stated, and identifying City as an additional insured.

7. This agreement is personal to Owner and cannot be sold, transferred or otherwise assigned. This agreement shall immediately terminate upon Owner's sale, transfer or assignment of the encroaching property.

8. It is understood and agreed by and between the parties that this agreement and permission to encroach is given subject to any limitation on the authority of City to grant such permission, which may now or hereafter exist.

9. It is specifically understood and agreed that the City retains authority to operate and maintain existing above ground and underground municipal facilities in the encroachment area. In the event the City needs to permanently retake the encroachment area for public use, City will



1422926  
Page: 4 of 6  
7/28/2014 12:30 PM  
ENCRCH \$35.00

Exhibit "B"

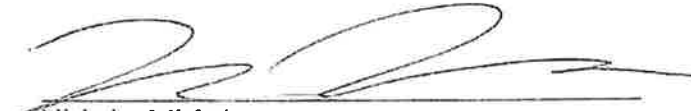
OFFICE OF CITY ATTORNEY

provide Owner written notice ninety (90) days in advance to remove the encroaching fence and all private facilities.

10. It is specifically agreed between the parties that this Encroachment Agreement may be recorded.

Dated: 11/20/13

OWNER:


  
Nicholas Michels

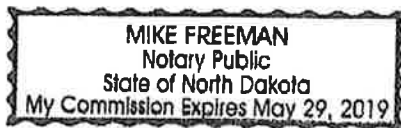
  
Dawn M. Michels

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

On this 20 day of November, 2013, before me, a notary public in and for said county and state, personally appeared **NICHOLAS MICHELS** and **DAWN M. MICHELS**, to me known to be the persons described in and that executed the within and foregoing instrument, and acknowledged to me that they executed the same.

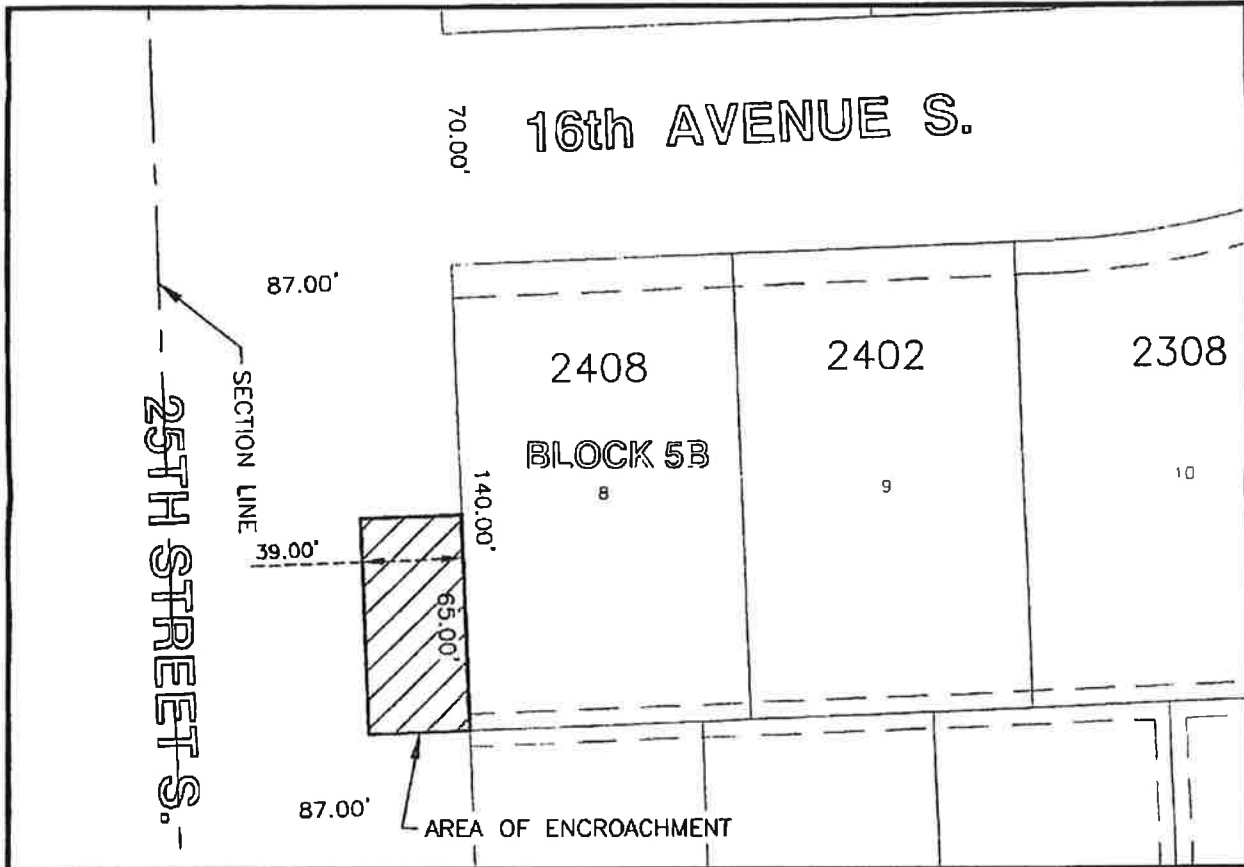
(SEAL)

  
Notary Public  
Cass County, North Dakota





OFFICE OF CITY ATTORNEY



**EXHIBIT A**

**Owner:** Dawn M. & Nicholas Michels  
**Purpose:** Encroachment Agreement

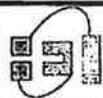
**Description:**

A tract of land in the REPLAT OF BLOCK FIVE (5), SOUTHVIEW VILLAGES ADDITION TO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA, described as follows:

The easterly 39.00 feet of the 25th Street South right-of-way bounded on the south by the westerly extension of the south line of Lot 8, Block 5B in said Addition and bounded on the north by a line lying parallel to and 65.00 feet northerly of the south line of Lot 8, Block 5B in said Addition.

Said tract contains 2,535 square feet, more or less.

2:\Users\KNS\101\_0001\_0225\CAD\Encroachment - 6059-023.dwg 10/18/13 2:54 PM - (hatched)



**Houston Engineering Inc.**

Drawn by KNS	Date 10-18-13	ENCROACHMENT AGREEMENT 2408 16TH AVENUE SOUTH FARGO, NORTH DAKOTA PROJECT NO. 6059-023	EXHIBIT <b>A</b>
Checked by CAS	Scale AS SHOWN		

16

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Type: Encroachment Agreement

Location: 616 1st Avenue South

Date of Hearing: 1/17/2023

<u>Routing</u>	<u>Date</u>
City Commission	<u>5/1/2023</u>
PWPEC File	<u>X</u>
Project File	<u>Kevin Gorder</u>

The Committee reviewed a communication from Division Engineer, Kevin Gorder, regarding an Encroachment Agreement with the Fargo Park District for Island Park Pool.

Fargo Park District is in the process of developing plans to update Island Park along with updating the pool at the corner of 1st Avenue South and 7th Street South. The Park District currently has an encroachment on the west side of the pool in the public right of way along 7th Street. The Park District has been working with Engineering on a plan that will save some money by repurposing their bath house/mechanical building. The Encroachment Agreement needed will be 10' by 170'. Items that will be installed in the encroachment area will include a retaining wall, safety fence on top the retaining wall, pool deck clearance area, and lighting.

Engineering proposes to waive the application fee and the annual fee.

On a motion by Ben Dow, seconded by Tim Mahoney, the Committee voted to recommend approval of the Encroachment Agreement with the Fargo Park District for the Island Park Pool at 616 1st Avenue South.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve the Encroachment Agreement with the Fargo Park District for the Island Park Pool at 616 1st Avenue South.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: N/A

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

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

COMMITTEE

- Tim Mahoney, Mayor
- Nicole Crutchfield, Director of Planning
- Steve Dirksen, Fire Chief
- Michael Redlinger, City Administrator
- Ben Dow, Director of Operations
- Steve Sprague, City Auditor
- Brenda Derrig, City Engineer
- Terri Gayhart, Finance Director

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

ATTEST:



Brenda E. Derrig, P.E.  
City Engineer

C: Kristi Olson

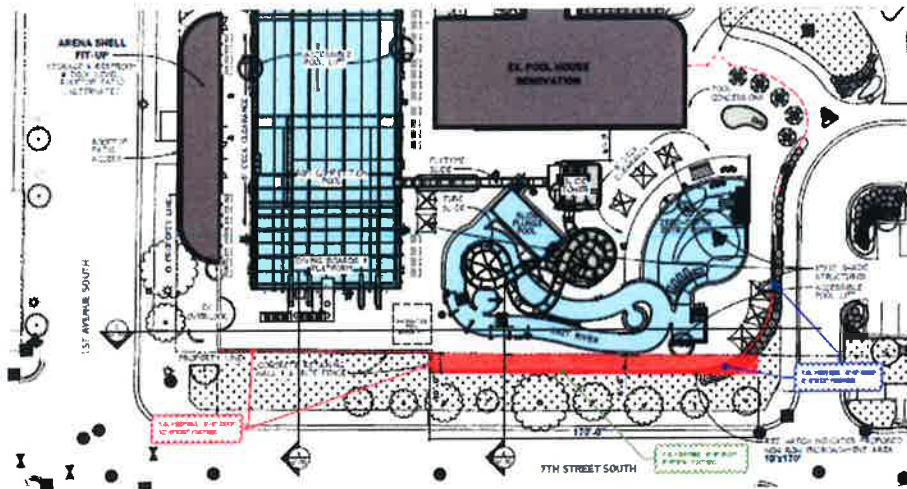


# Memorandum

**To:** Members of PWPEC  
**From:** Kevin Gorder, Division Engineer  
**Date:** January 12, 2023  
**Re:** Island Park Pool Encroachment – 616 1<sup>st</sup> Avenue South

Fargo Park District is in the process of developing plans to update Island Park along with the updating the pool at the corner of 1<sup>st</sup> Avenue South and 7<sup>th</sup> Street South. In 2017, the City of Fargo entered into an Encroachment Agreement with the Fargo Park District. The area of encroachment is on the west side of the pool in the public right of way along 7<sup>th</sup> Street. The approved agreement included a stipulation that if the Park District repaired, reconstructed, or improved the property at a cost of 25% or more of the market value, the agreement would terminate.

Engineering has been working with the Park District on a plan that will save the Park District some money by repurposing their bath house/mechanical building. The Park District is asking for a much smaller encroachment to accommodate saving the building and adding the desired amenities. This new encroachment agreement will be approximately 10' by 170'. Items that will be installed in the encroachment area include a retaining wall, safety fence on top the retaining wall, pool deck clearance area, and lighting. The proposed encroachment area is shown in the red area below.



A draft of the encroachment agreement is attached. Engineering will continue to work up a final agreement for Commission approval. This agreement can be brought back to PWPEC at a later date or if PWPEC agrees, the agreement can go directly to the Commission for approval. The previous agreement waived the application fee and annual fee since the City and the Park District work together on many items. Engineering proposes to waive the application fee and the annual fee in the new agreement.

Engineering and the Park District is also discussing the possibility of vacating this portion of the right of way so this agreement will no longer be needed. The Park District would like to bid their project as soon as possible and the vacation process would delay the pool upgrades. If a vacation of the right of way is finalized, this encroachment agreement will be terminated.

**Recommended Motion:**

Approve the new encroachment agreement with the Fargo Park District for their Island Park Pool upgrade items.

Attachment

**ENCROACHMENT AGREEMENT**

**THIS AGREEMENT**, made and entered by and between the **CITY OF FARGO**, a North Dakota municipal corporation, hereinafter referred to as “City”, and **PARK DISTRICT OF THE CITY OF FARGO**, hereinafter referred to as “Park District” or “Owner”;

**WITNESSETH:**

**WHEREAS**, Park District has requested permission and desires to encroach on a portion of City right-of-way (described below) for items related to the Island Park Pool Improvements. Items that will encroach upon the right-of-way include the minimum aquatic code required deck space, deck space drains and the associated underground pipes, three general area lights, retaining wall and a safety fence for the retaining wall, and pool side amenities hereinafter referred to as “Island Park Pool Facilities”;

**WHEREAS**, the Public Works Projects Evaluation Committee has reviewed the Park District’s request for encroachment and recommends approval; and,

**WHEREAS**, Park District has agreed to execute this agreement required by City for encroachment on City right-of-way.

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

Park District is hereby granted the right to encroach upon and use a portion of the right-of-way, said encroachment being for the purpose of the Island Park Pool Facilities, located as follows:

A parcel of land being adjacent to Block 19 of the Original Townsite of the City of Fargo, Cass County, North Dakota described as follows:

Commencing at the northwest corner of said Block 19; thence South 02 degrees 29 minutes 16 seconds West, an assumed bearing on the west line of said Block 19, 130.55 feet. to the point of beginning; thence continuing South 02 degrees 29 minutes 16 seconds West, on said west line 170.00 feet; thence North 87 degrees 30 minutes 44 seconds West, 10.00 feet; thence North 02 degrees 29 minutes 16 seconds East, parallel with said west line, 170.00 feet; thence South 87 degrees 30 minutes 44 seconds East, 10.00 feet to the point of beginning

Containing 1,700 square feet, more or less.

Said encroachment is more particularly described and indicated in attached Exhibit "A" showing the property for the Island Park Pool Facilities. Exhibit "A" is attached hereto and incorporated herein by reference.

2. It is the intent of this agreement that Owner may utilize City right-of-way for the purpose of installing and maintaining the Island Park Pool Facilities.

3. Owner agrees and understands that as a condition of the use of the City right-of-way, Owner shall be responsible for the installation costs, repairs, and maintenance of the Island Park Pool Facilities. City shall have no responsibility for the payment of any installation costs, repairs, or maintenance expenses related to the Island Park Pool Facilities, nor shall City have any responsibility for maintenance, upkeep, or repairs.

4. Upon discontinuance of use, Owner will restore and replace all public property to a vegetated surface, or pay all costs incurred by City to restore such surface.

5. It is understood and agreed by and between the parties that Owner will be responsible for the repair and replacement of any public property which may be damaged or destroyed as a direct or indirect result of the use of the public right-of-way for the Island Park Pool Facilities. Park District agrees to accept all maintenance responsibility for the Island Park Pool Facilities and associated property use in the City right-of-way.

6. Owner agrees to further defend and hold the City harmless against any and all expenses, demands, claims or losses of any kind that may be sustained by City, its officers, agents and employees, its property, streets, sidewalks, or any other municipal improvements by reason of the use of the public right-of-way as aforesaid. Owner agrees to provide to the City a certificate of insurance indicating acceptance by its insurer of its obligation to defend and hold the City harmless as hereinabove stated.

7. This agreement is personal to Owner and cannot be sold, transferred or otherwise assigned. This agreement shall immediately terminate upon Owner's sale, transfer or assignment of the encroaching property. Subsequent owners may request permission to encroach, and enter into a separate agreement with City. City shall not withhold permission to encroach under the terms herein without due cause.

8. It is understood and agreed by and between the parties that this agreement and permission to encroach is given subject to any limitation on the authority of City to grant such permission, which may now or hereafter exist.

9. It is specifically understood and agreed that the City retains authority to operate and maintain existing above ground and underground municipal facilities in the encroachment area. In the event the City needs to permanently retake the encroachment area, City will provide Owner written notice ninety (90) days in advance to remove the encroaching private facilities, to the extent

deemed necessary by City. If City determines, in its sole discretion, that Owner has failed to maintain the Island Park Pool Facilities in an acceptable manner, City may terminate as provided herein. Owner agrees and understands it will be Owner's responsibility to restore the property to a vegetated surface, and is responsible for all additional costs incurred as a result of such removal.

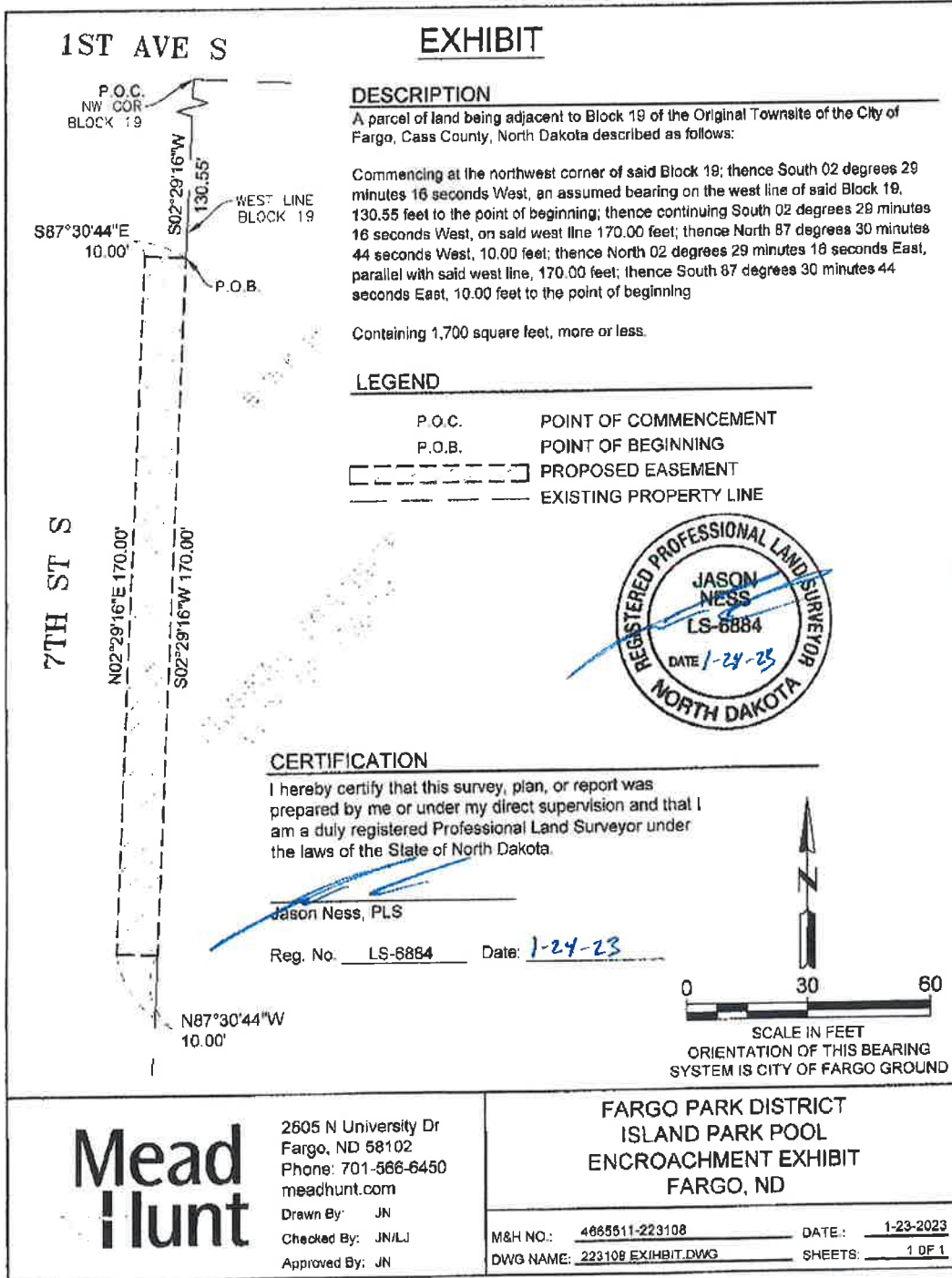
10. It is specifically agreed between the parties that a copy of this Encroachment Agreement may be recorded.

11. City agrees to waive the processing and annual fees.









17

April 26, 2023

Honorable Board of City  
 Commissioners  
 City of Fargo  
 Fargo, ND

Re: Project No. NR-23-A1

Dear Commissioners:

Bids were opened at 11:45 AM on Wednesday, April 26, 2023, for Drain #27 Lift Station #47 & #48, Project No. NR-23-A1, located at Storm Sewer Lift Stations #47 & #48 on 38<sup>th</sup> Street South at Cass County Drain 27.

For the bidding and advertising of this project, the North Dakota Century Code Section 48-01.2-06 was utilized due to the Engineer's estimated electrical costs for the project to be greater than \$50,000.00. Therefore, the North Dakota Century Code required bids for this project to be received for the following: General Construction, Electrical Construction and Combined.

The bids received were as follows:

<u>Company</u>	<u>General</u>	<u>Electrical</u>	<u>Combined</u>
Fusion Automation Inc.	-	\$290,209.31	-
Rick Electric Inc.	-	\$420,000.00	-
Key Contracting, Inc.	\$9,673,607.50	\$493,500.00	\$9,995,907.50

Original Engineer's Estimate                      \$ 9,113,337.25

As a result of the bids received, the apparent low bid is a combination of the General Construction bid submitted by Key Contracting, Inc. of \$9,673,607.50 and the Electrical Construction bid submitted by Fusion Automation Inc. of \$290,209.31. The total of these two bids are \$9,963,816.81, which is less than the lowest Combined bid submitted.

For proper accounting and administration of the General Construction and Electrical Construction contracts, it is necessary to assign new phase numbers to Project No. NR-23-A. These new phase numbers will replace Project No. NR-23-A1, which is the phase these bids were received under. The new phases for the General Construction contract and Electrical Construction contract shall be known as Project No. NR-23-A2 and Project No. NR-23-A3, respectively.

The special assessment escrow is not required.

**Recommended Motion**

Engineering staff is recommending award of a General Construction contract (Project No. NR-23-A2) to Key Contracting, Inc. in the amount of \$9,673,607.50 as the lowest and best bid received for General Construction, and an award of an Electrical Construction contract (Project No. NR-23-A3) to Fusion Automation Inc. in the amount of \$290,209.31 as the lowest and best bid received for Electrical Construction. Both bid awards shall be contingent upon approval of the North Dakota Department of Environmental Quality.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. Knakmuhs', written in a cursive style.

Tom Knakmuhs  
Assistant City Engineer

TAK/klb

**ENGINEER'S STATEMENT OF ESTIMATED COST**

**PROJECT # NR-23-A2 (General Contract)**

**DRAIN #27 LIFT STATION #47 & #48**

**STORM SEWER LIFT STATIONS #47 & #48 ON 38TH STREET SOUTH AT CASS COUNTY DRAIN 27**

WHEREAS, bids have been opened and filed for the above described Project for City of Fargo, North Dakota; and WHEREAS, an estimate of the cost of work is required by the engineer for the City of Fargo, North Dakota;

NOW THEREFORE Tom Knakmuhs, do hereby certify as follows:

That I am the Assistant City Engineer for the City of Fargo, North Dakota;

That the following is detailed statement of the estimated cost of the job described as:

Drain #27 Lift Station #47 & #48 (General Contract) Project # NR-23-A2 of the City of Fargo, North Dakota.

Line	Description	Quantity	Unit	Unit Price (\$)	Amount (\$)
<b>Sanitary Sewer</b>					
1	F&I Manhole Air Release 5' Dia Reinf Conc	1	EA	\$ 72,000.00	\$ 72,000.00
2	Connect Pipe to Exist Pipe	2	EA	\$ 16,500.00	\$ 33,000.00
3	Remove Pipe All Sizes All Types	52	LF	\$ 800.00	\$ 41,600.00
4	F&I Force Main - Fittings	184	LB	\$ 90.00	\$ 16,560.00
5	F&I Force Main w/GB 8" Dia	52	LF	\$ 1,200.00	\$ 62,400.00
6	F&I Fittings Ductile Iron	454	LB	\$ 65.00	\$ 29,510.00
7	F&I Hydrant	1	EA	\$ 15,000.00	\$ 15,000.00
8	Connect Pipe to Exist Pipe	2	EA	\$ 9,000.00	\$ 18,000.00
9	Remove Pipe All Sizes All Types	52	LF	\$ 800.00	\$ 41,600.00
10	F&I Pipe w/GB C900 DR 18 - 12" Dia PVC	52	LF	\$ 400.00	\$ 20,800.00
11	F&I Gate Valve 6" Dia	1	EA	\$ 6,000.00	\$ 6,000.00
12	F&I Gate Valve 12" Dia	1	EA	\$ 9,000.00	\$ 9,000.00
13	Connect Water Service	1	EA	\$ 6,500.00	\$ 6,500.00
14	F&I Controlled Density Fill	1	LS	\$ 128,700.00	\$ 128,700.00
15	F&I 1-1/4" Trench Found Rock 14" thru 24" Dia	723	LF	\$ 15.00	\$ 10,845.00
16	F&I 1-1/4" Trench Found Rock 27" thru 36" Dia	122	LF	\$ 20.00	\$ 2,440.00
17	F&I 1-1/4" Trench Found Rock 42" thru 54" Dia	384	LF	\$ 25.00	\$ 9,600.00
18	F&I 1-1/4" Trench Found Rock 60" Plus Dia	191	LF	\$ 40.00	\$ 7,640.00
19	F&I Manhole Type E Reinf Conc	6	EA	\$ 56,000.00	\$ 336,000.00
20	Remove Manhole	1	EA	\$ 4,500.00	\$ 4,500.00
21	F&I Inlet - Manhole (MHI) 4' Dia Reinf Conc	4	EA	\$ 9,500.00	\$ 38,000.00
22	F&I Inlet - Double Box (DBI) Reinf Conc	2	EA	\$ 23,500.00	\$ 47,000.00
23	F&I Inlet - Round (RDI) Reinf Conc	2	EA	\$ 5,500.00	\$ 11,000.00
24	F&I Inlet - Special (SPI) Reinf Conc	3	EA	\$ 10,500.00	\$ 31,500.00
25	F&I Tee Manhole 72"x48" Reinf Conc	1	EA	\$ 19,500.00	\$ 19,500.00
26	Remove Inlet	1	EA	\$ 3,500.00	\$ 3,500.00
27	Bore Pipe 18" Dia Reinf Conc	240	LF	\$ 1,371.00	\$ 329,040.00
28	Bore Pipe 36" Dia Reinf Conc	260	LF	\$ 2,190.00	\$ 569,400.00
29	F&I Pipe 18" Dia	133	LF	\$ 560.00	\$ 74,480.00
30	F&I Pipe Arch Equiv 30" Reinf Conc	85	LF	\$ 340.00	\$ 28,900.00
31	F&I Pipe Arch Equiv 54" Reinf Conc	39	LF	\$ 700.00	\$ 27,300.00
32	F&I Pipe 15" Dia Reinf Conc	373	LF	\$ 135.00	\$ 50,355.00

33 F&I Pipe 18" Dia Reinf Conc	52 LF	\$	155.00	\$	8,060.00
34 F&I Pipe 36" Dia Reinf Conc	37 LF	\$	265.00	\$	9,805.00
35 F&I Pipe 42" Dia Reinf Conc	52 LF	\$	450.00	\$	23,400.00
36 F&I Pipe 48" Dia Reinf Conc	160 LF	\$	470.00	\$	75,200.00
37 F&I Pipe 54" Dia Reinf Conc	133 LF	\$	670.00	\$	89,110.00
38 Remove Pipe All Sizes All Types	1152 LF	\$	150.00	\$	172,800.00
39 F&I Pipe w/GB 15" Dia Reinf Conc	29 LF	\$	225.00	\$	6,525.00
40 F&I Pipe w/GB 18" Dia Reinf Conc	269 LF	\$	225.00	\$	60,525.00
41 F&I Pipe w/GB 72" Dia Reinf Conc	208 LF	\$	2,100.00	\$	436,800.00
42 F&I Rip Rap Rock	380 CY	\$	195.00	\$	74,100.00
43 Salvage Rip Rap Rock	1 LS	\$	18,800.00	\$	18,800.00
44 Install Salvaged Rip Rap Rock	1 LS	\$	16,000.00	\$	16,000.00
45 F&I Flared End Section Arch Equiv 30" Reinf Conc	1 EA	\$	6,500.00	\$	6,500.00
46 F&I Flared End Section Arch Equiv 54" Reinf Conc	1 EA	\$	9,600.00	\$	9,600.00
47 F&I Pipe Liner 36" Dia 15 mm CIPP	240 LF	\$	800.00	\$	192,000.00
48 F&I Lift Station	1 LS	\$	2,125,000.00	\$	2,125,000.00
49 Remove Lift Station	1 EA	\$	96,000.00	\$	96,000.00
50 Abandon Gatewell	1 EA	\$	36,000.00	\$	36,000.00
51 F&I Lift Station	1 LS	\$	2,425,000.00	\$	2,425,000.00
52 Remove Lift Station	1 EA	\$	98,000.00	\$	98,000.00
53 Remove Pavement All Thicknesses All Types	2224 SY	\$	18.00	\$	40,032.00
54 Subgrade Preparation	167 SY	\$	18.00	\$	3,006.00
55 F&I Woven Geotextile	1975 SY	\$	4.50	\$	8,887.50
56 F&I Class 5 Agg - 9" Thick	1808 SY	\$	32.00	\$	57,856.00
57 F&I Class 5 Agg - 12" Thick	167 SY	\$	36.00	\$	6,012.00
58 F&I Curb & Gutter Standard (Type II)	41 LF	\$	100.00	\$	4,100.00
59 Remove Curb & Gutter	41 LF	\$	55.00	\$	2,255.00
60 F&I Valley Gutter Reinf Conc	182 SY	\$	180.00	\$	32,760.00
61 F&I Pavement 6" Thick Reinf Conc	91 SY	\$	154.00	\$	14,014.00
62 F&I Pavement 8" Thick Reinf Conc	1808 SY	\$	146.00	\$	263,968.00
63 F&I Pavement 8" Thick Doweled Conc	167 SY	\$	168.00	\$	28,056.00
64 Paint Epoxy Line 4" Wide	148 LF	\$	30.00	\$	4,440.00
65 Mobilization	1 LS	\$	550,000.00	\$	550,000.00
66 F&I Bollards	8 EA	\$	1,300.00	\$	10,400.00
67 F&I Swing Gate	2 EA	\$	5,000.00	\$	10,000.00
68 F&I Fence	958 LF	\$	28.00	\$	26,824.00
69 Salvage & Install Fence	25 LF	\$	220.00	\$	5,500.00
70 Remove Fence	958 LF	\$	5.50	\$	5,269.00
71 Clear & Grub	1 LS	\$	9,000.00	\$	9,000.00
72 Mulching Type 1 Hydro	17725 SY	\$	0.65	\$	11,521.25
73 Mulching Type 2 Straw	12535 SY	\$	0.40	\$	5,014.00
74 Seeding Type A	12535 SY	\$	0.55	\$	6,894.25
75 Seeding Type C	17725 SY	\$	0.55	\$	9,748.75
76 Overseeding	17725 SY	\$	0.21	\$	3,722.25
77 Weed Control Type B	17725 SY	\$	0.10	\$	1,772.50

78 Stormwater Management	1 LS	\$	10,500.00	\$	10,500.00
79 Temp Construction Entrance	10 EA	\$	7,500.00	\$	75,000.00
80 Silt Fence - Standard	2900 LF	\$	4.00	\$	11,600.00
81 Sediment Control Log 6" to 8" Dia	130 LF	\$	4.00	\$	520.00
82 Inlet Protection - New Inlet	11 EA	\$	300.00	\$	3,300.00
83 Inlet Protection - Existing Inlet	9 EA	\$	300.00	\$	2,700.00
84 Traffic Control - Type 2	1 LS	\$	44,000.00	\$	44,000.00
85 Topsoil - Strip	1300 CY	\$	42.00	\$	54,600.00
86 Topsoil - Spread	1300 CY	\$	32.00	\$	41,600.00
87 Excavate & Haul - Excess Material	500 CY	\$	52.00	\$	26,000.00
88 Fill - Import	1330 CY	\$	48.00	\$	63,840.00
89 Embankment	1820 CY	\$	42.00	\$	76,440.00
90 Excavation	500 CY	\$	36.00	\$	18,000.00
91 Inspection Trench	990 CY	\$	44.00	\$	43,560.00

**Total Construction in \$ \$ 9,673,607.50**

Contingency:	10.00%	\$	967,360.75
Land/Easements		\$	216,545.00
Utility Relocation		\$	9,600.00
Consultant Engineer		\$	497,500.00
<b>Total Estimated Costs</b>		<b>\$</b>	<b>11,364,613.25</b>
Sales Tax Funds - Flood Control - 460		\$	11,364,613.25
<b>Unfunded Costs</b>		<b>\$</b>	<b>-</b>

IN WITNESS THEREOF, I have hereunto set my hand and seal  
Date: 4/26/2023

  
\_\_\_\_\_  
Tom Knakmuhs  
Assistant City Engineer



**ENGINEER'S STATEMENT OF ESTIMATED COST**

**PROJECT # NR-23-A3 (Electrical Contract)**

**DRAIN #27 LIFT STATION #47 & #48**

STORM SEWER LIFT STATIONS #47 & #48 ON 38TH STREET SOUTH AT CASS COUNTY DRAIN 27

WHEREAS, bids have been opened and filed for the above described Project for City of Fargo, North Dakota; and WHEREAS, an estimate of the cost of work is required by the engineer for the City of Fargo, North Dakota;

NOW THEREFORE Tom Knakmuhs, do hereby certify as follows:

That I am the Assistant City Engineer for the City of Fargo, North Dakota;

That the following is detailed statement of the estimated cost of the job described as:

Drain #27 Lift Station #47 & #48 (Electrical Contract) Project # NR-23-A3 of the City of Fargo, North Dakota.

Line	Description	Quantity	Unit	Unit Price (\$)	Amount (\$)
<b>Sanitary Sewer</b>					
1	F&I Lift Station Electrical	1	LS	\$ 141,797.78	\$ 141,797.78
2	F&I Lift Station Electrical	1	LS	\$ 144,850.28	\$ 144,850.28
3	Relocate Street Light	1	EA	\$ 3,561.25	\$ 3,561.25
				<b>Total Construction in \$</b>	<b>\$ 290,209.31</b>
				Contingency 10.00%	\$ 29,020.93
				<b>Total Estimated Costs \$</b>	<b>\$ 319,230.24</b>
				Sales Tax Funds - Flood Control - 460	\$ 319,230.24
				<b>Unfunded Costs \$</b>	<b>-</b>

IN WITNESS THEREOF, I have hereunto set my hand and seal

Date: 4/26/2023

  
 \_\_\_\_\_  
 Tom Knakmuhs  
 Assistant City Engineer



18

April 25, 2023

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

Re: Permanent Water Main Easement – Project No. WA2254

Dear Commissioners:

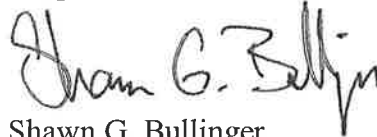
Accompanying for City Commission review and approval is an original water main easement from Matthew R. & Ashley N. Scherbenske in association with Project No. WA2254.

RECOMMENDED MOTION:

Approve permanent water main easement from Matthew R. & Ashley N. Scherbenske.

Please return the signed original.

Respectfully submitted,



Shawn G. Bullinger  
Land Acquisition Specialist

C: Nathan Boerboom



**PERMANENT EASEMENT**  
(Water Main)

KNOW ALL MEN BY THESE PRESENTS that MATTHEW R. SCHERBENSKE and ASHLEY N. SCHERBENSKE, hereinafter referred to as "Grantor", for and in consideration of the sum of One and no/100 Dollars (\$1.00) and other valuable consideration, to them in hand paid the receipt whereof is hereby acknowledged, **HEREBY GRANTS UNTO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA**, a municipal corporation, its successors and assigns, hereinafter referred to as "Grantee", a permanent and perpetual easement over, under, upon and in the land hereinafter described for the purpose of constructing, operating, maintaining and repairing a water main, together with the customary appurtenances, said tract being more particularly described as follows (and depicted on Exhibit A attached hereto):

That part of Lot 49, Block 11, Deer Creek Addition to the City of Fargo, Cass County, North Dakota, being further described as follows:

All that part of Lot 49, Block 11, Deer Creek Addition lying northeasterly of the following described line:

Commencing at the Northeast Corner of said Lot 49; thence S85°44'40"E on the north line of said Lot 49 a distance of 40.00 feet to the Point of Beginning; thence S46°20'37"E a distance of 31.14 feet to the easterly line of said Lot 49 and there terminating.

Said tract contains 459 square feet (0.01 acres), more or less.

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

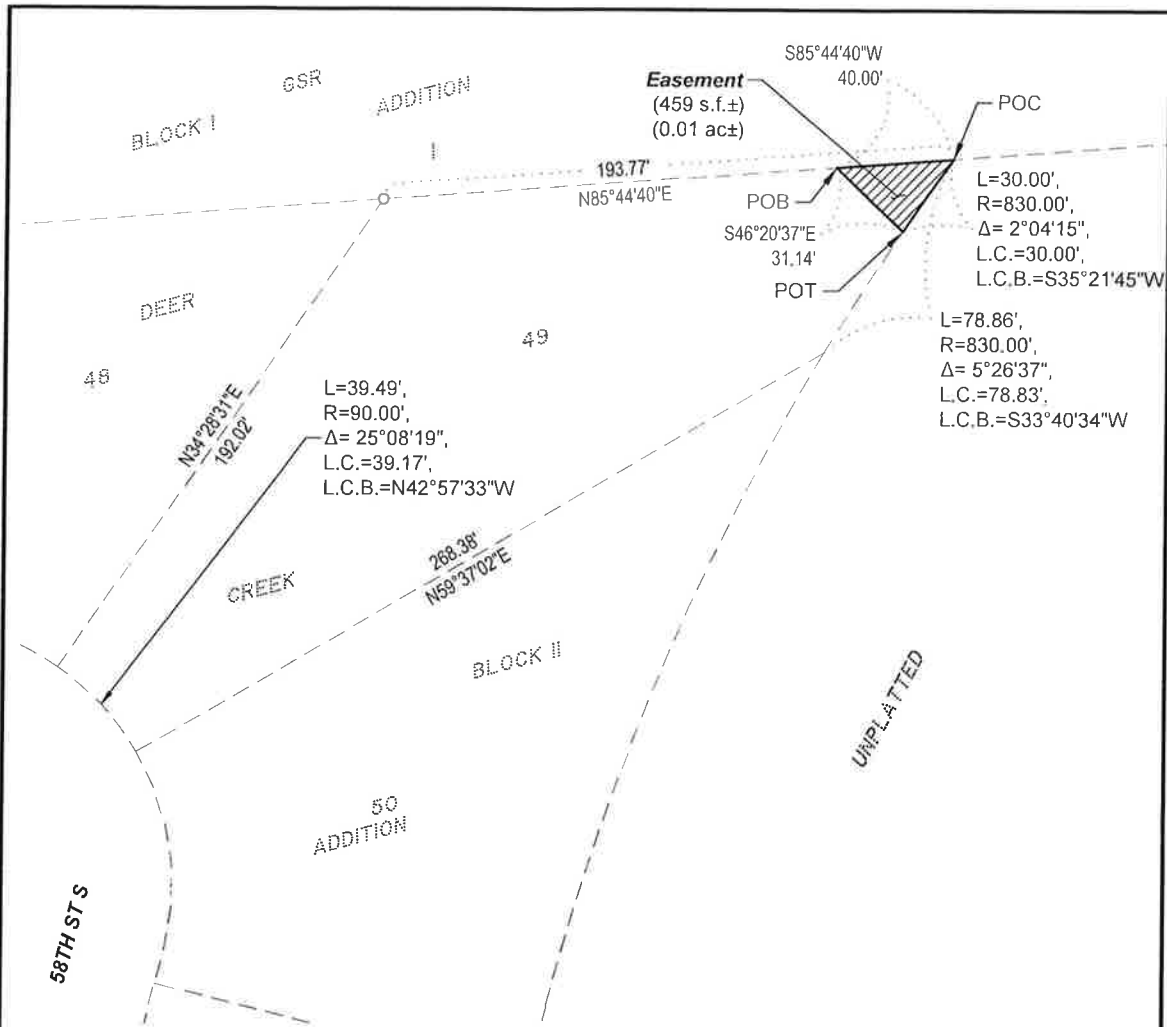
Grantor, their successors and assigns, further agree that they will not disturb, injure, molest or in any manner interfere with said water main and customary appurtenances, or with material for laying, maintaining, operating or repairing the same, in, over or upon the above-described premises, and Grantor expressly warrants and states that no buildings, trees or other obstacles of any kind shall be placed or located upon the tract so as to interfere in any manner with the construction, operation, maintenance or repair of said water main including customary appurtenances, provided that Grantee, at its own expense, shall refill any excavation it makes and level the ground thereafter, leaving the premises in as good condition as it was prior to the time of constructing of said water main and customary appurtenances was begun.

[Signature pages to follow]





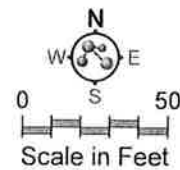
Exhibit A



BASIS OF BEARINGS: CITY OF FARGO GROUND COORDINATE SYSTEM, DECEMBER 1992. DISTANCES ARE GROUND, US SURVEY FEET.

**LEGEND**

- SECTION LINE
- - - 1/4 LINE
- - - 1/4 1/4 LINE
- - - EXIST. PARCEL LINE
- - - EXIST. EASEMENT LINE
- NEW EASEMENT LINE
- FND IRON MON.
- FND IRON MON. W/ PLASTIC CAP
- NEW PERMANENT EASEMENT
- POC = POINT OF COMMENCEMENT
- POB = POINT OF BEGINNING
- POT = POINT OF TERMINATION



PAGE 1 of 2

PROJECT NO: P00803-2022-002	<b>CERTIFICATE OF SURVEY</b>		SURVEY DATE: 1/11/23
DRAWING TYPE: COS	OWNER:	<b>Matthew R. Scherbenske and Ashley N. Scherbenske</b>	PREPARED BY: CB
	PARENT PARCEL ABBREVIATED LEGAL DESCRIPTION:		CHECKED BY: NS
	Lot 49, Block 11, Deer Creek Addition		APPROVED BY: NS
	Section 5, T138N, R49W, Cass County, North Dakota		
Advanced Engineering and Environmental Services, LLC www.ae2s.com			

**EASEMENT - LEGAL DESCRIPTION**

That part of Lot 49, Block 11, Deer Creek Addition to the City of Fargo, Cass County, North Dakota, being further described as follows:

All that part of Lot 49, Block 11, Deer Creek Addition lying northeasterly of the following described line:  
 Commencing at the Northeast Corner of said Lot 49;  
 thence S85°44'40"E on the north line of said Lot 49 a distance of 40.00 feet to the Point of Beginning;  
 thence S46°20'37"E a distance of 31.14 feet to the easterly line of said Lot 49 and there terminating.

Said tract contains 459 square feet (0.01 acres), more or less.

**CERTIFICATE OF SURVEYOR**


I hereby certify that this survey was prepared by me or under my direct supervision and that I am a duly Registered Land Surveyor under the laws of the State of North Dakota. All distances and measurements are true and correct to the best of my knowledge and belief, and all monuments shall be placed in the ground as shown.

*Nicholas R. Stattelmann*

Nicholas R. Stattelmann  
 N.D. Registration No. LS-8218  
 Date: 3/9/23



PAGE 2 of 2

PROJECT NO: P00803-2022-002	<b>CERTIFICATE OF SURVEY</b>	SURVEY DATE: 1/11/23
DRAWING TYPE: COS	OWNER: <b>Matthew R. Scherbenske and Ashley N. Scherbenske</b>	PREPARED BY: CB
	PARENT PARCEL ABBREVIATED LEGAL DESCRIPTION: Lot 49, Block 11, Deer Creek Addition Section 5, T138N, R49W, Cass County, North Dakota	CHECKED BY: NS
	Advanced Engineering and Environmental Services, LLC www.ae2s.com	APPROVED BY: NS

19

April 25, 2023

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

Re: Access Easement (Water Main) – Project No. WA2254

Dear Commissioners:

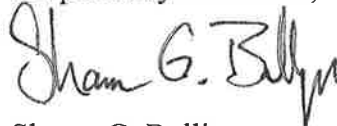
Accompanying for City Commission review and approval is an original access easement from Southeast Cass Water Resource District in association with Project No. WA2254.

RECOMMENDED MOTION:

Approve access easement from Southeast Cass Water Resource District.

Please return the signed original.

Respectfully submitted,



Shawn G. Bullinger  
Land Acquisition Specialist

C: Nathan Boerboom

**ACCESS EASEMENT**  
(Water Main)

THIS EASEMENT is made this 11 day of APRIL, 2023, by the Southeast Cass Water Resource District, a North Dakota political subdivision, with a post office address of 1201 Main Avenue West, West Fargo, North Dakota 58078-1301 (the "District"); and the City of Fargo, a North Dakota municipal corporation, with a post office address of 225 - 4th Street North, Fargo, North Dakota 58102 (the "City").

**RECITALS**

A. The District owns, operates, and maintains Cass County Drain No. 27 ("Drain 27"), a legal assessment drain; portions of Drain 27 are located within the City's municipal boundaries.

B. The City wishes to install, construct, operate, and maintain a water main and related infrastructure (the "Water Infrastructure"), upon, over, under, across, and through portions of the District's Drain 27 right of way.

C. The District has agreed to convey an easement to the City for purposes of the installation, construction, operation, and maintenance of the Water Infrastructure, subject to the terms and conditions contained in this Easement.

In consideration of the mutual covenants contained in this Easement, and other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties agree as follows:

**AGREEMENT**

1. **The Easement Property.** The District grants and conveys to the City a non-exclusive, permanent easement, including the easement rights described in this Easement, upon, over, under, across, and through the following real property in Cass County, North Dakota:

See survey and legal description attached as **Exhibit A.**

The property described above is the "Easement Property." The District does not warrant fee simple ownership of the Easement Property and only conveys those rights to the City permitted under North Dakota law that are consistent with the District's rights in the Easement Property.



*Southeast Cass Water Resource District  
City of Fargo  
Easement - Drain 27  
Water Main*

2. **Easement Rights.** Under this Easement, the District grants to the City and the City's officers, employees, agents, representatives, consultants, and contractors a permanent and perpetual easement upon, over, under, across, and through the Easement Property for the following purposes: installing, constructing, inspecting, maintaining, reconstructing, altering, repairing, replacing, operating, improving, modifying, and removing the Water Infrastructure; excavating, piling, storing, depositing, spoiling, spreading, and removing excavated dirt, soil, clay, silt, or other materials; moving, storing, and removing equipment, materials, and supplies; removing trees, underbrush, obstructions, and any other vegetation, structures, or obstacles from the Easement Property; and the right to perform any other work necessary and incident to the installation, construction, inspection, maintenance, reconstruction, alteration, repair, replacement, operation, improvement, modification, and removal of the Water Infrastructure, together with all necessary and reasonable rights of ingress and egress to and from the Easement Property. The City is solely responsible for the installation, construction, inspection, maintenance, reconstruction, alteration, repair, replacement, operation, improvement, modification, and removal of the Water Infrastructure at the City's sole cost. The City is solely responsible for ensuring the Water Infrastructure does not interfere with any existing utility infrastructure on the Easement Property, at the City's sole expense.

3. **Drainage Priority and Use.** The parties understand and agree that Drain 27 is a public facility that provides drainage benefits and other important public benefits to Cass County and its residents, including the City and residents of the City, and further agree the District's use of Drain 27, including the Easement Property, as a drainage facility takes priority over any other use of the Easement Property, including the City's use of the Easement Property for the Water Infrastructure.

4. **No Unreasonable Interference.** The District will not unreasonably interfere with the City's easement rights under this Easement. However, the District's priority use of Drain 27 for drainage, flood protection, or other emergency purposes may require and include temporary disruptions or interference with the Water Infrastructure or the City's interest in the Easement Property. The District will use reasonable care to avoid any damages to the Water Infrastructure and associated appurtenances; however, the District will not be liable or responsible for any damages resulting from any construction, cleaning, inspection, reconstruction, modification, operation, maintenance, repair, or improvement of Drain 27 by the District, its officers, agents, representatives, employees, consultants, or contractors. In the event any reconstruction, modification, or improvement of Drain 27 requires any modifications to the Water Infrastructure or associated appurtenances, the City will modify or relocate the Water Infrastructure at the City's expense and, if necessary, the parties will amend this Easement for purposes of redefining the "Easement Property."

*Southeast Cass Water Resource District  
City of Fargo  
Easement - Drain 27  
Water Main*

5. **Improvements and Repairs to the Easement Property.** Any improvements or repairs to the Easement Property are subject to the following:

a. Prior to the City's construction, reconstruction, or other improvements of the Water Infrastructure, the City must provide plans and specifications to the District, and the District must first give prior written consent to the design of any construction or improvements; the District will not unreasonably withhold consent.

b. The City will operate and maintain the Water Infrastructure and related appurtenances at the City's sole cost.

c. The City will obtain the District's written consent prior to commencing any structural repairs, modifications, or improvements to the Water Infrastructure on or adjacent to the Easement Property that require excavation; the District will not unreasonably withhold consent.

d. The City will design and construct any and all improvements and required maintenance on the Water Infrastructure in a manner that ensures adequate drainage of the Easement Property, with a finished grade that drains the Easement Property, and that does not result in ponding in or on Drain 27.

e. With the exception of the Water Infrastructure and related appurtenances, the City will not construct any improvements in, upon, under, over, or across any portion of the Easement Property; the City will not place any fixtures, equipment, or other personal property on any portion of the Easement Property; the City will not construct or install, or allow construction or installation of, any utility facilities, lines, structures, or associated appurtenances on, over, in, under, through, or across the Easement Property; the City will not encumber any portion of the Easement Property; and the City will not otherwise alter any portion of the Easement Property without prior consent from the District; the District will not unreasonably withhold consent.

f. The City will repair the Easement Property and will repair or replace any of the District's structures, facilities, right of way, or any other property owned by the District damaged as a result of the City's construction, operation, inspection, maintenance, alteration, repair, replacement, reconstruction, and removal of the Water Infrastructure or otherwise damaged as a result of the City's use, access, ingress, and egress granted under this Easement; the City will otherwise repair and return the Easement Property as nearly as practicable to its original condition following any disturbance or damages, at the City's sole cost.

g. The City will promptly cease any activity and remove any structure or obstruction that interferes with Drain 27 or the District's use of the Easement Property, at the City's sole cost.

*Southeast Cass Water Resource District  
City of Fargo  
Easement - Drain 27  
Water Main*

6. **Term.** The rights granted under this Easement are permanent and will only terminate if necessary to protect the integrity of Drain 27; as necessary to comply with any laws, rules, regulations, requirements, or directives of any applicable federal or state agency with regulatory jurisdiction over Drain 27; or in the event of any default by the City not remedied within a reasonable time. In the event of any termination, the District will record an Affidavit of Termination with the Cass County Recorder's Office, and the City will remove any improvements from Drain 27, at the City's sole cost.

7. **Liability.** The City will be solely responsible for all claims, actions, administrative proceedings, judgments, damages, penalties, fines, costs, liabilities, interests, or losses, including costs, expenses, and attorneys' fees, arising out of or as a result of the construction, inspection, maintenance, operation, alteration, repair, replacement, reconstruction, removal, or use of the Water Infrastructure by the City or the City's officers, consultants, contractors, agents, representatives, employees, or other invitees; any entry upon, use of, or access, ingress, and egress upon, over, or across the Easement Property by the City or the City's officers, consultants, contractors, agents, representatives, employees, or other invitees; or any act, error, or omission of the City or the City's officers, consultants, contractors, agents, representatives, employees, or other invitees, including any failure to perform under this Easement.

8. **Assumption of Risk.** The City explicitly accepts any and all risk regarding any entry upon the Easement Property. The District will not be liable or responsible for any damages or injuries to the City or any of the City's officers, employees, agents, representatives, consultants, or contractors resulting from or in any way arising out of the Water Infrastructure or any of those parties' entry upon or use of the Easement Property.

9. **Compliance with Laws.** The City, at its own cost, is solely responsible for promptly complying with all present and future laws, ordinances, rules, and regulations, and obtaining all necessary licenses, permits, registrations, and/or approvals, from all applicable federal, state, county, and municipal governments and any other applicable governmental entities or political subdivisions, and their appropriate departments, commissions, boards, and officers, regarding the Water Infrastructure or the City's other permissible use, access, ingress, and egress rights upon, over, or across any of the Easement Property.

10. **Forbearance.** The failure or delay of either party to insist on the timely performance of any of the terms of this Easement, or the waiver of any particular breach of any of the terms of this Easement, at any time, will not be construed as a continuing waiver of those terms or any subsequent breach, and all terms will continue and remain in full force and effect as if no forbearance or waiver had occurred.

11. **Governing Law.** This Easement will be construed and enforced in accordance with North Dakota law.

*Southeast Cass Water Resource District  
City of Fargo  
Easement - Drain 27  
Water Main*

12. **Interpretation.** This Easement will be construed as if prepared by both parties.
13. **Severability.** If any court of competent jurisdiction finds any provision or part of this Easement is invalid, illegal, or unenforceable, that portion will be deemed severed from this Easement, and all remaining terms and provisions of this Easement will remain binding and enforceable; the parties will reconvene negotiations to arrive, in good faith, at an agreement as to matters remaining undetermined as a result of any finding by a court of competent jurisdiction that any provision or part of this Easement is invalid, illegal, or unenforceable.
14. **Entire Agreement.** This Easement, together with any amendments, constitutes the entire agreement between the parties regarding the matters described in this Easement, and this Easement supersedes all other previous oral or written agreements between the parties.
15. **Assignment.** Neither party may transfer or assign this Easement, or any rights or obligations under this Easement, without the express written consent of the other party.
16. **Binding Effect.** The covenants, terms, conditions, provisions, and undertakings in this Easement, or in any amendment, will be binding upon the parties' heirs, successors, and permitted assigns.
17. **Modifications.** Any modifications or amendments of this Easement must be in writing and signed by the District and the City and must be recorded in the Cass County Recorder's Office.
18. **Headings.** Headings in this Easement are for convenience only and will not be used to interpret or construe its provisions.

[Signatures appear on the following pages.]

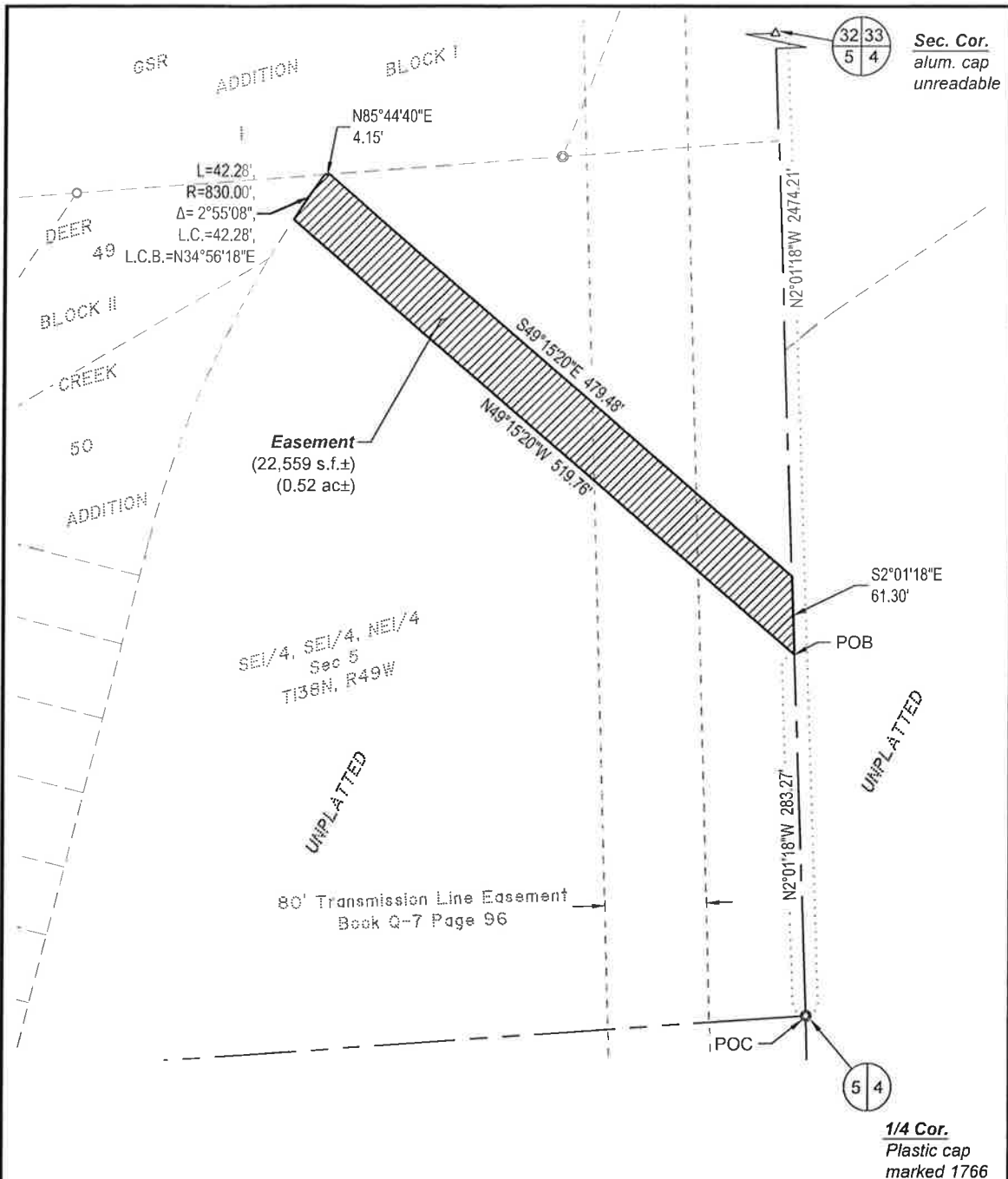




*Southeast Cass Water Resource District  
City of Fargo  
Easement - Drain 27  
Water Main*

**EXHIBIT A**

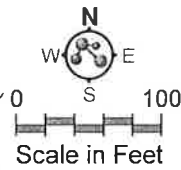
Legal Description and Survey of the Easement Property



**LEGEND**

- SECTION LINE
- - - 1/4 LINE
- - - - - EXIST. PARCEL LINE
- - - - - EXIST. EASEMENT LINE
- NEW EASEMENT LINE
- FND IRON MON.
- FND IRON MON. W/ PLASTIC CAP
- △ FND IRON MON. W/ ALUM. CAP
- NEW PERMANENT EASEMENT

BASIS OF BEARINGS: CITY 0 OF FARGO GROUND COORDINATE SYSTEM, DECEMBER 1992. DISTANCES ARE GROUND, US SURVEY FEET.



PROJECT NO: P00803-2022-002	<b>CERTIFICATE OF SURVEY</b>	SURVEY DATE: 1/11/23
DRAWING TYPE: COS	OWNER: Southeast Cass Water Resource District	PREPARED BY: CB
	PARENT PARCEL ABBREVIATED LEGAL DESCRIPTION: Part of the SE1/4 of the NE1/4 Section 5, T138N, R49W, Cass County, North Dakota	CHECKED BY: NS
	Advanced Engineering and Environmental Services, LLC www.ae2s.com	APPROVED BY: NS



**EASEMENT - LEGAL DESCRIPTION**

That part of the Southeast Quarter of the Northeast Quarter of Section 5, Township 138 North, Range 49 West of the 5th Principal Meridian, Cass County, North Dakota, being further described as follows:

Commencing at the Southeast Corner of the Northeast Quarter (NE1/4) of Section 5; thence North 02 degrees 01 minute 18 seconds West on the east line of said NE1/4 a distance of 283.27 feet to the Point of Beginning; thence North 49 degrees 15 minutes 20 seconds West a distance of 519.76 feet to the east line of Lot 49, Block 11, Deer Creek Addition to the City of Fargo; thence, on said east lot line, 42.28 feet on the arc of a curve, concave to the southeast, having a radius of 830.00 feet, a central angle of 02 degrees 55 minutes 08 seconds, and a long chord length of 42.28 feet bearing North 34 degrees 56 minutes 18 seconds East to the south line of Block 1, GSR Addition to the City of Fargo; thence North 85 degrees 44 minutes 40 seconds East on the south line of said Block 1, GSR Addition a distance of 4.15 feet; thence South 49 degrees 15 minutes 20 seconds East a distance of 479.48 feet to said east line of the NE1/4; thence South 02 degrees 01 minute 18 seconds East on said east line a distance of 61.30 feet to the Point of Beginning.

Said easement contains 22,559 square feet (0.52 acres), more or less.

**CERTIFICATE OF SURVEYOR**

I hereby certify that this survey was prepared by me or under my direct supervision and that I am a duly Registered Land Surveyor under the laws of the State of North Dakota. All distances and measurements are true and correct to the best of my knowledge and belief, and all monuments shall be placed in the ground as shown.

*Nicholas R. Stattel*

Nicholas R. Stattel

N.D. Registration No. LS-8218

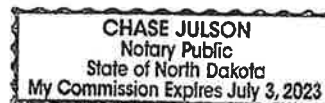
Date: 4/19/23



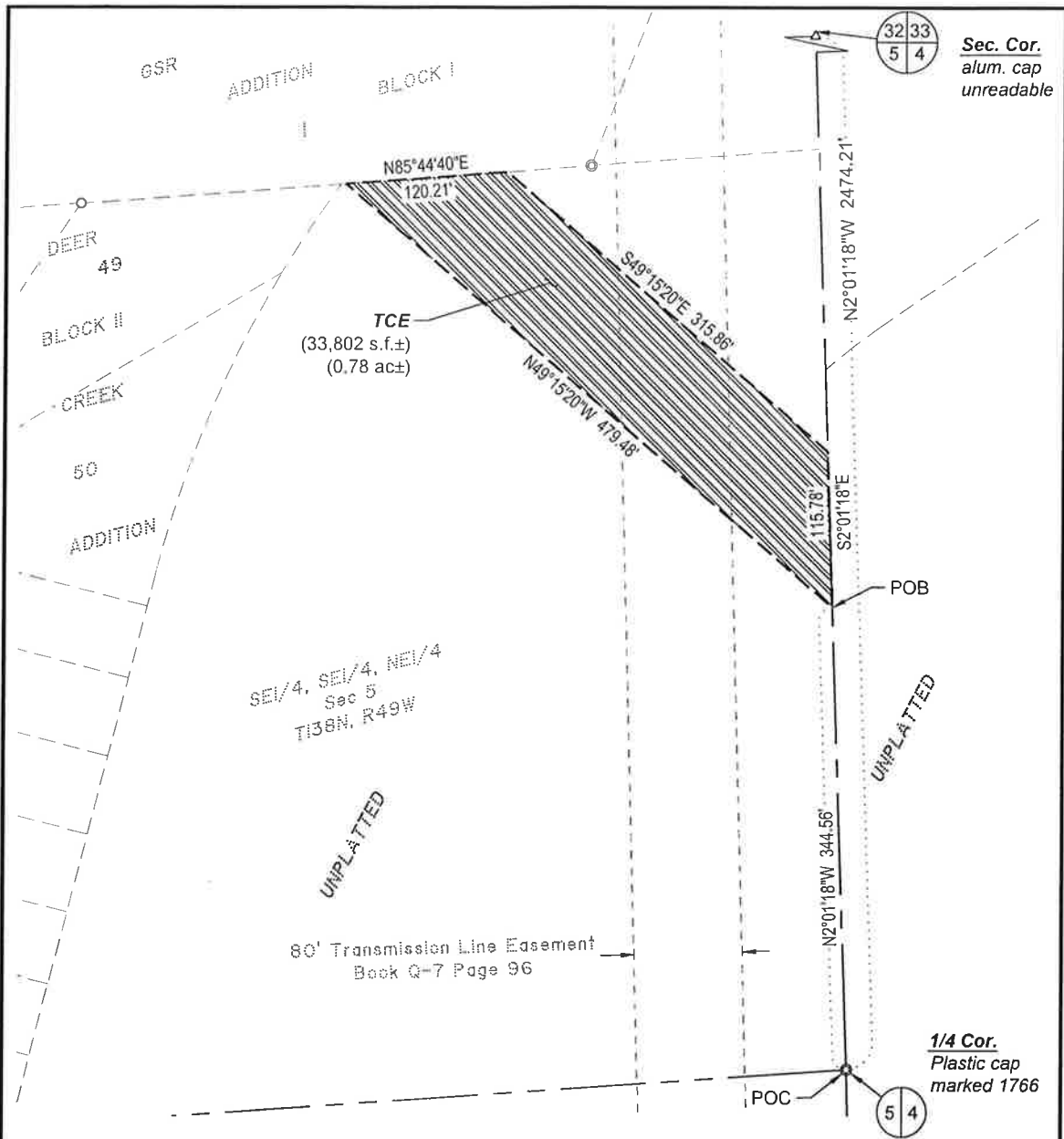
STATE OF NORTH DAKOTA )  
 ) ss.  
 COUNTY OF CASS )

On this 19<sup>th</sup> day of April, in the year 2023, before me a notary public in and for said county and state, personally appeared Nicholas R. Stattel, known to me to be the person(s) described in, and who executed the within instrument and acknowledged to me that he/she executed the same.

*Chase Julson*  
 Notary Public:  
 State of North Dakota  
 My commission expires: July 3, 2023



PROJECT NO: P00803-2022-002	<b>CERTIFICATE OF SURVEY</b>	SURVEY DATE: 1/11/23
DRAWING TYPE: COS	OWNER: Southeast Cass Water Resource District	PREPARED BY: CB
	PARENT PARCEL ABBREVIATED LEGAL DESCRIPTION: Part of the SE1/4 of the NE1/4 Section 5, T138N, R49W, Cass County, North Dakota	CHECKED BY: NS
	Advanced Engineering and Environmental Services, LLC www.ae2s.com	APPROVED BY: NS



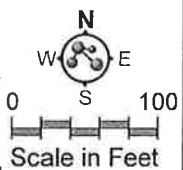
**LEGEND**

- SECTION LINE
- - - 1/4 LINE
- - - EXIST. PARCEL LINE
- - - EXIST. EASEMENT LINE
- NEW EASEMENT LINE
- FND IRON MON.
- FND IRON MON. W/ PLASTIC CAP
- △ FND IRON MON. W/ ALUM. CAP



NEW TEMP. CONST. EASE. (TCE)

BASIS OF BEARINGS: CITY OF FARGO GROUND COORDINATE SYSTEM, DECEMBER 1992. DISTANCES ARE GROUND, US SURVEY FEET.



PROJECT NO: P00803-2022-002	<b>CERTIFICATE OF SURVEY</b>	SURVEY DATE: 1/11/23
DRAWING TYPE: COS	OWNER: Southeast Cass Water Resource District	PREPARED BY: CB
	PARENT PARCEL ABBREVIATED LEGAL DESCRIPTION: Part of the SE1/4 of the NE1/4 Section 5, T138N, R49W, Cass County, North Dakota	CHECKED BY: NS
	Advanced Engineering and Environmental Services, LLC www.ae2s.com	APPROVED BY: NS

**TEMPORARY CONSTRUCTION EASEMENT (TCE) - LEGAL DESCRIPTION**

That part of the Southeast Quarter of the Northeast Quarter of Section 5, Township 138 North, Range 49 West of the 5th Principal Meridian, Cass County, North Dakota, being further described as follows:

Commencing at the Southeast Corner of the Northeast Quarter (NE1/4) of Section 5; thence North 02 degrees 01 minute 18 seconds West on the east line of said NE1/4 a distance of 344.56 feet to the Point of Beginning; thence North 49 degrees 15 minutes 20 seconds West a distance of 479.48 feet to the south line of Block 1, GSR Addition to the City of Fargo; thence North 85 degrees 44 minutes 40 seconds East on said south block line a distance of 120.21 feet; thence South 49 degrees 15 minutes 20 seconds East a distance of 315.86 feet to said east line of the NE1/4; thence South 02 degrees 01 minute 18 seconds East on said east line a distance of 115.78 feet to the Point of Beginning.

Said temporary construction easement contains 33,802 square feet (0.78 acres), more or less.

**CERTIFICATE OF SURVEYOR**

I hereby certify that this survey was prepared by me or under my direct supervision and that I am a duly Registered Land Surveyor under the laws of the State of North Dakota. All distances and measurements are true and correct to the best of my knowledge and belief, and all monuments shall be placed in the ground as shown.

*Nicholas R. Stattel*

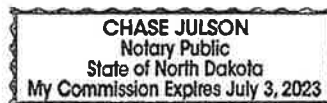
Nicholas R. Stattelman  
 N.D. Registration No. LS-8218  
 Date: 4/19/23



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

On this 19<sup>th</sup> day of April, in the year 2023, before me a notary public in and for said county and state, personally appeared Nicholas R. Stattelman, known to me to be the person(s) described in, and who executed the within instrument and acknowledged to me that he/she executed the same.

*Chase Julson*  
 Notary Public:  
 State of North Dakota  
 My commission expires: July 3, 2023



PAGE 2 of 2

PROJECT NO: P00803-2022-002	<b>C E R T I F I C A T E O F S U R V E Y</b>	SURVEY DATE: 1/11/23
DRAWING TYPE: COS	OWNER: Southeast Cass Water Resource District	PREPARED BY: CB
	PARENT PARCEL ABBREVIATED LEGAL DESCRIPTION: Part of the SE1/4 of the NE1/4 Section 5, T138N, R49W, Cass County, North Dakota	CHECKED BY: NS
	Advanced Engineering and Environmental Services, LLC www.ae2s.com	APPROVED BY: NS

20

March 31, 2023

Board of City Commissioners  
City of Fargo  
200 North Third Street  
Fargo, ND 58102

Re: **Access Easement**  
**Project #NR-23-A1**

Dear Commissioners:

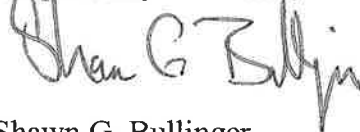
Accompanying for City Commission review and approval is an Access Easement with **Fargo Public Schools** in association with Project #NR-23-A1.

RECOMMENDED MOTION:

Approve Access Easement with **Fargo Public Schools**.

Please return the signed original.

Respectfully submitted,



Shawn G. Bullinger  
Land Acquisition Specialist

C: Nathan Boerboom  
Kasey McNary

## ACCESS EASEMENT

THIS IDENTURE made this 20<sup>th</sup> day of March 2023 between the City of Fargo, for Use of the Schools, Grantor, whose office address is 700 7th Street South, Fargo, ND 58103 and the City of Fargo, a municipal corporation, Grantee, whose address is 225 4th Street North, Fargo, North Dakota 58102.

WHEREAS, Grantee is the owner of the real property in the County of Cass, State of North Dakota whereby it will construct a storm sewer lift station ("Benefitted Property").

WHEREAS, Grantor is the owner of the real property in the County of Cass, State of North which borders the Benefitted Property.

WHEREAS, Grantor has agreed to grant to Grantee a permanent access easement allowing Grantee to access the Benefitted Property.

WITNESSETH, for and in consideration of One Dollar (\$1.00) and other good and valuable consideration to them in hand paid, the receipt of which is hereby acknowledged, Grantor has granted and by these presents does hereby grant to Grantee, its successors and assigns, a non-exclusive Access Easement granted upon, over and under the following described land situate in the County of Cass, State of North Dakota:

**The East 110.00 feet of the North 32.00 feet of Lot 2, Block 1, FSOC Addition to the City of Fargo, Cass County, North Dakota**

**Said tract contains 3,524 square feet, more or less.**

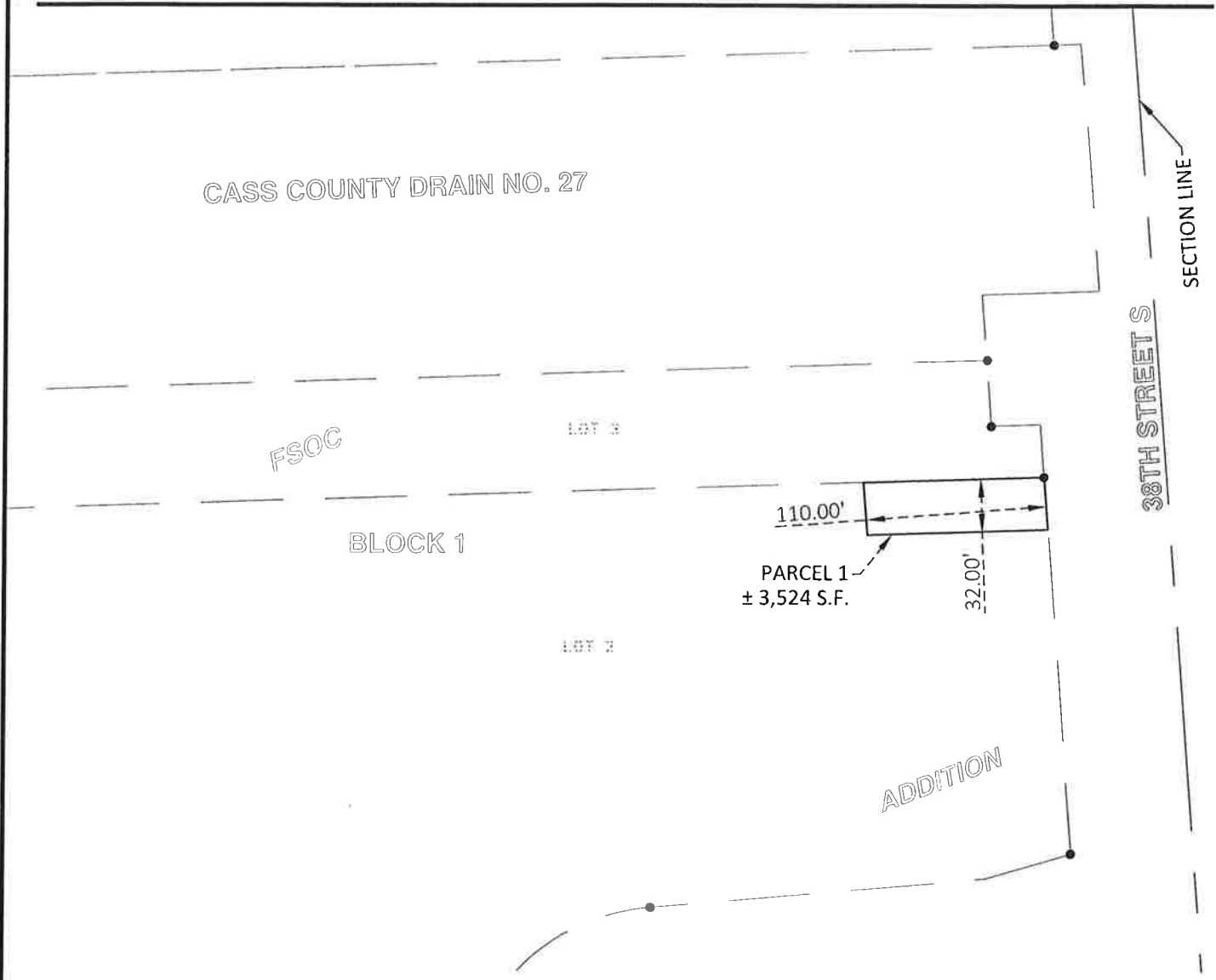
The Access Easement area is depicted in **Exhibit A** attached hereto and incorporated.

The Easement is a non-exclusive surface easement for the sole purpose of allowing Grantee access to the Benefitted Property. All costs of improving, maintaining, and repairing the Access Easement remain the sole responsibility of Grantor, unless otherwise agreed to by the





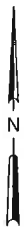
PART OF LOT 2, BLOCK 1  
FSOC ADDITION  
CITY OF FARGO, CASS COUNTY  
STATE OF NORTH DAKOTA



Description - Parcel 1 (Permanent Access Easement):

The East 110.00 feet of the North 32.00 feet of Lot 2, Block 1, FSOC Addition to the City of Fargo, Cass County, North Dakota.

Said tract contains 3,524 square feet, more or less.



Scale: 1" = 100'



(21)

April 14, 2023

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

Re: Permanent Storm Sewer Easement  
Improvement District #BN-23-C1

Dear Commissioners:

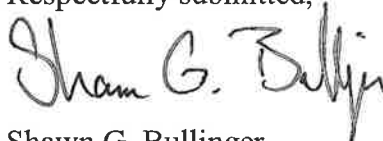
Accompanying for City Commission review and approval is an original permanent storm sewer easement from 76<sup>th</sup> Street Holdings, LLC in association with Improvement District #BN-23-C1.

RECOMMENDED MOTION:

Approve permanent storm sewer easement from 76<sup>th</sup> Street Holdings, LLC.

Please return the signed original.

Respectfully submitted,



Shawn G. Bullinger  
Land Acquisition Specialist

C: Nancy Morris  
Matt Jennings

**PERMANENT EASEMENT**  
**(Storm Sewer)**

**KNOW ALL MEN BY THESE PRESENTS** that **76<sup>TH</sup> STREET HOLDINGS LLC**, a North Dakota limited liability company, hereinafter referred to as "Grantor", whether one or more, for and in consideration of the sum of One and no/100 Dollars (\$1.00) and other valuable consideration, to it in hand paid the receipt whereof is hereby acknowledged, **HEREBY GRANTS UNTO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA**, a municipal corporation, its successors and assigns, hereinafter referred to as "Grantee", a permanent and perpetual easement over, upon and in the land hereinafter described for the purpose of constructing, operating, maintaining and repairing a storm sewer, together with the customary appurtenances, said tract being more particularly described as follows:

Two tracts of land being all that part of Lots 1 through 4 and Lots 6 through 8, **BLOCK ONE** of **GOLDEN VALLEY SECOND ADDITION** in the Northeast Quarter of Section 11, Township 138 North, Range 49 West of the Fifth Principal Meridian, City of Fargo, Cass County, North Dakota lying northerly and northwesterly of the following described line:

Beginning at a point on the east line of said Lot 8 lying 5.00 feet southerly of, as measured perpendicular to, the north line of said **BLOCK ONE**; thence South 87°43'53" West, parallel with the north line of said **BLOCK ONE**, a distance of 481.41 feet; thence South 56°30'57" West, a distance of 31.96 feet to the westerly line of said Lot 1 and there terminating.

Said tracts together contain 2,633 square feet, more or less.

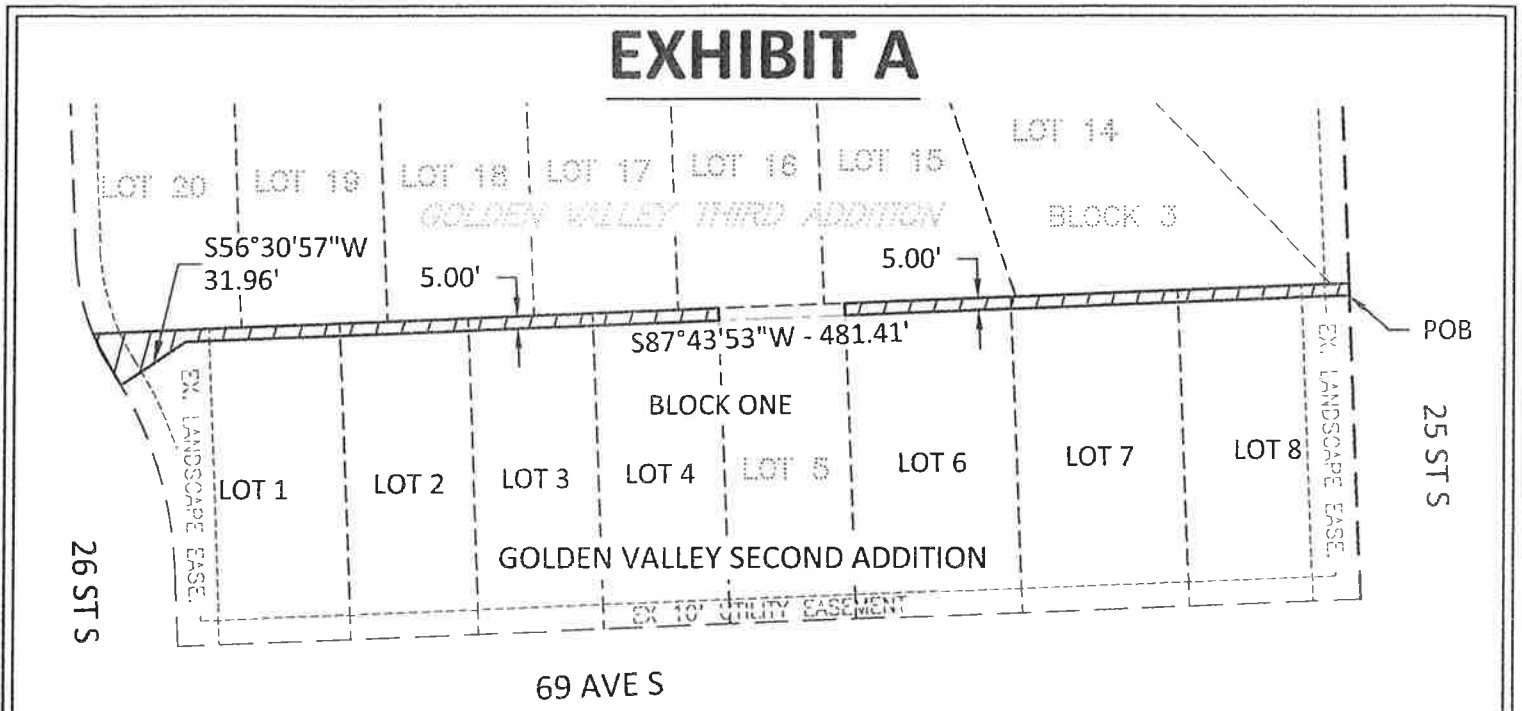
Grantor, its successors and assigns, hereby covenant to and with Grantee that Grantee's officers, contractors, agents and employees may at any and all times when necessary or convenient to do so, go over and upon said above-described tract of land and perform any and all acts necessary or convenient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

Grantor, its successors and assigns, further agrees that it will not disturb, injure, molest or in any manner interfere with said storm sewer and customary appurtenances, or with material for laying, maintaining, operating or repairing the same, in, over or upon the above-described premises, and Grantor expressly warrants and states that no buildings or other obstacles of any kind shall be placed or located upon the tract so as to interfere in any manner with the construction, operation, maintenance or repair of said storm sewer including customary appurtenances, provided that Grantee, at its own expense, shall refill any excavation it makes and level the ground thereafter, leaving the premises in as good condition as it was prior to the time of constructing of said storm sewer and customary appurtenances was begun.

(Signatures on following page.)





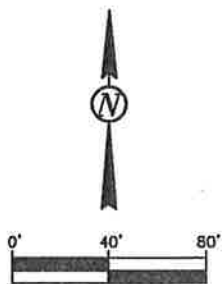


**Description:**

Two tracts of land being all that part of Lots 1 through 4 and Lots 6 through 8, BLOCK ONE of GOLDEN VALLEY SECOND ADDITION in the Northeast Quarter of Section 11, Township 138 North, Range 49 West of the Fifth Principal Meridian, City of Fargo, Cass County, North Dakota lying northerly and northwesterly of the following described line:

Beginning at a point on the east line of said Lot 8 lying 5.00 feet southerly of, as measured perpendicular to, the north line of said BLOCK ONE; thence South 87°43'53" West, parallel with the north line of said BLOCK ONE, a distance of 481.41 feet; thence South 56°30'57" West, a distance of 31.96 feet to the westerly line of said Lot 1 and there terminating.

Said tracts together contain 2,633 square feet, more or less.



BEARINGS BASED ON  
CITY OF FARGO GROUND COORDINATE  
SYSTEM, DECEMBER 1992

**LEGEND**

- NEW EASEMENT
- RIGHT-OF-WAY
- LOT LINE
- EXISTING EASEMENT
- DIMENSIONAL LINE



### PERMANENT EASEMENT

**LOTS 1-4 AND LOTS 6-8, BLOCK ONE, GOLDEN VALLEY SECOND ADDITION  
CITY OF FARGO, CASS COUNTY, NORTH DAKOTA**



ENGINEERING DEPT.

DRAWN BY: JWZ

APPROVED BY: BWW

DATE: MARCH 14, 2023

SHEET 1 OF 1

22

April 14, 2023

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

**Re: Temporary Easement – Improvement District #BR-22-A0**

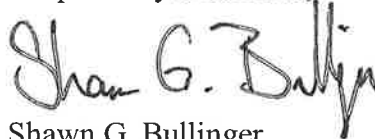
Dear Commissioners:

Enclosed and delivered to the City Commission office for review and approval is an original temporary easement from Oak Grove Lutheran School in association with Improvement District #BR-22-A0.

**RECOMMENDED MOTION:** I/we hereby move to approve the temporary easement from **Oak Grove Lutheran School** in association with Improvement District #BR-22-A0 and that the Mayor is instructed to execute the temporary easement on behalf of the City of Fargo.

Please return the signed original.

Respectfully submitted,



Shawn G. Bullinger  
Land Acquisition Specialist

C: Jeremy Gorden  
Nancy J. Morris

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

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

That part of Lot One (1), Block One (1), Jensen Subdivision to the City of Fargo, County of Cass, State of North Dakota, described as follows:

Commencing at the northeast corner of said Lot One; thence South 04 degrees 28 minutes 48 seconds East along the east line of said Lot One, a distance of 5.00 feet; thence South 87 degrees 54 minutes 27 seconds West, parallel with the north line of said Lot One, a distance of 126.57 feet to the point of beginning; thence South 02 degrees 05 minutes 33 seconds East, a distance of 20.00 feet; thence South 87 degrees 54 minutes 27 seconds West, a distance of 27.60 feet to the west line of said Warranty Deed, Document Number 1565366, which is also the east line of said Corrective Warranty Deed, Document Number 1187786, both documents found in the Recorder's Office of said County of Cass; thence North 04 degrees 28 minutes 48 seconds West along said Deed line, a distance of 15.01 feet; thence South 87 degrees 54 minutes 27 seconds West, parallel with the north line of said Lot 1, a distance of 42.55 feet; thence North 02 degrees 05 minutes 33 seconds West, a distance of 5.00 feet; thence North 87 degrees 54 minutes 27 seconds East, parallel with the north line of said Lot 1, a distance of 42.35 feet to said Deed line; thence continuing North 87 degrees 54 minutes 27 seconds East, parallel with the north line of said Lot One, a distance of 28.43 feet to said point of beginning.



Said parcel contains 773 square feet, more or less, and is subject to existing easements of record (the "Easement Area").

Grantor, its successors and assigns, hereby covenants to and with Grantee that Grantee's officers, contractors, agents and employees may at any and all times while this Temporary Easement is effective, when necessary or convenient to do so, go over and upon said Easement Area and perform any and all acts necessary or convenient to carry into effect the purpose for which the easement is made.

Grantor, its successors and assigns, further agrees that it will not disturb, injure, molest or in any manner interfere with the Easement Area to be used for the storage of dirt and all other construction activities during the term of this easement and Grantor expressly warrants and states that no buildings, trees, shrubs or other obstacles of any kind shall be placed or located upon the Easement Area so as to interfere in any manner with the Easement Area to be used for the storage of dirt and all other construction activities during the construction phase of said project, provided that Grantee, at its own expense, shall refill any excavation it makes and level the ground thereafter, and restore all grass and plantings, leaving the premises in as good condition as it was prior to the time of storage of dirt and all other construction activities was begun.

This easement shall commence on May 1, 2022, and shall terminate at the completion of construction of the project, or on June 30, 2024, whichever occurs sooner.

This instrument shall not be recorded.

(Signatures on the following pages)





23

April 20, 2023

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

**Re: Memorandum of Offer to Landowner  
Permanent & Temporary Easements – Improvement District #BR-23-C1**

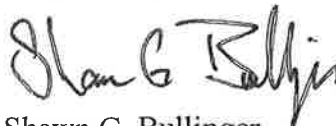
Dear Commissioners:

Enclosed and delivered to the City Commission office is an original Memorandum of Offer to Landowner document for the acquisition of a permanent & temporary easement in association with Improvement District #BR-23-C1. Final purchase price has been reached and at this time we are requesting authorization from the Commission to proceed with the purchase. All land acquisition procedures have been followed and the City Engineer's office recommends purchase.

RECOMMENDED MOTION: I/we hereby move to approve and authorize purchase of a permanent & temporary easement from **JASL, LLC** in association with Improvement District #BR-23-C1 and that the Mayor is instructed to execute the Memorandum of Offer to Landowner & Easement documents on behalf of the City of Fargo.

Please return the signed originals.

Respectfully submitted,



Shawn G. Bullinger  
Land Acquisition Specialist

C: Rick Larson  
Nancy J. Morris

**MEMORANDUM OF OFFER TO LANDOWNER**

City of Fargo, Engineering Department

Project BR-23-C1	County Cass	Parcel(s) 01-2382-01793-000
Landowner JASL, LLC		
Mailing Address 910 6th Ave N Fargo, ND 58102		

The following-described real property and/or related temporary easement areas are being acquired for project purposes:

See enclosed easement(s).

I, as right of way agent for the City of Fargo, Engineering Department, am hereby authorized to offer the following amount of \$ 4,904.00 as full compensation for the fee and/or temporary taking of the foresaid parcels and all damages incidental thereto. The offer set forth has been established through one of the following, Basic Data Book, Certified Appraisal, City of Fargo Minimum Payment Policy. A breakdown of this offer is as follows:

Land	\$	_____	
Easement and Access Control	\$	<u>4,904.00</u>	
Improvements on Right of Way*	\$	_____	
Damages to Remainder	\$	_____	
<b>Total Offer</b>			<b>\$ <u>4,904.00</u></b>

\*Description of Damages to Remainder are as follows:

\_\_\_\_\_



Owner Signature  
Signature hereby constitutes acceptance of offer as presented above.



Shawn G. Bullinger  
Land Acquisition Specialist, City of Fargo

*Fargo City Commission has considered the offer and approves the same:*



**Timothy J. Mahoney**

MAYOR

SIGNATURE

DATE

**PERMANENT EASEMENT**  
**(Street and Utility)**

**KNOW ALL MEN BY THESE PRESENTS** that **JASL, LLC**, a North Dakota limited liability company, hereinafter referred to as "Grantor", for and in consideration of the sum of One and no/100 Dollars (\$1.00) and other valuable consideration, to it in hand paid the receipt whereof is hereby acknowledged, **HEREBY GRANTS UNTO THE CITY OF FARGO, NORTH DAKOTA**, a municipal corporation, its successors and assigns, hereinafter referred to as "Grantee", a permanent and perpetual easement over, upon and in the land hereinafter described for the purpose of laying, constructing, operating, maintaining and repairing a street and all other public utilities, together with the customary appurtenances including location of any and all utilities, said parcel being more particularly described as follows:

A tract of land in Lot 6, Block 15 of Roberts' Second Addition to the City of Fargo, Cass County, North Dakota more particularly described as follows:

Beginning at the northeast corner of said Lot 6; thence southerly, on the east line of said Lot 6, a distance of 8.04 feet; thence northwesterly to a point on the north line of said Lot 6 lying 39.98 feet westerly of the northeast corner of said Lot 6, as measured along said north line; thence easterly on said north line to the point of beginning.

Said tract contains 157 square feet, more or less.

Said parcel is pictorially represented on an Easement Plat attached hereto and incorporated herein by reference as Exhibit "A".

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

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

any manner interfere with said street and customary appurtenances including location of any and all utilities, or with material for laying, maintaining, operating or repairing the same, in, over or upon the above-described premises, and Grantor expressly warrants and states that no buildings, trees, shrubs or other obstacles of any kind shall be placed or located upon the parcel so as to interfere in any manner with the construction, operation, maintenance or repair of said street including location of any and all utilities or customary appurtenances, provided that Grantee, at its own expense, shall refill any excavation it makes and level the ground thereafter, leaving the premises in as good condition as it was prior to the time of constructing of said street and customary appurtenances was begun.

(Signatures on the following page)

IN WITNESS WHEREOF, Grantor has set its hand and caused this instrument to be executed this 19th day of April, 2023.

GRANTOR:

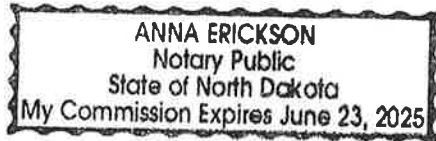
JASL, LLC  
a North Dakota limited liability company

By: [Signature]  
Its: President

STATE OF North Dakota )  
 ) ss.  
COUNTY OF Cass )

On this 19th day of April, 2023, before me, a notary public in and for said county and state, personally appeared Justin Axness to me known to be the President of JASL, LLC, a North Dakota limited liability company, described in and who executed the within and foregoing instrument, and acknowledged to me that he/she executed the same.

(SEAL)

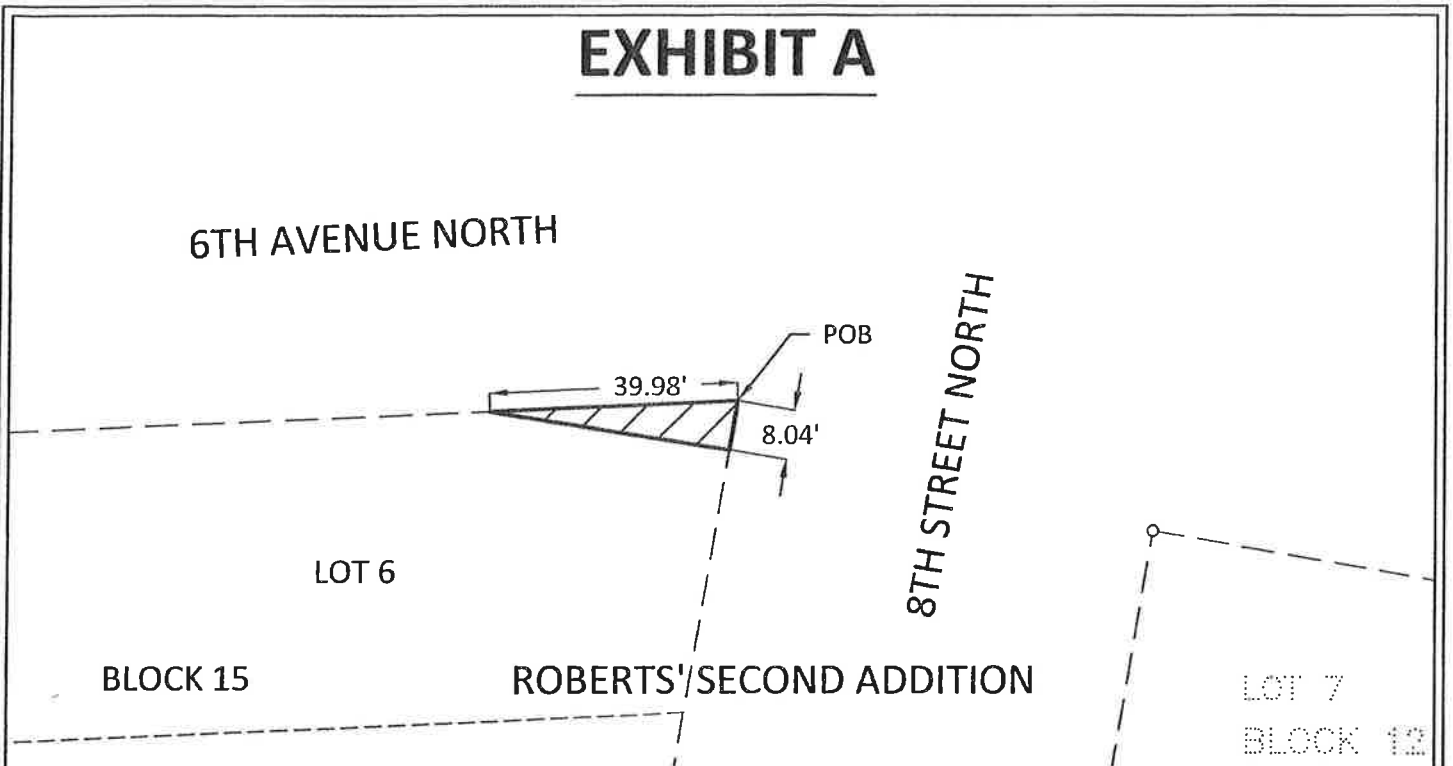


Anna Erickson  
Notary Public  
Cass County, ND





# EXHIBIT A

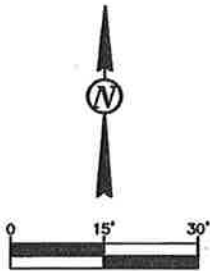


Description:

A tract of land in Lot 6, Block 15 of Roberts' Second Addition to the City of Fargo, Cass County, North Dakota more particularly described as follows:

Beginning at the northeast corner of said Lot 6; thence southerly, on the east line of said Lot 6, a distance of 8.04 feet; thence northwesterly to a point on the north line of said Lot 6 lying 39.98 feet westerly of the northeast corner of said Lot 6, as measured along said north line; thence easterly on said north line to the point of beginning.

Said tract contains 157 square feet, more or less.



BEARINGS BASED ON  
CITY OF FARGO GROUND COORDINATE  
SYSTEM, DECEMBER 1992

LEGEND

- NEW EASEMENT
- MONUMENT FOUND
- MONUMENT SET
- STREET R/W
- LOT LINE



ENGINEERING DEPT.

## PERMANENT EASEMENT

**LOT 6, BLOCK 15, ROBERTS' SECOND ADDITION  
CITY OF FARGO, CASS COUNTY, NORTH DAKOTA**

DRAWN BY: BWV

APPROVED BY: BWV

DATE: 10/11/2022

SHEET 1 OF 1

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

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

A 10.00 foot wide strip of land in Lot 6, Block 15 of Roberts' Second Addition to the City of Fargo, Cass County, North Dakota lying southerly of and adjacent to the following described line:

Commencing at the northeast corner of said Lot 6; thence southerly, on the east line of said Lot 6, a distance of 8.04 feet to the point of beginning; thence northwesterly to a point on the north line of said Lot 6 lying 39.98 feet westerly of the northeast corner of said Lot 6, as measured along said north line and there terminating.

Said strip contains 391 square feet, more or less.

Said parcel is pictorially represented in Exhibit "A" hereto and made a part hereof.

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

Grantor, his successors and assigns, further agrees they will not disturb, injure, molest or in any manner interfere with said parcel to be used for the storage of dirt and all other construction

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

This easement shall terminate on December 1, 2023 or end of project, whichever occurs first.

(Signatures on following pages).

IN WITNESS WHEREOF, Grantor set his/her hand and caused this instrument to be executed this 19th day of April, 2023.

GRANTOR:

JASL, LLC  
a North Dakota limited liability company

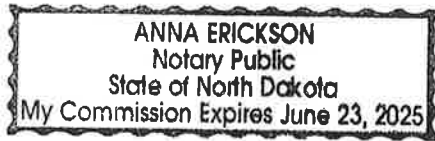
By: *Justin Arness*

Its: President

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

On this 19th day of April, 2023, before me, a notary public in and for said county and state, personally appeared Justin Arness, the President of JASL, LLC, a North Dakota limited liability company to me known to be the persons described in and who executed the within and foregoing instrument, and acknowledged to me that he/she executed the same.

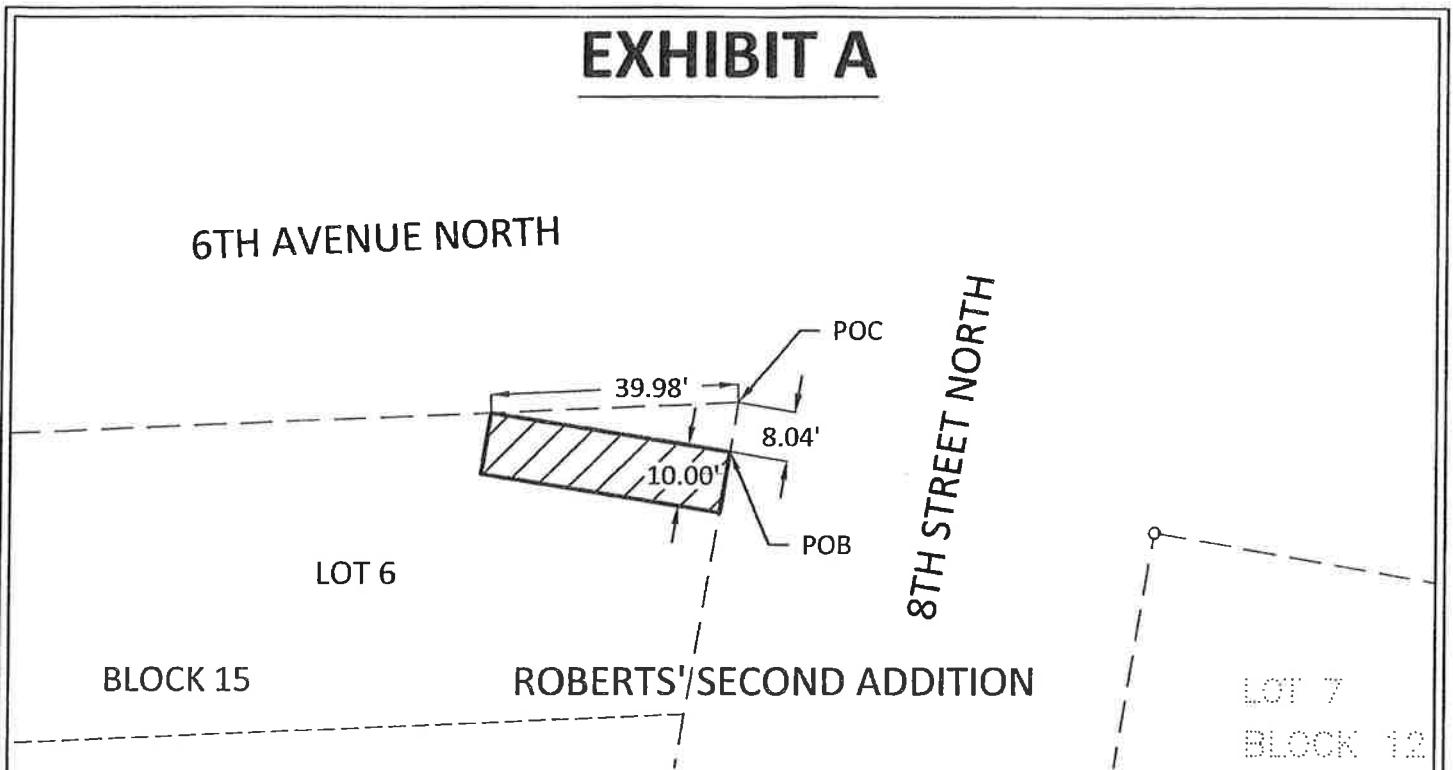
(SEAL)



*Anna Erickson*  
Notary Public  
Cass County, North Dakota



# EXHIBIT A

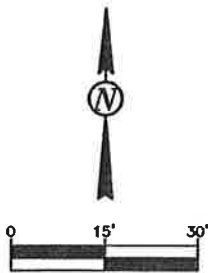


Description:

A 10.00 foot wide strip of land in Lot 6, Block 15 of Roberts' Second Addition to the City of Fargo, Cass County, North Dakota lying southerly of and adjacent to the following described line:

Commencing at the northeast corner of said Lot 6; thence southerly, on the east line of said Lot 6, a distance of 8.04 feet to the point of beginning; thence northwesterly to a point on the north line of said Lot 6 lying 39.98 feet westerly of the northeast corner of said Lot 6, as measured along said north line and there terminating.

Said strip contains 391 square feet, more or less.



BEARINGS BASED ON  
CITY OF FARGO GROUND COORDINATE  
SYSTEM, DECEMBER 1992

**LEGEND**

- TEMPORARY EASEMENT
- MONUMENT FOUND
- MONUMENT SET
- STREET R/W
- LOT LINE



ENGINEERING DEPT.

## TEMPORARY EASEMENT

**LOT 6, BLOCK 15, ROBERTS' SECOND ADDITION  
CITY OF FARGO, CASS COUNTY, NORTH DAKOTA**

DRAWN BY: BWW

APPROVED BY: BWW

DATE: 10/11/2022

SHEET 1 OF 1



24

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

April 26, 2023

Honorable Board of City  
Commissioners  
City of Fargo  
Fargo, ND

Re: Improvement District No. BR-23-F1

Dear Commissioners:

Bids were opened at 11:45 am on Wednesday, April 26th 2023, for Paving and Utility Rehab/Reconstruction, Improvement District No. BR-23-F1, located on Northern Pacific Avenue North from 10th Street to 8th Street.

The bids were as follows:

R & R Excavating, Inc.	\$2,947,619.97
Dakota Underground Co Inc	\$3,316,714.80
Engineers Estimate	\$2,386,307.00

Private financial security is not needed.

No protests have been recieved.

This office recommends award of the contract to R & R Excavating, Inc. in the amount of \$2,947,619.97 as the lowest and best bid.

Sincerely,

Thomas Knakmuhs, PE  
Assistant City Engineer





**Engineer's Statement Of Cost**  
**Improvement District # BR-23-F1**  
**Paving And Utility Rehab/Reconstruction**

On Northern Pacific Avenue North from 10th Street to 8th Street

WHEREAS, bids have been opened and filed for the above described Improvement District for City of Fargo, North Dakota; and WHEREAS, an estimate of the cost of work is required by the engineer for the City of Fargo, North Dakota;

NOW THEREFORE Thomas Knakmuhs, do hereby certify as follows:

That I am the Assistant City Engineer for the City of Fargo, North Dakota;

That the following is detailed statement of the estimated cost of the job described as:

Paving and Utility Rehab/Reconstruction Improvement District # BR-23-F1 of the City of Fargo, North Dakota.

Line	Description	Unit	Quantity	Unit Price (\$)	Amount (\$)
<b>Sanitary Sewer</b>					
1	Remove Manhole	EA	4.00	1,068.22	4,272.88
2	Remove Pipe All Sizes All Types	LF	774.00	1.30	1,006.20
3	Connect Pipe to Exist Pipe	EA	3.00	2,533.99	7,601.97
4	Connect Sewer Service	EA	10.00	11,821.25	118,212.50
5	F&I Controlled Density Fill	CY	2.25	1,859.99	4,184.98
6	F&I Manhole 4' Dia Reinf Conc	EA	5.00	18,409.87	92,049.35
7	F&I Pipe w/GB SDR 26 - 6" Dia PVC	LF	248.00	30.30	7,514.40
8	F&I Pipe w/GB SDR 26 - 12" Dia PVC	LF	695.00	362.57	251,986.15
9	F&I Pipe w/GB SDR 26 - 15" Dia PVC	LF	97.00	423.90	41,118.30
				Sanitary Sewer Total	<b>527,946.73</b>
<b>Water Main</b>					
10	Furnish Temp Water Svc	EA	4.00	5,000.00	20,000.00
11	Remove Pipe All Sizes All Types	LF	863.00	2.04	1,760.52
12	Rem & Repl CS & Box 1" Dia	EA	1.00	531.10	531.10
13	Rem & Repl CS & Box 1.5" Dia	EA	2.00	936.91	1,873.82
14	Rem & Repl CS & Box 2" Dia	EA	1.00	1,213.70	1,213.70
15	Connect Water Service	EA	4.00	11,808.15	47,232.60
16	F&I Hydrant	EA	2.00	15,796.14	31,592.28
17	F&I Gate Valve 4" Dia	EA	1.00	5,609.40	5,609.40
18	F&I Gate Valve 6" Dia	EA	6.00	5,164.55	30,987.30
19	F&I Gate Valve 8" Dia	EA	2.00	6,444.91	12,889.82

Line	Description	Unit	Quantity	Unit Price (\$)	Amount (\$)
20	F&I Gate Valve 10" Dia	EA	2.00	8,671.53	17,343.06
21	F&I Fittings C153 Ductile Iron	LB	1,248.00	11.78	14,701.44
22	F&I 1-1/4" Trench Found Rock 4" thru 12" Dia	LF	100.00	331.94	33,194.00
23	F&I Pipe w/GB C900 DR 18 - 4" Dia PVC	LF	4.00	1,234.91	4,939.64
24	F&I Pipe w/GB C900 DR 18 - 6" Dia PVC	LF	54.00	382.14	20,635.56
25	F&I Pipe w/GB C900 DR 18 - 8" Dia PVC	LF	46.00	482.62	22,200.52
26	F&I Pipe w/GB C900 DR 18 - 10" Dia PVC	LF	798.00	378.72	302,218.56
27	F&I Pipe w/GB 1" Dia Water Service	LF	40.00	13.46	538.40
28	F&I Pipe w/GB 1.5" Dia Water Service	LF	42.00	37.71	1,583.82
29	F&I Pipe w/GB 2" Dia Water Service	LF	41.00	56.10	2,300.10
30	Bore Pipe 1.5" Dia Water Service	LF	41.00	312.82	12,825.62
Water Main Total					<b>586,171.26</b>
<b>Storm Sewer</b>					
31	Remove Manhole	EA	1.00	1,106.62	1,106.62
32	Remove Inlet	EA	5.00	904.02	4,520.10
33	Remove Pipe All Sizes All Types	LF	306.00	24.63	7,536.78
34	Connect Pipe to Exist Pipe	EA	2.00	2,714.73	5,429.46
35	Connect Pipe to Exist Structure	EA	1.00	2,794.52	2,794.52
36	F&I Pipe w/GB SDR 26 - 15" Dia PVC	LF	123.00	251.84	30,976.32
37	F&I Manhole 4' Dia Reinf Conc	EA	2.00	9,318.95	18,637.90
38	F&I Inlet - Manhole (MHI) 4' Dia Reinf Conc	EA	1.00	8,428.81	8,428.81
39	F&I Inlet - Single Box (SBI) Reinf Conc	EA	4.00	6,468.67	25,874.68
40	F&I Pipe w/GB SDR 26 - 10" Dia PVC	LF	15.00	229.85	3,447.75
41	F&I Pipe w/GB SDR 26 - 12" Dia PVC	LF	8.00	277.62	2,220.96
42	F&I Pipe w/GB 18" Dia Reinf Conc	LF	112.00	227.65	25,496.80
Storm Sewer Total					<b>136,470.70</b>
<b>Paving</b>					
43	Special Surface Finish	SF	444.00	38.91	17,276.04
44	Traffic Control - Type 1	LS	1.00	7,565.00	7,565.00
45	Construction Signing	SF	30.00	15.00	450.00
46	Stormwater Management	LS	1.00	1,000.00	1,000.00
47	Temp Fence - Safety	LS	1.00	37,905.29	37,905.29
48	Inlet Protection - New Inlet	EA	5.00	245.00	1,225.00
49	Inlet Protection - Existing Inlet	EA	20.00	245.00	4,900.00
50	Remove Pavement All Thicknesses All Types	SY	4,552.00	21.07	95,910.64

Line	Description	Unit	Quantity	Unit Price (\$)	Amount (\$)
51	Remove Curb & Gutter	LF	1,711.00	9.10	15,570.10
52	Remove Sidewalk All Thicknesses All Types	SY	1,464.00	13.20	19,324.80
53	Remove Driveway All Thicknesses All Types	SY	419.00	15.50	6,494.50
54	Rem & Repl Casting - Inlet	EA	3.00	3,083.94	9,251.82
55	Casting to Grade - w/Conc	EA	14.00	800.00	11,200.00
56	Casting to Grade - no Conc	EA	1.00	1,269.97	1,269.97
57	GV Box to Grade - Blvd	EA	2.00	440.99	881.98
58	GV Box to Grade - w/Conc	EA	8.00	593.50	4,748.00
59	GV Box to Grade - no Conc	EA	1.00	441.01	441.01
60	F&I Casting Water Service	EA	3.00	670.18	2,010.54
61	Subgrade Preparation	SY	4,258.00	2.50	10,645.00
62	Boulevard Grading	SY	225.00	8.95	2,013.75
63	F&I Woven Geotextile	SY	4,258.00	2.10	8,941.80
64	F&I Class 5 Agg - 12" Thick	SY	4,258.00	18.05	76,856.90
65	F&I Edge Drain 4" Dia PVC	LF	1,675.00	15.25	25,543.75
66	F&I Curb & Gutter Standard (Type II)	LF	1,645.00	32.50	53,462.50
67	F&I Median Nose Conc	SY	66.00	180.00	11,880.00
68	F&I Pavement 9" Thick Doweled Conc	SY	3,252.00	134.50	437,394.00
69	F&I Sidewalk 4" Thick Reinf Conc	SY	1,202.00	95.35	114,610.70
70	F&I Sidewalk 6" Thick Reinf Conc	SY	88.00	111.35	9,798.80
71	F&I Det Warn Panels Cast Iron	SF	298.00	60.00	17,880.00
72	F&I Driveway 6" Thick Reinf Conc	SY	447.00	115.25	51,516.75
73	F&I Asphalt Pavement FAA 43 w/ PG58H-34	Ton	138.00	278.50	38,433.00
74	Seeding Type C	SY	225.00	8.50	1,912.50
75	Mulching Type 1 Hydro	SY	225.00	8.50	1,912.50
76	Weed Control Type B	SY	225.00	3.00	675.00
77	Construction Inspection of Structures and Monitoring	LS	1.00	49,051.00	49,051.00
				<b>Paving Total</b>	<b>1,149,952.64</b>
<b>Street Amenities</b>					
78	Topsoil - Import Special	CY	245.00	38.50	9,432.50
79	F&I Edge Drain 4" Dia PVC	LF	605.00	16.00	9,680.00
80	F&I Shared Use Path 4" Thick Reinf Conc	SY	401.00	97.35	39,037.35
81	F&I Impressioned 4" Thick Reinf Conc	SY	308.00	212.35	65,403.80
82	F&I Decorative 4" Thick Reinf Conc	SY	220.00	122.35	26,917.00
83	F&I Decid Tree 2" Dia	EA	23.00	695.00	15,985.00

Line	Description	Unit	Quantity	Unit Price (\$)	Amount (\$)
84	F&I Plant - Perennial Type 1	EA	480.00	28.50	13,680.00
Street Amenities Total					<b>180,135.65</b>
<b>Street Lights</b>					
85	Remove Street Light	EA	8.00	550.00	4,400.00
86	Remove Base	EA	8.00	600.00	4,800.00
87	F&I Pull Box	EA	3.00	2,100.00	6,300.00
88	F&I Base 6' Deep Reinf Conc	EA	9.00	1,200.00	10,800.00
89	F&I Innerduct 1.5" Dia	LF	2,566.00	11.00	28,226.00
90	F&I Conductor #6 USE Cu	LF	7,050.00	2.25	15,862.50
91	F&I Luminaire Type C	EA	9.00	700.00	6,300.00
92	F&I Luminaire Type D	EA	2.00	750.00	1,500.00
93	F&I Light Standard Type A	EA	9.00	4,000.00	36,000.00
94	Interim Lighting System	LS	1.00	46,091.91	46,091.91
Street Lights Total					<b>160,280.41</b>
<b>Traffic Signals</b>					
95	Remove Signal Standard Type V	EA	1.00	1,000.00	1,000.00
96	Remove Foundation Type V	EA	1.00	800.00	800.00
97	Remove Foundation Type IV/Combo	EA	2.00	816.86	1,633.72
98	Rem & Repl Pull Box Cover	EA	3.00	800.00	2,400.00
99	Rem & Repl T-Base Type IV	EA	3.00	6,500.00	19,500.00
100	Relocate Signal Standard	EA	1.00	11,000.00	11,000.00
101	Relocate Ped Head	EA	2.00	600.00	1,200.00
102	Relocate Pull Box	EA	2.00	3,200.00	6,400.00
103	F&I Conduit 1" Dia	LF	50.00	15.00	750.00
104	F&I Conduit 2" Dia	LF	700.00	13.00	9,100.00
105	F&I Conduit 4" Dia	LF	80.00	80.00	6,400.00
106	F&I Pull Box PVC	EA	2.00	2,000.00	4,000.00
107	F&I Foundation Type IV/Combo	EA	2.00	9,500.00	19,000.00
108	F&I Signal Cable Loop Lead-in	LF	330.00	1.50	495.00
109	F&I Detection Preformed Loop	EA	3.00	1,200.00	3,600.00
110	F&I Head 5 Sect Stack w/12" LED Post Mtd	EA	1.00	4,800.00	4,800.00
111	F&I PTZ Camera System	EA	1.00	6,500.00	6,500.00
Traffic Signals Total					<b>98,578.72</b>
<b>Pavement Marking</b>					
112	Obliterate Pavement Markings	SF	450.00	8.00	3,600.00

Line	Description	Unit	Quantity	Unit Price (\$)	Amount (\$)
113	Paint Epoxy Line 4" Wide	LF	400.00	3.70	1,480.00
114	Paint Epoxy Line 8" Wide	LF	950.00	8.50	8,075.00
115	F&I Pavement Markings Green	SF	78.00	88.00	6,864.00
116	F&I Grooved Plastic Film 16" Wide	LF	97.00	35.00	3,395.00
117	F&I Grooved Plastic Film 24" Wide	LF	570.00	52.00	29,640.00
118	F&I Grooved Contrast Film 7" Wide	LF	2,171.00	18.10	39,295.10
119	F&I Grooved Thermoplastic Pavement Marking Message	SF	185.50	60.00	11,130.00

**Pavement Marking Total 103,479.10**

**Signing**

120	F&I Sign Assembly	EA	13.00	79.62	1,035.06
121	F&I Sign Assembly & Anchor	EA	7.00	265.00	1,855.00
122	F&I Diamond Grade Cubed	SF	28.80	24.00	691.20
123	F&I High Intensity Prismatic	SF	44.50	23.00	1,023.50

**Signing Total 4,604.76**

**Total Construction in \$ 2,947,619.97**

Engineering 10.00% 294,762.00

Admin 4.00% 117,904.81

Legal 3.00% 88,428.60

Interest 4.00% 117,904.81

Contingency 5.00% 147,381.00

**Total Estimated Costs 3,714,001.19**

Special Assessments 957,869.09

State Funds - Other ND 2,756,132.10

**Unfunded Costs 0.00**

IN WITNESS THEREOF, I have hereunto set my hand and seal

Date: 04/26/2023



Thomas Knakmuhs  
Assistant City Engineer



COVER SHEET  
CITY OF FARGO PROJECTS

25

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

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

New Paving Construction

Improvement

District No. PN-23-E

Call For Bids	<u>May 1</u>	, <u>2023</u>
Advertise Dates	<u>May 10 &amp; 17</u>	, <u>2023</u>
Bid Opening Date	<u>June 7</u>	, <u>2023</u>
Substantial Completion Date	<u>September 30</u>	, <u>2023</u>
Final Completion Date	<u>October 30</u>	, <u>2023</u>

- N/A PWPEC Report (Part of 2023 CIP)
- X Engineer's Report (Attach Copy)
- X Direct City Auditor to Advertise for Bids
- X Bid Quantities (Attach Copy for Auditor's Office Only)
- X Notice to Property Owners (Dan Eberhardt)
- N/A Supplemental Funding Language Included

Project Engineer Tyler Jacobs

Phone No. (701) 241-1545

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

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



**ENGINEER'S REPORT  
NEW PAVING CONSTRUCTION  
IMPROVEMENT DISTRICT NO. PN-23-E  
73RD AVE S BETWEEN 14TH ST S AND UNIVERSITY DR.**

**Nature & Scope**

This project is for the installation of underground utilities, asphalt pavement, and incidentals on 73rd Avenue South connecting 14th Street South to University Drive.

**Purpose**

The purpose of this project is to install 73rd Avenue South connecting 14th Street to University Drive.

**Feasibility**

The estimated cost of construction is \$340,382.00. The cost breakdown is as follows:

<b>Cass Rural WUD</b>			
<b>Construction Cost</b>			<b>\$44,869.00</b>
<b>Fees</b>			
Admin	4%		\$1,794.76
Contingency	5%		\$2,243.45
Engineering	10%		\$4,486.90
Interest	4%		\$1,794.76
Legal	3%		\$1,346.07
<b>Total Estimated Cost</b>			<b>\$56,534.94</b>
<b>Funding</b>			
Special Assessments		100.00%	\$56,534.94



<b>Frontage Road</b>			
<b>Construction Cost</b>			<b>\$31,350.00</b>
<b>Fees</b>			
Admin	4%		\$1,254.00
Contingency	5%		\$1,567.50
Engineering	10%		\$3,135.00
Interest	4%		\$1,254.00
Legal	3%		\$940.50
<b>Total Estimated Cost</b>			<b>\$39,501.00</b>
<b>Funding</b>			
Sales Tax Funds - Infrastructure - 420	100.00%		\$39,501.00


<b>Paving</b>			
<b>Construction Cost</b>			<b>\$264,163.00</b>
<b>Fees</b>			
Admin	4%		\$10,566.52
Contingency	5%		\$13,208.15
Engineering	10%		\$26,416.30
Interest	4%		\$10,566.52
Legal	3%		\$7,924.89
<b>Total Estimated Cost</b>			<b>\$332,845.38</b>
<b>Funding</b>			
Special Assessments	100.00%		\$332,845.38

<b>Project Funding Summary</b>			
Special Assessments	90.79%		\$389,380.32
Sales Tax Funds - Infrastructure - 420	9.21%		\$39,501.00
<b>Total Estimated Project Cost</b>			<b>\$428,881.32</b>

**This project does not have any alternate or optional containers.**

We believe this project to be cost effective.



  
Thomas Knakmuhs, PE  
Assistant City Engineer



**LOCATION AND COMPRISING  
NEW PAVING CONSTRUCTION  
IMPROVEMENT DISTRICT NO. PN-23-E  
73RD AVE S BETWEEN 14TH ST S AND UNIVERSITY DR.**

**LOCATION:**

On 73rd Avenue South from 14th Street South to University Drive South.

**COMPRISING:**

Lots 3-10, Block 1.

Lots 1-12, Block 2.

Lots 3-30, Block 3.

Lots 1-9, Block 4.

All in Eagle Pointe 1st Addition.

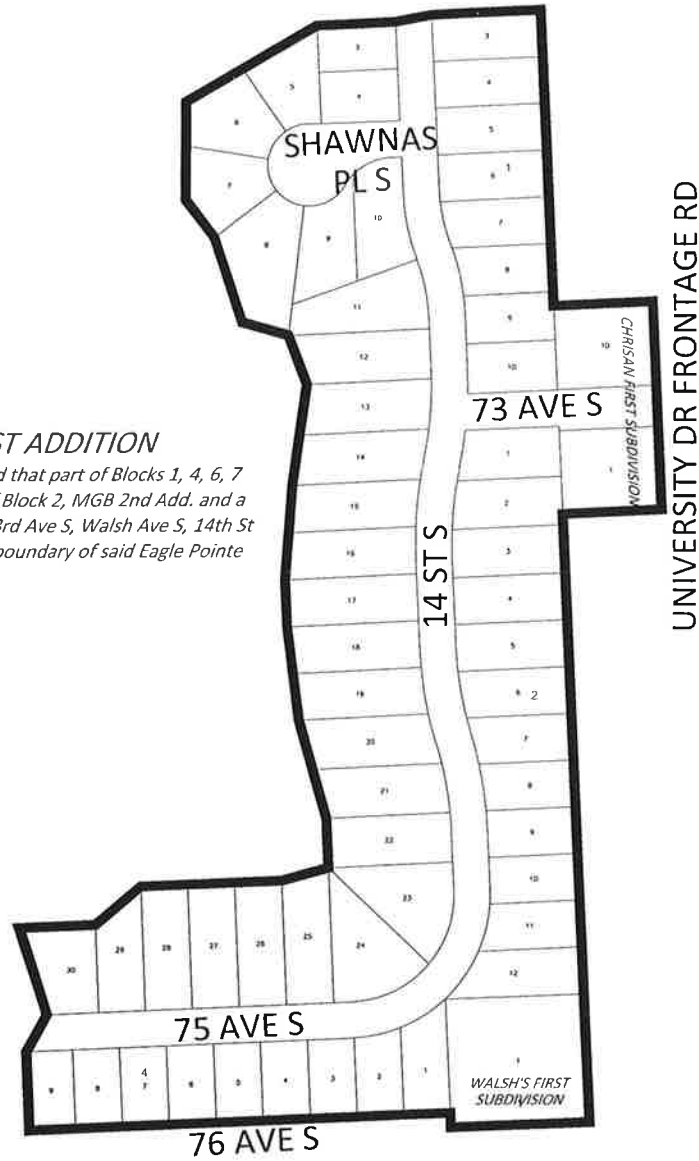
Lot 10, Block 1.

Lot 1, Block 2.

All in Chrisan 1st Subdivision.

Lot 1, Block 1 Walsh's 1st Subdivision.

All of the foregoing is located in the City of Fargo, Cass County, North Dakota.



**EAGLE POINTE 1ST ADDITION**

*a replat of all of Blocks 2, 3 and 8 and that part of Blocks 1, 4, 6, 7 and 9, MGB 1st Add. and that part of Block 2, MGB 2nd Add. and a vacation of that part of 72nd Ave S, 73rd Ave S, Walsh Ave S, 14th St S, 15th St S and 16th St S within the boundary of said Eagle Pointe 1st Add.*

CITY OF FARGO ENGINEERING  
DEPARTMENT

LOCATION & ASSESSMENT AREA

NEW PAVING CONSTRUCTION & INCIDENTALS

IMPROVEMENT DISTRICT NO. PN-23-E1

(26)

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

**TO: BOARD OF CITY COMMISSIONERS**

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

**DATE: APRIL 21, 2023**

**RE: NOTICE OF GRANT AWARD AMENDMENT FROM ND DEPARTMENT  
 OF HEALTH AND HUMAN SERVICES FOR ND LPH FUNDING EQUITY  
 AND PRIORITIZING POPULATIONS DISPROPORTIONATELY  
 AFFECTED BY COVID-19  
 GRANT NUMBER: G19.1294A  
 CFDA: 93.268 FOR \$2,594,907 AND 93.391 FOR \$182,700  
 ADDITIONAL FUNDS: \$485,607  
 EXPIRES: 05/31/2024**

The attached notice of grant award amendment for funding equity and prioritizing populations disproportionately affected by COVID-19. This amendment is for an additional \$485,607.

<b>2023 Expense</b>			
Temp/Seasonal	101-6095-451-14-00	\$	20,000
FICA	101-6095-451-21-01	\$	1,240
Medicare	101-6095-451-21-02	\$	290
Contract Services	101-6095-451-38-11	\$	100,000
		\$	
<b>2023 Revenue</b>			
Immunization Initiative	101-0000-331-12-97	\$	100,000
Health Equity	101-0000-331-12-98	\$	57,700

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

**Suggested Motion:**

Move to approve the notice of grant award amendment with ND Department of Health and Human Services.

DF/ls  
 Attachment



**NOTICE OF GRANT AWARD**

NORTH DAKOTA DEPARTMENT OF HEALTH AND HUMAN SERVICES  
SFN 53771 (09-2022)

Grant Number G19.1294A	CFDA Name Imm & Imm2: Immunization Cooperative Agreement. HE: Activities to Support State, Tribal, Local and Territorial (STLT) Health Department Response to Public Health or Healthcare Crisis	CFDA Number Imm & Imm2: 93.268 for \$2,594,907 HE: 93.391 for \$182,700
FAIN Number Imm & Imm2: NH23IP922623 HE: NH75OT00095	Grant Type (Check One) <input checked="" type="checkbox"/> Program <input type="checkbox"/> R&D	Grant Start Date 6/1/2021
Federal Award Date Imm: 3/31/2021 Imm2: 8/23/2021. HE: 5/28/2021	Federal Awarding Agency Imm, Imm2 and HE: Centers for Disease Control and Prevention	

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

Title of Project/Program ND LPH Funding Equity and Prioritizing Populations Disproportionately Affected by COVID-19	North Dakota Department of Health and Human Services (NDDHHS) Project Code: Imm: 2201 HLH 4774 01: \$2,167,000 Imm2: 2201 HLH 4776 01: \$427,907 HE: 4541 HLH 4903 01: \$182,700
Grantee Name Fargo Cass Public Health	Project Director: Molly Howell, Immunization Unit Director Krissie Guerard, Community Engagement Unit Director
Address: 1240 25 <sup>th</sup> St. S	Address: 600 East Boulevard Ave, Dept 325
City/State/ZIP Code: Fargo, ND 58103-2367	City/State/ZIP Code: Bismarck, ND 58505-0250
Contact Name: Desi Fleming	Contact Name: Molly Howell, Immunization Unit Director Krissie Guerard, Community Engagement Unit Director
Telephone Number: 701-241-1360	Telephone Number: 701-328-4556, 701-328-4538
Email Address: dfleming@fargond.gov	Email Address: mahowell@nd.gov; kguerard@nd.gov

	NDDHHS Cost Share	Grantee Cost Share	Total Costs
Amount Awarded	\$485,607	\$0	\$485,607
Previous Funds Awarded	\$2,292,000	\$0	\$2,292,000
Total Funds Awarded	\$2,777,607	\$0	\$2,777,607
Indirect Rate (Check One)	<input checked="" type="checkbox"/> Subrecipient waived indirect costs	<input type="checkbox"/> De minimis rate of 10%	<input type="checkbox"/> Negotiated/Approved rate of %

**Scope of Service**  
This amendment extends the grant end date from 6/30/2023 to 5/31/2024 and provides additional funding of \$485,607 to continue and complete the scope of service requirements as noted in the original agreement. Grantee will attend quarterly meetings with community partners to discuss current immunization trends and topics regarding the Immunization Initiative funds. Grantee will ensure availability of COVID-19 vaccine at local public health, clinic, and off-site locations regarding the Immunization Initiative funds.

**Reporting Requirements**  
Expenditure report for the period ending May 31, 2024 must be received by June 30, 2024. All other reporting requirements of the original agreement remain the same.

**Special Conditions**  
This amendment removes the requirement for at least 10% of Immunization Initiative funds to be subcontracted to faith or community-based organizations. This amendment includes \$427,907 for the Immunization Initiative and \$57,700 for the Health Equity Initiative. Costs for the Health Equity Initiative must be invoiced separately.

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

Evidence of Grantee's Acceptance		Evidence of NDDHHS Acceptance	
Date 04/21/2023	Signature <i>Desi Fleming</i>	Date	Signature
Typed Name/Title of Authorized Representative Desi Fleming, Director of Public Health		Typed Name/Title of Authorized Representative Molly Howell, MPH, Immunization Unit Director Assistant Section Director, Disease Control & Forensic Pathology	
Date	Signature	Date	Signature
Typed Name/Title of Authorized Representative Timothy J. Mahoney, Mayor, City of Fargo		Typed Name/Title of Authorized Representative Christopher D. Jones, Executive Director	

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



(21)

**MEMORANDUM**

**TO: BOARD OF CITY COMMISSIONERS**

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

**DATE: APRIL 25, 2023**

**RE: PURCHASE OF SERVICE AGREEMENT WITH NORTHERN  
CASS PUBLIC SCHOOL DISTRICT  
FUNDS: \$55,019.58  
EXPIRES: 06/30/2024**

The attached purchase of service agreement is for Northern Cass Public School District for the 2023-2024 school year.

**No budget adjustment is required for this agreement.**

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

**Suggested Motion:**

Move to approve the purchase of service agreement with Northern Cass Public School District.

DF/lls  
Attachment



**PURCHASE OF SERVICE AGREEMENT WITH  
NORTHERN CASS PUBLIC SCHOOL DISTRICT**

PUBLIC HEALTH NURSING

TERM: 07/01/2023 TO 06/30/2024 · Page 1 of 8

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

Whereas, Fargo Cass Public Health, 1240 25th Street South, Fargo, North Dakota 58103-2367 hereinafter referred to as Provider desires to provide the services described in the "Scope of Services" (Attachment A);

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

**I. TERMS OF CONTRACT**

The term of this contract shall be for school year 2023-2024, beginning on July 1, 2023, and ending on June 30, 2024. This contract may be renewed for subsequent school years by written agreement of the parties. Provided, that either party may terminate this contract at any time upon thirty (30) days written notice to other.

**II. TERMINATION**

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

**III. SCOPE OF SERVICE**

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

**IV. COMPENSATION**

1. The District agrees to reimbursement for service in accordance with the agreed upon charges in this contract (Attachment B). The billing will occur monthly, at the previously determined rate of 65 percent for the district and 35 percent for the provider. The hours to be billed will include the scheduled nursing time, any annual or sick leave taken by the nursing personnel and holiday pay as determined by the City of Fargo.
2. The provider will attempt to get substitute nursing coverage, when the regularly scheduled nurse is on an extended leave.
3. Northern Cass Public School District has requested an increase in school nursing hours over the original 30 hour per week agreement plus an extra sixty hours to use over the school year. Therefore, Northern Cass Public School District agrees to pay 100 percent (salary plus benefits) of the school nursing hours in excess of 30 hours per week and the extra sixty hours, including any overtime accrued in lieu of this request. The school nurse rate for those hours over the originally contracted amount of 30 hours with salary and benefits will be billed at \$49.35.
4. Please note this position is currently vacant and the numbers noted in Attachment B are estimates based on new hire payroll plus benefits.

**V. CHANGES**

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

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

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



**PURCHASE OF SERVICE AGREEMENT WITH  
NORTHERN CASS PUBLIC SCHOOL DISTRICT**

PUBLIC HEALTH NURSING

TERM: 07/01/2023 TO 06/30/2024 Page 3 of 8

purchased hereunder. The District acknowledges their role in abiding by the adherence to FERPA regulations relative to educational records confidentiality in order to protect student privacy. The consequences of failing to comply with FERPA must be borne by the School District and not Fargo Cass Public Health.

**XVII. APPLICABLE LAW**

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

**XVIII. CAPTIONS**

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

**XIX. EXECUTION AND COUNTERPARTS**

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

**XX. AMENDMENTS**

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

**XXI. NOTICES**

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

**XXII. SUCCESSORS IN INTEREST**

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

**XXIII. SEVERABILITY**

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

**XXIV. WAIVER**

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

**XXV. MERGER CLAUSE**

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

**PURCHASE OF SERVICE AGREEMENT WITH  
NORTHERN CASS PUBLIC SCHOOL DISTRICT**

PUBLIC HEALTH NURSING

TERM: 07/01/2023 TO 06/30/2024 Page 5 of 8

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

**REIMBURSEMENT:** See Attachment B (Budget)

**PROVIDER- FARGO CASS PUBLIC HEALTH**

**NORTHERN CASS PUBLIC SCHOOL DISTRICT**

\_\_\_\_\_  
**Timothy J. Mahoney, Mayor, City of Fargo**

*Cory J. Steiner*

Cory J. Steiner (Apr 19, 2023 07:53 PDT)

\_\_\_\_\_  
**- Cory Steiner, Superintendent**

\_\_\_\_\_  
**Date**

**04/19/2023**

\_\_\_\_\_  
**Date**

*Desi Fleming*  
\_\_\_\_\_  
**Desi Fleming, Director of Public Health**

**04/17/2023**

\_\_\_\_\_  
**Date**

**ATTACHMENT B**  
**2023-2024**  
**SCHOOL HEALTH SERVICES BUDGET**

NORTHERN CASS PUBLIC SCHOOL DISTRICT PROPOSED FUNDING FOR SCHOOL HEALTH SERVICES	AMOUNT
30 RN HOURS/WEEK X 35 WEEKS AT \$47.32/HOUR	\$49,686.00
40 RN HOURS/YEAR FOR EXTRA ACTIVITES AT \$47.32/HR	\$1,892.80
36 HOURS OF ADMINISTRATIVE NURSING SUPPORT AT \$53.84/HOUR	\$1,938.24
<b>TOTAL</b>	<b>\$53,517.04</b>
10 RN HOURS/WEEK X 35 WEEKS AT \$49.35 AT 100%	\$17,272.50
60 ADDITIONAL RN HOURS AT \$49.35 at 100%	<u>\$2,961.00</u>
	<u>\$20,233.50</u>
<b>GRAND TOTAL</b>	<b><u>\$ 73,427.50</u></b>
DISTRICT PORTION AT 65% OF \$53,517.04	\$34,786.08
DISTRICT PORTION AT 100% OF <u>\$20,233.50</u>	<u>\$20,233.50</u>
PROVIDER PORTION AT 35% OF \$53,517.04	\$18,730.96
TOTAL FOR DISTRICT OF AMOUNT AT 65%	\$34,786.08
TOTAL FOR DISTRICT OF AMOUNT AT 100%	<u>\$20,233.50</u>
GRAND TOTAL FOR DISTRICT (ADDED PORTION AT 100%)	\$55,019.58







# Northern Cass Service Agreement 6.30.24

Final Audit Report

2023-04-19

Created:	2023-04-17
By:	Lori Sall (lsall@FargoND.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAAL6XPtwvJIniIVkLOem6gE2nGiFeaTPpU

## "Northern Cass Service Agreement 6.30.24" History

-  Document created by Lori Sall (lsall@FargoND.gov)  
2023-04-17 - 9:57:46 PM GMT
-  Document emailed to cory.steiner@northerncassschool.com for signature  
2023-04-17 - 9:58:01 PM GMT
-  Email viewed by cory.steiner@northerncassschool.com  
2023-04-19 - 2:53:04 PM GMT
-  Signer cory.steiner@northerncassschool.com entered name at signing as Cory J. Steiner  
2023-04-19 - 2:53:32 PM GMT
-  Document e-signed by Cory J. Steiner (cory.steiner@northerncassschool.com)  
Signature Date: 2023-04-19 - 2:53:34 PM GMT - Time Source: server
-  Agreement completed.  
2023-04-19 - 2:53:34 PM GMT

Names and email addresses are entered into the Acrobat Sign service by Acrobat Sign users and are unverified unless otherwise noted.

(28)

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

**TO: BOARD OF CITY COMMISSIONERS**

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

**DATE: APRIL 4, 2023**

**RE: AMENDMENT TO PURCHASE OF SERVICE AGREEMENT WITH  
ND DEPARTMENT OF HEALTH AND HUMAN SERVICES, BHD.  
810-12545B  
FUNDS: TOTAL \$28,650  
EXPIRES: 09/30/2023**

The attached amendment to the purchase of service agreement changed the previous Amendment A to the attached Amendment B.

**No budget adjustment is required for this agreement.**

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

**Suggested Motion:**

Move to approve the purchase of service agreement amendment with ND Department of Health and Human Services BHD.

DF/lls  
Attachment

AMENDMENT TO PURCHASE OF SERVICE AGREEMENT

On or about December 15, 2021, the state of North Dakota, acting through its North Dakota Department of Health and Human Services, Behavioral Health Division (State) and City of Fargo (Vendor) entered into an Agreement to plan, implement, and evaluate evidence-based substance abuse prevention activities and strategies.

The parties agree that certain parts of that Agreement and Amendment A should be changed:

The Compensation section, as amended by Amendment A, is further amended to increase the total amount paid under the Agreement from \$23,650 to \$28,650, an increase of \$5,000. For the period October 1, 2022, through September 30, 2023, total payment under this Agreement may not exceed \$11,000.

All other terms and conditions remain as previously written.

CITY OF FARGO

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

By Desi Fleming \_\_\_\_\_ 04/04/2023  
Desi Fleming, Director of Public Health DATE

\_\_\_\_\_  
DATE

STATE OF NORTH DAKOTA

NORTH DAKOTA DEPARTMENT OF HEALTH AND HUMAN SERVICES

By \_\_\_\_\_  
PAMELA SAGNESS, DIRECTOR DATE  
BEHAVIORAL HEALTH DIVISION

By \_\_\_\_\_  
KYLE J. NELSON DATE  
CONTRACT OFFICER  
Approved for form and content



29

FARGO POLICE DEPARTMENT

CHIEF DAVID B. ZIBOLSKI

105 25th Street North

Fargo, ND 58102-4002

Main Line: 701.235.4493 | Fax: 701.297.7789

FargoPolice.com

April 26, 2023

Board of City Commissioners  
City Hall  
Fargo, ND 58102

RE: Fargo Police Department Request to Use Asset Forfeiture Funds

Dear Commissioners:

We are seeking the City Commission's approval to go forward with a request for a sole source purchase of the Idemia LiveScan portable fingerprint machine for \$23,446 using funds from our seized assets account. We received Finance Committee approval (SSP23085) on 4.24.2023

Over the past year, the Cass County Jail has experienced high inmate levels which has prevented the Cass County Jail from accepting non-violent arrestees from the various local law enforcement jurisdictions. Sheriff Jahner expects the jail to have high inmate levels until the new jail addition is completed in 2025. Since January 2023, the Fargo Police Department has documented at least 53 instances where Fargo officers should have made a probable cause arrest or warrant arrest on non-violent offenders, but due to jail inmate levels officers could not make a physical arrest.

The Department is currently working with Fargo Municipal Court, the Fargo Prosecutor, and the Cass County States Attorney's Office to develop a process allowing officers to make a non-violent offender arrest, book, and then release a person without involving the Cass County Jail. This new booking process would be used during the times when the Cass County Jail will not accept additional non-violent arrestees. The North Dakota Century Code (NDCC) specifies offenses where people who have been arrested will be "booked" which includes fingerprinting and photographing the arrested person. With an inconsistent booking process, due to high inmate levels at the Cass Jail, our officers our experiencing an unnecessary officer safety risk. This risk is caused by the lack of a consistent mechanism to place arrestees bio-metric information into the Criminal Justice Information Sharing (CJIS) system and National Crime Information Center (NCIC) system for identification purposes.

The Idemia LiveScan portable fingerprint machine will allow the Department to create a separate booking area from the main lobby, where officers once they have made an arrest can "book" the person per NDCC, and then release the person in accordance with establish procedures. The Idemia LiveScan portable fingerprint machine, produced by Idemia Identity and Security USA, is the **only** authorized fingerprint vendor by the ND Attorney General's Office and ND Bureau of Criminal Investigation

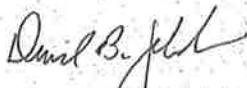
(ND BCI). The ND BCI is the only state law enforcement agency authorized to accept, process, and send fingerprints to the Federal Bureau of Investigations (FBI) using the Idemia fingerprint system. Therefore, it is critical the Department has the approval to purchase the Idemia LiveScan portable fingerprint machine in order to have fingerprint connectivity with the ND BCI. The Department has a stationary Idemia fingerprint machine located next to the front lobby of the department used for civilian fingerprinting. However, we need to keep our civilian customers separated from the people we arrest for public safety concerns and best practices.

**Recommended Motion:**

*The Fargo Police Department recommends the approval to sole source purchase of the Idemia LiveScan portable fingerprint machine for \$23,446 using funds from our siezed assets account.*

Please contact me if you have any questions or concerns.

Sincerely,



David B. Zibolski  
Chief of Police



## Application for Appropriation from Civil Asset Forfeiture Fund

### Applicant

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

April 18, 2023

### Appropriation Requested:

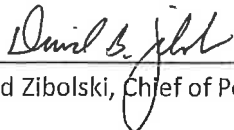
\$23,446 to purchase Idemia Identity and Security USA, LLC LiveScan portable fingerprint machine

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

Due to ongoing inmate space restrictions at the Cass County Jail, officers from the Fargo Police Department have been regularly turned away or told by Jail staff they will not accept people we have arrested. Since January 2023, the Department has documented at least 53 instances where officers could have made a probable cause arrest or warrant arrest, but due to jail space limitations, officers did not make a physical arrest. This has created a public safety issue since the NDCC specifies offenses where people who have been arrested will be "booked" which includes fingerprinting and photos being taken. The booking process help ensure that law enforcement officers know who they are dealing with through fingerprinting and up to date photographs.

In order to reduce the public safety risk caused by the lack of a consistent Cass County Jail booking process, the Police Department wants to purchase the Idemia LiveScan portable fingerprint machine. The Idemia LiveScan portable fingerprint machine will connect directly to the ND BCI via a secure internet connection and allow officers to take fingerprints to assist in completing the booking process. The booking process will be in a separate location from the police department lobby in order to separate the public from people we have arrested. Once the new Fargo Police booking process has been completed, the arrested person will be released in accordance with guidelines established by Fargo Municipal Court and the Cass County States Attorney's Office.

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

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

04-26-23  
\_\_\_\_\_  
Date

(30)

April 26, 2023

Honorable Board of City Commissioners  
City of Fargo  
200 3<sup>rd</sup> Street North  
Fargo, ND 58102

RE: Solid Waste Management Agreement with High Flying Junk

Dear Commissioners:

Attached for your approval is a Solid Waste Management Agreement between the City of Fargo and High Flying Junk. The Agreement outlines the provisions of being a Private Hauler within the City of Fargo and governs the collection and delivery of waste generated within the City. The agreement also outlines the approved billing procedures, and provides a detailed list of and waste that is prohibited at the Fargo Landfill Facility.

Prior to the Agreement application process, the applicant did meet the Waste Hauler provisions of the North Dakota Department of Health and the Commercial Hauler permit provision by the City of Fargo Auditor's Office. The Agreement shall have an initial term of ten years, renewable for an additional period of five years by mutual agreement.

Your consideration in this matter is greatly appreciated.

**SUGGESTED MOTION**

Approve The Solid Waste Management Agreement between the City of Fargo and High Flying Junk, LLC, effective May 1, 2023.

Respectfully Submitted,

Scott Olson, PE  
Solid Waste Utility Directorcc: Scott Anderson, Landfill Supervisor  
Sharon Johnson, Solid Waste Office Manager

**SOLID WASTE MANAGEMENT AGREEMENT  
FOR PRIVATE HAULERS IN THE CITY OF FARGO**

**PARTIES**

**THIS AGREEMENT** is entered into this 1<sup>st</sup> day of MAY, 2023, by and between the CITY OF FARGO (A City), a political subdivision of the State of North Dakota and HIGH FLYING JUNK, (A Private Hauler), collectively referred to as the parties.

**RECITALS:**

**WHEREAS**, the Solid Waste Management Rules of North Dakota, NDCC Chapter 23-29 and NDAC Article 33-20, as amended require the City to establish a solid waste management program; and

**WHEREAS**, the City wishes to assure the protection of the environment and protect against environmental liability by insuring the proper operation of the program and solid waste facilities for its citizens; and

**WHEREAS**, the North Dakota legislature has established reduction goals in an effort to reduce the waste stream volumes entering municipal solid waste (MSW) landfills; and

**WHEREAS**, it is the desire of the City to reduce the volume of solid waste generated in the City by ensuring that the fees charged for solid waste disposal better reflect the true long term costs of waste disposal, and to reuse or recycle certain components of such solid waste to the maximum extent appropriate; and

**WHEREAS**, the City is operating a MSW landfill and related recycling programs for the purpose of (1) disposal of residential, commercial and industrial solid waste, and (2) diverting certain wastes for recycling purposes; and

**WHEREAS**, the City finds that the most effective means to protect residents and businesses of the City of Fargo from liability under state and federal environmental statutes is to ensure that solid waste generated in the City comes under the control of the City, and is disposed of in an appropriate location, including, without limitation, in the City-supervised and operated MSW landfill; and

**WHEREAS**, the Private Hauler is in the business of collecting solid waste in the City and desires to voluntarily enter into this Solid Waste Management Agreement governing its collection of solid waste generated within the City; and

**WHEREAS**, entering into this Agreement will be mutually beneficial to both the Private Hauler and the City; and

**NOW, THEREFORE**, in consideration of the mutual promises and agreements herein set forth, and in order to permit the City to accomplish the goals and objectives set out in the Rules, it is agreed to by the parties hereto as follows:

**ARTICLE I  
DEFINITIONS AND OTHER PROVISIONS  
OF GENERAL APPLICATION**

Section 1.1. Definitions. The terms defined in this Section 1.1 shall, for all purposes of this Agreement, have the meanings herein specified, unless the context clearly requires otherwise;

Acceptable Waste means materials generally referred to as residential, commercial, or industrial waste as defined in Article 13-0501 of the Fargo Municipal Code, which have traditionally been disposed of in a solid waste landfill, consistent with City solid waste ordinances and which are not prohibited wastes.

Agreement means this Solid Waste Management Agreement, as it may hereafter be amended or supplemented.

Generators means the residential, commercial and industrial generators within the City of Fargo.

Landfill means the City of Fargo Municipal Solid Waste Landfill.

Private Hauler means any person or entity, including the Private Hauler, licensed to collect or transport waste from residential, commercial, or industrial property.

Prohibited Waste means Prohibited Waste as defined in Exhibit A hereto.

Self-Hauler means a person or entity who transports municipal waste generated by that person or entity or another person or entity without compensation.

Solid Waste Ordinances means the ordinances found in Article 13-05 of the Fargo Municipal Code adopted by the City and amended from time to time.

Tipping Fee is the charge for the use of the Landfill for the disposal of Acceptable Waste as set by City of Fargo Solid Waste Ordinances.

Unforeseen Circumstance means any act, event or condition that has had, or will have a material adverse effect on the rights or obligations of the Private Hauler or the City under this Agreement, if such act, event or condition is beyond the reasonable control of the party relying thereon as justification for not performing an obligation or complying with any condition required of such party under this Agreement. Such acts or events may include, but shall not be limited to, and are qualified by the following:

- (a) An act of God (but not including reasonably anticipated weather conditions for the geographic area of the Facility) such as a landslide, lightning, tornado, flood, fire, explosion, sabotage or similar occurrence; acts of public enemy, extortion, war, blockade or insurrection, riot or civil disturbance;

- (b) The non-issuance, suspension, termination, interruption, denial or failure of renewal of any permit license, consent, authorization or approval essential to the operation of the Landfill; provided that such act or event shall not be the result of the willful or negligent action or inaction of the party relying thereon and that neither the contesting in good faith or any such order nor the reasonable failure to so contest shall be construed as a willful or negligent action of inaction of such party; and
- (c) The failure of any appropriate federal, state, county, or city public agency or private utility, having operational jurisdiction in the area in which the Landfill is located, to provide and maintain utilities, services, water and sewer lines, and power transmission lines to the Landfill site which are required for and essential to the operation of the Landfill.

Waste means all waste as defined in Article 13-1501 of the Fargo Municipal Code delivered or caused to be delivered to the Landfill.

Section 1.2. References. All references in this Agreement to designated Articles, Sections and other subdivisions are to the designated Articles, Sections and other subdivisions of this Agreement as executed. The words herein, hereof, hereunder and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision unless the context clearly indicates otherwise.

Section 1.3. Other References. The terms defined in Section 1.1 include the plural as well the singular, and the use of any gender refers to all genders. All accounting terms are in accordance with generally accepted accounting principles. All computations provided for herein shall be made in accordance with generally accepted accounting principles.

Section 1.4. Representations by the Private Hauler. The Private Hauler makes the following representations as the basis of its covenants herein:

- (1) The Private Hauler, if a corporation, is duly incorporated, and is in good standing under the laws of the State of North Dakota, has power to enter into this Agreement and by proper corporate action has authorized the execution and delivery of this Agreement.
- (2) The Private Hauler, if a partnership, is a validly formed and existing partnership, has power to enter into this Agreement and by proper action of the partnership has authorized the execution and delivery of this Agreement.
- (3) The execution and delivery of this Agreement, the consummation of the transaction contemplated hereby, and the fulfillment of the terms and conditions hereof do not and will not conflict with or result in a breach of any of the terms or conditions of the articles of incorporation or bylaws of the Private Hauler, if it is a corporation, or of the partnership agreement, if the Private Hauler is a partnership, or of any restriction or of any agreement or instrument to which the Private Hauler is now a party, and do not and will not constitute a default under any of the foregoing, or result in the creation or imposition of any liens, charges or encumbrances of any nature upon any of the property or assets of the Private Hauler contrary to the terms of any instrument or agreement.

- (4) The Private Hauler is duly licensed to collect Waste within the City; the Private Hauler has obtained all requisite approvals of the State of North Dakota and other federal, state, regional and local government bodies for the collection of the Waste it collects.
- (5) The Private Hauler has or will obtain all equipment and personnel necessary to fulfill its obligation under this Agreement and will maintain all accounting and billing systems necessary to fulfill its obligations under this agreement and applicable ordinances, and will, further, fully comply with all applicable licenses, permits, laws or ordinances.
- (6) The Private Hauler is able to deliver to the Landfill all Acceptable Waste collected by it from all of its present and future customers in the City in accordance with the terms of this Agreement.
- (7) To the extent that the Private Hauler with regard to Section 3.6 is the legal successor to prior commercial Haulers, the Private Hauler has obtained the irrevocable right to fully and unconditionally release claims against the City on their behalf.
- (8) The Private Hauler understands that this Agreement does not include, and does not apply to, the collection of Waste generated outside the geographic boundaries of the City of Fargo, except as expressly provided herein.

Section 1.5 Exhibits. The following Exhibits are attached to and by reference made a part of this Agreement:

Exhibit A: Prohibited Waste

Exhibit B: City of Fargo Waste Management Credit Policy

The City may from time to time during the term of this Agreement amend or modify the provisions of these exhibits, subject to advance notice to and input from the Private Haulers.

## **ARTICLE II DELIVERY OF WASTE**

Section 2.1. Private Hauler Status, Collection and Billing Procedures. Execution of this Agreement by the City constitutes the substitute contract waiver of the limitation on private haulers as set forth in Article 13 of the City's ordinance providing for organized collection. As such, the agreement entitles the Private Hauler to continue to provide collection and hauling services, and bill directly, to all customers currently being serviced by the Private Hauler at the time of the execution of this agreement, and compete for new or additional accounts and customers so long as the Private Hauler is in compliance with the provisions of this Agreement.

Notwithstanding any other provision of this Agreement, the City retains the absolute right to provide waste collection and disposal services exclusively to all residential accounts. In addition, the City may provide service directly to those commercial accounts it obtains as part of its own proprietary commercial hauling operations provided directly by the City, or by contracting with a private hauler.

Section 2.2. Collection and Delivery of Acceptable Waste. The Private Hauler hereby agrees to collect and promptly deliver to the City at the Landfill, in accordance with the terms of this Agreement and with such collection and delivery procedures as the City may from time to time prescribe, commencing on the effective date of this Agreement and continuing thereafter during the term of this Agreement, the total quantity of Acceptable Waste generated in the City of Fargo collected by the Private Hauler, subject to the terms and conditions of this Agreement.

Section 2.3. Delivery of Prohibited Waste. The Private Hauler agrees to use its best efforts to deliver only Acceptable Waste to the Landfill. The City shall not be required to accept any Waste which does not constitute Acceptable Waste. The City shall have the right, but not obligation, to inspect all vehicles delivering Waste to the Landfill. No inspection by the City shall limit the obligation of the Private Hauler to deliver only Acceptable Waste to the Landfill. If the City in the exercise of its reasonable judgement determines that a vehicle contains any Prohibited Waste, as defined in Exhibit A, the City may reject the entire delivery and the Private Hauler shall forthwith remove such entire delivery from the Landfill for disposal at a specified Facility. All costs of such removal and disposal shall be borne by the Contact Hauler. In addition, a sum equal to the disposal fee provided in Section 2.6 and as adjusted, together with all costs including special handling fees if applicable, incurred by the City, shall be charged to the Contact Hauler for each ton of Waste delivered by the Private Hauler and rejected by the City.

The Private Hauler shall have the sole responsibility to remove from the Landfill, Prohibited Waste it has delivered and pay the resulting cost, notwithstanding any prior acceptance of such Waste as Acceptable Waste by the City. Such removal shall be accomplished promptly after notice, verbal or written, is received by the Private Hauler from the City that any Waste previously delivered by the Private Hauler is Prohibited Waste. In the event the Private Hauler refuses to or unreasonable delays its removal of Prohibited Waste, (i.e. delays by more than 24 hours), the City may remove and dispose of the Prohibited Waste and charge the costs of such removal and disposal to the Private Hauler on the next monthly invoice to the Private Hauler.

Section 2.4. Delivery Conditions. The Private Hauler agrees that all Acceptable Waste shall be delivered in accordance with the following terms and conditions:

- (a) Hours and Days of Delivery. The City, unless it notifies the Private Hauler otherwise, shall accept deliveries from the Private Hauler during the operating hours as posted at the Landfill.
- (b) Final Disposal Location. Once annually, during the term of this agreement, the Private Hauler shall inform each customer in writing of the final disposal location(s) of the Solid Waste collected from the customer. The Private Hauler shall make the same report in writing to The City of Fargo.

- (c) Origin of Waste. The Private Hauler, acting through its drivers, shall state the origin by municipality of collected Waste on the Landfill scale ticket at time of delivery to the Landfill.
- (d) Commingling of Waste: The Private Hauler, acting through its drivers, shall not commingle Waste generated inside the geographic boundaries of the City of Fargo with waste generated outside the geographic boundaries of the City of Fargo, unless and until a separate contract agreement for the outside waste has been entered into between the Private Hauler and the City of Fargo.
- (e) Differential Tipping Fees: The Private Hauler understands that the City reserves all rights to charge a different tipping fee at the Landfill for the disposal of Waste generated outside the geographic boundaries of the City of Fargo than for Waste generated inside the geographic boundaries of the City of Fargo.
- (f) Transportation to Landfill. The Private Hauler shall be solely responsible for the provision, at its expense, of all personnel and equipment necessary to transport all Waste to be delivered under this Agreement and to deliver the same to the Landfill in accordance with such regulations relating to the manner of delivery as the City may from time to time establish.
- (g) Equipment. All equipment used by the Private Hauler for collection and transportation of Waste for delivery pursuant to this Agreement shall be licensed pursuant to and comply with all ordinances and regulations which may from time to time be enacted with respect thereto, and shall comply with such equipment specifications as may be established by the City or other regulatory agencies. The City may reject any delivery of Waste delivered by equipment in violation of this paragraph. In the event of such a rejection, a sum equal to the special handling fee, if applicable, as adjusted shall be charged to the Private Hauler for each ton of Waste, or part thereof, delivered by the Private Hauler and rejected. The Private Hauler shall maintain with the City such information concerning equipment of the Private Hauler as may be requested from time to time by the City.
- (h) Landfill Rules. The Private Hauler will comply with all reasonable rules and regulations posted at the Landfill.

Section 2.5. Tipping Fee Remittance. The tonnage of Waste hereunder shall be determined as provided in section 2.7. The Tipping Fees remitted by the Private Hauler to the City for each ton of Waste delivered to the Landfill shall comply with Section 4.5.

Section 2.6. Monthly Statements; Payments. The City shall, within ten (10) days following the last day of each month subsequent to the effective date of this Agreement and within ten (10) days following the expiration of the term or termination of this Agreement, submit to the Private Hauler a statement of the total tonnage of Acceptable Waste delivered to the Landfill during the preceding month or other applicable period and the amount which the Private Hauler is required to remit to the City pursuant to this Agreement. The charge for each month during the term of the Agreement shall be computed on the basis of the tipping fees as noted in Section 4.5. The City of Fargo reserves the right to audit the



accounts receivable and other records of the Private Hauler as necessary to verify the accuracy of the accounts receivable and other records of the Private Hauler. City staff or appointed representatives will perform the audit at no cost to the Private Hauler except in the event where material discrepancies and/or violations are noted or the Private Hauler's records are incomplete or incorrect, the City may calculate the correct remittances due the City and charge the cost of necessary work to the Private Hauler. Remittances for each month's deliveries shall be paid according to the City of Fargo's Waste Management Credit Policy as set out in Exhibit B. Such audit shall be subject to the applicable laws of the State of North Dakota.

Section 2.7. Weighing at Facility. The City shall maintain at the landfill certified truck-weighing scales operated by a scale operator. The tonnage of Acceptable Waste delivered at the Landfill shall be determined by the deduction of the tare weight of the vehicle from the total loaded weight of the vehicle. The tare weight of the vehicle is determined after the contents of each vehicle load is disposed of at the Landfill. The City or Private Hauler shall have the right at any time to reweigh any vehicle. The City shall provide to the driver of each vehicle making a delivery to the Landfill a receipt signed by the scale operator, which shall also be signed by the driver of the vehicle, setting forth the gross weight, tare weight, date, time, truck identification, total tonnage and origin of Acceptable Waste determined to have been delivered to the Landfill by such Vehicle. Whenever any Waste is not accepted, the outgoing vehicle shall be weighed and receipted in a like manner. All such receipts shall be prepared in triplicate, with the City retaining one copy or a suitable machine record. Such receipts shall be used by the City, as the basis for determining the remittances required by Section 2.6 and Section 2.7. The Private Hauler through its authorized representatives, shall have the right from time to time to audit, at the Private Hauler's sole cost, the weight records of the Landfill, provided such audits are made at reasonable times and upon prior written notice and in accordance with applicable laws of the State of North Dakota and do not in any way interfere with the orderly operation of the Landfill.

**ARTICLE III  
COVENANTS OF THE PRIVATE HAULER**

Section 3.1. Indemnification. The Private Hauler shall take all precautions necessary to protect the public against injury and shall defend, indemnify and save the City harmless from all damages and claims of damages that may arise by reason of any negligence on the part of the Private Hauler, its agents, employees, or independent contractors, while engaged in the performance of this Agreement including, but not limited to damages and claims of damages caused by hot loads delivered by the Private Hauler, fires caused by hot loads after delivery, driver-caused damage to any part of the Landfill and the cost of clean up of Waste contaminated by the Private Hauler, and against any and all claims, liens and claims of liens for labor performed or material or services furnished or subcontracted for by the Private Hauler with or without authorization of the City. The Contact Hauler shall also defend, indemnify and save the City harmless from and against all liabilities, losses, damages, costs and expenses (including attorney's fees and expenses of the City), causes of action, suits, claims, demands and judgements of any nature arising from violation of any representation, agreement, warranty, covenant or condition of this Agreement. The City shall indemnify the Private Hauler for any damages, including costs of defense, for the negligence of itself, its employees or agents arising from the violation of any representation, agreement, warranty, covenant or condition of this Agreement.

Section 3.2. Insurance. The Private Hauler shall obtain and furnish to the City evidence of all insurance required under City of Fargo Solid Waste Ordinances, covering all vehicles to be used and all operations to be performed by the Private Hauler, its subcontractors and independent contractors in performing this Agreement. Such insurance may be provided by the Private Hauler and separately by the individual subcontractors and independent contractors; or, in the alternative, the Private Hauler may furnish evidence of such insurance covering itself as well as all of its subcontractors and independent contractors as additional insureds. The Private Hauler shall ensure that the City of Fargo is included as an additional insured in all policies required under this Section.

Section 3.3. Nondiscrimination. The Private Hauler agrees that it shall not, within the State of North Dakota, discriminate against any employee or applicant for employment because of race, color, creed, national origin or sex, and will include a provision prohibiting such discrimination in all subcontracts entered into for the performance hereof.

Section 3.4. Notice of Default. The parties will give to the other prompt notice of any condition or event that constitutes an Event of Default.

Section 3.6. Continuing Existence and Qualification. The Private Hauler will remain duly qualified to do business in the State of North Dakota and licensed to operate as a Private Hauler in the City of Fargo.

Section 3.6. Waiver of Liability and Covenant Not to Sue. The Private Hauler hereby waives any liability claims or causes of action arising from the existence of or enforcement of City ordinances, resolutions, policies, contracts, or other actions controlling or attempting to control, the collection, disposal or other handling of Waste. The waiver specifically extends to any predecessor individuals, partnerships, corporations or other entities, of the Private Hauler. The Private Hauler further agrees that it will not assert any claim that the provisions of this Agreement or any City ordinance related thereto is unconstitutional or illegal and should any other individual establish such in any court of law that the Private Hauler will not claim any damages.

Section 3.7. Charge for Collection. The Private Hauler agrees to charge for collection of Waste based upon the usual industry standards.

Section 3.8. Independent Contractor. The Private Hauler shall select the means, method, and manner of performing the services herein. Nothing is intended or should be construed in any manner as creating or establishing the relationship of co-partners between the parties hereto or as constituting the Private Hauler as the agent, representative, or employee of the City of Fargo for any purpose or in any manner whatsoever. The Private Hauler is to be and shall remain an independent contractor with respect to all the services performed under this Agreement. The Private Hauler represents that it has or will secure at its own expense all personnel required in performing services under this Agreement. Any and all personnel of the Private Hauler or other persons while engaged in the performance of any work or services required by the Private Hauler under this Agreement shall have no contractual relationship with the City of Fargo, and shall not be considered employees of the City of Fargo. Any and all claims that may or might arise under Chapter 52-01, et seq., N.D.C.C.

of the State of North Dakota on behalf of said personnel, arising out of employment or alleged employment, including without limitation, claims of discrimination against the Private Hauler, its officers, agents, contractors, or employees, shall in no way be the responsibility of the City of Fargo. The Private Hauler shall defend, indemnify, and hold the City of Fargo, its officers, agents, and employees, harmless from any and all such claims irrespective of any determination of any pertinent tribunal, agency, board, commission, or court. Such personnel or other persons shall neither require nor be entitled to any compensation, rights, or benefits of any kind whatsoever, from the City of Fargo, including, without limitation, tenure rights, hospital and medical care, sick and vacation leave, Workers' Compensation, Unemployment Insurance, disability, severance pay, and PERA.

#### ARTICLE IV COVENANTS OF CITY

Section 4.1. City's Duty to Accept Waste. For the term of this Agreement, the City shall accept from the Private Hauler all Acceptable Waste delivered by the Private Hauler to the Landfill or to such other location as the City shall specify, in accordance with the terms of this Agreement.

Section 4.2. Failure to Accept Waste at Landfill. If at any time the City is unable to receive all or any part of the Private Hauler's Acceptable Waste at the Landfill for any reason, then the City shall verbally notify the Private Hauler's truck operator or dispatcher and any other responsible party designated by the Private Hauler for notification, such notification to be followed by written confirmation to the Private Hauler. The City shall also station an individual or post a sign during normal waste receiving hours to notify truck operators of the suspension of operations. The Private Hauler shall be authorized to haul the waste to any State approved waste processing or disposal facility, as determined by the City of Fargo Solid Waste Operations Manager. All costs of such transportation and disposal shall be borne by the Private Hauler. The City shall give at least 48 hours verbal notice to the Private Hauler when operations at the Landfill will resume. If such 48-hour notice is given, then the Private Hauler shall deliver waste to the Landfill in accordance with this Agreement when operations resume. If such advance notice is not given, then the Private Hauler shall begin delivery of Waste to the Landfill within 48 hours of having received notice from the City.

Section 4.3. Proper Disposal of Waste. The City shall dispose of all Acceptable Waste delivered to it in accordance with the terms of this Agreement and all applicable laws and regulations.

Section 4.4. Enforcement of Similar Agreements and Solid Waste Ordinances. The City shall exercise its best efforts to enforce all similar agreements and related Solid Waste Ordinances. The City agrees that it will not extend preferential rates or privileges to any individual Private Hauler, unless such rates or privileges are offered to all Private Haulers. However, the City may continue preferential rates to single-family residential accounts. The City reserves the right to enter into similar contracts with other Private Haulers, waste generators or governmental bodies with the same rates and privileges.

Section 4.5. Establishment of Tipping Fees. The City agrees to establish the following Tipping Fees effective JANUARY 1, 2023:

\$ 51<sup>00</sup> per ton - Fargo Waste / MSW      \$ 46<sup>00</sup> per ton - FARGO INTENT WASTE

The City reserves the right to adjust the Tipping Fees subject to the following:

- (1) Public notice of the intent to adjust the Tipping Fee will be given and a public hearing of the City Commission will be held on the adjustment;
- (2) Any increase in the Tipping Fee will be based on and directly related to increased capital or operational costs of the Solid Waste Division, including any increase in maintenance costs in addition to the anticipated costs, or decreased revenue from the operation of the Landfill; and
- (3) No such adjustment will be made during the first 3 years after the effective date of this Agreement. Thereafter, adjustments shall be made not more than once annually and shall also be reflected in the City's commercial fee matrix.

In addition to the Tipping Fees, the Private Hauler will pay all applicable taxes and other fees established by the State of North Dakota or other governmental body other than the City.

Section 4.6. No Waiver of Immunity: Nothing in this Agreement shall constitute a waiver or diminution by the City of Fargo of any immunities or statutory limitations on liability.

**ARTICLE V  
EVENTS OF DEFAULT REMEDIES**

Section 5.1. Events of Default. Any of the following events shall constitute an Event of Default:

- (a) The failure to delivery any Acceptable Waste as required by Section 2.1; or
- (b) If the Private Hauler enters voluntary bankruptcy or insolvency, or seeks reorganization, arrangement, adjustment or composition under the federal Bankruptcy Code or any other applicable federal or state law, [or makes any general assignment for the benefit of its creditors without complying with the provisions in Section 6.4 regarding transfers and assignments] or suffers any order for relief under the federal Bankruptcy Code or any order adjudicating it to be bankrupt or insolvent, or appointing a receiver, liquidator, assignee for the benefit of creditors, trustee, sequestrator or other similar official for the Private Hauler which prevents or impairs the Private Hauler's ability to perform all terms and conditions of this Agreement; or

- (c) The failure to perform or observe any other of the covenants, agreements or conditions on the part of the Private Hauler or the City in this Agreement, including the failure to make punctual payment of any amounts due pursuant to Section 2.5, and such default shall have continued for a period of fifteen (15) days after written notice thereof given by the other party to defaulting party, unless the non-defaulting party shall agree in writing to an extension of such time prior to its expiration for such longer period as reasonable diligence may require to remedy the same, with such an extension to be reasonably granted by the non-defaulting party.

Section 5.2. Other Remedies. Upon the occurrence of an Event of Default, the non-defaulting party may pursue any available remedy by suit at law or equity to enforce the covenants of the defaulting party herein, including such appropriate judicial proceedings as the non-defaulting party shall deem most effective to protect and enforce or aid in the protection and enforcement of the covenants and agreements in this Agreement. In addition, upon the occurrence of an Event of Default, the non-defaulting party may immediately terminate this Agreement by written notice to the defaulting party. The City retains the right to enforce against the Private Hauler all applicable ordinances, regulations, statutes or permits.

Section 5.3. Manner of Exercise. Unless otherwise stated, no remedy by the terms of this Agreement conferred upon or reserved to the parties is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy of the parties given now or hereafter existing at law or in equity or by statute.

## ARTICLE VI GENERAL TERMS

Section 6.1. Terms and Termination. This Agreement shall become effective on MAY 1, 2023, if and only if on or before that date the City has given the Private Hauler notice that contracts identical to this Agreement (except with regard to the name of the Private Hauler) have been executed by a sufficient number of Private Haulers to justify the waiver from the organized collection provisions, such justification to be in the sole and complete discretion of the City. If such notice is not given on or before MAY 1, 2023, this Agreement shall be null and void. The Agreement shall have an initial term of ten years from MAY 1, 2023, renewable for an additional period of 10 years by mutual agreement of the parties provided that the Private Hauler shall provide final, binding notice of intent to renew no later than NOVEMBER 1, 2032, provided City has given notice of the same 30 days prior thereto.

This Agreement shall also terminate:

- (a) If the City permanently ceases the operation of its Landfill; or
- (b) If this Agreement is terminated by the non-defaulting party after an Event of Default, as provided in Section 5.1; or
- (c) If the City lawfully terminates its solid waste management program; or
- (d) By mutual agreement of the parties.

Section 6.2. Private Hauler's Obligations Unconditional. Without limiting any of the other provisions of this Agreement, all obligations of the Private Hauler to make Tipping Fee remittances and other payments due to the City under this Agreement shall be absolute and unconditional, and the Private Hauler shall not be entitled to any abatement, diminution, set off, abrogation, waiver or modification thereof, nor to any termination of this Agreement by any reason whatsoever, except as expressly provided herein, regardless of any rights of set off recoupment or counterclaim that the Private Hauler might otherwise claim against the City or any other party or parties and regardless of any contingency, event or cause whatsoever and notwithstanding any circumstances or occurrence that may arise or take place before, during or after the effective date of this Agreement, except during the pendency of an Unforeseen Circumstance.

Section 6.3. Disposal of Waste other than for Private Hauler. The Private Hauler recognizes that the Landfill will be operated for the purpose of receiving Waste from a number of sources. The Private Hauler agrees that the City shall have the right to accept Waste at the Landfill delivered by joint powers, authorities or public agencies, municipal or other private corporations, individuals or partnerships, and other Private Haulers. The City may accept Waste on a first come first served basis, and set tipping fees for waste received from non-Private Haulers in any manner it deems appropriate. The Private Hauler agrees that the City shall not be liable to the Private Hauler for any costs or expenses incurred by the Private Hauler in connection with delivery of Waste to the Landfill whether such costs or expenses are attributed to waiting time, temporary shutdown of the Landfill or any other cause whatsoever.

Section 6.4. Successors and Assignment. This Agreement shall be binding upon any successor or assignee of the Private Hauler and the Private Hauler agrees that any transfer of assignment by any means or in any manner of any right, title or interest in the business of Private Hauler will provide that the transferee or assignee agrees to be bound by this Agreement. The transfer or assignment of the rights and/or obligations of the Private Hauler under this Agreement shall be effective upon (i) written acknowledgment to the City by the transferee or assignee that the transferee or assignee is bound by all the terms and conditions of this Agreement, and (ii) the issuance of a Private Hauler license by the City to the transferee or assignee. A Private Hauler license is not transferable. Transferees or assignees must apply for a Private Hauler license to do business in the City of Fargo.

Section 6.5. Voluntary Agreement. The parties hereto have voluntarily entered into this Agreement because of the mutual benefits to be derived by each.

Section 6.6. Relationship of the Parties. Except as provided herein, no party to this Agreement shall have any responsibility whatsoever with respect to services provided or contractual obligations assumed by the other party to third parties. This Agreement does not create any fiduciary relationship between the parties or any relationship of employer-employee.

Section 6.7. Representatives. The authorized representative of the City for purposes of this Agreement shall be the City of Fargo Solid Waste Operations Manager.

The authorized representative of the Private Hauler for purposes of this Agreement shall be: DANIEL WILSON. Either party may change its representative upon five (5) days written notice to the other party.

Section 6.8. Notices. All notices, consents and other communications required or permitted by this Agreement unless otherwise specified, are required to be in writing and shall be deemed delivered when tendered to the other party by hand to such party's designated representative, or, if mailed shall be deemed to have been given when dispatched by certified mail, return receipt requested, postage paid, and addressed as follows:

If to the City:                    Operations Manager  
    City of Fargo  
    Solid Waste Division  
    2301 8th Avenue North  
    Fargo ND 58102

If to a Private Hauler: HIGH FLYING JUNK  
highflyingjunk23@gmail.com

or to such other addresses as either party hereto may, from time to time, designate in writing by notice to the other party.

Section 6.9. Entire and Complete Agreement. This Agreement constitutes the entire and complete Agreement of the parties, exclusive of all prior or contemporaneous understandings, arrangements and commitments, all of such, whether oral or written, having been merged herein.

Section 6.10. Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or enforceable, in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, but this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

Section 6.11. Applicable Law. The laws of the State of North Dakota shall govern the validity, interpretation construction and performance of this Agreement. Nothing in this Agreement shall be deemed to relieve the Private Hauler of any obligation under the Rules, the Solid Waste Ordinances or any other law.

Section 6.12. Unforeseen Circumstance. The inability of either party to perform any obligation under this Agreement due to an Unforeseen Circumstance shall not constitute a breach of any such obligation during the pendency of the Unforeseen Circumstance.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the day and year first above written.

CITY OF FARGO, NORTH DAKOTA  
A municipal corporation

By \_\_\_\_\_  
Its Mayor

Attest:

\_\_\_\_\_  
City Auditor

Approved as to form and execution.

\_\_\_\_\_  
City Attorney

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

PRIVATE HAULER:

*Daniel Wilson*  
\_\_\_\_\_

By \_\_\_\_\_  
\_\_\_\_\_, Site Manager



**EXHIBIT A**  
**Fargo Landfill Facility**  
**Prohibited Waste**

1. **Hazardous Waste**  
(other than normal household quantities)  
Including:
  - a. Ignitables (solvents, fuels, paints, etc.)
  - b. Corrosives (acids and alkalis)
  - c. Reactives (hypochlorites - swimming pool chemicals, cyanides, etc.)
  - d. Toxicity Characteristic wastes
  - e. Other listed hazardous wastes
  
2. **Industrial Waste**  
(Nonhazardous waste generated by industrial or manufacturing processes)  
MSW Landfills may accept an amount of up to ten percent of the total weight of MSW received per month if the industrial waste is identified in the industrial waste management procedures contained in the approved operating plan.
  
3. **Lead Acid Batteries**
  
4. **Liquids**  
(other than normal household quantities)
  
5. **Animal Manure**
  
6. **Septic Tank Pumpings**
  
7. **Tires**
  
8. **Major Appliances**  
(refrigerators, washers, etc.)
  
9. **Municipal Waste Incinerator Ash**
  
10. **Pesticide Containers**  
(other than normal household quantities or triple rinsed and punctured)
  
11. **PCB Waste and PCB Oils**  
(transformers and capacitors)
  
12. **Sludges**  
(raw or digested sewage sludges, lime sludges, grit chamber cleanings bar screenings, oil sludges and other sludges unless approved by the NDDH)
  
13. **Regulated Infectious**  
(other than normal household quantities)  
MSW landfills may accept regulated infectious waste from hospitals, nursing homes, etc. If incinerated or autoclaved and sharps rendered "non-sharp" with NDDH approval.

**14. Waste Oil**

**15. Special Waste**

(nonhazardous solid wastes generated by energy conversion facilities; crude oil and natural gas exploration and production; mineral and ore mining; beneficiation and extraction; and surface coal mine operations)

**16. Other Waste**

(toxic or adverse characteristics potentially impacting public health or environmental resources)

**EXHIBIT B**  
**City of Fargo**  
**Waste Management Credit Policy**

PURPOSE:

It is a financial policy of the City to selectively use available capital in a way that will best serve our taxpayer=s interest. We feel we do this best by using our money to provide efficient services to the taxpayers, rather than using it to finance customer accounts receivable beyond regular terms or accounts that are uncollectible.

To protect the taxpayer=s best interest, the Board of Commissioners has adopted a general credit policy; and individual division policies where necessary. The following guidelines apply to all services provided by the Division of Solid Waste:

Interest:

Interest will be charged to all accounts over 30 days at the annual rate equal to 1.5% per month or 18% per annum. Periodically the interest rate will be reviewed to ensure that is not too high or too low.

Past due accounts:

Past due accounts will be pursued by the Division or designated individual as approved by the Commission. If a receivable is determined to be uncollectible, it may be written off as follows:

- a. A/R Supervisor has authority to write off accounts that have been through the collections policy for amounts up to \$1,000 per account.
- b. Director of Finance approves write offs from \$1,000 to \$5,000.
- c. Amounts greater than \$5,000 to be approved by the Finance Committee

Effective date of Commission Action: May 1, 2004 Changes effective: Same

REPORT OF ACTION

UTILITY COMMITTEE

31

Project No. WA2217

Type: Bid Award  
Sheyenne 1-MGD Pump

Location: Sheyenne River Pump Station (52<sup>nd</sup> Avenue South)

Date of Hearing: 4/13/2023

<u>Routing</u>	<u>Date</u>
City Commission	5/1/2023
Project File	

Dan Portlock, Water Utility Engineer, presented the attached bid recommendation for CC Steel, Inc. to install a small one million gallon per day (1-MGD) pump at the Sheyenne River Pump Station (Project WA2217). This small pump will be operated frequently to keep the 9-mile pipeline to the Water Treatment Plant filled with fresh water (not stagnant). Four bids were received. The winning was CC Steel, Inc. at \$93,300, which was below the Engineer's Estimate of \$125,000. Project WA2217 will be funded with Infrastructure Sales Tax (Fund 450) under the Renewal & Rehab budget line.

**MOTION:**

On a motion by Ben Dow, seconded by Scott Liudahl, the Utility Committee voted to approve the bid award to CC Steel, Inc. for Project WA2217 at a cost of \$93,300.

<u>COMMITTEE:</u>	<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Unanimous</u>
				<u>X</u>
				<u>Proxy</u>
Denise Kolpack, City Commissioner	X			
Terri Gayhart, Director of Finance				
Brian Ward, Water Plant Supt.				
Mark Miller, Wastewater Plant Supt.	X			
Bruce Grubb, Temp. Asst. City Administrator	X			
Scott Liudahl, City Forester	X			
Terry Ludlum, Retired Waste Utility Director	X			
James Hausauer, Wastewater Util. Director	X			
Troy Hall, Water Utility Director	X			
Ben Dow, Public Works Operations Director	X			
Brenda Derrig, City Engineer	X			
Dan Portlock, Water Utility Engineer	X			
Scott Olson, Solid Waste Utility Director	X			

ATTEST:

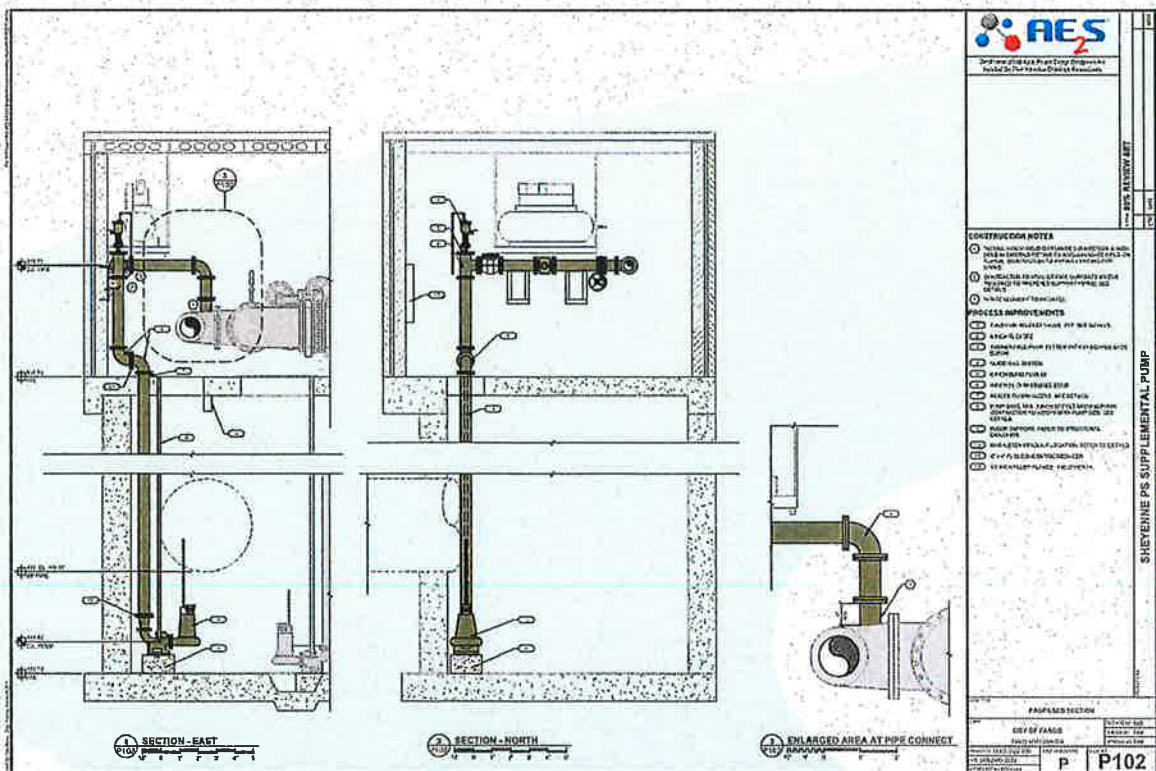
  
 \_\_\_\_\_  
 Troy B. Hall  
 Water Utility Director

C: Tim Mahoney, Mayor  
Commissioner Strand  
Commissioner Piepkorn  
Commissioner Preston

**MEMORANDUM**  
 February 23, 2023

**To:** Utility Committee  
**From:** Troy B. Hall, Water Utility Director  
**Re:** Project WA2217 Bid Award – Sheyenne Pump Station – Supplemental Pump

Construction bids were received at 2:00 PM, local time, on Wednesday, February 22, for Project WA2217, Fargo Sheyenne Pump Station – Supplemental Pump (see Engineer’s Recommendation Letter and Bid Tabulation). Four (4) bids were opened from contractors. The low bid was submitted by CC Steel, LLC in the amount of \$93,300 and is recommended for award. The Engineer’s Estimate was \$125,000. The CC Steel, LLC bid is 25.4 percent below the estimate. This project is funded through Infrastructure Sales Tax (Fund 450), using an annual Renewal & Rehab budget line. Once constructed, the new pump will keep the 9-mile Sheyenne pipeline continuously freshened and available for use, reducing the risk of stagnant water entering the water treatment plants.



**Drawings of supplemental pump and associated piping to be installed under Project WA2217. This equipment will be installed into the existing Sheyenne River Pump Station.**

**Plan of Financing**

This project is funded through Infrastructure Sales Tax (Fund 450), using an annual Renewal & Rehab budget line. The project was approved to use Renewal & Rehab funding by the Utility Committee on October 26, 2022.

**SUGGESTED MOTION:**

Award bid for Project WA2217 to CC Steel, LLC in the amount of \$93,300 to construct and install a Supplemental Pump at the Sheyenne Pump Station.

Your consideration in this matter is greatly appreciated.



February 23, 2023

Mr. Troy Hall  
Water Utility Director  
City of Fargo  
435 14th Ave S  
Fargo ND 58103-4306

**Re: Fargo Sheyenne Pump Station – Supplemental Pump  
Engineer’s Bid Review and Award Recommendation  
Fargo Water Project No. WA2217**

Dear Mr. Hall:

Bids were received at 2:00 p.m. on Wednesday, February 22, 2023 at the City Auditor’s Office and opened by AE2S. A total of four (4) bidders submitted sealed bids. A bid tabulation is attached to this letter for your review.

The project was bid as a single contract, Contract No. 1 – General Construction. Based on review of the four bids, the apparent low bid was submitted by CC Steel, LLC for Contract No. 1 – General Construction.

The project team recommends the following construction contract:

- Contract No. 1 – General Construction: CC Steel, LLC in the amount of \$93,300.00

Thank you for the opportunity to assist the City of Fargo with this important project. Should you have any comments or questions regarding the bid results or the project in general, please do not hesitate to contact me at (701) 364-9111.

Respectfully Submitted,

AE2S

A handwritten signature in blue ink that reads "Richard A. Wagner".

Richard A. Wagner, PE  
Project Manager

Attachment

**Fargo Sheyenne PS Supplemental Pump  
City of Fargo  
Fargo, ND  
Fargo Sheyenne PS Supplemental Pump RFP23040  
City of Fargo Water Project WA2217; AE2S Project No. 00803-2022-008  
Proposals Due 02:00 PM CDT, Wednesday, February 22, 2023**

<b>Contractor</b>	Acknowledge Addendum No. 1 and 2	Bid Bond	Contractor's License or Renewal	Completed Bid Form	<b>Total Lump Sum Price for Base Bid Contract No. 1 - General Construction</b>
CC Steel, LLC	✓	✓	✓	✓	\$93,300.00
Northern Plains Contracting, Inc.	✓	✓	✓	✓	\$120,600.00
PKG Contracting, Inc.	✓	✓	✓	✓	\$135,693.00
American General Contractor's, Inc.	✓	✓	✓	✓	\$194,900.00
Engineer's Estimate					\$125,000.00



Advanced Engineering and Environmental Services, LLC  
4170 28th Avenue S  
Fargo, ND 58104  
Tel: 701-364-9111

*Richard A. Wagner*

Richard Wagner, PE