FARGO CITY COMMISSION AGENDA
Monday, May 4, 2020 - 5:00 p.m.

City Commission meetings are broadcast live on TV Fargo Channel 56 and online at www.FargoND.gov/streaming. They are rebroadcast Mondays at 5:00 p.m., Thursdays at 7:00 p.m. and Saturdays at 8:00 a.m. They are also included in the video archive at www.FargoND.gov/citycommission. . ***PLEASE NOTE** that in an effort to exercise the CDC's Prevention guidelines pertaining to social distancing and gatherings the number of individuals in attendance of the meeting will be limited. Members of the public and media are encouraged to view the meeting in an alternative method, including the following: via a livestream hosted on the City of Fargo's Facebook (questions and comments will be monitored during the Commission Meeting) and Twitter accounts, on the web at www.TVFargo.com or via the Fargo Access Channel 56.

A. Pledge of Allegiance.

B. Roll Call.

C. Approve Order of Agenda.

D. Minutes (Regular Meeting, April 20, 2020).

CONSENT AGENDA – APPROVE THE FOLLOWING:

1. Application for Games of Chance for Grand Chapter Order of the Eastern Star Foundation, Inc. for a raffle on 6/4/20; Public Spirited Resolution.

2. Agreement with the Downtown Community Partnership for the placement of a Bison sculpture on Broadway in the City's right of way.

3. Amendment (Fifth) to Developer and Road Use Agreement with Block 9 Partners LLC.

4. Purchase Agreement with Tara Shilling for property located at 901 41st Avenue North (Project No. FM-19-A).

5. Purchase Agreement with Philip S. and Ellen J. Sondreal for property located at 906 42nd Avenue North (Project No. FM-19-A).

6. Purchase Agreement with Marjorie A. Montplaisir, as Trustee of the Marjorie A. Montplaisir Living Trust for property located at 747 Royal Oaks Drive North (Project No. FM-19-B).

7. Bid award for Project No. SR-20-A1.

8. Bid advertisement for Project No. SL-20-A.

9. Agreement for Services with Janice Tweet.

10. Amendment to Purchase of Service Agreement with ND Department of Human Services, Behavioral Health Division for prevention of opioid related deaths.

11. Exercising the option to piggyback on ND State Contract No. 22-MNWNC-124-PA with PCS Mobile/NASPO ValuePoint for Police squad car set-ups and mobile data computers for the Fire Department vehicles. (PBC20-022)

12. Set May 18, 2020 at 5:15 p.m. as the date and time for a hearing on a dangerous building at 1007 8th Avenue North.

13. Purchase Agreement and Developer's Agreement with Beyond Shelter, Inc. for the redevelopment of 314, 320, 324 7th Street North and 712 4th Avenue North, pending legal review.

14. Application for Appropriation from Civil Asset Forfeiture Fund for the Fargo Police Department Criminal Investigation Fund.

15. Grant award from the Office of Justice for funding from the Coronavirus Emergency Supplemental Funding Program (CFDA #16.034).

16. Amending Agreement No. 1 with Creative Outdoor Advertising of America Inc.

17. Amendments to Contract Nos. 38180987A and 38190960A with the ND Department of Transportation (CFDA #s 20.513 and 20.256).

18. Submittal of a grant application to the Federal Transit Administration for funding under the CARES Act and upon successful receipt of funds to execute the Grant Agreement.

19. Submittal of a grant application to the State of ND for grant funding for public transportation and upon successful receipt of funds to execute the Grant Agreement (CFDA #s 20.526 and 20.513).

20. Transit Capital Project – Fiscal Year 2020 Urban Roads Program Memorandum of Understanding with the NDDOT/Federal Transit Administration.

21. Change Orders for the Ground Transportation Center Remodel Project (F18006 and F19011):
    a. No. 1 for a decrease in the amount of $2,710.00 with Gast Construction Company, Inc.
    b. No. 1 for an increase in the amount of $18,488.64 with Rick Electric, Inc.
    c. No. 1 for a decrease in the amount of $166.60 with Valley Service Mechanical, LLC.

22. Pre-Disaster Mitigation Program Subgrant Agreement with the ND Department of Emergency Services and FEMA for the Wastewater Treatment Plant Flood Protection Plan (Project No. WW1707).

23. Task Order No. 14 with AE2S for Project No. WW1707.

24. Contract and bond for Project No. TR-20-A1.

25. Bills.

26. Memorandum of Offer to Landowner for the purchase of a permanent easement (storm sewer) from the University of Northwestern in association with Improvement District No. BN-19-A1.

27. Memorandum of Offers to the following Landowners in association with Improvement District No. BN-20-C1:
    a. Gary and Diana D. Buzick for a permanent and temporary easement.
    b. Sarah and Thomas Bruce for a permanent and temporary easement.

c. Clarence W. Samuel Revocable Living Trust #2 for a permanent easement.
d. Lee and Deborah Haugen for a temporary easement.

28. Improvement District No. BN-20-C1:
    a. Sole Source Procurement with Ducks Unlimited, Inc. (SSP20084)
    b. Purchase of Wetland Mitigation Credits from Ducks Unlimited, Inc.

29. Contract Amendment No. 4 with KLJ in the amount of $218,068.00 for Improvement District No. PN-19-A0.

30. Contracts and bonds for Improvement District Nos. BN-20-C1, BR-20-B1 and PR-20-E1.

REGULAR AGENDA:

31. Presentation on the Wastewater Treatment Plant Phase IIB Expansion:
    a. Bid award for Project No. WW1701.
    b. Task Order No. 23 with Apex Engineering Group in the amount of $8,047,500.00 for Project No. WW1701.

32. Applications for property tax exemptions for improvements made to buildings:
    a. Richard Trottier, 1501 40th Avenue South (3 year).
    b. Simon and Leslie Heitkamp, 2801 Evergreen Road North (5 year).

33. Commissioner Gehrig would like to have a discussion on a polling site(s) for the upcoming June election.

34. COVID-19 Update:
    a. Health Update.
    b. Update from the Cass Clay Food Partners.
        1. Resolution Establishing a Moratorium to Permit the Keeping of up to six chickens.
    c. Budget Update.
    d. CIP Update.

People with disabilities who plan to attend the meeting and need special accommodations should contact the Commission Office at 701.241.1310. Please contact us 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.

(1)

25.00
CC
4/24/20

APPLICATION FOR A LOCAL PERMIT OR RESTRICTED EVENT PERMIT

OFFICE OF ATTORNEY GENERAL
SFN 9338 (08/2019)

Application for: [x] Local Permit * [ ] Restricted Event Permit (one event per year)

Name of Nonprofit Organization or group of people permit is issued to	Date(s) of Activity	For a raffle, provide drawing date(s):
Grand Chapter Order Of The Eastern Star Foundation, Inc	5/15/2020 to 6/4/2021	6/4/2021
Person Responsible for the Gaming Operation and Disbursement of Net Income	**Title**	**Business Phone Number**
Carolyn Paulsen	Grand Matron	(701) 789-1035
Business Address	**City**	**State / Zip Code**
2415 42nd Ave S,	Grand Forks	ND 58201-0000
Mailing Address (if different)	**City**	**State / Zip Code**
Name of Site Where Game(s) will be Conducted	**Site Address**	
Ramada Inn	3333 13th Ave S	
City	**State / Zip Code**	**County**
Fargo	ND 58103-0704	Cass

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

[ ] Bingo [x] Raffle [ ] Raffle Board [ ] Calendar Raffle [ ] Sports Pool [ ] Poker * [ ] Twenty-one * [ ] Paddlewheels *

DESCRIPTION AND RETAIL VALUE OF PRIZES TO BE AWARDED

Game Type	Description of Prize	Retail Value of Prize
Raffle	Quilt	$800.00
Raffle	Signet	$100.00

Game Type	Description of Prize	Retail Value of Prize

Total: (Limit $40,000 per year) $ 900.00

Intended uses of gaming proceeds: Quilt money will go to Service Dogs of America, Signet money will go to Great Plains Food Bank

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

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

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

Signature of Organizat	Date	Title	Business Phone Number
Signature of Organization or Group's Top Officer: Carolyn A Paulsen	4-23-2020	Worthy Grand Matron	701-789-1035

REPORT OF ACTION

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

(2)

Type: Agreement for Bison Sculpture

Location: Broadway & 3rd Ave N

Date of Hearing: 4/27/2020

Routing	Date
City Commission	5/4/2020
PWPEC File	X
Project File	Kristy Schmidt

The Committee reviewed a communication from Civil Engineer, Kristy Schmidt, regarding a request from Downtown Community Partnership (DCP) and BID to place a bison sculpture on Broadway in the City right of way.

The Sculpture will be located on Broadway at 3rd Avenue North, near Atomic Coffee. This is the same location that a different bison sculpture had been located for the past few years.

Staff is recommending approval of the Agreement.

On a motion by Tim Mahoney, seconded by Steve Sprague, the Committee voted to recommend approval of the Agreement with the DCP for placement of the Bison Sculpture.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve the Placement of Bison Sculpture Agreement with the DCP.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: _____

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

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

ATTEST:

Brenda E. Derrig, P.E.
City Engineer

THE CITY OF Fargo
FAR MORE

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

Memorandum

To: Members of PWPEC

From: Kristy Schmidt, Civil Engineer II

Date: April 22, 2020

Re: Agreement for Placement of Bison Sculpture on Broadway

Background:

Melissa Brandt, president of DCP, and Chris Schlepp, manager of BID, have requested a Bison Sculpture to be place on Broadway in the City Right of Way planter at 3rd Avenue North near Atomic Coffee. This is the same location a different Bison Sculpture had been located at for the past few years. The placement of the Bison Sculpture will be seasonal and they would put it in storage during the winter.

Attached you will find an Agreement for the buffalo to be placed in the City Right of Way.

The DCP will be required to provide a certificate of insurance to hold the City harmless.

Recommended Motion:

Approve the Agreement allowing the Bison Sculpture on Broadway.

KLS/klb
Attachments

C: Chris Schlepp

Kirstie Bosman

From: Kristy Schmidt
Sent: Thursday, April 23, 2020 10:29 AM
To: Kirstie Bosman
Subject: FW: Bison Request
Attachments: Path Through the Prairie.pdf

Please add this email as the request to my PWPEC memo, including the picture of it in the attachment.

Thanks,

Kristy Schmidt
Civil Engineer II | Engineering Department
City of Fargo | 225 4th St N | Fargo, ND 58102
Phone: (701) 241-1571 | Email: kschmidt@fargond.gov

From: Chris Schlepp <chris@downtownfargo.com>
Sent: Thursday, April 23, 2020 9:42 AM
To: Kristy Schmidt <KSchmidt@FargoND.gov>; Downtown Bus Assn <President@downtownfargo.com>
Subject: Bison Request

CAUTION: This email originated from an outside source. Do not click links or open attachments unless you know they are safe.

Kristy,

The Downtown Community Partnership (DCP) is requesting use of the planter bed adjacent to Atomic Coffee on Broadway for placement of the bison" Path Through the Prairie." Previously, this planter bed was the home for the bison, "Nights in the Valley" but was retired by the owner.

I have attached a photo of the bison for your reference.

Thank you for your consideration.

Chris Schlepp

Fargo BID Operations Manager
chris@downtownfargo.com
(701) 238-1051

COVID-19 Resources:
- Resource list for Small Businesses
- FM Strong: How to Support the FM Community
- Shops & Businesses Currently Open
- Restaurants Offering Take-Out Options
- How to Help Local Charities

AGREEMENT

THIS LICENSE AGREEMENT ("Agreement") is made by and between the City of Fargo, a North Dakota municipal corporation (the "City") and the Downtown Community Partnership ("DCP"), a North Dakota non-profit corporation

WHEREAS, the City owns property located at Broadway and 3rd Avenue North in the southwest planter, Fargo ND 58102 (the "Subject Property"); and

WHEREAS, DCP seeks to install a decorative Bison Sculpture ("Bison Sculpture") on the Subject Property for public display; and

WHEREAS, the City wishes to grant to the DCP a license to use the Subject Property to install the Bison Sculpture, as further described in this agreement, under the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises made herein, the City and DCP agree as follows:

1. Grant of license.

The City hereby grants DCP an exclusive, non-transferable license to enter upon and use the Subject Property to install the Bison sculpture. The BID shall make no other use of the Subject Property without first obtaining the written permission of the City.

2. Right of entry.

The City shall retain all rights to the Subject Property. If the City determines in its sole discretion that it needs to use the Subject Property, the DCP shall detach and remove the Bison Sculpture, at the sole discretion of the City. In the event of an emergency, the City may dismantle or remove the Bison Sculpture. The City shall not be liable for any damage to the Bison Sculpture should such an emergency situation occur.

3. Installation of the Bison Sculpture.

The Bison Sculpture shall be properly installed on a base that is anchored to the ground.

4. Maintenance of the Bison Sculpture.

The DCP shall keep the Bison Sculpture and all elements of the Bison Sculpture installation clean and in good repair at DCP's sole expense. At the termination of this Agreement, the DCP shall restore the Subject Property to the condition it was in immediately prior to this Agreement.

5. Term and termination.

The license granted herein begins on the date of last signing of this Agreement and terminates upon removal of the Bison Sculpture by the DCP. Notwithstanding the foregoing, the City shall have the right, in its sole discretion, to revoke or suspend the license granted under this Agreement at such times as the City deems necessary or appropriate. Should the City revoke or suspend this license, the DCP shall have 72 hours to remove the Bison Sculpture.

6. Indemnification.

DCP shall indemnify and hold the City, its officers, agents, employees, servants, and contractors harmless against any claim or loss from personal injury or property damage resulting from or arising out of the use and/or occupancy of Subject Property. In the event of any asserted claim, the City of Fargo shall provide the DCP reasonable timely written notice, and thereafter the DCP shall defend, protect and save harmless the City of Fargo against said claim or any loss or liability thereunder.

7. Governing Law.

This Agreement shall be governed by the laws of the State of North Dakota, and the parties agree that the venue for the resolution of any disputes will be in Cass County, North Dakota.

8. Severability.

If any term or provision of this Agreement is determined by a court to be invalid or unenforceable, such finding will not affect the remaining terms and provisions of this Agreement, which shall remain in full force and effect.

9. Modification.

This Agreement may not be waived, modified or amended, unless in writing signed by both parties hereto.

10. Assignment

The BID shall not make any assignment or transfer of any rights, obligations or duties to a third party without the express written permission of the City.

CITY OF FARGO,
a North Dakota municipal corporation

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

ATTEST:

_____
Steven Sprague, City Auditor

Downtown Community Partnership,
a North Dakota Non-Profit Corporation

_____
By: Melissa Brandt
Its: Executive Director

REPORT OF ACTION

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

3

Type: Block 9 Developer and Road Use Agreement Amendment

Location: Block 9 – Broadway b/w 2nd & 3rd Ave

Date of Hearing: 4/27/2020

Routing	Date
City Commission	5/4/2020
PWPEC File	X
Project File	Kristy Schmidt

The Committee reviewed communication from Civil Engineer, Kristy Schmidt, regarding a request received from Kilbourne Group for phased closures on Broadway, westbound 2nd Avenue North, and eastbound 3rd Avenue North to finish the remainder of the work. Staff have been working with the DCP to assist with communication of the closures with the downtown businesses.

Staff is recommending approval.

On a motion by Kent Costin, seconded by Bruce Grubb, the Committee voted to recommend approval of the Amendment to the Developer and Road Use Agreement for the phased closures to allow completion of work.

RECOMMENDED MOTION
Concur with the recommendations of PWPEC and approve the Amendment to the Developer and Road Use Agreement with Kilbourne Group.

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

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

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

ATTEST:

Brenda E. Derrig, P.E.
City Engineer

C: Kristi Olson

THE CITY OF Fargo
FAR MORE

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

Memorandum

To: Members of PWPEC

From: Kristy Schmidt, Project Engineer

Date: April 23, 2020

Re: Amendment to Block 9 Developer and Road Use Agreement

Background:

We have received a request for closures from the Kilbourne Group associated with the Block 9 Project to finish the remainder of work adjacent to Block 9 and the Plaza. They are as follows:

- Closure of Broadway between 2nd and 3rd Avenue North. Durations as follows:
  - Phase 1a – full roadway closure + east sidewalk beginning May 11 - duration 21 days
  - Phase 1b – ½ roadway closure (north bound lane) + east sidewalk beginning June 1 – duration 14 days
  - Phase 1c – parking lane + sidewalk closure beginning June 15 - duration 14 days
- West bound lane on 2nd Avenue North (Broadway to the alley east of Broadway) - duration as follows:
  - ½ roadway closure for west bound lane + sidewalk closure beginning May 18 – duration 19 days
- Eastbound lane closure on 3rd Avenue North (Broadway to the alley east of Broadway). Duration as follows:
  - ½ roadway closure for east bound lane + south sidewalk closure beginning July 20th - duration 14 days
  - parking lane closure + sidewalk closure for boulevard work - duration 14 days

Staff is recommending approval of the Amendment to the Block 9 Developer and Road Use Agreement to allow closures at the above-mentioned streets.

Recommended Motion:

Approve road closure phasing on Broadway (2nd to 3rd Avenue), west bound on 2nd Avenue (Broadway to alley east of Broadway) and east bound lane on 3rd Avenue North (Broadway to alley east of Broadway) adjacent to Block 9 and Plaza.

KLS/klb
Attachment

C: Keith Leier, Kilbourne Group

Amendment (Fifth) to Developer and Road Use Agreement

This Amendment (Fifth) amends that Developer and Road Use Agreement dated July 11, 2018.

1. Paragraph #2 shall be amended to include the attachments hereto, identified at Exhibit "A", amended Construction and Logistics Plans. Upon approval and acceptance of the Plans by the City Engineer, Block 9 Partners, LLC may begin work in the right of way.
2. The parties agree and understand that in addition to the approved Construction and Logistics Plan, the sidewalk on the east side of Broadway adjacent to development must have an ADA compliant pedestrian walk travel path from 2nd Avenue North to 3rd Avenue North, on or before by July 1.
3. The parties further understand and agree that Block 9 Partners, LLC shall engage a competent licensed Engineer and Surveyor to survey, inspect and approve the project element constructed, or reconstructed, in the city right of way to certify compliance with City Standards and Specifications, including presentation of all necessary testing required

for acceptance of the right of way upon completion of the construction activity on the Development Property.

4. All other terms and conditions of the Developer and Road Use Agreement shall remain in full force in effect.

Dated this 28 day of April, 2020.

Block 9 Partners, LLC, a North Dakota Limited Liability Company

Mike Almendinger, Vice President

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

On this 28th day of April, 2020, before me personally appeared Mike Allmendinger, Vice President of Block 9 Partners, LLC, described in, and that executed the foregoing instrument, and acknowledged to me that such nonprofit corporation executed the same.

ANDREA R. NELSON NOTARY PUBLIC STATE OF NORTH DAKOTA MY COMMISSION EXPIRES Dec. 19, 2022

Notary Public

City of Fargo, a North Dakota municipal corporation

Dated: _____

_____
Timothy J Mahoney M.D., Mayor

ATTEST

_____
Steve Sprague, City Auditor

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

On this ____ day of _____, 2020, 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 City Auditor, respectively, of the City of Fargo, Cass County, North Dakota, the municipal corporation described in and that executed the within and foregoing instrument, and acknowledged to me that said municipal corporation executed the same.

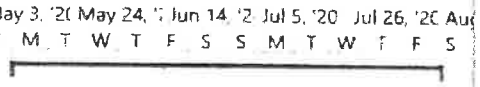
_____
Notary Public
Cass County, ND
My Commission expires:

EXHIBIT A

Construction and Logistics Plan

EXHIBIT A

ID	Task Name	Duration	Start	Finish
1	**Block 9 ROW Schedule**	**70 days**	**Mon 5/11/20**	**Sun 8/16/20**
2	Phase 1 - Broadway Full Closure 21 Calendar Days	16 days	Mon 5/11/20	Sun 5/31/20
3	Phase 1 - Broadway Half Closure 14 Calendar Days	11 days	Mon 6/1/20	Sun 6/14/20
4	Phase 1 - Broadway Parking Lane Closure 14 Calendar Days Half	11 days	Mon 6/15/20	Sun 6/28/20
5	Phase 2 - 2nd Ave. Full Closure 19 21 Calendar Days	14 16 days	Mon 5/18/20	6/5/20 Sun 6/7/20
6	No Work due to Fargo Street Fair	4 days	Wed 7/15/20	Sat 7/18/20
7	Phase 3 - 3rd Ave. Half Closure 14 Calendar Days	11 days	Mon 7/20/20	Sun 8/2/20
8	Phase 3 - 3rd Ave. Parking Lane Closure 14 Calendar Days	11 days	Mon 8/3/20	Sun 8/16/20



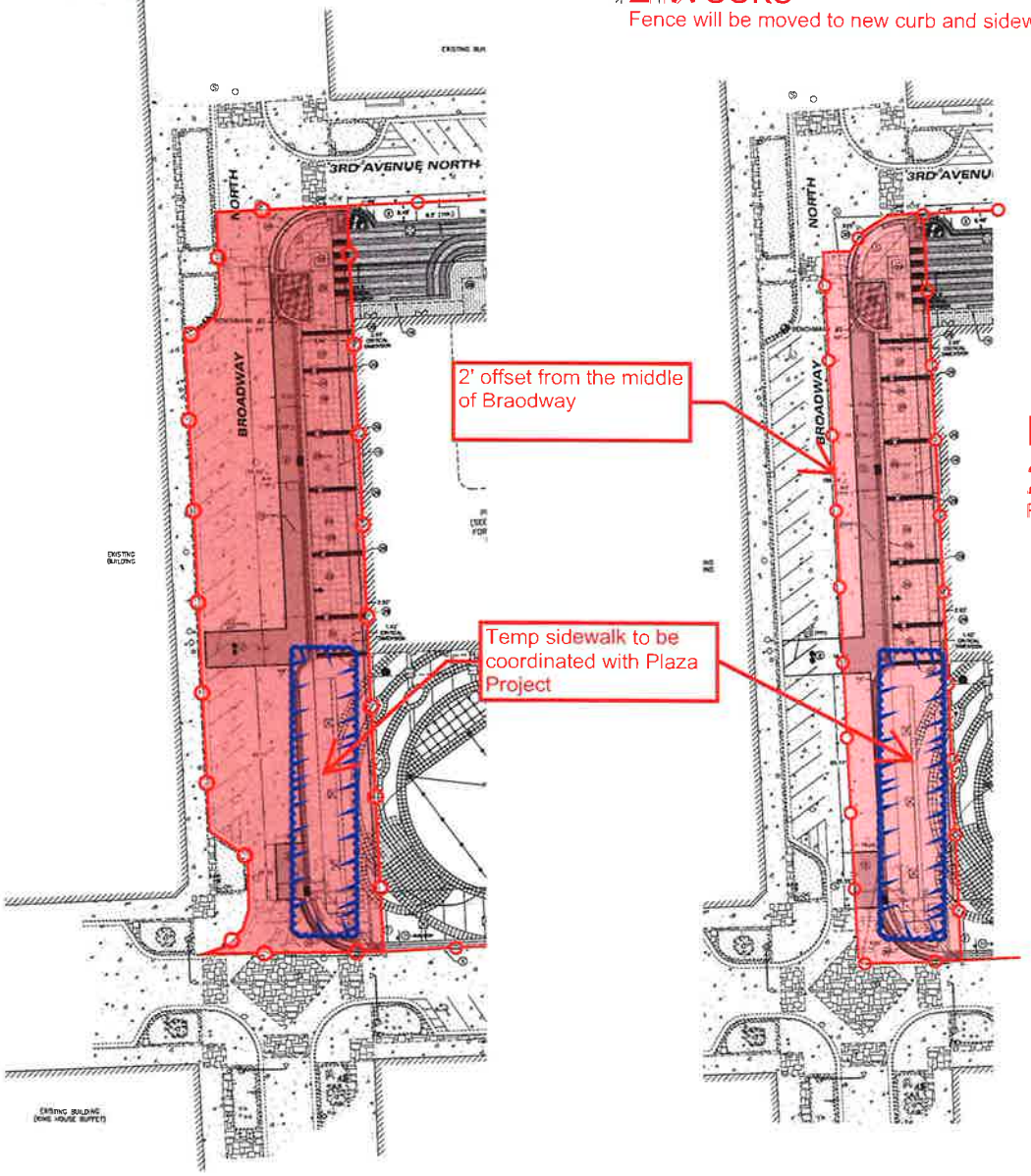
Project: ROW Schedule Rev. 2
Date: Sat 3/21/20

Task	Inactive Summary	External Tasks
Split	Manual Task	External Milestone
Milestone	Duration-only	Deadline
Summary	Manual Summary Rollup	Progress
Project Summary	Manual Summary	Manual Progress
Inactive Task	Start-only	
Inactive Milestone	Finish-only	

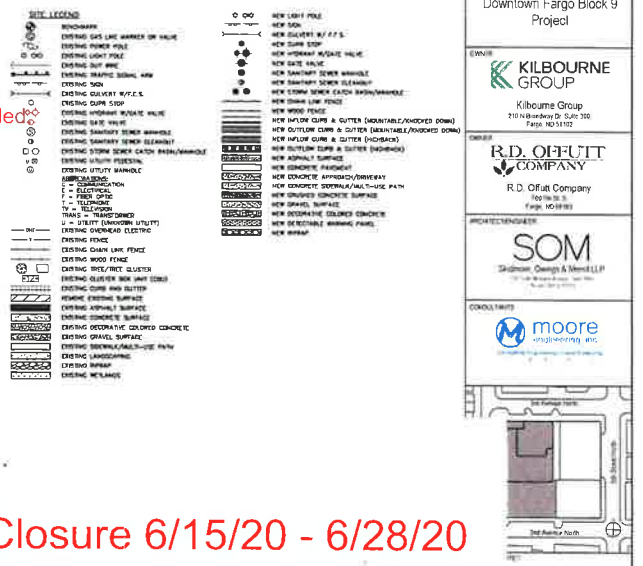
Block 9 ROW Phase 1 - Broadway

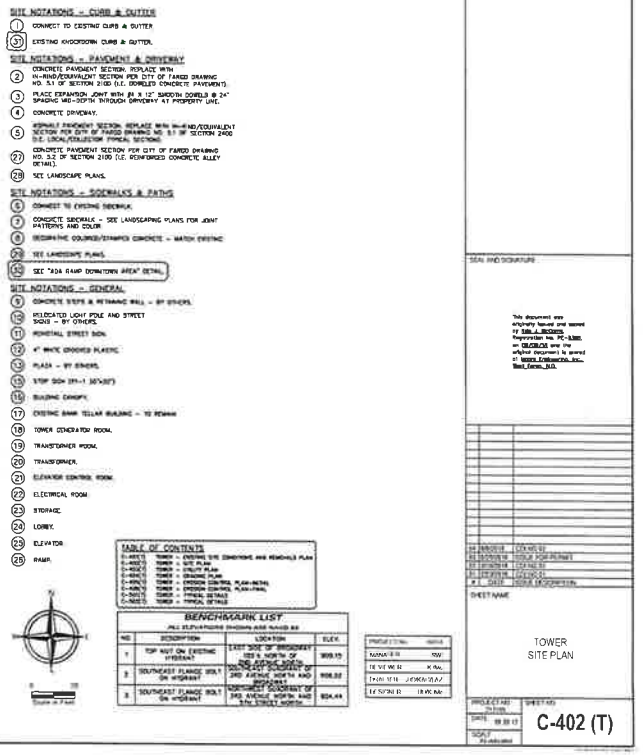
Full Closure 5/11/20 - 5/31/10
3 Weeks

Half Lane Closure 6/1/20 - 6/14/20
2 Weeks
Fence will be moved to new curb and sidewalk work will continue if needed.



Parking Lane Closure 6/15/20 - 6/28/20
2 Weeks
Fence will be moved to new curb and sidewalk work will continue if needed.





Downtown Fargo Block 9 Project

KILBOURNE GROUP
Kilbourne Group

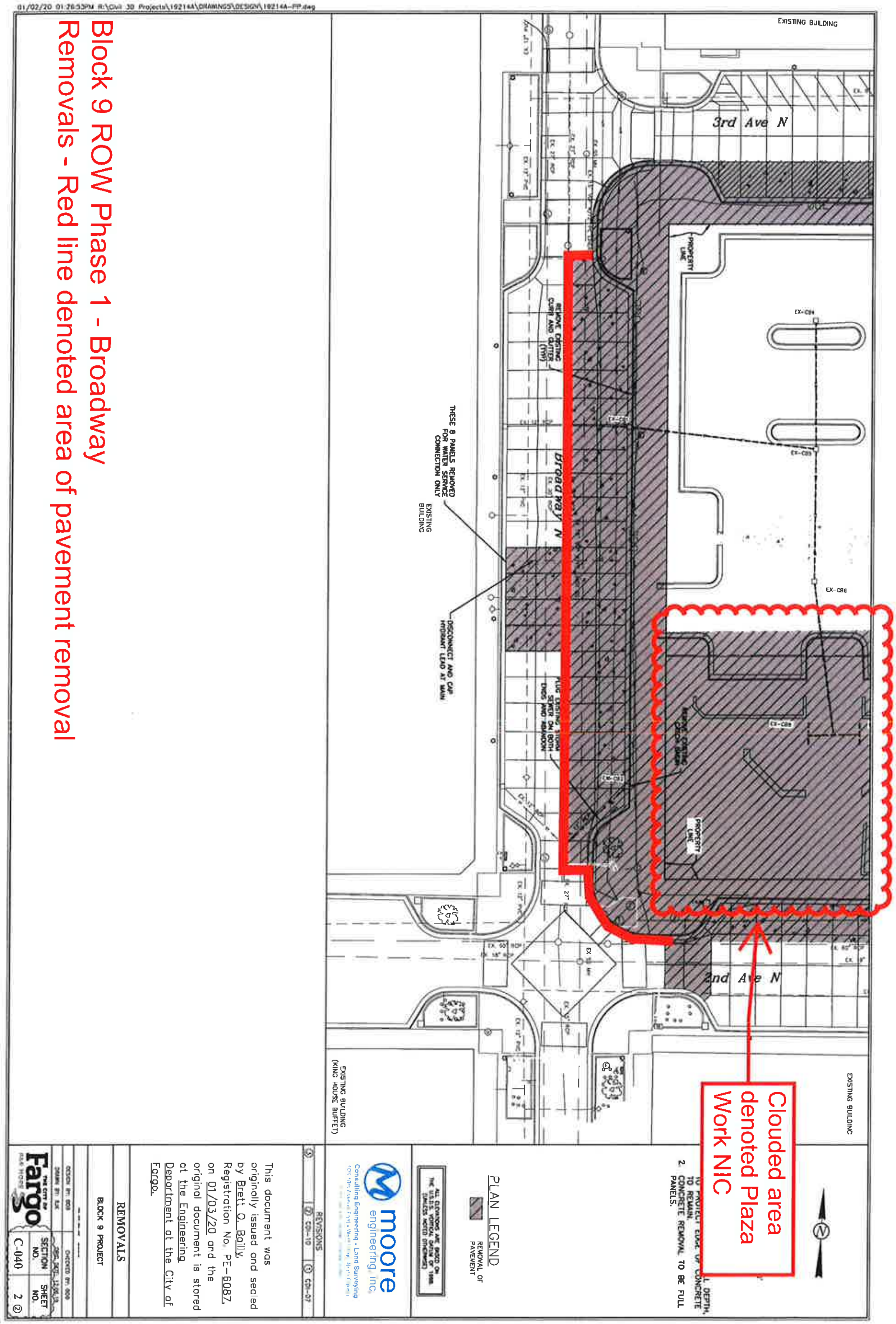
R.D. OFFUTT COMPANY
R.D. Offutt Company

SOM

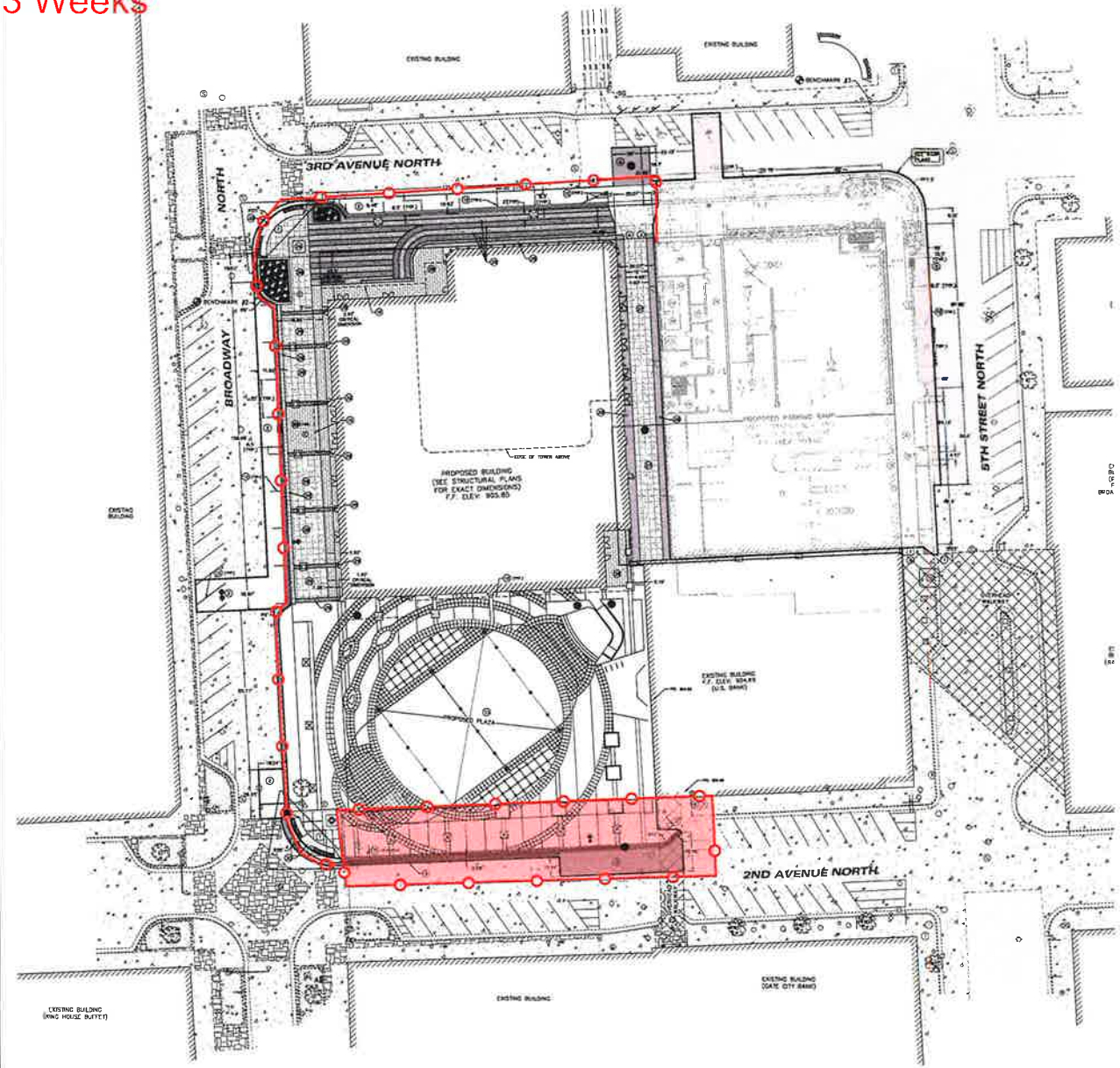
moore engineering, inc.

TOWER SITE PLAN

C-402 (T)


01/02/20 01:26:53PM R:\Civil 3D Projects\19214A\DRAWINGS\DESIGN\19214A-FP.dwg
Block 9 ROW Phase 1 - Broadway
Removals - Red line denoted area of pavement removal
Clouded area denoted Plaza Work NIC
EXISTING BUILDING
3rd Ave N
2nd Ave N
Broadway N
PROPERTY LINE
REMOVE EXISTING CURB AND GUTTER (TYP)
THESE 8 PANELS REMOVED FOR WATER SERVICE CONNECTION ONLY
EXISTING BUILDING
DISCONNECT AND CAP HYDRANT LEAD AT MAIN
PLUG EXISTING STORM SEWER ON BOTH ENDS AND ABANDON
EXISTING BUILDING (KING HOUSE BUFFET)
EX-CB4
EX-CB5
EX-CB6
EX-CB8
2. CONCRETE REMOVAL TO BE FULL PANELS.
PLAN LEGEND
REMOVAL OF PAVEMENT
ALL ELEVATIONS ARE BASED ON THE U.S.G.S. VERTICAL DATUM OF 1988. (UNLESS NOTED OTHERWISE)
moore engineering, inc.
Consulting Engineering • Land Surveying
REVISIONS
CON-10
CON-07
This document was originally issued and sealed by Brett O. Bailly, Registration No. PE-6087, on 01/03/20 and the original document is stored at the Engineering Department at the City of Fargo.
REMOVALS
BLOCK 9 PROJECT
THE CITY OF Fargo
SECTION NO. C-040
SHEET NO. 2

Block 9 ROW Phase 2 - 2nd Ave.
Half Closure 5/18/20 - 6/5/20
3 Weeks



SITE LEGEND

GENERAL NOTES

SITE PLAN NOTES

SITE NOTATIONS – CURB & GUTTER

1. CONNECT TO EXISTING CURB & GUTTER
33. EXISTING MOUNTDOWN CURB & GUTTER

SITE NOTATIONS – PAVEMENT & DRIVEWAY

2. CONCRETE PAVEMENT SECTION. REPLACE WITH IN-KIND/EQUIVALENT SECTION PER CITY OF FARGO DRAWING NO. 5.1 OF SECTION 2400 (I.E. DOWELED CONCRETE PAVEMENT)
3. PLACE EXPANSION JOINT WITH Ø1 x 12" SMOOTH DOWELS @ 24" SPACING MID-DEPTH THROUGH DRIVEWAY AT PROPERTY LINE.
4. CONCRETE DRIVEWAY.
5. ASPHALT PAVEMENT SECTION REPLACE WITH IN-KIND/EQUIVALENT SECTION PER CITY OF FARGO DRAWING NO. 5.1 OF SECTION 2400 (I.E. LOCAL/COLLECTOR TYPICAL SECTION).
27. CONCRETE PAVEMENT SECTION PER CITY OF FARGO DRAWING NO. 5.2 OF SECTION 2100 (I.E. REINFORCED CONCRETE ALLEY DETAIL).
28. SEE LANDSCAPE PLANS.

SITE NOTATIONS – SIDEWALKS & PATHS

6. CONNECT TO EXISTING SIDEWALK.
7. CONCRETE SIDEWALK – SEE LANDSCAPING PLANS FOR JOINT PATTERNS AND COLOR.
8. DECORATIVE COLORED/STAMPED CONCRETE – MATCH EXISTING.
28. SEE LANDSCAPE PLANS.
32. SEE "ADA RAMP DOWNTOWN AREA" DETAIL.

SITE NOTATIONS – GENERAL

9. CONCRETE STEPS & RETAINING WALL – BY OTHERS.
10. RELOCATED LIGHT POLE AND STREET SIGNS – BY OTHERS.
11. REINSTALL STREET SIGN.
12. 4" WHITE GROOVED PLASTIC.
13. PLAZA – BY OTHERS.
15. STOP SIGN (R1-1 30"x30")
16. BUILDING CANOPY.
17. EXISTING BANK TELLER BUILDING – TO REMAIN.
18. TOWER GENERATOR ROOM.
19. TRANSFORMER ROOM.
20. TRANSFORMER
21. ELEVATOR CONTROL ROOM.
22. ELECTRICAL ROOM
23. STORAGE
24. LOBBY.
25. ELEVATOR.
26. RAMP.

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C-402(T) TOWER – SITE PLAN
C-403(T) TOWER – UTILITY PLAN
C-404(T) TOWER – GRADING PLAN
C-405(T) TOWER – EROSION CONTROL PLAN–INITIAL
C-406(T) TOWER – EROSION CONTROL PLAN–FINAL
C-501(T) TOWER – TYPICAL DETAILS
C-502(T) TOWER – TYPICAL DETAILS

BENCHMARK LIST

ALL ELEVATIONS SHOWN ARE NAVD 88

NO.	DESCRIPTION	LOCATION	ELEV.
1	TOP NUT ON EXISTING HYDRANT	EAST SIDE OF BROADWAY 183'± NORTH OF CENTERLINE OF 3RD AVENUE NORTH	908.19
2	SOUTHEAST FLANGE BOLT ON HYDRANT	SOUTHEAST QUADRANT OF 3RD AVENUE NORTH AND BROADWAY	906.02
3	SOUTHEAST FLANGE BOLT ON HYDRANT	SOUTHEAST QUADRANT OF 3RD AVENUE NORTH AND 5TH STREET NORTH	904.88

PROJECT NAME
Downtown Fargo Block 9 Project

OWNER
KILBOURNE GROUP
Kilbourne Group

OWNER
R.D. OFFUTT COMPANY
R.D. Offutt Company

ARCHITECT/ENGINEER
SOM
Skidmore, Owings & Merrill LLP

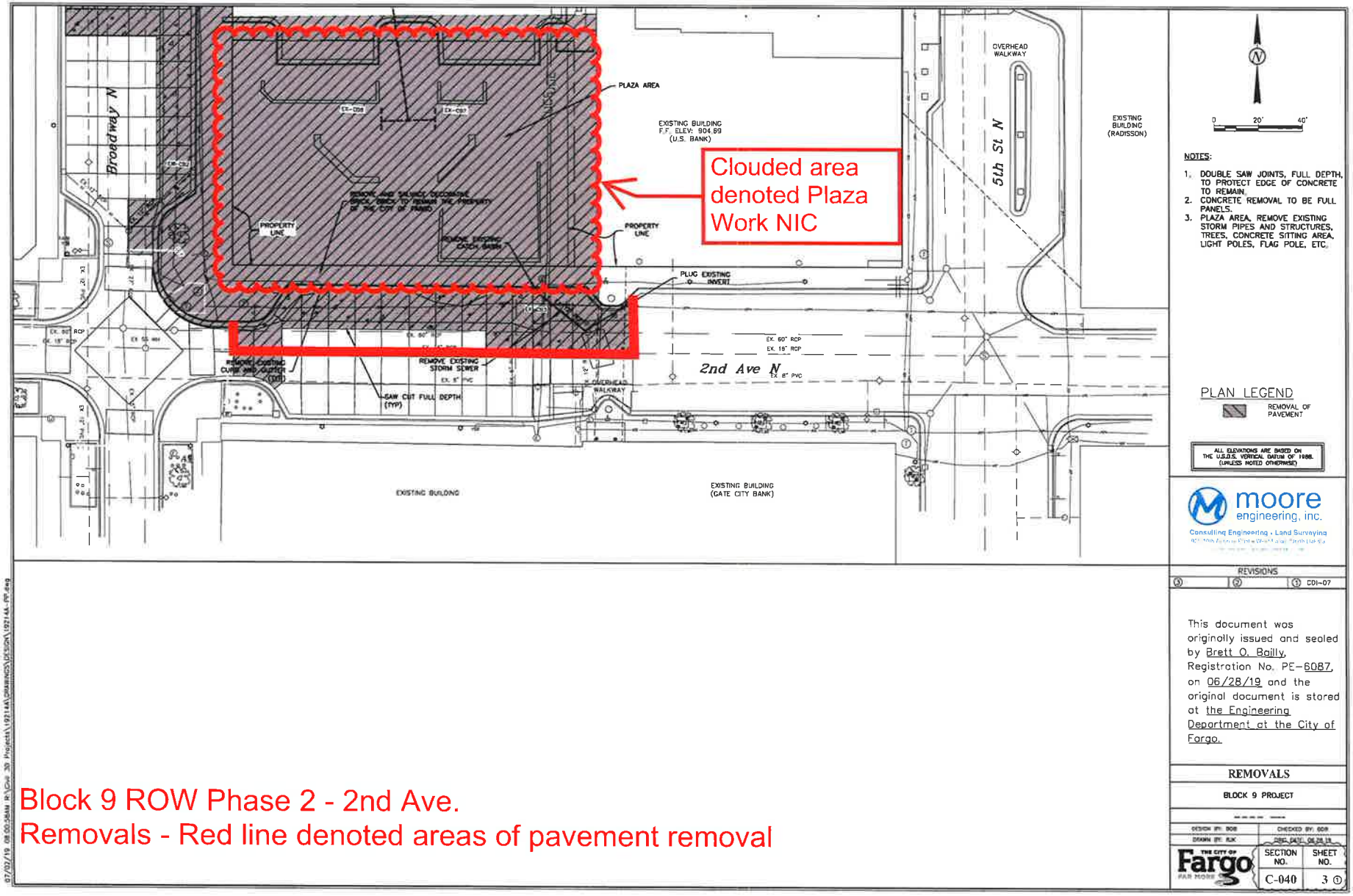
CONSULTANTS
moore engineering, inc.

GENERAL NOTES

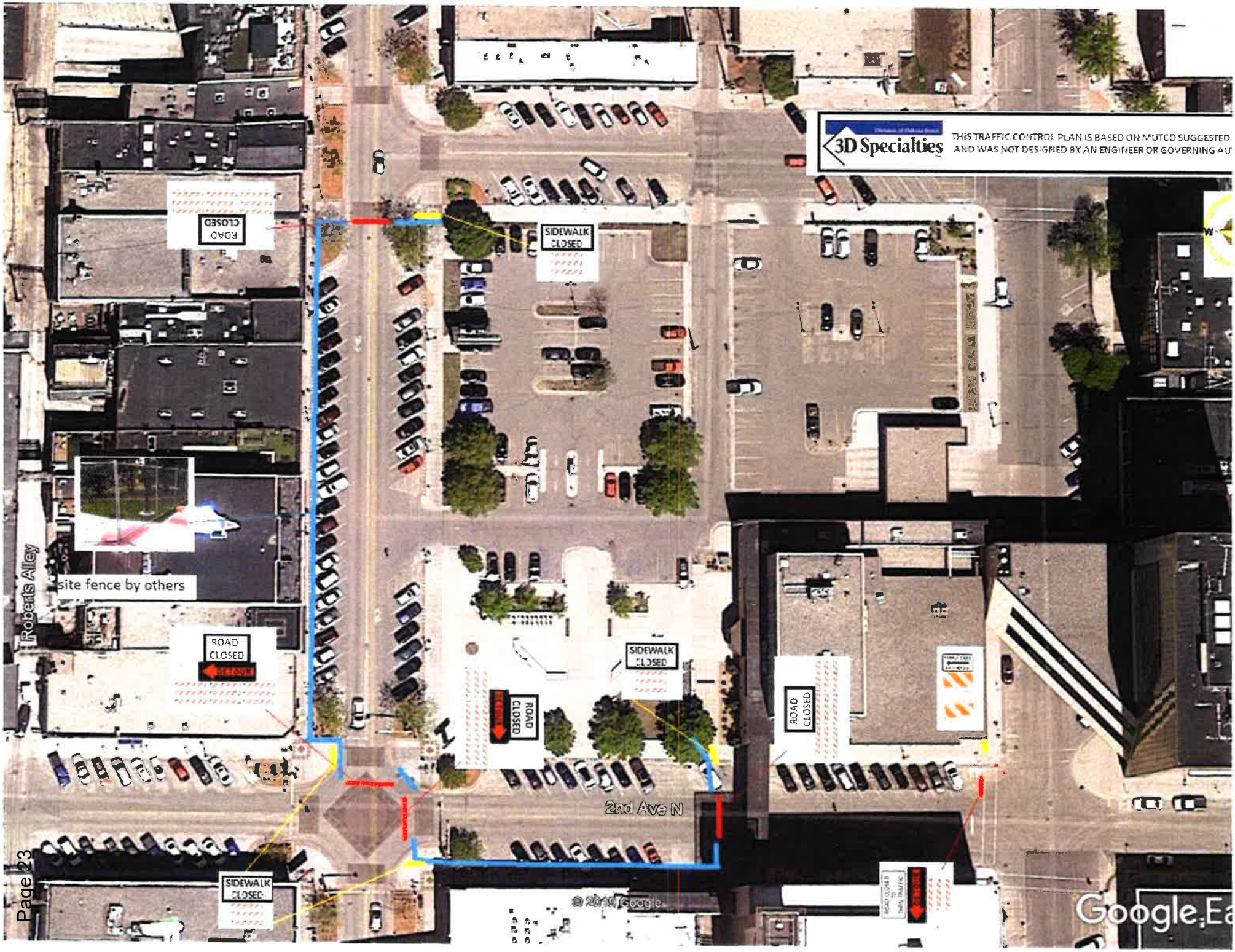
SEAL AND SIGNATURE

SHEET NAME
TOWER SITE PLAN

SHEET NO.
C-402 (T)



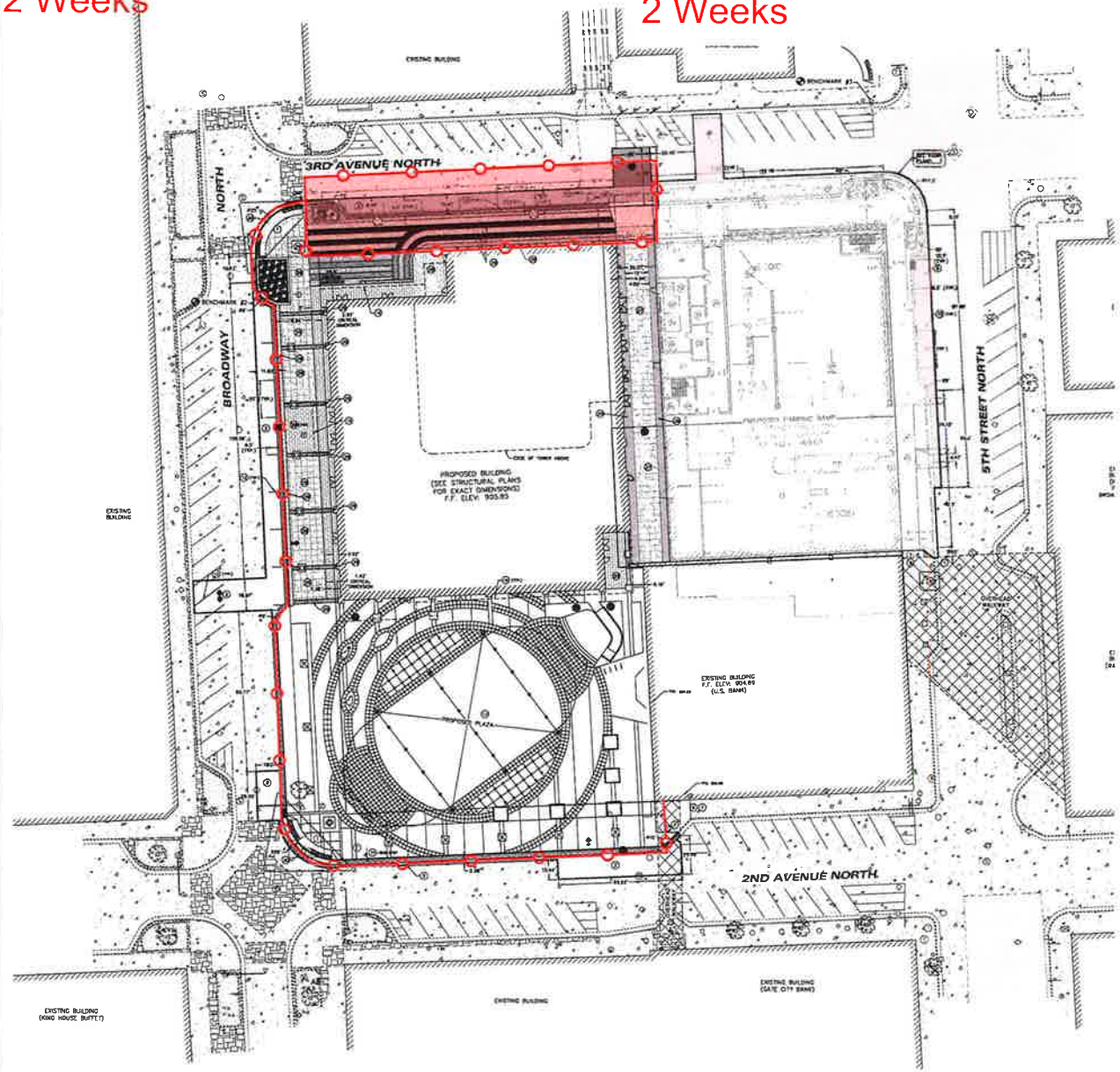
Block 9 ROW Phase 2 - 2nd Ave.
Removals - Red line denoted areas of pavement removal

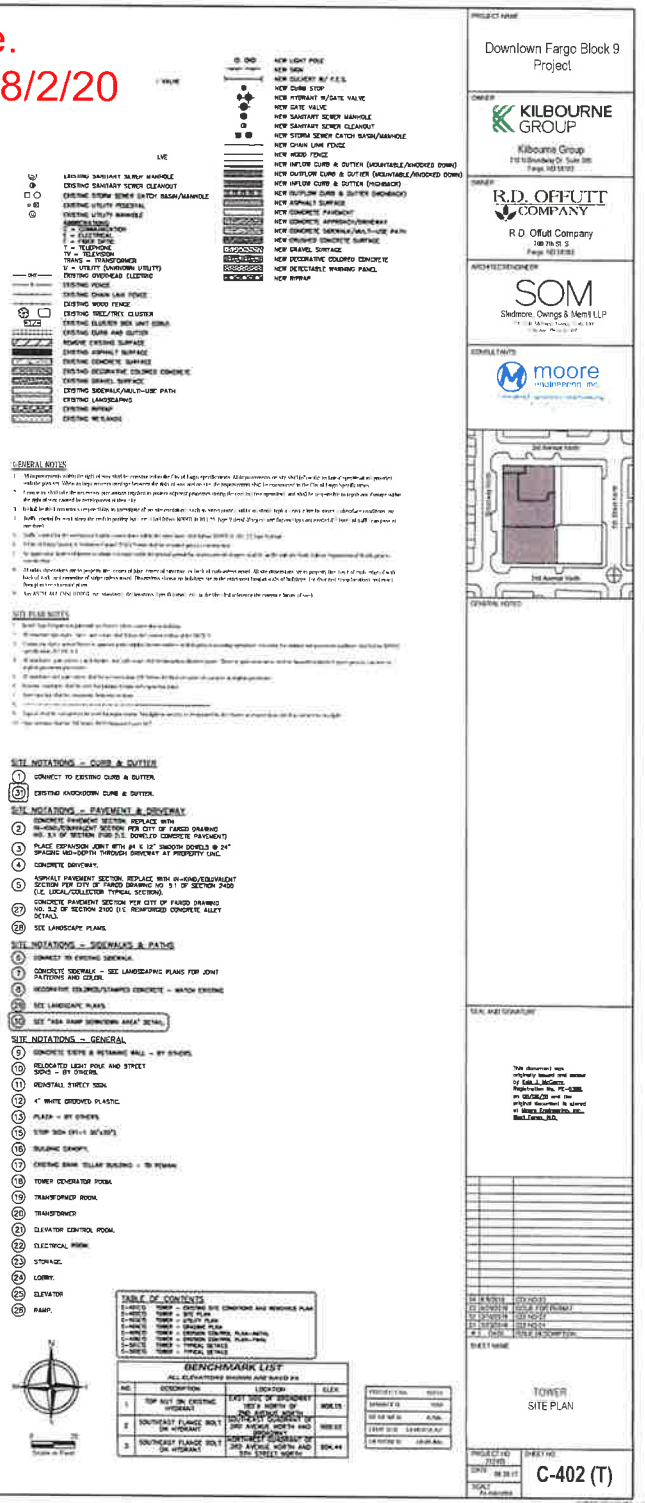

3D Specialties
THIS TRAFFIC CONTROL PLAN IS BASED ON MUTCD SUGGESTED
AND WAS NOT DESIGNED BY AN ENGINEER OR GOVERNING AU
ROAD CLOSED
SIDEWALK CLOSED
site fence by others
Roberts Alley
ROAD CLOSED
SIDEWALK CLOSED
ROAD CLOSED
ROAD CLOSED
2nd Ave N
SIDEWALK CLOSED
© 2016 Google
Google

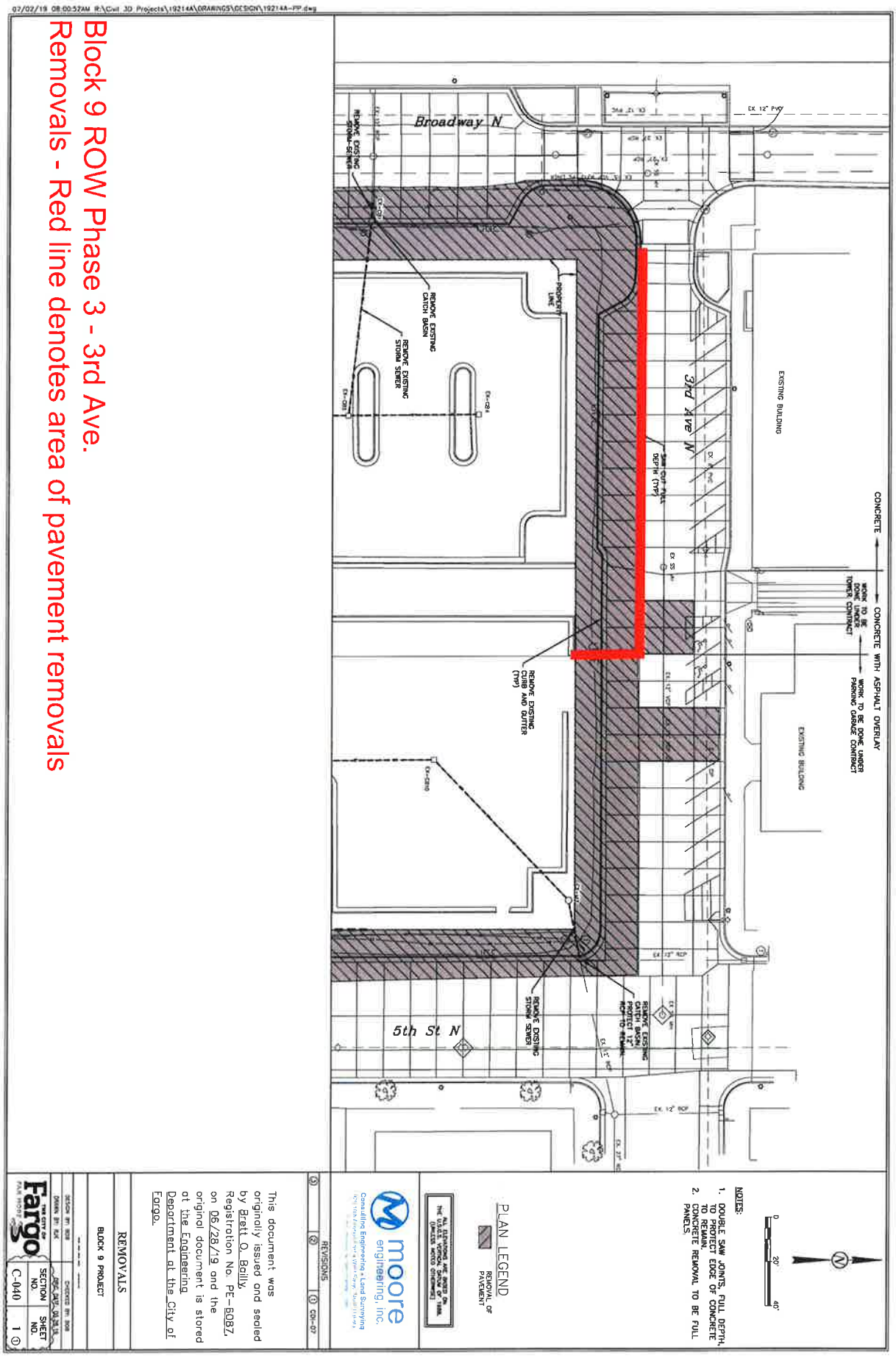
7th St N
Fargo
Roberts St N
Roberts Alley
Broadway N
2nd Ave N
4th Ave N
3rd Ave N
5th St N
4th St N
1st Ave N
DETOUR
DETOUR AHEAD
ROAD CLOSED AHEAD
ROAD CLOSED
3D Specialties
THIS TRAFFIC CONTROL PLAN IS BASED ON MUTCD SUGGEST
AND WAS NOT DESIGNED BY AN ENGINEER OR GOVERNING
Google

Block 9 ROW Phase 3 - 3rd Ave.
Half Closure 7/20/20 - 8/2/20
2 Weeks

Block 9 ROW Phase 3 - 3rd Ave.
Parking Lane Closure 7/20/20 - 8/2/20
2 Weeks







Block 9 ROW Phase 3 - 3rd Ave.

Removals - Red line denotes area of pavement removals

SIDEWALK CLOSED
ROAD CLOSED
DETOUR
DO NOT ENTER
DRUMS
SIDEWALK CLOSED
SIDEWALK CLOSED USE OTHER SIDE
© 2020 Google
Google
3rd Av
3D Specialties
THIS TRAFFIC CONTROL PLAN IS BASED ON MUTCD SUGGESTE
AND WAS NOT DESIGNED BY AN ENGINEER OR GOVERNING A

Roberts Alley
Broadway N
DETOUR
4th Ave N
ROAD WORK AHEAD
DETOUR
5th St N
3rd Ave N
3D Specialties
THIS TRAFFIC CONTROL PLAN IS BASED ON MUTCD SUGGESTE
AND WAS NOT DESIGNED BY AN ENGINEER OR GOVERNING A
W
Google

KILBOURNEGROUP

Kilbourne Group
210 Broadway, Suite 300
Fargo, ND 58102
p: (701) 237-2279
e: info@kilbournegroup.com
www.kilbournegroup.com

March 10, 2020

Re: Memo – Developer and Road Use Agreement Amendment Clarification

Dear City of Fargo Engineering Department,

We are formally requesting the enclosed amendment to the Block 9 Developer and Road Use Agreement to finalize and coordinate the remaining right of way work and impacts surrounding the Block 9 Development Project.

The original agreement intended for a completion of all right of way work by the end of the 2019 construction season. The work was planned accordingly and began in small phases to achieve this. During some of the initial excavations some unforeseen conditions were realized in the street that would pose challenges to the originally intended design. Specifically, this had to do with realized location of fiber duct banks and fiber conduits conflicting with proposed storm sewer infrastructure. The result of the conflict required the Block 9 civil design team to find and coordinate available options acceptable to the City Engineering Department. Several options were studied and ultimately a final design was agreed to by the City. The duration of additional exploration, design iterations, and field coordination ultimately caused the work to shift in schedule. This shift in work schedule shifted the scheduled duration of the work beyond the normal working season for street and utility work allowed by the City. Given the potential risk of quality assurance due to late season construction, the developer, contractor and City Engineering decided that the best decision for the long-term solution of the project was to shift the remaining right of way work until the spring of 2020.

The amended plan before you has been developed by the block 9 team and reviewed by City Engineering staff. We feel it the best option to minimize the remaining impact of the project to the surrounding right of way.

Please let me know if you have any additional questions.

Thank you,

Keith Leier, Kilbourne Group
Block 9 Partners – Project Manager, Owner's Representative.
Keith@kilbournegroup.com
(701) 237-2279

THE CITY OF Fargo
FAR MORE

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

April 29, 2020

(4)

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

Re: Tara Shilling – Purchase Agreement
Project #FM-19-A

Dear Commissioners:

Enclosed and delivered to the City Commission office for review and approval please find an original Purchase Agreement signed by **Tara Shilling**. 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 the property located at 901 41st Avenue North from **Tara Shilling** in association with Project #FM-19-A and that the Mayor and City Auditor be instructed to execute the Purchase Agreement on behalf of the City of Fargo.

Please return a copy of the signed originals.

Respectfully submitted,
Shawn G. Bullinger
Land Acquisition Specialist

C: Nancy J. Morris

PURCHASE AGREEMENT

THIS AGREEMENT, made and entered into by and between **TARA SHILLING**, the identified owner of the property located at 901 41st Avenue North in Fargo, North Dakota hereinafter "Seller", whether one or more, and the **CITY OF FARGO,** a North Dakota municipal corporation, hereinafter "City" or "Buyer",

WITNESSETH:

WHEREAS, Seller is the owner of real estate situated in the County of Cass and State of North Dakota described as follows:

> Lot Seven (7), Block One (1) of Riverwood 2nd Addition to the City of Fargo, situate in the County of Cass and the State of North Dakota.
>
> Property Address: 901 41st Avenue North, Fargo, ND

WHEREAS, Owner desires to sell, and the City of Fargo is willing to purchase Owner's property due to its proximity to the river and flood protection logistics; and

WHEREAS, Seller and Buyer have reached an agreement to purchase the property in accordance with the terms herein.

NOW, THEREFORE, in consideration of the mutual covenants, promises and agreements of the parties, it is hereby agreed as follows:

1. Subject Matter. The subject matter of this agreement is the real estate described, other buildings located thereon, and all items affixed to the property.

2. Purchase Price. The purchase price for the Property is Six Hundred Forty-Four Thousand Nine Hundred Dollars ($644,900.00).

3. Payment of Purchase Price. The mortgage, if any, as well as any liens or encumbrances, will be paid and Seller shall receive the balance of the purchase price, less any escrow amounts, in cash on the date of closing.

4. Abstract. Seller shall furnish Buyer an abstract of title to the subject property and Buyer shall pay for the cost of continuation of said abstract to a recent date. Said abstract must show good and marketable title in Seller free and clear of all liens and encumbrances (other than those that will be handled at closing). City shall pay all costs associated with closing, including deed preparation and recordation.

5. Taxes and Utilities. Taxes and installments of special assessments for the year of closing shall be prorated between the parties to the date of closing based upon current total true value as calculated by the County of Cass, ND, as of the date of closing. Prior year taxes and assessments must be paid by Seller in advance of closing.

6. Deeds. Seller shall sign warranty deeds prepared by Buyer. Buyer will take title as follows: City of Fargo, North Dakota, a municipal corporation.

7. Closing Date and Transfer of Possession. Closing shall take place at a time and date to be agreed by the parties. The City shall take possession of the real estate no later than the last day of the month of closing, unless other arrangements have been made. If City does not take possession on the date of closing, $1,000 will be required of Seller at closing and retained until such time as the possession of the property is secured by the City in satisfactory condition. Seller agrees the $1,000 deposit may be forfeited if the property is not delivered in satisfactory condition.

A separate Occupancy Agreement may be entered into between the parties should Seller desire to continue to reside in the dwelling longer than the end of the month of closing. If Seller elects to occupy the premises beyond the end of the month of closing, rent shall be paid to the City in the amount of $1,000/month beginning on the 1st day of the month following closing. 3% of the purchase price shall be retained until such time Seller vacates the premises.

If Seller vacates the property prior to closing, the end of the month of closing, or prior to the expiration of the time period contained in an Occupancy Agreement, Seller shall immediately notify Buyer so that appropriate measures can be taken to secure the premises.

8. Relocation Assistance. Seller may qualify as a "displaced person," as the term is defined under the Uniform Relocation Assistance and Real Property Acquisition Policies of 1970, as amended (42 U.S.C. 4601, et seq.) and under Chapter 54-01.1 of the North Dakota Century Code. The Purchase Price does not include relocation assistance. If the Seller qualifies as a displaced person and is otherwise entitled to relocation assistance, the parties will agree to relocation assistance payments in a separate written agreement.

9. Fixtures, Structures and Personal Property. Seller and Buyer agree that the real and personal property affixed to the real estate at the time of closing shall become the Buyer's property without the need for a bill of sale or other conveyance. The parties further agree that all carpeting, light fixtures, window coverings, dishwasher, and other appliances affixed to the property are included in this transaction, unless excepted herein:

Items Identified for Removal by Seller:

-speakers in basement ceiling, hot tub,
generator, washer & dryer,

10. Warranty. Seller provides no express warranties on the subject property. Buyer understands and agrees that the property is a used home and is being purchased "AS IS". Buyer shall make any inspection it deems necessary concerning the condition of said used home.

11. Inspection and Photographs. Seller agrees to allow City to enter the Premises for purposes of inspection, including but not limited to asbestos testing and mitigation.

(Signatures on following page.)

Dated this 20 day of April, 2020.

SELLER:

Tara Shilling

Tara Shilling, a single person

Dated this _____ day of _____, 2020.

THE CITY OF FARGO, NORTH DAKOTA

By_____

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

ATTEST:

_____

Steve Sprague, City Auditor

THE CITY OF Fargo
FAR MORE

(5)

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

April 30, 2020

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

Re: Philip S. & Ellen J. Sondreal – Purchase Agreement
Project #FM-19-A

Dear Commissioners:

Enclosed and delivered to the City Commission office for review and approval please find an original Purchase Agreement signed by **Philip S. & Ellen J. Sondreal**. 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 the property located at 906 42nd Avenue North from **Philip S. & Ellen J. Sondreal** in association with Project #FM-19-A and that the Mayor and City Auditor be instructed to execute the Purchase Agreement on behalf of the City of Fargo.

Please return a copy of the signed originals.

Respectfully submitted,
Shawn G. Bullinger
Land Acquisition Specialist

C: Nancy J. Morris

PURCHASE AGREEMENT

THIS AGREEMENT, made and entered into by and between **PHILIP S. AND ELLEN J. SONDREAL**, the identified owner of the property located at 906 42nd Avenue North in Fargo, North Dakota hereinafter "Seller", whether one or more, and the **CITY OF FARGO**, a North Dakota municipal corporation, hereinafter "City" or "Buyer".

WITNESSETH:

WHEREAS, Seller is the owner of real estate situated in the County of Cass and State of North Dakota described as follows:

> Lot Eight (8), Block Six (6) of Riverwood 3rd Addition to the City of Fargo, situate in the County of Cass and the State of North Dakota.
>
> Property Address: 906 42nd Avenue North, Fargo, ND

WHEREAS, Owner desires to sell, and the City of Fargo is willing to purchase Owner's property due to its proximity to the river and flood protection logistics; and

WHEREAS, Seller and Buyer have reached an agreement to purchase the property in accordance with the terms herein.

NOW, THEREFORE, in consideration of the mutual covenants, promises and agreements of the parties, it is hereby agreed as follows:

1. Subject Matter. The subject matter of this agreement is the real estate described, other buildings located thereon, and all items affixed to the property.

2. Purchase Price. The purchase price for the Property is Five Hundred Sixty-Nine Thousand Dollars ($569,000.00).

3. Payment of Purchase Price. The mortgage, if any, as well as any liens or encumbrances, will be paid and Seller shall receive the balance of the purchase price, less any escrow amounts, in cash on the date of closing.

4. Abstract. Seller shall furnish Buyer an abstract of title to the subject property and Buyer shall pay for the cost of continuation of said abstract to a recent date. Said abstract must show good and marketable title in Seller free and clear of all liens and encumbrances (other than those that will be handled at closing). City shall pay all costs associated with closing, including deed preparation and recordation.

5. Taxes and Utilities. Taxes and installments of special assessments for the year of closing shall be prorated between the parties to the date of closing based upon current total true value as calculated by the County of Cass, ND, as of the date of closing. Prior year taxes and assessments must be paid by Seller in advance of closing.

6. Deeds. Seller shall sign warranty deeds prepared by Buyer. Buyer will take title as follows: City of Fargo, North Dakota, a municipal corporation.

7. Closing Date and Transfer of Possession. Closing shall take place at a time and date to be agreed by the parties, but not later than November 30, 2020. The City shall take possession of the real estate no later than the last day of the month of closing, unless other arrangements have been made. If City does not take possession on the date of closing, $1,000 will be required of Seller at closing and retained until such time as the possession of the property is secured by the City in satisfactory condition. Seller agrees the $1,000 deposit may be forfeited if the property is not delivered in satisfactory condition.

A separate Occupancy Agreement may be entered into between the parties should Seller desire to continue to reside in the dwelling longer than the end of the month of closing. If Seller elects to occupy the premises beyond the end of the month of closing, rent shall be paid to the City in the amount of $1,000/month beginning on the 1st day of the month following closing. 3% of the purchase price shall be retained until such time Seller vacates the premises.

If Seller vacates the property prior to closing, the end of the month of closing, or prior to the expiration of the time period contained in an Occupancy Agreement, Seller shall immediately notify Buyer so that appropriate measures can be taken to secure the premises.

8. Relocation Assistance. Seller may qualify as a "displaced person," as the term is defined under the Uniform Relocation Assistance and Real Property Acquisition Policies of 1970, as amended (42 U.S.C. 4601, et seq.) and under Chapter 54-01.1 of the North Dakota Century Code. The Purchase Price does not include relocation assistance. If the Seller qualifies as a displaced person and is otherwise entitled to relocation assistance, the parties will agree to relocation assistance payments in a separate written agreement.

9. Fixtures, Structures and Personal Property. Seller and Buyer agree that the real and personal property affixed to the real estate at the time of closing shall become the Buyer's property without the need for a bill of sale or other conveyance. The parties further agree that all carpeting, light fixtures, window coverings, dishwasher, and other appliances affixed to the property are included in this transaction, unless excepted herein:

Items Identified for Removal by Seller:

_____

_____

10. Warranty. Seller provides no express warranties on the subject property. Buyer understands and agrees that the property is a used home and is being purchased "AS IS". Buyer shall make any inspection it deems necessary concerning the condition of said used home.

11. Inspection and Photographs. Seller agrees to allow City to enter the Premises for purposes of inspection, including but not limited to asbestos testing and mitigation.

(Signatures on following page.)

DATED this 29th day of April, 2020.

SELLER:

Philip S. Sondreal

Ellen J. Sondreal

DATED this ____ day of_____, 2020.

BUYER:

City of Fargo, a North Dakota municipal corporation

Timothy J. Mahoney M.D., Mayor

ATTEST:

Steve Sprague, City Auditor

THE CITY OF Fargo
FAR MORE

(6)

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

April 24, 2020

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

Re: Marjorie A. Montplaisir – Purchase Agreement
Project #FM-19-B

Dear Commissioners:

Enclosed and delivered to the City Commission office for review and approval please find an original Purchase Agreement signed by **Marjorie A. Montplaisir**. 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 the property located at 747 Royal Oaks Drive North from **Marjorie A. Montplaisir, as Trustee of the Marjorie A. Montplaisir Living Trust** in association with Project #FM-19-B and that the Mayor and City Auditor be instructed to execute the Purchase Agreement on behalf of the City of Fargo.

Please return a copy of the signed original.

Respectfully submitted,

Shawn G. Bullinger
Land Acquisition Specialist

C: Jody Bertrand
Nancy J. Morris

PURCHASE AGREEMENT

THIS AGREEMENT, made and entered into by and between **Marjorie A. Montplaisir, as trustee of the Marjorie A. Montplaisir Living Trust** the identified owner of the property located at 739 Royal Oaks Drive North in Fargo, North Dakota hereinafter "Seller" or "Owner", whether one or more, and the **CITY OF FARGO,** a North Dakota municipal corporation, hereinafter "City" or "Buyer",

WITNESSETH:

WHEREAS, Seller is the owner of real estate situated in the County of Cass and State of North Dakota described as follows:

> All that part of Lot 2, Block 1, Broadway North Third Addition to the City of Fargo, Cass County, North Dakota, that lies Northerly, Easterly, and/or Northeasterly of the following described line: From the West corner of Lot 2, Block 1, Broadway North Third Addition to the City of Fargo, Cass County, North Dakota, bear North 51°30'00" East along the rear line of said Lot 2 a distance of 71.78 feet to the Point of Beginning of the line herein described; thence South 28°54'59" East a distance of 87.05 feet; thence North 61°05'01" East a distance of 1.50 feet; thence South 28°54'59" East a distance of 3.50 feet; thence South 61°05'01" West a distance of 1.50 feet; thence South 28°54'59" East a distance of 23.69 feet, more or less, to a point of intersection with the front line of said Lot 2, and there terminating.
>
> Property Address: 739 Royal Oaks Drive North, Fargo, ND

WHEREAS, Owner desires to sell, and the City of Fargo is willing to purchase Owner's property due to its proximity to the river and flood protection logistics; and

WHEREAS, Seller and Buyer have reached an agreement to purchase the property in accordance with the terms herein.

NOW, THEREFORE, in consideration of the mutual covenants, promises and agreements of the parties, it is hereby agreed as follows:

1. Subject Matter. The subject matter of this agreement is the real estate described, other buildings located thereon, and all items affixed to the property.

2. Purchase Price. The purchase price for the Property is Three Hundred Twenty-Five Thousand and no/100 dollars ($325,000).

3. Payment of Purchase Price. The mortgage, if any, as well as any liens or encumbrances, will be paid and Seller shall receive the balance of the purchase price, less any escrow amounts, in cash on the date of closing.

4. Abstract. Seller shall furnish Buyer an abstract of title to the subject property and Buyer shall pay for the cost of continuation of said abstract to a recent date. Said abstract must show good and marketable title in Seller free and clear of all liens and encumbrances (other than those that will be handled at closing). City shall pay all costs associated with closing, including deed preparation and recordation.

5. Taxes and Utilities. Taxes and installments of special assessments for the year of closing shall be prorated between the parties to the date of closing based upon current total true value as calculated by the County of Cass, ND, as of the date of closing. Prior year taxes and assessments must be paid by Seller in advance of closing.

6. Deeds. Seller shall sign warranty deeds prepared by Buyer. Buyer will take title as follows: City of Fargo, North Dakota, a municipal corporation.

7. Closing Date and Transfer of Possession. Closing shall take place at a time and date to be agreed by the parties. The City shall take possession of the real estate no later than the last day of the month of closing, unless other arrangements have been made. If City does not take possession on the date of closing, $1,000 will be required of Seller at closing and retained until such time as the possession of the property is secured by the City in satisfactory condition. Seller agrees the $1,000 deposit may be forfeited if the property is not delivered in satisfactory condition.

A separate Occupancy Agreement may be entered into between the parties should Seller desire to continue to reside in the dwelling longer than the end of the month of closing. If Seller elects to occupy the premises beyond the end of the month of closing, rent shall be paid to the City in the amount of $1,000/month beginning on the 1st day of the month following closing. 3% of the purchase price shall be retained until such time Seller vacates the premises.

If Seller vacates the property prior to closing, the end of the month of closing, or prior to the expiration of the time period contained in an Occupancy Agreement, Seller shall immediately notify Buyer so that appropriate measures can be taken to secure the premises.

8. Relocation Assistance. Seller may qualify as a "displaced person," as the term is defined under the Uniform Relocation Assistance and Real Property Acquisition Policies of 1970, as amended (42 U.S.C. 4601, et seq.) and under Chapter 54-01.1 of the North Dakota Century Code. The Purchase Price does not include relocation assistance. If the Seller qualifies as a displaced person and is otherwise entitled to relocation assistance, the parties will agree to relocation assistance payments in a separate written agreement.

9. Fixtures, Structures and Personal Property. Seller and Buyer agree that the real and personal property affixed to the real estate at the time of closing shall become the Buyer's property without the need for a bill of sale or other conveyance. The parties further agree that all carpeting, light fixtures, window coverings, dishwasher, and other appliances affixed to the property are included in this transaction, unless excepted herein:

Items Identified for Removal by Seller:

Refrigerator

10. Warranty. Seller provides no express warranties on the subject property. Buyer understands and agrees that the property is a used home and is being purchased "AS IS". Buyer shall make any inspection it deems necessary concerning the condition of said used home.

11. Inspection and Photographs. Seller agrees to allow City to enter the Premises for purposes of inspection, including but not limited to asbestos testing and mitigation.

(Signatures on following page.)

DATED this 1st day of April, 2020.

SELLER:

Marjorie A. Montplaisir

Marjorie A. Montplaisir, trustee

DATED this ____ day of_____, 2020.

BUYER:
City of Fargo, a North Dakota municipal corporation

_____
Timothy J. Mahoney M.D., Mayor

ATTEST:

_____
Steve Sprague, City Auditor

THE CITY OF Fargo
FAR MORE

(1)

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

April 29, 2020

Honorable Board of City
Commissioners
City of Fargo
Fargo, ND

Re: Project No. SR-20-A1

Dear Commissioners:

Bids were opened at 2:30 PM on Wednesday, April 29, 2020, for New and Reconstruction of City Order Sidewalks & Biketrails, Project No. SR-20-A1, located Citywide.

The bids were as follows:

Ti-Zack Concrete, Inc.	$228,089.00
Opp Construction	$239,788.25
Engineer's Estimate	$222,246.00

The special assessment escrow is not required.

This office recommends award of the contract to Ti-Zack Concrete, Inc. in the amount of $228,089.00 as the lowest and best bid.

Sincerely,

Tom Knakmuhs
Assistant City Engineer

TAK/klb

ENGINEER'S STATEMENT OF ESTIMATED COST

PROJECT # SR-20-A1

New and Reconstruction of City Order Sidewalks & Biketrails

Citywide

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:

New and Reconstruction of City Order Sidewalks & Biketrails Project # SR-20-A1 of the City of Fargo, North Dakota.

Line	Description	Unit	Quantity	Unit Price ($)	Amount ($)
Property Owner Cost					
1	Rem & Repl Sidewalk 4" Thick Reinf Conc	SY	737.00	100.00	73,700.00
2	Rem & Repl Sidewalk 6" Thick Reinf Conc	SY	123.00	125.00	15,375.00
3	Rem & Repl Driveway 6" Thick Reinf Conc	SY	20.00	120.00	2,400.00
4	F&I Sidewalk 4" Thick Reinf Conc	SY	800.00	70.00	56,000.00
5	Sodding	SY	20.00	25.00	500.00
6	Rem & Repl Pavement 6" Thick Asph	SY	137.00	95.00	13,015.00
				Property Owner Cost Total	160,990.00
City Cost					
7	Rem & Repl Curb & Gutter	LF	20.00	55.00	1,100.00
8	Rem & Repl Sidewalk 4" Thick Reinf Conc	SY	47.00	85.00	3,995.00
9	Rem & Repl Sidewalk 6" Thick Reinf Conc	SY	20.00	120.00	2,400.00
10	Remove Sidewalk All Thicknesses All Types	SY	20.00	20.00	400.00
11	F&I Sidewalk 4" Thick Reinf Conc	SY	20.00	85.00	1,700.00
12	F&I Sidewalk 6" Thick Reinf Conc	SY	20.00	125.00	2,500.00
13	F&I Det Warn Panels Cast Iron	SF	40.00	55.00	2,200.00
14	Casting to Grade - w/Conc	EA	2.00	750.00	1,500.00
15	Curb Stop Box to Grade	EA	6.00	650.00	3,900.00
16	Topsoil - Import Special	CY	20.00	55.00	1,100.00
17	Seeding Type B	SY	919.00	3.00	2,757.00
18	Mulching Type 1 - Hydro	SY	919.00	3.00	2,757.00
19	Sodding	SY	20.00	30.00	600.00
20	Rem & Repl Pavement 9" Thick Asph	SY	20.00	100.00	2,000.00
21	Traffic Control - Type 1	LS	1.00	15,000.00	15,000.00
				City Cost Total	43,909.00
Street Light Utilities					
22	Rem & Repl Pull Box Cover	EA	10.00	500.00	5,000.00
23	Rem & Repl Sidewalk 6" Thick Reinf Conc	SY	70.00	125.00	8,750.00
24	Seeding Type B	SY	47.00	10.00	470.00
25	Mulching Type 1 - Hydro	SY	47.00	10.00	470.00
26	Traffic Control - Type 2	LS	1.00	8,500.00	8,500.00
				Street Light Utilities Total	23,190.00
				Total Construction in $	**228,089.00**
			Engineering	10.00 %	22,808.90
			Legal & Misc	3.00 %	6,842.67
			Contingencies	10.00 %	22,808.90
			Administration	4.00 %	9,123.56
			Interest	4.00 %	9,123.56
				Total Estimated Costs	**298,796.59**
				Special Assessments	210,896.90
				Sales Tax Funds - Infrastructure - 420	57,520.79
				Utility Funds - Street Lights - 528	30,378.90
				Unfunded Costs	**0.00**

ENGINEER'S STATEMENT OF ESTIMATED COST

PROJECT # SR-20-A1

New and Reconstruction of City Order Sidewalks & Biketrails

IN WITNESS THEREOF, I have hereunto set my hand and seal

Date: 04/29/2020

Tom Knakmuhs

Assistant City Engineer

COVER SHEET
CITY OF FARGO PROJECTS

8

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

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

Street Lighting Rehabilitation & Incidentals

Project No. SL-20-A

Call For Bids	May 4	, 2020
Advertise Dates	May 11, 18 & 25	, 2020
Bid Opening Date	June 10	, 2020
Substantial Completion Date	October 25	, 2020
Final Completion Date	November 25	, 2020

N/A PWPEC Report (Attach Copy) **Part of 2020 CIP Revision**

X Engineer's Report (Attach Copy)

X Direct City Auditor to Advertise for Bids

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

N/A Notice to Property Owners (Dan Eberhardt)

Project Engineer Jim Mohr

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:

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

N/A Order Plans & Specifications

N/A Approve Plans & Specifications

N/A Adopt Resolution of Necessity

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

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

ENGINEER'S REPORT

STREET LIGHTING REHABILITATION & INCIDENTALS

PROJECT NO. SL-20-A

Nature and Scope

This project calls for the repair of miscellaneous street lighting items at various locations within the City of Fargo.

Purpose

The project's goal is to repair the street lighting system so that it is fully functional to the residents and traveling public.

Feasibility

The estimated cost of construction is approximately $144,972. The cost breakdown is as follows:

Estimated Construction Cost:	**$ 144,972.00**
Plus Engineering Fees 10%:	$ 14,497.20
Plus Legal & Misc. Fees 3%:	$ 4,349.16
Plus Contingency 10%:	$ 14,497.20
Plus Admin Fees 4%:	$ 5,798.88
Plus Interest Fees 4%:	$ 5,798.88
Total Estimated Cost:	**$ 189,913.32**

Project Funding Summary:

Street Lighting Traffic Control Device Utility Funds	**$ 189,913.32**

We believe this project to be cost effective.

REGISTERED PROFESSIONAL ENGINEER
TOM KNAKMUHS
PE-10059
DATE: 4/29/2020
NORTH DAKOTA

Tom Knakmuhs, P.E.
Assistant City Engineer

THE CITY OF Fargo FAR MORE

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

(9)

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

MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

FROM: DESI FLEMING
DIRECTOR OF PUBLIC HEALTH

DATE: APRIL 30, 2020

RE0: AGREEMENT FOR SERVICES WITH JANICE TWEET TO SERVE AS PROJECT COORDINATOR OF THE GLEAND NETWORK, $1000

The attached Agreement for Services with Janice Tweet for a maximum of $1000 to serve as the Project Coordinator of the GleaND network, a fruit and vegetable recovery system for the 2020 growing season.

No budget adjustment is required for this contract.

Suggested Motion: Move to approve the Agreement for Services with Janice Tweet.

DF/lls
Enclosure

THE CITY OF Fargo FAR MORE

AGREEMENT FOR SERVICES

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

THIS AGREEMENT, effective the 1st day of May 2020, by and between Fargo Cass Public Health ("FCPH"); and Janice Tweet (Independent Contracting Consultant).

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

A. **Term of Agreement:** The parties entered into a written agreement for the period of May 1, 2020, through September 30, 2020.

B. **Services to be provided by independent contractor:** Independent contractor will function as the Project Coordinator of the GleaND network, a fruit and vegetable food recovery system. During the 2020 growing season contractor will work closely with the Cass Clay Food Partners, including the Great Plains Food Bank, to implement the GleaND program in Cass County. Contractor will work with partners to recruit growers and volunteers, utilize the online networking system to implement gleans, collect data, and complete reports as needed.

C. **Reimbursement:** The independent contracting consultant shall be reimbursed a stipend of $1000.00 for services.

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

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

Special Considerations:

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

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

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

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

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

FARGO CASS PUBLIC HEALTH

By Desi Fleming
Desi Fleming, Director of Public Health

Date 4/30/20

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

Date _____

Independent Contractor

By Janice L Tweet
Janice Tweet, Independent Contractor

Date 4/24/2020

Contract Originator: Kim Lipetzky
P:\Contracts,Contracts,Executed, Contracts Original Copies,2020 Janice Tweet

THE CITY OF Fargo FAR MORE

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

(10)

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

MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

FROM: DESI FLEMING
DIRECTOR OF PUBLIC HEALTH

DATE: APRIL 30, 2020

RE: AMENDMENT TO THE CONTRACT WITH THE NORTH DAKOTA DEPARTMENT OF HEALTH AND HUMAN SERVICES FOR PREVENTION OF OPIOID RELATED DEATHS #810-11543 CFDA NO. N/A, $65,200

This is a request to approve the attached Purchase of Service Agreement Amendment with the North Dakota Department of Human Services, Behavioral Health Division for prevention of opioid related deaths through evidence based prevention strategies. The reimbursement has increased overall by $65,200 Total payment will not exceed $292,600.

No budget adjustments.

If you have questions, please contact Desi Fleming at 241.1380.

Suggested Motion: Move to approve the contract with the North Dakota Department of Health and Human Services for the prevention of opioid related deaths.

DF/lls
Enclosure

CONTRACT #810-11543
AMENDMENT A

AMENDMENT TO PURCHASE OF SERVICE AGREEMENT

On or about October 1, 2019, the state of North Dakota, acting through its North Dakota Department of Human Services, Behavioral Health Division (State) and City of Fargo (Vendor) entered into an Agreement to implement data-driven, evidence-based strategies to prevent opioid overdose-related deaths by increasing implementation of evidence-based prevention strategies, increase comprehensive evidence-based treatment and recovery services to support positive outcomes for individuals with an Opioid Use Disorder (OUD), and increase capacity of recovery support services to support individuals with an OUD.

The parties agree that certain parts of that Agreement should be changed:

Effective October 1, 2019, the Compensation section is amended to delete the section in its entirety and replace it with the following:

State, upon receipt and approval of SFN 1763 Request for Reimbursement, monthly report, and required Agreement deliverables met to date, shall pay Vendor monthly payments of $20,672.73 for October 2019 through January 2020; $29,987.01 for February through July 2020; and a final payment of $29,987.02 for August 2020. Total payment under this Agreement may not exceed $292,600. Vendor shall submit its request for reimbursement to State monthly. Vendor shall submit its final payment request to State no later than 15 days after the expiration or termination of this Agreement, or upon request by State.

All other terms and conditions remain as previously written.

CITY OF FARGO

By_____
Date_____
Its__Mayor, City of Fargo_____

By_____ 4/30/20
DATE
Its Director of Public Health

STATE OF NORTH DAKOTA
NORTH DAKOTA DEPARTMENT OF HUMAN SERVICES

By_____ _____
PAMELA SAGNESS, DIRECTOR DATE
BEHAVIORAL HEALTH DIVISION

By_____ _____
KYLE J. NELSON DATE
CONTRACT OFFICER
Approved for form and content

CITY OF Fargo

(11)

INFORMATION SERVICES
225 4th St N
FARGO, ND 58102
PHONE: 701-476-6700
FAX: 701-241-8253

April 29, 2020

Honorable Board of
City Commissioners
City of Fargo
200 N 3rd St. S
Fargo, ND 58102

Dear Commissioners;

The Police Department is deploying 4 new squad car. We need to procure the Mobile Data Computers (MDCs) and In-Car-Video (ICV) equipment for the vehicles. We plan to use the NASPO Valuepoint purchasing agreement. The cost will be $43,864.92.

Also, the MDCs in the Fire Department vehicles have reached their End-Of-Life. We plan to replace them with Panasonic Toughbooks, similar to the equipment installed in the Police vehicles. We will also use the NASPO Valuepoint purchasing agreement for this equipment. The cost will be $103,864.92.

The Finance Committee has approved both purchases using the NASPO contract.

The Police Department has the equipment in their 2020 budget for the $43,139.82 purchase. The Fire Department and IS have find in the 2020 budget to cover the Fire MDC and ICV purchase.

Suggested Motion:

Direct Information Services staff to purchase the equipment using the NASPO ValuePoint Contract.

Thank you,

R M Gronneberg

Ron Gronneberg
CIO, City of Fargo

CITY OF Fargo

(12)

Fargo Inspections
City of Fargo
225 Fourth Street North
701-241-1561
fax 701-241-1526

Memorandum

DATE: 4/29/2020

TO: Mayor Mahoney and Board of City Commissioners

FROM: Bruce Taralson, Inspections Administrator BT

SUBJECT: Dangerous Building Notice and Order at 1007 8 Avenue N., Fargo, ND 58102

This is to notify you that the property owner of 1007 8 Avenue N., Fargo, ND 58102 the property that is subject of the attached Notice, has failed to comply with my order to either obtain a permit to repair or remove the heavily damaged structure at that location within the time allowed for that removal. In accordance with Fargo Municipal Code Article 21-0405, it will now be necessary for you to set a date for a hearing of this order at which time the property owner will be able to appear and show cause why the building should not be removed and the costs of that removal assessed against this property.

The Inspections Department has been notified that the property has recently come under new ownership. The previous owner(s) and new owner(s) will be notified of an approved hearing.

The recommendation is **to make a motion, in accordance with FMC Article 21-0405, to set Monday, May 18, 2020 as the time and date for the hearing regarding the dangerous building order for the structure at 1007 8 Avenue N., Fargo, ND 58102.**

Fargo Inspections

City of Fargo
225 4th Street North
701-241-1561
701-476-6779 fax

CITY OF Fargo

NOTICE OF DANGEROUS BUILDING

TO: Dietz Investment Group LLP
2507 Parkview Drive S.
Fargo, ND 58103

YOU ARE HEREBY Given Notice of the following:

1. That this Notice is being given to you pursuant to Fargo Municipal Code, Article 21-04 concerning Dangerous Buildings.

2. That the building with which this Notice is concerned is commonly known as 1007 8 Ave N, and is located on that tract of land in the city of Fargo, more particularly described as follows:

Harwoods 3rd, Block 10, Lot 5

(hereinafter referred to as "the building")

3. That an inspection was made of the building on October 30, 2019 by Bill Thompson, Building Inspector, and on January 9, 2020 by James Haley, Deputy Assessor, of the City of Fargo.

4. That the building inspector for the City of Fargo has found the building, consisting of a single-story, wood-framed structure to be a Dangerous Building within the standards set forth in the Fargo Municipal Code, Article 21-04, Dangerous Buildings and IPMC Code 108.1.5 concerning Dangerous Structures.

5. This building has been found to be a dangerous building by the building inspector. This notice is to remain on this building until it is repaired, vacated, or demolished in accordance with the notice which has been given the owner, occupant, lessee, or mortgagee of this building and all other persons having an interest in said building as shown by the records of the register of deeds of the county of Cass. It is unlawful to remove this notice until such notice is complied with. Source: 1952 Rev. Ord. 21-0404.

6. That the owner of the building must demolish the building within 30 (thirty) days from the date of this notice or obtain a permit to repair. To obtain a permit, see 'Conditions Found Statement' below.

7. That the building is unsafe and is a dangerous building in the following respects: See 'Conditions Found Statement' below.

A. Deputy Assessor, James Haley, of the City of Fargo has deemed that the building has been damaged or deteriorated to the extent of more than fifty (50) percent of its original value prior to the damage or deterioration. Source: Fargo Municipal Code, Article 21-0402 concerning Dangerous Buildings.

8. The building is unsafe and constitutes a public nuisance pursuant to Fargo Municipal Code, Article 21-04 concerning Dangerous Buildings and Section 116 of the International Building Code as adopted by Article 21-0101 of the Fargo Municipal Code.

9. You are further given Notice that unless the building is demolished within the time period set forth herein, the City of Fargo will take such steps as are necessary to cause said building to be demolished pursuant to Fargo Municipal Code, Article 21-04 concerning Dangerous Buildings and the International Building Code and the owner will be assessed such costs as are provided for therein.

10. Order for vacation of building. The undersigned building official has determined that the building or structure must be vacated as required by Section 108.2 of the International Property Maintenance Code, 2018 edition. Therefore, it is hereby ordered that the building or structure shall be vacated immediately, and remain vacated, on this 7th day of February, 2020.

11. The undersigned building official has determined that the building must remain secured. Therefore, it is hereby ordered that all means of entering the building remain secured to prevent unauthorized entrance. **An inspector will continue to verify compliance.** Failure to keep the building secured will result in the City of Fargo hiring an independent contractor to secure the building. All expenses for securing the building will be assessed against the property.

Dated this 7th day of February, 2020.

Bill Thompson
Building Inspector
City of Fargo, ND

Conditions Found Statement

On October 30, 2019, Building Inspector Bill Thompson, was present at 1007 8 Ave N, Fargo, ND to address a complaint inspection. The following violations were found:

- Extensive property damage stemming from a fire on October 25, 2019.
- Multiple windows are boarded up.
- Fire debris/debris scattered around property.
- As per City of Fargo Water Department on February 7, 2020, the water meter was pulled on October 30, 2019.
- As per Xcel Energy on February 7, 2020, the electric and gas services were disconnected in May of 2018. Both meters were removed on November 1, 2019 – electric meter number 2102582, gas meter number 952872.

Bill Thompson
Building Inspector
City of Fargo, ND

Bruce Taralson
Inspections Director

2/7/20
Date Signed

THE CITY OF Fargo
FAR MORE

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

(13)

MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

FROM: NICOLE CRUTCHFIELD, PLANNING DIRECTOR

DATE: APRIL 30, 2020

RE: AGREEMENT WITH BEYOND SHELTER, INC. FOR REVELOPMENT OF 314, 320, 324 7TH STREET NORTH AND 712 4TH AVENUE NORTH

With approval of the April 20th City Commission consent agenda, the proposal received by Beyond Shelter, Inc in response to RFP #20067 was accepted. The RFP sought proposals to build affordable housing on City owned parcels at 314, 320, 324 7 Street North and 712 4th Avenue North.

Attached is the purchase agreement and developer agreement for your review. They intend to develop affordable senior housing within two years. As an eligible CDBG activity, the City of Fargo in essence, will donate the parcels for the intention of reducing the cost of the construction and lowering rents. BSI, Inc desires to close on the land towards the end of May.

Staff is seeking approval of the purchase agreement and development agreement, following CDBG rules, and subject to legal review.

Recommended Motion: Award agreements with Beyond Shelter, Inc for the redevelopment of 314, 320, 324 7th Street North, and 712 4th Avenue North pending legal review.

PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT (the "Agreement") is made and entered into as of May 4, 2020 by and between the CITY OF FARGO, a North Dakota municipal corporation ("Seller"), and BEYOND SHELTER, INC., a North Dakota nonprofit corporation ("Buyer").

RECITALS:

A. Seller is the owner of real property located in the City of Fargo, North Dakota and legally described on Exhibit A attached hereto and hereby made a part hereof, together with all rights, title and interest appurtenant thereto (the "Real Property").

B. Seller desires to sell and assign to Buyer, and Buyer agrees to purchase and accept from Seller, the Real Property under the terms and conditions hereunder.

NOW, THEREFORE, in consideration of mutual covenants set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer agree as follows:

1. Sale and Purchase. Subject to the terms, conditions, representations and warranties set forth in this Agreement and the Developer's Agreement, Seller agrees to sell and assign to Buyer, and Buyer agrees to purchase and accept from Seller, good and marketable title to the Real Property free of all encumbrances, unless otherwise agreed herein.

2. Purchase Price. The purchase price for the Real Property shall be $1.00 (the "Purchase Price") and shall be payable as cash, certified check, cashier check or by wire transfer of funds on the Closing Date.

3. Real Estate Taxes and Special Assessments. Taxes and special assessments, if any, due and payable in 2020 shall be prorated to the date of closing. Real estate taxes and special assessment installments due and payable in 2019 and all prior years are the responsibility of the Seller. Real estate taxes and special assessments due and payable in 2021 and subsequent years are the responsibility of the Buyer.

4. Personal Property. Personal Property included in this transaction is: NONE. Any Personal Property currently on the Real Property shall be removed by Seller prior to the Closing Date.

5. Parking Leases. Seller shall assign all applicable Parking Leases to the Buyer.

6. Closing Costs. It is understood and agreed that as part of this purchase, Seller shall be responsible for updating the abstract of title, the cost of preparation of the deed, the cost of preparation of and recording fees for any documents necessary to remove any liens or encumbrances or to clear title, the broker's selling commission, if any; and one-half of the fee for any closing agent or company. Buyer shall pay the cost of recording the deed and mortgage, the cost of a title opinion, the cost of an appraisal, if any, and one-half of the fee for any closing agent or company.

7. Covenants of Seller. Between the date of this Agreement and the Closing Date, Seller shall:

a. comply with all laws, ordinances, regulations and restrictions affecting the Real Property and its use;

b. without first obtaining the prior written consent of Buyer, refrain from creating any mortgage, easement, lien, pledge or any other encumbrance against or in any way affecting the Real Property, and refrain from conveying any leasehold or other interest in the Real Property, with the exception of any permitted encumbrances listed on Exhibit B attached hereto (the "Permitted Encumbrances");

c. refrain from committing any waste or nuisance upon the Real Property; and

d. without first obtaining the prior written consent of Buyer, refrain from entering into any contracts or agreements pertaining to the Real Property, except contracts or agreements which are consistent with Buyer's rights hereunder and which may be terminated prior to the Closing Date.

8. Closing.

a. General; Possession. The closing of the transaction contemplated hereby (the "Closing") shall occur on or before May 22, 2020 (the "Closing Date") or at such other date, time as the parties shall agree in writing and shall occur at The Title Company, 35 4th Street North, Fargo, ND 58102. Possession of the Real Property shall be transferred by Seller to Buyer on the Closing Date.

b. Deliveries by Seller at Closing. At the closing, Seller shall deliver to Buyer (i) a Warranty Deed, in recordable form, duly executed by Seller, conveying good and marketable title to the Real Property to Buyer and (ii) such other documents as may be reasonably required by Buyer or by the Buyer's title insurance company in order to convey good and marketable title to Buyer and to allow for Buyer to obtain an owner's policy of title insurance in a form reasonably acceptable to Buyer (collectively, the "Seller Closing Documents").

c. Deliveries by Buyer at Closing. At the Closing, Buyer shall deliver to Seller the entire Purchase Price.

9. Representations and Warranties of Seller. Seller represents and warrants to and covenants with Buyer that: (i) Seller is a municipal corporation under the laws of the State of North Dakota; (ii) Seller has the power to enter into this Agreement and all the Seller's Closing Documents signed or to be signed by it; (iii) each of the Seller's Closing Documents has been or will be duly authorized on the part of Seller prior to its execution executed; and (iv) such documents are or will be valid and binding obligations of Seller, and are or will be enforceable in accordance with their terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium, creditor's rights and other similar laws. No consents or approvals from any third parties are required for Seller to perform its obligations under this Agreement.

EXCEPT AS EXPRESSLY SET FORTH HEREIN, SELLER MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND TO BUYER, INCLUDING, WITHOUT LIMITATION, THE PHYSICAL CONDITION OF THE REAL PROPERTY OR ITS SUITABILITY FOR ANY PARTICULAR PURPOSE. Buyer acknowledges that Buyer has already (or, prior to the Closing Date, will have) independently inspected or is otherwise familiar with the Real Property and that Buyer has entered into this Agreement based upon such examination, inspection, familiarity and Buyer's right to conduct the inspections. Buyer agrees that the Real Property is to be sold to and accepted by Buyer at Closing in its then present physical condition, "AS IS, WITH ALL FAULTS, IF ANY, AND WITHOUT ANY WARRANTY WHATSOEVER, EXPRESS OR IMPLIED;" specifically (without limiting the generality of the foregoing) without any warranty of (i) the nature or quality of the construction, structural design and/or engineering of any improvements, (ii) the quality of the labor and materials included in the any improvements, (iii) the soil conditions existing at the Real Property for any particular purpose or

developmental potential, (iv) the presence or absence of any petroleum or petroleum by-products, hazardous substance, matter or waste in or on the Real Property, and (v) compliance of the Real Property with any applicable environmental laws or regulations.

10. Governing Law. This Agreement shall be construed as to both validity and performance and enforced in accordance with and governed by the laws of the State of North Dakota.

11. Counterparts. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one, complete Agreement. A copy of this Agreement delivered as or by .pdf, facsimile or other electronic means containing a party's signature shall be deemed such party's original, binding signature.

IN WITNESS WHEREOF, the undersigned have signed this Purchase Agreement as of the day and year first written above.

SELLER:

CITY OF FARGO,
a North Dakota municipal corporation

By:_____
Name:_____
Its:_____

BUYER:

BEYOND SHELTER, INC.,
a North Dakota nonprofit corporation

By:_____
Name: Daniel P. Madler
Its: Chief Executive Officer

EXHIBIT A

Addresses and Legal Descriptions

Address: 314 7th Street North, Fargo, ND 58102

Legal Description: Lot Four, Block Ten, Roberts Second Addition to the City of Fargo, situate in the County of Cass and the State of North Dakota

Address: 320 7th Street North, Fargo, ND 58102

Legal Description: Lot Five, Block Ten, Roberts Second Addition to the City of Fargo, situate in the County of Cass and the State of North Dakota

Address: 324 7 Street North, Fargo, ND 58102

Legal Description: The East 53.5 feet of Lot Six, Block Ten, Roberts Second Addition to the City of Fargo, situate in the County of Cass and the State of North Dakota

Address: 712 4 Avenue North, Fargo, ND 58102

Legal Description: The West 43 feet of Lot Six, Block Ten, Roberts Second Addition to the City of Fargo, situate in the County of Cass and the State of North Dakota

EXHIBIT B

Permitted Encumbrances

Developer's Agreement
Between the City of Fargo & Beyond Shelter, Inc.
Community Development Block Grant (CDBG)
Property Disposition for Affordable Housing – The Milton Earl

THIS AGREEMENT is entered into this ____ day of _____, 2020, (the "Commencement Date") by and between the City of Fargo (the "City"), a North Dakota municipal corporation, and Beyond Shelter, Inc., a North Dakota incorporation (the "Developer") whose DUNS number is DUNS #.

WHEREAS, Developer wishes to acquire property from the City upon which Developer will construct affordable senior housing for predominately low to moderate income residents ; and,

WHEREAS, the City wishes to provide Developer with certain real property—land—that was purchased by the City with Community Development Block Grant ("CDBG") funds, for said purpose;

NOW THEREFORE, in consideration of the parties' mutual covenants contained in this Agreement, and other good and valuable consideration, the parties agree as follows:

Section 1 The Project—Development, Design, Construction, Finance, and Operate.

A) The City shall quitclaim, grant and convey to Developer in that certain real property situate in the County of Cass and State of North Dakota, described as:

Parcel No.	*Address*	*Legal Description*
01-2382-01290-000	*314 7 St N*	
01-2382-01300-000	*320 7 St N*	
01-2382-01310-000	*324 7 St N*	
01-2382-01320-000	*712 4 Ave N*	

Said property cumulatively referred to herein as the "**Subject Property**".

B) Said conveyance shall be by quitclaim deed by the City to be delivered at a Closing to occur within 30 days of the Effective Date.

C) The Developer will construct upon the Property an affordable residential housing development consisting of at least 42 housing units leased to residents ages 62 years and older (the "**Project**"). This Project will maximize the highest and best use of the Subject Property. The design will be consistent with the character of the surrounding neighborhood. The construction will be complete or substantially complete (90% or more) within 24 months of the Effective Date.

D) All activities funded with CDBG funds must meet one of the following CDBG program's National Objectives:

i) benefit low-to-moderate income persons;

ii) aid in the prevention or elimination of slum or blight; or,

iii) meet community development needs having a particular urgency, as defined in 24 CFR §570.208.

E) **The Developer certifies that the activity carried out under this Agreement will meet the Low-to-Moderate Income Housing National Objective under 24 CFR §570.208(a)(3) including the following requirements:**

i) at least 51% of the residents must have income at or below 80% of the area median income at the time of occupancy;

ii) Rents must be set at levels which are affordable to low-to-moderate income persons as provided by 24 C.F.R. Part 570.483(b)(3); and,

iii) Rent and income levels shall align with published limits for the Low Income Housing Tax Credit program.

[Referred to herein as the "Low-to-Moderate Income Housing National Objective"]. The HUD Income Limits change annually and are available at the HUD User website (www.huduser.gov) under "Data Sets". The most up to date Income Limits must be used to calculate income of residents. HUD Income Limits are set by the Department of Housing and Urban Development (HUD), which determine eligibility for assisted housing programs. Income limits are based on Median Family Income estimates and Fair Market Rent area definitions for each metropolitan area, parts of some metropolitan areas, and each non-metropolitan county. Income, race, and ethnicity data for each resident will be provided to the City upon occupancy of at least 51% of units by low and moderate income households (e.g., at least 22 units in a 42 unit complex are occupied by LMI households. Developer shall periodically complete the form at Exhibit B and remit the same in a timely manner to City.

F) Residential occupancy of the Subject Property must be occupied and rented to residents meeting the Low-to-Moderate Income Housing National Objective for at least five (5) years following the Effective Date of this Agreement,

G) The Developer shall comply with the requirements of Title 24 of the Code of Federal Regulations, Part 570--the U.S. Housing and Urban Development regulations concerning CDBG including Subpart K of these regulations, except that (1) the Developer does not assume the City's environmental responsibilities described in 24 CFR 570.604 and (2) the Developer does not assume the City's responsibility for initiating the review process under the provisions of 24 CFR Part 52. The Developer shall also materially comply with all other applicable Federal, state, and local laws, regulations, and policies governing the funds provided under this Agreement. The Developer shall utilize funds available under this Agreement to supplement rather than supplant funds otherwise available.

H) Assurances The Developer agrees to use CDBG resources for the purposes authorized by the City pursuant to this Agreement. The Developer further agrees to comply with the certifications, attached as Exhibit A, and made a part of this Agreement, which are required by the Department of Housing and Urban Development for all CDBG projects.

I) Conflict of Interest. The Developer agrees to abide by the provisions of 24 CFR 84.42 and 570.611, which include (but are not limited to) the following:

The Developer shall maintain a written code or standards of conduct that shall govern the performance of its officers, employees, or agents engaged in the award and administration of agreements supported by Federal funds.

i) No employee, officer, or agent of the Developer shall participate in the selection, or in the award, or administration of, an agreement supported by Federal funds if a conflict of interest, real or apparent, would be involved.

ii) No covered persons who exercise or have exercised any functions or responsibilities with respect to CDBG-assisted activities, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest in any agreement, or have a financial interest in any agreement, subcontract, or agreement with respect to the CDBG-assisted activity, or with respect to the proceeds from the CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for a period of one (1) year thereafter. For purposes of this paragraph, a "covered person" includes any person who is an employee, agent, consultant, officer, or elected or appointed official of the City, the Developer, or any designated public agency.

K) Administrative Requirements

i) Financial Management/OMB

(a) *Accounting Standards* – The Developer agrees to comply with Part 200 of Title 2 CFR and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.

(b) *Cost Principles* – The Developer shall administer its program in conformance with OMB (U.S. Office of Management & Budget) Circulars A-122, "Cost Principles for Non-Profit Organizations," or A-21, "Cost Principles for Educational Institutions," as applicable. These principles shall be applied for all costs incurred whether charged on a direct or indirect basis.

i) Documentation & Recordkeeping

(a) *Records to be Maintained* – The Developer shall maintain all records required by the Federal regulations specified in 24 CFR §570.506, that are pertinent to the activities to be funded under this Agreement. Such records shall include but not be limited to:

(i) Records providing a full description of each activity undertaken.

(ii) Records demonstrating that each activity undertaken meets one of the National Objectives of the CDBG program.

(iii) Records required to determine the eligibility of activities.

(iv) Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG assistance.

(v) Records documenting compliance with the fair housing and equal opportunity components of the CDBG program.

(vi) Financial records as required by 24 CFR 570.502, and Part 200 of Title 2 CFR.

(vii) Other records necessary to document compliance with Subpart K of 24 CFR Part 570.

(b) Records of reimbursable expenses pertaining to the acquisition of the Subject Property and records of accounts between the City and the Developer shall be kept in a manner consistent with generally recognized accounting standards. The City, the U.S. Department of Housing and Development, the Comptroller General of the U.S. or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the Developer, including receipts, invoices, and other financial records, employment records, and client demographic and income data which are directly pertinent to the agreement for the purpose making an audit, examination, excerpts and transcriptions.

(i) *Records Retention* – The Developer shall retain all financial records, supporting documents, statistical records, and all other records pertinent to the Agreement for a period of four (4) years after the date of the HUD's approval of the City's Consolidated Annual Performance and Evaluation Report (CAPER – due annually in late July), in which the activities assisted under this Agreement are reported on for the final time. Notwithstanding the above, if there is litigation, claims, audits, negotiations, or other actions that involve any of the records cited and that have started before the expiration of the four-year period, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the four-year period, whichever occurs later. The Developer shall retain information in its files which shall clearly document all activities performed in conjunction with this Agreement including, but not limited to, financial transactions, conformance with assurances, and Developer activity reports.

ii) *Client Data* – The Developer shall maintain client data demonstrating client eligibility for services provided. Such data shall include, but not be limited to, client name, address, income level or other basis for determining eligibility, and description of service provided. Such information shall be secured under lock and key and made available to City monitors or their designees for review upon reasonable advanced request. See Exhibit B for a participant data collection form sample. Developer may use their own format and method to collect the same data.

i) Title. Developer's acquisition of the Subject Property in the Subject Property shall only be subject to those easements, restrictions, and other matters of record, reasonably approved by the Developer (the "Pre-Approved Title Matters"). The City shall furnish to the Developer an abstract of title covering the Subject Property (the "Abstract") for review by the Developer's attorney with Developer being responsible for updating of any abstracts at Developer's expense

ii) Survey. The Developer shall have the right to obtain an ALTA as-built survey of the Subject Property in form reasonably acceptable to the Developer (the "Survey") at Developer's expense. If requested by the Developer, City shall promptly deliver to the City copies of all material documents in its possession which will assist the City in having the Survey created (including constructions documents, plans, etc.).

iii) Corrections to Title. If any objections to title or to the Survey are made (other than to the Pre-Approved Title Matters), City will use best efforts to correct such objections to the reasonable satisfaction of the Developer prior to the Closing. Notwithstanding the foregoing, the City will reasonably cooperate with Developer to address and/or remove any title defects.

Section 2 ***City to Convey Community Development Block Grant (CDBG)-Acquired Property to Developer***

The City will convey the Subject Property to Developer, said property having been previously acquired by the City using Community Development Block Grant Funds. Said funds require certain conditions, or covenants, entitled as Land Use Restrictive Covenants to be imposed upon the Subject Property declared by the Developer, as owner of the Subject Property, the form of which shall be substantially in conformance with the form attached hereto as Exhibit "C", and recorded against the Developer's interest in the Subject Property, each for a period of Five (5) years from the Commencement Date (as defined below) (the "Term").

The City shall designate one or more representatives of the City who will be authorized to make all necessary decisions required of the City on behalf of the City in connection with the execution of this Agreement, including monitoring the use of the Subject Property in connection with the activity. The "Commencement Date" shall be deemed to occur on the date on which the Project achieves occupancy of at least 51% of the units by low to moderate income households (80% of the area median income as set forth by HUD's annual income limits, which shall be evidenced in writing by Developer to the City.

Section 3 Closing

A) The conveyance of the Subject Property contemplated hereby, [the "**Closing**"] will occur as soon as reasonably possible after the Contingencies have been waived or satisfied by the City and Developer, as applicable, but not later than 30 days from the Effective Date hereof.

B)

i) Title and Survey. The City shall be responsible for performing any and all title and survey examination or due diligence that the City deems prudent, at the City's sole cost and expense. As mentioned, If any objections to title or to the Survey are made (other than to the Pre-Approved Title Matters), Developer will use best efforts to correct such objections to the reasonable satisfaction of the City prior to the Grant Funds Closing. Notwithstanding the foregoing, the City will reasonably cooperate with Developer to address and/or remove any title defects.

C) Closing Documents.

i) City Closing Documents. The City will deliver to Developer at the Closing:
   (a) the Subject Property specified in Section 21, above; and
   (b) any other items required by this Agreement or reasonably requested by Developer to the closing agent for the Closing.

ii) Developer Closing Documents. Developer will deliver to the City at the Closing:
   (c) a resolution of the manager of Developer authorizing and approving the transaction contemplated by this Agreement, certified as true and correct by an officer of Developer; and
   (d) any other items required by this Agreement or reasonably requested by the closing agent or the City for the Closing.

D) Closing Costs and Prorations.

i) Costs of Closing. Developer will be responsible for any document recording fees required for correction of title. Developer will be responsible for all document recording fees (including the Land Use Restrictive Covenant(s) or Agreement(s)), title examination costs and title insurance premiums. Developer will pay the closing fee and escrow fees, if any, imposed by the closing agent in connection with this transaction.

Section 4 Reserved.

Section 5 ***Events of Default.***

Each of the following shall constitute a default by the Developer under this Agreement ("Event of Default") as the same are set forth in Part 200 of Title 2 CFR [Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher education, hospitals, and other non-profit organizations] , but further subject to the Risk of Certain Losses/Force Majeure provision (Subsection 6 (C)) below:

A) Failure to materially comply with any of the rules, regulations or provisions referred to herein, or such statues, regulations, executive orders, and HUD guidelines, policies or directives as may become applicable at any time.

B) Failure, for any reason, of the Developer to materially fulfill its obligations under this Agreement, in a timely and reasonably proper manner.

C) Ineffective or improper use of the Subject Property provided under this Agreement.

D) Submission of incorrect or incomplete reports that are not subsequently corrected within thirty (30) days following notice from the City.

and, of the following (in addition to those set forth above from Part 200 Title 2 CFR):

E) the failure to make any payment of any sums payable under this Agreement, which failure shall continue for fifteen (15) days after receipt of written notice to the Developer by the City (a "Monetary Payment Default");

F) the Developer's material violation or material failure to perform or observe any covenant or condition of this Agreement, other than a "Monetary Payment Default;

G) the Developer has instituted voluntary proceedings in bankruptcy;

H) involuntary proceedings in bankruptcy have been instituted against the Developer that are not discharged within ninety (90) days thereafter;

I) any proceedings has been instituted by or against the Developer under any Law relating to insolvency or bankruptcy reorganization, and in the case of an involuntary proceeding, that is not discharged within ninety (90) days after filing;

J) a trustee or receiver shall be appointed for the Developer by any court of competent jurisdiction, or (v) the Developer shall make a general assignment for the benefit of its creditors; or

K) any representation or warranty made by the Developer herein shall prove to have been incorrect when made, in any material respect.

L) Failure of the Developer to materially comply, perform, fulfill or observe an obligation under this Agreement shall be deemed to have occurred when such failure or violation has continued for thirty (30) days after receipt of written notice to the Developer by the City identifying with particularity the failure or violation; provided, however, that so long as such failure or violation (said failure or violation being a non-Monetary Payment Default) is not reasonably capable of being cured within such thirty (30) day period, there shall exist no Event of Default if the Developer promptly advises the City of the Developer's intention to duly institute all steps reasonably necessary to cure such default and the Developer promptly commences cure of such failure or violation within such thirty (30) day period and diligently pursues such cure to completion, but such additional time for cure shall not exceed one-hundred eighty (180) days after receipt of the initial written notice to the Developer by the City.

Section 6 Remedies Upon Event of Default.

A) Upon the occurrence of an Event of Default, each City will have the right to exercise any of the following remedies:

i) exercise any remedy afforded hereunder.

ii) seek specific performance or other equitable relief.

iii) sue for money damages.

B) Remedies Cumulative; Limitation on Remedies; Waiver.

All rights and remedies set forth in this Agreement are cumulative and in addition to the Parties' rights and remedies at law or in equity, subject, however, to any limitation on damages, fees and costs as provided for in this Agreement. A Party's exercise of any such right or remedy shall not prevent the concurrent or subsequent exercise of any other right or remedy. A Party's delay or failure to exercise or enforce any rights or remedies shall not constitute a waiver of any such

rights, remedies, or obligations. No Party shall be deemed to have waived any default unless such waiver is expressly set forth in an instrument signed by such Party. If a Party waives in writing any default, then such waiver shall not be construed as a waiver of any covenant or condition set forth in this Agreement, except as to the specific circumstances described in such written waiver. Neither payment of a lesser amount than the sum due hereunder, nor endorsement or statement on any check or letter accompanying such payment shall be deemed an accord and satisfaction, and the other Party or Parties may accept the same without prejudice to the right to recover the balance of such sum or to pursue any other remedy.

C) Use & Reversion of Assets. The use and disposition of real property and equipment under this Agreement shall be in compliance with the requirements of Part 200 Title 24 CFR and 24 CFR 570.502, 570.503, and 570.504, as applicable, which include but are not limited to the following:

i) The Developer shall transfer to the City any Grant Funds on hand, if any, at the time of expiration, cancellation, or termination.

ii) Real property under the Developer's control that was acquired or improved, in whole or in part, with funds under this Agreement in excess of $25,000 shall be used to meet one of the CDBG National Objectives pursuant to 24 CFR 570.208 for a minimum of five (5) years after the date of this Agreement. If the Developer fails to use CDBG-assisted real property in a manner that meets a CDBG National Objective for the prescribed period of time, the Developer shall pay the City an amount equal to the current fair market value of the property less any portion of the value attributable to expenditures of non-Grant Funds for acquisition of, or improvement to, the property. Such payment shall constitute program income to the City. The Developer may retain real property acquired or improved under this Agreement after the expiration of the five-year period.

iii) In all cases in which equipment acquired, in whole or in part, with funds under this Agreement is sold, the proceeds shall be program income (prorated to reflect the extent to that funds received under this Agreement were used to acquire the equipment.) Equipment not needed by the Developer for activities under this Agreement shall be (a) transferred to the City for the CDBG program or (b) retained after compensating the City (an amount equal to the current fair market value of the equipment less the percentage of non-Grant Funds used to acquire the

D) Risk of Certain Losses; Force Majeure.

i) The non-occurrence of any condition under this Agreement shall not give rise to any right otherwise provided in this Agreement when such failure or non-occurrence is due to the occurrence of a Force Majeure event and without the fault of the Party claiming an extension of time to perform or excuse from performance. Without limitation of and in addition to the foregoing, if a Party hereto shall be delayed or hindered or prevented from the performance of any obligation required under this Agreement by reason of a Force Majeure event, then the performance of such obligation shall be excused for the period of delay and the period for performance of any such act shall be extended for a period equivalent to the period of such delay. An extension of time for any such cause, if any, shall be limited to the period of delay due to such cause, which period shall be deemed to commence from the time of the commencement of the cause; provided, however, that if

notice by the Party claiming such extension is sent to the other Parties more than thirty (30) days after the commencement of the cause, the period shall be deemed to commence thirty (30) days prior to the giving of such notice. The Party claiming a Force Majeure event shall remedy the Force Majeure event with all reasonable dispatch, and shall make commercially reasonable efforts to avoid the adverse impacts thereof and to resolve the event or occurrence once it has occurred in order to resume performance. As soon as the Party claiming a Force Majeure event is able to resume performance of all or a portion of its obligations excused as a result of the occurrence of Force Majeure, such Party shall give prompt notice thereof to the other Parties. Times of performance under this Agreement also may be extended as mutually agreed upon in writing by the Parties. However, failure to agree to a proposed extension of time for performance shall not be deemed grounds for delay or failure to timely cure an Event of Default under this Agreement.

ii) Force Majeure. A Force Majeure event shall be defined as an event that causes delay by a party or failure by a party in the performance of its obligations (other than the payment of money) results, without its fault or negligence, from any cause beyond its reasonable control, such as acts of God, acts of civil or military authority, embargoes, epidemics, war, riots, insurrections, fires, explosions, earthquakes, floods, adverse weather conditions, union activity, strikes or lock-outs, and changes in laws, statutes, regulations, or ordinances.

E) Limited Recourse Obligations; Members and Officers Not Liable.
All covenants, stipulations, promises, agreements, and obligations of the City contained herein shall be deemed to be covenants, stipulations, promises, agreements, and obligations of the City and not of any member, director, officer, employee, or agent of the City in his or her individual capacity, and no recourse shall be had for any Claim hereunder against any member, director, officer, employee, or agent of the City in such capacity. All covenants, stipulations, promises, agreements, and obligations of Developer contained herein shall be deemed to be covenants, stipulations, promises, agreements, and obligations of Developer and not of any shareholder, member, partner, owner, manager, officer, employee, or agent of Developer in his or her individual capacity, and no recourse shall be had for any Claim hereunder against any shareholder, member, partner, owner, manager, officer, employee, or agent of Developer in such capacity.

Section 7 Amendments

Except as otherwise provided in this Section, this Agreement may not be amended except by written instrument approved by both parties and executed by a duly authorized representative of each party. Such amendments shall not invalidate this Agreement, nor relieve or release the City or Developer from its obligations under this Agreement.

To the extent this Agreement obligates the Developer to conform with Federal or state statutes, regulations, or other formal guidance and such statutes, regulations or other formal guidance are amended, modified or otherwise formally issued or enacted, this Agreement shall be deemed to be amended to include such obligation; provided, however, that to the extent the City is so authorized to allow, failure by the Developer to comply, perform, fulfill or observe such obligation may not be deemed to be an event of default unless the City have given the Developer notice of the said amendment and provided Developer a reasonable period of time in which to so comply, perform, fulfill or observe such amendment or obligation, in the same manner as is set forth for material

failures as described in Section 5 (L), above. Further, if such amendments result in a change of funding, the scope of services, or schedule of the activities to be undertaken as part of this Agreement, such modifications will be incorporated only by written amendment signed by both parties.

Notwithstanding anything to the contrary contained herein, the City acknowledges and agrees that Developer intends to develop the Project in a manner that qualifies for low-income housing tax credits under Section 42 of the Internal Revenue Code of 1986, as amended and that in connection with such development, Developer will admit a tax credit investor as a limited partner of Developer (the "Limited Partner"). Further, in connection with the development of the Project, Developer will be obtaining additional construction and permanent financing from one or more lenders (the "Third Party Lenders") to facilitate the construction and operation thereof. Prior to closing on the admission of the Limited Partner as a limited partner of Developer, and the additional financing from Third Party Lenders, the City agrees that it shall reasonably cooperate with the Developer, Limited Partner, and Third Party Lenders (i) in amending this Agreement and any of the documents executed in connection herewith (including any land use restrictive covenants) so as to, among other things, provide notice and cure rights to such Limited Partner and Third Party Lenders and accommodate any reasonable requests by Developer, Limited Partner and/or any Third Party Lender, and (ii) execute any subordination agreements as reasonably requested by such Developer, Limited Partner, and/or Third Party Lenders.

Section 8 Assignability & Subcontractors

The Developer shall not assign or transfer any interest in this Agreement without the prior written consent of the City thereto; provided, however, that claims for money due or to become due to the Developer from the City under this Agreement may be assigned to a bank, trust company, or other financial institution without such approval, notice of which assignment shall be promptly given to the City.

Section 9 Notices

All notices, requests, consents, or other communications required under this Agreement shall be in writing and shall be deemed to have been properly given if served personally or if sent by United States registered or certified mail or overnight delivery service to the parties as follows (or at such other address as a party may from time to time designate by notice given pursuant to this section):

To Developer:

Beyond Shelter, Inc.
ATTN: Daniel P. Madler
3320 Westrac Dr. S., Ste G
PO Box 310
Fargo, ND 58107
701.551.0488
dmadler@beyondshelterinc.com

or to:

The Registered Agent for service of process for
Developer

To the City:

City Auditor
Fargo City Hall
225 N. Fourth Street
Fargo, ND 58102

and to:

Community Development Planning Director
ATTN: Tia Braseth
Fargo City Hall
225 N. Fourth Street
Fargo, ND 58102
701.476.4144
tbraseth@fargond.gov

Each notice shall be deemed given and received on the date delivered if served personally or, if sent by United States registered or certified mail or by overnight delivery service, then the day so sent to the address of the respective party, as provided herein, postage pre-paid. Notices sent by a party's counsel shall be deemed notices sent by such Party.

Section 10 General Conditions

A) Independent Contractor

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

B) Indemnification & Hold Harmless

The Developer agrees to indemnify and hold harmless the City and any of its officers, employees, contractors, consultants, representatives, agents, and assigns from and against any and all liability, damages, penalties, judgments, or claims of whatever nature arising from injury to person(s) or property resulting solely from the negligent acts or omissions of the Developer, or the Developer's contractors, successors, or assigns in connection with the work on the Subject Property, and the Developer will, at the Developer's own cost and expense, defend any and all suits or actions (just or unjust) which may be brought against the City or in which the City may be joined with other parties upon any such matter or claim(s). This agreement to indemnify and hold harmless will include indemnity against all costs, expenses, and liabilities, including any reasonable attorney fees, reasonably incurred in or in connection with any such claims or proceedings brought thereof. This indemnification provision will survive the termination of this Agreement and any subsequent agreements of the parties contemplated herein. Notwithstanding anything to the contrary contained herein, the Developer's obligation hereunder shall not apply to the

extent such liability, damages, penalties, judgments, or claims of whatever nature arising from injury to person(s) or property, are a result of the acts or omissions of the City.

C) Worker's Compensation
The Developer shall provide Workers' Compensation Insurance coverage for all of its employees involved in the performance of this Agreement.

D) Insurance & Bonding
The Developer shall carry sufficient insurance coverage to protect Agreement assets from loss due to theft, fraud and/or undue physical damage, and as a minimum shall purchase a blanket fidelity bond covering all employees in an amount equal to cash advances from the City. The Developer shall include the City as an additional insured on any insurance policy issued to comply with the requirements of this provision. The Developer shall comply with the bonding and insurance requirements of 24 CFR 84.31 and 84.48, Bonding and Insurance.

E) City Recognition
The Developer shall ensure recognition of the role of the City in providing funding through this Agreement. The Developer shall use best efforts to provide: (1) oral recognition of the City's role and of the federal program as a source of funds during major oral presentations related to the Subject Property; and (2) recognition by logo (provided by the City) of the City's role and of the federal program as a source of funds in any publicity materials of the Subject Property.

F) *Disclosure* – The Developer understands that client information collected under this Agreement is private and the use or disclosure of such information, when not directly connected with the administration of the City's or Developer's responsibilities with respect to services provided under this Agreement, is prohibited unless written consent is obtained from such person receiving service and, in the case of a minor, that of a responsible parent/guardian.

G) *Close-outs* – The Developer's obligation to the City shall not end until all close-out requirements are completed. Activities during this close-out period shall include, but are not limited to: making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and accounts receivable to the City), and determining the custodianship of records. Notwithstanding the foregoing, the terms of this Agreement shall remain in effect during any period that the Developer has control over Grant Funds.

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

H) Reporting & Payment

i) *Program Income and Security Requirements* – For the purpose of this Agreement, program income includes funds from future sale of any property acquired with Grant Funds. The Developer agrees to return all income generated from Grant

Funds to the City if the Subject Property is sold or transferred during the five (5) year period outlined in the Use & Reversion of Assets section 6(c). Program income does not include proceeds from the disposition of real property by Developer that was acquired or improved with Grant Funds five years after the close out or termination of this Agreement.

ii) *Indirect Costs* – Any indirect costs charged must be consistent with the conditions of this Agreement. In addition, the City may require a more detailed budget breakdown than the one contained herein if reasonably requested, and the Developer shall provide such supplementary budget information in a timely fashion in the form and content reasonably prescribed by the City. Any amendments to the budget must be approved in writing by both the City and the Developer, and such approval shall not be unreasonably withheld or delayed.

iii) *Payment Procedures* – Provided that the activities authorized under the statement of work and Agreements signed by the Developer are eligible expenditures of Grant Funds, the City agrees to provide the Subject Property, as provided herein, to the Developer to acquire an interest in the property to be used for affordable senior housing.

iv) *Progress Reports & Data Collection* – The Developer shall submit regular progress reports to the City upon request of the City in the form, content, and frequency as required by the City. The Developer shall submit to the City data collection on race and ethnicity of clients upon occupancy of the Subject Property. See and complete form at Exhibit B and return to City.

l) *Reserved.*

Section 11 ***Women & Minority Owned Businesses/Enterprises***

The Developer will use its best efforts to afford small businesses, minority business enterprises, and women's business enterprises the maximum practicable opportunity to participate in the performance of this Agreement. As used in this Agreement, the terms "small business" means a business that meets the criteria set forth in section 3(a) of the Small Business Act, as amended (15 U.S.C. 632), and "minority and women's business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women. For the purpose of this definition, "minority group members" are Afro-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and American Indians. The Developer may rely on written representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.

Section 12 Copyright

If this Agreement results in any copyrightable material or inventions, the City reserves the right to royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use the work or materials for governmental purposes.

Section 13 ***Entire Agreement***

This Agreement, including attachments, constitutes the entire and complete agreement between the parties with respect to the subject premises. It is expressly agreed that there are no verbal understandings or agreements which in any way change the terms, covenants, and conditions set forth herein, and that no modification of this Agreement and no waiver of any of its terms and conditions will be effective unless in writing and duly executed by the parties.

Section 14 Counterparts

This Agreement may be executed in counterparts with both parties having a fully-executed counterpart.

Section 15 Agreement Binding on Successors

This Agreement will be binding upon and inure to the benefit of the parties hereto and their respective personal representatives, successors, and assigns.

Section 16 North Dakota Law Applies.

Except with respect to any applicable federal statute, regulation or other federal law, this Agreement shall be controlled by and construed in accordance with the laws of the State of North Dakota, and any action brought as a result of any claim, demand or cause of action arising under the terms of this Agreement must be brought in state or federal district court in North Dakota venued in in the County of Cass and State of North Dakota.

Section 17 ***Effective Date.*** This Agreement shall be deemed to be effective as of the date and year first above-written or, if the date and year is not completed above, then this Agreement shall be deemed effective on the date last signed below (the "Effective Date").

[Signature Page(s) to Follow]

SIGNED THE ____ DAY OF _____, 20___.

BEYOND SHELTER, INC., a North Dakota incorporation

By: _____
Daniel P. Madler
Its: Chief Executive Officer

Federal ID # _____

DUNS # _____

SIGNED THE ____ DAY OF _____, 20___.

CITY OF FARGO, a North Dakota municipal corporation

By: _____
Timothy J. Mahoney, M.D.
Its: Mayor

ATTEST:

_____
Steven Sprague, City Auditor

EXHIBIT A

Certifications

This Agreement will be conducted and administered in compliance with:

1. Title VI of the Civil Rights Acts of 1964 (Pub. L. 88-352) and implementing regulations issued at 24 CFR Part 1.
2. Title VIII of the Civil Rights Act of 1968 (Pub. L. 90-284), as amended; and the City will administer all programs and activities related to housing and community development in a manner to affirmatively further fair housing.
3. Section 109 of the Housing and Community Development Act of 1974, as amended, and the regulations issued pursuant thereto.
4. Section 3 of the Housing and Urban Development Act of 1968, as amended; the Developer further agrees to comply with these "Section 3" requirements and to include the following language in all subcontractors executed under this Agreement:

   "The work to be performed under this Agreement is a project assisted under a program providing direct Federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701). Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to low and very low income residents of the project area, and that Agreements for work in connection with the project be awarded to business concerns that provide economic opportunities for low and very low income persons residing in the metropolitan area in which the project is located."

   The Developer certifies and agrees that no Contractual or other legal incapacity exists that would prevent compliance with these requirements.

   The Developer agrees to send to each labor organization or representative of workers with which it has a collective bargaining agreement or other Agreement or understanding, if any, a notice advising said labor organization or worker's representative of its commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.
5. Equal Employment Opportunity, Executive Order 11246, as amended by Executive Orders 11375, 11478, 12086, 13279, 13665, 13672 and including E.O. 12107, and implementing regulations issued at 41 CFR Chapter 60; and Equal Employment Opportunity and Affirmative Action (EEO/AA) Statement, the Developer will, in all solicitations or advertisements for employees placed by or on behalf of the Developer, state that it is an Equal Opportunity or Affirmative Action employer.
6. Nondiscrimination and Equal Opportunity in Housing, Executive Order 11063, as amended by Executive Order 12259, and implementing regulations at 24 CFR Part 107.
7. Section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112), as amended, and implementing regulations when published for effect.
8. The American with Disabilities Act of 1990.

9. The Age Discrimination Act of 1975 (Pub. L. 94-135), as amended, and implementing regulations when published for effect.
10. Lobbying
    The Developer hereby certifies that:
    A) No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal Agreement, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal Agreement, grant, loan, or cooperative agreement.
    B) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal Agreement, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions; and
        i) It will require that the language of paragraph (d) of this certification be included in the award documents for all sub-awards at all tiers (including subcontractors, sub-grants, and Agreements under grants, loans, and cooperative agreements) and that all Developer shall certify and disclose accordingly.
        ii) Lobbying Certification: This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.
11. Hatch Act, the Developer agrees that no funds provided, nor personnel employed under this Agreement, shall in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V of the U.S.C.
12. Religious & Political Activities, the Developer agrees that funds provided under this Agreement will not be utilized for inherently religious activities prohibited by 24 CFR 570.200(j), such as worship, religious instruction, or proselytization or any political activities.
13. The relocation requirements of Title II and the acquisition requirements of Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, and the implementing regulations at 24 CFR Part 42.
14. Executive Order 11988 relating to the evaluation of flood hazards and Executive Order 11288 relating to the prevention, control and abatement of water pollution.
15. The flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (Pub.L. 93-234).
16. The Uniform Administrative requirements, set forth in 24 CFR Part 570.502, and 24 CFR 85, and the requirements of OMB Circular Nos. A-87, A-128, A-122, A-21 and A-110 implemented at 24 CFR Part 84 as they relate to the acceptance and use of

Federal funds under this federally assisted program, including but not limited to the regulations pertaining to inventions, reporting and patent rights, and copyrights.

17. The Clean Air Act (42 U.S.C. 7401 et. seq.).
18. HUD environmental standards (24 C.F.R Part 51, Environmental Criteria and Standards (44FR 40860-40866, July 12, 1979).
19. The Safe Drinking Water Act of 1974 (42 U.S.C. 201, 300 (f) et. seq., and 21 U.S.C. 349), as amended.
20. The Endangered Species Act of 1973 (16 U.S.C. 1531 et. seq.) as amended.
21. The Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et. seq.), as amended.
22. The Reservoir Salvage Act of 1960 (16 U.S.C. 469 et. seq.), as amended by the Archeological and Historical Preservation Action of 1974.
23. Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 et. seq.), as amended.
24. Executive Order 11990, Protection of Wetlands, May 24, 1977 (42 FR 26961 et. seq.).
25. The lead based paint requirements of 24 C.F.R. Part 35 issued pursuant to the Lead Based Paint Poisoning Prevention Act (42 U.S.C. 4801 et. seq.).
26. The National Historic Preservation Act of 1966 (16 U.S.C. 470 et. seq.) as amended;
27. Executive Order 11593, Protection and Enhancement of the Cultural Environment, May 13, 1971 (36 C.F.R. 8921 et. seq.).
28. The Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented in the Department of Labor regulations (29 C.F.R., Part 3).
29. The Davis Bacon Act (40 U.S.C. 276a-276a-5; 40 USC 327 and 40 USC 276c) as supplemented by the Department of Labor regulations (29 C.F.R., Part 5); Sections 103 and 107 of the Agreement Work Hours and Safety Standards Act (40 U.S.C. 327-330), as supplemented by the Department of Labor regulations (29 CFR, Part 5), and the attached Federal Labor Standards Provisions.

EXHIBIT B

RACE & ETHNICITY DATA REPORT
Beyond Shelter, Inc.
The Milton Earl

The following information must be collected by participants of any CDBG-funded project. Please collect the data and submit to the City upon occupancy. All information is strictly confidential (will be reported in aggregated form on a quarterly and an annual basis).

Income

Extremely Low (Less than 30% AMI) _____

Low (30% - 80% AMI) _____

Moderate (80% AMI or less) _____

Non-Low/Moderate (Over 80% AMI) _____

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

Total (needs to match number assisted) _____

The Number Assisted and the Race all need to total the same number.

EXHIBIT C

Land Use Restrictive Covenants

[attached]

Please return
record-stamped instrument to:
City of Fargo
Attn: Comm. Dev. Director, Dept. of Planning & Dev
225 4th Street N
Fargo, ND 58102

DECLARATION OF LAND USE RESTRICTIVE COVENANTS
(MULTIPLE FAMILY)
FARGO CDBG PROGRAM

THIS "Declaration of Land Use Restrictive Covenants" (this "Declaration") is declared and established as of the ___ day of _____, 20__ by Beyond Shelter, Inc., a North Dakota incorporation ("Developer" or "Declarant"), whose address is PO Box 310, Fargo, ND 58107.

WITNESSETH:

WHEREAS; Developer holds an interest in that certain of land located in Cass County, North Dakota, legally described as follows:

Parcel No.	*Address*	*Legal Description*
01-2382-01290-000	*314 7 St N*	
01-2382-01300-000	*320 7 St N*	
01-2382-01310-000	*324 7 St N*	
01-2382-01320-000	*712 4 Ave N*	

Said property cumulatively referred to herein as the "**Subject Property**".

WHEREAS; Developer will construct upon the Subject Property an affordable residential housing development consisting of at least 42 senior housing units leased to residents ages 62 years and older (the "Project").

WHEREAS; Developer has submitted a proposal to City of Fargo, a North Dakota municipal corporation (the "City") for use of vacant land purchased by the City with Community Development Block Grant "CDBG" funds, made available from the US Department of Housing and Urban Development (HUD), provided through the provisions of Title I of the Housing and Community Development Act of 1974, and pursuant to all federal rules, regulations and policies promulgated thereunder (herein said act, program, rules, regulations and policies collectively referred to as the "CDBG Program"), which CDBG Program is being administered by the Department of Planning and Development of the City; and

WHEREAS; the CDBG Program, as adopted by City, requires that as a condition precedent to the conveyance of CDBG-acquired land as requested by the Developer, that this Declaration be executed, delivered, and recorded with the County Recorder for the county at which said Project is located in order to create certain covenants running with the Subject Property for the purpose of enforcing certain requirements which regulate and restrict the use, occupancy and transfer of the Subject Property as set forth herein; and

WHEREAS; the City and Developer have entered into a Developer Agreement effective the ____ day of _____, 20__, (the "Developer Agreement") setting forth terms by which the Developer will receive land acquired with CDBG funds, and conditions and obligations of the Developer for receiving such land;

NOW, THEREFORE, in consideration of the above recitals and the following mutual covenants and agreements, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is hereby declared:

SECTION 1 - RECORDING AND FILING

Upon execution and delivery of this Declaration by the Developer, the City may cause this Declaration and all amendments hereto to be recorded at the Office of the County Recorder in Cass County, North Dakota, and shall pay all fees and charges incurred in connection therewith. Upon recording, the City shall immediately transmit to Developer an executed and certified copy of the original of the recorded Declaration, showing the date, book and page of recordation.

SECTION 2 – CDBG NATIONAL OBJECTIVE.

A. The Developer, at this place, confirms that the Subject Property acquired in whole or in part with CDBG funds is required to meet the Low-to-Moderate Housing CDBG National Objective

for five (5) years, commencing upon the date on which the Subject Property achieves occupancy of at least 51% of the units by low to moderate income households (80% of the area median income as set forth by HUD's annual income limits, which shall be evidenced in writing by Developer to the City, (the "Commencement Date") and terminate on the fifth anniversary thereof (the "Term").

SECTION 3 - COVENANTS TO RUN WITH THE LAND

Developer intends, declares and covenants, on behalf of Developer and all future owners and operators of the Project during the Term, that this Declaration and the covenants and restrictions set forth herein which regulate and restrict the use, occupancy and transfer of the Subject Property shall be and are covenants running with the Subject Property, binding upon the Developer's successors in title and all subsequent owners and operators of the Subject Property, and are not merely personal covenants of the Developer, and shall bind the Developer, and the benefit shall inure to the City and any past, present or prospective tenants of the Project, and the City's respective successors and assigns during the Term hereof. The Developer agrees that any and all requirements of the laws of the State of North Dakota to be satisfied in order for the provisions of this Declaration to constitute deed restrictions and covenants running with the land shall be deemed to have been satisfied in full, and that any requirements or privileges of estate are intended to be satisfied, or in the alternative, that an equitable servitude has been created to insure that these restrictions run with the land for the duration of the Term.

SECTION 4 - REPRESENTATIONS, FURTHER COVENANTS AND WARRANTIES OF THE DEVELOPER

(A) Developer is corporation, duly organized under the laws of the State of North Dakota (the "State"), and is qualified to transact business under the laws of the State. Developer has the power and authority to own its properties and assets and to carry on its business as now being conducted, and has the full legal right, power and authority to execute and deliver this Declaration.

(B) There is no action, suit or proceeding at law or in equity or by or before any governmental instrumentality or other agency now pending, or, to the knowledge of the Developer, threatened against or affecting it, or any of its properties or rights, which, if adversely determined, would materially impair its right to carry on business substantially as now conducted (and as now contemplated by the Declaration) or would materially adversely affect its financial condition.

(C) The Developer agrees to comply fully with the requirements of the CDBG Program as it may from time to time be amended or 24 CFR Part 570.

SECTION 5 - RENTAL LIMITATIONS AND RESTRICTIONS.

CDBG Restrictions: The Project is required to meet the Low-to-Moderate Housing CDBG National Objective (as set forth in Section 1 of the Developer Agreement) for the Term. At least 51% of the residents in the Project must have income at or below 80% of the area median income at the time of occupancy. Rents must be set at levels which are affordable to low-to-moderate income persons. Rent and income levels shall align with published limits for the Low Income Housing Tax Credit program.

SECTION 6 - TERMINATION.

The Project will remain affordable as provided herein, for not less than the Term, except that upon foreclosure by any senior mortgagee, or transfer in lieu of foreclosure, this Declaration and the covenants and restrictions set forth herein shall terminate. However, if at any time following the transfer by foreclosure or transfer in lieu of foreclosure, but still during the Term the Developer of record prior to the foreclosure or transfer in lieu of foreclosure, or any newly formed entity that includes the former Developer, or those with whom the former Developer has or had family or business ties, obtains an ownership interest in the Project, the Term shall be revived according to its original Term. Notwithstanding anything to the contrary contained herein, at the conclusion of the Term, so long as Developer has maintained and managed the Project in compliance with Developer's obligations under the Developer Agreement, the City will issue an unconditional release and termination of this Declaration.

SECTION 7 - DEFAULT.

(A) Enforcement and Remedies. If Developer defaults in the performance of any of its obligations under this Declaration or breaches any covenant, declaration or restriction set forth herein, and if such default remains uncured for a period of ninety 90 days after notice thereof is given by City, City shall be entitled to apply to any court having jurisdiction of the subject matter for specific performance of the Declaration, for an injunction against any violation of the Declaration, for the appointment of a receiver to take over and operate the Project in accordance with the terms of this Declaration, or for such other relief as may be appropriate, it being acknowledged that the beneficiaries of Developer's obligations hereunder cannot be adequately compensated by monetary damages in the event of Developer default. City shall be entitled to all its reasonable costs in any such judicial action in which City shall prevail.

(B) Remedies Cumulative. Each right, power and remedy of City provided for in this Declaration, now or hereafter existing at law or in equity by statute, or otherwise shall be cumulative and concurrent and shall be in addition to every other right, power, or remedy provided for in this Declaration, or hereafter existing at law or in equity or by statute, or otherwise, and the exercise or beginning of the exercise by City of any one or more of the rights, powers or remedies provided for in this Declaration or now or hereafter existing at law, in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by City of any or all such other rights, powers or remedies.

SECTION 8 - MISCELLANEOUS.

(A) Successors Bound. This Declaration and the covenants and conditions contained herein shall run with the land and shall bind, and the benefits shall inure to, respectively, the Developer and City and their respective grantees, heirs, personal representatives, successors and assigns of all or any of them, or any interest(s) therein for the Term specified herein above in Section 2.

(B) Additional Documents. The Developer shall submit any other information, documents or certifications requested by the City which City deems reasonably necessary to substantiate the Developer's continuing compliance with the CDBG program.

(C) Severability. The invalidity of any clause, part or provision of this Declaration shall not affect the validity of the remaining portions thereof.

(D) Notices. All notices to be given pursuant to this Declaration shall be in writing and shall be deemed given when mailed by certified or registered mail, return receipt requested, to the parties hereto at the addresses shown herein, or to such other place as a party may from time to time designate in writing to the other(s).

(E) Applicable Laws. This Declaration is governed by the laws of the state of North Dakota.

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

(G) Waivers. This Declaration may not be waived, altered, modified, supplemented, or amended, in any manner, except by written agreement signed by both parties.

(H) Compliance. Developer agrees to comply with all applicable laws, rules, regulations, and policies, including but not limited to those relating to non-discrimination, accessibility and civil rights. Developer agrees to timely file all recommended reports, make required payroll deductions, and timely pay all taxes and premium owed, including but not limited to sales and use taxes and unemployment compensation and workers compensation premiums. Developer shall have and keep current at all times during the term of this Declaration all licenses and permits required by law. The duties imposed by this paragraph are in addition to, and do not supplant, the duties imposed by 24 CFR part 570.

(I) Indemnity. Developer shall comply with all applicable federal, state, and local laws, rules, and ordinances at all times in the performance of this Declaration, and shall conduct its activities so as not to endanger any person or property. Developer agrees to indemnify, save, and hold harmless the City of Fargo, its agents, officers, and employees, from any and all claims of any nature, including costs, expenses, and reasonable attorneys' fees which may in any matter arise out of or result from this Declaration except claims resulting from or arising out of the City's acts or failure to act.

(J) Insurance. Developer shall secure liability and property damage insurance and furnish a certificate of insurance or other satisfactory proof of such coverage. The policy may not be canceled without prior written notice to City. The insurance policy does not define or limit Developer's duty to indemnify City under Section 8 (I).

(K) Developer declares and covenants that the regulatory and restrictive covenants set forth herein governing the use, occupancy and transfer of the Subject Property shall be and are covenants running with the Subject Property as described herein, for the Term stated herein and binding upon all subsequent owners of the Subject Property for such Term, and are not merely personal covenants of the Developer.

(L) No waiver, consent, modification, or change of any term of this Declaration is effective unless in writing and signed by both parties. There are no understandings, declarations or representations, oral or written, not specified within the Developer Agreement and the accompanying documents. The provisions of the Developer Agreement are hereby incorporated by reference into this Declaration, as fully as if set forth and in detail herein.

(M) Subordination. In connection with the development of the Subject Property, Developer will be obtaining additional construction and permanent financing from one or more lenders (the "Third Party Lenders") to facilitate the construction and operation thereof. Prior to closing on the admission of the tax credit investor as a limited partner of Developer (the "Limited Partner"), and the additional financing from Third Party Lenders, the City agrees that it shall reasonably cooperate with the Developer, Limited Partner, and Third Party Lenders (i) in amending this Declaration and any of the documents executed in connection herewith so as to, among other things, provide notice and cure rights to such Limited Partner and Third Party Lenders and accommodate any reasonable requests by Developer, Limited Partner and/or any Third Party Lender, and (ii) execute any subordination agreements as reasonably requested by such Developer, Limited Partner and/or any Third Party Lender.

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

BEYOND SHELTER, INC.
a North Dakota corporation

_____
Daniel P. Madler, Chief Executive Officer

STATE OF NORTH DAKOTA)
) SS
COUNTY OF CASS)

On this _____ day of _____, 2020, before me, _____, the undersigned Notary Public, personally appeared Daniel P. Madler, Chief Executive Officer of Beyond Shelter, Inc., on behalf of said company and who acknowledged that he executed this Declaration.

(Seal)

_____
Notary Public

17650489v4

Legal description obtained from previously recorded instrument.

Instrument drafted by:
Erik R. Johnson
City Attorney-Fargo
505 Broadway, Suite 206
Fargo ND 58102

THE CITY OF Fargo FAR MORE

FARGO POLICE DEPARTMENT

105 25th Street North, Fargo, North Dakota 58102

David E. Todd, Chief of Police

(14)

Application for Appropriation from Civil Asset Forfeiture Fund

Applicant

David Todd, Chief of Police
Fargo Police Department, 105 25th St. N., Fargo ND, 58102
dtodd@fargond.gov
701-476-4001

Appropriation Requested:

$9,000 for Fargo Police Department Criminal Investigation Fund

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:

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

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

David Todd, Chief of Police

04/29/2020
Date

During criminal investigations, Fargo Police Department personnel often encounter assets that are subject to forfeiture by state law. The most two most common examples are as follows:

- An individual is in possession of currency that they have obtained through the illegal sale of controlled substances. The currency may be subject to seizure.
- An individual is using a motor vehicle to transport illegal sale quantities of a controlled substance. The automobile may be subject to seizure.

In these situations, in compliance with North Dakota Century Code, a Fargo Police Officer will seize the asset (currency/vehicle) and provide the owner of the asset with a notice of a pending Civil Forfeiture Proceeding in the East Central Judicial District.

The East Central Judicial Court will either order the asset returned to the owner, or order the asset forfeited to the Fargo Police Department.

If currency is forfeited to the Fargo Police Department, it is held in a Civil Asset Forfeiture Fund and is available for department use.

If a motor vehicle is forfeited to the Fargo Police Department, it is most often sold at the City of Fargo auction and the proceeds from sale are placed in the Civil Asset Forfeiture Fund for police department use.

The Civil Asset Forfeiture Fund has historically been used by the Fargo Police Department for the following:

- Purchase equipment or services to improve the capability of the police department.
- Maintain a Criminal Investigation Fund used to pay cooperating individuals and to purchase illegal controlled substances or contraband during investigations.
- Disburse asset sharing funds to local agencies who have assisted in specific investigations related to funds that were forfeited.

In the past North Dakota legislative session, changes were made to North Dakota Century Code 19-03.1-36, which is titled "Forfeitures." The changes went into effect on August 1st, 2019.

A change in North Dakota Century Code section 19-03.1-36.6(3) states:

> *"A political subdivision that has a civil asset forfeiture fund shall establish an application process, including eligibility criteria, to accept and process application from law enforcement agencies with the political subdivision's jurisdiction for an appropriation from the civil asset forfeiture fund."*

The North Dakota Attorney General's Office provides guidance regarding the "application process", "eligibility requirements" and "eligibility criteria":

> ***Application Process***
>
> *"The application process must consist of a written request from a law enforcement agency within the political subdivision's jurisdiction. The requesting law enforcement agency must submit the written request to the governing entity that has spending authority over the respective agency ('governing entity').*

The written request must include at least the following minimum criteria:

1. *Name of the requesting law enforcement agency.*
2. *Address and location of the requesting law enforcement agency,*
3. *Name of the Chief Executive Officer (CEO) of the requesting law enforcement agency,*
4. *Direct contact information for the requesting law enforcement agency,*
5. *Requested dollar amount from asset forfeiture fund,*
6. *Reason for request, including details of how the requested funds will be used.*
    a. *Letter of support from the Chief Executive Officer of the requesting law enforcement agency on agency letterhead with an original signature.*

Note: The governing entity may require the agency to provide addition information before approving the request.

If asset forfeiture funds are granted, the requesting law enforcement agency shall follow the procurement procedures for their individual agencies. The requesting agency must provide written confirmation when the requested funds have been spent, including any documents that the governing entity requires to prove the funds were expended in the manner requested."

Eligibility Requirements

"Proceeds from forfeited funds are intended to further the public purpose of reducing criminal activity and aiding the efforts of criminal justice within that jurisdiction. Any political subdivision with an established asset forfeiture fund must establish eligibility requirements for requesting forfeited funds. Any requesting law enforcement agency, in order to be eligible for forfeited funds, must be geographically located within the jurisdiction of the political subdivision that legally possess the requested forfeited funds."

Eligibility Criteria

"The eligibility criteria for the application process of forfeited funds, by a law enforcement agency located in the jurisdiction of a political subdivision, must be based in the confirmation that the request itself is rooted in support and furtherance of the requesting agencies' overall law enforcement mission. The governing entity will have full authority and may deny requests that do not meet this level of confirmation."

In compliance with the North Dakota Century Code, the Fargo Police Department will be submitting requests to the Board of City Commissions for all appropriations from the Civil Asset Forfeiture Fund. Attached is a request for your consideration.

THE CITY OF Fargo FAR MORE

FARGO POLICE DEPARTMENT

105 25th Street North, Fargo, North Dakota 58102

David E. Todd, Chief of Police

(15)

May 4th, 2020

Board of City Commissioners
City Hall
Fargo, ND 58102

RE: Acceptance of Bureau of Justice Assistance Grant – Coronavirus Emergency Supplemental Funding Program – CFDA 16.034

Dear commissioners:

The Fargo Police Department has been awarded a grant from the Bureau of Justice Assistance in the amount of $195,828. There is no requirement for the City of Fargo to match any of the grant funding provided.

The Coronavirus Emergency Supplemental Funding (CESF) Program allows units of local government to support a broad range of activities to prevent, prepare for, and respond to the coronavirus. Funded projects or initiatives may include, but are not limited to, overtime, equipment (including law enforcement and medical personal protective equipment), hiring, supplies (such as gloves, masks, sanitizer), training, travel expenses.

Recommended Motion:

Accept the grant funding for $195,828

Please contact me if you have any questions regarding the grant funding or the police department's budget adjustment request.

Sincerely,

David Todd
Chief of Police

Cc: Kent Costin, Finance Director

Department of Justice (DOJ)
Office of Justice Programs

Office of the Assistant Attorney General
Washington, D.C. 20531

April 23, 2020

The Honorable Tim Mahoney
City of Fargo
222 4th Street North
Fargo, ND 58102-4818

Dear Mayor Mahoney:

On behalf of Attorney General William P. Barr, it is my pleasure to inform you that the Office of Justice Programs (OJP), U.S. Department of Justice (DOJ), has approved the application by City of Fargo for an award under the OJP funding opportunity entitled "BJA FY 20 Coronavirus Emergency Supplemental Funding Program." The approved award amount is $195,828. These funds are for the project entitled CIty of Fargo Coronavirus Emergency Response.

The award document, including award conditions, is enclosed. The entire document is to be reviewed carefully before any decision to accept the award. Also, the webpage entitled "Legal Notices: Special circumstances as to particular award conditions" (ojp.gov/funding/Explore/LegalNotices-AwardReqts.htm) is to be consulted prior to an acceptance. Through that "Legal Notices" webpage, OJP sets out -- by funding opportunity -- certain special circumstances that may or will affect the applicability of one or more award requirements. Any such legal notice pertaining to award requirements that is posted through that webpage is incorporated by reference into the award.

Please note that award requirements include not only award conditions, but also compliance with assurances and certifications that relate to conduct during the period of performance for the award. Because these requirements encompass financial, administrative, and programmatic matters, as well as other important matters (e.g., specific restrictions on use of funds), it is vital that all key staff know the award requirements, and receive the award conditions and the assurances and certifications, as well as the application as approved by OJP. (Information on all pertinent award requirements also must be provided to any subrecipient of the award.)

Should City of Fargo accept the award and then fail to comply with an award requirement, DOJ will pursue appropriate remedies for non-compliance, which may include termination of the award and/or a requirement to repay award funds.

Please direct questions regarding this award as follows:

- For program questions, contact Heather Wiley, Program Manager at (202) 598-3969; and

- For financial questions, contact the Customer Service Center of OJP's Office of the Chief Financial Officer at (800) 458-0786, or at ask.ocfo@usdoj.gov.

We look forward to working with you.

Sincerely,

Katharine T. Sullivan
Principal Deputy Assistant Attorney General

Encl.

Department of Justice (DOJ)
Office of Justice Programs
Office of Civil Rights

Washington, DC 20531

April 23, 2020

The Honorable Tim Mahoney
City of Fargo
222 4th Street North
Fargo, ND 58102-4818

Dear Mayor Mahoney:

Congratulations on your recent award. The Office for Civil Rights (OCR), Office of Justice Programs (OJP), U.S. Department of Justice (DOJ) has been delegated the responsibility for ensuring that recipients of federal financial assistance from the OJP, the Office of Community Oriented Policing Services (COPS), and the Office on Violence Against Women (OVW) are not engaged in discrimination prohibited by law. Several federal civil rights laws, such as Title VI of the Civil Rights Act of 1964 and Title IX of the Education Amendments of 1972, require recipients of federal financial assistance to give assurances that they will comply with those laws. In addition to those civil rights laws, many grant program statutes contain nondiscrimination provisions that require compliance with them as a condition of receiving federal financial assistance. For a complete review of these civil rights laws and nondiscrimination requirements, in connection with OJP and other DOJ awards, see https://ojp.gov/funding/Explore/LegalOverview/CivilRightsRequirements.htm

Under the delegation of authority, the OCR investigates allegations of discrimination against recipients from individuals, entities, or groups. In addition, the OCR conducts limited compliance reviews and audits based on regulatory criteria. These reviews and audits permit the OCR to evaluate whether recipients of financial assistance from the Department are providing services in a non-discriminatory manner to their service population or have employment practices that meet equal-opportunity standards.

If you are a recipient of grant awards under the Omnibus Crime Control and Safe Streets Act or the Juvenile Justice and Delinquency Prevention Act and your agency is part of a criminal justice system, there are two additional obligations that may apply in connection with the awards: (1) complying with the regulation relating to Equal Employment Opportunity Programs (EEOPs); and (2) submitting findings of discrimination to OCR. For additional information regarding the EEOP requirement, see 28 CFR Part 42, subpart E, and for additional information regarding requirements when there is an adverse finding, see 28 C.F.R. §§ 42.204(c), .205(c)(5). Please submit information about any adverse finding to the OCR at the above address.

We at the OCR are available to help you and your organization meet the civil rights requirements that are associated with OJP and other DOJ grant funding. If you would like the OCR to assist you in fulfilling your organization's civil rights or nondiscrimination responsibilities as a recipient of federal financial assistance, please do not hesitate to let us know.

Sincerely,

Michael L. Alston
Director

cc: Grant Manager
Financial Analyst

Department of Justice (DOJ)
Office of Justice Programs
Bureau of Justice Assistance

Grant

PAGE 1 OF 16

1. RECIPIENT NAME AND ADDRESS (Including Zip Code)
City of Fargo
222 4th Street North
Fargo, ND 58102-4818

4. AWARD NUMBER: 2020-VD-BX-0167

5. PROJECT PERIOD: FROM 01/20/2020 TO 01/31/2022
BUDGET PERIOD: FROM 01/20/2020 TO 01/31/2022

6. AWARD DATE 04/23/2020

7. ACTION
Initial

2a. GRANTEE IRS/VENDOR NO.
456002070

8. SUPPLEMENT NUMBER
00

2b. GRANTEE DUNS NO.
176384915

9. PREVIOUS AWARD AMOUNT $ 0

3. PROJECT TITLE
CIty of Fargo Coronavirus Emergency Response

10. AMOUNT OF THIS AWARD $ 195,828

11. TOTAL AWARD $ 195,828

12. SPECIAL CONDITIONS
THE ABOVE GRANT PROJECT IS APPROVED SUBJECT TO SUCH CONDITIONS OR LIMITATIONS AS ARE SET FORTH ON THE ATTACHED PAGE(S).

13. STATUTORY AUTHORITY FOR GRANT
This project is supported under FY20(BJA - CESF) Pub. L. No. 116-136, Div. B; 28 U.S.C. 530C

14. CATALOG OF DOMESTIC FEDERAL ASSISTANCE (CFDA Number)
16.034 - Coronavirus Emergency Supplemental Funding Program

15. METHOD OF PAYMENT
GPRS

[redacted] AGENCY APPROVAL [redacted]

16. TYPED NAME AND TITLE OF APPROVING OFFICIAL
Katharine T. Sullivan
Principal Deputy Assistant Attorney General

17. SIGNATURE OF APPROVING OFFICIAL

[redacted] GRANTEE ACCEPTANCE [redacted]

18. TYPED NAME AND TITLE OF AUTHORIZED GRANTEE OFFICIAL
Tim Mahoney
Mayor

19. SIGNATURE OF AUTHORIZED RECIPIENT OFFICIAL

19A. DATE

[redacted] AGENCY USE ONLY [redacted]

20. ACCOUNTING CLASSIFICATION CODES

FISCAL YEAR	FUND CODE	BUD. ACT.	OFC.	DIV. REG.	SUB.	POMS	AMOUNT
X	B	VD	80	00	00		195828

21. VVDUGT0206

OJP FORM 4000/2 (REV. 5-87) PREVIOUS EDITIONS ARE OBSOLETE.

Department of Justice (DOJ) Office of Justice Programs **Bureau of Justice Assistance**	**AWARD CONTINUATION SHEET** **Grant**	PAGE 2 OF 16

PROJECT NUMBER 2020-VD-BX-0167 AWARD DATE 04/23/2020

SPECIAL CONDITIONS

1. Requirements of the award; remedies for non-compliance or for materially false statements

The conditions of this award are material requirements of the award. Compliance with any assurances or certifications submitted by or on behalf of the recipient that relate to conduct during the period of performance also is a material requirement of this award.

Limited Exceptions. In certain special circumstances, the U.S. Department of Justice ("DOJ") may determine that it will not enforce, or enforce only in part, one or more requirements otherwise applicable to the award. Any such exceptions regarding enforcement, including any such exceptions made during the period of performance, are (or will be during the period of performance) set out through the Office of Justice Programs ("OJP") webpage entitled "Legal Notices: Special circumstances as to particular award conditions" (ojp.gov/funding/Explore/LegalNotices-AwardReqts.htm), and incorporated by reference into the award.

By signing and accepting this award on behalf of the recipient, the authorized recipient official accepts all material requirements of the award, and specifically adopts, as if personally executed by the authorized recipient official, all assurances or certifications submitted by or on behalf of the recipient that relate to conduct during the period of performance.

Failure to comply with one or more award requirements -- whether a condition set out in full below, a condition incorporated by reference below, or an assurance or certification related to conduct during the award period -- may result in OJP taking appropriate action with respect to the recipient and the award. Among other things, the OJP may withhold award funds, disallow costs, or suspend or terminate the award. DOJ, including OJP, also may take other legal action as appropriate.
Any materially false, fictitious, or fraudulent statement to the federal government related to this award (or concealment or omission of a material fact) may be the subject of criminal prosecution (including under 18 U.S.C. 1001 and/or 1621, and/or 34 U.S.C. 10271-10273), and also may lead to imposition of civil penalties and administrative remedies for false claims or otherwise (including under 31 U.S.C. 3729-3730 and 3801-3812).

Should any provision of a requirement of this award be held to be invalid or unenforceable by its terms, that provision shall first be applied with a limited construction so as to give it the maximum effect permitted by law. Should it be held, instead, that the provision is utterly invalid or -unenforceable, such provision shall be deemed severable from this award.

Department of Justice (DOJ) Office of Justice Programs **Bureau of Justice Assistance**	**AWARD CONTINUATION SHEET** **Grant**	PAGE 3 OF 16

PROJECT NUMBER 2020-VD-BX-0167 AWARD DATE 04/23/2020

SPECIAL CONDITIONS

2. Applicability of Part 200 Uniform Requirements

The Uniform Administrative Requirements, Cost Principles, and Audit Requirements in 2 C.F.R. Part 200, as adopted and supplemented by DOJ in 2 C.F.R. Part 2800 (together, the "Part 200 Uniform Requirements") apply to this FY 2019 award from OJP.

The Part 200 Uniform Requirements were first adopted by DOJ on December 26, 2014. If this FY 2019 award supplements funds previously awarded by OJP under the same award number (e.g., funds awarded during or before December 2014), the Part 200 Uniform Requirements apply with respect to all funds under that award number (regardless of the award date, and regardless of whether derived from the initial award or a supplemental award) that are obligated on or after the acceptance date of this FY 2019 award.

For more information and resources on the Part 200 Uniform Requirements as they relate to OJP awards and subawards ("subgrants"), see the OJP website at https://ojp.gov/funding/Part200UniformRequirements.htm.

Record retention and access: Records pertinent to the award that the recipient (and any subrecipient ("subgrantee") at any tier) must retain -- typically for a period of 3 years from the date of submission of the final expenditure report (SF 425), unless a different retention period applies -- and to which the recipient (and any subrecipient ("subgrantee") at any tier) must provide access, include performance measurement information, in addition to the financial records, supporting documents, statistical records, and other pertinent records indicated at 2 C.F.R. 200.333.

In the event that an award-related question arises from documents or other materials prepared or distributed by OJP that may appear to conflict with, or differ in some way from, the provisions of the Part 200 Uniform Requirements, the recipient is to contact OJP promptly for clarification.

3. Compliance with DOJ Grants Financial Guide

References to the DOJ Grants Financial Guide are to the DOJ Grants Financial Guide as posted on the OJP website (currently, the "DOJ Grants Financial Guide" available at https://ojp.gov/financialguide/DOJ/index.htm), including any updated version that may be posted during the period of performance. The recipient agrees to comply with the DOJ Grants Financial Guide.

4. Reclassification of various statutory provisions to a new Title 34 of the United States Code

On September 1, 2017, various statutory provisions previously codified elsewhere in the U.S. Code were editorially reclassified (that is, moved and renumbered) to a new Title 34, entitled "Crime Control and Law Enforcement." The reclassification encompassed a number of statutory provisions pertinent to OJP awards (that is, OJP grants and cooperative agreements), including many provisions previously codified in Title 42 of the U.S. Code.

Effective as of September 1, 2017, any reference in this award document to a statutory provision that has been reclassified to the new Title 34 of the U.S. Code is to be read as a reference to that statutory provision as reclassified to Title 34. This rule of construction specifically includes references set out in award conditions, references set out in material incorporated by reference through award conditions, and references set out in other award requirements.

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SPECIAL CONDITIONS

5. Required training for Point of Contact and all Financial Points of Contact

Both the Point of Contact (POC) and all Financial Points of Contact (FPOCs) for this award must have successfully completed an "OJP financial management and grant administration training" by 120 days after the date of the recipient's acceptance of the award. Successful completion of such a training on or after January 1, 2018, will satisfy this condition.

In the event that either the POC or an FPOC for this award changes during the period of performance, the new POC or FPOC must have successfully completed an "OJP financial management and grant administration training" by 120 calendar days after -- (1) the date of OJP's approval of the "Change Grantee Contact" GAN (in the case of a new POC), or (2) the date the POC enters information on the new FPOC in GMS (in the case of a new FPOC). Successful completion of such a training on or after January 1, 2018, will satisfy this condition.

A list of OJP trainings that OJP will consider "OJP financial management and grant administration training" for purposes of this condition is available at https://www.ojp.gov/training/fmts.htm. All trainings that satisfy this condition include a session on grant fraud prevention and detection

The recipient should anticipate that OJP will immediately withhold ("freeze") award funds if the recipient fails to comply with this condition. The recipient's failure to comply also may lead OJP to impose additional appropriate conditions on this award.

6. Requirements related to "de minimis" indirect cost rate

A recipient that is eligible under the Part 200 Uniform Requirements and other applicable law to use the "de minimis" indirect cost rate described in 2 C.F.R. 200.414(f), and that elects to use the "de minimis" indirect cost rate, must advise OJP in writing of both its eligibility and its election, and must comply with all associated requirements in the Part 200 Uniform Requirements. The "de minimis" rate may be applied only to modified total direct costs (MTDC) as defined by the Part 200 Uniform Requirements.

7. Requirement to report potentially duplicative funding

If the recipient currently has other active awards of federal funds, or if the recipient receives any other award of federal funds during the period of performance for this award, the recipient promptly must determine whether funds from any of those other federal awards have been, are being, or are to be used (in whole or in part) for one or more of the identical cost items for which funds are provided under this award. If so, the recipient must promptly notify the DOJ awarding agency (OJP or OVW, as appropriate) in writing of the potential duplication, and, if so requested by the DOJ awarding agency, must seek a budget-modification or change-of-project-scope grant adjustment notice (GAN) to eliminate any inappropriate duplication of funding.

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SPECIAL CONDITIONS

8. Requirements related to System for Award Management and Universal Identifier Requirements

The recipient must comply with applicable requirements regarding the System for Award Management (SAM), currently accessible at https://www.sam.gov/. This includes applicable requirements regarding registration with SAM, as well as maintaining the currency of information in SAM.

The recipient also must comply with applicable restrictions on subawards ("subgrants") to first-tier subrecipients (first-tier "subgrantees"), including restrictions on subawards to entities that do not acquire and provide (to the recipient) the unique entity identifier required for SAM registration.

The details of the recipient's obligations related to SAM and to unique entity identifiers are posted on the OJP web site at https://ojp.gov/funding/Explore/SAM.htm (Award condition: System for Award Management (SAM) and Universal Identifier Requirements), and are incorporated by reference here.

This condition does not apply to an award to an individual who received the award as a natural person (i.e., unrelated to any business or non-profit organization that he or she may own or operate in his or her name).

Department of Justice (DOJ) Office of Justice Programs **Bureau of Justice Assistance**	**AWARD CONTINUATION SHEET** **Grant**	PAGE 6 OF 16

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SPECIAL CONDITIONS

9. Employment eligibility verification for hiring under the award

1. The recipient (and any subrecipient at any tier) must--

A. Ensure that, as part of the hiring process for any position within the United States that is or will be funded (in whole or in part) with award funds, the recipient (or any subrecipient) properly verifies the employment eligibility of the individual who is being hired, consistent with the provisions of 8 U.S.C. 1324a(a)(1) and (2).

B. Notify all persons associated with the recipient (or any subrecipient) who are or will be involved in activities under this award of both--

(1) this award requirement for verification of employment eligibility, and

(2) the associated provisions in 8 U.S.C. 1324a(a)(1) and (2) that, generally speaking, make it unlawful, in the United States, to hire (or recruit for employment) certain aliens.

C. Provide training (to the extent necessary) to those persons required by this condition to be notified of the award requirement for employment eligibility verification and of the associated provisions of 8 U.S.C. 1324a(a)(1) and (2).

D. As part of the recordkeeping for the award (including pursuant to the Part 200 Uniform Requirements), maintain records of all employment eligibility verifications pertinent to compliance with this award condition in accordance with Form I-9 record retention requirements, as well as records of all pertinent notifications and trainings.

2. Monitoring

The recipient's monitoring responsibilities include monitoring of subrecipient compliance with this condition.

3. Allowable costs

To the extent that such costs are not reimbursed under any other federal program, award funds may be obligated for the reasonable, necessary, and allocable costs (if any) of actions designed to ensure compliance with this condition.

4. Rules of construction

A. Staff involved in the hiring process

For purposes of this condition, persons "who are or will be involved in activities under this award" specifically includes (without limitation) any and all recipient (or any subrecipient) officials or other staff who are or will be involved in the hiring process with respect to a position that is or will be funded (in whole or in part) with award funds.

B. Employment eligibility confirmation with E-Verify

For purposes of satisfying the requirement of this condition regarding verification of employment eligibility, the recipient (or any subrecipient) may choose to participate in, and use, E-Verify (www.e-verify.gov), provided an appropriate person authorized to act on behalf of the recipient (or subrecipient) uses E-Verify (and follows the proper E-Verify procedures, including in the event of a "Tentative Nonconfirmation" or a "Final Nonconfirmation") to confirm employment eligibility for each hiring for a position in the United States that is or will be funded (in whole or in part) with award funds.

C. "United States" specifically includes the District of Columbia, Puerto Rico, Guam, the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands.

D. Nothing in this condition shall be understood to authorize or require any recipient, any subrecipient at any tier, or

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any person or other entity, to violate any federal law, including any applicable civil rights or nondiscrimination law.

E. Nothing in this condition, including in paragraph 4.B., shall be understood to relieve any recipient, any subrecipient at any tier, or any person or other entity, of any obligation otherwise imposed by law, including 8 U.S.C. 1324a(a)(1) and (2).

Questions about E-Verify should be directed to DHS. For more information about E-Verify visit the E-Verify website (https://www.e-verify.gov/) or email E-Verify at E-Verify@dhs.gov. E-Verify employer agents can email E-Verify at E-VerifyEmployerAgent@dhs.gov.

Questions about the meaning or scope of this condition should be directed to OJP, before award acceptance.

10. Requirement to report actual or imminent breach of personally identifiable information (PII)

The recipient (and any "subrecipient" at any tier) must have written procedures in place to respond in the event of an actual or imminent "breach" (OMB M-17-12) if it (or a subrecipient) -- (1) creates, collects, uses, processes, stores, maintains, disseminates, discloses, or disposes of "personally identifiable information (PII)" (2 CFR 200.79) within the scope of an OJP grant-funded program or activity, or (2) uses or operates a "Federal information system" (OMB Circular A-130). The recipient's breach procedures must include a requirement to report actual or imminent breach of PII to an OJP Program Manager no later than 24 hours after an occurrence of an actual breach, or the detection of an imminent breach.

11. All subawards ("subgrants") must have specific federal authorization

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements for authorization of any subaward. This condition applies to agreements that -- for purposes of federal grants administrative requirements -- OJP considers a "subaward" (and therefore does not consider a procurement "contract").

The details of the requirement for authorization of any subaward are posted on the OJP web site at https://ojp.gov/funding/Explore/SubawardAuthorization.htm (Award condition: All subawards ("subgrants") must have specific federal authorization), and are incorporated by reference here.

12. Specific post-award approval required to use a noncompetitive approach in any procurement contract that would exceed $250,000

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements to obtain specific advance approval to use a noncompetitive approach in any procurement contract that would exceed the Simplified Acquisition Threshold (currently, $250,000). This condition applies to agreements that -- for purposes of federal grants administrative requirements -- OJP considers a procurement "contract" (and therefore does not consider a subaward).

The details of the requirement for advance approval to use a noncompetitive approach in a procurement contract under an OJP award are posted on the OJP web site at https://ojp.gov/funding/Explore/NoncompetitiveProcurement.htm (Award condition: Specific post-award approval required to use a noncompetitive approach in a procurement contract (if contract would exceed $250,000)), and are incorporated by reference here.

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SPECIAL CONDITIONS

13. Unreasonable restrictions on competition under the award; association with federal government

SCOPE. This condition applies with respect to any procurement of property or services that is funded (in whole or in part) by this award, whether by the recipient or by any subrecipient at any tier, and regardless of the dollar amount of the purchase or acquisition, the method of procurement, or the nature of any legal instrument used. The provisions of this condition must be among those included in any subaward (at any tier).

1. No discrimination, in procurement transactions, against associates of the federal government

Consistent with the (DOJ) Part 200 Uniform Requirements -- including as set out at 2 C.F.R. 200.300 (requiring awards to be "manage[d] and administer[ed] in a manner so as to ensure that Federal funding is expended and associated programs are implemented in full accordance with U.S. statutory and public policy requirements") and 200.319(a) (generally requiring "[a]ll procurement transactions [to] be conducted in a manner providing full and open competition" and forbidding practices "restrictive of competition," such as "[p]lacing unreasonable requirements on firms in order for them to qualify to do business" and taking "[a]ny arbitrary action in the procurement process") -- no recipient (or subrecipient, at any tier) may (in any procurement transaction) discriminate against any person or entity on the basis of such person or entity's status as an "associate of the federal government" (or on the basis of such person or entity's status as a parent, affiliate, or subsidiary of such an associate), except as expressly set out in 2 C.F.R. 200.319(a) or as specifically authorized by USDOJ.

2. Monitoring

The recipient's monitoring responsibilities include monitoring of subrecipient compliance with this condition.

3. Allowable costs

To the extent that such costs are not reimbursed under any other federal program, award funds may be obligated for the reasonable, necessary, and allocable costs (if any) of actions designed to ensure compliance with this condition.

4. Rules of construction

A. The term "associate of the federal government" means any person or entity engaged or employed (in the past or at present) by or on behalf of the federal government -- as an employee, contractor or subcontractor (at any tier), grant recipient or -subrecipient (at any tier), agent, or otherwise -- in undertaking any work, project, or activity for or on behalf of (or in providing goods or services to or on behalf of) the federal government, and includes any applicant for such employment or engagement, and any person or entity committed by legal instrument to undertake any such work, project, or activity (or to provide such goods or services) in future.

B. Nothing in this condition shall be understood to authorize or require any recipient, any subrecipient at any tier, or any person or other entity, to violate any federal law, including any applicable civil rights or nondiscrimination law.

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SPECIAL CONDITIONS

14. Requirements pertaining to prohibited conduct related to trafficking in persons (including reporting requirements and OJP authority to terminate award)

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements (including requirements to report allegations) pertaining to prohibited conduct related to the trafficking of persons, whether on the part of recipients, subrecipients ("subgrantees"), or individuals defined (for purposes of this condition) as "employees" of the recipient or of any subrecipient.

The details of the recipient's obligations related to prohibited conduct related to trafficking in persons are posted on the OJP web site at https://ojp.gov/funding/Explore/ProhibitedConduct-Trafficking.htm (Award condition: Prohibited conduct by recipients and subrecipients related to trafficking in persons (including reporting requirements and OJP authority to terminate award)), and are incorporated by reference here.

15. Determination of suitability to interact with participating minors

SCOPE. This condition applies to this award if it is indicated -- in the application for the award (as approved by DOJ)(or in the application for any subaward, at any tier), the DOJ funding announcement (solicitation), or an associated federal statute -- that a purpose of some or all of the activities to be carried out under the award (whether by the recipient, or a subrecipient at any tier) is to benefit a set of individuals under 18 years of age.

The recipient, and any subrecipient at any tier, must make determinations of suitability before certain individuals may interact with participating minors. This requirement applies regardless of an individual's employment status.

The details of this requirement are posted on the OJP web site at https://ojp.gov/funding/Explore/Interact-Minors.htm (Award condition: Determination of suitability required, in advance, for certain individuals who may interact with participating minors), and are incorporated by reference here.

16. Compliance with applicable rules regarding approval, planning, and reporting of conferences, meetings, trainings, and other events

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable laws, regulations, policies, and official DOJ guidance (including specific cost limits, prior approval and reporting requirements, where applicable) governing the use of federal funds for expenses related to conferences (as that term is defined by DOJ), including the provision of food and/or beverages at such conferences, and costs of attendance at such conferences.

Information on the pertinent DOJ definition of conferences and the rules applicable to this award appears in the DOJ Grants Financial Guide (currently, as section 3.10 of "Postaward Requirements" in the "DOJ Grants Financial Guide").

17. Requirement for data on performance and effectiveness under the award

The recipient must collect and maintain data that measure the performance and effectiveness of work under this award. The data must be provided to OJP in the manner (including within the timeframes) specified by OJP in the program solicitation or other applicable written guidance. Data collection supports compliance with the Government Performance and Results Act (GPRA) and the GPRA Modernization Act of 2010, and other applicable laws.

18. OJP Training Guiding Principles

Any training or training materials that the recipient -- or any subrecipient ("subgrantee") at any tier -- develops or delivers with OJP award funds must adhere to the OJP Training Guiding Principles for Grantees and Subgrantees, available at https://ojp.gov/funding/Implement/TrainingPrinciplesForGrantees-Subgrantees.htm.

Department of Justice (DOJ) Office of Justice Programs **Bureau of Justice Assistance**	**AWARD CONTINUATION SHEET** **Grant**	PAGE 10 OF 16

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SPECIAL CONDITIONS

19. Effect of failure to address audit issues

The recipient understands and agrees that the DOJ awarding agency (OJP or OVW, as appropriate) may withhold award funds, or may impose other related requirements, if (as determined by the DOJ awarding agency) the recipient does not satisfactorily and promptly address outstanding issues from audits required by the Part 200 Uniform Requirements (or by the terms of this award), or other outstanding issues that arise in connection with audits, investigations, or reviews of DOJ awards.

20. Potential imposition of additional requirements

The recipient agrees to comply with any additional requirements that may be imposed by the DOJ awarding agency (OJP or OVW, as appropriate) during the period of performance for this award, if the recipient is designated as "high-risk" for purposes of the DOJ high-risk grantee list.

21. Compliance with DOJ regulations pertaining to civil rights and nondiscrimination - 28 C.F.R. Part 42

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements of 28 C.F.R. Part 42, specifically including any applicable requirements in Subpart E of 28 C.F.R. Part 42 that relate to an equal employment opportunity program.

22. Compliance with DOJ regulations pertaining to civil rights and nondiscrimination - 28 C.F.R. Part 54

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements of 28 C.F.R. Part 54, which relates to nondiscrimination on the basis of sex in certain "education programs."

23. Compliance with DOJ regulations pertaining to civil rights and nondiscrimination - 28 C.F.R. Part 38

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements of 28 C.F.R. Part 38 (as may be applicable from time to time), specifically including any applicable requirements regarding written notice to program beneficiaries and prospective program beneficiaries.

Currently, among other things, 28 C.F.R. Part 38 includes rules that prohibit specific forms of discrimination on the basis of religion, a religious belief, a refusal to hold a religious belief, or refusal to attend or participate in a religious practice. Part 38, currently, also sets out rules and requirements that pertain to recipient and subrecipient ("subgrantee") organizations that engage in or conduct explicitly religious activities, as well as rules and requirements that pertain to recipients and subrecipients that are faith-based or religious organizations.

The text of 28 C.F.R. Part 38 is available via the Electronic Code of Federal Regulations (currently accessible at https://www.ecfr.gov/cgi-bin/ECFR?page=browse), by browsing to Title 28-Judicial Administration, Chapter 1, Part 38, under e-CFR "current" data.

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SPECIAL CONDITIONS

24. Restrictions on "lobbying"

In general, as a matter of federal law, federal funds awarded by OJP may not be used by the recipient, or any subrecipient ("subgrantee") at any tier, either directly or indirectly, to support or oppose the enactment, repeal, modification, or adoption of any law, regulation, or policy, at any level of government. See 18 U.S.C. 1913. (There may be exceptions if an applicable federal statute specifically authorizes certain activities that otherwise would be barred by law.)

Another federal law generally prohibits federal funds awarded by OJP from being used by the recipient, or any subrecipient at any tier, to pay any person to influence (or attempt to influence) a federal agency, a Member of Congress, or Congress (or an official or employee of any of them) with respect to the awarding of a federal grant or cooperative agreement, subgrant, contract, subcontract, or loan, or with respect to actions such as renewing, extending, or modifying any such award. See 31 U.S.C. 1352. Certain exceptions to this law apply, including an exception that applies to Indian tribes and tribal organizations.

Should any question arise as to whether a particular use of federal funds by a recipient (or subrecipient) would or might fall within the scope of these prohibitions, the recipient is to contact OJP for guidance, and may not proceed without the express prior written approval of OJP.

25. Compliance with general appropriations-law restrictions on the use of federal funds (FY 2020) The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable restrictions on the use of federal funds set out in federal appropriations statutes. Pertinent restrictions that may be set out in applicable appropriations acts are indicated at https://ojp.gov/funding/Explore/FY20AppropriationsRestrictions.htm, and are incorporated by reference here. Should a question arise as to whether a particular use of federal funds by a recipient (or a subrecipient) would or might fall within the scope of an appropriations-law restriction, the recipient is to contact OJP for guidance, and may not proceed without the express prior written approval of OJP.

26. Reporting potential fraud, waste, and abuse, and similar misconduct

The recipient and any subrecipients ("subgrantees") must promptly refer to the DOJ Office of the Inspector General (OIG) any credible evidence that a principal, employee, agent, subrecipient, contractor, subcontractor, or other person has, in connection with funds under this award -- (1) submitted a claim that violates the False Claims Act; or (2) committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct.

Potential fraud, waste, abuse, or misconduct involving or relating to funds under this award should be reported to the OIG by--(1) online submission accessible via the OIG webpage at https://oig.justice.gov/hotline/contact-grants.htm (select "Submit Report Online"); (2) mail directed to: Office of the Inspector General, U.S. Department of Justice, Investigations Division, 1425 New York Avenue, N.W. Suite 7100, Washington, DC 20530; and/or (3) by facsimile directed to the DOJ OIG Fraud Detection Office (Attn: Grantee Reporting) at (202) 616-9881 (fax).

Additional information is available from the DOJ OIG website at https://oig.justice.gov/hotline.

Department of Justice (DOJ) Office of Justice Programs **Bureau of Justice Assistance**	**AWARD CONTINUATION SHEET** **Grant**	PAGE 12 OF 16

PROJECT NUMBER 2020-VD-BX-0167 AWARD DATE 04/23/2020

SPECIAL CONDITIONS

27. Restrictions and certifications regarding non-disclosure agreements and related matters

No recipient or subrecipient ("subgrantee") under this award, or entity that receives a procurement contract or subcontract with any funds under this award, may require any employee or contractor to sign an internal confidentiality agreement or statement that prohibits or otherwise restricts, or purports to prohibit or restrict, the reporting (in accordance with law) of waste, fraud, or abuse to an investigative or law enforcement representative of a federal department or agency authorized to receive such information.

The foregoing is not intended, and shall not be understood by the agency making this award, to contravene requirements applicable to Standard Form 312 (which relates to classified information), Form 4414 (which relates to sensitive compartmented information), or any other form issued by a federal department or agency governing the nondisclosure of classified information.

1. In accepting this award, the recipient--

a. represents that it neither requires nor has required internal confidentiality agreements or statements from employees or contractors that currently prohibit or otherwise currently restrict (or purport to prohibit or restrict) employees or contractors from reporting waste, fraud, or abuse as described above; and

b. certifies that, if it learns or is notified that it is or has been requiring its employees or contractors to execute agreements or statements that prohibit or otherwise restrict (or purport to prohibit or restrict), reporting of waste, fraud, or abuse as described above, it will immediately stop any further obligations of award funds, will provide prompt written notification to the federal agency making this award, and will resume (or permit resumption of) such obligations only if expressly authorized to do so by that agency.

2. If the recipient does or is authorized under this award to make subawards ("subgrants"), procurement contracts, or both--

a. it represents that--

(1) it has determined that no other entity that the recipient's application proposes may or will receive award funds (whether through a subaward ("subgrant"), procurement contract, or subcontract under a procurement contract) either requires or has required internal confidentiality agreements or statements from employees or contractors that currently prohibit or otherwise currently restrict (or purport to prohibit or restrict) employees or contractors from reporting waste, fraud, or abuse as described above; and

(2) it has made appropriate inquiry, or otherwise has an adequate factual basis, to support this representation; and

b. it certifies that, if it learns or is notified that any subrecipient, contractor, or subcontractor entity that receives funds under this award is or has been requiring its employees or contractors to execute agreements or statements that prohibit or otherwise restrict (or purport to prohibit or restrict), reporting of waste, fraud, or abuse as described above, it will immediately stop any further obligations of award funds to or by that entity, will provide prompt written notification to the federal agency making this award, and will resume (or permit resumption of) such obligations only if expressly authorized to do so by that agency.

Department of Justice (DOJ) Office of Justice Programs **Bureau of Justice Assistance**	**AWARD CONTINUATION SHEET** **Grant**	PAGE 13 OF 16

PROJECT NUMBER 2020-VD-BX-0167 AWARD DATE 04/23/2020

SPECIAL CONDITIONS

28. Compliance with 41 U.S.C. 4712 (including prohibitions on reprisal; notice to employees)

The recipient (and any subrecipient at any tier) must comply with, and is subject to, all applicable provisions of 41 U.S.C. 4712, including all applicable provisions that prohibit, under specified circumstances, discrimination against an employee as reprisal for the employee's disclosure of information related to gross mismanagement of a federal grant, a gross waste of federal funds, an abuse of authority relating to a federal grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal grant.

The recipient also must inform its employees, in writing (and in the predominant native language of the workforce), of employee rights and remedies under 41 U.S.C. 4712.

Should a question arise as to the applicability of the provisions of 41 U.S.C. 4712 to this award, the recipient is to contact the DOJ awarding agency (OJP or OVW, as appropriate) for guidance.

29. Encouragement of policies to ban text messaging while driving

Pursuant to Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving," 74 Fed. Reg. 51225 (October 1, 2009), DOJ encourages recipients and subrecipients ("subgrantees") to adopt and enforce policies banning employees from text messaging while driving any vehicle during the course of performing work funded by this award, and to establish workplace safety policies and conduct education, awareness, and other outreach to decrease crashes caused by distracted drivers.

30. Requirement to disclose whether recipient is designated "high risk" by a federal grant-making agency outside of DOJ

If the recipient is designated "high risk" by a federal grant-making agency outside of DOJ, currently or at any time during the course of the period of performance under this award, the recipient must disclose that fact and certain related information to OJP by email at OJP.ComplianceReporting@ojp.usdoj.gov. For purposes of this disclosure, high risk includes any status under which a federal awarding agency provides additional oversight due to the recipient's past performance, or other programmatic or financial concerns with the recipient. The recipient's disclosure must include the following: 1. The federal awarding agency that currently designates the recipient high risk, 2. The date the recipient was designated high risk, 3. The high-risk point of contact at that federal awarding agency (name, phone number, and email address), and 4. The reasons for the high-risk status, as set out by the federal awarding agency.

31. Signing Authority

This award must be signed by an authorized official of the applicant State, local, or tribal government, on behalf of that applicant State, unit of local government, or Tribe, unless the applicant designates an organizational unit to apply on its behalf. For example, if designated by a unit of local government, a Police Department or Sheriff's Office (or similar agency) may apply on behalf of the applicant jurisdiction, as long as the department, office, or agency is listed as the organizational unit on the SF-424. In that case, the head of the designated organizational unit (such as a Police Chief or Sheriff) may sign the award. Documentation of the designation by the appropriate governing body must be retained by the grant recipient.

32. The "Emergency Appropriations for Coronavirus Health Response and Agency Operations" law (Public Law 116-136) includes definitions, reporting requirements, and certain other provisions that apply (whether in whole or in part) to this award. In addition, consistent with the CESF Program's purposes, which involve preparing for, preventing, and responding to the coronavirus national emergency, OJP will provide notice of any additional CESF program-specific grants administrative requirements on an award page, accessible at https://www.ojp.gov/funding/explore/CESF-program-specific-condition, that is incorporated by reference here.

Department of Justice (DOJ) Office of Justice Programs **Bureau of Justice Assistance**	**AWARD CONTINUATION SHEET** **Grant**	PAGE 14 OF 16

PROJECT NUMBER 2020-VD-BX-0167 AWARD DATE 04/23/2020

SPECIAL CONDITIONS

33. The recipient agrees to comply with OJP grant monitoring guidelines, protocols, and procedures, and to cooperate with BJA and OCFO on all grant monitoring requests, including requests related to desk reviews, enhanced programmatic desk reviews, and/or site visits. The recipient agrees to provide to BJA and OCFO all documentation necessary to complete monitoring tasks, including documentation related to any subawards made under this award. Further, the recipient agrees to abide by reasonable deadlines set by BJA and OCFO for providing the requested documents. Failure to cooperate with BJA's/OCFO's grant monitoring activities may result in sanctions affecting the recipient's DOJ awards, including, but not limited to: withholdings and/or other restrictions on the recipient's access to grant funds; referral to the Office of the Inspector General for audit review; designation of the recipient as a DOJ High Risk grantee; or termination of an award(s).

34. FFATA reporting: Subawards and executive compensation

The recipient must comply with applicable requirements to report first-tier subawards ("subgrants") of $25,000 or more and, in certain circumstances, to report the names and total compensation of the five most highly compensated executives of the recipient and first-tier subrecipients (first-tier "subgrantees") of award funds. The details of recipient obligations, which derive from the Federal Funding Accountability and Transparency Act of 2006 (FFATA), are posted on the OJP web site at https://ojp.gov/funding/Explore/FFATA.htm (Award condition: Reporting Subawards and Executive Compensation), and are incorporated by reference here.

This condition, including its reporting requirement, does not apply to-- (1) an award of less than $25,000, or (2) an award made to an individual who received the award as a natural person (i.e., unrelated to any business or non-profit organization that he or she may own or operate in his or her name).

35. Required monitoring of subawards

The recipient must monitor subawards under this award in accordance with all applicable statutes, regulations, award conditions, and the DOJ Grants Financial Guide, and must include the applicable conditions of this award in any subaward. Among other things, the recipient is responsible for oversight of subrecipient spending and monitoring of specific outcomes and benefits attributable to use of award funds by subrecipients. The recipient agrees to submit, upon request, documentation of its policies and procedures for monitoring of subawards under this award.

36. Use of program income

Program income (as defined in the Part 200 Uniform Requirements) must be used in accordance with the provisions of the Part 200 Uniform Requirements. Program income earnings and expenditures both must be reported on the quarterly Federal Financial Report, SF 425.

37. Justice Information Sharing

Recipients are encouraged to comply any information-sharing projects funded under this award with DOJ's Global Justice Information Sharing Initiative (Global) guidelines. The recipient (and any subrecipient at any tier) is encouraged to conform to the Global Standards Package (GSP) and all constituent elements, where applicable, as described at: https://it.ojp.gov/ gsp_grantcondition. The recipient (and any subrecipient at any tier) must document planned approaches to information sharing and describe compliance with the GSP and appropriate privacy policy that protects shared information.

38. Avoidance of duplication of networks

To avoid duplicating existing networks or IT systems in any initiatives funded by BJA for law enforcement information sharing systems which involve interstate connectivity between jurisdictions, such systems shall employ, to the extent possible, existing networks as the communication backbone to achieve interstate connectivity.

Department of Justice (DOJ) Office of Justice Programs **Bureau of Justice Assistance**	**AWARD CONTINUATION SHEET** **Grant**	PAGE 15 OF 16

PROJECT NUMBER 2020-VD-BX-0167 AWARD DATE 04/23/2020

SPECIAL CONDITIONS

39. Compliance with National Environmental Policy Act and related statutes

Upon request, the recipient (and any subrecipient at any tier) must assist BJA in complying with the National Environmental Policy Act (NEPA), the National Historic Preservation Act, and other related federal environmental impact analyses requirements in the use of these award funds, either directly by the recipient or by a subrecipient. Accordingly, the recipient agrees to first determine if any of the following activities will be funded by the grant, prior to obligating funds for any of these purposes. If it is determined that any of the following activities will be funded by the award, the recipient agrees to contact BJA. The recipient understands that this condition applies to new activities as set out below, whether or not they are being specifically funded with these award funds. That is, as long as the activity is being conducted by the recipient, a subrecipient, or any third party, and the activity needs to be undertaken in order to use these award funds, this condition must first be met. The activities covered by this condition are: a. New construction; b. Minor renovation or remodeling of a property located in an environmentally or historically sensitive area, including properties located within a 100-year flood plain, a wetland, or habitat for endangered species, or a property listed on or eligible for listing on the National Register of Historic Places; c. A renovation, lease, or any proposed use of a building or facility that will either (a) result in a change in its basic prior use or (b) significantly change its size; d. Implementation of a new program involving the use of chemicals other than chemicals that are (a) purchased as an incidental component of a funded activity and (b) traditionally used, for example, in office, household, recreational, or education environments; and e. Implementation of a program relating to clandestine methamphetamine laboratory operations, including the identification, seizure, or closure of clandestine methamphetamine laboratories. The recipient understands and agrees that complying with NEPA may require the preparation of an Environmental Assessment and/ or an Environmental Impact Statement, as directed by BJA. The recipient further understands and agrees to the requirements for implementation of a Mitigation Plan, as detailed at https:/ / bja.gov/ Funding/ nepa.html, for programs relating to methamphetamine laboratory operations. Application of This Condition to Recipient's Existing Programs or Activities: For any of the recipient's or its subrecipients' existing programs or activities that will be funded by these award funds, the recipient, upon specific request from BJA, agrees to cooperate with BJA in any preparation by BJA of a national or program environmental assessment of that funded program or activity.

40. Establishment of interest-bearing account

If award funds are being drawn down in advance, the recipient (or a subrecipient, with respect to a subaward) is required to establish an interest-bearing account dedicated specifically to this award. Recipients (and subrecipients) must maintain advance payments of federal awards in interest-bearing accounts, unless regulatory exclusions apply (2 C.F.R. 200.305(b)(8)). The award funds, including any interest, may not be used to pay debts or expenses incurred by other activities beyond the scope of the Coronavirus Emergency Supplemental Funding (CESF) program . The recipient also agrees to obligate the award funds in the account(including any interest earned) during the period of performance for the award and expend within 90 days thereafter. Any unobligated or unexpended funds, including interest earned, must be returned to OJP at the time of closeout.

41. Expenditures requiring prior approval

No funds under this award may be expended on individual items costing $500,000 or more, or to purchase Unmanned Aerial Systems (UAS), Unmanned Aircraft (UA), and/or Unmanned Aerial Vehicles (UAV) without prior written approval from BJA. Prior approval must be obtained post-award, through the submission and approval of a Grant Adjustment Notice (GAN) through OJP's Grant Management System (GMS).

Department of Justice (DOJ) Office of Justice Programs **Bureau of Justice Assistance**	**AWARD CONTINUATION SHEET** **Grant**	PAGE 16 OF 16

PROJECT NUMBER 2020-VD-BX-0167 AWARD DATE 04/23/2020

SPECIAL CONDITIONS

42. Authorization to obligate (federal) award funds to reimburse certain project costs incurred on or after January 20, 2020

The recipient may obligate (federal) award funds only after the recipient makes a valid acceptance of the award. As of the first day of the period of performance for the award (January 20, 2020), however, the recipient may choose to incur project costs using non-federal funds, but any such project costs are incurred at the recipient's risk until, at a minimum-- (1) the recipient makes a valid acceptance of the award, and (2) all applicable withholding conditions are removed by OJP (via a Grant Adjustment Notice). (A withholding condition is a condition in the award document that precludes the recipient from obligating, expending, or drawing down all or a portion of the award funds until the condition is removed.)

Nothing in this condition shall be understood to authorize the recipient (or any subrecipient at any tier) to use award funds to "supplant" State or local funds.

43. Use of funds for DNA testing; upload of DNA profiles

If award funds are used for DNA testing of evidentiary materials, any resulting eligible DNA profiles must be uploaded to the Combined DNA Index System ("CODIS," the DNA database operated by the FBI) by a government DNA laboratory with access to CODIS. No profiles generated under this award may be entered or uploaded into any non-governmental DNA database without prior express written approval from BJA. Award funds may not be used for the purchase of DNA equipment and supplies unless the resulting DNA profiles may be accepted for entry into CODIS.

44. Body armor - compliance with NIJ standards and other requirements

Ballistic-resistant and stab-resistant body armor purchased with award funds may be purchased at any threat level, make or model, from any distributor or manufacturer, as long as the body armor has been tested and found to comply with applicable National Institute of Justice ballistic or stab standards and is listed on the NIJ Compliant Body Armor Model List (https://nij.gov/topics/technology/body-armor/Pages/compliant-ballistic-armor.aspx). In addition, ballistic-resistant and stab-resistant body armor purchased must be made in the United States and must be uniquely fitted, as set forth in 34 U.S.C. 10202(c)(1)(A). The latest NIJ standard information can be found here: https:/ / nij.gov/ topics/ technology/ body-armor/ pages/ safety-initiative.aspx.

Department of Justice (DOJ)

Office of Justice Programs

Bureau of Justice Assistance

Washington, D.C. 20531

Memorandum To: Official Grant File

From: Orbin Terry, NEPA Coordinator

Subject: Categorical Exclusion for City of Fargo

The Coronavirus Emergency Supplemental Funding (CESF) Program allows eligible states, local units of government, and tribes to support a broad range of activities including preventing, preparing for, and responding to the coronavirus.

All recipients of CESF funding must assist BJA in complying with NEPA and other related federal environmental impact analyses requirements in the use of grant funds, whether the funds are used directly by the grantee or by a sub-grantee or third party.

BJA's expectation is that none of the following activities will be conducted whether under this federal award or a related third party action:
(1) New construction
(2) Any renovation or remodeling of a property located in an environmentally or historically sensitive area, including property (a) listed on or eligible for listing on the National Register of Historic Places, or (b) located within a 100-year flood plain, a wetland, or habitat for an endangered species
(3) A renovation that will change the basic prior use of a facility or significantly change its size
(4) Research and technology whose anticipated and future application could be expected to have an effect on the environment
(5) Implementation of a program involving the use of chemicals (including the identification, seizure, or closure of clandestine methamphetamine laboratories) other than chemicals that are (a) purchased as an incidental component of a funded activity and (b) traditionally used, for example, in office, household, recreational, or education environments.

Consequently, the subject federal action meets the Office of Justice Programs' criteria for a categorical exclusion as contained in paragraph 4(b) of Appendix D to Part 61 of Title 28 of the Code of Federal Regulations.

If, however, award funds are proposed to be used for any of the enumerated projects or activities above, grant recipients must contact their grant manager, and receive written approval prior to commencing that project or activity.

Questions about this determination may be directed to your grant manager or Orbin Terry, Environmental Coordinator for BJA.

Department of Justice (DOJ)
Office of Justice Programs
Bureau of Justice Assistance

GRANT MANAGER'S MEMORANDUM, PT. I: PROJECT SUMMARY

Grant

PROJECT NUMBER	PAGE 1 OF 1
2020-VD-BX-0167	

This project is supported under FY20(BJA - CESF) Pub. L. No. 116-136, Div. B; 28 U.S.C. 530C

1. STAFF CONTACT (Name & telephone number)	2. PROJECT DIRECTOR (Name, address & telephone number)
Heather Wiley (202) 598-3969	Todd Osmundson Deputy Chief 222 4th Street North Fargo, ND 58102-4818 (701) 298-6996

3a. TITLE OF THE PROGRAM	3b. POMS CODE (SEE INSTRUCTIONS ON REVERSE)
BJA FY 20 Coronavirus Emergency Supplemental Funding Program	

4. TITLE OF PROJECT

CIty of Fargo Coronavirus Emergency Response

5. NAME & ADDRESS OF GRANTEE	6. NAME & ADRESS OF SUBGRANTEE
City of Fargo 222 4th Street North Fargo, ND 58102-4818	

7. PROGRAM PERIOD	8. BUDGET PERIOD
FROM: 01/20/2020 TO: 01/31/2022	FROM: 01/20/2020 TO: 01/31/2022

9. AMOUNT OF AWARD	10. DATE OF AWARD
$ 195,828	04/23/2020

11. SECOND YEAR'S BUDGET	12. SECOND YEAR'S BUDGET AMOUNT

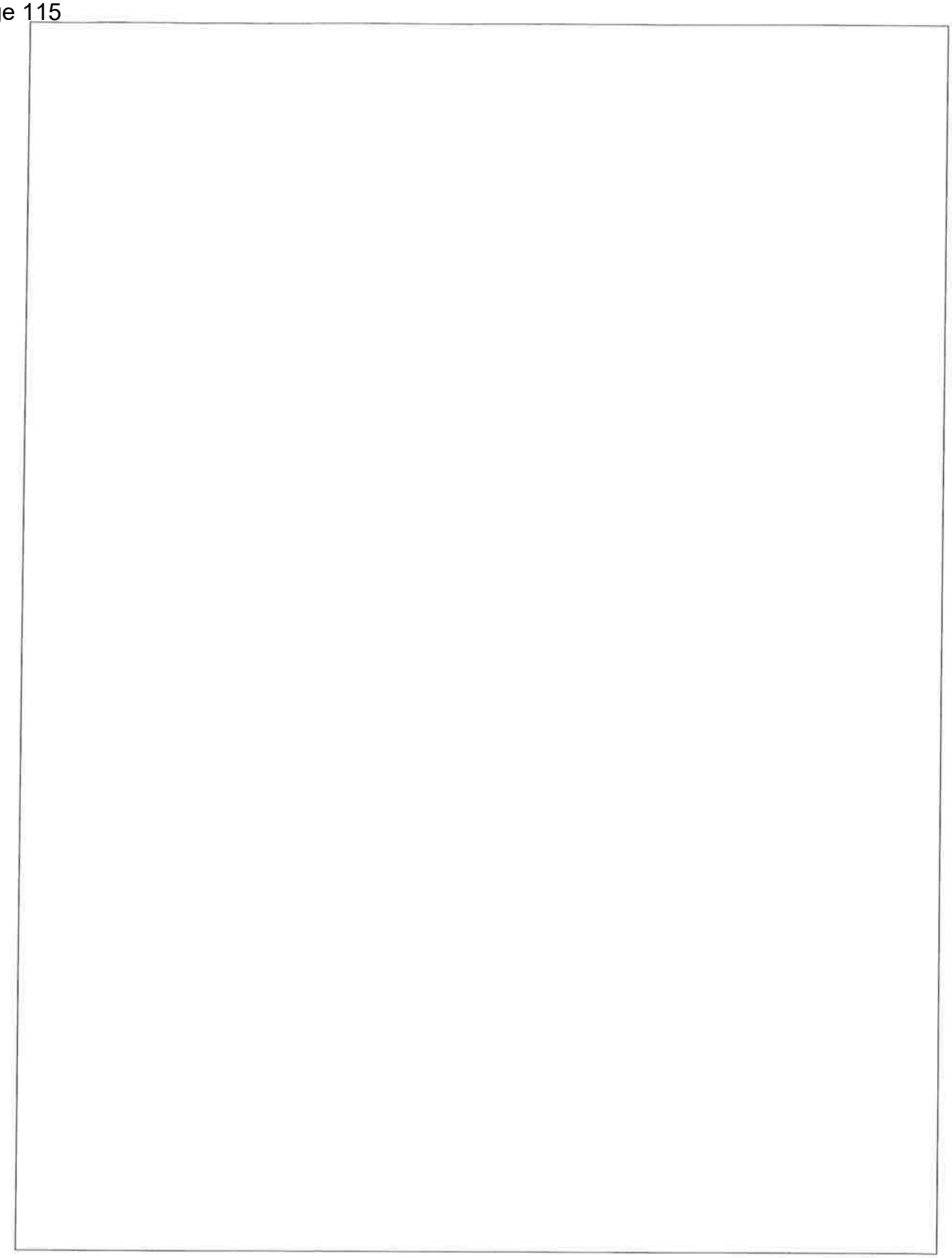
13. THIRD YEAR'S BUDGET PERIOD	14. THIRD YEAR'S BUDGET AMOUNT

15. SUMMARY DESCRIPTION OF PROJECT (See instruction on reverse)

The Coronavirus Emergency Supplemental Funding (CESF) Program allows States, U.S. Territories, the District of Columbia, units of local government, and federally recognized tribal governments to support a broad range of activities to prevent, prepare for, and respond to the coronavirus. Funded projects or initiatives may include, but are not limited to, overtime, equipment (including law enforcement and medical personal protective equipment), hiring, supplies (such as gloves, masks, sanitizer), training, travel expenses (particularly related to the distribution of resources to the most impacted areas), and addressing the medical needs of inmates in state, local, and tribal prisons, jails, and detention centers.

NCA/NCF

OJP FORM 4000/2 (REV. 4-88)



THE CITY OF Fargo FAR MORE

16

May 4, 2020

City Commission
225 N 4th Street N
Fargo, ND 58102

Dear Commissioners:

The City of Fargo Transit Department (MATBUS) has been working with our vendor, Creative Outdoor Advertising (COA), who manages our bus bench advertising. In 2019, a letter was sent to COA terminating our contract as of April 30, 2020 for various reason. Since then COA has reached out and requested we reconsider this decision and would increase our revenue along with addressing other items, such as snow clearing, placement, etc.

Recommended motion is to approve the attached amendment.

Sincerely,

Matthew Peterson

Matthew G. Peterson
Assistant Transit Director
City of Fargo

/enc

AMENDING AGREEMENT NO. 1

THIS AMENDING AGREEMENT (the "Agreement") dated this 4th day of May 2020.

BETWEEN:

THE CITY OF FARGO

-AND-

CREATIVE OUTDOOR ADVERTISING OF AMERICA INC

1. BACKGROUND

1.1 The City of Fargo and Creative Outdoor Advertising entered into a Street Amenities Agreement (the "Contract") signed May 1st, 2015, a copy of which is attached hereto as Exhibit 1.

1.2 The Parties wish to amend the terms and conditions set forth in the Contract in a way that is described in this Amending Agreement (the "Agreement").

1.3 This is the first amendment to the Contract.

1.4 In CONSIDERATION OF the Parties agreeing to amend their responsibilities as set forth in the existing Contract, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, both Parties agree to keep, perform, and fulfill the promises, conditions and agreements below:

2. AMENDMENTS

The Contract is amended as follows:

2.1 Unless otherwise terminated, the Contract will renew each successive year commencing May 1, 2020, for one-year terms. The Contract and this Agreement shall terminate five (5) years from the date hereof, unless otherwise agreed to in writing signed by the parties.

2.2 The parties agree to provide notice in accordance with the terms of the Contract, in writing, of the intent NOT to renew this Agreement under the same terms and conditions, at least 120 days before the expiration of this Agreement, or any renewals or extensions thereof.

2.3 COA will remove snow from the benches within three (3) calendar days of any snowfall event. If a private property owner's actions are contributing to additional snow being placed on the Amenity, as defined in the Contract, the CITY agrees to assist COA in contacting the property owner when requested. In the event the adjacent Property Owner does not remove the additional snow placed by the property owner or other agreement reached to COA's satisfaction, COA will have the right to remove the Amenity without further notice or compensation to CITY.

2.4 COA shall pay to the City of Fargo:

2.4.1 **Years 1-3 of this agreement** - $100 per Amenity per year.

2.4.2 **Years 4-5 of this agreement** - $150 per Amenity per year.

3. NO OTHER CHANGES

3.1 Except as otherwise expressly stated herein, all the terms and conditions of the Contract remain unchanged and in full force and effect.

IN WITNESS WHEREOF the parties have executed this Agreement Amendment No. 1 as of the date set out above.

Accepted on behalf of The City of Fargo

_____ _____

Signature Date

_____

Print Name

_____ _____

Signature Date

_____

Accepted on behalf of Creative Outdoor Advertising of America, Inc

_____ _____

Signature Date

_____ _____

Print Name

CITY OF Fargo

Metropolitan Area Transit
650 23rd Street N
Fargo, ND 58102
Phone: 701-241-8140
Fax: 701-241-8558

17

May 3, 2020

Board of City Commissioners
Fargo City Hall
200 North Third Street
Fargo, ND 58102

Dear Commissioners:

The State of North Dakota Department of Transportation (ND DOT) has granted an extension for contracts 38180987 and 38190960. There are no additional funds or funding impacts, only an extension of time for each.

The amendment, ND DOT Contract No. 38180987A, CFDA No. 20.513 and Contract No. 38190960A, CFDA No. 20.256 are attached.

The requested motion is to approve the attached amendments 38180987A and 38190960A.

Thank you.

Sincerely,

Julie Bommelman

Julie Bommelman
City of Fargo Transit Director
701-476-6737
jbommelman@fargond.gov

/enc

NDDOT Contract No. 38180987A

North Dakota Department of Transportation

AMENDMENT TO CONTRACT NO. 38180987

Project No.

THIS AMENDMENT to the above-referenced contract is entered into by and between the State of North Dakota, acting through its Director of Transportation, hereinafter known as NDDOT, whose address is 608 East Boulevard Avenue, Bismarck, North Dakota 58505-0700, and City of Fargo, hereinafter known as the Contractor, whose address is 650 23rd St North, Fargo, ND 58102.

WHEREAS, the parties entered into a contract on September 19, 2018; and

WHEREAS, no additional funding is awarded to this contract; and

WHEREAS, additional time is required to complete the contract; and

NOW THEREFORE, the Contractor and NDDOT agree that the contract entered into on September 19, 2018, shall have a new completion date of December 31, 2020.

All other terms and conditions of the above-referenced contract are incorporated herein by reference and remain in full force and effect.

EXECUTED the date last below signed.

WITNESS:

Steve Sprague
NAME (TYPE OR PRINT)

SIGNATURE

To be signed by **Owner**; **Partner**; **Corp. Pres.**, **Vice Pres.**, or **other authorized Corp. Officer**. (If signed by other authorized Corp. Officer, please attach copy of Power of Attorney or other documentation showing authority to sign.)

CONTRACTOR:

City of Fargo
COMPANY NAME

Dr. Timothy J. Mahoney
OFFICER'S NAME (TYPE OR PRINT)

SIGNATURE

Mayor
TITLE

DATE

WITNESS:

NAME (TYPE OR PRINT)

SIGNATURE

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

DIRECTOR (TYPE OR PRINT)

SIGNATURE

DATE

APPROVED as to substance by:

DIVISION DIRECTOR (TYPE OR PRINT)

SIGNATURE

DATE

CLA 52494 (Div. 06)
L.D. Approved 5-19-00; 5-03

NDDOT
North Dakota Department of Transportation

NDDOT Contract No. 38190960A

North Dakota Department of Transportation

AMENDMENT TO CONTRACT NO. 38190960

Project No.

THIS AMENDMENT to the above-referenced contract is entered into by and between the State of North Dakota, acting through its Director of Transportation, hereinafter known as NDDOT, whose address is 608 East Boulevard Avenue, Bismarck, North Dakota 58505-0700, and City of Fargo, hereinafter known as the Contractor, whose address is 650 23rd St North, Fargo, ND 58102.

WHEREAS, the parties entered into a contract on September 17, 2019; and

WHEREAS, no additional funding is awarded to this contract; and

WHEREAS, additional time is required to complete the contract; and

NOW THEREFORE, the Contractor and NDDOT agree that the contract entered into on September 17, 2019, shall have a new completion date of December 31, 2020.

All other terms and conditions of the above-referenced contract are incorporated herein by reference and remain in full force and effect.

EXECUTED the date last below signed.

WITNESS:

Steve Sprague
NAME (TYPE OR PRINT)

SIGNATURE

To be signed by **Owner**; **Partner**; **Corp. Pres.**, **Vice Pres.**, or **other authorized Corp. Officer.** (If signed by other authorized Corp. Officer, please attach copy of Power of Attorney or other documentation showing authority to sign.)

CONTRACTOR:

City of Fargo
COMPANY NAME

Dr. Timothy J. Mahoney
OFFICER'S NAME (TYPE OR PRINT)

SIGNATURE

Mayor
TITLE

DATE

WITNESS:

NAME (TYPE OR PRINT)

SIGNATURE

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

DIRECTOR (TYPE OR PRINT)

SIGNATURE

DATE

APPROVED as to substance by:

DIVISION DIRECTOR (TYPE OR PRINT)

SIGNATURE

DATE

CLA 52494 (Div. 06)
L.D. Approved 5-19-00; 5-03

CITY OF Fargo

May 5, 2020

Metropolitan Area Transit
650 23rd Street N
Fargo, ND 58102
Phone: 701-241-8140
Fax: 701-241-8558

(18)

Board of City Commissioners
Fargo City Hall
200 North Third Street
Fargo, ND 58102

Dear Commissioners:

The Federal Transit Administration has made $7,936,636 available to the City of Fargo Transit Department in grant funding under the Coronavirus Aid, Relief, and Economic Security (CARES) Act.

Funding will be provided at a 100 percent federal share, with no local match required, and will be available to support Transit capital, operating, and other expenses generally eligible under those programs to prevent, prepare for, and respond to COVID-19. Further, operating expenses incurred beginning on January 20, 2020 are also eligible, including operating expenses to maintain transit services as well as paying for administrative leave for Transit personnel due to reduced operations during an emergency.

Funds available under the CARES Act are available for all Transit operating activities (net fare revenues) that occur on or after January 20, 2020 are eligible. In general, Transit operating expenses are those costs necessary to operate, maintain, and manage a public transportation system. Transit operating expenses usually include such costs as driver salaries, fuel, and items having a useful life of less than one year, including personal protective equipment and cleaning supplies.

Funds are available to Transit until expended. There is no lapse date to obligate funds available under the CARES Act, however, it is in the best interest of the City to apply for and obligate the funds as soon as possible.

The requested motion is to approve submittal of the grant application and, upon receipt of funds, execute the grant agreement.

Thank you.

Sincerely,

Julie Bommelman

Julie Bommelman
City of Fargo Transit Director
701-476-6737
jbommelman@fargond.gov

CITY OF Fargo

Metropolitan Area Transit
650 23rd Street N
Fargo, ND 58102
Phone: 701-241-8140
Fax: 701-241-8558

19

May 3, 2020

Board of City Commissioners
City Hall - 225 4th St N
Fargo, ND 58102

Dear Commissioners:

The State of North Dakota has made $10.5M available in grant funding for public transportation (transit). The grant opportunity is for capital discretionary 5339 CDFA No. 20.526 and 5310 CFDA No. 20.513 funds (for bus and bus facilities by the Federal Transit Administration (FTA) and administered by the NDDOT). The Transit Department will utilize our State Aid for funding a local share of $500,000 (the federal share of the project is $2,000,000), therefore there is no request for local share.

These grants would have a profound impact on our community's transit system and the transportation options we offer our residents. There is a critical need for support equipment and replacement of overhead door detection system as well as capital repairs. In addition, we included a request for an upgrade to our internal communications/file share software and the Mobility Manager position.

The Transit Development Plan identified the need to upgrade and rehab equipment, and the Federal Transit Administration has implemented a requirement to have and follow a Transit Asset Management Plan which outlines equipment maintenance and lifecycle requirements.

The requested motion is to approve the grant applications, and, upon successful receipt of funds, approve the grant execution. Thank you.

Sincerely,

Julie Bommelman
City of Fargo Transit Director
701-476-6737
jbommelman@cityoffargo.com

Printed on Recycled paper.

CITY OF Fargo

Metropolitan Area Transit
650 23rd Street N
Fargo, ND 58102
Phone: 701-241-8140
Fax: 701-241-8558

(20)

May 3, 2020

Board of City Commissioners
Fargo City Hall
200 North Third Street
Fargo, ND 58102

Dear Commissioners:

The North Dakota Department of Transportation, Federal Highways Administration (NDDOT FHWA) has made $1,000,000 available to the City of Fargo Transit Department in grant funding under the STBGP-U program.

The funding is programmed into the Transportation Improvement Plan bi-annually for bus purchases.

The City Transit Department's capital replacement plan identifies the need to replace buses on a planned schedule, which include this project. The local match will be $250,000, however, that funding is not required until FY2021 and will be put in the budget for Transit.

The requested motion is to approve the local match for 2021 and approve the attached Memorandum of Understanding with NDDOT FHWA for bus replacements.

Thank you.

Sincerely,

Julie Bommelman

Julie Bommelman
City of Fargo Transit Director
701-476-6737
jbommelman@fargond.gov

/enc

Transit Capital Project – Fiscal Year 2020 Urban Roads Program
Memorandum of Understanding
City of Fargo and NDDOT
NDDOT Project No. SU-8-984(167), PCN 22820

This Memorandum of Understanding (MOU) is entered into by and between the North Dakota Department of Transportation (NDDOT) acting through the Director, whose address is 608 East Boulevard Avenue, Bismarck, ND 58505-0700, and the city of Fargo, North Dakota, hereinafter referred to as the City who agree that:

It is in the best interest of both parties to have the city of Fargo take the lead in the procurement of fixed route replacement vehicles, funded through the fiscal year 2020 Urban Roads Program, as a Section 5307 grant through the Federal Transit Administration (FTA). The transit capital project is currently programmed in the 2020-2023 NDDOT Statewide Transportation Improvement Program (STIP) and the Metro COG Transportation Improvement Program (TIP), ID Number 4162670, at the following cost:

$1,250,000 Total
$1,000,000 Federal
$ 250,000 City

NDDOT has discussed this project with the Federal Highway Administration (FHWA) and FTA. It has been determined that FTA will administer the grant to the city of Fargo. Pursuant to Title 23 of the United States Code, NDDOT will submit a funding transfer request to FHWA. FHWA will transfer the funds to FTA for a grant to the city of Fargo for this project.

NDDOT will notify the city of Fargo once it has received confirmation that FHWA has transferred the funds. The city of Fargo is responsible for obtaining the grant from FTA for the fixed route replacement vehicles. The funds shall be used as identified in the approved STIP and TIP. The city agrees to the terms and conditions required for this project by FHWA and FTA.

The city agrees to the following requirements for NDDOT:

a. The city shall submit project data and information as requested by NDDOT.
b. The city shall also submit financial statements, data, records, contracts, specifications, procurement documents, and other documents related to the project as requested by NDDOT.
c. The city shall maintain all accounting and project records NDDOT may require. Such records shall be made available to NDDOT and the federal government for inspection and audit during the agreement term and for three years after close-out of the FTA grant, unless any litigation, claim, or audit is started before the expiration of the three years, in which case the records shall be retained until such action is satisfied.

d. The city shall list NDDOT as lienholder on the vehicles in accordance with the "NDDOT State Management Plan for Public Transportation".

ATTESTED:
Steve Sprague, City Auditor

NAME (TYPE OR PRINT)

SIGNATURE

CITY OF FARGO
Dr. Timothy J. Mahoney

MAYOR (TYPE OR PRINT NAME)

SIGNATURE

DATE

WITNESS:

NAME (TYPE OR PRINT)

SIGNATURE

DATE

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

DIRECTOR (TYPE OR PRINT NAME)

SIGNATURE

DATE

APPROVED as to substance by:

DIVISION DIRECTOR (TYPE OR PRINT)

SIGNATURE

DATE

CITY OF Fargo

Metropolitan Area Transit
650 23rd Street N
Fargo, ND 58102
Phone: 701-241-8140
Fax: 701-241-8558

2a-c

May 3, 2020

Board of City Commissioners
City Hall - 225 4th St N
Fargo, ND 58102

Dear Commissioners:

The Ground Transportation Center (GTC) renovation project has three prime contractors: Gast Construction, Rick Electric and Valley Services Mechanical. Each of these contractors has a change order for the above grade and Jefferson Lines portions of the project:

RFP No. AFB20017, Project F18006 (GTC Above Grade):

Gast Construction	-$2,710.00
Rick Electric	$18,488.64
Valley Service Mechanical	-$166.00

RFP No. AFB20017, Project F19011 (Jefferson Lines portion):
These are zero-cost change orders, but outline the changes in the modified phasing plans.

Gast Construction	$0
Rick Electric	$0
Valley Service Mechanical	$0

The requested motion is to approve the attached change orders for the referenced projects. Thank you.

Sincerely,

Julie Bommelman

Julie Bommelman
City of Fargo Transit Director
701-476-6737
jbommelman@cityoffargo.com

/enc

CHANGE ORDER NO. 1

Date of Issuance: *4/20/2020*

Effective Date: *4/1/2020*

PROJECT TITLE
Remodel (F18006)
OWNER
City of Fargo
CONTRACTOR
Gast Construction Company, Inc.
ORIGINAL CONTRACT DATE
1/31/2020

THE CONTRACT DOCUMENTS ARE MODIFIED AS FOLLOWS UPON EXECUTION OF THIS CHANGE ORDER

1. ADDITIONS OR DELETIONS TO THE CONTRACT AND ASSOCIATED COSTS

Spec. No.	Item	Description of Addition or Deletion	Unit	Quantity	Unit Price	Affect On Contract Price
02 4119	1	Disposal of Owner Items	LS	1	$4,290.00	$4,290.00
00520	2	Modified Phasing and Construction Schedule	LS	1	($5,000.00)	($5,000.00)
02 4119	3	Restroom Flooring Credit	LS	1	($250.00)	($250.00)
02 4119	4	Fritz Tile Credit	LS	1	($1,750.00)	($1,750.00)
TOTAL COST FOR THESE CONTRACT ADDITIONS OR DELETIONS						**($2,710.00)**

2. JUSTIFICATION FOR ADDITIONS OR DELETIONS TO CONTRACT

When the building was vacated by the City, items were left behind that were no longer needed. PR GC1 covers the removal of these items which were completed on a time and material basis. The City of Fargo is omitting the interior phasing requirements and associated exterior work on the GTC site as shown in the attached modified phasing plan in PR GC4. This will expedite the substantial completion schedule and final completion dates for the project. The architectural plans indicated fritz tile flooring removal in the restrooms, which is not correct. The flooring is epoxy painted concrete (refer to PR GC5). In addition, asbestos was found during demolition below the fritz tile. As a result, the removal of the fritz tile is being handled through a separate contract with an abatement contractor (refer to PR GC6).

3. CHANGE TO CONTRACT AMOUNT

ORIGINAL CONTRACT AMOUNT:	$1,314,340.00
NET INCREASE/DECREASE FROM PREVIOUS CHANGE ORDER(S):	$0.00
CONTRACT AMOUNT PRIOR TO THIS CHANGE ORDER:	$1,314,340.00
INCREASE/DECREASE FROM THIS CHANGE ORDER:	-$2,710.00
NEW CONTRACT AMOUNT INCLUDING THIS CHANGE ORDER:	**$1,311,630.00**

4. CHANGE TO CONTRACT TIMES

Original Contract Times:	
Substantial Completion (Days or Date):	*10/2/2020*
Ready For Final Payment (Days or Date):	*10/30/2020*
Contract Times from previously Approved Change Orders	
Substantial Completion (Days or Date):	*10/2/2020*
Ready For Final Payment (Days or Date):	*10/30/2020*
Contract Times will be Increased/Decreased because of this Change Order	*Decreased*
Contract Times including this Change Order	
Substantial Completion (Days or Date):	*8/14/2020*
Ready For Final Payment (Days or Date):	*8/31/2020*

5. REQUIRED SIGNATURES - Not valid until signed by Owner. Signature of Contractor indicates agreement herewith, including any adjustments in the Contract Amount or Contract Times

ACCEPTED:

By: _____
OWNER (Authorized Signature)

Name: **Timothy J. Mahoney**

Title: **Mayor**

Date: _____

ACCEPTED:

By: _____
CONTRACTOR (Authorized Signature)

Name: **James Gast**

Title: **President**

Date: _____

RECOMMENDED:

By: Cassie McNames
ENGINEER (Authorized Signature)

Name: **Cassie McNames**

Title: **Project Manager**

Date: 4/20/2020

ACCEPTED:

Funding Agency (if applicable)

By: _____
FUNDING AGENCY (Authorized Signature)

Name: **Becky Hanson**

Title: **Transit Program Manager**

Date: _____

CHANGE ORDER NO. 1

Date of Issuance: *4/20/2020*

Effective Date: *4/1/2020*

PROJECT TITLE
Remodel (BP18006)
OWNER
City of Fargo
CONTRACTOR
Rick Electric, Inc.
ORIGINAL CONTRACT DATE
1/31/2020

THE CONTRACT DOCUMENTS ARE MODIFIED AS FOLLOWS UPON EXECUTION OF THIS CHANGE ORDER

1. ADDITIONS OR DELETIONS TO THE CONTRACT AND ASSOCIATED COSTS

Spec. No.	Item	Description of Addition or Deletion	Unit	Quantity	Unit Price	Affect On Contract Price
26 0519	1	Rough-in conduit for card access readers	LS	1	$2,046.85	$2,046.85
26 0519	2	Upgrade CAT6 cable with CAT6A cable	LS	1	$16,441.79	$16,441.79
	3					$0.00
	4					$0.00
	5					$0.00
TOTAL COST FOR THESE CONTRACT ADDITIONS OR DELETIONS						**$18,488.64**

2. JUSTIFICATION FOR ADDITIONS OR DELETIONS TO CONTRACT

The electrical requirements for some of the card readers were not shown on the electrical plans, so PR E1 attached addresses the labor and material associated with this work. The City of Fargo requested all the communication cabling in the building be upgraded to CAT6A. PR E2 covers the cost to upgrade both the Jefferson and GTC cabling, which is being covered under the scope of this contract. In addition, the City of Fargo is omitting the interior phasing requirements and associated exterior work on the GTC site as shown in the attached modified phasing plan. This will extend the substantial completion schedule and expedite the final completion dates for the project.

3. CHANGE TO CONTRACT AMOUNT

ORIGINAL CONTRACT AMOUNT:	$165,500.00
NET INCREASE/DECREASE FROM PREVIOUS CHANGE ORDER(S):	$0.00
CONTRACT AMOUNT PRIOR TO THIS CHANGE ORDER:	$165,500.00
INCREASE/DECREASE FROM THIS CHANGE ORDER:	$18,488.64
NEW CONTRACT AMOUNT INCLUDING THIS CHANGE ORDER:	**$183,988.64**

4. CHANGE TO CONTRACT TIMES

Original Contract Times:	
Substantial Completion (Days or Date):	*10/2/2020*
Ready For Final Payment (Days or Date):	*10/30/2020*
Contract Times from previously Approved Change Orders	
Substantial Completion (Days or Date):	*10/2/2020*
Ready For Final Payment (Days or Date):	*10/30/2020*
Contract Times will be Increased/Decreased because of this Change Order	*Decreased*
Contract Times including this Change Order	
Substantial Completion (Days or Date):	*8/14/2020*
Ready For Final Payment (Days or Date):	*8/31/2020*

5. REQUIRED SIGNATURES - Not valid until signed by Owner. Signature of Contractor indicates agreement herewith, including any adjustments in the Contract Amount or Contract Times

ACCEPTED:

By: _____
OWNER (Authorized Signature)

Name: **Timothy J. Mahoney**

Title: **Mayor**

Date: _____

ACCEPTED:

By: _____
CONTRACTOR (Authorized Signature)

Name: **Dennis Rick**

Title: **Vice President**

Date: _____

RECOMMENDED:

By: Cassie McNames
ENGINEER (Authorized Signature)

Name: **Cassie McNames**

Title: **Project Manager**

Date: 4/20/2020

ACCEPTED:

Funding Agency (if applicable)

By: _____
FUNDING AGENCY (Authorized Signature)

Name: **Becky Hanson**

Title: **Transit Program Manager**

Date: _____

CHANGE ORDER NO. 1

Date of Issuance: *4/20/2020*

Effective Date: *4/1/2020*

PROJECT TITLE
Remodel (F18006)
OWNER
City of Fargo
CONTRACTOR
Valley Service Mechanical, LLC
ORIGINAL CONTRACT DATE
1/31/2020

THE CONTRACT DOCUMENTS ARE MODIFIED AS FOLLOWS UPON EXECUTION OF THIS CHANGE ORDER

1. ADDITIONS OR DELETIONS TO THE CONTRACT AND ASSOCIATED COSTS

Spec. No.	Item	Description of Addition or Deletion	Unit	Quantity	Unit Price	Affect On Contract Price
22 4000	1	Omit (4) L-1 drop in sinks	Ea.	4	($41.65)	($166.60)
	2					$0.00
	3					$0.00
	4					$0.00
	5					$0.00
TOTAL COST FOR THESE CONTRACT ADDITIONS OR DELETIONS						($166.60)

2. JUSTIFICATION FOR ADDITIONS OR DELETIONS TO CONTRACT

There was a duplication of the restroom sinks between the architectural and mechanical plans; so the sinks shown on the mechanical plans have bee removed from the mechanical contract (refer to PR M2 attached). In addition, City of Fargo is omitting the interior phasing requirements and associated exterior work on the GTC site as shown in the attached modified phasing plan. This will expedite the substantial and final completion dates for the project.

3. CHANGE TO CONTRACT AMOUNT

ORIGINAL CONTRACT AMOUNT:	$353,537.00
NET INCREASE/DECREASE FROM PREVIOUS CHANGE ORDER(S):	$0.00
CONTRACT AMOUNT PRIOR TO THIS CHANGE ORDER:	$353,537.00
INCREASE/DECREASE FROM THIS CHANGE ORDER:	-$166.60
NEW CONTRACT AMOUNT INCLUDING THIS CHANGE ORDER:	**$353,370.40**

4. CHANGE TO CONTRACT TIMES

Original Contract Times:

Substantial Completion (Days or Date):	*10/2/2020*
Ready For Final Payment (Days or Date):	*10/30/2020*

Contract Times from previously Approved Change Orders

Substantial Completion (Days or Date):	*10/2/2020*
Ready For Final Payment (Days or Date):	*10/30/2020*

Contract Times will be Increased/Decreased because of this Change Order *Decreased*

Contract Times including this Change Order

Substantial Completion (Days or Date):	*8/14/2020*
Ready For Final Payment (Days or Date):	*8/31/2020*

5. REQUIRED SIGNATURES - Not valid until signed by Owner. Signature of Contractor indicates agreement herewith, including any adjustments in the Contract Amount or Contract Times

ACCEPTED:

By: _____
OWNER (Authorized Signature)

Name: **Timothy J. Mahoney**

Title: **Mayor**

Date: _____

ACCEPTED:

By: _____
CONTRACTOR (Authorized Signature)

Name: **David Zens**

Title: **Vice President**

Date: _____

RECOMMENDED:

By: Cassie McNames
ENGINEER (Authorized Signature)

Name: **Cassie McNames**

Title: **Project Manager**

Date: 4/20/2020

ACCEPTED:

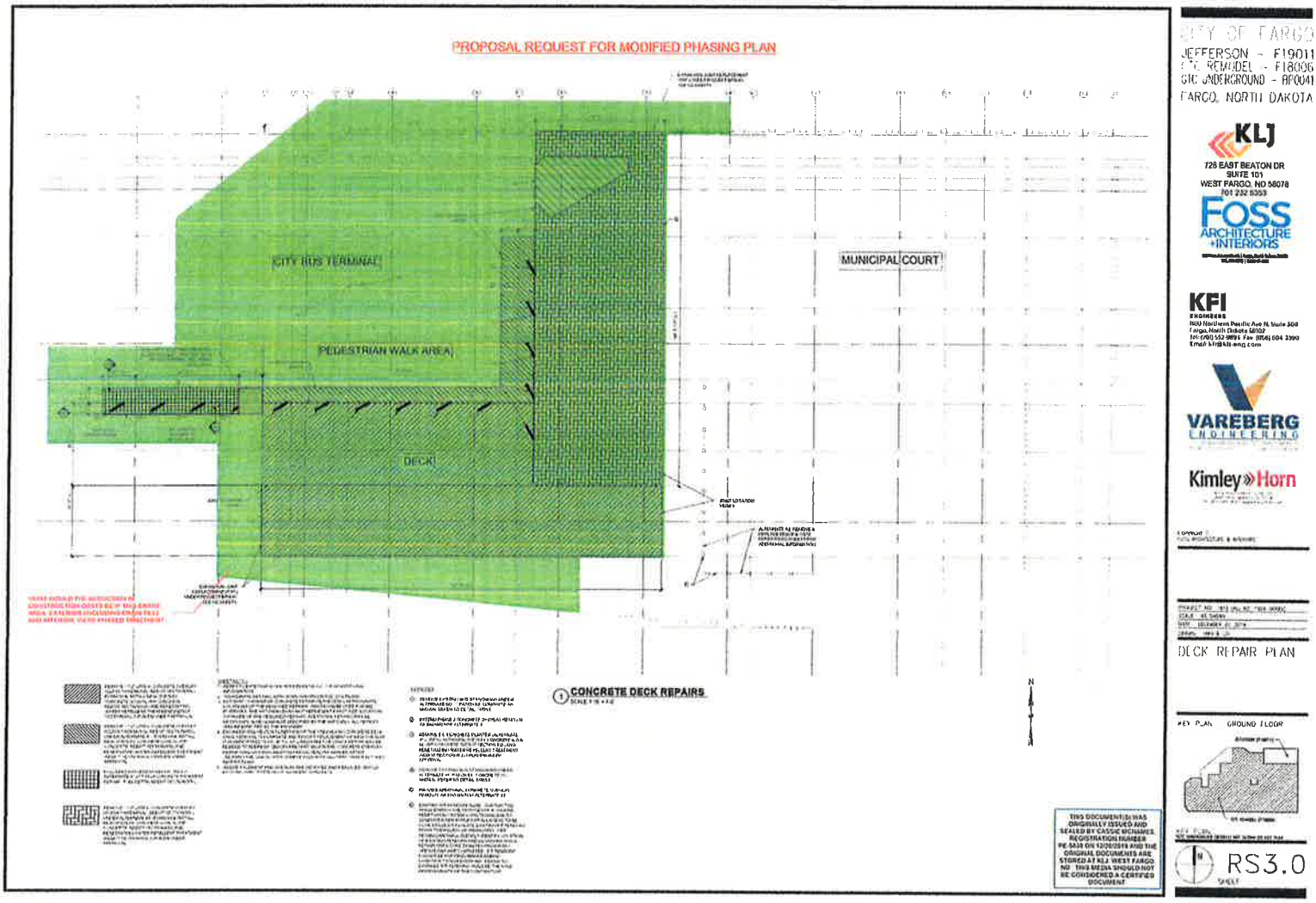
Funding Agency (if applicable)

By: _____
FUNDING AGENCY (Authorized Signature)

Name: **Becky Hanson**

Title: **Transit Program Manager**

Date: _____


PROPOSAL REQUEST FOR MODIFIED PHASING PLAN
CITY BUS TERMINAL
PEDESTRIAN WALK AREA
DECK
MUNICIPAL COURT
CONCRETE DECK REPAIRS
CITY OF FARGO
JEFFERSON - F19011
FIRE REMODEL - F18006
GTC UNDERGROUND - AP0041
FARGO, NORTH DAKOTA
KLJ
726 EAST BEATON DR
SUITE 101
WEST FARGO, ND 58078
701 232 8353
FOSS
ARCHITECTURE
+INTERIORS
KFI
ENGINEERS
VAREBERG
ENGINEERING
Kimley»Horn
DECK REPAIR PLAN
KEY PLAN GROUND FLOOR
RS3.0

Cassie McNames

From: Mike Cegla <mcegla@valleyservice.net>
Sent: Tuesday, March 31, 2020 3:07 PM
To: Cassie McNames
Subject: GTC Proposal Request PR M2

Cassie:

The proposal PR M2 for credit to removal 4 of the L-1 drop in sink. It is $41.65 each X 4 for a total of $166.60. If you have any more question please let me know.

Thank You

Michael Cegla

Michael Cegla
Valley Service Mechanical
824 Page Drive, Fargo, ND 58102
Mobile: 218-329-2839
Office 701-293-5701
mcegla@valleyservice.net

728 East Beaton Drive, Suite 101
West Fargo, ND 58078-2650
701 232 5353
KLJENG.COM

March 24, 2020

David Zens
Vice President
Valley Service Mechanical, LLC
824 Paige Drive
Fargo, ND 58103

Re: GTC Proposal Request PR M2

Dear Mr. Zens:

KLJ is requesting a proposal for a credit to the GTC Remodel (F18006) project to omit the four (4) L-1 drop-in sinks shown on sheet RM3.1 and shown in the schedule on sheet RM4.0. Please return your proposal to our office before the end of the day on March 25, 2020.

Please note this is not a change order nor direction to proceed with the work. If you have any questions, please contact me at 701-241-2317 or cassie.mcnames@kljeng.com.

Sincerely,

KLJ

Cassie McNames

Cassie McNames, PE
Project Manager

Enclosure(s): None
Project #: 1804-00689
cc: File

CHANGE ORDER NO. 1

Date of Issuance: *4/20/2020*

Effective Date: *4/1/2020*

PROJECT TITLE
Jefferson (F19011)
OWNER
City of Fargo
CONTRACTOR
Valley Service Mechanical, LLC
ORIGINAL CONTRACT DATE
1/31/2020

THE CONTRACT DOCUMENTS ARE MODIFIED AS FOLLOWS UPON EXECUTION OF THIS CHANGE ORDER

1. ADDITIONS OR DELETIONS TO THE CONTRACT AND ASSOCIATED COSTS

Spec. No.	Item	Description of Addition or Deletion	Unit	Quantity	Unit Price	Affect On Contract Price
	1					$0.00
	2					$0.00
	3					$0.00
	4					$0.00
	5					$0.00
TOTAL COST FOR THESE CONTRACT ADDITIONS OR DELETIONS						**$0.00**

2. JUSTIFICATION FOR ADDITIONS OR DELETIONS TO CONTRACT

City of Fargo is omitting the interior phasing requirements and associated exterior work on the GTC site as shown in the attached modified phasing plan. This will extend the substantial completion schedule and expedite the final completion dates for the project.

3. CHANGE TO CONTRACT AMOUNT

ORIGINAL CONTRACT AMOUNT:	$6,728.00
NET INCREASE/DECREASE FROM PREVIOUS CHANGE ORDER(S):	$0.00
CONTRACT AMOUNT PRIOR TO THIS CHANGE ORDER:	$6,728.00
INCREASE/DECREASE FROM THIS CHANGE ORDER:	$0.00
NEW CONTRACT AMOUNT INCLUDING THIS CHANGE ORDER:	**$6,728.00**

4. CHANGE TO CONTRACT TIMES

Original Contract Times:	
Substantial Completion (Days or Date):	*60 days from Notice to Proceed*
Ready For Final Payment (Days or Date):	*10/30/2020*
Contract Times from previously Approved Change Orders	
Substantial Completion (Days or Date):	*60 days from Notice to Proceed*
Ready For Final Payment (Days or Date):	*10/30/2020*
Contract Times will be Increased/Decreased because of this Change Order	*Increased Substantial Completion/Decreased Final Completion*
Contract Times including this Change Order	
Substantial Completion (Days or Date):	*8/14/2020*
Ready For Final Payment (Days or Date):	*8/31/2020*

5. REQUIRED SIGNATURES - Not valid until signed by Owner. Signature of Contractor indicates agreement herewith, including any adjustments in the Contract Amount or Contract Times

ACCEPTED:

By: _____
OWNER (Authorized Signature)

Name: **Timothy J. Mahoney**

Title: **Mayor**

Date: _____

ACCEPTED:

By: _____
CONTRACTOR (Authorized Signature)

Name: **David Zens**

Title: **Vice President**

Date: _____

RECOMMENDED:

By: Cassie McNames
ENGINEER (Authorized Signature)

Name: **Cassie McNames**

Title: **Project Manager**

Date: 4/20/2020

ACCEPTED:

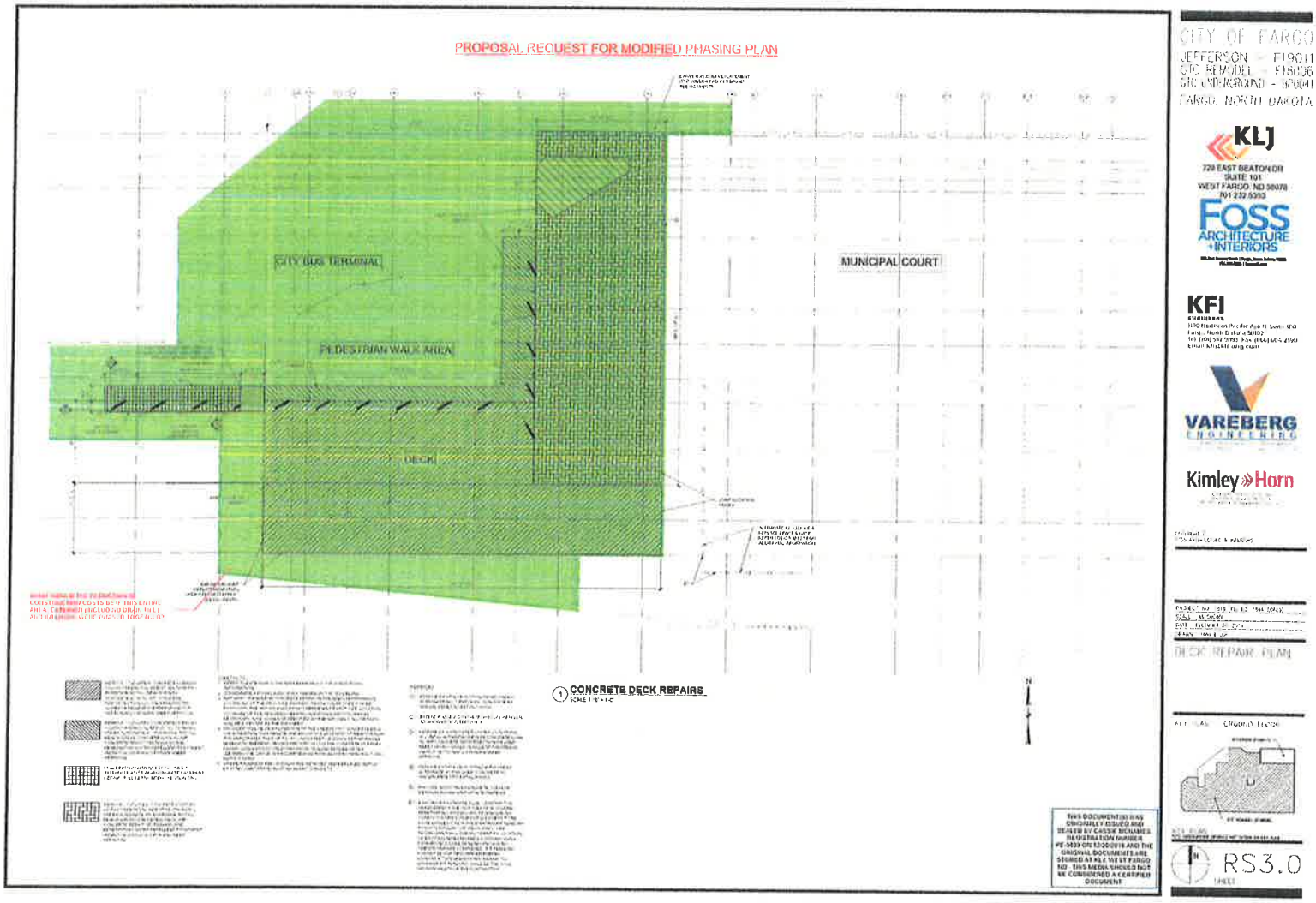
Funding Agency (if applicable)

By: _____
FUNDING AGENCY (Authorized Signature)

Name: **Becky Hanson**

Title: **Transit Program Manager**

Date: _____


PROPOSAL REQUEST FOR MODIFIED PHASING PLAN
CITY BUS TERMINAL
PEDESTRIAN WALK AREA
DECK
MUNICIPAL COURT
CONCRETE DECK REPAIRS
CITY OF FARGO
JEFFERSON - F19011
GTC REMODEL - F18006
GTC UNDERGROUND - BP0041
FARGO, NORTH DAKOTA
KLJ
720 EAST BEATON DR
SUITE 101
WEST FARGO, ND 58078
701 232 5393
FOSS
ARCHITECTURE
+INTERIORS
KFI
ENGINEERS
VAREBERG
ENGINEERING
Kimley»Horn
DECK REPAIR PLAN
RS3.0

22

REPORT OF ACTION

UTILITY COMMITTEE

Project No. WW1707

Type: FEMA Pre Disaster Mitigation Award

Location: Wastewater Treatment Facility- Flood Control

Date of Hearing: 4-23-2020

Routing	Date
City Commission	5-4-2020
Project File	

Jim Hausauer, Wastewater Utility Director, presented the attached Pre Disaster Subgrant Agreement with the North Dakota Department of Emergency Services for flood protection measures for the Fargo Wastewater Treatment Facility (WWTF). The WWTF currently does not have permanent flood control measures in place to protect the facility during flooding events. Previously the WWTP has relied on temporary measures to protect the facility in the event of river flooding. In 2009, a temporary earth levee was constructed through the center of the facility and on the south access road affecting daily operations for weeks. In addition, installing/removing temporary measures is time consuming & expensive when a flood threatens the facility. As a regional provider of wastewater services, the City has a rather large investment in the current and future Wastewater Treatment Facility (WWTF) and its operations. The Pre-Disaster Mitigation program will provide 75% funding for a 500 year levee, thus providing infrastructure protection and eliminating the need for temporary earth levees for future floods.

The Pre-Disaster Mitigation (PDM) Program makes Federal funds available to State, Local and Tribal Governments to implement and sustain cost effective measures designed to reduce risk to individuals and property from natural hazards, while reducing reliance on Federal funding from future disasters. Federal funding is available with a Period of Performance of 42 months which began October 1, 2018 and will end April 1, 2022. The cost share provides 75% Federal funding of the eligible costs, with the remaining 25% of eligible costs derived from non-Federal sources. The preliminary estimate for the WWTP Levee is $4.9 million resulting with the Federal share of $3,679,792.50 and a local share of $1,226,597.50. Note: Funding for the local share has a placeholder in the Wastewater Infrastructure Sales Tax Fund 455 and in the Wastewater Utility 20 year CIP.

MOTION:

On a motion by Troy Hall, seconded by Ben Dow, the Utility Committee voted to approve the Pre Disaster Mitigation Subgrant Agreement with the North Dakota Department of Emergency Services and FEMA for the Fargo Wastewater Treatment Plant Flood Protection Plan.

COMMITTEE:	Present Yes	No	Unanimous X X Proxy
Anthony Gehrig, City Commissioner			
Kent Costin, Director of Finance	X		
Brian Ward, Water Plant Superintendent	X		
Mark Miller, Wastewater Plant Supt.	X		
Bruce Grubb, City Administrator	X		
Scott Liudahl, City Forester	X		
Terry Ludlum, Solid Waste Utility Director	X		
Jim Hausauer, Wastewater Utility Director	X		
Troy Hall, Water Utility Director	X		
Ben Dow, Public Works Operations Director	X		
Brenda Derrig, City Engineer	X		
Jason Halsne, Enterprise I/C Coordinator			

ATTEST:

Jim Hausauer
Wastewater Utility Director

C: Mayor Mahoney
Commissioner Strand
Commissioner Piepkorn
Commissioner Grindberg

THE CITY OF Fargo
FAR MORE

Wastewater Treatment Plant
3400 North Broadway
Fargo, ND 58102
Office: 701.241.1454 | Fax: 701.241.8159
www.FargoND.gov

MEMORANDUM

April 23, 2020

To: Utility Committee
From: Jim Hausauer, Wastewater Utility Director
Re: FEMA Pre-Disaster Mitigation- Award Approval
Project ID: PDMC-PJ-08-ND-2018-023
Wastewater Treatment Plant Flood Protection Plan

Background

The Fargo Wastewater Treatment Plant (WWTP) currently does not have permanent flood control measures in place to protect the facility during flooding events. The WWTP has relied on temporary measures to protect the facility in the event of river flooding. In 2009, a temporary earth levee was constructed through the center of the facility and on the south access road affecting daily operations for weeks. In addition, installing/removing temporary measures is time consuming & expensive when a flood threatens the facility.

As a regional provider of wastewater services, the City has a rather large investment in the current and future Wastewater Treatment Facility (WWTF) and its operations. The Pre-Disaster Mitigation program will provide 75% funding for a 500 year levee, thus providing infrastructure protection and eliminating the need for temporary earth levees for future floods.

Pre-Disaster Mitigation

The Pre-Disaster Mitigation (PDM) Program makes Federal funds available to State, Local and Tribal Governments to implement and sustain cost effective measures designed to reduce risk to individuals and property from natural hazards, while reducing reliance on Federal funding from future disasters. Federal funding is available with a Period of Performance of 42 months which began October 1, 2018 and will end April 1, 2022. The cost share provides 75% Federal funding of the eligible costs, with the remaining 25% of eligible costs derived from non-Federal sources.

The preliminary estimate for the WWTP Levee is $4.9 million resulting with the Federal share of $3,679,792.50 and a local share of $1,226,597.50. Note: Funding for the local share has a placeholder in the Wastewater Infrastructure Sales Tax Fund 455 and in the Wastewater Utility 20 year CIP.

Recommended Motion

Approve the attached Pre Disaster Mitigation Program Subgrant Agreement with the North Dakota Department of Emergency Services and FEMA for the City of Fargo Wastewater Treatment Plant Flood Protection Plan.

Advanced Engineering and Environmental Services, Inc. • 4170 28th Ave S Fargo, ND 58104 • (t) 701-364-9111 (f) 701-364-9979 • www.ae2s.com

FIG2

FARGO WWTP FLOOD PROTECTION
CITY OF FARGO
FARGO, NORTH DAKOTA
SITE MAP

PRELIMINARY
NOT FOR CONSTRUCTION
MILESTONE - 30%

ENGINEER'S OPINION OF PROBABLE COSTS

PROJECT: Fargo WWTP Flood Protection System
LOCATION: Fargo, ND
PROJECT NO: P00803-2016-069

PREPARED BY: AE2S
DATE: December 13, 2018

Engineer's Opinion of Probable Costs
WWTP Flood Protection System

Item #	Description	Unit	Estimated Quantity	Unit Price	Item Cost
1	Mobilization	LS	1	$ 184,000.00	$ 184,000.00
2	Strip Topsoil	CY	4860	$ 4.80	$ 23,328.00
3	Site Grading	LS	1	$ 90,000.00	$ 90,000.00
4	Clay Excavation & Haul	CY	33557	$ 42.00	$ 1,409,394.00
5	Class 5 Import	CY	800	$ 24.00	$ 19,200.00
6	Topsoil (Haul and Spread)	CY	6300	$ 18.00	$ 113,400.00
7	Seeding	SY	37900	$ 2.70	$ 102,330.00
8	8" Plug Valve and fittings	EA	1	$ 7,200.00	$ 7,200.00
9	Relocate Water Main 10" Dia	EA	1	$ 8,400.00	$ 8,400.00
10	Erosion Control	LS	1	$ 18,000.00	$ 18,000.00
11	Remove Tree	EA	47	$ 120.00	$ 5,640.00
12	Salvage Tree	EA	20	$ 690.00	$ 13,800.00
13	Remove Pavement All Thickness All Types	SY	1525	$ 13.20	$ 20,130.00
14	F&I Pavement 8" Thick Doweled Conc	SY	1440	$ 99.60	$ 143,424.00
15	Remove and Replace Chain Link Fence	LF	2075	$ 60.00	$ 124,500.00
16	Raise Scrubber	LS	1	$ 18,000.00	$ 18,000.00
17	Raise Manhole	LS	1	$ 4,200.00	$ 4,200.00
18	18" RCP Storm Pipe	LF	895	$ 66.00	$ 59,070.00
19	F&I 48" SDMH w/beehive	EA	10	$ 7,800.00	$ 78,000.00
20	F&I Curb and Gutter (1-foot)	LF	325	$ 42.00	$ 13,650.00
21	F&I Sheet Piling - Steel	LF	640	$ 1,560.00	$ 998,400.00
22	F&I 12" Gate Valve	EA	5	$ 5,400.00	$ 27,000.00
23	F&I 12" PVC	LF	230	$ 78.00	$ 17,940.00
24	F&I Inlet - Manhole (MHI) 4' Dia Reinf Conc	EA	8	$ 3,480.00	$ 27,840.00
25	F&I Casting - Inlet	EA	5	$ 1,440.00	$ 7,200.00
26	24" Slide Gate	EA	1	$ 9,600.00	$ 9,600.00
27	8' x 8' Box Gate Structure	EA	1	$ 18,000.00	$ 18,000.00
28	F&I Edge Drain 8" Dia PVC	LF	485	$ 14.40	$ 6,984.00
29	F&I Pavement 6" Thick Reinforced Conc	SY	500	$ 54.00	$ 27,000.00
30	Replace Cleanout Length of Drying Beds	LS	1	$ 60,000.00	$ 60,000.00
31	F&I Curb and Gutter (2-foot drying beds)	LF	600	$ 156.00	$ 93,600.00
32	F&I Drying Bed Walls (6" x 2')	CY	18	$ 120.00	$ 2,160.00
33	F&I Drying Bed Concrete Floor (2.5' x 485' x 6")	SY	1200	$ 54.00	$ 64,800.00
34	F&I Woven Geotextile Fabric	SY	1200	$ 2.40	$ 2,880.00
35	F&I 1-1/4" Trench Found Rock 4" through 12" Dia	SY	200	$ 21.60	$ 4,320.00
36	F&I Sand	SY	600	$ 30.00	$ 18,000.00
37	Demo drying bed portion (2,981 SY)	LS	1	$ 24,000.00	$ 24,000.00
				Construction Subtotal -	$ 3,865,390.00
				Engineering Design and Construction -	$ 500,000.00
				Contingency (5%) -	$ 218,200.00
				Project Management Fees (5%) -	$ 229,100.00
				Pre-Award Engineering Costs (Preliminary Design Services & Application Costs) -	$ 93,700.00
				Total Estimated Project Cost -	**$ 4,906,390.00**

U.S. Department of Homeland Security
Region VIII
Denver Federal Center, Building 710
P.O. Box 25267
Denver, CO 80225-0267

FEMA

R8-MT

March 4, 2020

Cody Schulz, Director
N.D. Department of Emergency Services
EIN: 45-0309770
Fraine Barracks Lane, Bldg. 35
Bismarck, ND 58504-5511

Attention: Todd Joersz, SHMO

Re: AWARD APPROVAL – Pre-Disaster Mitigation FY 2018
CFDA: 97.047

Dear Mr. Schulz:

The above referenced Pre-Disaster Mitigation (PDM) Award is approved for funding. The federal share for this Award is $3,679,792.50 under EMD-2019-PC-0007. These subawards have a 75% federal and 25% non-federal cost share percentage. There is no indirect cost rate for these subawards and they are not for research and development. The Recipient must award the projects within 45 days from the date of this letter and the subrecipients must then begin the projects immediately.

Project ID	Project Name	Federal Share Obligated	Non-Federal Match
PDMC-PJ-08-ND-2018-023	City of Fargo WWTP Flood Protection Plan	$3,679,792.50	$1,226,597.50

The period of performance (POP) for PDM 2018 began October 1, 2018 and will end April 1, 2022. Please ensure that all approved activities are completed by the end of the Award POP. If the subrecipient cannot complete the subaward within the approved POP, a written request for an extension, including a revised timeline and supporting documentation, must be submitted to FEMA for approval no later than 60 days prior to the end of the POP.

For all project subawards, enclosed are environmental document(s) applicable to this project. In your award letter to the subrecipient, please send them a copy of these documents and make them aware of the importance of complying with all conditions written in the Record of Environmental Consideration (REC) or the Finding of No Significant Impact (FONSI). It is the responsibility of the subrecipient to monitor the environmental conditions and report compliance in their quarterly reports. At closeout, FEMA requires a written description of how the environmental conditions were met, a signed copy of the attached Environmental Closeout Declaration form, and copies of required permits.

Please be sure to carefully review the Agreement Articles included with the awarding documents in the eGrants system. These Articles reference the rules and regulations that govern the PDM program. Here are some important highlights:

- Quarterly reports must be completed until the subawards are officially reconciled by FEMA. Quarterly performance and financial reports are due on January 30, April 30, July 30, and October 30.

- An approved subaward cannot be changed in any way once awarded without authorization from FEMA. Any proposed changes to the scope of work must be immediately reported to FEMA and will require additional review.

- All subaward closeout documentation must be submitted to the Recipient within 90 days of project completion. Subaward closeout documentation must be submitted to FEMA within 180 days of project completion.

- All funds must be liquidated and final closeout documentation for the overall Award must be submitted to FEMA within 90 days of the end of the period of performance.

We will work closely with you and your staff to ensure the success of these subawards. FEMA's goal is for all approved subawards to begin immediately and be completed within their original period of performance. If you have any questions or concerns regarding the award of these subawards, please contact Rita Sowards, North Dakota's HMA program manager, at 303-235-4895 or rita.sowards@fema.dhs.gov.

Sincerely,

MICHAEL E HILLENBURG

Digitally signed by MICHAEL E HILLENBURG
Date: 2020.03.04 11:24:24 -07'00'

Michael E. Hillenburg
HMA Branch Chief

Enclosures:
SF 76-10
Records of Environmental Consideration (REC)
Environmental Closeout Declaration Form
Environmental Closeout Instructions

cc: Justin Messner, Disaster Recovery Chief

FEDERAL EMERGENCY MANAGEMENT AGENCY

RECORD OF ENVIRONMENTAL CONSIDERATION (REC)

Project PDMC-PJ-08-ND-2018-023 (0)

Title: City of Fargo WWTP Flood Protection Plan

NEPA DETERMINATION

Non Compliant Flag: No	**EA Draft Date:**	**EA Final Date:**
EA Public Notice Date:	**EA Fonsi**	**Level:** CATEX
EIS Notice of Intent	**EIS ROD Date:**	

Comment The proposed scope of work for this project will provide permanent flood protection for the City of Fargo's Waste Water Treatment Plant (WWTP) above the 500-year level of protection. The project proposes the use of levees, floodwalls, sheet piles and road raises to provide protection around the facility. - djones58 - 01/24/2020 00:40:38 GMT

CATEX CATEGORIES

Catex Category Code	Description	Selected
*n7	(*n7) Federal Assistance for Structure and Facility Upgrades. Federal assistance for the reconstruction, elevation, retrofitting, upgrading to current codes and standards, and improvements of pre-existing facilities in existing developed areas with substantially completed infrastructure, when the immediate project area has already been disturbed, and when those actions do not alter basic functions, do not exceed capacity of other system components, or modify intended land use. This category does not include actions within or affecting streams or stream banks or actions seaward of the limit of moderate wave action (or V zone when the limit of moderate wave action has not been identified).	Yes

EXTRAORDINARY

Extraordinary Circumstance Code	Description	Selected ?
	No Extraordinary Circumstances were selected	

ENVIRONMENTAL LAW / EXECUTIVE ORDER

Environmental Law/ Executive Order	Status	Description	Comment
Clean Air Act (CAA)	Completed	Project will not result in permanent air emissions - Review concluded	
Coastal Barrier Resources Act (CBRA)	Not Applicable	Project is not on or connected to CBRA Unit or otherwise protected area - Review concluded	
Clean Water Act (CWA)	Completed	Project would affect waters, including wetlands, of the U.S.	Based on coordination with USACE dated 9/8/2017, the proposed project may require USACE permits. See project conditions. - djones58 - 01/24/2020 00:05:29 GMT
	Completed	Project may require Section 404/401 or Section 9/10 (Rivers and Harbors Act) permit, including qualification under Nationwide Permits - Review concluded	

FEDERAL EMERGENCY MANAGEMENT AGENCY

RECORD OF ENVIRONMENTAL CONSIDERATION (REC)

Project PDMC-PJ-08-ND-2018-023 (0)

Title: City of Fargo WWTP Flood Protection Plan

Environmental Law/ Executive Order	Status	Description	Comment
Coastal Zone Management Act (CZMA)	Not Applicable	Project is not located in a coastal zone area and does not affect a coastal zone area - Review concluded	
Executive Order 11988 - Floodplains	Completed	No effect on floodplain/flood levels and project outside floodplain - Review concluded	Per FIRM panel number 38017C0591G, the project area is located in shaded and unshaded Zone X. - djones58 - 01/24/2020 00:25:37 GMT
Executive Order 11990 - Wetlands	Completed	No effects on wetlands and project outside wetlands - Review concluded	Project activities will not impact wetlands. - djones58 - 01/24/2020 00:26:46 GMT
Executive Order 12898 - Environmental Justice for Low Income and Minority Populations	Completed	Low income or minority population in or near project area	
	Completed	No disproportionately high and adverse impact on low income or minority population - Review concluded	
Endangered Species Act (ESA)	Completed	Listed species and/or designated critical habitat present in areas affected directly or indirectly by the federal action	Based on the project location, scope of work, the species listed in Cass County, ND, and coordination with USFWS dated 9/21/2017, FEMA determines there will be no effect on endangered species or critical habitat - djones58 - 01/24/2020 00:02:50 GMT
	Completed	No effect to species or designated critical habitat (See comments for justification) - Review concluded	
Farmland Protection Policy Act (FPPA)	Completed	Project does not affect designated prime or unique farmland - Review concluded	
Fish and Wildlife Coordination Act (FWCA)	Completed	Project does not affect, control, or modify a waterway/body of water - Review concluded	
Migratory Bird Treaty Act (MBTA)	Completed	Project located within a flyway zone	
	Completed	Project does not have potential to take migratory birds - Review concluded	
Magnuson-Stevens Fishery Conservation and Management Act (MSA)	Completed	Project not located in or near Essential Fish Habitat - Review concluded	
National Historic Preservation Act (NHPA)	Completed	Standard Section 106 review	Based on consultation/coordination with the ND SHPO dated 8/24/17 (ND SHPO Ref# 17-5851), FEMA determines there are

FEDERAL EMERGENCY MANAGEMENT AGENCY

RECORD OF ENVIRONMENTAL CONSIDERATION (REC)

Project PDMC-PJ-08-ND-2018-023 (0)

Title: City of Fargo WWTP Flood Protection Plan

Environmental Law/ Executive Order	Status	Description	Comment
			no historic properties affected. See project conditions. - djones58 - 01/23/2020 23:58:16 GMT
	Completed	Historic Buildings and Structures	
	Completed	Building or structure 50 years or older or listed on the National Register in the project area and activity not exempt from review	
	Completed	Determination of No Historic Properties Affected (FEMA finding/SHPO/THPO concurrence attached) - Review concluded	
	Completed	Project affects only previously disturbed ground - Review concluded	
State Water and Soil Laws	Completed	Review concluded	See project conditions. - djones58 - 01/24/2020 00:09:20 GMT
Wild and Scenic Rivers Act (WSR)	Completed	Project is not along and does not affect Wild and Scenic River - Review concluded	

CONDITIONS

Special Conditions required on implementation of Projects:

The current footprint of the wastewater treatment plant does not encroach on a FEMA-identified 1 %-chance floodplain. However, be advised that floodplains (Zone AE) and regulatory flood way are directly adjacent to the facility as it currently exists. Any encroachment on the 1 %-chance floodplain will require a floodplain development permit from the City of Fargo. In addition, development in the regulatory floodway carries additional requirements per NDCC § 61-16.2-14. Before authorizing any development, the community responsible for permitting such use shall request a floodway review from the State Engineer. The application form may be downloaded from our website under "Regulation & Appropriation, Floodplain Management." Please contact Dionne Haynes with any questions regarding this process. The Floodplain Administrator for the City of Fargo is Jody Bertrand (Floodplain Administrator), 701-241-1548, jbertrand@cityoffargo.com. The NFIP map used to make this determination is Panel I/38017C0591G, Date: 1/16/2015.

Source of condition: Executive Order 11988 - Floodplains Monitoring Required: No

The City shall consult with the USACE to determine final project requirements. The City is responsible for obtaining any needed permits and verifying and complying with all permit requirements, including wetland mitigation, any permit conditions, pre-construction notification requirements, and regional conditions as provided by the Army Corps of Engineers. The City is responsible for implementing, monitoring, and maintaining all Best Management Practices (BMPs) and Pre- Construction Notification (PCN) conditions of applicable nationwide permits.

Source of condition: Clean Water Act (CWA) Monitoring Required: No

FEDERAL EMERGENCY MANAGEMENT AGENCY

RECORD OF ENVIRONMENTAL CONSIDERATION (REC)

Project PDMC-PJ-08-ND-2018-023 (0)

Title: City of Fargo WWTP Flood Protection Plan

All borrow material and/or rip rap must come from a ND SHPO approved source. If the applicant chooses to use a borrow source that is not NDDOT Certified and/or from an existing stockpile, the following must occur prior to digging:

1. State Historical Preservation Office (SHPO) approval including completion and FEMA approval of required archeological surveys.

2. The applicant shall notify the FEMA Regional Environmental Officer if any listed species or designated critical habitat might be affected or is in the vicinity of the project, and shall not begin work until notified by the FEMA Regional Environmental Officer that the requirements of the Endangered Species Act have been satisfied.

3. Applicant is required to coordinate borrow pit locations with the USFWS Wetland District Manager to avoid project impacts to easements or public lands.

4. Applicant is responsible for ensuring that no borrow pit activity occurs in Waters of the United States, wetlands or a river listed on the Nationwide Rivers Inventory (NRI). Borrow pit activity occurring in a floodplain must not affect pre-existing hydrological profiles. If activities occur in prime farmland ground disturbance must be temporary, one time use, and no permanent loss of farmland may occur.

Source of condition: National Historic Preservation Act (NHPA) Monitoring Required: No

1. Applicant shall comply with proper construction practices and environmental disturbance requirements as outlined in the NDDOH letter dated 8/29/17.

2. Care is to be taken during construction activity near any water of the state to minimize adverse effects on a water body. This includes minimal disturbance of stream beds and banks to prevent excess siltation, and the replacement and revegetation of any disturbed area as soon as possible after work has been completed. Caution must also be taken to prevent spills of oil and grease that may reach the receiving water from equipment maintenance, and/or the handling of fuels on the site. Guidelines for minimizing degradation to waterways during construction must be followed.

3. Projects disturbing one or more acres are required to have a permit to discharge storm water runoff until the site is stabilized by the reestablishment of vegetation or other permanent cover. Further information on the storm water permit may be obtained from the Department's website or by calling the Division of Water Quality (701-328-5210). Also, cities may impose additional requirements and/or specific best management practices for construction affecting their storm drainage system. Check with the local officials to be sure any local storm water management considerations are addressed.

4. The proposed construction project is located near the West Fargo aquifer. Care should be taken to avoid spills of any materials that may have an adverse effect on groundwater quality. All spills must be immediately reported to this Department and appropriate remedial actions performed.

5. Per the NDSWC, initial review indicates the project does not require a conditional or temporary permit for water appropriation. However, if surface water or groundwater will be diverted for construction of the project, a water permit will be required per North Dakota Century Code (NDCC) § 61-04-02. Please consult with the Water Appropriations Division of the Office of the State Engineer (OSE) at 701-328-2754 or waterpermits@nd.gov if you have questions.

6. A Sovereign Land Permit will be required for any work below the ordinary high water mark of the Red River. Please contact Ashley Persinger, OSE Sovereign Land Specialist, at 701-328-4988 or apersinger@nd.gov if you have questions.

7. it is likely that the levee proposed, including both temporary and permanent levees and floodwalls, requires or will require a construction permit from the OSE. The OSE requests more information regarding the temporary and permanent levees, including plans and specifications for the levees and floodwalls. Additional information may be necessary to submit with a construction permit application to ensure the levee and floodwall design can be adequately reviewed. For further information on the OSE's permitting requirements, please visit the Regulation & Appropriation tab on the OSE's website (swc.nd.gov). Please contact the OSE Engineering and Permitting Section at 701-328-2752 if you have questions.

8. All necessary measures must be taken to minimize fugitive dust emissions created during construction activities. Any complaints that may arise are to be dealt with in an efficient and effective manner.

Source of condition: State Water and Soil Laws Monitoring Required: No

Standard Conditions:

FEDERAL EMERGENCY MANAGEMENT AGENCY

RECORD OF ENVIRONMENTAL CONSIDERATION (REC)

Project PDMC-PJ-08-ND-2018-023 (0)

Title: City of Fargo WWTP Flood Protection Plan

Any change to the approved scope of work will require re-evaluation for compliance with NEPA and other Laws and Executive Orders.

This review does not address all federal, state and local requirements. Acceptance of federal funding requires recipient to comply with all federal, state and local laws. Failure to obtain all appropriate federal, state and local environmental permits and clearances may jeopardize federal funding.

If ground disturbing activities occur during construction, applicant will monitor ground disturbance and if any potential archeological resources are discovered, will immediately cease construction in that area and notify the State and FEMA.

ENVIRONMENTAL CLOSEOUT PROCEDURES

Because the environmental laws fall within FEMA's area of responsibility, verification that the requirements of the environmental documents were met must be provided at the time of grant closeout. The applicant or applicant's agent must certify the conditions stated in the Catex or Fonsi document were met, attach all copies of permits and other required documentation, and submit to FEMA with the closeout packet.

Examples of conditions of environmental documents (not all inclusive):

1. Stormwater permits (EPA's NPDES; Section 401 of the Clean Water Act)
2. Dike permit
3. Army Corps of Engineers Section 10 or 404 permits
4. Floodplain development permit
5. Local permits for debris removal; abandonment of private wells, asbestos, etc.
6. Documentation that agency recommendations such as Best Management Practices (mitigation) were followed
7. Documentation that applicant received coordinated approvals from agencies on final design or plan where requested

This process begins at the time of grant award by the State. The applicant will have already received a copy of the environmental documentation from FEMA staff outlining the conditions to be met. The State should further emphasize the applicant's responsibilities. The quarterly 404 Report must reflect the progress being made on environmental conditions.

The applicant must sign FEMA's Environmental Closeout Declaration and attach a statement or explanation of what action was taken to address each condition or explain why an action was not required. Copies of all permits must be attached.

Funding will be jeopardized if environmental conditions are not followed and required permits are not obtained.

STATE OF NORTH DAKOTA
DEPARTMENT OF EMERGENCY SERVICES

DOUG BURGUM
Governor

Major General Alan Dohrmann
Director – Department of Emergency Services

Cody Schulz
Director - Division of Homeland Security

CFDA Title and Number: Non-Disaster Grants – Pre-Disaster Mitigation Program, 97.047
Non-Disaster Grant Fiscal Year: 2018
Subrecipient: City of Fargo
Project Number: PDMC-PJ-08-ND-2018-023 – 2018 City of Fargo WWTP Flood Protection Plan

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Pre-Disaster Mitigation Program Subgrant Agreement
for
FY 2018 Non-Disaster Grant Awards

This Agreement is between the State of North Dakota, Department of Emergency Services (Grantee) and, the undersigned state agency, political subdivision of the state, or federally recognized Tribal Nation or authorized tribal organization (Subgrantee). This Agreement is based on the existence of the following facts and conditions:

A. WHEREAS, on March 4, 2020, the Federal Emergency Management Agency (FEMA) obligated project funding under Application Number PDMC -08-ND-2018; and
B. WHEREAS, the Grantee represents that it is fully qualified and eligible to receive these grant funds to provide the services identified herein and agrees to comply with all the requirements of this Agreement; and
C. WHEREAS, the Subgrantee has submitted an application, which is incorporated herein by reference, to the Grantee setting forth a list of activities (herein referred to individually as "Project"). The Grantee and FEMA have approved the Project along with any exceptions that have been made prior to signing of this agreement.
D. WHEREAS, Subgrantee has the legal authority to accept mitigation funds and shall provide all necessary financial and managerial resources to meet the terms and conditions of receiving federal and state mitigation funds.

NOW, THEREFORE, the Grantee and Subgrantee, based upon the existence of the foregoing conditions, do further agree to the following:

ARTICLE I. Definitions. As used in this Agreement, the following terms shall have the following meanings unless another meaning is specified elsewhere:

A. "Eligible activities" are those activities authorized in the FEMA-State Agreement, and in the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93-288, as amended, 42 U.S.C §§ 5121-5207 (Stafford Act); in accordance with 44 CFR § 206.44; and applicable policies of the FEMA.

B. "Articles of Agreement" is the agreement electronically signed between the FEMA and the State of North Dakota, for projects awarded through the FY 2018 PDM Program. The Recipient and Subrecipient must abide by the Federal award terms and conditions set forth in the Articles of Agreement.

ARTICLE II. Applicable Law. The parties agree to all the conditions, obligations, and duties imposed by the FEMA-State Agreement and all applicable state and federal legal requirements including, without any limitation on the generality of the foregoing, the requirements of Title 44 of the Code of Federal Regulations (CFR) Part(s) 13, 80, and 206, and the policies of the FEMA. The Subgrantee further agrees to comply with the Statement of Assurances attached hereto as Attachment B.

ARTICLE III. Funding and Insurance. Grantee shall provide funds to the Subgrantee for eligible activities for the project approved by the Grantee and the FEMA, as specified in Attachment A – Approved Project Data. The federal allowable costs shall be determined as per 44 CFR Part(s) 13 and 206, which shall be up to seventy-five percent of all eligible costs.

A. The approved project documentation shall be transmitted to Subgrantee, and shall state the cumulative funding allowed, the scope of the eligible project, and the costs eligible under this Agreement. Amendments may obligate or deobligate funding, thereby amending the total funding for the project. The approved project documentation shall document the total eligible costs and the total federal share of those costs, which shall be seventy-five percent of all eligible costs. Contingent upon an appropriation by the State Legislature, the Grantee may provide some portion of any nonfederal share for some sub grantees. As a condition of receipt of the federal funding, the Subgrantee agrees to provide any nonfederal share not paid by the Grantee.

B. If the Subgrantee is required to repay the Grantee funds already disbursed by the Grantee, the Subgrantee will have 60 days to reimburse the full amount. If Subgrantee has not reimbursed the grantee the full amount within the 60 days, the Grantee will have all the rights and remedies available to them by law; including, but not limited to, the withhold of future fund disbursement to off-set amount due to Grantee.

C. As a further condition to funding under this Agreement, the Subgrantee agrees to procure insurance sufficient for the type or types of hazards for which the disaster was declared to cover any and all projects to be funded under this Agreement where insurance is available and reasonable. Subgrantee shall provide Grantee with a certificate of such insurance as a condition to funding under this Agreement.

ARTICLE IV. Duplication of Benefits Prohibition. Subgrantee may not receive funding under this Agreement to pay for damage covered by insurance, nor may Subgrantee receive any other duplicate benefits under this Agreement.

A. Without delay, Subgrantee shall advise Grantee of any insurance coverage for the damage identified on the applicable project application and of any entitlement to compensation or indemnification from such insurance. All such duplicate benefits are "ineligible costs"

which the Subgrantee shall reimburse to the Grantee without delay. The Subgrantee shall also reimburse the Grantee if the Subgrantee receives any duplicate benefits from any other source for any damage identified on the applicable project application for which Subgrantee has received payment from Grantee.

B. In the event that Grantee should determine that Subgrantee has received duplicate benefits, by its execution of this Agreement the Subgrantee gives Grantee the authority to set off the sum of any such duplicate benefits by withholding it from any other funds otherwise due and owing to Subgrantee, or to use such remedies available at law or equity to the repayment of said sums to Grantee.

ARTICLE V. Compliance with Environmental, Planning and Permitting Laws. Subgrantee shall be responsible for the implementation and completion of the approved projects described in Attachment A – Approved Project Data, in a manner acceptable to Grantee, and in accordance with applicable legal requirements. The contract documents for any project undertaken by Subgrantee, and any land use permitted by or engaged in by Subgrantee, shall be consistent with the local ordinances and State law. Subgrantee shall ensure that any development or development order complies with all applicable planning, permitting and building requirements. Subgrantee shall engage such competent, properly licensed engineering, building, and other technical and professional assistance at all project sites as may be needed to ensure that the project complies with the contract documents.

ARTICLE VI. Subgrantee Risk Assessment. As required by 2 CFR § 200.331 NDDES will complete a Financial Assistance Recipient Risk Assessment rating form for every subgrantee receiving an award to evaluate their potential risk of non-compliance. Subgrantees will be evaluated on factors such as their prior experience with the same or similar subawards, results of previous audits including whether or not they received a Single Audit and the extent to which the same or similar subaward has been audited as a major program; if they have new personnel or new or substantially changed systems, and the extent and results of Federal awarding agency monitoring.

A Risk Assessment will be completed immediately prior to executing this Subgrant Agreement. All new and existing active subgrantees will be rated upon new disaster and program funding opportunities. The Business Manager will work with the State Hazard Mitigation Officer (SHMO) or assigned staff, to jointly complete the risk assessment and score subgrantees, as applicable. Results of the Risk Assessment may result in the imposition of specific conditions as allowed in 2 CFR § 200.207, and will be identified within Attachment D of this Subgrant Agreement.

Every January, or as needed, NDDES will re-evaluate all subgrantee Risk Assessments. Based on overall compliance with project requirements and any issues noticed therein, an updated Financial Assistance Recipient Risk Assessment will be completed and subgrantees can be upgraded or removed from low, medium or high risk status. If a subgrantee is non-compliant with the additional requirements of a subaward due to being considered high risk, the subaward and all federal and state monies can be deobligated at the request of NDDES. Upon deobligation due to non-compliance, a subgrantee will be considered high risk in perpetuity.

ARTICLE VII. Required Documentation, Reviews, and Inspections. Subgrantee shall create and maintain documentation of work performed and costs incurred sufficient to permit a formal audit comporting with ordinary, customary and prudent public accounting requirements. Upon the failure of Subgrantee to create and maintain such documentation, Grantee may terminate further funding under this Agreement, and Subgrantee shall reimburse to Grantee (within 60 days) all payments disbursed earlier to Subgrantee, together with any and all accrued interest.

To ensure all State and Federal Standards are met, Grantee will conduct a physical inspection of all non-plan projects before a project is started and again before the project is closed.

Throughout the life of an approved project, Grantee will undertake a number of project monitoring activities to ensure successful completion of projects. Grantee will monitor and evaluate project accomplishments and adherence to the project work schedule. Through the review of Subgrantee quarterly reports mitigation staff will attempt to identify any potential problems in grant performance. If problems or concerns exist Grantee will contact Subgrantee to further research potential issues. Technical administration or program assistance may be offered or coordinated if required. In addition, mitigation staff will contact Subgrantee on an as needed basis to provide project management support and to aid in the successful completion and closeout of projects. If a project has not been completed and closed within 120 days of the project's period of performance Grantee will send a letter to the applicant that details project deadlines, includes instructions for project closeout, and gives instructions and deadlines for requesting a time extension if necessary.

For all projects, Subgrantee shall certify that: the project was completed in accordance with FEMA approvals; all required and allowable funds have been paid; all reported costs were incurred in the performance of eligible work; work was completed in compliance with the provisions of the FEMA-State Agreement; payments for the project were made in accordance with the existing requirements of Federal and State laws and regulations; no further requests for funding will be made; and there are no pending bills.

As required by 44 CFR Part 80.14 (d), for all acquisition and relocation projects, every 3 years the Subgrantee (in coordination with any current successor in interest) through the grantee, shall submit to the FEMA Regional Administrator a report certifying that the Subgrantee has inspected the property within the month preceding the report, and that the property continues to be maintained consistent with the provisions of 44 CFR Part 80, the property conveyance and the grant award.

ARTICLE VIII. Cost Sharing. The federal share of the eligible costs specified in Attachment A – Approved Project Data, under this Agreement shall be up to seventy five (75) percent of such costs, and the nonfederal share shall be the remaining amount. Payment of a specified portion of the nonfederal share of such costs is contingent upon a potential future State appropriation defining the apportionment of the nonfederal share. Subgrantee commits to meet any local matching funds required for successful project completion. Further, at the time of project application, Subgrantee must provide Grantee with a Resolution of Commitment from its authorized governing body. Subgrantee also certifies that any matching funds borne by the Subgrantee will come from a nonfederal source as required by 44 CFR § 13.24.

ARTICLE IX. Payment of Costs. Grantee shall disburse the eligible costs to Subgrantee in accordance with the following procedures:

A. Following the receipt of a project reimbursement request (including supporting documentation in the way of invoices, contracts, force account labor and equipment schedules, and cancelled checks or vouchers), a payment will be issued for any funding that is eligible to be paid to the Subgrantee, as it becomes available. Payment authorizations shall be calculated in accordance with the federal/non-federal cost share, and on the terms and conditions set forth in the FEMA/State Agreement and this agreement. Authorization for payment will include documentation to substantiate the amount of the authorization.
B. Grantee may advance funds under this Agreement to Subgrantee up to 90 percent of the 75 percent federal share for projects other than Acquisition/Relocation/Elevation projects. Upon completion of the project, submission of the summary of documentation (cancelled checks, warrants, certified transaction reports, etc.) and final approval by FEMA, the

remaining 10 percent share of the federal share and the appropriate state share will be paid. For Acquisition/Relocation/Elevations projects, all conditions for advances listed above shall apply except that the grantee may advance 100 percent of the federal share rather than 90 percent. Subgrantee must meet the following conditions to be eligible for an advance of funds:

1. Subgrantee shall certify to Grantee that Subgrantee has procedures in place to ensure that funds are disbursed to project vendors, contractors, and subcontractors without unnecessary delay;
2. Subgrantee shall submit to Grantee the budget supporting the request;
3. Subgrantee shall submit a statement justifying the advance and the proposed use of the funds and specifying the amount of funds requested; and
4. Subgrantee shall pay over to Grantee any interest earned on advances for remittance to the FEMA as often as practicable, but not later than ten (10) business days after the close of each calendar quarter.

C. Grantee may, in its discretion, withhold its portion of the nonfederal share of funding under this Agreement from Subgrantee if Grantee has reason to expect a subsequent unfavorable determination by the FEMA that a previous disbursement of funds under this Agreement was improper.

ARTICLE X. Final Payment. Grantee shall disburse the final payment to Subgrantee upon the performance of the following conditions:

A. Subgrantee shall have completed the project to the satisfaction of the Grantee;
B. Subgrantee shall have submitted the documentation specified in Articles VI and VIII of this Agreement;
C. Grantee shall have performed the final inspection;
D. Subgrantee shall have requested final reimbursement.
E. Subgrantee shall have requested project closeout by letter

ARTICLE XI. Records Maintenance. The funding of eligible costs under this Agreement and the performance of all other conditions shall be subject to the following requirements, in addition to such other and further requirements as may be imposed by operation of law:

A. The "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," as codified in 44 Code of Federal Regulations Part 13, as amended.
B. Office of Management and Budget Circular No. A-87, "Cost Principles for State and Local Governments," as amended.
C. Office of Management and Budget Circular No. A-110, "Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations," as amended.
D. Office of Management and Budget Circular No. A-122, "Cost Principles for Non-Profit Organizations," as amended.
E. Subgrantee shall retain sufficient records to show its compliance with the terms of this Agreement, as well as the compliance of all subcontractors or consultants paid from funds under this Agreement for a period of three years from the date of formal notification from the Grantee that FEMA has officially closed the disaster program. The Subgrantee shall allow the Grantee or its designee, the Comptroller General of the United States, FEMA, and the North Dakota State Auditor's Office, access to records upon request. The three year period may be extended for the following exceptions:
    1. If any litigation, claim or audit is started before the three year period expires, and extend beyond the three year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.

2. Records for the disposition of non-expendable personal property valued at $5,000 or more at the time it is acquired shall be retained for five years after final disposition.
3. Records relating to real property acquired shall be retained for five years after the closing on the transfer of title.

F. The Subgrantee shall maintain all records for the Subgrantee and for all subcontractors or consultants to be paid from funds provided under this Agreement, including documentation of all program costs, in a form sufficient to determine compliance with the requirements and objectives under this Agreement and all other applicable laws and regulations.

G. The Subgrantee, its employees or agents, including all subcontractors or consultants to be paid from funds provided under this Agreement, shall allow access to its records at reasonable times to the Grantee, its employees, and agents. "Reasonable" shall ordinarily mean during normal business hours of 8:00 a.m. to 5:00 p.m., local time, on Monday through Friday. "Agents" shall include, but not be limited to, auditors retained by the Grantee.

ARTICLE XII. Reimbursement of Funds. If upon final inspection, final audit, or other review by Grantee, the FEMA or other authority determines that the disbursements to Subgrantee under this Agreement exceed the eligible costs, Subgrantee shall reimburse to Grantee the sum by which the total disbursements exceed the eligible costs within sixty (60) days from the date Subgrantee is notified of such determination. If Subgrantee has not reimbursed the grantee the full amount within the 60 days, the Grantee will have all the rights and remedies available to them by law; including, but not limited to, the withhold of future fund disbursement to off-set amount due to Grantee.

ARTICLE XIII. Repayment by Subgrantee. All refunds or repayments due to the Grantee under this Agreement are to be made payable to the order of "**North Dakota Department of Emergency Services**" and mailed directly to the following address: **PO Box 5511, Bismarck, ND, 58506.**

ARTICLE XIV. Audit.

A. The Subgrantee agrees to maintain financial procedures and support documents, in accordance with generally accepted accounting principles, to account for the receipt and expenditure of funds under this Agreement.

B. These records shall be available at all reasonable times for inspection, review, or audit by state personnel and other personnel duly authorized by the Grantee. "Reasonable" shall be construed according to circumstances, but ordinarily shall mean normal business hours of 8:00 a.m. to 5:00 p.m., local time, Monday through Friday.

C. The Subgrantee shall also provide the Grantee or its designee with the records, reports or financial statements upon request for the purposes of auditing and monitoring the funds awarded under this Agreement.

D. If a Subgrantee is a state or local government or a non-profits organization as defined in OMB Circular A-133, as revised, and if the Subgrantee expends $500,000 or more, then the Subgrantee shall have a single or program specific audit conducted which meets the requirements of the Single Audit Act of 1984, 31 U.S.C. ss. 7501-7507, OMB Circular A-133 Part .200 for the purposes of auditing and monitoring the funds awarded under this Agreement. In connection with the aforementioned audit requirement, the Subgrantee shall fulfill for auditee responsibilities as provided in Subpart C of OMB Circular A-133, as revised.

E. If the Subgrantee spends less than $500,000 in federal awards in its fiscal year, an audit conducted in accordance with the provision of OMB Circular A-133, as revised, is not required. In the event the Subgrantee expends less than $500,000 in federal awards in its

fiscal year and chooses to have an audit conducted in accordance with OMB Circular A-133 Part .200, as revise, the cost of the audit must be paid from nonfederal funds.

F. In the event the audit shows that the entire funds disbursed hereunder, or any portion thereof, were not spent in accordance with the conditions of this Agreement, the Subgrantee shall be held liable for reimbursement to the Grantee of all funds not spent in accordance with these applicable regulations and Agreement provisions within sixty (60) days after the Grantee has notified the Subgrantee of such non-compliance.

G. If required, the audit is due nine (9) months after the end of the fiscal year of Subgrantee.

H. If audit is conducted as required by subsection D. above, the Subgrantee shall submit the data collection form and one copy of the reporting package to the Federal Audit Clearinghouse at the following address: **Federal Audit Clearinghouse, Bureau of the Census, 1201 East 10th Street, Jeffersonville, IN 47132**. If the audit documents any finding or questioned costs, Subgrantee shall submit a copy of the reporting package to the State at the following address:

ND Department of Emergency Services
PO Box 5511
Bismarck ND 58506

ARTICLE XV. Noncompliance. If the Subgrantee violates this Agreement or any legislation, regulation, statute, rule or other legal requirement applicable to the performance of this Agreement, the Grantee may withhold any disbursement otherwise due Subgrantee for the project with respect to which the violation has occurred until the violation is cured or has otherwise come to final resolution. If the violation is not cured, Grantee may terminate this Agreement and invoke its remedies under the Agreement as per the Articles of this Agreement.

ARTICLE XVI. Nondiscrimination by Contractors. Pursuant to 44 CFR Parts 7 and 16, and 44 CFR Part 206.36, the Subgrantee shall undertake an active program of nondiscrimination in its administration of disaster assistance under this Agreement. Subgrantee shall also be subject to the requirements in the General Services Administrative Consolidated List of Debarred, Suspended and Ineligible Contractors, in accordance with 44 CFR Part 17.

ARTICLE XVII. Modification. A modification extending the time for completion of a project and any other modification shall be in writing. Modifications to any project to be funded under this Agreement may be requested by Subgrantee through Grantee, but the approval of any such modifications shall reside in the sole discretion of the FEMA. Any approved modification to a project shall be noted in an amendment to the project and in any amendment to this Agreement. If otherwise allowed under this Agreement, any extension shall be in writing and shall be subject to the same terms and conditions as those set out in the initial Agreement.

ARTICLE XVIII. Period of Performance (POP). The POP is the period of time during which the Grantee is expected to complete all grant activities and to incur and expend approved funds. The POP begins on the date that the grant is awarded and ends no later than 36 months from the award of the final subgrant under the grant. The POP termination date is established by the subgrant with the latest completion date.

FEMA will not establish activity completion timeframes for individual subgrants. Grantees are responsible for ensuring that all approved activities are completed by the end of the grant POP.

ARTICLE XIX. Contracts with Others. If the Subgrantee contracts with any other contractor or vendor for performance of all or any portion of the work required under this Agreement, the Subgrantee shall incorporate into its contract with such contractor or vendor an indemnification

clause holding Grantee and Subgrantee harmless from liability to third parties for claims asserted under such contract. The Subgrantee shall also document in the quarterly report the subcontractor's progress in performing its work under this Agreement.

ARTICLE XX. Termination. Either of the parties may terminate this Agreement by notice in writing. Such termination shall take effect thirty (30) days after the date of such notice. Such termination shall not affect the rights, interests, duties or responsibilities of either of the parties or any allowable costs that have accrued as of the date of the notice of termination.

ARTICLE XXI. Liability. Grantee assumes no liability to third parties in connection with this agreement. The Subgrantee shall be solely responsible to any and all contractors, vendors, and other parties with whom it contracts in performing this Agreement. Unless the Subgrantee is a political subdivision under NDCC 32-12.2-13, the Subgrantee shall defend, indemnify and hold harmless Grantee from claims asserted by third parties in connection with the performance of this Agreement. Contractors hired by a Subgrantee, including political subdivisions, shall be required to agree in writing to defend, indemnify and hold the State of North Dakota harmless for any claims arising out the contractor's or any subcontractor's performance under the agreement. For the purposes of this Agreement, the Grantee and Subgrantee agree that neither one is an employee or agent of the other, but that each one stands as an independent entity in relation to one another. Nothing in this Agreement shall be construed as a waiver by the Grantee or Subgrantee of any legal immunity, nor shall anything in this Agreement be construed as consent by either of the parties to be sued by third parties in connection with any matter arising from the performance of this Agreement. Subgrantee represents to the best of its knowledge any hazardous substances at its projected site or sites are present in quantities within statutory and regulatory limitations, and do not require remedial action under any federal, state or local legal requirements concerning such substances, Subgrantee further represents that the presence of any such substance or any condition at the site caused by the presence of any such substance shall be addressed in accordance with all applicable legal requirements.

ARTICLE XXII. Reports. Subgrantee shall provide Quarterly Reports to Grantee using forms provided by the Grantee for each specific project. The first Quarterly Report shall be due at such time as Subgrantee is notified. All subsequent Quarterly Reports shall be due no later than fifteen (15) days after each calendar quarter through final inspection. Quarterly Reports shall indicate the anticipated completion date for each project, together with any other circumstances that may affect the completion date, the scope of work, the project costs, or any other factors that may affect compliance with this Agreement. Interim inspections may be scheduled by Subgrantee before the final inspection and may be required by Grantee based on information supplied in the Quarterly Reports. Grantee may require additional reports as needed, and Subgrantee shall provide any additional reports requested by Grantee as soon as practicable.

ARTICLE XXIII. Monitoring. The Subgrantee shall monitor its performance under this Agreement, as well as that of its subcontractors, Subgrantees and consultants who are paid from funds provided under this Agreement, to ensure that performance under this Agreement are achieved and satisfactorily performed and in compliance with applicable state and federal laws and rules.

In addition to reviews of audits conducted in accordance with OMB Circular A-133, as revised, monitoring procedures may include, but not be limited to, on-site visits by Grantee staff, limited scope audits as defined by OMB Circular A-133, as revised, and/or other procedures. By entering into this Agreement, the Subgrantee agrees to comply and cooperate with all monitoring procedures/processes deemed appropriate by the Grantee. In the event that the Grantee determines

that a limited scope audit of the Subgrantee is appropriate, the Subgrantee agrees to comply with any additional instructions provided by the Grantee to the Subgrantee regarding such audit. The Subgrantee further agrees to comply and cooperate with any inspections, reviews, investigations or audits deemed necessary by the Comptroller or Auditor General. In addition, the Grantee will monitor the performance and financial management by the Subgrantee throughout the contract term to ensure timely completion of all tasks.

ARTICLE XXIV. Mandated Conditions. Subgrantee agrees to the following conditions:

A. The performance and obligation of Grantee to pay under this Agreement is contingent upon an annual appropriation by the Legislature.

B. Bills for fees or other compensation for services or expenses must be submitted in detail sufficient for a proper pre-audit and post-audit.

C. Grantee may unilaterally terminate this Agreement for refusal by the Subgrantee or its contractors or subcontractors to allow public access to all documents, papers, letters or other material that are made or received by Subgrantee or its contractors and subcontractors in connection with this Agreement.

D. Subgrantee agrees that no funds or other resources received from the Grantee disbursed to it under this Agreement will be used directly or indirectly to influence legislation or any other official action by the North Dakota Legislature or any state agency.

E. Subgrantee certifies that it possesses the legal authority to receive the funds under this Agreement and that it's governing body (if applicable) has authorized the execution and acceptance of this Agreement. The Subgrantee also certifies that the undersigned person has the authority to legally execute and bind Subgrantee to the terms of this Agreement.

F. Subgrantee agrees that responsibility for compliance with this Agreement rests with Subgrantee, and further agrees that noncompliance with this Agreement shall be cause for the rescission, suspension or termination of funding under this Agreement, and may affect eligibility for funding under future Subgrantee Agreements.

G. The Grantee will not intentionally award publicly-funded contracts to any contractor who knowingly employs unauthorized alien workers, constituting a violation of the employment provisions contained in 8 U.S.C. Section 1324a(e) [Section 274A(e) of the Immigration and Nationality Act ("INA")]. The Department shall consider the employment by any contractor of unauthorized aliens a violation of Section 274A (e) of the INA. Such violation by the Subgrantee of the employment provisions contained in Section 274A (e) of the INA shall be grounds for unilateral cancellation of this Agreement by the Department.

H. A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime or on the discriminatory vendor list may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with a public entity, and may not transact business with any public entity in excess of Category Two for a period of 36 months from the date of being placed on the convicted vendor list or on the discriminatory vendor list.

I. The Subgrantee agrees to comply with the Americans With Disabilities Act (Public Law 101-336, 42 U.S.C. Section 12101 et seq.), if applicable, which prohibits discrimination by public and private entities on the basis of disability in the areas of employment, public accommodations, transportation, State and local government services, and in telecommunications.

J. With respect to any Subgrantee which is not a local government or state agency, and which receives funds under this Agreement from the federal government, by signing this

Agreement, the Subgrantee certifies, to the best of its knowledge and belief, that it and its principals:

1. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by a federal department or agency;
2. have not, within a five-year period preceding this proposal been convicted of or had a civil judgment rendered against them for:
    a) the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under public transaction.
    b) violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.
    c) have not within a five-year period preceding this Agreement had one or more public transactions (federal, state or local) terminated for cause or default.

Where the Subgrantee is unable to certify to any of the statements in this certification, such Subgrantee shall attach an explanation to this Agreement. In addition, the Subgrantee shall submit to the Grantee (by email or facsimile) the completed "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion" for each prospective subcontractor which Subgrantee intends to fund under this Agreement. See Attachment C. Such form must be received by the Grantee prior to the Subgrantee entering into a contract with any prospective subcontractor.

K. The validity of this Agreement is subject to the truth and accuracy of all the information, representations, and materials submitted or provided by the Subgrantee in this Agreement, in any subsequent submission or response to Grantee request, or in any submission or response to fulfill the requirements of this Agreement, and such information, representations, and materials are incorporated by reference. The lack of accuracy thereof or any material changes shall, at the option of the Department and with thirty (30) days written notice to the Subgrantee, cause the termination of this Agreement and the release of the Grantee from all its obligations to the Subgrantee.

L. This Agreement shall be construed under the laws of the State of North Dakota, and venue for any actions arising out of this Agreement shall lie in Burleigh County. If any provision hereof is in conflict with any applicable statute or rule, or is otherwise unenforceable, then such provision shall be deemed null and void to the extent of such conflict, and shall be deemed severable, but shall not invalidate any other provision of this Agreement.

M. The Subgrantee certifies, by its signature to this Agreement, that to the best of his or her knowledge and belief:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement.
2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit

Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements) and that all sub grantees shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

O. All unmanufactured and manufactured articles, materials and supplies which are acquired for public use under this Agreement have been produced in the United States as required 41 U.S.C. 10a, unless it would not be in the public interest or unreasonable in cost.

ARTICLE XXV. Term. This Agreement shall take effect upon its execution by both parties, and shall terminate upon approval of closeout by the FEMA, unless terminated earlier as specified elsewhere in this Agreement. Subgrantee shall commence project(s) specified by this Agreement without delay.

ARTICLE XXVI. Events of Default, Remedies, and Termination.

1. Upon the occurrence of any one or more of the following events, all obligations of Grantee to disburse further funds under this Agreement shall terminate at the option of Grantee. Notwithstanding the preceding sentence, Grantee may at its option continue to make payments or portions of payments after the occurrence of any one or more such events without waiving the right to exercise such remedies and without incurring liability for further payment. Grantee may at its option terminate this Agreement and any and all funding under this Agreement upon the occurrence of any one or more of the following:

1. Any representation by Subgrantee in this Agreement is inaccurate or incomplete in any material respect, or Subgrantee has breached any condition of this Agreement with Grantee and has not cured in timely fashion or is unable or unwilling to meet its obligations under this Agreement.
2. Subgrantee suffers any material adverse change in its financial condition while this Agreement is in effect, as compared to its financial condition as represented in any reports or other documents submitted to Grantee, if Subgrantee has not cured the condition within thirty (30) days after notice in writing from Grantee.
3. Any reports required by this Agreement have not been submitted to Grantee or have been submitted with inaccurate, incomplete, or inadequate information.
4. The monies necessary to fund this Agreement are unavailable due to any failure to appropriate or other action or inaction by the State Legislature, Congress or Office of Management and Budget.

2. Upon the occurrence of any one or more of the foregoing events, Grantee may at its option give notice in writing to Subgrantee to cure its failure of performance if such failure may be cured. Upon the failure of Subgrantee to cure, Grantee may exercise any one or more of the following remedies:

1. Terminate this Agreement upon not less than fifteen (15) days' notice of such termination by certified letter to the Subgrantee, such notice to take effect when delivered to Subgrantee;
2. Commence a legal action for the judicial enforcement of this Agreement;
3. Withhold the disbursement of any payment or any portion of a payment otherwise due and payable under this agreement or any other agreement with Subgrantee; and

4. Take any other remedial actions that may otherwise be available under law.

3. Grantee may terminate this Agreement for any misrepresentation of material fact, for failure or nonperformance of any Agreement condition or obligation, or for noncompliance with any applicable legal requirement.
4. Any deobligation of funds or other determination by the FEMA shall be addressed in accordance with the regulations of that Agency.
5. Upon the rescission, suspension or termination of this Agreement, the Subgrantee shall refund to Grantee all funds disbursed to Subgrantee under this Agreement.
6. The venue of any action or proceeding by either Grantee or Subgrantee for enforcement of this Agreement or for adjudication rights, interest, or duties of the parties to it shall lie in South Central District Court, Burleigh County, North Dakota.
7. Notwithstanding anything to the contrary elsewhere in this Agreement, the rescission, suspension or termination of this Agreement by Grantee shall not relieve Subgrantee of liability to Grantee for the restitution of funds advanced to Subgrantee under this Agreement, and Grantee may set off any such funds by withholding future disbursements otherwise due Subgrantee under this Agreement or any other Agreement until such time as the exact amount of restitution due Grantee from Subgrantee is determined. In the event the FEMA should deobligate funds formerly allowed under this Agreement or under any other Agreement funded by the Agency and administered by Grantee, then Subgrantee shall immediately repay such funds to Grantee. If the Subgrantee fails to repay any such funds, then Grantee may recover the same from funding otherwise due Subgrantee.

ARTICLE XXVII. Attachments.

A. All attachments to this Agreement are incorporated into this Agreement by reference as if set out fully in the text of the Agreement itself.
B. In the event of any inconsistencies between the language of this Agreement and the Attachments to it if any, the language of the Attachments shall be controlling, but only to the extent of such inconsistencies.

Note: All other grant administrative and electronic forms will be provided by Grantee as necessary or posted on the North Dakota Department of Emergency Services website: http://www.nd.gov/des/.

ARTICLE XXVIII. Notice and Contact. All notices under this Agreement shall be in writing and shall be delivered by email, by facsimile, by hand, or by letter to the following respective addresses:

Grantee:

Justin Messner, Disaster Recovery Chief
Department of Emergency Services
PO Box 5511
Bismarck ND 58506
Email: jmessner@nd.gov

Subgrantee:

James Hausauer
Utility Director, Fargo WWTP
3400 North Broadway
Fargo, ND 58102
Email: JHausauer@FargoND.gov

ARTICLE XXIX. Designation of Agent. Subgrantee hereby designates the following agents to execute any Request for Advance or Reimbursement, certification, or other necessary documentation:

Primary Agent	Alternate Agent
_____	_____
Name and Title	Name and Title
_____	_____
Phone Number	Phone Number
_____	_____
E-mail	E-mail

STATE OF NORTH DAKOTA
DEPARTMENT OF EMERGENCY SERVICES

SIGNATURE PAGE

HAZARD MITIGATION GRANT PROGRAM SUBGRANT AGREEMENT
FOR
FY 2018 NON-DISASTER GRANT AWARDS

IN WITNESS HEREOF, the Grantee and Subgrantee have executed this Agreement:

FOR THE SUBGRANTEE:

_____
Name and Title

_____
Signature Date

Federal Employer Identification Number (FEIN): _____

DUNS Number: _____

STATE OF NORTH DAKOTA
DEPARTMENT OF EMERGENCY SERVICES

SIGNATURE PAGE

HAZARD MITIGATION GRANT PROGRAM SUBGRANT AGREEMENT
FOR
FY 2018 NON-DISASTER GRANT AWARDS

IN WITNESS HEREOF, the Grantee and Subgrantee have executed this Agreement:

FOR THE GRANTEE:

DEPARTMENT OF EMERGENCY SERVICES

3/31/2020

Justin Messner – Disaster Recovery Chief — Date

ATTACHMENT A

Approved Project Data

CFDA Title and Number: Disaster Grants – Pre-Disaster Mitigation Program, 97.047
Non-Disaster Grant Fiscal Year: 2018
Subrecipient: City of Fargo
Project Number: PDMC-PL-08-ND-2018-023
Project Cost: 100% - $4,906,390.00
Federal Funding: 75% - $3,679,792.50
Local Funding: 25% - $1,226,597.50
Work Schedule: 4 March 2020 – 4 February 2022

Scope of Work:
The scope of work for this project is to provide permanent flood protection for the City of Fargo's Wastewater Treatment Plant (WWTP) above the 500-year level of protection. The 500-year floodplain elevation for the Red River at the WWTP based on the current Flood Insurance Study (FIS) is 899.2 feet (NAVD 88). The project proposes the use of levees, floodwalls and a road raise to provide protection around the facility. The project has integrated design standards from the City of Fargo, State and FEMA to develop the design. For levees, FEMA requires levees to be constructed (top of clay) to a height of the Base Flood Elevation (BFE) plus three (3) feet for adequate freeboard. In our case, the BFE is 896.5 feet, which sets the top of the clay at 899.5 feet [896.5ft. (BFE) + 3.0 ft.]. For the flood wall design height, the City of Fargo has set the standard as the BFE plus 5.5 feet. For the WWTP location, this would set the top of wall height to an elevation of 902.2 ft. [896.5 ft. + 5.5 ft.]. Both design standards exceed the minimum height requirement for the 500-year floodplain elevation of 899.2 feet. Majority of the site is located within the 500-year floodplain. A portion of the site in the southeast corner is elevated above the 500-year floodplain which the project proposes to tie into.

The alignment of the protection system has been split into five (5) segments for the design: South Access Road, SW Low Area, West Drying Beds, NW Green Space and the NE Clarifier Area. An alternative analysis was completed for the project with details of the analysis can be found in the attached preliminary design report. Provided below is a summary of the selected measures for each of the segments.

Starting on the south side of the facility, the South Access Road segment is proposed to be raised above the 500-year floodplain elevation that will then tie into the southeast corner of the site, the area of the site that is elevated above the 500-year floodplain. This road raise will be completed by removing the existing pavement section, raising and replacing the pavement, adding curb & gutter and installing storm sewer in this area. Working clockwise around the site, the next segment (SW Low Area) is proposed to be an earthen levee. Continuing to the north, the levee is proposed to extend along the West Drying Bed segment. Within this segment, the levee alignment was set strategically to avoid running over top of the existing utilities located along the west side of the site. However, the drying bed will be impacted and are proposed to be mitigated for. Continuing the levee north, it will extend through the NW Green Space segment. The existing access road located in the northwest corner of the site will be removed. Following the NW Green Space, the line of protection transitions from a levee to a sheet pile wall at the NE Clarifier Area. Space limitations in this area do not allow for the construction of a levee and the existing access road in the northeast area of the site will also be removed. The wall will run parallel to the property line, continuing to the south until it ties into the elevated portion of the site, which is

above the 500-year floodplain. The tie-in point is approximately located at the west central access road to the WWTP.

Overall, the project proposed to provide a continuous permanent line of protection around the WWTP above the 500-year floodplain without the need for closures. Mitigation will be implemented by developing construction drawings in specifications based on City of Fargo, State and FEMA standards. The construction plans will integrate any environmental conditions required for the project. The project will then be bid out in accordance with City, State and FEMA requirements to a contractor. Once a contractor is awarded the project, the City will oversee the construction of the mitigation project, ensuring it is built to the standards specified in the project made during the design process. Once the project is completed, the City will work with the State to reimburse all eligible project costs and close the project on the State and Federal levels.

Work Schedule:

Environmental Permitting	2 Months
Final Design	6 Months
Bidding	1 Month
Construction	12 Months
Project Closeout	2 Months
Total:	23 Months

Cost Estimate:

F&I Pavement 8" Thick Doweled Conc	Construction and Project Improvement	1,440.00	Square Yard	$ 99.60	$ 143,424.00
Remove & Replace Chain Link Fence	Construction and Project Improvement	2,075.00	Linear Foot	$ 60.00	$ 124,500.00
Raise Scrubber	Construction and Project Improvement	1.00	Each	$ 18,000.00	$ 18,000.00
Raise Manhole	Construction and Project Improvement	1.00	Each	$ 4,200.00	$ 4,200.00
8' x 8' Box Gate Structure	Construction and Project Improvement	1.00	Each	$ 18,000.00	$ 18,000.00
F&I Edge Drain 8" Dia PVC	Construction and Project Improvement	485.00	Linear Foot	$ 14.40	$ 6,984.00
F&I Pavement 6" Thick Reinforced Conc	Construction and Project Improvement	500.00	Square Yard	$ 54.00	$ 27,000.00
Replace Cleanout Length of Drying Beds	Construction and Project Improvement	1.00	Each	$ 60,000.00	$ 60,000.00

Site Grading	Construction and Project Improvement	1.00	Unknown	$ 90,000.00	$ 90,000.00
F&I Curb and Gutter (2-foot drying beds)	Construction and Project Improvement	600.00	Linear Foot	$ 156.00	$ 93,600.00
F&I Drying Bed Walls (6" x 2')	Construction and Project Improvement	18.00	Cubic Yard	$ 120.00	$ 2,160.00
F&I Drying Bed Concrete Floor (2.5' x 285' x 6")	Construction and Project Improvement	1,200.00	Square Yard	$ 54.00	$ 64,800.00
F&I Woven Geotextile Fabri	Construction and Project Improvement	1,200.00	Square Yard	$ 2.40	$ 2,880.00
Erosion Control	Construction and Project Improvement	1.00	Each	$ 18,000.00	$ 18,000.00
Remove Pavement All Thickness All Types	Construction and Project Improvement	1,525.00	Square Yard	$ 13.20	$ 20,130.00
Class 5 Import	Construction and Project Improvement	800.00	Cubic Yard	$ 24.00	$ 19,200.00
Topsoil (Haul and Spread)	Construction and Project Improvement	6,300.00	Cubic Yard	$ 18.00	$ 113,400.00
Seeding	Construction and Project Improvement	37,900.00	Cubic Yard	$ 2.70	$ 102,330.00
8" Plug Valve and Fitting	Construction and Project Improvement	1.00	Each	$ 7,200.00	$ 7,200.00
Relocate Water Main 10" Dia	Construction and Project Improvement	1.00	Each	$ 8,400.00	$ 8,400.00
Remove Tree	Construction and Project Improvement	47.00	Each	$ 120.00	$ 5,640.00
Salvage Tree	Construction and Project Improvement	20.00	Each	$ 690.00	$ 13,800.00
F&I 1-1/4" Trench Found Rock 4" through 12" Dia	Construction and Project Improvement	200.00	Square Yard	$ 21.60	$ 4,320.00
Contigency	Contingencies	1.00	Each	$ 218,200.00	$ 218,200.00

Project Management Fees	Other Architectural Engineering Basic Fees	1.00	Each	$ 229,100.00	$ 229,100.00
18" RCP Strom Pipe	Construction and Project Improvement	895.00	Linear Foot	$ 66.00	$ 59,070.00
F&I 48" SDMH w/beehive	Construction and Project Improvement	10.00	Each	$ 7,800.00	$ 78,000.00
F&I Gate Valve	Construction and Project Improvement	5.00	Each	$ 5,400.00	$ 27,000.00
F&I 12" PVC	Construction and Project Improvement	230.00	Linear Foot	$ 78.00	$ 17,940.00
24" Slide Gate	Construction and Project Improvement	1.00	Each	$ 9,600.00	$ 9,600.00
F&I Sand	Construction and Project Improvement	600.00	Square Yard	$ 30.00	$ 18,000.00
Demo Drying Bed Portion	Construction and Project Improvement	1.00	Each	$ 24,000.00	$ 24,000.00
Engineering and Construction	Architectural Engineering Basic Fees	1.00	Unknown	$ 500,000.00	$ 500,000.00
F&I Curb and Gutter	Construction and Project Improvement	325.00	Linear Foot	$ 42.00	$ 13,650.00
F&I Casting - Inlet	Construction and Project Improvement	5.00	Each	$ 1,440.00	$ 7,200.00
Pre-Award Engineering Fees	Preliminary Expense	1.00	Each	$ 93,700.00	$ 93,700.00
Mobilization	Construction and Project Improvement	1.00	Unknown	$ 184,000.00	$ 184,000.00
Strip Topsoil	Construction and Project Improvement	4,860.00	Cubic Yard	$ 4.80	$ 23,328.00
Clay Excavation & Haul	Construction and Project Improvement	33,557.00	Cubic Yard	$ 42.00	$ 1,409,394.00
F&I Sheet Piling	Construction and Project Improvement	640.00	Linear Foot	$ 1,560.00	$ 998,400.00

F&I Inlet - Manhole (MHI) 4' Dia Reinf Conc	Construction and Project Improvement	8.00	Each	$ 3,480.00	$ 27,840.00
Total					**$ 4,906,390.00**

Other Conditions:

Environmental requirements, as noted below and in the attached FEMA award letter dated 4 March 2020 must be met and documented. The attached environmental form must be completed and submitted before grant can be closed out:

Source of Condition: Executive Order 11988 – Flood Plains

The current footprint of the wastewater treatment plant does not encroach on a FEMA-identified 1 %-chance floodplain. However, be advised that floodplains (Zone AE) and regulatory flood way are directly adjacent to the facility as it currently exists. Any encroachment on the 1 %-chance floodplain will require a floodplain development permit from the City of Fargo. In addition, development in the regulatory floodway carries additional requirements per NDCC § 61-16.2-14. Before authorizing any development, the community responsible for permitting such use shall request a floodway review from the State Engineer. The application form may be downloaded from our website under "Regulation & Appropriation, Floodplain Management." Please contact Dionne Haynes with any questions regarding this process. The Floodplain Administrator for the City of Fargo is Jody Bertrand (Floodplain Administrator), 701-241-1548, jbertrand@cityoffargo.com.
The NFIP map used to make this determination is Panel l/38017C0591G, Date: 1/16/2015.

Source of Condition: Clean Water Act

The City shall consult with the USACE to determine final project requirements. The City is responsible for obtaining any needed permits and verifying and complying with all permit requirements, including wetland mitigation, any permit conditions, pre-construction notification requirements, and regional conditions as provided by the Army Corps of Engineers. The City is responsible for implementing, monitoring, and maintaining all Best Management Practices (BMPs) and Pre- Construction Notification (PCN) conditions of applicable nationwide permits.

Source of Condition: National Historic Preservation Act

All borrow material and/or rip rap must come from a ND SHPO approved source. If the applicant chooses to use a borrow source that is not NDDOT Certified and/or from an existing stockpile, the following must occur prior to digging:

1. State Historical Preservation Office (SHPO) approval including completion and FEMA approval of required archeological surveys.

2. The applicant shall notify the FEMA Regional Environmental Officer if any listed species or designated critical habitat might be affected or is in the vicinity of the project, and shall not begin work until notified by the FEMA Regional Environmental Officer that the requirements of the Endangered Species Act have been satisfied.

3. Applicant is required to coordinate borrow pit locations with the USFWS Wetland District Manager to avoid project impacts to easements or public lands.

4. Applicant is responsible for ensuring that no borrow pit activity occurs in Waters of the United States, wetlands or a river listed on the Nationwide Rivers Inventory (NRI). Borrow pit activity occurring in a floodplain must not affect pre-existing hydrological profiles. If activities occur in prime farmland ground disturbance must be temporary, one time use, and no permanent loss of farmland may occur.

Source of Condition: State Water and Soil Laws

1. Applicant shall comply with proper construction practices and environmental disturbance requirements as outlined in the NDDOH letter dated 8/29/17.

2. Care is to be taken during construction activity near any water of the state to minimize adverse effects on a water body. This includes minimal disturbance of stream beds and banks to prevent excess siltation, and the replacement and revegetation of any disturbed area as soon as possible after work has been completed. Caution must also be taken to prevent spills of oil and grease that may reach the receiving water from equipment maintenance, and/or the handling of fuels on the site. Guidelines for minimizing degradation to waterways during construction must be followed.

3. Projects disturbing one or more acres are required to have a permit to discharge storm water runoff until the site is stabilized by the reestablishment of vegetation or other permanent cover. Further information on the storm water permit may be obtained from the Department's website or by calling the Division of Water Quality (701-328-5210). Also, cities may impose additional requirements and/or specific best management practices for construction affecting their storm drainage system. Check with the local officials to be sure any local storm water management considerations are addressed.

4. The proposed construction project is located near the West Fargo aquifer. Care should be taken to avoid spills of any materials that may have an adverse effect on groundwater quality. All spills must be immediately reported to this Department and appropriate remedial actions performed.

5. Per the NDSWC, initial review indicates the project does not require a conditional or temporary permit for water appropriation. However, if surface water or groundwater will be diverted for construction of the project, a water permit will be required per North Dakota Century Code (NDCC) § 61-04-02. Please consult with the Water Appropriations Division of the Office of the State Engineer (OSE) at 701-328-2754 or waterpermits@nd.gov if you have questions.

6. A Sovereign Land Permit will be required for any work below the ordinary high water mark of the Red River. Please contact Ashley Persinger, OSE Sovereign Land Specialist, at 701-328-4988 or apersinger@nd.gov if you have questions.

7. it is likely that the levee proposed, including both temporary and permanent levees and floodwalls, requires or will require a construction permit from the OSE. The OSE requests more information regarding the temporary and permanent levees, including plans and specifications for the levees and floodwalls. Additional information may be necessary to submit with a construction permit application to ensure the levee and floodwall design can be adequately reviewed. For further information on the OSE's permitting requirements, please visit the Regulation & Appropriation tab on the OSE's website (swc.nd.gov). Please contact the OSE Engineering and Permitting Section at 701-328-2752 if you have questions.

8. All necessary measures must be taken to minimize fugitive dust emissions created during construction activities. Any complaints that may arise are to be dealt with in an efficient and effective manner.

ATTACHMENT B

Statement of Assurances

To the extent the following provisions apply to this Agreement, the Subgrantee agrees to comply with the following:

1. Contract Work Hours and Safety Standards Act of 1962, 40 U.S.C. 327 et seq., requiring that mechanics and laborers (including watchmen and guards) employed on federally assisted contracts be paid wages of not less than one and one-half times their basic wage rates for all hours worked in excess of forty hours in a workweek.
2. Federal Fair Labor Standards Act, 29 U.S.C. Section 201 et seq., requiring that covered employees be paid at least the minimum prescribed wage, and also that they be paid one and one-half times their basic wage rates for all hours worked in excess of the prescribed work-week.
3. Title VI of the Civil Rights Act of 1964 (P.L. 88-352), and the regulations issued pursuant thereto, which provides that no person in the United States shall on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Subgrantee receives federal financial assistance and will immediately take any measures necessary to effectuate this assurance. If any real property or structure thereon is provided or improved with the aid of federal financial assistance extended to the Subgrantee, this assurance shall obligate the Subgrantee, or in the case of any transfer of such property, any transferee, for the period during which the real property or structure is used for a purpose for which the federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits.
4. Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975, as amended (42 U.S.C.: 6101-6107) which prohibits discrimination on the basis of age or with respect to otherwise qualified handicapped individuals as provided in Section 504 of the Rehabilitation Act of 1973.
5. Executive Order 11246 as amended by Executive Orders 11375 and 12086, and the regulations issued pursuant thereto, which provide that no person shall be discriminated against on the basis of race, color, religion, sex or national origin in all phases of employment during the performance of federal or federally assisted construction contracts; affirmative action to insure fair treatment in employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff/termination, rates of pay or other forms of compensation; and election for training and apprenticeship.
6. It will comply with the Anti-Kickback Act of 1986, 41 U.S.C. Section 51 which outlaws and prescribes penalties for "kickbacks" of wages in federally financed or assisted construction activities.
7. It will comply with the provisions of 18 USC 594, 598, 600-605 (further known as the Hatch Act) which limits the political activities of employees.
8. It will comply with the flood insurance purchase and other requirements of the Flood Disaster Protection Act of 1973 as amended, 42 USC 4002-4107, including requirements regarding the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any federal financial assistance for construction or acquisition purposes for use in any area having special flood hazards. The phrase "Federal financial assistance" includes any form of loan, grant, guaranty, insurance payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect federal assistance.
9. It will require every building or facility (other than a privately owned residential structure) designed, constructed, or altered with funds provided under this Agreement to comply with

the "Uniform Federal Accessibility Standards," (AS) which is Appendix A to 41 CFR Section 101-19.6 for general type buildings and Appendix A to 24 CFR Part 40 for residential structures. The Subgrantee will be responsible for conducting inspections to ensure compliance with these specifications by the contractor.

10. It will, in connection with its performance of environmental assessments under the National Environmental Policy Act of 1969, comply with Section 106 of the National Historic Preservation Act of 1966 (U.S.C. 470), Executive Order 11593, 24 CFR Part 800, and the Preservation of Archaeological and Historical Data Act of 1966 (16 U.S.C. 469a-1, et seq.) by:
    a) Consulting with the State Historic Preservation Office to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects (see 36 CFR Section 800.8) by the proposed activity.
    b) Complying with all requirements established by the state to avoid or mitigate adverse effects upon such properties.
    c) When any of Subgrantee's projects funded under this Agreement may affect a historic property, as defined in 36 CFR 800. (2)(e), the FEMA may require Subgrantee to review the eligible scope of work in consultation with the State Historic Preservation Office (SHPO) and suggest methods of repair or construction that will conform with the recommended approaches set out in the "Secretary of Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings 1992 (Standards), the Secretary of the Interior's Guidelines for Archeological Documentation (Guidelines) (48 Federal Register 44734-37)," or any other applicable Secretary of Interior standards. If FEMA determines that the eligible scope of work will not conform with the Standards, Subgrantee agrees to participate in consultations to develop, and, after execution by all parties, to abide by, a written agreement that establishes mitigation and recondition measures, including but not limited to, impacts to archeological sites, and the salvage, storage, and reuse of any significant architectural features that may otherwise be demolished.
    d) Subgrantee agrees to notify FEMA and the Grantee if any project funded under this Agreement will involve ground disturbing activities, including, but not limited to: subsurface disturbance; removal of trees; excavation for footings and foundations; and installation of utilities (such as water, sewer, storm drains, electrical, gas, leach lines and septic tanks) except where these activities are restricted solely to areas previously disturbed by the installation, replacement or maintenance of such utilities. FEMA will request the SHPO's opinion on the potential that archeological properties may be present and be affected by such activities. The SHPO will advise Subgrantee on any feasible steps to be accomplished to avoid any National Register eligible archeological property or will make recommendations for the development of a treatment plan for the recovery of archeological data from the property. If Subgrantee is unable to avoid the archeological property, develop, in consultation with the SHPO, a treatment plan consistent with the Guidelines and take into account the Advisory Council on Historic Preservation (Council) publication "Treatment of Archeological Properties." Subgrantee shall forward information regarding the treatment plan to FEMA, the SHPO and the Council for review. If the SHPO and the Council do not object within 15 calendar days of receipt of the treatment plan, FEMA may direct Subgrantee to implement the treatment plan. If either the Council or the SHPO object, Subgrantee shall not proceed with the project until the objection is resolved.

e) Subgrantee shall notify the Grantee and FEMA as soon as practicable: (i) of any changes in the approved scope of work for a National Register eligible or listed property; (ii) of all changes to a project that may result in a supplemental DSR or modify an HMGP project for a National Register eligible or listed property; (iii) if it appears that a project funded under this Agreement will affect a previously unidentified property that may be eligible for inclusion in the National Register or affect a known historic property in an unanticipated manner. Subgrantee acknowledges that FEMA may require Subgrantee to stop construction in the vicinity of the discovery of a previously unidentified property that may be eligible for inclusion in the National Register or upon learning that construction may affect a known historic property in an unanticipated manner. Subgrantee further acknowledges that FEMA may require Subgrantee to take all reasonable measures to avoid or minimize harm to such property until FEMA concludes consultation with the SHPO. Subgrantee also acknowledges that FEMA will require, and Subgrantee shall comply with, modifications to the project scope of work necessary to implement recommendations to address the project and the property.

f) Subgrantee acknowledges that, unless FEMA specifically stipulates otherwise, it shall not receive funding for projects when, with intent to avoid the requirements of the NHPA, Subgrantee intentionally and significantly adversely affects a historic property, or having the legal power to prevent it, allowed such significant adverse effect to occur.

11. It will comply with Title IX of the Education Amendments of 1972, as amended (20 U.S.C.: 1681-1683 and 1685 - 1686) which prohibits discrimination on the basis of sex.
12. It will comply with the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, (42 U.S.C. 4521-45-94) relating to nondiscrimination on the basis of alcohol abuse or alcoholism.
13. It will comply with 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records.
14. It will comply with Lead-Based Paint Poison Prevention Act (42 U.S.C.: 4821 et seq.) which prohibits the use of lead based paint in construction of rehabilitation or residential structures.
15. It will comply with the Energy Policy and Conservation Act (P.L. 94-163; 42 U.S.C. 6201-6422), and the provisions of the state Energy Conservation Plan adopted pursuant thereto.
16. It will comply with the Laboratory Animal Welfare Act of 1966, 7 U.S.C. 2131-2159, pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by an award of assistance under this agreement.
17. It will comply with Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 2000c and 42 3601-3619, as amended, relating to non-discrimination in the sale, rental, or financing of housing, and Title VI of the Civil Rights Act of 1964 (P.L. 88-352), which prohibits discrimination on the basis of race, color or nation origin.
18. It will comply with the Clean Air Act of 1955, as amended, 42 U.S.C. 7401-7642.
19. It will comply with the Clean Water Act of 1977, as amended, 42 U.S.C. 7419-7626.
20. It will comply with the Endangered Species Act of 1973, 16 U.S.C. 1531-1544.
21. It will comply with the Intergovernmental Personnel Act of 1970, 42 U.S.C. 4728-4763.
22. It will assist the awarding agency in assuring compliance with the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 270.
23. It will comply with environmental standards which may be prescribed pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4321-4347.
24. It will assist the awarding agency in assuring compliance with the Preservation of Archeological and Historical Preservation Act of 1966, 16 U.S.C. 469a, et seq.

25. It will comply with the Rehabilitation Act of 1973, Section 504, 29 U.S.C. 794, regarding non-discrimination.
26. It will comply with the environmental standards, which may be prescribed pursuant to the Safe Drinking Water Act of 1974, 42 U.S.C. 300f-300j, regarding the protection of underground water sources.
27. It will comply with the requirements of Titles II and III of the Uniform Relocation Assistance and Property Acquisition Policies Act of 1970, 42 U.S.C. 4621-4638, which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of federal or federally assisted programs.
28. It will comply with the Wild and Scenic Rivers Act of 1968, 16 U.S.C. 1271-1287, related to protecting components or potential components of the national wild and scenic rivers system.
29. It will comply with the following Executive Orders: EO 11514 (NEPA); EO 11738 (violating facilities); EO 11988 (Floodplain Management); EO 11990 (Wetlands); and EO 12898 (Environmental Justice).
30. It will comply with the Coastal Barrier Resources Act of 1977, 16 U.S.C. 3510.
31. It will assure project consistency with the approved state program developed under the Coastal Zone Management Act of 1972, 16 U.S.C. 1451-1464.
32. It will comply with the Fish and Wildlife Coordination Act of 1958; 16 U.S.C. 661-666.
33. With respect to demolition activities, it will:
    a) Create and make available documentation sufficient to demonstrate that the Subgrantee and its demolition contractor have sufficient manpower and equipment to comply with the obligations as outlined in this Agreement.
    b) Return the property to its natural state as though no improvements had ever been contained thereon.
    c) Furnish documentation of all qualified personnel, licenses and all equipment necessary to inspect buildings located in Subgrantee's jurisdiction to detect the presence of asbestos and lead in accordance with requirements of the U.S. Environmental Protection Agency, the State health authority and the county health authority.
    d) Provide documentation of the inspection results for each structure to indicate: safety hazards present; health hazards present; and/or hazardous materials present.
    e) Provide supervision over contractors or employees employed by Subgrantee to remove asbestos and lead from demolished or otherwise applicable structures.
    f) Leave the demolished site clean, level and free of debris.
    g) Notify the Grantee promptly of any unusual existing condition which hampers the contractors work.
    h) Obtain all required permits.
    i) Provide addresses and marked maps for each site where water wells and septic tanks are to be closed along with the number of wells and septic tanks located on each site. Provide documentation of closures.
    j) Comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Public Law 94-163).
    k) Comply with all applicable standards, orders, or requirements issued under Section 112 and 306 of the Clean Air Act (42 U.S.C. 1857 (h), Section 508 of the Clean Water Act (33 U.S. 1368), Executive Order 11738, and the U.S. Environmental Protection Agency regulations (40 CFR Part 15 and 61). This clause shall be added to any subcontracts.
    l) Provide documentation of public notices for demolition activities.

ATTACHMENT C

Certification Regarding
Debarment, Suspension, Ineligibility
and
Voluntary Exclusion

Subcontractor Covered Transactions:

1. The prospective subcontractor of the Subgrantee certifies, by submission of this document, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

2. Where the Subgrantee's subcontractor is unable to certify to the above statement, the prospective subcontractor shall attach an explanation to this form.

SUBCONTRACTOR:

_____
Name of Company

_____
Street Address

_____
City, State, Zip

_____
Federal Employer Identification Number (FEIN)

By: _____
Signature Date

_____
Subgrantee's Name

_____
Grantee Agreement Number

ATTACHMENT D

Risk Assessment Conditions

Per Article VI of this contract, NDDES is required to complete a Financial Assistance Risk Assessment rating form for every subgrantee receiving an award to evaluate their potential risk of non-compliance. Subgrantees will be evaluated on factors such as their prior experience with the same or similar subawards, results of previous audits including whether or not they received a Single Audit and the extent to which the same or similar subaward has been audited as a major program; if they have new personnel or new or substantially changed systems, and the extent and results of Federal awarding agency monitoring. Results of the Risk Assessment may result in the imposition of specific conditions, as allowed in 2 CFR § 200.207, and contained within this attachment.

Based upon the Risk Assessment completed for DR-4323-ND, the {Enter Subgrantee Name Here} has received a score of {Enter Score Here} and has been determined to be a {Enter Low, Medium, or High} Risk based upon the above mentioned criteria.

The specific conditions for a subgrantee determined to be Low Risk are the following:

- Subgrantees identified as Low Risk have no further conditions and may continue with their projects as approved by FEMA. This must include the completion of all project specific conditions, to include environmental requirements and/or permitting, placed upon individual projects by FEMA at the time of award or amendment. **Subgrantees that fail to comply with project specific conditions could potentially jeopardize their current and future federal funding.**

Every January, or as needed, NDDES will re-evaluate all subgrantee Risk Assessments. Based on overall compliance with project requirements and any issues noticed therein, an updated Financial Assistance Recipient Risk Assessment will be completed and subgrantees can be upgraded or removed from low, medium or high risk status. If a subgrantee is non-compliant with the additional requirements of a subaward due to being considered high risk, the subaward and all federal and state monies can be deobligated at the request of NDDES. Upon deobligation due to non-compliance, a subgrantee will be considered high risk in perpetuity.

REPORT OF ACTION

(23)

UTILITY COMMITTEE

Project: WW1707

Type: AE2S Task Order #14
Pre Disaster Mitigation

Location: Wastewater Treatment Facility Flood Protection

Date of Hearing: 4-23-2020

Routing	Date
City Commission	5-4-2020
Project File	

Jim Hausauer, Wastewater Utility Director, presented attached memo describing Task Order #14 from Advanced Engineering and Environmental Services (AE2S). The Fargo Wastewater Treatment Plant (WWTP) currently does not have permanent flood control measures in place to protect the facility during flooding events. The WWTP has relied on temporary measures to protect the facility in the event of river flooding. In 2009, a temporary earth levee was constructed through the center of the facility and on the south access road affecting daily operations for weeks. In addition, installing and removing temporary measures is time consuming & expensive when a flood threatens the facility. As a regional provider of wastewater services, the City has a rather large investment in the current and future Wastewater Treatment Facility (WWTF) and its operations. The Pre-Disaster Mitigation (PDM) program will provide 75% funding for a 500 year levee, thus providing infrastructure protection and eliminating the need for temporary earth levees for future floods.

The Pre-Disaster Mitigation (PDM) program makes Federal funds available to State, Local and Tribal Governments to implement and sustain cost effective measures designed to reduce risk to individuals and property from natural hazards, while reducing reliance on Federal funding from future disasters. Federal funding is available with a Period of Performance of 42 months which began October 1, 2018 and will end April 1, 2022. The cost share provides 75% Federal funding of the eligible costs, with the remaining 25% of eligible costs derived from non-Federal sources. The preliminary estimate for the WWTP Levee is $4.9 million resulting with the Federal share of $3,679,792.50 and a local share of $1,226,597.50.

This task order provides services to develop bid documents for construction of a permanent levee at the Fargo Wastewater Treatment Plant that will consist of an earthen levee and flood walls to protect to the 500 year flood level. A future task order will be needed to oversee the construction of the project to ensure it is built to standards specified by the design process and FEMA.

Task Order #14 is $288,700 with the City of Fargo responsible for $72,175 as per the FEMA funding formula. Note: Funding for the local share has a placeholder in the Wastewater Infrastructure Sales Tax Fund 455 and in the Wastewater Utility 20 year CIP.

MOTION:

On a motion by Scott Luidahl, seconded by Terry Ludlum, the Utility Committee voted to approve Task Order #14 from AE2S for Final Design and Bidding Phase Services for the Pre Disaster Mitigation Flood Protection Project.

COMMITTEE:	Present Yes	No	Unanimous X	
				X
				Proxy
Anthony Gehrig, City Commissioner				
Kent Costin, Director of Finance	X			
Brian Ward, Water Plant Supt.	X			
Mark Miller, Wastewater Plant Supt.	X			
Bruce Grubb, City Administrator	X			
Scott Liudahl, City Forester	X			
Terry Ludlum, Solid Waste Utility Director	X			
Jim Hausauer, Wastewater Utility Director	X			
Troy Hall, Water Utility Director	X			
Ben Dow, Public Works Operations Director	X			
Brenda Derrig, City Engineer	X			
Jason Halsne, Enterprise I/C Coordinator				

ATTEST:

Jim Hausauer
Wastewater Utility Director

C: Mayor Mahoney
Commissioner Strand
Commissioner Piepkorn
Commissioner Grindberg

THE CITY OF Fargo
FAR MORE

Wastewater Treatment Plant
3400 North Broadway
Fargo, ND 58102
Office: 701.241.1454 | Fax: 701.241.8159
www.FargoND.gov

MEMORANDUM

April 23, 2020

To: Utility Committee
From: Jim Hausauer, Wastewater Utility Director
Re: AE2S Task Order #14
Final Design and Bidding Phase Services
FEMA Pre-Disaster Mitigation- Wastewater Plant Levee

Background

The Fargo Wastewater Treatment Plant (WWTP) currently does not have permanent flood control measures in place to protect the facility during flooding events. The WWTP has relied on temporary measures to protect the facility in the event of river flooding. In 2009, a temporary earth levee was constructed through the center of the facility and on the south access road affecting daily operations for weeks. In addition, installing/removing temporary measures is time consuming & expensive when a flood threatens the facility. As a regional provider of wastewater services, the City has a rather large investment in the current and future Wastewater Treatment Facility (WWTF) and its operations. The Pre-Disaster Mitigation (PDM) program will provide 75% funding for a 500 year levee, thus providing infrastructure protection and eliminating the need for temporary earth levees for future floods.

Pre-Disaster Mitigation

The Pre-Disaster Mitigation (PDM) program makes Federal funds available to State, Local and Tribal Governments to implement and sustain cost effective measures designed to reduce risk to individuals and property from natural hazards, while reducing reliance on Federal funding from future disasters. Federal funding is available with a Period of Performance of 42 months which began October 1, 2018 and will end April 1, 2022. The cost share provides 75% Federal funding of the eligible costs, with the remaining 25% of eligible costs derived from non-Federal sources. The preliminary estimate for the WWTP Levee is $4.9 million resulting with the Federal share of $3,679,792.50 and a local share of $1,226,597.50.

Task Order #14

This task order provides services to develop bid documents for construction of a permanent levee at the Fargo Wastewater Treatment Plant that will consist of an earthen levee and flood walls to protect to the 500 year flood level. A future task order will be needed to oversee the construction of the project to ensure it is built to standards specified by the design process and FEMA.

Task Order #14 is $288,700 with the City of Fargo responsible for $72,175 as per the FEMA funding formula. Note: Funding for the local share has a placeholder in the Wastewater Infrastructure Sales Tax Fund 455 and in the Wastewater Utility 20 year CIP.

Recommended Motion

Approve the attached Task Order #14 from AE2S for Final Design and Bidding Phase Services for the City of Fargo Wastewater Treatment Plant Flood Protection Plan.

www.ae2s.com

April 23, 2020

Jim Hausauer
Fargo Wastewater Utility Director
3400 North Broadway
Fargo, ND 58102

RE: Fargo WWTP Flood Protection Improvements
Final Design and Bidding Phase Services
Wastewater Consulting Task Order No. 14

Dear Jim:

Thank you for the opportunity to submit this letter proposal for professional engineering services for the Fargo WWTP Flood Protection Improvements Project. This letter and the attached Wastewater Consulting Task Order No. 14 provide the proposed scope of services for final design and bidding phase services. The proposed fee for these services, expenses, and reimbursables is $288,700.

The Fargo Wastewater Treatment Plant (WWTP) currently does not have permanent flood control measures in place to protect the facility during flooding events. The City relies upon temporary measures such as earthen levees to protect the facility during flooding events. These temporary measures are costly, require significant manpower to maintain and monitor, and impact overall plant operations. The City previously completed preliminary engineering for a permanent flood protection solution for the WWTP and was recently successful in securing a Federal Emergency Management Agency (FEMA) Pre-Disaster Mitigation (PDM) grant to construct the necessary improvements. The PDM grant will provide federal funding for up to 75 percent of the project costs with the remaining 25 percent to be City of Fargo local share.

This Task Order provides services to develop bid documents for construction of permanent flood protection at the Fargo WWTP. Permanent flood protection mitigation will consist of earthen levees and flood walls to protect to the 500-year flood level. It is anticipated that a future task order will be needed to oversee the construction of the mitigation project, ensuring it is built to the standards specified by the design process.

If you agree with the proposed scope of services and associated professional fees presented in the attached Wastewater Consulting Task Order No. 14, please sign both copies in the spaces provided, retain one fully-executed copy for your records, and return the other fully-executed copy to AE2S. We are excited to assist the City of Fargo in completing a successful project to provide permanent flood protection to the Fargo WWTP.

Submitted in Service,

Ryan Grubb, PE
Assistant Operations Manager

Enclosures

This is Wastewater Consulting Task Order No. __14__, consisting of __3__ pages.

Wastewater Consulting Task Order No. 14

In accordance with Paragraph 1.01 of the Agreement Between Owner and Engineer for Professional Water Consulting Services – Task Order Edition, dated January 1, 2018 ("Agreement"), Owner and Engineer agree as follows:

1. **Background Data**

   A. Effective Task Order Date: April 23, 2020

   B. Owner: City of Fargo (Wastewater Utility)

   C. Engineer: Advanced Engineering and Environmental Services, Inc. (AE2S)

   D. Engineer Project No.: P00803-2016-070

   E. Specific Project (title): Fargo WWTP Flood Protection Improvements – Final Design and Bidding Services (FEMA Project No. PDMC-PJ-08-ND-2018-023)

   F. Specific Project (description):

   This Task Order provides for Final Design and Bidding phase services to develop bid package plans and specifications to construct permanent flood protection at the Fargo Wastewater Treatment Plant (WWTP) consisting of earthen levees and flood walls to a the 500-year flood level of protection. The City previously completed preliminary engineering for a permanent flood protection solution for the WWTP and was recently successful is securing FEMA Pre-Disaster Mitigation (PDM) grant funding to construct the necessary improvements, which is anticipated to provide federal funding for up to 75 percent of the project costs.

2. **Services of Engineer**

   A. The specific services to be provided or furnished by Engineer under this Task Order are detailed in Attachment 1 and include the services (and related terms and conditions) set forth in the following sections of Exhibit A, as attached to the Agreement referred to above, such sections being hereby incorporated by reference:

   - Final Design Phase (Exhibit A, Paragraph A1.03)
   - Bidding or Negotiating Services (Exhibit A, Paragraph A1.04)
   - Other Services (Exhibit A, Paragraph A1.08)

   B. Resident Project Representative (RPR) Services: None.

   C. All of the services included above comprise Basic Services for purposes of Engineer's compensation under this Task Order.

3. Owner's Responsibilities

Owner shall have those responsibilities set forth in Article 2, Exhibit B of the Agreement.

4. Task Order Schedule

In addition to any schedule provisions provided in Exhibit A or elsewhere, the parties shall meet the following approximate schedule:

- Task Order approval – *April 23, 2020*
- Final Design Phase – *May 2020 – August 2020*
- Anticipated Bidding Phase – *September 2020*

5. Payments to Engineer

A. Owner shall pay Engineer for services rendered under this Task Order as follows:

Phase	*Task Number and Task Name*	*Payment Method*	*Estimated Hours*	*Amount*
040	***Final Design Phase Services***	*Method A*		
01	*Project Management and Administration*		*68*	*$11,600*
02	*Geotechnical Coordination and Surveying*		*72*	*$12,700*
03	*Design, Specifications, and Project Meetings*		*1,502*	*$247,800*
050	***Bidding or Negotiating Phase Services***	*Method A*		
01	*Pre-Bidding Administration*		*78*	*$11,900*
02	*Post-Bidding Administration*		*20*	*$4,700*
Total			***1,740***	***$288,700***

Compensation items and totals based in whole or in part on Hourly Rates or Direct Labor are estimates only. Lump sum amounts and estimated totals included in the breakdown by phases incorporate Engineer's labor, overhead, profit, reimbursable expenses (if any), and Consultants' charges, if any. For lump sum items, Engineer may alter the distribution of compensation between individual phases (line items) to be consistent with services actually rendered, but shall not exceed the total lump sum compensation amount unless approved in writing by the Owner.

B. The terms of payment are set forth in Article 4 of the Agreement and in the applicable governing provisions of Exhibit C, where Method A is a Lump Sum payment and Method B is payment for Standard Hourly Rates.

6. Consultants retained as of the Effective Date of the Task Order: None.

7. Other Modifications to Agreement and Exhibits: None.

8. **Attachments:**

   Attachment 1 – Scope of Services for Task Order

9. **Other Documents Incorporated by Reference:** None.

10. **Terms and Conditions**

    Execution of this Task Order by Owner and Engineer shall make it subject to the terms and conditions of the Agreement (as modified above), which Agreement is incorporated by this reference. Engineer is authorized to begin performance upon its receipt of a copy of this Task Order signed by Owner.

The Effective Date of this Task Order is April 23, 2020.

OWNER: City of Fargo (Wastewater Utility)		ENGINEER: Advanced Engineering and Environmental Services, Inc. (AE2S)	
By:		By:	
Name:	Timothy J. Mahoney	Name:	Brian R. Bergantine, PE
Title:	Mayor	Title:	Operations Manager
DESIGNATED REPRESENTATIVE FOR TASK ORDER:		DESIGNATED REPRESENTATIVE FOR TASK ORDER:	
Name:	Jim Hausauer, REHS	Name:	Ryan Grubb, PE
Title:	Wastewater Utility Director	Title:	Assistant Operations Manager
Address:	3400 N. Broadway Fargo, ND 58102	Address:	4170 28th Ave S Fargo, ND 58104
E-Mail Address:	JHausauer@FargoND.gov	E-Mail Address:	Ryan.Grubb@ae2s.com
Phone:	(701) 241 - 8565	Phone:	(701) 364 - 9111

This is Attachment 1 to Wastewater Consulting Task Order No. 14 consisting of 3 page(s).

Attachment 1 to Wastewater Consulting Task Order No. 14

Fargo WWTP Flood Protection Improvements ***April 23, 2020***

Scope of Services

The Fargo Wastewater Treatment Plant (WWTP) currently does not have permanent flood control measures in place to protect the facility during flooding events. The City relies upon temporary measures such as earthen levees to protect the facility during flooding events. These temporary measures are costly, require significant manpower to maintain and monitor, and impact plant operations. The City previously completed preliminary engineering for a permanent flood protection solution for the WWTP and was recently successful in securing a FEMA Pre-Disaster Mitigation (PDM) grant to construct the necessary improvements. The PDM grant will provide federal funding for up to 75 percent of the project costs with the remaining 25 percent to be City of Fargo local share.

This Task Order provides Final Design and Bidding phase services to develop bid documents for construction of permanent flood protection at the Fargo WWTP. Permanent flood protection mitigation will consist of earthen levees and flood walls to protect to the 500-year flood level. It is anticipated that a future task order will be needed to oversee the construction of the mitigation project, ensuring it is built to the standards specified by the design process.

The following is a detailed breakdown of this Scope of Services for Water Consulting Task Order No. 14. This Task Order was based upon the findings of the Preliminary Design Report dated January 3rd, 2019 and submitted as part of the FEMA PDM grant application.

Phase 040 – Final Design Phase Services

In accordance with Paragraphs A1.03 and A1.08 of Exhibit A of the Original Task Order Agreement, dated January 1, 2018, ENGINEER shall perform the following additional Final Design Phase services under Water Consulting Task Order No. 14:

Task 01 – Project Management and Administration

ENGINEER shall perform general Project administration activities including progress monitoring, scheduling, general correspondence, office administration, and invoicing. These activities include maintaining contact and liaison with the OWNER and Project team; providing OWNER with monthly Project financial status updates; ensuring that the needs of the OWNER are met in a timely manner, monitoring Project budgets, schedules; and providing online quarterly reports to North Dakota Department of Emergency Services/FEMA.

Task 02 –Geotechnical Coordination and Topographic Survey

- ENGINEER will solicit a proposal and quote from Braun Intertec Corporation for performing geotechnical engineering investigation and recommendations for the project site. The OWNER shall contract with the geotechnical consultant to perform the investigation through a separate contract. ENGINEER shall be responsible for all coordination and correspondence with the geotechnical consultant necessary for the project.

- ENGINEER shall collect topographic survey information of the project site necessary for the proposed improvements. Key components anticipated are a surface topography, existing site improvements such as fences, buildings, trees, power poles, streetlights, pavement and other miscellaneous above ground improvements. The ENGINEER will also collect utility locates and maps provided by the various utility company respondents from the One-Call process. A boundary survey will not be performed, and property lines, easements and right-of-way will be reliant on City of Fargo base maps. All collected topographic data will compiled into an existing site conditions drawing for the ENGINEERS use in preparation of bid documents.

Task 03 –Design, Specifications, and Project Meetings

ENGINEER shall prepare bidding drawings and technical specifications for the project. Design elements are anticipated to include earthen levee, flood wall, utility relocates due to flood protection, and demolition and removals required for flood protection improvements.

Design shall progress in milestones of 30, 60, 90, and 100 percent design level and submittals shall be delivered to the OWNER at the 60, 90, and 100 percent design level. The task descriptions and deliverables anticipated for each design milestone are anticipated

- 30 Percent Design:
  - 30 percent design drawings including overall site plan, flood protection plan drawings, removals and demolition plan, relocation plan and typical details and sections
  - Specification Outline based upon using Engineers Joint Contract Documents Committee (EJCDC) and Construction Specification Institute (CSI) Division 50 format
  - Opinion of probable construction cost (OPCC)
- 60 Percent Design Deliverables:
  - 60 percent review set of revised and refined drawings with OWNER's comments received at 30 percent Design Review Workshop with addition of preliminary profile drawings, section drawings, and project specific detail drawings
  - Draft project front-end documents and technical specifications
  - Refined OPCC to reflect 60 percent design
  - Distribution of 60 percent review set to local utility companies and regulatory agencies, if necessary, for review
- 90 Percent Design Deliverables:
  - Final review set of revised and refined drawings and specifications with OWNER's comments from 60 percent design review incorporated into the design documents
  - Refined OPCC to reflect 90 percent design
  - Distribution of 90 percent review set to local utility companies and regulatory agencies, if necessary, for review
- 100 Percent Design Deliverables:
  - Final set of signed and sealed contract drawings and specifications to be used as bidding documents
  - Final OPCC
- ENGINEER shall conduct internal quality control review and refinement before submittal to OWNER.
- ENGINEER shall submit three (3) hard copies and one (1) electronic copy, in PDF format, of each Design deliverable above to OWNER for review at least one (1) week prior to review meeting.

ENGINEER shall attend and facilitate the following design coordination and progress review meetings:

- Three (3) Design Review Workshops will be conducted with key City staff to review 30 percent design progress, and 60 percent and 90 percent design submittals. The meetings are assumed to be conducted and attended via web conference platform. ENGINEER shall compile OWNER's comments and questions in to meeting minutes and distribute to the project team.
- ENGINEER will conduct two (2) site visits for supplemental site investigations with key design team members.
- ENGINEER has included two (2) meetings with Apex Engineering Group for coordination of flood protection improvements with other proposed WWTP expansion improvements. The meetings are assumed to be conducted and attended via web conference platform.
- ENGINEER will coordinate two (2) utility coordination meetings with private utility companies identified to have potential impacts due to the project. The meetings are assumed to be conducted and attended via web conference platform.

Phase 050 – Bidding or Negotiating Phase Services

In accordance with Paragraphs A1.04 and A1.08 of Exhibit A of the Original Task Order Agreement, dated January 1, 2018, ENGINEER shall perform the following additional Bidding or Negotiating Phase services under Water Consulting Task Order No. 14:

Task 01 – Pre-Bidding Administration

Pre-bidding administration services will be provided to assist the OWNER in soliciting bids for construction, responding to plan holder questions, preparing and certifying addenda for distribution, and, coordination and attending a per-bid meeting and bid opening for the Fargo WWTP Flood Protection Improvements.

Task 02 – Post-Bidding Administration

Post-bidding administration services will include reviewing the bids for errors and discrepancies, preparing a recommendation letter to the Utility Committee and City Commission, preparing the Notice of Award(s) to the successful contractor(s), and preparing the contract documents for the Fargo WWTP Flood Protection Improvements.

THE CITY OF Fargo
FAR MORE

26

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

April 24, 2020

Board of City Commissioners
City of Fargo
200 North Third Street
Fargo, ND 58102

Re: Memorandum of Offer to Landowner
Permanent Easement (Storm Sewer)
Improvement District #BN-19-A1

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 easement in association with Improvement District #BN-19-A1. 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 easement from the **University of Northwestern** in association with Improvement District #BN-19-A1 and that the Mayor is instructed to execute the Memorandum of Offer to Landowner on behalf of the City of Fargo.

Please return a copy of the signed originals.

Respectfully submitted,

Shawn G. Bullinger
Land Acquisition Specialist

C: Nancy J. Morris

MEMORANDUM OF OFFER TO LANDOWNER

City of Fargo, Engineering Department

Project	County	Parcel(s)
BN-19-A1	Cass	Storm Sewer Easement
Landowner	University of Northwestern - St. Paul	
Mailing Address	3003 Snelling Ave N St. Paul, MN 55113	

The following-described real property and/or related temporary easement areas are being acquired for project purposes:

See attached exhibit(s).

I, as right of way agent for the City of Fargo, Engineering Department, am hereby authorized to offer the following amount of $ 634.50 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	$	634.50
Improvements on Right of Way*	$	
Damages to Remainder	$	
Total Offer	$	634.50

*Description of Damages to Remainder are as follows:

Bryan D Kruger VP for Finance/CFO
Owner Signature
Signature hereby constitutes acceptance of offer as presented above.

Shawn G. Bullinger
Shawn G. Bullinger
Land Acquisition Specialist, City of Fargo

CITY OF Fargo

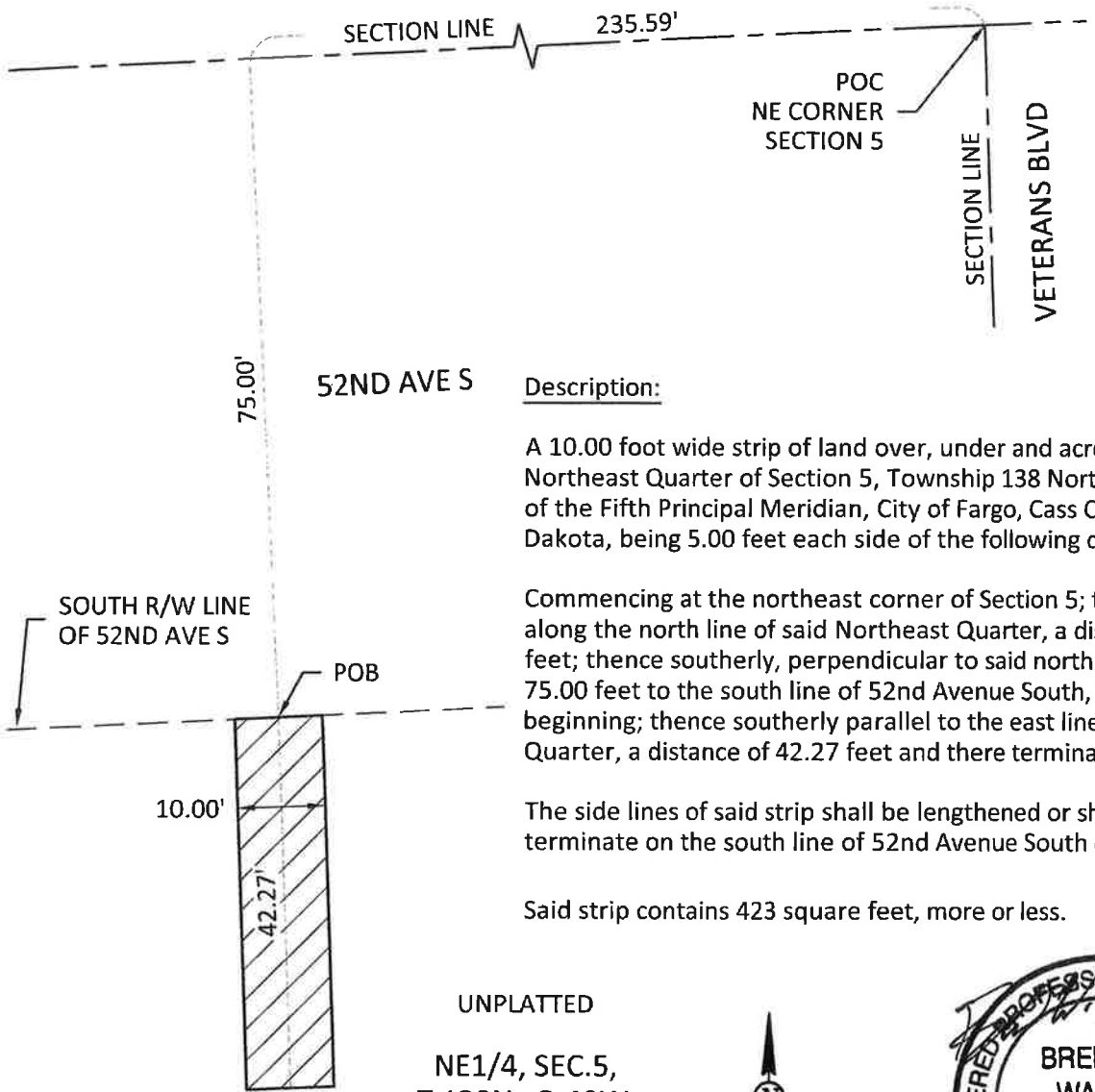
Fargo City Commision has considered the offer and approves the same:

Timothy J. Mahoney
MAYOR

SIGNATURE

DATE

EXHIBIT A



Description:

A 10.00 foot wide strip of land over, under and across a portion of the Northeast Quarter of Section 5, Township 138 North, Range 48 West of the Fifth Principal Meridian, City of Fargo, Cass County, North Dakota, being 5.00 feet each side of the following described centerline:

Commencing at the northeast corner of Section 5; thence westerly, along the north line of said Northeast Quarter, a distance of 235.59 feet; thence southerly, perpendicular to said north line, a distance of 75.00 feet to the south line of 52nd Avenue South, the point of beginning; thence southerly parallel to the east line of said Northeast Quarter, a distance of 42.27 feet and there terminating.

The side lines of said strip shall be lengthened or shortened so as to terminate on the south line of 52nd Avenue South on the north.

Said strip contains 423 square feet, more or less.

REGISTERED PROFESSIONAL LAND SURVEYOR
BRENT W. WACHA
LS-5068
DATE: 11/22/2019
NORTH DAKOTA

THE CITY OF Fargo FAR MORE
ENGINEERING DEPT.

STORM SEWER EASEMENT

A STRIP OF LAND IN SECTION 5, T.138N., R.49W., FIFTH P.M., CITY OF FARGO, CASS COUNTY, NORTH DAKOTA

DRAWN BY: JWZ	APPROVED BY: BWW	DATE: NOVEMBER 22, 2019	SHEET 1 OF 1

FILE NAME: T:\Engineering\Survey\Legals\1384905\BN-19-A1\BN-19-A1_StmEasements.dwg

THE CITY OF Fargo
FAR MORE

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

27a

April 24, 2020

Board of City Commissioners
City of Fargo
200 North Third Street
Fargo, ND 58102

Re: Memorandum of Offer to Landowner
Permanent & Temporary Easements
Improvement District #BN-20-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 #BN-20-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 **Gary & Diana D. Buzick** in association with Improvement District #BN-20-C1 and that the Mayor is instructed to execute the Memorandum of Offer to Landowner on behalf of the City of Fargo.

Please return a copy of the signed originals.

Respectfully submitted,

Shawn G. Bullinger

Shawn G. Bullinger
Land Acquisition Specialist

C: Nancy J. Morris

MEMORANDUM OF OFFER TO LANDOWNER

City of Fargo, Engineering Department

Project	County	Parcel(s)
BN-20-C1	Cass	01-8421-00050-000
Landowner Gary & Diana D Buzick		
Mailing Address 2712 64th Ave S Fargo, ND 58104		

The following-described real property and/or related temporary easement areas are being acquired for project purposes:

See attached exhibit(s).

I, as right of way agent for the City of Fargo, Engineering Department, am hereby authorized to offer the following amount of $ 676.00 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	$	676.00
Improvements on Right of Way*	$	
Damages to Remainder	$	
Total Offer	$	676.00

*Description of Damages to Remainder are as follows:

Gary L. Buzick
Owner Signature
Signature hereby constitutes acceptance of offer as presented above.

Shawn G. Bullinger
Shawn G. Bullinger
Land Acquisition Specialist, City of Fargo

Diana D. Buzick
Owner Signature
Signature hereby constitutes acceptance of offer as presented above.

CITY OF Fargo

Fargo City Commision has considered the offer and approves the same:

Timothy J. Mahoney
MAYOR

SIGNATURE

DATE

EASEMENT
(Temporary Construction Easement)

KNOW ALL MEN BY THESE PRESENTS that **GARY AND DIANA D. BUZICK,** 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 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 flood protection measures construction and activities appurtenant thereto, said land being more fully described, to-wit:

> A 10-foot wide temporary construction easement located in Lot 6 and the West Half of Lot 7, SOUTH HAVEN SUBDIVISION, located in Section 11, Township 138 North, Range 49 West of the Fifth Principal Meridian, County of Cass, State of North Dakota, described as follows:
>
> The North 10 feet is as measured perpendicular to the north line of said Lot 6 and said West Half of Lot 7.
>
> Said easement area is shown as the shaded area on "Exhibit A", attached hereto, and contains 2,000 square feet, more or less, and is subject to any easements or rights of way previously recorded.

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 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. 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, 2020.

(Signatures on following page.)

IN WITNESS WHEREOF, Grantor set its hand and caused this instrument to be executed this 21ST day of APRIL, 2020.

GRANTORS:

Gary S. Buzick
Gary Buzick

Diana D. Buzick
Diana D. Buzick

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

On this 21ST day of APRIL, 2020, before me, a notary public in and for said county and state, personally appeared Gary and Diana D. Buzick described in and who executed the within and foregoing instrument, and acknowledged to me that he/she executed the same.

(SEAL)

SHAWN G. BULLINGER
Notary Public
State of North Dakota
My Commission Expires May 18, 2021

Shawn G. Bullinger
Notary Public
Cass County, North Dakota

GRANTEE:

City of Fargo, a North Dakota municipal corporation

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

ATTEST

_____
Steve Sprague, City Auditor

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

On this ____ day of _____, 2020, 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 City Auditor, respectively, of the City of Fargo, Cass County, North Dakota, the municipal corporation described in and that executed the within and foregoing instrument, and acknowledged to me that said municipal corporation executed the same.

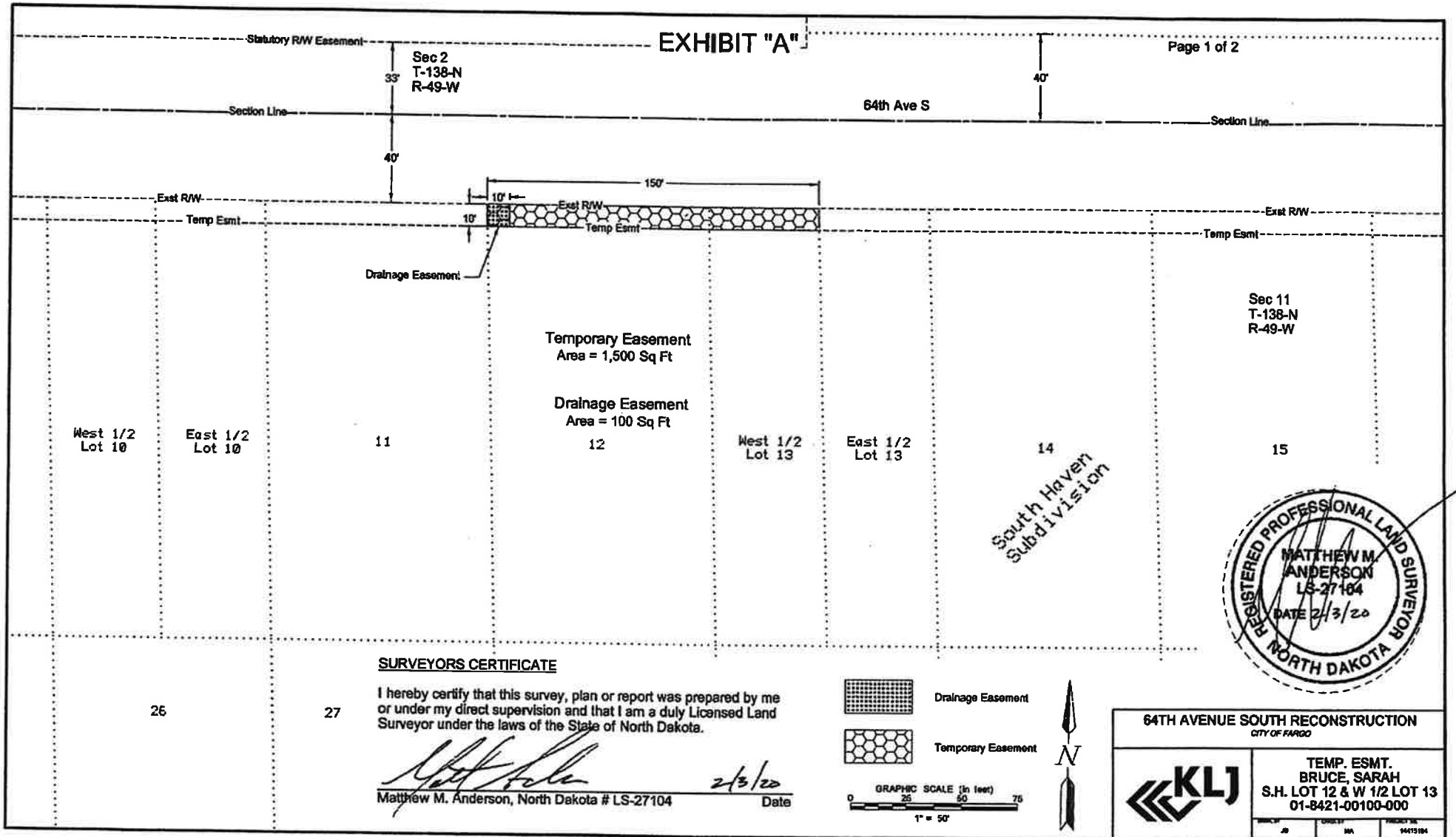
_____
Notary Public
Cass County, ND
My Commission expires:

(SEAL)

The legal description was prepared by:
Matthew M. Anderson, ND LS-27104, KLJ
32nd Avenue South, Suite 201
Fargo, ND 58103

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

EXHIBIT "A"



REGISTERED PROFESSIONAL LAND SURVEYOR
MATTHEW M. ANDERSON
LS-27104
DATE 2/3/20
NORTH DAKOTA

SURVEYORS CERTIFICATE

I hereby certify that this survey, plan or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of North Dakota.

Matthew M. Anderson, North Dakota # LS-27104 — Date 2/3/20

Drainage Easement

Temporary Easement

GRAPHIC SCALE (in feet)
0 25 50 75
1" = 50'

N

64TH AVENUE SOUTH RECONSTRUCTION
CITY OF FARGO

KLJ

TEMP. ESMT.
BRUCE, SARAH
S.H. LOT 12 & W 1/2 LOT 13
01-8421-00100-000

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© KLJ 2019

EXHIBIT "A"

Lot 12 & W1/2 of Lot 13, SOUTH HAVEN SUBDIVISION

Temporary Construction Easement
A 10-foot wide temporary construction easement located in Lot 12 and the West Half of Lot 13, SOUTH HAVEN SUBDIVISION, located in Section 11, Township 138 North, Range 49 West of the Fifth Principal Meridian, County of Cass, State of North Dakota, described as follows:

The North 10 feet is as measured perpendicular to the north line of said Lot 12 and the West Half of Lot 13.

Said easement area is shown as the shaded area on "Exhibit A" and contains 1,500 square feet, more or less, and is subject to any easements or rights of way previously recorded.

The legal description was prepared by Matthew M. Anderson, ND LS-27104, KLJ 3203 32" Avenue South, Suite 201, Fargo, ND 58103.

Drainage Easement
A 10-foot by 10-foot permanent drainage easement located in Lot 12, SOUTH HAVEN SUBDIVISION, located in Section 11, Township 138 North, Range 49 West of the Fifth Principal Meridian, County of Cass, State of North Dakota, described as follows:

The North 10 feet of the West 10 feet of said Lot 12.

Said easement area is shown as the shaded area on "Exhibit A" and contains 100 square feet, more or less, and is subject to any easements or rights of way previously recorded.

The legal description was prepared by Matthew M. Anderson, ND LS-27104, KLJ 3203 32" Avenue South, Suite 201, Fargo, ND 58103.

REGISTERED PROFESSIONAL LAND SURVEYOR
MATTHEW M. ANDERSON
LS-27104
DATE 2/3/20
NORTH DAKOTA

SURVEYORS CERTIFICATE

I hereby certify that this survey, plan or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of North Dakota.

2/3/20

Matthew M. Anderson, North Dakota # LS-27104 Date

64TH AVENUE SOUTH RECONSTRUCTION
CITY OF FARGO

KLJ

TEMP. ESMT.
BRUCE, SARAH
S.H. LOT 12 & W 1/2 LOT 13
01-8421-00100-000

JR | MA | 14415104

© KLJ 2019

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THE CITY OF Fargo
FAR MORE

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

276

April 29, 2020

Board of City Commissioners
City of Fargo
200 North Third Street
Fargo, ND 58102

Re: Memorandum of Offer to Landowner
Permanent & Temporary Easements
Improvement District #BN-20-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 #BN-20-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 **Sarah & Thomas Bruce** in association with Improvement District #BN-20-C1 and that the Mayor is instructed to execute the Memorandum of Offer to Landowner on behalf of the City of Fargo.

Please return a copy of the signed originals.

Respectfully submitted,

Shawn G. Bullinger
Land Acquisition Specialist

C: Nancy J. Morris

MEMORANDUM OF OFFER TO LANDOWNER

City of Fargo, Engineering Department

Project	County	Parcel(s)
BN-20-C1	Cass	01-8421-00100-000
Landowner Sarah & Thomas Bruce		
Mailing Address 2604 64th Ave S Fargo, ND 58104		

The following-described real property and/or related temporary easement areas are being acquired for project purposes:

See attached exhibit(s).

I, as right of way agent for the City of Fargo, Engineering Department, am hereby authorized to offer the following amount of $ 574.00 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	$	574.00
Improvements on Right of Way*	$	
Damages to Remainder	$	
Total Offer	$	574.00

*Description of Damages to Remainder are as follows:

Sarah Bruce

Owner Signature

Signature hereby constitutes acceptance of offer as presented above.

Shawn G. Bullinger

Shawn G. Bullinger

Land Acquisition Specialist, City of Fargo

Owner Signature

Signature hereby constitutes acceptance of offer as presented above.

CITY OF Fargo

Fargo City Commision has considered the offer and approves the same:

Timothy J. Mahoney

MAYOR

SIGNATURE

DATE

EASEMENT
(Temporary Construction Easement)

KNOW ALL MEN BY THESE PRESENTS that **SARAH AND THOMAS BRUCE,** 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 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 flood protection measures construction and activities appurtenant thereto, said land being more fully described, to-wit:

A 10-foot wide temporary construction easement located in Lot 12 and the West Half of Lot 13, SOUTH HAVEN SUBDIVISION, located in Section 11, Township 138 North, Range 49 West of the Fifth Principal Meridian, County of Cass, State of North Dakota, described as follows:

The North 10 feet is as measured perpendicular to the north line of said Lot 12 and the West Half of Lot 13.

Said easement area is shown as the shaded area on "Exhibit A", attached hereto, and contains 1,500 square feet, more or less, and is subject to any easements or rights of way previously recorded.

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 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. 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, 2020.

(Signatures on following page.)

IN WITNESS WHEREOF, Grantor set its hand and caused this instrument to be executed this 29 day of APRIL 2020.

GRANTORS:

Sarah Bruce

Sarah Bruce

Thomas Bruce

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

On this 29 day of APRIL, 2020, before me, a notary public in and for said county and state, personally appeared Sarah and Thomas Bruce, described in and who executed the within and foregoing instrument, and acknowledged to me that they executed the same.

(SEAL)

SHAWN G. BULLINGER
Notary Public
State of North Dakota
My Commission Expires May 18, 2021

Shawn G. Bullinger

Notary Public
Cass County, North Dakota

GRANTEE:

City of Fargo, a North Dakota municipal corporation

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

ATTEST

_____
Steve Sprague, City Auditor

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

On this ____ day of _____, 2020, 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 City Auditor, respectively, of the City of Fargo, Cass County, North Dakota, the municipal corporation described in and that executed the within and foregoing instrument, and acknowledged to me that said municipal corporation executed the same.

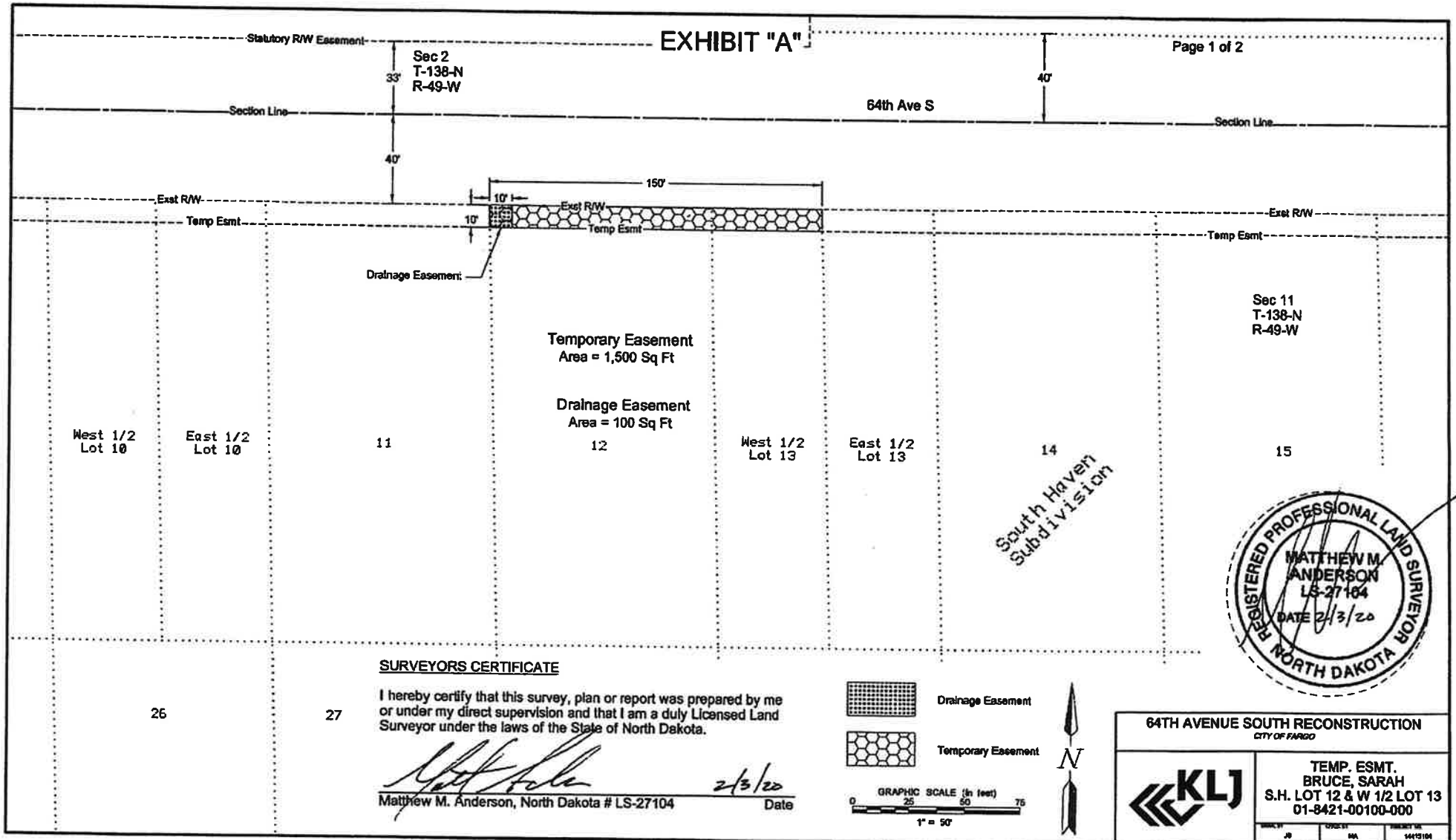
_____
Notary Public
Cass County, ND
My Commission expires:

(SEAL)

The legal description was prepared by:
Matthew M. Anderson, ND LS-27104, KLJ
32nd Avenue South, Suite 201
Fargo, ND 58103

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

EXHIBIT "A"



SURVEYORS CERTIFICATE

I hereby certify that this survey, plan or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of North Dakota.

Matthew M. Anderson, North Dakota # LS-27104 — Date 2/3/20

Drainage Easement

Temporary Easement

GRAPHIC SCALE (in feet)
0 25 50 75
1" = 50'

N

64TH AVENUE SOUTH RECONSTRUCTION
CITY OF FARGO

KLJ

TEMP. ESMT.
BRUCE, SARAH
S.H. LOT 12 & W 1/2 LOT 13
01-8421-00100-000

JB | MA | 14415104

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EXHIBIT "A"

Lot 12 & W1/2 of Lot 13, SOUTH HAVEN SUBDIVISION

Temporary Construction Easement
A 10-foot wide temporary construction easement located in Lot 12 and the West Half of Lot 13, SOUTH HAVEN SUBDIVISION, located in Section 11, Township 138 North, Range 49 West of the Fifth Principal Meridian, County of Cass, State of North Dakota, described as follows:

The North 10 feet is as measured perpendicular to the north line of said Lot 12 and the West Half of Lot 13.

Said easement area is shown as the shaded area on "Exhibit A" and contains 1,500 square feet, more or less, and is subject to any easements or rights of way previously recorded.

The legal description was prepared by Matthew M. Anderson, ND LS-27104, KLJ 3203 32" Avenue South, Suite 201, Fargo, ND 58103.

Drainage Easement
A 10-foot by 10-foot permanent drainage easement located in Lot 12, SOUTH HAVEN SUBDIVISION, located in Section 11, Township 138 North, Range 49 West of the Fifth Principal Meridian, County of Cass, State of North Dakota, described as follows:

The North 10 feet of the West 10 feet of said Lot 12.

Said easement area is shown as the shaded area on "Exhibit A" and contains 100 square feet, more or less, and is subject to any easements or rights of way previously recorded.

The legal description was prepared by Matthew M. Anderson, ND LS-27104, KLJ 3203 32" Avenue South, Suite 201, Fargo, ND 58103.

REGISTERED PROFESSIONAL LAND SURVEYOR
MATTHEW M. ANDERSON
LS-27104
DATE 2/3/20
NORTH DAKOTA

SURVEYORS CERTIFICATE

I hereby certify that this survey, plan or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of North Dakota.

2/3/20

Matthew M. Anderson, North Dakota # LS-27104 Date

84TH AVENUE SOUTH RECONSTRUCTION
CITY OF FARGO

KLJ

TEMP. ESMT.
BRUCE, SARAH
S.H. LOT 12 & W 1/2 LOT 13
01-8421-00100-000

DRN BY	CHKD BY	PROJECT NO.
JB	MA	14415104

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THE CITY OF Fargo
FAR MORE

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

27c

April 29, 2020

Board of City Commissioners
City of Fargo
200 North Third Street
Fargo, ND 58102

Re: Memorandum of Offer to Landowner
Permanent Easement
Improvement District #BN-20-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 easement in association with Improvement District #BN-20-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 easement from **Clarence W. Samuel Revocable Living Trust #2** in association with Improvement District #BN-20-C1 and that the Mayor is instructed to execute the Memorandum of Offer to Landowner on behalf of the City of Fargo.

Please return a copy of the signed originals.

Respectfully submitted,

Shawn G. Bullinger
Land Acquisition Specialist

C: Nancy J. Morris

City of Fargo, Engineering Department

Project	County	Parcel(s)
BN-20-C1	Cass	01-3518-00100-000

Landowner Clarence W Samuel Revocable Living Trust #2

Mailing Address 2605 64th Ave S Fargo, ND 58104

The following-described real property and/or related temporary easement areas are being acquired for project purposes:

See attached exhibit(s).

I, as right of way agent for the City of Fargo, Engineering Department, am hereby authorized to offer the following amount of $ 63,250.00 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	$ 63,250.00	
Improvements on Right of Way*	$	
Damages to Remainder	$	
Total Offer		$ 63,250.00

*Description of Damages to Remainder are as follows:

P.O.A. C.W. [illegible]

Owner Signature
Signature hereby constitutes acceptance of offer as presented above.

Shawn G. Bullinger
Land Acquisition Specialist, City of Fargo

Owner Signature
Signature hereby constitutes acceptance of offer as presented above.

CITY OF Fargo

Fargo City Commision has considered the offer and approves the same:

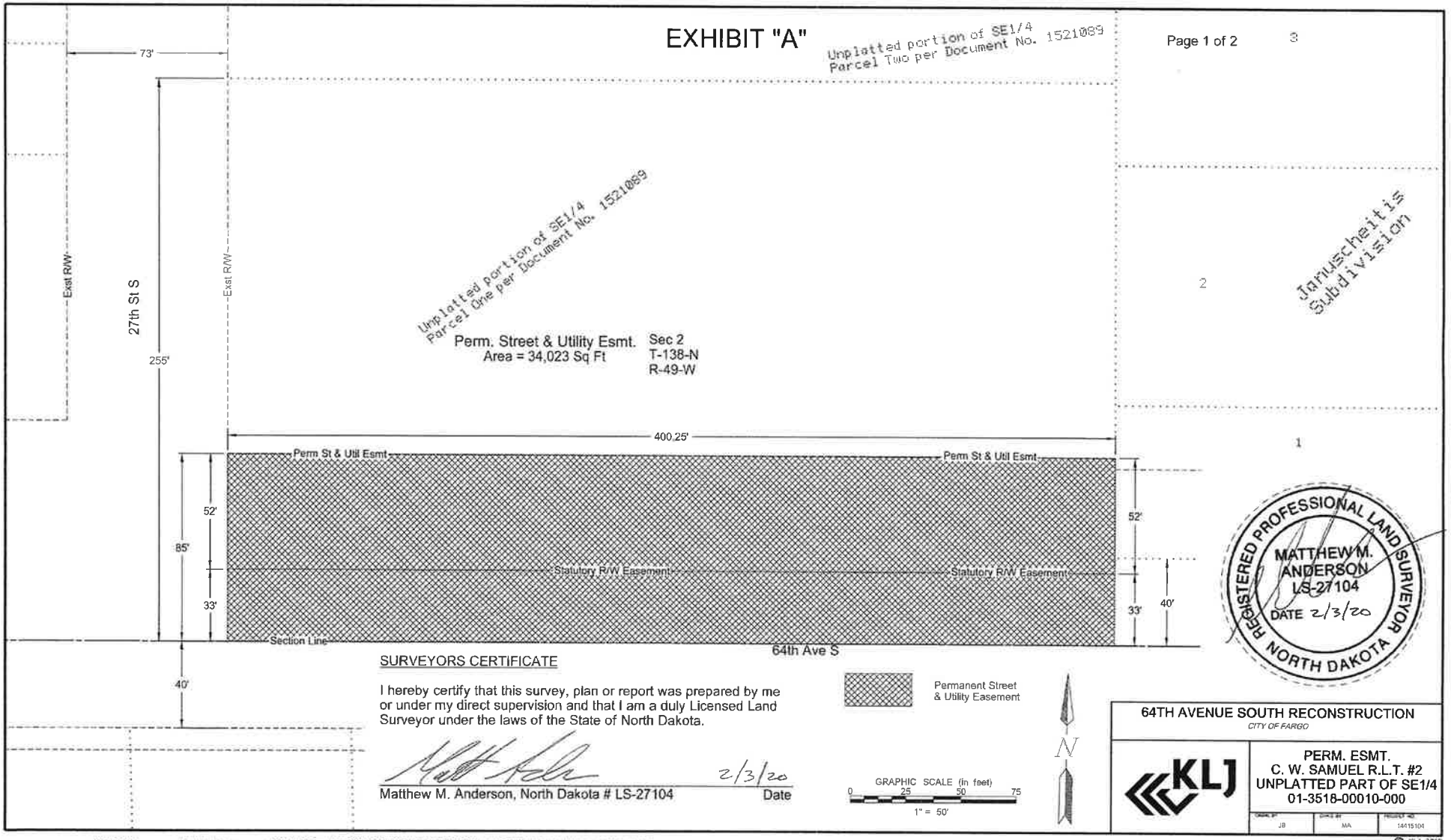
Timothy J. Mahoney
MAYOR

SIGNATURE

DATE

EXHIBIT "A"

Page 1 of 2



SURVEYORS CERTIFICATE

I hereby certify that this survey, plan or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of North Dakota.

2/3/20

Matthew M. Anderson, North Dakota # LS-27104 — Date

Permanent Street & Utility Easement

GRAPHIC SCALE (in feet)
0 25 50 75
1" = 50'

N

64TH AVENUE SOUTH RECONSTRUCTION
CITY OF FARGO

KLJ

PERM. ESMT.
C. W. SAMUEL R.L.T. #2
UNPLATTED PART OF SE1/4
01-3518-00010-000

JB	MA	14415104

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© KLJ 2019

EXHIBIT "A"

Unplatted SE ¼2-138-49

Permanent Street & Utility Easement
A 85-foot wide permanent street and utility easement of an un-platted parcel located in the Southeast Quarter of Section 2, Township 138 North, Range 49 West of the Fifth Principal Meridian, County of Cass, State of North Dakota, and said un-platted parcel is known as Parcel One in Document No. 1521089, filed and recorded at the Office of the Recorder, Cass County, North Dakota, for which Parcel One is further described as follows:

Commencing on the south line of said Section Two (2) at a point located 400 feet west of the southeast corner of said Section Two (2); thence West for a distance of 400.25 feet along the south section line; thence North and parallel with the east line of the said section for a distance of 255 feet; thence East and parallel with south line of said Section Two (2) for a distance of 400.25 feet; thence South and parallel with the east line of the said section for a distance of 255 feet, more or less to the point of beginning.

The South 85 feet of the above described un-platted parcel.

Said easement area is shown as the shaded area on "Exhibit A"and contains 34,023 square feet, more or less, and is subject to any easements or rights of way previously recorded.

The legal description was prepared by Matthew M. Anderson, ND LS-27104, KLJ 3203 32nd Avenue South, Suite 201, Fargo, ND 58103.

REGISTERED PROFESSIONAL LAND SURVEYOR
MATTHEW M. ANDERSON
LS-27104
DATE 2/3/20
NORTH DAKOTA

SURVEYORS CERTIFICATE

I hereby certify that this survey, plan or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of North Dakota.

2/3/20
Matthew M. Anderson, North Dakota # LS-27104 Date

64TH AVENUE SOUTH RECONSTRUCTION
CITY OF FARGO

KLJ

PERM. ESMT.
C. W. SAMUEL R.L.T. #2
UNPLATTED PART OF SE1/4
01-3518-00010-000

JB	MA	14415104

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THE CITY OF Fargo
FAR MORE

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

27d

April 24, 2020

Board of City Commissioners
City of Fargo
200 North Third Street
Fargo, ND 58102

Re: Memorandum of Offer to Landowner
Temporary Easement
Improvement District #BN-20-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 temporary easement in association with Improvement District #BN-20-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 temporary easement from **Lee & Deborah Haugen** in association with Improvement District #BN-20-C1 and that the Mayor is instructed to execute the Memorandum of Offer to Landowner on behalf of the City of Fargo.

Please return a copy of the signed originals.

Respectfully submitted,

Shawn G. Bullinger
Land Acquisition Specialist

C: Nancy J. Morris

MEMORANDUM OF OFFER TO LANDOWNER

City of Fargo, Engineering Department

Project	County	Parcel(s)
BN-20-C1	Cass	01-8421-00090-000
Landowner Lee & Deborah Haugen		
Mailing Address 2608 64th Ave S Fargo, ND 58104		

The following-described real property and/or related temporary easement areas are being acquired for project purposes:

See attached exhibit(s).

I, as right of way agent for the City of Fargo, Engineering Department, am hereby authorized to offer the following amount of $ 305.00 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	$	305.00
Improvements on Right of Way*	$	
Damages to Remainder	$	
Total Offer	$	305.00

*Description of Damages to Remainder are as follows:

Owner Signature
Signature hereby constitutes acceptance of offer as presented above.

Owner Signature
Signature hereby constitutes acceptance of offer as presented above.

Shawn G. Bullinger
Land Acquisition Specialist, City of Fargo

Fargo City Commision has considered the offer and approves the same:

Timothy J. Mahoney
MAYOR

SIGNATURE

DATE

EASEMENT
(Temporary Construction Easement)

KNOW ALL MEN BY THESE PRESENTS that **LEE AND DEBORAH HAUGEN,** 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 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 flood protection measures construction and activities appurtenant thereto, said land being more fully described, to-wit:

> A 10-foot wide temporary construction easement located in the East Half of Lot 10 and Lot 11, SOUTH HAVEN SUBDIVISION, located in Section 11, Township 138 North, Range 49 West of the Fifth Principal Meridian, County of Cass, State of North Dakota, described as follows:
>
> The North 10 feet is as measured perpendicular to the north line of said East Half of Lot 10 and Lot 11.
>
> Said easement area is shown as the shaded area on "Exhibit A", attached hereto, and contains 1,500 square feet, more or less, and is subject to any easements or rights of way previously recorded.

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 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. 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, 2020.

(Signatures on following page.)

IN WITNESS WHEREOF, Grantor set its hand and caused this instrument to be executed this 18 day of May, 2020.

GRANTORS:

Lee Haugen
Lee Haugen

Deborah Haugen
Deborah Haugen

STATE OF ND)
) ss.
COUNTY OF Cass)

On this 18th day of May, 2020, before me, a notary public in and for said county and state, personally appeared Lee and Deborah Haugen, described in and who executed the within and foregoing instrument, and acknowledged to me that he/she executed the same.

(SEAL)

MATT MIRANDA
Notary Public
State of North Dakota
My Commission Expires Sept. 13, 2023

Notary Public
Cass County, North Dakota

GRANTEE:

City of Fargo, a North Dakota municipal corporation

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

ATTEST

_____
Steve Sprague, City Auditor

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

On this ____ day of _____, 2020, 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 City Auditor, respectively, of the City of Fargo, Cass County, North Dakota, the municipal corporation described in and that executed the within and foregoing instrument, and acknowledged to me that said municipal corporation executed the same.

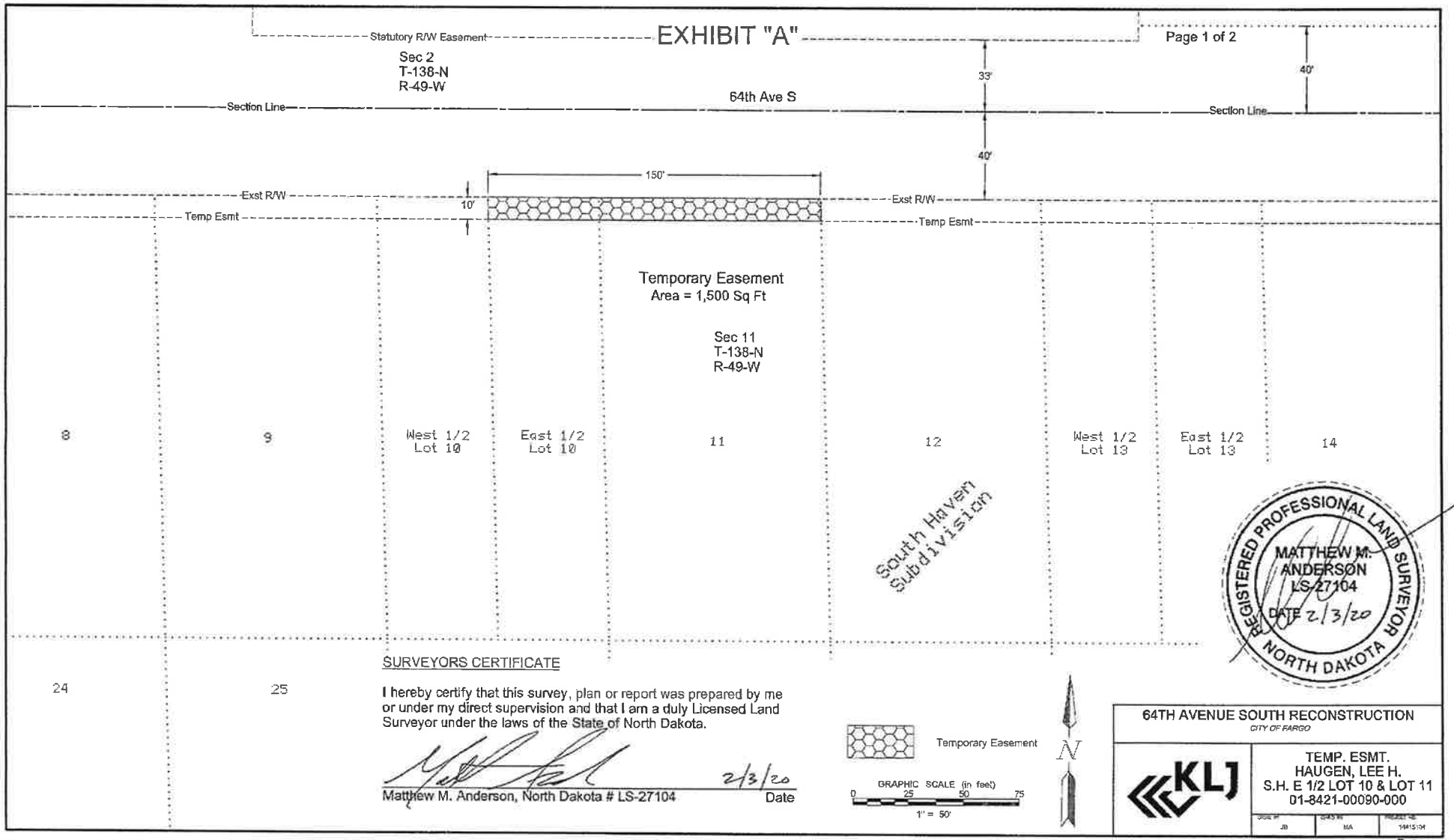
_____
Notary Public
Cass County, ND
My Commission expires:

(SEAL)

The legal description was prepared by:
Matthew M. Anderson, ND LS-27104, KLJ
32nd Avenue South, Suite 201
Fargo, ND 58103

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

EXHIBIT "A"



REGISTERED PROFESSIONAL LAND SURVEYOR
MATTHEW M. ANDERSON
LS-27104
DATE 2/3/20
NORTH DAKOTA

SURVEYORS CERTIFICATE

I hereby certify that this survey, plan or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of North Dakota.

Matthew M. Anderson, North Dakota # LS-27104 — Date 2/3/20

64TH AVENUE SOUTH RECONSTRUCTION
CITY OF FARGO

KLJ

TEMP. ESMT.
HAUGEN, LEE H.
S.H. E 1/2 LOT 10 & LOT 11
01-8421-00090-000

DRAWN BY: JB | CHECKED BY: MA | PROJECT NO.: 144151104

© KLJ 2019

1/31/2020 12:53:40 PM jonathonbecker P:\City\ND\Fargo\144151104\CAD\80984156.153\ROW\RW_Eastof129\RW195_001_SouthHavenLot11_Haugen.dgn

EXHIBIT "A"

E1/2 of Lot 10 & Lot 11, SOUTH HAVEN SUBDIVISION

Temporary Construction Easement
A 10-foot wide temporary construction easement located in the East Half of Lot 10 and Lot 11, SOUTH HAVEN SUBDIVISION, located in Section 11, Township 138 North, Range 49 West of the Fifth Principal Meridian, County of Cass, State of North Dakota, described as follows:

The North 10 feet is as measured perpendicular to the north line of said East Half of Lot 10 and Lot 11.

Said easement area is shown as the shaded area on "Exhibit A" and contains 1,500 square feet, more or less, and is subject to any easements or rights of way previously recorded.

The legal description was prepared by Matthew M. Anderson, ND LS-27104, KLJ 3203 32nd Avenue South, Suite 201, Fargo, ND 58103.

REGISTERED PROFESSIONAL LAND SURVEYOR
MATTHEW M. ANDERSON
LS-27104
DATE 2/3/20
NORTH DAKOTA

SURVEYORS CERTIFICATE

I hereby certify that this survey, plan or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of North Dakota.

2/3/20
Matthew M. Anderson, North Dakota # LS-27104 Date

64TH AVENUE SOUTH RECONSTRUCTION
CITY OF FARGO

KLJ

TEMP. ESMT.
HAUGEN, LEE H.
S.H. E 1/2 LOT 10 & LOT 11
01-8421-00090-000

DESIGNED	DRAWN	PROJECT NO.
JB	MA	144151

© KLJ 2019

1/31/2020 12:53:41 PM jonathonbecker P:\City\ND\Fargo\144151\04\CAD\60984156.153\ROW\RW_East of 29\RW195_001_SouthHavenLot11_Haugen-2.dgn

28a-6

REPORT OF ACTION

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Improvement District No. BN-20-C1 Type: Wetland Credit Purchase

Location: 64th Ave S (Drain 53) Date of Hearing: 4/27/2020

Routing	Date
City Commission	5/4/2020
PWPEC File	X
Project File	Jeremy Gorden

The Committee reviewed communication from Division Engineer, Jeremy Gorden, regarding the purchase of wetland mitigation credits from Ducks Unlimited, Inc. in the amount of $48,000.

This project will negatively affect 0.8 acres of wetland, which requires the purchase of wetland credit to allow for the proper permitting.

Finance Committee approved the sole source earlier today and staff is recommending approval.

On a motion by Bruce Grubb, seconded by Ben Dow, the Committee voted to recommend approval of the purchase of wetland credits from Ducks Unlimited, Inc. in the amount of $48,000.

RECOMMENDED MOTION
Concur with the recommendations of PWPEC and approve the purchase of wetland credits from Ducks Unlimited, Inc. in the amount of $48,000.

PROJECT FINANCING INFORMATION:
Recommended source of funding for project: Sales Tax & Special Assessments

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

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

ATTEST:

Brenda E. Derrig, P.E.
City Engineer

REPORT OF ACTION

FINANCE COMMITTEE

Improvement District: BN-20-C1 **Type:** Sole Source Wetland Credits

Location: 64th Avenue South from 25th to 33rd Street

Date of Hearing: April 27, 2020

Routing	Date
City Commission	5/04/2020
Project File	Jeremy Gorden

The Committee reviewed communication from Division Engineer, Jeremy Gorden, regarding the need to purchase .80 wetland credits in the amount of $48,000 from Ducks Unlimited, Inc. for the construction of 64th Avenue South from 25th to 33rd Street. This is needed to receive the permits necessary to construct the project. Ducks Unlimited, Inc. is the only local provider of wetland mitigation credits.

On a motion by Steve Sprague, seconded by Bruce Grubb, the Finance Committee voted to approve the sole source procurement for Ducks Unlimited, Inc.

RECOMMENDED MOTION:

Concur with the recommendation of Finance Committee and approve the sole source procurement for Ducks Unlimited, Inc.

COMMITTEE:	Present	Yes	No	Unanimous
				X
				Proxy
Tim Mahoney, Mayor	X	X		
Dave Piepkorn, City Commissioner	X	X		
Bruce Grubb, City Administrator	X	X		
Mike Redlinger, Assistant City Administrator	X	X		
Kent Costin, Director of Finance	X	X		
Steve Sprague, City Auditor	X	X		

Tim Mahoney, Finance Committee Chair

SSP20084

CITY OF Fargo

Sole Source and Piggyback Procurement Form

Sole Source and Piggyback Justification for Procurement

The following information is offered for the sole source acquisition of goods or services described below. The purchase has been thoroughly researched and it has been determined that the vendor/brand is the only acceptable vendor/brand for the product or services that will fit the particular need.

Vendor Name:

Ducks Unlimited, Inc.

Estimated Dollar Amount of Purchase:

48,000

Is this procurement funded by a federal grant?

No

If yes, you must attach a document from the grant agency approving this procurement as a sole source.

The project/service is required to:

This is a purchase of wetland credits from DU for impacts associated with the Drain 53 crossing on 64th Ave S road project this year. It is for 0.8 acres of mitigation.

Description of features or capabilities unique to the vendor/brand being requested as related to project requirements:

DU is the only local provider of wetland mitigation credits.

Provide a brief description of how your investigation was conducted. (Internet, publications, consultations) List all sources identified and investigated to determine that no other source exists for similar products capable of meeting requirements (Must be exhaustive of all sources for the commodity being purchased. **)

KLJ is familiar with how wetland mitigation is handled and they lined this purchase up for us.

****If all sources are not investigated a competitive solicitation must be issued.**

Provide a side-by-side comparison of the features/service of all other vendors/brands considered. (List the features or capabilities required for your project and how each vendor investigated does or does not meet those requirements. A table format is recommended)

NA

If the piggyback procurement method is being used, please provide a copy of the piggyback contract.

NA

Signature: _____
(Requestor)

Printed Name: Jeremy M. Gorden

Department: Traffic Engineering

Title: Division Engineer - Transportation

Date: 4-22-20

I, hereby, certify that this justification for other than full and open competition is accurate and complete to the best of my knowledge and belief.

_____ **(Requestor initials)**

THE CITY OF Fargo
FAR MORE

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

April 22, 2020

To: Members of PWPEC

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

Subject: Purchase of Wetland Mitigation Credits from Ducks Unlimited, Inc.
Improvement District No. BN-20-C1

Background:

I have attached an invoice from Ducks Unlimited, Inc. in the amount of $48,000 for us purchasing wetland mitigation credits for our impacts to them in Drain 53 associated with the 64th Avenue street construction project. KLJ determined that our road project will negatively affect 0.8 acres of wetland, and this purchase will allow that to be permitted. This is a sole source procurement and a Sole Source Procurement form has been filled out and placed on the next Finance Committee agenda for approval as well.

Recommended Motion:

Approve the purchase of wetland mitigation credits from Ducks Unlimited, Inc. in the amount of $48,000 for Improvement District No. BN-20-C1.

JMG/jmg
Attachment

DUCKS UNLIMITED

Great Plains Regional Office
2525 River Road
Bismarck, ND 58503-9011
(701) 355-3500 • Fax (701) 355-3575
www.ducks.org

March 27, 2020

INVOICE # GPRO-DEFINV-2020-169

TO: City of Fargo Attn: Jeremy Gorden 200 N 3rd Street Fargo, ND 58102	**FROM:** Ducks Unlimited, Inc. 2525 River Road Bismarck, ND 58503

FOR: Wetland Mitigation credits through the Ducks Unlimited – Grafton Mitigation Bank approved by the Army Corps of Engineers.

Grafton Mitigation Bank – Walsh County, ND:

- 0.80 wetland credits per Permit # NWO-2019-0089-BIS

Total Due: $48,000.00

Please make check payable to Ducks Unlimited, Inc. and send to the address listed above.

Thank you.

DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, OMAHA DISTRICT
NORTH DAKOTA REGULATORY OFFICE
3319 UNIVERSITY DRIVE
BISMARCK, NORTH DAKOTA 58504-7565

March 26, 2020

NWO-2019-00089-BIS

City of Fargo
Attn: Mr. Jeremy Gorden
225 4th Street North
Fargo, North Dakota 58102

Dear Mr. Gorden:

We are responding to your February 7, 2020 request for a Department of the Army permit for the City of Fargo Project No. BN-20-C1 64th Ave S Improvements from 25th St S to 45th St S, SU-8-984(153)156, PCN 21564. The project site is located in Sections 2 and 11, Township 138 North, Range 49 West, Latitude 46.789360° North, Longitude -96.840144° West, Fargo, Cass County, North Dakota.

Based on the City of Fargo/KLJ preliminary engineering plan sheets, dated 2/20/2020, and supplemental information that you provided to this office, this project involves the enhancement of approximately 1.95 miles of 64th Ave S to accommodate the growth and development in the surrounding areas. This project includes realigning and widening of 64th Ave S to include turning lanes and shared use paths to run parallel to the road; and installing water mains, storm sewers, and street lighting. The specific activities that require discharges into WOUS include the filling of multiple wetlands to increase the footprint of 64th Ave S and construct shared use paths; the replacement of 72" CSP's with a double 8' by 8' box culvert and associated rock riprap on Drain 53; and the placement of foundational layers for the new water mains and storm sewers. Permanent impacts will total 0.40 acre; temporary impacts to 0.07 acre of aquatic resources will be restored to preconstruction contours following project completion. In lieu fee credits will be purchased from Ducks Unlimited in the amount of 0.80 acre.

We have determined activities in waters of the U.S. associated with the project are authorized by Nationwide Permit Number (NWP) 23 Approved Categorical Exclusions, found in the January 6, 2017 Federal Register (82 FR 1860), Reissuance of Nationwide Permits. Enclosed is a fact sheet that fully describes this Nationwide Permit and lists the General, Regional and Water Quality Conditions that must be adhered to for this authorization to remain valid. **Please note that deviations from the original plans and specifications of your project could require additional authorization from this office.**

This determination is applicable only to the permit program administered by the Corps of Engineers. It does not eliminate the need to obtain other Federal, state, tribal and local approvals before beginning work.

You are responsible for all work accomplished in accordance with the terms and conditions of the Nationwide Permit, **including the Regional Conditions specific to projects undertaken in North Dakota.** Information about the NWP and regional conditions are available at http://www.nwo.usace.army.mil/Missions/Regulatory-Program/North-Dakota/. If a contractor or other authorized representative will be accomplishing the work authorized by the Nationwide Permit on your behalf, it is strongly recommended that they be provided a copy of this letter and the attached conditions so that they are aware of the limitations of the applicable Nationwide Permit. Any activity that fails to comply with all of the terms and conditions of the Nationwide Permit will be considered unauthorized and subject to appropriate enforcement action.

In addition, your work must comply with the following special conditions:

1. This permit verification is based on the attached Preliminary Plan Sheets dated February 20, 2020 for Project number (BN-20-C1, SU-8-984(153)156, PCN 21564). Any deviations from these preliminary plan sheets shall be submitted to the North Dakota Regulatory Office prior to construction and approved in writing.

2. To compensate for the loss of 0.40 acres of aquatic resources, you shall purchase 0.80 aquatic resource credit from the Ducks Unlimited, Inc. North Dakota In-Lieu-Fee Program for the Red River Basin Regional Service Area. Evidence of this purchase shall be provided to this office prior to initiation of construction activities in waters of the U.S. authorized by this verification.

3. Within 60 days following completion of the authorized work or at the expiration of the construction window of this permit, whichever occurs first, you shall submit as-built drawings or stamped final construction plans showing any changes that occurred during construction and a description of the work conducted on the project site AND/OR avoidance areas to this office for review. The drawings shall be signed and sealed by a registered professional engineer and include the following:

    a. The Department of the Army Permit number
    b. A plan view drawing of the location of the authorized work footprint (as shown on the permit drawings) with an overlay of the work as constructed in the same scale as the attached permit drawings. The drawing should show all "earth disturbance," wetland impacts, structures, and avoidance areas. The drawings shall contain, at a minimum, 1-foot topographic contours of the entire site.
    c. Ground and aerial photographs of the completed work. The camera positions and view-angles of the ground photographs shall be identified on a map, aerial photograph, or project drawing.
    d. A description and list of all minor deviations between the work as authorized by this permit and the work as constructed. Clearly indicate on the as-built drawings the location of any deviations that have been listed.

4. At least 10 days prior to initiation of construction activities in waters of the U.S. authorized by this permit/verification, you shall submit to this office pre-construction site and aerial photographs of the project site, which have been taken no more than one year prior to initiation of construction activities in waters of the U.S. authorized by this permit/verification. Within 60 days following completion of construction activities in waters of the U.S. authorized by this permit-verification, you shall submit post-construction site and aerial photographs/satellite imagery of the project site, showing the work conducted, to this office. Aerial photographs/satellite imagery submitted, including those publicly available, must be taken no more than one year prior to initiation of construction activities in waters of the U.S. authorized by this permit/verification. The camera positions and view angles of post-construction photographs shall be identified on a map, aerial photo, or project drawing. Construction locations shall include all major project features and waters of the U.S. including avoidance and compensatory mitigation areas.

5. At least 10 days prior to initiation of construction activities in waters of the U.S. authorized by this permit/verification, you shall notify this office in writing of the anticipated start date for the work. No later than 30 calendar days following completion of construction activities in waters of the U.S. authorized by this permit/verification, you shall sign and return the attached Project Compliance Certification verifying that construction activities have been completed.

6. You and your authorized contractor shall allow representatives from this office to inspect the activity authorized by this permit/verification and all avoidance areas at any time deemed necessary to ensure that work is being or has been accomplished in accordance with the terms and conditions of this permit verification.

6. The permittee is responsible for ensuring that the Corps is notified of the location of any borrow site that will be used in conjunction with the construction of the authorized activity so that the Corps may evaluate the site for potential impacts to aquatic resources, historic properties, and endangered species. For projects where there is another lead Federal agency, the permittee shall provide the Corps documentation indicating that the lead Federal agency has complied with the National Historic Preservation Act and Endangered Species Act for the borrow site. The permittee shall not initiate work at the borrow site in conjunction with the authorized activity until approval is received from the Corps.

Within 30 days after completion of the authorized work, you must sign the enclosed Compliance Certification and return it to this office.

This verification will be valid until **March 18, 2022.** If the nationwide permit is modified, suspended, or revoked prior to this date, but is reissued without modification or the activity complies with any subsequent modification, this authorization remains valid until the expiration date. All of the existing nationwide permits are scheduled to be modified, reissued, or revoked prior to **March 18, 2022**. It is incumbent upon you to remain informed of changes to the nationwide permits. We will issue a public notice when the nationwide permits are reissued. Furthermore, if you commence or are under contract to commence this activity before the date that the relevant nationwide permit is modified or revoked, you will have twelve (12) months from the date of the modification or revocation to complete the activity under the present terms and conditions.

The Omaha District, North Dakota Regulatory Office is committed to providing quality and timely service to our customers. In an effort to improve customer service, please take a moment to complete our Customer Service Survey found on our website at http://corpsmapu.usace.army.mil/cm_apex/f?p=regulatory_survey. If you do not have Internet access, you may call and request a paper copy of the survey that you can complete and return to us by mail or fax.

Please refer to identification number NWO-2019-00089-BIS in any correspondence concerning this project. If you have any questions, please contact Amber Inman at the above address, by email at Amber.L.Inman@usace.army.mil, or telephone at (701) 255-0015, extension 2009.

Sincerely,

ERHARDT.TONI.R.1231324557 Digitally signed by ERHARDT.TONI.R.1231324557 Date: 2020.03.26 10:48:35 -05'00'

Toni R. Erhardt
Senior Project Manager
North Dakota

Enclosures

REPORT OF ACTION

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

29

Improvement District No. PN-19-A0 Type: Contract Amendment #4

Location: 64th Ave S, 25th St to 45th St Date of Hearing: 4/27/2020

Routing	Date
City Commission	5/4/2020
PWPEC File	X
Project File	Jeremy Gorden

The Committee reviewed the accompanying correspondence from Division Engineer, Jeremy Gorden, related to Contract Amendment #4 submitted by KLJ in the amount of $218,068, $128,575 of which will be credited by the NDDOT with Construction Funds once the overpass is bid in the fall.

The costs included in this Amendment can be summarized by:

- Additional time, due to the extended schedule, in the amount of $18,594
- Roadway Design revisions for $72,724
- Structural Design for the I-29 bridge $87,968
- Environmental & Permitting $21,782
- Engineering Design Subconsultant Services $17,000

Staff is recommending approval of Amendment #4 in the amount of $218,068, bringing the total contract amount to $2,282,724.

On a motion by Steve Sprague, seconded by Nicole Crutchfield, the Committee voted to recommend approval of the Contract Amendment #4 to KLJ.

RECOMMENDED MOTION

Concur with the recommendation of PWPEC and approve Contract Amendment #4 to KLJ in the amount of $218,068, bringing the total contract amount to $2,282,724.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: Federal, Sales Tax & Special Assessments

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

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

ATTEST:

Brenda E. Derrig, P.E.
City Engineer

C: Kristi Olson

THE CITY OF Fargo
FAR MORE

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

April 22, 2020

To: Members of PWPEC

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

Subject: Contract Amendment #4 for KLJ
64th Avenue S – 25th Street to 45th Street
City of Fargo Improvement District No. PN-19-A0

Background:

As we have progressed through environmental documentation, project development and final design for this roadway, this project has evolved quite extensively along the way. This project started out as an overpass project with limited extents on each side of I-29 to one whose extents reaches 2 miles in length, from 25th Street to 45th Street. It also started out as a simple overpass project and has turned into a phased approach to constructing a full interchange with I-29 in the year 2025. In addition, it has gone from one construction project into two, with the break point at 33rd Street, east of I-29. We have tasked KLJ with completing a number of new items that were not scoped out in their original contract from late 2015. We have approved three contract amendments with them through January of this year.

I have attached contract amendment #4 with KLJ as a part of this project. The amendment is for additional time for project management ($18,594), Roadway Design for revisions to original layout ($72,724), Structural Design for the I-29 bridge ($87,968 total; split $72,270 NDDOT/$15,698 City), Environmental & Permitting ($21,782) and lastly, additional work for subconsultant Moore Engineering with water main modifications and multiple plan sets ($17,000). The total contract amendment request is for $218,068.

KLJ's contract to date is $2,064,656 and amendment #4 will bring their contract value to $2,282,724. Of that amount, NDDOT will credit us $128,575 with construction funds once the overpass project is bid this fall.

Recommended Motion:

Approve Contract Amendment #4 with KLJ in the amount of $218,068.

JMG/jmg
Attachment

This is **EXHIBIT**, consisting of [2] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated [11/3/15].

AMENDMENT TO OWNER-ENGINEER AGREEMENT
Amendment No. 4

The Effective Date of this Amendment is: 4/20/20.

Background Data

Effective Date of Owner-Engineer Agreement: November 3, 2015

Owner: City of Fargo

Engineer: Kadrmas, Lee & Jackson, Inc.

Project: City of Fargo Project PN-19-A0 – 64th Ave Reconstruction

Nature of Amendment:

_X_ Additional Services to be performed by Engineer

_X_ Modifications to services of Engineer

____ Modifications to responsibilities of Owner

_X_ Modifications of payment to Engineer

____ Modifications to time(s) for rendering services

_X_ Modifications to other terms and conditions of the Agreement

Description of Modifications:

See attached amendment request summary for additional services performed.

Agreement Summary:

Original agreement amount:	$ 585,000.00
Net change for prior amendments:	$ 1,479,656.00
This amendment amount:	$ 218,068.00
Adjusted Agreement amount:	$ 2,282,724.00

The foregoing Agreement Summary is for reference only and does not alter the terms of the Original Agreement.

Owner and Engineer hereby agree to modify the above-referenced Agreement as set forth in this Amendment. All provisions of the Agreement not modified by this or previous Amendments remain in effect.

OWNER:		ENGINEER:	
By:	_____	By:	Mark Anderson
Print name:	_____	Print name:	Mark Anderson
Title:	_____	Title:	Vice President, EPW
Date Signed:	_____	Date Signed:	4/20/2020

3203 32nd Avenue South, Suite 201
Fargo, ND 58103-6242
701 232 5353
KLJENG.COM

April 6, 2020

Jeremy Gorden
Division Engineer - Transportation
City of Fargo
225 4th Street North
Fargo, ND 58102

Re: SU-8-984(153)156/BN-20-C1 – Out of Scope Work
Contract Amendment Request #4

Dear Mr. Gorden:

As we have progressed through the design phases of the referenced project, we have been requested to perform some work that was not included in the original scope of services. Some of the out of scope work that was requested has been completed, other out of scope work is still in progress. We have broken down the out of scope work requests below.

Project Management ($18,594)

Additional time was required due to the extended schedule of the project. This task includes additional status reports, coordination with design disciplines, coordination with City of Fargo, NDDOT, and coordination with subconsultants.

Roadway Design ($72,724)

Throughout the plan development process, KLJ has been requested to perform the following out of scope work items:

- *Proposed Interchange Layouts ($16,250)* – KLJ has completed several iterations of interchange alternatives to determine proposed right-of-way limits and assist with determining the overpass bridge width and lane designations.
- *Interchange Cost Estimates ($6,968)* – KLJ prepared cost estimates for a few of the interchange configurations that were developed. These cost estimates were used to assist City Officials in decision making.
- *Roadway Profile Revisions ($13,160)* – Early on in the project, it was decided to use a vertical curve length of 1,000'. During discussion of a potential interchange, it was decided to flatten that curve to a 1,500' curve. This required design revisions to the preliminary bridge and roadway profile.

- *Multiple Plan Sets ($24,360)* – The project was originally scoped to be bid as one plan set. Due to changes in the development west of I-29, the discussion revolving around a potential interchange, and NDDOT request to revise the CATEX the City of Fargo requested that the project be split into multiple plan sets. The plan set for the segment between 33rd St and 25th St required significant revisions to be converted from NDDOT standards and bid items to City of Fargo standards and bid items.
- *Five Lane Roadway ($11,716)* – City of Fargo requested that KLJ increase the roadway capacity of 64th Ave west of I-29 to a 5-lane section. This required design and plan sheet revisions.

Structural Design ($87,968)

Due to decisions made after the CATEX was completed, the following items were either additional work or out of scope work require of KLJ:

- *Bridge Redesign $(38,760)* – After CATEX was completed, KLJ began working on the design for a 4-span bridge. In August of 2019, KLJ was notified that NDDOT would require a 2-span structure. This rendered the design that KLJ had completed unusable.
- *Steel Structure Design ($33,240)* – The original scope of the project included a prestressed I-girder bridge design. Due to the outcome of the collector-distributer route analysis, it has been decided that a 2-span steel girder structure is preferred. The design for a steel structure requires for time.
- *Bridge Aesthetics ($15,698)* – The original project scope assumed that the bridge aesthetics would mimic the 52nd Ave interchange structure. It has been requested by the City of Fargo that KLJ work with the Planning Department to incorporate aesthetic features and designs into the new structure.

Environmental Documentation/Permitting ($21,782)

Because of revisions requested to accommodate a future collector-distributor route and potential interchange, a CATEX addendum is required. KLJ is requesting additional hours for the following tasks:

- *Noise Analysis ($8,936)* – Due to the changes in the roadway profile, mainly over I-29, and the additional traffic lanes requested by the City of Fargo, an updated noise analysis is required for the CATEX addendum.
- *CATEX Addendum ($7,970)* – KLJ scoped an addendum for the CATEX in contract amendment 1, but only to include additional wetland and cultural survey limits. The CATEX addendum will not include revisions to the roadway profile, bridge type, and additional traffic lanes.
- *Permitting ($4,876)* – The project was originally scoped to be bid as one plan set. Due to changes previously discussed, the project will now be bid in multiple segments. KLJ will need to complete the permit applications for multiple project segments opposed to one.

Subconsultants ($17,000)

Moore Engineering completed additional work per the request of the City of Fargo. They are requesting additional time for the following items:

- *Additional Watermain ($8,000)* – The original scope of the project did not include replacing the watermain from 33rd St to 25th St. Per the City of Fargo and Cass Rural Waters request, the watermain was relocated outside of the proposed roadway footprint. Additional coordination, design, and plan development was required to complete the design.
- *Multiple Plan Sets ($9,000)* – As discussed previously, the project was originally scoped to be bid as one plan set. Additional time and effort was required to split the project into multiple segments. This also include reformatting the plans to more closely follow City of Fargo bid items and appearance.

We appreciate your consideration of this contract amendment request. This request totals **$218,068**. Please feel free to contact me with any questions or comments.

Sincerely,

KLJ

Scott Middaugh
Project Manager

Enclosure(s): none
Project #: 14415104
cc: none