

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.

- A. Pledge of Allegiance.
- B. Roll Call.
- C. Approve Order of Agenda.
- D. Minutes (Regular Meeting, October 31, 2022).

CONSENT AGENDA – APPROVE THE FOLLOWING:

- 1. Purchase Agreement with 701 Brew LLC for property at 714 12th Street North.
- 2. Findings of Fact, Conclusions and Order and Notice of Entry of Order for 509 21st Street North.
- 3. Findings of Fact, Conclusions and Order and Notice of Entry of Order for 812 7th Street North.
- 4. Receive and file Notice of Appeal of Decision of Local Governing Body Romantix-Fargo, Inc. v. City of Fargo and Nicole Crutchfield.
- 5. 2nd reading and final adoption of an Ordinance Rezoning Certain Parcels of Land Lying in Chas A. Roberts Addition.
- 6. Application for Games of Chance for El Zagal Holding Company for a raffle on 2/18/23.
- 7. Receive and file General Fund – Budget to Actual through October 2022 (unaudited).
- 8. Agreement for Downtown Business Improvement District Services and Materials with the Downtown Community Partnership beginning 1/1/23 through 12/31/27.
- 9. Change Order No. 2 in the amount of -\$7,842.00 and a time extension to the completion date to 10/19/22 for Project No. FM-19-C1.
- 10. Negative Final Balancing Change Order No. 3 in the amount of -\$97,977.10 for Project No. HD-19-A1.
- 11. Change Order No. 1 in the amount of \$80,854.40 for Project No. SL-22-A1.
- 12. Change Order No. 2 in the amount of \$74,316.50 for Project No. TM-22-A1.
- 13. Preliminary Engineering Reimbursement Agreement with the ND Department of Transportation for the 19th Avenue North Chip Seal Project.
- 14. Bid award for Project No. FM-21-A2.

Page 15. Assessment of 31.5 days of liquated damages on Project No. BN-19-A2.

16. State Water Commission request for cost reimbursement for the Fargo-Moorhead Metropolitan Area Flood Risk Management Project in the amount of \$1,153,591.33.
17. 90-day extension of FMLA for Fire Captain Jason Gisselbeck.
18. Sole Source Procurement with Center for Public Safety Excellence, Inc. in the amount of \$17,820.00 and Professional Services Agreement for the updating of the Fire Department's Strategic Plan in 2023.
19. Notice of Grant Award from the ND Department of Health and Human Services for Childhood Obesity Prevention (CFDA #93.994).
20. Receive and file September traffic enforcement efforts and 3rd Quarter hate crime updates.
21. Bid award for Water Treatment Plant Chemical Bids for 2023 (AFB23007).
22. Bid award for Water Reclamation Utility Chemical Bids for 2023 (AFB23008).
23. Contract and bond for Project No. UR-22-C1.
24. Bills.
25. Agreement for Engineering Services with Houston Engineering, Inc. for Improvement District No. BN-23-A2.
26. Memorandum of Offer to Landowner for an Easement (Temporary Construction Easement) and Permanent Easement (Street and Utility) with Howard C. and Barbara A. Gensler in association with Improvement District No. BN-23-A.
27. Early Building Permit Application and Agreement for property located at 2983 43rd Street North (Improvement District No. BN-22-C1).
28. Early Building Permit Application and Agreement for property located at 5624 Tillstone Drive South (Improvement District No. BN-22-F1).
29. Negative Final Balancing Change Order No. 2 in the amount of -\$25,402.86 for Improvement District No. PR-22-E1.

REGULAR AGENDA:

30. **RESIDENT COMMENTS (Fargo residents will be offered 2.5 minutes for comment with a maximum of 30 minutes total for all resident comments. Residents who would like to address the Commission, whether virtually or in person, must sign-up at FargoND.gov/VirtualCommission).**
31. ***Public Input Opportunity* - PUBLIC HEARINGS - 5:15 pm:**
 - a. Hearing to consider a Development Agreement with Great Plains NP Holdings, LLC to build and operate a parking garage to be located at 602-636 Northern Pacific Avenue; continued from the 10/31/22 Regular Meeting.
 - b. Renaissance Zone Project with EPIC Unite Real Estate Holdings, LLC for a new construction project at 234 Main Avenue.

- c. Fitzsimonds Second Addition (3716, 3740 and 3750 51st Avenue South); approval recommended by the Planning Commission on 8/2/22:
 - 1. Zoning Change to repeal and re-establish a C-O, Conditional Overlay in the GC, General Commercial zoning district.
 - 2. 1st reading of rezoning Ordinance.
 - 3. Plat of Fitzsimonds Second Addition.

- 32. Recommendation to create a Downtown Oversight Committee.

- 33. Recommendation to approve the Red River Regional Dispatch Center (RRRDC) Joint Powers Agreement and to appoint Mayor Timothy Mahoney and Commissioner Denise Kolpack as members of the RRRDC Board of Authority.

- 34. Recommendation for appointment to the Planning Committee of the Metro Flood Diversion Authority.

- 35. Recommendation to authorize negotiation of a Sewer Agreement with Commerce on I29 Association.

- 36. Liaison Commissioner Assignment Updates.

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

Minutes are available on the City of Fargo website at www.FargoND.gov/citycommission.




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City Administration
225 4th Street North
Fargo, ND 58102

MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

FROM: JIM GILMOUR, STRATEGIC PLANNING DIRECTOR 

DATE: NOVEMBER 7, 2022

SUBJECT: ACQUISITION AND CLEARANCE OF 714 12TH STREET NORTH

The owner of 714 12th Street North has signed an agreement to sell the property to the City of Fargo. It is attached for your consideration.

Shortly after the City Commission approved the purchase of this property, there was a significant fire in the house. The City now has an even greater interest in demolishing the house as soon as possible and the owners of the property have indicated they are willing to allow the demolition of the house prior to the closing.

Recommended Motion

Approve the purchase agreement for 714 12th Street North.

PURCHASE AGREEMENT

THIS AGREEMENT, made and entered into this 7 day of November, 2022, by and between **CITY OF FARGO, NORTH DAKOTA**, a municipal corporation, hereinafter "City" or "Buyer", and 701 Brew LLC, a North Dakota limited liability company, hereinafter "Seller",

WITNESSETH:

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

The East Half of Lot Four (4), in Block Seven (7), of Harwood's Addition to the City of Fargo, situate in the County of Cass and the State of North Dakota.

Said real property is commonly known as 714 12th Street North, Fargo, ND 58102.

WHEREAS, Seller has indicated a desire to sell the real estate, and offered the property for sale to the City; and,

WHEREAS, City offered to purchase the real estate in accordance with the terms stated 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 building located thereon, and all items affixed to the property.
2. Purchase Price. The purchase price for the real property identified is as follows: Twenty Nine Thousand Dollars (\$29,000).
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 updated abstract of title to the subject property to a recent date. Seller shall secure a Title Opinion, affirming said abstract shows good and marketable title in Seller free and clear of all liens and encumbrances (other than those that will be handled at closing). Seller shall pay all costs associated with closing, including deed preparation and recordation.
5. Taxes and Utilities. Taxes 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 special assessments must be paid by Seller in advance of closing.

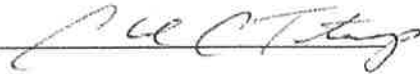
6. Warranty Deed. Seller shall sign a Warranty deed. Buyer will take title as follows: City of Fargo, a North Dakota municipal corporation.
7. Closing Date and Transfer of Possession. Closing shall take place as soon as possible. Buyer shall take possession of the real estate on the day of closing. The property is currently vacant.

DATED this 7 day of November, 2022.

SELLER:

701 Brew LLC, a North Dakota limited liability company

By:
Its:

A handwritten signature in cursive script, appearing to read "P. C. Thompson", is written over a horizontal line.

DATED this ____ day of _____, 2022.

BUYER:

CITY OF FARGO, NORTH DAKOTA
a municipal corporation

Timothy J. Mahoney, M.D., Mayor

ATTEST:

Steven Sprague, City Auditor

CITY ATTORNEY

Nancy J. Morris

ASSISTANT CITY ATTORNEYS

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

②

November 10, 2022

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

RE: Dangerous Building located at 509 21st Street North, Fargo, North Dakota

Dear Commissioners,

Enclosed for your review and approval are proposed Findings of Fact, Conclusions and Order, and Notice regarding the dangerous building proceeding for the property at 509 21st Street North. At its October 31st, 2022 meeting, the report presented by Shawn Ouradnik, city of Fargo Building Inspections Director, was approved by the Board. As such, the City Attorney's Office was directed to prepare the appropriate Findings of Fact, Conclusions and Order, and Notice.

Suggested Motion: I move to approve the Findings of Fact, Conclusions and Order, and Notice as presented.

Sincerely,



Alissa R. Farol
Assistant City Attorney

Enclosure

cc: Shawn Ouradnik, Inspections Department

FINDINGS OF FACT, CONCLUSIONS AND ORDER
of the
BOARD OF CITY COMMISSIONERS
OF THE CITY OF FARGO

Property Address: 509 21st Street North, Fargo, North Dakota

Property Owner: Sylvia A. Borud

A hearing was held before the Board of City Commissioners of the City of Fargo on the 31st day of October, 2022 regarding the property located at 509 21st Street North, Fargo, North Dakota. Shawn Ouradnik, city of Fargo Building Inspections Director, appeared on behalf of the city of Fargo Inspections Department and provided testimony as to the condition of the property. The property owner or anyone else claiming an ownership interest in the property did not appear.

The Board heard the testimony offered by Shawn Ouradnik, considered the reports, evidence and other information presented, and hereby makes the following Findings of Fact:

FINDINGS OF FACT

1. That Sylvia A Borud is the owner of the following described real property located in the City of Fargo, County of Cass and State of North Dakota:

Lot Thirteen (13), Block Four (4), Tylers Addition to the city of Fargo

Street address: 509 21st Street North, Fargo, North Dakota, 58102

[hereinafter "Subject Property"].

2. That the property owner is deceased and Subject Property has been vacant ever since.

3. That on July 25, 2022 and August 1, 2022, Greg Conlin, Code Enforcement Inspector to the city of Fargo, inspected the Subject Property and found the building, consisting of a single-story wood-framed structure with detached 2-stall garage to be dangerous buildings within the standards set forth in Article 21-04 of the Fargo Municipal Code and Section 111.1.5 of the International Property Maintenance Code concerning dangerous structures.

4. That the buildings are unsafe and dangerous in the following respects: (a) plant overgrowth and un-kept vegetation around property; (b) harborage for vermin; (c) cracked and peeling paint compromising all-weather surfacing; (d) front steps and deck boards are loose or rotted to the point of shifting or lifting under foot; (e) broken glass/unsecure windows and glazing around the house structure and the detached garage structure on the property; (f) unsecure doors into home on the north side of the home and the west side garage; (g) missing garage door and window; (h) broken overhead garage door; (i) no water service and marked vacant on June 21, 2022 by City of Fargo Assessor's Office; (j) disassembled automobile located in unsecure garage; (k) evidence of squatter activity; and (l) call to Fargo Police Department on July 24, 2022 for suspicious activity around home.

5. That the City Assessor's office to the city of Fargo, inspected the buildings and determined that the estimated cost to repair the buildings would be less than fifty percent (50%) of the buildings' value as established by the Fargo Assessment Department.

6. That the following conditions exist with respect to the Subject Property:

- a. The structures have been damaged or deteriorated for less than fifty percent (50%) of their original value;
- b. The buildings are unsafe, fail to provide the amenities essential to decent living, and is unfit for human habitation; and
- c. The buildings are unsafe or dangerous to the health, moral safety or general welfare of the people of the City of Fargo.

7. That the information in the files of the Inspections Department stemming from various inspections of the property on or before July 25, 2022 and August 1, 2022, in respect to the Subject Property is hereby accepted as true and correct.

8. That Notice of Dangerous Building was posted on the property on or about July 25, 2022, in accordance with Municipal Code § 21-0404. The Notice of Dangerous Building informed the owner and all occupants, if any, that the "dangerous buildings" must be vacated and secured, and the buildings must be demolished or any necessary and valid permits be obtained within thirty (30) days from the date of the notice.

CONCLUSIONS AND ORDER

Based on the foregoing Findings of Fact, the Board of City Commissioners hereby makes the following Conclusions:

1. That the buildings located at 509 21st Street North, Fargo, North Dakota 58102, are hereby found to be “dangerous buildings.”
2. That the owner or anyone claiming to have an ownership interest in said buildings have not sufficiently presented cause why the “dangerous buildings” should not be demolished.
3. That despite being ordered that the buildings on the Subject Property should be demolished or necessary and valid permits be obtained within thirty (30) days of the notice, the owner or anyone else claiming to have an ownership interest in said buildings have failed to do so.

IT IS HEREBY ORDERED that Sylvia A. Borud or anyone else claiming an ownership interest, shall demolish the “dangerous buildings” located at 509 21st Street North, Fargo, North Dakota by December 30, 2022.

It is further ordered that if the owner fails to demolish said “dangerous buildings,” the City Auditor, Building Inspector and City Attorney are directed to act on behalf of the city of Fargo to cause the “dangerous buildings” to be demolished, and the cost of said demolition to be assessed against the Subject Property as provided in Section 21-0405 of the Fargo Municipal Code.

DATED this _____ day of November, 2022.

BOARD of CITY COMMISSIONERS of the CITY
OF FARGO,
a North Dakota Municipal Corporation

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

ATTEST:

Steven Sprague, City Auditor

NOTICE OF ENTRY OF ORDER

TO: SYLVIA A. BORUD AND ALL OTHER PERSONS HAVING INTEREST IN THIS
PROPERTY

RE: PROPERTY AT 509 21ST STREET NORTH, FARGO, NORTH DAKOTA 58102

YOU ARE HEREBY GIVEN NOTICE that you shall have thirty (30) days from the date of service of Findings of Fact and Conclusions and Order of the Board of City Commissioners of the City of Fargo (“Order”) upon you in which to appeal the Order to the District Court of Cass County, North Dakota, or to take such other legal action to enjoin the enforcement of this Order as you deem proper, all in accordance with the appeal procedure set forth in Fargo Municipal Code § 21-0412. You are further given notice that the “dangerous buildings” on the Subject Property may be demolished by the city of Fargo at any time on or after December 30, 2022.

DATED this _____ day of November, 2022.

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

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

ATTEST:

Steven Sprague, City Auditor

CITY ATTORNEY

Nancy J. Morris

ASSISTANT CITY ATTORNEYS

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

(3)

November 10, 2022

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

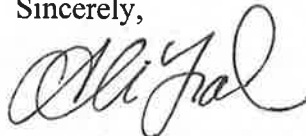
RE: Dangerous Building located at 812 7th Street North, Fargo, North Dakota

Dear Commissioners,

Enclosed for your review and approval are proposed Findings of Fact, Conclusions and Order, and Notice regarding the dangerous building proceeding for the property at 812 7th Street North. At its October 31st, 2022 meeting, the report presented by Shawn Ouradnik, city of Fargo Building Inspections Director, was approved by the Board. As such, the City Attorney's Office was directed to prepare the appropriate Findings of Fact, Conclusions and Order, and Notice.

Suggested Motion: I move to approve the Findings of Fact, Conclusions and Order, and Notice as presented.

Sincerely,



Alissa R. Farol
Assistant City Attorney

Enclosure

cc: Shawn Ouradnik, Inspections Department

FINDINGS OF FACT, CONCLUSIONS AND ORDER
of the
BOARD OF CITY COMMISSIONERS
OF THE CITY OF FARGO

Property Address: 812 7th Street North, Fargo, North Dakota

Property Owner: Brigitte R. Von Budde

A hearing was held before the Board of City Commissioners of the City of Fargo on the 31st day of October, 2022 regarding the property located at 812 7th Street North, Fargo, North Dakota. Shawn Ouradnik, city of Fargo Building Inspections Director, appeared on behalf of the city of Fargo Inspections Department and provided testimony as to the condition of the property. The property owner did not appear.

The Board heard the testimony offered by Shawn Ouradnik, considered the reports, evidence and other information presented, and hereby makes the following Findings of Fact:

FINDINGS OF FACT

1. That Brigitte R. Von Budde is the owner of the following described real property located in the City of Fargo, County of Cass and State of North Dakota:

South Three (3) Feet of Lot Six (6) and North Forty-Seven (47) Feet of Lot Five (5), Block Thirteen (13) of Harwoods 2nd Addition to the city of Fargo

Street address: 812 7th Street North, Fargo, North Dakota, 58102

[hereinafter "Subject Property"].

2. That on September 8, 2022, Greg Conlin, Code Enforcement Inspector to the city of Fargo, inspected the Subject Property and found the building, consisting of a two-story wood-framed structure and attached garage to be a dangerous building within the standards set forth in Article 21-04 of the Fargo Municipal Code and Section 111.1.5 of the International Property Maintenance Code concerning dangerous structures.

3. That the building is unsafe and is a dangerous building in the following respects:

- (a) no water usage since October 16, 2020;
- (b) evidence of squatter activity and service calls to the Fargo Police Department;
- (c) items from the exterior of the home have been moved or are missing;
- (d) both the side and front door are left ajar and unsecured;
- (e) interior of home viewable from front door shows water damage to interior surfaces and smells of urine;
- (f) exterior surfaces are weather damaged and show signs of rotting;
- (g) multiple holes and missing siding on the exterior surfaces of the home allowing harborage and infestation;
- (h) window casings are damaged and have signs of decay;
- (i) front porch is rotting, roofline is leaning and sides are pulling away from structure;
- (j) garage door is damaged and not in track allowing harborage and infestation;
- (k) gutter system is damaged;
- (l) fence is damaged; and
- (m) lot is overgrown with volunteer trees and weeds.

4. That on October 26, 2022, James Haley, Deputy Assessor to the city of Fargo, inspected the building and determined that the estimated cost to repair the building would be more than fifty percent (50%) of the building value as established by the Fargo Assessment Department.

5. That the following conditions exist with respect to the Subject Property:

- a. The structure has been damaged or deteriorated for less than fifty percent (50%) of its original value;
- b. The building is unsafe, fails to provide the amenities essential to decent living, and is unfit for human habitation; and
- c. The building is unsafe or dangerous to the health, moral safety or general welfare of the people of the City of Fargo.

6. That the information in the files of the Inspections Department stemming from various inspections of the property on or before September 9, 2022, in respect to the Subject Property is hereby accepted as true and correct.

7. That Notice of Dangerous Building was posted on the property on or about September 9, 2022, in accordance with Municipal Code § 21-0404. The Notice of Dangerous Building informed the owner and all occupants, if any, that the “dangerous building” must be vacated and secured, and the building must be demolished or any necessary and valid permits be obtained within thirty (30) days from the date of the notice.

CONCLUSIONS AND ORDER

Based on the foregoing Findings of Fact, the Board of City Commissioners hereby makes the following Conclusions:

1. That the building located at 812 7th Street North, Fargo, North Dakota 58102, is hereby found to be “dangerous building.”
2. That the owner or anyone claiming to have an ownership interest in said building has not sufficiently presented cause as to why the “dangerous building” should not be demolished.
3. That despite being ordered that the building on the Subject Property should be demolished or necessary and valid permits be obtained within 30 days of the notice, the owner or anyone else claiming to have an ownership interest in said building have failed to do so.

IT IS HEREBY ORDERED that Brigitte R. Von Budde or anyone else claiming an ownership interest, shall demolish the “dangerous building” located at 812 7th Street North, Fargo, North Dakota by December 30, 2022.

It is further ordered that if the owner fails to demolish said “dangerous building,” the City Auditor, Building Inspector and City Attorney are directed to act on behalf of the city of Fargo to cause the “dangerous building” to be demolished, and the cost of said demolition to be assessed against the Subject Property as provided in Section 21-0405 of the Fargo Municipal Code.

DATED this ____ day of November, 2022.

BOARD of CITY COMMISSIONERS of the CITY
OF FARGO,
a North Dakota Municipal Corporation

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

ATTEST:

Steven Sprague, City Auditor

NOTICE OF ENTRY OF ORDER

TO: BRIGITTE R. VON BUDDE AND ALL OTHER PERSONS HAVING INTEREST IN THIS PROPERTY

RE: PROPERTY AT 812 7TH STREET NORTH, FARGO, NORTH DAKOTA 58102

YOU ARE HEREBY GIVEN NOTICE that you shall have thirty (30) days from the date of service of Findings of Fact and Conclusions and Order of the Board of City Commissioners of the City of Fargo (“Order”) upon you in which to appeal the Order to the District Court of Cass County, North Dakota, or to take such other legal action to enjoin the enforcement of this Order as you deem proper, all in accordance with the appeal procedure set forth in Fargo Municipal Code § 21-0412. You are further given notice that the “dangerous building” on the Subject Property may be demolished by the city of Fargo at any time on or after December 30, 2022.

DATED this _____ day of November, 2022.

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

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

ATTEST:

Steven Sprague, City Auditor

CITY ATTORNEY

Nancy J. Morris

ASSISTANT CITY ATTORNEYS

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

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November 10, 2022

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

RE: Romantix-Fargo, Inc. v. City of Fargo and Nicole Crutchfield

Dear Commissioners,

Please find attached for receive and file a lawsuit commenced in Federal court by Romantix-Fargo, Inc. against the City of Fargo and Nicole Crutchfield. Howard Swanson has been retained as counsel by the North Dakota Insurance Reserve Fund to represent the City and Nicole Crutchfield, named defendants. The plaintiff has now moved for an injunction, to which Mr. Swanson will respond.

SUGGESTED MOTION: I move to receive and file the action Romantix-Fargo, Inc. v. City of Fargo and Nicole Crutchfield.

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

Regards,



Nancy J. Morris

NJM/lmw



701.478.4900 | P
701.478.4330 | F
kennellybusinesslaw.com

1213 NP Avenue, Fargo, ND 58102

Chris Kennelly
Jeff Gunkelman
Ben Williams
Brayden Harwood

October 28, 2022

PERSONAL SERVICE

City Of Fargo, North Dakota
c/o City Commissioner
Fargo City Hall
225 4th Street North
Fargo, ND 58102

Nicole Crutchfield
Fargo City Hall
225 4th Street North
Fargo, ND 58102

RE: Romantix-Fargo, Inc v. City of Fargo and Nicole Crutchfield
Court File No.: 3:22-CV-00183-PDW-ARS
Our File No.: 2991-00001

Enclosed and served on you, please find the following:

1. Notice of Appeal;
2. Civil Cover Sheet;
3. Summons;
4. Complaint (w/Index and Exhibits A-P); and
5. USB drive containing video Exhibits H & N.

Please let me know if you have any questions or issues with the USB drives.

Sincerely,

A handwritten signature in black ink that reads 'Beth Hauger'.

Beth Hauger
Paralegal
beth@kennellybusinesslaw.com

**UNITED STATES DISTRICT COURT
DISTRICT OF NORTH DAKOTA**

ROMANTIX-FARGO, INC.,)
))
Plaintiff,)
))
v.)
))
CITY OF FARGO, NORTH DAKOTA,)
and **NICOLE CRUTCHFIELD,** in her)
official capacity as the Director of Planning)
& Development,)
))
Defendants.)

N.D.C.C. § 28-34-01
NOTICE OF APPEAL OF DECISION
OF LOCAL GOVERNING BODY

Case No.: 3:22-cv-183-PDW-ARS

NOW COMES Plaintiff/Petitioner Romantix-Fargo, Inc. and pursuant to N.D.C.C. § 28-34-01 hereby provides this Notice of Appeal of local governing body. This appeal arises out of a decision of the Fargo City Commission on October 17, 2022, where the City Commission voted to affirm the September 27, 2022 decision of the Fargo Board of Adjustment to affirm the decision of Fargo Planning Director Nicole Crutchfield to deny a Change of Use Permit for 74 Broadway, as set forth in her September 7, 2022 correspondence to Josh Porter and Gill’s Investment, LTD. Neither the minutes of the City Commission or the Board of Adjustment are available as of the date of this Notice of Appeal. The matter is listed as item 36(c) on the City Commission agenda for October 17, 2022 and the City Commission voted 4-1 in favor of a motion to affirm the decision of the Board of Adjustment.

The decision of the City Commission is arbitrary, capricious, unreasonable and based on unlawful process and ordinance provisions.

Dated this 28th Day of October 2022

/s/ Ben Williams
BEN WILLIAMS (ND# 06945)
KENNELLY BUSINESS LAW
1213 NP Ave, Suite 301
Fargo, ND 58102
(701) 478-4900
Ben@KennellyBusinessLaw.com
Counsel for Plaintiff

/s/ Matthew J. Hoffer
MATTHEW J. HOFFER (MI No. P70495)*
Matt@BradShaferLaw.com
SHAFER & ASSOCIATES, P.C.
3800 Capital City Boulevard, Suite 2
Lansing, Michigan 48906
(517) 886-6560
Counsel for Plaintiff

CERTIFICATE OF SERVICE

This suit is presently unserved. This N.D.C.C. § 28-34-01 NOTICE OF APPEAL OF DECISION OF LOCAL GOVERNING BODY will be served on the Defendant City of Fargo and Nicole Crutchfield in conjunction with the Summons and Complaint previously filed in this action, with proof of service of be provided to the Court.

Dated this 28th Day of October 2022

/s/ Ben Williams
BEN WILLIAMS (ND# 06945)
KENNELLY BUSINESS LAW
1213 NP Ave, Suite 301
Fargo, ND 58102
(701) 478-4900
Ben@KennellyBusinessLaw.com
Counsel for Plaintiff

JS 44 (Rev. 06/17)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
Romantix-Fargo, Inc.
(b) County of Residence of First Listed Plaintiff Cass
(c) Attorneys (Firm Name, Address, and Telephone Number)
(1) Benjamin Williams, Kennelly Business Law, 1213 NP Ave, Ste 301, Fargo, ND 58102, (701) 478-4900; (2) Matthew Hoffer, Shafer & Assoc., 3800 Capital City Blvd, Ste 2, Lansing, MI 48906, (517) 866-6560.
DEFENDANTS
City of Fargo, North Dakota and Nicole Crutchfield, in her official capacity as the Director of Planning & Development
County of Residence of First Listed Defendant Cass
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
Table with columns for Plaintiff and Defendant citizenship and incorporation status.

IV. NATURE OF SUIT (Place an "X" in One Box Only)
Grid with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FOREFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation - Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 U.S.C. 1983
Brief description of cause:
Deprivation of rights under First and Fourteenth Amendments; Appeal of administrative decision under state law.

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION DEMAND UNDER RULE 23, F.R.Cv.P.
CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See Instructions):
JUDGE
DOCKET NUMBER

DATE 10/26/2022
FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE
SIGNATURE OF ATTORNEY OF RECORD

Local AO 440 (Rev. 8/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of North Dakota

Romantix-Fargo, Inc.,

Plaintiff

v.

City of Fargo, North Dakota, and Nicole Crutchfield, In her Official Capacity as the Director of Planning and Development

Defendant

Civil Action No. 3:22-cv-183

SUMMONS IN A CIVIL ACTION

To: Above Named Defendant(s)

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Benjamin J. Williams
1213 NP Ave, Suite 301
Fargo, ND 58102

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ROBERT ANSLEY, CLERK OF COURT

/s/ Sarah Cook, Deputy Clerk

Date: October 26, 2022



Signature of Clerk or Deputy Clerk

Local AO 440 (Rev. 6/11) Summons in a Civil Action (Page 2)

Civil Action No. 3:22-cv-183

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify):* _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

UNITED STATES DISTRICT COURT
DISTRICT OF NORTH DAKOTA

ROMANTIX-FARGO, INC.,	)	Case No.:
)	
Plaintiff/Petitioners,)	
)	
v.	)	VERIFIED COMPLAINT FOR
	)	DECLARATORY AND INJUNCTIVE
	)	RELIEF, DAMAGES, AND
CITY OF FARGO, NORTH DAKOTA,	)	ATTORNEY FEES AND COSTS; AND
and NICOLE CRUTCHFIELD , in her	)	NDCC § 28-34-01 APPEAL
official capacity as the Director of Planning)	
& Development,)	
)	
Defendant/Respondent.)	

NOW COMES Romantix-Fargo, Inc., by and through its undersigned counsel, and for its complaint against Defendant City of Fargo, North Dakota and Nicole Crutchfield, in her official capacity, states as follows:

INTRODUCTION

1. This is a civil action wherein Plaintiff prays for a declaratory judgment, damages, attorney fees and costs, and both a preliminary and permanent injunction to restrain and enjoin the Defendants, as well as their agents, employees and representatives, from acting under color of state law to deprive the Plaintiff of their rights, privileges and immunities secured to them by the First and Fourteenth Amendments to the Constitution of the United States. Specifically, Plaintiff seeks to have this Court declare as unconstitutional, both on its face and as applied, and to enjoin, specified aspects of the City of Fargo Land Use Development Code, both on their face and as applied by Defendant.

2. This suit further includes a state law appeal of the Fargo, North Dakota, City Commission decision to deny Plaintiff, a change of use permit to operate its intended business at 74 Broadway North, Fargo, North Dakota. Such appeal is brought to pursuant to North Dakota Century Code § 28-34-01, 28 U.S.C. § 1367, and City of Chicago v. International College of Surgeons, 522 U.S. 156 (1997).

JURISDICTION AND VENUE

3. Jurisdiction is conferred on this Court for the resolution of the substantial constitutional questions presented here by virtue of 28 U.S.C. § 1331, 28 U.S.C. § 1343(a)(4), and 28 U.S.C. § 1343(a)(3), the latter of which provides, in pertinent part, that the district courts shall have original jurisdiction over any civil action authorized by law to be commenced by any person:

“To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States. . . .”

4. The statutory law which further authorizes the institution of this suit, and in particular the damage claims asserted herein, is 42 U.S.C. § 1983, which provides, in part, as follows:

“Every person who, under color of any statute, ordinance, regulation, custom or usage, or any State or Territory of the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. . . .”

5. The prayer for declaratory relief is founded on Rule 57 of the Federal Rules of Civil Procedure as well as 28 U.S.C. § 2201, the latter of which provides that:

“. . . any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. . . .”

6. The jurisdiction of the Court to grant injunctive relief is conferred upon this Court by Rule 65 of the Federal Rules of Civil Procedure, and by 28 U.S.C. § 2202, the latter of which provides:

“Further necessary or proper relief on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment.”

7. Federal question jurisdiction for the request for attorney’s fees and costs is conferred by 42 U.S.C. § 1988.

8. No other action, civil or criminal, is pending in any state court involving the Plaintiff regarding the activities and events at issue here.

9. This suit is authorized by law to redress deprivations under color of state law of rights, privileges, and immunities secured by the First and Fourteenth Amendments to the United States Constitution, and for declaratory and injunctive relief.

10. Supplemental jurisdiction for Plaintiff’s state law claims is supplied by 28 U.S.C. § 1367 because the state law claims are related to the federal claims in such a manner that they form the same case and controversy and because no circumstances are present that would merit the Court declining to exercise supplemental jurisdiction. Plaintiff’s appeal pursuant to NDCC § 28-34-01 and City of Chicago v. International College of Surgeons, 522 U.S. 156 (1997).

11. Venue in this Court is appropriate as the various acts complained of occurred, and the Defendant is located, within the District of North Dakota, and more specifically within Cass County, North Dakota.

PARTIES

12. Plaintiff Romantix-Fargo, Inc. (“Romantix-Fargo”) is a corporation duly organized under the laws of the State of North Dakota and duly authorized to do business in North Dakota.

13. Defendant Fargo, North Dakota (“Fargo” or the “City”), is a municipal government located within and chartered under the laws of the State of North Dakota.

14. Defendant Nicole Crutchfield is the Director of Planning & Development for the City of Fargo, North Dakota. At present, pending further discovery, Ms. Crutchfield is named as a defendant only in that official capacity.

RELEVANT PROVISIONS OF THE FARGO LAND USE DEVELOPMENT CODE

15. Fargo’s Land Development Code is set forth in Chapter 20 of the Fargo Municipal Code (“FMC”). A true and accurate copy of the Land Development Code is attached hereto as **Exhibit A** and incorporated by reference as though fully set forth herein.

16. FMC § 20-1202 generally contains definitions of various terms and phrases used in the Land Development Code.

17. FMC § 20-1202(5) states:

Adult Entertainment Center: An Adult Bookstore, Adult Cinema, Adult Entertainment Facility or any combination thereof.

18. FMC § 20-1202(2) states:

Adult Bookstore: An enclosed building having as a substantial or significant portion of its stock in trade, books, magazines, or other periodicals that are distinguished or characterized by their emphasis on matter depicting or describing specified sexual activities or specified anatomical areas.

19. FMC § 20-1202(3) states:

Adult Cinema: An enclosed building used on a regular basis for presenting pictorial materials or other visual images by way of direct or indirect projection, which materials are distinguished or characterized by an emphasis on the depiction of specified sexual activities or specified anatomical areas, for observation by patrons therein in return for the payment of a consideration, irrespective of the number of patrons who may be able to view the presentation at one time.

20. FMC § 20-1202(4) states:

Adult Entertainment Facility: An enclosed building wherein an admission is charged for entrance, or food or nonalcoholic beverages are sold or intended for consumption, and wherein may be observed live presentation of entertainment distinguished or characterized by an emphasis on matters depicting, describing or relating to specified sexual activities or specified anatomical areas.

21. FMC § 20-1202(59) states:

Specified Anatomical Areas:

- a. Less than completely and opaquely covered:
 - (1) Human genitals, pubic region;
 - (2) Buttocks;
 - (3) Female breast below a point immediately above the top of the areola; and
- b. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

22. FMC § 20-1202(60) states:

Specified Sexual Activities:

- a. Human genitals in a state of sexual stimulations or arousal;
- b. Acts of human masturbation, sexual intercourse, or sodomy; and
- c. Fondling of human genitals, pubic region, buttock or female breast.

23. FMC § 20-0212(B) states that “[u]ses are allowed in the DMU district in accordance with the Use Table of Sec. 20-0401.”

24. The Use Table of FMC 20-0401 is an intersection of uses and districts with categories and types of uses listed in the rows and districts arranged in the columns. The intersection of “Retail Sales and Service” and the “DMU” district is marked by a “P.”

25. According to FMC 20-0401(B) (entitled “P Uses Permitted By-Right”): “A ‘P’ indicates that a use category is allowed by-right in the respective zoning district. These permitted uses are subject to all other applicable regulations of this Land Development Code.”

26. According to FMC 20-0401(E) (entitled “Uses Not Allowed”): “A ‘-’ indicates that a use type is not allowed in the respective zoning district, unless it is otherwise expressly allowed

by other regulations of this Land Development Code.” The “Retail Sales and Service” use category is set forth in FMC § 20-1203(D)(6) as follows:

a. Characteristics

Retail Sales and Service firms are involved in the sale, lease or rent of new or used products to the general public. They may also provide personal services or entertainment, or provide product repair or services for consumer and business goods.

b. Accessory Uses

Accessory uses may include offices, storage of goods, manufacture or repackaging of goods for on-site sale and parking.

c. Examples

Examples include uses from the four following groups:

(1) Sales-Oriented:

Stores selling, leasing, or renting consumer, home and business goods including art, art supplies, bicycles, clothing, dry goods, electronic equipment, fabric, furniture, garden supplies, gifts, groceries, hardware, home improvements, household products, jewelry, pets, pet food, pharmaceuticals, plants, printed material, stationary and videos; food sales and sales or leasing of consumer vehicles including passenger vehicles, motorcycles, light and medium trucks and other recreational vehicles.

(2) Personal Service-Oriented:

Branch banks; emergency medical care; laundromats; photographic studios; photocopy and blueprint services; hair, tanning and personal care services; business, martial arts and other trade schools; dance or music classes; taxidermists; mortuaries; veterinarians; and animal grooming.

(3) Entertainment-Oriented:

Restaurants, cafes, delicatessens, bars and taverns; indoor continuous entertainment activities such as bowling alleys, ice rinks and game arcades; pool halls; dance halls; indoor firing ranges; theaters, health clubs, gyms, membership clubs and lodges; hotels, motels, recreational vehicle parks and other temporary lodging with an average length of stay of less than 30 days.

(4) Repair-Oriented:

Repair of televisions, bicycles, clocks, watches, shoes, guns, appliances and office equipment; photo or laundry drop-off; tailor; locksmith; and upholsterer.

27. The Fargo Land Development Code does not set forth any requirement for a business to obtain a change of use permit prior to opening and operating within Fargo.

28. The Fargo Land Development Code does not set forth any criteria to determine whether a change of use permit should be granted or denied.

29. The Fargo Land Development Code does not set forth any deadlines specifying when a change of use permit must be granted or denied, or stating the effect of a failure to grant or deny the permit within such time.

THE PREMISES

30. Gill's Investment LLP, a North Dakota limited liability partnership, is the owner of real property and improvements located at 74 Broadway North in Fargo North Dakota.

31. Romantix-Fargo, entered into a lease with Gill's Investment LLP, commencing September 1, 2022, for the entire first floor of the building located at 74 Broadway North, consisting of approximately 3,500 square feet (the "Premises").

32. Pursuant to its lease with Gill's Investment, LLP, Romantix-Fargo has had and currently has the right to exclusive right to occupy and use the Premises.

STATEMENT OF FACTS

33. Romantix-Fargo seeks to open and operate a commercial retail establishment at or about the Premises. Romantix-Fargo seeks to operate an establishment that would appropriately be characterized as a Retail Sales and Service use and not as an Adult Bookstore or Adult Entertainment Center within the meaning of the Fargo Land Development code. Romantix-Fargo,

through its agents, have made inquiries of Fargo and its employees and representatives in furtherance of understanding and complying with the Fargo Land Development Code.

34. Romantix-Fargo does not intend to maintain or offer for sale upon the property any books, magazines, or periodicals.

35. Romantix-Fargo intends to carry a number of products that are expressive in nature and which it expects its customers to purchase for their expressive or amusement value. Such items include, but are not limited to, bachelor and bachelorette novelties and apparel, balloons with humorous messages and in humorous shapes, board games and card games. These items are presumptively protected by the First Amendment to the United States Constitution.

36. Mark Labertew is the President of Romantix-Fargo, Inc.

37. Joshua Porter is the Vice President of Retail Operations for Progressive Retail Management, Inc.

38. Romantix-Fargo, Inc., is a wholly owned by Progressive Retail Management, Inc.

39. At all times relevant hereto, Joshua Porter acted as an authorized agent of Romantix-Fargo, Inc.

40. Mr. Labertew and Mr. Porter are familiar with the operations of various other separately incorporated businesses operation under the “Romantix” and “Sam & Delilah’s” trade names, including the business operating as “Romantix” at 417 Northern Pacific Avenue in Fargo (“Romantix Northern Pacific”), North Dakota and the business operating as “Sam & Delilah’s” at 1015 38th Street North, in Fargo, North Dakota (“Sam & Delilah’s 38th Street”).

41. On or about February 22, 2019, attorney for Romantix Northern Pacific, Sam & Delilah’s 38th Street, and Romantix-Fargo, Bradley J. Reich, spoke with Kylie Bagley, then a planner with the City of Fargo, regarding the Romantix Northern Pacific and the Sam & Delilah’s

38th Street. Mr. Reich confirmed the substance of his and Ms. Bagley's conversation via an e-mail dated February 22, 2019 and addressed to Ms. Bagley, a copy of which is attached hereto as **Exhibit B**. The confirmatory email (**Ex. B**) states that the owner of those businesses was proposing to "build an 'adult bookstore', 'adult arcade' and 'adult theater'" adjacent to Sam & Delilah's 38th Street.

42. Although Sam & Delilah's 38th Street was located in a district permitting adult entertainment centers, use standards (FMC §§ 20-1202(5), 20-0402(A)(3)) prohibited an adult entertainment center from being located within 1,250 feet of another adult entertainment center.

43. Mr. Reich confirmed with Ms. Bagley via the February 22, 2019 email (**Ex. B**) that so long as Sam & Delilah's removed its "sexually oriented 'books, magazines, and other periodicals' . . . it would not constitute an 'adult bookstore' as that term is defined in Section 20-1202 of the [FMC].

44. On February 27, 2019, Mr. Reich spoke with Ms. Bagley by telephone. Ms. Bagley indicated that the whole planning department had a meeting that morning to make sure everyone was on the same page regarding the Sam & Delilah's proposal. Everyone in the planning department agreed that, as proposed, Sam & Delilah's would not meet the definition of an Adult Bookstore.

45. On March 5, 2019, Ms. Bagley indeed confirmed via email to attorney Reich: "Based on what you have previously described in your emails the planning department does not see an issue with zoning if the new adult bookstore, adult arcade and adult theater were to be placed at 1015 38 St N at this time." A true and accurate copy of this email, along with prior emails in that direct chain, are attached hereto as **Exhibit C** and the same is incorporated by reference as though fully set forth herein.

46. Following attorney Reich's communications with her, Planner Bagley provided Mr. Labertew with a Zoning Confirmation Letter dated June 16, 2021 on or about that date. A true and accurate copy of this Zoning Confirmation Letter, together with its attachments, is attached hereto as **Exhibit D** and is hereby incorporated by reference as though fully set forth herein.

47. The Zoning Confirmation Letter (**Ex. D**) states, in part:

The undersigned certifies that the information contained in this letter is accurate based on or relating to the information supplied; however, neither the undersigned nor the City assumes liability for errors and omissions. All information was obtained from public records which may be inspected during regular business hours. The undersigned hereby certifies the following with respect to the "property," described as parcel number 01-8734-00100-000.

48. The Zoning Confirmation Letter (**Ex. D**) further states, in part:

It appears that the property is intended to be used for an adult bookstore/adult theater and adult arcade. Adult bookstore/adult theater and adult arcade are permitted by right in the LI, Limited Industrial subject to substandard A of Section 20-0402. Based on the attached letter from 2019, it is assumed that the Sam & Delilah's that is to the south of the subject property would remove most of the sexually oriented "books, magazines and other periodicals" which would no longer constitute Sam & Delilah's as an adult bookstore. Therefore the spacing requirement for the proposed Romantix location at 1055 38th Street North would be met.

49. The text of the "attached letter from 2019," as referenced in the Zoning Confirmation Letter (**Ex. D**), is identical to the email previously identified as **Exhibit B**.

50. The project described in the Zoning Confirmation Letter ultimately did not move forward.

51. On or about June 10, 2022, Attorney Reich reached out to Fargo Planning Coordinator Donald Kress and explained that Romantix-Fargo was pursuing opening a store at the Premises.

52. Mr. Reich confirmed his conversation with Mr. Kress by way of an email to Mr. Kress dated June 10, 2022. A true and accurate copy of that email and subsequent emails on June 10, 2022 is attached hereto as **Exhibit E** and is hereby incorporated by reference as though fully set forth herein.

53. In this confirmatory email (**Ex. E**), Mr. Reich stated, in part:

My client is proposing to open a non-adult business at 74 North Broadway Drive in the city of Fargo and we are seeking to confirm that there are no zoning issues with regard to their proposed use.

According to our reading of your zoning code, this business would be a general retail establishment and not an “adult entertainment center” because: (1) It would have no sexually explicit “books, magazines or other periodicals” and therefore, would not fall under the definition of “adult bookstore”; (2) It would have no on-premises viewing (i.e. no arcades or theater), and therefore, would not fall under the definition of “adult cinema”; and (3) It would have no live entertainment, and therefore, would not fall under the definition of “adult facility”.

54. After quoting portions of the Fargo Land Development Code, Mr. Reich further stated:

As we discussed, my client would like to proceed with a lease for these premises, and we would greatly appreciate your confirmation of our understanding of the code that this proposed use would be a permitted use at that location. Thank you in advance for your prompt attention to this matter, and once again, thank you for your courtesy and professionalism.

55. Mr. Kress responded to Mr. Reich by email that same day, June 10, 2020. **Ex. E**.

56. In his response (**Ex. E**), Mr. Kress stated: “74 Broadways is zoned DMU, Downtown Mixed Use. Among the uses permitted by right is retails sales and service, which is described in our Land Development Code (LDC) as”

57. After quoting portions of the Land Development Code, Mr. Kress further stated (**Ex. E**):

Adult uses are not allowed in DMU (LDC Table 20-1401).

Adult uses include adult bookstore, adult cinema, adult entertainment facility, and adult entertainment center.

Business that fit into the retail sales and service use group and do not include any adult uses would be allowed in DMU.

58. Mr. Reich then replied by email (Ex. E) that same day:

Thank you for your response! I appreciate it. As I read your email, you agree with my interpretation of the code, and as such, Romantix would be allowed to open their proposed business at that location, assuming they have no live entertainment (adult facility); no arcade or theater (adult cinema) and no sexually explicit books magazines or other periodicals (adult bookstore). Thank you again for your prompt attention to this matter!

59. Following the June 10, 2022, email exchange between Mr. Reich and Mr. Kress, Romantix Fargo continued to pursue and then entered into a lease for the Premises.

60. On or about August 15, 2022, Gill's Investment, LTD applied for a Change of Use Permit as the owner of the Property. The application sought to change the use classification for the Property to Retail Sales and Service, which is permitted as a by-right use in the DMU.

61. To avoid any confusion, that same day, Mr. Joshua Porter reached out to Assistant Planning Director Mark Williams. After speaking with Mr. Williams by phone, Mr. Porter forwarded to Mr. Williams a copy of Mr. Reich's June 10, 2022, email correspondence with Mr. Kress. A true and accurate copy of Mr. Porter's August 15, 2022 email to Mr. Williams is attached hereto as **Exhibit F** and is hereby incorporated by reference as though fully set forth herein.

62. Also on August 15, 2020, Mr. Porter had followed up with Mr. Williams via email and provided a general description of the anticipated retail store at the Property. A true and accurate copy of this email is attached as **Exhibit G** hereto and is hereby incorporated by reference as though fully set forth herein.

63. Although he was unable to provide a draft floorplan at the time, Mr. Porter stated

(Ex. G):

I can explain the store is approximately 3300 sf. 600 sf will be storage and restroom. 2700 will be retail. 1400 sf will be devoted to apparel. 200 games and gifts. 300 sf to bath and body products. 600 sf will be sexual wellness products. 200 sf to the cash wrap. We will have no adult DVDs, Arcades, or Theaters.

64. On or about August 18, 2022, Mr. Porter attended a Zoom video conference with Mr. Williams and Mayor Tim Mahoney. Mr. Porter, again, confirmed that the store would offer, “no magazines, no DVDs, no services of any kind.” Mayor Mahoney asked Mr. Porter to make arrangements with the Downtown Business Partnership, so that he could address concerns that the store would be like the “ABC Bookstore,” referencing the Romantix at 417 Northern Pacific Avenue that operates as an Adult Bookstore and Adult Cinema. That was the only “problem” identified at the meeting.

65. A true and accurate video recording of the August 18, 2022, Zoom video conference is attached hereto as **Exhibit H** hereto and is hereby incorporated by reference as though fully set forth herein.

66. On or about August 22, 2022, Mr. Porter emailed Mr. Williams, thanked him for the meeting and asking when Mr. Williams would like him to meet with the local business owners. Mr. Porter received no response.

67. On or about August 22, 2022, Mr. Porter learned from Gill’s Investment LTD that there was a problem with the issuance of the change of use permit.

68. On or about August 22, 2022, Mr. Porter then followed up with Mr. Williams via email. A true and accurate copy of this email is attached hereto as **Exhibit I** hereto and is hereby incorporated by reference as though fully set forth herein. Mr. Porter expressed his understanding

that the August 18 conference “ended positively” and asked: “What happened in the last few days?” Mr. Porter further inquired as to why a change of use permit is required when the zoning district “permits retail sales and services.”

69. On or about August 23, 2022, Mr. Porter received a phone call from Planner Nicole Crutchfield. Mr. Crutchfield explained that the change of use permit had been or would be denied because she regarded the business as an Adult Bookstore.

70. Also, on or about August 23, 2022, Mr. Porter followed up with an email to Mr. Williams and Ms. Crutchfield. A true and accurate copy of this email is attached hereto as **Exhibit J** hereto and is hereby incorporated by reference as though fully set forth herein.

71. In the August 23, 2022 email (**Ex. J**), Mr. Porter provided a floorplan and a description of the intended business by product category and approximate square footage:

The space is 3,500 sqft.
Approximate space given to each area:
Cash Wrap / Storage / Dressing Room: 600sf
Apparel / Lingerie / Shoes: 1350sf
Bath / Body: 200sf
Party / Games / Bachelorette: 170sf
Health Aids: 100sf
Sexual Wellness Items: 600sf (less than 20% of floor space)
Advertising / Signage / Mannequins: 480sf

72. **Exhibit J** provides an accurate description of the retail items Romantix-Fargo intends to offer for sale upon the Premises.

73. In the August 23, 2022, email (**Ex. J**), Mr. Porter again expressed that the inventory would include: “No DVDs, No Magazines, No Media, No Viewing Areas, No Theaters of any kind.” Indeed, “[t]he inventory mix will be very similar to the three Enchantasy stores in Fargo operating without any kind of SOB.”

74. By “SOB,” Mr. Porter was referring to the pejorative acronym for a “sexually oriented business,” and by “without any kind of SOB” Mr. Porter was referring to the fact that the referenced Enchantasys stores operate in locations within Fargo that would not be permitted if they were categorized as an adult bookstore or an adult entertainment center.

75. Exasperated, Mr. Porter further wrote (**Ex. J**):

Based on the above interaction with the Fargo Planning Dept; we signed a 7 year lease for the space at 74 Broadway.

We have spent more than \$400,000 on improvements, travel, freight, furniture, and inventory for this store.

We received our sign permit on July 26.

We were issued a sales and Use Tax Permit on July 30.

We have been up front and open about our intentions the whole way through this process.

At no time in this process has anyone dissuaded us from moving forward.

Now one week from opening all of these questions come up???

I have attached several images of our stores interiors, and exteriors for your review.

As mentioned on our call, if it would appease the city and our neighbors, we are willing to place tint on the windows.

If you need any additional information please let me know.

I look forward to hearing from you soon.

76. As stated, Mr. Porter attached to several images (**Ex. J**) of other Romantix-branded stores to provide an example of the upscale, inviting retail space that Romantix-Fargo envisions for the Premises.

77. On or about August 29, 2022, Mr. Porter emailed with Ms. Crutchfield. A true and accurate copy of these emails are attached hereto as **Exhibit K** hereto and is hereby incorporated by reference as though fully set forth herein.

78. In these August 29, 2022 emails with Mr. Crutchfield (**Ex. K**), Mr. Porter requested the Planning Departments definition of “substantial or significant” as used in the definition of an Adult Bookstore.

79. In these August 29, 2022 emails with Mr. Crutchfield (**Ex. K**), Mr. Porter again pointed out that several Enchantays stores in Fargo, which are open and operating, are not lawfully located under the definition of “adult bookstore” that Fargo is applying to Romantix-Fargo’s proposed operation of the Premises.

80. On or about September 7, 2022, Planner Nicole Crutchfield issued a letter to Joshua Porter and Gill’s Investment LTD formally denying the requested change of use application. A true and accurate copy is attached hereto as **Exhibit L** hereto and is hereby incorporated by reference as though fully set forth herein.

81. On or about September 19, 2022, Romantix-Fargo timely appealed the denial of the requested change of use permit by way of an “Appeal of an Administrative Decision” submitted via Fargo Planning & Development.

82. A true and accurate copy of Romantix-Fargo’s Appeal of an Administrative Decision, but without exhibits, is attached hereto as **Exhibit M** hereto and is hereby incorporated by reference as though fully set forth herein.

83. The eleven exhibits to Romantix-Fargo’s Appeal of an Administrative Decision (**Ex. M**), correspond to and are identical to the exhibits hereto as follows: (exhibit hereto:exhibit to Appeal of an Administrative Decision) B:1, C:2, D:3, E:4, F:5, G:6, I:7, J:8, K:9, L:10, P:11.

84. Romantix-Fargo’s Appeal of an Administrative Decision came before the Fargo Board of Adjustment on September 27, 2022. A video recording of the proceedings is attached hereto as **Exhibit N**.

85. At the meeting of the Board of Adjustment, the members struggled to apply the definition of an adult bookstore.

- a. Board of Adjustment member Michael Love explained: “It really boils down to what’s the definition of adult bookstore and you know it’s . . . it’s pretty vague”
- b. Love further commented: “So the definition isn’t exactly clear. I think we’ve established that.
- c. Board of Adjustment member Matthew Borren explained: I still find it difficult to make a determination on something that I’m not fully comprehending, where the line between adult bookstore is and what a retail center. . . . I don’t know that we can define this here today. . . . I don’t how we can make a determination, some judgment without knowing the definition, where that line is. Is that something the city can further define? . . . I’m at a loss.
- d. Boreen further stated: “It seems to me then, if we are stuck on semantics or definitions or anything, it kind goes back to our original questions of what our job here is, is to determine whether or not the city has erred. And if I come down to the answer of I don’t know. Then I think the answer is that we have to vote for this, because we don’t know.

86. At the September 27, 2022, 2022 Board of Adjustment meeting, Planner Crutchfield further explained her decision to deny the change of use permit, stating:

One of the grounding aspects for the planning department when we considered this specific application is the fact that its zoned dmu – downtown mixed use. So any adult-oriented business is not allowed in the downtown mixed use So, as such, since we believe based on the materials presented to us by the applicant . . . is there enough evidence to show us there is some adult-oriented activity there. Therefore, it’s not allowed in downtown mixed use. So that is our line of thinking.

87. At the September 27, 2022, 2022 Board of Adjustment meeting, the Board voted 4-1 to affirm the decision of the City Planner to deny the permit.

88. On or about October 6, 2022, Romantix-Fargo timely appealed the decision of the Board of Adjustment to the Fargo City commission by way of an “Appeal of a Board of Adjustment Decision” submitted via Fargo Planning & Development.

89. A true and accurate copy of Romantix-Fargo’s Appeal of a Board of Adjustment Decision, but without exhibits, it attached hereto as **Exhibit O** hereto and is hereby incorporated by reference as though fully set forth herein.

90. The eleven exhibits to Romantix-Fargo’s Appeal of a Board of Adjustment Decision (**Ex. O**), correspond to and are identical to the exhibits hereto as follows: (exhibit hereto:exhibit to Appeal of a Board of Adjustment Decision) B:1, C:2, D:3, E:4, F:5, G:6, I:7, J:8, K:9, L:10, P:11.

91. Romantix-Fargo’s Appeal of a Board of Adjustment Decision came before the City Commission on October 17, 2022. At that meeting, the City Commission voted 4-1 to affirm the decision of Board of Adjustment.

92. Fargo’s decision to deny the change of use permit for the Premises conflicts with the City’s historical interpretation of the definition of an adult bookstore.

93. Fargo’s decision to deny the change of use permit for the Premises conflicts with the position stated in the Zoning Confirmation Letter June 16, 2021, which stated that a business which removed its books, magazines, and other periodical would no longer constitute an adult bookstore.

94. Fargo’s decision to deny the change of use permit for the Premises conflicts with its historical application of the definition of an adult bookstore. For example, there exists two

Enchantasys locations in Fargo that carry the types of adult-oriented products that Fargo regarded as rendering Romantix-Fargo's proposed operation at the Premises to be an adult bookstore. If these same products were regarded by the City to cause the Enchantasys locations to be classified as Adult Bookstores, they would not be lawful at their current location due to the Land Development Code's requirements in FMC § 20-0402(A) that Adult Entertainment Centers be located at least 1,250 feet from certain specified uses and districts. This is further described in **Exhibit P** hereto, which is hereby incorporated by reference as though fully set forth herein.

COUNT I – VAGUENESS

95. Plaintiff incorporates herein by reference each and every paragraph above as though fully set forth herein.

96. The definition of an Adult Bookstore applies or not based on content, specifically whether the listed items “are distinguished or characterized by their emphasis on matter depicting or describing specific sexual activities or specific anatomical areas.”

97. Fargo administering officials have, at different points in time, interpreted the definition of Adult Bookstore differently as to whether the definition can be triggered by items other than “books, magazines, or other periodicals.”

98. Fargo administering officials, including its Board of Adjustment, have openly struggled to understand the definition of Adult Bookstore.

99. Defendants have applied the definition of Adult Bookstore differently as to different business and different zoning districts.

100. The definition of Adult Bookstore is vague and ambiguous, on its face and as applied, in numerous and various manners including:

- a. The meaning of “substantial or significant.”

- b. The meaning of “portion of its stock in trade, books, magazines, or other periodicals.”
- c. The meaning of “distinguished or characterized by.”
- d. The meaning of "Specified Anatomical Areas.”
- e. The meaning of "Specified Sexual Activities.”

101. Defendants have interpreted the definition of “Adult Entertainment Center,” either by itself or in conjunction other portion of the Fargo Land Development Code, to mean that no adult-oriented activity is permitted in the downtown mixed use district.

102. The vagueness of the terms Adult Bookstore and Adult Entertainment Center violates the First Amendment and the due process clause of the Fourteen Amendment.

103. Defendants have applied the definition of Adult Bookstore against Plaintiff or its interests.

104. The vague definition of Adult Bookstore chills speech and expression by its very existence.

105. Defendants have applied the definition of Adult Entertainment Center against Plaintiff or its interests.

106. All of the actions of Defendants, by and through their agents, employees and representatives, in applying the definition of “Adult Bookstore” and/or “Adult Entertainment Center” against the Plaintiff and its interests, have been undertaken, and will be undertaken, in the course and scope of official duties and under the color of state law.

107. Defendants denied a change of use permit for the premises, in whole or in part, based on the definition of Adult Bookstore.

108. Defendants denied a change of use permit for the premises, in whole or in part, based on the definition of Adult Entertainment Center.

109. As a direct and proximate result of the terms Adult Bookstore and Adult Entertainment Center, and the Defendants' application of those terms to Romantix-Fargo's proposed operation at the Premises, Plaintiff has suffered and will in the future continue to suffer irreparable violations of its fundamental rights under the First and Fourteenth Amendment to the United States Constitution.

110. Absent Defendants being enjoined from applying the terms Adult Bookstore or Adult Entertainment Center against Plaintiff, Plaintiff will continue to suffer irreparable injury.

111. The harm to Plaintiff from the enforcement of the unconstitutional provisions outweighs the Defendants' interest in enforcing unconstitutional ordinance provisions.

112. The public interest favors enforcing and protecting constitutional rights.

113. As a direct and proximate result of the terms Adult Bookstore and Adult Entertainment Center, and the Defendants' application of those terms to Romantix-Fargo's proposed operation at the Premises, Plaintiff has significant and substantial damages, and will in the future suffer significant and substantial damages, including, but not limited to lost business profits; loss of business reputation; and having to incur costs and attorney fees in seeking protection of their constitutional rights asserted herein.

114. As a result of the matters stated in this Count, Defendants are liable to Plaintiff for money damages pursuant to 42 U.S.C. § 1983 in an amount to be determined or for nominal damages.

115. As a result of the matters stated in this Count, Defendants are liable to Plaintiff for their reasonable attorney fees and costs pursuant to 42 U.S.C. § 1988.

116. Defendants are entitled to a declaration that the terms Adult Bookstore and Adult Entertainment Center are unconstitutionally vague and is invalid.

COUNT II – PRIOR RESTRAINT/ZONE OUT – CHANGE OF USE PERMIT

117. Plaintiff incorporates herein by reference each and every paragraph above as though fully set forth herein.

118. There exists no place within the municipal boundaries of Fargo where a new Adult Bookstore or any Adult Entertainment Center may locate as a matter of right.

119. Despite Adult Entertainment Centers, which would include Adult Bookstores, being identified as “by right” uses in certain zoning districts, before an Adult Entertainment Center may open and operate anywhere in the City, the location must be approved by way of Fargo’s *ad hoc* change of use permitting process.

120. The change of use permitting process has no specific or objective criteria for approval. Instead, a change of use permit may be approved or denied in the unfettered discretion of the administering official.

121. The change of use permitting process has no specified or reasonable deadlines for decision.

122. The change of use permitting process is an unconstitutional prior restraint and zone out in violation of the First and Fourteenth Amendments.

123. Defendants have applied the unconstitutional change of use permit requirement against Plaintiff or its interests, including to deny Plaintiff the ability to lawfully open and operate upon the Premises.

124. All of the actions of Defendants, by and through their agents, employees and representatives, in applying the unconstitutional change of use permit requirement against the

Plaintiff and its interests, have been undertaken, and will be undertaken, in the course and scope of official duties and under the color of state law.

125. As a direct and proximate result of the unconstitutional change of use permit requirement, Plaintiff has suffered and will in the future continue to suffer irreparable violations of its fundamental rights under the First and Fourteenth Amendment to the United States Constitution.

126. Absent Defendants being enjoined from applying the unconstitutional change of use permit requirement, Plaintiff will continue to suffer irreparable injury.

127. The harm to Plaintiff from the enforcement of the unconstitutional change of use permit requirement outweighs the Defendants' interest in enforcing unconstitutional ordinance provisions.

128. The public interest favors enforcing and protecting constitutional rights.

129. As a direct and proximate result of the unconstitutional change of use permit requirement, and the Defendants' application of the requirement to Romantix-Fargo's proposed operation at the Premises, Plaintiff has significant and substantial damages, and will in the future suffer significant and substantial damages, including, but not limited to lost business profits; loss of business reputation; and having to incur costs and attorney fees in seeking protection of their constitutional rights asserted herein.

130. As a result of the matters stated in this Count, Defendants are liable to Plaintiff for money damages pursuant to 42 U.S.C. § 1983 in an amount to be determined or for nominal damages.

131. As a result of the matters stated in this Count, Defendants are liable to Plaintiff for their reasonable attorney fees and costs pursuant to 42 U.S.C. § 1988.

132. Defendants are entitled to declaration that the change of use permit requirement is an unconstitutional prior restraint and an unconstitutional zone out, and is invalid.

COUNT III – VIOLATION OF PROCEDURAL DUE PROCESS
CHANGE OF USE PERMIT

133. Plaintiff incorporates herein by reference each and every paragraph above as though fully set forth herein.

134. Plaintiff has a First Amendment interest in offering expressive and amusing items for sale.

135. Plaintiff has standing to assert its customers' First Amendment interests in accessing the expressive and amusing items Plaintiff intends to offer for sale.

136. Plaintiff has a liberty interest in offering for sale various intimacy aids and sexual wellness products.

137. Plaintiff has standing to assert its customer's liberty interests in accessing the various intimacy aids and sexual wellness products Plaintiff intends to offer for sale.

138. Because Retail Sales and Services uses are permitted by right in the downtown mixed use district, Plaintiff has an ordinance-created property right in operating a Retail Sales and Service use upon the Premises.

139. Defendants' *ad hoc* change of use permit process, which is not set forth in the FMC and contains no guidelines for submissions or decisions, fails to provide sufficient process.

140. Defendants have applied the unconstitutional change of use permit requirement against Plaintiff and its interests, including to deny Plaintiff the ability to lawfully open and operate upon the Premises.

141. All of the actions of Defendants, by and through their agents, employees and representatives, in applying the unconstitutional change of use permit requirement against the Plaintiff and its interests, have been undertaken, and will be undertaken, in the course and scope of official duties and under the color of state law.

142. As a direct and proximate result of the unconstitutional change of use permit requirement, Plaintiff has suffered and will in the future continue to suffer irreparable violations of its fundamental rights under the First and Fourteenth Amendment to the United States Constitution.

143. Absent Defendants being enjoined from applying the unconstitutional change of use permit requirement, Plaintiff will continue to suffer irreparable injury.

144. The harm to Plaintiff from the enforcement of the unconstitutional change of use permit requirement outweighs the Defendants' interest in enforcing unconstitutional ordinance provisions.

145. The public interest favors enforcing and protecting constitutional rights.

146. As a direct and proximate result of the unconstitutional change of use permit requirement, and the Defendants' application of the requirement to Romantix-Fargo's proposed operation at the Premises, Plaintiff has significant and substantial damages, and will in the future suffer significant and substantial damages, including, but not limited to lost business profits; loss of business reputation; and having to incur costs and attorney fees in seeking protection of their constitutional rights asserted herein.

147. As a result of the matters stated in this Count, Defendants are liable to Plaintiff for money damages pursuant to 42 U.S.C. § 1983 in an amount to be determined or for nominal damages.

148. As a result of the matters stated in this Count, Defendants are liable to Plaintiff for their reasonable attorney fees and costs pursuant to 42 U.S.C. § 1988.

149. Plaintiff is entitled to a declaration that the change of use permit requirement violates procedural due process and is invalid.

**COUNT IV – VIOLATION OF STRICT SCRUTINY
AND INTERMEDIATE SCRUTINY**

150. Plaintiff incorporates herein by reference each and every paragraph above as though fully set forth herein.

151. As defined, the term Adult Bookstore, in conjunctions with other provisions of the Fargo Land Development Code, regulates based on the content of a business or proposed businesses speech or expression and is therefore a content-based restriction on First Amendment activity.

152. As a content-based restriction on First Amendment activity, the definition of Adult Bookstore is presumptively unconstitutional.

153. The definition of Adult Bookstore is not supported by any compelling governmental interest.

154. The definition of Adult Bookstore is not narrowly tailored or the least restrictive means of achieving any compelling governmental interest asserted by Defendants.

155. Even viewed as a content-neutral restriction on speech, the definition of Adult Bookstore furthers no important or substantial governmental interest, is not unrelated to the suppression of speech or expression, and the restriction on speech or expression is greater than essential to further the government's alleged interest.

156. Romantix-Fargo's proposed operation, an upscale retail establishment that offers no onsite consumption or use of its goods or services, is not reasonably likely to engender the types of negative secondary effects sometimes associated with so-called "adult businesses."

157. The definition of Adult Bookstore is therefore unconstitutional under the First and Fourteenth Amendments.

158. All of the actions of Defendants, by and through their agents, employees and representatives, in applying the definition of Adult Bookstore against the Plaintiff and its interests, have been undertaken, and will be undertaken, in the course and scope of official duties and under the color of state law.

159. Defendants denied a change of use permit for the premises, in whole or in part, based on the definition of Adult Bookstore.

160. As a direct and proximate result of the terms Adult Bookstore, and the Defendants' application of that term to Romantix-Fargo's proposed operation at the Premises, Plaintiff has suffered and will in the future continue to suffer irreparable violations of its fundamental rights under the First and Fourteenth Amendment to the United States Constitution.

161. Absent Defendants being enjoined from applying the terms Adult Bookstore against Plaintiff, Plaintiff will continue to suffer irreparable injury.

162. The harm to Plaintiff from the enforcement of the unconstitutional provisions outweighs the Defendants' interest in enforcing unconstitutional ordinance provisions.

163. The public interest favors enforcing and protecting constitutional rights.

164. As a direct and proximate result of the term Adult Bookstore Defendants' application of the term to Romantix-Fargo's proposed operation at the Premises, Plaintiff has significant and substantial damages, and will in the future suffer significant and substantial

damages, including, but not limited to lost business profits; loss of business reputation; and having to incur costs and attorney fees in seeking protection of their constitutional rights asserted herein.

165. As a result of the matters stated in this Court, Defendants are liable to Plaintiff for money damages pursuant to 42 U.S.C. § 1983 in an amount to be determined.

166. As a result of the matters stated in this Court, Defendants are liable to Plaintiff for their reasonable attorney fees and costs pursuant to 42 U.S.C. § 1988.

167. Defendants are entitled to a declaration that the terms Adult Bookstore and Adult Entertainment Center unconstitutional under the First and Fourteenth Amendment.

**COUNT V – NDCC § 28-34-01 APPEAL FROM
DECISION OF FARGO CITY COMMISSION**

168. Plaintiff incorporates herein by reference each and every paragraph above as though fully set forth herein.

169. Plaintiff, pursuant to NDCC § 28-34-01 hereby provides notice of its appeal from the Fargo City Commission decision of October 17, 2022 denying a change of use permit for 74 Broadway North.

PRAYER FOR RELIEF

WHEREFORE, for the forgoing reasons, Plaintiff prays that this Honorable Court enter judgment against Defendant, which would include:

A. Entry of an order declaring that the definitions of Adult Bookstore and Adult Entertainment Center contained in FMC § 20-1202(2),(5) are unconstitutional on their face and as applied to the Plaintiff;

B. Entry of an order declaring that the change of use permitting process is unconstitutional as applied to the Plaintiff;

C. Entry of a preliminary and permanent injunction restraining the Defendants, including their officers, agents, employees, representatives, and all persons acting by, through, or for Defendant, from enforcing and/or applying FMC § 20-1202(2), FMC § 20-1202(5), or the change of use permitting process against Plaintiff or against the business Plaintiff intends to operate upon the Premises;

D. Entry of an order permitting Plaintiff to operate its intended business upon the Premises;

E. Entry of an award of damages against Defendant Rapid City and in favor of the Plaintiff in an amount to which Plaintiff is found to be entitled and/or for nominal damages;

F. Entry of an award of costs and attorney fees incurred herein pursuant to 42 U.S.C. § 1988;

G. Issuance of an order reversing the City Commission decision to deny the requested change of use permit and ordering Defendants to issue the permit as requested ; and

H. Such other and further relief as the Court deems just and proper.

Respectfully Submitted:

Dated: October 25, 2022

/s/ Ben Williams

BEN WILLIAMS (ND# 06945)
Ben@KennellyBusinessLaw.com
KENNELLY BUSINESS LAW
(701) 478-4900
Counsel for Plaintiff

MATTHEW J. HOFFER (MI No. P70495)*
Matt@BradShaferLaw.com
SHAFER & ASSOCIATES, P.C.
3800 Capital City Boulevard, Suite 2
Lansing, Michigan 48906

(517) 886-6560
Counsel for Plaintiff
**Pending admission Pro Hac Vice*

CERTIFICATION/VERIFICATION**OF JOSHUA PORTER**

1. I, Joshua Porter, am the Vice President of Operations for Progressive Retail Management and a duly authorized agent for Romantix, Inc.

2. I am an adult resident of the State of Colorado.

3. I make this verification upon my personal knowledge, unless specifically stated to the contrary.

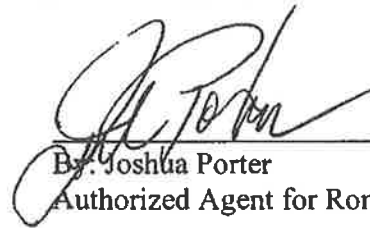
4. I have reviewed the foregoing **VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF, DAMAGES, AND ATTORNEY FEES AND COSTS; AND NDCC § 28-34-01 APPEAL** (the "Complaint") in its entirety.

5. The factual statements in the Complaint are true and accurate to the best of my information, knowledge and belief.

6. Except, I do not verify or authenticate any communications by or with Bradley J. Reich.

I VERIFY UNDER PENALTY OF PERJURY THAT THE FORGOING IS TRUE AND CORRECT.

Executed on: 10/25/2022



By: Joshua Porter
Authorized Agent for Romantix-Fargo, Inc.

CERTIFICATION/VERIFICATION

OF BRADLEY J. REICH, ESQ.

1. I, Bradley J. Reich am an adult resident of the State of Colorado duly admitted to practice law in the State of Colorado,

2. I make this verification upon my personal knowledge, unless specifically stated to the contrary.

3. I have reviewed the foregoing **VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF, DAMAGES, AND ATTORNEY FEES AND COSTS; AND NDCC § 28-34-01 APPEAL** (the "Complaint") in its entirety

4. I hereby verify the authenticity of the exhibits to the Complaint memorialize my communications with the City of Fargo, North Dakota being Exhibits B, C, and F.

I VERIFY UNDER PENALTY OF PERJURY THAT THE FORGOING IS TRUE AND CORRECT.

Executed on: 10-25-22


By: Bradley J Reich

UNITED STATES DISTRICT COURT
DISTRICT OF NORTH DAKOTA

ROMANTIX-FARGO, INC.,	)	Case No.:
)	
Plaintiffs/Petitioners,)	
)	
v.	)	INDEX OF EXHIBITS TO
	)	VERIFIED COMPLAINT FOR
CITY OF FARGO, NORTH DAKOTA,	)	DECLARATORY AND INJUNCTIVE
and NICOLE CRUTCHFIELD , in her	)	RELIEF, DAMAGES, AND
official capacity as the Director of Planning	)	ATTORNEY FEES AND COSTS; AND
& Development,	)	NDCC § 28-34-01 APPEAL
)	
Defendant/Respondent.)	

- Exhibit A** Rapid City’s Land Development Code is set forth in Chapter 20 of the Fargo Municipal Code (“FMC”).
- Exhibit B** February 22, 2019 – Email Between Bradley J. Reich and Kylie Bagley.
- Exhibit C** March 5, 2019 – Bagley’s Email to Reich.
- Exhibit D** June 16, 2021 – Zoning Confirmation Letter
- Exhibit E** June 10, 2022 – Reich’s Email to Kress
- Exhibit F** August 15, 2022 – Porter’s Email to Williams
- Exhibit G** August 15, 2020 – Porter’s Email to Williams (second)
- Exhibit H** August 18, 2022 – Video Recording of Zoom Conference – Porter, Williams, Mahoney
- Exhibit I** August 22, 2022 – Porter’s Emails to Williams
- Exhibit J** August 23, 2022 – Porter’s Email to Williams and Crutchfield
- Exhibit K** August 29, 2022 – Porter’s Email to Crutchfield
- Exhibit L** September 7, 2022 – Crutchfield’s Denial Letter

- Exhibit M** September 19, 2022 – Romantix-Fargo’s Appeal of an Administrative Decision
(Exhibits Omitted)

- Exhibit N** September 27, 2022 - Video Recording of Board of Adjustment Proceedings

- Exhibit O** October 6, 2022 – Romantix-Fargo’s Appeal of a Board of Adjustment Decision
(Exhibits Omitted)

- Exhibit P** Site Review and Photographs of Enchantasys locations

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

5

ORDINANCE NO. _____

1 AN ORDINANCE REZONING CERTAIN PARCELS OF LAND
2 LYING IN CHAS A. ROBERTS ADDITION
3 TO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA

4 WHEREAS, the Fargo Planning Commission and the Board of City Commissioners of the
5 City of Fargo have held hearings pursuant to published notice to consider the rezoning of certain
6 parcels of land lying in the proposed Chas A. Roberts Addition to the City of Fargo, Cass County,
7 North Dakota; and,

8 WHEREAS, the Fargo Planning Commission recommended approval of the rezoning
9 request on October 4, 2022; and,

10 WHEREAS, the rezoning changes were approved by the City Commission on October 31,
11 2022,

12 NOW, THEREFORE,

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

14 Section 1. The following described properties:

15 PT BLK H DESC AS FOLL: BEG AT SW COR OF LT 14; THEN N ALG W LN OF
16 BLK H TO PT 5 FT N OF THE SW COR OF LT 21; THEN S 89 DEG 56 MIN E 185.3
17 FT; THEN S 65 DEG 56 MIN E TO THE INTER WITH THE E LN OF THE W 100 FT
18 OF LT 7; THEN S PARA TO & 100 FT E OF THE W LN OF LTS 7 - 13 TO THE S LN
19 LT 12; THEN W ALG THE S LN OF LT 12 50 FT; THEN S TO THE S LN OF BLK H;
20 THEN W ALG SD S LN TO THE PT OF BEG, BLOCK H, CHAS A ROBERTS
21 ADDITION to the City of Fargo, Cass County, North Dakota;

22 and

23 S 16 FT OF LT 6 & ALL OF LTS 7 - 12 LESS W 12 FT OF S 25 FT OF LT 22 & LESS
THE W 12 FT OF LT 12, BLOCK G, CHAS A ROBERTS ADDITION to the City of
Fargo, Cass County, North Dakota;

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

1 are hereby rezoned from "LC", Limited Commercial, District, repealing the existing "C-O",
2 Conditional Overlay, District, as established by Fargo Municipal Ordinance No. 4276, to "P/I",
3 Public and Institutional, District.

4 Section 2. The following described properties:

5 BEG AT A PT ON N & S 1/4 LN OF SEC 7, TWP 139N, RGE 48W WHICH IS 293 FT
6 N OF EXTENDED S LN OF BLK H, RUNNING W 246 FT ON A LN PARA TO SD S
7 LN OF BLK H, THEN TO W LN OF BLK H, THEN NLY ALG W LN OF SD BLK H
8 TO NW COR OF SD BLK H WHICH IS ON N LN OF SD SW 1/4 OF SD SEC 7,
9 THEN E ALG N LN OF SD SW 1/4 OF SEC 7, TO N-S 1/4 LN OF SD SEC, THEN S
10 ALG SD 1/4 SEC LN TO PT OF BEG, EXC THAT PT LYING IN NE COR OF SD
11 TRACT DED FOR PUBLIC RDWY INCL 6 AVE S, SD ABOVE TRACT DESC: ALL
12 THAT PT OF BLK H & TT & PT OF VAC 5 ST LYING BETWEEN BLKS TT & N-S
13 1/4 SEC LN OF SEC 7 & PT OF VAC 6 ST, BLOCK H, CHAS A ROBERTS
14 ADDITION to the City of Fargo, Cass County, North Dakota;

15 and

16 VAC 8 & 9 AVE S, BLOCK I, CHAS A ROBERTS ADDITION to the City of Fargo,
17 Cass County, North Dakota;

18 are hereby rezoned from "SR-2", Single-Dwelling Residential, District, to "P/I", Public and
19 Institutional, District.

20 Section 3. The following described property:

21 BEG AT A PT 33 FT W OF N/S 1/4 LN OF SEC 7, TWP 139N, RGE 48W & 293 FT N
22 OF EXT S LN OF BLK H, THEN W 213 FT ON A LN PARA TO SUCH EXT S LN OF
23 BLK H RNG THEN NWLY 154.35 FT TO A PT 356 FT N & 50 FT E OF SW COR OF
13, BLK H, THEN S TO A PT 50 FT E OF SW COR OF 13, BLK H, THEN E 160 MIN
TO SW COR OF BLK TT, THEN IN A SELY DIR TO SE COR OF BLK TT, THEN N
ALG E LN OF BLK TT TO PT OF BEG, LESS THE FOLL: E 50 FT OF W 100 FT OF
8, 9, 10, 11 & 12 & ALSO LESS THAT PT OF 6 & 7 LYING WITH IN THE FOLL:
BEG AT A PT ON S BNDRY LN OF 7, 50 FT E OF SW COR OF 7, THEN N 00 DEG
00 MIN E FOR A DIST OF 54.3 FT, THEN S 65 DEG 56 MIN E FOR A DIST OF
54.76 FT, THEN S 00 DEG 00 MIN W FOR A DIST OF 31.97 FT TO A PT ON S
BNDRY LN OF 7, SD PT BG 100 FT E OF THE SW COR OF 7, THEN W ALG THE S

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

LN OF LT 7, 50 FT TO PT OF BEG, PT OF BLOCKS H & TT, CHAS A ROBERTS
ADDITION

1
2 that is currently zoned "P/I", Public and Institutional, District, will hereby retain the base zoning of
3 "P/I", Public and Institutional, District.

4 Section 4. The City Auditor is hereby directed to amend the zoning map now on file in his
5 office so as to conform with and carry out the provisions of this ordinance.

6 Section 5. This ordinance shall be in full force and effect from and after its passage and
7 approval.

8
9 _____
10 Dr. Timothy J. Mahoney, M.D., Mayor

11 (SEAL)

12 Attest:

13 _____
14 Steven Sprague, City Auditor

15 First Reading:
16 Second Reading:
17 Final Passage:



APPLICATION FOR A LOCAL PERMIT OR RESTRICTED EVENT PERMIT
 NORTH DAKOTA OFFICE OF ATTORNEY GENERAL
 LICENSING SECTION
 SFN 9338 (09-2021)

6

✓ 1617
 25.00
 11/7/22

Applying for (check one)
 Local Permit Restricted Event Permit*

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

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

Poker, Twenty-One, and Paddlewheels may be conducted Only with a Restricted Event Permit. Only one permit allowed per year.

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

Name of Organization or Group of People permit is issued to El Zagal Holding Company	Dates of Activity 2/18/2023	If raffle, provide drawing date 2/18/2023	
Organization or Group Contact Person Cal Braun	Title or Position Chairman	Telephone Number 701-532-1123	
Business Address 1429 3rd St N	City Fargo	State ND	ZIP Code 58102
Mailing Address (if different)	City	State	ZIP Code
Site Name (where gaming will be conducted) El Zagal Shrine Center			
Site Address 1429 3rd St N	City Fargo	ZIP Code 58102	County Cass

Description and Retail Value of Prizes to be Awarded

Game Type	Description of Prize	Retail Value of Prize
Raffle	<i>Scheel's</i> 10-Gun Raffles	5000
Raffle	\$250 Raffles Cash	2500
Raffle	\$500 Raffles Cash	2500
Raffle	Big Green Egg, Blackstone Grill, \$300 cash, \$250 cash, \$200 Cash	2500
Total (limit \$40,000 per year)		12,500

Intended Uses of Gaming Proceeds
 Transportation Fund

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

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

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

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

Organization or Group Contact Person

Name Cal Braun	Title Chairperson	Telephone Number 701-532-1123	E-mail Address cbraun@integrityfirst.net
Signature of Organization or Group's Top Official 		Title Chairperson	Date 11-4-22

(9)

**CITY OF FARGO
GENERAL FUND - BUDGET TO ACTUAL
THROUGH OCTOBER 2022
(UNAUDITED)**

	2022 BUDGET	2022 ACTUAL	VARIANCE
REVENUES:			
Taxes	\$ 36,091,276	\$ 35,712,935	\$ (378,341)
Licenses & Permits	5,131,130	5,712,672	581,542
Fines & Traffic Tickets	1,940,384	1,236,873	(703,511)
Intergovernmental Revenue	17,166,156	15,823,278	(1,342,878)
Charges for Services	12,041,070	11,709,058	(332,012)
Interest	1,883,320	2,332,833	449,513
Miscellaneous Revenue	3,982,437	911,484	(3,070,953)
Transfers In	11,027,173	7,527,494	(3,499,679)
Total Revenues	\$ 89,262,946	\$ 80,966,627	\$ (8,296,319)
EXPENDITURES:			
City Administrator	\$ 7,442,516	\$ 7,381,486	\$ 61,030
Finance	7,292,654	7,073,856	218,798
Planning & Development	4,453,280	3,650,455	802,825
Public Works	14,945,006	15,550,886	(605,880)
Fire Department	13,033,479	12,942,667	90,812
Police	20,804,836	19,039,098	1,765,738
Health	10,468,967	11,936,539	(1,467,572)
Library	4,231,804	4,102,300	129,504
Commission	659,369	635,966	23,403
Social Services	652,807	406,009	246,798
Capital Outlay	1,213,088	778,558	434,530
Vehicle Replacement/IT	-	(15,786)	15,786
Contingency	(1,488,799)	(14,630)	(1,474,169)
Transfers Out	3,129,639	2,802,596	327,043
Total Expenditures	\$ 86,838,646	\$ 86,270,000	\$ 568,646
Excess of Revenue Over (Under) Expenditures	\$ 2,424,300	\$ (5,303,373)	\$ (7,727,673)



MEMORANDUM

TO: Board of City Commissioners
FROM: Steven Sprague, City Auditor
SUBJECT: 2022 Downtown Business Improvement District (RFP22161)
DATE: November 9, 2022

The City of Fargo advertised for request for proposals for management of the Downtown Business Improvement District (BID), the sole respondent was the Downtown Community Partnership. Staff feels the Downtown Community Partnership are a responsible bidder and the contract for the management of the BID should be awarded to the Downtown Community Partnership. Detailed plans and specifications are on file in the Auditor's Office.

Recommended Motion:

Approve the Downtown Business Improvement District (BID) agreement for services with the Downtown Community Partnership beginning January 1, 2023 and ending December 31, 2027.

**AGREEMENT FOR DOWNTOWN BUSINESS IMPROVEMENT DISTRICT
SERVICES AND MATERIALS
BETWEEN CITY OF FARGO AND DOWNTOWN COMMUNITY PARTNERSHIP**

THIS AGREEMENT is made and entered into effective the 14th day of November, 2022, by and between the **CITY OF FARGO, a municipal corporation** (hereinafter "City") and Downtown Community Partnership, a private sector development C corporation, whose address is 207 4th Street North, Suite B, Fargo, ND (hereinafter "Contractor").

RECITALS:

WHEREAS, the Board of City Commissioners of the city of Fargo have created Business Improvement District (BID) and certain plans and specifications have been approved for the providing of services relating to the cleaning, safety, maintenance, beautification and promotion within said district and for the administration and oversight of said services and materials which functions are described in the plans and specifications attached hereto as Exhibit A and incorporated as if fully set forth herein; and

WHEREAS, the City entered into a separate Memorandum of Understanding (MOU) with the Downtown Community Partnership, which served as the proposer of the Business Improvement District, for the contribution and investment by the city of Fargo of certain in-kind materials and services for the benefit of the BID, a copy of which is attached hereto for purposes of reference as Exhibit B; and

WHEREAS, the City has engaged in a process of requesting proposals for the providing of the goods and materials described in Exhibit A and the Contractor has been designated as the successful proposer; and

WHEREAS, the City and Contractor wish to enter into a written agreement for the providing of the goods and services described in Exhibit A, said contract to conform with the requirements of N.D.C.C. Chapter 40-22.1;

NOW, THEREFORE, IT IS HEREBY AGREED:

1. Contractor shall provide all the goods and services described on the plans and specifications, Exhibit A.
2. As and for its compensation for the providing of these services, Contractor shall be entitled to an annual amount of compensation of 10% of the annual assessment per annum, payable in quarterly installments, commencing with January 1, 2023.
3. The term of this contract shall be for a period of five (5) years commencing January 1, 2023 and ending December 31, 2027 with the option of five (5) one-year renewals, provided the annual BID Assessment renewal is approved by the Board of City Commission.

4. The City has established the Downtown BID District, Fund 221 into which the City will deposit all proceeds received from the special assessments for the BID. All payments under this contract from the City to Contractor, or to any third parties, shall be paid from the Downtown BID, Fund 221 and any consideration expressed in this contract shall be payable only in warrants drawn on the Downtown BID, Fund 221.

5. Contractor will maintain detailed monthly accounting and annual budgeting records. City will remit to Contractor 95% of total assessments on a quarterly basis at the beginning of the quarter for the first 2 quarters. City will remit to Contractor the remaining funds up to the amount of special assessments collected. Contractor will provide detailed quarterly reports or detailed reports as requested.

6. Contractor shall report to the Board of City Commissioners of the City within 30 days of the end of each calendar year throughout the term of this contract. In addition to an annual report to the Board of City Commissioners, the Contractor shall be obligated to report on any or all activities contemplated under this contract upon request of the Board of City Commissioners.

7. The Board of City Commissioners may suspend the work to be performed by Contractor pursuant to this contract at any time for improper performance and, this contract may be terminated at any time for improper performance. In such case this contract may be re-let or the obligations contained herein be ordered to be re-performed as to all or any of the work contemplated herein that is improperly done, as contemplated by N.D.C.C. § 40-22.1.-10.

8. The work to be performed by Contractor shall be performed in a timely manner and within the term hereof.

9. City of Fargo shall assume and incur no general liability under this contract.

10. The City Auditor is authorized to reject work and materials which are not up to specifications and the acceptance of any job described herein by the City Auditor shall not release the Contractor from liability for any failure to perform work or furnish materials in accordance with the plans and specifications, Exhibit A.

11. Contractor acknowledges that the City Auditor, acting for the City, shall supervise and inspect the work contemplated under this agreement throughout its progress.

12. Contractor acknowledges that, in addition to any rights which the City may have under this contract before establishment and operation of part or all of Business Improvement District after this contract has been awarded and before this contract work has been completed, the City may, with the consent of Contractor, and without advertising for bids, order additional work done by the Contractor of the same character as that which is contracted for herein. Where within or without this Business Improvement District, and upon the same terms and conditions specified in this contract except as to time and performance, and at the same prices for the additional work; provided, that the total price payable to the Contractor for such additional work may not exceed twenty percent (20%) of the amount estimated by the City Auditor for the

municipality to be payable for that character of work under this original contract. See generally, N.D.C.C. § 40-22.1-10.

13. Equal Employment Opportunity. In connection with this proposal and any subsequent contract, the consultant shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, national origin, disability, sex, sexual orientation, or status regarding public assistance. The consultant will take action to insure that its employees are fairly treated during employment without regard to their race, color, creed, religion, national origin, disability, sex, sexual orientation, or status regarding public assistance. Such actions shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising, layoff or termination; rate of pay or other forms of compensation; and selection for training, including internship and/or apprenticeship. The consultant further agrees to insert a similar provision in all subcontracts, except subcontract for standard commercial supplies or raw materials

14. Ownership, Publication, Reproduction, and Use of Materials. All work products of the contractor that result from this contract are the exclusive property of City or Fargo.

15. Conflicts of Interest. No official or employee of the City, who is authorized in his official capacity to negotiate, make, accept, or approve, or to take part in negotiating, making, accepting, or approving any contract or subcontract in connection with a project shall have, directly or indirectly, any financial or other personal interest in any such contract or subcontract.

16. Subcontracting and Assignments. The contractor may subcontract as necessary to accomplish the contract objectives. Subcontracts shall contain all applicable provisions of this agreement. The contractor shall not assign or transfer the contractor's interest in this agreement without the express written consent of the City.

17. Termination. The right is reserved by the City to terminate any agreement with or without cause at any time if the recipient does not comply with the provisions of such agreement.

If the City terminates such agreement, it reserves the right to take such action as it deems necessary and appropriate to protect the interests of the City. Such action may include refusing to make any additional reimbursement of funds and requiring the return of all or part of any funds that have already been disbursed.

18. Persons with Disabilities. The contractor shall ensure that no qualified disabled individual, as defined in 29 USE 706(7) and 49 CFR Part 27 shall, solely by reason of this handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives or benefits from the assistance under this agreement.

20. Hold Harmless. The contractor shall save and hold harmless the City, its officers, agents, employees, and members from all claims, suits, or actions of whatsoever nature resulting from or arising out of the activities of the contractor or its subcontractors, agents, or employees under this agreement. It is hereby understood and agreed that any and all employees of the

contractor and all other persons employed by the contractor in the performance of any of the services required or provided for under this agreement shall not be considered employees of the City, and that any and all claims that may arise under the Worker's Compensation Act on behalf of said employees while so engaged and any and all claims by any third parties as a consequence of any act or omission on the part of said contractor's employees while so engaged in any of the services to be rendered under this agreement by the contractor shall in no way be the obligation or responsibility of the City.

CITY OF FARGO, a municipal corporation,

By: _____
Timothy Mahoney
Its: Mayor

ATTEST:

Steven Sprague, City Auditor

DOWNTOWN COMMUNITY PARTNERSHIP, a
North Dakota non-profit corporation

By: _____
Cindy Graffeo, its Executive Director

EXHIBIT A EXHIBIT B

2023 Business Improvement District

	2023 Budget	City MOU
Prev Year Rollover - Directory Signs	\$38,000.00	
Prev Year Rollover - Unallocated	\$20,640.00	
Assessments	\$699,000.00	
Total Assessment Income	\$757,640.00	
Add Revenue (BID) - Estimated		
Trash / Recyclables Removal - City of Fargo	\$ 40,248.00	\$40,248.00
Trash / Recyclables Removal - Broadway Square	\$ 6,912.00	
Snow Removal - Railroad Tracks	\$ 10,400.00	\$10,400.00
Street Fair Support / Clean-up	\$ 2,500.00	
City of Fargo Irrigation	\$ 2,000.00	
Parade Support / Clean-up	\$ 1,500.00	
Flag Revenue	\$ 1,000.00	
Utility Box Wraps		
Total Additional Income	\$ 64,560.00	
Total Income	\$822,200.00	
Expenses		
Block by Block - Cleaning & Maintenance (70%)	\$512,203.07	
Block by Block - Safety & Hospitality (30%)		
Maintained		
Snow Removal Contract	\$ 4,500.00	
Maintenance Supplies / Repairs	\$ 4,000.00	
Pressure Washing	\$ 20,000.00	
Minor Streetscape Repairs / Benches	\$ 4,000.00	
Directory Signs	\$ 40,000.00	
Trash Cans / Liners / Bags	\$ 3,250.00	
Utilities	\$ 3,000.00	\$3,000.00
Heated Tractor and Attachments	\$ 27,900.00	
Snow Removal / Equipment	\$ 2,000.00	
Lighted Columns	\$ 500.00	
Beautified		
Winter Lights Install / Remove (Christmas Décor)	\$ 27,000.00	
Planter Bed Maintenance	\$ 33,000.00	
Flower Baskets	\$ 17,000.00	
New Zone 1 Setup	\$ 20,000.00	
Winter Lights Supplies	\$ 4,000.00	
Garland Install / Remove (Accelerated)	\$ 4,500.00	
Downtown Art Projects		
Planter Bed Sprinkler System	\$ 2,000.00	
Irrigation (Meters)	\$ 2,000.00	
Promotion		
Flags / Banners	\$ 1,000.00	
Advertising / Public Relations	\$ 4,000.00	
Conference Fees / Member Dues	\$ 500.00	
BID Bike / Info Cart	\$ 250.00	
Miscellaneous	\$ -	
Administrative		
BID Insurance	\$ 4,000.00	
Website / Social Media	\$ 370.90	
Parking Pass	\$ 2,100.00	
New Office Setup	\$ - 5,000.00	
DCP		
Administration Fee	\$ 69,900.03	
Widmer Roel 990 Form Fee	\$ 1,100.00	
Accounting Fee (BID Advisory Meetings)	\$ 250.00	
Main Ave Zone 1 Set-Up and Undefined projects 2023		\$16,352.00
Total Expenses	\$819,324.00	
Net Income	\$ 2,876.00	TOTAL CITY OF FARGO \$70,000.00

**PROPOSAL FOR
DOWNTOWN BID SERVICES**

CITY OF FARGO

Attn: Steve Sprague, City Auditor

Fargo City Hall
225 4th Street North
Fargo, ND 58102

dcp

A. Introduction and Firm Background

The Downtown Community Partnership has served as the Downtown Fargo Business Improvement District Administrator since its inception on behalf of the property owners and the City of Fargo. The DCP would be honored to continue serving this function for the betterment of our community.

The Downtown Community Partnership was originally formed in 1969 with the incorporation of the Fargo Park and Shop. This was later renamed the Downtown Business Association. With the emphasis shifting to a more community-minded approach to downtown revitalization, the name was changed to its current name.

Downtown Community Partnership is a private sector development corporation for the downtown district of Fargo, ND. The mission since its origin is to create and maintain a vital, vibrant downtown. This is a focus that goes beyond typical downtown associations that often solely focus on retail and special events. The DCP encompasses this as well as takes on some of the challenging development issues that face diverse, dense city cores.

On a daily basis, the DCP is involved in the planning and coordination of events and activities that attract thousands to downtown and promotes our city center as a healthy and vibrant center. The DCP also leads efforts within the community to shape public policy that advocates the betterment and enrichment of downtown. We aim to serve as the base liaison between the private sector and public sector. The DCP drives initiatives in marketing downtown as vibrant, clean, and safe.

Major initiatives facilitated by the DCP over the years include the adoption of the ND Renaissance Zone, the Broadway Streetscape Improvement Project, and the Railway Quiet Zone Project. There are countless other initiatives where the DCP has dedicated time and resources to improve the downtown experience over the past 40+ years.

In January of 2010, a meeting was convened with more than 30 downtown stakeholders in attendance. At this meeting, the DCP's mission and vision was updated and an additional focus on vibrancy led to discussions on cleanliness, safety, and maintenance of Downtown Fargo to ensure that the investments made in this area continue to make an impact and increase visitors and activity in the area.

This meeting and discussion was the starting point in which the DCP began study and engagement to determine the feasibility of the formation of the first BID in North Dakota. A year of research,

process design, and meticulous detail was committed completely to the benefit of downtown. The DCP invested time, money, and countless hours of effort toward this initiative in order to explore options to unify, engage, collaborate with the city, and form a strong grassroots style public-private partnership that is illustrative of our hardworking culture and pull-together nature in Fargo. The DCP's strategic plan was updated in 2016, and includes an emphasis on enhancing and strengthening the BID.

The DCP uses community engagement, policy development, communication, promotion, and hard work to advance our downtown as a sustainable city center in our region. Our entire staff not only has a passion for downtown and the core of our city, but also has a passion for connections with people as well as creative approaches to improving downtown. We are all driven by our beautiful environment and the people that live, work, and play downtown. We strive to communicate, grow, evaluate, improve, and advance downtown through building and fostering partnerships in our community.

Type of Ownership and Parent Company Information

The DCP as it exists today was formally incorporated in 2014 as a 501(c)6 nonprofit in North Dakota. We have over 170 members and investors and are governed by a 15 member board of directors. Staff includes an Executive Director, a Community Relations Coordinator, and an Events Coordinator. Annual budget typically runs in the \$525,000-575,000 range. The DCP estimates that our events and activities bring a total of approximately 200,000-225,000 people to downtown Fargo annually.

We are located at:

Downtown Community Partnership
207 4th Street N, Suite B
Fargo, ND 58102
Phone: 701.241.1570

Project Managers - DCP

Cindy Graffeo, Executive Director of the DCP will serve as the primary BID Administrator and "Project Manager." She currently serves as the Downtown BID Administrator and has held this role since July 2021.

Cindy started her career in Economic Development in her hometown of Eau Claire, WI where she worked in the City's Economic Development Division. The City then donated half of her time to Downtown Eau Claire. Part of her role was serving as the staff liaison for all four Business Improvement Districts. This experience provided a solid foundation for knowledge and operations of a BID from the City's perspective. Cindy can be reached at:

Cindy Graffeo, Executive Director
Downtown Community Partnership
207 4th Street N, Suite B
Fargo, ND 58102
Phone: 701.241.1570
Email: ExecutiveDirector@DowntownFargo.com

Cindy Graffeo reports to the DCP Board of Directors. The DCP is overseen by a 15-member Board of Directors (11 voting members, 4 non-voting members). Each member represents a property owner, business owner, resident, or downtown stakeholder organization. Together, they are a diverse group of influential leaders in our community that provide council, oversight, and serve as a resource for the BID Administration. The DCP Board of Directors roster is attached to this RFP response document.

In addition, the DCP convenes a BID Advisory Committee once a month. This Committee is made up of business and property owners from each district/zone of the BID. This group reviews work plans, directs staff, reviews monthly budget reports, and reviews/recommends major actions and annual budgets to the full DCP Board.

B. Response to Administrative Questions

Who will serve as the respondents authorized negotiator?

Cindy Graffeo, Executive Director
Downtown Community Partnership
207 4th Street N, Suite B
Fargo, ND 58102
Phone: 701.241.1570
Email: ExecutiveDirector@DowntownFargo.com

Provide workload and manpower summary to define respondent's ability to meet project timelines.

The DCP, Block By Block, and the City of Fargo collaborate together to plan and budget for each year's staffing budget. The BID Assessment is the overall driver for the yearly budget which translates to the level of services and staff hours that can be provided by the DCP and Block By Block.

Victor Heitkamp is the Operations Manager for Block By Block and works with his Ambassador Team on a weekly and daily basis to plan for the hours needed to accomplish the goals set out by the DCP and the City of Fargo. Victor and his team work side-by-side with the BID Advisory Committee and the DCP Board to coordinate and collaborate with planned events that serve downtown. There are also many events that are planned by other community entities and the City of Fargo which translate to varied staff hour demands throughout the year.

The manpower necessary to keep downtown Clean, Safe, and Maintained changes seasonally. The DCP will contract Block-by-Block for the following staffing levels (contingent upon Zone 1 BID Assessment proposals being approved at the October 17, 2022 City Commission Meeting.)

2023 Peak Season Staffing:

- 1 full-time Operations Manager
- 1 full-time Team Leader
- 4 full-time Maintenance/Cleaning Ambassadors
- 2 full-time Safety and Hospitality Ambassadors

This totals 320 total staffing hours every month from May to September.

2023 Off Season Staffing:

- 1 full-time Operations Manager
- 1 full-time Team Leader
- 2 full-time Maintenance/Cleaning Ambassadors
- 2 full-time Safety and Hospitality Ambassadors

This totals 240 total staffing hours every month from October to April.

Typical staffing hours are detailed here:

Downtown Fargo

Peak

Position	Zone	Task	Hours	Sun	Mon	Tues	Wed	Thurs	Fri	Sat	Total	
Clean/Maint Ambassadors	All	Manual Cleaning	7am - 3:30pm	8	8	8	8				8	40
		Manual Cleaning	7am - 3:30pm		8	8	8	8	8			40
		Manual Cleaning	7am - 3:30pm		8	8	8	8	8			40
		Manual Cleaning	7am - 3:30pm	8			8	8	8	8	8	40
Safety Ambassadors	All	Hospitality / Safety	1:30pm - 10pm	8			8	8	8	8	8	40
		Hospitality / Safety	1:30pm - 10pm	8			8	8	8	8	8	40
Team Leader	All	Working Supervisor	7am - 3:30pm	8			8	8	8	8	40	
Operations Manager	All	Working Manager	7am - 3:30pm		8	8	8	8	8		40	
				40	32	32	64	56	56	40		
Total Scheduled Weekly Hours											320	

Non-Peak

Position	Zone	Task	Hours	Sun	Mon	Tues	Wed	Thurs	Fri	Sat	Total
Clean/Maint Ambassadors	All	Manual Cleaning	7am - 3:30pm		8	8	8	8	8		40
		Manual Cleaning	7am - 3:30pm	8	8	8	8			8	40
Safety Ambassadors	All	Hospitality / Safety	1:30pm - 10pm	8			8	8	8	8	40
		Hospitality / Safety	1:30pm - 10pm	8			8	8	8	8	40
Team Leader	All	Working Supervisor	7am - 3:30pm	8			8	8	8	8	40
Operations Manager	All	Working Manager	7am - 3:30pm		8	8	8	8	8		40
				32	24	24	48	40	40	32	
Total Scheduled Weekly Hours											240

Average Weekly Hours			
	Peak	Non-Peak	Average
# of Weeks	22	30	52
Cleaning Ambassadors	160	80	113.85
Safety Ambassadors	80	80	80
Team Leader	40	40	40
Operations Manager	40	40	40
TOTAL	320	240	273.85

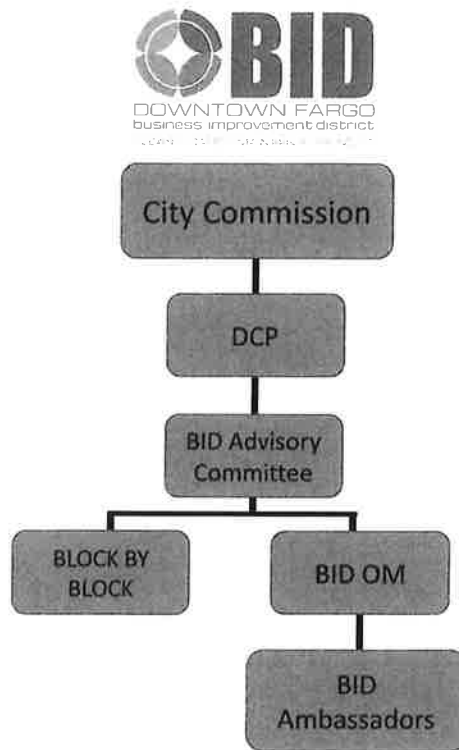
C. Summary of Technical Process

The Downtown Community Partnership will continue to contract with Block By Block to deliver the day to day-services to administer and operate the BID in Downtown Fargo for the duration of the service term. They bring with them the vast experience and services that they gain as they operate in a variety of locations and market sizes throughout the country.

Block by Block is the largest BID administration firm in the United States. They are an independent, third-party contractor that specializes in the unique needs of business districts and

downtowns. The company was founded in 1930 as an event management and private security company, pivoting into downtowns in 1995 when it began servicing Louisville Downtown Partnership.

The DCP began contracting with Block by Block in 2017, and would plan to continue to do so for the length of the BID administration contract term.



Block by Block developed SMART System, a data tracking and analysis software, specifically to meet the needs of business improvement districts, because information is one of the most powerful tools when it comes to proving the value and impact of the BID in our community. The SMART System allows data collection and trend identification for things like: Referrals to Community Resources (Mobile Outreach, PD, etc.) Person of Interest Database, Incident Reporting Module, Ambassador Tracking, Client/Property Owner Interaction Tracking, and much more.

Every month, statistics and reports generated by Block by Block using the SMART System are presented to the BID Advisory Committee, providing real time impact information and setting the stage for data-driven decisions and directives by the group.

Satisfactory Completion of Project

The DCP has successfully served as the BID Administrator since its inception with no interruptions to service. Short of a catastrophic natural disaster impacting Downtown Fargo, the DCP foresees no situations under which we would be unable to fulfill the duties of BID Administrator.

Innovation

As a national service provider operating in a variety of markets across the nation, Block by Block serves as a valuable resource for identifying trends in downtowns as well as options and approaches for addressing challenges. They also provide a wealth of information, tools, equipment, and best practices seen in other communities.

D. Project Staff

The Leadership Team for this project includes the DCP Executive Director, BID Operations Manager, BID Advisory Chair, and DCP Chair.

Cindy Graffeo, DCP Executive Director

Cindy Graffeo, Executive Director of the DCP will serve as the primary BID Administrator and "Project Manager." She currently serves as the Downtown BID Administrator and has held this role since July 2021.

Cindy started her career in Economic Development in her hometown of Eau Claire, WI where she worked in the City's Economic Development Division. The City then donated half of her time to Downtown Eau Claire. Her professional career in marketing, economic development, and nonprofit leadership serves as a solid foundation for her work with the DCP.

Victor Heitkamp, BID Operations Manager

Victor Heitkamp has served as the Operations Manager for the Fargo BID with Block by Block since July 2021. Victor joined the BID after serving for more than 30 years with Fargo Park District. His extensive experience with project, facilities, and business management has been invaluable during his time Downtown.

Jesse Helland, BID Advisory Committee Chair

Jesse Helland is the current BID Advisory Committee Chair. Jesse has also served on the DCP Board since 2019. Jesse has a degree in architecture from NDSU and has spent his career delivering

complex projects in numerous downtown settings. He believes that safe, clean and well-maintained downtowns lead to vibrant city centers and Jesse is committed to continued leadership supporting the mission of the BID. He is currently a Design/Build Project Manager with Rice Companies.

Tami Norgard, DCP Chair

Tami Norgard has served on the DCP Board since 2019, and is the current Chair. She has practiced law at the Vogel Law Firm for 20 years and is one of the firm's managing partners. Tami has supported the community over the years by sitting on various boards for a variety of causes. Her legal experience, and vast network has been an asset for the DCP and BID.

Melissa Miranda, Step-by-Step Accounting

The DCP uses Step-by-Step Accounting, a private accounting firm owned and operated by Melissa Miranda and her team of accountants for both its own financial needs, and the BID as well. Step-by-Step prepares monthly financial statements that are shared with the BID Advisory Committee, as well as attends the meetings monthly to do a financial presentation to the oversight committee. The DCP has contracted with Step-by-Step since 2020, and intends to continue to do so for the length of the BID administration contract term.

E. Similar Project Experience

The Downtown Community Partnership has served as the Downtown Fargo Business Improvement District Administrator since its inception on behalf of the property owners and the City of Fargo.

F. References

The Downtown Community Partnership has served as the Downtown Fargo Business Improvement District Administrator since its inception on behalf of the property owners and the City of Fargo. The following individuals can attest to the work and qualifications of the DCP:

Adrienne Olson, Kilbourne Group
210 Broadway N #300
Fargo, ND 58102
Phone: 701.361.8249

Anna Schmoll, Block by Block

1030 3rd Ave S.
Minneapolis, MN 55404
Phone: 612.618.3313

Victor Heitkamp, Block by Block
207 4th Street North, Suite B
Fargo, ND 58102
Phone: 701.238.1051

Jennifer Brandel, NDSU
School of Design, Architecture and Art
1340 Administration Ave
Fargo, ND 58105
Phone: 701.306.3105

G. Schedule

The Schedule for Services is to begin January 1, 2023 and will extend through December 31st, 2027, contingent upon annual approval of the BID Assessments. Staffing provided for the work during peak and non-peak months are outlined in a previous section.

H. Proof of Insurance

A current Certificate of Insurance is attached.

I. Cost Proposals/Negotiations

The DCP is proposing a 10% administrative fee of the BID Special Assessments. In 2023, this will total approximately \$69,900. The following draft budget reflects the various channels of income the BID has created under the DCP Administration, as well as anticipated expenditures necessary to complete the work. In addition to general administration, board and staff oversight, this 10% administrative fee also covers the following items:

- Office space for the BID - BID Operations Manager Office, locker room for Hospitality and Safety Ambassadors, break room/kitchen, and use of shared common areas
- Use of DCP copier and printing expenses
- Accounting and audit expenses (audit performed every 3 years)
- Internet and utilities

- Office supplies

In addition to the 10% administrative fee, the DCP is asking that the City of Fargo budget/provide approximately \$70,000 in in-kind services for 2023 to be outlined in an updated Memorandum of Understanding. The proposed \$70,000 of in-kind services would cover:

- \$40,000 for trash/recyclables removal
- \$10,000 for snow removal services from the railway tracks
- \$3,000 for utilities
- \$17,000 for special requested projects and unallocated funds

The draft budget outlined below includes several items that are currently in process, such as:

- Zone 1 adjustment special assessments public hearing and approval at the October 17, 2022 City Commission Meeting and final Zone 1 Main Avenue plan to be determined in partnership with City Staff.
- Updated quotes for the wayfinding sign project from the vendor. This project was budgeted for in 2022 but the vendor was unable to complete this summer, accounting for the unusually large carry-over into the 2023 budget.
- The DCP is potentially moving office spaces in 2023. This drafted budget includes \$5,000 for furniture and general set-up of the new BID dedicated spaces in the new building.
- Quotes from third-party vendors for planter bed maintenance and the purchase of new snow removal equipment.

2023 Business Improvement District		
	YTD	2023 Budget
Prev Year Rollover - Directory Signs	\$45,000.00	\$45,000.00
Prev Year Rollover - Unallocated	\$13,640.00	\$13,640.00
Assessments	\$ -	\$699,000.00
Total Assessment Income	\$58,640.00	\$757,640.00
Addl Revenue (BID) - Estimated		
Trash / Recyclables Removal - City of Fargo	\$ -	\$ 40,248.00
Trash / Recyclables Removal - Broadway Square	\$ -	\$ 6,912.00
Snow Removal - Railroad Tracks	\$ -	\$ 10,400.00
Street Fair Support / Clean-up	\$ -	\$ 2,500.00
City of Fargo Irrigation	\$ -	\$ 2,000.00
Parade Support / Clean-up	\$ -	\$ 1,500.00
Flag Revenue	\$ -	\$ 1,000.00
Utility Box Wraps	\$ -	\$ -
Total Additional Income	\$ -	\$ 64,560.00
Total Income	\$58,640.00	\$822,200.00
Expenses		
Block by Block - Cleaning & Maintenance	\$ -	\$510,579.07
Block by Block - Safety & Hospitality	\$ -	\$ -
Maintained		
Snow Removal Contract	\$ -	\$ 4,500.00
Maintenance Supplies / Repairs	\$ -	\$ 4,000.00
Pressure Washing	\$ -	\$ 20,000.00
Minor Streetscape Repairs / Benches	\$ -	\$ 4,000.00
Directory Signs	\$ -	\$ 41,500.00
Trash Cans / Liners / Bags	\$ -	\$ 3,250.00
Utilities	\$ -	\$ 3,000.00
Heated Tractor and Attachments	\$ -	\$ 27,900.00
Snow Removal / Equipment	\$ -	\$ 2,000.00
Lighted Columns	\$ -	\$ 500.00
Beautified		
Winter Lights Install / Remove (Christmas Décor)	\$ -	\$ 27,000.00
Planter Bed Maintenance	\$ -	\$ 33,000.00
Flower Baskets	\$ -	\$ 17,000.00
New Zone 1 Setup	\$ -	\$ 20,000.00
Winter Lights Supplies	\$ -	\$ 4,000.00
Garland Install / Remove (Accelerated)	\$ -	\$ 4,500.00
Downtown Art Projects	\$ -	\$ -
Planter Bed Sprinkler System	\$ -	\$ 2,000.00
Irrigation (Meters)	\$ -	\$ 2,000.00
Promotion		
Flags / Banners	\$ -	\$ 1,000.00
Advertising / Public Relations	\$ -	\$ 4,000.00
Conference Fees / Member Dues	\$ -	\$ 500.00
BID Bike / Info Cart	\$ -	\$ 250.00
Miscellaneous	\$ -	\$ -
Administrative		
BID Insurance	\$ -	\$ 4,000.00
Website / Social Media	\$ -	\$ 370.90
Parking Pass	\$ -	\$ 2,100.00
New Office Setup	\$ -	\$ 5,000.00
DCP		
Administration Fee	\$ -	\$ 69,900.03
Widmer Roel 990 Form Fee	\$ -	\$ 1,100.00
Accounting Fee (BID Advisory Meetings)	\$ -	\$ 250.00
Total Expenses	\$ -	\$819,200.00
Net Income	\$58,640.00	\$ 3,000.00



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

4/1/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Bell Insurance PO Box 1470 Fargo, ND 58107	CONTACT NAME: Sean Johnson	
	PHONE (A/C, No, Ext): (701) 237-6414	FAX (A/C, No): (701) 239-0009
E-MAIL ADDRESS: sgjohnson@bell.insurance		
INSURER(S) AFFORDING COVERAGE		NAIC #
INSURER A: Secura Insurance Companies		
INSURER B:		
INSURER C:		
INSURER D:		
INSURER E:		
INSURER F:		

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSO	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> GEN'L AGGREGATE LIMIT APPLIES PER POLICY <input type="checkbox"/> PROJ <input type="checkbox"/> LOC <input checked="" type="checkbox"/> General Aggregate OTHER			CP3321175	4/1/2022	4/1/2023	EACH OCCURRENCE \$ 1,000,01 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,01 MED EXP (Any one person) \$ 10,01 PERSONAL & ADV INJURY \$ 1,000,01 GENERAL AGGREGATE \$ 2,000,01 PRODUCTS - COMP/OP AGG \$ 2,000,01 \$
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 10,000			CU3321176	4/1/2022	4/1/2023	EACH OCCURRENCE \$ 1,000,01 AGGREGATE \$ 1,000,01 \$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y/N N/A If yes, describe under DESCRIPTION OF OPERATIONS below			CP3321175	4/1/2022	4/1/2023	<input type="checkbox"/> PER STATUTE <input checked="" type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 500,01 E.L. DISEASE - EA EMPLOYEE \$ 500,01 E.L. DISEASE - POLICY LIMIT \$ 500,01

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
 Event-Street Fair - Certificate holder listed as Additional Insured with regards to the General Liability Policy

CERTIFICATE HOLDER City of Fargo 225 4th St. N Fargo, ND 58102	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
--	--



October 17, 2022

Steve Sprague
City Auditor
City of Fargo
225 4th Street North
Fargo, ND 58102

Dear Mr. Sprague,

I am writing in support of Fargo's Downtown Community Partnership's (DCP) proposal to administer the Business Improvement District (BID).

After serving on the Board of Directors of the DCP, with two years as the BID Advisory Board Chair, I have seen firsthand the true partnership between the two organizations working for the betterment of downtown Fargo. Even through staff turnover, the business relationship has remained strong, effective, and mutually beneficial.

As the manager of multiple commercial and residential spaces in downtown, we and our tenants have benefitted greatly from the realization of shared goals between the DCP and BID. They share common missions and stakeholders. This tested and successful administrative relationship fosters alignment in their work and allows both organizations to achieve more, creating efficiencies in the use of time and financial resources.

All this adds up to a better experience for those who live, work, play, and visit downtown Fargo.

Thank you for your consideration of the DCP's desire to continue to administer the BID.

Best Regards,

A handwritten signature in black ink that reads 'Adrienne Olson'.

Adrienne Olson
Vice President Communication
Kilbourne Group
Adrienne@KilbourneGroup.com



October 14, 2022

The City of Fargo
Attn: Steve Sprague
225 4th Street North
Fargo, ND 58102

Dear City Commissioners,

I am writing to express my support for the continued administration of the downtown Fargo Business Improvement District (BID) by the Downtown Community Partnership (DCP) organization.

My accounting firm, Step By Step Accounting, PLLC, has worked with the DCP for the last three years. The DCP and its staff care greatly about the mission of the Fargo BID and have worked proactively to ensure its success during this time.

The DCP is willing and ready to continue its competent and ethical administration of the BID. For instance, it has laid the foundation to continue to administer the BID by securing resources such as accounting/financial support services and office space for future years. Lastly, the DCP has built relationships with many city stakeholders to execute the mission of the BID.

Sincerely,

A handwritten signature in black ink that reads "Melissa L. Miranda". The signature is written in a cursive, flowing style.

Melissa L. Miranda, CPA, Owner
Step By Step Accounting, PLLC
melissa@stepbystepaccounting.com
(701) 403-8176



September 28, 2022

City of Fargo
ATTN: Steve Sprague
225 4th Street North
Fargo, ND 58102

Dear BID RFP Selection Committee,

It is with great pleasure that I write a letter of recommendation on behalf of the Downtown Community Partnership (DCP). I have been the BID Operations Manager since July 2021 and over the past year we have built a great working relationship between the BID and DCP staff. Cindy Graffeo, Executive Director, has a great vision for moving our downtown forward, keeping it fresh and relevant. It is this vision that fits well with the work of the BID and helps us to achieve our mission, to improve and enhance the overall attractiveness and appeal of Downtown Fargo by making sure our downtown is clean, maintained, safe and properly promoted.

The DCP's administration of the BID has created a partnership which is important to the businesses in our downtown. The DCP representation brings a voice to the work we do through their direct connection to the businesses they serve, which is a huge asset for our mission. The DCP has a great understanding of the scope of work we do with a check and balance from the BID Advisory Committee. As the BID Administrator, the DCP works closely with City Officials and our accounting team, Step By Step Accounting, and has a great understanding of how the BID is funded and how the dollars are spent. Our close working relationship also allows events like Street Fair, St. Patrick's Day Parade, Holiday Lights Parade and other smaller events run smoothly.

In conclusion, I am happy to recommend the DCP to continue serving as the BID Administrator. Whether you live, work, or play in Downtown Fargo, it is their commitment and knowledge, along with the work that we do, that keeps our Downtown clean, friendly, inviting, and safe for all. If you have any additional questions or require further information please do not hesitate to contact me.

Sincerely,

Victor Heitkamp
Operations Manager
701-238-1051



September 30, 2022

To whom it may concern,

Block by Block has worked with the Downtown Community Partnership for just over 5 years since June 2017. During this time, it has been a wonderful professional relationship getting to know how best our two organizations can work side by side. We have appreciated the DCP's quick response, communication on needs and most recently flexibility in the changing market with our Ambassador program. With this understanding, we hope to continue this working relationship towards the goals and mission of Downtown Fargo. Block by Block highly recommends a business partnership with the DCP and we appreciate the collaboration we have had over the years.

Anna Schmoll
Regional Vice President
Midwest Region
612-332-1113



2022 Board of Directors Roster

Updated September 30, 2022

NAME	POSITION	ORG	EMAIL	PARTIAL TERM	FIRST TERM	SECOND TERM
Tami Norgard	Chair	Vogel Law	tnorgard@vogellaw.com	N/A	12/31/2019 - 12/31/2022	Eligible
Jesse Helland	BID Advisory Comm. Chair	RICE Construction	jesseholland@gmail.com	N/A	12/31/2019 - 12/31/2022	Eligible
Warren Ackley	Voting Member	Old Broadway	wka@gdfargo.com	N/A	12/31/2019 - 12/31/2022	Eligible
Patrick McShane	Voting Member	Bank Forward	Pat.Mcshane@bankforward.com	N/A	12/31/2019 - 12/31/2022	Eligible
Adrienne Olson	Membership Comm. Chair	Kilbourne Group	adrienne@kilbournegroup.com	N/A	1/1/2017 - 12/31/2019	1/1/2022 - 12/31/2022
Austin Morris	Voting Member	Enclave	austin@enclavecompanies.com	N/A	1/1/2018 - 12/31/2020	1/1/2021 - 12/31/2023
Jodi McGregor	Voting Member	Microsoft	Jodi.McGregor@microsoft.com	12/31/2021 - 12/31/2023	Eligible	Eligible
Tony Grindberg	Vice Chair	Xcel Energy	tony.s.grindberg@xcelenergy.com	N/A	4/15/2021 - 4/15/2024	Eligible
Dan Altenbernd	Events Chair	H2M	danalt@h2m.biz	N/A	4/15/2021 - 4/15/2024	Eligible

Jennifer Brandel	Voting Member	NDSU	jennifer.brandel@ndsu.edu	N/A	1/1/2022 - 12/31/2024	Eligible
Joel Vettel	Voting Member	Sanford Health	joel.vettel@sanfordhealth.org	N/A	1/1/2022 - 12/31/2024	Eligible
John Strand	Non-Voting	City Commission	jstrand@fargond.gov	N/A	7/11/2022 - current	N/A
Dannielle Melquist	Non-Voting	CVB	Dannielle@fargomoorhead.org	N/A	1/21/2021 - current	N/A
Seth Lumley Kaylee Weigel	Non-Voting	NDSU Student Gov't	Seth.Lumley@ndsu.edu Kaylee.Weigel@ndsu.edu	N/A	7/12/2022 - current	N/A
Tonya Scott	Non-Voting	Plains Art Museum	tscott@plainsart.org	N/A	5/12/2022 - current	N/A
Austin Foss	Non-Voting	Downtown Neighborhood Association	austin.james.foss@gmail.com	N/A	5/12/2022 - current	N/A

9

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Project No. FM-19-C1 Type: Change Order #2 & Milestone No. 2 Modifications

Location: Woodcrest Neighborhood Date of Hearing: 10/24/2022

<u>Routing</u>	<u>Date</u>
City Commission	<u>11/14/2022</u>
PWPEC File	<u>X</u>
Project File	<u>Rob Hasey</u>

The Committee reviewed the accompanying correspondence from Project Manager, Rob Hasey, regarding Change Order #2 in the amount of -\$7,842.00. Along with this change order, there is also a time extension to the Milestone No. 2 completion date extending it from September 1, 2022 to October 19, 2022 to allow for the Homeowner to complete home renovations that would interfere with the project.

Staff is recommending approval of Change Order #2 in the amount of -\$7,842.00 and the time extension to the Milestone No. 2 completion date as described above.

On a motion by Bruce Grubb, seconded by Ben Dow, the Committee voted to recommend approval of Change Order #2 and the time extension to Milestone No. 2 to Industrial Builders.

RECOMMENDED MOTION

Concur with recommendations of PWPEC and approve Change Order #2 in the amount of -\$7,842.00, bringing the total contract amount to \$4,279,040.50, and Milestone No. 2 time extension adjusting the completion date from September 1, 2022 to October 19, 2022 to Industrial Builders.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: Sales Tax Funds


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

COMMITTEE

	<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Unanimous</u>
				<u>17</u>
Tim Mahoney, Mayor	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Nicole Crutchfield, Director of Planning	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Steve Dirksen, Fire Chief	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Michael Redlinger, Interim City Administrator	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Bruce Grubb
Ben Dow, Director of Operations	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Steve Sprague, City Auditor	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Brenda Derrig, City Engineer	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Terri Gayhart, Finance Director	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

ATTEST:

C: Kristi Olson


Brenda E. Derrig, P.E.
City Engineer

Memorandum

To: Members of PWPEC
From: Rob Hasey, Project Manager
Cc: Nathan Boerboom, Division Engineer
Date: October 24, 2022
Re: Project No. FM-19-C1 – Change Order #2 Project Phasing & Milestone No. 2 Modifications, Storm Sewer Alignment Modifications

Background:

Project No. FM-19-C1 is for the installation of an earthen levee and storm water lift station in the Woodcrest Neighborhood located along North & South Woodcrest Drive near Willow Road North.

During shop drawing review the precast supplier pointed out manhole ST-4 had to be upsized in diameter due to the angle between the 60" RCP. Houston adjusted the storm sewer alignments to allow the manhole to remain the same diameter. Modifying the alignment caused SS, STS & WM lengths to increase and decrease for a net overall decrease of \$7,842 to the contract.

This project was divided into two phases to allow the northern portion of the project to be constructed while the City continued to acquire the remaining easements on the south half of the project. The City had the option to remove the phase 2 work from the Contract if it wasn't likely that easements for Phase 2 would be secured. To date we are only needing one final easement for Phase 2 of the project. We have asked IBI if they would extend the City's deadline of 9/1/2022 to 12/31/2022 to keep the phase 2 work on the schedule for 2023 construction.

Project Milestone #2 was included in the plans and specifications to have work behind two residences completed by 9/1/2022. One of the two affected homeowners asked to postpone final grading and seeding on their property while their home renovation project completes certain phases that would disturb our grading. The homeowner also wanted to install irrigation ahead of our seeding project. It is recommended to modify Milestone No. 2 date from 9/1/2022 to 10/19/2022.

Recommended Motion:

Approve Change Order #2 to modify milestone & phasing dates along with modifications to the storm sewer alignment in the amount of \$-7,842.00.

Attachments



CHANGE ORDER REPORT
WOODCREST FLOOD RISK MANAGEMENT PROJECT
PROJECT NO. FM-19-C1
STARTING AT 119 SOUTH WOODCREST DRIVE NORTH AND ENDING AT 150 NORTH WOODCREST DRIVE NORTH.

Change Order No 2 **Change Order Date** 10/14/2022
Contractor Industrial Builders Inc

This change is made under the terms of or is supplemental to your present contract, if and when approved, you are ordered to perform the work in accordance with the additions, changes, or alterations hereinafter described.

EXPLANATION OF CHANGE Change Order # 2

Modify SS, STS & WM quantities due to modifying storm sewer alignment (see attached plan sheets showing modified storm sewer alignment). Modify Project Phasing note in Special Instructions to Bidders regarding Phase 2 work. Modify the original date of 9/1/2022 to 12/31/2022 to allow the City additional time to secure remaining easements from property owners for Phase 2 work to be completed in 2023 (New Interim Completion Date #8 below). Modify Milestone No. 2 date from 9/1/2022 to 10/19/2022 to allow for work on adjacent private property to be completed ahead of final grading, seeding and hydro-mulching to occur on their property.

Section	Line No	Item Description	Unit	Orig Cont Qty	Prev C/O Qty	Cont Qty	Curr C/O Qty	Tot Cont Qty	Unit Price (\$)	C/O Ext Price (\$)
Phase 1 Sanitary Sewer	3	Remove Pipe All Sizes All Types	LF	207	207	207	5	212	\$38.00	\$190.00
Phase 1 Sanitary Sewer Sub Total \$190.00										
Phase 1 Water Main	15	F&I Fittings Ductile Iron	LB	164	164	164	-32	132	\$14.00	-\$448.00
	20	F&I Pipe w/GB C900 DR 18 -6" Dia PVC	LF	31	31	31	8	39	\$56.00	\$448.00
	21	F&I Pipe w/GB C900 DR 18 -8" Dia PVC	LF	83	83	83	-17	66	\$70.00	-\$1,190.00
Phase 1 Water Main Sub Total -\$1,190.00										
Phase 1 Storm Sewer	29	F&I Manhole 8' Dia Reinf Conc	EA	3	3	3	1	4	\$36,400.00	\$36,400.00

Section	Line No	Item Description	Unit	Orig Cont Qty	Prev C/O Qty	Prev Cont Qty	Curr C/O Qty	Tot Cont Qty	Unit Price (\$)	C/O Ext Price (\$)
	31	F&I Inlet - Manhole (MHI) 8' Dia Reinf Conc	EA	2		2	-1	1	\$36,400.00	-\$36,400.00
	33	F&I Inlet - Round (RDI) Reinf Conc	EA	2		2	1	3	\$2,460.00	\$2,460.00
	38	F&I Pipe 15" Dia	LF	122		122	32	154	\$64.00	\$2,048.00
	39	F&I Pipe 15" Dia Reinf Conc	LF	134		134	-5	129	\$75.00	-\$375.00
	40	F&I Pipe 60" Dia Reinf Conc	LF	456		456	-11	445	\$700.00	-\$7,700.00
	43	F&I Pipe w/GB 15" Dia Reinf Conc	LF	61		61	-3	58	\$113.00	-\$339.00
	45	F&I Pipe w/GB 60" Dia Reinf Conc	LF	126		126	-4	122	\$920.00	-\$3,680.00
								Phase 1 Storm Sewer Sub Total		-\$7,586.00
Phase 1 Flood Mitigation	84	Fill - Import	CY	13950		13950	48	13998	\$15.50	\$744.00
								Phase 1 Flood Mitigation Sub Total		\$744.00

Summary.
 Source Of Funding Infrastructure Sales Tax Fund 460
 Net Amount Change Order # 2 (\$) -\$7,842.00
 Previous Change Orders (\$) \$149,943.80
 Original Contract Amount (\$) \$4,136,938.70
 Total Contract Amount (\$) \$4,279,040.50

I hereby accept this order both as to work to be performed and prices on which payment shall be based.

CONTRACT DATES

Current Substantial Completion Date	Current Final Completion Date
8/15/2023	9/15/2023
Additional Days Substantial Completion	Additional Days Final Completion
0	0
New Substantial Completion Date	New Final Completion Date
8/15/2023	9/15/2023
New Interim Completion Date #1	Interim Completion Dates
New Interim Completion Date #2	Current Interim Completion Date #1
10/19/2022	
New Interim Completion Date #3	Current Interim Completion Date #2
11/1/2022	9/1/2022
New Interim Completion Date #4	Current Interim Completion Date #3
3/1/2023	11/1/2022
New Interim Completion Date #5	Current Interim Completion Date #4
5/15/2023	3/1/2023
New Interim Completion Date #6	Current Interim Completion Date #5
6/15/2023	5/15/2023
New Interim Completion Date #7	Current Interim Completion Date #6
	6/15/2023
	Current Interim Completion Date #7

Current Interim Completion Date #8

New Interim Completion Date #8

12/31/2022

APPROVED
For Contractor
Title

Industrial Builders, Inc.
Desey M Maska
SR, Project Manager

APPROVED DATE
Department Head
Mayor
Attest

T. Cole



October 11, 2022

Robert Hasey
City of Fargo Engineering
225 4th Street North
Fargo, ND 58102

**Subject: Change Order 2 Recommendations
FM-19-C1 Riverwood Flood Risk Management Project
Project Phasing, Milestone No. 2, and Storm Sewer Modifications**

Mr. Hasey:

Below is a summary of the proposed changes associated with this change order request.

Project Phasing

To allow additional time for the City to acquire the necessary easements for Phase 2 of the project, the City is requesting a modification to Section 2 of the SIBs. The Project Phasing subsection of this SIB states, "The City reserves the right to eliminate the Phase 2 work via change order on or before September 1, 2022." To allow more time for negotiations with landowners, the City has requested that the September 1, 2022 date be changed to December 31, 2022. We have reviewed this request and found that this modification will not adversely effect the overall project.

Milestone No. 2

Industrial Builders, Inc. is requesting a modification to Milestone No. 2 for work between levee station 19+50 and 25+50. The contract documents state that this portion of the project shall be complete by September 1, 2022. At the request of a homeowner along that portion of the project, the Contractor delayed the final grading and seeding in some areas to accommodate the homeowner who is constructing an addition to their house and installing an underground irrigation system. It is our recommendation that the Milestone No. 2 completion date be extended to October 19, 2022.

Storm Sewer Modifications

During our review of the storm sewer shop drawings, the supplier indicated that storm structure ST-4 needed to be upsized due to the angle between the incoming and outgoing 60" RCP which would result in a higher cost for that structure. HEI revised the storm sewer layout to increase the angle and avoid the cost increase. The enclosed table shows the plan quantity revision resulting from the revised storm sewer layout. This change will result in a net decrease of \$7,842.00 to the contract. We recommend approval of these storm sewer modifications as it results in a cost savings to the project.

Rob Hasey
October 11, 2022
Page 2



Sincerely,

A handwritten signature in blue ink, appearing to read 'Michael P. Love', written over a horizontal line.

Michael P. Love, PE
Project Manager
Direct: 701.499.2062
mlove@houstoneng.com

Change Order No. 2 Quantity Revisions Woodcrest Flood Risk Management Project - Phase 1 Project FM-19-C1 5/27/2022							
NO.	ITEM	UNIT	ORIGINAL QUANTITY	CO NO. 2 QUANTITY	NET QUANTITY CHANGE	UNIT PRICE	NET PRICE CHANGE
Phase 1 Sanitary Sewer							
1200-PR51-00001	Remove Pipe All Sizes All Types	LF	207	212	5	\$ 38.00	\$ 190.00
Phase 1 Watermain							
1300-FN3D-00000	F&I Fittings Ductile Iron	LB	164	132	-32	\$ 14.00	\$ (448.00)
1300-QN5V-D1806	F&I Pipe w/GB C900 DR 18 - 6" Dia PVC	LF	31	39	8	\$ 56.00	\$ 448.00
1300-QN5V-D1808	F&I Pipe w/GB C900 DR 18 - 8" Dia PVC	LF	83	66	-17	\$ 70.00	\$ (1,190.00)
Phase 1 Storm Sewer							
1500-AN2C-DF080	F&I Manhole 8' Dia Reinf Conc	EA	3	4	1	\$ 36,400.00	\$ 36,400.00
1500-BN2C-DF080	F&I Inlet - Manhole (MHI) 8' Dia Reinf Conc	EA	2	1	-1	\$ 36,400.00	\$ (36,400.00)
1500-EN2C-00000	F&I Inlet - Round (RDI) Reinf Conc	EA	2	3	1	\$ 2,460.00	\$ 2,460.00
1500-PN50-D0150	F&I Pipe 15" Dia	LF	122	154	32	\$ 64.00	\$ 2,048.00
1500-PN5C-D0150	F&I Pipe 15" Dia Reinf Conc	LF	134	129	-5	\$ 75.00	\$ (375.00)
1500-PN5C-D0600	F&I Pipe 60" Dia Reinf Conc	LF	456	445	-11	\$ 700.00	\$ (7,700.00)
1500-QN5C-D0150	F&I Pipe w/GB 15" Dia Reinf Conc	LF	61	58	-3	\$ 113.00	\$ (339.00)
1500-QN5C-D0600	F&I Pipe w/GB 60" Dia Reinf Conc	LF	126	122	-4	\$ 920.00	\$ (3,680.00)
Phase 1 Flood Mitigation							
2000-J090-00000	Fill - Import	CY	13,950	13,998	48	\$ 15.50	\$ 744.00
Net Amount Change Order No. 2							\$ (7,842.00)
Previous Change Orders							\$ 149,943.80
Original Contract Amount							\$ 4,136,938.70
Total Contract Amount							\$ 4,279,040.50

NOTES:
 1. ALL PIPE DISTANCES AND SLOPES ARE CALCULATED BASED ON CENTER OF STRUCTURE EXCEPT AT THE LIFT STATION, WHICH ARE MEASURED TO THE INSIDE OF THE EXTERIOR WALLS.
 2. MONOLITHIC MANHOLE STYLE RIGID CONNECTOR FACTORY SHALL BE USED TO CONNECT PVC OR PP PIPE TO THE MANHOLE. CONTRACTOR SHALL SUBMIT DETAILS OF APPROVAL PRIOR TO USE.
 3. CASTINGS SHOWN IN THE DETAILS SHALL BE TO THE SPECIFICATIONS OF FARGO CITY. CONTRACTOR MAY SUBMIT ALTERNATIVE MANUFACTURERS FOR APPROVAL.



Proj. No. 60399-0165
 Houston
 Engineering Inc.
 Ph: 701.237.5065

ALL ELEVATIONS ARE BASED ON FARGO CITY DATUM (UNLESS NOTED OTHERWISE)

REVISIONS
 1 07/13/2022



SEAL

Pipe & Structure Schedule

Woodcrest Flood Risk Management Project

Project No. FM-19-C7

DESIGN BY DATE: 06/20/22
 CHECKED BY DATE: 06/20/22
 DRAWN BY DATE: 06/20/22

SECTION NO. SHEET NO.
 050 1

FARGO THE CITY OF FARGO, NORTH DAKOTA

SS Structure Schedule

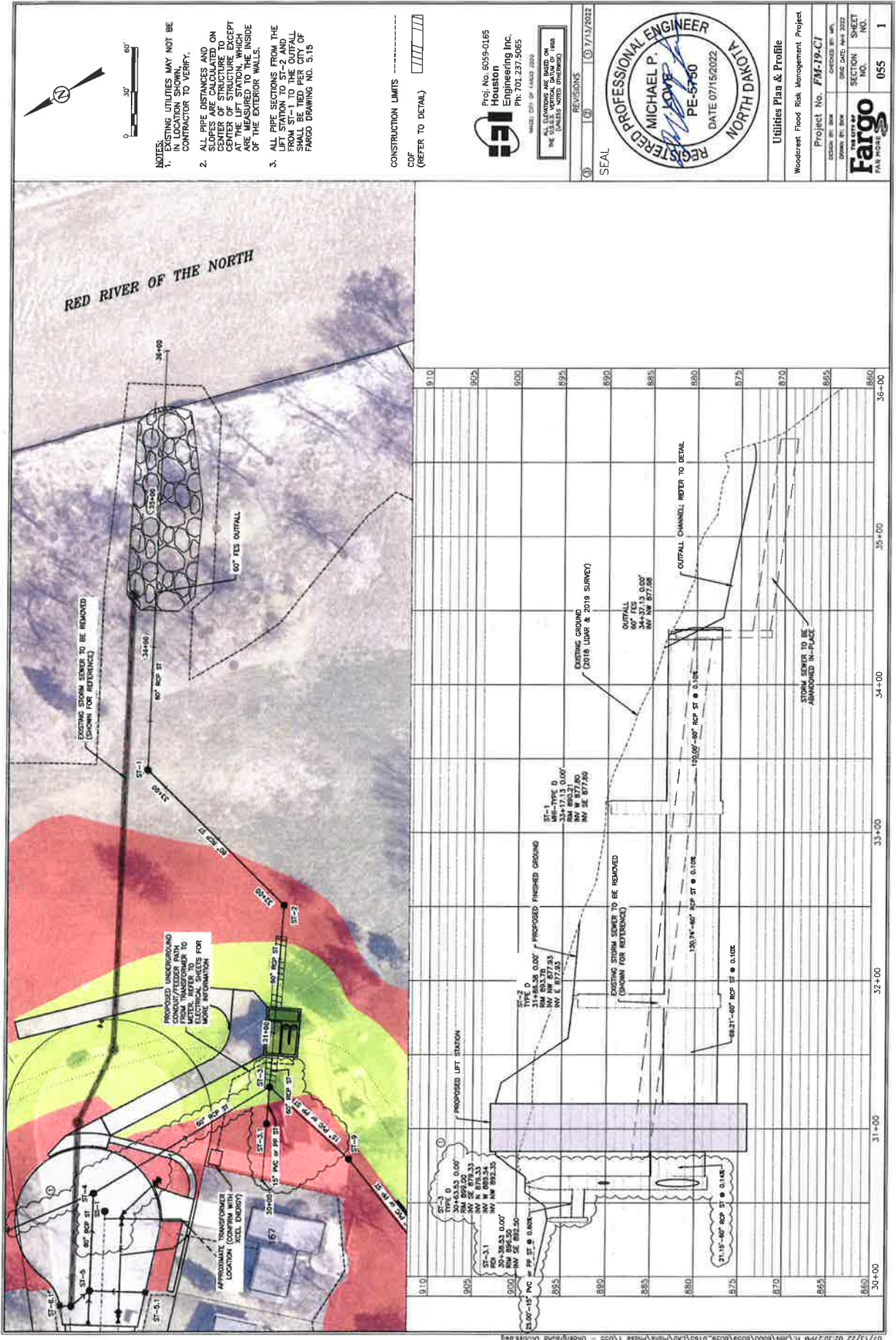
#/Desc.	Details
SS-1 MH	43" RIM 8" VCP NW 886.63

ST Pipe Schedule

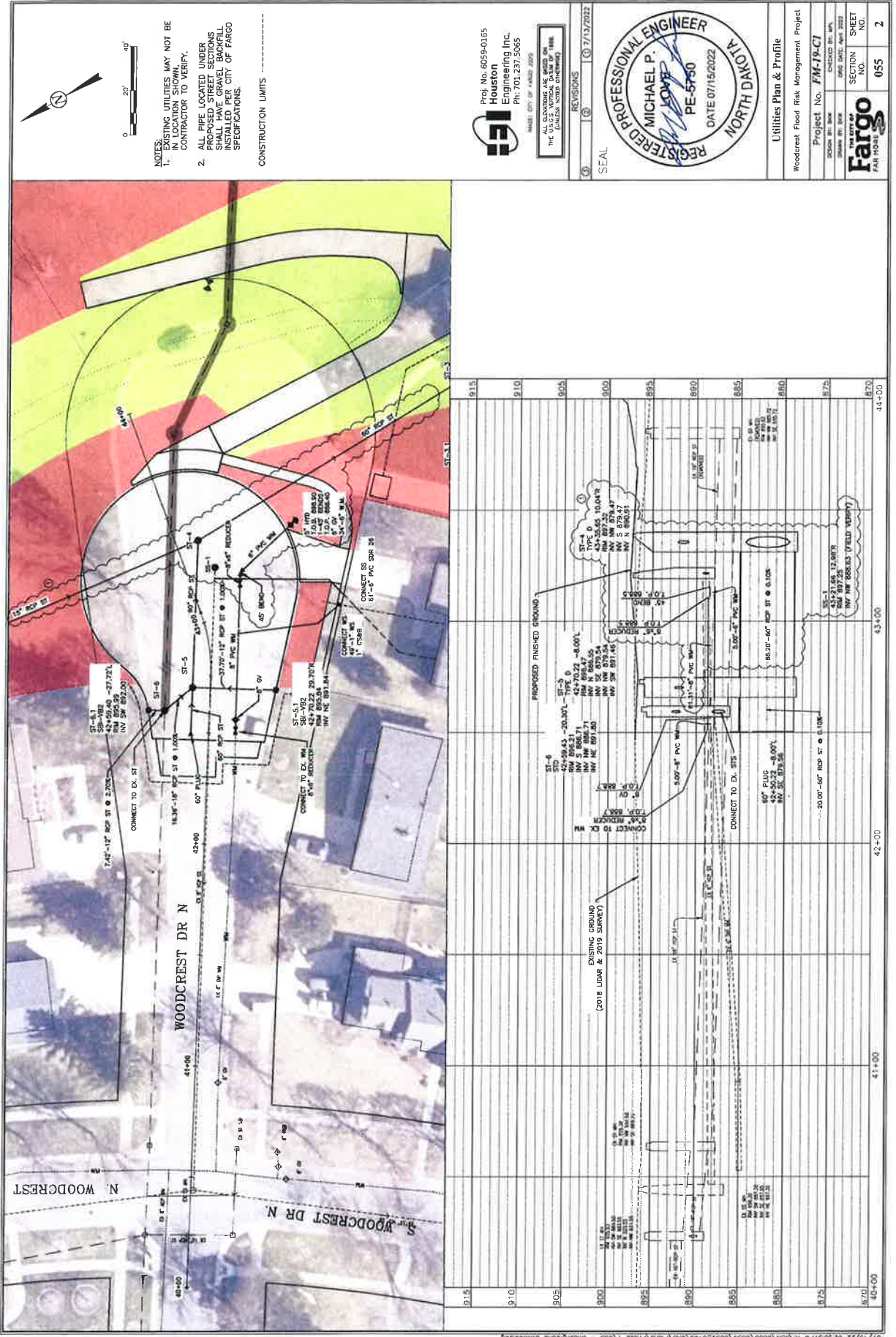
Pipe	Description	Length	Slope
60" PLUG to ST-5	60" RCP	20.00'	0.10%
18" LIFT to ST-2	60" RCP	59.21'	0.10%
ST-1 to OUTFALL	60" RCP	120.00'	0.10%
ST-2 to ST-1	60" RCP	30.00'	0.10%
ST-3 to ST-2	60" RCP	21.15'	0.14%
ST-3 to ST-4	60" RCP or PP	23.00'	0.60%
ST-4 to ST-5	60" RCP	138.86'	0.10%
ST-5 to ST-6	60" RCP	66.20'	0.10%
ST-5 to ST-7	12" RCP	37.70'	1.50%
ST-6 to ST-5	18" RCP	16.36'	1.00%
ST-6 to ST-4	12" RCP	7.42'	2.70%
ST-7 to ST-4	15" RCP	187.36'	0.52%
ST-8 to ST-7	15" PVC or PP	82.35'	0.50%
ST-9 to ST-3	15" PVC or PP	72.51'	0.50%
ST-10 to ST-9	15" PVC or PP	61.70'	0.50%
ST-11 to ST-10	15" PVC or PP	132.70'	0.50%
ST-12 to ST-11	15" PVC or PP	123.16'	0.50%
ST-13 to ST-12	15" PVC or PP	63.37'	0.50%
ST-14 to ST-13	15" PVC or PP	117.57'	0.50%
ST-15 to ST-14	15" PVC or PP	94.58'	0.50%

ST Structure Schedule

#/Type	Details	CASTING
ST-1 MH-TYPE D	33x17x13-0.00" RIM 890.27, 80 60" RCP SE 877.80	R-2573
ST-2 MH-TYPE D	31x16x10-0.00" RIM 892.78 60" RCP NW 877.33	R-1733
ST-3 MH-TYPE D	30x15x10-0.00" RIM 892.00 60" RCP SE 879.33 15" PVC or PP NW 893.54 15" PVC or PP NW 892.35	R-1733
ST-3.1 RO	30x15x10-0.00" RIM 894.50 15" PVC or PP SE 892.50	R-2573
ST-4 MH-TYPE D	42x17x13-0.00" RIM 896.55 60" RCP NW 879.47 60" RCP SE 879.47 15" RCP N 890.81 12" RCP SW 891.46	R-1733
ST-5 MH-TYPE D	42x17x13-0.00" RIM 895.44 12" RCP NE 891.84	R-3067-1B
ST-6 STD	42x19x13-20.30" RIM 896.71 18" RCP NW 886.71 12" RCP NE 891.80	R-1733
ST-6.1 SB-10B2	42x19x13-27.21" RIM 896.66 12" RCP SW 892.00	R-3067-1B
ST-7 RO	60x37.24-0.00" RIM 896.66 15" PVC or PP N 891.89 15" RCP S 891.69	R-1733
ST-8 RO	56x51.81-0.00" RIM 897.45 15" PVC or PP S 892.30	R-2573
ST-9 STD	55x43.86-0.00" RIM 896.25 15" PVC or PP W 890.34 15" PVC or PP E 899.80	R-1733
ST-10 MH-STD	54x11.72-0.00" RIM 897.40 15" PVC or PP W 891.01 15" PVC or PP E 891.82	R-2573
ST-11 MH-STD	53x10.81-0.00" RIM 894.00 15" PVC or PP W 891.01 15" PVC or PP E 891.82	R-2573
ST-13 RO	52x14.84-0.00" RIM 894.00 15" PVC or PP NE 891.84 15" PVC or PP SE 892.53	R-2573
ST-14 RO	51x17.07-0.00" RIM 894.75 15" PVC or PP SW 892.53 15" PVC or PP NE 892.53	R-2573
ST-15 RO	50x22.22-0.00" RIM 897.00 15" PVC or PP NE 893.00	R-2573



07/13/22 02:20:27P \\1\BNA\6000\6039\6039_0165\CD\Plan\Phase 1\055 - Underground Utilities.dwg



NOTES:
 1. EXISTING UTILITIES MAY NOT BE IN LOCATION SHOWN. CONTRACTOR TO VERIFY.
 2. ALL PIPE LOCATED UNDER PROPOSED STREET SECTIONS SHALL HAVE GRAVEL BACKFILL INSTALLED PER CITY OF FARGO SPECIFICATIONS.
 CONSTRUCTION LIMITS -----



REGISTERED PROFESSIONAL ENGINEER
 MICHAEL P. LOVBE
 PE-5750
 DATE 07/15/2022
 NORTH DAKOTA

SEAL	REVISIONS	7/13/2022
Project No. FM-19-C7		
Woodcrest Flood Risk Management Project		
Project No.	FM-19-C7	
Checked By		
Drawn By		
Issue Date	07/15/2022	
Section No.	055	2
Fargo		

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Project No. HD-19-A1 Type: Negative Final Balancing Change Order #3

Location: 42nd Avenue North Date of Hearing: 11/7/2022

<u>Routing</u>	<u>Date</u>
City Commission	11/14/2022
PWPEC File	X
Project File	Rob Hasey

The Committee reviewed the accompanying correspondence from Project Manager, Rob Hasey, for Negative Final Balancing Change Order #3 in the amount of \$-97,977.10, which reconciles the measured quantities used in the field with those estimated for the contract.

Staff is recommending approval of Negative Final Balancing Change Order #3 in the amount of \$-97,977.10, bringing the total contract amount to \$534,003.11.

On a motion by Ben Dow, seconded by Ryan Erickson, the Committee voted to recommend approval of Negative Final Balancing Change Order #3 to LinnCo, Inc.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve Negative Final Balancing Change Order #3 in the amount of \$-97,977.10, bringing the total contract amount to \$534,003.11 to LinnCo, Inc.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: Flood Sales Tax

	<u>Yes</u>	<u>No</u>
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

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

ATTEST:

B. E. Derrig

Brenda E. Derrig, P.E.
City Engineer

C: Kristi Olson

Memorandum

To: PWPEC
From: Rob Hasey, Civil Engineer I, Storm Sewer Utility
Cc: Jody Bertrand, Division Engineer
Date: November 7, 2022
Re: Project # HD-19-A1 – Final Balancing Change Order #3

Attached is Final Balancing Change Order #3 in the amount of \$-97,977.10 for Project No. HD-19-A1. Please refer to the attached final balancing change order which reconciles the measured quantities with those estimated for the contract.

Original Contract:	\$ 575,837.71
Change Order #1	\$ 40,651.00
Change Order #2	\$ 15,491.50
<u>FBCO #3</u>	<u>\$ -97,977.10</u>
Total Contract:	\$ 534,003.11

Recommended Motion:

Approve Final Balancing Change Order #3 in the amount of \$-97,977.10. This project is 100% funded through Flood Sales Tax Fund 460.

*Street Lighting
Sidewalks*

*Design & Construction
Traffic Engineering*

*Truck Regulatory
Flood Plain Mgmt.*

*Mapping & GIS
Utility Locations*



**CITY OF FARGO
ENGINEERING DEPARTMENT
CHANGE ORDER REPORT**

Project No: HD-19-A1 Change Order No: 3
 Project Name: Demolition, Site Restoration & Incidentals
 Date Entered: 10/28/2022 For: LinnCo, Inc.

This change is made under the terms of or is supplemental to your present contract, if and when approved, you are ordered to perform the work in accordance with the additions, changes, or alterations hereinafter described.

EXPLANATION OF CHANGE: Final Balancing

This change order reconciles the estimated quantities used in the contract with the final quantities as measured in the field.

Section	Line No	Item Description	Unit	Orig Cont Qty	Prev C/O Qty	Prev Cont Qty	Curr C/O Qty	Tot Cont Qty	Unit Price (\$)	C/O Ext Price (\$)
Site #1 - Riverwood	4	Inlet Protection - Existing Inlet	EA	20.00	0.00	20.00	-20.00	0.00	170.00	-3,400.00
	119	Topsoil - Import	CY	150.00	0.00	150.00	-144.50	5.50	25.00	-3,612.50
	120	Fill - Contractor Supply	CY	600.00	0.00	600.00	176.00	776.00	18.50	3,256.00
	121	Site Grading	LS	1.00	0.00	1.00	-1.00	0.00	625.00	-625.00
	122	Excavation	CY	200.00	0.00	200.00	-200.00	0.00	11.00	-2,200.00
	123	Mulching Type 1 - Hydro	SY	1,500.00	0.00	1,500.00	-1,500.00	0.00	1.15	-1,725.00
	124	Seeding Type C	SY	1,500.00	0.00	1,500.00	-1,500.00	0.00	1.15	-1,725.00
Site #1 - Riverwood Sub Total (\$)										
-10,031.50										
#1A - #901 42nd Ave N	9	Excavation	CY	200.00	0.00	200.00	-200.00	0.00	11.00	-2,200.00
	11	Fill - Contractor Supply	CY	850.00	0.00	850.00	-215.00	635.00	18.50	-3,977.50
	12	Topsoil - Import	CY	150.00	0.00	150.00	-144.50	5.50	25.00	-3,612.50
	14	Seeding Type C	SY	2,000.00	0.00	2,000.00	-2,000.00	0.00	1.15	-2,300.00
	15	Mulching Type 1 - Hydro	SY	2,000.00	0.00	2,000.00	-2,000.00	0.00	1.15	-2,300.00
#1A - #901 42nd Ave N Sub Total (\$)										
-14,390.00										
#1B - #902 41st Ave N	20	Excavation	CY	200.00	0.00	200.00	-102.00	98.00	11.00	-1,122.00
	22	Fill - Contractor Supply	CY	1,000.00	0.00	1,000.00	3.00	1,003.00	18.50	55.50
	23	Topsoil - Import	CY	150.00	0.00	150.00	-145.00	5.00	25.00	-3,625.00
	25	Seeding Type C	SY	1,600.00	0.00	1,600.00	-1,600.00	0.00	1.15	-1,840.00
	#1B - #902 41st Ave N Sub Total (\$)									
-3,625.00										



CITY OF FARGO
ENGINEERING DEPARTMENT
CHANGE ORDER REPORT

Item #	Description	Unit	Quantity	Rate	Amount	Sub Total	Sub Total (\$)
26	Mulching Type 1 - Hydro	SY	1,600.00	0.00	1,600.00	-1,600.00	1.15
#1B - #902 41st Ave N							-1,840.00
29	Rem & Repl Curb & Gutter	LF	36.00	0.00	36.00	-36.00	100.00
30	F&I Pavement Mix Base Course Asph	TON	30.00	0.00	30.00	-13.00	332.00
31	F&I Pavement Mix Wear Course Asph	TON	10.00	0.00	10.00	-2.00	332.00
32	Inlet Protection - Existing Inlet	EA	7.00	0.00	7.00	-7.00	170.00
Site #2 - Royal Oaks Drive Sub Total (\$)							-9,770.00
39	Excavation	CY	500.00	0.00	500.00	-147.00	11.00
41	Fill - Contractor Supply	CY	1,900.00	0.00	1,900.00	-13.00	18.00
42	Topsoil - Import	CY	330.00	0.00	330.00	-330.00	22.10
44	Seeding Type C	SY	2,200.00	0.00	2,200.00	-2,200.00	1.15
45	Mulching Type 1 - Hydro	SY	2,200.00	0.00	2,200.00	-2,200.00	1.15
#2A - #763, #767, #771, #775 Sub Total (\$)							-14,204.00
54	Excavation	CY	2,500.00	598.00	3,098.00	-598.00	5.75
57	Topsoil - Import	CY	350.00	0.00	350.00	-350.00	25.00
59	Seeding Type C	SY	5,000.00	0.00	5,000.00	-5,000.00	1.15
60	Mulching Type 1 - Hydro	SY	5,000.00	0.00	5,000.00	-5,000.00	1.15
#2B - #701/#709 Sub Total (\$)							-23,688.50
68	Excavation	CY	250.00	0.00	250.00	-136.00	11.00
70	Fill - Contractor Supply	CY	650.00	0.00	650.00	-58.00	18.50
71	Topsoil - Import	CY	250.00	0.00	250.00	-55.00	25.00
73	Seeding Type C	SY	2,800.00	0.00	2,800.00	-1,030.00	1.15
74	Mulching Type 1 - Hydro	SY	2,800.00	0.00	2,800.00	-1,030.00	1.15
75	Inlet Protection - Existing Inlet	EA	5.00	0.00	5.00	-5.00	170.00
Site #3 - 173 South Woodcrest Dr N Sub Total (\$)							-7,163.00
78	Remove Pavement All Thicknesses All Types	SY	242.00	0.00	242.00	72.00	7.00
85	Excavation	CY	250.00	0.00	250.00	-250.00	11.00



CITY OF FARGO
ENGINEERING DEPARTMENT
CHANGE ORDER REPORT

Item #	Material / Description	Unit	Quantity	Unit Price	Amount	Additional Days	Final Completion Date	Substantial Completion Date	Net Amount
Site #4 - #1422 South River Road S									
87	Fill - Contractor Supply	CY	900.00	0.00	900.00	0.00	242.00	1,142.00	18.50
88	F&I Pavement 8" Thick Reinf Conc	SY	58.60	0.00	58.60	94.40	94.40	153.00	84.82
89	F&I Curb & Gutter Standard (Type II)	LF	69.00	0.00	69.00	46.00	46.00	115.00	45.04
90	F&I Sidewalk 4" Thick Reinf Conc	SY	10.00	0.00	10.00	-10.00	-10.00	0.00	66.55
91	Topsoil - Import	CY	170.00	0.00	170.00	-55.00	-55.00	115.00	25.00
93	Seeding Type C	SY	1,900.00	0.00	1,900.00	-866.00	-866.00	1,034.00	1.15
94	Mulching Type 1 - Hydro	SY	1,900.00	0.00	1,900.00	-866.00	-866.00	1,034.00	1.15
95	Inlet Protection - Existing Inlet	EA	7.00	0.00	7.00	-7.00	-7.00	0.00	170.00
96	Embankment	CY	200.00	0.00	200.00	137.00	137.00	337.00	12.50
Site #4 - #1422 South River Road S Sub Total (\$)									
100	Rem & Repl Pavement 10" Thick Reinf Conc	SY	180.00	0.00	180.00	-75.67	-75.67	104.33	235.00
Site #5 - #1213 El Cano Dr S									
108	Fill - Contractor Supply	CY	700.00	0.00	700.00	75.00	75.00	775.00	18.50
109	Topsoil - Import	CY	250.00	0.00	250.00	45.00	45.00	295.00	25.00
111	Seeding Type C	SY	3,000.00	0.00	3,000.00	-1,469.00	-1,469.00	1,531.00	1.15
112	Mulching Type 1 - Hydro	SY	3,000.00	0.00	3,000.00	-1,469.00	-1,469.00	1,531.00	1.15
113	Inlet Protection - Existing Inlet	EA	3.00	0.00	3.00	-3.00	-3.00	0.00	170.00
Site #5 - #1213 El Cano Dr S Sub Total (\$)									
Summary									
Source Of Funding									
Net Amount Change Order # 3 (\$)									
Previous Change Orders (\$)									
Original Contract Amount (\$)									
Total Contract Amount (\$)									

I hereby accept this order both as to work to be performed and prices on which payment shall be based.

CONTRACT TIME

Current Substantial Completion Date	Current Final Completion Date	Additional Days Substantial Completion	Additional Days Final Completion	New Substantial Completion Date	New Final Completion Date



CITY OF FARGO
ENGINEERING DEPARTMENT
CHANGE ORDER REPORT

Description	0.00	0.00	03/01/2021
APPROVED			
For Contractor			
Title			
APPROVED DATE			
Department Head			
Mayor			
Attest			

 Project Manager
 Mayor
 Department Head

11

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Project No. SL-22-A1

Type: Change Order #1

Location: Citywide

Date of Hearing: 11/7/2022

<u>Routing</u>	<u>Date</u>
City Commission	<u>11/14/2022</u>
PWPEC File	<u>X</u>
Project File	<u>Jim Mohr</u>

The Committee reviewed the accompanying correspondence from Project Manager, Jim Mohr, for Change Order #1 in the amount of \$80,854.40 for additional work.

Staff is recommending approval of Change Order #1 in the amount of \$80,854.40, bringing the total contract amount to \$480,131.20.

On a motion by Ben Dow, seconded by Ryan Erickson, the Committee voted to recommend approval of Change Order #1 to Fargo Electric Construction, Inc.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve Change Order #1 in the amount of \$80,854.40, bringing the total contract amount to \$480,131.20 to Fargo Electric Construction, Inc.

PROJECT FINANCING INFORMATION:

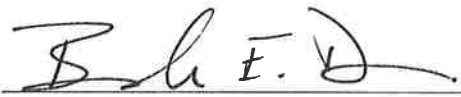
Recommended source of funding for project: Street Lighting & Traffic Utility Funds

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

COMMITTEE

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

ATTEST:



Brenda E. Derrig, P.E.
City Engineer

C: Kristi Olson

Memorandum

To: Members of PWPEC
From: Jim Mohr, Project Engineer
Date: October 25, 2022
Re: Project No. SL-22-A1 – Change Order #1

Background:

Project No. SL-22-A1 is for the repair of various street lighting maintenance issues Citywide.

Fargo Electric is the Prime Contractor on this project.

The attached Change Order #1 in the amount of \$80,854.40, which will increase the total contract amount to \$480,131.20 for additional work, is shown on the Change Order #1.

Recommended Motion:

Approve Change Order #1 in the amount of \$80,854.40.

JDM/jmg
Attachment



CHANGE ORDER REPORT
STREET LIGHTING
PROJECT NO. SL-22-A1
VARIOUS LOCATIONS WITHIN THE CITY OF FARGO

Change Order No 1 Change Order Date 6/23/2022
 Contractor Fargo Electric Const Inc

This change is made under the terms of or is supplemental to your present contract, if and when approved, you are ordered to perform the work in accordance with the additions, changes, or alterations hereinafter described.

EXPLANATION OF CHANGE Change Order # 1
 Add-ons #1-#21

Section	Line No	Item Description	Unit	Orig Cont Qty	Prev C/O Qty	Prev Cont Qty	Curr C/O Qty	Tot Cont Qty	Unit Price (\$)	C/O Ext Price (\$)
Change Order 1	7	F&I Detection Performed Loop	EA	0	0	0	9	9	\$2,700.00	\$24,300.00
	8	Relocate Equipment Cabinet & Contoller	EA	0	0	0	1	1	\$12,780.00	\$12,780.00
	9	F&I Foundation Type V	EA	0	0	0	1	1	\$1,000.00	\$1,000.00
	10	F&I Signal Cable Loop Lead-in	LF	0	0	0	352	352	\$2.00	\$704.00
	11	Repair Street Light Miscellaneous	EA	0	0	0	1	1	\$3,375.00	\$3,375.00
	12	F&I Street Light Foundation	EA	0	0	0	5	5	\$1,000.00	\$5,000.00
	13	Directional Boring	LF	0	0	0	1919	1919	\$8.00	\$15,352.00
	14	Remove Base	EA	0	0	0	4	4	\$500.00	\$2,000.00
	15	F&I Conductor #6 USE Cu	LF	0	0	0	4812	4812	\$2.20	\$10,586.40
	16	F&I Innerduct 1.5" Dia	LF	0	0	0	1919	1919	\$3.00	\$5,757.00
Change Order 1 Sub Total										\$80,854.40

Summary.

Source Of Funding

Net Amount Change Order # 1 (\$) \$80,854.40

Previous Change Orders (\$) \$0.00

Original Contract Amount (\$) \$399,276.80

Total Contract Amount (\$) \$480,131.20

Street Lighting Traffic Control Device Utility Funds

\$80,854.40

\$0.00

\$399,276.80

\$480,131.20

I hereby accept this order both as to work to be performed and prices on which payment shall be based.

APPROVED
For Contractor
Title
[Signature]
Project Manager

APPROVED DATE
Department Head
Mayor
Attest
[Signature]

12

REPORT OF ACTION

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Project No. TM-22-A1

Type: Change Order #2

Location: Citywide

Date of Hearing: 11/7/2022

<u>Routing</u>	<u>Date</u>
City Commission	<u>11/14/2022</u>
PWPEC File	<u>X</u>
Project File	<u>Jim Mohr</u>

The Committee reviewed the accompanying correspondence from Project Manager, Jim Mohr, for Change Order #2 in the amount of \$74,316.50 for additional work.

Staff is recommending approval of Change Order #2 in the amount of \$74,316.50, bringing the total contract amount to \$648,250.50.

On a motion by Ben Dow, seconded by Ryan Erickson, the Committee voted to recommend approval of Change Order #2 to Northstar Safety.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve Change Order #2 in the amount of \$74,316.50, bringing the total contract amount to \$648,250.50 to Northstar Safety.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: Sales Tax

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

COMMITTEE

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

ATTEST:



 Brenda E. Derrig, P.E.
 City Engineer

C: Kristi Olson

Memorandum

To: Members of PWPEC
From: Jim Mohr, Project Manager Traffic
Date: November 2, 2022
Re: Project No. TM-22-A1– Change Order #2
Pavement Markings

Background:

Project No. TM-22-A1 is a citywide pavement-marking project.

Northstar Safety is the Prime Contractor on this project.

The attached Change Order #2, in the amount of \$74,316.50, which increases the total contract amount to \$648,250.500, is for additional work as shown on Change Order #2. A full description of the additional work can be seen on the attached Change Order.

Recommended Motion:

Approve Change Order #2 in the amount of \$74,316.50 to Northstar Safety.

Attachment



**CHANGE ORDER REPORT
PAVEMENT MARKINGS
PROJECT NO. TM-22-A1
VARIOUS LOCATIONS CITY WIDE**

Change Order No 2 Change Order Date 8/12/2022
Contractor Northstar Safety Inc

This change is made under the terms of or is supplemental to your present contract, if and when approved, you are ordered to perform the work in accordance with the additions, changes, or alterations hereinafter described.

EXPLANATION OF CHANGE Change Order # 2
street department asphalt overlays

Section	Line No	Item Description	Unit	Orig Cont Qty	Prev C/O Qty	Prev Cont Qty	Curr C/O Qty	Tot Cont Qty	Unit Price (\$)	C/O Ext Price (\$)
Change Order 2	56	Pavement Markings	LS	0	0	0	90	90	\$10.00	\$900.00
	57	Obliterate Pavement Markings	SF	-126	190	0	64	64	\$5.00	\$320.00
	58	F&I Contrast Tape Messages	SF	0	32	0	32	32	\$40.00	\$1,280.00
	59	F&I Grooved Plastic Film Message	SF	0	0	0	64	64	\$37.00	\$2,368.00
	60	F&I Grooved Plastic Film 8" Wide	LF	0	0	0	338	338	\$11.00	\$3,718.00
	61	F&I Grooved Contrast Film 7" Wide	LF	-1160	840	0	482	482	\$12.00	\$5,784.00
	62	F&I Grooved Contrast Film 7" Wide	LF	-1596	840	0	46	46	\$12.00	\$552.00
	63	Paint Epoxy Line 4" Wide	LF	0	0	0	9101	9101	\$2.50	\$22,752.50
	64	Paint Epoxy Line 4" Wide	LF	0	0	0	170	170	\$2.50	\$425.00
	65	Paint Epoxy Line 8" Wide	LF	0	0	0	2125	2125	\$5.00	\$10,625.00

Section	Line No	Item Description	Unit	Orig Cont Qty	Prev C/O Qty	Prev Cont Qty	Curr C/O Qty	Tot Cont Qty	Unit Price (\$)	C/O Ext Price (\$)
	66	Paint Epoxy Line 16" Wide	LF	0		0	440	440	\$10.00	\$4,400.00
	67	Paint Epoxy Line 24" Wide	LF	0		0	770	770	\$20.00	\$15,400.00
	68	Paint Epoxy Message	SF	0		0	362	362	\$16.00	\$5,792.00
							Change Order 2 Sub Total			\$74,316.50

Summary.

Source Of Funding

Net Amount Change Order # 2 (\$)

Previous Change Orders (\$)

Original Contract Amount (\$)

Total Contract Amount (\$)

Infrastructure Sales Tax Funds

\$74,316.50


\$38,424.00

\$535,510.00

\$648,250.50

I hereby accept this order both as to work to be performed and prices on which payment shall be based.

APPROVED
For Contractor 
Title VICE PRESIDENT

APPROVED DATE 
Department Head
Mayor
Attest

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Type: Preliminary Engineering Reimbursement Agreement

Location: 19th Avenue North, I-29 to Dakota Dr

Date of Hearing: 11/7/2022

<u>Routing</u>	<u>Date</u>
City Commission	11/14/2022
PWPEC File	X
Project File	Jeremy Gorden

The Committee reviewed a communication from Division Engineer, Jeremy Gorden, regarding a Preliminary Engineering Reimbursement Agreement from the NDDOT for a chip seal project located on 19th Avenue North from Interstate 29 to Dakota Drive.

At this time, the City has no costs associated with the project. NDDOT request the agreement so that if the City does not move forward with the project, or would like to add to the project, there would be a clear understanding of how that work is to be paid for.

On a motion by Bruce Grubb, seconded by Ben Dow, the Committee voted to recommend approval of the Preliminary Engineering Reimbursement Agreement with the NDDOT.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve the Preliminary Engineering Reimbursement Agreement with the NDDOT for the 19th Avenue North Chip Seal Project.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: N/A

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

<u>Yes</u>	<u>No</u>
N/A	
N/A	
N/A	


COMMITTEE

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

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

ATTEST:

C: Kristi Olson


 Brenda E. Derrig, P.E.
 City Engineer

Memorandum

To: Members of PWPEC

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

Date: November 7, 2022

Re: Preliminary Engineering Reimbursement Agreement with NDDOT
Chip Seal - 19th Avenue North from Interstate 29 to Dakota Drive
NHU-8-081(041)930, PCN 238449

Background:

I have attached a Preliminary Engineering Reimbursement Agreement from the Local Government Division of the NDDOT for this chip seal project. This project is located on 19th Avenue North from Interstate 29 to Dakota Drive.

At the current time, we have no costs associated with the project. Having said that, the NDDOT would like this agreement so that if the City didn't move forward with the project or would like to add to the project, there would be a clear understanding of how that work is to be paid for.

Recommended Motion:

Approve the attached Preliminary Engineering Agreement with the NDDOT.

Attachments

MEMO TO: Ronald J. Henke
Director

FROM: Wayne A. Zacher, P.E.

DATE: 10/28/2022

SUBJECT: 38221500: NHU-8-081(041)930 (PCN 23844) Preliminary Engineering Reimbursement Agreement

This project is a Chip Seal on US Highway 81 (19th Ave N) from Dakota Drive to Interstate 29 in Fargo.

This agreement solidifies the City's agreement with NDDOT proceeding with the project development process. If the City decides they no longer want the project or support it, this agreement outlines their role in reimbursement to NDDOT for engineering services.

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

38/waz

Contract Routing:

Stacey Hanson;

Paul Benning;

Shannon Sauer;

Brenda Derrig;

City Attorney;

City Auditor;

City Mayor;

Wayne Zacher;

Clint Morgenstern;

Jen Turnbow

NDDOT Contract No. 38221500
Project No. NHU-8-081(041)930
PCN No. 23844

**North Dakota Department of Transportation
PRELIMINARY ENGINEERING REIMBURSEMENT AGREEMENT**

This agreement is between the state of North Dakota, acting by and through its Director of Transportation, hereinafter referred to as NDDOT, whose address is 608 East Boulevard Avenue, Bismarck, North Dakota 58505-0700, and Fargo, North Dakota, hereinafter referred to as the City.

WHEREAS, the City agrees that NDDOT proceed with project development activities on US Highway 81 (19th Ave N) from Dakota Drive to Interstate 29, NHU-8-081(041)930 (PCN 23844); and;

WHEREAS, the City agrees that the project be developed in accordance with NDDOT policies and with the scope of work identified in Attachment A, attached hereto and incorporated by reference.

NOW, THEREFORE, it is agreed that NDDOT will take all necessary steps in project development to deliver an environmental document and set of design plans approved by the City, and construct the project by scheduling a bid opening at such time as funding and project completion allows.

The City agrees that should it unilaterally and voluntarily terminate this agreement by whatever means or action, it shall reimburse NDDOT for any and all costs it has incurred for engineering services under this agreement.

The City further agrees that should it request or otherwise cause a material alteration to, or a reduction of the scope of the project, it shall reimburse NDDOT for any and all costs it has incurred for engineering services under this agreement.

In the event the City fails to reimburse NDDOT, such failure shall constitute an assignment of funds, derived from the State Highway Tax Distribution Fund now or hereafter coming into the hands of the State Treasurer to the credit of the City, and that the State Treasurer is hereby directed to deliver and pay over to NDDOT all funds credited to the City until the total thereof equals the sum billed pursuant to this agreement.

Appendices A and E of the Title VI Assurances, attached, are hereby incorporated into and made a part of this agreement.

The Risk Management Appendix, attached, is hereby incorporated and made a part of this agreement.



Executed by the city of Fargo, at Fargo North Dakota, the last date below signed.

APPROVED:

CITY ATTORNEY (TYPE OR PRINT)

City of Fargo

SIGNATURE

Dr. Timothy J. Mahoney
NAME (TYPE OR PRINT)

DATE

SIGNATURE

* Mayor
TITLE

DATE

ATTEST:

Steve Sprague
CITY AUDITOR (TYPE OR PRINT)

SIGNATURE

DATE

Executed for the North Dakota Department of Transportation by the Director at Bismarck, North Dakota, the last date below signed.

APPROVED as to substance by:

NORTH DAKOTA
DEPARTMENT OF TRANSPORTATION

Paul Benning
LOCAL GOVERNMENT ENGINEER (TYPE OR PRINT)

DIRECTOR (TYPE OR PRINT)

DS
SK

DocuSigned by:
Paul Benning
SIGNATURE

SIGNATURE

DS
SS

10/31/2022
DATE

DATE

*Mayor or President City Commission

CLA 17057 (Div. 38)
L.D. Approved 7-17-89; 10-22



Project No. NHU-8-081(041)930

**North Dakota Department of Transportation
AUTHORIZATION**

At a _____ meeting held on the ____ day
of _____ 20____, it was moved by _____ and seconded by
_____ that the attached agreement be approved and that the *
and city auditor be authorized to execute in behalf of the city of
_____ and that two executed copies be returned to the North
Dakota Department of Transportation Director.

Adopted on a vote of _____ aye, _____ nay, _____ absent.

ATTEST:

APPROVED:

Steve Spague
CITY AUDITOR (TYPE OR PRINT)

City of Fargo

SIGNATURE

Dr. Timothy J. Mahoney
NAME (TYPE OR PRINT)

DATE

SIGNATURE

* Mayor
TITLE

DATE

*Mayor or President City Commission



**NORTH DAKOTA DEPARTMENT OF TRANSPORTATION
APPENDIX A OF THE TITLE VI ASSURANCES**

During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the Contractor) agrees as follows:

1. **Compliance with Regulations:** The Contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, the Federal Highway Administration, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the Contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the Federal Highway Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the Recipient or the Federal Highway Administration as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Nondiscrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
 - a. withholding payments to the Contractor under the contract until the Contractor complies; and/or
 - b. cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the Recipient or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.



**NORTH DAKOTA DEPARTMENT OF TRANSPORTATION
APPENDIX E OF THE TITLE VI ASSURANCES**

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the Contractor) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.P.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes nondiscrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 *et seq.*).



Risk Management Appendix

Routine* Service Agreements with Sovereign Entities and Political Subdivisions of the State of North Dakota:

Parties: State – State of North Dakota, its agencies, officers and employees

Governmental Entity – The Governmental Entity executing the attached document, its agencies, officers and employees

Governments – State and Government Entity, as defined above

Each party agrees to assume its own liability for any and all claims of any nature including all costs, expenses and attorney's fees which may in any manner result from or arise out of this agreement.

Each party shall secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds, authorized to do business in North Dakota, the following insurance coverages:

- 1) **Commercial general liability and automobile liability** insurance – minimum limits of liability required of the Governmental Entity are **\$375,000 per person and \$1,000,000 per occurrence**. The minimum limits of liability required of the State are **\$375,000 per person and \$1,000,000 per occurrence**.
- 2) **Workers compensation** insurance meeting all statutory limits.
- 3) The policies and endorsements may not be canceled or modified without **thirty (30) days prior written notice** to the undersigned State representative.

The State reserves the right to obtain complete, certified copies of all required insurance documents, policies, or endorsements at any time.

Each party that hires subcontractors shall require any non-public subcontractors, prior to commencement of work set out under an agreement between that party and the non-public subcontractor, to:

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

Subcontractor shall secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds authorized to do business in North Dakota: 1) commercial general liability; 2) automobile liability; and 3) workers compensation insurance all covering the Subcontractor for any and all claims of any nature which may in any manner arise out of or result from this agreement. The minimum limits of liability required are \$375,000 per person and \$1,000,000 per occurrence for commercial general liability and automobile liability coverages, and statutory limits for workers compensation. The Governments shall be endorsed on the commercial general liability policy and automobile liability policy as additional insureds. The Governments shall have all the benefits, rights and coverages of an additional insured under these policies that shall not be limited to the minimum limits of insurance required by this agreement or by the contractual indemnity obligations of the Contractor. Said endorsement shall contain a "Waiver of Subrogation" waiving any right of recovery the insurance company may have against the Governments as well as provisions that the policy and/or endorsement may not be canceled or modified without thirty (30) days prior written notice to the undersigned representatives of the Governments, and that any attorney who represents the State under this policy must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under N.D.C.C. Section 54-12-08. Subcontractor's insurance coverage shall be primary (i.e., pay first) as respects any insurance, self-insurance or self-retention maintained by the Governments. Any insurance, self-insurance or self-retention maintained by the Governments shall be excess of the Contractor's insurance and the Subcontractor's insurance and shall not contribute with them. The insolvency or bankruptcy of the insured Subcontractor shall not release the insurer from payment under the policy, even when such insolvency or bankruptcy prevents the insured Subcontractor from meeting the retention limit under the policy. Any deductible amount or other obligations under the Subcontractor's policy(ies) shall be the sole responsibility of the Subcontractor. This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and be placed with insurers rated "A-" or better by A.M. Best Company, Inc. The Governments will be indemnified, saved, and held harmless to the full extent of any coverage actually secured by the Subcontractor in excess of the minimum requirements set forth above. The Government Entity that hired the Subcontractor shall be held responsible for ensuring compliance with the above requirements by all Subcontractors. The Governments reserve the right to obtain complete, certified copies of all required insurance documents, policies, or endorsements at any time.

*See *North Dakota Risk Management Manual*, section 5.1 for discussion of "unique" and "routine" agreements.

RM Consulted 2007
Revised 07-22



MEMO TO: File

FROM: Wayne A. Zacher, P.E.

DATE: October 27, 2022

SUBJECT: NHU-8-081(041)930 (PCN 23844) – Fargo 19th Ave N Chip Seal Scoping Report

The Fargo District submitted a request to Local Government Division for a chip seal on this segment of roadway on October 14, 2022. The chip seal will be on 19th Ave North (US 81) from Dakota Drive to I-29, which is 0.6 miles. This will protect an overlay that was placed in 2020.



14

Engineering Department

225 4th Street North

Fargo, ND 58102

Phone: 701.241.1545 | Fax: 701.241.8101

Email: feng@FargoND.gov

www.FargoND.gov

November 9, 2022

Honorable Board of City
Commissioners
City of Fargo
Fargo, ND

Re: Project No. FM-21-A2

Dear Commissioners:

Bids were opened at 11:45 am on Wednesday, November 9th 2022, for Flood Risk Management, Project No. FM-21-A2, located on University Dr S and 52nd Ave S.

The bids were as follows:

Excavating, Inc - Fargo	\$2,384,231.55
Sellin Brothers, Inc	\$2,813,818.00
Rachel Contracting	\$2,840,143.60
Industrial Builders Inc	\$3,169,455.50
Engineers Estimate	\$2,440,683.50

Private financial security is not needed.

No protests have been recieved.

This office recommends award of the contract to Excavating, Inc - Fargo. in the amount of \$2,384,231.55 as the lowest and best bid.

Sincerely,

Thomas Knakmuhs, PE

Assistant City Engineer



Engineer's Statement Of Cost

Project # FM-21-A2

Flood Risk Management

Red River erosion protection & bank stabilization University Dr S
and 52nd Ave S

WHEREAS, bids have been opened and filed for the above described Improvement District for City of Fargo, North Dakota; and WHEREAS, an estimate of the cost of work is required by the engineer for the City of Fargo, North Dakota;

NOW THEREFORE Thomas Knakmuhs, do hereby certify as follows:

That I am the Assistant City Engineer for the City of Fargo, North Dakota;

That the following is detailed statement of the estimated cost of the job described as:

Flood Risk Management Project # FM-21-A2 of the City of Fargo, North Dakota.

Line	Description	Unit	Quantity	Unit Price (\$)	Amount (\$)
Miscellaneous					
1	Mobilization	LS	1.00	44,100.00	44,100.00
2	Clear & Grub	LS	1.00	70,000.00	70,000.00
3	Remove Tree	EA	8.00	275.00	2,200.00
4	Mulching Type 2 Straw	SY	25,745.00	0.15	3,861.75
5	Seeding Type A	SY	25,745.00	0.28	7,208.60
6	Stomwwater Management	LS	1.00	5,000.00	5,000.00
7	Silt Curtain	LF	360.00	20.00	7,200.00
8	Temp Construction Entrance	EA	1.00	4,000.00	4,000.00
9	Inlet Protection - Existing Inlet	EA	3.00	220.00	660.00
10	Traffic Control - Type 1	LS	1.00	2,029.50	2,029.50
11	F&I Detection Preformed Loop	EA	2.00	2,640.00	5,280.00
12	F&I Conduit 1" Dia	LF	53.00	11.00	583.00
13	Relocate Pull Box PVC	EA	1.00	500.00	500.00
14	Relocate Street Light	EA	1.00	2,750.00	2,750.00
15	F&I Base 7' Deep Reinf Conc	EA	1.00	1,320.00	1,320.00
16	Remove Base	EA	1.00	660.00	660.00
17	F&I Conductor #6 USE Cu	LF	2,502.00	2.75	6,880.50
18	F&I Innerduct 2" Dia	LF	228.00	15.40	3,511.20
19	F&I Decid Tree 1" Dia	EA	80.00	423.50	33,880.00
Miscellaneous Total					201,624.55
Grading					

Line	Description	Unit	Quantity	Unit Price (\$)	Amount (\$)
20	Modify Inlet Type A	EA	1.00	5,200.00	5,200.00
21	F&I Rip Rap Rock	CY	8,540.00	143.00	1,221,220.00
22	Topsoil - Strip	CY	2,500.00	3.15	7,875.00
23	Topsoil - Spread	CY	2,500.00	5.10	12,750.00
24	Fill - Import Special	CY	4,220.00	109.00	459,980.00
25	Fill - Haul	CY	13,000.00	8.75	113,750.00
26	Excavation	CY	13,400.00	16.80	225,120.00
27	Subgrade Preparation	SY	10,360.00	4.40	45,584.00
Grading Total					2,091,479.00
Paving					
28	F&I Edge Drain 4" Dia PVC	LF	227.00	15.00	3,405.00
29	F&I Curb & Gutter Standard (Type II)	LF	227.00	71.50	16,230.50
30	Remove Curb & Gutter	LF	227.00	20.00	4,540.00
31	F&I Pavement 9" Thick Reinf Conc	SY	18.00	438.00	7,884.00
32	F&I Pavement 9" Thick Doweled Conc	SY	38.00	410.00	15,580.00
33	Remove Pavement 9" Thick Conc	SY	224.00	17.00	3,808.00
34	F&I Shared Use Path 4" Thick Reinf Conc	SY	203.00	107.50	21,822.50
35	Remove Shared Use Path 4" Thick Conc	SY	257.00	12.00	3,084.00
36	F&I Impressioned 4" Thick Reinf Conc	SY	51.00	190.00	9,690.00
37	Obliterate Pavement Markings	SF	6.00	14.00	84.00
Paving Total					86,128.00
Demobilization/Remobilization					
38	Mobilization	LS	1.00	5,000.00	5,000.00
Demobilization/Remobilization Total					5,000.00
Total Construction in \$					2,384,231.55

Contingency	10.00%	238,423.16
Misc. Costs		193,500.00
Total Estimated Costs		2,816,154.71
Sales Tax Funds - Flood Control - 460		2,816,154.71
Unfunded Costs		0.00

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

Date: 11/09/2022



Thomas Knakmuhs
Assistant City Engineer



REPORT OF ACTION
FINANCE COMMITTEE

(15)

Project: BN-19-A2

Type: Project Final

Location: 52nd Ave – 45th St to 63rd St

Date of Hearing: October 31, 2022

<u>Routing</u>	<u>Date</u>
City Commission	
Project File	<u>BN-19-A2</u>

Engineering along with KPH, Inc. reviewed the liquidated damages on BN-19-A2. After reviewing the contract and days charged, it was determined that that 31.5 days of liquidated damages should be assessed to the contract. This amount was arrived using typical procedures on a City construction contract.

MOTION:

On a motion by Steve Sprague, seconded by Mike Redlinger, the Finance Committee voted to approve the assessment of 31.5 days of liquidated damages on BN-19-A2 to forward on to the City Commission with a recommendation for approval.

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

To: Finance Committee

From: Kevin Gorder, Division Engineering
Tom Knakmuhs, Assistant City Engineer

Date: October 25, 2022

Subject: Liquidated Damage Assessment BN-19-A2
52nd Ave South – 45th St to 63rd St

Background:

Construction on this \$19.2 million project started in 2019 and most of the construction was completed in the fall of 2020. Some minor items on the signal lights and other items carried over into early 2021. Since that time, Engineering and KPH have been working on paperwork and all items to meet NDDOT and FHWA approval so federal aid eligibility is satisfied. This paperwork was completed March 7th, 2022. All items were completed with the exception of a final agreement on Liquidated Damages (LD) on the contract. This project has multiple funding sources that included Federal Aid, West Fargo, Cass County, SE Cass Water Resource District, Special Assessments, and City Infrastructure Sales Tax. All external funding sources were maximized and any final adjustments to the contract would be paid with Sales Tax money. Since the contract records were complete, KPH and Engineering agreed to finalize the NDDOT contract and continue LD negotiation with any potential adjustments coming from Sales Tax Funds.

The amount of LD assessment at the time of NDDOT contract completion was 47 days at \$5,000/day or \$235,000. Factors in adjusting the Liquidated Damage amount that were not yet complete at the time of NDDOT contract completion included charging days when no impacts to the public occurred, potential COVID impacts, and how temporary measures mitigated impacts to the public. During this review we also found a discrepancy in the NDDOT final documents. The final estimate NDDOT sent to KPH had 50 days of LDs but the actual number is 47 days on the paperwork from NDDOT. We are working with NDDOT to correct the final payment but it might be easier to include that in this adjustment.

The breakdown of liquidated damages include 15 days in 2019 when the roadway was not completed and open to traffic. All 15 of these days will be charged. That leaves 32 days of LD's for 2020. The contract work that remained was installing the fiber interconnect between the signal systems and connecting it to the existing fiber network for remote communication between Engineering and the signal systems.

Engineering and KPH agreed to a 15.5 day reduction in the LD's assessed on the final document with the NDDOT. The basis of this was about half the work completed in 2020 happened with little or no impact to the traveling public. Typically, Engineering would not have counted these days on a City bid project so by adjusting the days charged provides better consistency with current LD applications on City projects.

At the time of contract closeout, the amount of Sales Tax Funds used on the project were reduced by \$235,000 (47 days at \$5,000/day) due to LDs. If approved by the Finance Committee and City Commission, the amount of Sales Tax used on the project will be reduced by \$157,500 (31.5 days at \$5,000/day).

Recommended Motion:

Approve 31.5 days at \$5,000 of liquidated damages be charged to the contract.

November 10, 2022

To: Eric Merhiy, KPH Inc

From: Kevin Gorder, City of Fargo Engineering

Subject: Amended Final Balancing Change Order BN-19-A2

Amended Final Balancing Change Order Agreement:

A Final Balancing Change Order (FBCO) was approved by Commission at the July 25, 2022 regular meeting. Prior to accepting the FBCO, the Contractor requested a meeting to further discuss the liquidated damages assessment on the project. Engineering reviewed the liquidated damage assessment and agreed that some of the days previously charged should not have been charged based on typical City procedures for assessing liquidated damages. 15 days of liquidated damages were charged in 2019 due to the roadway being incomplete and not usable by the public. 32 days were charged on the original FBCO in 2020 for original contract work that was not completed. On approximately half of the 32 days' work was ongoing in 2020, work was completed without any impacts to the traveling public.

Engineering has agreed to charge 15 days in 2019 and 16.5 days in 2020 for a total of 31.5 days on the contract.

Total Work Completed	\$19,428,828.92
Liquidated Damages 31.5 days @ \$5,000/day	\$157,500.00
Total Due	\$19,271,328.92
Previous Payments	\$18,767,329.26
Pending NDDOT Payment	\$426,499.66
Payment Due	\$77,500.00

The Contractor, KPH Inc, by the signing of this agreement certifies that any and all claims in any manner arising out of, or pertaining to, BN-19-A2, including but not limited to such issues as;

- Final Quantities and Final Payment
- Liquidated Damages
- All Subcontractor Payments

Have been satisfied in full and the City of Fargo is released and discharged from any claims or extra compensation in any manner arising out of the contract for BN-19-A2.

City Representative

Date

Contractor Representative

Date

Printed Name

Printed Name



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FINANCE OFFICE

PO Box 2083

225 4th Street North

Fargo, ND 58102

Phone: 701.241.1333 | Fax: 701.476.4188

www.FargoND.gov

TO: BOARD OF CITY COMMISSIONERS

FROM: TERRI GAYHART, DIRECTOR OF FINANCE *TG*

RE: STATE WATER COMMISSION COST REIMBURSEMENT APPROVAL

DATE: November 7, 2022

The existing legislation in place for State Water Commission funding related to the Fargo-Moorhead Metropolitan Area Flood Risk Management Project requires that the Fargo City Commission, Cass County Commission, and the Cass Water Resource Board approve all payment reimbursement requests prior to their submission and ultimate payment.

The attached reimbursement request has been prepared by Finance staff and is ready for processing. Your approval of the request for funds is hereby requested as required.

Suggested Motion:

Approve a State Water Commission request for cost reimbursement for Fargo-Moorhead Metropolitan Area Flood Risk Management Project costs totaling \$1,153,591.33.



November 7, 2022

Andrea J. Travnicek, PHD.
 North Dakota State Water Commission
 900 East Boulevard Avenue, Dept 770
 Bismarck, ND 58505-0850

Dear Andrea,

The Metro Flood Diversion Authority is submitting eligible costs for reimbursement request #129 pursuant to the terms and conditions of House Bill 1020 for costs incurred from August 1, 2022 - August 31, 2022 on the Fargo-Moorhead Metropolitan Area Flood Risk Management Project. These costs are summarized in the attached cost summaries and are supported by detailed disbursement records included within this submission.

The total amount of the claim for reimbursement is \$1,153,591.33

State Funds Available	Amount Spent Previous Request	Amount Spent This Period	State Cost Share	Reimbursement Request This Period	Balance of State Funds
\$ 354,500,000.00	\$ 353,346,408.67	\$ 2,307,182.66	50%	\$ 1,153,591.33	\$ 0.00

Project Narrative, this request:

Project Number	Project Description
V01701	Land purchases, easements & relocation assistance for homeowners and business located in areas of the diversion project
V01704	Right of Entry Requests
V04205	Road reshaping and surfacing

Engineering, Legal, and Admin Expense Summary, this request:

Expense Type	Amount
Engineering Services	1,189,898.31
Construction Management	1,115,672.87
Legal Services	515,569.62
Financial Advisor	1,562.50
Appraisal Services	19,313.00
Consulting Services	54,092.41
Property Holding Costs	33,224.17
Quality Testing	15,110.75
Crop Loss Insurance	27,765.32
Total Eligible Expense	2,972,208.95

We certify that \$101,279,533 has been expended on the acquisition of homes and that these costs are eligible for the local matching share requirements of SB 2020. Records relating to these costs are on file with the City of Fargo in the Office of the City Auditor.

The City of Fargo, Cass County Commission, and the Cass County Joint Water Resource Board have approved our request for funds as required in SB 2020. Copies of their approval letters are included.

If you have any questions relating to our request, please contact me directly.

Sincerely,



Terri Gayhart
Director of Finance, City of Fargo
Metro Flood Diversion Authority

Required Local Approvals:

City of Fargo

Cass County Commission

Cass County Joint Water Resource Dist.

CITY OF
Fargo Fire Department

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MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

FROM: FIRE CHIEF STEVE DIRKSEN

DATE: NOVEMBER 10, 2022

SUBJECT: EXTENSION OF FMLA FOR FIRE CAPTAIN

Fire Captain Jason Gisselbeck suffered a personal injury and has been on a extended FMLA. On October 22, 2022, Captain Gisselbeck exhausted his 12 weeks of FMLA. Based on reports from his physician and the City of Fargo Medical Provider, it is expected that Captain Gisselbeck will be able to return to his duties with the Fire Department following sufficient rehabilitation.

Per City of Fargo policy, I extended Captain Gisselbeck's FMLA for 30 days. He has informed me that he is not able to return to full duty at this point and will need additional time. The 30-day extension will end on November 21. He has requested that the Fargo City Commission extend his FMLA for 14 additional days. The extension will be applicable through December 5, 2022.

Recommended motion: Approve a 90-day extension of FMLA leave for Fire Captain Jason Gisselbeck.

CITY OF Fargo Fire Department

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MEMORANDUM

TO: FARGO CITY COMMISSION

FROM: FIRE CHIEF STEVE DIRKSEN

DATE: 11/10/2022

SUBJECT: FIRE DEPARTMENT SOLE SOURCE PURCHASE

The Fire Department is planning to engage in updating the Fire Department Strategic Plan in 2023. The Center for Public Safety provides that service through their Technical Advisor Program. CPSE has the only team of experts on the CFAI accreditation model that are available to professionally facilitate a community-driven strategic planning process. These CPSE technical advisors assure that the tenets of a quality strategic plan are accomplished while ensuring that all current and proposed relative international fire accreditation competencies are properly addressed.

In order to get in the CPSE que a contract needs to be signed this month to meet desired timelines. This is budgeted for in the 2023 budget and fire department will not be invoiced until January of 2023.

The sole source request was approved by the Finance Committee on October 31, 2022.

RECOMMENDATION: Authorize the Fire Department sole source purchase of facilitation and consultation services from the Center for Public Safety Excellence in the amount of \$17,820.00.



CPSE Technical Advisor Program Professional Services Agreement

This PROFESSIONAL SERVICES AGREEMENT, (together with any attachments referred to below, the "Agreement") is dated as of October 12, 2022, by and between the CENTER FOR PUBLIC SAFETY EXCELLENCE®, INC. ("CPSE"), 4501 Singer Court, Suite 180, Chantilly Virginia 20151, a Virginia not-for-profit corporation and the Fargo Fire Department ("Agency"), 637 NP Avenue, Fargo, North Dakota 58102. CPSE® and Agency are also referred to as the "parties" and each as a "party."

The parties, intending legally and equitably to be bound, agree as follows:

1. Recitals

The Agency desires to retain the services of CPSE for the facilitation of a community-driven strategic plan. Appendix A -Statement of Work (SOW) outlines the specific services CPSE will provide to Agency.

2. Fees

Total contract price is \$17,820.00, and Agency shall pay fees in accordance with the schedule of fees and minimum payments included in Appendix A -SOW.

Agency agrees to perform Step Responsibility within the Step Timing as outlined in Appendix A – SOW. Should agency fall more than thirty (30) days behind the schedule, CPSE, at its discretion, may invoice agency an additional 5% per month of the total contract amount for the project delay.

CPSE shall periodically send invoices to Agency, and Agency shall pay CPSE on receipt of such invoice, but in no event later than 30 days after such receipt.

3. Technical Advisors

CPSE Technical Advisors working on projects under this Agreement may perform similar services from time to time for others, and this Agreement shall not prevent CPSE from performing such similar services or restrict CPSE from so assigning the technical advisors provided to Agency under this Agreement. CPSE will make every effort consistent with sound business practices to honor the specific requests of Agency with regard to the assignment of its technical advisors; however, CPSE reserves the sole right to determine the assignment of its technical advisors.

4. Modification of Services

If Agency wishes to change Appendix A -SOW or wishes to obtain additional Services not listed in Appendix A -SOW, Agency through its authorized signatory shall so advise CPSE in writing. If the requested Service is within CPSE's scope, such Services shall be performed following the issuance of a change order. If CPSE performs the Services in response to Agency's written request, the charges for such Services and other terms and conditions of performance shall be governed by this Agreement.

5. Right to Assurance

Whenever one party to this Contract has reason to question, in good faith, the other party's intent to perform according to Appendix A - SOW, the former party may demand that the other party give a written assurance of this intent to perform. If a demand is made, and no written assurance is given within fifteen (15) days, the demanding party may treat this failure as the other party's intent not to perform and as a cause for automatic agreement termination.

6. Termination of Services

CPSE or Agency may at any time terminate this agreement upon thirty (30) days prior written notice, stating its intention to terminate and the date upon which such termination shall be effective. Agency shall pay for all



CPSE Technical Advisor Program Professional Services Agreement

services rendered by CPSE up to the effective date of termination within thirty (30) days following the effective date of termination of such services.

7. Rights in Work Product

Unless otherwise agreed by the parties, all services rendered by CPSE under this Agreement and the product of such services manifested in documentation delivered to Agency ("Work Product") shall belong to and be owned by Agency. To the extent such Work Product qualifies as a "work made for hire" under applicable copyright law, it shall be considered a work made for hire, and the copyright shall be owned solely and exclusively by Agency. To the extent such Work Product is not considered as a "work made for hire" under applicable copyright law, CPSE hereby assigns and transfers all of CPSE's right, title and interest in and to such Work Product to Agency. The rights conveyed to Agency pursuant to this Agreement do not include rights to any preexisting CPSE Intellectual Property used, developed and refined by CPSE during CPSE's provision of Services under this Agreement. CPSE shall retain sole and exclusive ownership, right, title and interest, including ownership of copyright, with respect to CPSE's Intellectual Property.

8. Limitation of Liability

No action, regardless of form, arising out of the Services under this Agreement may be brought by either party more than one year after the cause of action has occurred, except that an action for nonpayment may be brought within one year of the date of last payment.

9. Force Majeure

CPSE shall not be held responsible for delay or default due to causes beyond its reasonable control, including but not limited to fire, floods, earthquakes, riot, acts of God or war, civil unrest, major weather event (e.g., tornado, blizzard, etc.), epidemics, pandemics or outbreak of communicable disease, quarantines, and failures of public carrier.

10. Conflict of Interest Statement

CPSE has neither directly, nor indirectly entered into any agreement, participated in any collusion or collusion activity, nor otherwise taken any action which in any way restrict or restraint the competitive nature of this solicitation, including but not limited to, the prior discussion of terms, conditions, pricing or other offer parameters required by this solicitation.

CPSE is not presently suspended or otherwise prohibited from participation in this solicitation or any other contracting to follow thereafter by any government.

Neither CPSE nor anyone associated with CPSE have any potential conflict of interest because of or due to any other clients, contracts, or property interests in this solicitation or the resulting project. In the event that a conflict of interest is identified in the provision of services, CPSE will immediately notify the Agency in writing.

Any person assigned to this project by CPSE shall not serve as a peer assessor for the Commission of Fire Accreditation International (CFAI) for the Agency within a five (5) year time period.

11. Notice

Any notice required or permitted to be sent under this Agreement shall be delivered by hand or mailed by certified mail, return receipt requested, or sent by reliable overnight carrier to the address of the parties first set forth in this Agreement.

12. General



CPSE Technical Advisor Program Professional Services Agreement

This agreement shall be binding upon all parties hereto and their respective heirs, executors, administrators, successors, and assigns.

The laws of the State of North Dakota, United States of America, shall govern this agreement.

This agreement is an integrated writing, executed by the parties after negotiation and discussions of all material provisions. Neither party has relied upon inducements, concessions or representations of the fact, except as set forth in this written agreement and CPSE's proposal.

If any provision or any portion thereof contained in this agreement is held unconstitutional, invalid or unenforceable, the remainder of this agreement, or portion thereof, shall be deemed severable and shall not be affected and shall remain in full force and effect.

In the event of any legal action between the parties hereto to enforce the provisions of this agreement, the prevailing party shall be entitled to reasonable legal fees and costs as fixed by the Court.

THE PARTIES ACKNOWLEDGE THAT THEIR AUTHORIZED REPRESENTATIVES HAVE READ THIS AGREEMENT, UNDERSTAND IT AND AGREE TO BE BOUND BY ITS TERMS AND FURTHER AGREE THAT ALONG WITH ANY STATEMENT OF WORK IT IS THE COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN THE PARTIES, WHICH SUPERSEDES ALL PROPOSALS, ORAL AND WRITTEN, AND ALL OTHER COMMUNICATIONS BETWEEN THE PARTIES RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT.

Accepted by:

CPSE

Accepted by:

Fargo Fire Department, ND

Debbie Sobotka

Name

Chief Operating Officer

Title

Date

Steven J. Dirksen

Name

Fire Chief

Title

Date



Appendix A: Community-Driven Strategic Planning Statement of Work
October 12, 2022

Project Steps	Step Details	Step Timing	Step Responsibility	Step Billing
1. Project Acceptance	<ul style="list-style-type: none"> Finalized Statement of Work Signed Professional Services Agreement Construction of Shared Site Identification of CPSE and agency project points of contact 	By Friday, February 3, 2023	CPSE and Fargo Fire Department	\$5,940.00
2. Project Executive Orientation	<ul style="list-style-type: none"> Discussion of final SOW and identification of resources need for each step Overview of Shared Site 	By Friday, March 17, 2023	CPSE	N/A
3. Post Required Materials to Shared Site	<ul style="list-style-type: none"> Agency primary contact information Agency and community images, including high resolution agency logo Agency current mission and values, if available Agency organizational chart Agency background information, as available 	By Friday, April 14, 2023	Fargo Fire Department	N/A
4. Invite Stakeholders	<ul style="list-style-type: none"> Send invitations to request community stakeholder participation in community stakeholder meeting Invite identified agency stakeholders and schedule the work session 	By Monday, April 24, 2023	Fargo Fire Department	N/A
5. Post Required Materials to Shared Site	<ul style="list-style-type: none"> List of community stakeholders List of agency stakeholders with rank/title and assignment (shift, station, etc.) 	By Thursday, May 4, 2023	Fargo Fire Department	N/A
6. Community Stakeholder Meeting	<ul style="list-style-type: none"> Determine community stakeholder priorities of service delivery Determine community stakeholder expectations Receive community stakeholder input on positive and correctional issues 	By Monday, May 8, 2023	CPSE	N/A
7. Agency Stakeholder Work Session	<ul style="list-style-type: none"> Review input from community stakeholders Develop, revise or update mission statement Develop, revise or update value statements Establish core programs and support services Conduct SWOT Analysis Identify critical issues and service gaps Determine strategic initiatives with outcomes expected Develop goals, objectives, and critical tasks Develop, revise or update vision statement 	Tuesday, May 9, 2023 through Thursday, May 11, 2023	CPSE	\$5,940.00
8. Draft Report Published	<ul style="list-style-type: none"> Draft uploaded to Shared Site for Agency review 	By Monday, May 22, 2023	CPSE	N/A
9. Review of Draft Report	<ul style="list-style-type: none"> Edits to draft report completed via Shared Site 	By Friday, June 30, 2023	Fargo Fire Department	N/A
10. Strategic Plan Finalized	<ul style="list-style-type: none"> Approval of final draft 	By Monday, July 17, 2023	Fargo Fire Department	N/A
11. Strategic Plan Issued	<ul style="list-style-type: none"> Delivery of one digital and ten (10) hard copies of the finalized Strategic Plan. 	By Monday, July 24, 2023	CPSE	\$5,940.00



Appendix A: Community-Driven Strategic Planning Statement of Work
October 12, 2022

Acceptance:

Fargo Fire Department, North Dakota
Center for Public Safety Excellence (CPSE)

Initials of Authorized Party: *Steven J. Dirksen, Fire Chief*

Initials of Authorized Party: *Debbie Sobotka, COO*



Center for
Public Safety
Excellence®

Community-Driven Strategic Plan Proposal
to
Fargo Fire Department
637 NP Avenue
Fargo, North Dakota 58102

Steven J. Dirksen, CFO
Fire Chief
August 19, 2022

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THE CPSE® DIFFERENCE

The mission of the Center for Public Safety Excellence® is: *“To lead the fire and emergency service to excellence through the continuous quality improvement process of accreditation, credentialing, and education.”*

By teaching, coaching, guiding, and advising, CPSE’s Technical Advisor Program (TAP) strives to provide agencies the tools to internalize continuous quality improvement and thereby achieve excellence.

Give a man a fish and you feed him for a day. Teach a man to fish and you feed him for a lifetime.

TAP places great importance on thorough preparation for each project including:

- A clear understanding of the agency’s background, goals and objectives, and the complex issues they are facing,
- A workplan that is comprehensive, well designed, and provides ample opportunity for stakeholder input,
- Sufficient resources and a commitment to successfully complete the project within the desired time frame at a reasonable cost, and
- A commitment to support the agency after the Strategic Plan is adopted.

TAP uses contemporary methods and enlists energetic and positive individuals to help facilitate agency work. Our advisors personalize their approach and garner candid feedback from stakeholders while putting stakeholders at ease. The end result is a truly strategic rather than tactical plan.

SCOPE

The purpose of a strategic plan is to identify and provide a process that envisions the future by accomplishing organizational visions. A well-crafted strategic plan, guided by good management, and executed by committed personnel will translate to improved effectiveness, efficiency, and better quality of services being delivered. CPSE believes the most successful strategic planning efforts involve both internal and external stakeholders.

The Community-Driven Strategic Plan Facilitation process typically takes 60 to 90 days and includes:

- Meeting with community stakeholders to gather feedback on community expectations, concerns, and priorities (live or virtual),
- A three-day, in-person work session with agency stakeholders to integrate community feedback into their mission, vision, and values, and
- A professionally formatted and published document encompassing strategic initiatives, goals, objectives, critical tasks, and performance measures.

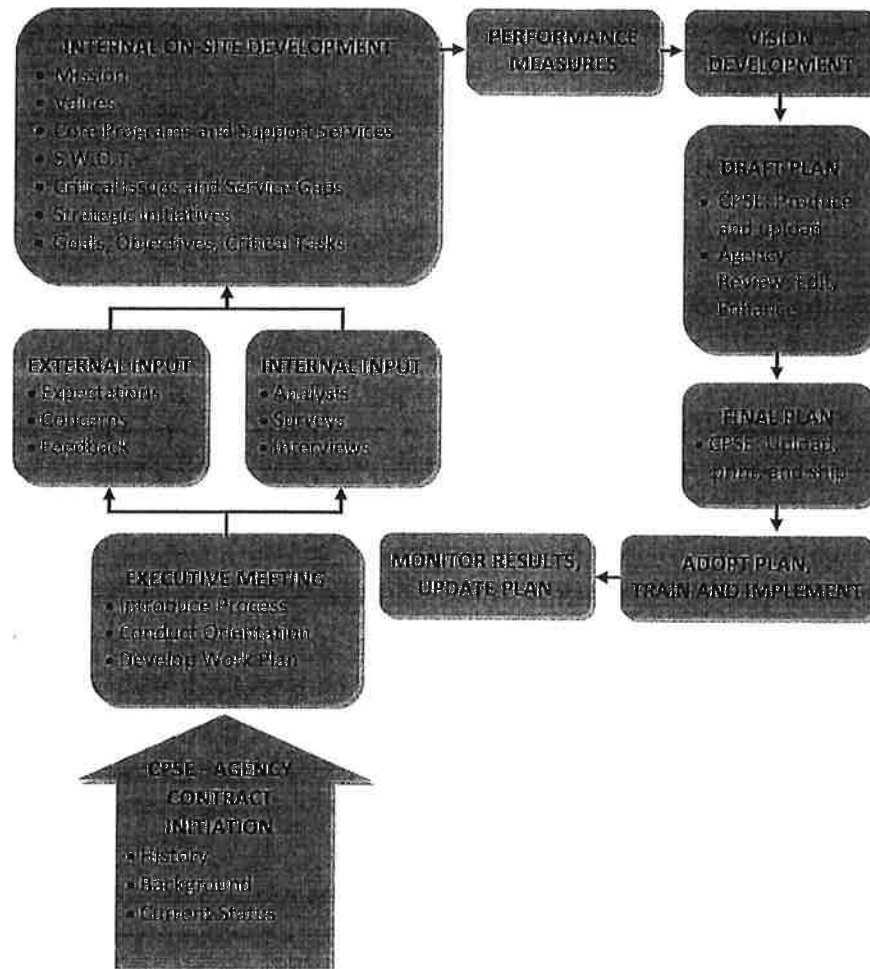
Expected outcomes include a strategic plan that will:

- Address the organization’s mission, vision, and values
- Be achievable, measurable, and responsive to changing community needs
- Be easily reviewed and modified to meet the changing internal and external needs of the agency
- Build upon community partnerships and enhance the ability to harmonize the goals of the agency with the community’s identified needs
- Encourage and embrace involvement, participation, and teamwork
- Establish strategic initiatives
- Establish goals, objectives, performance measures, and an implementation strategy corresponding to the strategic initiatives
- Focus on critical issues and needs of internal and external stakeholders

- Provide a basis for improving efficiency, effectiveness, and service deliverables

PROJECT FRAMEWORK

CPSE will take a systematic approach to the agency's planning process. The chart below illustrates the general flow of events for a comprehensive strategic planning process:



PROJECT TIMELINE

There will be four stages to this project. Once this proposal is accepted, a detailed statement of work (SOW) will be built that addresses the details for these stages, their timing, and the roles that CPSE and the agency will play in their completion. A sample SOW is provided at the end of this proposal. Once a signed professional services agreement (PSA) and a finalized SOW is received, CPSE can begin work on this project within 30 days and complete the project within another 30 to 60 days for a total project time of 60 to 90 days.

1. Project executive orientation
2. Community stakeholders public meeting (one in-person or up to two virtual)
3. Agency stakeholders work session
 - a. Develop goal, objectives, and performance measures
 - b. Develop an implementation strategy
4. Strategic plan publication

DELIVERABLES

CPSE is responsible for the following deliverables:

1. Development of a project work plan
2. Identification and coordination of stakeholders
3. Facilitation of on-site work sessions involving stakeholders
4. Status reports, as deemed necessary by the agency
5. Provision of an executive orientation session
6. Provision of all necessary forms
7. Findings from surveys, interviews, questionnaires, and facilitation
8. A technically and professionally competent strategic plan, that includes:
 - a. Mission
 - b. Vision
 - c. Guiding values or principles
 - d. Community expectations, concerns, and positive feedback
 - e. Prioritization of programs/services
 - f. SWOT analysis
 - g. Identified critical issues and service gaps
 - h. Strategic initiatives
 - i. Planned outcomes
 - j. Goals, objectives, performance expectations
 - k. Implementation strategies including areas of responsibility, critical tasks, and timelines
9. One (1) digital copy of the draft report for review of accuracy of obtained information
10. One (1) digital copy and ten (10) professionally bound copies of the final Strategic Plan.*

CPSE RESOURCES

CPSE's Technical Advisor Program Manager oversees every project to ensure that the end result of each project is a satisfied client whose expectations are fully met. Each project will also have an assigned Senior Technical Advisor to facilitate the onsite work, a second facilitator to assist with the internal stakeholder work session, and a TAP support specialist to ensure all materials are professionally prepared.

* CPSE is currently changing its deliverables to provide more modern tools and instruments. Deliverables may change as stated.

ESTIMATED FEES AND EXPENSES

CPSE has estimated the following fees and expenses for this project:

The proposed cost for CPSE to facilitate the development of the Fargo Fire Department's Community-Driven Strategic Plan is **\$19,800**. **For an accredited agency, CPSE is glad to extend a 10 percent discount of \$1,980 for a total proposed cost of \$17,820.**

This total proposed cost includes all technical advisor time and travel expenses to facilitate one community stakeholder meeting (limited to no more than 75 people) and a three-day agency stakeholder work session (limited to no more than 36 people). These events will be scheduled during the same week. Any additional travel requested and approved by the Fargo Fire Department will be billed by CPSE at actual cost and is above and beyond the proposed cost above.

ASSUMPTIONS

- The Fargo Fire Department is a municipal fire service agency that protects residents, businesses, and visitors of Fargo, North Dakota.
- Steven J. Dirksen, Fire Chief is the key contact for this project.
- Please provide information regarding specific procurement requirements prior to the issue of a professional services agreement.
- The purpose of CPSE's Technical Advisor Program (TAP) is to coach, mentor, guide, and assist fire service agencies. Agency representatives will play an active role in developing their community-driven strategic plan.
- This proposal is valid for a period of sixty (60) days.
- CPSE and the Fargo Fire Department will execute a professional services agreement prior to the start of this project.
- CPSE and the Fargo Fire Department will execute a statement of work governed by the professional services agreement prior to the start of this project that will be the sole document to govern the scope, methods, terms, and deliverables of this project.

INQUIRIES

Please contact CPSE with any inquiries regarding this proposal:

Brian R Dean, CFO

Technical Advisor Program Manager

4501 Singer Court, Suite 180

Chantilly, VA 20151

Office: (703) 691-4620, ext. 209

Mobile: (407) 919-9862

Email: bdean@cpse.org

COMMUNITY-DRIVEN STRATEGIC PLAN PROPOSAL

SAMPLE STATEMENT OF WORK



Appendix A: Strategic Planning Statement of Work January 1, 2022


Project Steps	Step Details	Step Timing	Step Responsibility	Step Billing
1. Project Acceptance	<ul style="list-style-type: none"> Finalized Statement of Work Signed Professional Services Agreement Construction of Shared Site Identification of CPSE and agency project points of contact 	Tuesday, February 1, 2022	CPSE and Agency	1/3 of Price
2. Project Executive Orientation	<ul style="list-style-type: none"> Discussion of final SOW and identification of resources need for each step Overview of Shared Site 	By Tuesday, February 15, 2022	CPSE	N/A
3. Post Required Materials to Shared Site	<ul style="list-style-type: none"> Agency primary contact information Agency and community images, including high resolution agency logo Agency current mission and values, if available Agency organizational chart Agency background information, as available 	By Tuesday, March 1, 2022	Agency	N/A
4. Invite Stakeholders	<ul style="list-style-type: none"> Send invitations to request external stakeholder participation in External Stakeholder Meeting Invite identified internal stakeholder and schedule the work session 	By Friday, March 11, 2022	Agency	N/A
5. Post Required Materials to Shared Site	<ul style="list-style-type: none"> List of external stakeholders List of internal stakeholders with rank/title and assignment (shift, station, etc.) 	By Thursday, April 14, 2022	Agency	N/A
6. External Stakeholder Meeting	<ul style="list-style-type: none"> Determine external stakeholder priorities of service delivery Determine external stakeholder expectations Receive external stakeholder input on positive and correctional issues 	Monday, April 18, 2022	CPSE	N/A
7. Internal Stakeholder Work Session	<ul style="list-style-type: none"> Review input from External Stakeholders Develop, Revise or Update Mission Statement Develop, Revise or update Value Statements Establish core programs and support services Conduct S.W.O.T. Analysis Identify Critical Issues and Service Gaps Determine strategic Initiatives with outcomes expected Develop goals, objectives, and critical tasks Develop, Revise or Update Vision Statement 	Tuesday, April 19, 2022 through Thursday, April 21, 2022	CPSE	1/3 of Price
8. Draft Report Published	<ul style="list-style-type: none"> Draft uploaded to Shared Site for Agency review 	By Monday, May 2, 2022	CPSE	N/A
9. Review of Draft Report	<ul style="list-style-type: none"> Edits to draft report completed via Shared Site 	By Friday, June 10, 2022	Agency	N/A
10. Strategic Plan Finalized	<ul style="list-style-type: none"> Approval of final draft 	By Friday, June 17, 2022	Agency	N/A
11. Strategic Plan Issued	<ul style="list-style-type: none"> Delivery of one digital and ten (10) hard copies of the finalized Strategic Plan. 	By Thursday, June 30, 2022	CPSE	1/3 of Price

19



MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

FROM: DESI FLEMING 
DIRECTOR OF PUBLIC HEALTH

DATE: NOVEMBER 1, 2022

RE: NOTICE OF GRANT AWARD FROM NORTH DAKOTA DEPARTMENT
OF HEALTH AND HUMAN SERVICES FOR PREVENTING
CHILDHOOD OBESITY.
G21.1073 CFDA 93.994
FUNDS: \$15,000
EXPIRES: 09/30/2023

The following Notice of Grant Award for \$15,000 from the North Dakota Department of Health and Human Services is for the grantee to carry out the childhood obesity prevention program.

There are no budget adjustments.

If you have any questions, please contact me at 241.1380.

Suggested Motion: Move to approve the award from North Dakota Department of Health and Human Services

DF/lls
Attachment

G21.1073
Fargo Cass Public Health
Attachment B

Special Conditions

- The Title V Maternal and Child Health (MCH) funds will be used primarily for preventive services such as those related to the identified state priorities. Title V MCH prohibits exclusion from participation, denial of benefits, or discrimination in any program or activity funded in whole or in part with Title V MCH monies on the basis of race, color or national origin, sex, age, religion or handicapping conditions.
- Before changing/carrying out any activities not in the approved action plan must be submitted to the Project Director for approval.
- Non-approved line items in budget must be submitted to the Project Director for approval before any purchases are incurred.
- Grantee has 25 percent budget flexibly for approved line items. Anything over 25 percent must be approved by Project Director.
- Grantee is required to use the following language (italicized below) when issuing statements, press releases, requests for proposals, bid solicitations, and other Health Resources and Services Administration (HRSA) supported publications and forums describing projects or programs funded in whole or in part with HRSA funding, including websites. Examples of HRSA-supported publications include, but are not limited to, manuals, toolkits, resource guides, case studies and issues briefs.

This project is supported by the Health Resources and Services Administration (HRSA) of the U.S. Department of Health and Human Services (HHS) grant, Maternal and Child Health Services. This information or content and conclusions are those of the author and should not be construed as the official position or policy of, nor should any endorsements be inferred by HRSA, HHS or the U.S. Government.

Attachment A - Continued

TITLE V/MATERNAL AND CHILD HEALTH (MCH) GRANT

MCH DATA REPORTING GUIDANCE

Unduplicated count of individuals serviced under Title V enables the State to track and report on the number of individuals who were served by the Title V program within the top level (Direct Services) of the MCH Pyramid.

Total recipient count of individuals served by Title V enables the State to track and report on the number of individuals who received a Title V service within the top two levels (Direct Services and Enabling Services) of the MCH Pyramid.

MCH Pyramid Levels:

Direct Services – Direct services are preventive, primary, or specialty clinical services to pregnant women and children, including children with special health care needs, where MCH Services Block Grant funds are used to reimburse or fund providers for these services through a formal process similar to paying a medical billing claim or managed care contracts. State reporting on direct services should not include the costs of clinical services which are delivered with Title V dollars but reimbursed by Medicaid, CHIP or other public or private payers. Examples include, but are not limited to, preventive, primary or specialty care visits, emergency department visits, inpatient services, outpatient and inpatient mental and behavioral health services, prescription drugs, occupational and physical therapy, speech therapy, durable medical equipment and medical supplies, medical foods, dental care, and vision care.

Enabling Services – Enabling services are non-clinical services (i.e., not included as direct or public health services) that enable individuals to access health care and improve health outcomes where MCH Services Block Grant funds are used to finance these services. Enabling services include, but are not limited to: case management, care coordination, referrals, translation/interpretation, transportation, eligibility assistance, health education for individuals or families, environmental health risk reduction, health literacy, and outreach. State reporting on enabling services should not include the costs for enabling services that are reimbursed by Medicaid, CHIP, or other public and private payers. This category may include salary and operational support to a clinic or program that enable individuals to access health care or improve health outcomes. Examples include the salary of a public health nurse who provides prenatal care in a local clinic or compensation provided to a specialist pediatrician who provides services for children with special health care needs.

Public Health Services and Systems – Public health services and systems are activities and infrastructure to carry out the core public health functions of assessment, assurance, and policy development, and the 10 essential public health services. Examples include the development of standards and guidelines, needs assessment, program planning, implementation, and evaluation, policy development, quality assurance and improvement, workforce development, and population-based disease prevention and health promotion campaigns for services such as newborn screening, immunization, injury prevention, safe-sleep education and anti-smoking. State reporting on public health services and systems should not include costs for direct clinical preventive services, such as immunization, newborn screening tests, or smoking cessation.

Reference: Title V Maternal and Child Health Services Block Grant to State Program – Guidance and Forms for the Title V Application/Annual Report and Appendix of Supporting Documents

**G21.1073
 Fargo Cass Public Health
 Attachment A**

Reporting Requirements

Expenditure and Progress Reports Due Dates

Reporting Period	Due Date
October 1, 2022 – December 31, 2022	January 13, 2023*
January 1, 2023 – March 31, 2023	April 14, 2023
April 1, 2023 – June 30, 2023	July 14, 2023
July 1, 2023 – September 30, 2023	October 16, 2023**

* Federal Data Report due for the reporting period of October 1, 2022 – December 31, 2022.

** Federal Data Report due for the reporting period of January 1, 2023 – September 30, 2023.

Quarterly Conference Calls (Note: all times are Central Time)			
<u>January 18, 2023</u> Breastfeeding 9:00-10:00 am Childhood Obesity 10:00-11:00 am	<u>April 18, 2023</u> Breastfeeding 9:00-10:00 am Childhood Obesity 10:00-11:00 am	<u>July 18, 2023</u> Breastfeeding 9:00-10:00 am Childhood Obesity 10:00-11:00 am	<u>October 18, 2023</u> Breastfeeding 9:00-10:00 am Childhood Obesity 10:00-11:00 am

**NOTICE OF GRANT AWARD**NORTH DAKOTA DEPARTMENT OF HEALTH AND HUMAN SERVICES
SFN 53771 (09-2022)

Grant Number G21.1073	CFDA Name Maternal and Child Health Block Grant to the States	CFDA Number 93.994
FAIN Number B0445235	Grant Type (Check One) <input checked="" type="checkbox"/> Program <input type="checkbox"/> R&D	Grant Start Date 10/1/2022
Federal Award Date 10/18/2021	Grant End Date 9/30/2023	
Federal Awarding Agency Department of Health and Human Services		

This award is not effective and expenditures related to this award should not be incurred until all parties have signed this document.

Title of Project/Program Childhood Obesity Prevention	North Dakota Department of Health and Human Services (NDDHHS) Project Code 4551 HLH 5132 05
Grantee Name Fargo Cass Public Health	Project Director Mikaela Schlosser
Address 1240 25 th Street South	Address 600 East Boulevard Ave., Dept. 325
City/State/ZIP Code Fargo, ND 58103	City/State/ZIP Code Bismarck, ND 58505-0250
Contact Name Larry Anenson	Contact Name Mikaela Schlosser
Telephone Number 701-241-8575	Telephone Number 701-328-4529
Email Address LAnenson@FargoND.gov	Email Address mschlosser@nd.gov

	NDDHHS Cost Share	Grantee Cost Share	Total Costs
Amount Awarded	\$15,000	\$11,250	\$26,250
Previous Funds Awarded	\$0	\$0	\$0
Total Funds Awarded	\$15,000	\$11,250	\$26,250
Indirect Rate (Check One)	<input checked="" type="checkbox"/> Subrecipient waived indirect costs	<input type="checkbox"/> De minimus rate of 10%	<input type="checkbox"/> Negotiated/Approved rate of %

Scope of Service
Grantee agrees to carry out the childhood obesity prevention program in accordance with the activities stated in the Grantee's action plan.

Reporting Requirements
Grantee will submit expenditure, data, and progress reports via the Program Reporting System (PRS).
Reimbursement will be processed upon Department approval of expenditures, data, and progress reports.
Reporting Requirements are further defined in Attachment A.

Special Conditions
Special Conditions are defined in Attachment B.

This Notice of Grant Award is subject to the terms and conditions incorporated either directly or by reference in the following: (1) Requirements Addendum and Grantee Assurances for Notice of Grant Awards issued by the NDDHHS as signed by Grantee for the period of July 1, 2021 to June 30, 2023 [Finance Use Only: Requirements Received; Questionnaire received] and (2) applicable State and Federal regulations.

Evidence of Grantee's Acceptance		Evidence of NDDHHS Acceptance	
Date 11/3/2022	Signature <i>Desi Fleming</i>	Date	Signature
Typed Name/Title of Authorized Representative Desi Fleming, MSN, RN		Typed Name/Title of Authorized Representative Deanna Askew, Unit Director Family Health and Wellness	
Date	Signature	Date	Signature
Typed Name/Title of Authorized Representative Timothy J. Mahoney, Mayor, City of Fargo		Typed Name/Title of Authorized Representative Dirk D. Wilke, J.D., M.B.A., Executive Director of Public Health	

If attachments are referenced, they must be returned with the signed award.
If you did not receive attachments as indicated, contact the Program Director identified above.

20

COPY



FARGO POLICE DEPARTMENT

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

CRIMINAL INVESTIGATIONS DIVISION

RECEIVED
 FARGO POLICE DEPARTMENT

 OCT 10 2022
 GEORGE VINSON
 CAPTAIN
 REF: AC

MEMORANDUM

To: Chief David Zibolski

From: Lt Jared Crane *MC*

Date: 10.10.2022

RE: Update on Hate Crime Investigations for the third quarter of 2022

The following is a summary of bias and hate crime investigations that have taken place for the third quarter of 2022:

During the third quarter of 2022, there have been three incidents reported in which a bias motivation was initially listed in the case (two in July and one in September). None of these cases list charges under the three City of Fargo Hate Crime Ordinances – simple assault, criminal mischief, or harassment. After review, the bias motivation element was removed from two of these cases due to lack of evidence supporting a hate or bias motivation. The remaining case showed evidence of a hate or bias motivation; however, the charge listed in the report was disorderly conduct.

The following is a summary of the one case for this quarter containing evidence to support a hate or bias motivation - this case does not apply to any of the three City of Fargo Hate Crime Ordinances:

- 22-48993: This incident occurred on 7/15/22. [REDACTED] called police stating his wife and child were in the downtown area. The complainant stated his wife and child were approached by a suspicious male twice. The first time the male made a comment to his wife and child "not being taught what side of the sidewalk to walk on in their Muslim country." The suspect also allegedly said, "Go back to your Muslim country." The second interaction the male took a step towards them. This male also followed them for approximately five feet. The two then ran to the car out of fear from the man. This case has the charge of Disorderly Conduct which does not apply to any City of Fargo ordinances with a hate crime emphasis. This case has been sent back to the officer for further follow up to try and obtain video of the area.

A review is conducted of all cases submitted with a bias designation indicated by the responding officer. For background, the Federal Bureau of Investigation has established guidelines for the collection of hate crime data as part of their Uniform Crime Reporting program. Offenses that are motivated, in whole or in part, by the offender's bias against a race, religion, disability, sexual orientation, ethnicity, gender or gender identity are reported to the FBI if the police investigation reveals objective facts that would lead a "reasonable and prudent person" to conclude that the offender's actions were motivated

by bias. FBI guidelines also recommend a secondary review of these cases to ensure that the facts of the case support a hate crime designation. A secondary review is completed as the cases are reported to us.

RECEIVED
FARGO POLICE DEPARTMENT
OCT 11 2022
TRAVIS STEFCNOWICZ
ASSISTANT CHIEF OF POLICE
REF Chief Z. bolski - 1242

RECEIVED
FARGO POLICE DEPARTMENT
OCT 11 2022
DAVID B ZIBOLSKI
CHIEF OF POLICE
REF: FIVE - HATE CRIMES

20



FARGO POLICE DEPARTMENT

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

OFFICE OF THE CHIEF

MEMORANDUM

To: Kember Anderson

From: Chief David B. Zibolski

DZ

Date: November 8, 2022

RE: Item for consent agenda

Kember,

I would like to present on the following for the November 14, 2022 City Commission Meeting:

- September traffic enforcement efforts
- Third quarter hate crime updates

Please contact my office if you have questions or need any additional information.

Thank you.



FARGO POLICE DEPARTMENT

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

CRIMINAL INVESTIGATIONS DIVISION

RECEIVED
FARGO POLICE DEPARTMENT

OCT 10 2022
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REF: AC

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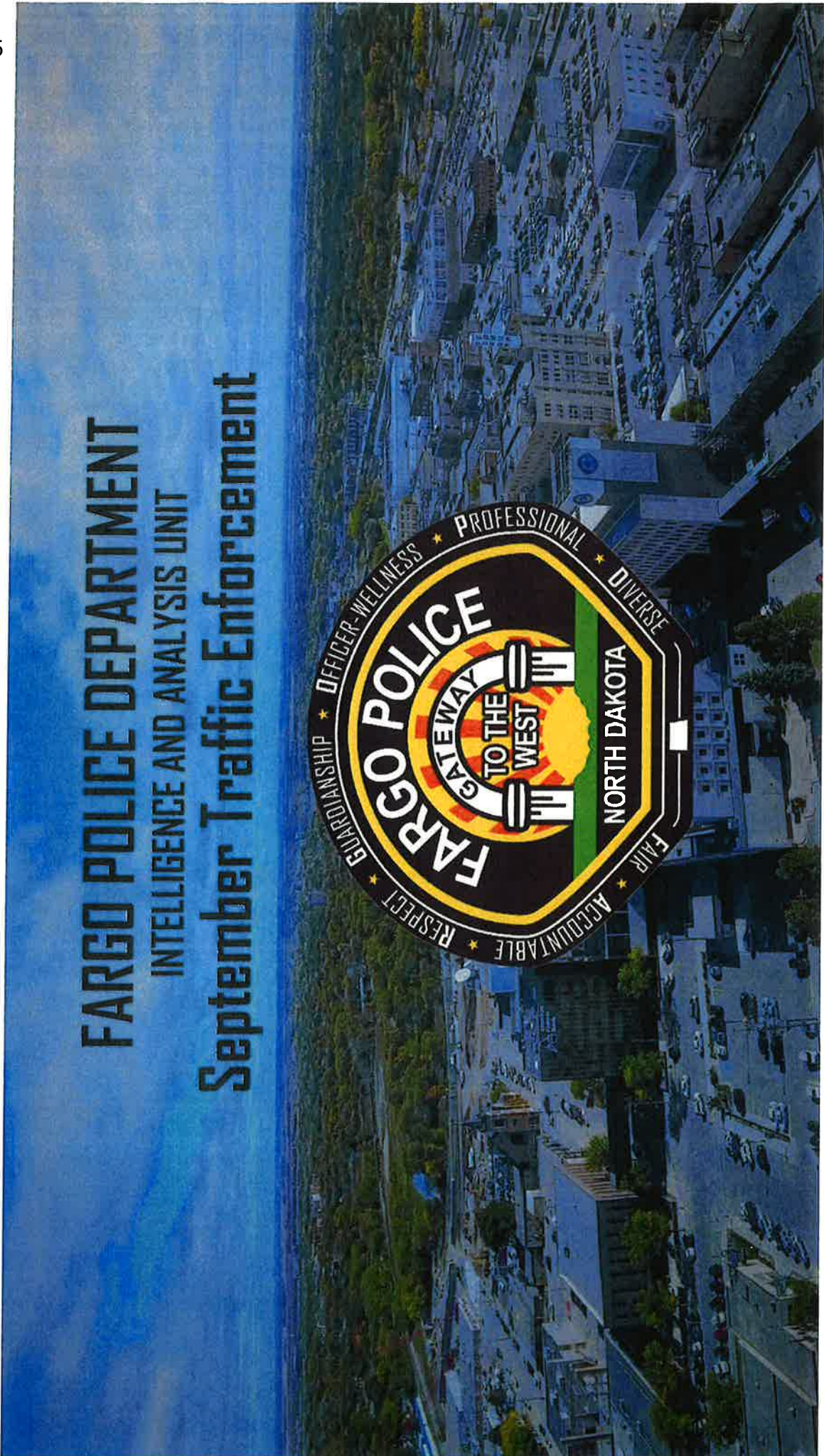
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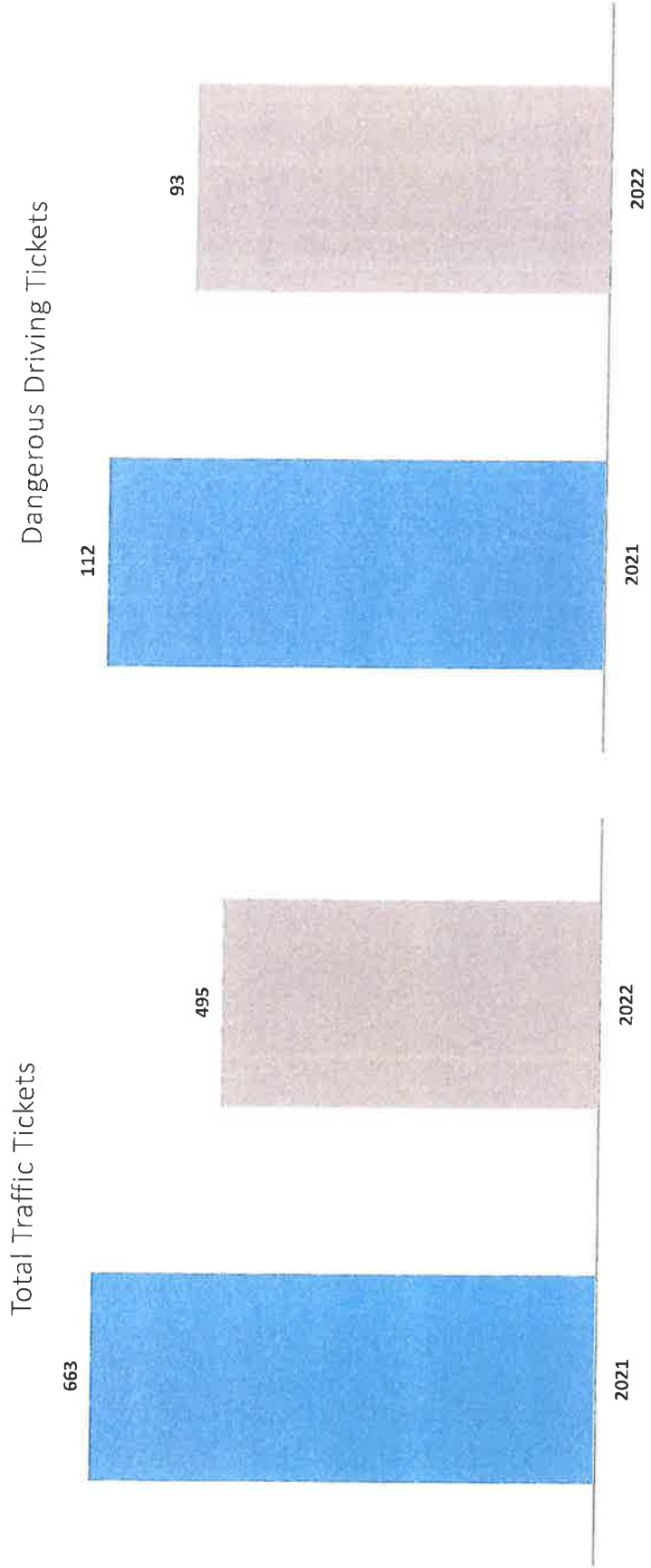
RECEIVED
FARGO POLICE DEPARTMENT
OCT 11 2022
TRAVIS STEPONOWICZ
ASSISTANT CHIEF OF POLICE
REF Chief Zibolski - 1243

RECEIVED
FARGO POLICE DEPARTMENT
OCT 11 2022
DAVID B ZIBOLSKI
CHIEF OF POLICE
REF: FIVE HATE CRIMES

FARGO POLICE DEPARTMENT
INTELLIGENCE AND ANALYSIS UNIT
September Traffic Enforcement



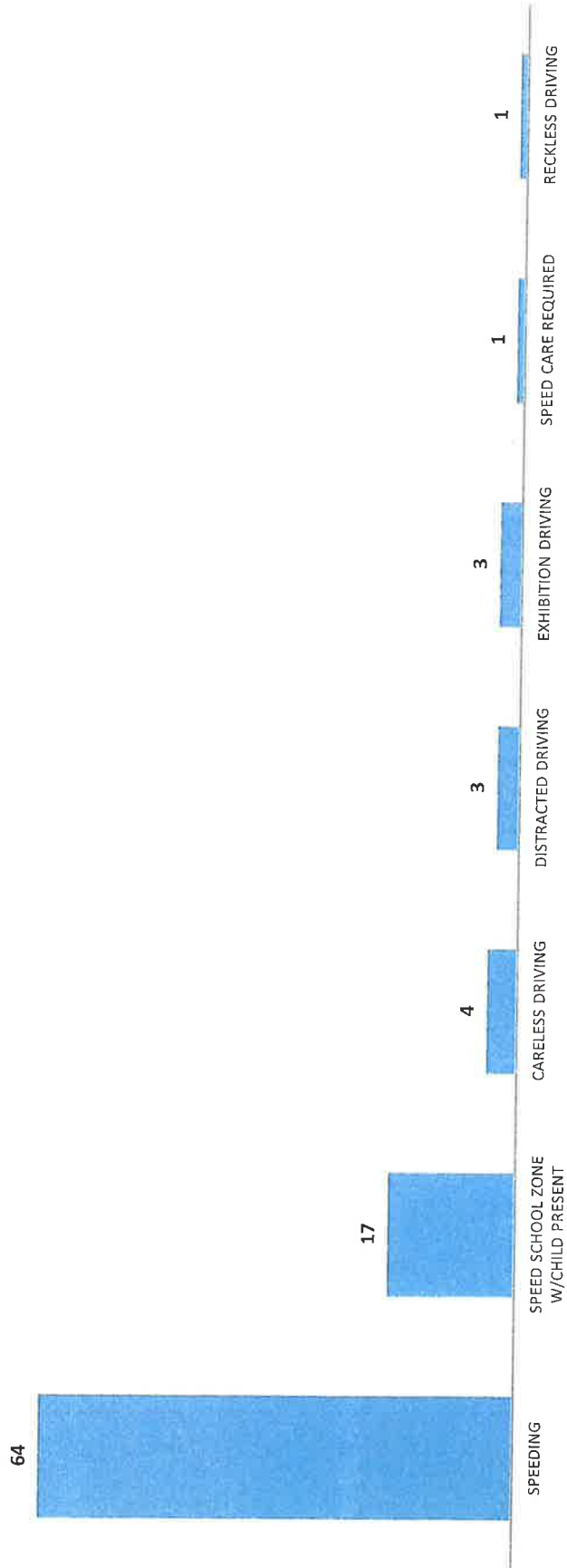
Traffic Tickets September



FARGO POLICE DEPARTMENT ★ INTELLIGENCE AND ANALYSIS UNIT

Dangerous Driving Ticket Comparison September

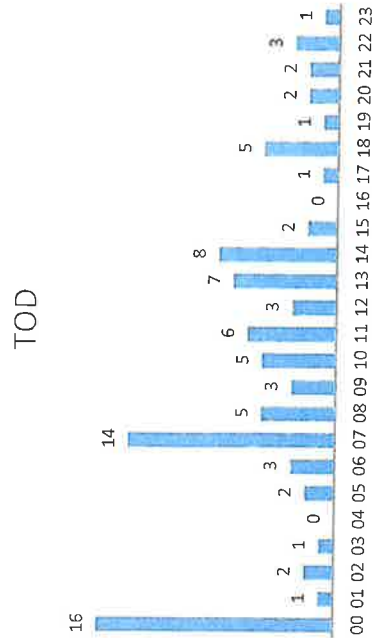
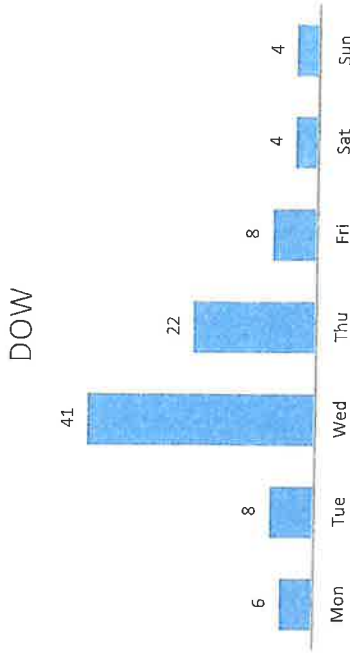
Dangerous Driving



FARGO POLICE DEPARTMENT * INTELLIGENCE AND ANALYSIS UNIT

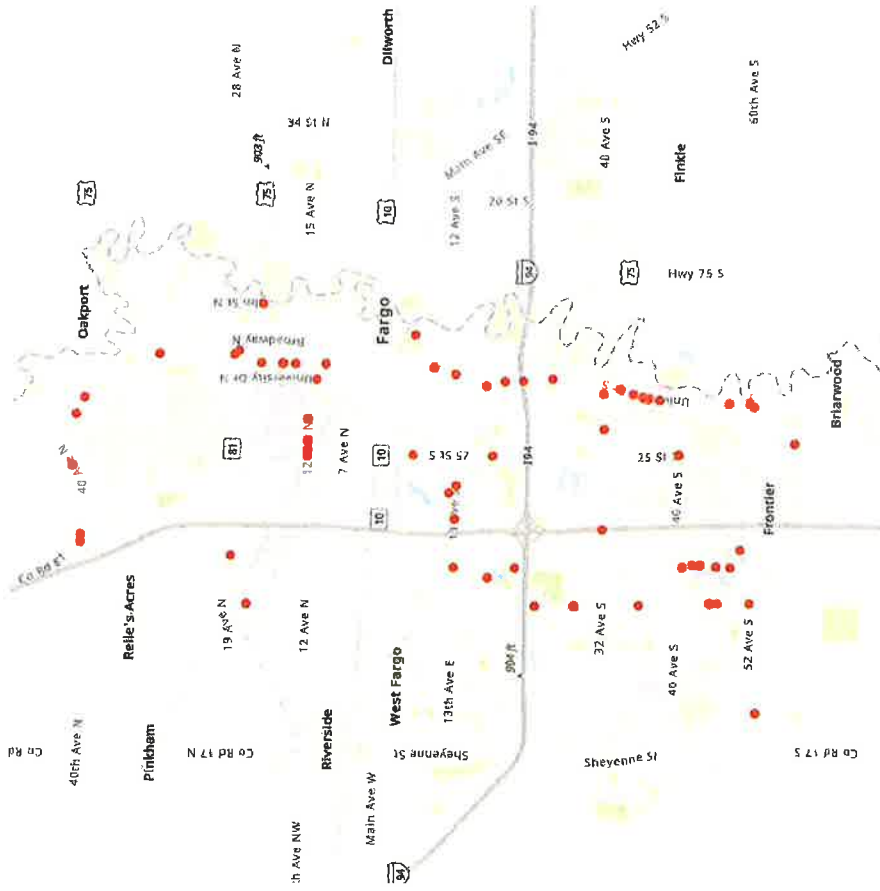
Dangerous Driving September Times

TOD	Sun	Mon	Tue	Wed	Thu	Fri	Sat
00	1	3	8	1	3	1	1
01							1
02							1
03							
04							
05			2				
06			1	1	1		
07			2	6	2	4	
08				4	1		
09				3			
10				4	1		
11				2	2		
12				1	1		
13				1	4	1	
14				2	6		
15					1		
16							
17							
18				1	3		
19							
20				1	1		
21							
22				2	1		
23							
Grand Tot	4	6	8	41	22	8	4



FARGO POLICE DEPARTMENT * INTELLIGENCE AND ANALYSIS UNIT

Location of Dangerous Driving Tickets YTD 2022



FARGO POLICE DEPARTMENT * INTELLIGENCE AND ANALYSIS UNIT

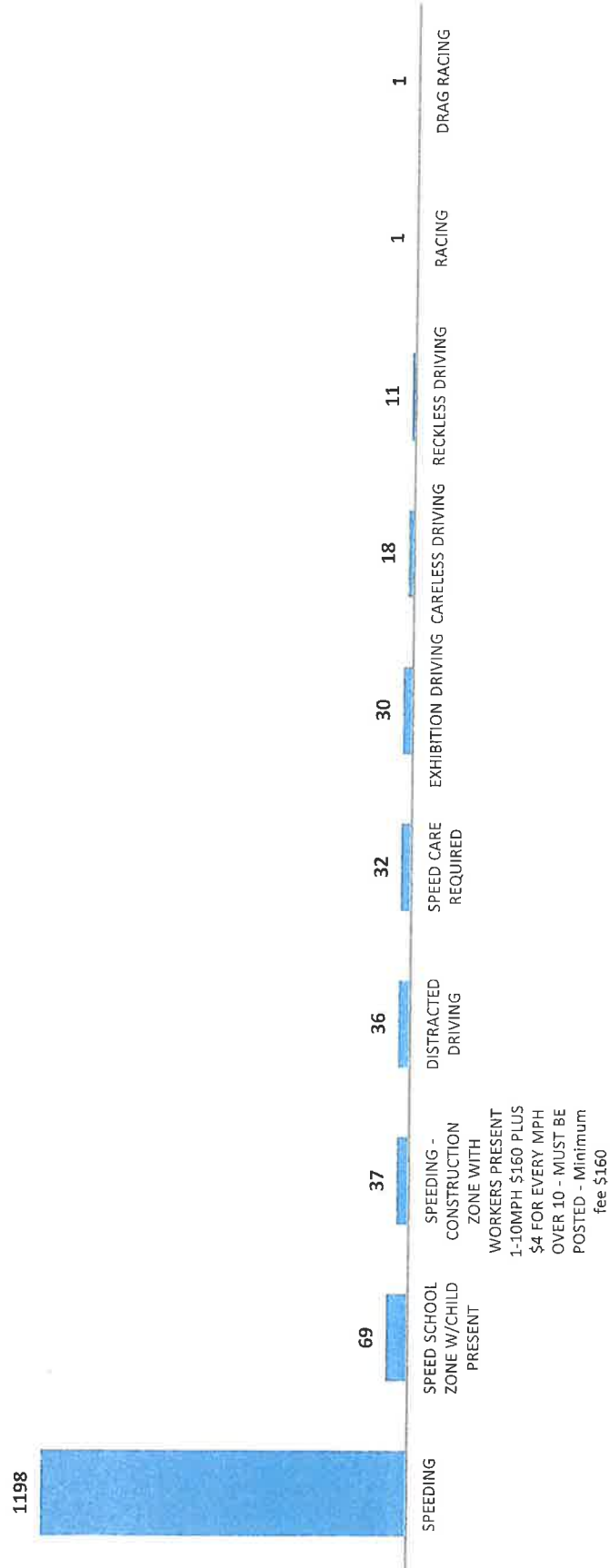
Dangerous Driving Tickets YTD Times

TOD	Sun	Mon	Tue	Wed	Thu	Fri	Sat
00	8	13	2	9	15	6	8
01	2		1	4			2
02		1	2	3	2	1	1
03	3	2	1	1	4	1	
04		3	1	1	3	2	1
05	1	2	4	5	5	2	
06	2	2	6	7	1		
07	3	4	17	58	5	6	1
08	4	8	6	50	10	6	4
09	3	10	11	43	11	10	3
10	6	10	9	46	17	7	3
11	4	7	11	30	9	6	3
12	6	10	11	39	7	1	6
13	6	18	20	50	12	8	3
14	5	16	18	43	17	8	2
15	2	8	3	11	4	9	4
16	5	10	7	10	4	7	9
17	8	11	4	14	3	3	10
18	8	10	2	25	6	9	9
19	4	12	4	24	7	8	10
20	4	7	7	13	2	9	8
21	6	2	3	5	6	10	8
22	10	8	7	23	9	13	14
23	9	7	7	25	5	13	22
Grand Tot	109	181	164	535	168	145	131



FARGO POLICE DEPARTMENT ★ INTELLIGENCE AND ANALYSIS UNIT

Dangerous Driving YTD



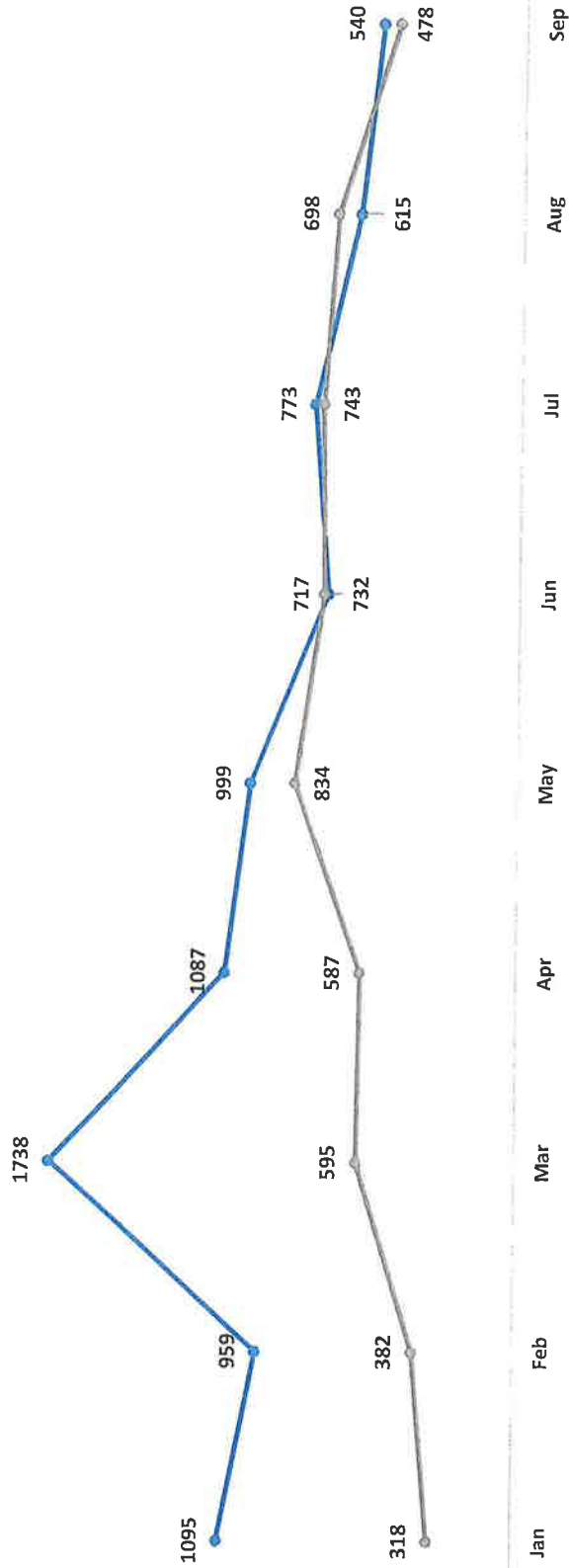
WORKERS PRESENT
 1-10MPH \$160 PLUS
 \$4 FOR EVERY MPH
 OVER 10 - MUST BE
 POSTED - Minimum
 fee \$160



FARGO POLICE DEPARTMENT * INTELLIGENCE AND ANALYSIS UNIT

Traffic Stop Comparison

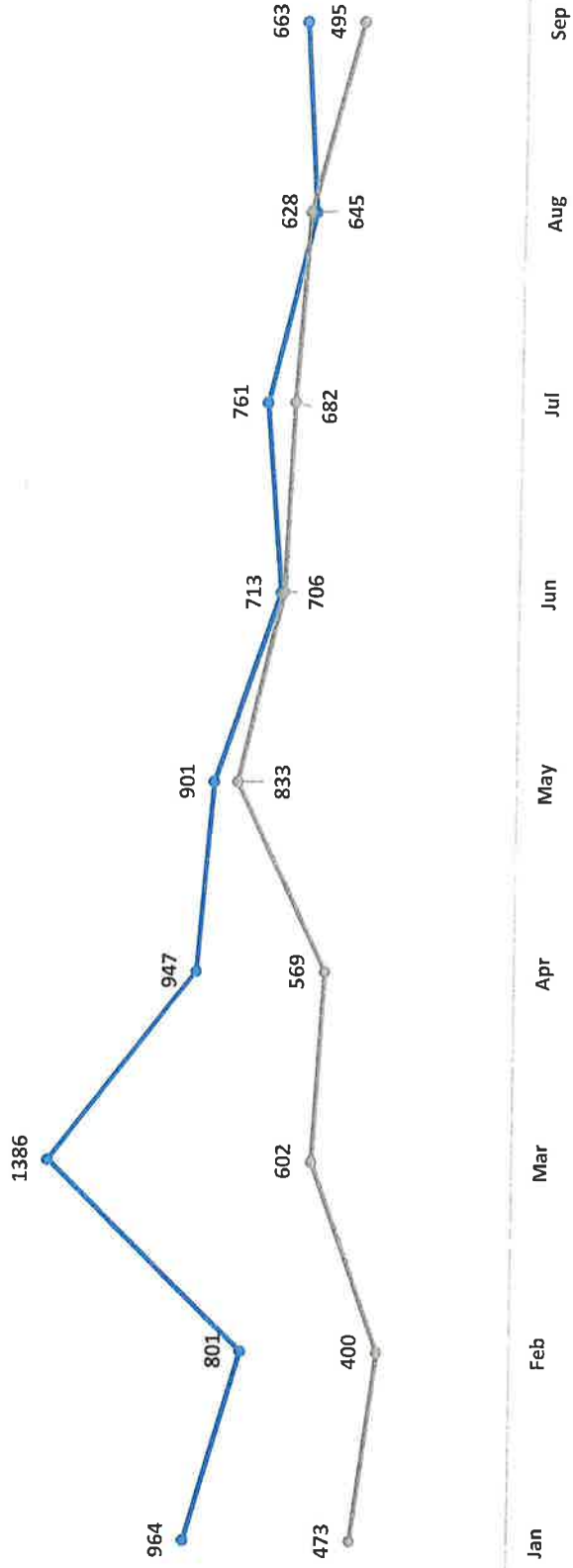
YTD Comparison



FARGO POLICE DEPARTMENT ★ INTELLIGENCE AND ANALYSIS UNIT

Traffic Citations Comparison

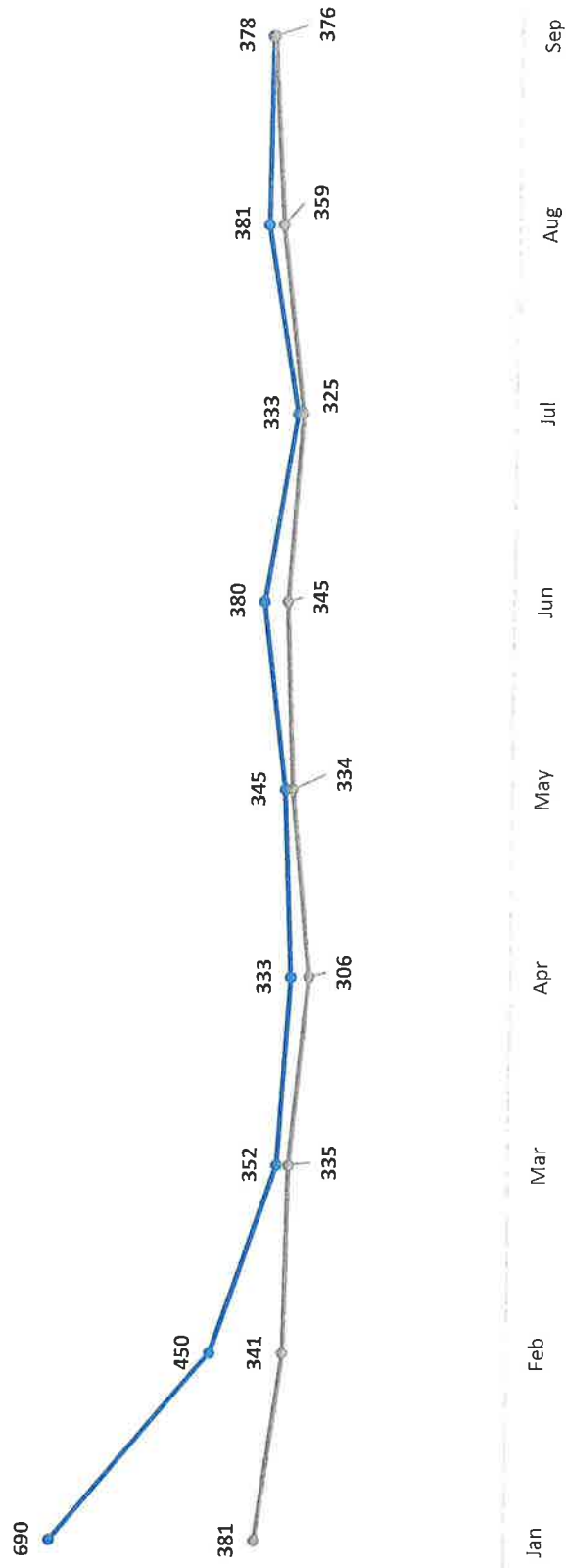
YTD Comparison



FARGO POLICE DEPARTMENT * INTELLIGENCE AND ANALYSIS UNIT

Crashes YTD

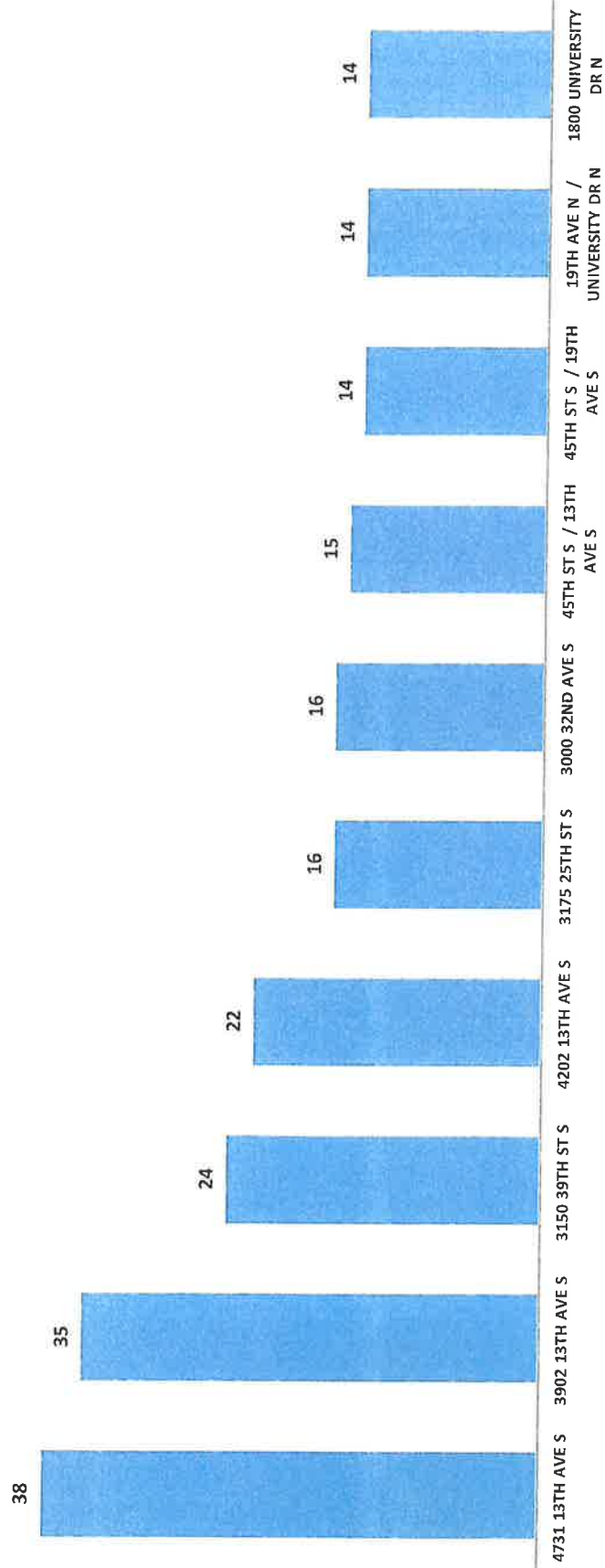
Crashes YTD



FARGO POLICE DEPARTMENT * INTELLIGENCE AND ANALYSIS UNIT

2022 YTD Crash Locations

Top 10 Crash Locations



FARGO POLICE DEPARTMENT ★ INTELLIGENCE AND ANALYSIS UNIT

21

November 10, 2022

Honorable Board of
 City Commissioners
 City of Fargo
 225 4th St. N
 Fargo, ND 58102

Dear Commissioners:

Attached please find a tabulation sheet from **AFB23007** listing all qualified bids received for supplying chemicals to the Water Treatment Plant for 2023. Listed below are the lowest and/or best value bids received for each of the chemicals:

AFB23007 Water Treatment Plant Chemical Bid Results		
Product Name	Vendor	Unit Price
Aluminum Sulfate	Hawkins, Inc.	\$0.155 / pound
Anhydrous Ammonia	Hawkins, Inc.	\$3.10 / pound
Citric Acid, 50%	Hawkins, Inc.	\$1.16 / pound
Hydrofluosilicic Acid	Univar Solutions Inc.	\$0.285 / pound
Hydrogen Peroxide, 34%	Hawkins, Inc.	\$0.625 / pound
Lime	Graymont (WI) LLC	\$231.88 / ton
Liquid carbon Dioxide	American Welding & Gas	\$164.80 / ton
Liquid Chlorine	Hawkins, Inc.	\$2,240.00 / ton
Liquid Oxygen	Linde, Inc.	\$147.34 / ton
Aluminum Chlorohydrate	Hawkins, Inc.	\$0.38 / pound
Polyphosphate	Carus, LLC.	\$2.49 / pound
Ferric Sulfate 60%	Hawkins, Inc.	\$3.085 / gallon
Soda Ash	Killoran T&B, Inc.	\$582.25 / ton
Sodium Bisulfite, 38%	Hawkins, Inc.	\$0.39 / pound
Sodium Hydroxide, 50%	Univar Solutions Inc.	\$0.3035 / pound
Sodium Hypochlorite, 12.5%	Hawkins, Inc.	\$0.345 / pound
Sulfuric Acid, 40% Drums	Hawkins, Inc.	\$0.53 / pound
Sulfuric Acid, 40% Pails	Hawkins, Inc.	\$8.40 / gallon
Sulfuric Acid, 93%	Hawkins, Inc.	\$0.139 / pound
Poly DADMAC 20	Hexagon Technologies	\$0.99 / pound
Anionic Polyacrylamide	Neo Solutions, Inc.	\$2.18 / pound
Acetic Acid 56	Hawkins, Inc.	\$1.70 / pound

The recommendation is to award the 2023 chemical bids as listed above.

It is projected that chemical usage for 2023 will be similar to usage during 2022. The results of AFB23007 Chemical Bid reflect a 27% increase in costs compared to 2022.

Sincerely,



Daniel Portlock
 Water Utility Engineer

Sincerely,



Brian A. Ward
 Water Plant Superintendent

AFB23007

**FARGO WATER TREATMENT PLANT
2023 ANNUAL CHEMICAL BIDDING SUMMARY OF QUALIFYING BIDS**

Product Name	Vendor	Estimated Annual	Tons, lbs. or gallons	Unit Price \$ per	Estimated Annual Cost	Payment Method	Recommendation
Aluminum Sulfate	Chemtrade	90,000	lbs	0.2407	\$21,663.00	PO	
	Hawkins Inc.	90,000	lbs	0.155	\$13,950.00	PO	Accept
Anhydrous Ammonia	Hawkins, Inc.	64,000	lbs	3.10	\$198,400.00	PO	Accept
Citric Acid, 50%	Hawkins	36,000	lbs	1.16	\$41,760.00	PO	Accept
	Thornton, Musso, Bellemin	36,000	lbs	2.10	\$75,600.00	PO	
	Sioux Valley Environmental	36,000	lbs	2.75	\$99,000.00	PO	
	Shannon Chemical Corp.	36,000	lbs	3.03	\$109,080.00	PO	
Hydrofluosilicic Acid	Hawkins Inc.	200,000	lbs	0.293	\$58,600.00	PO	
	Univar Solutions	200,000	lbs	0.285	\$57,000.00	PO	Accept
Hydrogen Peroxide, 34%	Hawkins, Inc.	16,000	lbs	0.625	\$10,000.00	PO	Accept
Lime	Graymont (WI) LLC	4,400	Tons	231.88	\$1,020,272.00	PO	Accept
Liquid Carbon Dioxide	American Welding & Gas	650	Tons	164.80	\$107,120.00	PO	Accept
	Central McGowan	650	Tons	210.00	\$136,500.00	PO	
Liquid Chlorine	Hawkins	150	Tons	2,240.00	\$336,000.00	PO	Accept
Liquid Oxygen	American Welding & Gas	500	Tons	205.36	\$102,680.00	PO	
	Central McGowan	500	Tons	182.00	\$91,000.00	PO	
	Linde Inc.	500	Tons	147.34	\$73,670.00	PO	Accept
	Airgas	500	Tons	175.66	\$87,830.00	PO	
Aluminum Chlorohydrate	Chemtrade	1,500,000	lbs	0.75	\$1,125,000.00	PO	
	Hawkins	1,500,000	lbs	0.38	\$570,000.00	PO	Accept
	USALCO Fairfield Plant, LLC	1,500,000	lbs	0.545	\$817,500.00	PO	
Polyphosphate	Carus LLC	120,000	lbs	2.49	\$298,800.00	PO	Accept
	Shannon Chemical Corp.	120,000	lbs	3.27	\$392,400.00	PO	
Ferric Sulfate 60%	Chemtrade	100,000	gallons	4.566	\$456,600.00	PO	
	Hawkins Inc.	100,000	gallons	3.085	\$308,500.00	PO	Accept
Soda Ash	Killoran T&B, Inc.	1,400	Tons	582.25	\$815,150.00	PO	Accept
Sodium Bisulfite, 38%	Hawkins Inc.	60,000	lbs	0.39	\$23,400.00	PO	Accept
Sodium Hydroxide, 50%	Univar Solutions	1,200,000	lbs	0.3035	\$364,200.00	PO	Accept
	Hawkins, Inc.	1,200,000	lbs	0.55	\$660,000.00	PO	
Sodium Hypochlorite, 12.5%	Hawkins Inc.	80,000	lbs	0.345	\$27,600.00	PO	Accept
Sulfuric Acid, 40% Drums	Hawkins, Inc.	16,000	lbs	0.53	\$8,480.00	PO	Accept
Sulfuric Acid, 40% Pails	Hawkins, Inc.	40	gallons	8.40	\$336.00	PO	Accept
Sulfuric Acid, 93%	Hawkins Inc.	1,200,000	lbs	0.139	\$166,800.00	PO	Accept
Poly DADMAC 20	Hexagon Technologies	50,000	lbs	0.99	\$49,500.00	PO	Accept
Anionic Polyacrylamide	Neo Solutions, Inc.	6,600	lbs.	2.18	\$14,388.00	PO	Accept
Acetic Acid 56	Hawkins Inc.	3,600	lbs	1.70	\$6,120.00	PO	Accept

2023 Estimated Chemical Cost of Bid Chemicals = \$4,511,446.00

The recommendation is to accept bid chemicals as listed above.

November 14, 2022

3400 North Broadway
 Fargo, ND 58102
 Phone: 701.241.1454 | Fax: 701.241.8159

www.FargoND.gov

22

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

Commissioners,

The following is in Reference to City Auditors Ad number AFB23008. Bids were opened on November 9, 2022. Please find attached bid tabulation sheet listing all bids received for supplying chemicals to the Water Reclamation Utility for 2023. Listed below are the received low bid for each chemical.

City of Fargo Water Reclamation Utility Chemical Bids for 2023

item #	Product Name	Vendor	Price \$ Per CC	Unit	Price \$ Per PO	Unit
23	Azone 15/ Sodium Hypochlorite	Hawkins Inc.	\$3.65	/gallon	NA	/gallon
24	Prétreat Plus Antiscalant	Hawkins Inc.	\$22.70	/gallon	NA	/gallon
25	Caustic Soda, 30%	Hawkins Inc.	\$5.45	/gallon	NA	/gallon
26	Ferric Chloride, 35%	Hawkins Inc.	\$0.64	/pound	NA	/pound
27	Ammonium Hydroxide, 19%	Hawkins Inc.	\$0.57	/pound	NA	/pound
28	Sulfuric Acid, 40%	Hawkins Inc.	\$0.365	/pound	NA	/pound
29	Citric Acid, 50%	Hawkins Inc.	\$1.35	/pound	NA	/pound
30	Odor Control/Hydrogen Sulfide	MXN Inc.	\$145.00	/FT ³ media	\$145.00	/FT ³ media
31	Odor Control/Broad Spectrum	MXN Inc.	\$210.00	/FT ³ media	\$210.00	/FT ³ media
32	Calcium Nitrate / Bulk	Hawkins Inc.	\$3.43	/gallon	NA	/gallon
	Calcium Nitrate / Tote	Hawkins Inc.	\$4.68	/gallon	NA	/gallon
33	Sodium Hypochlorite, 12%	Hawkins Inc.	\$3.65	/gallon	NA	/gallon
34	Hydrogen Peroxide 34%	Hawkins Inc.	\$2.95	/gallon	NA	/gallon
35	Cationic Flocculant	Sioux Valley Env	\$2.33	/pound	\$2.25	/pound

Water Reclamation Staff recommendation to City Commission is to award the 2023 chemical bids to the included vendors and their respective chemicals.

Respectfully,



Jim Hausauer
 Utility Director
 Water Reclamation Utility

2023 CHEMICAL BID FORM

Annual Bid to supply chemicals for the City of Fargo, ND, Water Treatment Plant and Regional Water Reclamation Facility from January 1, 2023 through December 31, 2023

Bid opening - 11:30am Wednesday, November 9th, 2022

Engineering Conference Room in Fargo City Hall View online at: <http://www.fargobidopenings.com/>

***** For each line item bid, be sure to check or enter information in all yellow cells *****

Item #	Item	Check this box to acknowledge bid specifications (x)	Guaranteed Bid Price Per Unit	
			Credit card payment (NA) if not acceptable	Purchase order (PO) payment
1	Aluminum Sulfate	X	\$/pound= NA	\$/pound= \$1.55/lb.
2	Anhydrous Ammonia	X	\$/pound= NA	\$/pound= \$3.10/lb.
3	Citric Acid, 50%	X	\$/pound= NA	\$/pound= \$1.16/lb.
4	Hydrofluosilicic Acid	X	\$/pound= NA	\$/pound= \$2.93/lb.
5	Hydrogen Peroxide, 34%	X	\$/pound= NA	\$/pound= \$0.625/lb.
6	Lime		\$/ton=	\$/ton=
7	Liquid Carbon Dioxide		\$/ton=	\$/ton=
8	Liquid Chlorine	X	\$/ton= NA	\$/ton= \$2,240/Ton
9	Liquid Oxygen		\$/ton=	\$/ton=
10	Aluminum Chlorohydrate	X	\$/pound= NA	\$/pound= \$0.38/lb.
11	Polyphosphate		\$/pound=	\$/pound=
12	Ferric Sulfate 60%	X	\$/gallon= NA	\$/gallon= \$3.085/Gallon
13	Soda Ash		\$/ton=	\$/ton=
14	Sodium Bisulfite, 38%	X	\$/pound= NA	\$/pound= \$0.39/lb.
15	Sodium Hydroxide, 50%	X	\$/pound= NA	\$/pound= \$0.55/lb.
16	Sodium Hypochlorite, 12.5%	X	\$/pound= NA	\$/pound= \$0.345/lb.
17	Sulfuric Acid, 40% / Drum	X	\$/pound= NA	\$/pound= \$0.53/lb.
18	Sulfuric Acid, 40% / Pail	X	\$/gallon= NA	\$/gallon= \$8.40/Gallon
19	Sulfuric Acid, 93%	X	\$/pound= NA	\$/pound= \$0.139/lb.
20	Poly DADMAC 20		\$/pound=	\$/pound=
21	Anionic Polyacrylamide		\$/pound=	\$/pound=
22	Acetic Acid 56	X	\$/pound= NA	\$/pound= \$1.70/lb.
23	Azone 15 / Sodium Hypochlorite	X	\$/gallon= \$3.65/Gallon	\$/gallon=
24	Pretreat Plus Antiscalant	X	\$/gallon= \$22.70/Gallon	\$/gallon=
25	Caustic Soda, 30%	X	\$/gallon= \$5.45/Gallon	\$/gallon=
26	Ferric Chloride, 35%	X	\$/pound= \$0.64/lb.	\$/pound=
27	Ammonium Hydroxide, 19%	X	\$/pound= \$0.57/lb.	\$/pound=
28	Sulfuric Acid, 40%	X	\$/pound= \$0.365/lb.	\$/pound=
29	Citric Acid, 50%	X	\$/pound= \$1.35/lb.	\$/pound=
30	Odor Control/Hydrogen Sulfide		\$/FT ³ media=	\$/FT ³ media=
31	Odor Control/Broad Spectrum		\$/FT ³ media=	\$/FT ³ media=
32	Calcium Nitrate / Bulk	X	\$/gallon= \$3.43/Gallon	\$/gallon=
	Calcium Nitrate / Tote	X	\$/gallon= \$4.68/Gallon	\$/gallon=
33	Sodium Hypochlorite 12%	X	\$/gallon= \$3.65/Gallon	\$/gallon=
34	Hydrogen Peroxide 34%	X	\$/gallon= \$2.95/Gallon	\$/gallon=
35	Cationic Flocculant		\$/pound=	\$/pound=

Bid Submitted by (company):

Hawkins Inc.

Signature of Authorized Representative:

Nicholas D. Minick

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***** For each line item bid, be sure to check or enter information in all yellow cells *****

Item #	Item	Check this box to acknowledge bid specifications (x)	Guaranteed Bid Price Per Unit	
			Credit card payment (NA) if not acceptable	Purchase order (PO) payment
1	Aluminum Sulfate		\$/pound=	\$/pound=
2	Anhydrous Ammonia		\$/pound=	\$/pound=
3	Citric Acid, 50%		\$/pound=	\$/pound=
4	Hydrofluosilicic Acid		\$/pound=	\$/pound=
5	Hydrogen Peroxide, 34%		\$/pound=	\$/pound=
6	Lime		\$/ton=	\$/ton=
7	Liquid Carbon Dioxide		\$/ton=	\$/ton=
8	Liquid Chlorine		\$/ton=	\$/ton=
9	Liquid Oxygen		\$/ton=	\$/ton=
10	Aluminum Chlorohydrate		\$/pound=	\$/pound=
11	Polyphosphate		\$/pound=	\$/pound=
12	Ferric Sulfate 60%		\$/gallon=	\$/gallon=
13	Soda Ash		\$/ton=	\$/ton=
14	Sodium Bisulfite, 38%		\$/pound=	\$/pound=
15	Sodium Hydroxide, 50%		\$/pound=	\$/pound=
16	Sodium Hypochlorite, 12.5%		\$/pound=	\$/pound=
17	Sulfuric Acid, 40% / Drum		\$/pound=	\$/pound=
18	Sulfuric Acid, 40% / Pail		\$/gallon=	\$/gallon=
19	Sulfuric Acid, 93%		\$/pound=	\$/pound=
20	Poly DADMAC 20		\$/pound=	\$/pound=
21	Anionic Polyacrylamide		\$/pound=	\$/pound=
22	Acetic Acid 56		\$/pound=	\$/pound=
23	Azone 15 / Sodium Hypochlorite		\$/gallon=	\$/gallon=
24	Pretreat Plus Antiscalant		\$/gallon=	\$/gallon=
25	Caustic Soda, 30%		\$/gallon=	\$/gallon=
26	Ferric Chloride, 35%		\$/pound=	\$/pound=
27	Ammonium Hydroxide, 19%		\$/pound=	\$/pound=
28	Sulfuric Acid, 40%		\$/pound=	\$/pound=
29	Citric Acid, 50%		\$/pound=	\$/pound=
30	Odor Control/Hydrogen Sulfide	X	\$/FT ³ media= 207.00 ✓	\$/FT ³ media= 207.00 ✓
31	Odor Control/Broad Spectrum	X	\$/FT ³ media= 152.00 ✓	\$/FT ³ media= 152.00 ✓
32	Calcium Nitrate / Bulk		\$/gallon=	\$/gallon=
	Calcium Nitrate / Tote		\$/gallon=	\$/gallon=
33	Sodium Hypochlorite 12%		\$/gallon=	\$/gallon=
34	Hydrogen Peroxide 34%		\$/gallon=	\$/gallon=
35	Cationic Flocculant		\$/pound=	\$/pound=

Doesn't spec !!

Bid Submitted by (company): ELECTRIC PUMP
 Signature of Authorized Representative: [Signature]

2023 CHEMICAL BID FORM

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***** For each line item bid, be sure to check or enter information in all yellow cells *****

Item #	Item	Check this box to acknowledge bid specifications (x)	Guaranteed Bid Price Per Unit	
			Credit card payment (NA) if not acceptable	Purchase order (PO) payment
1	Aluminum Sulfate		\$/pound=	\$/pound=
2	Anhydrous Ammonia		\$/pound=	\$/pound=
3	Citric Acid, 50%		\$/pound=	\$/pound=
4	Hydrofluosilicic Acid		\$/pound=	\$/pound=
5	Hydrogen Peroxide, 34%		\$/pound=	\$/pound=
6	Lime		\$/ton=	\$/ton=
7	Liquid Carbon Dioxide		\$/ton=	\$/ton=
8	Liquid Chlorine		\$/ton=	\$/ton=
9	Liquid Oxygen		\$/ton=	\$/ton=
10	Aluminum Chlorohydrate		\$/pound=	\$/pound=
11	Polyphosphate		\$/pound=	\$/pound=
12	Ferric Sulfate 60%		\$/gallon=	\$/gallon=
13	Soda Ash		\$/ton=	\$/ton=
14	Sodium Bisulfite, 38%		\$/pound=	\$/pound=
15	Sodium Hydroxide, 50%		\$/pound=	\$/pound=
16	Sodium Hypochlorite, 12.5%		\$/pound=	\$/pound=
17	Sulfuric Acid, 40% / Drum		\$/pound=	\$/pound=
18	Sulfuric Acid, 40% / Pail		\$/gallon=	\$/gallon=
19	Sulfuric Acid, 93%		\$/pound=	\$/pound=
20	Poly DADMAC 20		\$/pound=	\$/pound=
21	Anionic Polyacrylamide		\$/pound=	\$/pound=
22	Acetic Acid 56		\$/pound=	\$/pound=
23	Azone 15 / Sodium Hypochlorite		\$/gallon=	\$/gallon=
24	Pretreat Plus Antiscalant		\$/gallon=	\$/gallon=
25	Caustic Soda, 30%		\$/gallon=	\$/gallon=
26	Ferric Chloride, 35%		\$/pound=	\$/pound=
27	Ammonium Hydroxide, 19%		\$/pound=	\$/pound=
28	Sulfuric Acid, 40%		\$/pound=	\$/pound=
29	Citric Acid, 50%		\$/pound=	\$/pound=
30	Odor Control/Hydrogen Sulfide	X	\$/FT ³ media= 145.00	\$/FT ³ media= 145.00
31	Odor Control/Broad Spectrum	X	\$/FT ³ media= 210.00	\$/FT ³ media= 210.00
32	Calcium Nitrate / Bulk		\$/gallon=	\$/gallon=
	Calcium Nitrate / Tote		\$/gallon=	\$/gallon=
33	Sodium Hypochlorite 12%		\$/gallon=	\$/gallon=
34	Hydrogen Peroxide 34%		\$/gallon=	\$/gallon=
35	Cationic Flocculant		\$/pound=	\$/pound=

Bid Submitted by (company): MNX inc on behalf of Purafil Inc.

Signature of Authorized Representative: *Nan B. Ewert* 11/2/22

2023 CHEMICAL BID FORM

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***** For each line item bid, be sure to check or enter information in all yellow cells *****

Item #	Item	Check this box to acknowledge bid specifications (x)	Guaranteed Bid Price Per Unit	
			Credit card payment (NA) if not acceptable	Purchase order (PO) payment
1	Aluminum Sulfate		\$/pound=	\$/pound=
2	Anhydrous Ammonia		\$/pound=	\$/pound=
3	Citric Acid, 50%	X	\$/pound= 2.86	\$/pound= 2.75
4	Hydrofluosilicic Acid		\$/pound=	\$/pound=
5	Hydrogen Peroxide, 34%		\$/pound=	\$/pound=
6	Lime		\$/ton=	\$/ton=
7	Liquid Carbon Dioxide		\$/ton=	\$/ton=
8	Liquid Chlorine		\$/ton=	\$/ton=
9	Liquid Oxygen		\$/ton=	\$/ton=
10	Aluminum Chlorohydrate		\$/pound=	\$/pound=
11	Polyphosphate		\$/pound=	\$/pound=
12	Ferric Sulfate 60%		\$/gallon=	\$/gallon=
13	Soda Ash		\$/ton=	\$/ton=
14	Sodium Bisulfite, 38%		\$/pound=	\$/pound=
15	Sodium Hydroxide, 50%		\$/pound=	\$/pound=
16	Sodium Hypochlorite, 12.5%		\$/pound=	\$/pound=
17	Sulfuric Acid, 40% / Drum		\$/pound=	\$/pound=
18	Sulfuric Acid, 40% / Pail		\$/gallon=	\$/gallon=
19	Sulfuric Acid, 93%		\$/pound=	\$/pound=
20	Poly DADMAC 20		\$/pound=	\$/pound=
21	Anionic Polyacrylamide		\$/pound=	\$/pound=
22	Acetic Acid 56		\$/pound=	\$/pound=
23	Azone 15 / Sodium Hypochlorite		\$/gallon=	\$/gallon=
24	Pretreat Plus Antiscalant		\$/gallon=	\$/gallon=
25	Caustic Soda, 30%		\$/gallon=	\$/gallon=
26	Ferric Chloride, 35%		\$/pound=	\$/pound=
27	Ammonium Hydroxide, 19%		\$/pound=	\$/pound=
28	Sulfuric Acid, 40%		\$/pound=	\$/pound=
29	Citric Acid, 50%		\$/pound=	\$/pound=
30	Odor Control/Hydrogen Sulfide		\$/FT ³ media=	\$/FT ³ media=
31	Odor Control/Broad Spectrum		\$/FT ³ media=	\$/FT ³ media=
32	Calcium Nitrate / Bulk		\$/gallon=	\$/gallon=
	Calcium Nitrate / Tote		\$/gallon=	\$/gallon=
33	Sodium Hypochlorite 12%		\$/gallon=	\$/gallon=
34	Hydrogen Peroxide 34%		\$/gallon=	\$/gallon=
35	Cationic Flocculant	X	\$/pound= 2.33	\$/pound= 2.25

Bid Submitted by (company): SIoux VALLEY ENVIRONMENTAL
 Signature of Authorized Representative: [Signature]

2023 Chemical Bid Tabulation Results - Final					
Item #	Item	Bidder	Acknowledgement of bid specifications (x)	Guaranteed Bid Price Per Unit	
				Credit card payment	Purchase order payment
1	Aluminum Sulfate			\$/pound=	\$/pound=
		Chemtrade Chemicals US, LLC	X	NA	0.2407
		Hawkins Inc.	X	NA	0.155
2	Anhydrous Ammonia			\$/pound=	\$/pound=
		Hawkins Inc.	X	NA	3.10
3	Citric Acid, 50%			\$/pound=	\$/pound=
		Shannon Chemical Corporation	X	3.17	3.03
		Sioux Valley Environmental, Inc.	X	2.86	2.75
		Thornton, Musso, and Bellemin, Inc.	X	NA	2.10
		Hawkins Inc.	X	NA	1.16
4	Hydrofluosilicic Acid			\$/pound=	\$/pound=
		Univar Solutions	X	NA	0.285
		Hawkins Inc.	X	NA	0.293
5	Hydrogen Peroxide, 34%			\$/pound=	\$/pound=
		Hawkins Inc.	X	NA	0.625
6	Lime			\$/ton=	\$/ton=
		Graymont WI LLC	X	NA	231.88
7	Liquid Carbon Dioxide			\$/ton=	\$/ton=
		American Welding & Gas	X	NA	164.80
		Central McGowan	X	210.00	210.00
8	Liquid Chlorine			\$/ton=	\$/ton=
		Hawkins Inc.	X	NA	2,240.00
9	Liquid Oxygen			\$/ton=	\$/ton=
		American Welding & Gas	X	NA	205.36
		Linde Inc.	X	NA	147.34
		Central McGowan	X	182.00	182.00
		Airgas	X	NA	175.66
10	Aluminum Chlorohydrate			\$/pound=	\$/pound=
	HYPER+ION 1090	Chemtrade Chemicals US, LLC	X	NA	0.75
	DelPAC XG	USALCO, LLC	X	NA	0.545
	Aqua Hawk 607	Hawkins Inc.	X	NA	0.38
11	Polyphosphate			\$/pound=	\$/pound=
	SHAN-NO-CORR Type N2	Shannon Chemical Corporation	X	3.37	3.27
	Aquadene MP-4020	Carus LLC	X	2.56	2.49

2023 Chemical Bid Tabulation Results - Final					
Item #	Item	Bidder	Acknowledgement of bid specifications (x)	Guaranteed Bid Price Per Unit	
				Credit card payment	Purchase order payment
12	Ferric Sulfate 60%			\$/gallon=	\$/gallon=
		Chemtrade Chemicals US, LLC	X	NA	4.566
		Hawkins Inc.	X	NA	3.085
13	Soda Ash			\$/ton=	\$/ton=
		Killoran Trucking & Brokerage, Inc.	X	NA	582.25
14	Sodium Bisulfite, 38%			\$/pound=	\$/pound=
		Hawkins Inc.	X	NA	0.39
15	Sodium Hydroxide, 50%			\$/pound=	\$/pound=
		Univar Solutions	X	NA	0.3035
		Hawkins Inc.	X	NA	0.55
16	Sodium Hypochlorite, 12.5%			\$/pound=	\$/pound=
		Hawkins Inc.	X	NA	0.345
17	Sulfuric Acid, 40% Drum			\$/pound=	\$/pound=
		Hawkins Inc.	X	NA	0.53
18	Sulfuric Acid, 40% Pail			\$/gallon=	\$/gallon=
		Hawkins Inc.	X	NA	8.40
19	Sulfuric Acid, 93%			\$/pound=	\$/pound=
		Hawkins Inc.	X	NA	0.139
20	Poly DADMAC 20			\$/pound=	\$/pound=
	Hexafloc 0120	Hexagon Technologies	X	NA	0.99
21	Anionic Polyacrylamide			\$/pound=	\$/pound=
	NS 6550P	Neo Solutions, Inc.	X	2.27	2.18
22	Acetic Acid 56			\$/pound=	\$/pound=
		Hawkins Inc.	X	NA	1.70

2023 Chemical Bid Tabulation Results - Final					
Item #	Item	Bidder	Acknowledgement of bid specifications (x)	Guaranteed Bid Price Per Unit	
				Credit card payment	Purchase order payment
23	Azone 15 / Sodium Hypochlorite			\$/gallon=	\$/gallon=
		Hawkins Inc.	X	3.65	NA
24	Pretreat Plus Antiscalant			\$/gallon=	\$/gallon=
		Hawkins Inc.	X	22.70	NA
25	Caustic Soda, 30%			\$/gallon=	\$/gallon=
		Hawkins Inc.	X	5.45	NA
26	Ferric Chloride, 35%			\$/pound=	\$/pound=
		Hawkins Inc.	X	0.64	NA
27	Ammonium Hydroxide, 19%			\$/pound=	\$/pound=
		Hawkins Inc.	X	0.57	NA
28	Sulfuric Acid, 40%			\$/pound=	\$/pound=
		Hawkins Inc.	X	0.365	NA
29	Citric Acid, 50%			\$/pound=	\$/pound=
		Hawkins Inc.	X	1.35	NA
30	Odor Control/Hydrogen Sulfide			\$/FT³ media=	\$/FT³ media=
		Electric Pump	X	207.00	207.00
		MNX Inc. / Purafil	X	145.00	145.00
31	Odor Control/Broad Spectrum			\$/FT³ media=	\$/FT³ media=
		Electric Pump	X	152.00	152.00
		MNX Inc. / Purafil		210.00	210.00
32	Calcium Nitrate / Bulk			\$/gallon=	\$/gallon=
		Hawkins Inc.	X	3.43	NA
	Calcium Nitrate / Tote			\$/gallon=	\$/gallon=
		Hawkins Inc.	X	4.68	NA
33	Sodium Hypochlorite, 12%			\$/gallon=	\$/gallon=
		Hawkins Inc.	X	3.65	NA
34	Hydrogen Peroxide 34%			\$/gallon=	\$/gallon=
		Hawkins Inc.	X	2.95	NA
35	Cationic Flocculant			\$/pound=	\$/pound=
	Clarifloc CE-1300	Sioux Valley Environmental, Inc.	X	2.33	2.25

REPORT OF ACTION

CONSULTANT SELECTION COMMITTEE

Requesting: CONSULTING ENGINEERING SERVICES

Improvement District #: BN-23-A2

Location: 52nd Avenue S from 63rd Street to Sheyenne Street

Date of Hearing: 9/21/2022

Requested Services: Construction Administration Services for the Street Construction Project

<u>Routing</u>	<u>Date</u>
City Commission	11/14/2022
Consultant File	
Project File	X
Petitioners	
Selection Committee	X

Proposals were received from the following Consultants for this project:

Houston Engineering, Inc.

The Selection Committee evaluated proposals based on the criteria outlined within the RFP:

<u>Selection Criteria</u>	<u>Points</u>
Project understanding, issues & approach	10
Past Performance on other local projects	20
Related Experience with Similar Projects, specifically NDDOT projects	20
Cost Proposal	10
Expertise of the Technical and Professional Engineering Staff	
Assigned to the Project	40
	100

RECOMMENDED MOTION

Concur with consultant selection and recommend contract award for consulting services to Houston Engineering Inc. in the amount of \$1,425,840 with the funding source to be Special Assessments and Sales Tax Funds.


PROJECT FINANCING INFORMATION:

Following review of the proposals, the Selection Committee ranked the firms for selection of the preferred consultant. The Committee then tabulated Committee member proposal rankings. Based on the tabulated ranking, the Committee selected Houston Engineering, Inc. as the preferred consultants for the project, in the amount of \$1,425,840.

COMMITTEE

- Brenda Derrig, City Engineer
- Tom Knakmuhs, Assistant City Engineer
- Jeremy Gorden, Division Engineer
- Kevin Gorder, Division Engineer
- Nathan Boerboom, Division Engineer

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



 Jeremy M. Gorden, PE, PTOE
 Transportation Division Engineer

Fargo Corporate Office 701.237.5065 701.237.5101

1401 21st Avenue North Fargo ND 58102



PROFESSIONAL SERVICES

INITIAL SCOPE OF SERVICES

Project: City of Fargo Project BR-23-A2 – 52nd Avenue S Road Construction Project – 63rd Street to Sheyenne Street
NDDOT Project No. SU-8-984(170)
HE Project No. 6059-0201

Client: City of Fargo
225 4th Street N.
Fargo, ND 58102
Phone (701) 241-1545
Attn: Jeremy Gorden

Location of Project: 52nd Avenue S Road Construction Project – 63rd Street to Sheyenne Street
City of Fargo, Cass County, North Dakota

Description of Work: This is a brief Scope of Work provide for BR-23-A2 is based on Houston Engineering Request for Proposal submitted on 9/16/2022 and have tasks listed below:

- Construction Administration – Prior to Construction
- Survey Preparation – Prior to Construction
- Construction Administration – 42 Weeks
- Continuous Digital Data Office Work – 42 Weeks
- Construction Staking – 42 Weeks
- Project Closeout
- Mileage

In addition to the original scope of work, we have included an estimated fee for the following items:

- Review of Shop Drawings
- Answering questions during the bidding process
- Revisions to plan during bidding process (Addendums) prior to the bid date
 - We have assumed two addendum or specification changes of relatively minor changes in nature based on the hours shown. Actual time for change orders will be compared to estimated hours and billed according to actual time spent.
- Revisions to plans based on a set number of change orders



October 5, 2022
Page 2

- We have assumed two change orders of relatively minor changes in nature based on the hours shown. Actual time for change orders will be compared to estimated hours and billed according to actual time spent.
- Questions and coordination on structural items during construction (Design Engineer)

Basis of Proposal:

This scope of services is based the cost proposal attached to the proposal submitted. The proposal was accepted by Jeremy Gorden via email on 9/21/22 and the additional scope and fee as shown in the attached document.

Fee:

The total budget for the above-described tasks is $\$1,343,392 + \$82,448 = \$1,425,840$. Additional work required beyond the scope listed in the proposal and as noted above will be billed at our current hourly rates.

Conditions:

Material Testing – A rate sheet from Braun Intertec was submitted as part of the proposal. Material testing is not included the above fixed lump sum price, but rates submitted for services will be used during construction.

HOUSTON ENGINEERING, INC.

A handwritten signature in black ink that reads 'Adam R Walker'.

Adam R Walker, PE
Project Manager

AGREEMENT FOR ENGINEERING SERVICES

This Agreement made and entered on this ___ day of _____, 2022 between the CITY OF FARGO, North Dakota, ("City") and **Houston Engineering, Inc.** ("Consultant") for services to be provided to City in furtherance of its development of Improvement District No. BN-23-A2.

1. **Scope of Work.** Consultant shall perform in a competent and professional manner the Scope of Work included in the Request for Proposals for Engineering Services located in the Engineering Department, City of Fargo, for Improvement District No. BN-23-A2 and in Exhibit A attached hereto, both of which are incorporated herein and made a part of this Agreement.
2. **Acceptance and Completion.** Consultant shall commence work immediately upon receipt of a written Notice to Proceed from the City. Services initiated by Consultant prior to execution of this Agreement are done so at Consultant's risk. Acceptance of this Agreement is required by the Board of City Commission of the city of Fargo. The parties anticipate that all work pursuant to this Agreement shall follow the timeframe laid out with the Request for Proposals. Upon request of the City, Consultant shall submit, for the City's approval, a schedule for the performance of Consultant's services which shall be adjusted as required as the project proceeds, and which shall include allowances for periods of time required by the City's project engineer for review and approval of submissions and for approvals of authorities having jurisdiction over the project. This schedule, when approved by the City, shall not, except for reasonable cause, be exceeded by the Consultant.
3. **Change Orders.** City may request changes to the Scope of Work by altering or adding to the Services to be performed. Consultant will provide a contract amendment setting out the fees for the requested change. City shall accept Consultant's reasonable offer in writing, and as approved by the Board of City Commission of the city of Fargo.
4. **Payment.** City shall pay Consultant for all work performed. Consultant shall submit, at least monthly, invoices for work performed. Payment is due within 45 days after receipt of invoice. City shall notify Consultant if it objects to any portion of the charges within 20 days from receipt of the Consultant's invoice, but shall timely pay the undisputed portion. It is the Consultant's responsibility to determine whether federal, state, or local prevailing wage requirements apply.
5. **Assignment.** This Agreement may not be assigned by the City or Consultant without the prior written consent of the other party.
6. **Termination.** This Agreement may be terminated by either party upon fifteen (15) days written notice should the other party fail to perform in accordance with the terms hereof, provided such failure is not cured within such fifteen (15) day period. City may terminate this Agreement for convenience at any time, in which event Consultant shall be compensated in

accordance with the terms hereof for Services performed and reimbursable expenses incurred prior to its receipt of written notice of termination from City.

7. **Third Party Reliance.** The services provided for hereunder are for the City's sole benefit and exclusive use with no third party beneficiaries intended.
8. **Ownership of Documents.** Consultant's work product reimbursed by the City, including all data, documents, results, ideas, developments, and inventions that Consultant conceives or developed in the course of its performance under this Agreement shall be the City's property, unless otherwise agreed.
9. **Independent Contractor Status.** It is expressly acknowledged and understood by the parties that nothing contained in this agreement shall result in, or be construed as establishing an employment relationship. Consultant shall be, and shall perform as, an independent contractor who agrees to use his or her best efforts to provide the services to the City. Consultant shall be solely responsible for the compensation, benefits, contributions and taxes, if any, of its employees, subcontractors and agents.
10. **Indemnification.** Consultant agrees to indemnify and hold harmless the City, its officers, employees, insurers, and self-insurance pool, from and against all liability, claims, and demands, on account of injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with this contract, to the extent such injury, loss, or damage is caused by the negligent act, omission, error, professional error, mistake, negligence, or other fault of the Consultant, any subcontractor of the Consultant, or any officer, employee, representative, or agent of the Consultant or of any subcontractor of the Consultant, or which arises out of any workmen's compensation claim of any employee of the Consultant or of any employee of any subcontractor of the Consultant. The Consultant agrees to investigate, handle, respond to, and to provide defense for and defend against (except in the case of professional liability claims), any such liability, claims or demands at the sole expense of the Consultant, or at the option of the City,

agrees to pay the City or reimburse the City for the defense costs incurred by the City in connection with, any such liability, claims, or demands.

11. **Professional Liability Insurance.** Consultant shall maintain in full force and effect until at least three years subsequent to completion of the Services professional liability insurance covering the performance of the Services. Insurance shall be on a “claims made” basis and in the amount of at least \$1,000,000.

12. **Workers Compensation Insurance.** Consultant shall maintain workers compensation insurance with following limits or with the minimum limits required by law, if greater:

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

13. **General Liability Insurance.** Consultant shall maintain general liability insurance with coverage to include: Premises/Operations, Completed Operations and Contractual Liability (to cover the indemnification provision in paragraph 10 of this Agreement). Limits of coverage shall not be less than:

\$2,000,000	Per occurrence
\$2,000,000	Aggregate

14. **Automobile Insurance.** Consultant shall maintain automobile liability insurance to include all owned autos (private passenger and other than private passenger), hired and non-owned vehicles. Limits of coverage shall not be less than:

\$2,000,000	Per occurrence
-------------	----------------

15. **Evidence of Insurance.** The above insurance shall be maintained in companies lawfully authorized to do business in North Dakota and which are reasonably acceptable to City. Consultant shall furnish City with certificates reflecting such insurance (ACORD form or equivalent) to be in force as long as this agreement remains in effect and providing that said insurance will not be canceled or its limits reduced by endorsement without at least 30 days prior written notice to City.

16. **Consequential Damages.** North Dakota law governs claims for consequential damages.

17. **Entire Agreement.** The terms and conditions set forth herein, the RFP, the Instructions to Offerors of Professional Services, and any document referenced herein constitute the entire

understanding of the parties relating to the provision of services by Consultant to City. This Agreement may be amended only by a written instrument signed by both parties.

18. **Severability**. Should a court of law determine that any paragraph of this Agreement is invalid, all other paragraphs shall remain in effect.
19. **Statute of Limitations**. Causes of action arising out of Consultant's services shall be governed by the applicable statute of limitations.
20. **Dispute Resolution**. Consultant and City will exercise good faith efforts to resolve disputes through a mutually acceptable Alternative Dispute Resolution process. Nothing prevents the parties from pursuing litigation in an appropriate State or Federal court.
21. **Governing Law**. This Agreement shall be governed by and construed in accordance with the laws of the state of North Dakota.
22. **Force Majeure**. Neither party shall be liable for damages or deemed in default of this Agreement and any Authorization for Services hereunder to the extent that any delay or failure 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.

23. **Notice.** Any written notices as called for herein may be hand delivered to the respective persons and/or addresses listed below or mailed by certified mail return receipt requested, to:

City:
City Auditor
City of Fargo
225 North Fourth Street
Fargo, North Dakota 58102

Consultant:
Houston Engineeing, Inc.
1401 21st Avenue N
Fargo, ND 58102

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed by their duly authorized officials, this Agreement.

ATTESTED BY:

CITY OF FARGO, NORTH DAKOTA:

By: _____

Title: _____

Date: _____

Consultant:

WITNESSED BY:

Houston Engineering, Inc.

Adam R Walker

By: Jeremy M. Laughlin 2022.10.27
12:38:58-05'00'

Title: Vice President

Date: _____

26

October 31, 2022

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

**Re: Memorandum of Offer to Landowner
Permanent & Temporary Easements – Improvement District #BN-23-A**

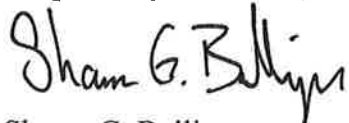
Dear Commissioners:

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-23-A. 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 **Howard C. & Barbara A. Gensler** in association with Improvement District #BN-23-A and that the Mayor is instructed to execute the Memorandum of Offer to Landowner & Easement documents on behalf of the City of Fargo.

Please return the signed originals.

Respectfully submitted,



Shawn G. Bullinger
Land Acquisition Specialist

C: Jeremy Gorden
Nancy J. Morris

Project BN-23-A	County Cass	Parcel(s) 01-3517-00023-000
Landowner Howard C. & Barbara A. Gensler		
Mailing Address 5218 68 ST S Fargo, ND 58104		


The following-described real property and/or related temporary easement areas are being acquired for project purposes:

See enclosed easement(s).

I, as right of way agent for the City of Fargo, Engineering Department, am hereby authorized to offer the following amount of \$ 77,785.00 as full compensation for the fee and/or temporary taking of the foresaid parcels and all damages incidental thereto. The offer set forth has been established through one of the following, Basic Data Book, Certified Appraisal, City of Fargo Minimum Payment Policy. A breakdown of this offer is as follows:

Land	\$	_____
Easement and Access Control	\$	<u>77,785.00</u>
Improvements on Right of Way*	\$	_____
Damages to Remainder	\$	_____
Total Offer	\$	<u>77,785.00</u>

*Description of Damages to Remainder are as follows:


 Owner Signature
 Signature hereby constitutes acceptance of offer as presented above.


 Shawn G. Bullinger
 Land Acquisition Specialist, City of Fargo


 Owner Signature
 Signature hereby constitutes acceptance of offer as presented above.

Fargo City Commission has considered the offer and approves the same:

Timothy J. Mahoney

 MAYOR

 SIGNATURE

 DATE

PERMANENT EASEMENT
(Street and Utility)

KNOW ALL MEN BY THESE PRESENTS that **HOWARD C. GENSLER AND BARBARA A. GENSLER**, hereinafter referred to as "Grantors", for and in consideration of the sum of One and no/100 Dollars (\$1.00) and other valuable consideration, to it in hand paid the receipt whereof is hereby acknowledged, HEREBY GRANTS UNTO THE **CITY OF FARGO, NORTH DAKOTA**, a municipal corporation, its successors and assigns, hereinafter referred to as "Grantee", a permanent and perpetual easement over, upon and in the land hereinafter described for the purpose of laying, constructing, operating, maintaining and repairing a street and all other public utilities, together with the customary appurtenances including location of any and all utilities, said parcel being more particularly described as follows:

Parcel 9:

That part of Government Lots 3 and 4, Section 5, Township 138 North, Range 49 West of the Fifth Principal Meridian, City of Fargo, Cass County, North Dakota, described as follows:

A strip of land 25.00 feet wide, lying southerly of and being coincident with the following described line:

Commencing at the northwest corner of said Section 5; thence North 87°23'42" East, along the northerly line of said Government Lot 4, for a distance of 739.78 feet to a point of intersection with the easterly line of Tract 2 described in Document No. 451449, on file at the Cass County Recorder's Office; thence South 33°34'46" East, along the easterly line of said Tract 2, for a distance of 87.47 feet to a point of intersection with the southerly line of the North 75.00 feet of said Government Lot 4 and the true point of beginning of the line to be described; thence North 87°23'42" East, along the southerly line of the North 75.00 feet of said Government Lots 4 and 3, for a distance of 1806.66 feet to the northwest corner of a tract of land described in Document No. 1335162, on file at said Recorder's Office, said line there terminating. Said strip shall be lengthened or shortened as necessary to intersect a line bearing South 33°34'46" East passing through

the true point of beginning on the west and to intersect a line bearing South 03°09'14" East passing through the point of termination on the east.

Said tract contains 44,982 square feet, more or less.

Said parcel is pictorially represented on an Easement Plat attached hereto and incorporated herein by reference as Exhibit "A".

Grantor, its successors and assigns, hereby covenants to and with Grantee that Grantee's officers, contractors, agents and employees may at any and all times when necessary or convenient to do so, go over and upon said above-described parcel of land and perform any and all acts necessary or convenient to carry into effect the purpose for which the grant is made.

Grantor, its successors and assigns, further agrees that it will not disturb, injure, molest or in any manner interfere with said street and customary appurtenances including location of any and all utilities, or with material for laying, maintaining, operating or repairing the same, in, over or upon the above-described premises, and Grantor expressly warrants and states that no buildings, trees, shrubs or other obstacles of any kind shall be placed or located upon the parcel so as to interfere in any manner with the construction, operation, maintenance or repair of said street including location of any and all utilities or customary appurtenances, provided that Grantee, at its own expense, shall refill any excavation it makes and level the ground thereafter, leaving the premises in as good condition as it was prior to the time of constructing of said street and customary appurtenances was begun.

(Signatures on the following pages)

IN WITNESS WHEREOF, Grantee has set its hand and caused this instrument to be executed this ____ day of _____, 2022.

GRANTEE:

City of Fargo, a North Dakota municipal corporation

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

ATTEST

Steven Sprague, City Auditor

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

On this ____ day of _____, 2022, before me, a notary public in and for said county and state, personally appeared DR. TIMOTHY J. MAHONEY, M.D. and STEVEN SPRAGUE, to me known to be the Mayor and 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:

James A. Schlieman
Registered Land Surveyor
LS-6086
Houston Engineering Inc.
1401 21st Ave. N.
Fargo, ND 58102
(701) 237-5065

This document was prepared by:

Nancy J. Morris
City Attorney
Serkland Law Firm
10 Roberts Street North
Fargo, ND 58102
(701) 232-8957
nmorris@serklandlaw.com

Description - Parcel 9 (Permanent Easement):

That part of Government Lots 3 and 4, Section 5, Township 138 North, Range 49 West of the Fifth Principal Meridian, City of Fargo, Cass County, North Dakota, described as follows:
 A strip of land 25.00 feet wide, lying southerly of and being coincident with the following described line:

Commencing at the northwest corner of said Section 5; thence North 87°23'42" East, along the northerly line of said Government Lot 4, for a distance of 739.78 feet to a point of intersection with the easterly line of Tract 2 described in Document No. 451449, on file at the Cass County Recorder's Office; thence South 33°34'46" East, along the easterly line of said Tract 2, for a distance of 87.47 feet to a point of intersection with the southerly line of the North 75.00 feet of said Government Lot 4 and the true point of beginning of the line to be described; thence North 87°23'42" East, along the southerly line of the North 75.00 feet of said Government Lots 4 and 3, for a distance of 1806.66 feet to the northwest corner of a tract of land described in Document No. 1335162, on file at said Recorder's Office, said line there terminating. Said strip shall be lengthened or shortened as necessary to intersect a line bearing South 33°34'46" East passing through the true point of beginning on the west and to intersect a line bearing South 03°09'14" East passing through the point of termination on the east.

Said tract contains 44,982 square feet, more or less.

Description - Parcel 9A (Temporary Construction Easement):

That part of Government Lots 3 and 4, Section 5, Township 138 North, Range 49 West of the Fifth Principal Meridian, City of Fargo, Cass County, North Dakota, described as follows:
 The South 5.00 feet of a strip of land 30.00 feet wide, lying southerly of and being coincident with the following described line:

Commencing at the northwest corner of said Section 5; thence North 87°23'42" East, along the northerly line of said Government Lot 4, for a distance of 739.78 feet to a point of intersection with the easterly line of Tract 2 described in Document No. 451449, on file at the Cass County Recorder's Office; thence South 33°34'46" East, along the easterly line of said Tract 2, for a distance of 87.47 feet to a point of intersection with the southerly line of the North 75.00 feet of said Government Lot 4, and the true point of beginning of the line to be described; thence North 87°23'42" East, along the southerly line of the North 75.00 feet of said Government Lots 4 and 3, for a distance of 1826.40 feet to a point of intersection with the easterly line of said Government Lot 3, said line there terminating. Said strip shall be lengthened or shortened as necessary to intersect a line bearing South 33°34'46" East passing through the true point of beginning on the west.

Excepting therefrom that part lying within the East 320.00 feet of said Government Lot 3.

Said tract contains 7,447 square feet, more or less.



IRON MONUMENT FOUND
 MEASURED BEARING S59°27'46"E
 MEASURED DISTANCE 105.00'
 PLAT BEARING (N57°00'00"W)
 PLAT DISTANCE (105.00')
 PERMANENT EASEMENT
 TEMPORARY EASEMENT



No.	Revision	Date	By
		9/30/22	
I hereby certify that the bearing, distance, or other data herein are correct to the best of my knowledge and belief, and that I am a duly Licensed Professional Engineer in the State of North Dakota. James A. Schleman No. 6000 No. 00000			
HOUSTON ENGINEERING, INC.		Drawn by DSB	Date 8-30-22
AS SHOWN		Created by JAS	Scale AS SHOWN
PARCELS 9 AND 9A 52nd AVENUE SOUTH FARGO, NORTH DAKOTA		EASEMENT EXHIBIT PROJECT NO. 8059-0158	
		SHEET 1 OF 1	

EASEMENT
(Temporary Construction Easement)

KNOW ALL MEN BY THESE PRESENTS that **HOWARD C. GENSLER AND BARBARA A. GENSLER**, hereinafter referred to as "Grantors", for and in consideration of the sum of One Dollar and other valuable consideration (\$1.00), to him in hand paid the receipt whereof is hereby acknowledged, **HEREBY GRANTS UNTO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA**, a municipal corporation, its successors and assigns, hereinafter referred to as "Grantee", a temporary construction easement over, upon and in land hereinafter described for the purpose of levee and storm sewer construction and activities appurtenant thereto, said land being more fully described, to-wit:

Parcel 9A:

That part of Government Lots 3 and 4, Section 5, Township 138 North, Range 49 West of the Fifth Principal Meridian, City of Fargo, Cass County, North Dakota, described as follows:

The South 5.00 feet of a strip of land 30.00 feet wide, lying southerly of and being coincident with the following described line:

Commencing at the northwest corner of said Section 5; thence North 87°23'42" East, along the northerly line of said Government Lot 4, for a distance of 739.78 feet to a point of intersection with the easterly line of Tract 2 described in Document No. 451449, on file at the Cass County Recorder's Office; thence South 33°34'46" East, along the easterly line of said Tract 2, for a distance of 87.47 feet to a point of intersection with the southerly line of the North 75.00 feet of said Government Lot 4, and the true point of beginning of the line to be described; thence North 87°23'42" East, along the southerly line of the North 75.00 feet of said Government Lots 4 and 3, for a distance of 1826.40 feet to a point of intersection with the easterly line of said Government Lot 3, said line there terminating. Said strip shall be lengthened or shortened as necessary to intersect a line bearing South 33°34'46" East passing through the true point of beginning on the west.

Excepting therefrom that part lying within the East 320.00 feet of said Government Lot 3. Said tract contains 7,447 square feet, more or less.

Said parcel is pictorially represented in Exhibit "A" hereto and made a part hereof.

Grantor, his successors and assigns, hereby covenants to and with Grantee that Grantee's officers, contractors, agents and employees may at any and all times, when necessary or convenient to do so, go over and upon said above-described parcel of land and perform any and all acts necessary or convenient to carry into effect the purpose for which the grant is made.

Grantor, his successors and assigns, further agrees they will not disturb, injure, molest or in any manner interfere with said parcel to be used for the storage of dirt and all other construction activities during the construction phase of said project and Grantor expressly warrants and states that no buildings, trees, shrubs or other obstacles of any kind shall be placed or located upon the parcel so as to interfere in any manner with the said parcel to be used for the storage of dirt and all other construction activities during the construction phase of said project, provided that Grantee, at its own expense, shall refill any excavation it makes and level the ground thereafter, leaving the premises in as good condition as it was prior to the time of storage of dirt and all other construction activities was begun.

This easement shall terminate on November 30, 2024.

(Signatures on following pages).

IN WITNESS WHEREOF, Grantor set his/her hand and caused this instrument to be executed this ____ day of _____, 2022.

GRANTORS:

Howard C. Gensler

Barbara A. Gensler

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

On this ____ day of _____, 2022, before me, a notary public in and for said county and state, personally appeared Howard C. Gensler and Barbara A. Gensler, described in and who executed the within and foregoing instrument, and acknowledged to me that he/she executed the same.

(SEAL)

Notary Public
Cass County, North Dakota

Description - Parcel 9 (Permanent Easement):

That part of Government Lots 3 and 4, Section 5, Township 138 North, Range 49 West of the Fifth Principal Meridian, City of Fargo, Cass County, North Dakota, described as follows:
 A strip of land 25.00 feet wide, lying southerly of and being coincident with the following described line:

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Said tract contains 44,982 square feet, more or less.

Description - Parcel 9A (Temporary Construction Easement):

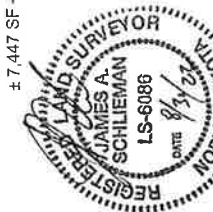
That part of Government Lots 3 and 4, Section 5, Township 138 North, Range 49 West of the Fifth Principal Meridian, City of Fargo, Cass County, North Dakota, described as follows:
 The South 5.00 feet of a strip of land 30.00 feet wide, lying southerly of and being coincident with the following described line:

Commencing at the northwest corner of said Section 5; thence North 87°23'42" East, along the northerly line of said Government Lot 4, for a distance of 739.78 feet to a point of intersection with the easterly line of Tract 2 described in Document No. 451449, on file at the Cass County Recorder's Office; thence South 33°34'46" East, along the easterly line of said Tract 2, for a distance of 87.47 feet to a point of intersection with the southerly line of the North 75.00 feet of said Government Lot 4, and the true point of beginning of the line to be described; thence North 87°23'42" East, along the southerly line of the North 75.00 feet of said Government Lots 4 and 3, for a distance of 1826.40 feet to a point of intersection with the easterly line of said Government Lot 3, said line there terminating. Said strip shall be lengthened or shortened as necessary to intersect a line bearing South 33°34'46" East passing through the true point of beginning on the west.

Excepting therefrom that part lying within the East 320.00 feet of said Government Lot 3.
 Said tract contains 7,447 square feet, more or less.



IRON MONUMENT FOUND
 MEASURED BEARING S59°27'46"E
 MEASURED DISTANCE 105.00'
 PLAT BEARING (N57°00'00"W)
 PLAT DISTANCE (105.00')
 PERMANENT EASEMENT
 TEMPORARY EASEMENT



NO. _____	Revision	Date	By	Date	Checked by	Scale	Drawn by	Date	PROJECT NO. 6059-0158	EASEMENT EXHIBIT	SHEET	1 OF 1
HOUSTON ENGINEERING, INC. 52nd AVENUE SOUTH FARGO, NORTH DAKOTA									PARCELS 9 AND 9A 52nd AVENUE SOUTH FARGO, NORTH DAKOTA			

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Improvement District No. BN-22-C1 Type: Early Building Permit and Application

Location: 2983 43rd Street N Date of Hearing: 11/7/2022
Laverne's 2nd Addition

Table with 2 columns: Routing, Date. Rows include City Commission (11/14/2022), PWPEC File (X), Project File (Jason Leonard).

The Committee reviewed the accompanying correspondence from Project Manager, Jason Leonard, regarding an Early Building Permit and Application for 2983 43rd Street North within Laverne's 2nd Addition.

Bids for Improvement District No. BN-22-C1 (New Utility and Paving Construction) were awarded by City Commission on August 31, 2022. This project has a Substantial Completion Date of September 15, 2023.

The applicant has filled out the application and agreement and has worked with Engineering to provide their own access throughout construction. The Applicant will provide a check that could be used to repair any impacts from the site construction to the municipal projects. This lot has 920' of frontage; therefore, their deposit will be \$18,400.

Staff is recommending approval of the Early Building Permit and Application.

On a motion by Nicole Crutchfield, seconded by Bruce Grubb, the Committee voted to recommend approval of the Early Building Permit and Application for 2983 43rd Street North located within Laverne's 2nd Addition.

RECOMMENDED MOTION

Concur with recommendations of PWPEC and approve the Early Building Permit and Application request for 2983 43rd Street North located within Laverne' 2nd Addition.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: _____

Table with 2 columns: Question, Yes/No. Rows include Developer meets City policy for payment of delinquent specials, Agreement for payment of specials required of developer, Letter of Credit required (per policy approved 5-28-13).

COMMITTEE

Table with 4 columns: Name, Present, Yes, No, Unanimous. Lists committee members and their voting status.

ATTEST:

C: Kristi Olson

Signature of Brenda E. Derrig, P.E. City Engineer

Memorandum

To: Members of PWPEC
From: Jason Leonard, Project Manager
Date: November 4, 2022
Re: Improvement District No. BN-22-C1 - Early Building Permit and Application for 2983 43rd Street N located within Laverne's 2nd Addition.

Background:

Attached you will find an Application for Early Building Permit and an Agreement for Early Building Permit from the Developer for their buildings located within the plat Laverne's 2nd Addition with an address of 2983 43rd Street North.

Bids for Improvement District No. BN-22-C1 (New Utility and Paving Construction) were awarded by City Commission on August 31, 2022. This project has a Substantial Completion Date of September 15, 2023.

The Applicant has filled out the application and agreement. The Applicant has worked with Engineering and agreed to provide their own access throughout construction.

As part of the Early Building Permit, the Applicant will provide a check for a deposit that could be used to repair any impacts from the site construction to the municipal projects. This lot has 920' of frontage; therefore, their deposit will be \$18,400.

Recommended Motion:

Approve the Application for Early Building Permit and the Agreement for Early Building Permit for 2983 43rd Street North located within Laverne's 2nd Addition.

C: Christine Goldader

APPLICATION FOR EARLY BUILDING PERMIT

The City of Fargo has agreed to allow building activity prior to completion of municipal utilities as listed below:

- 1. General Location: _____
- 2. Utility Completion Date (Sanitary Sewer, Water, Storm): _____
 - a. Occupancy will not be allowed prior to this date.
- 3. Paving Completion Date: _____
 - a. City accepts no responsibility for site access prior to this date.
- 4. Site Plan Project Engineer: Houston Engineering, Brian Pattengale
Phone: 701 499 2071
Email: bpattengale@houstoneng.com

Request for Building Permit

- A. Location: 2983 43rd Street N
Lot: 1
Block: 2
Addition: Laverne's Second Addition
Address: 2983 43rd Street N
Permit Request – Footage Adjacent to Infrastructure Request (LF): 920
 - a. Minimum amount of Five Thousand Dollars (\$5,000.00) or \$20.00 per foot adjacent to the infrastructure request covered by the permit application, whichever is greater.

B. Required Documents

- 1. Fill out Application for Early Building Permit.
- 2. Submit complete site plan drawings showing detailed locations of all utility stub outs (sanitary sewer, water, and storm sewer) and driveways.
- 3. Building and utility stub out elevations
- 4. As-built drawings showing actual utility stub out locations and elevations (after installation).

C. Provisions

1. Access

- a. Access to construction sites will not be on the public right-of-way under most conditions during the sewer and water construction. The City contractor will not be required to maintain access for the builders. Also, parking on the public right-of-way will not be permitted. The City contractor will have total control of the right-of-way during sewer and water construction.
- b. City accepts no responsibility for site access prior to paving completion date.

2. Sewer and Water Services

- a. Builders will not be allowed to hook up to the City sewer and water services until after the project is complete.
- b. Builders shall stub out sewer and water services a distance of not to exceed 5-feet from building.
- c. Builders to verify depth and location of sewer and water service stub outs for buildings with City Engineering Department. As-built drawings required.
- d. After City mains have been installed and tested, the builder shall complete service installation and connections along with appropriate permits and inspections. The City contractor will not hook up sewer and water services to building stub outs. This is not part of his contract. The builder may privately negotiate such work with City contractor. Builder and contractor accept responsibility for necessary permits and inspections.

3. Occupancy will not be allowed until after utility installation is complete. Access prior to paving completion shall be the sole responsibility of builder/occupant.

4. Other utilities such as gas, electric, telephone and cable TV will not be installed until municipal utility installation is complete.

Application for Early Building Permit
Page 3

D. Signatures (All required)

	Property Owner	Builder	Company Connecting to COF Infrastructure
Name	Bullinger Enterprises LLC	Valor Contracting	Agassiz Underground
Address	474 45 th Street S Fargo, ND	300 23 rd Ave E, Suite 300 West Fargo 58078	3100 41 st Street S, Fargo, ND 58104
Telephone		701 997 3011	701 730 3280
Signature			
Date			

E. Approval

City of Fargo Project Engineer: _____ Date: _____

AGREEMENT

EARLY BUILDING PERMIT

THIS AGREEMENT, made and entered into this 9th day of November, 2022, by and between **THE CITY OF FARGO, NORTH DAKOTA**, a municipal corporation, 225 4th Street North, Fargo, North Dakota 58102, hereinafter referred to as "City", and the undersigned person, firm or corporation, hereinafter referred to as "Builder".

WITNESSETH:

WHEREAS, City does not ordinarily issue building permits until sewer and water main connections are functional; and,

WHEREAS, for large building projects (commercial, industrial and multi-family [8-plex or greater]), it has been determined that permits may be issued prior to completion of said underground utilities; and,

WHEREAS, installation of utilities and paving can take place during the time said building projects are under way;

WHEREAS, City requires a cash deposit as one of the conditions for granting early building permits, said deposit to be utilized, if necessary, to reimburse City for any costs relating to Builder's, his or its developers', agents' or subcontractors' activities under the early building permit; and,

WHEREAS, City requires an agreement with Builder relative to the issuance of early building permits.

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

1. City has agreed, or by execution of this agreement, does agree, that an early building permit be issued to Builder for the project therein stated and as listed below.

2. In consideration of the issuance of said early building permit for the project therein stated, Builder agrees to deposit with City a cash deposit or letter of credit in the minimum amount of Five Thousand Dollars (\$5,000.00) or \$20.00 per front foot of lot covered by the permit, whichever sum is greater. Said cash deposit may be utilized by City to reimburse City for any building site impact or any impact the building project may have on municipal projects, including utilities or paving. Said cash deposit may, among other things, be used for corrective measures such as debris removal, drain maintenance, damages caused by unauthorized access, and cleaning adjacent streets impacted by building construction. It is specifically understood and agreed by

Builder that such list is not exclusive and said deposit may be used for any costs or damages City may incur due to Builder's activities under the early building permit forming the subject of this agreement.

3. Builder expressly agrees and recognizes the City of Fargo policy on early building permit waivers. Builder recognizes and agrees that the only eligible building projects for such waivers are commercial, industrial and multi-family (8-plex or greater). Builder agrees to or has furnished to City a building site plan drawing showing access points and exact service utility connections required, such as sanitary sewer, water sewer service, storm sewer and the like. Builder has indicated or will indicate specifically the following:

- a. Site access to the building that will not impact municipal utilities/paving installation.
- b. Temporary measures to address nonfunctional sewer, water and storm sewer on the building site.
- c. Building construction and occupancy schedule.
- d. Contact person for notification including name, address and phone.

4. City agrees to provide 48-hour notification to Builder prior to project start-up for installation of utilities or paving so as to allow Builder to clear right-of-way for such public construction. Builder agrees, however, that during construction, City shall only be required to give a 2-hour notification for various aspects of the project.

5. Builder agrees to indemnify and hold City harmless for any delays in municipal projects (i.e. utilities or paving) resulting from Builder's activities including, but not limited to, site interference, storage of construction materials, or the like.

6. Builder understands and accepts all risks of proceeding with the building project in advance of the installation and operation of the municipal improvements. Builder waives, for itself and successors, any and all claims for damages against City as a result of any delay in the installation of the municipal projects, for whatever reason. City will enter into a standard

contract for the municipal project; Builder is not a third party beneficiary of that contract and has no rights thereunder.

7. Builder agrees to acquire any easements deemed necessary for site access to the building site and City shall have no responsibility in this regard. Builder further understands and agrees that without installation of streets there is limited access to the site for fire and police protection. Builder agrees to be responsible for any access limitations resulting from the same.

8. Any cash deposit or letter of credit remaining unused upon completion of the paving project (thus completing the public construction) shall be returned to Builder upon application.

9. The project and project location are as follows:

Description: Dakota Allied Properties, LLC

Location: 2983 43rd Street N

IN WITNESS WHEREOF, the parties have entered into this agreement the day and year first above written.

ATTEST:

Steve Sprague, City Auditor

Approved by Fargo City Commission on the ____ day of _____, 2022.

Timothy J. Mahoney, Mayor

Approved by Public Works Projects Evaluation Committee on the 7th day of November, 2022.

11-9-2022
Date

Brenda Derrig
Brenda Derrig, City Engineer

Joshua T. Baneck, Project Manager, Valor Contracting

11/09/2022
Date

Joshua T. Baneck
Builder, Title



REPORT OF ACTION

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Improvement District No. BN-22-F1 Type: Early Building Permit and Application

Location: Origin at Tillstone Apartment Buildings Date of Hearing: 11/7/2022
5624 Tillstone Drive South

<u>Routing</u>	<u>Date</u>
City Commission	<u>11/14/2022</u>
PWPEC File	<u>X</u>
Project File	<u>Jason Satterlund</u>

The Committee reviewed the accompanying correspondence from Project Manager, Jason Satterlund, regarding an application and agreement for an Early Building Permit at Tillstone Apartment Buildings located within the plat, The District of Fargo Fourth Addition, with an address of 5624 Tillstone Drive South.

The Utility and Paving Project was awarded on May 31, 2022 and has a Substantial Completion Date of August 1, 2023, which includes construction of paving in front of this facility.

As part of the agreement the applicant will provide their own access throughout construction. Enclave has indicated that their planned Certificate of Occupancy date would be April 23, 2024. The applicant has provided the required deposit that could be used to repair any impacts from the site construction to the municipal projects. This lot has 597.61' of frontage; therefore, their deposit will be \$11,952.20.

The Committee discussed the request and Fire noted that they have been working with the applicant and they have split their building permit to start with the concrete work. The site will be reviewed again when the building permit is requested to ensure access and hydrants are available prior to wood frame construction beginning.

Staff is recommending approval of the Early Building Permit and Application.

On a motion by Ben Dow, seconded by Nicole Crutchfield, the Committee voted to recommend approval of the Early Building Permit and Application for Origin at Tillstone Apartments Buildings located at 5624 Tillstone Drive South.

RECOMMENDED MOTION

Concur with recommendations of PWPEC and approve the Early Building Permit request for Origin at Tillstone Apartments located at 5624 Tillstone Drive South.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: _____

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

<u>Yes</u>	<u>No</u>
	<u>N/A</u>
	<u>N/A</u>
	<u>N/A</u>

PWPEC ROA
ID BN-22-F1 Early Building Permit – 5624 Tillstone Dr S
11/7/2022 -- Page 2

COMMITTEE

Tim Mahoney, Mayor
Nicole Crutchfield, Director of Planning
Steve Dirksen, Fire Chief
Michael Redlinger, Interim City Administrator
Ben Dow, Director of Operations
Steve Sprague, City Auditor
Brenda Derrig, City Engineer
Terri Gayhart, Finance Director

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

ATTEST:

C: Kristi Olson



Brenda E. Derrig, P.E.
City Engineer

Memorandum

To: Members of PWPEC
From: Jason Satterlund, Project Manager
Date: November 2, 2022
Re: Improvement District No. BN-22-F1 - Early Building Permit and Application for Origin at Tillstone Apartment Buildings - 5624 Tillstone Drive South located within The District of Fargo Fourth Addition.

Background:

Attached you will find an Application for Early Building Permit and an Agreement for Early Building Permit from the Developer for their buildings located within the plat The District of Fargo Fourth Addition with an address of 5624 Tillstone Drive South.

Bids for Improvement District No. BN-22-F1 (New Utility and Paving Construction) were awarded by City Commission on May 31, 2022. This project has a Substantial Completion Date of August 1, 2023, which includes construction of paving in front of this facility.

The Applicant has filled out the application and agreement. The Applicant has worked with Engineering and agreed to provide their own access throughout construction. Enclave Companies has indicated that their planned Certificate of Occupancy date would be April 23, 2024.

As part of the early building permit, the Applicant will provide a check for a deposit that could be used to repair any impacts from the site construction to the municipal projects. This lot has 597.61' of frontage; therefore, their deposit will be \$11,952.20.

Recommended Motion:

I recommend that the Public Works Project Evaluation Committee approve the Application for an Early Building Permit and the Agreement for Early Building Permit for Origin at Tillstone apartments located at 5624 Tillstone Drive South located within The District of Fargo Fourth Addition.

JTS/klb

C: Brenda Derrig
Christine Goldader

APPLICATION FOR EARLY BUILDING PERMIT

The City of Fargo has agreed to allow building activity prior to completion of municipal utilities as listed below:

1. General Location: 55th Ave. S., 38th St. S., Tillstone Drive
2. Utility Completion Date (Sanitary Sewer, Water, Storm): June 1, 2023
 - a. Occupancy will not be allowed prior to this date.
3. Paving Completion Date: September 1, 2023
 - a. City accepts no responsibility for site access prior to this date.
4. Site Plan Project Engineer: Brian Pattengale, Houston Engineering
Phone: 701-499-2071
Email: bpattengale@houstoneng.com

Request for Building Permit

- A. Location: Tillstone Drive & 38th Street South
Lot: Lot 3
Block: Block 2
Addition: The District of Fargo 4nd Addition
Address: 5624 Tillstone Drive
Permit Request – Footage Adjacent to Infrastructure Request (LF): 597.61 LF
 - a. Minimum amount of Five Thousand Dollars (\$5,000.00) or \$20.00 per foot adjacent to the infrastructure request covered by the permit application, whichever is greater.

B. Required Documents

1. Fill out Application for Early Building Permit.
2. Submit complete site plan drawings showing detailed locations of all utility stub outs (sanitary sewer, water, and storm sewer) and driveways.
3. Building and utility stub out elevations
4. As-built drawings showing actual utility stub out locations and elevations (after installation).

C. Provisions

1. Access
 - a. Access to construction sites will not be on the public right-of-way under most conditions during the sewer and water construction. The City contractor will not be required to maintain access for the builders. Also, parking on the public right-of-way will not be permitted. The City contractor will have total control of the right-of-way during sewer and water construction.
 - b. City accepts no responsibility for site access prior to paving completion date.
2. Sewer and Water Services
 - a. Builders will not be allowed to hook up to the City sewer and water services until after the project is complete.
 - b. Builders shall stub out sewer and water services a distance of not to exceed 5-feet from building.
 - c. Builders to verify depth and location of sewer and water service stub outs for buildings with City Engineering Department. As-built drawings required.
 - d. After City mains have been installed and tested, the builder shall complete service installation and connections along with appropriate permits and inspections. The City contractor will not hook up sewer and water services to building stub outs. This is not part of his contract. The builder may privately negotiate such work with City contractor. Builder and contractor accept responsibility for necessary permits and inspections.
3. Occupancy will not be allowed until after utility installation is complete. Access prior to paving completion shall be the sole responsibility of builder/occupant.
4. Other utilities such as gas, electric, telephone and cable TV will not be installed until municipal utility installation is complete.

Application for Early Building Permit
Page 3

D. Signatures (All required)

	Property Owner	Builder	Company Connecting to COF Infrastructure
Name	Origin at Tillstone, LLC	Enclave Construction	Aggasiz Underground
Address	300 23 rd Ave. South Suite 300 West Fargo, ND 58078	300 23 rd Ave. South Suite 300 West Fargo, ND 58078	3100 41 st St. S. Fargo, ND 58104
Telephone	701-478-4300	701-478-4300	701-356-0539
Email	Timg@enclavecompanies.com	Thomasd@enclavecompanies.com	drichards@aggasizunderground.com
Signature			
Date	11/1/22	11/1/2022	11-1-22

E. Approval

City of Fargo Project Engineer: _____ Date: _____

AGREEMENT

EARLY BUILDING PERMIT

THIS AGREEMENT, made and entered into this ____ day of _____, 2022, by and between **THE CITY OF FARGO, NORTH DAKOTA**, a municipal corporation, 225 4th Street North, Fargo, North Dakota 58102, hereinafter referred to as "City", and the undersigned person, firm or corporation, hereinafter referred to as "Builder".

WITNESSETH:

WHEREAS, City does not ordinarily issue building permits until sewer and water main connections are functional; and,

WHEREAS, for large building projects (commercial, industrial and multi-family [8-plcx or greater]), it has been determined that permits may be issued prior to completion of said underground utilities; and,

WHEREAS, installation of utilities and paving can take place during the time said building projects are under way;

WHEREAS, City requires a cash deposit as one of the conditions for granting early building permits, said deposit to be utilized, if necessary, to reimburse City for any costs relating to Builder's, his or its developers', agents' or subcontractors' activities under the early building permit; and,

WHEREAS, City requires an agreement with Builder relative to the issuance of early building permits.

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

1. City has agreed, or by execution of this agreement, does agree, that an early building permit be issued to Builder for the project therein stated and as listed below.

2. In consideration of the issuance of said early building permit for the project therein stated, Builder agrees to deposit with City a cash deposit or letter of credit in the minimum amount of Five Thousand Dollars (\$5,000.00) or \$20.00 per front foot of lot covered by the permit, whichever sum is greater. Said cash deposit may be utilized by City to reimburse City for any building site impact or any impact the building project may have on municipal projects, including utilities or paving. Said cash deposit may, among other things, be used for corrective measures such as debris removal, drain maintenance, damages caused by unauthorized access, and cleaning

adjacent streets impacted by building construction. It is specifically understood and agreed by Builder that such list is not exclusive and said deposit may be used for any costs or damages City may incur due to Builder's activities under the early building permit forming the subject of this agreement.

3. Builder expressly agrees and recognizes the City of Fargo policy on early building permit waivers. Builder recognizes and agrees that the only eligible building projects for such waivers are commercial, industrial and multi-family (8-plex or greater). Builder agrees to or has furnished to City a building site plan drawing showing access points and exact service utility connections required, such as sanitary sewer, water sewer service, storm sewer and the like. Builder has indicated or will indicate specifically the following:

- a. Site access to the building that will not impact municipal utilities/paving installation.
- b. Temporary measures to address nonfunctional sewer, water and storm sewer on the building site.
- c. Building construction and occupancy schedule.
- d. Contact person for notification including name, address and phone.

4. City agrees to provide 48-hour notification to Builder prior to project start-up for installation of utilities or paving so as to allow Builder to clear right-of-way for such public construction. Builder agrees, however, that during construction, City shall only be required to give a 2-hour notification for various aspects of the project.

5. Builder agrees to indemnify and hold City harmless for any delays in municipal projects (i.e. utilities or paving) resulting from Builder's activities including, but not limited to, site interference, storage of construction materials, or the like.

6. Builder understands and accepts all risks of proceeding with the building project in advance of the installation and operation of the municipal improvements. Builder waives, for itself and successors, any and all claims for damages against City as a result of any delay in the

installation of the municipal projects, for whatever reason. City will enter into a standard contract for the municipal project; Builder is not a third party beneficiary of that contract and has no rights thereunder.

7. Builder agrees to acquire any easements deemed necessary for site access to the building site and City shall have no responsibility in this regard. Builder further understands and agrees that without installation of streets there is limited access to the site for fire and police protection. Builder agrees to be responsible for any access limitations resulting from the same.

8. Any cash deposit or letter of credit remaining unused upon completion of the paving project (thus completing the public construction) shall be returned to Builder upon application.

9. The project and project location are as follows:

Description: Origin at Tillstone apartments

Location: 5624 Tillstone Drive South

IN WITNESS WHEREOF, the parties have entered into this agreement the day and year first above written.

ATTEST:

Steve Sprague, City Auditor

Approved by Fargo City Commission on the ____ day of _____, 2022.

Timothy J. Mahoney, Mayor

Approved by Public Works Projects Evaluation Committee on the 7th day of November, 2022.

11-8-2022
Date

B. D.
Brenda Derrig, City Engineer

11/1/2022
Date

Brady Snell project Manager.
Builder, Title

29

REPORT OF ACTION

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Improvement District No. PR-22-E1 Type: Negative Final Balancing Change Order #2

Location: Citywide Date of Hearing: 11/7/2022

<u>Routing</u>	<u>Date</u>
City Commission	<u>11/14/2022</u>
PWPEC File	<u>X</u>
Project File	<u>Jason Hoogland</u>

The Committee reviewed the accompanying correspondence from Project Manager, Jason Hoogland, for Negative Final Balancing Change Order #2 in the amount of \$-25,402.86, which reconciles the measured quantities used in the field with those estimated for the contract.

Staff is recommending approval of Negative Final Balancing Change Order #2 in the amount of \$-25,402.86, bringing the total contract amount to \$955,108.42.

On a motion by Ben Dow, seconded by Ryan Erickson, the Committee voted to recommend approval of Negative Final Balancing Change Order #2 to Pearson Bros, Inc.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve Negative Final Balancing Change Order #2 in the amount of \$-25,402.86, bringing the total contract amount to \$955,108.42 to Pearson Bros, Inc.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: Sales Tax & Special Assessments

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

COMMITTEE

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

ATTEST:

Brenda E. Derrig, P.E.
City Engineer

C: Kristi Olson



**CHANGE ORDER REPORT
SEAL COAT**

Final Balancing
Change Order

IMPROVEMENT DISTRICT NO. PR-22-E1

SECTION 1 - ELM ST N AND SURROUNDING STREETS AND AVENUES, SECTION 2 - 11TH ST S FROM 5TH AVE TO 13TH AVE S, SECTION 3 - GATEWAY CIRCLE S AREA, SECTION 4 - 25TH AVE S & 17TH ST S, SECTION 5 - AGASSIZ KING, SECTION 6 - POINTE WEST AREA, SECTION 7 - AREA FROM 32ND AVE S TO 36TH AVE S BETWEEN 25TH ST S TO 32ND ST S, SECTION 8 - 14TH ST S, 18TH ST S, 15TH ST S, SECTION 9 - 73RD AVE S & 15TH ST S, 14TH ST S, SECTION 10 - EAST SIDE OF DEER CREEK.

Change Order No 2 **Change Order Date** 10/19/2022
Contractor Pearson Bros Inc

This change is made under the terms of or is supplemental to your present contract, if and when approved, you are ordered to perform the work in accordance with the additions, changes, or alterations hereinafter described.

EXPLANATION OF CHANGE Change Order # 2
Final Balancing Change Order

Section	Line No	Item Description	Unit	Orig Cont Qty	Prev C/O Qty	Prev Cont Qty	Curr C/O Qty	Tot Cont Qty	Unit Price (\$)	C/O Ext Price (\$)	
Section 1	2	F&I Pavement Mix Wear Course Asph	Ton	10		10	2.59	12.59	\$500.00	\$1,295.00	
	3	F&I Seal Aggregate A	SY	82240		82240	521.62	82761.62	\$0.83	\$432.94	
	4	F&I Seal Aggregate B	SY	47501		47501	-3942.63	43558.37	\$0.83	-\$3,272.38	
	5	F&I Seal Oil	Gal	39177		39177	-4925.93	34251.07	\$1.60	-\$7,881.49	
	6	Paint Epoxy Line 4" Wide	LF	4357		4357	-3457	900	\$2.90	-\$10,025.30	
	7	Paint Epoxy Line 16" Wide	LF	25		25	1	26	\$23.00	\$23.00	
	9	Paint Epoxy Message	SF	2112		2112	72	2184	\$24.00	\$1,728.00	
	Section 1 Sub Total										-\$17,700.23
	Section 2	12	F&I Pavement Mix Wear Course Asph	Ton	15		15	5	20	\$500.00	\$2,500.00
13		F&I Seal Aggregate A	SY	21356		21356	-0.78	21355.22	\$0.83	-\$0.65	
14		F&I Seal Oil	Gal	5980		5980	-681.38	5298.62	\$1.60	-\$1,080.21	

Section	Line No	Item Description	Unit	Orig Cont Qty	Prev C/O Qty	Prev Cont Qty	Curr C/O Qty	Tot Cont Qty	Unit Price (\$)	C/O Ext Price (\$)
Section 2 Sub Total										\$1,409.14
Section 3	17	F&I Pavement Mix Wear Course Asph	Ton	10		10	2.58	12.58	\$500.00	\$1,290.00
	18	F&I Seal Aggregate A	SY	56224		56224	81.76	56305.76	\$0.83	\$67.86
	20	F&I Seal Oil	Gal	17654		17654	-1933.16	15720.84	\$1.60	-\$3,093.06
	21	Paint Epoxy Line 4" Wide	LF	908		908	-8	900	\$2.90	-\$23.20
	22	Paint Epoxy Line 8" Wide	LF	363		363	-7	356	\$5.80	-\$40.60
Section 3 Sub Total										-\$1,799.00
Section 4	26	F&I Seal Aggregate B	SY	14294		14294	-84.13	14209.87	\$0.83	-\$69.83
	27	F&I Seal Oil	Gal	4860		4860	-385.04	4474.96	\$1.60	-\$616.06
	28	Paint Epoxy Line 4" Wide	LF	1090		1090	185	1275	\$2.90	\$536.50
Section 4 Sub Total										-\$149.39
Section 5	32	F&I Seal Aggregate B	SY	7237		7237	0.05	7237.05	\$0.83	\$0.04
	33	F&I Seal Oil	Gal	2606		2606	-326.91	2279.09	\$1.60	-\$523.06
Section 5 Sub Total										-\$523.01
Section 6	36	F&I Pavement Mix Wear Course Asph	Ton	15		15	7	22	\$500.00	\$3,500.00
	37	F&I Seal Aggregate A	SY	60822		60822	-837.56	59984.44	\$0.83	-\$695.17
	38	F&I Seal Aggregate B	SY	12667		12667	-0.1	12666.9	\$0.83	-\$0.08
	39	F&I Seal Oil	Gal	21591		21591	-2718.73	18872.27	\$1.60	-\$4,349.97
	40	Paint Epoxy Line 4" Wide	LF	642		642	-7	635	\$2.90	-\$20.30
	41	Paint Epoxy Line 8" Wide	LF	200		200	-8	192	\$5.80	-\$46.40
Section 6 Sub Total										-\$1,811.93
Section 7	45	F&I Seal Aggregate A	SY	20791		20791	0.11	20791.11	\$0.83	\$0.09
	46	F&I Seal Aggregate B	SY	36888		36888	25.94	36913.94	\$0.83	\$21.53
	47	F&I Seal Oil	Gal	17948		17948	-1172.69	16775.31	\$1.60	-\$1,876.30

Section	Line No	Item Description	Unit	Orig Cont Qty	Prev C/O Qty	Prev Cont Qty	Curr C/O Qty	Tot Cont Qty	Unit Price (\$)	C/O Ext Price (\$)
	48	Paint Epoxy Line 4" Wide	LF	512		512	-2	510	\$2.90	-\$5.80
	49	Paint Epoxy Line 8" Wide	LF	136		136	-5	131	\$5.80	-\$29.00
	51	Paint Epoxy Line 24" Wide	LF	0	72	90	-18	72	\$27.50	-\$495.00
Section 7 Sub Total										-\$2,384.48
Section 8	55	F&I Seal Aggregate A	SY	8054		8054	1377.01	9431.01	\$0.83	\$1,142.92
	56	F&I Seal Aggregate B	SY	1378		1378	-1378	0	\$0.83	-\$1,143.74
	57	F&I Seal Oil	Gal	2590		2590	-250	2340	\$1.60	-\$400.00
Section 8 Sub Total										-\$400.82
Section 9	60	F&I Seal Aggregate A	SY	17870		17870	1567.87	19437.87	\$0.83	\$1,301.33
	61	F&I Seal Aggregate B	SY	18071		18071	-1569.28	16501.72	\$0.83	-\$1,302.50
	62	F&I Seal Oil	Gal	10790		10790	-770.4	10019.6	\$1.60	-\$1,232.64
	63	Paint Epoxy Line 24" Wide	LF	136	72	224	-16	208	\$26.00	-\$416.00
Section 9 Sub Total										-\$1,649.81
Section 10	66	F&I Seal Aggregate A	SY	37178		37178	408.75	37586.75	\$0.83	\$339.26
	67	F&I Seal Aggregate B	SY	17512		17512	-481.3	17030.7	\$0.83	-\$399.48
	68	F&I Seal Oil	Gal	15620		15620	-930.76	14689.24	\$1.60	-\$1,489.22
	69	Paint Epoxy Line 4" Wide	LF	3512		3512	305	3817	\$2.90	\$884.50
	70	Paint Epoxy Line 8" Wide	LF	132		132	-13	119	\$5.80	-\$75.40
	71	Paint Epoxy Line 24" Wide	LF	120	72	150	42	192	\$27.50	\$1,155.00
	72	Paint Epoxy Messgae	SF	320		320	-42	278	\$24.00	-\$1,008.00
Section 10 Sub Total										-\$593.33

Summary

Source Of Funding	sales tax funds/special assessments
Net Amount Change Order # 2 (\$)	\$25,402.86
Previous Change Orders (\$)	\$3,670.00
Original Contract Amount (\$)	\$976,841.28
Total Contract Amount (\$)	\$955,108.42

I hereby accept this order both as to work to be performed and prices on which payment shall be based.

APPROVED
For Contractor
Title

10/26/22
JACIE ELAN
President

APPROVED DATE
Department Head
Mayor
Attest

T. COE