

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.

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.

10/31/22 CITY COMMISSION ACTION
Delay 2 weeks = Nov. 14

3/10

**NOTICE OF HEARING
INFRASTRUCTURE DEVELOPMENT BY PRIVATE OPERATOR**


Notice is hereby given that the Board of City Commissioners of the City of Fargo, North Dakota, will meet at 5:15 o'clock p.m. on Monday, October 31, 2022, in the City Commission Room, City Hall, 225 4th St N, Fargo, North Dakota, to consider a development agreement with a private operator to build and operate a parking garage, located at 602-636 Northern Pacific Ave, Fargo.

City Auditor's Office
(October 19 & 26, 2022)

MEMORANDUM

336

TO: Fargo City Commission

FROM: Jim Gilmour, Director of Strategic Planning and Research 

DATE: October 24, 2022

SUBJECT: Public Private Partnership for NP Redevelopment Project

Background Information

In February, the City Commission authorized work on a redevelopment plan for the parking lots on NP Avenue between Broadway and 8th Street. The work included preparing a development agreement, work on a financial plan, and work on a Renewal Plan.

A development agreement has been prepared for your consideration. If the development agreement is approved, work on the Renewal Plan and financing plan should proceed.

Legal Authority

The ND Century Code authorizes public private partnerships with private operators.

NDCC section 48-02.1-03. Public authority may enter into development agreement. "A public authority may solicit or accept proposals from private operators for the constructing, improving, rehabilitating, operating, managing, and owning of a fee-based facility that will be situated in an area subject to the public authority's jurisdiction. After a hearing, the public authority may accept a proposal that it determines to be in the public interest. A public authority may negotiate and enter into a development agreement with any private operator." [Emphasis added.] N.D. Cent. Code, § 48-02.1-03.

Summary of Development

There will be four components to this development.

- Fargo Moorhead Community Theater (~420 seat theater, classrooms, and offices)
- City of Fargo Parking Garage (450 to 490 parking spaces)
- Apartments (~145 market rate apartments)
- Herbst Building (redevelopment of a 50,000 sf building on Broadway)

- Fargo to provide up to \$450,000 for design and other soft costs
- Fargo to pay cost of Parking Garage to be actual cost, not to exceed \$20 million
- Fargo and developer to combine two sites and alley access into single site, no payment to either party.
- Fargo and Developer review and approve a design by May 1, 2023.
- Fargo may opt out of agreement if cost of parking garage exceeds \$20 million, the City is unable to sell \$16 million in bonds at 7% interest or less, or if the Fargo Moorhead Theater decides not to be a part of the project.
- Fargo will reconstruct NP Avenue and 8th Street prior to the end of 2025.
- The Fargo Moorhead Community Theater will purchase space in the development of 25,000 to 30,000 sf for a theater, classrooms, and office space.
- Global Development will have access to 50 undesignated parking spaces in the parking garage at no cost and 15 surface parking spaces south of the garage.
- Global Development incentives will be limited to 5 year renaissance zone program, contingent to qualifying for that program.
- Parking will be free and open to the public after 5:00 pm weekdays and on weekends.
- Apartment/commercial developer incentives will be limited to 5 year renaissance zone program and up to a 5 years of a TIF note, contingent on qualifying for those programs.
- Each apartment will have the option to rent one parking space in the parking garage at the market rate determined by the City of Fargo.
- The development will conform to all City regulations, including zoning, engineering, and building codes.

Financing Plan

- \$4 million of parking funds
- \$16 million bond – to be paid with:
 - Parking income from new parking garage
 - Parking income from existing parking facilities (Civic Ramp, GTC Garage, 4th Street Lot, and 3rd Street Lot)
 - Parking income from an addition to Civic Ramp funding by Riverfront TIF
 - Parking fines of \$200,000 a year
 - Shift of Planning Department staff costs from Parking Fund to General Fund.
 - New Tax Increment Financing District to include development in the project area and sites in the project vicinity that could benefit from the parking in the future.
 - General fund shortfall, primarily in 2024 and 2025.

Baker Tilly reviewed parking income and TIF income estimates and estimated the shortfalls. The letter is attached for your review.

If the attached agreement is approved. The following steps would be brought to the City Commission for action.

- Submit a subdivision application to plat the city parking lot and the adjacent parcel owned by Global Development.
- Hire a parking garage consultant as the city representative to review plans for the parking garage and shared spaces.
- Renewal Plan and TIF District approval.
- Renaissance Zone application from Global Development
- Renaissance Zone and TIF application from Kilbourne Group
- Baker Tilly to prepare for bond sale
- Addition to Civic Parking Ramp with Riverfront TIF funds

Recommended Motion

The City of Fargo finds that the NP Redevelopment Project is in the public interest and approves the development agreement with Great Plains NP Holdings, LLC.



October 25, 2022

City of Fargo City Commission
200 3rd St. N.
Fargo, ND, 58102

Re: NP Parking Garage Financing

Introduction

At the City's request, Baker Tilly Municipal Advisors has evaluated financing options for Fargo's proposed \$20 million NP Parking Garage. The scenario that is currently being considered assumes a \$4 million cash investment from the City's parking fund with the remainder of project costs financed with annual appropriation bonds.

The Bonds

For this evaluation, the bonds were assumed to be issued as taxable annual appropriation bonds with an A1 rating. Interest rates are as of 9/27/2022 plus a 0.75% cushion for potential rate increases. The bonds are assumed to be issued 7/1/23 with a first payment on 12/1/23 and a final maturity in 2045.

The City's Director of Strategic Planning and Research provided estimates of revenue (attached) that may be available to pay the debt service on the bonds from the following:

- Existing income from City parking facilities
- Existing TIF revenue identified by the City as ROCO TIF – Roberts, Dillard and Kesler and Mercantile TIF – Mercantile Building and GN Condos
- Revenue from the proposed NP garage
- New TIF revenue from projects identified by City as NP Avenue Apartments, 501 Main Avenue, Herbst , the JBC Site and the Barnick Site
- Parking ticket revenues that currently go the general fund
- A budget amendment that would end a budget allocation whereby the general fund receives \$81,000/year for the administration of the parking fund.

Revenue considerations

- In the event of a revenue shortfall, the City would be required to appropriate funds to avoid default on the bonds. The attached projections currently show a revenue shortfall of \$3.5 million in the years between 2023 and 2030. In the years between 2031 and 2045 the projections show a surplus of \$3.5 million.
- The projections include assumptions about future revenue which are uncertain. Actual revenues could be higher or lower than the estimates provided, and Baker Tilly has not independently verified amounts or availability of revenue included in the projections.
- Some of the revenue estimates may be considered conservative by some given that they do not include an annual growth assumption in parking or TIF Revenue.
- The Director of Strategic Planning and Research has identified \$200,000 of annual payments that are currently being set aside for a \$2,000,000 debt service payment in 2029 as a possible short-term solution to revenue shortfalls. If this revenue, which is not included in this revenue projection, is used for this purpose another source of funds would need to be identified to pay the \$2,000,000 balloon payment in 2029.
- The revenue estimates include an estimated \$6.2 million from parking ticket revenue and budget amendment that would otherwise go to the City's general fund between 2024 and 2045.

Summary

The projected revenues are not sufficient to cover the debt service on the bonds in the years 2023 through 2030. As a result, the City would have to appropriate approximately \$3.5 million between 2023 and 2030 from sources that have not been identified. Additionally, \$6.2 million of revenue is directed away from the general fund over the life of the bonds. In years 2031 to 2045 the bonds are projected to have approximately 1.08x coverage which would provide an aggregate surplus of approximately \$3.5 million if achieved.

City of Fargo, North Dakota
October 25, 2022
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Respectfully,

A handwritten signature in black ink, appearing to read 'BE', is positioned above the typed name.

Brad Elmer, Managing Director

Baker Tilly Municipal Advisors

cc: Michael Redlinger, Interim City Administrator
Terri Gayhart, Finance Director
Jim Gilmour, Director of Strategic Planning and Research
Terri Heaton, Baker Tilly Municipal Advisors
Steve Scharff, Baker Tilly Municipal Advisors

\$16,330,000

City of Fargo, North Dakota

Taxable Annual Appropriation Bonds, Series 2023

Parking Garage - Current A1 Rates Plus 75 Bps

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As of 09/27/2022

\$16,330,000

City of Fargo, North Dakota

Taxable Annual Appropriation Bonds, Series 2023

Parking Garage - Current A1 Rates Plus 75 Bps

Sources & Uses

Dated 07/01/2023 | Delivered 07/01/2023

Sources Of Funds

Par Amount of Bonds	\$16,330,000.00
Planned Issuer Equity contribution	4,000,000.00

Total Sources **\$20,330,000.00**

Uses Of Funds

Deposit to Project Construction Fund	20,000,000.00
Total Underwriter's Discount (1.200%)	195,960.00
Costs of Issuance	130,000.00
Rounding Amount	4,040.00

Total Uses **\$20,330,000.00**

\$16,330,000

City of Fargo, North Dakota

Taxable Annual Appropriation Bonds, Series 2023

Parking Garage - Current A1 Rates Plus 75 Bps

NET DEBT SERVICE SCHEDULE

Date	Principal	Coupon	Interest	Total P+I	Existing D/S	Net New D/S	Revenue	Surpl/(Deficit)
12/01/2023	-	-	463,501.04	463,501.04	1,126,877.00	1,590,378.04	1,246,516.00	(343,862.04)
12/01/2024	-	-	1,112,402.50	1,112,402.50	1,448,449.00	2,560,851.50	1,582,318.00	(978,533.50)
12/01/2025	-	-	1,112,402.50	1,112,402.50	1,451,919.00	2,564,321.50	1,835,318.00	(729,003.50)
12/01/2026	-	-	1,112,402.50	1,112,402.50	1,523,461.50	2,635,864.00	2,307,000.00	(328,864.00)
12/01/2027	-	-	1,112,402.50	1,112,402.50	1,571,466.50	2,683,869.00	2,297,000.00	(386,869.00)
12/01/2028	-	-	1,112,402.50	1,112,402.50	1,737,324.00	2,849,726.50	2,431,000.00	(418,726.50)
12/01/2029	-	-	1,112,402.50	1,112,402.50	1,736,317.50	2,848,720.00	2,598,000.00	(250,720.00)
12/01/2030	-	-	1,112,402.50	1,112,402.50	1,533,932.50	2,646,335.00	2,598,000.00	(48,335.00)
12/01/2031	260,000.00	5.950%	1,112,402.50	1,372,402.50	1,539,758.50	2,912,161.00	3,144,000.00	231,839.00
12/01/2032	350,000.00	6.050%	1,096,932.50	1,446,932.50	1,542,606.00	2,989,538.50	3,228,000.00	238,461.50
12/01/2033	435,000.00	6.250%	1,075,757.50	1,510,757.50	1,542,825.50	3,053,583.00	3,298,000.00	244,417.00
12/01/2034	465,000.00	6.350%	1,048,570.00	1,513,570.00	1,536,626.50	3,050,196.50	3,298,000.00	247,803.50
12/01/2035	490,000.00	6.450%	1,019,042.50	1,509,042.50	1,543,174.00	3,052,216.50	3,298,000.00	245,783.50
12/01/2036	1,050,000.00	6.550%	987,437.50	2,037,437.50	807,908.50	2,845,346.00	3,073,000.00	227,654.00
12/01/2037	1,120,000.00	6.650%	918,662.50	2,038,662.50	807,625.00	2,846,287.50	3,073,000.00	226,712.50
12/01/2038	1,195,000.00	6.750%	844,182.50	2,039,182.50	806,623.50	2,845,806.00	3,073,000.00	227,194.00
12/01/2039	1,275,000.00	6.800%	763,520.00	2,038,520.00	804,904.00	2,843,424.00	3,073,000.00	229,576.00
12/01/2040	1,360,000.00	6.850%	676,820.00	2,036,820.00	807,466.50	2,844,286.50	3,073,000.00	228,713.50
12/01/2041	1,450,000.00	6.900%	583,660.00	2,033,660.00	809,131.50	2,842,791.50	3,073,000.00	230,208.50
12/01/2042	1,550,000.00	6.950%	483,610.00	2,033,610.00	809,224.00	2,842,834.00	3,073,000.00	230,166.00
12/01/2043	1,660,000.00	7.000%	375,885.00	2,035,885.00	808,394.00	2,844,279.00	3,073,000.00	228,721.00
12/01/2044	1,770,000.00	7.050%	259,685.00	2,029,685.00	811,641.50	2,841,326.50	3,073,000.00	231,673.50
12/01/2045	1,900,000.00	7.100%	134,900.00	2,034,900.00	808,782.00	2,843,682.00	3,073,000.00	229,318.00
Total	\$16,330,000.00	-	\$19,631,386.04	\$35,961,386.04	\$27,916,438.00	\$63,877,824.04	\$63,891,152.00	\$13,327.96

SIGNIFICANT DATES

Dated	7/01/2023
Delivery Date	7/01/2023
First Coupon Date	12/01/2023

Yield Statistics

Bond Year Dollars	\$285,874.17
Average Life	17.506 Years
Average Coupon	6.8671424%
Net Interest Cost (NIC)	6.9356900%
True Interest Cost (TIC)	6.9669994%
Bond Yield for Arbitrage Purposes	6.8458070%
All Inclusive Cost (AIC)	7.0485733%

Net Interest Cost in Dollars	19,631,386.04
Weighted Average Maturity	17.506 Years

2023 Tax AA Bonds (Parkin | SINGLE PURPOSE | 9/27/2022 | 6:03 PM)

\$16,330,000
City of Fargo, North Dakota
Taxable Annual Appropriation Bonds, Series 2023
Parking Garage - Current A1 Rates Plus 75 Bps

Debt Service Schedule

Date	Principal	Coupon	Interest	Total P+I	Fiscal Total
07/01/2023	-	-	-	-	-
12/01/2023	-	-	463,501.04	463,501.04	463,501.04
06/01/2024	-	-	556,201.25	556,201.25	-
12/01/2024	-	-	556,201.25	556,201.25	1,112,402.50
06/01/2025	-	-	556,201.25	556,201.25	-
12/01/2025	-	-	556,201.25	556,201.25	1,112,402.50
06/01/2026	-	-	556,201.25	556,201.25	-
12/01/2026	-	-	556,201.25	556,201.25	1,112,402.50
06/01/2027	-	-	556,201.25	556,201.25	-
12/01/2027	-	-	556,201.25	556,201.25	1,112,402.50
06/01/2028	-	-	556,201.25	556,201.25	-
12/01/2028	-	-	556,201.25	556,201.25	1,112,402.50
06/01/2029	-	-	556,201.25	556,201.25	-
12/01/2029	-	-	556,201.25	556,201.25	1,112,402.50
06/01/2030	-	-	556,201.25	556,201.25	-
12/01/2030	-	-	556,201.25	556,201.25	1,112,402.50
06/01/2031	-	-	556,201.25	556,201.25	-
12/01/2031	260,000.00	5.950%	816,201.25	816,201.25	1,372,402.50
06/01/2032	-	-	548,466.25	548,466.25	-
12/01/2032	350,000.00	6.050%	548,466.25	898,466.25	1,446,932.50
06/01/2033	-	-	537,878.75	537,878.75	-
12/01/2033	435,000.00	6.250%	537,878.75	972,878.75	1,510,757.50
06/01/2034	-	-	524,285.00	524,285.00	-
12/01/2034	465,000.00	6.350%	524,285.00	989,285.00	1,513,570.00
06/01/2035	-	-	509,521.25	509,521.25	-
12/01/2035	490,000.00	6.450%	509,521.25	999,521.25	1,509,042.50
06/01/2036	-	-	493,718.75	493,718.75	-
12/01/2036	1,050,000.00	6.550%	493,718.75	1,543,718.75	2,037,437.50
06/01/2037	-	-	459,331.25	459,331.25	-
12/01/2037	1,120,000.00	6.650%	459,331.25	1,579,331.25	2,038,662.50
06/01/2038	-	-	422,091.25	422,091.25	-
12/01/2038	1,195,000.00	6.750%	422,091.25	1,617,091.25	2,039,182.50
06/01/2039	-	-	381,760.00	381,760.00	-
12/01/2039	1,275,000.00	6.800%	381,760.00	1,656,760.00	2,038,520.00
06/01/2040	-	-	338,410.00	338,410.00	-
12/01/2040	1,360,000.00	6.850%	338,410.00	1,698,410.00	2,036,820.00
06/01/2041	-	-	291,830.00	291,830.00	-
12/01/2041	1,450,000.00	6.900%	291,830.00	1,741,830.00	2,033,660.00
06/01/2042	-	-	241,805.00	241,805.00	-
12/01/2042	1,550,000.00	6.950%	241,805.00	1,791,805.00	2,033,610.00
06/01/2043	-	-	187,942.50	187,942.50	-
12/01/2043	1,660,000.00	7.000%	187,942.50	1,847,942.50	2,035,885.00
06/01/2044	-	-	129,842.50	129,842.50	-
12/01/2044	1,770,000.00	7.050%	129,842.50	1,899,842.50	2,029,685.00
06/01/2045	-	-	67,450.00	67,450.00	-
12/01/2045	1,900,000.00	7.100%	67,450.00	1,967,450.00	2,034,900.00
Total	\$16,330,000.00	-	\$19,631,386.04	\$35,961,386.04	-

Yield Statistics

Bond Year Dollars	\$285,874.17
Average Life	17.506 Years
Average Coupon	6.8671424%
Net Interest Cost (NIC)	6.9356900%
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Bond Yield for Arbitrage Purposes	6.8458070%
All Inclusive Cost (AIC)	7.0485733%

IRS Form 8038

Net Interest Cost	6.8671424%
Weighted Average Maturity	17.506 Years

2023 Tax AA Bonds (Parkin) | SINGLE PURPOSE | 9/27/2022 | 6:03 PM

\$16,330,000**City of Fargo, North Dakota****Taxable Annual Appropriation Bonds, Series 2023****Parking Garage - Current A1 Rates Plus 75 Bps****Coverage Ratio**

Date	Total Revenues	Total D/S	Coverage
12/01/2023	1,246,516.00	1,590,378.04	0.7837860x
12/01/2024	1,582,318.00	2,560,851.50	0.6178874x
12/01/2025	1,835,318.00	2,564,321.50	0.7157129x
12/01/2026	2,307,000.00	2,635,864.00	0.8752348x
12/01/2027	2,297,000.00	2,683,869.00	0.8558540x
12/01/2028	2,431,000.00	2,849,726.50	0.8530643x
12/01/2029	2,598,000.00	2,848,720.00	0.9119885x
12/01/2030	2,598,000.00	2,646,335.00	0.9817351x
12/01/2031	3,144,000.00	2,912,161.00	1.0796106x
12/01/2032	3,228,000.00	2,989,538.50	1.0797653x
12/01/2033	3,298,000.00	3,053,583.00	1.0800427x
12/01/2034	3,298,000.00	3,050,196.50	1.0812418x
12/01/2035	3,298,000.00	3,052,216.50	1.0805262x
12/01/2036	3,073,000.00	2,845,346.00	1.0800093x
12/01/2037	3,073,000.00	2,846,287.50	1.0796520x
12/01/2038	3,073,000.00	2,845,806.00	1.0798347x
12/01/2039	3,073,000.00	2,843,424.00	1.0807393x
12/01/2040	3,073,000.00	2,844,286.50	1.0804116x
12/01/2041	3,073,000.00	2,842,791.50	1.0809797x
12/01/2042	3,073,000.00	2,842,834.00	1.0809636x
12/01/2043	3,073,000.00	2,844,279.00	1.0804144x
12/01/2044	3,073,000.00	2,841,326.50	1.0815371x
12/01/2045	3,073,000.00	2,843,682.00	1.0806412x
Total	\$63,891,152.00	\$63,877,824.04	-

\$16,330,000

City of Fargo, North Dakota

Taxable Annual Appropriation Bonds, Series 2023

Parking Garage - Current A1 Rates Plus 75 Bps

Aggregate Revenue Payments

DATE	Income from City Facilities	TIF Income	Income from NP Garage	Add'l TIF Income	Parking Ticket Revenue	Budget Amendments	TOTAL
12/01/2023	1,150,000.00	96,516.00	-	-	-	-	1,246,516.00
12/01/2024	1,150,000.00	151,318.00	-	-	200,000.00	81,000.00	1,582,318.00
12/01/2025	1,150,000.00	151,318.00	100,000.00	153,000.00	200,000.00	81,000.00	1,835,318.00
12/01/2026	1,300,000.00	386,000.00	300,000.00	40,000.00	200,000.00	81,000.00	2,307,000.00
12/01/2027	1,300,000.00	386,000.00	300,000.00	30,000.00	200,000.00	81,000.00	2,297,000.00
12/01/2028	1,300,000.00	550,000.00	300,000.00	-	200,000.00	81,000.00	2,431,000.00
12/01/2029	1,300,000.00	717,000.00	300,000.00	-	200,000.00	81,000.00	2,598,000.00
12/01/2030	1,300,000.00	717,000.00	300,000.00	-	200,000.00	81,000.00	2,598,000.00
12/01/2031	1,300,000.00	717,000.00	300,000.00	546,000.00	200,000.00	81,000.00	3,144,000.00
12/01/2032	1,300,000.00	717,000.00	300,000.00	630,000.00	200,000.00	81,000.00	3,228,000.00
12/01/2033	1,300,000.00	717,000.00	300,000.00	700,000.00	200,000.00	81,000.00	3,298,000.00
12/01/2034	1,300,000.00	717,000.00	300,000.00	700,000.00	200,000.00	81,000.00	3,298,000.00
12/01/2035	1,300,000.00	717,000.00	300,000.00	700,000.00	200,000.00	81,000.00	3,298,000.00
12/01/2036	1,300,000.00	212,000.00	300,000.00	980,000.00	200,000.00	81,000.00	3,073,000.00
12/01/2037	1,300,000.00	212,000.00	300,000.00	980,000.00	200,000.00	81,000.00	3,073,000.00
12/01/2038	1,300,000.00	212,000.00	300,000.00	980,000.00	200,000.00	81,000.00	3,073,000.00
12/01/2039	1,300,000.00	212,000.00	300,000.00	980,000.00	200,000.00	81,000.00	3,073,000.00
12/01/2040	1,300,000.00	212,000.00	300,000.00	980,000.00	200,000.00	81,000.00	3,073,000.00
12/01/2041	1,300,000.00	212,000.00	300,000.00	980,000.00	200,000.00	81,000.00	3,073,000.00
12/01/2042	1,300,000.00	212,000.00	300,000.00	980,000.00	200,000.00	81,000.00	3,073,000.00
12/01/2043	1,300,000.00	212,000.00	300,000.00	980,000.00	200,000.00	81,000.00	3,073,000.00
12/01/2044	1,300,000.00	212,000.00	300,000.00	980,000.00	200,000.00	81,000.00	3,073,000.00
12/01/2045	1,300,000.00	212,000.00	300,000.00	980,000.00	200,000.00	81,000.00	3,073,000.00
Total	\$29,450,000.00	\$8,860,152.00	\$6,100,000.00	\$13,299,000.00	\$4,400,000.00	\$1,782,000.00	\$63,891,152.00

\$16,330,000

City of Fargo, North Dakota

Taxable Annual Appropriation Bonds, Series 2023

Parking Garage - Current A1 Rates Plus 75 Bps

Disclosure

Baker Tilly Municipal Advisors, LLC is a registered municipal advisor and wholly-owned subsidiary of Baker Tilly US, LLP, an accounting firm. Baker Tilly US, LLP trading as Baker Tilly is a member of the global network of Baker Tilly International Ltd., the members of which are separate and independent legal entities. Copyright 2022 Baker Tilly Municipal Advisors, LLC

	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036-2045
Net Income - Operations														
Income from City Facilities	\$ 1,150,000.00	\$ 1,150,000.00	\$ 1,150,000.00	\$ 1,300,000.00	\$ 1,300,000.00	\$ 1,300,000.00	\$ 1,300,000.00	\$ 1,300,000.00	\$ 1,300,000.00	\$ 1,300,000.00	\$ 1,300,000.00	\$ 1,300,000.00	\$ 1,300,000.00	\$ 1,300,000.00
TOTAL NET INCOME	\$ 1,150,000.00	\$ 1,150,000.00	\$ 1,150,000.00	\$ 1,300,000.00	\$ 1,300,000.00	\$ 1,300,000.00	\$ 1,300,000.00	\$ 1,300,000.00	\$ 1,300,000.00	\$ 1,300,000.00	\$ 1,300,000.00	\$ 1,300,000.00	\$ 1,300,000.00	\$ 1,300,000.00
TIF Income														
ROCO TIF - Roberts	\$ 1,181.00	\$ 150,000.00	\$ 150,000.00	\$ 150,000.00	\$ 150,000.00	\$ 150,000.00	\$ 150,000.00	\$ 150,000.00	\$ 150,000.00	\$ 150,000.00	\$ 150,000.00	\$ 150,000.00	\$ 150,000.00	\$ 150,000.00
ROCO TIF - Billard	\$ 1,335.00	\$ 1,318.00	\$ 1,318.00	\$ 236,000.00	\$ 236,000.00	\$ 236,000.00	\$ 236,000.00	\$ 236,000.00	\$ 236,000.00	\$ 236,000.00	\$ 236,000.00	\$ 236,000.00	\$ 236,000.00	\$ 236,000.00
ROCO TIF - Keeler	\$ 80,000.00	RZ	RZ	RZ	RZ	RZ	RZ	RZ	RZ	RZ	RZ	RZ	RZ	RZ
Mercantile TIF - Mercantile Bldg.	RZ	RZ	RZ	RZ	RZ	RZ	RZ	RZ	RZ	RZ	RZ	RZ	RZ	RZ
Mercantile TIF - GN Condos	\$ 14,000.00	RZ	RZ	RZ	RZ	RZ	RZ	RZ	RZ	RZ	RZ	RZ	RZ	RZ
TOTAL TIF INCOME	\$ 96,516.00	\$ 151,318.00	\$ 151,318.00	\$ 386,000.00	\$ 386,000.00	\$ 386,000.00	\$ 717,000.00	\$ 717,000.00	\$ 717,000.00	\$ 717,000.00	\$ 717,000.00	\$ 717,000.00	\$ 717,000.00	\$ 717,000.00
TOTAL INCOME	\$ 1,246,516.00	\$ 1,301,318.00	\$ 1,301,318.00	\$ 1,686,000.00	\$ 1,686,000.00	\$ 1,686,000.00	\$ 2,017,000.00	\$ 2,017,000.00	\$ 2,017,000.00	\$ 2,017,000.00	\$ 2,017,000.00	\$ 2,017,000.00	\$ 2,017,000.00	\$ 2,017,000.00
Debt Payments														
Roberts Ramp	\$ (734,000.00)	\$ (734,000.00)	\$ (734,000.00)	\$ (734,000.00)	\$ (734,000.00)	\$ (734,000.00)	\$ (734,000.00)	\$ (734,000.00)	\$ (734,000.00)	\$ (734,000.00)	\$ (734,000.00)	\$ (734,000.00)	\$ (734,000.00)	\$ (734,000.00)
Mercantile Ramp debt	\$ (512,034.00)	\$ (514,209.00)	\$ (516,154.00)	\$ (587,846.50)	\$ (637,491.50)	\$ (800,469.00)	\$ (803,332.00)	\$ (806,327.50)	\$ (801,803.50)	\$ (806,176.00)	\$ (804,890.50)	\$ (803,111.50)	\$ (805,839.00)	\$ (807,908.50)
RZ Fund Debt	\$ (200,000.00)	\$ (200,000.00)	\$ (200,000.00)	\$ (200,000.00)	\$ (200,000.00)	\$ (200,000.00)	\$ (200,000.00)	\$ (200,000.00)	\$ (200,000.00)	\$ (200,000.00)	\$ (200,000.00)	\$ (200,000.00)	\$ (200,000.00)	\$ (200,000.00)
DEBT PAYMENTS	\$ (1,446,034.00)	\$ (1,448,209.00)	\$ (1,450,154.00)	\$ (1,521,846.50)	\$ (1,571,491.50)	\$ (1,734,469.00)	\$ (1,737,332.00)	\$ (1,534,327.50)	\$ (1,535,803.50)	\$ (1,540,176.00)	\$ (1,538,890.50)	\$ (1,537,111.50)	\$ (1,539,839.00)	\$ (1,542,817.00)
Net Income	\$ (199,518.00)	\$ (146,891.00)	\$ (148,836.00)	\$ 164,153.50	\$ 114,508.50	\$ 115,531.00	\$ 279,668.00	\$ 482,672.50	\$ 481,196.50	\$ 476,824.00	\$ 478,109.50	\$ 479,888.50	\$ 477,161.00	\$ 704,091.50

DEVELOPMENT AGREEMENT
BY AND BETWEEN
CITY OF FARGO, NORTH DAKOTA
AND
GREAT PLAINS NP HOLDINGS, LLC
DATED AS OF OCTOBER 31, 2022

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EXHIBIT B Legal Description of Portion of Project Parcel Owned by Global
EXHIBIT C Master Project Schedule
EXHIBIT D Assignment of Construction Contracts, Plans and Related Agreements
EXHIBIT E GPC Summary Template
EXHIBIT F Parking Agreement
EXHIBIT G Guaranty
EXHIBIT H Project Summary
EXHIBIT I Mortgage
EXHIBIT J Form of Certificate of Completion
EXHIBIT K Disbursing Agreement

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this “Agreement”) is made as of the 31st day of October, 2022 (the “Effective Date”), by and among the City of Fargo, a North Dakota municipal corporation (the “City”) and Great Plains NP Holdings, LLC, a North Dakota limited liability company (“Developer”).

RECITALS:

WHEREAS, Developer approached the City with a proposal to develop the Project Parcel as mixed-use project that will include a parking garage, multi-family housing and commercial space;

WHEREAS, the proposal includes the construction and operation of a parking garage (the “Garage”) as a fee-based facility pursuant to the Infrastructure Development Act, which parking garage and other general features of the NP Avenue Project are described and depicted on the Project Summary.

WHEREAS, Developer constitutes a “private operator” under the Infrastructure Development Act.

WHEREAS, upon completion of the Garage, Developer has agreed to transfer ownership of the Garage to the City and to operate the Garage as more particularly described in this Agreement;

WHEREAS, the City has agreed to provide certain funding for the Garage, subject to the terms of this Agreement;

WHEREAS, this Agreement is executed to provide for the planning, design, financing, acquisition, development, and construction of the NP Avenue Project.

NOW, THEREFORE, in consideration of the foregoing Recitals, which are hereby incorporated into this Agreement, and the mutual promises, undertakings and covenants hereinafter set forth, and intending to be legally bound hereby, the City and Developer covenant and agree as follows:

**ARTICLE 1
DEFINITIONS**

Section 1.1 Defined Terms

In addition to other terms defined herein, the following terms used in this Agreement shall have the meaning set forth below:

“Agreement” shall mean this Development Agreement by and among the City and Developer, as the same may be amended, modified or supplemented from time to time.

“Assignment of Construction Contracts” shall mean an Assignment of Construction Contracts, Plans and Related Agreements by and among the City and Developer in the form attached hereto as Exhibit D.

“Business Day” shall mean any day other than a Saturday, Sunday or other day on which banks are required or authorized to close in Fargo, North Dakota.

“Certificate of Completion” means a certificate in substantially the form of Exhibit J attached hereto.

“Change Order” means a written change order executed by both the City and Developer which must state agreement upon all of the following: (i) the change in the Garage Work; (ii) the amount of the adjustment to the Guaranteed Project Cost, if any; and (iii) the adjustment in the Master Project Schedule, if any.

“City” shall mean the City of Fargo, a North Dakota municipal corporation.

“City Representative” shall mean Jim Gilmour, his designee, or any successor to the foregoing Person designated by the City by written notice to Developer.

“City Contingency” shall mean the sum of \$100,000.00, and available when and for the purposes set out in this Agreement.

“Claim” shall mean any claim, demand or dispute between or among the Parties relating to this Agreement or the Project.

“Commitment” shall have the meaning assigned to such term in Section 6.2(a) below.

“Condominium Documents” shall have the meaning assigned to such term in Section 5.1 below.

“Construction Contract” shall have the meaning assigned to such term in Section 4.1(f)(i) below.

“Construction Manager” shall mean Kilbourne Construction Management, LLC, a North Dakota limited liability company.

“Contamination” shall mean the presence or release or threat of release of Regulated Substances in, on, under or emanating to or from the Project Parcel, which pursuant to Environmental Laws requires notification or reporting to any Governmental Authority, or which pursuant to Environmental Laws requires the identification, investigation, cleanup, removal, remediation, containment, control, abatement, monitoring of or other Response Action to such Regulated Substances, or which otherwise constitutes a violation of Environmental Laws.

“City Contingencies Deadline” shall have the meaning set forth in Section 10.1 hereof.

“County” shall mean Cass County, North Dakota.

“Day” or “days” shall have the meaning set forth in Section 14.10 hereof.

“Defaulting Party” shall have the meaning set forth in Section 13.1 hereof.

“Developer” shall mean Great Plains NP Holdings, LLC, a North Dakota limited liability company.

“Developer Step I Contingencies Deadline” and “Developer Step II Contingencies Deadline” shall have the meanings set forth in Section 10.3 hereof.

“Developer Fee” shall mean a sum of money equal to 3% of the sum of Sub-Total Hard and Soft Costs (as such items are identified and categorized in the GPC Summary, and tentatively shown on attached Exhibit E) within the Guaranteed Project Cost or Final Total Project Cost, as the case may be.

“Developer Representative” shall mean Mike Allmendinger, his/her designee, or any successor to the foregoing Person designated by Developer by written notice to the City.

“Disbursing Agreement” shall mean that Disbursing Agreement by and between the City, Developer and the Title Company in substantially the form attached hereto as Exhibit K.

“Environmental Laws” shall mean all Laws, including any consent decrees, settlement agreements, judgments, or orders, issued by or entered into with a Governmental Authority pertaining or relating to: (a) pollution or pollution control; (b) protection of human health or the environment; (c) the presence, use, management, generation, processing, treatment, recycling, transport, storage, collection, disposal or release or threat of release of Regulated Substances; (d) the presence of Contamination; or (e) the protection of endangered or threatened species.

“Event of Default” shall have the meaning set forth in Section 13.1 hereof.

“Final Total Project Cost” is the actual, total project costs incurred or earned by Developer in completing Garage Work.

“Force Majeure” shall mean acts of God, accidents, fire or other casualty, earthquake, hurricane, tornadoes, named storms, flood, war, riot, intervention by civil or military authorities of government, insurrection or other civil commotion, governmental action (excluding any governmental action or inaction with respect to the grant or withholding of any governmental approvals or permits needed for construction, commissioning, or other matters affecting this Agreement), material shortages, strikes, boycotts, lockouts or labor disputes, any other similar or like event or occurrence, or any other event or occurrence beyond the reasonable control of a Party hereto, that causes such Party to be delayed or hindered in, or prevented from, the performance of any covenant or obligation hereunder. Unavailability of funds, alone, shall not constitute Force Majeure.

“Garage” shall have the meaning assigned to such term in the second WHEREAS clause set forth above.

“Garage Closing” shall have the meaning assigned to such term in Section 6.1(b) below.

“Garage Plans” shall mean those certain construction ready documents for the Garage Work to be prepared by ESG Architecture & Design, Inc.

“Garage Unit” shall have the meaning set forth in Section 5.1 hereof.

“Garage Work” shall have the meaning assigned to such term in Section 4.1(a).

“Guaranteed Project Cost” is the sum of \$19,900,000.00, which, excluding Change Orders and City’s Contingency, is the estimated total cost to complete the Garage Work. If the GPC Summary reflects a Total Project Cost less than such sum, then the Guaranteed Project Cost for all purposes of this Agreement thereafter shall be a sum equal to the Total Project Costs shown in the GPC Summary.

“Governmental Authority” shall mean any federal, state, county, city, local or other government or political subdivision or any agency, authority, board, bureau, commission, department or instrumentality thereof having jurisdiction over the portion or characteristic of the Project being referenced.

“GPC Confirmation” shall mean the signed Construction Contract representing the full scope of the Garage Work, and the GPC Summary, both evidencing an aggregate guaranteed maximum cost for the Garage Work at a sum at or below the Guaranteed Project Cost.

“GPC Summary” shall mean a completed form identifying and quantifying various Guaranteed Project Cost component parts in substantially the form attached hereto as Exhibit E.

“Guarantor” shall mean Great Plains Opportunity Zone Fund II, LLC, a Delaware limited liability company, or such other person or entity reasonably acceptable to City.

“Guaranty” shall mean that certain Guaranty in the form attached hereto as Exhibit G executed by Guarantor in favor of City.

“Infrastructure Development Act” shall mean North Dakota Century Code Chapter 48-02.1, as amended.

“Law” or “Laws” shall mean any law, statute, code, ordinance, rule, regulation or constitutional or charter provision, duly enacted or adopted by any Governmental Authority.

“Legal Requirements” shall mean present and future Laws (including Environmental Laws) applicable to the design, development, construction, equipping, use, occupancy, possession, operation, maintenance and management of the Project.

“Master Project Schedule” shall mean the schedule attached hereto as Exhibit C and updated in accordance with this Agreement.

“Mortgage” shall mean that certain Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing Statement granted by Developer in favor of the City, in the form attached hereto as Exhibit I, encumbering the Garage.

“Non-defaulting Party” shall have the meaning set forth in Section 13.1(a) hereof.

“NP Avenue Project” shall have the meaning given to such term in Section 2.1(b) below.

“Parking Agreement” shall have the meaning set forth in Section 4.2 hereof.

“Party” or “Parties” shall mean one (1) or more of the City or Developer.

“Permits” shall mean any permit, license or approval to be issued by any Person, including Required Environmental Permits, required for demolition, construction, installation, alteration or repair of any improvements related in any manner to the Project.

“Person” shall mean any natural person, sole proprietorship, corporation, partnership, trust, limited liability company, limited liability association, unincorporated association, joint venture, joint-stock company, Governmental Authority, or any other entity.

“Pre-Approved Title Matters” shall have the meaning assigned to such term in Section 6.2 below.

“Primary Subcontract” shall have the meaning set forth in Section 4.1(f) hereof.

“Project” shall mean, collectively, the NP Avenue Project, and all activities relating to the planning, acquisition, design, financing, development, and construction thereof.

“Project Agreements” shall mean the Parking Agreement, the Mortgage, the Disbursing Agreement, Assignment of Construction Contracts, and the Guaranty, as the same may be amended from time to time.

“Project Parcel” shall mean the real estate upon which the Garage and the Wrap shall be constructed and more-specifically described on attached Exhibit A and Exhibit B.

“Project Summary” shall mean the broad, general description and depiction of the NP Avenue Project attached hereto as Exhibit H.

“Regulated Substances” shall mean any substance, material or waste, regardless of its form or nature, defined under Environmental Laws as a “hazardous substance,” “hazardous waste,” “toxic substance,” “extremely hazardous substance,” “toxic chemical,” “toxic waste,” “solid waste,” “industrial waste,” “residual waste,” “municipal waste,” “special handling waste,” “mixed waste,” “infectious waste,” “chemotherapeutic waste,” “medical waste,” “regulated

substance,” “pollutant” or “contaminant” or any other substance, material or waste, regardless of its form or nature that otherwise is regulated by Environmental Laws.

“Representative” or “Representatives” shall mean one (1) or more of the City Representative or the Developer Representative.

“Required Environmental Permits” shall mean Permits, licenses, bonds, consents, programs, approvals or authorizations required under Environmental Laws for the construction of the Project.

“Response Action” shall mean the investigation, cleanup, removal, remediation, containment, control, abatement, monitoring of or any other response action to the presence of Regulated Substances or Contamination in, on, at, under or emanating from the Project Parcel, including the correction or abatement of any violation required pursuant to Environmental Laws, Required Environmental Permits or by a Governmental Authority.

“State” shall mean the State of North Dakota.

“Statement of Costs” shall have the meaning set forth in Section 4.1(l) hereof.

“Soils Work” shall have the meaning set forth in Section 4.1(d) hereof.

“Survey” shall have the meaning given to such term in Section 6.2(b) below.

“Title Company” shall mean The Title Company, which will be the title company and disbursing agent in connection with the Project.

“Wrap” shall have the meaning given to such term in Section 2.1(b)(ii) below.

“Wrap Plans” shall have the meaning assigned to such term in Section 8.1 below.

“Wrap Unit” shall have the meaning set forth in Section 5.1 hereof.

Section 1.2 Construction of Terms

As the context of this Agreement may require, terms in the singular shall include the plural (and vice versa) and the use of feminine, masculine or neuter genders shall include each other. Wherever the word “including” or any variation thereof is used herein, it shall mean “including, without limitation” and shall be construed as a term of illustration, not a term of limitation. Wherever the word “or” is used herein, it shall mean “and/or.”

ARTICLE 2 PROJECT

Section 2.1 Project

(a) In General. Developer shall develop, design and construct the Project as set forth in this Agreement and the Project Agreements, as applicable. Developer agrees to meet, confer, and consult with the City throughout any design modification and construction process as required in this Agreement and in the Project Agreements, or upon request of the City following reasonable notice.

(b) Project Components. Developer shall own, develop, design and construct the Project to include: (i) the Garage consisting of at least 450 and not more than 490 parking spaces, and (ii) a residential and commercial development on two (2) sides of and partially vertically integrated with the Garage including at least 120 and not more than 200 residential living units, approximately 2,000 square feet of commercial space and a theater area comprising 25,000-35,000 square feet (the “Wrap”; collectively with the Garage, the “NP Avenue Project”).

Section 2.2 Project Representatives

(a) Developer Representative. Developer has designated the Developer Representative as its agent and representative authorized to act on behalf of Developer with respect to the Project. The Developer Representative is Developer’s exclusive representative insofar as this Agreement is concerned. All instructions from Developer to the City relating to this Agreement shall be issued or made in writing (or as otherwise agreed to by the Parties) through the Developer Representative. All communications and submittals from the City to Developer with respect to matters covered by this Agreement shall be issued or made through the Developer Representative, unless Developer or the Developer Representative shall otherwise direct in writing.

(b) City Representative. The City has designated the City Representative as its agent and representative authorized to act on the City’s behalf with respect to the Project. The City Representative is the City’s exclusive representative insofar as this Agreement is concerned. All instructions from the City to Developer relating to this Agreement shall be issued or made in writing (or as otherwise agreed to by the Parties) through the City Representative. All communications and submittals from Developer to the City with respect to matters covered by this Agreement shall be issued or made through the City Representative, unless the City or the City Representative shall otherwise direct in writing. Developer recognizes that the City may have additional representatives involved in the Project; however, official determinations by the City must be made through the City Representative.

Section 2.3 City Process

The Project is subject to normal City comprehensive plan, zoning, subdivision, environmental and historic approval processes, including traffic management plans, planned unit development, site plan and design reviews, conditional use permits, variances, and other applicable zoning and land use approvals.

**ARTICLE 3
CITY PARCEL INITIAL TRANSFER**

Section 3.1 City Parcel

(a) Property. The City currently owns that portion of the Project Parcel identified on attached Exhibit A (the “City Parcel”). Developer currently has rights to acquire the remainder of the Project Parcel, specifically the portion of the Project Parcel described on attached Exhibit B (the “Global Parcel”). Subject to the terms and conditions of this Agreement, City will convey to Developer, and Developer will purchase and accept from City the City Parcel. The City shall not be required to remove any improvements from the City Parcel and Developer takes the City Parcel in its as-is condition without any representation or warranty concerning the City Parcel (including, without limitation, the warranties of fitness for a particular purpose, tenantability, habitability and use). Promptly following the Effective Date, City shall, at its sole cost and expense, initiate a two-lot plat of the Project Parcel, one lot being the City Parcel and the other being the Global Parcel City shall diligently process such plat through the City staff and public hearing process and complete same, including the recordation thereof, not later than 180 days following the Effective Date.

(b) Closing. The closing of the sale by City and purchase by Developer of the City Parcel (the “City Parcel Closing”) will occur on or before 21 days following the Developer’s Step I Contingencies Deadline (the “City Parcel Closing Date”) but subject to the contingency for the benefit of the City that Developer has, in fact, acquired from Global, as explained in Section 10.3(b), below, that part of the Project Parcel currently owned by Global and more particularly described on attached Exhibit B, together and certain easement interests integral to the NP Avenue Project.

(c) Purchase Price. The purchase price for the City Parcel is \$10.00, which is payable by Developer to City at the City Parcel Closing. This purchase price has been determined by the City to be appropriate under the Infrastructure Development Act.

Section 3.2 Title and Survey

Developer shall be responsible for performing any and all title and survey examination or due diligence that Developer deems prudent, at Developer’s sole cost and expense. Developer acknowledges and agrees that the City is providing marketable title and otherwise is not providing any representations or warranties as to the condition of title and expressly waives any claims Developer may have against the City in connection with any title defects.

Section 3.3 City Parcel Closing Documents

(a) City Closing Documents. The City will deliver to Developer at the City Parcel Closing:

(i) a special warranty deed duly executed by the City conveying the City Parcel to Developer; and

(ii) any other items required by this Agreement or reasonably required by the Title Company for the City Parcel Closing.

(b) Developer Closing Documents. Developer will deliver to the City at the City Parcel Closing:

(i) the purchase price specified in Section 3.1(c);

(ii) the Mortgage; and

(iii) any other items required by this Agreement or reasonably required by the Title Company for the City Parcel Closing.

Section 3.4 Closing Costs and Prorations

(a) Closing Costs. The City and Developer will each be responsible for its respective legal, accounting and other expenses associated with the City Parcel transaction contemplated by this Article 3. City will be responsible for correction of title and any document recording fees required for correction of title. Developer will be responsible for the deed and the Mortgage recording fees, title examination costs and title insurance premiums, the cost of its ALTA survey, fees associated with the transfer or obtaining of licenses and permits required to operate the City Parcel, the closing fee and any escrow fees imposed by the Title Company in connection with this transaction.

(b) Taxes and Assessments. Real estate taxes and installments of special assessments for the year prior to the City Parcel Closing (payable the year of the City Parcel Closing) and prior years shall be the responsibility of City. Real estate taxes and installments of special assessments for the year of the City Parcel Closing (payable the year following the City Parcel Closing) shall be prorated between the parties to the City Parcel Closing date, based on the prior year's information if the tax statements for the current year are not yet available. Subject to other proration provisions set out in this Agreement, real estate taxes and installments of special assessments for the year following the City Parcel Closing (payable the second year following the City Parcel Closing) and subsequent years shall be the responsibility of Developer.

(c) Income and Expenses. All income and operating expenses relating to the City Parcel will be prorated as of the close of business of the day before the City Parcel Closing. The City will be responsible for the expenses and entitled to the revenues accrued or applicable to the period prior to the City Parcel Closing. Developer will be responsible for the expenses and entitled to the revenues accrued or applicable to the day of the City Parcel Closing and thereafter until the Garage Closing, subject to the Parking Agreement.

(d) Estimates. If any amount to be apportioned under (c) cannot be calculated with precision because any item included in such calculation is not then known, such calculation will be made on the basis of reasonable estimates of the City of the items in question. Promptly after any such item becomes known to either Party, such Party will so notify the other and will include in such notice the amount of any required adjustment. If such adjustment requires an additional payment by the City to Developer, the City will make such payment to Developer simultaneously with its giving or within twenty (20) days of its receipt of such notice, as the case

may be. If such adjustment requires a refund by Developer to the City, Developer will make such refund simultaneously with its giving or within twenty (20) days after its receipt of such notice, as the case may be.

Section 3.5 As Is

Except for those representations and warranties specifically included in this Section 3: (i) the City makes no representations or warranties regarding the City Parcel; (ii) the City hereby disclaims, and Developer hereby waives, any and all representations or warranties of any kind, express or implied, concerning the City Parcel or any portion thereof, as to its condition, value, compliance with laws, status of permits or approvals, existence or absence of hazardous materials on site, occupancy rate or any other matter of similar or dissimilar nature relating in any way to the City Parcel, including the warranties of fitness for a particular purpose, tenantability, habitability and use; and (iii) Developer otherwise takes the City Parcel “AS IS”, “WHERE IS” and “WITH ALL FAULTS.”

**ARTICLE 4
GARAGE CONSTRUCTION AND OPERATION**

Section 4.1 Garage Construction

(a) Garage Work. Developer is responsible for performing, or causing others to perform, all work (collectively, the “Garage Work”) required to design, develop and construct the Garage upon the Project Parcel and pursuant to the Garage Plans and in accordance with all Laws and all requirements of this Agreement.

(b) Garage Plans. Developer will deliver to City, on or before April 15, 2023, proposed Garage Plans for City’s review and approval. City shall promptly review the Garage Plans and timely communicate any proposed changes to same. City and Developer shall coordinate and cooperate with one another to agree upon and finalize a final set of Garage Plans not later than May 1, 2023, which if and when agreed upon, shall become the “Garage Plans” for all purposes under this Agreement.

(c) Change Orders. All Changes Orders must be accepted and executed by both Developer and the City. Developer’s approval to any City-requested Change Order shall not be unreasonably withheld, conditioned or delayed and City’s approval to any Developer-requested Change Order shall not be unreasonably withheld, conditioned or delayed provided such Developer-requested Change Order does not increase the Guaranteed Project Cost and/or delay the Master Project Schedule. Developer or the City, as the case may be, shall respond to a requested Change Order within ten (10) days of receipt. No changes may be made to the Garage Plans or the Guaranteed Project Cost except through a mutually accepted and executed Change Order.

(d) City Contingency. City and Developer acknowledge that Developer has conducted soils tests over parts, but not all, of the Project Parcel. City and Developer also acknowledge the Garage Work will commence on or about July 15, 2023, and proceed throughout the winter months and the Guaranteed Project Cost is calculated based upon typical

winter conditions. City shall make the City Contingency (limited to the amount set forth in Article 1, and no more) available to Developer for (“Special Conditions”): (i) 42% of the costs of Soils Work occurring throughout the NP Avenue Project (whether under the Garage or the Wrap); and/or (ii) increased costs of Garage Work resulting from harsher than typical winter conditions. Access to the City Contingency shall be subject to the approval of City, which approval City shall not unreasonably withhold or delay. Developer shall segregate and specifically identify any City Contingency requested in draw requests and shall provide reasonable supporting information documenting the Special Condition encountered and the amount requested. If approved, City shall pay directly to Developer, or provide to the Title Company to disburse to Developer, the City Contingency requested. From and after all draw requests for Garage Work completed after June 1, 2024, have been processed and paid, City may, subject to the normal Change Order process, utilize all remaining City Contingency for items other than Special Conditions. For purposes of this Section, “Soils Work” shall mean the costs of assessing, removing, transporting, disposing of and replacing contaminated soils and/or undocumented fill. Developer shall be under no obligation to first utilize the Developer Contingency for Special Conditions, the Parties acknowledging that the City Contingency is intended as the primary resource for funding Special Conditions; provided, however, Developer may utilize the Developer Contingency for Special Conditions if and when the City Contingency is exhausted.

(e) Selection of Contractors and Subcontractors. Developer shall be responsible for competitively bidding all aspects of the Garage Work. Developer shall, on or before March 15, 2023, submit to City for its approval a list of proposed bidders for each trade and portion of Garage Work. City shall promptly review such list and timely communicate any proposed additions or deletions to same. City and Developer shall coordinate and cooperate with one another to agree upon and finalize the bidders list not later than April 1, 2023. If any contractors or subcontractors are later substituted, City shall have the right to actively participate in the solicitation and selection of proposed contractors and subcontractors and the review of all bids. Notwithstanding any participation by the City, Developer shall be solely responsible to the City for the performance of all contractors and subcontractors.

(f) Construction Contract.

(i) All contracts entered into by Developer with design professionals and all contractors shall not conflict with Developer’s obligations under this Agreement. Developer shall deliver a copy of all such contracts to the City upon request and in any event prior to commencing construction. The general construction contract for the Garage Work (the “Construction Contract”) with the Construction Manager and the subcontracts entered into by the Construction Manager (the “Primary Subcontracts”) at a minimum must:

(A) be an AIA form construction contract with a guaranteed maximum price;

(B) with respect to the Construction Contract, provide for a Construction Manager’s fee (to be paid to Kilbourne Construction Management,

LLC, the Construction Manager) equal to 3% of the Base Construction Costs component of Hard Costs set out in the GPC Summary.

(C) identify the City as an express, intended third-party beneficiary;

(D) state that the City has the right to enforce all warranties and material and equipment guarantees as described herein;

(E) with respect to the Construction Contract, require payment and performance bonds in a form reasonably acceptable to the City, with a dual obligee rider in favor of both Developer and the City; and

(F) be reasonably acceptable to the City.

(ii) Developer shall not do any one or more of the following without the City's prior written consent: execute a letter of intent, or similar document, with respect to the Construction Contract or a Primary Subcontract or execute a Construction Contract or Primary Subcontract that is inconsistent with either the Master Project Schedule or the Guaranteed Project Cost; assign its rights under the Construction Contract; or execute either or both any change orders or any construction change directives.

(iii) Prior to the City Contingencies Deadline, Developer shall deliver to the City an Assignment of Construction Contracts in the form attached hereto as Exhibit D and prior to commencing any construction on the Garage, Developer shall deliver a consent to the Assignment of Construction Contracts from the Construction Manager in the form attached as Exhibit D.

(g) Warranties. Developer warrants to the City that: (a) materials and equipment used in connection with the Garage Work will be of good quality and new and (b) that the Garage Work will conform to the requirements of this Agreement, the Garage Plans and the Construction Contract. Prior to the Garage Closing, Developer shall require its contractors to promptly correct any of the Garage Work which fails to conform to the requirements of the Garage Plans and this Agreement, whether or not fabricated, installed or completed. At the Garage Closing, Developer shall assign all warranties for the Garage Work to City, and thereafter, Developer shall cooperate and take all necessary steps with City to require the contractors to promptly correct any of the Garage Work which fails to conform to the requirements of this Agreement, the Garage Plans or the Construction Contract, whether discovered before or after substantial completion (but only until and subject to required notices so as to be covered under a warranty in the Construction Contract) and whether or not fabricated, installed or completed.

(h) Intentionally Omitted.

(i) Developer Contingency Use. Developer must report in writing and on a monthly basis to the City (a) the then-current amount of the Construction Contingency component of Hard Costs provided in the GPS Summary, including all credits to, and deductions from, same shown in the GPC Summary (the "Developer Contingency"), and (b) the changes anticipated in

the following month in the amount of the Developer Contingency, including all credits to, and deductions from.

(j) Developer Fee. Developer shall receive the Developer Fee, an amount defined in Section 1.1 herein, as set forth in the Disbursing Agreement.

(k) Adjacent Infrastructure. The Parties acknowledge that certain utility, street and sidewalk replacement work in and to the NP Avenue right of way adjacent to the Project and in and to 8th St. N near the project is necessary to make the Wrap and Garage useable for their intended purposes and to satisfy other aspects of this Agreement (the "ROW Work") and the ROW Work is not part of the Garage Work or the Guaranteed Project Cost. City will (at its cost and expense, but subject to the City's normal special assessment policies and procedures) design, bid and complete the ROW Work. City recognizes and acknowledges that, in order to timely complete construction of the Project, Developer must have continuous access to the Project. Thus, City will (at its cost and expense, but subject to the City's normal special assessment policies and procedures) design, bid and complete the ROW in a manner to ensure at least one means of access to the Project at all times from either 8th St. or NP Avenue, and City and Developer will communicate, cooperate and coordinate with one another regarding such access and to facilitate timely and efficient completion of Developer's work at and related to the Project that ties into and must be coordinated with the ROW Work. City will substantially complete the ROW Work not later than October 15, 2025.

(l) Statement of Costs. Within fifteen (15) days following the substantial completion of the Garage Work, Developer shall submit to the City a statement (the "Statement of Costs"), prepared and certified by Developer, or an authorized agent thereof, setting forth Developer's calculation of the actual Final Total Project Cost. The Statement of Costs shall include reasonable supporting documentation of amounts paid (or to be paid) to various project vendors, and the nature of each item comprising of Developer's calculation of the Final Total Project Cost. The City shall have a period of thirty (30) days after receipt of the Statement of Costs to review the same and provide written objections, if any, to Developer together with an explanation and computation of the alleged discrepancies. The City may, upon reasonable prior written notice, audit Developer's books and records with respect to Final Total Project Cost and Garage Work at any time prior to the expiration of such thirty (30) day period.

(m) City Funding. The City's payment of the lesser of the Final Total Project Cost and the Guaranteed Project Cost shall be pursuant to the Disbursing Agreement.

(n) City Inspection Rights. The City shall have the right to supervise and inspect all aspects of the Garage Work and Developer shall cooperate with any representative or agent of the City undertaking such supervision or inspection.

(o) Compliance. No approval by the City shall relieve Developer of the obligation to comply with the terms of this Agreement, applicable federal, state and local laws, ordinances, rules and regulations, or to properly construct the Garage. No approval by the City shall constitute a waiver of an Event of Default. In accordance with the Infrastructure Development Act, the construction of the Garage must satisfy the City's standards of construction for infrastructure of the same functional classification.

Section 4.2 Garage Operations/Temporary Use of a Portion

The City and Developer will enter into a parking operations, maintenance and use agreement (the “Parking Agreement”) in substantially the form attached hereto as Exhibit F on or before the Garage Closing which sets forth the terms of the management and operation of the Garage as a fee-based facility consistent with the Infrastructure Development Act. Notwithstanding the foregoing, Developer shall have use, without charge of any kind, of the top level of the Garage for the staging of construction materials pertaining to the Wrap until August 15, 2025. Developer shall not exceed structural tolerances and shall, at its cost, restore any damage to the Garage resulting from such use.

Section 4.3 Application of Other Law

In accordance with the Infrastructure Development Act, Developer is not excused from the necessity of obtaining environmental, navigational, design or safety approvals that would be required if the Garage were constructed or operated by a public body. In accordance with the Infrastructure Development Act, to the extent the Garage will be incorporated into the existing infrastructure of the City, any applicable City department or other public authority may review and approve the Garage to the same extent as it would for a similar public constructed facility.

**ARTICLE 5
CONDOMINIUM**

Section 5.1 Creation of Condominium and Parking

(a) Condominium Documents. Developer shall be responsible for all property division and condominium creation necessary to divide the Project Parcel into separate units with separate parcel identification numbers, one such unit consisting of the Garage (the “Garage Unit”) and one or more such units consisting of the Wrap (the “Wrap Unit”). The parties acknowledge and recognize that the Project includes Northern Prairie Performing Arts, a North Dakota nonprofit corporation, a/k/a Fargo/Moorhead Community Theater (“FMCT”), purchasing a portion of the Project that would otherwise constitute a portion of the Wrap and the Condominium will include another, third unit (the “Theater Unit”). All property division documents (including, without limitation, plats, surveys, easements, association documents, etc.) are subject to the City’s prior approval. Within 180 days after the City Parcel Closing Date, Developer shall deliver to the City, for its review and approval, property division and condominium documentation, including a proposed survey map depicting the proposed units, condominium declaration, condominium association by laws and formation documentation, a declaration of covenants, conditions and restrictions and any other documentation required by applicable law for the property division and condominium creation (collectively, such documents, as approved by the City are the “Condominium Documents”). The Condominium Documents must include mutual easements or other rights relating to use and administration of common areas mutually benefiting each parcel, must provide that the condominium association shall consist of only three voting members, one member for each unit. The units include air rights above those parts of their units where no part of another unit is present. The City will not unreasonably withhold or delay approval of the Condominium Documents. The Condominium Documents shall provide that Developer can, at any time, create one or more sub-condominiums

for the Wrap Unit, but as pertains to the condominium created by the Condominium Documents, any/all units within the Wrap shall be entitled to only one vote and such sub-condominium(s) shall not reduce or alter the City's rights or obligations under the Condominium Documents.

(b) Parking Rights. The Parties acknowledge and recognize that, pursuant to the Condominium Documents and/or such other agreements that may be advisable parking rights in and to the Garage as further described below shall be established.

(i) Developer intends to incorporate not less than 120 and not more than 200 apartment style residential living units into the Wrap. The owner of the apartment style residential living units (or the association pertaining thereto if such living units are later sub-condominiumized) may obtain from City for use by Eligible Occupants up to one Full Time Parking Space for each apartment style residential living unit with such owner/association paying the Market Rate for such spaces.

(ii) "Full Time Parking Spaces" shall mean spaces available on a so-called "24/7/365" basis, without restrictions as to days or hours of use. "Market Rate" shall mean the rate charged by City for comparable parking spaces and rights at its downtown Fargo facilities. "Eligible Occupants" shall mean tenants or owners (in the event the Wrap Unit is later sub-condominiumized) of residential spaces within the Wrap Unit.

(iii) If at any time there are less than the maximum allocated Full Time Parking Spaces issued to Eligible Occupants and one or more Eligible Occupants wish to obtain a Full Time Parking Space, the Owner of the Garage shall promptly reduce the number of Full Time Parking Spaces issued to others, reduce the number of short-term parking spaces within the Garage Unit and/or undertake other actions as are necessary to provide up to maximum allocated Full Time Parking Spaces to Eligible Occupants.

Section 5.2 City and County Process

All property division and condominium creation are subject to normal City and County comprehensive plan, zoning, and subdivision approval processes.

ARTICLE 6 PURCHASE AND SALE OF GARAGE

Section 6.1 Sale and Purchase

(a) Property. Developer will sell and convey to the City, and the City will purchase and accept from Developer, the Garage Unit. Prior to the Garage Closing, the Garage Unit must be a separate, legal condominium unit with its own parcel identification number.

(b) Closing. The closing of the sale and purchase of the Garage Unit (the "Garage Closing") will occur on or before the first business day which is thirty (30) days after the date a Certificate of Occupancy is issued for the Garage or the date the Garage is fully operational (including all parking control equipment,), whichever occurs later.

(c) Purchase Price. The purchase price for the Garage Unit is \$10.00, which is payable by the City to Developer in cash at the Garage Closing. This purchase price has been determined by the City to be appropriate under the Infrastructure Development Act.

Section 6.2 Title and Survey

(a) Title. Title to the Garage Unit shall only be subject to those easements, restrictions, and other matters of record, the Condominium Documents and other instruments contemplated by this Agreement and approved by the City and the Mortgage (the “Pre-Approved Title Matters”). Developer shall furnish to the City at the City’s request either a commitment for an owner’s policy of title insurance or an updated abstract of title covering the Garage Unit (the “Commitment”), issued by the Title Company. The City shall be responsible for the cost of the Commitment and the premium for any policy issued pursuant to the Commitment and any desired endorsements thereto.

(b) Survey. The City shall have the right to obtain an ALTA as-built survey of the Garage Unit in form reasonably acceptable to the City (the “Survey”). Developer shall promptly deliver to the City all documents in its possession which will assist the City in having the Survey created (including constructions documents, plans, etc.).

(c) Corrections to Title. If any objections to Commitment or Survey are made (other than to the Pre-Approved Title Matters), Developer will correct such objections prior to the Garage Closing.

Section 6.3 Garage Closing Documents

(a) City Closing Documents. The City will deliver to Developer at the Garage Closing:

- (i) the purchase price specified in Section 6.1(c);
- (ii) Parking Agreement executed by the City; and
- (iii) any other items required by this Agreement or reasonably required by the Title Company for the Garage Closing.

(b) Developer Closing Documents. Developer will deliver to the City at the Garage Closing:

- (i) a warranty deed duly executed by Developer conveying the Garage Unit to the City;
- (ii) an assignment of permits and warranties in form reasonably acceptable to the City;
- (iii) Parking Agreement executed by Developer;

(iv) an affidavit satisfactory to the City that Developer is not a foreign person under Section 1445 of the United States Internal Revenue Code;

(v) an affidavit satisfactory to the City and the Title Company that at the Garage Closing there are no outstanding, unsatisfied judgments, tax liens, or bankruptcies against Developer, no labor, services, materials, or machinery furnished to the Garage Unit for which construction liens could be filed, and no unrecorded interests in the Garage Unit which have not been fully disclosed to the City;

(vi) a resolution of the manager of Developer authorizing and approving the transaction contemplated by this Agreement, certified as true and correct by an officer of Developer; and

(vii) any other items required by this Agreement or reasonably required by the Title Company for the Garage Closing.

Section 6.4 Garage Closing Costs and Prorations

(a) Closing Costs. The City and Developer will each be responsible for its legal, accounting and other expenses associated with the Garage Unit transaction contemplated by this Article 6 up to and including the date final adjustments are made pursuant hereto. Developer will be responsible for correction of title and any document recording fees required for correction of title. City will be responsible for document recording fees. City will pay the closing fee and any escrow fees imposed by the Title Company in connection with this transaction.

(b) Taxes and Assessments. Real estate taxes and installments of special assessments for the Garage Unit shall be prorated by the Parties to the City Parcel Closing Date, Developer responsible for those for the period of time prior to the City Parcel Closing Date and City responsible for those from and after the City Parcel Closing Date.

(c) Income and Expenses. All income and operating expenses relating to the Garage Unit will be prorated as of the close of business of the day before the Garage Closing. Developer will be responsible for the expenses and entitled to the revenues accrued or applicable to the period prior to the Garage Closing. The City will be responsible for the expenses and entitled to the revenues accrued or applicable to the day of the Garage Closing and thereafter, subject to the Parking Agreement.

(d) Estimates. If any amount to be apportioned under (b) or (c) cannot be calculated with precision because any item included in such calculation is not then known, such calculation will be made on the basis of reasonable estimates of Developer of the items in question. Promptly after any such item becomes known to either Party, such Party will so notify the other and will include in such notice the amount of any required adjustment. If such adjustment requires an additional payment by the City to Developer, the City will make such payment to Developer simultaneously with its giving or within twenty (20) days of its receipt of such notice, as the case may be. If such adjustment requires a refund by Developer to the City, Developer will make such refund simultaneously with its giving or within twenty (20) days after its receipt of such notice, as the case may be.

ARTICLE 7
ADDITIONAL PROJECT FEATURES

Section 7.1

Notwithstanding anything in this Agreement to the contrary, the parties acknowledge and agree and covenant to one another that the following features are incorporated into and/or will be completed in conjunction with the NP Avenue Project as the case may be.

(a) The Wrap shall include not less than 120 and not more than 200 apartments, approximately 2,000 square feet of commercial space and will include a theater area comprising 25,000-35,000 square feet.

(b) The Garage shall contain not less than 450 nor more than 490 parking spaces, the access to which shall be via a three-lane design entrance/exit on Northern Pacific Avenue.

(c) Subject to the provisions of Section 7.1(g), Global Development, L.L.C., a North Dakota limited liability company (“Global”) shall be entitled to the use of no less than 50 parking spaces within the Garage without charge or fee of any kind. These parking rights shall be personal to Global, shall be fully transferable by Global and shall remain the separate property of Global even in the event Global disposes of one or more of the properties it owns adjacent to the NP Avenue Project. Said parking rights shall have a term of not less than 40 years from and after the date the Ramp receives its initial Certificate of Occupancy and thereafter shall only end if the Ramp is permanently closed and no longer operated, is demolished or destroyed, or is deemed by City, in its sole discretion, to be no longer operational.

(d) Public parking with respect to the Uncommitted Spaces (as defined below) in the Garage during “Off-Peak Hours” shall be open to the public in perpetuity. For purposes of this Section 7.1(d): [a] the phrase “Off-Peak Hours” shall mean before 8 a.m. and after 5 p.m. Monday through Friday and all day on weekends and holidays; and [b] the phrase “Uncommitted Spaces” shall mean the total non-handicapped parking spaces located in the Garage less those designated for Global (as potentially increased pursuant to Section 7.1(g)) and Developer pursuant to this Agreement.

(e) The parties acknowledge the Garage Work shall include replacing the paving in the Alley, maintaining the current number of drains and installing an additional storm sewer drain midway in the Alley to as to provide proper drainage of the Alley.

(f) The Garage Work shall include new lighting on the Easterly face of the Garage to improve lighting in the Alley.

(g) The Burlington Northern and Santa Fe Railway Company (“BNSF”) owns two tracts of land immediately adjacent to and Southerly of the Project Parcel, currently being utilized for 15 total parking spaces (the “Parking Area”). BNSF has granted an easement to Global to utilize the Parking Area for parking. Global subsequently assigned certain rights under that easement to City, and Global and the City of Fargo have entered into a Parking Lot Agreement dated as of October 2016 governing their use of the Parking Area. City acknowledges

that, following construction of the Project, Global may use the Parking Area and shall have access to the Parking Area either through existing access points or points to be designated as part of the construction of the Project, and that the Parking Area shall be repaired as necessary if damaged during the construction process as part of the Garage Work. City and Developer acknowledge that ensuring access to a total of 65 parking spaces between the Garage and the Parking Area following construction of the Project is a matter of material importance to Global and agree that, to the extent the Parking Area will contain less than 15 usable parking spaces following construction of the Project, the number of spaces allocated to Global under and pursuant to the terms of Section 7.1(c) hereof shall be increased so that Global has an aggregate total of 65 spaces.

ARTICLE 8 MIXED-USE CONSTRUCTION

Section 8.1 In General

Developer will initially own, privately finance, develop, design and construct the Wrap. Developer shall develop plans and specifications, including site plans (the “Wrap Plans”), for each component of the Wrap. The Wrap Plans shall provide for construction of the Wrap generally consistent with material elements of the Project Summary and in conformity with this Agreement and all applicable state and local laws and regulations, and any deviation thereof shall require the written approval of City Representative.

Section 8.2 Interference

Developer acknowledges that portions of the construction of the Wrap may occur after the Garage Closing. Developer will use commercially reasonable and diligent efforts to minimize any interference, to the extent practicable, in the operation of the Garage in connection with its construction of the Wrap.

Section 8.3 Renaissance Program

Developer will seek approval for the Wrap to be part of the Renaissance Zone Program. Developer will not seek a payment in lieu of tax incentive. Any determination by the City with respect to the Renaissance Zone Program shall be subject to the City’s standard application, review and approval process.

Section 8.4 Tax Increment Financing

Developer will seek Tax Increment Financing with respect to the Wrap that will provide for the payment to Developer of all tax increment, less a City administrative fee equal to the lesser of five percent of such increment or \$12,500.00, generated by the Wrap in the first five tax years following expiration of the Renaissance Zone Program, up to a maximum of eligible costs, the terms for which to be set forth in a separate TIF developer agreement to be entered into between the Developer and City.

Section 8.5 Public Infrastructure

Developer acknowledges that the City may perform work on the streets, sidewalks, alleys, electrical distribution systems, and other public infrastructure and utilities surrounding, or serving, the Project and may, in the City's discretion, except to the extent expressly provided otherwise in this Agreement, finance such work in accordance with applicable Law and City policy using tax increment financing, special assessments or any other financing method available to the City, to which the Project would be subject.

**ARTICLE 9
SCHEDULE**

Section 9.1 Master Project Schedule

The Master Project Schedule attached as Exhibit C to this Agreement sets forth the anticipated start, completion and duration dates for the various components of the Project and related facilities as set forth herein and Developer shall develop, design and construct the Project in accordance with such Master Project Schedule. In addition, the Parties agree as follows:

- (a) The anticipated date of substantial completion for the Garage is December 1, 2024.
- (b) The anticipated date of substantial completion of the Wrap is September 15, 2025.

Section 9.2 Progress Notifications

(a) Developer will periodically provide the City with written notification related to meeting the agreed upon construction benchmarks and the then current timing of delivery of the Project. The written notification shall be provided to the City on the following schedule:

(i) At the start of construction of the Garage, Developer will provide notification to the City that construction has begun.

(ii) Developer will provide an update of construction progress and confirmation of the ability of Developer to meet the anticipated dates of substantial completion set forth in Exhibit C, every month, thereafter.

(b) Subject to Section 13.5 below, if at any time written notification or observation of the City reasonably indicates any one or more of the Garage or the Wrap will not be completed by the anticipated dates of substantial completion set forth in Exhibit C, respectively, unless Developer is able to appropriately satisfy the City, within forty-five (45) days of written notice from the City with respect to the Garage and within ninety (90) days with respect to the Wrap, that construction will be completed by the applicable delivery date, or the Parties agree upon a later delivery date, the City will have the right to take over construction of the Garage or the Wrap (subject to the rights of any mortgagees of the Wrap, but with such rights shall come the obligations of such mortgagees to perform the obligations of Developer under this Agreement as to the Wrap), as applicable, to ensure the timely completion of the Garage or the Wrap, without

any increased cost to the City and Developer will reimburse the City for all costs incurred in connection therewith.

ARTICLE 10 CONTINGENCIES

Section 10.1 City Contingencies

The City's obligations under this Agreement are subject to satisfaction or waiver by the City of the following contingencies on or before seven days following the Developer's Step I Contingencies Deadline (the "City Contingencies Deadline"):

(a) City's ability to finance the Garage, in part, through the sale of taxable bonds in the principal amount of not less than \$16,330,000.00 with an amortization of not less than 25 years and an interest rate of not greater than seven percent.

(b) FMCT and Developer waiving all of their contingencies under the agreement(s) by which Developer will construct and FMCT will purchase the Theater Unit.

(c) execution and delivery to City, subject only to satisfaction of the Developer's Step II Contingencies, by the applicable parties of the following Project Agreements:

(i) Mortgage;

(ii) Disbursing Agreement;

(iii) Assignment of Construction Contracts; and

(iv) Guaranty.

(d) City's receipt of the GPC Confirmation.

(e) City's receipt of reasonable financial information for the Guarantor in form reasonably satisfactory to the City;

(f) no pending or threatened litigation or Legal Requirements, injunction or other order that prohibits the consummation of this Agreement; and

(g) all of the covenants and obligations that Developer is required to perform or to comply with pursuant to this Agreement, as applicable, including the delivery of all documents and notices provided for herein, have been performed and complied with in all material respects.

The contingencies set forth in this Section 10.1 are intended for the sole benefit of City and may be insisted upon or waived, in whole or in part, by the City in its sole discretion. City shall exercise reasonable diligence to satisfy its contingencies until and unless it exercises same.

Section 10.2 Unsatisfied Contingencies

If any contingency set out in Section 10.1 is unsatisfied as of the City Contingencies Deadline, the City may at its option:

- (a) waive the contingency and proceed to perform under this Agreement; or
- (b) terminate this Agreement.

If this Agreement is so terminated, no Party shall have the right to specific performance or damages for default of this Agreement. Notwithstanding anything herein to the contrary, waiver by the City of any contingencies in its favor shall not be deemed a waiver of any obligations of Developer expressly set forth in this Agreement.

Section 10.3 Developer Contingencies

Developer's obligations under this Agreement are subject to satisfaction or waiver by Developer of the following contingencies:

- (a) On or before June 15, 2023 (the "Developer's Step I Contingencies Deadline"):
 - (i) Developer receiving final approvals from all necessary governing bodies that the Wrap has been approved for the programs set forth in Section 8.3 and 8.4.
 - (ii) FMCT and Developer waiving all of their contingencies under the agreement(s) by which Developer will construct and FMCT will purchase the Theater Unit.
 - (iii) Developer, in its sole and absolute discretion, satisfying itself that Project construction, construction costs, financing, equity, returns and all other aspects of the Project are satisfactory and available to Developer on terms acceptable to Developer.

(b) On or Before 14 days following the Developer's Step I Contingencies Deadline ("Developer's Step II Contingencies Deadline") Developer acquiring from Global that part of the Project Parcel currently owned by Global and more particularly described on attached Exhibit B, together and certain easement interests integral to the NP Avenue Project.

(c) The contingencies set forth in this Section 10.3 are intended for the sole benefit of Developer and may be insisted upon or waived, in whole or in part, by Developer in its sole discretion. Developer shall exercise reasonable diligence to satisfy its contingencies until and unless it exercises same. If a contingency set out in Section 10.3 is unsatisfied as of the applicable contingency deadline, Developer may at its option waive the contingency and proceed to perform under this Agreement or terminate this Agreement. Notwithstanding anything herein to the contrary, waiver by Developer of any contingencies in its favor shall not be deemed a waiver of any obligations of the City expressly set forth in this Agreement. If this Agreement is so terminated, no Party shall have the right to specific performance or damages for default of this Agreement.

Section 10.4 Soft Costs

The parties acknowledge that Developer has and will continue to incur Soft Costs (as categorized on the CPC Summary form attached as Exhibit E) related to the Project. City will, promptly after billing by Developer, reimburse Developer for the Soft Costs attributable or allocable to the Garage Work even if, and accrued through the date, a party exercises a contingency pursuant to this Article 10. From and after the City Parcel Closing, said Soft Costs shall be billed with regular construction draws. Notwithstanding anything herein to the contrary, the maximum amount billed to City for Soft Costs prior to the City Parcel Closing shall be \$450,000.00.

**ARTICLE 11
REPRESENTATIONS AND WARRANTIES OF THE CITY**

The City hereby represents and warrants to Developer that, as of the date of execution of this Agreement:

Section 11.1 Organization

The City is a municipal corporation, duly organized, validly existing, and in good standing under the Laws of the State.

Section 11.2 Authorization, Validity, and Enforceability

The City has all requisite power and authority to enter into this Agreement and the Project Agreements to which it is a party and to carry out the actions contemplated hereby and thereby. The execution, delivery, and performance by the City of this Agreement and the Project Agreements to which it is a party have been duly authorized and approved by all necessary City action. This Agreement and the Project Agreements to which it is a party, when executed, shall constitute the valid and legally binding obligations of the City, enforceable against the City in accordance with their respective terms.

Section 11.3 No Conflicts

The execution, delivery, and performance of this Agreement and the Project Agreements to which it is a party shall not result in a violation of, in any material respect, any provision of any other agreements, charters, instruments, contracts, judgments, or decrees to which the City is a party or by which the City or its assets may be bound or affected.

Section 11.4 No Violation of Laws

The City has complied in all material respects with all Legal Requirements and is not in default with respect to any judgment, order, injunction, or decree of any court, administrative agency, or other Governmental Authority that is in any respect material to the transactions contemplated in and by this Agreement or the Project Agreements to which it is a party.

ARTICLE 12
REPRESENTATIONS AND WARRANTIES OF DEVELOPER

Developer hereby represents and warrants to the City that, as of the date of execution of this Agreement:

Section 12.1 Organization

Developer is a limited liability company duly organized, validly existing, and in good standing under the Laws of the State. This Agreement and all Project Agreements to which Developer is a party shall be binding upon and enforceable against Developer.

Section 12.2 Authorization, Validity and Enforceability

Developer has all requisite power and authority to enter into this Agreement and the Project Agreements to which it is a party and to carry out the actions contemplated hereby and thereby. The execution, delivery, and performance by Developer of this Agreement and the Project Agreements to which it is a party have been duly authorized and approved by all necessary Developer company action. This Agreement and the Project Agreements to which it is a party, when executed, shall constitute the valid and legally binding obligations of Developer, enforceable against Developer in accordance with their respective terms.

Section 12.3 No Conflicts

The execution, delivery, and performance of this Agreement and the Project Agreements to which it is a party shall not result in a violation of, in any material respect, any provision of any other agreements, charters, instruments, contracts, judgments, or decrees to which Developer is a party or by which Developer or its assets may be bound or affected.

Section 12.4 No Violations of Laws

Developer has complied in all material respects with all Legal Requirements and is not in default with respect to any judgment, order, injunction, or decree of any court, administrative agency, or other Governmental Authority that is in any respect material to the transactions contemplated in and by this Agreement or the Project Agreements to which it is a party.

Section 12.5 Litigation

To the actual knowledge of Developer, there is no action, suit, proceeding, or investigation at law or in equity or by or before any Governmental Authority now pending or threatened against Developer seeking to restrain or prohibit, or seeking damages or other relief in connection with, the execution of this Agreement or the Project Agreements to which it is a party and the performance of the transactions contemplated herein or therein or the performance of Developer hereunder or thereunder.

**ARTICLE 12
REPRESENTATIONS AND WARRANTIES OF DEVELOPER**

Developer hereby represents and warrants to the City that, as of the date of execution of this Agreement:

Section 12.1 Organization

Developer is a limited liability company duly organized, validly existing, and in good standing under the Laws of the State. This Agreement and all Project Agreements to which Developer is a party shall be binding upon and enforceable against Developer.

Section 12.2 Authorization, Validity and Enforceability

Developer has all requisite power and authority to enter into this Agreement and the Project Agreements to which it is a party and to carry out the actions contemplated hereby and thereby. The execution, delivery, and performance by Developer of this Agreement and the Project Agreements to which it is a party have been duly authorized and approved by all necessary Developer company action. This Agreement and the Project Agreements to which it is a party, when executed, shall constitute the valid and legally binding obligations of Developer, enforceable against Developer in accordance with their respective terms.

Section 12.3 No Conflicts

The execution, delivery, and performance of this Agreement and the Project Agreements to which it is a party shall not result in a violation of, in any material respect, any provision of any other agreements, charters, instruments, contracts, judgments, or decrees to which Developer is a party or by which Developer or its assets may be bound or affected.

Section 12.4 No Violations of Laws

Developer has complied in all material respects with all Legal Requirements and is not in default with respect to any judgment, order, injunction, or decree of any court, administrative agency, or other Governmental Authority that is in any respect material to the transactions contemplated in and by this Agreement or the Project Agreements to which it is a party.

Section 12.5 Litigation

To the actual knowledge of Developer, there is no action, suit, proceeding, or investigation at law or in equity or by or before any Governmental Authority now pending or threatened against Developer seeking to restrain or prohibit, or seeking damages or other relief in connection with, the execution of this Agreement or the Project Agreements to which it is a party and the performance of the transactions contemplated herein or therein or the performance of Developer hereunder or thereunder.

ARTICLE 13
DEFAULT AND REMEDIES

Section 13.1 Events of Default

Each of the following shall constitute a default by any Party (the “Defaulting Party”) under this Agreement (“Event of Default”), but further subject to Section 13.5 below:

(a) the failure to make any payment of any sums payable under this Agreement, which failure shall continue for ten (10) days after receipt of written notice to the Defaulting Party by either of the other Parties (the “Non-defaulting Party”);

(b) the Defaulting Party’s violation or failure to perform or observe any covenant or condition of this Agreement (other than as provided in (a) above), which failure or violation shall continue for thirty (30) days after receipt of written notice to the Defaulting Party by the Non-defaulting Party identifying with particularity the failure or violation; provided, however, that so long as such failure or violation is of a non-monetary nature susceptible to cure within a period of time that does not unreasonably cause risk to achieving the milestones contemplated by the Master Project Schedule, but is not reasonably capable of being cured within such thirty (30) day period, there shall exist no Event of Default if the Defaulting Party promptly advise the Non-defaulting Party of the Defaulting Party’s intention to duly institute all steps necessary to cure such default and the Defaulting Party promptly commences cure of such failure or violation within such thirty (30) day period and diligently pursues such cure to completion, but such additional time for cure shall not exceed ninety (90) days after receipt of the initial written notice to the Defaulting Party by the Non-defaulting Party;

(c) the Defaulting Party’s violation or failure to perform or observe any covenant or condition of any other Project Agreement beyond any applicable notice and cure period set forth in such Agreement, provided if no such notice and cure is set forth in such Project Agreement, then if such violation or failure shall continue for thirty (30) days after receipt of written notice to the Defaulting Party by the Non-defaulting Party identifying with particularity the failure or violation; provided, however, that so long as such failure or violation is of a non-monetary nature susceptible to cure within a period of time that does not unreasonably cause risk to achieving the milestones contemplated by the Master Project Schedule, but is not reasonably capable of being cured within such thirty (30) day period, there shall exist no Event of Default if the Defaulting Party promptly advise the Non-defaulting Party of the Defaulting Party’s intention to duly institute all steps necessary to cure such default and the Defaulting Party promptly commences cure of such failure or violation within such thirty (30) day period and diligently pursues such cure to completion, but such additional time for cure shall not exceed ninety (90) days after receipt of the initial written notice to the Defaulting Party by the Non-defaulting Party;

(d) (i) the Defaulting Party shall institute voluntary proceedings in bankruptcy, (ii) involuntary proceedings in bankruptcy shall be instituted against the Defaulting Party that are not discharged within sixty (60) days thereafter, (iii) any proceedings shall be instituted by or against the Defaulting Party under any Law relating to insolvency or bankruptcy reorganization, and in the case of an involuntary proceeding, that is not discharged within sixty (60) days after filing, (iv) a trustee or receiver shall be appointed for the Defaulting Party by any court of competent

jurisdiction, or (v) the Defaulting Party shall make a general assignment for the benefit of its creditors; or

(e) any representation or warranty made by the Defaulting Party herein shall prove to have been incorrect when made, in any material respect.

Section 13.2 Remedies Upon Event of Default

Upon the occurrence of an Event of Default, each Non-defaulting Party will have the right to exercise any of the following remedies:

- (a) exercise any remedy afforded hereunder;
- (b) seek specific performance or other equitable relief; or
- (c) sue for money damages.

Except as set forth in Article 10, no Party shall be entitled to terminate this Agreement.

Section 13.3 Injunctive Relief; Specific Performance

The Parties acknowledge that the rights conveyed by this Agreement and the covenants of the Parties are of a unique and special nature, and that a breach or violation of this Agreement shall result in immediate and irreparable harm. In the event of any such actual or threatened breach or violation of this Agreement caused by a Party, the Party or Parties so harmed shall be entitled as a matter of right to an injunction or a decree of specific performance from any equity court of competent jurisdiction without the posting of any bond. The Parties waive the right to assert the defense that a breach of this Agreement can be compensated adequately in damages in an action at law.

Section 13.4 Remedies Cumulative; Limitation on Remedies; Waiver

All rights and remedies set forth in this Agreement are cumulative and in addition to the Parties' rights and remedies at law or in equity, subject, however, to any limitation on damages, fees and costs as provided for in this Agreement. A Party's exercise of any such right or remedy shall not prevent the concurrent or subsequent exercise of any other right or remedy. A Party's delay or failure to exercise or enforce any rights or remedies shall not constitute a waiver of any such rights, remedies, or obligations. No Party shall be deemed to have waived any default unless such waiver is expressly set forth in an instrument signed by such Party. If a Party waives in writing any default, then such waiver shall not be construed as a waiver of any covenant or condition set forth in this Agreement, except as to the specific circumstances described in such written waiver. Neither payment of a lesser amount than the sum due hereunder, nor endorsement or statement on any check or letter accompanying such payment shall be deemed an accord and satisfaction, and the other Party or Parties may accept the same without prejudice to the right to recover the balance of such sum or to pursue any other remedy.

Section 13.5 Risk of Certain Losses; Force Majeure

The non-occurrence of any condition under this Agreement shall not give rise to any right otherwise provided in this Agreement when such failure or non-occurrence is due to the occurrence of a Force Majeure event and without the fault of the Party claiming an extension of time to perform or excuse from performance. Without limitation of and in addition to the foregoing, if a Party hereto shall be delayed or hindered or prevented from the performance of any obligation required under this Agreement by reason of a Force Majeure event, then the performance of such obligation shall be excused for the period of delay and the period for performance of any such act shall be extended for a period equivalent to the period of such delay. An extension of time for any such cause, if any, shall be limited to the period of delay due to such cause, which period shall be deemed to commence from the time of the commencement of the cause; provided, however, that if notice by the Party claiming such extension is sent to the other Parties more than thirty (30) days after the commencement of the cause, the period shall be deemed to commence thirty (30) days prior to the giving of such notice. The Party claiming a Force Majeure event shall remedy the Force Majeure event with all reasonable dispatch, and shall make commercially reasonable efforts to avoid the adverse impacts thereof and to resolve the event or occurrence once it has occurred in order to resume performance. As soon as the Party claiming a Force Majeure event is able to resume performance of all or a portion of its obligations excused as a result of the occurrence of Force Majeure, such Party shall give prompt notice thereof to the other Parties. Times of performance under this Agreement also may be extended as mutually agreed upon in writing by the Parties. However, failure to agree to a proposed extension of time for performance shall not be deemed grounds for delay or failure to timely cure an Event of Default under this Agreement.

Section 13.6 Limited Recourse Obligations; Members and Officers Not Liable

(a) All covenants, stipulations, promises, agreements, and obligations of the City contained herein shall be deemed to be covenants, stipulations, promises, agreements, and obligations of the City and not of any member, director, officer, employee, or agent of the City in his or her individual capacity, and no recourse shall be had for any Claim hereunder against any member, director, officer, employee, or agent of the City in such capacity.

(b) All covenants, stipulations, promises, agreements, and obligations of Developer contained herein shall be deemed to be covenants, stipulations, promises, agreements, and obligations of Developer and not of any shareholder, member, partner, owner, manager, officer, employee, or agent of Developer in his or her individual capacity, and no recourse shall be had for any Claim hereunder against any shareholder, member, partner, owner, manager, officer, employee, or agent of Developer in such capacity.

**ARTICLE 14
MISCELLANEOUS**

Section 14.1 Certificate of Completion

Developer will notify the City when it has fully completed construction of each of the Garage and the Wrap. The City will promptly inspect the Garage or the Wrap, as the case may

be, to determine whether the Garage or the Wrap has been constructed in substantial conformity with the approved plans. If the City determines that either the Garage or the Wrap have not been constructed in conformity with the approved plans, the City shall, within ten (10) days of its inspection, deliver a written statement to the Developer Representative indicating in adequate detail the specific respects in which the Garage or the Wrap have not been constructed in substantial conformity with the approved plans. At such time as the City determines that either the Garage or the Wrap have been fully completed in conformity with the approved plans, the City shall promptly deliver a Certificate of Completion to the Developer Representative. Delivery of a Certificate of Completion by the City does not constitute a representation or warranty by the City that the Wrap Plans or either the Garage or the Wrap comply with any applicable building code, health or safety regulation, zoning regulation, or other law or regulation, or that either the Garage or the Wrap will meet the qualifications for issuance of a certificate of occupancy, or that either the Garage or the Wrap will meet the requirements of users of the Garage, or the Wrap. The Certificate of Completion shall be in such form as will enable it to be recorded in the proper office for the recordation of deeds and other instruments. It will be the responsibility of Developer to provide for the prompt recording of the Certificate of Completion and the payment of any costs for such recording.

Section 14.2 Hazardous Materials

Except as set forth in Section 4.1(d), Developer agrees that the City will bear no responsibility or liability to Developer for any Regulated Substances, any Contamination or any violation of Environmental Laws in, on, under or around the Project Parcel, and Developer will indemnify and hold harmless the City against all claims, costs, judgments, liabilities and damages (including reasonable attorneys' fees) arising out of the presence or release of any Regulated Substances, any Contamination or any violation of Environmental Laws.

Section 14.3 Insurance

(a) Developer Required Insurance. Developer, and any successor in interest to Developer, shall obtain and continuously maintain on the portions of the Project so owned by such party the insurance coverages set forth below until a Certificate of Completion has been issued for the Garage and the Wrap, and, from time to time at the request of the City, furnish a certificate of insurance to the City evidencing that the premiums for such insurance have been paid and the insurance is in effect. The insurance coverage described below is the minimum insurance coverage that Developer must obtain and continuously maintain, provided that Developer shall obtain, or require its general contractor to obtain and provide, the insurance described in clause (i) below prior to the commencement of construction of any portion of the Project:

(i) Builder's risk insurance, written on the so-called "Builder's Risk—Completed Value Basis", in an amount equal to one hundred percent (100%) of the insurable value of the applicable portion of the Project at the date of completion. The Builder's risk insurance shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal

including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for contractor and architectural services and expenses required as a result of such insured loss.

(ii) Comprehensive general liability insurance (including operations, contingent liability, operations of subcontractors, completed operations and contractual liability insurance) together with an Owner's/Contractor's Policy naming the City as an additional insured, with limits against bodily injury and property damage of not less than \$5,000,000 for each occurrence (to accomplish the above-required limits, an umbrella excess liability policy may be used), written on an occurrence basis. Developer's policies shall be primary insurance to any other valid and collectible insurance available to the City with respect to any claim arising out of Developer's performance under this Agreement.

(iii) To the extent required by law, workers compensation insurance, with statutory coverage, and if available without additional costs, such policy shall include a waiver of subrogation clause or endorsement in favor of the City.

(iv) Business Automobile Liability Insurance with a minimum limit of \$2,000,000 per occurrence Combined Single Limit for Bodily Injury and Property Damage (to accomplish the above-required limits, an umbrella excess liability policy may be used). In addition, the following coverages should be included: Owned (if Developer in fact owns any vehicles), Hired, and Non-owned Automobiles.

(b) All insurance required in this Section shall be obtained and continuously maintained in responsible insurance companies authorized under the laws of the State of North Dakota to assume the risks covered by such policies.

Section 14.4 Survival of Covenants, Agreements, Representations, and Warranties

No action taken pursuant to or related to this Agreement, including any investigation by or on behalf of a Party, shall be deemed to constitute a waiver by the Party taking such action of compliance with any representation, warranty, condition, or agreement in this Agreement.

Section 14.5 Additional Documents and Approval

The Parties, whenever and as often as any shall be reasonably requested to do so, shall execute or cause to be executed any further documents and take any further actions as may be reasonably necessary or expedient and within their lawful obligation in order to consummate the transactions provided for in, and to carry out the purpose and intent of, this Agreement. The Mayor of City is, on behalf of City, authorized to: (a) evaluate and confirm the satisfaction or waiver of City's contingencies set out in Article 10 and to execute any document, agreement or the like evidencing same; and (b) to extend the City Contingencies Deadline for up to 180 days following the original date, and execute an amendment to this Agreement with Developer limited to such purpose.

Section 14.6 Good Faith

In exercising its rights and fulfilling its obligations under this Agreement, each of the Parties acknowledges that the other Parties have acted to date in good faith and each Party agrees to continue to act in good faith. Each Party acknowledges that in each instance under this Agreement where a Party is obligated to exercise good faith or to use good faith, diligent, or other similar efforts, such Party shall not be required to expend any funds or grant any other consideration of any kind in the performance of such undertaking, and each Party further acknowledges that the obligation of any Party to act in good faith or undertake good faith, diligent, or other similar efforts does not constitute a warranty, representation, or other guaranty that the result that the Parties are attempting to achieve shall be successfully achieved and no Party shall be liable for any failure to achieve the result or results intended so long as the Party has complied with its obligation to act in good faith.

Section 14.7 Assignment; Property Transfers

Prior to the issuance of a Certificate of Completion for the entirety of the Project, except as otherwise contemplated in Article 6 above (with respect to transferring the Garage Unit to the City), Developer shall not make, or suffer to be made, any total or partial sale, assignment, conveyance, lease, or other transfer, with respect to this Agreement, the Project or the Project Parcel, or any part thereof or any interest therein, or enter into any contract or agreement to do any of the same, without the prior written approval of the City, which may be withheld in the City's sole discretion. No transfer of, or change with respect to, ownership in the Project, the Project Parcel or any part thereof, or any interest therein, however consummated or occurring and whether voluntary or involuntary, shall operate, legally or practically, to deprive or limit the City of or with respect to any rights or remedies or controls provided in or resulting from this Agreement with respect to the Project Parcel and the completion of the Project that the City would have had, had there been no such transfer or change. No sale, assignment, conveyance, lease, or other transfer or approval by the City of the same shall be deemed to relieve Developer, or any other party bound in any way by this Agreement or otherwise with respect to the completion of the Project, from any of its obligations with respect thereto.

Notwithstanding the foregoing, Developer shall have the right to (without the consent of the City under this Section 14.7): (i) sell or transfer the Wrap to any entity controlling, controlled by or under common control with Developer; or (ii) after the Garage Closing, sell or transfer portions of the Wrap for which a certificate of occupancy has been issued or which has been completed to a "vanilla shell" level, ready for installation of electrical and mechanical distribution services and other interior finishes; provided in any such case Developer shall not be relieved of its obligations under this Agreement, including with respect to the completion of the Project.

Section 14.8 Notice of Matters

In the event that any Party receives knowledge about any matter that may constitute a breach of any of its warranties or covenants set forth in this Agreement that arises after the date of this Agreement, it shall promptly notify the other Party of the same in writing.

Section 14.9 Form of Notices; Addresses

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

To Developer: Great Plains NP Holdings, LLC
ATTN: Mike Allmendinger, President
210 Broadway N., Suite 300
Fargo, ND 58102

with a copy to: Dan Bueide
Bueide Law Firm
1 2nd St. N, Suite 100
Fargo, ND 58102

To the City: City Auditor
Fargo City Hall
225 4th Street North
Fargo, ND 58102

and to: Director of Strategic Planning and Development
ATTN: James Gilmour
Fargo City Hall
225 4th Street North
Fargo, ND 58102

with copy to: Office of the Fargo City Attorney
Attn: Erik R. Johnson
608 24th Avenue S.
Fargo, ND 58103

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

Section 14.10 Calculation of Time

Unless otherwise stated, all references to "day" or "days" shall mean calendar days. If any time period set forth in this Agreement expires on other than a Business Day, such period shall be extended to and through the next succeeding Business Day.

Section 14.11 Time is of the Essence

Time is of the essence of this Agreement. The Parties shall use good faith, diligent efforts to cause the work contemplated by this Agreement to meet the Master Project Schedule.

Section 14.12 Incorporation by Reference

All exhibits, schedules, or other attachments referenced in this Agreement are hereby incorporated into this Agreement by such reference and are deemed to be an integral part of this Agreement.

Section 14.13 Entire Agreement

Except as otherwise provided in this Agreement and the other written agreements contemplated hereby, this Agreement contains the sole and entire agreement among the Parties with respect to its subject matter and supersedes any and all other prior written or oral agreements among them with respect to such subject matter.

Section 14.14 Amendment

No amendment, modification, or termination of this Agreement shall be valid unless in writing and duly executed by the Parties.

Section 14.15 Binding Effect

This Agreement shall be binding upon and shall inure to the benefit of the permitted successors and assigns of the Parties.

Section 14.16 Headings

The headings contained in this Agreement are for convenience of reference only and shall not limit, extend, or otherwise affect the meaning hereof.

Section 14.17 No Presumption Against Drafter

This Agreement has been negotiated at arm's length and between Persons sophisticated and knowledgeable in the matters dealt with herein. In addition, each Party has been represented by experienced and knowledgeable legal counsel. Accordingly, this Agreement shall be interpreted to achieve the intents and purposes of the Parties, without any presumption against the Party responsible for drafting any part of this Agreement.

Section 14.18 Severability

If any term or provision of this Agreement or the application thereof to any Person or circumstance shall, to any extent, be inconsistent with, invalid, or unenforceable under any Laws or Legal Requirements, the remainder of this Agreement or the application of such term or provision to Persons or circumstances, other than those as to which it was held invalid or

unenforceable, shall not be affected thereby and each term or provision of this Agreement shall be valid and enforceable to the fullest extent permitted by any Laws or Legal Requirements.

Section 14.19 Third Party Beneficiaries

Nothing in this Agreement, express or implied, is intended to (a) confer upon any Person other than the Parties and their permitted successors and assigns any rights or remedies under or by reason of this Agreement as a third-party beneficiary or otherwise, except as specifically provided in this Agreement; or (b) authorize anyone not a Party to this Agreement to maintain an action pursuant to or based upon this Agreement.

Section 14.20 Governing Law; Venue

This Agreement shall be governed by and construed in accordance with the Laws of the State, notwithstanding its conflicts of law or choice of law provisions. All matters, whether sounding in tort or in contract, relating to the validity, construction, performance, or enforcement of this Agreement shall be controlled by and determined in accordance with the Laws of the State, and the Parties agree that all legal actions initiated with respect to or arising from any provision contained in this Agreement shall be initiated, filed and venued exclusively in the State, Cass County, District Court and shall not be removed therefrom to any other federal or state court.

Section 14.21 Counterparts

This Agreement may be executed and delivered in one (1) or more counterparts, each of which shall be deemed to be an original and all of which, taken together, shall be deemed to be one agreement.

Section 14.22 Relationship of Parties

It is agreed that nothing contained in this Agreement shall be deemed or construed as creating a partnership or joint venture among the Parties.

Section 14.23 Approval by Parties

In each instance where the approval or consent of any Party may be sought or is required, such approval or consent shall not be unreasonably withheld, conditioned or delayed.

Section 14.24 Run with the Land

The covenants and restrictions set forth in this Agreement shall run with the title to the Project Parcel and shall be binding upon all present and future owners and occupants of the Property; provided, however, that the covenants and restrictions set forth in the Agreement shall inure only to the benefit of the City and may be released or waived in whole or in part at any time, and from time to time, by the sole act of the City, and variances may be granted to the covenants and restrictions herein contained by the sole act of the City.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

Developer:

GREAT PLAINS NP HOLDINGS, LLC, a North Dakota limited liability company

By:  _____

Name: William Rothman

Title: CFO / VP

CITY:

CITY OF FARGO,
a North Dakota municipal corporation

By: _____

Name: _____

Title: Mayor

ATTEST:

By: _____

Name: _____

Title: City Auditor

EXHIBIT A
Legal Description of City Parcel

That part of the Northwest Quarter of Section Seven, in Township One Hundred Thirty-nine North of Range Forty-eight West of the Fifth Principal Meridian, in the City of Fargo, Cass County, North Dakota, described as follows: Commencing at the intersection of the Southerly Right-of-Way Line of Northern Pacific Avenue and the Westerly Right-of-Way Line of Broadway in the said City of Fargo; thence South $87^{\circ}47'33''$ West (assumed bearing), along the Southerly Right-of-Way Line of said Northern Pacific Avenue, for a distance of 205.00 feet; thence continue South $87^{\circ}47'33''$ West along the Southerly Right-of-Way Line of said Northern Pacific Avenue, for a distance of 119.69 feet to the true point of beginning; thence South $02^{\circ}33'41''$ West for a distance of 264.90 feet to a point of intersection with the Northerly Line of the BNSF Railway Company Right-of-Way; thence North $87^{\circ}30'57''$ West, along the Northerly Line of the said BNSF Railway Company Right-of-Way, for a distance of 174.33 feet; thence North $02^{\circ}29'00''$ East for a distance of 250.56 feet to a point of intersection with the Southerly Right-of-Way Line of said Northern Pacific Avenue; thence North $87^{\circ}47'33''$ East, along the Southerly Right-of-Way Line of said Northern Pacific Avenue, for a distance of 175.27 feet to the true point of beginning.

EXHIBIT B

Legal Description of Global Parcel

That part of the Northwest Quarter of Section Seven, Township One Hundred Thirty-nine North of Range Forty-eight West of the Fifth Principal Meridian, in the City of Fargo, Cass County, North Dakota, described as follows: Commencing at the intersection of the Southerly right-of-way line of Northern Pacific Avenue and the Westerly right-of-way line of Broadway in the said City of Fargo; thence South $87^{\circ}47'33''$ West (assumed bearing), along the Southerly right-of-way line of said Northern Pacific Avenue for a distance of 205.00 feet to the true point of beginning; thence continue South $87^{\circ}47'33''$ West along the Southerly right-of-way line of said Northern Pacific Avenue for a distance of 119.69 feet; thence South $02^{\circ}33'41''$ West for a distance of 264.90 feet to a point of intersection with the Northerly line of the BNSF Railway Company right-of-way; thence South $87^{\circ}30'57''$ East along the Northerly line of the said BNSF Railway Company right-of-way, for a distance of 122.40 feet; thence North $01^{\circ}54'31''$ East for a distance of 274.70 feet to the true point of beginning.

EXHIBIT C
Master Project Schedule

<u>Task Name</u>	<u>Start</u>	<u>Finish</u>
626 NP Project		
Ramp	7/15/2023	12/1/2024
Demo/Excavation/Piles	7/15/2023	11/27/2023
Foundations	11/30/2023	3/29/2024
Precast	4/8/2024	8/2/2024
MEP	8/3/2024	10/31/2024
Finishes	8/3/2024	11/31/2024
Certificate of Occupancy	12/1/2024	12/1/2024
Mixed-Use	7/17/2023	9/15/2025
Demo/Excavation/Piles	7/17/2023	9/25/2023
Foundations	9/26/2023	2/20/2024
Precast	2/14/2024	3/12/2024
Framing & Roofing	3/20/2024	11/12/2024
MEP/Rough-In	10/30/2024	2/21/2025
Exteriors	10/30/2024	7/16/2025
Finishes	11/20/2024	9/14/2025
Certificate of Occupancy	9/15/2025	9/15/2025

EXHIBIT D

Assignment of Construction Contracts, Plans and Related Agreements

THIS ASSIGNMENT OF CONTRACTS, PLANS AND RELATED AGREEMENTS is made and executed by GREAT PLAINS NP HOLDINGS, LLC, a North Dakota limited liability company (hereinafter referred to as the "Developer") to and for the benefit of the CITY OF FARGO, a North Dakota municipal corporation (hereinafter referred to as the "City"), as of the _____ day of _____, 20___. Capitalized terms used herein but not defined herein have the meanings assigned to such terms in the Loan Agreement (hereinafter defined).

WITNESSETH:

WHEREAS, Developer and the City have entered into a Development Agreement dated as of October 31, 2022 ("Development Agreement"); and

WHEREAS, Developer has or will enter into and execute certain contracts and agreements relating to the Garage (as defined in the Development Agreement) and/or the improvements to be constructed and installed thereon and therein, and receive certain plans relating to the Garage Work, as may be more particularly described on Exhibit A attached hereto and hereby made a part hereof (all collectively "Contracts" and each a "Contract"); and

WHEREAS, Developer desires to execute this Assignment, in accordance with the terms and provisions hereof, in order to induce the City to perform in accordance with the Development Agreement.

NOW, THEREFORE, in consideration of the foregoing and of the mutual promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Developer, Developer hereby agrees that the foregoing recitals are true and correct and are by this reference hereby made a part hereof as if fully set forth below, and further covenants and agrees as follows:

1. Developer hereby assigns its rights, title and interests in, under and pursuant to the Contracts to the City, it being understood and agreed that, if an Event of Default (as that term is defined in the Development Agreement) does not occur, and the Garage is completed in accordance therewith, and all other obligations of Developer thereunder are fully performed, then this Assignment shall terminate. If the consent of any other party to any Contract is required to said assignment, Developer agrees to promptly obtain the same and to deliver the same to the City substantially in the form of consent attached to this Assignment.

2. If such an Event of Default does occur, without same being cured within applicable cure periods, then the City may, at its option, take over Developer's position under the Contracts, or any of them which the City may elect. In such event, the City shall have all of the

rights of Developer under said Contract(s). If the City does not expressly assume a Contract, in writing, the City shall have no obligation to perform any of Developer's obligations thereunder.

3. The City's taking over of Developer's position under any Contract shall be preceded by at least three (3) business prior written notice to Developer, such notice to persons and otherwise in accordance with the notice provisions of the Development Agreement.

4. In addition, Developer hereby grants to the City a security interest in Developer's rights, title and interests in, to and under each Contract, if and to the extent that a security interest may be granted therein under the North Dakota Uniform Commercial Code, and Developer acknowledges that the City shall have all of the rights and remedies with respect thereto provided for by the North Dakota Uniform Commercial Code, in addition to the other rights and remedies herein granted to the City, in the event of the occurrence of an Event of Default under the Development Agreement.

5. Developer hereby represents and warrants to the City no Contract constitutes or creates a lien, charge or encumbrance on the title of the Garage.

6. Subject to the provisions hereof, this Assignment shall be binding upon Developer and its successors and assigns, and shall inure to the benefit of the City and its successors and assigns. The City may assign its rights under this Assignment, without the consent of Developer, but Developer may not assign its rights or obligations under any of the Contracts or under this Assignment without the prior written consent of the City.

[Remainder of page intentionally blank.]

IN WITNESS WHEREOF, Developer has caused this instrument to be executed as of the day and year first above written.

GREAT PLAINS NP HOLDINGS, LLC, a North Dakota limited liability company

By: _____

Name: _____

Title: _____

EXHIBIT A
CONTRACTS

[Construction Contract]

[Garage Plans]

[Form of Third Party Consent]

CONSENT

The undersigned hereby consents to the foregoing Assignment, authorizes the City to rely upon and to utilize the Contract(s), without any payment by the City to the undersigned therefor, and agrees to cooperate with the City regarding the completion of construction of the Garage or the rights and obligations set forth in the Contract after any Event of Default under the above-mentioned Development Agreement; provided, however, that, if the City requires the undersigned to perform any work or obligations for which the undersigned has not already been paid, the City shall pay the undersigned for said work or obligation, but the City shall have no obligation to pay for any work or obligations already performed for which the City has paid Developer and for which Developer has failed to pay the undersigned.

Dated as of the _____ day of _____, 202__.

By: _____

Printed Name: _____

EXHIBIT E

Soft Costs		Phase I Garage Allocation
PARKING RAMP		
Phase I/II Environmental Site Assessment		<i>Included in Geotech</i>
Architectural	\$	90,000
Architectural Reimbursable expenses	\$	15,000
Structural, Mechanical and Electrical, Civil	\$	225,000
Landscape Design	\$	15,000
Precast Subcontractor Design Assist	\$	50,000
Topographic Survey, ALTA Survey	\$	8,000
Geotech Exploration	\$	17,500
Condo Association Agreement/Legal/Condo Docs	\$	80,000
ROW Use Fee	\$	20,000
Redesign Additional Services	\$	95,000
TOTAL PROJECT SOFT COSTS	\$	615,500
Hard Costs		
PARKING RAMP		
Base Construction Costs	\$	16,927,501
Design/Material Contingency (3.5%)	\$	592,463
Construction Contingency (4%)	\$	677,100
Construction Management Fee (3%)	\$	507,825
TOTAL PROJECT HARD COSTS (by-division summary included in EXHIBIT C)	\$	18,704,889
Sub-Total Hard and Soft Costs		
	\$	19,320,389
Kilbourne Group Development Fee (3%)	\$	579,612
City of Fargo Owner's held Contingency	\$	100,000
TOTAL PROJECT COSTS	\$	20,000,000

**EXHIBIT F
PARKING AGREEMENT**

THIS PARKING AGREEMENT, dated _____, 20__ (this “Agreement”), is entered into by and between the City of Fargo, North Dakota, a municipal corporation (together with its successors and assigns, the “City”) and the Great Plains NP Holdings, LLC, a North Dakota limited liability company (together with its successors and assigns, “Developer”).

RECITALS:

WHEREAS, the City and Developer have entered into that certain Development Agreement, dated as of October 31, 2022 (the “Development Agreement”) regarding the design, construction and ownership of certain improvements, including the Garage.

WHEREAS, the City owns, or will own, the Garage;

WHEREAS, the City desires Developer to operate the Garage for the period set forth herein, subject to the terms set forth in this Agreement;

WHEREAS, Developer desires to operate the Garage for the City for the period set forth herein, subject to the terms set forth in this Agreement; and

WHEREAS, Developer constitutes a “private operator” under the Infrastructure Development Act.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as set forth below.

AGREEMENT

Section 1. **Defined Terms.** In addition to other terms defined herein, the following terms used in this Agreement shall have the meanings set forth below:

“Accessible Spaces” shall mean parking spaces made available to eligible users and which comply with the requirements of the Americans with Disabilities Act (ADA), U.S. Department of Justice guidelines and applicable state and local accessibility requirements.

“Agreement” shall mean this Parking Agreement by and among the City and Developer, as the same may be amended, modified or supplemented from time to time.

“Annual Report” shall have the meaning set forth in Section 3.03 hereof.

“Applicable Law” shall mean any and all laws (including all statutory enactments and common law), ordinances, constitutions, regulations, treaties, rules, codes, standards, permits, requirements and Orders that (i) have been adopted, enacted, implemented, promulgated, ordered, issued, entered or deemed applicable by or under the authority of any Governmental

Authority or arbitrator having jurisdiction over a specified Person (or the properties or assets of such Person) and are (ii) applicable to this Agreement or the performance of the obligations of the Parties under this Agreement.

“Approved Budget” shall have the meaning set forth in Section 3.05 hereof.

“Business Day” shall mean any day other than a Saturday, Sunday or other day on which banks are required or authorized to close in Fargo, North Dakota.

“Calendar Year” shall mean a period of twelve (12) months commencing on January 1 and ending on December 31.

“Capital Expenditures” shall mean expenditures capitalized under GAAP, consistent with the City of Fargo capitalization policy.

“Casualty” shall have the meaning set forth in Section 6.02 hereof.

“City” shall have the meaning set forth in the first clause of this Agreement.

“Claims” shall have the meaning set forth in Section 7.4 hereof.

“Contamination” shall mean the presence or release or threat of release of Regulated Substances in, on, under or emanating to or from the Garage, which pursuant to Environmental Laws requires notification or reporting to any Governmental Authority, or which pursuant to Environmental Laws requires the identification, investigation, cleanup, removal, remediation, containment, control, abatement, monitoring of or other Response Action to such Regulated Substances, or which otherwise constitutes a violation of Environmental Laws.

“Defaulting Party” shall have the meaning set forth in Section 27.01 hereof.

“Early Termination Date” shall have the meaning assigned to such term in Section 2.05 hereof.

“Effective Date” shall mean the date of this Agreement as set forth in the introductory paragraph of this Agreement.

“Environmental Laws” shall mean all Laws, including any consent decrees, settlement agreements, judgments, or orders, issued by or entered into with a Governmental Authority pertaining or relating to: (a) pollution or pollution control; (b) protection of human health or the environment; (c) the presence, use, management, generation, processing, treatment, recycling, transport, storage, collection, disposal or release or threat of release of Regulated Substances; (d) the presence of Contamination; or (e) the protection of endangered or threatened species.

“Event of Default” shall have the meaning set forth in Section 27.01 hereof.

“Expiration Date” shall mean the earlier of (i) the Early Termination Date and (ii) the day immediately prior to the fifth (5th) anniversary of the date of the Garage Closing, unless extended pursuant to Section 2.04 below or earlier terminated in accordance with the terms of

this Agreement.

“Force Majeure” shall mean acts of God, accidents, fire or other casualty, earthquake, hurricane, tornadoes, named storms, flood, war, riot, intervention by civil or military authorities of government, insurrection or other civil commotion, governmental action (excluding any governmental action or inaction with respect to the grant or withholding of any governmental approvals or permits needed for construction, commissioning, or other matters affecting this Agreement), material shortages, strikes, boycotts, lockouts or labor disputes, or any other similar or like event or occurrence beyond the reasonable control of a Party hereto, that causes such Party to be delayed or hindered in, or prevented from, the performance of any covenant or obligation hereunder. Unavailability of funds, alone, shall not constitute Force Majeure.

“GAAP” shall mean Generally Accepted Accounting Principles.

“Garage Management Company Agreement” is the written agreement between Developer and the Garage Management Company.

“Governmental Authority” shall mean any federal, state, county, city, local or other government or political subdivision or any agency, authority, board, bureau, commission, department or instrumentality thereof having jurisdiction over a specified Person (or the properties or assets of such Person) as pertains to the subject matter of this Agreement.

“Infrastructure Development Act” shall mean North Dakota Century Code Chapter 48-02.1, as amended.

“Law” or “Laws” shall mean any law, statute, code, ordinance, rule, regulation or constitutional or charter provision, duly enacted or adopted by any Governmental Authority.

“Legal Requirements” shall mean present and future Laws (including Environmental Laws) applicable to the design, development, construction, equipping, use, occupancy, possession, operation, maintenance and management of the Garage.

“Management Company” is a reputable third party parking garage management company retained by Developer to manage the Garage on behalf of Developer during the Term.

“Garage” shall mean that certain parking facility, and the condominium unit for same, as described in the Development Agreement to be located on a portion of the real property legally described on **Exhibit A** attached hereto.

“Garage Closing” shall mean the date the City acquires fee title to the Garage.

“NOI” shall mean, for any period, the difference between Parking Revenues and Parking Expenses.

“Non-Defaulting Party” shall have the meaning set forth in Section 27.01 hereof.

“Parking Expenses” shall mean all expenses reasonably necessary to manage, maintain, operate, repair and restore the Garage, including, without limitation, the expenses set forth on

attached **Exhibit B**.

“Parking Revenue” shall mean, for any period, revenues or other consideration generated from short-term or long-term parking, including, without limitation, parking contracts, daily transient parking and event parking,

“Party” or “Parties” shall mean one (1) or more of the City or Developer.

“Permits” shall mean any permit, license or approval to be issued by any Person, including Required Environmental Permits, required for demolition, construction, installation, alteration or repair of any improvements related in any manner to the Garage.

“Person” shall mean any natural person, sole proprietorship, corporation, partnership, trust, limited liability company, limited liability association, unincorporated association, joint venture, joint-stock company, Governmental Authority, or any other entity.

“Proposed Budget” shall have the meaning set forth in Section 3.05 hereof.

“Qualified Capital Work” is any repair or replacement to the Garage required during the Term that meets all of the following:

- (i) is for any repair or replacement of the structural elements, footings, foundations, and the like;
- (ii) is not a routine or ordinary repair or replacement;
- (iii) is a Capital Expenditure;
- (iv) is not required because Developer has failed to otherwise satisfy its maintenance, repair and replacement obligations under this Agreement;
- (v) is not required because Developer has breached or defaulted under any of its obligations under the Development Agreement;
- (vi) is not required because of either or both a casualty or a condemnation; and
- (vii) is not subject to, or covered by, any warranty relating to the Garage.

“Qualified Capital Work Request” has the meaning set forth in Section 6.01(e) hereof.

“Regulated Substances” shall mean any substance, material or waste, regardless of its form or nature, defined under Environmental Laws as a “hazardous substance,” “hazardous waste,” “toxic substance,” “extremely hazardous substance,” “toxic chemical,” “toxic waste,” “solid waste,” “industrial waste,” “residual waste,” “municipal waste,” “special handling waste,” “mixed waste,” “infectious waste,” “chemotherapeutic waste,” “medical waste,” “regulated substance,” “pollutant” or “contaminant” or any other substance, material or waste, regardless of

its form or nature that otherwise is regulated by Environmental Laws.

“Required Environmental Permits” shall mean Permits, licenses, bonds, consents, programs, approvals or authorizations required under Environmental Laws for the construction and or operation of the Garage.

“Response Action” shall mean the investigation, cleanup, removal, remediation, containment, control, abatement, monitoring of or any other response action to the presence of Regulated Substances or Contamination in, on, at, under or emanating from the Garage, including the correction or abatement of any violation required pursuant to Environmental Laws, Required Environmental Permits or by a Governmental Authority.

“State” shall mean the State of North Dakota.

“Taking” shall have the meaning set forth in Section 6.03 hereof.

“Term” shall mean the term of this Agreement which commences on the date of the Garage Closing and expires on the Expiration Date.

Section 2. Ownership and Management of Garage; Retention of Garage Management Company; Term.

2.01. The City shall own the Garage from and after the Garage Closing.

2.02. Developer shall manage the Garage during the Term, subject to the terms and conditions of this Agreement. Developer shall manage the Garage in a commercially reasonable manner consistent with parking garages in downtown Fargo and in a manner, subject to the foregoing commercially reasonable management standard, that will maximize NOI of the Garage. Developer shall manage the Garage prior to the Term, as described herein, during the period between completion of construction of the Garage and issuance of a certificate of occupancy and the commencement of the Term herein—the period prior to the City’s acquiring of fee title to the Garage. The parking fees for the Garage shall be determined by Developer, subject to the prior approval of the City, which approval shall not be unreasonably withheld. Furthermore, with respect to the management of the Garage, Developer will be responsible for establishing priorities for hourly parking, parking for downtown residents and it shall establish a method for creating a waiting list for customers who desire to lease one or more spaces within the Garage, said matters being subject to the approval of the City, which approval shall not be unreasonably withheld.

2.03. Developer may, from time-to-time, retain the services of a Garage Management Company to perform some or all of the management duties of the Garage. The Garage Management Company, and the Garage Management Company Agreement, are both subject to the prior written approval of the City, which approval must not be unreasonably withheld, conditioned or delayed. The term of the Garage Management Company Agreement executed by Developer must not extend beyond the Term. Developer may, during the Term and upon notice to the City, terminate or replace the Garage Management Company from time-to-time; provided, however, that any replacement Garage Management Company must be approved in writing by the City in accordance with the terms of this Section 2.03.

Developer is solely responsible for compensating the Garage Management Company pursuant to the terms of the Garage Management Company Agreement.

2.04. The City and Developer may agree to extend the Term for two (2) additional periods of five (5) years each. Any such extension shall only be effective upon the execution of an appropriate extension amendment to this Agreement executed by both the City and Developer.

2.05. The City shall have the right to terminate this Agreement in its sole discretion by giving written notice to Developer setting forth an early termination date (the "Early Termination Date"), which Early Termination Date cannot be less than thirty (30) days after the date of such notice. If such notice is given, then the Term shall terminate on the Early Termination Date.

Section 3. **Compensation, Reports And Budget.**

3.01. All NOI generated during the Term belongs, and shall be paid, to the City, subject to the terms of this Agreement. Developer shall collect, or cause to be collected, all Parking Revenue from the operation and use of the Garage during the Term and shall deliver such Parking Revenue less the Parking Expenses to the City on a monthly basis, provided that in no event shall the City be responsible for any amount by which the Parking Expenses exceed the Parking Revenue. Developer shall timely pay all Parking Expenses during the Term. In accordance with the Infrastructure Development Act, Developer agrees that the anticipated fees, rental income and revenues from the operation of the Garage will be sufficient to pay the maintenance and operation costs for the Garage. Notwithstanding anything herein to the contrary, if NOI is a negative sum for any month, Developer may in subsequent months deduct from NOI otherwise payable to the City amounts sufficient to offset and compensate Developer for all cumulative prior-incurred negative NOI.

3.02. Developer shall utilize an appropriate and consistent accounting system to record all Parking Revenue and Parking Expenses. Upon the expiration or earlier termination of the Term, Developer must deliver to the City all records pertaining to Parking Revenue and Parking Expenses for the previous five (5) Calendar Years, including, without limitation, parking tickets, monthly parking records, coupon and validation stamp sales, redemption records, cashier reports, daily reports and deposit slips. Prior to the expiration or earlier termination of the Term, such information must be available for examination and audit by the City and their authorized representatives upon fifteen (15) Business Days' prior written notice to Developer.

3.03. By March 15 of each Calendar Year during the Term, Developer will provide an Annual Report to the City. An "Annual Report" is a written report, in form and substance reasonably acceptable to the City and submitted to the City that includes at least the following information:

(a) an annual certified statement of operations (which must include maintenance activities) for the Garage that documents the annual NOI, each on a cash basis for the immediately preceding Calendar Year;

(b) detail of expenditures categorized as operating expenses in accordance with GAAP and Capital Expenditures;

(c) a detailed calculation of Parking Revenues for the previous Calendar Year broken down by the following categories: monthly parking, charge accounts, cash parking and such other reports as requested by the City;

(d) cumulative vendor payment disbursement, detailing payments on a “by vendor by month” basis; and

(e) such other information as is reasonably requested in writing by the City.

3.04. The City has the right to audit the Annual Reports, which audit will be performed at the City’s cost unless a material deviation is identified, in which case Developer shall pay for the cost of the audit. For purposes of this Section 3.04, a “material deviation” is a deviation of five percent (5%) or more in overall underpaid NOI.

3.05. Not later than July 1 of each year, Developer shall provide to the City a proposed operating budget for the Garage for the following year (the “Proposed Budget”); provided, however, that the first Proposed Budget shall be prepared and submitted to the City prior to the commencement of the Term. The Proposed Budget shall include projected Parking Revenue (including, without limitation, detailed parking rates and usage assumptions) and all projected Parking Expenses to be paid in the operation of the Garage. Upon the approval of such Proposed Budget by the City (which approval may not be unreasonably withheld, conditioned or delayed), the same shall be the approved budget for such Calendar Year (once so approved, the “Approved Budget”). After the first budget is approved, in subsequent Calendar Years, until a new budget is approved, Developer shall be authorized to continue operations consistent with the previous Approved Budget.

Section 4. **Staff.**

4.01. Developer must employ or cause the Garage Management Company to employ at the Garage a sufficient number of personnel capable of managing and operating the Garage in accordance with the terms and conditions hereof such that the Garage shall be operated in a professional, businesslike and efficient manner, and in a manner comparable to other parking facilities of similar type in the Fargo metropolitan area. Developer must provide or cause the Garage Management Company to provide all necessary executive and supervisory personnel that are required for the proper management of the Garage, but such personnel are not required to work on location at the Garage. All Persons so employed shall have no authority to act as the agent of the City.

4.02. The Garage shall be open to the public for parking purposes 24 hours per day, 365 days per year, except for any periods of closure beyond Developer’s reasonable control, or as agreed to in writing by the City.

Section 5. **Compliance With Laws.**

5.01. During the Term, Developer must comply or cause the Garage Management Company to comply with all Laws and Legal Requirements pertaining to Developer’s or the Garage Management Company’s management and operation of the Garage and the business conducted therein by Developer or the Garage Management Company, including, without limitation, Laws relating to equal opportunity employment and federal,

state and municipal tax withholding with respect to Developer or the Garage Management Company's employees and the provision of an appropriate number of Accessible Spaces.

5.02. During the Term, Developer must prepare and file or cause the Garage Management Company to prepare and file all necessary returns, reports and forms required by law in connection with unemployment insurance, social security taxes, workers' compensation insurance, disability benefits, federal and state income tax withholding and other similar taxes and all other returns and reports required by any federal, state or municipal authority and pay or make all deposits required for such taxes.

5.03. In accordance with the Infrastructure Development Act, neither Developer, nor its Garage Management Company, is excused from the necessity of obtaining any environmental, navigational, design or safety approvals that would be required if the Garage were constructed or operated by a public body.

Section 6. **Maintenance; Casualty; Condemnation; Expiration of Term.**

6.01. Maintenance.

(a) During the Term, Developer must, or cause the Garage Management Company to, maintain the Garage in a commercially reasonable condition, which maintenance includes performing all repairs and replacements, and in a manner comparable to other public parking facilities of similar type in the downtown Fargo area. All costs reasonably incurred by Developer and the Garage Management Company in complying with the preceding sentence shall be Parking Expenses, subject to subparagraph (e) below. Developer's obligations under this Section 6.01 include, but are not limited to, maintaining the Garage in a clean, neat and orderly condition, and in a manner comparable to other public parking facilities of similar type in the downtown Fargo area. Developer's obligations in connection with the management, operation and promotion of the Garage, and employment of Persons in connection therewith, include the rendition of, or the contracting for the rendition of, service, supervision, or furnishing of personnel in connection with the personal safety and security of employees, tenants, customers, or other Persons within and about the Garage.

(b) Developer shall, or cause the Garage Management Company to, advise and cooperate with the City in the development and implementation of rules and regulations applicable to the Garage, and shall enforce such rules and regulations as the City shall adopt, and Developer and the Garage Management Company shall advise and consult with the City with respect to matters of potential changes to traffic control systems, safety and security matters, signage and/or any other matter that may substantially alter the use and operation of the Garage, the implementation of any of which shall require the City's written consent, which consent will not be unreasonably withheld, conditioned or delayed. Rules promulgated under this Agreement must be commercially reasonable and substantially similar to rules promulgated by other public parking facilities in downtown Fargo.

(c) The City shall have monthly inspection rights and an inspection right upon the expiration of the Term. If any such inspection indicates that the Garage is not being maintained in a commercially reasonable condition,

Developer shall have an obligation to create a restoration plan, which restoration plan is subject to the prior approval of the City.

(d) During the Term, except as set forth in subparagraph (e) below regarding payments to Developer, the City shall not have any obligations whatsoever with respect to maintenance, repairs, alterations, restorations or replacements relating to the Garage. However, during Term, no alterations or modifications shall be made to the Garage without the City's prior written consent.

(e) In the event during the Term Developer reasonably believes the Garage requires the performance of Qualified Capital Work, Developer shall submit a request in writing to the City specifying the Qualified Capital Work and the proposed cost of the Qualified Capital Work (the "Qualified Capital Work Request"). Within twenty (20) days after the City's receipt of the Qualified Capital Work Request, the City shall notify Developer whether it accepts the Qualified Capital Work Request or objects thereto. If the City accepts the Qualified Capital Work Request, (i) Developer shall promptly and in accordance with the terms of this Agreement perform, or cause to be performed, the Qualified Capital Work and upon completion of the Qualified Capital Work, submit to the City paid invoices and appropriate lien waivers from all contractors, suppliers and materialmen with a lienable interest in the Garage and (ii) the City shall reimburse Developer for the cost of the Qualified Capital Work as evidenced by the submitted invoices and lien waivers (which costs shall not be treated as Parking Expenses hereunder) and shall pay Developer a construction/supervision fee equal to 3% of the actual cost of the Qualified Capital Work. If the City objects to the Qualified Capital Work Request, the City and Developer shall meet and negotiate in good faith to come to resolution thereon.

6.02. Casualty. If the Garage is damaged by casualty, including, without limitation, fire (a "Casualty"), at the City's election, this Agreement will terminate. If this Agreement is not so terminated, then at the election of the City either (i) the City will repair and restore the Garage or (ii) Developer shall proceed, as soon as reasonably possible, to repair all damage, and shall diligently pursue such repairs to completion, subject to Developer's receipt of adequate insurance proceeds or other funds from the City for the cost of such repair and restoration (Developer will not be required to expend any amounts in excess of the amount of insurance proceeds or other funds received by Developer from any source), plus a construction/supervision fee equal to 3% of the actual cost of such repair and restoration. In the event the City elects to proceed under (ii) above, the Parties shall enter into a commercially reasonable disbursement agreement of the type typically used for the disbursement of proceeds for commercial construction projects. In the event of any Casualty loss, Developer shall give the City prompt written notice thereof.

6.03. Eminent Domain. If the Garage is taken by eminent domain or condemnation (a "Taking"), the Parties may terminate this Agreement upon mutual agreement. If this Agreement is not terminated, all damages awarded to any Party shall be turned over to Developer, and Developer shall proceed with due diligence to make all necessary repairs to

restore the Garage to substantially the same condition that it was in prior to the partial Taking; provided, however, that Developer will not be required to repair any damage in excess of the amount of condemnation proceeds received by Developer. Damages awarded for any Taking shall be payable to the City.

6.04. Expiration of Term. On the Expiration Date, Developer shall return the Garage to the City in the same condition as existing at the commencement of the Term, reasonable wear and tear, the effects of casualty (subject to Section 6.02 above) and eminent domain excepted, and with all Developer's repair, maintenance and replacement obligations under this Agreement fully performed.

Section 7. Insurance.

7.01. During the Term, Developer must obtain and maintain the following types of insurance for the Garage with companies authorized to do business in the State of North Dakota, and reasonably acceptable to the City:

(a) to the extent required by law, workers compensation insurance, with statutory coverage;

(b) Employers Liability Insurance with coverage limits of \$100,000 for bodily injury per accident limit, \$500,000 for bodily injury by disease policy limit and \$100,000 for bodily injury by disease per employee limit;

(c) commercial general liability (including bodily injury and property damage and contractual tort liability) insurance, Personal Injury Insurance with liability limits of \$1,000,000 per occurrence and \$2,000,000 in aggregate that names the City as an additional insured;

(d) garage keeper's legal liability insurance with minimum liability limits of \$500,000 and Automobile Liability insurance with minimum liability limits of \$1,000,000;

(e) umbrella coverage in the amount of not less than \$10,000,000 providing excess coverage over the following underlying liability policies: General Liability, Commercial Business Automobile and Employers Liability;

(f) fidelity (crime) insurance with respect to its employees who handle or are responsible for funds with liability limits of \$500,000, subject to availability of such limits, and, to the extent available, a Co-Obligee endorsement in favor of the City;

(g) twelve (12) months of Business Interruption Insurance insuring Developer (or the Garage Management Company) against an interruption in Developer (or the Garage Management Company's) business under this Agreement;

(h) "all-risk of direct physical loss" commercial property insurance for personal property and contents owned by Developer (or its agents or the Garage

Management Company) in the amount of the full replacement values thereof (as reasonably determined by Developer);

(i) Waiver of Subrogation in favor of the City on Workers Compensation Liability, Garage Keepers Legal Liability, Automobile Liability and “all-risk of direct physical loss” policies, to the extent available without material additional cost;

(j) Naming the City as Additional Insured on the Automobile Liability Insurance and Commercial General Liability Insurance policies.

7.02. Certificates evidencing such insurance shall be furnished by Developer to the City upon request and such certificates shall contain an endorsement requiring the insurance carrier to endeavor to provide thirty (30) days’ written notice in the event of cancellation. Premiums with respect to the policies which Developer must obtain shall be paid by Developer and shall constitute Parking Expenses. Such policies shall be subject to the reasonable approval of the City.

7.03. During the Term, the City must obtain and maintain the following types of insurance for the Garage with companies authorized to do business in the State of North Dakota:

(a) “all-risk of direct physical loss” commercial property insurance in the amount of the full replacement value of the Garage, and similar coverage insuring personal property and contents owned by the City in the Garage for the full replacement value thereof (as reasonably determined by the City), with a Waiver of Subrogation in favor of Developer, to the extent available without material additional cost. Certificates evidencing such insurance shall be furnished by Developer to the City upon request and such certificates shall contain an endorsement requiring the insurance carrier to endeavor to provide thirty (30) days’ written notice in the event of cancellation. Premiums with respect to the policies which City must obtain shall be paid by City.

7.04. Developer shall indemnify and hold the City harmless from any and all claims, demands and actions, and all costs and expenses relating thereto (including reasonable attorneys’ fees) (collectively, “Claims”), for damage, injury, death, disability or illness of or to any Persons or property that occur during the Term, arising out of, or as a result of, either or both Developer’s negligent management of the Garage or Developer’s default under this Agreement. Developer shall require its Garage Management Company to indemnify and hold the City harmless from any and all Claims for damage, injury, death, disability or illness of or to any Persons or property, arising out of, or as a result of, either or both the Garage Management Company’s negligent management of the Garage or the Garage Management Company’s default under its Garage Management Company Agreement.

Section 8. **Assignment.** No Party hereto shall assign its rights hereunder without the prior written consent of the other Party to this Agreement.

Section 9. **Permits and Licenses.** During the Term, Developer must apply for, secure (or cause to be applied for and secured) and maintain, in its own name, all municipal

permits and licenses required for the Garage and carry out the responsibilities under all such permits and licenses to the public and to the agencies having jurisdiction.

Section 10. **Notices.** All notices, requests, consents, or other communications required under this Agreement shall be in writing and shall be deemed to have been properly given if served personally or if sent by United States registered or certified mail or overnight delivery service to the Parties as follows (or at such other address as a Party may from time to time designate by notice given pursuant to this Section):

To Developer: Great Plains NP Holdings, LLC
 ATTN: Mike Allmendinger, President
 210 Broadway N., Suite 300
 Fargo, ND 58102

with a copy to: Dan Bueide
 Bueide Law Firm
 1 2nd St. N, Suite 100
 Fargo, ND 58102

To the City: City Auditor
 Fargo City Hall
 225 4th Street North
 Fargo, ND 58102

and to: Director of Strategic Planning
 ATTN: James Gilmour
 Fargo City Hall
 225 4th Street NorthFargo, ND 58102

and to: Director of Planning and Development
 ATTN: Nicole Crutchfield
 Fargo City Hall
 225 4th Street North
 Fargo, ND 58102

with copy to: Erik R. Johnson
 Fargo City Attorney
 608 24th Avenue S.
 Fargo, ND 58103

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

Section 11. **Estoppel.** Each Party, respectively, agrees that at any time and from time to time within ten (10) Business Days after receipt of a written request by a Party, to execute, acknowledge and deliver to such Party a statement in writing certifying: (a) that this Agreement is unmodified and in full force and effect or, if there have been modifications, that the same are in full force and effect as modified and identifying the modifications; (b) that no Party is in default under any provisions of this Agreement or, if there has been a default, the nature of such default; and (c) as to any other matter that the requesting Party or a prospective mortgagee or other lender shall reasonably request. It is intended that any such statement may be relied upon by any Person, prospective mortgagee of, or assignee of any mortgage, upon such interest. Developer agrees to include in its Garage Management Company Agreement provisions similar to those set forth in this Section 11.

Section 12. **Survival of Covenants, Agreements, Representations, and Warranties.** No action taken pursuant to or related to this Agreement, including any investigation by or on behalf of a Party, shall be deemed to constitute a waiver by the Party taking such action of compliance with any representation, warranty, condition, or agreement in this Agreement.

Section 13. **Additional Documents and Approval.** The Parties, whenever and as often as any shall be reasonably requested to do so, shall execute or cause to be executed any further documents and take any further actions as may be reasonably necessary or expedient and within their lawful obligation in order to consummate the transactions provided for in, and to carry out the purpose and intent of, this Agreement.

Section 14. **Good Faith.** In exercising its rights and fulfilling its obligations under this Agreement, each of the Parties acknowledges that the other has acted to date in good faith and each Party agrees to continue to act in good faith. Each Party acknowledges that in each instance under this Agreement where a Party is obligated to exercise good faith or to use good faith, diligent, or other similar efforts, such Party shall not be required to expend any funds or grant any other consideration of any kind in the performance of such undertaking, and each Party further acknowledges that the obligation of any Party to act in good faith or undertake good faith, diligent, or other similar efforts does not constitute a warranty, representation, or other guaranty that the result that the Parties are attempting to achieve shall be successfully achieved and no Party shall be liable for any failure to achieve the result or results intended so long as the Party has complied with its obligation to act in good faith.

Section 15. **Calculation of Time.** Unless otherwise stated, all references to “day” or “days” shall mean calendar days. If any time period set forth in this Agreement expires on other than a Business Day, such period shall be extended to and through the next succeeding Business Day.

Section 16. **Time is of the Essence.** Time is of the essence of this Agreement.

Section 17. **Entire Agreement.** Except as otherwise provided in this Agreement and the other written agreements contemplated hereby, this Agreement contains the sole and entire agreement among the Parties with respect to its subject matter and supersedes any and all other prior written or oral agreements among them with respect to such subject matter.

Section 18. **Amendment.** No amendment, modification, or termination of this Agreement shall be valid unless in writing and duly executed by the Parties.

Section 19. **No Presumption Against Drafter.** This Agreement has been negotiated at arm's length and between Persons sophisticated and knowledgeable in the matters dealt with herein. In addition, each Party has been represented by experienced and knowledgeable legal counsel. Accordingly, this Agreement shall be interpreted to achieve the intents and purposes of the Parties, without any presumption against the Party responsible for drafting any part of this Agreement.

Section 20. **Severability.** If any term or provision of this Agreement or the application thereof to any Person or circumstance shall, to any extent, be inconsistent with, invalid, or unenforceable under any laws, the remainder of this Agreement or the application of such term or provision to Persons or circumstances, other than those as to which it was held invalid or unenforceable, shall not be affected thereby and each term or provision of this Agreement shall be valid and enforceable to the fullest extent permitted by any laws.

Section 21. **Third Party Beneficiaries.** Nothing in this Agreement, express or implied, is intended to (a) confer upon any Person other than the Parties and their permitted successors and assigns any rights or remedies under or by reason of this Agreement as a third-party beneficiary or otherwise, except as specifically provided in this Agreement; or (b) authorize anyone not a Party to this Agreement to maintain an action pursuant to or based upon this Agreement.

Section 22. **Governing Law; Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of North Dakota, notwithstanding its conflicts of law or choice of law provisions. All matters, whether sounding in tort or in contract, relating to the validity, construction, performance, or enforcement of this Agreement shall be controlled by and determined in accordance with the Laws of the State, and the Parties agree that all legal actions initiated with respect to or arising from any provision contained in this Agreement shall be initiated, filed and venued exclusively in the State, Cass County, District Court and shall not be removed therefrom to any other federal or state court. The parties hereby waive personal jurisdiction and venue for all claims and defenses.

Section 23. **Counterparts.** This Agreement may be executed and delivered in one (1) or more counterparts, each of which shall be deemed to be an original and all of which, taken together, shall be deemed to be one agreement.

Section 24. **Relationship of Parties.** It is agreed that nothing contained in this Agreement shall be deemed or construed as creating a partnership or joint venture among the Parties.

Section 25. **Approval by Parties.** In each instance where the approval or consent of any Party may be sought or is required, such approval or consent shall not be unreasonably withheld, conditioned or delayed.

Section 26. **Injunctive Relief; Specific Performance.** The Parties acknowledge that the rights conveyed by this Agreement and the covenants of the Parties are of a unique and

special nature, and that a breach or violation of this Agreement shall result in immediate and irreparable harm. In the event of any such actual or threatened breach or violation of this Agreement caused by a Party, the Party so harmed shall be entitled as a matter of right to an injunction or a decree of specific performance from any equity court of competent jurisdiction without the posting of any bond. The Parties waive the right to assert the defense that a breach of this Agreement can be compensated adequately in damages in an action at law.

Section 27. Default; Remedies Cumulative; Limitation on Remedies; Waiver.

27.01. Each of the following shall constitute a default by any Party (the “Defaulting Party”) under this Agreement (“Event of Default”), but further subject to Section 28 below:

(a) the failure to make any payment of any sums payable under this Agreement, which failure shall continue for ten (10) days after receipt of written notice to the Defaulting Party by the other Party (the “Non-Defaulting Party”);

(b) the Defaulting Party’s violation or failure to perform or observe any covenant or condition of this Agreement other than a failure under Section 27.01(a), which failure or violation shall continue for 30 days after receipt of written notice to the Defaulting Party by the Non-Defaulting Party identifying with particularity the failure or violation; provided, however, if such violation or failure reasonably cannot be cured within such 30 day period, then a reasonably longer period of time provided that the Defaulting Party commences to cure such violation or failure within such 30 day period and diligently pursues the same to completion; or

(c) (i) the Defaulting Party shall institute voluntary proceedings in bankruptcy, (ii) involuntary proceedings in bankruptcy shall be instituted against the Defaulting Party that are not discharged within ninety (90) days thereafter, (iii) any proceedings shall be instituted by or against the Defaulting Party under any Law relating to insolvency or bankruptcy reorganization, and in the case of an involuntary proceeding, that is not discharged within ninety (90) days after filing, (iv) a trustee or receiver shall be appointed for the Defaulting Party by any court of competent jurisdiction, or (v) the Defaulting Party shall make a general assignment for the benefit of its creditors.

(d) in the case of Developer, a default or breach of the Development Agreement by Developer beyond the applicable notice and cure period set forth in such Development Agreement.

27.02. Upon the occurrence of an Event of Default, the Non-Defaulting Party will have the right to exercise any of the following remedies:

(a) exercise any remedy afforded hereunder;

(b) seek specific performance or other equitable relief;

(c) sue for money damages; or

(d) in the case of an Event of Default by Developer, terminate this Agreement. Except as expressly set forth in this Agreement, Developer shall not be entitled to terminate this Agreement.

All rights and remedies set forth in this Agreement are cumulative and in addition to the Parties' rights and remedies at law or in equity, subject, however, to any limitation on damages, fees and costs as provided for in this Agreement. A Party's exercise of any such right or remedy shall not prevent the concurrent or subsequent exercise of any other right or remedy. A Party's delay or failure to exercise or enforce any rights or remedies shall not constitute a waiver of any such rights, remedies, or obligations. No Party shall be deemed to have waived any default unless such waiver is expressly set forth in an instrument signed by such Party. If a Party waives in writing any default, then such waiver shall not be construed as a waiver of any covenant or condition set forth in this Agreement, except as to the specific circumstances described in such written waiver. Neither payment of a lesser amount than the sum due hereunder, nor endorsement or statement on any check or letter accompanying such payment shall be deemed an accord and satisfaction, and the other Party or Parties may accept the same without prejudice to the right to recover the balance of such sum or to pursue any other remedy.

27.03. No Party shall suspend its performance under this Agreement pending the resolution of any Event of Default.

27.04. No Party shall interfere with Garage operations pending the resolution of any Event of Default.

Section 28. Risk of Certain Losses; Force Majeure. The non-occurrence of any condition under this Agreement shall not give rise to any right otherwise provided in this Agreement when such failure or non-occurrence is due to the occurrence of a Force Majeure condition and without the fault of the Party claiming an extension of time to perform. An extension of time for any such cause, if any, shall be limited to the period of delay due to such cause, which period shall be deemed to commence from the time of the commencement of the cause; provided, however, that if notice by the Party claiming such extension is sent to the other Party more than thirty (30) days after the commencement of the cause, the period shall be deemed to commence thirty (30) days prior to the giving of such notice. Times of performance under this Agreement also may be extended as mutually agreed upon in writing by the Parties. However, failure to agree to a proposed extension of time for performance shall not be deemed grounds for delay or failure to timely cure an Event of Default under this Agreement. Unavailability of funds shall not constitute Force Majeure.

Section 29. Limited Recourse Obligations; Members and Officers Not Liable. All covenants, stipulations, promises, agreements, and obligations of Developer contained herein shall be deemed to be covenants, stipulations, promises, agreements, and obligations of Developer and not of any shareholder, member, partner, owner, manager, officer, employee, or agent of Developer in his or her individual capacity, and no recourse shall be had for any claim hereunder against any shareholder, member, partner, owner, manager, officer, employee, or agent of Developer in such capacity. All covenants, stipulations, promises, agreements, and obligations of the City contained herein shall be deemed to be covenants, stipulations, promises, agreements, and obligations of the City and not of any commissioner, member, director, officer, employee, or agent of the City in his or her individual capacity, and no recourse shall be had for

any claim hereunder against any commissioner, member, director, officer, employee, or agent of the City in such capacity.

Section 30. **Inclusion in Management Agreement.** Developer shall include in its Garage Management Company Agreement, or make the same expressly subject to, the terms and provisions of this Agreement to the extent required to require the Garage Management Company to perform those obligations allocated thereto in this Agreement.

Section 31. **Binding Covenants.** The provisions herein shall be deemed covenants that run with the land, and shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

Section 32. **Recording of Parking Agreement.** This Agreement shall not be recorded, but at the request of any Party, the Parties shall promptly execute, acknowledge and deliver to each other a Memorandum of Parking Agreement in form reasonably acceptable to the Parties (and a memorandum of modification of parking agreement in respect of any modification of this Agreement) sufficient for recording. Such memoranda shall not be deemed to change or otherwise affect any obligations or provisions of this Agreement.

[The balance of this page is intentionally left blank.]

IN WITNESS WHEREOF, Developer and the City have caused this Agreement to be executed as of the date first set forth above.

Developer:

GREAT PLAINS NP HOLDINGS, LLC,
a North Dakota limited liability company

By: _____

Name: _____

Title: _____

CITY:

CITY OF FARGO,
a North Dakota municipal corporation

By: _____

Name: _____

Title: Mayor

ATTEST:

By: _____

Name: _____

Title: City Auditor

EXHIBIT A

Legal Description of Real Property, on a portion of which the Garage will be located

[use applicable condominium unit description prior to execution]

EXHIBIT B

Parking Expenses

- (i) Wages of on-site supervisory personnel, attendants and cashiers, clerical and audit staff assigned to the Garage, and a charge from Developer for employee benefits including, but not limited to, monetary fringe benefits such as workers' compensation insurance, unemployment insurance, social security, group health and dental insurance, retirement benefits; provided, however, in the event an employee does not devote his or her full working time to the Garage, then all of the foregoing charges pertaining to such employee shall be appropriately prorated to the Garage in a manner reasonably acceptable to the City; provided further, in no event shall the compensation (direct or indirect) of any off-site management personnel be included in Parking Expenses, the same being borne solely by Developer.
- (ii) (a) Ad valorem taxes and special assessments levied against real property; (b) sales taxes imposed by the various jurisdictions in which the Garage is located; (c) any other taxes generated by the presence or operation of the Garage, except income taxes incurred by Developer or the Garage Management Company; and (d) the cost of Permits.
- (iii) Expenses for the Garage management office including, but not limited to, telephone, postage, office supplies, computer and software expenses, subject to an equitable proration if the management office services other facilities in addition to the Garage.
- (iv) General repair and maintenance of the Garage, including signs and electrical, mechanical and parking equipment, incurred in the ordinary course of business.
- (v) The costs of printing parking tickets and related forms, cards, decals, invoices and stationary for use exclusively at the Garage.
- (vi) Power and hand sweeping and cleaning, and line painting, as required at the Garage.
- (vii) Insurance premiums, including business interruption insurance and property and casualty insurance.
- (viii) Business license, business taxes, license fees and permits.
- (ix) Costs of advertising and promoting the Garage incurred by Developer or its Garage Management Company.
- (x) The costs of towing vehicles or otherwise enforcing parking restrictions, replacing or changing access devices and similar costs related to users of the Garage.
- (xi) Uniforms and janitorial supplies.
- (xii) Snow clearance where required to be performed by Developer.

- (xiii) Bank charges associated with the maintenance of bank accounts for the Garage.
- (xiv) Gas, electric, water, telecommunications and any other utility charges.
- (xv) Fees payable to a Garage Management Company pursuant to an approved Garage Management Company Agreement.
- (xvi) Amounts expended from time to time used by the Developer to pay extraordinary maintenance and replacement costs, including costs periodically incurred to repair or cure defects (excluding construction defects covered by a construction warranty) or conditions in order to maintain or restore the Garage to a commercially reasonable condition, and as shall be used for improvements required as a result of a City inspection as described in Section 6.01. Such expenditures may include operating expenditures or Capital Expenditures.
- (xvii) Cost for preparing any required operational, maintenance and financial records as required under this Agreement.

EXHIBIT G

Guaranty

This Guaranty is made by Great Plains Opportunity Zone Fund II, LLC, a Delaware limited liability company, (“Guarantor”), in favor of the City of Fargo, North Dakota, a municipal corporation (the “City”), to induce the City to enter into that certain Development Agreement of substantially even date herewith, with Great Plains NP Holdings, LLC, a North Dakota limited liability company (“Developer”) for the for the planning, design, financing, acquisition, development, and construction of the NP Avenue Project (as defined in the Development Agreement) in Fargo, North Dakota (as amended, supplemented or otherwise modified from time to time, the “Development Agreement”) and in consideration of the City entering into the Development Agreement.

Developer is an affiliate of Guarantor and Guarantor will derive benefit from the making of the Guaranty.

NOW, THEREFORE, for good and valuable consideration, Guarantor hereby covenants and agrees as follows:

1. Guarantor hereby unconditionally guarantees the full and timely payment and performance by Developer of all of its obligations under the Development Agreement, as it from time to time may be amended, and hereby undertakes that if Developer shall in any respect fail to perform and observe all of the terms, provisions, conditions, and stipulations of the Development Agreement, Guarantor warrants the faithful payment and performance of all of such terms and conditions and will fully indemnify and keep indemnified the City against all claims, losses, damages, costs and expenses whatsoever which the City may incur by reason of Developer’s failure to perform and observe any of the terms, provisions, conditions, and stipulations of the Development Agreement and in addition against all claims, losses, damages, costs and expenses which the City may incur by reason of Developer’s breach of any other duty to the City, (collectively the “Guaranteed Obligations”). THE OBLIGATIONS OF THE GUARANTOR HEREUNDER SHALL NOT BE REDUCED, LIMITED OR TERMINATED, NOR SHALL THE GUARANTOR BE DISCHARGED FROM ANY THEREOF, FOR ANY REASON WHATSOEVER, including (and whether or not the same shall have occurred or failed to occur once or more than once and whether or not Guarantor shall have received notice thereof):
 - (a) (i) any increase in, (ii) any extension of the time of payment, observance or performance of, (iii) any other amendment or modification of any of the other

terms and provisions of, (iv) any release, composition or settlement (whether by way of acceptance of a plan of reorganization or otherwise) of, (v) any subordination (whether present or future or contractual or otherwise) of, or (vi) any discharge, disallowance, invalidity, illegality, voidness or other unenforceability of, the Guaranteed Obligations;

- (b) (i) any failure to obtain, (ii) any release, composition or settlement of, (iii) any amendment or modification of any of the terms and provisions of, (iv) any subordination of, or (v) any discharge, disallowance, invalidity, illegality, voidness or other enforceability of, any other guaranties of the Guaranteed Obligations;
- (c) any termination of or change in any relationship between Guarantor and Developer, including any such termination or change resulting from a change in the ownership of Guarantor or from the cessation of any commercial relationship between the Guarantor and Developer;
- (d) any exercise of, or any election not or failure to exercise, delay in the exercise of, waiver of, or forbearance or other indulgence with respect to, any right, remedy or power available to the City, including (i) any election not or failure to exercise any right of set-off, recoupment or counterclaim, and (ii) any election of remedies effected by the City, and
- (e) ANY OTHER ACT OR FAILURE TO ACT OR ANY OTHER EVENT OR CIRCUMSTANCE THAT (i) VARIES THE RISK OF THE GUARANTOR HEREUNDER OR (ii) BUT FOR THE PROVISIONS HEREOF, WOULD, AS A MATTER OF STATUTE OR RULE OF LAW OR EQUITY, OPERATE TO REDUCE, LIMIT OR TERMINATE THE OBLIGATIONS OF THE GUARANTOR HEREUNDER OR DISCHARGE GUARANTOR FROM ANY THEREOF.

2. Guarantor represents and warrants to the City that:

- (a) Guarantor is a duly organized and validly existing limited liability company organized in the State of Delaware;
- (b) Guarantor directly or indirectly owns all of the ownership interests of Developer;
- (c) Guarantor is authorized and has all necessary power and authority, corporate and other, to execute and deliver this Guaranty and to perform the obligations of Guarantor, including all obligations of Developer pursuant to the Development Agreement. This Guaranty reasonably may be expected to benefit directly or indirectly, Guarantor, and this Guaranty has been duly executed and delivered by Guarantor and is the valid, binding, and enforceable contract of Guarantor, and;

- (d) The execution and delivery of this Guaranty by Guarantor and its performance of its obligations under the Guaranty, do not (and, to the best of Guarantor's knowledge, will not) conflict with any law, rule or regulation, or any agreement, instrument, indenture, deed or any other restriction, to which Guarantor is subject or a party, or accelerate or affect any of its obligations under any thereof.
3. Guarantor shall cause Developer to duly and timely perform all of the Guaranteed Obligations including the obligations of Developer under the Development Agreement, as it may from time to time be amended.
 4. The obligations of the Guarantor hereunder include, without limitation, all liabilities for liquidated or similar damages and warranty obligations of Developer.
 5. The City may enforce against Guarantor any and all of the rights of the City under this Guaranty without having instituted or completed any legal, arbitration or other proceedings against Developer.
 6. This Guaranty shall be governed by and construed according to the laws of the State of North Dakota.
 7. Guarantor waives: (a) any requirement, and any right to require, that any right or power be exercised or any action be taken against Developer; (b) (i) notice of acceptance of and intention to rely on this Guaranty, and (ii) all other notices that may be required by applicable law or otherwise to preserve any rights against Guarantor under this Guaranty, including any notice of default, demand, dishonor, presentment and protest; and, (c) diligence.
 8. Guarantor shall not assert any right to set off against claims by the City hereunder other than claims which Developer has a right to set off under the Development Agreement.
 9. Guarantor's obligations hereunder (a) are absolute and unconditional, (b) are unlimited in amount, (c) constitute a guaranty of payment and performance and not a guaranty of collection, (d) are as primary obligor and not as a surety only (e) shall be a continuing guaranty of all present and future Guaranteed Obligations and (f) shall be irrevocable.
 10. All notices, requests, consents, or other communications required under this Agreement shall be in writing and shall be deemed to have been properly given if served personally or if sent by United States registered or certified mail or overnight delivery service to the parties as follows (or at such other address as a party may from time to time designate by notice given pursuant to this Section):

To Guarantor: Great Plains Opportunity Zone Fund II, LLC
Attn: Mike Almendinger, President
210 Broadway N., Suite 300
Fargo, ND 58102

with a copy to: Dan Bueide
Bueide Law Firm
1 2nd St. N, Suite 100
Fargo, ND 58102

To the City: City Auditor
Fargo City Hall
225 4th Street North
Fargo, ND 58102

and to: Director of Strategic Planning and Development
Attn: James Gilmour
Fargo City Hall
225 4th Street North
Fargo, ND 58102

with copy to: Office of the Fargo City Attorney
Attn: Erik R. Johnson
608 24th Avenue S.
Fargo, ND 58103

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

IN WITNESS WHEREOF, Guarantor has caused this Guaranty to be executed and delivered to the City in the name and on behalf of Guarantor by one of its officers who is duly authorized to do so, for the benefit of the City, as of this ___ day of _____, 202__.

[Remainder of page left blank – signature page follows]

GUARANTOR:

GREAT PLAINS OPPORTUNITY ZONE
FUND II, LLC

By: _____

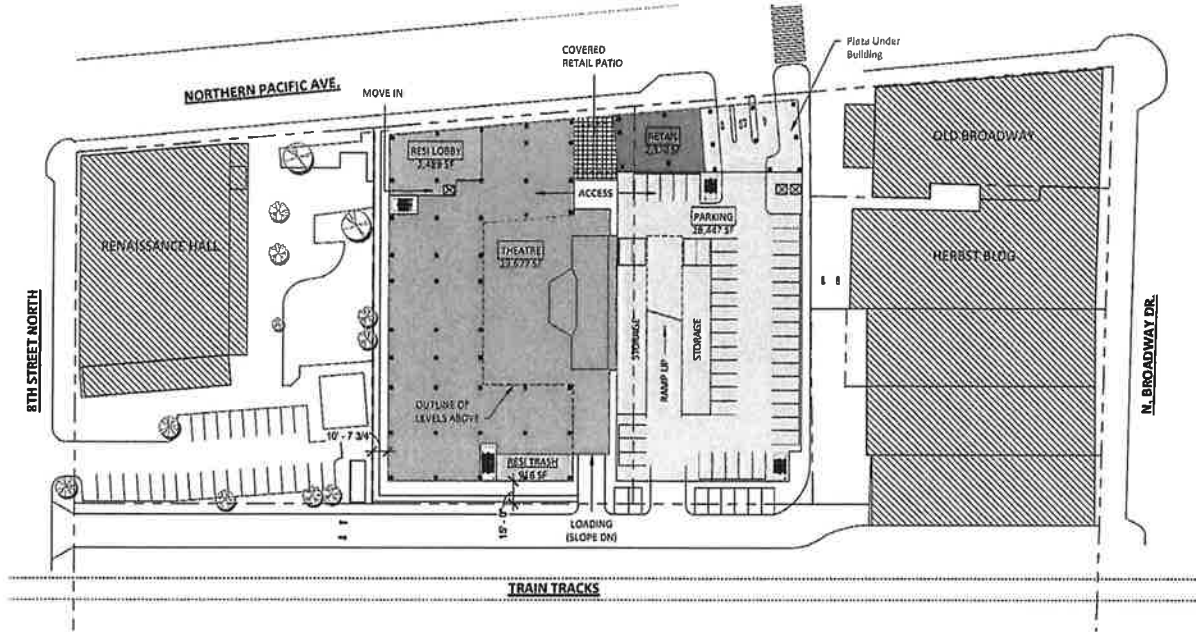
Name: _____

Its: _____

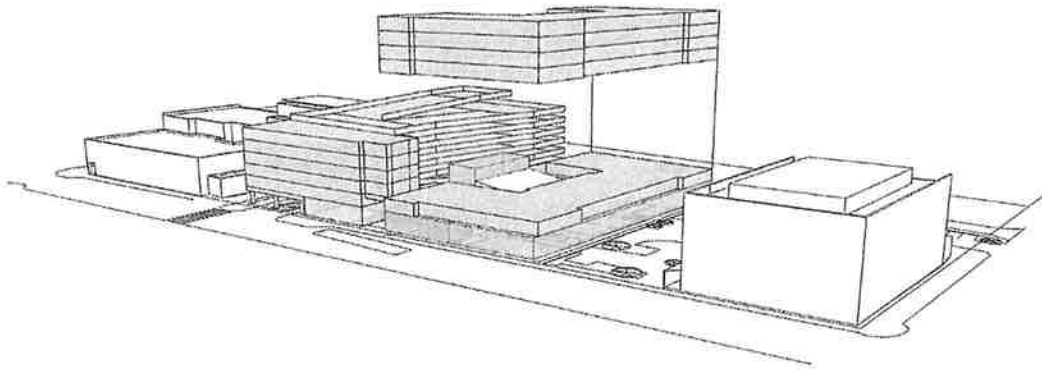
EXHIBIT H
Project Summary

Type of Property	Commercial Parking Garage & Mixed Use
Townhomes & Apartment Units	120-200
Floors	6
Garage Stalls	450-490
Approximate Residential SF	150,000
Approximate Retail SF	±2,000
Approximate Theater SF	±25,000-35,000

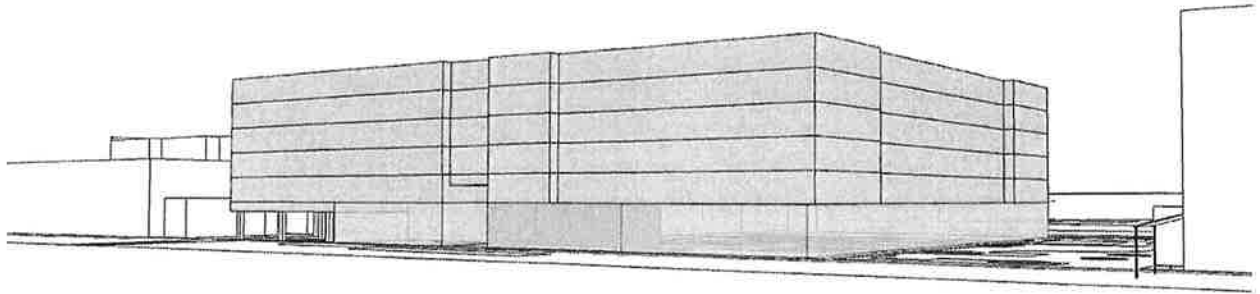
Site Plan



Massing Model



Northwest Perspective



Northeast Perspective

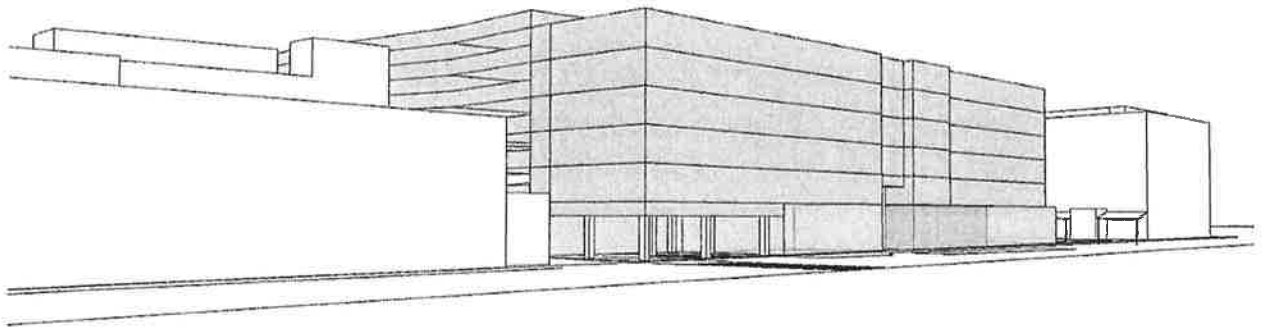


EXHIBIT I
Mortgage

THIS INSTRUMENT WAS DRAFTED BY,
AND WHEN RECORDED SHOULD BE
RETURNED TO:
Fargo City Attorney
Attn: Erik R. Johnson
608 24th Avenue S.
Fargo, ND 58103

**MORTGAGE, SECURITY AGREEMENT,
ASSIGNMENT OF LEASES AND RENTS
AND FIXTURE FILING STATEMENT**

THIS MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING STATEMENT (this "Mortgage") is made as of _____, 2023, by GREAT PLAINS NP HOLDINGS, LLC, a North Dakota limited liability company ("Mortgagor"), having its mailing address at 210 Broadway N., Suite 300, Fargo, ND 58102, in favor of CITY OF FARGO, a North Dakota municipal corporation, having its principal office at 225 4th Street North, Fargo, ND 58102 ("Mortgagee").

RECITALS

A. Mortgagor and Mortgagee are parties to that certain Development Agreement dated as of October 31, 2022 (as amended, restated, modified, supplemented, increased, or extended from time to time, the "Development Agreement"). All capitalized terms used herein and not otherwise defined have the meanings assigned to such terms in the Lease.

B. The obligations secured by this Mortgage (the "Obligations") are prompt payment and/or performance of all performance and payment obligations of Mortgagor under or in connection with the Development Agreement.

NOW, THEREFORE, Mortgagor, in consideration of the foregoing recitals, which are hereby incorporated herein by reference and which are true and correct on the date hereof, and of the City entering into the Development Agreement and performing thereunder, and to secure the payment and performance of the Obligations, hereby grants, bargains, sells, conveys, mortgages and warrants to Mortgagee, its successors and assigns, forever, with power of sale, and grants to Mortgagee, its successors and assigns, a security interest in Mortgagor's right, title and interest in the following, all of which is collectively called the "Mortgaged Property":

A. LAND AND IMPROVEMENTS

The land described in **Exhibit A** attached hereto and all mineral rights, hereditaments, easements and appurtenances thereto (collectively the "Land"), and all improvements and structures thereon (the "Improvements"); and

B. FIXTURES AND PERSONAL PROPERTY

All fixtures (the "Fixtures"), and all machinery, equipment and personal property (collectively, the "Personal Property") now or hereafter located on, in or under the Land and the Improvements and necessary for the operation of the Land or the Improvements, and which are owned by Mortgagor or in which Mortgagor has an ownership interest, including any construction and building materials stored on and to be included in the Improvements, plus any repairs, replacements and betterments to any of the foregoing and the proceeds and products thereof; and

C. LEASES AND RENTS

Subject to the revocable license granted to Mortgagor under this Mortgage, all rights of Mortgagor with respect to tenants or occupants now or hereafter occupying any part of the Land or the Improvements, if any, including all leases and licenses and rights in connection therewith, whether oral or written (collectively, the "Leases"), and all rents, income, both from services and occupation, royalties, revenues and payments, including prepayments and security deposits (collectively, the "Rents"), which are now or hereafter due or to be paid in connection with the Land, the Improvements, the Fixtures or the Personal Property; and

D. GENERAL INTANGIBLES

All general intangibles of Mortgagor which relate to any of the Land, the Improvements, the Fixtures, the Personal Property, the Leases or the Rents, including proceeds of insurance and condemnation or conveyance of the Land and the Improvements, accounts, trade names, contract rights, accounts receivable and bank accounts relating to the Land, the Improvements, the Fixtures, the Personal Property, the Leases and the Rents; and

E. AFTER ACQUIRED PROPERTY AND PROCEEDS

All after acquired property similar to the property herein described and conveyed which may be subsequently acquired by Mortgagor and used in connection with the Land, the Improvements, the Fixtures, the Personal Property and other property; and all cash and non-cash proceeds and products of all of the foregoing property.

TO HAVE AND TO HOLD the same, and all estate therein, together with all the rights, privileges and appurtenances thereunto belonging, to the use and benefit of Mortgagee, its successors and assigns, forever.

PROVIDED NEVERTHELESS, should Mortgagor pay and perform all the Obligations, and should Mortgagor perform and observe all the terms, covenants and conditions in this Mortgage, then these presents will be of no further force and effect, and this Mortgage shall be satisfied by Mortgagee, at the expense of Mortgagor.

This Mortgage also constitutes a security agreement within the meaning of the Uniform Commercial Code as in effect in the State of North Dakota (the "UCC"), with respect to all property described herein as to which a security interest may be granted and/or perfected pursuant to the UCC, and is intended to afford Mortgagee, to the fullest extent allowed by law, the rights and remedies of a secured party under the UCC.

MORTGAGOR FURTHER covenants, warrants and agrees as follows:

ARTICLE 2

AGREEMENTS

Performance of Obligations; Incorporation by Reference. Mortgagor shall perform, observe and comply with all provisions hereof and of the Development Agreement required to be performed, observed and complied with by Mortgagor, including without limitation the Obligations, and will duly and punctually pay to Mortgagee all sums required to be paid by Mortgagor pursuant to the provisions of this Mortgage, all without any deductions or credit for taxes or other similar charges paid by Mortgagor. Time is of the essence hereof. All of the covenants, obligations, agreements, warranties and representations of Mortgagor contained in the Development Agreement and all of the terms and provisions thereof, are hereby incorporated herein and made a part hereof by reference as if fully set forth herein.

Further Assurances. If Mortgagee requests, Mortgagor shall sign and deliver and cause to be recorded and hereby authorizes Mortgagee to record any further mortgages, instruments of further assurance, certificates, financing statements, continuation statements and other documents (without the consent of Mortgagor) as Mortgagee reasonably may consider necessary or desirable in order to perfect, continue and preserve the Obligations and Mortgagee's rights, title, estate, liens, security interests and interests under the Development Agreement.

Sale, Transfer, Encumbrance. Except as otherwise expressly permitted by the Development Agreement, if Mortgagor sells, conveys, transfers or otherwise disposes of, or encumbers, any part of its interest in the Mortgaged Property, whether voluntarily, involuntarily or by operation of law, without the prior written consent of Mortgagee, Mortgagee shall have the option to declare the Obligations immediately due and payable without notice. Mortgagor shall give

notice of any proposed action to Mortgagee at least thirty (30) days prior to taking such action. Mortgagor shall pay all reasonable costs and expenses incurred by Mortgagee in evaluating any such action. No such action shall relieve Mortgagor from liability for the Obligations. The consent by Mortgagee to any action shall not constitute a waiver of the necessity of such consent to any subsequent action.

Insurance. Mortgagor shall obtain, maintain and keep in full force and effect (and upon request of Mortgagee shall furnish to Mortgagee copies of) policies of insurance required of Mortgagor as described in, and meeting the requirements set forth in, the Development Agreement.

Taxes, Liens and Claims, Utilities. Subject to reimbursement rights set out in the Development Agreement, Mortgagor, at least fifteen (15) days before any penalty attaches thereto, shall pay and discharge, or cause to be paid and discharged, all taxes, assessments and governmental charges and levies (collectively, "Impositions") imposed upon or against the Mortgaged Property or the Rents, or upon or against the Obligations, or upon or against the interest of Mortgagee in the Mortgaged Property or the Obligations, except Impositions measured by the income of Mortgagee. Mortgagor shall provide evidence of such payment at Mortgagee's request. Mortgagor shall keep the Mortgaged Property free and clear of all liens, encumbrances, easements, covenants, conditions, restrictions and reservations (collectively, "Liens") except for the permitted encumbrances specifically listed in Mortgagee's loan policy of title insurance covering this Mortgage, except for those encumbrances otherwise permitted by the Development Agreement and except for any of the same caused, or consented to in writing, by Mortgagee. Mortgagor shall pay or cause to be paid when due all charges or fees for utilities and services supplied to the Mortgaged Property. Notwithstanding anything to the contrary contained in this Section, Mortgagor shall not be required to pay or discharge any Imposition or Lien so long as Mortgagor shall in good faith, and after giving notice to Mortgagee, contest the same by appropriate legal proceedings. If Mortgagor contests any Imposition or Lien against the Mortgaged Property, Mortgagor shall provide such security to Mortgagee as Mortgagee shall reasonably require against loss or impairment of Mortgagor's ownership of or Mortgagee's lien on the Mortgaged Property and shall in any event pay such Imposition or Lien before loss or impairment occurs.

Leases. Mortgagor shall not enter into or amend any Lease without Mortgagee's prior written consent.

Indemnity. Mortgagor shall indemnify Mortgagee and its respective successors and assigns and their directors, officers, agents and employees (collectively the "Indemnified Parties") against, and hold the Indemnified Parties harmless from, all losses, damages, suits, claims, judgments, penalties, fines, liabilities, costs and expenses by reason of, or on account of, or in connection with the construction, reconstruction or alteration of the Mortgaged Property, or any accident, injury, death or damage to any person or property occurring in, on or about the Mortgaged Property. The indemnity contained in this Section shall include reasonable costs of defense of any such claim asserted against an Indemnified Party, including reasonable attorneys' fees. The indemnity contained in this Section shall exclude any liability for claims or losses arising out of any Indemnified Party's gross negligence or willful misconduct. The indemnity contained in this Section shall survive payment and performance of the Obligations and satisfaction and release of this Mortgage and any foreclosure thereof or acquisition of title by deed in lieu of foreclosure,

but only to the extent that the events giving rise to a matter covered by the indemnity occurred prior thereto.

Release. Mortgagee acknowledges that it will release this Mortgage as to all of the Project other than the Garage once the Condominium Documents have been recorded. Further, upon the occurrence of the Garage Closing, Mortgagee shall record a satisfaction of this Mortgage acknowledging Mortgagee has fully satisfied all of its obligations under this Mortgage and the Mortgage is terminated and of no further force or effect.

ARTICLE 3

REPRESENTATIONS AND WARRANTIES

Mortgagor makes the following representations and warranties:

Ownership, Liens, Compliance with Laws. Mortgagor owns the Mortgaged Property free from all Liens, except for the permitted encumbrances specifically listed in Mortgagee's loan policy of title insurance covering this Mortgage and except for those encumbrances otherwise permitted by the Development Agreement.

Use. The Mortgaged Property is not homestead property, agricultural property or in agricultural use, or owner-occupied residential property containing four units or less.

ARTICLE 4

DEFAULTS AND REMEDIES

Events of Default. An Event of Default, as such term is defined in the Development Agreement, shall constitute an "Event of Default" hereunder. In addition, the following shall be an Event of Default: any failure to comply with, or breach of, any term of this Mortgage, which is not cured (i) within thirty (30) days following Mortgagor obtaining knowledge of such failure, or (ii) if such failure cannot be cured within thirty (30) days, such reasonable amount of time necessary for Mortgagor to cure such failure, provided that Mortgagor is diligently pursuing such cure, but in no event shall such amount of time exceed ninety (90) days following Mortgagor obtaining knowledge of such failure. Mortgagor covenants and agrees to provide Mortgagee with written notice promptly, and in any event, within five (5) business days of obtaining knowledge of any failure to comply with, or breach of, any term of this Mortgage.

Remedies. Upon the occurrence of one or more other Events of Default, all of the Obligations, at the option of Mortgagee, shall be accelerated and become immediately due and payable upon notice to Mortgagor. In either event, the Obligations shall be due and payable without presentment, demand or further notice of any kind. Mortgagee shall have the right to proceed to protect and enforce its rights by one or more of the following remedies:

(a) MORTGAGEE SHALL HAVE THE RIGHT TO BRING SUIT either for damages, for specific performance of any agreement contained in the Development Agreement, for the foreclosure of this Mortgage, or for the enforcement of any other appropriate legal or equitable remedy.

(b) MORTGAGEE SHALL HAVE THE RIGHT TO SELL THE MORTGAGED PROPERTY AT PUBLIC AUCTION AND CONVEY THE SAME TO THE PURCHASER IN FEE SIMPLE, as provided or required by law, Mortgagor to remain liable for any deficiency. Said sale may be as one tract or otherwise, at the sole option of Mortgagee. In the event of any sale of the Mortgaged Property pursuant to any judgment or decree of any court or at public auction or otherwise in connection with the enforcement of any of the terms of this Mortgage, Mortgagee, its successors or assigns, may become the purchaser, and for the purpose of making settlement for or payment of the purchase price, shall be entitled to deliver over and use the Development Agreement and any claims for interest accrued and unpaid thereon, together with all other sums, with interest, advanced or secured hereby and unpaid hereunder, in order that there may be credited as paid on the purchase price the total amount of the Obligations then due, advanced or secured hereby and unpaid hereunder or under the Development Agreement.

(c) MORTGAGEE SHALL HAVE THE RIGHT TO OBTAIN THE APPOINTMENT OF A RECEIVER at any time after the occurrence of an Event of Default. Mortgagee may apply for the appointment of a receiver to the district court for the county where the Mortgaged Property or any part thereof is located, by an action separate from any foreclosure of this Mortgage pursuant to applicable law, or as a part of the foreclosure action. Mortgagee shall be entitled to the appointment of a receiver without regard to waste, adequacy of the security or solvency of Mortgagor. The receiver, who shall be an experienced property manager, shall collect (until the Obligations are fully paid and satisfied and, in the case of a foreclosure sale, during the entire redemption period) the Rents, and shall manage the Mortgaged Property, execute Leases within or beyond the period of the receivership if approved by the court and apply all rents, profits and other income collected by him in accordance with applicable law and otherwise in his sole discretion.

Mortgagee shall have the right, at any time and without limitation to advance money to the receiver to pay any part or all of the items which the receiver should otherwise pay if cash were available from the Mortgaged Property and sums so advanced, shall be secured hereby, or if advanced during the period of redemption shall be part of the sum required to be paid to redeem from the sale.

(d) MORTGAGEE SHALL HAVE THE RIGHT TO COLLECT THE RENTS from the Mortgaged Property and apply the same in the manner hereinbefore provided with respect to a receiver. For that purpose, Mortgagee may enter and take possession of the Mortgaged Property and manage and operate the same and take any action which, in Mortgagee's judgment, is necessary or proper to collect the Rents and to conserve the value of the Mortgaged Property. Mortgagee may also take possession of, and for these purposes use, any and all of the Personal Property. The expense (including any receiver's fees, attorneys' fees, costs and agent's compensation) incurred pursuant to the powers herein contained shall be secured by this Mortgage. Mortgagee shall not be liable to account to Mortgagor for any action taken pursuant hereto other than to account for any Rents actually received by Mortgagee. Enforcement hereof shall not cause Mortgagee to be deemed a mortgagee in possession unless Mortgagee elects in writing to be a mortgagee in possession.

(e) MORTGAGEE SHALL HAVE THE RIGHT TO ENTER AND TAKE POSSESSION of the Mortgaged Property and manage and operate the same in conformity with

all applicable laws and take any action which, in Mortgagee's judgment, is necessary or proper to conserve the value of the Mortgaged Property.

(f) MORTGAGEE SHALL HAVE ALL OF THE RIGHTS AND REMEDIES PROVIDED IN THE UCC, including the right to proceed under the UCC provisions governing default as to any Personal Property separately from the real estate included within the Mortgaged Property, or to proceed as to all of the Mortgaged Property in accordance with its rights and remedies in respect of said real estate. If Mortgagee should elect to proceed separately as to such Personal Property, Mortgagor agrees to make such Personal Property available to Mortgagee at a place or places acceptable to Mortgagee, and if any notification of intended disposition of any of such Personal Property is required by law, such notification shall be deemed reasonably and properly given if given at least ten (10) days before such disposition in the manner hereinafter provided.

(g) MORTGAGEE SHALL HAVE THE RIGHT TO FILE PROOF OF CLAIM and other documents as may be necessary or advisable in order to have its claims allowed in any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceedings affecting Mortgagor, its creditors or its property, for the entire amount due and payable by Mortgagor in respect of the Obligations at the date of the institution of such proceedings, and for any additional amounts which may become due and payable by Mortgagor after such date.

Each remedy herein specifically given shall be in addition to every other right now or hereafter given or existing at law or in equity, and each and every right may be exercised from time to time and as often and in such order as may be deemed expedient by Mortgagee and the exercise or the beginning of the exercise of one right shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right. Mortgagee shall have all rights and remedies available under the law in effect now and/or at the time such rights and remedies are sought to be enforced, whether or not they are available under the law in effect on the date hereof.

Expenses of Exercising Rights Powers and Remedies. The reasonable expenses (including any receiver's fees, attorneys' fees, appraisers' fees, environmental engineers' and/or consultants' fees, costs incurred for documentary and expert evidence, stenographers' charges, publication costs, costs (which may be estimated as to items to be expended after entry of the decree of foreclosure) of procuring all abstracts of title, continuations of abstracts of title, title searches and examinations, title insurance policies and commitments and extensions therefor and endorsements thereto, UCC and chattel lien searches, and similar data and assurances with respect to title as Mortgagee may deem reasonably necessary either to prosecute any foreclosure action or to evidence to bidders at any sale which may be had pursuant to any foreclosure decree the true condition of the title to or the value of the Mortgaged Property, and agent's compensation) incurred by Mortgagee after the occurrence of any Event of Default and/or in pursuing the rights, powers and remedies contained in this Mortgage shall be immediately due and payable by Mortgagor and shall be added to the indebtedness secured by this Mortgage.

Restoration of Position. In case Mortgagee shall have proceeded to enforce any right under this Mortgage by foreclosure, sale, entry or otherwise, and such proceedings shall have been

discontinued or abandoned for any reason or shall have been determined adversely, then, and in every such case, Mortgagor and Mortgagee shall be restored to their former positions and rights hereunder with respect to the Mortgaged Property subject to the lien hereof.

Marshalling. Mortgagor, for itself and on behalf of all persons and entities which may claim under Mortgagor, hereby waives all requirements of law relating to the marshalling of assets, if any, which would be applicable in connection with the enforcement by Mortgagee of its remedies for an Event of Default hereunder, absent this waiver. Mortgagee shall not be required to sell or realize upon any portion of the Mortgaged Property before selling or realizing upon any other portion thereof.

Waivers. No waiver of any provision hereof shall be implied from the conduct of the parties. Any such waiver must be in writing and must be signed by the party against which such waiver is sought to be enforced. The waiver or release of any breach of the provisions set forth herein to be kept and performed shall not be a waiver or release of any preceding or subsequent breach of the same or any other provision. No receipt of partial payment after acceleration of any of the Obligations shall waive the acceleration. No payment by Mortgagor or receipt by Mortgagee of a lesser amount than the full amount secured hereby shall be deemed to be other than on account of the sums due and payable hereunder, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed an accord and satisfaction, and Mortgagee may accept any check or payment without prejudice to Mortgagee's right to recover the balance of such sums or to pursue any other remedy provided in this Mortgage. The consent by Mortgagee to any matter or event requiring such consent shall not constitute a waiver of the necessity for such consent to any subsequent matter or event.

Mortgagee's Right to Cure Defaults. If Mortgagor shall fail to comply with any of the terms of the Development Agreement with respect to the procuring of insurance, the payment of taxes, assessments and other charges, the keeping of the Mortgaged Property in repair, or any other term contained herein, in the Development Agreement, Mortgagee may make advances to perform the same without releasing Mortgagor from any of the Obligations. Mortgagor agrees to repay upon demand all sums so advanced and all sums expended by Mortgagee in connection with such performance, including without limitation attorneys' fees, interest, and all sums so advanced and/or expenses incurred, with interest, shall be secured hereby, but no such advance and/or incurring of expense by Mortgagee, shall be deemed to relieve Mortgagor from any default hereunder, in the Development Agreement, or to release Mortgagor from any of the Obligations.

Suits and Proceedings. Mortgagee shall have the power and authority, upon prior notice to Mortgagor, to institute and maintain any suits and proceedings as Mortgagee may deem advisable to (i) prevent any impairment of the Mortgaged Property by any act which may be unlawful or by any violation of this Mortgage, (ii) preserve or protect its interest in the Mortgaged Property, or (iii) restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if, in the sole opinion of Mortgagee, the enforcement of or compliance with such enactment, rule or order might impair the security hereunder or be prejudicial to Mortgagee's interest.

ARTICLE 5
MISCELLANEOUS

Binding Effect; Survival; Number; Gender. This Mortgage shall be binding on and inure to the benefit of the parties hereto, and their respective heirs, legal representatives, successors and assigns. All agreements, representations and warranties contained herein or otherwise heretofore made by Mortgagor to Mortgagee shall survive the execution, delivery and foreclosure hereof. The singular of all terms used herein shall include the plural, the plural shall include the singular, and the use of any gender herein shall include all other genders, where the context so requires or permits.

Severability. The unenforceability or invalidity of any provision of this Mortgage as to any person or circumstance shall not render that provision unenforceable or invalid as to any other person or circumstance.

Notices. Any notice or other communication to any party in connection with this Mortgage shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail addressed to such party at the address specified below. Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received.

To Mortgagor: Great Plains NP Holdings, LLC
 ATTN: Mike Allmendinger, President
 210 Broadway N., Suite 300
 Fargo, ND 58102

with a copy to: Dan Bueide
 Bueide Law Firm
 1 2nd St. N, Suite 100
 Fargo, ND 58102

To Mortgagee: City Auditor
 Fargo City Hall
 225 4th Street North
 Fargo, ND 58102

and to: Director of Strategic Planning
 ATTN: James Gilmour
 Fargo City Hall
 225 4th Street North
 Fargo, ND 58102

with copy to: Erik R. Johnson
 608 24th Avenue S.
 Fargo, ND 58103

Either party may change its address for notices by a notice given not less than ten (10) Business Days prior to the effective date of the change.

Applicable Law. This Mortgage shall be construed and enforceable in accordance with, and be governed by, the laws of the State of North Dakota, without giving effect to conflict of laws or principles thereof. Whenever possible, each provision of this Mortgage and any other statement, instrument or transaction contemplated hereby or relating hereto, shall be interpreted in such manner as to be effective and valid under such applicable law, but, if any provision of this Mortgage or any other statement, instrument or transaction contemplated hereby or relating hereto shall be held to be prohibited or invalid under such applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Mortgage or any other statement, instrument or transaction contemplated hereby or relating hereto.

Waiver of Jury Trial. MORTGAGOR AND MORTGAGEE BY ACCEPTANCE HEREOF EACH IRREVOCABLY WAIVE ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS MORTGAGE OR ANY OF THE OTHER LOAN DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

Effect. This Mortgage is in addition and not in substitution for any other guarantees, covenants, obligations or other rights now or hereafter held by Mortgagee from any other person or entity in connection with the Obligations.

Assignability. Mortgagee shall have the right to assign this Mortgage, in whole or in part, or sell participation interests herein, to any person obtaining an interest in the Obligations.

Headings. Headings of the Sections of this Mortgage are inserted for convenience only and shall not be deemed to constitute a part hereof.

Section 4.9 Fixture Filing. This Mortgage shall be deemed to be a fixture financing statement within the meaning of the UCC and for such purpose, the following information is given with respect to Mortgagor as fee owner of the Land:

Name and address of Debtor:	Great Plains NP Holdings, LLC ATTN: Mike Allmendinger, 210 Broadway N., Suite 300 Fargo, ND 58102
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Type of organization:	limited liability company
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Jurisdiction of organization:	_____
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Organization ID No.:	_____
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Name and address of Secured Party:	City of Fargo, North Dakota City Auditor Fargo City Hall
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225 4th Street North
Fargo, ND 58102

Description of the types (or items)
of property covered by this
Financing Statement:

See Granting Clauses on pages 2-3 above

Description of real estate to
which the collateral is attached or
upon which it is or will be located:

See Exhibit A hereto

Record owner of real estate to
which the collateral is attached or
upon which it is or will be located:

Great Plains NP Holdings, LLC

Some of the above-described collateral is or is to become fixtures upon the above-described real estate and this Financing Statement is to be filed for record in the public real estate records

IN WITNESS WHEREOF, Mortgagor has executed this Mortgage as of the date first written above.

MORTGAGOR:

GREAT PLAINS NP HOLDINGS, LLC

By: _____
Name: _____
Title: _____

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

On this ___ day of _____, 2023, before me, personally appeared, _____ known to me to be the _____ of the limited liability company that is described in and that executed the foregoing instrument, and acknowledged that such limited liability company executed the same.

(Seal)

Notary Public

_____ County
State of _____

My commission expires:
_____, 20__

[Signature page to Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing Statement]

EXHIBIT A

Legal Description of Garage

[Note: Insert Garage condo unit description, if available. Otherwise, use the full Project legal description, in which case the portions of the Project other than the Garage will be released from the Mortgage when the Condominium documents are recorded]

EXHIBIT J

Form of Certificate of Completion

CERTIFICATE OF COMPLETION

A. GREAT PLAINS NP HOLDINGS, LLC (“Developer”), pursuant to the Development Agreement with the CITY OF FARGO, A NORTH DAKOTA MUNICIPAL CORPORATION (the “City”), dated as of October 31, 2022 (the “Agreement”), has agreed to plan, design, finance, acquire, develop, and construct the NP Avenue Project.

B. The Developer has substantially completed construction of the [Garage/Wrap] as required under the Agreement, which project is legally described on Schedule I attached hereto.

C. The issuance of this Certificate of Completion by the City is not intended nor shall it be construed to be a warranty or representation by the City as to the structural soundness of the [Garage/Wrap], including, but not limited to, the quality of materials, workmanship or the fitness of the Garage/Wrap for its proposed use.

NOW THEREFORE, this is to certify that all construction and other physical improvements specified to be done and made by Developer with regard to the [Garage/Wrap] have been substantially completed, and the provisions of the Agreement imposing obligations on the Developer to construct the [Garage/Wrap] as required under the Agreement, are hereby satisfied and terminated, and the Recorder in and for Cass County, North Dakota is hereby authorized to record this instrument, to be a conclusive determination of the satisfactory termination or said provisions of the Agreement.

[Remainder of page intentionally blank.]

Dated: _____, 20__

CITY:

CITY OF FARGO, NORTH DAKOTA

By _____
Its Mayor

By _____
Its City Auditor

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

On this ___ day of _____, 202__, before me, personally appeared,
_____ and _____ known to me to be the
_____ and _____ of the municipal corporation that is
described in and that executed the foregoing instrument, and acknowledged that such municipal
corporation executed the same.

(Seal)

Notary Public

_____ County
State of _____

My commission expires:

_____, 20__

SCHEDULE I

Legal Description

EXHIBIT K

Disbursing Agreement

THIS DISBURSING AGREEMENT (the “Agreement”), is made an entered into as of the _____, 2023, by and among Great Plains NP Holdings, LLC, a North Dakota limited liability company (“Developer”), City of Fargo, a North Dakota municipal corporation (the “City”); and The Title Company, as title and escrow agent (“Title Company”).

WITNESSETH:

A. Developer and the City entered into a Development Agreement dated of substantially even date hereof (the “Development Agreement”). Undefined capitalization terms used herein are used with the same meanings assigned such terms in the Development Agreement. Pursuant to the Development Agreement, Developer will construct the Garage pursuant to the terms of such Development Agreement and the City will reimburse the Developer for the Final Total Project Cost up to the Guaranteed Project Cost.

B. Pursuant to the Development Agreement, the parties agreed to execute this Agreement concurrently with the execution of the Development Agreement to provide a mechanism for the disbursement of funds to Developer in connection with the Garage Work in accordance with the Development Agreement and this Agreement.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements hereinafter set forth, it is agreed by and among the parties hereto as follows:

SECTION 1. DISBURSEMENT OF FUNDS.

1.01 Conditions for Disbursements to Developer. Developer has certified to the City that all of Developer’s representations and warranties under the Development Agreement remain true and correct as if made on the date of such request.

(b) No Event of Default by Developer remains uncured under the Development Agreement and no event or condition exists that with the giving of notice and opportunity to cure would be an Event of Default under the Development Agreement.

(c) No construction lien or other encumbrance shall have been filed and remain in effect against the Garage, or if there has been such a lien, Developer shall have agreed to indemnify Title Company from and against any loss arising therefrom in a form reasonably acceptable to Title Company.

(d) Developer has submitted a duly and properly authorized draw request (in form reasonably acceptable to the City and the Title Company) evidencing through attached invoices, receipts, cancelled checks, or other

evidence, reasonably acceptable to the Title Company and the City that the costs have been incurred and relate to work incorporated into the Garage (a "Draw Request").

(e) Developer has submitted to the Title Company and the City, or the Title Company shall obtain as a precondition of payment, where applicable, a partial and conditional (subject only to payment) waiver of mechanic's lien and/or materialmen's lien, executed by all contractors to be paid out of the Draw Request in the amount of the lienable costs payable from the Draw Request, in the form reasonably required by the Title Company.

(f) The City and Title Company have approved Developer's Draw Request.

(g) The Title Company has unconditionally agreed to issue an appropriate date down endorsement to the City's title policy relating to the Garage providing acceptable coverage over mechanic's lien and/or materialmen's lien, which must be acceptable to the City.

(h) Developer has delivered to the Title Company all other items reasonably requested in connection with the Draw Request.

(i) All terms and conditions of this Agreement have been satisfied with respect to each disbursement.

1.02 Draw Procedure. Developer shall not be permitted to submit more than one (1) Draw Request per month. Upon satisfaction of the conditions set forth in Section 1.01 above, the Title Company shall notify the City that all requirements for the payment of the Draw Request have been met. The City shall, subject to Section 1.04 below, within five (5) Business Days thereafter deposit the amount of such approved Draw Request less a 5% retainage with the Title Company and the Title Company shall pay such approved amounts to each contractor and other person identified in the relevant Draw Request, less the 5% retainage. Garage hard construction costs shall include a Construction Manager's fee of 3% of certain construction costs paid to the Construction Manager, Kilbourne Construction Management, LLC, all as more-fully described in the Development Agreement. Soft costs incurred by Developer in connection with the Garage Work may be included in any Draw Request, provided all the conditions of Section 1.01 and this Section 1.02 are met, and there shall be no 5% retainage on the incurred soft costs.

1.03 Developer's Fee. Developer shall not be entitled to the 5% retainage on the Garage Work except pursuant to this Section 1.03. Upon the issuance of a Certificate of Completion, satisfaction of the conditions set forth in Section 1.01 above, and agreement by the parties on the Final Total Project Cost, the Title Company shall notify the City that all requirements for the payment under this Section 1.03 have been met. The City shall, subject to Section 1.04 below, within five (5) Business Days thereafter deposit the amount of the 5% retainage and the Title Company shall pay such amounts to Developer. The Developer Fee under the Development Agreement will be paid at the agreed-upon rate (3%) applied to and paid with each Draw Request (and will not be subject to the 5% retainage).

1.05 Maximum City Payment. The City shall not be required to pay any amounts to Developer in excess of the lesser of the Final Total Project Cost and the Guaranteed Project Cost.

SECTION 2. RECORDS. The Title Company shall keep records showing the names of all Applicants to whom disbursements are made by the Title Company, the date, the amount and purpose of such disbursement, which records may be inspected by Developer and the City.

SECTION 3. INSUFFICIENT DOCUMENTATION. If the Title Company shall determine in its reasonable judgment that proper documentation to support a given disbursement as required by this Agreement has not been furnished, the Title Company shall withhold payment of all or such portion of such disbursement as shall not be so supported by proper documentation, and shall promptly notify Developer and the City of the discrepancy in or omission of such documentation. Until such time as such discrepancy or omission is corrected to the satisfaction of the Title Company and the City, it shall withhold such amount, unless otherwise directed in writing by the City.

SECTION 4. NOTICE. Any notice required or permitted to be given by any party hereto to any other party hereto under the terms of this Agreement shall be deemed to have been given as and when provided for in the Development Agreement, addressed to the party to which the notice is to be given at the address set forth in the Development Agreement, or to any other address in the United States of America specified in a notice given by such party to the others not less than three (3) business days prior to the effective date of the address change.

SECTION 5. COMPENSATION. The Title Company costs and fees in connection with making disbursements in accordance with the terms of this Agreement shall be split equally between Developer and the City. Developer's share of such costs shall not be included in the Total Project Cost.

SECTION 6. MISCELLANEOUS. This Agreement shall be binding upon the parties hereto and their respective successors and assigns; provided, however, that the Title Company may not delegate its duties hereunder. This Agreement is made solely by the signatory parties hereto, and no other persons (except the successors and assigns of the signatory parties) shall have any right to rely on or enforce or have the benefit of any provision of this Agreement. This Agreement shall be governed by the laws of the State of North Dakota. This Agreement can be amended or modified only by a writing signed by the parties hereto.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed as of the day and year first above written.

CITY OF FARGO, a North Dakota
municipal corporation

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

ATTEST:

By: _____
Steve Sprague, City Auditor

GREAT PLAINS NP HOLDINGS, LLC

By: _____
Name: _____
Its: _____

THE TITLE COMPANY

By: _____
Name: _____
Title: _____

[Signature page to Disbursing Agreement]

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MEMORANDUM

TO: City Commission
FROM: Nicole Crutchfield, Planning Director *NC*
DATE: November 8, 2022
RE: Renaissance Zone Application for EPIC Unite Real Estate Holdings, LLC (334-F) located at 234 Main Avenue North

The City received a Renaissance Zone (RZ) application from EPIC Unite Real Estate Holdings, LLC to construct a new mixed-use building at 234 Main Avenue. Pursuant to the application, the intent of the project is to construct a new 7-story, 136,901 square foot building with underground, first and second level parking, commercial space on first and third levels, and residential (apartments and for-sale condos) on floors four through seven. Construction is anticipated to begin in 2023 with completion in 2024. Attached is a copy of the staff report and corresponding materials.

As indicated in the attached documentation, the project met all state and local requirements for approval and is consistent with a number of goals and objectives as established in the Fargo Renaissance Zone Development Plan. The application indicates an investment of approximately \$25,500,000, which exceeds the minimum investment threshold as set forth in the plan.

The Renaissance Zone Authority unanimously recommended approval of this project on October 26, 2022.

Recommended Action: Approve the Renaissance Zone new construction application for EPIC Unite Real Estate Holdings, LLC and grant state income tax and property tax exemptions as recommended by the Renaissance Zone Authority.



**Renaissance Zone Staff Report for
EPIC Unite Real Estate Holdings, LLC (334-F)
234 Main Avenue**

Project Evaluation:

The City of Fargo received a Renaissance Zone application from EPIC Unite Real Estate Holdings, LLC to construct a mixed-use project at 234 Main Avenue. Pursuant to the application, the intent of the project is to construct a 7-story building with underground, first and second level parking, commercial space on first and third levels, and residential (apartments and for-sale condos) on floors four through seven. Construction is anticipated to begin in 2023 with completion in 2024.

The Planning Department has reviewed the application and has provided a project ranking based on the analysis below:

1. **Renaissance Zone Plan Goals:** Use consistent with the RZ Plan (as per Visions and Goals): As noted in the 2019 Renaissance Zone Development Plan.
 - a. *Grow as a Neighborhood:* Invest in housing to increase the population living Downtown and maintain Downtown's diversity.
The project will add approximately 28 1-2 bedroom market rate apartments and 16 for-sale condos.
 - b. *Prosper as a Business Center:* Increase the number and types of jobs Downtown.
The mixed use building will have approximately 17,081 square feet of commercial space, providing opportunities for businesses to be in the downtown area, as well as offering a work-live environment.
 - c. *Thrive as a Destination:* Create a unique Downtown experience with an activated riverfront and vibrant sidewalks and public spaces that serve as the backdrop of the community's social life.
Project could serve as a destination and also contributes to Downtown as an overall destination. The location of the project is nearby the river, which will activate further east on Main Avenue than any other projects to date. Project provides sidewalks and ground level interaction, and provides pedestrian and non-motorized transportation to connect to the river greenway.
 - d. *Be a model for Inclusive Growth and Development:* Protect Downtown's diversity and evolve as a model for equitable growth and development.
Project provides different market rate housing options. Project does not address diversity, public amenities or needs for specific populations.
 - e. *Complete our Streets:* Make complete streets common place and encourage trips by foot, bicycle, and bus, as well as car.
Project proposes pedestrian circulation, as well as connections to the metro-area trail system. Routes 14 and 16 run along 2nd Street, with stops within a tenth-mile of the subject property. The site is also several blocks from the MATBUS GTC (Ground Transportation Center).
 - f. *Park Smart:* Manage parking resources to meet the needs of drivers, while also making room for new development and activity.
The project proposes 115 parking spaces, including underground parking (34 spaces), enclosed parking (18 on floor 1 and 33 on floor 2) and exterior parking on the south side of the development (30 space).
 - g. *Play with purpose:* Develop a system of connected all-season green spaces designed for people (of a range of ages and interests) and purpose (as infrastructure that absorbs stormwater).
Project provides space to hold and treat stormwater. Project provides public amenity greenspace on the south side of the building, which may be programmed for events and provide public art. These amenities contribute to the open space network.

(18/20 points)

2. **Investment Thresholds:** Does the investment comply with minimum investment thresholds (locally determined) for residential and commercial projects as set forth in this RZ Plan?

According to the application, the structure accommodates (number) square feet, as follows:

- *Proposed Building Total:* approximately 136,901 square feet
- *Residential:* approximately 60,496 square feet
- *Commercial:* approximately 17,081 square feet
- *Parking:* approximately 38,341 square feet

*Remaining square footage is ancillary space of hallways.

The application estimates a total capital investment of \$25,500,000, which calculates to approximately \$186 per square foot.

(10/10 points)

3. **High Priority Land Use:** The new construction or proposed improvements are representative of “High Priority Land Uses” as defined by this RZ Plan.

- a. **Primary Sector Business, Industry, and Talent-Dependent Enterprises:**
Staff is not aware that the applicant is specifically targeting primary sector business, but project provides space for such uses.
- b. **Active Commercial, Specialty Retail or Destination Commercial:**
Staff is not aware that the applicant is specifically targeting active commercial, specialty retail, or destination commercial, but the project provides space for such uses.
- c. **Mixed Use Development:**
Yes

(18/20 points)

4. **Targeted Areas:** Is the investment located in a “Targeted Area” as defined by this RZ Plan? Consideration shall be given to whether this property has been vacant or underutilized for a period of time and/or whether the property is specifically targeted for clearance.

- a. **Parcels that have been vacant or underutilized for an extended period of time:**
The Park East Apartments were demolished in 2015-2016, and the property has remained vacant since.
- b. **Parcels specifically targeted for clearance:**
The RZ Plan identifies Block 29 for redevelopment with mixed-use and ground level interaction on Main Avenue and the intersection of 2nd Street and Main Avenue. The 2007 Downtown Framework Plan highlights the importance of this block in terms of improving synergy and extending the success of downtown onto Main Avenue, and also states the block should be developed as a ‘gateway’ between the Fargo and Moorhead areas with a focus on mixed-use, walkability, economic vitality and connectivity (greenway, streetscape, etc.).

(10/10 points)

5. **Urban Design:** Is the project representative of strong urban design principles?
The project includes strong urban design principles, including density, form, and proximity to amenities. The building is placed close to Main Avenue and the design contemplates the interface of the structure to the right-

of-way, as the ground floor facade provides architectural interest through varying materials and a high amount of glazing that provides transparency and vibrancy. The site is located near the Red River where residents and employees can connect to metro area trails and other destinations. The project is located within the DMU, Downtown-Mixed Use, zoning district and will have to meet the architectural intent of that zoning district as well.

Note that in the packet there are different renderings; the current rendering shows the updated building, however, the previous version more accurately reflects the interface between the building and Main Avenue. The applicant can speak more to this at the meeting.

(10/10 points)

6. **Investment Analysis:** Consideration and analysis as to the total actual investment in the project.

As proposed, the redevelopment project and improvement costs exceeds the \$100 per square foot requirement. As previously noted, the application represents a total estimated investment of \$25,500,000.

(10/10 points)

7. **Business Relocation:** Consideration as to whether the project will include or accommodate the relocation of a business from another North Dakota community?

The project does not intend currently for the movement or relocation of a business from another North Dakota community.

(10/10)

8. **Street Activation:** Will the project fit contextually and will the project contribute or enhance the area from an architectural perspective?

Main Avenue was recently reconstructed to be more pedestrian friendly as well as slowing vehicular traffic. This project will enhance the area from an architectural perspective. The project is architecturally designed and provides interest with varying articulation, glazing, textures, and other horizontal elements, including facade variation. When traveling west on Main Avenue, citizens will see facades with varying degrees of recesses and projections as well as architectural materials. The applicant has also stated that the project will provide a range of activities that will also connect to the green space to the east. Renaissance Zone projects are anticipated to be conscience of four-sided design, which is provided by this project. Project is harmonious with new projects to the west and southwest.

(10/10 points)

Summary:

This application received a score of 91 on a 100-point scale. The applicant met all required criteria and the use is consistent with the RZ Plan. The proposed new construction project surpasses the local capital improvement requirement of \$100 per square foot for new construction.

This project is consistent with the RZ Plan to provide a mixed-use development within a target area that acts as an activity generator by providing for residential units and street-level retail activity.

The amount invested in the project exceeds state and local guidelines. The project does not involve the relocation of commercial businesses from another North Dakota city. The applicant will not be seeking any historic preservation tax credits.

This project will make use of a lot that is currently underutilized. Staff believes that this project will be a benefit to the downtown community and will positively contribute to the health of surrounding businesses.

Minimum Criteria (New Construction Proposals)			
Criteria:		Staff Rating	Possible Points
1	Consistency with Plan Goals	18	20
2	Investment Thresholds	10	10
3	High Priority Land Use	18	20
4	Consistency with Targeted Areas	10	10
5	Urban Design	10	10
6	Investment Analysis	10	10
7	Business Relocation	10	10
8	Street Activation	10	10
Total Rating (100 possible points)		96	100

Suggested motion:

Recommend approval to the Fargo City Commission to approve the application submitted by EPIC Unite Real Estate Holdings, LLC and to grant the property tax exemption and the State income tax exemptions as allowed by the Renaissance Zone law contingent upon completion of the project and verification of costs.



234 Main Ave





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

APPLICATION FOR RENAISSANCE ZONE PROJECT

Property owners, business owners, developers or investors interested in pursuing a Renaissance Zone project should review the 2019 RZ Plan. The RZ Plan delineates the current geographical boundaries of the program (only certain blocks within the downtown core are included) and provides additional detail on minimum investment requirements and applicable program goals and objectives that must be met.

Application submitted for (check all that apply):

- | | |
|---|---|
| <input checked="" type="checkbox"/> New Construction | <input type="checkbox"/> Commercial Lease |
| <input type="checkbox"/> Purchase with Major Improvements | <input type="checkbox"/> Rehabilitation: <input type="checkbox"/> Commercial <input type="checkbox"/> Residential |
| <input type="checkbox"/> Primary Residential Purchase | <input type="checkbox"/> Block Addition |

Property Owner Information	
Name (printed): EPIC Unite Real Estate Holdings, LLC	
Name (printed): Amy Hass	
Address: 745 31st. Ave. E. Ste. 105 West	
West Fargo, ND 58078	

Contact Person Information (if different than owner)	
Name (printed): Brian Reinarts	
Address: 745 31st. Ave. E. Ste. 105 West	
West Fargo, ND 58078	

Parcel Information	
Address: 234 Main Ave., Fargo, ND 58103	
Unit Number: n/a	
Renaissance Zone Block Number: 29	
Legal Description (attach separate sheet if more space is needed): Block 1, Lot 1, MHB Guardian Addition	
Block 1, Lot 1, MHB Guardian Addition	
Parcel Number: 01-8821-0010-000	

Is this property listed on or a contributing structure to the National Register of Historic Places? Yes No
 Do you intend to apply for a Historic Preservation Tax Credit in conjunction with this project? Yes No

Project Information	
Total Project Cost: (Qualified Capital Improvements) \$25,500,000	
Current Use of Property: Vacant Lot	
Anticipated Use Upon Completion: Commercial and Residential	
Expected Date of Purchase: 11/1/2022	Expected Date of Occupancy: Fall 2024
Estimated Property Tax Benefit: (Over five year exemption period) ^{11/1/2022} \$1732,725	Estimated State Income Tax Benefit: (Over five year exemption period) \$1,732,725 0
Current Employees: (Full-time equivalent)	Anticipated Employees: (Full-time equivalent)

per email from Brian Reinarts on 10/17/22

Scope of Work

Build a 7-story mixed-use building on a currently vacant lot. This will be a 136,901 sf mixed-use building with underground parking along with 1st and 2nd floor parking. 17,081 sf of Commercial space on the 1st and 3rd floors. 4th through 7th floor will consist of apartments for lease and condos for purchase. There will be additional surface parking on the south side of the building as well as pedestrian connections to Main Ave. and the Fargo Parks river trails. An exterior amenity for the residents and public will be a plaza/park.

Additional Project Information

New Construction/Rehabilitation/Purchase with Improvements Only

Current Building Value: (Taxable Improvement Value) \$380,000	Estimated Building Value Upon Completion: (Taxable Improvement Value) \$25,500,000
Building Area Upon Completion (SF): 136,901	Number of Stories Upon Completion: 7

Commercial Lease Only

Lease Area Upon Completion (SF): 17,081			
Type of Business: Office and Retail			
<input checked="" type="checkbox"/> New business moving to the Renaissance Zone	<input type="checkbox"/> Expanding Business moving to the Renaissance Zone	<input type="checkbox"/> Existing Business Expanding within the Renaissance Zone	<input type="checkbox"/> Continuation of a lease moving from one Renaissance Zone Project to another Renaissance Zone Project

Residential Purchase Only

Will this be your primary place of Residency?: No

Acknowledgement – We hereby acknowledge that we have familiarized ourselves with the rules and regulations to the preparation of this submittal and that the forgoing information is true and complete to the best of our knowledge.

Owner (Signature): <u>Amy Hass</u>	Date: <u>10.5.2022</u>
Joint Owner (Signature): _____	Date: _____
Representative (Signature): <u>[Signature]</u>	Date: <u>10.5.2022</u>

THE FOLLOWING CHECKLIST MUST BE COMPLETED AND SUBMITTED WITH THE APPLICATION FORM:

		Submitted	N/A
Renaissance Zone Project	Current photos of property, relevant to project scope and proposed renderings of the proposed project	<input checked="" type="checkbox"/>	
	Certificate of Good Standing from the Office of the State Tax Commissioner	<input checked="" type="checkbox"/>	
	Business Incentive Agreement from the Department of Commerce for all non-residential projects	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	For residential purchases provide proof of ownership and closing date	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	Goals and objectives as outlined in the 2015 Fargo Renaissance Zone Development Plan (Attachment A)	<input checked="" type="checkbox"/>	<input type="checkbox"/>

APPLICATION DEADLINES:

The Renaissance Zone Authority regularly meets on the Fourth Wednesday of each month at 8:00 am in the in the City Commission Chambers at 225 4th Street North, Fargo, ND 58102. For consideration during a monthly meeting:

- Renaissance Zone applications are due by 4:30 pm on the last weekday of each month.

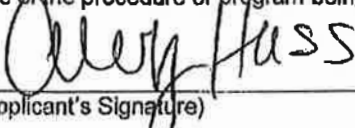
REQUIREMENTS, POLICIES, AND GUIDELINES:

The Renaissance Zone is administered according to the following written documents, each of which are available on the City of Fargo's website.

- Renaissance Zone Designation
 - o City of Fargo Renaissance Zone Development Plan
 - o North Dakota Renaissance Zone Program Guidelines

CERTIFICATION:

Applicant certifies that, to the best of his/her knowledge and belief, the information contained in the application and attached hereto is true and correct. Applicant also certifies that he/she understands all written requirements, policies, and guidelines of the Fargo Renaissance Zone Authority, the City of Fargo, and/or the State of North Dakota governing the use of the procedure or program being applied for:


Amy Hass
10.5.2022

 (Applicant's Signature) (Printed Name) (Date)

If the property owner(s) and applicant are different, the property owner certifies that he/she has full knowledge of this application and consents to its submission:

_____ (Applicant's Signature) (Printed Name) (Date)

_____ (Applicant's Signature) (Printed Name) (Date)

Goals of the Fargo Renaissance Zone Plan

Is the proposed use of the project consistent with the RZ Plan? As noted in the Renaissance Zone Development Plan the desired land use will contribute to a number of goals:

1. *Grow as a Neighborhood.* How will this project invest in housing to increase the population living Downtown and maintain Downtown's diversity?

The Unite building will provide a variety of housing options from rental to ownership. There will be 28 1-2 bedroom units for rent and 16 condos for ownership. The condo units will bring a more permanent resident to the downtown that will have a long term investment in the downtown area as well as contribute to the downtown economy.

2. *Prosper as a Business Center.* How will this project increase the number and type of jobs Downtown (or accessible from Downtown)?

The Unite building will be a mixed-use building with about 17,081 sf of commercial space that will provide opportunities for businesses to be in the downtown area which will increase the employment of the downtown. The range of jobs could vary pending on the business type but we could see anything from retail to office tenants.

3. *Thrive as a Destination.* How will this project create a unique Downtown experience with an activated riverfront and vibrant sidewalks and public spaces that serve as the backdrop to the community's social life?

This project will create the opportunity for a strong pedestrian connection to the Fargo Parks river trails and to the City's oldest park; Island Park. These connections will promote an active lifestyle by the residents engaging with Fargo's park system. With this project located on Main Ave. it will enhance the pedestrian experience as well as improving the connection not only to Fargo's downtown but also to Moorhead's downtown. There are also plans to create a small park/plaza south of the Unite building that will not only be for the residents but also the public.

4. *Be a Model for Inclusive Growth and Development.* How will this project protect Downtown's diversity and evolve as a model for equitable growth and development?

With commercial as a part of this development it will bring a mix of users to these businesses creating diverse opportunities for all users and businesses. The model of mixing rental units and privately owned condos will diversify the residents of the project which will enhance that live, work and play experience of the downtown.

5. *Complete our Streets.* How will this project make complete streets common place and encourage trips by foot, bicycle, and bus, as well as car?

Being creative with parking in the downtown area can be a challenge but we feel we have created a unique way of doing this by providing underground parking but also using a portion of the 1st floor and 2nd floor to additional parking for our users, tenants and residents. We will also have surface parking on the south side of the building which will be visually hidden from the public creating a more pleasing visual for the pedestrian traveling the sidewalks. We will encourage the users to use foot and wheeled transportation by making strong connections to our city trail systems including the river greenway trails. There will also be internal walk-ability as phases of the development are completed.

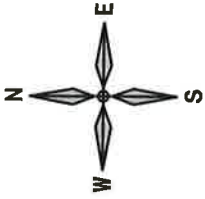
6. *Park Smart.* How will this project manage parking resources to meet the needs of drivers, while also making room for new development and activity?

Being creative with parking in the downtown area can be a challenge but we feel we have created a unique way of doing this by providing underground parking but also using a portion of the 1st floor and 2nd floor to additional parking for our users, tenants and residents. We will also have surface parking on the south side of the building which will provide additional parking for the users of the retail and office tenants.

7. *Play with Purpose*. Will this project develop a system of connected all-season green spaces designed for people (of a range of ages and interests) and purpose (as infrastructure that absorbs stormwater)?

We will be exploring the opportunity of providing a public park/plaza south of the proposed building. The public space will provide an opportunity to engage the local art community and also to be programmed for a variety of events that range from movie night to yoga on the lawn. Another unique opportunity this public space will provide is the opportunity to control and treat the sites stormwater. This is very unique for the urban environment as it is typical for stormwater to be placed right into the city's system.

MBN
 MECHANICAL • ELECTRICAL • CIVIL
 ENGINEERS
 503 7TH ST. W
 SUITE 200
 FARCO, ND 58048
 PHONE: 701.478.6338
 FAX: 701.478.6340



SCALE: 1 INCH = 70 FEET
 0 35 70 140

EPIC COMPANIES
 GATEWAY DEVELOPMENT

FARCO, ND

NOT FOR CONSTRUCTION

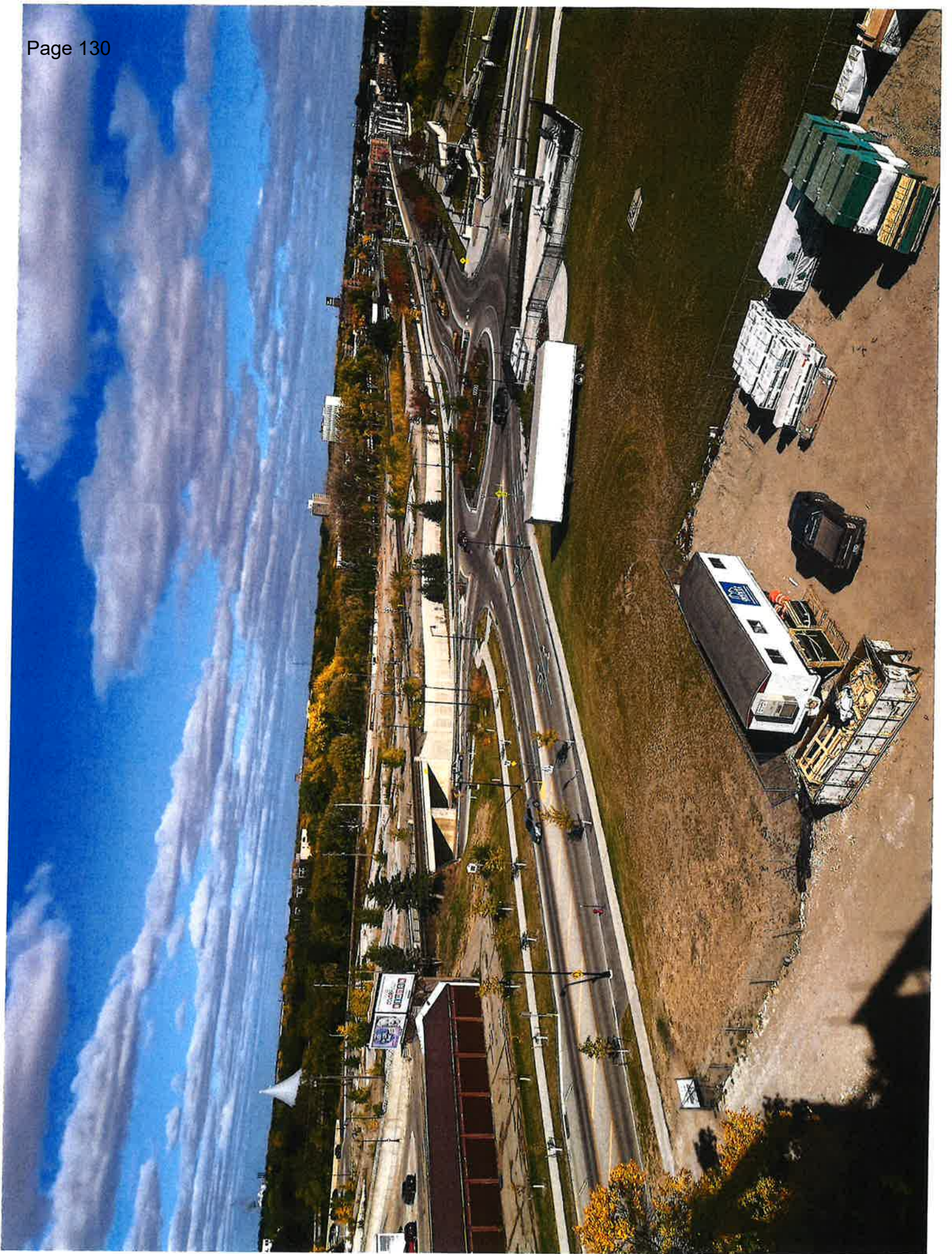
MBN JOB #: 22-006 DATE: 10-24-22

SITE

GATEWAY SITE SCHEMATIC

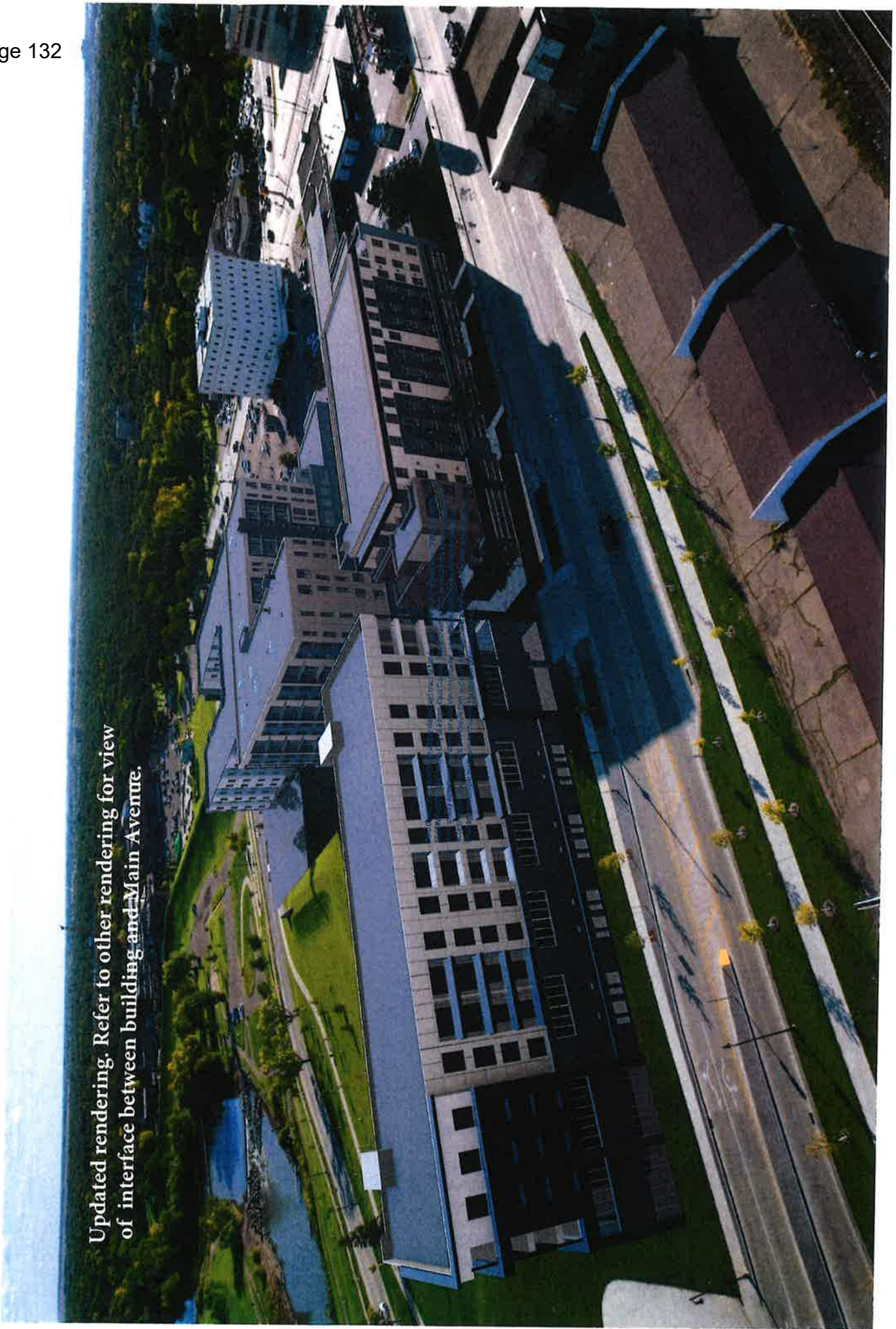








Updated rendering. Refer to other rendering for view of interface between building and Main Avenue.



Refer to updated building rendering. This rendering is outdated but included to show the interface between Main Avenue and the building.





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City of Fargo Staff Report			
Title:	Fitzsimonds Second Addition	Date:	7/27/2022 11/9/2022
Location:	3716, 3740, and 3750 51 st Avenue South	Staff Contact:	Maegin Elshaug, planning coordinator
Legal Description:	Lots 5-7, Block 1, Fitzsimonds Addition		
Owner(s)/Applicant:	Fitzsimonds Commons LLC / Christianson Companies	Engineer:	Bolton & Menk
Entitlements Requested:	Zoning Change to repeal and re-establish a C-O, Conditional Overlay in the GC, General Commercial zoning district, and Minor Subdivision (Replat of Lots 5-7, Block 1, Fitzsimonds Addition)		
Status:	City Commission Public Hearing: November 14, 2022		

Existing
Land Use: vacant
Zoning: GC, General Commercial with C-O, Conditional Overlay (Ordinance 5206)
Uses Allowed: Allows colleges, community service, daycare centers of unlimited size, detention facilities , health care facilities, parks and open space, religious institutions, safety services, adult entertainment centers , offices, off-premise advertising , commercial parking, outdoor recreation and entertainment, retail sales and service, self-storage, vehicle repair , limited vehicle service, aviation , surface transportation , basic utilities, major entertainment events and telecommunication structures. Conditional Overlay (Ordinance 5206) also restricts portable signs, industrial services, manufacturing and production, and warehouse and freight movement, in addition to the uses with a strike above.
Maximum Lot Coverage Allowed: GC allows 85% maximum building coverage

Proposed
Land Use: commercial
Zoning: GC, General Commercial with C-O, Conditional Overlay
Uses Allowed: Allows colleges, community service, daycare centers of unlimited size, detention facilities , health care facilities, parks and open space, religious institutions, safety services, adult entertainment centers , offices, off-premise advertising , commercial parking, outdoor recreation and entertainment, retail sales and service, self-storage, vehicle repair , limited vehicle service, aviation , surface transportation , basic utilities, major entertainment events, and telecommunication structures. Conditional Overlay (Ordinance 5206) also restricts portable signs, industrial services, manufacturing and production, and warehouse and freight movement, in addition to the uses with a strike above. Proposed zoning change to the conditional overlay would allow vehicle repair as a use.
Maximum Lot Coverage Allowed: no change

Proposal:
The applicant requests two entitlements: <ol style="list-style-type: none"> Zoning Change to repeal and re-establish a C-O, Conditional Overlay in the GC, General Commercial zoning district. Minor Subdivision, which would replat Lots 5-7, Block 1, Fitzsimonds Addition into two lots. <p>Note 11/9/2022: A Conditional Use Permit (CUP) was part of this application, which allowed for an alternative access plan for a parking reduction, which was approved by the Planning Commission, with the condition to provide 1 parking space per 10,000 gross square feet for a self-service storage use. The CUP will be recorded upon recordation of the plat.</p>

Zoning Change

The applicant is requesting to modify the conditional overlay to allow the use of vehicle repair in order to construct a tire store on Lot 2 the proposed lots of Fitzsimonds Second Addition. The Land Development Code identifies tire stores as a vehicle repair use and the Conditional Overlay (Ordinance 5206) identifies this use as prohibited. No other changes to the conditional overlay are proposed.

Minor Subdivision

The applicant is requesting to replat three legal lots into two to accommodate future development. The plat includes a stormwater retention and drainage easement to account for stormwater within the development (which includes all of the properties within the original Fitzsimonds Addition plat). The amenities plan will be amended to account for this change. Access will be from 51st Avenue South and through internal access easements within the development. The plat encompasses approximately 4.1 acres.

This project was reviewed by the City's Planning and Development, Engineering, Public Works, and Fire Departments ("staff"), whose comments are included in this report.

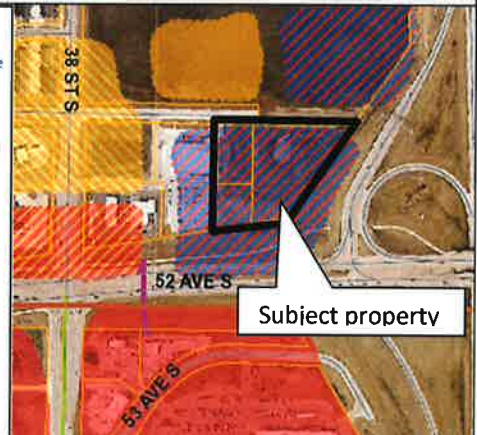
Surrounding Land Uses and Zoning Districts:

- North: GC, General Commercial with undeveloped and unplatted land;
- East: Interstate 29;
- South: Across 52nd Avenue South is LC, Limited Commercial with C-O, Conditional Overlay, with commercial development;
- West: GC, General Commercial with C-O, Conditional Overlay, with commercial development.

Area Plans:

The subject properties are located within the *2003 Southwest Future Land Use Plan*. Within this growth plan, the subject properties are identified as being suitable for Office or Commercial use.

	Commercial
	Commercial or Medium/High Density
	Commercial or Medium/High or Park/Open Space
	Commercial or Park/Open Space
	Either Industrial or Commercial
	Either Office or Commercial
	Either Office or Medium/High Density Residential
	Industrial
	Low/Medium Density Residential
	Low/Medium Density or Medium/High Density
	Medium/High Density Residential
	Medium/High Density or Park/Open Space
	Office
	Office or Commercial or Medium/High Density
	Park/Open Space
	Public
	Public or Commercial
	Public or Low/Medium Density
	Public or Office
	Storm Water



Context:

Neighborhood: Woodhaven

Schools: The subject property is located within the Fargo School District and is served by Kennedy Elementary, Discovery Junior High and Davies High schools.

Parks: Cottagewood Park (4896 38th Street South) is located within a quarter-mile of the subject property, and provides amenities of shelters, a playground and recreational trails.

Pedestrian / Bicycle: Off-road bike facilities are located along 52nd Ave S, 38th St S, 42nd St S, 53rd Ave S, and through Cottagewood Park, which are components of the metro area bikeway system.

Transit: MATBUS route 18 travels south on 42nd Street South, turns east on 52nd Avenue South, turns south on 38th Street South and into the development and loops back the same route. There is a shelter located at Walmart.

Staff Analysis:**Zoning**

Section 20-906. F (1-4) of the LDC stipulates the following criteria be met before a zone change can be approved:

1. Is the requested zoning change justified by a change in conditions since the previous zoning classification was established or by an error in the zoning map?

Staff is unaware of any error in the zoning map as it relates to this property. The applicant is requesting to modify the conditional overlay to allow the use of vehicle repair. The prohibition of vehicle repair was included in the original conditional overlay for the development, Ordinance 4636, which was established in 2007 (the current conditional overlay is Ordinance 5206, which is proposed to be amended with this application). At the time the original conditional overlay was drafted, this area was intended for a big box store. That type of development is no longer going forward in this location and is intended for smaller scale development. **(Criteria Satisfied)**

2. Are the City and other agencies able to provide the necessary public services, facilities, and programs to serve the development allowed by the new zoning classifications at the time the property is developed?

City staff and other applicable review agencies have reviewed this proposal. Staff finds no deficiencies in the ability to provide all of the necessary services to the site. The subject property is adjacent to existing developed public rights-of-way and access and utility easements, which provide access and public utilities to serve the property. **(Criteria Satisfied)**

3. Will the approval of the zoning change adversely affect the condition or value of the property in the vicinity?

Staff has no documentation or evidence to suggest that the approval of this zoning change would adversely affect the condition or value of the property in the vicinity. Written notice of the proposal was sent to all property owners within 300 feet of the subject property. To date, Planning staff has received one inquiry with no noted concern. Staff finds that the approval of the zoning change will not adversely affect the condition or value of the property in the vicinity. **(Criteria Satisfied)**

4. Is the proposed amendment consistent with the purpose of this LDC, the Growth Plan, and other adopted policies of the City?

The purpose of the LDC is to implement Fargo's Comprehensive Plan in a way that will protect the general health, safety, and welfare of the citizens. Staff finds that the proposed amended Conditional Overlay is consistent with the purpose of the LDC, the Go2030 Comprehensive Plan, 2003 Southwest Future Land Use Plan, and other adopted policies of the City. **(Criteria Satisfied)**

Minor Subdivision

The LDC stipulates that the following criteria is met before a minor plat can be approved:

1. Section 20-0907.B.3 of the LDC stipulates that the Planning Commission recommend approval or denial of the application, based on whether it complies with the adopted Area Plan, the standards of Article 20-06 and all other applicable requirements of the Land Development Code. Section 20-0907.B.4 of the LDC further stipulates that a Minor Subdivision Plat shall not be approved unless it is located in a zoning district that allows the proposed development and complies with the adopted Area Plan, the standards of Article 20-06 and all other applicable requirements of the Land Development Code.

The current zoning is GC, General Commercial and the base zoning district is not changing with this application. Staff has been coordinating with representatives of the land owners to the north to ensure vehicular connectivity is addressed appropriately at the time that land develops. Additionally, the amenities plan will be amended to address stormwater retention and drainage easement within the development. In accordance with Section 20-0901.F of the LDC, notices of the proposed plat have been sent out to property owners within 300 feet of the subject property. To date, Planning staff has received one inquiry with no noted concern. The project has been reviewed by the city's Planning, Engineering, Public Works,

Inspections, and Fire Departments. **(Criteria Satisfied)**

2. Section 20-907.C.4.f of the LDC stipulates that in taking action on a Final Plat, the Board of City Commissioners shall specify the terms for securing installation of public improvements to serve the subdivision.

While this section of the LDC specifically addresses only major subdivision plats, staff believes it is important to note that any improvements associated with the project (both existing and proposed) are subject to special assessments. Special assessments associated with the costs of the public infrastructure improvements are proposed to be spread by the front footage basis and storm sewer by the square footage basis as is typical with the City of Fargo assessment principles. **(Criteria Satisfied)**

Update 11/9/2022: Since the Planning Commission, staff has received and responded to one inquiry.

Note on contingent approval: The suggested motion below states that approval is contingent on final technical review of the plat, including the City Engineer's signature. This contingency is proposed as clarification on easement dedications need additional time to resolve. The contingent motion below allows the City Commission to approve the plat at this time. Once the final technical review is complete and the City Engineer has signed the plat, then the City can then proceed with recording the plat, if approval is received as referenced below. Please note that all future permits, such as building permits, are on hold until the plat can be recorded.

Staff Recommendation:

Suggested Motion: "To accept the findings and recommendations of the Planning Commission and staff and hereby waive the requirement to receive the rezoning Ordinance one week prior to the first reading and place the rezoning Ordinance on for the first reading, and move to approve the proposed: 1) Zoning Change to repeal and re-establish a C-O, Conditional Overlay in the GC, General Commercial zoning district and 2) Subdivision Plat, **Fitzsimonds Second Addition**, contingent on final technical review of the plat, including the City Engineer's signature, as outlined within the staff report, as the proposal complies with the Go2030 Fargo Comprehensive Plan, adopted Area Plan, the standards of Section 20-0906.F (1-4), Section 20-0907.B-C, and of Article 20-06, and all other applicable requirements of the Land Development Code".

Planning Commission Recommendation: August 2, 2022

At the August 2, 2022 Planning Commission hearing, by a vote of 6-0 with three commissioners absent and two Commission seats vacant, the Planning Commission moved to accept the findings and recommendations of staff and moved to approve the Conditional Use Permit to allow an Alternative Access Plan for a parking reduction in the GC, General Commercial zoning district on the propped Lot 1, Block 1, Fitzsimonds Second Addition, as the proposal complied with Section 20-0909.D (1-6) and all other applicable requirements of the LDC, with the conditional to provide 1 parking space per 10,000 gross square feet for a self service storage facility;

At the same meeting, by a vote of 6-0 with three commissioners absent and two Commission seats vacant, the Planning Commission moved to accept the findings and recommendations of staff and recommended approval to the City Commission of the proposed 1) Zoning Change to repeal and re-establish a C-O, Conditional Overlay in the GC, General Commercial zoning district and 2) Subdivision Plat, **Fitzsimonds Second Addition**, as outlined within the staff report, as the proposal complies with the Go2030 Fargo Comprehensive Plan, adopted Area Plan, the standards of Section 20-0906.F (1-4), Section 20-0907.B-C, and of Article 20-06, and all other applicable requirements of the Land Development Code.

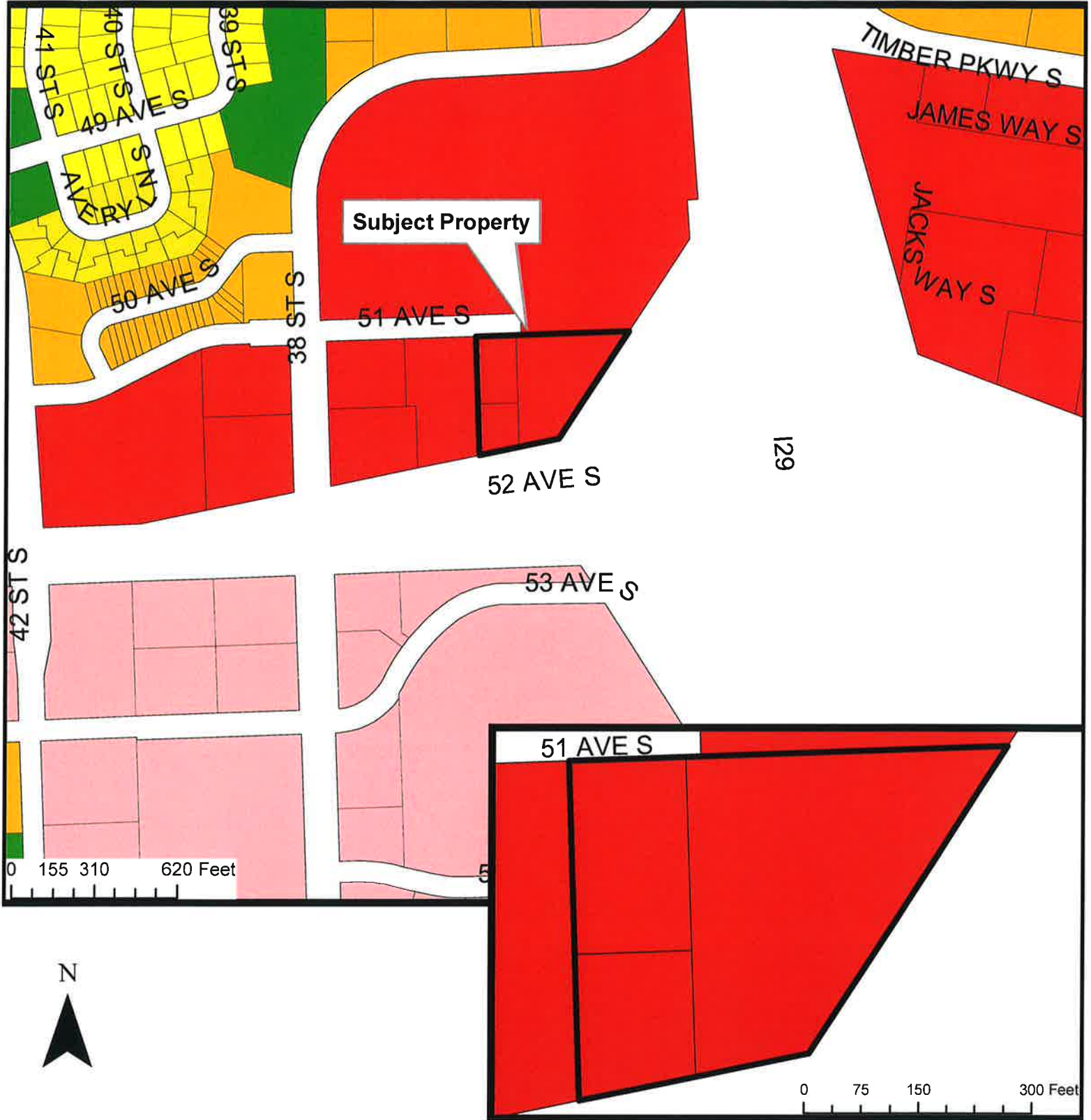
Attachments:

1. Zoning Map
2. Location Map
3. Preliminary Plat

Page 139
Plat (minor), Zone Change (repeal and re-establish a C-O), CUP

Fitzsimonds Second Additon

3716-3750 51 Ave S



Plot (minor), Zone Change (repeal and re-establish a C-O), CUP

Fitzsimonds Second Additon

3716-3750 51 Ave S



OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

3102

ORDINANCE NO. _____

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

1
2 WHEREAS, the Fargo Planning Commission and the Board of City Commissioners of the
3 City of Fargo have held hearings pursuant to published notice to consider the rezoning of certain
4 parcels of land lying in Fitzsimonds Second Addition to the City of Fargo, Cass County, North
5 Dakota; and,

6 WHEREAS, the Fargo Planning Commission recommended approval of the rezoning
7 request on August 2, 2022; and,

8 WHEREAS, the rezoning changes were approved by the City Commission on November
9 14, 2022.

10 NOW, THEREFORE,

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

12 Section 1. The following described property:

13 Lots One (1) and Two (2), Block One (1) of Fitzsimonds Second Addition to the
14 City of Fargo, Cass County, North Dakota;

15 is hereby retaining the base zoning of "GC", General Commercial, District with a "C-O",
16 Conditional Overlay, as established by Fargo City Ordinance No. 5206, repealing the existing "C-
17 O", Conditional Overlay to the above-described property and replacing with the following "C-O",
18 Conditional Overlay, District:

- 19 1. This Conditional Overlay is intended to provide for a higher quality of design than is
20 afforded by the City of Fargo Land Development Code regarding the future commercial
21 development of McShane Development.
22 2. All primary buildings shall be constructed or clad with materials that are durable,
23 economically-maintained, and of a quality that will retain their appearance over time,
including but not limited to natural or synthetic stone; brick; stucco; integrally colored,
textured or glazed concrete masonry units; high-quality pre-stressed concrete systems; or

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FARGO, NORTH DAKOTA

ORDINANCE NO. _____

glass. Natural wood or wood paneling shall not be used as a principal exterior wall material, but durable synthetic materials with the appearance of wood may be used.

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3 3. Color schemes shall tie building elements together, relate pad buildings within the same development to each other, and shall be used to enhance the architectural form of a building.
- 4
5 4. All building façades greater than 200 feet in length, measured horizontally, shall incorporate wall plane projections or recesses having a depth of at least three percent of the length of the façade, and extending at least 20 percent of the façade. No uninterrupted length of façade shall exceed 200 horizontal feet. An articulated façade would emphasize elements on the face of a wall including change in setback, materials, roof pitch, or height.
 - 6
7 i. All buildings shall have architectural interest and variety to avoid the effect of a single, long or massive wall; buildings shall include a variation in size and shape.
 - 8
9 ii. All building elevations or façades facing or viewable from right-of-ways or parking lots that are greater than 200 feet in length, measured horizontally from vertical edge to vertical edge, shall incorporate wall plane projections or recesses. Each projection and/or recess shall have a depth of at least five feet, and the cumulative horizontal width of all projections and/or recesses within a façade shall equate to at least an accumulated total of 20 percent of the overall horizontal length of the façade. No uninterrupted length of any façade shall exceed 200 horizontal feet. Attached or adjacent permanent wall projections that screen maintenance/loading/delivery/ dumpsters that exceed 9 feet in height shall count as projections and recesses.
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15 iii. Ground floor façades that are within 200 feet of the right-of-way, measured from the exterior wall, shall have arcades, display windows, entry areas, awnings, spandrel glass, ground level landscaping, or other such features along no less than 60% of its horizontal length.
 - 16
17
18 iv. All building elevations or façades facing or viewable from the rights-of-way or parking lots shall be designed with a similar level of design detail, respective to building massing and building materials.
- 19
20 5. Ground floor façades that face public streets shall have arcades, display windows, entry areas, awnings, or other such features along no less than 60 percent of their horizontal length. If the façade facing the street is not the front, it shall include the same features and/or landscaping in scale with the façade.
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FARGO, NORTH DAKOTA

ORDINANCE NO. _____

1 6. Flat roofs and rooftop equipment, such as HVAC units, shall be screened to a minimum
2 of half the height of the unit by parapets and/or screens, including but not limited to the
back of the structure

3 7. Loading facilities shall not be located at the front of structures where it is difficult to
4 adequately screen them from view. All loading and service areas shall be screened from
the view of adjacent public streets through a structure and/or landscaping.

5 8. Dumpsters and outdoor storage areas must be completely screened from view. Collection
6 area enclosures shall contain permanent walls on three (3) sides with the service opening
7 not directly facing any public right-of-way or residentially zoned property. The fourth
side shall incorporate a metal gate to visually screen the dumpster or compactor.

8 9. Separate vehicular and pedestrian circulation systems shall be provided. An on-site
9 system of pedestrian walkways shall be designed to provide direct access and connections
to and between the following:

- 10 a. the primary entrance or entrances to each commercial building, including pad site
11 buildings.
- 12 b. any sidewalks or walkways on adjacent properties that extend to the boundaries
shared with the commercial development.
- 13 c. parking areas or structures that serve such primary buildings.
- 14 d. connections between the on-site (internal) pedestrian walkway network and any
15 public sidewalk system located along adjacent perimeter streets shall be provided
at regular intervals along the perimeter street as appropriate to provide easy access
16 from the public sidewalks to the interior walkway network.
- 17 e. any public sidewalk system along the perimeter streets adjacent to the commercial
development.
- 18 f. where practical and appropriate, adjacent land uses and developments, including
but not limited to residential developments, retail shopping centers, office
buildings.

19 10. On-premise signs

- 20 a. Every structure and complex should be designed with a precise concept for
21 adequate signing. Provisions for sign placement, sign scale in relationship with

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FARGO, NORTH DAKOTA

ORDINANCE NO. _____

the building, and sign readability should be considered in developing the signing concept.

- b. Signage size, color and form should complement the architecture of the building and should not compete or become the focal point of the building form.
 - c. Signage must not extend horizontally or vertically past the building.
 - d. Signage text should be legible from arterial streets, use of recognizable imagery can be substituted for legibility of text. Sign should not be larger than necessary to achieve this legibility from the street.
 - e. Sign surface areas must be less than 10% of the building surface.
 - f. Signs should be located horizontally above first floor doors and windows, on awnings, or adjacent to building entrances if mounted on a wall.
 - g. Corporate logos should be appropriately scaled.
 - h. Separate pedestrian-oriented signs should be provided when pedestrians cannot see the façade signage which is oriented to the street.
 - i. Each development site should be appropriately signed to give directions to loading and receiving areas, visitor parking and other special areas.
 - j. Multi-tenant buildings or developments may have one monument or ground mounted sign per street frontage listing all of the tenants. Monument or ground mounted signs for individual businesses in multi-tenant buildings or developments are prohibited. Monument-type signs are the preferred alternative for business identification whenever possible.
 - k. Signs should advertise a specific building or business, not products, trademarks, or special events.
 - l. Window signs used for shop fronts or mixed-use building are permitted provided that the aggregate total of all window signs for each business shall not exceed 25% of its respective window area.
 - m. One on-premise, static, multi-tenant sign, positioned to be visible from Interstate 29, may be up to 60 feet in height. Otherwise, no on premise sign shall exceed forty-five (45) feet in height.
11. A minimum of 4.5% of the internal surface area of the parking lot shall be landscaped. The cumulative open space (green space) of each lot shall consist of at least 15% of the lot.
12. The following use(s) are prohibited.
- a. Detention Facilities
 - b. Adult Entertainment Center

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FARGO, NORTH DAKOTA

ORDINANCE NO. _____

c. Off-Premise Advertising Signs (directional signs that are less than 50 square feet in size are exempt for this prohibition)

d. Portable Signs

e. Industrial Service

f. Manufacturing and Production

g. Warehouse and Freight Movement

h. Aviation/Surface Transportation

13. The Zoning Administrator shall review each applicable Site Plan to determine compliance with this Conditional Overlay and act to approve or deny the Site Plan application.

14. The decision of the Zoning Administrator may be appealed to the Planning Commission.

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

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

Timothy J. Mahoney, M.D., Mayor

(SEAL)

Attest:

Steven Sprague, City Auditor

First Reading:
Second Reading:
Final Passage:

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Arlette Preston, City Commissioner

Fargo City Hall
225 4th Street North
Fargo, ND 58102-4817
www.FargoND.gov

MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

FROM: CITY COMMISSIONER ARLETTE PRESTON

DATE: NOVEMBER 14, 2022

SUBJECT: DOWNTOWN COMMISSION

In an effort to increase the efficiency and effectiveness of the Advisory Boards, conversations with staff have been ongoing regarding how to best manage the City's responsibilities for downtown. The need to place accountability and coordination of all things downtown into one body has been identified.

The Parking Commission has not met for over a year. The Renaissance Authority meets only when a project comes up for approval and has met only twice this year. The conversations with staff have been to establish a commission/board, as advisory to the City Commission, with the following as a possible list of functions:

1. Accountabilities assigned by state law to the Renaissance Authority.
2. Any required accountabilities assigned to the Parking Commission.
3. Review and oversee the implementation of the updated InFocus plan.
4. Review and provide recommendations to the City Commission re: any and all development incentives for projects located downtown.
5. Review and provide oversight of the BID contract.
6. Examine the old riverfront plans and make recommendations for riverfront development.

RECOMMENDED MOTION: To direct the City Attorney and Planning staff to develop the Ordinance(s) to create a Downtown Oversight Commission and to bring the proposed changes to the City Commission at the December 12th meeting.

CITY OF Fargo Fire Department

33

MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

FROM: FIRE CHIEF STEVE DIRKSEN, INTERIM CITY ADMINISTRATOR MICHAEL REDLINGER

DATE: NOVEMBER 9, 2022

SUBJECT: RED RIVER REGIONAL DISPATCH CENTER JOINT POWERS AGREEMENT

In 2001 Fargo, Moorhead, Cass County and Clay County entered into a Joint Powers Agreement to jointly operate an Emergency Dispatch Center. West Fargo was not an original member but joined in 2010. Over the course of the last 20 years there have been nine amendments to the agreement.

Over the last 20 years the growth of the communities has necessitated changes in the operations and administration of the RRRDC. The need for a new dispatch center and the growth in the region, it has become necessary to review the composition of the RRRDC Board of Authority. The review began in 2019 by Elected Officials, City and County Administrators, City and County Attorneys, and the Chiefs and Sheriffs who currently make up the Board of Authority.

The process has been deliberate and thorough. Leaders in cities of Fargo, Moorhead, and West Fargo and Cass and Clay counties worked diligently together to develop the document presented.

The proposed document has been drafted in a similar manner to the Diversion Authority document. Erik Johnson and John Shockley drafted the document and worked with the all entities to meet the needs of the various entities.

A list of the major changes to document has been provided with the proposed agreement.

RECOMMENDED MOTION: To approve City of Fargo participation in Red River Regional Dispatch Center Joint Powers Agreement and appoint the Mayor and Commissioner Kolpack as the Fargo Members to serve on the RRRDC Board of Authority.

- a. Budget & Finance Committee – page 4
 - b. City of Fargo Members – page 4
 - c. Personnel Committee – page 8
 - d. RRRDC Executive Committee – page 9
 - e. Sanford Ambulance – page 9
2. Article V Red River Regional Dispatch Center Authority
- a. Section 5.01 – Composition of the Board – page 11
 - b. Section 5.05 – Terms of RRRDC Authority Board Members – pages 12
 - c. Section 5.08 – Secretary – page 13
 - d. Section 5.09 – Voting by the Board – pages 13 & 14
 - e. Section 5.11 – Meetings of the Board – Organizational meeting needs to happen within 30 days of the effective date of the agreement (January 1, 2023) – pages 14 & 15
3. Article VI Committees
- a. Section 6.04 – Budget & Finance Committee Membership – page 17
 - i. 1 of the COF elected officials on the RRRDC Board
 - ii. The COF Finance Director or a member of the Finance Director's office
 - b. Section 6.10 – RRRDC Executive Committee Membership – page 18
 - i. The Fire and Police Chief will serve on this committee – oversee operations.
 - c. Section 6.16 – Law Enforcement Operation Committee Membership – page 19
 - i. Two persons nominated by the Fire and Police Chief
 - d. Section 6.23 – Fire/EMS Committee Membership – page 20
 - i. Two persons nominated by the Fire and Police Chief
 - e. Section 6.29 – Radio Communications Committee Membership – page 21
 - i. Two persons nominated by the Fire and Police Chief
 - f. Section 6.35 – Personnel Committee Membership – page 20

- i. The Fargo Human Resources Director or a member of the Human Resource Director's office
 - ii. Either the Fire or Police Chief
4. Article VIII Finance/Budget
 - a. Section 8.03 – Preparation of and Submission – pages 26 & 27
 - b. Section 8.04 – RRRDC Authority Board Action on the Annual Budget – page 27
5. Article X Financial Oversight/Fiscal Agent
 - a. Section 10.01 Financial oversight – page 29
 - b. Section 10.02 Interim Fiscal Agent – page 29
 - c. Section 10.08 No Commingling of Funds – page 30
6. Article XII Dispatch Center Procedures and Cost Share
 - a. Section 12.03 – Cost Share – New World Maintenance and License Fees – page 33
 - b. Section 12.04 – Cost Share – Other than Annual Operations – pages 33 & 34
 - c. Section 12.05 – Cost Share – Annual Operations – page 34
 - d. Section 12.06 – Cost Share for New Dispatch Center – page 34
 - e. Section 12.07 – Periodic Review of Cost Share Allocations Based Upon Population – page 34
7. Article XIV Director
 - a. Section 14.01 – The Director – page 37
 - b. Section 14.04 – Human Resources Agent – page 38
8. Article XIX Term and Termination of the Agreement
 - a. Section 19.02 – Termination – pages 43 & 44
 - b. Section 19.03 – Distribution of Funds and Property – page 44
9. Article XXI Rights Upon Refusal and Withdrawal
 - a. Section 21.01 – 21.09 – pages 45 - 48
10. Article XXIV New Dispatch Center – Initial Authorization and Cost-Share Terms
 - a. Section 24.01 – New Dispatch Center – page 51

- b. Section 24.02 – Authorize Acquisition of Land for New Dispatch Center – pages 51 & 52
- c. Section 24.03 – Construction Delegated to Cass County – page 52
- d. Section 24.04 – Cost Share – pages 52 & 53
- e. Section 24.05 – Decision-Making Process – page 52
- f. Section 24.06 – Payment in Advance of Minnesota Entities' Share – Financing/Debt Service – page 53
- g. Section 24.07 – RRRDC Dissolution, Removal of Minnesota Member Entities – Minimum Recoupment – pages 53 & 54

JOINT POWERS AGREEMENT

BY AND BETWEEN

CITY OF MOORHEAD, MINNESOTA

AND

CITY OF FARGO, NORTH DAKOTA

AND

CITY OF WEST FARGO, NORTH DAKOTA

AND

CLAY COUNTY, MINNESOTA

AND

CASS COUNTY, NORTH DAKOTA

Dated as of January 1, 2023

Relating to:

An Agreement establishing and continuing a permanent joint powers entity called the Red River Regional Dispatch Center Authority to provide the Fargo-Moorhead-West Fargo Metropolitan Area with a regional public safety dispatch facility.

This instrument was drafted by:

Erik R. Johnson & Associates, Ltd., 505 Broadway, Suite 206, Fargo, ND 58102 after a model provided by John Shockley, Ohnstad Twichell Law Firm.

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EXHIBIT A—PRIOR AMENDMENTS TO ORIGINAL JOINT POWERS AGREEMENT

EXHIBIT B —MINNESOTA MEMBER ENTITIES RECOUPMENT – REVERSE AMORTIZATION SCHEDULE

PREAMBLE

The leaders and representatives of the Member Entities to this Agreement, in order to provide efficient public-safety dispatch capabilities and facilities for the Fargo-Moorhead-West Fargo Metropolitan Area which includes rural communities and areas within Cass County, North Dakota, and Clay County, Minnesota, and to promote accountable governance, to provide for the ownership, operation, and maintenance of a regional public safety dispatch center, and to encourage Member Entities' participation, do hereby adopt this Agreement and establish the following procedures and governing structure.

JOINT POWERS AGREEMENT

THIS JOINT POWERS AGREEMENT (the “Agreement”) is made and entered into this 1st day of January, 2023 (the “Effective Date”), between the City of Moorhead, a Minnesota Home Rule City and political subdivision of the State of Minnesota (the “City of Moorhead”); the City of Fargo, a North Dakota Home Rule City and political subdivision of the State of North Dakota (the “City of Fargo”); the City of West Fargo, a North Dakota Home Rule City and political subdivision of the State of North Dakota (the “City of West Fargo”); Clay County, a political subdivision of the State of Minnesota (“Clay County”); and Cass County, a North Dakota Home Rule County and political subdivision of the State of North Dakota (“Cass County”).

WHEREAS, pursuant to Chapter 54-40.3, N.D.C.C., and Minnesota Statutes Section 471.59 (joint exercise of powers), the above-named governmental units have the legal authority to enter into an agreement, through action of their respective governing bodies, to jointly or cooperatively exercise any power common to the contracting powers or any similar powers, including those which are the same except for territorial limits within which they may be exercised; and

WHEREAS, the City of Fargo, the City of Moorhead, Cass County, and Clay County previously entered into a Joint Powers Agreement in 2001 to jointly establish and administer a dispatch center and related dispatch service and a joint dispatch center was established, known as “Red River Regional Dispatch Center”; and

WHEREAS, the initial Joint Powers Agreement has been amended nine (9) times since 2001 as described on the list attached hereto as Exhibit A, copies of which amendments are on file at the administrative offices of the Dispatch Center; and

WHEREAS, the parties wish to amend the agreement again in order to incorporate into the governance of the Dispatch Center a board of authority consisting of elected officials from the five (5) said Member Entities and, among other things, to create a structure for the possible design, build, financing, operation, and maintenance of a new dispatch center facility.

NOW THEREFORE, in consideration of the mutual covenants made herein and for other valuable consideration, the receipt of which is hereby acknowledged, the City of Moorhead, the City of Fargo, the City of West Fargo, Clay County, and Cass County agree as follows:

ARTICLE I. AMENDMENT

Section 1.01 ORIGINAL JOINT POWERS AGREEMENT. **Member Entities** previously entered into a **Joint Powers Agreement**, dated as of July 11, 2001, which was subsequently amended by a series of amendments described in the attached Exhibit A (collectively said Joint Powers Agreement, as the same was amended from time to time as described herein, shall be referred to as the “**Original Joint Powers Agreement**”).

Section 1.02 REPEAL, REPLACE, AND AMEND IN ENTIRETY. The **Member Entities** hereby acknowledge and agree that the **Original Joint Powers Agreement** is hereby repealed, replaced, and amended in its entirety with the terms and conditions of this **Agreement**. The terms and conditions of this **Agreement** shall be in full force and effect as of the **Effective Date**.

Section 1.03 CONTINUITY OF AGREEMENTS, OBLIGATIONS, ENTITY. The **Member Entities** agree and acknowledge, and as more fully set forth in Section 18.02 of this **Agreement**, that the prior obligations of the **Red River Regional Dispatch Center Authority** created under the **Original Joint Powers Agreement** shall continue and be in full force and effect under this **Agreement**.

Section 1.04 PRIOR UNDERSTANDINGS. This **Agreement**, when executed by the **Member Entities**, shall be effective as of the **Effective Date**. All prior understandings and agreements heretofore as among the **Member Entities** with respect to the **Dispatch Center**, except as specifically set forth in Sections 22.02 and 22.03 of this **Agreement**, are hereby superseded and replaced in their entirety by this **Agreement**. This **Agreement** fully and completely expresses the agreement of the **Member Entities** with respect to the **Dispatch Center** and shall not be modified or amended except as set forth in Section 23.03 of this **Agreement**.

Section 1.05 FAILURE TO APPROVE. The failure of a **Member Entity** to approve this **Agreement** by or before the 1st day of January, 2023, shall result in this **Agreement** being null, void, and cancelled ab initio, and the **Original Joint Powers Agreement** shall, in such event, remain in full force and effect.

ARTICLE II. DEFINITIONS AND INTERPRETATION

Section 2.01 DEFINITIONS. All capitalized and bolded terms used and not otherwise defined herein shall have the meanings given to them in this **Agreement** and as defined in this Section unless a different meaning clearly applies from the context.

“**Agreement**” means this **Joint Powers Agreement** by and between the **City of Moorhead**, the **City of Fargo**, the **City of West Fargo**, **Clay County**, and **Cass County**.

“**Annual Meeting**” means a properly noticed meeting of the **RRRDC Authority Board** held in January of each year at a time and date to be determined by the **RRRDC Authority Board**.

“**Approved Budget**” means the annual budget approved by the **RRRDC Authority Board** for each and every calendar year of this **Agreement**.

“**Assistant Director**” means a position of the **Red River Regional Dispatch Center Authority** created by Section 14.03 of this **Agreement**.

“**Best Efforts**” means that a **Member Entity** and its **Governing Body** will act in **Good Faith**, act in accordance with generally accepted commercial practices, and use reasonable due diligence to undertake all action contemplated by this **Agreement**, in accordance with applicable

federal and state laws, regulations, and rules; however, the obligation to use **Best Efforts** does not mean a duty to take action that would be in violation of applicable federal or state law.

“Budget & Finance Committee” means a committee of the **Red River Regional Dispatch Center Authority** created for the purpose of providing operating budget and capital budget recommendations to the **RRRDC Authority Board** and providing policy recommendations regarding the management of the financial aspects of the **Red River Regional Dispatch Center Authority** and financial expenditures for the **Dispatch Center** to the **RRRDC Authority Board**.

“Business Day” means any day that is not a Saturday, a Sunday, or a North Dakota public holiday.

“Cass County” means Cass County, a North Dakota Home Rule County and political subdivision of the State of North Dakota.

“Cass County Commission” means the Cass County Commission, which is the **Governing Body of Cass County**.

“Cass County Members” means the two (2) individuals appointed by the **Cass County Commission** to serve on the **RRRDC Authority Board**.

“Chair” means a voting member of the **RRRDC Authority Board** who presides over meetings pursuant to Section 5.06 of this **Agreement**.

“City of Fargo” means the City of Fargo, a North Dakota Home Rule City and political subdivision of the State of North Dakota.

“City of Fargo Members” means the two (2) individual members of the **Fargo City Commission** representing the **City of Fargo** on the **RRRDC Authority Board**, consisting of one (1) individual appointed by the **Fargo City Commission** and the mayor of the **City of Fargo**.

“City of Moorhead” means the City of Moorhead, a Minnesota Home Rule City and political subdivision of the State of Minnesota.

“City of Moorhead Members” means the two (2) individual members of the **Moorhead City Council** representing the **City of Moorhead** on the **RRRDC Authority Board**, consisting of one (1) individual appointed by the **Moorhead City Council** and the mayor of the **City of Moorhead**.

“City of West Fargo” means the City of West Fargo, a North Dakota Home Rule City and political subdivision of the State of North Dakota.

“City of West Fargo Members” means the two (2) individual members of the **West Fargo City Commission** representing the **City of West Fargo** on the **RRRDC Authority Board**,

consisting of one (1) individual appointed by the **West Fargo City Commission** and the President of the **West Fargo City Commission**.

“**Clay County**” means Clay County, a Minnesota County and political subdivision of the State of Minnesota.

“**Clay County Commission**” means the Clay County Commission, which is the **Governing Body of Clay County**.

“**Clay County Member**” means the two (2) individual members of the **Clay County Commission** appointed by the **Clay County Commission** to serve on the **RRRDC Authority Board**.

“**Code**” means the Internal Revenue Code of 1986, as amended from time to time, and all rules and regulations from time to time promulgated thereunder.

“**Congress**” means the Congress of the United States of America.

“**Debt Obligation**” means any loan, note, bond, or other security instrument issued by one or more of the **Member Entities** to provide either temporary or permanent financing of the **Dispatch Center** or any approved acquisition for the **Dispatch Center**.

“**Debt Obligation Fund**” means the Debt Obligation Fund created by Section 10.04 of this **Agreement**.

“**Defaulting Member Entity**” means any **Member Entity** that is deemed to be in default pursuant to Section 21.04 of this **Agreement** because such **Member Entity** did not have a **Rational Basis** for refusing to undertake and complete a **Requested Dispatch Center Action**.

“**Director**” means the chief administrative officer of the **Red River Regional Dispatch Center Authority**.

“**Dispatch Center**” means the Red River Regional Dispatch Center dispatching facility located at 300 NP Avenue, Fargo, North Dakota, or any additional or alternative facility or facilities for dispatching activities to be acquired, constructed, leased, or used as dispatching facilities as authorized by the **Red River Regional Dispatch Center Authority**.

“**Dispatch Center Element**” means a component or part of the **Dispatch Center**.

“**Dispatch Center Property**” means real property acquired for the **Dispatch Center**, including, but not limited to, land, rights-of-way, easements, licenses, and leases.

“**Effective Date**” means January 1, 2023.

“Event of Default” means the occurrence of any event or the existence of any condition that, with the giving of notice, the passage of time, or both, would constitute an event of default under the terms of this **Agreement**.

“Fargo-Moorhead-West Fargo Metropolitan Area” means the **City of Fargo**, the **City of Moorhead**, and surrounding communities; it is further defined by the United States Census Bureau as comprising all of **Cass County** and **Clay County**, which includes the Cities of Dilworth, Minnesota, and the **City of West Fargo**, and numerous other towns and developments from which commuters travel daily for work, education, and regular activities.

“Fargo City Commission” means the **City of Fargo’s** City Commission, which is the **Governing Body** of the **City of Fargo**.

“Fiscal Agent” means Cass County, acting through its Finance Director.

“Fiscal Year” means one (1) calendar year beginning on January 1 and ending December 31 of each and every year of this **Agreement**.

“Fire/EMS Operations Committee” means a committee of the **Red River Regional Dispatch Center Authority** created for the purpose of providing policy and procedure recommendations to the **RRRDC Executive Committee** regarding fire and EMS operations.

“Former Member Entity” means any **Member Entity** that withdraws or is removed pursuant to Article XXI of this **Agreement**.

“GAAP” means accounting principles generally accepted in the United States as set forth in the opinions and pronouncements of the Accounting Principles Board, the American Institute of Certified Public Accountants, and the Financial Accounting Standards Board, or in such other statements by such other entity as may be in general use by significant segments of the accounting profession as in effect on the date hereof.

“Good Faith” means the observance of reasonable commercial standards of fair dealing in a given trade of business.

“Governing Body” means the body which performs the legislative and governmental functions of a political subdivision, including but not limited to, a board, council, or commission. For example, the **Cass County Commission**, the **Clay County Commission**, the **Moorhead City Council**, the **Fargo City Commission**, and the **West Fargo City Commission** are, respectively, the **Governing Body** of each of said entities.

“Governmental Authority” means any national, supra-national, state, or local government (whether domestic or foreign), any political subdivision thereof or any other governmental, quasi-governmental, judicial, administrative, public or statutory instrumentality, authority, body, board, agency, department, county, bureau, court, central bank, or other entity exercising executive, legislative, judicial, taxing, regulatory, fiscal, monetary, or administrative

powers or functions of or pertaining to government, or any arbitrator, mediator, or other person with authority to bind a party at law.

“Human Resources Agent” means a function of the **Red River Regional Dispatch Center Authority** as described in Section 14.04 of this **Agreement**.

“Interim Fiscal Agent” means the **City of Fargo**.

“Law Enforcement Operations Committee” means a committee of the **Red River Regional Dispatch Center Authority** created for the purpose of providing policy and procedure recommendations to the **RRRDC Executive Committee** regarding law enforcement operations.

“Lobbyist” means an individual who promotes and lobbies for funding and other decisions of the federal government and state governments, including **Congress** and the legislative branches of the State of North Dakota and State of Minnesota.

“Maintenance” means all normal maintenance activity associated with maintaining or preserving the **Dispatch Center** or a **Dispatch Center Element**.

“Maintenance Costs” means normal, regular maintenance costs associated with a **Dispatch Center Element**; however, **Maintenance Costs** do not include costs for **Extraordinary Maintenance**.

“Member Entities” shall mean the **City of Moorhead**, the **City of Fargo**, the **City of West Fargo**, **Clay County**, and **Cass County**.

“Minnesota Board Members” includes the **Clay County Members** and the **City of Moorhead Members**.

“Minnesota Government Data Practices Act” means the Minnesota Government Data Practices Act, Minn. Stat. Chapter 13.

“Minnesota Member Entity” means the **City of Moorhead** and **Clay County**. Provided, if one of the herein defined **Member Entities** should fail to approve this **Agreement**, it will not be deemed a **Minnesota Member Entity**.

“Moorhead City Council” means the City Council of the **City of Moorhead**, the **Governing Body** of the **City of Moorhead**.

“New Dispatch Center” means the new facility contemplated in Section 12.06 and Article XXIV hereof.

“North Dakota Board Members” includes the **City of Fargo Members**, the **City of West Fargo Members**, and the **Cass County Members**.

“North Dakota Member Entity” means the **City of Fargo**, the **City of West Fargo** and **Cass County**.

“North Dakota Open Records Law” means N.D.C.C. Chapter 44-04.

“O&M Revenues” means, collectively, all revenues pledged by the **Member Entities** to fund or finance operations and maintenance of the **Dispatch Center**.

“Operations and Maintenance Fund” means a fund created pursuant to Section 10.04 of this **Agreement**.

“Original Joint Powers Agreement” means the agreement dated July 11, 2001, and subsequently amended, which was entered into between the **City of Moorhead**, the **City of Fargo**, **Clay County**, **Cass County**, and, subsequently, the **City of West Fargo** in order to cooperate in the ownership, operation, and maintenance of a regional public safety dispatch center.

“Original Joint Powers Entity” means the entity that was created by the Original Joint Powers Agreement.

“Person” means any natural or legal person, county, city, municipality, political subdivision, public benefit corporation, corporation, limited liability company, trust, joint venture, association, company, partnership, **Governmental Authority**, or other entity.

“Personnel Committee” means a committee of the **Red River Regional Dispatch Center Authority** created for the purpose of providing recommendations to the **RRRDC Executive Committee** regarding personnel-related matters of the **Red River Regional Dispatch Center Authority**.

“Pledged Revenues” means, collectively, all revenues pledged by the Member Entities to finance the construction, operation, and maintenance of the Dispatch Center.

“Radio Communications Committee” means a committee of the **Red River Regional Dispatch Center Authority** created for the purpose of providing recommendations to the **RRRDC Executive Committee** regarding radio communications matters related to the **Red River Regional Dispatch Center Authority**.

“Rational Basis” means making a decision that is determined by the **RRRDC Authority Board** to be fair, moderate, suitable under the circumstances, and governed by reason.

“Requested Dispatch Center Action” means a written request, approved by the **RRRDC Authority Board**, in which the **RRRDC Authority Board** requests a **Member Entity** perform an action or actions related to the **Dispatch Center** pursuant to Section 21.03 of this **Agreement**.

“Red River Regional Dispatch Center Authority” means the political subdivision created by the **Original Joint Powers Agreement** and continued with and through this **Agreement** and vested with the powers herein.

“RRRDC Authority Board” means the **Governing Body** of the **Red River Regional Dispatch Center Authority**.

“RRRDC Authority Board Member” means an individual duly appointed pursuant to Section 5.01 of this **Agreement** and who is a voting member of the **RRRDC Authority Board**.

“RRRDC Authority Board Member Alternate” means a person selected by a **Member Entity’s Governing Body** to serve on the **RRRDC Authority Board** in the event that the **Member Entity’s RRRDC Authority Board Member(s)** is/are unable to serve.

“RRRDC Executive Committee” means a committee of the **Red River Regional Dispatch Center Authority** created for the purpose of providing policy recommendations regarding the management of the operational aspects of the **Red River Regional Dispatch Center Authority** and related expenditures for the **Dispatch Center**.

“Sanford Ambulance” means FM Ambulance Services, Inc., a North Dakota corporation, doing business as Sanford Ambulance, a trade name registered with the North Dakota Secretary of State.

“Secretary” means a position of the **Red River Regional Dispatch Center Authority** created by Section 5.08 of this **Agreement**.

“Software Maintenance Agreement” means the agreement entered with New World Systems for the installation and maintenance of CAD/RMS software, as set forth in the Sixth Amendment to the **Original Joint Powers Agreement**.

“Total Cost of Construction” shall mean as defined in Section 24.04 hereof.

“Vice Chair” means the member of the **RRRDC Authority Board** who was elected to the Vice Chair position by the **RRRDC Authority Board** pursuant to Section 5.07 of this **Agreement**.

“West Fargo City Commission” means the City of West Fargo City Commission, which is the **Governing Body** of the **City of West Fargo**.

Section 2.02 TERMS GENERALLY. The definition of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes,” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument, or other document herein shall be construed as referring to such agreement, instrument, or other document as from time to time amended, supplemented, or otherwise modified (subject to any restrictions on such amendments, supplements, or modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person’s permitted successors and assigns, (c) the words “herein,” “hereof,” and “hereunder,” and words of similar import, shall be construed

to refer to this **Agreement** in its entirety and not to any particular provision hereof, (d) all references herein to Articles, Sections, Exhibits, and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this **Agreement**, and (e) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts, and contract rights.

Section 2.03 ACCOUNTING TERMS; GAAP. Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with **GAAP**, as in effect from time to time.

Section 2.04 ADDITIONAL PROVISIONS AS TO INTERPRETATION. All references herein to “Articles,” “Sections,” and other subdivisions are to the corresponding Articles, Sections, or subdivisions of this **Agreement**; and the words “herein,” “hereof,” “hereunder,” and other words of similar import refer to this **Agreement** as a whole and not any particular Article, Section, or subdivision hereof. All references to the office of the mayor of a city shall be deemed to include the office of the president of the city commission when applied to the **City of West Fargo**.

ARTICLE III. PURPOSE

Section 3.01 GENERAL PURPOSE. This **Agreement** is made pursuant to N.D.C.C. § 54-40.3-01 and Minn. Stat. § 471.59, which authorize the joint and cooperative exercise of power common to the contracting parties. The purpose of this **Agreement** is to allow the **Member Entities** to work collaboratively to own, operate, and maintain a regional public safety dispatch center, to maximize efficiencies of the **Member Entities** with respect to Dispatch Center related activities, and to have the **Member Entities’** employees, architects, engineers, attorneys, and professional consultants cooperate in the design, operation, and maintenance of the **Dispatch Center**. The **Member Entities** desire to establish and continue a joint powers structure to design, finance, construct, operate, and/or maintain the **Dispatch Center** consistent with the provisions of this **Agreement**, N.D.C.C. § 54-40.3-01, and Minn. Stat. § 471.59.

Section 3.02 COMPLIANCE WITH DISPATCH CALL REQUIREMENTS. Given that the **Red River Regional Dispatch Center Authority** responds to calls from Minnesota as well as North Dakota, for the purpose of responding to calls in each jurisdiction, the **Red River Regional Dispatch Center Authority** will comply with that state’s laws and regulations as applicable to the particular call.

Section 3.03 SEPARATE POLITICAL SUBDIVISION. This **Agreement** is expressly intended to confirm the ongoing existence and operation of a separate political subdivision named the **Red River Regional Dispatch Center Authority**. The **Member Entities** recognize that pursuant to and in conformance with N.D.C.C. § 54-40.3-01 and Minn. Stat. § 471.59, the **Red River Regional Dispatch Center Authority** may not exercise a power unless that power is expressly granted by this **Agreement**. As a result, the **Red River Regional Dispatch Center Authority** will from time to time request that one or several of the **Member Entities** use their **Best Efforts** to exercise their respective powers in furtherance of the **Dispatch Center**.

**ARTICLE IV.
RESERVED**

**ARTICLE V.
RED RIVER REGIONAL DISPATCH CENTER AUTHORITY**

Section 5.01 COMPOSITION OF BOARD. There is hereby established and continued a joint powers board to be known as the “**RRRDC Authority Board.**” The **RRRDC Authority Board** is the **Governing Body** of the **Red River Regional Dispatch Center Authority** and shall consist of:

- (a) Two (2) members of the **Fargo City Commission**, provided, one (1) of the two (2) members shall be the current mayor of the **City of Fargo**, and the other member shall be a current member of the **Fargo City Commission** appointed by the **Fargo City Commission**;
- (b) Two (2) members of the **Moorhead City Council**, provided, one (1) of the two (2) members shall be the current mayor of the **City of Moorhead**, and the other member shall be appointed by the **Moorhead City Council**;
- (c) Two (2) members appointed by the **Cass County Commission**, provided, all appointments made by the **Cass County Commission** must be current **Cass County Commissioners**;
- (d) Two (2) members appointed by the **Clay County Commission**, provided, all appointments made by the **Clay County Commission** must be current **Clay County Commissioners**; and
- (e) Two (2) members of the **West Fargo City Commission**, provided, one (1) of the two (2) members shall be the current president of the **West Fargo City Commission**, and the other member shall be a current member of the **West Fargo City Commission** appointed by the **West Fargo City Commission**.

The **Governing Body** of each **Member Entity** is authorized to designate a **RRRDC Authority Board Member Alternate** to sit in place of an appointed **RRRDC Authority Board Member** when the appointed **RRRDC Authority Board Member** is unable to attend a meeting of the **RRRDC Authority Board**. Any **RRRDC Authority Board Member Alternates** must be either elected or appointed to a **Member Entity’s Governing Body**.

Section 5.02 RRRDC AUTHORITY BOARD MEMBERSHIP REQUIREMENTS. The following are the membership requirements of the **RRRDC Authority Board**:

- (a) A **RRRDC Authority Board Member**, including a **RRRDC Authority Board Member Alternate**, must be a member of a **Member Entity’s Governing Body**.

Section 5.03 NOT EMPLOYEES. **RRRDC Authority Board Members** shall not be deemed employees of the **Red River Regional Dispatch Center Authority**. The **Member**

Entities acknowledge that it is their sole responsibility to provide all compensation and fringe benefits to their respective employees and elected or appointed officials. **RRRDC Authority Board Members** shall not be allowed to be party to any contract with the **Red River Regional Dispatch Center Authority**.

Section 5.04 INCOMPATIBLE OFFICES. **RRRDC Authority Board Members** may not be appointed to any paid office at the **Red River Regional Dispatch Center Authority**, nor shall they be employed by the **Red River Regional Dispatch Center Authority**.

Section 5.05 TERMS OF RRRDC AUTHORITY BOARD MEMBERS. There are no set terms of members of the **RRRDC Authority Board**. The **City of Fargo Members, City of Moorhead Members, City of West Fargo Members, Cass County Members, and Clay County Members** shall serve at the discretion of the **Governing Body** of the respective organization from which they were appointed.

Section 5.06 THE CHAIR.

- (a) The **Chair** is a member of the **RRRDC Authority Board** for purposes of presiding at its meeting. The **Chair** may vote on all matters before the **RRRDC Authority Board**, but may not cast an additional vote in the event of a tie vote of the **RRRDC Authority Board**. The **Chair** does not have the authority to veto decisions of the **RRRDC Authority Board**. The **Chair** is the head of the **RRRDC Authority Board** for ceremonial purposes and for the purpose of service of civil process. The **Chair** may execute all contracts, agreements, notes, indentures, warrants, and other instruments on behalf of the **Red River Regional Dispatch Center Authority** and perform any other duties assigned by the **RRRDC Authority Board**. No contract, agreement, note, indenture, warrant, or other instrument executed by the **Chair**, or **Vice Chair** acting as **Chair** pursuant to Section 5.07 of this **Agreement**, shall become valid and binding upon the **Red River Regional Dispatch Center Authority** until countersigned by the **Director** or the **Assistant Director** acting as **Director** pursuant to Section 14.03 of this **Agreement**.
- (b) The **Chair** position shall rotate between the mayors, presidents of the city commission, or selected members of the county commissions, as applicable, of each **Member Entity**. Each **Chair** shall serve a one (1) year term, beginning January 1 and ending December 31. Any partial terms served by an individual as Chair that result from a vacancy shall be considered part of the one-year term to which said individual is next elected by the **Red River Regional Dispatch Center Authority**. Individuals may serve as **Chair** multiple times if they remain in their respective elected or appointed positions. Provided, the **Chair** must not be from a **Member Entity** from the same state as the **Vice Chair's Member Entity** (i.e. if the **Chair** is from a **Minnesota Member Entity**, the **Vice Chair** shall be from a **North Dakota Member Entity**). The term of the **Chair** shall cease if his or her position as mayor or as a president or member of a **Member Entity** has ceased for any reason provided, however, that the **Member Entity** is permitted to replace the **Chair** with the individual filling the vacancy of the outgoing **Chair** position within

the **Governing Body** of the **Member Entity** (i.e., if a new mayor is elected in the **City of Fargo** while the **City of Fargo's** mayor is serving as **Chair**, then the newly elected mayor of the **City of Fargo** will serve the remainder of the **Chair's** term). The **Red River Regional Dispatch Center Authority** is authorized to elect an acting **Chair** under such circumstances when a vacancy occurs in a manner not contemplated by this Section.

Section 5.07 VICE CHAIR. A **Vice Chair** must be elected at the **Annual Meeting** of the **RRRDC Authority Board** by a majority vote of all members of the **RRRDC Authority Board**. The **Vice Chair** must be a **RRRDC Authority Board Member** and must not be a member from the same state as the **Chair**. The **Vice Chair** serves as the **Chair** in the **Chair's** disability or absence from the **RRRDC Authority Board** or when a vacancy in the office of **Chair** exists. When presiding over a meeting in the absence of the **Chair**, the **Vice Chair** may vote on all matters before the **RRRDC Authority Board**, but may not cast an additional vote in the event of a tie vote of the **RRRDC Authority Board**. The **RRRDC Authority Board** must elect a **Vice Chair** at the organizational meeting. Each **Vice Chair** shall serve a one (1) year term beginning the date of selection at the **RRRDC Authority Board Annual Meeting** and ending either upon re-election for another one (1) year term or upon the selection of a successor **Vice Chair**. It is the expectation that the **Vice Chair** for a particular year elected by the **RRRDC Authority Board** will be the following year's **Chair** unless the **Chair**, from term to term, is from the same state (i.e., North Dakota or Minnesota) for successive terms.

Section 5.08 SECRETARY. At the **Annual Meeting** of the **Red River Regional Dispatch Center Authority**, the **RRRDC Authority Board Members** shall appoint a **Secretary**. An employee of one of the **Member Entities**, an individual, or contractor may be appointed as the **Secretary** for the **Red River Regional Dispatch Center Authority**. The **Secretary** shall be responsible for ensuring that minutes are prepared for all **Red River Regional Dispatch Center Authority** meetings. The **Secretary** shall also keep all books and records of the **Red River Regional Dispatch Center Authority** and shall give all notices required by law and may have other duties assigned from time to time by the **Red River Regional Dispatch Center Authority**. The **Secretary** shall also be responsible for compliance with **North Dakota Open Records Law** requirements.

Section 5.09 VOTING BY THE BOARD. Each **RRRDC Authority Board Member** shall have one (1) vote on matters before the **Red River Regional Dispatch Center Authority**. Each **RRRDC Authority Board Member** shall cast a vote on all matters before the **Red River Regional Dispatch Center Authority** unless the **RRRDC Authority Board Member** has a conflict prohibiting him or her from casting a vote. All decisions before the **Red River Regional Dispatch Center Authority** shall be determined by a simple majority vote of the **RRRDC Authority Board Members** present except as set forth in this Section. **RRRDC Authority Board Members** are not permitted to vote by proxy. A **RRRDC Authority Board Member Alternate** will be seated as a **RRRDC Authority Board Member** when the **Member Entity's** **RRRDC Authority Board Member** is absent from a **RRRDC Authority Board** meeting. When seated pursuant to this Section, **RRRDC Authority Board Member Alternates** will have the same voting rights as regular **RRRDC Authority Board Members**. The following decisions require that at least one (1) affirmative vote must be cast by a **Minnesota Board Member**, at least one (1)

affirmative vote must be cast by a **North Dakota Board Member**, and, with respect to decisions described in subparagraph (a), (b), (f), (g), or (i), at least one (1) affirmative vote must be cast by a **Cass County Member**:

- (a) Approval of the annual operations budget.
- (b) Approval of the annual capital budget.
- (c) Hiring of a **Director**.
- (d) Establish the authorized level or size of staffing of the **Dispatch Center**.
- (e) Termination of the **Director**.
- (f) Approval or modification of the methodology and finance plan developed pursuant to Section 12.06 of this **Agreement** to allocate the costs associated with operating the **Dispatch Center**.
- (g) Approval of the modification of a Section 12.04 or 12.05 population-based cost allocation as recognized in Section 12.07.
- (h) Dissolution of a standing committee, established by this **Agreement**.
- (i) A decision by the **RRRDC Authority Board**, contemplated by Section 21.05, to remove a **Member Entity** deemed to be in default of this **Agreement** pursuant to Section 21.04 of this **Agreement**.

Section 5.10 RRRDC AUTHORITY BOARD MEMBER DISCLOSURE OF CONFLICTS OF INTEREST. Before taking any action or casting a vote regarding a matter before the **RRRDC Authority Board**, which would constitute a conflict of interest under North Dakota law or as set forth in this **Agreement**, **RRRDC Authority Board Member(s)** must disclose such conflict(s) and abstain from voting on the matter involving the conflict of interest and from participating in **RRRDC Authority Board** discussions and deliberations on the matter involving the conflict of interest. For purposes of this **Agreement**, conflicts of interest include, but are not limited to, all conflicts of interest under North Dakota and/or Minnesota law and/or membership on a **Governing Body** and/or status as a controlling officer, member of a board of directors, mayor, president, or chief executive of a political subdivision, a public entity, and/or private entity engaged in a legal or administrative action, or pending litigation and/or active litigation in which the **Red River Regional Dispatch Center Authority** is an adverse party. Any **RRRDC Authority Board Member** with a conflict of interest shall not be entitled to participate in an executive session of the **RRRDC Authority Board** held pursuant to Section 5.11.

Section 5.11 MEETINGS OF THE BOARD. The **Red River Regional Dispatch Center Authority** shall hold meetings as follows:

- (a) Organizational Meeting. An organizational meeting shall be held within thirty (30) calendar days of the **Effective Date** of this **Agreement** and shall be called at a time

to be determined by the **Director**. The **Director** shall ensure that proper notice of this meeting is given.

- (b) Regular Meetings. Thereafter, a schedule of regular meetings, which may include one or more regular meetings each quarter of the year, shall be adopted at the organizational meeting and thereafter each and every year at the **Annual Meeting**. The **RRRDC Authority Board** may determine alternative times and dates for regular meetings.
- (c) Annual Meeting. The **RRRDC Authority Board** shall hold its **Annual Meeting** in January of each year at a time and date to be determined by the **RRRDC Authority Board**.
- (d) Special Meetings. Special meetings of the **RRRDC Authority Board** may be called by the **Chair** and must be called by the **Chair** upon written request of three (3) **RRRDC Authority Board Members**, who must identify the business matters to be discussed at such special meeting. Business at a special meeting is limited to matters contained in the notice of the special meeting. A special meeting may also be called at the request of the **Governing Body** of a **Member Entity**, who must identify the business matters to be discussed at such special meeting.
- (e) Emergency Meetings. In accordance with applicable law, an emergency meeting may be called by the **RRRDC Authority Board** due to circumstances that in the judgment of the **Chair** and/or **Vice Chair** require immediate **RRRDC Authority Board** consideration. Prior to calling an emergency meeting, the **RRRDC Authority Board** shall contact appropriate media.
- (f) Meeting Location. **RRRDC Authority Board** meetings will be held at a location to be determined, from time to time, by the **RRRDC Authority Board**.
- (g) Parliamentary Rules. All meetings of the **RRRDC Authority Board** shall comply with parliamentary rules and procedures outlined in the most recent edition of ROBERT'S RULES OF ORDER for small boards, except to the extent those rules are inconsistent with any rules adopted by the **RRRDC Authority Board** or are inconsistent with the provisions of this **Agreement** or applicable North Dakota law.
- (h) Notice of Meetings to Alternate Board Members. Each **RRRDC Authority Board Member Alternate**, whether or not a voting member, shall be entitled to receive notices of and attend all meetings of the **RRRDC Authority Board**, to receive all reports, and to participate in **RRRDC Authority Board** discussions in the same manner as the **RRRDC Authority Board Members**. Provided, however, that a **RRRDC Authority Board Member Alternate** will not be seated unless the **Member Entity's** appointed **RRRDC Authority Board Member** is unable to attend the meeting, and, during closed sessions of the **RRRDC Authority Board**, the meeting shall be attended only by the **Chair** and **RRRDC Authority Board Members** or seated **RRRDC Authority Board Member Alternates**.

- (i) Executive Sessions. The **RRRDC Authority Board** may hold an executive session to consider or discuss confidential records or other matters as authorized by Chapter 44-04 of the N.D.C.C. **RRRDC Authority Board Members** may be excluded from an executive session in the event that the **Member Entity** or organization from which they are appointed is an adverse party to the **Red River Regional Dispatch Center Authority** in ongoing or pending litigation, which is the subject of the executive session and/or the **RRRDC Authority Board Member** has disclosed a conflict of interest pursuant to Section 5.10 of this **Agreement** that is relevant to or related to the subject of the executive session.

Section 5.12 OPEN MEETING LAW. All meetings of the **Red River Regional Dispatch Center Authority** shall be held in compliance with the **North Dakota Open Records Law**. The **Minnesota Member Entities** shall, to the extent required by the **Minnesota Government Data Practices Act**, publish all notices and conduct all meetings held by a **Minnesota Member Entity** concerning the **Dispatch Center**, in accordance with the **Minnesota Government Data Practices Act**.

Section 5.13 RECORDS RETENTION POLICY. The **Red River Regional Dispatch Center Authority** shall adopt a records retention policy establishing minimum retention periods for its records in compliance with the **North Dakota Open Records Law**. The **Minnesota Member Entities** shall adopt a records retention policy establishing a minimum retention period for any records held by a **Minnesota Member Entity** related to the **Dispatch Center** in compliance with the **Minnesota Government Data Practices Act**.

Section 5.14 OPEN RECORDS LAW. The **Red River Regional Dispatch Center Authority** shall comply with the **North Dakota Open Records Law** in regard to all data collected, created, received, and maintained or disseminated. The **Minnesota Member Entities** shall maintain all data collected, created, received, maintained, or disseminated in conformance with the **Minnesota Government Data Practices Act**.

Section 5.15 QUORUM. A quorum of the **Red River Regional Dispatch Center Authority** necessary for the transaction of any business shall consist of six (6) **RRRDC Authority Board Members** who may transact business. If vacancies cause the membership of the **Red River Regional Dispatch Center Authority** to be fewer than six (6) members, the **Red River Regional Dispatch Center Authority** may not conduct any business until such time that there are at least six (6) **RRRDC Authority Board Members**, provided, however, that if a quorum of **RRRDC Authority Board Members** is not present, the **Members** who are present shall be authorized to adjourn the meeting to such date, time, and place as they shall determine and announce at the time of adjournment. The failure of the **RRRDC Authority Board** to meet due to a lack of a quorum shall not be construed so as to invalidate the authority of the **Director** to implement all previously approved contracts, agreements, or resolutions of the **Red River Regional Dispatch Center Authority**.

Section 5.16 BYLAWS. The **RRRDC Authority Board** may adopt bylaws governing its operations that are not inconsistent with this **Agreement** and may amend said bylaws as necessary. The bylaws may provide for sub-committees of the **RRRDC Authority Board** as

necessary. Any bylaw or modification thereof shall not be effective until approved by a majority vote of the **RRRDC Authority Board**. Bylaws shall be reviewed and updated annually by the **RRRDC Authority Board**.

Section 5.17 OFFICIAL NEWSPAPER. The **RRRDC Authority Board** may designate one or more legal newspapers of general circulation in the **Fargo-Moorhead-West Fargo Metropolitan Area** as its official newspaper for whatever purposes as may be required by statute to be published in an official newspaper.

ARTICLE VI. COMMITTEES

Section 6.01 BOARDS AND COMMISSIONS. Except as otherwise provided by law, or by this **Agreement**, there are no separate administrative boards, committees, or commissions. The **RRRDC Authority Board** performs the duties and exercises the powers of administrative boards, committees, or commissions. The **RRRDC Authority Board** may establish boards, commissions, or committees to advise the **RRRDC Authority Board** with respect to a **Dispatch Center** function or activity, to investigate a subject of interest to the **Red River Regional Dispatch Center Authority**, to perform quasi-judicial functions, or to perform any other task.

Section 6.02 BUDGET & FINANCE COMMITTEE. There is hereby created and continued a **Budget & Finance Committee** of the **Red River Regional Dispatch Center Authority** with the powers and duties set forth in this Article.

Section 6.03 BUDGET & FINANCE COMMITTEE JURISDICTION. The **Budget & Finance Committee** is responsible for making recommendations to the **RRRDC Authority Board** regarding the operating budgets and the capital budgets related to the **Dispatch Center**.

Section 6.04 BUDGET & FINANCE COMMITTEE MEMBERSHIP. The **Budget & Finance Committee** shall consist of ten (10) committee members, each of which shall first be nominated as follows and then approved by the **RRRDC Authority Board**:

- (a) One (1) person nominated by the two (2) **Cass County Members**, one (1) of which is the Cass County Finance Director or a member of the Finance Director's office and the other being one (1) of the **Cass County Members**;
- (b) One (1) person nominated by the two (2) **City of Fargo Members**, one (1) of which is the Fargo Finance Director or a member of the Finance Director's office and the other being one (1) of the **City of Fargo Members**;
- (c) One (1) person nominated by the two (2) **City of Moorhead Members**, one (1) of which is the Moorhead Finance Director or a member of the Finance Director's office and the other being one (1) of the **City of Moorhead Members**;
- (d) One (1) person nominated by the two (2) **Clay County Members**, one (1) of which is the Clay County Finance Director or a member of the Finance Director's office and the other being one (1) of the **Clay County Members**; and

- (e) One (1) person nominated by the two (2) **City of West Fargo Members**, one (1) of which is the West Fargo Finance Director or a member of the Finance Director's office and the other being one (1) of the **City of West Fargo Members**.

Section 6.05 BUDGET & FINANCE COMMITTEE CHAIR. The **Budget & Finance Committee** shall select a chair by majority vote of its members.

Section 6.06 DISSOLUTION OF BUDGET & FINANCE COMMITTEE. In the event that the **RRRDC Authority Board** determines by an affirmative vote of a majority of all **RRRDC Authority Board Members** that the **Budget & Finance Committee** is no longer needed, the **RRRDC Authority Board** may dissolve the **Budget & Finance Committee**.

Section 6.07 MEMBER ENTITY STAFF. **Member Entities** may provide support staff and services for the **Budget & Finance Committee**.

Section 6.08 RRRDC EXECUTIVE COMMITTEE. There is hereby created and continued an **RRRDC Executive Committee** of the **Red River Regional Dispatch Center Authority** with the powers and duties set forth in this Article.

Section 6.09 RRRDC EXECUTIVE COMMITTEE JURISDICTION. The **RRRDC Executive Committee** is responsible for making recommendations to the **RRRDC Authority Board** regarding all matters related to the **Dispatch Center** and for performing any other activities, decisions, tasks, including quasi-judicial functions, or any other matters delegated to it by the **RRRDC Authority Board**.

Section 6.10 RRRDC EXECUTIVE COMMITTEE MEMBERSHIP. The **RRRDC Executive Committee** shall consist of ten (10) committee members, each of which shall first be nominated as follows and then approved by the **RRRDC Authority Board**:

- (a) Two (2) persons nominated by the two (2) **Cass County Members**, and at least one (1) of which is a Cass County Sheriff representative;
- (b) A Fargo Police Department representative and a Fargo Fire Department representative nominated by the two (2) **City of Fargo Members**;
- (c) A Moorhead Police Department representative and a Moorhead Fire Department representative nominated by the two (2) **City of Moorhead Members**;
- (d) Two (2) persons nominated by the two (2) **Clay County Members**, and at least one (1) of which is a Clay County Sheriff representative; and
- (e) A West Fargo Police Department representative and a West Fargo Fire Department representative nominated by the two (2) **City of West Fargo Members**.
- (f) A representative of **Sanford Ambulance** proposed by **Sanford Ambulance**, who shall be a non-voting member of the committee.

Section 6.11 RRRDC EXECUTIVE COMMITTEE CHAIR. The **RRRDC Executive Committee** shall select a chair by majority vote of its members.

Section 6.12 DISSOLUTION OF RRRDC EXECUTIVE COMMITTEE. In the event that the **RRRDC Authority Board** determines by an affirmative vote of a majority of all **RRRDC Authority Board Members** that the **RRRDC Executive Committee** is no longer needed, the **RRRDC Authority Board** may dissolve the **RRRDC Executive Committee**.

Section 6.13 MEMBER ENTITY STAFF. **Member Entities** may provide support staff and services for the **RRRDC Executive Committee**.

Section 6.14 LAW ENFORCEMENT OPERATIONS COMMITTEE. There is hereby created and continued a **Law Enforcement Operations Committee** of the **Red River Regional Dispatch Center Authority** with the powers and duties set forth in this Article.

Section 6.15 LAW ENFORCEMENT OPERATIONS COMMITTEE JURISDICTION. The **Law Enforcement Operations Committee** is responsible for making recommendations to the **RRRDC Executive Committee** regarding policies and procedures related to law enforcement operations and for performing any other activities, decisions, tasks, including quasi-judicial functions, or any other matters delegated to it by the **RRRDC Executive Committee** or the **RRRDC Authority Board**.

Section 6.16 LAW ENFORCEMENT OPERATIONS COMMITTEE MEMBERSHIP. The **Law Enforcement Operations Committee** shall consist of ten (10) committee members, each of which shall first be nominated as follows and then approved by the **RRRDC Executive Committee**:

- (a) Two (2) persons nominated by the two (2) Cass County members of the **RRRDC Executive Committee**;
- (b) Two (2) persons nominated by the two (2) City of Fargo members of the **RRRDC Executive Committee**;
- (c) Two (2) persons nominated by the two (2) City of Moorhead members of the **RRRDC Executive Committee**;
- (d) Two (2) persons nominated by the two (2) Clay County members of the **RRRDC Executive Committee**; and
- (e) Two (2) persons nominated by the two (2) City of West Fargo members of the **RRRDC Executive Committee**.
- (f) A representative of **Sanford Ambulance** proposed by **Sanford Ambulance** and approved by the **RRRDC Executive Committee**, who shall be a non-voting member of the committee.

Section 6.17 LAW ENFORCEMENT OPERATIONS COMMITTEE CHAIR. The **Law Enforcement Operations Committee** shall select a chair by majority vote of its members.

Section 6.18 MEMBER ENTITY STAFF. **Member Entities** may provide support staff and services for the **Law Enforcement Operations Committee**.

Section 6.19 RESERVED.

Section 6.20 DISSOLUTION OF LAW ENFORCEMENT OPERATIONS COMMITTEE. In the event that the **RRRDC Authority Board** determines by an affirmative vote of a majority of all **RRRDC Authority Board Members** that the **Law Enforcement Operations Committee** is no longer needed, the **RRRDC Authority Board** may dissolve the **Law Enforcement Operations Committee**.

Section 6.21 FIRE/EMS OPERATIONS COMMITTEE. There is hereby created and continued a **Fire/EMS Operations Committee** of the **Red River Regional Dispatch Center Authority** with the powers and duties set forth in this Article.

Section 6.22 FIRE/EMS OPERATIONS COMMITTEE JURISDICTION. The **Fire/EMS Operations Committee** is responsible for making recommendations to the **RRRDC Executive Committee** regarding policies and procedures related to Fire/EMS operations matters related to the **Dispatch Center** and for performing any other activities, decisions, tasks, including quasi-judicial functions, or any other matters delegated to it by the **RRRDC Executive Committee** or the **RRRDC Authority Board**.

Section 6.23 FIRE/EMS OPERATIONS COMMITTEE MEMBERSHIP. The **Fire/EMS Operations Committee** shall consist of ten (10) committee members, each of which shall first be nominated as follows and then approved by the **RRRDC Executive Committee**:

- (a) Two (2) persons nominated by the two (2) Cass County members of the **RRRDC Executive Committee**;
- (b) Two (2) persons nominated by the two (2) City of Fargo members of the **RRRDC Executive Committee**;
- (c) Two (2) persons nominated by the two (2) City of Moorhead members of the **RRRDC Executive Committee**;
- (d) Two (2) persons nominated by the two (2) Clay County members of the **RRRDC Executive Committee**; and
- (e) Two (2) persons nominated by the two (2) City of West Fargo members of the **RRRDC Executive Committee**.
- (f) A representative of **Sanford Ambulance** proposed by **Sanford Ambulance** and approved by the **RRRDC Executive Committee**, who shall be a non-voting member of the committee.

Section 6.24 FIRE/EMS OPERATIONS COMMITTEE CHAIR. The **Fire/EMS Operations Committee** shall select a chair by majority vote of its members.

Section 6.25 DISSOLUTION OF FIRE/EMS OPERATIONS COMMITTEE. In the event that the **RRRDC Authority Board** determines by an affirmative vote of a majority of all **RRRDC Authority Board Members** that the **Fire/EMS Operations Committee** is no longer needed, the **RRRDC Authority Board** may dissolve the **Fire/EMS Operations Committee**.

Section 6.26 MEMBER ENTITY STAFF. **Member Entities** may provide support staff and services for the **Fire/EMS Operations Committee**.

Section 6.27 RADIO COMMUNICATIONS COMMITTEE. There is hereby created and continued a **Radio Communications Committee** of the **Red River Regional Dispatch Center Authority** with the powers and duties set forth in this Article.

Section 6.28 RADIO COMMUNICATIONS COMMITTEE JURISDICTION. The **Radio Communications Committee** is responsible for making recommendations to the **RRRDC Executive Committee** regarding policies and procedures related to radio communications operations of the **Dispatch Center** and for performing any other activities, decisions, tasks, including quasi-judicial functions, or any other matters delegated to it by the **RRRDC Executive Committee** or the **RRRDC Authority Board**.

Section 6.29 RADIO COMMUNICATIONS COMMITTEE MEMBERSHIP. The **Radio Communications Committee** shall consist of ten (10) committee members, each of which shall first be nominated as follows and then approved by the **RRRDC Executive Committee**:

- (a) Two (2) persons nominated by the two (2) Cass County members of the **RRRDC Executive Committee**;
- (b) Two (2) persons nominated by the two (2) City of Fargo members of the **RRRDC Executive Committee**;
- (c) Two (2) persons nominated by the two (2) City of Moorhead members of the **RRRDC Executive Committee**;
- (d) Two (2) persons nominated by the two (2) Clay County members of the **RRRDC Executive Committee**; and
- (e) Two (2) persons nominated by the two (2) City of West Fargo members of the **RRRDC Executive Committee**.
- (f) A representative of **Sanford Ambulance** proposed by **Sanford Ambulance**, who shall be a non-voting member of the committee.

Section 6.30 RADIO COMMUNICATIONS COMMITTEE CHAIR. The **Radio Communications Committee** shall select a chair by majority vote of its members.

Section 6.31 DISSOLUTION OF RADIO COMMUNICATIONS COMMITTEE. In the event that the **RRRDC Authority Board** determines by an affirmative vote of a majority of all **RRRDC Authority Board Members** that the **Radio Communications Committee** is no longer needed, the **RRRDC Authority Board** may dissolve the **Radio Communications Committee**.

Section 6.32 MEMBER ENTITY STAFF. Member Entities may provide support staff and services for the **Radio Communications Committee**.

Section 6.33 PERSONNEL COMMITTEE. There is hereby created and continued a **Personnel Committee** of the **Red River Regional Dispatch Center Authority** with the powers and duties set forth in this Article.

Section 6.34 PERSONNEL COMMITTEE JURISDICTION. The **Personnel Committee** is responsible for making recommendations to the **RRRDC Executive Committee** regarding personnel matters, including personnel policies and procedures, related to the **Dispatch Center** and for performing any other activities, decisions, tasks, including quasi-judicial functions, or any other matters delegated to it by the **RRRDC Executive Committee** or the **RRRDC Authority Board**.

Section 6.35 PERSONNEL COMMITTEE MEMBERSHIP. The **Personnel Committee** shall consist of ten (10) committee members, each of which shall first be nominated as follows and then approved by the **RRRDC Executive Committee**:

- (a) Two (2) persons nominated by the two (2) Cass County members of the **RRRDC Executive Committee**, one (1) of which is the Cass County Human Resources Director or a member of the Human Resources Director's office and the other being a Cass County Sheriff representative;
- (b) Two (2) persons nominated by the two (2) City of Fargo members of the **RRRDC Executive Committee**, one (1) of which is the Fargo Human Resources Director or a member of the Human Resources Director's office and the other being either the Fargo Police Chief or the Fargo Fire Chief;
- (c) Two (2) persons nominated by the two (2) City of Moorhead members of the **RRRDC Executive Committee**, one (1) of which is the Moorhead Human Resources Director or a member of the Human Resources Director's office and the other being either the Moorhead Police Chief or the Moorhead Fire Chief;
- (d) Two (2) persons nominated by the two (2) Clay County members of the **RRRDC Executive Committee**, one (1) of which is the Clay County Human Resources Director or a member of the Human Resources Director's office and the other being a Clay County Sheriff representative; and,
- (e) Two (2) persons nominated by the two (2) City of West Fargo members of the **RRRDC Executive Committee**, one (1) of which is the West Fargo Human Resources Director or a member of the Human Resources Director's office and the other being either the West Fargo Police Chief or the West Fargo Fire Chief.

Section 6.36 PERSONNEL COMMITTEE CHAIR. The **Personnel Committee** shall select a chair by majority vote of its members.

Section 6.37 DISSOLUTION OF PERSONNEL COMMITTEE. In the event that the **RRRDC Authority Board** determines by an affirmative vote of a majority of all **RRRDC Authority**

Board Members that the **Personnel Committee** is no longer needed, the **RRRDC Authority Board** may dissolve the **Personnel Committee**.

Section 6.38 MEMBER ENTITY STAFF. **Member Entities** may provide support staff and services for the **Personnel Committee**.

ARTICLE VII.
RED RIVER REGIONAL DISPATCH CENTER AUTHORITY POWERS

Section 7.01 POWERS. This **Agreement** shall in no way limit or restrict the powers and duties of each **Member Entity**, except as provided herein. The **Red River Regional Dispatch Center Authority** shall have the following duties and powers.

- (a) Receipt of Funds. To apply for and receive grants and **Debt Obligation** proceeds and to accept donations, bequests, and contributions from the **Member Entities**.
- (b) Enter Into Contracts. To enter into contracts related to the **Dispatch Center** and to perform all of its obligations pursuant to the terms and conditions of those contracts.
- (c) Director. To hire and terminate a **Director**.
- (d) Purchasing. To purchase or otherwise acquire real and personal property and to purchase capital equipment and equipment and items necessary for the operations and maintenance of the **Dispatch Center**.
- (e) Expenses. To incur expenses necessary and incidental to effectuation of its purposes and consistent with its powers.
- (f) Sales. To convey, sell, dispose of, or lease any of its equipment or its real or personal property as deemed necessary for the **Dispatch Center**.
- (g) Sue and Be Sued. To commence litigation as deemed necessary and to defend against any claims brought against the **Red River Regional Dispatch Center Authority**.
- (h) Conduct or Arrange for Public Information Meetings. To conduct and arrange for public information meetings.
- (i) Appoint Ex-Officio Board Members. Ex-Officio **RRRDC Authority Board Members** may attend **RRRDC Authority Board** meetings but may not vote unless they are seated as a member of the **RRRDC Authority Board**.
- (j) Appoint and Terminate Dispatch Center Consultants. To employ a **Program Management Consultant**, a **Lobbyist**, to the extent permitted by law, and other professional services support personnel and to provide necessary office space, supplies, equipment, and other support.

- (k) Employees. To employ personnel to carry out the purposes of this **Agreement**.
- (l) Management of Dispatch Center. To assist in the planning, design, development, and management of the **Dispatch Center**, including **Dispatch Center Property** acquisition and construction of the **Dispatch Center**.
- (m) Finance the Dispatch Center. To provide for the financing of the **Dispatch Center**, including coordination of the issuance of **Debt Obligations** by the **Member Entities**. This power includes the power to request that a **Member Entity** issue **Debt Obligations**.
- (n) Operations and Maintenance of Dispatch Center. To provide for the operations and maintenance of the **Dispatch Center**. This authority includes the authority to hire, retain, and terminate private contractors to provide for the operations and maintenance of the **Dispatch Center**. This power includes the power to request that a **Member Entity** operate and/or maintain the **Dispatch Center**. In the event that a **Member Entity** is requested to maintain a portion of the **Dispatch Center**, the **Member Entity** will be reimbursed for such costs in accordance with Article XII of this **Agreement**.
- (o) Budget. As provided in Article VIII, to establish an annual budget and to submit the preliminary budget for review by June 30 of each year of this **Agreement** to the **Governing Bodies** of the **Member Entities**.
- (p) Insurance. To enter into contracts for the purposes of securing insurance coverage regarding the **Dispatch Center** or the operation of the **Red River Regional Dispatch Center Authority**, including general liability, motor vehicles, property, and workers' compensation coverage.
- (q) Economization. To recommend to the **Member Entities** ways to economize the construction, management, operations, financing, and maintenance of the **Dispatch Center**.
- (r) Land Acquisition Requests. To request that **Member Entities** obtain access to and title to lands, easements, and rights-of-way necessary for the **Dispatch Center**. This will include requests for a **Member Entity** to exercise its eminent domain authority.
- (s) Amendments. To recommend amendments to this **Agreement** to the **Member Entities**.
- (t) Enforce this Agreement. To enforce the terms of this **Agreement**, including requiring one or more of the **Member Entities** to this **Agreement** to fulfill its obligations as defined herein.

- (u) Delegate Tasks. To delegate tasks to one or more of the **Member Entities** to this **Agreement**, unless prohibited by statute or otherwise.
- (v) Committees and Sub-committees. Pursuant to ARTICLE VI of this **Agreement**, to create committees to provide technical, financial, and legal assistance, or other assistance to the **Red River Regional Dispatch Center Authority**.
- (w) Provide for Professional Services. To procure the services of engineers, attorneys, contractors, consultants, and other persons or entities for the planning, design, development, financing, construction, operation, and/or maintenance of the **Dispatch Center**.
- (x) Hire Accountants. Procure the services of a public accountant to make an annual audit of the accounts and records of the **Red River Regional Dispatch Center Authority**.
- (y) Contract with Public Entities. To enter into contracts or other arrangements with the government of the United States of America or any department thereof, municipalities, counties, states or any agency thereof, persons, companies, or corporations, for cooperation or assistance in designing, developing, and constructing or operating the **Dispatch Center** and acquiring and maintaining the necessary lands, easements, and rights-of-way for the **Dispatch Center**, including contracts, joint powers agreements, or other arrangements for advancing funds for **Dispatch Center** purposes and for recouping some or all of such funds including, without limitation, entering into such contract(s), joint powers agreement(s), and any other purposes as may be necessary and appropriate for the furtherance of the **Dispatch Center**. This power includes the power to perform all its obligations under such contracts and the power to carry out and implement such contracts. To enter into joint powers agreements with other public entities.
- (z) Contracts with Private Third Parties. To enter into contracts or other arrangements with private utility companies or cooperatives, or other private parties, for cooperation or assistance in the design, construction, or operating of the **Dispatch Center**, and any other purposes as may be necessary and appropriate for the furtherance of the **Dispatch Center**. This power includes the power to perform all its obligations under such contracts and the power to carry out and implement such contracts.
- (aa) Reserved.
- (bb) Permits. To apply for any permits or licenses for the **Dispatch Center**, whether from the Government, the State of North Dakota, or the State of Minnesota.
- (cc) Reserved.

- (dd) Lobbying. To the extent permitted by law, to lobby for state (in either North Dakota or Minnesota) and/or federal funds for the **Dispatch Center** including lobbying for federal or state (in either North Dakota or Minnesota) authorization or other approvals as may be requested by the **Red River Regional Dispatch Center Authority**.
- (ee) Indemnification. To indemnify and hold harmless the **Member Entities**.
- (ff) Purchase Insurance Policies. To purchase insurance policies or products that provide coverage for contractors, including their consultants, agents, advisors, lobbyists, and employees for work performed in connection with, arising out of, or related to the **Dispatch Center**.
- (gg) Reserved.
- (hh) Reserved.
- (ii) Implicit Powers. In addition to the above specified powers, the **Red River Regional Dispatch Center Authority** shall have those powers implicitly necessary to carry out its duties.
- (jj) Uncertain Powers. If it is not clear whether the **Red River Regional Dispatch Center Authority** has a power to perform a certain action or to make a certain decision, the **Red River Regional Dispatch Center Authority** shall refrain from acting until such times as it receives authority in writing from a majority of **Member Entities**.

**ARTICLE VIII.
FINANCE/BUDGET**

Section 8.01 RRRDC AUTHORITY BOARD TO CONTROL FINANCES. The **RRRDC Authority Board** is responsible for the financial affairs of the **Red River Regional Dispatch Center Authority**. The **RRRDC Authority Board** must provide for the collection of revenues, the safekeeping of assets, the auditing and settlement of accounts, and the safekeeping and disbursements of public monies.

Section 8.02 FISCAL YEAR. The fiscal year of the **Red River Regional Dispatch Center Authority** is the calendar year.

Section 8.03 PREPARATION OF AND SUBMISSION OF THE BUDGET. An annual budget must be prepared and submitted to the **RRRDC Authority Board** by or before August 1 of each and every year of this **Agreement** in accordance with the following schedule:

- (a) The **Director**, with the assistance of the **Executive Committee**, shall prepare and submit an annual budget to the **Budget & Finance Committee** for review no later than May 15; and

- (b) Upon receipt and review thereof, the **Budget & Finance Committee** shall recommend and submit an annual budget to the **RRRDC Authority Board** for its consideration at its first regular meeting in June and the **RRRDC Authority Board** shall, upon receipt and consideration thereof, shall approve a preliminary annual budget and submit it to the **Member Entities** by June 30; and
- (c) Action on the annual budget by the **RRRDC Authority Board** shall be taken as set forth in this Article including, as provided in Section 8.04, adoption of an **Approved Budget** by resolution.

The budget must provide a complete financial plan for **Red River Regional Dispatch Center Authority** funds and activities for the ensuing fiscal year. The budget is in a form recommended by the **Director** or specified by the **RRRDC Authority Board** with necessary modifications required by law. The budget must show estimated income and proposed expenditures, including debt service and comparative figures for the current fiscal year, actual and estimated, and for the preceding fiscal year. The budget must show proposed expenditures for current operations. The budget must show proposed capital expenditures for the ensuing year and the proposed method of financing those capital expenditures. The annual budget will include expenditures for debt service payments; however, expenditures for debt service payments are not subject to annual appropriations of the **Red River Regional Dispatch Center Authority**.

Section 8.04 RRRDC AUTHORITY BOARD ACTION ON THE ANNUAL BUDGET. The budget must be considered by the **RRRDC Authority Board** no later than the first regular meeting of the **RRRDC Authority Board** in June. The **RRRDC Authority Board** must consider the budget at subsequent meetings until an **Approved Budget** is adopted by an affirmative vote of the **RRRDC Authority Board**. The failure of the **RRRDC Authority Board** to approve an annual budget shall not impair, excuse, revoke, negate, or terminate the obligation of a **Member Entity** to provide for and make a debt service payment on a **Debt Obligation**. The sums appropriated by the budget may not exceed the estimated revenues and reserves available to fund the expenditures in the budget. The **RRRDC Authority Board** must adopt the budget by resolution not later than August 1 of each and every year of this **Agreement** and shall submit the **Approved Budget** to the **Member Entities** by August 15 of each such year. The budget resolution must state the total amount of each budgeted fund, with segregation of objects and purposes of expenditures as deemed necessary by the **RRRDC Authority Board**. The sums fixed in the budget resolution are appropriated for the purposes identified in the budget resolution. The failure of the **Red River Regional Dispatch Center Authority** or the **RRRDC Authority Board** to timely approve an annual budget shall not be construed so as to invalidate the authority of the **Red River Regional Dispatch Center Authority** to continue making payments for continuing obligations or contracts previously approved by the **Red River Regional Dispatch Center Authority**.

Section 8.05 MEMBER ENTITY ACTION ON THE ANNUAL BUDGET. As provided in this Article, the **RRRDC Authority Board** shall submit to the **Member Entities** the preliminary budget, upon its adoption by resolution, as provided in Section 8.04. **Member Entities** are not required to formally adopt the budget but they may provide advice, comments, and input to the **Red River Regional Dispatch Center Authority**. The budget submitted to the **Member Entities** is intended to provide **Member Entities** with information regarding the financial condition of the

Red River Regional Dispatch Center Authority and does not require formal approval by the **Member Entities' Governing Bodies**.

Section 8.06 ENFORCEMENT OF THE BUDGET. The **Director** must enforce the budget. The **Director** may not approve a payment or the incurring of an obligation by the **Red River Regional Dispatch Center Authority** unless funds for the payment or obligation are appropriated by the budget and there is a sufficient unexpended balance in the appropriation after deducting prior expenditures and encumbrances against the appropriation; provided, that **Debt Obligations** are not subject to this requirement. An officer, employee, agent, or designee of the **Red River Regional Dispatch Center Authority** may not place an order or make a purchase for the **Red River Regional Dispatch Center Authority** unless the order or purchase is authorized in the budget. A **Red River Regional Dispatch Center Authority** check drawn on **Red River Regional Dispatch Center Authority** funds to a person or entity other than the **Red River Regional Dispatch Center Authority** may not be issued or paid until the claim to which the payment relates has been documented by an invoice, payroll timesheet, or other document approved and signed by a person authorized by the **RRRDC Authority Board** to execute documents on behalf of the **Red River Regional Dispatch Center Authority** who vouches for its correctness and reasonableness. The **Director** must report to the **Budget & Finance Committee** and the **RRRDC Authority Board** from time to time on the status of the budget and the expenditures from, and balances in, the budget accounts and funds.

Section 8.07 ALTERATIONS IN THE BUDGET. The **RRRDC Authority Board** may not increase the amounts appropriated in the budget resolution beyond the estimated revenues except to the extent that actual receipts exceed the estimated revenues. The **RRRDC Authority Board** may, by resolution, reduce an appropriation for any purpose in the budget or authorize the transfer of sums from unencumbered appropriations in the budget to other purposes. The **RRRDC Authority Board** may make budget adjustments as needed and from time to time.

Section 8.08 FUNDS TO BE KEPT. There must be maintained in the **Red River Regional Dispatch Center Authority** treasury the funds required by ARTICLE X of this **Agreement** and other funds as may be required by law, the budget resolution, or other resolution. The **RRRDC Authority Board** may, by resolution, make inter-fund loans except from trust or funds that are required to be restricted in some manner required by an applicable grant or other funding agreement.

Section 8.09 FINANCIAL MANAGEMENT POLICY. The **RRRDC Authority Board** will adopt a financial management policy upon the recommendation of the **Budget & Finance Committee**. The financial management policy should include reference to the annual audit process, and the **RRRDC Authority Board** may, at its discretion, create an audit subcommittee or task the **Budget & Finance Committee** to initiate the process.

**ARTICLE IX.
RESERVED**

**ARTICLE X.
FINANCIAL OVERSIGHT/ FISCAL AGENT**

Section 10.01 FINANCIAL OVERSIGHT. Under the oversight of the **RRRDC Authority Board** and the **Budget & Finance Committee**, the Clay County Auditor, the Cass County Finance Director, the City of Fargo Finance Director, the City of West Fargo Finance Director, and the City of Moorhead Finance Director shall work cooperatively to develop written administrative procedures and to establish funds for the management of **Dispatch Center** funds, **Debt Obligation** proceeds, the repayment of the debt service on any **Debt Obligations**, including, but not limited to procedures for handling **Dispatch Center** payment requests, ensuring tax and arbitrage compliance, and all other financial records for the **Dispatch Center** and the **Red River Regional Dispatch Center Authority**. Said written administrative procedures must be kept on file with the **Secretary** and made available for public inspection.

Section 10.02 INTERIM FISCAL AGENT. **Cass County**, acting through the Cass County Finance Director, shall serve as the **Fiscal Agent** for the **Dispatch Center**, to serve for an indefinite term. **Cass County** may resign as such at any time and which may be removed at any time by the **RRRDC Authority Board**. The **City of Fargo**, having served as the **Fiscal Agent** for many years prior to the **Effective Date**, shall serve as the **Interim Fiscal Agent** for the **Dispatch Center** on a temporary, interim basis and until such time as a transition of the role of **Fiscal Agent** to **Cass County** is completed, said transition to Cass County ending no later than six (6) months after the **Effective Date**. The **Interim Fiscal Agent** shall have the same powers, obligations, and duties as the **Fiscal Agent**.

Section 10.03 APPOINTMENT OF FISCAL AGENT. At such time as **Cass County** is no longer the **Fiscal Agent**, whether by termination at the instance of **Cass County**, the **RRRDC Authority Board**, or otherwise, then in such event, pursuant to Section 5.09 of this **Agreement**, the **RRRDC Authority Board** may appoint a **Fiscal Agent**. The **Fiscal Agent** is chosen by the **RRRDC Authority Board** solely on the basis of cost, experience, and fiscal management qualifications. The **Fiscal Agent** is appointed by the **RRRDC Authority Board** for an indefinite term and may be removed at any time by the **RRRDC Authority Board**.

Section 10.04 FISCAL AGENT. The **Fiscal Agent** shall be responsible for the administration of financial and accounting functions for the **Red River Regional Dispatch Center Authority**. The **Fiscal Agent** may be compensated by the **Red River Regional Dispatch Center Authority** at a rate mutually agreed upon by the **Red River Regional Dispatch Center Authority** and the **Fiscal Agent**. The **Fiscal Agent** shall establish and maintain for the management of **Dispatch Center** funds including but not limited, to annual budgets, revenues, proceeds of **Debt Obligations**, and the repayment of the debt service on the **Debt Obligations**.

Section 10.05 MISCELLANEOUS FUND ACCOUNTS. The **Fiscal Agent** is hereby authorized to establish and maintain such other fund accounts or sub-fund accounts as may be required by the terms of the **Debt Obligations** or agreed upon by the **Member Entities**.

Section 10.06 FISCAL AGENT TO ACT AS TRUSTEE OF FUNDS. The **Fiscal Agent**, acting as a trustee with a fiduciary duty to the other **Member Entities**, shall manage **Dispatch Center** funds outlined in Sections 10.04 and 10.05. If for any reason the **Fiscal Agent** shall neglect or fail to perform said fiduciary duties, the **RRRDC Authority Board** and the **Member Entities** may intervene and take any action necessary to avoid a default in payment of the debt service on the **Debt Obligations** and ensure the proper management of the various funds described in Sections 10.04 and 10.05.

Section 10.07 FUNDS OPEN TO INSPECTION. At all times during the term of this **Agreement**, the **Fiscal Agent** shall make available for inspection its financial records with respect to the funds described in Section 10.04 of this **Agreement**. The **Member Entities** agree that **GAAP** procedures shall govern.

Section 10.08 NO COMMINGLING OF FUNDS. All funds of the **Red River Regional Dispatch Center Authority** shall be held in separate accounts in the name of the **Red River Regional Dispatch Center Authority** and not commingled with funds of any **Member Entity** or any other person or entity. All funds of the **Red River Regional Dispatch Center Authority** shall be strictly and separately accounted for, and regular reports shall be rendered of all receipts and disbursements, at least quarterly during the calendar year. The **Red River Regional Dispatch Center Authority** shall contract with a public accountant to make an annual audit of the accounts and records of the **Red River Regional Dispatch Center Authority**. All expenditures shall be made in accordance with the **Approved Budget**. Notwithstanding the foregoing, so long as the **City of Fargo** is acting as **Fiscal Agent**, the obligation to hold **Red River Regional Dispatch Center Authority** funds in separate accounts shall not be applicable, as the **City of Fargo** is unable to comply with such requirements. The **City of Fargo** shall, however, endeavor to account separately for such **Red River Regional Dispatch Center Authority** funds, deposits, and expenditures. In no event shall **Pledged Revenues** be considered funds legally available to the **City of Fargo** in conjunction with separate debt or bond instruments or indentures issued by the **City of Fargo** for non-**Dispatch Center** related activity.

Section 10.09 REPORTS AND AUDITS. The **Fiscal Agent** shall submit a quarterly report to the **RRRDC Authority Board Members** and the **Member Entities** showing any activity related to the funds described in Section 10.04 of this **Agreement**. The **Fiscal Agent** shall provide the **RRRDC Authority Board** with annual audit reports and other financial records as needed for the **RRRDC Authority Board** to monitor its funds.

Section 10.10 ASSIGNMENT OR DELEGATION OF DUTIES. In the event that the **Fiscal Agent** is unable, unwilling to perform the duties of the **Fiscal Agent**, or it is in the best interests of the **Red River Regional Dispatch Center Authority**, the **RRRDC Authority Board** may assign the duties of the **Fiscal Agent** to a different third party private entity or a **Member Entity**. Prior to assigning the duties to either a private entity or a **Member Entity**, the **Red River Regional Dispatch Center Authority** shall provide written notice of its intent to assign the duties of **Fiscal Agent** at least thirty (30) calendar days prior to undertaking such action to the **Governing Body** of each of the **Member Entities**.

Section 10.11 BUDGET & FINANCE COMMITTEE. The **Fiscal Agent** shall provide reports and make recommendations regarding the management of **Dispatch Center** funds and financing to the **Budget & Finance Committee** prior to submitting those recommendations to the **RRRDC Authority Board**. The **Budget & Finance Committee** may make recommendations regarding the reports and recommendations of the **Fiscal Agent** and submit those reports and recommendations to the **RRRDC Authority Board**.

Section 10.12 INSPECTION. The books and records of the **Red River Regional Dispatch Center Authority** shall be open to inspection by the **RRRDC Authority Board Members** and **Member Entities** at all reasonable times.

ARTICLE XI. ISSUANCE OF DEBT FOR THE DISPATCH CENTER

Section 11.01 INTENT. The **Member Entities** agree and acknowledge that the **Dispatch Center** may require the issuance of **Debt Obligations** by one or more of the **Member Entities** which may be used to pay costs directly associated with the **Dispatch Center** or to refund prior **Debt Obligations**, both temporary and permanent, issued by one or more of the **Member Entities**.

Section 11.02 ISSUANCE OF DEBT FOR DISPATCH CENTER PERMITTED. The **Member Entities** agree and acknowledge that N.D.C.C. § 54-40.3-01, and Minn. Stat. § 471.59 allow two (2) or more Minnesota and North Dakota political subdivisions having in common any portion of their territory to cooperatively exercise their respective powers to issue **Debt Obligations** for the purpose of constructing and acquiring the **Dispatch Center** that will be owned or operated jointly or cooperatively by and through a joint powers agreement.

Section 11.03 PROCEDURE TO ISSUE DEBT OBLIGATIONS. The **Member Entities** agree and acknowledge that the precise terms and conditions of any **Debt Obligations** are unknown as of the **Effective Date**. The specific terms of the **Debt Obligations** will be set forth by written resolution adopted by the **Red River Regional Dispatch Center Authority** and the **Member Entity**, and/or **Member Entities**, issuing the **Debt Obligation**.

Section 11.04 RESERVED.

Section 11.05 DEBT OBLIGATION HELD/ISSUED BY MEMBER ENTITIES. The **Debt Obligations** will be issued by one or more of the **Member Entities**. The **Red River Regional Dispatch Center Authority** shall not be deemed to be the issuer of **Debt Obligations** and the **Red River Regional Dispatch Center Authority** shall not have the authority to pledge the full faith, credit and/or taxing power of a **Member Entity** without concurrent approval of the **Member Entity** issuing the **Debt Obligation**.

Section 11.06 COVENANT. Until the **Debt Obligations** have been fully paid and redeemed as provided in the terms of the **Debt Obligations** or any extensions thereof, the **Member Entities** hereby covenant and agree that they will use their **Best Efforts** to fully and properly perform each and all of the covenants contained and referred to in this **Agreement** and in the **Debt Obligations** or any extensions thereof.

Section 11.07 CASS COUNTY TO MAINTAIN TAX EXEMPT STATUS. **Cass County** covenants and agrees that it will not take or permit any of its officers, employees, or agents to take any action which would cause the interest payable in connection with the **Debt Obligations** to become subject to taxation under the **Code**, as now existing or as hereinafter amended or proposed or in effect at the time of such action, or otherwise cause the **Debt Obligations** to be treated as private activity bonds. **Cass County** agrees to monitor and take any action necessary to make rebate payments that may be required under the **Code** and related U.S. treasury regulations.

Section 11.08 CLAY COUNTY TO MAINTAIN TAX EXEMPT STATUS. **Clay County** covenants and agrees that it will not take or permit any of its officers, employees, or agents to take any action which would cause the interest payable in connection with the **Debt Obligations** to become subject to taxation under the **Code**, as now existing or as hereinafter amended or proposed or in effect at the time of such action, or otherwise cause the **Debt Obligations** to be treated as private activity bonds. **Clay County** agrees to monitor and take any action necessary to make rebate payments that may be required under the **Code** and related U.S. treasury regulations.

Section 11.09 CITY OF FARGO TO MAINTAIN TAX EXEMPT STATUS. The **City of Fargo** covenants and agrees that it will not take or permit any of its officers, employees, or agents to take any action which would cause the interest payable in connection with the **Debt Obligations** to become subject to taxation under the **Code**, as now existing or as hereinafter amended or proposed or in effect at the time of such action, or otherwise cause the **Debt Obligations** to be treated as private activity bonds. The **City of Fargo** agrees to monitor and take any action necessary to make rebate payments that may be required under the **Code** and related U.S. treasury regulations.

Section 11.10 CITY OF MOORHEAD TO MAINTAIN TAX EXEMPT STATUS. The **City of Moorhead** covenants and agrees that it will not take or permit any of its officers, employees, or agents to take any action which would cause the interest payable in connection with the **Debt Obligations** to become subject to taxation under the **Code**, as now existing or as hereinafter amended or proposed or in effect at the time of such action, or otherwise cause the **Debt Obligations** to be treated as private activity bonds. The **City of Moorhead** agrees to monitor and take any action necessary to make rebate payments that may be required under the **Code** and related U.S. treasury regulations.

Section 11.11 CITY OF WEST FARGO TO MAINTAIN TAX EXEMPT STATUS. The **City of West Fargo** covenants and agrees that it will not take or permit any of its officers, employees, or agents to take any action which would cause the interest payable in connection with the **Debt Obligations** to become subject to taxation under the **Code**, as now existing or as hereinafter amended or proposed or in effect at the time of such action, or otherwise cause the **Debt Obligations** to be treated as private activity bonds. The **City of West Fargo** agrees to monitor and take any action necessary to make rebate payments that may be required under the **Code** and related U.S. treasury regulations.

**ARTICLE XII.
DISPATCH CENTER PROCEDURES AND COST SHARE**

Section 12.01 INTENT. The **Member Entities** agree and acknowledge that the following general procedures will govern the bidding, contracting, and payment procedures for any projects.

Section 12.02 NORTH DAKOTA AND MINNESOTA MEMBER ENTITY ALLOCATION. The **North Dakota Member Entities** are authorized to enter into a separate, subordinate agreement as between the **North Dakota Member Entities** to allocate the **Dispatch Center** costs herein allocated to the **North Dakota Member Entities** pursuant to Sections 12.03, 12.04, 12.05, or 12.06 of this **Agreement**. The **Minnesota Member Entities** are authorized to enter into a separate, subordinate agreement as between the **Minnesota Member Entities** to allocate the **Dispatch Center** costs herein allocated to the **Minnesota Member Entities** pursuant to Section 12.03, 12.04, 12.05, or 12.06 of this **Agreement**. Pursuant to and in accordance with this section **Clay County** and the **City of Moorhead** intend to enter into a Dispatch Services Reimbursement Agreement whereby the **City of Moorhead** will remit its cost share to **Clay County**, which in turn will remit the **Minnesota Member Entities** cost share to the **Red River Regional Dispatch Center Authority**. Provided that if **Clay County** and the **City of Moorhead** are unable to enter into a Dispatch Services Reimbursement Agreement or said Dispatch Services Reimbursement Agreement is terminated, the **City of Moorhead** shall pay its share of the costs as set forth in this Article directly to the **Red River Regional Dispatch Center Authority**. Any sub-agreements and the rights of the **Member Entities** thereunder, entered into by the **Member Entities** pursuant to this Section, shall be subordinate to the rights created under this **Agreement**.

Section 12.03 COST SHARE – SOFTWARE MAINTENANCE AGREEMENT AND LICENSE FEES. The costs associated with the **Software Maintenance Agreement** and ongoing license fees therefore will be pro-rated between the **City of Fargo**, the **City of West Fargo**, the **City of Moorhead**, **Cass County**, and **Clay County** based on the cost-share formula as follows:

- (a) **City of Fargo – 36.65%**
- (b) **City of Moorhead – 17.68%**
- (c) **Cass County – 18.42%**
- (d) **Clay County – 15.84%**
- (e) **City of West Fargo – 11.42%**

Section 12.04 COST SHARE – OTHER THAN ANNUAL OPERATIONS. **Costs** for matters other than the annual **Software Maintenance Agreement** costs and ongoing license fees therefore, as described in Section 12.03, and other than for annual operations, as described in Section 12.05, shall be split and apportioned between the **Member Entities** in the following manner:

- A. **City of Fargo – 50.4%**
- B. **City of Moorhead – 17.8%**

- C. **Cass County** – 8.0%
- D. **Clay County** – 8.3%
- E. **City of West Fargo** – 15.5%

Said allocation percentages being based upon the Metro-COG formula and upon the desire to provide dispatch services on behalf of other non-member agencies. [Note: The cost-allocation formula was updated to current population after the 2010 and 2020 U.S. Census data became available. Based upon 2020 U.S. Census results, population of each of the five (5) **Member Entities** are: **Clay County**-65,318; **Cass County**-184,525; Total Cass/Clay-249,843]; **City of Moorhead**-44,505; **City of Fargo**-125,990; **City of West Fargo**-38,626.]

Section 12.05 COST SHARE – ANNUAL OPERATIONS. With respect to the allocation of the annual operations costs, as they are typically reflected in the annual operations budget, costs shall be split and apportioned between the **Member Entities** in the following manner:

- A. **City of Fargo** – 0.0%
- B. **City of Moorhead** – 17.8%
- C. **Cass County** – 73.9%
- D. **Clay County** – 8.3%
- E. **City of West Fargo** – 0.0%

Said costs allocation to **Cass County** for the shares for the **City of West Fargo** and the **City of Fargo** being covered by a North Dakota 9-1-1 fee collected by **Cass County**, said arrangement having been memorialized in the Eighth Amended JPA (a/k/a the Fifth Amendment to the Third Amended and Reconstituted Joint Powers Agreement (Jan. 2015)). See generally Exhibit A.

Section 12.06 COST SHARE FOR NEW DISPATCH CENTER. As of the Effective Date, the **Red River Regional Dispatch Center Authority** is considering arrangements for the design, financing, construction, and fit-up of a new dispatch facility (the “**New Dispatch Center**”) intended to replace the dispatch facility located at 300 NP Avenue, Fargo, North Dakota. With respect to the sharing of costs associated with the design, financing, and construction of the **New Dispatch Center**, cost-share and other provisions related to the **New Dispatch Center** are set forth in Article XXIV below.

Section 12.07 PERIODIC REVIEW OF COST SHARE ALLOCATIONS BASED UPON POPULATION. Subject to Section 12.02, the **RRRDC Authority Board** will review the operational cost allocations derived from population calculations or estimates, such as the allocations set forth in Sections 12.04 and 12.05, every three (3) years to determine if changes in population distributions warrant revision of the allocation of costs. The failure of the **RRRDC Authority Board** to undertake such review or to approve any proposed revision shall not invalidate the then-existing cost share allocation set forth herein or any cost share allocation subsequently approved as provided in this **Agreement**.

Section 12.08 DISPUTES WITH CONTRACTORS. The **Member Entities** and the **Red River Regional Dispatch Center Authority** shall coordinate with respect to any disputes with contractors regarding contracts let for the **Dispatch Center** business purposes. Such coordination shall include any potential or ongoing litigation with the contractor. If a **Member Entity** has a claim made against it for a contract for construction of an element of the **Dispatch Center**, the **Red River Regional Dispatch Center Authority** shall reimburse the **Member Entity** for any and all legal fees or other costs or damages the **Member Entity** incurs arising from or related to the contract dispute. Claims made or brought against a **Member Entity** arising out of contracts let for the **Dispatch Center** shall be venued in accordance with the applicable construction contract venue selection language and/or applicable federal or state rules, regulations, or laws.

ARTICLE XIII. OPERATIONS AND MAINTENANCE

Section 13.01 DISPATCH CENTER MAINTENANCE. The **Member Entities** agree and acknowledge that the **Dispatch Center** will require management, operations, and maintenance. The **RRRDC Authority Board** will oversee the long-term management, operations, and maintenance of the **Dispatch Center**. The **Red River Regional Dispatch Center Authority** shall reimburse **Member Entities** for all reasonable costs incurred by the **Member Entity** arising from or directly related to management, operation, improvement, modification, or maintenance of the **Dispatch Center**.

Section 13.02 OPERATIONS. The **Director** and the **RRRDC Authority Board** are authorized to provide amounts within the annual budget for the annual administration and operations of the **Dispatch Center**. The **RRRDC Authority Board** shall by written resolution enact specific procedures and policies to govern the operation of the **Dispatch Center**.

Section 13.03 RESERVED.

Section 13.04 MAINTENANCE. The **RRRDC Authority Board** may request one or more **Member Entities** to perform maintaining of the **Dispatch Center**.

Section 13.05 OPERATIONS AND MAINTENANCE EMPLOYEES. The **Red River Regional Dispatch Center Authority** may hire employees or contract with private entities to provide for the maintenance of the **Dispatch Center**. The **Director** shall provide the **RRRDC Authority Board** with regular updates regarding operations and maintenance of the **Dispatch Center**.

Section 13.06 ADOPT PROCEDURES. The **RRRDC Authority Board** may adopt procedures, protocols, and standard operating procedures for the **Dispatch Center** by written resolution. The procedures, protocols, and standard operating procedures shall be developed in cooperation by the administrative staffs of the **Member Entities**. The resolution or resolutions approving the procedures, protocols, and standard operating procedures shall be submitted to the **Member Entities** a minimum of forty-five (45) calendar days prior to consideration by the **RRRDC Authority Board**. The **Member Entities** may comment upon the draft resolution by submitting written comments to the **RRRDC Authority Board**. The **RRRDC Authority Board** may then approve the resolution establishing the procedures, protocols, and standard operating

procedures in accordance with the voting requirements of Section 5.09 of this **Agreement**. The **RRRDC Authority Board** will have authority to operate the **Dispatch Center**, and the **Member Entities** shall cooperate with the operations and policies of the **RRRDC Authority Board**.

Section 13.07 REQUESTS TO PERFORM MAINTENANCE. The **Red River Regional Dispatch Center Authority** may request that a **Member Entity** undertake maintenance of a **Dispatch Center Element**.

Section 13.08 CONTRACTS FOR MAINTENANCE OF DISPATCH CENTER ELEMENTS. Contracts for maintenance of **Dispatch Center Elements** shall identify the **Member Entity** undertaking the maintenance or the **Red River Regional Dispatch Center Authority** as the owner under the contract. The form of the contract shall be approved by the **Director**. All contracts for maintenance of **Dispatch Center Elements** shall be approved at a public meeting and by resolution of either the **Member Entity's Governing Body** or the **RRRDC Authority Board**. Copies of all contracts held by a **Member Entity** pursuant to this Section shall be provided to the **Secretary**.

Section 13.09 PROCESSING OF PAY REQUESTS AND CHANGE ORDERS FOR MAINTENANCE CONTRACTS. Pay request and change orders relating to contracts for maintenance of **Dispatch Center Elements** shall be reviewed and approved by either the applicable **Member Entity** or the **Red River Regional Dispatch Center Authority** which ever entity is identified as the owner under the contract. Provided that whether a **Member Entity** or the **Red River Regional Dispatch Center Authority** is identified as the owner under the contract, change orders exceeding ten percent (10%) or twenty-five thousand dollars (\$25,000), whichever amount is smaller, of the original contract amount for the maintenance of **Dispatch Center Elements** shall be approved by the **Director**. Copies of all pay requests and change orders held by a **Member Entity** pursuant to this Section shall be provided to the **Secretary**.

Section 13.10 RESERVED.

Section 13.11 DISPUTES WITH CONTRACTORS REGARDING MAINTENANCE CONTRACTS. The **Member Entities** and the **Red River Regional Dispatch Center Authority** shall coordinate with respect to any disputes with contractors regarding contracts let for the maintenance of a **Dispatch Center Element**. Such coordination shall include any potential or ongoing litigation with the contractor. If a **Member Entity** has a claim made against it for a contract for maintenance of a **Dispatch Center Element**, the **Red River Regional Dispatch Center Authority** shall reimburse the **Member Entity** for any and all legal fees or other costs or damages the **Member Entity** incurs arising from or related to the contract dispute. Claims made or brought against a **Member Entity** arising out of a contract for maintenance of a **Dispatch Center Element** shall be venued in accordance with the applicable maintenance contract venue selection language and/or applicable federal or state rules, regulations, or laws.

**ARTICLE XIV.
DIRECTOR**

Section 14.01 THE DIRECTOR. The **Director** is the chief administrative officer of the **Red River Regional Dispatch Center Authority**. The **Director** is chosen by the **Red River Regional Dispatch Center Authority** solely on the basis of training, experience, executive, and administrative qualifications. The **Director** is appointed by the **RRRDC Authority Board** for an indefinite term but may be removed at any time by the **RRRDC Authority Board**; provided, however, the **RRRDC Authority Board** is authorized to enter into an employment agreement with the **Director** containing provisions that address termination for cause, termination without cause, or both.

Section 14.02 POWERS AND DUTIES OF THE DIRECTOR.

- (a) The **Director** is the head of the administrative branch of the **Red River Regional Dispatch Center Authority** and is responsible to the **RRRDC Authority Board** for the administration of the **Red River Regional Dispatch Center Authority's** affairs.
- (b) The **Director** will be responsible for compliance of, and enforcement of, this **Agreement** and the resolutions of the **Red River Regional Dispatch Center Authority**.
- (c) The **Director** appoints employees on the basis of merit and fitness and subject to the applicable personnel policies or rules of the **Red River Regional Dispatch Center Authority** and the **Approved Budget**. The **Director** may remove or suspend appointed employees subject to applicable personnel policies or rules. The **Director** shall maintain authorized Full Time Equivalent (FTE) positions for the organization consistent with **RRRDC Authority Board** approvals and budgetary constraints. The **Director** may delegate tasks and projects to **Red River Regional Dispatch Center Authority** employees or **Member Entity** staff, including the **Human Resources Agent**.
- (d) The **Director** must attend meetings of the **RRRDC Authority Board**. The **Director** may take part in discussion at **RRRDC Authority Board** meetings but may not vote.
- (e) The **Director** may recommend to the **RRRDC Authority Board** for adoption measures necessary for the efficient administration of the **Red River Regional Dispatch Center Authority's** affairs.
- (f) The **Director** must keep the **RRRDC Authority Board** fully advised of the financial condition of the **Red River Regional Dispatch Center Authority**. The **Director**, working with the **Fiscal Agent**, the **Budget & Finance Committee**, and the **RRRDC Executive Committee**, must prepare and submit the annual budget.

- (g) The **Director** will confer with the **RRRDC Executive Committee** and with the other committees as may be necessary and appropriate.
- (h) The **Director** will implement the **RRRDC Authority Board's** policies regarding operation and maintenance of the **Dispatch Center**.
- (i) The **Director** performs other duties prescribed by this **Agreement** or the **RRRDC Authority Board**.
- (j) The **Director** may be employed by the **Red River Regional Dispatch Center Authority** pursuant to a written employment agreement.
- (k) The **Director** may make recommendations regarding the **Fiscal Agent** or the **Human Resources Agent** but does not have the power to suspend and/or remove the **Fiscal Agent** or the **Human Resources Agent**.
- (l) The **Director** shall consult with the **Assistant Director** on matters related to the **Dispatch Center**.

Section 14.03 ASSISTANT DIRECTOR. The **Assistant Director** shall serve as the **Director** when the office of **Director** is vacant and unfilled and, in addition, shall be authorized to execute functions of the **Director** at such other times and in other situations as may be authorized by the **RRRDC Authority Board**.

Section 14.04 HUMAN RESOURCES AGENT. The **City of Fargo**, acting through the City of Fargo Human Resources Director, shall serve as the **Human Resources Agent** for the **Dispatch Center**, to serve for an indefinite term but may resign as such at any time and may be removed at any time by the **RRRDC Authority Board**. The **Human Resources Agent** shall be responsible for providing assistance and support to the **Director** as may be necessary and appropriate regarding the human resources functions of the **Red River Regional Dispatch Center Authority**. At such time as the **City of Fargo** is no longer the **Human Resources Agent**, whether by termination by decision of the **City of Fargo**, the **RRRDC Authority Board**, or by other circumstance, then in such event, pursuant to Section 5.09 of this **Agreement**, the **RRRDC Authority Board** may appoint a **Human Resources Agent**. The **Human Resources Agent** is chosen by the **RRRDC Authority Board** solely on the basis of cost, experience, and human resources management qualifications. The **Human Resources Agent** is appointed by the **RRRDC Authority Board** for an indefinite term and may be removed at any time by the **RRRDC Authority Board**. The **Human Resources Agent** may be compensated by the **Red River Regional Dispatch Center Authority** at a rate mutually agreed upon by the **Red River Regional Dispatch Center Authority** and the **Human Resources Agent**.

Section 14.05 ADMINISTRATIVE ORGANIZATION. The **RRRDC Authority Board** may, by resolution, establish **Red River Regional Dispatch Center Authority** departments, offices, and agencies and prescribe their functions. A power or duty conferred by this **Agreement** on an

office or agency may not be transferred by the **RRRDC Authority Board** to a different office or agency.

Section 14.06 PURCHASES AND CONTRACTS. The **Director** is the chief purchasing agent of the **Red River Regional Dispatch Center Authority**. Purchases and contracts are made by the **Director** in accordance with procedures specified by **RRRDC Authority Board** resolution. The **Director** may enter into a purchase or contract in an amount on behalf of the **Red River Regional Dispatch Center Authority** that is in excess of such amount as determined by the **Red River Regional Dispatch Center Authority**. Such purchase or contract amounts in excess of the established authorized threshold require the approval by the **RRRDC Authority Board**. Other contracts and bonds, instruments, and documents to which the **Red River Regional Dispatch Center Authority** is a party must be signed by the **Chair** and the **Director** on behalf of the **Red River Regional Dispatch Center Authority**. The **RRRDC Authority Board** may, by resolution, adopt additional regulations for making **Red River Regional Dispatch Center Authority** contracts. **Red River Regional Dispatch Center Authority** contracts must be made in accordance with law.

ARTICLE XV. INSURANCE AND LIABILITY

Section 15.01 LIABILITY COVERAGE. To the fullest extent permitted by law, actions by the **Member Entities** pursuant to this **Agreement** are intended to be and shall be construed as a “cooperative activity,” and it is the intent of the **Member Entities** that they shall be deemed a “single governmental unit” for the purpose of liability. The **Red River Regional Dispatch Center Authority** shall maintain liability coverage with the North Dakota Insurance Reserve Fund with a minimum limit equal to the maximum liability limit in N.D.C.C. § 32-12.1-03 and/or Minn. Stat. § 466.04, Subdivision 1, whichever amount is greater. Alternatively, the **Red River Regional Dispatch Center Authority** may maintain equivalent private liability coverage. Such policy may be provided through a commercial general limited liability (“CGL”) policy. Such private liability policies must comply with the following requirements:

- (a) Minimum Limits. Each policy shall have a limit at least equal to the maximum municipal liability limits in N.D.C.C. § 32-12.1-03 and/or Minn. Stat. § 466.04, Subdivision 1, whichever amount is greater. If the policy contains a general aggregate limit, the general aggregate limit shall not be less than three million dollars (\$3,000,000).
- (b) Type of Coverage. The CGL insurance shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, and contractually assumed liability.
- (c) Additional Covered Parties. Each **Member Entity**, and each **Member Entities’** officers, employees, and volunteers, shall be named as additional covered parties on each policy for all claims arising from **Dispatch Center** activities or operations.

Section 15.02 ADDITIONAL POLICIES AUTHORIZED. The **Red River Regional Dispatch Center Authority** may, in its discretion, procure coverage for the contractors or other parties as needed and deemed necessary by the **RRRDC Authority Board**.

Section 15.03 AUTO LIABILITY AND PROPERTY DAMAGE. The **Red River Regional Dispatch Center Authority** may in its discretion procure coverage for auto liability and damage or loss of property. Each party shall be responsible for damages to or loss of its own equipment that is used for **Red River Regional Dispatch Center Authority** activities. Each **Member Entity** waives the right to, and agrees that it will not, bring any claim or suit against the **Red River Regional Dispatch Center Authority** or any other **Member Entity** for damages to or loss of its equipment arising out of participation in or assistance with the **Red River Regional Dispatch Center Authority** operations or activities, even if the damages or losses were caused wholly or partially by the negligence of the other **Member Entities** or their officers, employees, or volunteers.

Section 15.04 WORKERS' COMPENSATION COVERAGE. In the event that the **Red River Regional Dispatch Center Authority** hires employees, it shall maintain workers' compensation coverage of its employees. Each **Member Entity** shall be responsible for injuries or death of its own personnel. Each **Member Entity** will maintain workers' compensation insurance or self-insurance coverage, covering its own personnel if they participate in or assist **Red River Regional Dispatch Center Authority** operations or activities. Each **Member Entity** waives the right to, and agrees that it will not, bring any claim or suit against the **Red River Regional Dispatch Center Authority** or any other **Member Entity** for any workers' compensation benefits paid to its own employee or dependents, that arise out of participation in or assistance with **Red River Regional Dispatch Center Authority** operations or activities, even if the injuries were caused wholly or partially by the negligence of any other **Member Entity** or its officers, employees, or volunteers.

Section 15.05 DEFENSE AND INDEMNIFICATION. The **Red River Regional Dispatch Center Authority** agrees to defend and indemnify the **Member Entities** and the individual **RRRDC Authority Board Members** for any liability claims arising from the **Red River Regional Dispatch Center Authority** activities or operations, decisions of the **Red River Regional Dispatch Center Authority**, or arising out of or regarding the **Dispatch Center**. Nothing in this **Agreement** shall constitute a waiver of the statutory limits of liability set forth in N.D.C.C. § 32-12.1-03 and/or Minn. Stat. § 466.04 or a waiver of any available immunities or defenses. Nothing herein shall be construed to provide insurance coverage or indemnification to an officer, employee, or volunteer of any **Member Entity** for any act or omission for which the officer, employee, or volunteer is guilty of malfeasance in office, willful neglect of duty, or bad faith.

Section 15.06 RESERVED.

Section 15.07 INDEMNIFICATION. In the event that a claim is made against a **Member Entity** arising out of or related to the **Dispatch Center**, and the **Member Entity** seeks defense and indemnification from the **Red River Regional Dispatch Center Authority** pursuant to Section 15.05 of this **Agreement**, the **Red River Regional Dispatch Center Authority** shall first

apply any and all available and/or applicable insurance proceeds against said claim. In the event that such insurance proceeds are insufficient to satisfy the costs associated with such claim, and only after the application of insurance proceeds, said costs shall then be paid by funds made available to the **Red River Regional Dispatch Center Authority** by the **Member Entities**. Any amounts remaining to be paid shall then be allocated to the **Member Entities** in proportion to the cost allocation set forth in Article XII hereof.

Section 15.08 UNINSURED LIABILITY. Any excess or uninsured liability shall be borne in accordance with the cost-share formula for maintenance set forth in Article XII of this **Agreement**, by all **Member Entities**; provided, however, this does not include the liability of any individual officer, employee, or volunteer which arises from his or her own malfeasance, willful neglect of duty, or bad faith.

Section 15.09 CERTIFICATE OF INSURANCE. All insurance policies and certificates required under this **Agreement** shall be open to inspection by any **Member Entity** and copies of the policies or certificates shall be submitted to a **Member Entity** upon written request.

ARTICLE XVI.

OWNERSHIP OF PROPERTY ACQUIRED FOR THE DISPATCH CENTER

Section 16.01 INTENT OF THE MEMBER ENTITIES. The **Member Entities** agree and acknowledge that the **Dispatch Center** may require the acquisition of lands, easements, and/or rights-of-way, within one (1) or more of the various jurisdictions of the **Member Entities**. The **Member Entities** desire to set forth the responsibilities for each of the **Member Entities** with respect to the ownership of easements, rights-of-way, and lands related to and/or connected with the **Dispatch Center**. Said easements, rights-of-way, and lands related to the **Dispatch Center** may be titled in the names of the various **Member Entities**.

Section 16.02 PUBLIC PURPOSE. The **Member Entities** acknowledge, agree, and declare that the acquisition of easements, rights-of-way, and land for the **Dispatch Center** is for a public need and purpose.

Section 16.03 RESERVED.

Section 16.04 RESERVED.

Section 16.05 RESERVED.

Section 16.06 NATURE OF OWNERSHIP. The **Member Entities** acknowledge, agree, and covenant that to the extent a **Member Entity** owns **Dispatch Center Property**, it shall hold **Dispatch Center Property** for the benefit of the **Dispatch Center** and the **Red River Regional Dispatch Center Authority**, and it shall at all times control and maintain ownership of the **Dispatch Center Property** to ensure that the **Dispatch Center Property** is available for the **Dispatch Center**. The **Member Entities** acknowledge, agree, and covenant that they shall not take any action with respect to the **Dispatch Center Property** which would undermine the financing, construction, operation, and maintenance of the **Dispatch Center**.

Section 16.07 REQUEST FOR ACQUISITION OF DISPATCH CENTER PROPERTY. In the event that the **Red River Regional Dispatch Center Authority** requests that a **Member Entity** undertake the acquisition of **Dispatch Center Property**, the **Red River Regional Dispatch Center Authority** will provide a written request to the **Member Entity** and an estimated budget for the requested acquisition. The **Member Entity** shall proceed with acquiring the **Dispatch Center Property** by either voluntary action or eminent domain if the cost of the requested purchase or the eminent domain litigation is within the budget provided by the **Red River Regional Dispatch Center Authority**. Provided that if the cost of the **Dispatch Center Property** acquisition exceeds the budget set forth by the **Red River Regional Dispatch Center Authority**, the **Member Entity** shall request authorization from the **Red River Regional Dispatch Center Authority** to proceed with the **Dispatch Center Property** acquisition and shall not proceed with acquiring the **Dispatch Center Property** until the **Member Entity** receives approval from the **Red River Regional Dispatch Center Authority**. Copies of all public documents held by **Member Entities** reflecting actions undertaken by the **Member Entity** pursuant to this Section shall be provided to the **Secretary**.

Section 16.08 EMINENT DOMAIN ACTIONS. In the event that a **Member Entity** is required to commence an eminent domain action to acquire **Dispatch Center Property**, the eminent domain action will be venued in a court having jurisdiction over such action and as determined by the **Member Entity** commencing the eminent domain action.

Section 16.09 REIMBURSEMENT FOR DISPATCH CENTER PROPERTY ACQUIRED AFTER EFFECTIVE DATE. The **Member Entities** agree and acknowledge that each **Member Entity** will be reimbursed for **Dispatch Center Property** that it acquires after the **Effective Date** of this **Agreement** pursuant to requests of the **Red River Regional Dispatch Center Authority**. Reimbursement to **Member Entities** will include, but not be limited to, the purchase price of the **Dispatch Center Property**, appraisal costs, negotiation costs, title preparation and examination costs, relocation and re-establishment costs, legal fees associated with the acquisition, court costs, closing costs arising from and related to the acquisition of **Dispatch Center Property**, environmental remediation, cultural mitigation, and any other costs related to acquisition. Each **Member Entity** that acquires **Dispatch Center Property** shall submit its request for reimbursement to the **Director** and to the **Fiscal Agent** for payment. The **Red River Regional Dispatch Center Authority** will review and determine if such costs are eligible for reimbursement and then shall reimburse the **Member Entity** for the allowable costs incurred in connection with **Dispatch Center Property** acquisition.

Section 16.10 SALE OF EXCESS DISPATCH CENTER PROPERTY. The **Member Entities** agree and acknowledge that excess real property may be acquired in connection with real property needed for the **Dispatch Center**. In the event that excess real property is acquired, the **Member Entity** shall coordinate the sale, conveyance, or lease of such property with the **Director** and that **Member Entity's** chief administrative staff. **Member Entities** shall not sell, trade, and/or exchange excess **Dispatch Center Property** without prior written approval from the **RRRDC Authority Board**. All monies generated, less reasonable administrative expenses incurred by the **Member Entity**, from the sale, conveyance, or lease of excess **Dispatch Center Property** by a **Member Entity**, shall be remitted to the **Red River Regional Dispatch Center Authority**.

Section 16.11 PRO-RATA SAFE HARBOR. In the event that a **Member Entity** and the **Red River Regional Dispatch Center Authority** jointly acquire a parcel and only a portion or percentage of said property is needed for the **Dispatch Center**, the **Member Entity** and the **Red River Regional Dispatch Center Authority** will cooperate in the sale of excess property and sale proceeds will be applied and refunded to the **Member Entity** and the **Red River Regional Dispatch Center Authority** based upon the pro-rata **Member Entity** contribution and the **Red River Regional Dispatch Center Authority** contribution.

Section 16.12 DISPATCH CENTER PROPERTY OWNERSHIP UPON WITHDRAWAL AND/OR REMOVAL OF A MEMBER ENTITY. In the event that a **Member Entity** withdraws or is removed from the **Red River Regional Dispatch Center Authority** pursuant to Sections 21.05 and/or 21.06 of this **Agreement**, that **Member Entity** shall convey, transfer and assign any and all **Dispatch Center Property** which has been titled in the name of the **Former Member Entity** to the **Red River Regional Dispatch Center Authority** within forty-five (45) calendar days of withdrawing or being removed from the **Red River Regional Dispatch Center Authority** and this **Agreement**.

**ARTICLE XVII.
RESERVED**

**ARTICLE XVIII.
EFFECT OF AMENDMENT**

Section 18.01 INTENT. This **Agreement** is intended to be an amendment to, and a replacement of, the **Original Joint Powers Agreement** as amended, and that this **Agreement** shall serve as the amended and reconstituted joint powers agreement between the **Member Entities**.

Section 18.02 EFFECT. This **Agreement** is effective on the **Effective Date** and is a revision and comprehensive amendment to the **Original Joint Powers Agreement**. Nothing in this **Agreement** is to be construed to modify, abrogate, or abridge (a) the rights, duties, liabilities, privileges, or immunities of the **Red River Regional Dispatch Center Authority**, (b) pending or contemplated litigation, or (c) the current Bylaws and Resolutions of the **Red River Regional Dispatch Center Authority**. This amendment is not to be construed to affect, modify, or repeal any law of the State of North Dakota or the State of Minnesota applicable to the **Red River Regional Dispatch Center Authority**.

**ARTICLE XIX.
TERM AND TERMINATION OF THE AGREEMENT**

Section 19.01 TERM. This **Agreement** shall be for an indefinite term and shall continue until terminated or rescinded in accordance with the terms and conditions of this **Agreement**.

Section 19.02 TERMINATION. This **Agreement** may only be terminated by the mutual consent of all the **Member Entities**, but not including any **Former Member Entities**, evidenced by identical resolutions adopted by the **Governing Bodies** of each **Member Entity**. Provided that this **Agreement** may not be terminated prior to the retirement of any **Debt Obligation** issued to finance the **Dispatch Center** and/or until all obligations and liabilities under the **Dispatch Center**

Agreement have been irrevocably discharged in full. Any termination will be without prejudice to any obligations or liabilities of any parties already accrued prior to termination.

Section 19.03 DISTRIBUTION OF FUNDS AND PROPERTY. Upon the termination of this **Agreement**, the **Red River Regional Dispatch Center Authority** shall provide for the distribution of all **Red River Regional Dispatch Center Authority** assets in the following manner: (a) **Dispatch Center Property** contributed by a **Member Entity** shall be transferred to and titled in the name of **Cass County**, unless **Cass County** has become a **Former Member Entity** in which case the transferee shall be determined by agreement of the **Member Entities**; (b) any remaining **Dispatch Center Property**, which is determined to be unnecessary for the **Dispatch Center**, may be sold or liquidated prior to distribution; and (c) any remaining assets shall be divided in proportion to the contributions of the **Member Entities** and in conformance with the cost allocation formula for other-than-annual-operations set forth in Article XII, Section 12.04 of this **Agreement**. If the **Member Entities** do not agree on the fair market value of a non-liquid asset, the **Red River Regional Dispatch Center Authority** may submit the item to a professional appraiser, whose written opinion of the fair market value shall be conclusive.

ARTICLE XX. DISPUTE RESOLUTION

Section 20.01 INTENT AND PROCEDURE. The **Member Entities** shall cooperate and use their **Best Efforts** to ensure that the various provisions of this **Agreement** are fulfilled. The **Member Entities** agree to act in **Good Faith** to undertake resolution of disputes in an equitable and timely manner and in accordance with the provisions of this **Agreement**. If disputes cannot be resolved informally by the **Member Entities**, the following procedure shall be used.

Section 20.02 MEDIATION. If there is a failure between the **Member Entities** to resolve a dispute on their own, the **Member Entities** shall first attempt to mediate the dispute. The **Member Entities** shall agree upon a single mediator, or if they cannot agree, shall obtain a list of court appointed mediators from the **Cass County** District Court Administrator and select a mediator by alternatively striking names until one (1) remains. The **City of Fargo** shall strike the first name, followed by the **City of Moorhead**, followed by **Cass County**, followed by **Clay County**, followed by the **City of West Fargo**, this process shall continue in that recurring order until one (1) name remains.

Section 20.03 LITIGATION IF DISPUTE NOT RESOLVED. If the dispute is not resolved within forty-five (45) calendar days after the end of mediation proceedings, the **Member Entities** may litigate the matter.

Section 20.04 WAIVER OF JURY TRIAL. THE MEMBER ENTITIES HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHTS THAT ANY MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY ACTION, PROCEEDING, COUNTERCLAIM, OR DEFENSE BASED ON THIS AGREEMENT, OR ARISING OUT OF, UNDER OR IN ANY CONNECTION WITH THIS AGREEMENT, OR WITH RESPECT TO ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF ANY

PARTY HERETO RELATING TO THIS AGREEMENT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR ALL MEMBER ENTITIES ENTERING INTO THIS AGREEMENT. THIS PROVISION APPLIES ONLY TO SUITS BETWEEN THE MEMBER ENTITIES ARISING OUT OF OR RELATED TO THIS AGREEMENT AND DOES NOT APPLY TO THIRD PARTY CLAIMS OR SUITS BY OR ON BEHALF OF THE MEMBER ENTITIES FOR DISPATCH CENTER PROPERTY ACQUISITION AND/OR CONSTRUCTION CONTRACT CLAIMS AND DEFENSES.

ARTICLE XXI.
RIGHTS UPON REFUSAL AND WITHDRAWAL

Section 21.01 INTENT. The **Member Entities** recognize and agree that in order to work collaboratively and in an integrated manner and within the legal constraints of the N.D.C.C. § 54-40.3-01 and Minn. Stat. § 471.59, the **Red River Regional Dispatch Center Authority** will request that individual **Member Entity** will take appropriate and necessary actions to acquire property, lobby and obtain grants, impose and collect sales and use taxes, levy and collect special assessments as may be applicable, and other incidental actions that the **Red River Regional Dispatch Center Authority** cannot undertake pursuant to the authorities granted to it by N.D.C.C. § 54-40.3-01 and Minn. Stat. § 471.59 and in this **Agreement**. The **Member Entities** also recognize and agree that, in order to successfully complete the **Dispatch Center**, individual **Member Entities** may have to issue **Debt Obligations** and are relying upon the other **Member Entities** to be long-term partners who will act in **Good Faith** and in a reasonable manner and will undertake whatever actions, within the scope of their respective legal authorities, are necessary to expedite completion of the **Dispatch Center**. The **Member Entities** recognize and agree that they may be requested to make politically unpopular decisions and that it would not be fair or reasonable to withhold taking necessary action absent a **Rational Basis** for said inaction. As a result, the **Member Entities** desire to create a procedure by which a **Member Entity** may be removed from this **Agreement** for failing to take necessary and reasonable action without a **Rational Basis** for making such non-action.

Section 21.02 SUSPENSION. Upon the occurrence of any non-performance of a **Member Entity**'s obligations under this **Agreement** which has not been cured within thirty (30) calendar days after notice to the breaching **Member Entity**, a majority of the non-breaching **Member Entities**, in accordance with Section 21.05 of this **Agreement**, if applicable, may suspend the breaching **Member Entity**'s rights under this **Agreement** until they receive assurances from the breaching **Member Entity** satisfactory to the non-breaching **Member Entities** that the breaching **Member Entity** will cure such **Event of Default** and perform its obligations under this **Agreement**. During any period of non-performance and/or suspension of a **Member Entity**, its obligations and liabilities under this **Agreement** shall remain in full force and effect.

Section 21.03 RRRDC AUTHORITY BOARD REQUEST.

- (a) The **RRRDC Authority Board** may from time to time and in its discretion request that a **Member Entity** perform the following actions, which include but are not limited to: (a) acquiring rights of entry, either voluntarily or through court action; (b) acquiring easements, rights-of-way, land, disposal areas and relocations of

property areas, either voluntarily or through court action; (c) actively participating in requesting, obtaining, and providing grant and state legislative appropriations for the **Dispatch Center**; (d) imposing, collecting, and remitting sales and use taxes or other sources of revenue for the **Dispatch Center** and/or in connection with the issuance of **Debt Obligations** by another **Member Entity**; (e) creating improvement districts and levying and collecting special assessments; (f) issuing **Debt Obligations** either individually and/or in cooperation with another **Member Entity**; and (g) levying and collecting 9-1-1 fees and charges (collectively referred to as the “**Requested Dispatch Center Actions**”).

- (b) **Requested Dispatch Center Actions** shall be in writing and approved by motion of the **RRRDC Authority Board**, signed by the **Chair**, and attested by the **Director**. **Requested Dispatch Center Actions** shall be delivered to the **Governing Body** of the **Member Entity**. The **Member Entity** will have thirty (30) calendar days to respond in writing to the **RRRDC Authority Board** whether it intends to undertake and complete the **Requested Dispatch Center Actions**.

Section 21.04 REFUSAL TO UNDERTAKE AND COMPLETE REQUESTED DISPATCH CENTER ACTIONS. If the **Member Entity** does not intend to undertake and complete the **Requested Dispatch Center Action**, it must evidence such refusal by a motion of the **Member Entity’s Governing Body**. Such motion must specifically state in writing and on the record the reason(s) that the **Member Entity** is refusing to undertake and complete the **Requested Dispatch Center Action**. The **Member Entity** must, within ten (10) **Business Days** of its **Governing Body’s** decision, submit its written reasons for not undertaking and completing the **Requested Dispatch Center Actions** to the **RRRDC Authority Board**. The **RRRDC Authority Board** shall then have thirty (30) calendar days to determine if the written reasons given by the **Member Entity** for not undertaking and completing the **Requested Dispatch Center Actions** have a **Rational Basis**. The decision regarding whether the failure to undertake a **Request Dispatch Center Action** had a **Rational Basis** shall be made by an affirmative vote of not less than five (5) members of the **RRRDC Authority Board**. The **RRRDC Authority Board’s** determination that a **Member Entity** did not have a **Rational Basis** for refusing to undertake and complete the **Requested Dispatch Center Action** shall be deemed a **Default** by that **Member Entity**. If the **RRRDC Authority Board** determines that a **Member Entity** is in **Default** pursuant to this Section, the **RRRDC Authority Board** may institute proceedings in accordance with Section 21.05 of this **Agreement** to remove the **Defaulting Member Entity** from the **Red River Regional Dispatch Center Authority**.

Section 21.05 REMOVAL OF MEMBER ENTITY. In the event that a **Member Entity** is deemed to be in **Default** pursuant to Section 21.04 of this **Agreement**, the **RRRDC Authority Board** may vote to remove the **Defaulting Member Entity** from **Red River Regional Dispatch Center Authority** and this **Agreement** by an affirmative vote of two-thirds (2/3) of the members of the **RRRDC Authority Board**. The decision to remove a **Defaulting Member Entity** shall be in writing and signed by the **Chair** and attested by the **Director**. The decision of the **RRRDC Authority Board** shall then be submitted to all of the **Member Entities’ Governing Bodies** within ten (10) **Business Days** of the decision by the **RRRDC Authority Board** determining that a **Member Entity** is in **Default**. The **Governing Bodies** of the **Member Entities** shall then have

thirty (30) calendar days to determine whether the **Defaulting Member Entity** shall be removed from the **RRRDC Authority Board** and this **Agreement**. A **Defaulting Member Entity** can only be removed from the **Red River Regional Dispatch Center Authority** and this **Agreement** pursuant to this Section by an affirmative vote of a simple majority of all the **Member Entities**. The **Defaulting Member Entity** will be counted for purposes of determining the number of **Member Entities**, and the **Defaulting Member Entity** will be included in the determination of whether a majority of all **Member Entities** voted. Upon the affirmative vote of a majority of all the **Member Entities** the **Defaulting Member Entity** shall be removed from the **Red River Regional Dispatch Center Authority** and this **Agreement**. The removal of a **Member Entity** pursuant to this provision shall not be deemed or construed to alter any of the obligations of the **Member Entity** established, created, or accrued prior to its removal.

Section 21.06 VOLUNTARY WITHDRAWAL. A **Member Entity** may petition the **RRRDC Authority Board** to voluntarily withdraw from the **Red River Regional Dispatch Center Authority**. The **RRRDC Authority Board** may grant the request of the **Member Entity** if the **RRRDC Authority Board** determines by an affirmative vote of a simple majority of all of the **RRRDC Authority Board Members** that the request *would not* prejudice the other **Member Entities** with respect to the financing, constructing, operating, and/or maintaining the **Dispatch Center**. The decision to grant the request of a **Member Entity** to voluntarily withdraw from the **Red River Regional Dispatch Center Authority** and this **Agreement** shall be in writing, signed by the **Chair**, and attested by the **Director**. The decision of the **RRRDC Authority Board** shall then be submitted to all of the **Member Entities' Governing Bodies** within ten (10) **Business Days** of the decision by the **RRRDC Authority Board** determining that a **Member Entity** may voluntarily withdraw from the **Red River Regional Dispatch Center Authority** and this **Agreement**. The **Governing Bodies** of the **Member Entities** shall then have thirty (30) calendar days to determine whether the **Member Entity** shall be removed from the **RRRDC Authority Board** and this **Agreement**. A **Member Entity** can only be removed from the **Red River Regional Dispatch Center Authority** and this **Agreement** pursuant to this Section by an affirmative vote of a simple majority of all the **Member Entities**. The **Member Entity's** petition to withdraw from the **Red River Regional Dispatch Center Authority** will be included in the determination of whether a majority of all **Member Entities** voted. Upon the affirmative vote of a majority of all the **Member Entities**, the **Member Entity** shall be removed from the **RRRDC Authority Board** and this **Agreement**. Unless otherwise specifically determined by motion or resolution of the **Red River Regional Dispatch Center Authority**, the withdrawal of a **Member Entity** shall be deemed to take effect January 1 of the year following the decision authorizing such withdrawal.

Section 21.07 MEMBERSHIP OF THE BOARD UPON REMOVAL OR WITHDRAWAL. In the event a **Member Entity** is removed from the **Red River Regional Dispatch Center Authority** and this **Agreement** pursuant to Section 21.05 of this **Agreement**, and/or a **Member Entity** voluntarily withdraws from the **Red River Regional Dispatch Center Authority** and this **Agreement** pursuant to Section 21.06 of this **Agreement**, that **Member Entity** shall be known as a **Former Member Entity**, and the **RRRDC Authority Board**, the make-up of which is described in Section 5.01, shall be reduced in number accordingly.

Section 21.08 NO IMPAIRMENT OF DEBT OBLIGATION AND/OR DISPATCH CENTER AGREEMENT. In the event that a **Member Entity**'s rights are suspended under this **Agreement** pursuant to Section 21.02 of this **Agreement**, and/or a **Member Entity** withdraws from or is removed from the **Red River Regional Dispatch Center Authority**, such action shall not impair, revoke, repeal, or amend the **Defaulting Member Entity**'s obligations, if any, under **Debt Obligations** issued for the **Dispatch Center** by the **Defaulting Member Entity** and/or obligations the **Defaulting Member Entity** may have under any other agreement. Further, in the event this **Agreement** is terminated, such termination will not be construed so as to terminate any **Debt Obligation** issued by a **Member Entity**.

Section 21.09 PAYMENT TO DEPARTING MEMBER OF EQUIVALENT OF EQUITY - VALUATION. The **Member Entities** recognize that their participation in this **Agreement** and consequently in the **Red River Regional Dispatch Center Authority** established by this **Agreement** does not create or establish any form of equity in the joint powers entity; provided, however, this **Agreement**, in Section 19.03 of this **Agreement**, provides for a distribution of assets in the event of termination of this **Agreement** and, in the same manner, in the event that a **Member Entity** is removed from the **Red River Regional Dispatch Center Authority**, the removed **Member Entity** shall be entitled to receive payment for the departing **Member Entity**'s share of the fair market value of the assets of the **Red River Regional Dispatch Center Authority**, offset by liabilities, said payment to be determined by agreement between the departing **Member Entity** and remaining **Member Entities**. The agreement by the remaining **Member Entities** shall be determined by approval of a majority of the remaining said **Member Entities**. If the **Member Entities** do not agree on the fair market value of a non-liquid asset, the **Red River Regional Dispatch Center Authority** may submit the item to a professional appraiser, whose written opinion of the fair market value shall be conclusive. Said payment shall be made to the departing **Member Entity** within six (6) months of the date of removal but in no event shall such payment be payable until any **Dispatch Center Property** that had been contributed by a **Member Entity** has been transferred to, and titled in, the **Red River Regional Dispatch Center Authority** or one (1) of its remaining **Member Entities** as determined by the **Red River Regional Dispatch Center Authority**. A withdrawing **Member Entity** is deemed to have forfeited any right to receive payment for said withdrawing **Member Entity**'s share of the assets of the **Red River Regional Dispatch Center Authority** and, therefore, in the event that a **Member Entity** withdraws from the **Red River Regional Dispatch Center Authority**, no payment is to be made to the withdrawing **Member Entity** for any share of the fair market value of said assets. As provided in Article XXIV, this Section is subject to the recoupment rights of the **City of Moorhead** and of **Clay County** as provided in Section 24.07.

ARTICLE XXII. MISCELLANEOUS COVENANTS

Section 22.01 SUB-JOINT POWERS AGREEMENTS. The **Member Entities** acknowledge and agree that because the **Dispatch Center** benefits property located in both the States of Minnesota and North Dakota, the **Member Entities** may enter into sub-agreements with non-member or **Member Entities** for the purpose of fulfilling their obligations, allocating total costs of the **Dispatch Center**, and/or exercising the authority defined therein. The **Member Entities** agree and acknowledge that they will submit drafts of sub-joint powers agreements adopted under

this Section to the **Red River Regional Dispatch Center Authority** for review and comment prior to approval.

ARTICLE XXIII. GENERAL PROVISIONS

Section 23.01 COMPLETE AGREEMENT. Except as more fully set forth in Section 12.02 of this **Agreement**, this **Agreement** contains all negotiations and agreements between the **Member Entities**. No other understanding regarding this **Agreement**, whether written or oral, may be used to bind any **Member Entity**.

Section 23.02 SUPPLEMENTAL AGREEMENTS. The **Member Entities** may enter into supplemental and/or additional agreement(s) that may be necessary for fulfilling the purpose and objectives of the **Red River Regional Dispatch Center Authority**. Copies of those supplemental agreements will be provided to the **Secretary**.

Section 23.03 WRITTEN AMENDMENT REQUIRED. No amendment, modification, or waiver of any condition, provision, or term will be valid or of any effect unless made in writing signed by the **Member Entity** or **Member Entities** to be bound, or a duly authorized representative, and specifying with particularity the extent and nature of such amendment, modification, or waiver. Any waiver by any **Member Entity** of any default of another **Member Entity** will not affect or impair any right arising from any subsequent default. Except as expressly and specifically stated otherwise, nothing herein will limit the remedies and rights of the **Member Entities** thereto under and pursuant to this **Agreement**.

Section 23.04 INTERPRETATION. This **Agreement** will be construed as if it had been prepared by all **Member Entities**.

Section 23.05 GRAMMATICAL CONSTRUCTION. Whenever the singular noun is used herein, the same includes the plural where appropriate, and the words of any gender include any other gender where appropriate.

Section 23.06 ASSIGNMENT. No **Member Entity** may transfer or assign this **Agreement** or any of its rights or obligations under this **Agreement** without the express written consent of all the other **Member Entities**.

Section 23.07 SEVERABILITY AND SAVINGS CLAUSE. Each provision, section, sentence, clause, phrase, and word of this **Agreement** is intended to be severable. If any provision, section, sentence, clause, phrase, and word hereof is held by a court with jurisdiction to be illegal or invalid for any reason whatsoever, such illegality or invalidity will not affect the validity of the remainder of this **Agreement**. Deadlines for certain meetings and other actions, such as the annual meeting, as set forth in this **Agreement** are intended to establish a schedule for routine governance of the **Red River Regional Dispatch Center Authority**; provided, however, the failure of the **Red River Regional Dispatch Center Authority**, its appointed officers, or the **RRRDC Authority Board Members** to strictly adhere to such deadlines shall not be construed so as to invalidate the subsequent legal authority of the **Red River Regional Dispatch Center Authority**, or its

appointed officers, the **RRRDC Authority Board**, or the **RRRDC Authority Board Members**, nor shall the same support any claim that actions taken by the same are *ultra vires* or invalid in any way, so long as such actions are otherwise authorized. Further, the **Red River Regional Dispatch Center Authority** is authorized, by motion or resolution, to vary from such deadlines or schedule as may be necessary or appropriate.

Section 23.08 FORCE MAJEURE. No **Member Entity** will be liable to another **Member Entity** during any period in which its performance is delayed or prevented, in whole or in part, by circumstances beyond its reasonable control. Circumstances include, but are not limited to, the following: act of God (e.g., flood, earthquake, wind), fire, war, act of a public enemy or terrorist, act of sabotage, strike or other labor dispute, riot, misadventure of the sea, inability to secure materials and/or transportation, or a restriction imposed by legislation, an order, or a rule or regulation of a governmental entity. If such a circumstance occurs, the **Member Entity** claiming the delay must undertake reasonable action to notify the other **Member Entity** of the same.

Section 23.09 NEW MEMBERS. Another **Governmental Authority** may be added to this **Agreement** upon the approval of all **Member Entities**. Once approved, the rights and obligations of the new member shall be set forth in a written amendment to this **Agreement** and the new member shall be fully obligated and bound by the terms of this **Agreement**, as amended.

Section 23.10 NOTICE. All notices, certificates, or other communications required under this **Agreement** will be deemed sufficiently given when delivered or deposited in the United States mail in certified form with postage fully prepaid and addressed as follows:

- | | |
|----------------------------------|---|
| If to City of Fargo: | City Auditor
City of Fargo
225 4 th St. N.
Fargo, ND 58102 |
| If to Cass County: | Finance Director
Cass County
P.O. Box 2806
Fargo, ND 58108 |
| If to City of Moorhead: | City Manager
City of Moorhead
P.O. Box 779
Moorhead, MN 56561-0779 |
| If to Clay County: | County Administrator
Clay County
3510 12 th Avenue South
Moorhead, MN 56560 |
| If to City of West Fargo: | City Administrator
City of West Fargo |

800 4th Avenue E, Suite 1
West Fargo, ND 58078

Section 23.11 AGREEMENT BINDING ON SUCCESSORS. This **Agreement** will be binding upon and inure to the benefit of the **Member Entities** hereto and their respective personal representatives, successors, and assigns.

Section 23.12 NORTH DAKOTA LAW APPLIES. This **Agreement** will be controlled by the laws of the State of North Dakota.

Section 23.13 MEMBER ENTITY PERMITTING AUTHORITY. Nothing in this **Agreement** shall be construed as limiting the right or ability of a **Member Entity** to approve or disapprove of a permit of which it has jurisdiction to grant or deny, including but not limited to a building permit, zoning permit, flood plain development permit, or other similar permit required for construction or maintenance of the **Dispatch Center** within that **Member Entity**'s jurisdiction.

Section 23.14 MEMBER ENTITIES' COMPLIANCE WITH APPLICABLE STATE LAW. This **Agreement** shall not be construed or interpreted so as to relieve a **Member Entity** from complying with any state law applicable to the **Member Entity**. The **Member Entities** specifically agree and acknowledge that this **Agreement** does not except a **Member Entity** from the applicable state law governing that **Member Entity** (for example, the **City of Fargo** must still comply with North Dakota law and the **City of Moorhead** must still comply with Minnesota law).

Section 23.15 WAIVER OF VENUE/SELECTION. The **Member Entities** stipulate and agree that the District Court of **Cass County**, North Dakota, will be the sole and exclusive venue for any lawsuit pertaining to this **Agreement**, and the **Member Entities** consent to the personal jurisdiction in said court in the event of any such lawsuit. This provision shall not be construed to apply to litigation commenced by a **Member Entity** for acquisition of **Dispatch Center Property** or defense of a contract claim. This choice of law section applies exclusively to lawsuits pertinent to the terms and conditions of this **Agreement**.

Section 23.16 EXECUTION IN COUNTERPARTS. This **Agreement** will be executed in five (5) counterparts, each of which shall be an original, all which shall constitute but one (1) and the same instrument. All **Member Entities** shall receive a fully-executed counterpart.

ARTICLE XXIV.

NEW DISPATCH CENTER – INITIAL AUTHORIZATION AND COST-SHARE TERMS

Section 24.01 NEW DISPATCH CENTER. The terms of this Article XXIV relate to the acquisition of land, whether by fee title acquisition or long-term lease of land, and the design, construction, and financing of a **New Dispatch Center** that is intended to replace the existing dispatch center located at 300 NP Avenue in Fargo, North Dakota.

Section 24.02 AUTHORIZE ACQUISITION OF LAND FOR NEW DISPATCH CENTER. The **RRRDC Board of Authority** is hereby authorized and directed to go forward with the selection and acquisition or long-term lease of land and the design, construction, and financing of the **New**

Dispatch Center, including fixtures, furniture, and equipment (FF & E) subject to the terms and limitations of this Article.

Section 24.03 CONSTRUCTION DELEGATED TO CASS COUNTY. It is anticipated that the **New Dispatch Center** will be constructed within the State of North Dakota. **Cass County**, therefore, is requested and authorized to undertake the task of acquiring the land where the **New Dispatch Center** is to be located, to undertake the process of preparing the project so that bids for construction may be solicited, and to undertake all matters necessary for construction of the **New Dispatch Center** and for acquisition and installation of FF & E. This Section shall be deemed to constitute the authorization, as contemplated in Section 16.07, for said **New Dispatch Center**.

Section 24.04 COST SHARE. The maximum share of cost for land acquisition and **Total Cost of Construction** to be borne by the **Minnesota Member Entities** may not exceed the lesser of the following: (a) Twenty-Five Percent (25%) of the sum of the cost of land acquisition and the **Total Cost of Construction**, as defined below, or (b) \$2,500,000. The remainder of said costs shall be borne by **Cass County**. As to the said **Minnesota Member Entities'** cost share, **Clay County** will contribute Sixty Percent (60%) of the said maximum cost share—up to a maximum of \$1,500,000—and the **City of Moorhead** will contribute Forty Percent (40%) of said maximum cost share—up to a maximum of \$1,000,000.

- (a) The term “**Total Cost of Construction**” shall be the sum of the following project elements:
 - (i) All design professional fees, including architectural and engineering fees, including related costs.
 - (ii) All publicly-bid components of construction, including the lowest apparent bid for the general contractor, the electrical contractor, and the mechanical contractor or, in the alternative, the lowest apparent combined bid if applicable.
 - (iii) All estimates or bids for FF & E as well as for digital hardware for dispatch consoles and supporting equipment but not including costs of operating software, such as under the **Software Maintenance Agreement**, which costs shall be part of the annual operating costs for the **New Dispatch Center**.
 - (iv) Where actual fees or bid prices or costs are not yet known, a reasonable estimate shall be used for purposes of this calculation.
 - (v) Any other costs or categories of cost that are identified by the **RRRDC Authority Board**.
- (b) To the extent that land for the **New Dispatch Center** is acquired by long-term lease, payments made to the landlord under such lease and payments to third parties under such lease, such as taxes, insurance premiums, utility charges, and the like, shall be treated as annual operations costs and, therefore, shall not be treated as a cost of construction and, therefore, shall not be included in the **Total Cost of Construction**.

- (c) Proceeds from the sale of the existing **Dispatch Center**, located at 300 NP Avenue in Fargo, North Dakota, shall be deposited with the **Fiscal Agent** with said proceeds to be applied toward the reduction of the cost of construction and shall not be included in the **Total Cost of Construction**.

Section 24.05 DECISION-MAKING PROCESS. It is anticipated that **Cass County** will seek public bids in accordance with North Dakota statutory requirements such as N.D.C.C. Chapter 48-01.2. At such time as publicly-solicited bids are opened, the apparent **Total Cost of Construction**, subject to the selection of bid alternates, approved change orders, or other contract amendments, can be calculated for purposes of decision-making. Notwithstanding the terms of Section 5.09, which provides that certain decisions require at least one (1) affirmative vote must be cast by a **Minnesota Board Member**; at least one (1) affirmative vote must be cast by a **North Dakota Board Member** and, that, with respect to decisions described in Section 5.09, paragraphs (a), (b), (f), or (g), at least one (1) affirmative vote must be cast by a **Cass County Member**; with respect to any decision as to whether or not the actual construction of the **New Dispatch Center** is to be approved and authorized by the **RRRDC Authority Board**, the approval of construction bids and the award of construction contracts must be obtained by the **RRRDC Authority Board**, subject to the following limitations:

- (a) Any approval of the general contractor bid combined with the electrical contractor bid and the mechanical contractor bid must also receive the approval by motion or resolution by the **Cass County Commission**.
- (b) To the extent that the **Total Cost of Construction**, subject to the selection of bid alternates, approved change orders, or other contract amendments, will exceed \$12,500,000, no bids may be awarded unless suitable arrangements are made between **Cass County**, the **City of West Fargo** and the **City of Fargo** by which the **City of West Fargo** and the **City of Fargo** would contribute additional funds to cover such excess amount, whether such arrangements include a cash injection of funds by the **City of West Fargo** and the **City of Fargo** or a commitment to cover appropriate shares of debt-service payments on funds borrowed (whether by loan or sale of bonds).

Section 24.06 PAYMENT IN ADVANCE OF MINNESOTA ENTITIES' SHARE—FINANCING/DEBT SERVICE. Full payment of the **Minnesota Member Entities'** combined share, as described in Section 24.04, shall be paid in advance, before the earliest time that **Cass County** must enter into any binding commitments for the acquisition of land or for the construction of the **New Dispatch Center**. As such, with the **Minnesota Member Entities** having paid in full their maximum cost share for the project, to the extent that any portion of the cost of construction of the **New Dispatch Center** will be financed through one (1) or more loans or the sale of bonds, with respect to such debt and service payments, the **Minnesota Member Entities** would have no obligation to participate in such debt service.

Section 24.07 RRRDC DISSOLUTION, REMOVAL OF MINNESOTA MEMBER ENTITIES—MINIMUM RECOUPMENT. Notwithstanding any provision elsewhere in this **Agreement**, including Section 19.03 or Section 21.09, in the event (a) that the **Red River Regional Dispatch Center Authority** is dissolved; (b) that either or both of the **Minnesota Member Entities** cease to be a

Member Entity due to removal from the **Red River Regional Dispatch Center Authority**, as may occur under Article XXI; or (c) that some act or application of law prohibits one (1) or both of the **Minnesota Member Entities** from continuing to participate in this **Agreement**, then said **Minnesota Member Entities**, or either of them, shall be entitled to a minimum recoupment from the **Red River Regional Dispatch Center Authority** in accordance with the declining balance schedule set forth in Exhibit B hereto, which represents a reverse-amortization schedule, using a four percent (4%) discount factor, over a period of twenty (20) years in which **Clay County's** proportionate share of the said declining balance shall be Forty Percent (40%) and the **City of Moorhead** share being Sixty Percent (60%) thereof. Said schedule is expressed in terms of a declining balance from the \$2,500,000 maximum cost share for the **Minnesota Member Entities** described in Section 24.02. If their actual cost share is less than \$2,500,000, then the recoupment amount shall be reduced proportionately. For purposes of the schedule, the percentage for the applicable year shall be applied to the combined share of **Clay County** and the **City of Moorhead** of the **Total Cost of Construction** and the cost of land acquisition, as the same are described in this Article. Also, for purposes of this Section, "Year 1" shall be deemed to be the period, of whatever length of time, that ends on the first anniversary date of the date of initial occupancy of the **New Dispatch Center**, with subsequent years ending on each such anniversary date thereafter.

Section 24.08 RECOUPMENT PAYMENT. In case of a dissolution of the **Red River Regional Dispatch Center Authority**, payment of one (1) or both of the **Minnesota Member Entities'** recoupment amounts shall either be made from proceeds recovered from the liquidation of **Red River Regional Dispatch Center Authority** assets or by an in-kind payment made by the **Red River Regional Dispatch Center Authority** or by one (1) of its **Member Entities** by transfer or deed of real or personal property of value equivalent to the recoupment sum owed to said **Minnesota Member Entity or Entities**, in the same manner as contemplated by Section 19.03.

Section 24.09 CONFLICT. To the extent that the terms of this Article conflict with the terms of the rest of this **Agreement**, the terms of this Article shall be applicable; provided, however, that in all other respects nothing in this Article shall be interpreted or construed to abrogate, reduce, or limit any powers, rights, or obligations of any of the **Member Entities**.

IN WITNESS WHEREOF, the **Member Entities**, by action of their **Governing Bodies**, caused this **Agreement** to be executed in accordance with the authority granted in N.D.C.C. § 54-40.3-01, and Minn. Stat. § 471.59.

Signature Page for the City of Fargo

The Governing Body of the City of Fargo approved this Agreement on the ____ of _____, 202_.

CITY OF FARGO a North Dakota
municipal corporation

By: _____
Timothy Mahoney, Mayor

ATTEST:

Steve Sprague, City Auditor

Signature Page for the City of Moorhead

The Governing Body of the City of Moorhead approved this Agreement on the ___ of _____, 202_.

CITY OF MOORHEAD, MINNESOTA, a
municipal corporation

By: _____
Michelle "Shelly" Carlson, Mayor

ATTEST:

Dan Mahli, City Manager

Signature Page for Cass County

The Governing Body of Cass County approved this Agreement on the ___ of _____, 202_.

COUNTY OF CASS, NORTH DAKOTA, a
corporate body

By the CASS COUNTY BOARD OF
COMMISSIONERS

By: _____
Rick Steen, Chair

ATTEST:

Brandy Madrigga, Finance Director

Signature Page for Clay County

The Governing Body of Clay County approved this Agreement on the ___ of _____, 202_.

CLAY COUNTY, MINNESOTA, a
corporate body

By the CLAY COUNTY BOARD OF
COMMISSIONERS

By: _____
Jenny Mongeau, Chair

ATTEST:

Stephen Larson, Clay County Administrator

Signature Page for the City of West Fargo

The Governing Body of the City of West Fargo approved this Agreement on the ___ of _____, 202_.

CITY OF WEST FARGO a North Dakota
municipal corporation

By: _____
Bernie Dardis, President

ATTEST:

_____, City Auditor

EXHIBIT A

List of Amendments to Original Joint Powers Agreement

Nov 2001	Initial Joint Powers Agreement (JPA) for RRRDC
Mar 2002	First Amendment to JPA
Jan 2008	Second Amendment to JPA
Dec 2008	Third Amendment to JPA (3rd Amended and Reconstituted JPA)
Nov 2010	Fourth Amendment to JPA (1st Amendment to 3rd Amended and Reconstituted JPA)
Sept 2011	Fifth Amendment to JPA (2nd Amendment to 3rd Amended and Reconstituted JPA)
Sept 2012	Sixth Amendment to JPA (3rd Amendment to 3rd Amended and Reconstituted JPA)
Dec 2013	Seventh Amendment to JPA (4th Amendment to 3rd Amended and Reconstituted JPA)
Jan 2015	Eighth Amendment to JPA (5th Amendment to 3rd Amended and Reconstituted JPA)
Jan 2022	Ninth Amendment to JPA (6th Amendment to 3rd Amended and Reconstituted JPA)

EXHIBIT B

Minnesota Member Entities' Recoupment – Reverse Amortization Schedule

See attached


**Amortization of Investment in RRRDC by
Moorhead/Clay County
Using a 4% Present Value Discount Factor**

<u>Year</u>	<u>Beginning</u> <u>Balance</u>	<u>Ending</u> <u>Balance</u>
1	\$ 2,500,000	\$ 2,416,045
2	\$ 2,416,045	\$ 2,328,732
3	\$ 2,328,732	\$ 2,237,926
4	\$ 2,237,926	\$ 2,143,488
5	\$ 2,143,488	\$ 2,045,273
6	\$ 2,045,273	\$ 1,943,129
7	\$ 1,943,129	\$ 1,836,899
8	\$ 1,836,899	\$ 1,726,420
9	\$ 1,726,420	\$ 1,611,521
10	\$ 1,611,521	\$ 1,492,027
11	\$ 1,492,027	\$ 1,367,753
12	\$ 1,367,753	\$ 1,238,509
13	\$ 1,238,509	\$ 1,104,094
14	\$ 1,104,094	\$ 964,303
15	\$ 964,303	\$ 818,920
16	\$ 818,920	\$ 667,721
17	\$ 667,721	\$ 510,475
18	\$ 510,475	\$ 346,939
19	\$ 346,939	\$ 176,862
20	\$ 176,862	\$ 0

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MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

FROM: MAYOR TIMOTHY MAHONEY 

DATE: NOVEMBER 14, 2022

SUBJECT: PLANNING COMMITTEE OF THE METRO FLOOD DIVERSION AUTHORITY

At the September 22nd Metro Flood Diversion Authority Board Meeting the Board approved a Resolution establishing the Planning Committee of the Metro Flood Diversion Authority. Per the Resolution the Planning Committee membership will consist of one Diversion Authority Board Member from the six member entities.

My recommendation would be to appoint myself to that Board.

Your favorable consideration of this recommendation will be greatly appreciated.

RECOMMENDED MOTION: To appoint Mayor Mahoney to the Planning Committee of the Metro Flood Diversion Authority.

mmappt22dpc

November 14th, 2022

35

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

**RE: Commerce on I-29 @ 100th Ave S
Request for Sewer Service**

Commissioners:

On October 17, City Staff presented a Brown Bag related to a request from Board Member Jesse Riley (Commerce on I29) requesting consideration for sewer service to serve a commercial development along I29 and 100th Ave S. The development uses a 20,000-gallon private onsite sewer system/holding tank for its wastewater management. Due to growth, increased water use and possible groundwater infiltration, this development has experienced increased pumping frequency and costs, previous environmental concerns, along with current growth limitations. City staff have worked with Commerce board members since 2017-18 to find a permanent solution to the wastewater problem.

A possible solution is to work cooperatively with the Southeast Cass Water Resource District (SE Cass WRD) to obtain a Clean Water State Revolving Fund Loan (CWSRF) to install infrastructure to connect to the City of Fargo wastewater collection system at a point of connection at 64th Ave S and 45th Street. SE Cass WRD would be the sponsor of the low interest loan as they have assessment capability in a private/rural area such as this. Commerce on I29 would then repay the debt service. The City of Fargo has worked with SE Cass WRD since the late 1980s to provide sewer service to areas that had limited infrastructure options to alleviate public health/environmental concerns due to improper sewer disposal. Subsequently the SE Cass WRD Board approved the cooperative agreement in principle to apply for the loan and begin design of a sanitary sewer lift station and force main project.

The Finance and Utility Committees have approved the following recommendation:

Authorize staff to proceed finalizing a sewer agreement for only Commerce I29 with SE Cass WRD providing the financing and Commerce paying the debt service. Fargo would own and operate the infrastructure. Commerce will pay a volumetric rate with an O/M fee.

Staff are asking the Commission to authorize negotiation of a sewer agreement with only Commerce I29 Association, which will come back to the Commission in a final form for approval.

Recommended Motion:

Authorize staff to negotiate a sewer agreement with only the Commerce on I29 Association, with SE Cass Water Resource District providing the financing and Commerce on I29 repaying the debt.

Respectfully Submitted,



Jim Hausauer
Water Reclamation Utility Director

Jim, Brenda, and Nichole

The owners association of Commerce on 29 is requesting permission from the City of Fargo to connect to the gravity sanitary sewer at 64th AVE S and 45th street. We are working with Southeast Cass Rural Water District and the City of Fargo to expedite this request.

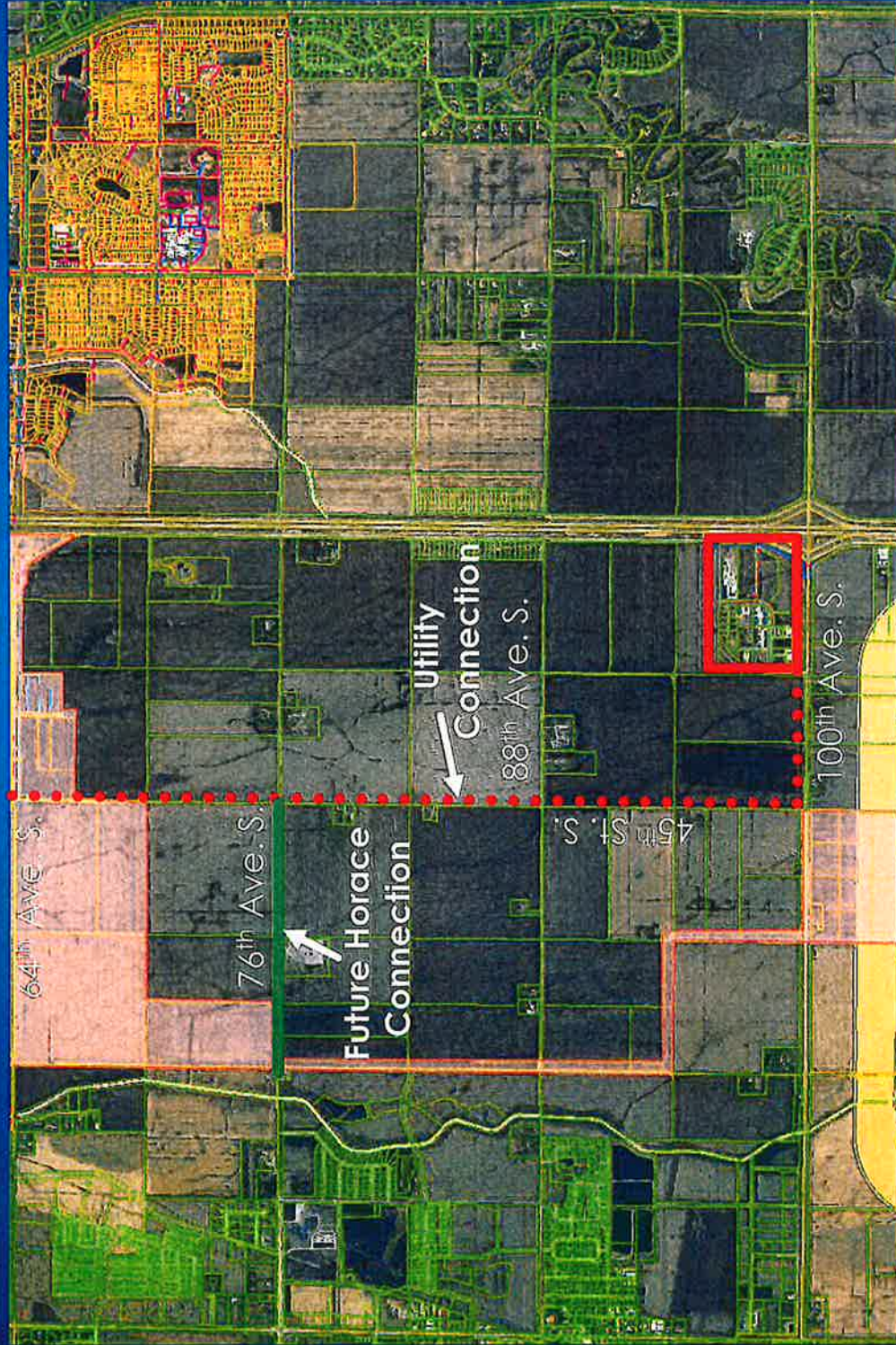
Board Member,

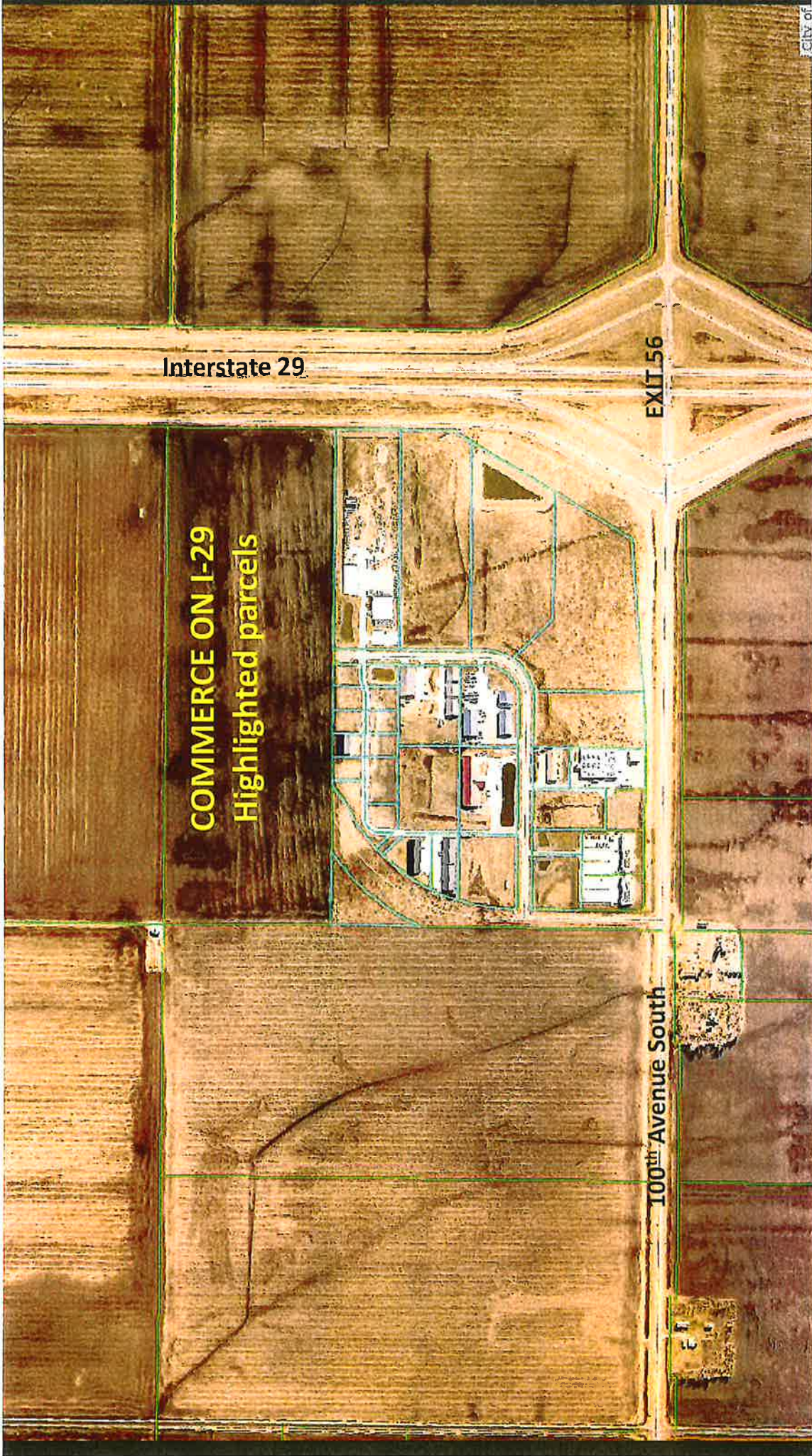
Jesse Riley

Commerce on I-29 Sanitary Sewer Request

16

Request #1 – provide a connection and contract for a new force main to support existing and fully build out Commerce on I-29 only





Interstate 29

EXIT 56

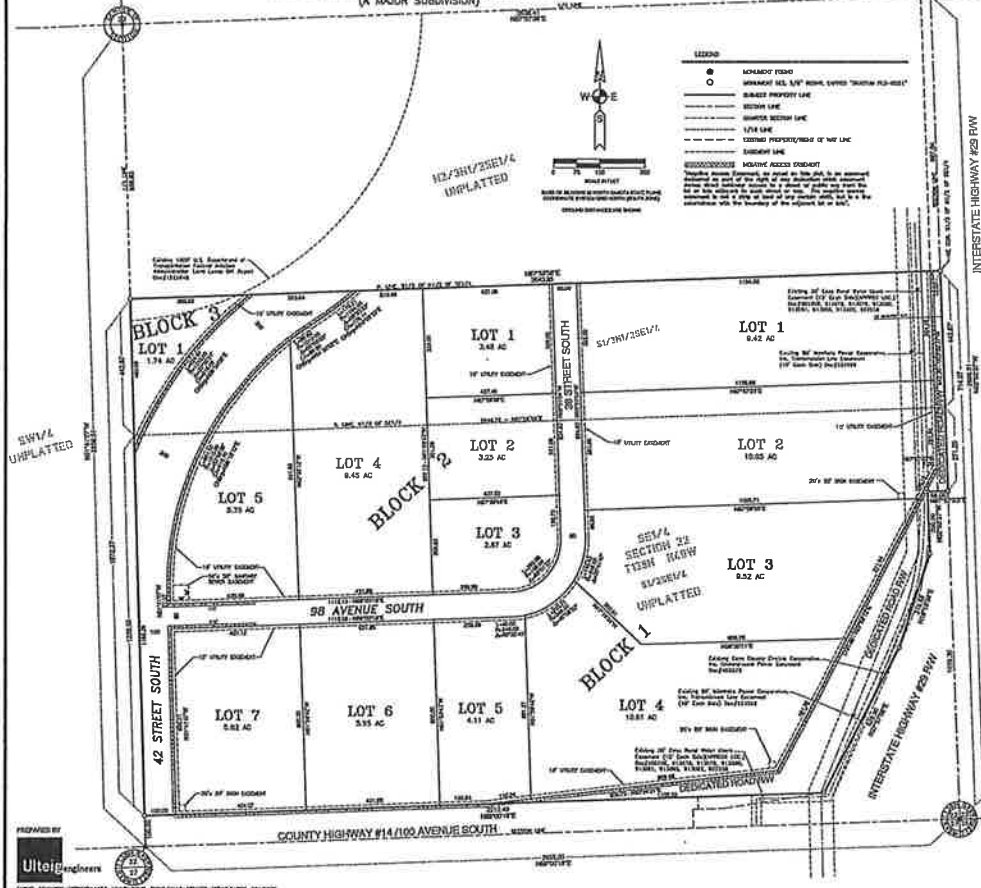
COMMERCE ON I-29
Highlighted parcels

100th Avenue South

CITY OF

COMMERCE ON I29 ADDITION

TO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA
 AN UNPLATTED PORTION OF THE SOUTHEAST QUARTER, SECTION 22, TOWNSHIP 130 NORTH, RANGE 49 WEST
 (A MAJOR SUBDIVISION)



OWNERS' EXPOSITION AND EDUCATION

VIEW ALL OF THESE PROJECTIONS AND BE INFORMED BY THE ENGINEER, ARCHITECT, SURVEYOR, AND OTHER PROFESSIONALS WHOSE SERVICES ARE EMPLOYED IN THE PREPARATION OF THIS PLAT. THE CITY OF FARGO, NORTH DAKOTA, IS THE APPLICANT FOR THIS PLAT. THE CITY OF FARGO, NORTH DAKOTA, IS THE APPLICANT FOR THIS PLAT. THE CITY OF FARGO, NORTH DAKOTA, IS THE APPLICANT FOR THIS PLAT.

CITY OF FARGO ENGINEERING DEPARTMENT APPROVAL

Approved by City Engineer: *[Signature]*, 2014.
 State of North Dakota: *[Signature]*, 2014.
 County of Cass: *[Signature]*, 2014.

CITY OF FARGO PLANNING COMMISSION APPROVAL

Approved by the Board of City Commissioners and adopted the 14th day of September, 2014.
 State of North Dakota: *[Signature]*, 2014.
 County of Cass: *[Signature]*, 2014.

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PREPARED BY
Ulteig engineers

Commerce on I-29/100th Ave S Request for Sewer Service Approved

Jim Hausauer has a request from Commerce on I29 Board member Jesse Riley requesting consideration for sewer service to serve a commercial development along I29 and 100th Ave S that was platted and zoned in 2014. This development intended to use a 20,000-gallon private onsite sewer system/holding tank for its wastewater management; however, due to growth, increased water use and possible groundwater infiltration, this development has experienced increased pumping costs, growth limitations, and concerns from City of Fargo Engineering, Planning and Public Health Departments. These departments have worked with Commerce board members since 2017-18 to find a permanent solution to the wastewater problem.

One agreed upon solutions was to work cooperatively with the SE Cass WRD to obtain a CWSRF loan to install infrastructure to connect to the Fargo wastewater collection system infrastructure at 64th Avenue and 45th Street. The SE Cass WRD Board approved the cooperative agreement in principle to apply for the loan and begin design of a sanitary sewer lift station and force main project.

City of Fargo staff is now seeing requests from adjacent developers to connect to the proposed infrastructure that is being designed only for the Commerce development, which is raising questions that do not meet intended orderly growth associated with Water & Wastewater Mater Planning, Growth and Land Use Planning and Floodplain Management Principles.

Hausauer is looking for approval to proceed finalizing a sewer agreement for only Commerce on I29 with SE Cass WRD providing the financing and Commerce paying the debt service. Fargo would own and operate the infrastructure. Commerce will pay a volumetric rate with an O/M fee.

Sprague made the motion to approve. Piepkorn seconded and all voted in favor.

Water Utility 2022 Budget Advance - Membrane WTP Ultrafiltration Modules Approved

Troy is requesting a budget advance for a 2023 Ultrafiltration (UF) membrane module replacement project for the Membrane Water Treatment Plant (MWTP). Suez Water Technologies & Solutions requires 30-percent paid at the time of a purchase order, which is estimated at \$99,630. The requested budget advance is for the Renewal & Rehab (R&R) budget line in the 2023 Water Utility budget. The R&R budget line is funded with Infrastructure Sales Tax (Fund 450), which had a balance of \$5,562,281 at the end of September.

Sprague made the motion to approve. Redlinger seconded and all voted in favor.

Water Utility Renewal & Rehab Project List Approved

Troy is requesting the use the Renewal & Rehab (R&R) line in the Water Utility budget to fund two projects; the State Revolving Fund Loan (Non-Reimbursement Requested Items) for an estimated cost for 2022-2023 of \$50,000 and the Wash Water Recovery Spare Pump (1997 Water Treatment Plant) for an estimated cost of \$22,000.

The R&R budget line uses Infrastructure Sales Tax (Fund 450), allocated to the Water Utility.

Redlinger made the motion to approve. Piepkorn seconded and all voted in favor.

Operation Prairie Dog Funds and Infrastructure Funding Policy Revision Approved

Tom Knakmuhs and Brenda Derrig spoke on the passage of House Bill 1066 in 2019, commonly referred to as "Operation Prairie Dog". The City of Fargo was forecasted to receive approximately \$25 million each biennium. During that same timeframe, a Special Assessment Taskforce was created to review the use of special assessments in Fargo and make recommendations for modifications to the City's infrastructure funding policy. On November 19, 2019, the Fargo City Commission adopted an updated infrastructure funding policy that incorporated 22 of the 26 recommendations made by the Special Assessment Taskforce.

Knakmuhs and Derrig are recommending that the infrastructure funding policy that was adopted in 2019 be revised to remove the following provision from the policy, "The City of Fargo will apply all appropriated

City of Fargo - Finance Committee Meeting

**Monday, October 31st, 2022
Go To Meeting/River Room
10:00 a.m.**

CONSENT AGENDA – APPROVE THE FOLLOWING:

1. Minutes from September meeting
2. Consider Sole Source and PBC Approvals (Departmental Requests)
 - a. Frontier Precision – Engineering (Derrig)
 - b. Salt Source LLC – Public Works (Fiechtner)
 - c. 3D Specialties – Traffic Engineering (Gorden)
 - d. B&B Roadway and Security Solutions – Traffic Engineering (Gorden)
 - e. Tennant Sale & Service – Fargodome (Sobolik)
 - f. Suez Water Tech & Solutions – Water Utility (Hall)
 - g. Center for Public Safety Excellence – Fire (Dirksen)
3. 2022 City and County Sales Tax (Sprague)

REGULAR AGENDA:

1. Temporary/Early Hire for Fire Department (Dirksen)
2. Amendment for czb for Core Neighborhood Plan services (Williams/Crutchfield)
3. Commerce on I-29/100th Ave S Request for Sewer Service (Hausauer)
4. Water Utility 2022 Budget Advance - Membrane WTP Ultrafiltration Modules (Hall)
5. Water Utility Renewal & Rehab Project List (Hall)
6. Operation Prairie Dog Funds and Infrastructure Funding Policy Revision (Knakmuhs/Derrig)
7. Emergency Purchase of Lift Station #32 Storm Water Pump (Derrig/Knakmuhs)
8. Liquidated Damage Assessment BN-19-A2 (Gorder/Knakmuhs)
9. (RFQ18084) Newman Outdoor Field CIP Project – Project Admin Costs (Majerus)
10. Supplemental Budget Request to Complete Multimedia Studio Space (Schildberger)
11. City Pension Board changes (Sprague)
12. Extension of Benefactor Group Consulting Services Agreement (Redlinger)
13. Governance Workshop Facilitation Services (Redlinger)
14. Government Relations & Legislative Advocacy RFQ (Redlinger)
15. Other

REPORT OF ACTION**FINANCE COMMITTEE**

Project: N/A

Type: Commerce on I-29

Request for Sewer Service

Location: Commerce Development on I29/100th Ave S

Date of Hearing: 10-31-2022

<u>Routing</u>	<u>Date</u>
City Commission	<u>TBD</u>
Project File	<u> </u>

Jim Hausauer Water Reclamation Utility Director presented attached memo requesting consideration for sewer service to serve a commercial development along I29 & 100th Ave S. Despite staff recommendation to deny, this development was platted and zoned in 2014. The development currently uses a 20,000-gallon private onsite sewer system/holding tank for its wastewater management. Due to growth, increased water use & possible groundwater infiltration, this development has experienced increased pumping costs, growth limitations, and concerns from the City of Fargo Engineering, Planning and Public Health Departments. City staff have worked with Commerce board members since 2017-18 to find a permanent solution to the wastewater problem.

The agreed upon solution was to work cooperatively with the Southeast Cass Water Resource District (SE Cass WRD) to obtain a Clean Water State Revolving Fund Loan (CWSRF) to install infrastructure to connect to the City of Fargo wastewater collection system at a point of connection at 64th Ave S and 45th Street. As they have assessment capability in private/rural area such as this, SE Cass WRD would be the sponsor of a low interest loan, Commerce on I29 would then repay the debt service, and the City of Fargo would ultimately own and operate the infrastructure. The City of Fargo has previously worked with SE Cass WRD to provide sewer service to areas that had limited infrastructure options. The SE Cass WRD Board has approved a cooperative agreement in principle to apply for the loan and begin design of a sanitary sewer lift station and force main project.

Staff are now seeing requests from adjacent developers to connect to the proposed infrastructure designed only for the Commerce development. The sewer infrastructure for Commerce is now raising difficult questions that do not meet intended orderly growth associated with Water & Wastewater Master Planning, Growth/Land Use Planning and Floodplain Management Principles.

Potential Motions:

- A. Authorize staff to proceed finalizing a sewer agreement for only Commerce I29 with SE Cass WRD providing the financing and Commerce paying the debt service. Fargo will own and operate the infrastructure. Commerce will pay a volumetric rate with an O/M fee.
- B. Authorize staff to proceed finalizing a sewer agreement for both Commerce I29 and (upsized for) an additional Commerce Third with SE Cass WRD providing the financing and Commerce paying the debt service. Fargo will own and operate the infrastructure. Commerce will pay a volumetric rate with an O/M fee.
- C. Deny the sewer request.

RECOMMENDED MOTION

On a motion by Steve Sprague, seconded by Dave Piepkorn, the Finance Committee voted to authorize staff to proceed finalizing a sewer agreement for Commerce on I29 only, with SE Cass WRD providing the financing and Commerce on I29 repaying the debt service. Fargo will own and operate the infrastructure and will charge a volumetric rate to include an operation and maintenance fee.

Memorandum

October 31st, 2022

To: Finance Committee
From: Jim Hausauer, Water Reclamation Utility Director *JH*
RE: Commerce on I-29/100th Ave S - Request for Sewer Service

Background

Attached you find a request from Board Member Jesse Riley (Commerce on I29) requesting consideration for sewer service to serve a commercial development along I29 and 100th Ave S. This development was platted and zoned in 2014 despite staff recommendation to deny. This development intended to use a 20,000-gallon private onsite sewer system/holding tank for its wastewater management. Due to growth, increased water use and possible groundwater infiltration, this development has experienced increased pumping costs, growth limitations, and concerns from the City of Fargo Engineering, Planning and Public Health Departments. City staff have worked with Commerce board members since 2017-18 to find a permanent solution to the wastewater problem.

One of the agreed upon solutions was to work cooperatively with the Southeast Cass Water Resource District (SE Cass WRD) to obtain a Clean Water State Revolving Fund Loan (CWSRF) to install infrastructure to connect to the City of Fargo wastewater collection system infrastructure at a point of connection at 64th Ave S and 45th Street. SE Cass WRD would be the sponsor of the low interest loan as they have assessment capability in a private/rural area such as Commerce. Commerce on I29 would then repay the debt service. The City of Fargo has worked with SE Cass WRD since the late 1980s to provide sewer service to areas that had limited infrastructure options to alleviate public health concerns due to improper sewer disposal. Subsequently the SE Cass WRD Board approved the cooperative agreement in principle to apply for the loan and begin design of a sanitary sewer lift station and force main project.

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- C. Deny the sewer request.

STAFF RECOMMENDATION: Authorize staff to proceed finalizing a sewer agreement for only Commerce I29 with SE Cass WRD providing the financing and Commerce paying the debt service. Fargo will would own and operate the infrastructure. Commerce will pay a volumetric rate with an O/M fee.

REPORT OF ACTION**UTILITY COMMITTEE**

Project: N/A

Type: Commerce on I-29
Request for Sewer ServiceLocation: Commerce Development on I29/100th Ave S

Date of Hearing: 10-26-2022

<u>Routing</u>	<u>Date</u>
City Commission	<u>TBD</u>
Project File	<u> </u>

Jim Hausauer Water Reclamation Utility Director presented attached memo requesting consideration for sewer service to serve a commercial development along I29 & 100th Ave S. Despite staff recommendation to deny, this development was platted and zoned in 2014. This development currently uses a 20,000-gallon private onsite sewer system/holding tank for its wastewater management. Due to growth, increased water use & possible groundwater infiltration, this development has experienced increased pumping costs, growth limitations, and concerns from the City of Fargo Engineering, Planning and Public Health Departments. City staff have worked with Commerce board members since 2017-18 to find a permanent solution to the wastewater problem.

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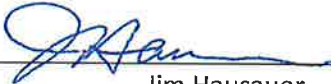
On a motion by Ben Dow, seconded by Brenda Derrig, the Utility Committee voted to authorize staff to proceed finalizing a sewer agreement for Commerce on I29 only, with SE Cass WRD providing the financing and Commerce on I29 repaying the debt service. Fargo will own and operate the infrastructure and will charge a volumetric rate to include an operation and maintenance fee.

RECOMMENDED MOTION:

Concur with the recommendation of the Utility Committee and authorize staff to proceed finalizing a sewer agreement for Commerce on I29 only, with SE Cass WRD providing the financing and Commerce I29 repaying the debt service. Fargo will own and operate the infrastructure and will charge a volumetric rate to include an operation and maintenance fee.

COMMITTEE:	Present	Yes	No	Unanimous
				Proxy
Denise Kolpack, City Commissioner		X	(Met Separately)	
Terri Gayhart, Director of Finance	X	X		
Brian Ward, Water Plant Superintendent	X	X		
Mark Miller, Water Reclamation Plant Supt.	X		X	
Bruce Grubb, Temp. PT City Administrator	X	X		
Scott Liudahl, City Forester	X	X		
Scott Olson, Solid Waste Utility Director	X	X		
Jim Hausauer, Water Reclamation Utility Dir.	X	X		
Troy Hall, Water Utility Director	X	X		
Ben Dow, Public Works Operations Director	X	X		
Brenda Derrig, City Engineer	X	X		
_____, Solid Waste Utility Engineer		Vacant		
Dan Portlock Water Utility Engineer	X	X		

ATTEST:



 Jim Hausauer
 Water Reclamation Utility Director

- C: Tim Mahoney, Mayor
 Commissioner Strand
 Commissioner Piepkorn
 Commissioner Preston

Memorandum

October 26th, 2022

To: Utility Committee
From: Jim Hausauer, Water Reclamation Utility Director *JHA*
RE: Commerce on I-29/100th - Request for Sewer Service

Background

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