

FARGO CITY COMMISSION AGENDA  
Monday, November 6, 2017 - 5:00 p.m.

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

- A. Pledge of Allegiance.
- B. Roll Call.
- C. Approve Order of Agenda.
- D. Minutes (Regular Meeting, October 23, 2017; Special Meetings, October 24, 2017 and October 30, 2017).

**CONSENT AGENDA – APPROVE THE FOLLOWING:**

- 1. 2nd reading, waive reading and final adoption of the following Ordinances; 1st reading, 10/23/17:
  - a. Rezoning Certain Parcels of Land Lying in Tunheim Addition.
  - b. Amending Section 20-0401 of Article 20-04 of Chapter 20 of the Fargo Municipal Code Relating to Use Regulations.
- 2. Applications for Games of Chance:
  - a. Pink It Forward for bingo from 11/22/17 to 2/7/18 (amended).
  - b. Bethany Auxiliary for a calendar raffle from 11/15/17 to 1/17/18.
  - c. Cory Hjelden Relief Fund for a raffle and raffle board on 11/12/17.
  - d. Dakota Medical Foundation – Lend A Hand for a raffle on 11/20/17.
- 3. Tax exemptions for improvements made to buildings:
  - a. Douglas G. and Charlotte M. Grant, 3031 Bohnet Boulevard (3 year).
  - b. Douglas J. and Renelda J. Hushka, 2720 26th Avenue South (3 year).
  - c. Sheila Koser and Hoadley Harris, 2725 30th Avenue South (3 year).
  - d. Joel M. Fremstad and Jennifer S. Soupir-Fremstad, 4026 Copperfield Court South (3 year).
  - e. Sheri R. McMahon, 717 7th Avenue North (5 year).
  - f. Scott A. Hansey and Barbara Mohs, 2519 Columbus Circle South (5 year).
  - g. Gary J. and Amie C. Haugo, 808 8th Street South (5 year).
  - h. Kenneth J. and Brenda J. Lenoue, 1001 21st Avenue South (5 year).
  - i. Beverly A. Bjorland, 2214 10th Street South (5 year).
  - j. Randau F. and Robyn M. Wimmer, 2501 West Country Club Drive South, Unit H (5 year).
  - k. Old Town LLC, 611 9th Avenue North (5 year).
  - l. Mark. L. and Jacquelin J. Stenehjerm, 1611 8th Street South (5 year).
  - m. Davis B. Beattie, 2005 15th Avenue South (5 year).
  - n. Holland's Consortio Inc., 1545 15th Street South (5 year).
  - o. Steven M. and Sara A. Madsen, 61 15th Avenue North (5 year).

4. Fire Department budget adjustment and contract with the ND Division of Homeland Security for grant funding, in the amount of \$20,512.00, FY 2018 Hazardous Materials Emergency Preparedness Training Grant (CFDA #20.703).
5. Agreement for Services with Deb Haugen to provide dietitian consulting services for the Cass-Clay School Wellness Policy Project.
6. Direct City Attorney's office to review and update Section 35-0102 of Article 35-01 of Chapter 35 Relating to Sale of Tobacco Products.
7. ND Department of Commerce Emergency Solutions Grant to support operational expenses for the Gladys Ray Shelter.
8. Agreement for Services with the Fargo-Moorhead METRO COG for the Cass Clay Food Commission.
9. Contract Agreement with North Dakota State University to provide a breastfeeding friendly environment for employees.
10. Notice of Grant Award with the ND Department of Health and Human Services for regional public health network implementation (CFDA #93.758).
11. Agreement for Services with Child Care Aware of North Dakota to provide training opportunities to licensed child care center staff to meet annual health code training requirements.
12. Contract Agreement with Academy for Children to provide a breastfeeding friendly environment.
13. Agreement for Services with Community Medical Services Montana-Private, LLC to provide medication assisted treatment and counseling.
14. Contract Agreement with Dana Rieth to implement healthy concession stand options.
15. Bid award for one rental excavator and three haul trucks at the landfill (RFP17296).
16. Bid award for walk through detection equipment at the FARGODOME.
17. Bid award for one skid steer loader at the FARGODOME.
18. Bid award for one articulated wheel loader at the FARGODOME.
19. Memorandum of Understanding with the Red River Radio Amateurs.
20. Amend the 2017 CIP to include the reconstruction of Storm Sewer Lift Station No. 7 and creation of Project No. NR-17-C1.
21. Time extension of an additional week for Project No. FM-14-63.
22. Negative Final Balancing Change Order No. 1 in the amount of -\$1,083.00 for Project No. PR-17-C1.
23. Memorandum of Understanding with Tharaldson Ethanol Plant I, LLC.

24. Third Amendment to Memorandum of Understanding with Tharaldson Ethanol Plant I, LLC.
25. ND Department of Transportation State Aid for Public Transit Agreement in the amount of \$12,787.00 (Contract No. 38171458).
26. Walmart Community Grant Program Award in the amount of \$2,500.00 for the Fargo Police Department.
27. Submittal of letter committing to the local share of 25% for a Pre-Disaster Mitigation grant application to FEMA.
28. Bid advertisement for Project No. WA1552.
29. Resolution approving Plat of Maple Valley 3rd Addition.
30. Contract and bond for Project No. TR-17-B1.
31. Bills.
32. Reimbursement Agreement with Magellan Pipeline Company, L.P. in the amount of \$65,000.00 for relocation of the Magellan gas line rectifier and ground bed for Improvement District No. BN-17-A1.
33. Change Order No. 2 for an increase of \$28,596.70 for Improvement District No. BN-17-A1.
34. Change Order No. 2 for an increase of \$82,726.00 and time extension to 1/5/18 for Improvement District No. BR-17-F1.
35. Final Balancing Change Order No. 1 for Improvement District No. UR-17-F1.
36. Negative Final Balancing Change Order No. 1 in the amount of -\$6,283.56 for Improvement District No. NN-14-01.
37. Time extension to 11/25/17 for Improvement District No. BR-17-C1.
38. Bid award for Improvement District No. BN-16-H1.

**REGULAR AGENDA:**

39. Receive annual purchasing card rebate check for FY 2016/2017 in the amount of \$284,522.00 as presented by PFM Payment Solutions.
40. Public Hearings - 5:15 pm:
  - a. WITHDRAWN - Appeal of a Board of Adjustment decision on a variance request at 3931 and 3949 37th Avenue South to allow a proposed building to be constructed to a lower elevation than would otherwise be required by the City's Floodproofing Code, as referenced by Article 21-06 of the Fargo Municipal Code; denied by the Board of Adjustment on 8/22/17; continued from 9/25/17 and 10/9/17 Regular Meetings.
  - b. Renaissance Zone Project for Scoop N Dough Candy Company LLC for a commercial lease project located at 206 Roberts Alley North.

41. Recommendation for appointments and reappointments to the following Boards and Commissions:
  - a. Tax Exempt Review Committee County appointment.
  - b. Convention and Visitors Bureau.
42. Consider five-year extension to the current agreement with Erik R. Johnson & Associates, Ltd. to provide general legal and prosecution services to the City of Fargo.
43. Consider Resolution to authorize the filing of an application with the ND Department of Health for a loan under the Clean Water Act for the Fargo Wastewater Treatment Plant Improvements (Project No. WW1701).

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

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



## Finance Office

P.O. Box 2083  
200 3rd Street North  
Fargo, North Dakota 58107-2083  
Phone: 701-241-1333  
Fax: 701-241-1526

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**TO: BOARD OF CITY COMMISSIONERS**  
**FROM: KENT COSTIN, DIRECTOR OF FINANCE**   
**RE: PFM ANNUAL PURCHASING CARD REBATE ACHIEVEMENT AWARD**  
**DATE: OCTOBER 31, 2017**

The City Commission will be receiving its annual purchasing card rebate cash award from PFM next week. This award is significant in size of rebate earned, volume of business and the cooperation of all of our City personnel who use this system.

This year represents the fifth anniversary of our program with PFM and we are happy to announce that we have achieved our initial program goals and will continue to look for ways to expand the use of this system in the future. We continue to be the top performer in this program on a nationwide basis for governmental accounts.

William Sullivan and Kelly Smaldone, our program sponsors will be attending the meeting to present to our rebate check total of \$ 284,522.

Cumulative rebates awarded since program inception total \$ 967,658. We are very pleased with the overall level of cooperation and performance by our employees who contributed to the program success.

### **Suggested Motion:**

Accept our 2016/2017 purchasing card rebate check from PFM in the amount \$ 284,522.





PLANNING AND DEVELOPMENT  
200 Third Street North  
Fargo, North Dakota 58102  
Phone: (701) 241-1474  
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E-Mail: [planning@fargond.gov](mailto:planning@fargond.gov)  
[www.fargond.gov](http://www.fargond.gov)

## MEMORANDUM

**TO:** Fargo City Commission  
**FROM:** Derrick LaPoint, Planner  
**DATE:** October 31, 2017  
**RE:** Renaissance Zone Project Lease Application

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The following Renaissance Zone project application was reviewed and recommended for approval by staff per Renaissance Zone Authority Policy:

Scoop N Dough Candy Company LLC (Project 264-F) is proposing to lease commercial space located at 206 Roberts Alley North. This project application met all of the State and local requirements for approval including that, the use is consistent with the goals and objectives as set forth within the Fargo Renaissance Zone Development Plan. The applicant is proposing to lease 557 square feet and is looking to occupy the space by April 2018. The applicant estimates a \$50,000 income tax exemption over the 5-year term.

According to the Renaissance Zone Development Plan, the prospective tenant must be leasing a space from a building that has been approved as a Renaissance Zone project. A Renaissance Zone application for *DFI Roberts LLC* (249-F) was approved by the City of Fargo on April 25, 2016 and the application will be reviewed by the State for final approval.

**Recommended Action: To approve the Renaissance Zone project application (Scoop N Dough Candy Company LLC) for a lease project at 206 Roberts Alley North and to grant state income tax exemptions as recommended by staff per Renaissance Zone Authority policy.**

# **CITY OF FARGO RENAISSANCE ZONE LEASE PROJECT APPLICATION**

***Attn: This application must be approved by all local and state review entities prior to executing a lease.***

- 1. Street address, legal description, and Renaissance Zone Block number of proposed project. If the proposed project involves more than one parcel, please provide relevant information for each parcel.**

206 Roberts Aly N (Main Project 625 2 Ave N)  
S 1/2 OF 9 & ALL OF 10, 11 & 12, Block 3, Roberts Addition  
01-2381-00560-000

Renaissance Zone Block 2 & 6

- 2. Current property owner(s).**

DFI Roberts LLC

- 3. Name of applicant(s), mailing address, Federal ID number or SSAN, and type of entity (partnership, LLC, S-corporation, etc.). Phone number and email address.**

Scoop N Dough Candy Company, LLC  
Not yet assigned  
Josh Ulrich  
408 Roberts St N, Apt 314, Fargo, ND 58102  
612-716-7353

- 4. Current use of property.**

Under Construction

- 5. Square footage of the lot, the building, and the space leased. List each floor separately and provide a floor plan of the leased space).**

625 2nd Ave N – 42,851

557/SF leasable space

- 6. Project Description. Describe the anticipated tenant activities, scope of the activities that the tenant will undertake, and describe and the expected date of occupancy and lease.**

The Roberts mixed-use building lining the parking structure is under construction will be completed April 2018. The building will consist of 47,615 rentable square feet of residential apartments (73 units). The ground floor will include 8,694 SF of retail along 2<sup>nd</sup> Ave N and Roberts Alley. The alley retail, averaging 594 SF, will be designed with overhead doors and target incubator retail, boutiques, and service providers. The SW and SE corners will be designed for food and beverage with retail in-between.

The addition of Scoop N Dough Candy Company off of 2nd Ave N will add a new storefront and activity on this street. This business will serve ice cream, popcorn, shakes, edible cookie dough, etc.

The expected date of occupancy April 1, 2018.

- 7. Describe how the project enhances the stated Renaissance Zone goals and objectives, being as specific as possible. Describe how this project addresses the needs and interests of the community (see Attachment C).**

## Activity Generators

Roberts Commons will substantially increase the activity in this area. The 455 parking spots will address parking shortages in the core and the office workers, residents, and visitors using the parking garage will generate increased activity. The resulting foot traffic from those using the garage will be strategically funneled past either the ground floor retail along 2<sup>nd</sup> Ave or through Roberts Alley and past the new and existing retailers. All three public frontages of the parking garage will be wrapped with a mixed-use liner to activate the street with different uses and hide the garage from sight.

### Walkable Districts.

While a parking garage is at the heart of this redevelopment, the project has been designed first and foremost for pedestrians. The ground floors on both Roberts Commons will include retail along 2<sup>nd</sup> Ave and along Roberts Alley. Second Ave will be redesigned with wide sidewalks that make walking comfortable and provide opportunities for outdoor seating. The ground floors will feature frequent entrances and large amounts of glass, both critical design elements for creating an interesting environment. Roberts St will include this same design element with individual entrances and stoops for the ground floor apartments to provide opportunities to generate social interaction and street life.

### Ground Floor Uses

The ground floor will completely be active retail. Roberts Alley will consist of a series of micro retail storefronts, featuring overhead doors to connect the interior spaces with the public realm.

### Neighborhood Center

The proximity of this location between Broadway and NDSU's downtown campus to the west can create a potential new activity node for downtown. Roberts Alley also has the potential to become the second busiest pedestrian corridor in downtown. The Roberts and Kesler mixed-use projects will be at the heart of this transformation, due to the physical design of this location, but also by positively influencing people's perception of this block. The Roberts and Kesler projects have the potential to become anchors of downtown Fargo, both in retail and residential activity. These anchors could help spur future active retail and investment along Roberts St.

### Transportation Issues

The project will include a 455 parking garage to serve daytime office workers, downtown residents, and visitors in the evenings and weekends. The south side of this property is served by MatBus Routes 13, 13U, and 17. NDSU students generate significant activity in this area, as many of them use Roberts St as a bike thoroughfare to Renaissance Hall. Many students also frequently pass this site to board the bus at Klai Hall. The vision of creating a 2<sup>nd</sup> Ave corridor to access the river has also influenced our design and intent for a pedestrian friendly redesign of the street.

### Safe Streets – Safe Neighborhoods.

The redevelopment of this block will further enhance the natural human surveillance by replacing a surface parking lot with an active ground floor of mixed retail. High Quality

### Housing

Roberts Commons will offer 74 residential units.

### Downtown Entryways

Roberts St, one of the identified corridors in the Renaissance Plan, will be improved with this mixed-use development. The streetscape, public realm, and built environment will create a much improved experience for those on foot and in their vehicles. Improving this corridor's experience is critical to develop a positive first impression for those visitors who will use the City-owned parking garage. The proposed redesign of the street and public realm is being led by Land Elements to create a functional and pleasing streetscape.

### The Place to Be

The reinvention of Roberts Alley to a pedestrian oriented public realm could position this corridor to become a unique and sought after experience. The Alley Fair has shown how alleys can become a place for socializing and entertainment. Activating Roberts Alley with ground floor retail, restaurants, and a pedestrian friendly design can turn elements of the yearly Alley Fair into a daily experience. The corner of Roberts St and 2<sup>nd</sup> Ave has been designed with a restaurant in mind. This south facing location with large sidewalks will create an opportunity for the restaurant to have a large outdoor seating, an experience that is frequently found in great cities, but missing from Fargo.

### A Place Like No Other

The area surrounding this block contains some of downtown's most iconic buildings and some of Fargo's highest concentration of historic buildings. The infill of these parcels will greatly improve this prominent, yet generally overlooked area.

### Spruce up the area

The replacement of surface parking lots with this mixed use development will greatly improve this area of downtown.

### Riverfront as an Asset

While this property is not located on the riverfront, it will benefit from future redevelopment of the riverfront, civic quad, the Block 9 Plaza, and an improved 2<sup>nd</sup> Ave corridor. Second Avenue has great potential to become a prominent pedestrian corridor. This corridor will be bookended by NDSU's downtown campus and the riverfront redevelopment, placing this property directly along this connection.

24 hours a day – 7 days a week – 365 days a year.

This location will be activated during working hours from the ground floor retail and those office workers parking in the 458 stall parking garage. The 71 residential units at Roberts and the 84 units at Kesler will activate this area throughout the day as well as during the evenings and weekends. These apartments will contain a total of 178 bedrooms. The redesign of Roberts Alley into a pedestrian friendly corridor will make it more inviting and a unique destination to spur activity.

#### Connections and Coordination.

This project will be thoughtfully designed to enhance the walkability of this area. The surface parking will be replaced with a mixed-use building with active ground floor retail and a design that encourages walking (frequent doors, high percentage of glass, and pedestrian scale design).

The design of Kesler will align with the long term goals Kilbourne Group has for the Black Building and the C.R. Stone (former Avalon) building. The Roberts Alley connection will be enhanced with this infill, as well as the connections between the former Avalon building and the Black Building and 1<sup>st</sup> Ave to this site via the north-south alley running along the Gardner building. Roberts will include a corridor for pedestrian access between Roberts St and Roberts Alley to allow this commonly used connection to continue.

### **8. Describe how the project fits under the Zone's development guidelines (Attachment D).**

#### High Priority Land Use

This project meets the guideline of high-priority land use by creating a mixed-use development with active ground floor retail space and large upscale apartments (and small units targeting a lower price point).

#### Target Areas

The majority of this site has been underutilized since the 1970s. One-hundred percent of these sites are currently surface parking.

#### Public Space

The public realm will be greatly enhanced with this mixed-use infill project. A ground floor filled with retail will make the sidewalks along these projects much more interesting and inviting.

#### Relocation

The project is projected to contain only new businesses in the ground floors and the upper floors will provide a much needed variety of housing options. The micro retail storefronts in the alley will provide suitable startup and incubator space for new retailers and service providers.

### **9. List of public and private financial commitments. If the project is funded by the Renaissance Zone Fund, describe type of funding and amounts.**

Private funds are committed by Scoop N Dough Candy Company and DFI Roberts LLC. No public funds will fund this project.

### **10. Estimated tax impact of Zone incentives to the applicant: Estimate the potential annual income tax savings.**

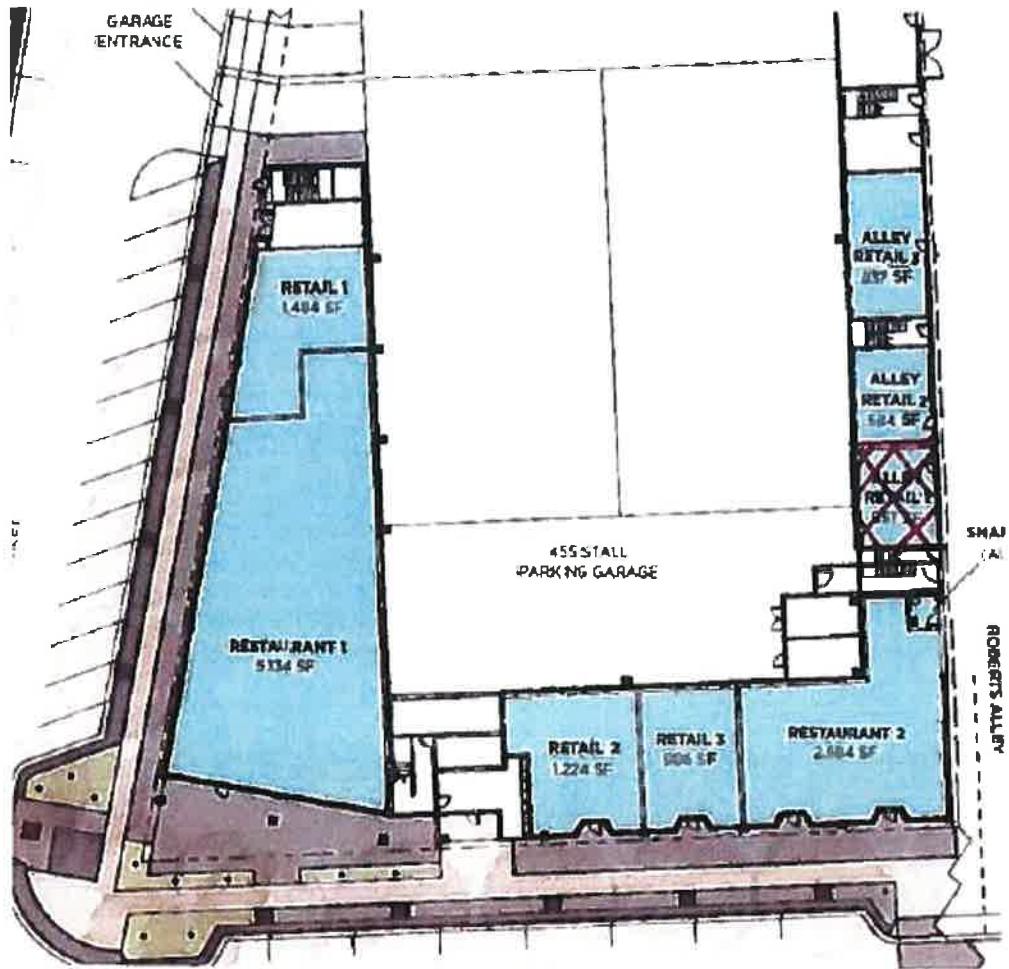
Estimated potential annual income tax savings for Scoop N Dough Candy Company is \$10,000.

### **11. Provide evidence that the applicant is current on state and local taxes (Certificate of Good Standing from State Tax Commissioner (see Attachment E) and receipt showing proof that local taxes have been paid.**

Please see attached. New business, will send into the state.

#### **Submit Project Proposals to:**


Department of Planning and Development, 200 N 3<sup>rd</sup> Street, Fargo, ND 58102  
Phone 701-241-1474





**MEMORANDUM**

**TO: BOARD OF CITY COMMISSIONERS**

**FROM: MAYOR TIMOTHY J. MAHONEY** 

**DATE: OCTOBER 30, 2017**

**SUBJECT: TAX EXEMPT REVIEW COMMITTEE COUNTY APPOINTMENT**

Recently enacted State legislation (Senate Bill 2166), which became effective August 1, 2017, requires the City to notify the county and each affected school district(s) before granting any property tax incentive for more than five years under N.D.C.C. 40-57.1-03 (New Industry PILOT) or N.D.C.C. 40-58-20.2 (Tax Increment Financing). The county and affected school district(s) may exercise the option to decline participation in the incentive or negotiate terms of the incentive with the City.

The City must also include the county and each affected school district(s) in creating and approving a Renaissance Zone Development Plan under N.D.C.C. 40-63-01. Letters of support from the county and affected school district(s) are required.

The Tax Exempt Review Committee currently includes representatives of the Fargo and West Fargo School Districts as non-voting ex-officio members.


Based on the recently enacted legislation, I feel that the Tax Exempt Review Committee should also include a representative appointed by the Cass County Commission as a non-voting ex-officio member of the committee.

**RECOMMENDED MOTION:** To approve the appointment of a representative of Cass County, appointed by the Cass County Commission, as a non-voting ex-officio member of the Tax Exempt Review Committee.



**MEMORANDUM**

**TO: BOARD OF CITY COMMISSIONERS**

**FROM: MAYOR TIMOTHY J. MAHONEY** 

**DATE: OCTOBER 30, 2017**

**SUBJECT: FARGO-MOORHEAD CONVENTION & VISITORS BUREAU**

The term of Kember Anderson on the Fargo-Moorhead Convention and Visitors Bureau expired on September 1st.

I am recommending that Ms. Anderson be reappointed for a three-year term ending September 1, 2020.

Your favorable consideration of this recommendation will be greatly appreciated.

**RECOMMENDED MOTION:** To approve the reappointment of Kember Anderson to the Fargo-Moorhead Convention & Visitors Bureau for a three-year term ending September 1, 2020.

mmappt17cvb



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**OFFICE OF THE CITY ADMINISTRATOR**  
**Bruce P. Grubb**

November 2, 2017

**MEMORANDUM**

**To:** Board of City Commissioners  
**From:** Bruce P. Grubb, City Administrator **BPG**  
**Re:** Agreement – City Attorney and Prosecution Services

**Introduction:**

The current agreement for city attorney and prosecution services is due to expire on December 31, 2017. The current agreement covered a five-year term from 2012–2017. Looking ahead, consideration has been given to the two options available to the City at this time:

1. Proceed with a Request for Proposals (RFP)
2. Extend the current agreement with Erik R. Johnson and Associates, Ltd.

Through the process of researching RFP examples from other municipal governments, a review of the legal services currently being provided to the City of Fargo was conducted. A graphic illustration of legal services being provided has been attached as Exhibit A. Please note the wide range of legal support currently being provided to the various departments in the City which has been summarized below:

**Auditors/Finance**

- Elections
- Advise and attend Liquor Control Board
- Licensing
- Municipal Code
- City Pension Board
- State finance and investment law
- Public finance and debt/bond law
- Bond matters and Tefra hearing reqmnts
- Sales tax, lodging tax, etc.
- IRS audits

**Municipal Court**

- Draft and review contracts
- Draft and review clerk procedures
- Implementing Marcy's Law

**Planning**

- LDC ordinances, interpretation, enforcement
- Advise and attend Planning Commission
- Advise and attend Board of Adjustment
- Advise Human Relations Commission
- Advise Native American Commission
- Draft Developers Agreements and Documents
- Downtown Business Improvement District
- Downtown signage issues (1<sup>st</sup> Amendment)

**Communications/Public Affairs**

- Advise open records/open meetings
- Advise website/copy right issues
- Advise registered trade-marks

**Police**

- City Prosecutions
- Legal changes (medical marijuana)
- Records and evidence legal matters
- Search and seizure matters
- Traffic and crimes ordinances
- NDSU Police Joint Powers Agreement

**Fire**

- Advice on procurements and contracts
- Prosecute fire code violations
- New World Software issues

**Public Health**

- Advice on procurements and contracts
- Draft ordinances and policies
- Advise health inspections procedures
- Advise and attend Code Enforcement
- Bring civil nuisance abatement lawsuits

**Building Inspections**

- Advise and attend Code Enforcement
- Code enforcement civil lawsuits

**Human Resources**

- Advice on employee discipline issues
- Advice on employment policies
- Attend unemployment claims hearings
- Attend Civil Service appeal hearings
- ADA compliance, FMLA, Workers Comp, Federal Wage & Hour, OSHA issues

**Assessors**

- Advice on assessed valuation issues
- Advice on exemption issues

**Wastewater Utility**

- Advice on procurements and contracts
- Advice on HMGP grants and SRF loans
- Regional wastewater contracts
- Tharaldson Ethanol 3-party contract

**Engineering**

- Advise and attend PWPEC
- Advise projects, construction easement issues
- Advice on public bidding law and bid openings
- Construction contract review
- Flood acquisition negotiations and documents
- Telecommunications technologies legal issues

**Library**

- Advise and attend Library Board
- Draft Library policies
- Arbitration Hearings (Library roof warranty)

**Public Transit**

- Advice on procurements and contracts
- Transit Building Joint Powers Agreement
- MAT Bus Joint Operations Agreement
- ADA compliance issues
- Federal Transit Administration issues

**Public Works**

- Advice on procurements and contracts
- Supervise litigation on claims

**Information Services**

- Advice on procurements and contracts
- Draft RFPs for services
- Assist with software licensing
- Assist negotiation of software performance
- Litigate software performance issues

**Building and Grounds**

- ADA compliance issues on City buildings
- Department of Justice audit assistance

**Water Utility**

- Advice on procurements and contracts
- Advice on SWC grants and SRF loans
- Regional water contracts

#### **Solid Waste Utility**

- Advice on procurements and contracts
- EPA regulations regarding methane gas
- Private hauler ordinances
- Regional landfill contracts

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In addition to providing legal support to individual City departments, the City Attorney also provides legal services in other areas that include, but are not limited to, the following:

#### **Legislative Matters**

- Monitor, review and advise City staff and elected officials on draft legislative bills and resolutions

#### **First Amendment Matters**

- Use of public spaces for demonstrations, gatherings, protests, etc.
- Broadway Flags, Ten Commandments, Menorah, etc.

#### **Fargodome (Fargodome Authority)**

- Advice on procurements and contract matters
- Advice on bond and financing matters
- Fargodome employee transition to City
- Gate City turf replacement
- New video boards

#### **Civic Center (Civic Auditorium Commission)**

- Advice on procurements and contract matters

#### **Airport (Municipal Airport Authority)**

- Advice on special assessment issues
- Advice on employment issues
- Advice on debt financing

### **General Description of City Attorney and City Prosecution Services:**

- **City Attorney Services:**

The scope of work for general legal services includes, but is not limited to, preparation of legal opinions, ordinances, contracts, leases and other documents; review of contracts, surety bonds and other documents; attendance at meetings (City Commission, Planning Commission, Pension Board, Public Works Projects Evaluation Committee and others as requested); and providing legal advice to the City Commission, city staff and advisory boards or committees. The general scope also involves litigation and administrative hearings regarding routine city matters, such as challenges of action by the City Commission or city employees.

The current agreement contains a monthly base sum for providing a minimum of 2,600 hours of general legal services per year. In the event that legal services exceed 2,600 hours for the year, the additional work and compensation is negotiated between the attorney and City. The hourly rate for services beyond 2,600 hours is \$195/hour.

- **City Prosecutor Services:**

The City Attorney is responsible for prosecution of all criminal matters on behalf of the city, including municipal court trials, district court trials and appeals to the North Dakota Supreme Court. The City is responsible for all costs, including salaries and benefits provided by the City Attorney's office and include office space, computers, equipment and supplies for necessary prosecution services.

- **2018 City Attorney and Prosecution Budgets:**

The 2018 budgets for city attorney and prosecution services were reviewed by the Budget Team during the departmental meetings on Friday, June 2, 2017. The City Prosecution budget fees are a pass-through to the City with an administrative lump sum mark-up of 1-1/2% of the Prosecution budget. The 2018 budget requests for City Attorney and City Prosecution are noted below:

<b><u>City Attorney</u></b>		<b><u>City Prosecution</u></b>	
General Legal Services	\$558,000	Prosecution Services	\$325,730
Claims	<u>\$ 15,000</u>	Insurance	<u>\$ 900</u>
	<b>\$573,000</b>		<b>\$326,630</b>

- **2013-2015 Budget versus Actual:**

The following is a summary of budget versus actual expenditures over the five-year term of the current contract:

<u>Year</u>	<b><u>City Attorney</u></b>		<b><u>City Prosecutor</u></b>	
	<u>Budget</u>	<u>Actual</u>	<u>Budget</u>	<u>Actual</u>
2013	\$494,000	\$583,843	\$315,000	\$315,000
2014	\$500,000	\$605,212	\$321,000	\$321,000
2015	\$512,000	\$571,620	\$287,000	\$298,873
2016	\$528,000	\$634,008	\$256,000	\$274,333
2017	\$545,000	\$529,382 YTD	\$276,000	\$252,947 YTD

## RFP vs. Contract Extension:

Attached for your reference are sample copies of both an RFP and contract extension.

- **RFP Timeline**

City Commission Approval of Advertisement	November 6, 2017
Advertisement Period	November 13 – 30, 2017
Proposals Due	December 1, 2017
Interviews	December 7 and 8, 2017
Commission Approval of Preferred Proposal	December 18, 2017

A draft (sample) copy of an RFP has been attached as Exhibit B.

- **Contract Extension**

The contract extension is for an additional five-year term to continue providing legal services as described above and illustrated on Exhibit A. A draft copy of the contract extension has been attached as Exhibit C.

The City Attorney is an appointed officer of the City Commission, and per NDCC and City Ordinances (Chapter 4), the attorney provides direct internal support to the Commission and organization in a formal client relationship. This is a unique contractual relationship in that the attorney would otherwise be a City employee if a contract was not in place (unlike other professional services contracts such as architect, engineer, planner, etc.).

The City Attorney contract is a “soup to nuts” engagement that is not scope specific, but rather has responsibilities for all facets of the organization’s legal affairs. The City Attorney is somewhat analogous to City Administrator in that the position provides organization-wide leadership in the area of civil legal services.

## Finance Committee:

This item was reviewed and discussed at the Finance Committee on Monday, October 30, 2017. Due to the extent of services reflected on Exhibit A and the number of ongoing legal issues (i.e. flood acquisitions, personnel issues, contract negotiations, etc.), it was determined that a contract extension was in the best interest of the City at this time. It was also determined that a transition plan for future City Attorney and Prosecution services should be developed.

On a motion by Kent Costin, seconded by Steve Sprague, the Finance Committee voted unanimously to approve an extension to the agreement with Erik R. Johnson & Associates, Ltd., for City Attorney and Prosecution services.

**Recommendation:**

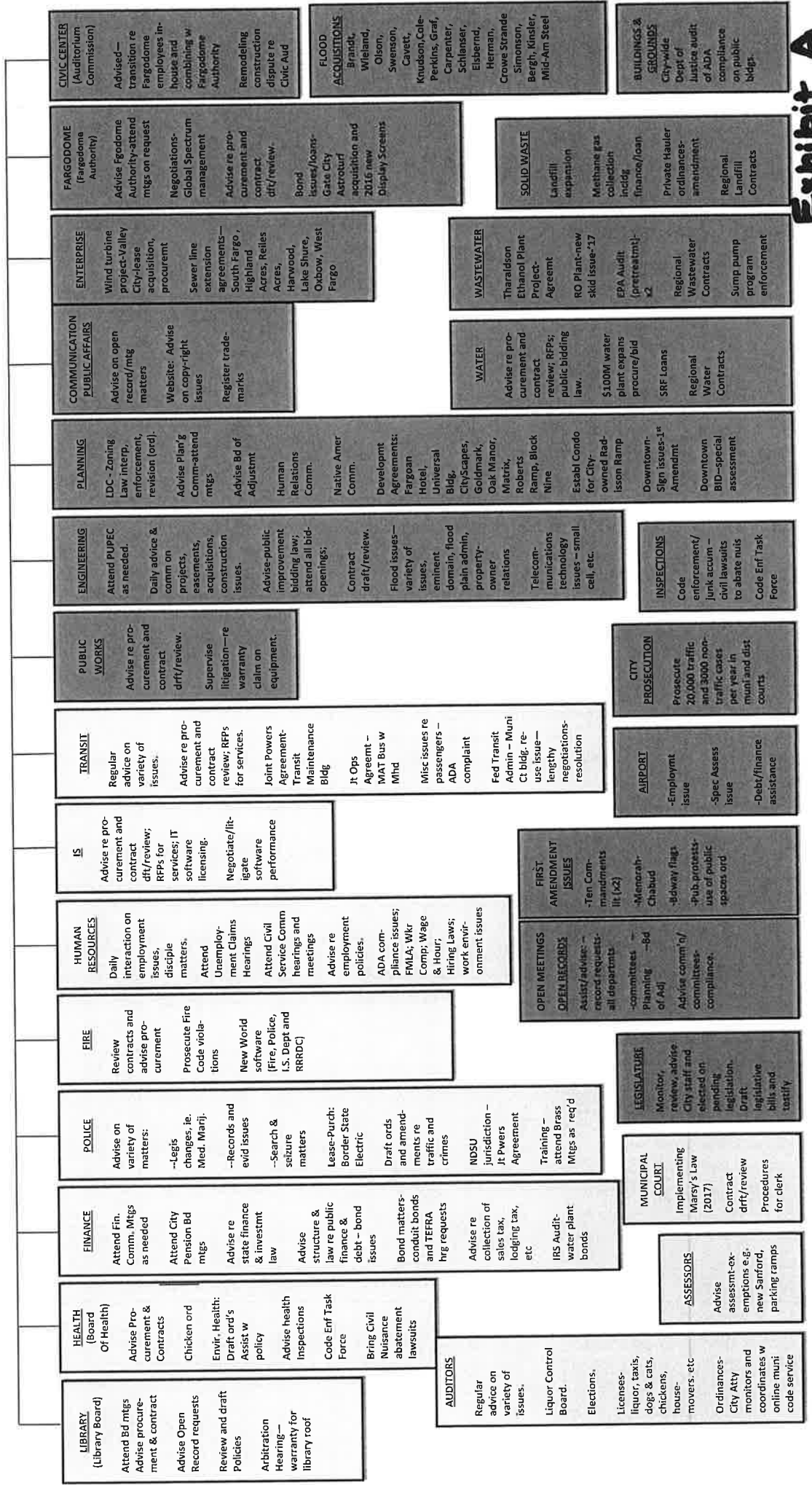
Based on a thorough review of Appendix A and the ongoing legal issues facing the City, it is the staff recommendation to extend the contract for City Attorney and City Prosecution services at this time. It is further recommended that, over the term of the contract extension, staff work with the City Attorney to prepare a transition plan for future legal services.

Your consideration in this matter is greatly appreciated.

**SUGGESTED MOTION:**

Approve a five-year extension to the current Agreement with Erik R. Johnson & Associates, Ltd to provide general legal and prosecution services to the City of Fargo.

C: Michael Redlinger, Assistant City Administrator  
Finance Committee





## **Request for Qualifications & Proposals – Civil Legal Services**

November 2017

### **I. INTRODUCTION**

This request for proposals (RFP) is intended to provide the background and format for use by a law firm or individual desiring to provide civil legal services for the City of Fargo, North Dakota. The City invites interested law firms and individuals with a minimum of five (5) years of municipal law experience to submit written proposals to provide City Attorney services to the City. Municipal experience is defined as representing and/or advising cities on a wide variety of issues that are regularly encountered in the course of municipal activities.

As City Attorney, the selected law firm or individual will be expected to provide a wide range of municipal legal services. The City Attorney will be selected by the City Commission and work closely with the Commission, boards, committees, the City Administrator, and City staff.

#### **Community Data**

Fargo's founding dates back to 1871, when the first settlers staked out homestead claims at the point where the Northern Pacific Railroad would cross the Red River. Railroads played a major role in the development of Fargo. In fact, the city was named for William G. Fargo, a director of the Northern Pacific Railroad, and co-founder of Wells Fargo Express Company.

On June 7, 1893, disaster struck the growing city. A fire began on Front Street (now called Main Avenue). Fanned by strong winds from the south, the fire consumed most of the downtown area. By the time it was over, more than 31 blocks were reduced to piles of rubble. Although the fire must have been a stunning blow to the city, Fargoans resolved to rebuild; in less than a year, 246 new buildings had been constructed. The new structures were designed by many fine regional architects; the post-fire city became more attractive and substantial, and many of these buildings survive today.

Today, Fargo is the central city in the vibrant and growing Fargo-Moorhead Metropolitan Area. The metro area is bisected by the Red River of the North, which is also the boundary between North Dakota and Minnesota. The community serves as a regional center for education, commerce, and health care.

#### *Population*

<b>Year</b>	<b>Fargo</b>	<b>Growth</b>	<b>Cass Co.</b>	<b>Growth</b>	<b>Metro Area*</b>	<b>Growth</b>	<b>State</b>	<b>Growth</b>
1960	47,000	N/A	66,947	N/A	106,027	N/A	632,442	N/A
1970	53,365	14%	73,653	10%	120,261	13%	617,792	-2%
1980	61,383	15%	88,247	20%	137,574	14%	652,717	6%
1990	74,084	20%	102,874	17%	153,296	11%	638,800	-2%

2000	90,599	22%	123,138	20%	174,367	14%	642,200	0.1%
2010	105,549	17%	149,778	22%	208,777	20%	672,591	5%

### *Governance*

The City of Fargo has a commission form of government. The Mayor and four Commissioners are elected at large, meaning that every citizen has an opportunity to vote for each of them. Rather than representing specific areas of the city, as is done in a council form of government, Commissioners represent the entire city. Commissioners are elected to four-year terms and are limited to three consecutive terms. Any member who has served in the capacity of Mayor, as well as City Commissioner, may serve four consecutive terms. The liaison assignment system was adopted several years ago as a means of providing a link between individual departments and the City Commissioners. With Fargo continuing to grow and its activities becoming more complex, the assignment of specific Commissioners to individual departments provides an effective avenue for communication between elected and appointed city officials. It also helps citizens decide which Commissioner to contact when they have questions or concerns about a particular city function.

### **Current Civil Legal Services Agreement (City Attorney)**

The City of Fargo is currently provided civil legal services by a contracted law firm. The City's 2017 budget for legal services is \$\_\_\_\_\_, of which \$\_\_\_\_\_ is budgeted for City Attorney services. Any law firm/individual responding to this solicitation is requested to carefully review this Request for Proposals & Qualifications and provide a complete and detailed summary of the method by which they propose to provide legal services to the City of Fargo with the associated rates, fees, and charges.

## **II. CITY ATTORNEY - SCOPE OF SERVICE**

### **Background**

Please describe the nature of your practice or your law firm's practice and your qualifications for providing City Attorney services. Include a professional chronology for the individual who will be designated to serve as the City Attorney, as well as for others whom you anticipate being involved with providing legal services to the City.

Provide the overall capabilities, qualifications, training, and areas of expertise for each of the principals, partners, and associates of the law firm, including the length of employment for each person and his/her area of specialization.

Provide the following for the person whom you propose to designate as City Attorney and for each person you propose to designate as a deputy or backup:

- Legal training and number of years of practice, including date of admission to the State Bar Association of North Dakota, number of years of municipal or other local public sector law

practice as a full-time local government attorney and/or in a private law office specializing in local government.

- Professional affiliations.
- Knowledge of, and experience with, North Dakota Century Code, municipal law, home rule authority, or other relevant public sector experience.
- Knowledge and practice of law relating to land use and planning; environmental law; risk management; redevelopment; general plans; real estate; and other related law.
- Experience in the area of contracts, franchises, and joint powers (inter-jurisdictional) agreements.
- Experience in the area of personnel; disability law rights and obligations; workers' compensation; employee relations; and employee discrimination claims (e.g. EEOC).
- Experience in the preparation and review of ordinances and resolutions.
- Types of clientele represented and years representing each.
- Office location and accessibility to the City. Describe your office staffing, including all permanent and temporary employees, their general duties, and work schedules. Include any staffing changes you would propose if awarded the City Attorney contract.

If the firm/individual, or any of the attorneys employed by the firm, have ever been sued by cities or other clients for malpractice, been the subject of complaints filed with the State Bar, or had discipline imposed by the State Bar, please provide information about the nature of the incident, the dates of when the matter began and was concluded, and the results of the incident.

### **Basic Services Requested**

Basic services, for the purpose of this proposal, shall include those legal services generally understood within the field of municipal law to fall within the category of "general counsel" work, and shall include, but not necessarily be limited to, the following:

- In-person attendance at regular City Commission meetings every two weeks and other special meetings as requested.
- Attendance at other board, commission, and committee meetings, upon request.
- Attendance at staff meetings and other meetings with City staff, upon request.

- General knowledge of North Dakota Century Code and specifically those laws pertaining to municipal government.
- Assistance in the preparation and review of ordinances, resolutions, agreements, contracts, forms, notices, certificates, deeds, and other documents required by the City.
- Enforcement of City codes, zoning regulations, and building standards through administrative and judicial actions.
- Legal work pertaining to property acquisitions, property disposals, public improvements, easement dedications, right-of-way vacations/agreements, and franchise agreements.
- Monitoring of pending and current state and federal court decisions, as appropriate.
- Legal advice and telephone/personal consultations with the Mayor, City Commissioners, City Administrator, and City staff.
- General legal advice and opinions concerning matters that affect the City.

#### **Advisor to Mayor, City Commissioners, and City Staff**

The City Attorney serves as the principal legal advisor to the Mayor, City Commissioners, City staff, and various commissions and committees of the City. These activities include:

- Attendance at all meetings of the City Commission and other boards, committees, and commissions as requested.
- Preparation of written legal opinions on a variety of subjects, including zoning, platting, contract bidding, licenses, and permits.
- Preparation of written findings, when required, in support of actions of the City Council and providing information involving important developments in statutory or judicial law.

#### **Additional Duties**

Additional duties of the City Attorney include drafting ordinances and ordinance amendments, resolutions, preparation of documents utilized by the City in connection with subdivisions and zonings, and preparation of documents necessary for the sale or purchase of property involving the City.

### III. THE PROPOSAL

#### General Instructions

- A. Responses must provide complete information as described in this request. Ten (10) copies shall be submitted by **4:30 p.m. on December 1, 2017**. The proposals shall be marked: "City of Fargo Legal Services RFP" and sent to:

City of Fargo  
ATTN: Bruce Grubb, City Administrator  
200 3<sup>rd</sup> St. N.  
Fargo, ND 58102

- B. To ensure fairness and uniformity, firms and individuals submitting responses are requested to not contact the Mayor, City Commissioners, or City staff. Questions regarding this RFP should only be directed to:

Bruce Grubb, City Administrator  
Phone: (701) 241-1553  
Email: bgrubb@FargoND.gov

- C. The City will not reimburse any expenses incurred by the firm or individual submitting responses, including but not limited to expenses associated with the preparation and submission of the response and attendance at interviews.
- D. The City reserves the right to reject any and all proposals, to request additional information from any or all Proposers, and to suggest modifications to the terms and conditions or a retainer agreement from that offered by a Proposer.

#### Proposal Content

Proposals must contain the following elements:

- A. **Title Page** which contains the name of the proposing law firm/individual, its address, telephone number, name of the contact person, and the date of submittal.
- B. **Table of Contents** containing an identification of material by section and page number.
- C. **A Firm/Contractor's Profile** that contains the following information:
1. Firm or individual history.
  2. Number of attorneys.

3. Number of clerical/support staff.
4. A description of the firm's/individual's library and research capabilities.
5. A single individual submitting a proposal must provide detailed information concerning backup services.

D. ***Scope of Work***

With respect to each of the topics described above, please indicate:

1. The general qualifications of the firm/individual to provide the described services. The firm/individual should expand on each item and describe why the firm/individual is qualified and capable of providing such services. ***Please note that the firm/individual must possess relevant municipal law experience.***
2. The individual proposed as the primary responsible person to provide the services, together with a description of their background and experience demonstrating the ability to provide such services.
3. The individuals proposed to assist the primary responsible person together with a description of such person's background and experience demonstrating their ability to assist in providing such services.

E. ***Rates, Fees and Charges***

Proposals must provide a complete description of the rate, fee, and charge structure proposed for the services. Proposers should also indicate whether, and to what extent, they are willing to consider the use of a retainer. Such retainer would be a fixed annual fee covering all services rendered under one or more of the categories described above.

F. ***Conflict Check***

1. Indicate whether Proposer (firm or individual) represents or has represented any client whose representation may conflict with the Proposer's ability to serve as a City Attorney.
2. Does the Proposer currently represent any other local units of government having jurisdiction contiguous to the City of Fargo?
3. What procedures does your firm utilize to identify and resolve conflicts of interest?

#### **IV. EVALUATION AND SELECTION PROCESS**

Proposals will be screened and the top candidates selected by the City Commission. Interviews may or may not be held at the discretion of the Commission. The qualifications for the top candidates will be verified and professional references will be checked.

In reviewing proposals, the City will carefully weigh the following:

- Depth and breadth of experience and expertise in the practice of municipal law, specifically in those areas most often encountered in municipal government operations.
- Capability to perform legal services promptly and in a manner that permits the Commission and staff to meet established deadlines and to operate in an effective and efficient manner.
- Degree of availability for quick response to inquiries that arise out of day-to-day operating questions or problems.
- Degree to which firm and individual attorneys stay current through continued professional development and active communication with practitioners in the municipal law field.
- Communication skills.
- Cost of services.

The civil legal services contract will require that the firm or individual selected as City Attorney maintain general liability, automobile, workers' compensation, and errors and omissions insurance. The contract will also contain provisions requiring the selected firm or individual to indemnify the City and provide that the City Attorney is an independent contractor serving at the will of the City Commission. Other required provisions will include the City Commission's right to terminate the agreement, at its sole discretion, upon the provision of notice.

In the event the City elects to engage a firm or individual to provide civil legal services, the City intends to enter into a contract with the selected firm/individual. Based upon a review of the proposals and such other evaluation as may be necessary, the City Administrator will request that the City Commission approve the appointment of the firm/individual(s) judged to be the most responsive and responsible. Approval of the recommendation and authorization of the execution of the contract for legal services lies within the sole discretion of the City Commission. Should the City and the selected Proposer be unable to mutually agree on the entire contract, the City reserves the right to discontinue negotiations, select another Proposer, or reject all proposals received.

**V. SCHEDULE**

Commission Approval of RFP	November 6, 2017
Distribute/Advertise RFP	Completed by November 13, 2017
RFP Submittals	<b>DUE December 1, 2017 by 4:30 p.m.*</b>
Interviews ( <i>to be scheduled</i> )	Completed by December 8, 2017
City Commission Appointment & Approval of Contract	December 18, 2017

*\*Proposals received after December 1, 2017 at 4:30 p.m. will be considered non-responsive and rejected.*

## EVALUATION METHOD – City Attorney

All proposals by selected City Attorney finalists will be evaluated based upon the following factors:

	<u>Point Range</u>
1. Prior City Attorney or closely related/equivalent local government legal experience.	(0 - 25)
2. Qualifications of law firm selected to provide full-time City Attorney services. or Qualifications of individual and backup selected to provide Full-time City Attorney services.	(0 - 25)
3. Costs for City Attorney proposal.	(0 - 25)
4. Organization and structure of firm or methodology of individual proposed for delivery of full-time City Attorney services.	(0 - 15)
5. Firm's or individual's understanding of City Attorney services to be provided.	(0 - 10)
<b>Total maximum points</b>	<b>100</b>

**CONTRACT EXTENSION AGREEMENT**  
**CITY ATTORNEY AND CITY PROSECUTION SERVICES**  
**YEARS 2018 THROUGH 2022**

This agreement is effective the date and year last executed below between the city of Fargo, a North Dakota municipal corporation, [hereinafter the "City"] and Erik R. Johnson & Associates, Ltd. of Fargo, North Dakota [hereinafter "Johnson" or the "City Attorney"].

**RECITALS:**

A. The City and Johnson entered into an agreement for city attorney and city prosecution services for a period commencing June 1, 2012 and ending December 31, 2017 [hereinafter the "City Attorney Agreement"], a copy of which is attached hereto as Exhibit "A"; and,

B. The parties wish to extend the term of said agreement;

NOW, THEREFORE, based upon the foregoing recitals and mutual covenants, IT IS HEREBY AGREED,

1. The City Attorney Agreement is hereby extended for a period of five years commencing January 1, 2018 and ending on December 31, 2022.
2. The terms contained in the City Attorney Agreement shall continue in full force and effect, except as follows:
  - a. The monthly base sum paid to the City Attorney's Office shall be established each year as part of the City's annual budget approval process.
  - b. In that former City Attorney Garylle Stewart died in 2016, references to Mr. Stewart's continued availability for legal services, including those in paragraphs 2, 6, 7 and 9 are no longer applicable and, therefore, deleted.
3. TERMINABLE AT WILL. As with the original City Attorney Agreement, this agreement shall be terminable at the will of either party upon 90 days' notice.

[remainder of page intentionally left blank – signature page to follow]

**Exhibit C**

DATE: \_\_\_\_\_

CITY OF FARGO

By: \_\_\_\_\_  
Timothy J. Mahoney, M.D., Mayor

ATTEST:

\_\_\_\_\_  
Steven Sprague

DATE: \_\_\_\_\_

Erik R. Johnson & Associates, Ltd.

By: \_\_\_\_\_  
Erik R. Johnson, President

DRAFT

EXHIBIT "A"

AGREEMENT FOR CITY ATTORNEY AND CITY PROSECUTION SERVICES

[attached]

DRAFT

## AGREEMENT

This agreement is effective the 1st day of June, 2012, between the city of Fargo, North Dakota, a municipal corporation, and Erik R. Johnson & Associates, Ltd. of Fargo, North Dakota.

1. EFFECTIVE DATE AND TERM: The provisions of this agreement shall take effect on the first of the month following approval by the board of city commissioners, and shall extend for a term of ending December 31, 2017, subject to it being terminable as provided in paragraph 15, below.

2. Personnel. The parties agree that as of the effective date hereof, Erik R. Johnson, of Erik R. Johnson & Associates, Ltd., which firm may be referred to herein as "JOHNSON", is the designated City Attorney. Erik R. Johnson shall be referred to herein as either "JOHNSON" or the "City Attorney" and Erik R. Johnson & Associates, Ltd. shall be referred to herein as the "City Attorney's Office". The City Attorney's Office may engage attorneys who may be designated as assistant city attorneys. In addition, the parties agree that the City Attorney's Office intends to subcontract certain work to Garryle B. Stewart, attorney at law, and to Stewart's law firm, Solberg, Stewart, Miller & Tjon, Ltd., [hereinafter "Solberg Law Firm"] subject to the continued approval and consent of the City; provided, however, that it is understood that the Solberg Law Firm will recognize the City as the client.

3. GENERAL LEGAL SERVICES. The City Attorney's Office shall perform all general legal work, including, but not limited to, preparation of legal opinions, ordinances, contracts, leases and other

documents; review of contracts, surety bonds, and other documents; attendance at meetings (City Commission, Pension Board, Planning Commission and others); and providing legal advice to the city commission, city staff and advisory boards. The scope of these services include litigation and administrative hearings regarding routine city matters, such as challenges of action by the Board of City Commissioners or city employees; provided, however, that those matters which are hereinafter described as "extra services" shall be compensated separately as described below. For all general legal services provided by the City Attorney's Office to the City as described above, City shall pay to the City Attorney's Office a monthly base sum that is based upon the following annualized sums:

2012	\$405,000*
2013	\$419,000
2014	\$440,000
2015	\$462,000
2016	\$478,000
2017	\$495,000

The base sum shall be paid in equal monthly installments in advance [at the beginning of the month]. It is agreed and understood that the City Attorney's Office will provide a minimum of 2500 hours of general legal services per year. In the event that the City Attorney's Office provides more than 2600 hours of general legal services for the year [not including Prosecution Services or "extra services"], the City

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\* The 2012 amount is unchanged from the previous City Attorney contract.

Attorney's Office and the City agree to review said work and determine if it is appropriate to provide additional compensation to the City Attorney's Office for such additional time and effort. The parties intend to conduct such review at such time or times as may be appropriate, the mid-year budget review process being one such time. To the extent that hours of City Attorney services accumulate during a calendar year at such a pace that the 2600-hour threshold is likely to be exceeded, the City Attorney's Office and the City agree to review whether monthly or quarterly payments should be made for some or all of the excess amount of work rather than waiting until year-end for such payment. In addition, in the event that the demand by the City for legal services from the City Attorney's Office becomes such that additional lawyer personnel become necessary to meet said demand, the City and City Attorney's Office will discuss such arrangements and appropriate financial adjustments to accommodate such additional lawyer personnel. Services provided by JOHNSON as Bond Counsel for the City are not included in this agreement.

4. CITY PROSECUTION SERVICES. The City Attorney's Office will be responsible for prosecution of all criminal matters on behalf of the city, including municipal court trials, district court trials and appeals to the North Dakota Supreme Court. For all Prosecution Services provided by the City Attorney's Office, the City will be responsible for all costs, including salaries and benefits provided by the City Attorney's Office and including all office space, computers, equipment and supplies for such prosecution services. The City shall hold harmless and indemnify the City Attorney's Office for any claims, demands or lawsuits resulting from unemployment compensation claims, workers' compensation claims and allegations of wrongful termination. This obligation shall survive the termination of this

Agreement. The City and City Attorney's Office have identified a budget for each calendar year since 2008 for the expenses associated with the Prosecutor's Office and will continue to do so. The City and City Attorney's Office will make arrangements for payment to the City Attorney's Office to provide advance reimbursement for expenses to be borne for such Prosecution Services. The budget amount for Prosecution Services shall be adjusted, from time to time, to account for an increase (or decrease, as the case may be) in demand for prosecution services, to provide cost of living adjustments, or other relevant factors. The parties will identify a sum to be included in each annual budget (starting with the budget for 2013) to be paid to the City Attorney's Office as general compensation for the overall responsibility and oversight of the office and its personnel. This sum is intended to be a modest amount that is approximately equal to 1-½ % of the Prosecution Office budget. The City shall provide, at City's expense, suitable office space to house the prosecution services, including space for support staff. The City Attorney's Office intends to employ two city prosecutors, however, additional attorneys may be needed, from time to time, to provide coverage for prosecution activities when full time prosecutors are absent (i.e. sickness or vacation) and/or when multiple prosecutors are needed to cover appearances in various courtrooms (i.e. when simultaneous appearances are needed in three or four courtrooms (municipal court and district court) at the same time). The City Attorney's Office is authorized to make arrangements with additional attorneys to provide such coverage, including reasonable compensation therefore, and the City Attorney's Office will apprise the City as to those arrangements. The cost of such additional prosecution coverage shall be part of the

City's obligation, above-referenced, to be responsible for all costs of prosecution.

5. LITIGATION SERVICES. Subject to those matters that are handled through the City's coverage with the North Dakota Insurance Reserve Fund (NDRF) and NDRF's resulting obligation to provide defense for certain claims and lawsuits against the City, the City Attorney's Office is responsible for services involving actual and threatened litigation in which the city of Fargo is a party, however, it is recognized that the City Attorney's Office, with the consent and approval of the City, may delegate such litigation to another law firm, however such litigation will continue to be overseen by the City Attorney's Office. For example, the City hires consulting attorneys on various areas of specialty and the City may also use such consulting attorneys for litigation purposes as well, as the City deems appropriate.

6. GARYLLE STEWART. The transition of the City Attorney position from Garylle Stewart to Erik Johnson is precipitated by Stewart's wish to reduce his workload; nevertheless, the City and JOHNSON recognize that Stewart continues to be a resource of knowledge and information regarding the City's legal matters. The City recognizes that the City Attorney's Office will be entering into an agreement whereby Stewart is to be compensated for such continuing legal advice and services given for various general legal matters for the City as may occur from time to time, including Liquor Control Committee and bid openings, and everyday matters for the Engineering Department, including easements for rights of way, encroachment agreements [for Engineering], special assessments and condemnation of land for right of way acquisition, flood protection and

the like (referred to herein as City "General Work"). The City will provide compensation for the reasonable time and effort expended by Stewart in such endeavors, subject to the following:

(a) To the extent that there is a source of funds to provide compensation for Stewart's efforts, such as from a special improvement district, the City will make payment directly to the Solberg Law Firm for said work. The hourly rate shall be 85% of the regular hourly rate charged by the attorney performing the services, at the time the services are provided. Hourly rates are subject to change. Nothing in this paragraph is intended to deny the Solberg Law firm from receiving compensation for work attorneys with said firm might do in covering during a vacation of Stewart's or other temporary absences.

(b) To the extent that such work is city General Work but not special assessment work that is compensated as set forth in (a), above, then the City shall provide payment for such work up to a maximum of \$42,000 per annum, based upon a calendar year. Stewart has reasonably estimated that this work may involve billings of 5 to 20 hours per month.

(c) It is understood that when Stewart is no longer willing or able to provide these services, these services will continue to be provided by the Solberg Law Firm unless and until the Solberg Law Firm can no longer "adequately perform" such services or the City requests such services be provided by JOHNSON. If continuation of these services by the Solberg Law Firm is not approved by the City, these services shall be provided by JOHNSON.

7. PAYMENT ARRANGEMENTS. With respect to litigation services and city General Work (including work on special assessment matters) which are provided by the Solberg Law Firm, said firm shall provide invoices for such services directly to the City, and the City may then remit payment directly to the Solberg Law Firm for said services. The Solberg Law Firm has agreed to look solely to the City for such payment and not to the City Attorney's Office and the City is willing, and agrees to make such payment arrangements directly with the Solberg Law Firm.

8.. EXTRA SERVICES. The City Attorney's Office is asked to provide legal services, from time to time, for other public entities that may be affiliated with the City but that may have their own budgets or sources of revenue, such entities including the FargoDome Authority, the Fargo Housing and Redevelopment Authority (Fargo HRA) or the Red River Regional Dispatch Center. Such legal services are referred to as "extra services". Said "extra services" also include legal services related to special assessments or other matters which are typically paid from an outside source such as a special improvement district. To the extent that there is such a source of funds to provide compensation, such matters shall be compensated as "extra services". Payment for "extra services" shall be at an hourly rate, upon submission of a bill from JOHNSON to the appropriate agency (i.e. HRA) or to the City, as the case may be. The hourly rate shall be 85% of the regular hourly rate charged by the attorney performing the services, at the time services are provided. Hourly rates are subject to change. Also mentioned previously, Exhibit A contains a listing of hourly rates. The parties recognize that the Solberg Firm currently provides legal services for the Fargo Municipal Airport Authority (MAA) and that relationship is not included in this agreement.

9. It is understood that as a result of the continued subcontract relationship with the Solberg Law Firm described herein, Garylle Stewart and, as appropriate, other members of the Solberg Law Firm shall remain as Assistant City Attorneys so long as they remain with the Solberg Law Firm and, as such, the City Attorney's office may delegate legal matters to them.

10. OFFICE SPACE AND SUPPLIES. The City Attorney's Office shall be responsible for providing office space and clerical supplies necessary to complete its work under the terms of this contract; excluding the expenses of Prosecution Services, which will be fully borne by the City as provided above.

11. ADMINISTRATIVE CLERICAL/ASSISTANTS. Except as otherwise specified herein, the City Attorney's Office shall be responsible for providing all secretarial and clerical assistance necessary to perform all services required by this agreement.

12. REIMBURSABLE EXPENSES: The City shall be responsible for payment of all out-of-pocket expenses including recording fees, filing fees, and expenses for long distance telephone calls, city attorney stationery, photocopying, membership in the International Municipal Lawyer's Association, expenses for attendance at conferences for IMLA and travel on authorized city-related business.

13. INDEPENDENT PROFESSIONAL JUDGMENT. Nothing in this agreement shall be construed to interfere with or otherwise affect the rendering of services by the City Attorney's Office in accordance with the independent professional judgment of the City Attorney's Office. The City Attorneys Office shall require its personnel to perform the services rendered in accordance with accepted principles of legal

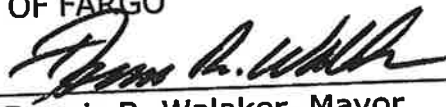
practice in the state of North Dakota. The City Attorney's Office personnel are subject to the rules and regulations of any and all licensing and professional organizations or associations which those personnel may, from time to time, belong and the laws and regulations governing the practice of law in the state of North Dakota.

14. CONTROLLING LAW AND BINDING EFFECT. This agreement shall be controlled by the laws of the state of North Dakota and shall be binding upon the parties, their successors and assigns; provided that the City Attorney's Office may not assign this contract without express written consent of the City. Notwithstanding the foregoing, certain City General matters may be subcontracted to the Solberg Firm, as provided above.

15. TERMINABLE AT WILL. This agreement shall be terminable at the will of either party upon 90 days' notice.

Effective the date and year first above written.


CITY OF FARGO

By:   
Dennis R. Walaker, Mayor

ATTEST:

  
Steven Sprague

Erik R. Johnson & Associates, Ltd.

By:   
Erik R. Johnson, President

REPORT OF ACTION

UTILITY COMMITTEE

43

Project No. WW1701

Type: CWSRF Resolution

Location: Wastewater Treatment Plant Improvements

Date of Hearing: 11/2/2017

<u>Routing</u>	<u>Date</u>
City Commission	11/6/2017
Project File	

Jim Hausauer, Wastewater Utility Director, presented attached memo and Resolution authorizing filing an application with the North Dakota Department of Health (NDDoH) for a loan under the Clean Water State Revolving Fund (CWSRF) loan program.

The current Wastewater Infrastructure Capital Improvement Plan (CIP) contains funding for a Wastewater Treatment Plant (WWTP) Improvement Project involving an expansion to provide capacity for future growth, regionalization as well as meet future regulatory requirements. The CIP contains an estimated project amount scheduled to be funded through the Clean Water State Revolving Fund loan program, which currently has a historic low 2% interest rate. The 30-year debt service on the CWSRF loan has been programmed to be paid with wastewater infrastructure sales tax and user rate revenues. A requirement to qualify for CWSRF funding is a submittal of a Resolution authorizing the filing of an application to the NDDoH.

**MOTION:**

On a motion by Terry Ludlum, seconded by Troy Hall, the Utility Committee approved the Resolution authorizing submittal of a Clean Water State Revolving Fund loan application to the North Dakota Department of Health for the Wastewater Treatment Plant Expansion.

<u>COMMITTEE:</u>	<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Unanimous</u>	<u>X</u>
				X	
				Proxy	
Anthony Gehrig, City Commissioner					
Mark Bittner, Director of Engineering	X				
Kent Costin, Director of Finance	X				
Brian Ward, Water Plant Superintendent	X				
Don Tucker, Wastewater Plant Supt.	X				
Bruce Grubb, City Administrator	X				
Scott Liudahl, City Forester	X				
Terry Ludlum, Solid Waste Utility Director	X				
Jim Hausauer, Wastewater Utility Director	X				
Troy Hall, Water Utility Director	X				
Ben Dow, Public Works Operations Director	X				

ATTEST:

  
\_\_\_\_\_  
Jim Hausauer  
Wastewater Utility Director

C: Mayor Mahoney  
Commissioner Strand  
Commissioner Piepkorn  
Commissioner Grindberg



**MEMORANDUM**

November 2, 2017

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**To: Utility Committee**  
**From: Jim Hausauer, Wastewater Utility Director** *JA*  
**Re: Clean Water State Revolving Fund Loan Application**  
**Wastewater Treatment Plant Expansion**

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**Background**

The current Wastewater Infrastructure Capital Improvement Plan (CIP) contains funding for a Wastewater Treatment Plant (WWTP) Improvement Project involving an expansion to provide capacity for future growth, regionalization as well as complying with water quality standards associated with future regulatory requirements. Alternative treatment technologies were identified in a recently completed WWTP Facility Plan.

A preliminary engineering report has yet to be completed, but the Wastewater Utility is recommending a loan application for \$140,700,000 to ensure there are no shortfalls. An EPA rule of thumb barometer is generally a treatment cost of 10\$/gallon. If we are expanding 14 mgd that would equate to \$140 M. The current Wastewater Infrastructure CIP budget includes an estimated project amount, which is scheduled to be funded through the Clean Water State Revolving Fund (CWSRF) loan program, which has a low 2% interest rate. The 2017 CWSRF project priority list includes a Wastewater Treatment Plant Improvement placeholder for the City of Fargo. The 30-year debt service on the CWSRF loan has been programmed to be paid with wastewater infrastructure sales tax and user rate revenues.

A requirement to qualify for CWSRF funding is a submittal of a formal loan application, a facility plan, environmental clearance documentation and public meeting minutes. To-date, the facility plan and the environmental clearance documentation has been completed. We are now recommending the submittal of a formal CWSRF loan application. Therefore, please find attached Resolution authorizing the filing of an application to the North Dakota Department of Health for a CWSRF loan under the federal Clean Water Act. It is the recommendation of this office that the Resolution be approved as described.

Your consideration in this matter is greatly appreciated.

**Recommended Motion**

Approve the attached Resolution authorizing submittal of a CWSRF loan application to the North Dakota Department of Health for Wastewater Treatment Plant Improvements.

**RESOLUTION OF GOVERNING BODY OF APPLICANT**  
(Suggested Format)

**RESOLUTION NO. \_\_\_\_\_**

Resolution authorizing filing of application with the North Dakota Department of Health for a Loan under the Clean Water Act.

WHEREAS, under the terms of the Clean Water Act, the United States of America has authorized the making of loans to authorized applicants to aid in the construction of specific public projects:

Now, therefore, BE IT RESOLVED Fargo City Commission  
(Governing Body of Applicant)

1. That James Hausauer be and is hereby authorized to execute  
(Designate Official)  
and file an application on behalf of City of Fargo, North Dakota with the North  
(Legal Name of Applicant)  
Dakota Department of Health for a loan to aid in the construction of:

Fargo Wastewater Treatment Plant Improvements

(Brief Project Description)

2. That James Hausauer, Wastewater Utility Director, be and is  
(Name of Authorized Representative) (Title)  
hereby authorized and directed to furnish such information as the North Dakota Department of Health may reasonably request in connection with the application which is herein authorized to be filed, to sign all necessary documents, and, on behalf of city, to accept loan offer and receive payment of loan funds.

**CERTIFICATE OF RECORDING OFFICER**

The undersigned duly qualified and acting City Auditor of the  
(Title of Officer)  
City of Fargo, North Dakota does hereby certify:  
(Legal Name of Applicant)

That the attached resolution is a true and correct copy of the resolution, authorizing the filing of application with the North Dakota Department of Health, as regularly adopted at a legally convened meeting of the Fargo City Commission duly held on the 6th day of  
(Name of Governing Body of Applicant)  
November, 2017; and further that such resolution has been fully recorded in the journal of proceedings and records in my office.

In WITNESS WHEREOF, I have hereunto set my hand this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

(SEAL)  
If applicant has  
an official seal,  
impress here.

\_\_\_\_\_  
(Signature of Recording Officer)

Fargo City Auditor

\_\_\_\_\_  
(Title of Recording Officer)

# Clean Water State Revolving Fund - 2017 Project Priority List - Alphabetical

City	NDPDES Permit No.	Project Description	Consultant	Project Number	* Median Houshld Income	User Charge	Relative Future Wastewater Index	Category	Cost (\$1,000)	Green Project Reserve Descr.	Green (\$1,000)	Loan term (yrs)
Argusville	NDG322535	Sewer Rehabilitation	Moore Eng.	944-02	98,250	120	0.12%	IIIA / IIIB	800	Energy Eff	800	30
Arthur	NDG321415	Storm Sewer Impr.	Moore Eng.	972-01	44,444	334	0.75%	VI-A	180	NA	0	30
Arthur	NDG321415	Sewer Rehabilitation	Moore Eng.	972-03	44,444	478	1.08%	IIIA / IIIB	400	Energy Eff	400	30
Beach	NDG320354	Sewer Rehabilitation	KLJ	753-03	34,545	218	0.63%	IIIA / IIIB	850	NA	0	30
Belfield	ND0022144	Sewer Rehabilitation	KLJ	991-02	61,932	474	0.77%	IIIA / IIIB	400	Energy Eff	5	30
Belfield	ND0022144	Sewer Rehabilitation	Apex Eng.	991-03	61,932	452	0.73%	IIIB	169	NA	0	20
Belfield	ND0022144	Sewer Rehabilitation	Apex Eng.	991-04	61,932	513	0.83%	IIIB	920	Energy Eff	300	20+
Beulah	ND0021211	Sewer Rehabilitation	Moore Eng.	990-02	63,694	175	0.28%	IIIB	500	Energy Eff	10	20
Beulah	ND0021211	Sewer Rehabilitation	Moore Eng.	990-03	63,694	214	0.34%	IIIB	1,500	Energy Eff	50	30
Beulah	ND0021211	Treatment Impr.	Moore Eng.	990-04	63,694	175	0.28%	I	500	NA	0	30
Beulah	ND0021211	Water Meter Replacmt.	Moore Eng.	1046-01	63,694	178	0.28%	IIIA	436	Water Eff	436	20
Burlington	NDG123442	Treatment Impr.	Ackerman-Est	756-02	73,676	913	1.24%	I	4,000	NA	0	30
Burlington	NDG123442	Sewer Expansion	Ackerman-Est	756-03	73,676	480	0.65%	IVB	1,500	NA	0	20+
Cando	NDG320672	Sewer Rehabilitation	Moore Eng.	896-01	47,708	517	1.08%	IIIA / IIIB	3,000	NA	0	30
Carpio	NDG221351	Sewer Rehabilitation	Moore Eng.	875-01	62,708	377	0.60%	IIIB	300	NA	0	30
Carrington	NDG322764	Sanitary Landfill	Interstate Eng.	729-05	50,000	202	0.40%	VII-J	263	NA	0	30
Carson	NDG320265	Sewer Rehabilitation	Interstate Eng.	981-01	34,375	425	1.24%	IIIA / IIIB	2,300	Energy Eff	1,200	30
Cavalier	NDG121954	Sewer Impr.	AE2S	795-02	41,467	1,977	4.77%	IVA	780	NA	0	20+
Cavalier	NDG121954	Sewer Rehabilitation	AE2S	795-03	41,467	357	0.86%	IIIB	241	NA	0	20+
Center	NDG220036	Sewer/St.Sewer Rehab.	Ufteig Eng.	915-01	48,750	180	0.37%	IIIB / VI	193	NA	0	30
Colfax	NDG323582	Treatment Expansion	Interstate Eng.	765-02	71,250	561	0.79%	I	800	NA	0	30
Colfax	NDG323582	Sewer Rehabilitation	Interstate Eng.	994-01	71,250	417	0.59%	IIIB	300	NA	0	20+
Columbus	NDG321741	Treat. Impr/Sewer Rehab	Ackerman-Est	984-01	36,635	365	1.00%	I / IIIB	420	NA	0	30
Cooperstown	ND0023213	Sewer Rehabilitation	Moore Eng.	762-03	42,727	168	0.39%	IIIB	300	NA	0	20+
Cooperstown	ND0023213	Sewer Rehabilitation	Moore Eng.	762-04	42,727	153	0.36%	IIIB	200	NA	0	20
Cooperstown	ND0023213	Treatment Impr.	Moore Eng.	762-05	42,727	192	0.45%	I	500	NA	0	30
Des Lacs	NDG322900	Treatment Impr.	Ackerman-Est	862-02	78,167	223	0.28%	I	88	NA	0	30
Des Lacs	NDG322900	Sewer Rehabilitation	Ackerman-Est	862-03	78,167	316	0.40%	IIIB	211	NA	0	30
Elgin	NDG322250	Treatment Impr.	Ufteig Eng.	897-01	35,398	200	0.57%	I	1,371	NA	0	30
Ellendale	NDG320711	Sewer Rehabilitation	Interstate Eng.	781-04	38,864	593	1.53%	IIIA / IIIB	3,000	NA	0	30
Enderlin	ND0022462	Treatment Impr.	Moore Eng.	794-04	38,750	302	0.78%	I	350	NA	0	20+
Enderlin	ND0022462	Sewer/St.Sewer Rehab.	Moore Eng.	833-03	38,750	436	1.13%	IA/IIIB/VI-J	1,060	Energy Eff	1,060	20+
Fargo	ND0022870	Sewer Rehab-Eff. FM Imp	AE2S	684-08	46,311	200	0.43%	IIIB	4,400	NA	0	30
Fargo	ND0022870	Effluent Reuse Fac. Exp.	AE2S	684-09	46,311	197	0.42%	II	2,400	Water Eff.	2,400	20
Fargo	ND0022870	Treat. Plant Expansion	AE2S	684-10	46,311	419	0.91%	I	119,000	Water Eff.	TBD	20+
Fargo	ND0022870	Treat. Expan - Regional	AE2S	684-11	46,311	209	0.45%	I	11,400	Not Identifi	TBD	30
Fargo	ND0022870	Sewer Rehab-Bdwy Int.	AE2S	715-04	46,311	202	0.44%	IIIA / IIIB	5,000	Energy Eff	TBD	30
Fargo	ND0022870	Sewer Impr.-South Side In	AE2S	715-05	46,311	214	0.46%	I	12,000	NA	0	30
Flasher	NDG321270	Sewer Rehabilitation	Ufteig Eng.	888-02	54,861	150	0.27%	IIIA / IIIB	117	NA	0	30
Flaxton	NDG322012	Sewer Rehabilitation	Ackerman-Est	1023-01	37,500	300	0.80%	IIIA / IIIB	424	Energy Eff	85	30
Forbes	NDG321466	Sewer Rehabilitation	Moore Eng.	1041-01	36,875	603	1.64%	IIIA / IIIB	300	Energy Eff	300	20
Forman	NDG321369	Treatment Impr.	Moore Eng.	830-02	41,964	145	0.35%	I	450	NA	0	30
Forman	NDG321369	Sewer Impr.	Moore Eng.	980-01	41,964	153	0.37%	IVA	500	NA	0	30
Gardner	NDG322021	Storm Sewer Impr.	Moore Eng.	961-01	83,750	818	0.98%	VI-A	350	NA	0	30

## James Hausauer

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**From:** Bergsagel, David L. <dbergsag@nd.gov>  
**Sent:** Tuesday, October 24, 2017 5:31 PM  
**To:** James Hausauer  
**Cc:** karla.olson@apexenggroup.com; Seth Lynne; Fisher, Shannon M.; Ament, DeAnn M.  
**Subject:** RE: CWSRF

Hi Jim,

I copied Karla Olson and Seth Lynne with this message because you may all have some of the same questions.

The CWSRF loan program can fund the proposed Fargo Wastewater Treatment expansion project with a 30-year loan of \$140 million at 2% interest. Because the construction will occur over several years, it is very important that we receive a quarterly draw schedule with annual updates showing when the dollars will be needed, because we will need to periodically issue bonds on the Municipal Bond Market to fund portions of the project. When we do that, there are IRS rules that dictate when those bond proceeds must be spent (distributed to the loan recipients). For example, within 6 months, 10% must be spent, at 12 months 45% must be spent, at 24 months 100% must be spent. Because of those rules, we won't be bonding for the entire \$140 million at the start for obvious reasons. Also, since we don't know how the Municipal Bond market may change over the next several years, we may need to include in the Fargo loan a provision to increase the loan interest rate. If that were to occur, it would not be an increase on loan funds already spent, but only on the remaining balance. This is not a normal or even a likely occurrence, and I only bring it up because of the magnitude of the loan, and the fact that some of the dollars will be coming from bonding proceeds.

To answer Jim's question from the message below, engineering and planning costs are fully reimbursable, and can be incurred before the loan is applied for or approved. This brings up another point I would ask you to consider: It would help us very much in the CWSRF program if the City could apply for a separate loan for the engineering and design costs. Because of EPA's requirements passed via the WRRDA (Water Resources Reform and Development Act of 2014), we need to have a significant sized loan to meet the equivalency requirements to prevent all of our loans from having to comply with those requirements. The way we can do this is by having a separate CWSRF loan for engineering costs that is funded by loan repayments, thereby using non-federal funds. This allows all our loan recipients, including for this project, to avoid having to advertise for engineering services for each project, among other requirements. With this in mind, we would ask the City to apply for a CWSRF loan for all the project engineering at this time, and have you apply for the full CWSRF construction loan when construction activities commence.

I hope this answers most of your questions. We look forward to participating in the proposed wastewater treatment project for the City of Fargo. Please email or call me or DeAnn Ament if you would like to discuss this further.

Dave Bergsagel  
CWSRF Program Manager  
Division of Municipal Facilities  
North Dakota Department of Health  
918 East Divide Avenue, 3rd Floor  
Bismarck, ND 58501-1947