

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 4, 2021).

CONSENT AGENDA – APPROVE THE FOLLOWING:

- 1. 1st reading of an Ordinance Relating to Alcoholic Beverages.
- 2. Amended Gaming Site Authorization for Northern Prairie Performing Arts at O'Clevy's at the Ramada.
- 3. Applications for Games of Chance:
 - a. El Zagal Holding Company for a raffle on 2/19/22.
 - b. Centennial PTO for bingo on 10/29/21.
 - c. River Keepers for a raffle on 10/28/21.
 - d. Shiloh Lodge of Fargo for a raffle on 5/7/22; Public Spirited Resolution.
 - e. The Cullen Children's Foundation for a raffle on 11/4/21.
 - f. The Village Family Service Center for a raffle on 11/12/21.
- 4. Agreement with Susan Davidson for the Customer Service Representative III position.
- 5. Change Order No. 7 for an increase of \$9,995.00 for Project No. FM-16-A1.
- 6. Modifications to the substantial completion items with an anticipated completion date of 12/23/21 for Project No. FM-19-F1.
- 7. Bid award for Project No. PR-21-E.
- 8. Expanded scope at the 7th Avenue North site in the amount of \$7,544.00 and additional emergency storm sewer repair at 2363 55th Street South in the amount of \$2,800.00 for Project No. UR-21-D1.
- 9. First Amendment and Complete Restatement of The Maplewood Estates Declaration of Covenants, Conditions, Restrictions, Reservations, Easements, Liens and Charges.
- 10. Purchase Agreement for the sale of City owned property located at 1367 Elm Circle North in the amount of \$468,000.00 (Project No. FM-19-E).
- 11. Permanent Easement (Retention Pond and Concrete Driveway) with Earlyne Hector.
- 12. Licensed User Agreement with Ticketmaster LLC (RFP21088).

Page 12. Resolutions Authorizing the Issuance and Sale of \$259,000.00 and \$4,361,000.00 City of Fargo Solid Waste Revenue Bond, Series 2021B and Series 2021C.

14. Receive and file Financial Status Report Year to Date through 9/30/21 for major operating funds (unaudited).
15. Receive and file General Fund – Budget to Actual through September 2021 (unaudited).
16. Receive and file City Investment Holdings as of 9/30/21.
17. Agreement for Services with the following:
 - a. Clets Ofere.
 - b. Alexander McKinney.
 - c. Bernadette Chinema.
 - d. Chad Simmons.
 - e. Beauty Mugadza.
 - f. Leontyne Famolu.
 - g. Tenezee Steele.
18. Agreement with AE2S Communications for the 2022 tobacco cessation campaign.
19. Agreement for Services with Metro COG to work with the Cass Clay Food Partners Steering Committee.
20. Community Development Block Grant (CDBG) and HOME Investment Partnerships Program (HOME) Amendments to 2021 Action Plan and 2020-2024 Consolidated Plan.
21. Resolution Approving Plat of Timber Parkway Sixth Addition.
22. Agreements to provide in-kind contributions to Brapper Holdings LLC for the PrX Project.
23. Extension of unpaid leave for Todd Fugere through 1/19/22.
24. Bid award for two, 3 wheeled mechanical street sweepers (RFP21160).
25. Bid award for one loader mounted snow blower (RFP21163).
26. Bid award for one excavator with sand bucket (RFP21164).
27. Bid award for one rear load refuse body (RFP21165).
28. Bid award for one hook hoist refuse body (RFP21166).
29. Natural Gas Service Agreement at the new Scale House and Maintenance Facility in the amount of \$430.05.
30. Bills.
31. Change Order No. 1 for an increase of \$71,026.00 for Improvement District No. BR-22-A0.
32. Final Balancing Change Order No. 2 in the amount of \$24,929.92 for Improvement District No. BR-20-B1.

Page 33. Negative Final Balancing Change Order No. 1 in the amount of -\$695.20 for Improvement District No. BN-20-H1.

34. Memorandum of Offer to Landowner for a Permanent Easement (Street and Utility) and Easement (Temporary Construction Easement) with Fargo Custard 182, LLC (Improvement District No. BR-22-A0).
35. Memorandum of Offer to Landowner for a Permanent Easement (Street and Utility) with Monge Family Partnership, LLLP (Improvement District No. BR-22-A0).

REGULAR AGENDA:

36. **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).**
37. COVID-19 Update.
38. Recommendation to receive and file an Ordinance Relating to Franchises and Contracts, and Electric Franchise Ordinance.
 - a. Presentation from Xcel Energy.
39. Quarterly Hate Crimes Report Update.
40. Recommendation from the Liquor Control Board to deny the request to amend the Class "FA" and "FA-RZ" Alcoholic Beverage Licenses.
41. Recommendation to approve a Consulting Agreement with the Benefactor Group for fundraising services related to the Performing Arts Center.
42. Proposal for the Election and City Governance Task Force.
43. Recommendation to approve the Purchase Agreement for the sale of the Island Park Parking Ramp located at 500 Main Avenue.
44. Applications for Property Tax Exemptions for Improvements Made to Buildings:
 - a. Christopher and Jolene Garty, 45 Fremont Drive South (3 year).
 - b. Jon and Michelle Ellingson, 2507 32nd Street South (3 year).
45. Recommendation for appointment to the Library Board.

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.

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

①

ORDINANCE NO. _____

AN ORDINANCE AMENDING SECTIONS 25-1506, 25-1507 AND 25-1508 OF ARTICLE 25-15 OF CHAPTER 25 OF THE FARGO MUNICIPAL CODE RELATING TO ALCOHOLIC BEVERAGES

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

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

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

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

NOW, THEREFORE,

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

Section 1. Amendment.

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

* * *

H. Class E. - A "Class E" license, in the nature of a special permit, shall authorize the holder of an existing "on-sale" license to engage in the sale of alcoholic beverages (on-sale only) on such licensed premises as may be designated in the "Class E" license, subject to the following restrictions and conditions:

1. A Class "E" license may be issued only to persons currently holding a Class "AB", Class "ABH", "ABH-RZ", Class "A", Class "C", Class "F", Class "FA", Class "G", Class "H", Class "I", Class "N", Class "W", Class "FA-Entertainment", "RZ-V", VWB or Class "Z" license.

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

* * *

- 1 DD. A Class VWB license shall authorize the licensee to sell “on-sale” and “off-
2 sale”, subject to the following restrictions and conditions:
- 3 1. The VWB license may sell and/or deliver on-sale wine only when a
4 qualifying Wine Educational Event is in progress, commencing 60
5 minutes before the educational component, and must cease sales and
6 delivery 60 minutes after the educational event ends, but in no event
7 later than midnight of the day of the Wine Educational Event.
- 8 2. Definitions.
- 9 a) Wine Educational Event: A particular set time for an event
10 in which a particular wine or vintner is featured and a
11 sommelier or other professionals, trained experts
12 recognized in the wine industry or otherwise associated
13 with the wine industry and complementary services, is
14 engaged to make presentations intended to educate event
15 ticket holders regarding particular aspects of the featured
16 wine, vintner or associate services.
- 17 b) Venue: A particular event space identified in the license
18 application and approved by the board of City
19 Commissioners. Such venue may have a permanent bar
20 for service, and may have limited seating at the bar for
21 ticketed attendees only while a Wine Educational Event is
22 in progress. The venue must provide seating for all
23 attendees at the Wine Educational Event.
- c) Controlled Access: Only those persons in possession of a
ticket from the licensee may be permitted access or
otherwise be permitted to consume wine on the premises
during the designated times.
3. All Wine Educational Events must be ticketed by the licensee for a pre-
determined price with limited capacity seating for the Wine Educational
Event with a specific start time for such event. Only ticket holders for the
specific Wine Educational Event may consume wine on-sale.
4. A Class VWB shall not have a food requirement.
5. There shall be no limit on the number of Wine Educational Events that a
license holder may hold in the approved venue on a yearly basis.
6. A holder of a Class VWB license may engage in limited off-sale of wine
only.

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- a) Off-sale may only be made to ticketed attendees of the Wine Educational Event during the time in which the Wine Educational Event is permitted herein.
- b) There shall be no store front or retail off-sale at any other times. Off-sale may only be to ticket holders of the specified Wine Educational Event and no off-sales shall be permitted to walk-in public. There shall be no signs or other announcement of off-sale wine except in association with a ticketed Wine Educational Event.
7. There shall be no charitable or licensed gaming of any kind in the licensed premise.
8. VWB license holders may secure an e-permit to conduct a qualifying Wine Education Event off the licensed premise.
 - a) No off-sale is permitted at events held pursuant to an e-permit for a qualifying Wine Educational Event off premise.
9. All attendees of the Wine Education Events must be 21 years old.
10. A Class VWB license shall be non-transferable. In the event the holder of a Class VWB shall close business (at the licensed venue), the license shall revert to the city.

Section 2. Amendment.

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

25-1507. License--Fees. —

- A. Initial issuance fee--For a license granted which is not a renewal or a transfer of an existing license, the following fees shall be payable as hereinafter provided:

Class AB—\$150,000
Class ABH—\$30,000
Class ABH-RZ—\$15,000
Class ABH-limited—\$1,800.00
Class A—\$115,000
Class B—\$ 90,000

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Class C—\$7,500

Class D—\$1,500.00

Class DD—\$3,000

Class E—\$25 plus \$10 for each day requested. Additional \$25 fee if application is received less than 7 days before the event, and only after a showing of good cause. In no event will a permit be issued less than 48 hours before the scheduled event.

Class F—\$3,000

Class FA—\$100,000

Class FA-RZ—\$50,000

Class FA-GOLF—\$60,000

Class FA-ENTERTAINMENT—\$100,000

Class G—\$1,000

Class H—\$800

Class I—\$10,000

Class I-ENTERTAINMENT—\$10,000

Class J—No fee

Class L—No fee

Class M—\$1,500

Class N—\$3,000

Class O—\$400

Class P—\$1,400

Class W—\$7,500

Class Y—\$3,000

Class Z—\$105,000

Class B-Limited—\$80,000

Class RZ-V—\$5,000

Class DCP-E—\$25 plus \$10 for each day requested.

Class VWB—\$7,500

* * * *

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B. Annual fees shall be payable at the beginning of each license year as follows:

Class AB—\$2,400

Class ABH—\$2,000

Class ABH-RZ—\$2,000

OFFICE OF THE CITY ATTORNEY
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ORDINANCE NO. _____

Class ABH-limited—\$700.00

Class A—\$1,700, except that the license fee for any lodge or club having a total membership of less than 1,000 shall be \$1,200 per year.

Class B—\$1,400

Class C—\$750

Class D—\$200

Class DD—\$500

Class E—No annual fee shall be charged for a Class E license.

Class F—\$1,500

Class FA—\$1,700

Class FA-RZ—\$1,700

Class FA-GOLF—\$1,700

Class FA-ENTERTAINMENT—\$1,700

Class G—\$400

Class H—\$300

Class I—\$1,000

Class I-ENTERTAINMENT—\$1,000

Class J—\$25

Class L—\$1,000

Class M—\$200

Class N—\$1,500

Class O—\$150

Class P—\$500

Class W—\$750

Class Y—\$500

Class Z—\$1,700

Class B-Limited—\$1,400

Class RZ-V—\$1,700

Class DCP-E—No annual fee shall be charged for a Class DCP-E license.

Class VWB—\$750

* * * *

Section 3. Amendment.

Section 25-1508 of Article 25-15 of Chapter 25 of the Fargo Municipal Code is hereby amended to read as follows:

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

* * *

F. The number of licenses which may be issued by the board of city
commissioners shall be limited as follows:

29. Class VWB - 10

* * * *

Section 4. Penalty.

A person who willfully violates this ordinance is guilty of a Class B misdemeanor. Every person, firm or corporation violating an ordinance which is punishable as a Class B misdemeanor shall be punished by a fine not to exceed \$1,500.00, or by imprisonment not to exceed 30 days, or by both such fine and imprisonment, in the discretion of the court; the court to have power to suspend said sentence and to revoke the suspension thereof. In addition to such fine and/or imprisonment, the court, in its discretion, may assess a fee in an amount not to exceed \$25.00 as provided in section 27-01-10, N.D.C.C.

Section 5. Effective Date.

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

Timothy J. Mahoney, M.D., Mayor

Attest:

Steven Sprague, City Auditor

First Reading:
Second Reading:
Final Passage:
Publication:



AMENDED

GAMING SITE AUTHORIZATION
OFFICE OF ATTORNEY GENERAL
SFN 17996 (02/2018)

2

G - _____ (_____) _____
Site License Number
(Attorney General Use Only)

Full, Legal Name of Gaming Organization **Northern Prairie Performing Arts**

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

Name of Location O'Clevy's at the Ramada			
Street 3333 13th Ave S	City Fargo	ZIP Code 58103	County Cass
Beginning Date(s) Authorized 11/1/21	Ending Date(s) Authorized 6/30/22	Number of twenty-one tables if zero, enter "0": 1	
Specific location where games of chance will be conducted <u>and</u> played at the site (required) Western protion of the bar and all banquet and meeting areas			
If conducting Raffle or Poker activity provide date(s) or month(s) of event(s) if known raffle in December of 2021			

RESTRICTIONS (City/County Use Only)

Days of week of gaming operations (if restricted)	Hours of gaming (if restricted)
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ACTIVITY TO BE CONDUCTED Please check all applicable games to be conducted at site (required)

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

Attorney General	Date
Signature of City/County Official	Date 10/18/21
PRINT Name and official position of person signing on behalf of city/county above Steve Sprague/City Auditor	

INSTRUCTIONS:

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

RETURN ALL DOCUMENTS TO:

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



APPLICATION FOR A LOCAL PERMIT OR RESTRICTED EVENT PERMIT

NORTH DAKOTA OFFICE OF ATTORNEY GENERAL

LICENSING SECTION

SFN 9338 (04-2020)

\$25.00
✓ 3088
10-7-21

(3a)

Applying for (check one)

☒ Local Permit ☐ Restricted Event Permit*

Games to be Conducted

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

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

Name of Organization or Group of People permit is issued to <i>EL Zagal Holding Company</i>		Dates of Activity <i>02/19/2022</i>		If raffle, provide drawing date <i>02/19/2022</i>	
Organization or Group Contact Person <i>Michael Dow</i>		Title or Position <i>Chairman</i>		Telephone Number <i>701-730-5456</i>	
Business Address <i>1429 3rd ST N</i>		City <i>Fargo</i>		State <i>ND</i>	ZIP Code <i>58102</i>
Mailing Address (if different)		City		State	ZIP Code
Site Name (where gaming will be conducted) <i>EL Zagal Shrine Center</i>					
Site Address <i>1429 3rd ST N</i>		City <i>Fargo</i>		ZIP Code <i>58102</i>	County <i>Cass</i>

Description and Retail Value of Prizes to be Awarded

Game Type	Description of Prize	Retail Value of Prize
Raffles	3 Shotguns @ 800 each	2400
Raffle	3 Rifles @ 600 each	1800
Raffle	Cash - 10 @ 100, 10 @ 50, 2 @ 250	2000
Raffle	3 Yeti Coolers @ 300 each	900
Raffle	Bacon 20 @ 100	2000
Add Row	Delete Row	

Total (limit \$40,000 per year)

9,100

Intended Uses of Gaming Proceeds

Transportation Fund / Childrens Hospital (Shriners)

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

☐ Yes ☒ No

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

☐ Yes ☒ No

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

☒ No

☐ Yes - Total Retail Value:

(This amount is part of the total prize limit of \$40,000 per year)

Organization or Group Contact Person

Name <i>Michael Dow</i>	Title <i>Chairman</i>	Telephone Number <i>701-730-5456</i>	E-mail Address <i>mwdow@msn.com</i>
Signature of Organization or Group's Top Official <i>Michael Dow</i>		Title <i>Post Potentate</i>	Date <i>10/06/2021</i>



APPLICATION FOR A LOCAL PERMIT OR RESTRICTED EVENT PERMIT
 OFFICE OF ATTORNEY GENERAL
 SFN 9338 (08/2019)

Application for: ☒ Local Permit * ☐ Restricted Event Permit (one event per year)

Name of Nonprofit Organization or group of people permit is issued to Centennial PTO	Date(s) of Activity 10/29/21 to	For a raffle, provide drawing date(s):	
Person Responsible for the Gaming Operation and Disbursement of Net Income Amy Lynne	Title President	Business Phone Number 701-446-4300	
Business Address 4201 25th St S	City Fargo	State ND	Zip Code 58104
Mailing Address (if different)	City	State	Zip Code
Name of Site Where Game(s) will be Conducted Centennial Elementary	Site Address 4201 25th St. S		
City Fargo	State ND	Zip Code 58104	County Cass
Check the Game(s) to be Conducted: * Poker, Twenty-one, and Paddlewheels may be Conducted only by a Restricted Event Permit.			
<input checked="" type="checkbox"/> Bingo <input type="checkbox"/> Raffle <input type="checkbox"/> Raffle Board <input type="checkbox"/> Calendar Raffle <input type="checkbox"/> Sports Pool <input type="checkbox"/> Poker * <input type="checkbox"/> Twenty-one * <input type="checkbox"/> Paddlewheels *			

DESCRIPTION AND RETAIL VALUE OF PRIZES TO BE AWARDED

Game Type	Description of Prize	Retail Value of Prize	Game Type	Description of Prize	Retail Value of Prize
Bingo	gift cards	280.00			
Bingo	TOYS	200.00			
Bingo	Admission tickets	223.44			
Total:					(Limit \$40,000 per year) \$ 703.44

Intended uses of gaming proceeds: classroom supplies, student support, teacher support, school needs

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

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

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

Signature of Organization or Group's Top Official 	Date 10/12/21	Title President	Business Phone Number 701-799-6358
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(30)

25.00
cc
10/13/21

APPLICATION FOR A LOCAL PERMIT OR RESTRICTED EVENT PERMIT

OFFICE OF ATTORNEY GENERAL
SFN 9338 (08/2019)

Application for: ☐ Local Permit * ☐ Restricted Event Permit (one event per year)

Name of Nonprofit Organization or group of people permit is issued to River Keepers	Date(s) of Activity to	For a raffle, provide drawing date(s): 10/28/2021	
Person Responsible for the Gaming Operation and Disbursement of Net Income Christine Holland	Title Exec. Dir.	Business Phone Number (701) 235-2895	
Business Address 1120 28th Ave. N.	City Fargo	State ND	Zip Code 58102-1334
Mailing Address (if different)	City	State	Zip Code
Name of Site Where Game(s) will be Conducted Gate City Bank	Site Address 500 2nd Ave N		
City Fargo	State ND	Zip Code 58102-0000	County Cass
Check the Game(s) to be Conducted: * Poker, Twenty-one, and Paddlewheels may be Conducted only by a Restricted Event Permit. <input type="checkbox"/> Bingo <input checked="" type="checkbox"/> Raffle <input type="checkbox"/> Raffle Board <input type="checkbox"/> Calendar Raffle <input type="checkbox"/> Sports Pool <input type="checkbox"/> Poker * <input type="checkbox"/> Twenty-one * <input type="checkbox"/> Paddlewheels *			

DESCRIPTION AND RETAIL VALUE OF PRIZES TO BE AWARDED

Game Type	Description of Prize	Retail Value of Prize	Game Type	Description of Prize	Retail Value of Prize
raffle	Art & Healing	\$25.00	raffle	Lit basket	\$40.00
raffle	Womens wallet	\$40.00	raffle	succulents	\$30.00
raffle	Fleece jacket	\$40.00	raffle	winter basket	\$80.00
raffle	tea basket	\$30.00	raffle	Costco basket	\$33.00
raffle	river basket	\$30.00	raffle	oil & bowl	\$35.00
raffle	grill & cooler	\$26.00	raffle	rain gauge	\$40.00
raffle	snow basket	\$36.00			
raffle	Halloween basket	\$31.00			
raffle	Lemonade basket	\$30.00			
Total:					(Limit \$40,000 per year) \$ 546.00

Intended uses of gaming proceeds: river educational outreach

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

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

Has the organization or group received a local permit from any city or county for the fiscal year July 1-June 30? ☐ No ☒ Yes - If "Yes," indicate the total value of all prizes previously awarded: \$ 800.00. This amount is part of the total prize limit of \$40,000 per year.

Signature of Organization or Group's Top Official <i>Christine Holland</i>	Date 10/11/2021	Title Exec. Director	Business Phone Number (701) 235-2895
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SFN 9338 (04-2020)

25.00
✓
10-7-21

(3d)

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

Description and Retail Value of Prizes to be Awarded

Add Row	Delete Row
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Organization or Group Contact Person

Name <i>Jeff Aveland</i>	Title <i>Master</i>	Telephone Number <i>701-799-3888</i>	E-mail Address
Signature of Organization or Group's Top Official <i>Jeff Aveland</i>		Title <i>Master</i>	Date <i>11-6-2021</i>



APPLICATION FOR A LOCAL PERMIT OR RESTRICTED EVENT PERMIT
OFFICE OF ATTORNEY GENERAL
SFN 9338 (05/2019)

Application for: ☐ Local Permit ☒ Restricted Event Permit (one event per year)

Name of Nonprofit Organization or group of people permit is issued to The Cullen Children's Foundation	Date(s) of Activity 11/4/2021 to 11/4/2021	For a raffle, provide drawing date(s) 11/4/2021	
Person Responsible for the Gaming Operation and Disbursement of Net Income Kathryn Kingsley	Title Foundin Coor.	Business Phone Number (701) 361-8678	
Business Address Po Box 594	City West Fargo	State ND	Zip Code 58078-0594
Mailing Address (if different)	City	State	Zip Code
Name of Site Where Game(s) will be Conducted Sanctuary Events Center	Site Address 670 4th Ave. N.		
City Fargo	State ND	Zip Code 58102-4786	County Cass
Check the Game(s) to be Conducted: * Poker, Twenty-one, and Paddlowheels may be Conducted only by a Restricted Event Permit. <input type="checkbox"/> Bingo <input checked="" type="checkbox"/> Raffle <input type="checkbox"/> Raffle Board <input type="checkbox"/> Calendar Raffle <input type="checkbox"/> Sports Pool <input type="checkbox"/> Poker * <input type="checkbox"/> Twenty-one * <input type="checkbox"/> Paddlowheels *			

DESCRIPTION AND RETAIL VALUE OF PRIZES TO BE AWARDED

Game Type	Description of Prize	Retail Value of Prize	Game Type	Description of Prize	Retail Value of Prize
Raffle	Jewelry	\$4,200.00			
Raffle	LouisXIII Cognac	\$3,500.00			
Total:					(Limit \$40,000 per year) \$ 7,700.00

Intended uses of gaming proceeds: To support the mission of The Cullen Children's Foundation, which is to provide financial resources for organizations that support children's healthcare needs, with an emphasis on cancer.

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

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

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

Signature of Organization or Group's Top Official <i>Julie Kingsley</i>	Date 10/13/2021	Title Board Member	Business Phone Number (701) 238-3204
--	--------------------	-----------------------	---

(3f)

✓ 189834
\$25.00
10-14-21


☒ Local Permit

☐ Bingo ☒ Raffle ☐ Raffle Board ☐ Calendar Raffle ☐ Sports Pool ☐ Poker * ☐ Twenty-one * ☐ Paddlewheels *

Game Type	Description of Prize	Retail Value of Prize
Paddle Game #1	Gift Card	\$250.00
Paddle Game #2	Gift Card	\$250.00
Raffle Item #1	Diamond Necklace	\$4,595.00
Raffle Item #2	Fargo Force Suit	\$800.00
Raffle Item #3	Whiskey Package	\$800.00
Raffle Item #4	Suite Shots Suit	\$1,000.00
Total:		(Limit \$40,000 per year) \$ 7,695.00

Including behavioral health services, mentoring, and other programming in the FM region. Big Brothers Big Sister, FRC, First Step

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

Signature of Organization or Group's Top Official 	Date 10-13-21	Title President/ceo	Business Phone Number (701) 451-4965
--	------------------	------------------------	---

4

AUDITOR'S OFFICE

Fargo City Hall
225 4th Street North
PO Box 2471

Fargo, ND 58108

Phone: 701.241.8108 | Fax: 701.241.8184

www.FargoND.gov

October 7, 2021

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

RE: Customer Service Representative III

Dear Commissioners:

Please find attached a copy of the contract for the position of Customer Service Representative III by and between the City of Fargo and Susan Davidson. The pay classification for this position will be the equivalent of a Grade 9 Step 8 under the City of Fargo's pay structure. The hourly rate for this position will be 25.63/hr. and this position will be full-time benefitted.

This contract position was approved by the Finance Committee. The total expenditure for the position is approximately \$53,310.

Recommended Motion:

Approve the attached contract for Customer Service Representative III by and between the City of Fargo and Susan Davidson.

Please contact me if you have any questions or concerns regarding the Customer Service Representative III position or corresponding contract.

Sincerely,



Steven Sprague
City Auditor

Attachment

AGREEMENT

Customer Service Representative III

THIS AGREEMENT made and entered into effective the 25th day of October 2021, by and between Susan Davidson, (hereinafter referred to as “Davidson”) and the CITY OF FARGO, a municipal corporation, whose address is 225 4th Street North, Fargo, North Dakota 58102 (hereinafter referred to as “City”).

WITNESSETH:

WHEREAS, the City desires to fill the position of Customer Service Representative III (CSR) within the City of Fargo Auditor’s Office as a contracted employee; and,

WHEREAS, the City desires to appoint Davidson to perform the duties associated with CSR and for purposes of the City’s budgeting process, to recognize a contract employment relationship for a period beginning October 25, 2021 and ending December 31, 2022, but which is still an “at-will” employment relationship, terminable by either party with or without cause, and,

WHEREAS, Davidson has agreed to accept such appointment to perform the duties associated with CSR on a contract employee basis according to the terms of this agreement; and,

WHEREAS, the parties wish to commit their agreement to writing.

NOW, THEREFORE, the parties hereto do hereby agree as follows:

1. City agrees to appoint Davidson for the purpose of performing the duties associated with CSR.

2. Term. The term of this agreement shall be for the period beginning October 25, 2021, extending through December 31, 2022, but may be terminated by either party at any time, upon written notice to the other party. This relationship is an "At-will" relationship and may be terminated by either party at any time with or without cause.

3. Compensation. City agrees to compensate Davidson in the amount of \$25.63 per hour for any and all duties associated with CSR during the year 2021. If the City Commission awards a 2021 Cost of Living Adjustment (COLA), Davidson is eligible to receive a COLA adjustment. To the extent this agreement is still in effect, beginning in years 2022 and thereafter, Davidson's compensation shall be adjusted annually, at the time of her step increase date, as well as adjusted in an amount equal to the Cost of Living Adjustment the City of Fargo approves for its employees.

4. In addition to the terms of compensation listed above, the City shall pay the employer's share of the following:

- (a) Social Security (FICA)
- (b) Workers Compensation
- (c) Unemployment Insurance
- (d) Federal Withholding (income tax)
- (e) State Income Tax
- (f) Medicare

5. Davidson will be full-time benefited and will be eligible to enroll in Health Insurance, Dental Insurance, Vision Insurance, Life Insurance and Flexible Spending and will be covered under the City's long-term disability and North Dakota Public Employee Retirement System (NDPERS). In addition, Davidson will accrue annual and sick leave.

6. During the term of this agreement, Davidson agrees to comply with all employee policies of the City of Fargo and the Auditor's Office, including all safety rules and procedures.

7. The parties hereto understand and agree that Davidson shall not be part of the Civil Service of the City of Fargo, but is a contracted employee, as permitted under Fargo Municipal Code section 7.0102(D).

Dated this day October 18, 2021


THE CITY OF FARGO, NORTH DAKOTA


By: _____
Timothy Mahoney, Mayor

ATTEST:

Steven Sprague, City Auditor

AUDITORS OFFICE


Angie Bear, Utility Billing Supervisor


Susan Davidson

REPORT OF ACTION

5

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Project No. FM-16-A1

Type: Change Order #7

Location: 45th Street & 64th Avenue North

Date of Hearing: 10/11/2021

RoutingDate

City Commission

10/18/2021

PWPEC File

X

Project File

Roger Kluck

The Committee reviewed the accompanying correspondence from Project Manager, Roger Kluck, related to Change Order #7 in the amount of \$9,995 for the installation of a field driveway to allow access for the farmer renting the land and a time extension for Milestone No. 6 to allow for use of the area from Drain 10 right of way to approximately 400' west. This request moves Milestone No. 6 completion from October 15, 2021 to November 15, 2021.

Staff is recommending approval of Change Order #7 and time extension to Milestone No. 6 as described above.

On a motion by Kent Costin, seconded by Steve Sprague, the Committee voted to recommend approval of Change Order #7 in the amount of \$9,995 bringing the total contract amount to \$9,391,038.70 and time extension to Milestone No. 6 adjusting the completion date to November 15, 2021 to Key Contracting.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve Change Order #7 in the amount of \$9,995 bringing the total contract amount to \$9,391,038.70 and time extension for Milestone No. 6 adjusting the completion date to November 15, 2021 to Key Contracting.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: Flood Sales Tax

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

Yes No

N/A

N/A

N/A

COMMITTEE

Present Yes No Unanimous

☒

Tim Mahoney, Mayor

☐☐☐

Nicole Crutchfield, Director of Planning

☒☒☐

Steve Dirksen, Fire Chief

☒☒☐

Bruce Grubb, City Administrator

☐☐☐

Ben Dow, Director of Operations

☒☒☐

Steve Sprague, City Auditor

☒☒☐

Brenda Derrig, City Engineer

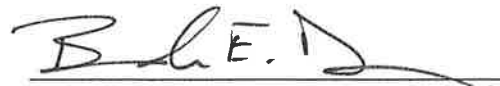
☒☒☐

Kent Costin, Finance Director

☒☒☐

ATTEST:

C: Kristi Olson



Brenda E. Derrig, P.E.
 City Engineer

Memorandum

To: Members of PWPEC

From: Roger E. Kluck, PE, CFM Civil Engineer II Storm Sewer & Floodplain

CC: Jody Bertrand, Division Engineer;
Nathan Boerboom, Division Engineer

Date: 10/6/2021

Re: Project # FM-16-A1 North Side Flood Risk Management Levee
Change Order No. 7

The project was advertised in August 2020 and the project was awarded to Key Contracting in September 2020 and construction started thereafter.

The Contractor has asked for a time extension on Milestone 6 from October 15, 2021 to November 15, 2021 to better reflect his construction plan. This does not affect the flood control system being operational in February 2022. Engineering believes it is a reasonable request.

We have been asked to install a field driveway into the land north of the softball fields at the intersection of 64th Ave N and 45th St N. With the building of the levee, the farmer renting the land has difficult access to work the field and avoid driving over the levee. The driveway cost will be \$9,995.00 and has been coordinated with Fargo Parks. The cost has been reviewed with the Consulting Engineer and Engineering believes it is reasonable.

Funding for this project will come from the Flood Sales Tax Fund 460.

Recommended Motion

Approve Change Order No. 7 for Milestone 6 time extension to November 15, 2021 and the added driveway for \$9,995.00.

RK/jmg
Attachment



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

Project No	FM-16-A1	Change Order No	7
Project Name	North Side Flood Risk Management Levee		
Date Entered	10/6/2021	For	Key Contracting Inc

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

EXPLANATION OF CHANGE: Add driveway and extend Milestone 6 to November 15, 2021

Contractor has requested milestone 6 extension to November 15, 2021 to better correlate with completion of lift station and drainage components and levee installation order of work. Farmer/Park District asked for driveway into field north of the softball complex because the new levee had cut off the access and Fargo didn't want traffic over the new levee.

Section	Line No	Item Description	Unit	Orig Cont Qty	Prev C/O Qty	Prev Cont Qty	Curr C/O Qty	Tot Cont Qty	Unit Price (\$)	C/O Ext Price (\$)
Miscellaneous	93	Site Access Protection	LS	0.00	0.00	0.00	1.00	1.00	9,995.00	9,995.00
Miscellaneous Sub Total (\$)									9,995.00	9,995.00

Summary

Source Of Funding Sales Tax Funds - Flood Control - 460

Net Amount Change Order # 7 (\$) 9,995.00

Previous Change Orders (\$) 169,507.40

Original Contract Amount (\$) 9,211,536.30

Total Contract Amount (\$) 9,391,038.70

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

CONTRACT TIME

Current Substantial Completion Date	Current Final Completion Date	Additional Days Substantial Completion	Additional Days Final Completion	New Substantial Completion Date	New Final Completion Date
06/15/2022	07/01/2022	0.00	0.00	06/15/2022	07/01/2022

Description

APPROVED

APPROVED DATE



CITY OF FARGO
ENGINEERING DEPARTMENT
CHANGE ORDER REPORT

For Contractor

Key Contracting
Steve Carr
VP 10/06/2021

Title

Department Head

 10/13/21

Mayor

Attest

Key Contracting, Inc.

245 7th Avenue NE

West Fargo, North Dakota 58078

Phone: (701) 238-8192

Fax: (701) 356-0166

Internet: keycontracting.com



CHANGE ORDER REQUEST # 8

Submitted To: Moore Engineering
Attention Brady Woodard
Date: 9/23/2021
Project : City of Fargo FM-16-A1
Total Price No Price Change Order

REVISED

Key Contracting, Inc., hereby submits an estimate for all labor and materials for:

Description				
Key Contracting requests a time extension from October 15 to November 15 for Milestone #6. We request this extension so we can use the area from Drain 10 Right of Way to approximately 400' West for parking, construction vehicles, construction traffic, trailers, construction equipment, box culverts, CMP, Rip Rap and lay down area for misc. pipe removals while backfilling lift station and installing box culverts. This request would not change Milestone 5 completion or final completion.				

NOTE: We currently have enough clay stockpiled and equipment and personnel on site to provide flood protection up to the Lift Station ROW in the unlikely event of major flooding prior to completion of Milestone 6.

All work shall be completed in a workman like manner and according to standard practice.

Steve Carr

Key Contracting, Inc.

Contact: Steve Carr

Cell (701) 371-1284

Key Contracting, Inc.

245 7th Avenue NE

West Fargo, North Dakota 58078

Phone: (701) 238-8192

Fax: (701) 356-0166

Internet: keycontracting.com

**CHANGE ORDER REQUEST # 9**

Submitted To: Moore Engineering
 Attention: Brady Woodard
 Date: 10/1/2021
 Project: City of Fargo FM-16-A1
 Total Price: see below

Key Contracting, Inc., hereby submits an estimate for all labor and materials for:

Adding an approach on 45th Street near Ball Diamonds

Description	Measure	Quantity	Unit Price	Amount
Approach = 20' wide x 30' long				
Mobilization	ls	1	\$ 500.00	\$ 500.00
Excav/Site Prep	ls	1	\$ 800.00	\$ 800.00
40lf 18" CMP	lf	40	\$ 110.00	\$ 4,400.00
18" FES	each	1	\$ 400.00	\$ 400.00
Infill Ditch w/ clay	cy	45	\$ 32.00	\$ 1,440.00
Filter Fabric	SY	70	\$ 6.50	\$ 455.00
8" Crushed concrete drive	cy	24	\$ 55.00	\$ 1,320.00
seed and mulch	ls	1	\$ 680.00	\$ 680.00
				\$ 9,995.00

All materials are guaranteed as specified.

All work shall be completed in a workman like manner and according to standard practice.

Accepted on: _____

Steve Carr

Key Contracting, Inc.

Contact: Steve Carr

Cell (701) 371-1284

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

(6)

Project No. FM-19-F1

Type: Modifications to Substantial Completion Items

Location: Oak Grove

Date of Hearing: 10/11/2021

RoutingDate

City Commission

10/18/2021

PWPEC File

X

Project File

Rob Hasey

The Committee reviewed the accompanying correspondence from Project Manager, Rob Hasey, regarding modifications to Substantial Completion items due to supplier delays.

Meyer Contracting is experiencing supplier delays for several project features:

- Gatewell flap & sluice gates. Anticipated arrival is November 18, 2021.
- Removable floodwall closure components. Anticipated arrival is December 6, 2021.
- Remaining precast wall panels for the sheetpile wall. Scheduled ship date is November 8, 2021.

Staff is recommending removal of the above mentioned items from the Substantial Completion date (October 15, 2021). Items will be completed by December 23, 2021.

On a motion by Kent Costin, seconded by Steve Sprague, the Committee voted to recommend approval of the modifications to remove the items mentioned above from the Substantial Completion date with an anticipated completion of December 23, 2021.

RECOMMENDED MOTION

Concur with the recommendation of PWPEC and approve the modifications to the Substantial Completion items with an anticipated completion date of December 23, 2021.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: Flood Sales Tax

Yes	No

Developer meets City policy for payment of delinquent specials

N/A

Agreement for payment of specials required of developer

N/A

Letter of Credit required (per policy approved 5-28-13)

N/A

COMMITTEE

Present	Yes	No	Unanimous
			<input checked="" type="checkbox"/>

Tim Mahoney, Mayor

Nicole Crutchfield, Director of Planning

Steve Dirksen, Fire Chief

Bruce Grubb, City Administrator

Ben Dow, Director of Operations

Steve Sprague, City Auditor

Brenda Derrig, City Engineer

Kent Costin, Finance Director

ATTEST:

C: Kristi Olson



Brenda E. Derrig, P.E.
City Engineer

Memorandum

To: Members of PWPEC
From: Rob Hasey, Project Manager
Cc: Nathan Boerboom, Division Engineer
Date: October 11, 2021
Re: Project No. FM-19-F1 – Change Order #3

Background:

Project No. FM-19-F1 is for the installation of an earthen levee, concrete floodwalls, sheet pile floodwall and a storm sewer gatewell in the Oak Grove neighborhood.

Meyer Contracting is experiencing supplier delays for several project features:

- Gatewell flap & sluice gates. Scheduled ship date is 10/18/2021. Anticipated arrival is 11/8/2021.
- Removable floodwall closure components. Scheduled ship date is 11/22/2021. Anticipated arrival 12/6/2021.
- Remaining precast wall panels for the sheetpile wall (formliner delays noted on CO #2). Scheduled ship date is 11/8/2021.

Recommended Motion:

Remove the above mentioned items from the Substantial Completion date (October 15, 2021). These items will be completed by December 23, 2021.

Attachments



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

Project No	FM-19-F1	Change Order No	3
Project Name	Oak Grove Flood Risk Management Project		
Date Entered	10/6/2021	For	Meyer Contracting, Inc.

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

EXPLANATION OF CHANGE: Remove the items described below from the Substantial Completion date (October 15, 2021)

- Gatewell flap & sluice gates. Scheduled ship date is 10/18/2021. Anticipated arrival is 11/8/2021.
 - Removable floodwall closure components. Scheduled ship date is 11/22/2021. Anticipated arrival 12/6/2021.
 - Remaining precast wall panels for the sheetpile wall (formliner delays noted on CO #2). Scheduled ship date is 11/8/2021.
- Above mentioned items will be completed by December 23rd, 2021.

Section	Line No	Item Description	Unit	Orig Cont Qty	Prev C/O Qty	Prev Cont Qty	Curr C/O Qty	Tot Cont Qty	Unit Price (\$)	C/O Ext Price (\$)
Summary										
Source Of Funding										
Net Amount Change Order # 3 (\$)										
Previous Change Orders (\$)										0.00
Original Contract Amount (\$)										6,635,152.64
Total Contract Amount (\$)										6,635,152.64

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

CONTRACT TIME

Current Substantial Completion Date	Current Final Completion Date	Additional Days Substantial Completion	Additional Days Final Completion	New Substantial Completion Date	New Final Completion Date
11/01/2021		0.00	0.00	11/01/2021	

Description

APPROVED

APPROVED DATE



CITY OF FARGO
ENGINEERING DEPARTMENT
CHANGE ORDER REPORT

For Contractor

Title

Eric W. ...

Project Manager

10/8/21

Department Head

[Signature]

Mayor

Attest

10/13/21



October 5, 2021

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

**Subject: FM-19-F1 Oak Grove Flood Risk Management Project
Substantial Completion Date Modification Request**

Mr. Hasey:

Meyer Contracting is requesting a modification to the Substantial Completion date due to continuing manufacturer delays of necessary project components. Per their attached letter dated October 5, 2021, delays in the manufacturing and delivery of the gateway flap gate and sluice gate, removable road closures for the floodwall, and the precast concrete wall panels for the sheetpile wall, they will not be able to meet the current Substantial Completion date of October 15, 2021 for these items. Their most recent delivery update from the supplier has the removable road closure components being delivered the week of December 6, 2021. The contractor is requesting that the Substantial Completion date for the installation of the gateway flap gate and sluice gate, removable road closures for the floodwall, and the precast concrete wall panel installation be extended to December 23, 2021 to allow sufficient time to install the components once delivered. The Substantial Completion date for all other work items outlined in the SIBs will continue to be October 15, 2021 and liquidated damages will commence starting October 16, 2021 if those items are not complete.

We have reviewed the attached request and agree that extending the Substantial Completion date to December 23, 2021 for the installation of the gateway flap gate and sluice gate, removable road closures for the floodwall, and the precast concrete wall panel installation is reasonable. Therefore, we recommend approving this request as noted above.

Sincerely,

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

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



October 5th, 2021

Mike Love, PE
Houston Engineering
1401 21st Ave N
Fargo, ND 58106

RE: Oak Grove Flood Risk Management Project
Project NO. FM-19-F1
Non-Compensable Manufacturing Delays - Flap Gate, Sluice Gate,
Removable Road Closure (North & South), and Precast Paneling

Mr. Love,

Meyer Contracting is submitting a request for an extension of the substantial completion date due to construction delays caused by manufacturing. The manufacturing of the flap gate, sluice gate, removable road closures and precast paneling will push completion of construction past the current substantial completion date of 10/15/21. Below summarizes the current impacts and schedule to the best of Meyer Contracting's ability with information available at the time of this correspondence.

The Flap Gate and Sluice Gate are scheduled to ship from the manufacturer the week of 10/18/21. The last product we received from the manufacturer, the thimble, took three weeks to ship from the manufacturer to the jobsite due to shipping delays. We would anticipate having this product onsite the week of 11/8/21. Then once the product is onsite Meyer Contracting would need to complete the subsequent work on the Gatewell and would anticipate this being complete 11/24/21.

Based on information received from the procuring vendor on 10/4/21, the removable closure manufacturing is taken longer than anticipated and isn't scheduled to ship until from the manufacturer until the week of 11/22/21. With an estimated arrival the week of 12/6/21. Given this information Meyer would complete the installation 12/23/21.

The precast paneling manufacturing was delayed due to the manufacturing of the formliner. Which affected the sequence of production of the precast paneling. Currently the standard panels were completed 9/29/21 and the custom panels are slated to begin 10/4/21. The anticipated completion date of the manufacturing and seven day cure prior to shipment is the week of 11/8/21. Meyer anticipates another five days to install the panels, caps, and columns completing the install of the precast concrete on the sheet pile wall. This puts completion of the precast wall at the week of 11/15/21.

We appreciate your time and consideration in this matter.

Eric Wilaby

Senior Project Manager



Mobile: 612.760.6399

Direct: 763.391.5989

⑦

October 13, 2021

Honorable Board of City
Commissioners
City of Fargo
Fargo, ND

Re: Project No. PR-21-E1

Dear Commissioners:

Bids were opened at 11:30 AM on Wednesday, October 13, 2021, for Concrete Spot Repair, Project No. PR-21-E1, located at Various Locations – City Wide.


The bids were as follows:

Ti-Zack Concrete, Inc.	\$ 713,859.00
Opp Construction	\$ 941,844.40
Northern Improvement Co.	\$ 973,251.90
Dakota Underground Co. Inc.	\$1,239,142.00
Engineer's Estimate	\$ 859,980.00

The special assessment escrow is not required.

This office recommends award of the contract to Ti-Zack Concrete, Inc. in the amount of \$713,859.00 as the lowest and best bid.

Sincerely,



Tom Knakmuhs
Assistant City Engineer

TAK/jmg



ENGINEER'S STATEMENT OF ESTIMATED COST

PROJECT # PR-21-E1

Concrete Spot Repair

Various Locations - City Wide

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

NOW THEREFORE Tom Knakmuhs, do hereby certify as follows:

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

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

Concrete Spot Repair Project # PR-21-E1 of the City of Fargo, North Dakota.

Line Description	Unit	Quantity	Unit Price (\$)	Amount (\$)
Paving				
1 Excavation	CY	70.00	40.00	2,800.00
2 Remove Pavement All Thicknesses All Types	SY	2,350.00	30.00	70,500.00
3 Remove Curb & Gutter	LF	930.00	6.00	5,580.00
4 Remove Sidewalk All Thicknesses All Types	SY	114.00	25.00	2,850.00
5 F&I Class 5 Agg - 12" Thick	SY	65.00	2.00	130.00
6 F&I Edge Drain 4" Dia PVC	LF	80.00	11.00	880.00
7 F&I Curb & Gutter Standard (Type II)	LF	925.00	40.00	37,000.00
8 F&I Pavement 10" Thick Doweled Conc	SY	2,350.00	145.00	340,750.00
9 Repair Pavement - Partial Depth Conc	SF	250.00	32.00	8,000.00
10 F&I Median Nose - Conc	SY	10.00	116.00	1,160.00
11 F&I Sidewalk 4" Thick Reinf Conc	SY	120.00	56.00	6,720.00
12 F&I Sidewalk 6" Thick Reinf Conc	SY	50.00	85.00	4,250.00
13 F&I Impressioned 6" Thick Reinf Conc	SY	160.00	85.00	13,600.00
14 F&I Sidewalk Curb	LF	25.00	35.00	875.00
15 F&I Det Warn Panels Cast Iron	SF	30.00	50.00	1,500.00
16 F&I Casting - Inlet	EA	5.00	2,000.00	10,000.00
17 F&I Casting - Std Manhole	EA	2.00	1,200.00	2,400.00
18 F&I Casting - Floating Manhole	EA	5.00	1,950.00	9,750.00
19 Casting to Grade - w/Conc	EA	12.00	415.00	4,980.00
20 GV Box to Grade - w/Conc	EA	4.00	75.00	300.00
21 Mulching Type 1 - Hydro	SY	1,000.00	3.00	3,000.00
22 Seeding Type C	SY	1,000.00	1.00	1,000.00
23 Inlet Protection - Existing Inlet	EA	18.00	60.00	1,080.00
24 Construction Signing	SF	50.00	15.40	770.00
25 Traffic Control - Type 1	LS	15.00	2,100.00	31,500.00
26 Traffic Control - Type 2	LS	3.00	3,200.00	9,600.00
27 Flagging	MHR	250.00	40.00	10,000.00
28 Relocate Sign Assembly	EA	4.00	130.00	520.00
Paving Total				581,495.00
Pavement Markings				
29 F&I Grooved Contrast Film 7" Wide	LF	150.00	16.00	2,400.00
30 F&I Grooved Contrast Film 11" Wide	LF	150.00	20.00	3,000.00
31 F&I Grooved Plastic Film Message	SF	60.00	44.00	2,640.00
32 F&I Grooved Plastic Film 4" Wide	LF	200.00	11.00	2,200.00

**ENGINEER'S STATEMENT OF ESTIMATED COST****PROJECT # PR-21-E1****Concrete Spot Repair**

33 F&I Grooved Plastic Film 6" Wide	LF	200.00	13.00	2,600.00
34 F&I Grooved Plastic Film 8" Wide	LF	400.00	16.00	6,400.00
35 F&I Grooved Plastic Film 16" Wide	LF	150.00	33.00	4,950.00
36 F&I Grooved Plastic Film 24" Wide	LF	300.00	44.00	13,200.00
37 Paint Epoxy Message	SF	100.00	20.00	2,000.00
Pavement Markings Total				39,390.00
Street Lighting				
38 Relocate Street Light	EA	1.00	1,200.00	1,200.00
39 F&I Base 7' Deep Reinf Conc	EA	1.00	2,000.00	2,000.00
40 Remove Base	EA	1.00	400.00	400.00
Street Lighting Total				3,600.00
Traffic Signals				
41 F&I Detection Preformed Loop	EA	12.00	2,000.00	24,000.00
42 F&I Ped Push Button Post	EA	1.00	4,000.00	4,000.00
43 F&I Detection In-Ground Loop	EA	4.00	2,500.00	10,000.00
Traffic Signals Total				38,000.00
Area 6 - 4th Ave N (City Centre)				
44 Remove Pavement All Thicknesses All Types	SY	101.00	30.00	3,030.00
45 Remove Curb & Gutter	LF	78.00	8.00	624.00
46 Remove Sidewalk All Thicknesses All Types	SY	36.00	17.00	612.00
47 F&I Curb & Gutter Standard (Type II)	LF	78.00	40.00	3,120.00
48 F&I Pavement 9" Thick Doweled Conc	SY	101.00	130.00	13,130.00
49 Repair Pavement - Partial Depth Conc	SF	10.00	100.00	1,000.00
50 F&I Impressioned 6" Thick Reinf Conc	SY	36.00	85.00	3,060.00
51 Inlet Protection - Existing Inlet	EA	5.00	60.00	300.00
52 F&I Grooved Contrast Film 7" Wide	LF	576.00	16.00	9,216.00
53 F&I Grooved Contrast Film 11" Wide	LF	106.00	22.00	2,332.00
54 F&I Grooved Plastic Film Message	SF	64.00	40.00	2,560.00
55 F&I Grooved Plastic Film 16" Wide	LF	25.00	30.00	750.00
56 F&I Grooved Plastic Film 24" Wide	LF	80.00	40.00	3,200.00
57 Traffic Control - Type 2	LS	1.00	3,000.00	3,000.00
58 Construction Signing	SF	6.00	15.00	90.00
59 Flagging	MHR	30.00	45.00	1,350.00
60 F&I Detection Preformed Loop	EA	2.00	2,000.00	4,000.00
Area 6 - 4th Ave N (City Centre) Total				51,374.00
Total Construction in \$				713,859.00
Engineering		10.00 %		71,385.90
Legal & Misc		3.00 %		21,415.77
Contingencies		5.00 %		35,692.95
Administration		4.00 %		28,554.36
Interest		4.00 %		28,554.36
Total Estimated Costs				899,462.34
Sales Tax Funds - Infrastructure - 420				834,731.10
LOMR - Developer Funded				64,731.24
Unfunded Costs				0.00



ENGINEER'S STATEMENT OF ESTIMATED COST

PROJECT # PR-21-E1

Concrete Spot Repair

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

Date: 10/13/2021

A handwritten signature in black ink, appearing to read "T. Knakmuhs", written over a horizontal line.

Tom Knakmuhs

Assistant City Engineer



PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

(8)

Project No.: UR-21-D1

Type: Emergency Storm Sewer Repair

Date of Hearing: 10/11/2021

Routing

City Commission

Date

10/18/2021

PWPEC File

X

Project File

Roger Kluck

The committee reviewed a communication from Civil Engineer, Roger Kluck, regarding approval of the expanded scope on the 7th Avenue North site and for emergency repairs on 55th Street South.

During repairs at 7th Avenue North and Drain 10, an unexpected sanitary sewer structure was found and determined to be in a deteriorated state. The estimate for the expanded scope of work is \$7,544.

Xcel alerted the Storm Sewer Department that they had encountered a leaking storm sewer line at 2363 55th Street South during the installation of a new gas main. Due to the time sensitivity of the needed repair, it was determine to use Dirt Dynamics, who were already working on other storm sewer repairs, to commence the repair immediately for a cost of \$2,800.

Staff is seeking approval for the expanded scope on the 7th Avenue North site and for the emergency repairs on 55th Street South.

On a motion by Kent Costin, seconded by Steve Sprague, the Committee voted to approve the expanded scope at the 7th Avenue North site in the amount of \$7,544 and the additional emergency storm sewer repair at 2363 55th Street South in the amount of \$2,800.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve the expanded scope at the 7th Avenue North site in the amount of \$7,544 and the additional emergency storm sewer repair at 2363 55th Street South in the amount of \$2,800.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: Storm Utility, Water Reclamation Utility, & Street Repair Funds

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

Yes No

N/A

N/A

N/A

COMMITTEE

Present Yes No Unanimous

☒

Tim Mahoney, Mayor

☐☐☐

Nicole Crutchfield, Director of Planning

☒☒☐

Steve Dirksen, Fire Chief

☒☒☐

Bruce Grubb, City Administrator

☐☐☐

Ben Dow, Director of Operations

☒☒☐

Steve Sprague, City Auditor

☒☒☐

Brenda Derrig, City Engineer


☒☒☐

Kent Costin, Finance Director

☒☒☐

ATTEST:

C: Kristi Olson


 Brenda E. Derrig, P.E.
 City Engineer

Memorandum

To: Members of PWPEC

From: Roger E. Kluck, PE, CFM Civil Engineer II Storm Sewer & Floodplain

CC: Jody Bertrand, Division Engineer

Date: October 8, 2021

Re: Project #UR-21-D1 - Emergency Storm Sewer Repair

In order to provide a tracking mechanism for as needed storm sewer repairs in 2021 project UR-21-D1 was set up.

During repairs at 7th Avenue North and Drain 10, an unexpected sanitary sewer structure was found and determined to be in a deteriorated state exasperating the undermining of the avenue. The estimate for the expanded scope of work is \$7,544.00; the original quote was \$100,632.50.

The Storm Sewer Department was alerted by XCEL that they had encountered a leaking storm sewer line at 2363 55th Street South during installation of a new gas main in that part of Fargo. Due to the time sensitivity of the needed repair, it was determined to use Dirt Dynamics who were already working on other storm sewer repairs to commence the repair immediately for a cost of \$2,800.00.

Engineering seeks approval from PWPEC to for the expanded scope on the 7th Avenue North site and for the emergency repairs on 55th Street South.

Funding is being provided by the Storm Sewer Utility, Water Reclamation Utility, and from Engineering's street repair budget.

Recommended Motion:

Approve expanded scope of \$7,544.00 at the 7th Avenue North and Drain 10 site and the additional emergency storm sewer repair at 2363 55th Street South in the amount of \$2,800.

9

October 14, 2021

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

Re: The Maplewood Estates Declaration of Covenants, Conditions, Restrictions, Reservations,
Easements, Liens and Charges First Amendment

Honorable Commissioners,

On May 20, 2019, the City of Fargo approved the Developer Agreement and Restrictive Covenants for The Maplewood Estates. The City became a party to the Restrictive Covenants to make sure that access to the water main and curb stops was maintained as there is a private roadway within the development. Attached you will find the First Amendment and Complete Restatement of the Declaration. The Assistant City Attorney and myself have reviewed the Amendment and are recommending approval of the First Amendment and Complete Restatement of the Maplewood Estates Declaration of Covenants, Conditions, Restrictions, Reservations, Easements, Liens and Charges.

Recommended Motion: I move to approve the First Amendment and Complete Restatement of the Maplewood Estates Declaration of Covenants, Conditions, Restrictions, Reservations, Easements, Liens and Charges and authorize the Mayor to sign.

Sincerely,



Brenda Derrig, P.E.
City Engineer

BED/jmg
Attachment

(reserved for recording data)

**FIRST AMENDMENT
AND
COMPLETE RESTATEMENT
OF
THE MAPLEWOOD ESTATES
DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS,
RESERVATIONS, EASEMENTS, LIENS AND CHARGES**

This First Amendment and Complete Restatement of the Maplewood Estates Declaration of Covenants, Conditions, Restrictions, Reservations, Easements, Liens and Charges is made by the Developer, Maplewood Estates, LLC on October 12, 2021. The Developer hereby amends and restates the Declaration in its entirety as follows:

THIS DECLARATION, is made October 12, 2021, by Maplewood Estates, LLC., hereinafter referred to as "Developer", who desires to provide for the preservation of the values and amenities of the property described in Article II of this Declaration, hereinafter called the "Property". To this end the Property is subject to the covenants, conditions, restrictions, reservations, easements, liens and charges set forth in this Declaration, each and all of which is and are for the benefit of the Property and each Owner. These covenants, conditions, restrictions, reservations, easements, liens and charges shall run with the land and shall be binding on all parties having or acquiring any right, title or interest in the properties herein described or any part thereof, and shall inure to the benefit of each Owner thereof.

NOW, THEREFORE, Developer declares that the Property is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, reservations, easements, liens and charges (sometimes referred to as "covenants and restrictions") set forth in this Declaration.

ARTICLE I.

DEFINITIONS

The following words, when used in this Declaration (unless the context shall prohibit), shall have the following meanings:

1. "Association" shall mean The Maplewood Estates Homeowners Association, Inc., its successors and assigns.
2. "Board" shall mean the Board of Directors of the Association.
3. "Building Plot" shall mean and consist of one or more Lots or one Lot and a portion or portions of adjacent Lots which have the same Owner.
4. Common Area Lots shall mean and include all HOA Owned Lots and any landscaping, drives, mailbox clusters, improvements, trails, walking paths, structures, sports courts, fences, and any other items located on the Common Area Lots or other areas of Property owned by or to be maintained by the Association pursuant to this Declaration.
5. "Declaration" shall mean the covenants, conditions, restrictions, reservations, easements, liens and charges set forth in this Agreement, as may from time to time be amended.
6. "Developer" shall mean and refer to Maplewood Estates, LLC, its successors and assigns, if any successors or assigns shall acquire a majority of the undeveloped Lots for the purpose of development.
7. "Family" shall mean one or more persons living in a residential building as a single housekeeping unit and shall exclude a group or groups of persons where three (3) or more persons thereof are not related by blood, adoption, or marriage.
8. "Lot" shall mean and refer to any plot of land, including any auditor's lot, shown upon any recorded Plat of the Property. If a Lot as shown on the Plat or a portion thereof is added to an adjacent Lot, then the same shall be considered as one Lot for purposes of this Declaration.
9. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Property, including contract sellers, but excluding those having an interest merely as security for the performance of an obligation.
10. "Property" shall mean that real property described more specifically in Article II of this Declaration.

11. "Review Committee" shall mean the Maplewood Estates Architectural Review Committee established pursuant to Article III.

12. "Unit" shall mean an enclosed space designated for residential habitation located on a Lot.

ARTICLE II.

PROPERTY SUBJECT TO THIS DECLARATION

The Property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is described as follows:

Lot 1 Block 2 Maplewood Estates Addition to the City of Fargo

Including any Auditor's Lot or Lots now existing or created in the future, all of which real property shall hereinafter be called the "Property".

ARTICLE III.

ARCHITECTURAL CONTROL

1. The Maplewood Estates Architectural Review Committee. There is hereby established The Maplewood Estates Architectural Review Committee ("Review Committee") for the Property which shall be comprised of only the Developer's designated agent, EagleRidge Development, LLC, 3280 Veteran's Blvd, Suite 300, Fargo, ND 58104, until the earlier of the date that residences have been constructed and completed on all lots within the Property, or until the time that the Developer decides to divest itself of responsibility for architectural control. When such control is relinquished, the responsibility shall be vested in a committee comprised of three Owners, who shall be appointed by the Board. The appointed committee shall, at that time, adopt a meeting schedule and rules of operation. It shall be conclusively presumed that there has been no complete construction upon all properties or that the Developer has not divested itself of responsibility for Architectural Control unless there is a sworn affidavit of record stating that one or the other of said factual circumstances exists. Whenever there is a reference in these documents to "Review Committee," such reference shall include either the Developer or the appointed committee.

2. Procedure for Submission of Plans and Specifications. A complete copy of the site plan, the architectural plans (including exterior elevations) (the "Plans") shall be submitted to the Review Committee at Teresa@Bullislaw.com. Approval or disapproval of those plans will be made in writing within ten (10) days after the receipt of those plans. Approval shall not be arbitrarily withheld or delayed, it being the intention of the Review Committee to grant or withhold approval for the purpose of establishing a quality, restricted residential development of like structures of similar design and workmanship, free from objectionable or value-destroying features and in conformity with the City of Fargo zoning codes, building codes and other applicable regulations then in force.

3. Architectural Control. No building, fence, wall, landscaping feature, pool, play structure, driveway, sidewalk or any other structure shall be commenced, erected or maintained on the Lots, nor shall any exterior addition to or change or alteration thereto be made to any buildings on the Lots until the Plans for the same have been submitted to and approved in writing by the Review Committee or its appointed architect from time to time.

ARTICLE IV.

RESTRICTIONS

The Property shall be subject to the following restrictions:

1. Land Use and Building Type. All Lots zoned residential shall be used for residential purposes only. No improvements or structures whatsoever, other than Developer or Review Committee approved dwellings, outbuildings, pools, garages and fences (subject to limitations hereinafter set forth) may be erected, placed or maintained on any Lot on the Property.

2. Building Location. No building shall be erected on any Lot unless side Lot clearances and front line set backs are in compliance with the City of Fargo zoning ordinances for residential zoning districts unless variances are approved by Review Committee and the City of Fargo.

3. Fencing. All fencing provided by the builder or owner, or anyone other than the Review Committee shall require the approval of the Review Committee prior to installation. All fencing must be made of maintenance free material, no chain link or wood fencing will be permitted. No fence shall be constructed to extend beyond the front of the primary structure facing the front of the Lot (that side of the lot facing a street) except on corner lots as approved by the Developer. No such fence shall exceed six feet in height. Aluminum ornamental style fencing is suggested. Any Development fencing located within the fencing easement on a Lot shall be maintained by the Developer. However, the cost of maintenance and repair of the Development fencing will be the responsibility of the lot owner.

4. Landscaping. The front and side of each Lot shall be sodded or seeded prior to the end of the first summer construction season that the Unit is completed. If a Unit is completed in the winter, it shall be sodded or seeded prior to the end of the following summer. If a Unit is completed in the same year, the rear Lot shall be seeded or sodded within one year of occupancy of the completed Unit.

5. Diseases and Insects. No Owner shall permit any condition to exist upon any Lot which shall induce, breed, or harbor infectious plant diseases or noxious insects.

6. Antennas. To the extent permitted by applicable law, the installation of antennas, satellite dishes or other devices for the transmission or reception of television

or radio signals or any other form or electromagnetic radiation shall be subject to the prior written approval of the Review Committee. Therefore, no antenna, satellite or microwave dish or other device for transmission or reception of television or radio signals shall be constructed, installed, erected, used or maintained on any Lot without the prior written approval of the Review Committee unless applicable law prohibits the Review Committee from requiring such approval. Any such antennas must be still installed in accordance with the guidelines set forth by the Review Committee.

7. Trash Containers and Collection. No garbage or trash shall be placed or kept on any Lot except in covered containers of a type, size and style which are approved by the Review Committee and the City of Fargo. In no event shall such containers be maintained so as to be Visible from neighboring Property except to make the same available for collection and then only for the shortest time reasonably necessary to effect such collection. All rubbish, trash, or garbage shall be removed from Lots and shall not be allowed to accumulate thereon. No outdoor incinerators shall be kept or maintained on any Lot. All garbage or trash shall be collected by a garbage or trash collection service as designated by the Developer or the Review Committee.

8. Basketball Goals and Backboards. No basketball goal or backboard shall be attached to a Unit or other building. Basketball goals and backboards attached to a freestanding pole are permitted on a Lot and may be installed and maintained at the expense of the lot owner.

9. Animals. Other than household pets kept for non-commercial uses, no animals, livestock, poultry or insects of any kind shall be raised, bred or maintained on any of the Lots. Pets will be restricted to owners Lot, must not be a nuisance and will not be allowed to stray to adjacent property.

10. Mailboxes. No non-conforming mailboxes shall be allowed on any Lot. Location of mailboxes will be consistent with the overall development plan and subject to approval by the Review Committee. No delivery boxes other than mailboxes for U.S. Mail will be permitted without the specific approval of the Review Committee. Snow removal and maintenance of the mailboxes shall be the responsibility of the homeowners.

11. Clotheslines. Clotheslines are not permitted.

12. Vehicle Parking Storage. No commercial vehicles, boats, motor homes, travel trailers, or construction equipment shall be permitted on any Lot in the subdivision. Motor homes, travel trailers and like vehicles shall be temporarily permitted on the Lots for the purpose of loading and unloading such vehicles or for temporary visits by visitors to the Lots. Motor homes, travel trailers and like vehicles may be stored on the Lots only if they are stored behind the front house line and are adequately screened from public view with prior approval of Review Committee. All motor vehicles kept on or about a property shall be currently licensed and shall be maintained in an operable condition at all times, temporary mechanical difficulties and breakdowns excepted.

13. Signs. No billboards or advertising signs of any kind or character shall be erected, placed, permitted or maintained on any Lot except as herein expressly permitted. A name and address sign used solely for the purpose of identification of the dwelling house occupants may be placed on the property by its occupants provided the sign is no more than two feet square maximum and the design of the sign is approved by the Review Committee prior to installation. The provisions of the paragraph may be waived by the Review Committee only when in its discretion the same is necessary to promote the sale of the property in the area of promotion of the premises. The Review Committee may erect, place and maintain such sign structure or structures as it deems necessary for the operation or identification of the subdivision.

14. Nuisance. No noxious or offensive trade or activity shall be carried on upon any Lot nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. Such restrictions shall include, but not be limited to using the Lot as a dumping ground for rubbish, garbage, trash, or other waste materials, the placing thereon of unsightly piles of dirt, lumber or other material except during construction, and then only during the course of construction. Such restrictions shall also include allowing noxious weeds to occur on the Lot either during or after the period of construction of the home.

15. Dirt Removal. No topsoil or excavation material may be removed from the Development property. When there is an excess of soil or excavation material as a result of basement excavation or Lot grading, permission to remove that material must be obtained from the Developer or Review Committee. Otherwise, the Review Committee will direct as to where the excess excavation, or soil, if any, is to be disposed of.

16. Appearance During Construction. All Lots are to be kept clean during construction. All garbage is to be stored out of sight. No garbage/trash burning will be permitted. All Lots shall comply with the storm water management practices in use in the City of Fargo during the time of construction.

17. Propane Tanks. No combustible liquid or gas tanks, exposed to view from the public street, shall be allowed on the Lots.

18. Temporary Residence. No trailer, basement, tent shack, garage, barn or other outbuilding erected on the tract shall be used as a residence, nor shall any residence of a temporary character be permitted.

19. Easements. The easements for the installation and maintenance of utility and drainage facilities are shown on the recorded plat of the Property. Within the area of the easements no structures, plantings, fencing or other materials shall be placed, erected, or permitted to remain which may damage or interfere with the installation and maintenance of utilities or which may change or alter the direction of flow of drainage channels or swales in the easements or which obstruct or retard the flow of water through drainage channels or swales in the easements. The easement areas of each Lot and all improvements on it shall be maintained continuously by the Owner except for the improvements for which the public authority or utility company is responsible. All

claims for damages, if any, arising out of the construction, maintenance and repair of the utility or drainage facility or on account of temporary or other inconvenience caused thereby against the Developer, the utility or the public authority or any of its agents or servants are waived by the Owners.

20. Power and Telephone Lines. For all the Lots, temporary overhead, distribution and service lines are permitted until permanent underground facilities are installed. Otherwise overhead lines shall be prohibited except during emergencies and repairs.

21. Mining. No derrick or other structure designed for use in exploring for oil or natural gas shall be erected, placed, or permitted upon any part of the Lots nor shall any oil, natural gas, petroleum, asphalt, or hydrocarbon products or minerals of any kind be produced or extracted anywhere in the Lots. No oil drilling, oil development operation, oil refining, quarrying, or mining operations of any kind shall be permitted on any Lot or any part of the properties nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted on part of the Lots.

22. Basements. No basement shall be constructed for temporary residential purposes and no basement structure shall be used for residential purposes unless and until the entire primary structure has been erected and complies with the building code of the City of Fargo, nor shall any trailer, tent, shack, garage, barn or other outbuilding erected on any lot at any time be used as a residence, temporary or permanent, nor shall any structure of a temporary character be used as a residence.

23. Mortgages. The breach of any of the foregoing covenants, conditions, reservations or restrictions shall not defeat or render invalid any lien, mortgage or deed of trust made in good faith for value as to any Lot or Lots or portion of Lots in the Development; but this Declaration shall be binding upon, and effective against any mortgagee, trustee or owner, whose title or whose grantor's title is or was acquired by foreclosure, trustee sale or otherwise.

24. Leasing. No Unit shall be rented for transient or hotel purposes or, in any event, for an initial period of less than six (6) months. No portion less than all of any Unit shall be leased for any period. No Owner shall lease a Unit other than on a written form of lease requiring the lessee to comply with this Declaration and all other governing documents of the Association. The written form of lease shall further provide that failure to comply constitutes default under the lease. The Board may provide a suggested standard lease form for use by Owners. Each Owner of a Unit shall, promptly following the execution of any lease of a Unit, forward a confirmed copy thereof to the Board. The foregoing provisions of this paragraph, except the restriction against use for hotel or transient purposes, shall not apply to the Developer, or to a Mortgagee in possession of a Unit as a result of foreclosure, proceeding in lieu of foreclosure, or other judicial sale.

ARTICLE V.

THE MAPLEWOOD ESTATES HOMEOWNERS ASSOCIATION

1. Membership in Association. Upon the completion of all residences in the Property, or in the sole discretion of Developer, governing control of these covenants and restrictions shall be transferred to the Board of the Association. Every Owner of any Lot which is subject by covenants of record to assessment by the Association shall be a mandatory member of the Association. There shall be one vote per Lot. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. All members of the Association shall be governed and controlled by the Articles of Incorporation and by the Bylaws thereof.

2. Creation of a Lien and Personal Obligation and Assessments. The Developer hereby covenants, and each Owner of any Lot by acceptance of a deed thereof, whether or not so expressed in such deed, is deemed to covenant and agree to pay the Association annual general assessments or charges, and special assessments for capital improvements. All assessments shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment shall also be the personal obligation of the Owner of such property at the time when the assessment fell due.

3. Method of Assessment. By vote of a majority of the members, the Association shall fix their annual assessment upon the basis provided herein, provided, however, that the annual assessment shall be sufficient to meet the obligations imposed by this Declaration. The Association shall set the date(s) such assessments shall become due. The Association may provide for collection of assessments annually or in monthly, quarterly, or semi-annual installments, provided, however, that upon default of the payment of any one or more installments, the entire balance of said assessment may be accelerated, at the option of the Association, to be declared due and payable in full.

4. General Assessment. The general assessment levied by the Association shall be used exclusively to (i) promote the improvement, maintenance and operation of the roads, underground municipal utilities, signage, mailboxes, common areas, parks, perimeter landscape and entrance to The Development, (ii) maintain the lawns, trees, and perimeter landscaping on the residential Lots, and (iii) for those purposes set forth in paragraph 8 below. Each Lot, whether improved or unimproved, shall be assessed at a uniform rate with the assessment commencing on a date and for an amount determined necessary by the Association.

5. Special Assessment for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable for that year and for not more than the next four succeeding years for the purpose of defraying in whole or in part, the cost of any construction, reconstruction, repair or replacement of capital improvements located within the development including the roads, paving of roads, underground municipal utilities, common areas, parks, entrance and the landscaped area or area of the entrance, street

lighting, banners, or other decorations to enhance the aesthetic value of the subdivision, sidewalks, or any other improvement, including fixtures and personal property related thereto, providing that any such assessment shall require the approval of a two-thirds (2/3) majority of the owners who are voting in person or by proxy at a special meeting duly called for that purpose. So long as the Developer owns any Lot any special assessment must also be approved in writing by the Developer. Any special assessment shall be levied in equal amount for each Lot. Any funds collected pursuant to this paragraph shall be held and maintained in a separate fund (the "Capital Fund") for the purposes described herein.

6. Surplus Funds. The Association shall not be obligated to spend in any year all the Assessments and other sums received by it in such year, and may carry forward as surplus any balances remaining. The Association shall not be obligated to reduce the amount of the Annual Assessment in the succeeding year if a surplus exists from a prior year, and the Association may carry forward from year to year such surplus as the Board in its discretion may determine to be desirable for the greater financial security of the Association and the accomplishment of its purposes.

7. General Taxes and City of Fargo Special Assessments. Real property taxes, general assessments and special assessments payable to the Cass County Treasurer on each Unit do not form part of the Association assessments set forth in this Declaration. Each individual Owner of a Unit is responsible for his or her own real property taxes and assessments. The assessments referenced in paragraph 8 below shall be the responsibility of the Association, and will be shared equally by the Owners of Units in the Development as set forth in that Section.

8. Taxes and Special Assessments Automatically Allocated. Notwithstanding any other terms contained in any Declaration of Covenants, Conditions, Restrictions, Reservations, Easements, Liens and Charges, Lot Owners and The Association hereby grant and convey to the city of Fargo, a North Dakota municipal corporation, the following:

- A. Ad Valorem Property Taxes. The *ad valorem* property taxes ("Taxes") levied upon the Common Area Lots shall be automatically allocated to, and shall be deemed to be automatically assessed to the Maplewood Estates Non-Common-Area Lots. Said Taxes shall be allocated on an equal basis to the Maplewood Estates Non-Common-Area Lots.
- B. Special Assessments. The special assessments that have been levied by one or more governmental entities against the Common Area Lots shall be automatically allocated to, and shall be deemed to be automatically assessed to, the Maplewood Estates Non-Common-Area Lots in the same manner as in the preceding subparagraph.
- C. The term automatically allocated and automatically assessed means that regardless of whether The Association actually completes the

process of identifying such *ad valorem* taxes or certifications of special assessments and allocating or assessing them to parcels within the Property, for purposes of this instrument, said taxes and special assessments shall be deemed to have been allocated and assessed to the parcels—the Maplewood Estates Non-Common-Area Lots.

- D. The Developer, Owners and Association hereby subrogate to the city of Fargo any and all powers provided by any covenants, conditions and restrictions that have been, or will be, granted to the Association to assess against the Lots other than the Common Area Lots, including without limitation *ad valorem* taxes, installments of special assessments or costs of abatement of nuisance.
- E. The above subrogation provision is for the benefit of the city of Fargo only, and nothing shall be interpreted to require the city of Fargo to be responsible for any of the obligations of ownership of the Common Area Lots. The city of Fargo has no obligation regarding ownership, upkeep, maintenance or the payment of any taxes or special assessments for such lots.
- F. The Lot Owners, Developer and Association agree that none of the foregoing powers or rights granted to the city of Fargo may be modified, canceled or terminated without approval of the board of city commissions of the city of Fargo, and any amendment to this Declaration that abrogates any right granted therein to the city of Fargo without such approval shall be void and of no force or effect.

9. Enforcement of Lien and Covenants.

- A. All delinquent assessments, together with interest thereon (at an interest rate equal to that rate charged by Cass County for delinquent taxes), and costs of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest thereon, attorney's fees and costs of collection thereof, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due.
- B. If the Association elects to claim a lien for non-payment of assessments, it shall at any time within thirty (30) days after the occurrence of default make a demand for payment to the defaulting owner. Said demand shall state the date and amount of delinquency. If such delinquency is not paid within ten (10) days after delivery of such notice, the Association may elect to file a claim

of lien against the Lot of such delinquent owner. Such claim of lien shall state:

- i. The name of the delinquent owner.
- ii. The legal description of the Lot against which the claim of lien is made.
- iii. The amount claimed to be due and owing.
- iv. That the claim of lien is made by the Association pursuant to the terms of this Declaration.
- v. That the lien claimed against the Lot is in an amount equal to the amount of the stated delinquency.
- vi. Due demand has been made upon the defaulting or the delinquent owner pursuant to this Declaration and that said amount was not paid within the ten (10) days after such demand.

Upon recordation of a duly executed and acknowledged original of such claim of lien by the Cass County Recorder, the lien claimed therein shall immediately attach to the real property and become effective subject to the limitations hereinafter set forth. Each default shall constitute a separate basis for a claim of lien or a lien but a number of defaults may be included within a single claim of lien. Any such lien may be foreclosed by appropriate action in court or in the manner provided by law for the foreclosure of real estate mortgages pursuant to the statutes of the State of North Dakota.

The lien of the assessments provided for above shall be subordinate to the lien of any first mortgage, first purchase money security deed, or security deed representing a first lien on said property and including the improvement note and mortgage of the Developer. Sale or transfer of any Lot pursuant to foreclosure shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall release such Lots from liability for any assessments thereafter becoming due or form the lien thereof.

- C. In addition to lien rights, the Developer or Association, as the case may be, shall have the authority to levy fines upon any homeowner who remains in default of these covenants after written notice of default. The amount of such fines shall be adjusted on a periodic basis by the Developer or Association, but the minimum amount per violation shall be set at \$50.00. Any fine not paid shall be a charge

on the land and a continuing lien on the Lot, together with attorney's fees and the cost of recording the lien.

ARTICLE VI.

MAINTENANCE

1. Areas of Association Responsibility. The Association, or its duly delegated representative, shall be responsible for the management and maintenance of (i) the roads, underground municipal utilities, signage, mail boxes, common area, parks, perimeter landscape and entrance to the Development, and all improvements located thereon, except for any part thereof which any governmental entity is maintaining or is obligated to maintain, and (ii) the lawns, trees and perimeter landscaping for each residential Lot. The Board shall be the sole judge as to the appropriate maintenance of all common areas. All grass, hedges, shrubs, vines, trees and plants of any type on a Lot shall be irrigated, mowed, trimmed and cut at regular intervals so as to be maintained in a neat and attractive manner, and consistent with the surrounding Lots and the Association maintained property. Trees, shrubs, vines, plants and grass which die shall be promptly removed and replaced with living foliage of like kind, unless different foliage is approved in writing by the Review Committee. No Owner, resident or other person shall construct or install any improvements on the common areas or alter, modify or remove any Improvements situated on the common areas without the approval of the Board. No Owner, resident or other person shall obstruct or interfere with the Association in performance of the Association's management or maintenance of the common areas, and the improvements located thereon.

2. Lots. Each Owner of a Lot shall be responsible for the maintenance of his, Unit, or other Improvements situated thereon. All Units, and other improvements shall at all times be kept in good condition and repair. No yard equipment, wood piles or storage areas may be maintained so as to be visible from neighboring property or streets. All Lots upon which no Units, buildings or other structures, landscaping or improvements have been constructed shall be maintained in a weed free and attractive manner.

3. Assessment of Certain Costs of Maintenance and Repair. In the event that the need for maintenance of and common areas is caused through the willful or negligent act of any Owner, his family, tenants, guests, or invitees, the cost of such maintenance shall be paid by such Owner to the Association upon demand and payment of such amounts shall be secured by the Assessment Lien.

4. Improper Maintenance and Use of Lots. In the event any portion of any Lot is so maintained as to present a public or private nuisance, or as to substantially detract from the appearance or quality of the surrounding Lots or other areas of the Development which are substantially affected thereby or related thereto, or in the event any portion of a Lot is being used in a manner which violates this Declaration, or in the event the Owner of any Lot is failing to perform any of its obligations under the Association Documents, the Board may make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto give notice thereof to the offending Owner

that unless corrective action is taken within fourteen (14) days, the Board may cause such action to be taken at said Owner's cost. If at the expiration of said fourteen day period of time the requisite corrective action has not been taken, the Board shall be authorized and empowered to cause such action to be taken and the cost thereof shall be paid by such Owner to the Association upon demand and payment of such amounts shall be secured by the Assessment Lien.

ARTICLE VII.

EASEMENTS

1. Easement to Inspect and Correct Violations. There is hereby created an easement in favor of the Association for ingress and egress on any Unit during reasonable hours:

- A. To inspect such property for alleged violations of this Declaration and any governing documents of the Development following receipt of a complaint, or compliance with standards following receipt of a complaint, or approved plans for alterations and improvements, provided the Owner of such Unit is given written notice of the purpose and time of inspection at least three (3) days in advance; and,
- B. Performing such correction of violations or such maintenance as is required by the Declaration on such Units.

2. Easement for Governmental Personnel. A right of entry on any Unit or common area is hereby granted to law enforcement officers, fire and rescue, public works and water meter personnel, and local animal control personnel as needed to carry out their duties, including curb stop access and enforcement of cleared emergency vehicle access zones.

3. Easement for Snow Removal/Storage. There is hereby created an easement upon, across, and over the approach at the back or front of each Unit in the Development for the placement, location, and storage of snow, ice, and slush which may be removed, taken from or extracted from the private roads in the Development.

4. Easement for Access. There is an Ingress/Egress Easement as shown on the plat created in favor of the lawful invitees, guests, or contractors of either an Owner(s) or the Association, an easement for the express purpose of providing a right of entry upon, across, over and through the private roads within the Development for the express purpose of obtaining access to a Unit, or performing a lawful contract.

Ingress and egress for the passage of motor vehicles and bicycles on the private drives constructed within the Development and of pedestrians upon all the sidewalks constructed within the Development, including particularly, but not by way of limitation, ingress and egress from the Prosperity Way on, over, and across the private roadways within the Development. This easement shall be for the benefit and use of all Units within

the Development, such that any drive constructed on a Unit shall be available for motor vehicular and bicycle use by any party traveling to or from any one of the Units and any sidewalks constructed within the Development shall be available for any pedestrian use. The easement runs with the land, and is binding upon and inures to the benefit of, the Development, and its Unit owners, respective transferees, successors, and assigns.

No fence, shrubs, or other barrier that prevents or obstructs the passage of pedestrian or vehicular travel shall be constructed across the easement. However, this provision shall not prohibit the installation of convenience facilities that do not impair the use of the easement (such as mailboxes, public telephones, benches, trash deposit enclosures, curbing, or forms of landscaping) and forms of traffic controls to the extent an owner of a parcel wishes to place or construct those improvements.

ARTICLE VIII.

PARTY WALL AGREEMENTS

1. Party Wall. The Project consists of several two (2) three (3) and four (4) plex Units. Between the Units there are common, or party walls supported by common or the same footings, foundation, and other supports and common sanitary sewer connections. Each garage has two party or common walls.

2. Units Affected. The covenants in this Article shall run with and bind the land contained herein.

3. Common Wall Deemed Not an Encroachment. The walls to be constructed on the boundary between the Units, and forming a part of each of Unit, are hereby declared to be party or common walls for the use, benefit, and enjoyment of the parties, their respective heirs, executors, administrators, successors, and assigns, and no part thereof is to be construed or deemed to be an encroachment on either of the Units situated in the Project.

4. Damage or Destruction to Common Walls. In the event of damage or destruction of a party wall or any portion thereof, from any cause other than the negligence on one of the Owners of the affected Unit, then the Owners of each of the affected Units shall at their joint and several equal expense repair or rebuild the damaged or destroyed wall, and each of the parties shall have the full use of the wall so repaired or rebuilt. If either Owner's negligence shall cause damage or destruction of the common wall, such negligent Owner shall bear the entire cost of the repair or reconstruction. If the Owner of either of the affected Unit shall neglect or refuse to pay his or her share or all of such costs in the case of negligence, the Association may have the wall repaired or restored and the same shall be deemed to be an assessment against the Unit(s) and Owner(s) who refused to pay his or her share. If, after expiration of fifteen (15) days from receipt of a written request for payment of such assessment, the Association shall be entitled to the remedies set forth herein.

5. Footings, Foundations, and Support. No part of any of the footings, foundation, and other supports, supporting the common wall constructed on the boundary between the Units is hereby declared to be party footings, foundations, and supports, shall be deemed an encroachment on any Unit or adjacent or adjoining property.

6. Repairs or Rebuilding of Footings. In the event that it should be necessary to repair or rebuild the footings, foundations, and supports, or any portion thereof, from any cause other than the negligence of either of the Owners of adjoining or adjacent Units or property, then each of the Owners shall, at their joint and equal expense, repair or rebuild the footings, foundations, and supports, and each Owner shall have the right to full use of the footings, foundations, and other supports so repaired or rebuilt.

7. Default by a Unit Owner. If any of the Owners of shall neglect or refuse to pay his or her share or all of such costs in the case of negligence, the other Owner shall be entitled to contribution and payment from the defaulting Owner for the defaulting Owner's share of the repair and reconstruction costs. The footings, foundations, and supports, when being rebuilt or restored shall be rebuilt or repaired where they are now situated, and shall be of like quality and done in a workmanlike manner consistent with the present footings, foundations, and other supports, and in such a manner as it may conform with the then-current accepted construction and engineering practices,

8. Destruction of a Unit. In the event that any of the Units situated on any adjoining lands are partially or totally destroyed by any cause whatsoever, then the Owner of said Unit will not do anything which will or will be likely to adversely affect or be detrimental in any way to the support and use of the water connection to the surviving Unit. The Owner of the surviving Unit is entitled to the party wall, footings, foundations and other supports for the surviving Unit.

ARTICLE IX.

GENERAL PROVISIONS

1. Enforcement. The Developer, Association, any Owner, City or First Mortgagee, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration, and seek specific performance, declaratory relief, or to recover damage for such violation, along with attorney's fees and court costs.

2. Right to Enforce. Failure to enforce any of the covenants, conditions, restrictions, easements, liens and charges now or hereafter imposed pursuant to the covenants or restrictions should not be deemed a waiver of the right to do so thereafter, nor shall it be construed as an act of acquiescence or approval on the part of the Owners.

3. Duration. The covenants, restrictions and conditions of this Declaration shall run with and bind the Property and shall inure to the benefit of and be enforceable by the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, devisees, successors and assigns for a term of thirty (30) years from the date this

Declaration is recorded. After that time these covenants and restrictions shall be automatically extended for successive periods of ten (10) years unless an instrument signed by a majority of the then Owners has been recorded, agreeing to modify said covenants and restrictions in whole or in part.

4. Severability. The invalidation of any one of these covenants or restrictions by Judgment or Court Order shall in no way affect any other provisions which shall remain in full force and affect.

5. Amendments. This Declaration of Covenants, Conditions and Restrictions may be amended by Developer until it divests itself of the responsibility for architectural control. It shall be conclusively presumed that the Developer has not divested itself of responsibility for architectural control unless there is a sworn affidavit of record so stating. After that time, this Declaration may be amended by an instrument signed by the owners of not less than seventy-five (75%) percent of the lots, but not without the express written approval of the City of Fargo. Any instrument amending, modifying or canceling this Declaration must be properly filed and recorded before it shall be effective.

6. Rights of the City of Fargo. Lot Owners, Developer and Association hereby agree and pledge that none of the foregoing powers or rights granted to the City of Fargo may be modified, cancelled or terminated without approval of the board of city commissioners of the City of Fargo.

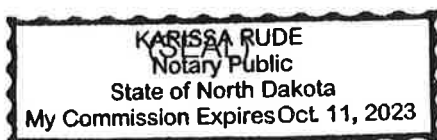
IN WITNESS of its terms and conditions, the undersigned, being the Owner and Developer, have caused this Declaration to be executed the day and year first above written.

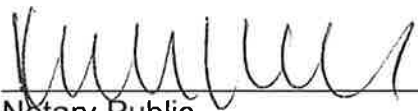
Maplewood Estates, LLC

By: 
James R. Bullis, Secretary

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

The foregoing instrument was acknowledged before me October 12, 2021 by James R. Bullis, the Secretary of Maplewood Estates, LLC, a North Dakota limited liability company, on behalf of the limited liability company.




Notary Public
Cass County, ND

ACCEPTANCE:

The city of Fargo hereby ACCEPTS DELIVERY of the RIGHTS and POWERS granted by this instrument.

CITY OF FARGO, NORTH DAKOTA,
a municipal corporation,

By: _____
Timothy J. Mahoney, Mayor

ATTEST:

Steven Sprague, City Auditor

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

On this ____ day of _____, 2021, before me, a notary public in and for said county and state, personally appeared TIMOTHY J. MAHONEY and STEVEN SPRAGUE, to me known to be the Mayor and City Auditor, respectively, of the CITY OF FARGO, Cass County, North Dakota, a municipal corporation, described in and that executed the within and foregoing instrument, and acknowledged that said municipal corporation executed the same.

(SEAL)

Notary Public
Cass County, ND

10

October 14, 2021

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

Re: Offer on Listed Property at 1367 Elm Circle N
Project #FM-19-E

Honorable Commissioners,

At your September 20, 2021 meeting, the property located at 1367 Elm Circle N was approved to be listed for sale on the Multiple Listing Service. The following day, the property was listed for sale at a listing price of \$488,000.00. Since then there have been eighteen property showings, and we have received five written offers on the property. After receiving these offers, we have negotiated a selling price for the property and are recommending approval to sell the property located at 1367 Elm Circle N for \$468,000.00.

Recommended Motion: Approve the attached purchase agreement for the sale of the City owned property located at 1367 Elm Circle N for \$468,000.00.

Sincerely,



Brenda Derrig, P.E.
City Engineer

BED/jmg
Attachment

ADDENDUM TO PURCHASE AGREEMENT: COUNTEROFFER**For use in North Dakota only**

This form approved by the Fargo-Moorhead Association of REALTORS® which disclaims any liability arising out of the use or misuse of this form.

1 Date: 10/07/20212 Counteroffer to the Purchase Agreement, dated 09/27/2021, pertaining to the property located at3 1367 ELM Circle N Fargo ND 581024 **This Counteroffer does not include the terms or conditions in any other counteroffer, unless specified below.**5 **Attach only the final Counteroffer to the Purchase Agreement.**

6 The Purchase Agreement is subject to the following Counteroffer.

7 *Select appropriate changes from the original offer.*8 ☒ Purchase price (and corresponding FHA ESCAPE CLAUSE sale price, if applicable) shall be \$ 468,000.00.9 ☐ Earnest Money shall be a total of \$ _____.10 ☐ Closing date shall be _____, 20____.11 ☐ Possession shall be _____, 20____.12 ☐ Seller agrees to complete all lender required repairs, not to exceed \$ _____.13 ☐ Seller shall pay Buyer's points, buy-down fees, prepaids and closing costs not to exceed \$ _____.14 ☐ Seller shall pay special assessments, not to exceed \$ _____.15 ☐ Other:

16 _____

17 _____

18 _____

19 _____

20 _____

21 _____

22 _____

23 **All other terms and conditions remain the same as stated in the Purchase Agreement.**24 _____
25 Seller Signature City of Fargo Date _____

Authentisign Eric J. Miller Buyer Signature	10/07/2021 Date
--	--------------------

Seller Signature	Date	Buyer Signature	Date
------------------	------	-----------------	------

28 **This is a legally binding contract. If you desire legal or tax advice, consult the appropriate professional.** FMAAR: COUNTEROFFER (Rev 9/2020)

PURCHASE AGREEMENT

For use in North Dakota only

This form approved by the Fargo-Moorhead Area Association of REALTORS® which disclaims any liability arising out of the use or misuse of this form.

1 Date: September 27, 2021 MLS#: 21-5255 Page 12 **TERMS AND CONDITIONS:** Subject to terms and conditions of this Agreement, Seller agrees to sell and convey to Buyer, and3 Buyer agrees to purchase the property at: Address 1367 ELM Circle N4 City Fargo County Cass State ND Legally described as BIRNAMWOOD LOT 8 & PT LOT 7 BLK 25 PT LOT 7 LYING ELY OF LN DESC AS BEG AT PT ON SLY ON LOT 7 LYING 80' SELY OF SW COR L6 Seller has this day agreed to sell all included real estate and personal property to Buyer for the sum of \$ 325,000.00,7 Three Hundred Twenty-Five Thousand dollars.8 Eric Miller, "Buyer" agrees to pay \$ 2,000.00 earnest money.

9 Earnest money shall be delivered to the listing broker, or, if checked, to ☐ _____
 10 within two (2) business days after the Final Acceptance Date of this Purchase Agreement. The earnest money shall be deposited in the
 11 trust account of the Earnest Money Holder as specified above within one (1) business day of receipt of the earnest money or Final
 12 Acceptance Date of this Purchase Agreement, whichever is later. Said earnest money is part payment for the purchase of property
 13 described above.

14 Buyer agrees to ☐ pay in cash ☒ finance remaining balance. Financing, if any, will be: (see Mortgage Financing section)15 ☐ Contract for Deed (see Addendum); ☐ Assumption Financing (see Addendum).16 **This sale includes the following property** (if any owned by Seller and located on said property):

- 17 • garden bulbs, plants, shrubs, and trees; • storm windows, storm doors, screens, and awnings;
- 18 • attached lighting fixtures and bulbs, fan fixtures; • window shades, blinds, traverse, curtain and drapery rods;
- 19 • towel rods; • security system equipment
- 20 • wall/ceiling-mounted speakers and mounts; • wiring/TV wall mounts;
- 21 • plumbing fixtures, water heater; • water softener ☐ owned ☐ rented ☒ none;
- 22 • lawn watering system; • shed;
- 23 • heating systems, built-in air conditioning equipment, built-in humidifier and dehumidifier, electronic air filter, environmental radon
- 24 systems, air exchange system, gas tanks and controls (if property of Seller), sump pump, attached television antenna, cable TV jacks
- 25 and wiring;
- 26 • built-ins: dishwashers, refrigerators, wine/beverage refrigerators, garbage disposals, trash compactors, ovens, cook top stoves,
- 27 warming drawers, microwave ovens, hood fans, intercoms, speakers, electronic air filter;
- 28 • attached: carpeting, mirrors, garage door openers and any controls, smoke detectors, fireplace screens, doors and heat circulating inserts;
- 29 and the following personal property shall be transferred with no additional monetary value, and free and clear of all liens and
- 30 encumbrances: _____
- 31 _____
- 32 _____

33 **This sale excludes the following property:** _____

34 _____

SALE OF BUYER'S PROPERTY36 **This Purchase Agreement is:** (check one)37 ☐ contingent on the sale of Buyer's property (see attached Addendum to Purchase Agreement: Sale of Buyer's Property Contingency)38 ☐ contingent on the successful closing of Buyer's property located at _____

39 _____ which is currently under contract. The closing of Buyer's property, if any, may

40 still affect Buyer's ability to obtain financing, if financing is applicable.

41 ☒ not contingent. Buyer represents that Buyer can perform on the Purchase Agreement without the sale and closing of another property.42 **CLOSING DATE:** The closing date shall be December 2nd, 20 21.43 **INITIAL: SELLER** _____ **DATE** _____ **BUYER** EM **DATE** 09/29/202144 **SELLER** _____ **DATE** _____ **BUYER** _____ **DATE** _____

45 ADDRESS: 1367 ELM Circle N Fargo ND 58102 Page 2

46 POSSESSION: Seller shall deliver possession of the property immediately following closing unless otherwise specified.

47 Seller agrees to remove all debris and all personal property not included herein from the property by possession date.

48 If applicable, oil in tank and other fuel on hand at the time of possession shall be _____.

49 The Buyer has a right to walk-through the property prior to closing and to establish that the property is in substantially the same condition as of the date of this Purchase Agreement.

50 SELLER DISCLOSURE: Buyer ☐ has ☒ has not received a seller's property condition disclosure. Seller agrees to notify Buyer immediately in writing of any substantive changes from any prior representations regarding the physical condition of the property.

51 Disclosure of Information on Lead-Based Paint and Lead-Based Paint Hazards, required on pre-1978 properties, ☐ is (attach) ☒ is not applicable.

52 SELLER CONTRIBUTION (not to exceed maximum amount allowed by Lender): Seller shall pay \$ 0.00 and Buyer may use it at their discretion towards points, buy-down fees, prepaid expenses or costs of closing. If Buyer does not use all of the above stated Seller contributions, the excess amount may be applied to a reduction of the loan amount or sales price, if allowed by Lender.

59 MORTGAGE FINANCING:

60 The Purchase Agreement ☒ IS ☐ IS NOT subject to the mortgage financing provisions below. If IS, complete the MORTGAGE FINANCING section below.

61 Buyer shall apply for and secure, at Buyer's expense, a:

62 ☒ CONVENTIONAL

63 ☐ DEPARTMENT OF VETERAN'S AFFAIRS ("DVA") GUARANTEED

64 ☐ FEDERAL HOUSING ADMINISTRATION ("FHA") INSURED

65 ☐ UNITED STATES DEPARTMENT OF AGRICULTURE ("USDA") RURAL DEVELOPMENT

66 ☐ OTHER _____

67 Mortgage estimated to be 90 % of the sale price amortized monthly over a period of not more than 30 years with an initial mortgage interest rate of no more than 5 % per year with 0 discount points (0.5 if required by financing program), plus

68 Private Mortgage Insurance, if applicable.

69 MORTGAGE APPLICATION: The mortgage application is to be made within five business days after the final acceptance date of this Purchase Agreement. Buyer agrees to use best efforts to secure a commitment for such financing and to execute all documents required to consummate said financing. If Buyer cannot secure a commitment for such mortgage this agreement shall become null and void; Buyer and Seller agree to sign a Cancellation of Purchase Agreement and earnest money shall be refunded to Buyer.

70 LOCKING OF MORTGAGE INTEREST RATE ("RATE"): The Rate shall be locked with the lender(s) by Buyer: (Check one)

71 ☐ WITHIN FIVE (5) BUSINESS DAYS OF FINAL ACCEPTANCE DATE OF THIS PURCHASE AGREEMENT; OR

72 ☒ AT ANY TIME PRIOR TO CLOSING OR AS REQUIRED BY LENDER(S).

73 APPRAISAL: If the property appraises for less than the purchase price, Buyer shall have the privilege and option of (a) proceeding with consummation of the contract without regard to the amount of the appraised valuation, (b) re-negotiating or (c) canceling the Purchase Agreement. If Buyer chooses to cancel, Buyer and Seller agree to sign a Cancellation of Purchase Agreement and earnest money shall be refunded to Buyer.

74 LENDER COMMITMENT WORK ORDERS: Nothing in this Purchase Agreement shall be construed as a warranty that Seller will make repairs required by the Lender commitment. However, Seller agrees to pay up to \$ 0.00 to make repairs as required by the Lender commitment. If the Lender commitment is subject to any work orders for which the cost of making said repairs shall exceed this amount, Seller shall have the following options: (A) make the necessary repairs; or (B) negotiate the cost of making said repairs with Buyer; or (C) with Buyer's consent, declare the Purchase Agreement null and void and sign a Cancellation of Purchase Agreement and earnest money paid shall be refunded to Buyer.

75 RE-INSPECTION: Re-inspection fee(s), if any, shall be paid by ☒ Buyer ☐ Seller ☐ Buyer and Seller to split fee(s) equally.

76 PERSONAL PROPERTY: We, the undersigned, do hereby certify that the personal property included in the Purchase Agreement is remaining with the property; however, it is not considered in the purchase price.

77 INITIAL: SELLER _____ DATE _____ BUYER [Signature] DATE 09/29/2021

78 SELLER _____ DATE _____ BUYER _____ DATE _____

94 ADDRESS: 1367 ELM Circle N

Fargo

ND 58102 Page 3

95 CONVENTIONAL MORTGAGE

96 **PRIVATE MORTGAGE INSURANCE (PMI):** PMI may be required by the lending institution. Buyer agrees to pay all subsequent
 97 years' mortgage insurance premiums as required by the lending institution. The said PMI may vary based on the mortgage amount,
 98 unless paid in cash at closing.

99 FHA MORTGAGE

100 **MORTGAGE INSURANCE PREMIUM:** Pursuant to Federal Regulations, a one time Mortgage Insurance Premium must be paid
 101 to FHA at the closing of this transaction. The said MIP may vary based on loan and will increase the mortgage amount unless paid in
 102 cash at closing.

103 **FHA AMENDATORY CLAUSE:** "It is expressly agreed that, notwithstanding any other provisions of this contract, the purchaser
 104 shall not be obligated to complete the purchase of the property described herein or to incur any penalty by forfeiture of earnest money
 105 deposits or otherwise unless the purchaser has been given in accordance with HUD/FHA or VA requirements a written statement by
 106 the Federal Housing Commissioner, Department of Veterans Affairs, or a direct endorsement lender, setting forth the appraised value
 107 of the property of not less than \$ _____. The purchaser shall have the privilege and option of proceeding
 108 with the consummation of the contract without regard to the amount of the appraised valuation. THE APPRAISED VALUATION IS
 109 ARRIVED AT TO DETERMINE THE MAXIMUM MORTGAGE THE DEPARTMENT OF HOUSING AND URBAN
 110 DEVELOPMENT WILL INSURE. HUD DOES NOT WARRANT THE VALUE NOR THE CONDITION OF THE PROPERTY.
 111 THE PURCHASER SHOULD SATISFY HIMSELF/HERSELF THAT THE PRICE AND THE CONDITION OF THE PROPERTY
 112 ARE ACCEPTABLE."

113 **FHA REAL ESTATE CERTIFICATION:** We, the undersigned, hereby certify that the terms of the contract for the purchase of
 114 the above referenced property are true to the best of our knowledge and belief, and that any other agreement(s) entered into in
 115 connection with this transaction is (are) attached to the sale contract.

116 **WARNING:** Section 1010 of Title 18, U.S.C., Federal Housing Administration transactions provides: "Whoever for the
 117 purpose of influencing in any way the action of such Administration...makes, passes, utters, or publishes any statement,
 118 knowing same to be false, shall be fined not more than \$5,000.00 or imprisoned not more than two years or both."

119 _____
 120 Seller Signature Date Buyer Signature Date

121 _____
 122 Seller Signature Date Buyer Signature Date

123 _____
 124 Broker/ Selling Agent Date Broker/ Listing Agent Date

125 **PERSONAL PROPERTY ADDENDUM:** We, the undersigned, do hereby certify that the personal property included in the
 126 Purchase Agreement is remaining with the property; however, it is not considered in the purchase price.

127 _____
 128 Seller Signature Date Buyer Signature Date

129 _____
 130 Seller Signature Date Buyer Signature Date

131 VA GUARANTEED MORTGAGE

132 **LENDER PROCESSING FEES:** Seller agrees to pay the VA Commitment Fee and the VA Closing Fee, if applicable, which the
 133 lender cannot charge to Buyer, not to exceed \$ _____. This amount is in addition to Seller's Contributions to Buyer's
 134 costs, if applicable.

135 **DEPARTMENT OF VETERANS' AFFAIRS ESCAPE CLAUSE:** "It is expressly agreed that, notwithstanding any other provisions
 136 of this contract, the purchaser shall not incur any penalty by forfeiture of earnest money or otherwise be obligated to complete the purchase
 137 of the Property described herein, if the contract purchase price or cost exceeds the reasonable value of the Property established by the
 138 Department of Veterans' Affairs. The purchaser shall, however, have the privilege and option of proceeding with the consummation of
 139 this contract without regard to the amount of reasonable value established by the Department of Veteran's Affairs."

140 **INITIAL: SELLER** _____ **DATE** _____ **BUYER** [ejm] **DATE** 09/29/2021

141 **SELLER** _____ **DATE** _____ **BUYER** _____ **DATE** _____

142 ADDRESS: 1367 ELM Circle N

Fargo

ND 58102 Page 4

143 REAL ESTATE TAXES, SPECIAL ASSESSMENTS & FEES

144 REAL ESTATE TAXES: Seller shall pay on the date of closing all real estate taxes due and payable in all prior years including
 145 all penalties and interest. Based upon ☒ gross ☐ discounted estimated taxes for the year 20²¹ from the Assessor to be
 146 paid as follows: At closing, Seller to pay (check one) ☐ none ☐ all ☒ prorated to the date of closing ☐ prorated to the date
 147 _____ the real estate taxes based on the year specified above. In the event the closing date is changed, the real
 148 estate taxes paid, if prorated to the date of closing, shall be adjusted to the new closing date.

149 SPECIAL ASSESSMENTS SHALL BE PAID AS FOLLOWS:

150 ANNUAL INSTALLMENTS: ☐ There are none ☐ Buyer shall assume ☐ Seller shall pay on the date of closing ☒ Buyer
 151 and Seller shall prorate to the date of closing ☐ Buyer and Seller shall prorate as of _____,
 152 all installments of special assessments due and payable for the year of closing.

153 UNCERTIFIED (balance unpaid + interest): ☐ There are none ☒ Buyer shall assume approximately \$ 1,411.95
 154 as of the date of contract. ☐ Seller shall pay uncertified special assessments on the date of closing in the amount of
 155 \$ _____ plus interest.

156 WORK IN PROGRESS/PENDING/PROPOSED: ☐ There are none ☒ Buyer shall assume approximately
 157 \$ 154.35 ☐ Seller shall pay on the date of closing special assessments in progress, pending and/or proposed as of
 158 the date of contract up to \$ _____.

159 TAX AND SPECIAL ASSESSMENT NOTICE: As of the date of this Purchase Agreement, Seller ☒ has ☐ has not received
 160 a notice regarding any new improvement project from any assessing authorities, the costs of which project may be assessed against
 161 the property. Buyer is aware there may be new public improvement projects, the costs of which may be assessed against the property.
 162 Seller agrees to immediately notify Buyer of any such notice received between the date of this Agreement and the date of closing.
 163 Seller and Buyer may then agree in writing, on or before the date of closing, to the payment terms of the notified assessments. In the
 164 absence of such an agreement, parties will agree to immediately sign a Cancellation of Purchase Agreement directing all earnest money
 165 paid hereunder to be refunded to Buyer. Following closing, Buyer shall pay all real estate taxes and any unpaid special assessments
 166 payable therewith and thereafter, for which payment is not otherwise provided. It is understood future general taxes and special
 167 assessments are only estimates.

168 Buyer is aware that there may be a tax abatement on this property which may affect the tax proration.
 169 No representations have been made concerning the amount of subsequent real estate taxes or special assessments.

170 PRO-RATA ADJUSTMENTS: All charges for water, sewer, electricity, propane, oil and natural gas, homeowner association
 171 dues and rents shall be prorated between the parties as of _____ Date of closing _____.

172 INSPECTIONS

173 Buyer is aware of the availability of property inspections. Buyer ☐ elects ☒ declines to have a property inspection(s) performed at
 174 Buyer's expense. This Purchase Agreement ☐ is ☒ is not contingent upon any inspections and/or tests of the property obtained by
 175 Buyer to determine its condition, including any non-intrusive testing or any intrusive testing as allowed pursuant to this Purchase
 176 Agreement.

177 All inspections and/or tests shall be done by inspector(s) or tester(s) of Buyer's choice, at Buyer's sole expense. Inspector(s) or
 178 tester(s) should be qualified to do the inspections and/or tests, as evidenced by a license or professional designation. If a North Dakota
 179 inspector, state registration is required. Buyer shall satisfy Buyer as to the qualifications of the inspector(s) or tester(s). Buyer shall
 180 not have the right to do intrusive testing without the prior written authorization of Seller. For purposes of this form, "intrusive testing"
 181 shall mean any testing, inspection or investigation that changes the property from its original condition or otherwise damages the
 182 property. Inspections and/or tests may include but are not limited to the following: electrical system, plumbing system, central
 183 cooling system, central heating system, ceilings, floors, basement, foundation, walls, windows, exterior, roof, radon, mold and
 184 asbestos.

185 Seller will provide access to attic(s) and crawlspace(s).

186 For purposes of this Contingency, "Calendar Days" shall end at 11:59 p.m., and include Saturdays, Sundays, and state and
 187 federal holidays.

188 All inspections, tests, and resulting negotiations, if any, shall be done within 20 Calendar Days, beginning with the day after the
 189 final acceptance of the Purchase Agreement.

190 INITIAL: SELLER _____ DATE _____ BUYER [EJM] DATE 09/29/2021

191 SELLER _____ DATE _____ BUYER _____ DATE _____

192 ADDRESS: 1367 ELM Circle N

Fargo

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193 Buyer shall have these options following inspection(s):

194 **Negotiation-** If Buyer identifies any defects pertaining to the property resulting from the inspections and/or tests and intends to
 195 negotiate the identified defects with Seller, then Buyer shall notify Seller, in writing, describing the defects and proposed remedy.
 196 If Buyer & Seller have not agreed in writing to a remedy of the identified defects within the timeframe specified on line 188, this
 197 Purchase Agreement shall be in full force and effect.

198 **And/or:**

199 **Waiver-** Notwithstanding any provision to the contrary or any notice given, Buyer may unilaterally waive any defects, providing
 200 that Buyer notifies Seller of waiver in writing, within the time specified on Line 188.

201 **Or:**

202 **Cancellation-** Notwithstanding any other provision of this Purchase Agreement, Buyer may, based on the inspections and/or
 203 tests, declare this Purchase Agreement cancelled by delivering a signed Cancellation of Purchase Agreement to Seller within the
 204 time specified on Line 188. Seller shall immediately sign the Cancellation of Purchase Agreement confirming said cancellation
 205 and directing all earnest money paid hereunder to be refunded to Buyer.

206 If Buyer fails to have the inspections and/or tests performed within the time specified on Line 188 above, or does not notify Seller of
 207 Buyer's decision within said timeframe, then this contingency shall be deemed removed and the Purchase Agreement shall be in full
 208 force and effect.

209 Any inspection and/or test required by FHA, VA, or any other governmental unit shall be done and paid for in accordance with the
 210 applicable regulations and are not part of this Inspection Contingency Addendum.

211 Seller agrees to make the property reasonably available for said inspections and/or tests.

212 **ADDITIONAL PROVISIONS**

213 **DEED/MARKETABLE TITLE:** Upon performance by Buyer, Seller shall deliver a ☒ **Warranty Deed** ☐ other deed joined in
 214 by spouse, if any, conveying marketable title, subject to: (A) building and zoning laws, ordinances, state and federal regulations; (B)
 215 restrictions relating to use or improvement of the property; (C) reservation of any mineral rights by the state; (D) utility and drainage
 216 easements which do not interfere with existing improvements; (E) rights of tenants as follows _____.

217 **TITLE AND EXAMINATION:** Seller, at Seller's expense, shall furnish an abstract of title, or a registered property abstract, certified
 218 to date. If, after examination, Seller's title is not insurable or free of defects and cannot be made so within sixty days after notice
 219 containing a written statement of defects is delivered to Seller, then said earnest money shall be refunded to Buyer, and Buyer and Seller
 220 agree to sign a Cancellation of Purchase Agreement. However, Buyer may waive defects and elect to purchase. *Buyer, at Buyer's*
 221 *option, may agree to accept an Owner's Title Policy in the full amount of the purchase price in lieu of an abstract of title if the property*
 222 *is subject to a master abstract or if no abstract of title is in Seller's possession or control.* If Buyer is to receive such policy, Seller shall
 223 pay the entire premium for such policy if no lender's policy is obtained, and only the additional cost of obtaining a simultaneously issued
 224 owner's policy if a lender's policy is obtained. Buyer shall pay the premium for the lender's policy.

225 **SELLER WARRANTIES:**

- 226 (a) that buildings are, or will be, constructed entirely within the boundary lines of the property;
- 227 (b) there is a right of access to the property from a public right of way;
- 228 (c) that Seller has not received any notice from any governmental authority as to violation of law, ordinance, or regulation for a
- 229 condition that remains uncorrected;
- 230 (d) that prior to closing, payment in full will have been made for all labor, materials, machinery, fixtures, or tools furnished
- 231 within the 90 days immediately preceding the closing in connection with construction, alteration, or repair of any structure on,
- 232 or improvement to, the property;
- 233 (e) if property is subject to restrictive covenants, Seller has not received any notice from any person or authority as to a breach
- 234 of the covenants which remains uncorrected. Any notices received by Seller will be provided to Buyer immediately.
- 235 All Seller warranties in Lines 226-234 shall survive the delivery of the deed or contract for deed.

236 **SUBDIVISION OF LAND:** If this sale constitutes or requires a subdivision of land owned by Seller, Seller shall pay all subdivision
 237 expenses and obtain all necessary governmental approvals. Seller warrants the legal description of the real property to be conveyed
 238 has been or will be approved for recording as of the date of closing.

239 **INSURANCE:** Buyer agrees to obtain insurance coverage satisfactory to their lender upon closing.

240 **RISK OF LOSS:** If there is any loss or damage to the property between the date hereof and the date of closing for any reason,
 241 including fire, vandalism, flood, earthquake, or act of God, the risk of loss shall be on Seller. If the property is destroyed or
 242 substantially damaged before the closing date, this Purchase Agreement is canceled, at Buyer's option, by written notice to Seller. If
 243 Buyer cancels this Purchase Agreement, Buyer and Seller shall immediately sign a Cancellation of Purchase Agreement confirming
 244 said cancellation and directing all earnest money paid hereunder to be refunded to Buyer.

245 INITIAL: SELLER _____ DATE _____ BUYER [Signature] DATE 09/29/2021

246 SELLER _____ DATE _____ BUYER _____ DATE _____

247 ADDRESS: 1367 ELM Circle N

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248 ENVIRONMENTAL CONCERNS: To the best of Seller's knowledge, there are no hazardous substances or underground storage
 249 tanks unless otherwise noted in Purchase Agreement.

250 ARBITRATION: Optional and voluntary residential real property arbitration may be an option if a dispute arises out of this real
 251 estate transaction. This option must be agreed to by all parties. If you are interested, information may be obtained from licensee.

252 FINAL ACCEPTANCE: Buyer understands and agrees that this Purchase Agreement is subject to acceptance by seller in writing.
 253 To be binding, this Purchase Agreement must be fully executed by both parties and a copy must be delivered.

254 OFFER CONFIDENTIALITY: Buyer is aware that Purchase Agreements generally are not confidential and in some cases Seller,
 255 in dealing with multiple offers, could make other buyers aware of the existence and contents of this Purchase Agreement. Buyer is
 256 aware that Buyer could make this offer contingent upon confidentiality prior to commencing negotiations with the Seller.

257 DISCLOSURE OF SALE TERMS: Buyer and Seller understand that the RMLS and members of the Fargo-Moorhead Area
 258 Association of REALTORS® will be notified as to the price and terms of sale, upon closing.

259 DEFAULT: If Buyer defaults in any of the agreements herein, Seller may terminate this Purchase Agreement and payments made
 260 hereunder may be retained by Seller to apply to damages (which Buyer agrees equals or exceeds that amount). This provision shall
 261 not deprive either Buyer or Seller of the right to recover damages for a breach of this Agreement or of the right of specific performance
 262 of this Agreement, provided this Purchase Agreement is not terminated, and further provided, as to specific performance, such action
 263 is commenced within six months after such right of action arises.

264 TIME OF ESSENCE: Time is of the essence in this Purchase Agreement. This means that all deadlines are intended to be strict and
 265 absolute.

266 FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT ("FIRPTA"): As a general rule, 26 U.S. Code § 1445 (hereinafter
 267 "FIRPTA") requires a transferee (Buyer) of a United States real property interest to withhold a tax from the proceeds of any disposition
 268 of the real property interest if the transferor (Seller) is a foreign person (any person other than a United States person), unless an
 269 exception to the FIRPTA withholding requirements applies. Exemptions from the general rule are set forth in the FIRPTA. Due to
 270 the complexity of the FIRPTA, both the Buyer and the Seller are advised to seek appropriate legal and tax advice regarding
 271 FIRPTA compliance, since failure to adhere to the FIRPTA withholding rules could result in legal liability to both the Buyer
 272 and Seller and their agents or qualified substitutes.

273 Seller hereby represents and warrants that Seller ☐ is ☒ is not a foreign person, as defined by the FIRPTA. This representation of
 274 the Seller shall survive closing. Seller's agents and Buyer's agents, and any qualified substitute, as those terms are defined by the
 275 FIRPTA, may rely upon this representation.

276 If the Seller represents that it is a foreign person, Buyer may be subject to income tax withholding requirements, and Buyer could be
 277 personally liable for failing to withhold a tax from the proceeds of the real estate disposition, if none of the enumerated exemptions to
 278 the FIRPTA apply to the transaction. If the Seller represents that it is a foreign person, but that one of the exemptions to the FIRPTA
 279 apply, Buyer may require Seller to provide specific documentation as prescribed by the FIRPTA to verify, under penalty of perjury,
 280 that one of the exemptions to the FIRPTA withholding requirements applies to the transaction. If the Seller represents that it is not a
 281 foreign person, Buyer, or its agents or qualified substitutes, may require the Seller to provide specific documentation as prescribed by
 282 the FIRPTA to verify, under penalty of perjury, that the Seller is not a foreign person. On or before closing, Buyer and Seller agree to
 283 complete, execute and deliver any affidavit, instrument, or statement which may reasonably be required to comply with FIRPTA
 284 requirements.

285 ELECTRONIC SIGNATURES: The parties agree the electronic signature of any party on any document related to this transaction
 286 constitutes a valid, binding signature.

AGENCY

287 NOTICE OF AGENCY REPRESENTATION: This notice does not satisfy statutory Agency Disclosure requirements.

288 Ryan Rettig is ☒ Buyer's Agent ☐ Seller's Agent ☐ Dual Agent ☐ Non-Agent
 289 Licensee -----check one-----

290 Beyond Realty
 291 Brokerage

292 Susan Ebeling is ☐ Buyer's Agent ☒ Seller's Agent ☐ Dual Agent ☐ Non-Agent
 293 Licensee -----check one-----

294 Beyond Realty
 295 Brokerage

296 INITIAL: SELLER _____ DATE _____ BUYER EFM DATE 09/29/2021

297 SELLER _____ DATE _____ BUYER _____ DATE _____

298 ADDRESS: 1367 ELM Circle N

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299 DUAL AGENCY REPRESENTATION:

300 ☒ Dual Agency representation does not apply in this transaction. Skip lines 301-315.301 ☐ Dual Agency representation does apply in this transaction.

302 Broker represents both Seller(s) and Buyer(s) of the property involved in this transaction, which creates dual agency. This means that
 303 Broker and its salespersons owe fiduciary duties to both Seller(s) and Buyer(s). Because the parties may have conflicting interests,
 304 Broker and its salespersons are prohibited from advocating exclusively for either party. Broker cannot act as a Dual Agent in this
 305 transaction without the consent of both Seller(s) and Buyer(s). Seller(s) and Buyer(s) acknowledge that:

- 306 (1) confidential information communicated to Broker which regards price, terms, or motivation to buy or sell will remain
 307 confidential unless Seller(s) or Buyer(s) instructs Broker in writing to disclose this information. Other information will be shared;
 308 (2) Broker and its salespersons will not represent the interest of either party to the detriment of the other; and
 309 (3) within the limits of dual agency, Broker and the salespersons will work diligently to facilitate the mechanics of the sale.

310 With the knowledge and understanding of the explanation above, Seller(s) and Buyer(s) authorize and instruct Broker and its
 311 salespersons to act as dual agents in this transaction.

312 Seller _____ Date _____ Buyer _____ Date _____
 313

314 Seller _____ Date _____ Buyer _____ Date _____
 315

316 APPOINTED AGENCY: Appointed Agency ☒ does ☐ does not apply.317 Seller warrants that the property is directly connected to: ☒ city sewer ☒ city water ☐ rural water ☐ well ☐ none.

318 This Purchase Agreement ☐ is (attach) ☐ is not subject to a Subsurface Sewage Treatment System and Well Inspection Contingency
 319 Addendum.

320 SUBSURFACE SEWAGE TREATMENT SYSTEM: Seller ☐ does ☒ does not know of a subsurface sewage treatment system
 321 on or serving the property. (If does, see Subsurface Sewage Treatment System Disclosure Statement.)

322 ☐ Buyer ☐ Seller agrees to provide, if required by this Purchase Agreement, governing authority, and/or lender, a licensed
 323 inspector's subsurface sewage treatment system report or notice indicating if the system complies with applicable regulations. A valid
 324 certificate of compliance for the system may satisfy this obligation. Seller is not obligated to upgrade, repair or replace the subsurface
 325 sewage treatment system unless otherwise agreed to in this Purchase Agreement.

326 PRIVATE WELL: Seller ☐ does ☒ does not know of a well on or serving the property. (If does, and well is located on the
 327 property, see Well Disclosure Statement.)

328 ☐ Buyer ☐ Seller agrees to provide a water quality test if required by this Purchase Agreement, governing authority, and/or lender.

329 SELLER WARRANTIES: All appliances, heating, air conditioning, wiring and plumbing systems located on the property and included
 330 in this Purchase Agreement will be in working order on the date of closing, except _____
 331 _____.

332 LINKED DEVICES: Seller warrants that Seller shall permanently disconnect or discontinue Seller's access or service to any device
 333 or system on or serving the property that is connected or controlled wirelessly, via internet protocol ("IP") to a router or gateway or
 334 directly to the cloud no later than delivery of possession as specified in this Purchase Agreement.

335 HOME PROTECTION/WARRANTY PLAN: Buyer and Seller are advised to investigate the various home protection/warranty
 336 plans available for purchase. Different home protection/warranty plans have different coverage options, exclusions, limitations and
 337 service fees. Most plans exclude pre-existing conditions.

338 Buyer ☐ elects ☒ declines to have a home protection/warranty plan. If elects, home warranty will be obtained by ☐ Buyer
 339 ☐ Seller and paid for by ☐ Buyer ☐ Seller to be issued by _____ at a cost not to exceed
 340 \$ _____.

341 INITIAL: SELLER _____ DATE _____ BUYER EJA DATE 09/29/2021

342 SELLER _____ DATE _____ BUYER _____ DATE _____

343 ADDRESS: 1367 ELM Circle N Fargo ND 58102 Page 8

344 OTHER TERMS: _____

345 _____

346 _____

347 _____

348 _____

349 _____

350 _____

351 _____

352 **ADDENDA:** The following addenda are attached and made a part of this Purchase Agreement.353 **NOTE:** Disclosures are not part of this Purchase Agreement354 ☒ Addendum to Purchase Agreement355 ☐ Addendum to Purchase Agreement: Contract for Deed Financing356 ☐ Addendum to Purchase Agreement: Disclosure of Information on Lead-Based Paint and Lead-Based Paint Hazards357 ☐ Addendum to Purchase Agreement: Sale of Buyer's Property Contingency358 ☐ Addendum to Purchase Agreement: Subsurface Sewage Treatment System and Well Inspection Contingency359 ☐ Addendum or Amendment to Purchase Agreement: Buyer's Move in Agreement360 ☐ Coronavirus Addendum/Amendment (North Dakota Association of REALTORS®)

361 **ENTIRE AGREEMENT:** This Purchase Agreement, any accompanying exhibits, and any addenda or amendments signed by the
 362 parties shall constitute the entire agreement between Seller and Buyer and supersedes all other written or oral agreements between
 363 Seller and Buyer. This Purchase Agreement can be modified only in writing signed by Seller and Buyer. All monetary sums are
 364 deemed to be United States currency for purposes of this agreement. Buyer or Seller may be required to pay certain closing costs
 365 which may effectively reduce the proceeds from the sale or increase the cash outlay at closing.

366 ☐ This is a backup offer.

367 A copy of this agreement may be delivered in person or electronically to Seller, Buyer or their agents.

368 **BUYER:** Buyer agrees to purchase the property for the price, terms and conditions as set forth above. Buyer has reviewed and
 369 understands all pages of this Purchase Agreement.

370  09/29/2021
 371  Date Buyer Signature Date

372 **Eric J Miller**
 373 Buyer Printed Name Buyer Printed Name

374 **SELLER:** Seller accepts this Purchase Agreement and authorizes Listing Broker to withdraw said property from the market, unless
 375 instructed otherwise in writing. Seller has reviewed and understands all pages of this Purchase Agreement.

376 ☒ If checked, this Purchase Agreement is subject to attached Addendum to Purchase Agreement: Counteroffer.

377 All Sellers must sign.

378 _____
 379 Seller Signature Date Seller Signature Date

380 **City of Fargo**
 381 Seller Printed Name Seller Printed Name

382 **FINAL ACCEPTANCE DATE:** _____

383 This is a legally binding contract. If you desire legal or tax advice, consult the appropriate professional.

ADDENDUM TO PURCHASE AGREEMENT: BUYER PURCHASE "AS IS" AND LIMITATIONS OF SELLER LIABILITY

For use in North Dakota only

This form approved by the Fargo-Moorhead Association of REALTORS® which disclaims any liability arising out of the use or misuse of this form.

Date: 10/12/21

September, 27th

Addendum to Purchase Agreement between parties, dated _____, 20 ²¹ _____ pertaining to the purchase and sale of the property located at: 1367 Elm Circle N City Fargo

State ND legally described as BIRNAMWOOD LOT 8 & PT LOT 7 BLK 2 PT LOT 7 LYING ELY OF LN DESC AS BEG AT PT ON SLY ON LOT 7 LYING 80' SELY OF SW COR L

Limitation of Seller Liability: The property is being sold in its existing condition. Buyer acknowledges that the property, including all improvements, is being sold on an "As-is" and "Where-is" basis, with all existing faults. Prior to closing, Buyer will make such inspections of the property as are consistent with the terms of this Purchase Agreement in order to satisfy Buyer as to the condition of the property. The seller warranties contained in the Purchase Agreement shall remain unmodified by this Addendum. The "Risk of Loss" provisions of the Purchase Agreement shall remain unmodified by this Addendum. Seller remains obligated to make "Other Required Disclosures". Except for "Other Required Disclosures", Buyer acknowledges that Seller has not made any oral or written representations regarding the condition of the property subject to this Purchase Agreement. By accepting delivery of the deed at closing, Buyer will be deemed to have accepted the condition of the property subject to this Purchase Agreement as satisfactory to Buyer, and Seller shall have no liability with respect to the condition of such property. Buyer waives any claims related in any way to the condition of the property.

WARNING: THIS ADDENDUM WILL AFFECT THE LEGAL RIGHTS OF BUYER AND SELLER. BUYER AND SELLER ARE STRONGLY ENCOURAGED TO OBTAIN LEGAL ADVICE BEFORE AGREEING TO THIS ADDENDUM.

The obligation to disclose material facts as a REALTOR® comes from the Code of Ethics (Article 2).

There is no ability for a REALTOR® to obtain a waiver of this disclosure obligation.

Any material fact which a REALTOR® is aware of MUST be disclosed to Buyer prior to the buyers entering into a Purchase Agreement.

Seller Signature _____ Date _____

Authenticator
[Eric] Miller 10/13/21
Buyer Signature _____ Date _____

Seller Signature _____ Date _____

Buyer Signature _____ Date _____

This is a legally binding contract between Buyer(s) and Seller(s). If you desire legal or tax advice, consult an appropriate professional.

FMAAR: AS IS (New 9/2020)

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE



Type: South Storm Sewer Retention Pond Easement

Location: Selkirk Addition

Date of Hearing: 10/11/2021

RoutingDate

City Commission

10/18/2021

PWPEC File

X

Project File

Jody Bertrand

The Committee reviewed the accompanying correspondence from Division Engineer, Jody Bertrand, regarding and easement over the existing south storm sewer retention pond located in the Selkirk Addition area (unplatted and adjacent to the future 67th Avenue South).

This pond will be expanded with the next phase of the Selkirk improvement. It is the present location for the storm sewer lift station adjacent to Drain 53. This easement allows City Staff the access to maintain and repair the pond until a future platted lot is dedicated to the City.

Staff is recommending approval of the easement for the Selkirk South Pond.

On a motion by Ben Dow, seconded by Nicole Crutchfield, the Committee voted to recommend approval of the easement for the Selkirk South Pond to allow access for maintenance and repair responsibilities.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve the easement for the Selkirk South Pond to allow access for maintenance and repair responsibilities.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: N/A

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

Yes No

N/AN/AN/ACOMMITTEE

Present Yes No Unanimous

[X]

Tim Mahoney, Mayor

☒☒☐

Nicole Crutchfield, Director of Planning

☒☒☐

Steve Dirksen, Fire Chief

☒☒☐

Bruce Grubb, City Administrator

☐☐☐

Ben Dow, Director of Operations

☒☒☐

Steve Sprague, City Auditor

☒☒☐

Brenda Derrig, City Engineer

☒☒☐

Kent Costin, Finance Director

☒☒☐

ATTEST:

Brenda E. Derrig, P.E.
 City Engineer

Memorandum

To: Members of PWPEC

From: Jody Bertrand, PE, CFM Division Engineer

CC: Brenda Derrig, City Engineer

Date: October 11, 2021

Re: Selkirk Addition Area - South Storm Sewer Retention Pond Easement – Maintenance and Repair

The City of Fargo requested an easement over the existing south storm sewer retention pond located in the Selkirk Addition area (unplatted and adjacent to the future 67th Avenue South). This pond will be expanded with the next phase of the Selkirk improvements. This pond is the present suction location for the storm sewer lift station, adjacent to Drain 53. This easement allows City Staff the access to maintain and repair the pond until a future platted lot is dedicated to the City.

Attached to this memorandum is the easement document needing the Mayor's signature and County recording.

Recommended Motion

Approve easement for the Selkirk South Pond access, maintenance and repair responsibilities.

JRB/jmg
Attachments

PERMANENT EASEMENT
(Retention Pond and Concrete Driveway)

KNOW ALL MEN BY THESE PRESENTS that **EARLYNE HECTOR**, hereinafter referred to as "Grantor", whether one or more, for and in consideration of the sum of One and no/100 Dollars (\$1.00) and other valuable consideration, to it in hand paid, the receipt whereof is hereby acknowledged, **HEREBY GRANTS UNTO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA**, a municipal corporation, its successors and assigns, hereinafter referred to as "Grantee", a permanent and perpetual easement for the construction of a retention pond and pump station concrete driveway, together with any and all other appurtenant structures or devices, said tracts of land being more particularly described as follows:

A tract of land in the Northeast Quarter of Section 11, Township 138 North, Range 49 West of the 5th Principal Meridian, City of Fargo, Cass County, North Dakota described as follows:

Beginning at the intersection of the south right-of-way line of 67th Avenue South with the west line of Lot 13, Block 1 of SELKIRK PLACE FIRST ADDITION to the City of Fargo as shown on document 1591800 on file at the Cass County Recorder's Office; thence South 02°10'41" East, along said west line, a distance of 300.00 feet; thence South 87°59'22" West, parallel with said south right-of-way line, a distance of 300.00 feet; thence North 02°10'41" West, parallel with said west line, a distance of 300.00 feet to said south right-of-way line; thence North 87°59'22" East, along said south right-of-way line, a distance of 300.00 feet to the point of beginning.

Said tract contains 90,000 square feet, more or less.

Said tract is pictorially represented on Exhibit "A" attached hereto.

Grantor, its successors and assigns, hereby covenants to and with Grantee that Grantee's officers, contractors, agents and employees may, at any and all times when necessary or convenient to do so, go over and upon said above-described tract of land and perform any and all acts necessary or convenient to carry into effect the purpose for which the grant is made. Grantee, its successors and assigns, will perform any and all maintenance required to the above-described tract of land, including but not limited to pond slope maintenance, erosion control devices, and turf maintenance. The easement shall be dedicated in the future plat.

Grantor, its successors and assigns, further understands and agrees that they will not disturb, injure, molest or in any manner interfere with said retention pond and concrete driveway, as constructed, and the customary appurtenances, or with material for laying, maintaining, operating or repairing the same, in, over or upon the above-described premises. Grantor, its successors and assigns, further expressly warrants and states that no buildings, trees, shrubs, sprinkler systems or other obstacles of any kind shall be placed or located upon the tract in any manner which may interfere with said retention pond or concrete driveway.

(Signatures on following page.)

IN WITNESS WHEREOF, Grantor has set its hand and caused this instrument to be executed this ____ day of _____, 2021.

GRANTOR:

Earlyne Hector

STATE OF _____)
) ss.
COUNTY OF _____)

On this ____ day of _____, 2021, before me, a notary public in and for said county and state, personally appeared Earlyne Hector to me known to be the person described in and who executed the within and foregoing instrument, and acknowledged to me that she executed the same.

(SEAL)

Notary Public

County,

IN WITNESS WHEREOF, Grantee has set its hand and caused this instrument to be executed this ____ day of _____, 2021.

CITY OF FARGO, a North Dakota
a municipal corporation,

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

ATTEST:

Steven Sprague, City Auditor

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

On this ____ day of _____, 2021, before me, a notary public in and for said county and state, personally appeared Dr. Timothy J. Mahoney, M.D. and Steven Sprague, to me known to be the Mayor and City Auditor, respectively, of the City of Fargo, a North Dakota municipal corporation, described in and that executed the within and foregoing instrument, and acknowledged that said municipal corporation executed the same.

(SEAL)

Notary Public
Cass County, ND

The legal description was prepared by:
Brent W. Wacha, LS-5068
City of Fargo, Engineering Department
225 4th Street North
Fargo, ND 58102
701-241-1545

This document was prepared by:
Nancy J. Morris
Assistant City Attorney
Erik R. Johnson & Associates, Ltd.
505 Broadway N., Ste. 206
Fargo, ND 58102
701-280-1901
nmorris@lawfargo.com

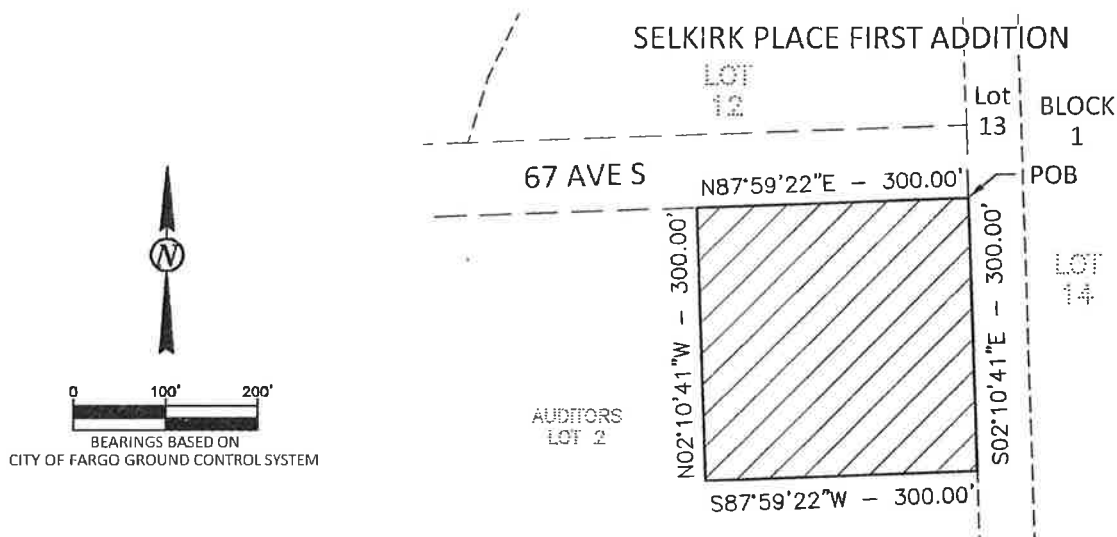
EXHIBIT A

Description:

A tract of land in the Northeast Quarter of Section 11, Township 138 North, Range 49 West of the 5th Principal Meridian, City of Fargo, Cass County, North Dakota described as follows:

Beginning at the intersection of the south right-of-way line of 67th Avenue South with the west line of Lot 13, Block 1 of SELKIRK PLACE FIRST ADDITION to the City of Fargo as shown on document 1591800 on file at the Cass County Recorder's Office; thence South $02^{\circ}10'41''$ East, along said west line, a distance of 300.00 feet; thence South $87^{\circ}59'22''$ West, parallel with said south right-of-way line, a distance of 300.00 feet; thence North $02^{\circ}10'41''$ West, parallel with said west line, a distance of 300.00 feet to said south right-of-way line; thence North $87^{\circ}59'22''$ East, along said south right-of-way line, a distance of 300.00 feet to the point of beginning.

Said tract contains 90,000 square feet, more or less.



LEGEND

- EASEMENT AREA
- LOT LINE
- RIGHT-OF-WAY LINE
- EXISTING EASEMENT LINE



ENGINEERING DEPT.

PERMANENT EASEMENT

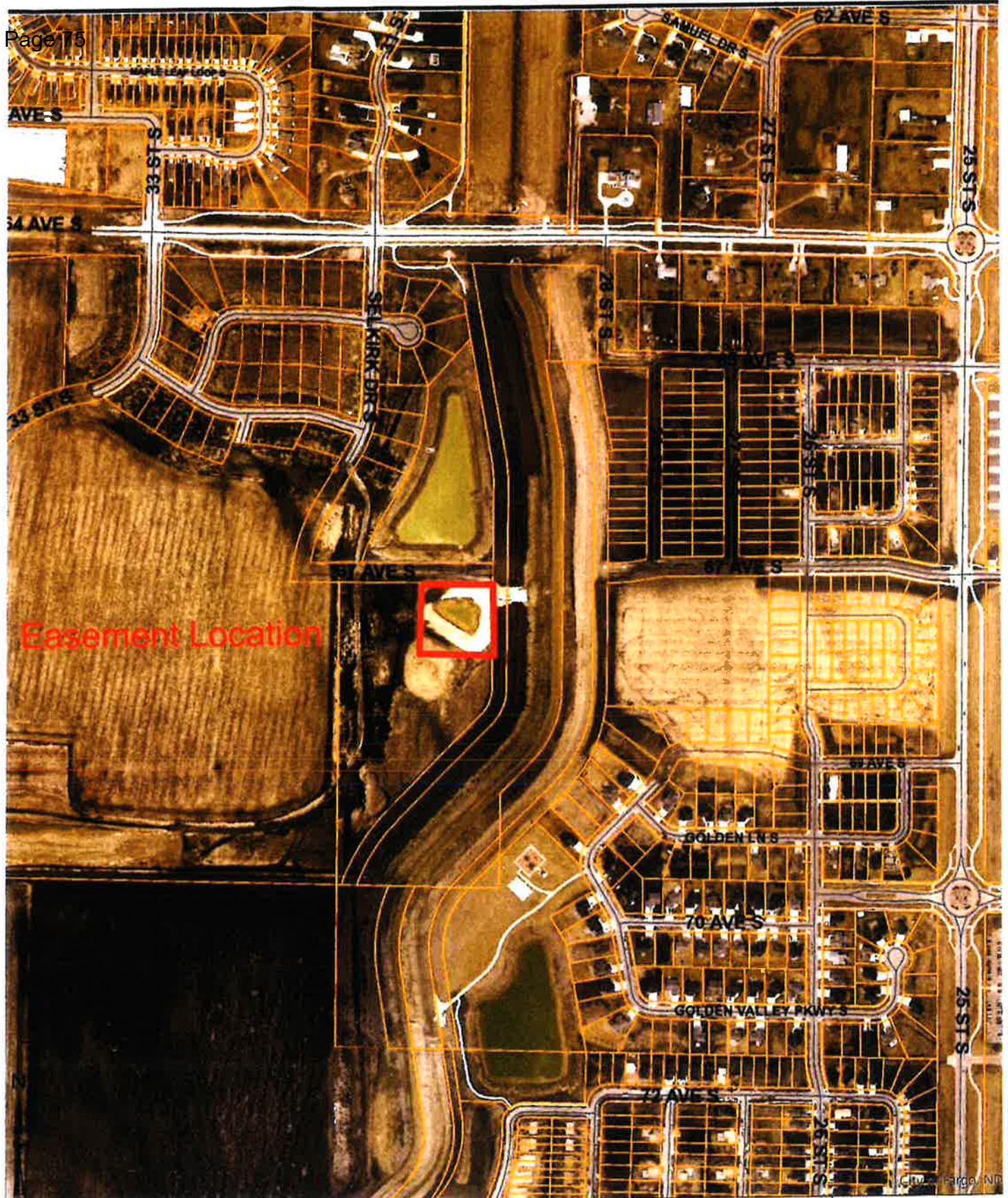
NE 1/4, SECTION 11, T. 139 N., R. 49 W. OF 5TH P.M.,
CITY OF FARGO, CASS COUNTY, NORTH DAKOTA

DRAWN BY: BWV

APPROVED BY: BWV

DATE: AUGUST 17, 2021

SHEET 1 OF 1



These data are provided on an "AS-IS" basis, without warranty of any type, expressed or implied, including but not limited to any warranty as to their performance, merchantability, or fitness for any particular purpose.

Selkirk Easement Location

1:9,028

10/7/2021 7:44 AM

This map is not a substitute for accurate field surveys or for locating actual property lines and any adjacent features.

THE CITY OF
Fargo
FAR MORE



(12)

October 8, 2021

Fargo City Commission
200 3rd Street North
Fargo, ND 58102

RE: Approve FARGODOME Ticketmaster Contract

Commissioners:

FARGODOME requests your approval of the attached Ticketmaster contract related to the bid award approved by the Fargo Dome Authority on May 25, 2021 and the City Commission on June 1, 2021. The contract has a start date of September 20, 2021 (to accommodate ticket sales for 2022 events) and end date of 12/31/2027, with the opportunity for contract extensions under mutually agreeable terms.

The bid was awarded based on responses received through an RFP process. Criteria considered in the selection include the following items:

- Quality, reliability, and overall **functionality** of the vendor's product.
- The vendor's ability to provide the necessary **support**.
- The vendor's **experience** in providing integrated ticketing and marketing solutions for buildings similar in nature to FARGODOME.
- **Cost effectiveness** of the solution.
- The vendor's ability to **meet the implementation date** required, and facilitate a **smooth transition** to their system (if applicable).
- Overall **business and financial viability** of the vendor.
- **Clarity and completeness** of the vendor's response to the RFP.

Requested Motion: The Fargo City Commission moves to approve the attached Ticketmaster contract as the computerized ticket provider for FARGODOME.

Thank you for your consideration of this matter.

Very truly yours,

Rob Sobolik
General Manager, FARGODOME

Fargo City Commission - June 1, 2021

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The Regular Meeting of the Board of City Commissioners of the City of Fargo, North Dakota, was held in the City Commission Room at City Hall at 5:00 o'clock p.m., Tuesday, June 1, 2021.

The Commissioners present or absent were as shown following:

Present: Gehrig, Piepkorn, Preston, Strand, Mahoney.

Absent: None.

Mayor Mahoney presiding.

The Mayor read a message with the following information: As of May 27th, Fargo Cass Public Health (FCPH) has administered 47,017 doses of COVID-19 vaccine; coronavirus in the community is more manageable now, yet the virus is still present and those who are eligible should get the vaccine; the Library is gearing up to host the annual Summer Reading Challenge for all ages starting June 7th; a Virtual Pet Show and Tell event with a game of Bingo is June 9th at the Library; an author visit by Jack Zaleski is June 10th featuring his new book "Forum Communications Company: A Narrative History 1980-2018;" Human Resources Manager Jennifer Lyon passed away on May 28th; Public Works Streets Supervisor Lee Anderson is retiring on June 3rd; an electrical vehicle (EV) charging station has been installed in the west parking lot of City Hall; and a video was shown featuring the Fargo Fire Department's newly sworn in firefighters.

Order of Agenda Approved:

Commissioner Piepkorn moved the Order of the Agenda be approved, moving Item No. "I" from the Consent Agenda to the Regular Agenda.

Second by Gehrig. All the Commissioners voted aye and the motion was declared carried.

Minutes Approved:

Commissioner Preston moved that the Minutes of the Regular Meeting of the Board held on May 17, 2021 be approved as read.

Second by Strand. All the Commissioners voted aye and the motion was declared carried.

Consent Agenda Approved:

Commissioner Strand moved the Consent Agenda be approved as follows:

1. Receive and file an Ordinance Repealing Article 12-04 of Chapter 12 of the Fargo Municipal Code Relating to Wildlife Management Program-Regulations (moved to the Regular Agenda).

2. 2nd reading and final adoption of the following Ordinances; 1st reading on 5/17/21:

a. Rezoning a Certain Parcel of Land Lying in 220 Addition to the City of Fargo, Cass County, North Dakota.

b. Rezoning Certain Parcels of Land Lying in EOLA Addition to the City of Fargo, Cass County, North Dakota.

c. Rezoning Certain Parcels of Land Lying in Golden Valley Fifth Addition to the City of Fargo, Cass County, North Dakota.

d. Rezoning Certain Parcels of Land Lying in Sanford Addition to the City of Fargo, Cass County, North Dakota.

3. Findings of Fact, Order and Notice of Entry of Order for property at 1343 2nd Avenue South.

4. Findings of Fact, Order and Notice of Entry of Order for property at 1426 4th Avenue North.

5. Site Authorizations for Games of Chance.

a. North Dakota Association for the Disabled, Inc. at Cowboy Jack's, O'Kelly's and Bulldog Tap.

b. Metro Sports Foundation at Brewtus Clubhouse, Mexican Village, Radisson Blu and Scheels Arena.

c. Special Olympics of North Dakota at Rooters Bar.

d. Sharehouse, Inc. at Ricks Bar, Bismarck Tavern, Baymont Inn/Alibi Lounge, The RoundUp Saloon and Woody's.

6. Applications for Games of Chance.

a. Grand Chapter Order of the Eastern Star Foundation, Inc. for a raffle on 6/9/22.

b. AOI Foundation for a raffle on 6/26/21.

7. Policy on Storm Water Discharge and Treatment Requirements – April 2021.

8. License Agreement with Nichole's Fine Pastry, LLC for outdoor dining at 13 8th Street South.

9. Encroachment Agreement (Sidewalk Dining) with Block 9 Partners, LLC and Aparium Hotel Group, LLC for outdoor dining at 215 Broadway.

10. License Agreement with the Downtown Community Partnership for Al Fresco dining.

11. Amendment (First) to Right of Way Use Agreement with Great Plains 1001 Holdings, LLC and Bakken Contracting Co, LLC.

12. Bid award to JDP Electric for the replacement of the Fire Alarm System at the FARGODOME (RFP21103).

13. Bid award to Ticketmaster for ticketing provider at the FARGODOME and the Civic Center (RFP21088).

14. State Water Commission request for cost reimbursement for the FM Metro Area Flood Risk Management Project for costs totaling \$4,262,543.72.

15. Purchase of Service Agreement with Mapleton Public School District for the 2021-2022 school year.

16. Agreement for Services with Casey Hallwachs.

17. Agreement for Physician Services with Dr. Tracie Newman.

18. Agreement with Camila Van Dyke for the Contract Human Resources Manager position.

19. Set June 14, 2021 at 5:15 p.m. as the date and time for a Hearing on a dangerous building at 1033 5th Street North.

20. Owner Agreement with Elliott Place Four, LLP to commit HOME Investment Partnership (HOME) Funds for a new construction project at 4462 30th Avenue South.

21. Rebate Grant Agreement with the North Dakota Department of Environmental Quality, Air Quality Division.

22. Bid award to Clean Harbors Environmental Services, Inc. for the recycling and disposal of chemicals and Green Lights Recycling, Inc. for electronics and fluorescent bulb disposal services for Household Hazardous Waste Services (RFP21077).

23. Amendment to Joint Powers Agreement for Transit Support with NDSU and Agreement for Transit Services with NDSU.

24. Bid award to Gast Construction in the amount of \$1,772,000.00 with four alternates for the GTC Exterior Renovation project (AFB21101).

25. North Dakota Department of Transportation Amendments to Contract Nos. 38190961A, 38190960C, 38190973A, 38190959A and 38190306A.

26. Contract and bond for Project No. FM-19-B1.

27. Bills in the amount of \$9,434,485.99.

Second by Gehrig. On call of the roll Commissioners Strand, Gehrig, Piepkorn, Preston and Mahoney voted aye.

No Commissioner being absent and none voting nay, the motion was declared carried.

Amended Engineer's Report for Improvement District No. PR-21-F Approved:

The Board received an Amended Engineer's Report from Assistant City Engineer Tom Knaknuhs for Concrete Paving Rehab/Reconstruction Improvement District No. PR-21-F.

Commissioner Strand moved the Amended Engineer's Report for Concrete Paving Rehab/Reconstruction Improvement District No. PR-21-F be approved.

Second by Gehrig. On call of the roll Commissioners Strand, Gehrig, Piepkorn, Preston and Mahoney voted aye.

No Commissioner being absent and none voting nay, the motion was declared carried.

Purchase Agreement with Dabbert Custom Homes LLC Approved (Improvement District Nos. UN-20-B1 and PN-20-B1):

The Board received a communication from Land Acquisition Specialist Shawn Bullinger stating a final purchase price has been reached for acquisition of Permanent Street Right of Way in association with Improvement District Nos. UN-20-B1 and

PN-20-B1.

Commissioner Strand moved the Purchase Agreement with Dabbert Custom Homes LLC in association with Improvement District Nos. UN-20-B1 and PN-20-B1 be approved.

Second by Gehrig. On call of the roll Commissioners Strand, Gehrig, Piepkorn, Preston and Mahoney voted aye.

No Commissioner being absent and none voting nay, the motion was declared carried.

Easements (Temporary Construction Easements) with Riviera Heights, LLC Approved (Improvement District No. BN-20-A0):

Commissioner Strand moved the (two) Easements (Temporary Construction Easements) with Riviera Heights, LLC in association with Improvement District No. BN-20-A0 be approved.

Second by Gehrig. On call of the roll Commissioners Strand, Gehrig, Piepkorn, Preston and Mahoney voted aye.

No Commissioner being absent and none voting nay, the motion was declared carried.

Change Order No. 2 for Improvement District No. BN-20-L1 Approved:

Commissioner Strand moved Change Order No. 2 for an increase of \$52,064.45 for Improvement District No. BN-20-L1 be approved.

Second by Gehrig. On call of the roll Commissioners Strand, Gehrig, Piepkorn, Preston and Mahoney voted aye.

No Commissioner being absent and none voting nay, the motion was declared carried.

Cost Participation, Construction and Maintenance Agreement with the NDDOT for Improvement District No. QN-23-A1 Approved:

The Board received a Report of Action from the Public Works Projects Evaluation Committee regarding a Cost Participation, Construction and Maintenance Agreement with NDDOT for construction of a pedestrian/bicycle bridge over the street and floodwall on 2nd Street North.

Commissioner Strand moved the Cost Participation, Construction and Maintenance Agreement with the NDDOT in association with Improvement District No. QN-23-A1 be approved.

Second by Gehrig. On call of the roll Commissioners Strand, Gehrig, Piepkorn, Preston and Mahoney voted aye.

No Commissioner being absent and none voting nay, the motion was declared carried.

No Protests Received for Alley Paving Improvement District No. AN-20-C1:

The Statutory Resolution of Necessity for the construction of Alley Paving Improvement District No. AN-20-C1 in the City of Fargo, North Dakota, was duly published in the official newspaper for the City of Fargo, North Dakota on April 28 and May 5, 2021 and no protests have been filed in the office of the City Auditor within the legal protest period.

Commissioner Strand moved that the Board declare that no protests have been filed to the construction of Alley Paving Improvement District No. AN-20-C1.

Second by Gehrig. On call of the roll Commissioners Strand, Gehrig, Piepkorn, Preston and Mahoney voted aye.

No Commissioner being absent and none voting nay, the motion was declared carried.

Bids Received for Alley Paving Improvement District No. AN-20-C1:

The bids for Alley Paving Improvement District No. AN-20-C1 in the City of Fargo, North Dakota were opened at 11:30 o'clock a.m., May 26, 2021 and the bids were found to be as follows:



May 26, 2021

Fargo City Commission
200 3rd Street North
Fargo, ND 58102

RE: FARGODOME/Fargo Civic Center Ticketing Provider (RFP 21088)

Commissioners:

The Fargo Dome Authority requests your approval of Ticketmaster as the computerized ticketing provider for FARGODOME and Fargo Civic Center events for a five-year term starting on January 1, 2022, with the opportunity for contract extensions under mutually agreeable terms.

The RFP process began in 2020, but was suspended due to COVID complications with multiple postponed FARGODOME concerts' tickets sold and managed through the current ticketing system. Upon resolution of those issues, the RFP process was re-started in January 2021. FARGODOME staff representing ticketing, sales and marketing, finance, and customer service reviewed the three received Request for Proposal responses. Based upon RFP Responses, subsequent inquiry responses, 2020 presentations, and working knowledge of our existing provider, the group unanimously endorsed Ticketmaster as the best solution for current and future ticketing and ticket sales needs. Criteria considered in the selection include the following items:

- Quality, reliability, and overall **functionality** of the vendor's product:
 - Clear and simple applications regarding event builds, event management, and event reporting for Fargo city venues' ticketing staff;
 - Demonstrated and ongoing commitment to current applications necessary to successfully implement ever-changing tour and promoter ticketing requirements;
 - Integration solutions to aid in event marketing and sales analytics; and
 - Ease of use for ticket-buying patrons.
- The vendor's ability to provide the necessary **support** in regards to:
 - Equipment/Technology - implementation, ongoing maintenance, timely upgrades;
 - City venues' ticketing and marketing staff – initial training, ongoing development, thorough and timely response to inquiries; and
 - Ticket-buying patrons – ease of account self-management, simple and informative online purchasing experience, and accessible and responsive customer service.

- The vendor's **experience** in providing integrated ticketing and marketing solutions for buildings similar in nature to Fargo city venues.
- **Cost effectiveness** of the solution.
- The vendor's ability to **meet the implementation date** required, and facilitate a **smooth transition** to their system (if applicable).
- Overall **business and financial viability** of the vendor.
- **Clarity and completeness** of the vendor's response to the RFP.

At their meeting held on May 25, 2021, the Fargo Dome Authority approved the selection of Ticketmaster as the computerized ticketing provider.

Requested Motion: The Fargo City Commission moves to approve Ticketmaster as the computerized ticket provider for FARGODOME and Fargo Civic Center effective January 1, 2022 for a five-year term, with opportunities for extensions at mutually-agreeable terms, and directs FARGODOME staff to execute a contract with Ticketmaster as per RFP requirements and responses.

Thank you for your consideration of this matter.

Very truly yours,

Rob Sobolik
General Manager, FARGODOME

LICENSED USER AGREEMENT

THIS LICENSED USER AGREEMENT ("Agreement") is entered into as of _____, 2021 and is made effective as of September 20, 2021 ("Effective Date"), by and between Ticketmaster L.L.C., a Virginia limited liability company ("Ticketmaster"), and the City of Fargo, a municipal corporation of the State of North Dakota, acting by and through its Fargo Dome Authority Board, an organization existing under and by virtue of Fargo Municipal Code Article 34-01, of the City of Fargo, North Dakota ("Principal"). This Agreement consists of this Licensed User Agreement, and any Exhibits attached hereto which are incorporated herein by this reference. The meanings of all capitalized terms used in this Agreement are set forth in Section 16 hereof. In consideration of the mutual promises and covenants set forth herein, the parties hereby agree as follows:

1. **TERM:** The initial term of this Agreement shall begin on the Effective Date and shall continue through the December 31, 2027 (the "Term"). Thereafter, the Term of this Agreement shall automatically be renewed for successive three (3) year periods unless either party hereto notifies the other party in writing, not less than ninety (90) nor more than one hundred twenty (120) days prior to the end of the initial Term or the then current renewal period, of its intention not to renew this Agreement. Each twelve (12) month period commencing on January 1 and continuing through the following December 31 shall be a "Contract Year" as such term is used herein; provided, however, that the initial Contract Year shall commence on the Effective Date and continue through the following December 31, 2022.

2. **TICKET SALES RIGHTS; EXCLUSIVITY:**

(a) **Grant of Rights:** In consideration for the licenses granted and services provided by Ticketmaster hereunder, and any compensation paid to Principal pursuant to this Agreement, Principal hereby grants to Ticketmaster, and Ticketmaster accepts from Principal, the right during the Term of this Agreement, to be the exclusive seller, as Principal's agent, of all Tickets for the Sellable Capacity for every Attraction via any and all means and methods, including on the Internet, by telephone, computer, IVR, outlets, television, clubs, auctions, VIP packages, presales, upsells, or by any other means of distribution, whether existing now or at any time in the future. Principal shall ensure that the entire Sellable Capacity for every Attraction shall be made available for distribution on the TM System.

(b) **Sales by Principal:** Subject to the terms of Sections 2(c)-(d) below, Principal retains the right to: (i) sell single Tickets from the Facility Box Office to persons physically present at the Facility Box Office; (ii) conduct single Ticket sales by telephone from the Facility Box Office; (iii) sell Season/Contract Tickets; (iv) conduct Group Sales of Tickets; and (v) provide a reasonable number of House Seats for any Attraction.

(c) **No Third Party Systems or Services:** Principal shall not directly or indirectly use, sponsor, promote, advertise, authorize or permit the use of any third party that promotes, engages in or facilitates the sale, resale or issuance of tickets. Notwithstanding the foregoing or anything else herein to the contrary, Principal may use and permit the use of a third party ticketing provider in connection with the (i) the Elton John concert currently scheduled to be held at the Facility on March 19, 2022, and/or (ii) any computerized ticketing events to be held prior to December 31, 2021 for which Principal has elected to exclude from the definition of Attraction hereunder (currently only Simon & Garfunkel) and/or (iii) any NDSU Athletics events

scheduled to be held at the Facility. For the avoidance of doubt, the terms and conditions in the first sentence of this subsection (c) above shall apply in all respects to any (iv) trade shows, amateur sporting events, Ribfest or other similar smaller events (for which Principal has determined that computerized ticketing is not necessary or practical) excluded from the definition of Attraction hereunder.

(d) **No Minimum Sales:** It is agreed and understood that neither Ticketmaster nor Principal guarantees or will guarantee that any minimum or fixed number of Tickets will be sold through the TM System for any Attraction.

3. **COMPENSATION:**

(a) **Ticketmaster Charges and Fees:** In consideration for the licenses granted and services provided by Ticketmaster hereunder as an agent of Principal, and any compensation paid to Principal pursuant to this Agreement, Ticketmaster shall be entitled to assess and receive charges and fees in the amounts set forth on Exhibit A, all of which charges and fees shall be assessed against consumers, except for Inside Charges, which shall be assessed against Principal. In the event applicable law prohibits the assessment of such fees against consumers, Ticketmaster and Principal shall agree on alternative means for compensating Ticketmaster for its services in amounts reasonably comparable to those set forth in this Agreement, and as permitted by applicable law.

(b) **Payment Processing Fees:**

(i) **Sales by Ticketmaster:** With respect to Tickets purchased from Ticketmaster with credit cards, debit cards, gift cards or any other methods of payment, the payment authorization and processing fees ("Payment Processing Fees") shall be passed on to Principal at the rates set forth on Exhibit A, which percentage rates shall be deducted by Ticketmaster from the Ticket sales proceeds, or, at Principal's option, upon notice to Ticketmaster, the Convenience Charge may be adjusted to include Principal's portion of such Payment Processing Fees, provided that the Convenience Charge will be rounded up to the nearest \$0.05.

(ii) **Principal Sales Using TM Charge:** In connection with Principal's sales of Tickets utilizing electronic payments and authorized via TM Charge using either Visa or MasterCard, Ticketmaster's credit card processor ("Processor") shall deduct the merchant fees in an amount set forth on Exhibit A for transactions processed on a daily basis. The fees charged to Principal for use of TM Charge are subject to automatic increases equal to any actual increases in Ticketmaster's Processor fees. Principal shall also be responsible for any and all other amounts charged to Ticketmaster (if any) by a Processor for processing Principal's transactions, including, without limitation, chargebacks, fraudulent credit card use and additional charges for failure to meet the specific timing or other qualifications of the applicable credit card association or company. In the event that Principal desires to process or accept any credit or debit cards or other payment methods other than Visa or MasterCard utilizing TM Charge, then the fees for such service shall be mutually agreed upon by Principal and such credit card companies or payment providers, as applicable, and Principal shall enter into its own merchant agreement with such parties.

(c) **Contingent Sales Volume Payment:**

(i) Ticketmaster shall pay Principal an annual contingent sales volume payment ("Contingent Sales Volume Payment") in the amount of Twenty Thousand Dollars (\$20,000.00) per Contract Year of the five (5) year period commencing on January 1, 2022 and expiring on December 31, 2026 (the "Volume Payment Period"). The Contingent Sales Volume Payment shall be paid to Principal within 30 days of the Effective Date of this Agreement and within 30 days of the beginning of each Contract Year of the Volume Payment Period thereafter. Ticketmaster's agreement to provide the Contingent Sales Volume Payment to Principal is contingent upon and subject to certain terms as described below.

(ii) Ticketmaster's agreement to provide the Contingent Sales Volume Payment to Principal is based on Ticketmaster's right to sell at least Two Hundred Seventy Five Thousand (275,000) Tickets in the aggregate (the "Aggregate Minimum Sales Threshold") via Ticketmaster distribution channels for which Ticketmaster receives (and does not refund) an Inside Charge during the Volume Payment Period. In the event that the Aggregate Minimum Sales Threshold has not been reached on or before expiration of the Volume Payment Period, then Principal shall return to Ticketmaster, within fourteen (14) days of such Volume Payment Period expiration, an amount equal to \$0.36 for each remaining unsold Ticket comprising the Aggregate Minimum Sales Threshold.

(iii) In the event the Agreement terminates early before expiration of the Volume Payment Period for any reason and the Minimum Sales Threshold has not been reached as of the date of such early termination, then Principal shall return to Ticketmaster, within fourteen (14) days of such early termination, an amount equal to \$0.36 for each Ticket, if any, by which (x) 55,000 Tickets for each Contingent Sales Volume paid exceeds (y) the total number of Tickets sold via Ticketmaster distribution channels for which Ticketmaster receives (and does not refund) an Inside Charge during the period commencing as of the Effective Date of this Agreement and continuing through the date of early termination. For example, in the event the Agreement terminates early on March 15, 2023 and a total of 100,000 Tickets have been sold via Ticketmaster distribution channels for which Ticketmaster receives (and does not refund) an Inside Charge during the period commencing as of the Effective Date of this Agreement and continuing through the date of such early termination, then there will have been two (2) Contingent Sales Volume Payments paid as of such early termination date (\$20,000 paid within 30 days of the January 1, 2022 Effective Date of this Agreement, and \$20,000 paid within 30 days of January 1, 2023), and Principal shall return to Ticketmaster, within fourteen (14) days of March 15, 2023, an amount equal to \$3,600.00 (comprised of 10,000 Tickets (the difference between 110,000 Tickets and 100,000 Tickets) x \$0.36 per Ticket).

(iv) Any return of any portion of the Contingent Sales Volume Payment by Principal shall be by wire transfer or certified check.

4. **LICENSE AND USE OF HARDWARE AND SOFTWARE:**

(a) **License:** In consideration for the exclusive Ticket sales rights granted Ticketmaster as provided above, Ticketmaster hereby grants Principal a non-exclusive, non-transferable license to use the Hardware and Software (collectively, the "License") in exchange for the fees set forth herein.

(b) **Use:** The Hardware and Software and all related materials may only be used by Principal in connection with the Attractions and only with systems used, operated and owned by Ticketmaster, and only for the purposes stated in this Agreement, and may not be utilized by or in connection with services, software, hardware or systems provided or supplied by

any third party. Principal shall use the Hardware and Software in a careful and proper manner and shall comply with and conform to all federal, state, county, municipal and other laws, ordinances and regulations in any way relating to the possession, use or maintenance of the Hardware and Software including, but not limited to, federal, state or other laws applicable to commercial emails. Except as otherwise provided in the immediately preceding sentence, Principal hereby agrees: (i) not to permit copying or reproduction of the Hardware or Software in any manner, including without limitation, use in a sharing arrangement or transmission over the Internet or over e-mail and similar electronic transmission; (ii) not to disassemble, re-manufacture, repair, re-configure, enhance, upgrade, modify, translate, adapt, create derivative works from or of, decompile or reverse engineer the Software in any way nor merge them into any other program for any purpose; (iii) not to transfer, license or sub-license, assign, rent, sell, grant, publish, disclose, display, dispose of or otherwise make available the Software, or any rights therein or copies or derivatives thereof, including other templates or working systems; (iv) not to delete, remove, change or otherwise alter any trademarks, copyright notices or other proprietary marks in or on the Hardware or Software, or any copies, modifications or partial copies thereof; and (v) not to "hack," or attempt to "hack," any of the Software, the servers on which the Software is hosted or any other portion of the Ticketmaster network, or otherwise attempt to circumvent, or navigate outside of, the borders of such Software servers in any manner whatsoever.

(c) **Passwords:** Principal agrees that use of the TM System by Principal shall be restricted to a reasonable number of Principal's personnel having passwords in the event that Ticketmaster assigns such passwords. Such passwords shall not be transferable without the written permission of Ticketmaster, which permission shall not be unreasonably delayed or withheld. Upon Ticketmaster's reasonable request, Principal (i) shall identify, as the case may be, the users (by name, position and site address), who use or view the TM System or from where the TM System is used, and (ii) shall provide to Ticketmaster access to any database which records access to the TM System.

(d) **TM Charge:**

(i) **Use and Operation of TM Charge:** Ticketmaster shall transmit data relating to Ticket sales made by Principal using TM Charge to Ticketmaster's credit card processor, provided Ticketmaster has received Principal's merchant number(s) and other necessary information for Ticketmaster to use for the transmission of sales data. Principal shall be responsible for promptly notifying Ticketmaster and Processor, if applicable, of any changes to the information provided pursuant to this Section. Processor will then transmit such data to the applicable credit card company for payment to Principal, subject to Principal having entered into the applicable Principal Processor Agreements (as further described below). Ticketmaster shall use its best efforts to ensure the accuracy of information transferred from the Processor via TM Charge, but Ticketmaster does not guarantee the accuracy and timeliness of such information. Principal shall comply with all applicable credit card association or company guidelines (e.g. swiping all retail transactions and using customer address information for all non-face-to-face transactions). Ticketmaster shall provide Principal with daily transaction reports regarding authorized and settled transactions. Principal shall review, on a regular basis, all reports provided to Principal by Ticketmaster. Principal also agrees that, for operational and monitoring purposes, the Processor may provide Ticketmaster with processing and settlement reports related to sales of Tickets using TM Charge.

(ii) **Effect of Termination of Ticketmaster's Processor Agreement:** Ticketmaster has entered into an agreement with the Processor (the "Processor Agreement"), and Principal agrees to enter into an agreement with such Processor (the "Principal Processor

Agreement") as soon as practicable after the date of this Agreement. The Principal Processor Agreement shall provide that if the related Processor Agreement expires or terminates, then the Principal Processor Agreement shall also expire or terminate without any early termination penalties or charges. In order to facilitate streamlined credit card authorization processing for Ticketmaster and its clients, Ticketmaster continues to seek to maintain relationships with superior processors throughout the Term of this Agreement. In the event that Ticketmaster elects to use a different Processor, Principal shall enter into an agreement with such new Processor if Principal desires to continue utilizing TM Charge, it being acknowledged and agreed by Principal, however, that use of certain Software (e.g., AccountManager) may require utilization of TM Charge.

(e) **TM+**: Ticketmaster shall enable its proprietary, integrated primary and secondary market ticket inventory platform and technology on the TM.com Website, which platform and technology shall enable consumers searching for Tickets to an Attraction to simultaneously view Tickets available for initial sale directly by Principal pursuant to the Agreement, in addition to Tickets available for resale from other consumers (collectively, "TM+"), in accordance with the terms and conditions set forth on Exhibit C attached hereto. The parties acknowledge and agree, the terms "TM System" and "Software" as used in the Agreement shall be deemed to incorporate TM+. Notwithstanding the foregoing or anything else herein to the contrary, the parties acknowledge and agree, TM+ shall not be enabled for any Attractions presented by a third party promoter who has elected to deactivate TM+ for all of its events on a nationwide basis.

(f) **TM1 Engagement**. Ticketmaster shall provide Principal with use of an email permission marketing tool which shall be powered by a third party enterprise-level interactive software and marketing provider, and which shall be integrated with the TM System ("TM1 Engagement") in accordance with the terms and conditions set forth in Exhibit D attached hereto. The parties acknowledge and agree that "Software" as such term is used in the Agreement shall not be deemed to incorporate TM1 Engagement, it being understood that TM1 Engagement is a third party software solution.

(g) **Platinum Tickets and VIP Packages**. The terms and conditions set forth in Exhibit E attached hereto shall apply in connection with the sale of Platinum Tickets and VIP Packages.

5. **INSTALLATION AND SET-UP:**

(a) **Infrastructure and Installation**: Ticketmaster will install the Hardware furnished by Ticketmaster, and provide Principal with access to the Software. Principal will provide (i) a redundant connectivity solution between the Facility and Ticketmaster's central computer facility for interfacing that satisfies Ticketmaster's minimum system requirements, and (ii) unless otherwise agreed to between the parties, any type of equipment and technology necessary to assist Ticketmaster in completing the installation of such Hardware or Software. Ticketmaster shall have no responsibility for any internal wiring or cabling (e.g., electrical, data lines, etc.) necessary for installation, operation or for proper functioning of the TM System at the Facility.

(b) **Attraction Set-Up**: In order to effectively utilize Ticketmaster's distribution technologies, within a reasonable time before (but in no event less than the time period described below) the scheduled on-sale date of Tickets for each Attraction (the "On-Sale Date"), Principal shall furnish Ticketmaster with all necessary information with respect to the Attraction, including,

without limitation, seating layout of the Facility, Ticket structure, discounts permissible, Attraction Taxes, any information necessary to calculate Attraction Taxes, if applicable, Ticket header information, logos, entry information, vision and hearing information, wheelchair and other accessible seating information, health and safety protocols and such other information as is necessary for the proper sale of Tickets (collectively, the "Set-Up Information"). The parties intend that all accessible seating Tickets that are available for sale to persons desiring accessible seating shall be made available for sale on the TM System and such accessible seating Tickets shall not be released into the general pool of Tickets that are available for sale until forty-eight (48) hours before an Attraction. Principal shall be solely responsible for maintaining appropriate security and health and safety protocols at the Facility for each Attraction. Principal must provide the Set-Up Information to Ticketmaster at least five (5) business days prior to the On-Sale Date for new Attractions that do not utilize seating charts then existing in the TM System and at least three (3) business days prior to the On-Sale Date for new Attractions that utilize seating charts then existing in the TM System. Ticketmaster shall have no responsibility and Principal shall indemnify and hold Ticketmaster harmless from and against any and all liabilities, claims, expenses (including court costs and reasonable attorneys' fees) and causes of action resulting from the inaccuracy of any Set-Up Information furnished by Principal pursuant hereto.

(c) **Facility Box Office Will-Call Services:** At all times during the Term of this Agreement, Principal shall maintain a designated Facility Box Office location for the pick-up of Tickets purchased through Ticketmaster distribution channels. The pick-up location shall be open during the normal hours of operation of the Facility Box Office. Principal shall notify Ticketmaster of Principal's will-call capabilities and will-call Facility Box Office hours. Principal shall verify the identity of each person picking up Tickets at will-call via a valid photo identification (government issued) and the credit card used in the Ticket sales transaction. Principal shall not release Tickets to any customer whose identity has not been so verified.

(d) **Supplies:** Principal shall be responsible for maintaining adequate nondurable operational supplies used at the Facility in connection with the operation of the Hardware and Software to assure continuous operations at the Facility.

(e) **Ticket Stock:** Principal shall be responsible for the security of Ticket stock in its possession, and the risk of loss of Ticket stock shall shift to Principal upon the delivery thereof to Principal or Principal's authorized representative, agent or employee.

6. **MAINTENANCE AND SUPPORT:**

(a) **Hardware and Software Maintenance and Support:** Ticketmaster shall provide ordinary and routine maintenance and repair services and adequate support of the Hardware and Software at the Facility to meet the reasonably anticipated service needs of Principal from time to time at no additional charge, provided that such maintenance, repair or support is not necessitated by the negligence or willful misconduct of Principal, its employees, agents or representatives. Support services will be provided, on a return call basis, during Ticketmaster's normal business hours by personnel qualified to answer telephone inquiries by Principal seeking advice on questions and problems. Non-emergency calls made at the end of the day, which require support services that would keep staff beyond normal working hours, will be deferred to the following business day. Support will be provided for off-hour critical system emergencies.

(b) **Training of Principal's Employees:** Principal shall staff the Facility Box Office with its employees for the proper operation of the TM System for Ticket sales made through

the Facility. Ticketmaster shall train, at its expense, Principal's employees who shall be reasonably necessary for the initial staffing of the Facility Box Office and for initial operation of the TM System for single ticket sales at the Facility. Ticketmaster shall also provide additional training at its cost to other employees of Principal to the extent such training is necessary as a consequence of changes initiated by Ticketmaster or changes in Ticketmaster's method of operation. To the extent of any change in personnel by Principal in connection with Facility Box Office sales requiring additional training beyond that initially contemplated hereunder, Principal agrees to absorb all of the expenses (including any and all reasonable travel expenses) thereof.

(c) **Notification by Principal:** In the event of any breakdown or malfunction in the operation of any of the Hardware or Software, or difficulties encountered in connection with access to any of the Software, Principal agrees to promptly notify Ticketmaster of any such breakdown, malfunction or difficulty to assist Ticketmaster in performing its obligations hereunder.

(d) **Access to Principal's Equipment and Data:** Principal shall permit Ticketmaster, at Ticketmaster's sole discretion and upon reasonable written notice, the right at a reasonable time to inspect Principal's pertinent sites and equipment (including any existing LAN or other network user monitor device) for the purpose of determining compliance with the terms of the License granted hereunder. In order to correctly diagnose faults in the equipment and data related to the Software and Hardware, Principal will provide (or Principal shall cause the City of Fargo's IT Administration to provide) Ticketmaster 24 hour remote access to Principal's installation, pertinent sites, equipment (including any existing LAN or other network user monitor device) and user data through PC Anywhere, with City of Fargo IT oversight which is available 24 hours per day. Failure to provide such access may prohibit effective action by Ticketmaster and render Ticketmaster unable to proceed, and in such circumstances, Ticketmaster shall be under no liability for failure to perform its obligations hereunder.

7. ADVERTISING:

(a) **Advertising on Tickets Fulfilled at Facility Box Office:** For tickets fulfilled by Principal at the Facility Box Office, Principal shall either (i) provide, or pay Ticketmaster to provide, its own blank custom ticket stock and ticket envelopes in which case Principal shall have the right to sell advertising on such ticket stock and ticket envelopes or (ii) have Ticketmaster provide Ticketmaster's standard ticket stock and ticket envelopes in which case Ticketmaster shall have the right to sell advertising on such ticket stock and ticket envelopes.

(b) **Ticketmaster Advertisements:** Principal hereby grants to Ticketmaster the right, in Ticketmaster's sole discretion, to advertise, in any medium determined by Ticketmaster, including on the TM.com Website or affiliated websites, Attractions and the availability of Tickets at the Facility Box Office, and via Ticketmaster distribution channels, and the availability of the Software and, in connection therewith, to use the name and logo of Principal, the Attraction, the Facility and all other information respecting the Attractions.

(c) **Principal Advertisements:** Principal may, during the Term hereof, provide and place advertisements in any form of media which Principal shall desire to promote the availability of Tickets, the TM.com Website and the Attractions (except on websites or other media operated by, or on behalf of, third parties that promote, engage in or facilitate the sale, resale or issuance of tickets); provided, however, that in the event Principal shall place any such advertisements, it shall use its best efforts to cause Ticketmaster's name, logos and if the advertisement relates to the availability of Tickets, the applicable TM.com Website address to be

displayed in the advertisement. Principal shall cause Principal's Website to deeplink to specified web page(s) within the applicable TM.com Website where ticket purchasers can begin the process of purchasing Tickets to Attractions. Principal agrees to promote the availability of Tickets on the TM.com Website by including, at a minimum, one "above-the-fold" graphic Ticketmaster branded link to the TM.com Website on each web page featuring one or more of the Attractions on Principal's Website. Such link will include the TM.com Website graphic logo and a call to action such as "buy tickets."

(d) **Ticketmaster Client Style Guide:** The look and feel of any and all links from Principal's Website to the Interface Page or the applicable TM.com Website are subject to Ticketmaster's prior approval. Principal shall comply with all terms and conditions of Ticketmaster's Client Style Guide, as it may be updated from time to time.

(e) **Advertising Revenue:** Ticketmaster and Principal shall separately receive and retain their respective income derived from advertising which each is entitled to sell under subsections (a), (b) and (c) above.

8. **ACCOUNTING PROCEDURES:**

(a) **Payments by Ticketmaster:** Principal hereby authorizes Ticketmaster and the financial institution indicated below ("Bank") to deposit all settlement funds payable to Principal hereunder in the account listed below ("Principal's Account"):

Financial Institution (Name of Bank): _____

Account Type: _____

Account Number: _____

Bank ACH Transfer Number: _____

Branch Address: _____

Branch Phone Number: _____

Ticketmaster shall collect all Ticket Receipts derived from Ticket sales made by Ticketmaster and shall initiate payment of Ticket Receipts to which Principal is entitled on Friday of each week with each weekly payment to be on account of TM System Ticket sales made for Attractions by Ticketmaster during Monday through Sunday of the week preceding such payment date. Initiation of the settlement payment via direct deposit shall constitute full performance by Ticketmaster of its obligation to make such settlement payment to Principal or to any person whatsoever. If funds to which Principal is not entitled are deposited into Principal's Account, Principal authorizes Ticketmaster to direct the Bank to return said funds. Principal hereby releases Ticketmaster from liability for delays or errors beyond Ticketmaster's reasonable control, including but not limited to any errors resulting from any inaccurate or outdated Account information provided by Principal or bank processing delays, or for any related damages. Principal acknowledges and agrees that direct deposit of such funds may require up to two (2) business days for Bank processing. In the event of an error, Principal also authorizes the initiation of a debit to Principal's Account to correct the error. Each weekly settlement payment shall be accompanied by a written accounting. Principal shall designate an email address (set forth below its signature line of this Agreement) for delivery of such accounting and information regarding Attractions and Ticket sales, and shall promptly notify Ticketmaster of any changes to such email address. The direct deposit authorization provided herein shall remain in full force and effect until Ticketmaster has received

written notification from Principal of its termination in such time and such manner as to afford Ticketmaster a reasonable opportunity to act upon it.

(b) **Cancelled Attractions; Refunds:** In the event that any Attraction for which Ticketmaster sold Tickets is cancelled, postponed, or modified (e.g., substitute acts) for any reason (each, a "Cancelled Attraction"), the Account Balance shall be held and made available for distribution by Ticketmaster to Ticket purchasers entitled to refunds for Tickets for Cancelled Attractions purchased from Ticketmaster. For purposes of this Agreement, the term "Account Balance" shall mean the amount of funds held at any time by Ticketmaster on account of Ticket sales for all Attractions, less the amount of Ticket sales proceeds which Ticketmaster is entitled to retain hereunder. Principal authorizes Ticketmaster to refund the Ticket price for Cancelled Attractions, at the original point of purchase (e.g., by Internet Sales) in such manner (e.g. by crediting the consumer's credit card) and at such time (e.g. before or after the scheduled date of the performance of such Attraction) as Ticketmaster, in its reasonable discretion (after taking into meaningful consideration any input it may receive from Principal and/or applicable event promoters), determines, and to exchange Tickets for Cancelled Attractions pursuant to any exchange policy that may be mutually agreed-upon by Ticketmaster and Principal. It is agreed and understood that Ticketmaster is the Ticket selling agent of Principal and therefore Ticketmaster's agreement to make any refunds as the agent of Principal is subject and limited to Ticketmaster holding or receiving from Principal the full amount of funds necessary to make refunds to all Ticket purchasers properly entitled to a refund, and Principal will promptly remit to Ticketmaster any such funds received by Principal in respect of Cancelled Attractions in order for Ticketmaster to process such refunds. Principal and Ticketmaster agree that Ticketmaster shall be entitled to retain the Ticketmaster fees assessable with respect to the initial sale of Tickets to Cancelled Attractions. Notwithstanding the foregoing, Ticketmaster's current policy is to refund all Ticketmaster fees (except UPS) as well as Inside Charges assessed to Principal with respect to the sale of Tickets to Cancelled Attractions, and Ticketmaster shall notify Principal in advance of any changes to such policy during the Term. Principal shall be responsible for all refunds and exchanges of Tickets initially purchased from the Facility Box Office.

(c) **Chargebacks:** Ticketmaster shall be responsible for any Chargebacks that Ticketmaster is assessed by its merchant bank, except to the extent caused by Principal's failure to obtain signatures, swipe credit cards, or follow any procedures provided by Ticketmaster or the merchant bank with respect to acceptance of credit cards, including, but not limited to, cardholder verification instructions for will-call and other alternative Ticket delivery/pick-up services. For purposes of this Agreement, "Chargebacks" shall mean the amounts that the merchant bank is charged back by a cardholder or a card issuer under the card organization's rules (e.g., cardholder dispute, fraud, declined transaction, returned Tickets for Cancelled Attractions, etc.).

(d) **Insolvency; Deficiency Amounts; Security for Repayment:** Principal shall provide immediate written notice to Ticketmaster in the event it files any voluntary or involuntary petition under the bankruptcy or insolvency laws or upon any appointment of a receiver for all or any portion of Principal's business or the assignment of all or substantially all of the assets of Principal for the benefit of creditors (each, a "Material Financial Event"). The parties agree that this Agreement constitutes a financial accommodation by Ticketmaster to Principal as such term is utilized in 11 U.S.C. §365. If at any time, the Account Balance is not sufficient to pay for anticipated refunds (e.g., due to cancellations or postponements of one or more Attractions), Principal shall deliver the amount of such deficiency ("Deficiency Amount") to Ticketmaster no later than twenty-four (24) hours after notice by Ticketmaster to Principal. Ticketmaster shall have the right to setoff any Deficiency Amount against any amounts held by Ticketmaster on behalf of

Principal. In the event of any Material Financial Event or in the event Principal has not paid any Deficiency Amount when due, Ticketmaster shall have the option to require Principal to provide additional security to Ticketmaster of a type (e.g., letter of credit, guaranty or performance bond) and in an amount as requested by Ticketmaster in its sole discretion, which Principal shall provide to Ticketmaster within five (5) business days after Ticketmaster's request. Ticketmaster reserves the right to require Principal to provide current financial statements or other financial information to Ticketmaster within five (5) business days after Ticketmaster's written request, and upon review of Principal's creditworthiness, Ticketmaster shall have the option to suspend payment of Ticket Receipts in advance of the occurrence of Attractions and instead deliver Ticket Receipts to which Principal is entitled post-performance (i.e. Friday of each week with respect to Attractions that occurred Monday through Sunday of the week preceding such payment date).

(e) **Counterfeit Tickets:** It is agreed and understood that Ticketmaster shall not be liable to Principal for the printing and sale of counterfeit Tickets.

(f) **Audit of Sales:** At all times during the Term of this Agreement, (i) Principal shall have the right at its own expense to audit Ticket sales for Attractions by Ticketmaster to assure Ticketmaster's compliance with the terms of this Agreement, and (ii) Ticketmaster shall have the right at its own expense to audit Principal's records as they relate to Ticket sales for Attractions, to assure compliance by Principal with the terms of this Agreement.

(g) **Request for Taxpayer Identification Number and Certification:** Principal shall complete the required Form W-9 provided with this Agreement and return it to Ticketmaster with this Agreement for purposes of reporting to the Internal Revenue Service.

9. **TAXES:**

(a) **Taxes on Hardware:** Principal shall keep the Hardware free and clear of all levies, liens and encumbrances which are caused by Principal or under Principal's control and shall promptly reimburse Ticketmaster for all license fees, registration fees, assessments, charges and taxes, whether federal, state, county, municipal or other governmental or quasi-governmental, with respect to the Hardware located at the Facility, including, without limitation, use, excise and property taxes, and penalties and interest with respect thereto, except and excluding, however, any taxes based on or measured solely by Ticketmaster's net income.

(b) **Attraction Taxes (North Dakota):** Ticketmaster shall be responsible for collecting any and all Principal Taxes, for preparing and timely filing any and all tax returns or reports required to be filed in respect of any Principal Taxes, and for timely remitting Principal Taxes to the appropriate taxing authority. Ticketmaster will collect and turn over to Principal the amounts to which it is entitled as provided in Section 8(a). In the event that Ticketmaster has to pay any Principal Taxes on behalf of Principal that are caused by the inaccuracy of information provided by Principal or by Principal's failure to provide Ticketmaster with the required writing or documentation of any Principal tax exemptions pursuant to Section 9(d) below, Principal shall promptly reimburse Ticketmaster for any and all Principal Taxes paid by Ticketmaster, including penalties and interest assessed with respect thereto (other than Principal Taxes, penalties and interest that Ticketmaster pays directly out of Principal's Ticket Receipts), and shall also promptly reimburse Ticketmaster for any and all expenses (including reasonable attorneys' fees) or damages that result from the failure by Principal to timely reimburse Ticketmaster for any and all Principal Taxes, interest and penalties as provided above. Ticketmaster shall be responsible for calculating any and all Ticketmaster Taxes, for preparing and timely filing any and all tax returns

or reports required to be filed in respect of any such Ticketmaster Taxes, and for timely remitting such Ticketmaster Taxes to the appropriate taxing authority.

(c) **Principal's Taxpayer ID Number:** Principal certifies that Principal's federal taxpayer identification number (FEIN or SSN) is _____. Principal further certifies that its state taxpayer identification or registration number for the state in which the Facility is located is _____.

(d) **Principal's Tax Exemptions:** Principal shall notify Ticketmaster in writing of any and all Principal tax exemptions (if applicable) and provide Ticketmaster with reasonable proof of Principal's tax exemptions.

10. **LOSS AND DAMAGE TO THE HARDWARE; INSURANCE:**

(a) Principal acknowledges that the Hardware will be used by Principal at the Facility and that Ticketmaster does not own, operate or control such location. Accordingly, Principal hereby assumes and shall bear the entire risk of loss and damage to the Hardware, ordinary wear and tear excepted, whether or not insured against, once installed, unless occasioned by the negligence or willful misconduct of Ticketmaster, from any and every cause whatsoever from the date of delivery of the Hardware to the Facility or Principal site until removal thereof following termination of this Agreement. No such loss or damage to the Hardware shall impair any obligation of Principal under this Agreement. In the event of loss or damage of any kind to any Hardware, Principal, at its sole option, shall within thirty (30) days after such loss or damage:

(i) Place the same, or replace the same with similar property, in good repair, condition and working order to the satisfaction of Ticketmaster; or

(ii) Pay Ticketmaster in cash the full replacement cost of the Hardware, and Ticketmaster shall promptly install new hardware to replace the lost or damaged Hardware.

(b) Principal shall, at its own expense, provide and maintain at all times during the Term hereof insurance to protect the Hardware against loss caused by fire (with extended coverage), vandalism, malicious mischief, theft, or any other cause in an amount equal to the full replacement value of the Hardware as determined by Ticketmaster. Should Principal become unable to provide or maintain such insurance coverage, Principal shall promptly notify Ticketmaster in writing prior to the expiration of any such coverage, and, thereafter, Ticketmaster shall have the right, but shall not be obligated, to provide insurance coverage for the occurrences specified above and charge Principal the costs of such insurance coverage.

(c) Principal shall provide, at its sole expense, comprehensive or commercial general liability and property damage insurance with minimum limits of \$1,000,000 per occurrence and \$2,000,000 in the aggregate for its protection and the protection of Ticketmaster.

(d) All insurance provided and maintained by Principal shall be in such amounts, under such forms of policies pursuant to this Section shall provide for the waiver of the insurer's right of subrogation against Principal and Ticketmaster. All policies of insurance shall include Ticketmaster, Live Nation Worldwide, Inc. and its landlords or licensors, if any, and their respective parents, members, partners, affiliates, divisions and subsidiaries as an additional

named insured on a primary and non-contributory basis irrespective of any other insurance, whether collectible or not, with respect to the operations of Principal per this written Agreement. Further, such policies shall provide for at least thirty (30) days' prior written notice of cancellation, non-renewal or material modification to Ticketmaster. Principal shall furnish Ticketmaster with certificates of such insurance or other evidence satisfactory to Ticketmaster as to its compliance with the provisions of this Section.

11. **TITLE:**

(a) **Hardware/Software:** Principal covenants and agrees that the Software and Hardware and any deliverables or work product furnished under this Agreement are, and shall at all times be and remain, personal property which shall, at all times, remain the sole and exclusive property of Ticketmaster, and Principal shall have no right, title or interest therein or thereto except as a licensed user thereof. Principal acknowledges and agrees that Ticketmaster has invention rights, copyrights, and other intellectual property rights in the TM System and the information contained therein which prohibit copying, sale, modification and re-manufacture of the TM System and information regarding the TM System and which will be enforced. Principal hereby agrees that it will, whenever reasonably requested by Ticketmaster, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, agreements, instruments, and documents necessary or desirable, in form satisfactory to Ticketmaster, to protect the rights and ownership of Ticketmaster to and of the Software and Hardware, including but not limited to certificates from parties with a real property interest in the premises wherein the Hardware may be located waiving any claim with respect to the Hardware. Except as may be necessary to prevent damage to or destruction of the Hardware, Principal will not move the Hardware nor permit such Hardware to be moved without Ticketmaster's prior written consent, which consent shall not be unreasonably withheld, and shall give Ticketmaster prompt written notice of any attachment or other judicial process affecting any item of Hardware. Upon the expiration or termination of this Agreement, Principal shall return the Software and Hardware to Ticketmaster in good repair, condition and working order, ordinary wear and tear resulting from proper use thereof alone excepted, and any and all licenses and other rights to the Software and Hardware shall terminate with respect to Principal.

(b) **Intellectual Property:** Each party shall retain all right, title and interest in and to its respective trademarks, service marks and trade names worldwide ("Intellectual Property") subject to a limited non-exclusive, non-transferable license necessary to perform this Agreement. Each party grants the other a royalty-free, non-exclusive, non-transferable license, during the Term, within the territory, to include such party's pre-approved Intellectual Property solely in connection with the promotions and marketing contemplated in this Agreement. Each party shall use the other's Intellectual Property only as provided, and shall not alter the Intellectual Property in any way, nor shall it act or permit action in any way that would impair the rights of owning party in its Intellectual Property. Each party acknowledges that its use of the other party's Intellectual Property shall not create any right, title or interest in or to such Intellectual Property. Each party shall have the right to monitor the quality of the other party's use of its Intellectual Property. Additionally, each party shall notify the other promptly in writing of any known infringement of the other's Intellectual Property. Any references to a party's Intellectual Property shall contain the appropriate trademark, copyright or other legal notice provided from time to time by owning party.

(c) **Purchaser Data:** Principal and Ticketmaster each has rights in the personally identifiable information with respect to persons who actually purchased tickets to Principal's Attractions through the TM System ("Purchaser Data"), subject to the terms hereof.

Such use by Ticketmaster may include, without limitation, in development of new or upgraded Software at Principal's request, or for general market research on pricing when used in aggregate form with other Ticketmaster client consumer data. Each party agrees to use the Purchaser Data only in compliance with all applicable laws and administrative rulings and in accordance with each party's own posted privacy policies. Principal and Ticketmaster shall implement and maintain reasonable security procedures and practices appropriate to the nature of the Purchaser Data (within their respective control) to protect the Purchaser Data from unauthorized access, destruction, use, modification or disclosure. Principal and Ticketmaster also agrees that if any portion of the Purchaser Data includes credit or debit card numbers and related information, Principal and Ticketmaster shall comply with payment card industry standards. Principal and Ticketmaster shall also include in any email communications that Principal and Ticketmaster may make based on the Purchaser Data a mechanism to provide the recipient with the right to "opt-out" from receiving further communications from Principal and Ticketmaster and Principal and Ticketmaster, respectively, shall honor such opt-out preferences as applicable.

12. CONFIDENTIAL INFORMATION:

(a) The parties acknowledge that by reason of their relationship hereunder, they may from time to time disclose information regarding their business, products, software technology, Intellectual Property and other information that is confidential and of substantial value to the other party, which value would be impaired if such information were disclosed to third parties ("Confidential Information"). The provisions of this Agreement shall be deemed to be Confidential Information.

(b) Confidential Information shall not include information that (i) is or becomes generally available to the public other than as a result of the breach of the confidentiality obligations in this Agreement by the receiving party, (ii) is or has been independently acquired or developed by the receiving party without violating any of the confidentiality obligations in this Agreement, (iii) was within the receiving party's possession prior to it being furnished to the receiving party by or on behalf of the disclosing party, or (iv) is received from a source other than the disclosing party; provided that, in the case of (iii) and (iv) above, the source of such information was not known by the receiving party to be bound by a confidentiality obligation to the disclosing party or any other party with respect to such information.

(c) Each party agrees that it will keep the Confidential Information strictly confidential and will not use in any way for its own account or the account of any third party, nor disclose to any third party, any Confidential Information revealed to it by the other party without the other party's prior written consent, except to the extent expressly permitted by this Agreement; provided, however, that the receiving party may disclose the Confidential Information, or any portion thereof, to its directors, officers, employees, legal and financial advisors, controlling persons and entities who need to know such information to perform such party's obligations under this Agreement and who agree to treat the Confidential Information in accordance with the confidentiality obligations in this Agreement. Each party shall use the same degree of care to avoid disclosure or use of the other party's Confidential Information as it employs with respect to its own Confidential Information of like importance and represents that it has adequate procedures to protect the secrecy of such Confidential Information including without limitation the requirement that employees have executed non-disclosure agreements which have the effect of adequately protecting Confidential Information.

(d) In the event that either party receives a request to disclose all or any part of the Confidential Information under the terms of a subpoena, document request, notice of

deposition or other legal proceeding, such party agrees to notify the other pursuant to Section 17(h) below, within forty-eight (48) hours after receipt of such legal document, and such party agrees to cooperate with the other in any attempt to obtain a protective order.

(e) The parties acknowledge and agree that Principal is subject to certain laws related to freedom of information and disclosure of public records ("FOIA"), pursuant to which Principal may be required to produce certain Confidential Information without compliance with the terms of Section 12(d) above. Notwithstanding the terms of Section 12(d) above or anything else in this Agreement to the contrary, in the event Principal receives a request pursuant to FOIA which calls for the production of Confidential Information, Principal shall be entitled to disclose all information and documentation (in whatever form) as Principal determines is necessary to respond to that request in accordance with FOIA; provided Principal will make reasonable efforts under such circumstances to promptly notify Ticketmaster in writing of any such FOIA request and to assert any relevant exemptions under FOIA to protect the Confidential Information from disclosure (for example, by providing the requesting party with redacted versions of the requested records (redacting confidential proprietary information and trade secrets)).

13. **LIMITATION ON LIABILITY:** In no event shall Ticketmaster be liable for any indirect, consequential, exemplary, incidental, special or punitive damages, including also lost profits, lost savings, lost or destroyed data, lost ticket revenues, lost opportunity costs or any other economic loss, of any type or nature, or for events or circumstances beyond Ticketmaster's control, even if Ticketmaster has been advised of the possibility of such damages. Neither occasional short term interruptions of service which are not unreasonable under comparable industry standards nor interruptions of service resulting from events or circumstances beyond Ticketmaster's reasonable control shall be cause for any liability or claim against Ticketmaster hereunder, nor shall any such occasion render Ticketmaster in default under this Agreement.

14. **INDEMNIFICATION:**

(a) Principal shall indemnify Ticketmaster and its parents, subsidiaries, and their officers, directors, employees and agents and their successors and assigns (collectively, for purposes of this Section, "Ticketmaster's Indemnitees") against, and hold Ticketmaster's Indemnitees harmless from, any and all claims, actions, damages, expenses (including court costs and reasonable attorneys' fees), obligations, losses, liabilities and liens, imposed on, incurred by, or asserted against Ticketmaster's Indemnitees occurring as a result of, or in connection with: (i) any Event of Default under this Agreement by Principal or any of its officers, directors, employees and agents (collectively, "Principal's Representatives"); (ii) use of the TM System (including without limitation any customization of Principal's Website or the Interface Page (if applicable) and any e-mail campaigns or distributions using the TM System) or possession and use of the Hardware (if any) by Principal or any of Principal's Representatives; (iii) any Attraction held or scheduled to be held at the Facility (including any injuries, illnesses or deaths occurring at or in connection with any Attraction or the failure of any Attraction to occur or to occur in the manner advertised or promoted); (iv) a claim that Ticketmaster's release of the Purchaser Data to Principal violates any applicable law, rule or regulation; (v) Principal's use or disclosure of the Purchaser Data; (vi) violations of laws relating to the resale of Tickets; or (vii) any email campaigns or distributions conducted by Ticketmaster on Principal's behalf or conducted by Principal including, without limitation, email campaigns or distributions in violation of federal, state or other laws applicable to commercial emails; except, in each case, to the extent that any such claims shall relate to Ticketmaster's negligence or willful misconduct with respect thereto.

(b) Ticketmaster shall indemnify Principal and its parents, subsidiaries, and

their officers, directors, employees and agents and their successors and assigns (collectively, for purposes of this Section, "Principal's Indemnitees") against, and hold Principal's Indemnitees harmless from, any and all claims, actions, damages, expenses (including court costs and reasonable attorneys' fees), obligations, losses, liabilities and liens, imposed on, incurred by, or asserted against, Principal's Indemnitees occurring as a result of, or in connection with: (i) any Event of Default under this Agreement by Ticketmaster; or any of its officers, directors, employees and agents or (ii) any alleged patent, trademark or copyright infringement asserted against Principal's Indemnitees with respect to Principal's use of the TM System; except, in each case, to the extent that any such claim shall relate to Principal's negligence or willful misconduct with respect thereto.

(c) The indemnified party must notify the other party promptly in writing of any claim hereunder, and provide, at such other party's expense, all reasonably necessary assistance, information and authority to allow the other party to control the defense and settlement of such claim.

15. **TERMINATION:**

(a) This Agreement may be terminated by either party in the event of any material default in or material breach of the terms and conditions of this Agreement by the other party, after the other party has received written notice of default and thirty (30) business days (or ten (10) business days, in the case of a monetary default) to cure such default (each such occurrence, after the expiration of such cure period, shall be an "Event of Default"); or the filing of any voluntary or involuntary petition against the other party under the bankruptcy or insolvency laws of any applicable jurisdiction, which petition is not dismissed within sixty (60) days of filing, or upon any appointment of a receiver for all or any portion of the other party's business, or any assignment of all or substantially all of the assets of such other party for the benefit of creditors. Upon an Event of Default by Ticketmaster, Ticketmaster shall, without demand, forthwith pay to Principal all amounts due and owing pursuant hereto, and Principal may, in addition to terminating this Agreement, require Ticketmaster to remove all Hardware from the Facility. Upon an Event of Default by Principal, Principal shall, without demand, forthwith pay to Ticketmaster all amounts due and owing pursuant hereto, and Principal authorizes Ticketmaster to setoff any amounts owed to Ticketmaster hereunder against any amounts held by Ticketmaster on behalf of Principal, and Ticketmaster may, in addition to terminating this Agreement, terminate Principal's right to access and use the TM System and take immediate possession of the Hardware and Software wherever the same may be located without demand, notice or court order.

(b) This Agreement may be terminated by Ticketmaster in the event any act by Principal threatens to cause any infringement of any Ticketmaster (or Ticketmaster licensor) intellectual property or other property right, including without limitation, any copyright, license right or trade secret right, and Principal fails to refrain from so acting within ten (10) business days' written notice from Ticketmaster.

(c) Upon the effective date of any termination or expiration of this Agreement, provisions regarding ownership of intellectual property rights, representations and warranties, confidentiality, indemnification, limitation of liability, non-solicitation, jurisdiction and venue shall remain in full force and effect; each party shall immediately cease the use of the other party's Intellectual Property; and each party shall return, or at the other party's request, destroy all copies of Confidential Information, and all other property belonging to and/or received from the other party.

(d) No remedy referred to in this Section is intended to be exclusive, but each shall be cumulative and in addition to any other remedy herein or otherwise available at law or in equity, each and all of which are subject to the limitations contained in Section 13 hereof.

16. **DEFINITIONS:** As used in this Agreement, the following terms shall have the respective meanings indicated below unless the context otherwise requires:

"AccessManager" means the Ticketmaster AccessManager software which interfaces with the TM System to facilitate certain reporting systems and to provide various enhanced services to the patron admissions process through the use of bar codes or other media printed on Tickets.

"Attraction" means a concert, sporting, entertainment or other act or event of any kind or nature whatsoever to be held at the Facility, with the exception of (i) the Elton John concert currently scheduled to be held at the Facility on March 19, 2022, (ii) any computerized ticketing events to be held prior to December 31, 2021 for which Principal has elected to exclude from the definition of Attraction hereunder (currently only Simon & Garfunkel), (iii) NDSU Athletics events, and (iv) trade shows, amateur sporting events, Ribfest or other similar smaller events for which Principal has determined that computerized ticketing is not necessary or practical.

"Attraction Taxes" means any and all sales, amusement, admissions and other taxes, charges, fees, levies or other assessments measured by reference to a charge per Ticket sold or determined based upon the purchase price of a Ticket assessed by federal, state, county, municipal or other governmental or quasi-governmental authorities as a result of, or in connection with, any Attraction, including Principal Taxes and Ticketmaster Taxes as further described below. To the extent such taxes relate to the funds paid or owed to Principal by Ticketmaster under this Agreement such portion of Attraction Taxes may also be referred to herein as Principal Taxes, and to the extent such taxes relate to fees or charges collected and retained by Ticketmaster under this Agreement, such portion of Attraction Taxes may also be referred to herein as Ticketmaster Taxes. For clarity and the avoidance of doubt, any taxes relating to funds collected by Principal via its Facility Box Office sales (or via any other transactions for which funds are paid directly from the consumer to Principal) shall not be deemed Principal Taxes for any purposes hereunder.

"Chargebacks" is defined in Section 8(c) hereof.

"Confidential Information" is defined in Section 12 hereof.

"Contract Year" is defined in Section 1 hereof.

"Convenience Charge" means the per Ticket amount charged to a consumer for the convenience of purchasing Tickets through the TM System.

"Event of Default" is defined in Section 15(a) hereof.

"Face Value" means the face price of a Ticket as determined by Principal, which shall be inclusive of all applicable Attraction Taxes and facility, parking and similar fees.

"Facility" means any venues owned, controlled, operated or managed by Principal, directly or indirectly through one or more affiliates, or where Principal otherwise controls the rights or has the authority to sell tickets to any event, including, but not limited to the venue(s) located at 1800 N University Dr, Fargo, ND 58102 and currently known as the Fargodome.

"Facility Box Office" means the Facility's Ticket sales locations that are operated by Principal and located at the Facility.

"Group Sales" means sales of Tickets by Principal to a group consisting of at least ten (10) people for use by the group members to attend an Attraction as a group. In no event shall Group Sales consist of the sale of Tickets to individuals to attend an event separately, or to a ticket resale platform or marketplace, professional ticket reseller or other individual or entity with the primary purpose of reselling such Tickets.

"Hardware" means all of that certain computer hardware, communications equipment, terminals and hook-ups (including replacements thereof) listed with particularity on Exhibit B or otherwise supplied by Ticketmaster to Principal at any time during the Term of this Agreement, but excluding (i) any computer hardware, communications equipment, terminals and hook-ups purchased by Principal to provide the connectivity to and interfacing with the TM System required under this Agreement, and (ii) any computer hardware, communications equipment, terminals and hook-ups purchased by Principal from Ticketmaster.

"House Seats" means Tickets provided by Principal (i) to the Attraction's promoter, performing act or event, or their managers or agents (i.e. band holds); (ii) for distribution through legitimate fan clubs in accordance with current guidelines (i.e. fan club holds); or (iii) for legitimate promotional purposes (e.g. radio station promotions); provided that House Seats Tickets shall not be distributed to the general public or sold to a ticket resale platform or marketplace, professional ticket reseller or other individual or entity with the primary purpose of reselling such Tickets.

"Inside Charges" means the amounts Ticketmaster charges Principal to sell, issue and process Tickets utilizing the TM System under this Agreement.

"Intellectual Property" is defined in Section 11(b) hereof.

"Internet Sales" means all sales of Tickets over the Internet, or via mobile or smart phone application.

"License" is defined in Section 4(a) hereof.

"Payment Processing Fees" is defined in Section 3(b).

"Principal's Website" means an Internet website(s) owned, operated and maintained by Principal.

"Processing Fee" means the per order amount charged by Ticketmaster to a consumer for purchasing Tickets via Ticketmaster distribution channels through the TM System.

"Purchaser Data" is defined in Section 11(c) hereof.

"sale and sell" and any derivations thereof in this Agreement shall include any distribution for consideration, by any means or method (including without limitation, on the Internet or by auction) and shall include resales.

"Season/Contract Tickets" means specifically designated Tickets sold directly by Principal on an annual basis across all Attractions or across all of a category of Attractions (i.e., luxury

suites, club level seats and season tickets); provided, that, in no event shall Season/Contract Tickets consist of the sale of Tickets to a ticket resale platform or marketplace, professional ticket reseller or other individual or entity with the primary purpose of reselling such Tickets.

"Sellable Capacity" means the admission capacity of the Facility for any particular Attraction.

"Signing Bonus" is defined in Section 3(c)(iii) hereof.

"Software" means Ticketmaster's ticketing system software known and marketed as Ticketmaster Classic, AccessManager, TM Charge, TM+ and any new versions thereof or any other deliverables for TM System access provided to Principal by Ticketmaster during the Term.

"Term" is defined in Section 1 hereof.

"Ticket" means a printed, electronic or other type of evidence of the right, option or opportunity to occupy space at or to enter or attend an Attraction or Attractions even if not evidenced by any physical manifestation of such right, such as a "smart card".

"Ticket Receipts" means the Face Value of all Tickets sold by Ticketmaster, plus any Convenience Charges and Processing Fees retained by Principal, less any applicable Inside Charges (exclusive of Ticketmaster Taxes in jurisdictions in which Principal is required to remit Attraction Taxes to the applicable taxing authority) and Payment Processing Fees, and less any Principal Taxes for jurisdictions in which Ticketmaster is required to remit Principal Taxes to the applicable taxing authority.

"TM Charge" means the electronic payment processing system within the TM System that utilizes the global banking association networks to authorize electronic payment for purchases of Tickets to Attractions sold by Principal from the Facility Box Office as permitted under this Agreement.

"TM.com Website" means any Internet websites owned, operated and maintained by Ticketmaster, including, without limitation, any co-branded versions and any version distributed through any broadband distribution platform or through any platform or device including television, broadband and wireless technologies.

"TM System" means the Hardware, Software, TM.com Website, related procedures and personnel, and repair and maintenance services established and maintained by Ticketmaster and its affiliates for the purpose of selling, distributing, auditing and controlling the sale of Tickets for Attractions, including, without limitation, by Internet Sales, and the processing of transactions through the Software.

17. **MISCELLANEOUS:**

(a) **Governing Law/Jurisdiction:** This Agreement shall be interpreted and governed by the laws of the State of North Dakota, without reference to conflict of laws principles. Each of the parties hereto agrees that the state courts, and the United States federal courts, that are located in the State of North Dakota shall each have subject matter jurisdiction hereunder and personal jurisdiction over each of the parties hereto. Each such party hereby consents thereto, and hereby waives any right it may have to assert the doctrine of forum non conveniens or to

object to venue to the extent that any proceeding is conducted in accordance with the foregoing provision.

(b) **Waiver of Jury Trial:** In the event the parties are required for any reason to submit any dispute hereunder to trial, the parties expressly agree to waive the right to a jury trial, because the parties hereto, all of whom are represented by counsel, believe that the complex commercial and professional aspects of their dealing with one another make a jury determination neither desirable nor appropriate.

(c) **Entire Agreement; Modification:** This Agreement constitutes the entire and exclusive agreement between the parties hereto with respect to the subject matter hereof and supersedes and cancels all previous oral or written communications, proposals, agreements, and commitments. No modification to this Agreement, nor any waiver of any rights, shall be effective unless assented to in writing by the party to be charged and the waiver of any breach or default shall not constitute a waiver of any other right hereunder or any subsequent breach or default. A party's delay in enforcing its rights hereunder shall not be construed as a waiver of such rights or remedies.

(d) **Assignment:** Without the prior written consent of Ticketmaster, which consent shall not be unreasonably withheld, Principal shall not (i) directly or indirectly assign, transfer, pledge or hypothecate its rights or obligations in this Agreement or any interest therein; or (ii) permit the Hardware (if any) or any part thereof to be used, or access to the Software or any part thereof to be had, by anyone other than Principal or Principal's authorized employees. Any such assignment shall not relieve Principal of any of its obligations hereunder. Notwithstanding the above, Principal may assign this Agreement and permit access to the Hardware and Software in the event of an assignment by Principal to any parent, subsidiary, affiliate or success-in-interest (including, without limitation, a successor by virtue of an acquisition), in which event no consent by Ticketmaster shall be required, provided such assignment does not impair Ticketmaster's rights or increase Ticketmaster's obligations hereunder. In the event that any such assignee is a competitor of Ticketmaster's or is not of at least substantially similar quality and characteristics as Principal, Ticketmaster shall have the option to terminate this Agreement or to require reasonable modifications to this Agreement in light of any changed circumstances. Without the prior written consent of Principal, which consent shall not be unreasonably withheld, Ticketmaster shall not assign or transfer its rights or obligations in this Agreement or any interest therein, except in the event of an assignment by Ticketmaster to any parent, subsidiary, affiliate or successor-in-interest (including, without limitation, a successor by virtue of an acquisition), in which event, no such consent shall be required but Principal shall have the option to terminate this Agreement early on thirty (30) days prior written notice. Any assignment, transfer, pledge or hypothecation for which consent is required hereby and which is made without such consent shall be void. Notwithstanding the foregoing, Principal agrees and acknowledges that certain of Ticketmaster's duties and obligations under this Agreement may be performed on Ticketmaster's behalf by one or more of its parent, subsidiaries and affiliates, and no such performance shall be deemed to be an assignment or breach of this Agreement by Ticketmaster. In the event Principal assigns this Agreement pursuant to this Section, Principal shall, at Ticketmaster's election, either (1) remit the outstanding balance of any Contingent Sales Volume Payment to Ticketmaster or (2) require in writing that Principal's permitted assignee expressly agrees to assume this Agreement, including responsibility for the return of any unpaid amount of any Contingent Sales Volume Payment to Ticketmaster in the event the outstanding amount of the Advance and Signing Bonus is not fully earned by Principal or such assignee and fully recouped by Ticketmaster during the term of this Agreement, but in no event would such assumption relieve Principal of its obligation related to any

unpaid Contingent Sales Volume Payment.

(e) **Relationship of the Parties**: Each party is an independent contractor and not an agent or partner of, or joint-venturer with, the other party for any purpose other than as set forth in this Agreement (e.g., Ticketmaster is the agent of Principal with respect to ticket sales and distribution). Neither party by virtue of this Agreement shall have any right, power, or authority to act or create any obligation, express or implied, on behalf of the other party.

(f) **Force Majeure**: Neither party will be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, when and to the extent such failure or delay is caused by or results from acts beyond the impacted party's control, including, without limitation, the following force majeure events ("Force Majeure Events"): (a) acts of God; (b) flood, fire, earthquake, explosion, pandemic or epidemic; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest; (d) government order or law; (e) actions, embargoes, or blockades in effect on or after the date of this Agreement; (f) action by any governmental authority; (g) national or regional emergency; (h) strikes, labor stoppages or slowdowns, or other industrial disturbances; and (i) shortage of adequate power. The impacted party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Events are minimized. The impacted party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause.

(g) **Severability**: If any provision of this Agreement is found to be invalid or unenforceable in any jurisdiction (a) the validity or enforceability of such provision shall not in any way be affected with respect to any other jurisdiction, and the validity and enforceability of the remaining provisions shall not be affected; and (b) the parties shall replace such provision by one or more valid and enforceable provisions approximating the original provision as closely as possible.

(h) **Notices**: Any notices required to be given under this Agreement must be sent to each party, in writing, at the address set forth immediately below the signature line hereto or at such address as may be provided by each party in writing from time to time, by certified or registered mail, return receipt requested or by an overnight courier. Notices will be deemed effective the day following sending if sent by overnight courier or five days after sending if sent by certified or registered mail. Settlement reports may be delivered from Ticketmaster to Principal by email; therefore Principal shall promptly notify Ticketmaster of any change to its email address set forth immediately below the signature line hereto.

(i) **Binding Agreement/Counterparts**: The terms, conditions, provisions and undertakings of this Agreement shall be binding upon and inure to the benefit of each of the parties hereto and their respective successors and permitted assigns; provided, however, that this Agreement shall not be binding until executed by each of the parties. This Agreement may be executed in multiple counterparts which when taken together constitute a single instrument.

(j) **Legal Review**: Each of the parties has had the opportunity to have its legal counsel review this Agreement on its behalf. If an ambiguity or question of intent arises with respect to any provision of this Agreement, this Agreement will be construed as if drafted jointly by the parties. The parties expressly agree that the construction and interpretation of this Agreement shall not be strictly construed against the drafter.

(k) **Attorneys' Fees**: In addition to any other rights hereunder, the substantially prevailing party, as a court of competent jurisdiction (as provided above) may determine, in any claim or other dispute which relates to this Agreement, regardless of whether such claim or other dispute arises from a breach of contract, tort, violation of a statute or other cause of action, shall have the right to recover and collect from the other party its reasonable costs and expenses incurred in connection therewith, including, without limitation, its reasonable attorneys' fees. If a party substantially prevails on some aspects of such claim or dispute but not others, the court may apportion any award of costs or attorneys' fees in such manner as it deems equitable.

(l) **Client Listings**: Principal's execution of this Agreement indicates approval for Principal to be listed as a Ticketmaster client in monthly newsletters for distribution to event industry clients, in product boiler plate information, and in future releases about Ticketmaster products and services for distribution to trade and consumer media. At any time, Principal may, in its sole discretion, direct Ticketmaster to stop using Principal's name for the purposes listed in this Section by sending notice to Ticketmaster via email at client.news@ticketmaster.com.

(m) **Survival of Terms**: Any provision of this Agreement that contemplates performance or observance subsequent to any termination or expiration of this Agreement, including without limitation provisions related to use of the Software, purchaser data, limitations on liability, indemnification, confidential information, governing law and waivers of jury trials, shall survive any termination or expiration of this Agreement and continue in full force and effect.

IN WITNESS WHEREOF, Ticketmaster and Principal have caused this Licensed User Agreement to be duly executed as of the date set forth below.

TICKETMASTER L.L.C.,
a Virginia limited liability company

FARGODOME, LLC,
a limited liability company

By: _____

By: _____

Print Name: Geoff Carns

Print Name: Tim Mahoney

Title: SVP, Venues & Promoters

Title: City of Fargo Mayor

Date: _____

Date: _____

Address: 1800 North University Drive
Fargo, ND 58102

Address: 1041 N. Formosa Ave.
West Hollywood, CA 90046

With a copy to:

Attn: Ticketmaster L.L.C.
175 Toyota Plaza
Suite 350
Memphis, TN 38103
Regional Vice President
Venues & Promoters

and with a copy to:

Attn: Ticketmaster L.L.C.
1041 N. Formosa Ave.
West Hollywood, CA 90046
General Counsel

EXHIBIT A
COMPENSATION

1. **Charges and Fees.**

(a) **Convenience Charge (Per Ticket) and Processing Fee (Per Order)**: The per Ticket Convenience Charges and per order Processing Fees shall be determined and (subject to the terms set forth herein) retained by Principal during the Term of this Agreement; provided, however, in the event the per Ticket Convenience Charges in any single transaction exceeds the amount of \$20.00 per Ticket (subject to escalation on the first day of the second Contract Year and on the first day of each Contract Year thereafter during the Term in the amount of \$0.10 per Ticket) (the "Standard Per Ticket Fee Cap"), then Principal and Ticketmaster shall each retain fifty percent (50%) of any amount of such aggregate per Ticket fees for such transaction in excess of the Standard Per Ticket Fee Cap; and provided, further, in the event the per order Processing Fees in any single transaction exceeds the amount of \$8.00 per order (the "Standard Per Order Fee Cap"), then Principal and Ticketmaster shall each retain fifty percent (50%) of any amount of such aggregate per order fees for such transaction in excess of the Standard Per Order Fee Cap. In the event any per Ticket fee or per order fee in any single transaction is less than the applicable Inside Charge due Ticketmaster as set forth in subsection (b) following, Ticketmaster reserves the right to invoice Principal for the amount of such Inside Charge, or to setoff such amount against any funds held by Ticketmaster on account of Principal.

(b) **Inside Charges:**

<u>Type of Ticket</u>	<u>Per Ticket Inside Charge</u>	<u>Per Order Inside Charge</u>
For all Tickets sold via the Facility Box Office (all Face Values)	\$0.00 per Ticket	\$0.00 per order
For Family Attraction Tickets sold via Ticketmaster distribution channels (all Face Values)	\$2.00 per Ticket*	\$2.75 per order
For Broadway Attraction Tickets sold via Ticketmaster distribution channels (all Face Values)	\$2.00 per Ticket*	\$2.75 per order
For Motorsports and Professional Sports Attraction Tickets sold via Ticketmaster distribution channels (all Face Values)	\$2.00 per Ticket*	\$2.75 per order

<u>Type of Ticket</u>	<u>Per Ticket Inside Charge</u>	<u>Per Order Inside Charge</u>
For High School/Trade Show Attraction Tickets sold via Ticketmaster distribution channels with the following Face Values: \$0.01 to \$5.00 \$5.01 and above	\$0.75 per Ticket \$1.00 per Ticket	\$0.00 per order
For Concert Attraction and any Other Attraction (i.e., any Attraction other than Family, Broadway, Highschool/Trade Show, Motorsports and Professional Sports Attractions) Tickets sold via Ticketmaster distribution channels (all Face Values)	\$3.00 per Ticket*	\$2.75 per order

The per Ticket Inside Charges for all Tickets sold via Ticketmaster distribution channels set forth above with the exception of High School/Trade Show Attraction Tickets, shall be subject to automatic increase on the first day of the second Contract Year and on the first day of each Contract Year thereafter during the Term in the amount of \$0.10 per Ticket.

(c) **Delivery Fees:**

(i) **Mail Fee.** Ticketmaster shall be entitled to assess and receive a fee in the amount of \$5.00 per order against purchasers of Tickets using the U.S. mail method of delivery (the "Mail Fee").

(ii) **Mobile Delivery.** Ticketmaster shall not assess any mobile delivery fee against purchasers of Tickets using the mobile method of delivery.

(iii) **Will Call Fee.** Principal has the option of implementing a per order fee ("Will Call Fee") in an amount of up to \$5.00 to be assessed against purchasers of Tickets using the will call method of delivery. Should Principal decide to implement a Will Call Fee, Ticketmaster shall assess such a fee against purchasers of Tickets using the will call method of Ticket fulfillment, and shall pay Principal the entirety of such Will Call Fee, less Payment Processing Fees (calculated at the rate set forth below) on such additional amount.

2. **Payment Processing Fees:**

<u>Type of Sale</u>	<u>Percentage Rate</u>
Ticketmaster distribution channels	3.12% of Face Value of Tickets plus any fees added to the Face Value

Principal Sales using TM Charge	2.6% of all transactions processed
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Any percentage rates set forth above are subject to automatic increase due to increases in the interbank rates imposed on Ticketmaster.

EXHIBIT B

HARDWARE

Up to 22	Boca Ticket Printers
Up to 21	Box Office Set-ups
Up to 15	EMV Devices
Up to 7	Credit Card Swipers
Up to 59	Scanners

EXHIBIT C

TM+ Terms and Conditions

Ticketmaster shall enable TM+ for all Attractions (except and excluding Attractions presented by a third party promoter who has elected to deactivate TM+ for all of its events on a nationwide basis) in accordance with the settlement terms set forth in this Exhibit C below.

TM+ Settlement Terms

- For any primary market ticket inventory sold through TM+, Ticketmaster shall continue to sell such tickets and settle the proceeds of such sales with Principal in accordance with the terms and conditions for such transactions as set forth in the Agreement.
- For any secondary market ticket inventory sold through TM+, Ticketmaster shall assess its standard fees against the buyers and sellers of such tickets in amounts as determined by Ticketmaster, which amounts currently include: (i) a seller fee generally in an amount of up to twelve percent (12%) of the ticket posting price (i.e., the price set by the seller upon posting such ticket for sale), and (ii) a buyer fee generally in an amount of up to seventeen and five-tenths percent (17.5%) of the ticket listing price (i.e., the posting price plus the seller fee), with a \$5.00 minimum.
- **TM+ Revenue Share:**
 - Principal shall be entitled to receive from Ticketmaster ten percent (10%) of the Net Resale Fees collected (and not refunded or subject to chargeback) by Ticketmaster on account of secondary market ticket sales through TM+ (the "TM+ Revenue Share").
 - For purposes of this Exhibit C, "Net Resale Fees" shall be defined as the gross amount collected from the new purchaser of a secondary market inventory ticket via TM+ less (i) the proceeds paid to the ticket seller, (ii) an amount equal to 3.5% of the gross amount collected from the new purchaser (to cover credit card processing fees), (iii) any applicable sales, admission or similar tax, and (iv) amount equal to 3.5% of the gross amount collected from the purchaser of any Ticket purchased via TM+ (to cover certain customer acquisition costs incurred by Ticketmaster).
- The TM+ Revenue Share will be paid to Principal on a quarterly basis for all such sales occurring in any calendar quarter, on or before the thirtieth (30th) day of the month following each calendar quarter. In the event that any Attraction for which Ticketmaster has made any TM+ Revenue Share payment to Principal becomes a Cancelled Attraction, Principal shall promptly repay to Ticketmaster the amount of such TM+ Revenue Share payments in respect of such Cancelled Attraction.
- Each settlement relating to the TM+ Revenue Share pursuant to this Exhibit C shall be accompanied by a report of the applicable transactions during such settlement period.

EXHIBIT D

TM1 Engagement TERMS AND CONDITIONS

Ticketmaster shall make TM1 Engagement available for Principal's use in exchange for the fees set forth in Schedule 1 attached hereto.

The parties acknowledge and agree that Principal is selecting the Plan 2 annual subscription plan. During the Term of the Agreement, Principal shall have the opportunity to upgrade Principal's current plan to a higher one, or downgrade to any lower plan, upon written notice to Ticketmaster and payment of the new annual subscription fee; provided, that such new plan shall not take effect until the beginning of the next Contract Year. For the avoidance of doubt, any unsent emails comprising the annual sent messages threshold and any unused Ticketmaster professional services hours for Principal's plan during each Contract Year shall expire at the conclusion of each such Contract Year, and no TM1 Engagement credit of any kind shall be provided to Principal in connection with such unsent emails and/or unused hours.

Notwithstanding anything to the contrary set forth in Schedule 1 attached hereto, , Ticketmaster agrees to waive the Plan 2 annual subscription fee; provided however, the number of Ticketmaster professional service hours included for no charge shall be 0 hours. In the event Principal exceeds the applicable email threshold for Principal's current plan in any Contract Year, or in the event Principal elects to upgrade Principal's current plan to a higher one, Ticketmaster shall invoice Principal at that time for the incremental amount of the annual subscription fee applicable to such higher volume of emails sent.

In the event Principal elects to purchase additional Principal user licenses and/or additional Ticketmaster professional services hours, in each case, for any given Contract Year to supplement the number of user licenses and professional services hours currently included in Principal's subscription plan for such Contract Year as set forth in Schedule 1 attached hereto,, Ticketmaster shall invoice Principal for the additional fees applicable in connection therewith at the time of such election. In the event Principal elects to activate Ticketmaster's Premium Automation Package in accordance with the terms set forth in Schedule 1 attached hereto, Ticketmaster shall invoice Principal for the additional annual fee applicable in connection therewith at the time of such election and at the beginning of each Contract Year during the Term of the Agreement thereafter, it being understood that any activation of Ticketmaster's Premium Automation Package shall be for the remaining Term of the Agreement (and not just for the remainder of the then-current Contract Year).

In the event Principal fails to pay any TM1 Engagement related invoice in full within thirty (30) days of issuance, Ticketmaster may deduct the unpaid amount of such invoice from the settlements otherwise due and owing to Principal under the Agreement, or Ticketmaster may elect to terminate the provision of TM1 Engagement services.

Ticketmaster shall provide all necessary maintenance and service support with respect to the use of TM1 Engagement, as described in Schedule 2 attached hereto. Ticketmaster agrees

to absorb all fees and other amounts due to any third party in connection with the use of TM1 Engagement, and support costs with respect thereto.

Principal agrees to use TM1 Engagement only in compliance with all applicable laws and administrative rulings and in accordance with Ticketmaster's posted privacy policies. Principal shall also include in any non-transactional email communications that Principal may make using TM1 Engagement a mechanism to provide the recipient with the right to "opt-out" from receiving further non-transactional email communications from Principal and Principal shall honor such opt-out preferences. Principal shall indemnify Ticketmaster's Indemnitees against, and hold Ticketmaster's Indemnitees harmless from, any and all claims, actions, damages, expenses (including court costs and reasonable attorneys' fees), obligations, losses, liabilities and liens, imposed on, incurred by, or asserted against Ticketmaster's Indemnitees occurring as a result of, or in connection with any email campaigns or distributions conducted by Principal including, without limitation, email campaigns or distributions in violation of federal, state or other laws applicable to commercial emails; except, in each case, to the extent that any such claims shall relate to Ticketmaster's negligence or willful misconduct with respect thereto.

Schedule 1 to Exhibit D

Plan	Annual Sent Messages		Annual Subscription Fee*	# of Principal User Licenses Included**	# of Ticketmaster Professional Services Hours Included***	Ticketmaster's Premium Automation Package****
Base	0	to	1,000,000	2	1 hour (Q&A call)	NOT INCLUDED
Plan 1	1,000,001	to	2,000,000	2	5 hours/ year	
Plan 2	2,000,001	to	4,000,000	3	10 hours/year	
Plan 3	4,000,001	to	6,000,000	3	15 hours/year	
Plan 4	6,000,001	to	12,000,000	3	20 hours/year	
Plan 5	12,000,001	to	18,000,000	3	25 hours/year	
Plan 6	18,000,001	to	30,000,000	4	30 hours/year	
Plan 7	30,000,001	to	48,000,000	4	35 hours/year	
Plan 8	48,000,001	or	More	Custom	Custom	

*The annual subscription fees for each plan set forth in the schedule above shall be subject to automatic increase on the first day of the second Contract Year and on the first day of each Contract Year thereafter during the Term in the amount of 5% of the previous Contract Year's annual subscription fee for each such plan.

**Additional user licenses may be purchased by Principal for \$600 per additional user license/ per Contract Year, and such \$600 per additional user license/ per Contract Year fee shall not be pro-rated for any partial Contract Year except to the extent explicitly provided otherwise in the Exhibit to which this Schedule 1 is attached. Principal shall notify Ticketmaster of its election to purchase additional user licenses during each Contract Year for which Principal intends to use such additional user licenses, and Principal's election to purchase additional user licenses during any particular Contract Year shall not carry forward into the continued use of such additional user licenses during any subsequent Contract Years.

***Except to the extent explicitly provided otherwise in the Exhibit to which this Schedule 1 is attached, notwithstanding the chart above, the number of Ticketmaster professional service hours included in any annual subscription plan for which Ticketmaster has waived or has otherwise provided a credit or discount towards Principal's annual subscription fee shall be 0.

****The amount of any unused Ticketmaster professional service hours included for any Contract Year shall expire at the conclusion such Contract Year, or upon the termination or expiration of the Agreement, whichever is earlier. For the avoidance of doubt, any unused Ticketmaster professional service hours included for any Contract Year shall not be rolled forward for use in any subsequent Contract Year.

****Additional Ticketmaster professional service hours may be purchased by Principal at the rate of \$250 per additional hour, or at the bulk discount rate of \$225 per additional hour where Principal purchases 50 or more hours in a single transaction, it being understood any such hours (including any of those purchased in bulk), consistent with the terms set forth above, shall expire at the conclusion of the Contract Year in which they were purchased, or upon the termination or expiration of the Agreement, whichever is earlier.

****Principal may elect to activate Ticketmaster's Premium Automation Package as an optional add-on for \$1,200 per Contract Year, and such \$1,200 per Contract Year fee shall not be pro-rated for any partial Contract Year except to the extent explicitly provided otherwise in the Exhibit to which this Schedule 1 is attached. For clarity, standard two-touch welcome automations are included with each Principal subscription plan and do not require activation of Ticketmaster's Premium Automation Package. Any activation of Ticketmaster's Premium Automation Package shall be for the remainder Term of the Agreement (and not just for the remainder of the then-current Contract Year).

Schedule 2 to Exhibit D

Plan				Annual Sent Messages		TM1 Engagement Ticketmaster Support	
Base	0	to	1,000,000			<ul style="list-style-type: none"> • Unlimited issue resolution technical support via Ticketmaster product support • Implementation Services • Industry-specific web-based training • Industry-specific user guides • Industry-specific best practices documentation and webinars • Deliverability Support 	
Plan 1	1,000,001	to	2,000,000				
Plan 2	2,000,001	to	4,000,000				
Plan 3	4,000,001	to	6,000,000				
Plan 4	6,000,001	to	12,000,000				
Plan 5	12,000,001	to	18,000,000				
Plan 6	18,000,001	to	30,000,000				
Plan 7	30,000,001	to	48,000,000				
Plan 8	48,000,001	or	More				

EXHIBIT E

PLATINUM TICKETS AND VIP PACKAGES

1. **Platinum Tickets and VIP Packages**

(a) **Definitions.**

"Platinum Ticket" means any dynamically-priced Ticket that represents the most select category of seats for an Attraction resulting from proximity to stage or other superior amenities as mutually determined by Principal and Ticketmaster, which is sold by Ticketmaster on behalf of Principal.

"Platinum Ticket Fee" means a fee assessed by Ticketmaster against each Platinum Ticket purchaser in an amount equal to 14.8% (which incorporates a Payment Processing Fee in the same percentage amount as set forth in the Agreement with respect to standard Ticket sales) of the Platinum Ticket Price (excluding any applicable delivery and processing fees) for each Platinum Ticket sold by Ticketmaster via the TM.com Website. Additionally, Ticketmaster shall charge Principal a "Platinum Platform Fee" in the amount of five percent (5%) of the Platinum Ticket Price (excluding any applicable delivery and processing fees), which shall be deducted from the Platinum Proceeds as an Inside Charge prior to settlement. The Platinum Ticket Fee and the Platinum Platform Fee payable to Ticketmaster in connection with each sale of a Platinum Ticket shall be in lieu of any per Ticket Convenience Charge or Inside Charge otherwise due Ticketmaster under this Agreement in respect of standard Ticket sales.

"Platinum Ticket Price" means the total price a purchaser pays for a Platinum Ticket sold via the TM.com Website, inclusive of applicable taxes, but exclusive of the Platinum Ticket Fee. The Platinum Ticket Price shall initially be established by Principal in consultation with Ticketmaster, and any subsequent adjustments to the Platinum Ticket Price shall be administered in accordance with parameters accepted by Principal in advance.

"Platinum Proceeds" means the Platinum Ticket Price collected by Ticketmaster, which, for the avoidance of doubt, shall not include the Platinum Ticket Fee.

"VIP Package(s)" means Ticket packages which entitle the purchaser of the Ticket to additional benefits to be fulfilled solely by Principal (and not, for the avoidance of doubt, the artist or performing act of any Attraction), including but not limited to, access to unique experiences surrounding the Attraction and/or unique merchandise.

"VIP Package Fee" means a fee assessed by Ticketmaster in the amount of 14.8% (which incorporates a Payment Processing Fee in the same percentage amount as set forth in the Agreement with respect to standard Ticket sales) of the VIP Package Price, which amount shall be charged to the VIP Package purchaser in addition to the VIP Package Price. Additionally, where Principal utilizes the marketing and fulfillment services of Ticketmaster's artist services division in connection with the applicable VIP Package offer, Ticketmaster shall charge Principal a "VIP Package Platform Fee" in the amount of ten percent (10%) of the VIP Package Lift, which shall be deducted from the VIP Package Proceeds as an Inside Charge prior to settlement.

"VIP Package Lift" means, as to each VIP Package, the VIP Package Price less the Face Value of the applicable Ticket included in such VIP Package.

"VIP Package Price" means the total price of the VIP Package paid by the purchaser as set by Principal, inclusive of the Face Value of the Ticket and applicable taxes.

"VIP Package Proceeds" means the VIP Package Price, which, for the avoidance of doubt shall not include the VIP Package Fee.

(b) **Platinum Tickets.**

(i) **Platinum Ticket Set-Up Information.** Principal will provide Ticketmaster with notice of its desire to have Ticketmaster enable a Platinum Ticket offer for any applicable Attraction, and shall provide Ticketmaster with required Set-Up Information in respect of such offer so that Ticketmaster may set up the offer for sale through the TM.com Website.

(ii) **Platinum Ticket Fulfillment.** Ticketmaster shall fulfill Platinum Ticket orders in the same manner as standard Tickets through Ticketmaster's ordinary distribution channels as requested by the purchaser.

(iii) **Platinum Ticket Settlement.** Ticketmaster shall pay Principal the Platinum Proceeds, less the Platinum Platform Fee, for each Platinum Ticket sold by Ticketmaster during a calendar week along with settlement of Ticket Receipts for the applicable week. Remittance of any applicable taxes on the amounts that each party retains from the sale of Platinum Tickets hereunder shall be in accordance with the terms and conditions set forth in Section 9(b) of the Agreement to which this Exhibit E is attached. Except as provided otherwise above, settlements of Platinum Proceeds shall be made in accordance with and subject to the accounting and refund procedures set forth in this Agreement.

(iv) **Platinum Ticket Fee Royalty.** Principal shall be entitled to receive from Ticketmaster a royalty in the percentage amount of: fifty percent (50%) with respect to each Platinum Ticket Fee received (and not refunded or subject to chargeback) by Ticketmaster. Notwithstanding the above, Payment Processing Fees, delivery fees, processing fees, and taxes (in each case, if any) related to any Platinum Ticket Fee shall be deducted from the Platinum Ticket Fees before the Platinum Ticket Fee royalties are calculated. Neither party makes any representation that any specific number of Platinum Tickets nor any amount of Platinum Ticket Fee royalties shall be available in connection with any Attraction for which the sale of Platinum Tickets has been enabled. Platinum Ticket Fee royalties shall be paid to Principal during a calendar week along with the settlement of Ticket Receipts for the applicable week.

(c) **VIP Packages.**

(i) **VIP Package Offer Information.** Principal will provide Ticketmaster with reasonable advance written notice of its desire to have Ticketmaster enable a VIP Package, which notice shall include an accurate and complete description of the VIP Package content, applicable dates for the sales campaign, and any other information reasonably requested by Ticketmaster (the "Offer Information"). Notwithstanding anything to the contrary, Ticketmaster shall not be obligated to offer a VIP Package for an Attraction if, in the reasonable discretion of Ticketmaster, the VIP Package is not appropriate for sale via the TM.com Website. Ticketmaster

and Principal will work together to develop appropriate messaging appearing on the TM.com Website to inform all purchasers of VIP Package elements and benefits. Ticketmaster shall have final control over any and all messaging on the TM.com Website, and reserves the right to reject any messaging proposed by Principal for any reason, including, without limitation, size constraints. Notwithstanding the foregoing, Ticketmaster shall have no responsibility or liability in the event that information (including Offer Information) provided to Ticketmaster by Principal relating to the VIP Package, is incorrect or incomplete, and Principal shall indemnify, defend and hold Ticketmaster's Indemnitees harmless from any and all claims, actions, damages, expenses (including court costs and reasonable attorneys' fees), obligations, losses, liabilities and liens, imposed on, incurred by, or asserted against Ticketmaster's Indemnitees occurring as a result of, or in connection with the Offer Information.

(ii) VIP Package Fulfillment.

(1) Ticketmaster Responsibilities. Ticketmaster will control access to the VIP Package by distributing to each applicable purchaser a unique barcode which will allow the purchaser to redeem the VIP Package elements from Principal at the Attraction. Ticketmaster shall be responsible solely for enabling a barcode for each Purchaser to use to redeem the VIP Package elements, together with instructions for redemption (including (i) that Principal is the party responsible for fulfilling the VIP Package elements, (ii) the time frames during which redeeming purchasers may redeem the VIP Package elements, and (iii) the relevant Principal customer service contact information for purposes of handling customer support issues relating to such redemption). Ticketmaster shall be responsible for customer service inquiries relating solely to enabling the barcode.

(2) Principal Responsibilities. Principal shall allow purchasers to redeem the VIP Package elements at the Facility. Principal shall be responsible for performing all fulfillment, redemption and delivery obligations, and customer service related to all fulfillment and delivery of VIP Package elements, and all costs associated therewith, and shall indemnify, defend and hold Ticketmaster's Indemnitees harmless from any and all claims, costs (including court costs and reasonable attorneys' fees), liabilities, obligations, losses, liabilities and liens related to, or occurring as a result of or in connection with, fulfillment, redemption and delivery of the VIP Package elements.

(iii) VIP Package Settlement.

(1) Ticketmaster shall pay Principal the VIP Package Proceeds, less the VIP Package Platform Fee, for each VIP Package sold by Ticketmaster during a calendar week along with settlement of Ticket Receipts for the applicable week. Notwithstanding anything to the contrary, Principal shall not receive any payment, nor shall a sale be deemed to have been made, if any VIP Package is the subject of a chargeback or for which Ticketmaster refunds the Ticket portion of the VIP Package.

(2) Principal agrees that it shall be responsible for all refunds related to the VIP Package elements, and to the extent Ticketmaster receives any VIP Package element refund requests, Ticketmaster shall refer the purchaser to a customer service number provided by Principal to Ticketmaster for such customer service issues. In no event shall Ticketmaster be liable for a refund of the VIP Package elements.

(3) Remittance of any applicable taxes on the amounts that each party retains from the sale of Platinum Tickets hereunder shall be in accordance with the terms and conditions set forth in Section 9(b) of the Agreement to which this Exhibit E is attached.

(iv) VIP Package Fee Royalty. Principal shall be entitled to receive from Ticketmaster a royalty in the percentage amount of: fifty percent (50%) with respect to each VIP Package Fee received (and not refunded or subject to chargeback) by Ticketmaster. Notwithstanding the above, Payment Processing Fees, and taxes (in each case, if any) related to any related to any VIP Package Fee shall be deducted from the VIP Package Fees before the VIP Package Fee royalties are calculated. Neither party makes any representation that any specific number of VIP Packages nor any amount of VIP Package Fee royalties shall be available in connection with any Attraction for which the sale of VIP Packages has been enabled. VIP Package Fee royalties shall be paid to Principal during a calendar week along with settlement of Ticket Receipts for the applicable week.

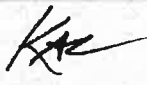
Form W-9 (Rev. October 2007) Department of the Treasury Internal Revenue Service	Request for Taxpayer Identification Number and Certification	Give form to the requester. Do not send to the IRS.
Print or type See specific instructions on page 2	Name (as shown on your income tax return)	
	Business name, if different from above	
	Check appropriate box: <input type="checkbox"/> Individual/Sole proprietor <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Limited liability company. Enter the tax classification (D=disregarded entity, C=corporation, P=partnership) ▶ <input type="checkbox"/> Exempt payee <input type="checkbox"/> Other (see instructions) ▶	
	Address (number, street, and apt. or suite no.)	Requester's name and address (optional)
	City, state, and ZIP code	
List account number(s) here (optional)		
Part I Taxpayer Identification Number (TIN) Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1 to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see <i>How to get a TIN</i> on page 3. Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.		
Part II Certification Under penalties of perjury, I certify that: <ol style="list-style-type: none"> The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and I am a U.S. citizen or other U.S. person (defined below). Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. See the instructions on page 4.		
Sign Here	Signature of U.S. person ▶ _____ Date ▶ _____	
General Instructions Section references are to the Internal Revenue Code unless otherwise noted.		
Purpose of Form A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA. Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to: <ol style="list-style-type: none"> Certify that the TIN you are giving is correct (or you are waiting for a number to be issued), Certify that you are not subject to backup withholding, or Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income. Note. If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.		
Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are: <ul style="list-style-type: none"> • An individual who is a U.S. citizen or U.S. resident alien, • A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States, • An estate (other than a foreign estate), or • A domestic trust (as defined in Regulations section 301.7701-7). Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income. The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases: <ul style="list-style-type: none"> • The U.S. owner of a disregarded entity and not the entity, 		

Cat. No. 10231X

Form W-9 (Rev. 10-2007)

(13)

TO: BOARD OF CITY COMMISSIONERS

FROM: KENT COSTIN, DIRECTOR OF FINANCE 

RE: RESOLUTION AUTHORIZING THE ISSUANCE OF STATE REVOLVING FUND LOANS FOR A SOLID WASTE LEACHATE COLLECTION PROJECT

DATE: OCTOBER 12, 2021

The City of Fargo utilizes State Revolving Loans (SRF) in its utility operations for larger capital project financing. Solid Waste is currently undertaking a leachate collection project at the current landfill site. These loans will fund project costs related to this project including the cost of engineering and construction.

The SRF construction loan will bear interest at 1.5% plus and administrative fee of .5%, while the loan related to Engineering costs will be a 0% loan. SRF loans are federally subsidized and are administered by the ND Public Finance Authority. These loans provide the flexibility to manage our Solid Waste capital projects in an efficient and effective manner.

You have previously authorized the loan and our application has been approved by the State of North Dakota.

Bond Counsel and City staff reviewed the attached loan agreements and are seeking your approval of the resolution authorizing the issues of the SRF loans.

Suggested Motion:

Approve a resolution authorizing the issuance of State Revolving Fund loans for the Solid Waste Leachate Collection Project 715-11.

CITY OF FARGO, STATE OF NORTH DAKOTA
RESOLUTION AUTHORIZING THE ISSUANCE AND SALE OF
\$259,000
CITY OF FARGO SOLID WASTE REVENUE BOND, SERIES 2021B

RECITATIONS

The City of Fargo, North Dakota (the "City"), hereby recites that by resolution of its governing body the City has:

1. Found and determined that it is necessary for the City to plan, design and construct a reclamation and redevelopment of the City's former landfill site to expand capacity for disposal, including leachate management and reduction (the "Redevelopment").
2. Directed its engineer to prepare a report as to the general nature, purpose and feasibility of the Redevelopment and an estimate of the probable cost of the Redevelopment.
3. After receiving and approving the engineer's report, directed the engineer to prepare detailed plans and specifications for construction of the Redevelopment.
4. Approved the engineer's detailed plans and specifications for construction of the Redevelopment and caused a copy of such plans and specifications to be filed in the office of the City Auditor.
5. Applied to the North Dakota Department of Health (the "Department") and the North Dakota Public Finance Authority (the "Public Finance Authority") for financial assistance to finance engineering costs (the "Project") of the Redevelopment, which application has been approved.
6. Performed all other acts required by the Constitution and laws of North Dakota prerequisite to the issuance and sale of revenue bonds and required by the Home Rule Charter and ordinances of the City of Fargo for the purpose of providing money to pay for the cost of the Project in the manner required of the City by law with full power and authority conferred on it as a political subdivision and municipality of North Dakota.

RESOLUTION

Be it resolved by the governing body of the City:

SECTION 1.
Sale.

Authorization and

1.01. Ratification of Prior Acts. All acts performed, resolutions, motions, or ordinances adopted or passed, and all publications incidental to the construction and financing of the Project, whether or not reflected in the official minutes and records of the City, are hereby ratified and confirmed, and all resolutions and other acts or proceedings of the City which are in any way

inconsistent with this Resolution are hereby amended to the extent necessary to give full force and effect to this Resolution.

1.02. Authorization. It is hereby found and determined to be necessary for the City to issue \$259,000 in principal amount of its CITY OF FARGO SOLID WASTE REVENUE BOND, SERIES 2021B (the "Municipal Securities"), pursuant to N.D.C.C. ch. 40-35, upon the terms as set forth in this Resolution.

1.03. Offer and Acceptance. The governing body of the City, in response to its application for financial assistance from the Department and the Public Finance Authority, has received an offer from the Public Finance Authority, subject to the approval of the Industrial Commission of North Dakota, to purchase the Municipal Securities at a price equal to the principal amount plus accrued interest, if any, to the date of purchase, which offer is more fully set out in a loan agreement to be entered into between the City and the Public Finance Authority (the "Loan Agreement"). It is hereby found and determined that the offer of the Public Finance Authority to purchase the Municipal Securities is reasonable and advantageous to the City and is hereby accepted, and the Loan Agreement, in substantially the form presented to the City at this meeting, is hereby accepted and authorized to be executed on behalf of the City by its Mayor and City Auditor (the "Authorized Officers"), with such modifications as may be approved by the Authorized Officers. The Authorized Officers are authorized and directed to execute the Loan Agreement and to deliver it to the Public Finance Authority, which execution and delivery shall be conclusive evidence of the approval of any modifications with respect to the Loan Agreement.

SECTION 2.

Term of Bonds.

2.01. Form. The Municipal Securities issued under this Resolution shall be designated CITY OF FARGO SOLID WASTE REVENUE BOND, SERIES 2021B, and shall be issued to the Public Finance Authority in the form of a single registered Municipal Security in substantially the form as attached hereto as Exhibit A.

2.02. Terms. The City authorizes the issuance of the Municipal Securities in the aggregate principal amount not to exceed \$259,000, dated the date of issuance and delivery to the Public Finance Authority.

The Municipal Securities shall bear interest commencing on the date of delivery thereof at the rate of 0.00% per year, with principal payable in installments on September 1 of each of the years and in the amounts set forth below. Interest will be payable only on funds actually advanced to the City by the Public Finance Authority as a draw on the Municipal Securities. The schedule below and attached to the Municipal Securities will be revised to reflect the actual principal amount loaned to the City at the completion of the Project. The Municipal Security is subject to mandatory sinking fund redemption together with accrued interest to the Redemption Date on September 1 of the following years and in the following principal amounts:

<u>Redemption Date</u> <u>(September 1)</u>	<u>Amount</u>	<u>Redemption Date</u> <u>(September 1)</u>	<u>Amount</u>
2023	\$ 29,000	2028	\$25,000
2024	25,000	2029	25,000
2025	25,000	2030	25,000
2026	25,000	2031	25,000
2027	25,000	2032*	30,000

*maturity

2.03. Payment to Registered Holders. The principal of and interest on the Municipal Securities shall be payable to the registered holder thereof at the address appearing on the registration books of the registrar in any coin or currency of the United States of America, which on the respective dates of payment is legal tender for the payment of public or private debts or by check or draft delivered to the registered holder thereof at the address appearing on the registration books of the registrar.

2.04. Registration. The Municipal Securities shall be registered as to both principal and interest and shall be initially registered in the name of and payable to the North Dakota Public Finance Authority. While so registered, principal of and interest on the Municipal Securities shall be payable at the office of the Bank of North Dakota, in Bismarck, North Dakota (the "Bank"), or such other place as may be designated by the Public Finance Authority in writing, delivered to the Registrar. The Bank shall act as Registrar and as such shall establish and maintain a register for the purpose of recording the names and addresses of the registered holders or assigns, and the date of such registration.

2.05. Transfer and Exchange. The Municipal Securities are transferable upon the books of the City at the principal office of the Bank of North Dakota, as bond registrar, or a successor bond registrar appointed by the Bank of North Dakota (the "Bond Registrar"), by the registered owner thereof in person or by his attorney duly authorized in writing upon surrender thereof together with a written instrument of transfer satisfactory to the Bond Registrar, duly executed by the registered owner or his attorney; and may also be surrendered in exchange for Municipal Securities of other authorized denominations. Upon such transfer or exchange, the City will cause new Municipal Securities to be issued in the name of the transferee or registered owner, of the same aggregate principal amount, bearing interest at the same rate and maturing on the same date, subject to reimbursement for any tax, fee or governmental charge required to be paid with respect to such transfer or exchange. No transfer of Municipal Securities shall be required to be made during the 15 days next preceding an interest payment date, nor during the 45 days next preceding the date fixed for redemption of such Municipal Securities.

2.06. Registered Owner Deemed Owner. The City, the Bond Registrar and the paying agent may deem and treat the person in whose name any Municipal Securities are registered as the absolute owner thereof, whether the Municipal Securities are overdue or not, for the purpose of receiving payment and for all other purposes, and neither the City, the Bond Registrar nor the paying agent shall be affected by any notice to the contrary. The City shall pay the fees and expenses of the Bond Registrar and the paying agent.

2.07. Execution and Delivery. The Municipal Securities shall forthwith be prepared under the direction of the City Auditor and when so prepared shall be executed on behalf of the City by the manual or facsimile signatures of the Mayor and City Auditor and shall be authenticated by the manual signature of the Registrar. When the Municipal Securities have been so executed and authenticated, they shall be delivered by the City to the Public Finance Authority.

2.08. Redemption. The Municipal Securities shall be subject to redemption, in whole or in part, and if in part in principal amounts which are integral multiples of \$5,000, prior to their stated maturity, with the written consent of the Public Finance Authority, at a price equal to the principal amount thereof plus accrued interest to the date of redemption.

2.09. Authorization of Related Documents. The Mayor, City Auditor, and other authorized officers of the City are hereby authorized to execute such additional agreements, certificates, and documents required or appropriate in connection with the issuance of the Municipal Securities and the transactions contemplated by the issuance thereof.

2.10. Draws of Municipal Security Proceeds. The proceeds of the Municipal Securities are irrevocably appropriated to pay expenses necessarily incurred in the construction and completion of the Project and to pay costs associated with the issuance of the Municipal Securities. Draws on the Municipal Securities, in the form of Requisitions for Payment, shall be submitted by the City to the Department from time to time in accordance with procedures established by the Department. Requisitions for Payment approved by the Department shall be forwarded to the Public Finance Authority for approval and funding.

SECTION 3.

Source of Payment.

The City hereby dedicates and pledges the available Net Revenues (as defined in Section 4.02 hereof) of the City's solid waste utility (the "Solid Waste Utility") to the payment of the principal of and interest on the Municipal Securities on a parity basis with bonds previously issued or to be issued and secured by a pledge of the Net Revenues and permitted herein. There are currently no outstanding bonds secured by the Net Revenues on a parity basis with the Municipal Securities. In addition, in conjunction with the issuance of the Municipal Securities, the City will issue its Solid Waste Revenue Bonds, Series 2021C (the "Series 2021C Bonds"; together with the Municipal Securities and any other obligations secured by the Net Revenues on a parity therewith, the "Bonds") in order to finance costs of the Redevelopment.

The Net Revenues are to be deposited in the funds set forth in Section 4 hereof.

SECTION 4.

Funds.

4.01. Solid Waste Fund. The City has created, and will maintain, a SOLID WASTE FUND (the "Solid Waste Fund"). The City shall credit and pay to the Solid Waste Fund, as received, the entire gross revenues derived from the operation of the City's Solid Waste Utility, including any future additions thereto and betterments thereof, including all income and receipts derived from rates, fees and charges for services, facilities, products and by-products of the Solid Waste Utility furnished or sold to the City and its inhabitants and all other customers, and for the availability thereof, and from sale of any of the properties of the Solid Waste Utility not necessary to be retained, and from the investment of any of the money so collected. On the books and records of

the Solid Waste Fund there shall be established and maintained the following funds as a part of the Solid Waste Fund. Amounts on deposit in the Solid Waste Fund from time to time shall be apportioned among said funds at least once in each calendar month and shall thereafter be held and administered and disbursed from the several funds established in this section.

4.02. Operation and Maintenance Fund. The City has created, and will maintain, an OPERATION AND MAINTENANCE FUND (the "Operation and Maintenance Fund"). Upon each such monthly apportionment, as a first lien and charge on the gross revenue, the City shall transfer to the Operation and Maintenance Fund from amounts on deposit in the Solid Waste Fund such sum as shall be needed, over and above any credit balance held therein, to pay all claims then due and allowed which by accepted accounting practices constitute normal, reasonable and current expenses of operation and maintenance of the utility, and to pay such expenses estimated to accrue for a period of one month, and to maintain a reasonable reserve for contingencies. Monies in the Operation and Maintenance Fund shall be used only to pay expenses of the foregoing type and not for major repairs, replacements, or capital improvements which are properly chargeable to replacement and depreciation reserves or surplus funds. All revenues in excess of such amount deposited to the Operation and Maintenance Fund shall be the Net Revenues (the "Net Revenues") of the Solid Waste Utility, provided that, for so long as the City's Qualified Energy Conservation Bonds, Series 2015C (the "Series 2015C Bonds") are outstanding, the Tipping Fees, as defined in the resolution adopted September 28, 2015 relating to the Series 2015C Bonds, shall not be considered as part of the Net Revenues.

4.03. Solid Waste Revenue Bond Fund. The City has created, and will maintain, a SOLID WASTE REVENUE BOND FUND (the "Solid Waste Revenue Bond Fund"). Upon each such monthly apportionment, out of the Net Revenues on hand at the time of each such distribution, an amount equal to not less than one-sixth (1/6) of the amount necessary to pay interest which becomes due on the next interest payment dates for the Bonds and an amount equal to not less than one-twelfth (1/12) of the sum of principal payments to become due on the next principal payment dates for the Bonds. These amounts may be reduced by an amount equal to the interest earnings on the Solid Waste Revenue Bond Fund credited to the Solid Waste Revenue Bond Fund subsequent to the last monthly apportionment. If Net Revenues on hand at any time are insufficient to permit the transfer to the Solid Waste Revenue Bond Fund of the full amount so required, such deficiencies shall be restored out of the next Net Revenues thereafter received. There shall also be credited to said fund the accrued interest, if any, paid on each subsequent issue of Additional Bonds and Additional SRF Bonds, if any. The money in said fund shall be solely for the purposes of paying principal of, and premium, if any, and interest on Bonds, as such principal, premium and interest respectively come due. Subordinate Bonds (hereinafter defined) shall not be payable from the Solid Waste Revenue Bond Fund.

In the event Net Revenues on deposit in the Solid Waste Revenue Bond Fund and amounts on deposit in the Surplus Fund available for transfer to the Solid Waste Revenue Bond Fund are insufficient to pay the principal of, and premium, if any, and interest on the Bonds then due, such Net Revenues and the transfers from the Surplus Fund shall be apportioned among each series of Bonds in proportion to the amount of principal, premium, if any, and interest then payable on the Bonds of each series. Transfers from any SRF Reserve Fund, including the Reserve Account established hereunder, shall be applied only to principal, premium, if any, and interest payable on the related series of SRF Bonds.

4.04. Surplus Fund. All surplus Net Revenues from time to time received in excess of the current requirements of the Solid Waste Revenue Bond Fund and any SRF Reserve Fund shall be credited on the books of the City to the Surplus Fund of the Solid Waste Fund, provided that City reserves the right to create additional funds within said fund for the purpose of segregating any of such surplus Net Revenues which may be pledged and appropriated to the payment of any Subordinate Bonds hereafter issued to finance improvements, replacements, or repairs of the Solid Waste Utility, subject to the prior lien on the Net Revenues of the Bonds. Surplus Net Revenues on hand from time to time shall be available and shall be used to the full extent necessary to restore a deficiency in the Operation and Maintenance Fund, the Solid Waste Revenue Bond Fund, the Reserve Account and any other SRF Reserve Fund, but when not so needed may be used to pay for capital improvements, replacements, or repairs to the Solid Waste Utility, or to pay principal and interest on Subordinate Bonds hereafter issued for such purposes, or they may be used to redeem and pay prior to maturity Bonds (other than Subordinate Bonds) when and as such bonds become redeemable according to their terms, or purchase Bonds (other than Subordinate Bonds) in the secondary market when deemed advisable. The City shall maintain in the Surplus Fund such cash or investments as it shall from time to time determine to constitute an adequate reserve for operation or maintenance emergencies and for depreciation and contemplated improvement or replacement of the Solid Waste Utility. At the end of the City's fiscal year, if there are no deficiencies in the Operation and Maintenance Fund, the Solid Waste Revenue Bond Fund, or any SRF Reserve Fund and there is an adequate reserve for operation and maintenance emergencies and for depreciation, contemplated improvements and replacements of the Solid Waste Utility, the City may transfer monies in excess of such requirements to other funds of the City in accordance with and subject to the limitations contained in the ordinances of the City and the provisions of state law.

4.05. Rebate Fund. There is hereby established a Rebate Fund. The City shall from time to time, and as required by Section 148 of the Internal Revenue Code of 1986, as amended, and the regulations promulgated in connection therewith, as amended (collectively, the "Code"), calculate the amount of rebate payable with respect to Bonds to the United States of America pursuant to Section 148 of the Code. The City may from time to time, and shall upon payment being due to the United States of America, withdraw the amount of such payment from the Surplus Fund and any SRF Reserve Fund, the Solid Waste Revenue Bond Fund and the Operation and Maintenance Fund, in such order, the amount of such payment notwithstanding any provision to the contrary in this Resolution. Amounts in the Rebate Fund shall be used solely to make required payments to the United States of America and shall not be pledged to the payment of the Bonds. All interest earnings on investments in the Rebate Fund shall be retained in the Rebate Fund.

4.06. Reserve Account. A separate SRF Reserve Fund (the "Reserve Account") is established within the Solid Waste Fund and shall be funded to the total amount of \$25,900, payable on September 1, 2023, which may be reduced proportionately if the final loan amount is less than the approved loan amount of \$259,000.

SECTION 5. Revenues Parity Pledges.

Additional Net

5.01. Parity Bonds. The City reserves the right to issue one or more series of bonds with a parity of lien on the Net Revenues as to both principal and interest with the Bonds (herein referred

to as "Additional Bonds"). The term Additional Bonds does not include Subordinate Bonds issued pursuant to Section 5.03 hereof, but does include Additional Bonds issued for refunding purposes. In the event the City shall at any time determine it to be necessary and expedient to issue Additional Bonds to finance capital improvements of the Solid Waste Utility, such Additional Bonds will be made payable from the Net Revenues of the Solid Waste Utility on a parity as to both principal and interest with the then outstanding Bonds. Additional Bonds or Additional SRF Bonds may be issued only if the annual Net Revenues received during the fiscal year of the City next preceding such issuance shall have equaled or exceeded 120% of the average annual principal and interest to become due and payable on all Bonds to be outstanding during the term of the proposed Additional Bonds.

If any of the rates and charges for solid waste service shall have been increased or reduced at any time subsequent to the commencement of the fiscal year immediately preceding the issuance of additional Bonds as contemplated above, the Net Revenues for the period prior to such change shall be deemed, for the purpose of the computation required above, to be those which would have been received by applying the revised rates and charges to the service actually provided during such period, less the estimated amount of decrease in service, if any, due to an increase in said rates and charges, and by deducting from the gross revenues so determined the actual operating expenses of the Solid Waste Utility, together with reasonably expected increases in operating expenses resulting from the improvements financed by such Additional Bonds, as determined by the report of an independent engineer selected by the City, for said period.

So long as Bonds are outstanding pursuant to resolutions which require greater coverage for the issuance of additional parity bonds, the provisions of such resolutions shall govern.

5.02. Additional SRF Bonds. The City reserves the right to issue one or more series of bonds with a parity pledge of Net Revenues (hereinafter referred to as "Additional SRF Bonds"), so long as such bonds can be issued in compliance with the requirements of Section 5.01 or 5.04. The Additional SRF Bonds may be secured by a separate reserve fund (an "SRF Reserve Fund"), funded either by proceeds of such bonds or from Net Revenues, provided such separate reserve fund shall not be a greater amount than that required generally by the Public Finance Authority of the State of North Dakota for its similar loans. All Additional SRF Bonds must be sold to the Public Finance Authority of the State of North Dakota pursuant to its state revolving loan fund program and shall bear interest at rates determined by the City to be less than available on publicly offered Additional Bonds at the time such bonds are issued.

5.03. Subordinate Lien Bonds. Except as authorized in Sections 5.01, 5.02 and 5.03, the City will issue no additional bonds or other obligations of any kind payable from or constituting a lien upon said Net Revenues of the Solid Waste Utility, unless the lien thereof is expressly made junior and subordinate to the lien on the then outstanding Bonds issued hereunder ("Subordinate Bonds"), and such additional bonds or obligations shall not be payable from the Solid Waste Revenue Bond Fund or any SRF Reserve Fund but may be payable from funds permitted to be transferred from the Surplus Fund to other funds of the City pursuant to Section 4.04 of this Resolution.

SECTION 6.
Covenants.

Solid Waste Utility

6.01. Rate Covenant. The City will establish, impose and collect rates and charges for the services, facilities, products, and by-products of the Solid Waste Utility, according to a schedule projected to generate Net Revenues in each fiscal year at least equal to, together with other revenues expected to be available therefor, 120% of the actual annual debt service on all Bonds outstanding, and to pay all amounts owed to any insurer of the Bonds outstanding. If the actual Net Revenues fail to meet this level, the City shall promptly increase its rates and charges to a level so that Net Revenues are projected to meet the required level. Annual debt service shall be determined for each fiscal year on the basis of a bond year ending on the January 1 immediately following the end of each fiscal year.

6.02. Covenant to Maintain Solid Waste Utility. The City will continue to own, operate and maintain the Solid Waste Utility, and will not sell or otherwise dispose of any properties thereof; provided, that any properties of the Solid Waste Utility not essential to continued operation of the Solid Waste Utility in satisfaction of other covenants herein prescribed may be sold or otherwise disposed of at their market value, and the proceeds thereof used to purchase other property required for the Solid Waste Utility or to pay principal and interest on obligations issued with respect to the Solid Waste Utility. The City will continue to maintain the Solid Waste Utility in good and efficient operating condition, supplying solid waste service and facilities to the City and its inhabitants, and will not authorize or enfranchise the establishment of any other utility for such purpose.

6.03. General. The City covenants and agrees with the Holders from time to time of all the Municipal Securities that until all the Municipal Securities are fully discharged as provided in this Resolution, it will continue to hold, maintain and operate the Solid Waste Utility as a public convenience, free from all liens thereon or on the income therefrom, and will maintain, expend and account for its Solid Waste Fund and the several funds therein as provided in Section 4, and will not issue bonds, notes or other indebtedness secured by or payable from the income or revenues of the Solid Waste Utility except upon the conditions and in the manner prescribed in Section 5, and will perform and cause all officers and employees of the City to perform and enforce each and all of the additional covenants and agreements set forth in this Section 6. The City further covenants to cause the Solid Waste Utility to be properly maintained and no free service shall be provided to any person or corporation.

6.04. Competing Service. The City will not establish or enfranchise any other facilities in competition with the facilities of the Solid Waste Utility.

6.05. Property Insurance. The City will cause all buildings, properties, fixtures and equipment constituting a part of the Solid Waste Utility to be kept insured with a reputable insurance carrier or carriers, qualified under the laws of North Dakota, in such amounts as are ordinarily carried, and against loss or damage by such hazards and risks as are ordinarily insured against, by public bodies owning and operating properties of a similar character and size; provided that if at any time the City is unable to obtain insurance, it will obtain insurance in such amounts and against risks as are reasonably obtainable. The proceeds of all such insurance shall be available for the repair, replacement or reconstruction of damaged or destroyed property, and until

paid out in making good such loss or damage, are pledged as security for the outstanding Bonds. All insurance proceeds received in excess of the amount required for restoration of the loss or damage compensated thereby shall be and become part of the revenues appropriated to the Solid Waste Fund. If for any reason insurance proceeds are insufficient for the repair, replacement and reconstruction of the insured property, the City shall supply the deficiency from revenues on hand in the Surplus Fund.

6.06. Liability Insurance and Surety Bonds. The City will carry insurance against liability of the City and its employees for damage to persons and property resulting from the operation of the Solid Waste Utility in such amounts as the City determines from time to time to be necessary or advisable by reason of the character and extent of such operation. It will also cause all persons handling money and other assets of the Solid Waste Fund to be adequately bonded for the faithful performance of their duties and to account for and pay over such money to the City. All amounts received under such insurance and bonds shall be applied to the payment of the loss or damage covered thereby. The premiums for all insurance and bonds required by this Section 6.06 and Section 6.05 constitute part of the operating expenses of the Solid Waste Utility, but no insurance liabilities of the City in excess of amounts received under such insurance and bonds shall constitute a lien or charge on revenues or any other assets herein or otherwise pledged to the Solid Waste Fund.

6.07. Cost of Insurance and Accounting. The insurance and fidelity bond premiums and the cost of the bookkeeping and audits herein provided for and of the billings and collection of the gross revenues shall be payable from the Operation and Maintenance Fund.

6.08. General Covenants. The City hereby covenants and agrees with the owners of all outstanding Municipal Securities as follows:

- a. That it will, to the extent the Net Revenues are sufficient, promptly cause the principal and interest on all Municipal Securities to be paid as they become due.
- b. That it will maintain complete books and records relating to the operation of the Solid Waste Utility, the Solid Waste Revenue Bond Fund, Reserve Account, Operation and Maintenance Fund, and Surplus Fund, in accordance with generally accepted accounting principles, and will cause such books and records to be audited annually at the end of each fiscal year, and an audit report prepared and made available for inspection of owners of the Municipal Securities.
- c. That it will not issue bonds or other obligations having a claim superior to the claim of the Municipal Securities upon the Net Revenues of the Solid Waste Utility.
- d. That it will promptly deposit into the Solid Waste Revenue Bond Fund all sums required to be so deposited.
- e. That it will operate the Solid Waste Utility in a sound, efficient and economic manner.

SECTION 7.

Miscellaneous.

7.01. Limited Obligations. The Municipal Securities issued hereunder shall not constitute a charge, lien or encumbrance upon any property of the City, and no holder or holders thereof shall ever have the right to compel any exercise of the taxing power of the City to pay the principal and interest on the Municipal Securities. The principal and interest of the Municipal Securities shall not be a general obligation of the City but are payable solely from the Net Revenues as set forth in this resolution.

7.02. Federal Tax Laws. The City hereby covenants that it will not take any action, or fail to take any action, if any such action or failure to take action would adversely affect the exclusion from gross income of the holders of the Municipal Securities of the interest on the Municipal Securities under Section 103 of the Code. The City also covenants that it will not directly or indirectly use or permit the use of any of the proceeds of the Municipal Securities or any other funds or any facilities refinanced thereby or take or omit to take any action which would cause the Municipal Securities to be "arbitrage bonds" within the meaning of Section 148(a) of the Code or "private activity bonds" within the meaning of Section 141 of the Code. The City will comply with all requirements of Section 148 of the Code to the extent applicable to the Municipal Securities. The City shall comply with all requirements set forth in any tax compliance certificate executed in connection with the issuance of the Municipal Securities. The covenants and obligations of the City set forth in this Section 7.02 shall survive the payment, redemption and defeasance of the Municipal Securities until the expiration of all statutes of limitation applicable to the City with respect to the Municipal Securities.

The City recognizes that the provisions of this Section 7.02 are intended to comply with provisions of the Code applicable to the Municipal Securities and if as a result of a change in an applicable section of the Code or in the interpretation thereof, a change in this Section 7.02 shall be permitted or necessary to assure continued compliance with provisions of the Code, then the City shall be empowered to amend this Section 7.02 upon receipt of a written opinion of bond counsel satisfactory of the City to the effect that either (i) such amendment is required to maintain the exclusion from gross income under Section 103 of the Code of interest paid and payable on the Municipal Securities, or (ii) such amendment shall not adversely affect the exclusion from gross income under Section 103 of the Code of interest paid or payable on the Municipal Securities.

This section shall be applicable only to the obligations, covenants, agreements, limitations, conditions and restrictions of and upon the City in relation to the holder of the Municipal Securities.

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Adopted October 18, 2021.

CITY OF FARGO

By: _____
Tim Mahoney, Mayor

ATTEST:

Steven Sprague, City Auditor

FORM OF MUNICIPAL SECURITY

UNITED STATES OF AMERICA
STATE OF NORTH DAKOTA
COUNTY OF CASS

CITY OF FARGO

SOLID WASTE REVENUE BOND,
SERIES 2021B

No. R-1

\$259,000

<u>Rate</u>	<u>Maturity Date</u>	<u>Date of Original Issue</u>	<u>CUSIP</u>
0.00%	September 1, 2032	[_____] , 2021	NONE

REGISTERED OWNER: NORTH DAKOTA PUBLIC FINANCE AUTHORITY

PRINCIPAL AMOUNT: TWO HUNDRED FIFTY NINE THOUSAND DOLLARS

KNOW ALL PERSONS BY THESE PRESENTS that the City of Fargo, North Dakota (the "City"), a political subdivision of and existing under and pursuant to the laws of the State of North Dakota, for value received, hereby promises to pay solely from the sources set forth herein to the Registered Owner specified above, or registered assigns, the Principal Amount (set forth above), or such lesser amount actually disbursed to the City, on or before the Maturity Date (set forth above). Interest shall accrue from the Date of Original Issuance at the annual rate of zero percent (0.00%). The Principal Amount of this Bond is subject to mandatory redemption on the dates and in the amounts set forth in Attachment A to this Municipal Security, which Attachment A shall be revised in accordance with Section 2.02 of the Loan Agreement in the event funds are advanced to the City less than as originally set forth in the Loan Agreement. All payments due with respect to this Bond are payable in lawful money of the United States of America at the main office of the Bank of North Dakota, in Bismarck, North Dakota, as paying agent and Registrar under the Resolution hereinafter described or of its successor as such. Interest shall be paid by check or draft mailed to the Registered Owner at the Owner's address set forth on the registration books or by wire or other electronic funds transfer.

This Municipal Security is issued pursuant to and in full conformity with the Constitution and laws of the State of North Dakota, including N.D.C.C. ch. 40-35 (the "Act"), and pursuant to a Resolution (the "Resolution") and a Loan Agreement (the "Loan Agreement") adopted and entered into by the City. Reference is hereby made to the Resolution and the Loan Agreement for a description of the Funds and Accounts pledged to the payment of the Municipal Securities and the rights of the Registered Owner of the Municipal Securities. The principal and interest payments for this Bond and the Administrative Fee payable hereunder, if any, are not general obligations of the City, but are payable solely from Net Revenues received by the City from the

operation of the solid waste facility of the City of Fargo and from any future additions thereto and betterments thereof.

This Municipal Security is transferable, as provided in the Resolution and the Loan Agreement, only upon books of the City kept by the Bank of North Dakota, as bond registrar, by the Registered Owner hereof in person or by the Owner's duly authorized attorney, or it may be surrendered in exchange for new Municipal Securities of the same aggregate principal amount, maturity and interest rate, as provided in the Resolution.

This Municipal Security shall be subject to redemption, in whole or in part, and if in part in principal amounts which are integral multiples of \$5,000, prior to their stated maturity, with the written consent of the Registered Owner, at a price equal to the principal amount thereof plus accrued interest to the date of redemption.

It is further certified, recited and declared that all acts, conditions and things required by the Constitution and the statutes of the State of North Dakota to exist, to have happened and to have been performed precedent to and in connection with the issuance of the Municipal Securities have been performed in due time, form and manner as required by law; and that the issuance of the Municipal Securities is within every debt and other limit prescribed by law.

IN WITNESS WHEREOF, the City has caused this Municipal Securities to be executed in its name by the manual or facsimile signatures of its Mayor and of its City Auditor, all as of the Date of Original Issue set forth above.

CITY OF FARGO, NORTH DAKOTA

By: _____
Tim Mahoney
Mayor

ATTEST:

Steven Sprague, City
Auditor

CERTIFICATE OF AUTHENTICATION

This Municipal Security is one of the Municipal Securities described in and issued under the provisions of the within-mentioned Resolution.

BANK OF NORTH DAKOTA

By: _____
Authorized Representative

ASSIGNMENT

For Value received the undersigned hereby sells, assigns and transfers unto _____ the within-mentioned Municipal Security and hereby irrevocably constitutes and appoints _____ attorney-in-fact, to transfer the same on the books of registration thereof, with full power of substitution in the premises.

Dated: _____, 20__

Social Security or other identifying number of
Assignee

NOTICE: The signature to this assignment must correspond with the name as it appears on the face of the within Municipal Security in every particular, without alteration or any change whatsoever.

Signature Guaranteed:

NOTICE: Signature(s) must be guaranteed by a member of the New York Stock Exchange or a commercial bank or trust company.

ATTACHMENT A

Clean Water Loan Info PRELIMINARY

Loan #	122
Loan	Fargo
Interest Rate	0.00%
Administration Fee	0.00%
Loan Request	259,000.00
Loan Amount	259,000.00
Fully Funded Amount	0.00
Insurance Denomination	5,000.00
Credit Rating	NTR
Security Type	Revenue
Closing Date	9/15/2021
First Maturity	9/1/2023
Term	10
Final Maturity	9/1/2032
First Interest	3/1/2022
First Interest Payment	0.00
First Admin. Payment	0.00
Debt Service Reserve Fund	25,000.00
First DSRF Payment	9/1/2023

Project Description

Landfill Reclamation - Engineering

Date	Principal	Interest	Total Principal & Interest	Annual P&I Payment	Outstanding Balance	Admin. Fee	Total Payment	Annual Total Payment
3/1/2022	-	-	-	-	259,000.00	-	-	-
9/1/2022	-	-	-	-	259,000.00	-	-	-
3/1/2023	-	-	-	-	259,000.00	-	-	-
9/1/2023	29,000.00	-	29,000.00	29,000.00	230,000.00	-	29,000.00	29,000.00
3/1/2024	-	-	-	-	230,000.00	-	-	-
9/1/2024	25,000.00	-	25,000.00	25,000.00	205,000.00	-	25,000.00	25,000.00
3/1/2025	-	-	-	-	205,000.00	-	-	-
9/1/2025	25,000.00	-	25,000.00	25,000.00	180,000.00	-	25,000.00	25,000.00
3/1/2026	-	-	-	-	180,000.00	-	-	-
9/1/2026	25,000.00	-	25,000.00	25,000.00	155,000.00	-	25,000.00	25,000.00
3/1/2027	-	-	-	-	155,000.00	-	-	-
9/1/2027	25,000.00	-	25,000.00	25,000.00	130,000.00	-	25,000.00	25,000.00
3/1/2028	-	-	-	-	130,000.00	-	-	-
9/1/2028	25,000.00	-	25,000.00	25,000.00	105,000.00	-	25,000.00	25,000.00
3/1/2029	-	-	-	-	105,000.00	-	-	-
9/1/2029	25,000.00	-	25,000.00	25,000.00	80,000.00	-	25,000.00	25,000.00
3/1/2030	-	-	-	-	80,000.00	-	-	-
9/1/2030	25,000.00	-	25,000.00	25,000.00	55,000.00	-	25,000.00	25,000.00
3/1/2031	-	-	-	-	55,000.00	-	-	-
9/1/2031	25,000.00	-	25,000.00	25,000.00	30,000.00	-	25,000.00	25,000.00
3/1/2032	-	-	-	-	30,000.00	-	-	-
9/1/2032	30,000.00	-	30,000.00	30,000.00	-	-	30,000.00	30,000.00
Total	\$ 259,000.00	\$ -	\$ 259,000.00	\$ 259,000.00		\$ -	\$ 259,001.00	\$ 259,000.00

CERTIFICATE

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

I, Steven Sprague, the duly appointed City Auditor of the City of Fargo, North Dakota, do hereby certify that attached hereto is a full, true and correct copy of the Resolution adopted by the governing body of the City of Fargo at the meeting held on October 18, 2021, and that such Resolution is now a part of the permanent records of the City of Fargo, North Dakota, as such records are filed in the office of the City Auditor.

Dated this __ day of _____, 2021.

City Auditor

(SEAL)

CITY OF FARGO, STATE OF NORTH DAKOTA
RESOLUTION AUTHORIZING THE ISSUANCE AND SALE OF
\$4,361,000
CITY OF FARGO SOLID WASTE REVENUE BOND, SERIES 2021C

RECITATIONS

The City of Fargo, North Dakota (the "City"), hereby recites that by resolution of its governing body the City has:

1. Found and determined that it is necessary for the City to plan, design and construct a reclamation and redevelopment of the City's former landfill site to expand capacity for disposal, including leachate management and reduction (the "Project").
2. Directed its engineer to prepare a report as to the general nature, purpose and feasibility of the Project and an estimate of the probable cost of the Project.
3. After receiving and approving the engineer's report, directed the engineer to prepare detailed plans and specifications for construction of the Project.
4. Approved the engineer's detailed plans and specifications for construction of the Project and caused a copy of such plans and specifications to be filed in the office of the City Auditor.
5. By publication, advertised for bids for construction of the Project.
6. Opened and made public the bids, entered them in the minutes of the meeting of the governing body at which they were considered and caused them to be kept by the City Auditor.
7. After requiring the engineer to make a careful and detailed statement of the estimated cost of the Project, awarded the contract to the lowest responsible bidder and approved the contractor's performance bond.
8. Applied to the North Dakota Department of Health (the "Department") and the North Dakota Public Finance Authority (the "Public Finance Authority") for financial assistance to finance costs of the Project, which application has been approved.
9. Performed all other acts required by the Constitution and laws of North Dakota prerequisite to the issuance and sale of revenue bonds and required by the Home Rule Charter and ordinances of the City of Fargo for the purpose of providing money to pay for the cost of the Project in the manner required of the City by law with full power and authority conferred on it as a political subdivision and municipality of North Dakota.

RESOLUTION

Be it resolved by the governing body of the City:

SECTION 1.
Sale.

Authorization and

1.01. Ratification of Prior Acts. All acts performed, resolutions, motions, or ordinances adopted or passed, and all publications incidental to the construction and financing of the Project, whether or not reflected in the official minutes and records of the City, are hereby ratified and confirmed, and all resolutions and other acts or proceedings of the City which are in any way inconsistent with this Resolution are hereby amended to the extent necessary to give full force and effect to this Resolution.

1.02. Authorization. It is hereby found and determined to be necessary for the City to issue \$4,361,000 in principal amount of its CITY OF FARGO SOLID WASTE REVENUE BOND, SERIES 2021C (the "Municipal Securities"), pursuant to N.D.C.C. ch. 40-35, upon the terms as set forth in this Resolution.

1.03. Offer and Acceptance. The governing body of the City, in response to its application for financial assistance from the Department and the Public Finance Authority, has received an offer from the Public Finance Authority, subject to the approval of the Industrial Commission of North Dakota, to purchase the Municipal Securities at a price equal to the principal amount plus accrued interest, if any, to the date of purchase, which offer is more fully set out in a loan agreement to be entered into between the City and the Public Finance Authority (the "Loan Agreement"). It is hereby found and determined that the offer of the Public Finance Authority to purchase the Municipal Securities is reasonable and advantageous to the City and is hereby accepted, and the Loan Agreement, in substantially the form presented to the City at this meeting, is hereby accepted and authorized to be executed on behalf of the City by its Mayor and City Auditor (the "Authorized Officers"), with such modifications as may be approved by the Authorized Officers. The Authorized Officers are authorized and directed to execute the Loan Agreement and to deliver it to the Public Finance Authority, which execution and delivery shall be conclusive evidence of the approval of any modifications with respect to the Loan Agreement.

SECTION 2.

Term of Bonds.

2.01. Form. The Municipal Securities issued under this Resolution shall be designated CITY OF FARGO SOLID WASTE REVENUE BOND, SERIES 2021C, and shall be issued to the Public Finance Authority in the form of a single registered Municipal Security in substantially the form as attached hereto as Exhibit A.

2.02. Terms. The City authorizes the issuance of the Municipal Securities in the aggregate principal amount not to exceed \$4,361,000, dated the date of issuance and delivery to the Public Finance Authority.

The Municipal Securities shall bear interest commencing on the date of delivery thereof at the rate of 1.50% per year (plus an administrative fee as set out in the Loan Agreement), with principal payable in installments on September 1 of each of the years and in the amounts set forth below. Interest shall be payable semiannually on each March 1 and September 1 commencing March 1, 2022. Interest will be payable only on funds actually advanced to the City by the Public Finance Authority as a draw on the Municipal Securities. The schedule below and attached to the

Municipal Securities will be revised to reflect the actual principal amount loaned to the City at the completion of the Project. The Municipal Security is subject to mandatory sinking fund redemption together with accrued interest to the Redemption Date on September 1 of the following years and in the following principal amounts:

<u>Redemption Date</u> <u>(September 1)</u>	<u>Amount</u>	<u>Redemption Date</u> <u>(September 1)</u>	<u>Amount</u>
2023	\$401,000	2028	\$440,000
2024	405,000	2029	450,000
2025	415,000	2030	460,000
2026	425,000	2031	465,000
2027	430,000	2032*	470,000

*maturity

2.03. Payment to Registered Holders. The principal of and interest on the Municipal Securities shall be payable to the registered holder thereof at the address appearing on the registration books of the registrar in any coin or currency of the United States of America, which on the respective dates of payment is legal tender for the payment of public or private debts or by check or draft delivered to the registered holder thereof at the address appearing on the registration books of the registrar.

2.04. Registration. The Municipal Securities shall be registered as to both principal and interest and shall be initially registered in the name of and payable to the North Dakota Public Finance Authority. While so registered, principal of and interest on the Municipal Securities shall be payable at the office of the Bank of North Dakota, in Bismarck, North Dakota (the "Bank"), or such other place as may be designated by the Public Finance Authority in writing, delivered to the Registrar. The Bank shall act as Registrar and as such shall establish and maintain a register for the purpose of recording the names and addresses of the registered holders or assigns, and the date of such registration.

2.05. Transfer and Exchange. The Municipal Securities are transferable upon the books of the City at the principal office of the Bank of North Dakota, as bond registrar, or a successor bond registrar appointed by the Bank of North Dakota (the "Bond Registrar"), by the registered owner thereof in person or by his attorney duly authorized in writing upon surrender thereof together with a written instrument of transfer satisfactory to the Bond Registrar, duly executed by the registered owner or his attorney; and may also be surrendered in exchange for Municipal Securities of other authorized denominations. Upon such transfer or exchange, the City will cause new Municipal Securities to be issued in the name of the transferee or registered owner, of the same aggregate principal amount, bearing interest at the same rate and maturing on the same date, subject to reimbursement for any tax, fee or governmental charge required to be paid with respect to such transfer or exchange. No transfer of Municipal Securities shall be required to be made during the 15 days next preceding an interest payment date, nor during the 45 days next preceding the date fixed for redemption of such Municipal Securities.

2.06. Registered Owner Deemed Owner. The City, the Bond Registrar and the paying agent may deem and treat the person in whose name any Municipal Securities are registered as the

absolute owner thereof, whether the Municipal Securities are overdue or not, for the purpose of receiving payment and for all other purposes, and neither the City, the Bond Registrar nor the paying agent shall be affected by any notice to the contrary. The City shall pay the fees and expenses of the Bond Registrar and the paying agent.

2.07. Execution and Delivery. The Municipal Securities shall forthwith be prepared under the direction of the City Auditor and when so prepared shall be executed on behalf of the City by the manual or facsimile signatures of the Mayor and City Auditor and shall be authenticated by the manual signature of the Registrar. When the Municipal Securities have been so executed and authenticated, they shall be delivered by the City to the Public Finance Authority.

2.08. Redemption. The Municipal Securities shall be subject to redemption, in whole or in part, and if in part in principal amounts which are integral multiples of \$5,000, prior to their stated maturity, with the written consent of the Public Finance Authority, at a price equal to the principal amount thereof plus accrued interest to the date of redemption.

2.09. Authorization of Related Documents. The Mayor, City Auditor, and other authorized officers of the City are hereby authorized to execute such additional agreements, certificates, and documents required or appropriate in connection with the issuance of the Municipal Securities and the transactions contemplated by the issuance thereof.

2.10. Draws of Municipal Security Proceeds. The proceeds of the Municipal Securities are irrevocably appropriated to pay expenses necessarily incurred in the construction and completion of the Project and to pay costs associated with the issuance of the Municipal Securities. Draws on the Municipal Securities, in the form of Requisitions for Payment, shall be submitted by the City to the Department from time to time in accordance with procedures established by the Department. Requisitions for Payment approved by the Department shall be forwarded to the Public Finance Authority for approval and funding.

SECTION 3.

Source of Payment.

The City hereby dedicates and pledges the Net Revenues (as defined in Section 4.02 hereof) of the City's solid waste utility, (the "Solid Waste Utility") to the payment of the principal of and interest on the Municipal Securities on a parity basis with bonds previously issued or to be issued and secured by a pledge of the Net Revenues and permitted herein. There are currently no outstanding bonds secured by the Net Revenues on a parity basis with the Municipal Securities. In addition, in conjunction with the issuance of the Municipal Securities, the City will issue its Solid Waste Revenue Bonds, Series 2021B (the "Series 2021B Bonds"; together with the Municipal Securities and any other obligations secured by the Net Revenues on a parity therewith, the "Bonds") in order to finance engineering costs of the Project.

The Net Revenues are to be deposited in the funds set forth in Section 4 hereof.

SECTION 4.

Funds.

4.01. Solid Waste Fund. The City has created, and will maintain, a SOLID WASTE FUND (the "Solid Waste Fund"). The City shall credit and pay to the Solid Waste Fund, as received, the entire gross revenues derived from the operation of the City's Solid Waste Utility, including any future additions thereto and betterments thereof, including all income and receipts derived from

rates, fees and charges for services, facilities, products and by-products of the Solid Waste Utility furnished or sold to the City and its inhabitants and all other customers, and for the availability thereof, and from sale of any of the properties of the Solid Waste Utility not necessary to be retained, and from the investment of any of the money so collected. On the books and records of the Solid Waste Fund there shall be established and maintained the following funds as a part of the Solid Waste Fund. Amounts on deposit in the Solid Waste Fund from time to time shall be apportioned among said funds at least once in each calendar month and shall thereafter be held and administered and disbursed from the several funds established in this section.

4.02. Operation and Maintenance Fund. The City has created, and will maintain, an OPERATION AND MAINTENANCE FUND (the "Operation and Maintenance Fund"). Upon each such monthly apportionment, as a first lien and charge on the gross revenue, the City shall transfer to the Operation and Maintenance Fund from amounts on deposit in the Solid Waste Fund such sum as shall be needed, over and above any credit balance held therein, to pay all claims then due and allowed which by accepted accounting practices constitute normal, reasonable and current expenses of operation and maintenance of the utility, and to pay such expenses estimated to accrue for a period of one month, and to maintain a reasonable reserve for contingencies. Monies in the Operation and Maintenance Fund shall be used only to pay expenses of the foregoing type and not for major repairs, replacements, or capital improvements which are properly chargeable to replacement and depreciation reserves or surplus funds. All revenues in excess of such amount deposited to the Operation and Maintenance Fund shall be the Net Revenues (the "Net Revenues") of the Solid Waste Utility, provided that, for so long as the City's Qualified Energy Conservation Bonds, Series 2015C (the "Series 2015C Bonds") are outstanding, the Tipping Fees, as defined in the resolution adopted September 28, 2015 relating to the Series 2015C Bonds, shall not be considered as part of the Net Revenues.

4.03. Solid Waste Revenue Bond Fund. The City has created, and will maintain, a SOLID WASTE REVENUE BOND FUND (the "Solid Waste Revenue Bond Fund"). Upon each such monthly apportionment, out of the Net Revenues on hand at the time of each such distribution, an amount equal to not less than one-sixth (1/6) of the amount necessary to pay interest which becomes due on the next interest payment dates for the Bonds and an amount equal to not less than one-twelfth (1/12) of the sum of principal payments to become due on the next principal payment dates for the Bonds. These amounts may be reduced by an amount equal to the interest earnings on the Solid Waste Revenue Bond Fund credited to the Solid Waste Revenue Bond Fund subsequent to the last monthly apportionment. If Net Revenues on hand at any time are insufficient to permit the transfer to the Solid Waste Revenue Bond Fund of the full amount so required, such deficiencies shall be restored out of the next Net Revenues thereafter received. There shall also be credited to said fund the accrued interest, if any, paid on each subsequent issue of Additional Bonds and Additional SRF Bonds, if any. The money in said fund shall be solely for the purposes of paying principal of, and premium, if any, and interest on Bonds, as such principal, premium and interest respectively come due. Subordinate Bonds (hereinafter defined) shall not be payable from the Solid Waste Revenue Bond Fund.

In the event Net Revenues on deposit in the Solid Waste Revenue Bond Fund and amounts on deposit in the Surplus Fund available for transfer to the Solid Waste Revenue Bond Fund are insufficient to pay the principal of, and premium, if any, and interest on the Bonds then due, such Net Revenues and the transfers from the Surplus Fund shall be apportioned among each series of

Bonds in proportion to the amount of principal, premium, if any, and interest then payable on the Bonds of each series. Transfers from any SRF Reserve Fund, including the Reserve Account established hereunder, shall be applied only to principal, premium, if any, and interest payable on the related series of SRF Bonds.

4.04. Surplus Fund. All surplus Net Revenues from time to time received in excess of the current requirements of the Solid Waste Revenue Bond Fund and any SRF Reserve Fund shall be credited on the books of the City to the Surplus Fund of the Solid Waste Fund, provided that City reserves the right to create additional funds within said fund for the purpose of segregating any of such surplus Net Revenues which may be pledged and appropriated to the payment of any Subordinate Bonds hereafter issued to finance improvements, replacements, or repairs of the Solid Waste Utility, subject to the prior lien on the Net Revenues of the Bonds. Surplus Net Revenues on hand from time to time shall be available and shall be used to the full extent necessary to restore a deficiency in the Operation and Maintenance Fund, the Solid Waste Revenue Bond Fund, the Reserve Account and any other SRF Reserve Fund, but when not so needed may be used to pay for capital improvements, replacements, or repairs to the Solid Waste Utility, or to pay principal and interest on Subordinate Bonds hereafter issued for such purposes, or they may be used to redeem and pay prior to maturity Bonds (other than Subordinate Bonds) when and as such bonds become redeemable according to their terms, or purchase Bonds (other than Subordinate Bonds) in the secondary market when deemed advisable. The City shall maintain in the Surplus Fund such cash or investments as it shall from time to time determine to constitute an adequate reserve for operation or maintenance emergencies and for depreciation and contemplated improvement or replacement of the Solid Waste Utility. At the end of the City's fiscal year, if there are no deficiencies in the Operation and Maintenance Fund, the Solid Waste Revenue Bond Fund, or any SRF Reserve Fund and there is an adequate reserve for operation and maintenance emergencies and for depreciation, contemplated improvements and replacements of the Solid Waste Utility, the City may transfer monies in excess of such requirements to other funds of the City in accordance with and subject to the limitations contained in the ordinances of the City and the provisions of state law.

4.05. Rebate Fund. There is hereby established a Rebate Fund. The City shall from time to time, and as required by Section 148 of the Internal Revenue Code of 1986, as amended, and the regulations promulgated in connection therewith, as amended (collectively, the "Code"), calculate the amount of rebate payable with respect to Bonds to the United States of America pursuant to Section 148 of the Code. The City may from time to time, and shall upon payment being due to the United States of America, withdraw the amount of such payment from the Surplus Fund and any SRF Reserve Fund, the Solid Waste Revenue Bond Fund and the Operation and Maintenance Fund, in such order, the amount of such payment notwithstanding any provision to the contrary in this Resolution. Amounts in the Rebate Fund shall be used solely to make required payments to the United States of America and shall not be pledged to the payment of the Bonds. All interest earnings on investments in the Rebate Fund shall be retained in the Rebate Fund.

4.06. Reserve Account. A separate SRF Reserve Fund (the "Reserve Account") is established within the Solid Waste Fund and shall be funded to the total amount of \$436,100, payable in installments commencing September 1, 2023, which may be reduced proportionately if the final loan amount is less than the approved loan amount of \$4,361,000.

SECTION 5.
Revenues Parity Pledges.

Additional Net

5.01. Parity Bonds. The City reserves the right to issue one or more series of bonds with a parity of lien on the Net Revenues as to both principal and interest with the Bonds (herein referred to as "Additional Bonds"). The term Additional Bonds does not include Subordinate Bonds issued pursuant to Section 5.03 hereof, but does include Additional Bonds issued for refunding purposes. In the event the City shall at any time determine it to be necessary and expedient to issue Additional Bonds to finance capital improvements of the Solid Waste Utility, such Additional Bonds will be made payable from the Net Revenues of the Solid Waste Utility on a parity as to both principal and interest with the then outstanding Bonds. Additional Bonds or Additional SRF Bonds may be issued only if the annual Net Revenues received during the fiscal year of the City next preceding such issuance shall have equaled or exceeded 120% of the average annual principal and interest to become due and payable on all Bonds to be outstanding during the term of the proposed Additional Bonds.

If any of the rates and charges for solid waste service shall have been increased or reduced at any time subsequent to the commencement of the fiscal year immediately preceding the issuance of additional Bonds as contemplated above, the Net Revenues for the period prior to such change shall be deemed, for the purpose of the computation required above, to be those which would have been received by applying the revised rates and charges to the service actually provided during such period, less the estimated amount of decrease in service, if any, due to an increase in said rates and charges, and by deducting from the gross revenues so determined the actual operating expenses of the Solid Waste Utility, together with reasonably expected increases in operating expenses resulting from the improvements financed by such Additional Bonds, as determined by the report of an independent engineer selected by the City, for said period.

So long as Bonds are outstanding pursuant to resolutions which require greater coverage for the issuance of additional parity bonds, the provisions of such resolutions shall govern.

5.02. Additional SRF Bonds. The City reserves the right to issue one or more series of bonds with a parity pledge of Net Revenues (hereinafter referred to as "Additional SRF Bonds"), so long as such bonds can be issued in compliance with the requirements of Section 5.01 or 5.04. The Additional SRF Bonds may be secured by a separate reserve fund (an "SRF Reserve Fund"), funded either by proceeds of such bonds or from Net Revenues, provided such separate reserve fund shall not be a greater amount than that required generally by the Public Finance Authority of the State of North Dakota for its similar loans. All Additional SRF Bonds must be sold to the Public Finance Authority of the State of North Dakota pursuant to its state revolving loan fund program and shall bear interest at rates determined by the City to be less than available on publicly offered Additional Bonds at the time such bonds are issued.

5.03. Subordinate Lien Bonds. Except as authorized in Sections 5.01, 5.02 and 5.03, the City will issue no additional bonds or other obligations of any kind payable from or constituting a lien upon said Net Revenues of the Solid Waste Utility, unless the lien thereof is expressly made junior and subordinate to the lien on the then outstanding Bonds issued hereunder ("Subordinate Bonds"), and such additional bonds or obligations shall not be payable from the Solid Waste Revenue Bond Fund or any SRF Reserve Fund but may be payable from funds permitted to be

transferred from the Surplus Fund to other funds of the City pursuant to Section 4.04 of this Resolution.

SECTION 6.
Covenants.

Solid Waste Utility

6.01. Rate Covenant. The City will establish, impose and collect rates and charges for the services, facilities, products, and by-products of the Solid Waste Utility, according to a schedule projected to generate Net Revenues in each fiscal year at least equal to, together with other revenues expected to be available therefor, 120% of the actual annual debt service on all Bonds outstanding, and to pay all amounts owed to any insurer of the Bonds outstanding. If the actual Net Revenues fail to meet this level, the City shall promptly increase its rates and charges to a level so that Net Revenues are projected to meet the required level. Annual debt service shall be determined for each fiscal year on the basis of a bond year ending on the January 1 immediately following the end of each fiscal year.

6.02. Covenant to Maintain Solid Waste Utility. The City will continue to own, operate and maintain the Solid Waste Utility, and will not sell or otherwise dispose of any properties thereof; provided, that any properties of the Solid Waste Utility not essential to continued operation of the Solid Waste Utility in satisfaction of other covenants herein prescribed may be sold or otherwise disposed of at their market value, and the proceeds thereof used to purchase other property required for the Solid Waste Utility or to pay principal and interest on obligations issued with respect to the Solid Waste Utility. The City will continue to maintain the Solid Waste Utility in good and efficient operating condition, supplying solid waste service and facilities to the City and its inhabitants, and will not authorize or enfranchise the establishment of any other utility for such purpose.

6.03. General. The City covenants and agrees with the Holders from time to time of all the Municipal Securities that until all the Municipal Securities are fully discharged as provided in this Resolution, it will continue to hold, maintain and operate the Solid Waste Utility as a public convenience, free from all liens thereon or on the income therefrom, and will maintain, expend and account for its Solid Waste Fund and the several funds therein as provided in Section 4, and will not issue bonds, notes or other indebtedness secured by or payable from the income or revenues of the Solid Waste Utility except upon the conditions and in the manner prescribed in Section 5, and will perform and cause all officers and employees of the City to perform and enforce each and all of the additional covenants and agreements set forth in this Section 6. The City further covenants to cause the Solid Waste Utility to be properly maintained and no free service shall be provided to any person or corporation.

6.04. Competing Service. The City will not establish or enfranchise any other facilities in competition with the facilities of the Solid Waste Utility.

6.05. Property Insurance. The City will cause all buildings, properties, fixtures and equipment constituting a part of the Solid Waste Utility to be kept insured with a reputable insurance carrier or carriers, qualified under the laws of North Dakota, in such amounts as are ordinarily carried, and against loss or damage by such hazards and risks as are ordinarily insured against, by public bodies owning and operating properties of a similar character and size; provided

that if at any time the City is unable to obtain insurance, it will obtain insurance in such amounts and against risks as are reasonably obtainable. The proceeds of all such insurance shall be available for the repair, replacement or reconstruction of damaged or destroyed property, and until paid out in making good such loss or damage, are pledged as security for the outstanding Bonds. All insurance proceeds received in excess of the amount required for restoration of the loss or damage compensated thereby shall be and become part of the revenues appropriated to the Solid Waste Fund. If for any reason insurance proceeds are insufficient for the repair, replacement and reconstruction of the insured property, the City shall supply the deficiency from revenues on hand in the Surplus Fund.

6.06. Liability Insurance and Surety Bonds. The City will carry insurance against liability of the City and its employees for damage to persons and property resulting from the operation of the Solid Waste Utility in such amounts as the City determines from time to time to be necessary or advisable by reason of the character and extent of such operation. It will also cause all persons handling money and other assets of the Solid Waste Fund to be adequately bonded for the faithful performance of their duties and to account for and pay over such money to the City. All amounts received under such insurance and bonds shall be applied to the payment of the loss or damage covered thereby. The premiums for all insurance and bonds required by this Section 6.06 and Section 6.05 constitute part of the operating expenses of the Solid Waste Utility, but no insurance liabilities of the City in excess of amounts received under such insurance and bonds shall constitute a lien or charge on revenues or any other assets herein or otherwise pledged to the Solid Waste Fund.

6.07. Cost of Insurance and Accounting. The insurance and fidelity bond premiums and the cost of the bookkeeping and audits herein provided for and of the billings and collection of the gross revenues shall be payable from the Operation and Maintenance Fund.

6.08. General Covenants. The City hereby covenants and agrees with the owners of all outstanding Municipal Securities as follows:

- a. That it will, to the extent the Net Revenues are sufficient, promptly cause the principal and interest on all Municipal Securities to be paid as they become due.
- b. That it will maintain complete books and records relating to the operation of the Solid Waste Utility, the Solid Waste Revenue Bond Fund, Reserve Account, Operation and Maintenance Fund, and Surplus Fund, in accordance with generally accepted accounting principles, and will cause such books and records to be audited annually at the end of each fiscal year, and an audit report prepared and made available for inspection of owners of the Municipal Securities.
- c. That it will not issue bonds or other obligations having a claim superior to the claim of the Municipal Securities upon the Net Revenues of the Solid Waste Utility.
- d. That it will promptly deposit into the Solid Waste Revenue Bond Fund all sums required to be so deposited.
- e. That it will operate the Solid Waste Utility in a sound, efficient and economic manner.

SECTION 7.

Miscellaneous.

7.01. Limited Obligations. The Municipal Securities issued hereunder shall not constitute a charge, lien or encumbrance upon any property of the City, and no holder or holders thereof shall ever have the right to compel any exercise of the taxing power of the City to pay the principal and interest on the Municipal Securities. The principal and interest of the Municipal Securities shall not be a general obligation of the City but are payable solely from the Net Revenues as set forth in this resolution.

7.02. Federal Tax Laws. The City hereby covenants that it will not take any action, or fail to take any action, if any such action or failure to take action would adversely affect the exclusion from gross income of the holders of the Municipal Securities of the interest on the Municipal Securities under Section 103 of the Code. The City also covenants that it will not directly or indirectly use or permit the use of any of the proceeds of the Municipal Securities or any other funds or any facilities refinanced thereby or take or omit to take any action which would cause the Municipal Securities to be "arbitrage bonds" within the meaning of Section 148(a) of the Code or "private activity bonds" within the meaning of Section 141 of the Code. The City will comply with all requirements of Section 148 of the Code to the extent applicable to the Municipal Securities. The City shall comply with all requirements set forth in any tax compliance certificate executed in connection with the issuance of the Municipal Securities. The covenants and obligations of the City set forth in this Section 7.02 shall survive the payment, redemption and defeasance of the Municipal Securities until the expiration of all statutes of limitation applicable to the City with respect to the Municipal Securities.

The City recognizes that the provisions of this Section 7.02 are intended to comply with provisions of the Code applicable to the Municipal Securities and if as a result of a change in an applicable section of the Code or in the interpretation thereof, a change in this Section 7.02 shall be permitted or necessary to assure continued compliance with provisions of the Code, then the City shall be empowered to amend this Section 7.02 upon receipt of a written opinion of bond counsel satisfactory of the City to the effect that either (i) such amendment is required to maintain the exclusion from gross income under Section 103 of the Code of interest paid and payable on the Municipal Securities, or (ii) such amendment shall not adversely affect the exclusion from gross income under Section 103 of the Code of interest paid or payable on the Municipal Securities.

This section shall be applicable only to the obligations, covenants, agreements, limitations, conditions and restrictions of and upon the City in relation to the holder of the Municipal Securities.

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Adopted October 18, 2021.

CITY OF FARGO

By: _____
Tim Mahoney, Mayor

ATTEST:

Steven Sprague, City Auditor

Exhibit AFORM OF MUNICIPAL SECURITY

UNITED STATES OF AMERICA

STATE OF NORTH DAKOTA

COUNTY OF CASS

CITY OF FARGO

SOLID WASTE REVENUE BOND,
SERIES 2021C

No. R-1

\$4,361,000

<u>Rate</u>	<u>Maturity Date</u>	<u>Date of Original Issue</u>	<u>CUSIP</u>
1.50%	September 1, 2032	[____], 2021	NONE

REGISTERED OWNER: NORTH DAKOTA PUBLIC FINANCE AUTHORITY

PRINCIPAL AMOUNT: FOUR MILLION THREE HUNDRED SIXTY ONE THOUSAND
DOLLARS

KNOW ALL PERSONS BY THESE PRESENTS that the City of Fargo, North Dakota (the "City"), a political subdivision of and existing under and pursuant to the laws of the State of North Dakota, for value received, hereby promises to pay solely from the sources set forth herein to the Registered Owner specified above, or registered assigns, the Principal Amount (set forth above), or such lesser amount actually disbursed to the City, on or before the Maturity Date (set forth above). Interest shall accrue from the Date of Original Issuance at the annual rate of one and one half percent (1.50%), payable on each March 1 and September 1, commencing March 1, 2022. The Principal Amount of this Bond is subject to mandatory redemption on the dates and in the amounts set forth in Attachment A to this Municipal Security, which Attachment A shall be revised in accordance with Section 2.02 of the Loan Agreement in the event funds are advanced to the City less than as originally set forth in the Loan Agreement. The City hereby promises to pay the Administrative Fee, as defined in the Loan Agreement (being one half of one percent (0.50%) per annum on the outstanding principal amount of the Bond), payable semi-annually on each March 1 and September 1. All payments due with respect to this Bond are payable in lawful money of the United States of America at the main office of the Bank of North Dakota, in Bismarck, North Dakota, as paying agent and Registrar under the Resolution hereinafter described or of its successor as such. Interest shall be paid by check or draft mailed to the Registered Owner at the Owner's address set forth on the registration books or by wire or other electronic funds transfer.

This Municipal Security is issued pursuant to and in full conformity with the Constitution and laws of the State of North Dakota, including N.D.C.C. ch. 40-35 (the "Act"), and pursuant to a Resolution (the "Resolution") and a Loan Agreement (the "Loan Agreement") adopted and entered into by the City. Reference is hereby made to the Resolution and the Loan Agreement for

a description of the funds and accounts pledged to the payment of the Municipal Securities and the rights of the Registered Owner of the Municipal Securities. The principal and interest payments for this Bond and the Administrative Fee payable hereunder, if any, are not general obligations of the City, but are payable solely from Net Revenues received by the City from the operation of the solid waste utility of the City of Fargo and from any future additions thereto and betterments thereof.

This Municipal Security is transferable, as provided in the Resolution and the Loan Agreement, only upon books of the City kept by the Bank of North Dakota, as bond registrar, by the Registered Owner hereof in person or by the Owner's duly authorized attorney, or it may be surrendered in exchange for new Municipal Securities of the same aggregate principal amount, maturity and interest rate, as provided in the Resolution.

This Municipal Security shall be subject to redemption, in whole or in part, and if in part in principal amounts which are integral multiples of \$5,000, prior to their stated maturity, with the written consent of the Registered Owner, at a price equal to the principal amount thereof plus accrued interest to the date of redemption.

It is further certified, recited and declared that all acts, conditions and things required by the Constitution and the statutes of the State of North Dakota to exist, to have happened and to have been performed precedent to and in connection with the issuance of the Municipal Securities have been performed in due time, form and manner as required by law; and that the issuance of the Municipal Securities is within every debt and other limit prescribed by law.

IN WITNESS WHEREOF, the City has caused this Municipal Securities to be executed in its name by the manual or facsimile signatures of its Mayor and of its City Auditor, all as of the Date of Original Issue set forth above.

CITY OF FARGO, NORTH DAKOTA

By: _____
Tim Mahoney
Mayor

ATTEST:

Steven Sprague, City
Auditor

CERTIFICATE OF AUTHENTICATION

This Municipal Security is one of the Municipal Securities described in and issued under the provisions of the within-mentioned Resolution.

BANK OF NORTH DAKOTA

By: _____
Authorized Representative

ASSIGNMENT

For Value received the undersigned hereby sells, assigns and transfers unto

the
within-mentioned Municipal Security and hereby irrevocably constitutes and appoints

attorney-
in-fact, to transfer the same on the books of registration thereof, with full power of substitution in
the premises.

Dated: _____, 20__

Social Security or other identifying number of
Assignee

NOTICE: The signature to this assignment
must correspond with the name as it appears
on the face of the within Municipal Security
in every particular, without alteration or any
change whatsoever.

Signature Guaranteed:

NOTICE: Signature(s) must be guaranteed
by a member of the New York Stock
Exchange or a commercial bank or trust
company.

ATTACHMENT A

Clean Water Loan Info PRELIMINARY	
Loan #	121
Loan	Fargo
Interest Rate	1.50%
Administration Fee	0.50%
Loan Request	4,361,000.00
Loan Amount	4,361,000.00
Fully Funded Amount	0.00
Insurance Deduction	5,000.00
Credit Rating	NR
Security Type	Revenue
Closing Date	9/15/2021
First Maturity	9/1/2023
Term	10
Final Maturity	9/1/2032
First Interest	3/1/2022
First Interest Payment	15,000.00
First Admin. Payment	5,000.00
Debt Service Reserve Fund	436,100.00
First DSRF Payment	9/1/2023

Project Description
Landfill Reclamation - Construction

Date	Principal	Interest	Total Principal & Interest	Annual P&I Payment	Outstanding Balance	Admin. Fee	Total Payment	Annual Total Payment
3/1/2022	-	15,000.00	15,000.00	-	4,361,000.00	5,000.00	20,000.00	-
9/1/2022	-	32,707.50	32,707.50	47,707.50	4,361,000.00	10,902.50	43,610.00	63,610.00
3/1/2023	-	32,707.50	32,707.50	-	4,361,000.00	10,902.50	43,610.00	-
9/1/2023	401,000.00	32,707.50	433,707.50	466,415.00	3,960,000.00	10,902.50	444,610.00	488,220.00
3/1/2024	-	29,700.00	29,700.00	-	3,960,000.00	9,900.00	39,600.00	-
9/1/2024	405,000.00	29,700.00	434,700.00	464,400.00	3,555,000.00	9,900.00	444,600.00	484,200.00
3/1/2025	-	26,662.50	26,662.50	-	3,555,000.00	8,887.50	35,550.00	-
9/1/2025	415,000.00	26,662.50	441,662.50	468,325.00	3,140,000.00	8,887.50	450,550.00	486,100.00
3/1/2026	-	23,550.00	23,550.00	-	3,140,000.00	7,850.00	31,400.00	-
9/1/2026	425,000.00	23,550.00	448,550.00	472,100.00	2,715,000.00	7,850.00	456,400.00	487,800.00
3/1/2027	-	20,362.50	20,362.50	-	2,715,000.00	6,787.50	27,150.00	-
9/1/2027	430,000.00	20,362.50	450,362.50	470,725.00	2,285,000.00	6,787.50	457,150.00	484,300.00
3/1/2028	-	17,137.50	17,137.50	-	2,285,000.00	5,712.50	22,850.00	-
9/1/2028	440,000.00	17,137.50	457,137.50	474,275.00	1,845,000.00	5,712.50	462,850.00	485,700.00
3/1/2029	-	13,837.50	13,837.50	-	1,845,000.00	4,612.50	18,450.00	-
9/1/2029	450,000.00	13,837.50	463,837.50	477,675.00	1,395,000.00	4,612.50	468,450.00	486,900.00
3/1/2030	-	10,462.50	10,462.50	-	1,395,000.00	3,487.50	13,950.00	-
9/1/2030	460,000.00	10,462.50	470,462.50	480,925.00	935,000.00	3,487.50	473,950.00	487,900.00
3/1/2031	-	7,012.50	7,012.50	-	935,000.00	2,337.50	9,350.00	-
9/1/2031	465,000.00	7,012.50	472,012.50	479,025.00	470,000.00	2,337.50	474,350.00	483,700.00
3/1/2032	-	3,525.00	3,525.00	-	470,000.00	1,175.00	4,700.00	-
9/1/2032	470,000.00	3,525.00	473,525.00	477,050.00	-	1,175.00	474,700.00	479,400.00
Total	\$ 4,361,000.00	\$ 417,622.50	\$ 4,778,622.50	\$ 4,778,622.50		\$ 139,207.50	\$ 4,917,830.00	\$ 4,917,830.00

CERTIFICATE

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

I, Steven Sprague, the duly appointed City Auditor of the City of Fargo, North Dakota, do hereby certify that attached hereto is a full, true and correct copy of the Resolution adopted by the governing body of the City of Fargo at the meeting held on October 18, 2021, and that such Resolution is now a part of the permanent records of the City of Fargo, North Dakota, as such records are filed in the office of the City Auditor.

Dated this __ day of _____, 2021.

City Auditor

(SEAL)

CITY OF FARGO, NORTH DAKOTA
FINANCIAL STATUS REPORT - MAJOR OPERATING FUNDS
2021 - YEAR TO DATE ENDING THROUGH 9/30/2021
BUDGET TO ACTUAL (Unaudited)

14

REVENUES:	Budget	Actual	Variance	Variance Percentage	Footnotes
General Fund	\$ 75,441,000	\$ 73,092,000	\$ (2,349,000)	-3.1%	
Enterprise Funds:					
Water	18,987,000	19,582,000	595,000	3.1%	
Solid Waste	13,710,000	12,761,000	(949,000)	-6.9%	
Wastewater	11,172,000	11,152,000	(20,000)	-0.2%	
Transit	8,996,000	7,263,000	(1,733,000)	-19.3%	(3)
Transit Capital	2,577,000	846,000	(1,731,000)	-67.2%	(3) (1)
Street Lighting	2,571,000	2,580,000	9,000	0.4%	
Storm Sewer	2,138,000	2,217,000	79,000	3.7%	
Forestry	1,868,000	1,919,000	51,000	2.7%	
Vector Control	540,000	544,000	4,000	0.7%	
Total Enterprise Funds	62,559,000	58,864,000	(3,695,000)	-5.9%	
Total Operating Funds	\$ 138,000,000	\$ 131,956,000	\$ (6,044,000)	-4.4%	

EXPENDITURES:	Budget	Actual	Variance	Variance Percentage	Notes
General Fund	\$ 78,501,000	\$ 74,972,000	3,529,000	4.5%	
Enterprise Funds:					
Water	\$ 21,002,000	\$ 20,236,000	766,000	3.6%	
Solid Waste	14,107,000	12,083,000	2,024,000	14.3%	(1)
Wastewater	12,440,000	12,282,000	158,000	1.3%	
Transit	7,302,000	6,942,000	360,000	4.9%	
Transit Capital	6,024,000	1,419,000	4,605,000	76.4%	(3)
Street Lighting	2,899,000	2,684,000	215,000	7.4%	
Storm Sewer	1,766,000	1,331,000	435,000	24.6%	(1)
Forestry	1,955,000	1,990,000	(35,000)	-1.8%	
Vector Control	572,000	355,000	217,000	37.9%	(2)
Total Enterprise Funds	68,067,000	59,322,000	8,745,000	12.8%	
Total Operating Funds	\$ 146,568,000	\$ 134,294,000	\$ 12,274,000	8.4%	

Reporting Basis: Revised Budget, Period 9/2021

- (1) Budgets have not been seasonally adjusted for capital projects, will vary from month to month
 (2) Weather conditions currently impact service requirements
 (3) Transit operating and capital grants are pending from Federal Transit Administration

(15)

CITY OF FARGO
GENERAL FUND - BUDGET TO ACTUAL
THROUGH SEPTEMBER 2021
(UNAUDITED)

	2021 BUDGET	2021 ACTUAL	VARIANCE
REVENUES:			
Taxes	\$ 33,819,908	\$ 34,223,079	\$ 403,171
Licenses & Permits	4,083,910	4,451,694	367,784
Fines & Traffic Tickets	1,201,854	1,169,542	(32,312)
Intergovernmental Revenue	12,838,586	11,774,530	(1,064,056)
Charges for Services	11,010,646	9,696,505	(1,314,141)
Interest	1,616,391	1,931,487	315,096
Miscellaneous Revenue	2,501,890	823,754	(1,678,136)
Transfers In	8,367,646	9,020,985	653,339
Total Revenues	\$ 75,440,831	\$ 73,091,576	\$ (2,349,255)
EXPENDITURES:			
City Administrator	\$ 6,152,470	\$ 6,029,734	\$ 122,736
Finance	6,177,370	5,275,341	902,029
Planning & Development	3,569,287	3,341,438	227,849
Public Works	12,771,832	11,626,840	1,144,992
Fire Department	11,403,507	11,195,189	208,318
Police	17,631,287	17,097,240	534,047
Health	9,116,186	9,046,668	69,518
Library	3,603,291	3,523,206	80,085
Commission	629,813	503,647	126,166
Civic Center		-	-
Social Services	1,487,360	318,516	1,168,844
Capital Outlay	658,667	182,959	475,708
Vehicle Replacement/IT	20,360	97,046	(76,686)
Contingency	(1,257,767)	195,537	(1,453,304)
Transfers Out	6,537,327	6,538,393	(1,066)
Total Expenditures	\$ 78,500,990	\$ 74,971,754	\$ 3,529,236
Excess of Revenue Over (Under) Expenditures	\$ (3,060,159)	\$ (1,880,178)	\$ 1,179,981

16

TO: BOARD OF CITY COMMISSIONERS

FROM: KENT COSTIN, DIRECTOR OF FINANCE 

RE: CITY INVESTMENT HOLDINGS REPORT

DATE: OCTOBER 14, 2021

The City of Fargo investments report is presented in accordance with a financial policy directive in 2014 to begin reporting this information directly to the City Commission. Our credit rating agencies best business practices include this process and we have previously discussed and concurred that this would enhance our financial reporting practices.

The report attached is a consolidated summary of our investment holdings. Individual portfolios are managed for various purposes and PFM Asset Management, LLC has been our investment advisor since 2012.

The Finance Committee periodically reviews changes in our asset management policies. The City Commission approves changes to our investment policies. Pension fund investments are not included in this report.

Suggested Motion:

Receive and file a report of City investment holdings as of 9/30/2021.



Portfolio Summary and Statistics

For the Month Ending September 30, 2021

CITY OF FARGO - Combined Portfolio

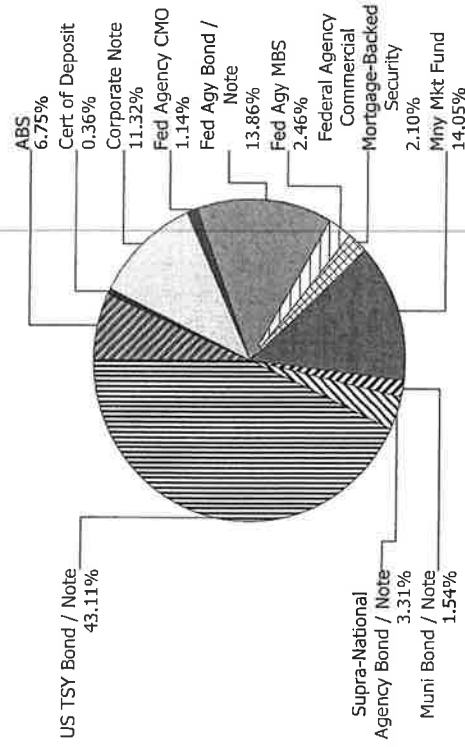
Account Summary

Description	Par Value	Market Value	Percent
U.S. Treasury Bond / Note	65,580,000.00	66,273,617.54	43.11
Supra-National Agency Bond / Note	5,095,000.00	5,082,942.75	3.31
Municipal Bond / Note	2,350,000.00	2,364,836.85	1.54
Federal Agency Mortgage-Backed Security	3,547,949.29	3,783,570.17	2.46
Federal Agency Commercial Mortgage-Backed Security	3,152,527.23	3,227,927.86	2.10
Federal Agency Collateralized Mortgage Obligation	1,720,456.07	1,760,364.42	1.14
Federal Agency Bond / Note	21,300,000.00	21,316,525.57	13.86
Corporate Note	16,858,000.00	17,409,126.78	11.32
Certificate of Deposit	555,000.00	557,141.75	0.36
Asset-Backed Security	10,348,916.45	10,371,036.47	6.75
Managed Account Sub-Total	130,507,849.04	132,147,090.16	85.95%
Accrued Interest		304,712.03	
Total Portfolio	130,507,849.04	132,451,802.19	
PFM Funds - Govt Select, Instl CI	20,320,067.48	20,320,067.48	13.22
PFM Funds - Govt Select, Instl CI	691,386.52	691,386.52	0.45
PFM Funds - Govt Select, Instl CI	591,312.19	591,312.19	0.38
Total Investments	152,110,615.23	154,054,568.38	100.00%

Unsettled Trades

560,000.00 560,510.72

Sector Allocation



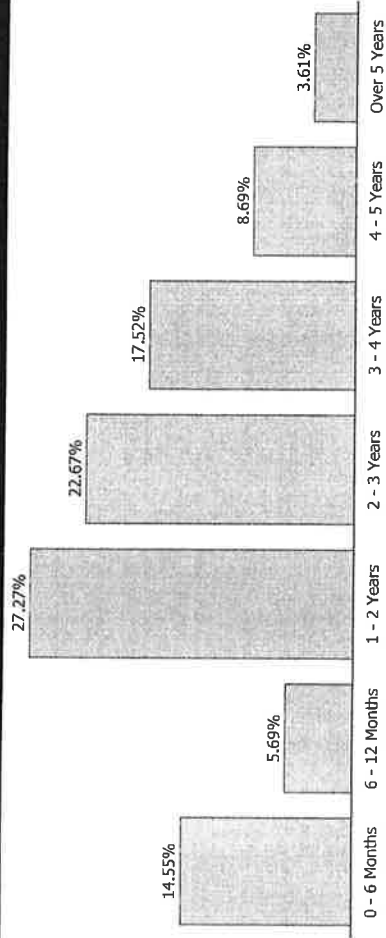


Portfolio Summary and Statistics

For the Month Ending **September 30, 2021**

CITY OF FARGO - Combined Portfolio

Maturity Distribution




Characteristics

Yield to Maturity at Cost	0.94%
Yield to Maturity at Market	0.55%
Weighted Average Days to Maturity	1076

17a

MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

FROM: DESI FLEMING 
DIRECTOR OF PUBLIC HEALTH

DATE: OCTOBER 9, 2021

**RE: AGREEMENT FOR CLETS OFERE INDEPENDENT
CONTRACTOR, FOR SERVING AS LOGISTICS AND
OPERATIONS SUPPORT FOR THE COVID-19 INCIDENT
TESTING SITE**

The attached agreement for services with Cleets Ofere to serve as the Logistics and Operations Support for the COVID-19 Testing Site is for \$23.00 an hour, overtime at the rate of \$34.50 an hour. The cost of this contract will be covered by Local Public Health COVID-19 funding. The cost will not exceed a total of \$9,900.

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

Suggested Motion: Move to approve the agreement with Cleets Ofere.

DF/lis
Enclosure



AGREEMENT FOR SERVICES

Fargo Cass

Public Health
 Prevent. Promote. Protect.

THIS AGREEMENT, effective the 8th of October, 2021, by and between Fargo Cass Public Health ("FCPH"); and Clets Ofere

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

- A. Term of Agreement:** The parties entered into a written agreement for the period of October 8, 2021 through December 31, 2021.
- B. Services to be provided by independent contractor:** Independent contractor will serve as the Logistics and Operations Support for the COVID-19 Incident Command. The independent contractor will be responsible for services for testing site support.
- C. Reimbursement:** Clets Ofere shall be reimbursed for the above services rendered, at \$23.00 per hour, hours worked over 40 hours per week will be reimbursed at \$34.50, not to exceed a total of \$9,900 for total project detailed.
- D. Termination:** This Agreement may be terminated by either party upon the giving of thirty (30) days written notice.
- E. Confidentiality:** The independent contracting consultant agrees to not, directly or indirectly, disclose, make known, divulge, publish or communicate any individually identifiable health information or other confidential information to any person, firm or corporation without consent unless that disclosure is authorized under North Dakota law.

Special Considerations:

- A.** It is understood and agreed that the relationship created by this Agreement shall be that of independent contractor and contractee that shall not be deemed an employee of Fargo Cass Public Health for any other purpose.
- B.** The laws of the State of North Dakota shall govern this service agreement. I hereby certify that the above assurances and provisions of service have been reviewed and our agency has agreed upon the conditions as set forth.
- C.** It is understood any forms or paperwork required by Fargo Cass Public Health and the City of Fargo to receive payment for services will be completed as needed.

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

FARGO CASS PUBLIC HEALTH

Desi Fleming
 Director of Public Health

Date 10/11/21

 Timothy J. Mahoney
 Mayor, City of Fargo

Date _____

INDEPENDENT CONTRACTOR

Clets Ofere
 Independent Contractor


Date 10/8/2021



(176)

M E M O R A N D U M

TO: BOARD OF CITY COMMISSIONERS

FROM: DESI FLEMING 
DIRECTOR OF PUBLIC HEALTH

DATE: OCTOBER 9, 2021

RE: AGREEMENT FOR ALEXANDER MCKINNEY INDEPENDENT CONTRACTOR, FOR SERVING AS LOGISTICS AND OPERATIONS SUPPORT FOR THE COVID-19 INCIDENT TESTING SITE

The attached agreement for services with Alexander McKinney to serve as the Logistics and Operations Support for the COVID-19 Testing Site is for \$23.00 an hour, overtime at the rate of \$34.50 an hour. The cost of this contract will be covered by Local Public Health COVID-19 funding. The cost will not exceed a total of \$9,900.

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

Suggested Motion: Move to approve the agreement with Alexander McKinney.

DF/lls
Enclosure



AGREEMENT FOR SERVICES

Fargo Cass

Public Health
 Prevent. Promote. Protect.

THIS AGREEMENT, effective the 1st of October, 2021, by and between Fargo Cass Public Health ("FCPH"); and Alexander McKinney

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

- A. Term of Agreement:** The parties entered into a written agreement for the period of October 1, 2021 through December 31, 2021.
- B. Services to be provided by independent contractor:** Independent contractor will serve as the Logistics and Operations Support for the COVID-19 Incident Command. The independent contractor will be responsible for services for testing site support.
- C. Reimbursement:** Alexander McKinney shall be reimbursed for the above services rendered, at \$23.00 per hour, hours worked over 40 hours per week will be reimbursed at \$34.50, not to exceed a total of \$9,900 for total project detailed.
- D. Termination:** This Agreement may be terminated by either party upon the giving of thirty (30) days written notice.
- E. Confidentiality:** The independent contracting consultant agrees to not, directly or indirectly, disclose, make known, divulge, publish or communicate any individually identifiable health information or other confidential information to any person, firm or corporation without consent unless that disclosure is authorized under North Dakota law.

Special Considerations:

- A.** It is understood and agreed that the relationship created by this Agreement shall be that of independent contractor and contractee that shall not be deemed an employee of Fargo Cass Public Health for any other purpose.
- B.** The laws of the State of North Dakota shall govern this service agreement. I hereby certify that the above assurances and provisions of service have been reviewed and our agency has agreed upon the conditions as set forth.
- C.** It is understood any forms or paperwork required by Fargo Cass Public Health and the City of Fargo to receive payment for services will be completed as needed.

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

FARGO CASS PUBLIC HEALTH

Desi Fleming
 Director of Public Health

Date 10/11/21

 Timothy J. Mahoney
 Mayor, City of Fargo

Date _____

INDEPENDENT CONTRACTOR

Alexander McKinney
 Independent Contractor


Date Oct 1st 2021



(170)

M E M O R A N D U M

TO: BOARD OF CITY COMMISSIONERS

FROM: DESI FLEMING 
DIRECTOR OF PUBLIC HEALTH

DATE: OCTOBER 9, 2021

**RE: AGREEMENT FOR BERNADETTE CHINEMA INDEPENDENT
CONTRACTOR, FOR SERVING AS LOGISTICS AND
OPERATIONS SUPPORT FOR THE COVID-19 INCIDENT
TESTING SITE**

The attached agreement for services with Bernadette Chinema to serve as the Logistics and Operations Support for the COVID-19 Testing Site is for \$23.00 an hour, overtime at the rate of \$34.50 an hour. The cost of this contract will be covered by Local Public Health COVID-19 funding. The cost will not exceed a total of \$9,900.

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

Suggested Motion: Move to approve the agreement with Bernadette Chinema.

DF/lls
Enclosure



AGREEMENT FOR SERVICES

Fargo Cass

Public Health
 Prevent. Promote. Protect.

THIS AGREEMENT, effective the 22th of September, 2021, by and between Fargo Cass Public Health ("FCPH"); and Bernadette P Chinema

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

- A. Term of Agreement:** The parties entered into a written agreement for the period of September 22, 2021 through December 31, 2021.
- B. Services to be provided by independent contractor:** Independent contractor will serve as the Logistics and Operations Support for the COVID-19 Incident Command. The independent contractor will be responsible for services for testing site support.
- C. Reimbursement:** Bernadette P Chinema shall be reimbursed for the above services rendered, at \$23.00 per hour, hours worked over 40 hours per week will be reimbursed at \$34.50, not to exceed a total of \$9,900 for total project detailed.
- D. Termination:** This Agreement may be terminated by either party upon the giving of thirty (30) days written notice.
- E. Confidentiality:** The independent contracting consultant agrees to not, directly or indirectly, disclose, make known, divulge, publish or communicate any individually identifiable health information or other confidential information to any person, firm or corporation without consent unless that disclosure is authorized under North Dakota law.

Special Considerations:

- A.** It is understood and agreed that the relationship created by this Agreement shall be that of independent contractor and contractee that shall not be deemed an employee of Fargo Cass Public Health for any other purpose.
- B.** The laws of the State of North Dakota shall govern this service agreement. I hereby certify that the above assurances and provisions of service have been reviewed and our agency has agreed upon the conditions as set forth.
- C.** It is understood any forms or paperwork required by Fargo Cass Public Health and the City of Fargo to receive payment for services will be completed as needed.

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

FARGO CASS PUBLIC HEALTH




 Desi Fleming
 Director of Public Health

Date 10/4/21

 Timothy J. Mahoney
 Mayor, City of Fargo

Date _____

INDEPENDENT CONTRACTOR



 Bernadette P Chinema
 Independent Contractor

Date 9/22/21



(17d)

MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

FROM: DESI FLEMING *DF*
DIRECTOR OF PUBLIC HEALTH

DATE: SEPTEMBER 23, 2021

**RE: AGREEMENT FOR CHAD SIMMONS INDEPENDENT
CONTRACTOR, FOR SERVING AS LOGISTICS AND
OPERATIONS SUPPORT FOR THE COVID-19 INCIDENT
TESTING SITE**

The attached agreement for services with Chad Simmons to serve as the Logistics and Operations Support for the COVID-19 Testing Site is for \$23.00 an hour, overtime at the rate of \$34.50 an hour. The cost of this contract will be covered by Local Public Health COVID-19 funding. The cost will not exceed a total of \$9,900.

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

Suggested Motion: Move to approve the agreement with Chad Simmons.

DF/lls
Enclosure



AGREEMENT FOR SERVICES

Fargo Cass

Public Health
 Prevent. Promote. Protect.

THIS AGREEMENT, effective the 23rd of September, 2021, by and between Fargo Cass Public Health ("FCPH"); and Chad Simmons

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

- A. Term of Agreement:** The parties entered into a written agreement for the period of September 23, 2021 through December 31, 2021.
- B. Services to be provided by independent contractor:** Independent contractor will serve as the Logistics and Operations Support for the COVID-19 Incident Command. The independent contractor will be responsible for services for testing site support.
- C. Reimbursement:** Chad Simmons shall be reimbursed for the above services rendered, at \$23.00 per hour, hours worked over 40 hours per week will be reimbursed at \$34.50, not to exceed a total of \$9,900 for total project detailed.
- D. Termination:** This Agreement may be terminated by either party upon the giving of thirty (30) days written notice.
- E. Confidentiality:** The independent contracting consultant agrees to not, directly or indirectly, disclose, make known, divulge, publish or communicate any individually identifiable health information or other confidential information to any person, firm or corporation without consent unless that disclosure is authorized under North Dakota law.

Special Considerations:

- A.** It is understood and agreed that the relationship created by this Agreement shall be that of independent contractor and contractee that shall not be deemed an employee of Fargo Cass Public Health for any other purpose.
- B.** The laws of the State of North Dakota shall govern this service agreement. I hereby certify that the above assurances and provisions of service have been reviewed and our agency has agreed upon the conditions as set forth.
- C.** It is understood any forms or paperwork required by Fargo Cass Public Health and the City of Fargo to receive payment for services will be completed as needed.

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

FARGO CASS PUBLIC HEALTH


 Desi Fleming
 Director of Public Health

Date 10/11/21

 Timothy J. Mahoney
 Mayor, City of Fargo

Date _____

INDEPENDENT CONTRACTOR


 Chad Simmons
 Independent Contractor


Date 9/23/21



(Handwritten initials: J7e)

MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

FROM: DESI FLEMING 
DIRECTOR OF PUBLIC HEALTH

DATE: OCTOBER 11, 2021

RE: AGREEMENT FOR BEAUTY MUGADZA INDEPENDENT
CONTRACTOR, FOR SERVING AS LOGISTICS AND
OPERATIONS SUPPORT FOR THE COVID-19 INCIDENT
TESTING SITE

The attached agreement for services with Beauty Mugadza to serve as the Logistics and Operations Support for performing demographics at the COVID-19 Testing Site is for \$23.00 an hour, overtime at the rate of \$34.50 an hour. For swabbing done at the COVID-19 Testing Site the reimbursement rate will be \$30.00 an hour, overtime at the rate of \$45.00 an hour. The cost of this contract will be covered by Local Public Health COVID-19 funding. The cost will not exceed a total of \$9,900.

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

Suggested Motion: Move to approve the agreement with Beauty Mugadza.

DF/lls
Enclosure

AGREEMENT FOR SERVICES



THIS AGREEMENT, effective the 11th of October, 2021, by and between Fargo Cass Public Health ("FCPH"); and Beauty Mugadza

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

- A. Term of Agreement:** The parties entered into a written agreement for the period of October 11, 2021 through December 31, 2021.
- B. Services to be provided by independent contractor:** Independent contractor will serve as the Logistics and Operations Support for the COVID-19 Incident Command. The independent contractor will be responsible for services for testing site support such as demographics. Contractor will also provide swabbing services at a different hourly rate.
- C. Reimbursement:** Beauty Mugadza shall be reimbursed for the above services (demographics) rendered, at \$23.00 per hour, hours worked over 40 hours per week will be reimbursed at \$34.50, for swabbing \$30.00 an hour with any hours swabbing worked over 40 hours per week being reimbursed at \$45.00 an hour, not to exceed a total of \$9,900 for total project detailed.
- D. Termination:** This Agreement may be terminated by either party upon the giving of thirty (30) days written notice.
- E. Confidentiality:** The independent contracting consultant agrees to not, directly or indirectly, disclose, make known, divulge, publish or communicate any individually identifiable health information or other confidential information to any person, firm or corporation without consent unless that disclosure is authorized under North Dakota law.

Special Considerations:

- A.** It is understood and agreed that the relationship created by this Agreement shall be that of independent contractor and contractee that shall not be deemed an employee of Fargo Cass Public Health for any other purpose.
- B.** The laws of the State of North Dakota shall govern this service agreement. I hereby certify that the above assurances and provisions of service have been reviewed and our agency has agreed upon the conditions as set forth.
- C.** It is understood any forms or paperwork required by Fargo Cass Public Health and the City of Fargo to receive payment for services will be completed as needed.

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

FARGO CASS PUBLIC HEALTH

Desi Fleming
 Desi Fleming
 Director of Public Health

Date 10/12/21

 Timothy J. Mahoney
 Mayor, City of Fargo

Date _____

INDEPENDENT CONTRACTOR

Beauty Mugadza
 Beauty Mugadza
 Independent Contractor

Date 10/11/21



17f

MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

FROM: DESI FLEMING ~~DK~~
DIRECTOR OF PUBLIC HEALTH

DATE: OCTOBER 11, 2021

RE: AGREEMENT FOR LEONTYNE FAMOLU INDEPENDENT CONTRACTOR, FOR SERVING AS LOGISTICS AND OPERATIONS SUPPORT FOR THE COVID-19 INCIDENT TESTING SITE

The attached agreement for services with Leontyne Famolu to serve as the Logistics and Operations Support for the COVID-19 Testing Site is for \$23.00 an hour, overtime at the rate of \$34.50 an hour. The cost of this contract will be covered by Local Public Health COVID-19 funding. The cost will not exceed a total of \$9,900.

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

Suggested Motion: Move to approve the agreement with Leontyne Famolu.

DF/lis
Enclosure



AGREEMENT FOR SERVICES

Fargo Cass

Public Health
 Prevent. Promote. Protect.

THIS AGREEMENT, effective the 11th of October, 2021, by and between Fargo Cass Public Health ("FCPH"); and Leontyne Famolu

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

- A. Term of Agreement:** The parties entered into a written agreement for the period of October 11, 2021 through December 31, 2021.
- B. Services to be provided by independent contractor:** Independent contractor will serve as the Logistics and Operations Support for the COVID-19 Incident Command. The independent contractor will be responsible for services for testing site support.
- C. Reimbursement:** Leontyne Famolu shall be reimbursed for the above services rendered, at \$23.00 per hour, hours worked over 40 hours per week will be reimbursed at \$34.50, not to exceed a total of \$9,900 for total project detailed.
- D. Termination:** This Agreement may be terminated by either party upon the giving of thirty (30) days written notice.
- E. Confidentiality:** The independent contracting consultant agrees to not, directly or indirectly, disclose, make known, divulge, publish or communicate any individually identifiable health information or other confidential information to any person, firm or corporation without consent unless that disclosure is authorized under North Dakota law.

Special Considerations:

- A.** It is understood and agreed that the relationship created by this Agreement shall be that of independent contractor and contractee that shall not be deemed an employee of Fargo Cass Public Health for any other purpose.
- B.** The laws of the State of North Dakota shall govern this service agreement. I hereby certify that the above assurances and provisions of service have been reviewed and our agency has agreed upon the conditions as set forth.
- C.** It is understood any forms or paperwork required by Fargo Cass Public Health and the City of Fargo to receive payment for services will be completed as needed.

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

FARGO CASS PUBLIC HEALTH



 Desi Fleming

Director of Public Health

Date 10/12/21

 Timothy J. Mahoney
 Mayor, City of Fargo

Date _____

INDEPENDENT CONTRACTOR



 Leontyne Famolu

Independent Contractor


Date 10-11-21



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MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

FROM: DESI FLEMING 
DIRECTOR OF PUBLIC HEALTH

DATE: OCTOBER 11, 2021

RE: AGREEMENT FOR TENEEZEE STEELE INDEPENDENT CONTRACTOR, FOR SERVING AS LOGISTICS AND OPERATIONS SUPPORT FOR THE COVID-19 INCIDENT TESTING SITE

The attached agreement for services with Tenezee Steele to serve as the Logistics and Operations Support for the COVID-19 Testing Site is for \$23.00 an hour, overtime at the rate of \$34.50 an hour. The cost of this contract will be covered by Local Public Health COVID-19 funding. The cost will not exceed a total of \$9,900.

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

Suggested Motion: Move to approve the agreement with Tenezee Steele.

DF/lls
Enclosure



AGREEMENT FOR SERVICES

Fargo Cass

Public Health
 Prevent. Promote. Protect.

THIS AGREEMENT, effective the 11th of October, 2021, by and between Fargo Cass Public Health ("FCPH"); and Tenezee Steele

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

- A. Term of Agreement:** The parties entered into a written agreement for the period of October 11, 2021 through December 31, 2021.
- B. Services to be provided by independent contractor:** Independent contractor will serve as the Logistics and Operations Support for the COVID-19 Incident Command. The independent contractor will be responsible for services for testing site support.
- C. Reimbursement:** Tenezee Steele shall be reimbursed for the above services rendered, at \$23.00 per hour, hours worked over 40 hours per week will be reimbursed at \$34.50, not to exceed a total of \$9,900 for total project detailed.
- D. Termination:** This Agreement may be terminated by either party upon the giving of thirty (30) days written notice.
- E. Confidentiality:** The independent contracting consultant agrees to not, directly or indirectly, disclose, make known, divulge, publish or communicate any individually identifiable health information or other confidential information to any person, firm or corporation without consent unless that disclosure is authorized under North Dakota law.

Special Considerations:

- A.** It is understood and agreed that the relationship created by this Agreement shall be that of independent contractor and contractee that shall not be deemed an employee of Fargo Cass Public Health for any other purpose.
- B.** The laws of the State of North Dakota shall govern this service agreement. I hereby certify that the above assurances and provisions of service have been reviewed and our agency has agreed upon the conditions as set forth.
- C.** It is understood any forms or paperwork required by Fargo Cass Public Health and the City of Fargo to receive payment for services will be completed as needed.

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

FARGO CASS PUBLIC HEALTH



 Desi Fleming
 Director of Public Health

Date 10/12/21

 Timothy J. Mahoney
 Mayor, City of Fargo

Date _____

INDEPENDENT CONTRACTOR



 Tenezee Steele
 Independent Contractor

Date 10/11/21



18

MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

FROM: DESI FLEMING ~~XX~~
DIRECTOR OF PUBLIC HEALTH

DATE: OCTOBER 13, 2021

RE: AGREEMENT FOR SERVICES WITH AE2S
COMMUNICATIONS FOR "Spot the Signs" CAMPAIGN
NOT TO EXCEED \$95,000.

The attached Contract Agreement with AE2S Communications is to continue the grant funded work on the "Spot the Signs" campaign which educates the public regarding the dangers of vaping, smoking and smokeless tobacco.

No budget adjustment is required for this contract.

Suggested Motion: Move to approve the Contract Agreement with AE2S Communications.

DF/lls
Enclosure



October 11, 2021

Dr. Larry Anenson & Melissa Markegard
Fargo Cass Public Health
1240 25th Street S
Fargo, ND 58103

RE: 2022 Tobacco Cessation Campaign

Dear Larry and Melissa:

AE2S Communications is pleased to have the opportunity to continue the work started two years ago with Fargo Cass Public Health. We're excited and energized to help educate the public about the dangers of vaping, smoking, and smokeless tobacco through the grant period ending in June 2022. The success of the "Spot the Signs" campaign will continue into 2022 by strengthening and expanding the campaign's messaging and reach.

Our team will continue to work closely with Fargo Cass Public Health and monitor public sentiment to ensure we continue to provide anti-nicotine messaging that connects with the intended audiences in the most effective ways.

We offer the following scope of services to help do just that.

Scope of Services

AE2S Communications (AE2S) proposes to work with Fargo Cass Public Health (CLIENT) to provide communications and engagement support services for the period of January through June of 2022. This Agreement sets forth the terms and conditions under which the CLIENT and AE2S shall be governed regarding the Assignment.

Scope:

- Amplify and continue to develop "Spot the Signs" campaign materials that address tobacco and nicotine usage in Cass County.
- Provide content development and graphic design services for owned media such as the Fargo Cass Public Health website and social media as well as content and advertisements for earned and paid media.
- Place and monitor paid advertising.
- Provide communications strategies, content development and other assistance as needed for Fargo Cass Public Health tobacco education initiatives.

Fees

AE2S proposes to render professional services under this Agreement on an hourly basis in accordance with the Scope and Fee attached as Exhibit A. This contract includes \$26,004 for labor and \$68,996 for media buys and expenses. This contract is not to exceed \$95,000 without written authorization from CLIENT, including reimbursement for all project related expenses and paid media.

As a reminder, our contract is hourly to a max which means you will be charged only for the hours worked.

Scope and Fee Table

Please see Exhibit A

Additional Services

Services resulting from significant changes in the general scope, extent, or character of the Assignment are not included as a part of the general Scope of Services. If authorized in writing by the CLIENT, AE2S will provide services beyond the scope of this Agreement on an hourly basis in accordance with the Hourly Fee Schedule attached as Exhibit C.

CLIENT'S Responsibilities

CLIENT shall do the following in a timely manner, so as not to delay the services of AE2S:

1. Designate a person to act as CLIENT's representative with respect to the services to be rendered under this Agreement. Such person shall have complete authority to transmit instructions, receive information, and interpret and define CLIENT's policies and decisions with respect to services for the Assignment
2. Provide relevant information and content regarding requirements for the Assignment. AE2S shall be entitled to use and rely upon all information provided by CLIENT or others in performing AE2S's services under this Agreement.
3. CLIENT shall, so long as AE2S is not in default, promptly pay AE2S for such professional services as have been performed satisfactorily hereunder in accordance with the fee schedule set forth herein.

CLIENT shall bear all costs incident to compliance with its responsibilities pursuant to this section.

Standard Terms and Conditions

Standard terms and conditions of this Agreement between CLIENT and AE2S are specified in Exhibit B.

Performance Schedule

Timetables and deliverables will be in conjunction with CLIENT goals for the ASSIGNMENT. Labor fees have been estimated based on the grant period ending in June of 2022.

Contract Documents

The Contract Documents consist of the following:

1. This Agreement;
2. Exhibit A – Scope and Fee Table;
3. Exhibit B – Standard Terms and Conditions;
4. Exhibit C – Labor Rate and Reimbursable Expense Schedule; and
5. Any duly executed amendments.

There are no Contract Documents other than those listed above.

RE: 2022 Tobacco Cessation Campaign

October 11, 2021

Page 3 of 3

If this Agreement sets forth your understanding of our agreement, including the scope of work desired, fees, terms, and conditions, please sign both this original and the enclosed copy in the space provided. Please retain the original for your files and return the copy to AE2S. Thank you for the opportunity to assist in this project and we look forward to working with you.

Sincerely,



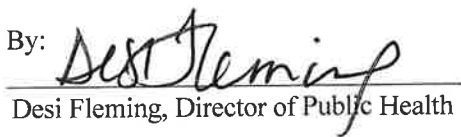
Heather Syverson
AE2S Communications Project Manager



Ryan Grubb
Fargo AE2S Operations Manager

CLIENT

By:


Desi Fleming, Director of Public Health

By:

Timothy J. Mahoney, Mayor, City of Fargo

Accepted this 13 day of _October, 2021

Accepted this _____ day of _October, 2021



AENS COMMUNICATIONS

Heather Zack Taylor Cody Nicole
 Syverson Otteson Corbett Schuler Gaustad
 Project Graphic Digital Digital Graphic
 Manager Designer Marketing & Storyteller Design Design
 Design

Task 1: Project Management, Collaboration, and Reporting

1.1 Client communications/team meetings/project management	8	4	4	5	4	25	\$	2,829		\$	2,829
1.2 Ad planning, placement, reporting	30		10			40	\$	4,830	\$	68,996	\$ 73,826
TOTAL FOR TASK 1	38	4	14	5	4	65	\$	7,659	\$	68,996	\$ 76,655

Task 2: Graphic Design

2.1 Graphic design	6	25	15	15	15	76	\$	8,340		\$	8,340
TOTAL FOR TASK 2	6	25	15	15	15	76	\$	8,340	\$	-	\$ 8,340

Task 3: Videography

3.1 Videography/animations/editing	10			30		40	\$	4,040		\$	4,040
TOTAL FOR TASK 3	10	0	0	30	0	40	\$	4,040	\$	-	\$ 4,040

Task 4: Content Creation

4.1 Website	8	5		5		18	\$	2,005		\$	2,005
4.2 Social media	15	5	10	5		35	\$	3,960		\$	3,960
TOTAL FOR TASK 4	23	10	10	10	0	53	\$	5,965	\$	-	\$ 5,965

TOTAL PROJECT HOURS/EXPENSES

9625	4212	4212	5580	2375	234	\$	26,004	\$	68,996	\$	95,000
------	------	------	------	------	-----	----	--------	----	--------	----	--------

10. COMPLETE AGREEMENT. This Agreement with its exhibit, attached, constitutes the complete agreement and sets forth the entire understanding and agreement of the parties as to the subject matter of this Agreement and supersedes all prior discussions and understandings in respect to the subject of this Agreement, whether written or oral.
11. MODIFICATION. No modification, termination, or attempted waiver of this Agreement, or any provision thereof, shall be valid unless in writing and signed by the party against whom the same is sought to be enforced.
12. BINDING EFFECT. This Agreement shall be binding on, and shall inure to the benefit of the parties and their respective successors in interest.
13. NOTICES. All notices given under this Agreement shall be in writing, addressed to the parties as set forth on page 1.
14. GOVERNING LAW. This Agreement shall be governed by the laws of the State of North Dakota.
15. EXECUTED IN COUNTERPARTS. This Agreement may be executed in counterparts, each of which together will constitute one and the same instrument. Delivery of an executed counterpart of this Agreement shall constitute effective delivery of this Agreement. Each Party agrees that the delivery of the Agreement by facsimile or electronic mail shall have the same force and effect as delivery of original signature and that each Party may use such facsimile or electronic mail signatures as evidence of the execution and delivery of the Agreement by the Parties to the same extent that an original signature could be used.



This is EXHIBIT B, consisting of 2 pages, referred to in and part of the Agreement between CLIENT and AE2S for Services dated October 11, 2021.

Standard Terms and Conditions

The Agreement is supplemented to include the following terms and conditions:

1. TERM. This Agreement shall commence on the Effective Date.
2. SCOPE OF SERVICES
 - 2.1.1 CONSULTANT will devote the required amount of time necessary to perform the Services for CLIENT as stated herein. CONSULTANT will have discretion in selecting the dates and times it performs the Services giving due regard to the requirements of the project and schedule of CLIENT.
 - 2.1.2 CLIENT will provide CONSULTANT with materials and information necessary to perform the scope of services proposed.
 - 2.1.3 The relationship between CLIENT and CONSULTANT created by this Agreement is that of independent contractor, and CONSULTANT is not and shall not be deemed to be an employee of CLIENT for any purpose.
3. INVOICES AND PAYMENTS. CONSULTANT will invoice CLIENT for time and reimbursable expenses monthly. Payments to CONSULTANT will be made within 30 days of CLIENT's receipt of an invoice documenting the services performed by CONSULTANT. If CLIENT fails to make any payment due AE2S for services and expenses within 30 days, the amounts due AE2S will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day. In addition, AE2S may, after giving seven days written notice to CLIENT, suspend services under this Agreement until AE2S has been paid in full all amounts due for services, expenses, and other related charges.
4. TERMINATION
 - 4.1 If, for any reason, either party fails to fulfill in a timely and proper manner its obligations under this Agreement, or if either party shall violate any of the covenants, agreements, or stipulations of this Agreement, the first party shall thereupon have the right to terminate the Agreement by giving written notice to the other party of such termination and specifying the effective date thereof. This Agreement may be terminated by either party ("the Terminating Party") upon a breach by the other party ("the Breaching Party") of any representation or obligation imposed hereby, provided that Terminating Party has given written notice of the breach to the Breaching Party and such breach has not been cured within ten (10) days of the date of such notice.
 - 4.2 Either party may terminate this Agreement at any time without cause by giving at least 30 days' notice in writing to the other party.
 - 4.3 If the Agreement is terminated as provided herein, CONSULTANT will be paid for the time provided and expenses incurred up to the termination date.
5. STANDARD OF CARE. CONSULTANT shall exercise the same degree of care, skill, and diligence in the performance of the Services as is provided by a professional of like experience, knowledge and resources, under similar circumstances.
6. EXCLUSION OR SPECIAL INCIDENTAL, INDIRECT, AND CONSEQUENTIAL DAMAGES. To the fullest extent permitted by law, and notwithstanding any other provision in the Agreement, AE2S and AE2S's officers, directors, partners, employees, agents, and Consultants, or any of them, shall not be liable to CLIENT or anyone claiming by, through, or under CLIENT for any special, incidental, indirect, or consequential damages whatsoever arising out of, resulting from, or in any way related to a Specific Project, Task Order, or this Agreement, from any cause or causes, including but not limited to any such damages caused by the negligence, professional errors or omissions, strict liability, breach of contract or warranties, express or implied, of AE2S or AE2S's officers, directors, partners, employees, agents, or AE2S's Consultants, or any of them.
7. LIMIT OF LIABILITY. To the fullest extent permitted by law, notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of AE2S and AE2S's officers, directors, partners, employees, agents, and AE2S's Consultants, and any of them, to CLIENT and anyone claiming by, through, or under CLIENT for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from or in any way related to the Project or the Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability or breach of contract, or warranty express or implied of AE2S or AE2S's officers, directors, partners, employees, agents, or AE2S's Consultants, or any of them, shall not exceed total compensation received by AE2S as part of this agreement.
8. CONFIDENTIALITY. All of reports, information, and data, prepared or assembled by CONSULTANT under this Agreement are confidential and CONSULTANT agrees that they shall not be made available to any individual or organization without the prior written approval of CLIENT.
9. COPYRIGHT. No printed or digitally designed documents produced in whole or in part under this Agreement shall be the subject of an application for copyright by or on behalf of CONSULTANT.



Labor Rates*

Administrative I	\$60.00
Administrative II	\$73.00
Administrative III	\$88.00

Communications Specialist I	\$93.00
Communications Specialist II	\$108.00
Communications Specialist III	\$125.00
Communications Specialist IV	\$150.00
Communications Specialist V	\$165.00

Construction Services I	\$142.00
Construction Services II	\$155.00
Construction Services III	\$175.00
Construction Services IV	\$192.00
Construction Services V	\$210.00

Engineering Assistant 1	\$73.00
Engineering Assistant 2	\$88.00
Engineering Assistant 3	\$103.00
Engineer I	\$119.00
Engineer II	\$141.00
Engineer III	\$168.00
Engineer IV	\$193.00
Engineer V	\$205.00
Engineer VI	\$223.00
Engineer VII	\$241.00
Engineer VIII	\$250.00

Engineering Technician I	\$72.00
Engineering Technician II	\$92.00
Engineering Technician III	\$112.00
Engineering Technician IV	\$126.00
Engineering Technician V	\$143.00
Engineering Technician VI	\$158.00
Engineering Technician VII	\$175.00
Engineering Technician VIII	\$186.00

Financial Analyst I	\$99.00
Financial Analyst II	\$112.00
Financial Analyst III	\$135.00
Financial Analyst IV	\$145.00
Financial Analyst V	\$164.00
Financial Analyst VI	\$185.00
Financial Analyst VII	\$202.00
Financial Analyst VIII	\$220.00

GIS Specialist I	\$93.00
GIS Specialist II	\$112.00
GIS Specialist III	\$132.00
GIS Specialist IV	\$148.00
GIS Specialist V	\$165.00
GIS Specialist VI	\$185.00

I&C Assistant	\$88.00
I&C Technician I	\$108.00
I&C Technician II	\$122.00
I&C Technician III	\$136.00
I&C Technician IV	\$147.00
I&C Technician V	\$160.00

I&C Specialist	\$174.00
I&C Senior Specialist	\$185.00
I&C Manager	\$193.00

IT I	\$111.00
IT II	\$151.00
IT III	\$181.00

Land Surveyor Assistant	\$86.00
Land Surveyor I	\$103.00
Land Surveyor II	\$123.00
Land Surveyor III	\$138.00
Land Surveyor IV	\$152.00
Land Surveyor V	\$169.00
Land Surveyor VI	\$179.00

Operations Specialist I	\$89.00
Operations Specialist II	\$108.00
Operations Specialist III	\$133.00
Operations Specialist IV	\$150.00
Operations Specialist V	\$175.00

Program Coordinator I	\$188.00
Program Coordinator II	\$202.00
Program Coordinator III	\$215.00

Project Coordinator I	\$104.00
Project Coordinator II	\$115.00
Project Coordinator III	\$126.00
Project Coordinator IV	\$141.00
Project Coordinator V	\$159.00

Project Manager I	\$179.00
Project Manager II	\$196.00
Project Manager III	\$216.00
Project Manager IV	\$231.00

Technical Expert I	\$265.00
Technical Expert II	\$289.00
Technical Expert III	Negotiable

Reimbursable Expense Rates


Transportation	\$0.65/mile
Survey Vehicle	\$0.85/mile
Laser Printouts/Photocopies	\$0.30/copy
Plotter Printouts	\$1.00/s.f.
UAS - Photo/Video Grade	\$100.00/day
Total Station - Robotic	\$35.00/hour
Mapping GPS	\$25.00/hour
Fast Static/RTK GPS	\$50.00/hour
All-Terrain Vehicle/Boat	\$100.00/day
Cellular Modem	\$75.00/month
Web Hosting	\$26.00/month
Legal Services Reimbursement	\$238.00/hour
Outside Services	cost *1.15
Geotechnical Services	cost *1.30
Out of Pocket Expenses	cost*1.15
Rental Car	cost*1.20
Project Specific Equipment	Negotiable

*Position titles are for labor rate grade purposes only. These rates are subject to adjustment each year on January 1.

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MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

FROM: DESI FLEMING 
DIRECTOR OF PUBLIC HEALTH

DATE: OCTOBER 11, 2021

RE: AGREEMENT FOR FARGO-MOORHEAD METROPOLITAN COUNCIL OF GOVERNMENTS TO WORK WITH CASS CLAY FOOD PARTNERS STEERING COMMITTEE TO IMPLEMENT AND CONDUCT THE CASS CLAY FOOD COMMISSION MEETINGS, PROVIDE GUIDANCE AND OVERSEE METROPOLITAN FOOD SYSTEMS PLAN UPDATES.

The attached agreement for services with Metro-Cog is to work with Cass Clay Food Partners Steering Committee.

No budget adjustments.

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

Suggested Motion: Move to approve the agreement with Metro-Cog.

DF/lls
Enclosure



AGREEMENT FOR SERVICES

Fargo Cass



Public Health
Prevent. Promote. Protect.

THIS AGREEMENT, effective the 15th day of October 2021, by and between Fargo Cass Public Health ("FCPH"); and Fargo-Moorhead Metropolitan Council of Governments (Independent Contracting Consultant).

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

- A. Term of Agreement:** The parties entered into a written agreement for the period of October 15, 2021 through September 30, 2022.
- B. Services to be provided by independent contractor:** Independent contractor will work closely with the Cass Clay Food Partners Steering Committee to implement and conduct the Cass Clay Food Commission meetings according to the Joint Powers Agreement guidelines; continue to provide guidance and administrative support for the Commission (keep minutes, compile and send out agenda packets, arrange room and technology for meetings, etc.). Oversee the Metropolitan Food Systems Plan updates and network with local jurisdictions to incorporate food systems in city/county comprehensive and land development plans.
- C. Reimbursement:** The independent contracting consultant shall be reimbursed \$6000 for services and will submit an invoice quarterly.
- D. Termination:** This Agreement may be terminated by either party upon the giving of thirty (30) days written notice.
- E. Confidentiality:** The independent contracting consultant agrees to not, directly or indirectly, disclose, make known, divulge, publish or communicate any individually identifiable health information or other confidential information to any person, firm or corporation without consent unless that disclosure is authorized under North Dakota law.

Special Considerations:

- A.** It is understood and agreed that the relationship created by this Agreement shall be that of independent contractor and contractee that shall not be deemed to be an employee of Fargo Cass Public Health for any other purpose.
- B.** This service agreement shall be governed by the laws of the State of North Dakota. I hereby certify that the above assurances and provisions of service have been reviewed and our agency has agreed upon the conditions as set forth.
- C.** It is understood any forms or paperwork required by Fargo Cass Public Health and the City of Fargo to receive payment for services will be completed as needed.
- D.** Services including printing and other miscellaneous costs may be discussed and agreed to by the parties as needed.

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

FARGO CASS PUBLIC HEALTH

By Desi Fleming
Desi Fleming, Director of Public Health

Date 10/12/21

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

Date _____

FM Metropolitan Council of Governments

By Cynthia R Gray
Cynthia R Gray (Oct 11, 2021 16:38 CDT)
Cindy Gray, Executive Director

Date October 11, 2021

Contract Originator: Michelle Draxten

Agreement for Services MetroCOG 2021_22

Final Audit Report

2021-10-11

Created:	2021-10-11
By:	Lori Sall (lsall@cityoffargo.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAA2G38FP0H2LesEjWbBCBLS-QGMVebNqpe

"Agreement for Services MetroCOG 2021_22" History

-  Document created by Lori Sall (lsall@cityoffargo.com)
2021-10-11 - 8:44:19 PM GMT- IP address: 165.234.250.1
-  Document emailed to Cynthia R Gray (gray@fmmetrocog.org) for signature
2021-10-11 - 8:44:36 PM GMT
-  Email viewed by Cynthia R Gray (gray@fmmetrocog.org)
2021-10-11 - 8:46:37 PM GMT- IP address: 140.186.102.177
-  Document e-signed by Cynthia R Gray (gray@fmmetrocog.org)
Signature Date: 2021-10-11 - 9:38:17 PM GMT - Time Source: server- IP address: 140.186.102.177
-  Agreement completed.
2021-10-11 - 9:38:17 PM GMT



Adobe Sign

20

MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

FROM: TIA BRASETH, COMMUNITY DEVELOPMENT PLANNING COORDINATOR TB
NICOLE CRUTCHFIELD, PLANNING DIRECTOR

DATE: OCTOBER 14, 2021

RE: FINAL CONSIDERATION OF PROPOSED AMENDMENT TO 2021 ACTION PLAN AND AUTHORIZATION OF PLAN SUBMITTAL TO THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

The City Commission is asked to consider the following Community Development Block Grant (CDBG) action:

- Add project to address 5-Year plan goal of Assistance to Vulnerable Populations – After School Matters Youth Center (ages 13-19)

The proposed amendment, as well as others not requiring a public hearing, are detailed in the attached public notice and are in compliance with federal regulations for the Department of Housing and Urban Development (HUD) CDBG and HOME programs. The following actions were completed as required by the City of Fargo's Citizen Participation Plan:

Public Advertisement Published	September 15, 2021
Public Comment Period	Sept. 16 – Oct. 18, 2021
Public Hearing at City Commission Meeting	October 4, 2021

No comments were received during the public comment period. Upon approval by the City Commission, the plan will be submitted to HUD for review and approval.

Recommended Action: Approve proposed amendment to 2021 Action Plan for Community Development Block Grant (CDBG) / HOME Investment Partnerships Grant programming and authorize submittal to the U.S. Department of Housing and Urban Development.

**RESOLUTION APPROVING AMENDMENTS TO THE 2021 HUD ACTION PLAN
COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG)
HOME INVESTMENT PARTNERSHIPS PROGRAM (HOME)**

**BE IT RESOLVED BY THE BOARD OF CITY COMMISSIONERS OF THE CITY
OF FARGO:**

WHEREAS, the City of Fargo receives Community Development Block Grant (CDBG) and HOME Investment Partnerships Program funds from United States Department of Housing and Urban Development (HUD); and

WHEREAS, in compliance with federal regulations, the City of Fargo has amended its 2021 Action Plan to make available housing and community development resources that primarily address the needs of low to moderate income persons in Fargo; and

WHEREAS, the City of Fargo has conducted a required citizen participation process including a draft publication of the amendments, a public hearing, and a 30-day public comment period.

NOW, THEREFORE, BE IT RESOLVED by the City Commission of the City of Fargo, North Dakota that the Mayor is herein authorized and directed to submit the amended plans to HUD and enter into and execute contracts and other documents as necessary to effectuate activities identified in the revised plan.

CERTIFICATE

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

I, Timothy J. Mahoney, the duly elected, qualified and acting Mayor of the City of Fargo, North Dakota; and

I, Steven Sprague, the duly appointed, qualified and acting City Auditor of the City of Fargo, North Dakota,

DO HEREBY CERTIFY:

That the foregoing is a full, true and correct copy of the original Resolution, and the whole thereof approving the amendments to the City of Fargo's 2021 Action Plan for the Community Development Block Grant (CDBG) and HOME Investment Partnerships Program as described in the foregoing Resolution; which Resolution was duly adopted by the Board of City Commissioners of the City of Fargo, North Dakota, at the meeting of the Board held October 18, 2021 at which Regular Meeting all members present voted in favor of the adoption of the Resolution; and

That such Resolution is now a part of the permanent records of the City of Fargo, as such records are now filed in the office of the City Auditor.

(SEAL)

Timothy J. Mahoney,
Mayor of the City of Fargo, North Dakota

ATTEST:

Steven Sprague, City Auditor

On this ____ day of _____, 2021, before me, _____, a Notary Public in and for Cass County, in the State of North Dakota, personally appeared Timothy J. Mahoney, known to me to be the Mayor of the City of Fargo, North Dakota, and Steven Sprague, City Auditor of the City of Fargo, a municipal corporation under the laws of the State of North Dakota, and they acknowledged to me that they executed the foregoing instrument.

Notary Public, Cass County, North Dakota

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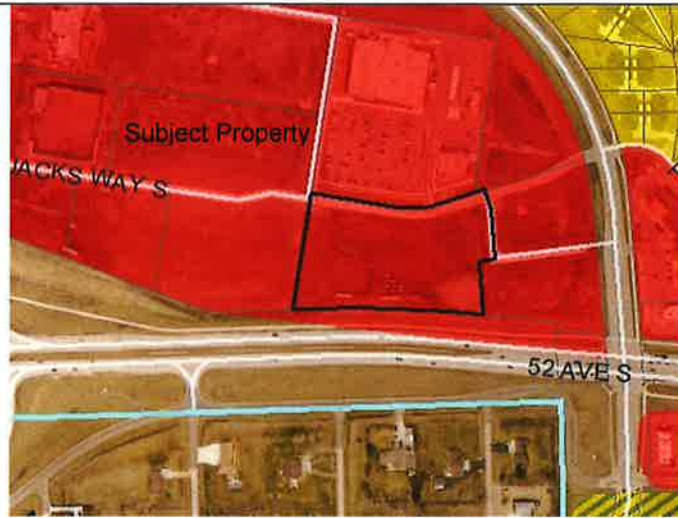
City of Fargo Staff Report			
Title:	Timber Parkway Sixth Addition	Date: Updated:	8/31/2021 10/14/2021
Location:	5081 Charles Way South	Staff Contact:	Aaron Nelson, planning coordinator Donald Kress, planning coordinator
Legal Description:	Lot 3, Block 1, Timber Parkway Third Addition		
Owner(s)/Applicant:	PLC Investments, LLC/Chris Mack	Engineer:	Bolton & Menk
Entitlements Requested:	Minor Subdivision (Replat of Lot 3, Block 1, Timber Parkway Third Addition)		
Status:	City Commission Public Hearing: October 18, 2021		

Existing	Proposed
Land Use: Vacant	Land Use: Future Commercial
Zoning: GC, General Commercial, with C-O, Conditional Overlay	Zoning: Unchanged
Uses Allowed: 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 , and major entertainment events.	Uses Allowed: Unchanged
Maximum Building Coverage Allowed: 85%	Maximum Building Coverage Allowed: Unchanged

Proposal:
The applicant is seeking approval of a minor subdivision to accommodate future commercial development of the subject property. The proposed minor subdivision, entitled <i>Timber Parkway Sixth Addition</i> , would subdivide one existing lot into two new lots. The subdivision would also establish a shared ingress/egress easement and would formally name the adjacent private drive as Jack's Way South for addressing and wayfinding purposes.
Surrounding Land Uses and Zoning Districts:
<ul style="list-style-type: none"> • North: GC, General Commercial, with retail sales uses • East: GC, General Commercial, with vacant land (across Timber Parkway South are retail sales uses) • South: City of Frontier (across 52nd Avenue South) with residential uses • West: GC, General Commercial, with vacant land

Area Plans:

The subject property is located within the study area of the 2001 Growth Plan for the Urban Fringe and Extraterritorial Area of the City of Fargo, within an area identified as future commercial on the future land use map, as amended. The base zoning district of GC, General



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

Commercial, is not changing with this application.

Schools and Parks:

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

Neighborhood: The subject property is located within the Centennial neighborhood.

Parks: Timber Creek Park, located at 3300 47th Ave S, is approximately one-quarter mile north of the subject property and offers the amenities of a playground, basketball court, and picnic shelter. Meadow Creek Park, located at 4800 Meadow Creek Drive, is approximately one-half mile east of the subject property and offers a multi-purpose field.

Pedestrian / Bicycle: An off-road multi-use trail is adjacent to the south side of the subject property, within the 52nd Avenue South right of way, which is a component of the metro area bikeways system.

Staff Analysis:

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.

Minor Subdivision

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

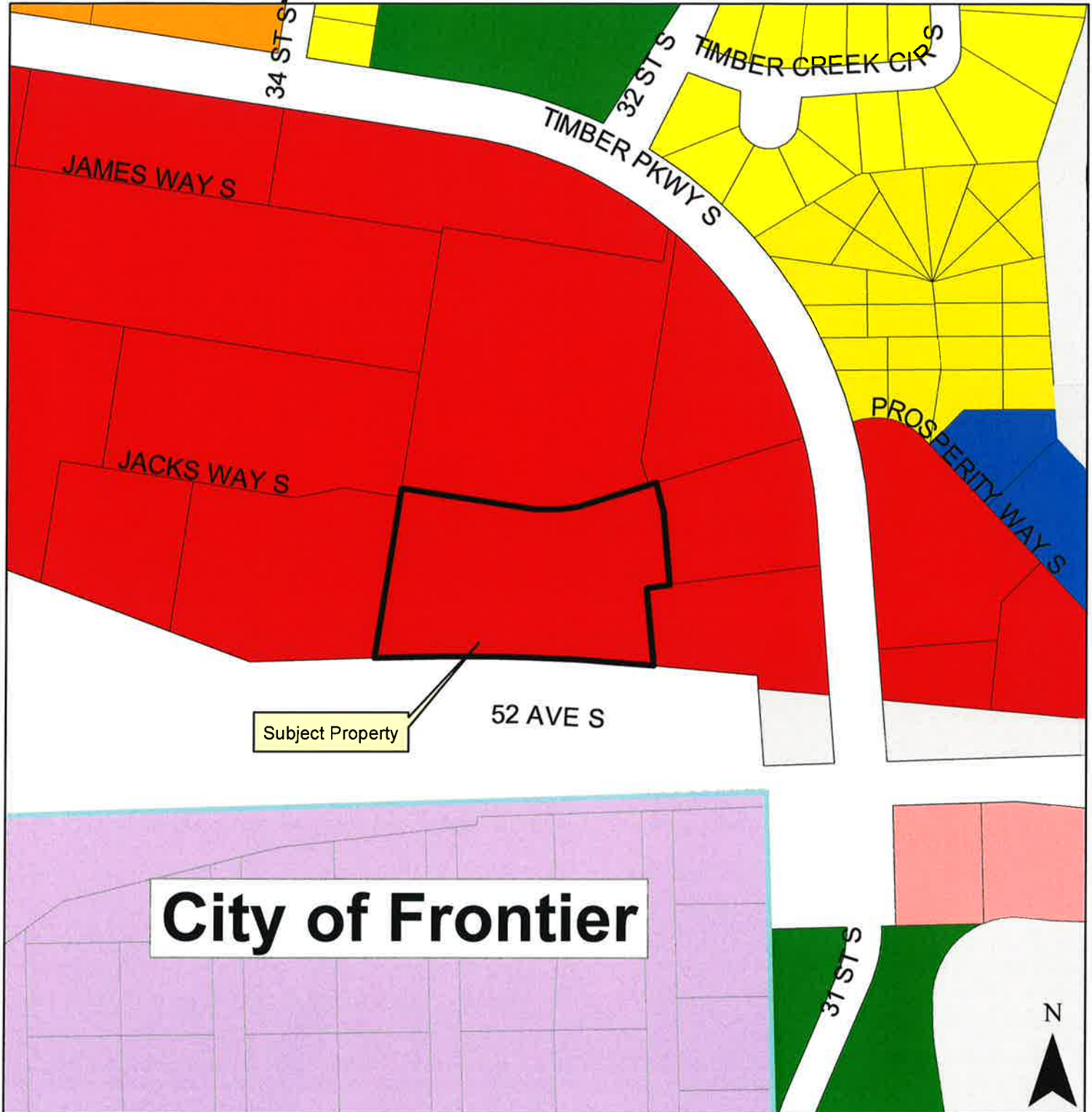
1. **Section 20-0907.B.3 of the LDC stipulates that the Planning Commission recommend approval or denial of the application, based on whether it complies with the adopted Area Plan, the standards of Article 20-06 and all other applicable requirements of the Land Development Code. Section 20-0907.B.4 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 subject property is within the area designated as future commercial within the amended future land use map for the 2001 Growth Plan. The subject property is currently within the GC, General Commercial, zoning district, which is consistent with the future land use designation. No

<p>zone change is proposed. 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, staff has not received any communication regarding this project. The project has been reviewed by the city's Planning, Engineering, Public Works, Inspections, and Fire Departments. (Criteria Satisfied)</p> <p>2. Section 20-0907.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.</p> <p>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)</p>
<p>Staff Recommendation:</p>
<p>Suggested Motion: "To accept the findings and recommendations of the Planning Commission and staff and approve the proposed subdivision plat, Timber Parkway Sixth Addition, as outlined within the staff report, as the proposal complies with the standards of Article 20-06, and all other applicable requirements of the Land Development Code".</p>
<p>Planning Commission Recommendation: September 9, 2021</p>
<p>At the September 9, 2021 Planning Commission hearing, by a vote of 6-0 with two Commissioners absent and three Commission seats vacant, that Commission moved to accept the findings and recommendations of staff and recommended approval to the City Commission of the proposed Timber Parkway Sixth Addition as outlined within the staff report, as the proposal complies with the standards of Article 20-06, and all other applicable requirements of the Land Development Code</p>
<p>Attachments:</p>
<ol style="list-style-type: none"> 1. Zoning Map 2. Location Map 3. Preliminary Plat

Plat (Minor)

Timber Parkway Sixth Addition

5081 Charles Way S



Legend

AG	LC	MHP	SR-2
DMU	MR-1	NCO	SR-3
GC	MR-2	P/L	SR-4
GO	MR-3	UMU	SR-5
			City Limits

300

Feet

Plat (Minor)

Timber Parkway Sixth Addition

5081 Charles Way S






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MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

FROM: JIM GILMOUR, STRATEGIC PLANNING DIRECTOR 

DATE: OCTOBER 14, 2021

SUBJECT: IN-KIND COMMITMENT FOR PRX PROJECT

Brapper Holdings, LLC is developing the PrX project in Fargo. PrX is constructing a new building to manufacture and distribute exercise equipment. The City of Fargo has already approved a PILOT property tax exemption for the project.

Brapper Holdings is applying for a buy down of its interest rate from the Bank of North Dakota. This requires community match, which can be an in-kind contribution of the PILOT property tax exemption.

Attached are the agreements the City of Fargo needs to approve and sign for the in-kind contribution of the already approved PILOT incentive. Fargo is not providing any cash or loan guarantees. The Bank of ND will provide a much lower interest rate if this interest buy down is approved.

I have reviewed the documents with the City Attorney.

RECOMMENDED MOTION:

Approve agreements to provide in-kind contributions to Brapper Holdings for the PrX project.

Attachments

OFFICE USE ONLY		Return SIGNED Documents to BND
Borrower:	BRAPPER HOLDINGS LLC	
Program Option:	PACE	
Community Participation:	In-Kind Commitment	

INTEREST BUYDOWN AGREEMENT PACE PROGRAM

This Interest Buydown Agreement is made between **CITY OF FARGO** (the "Community"), and the **Bank of North Dakota** ("BND") acting on behalf of the PACE Program ("PACE") for the purpose of a buydown on the interest for the loan (the "Loan") received by **BRAPPER HOLDINGS LLC** (the "Borrower") from **BANK FORWARD** (the "Originating Lender") dated _____. The attached payment schedule labeled Exhibit A details the Loan amount and terms and may be modified from time to time. The Borrower, Community, and BND agree as follows:

ARTICLE I

DEFINITIONS

Section 1.01. Defined Terms. Capitalized terms used in this Agreement and not otherwise defined shall have the meanings given to them in the Note and Related Documents. As used in this Agreement, the following terms have the following meanings (terms defined in the singular to have the same meaning when used in the plural and vice versa):

Addendum to the Promissory Note – means the Addendum to the Promissory Note entered into by the Borrower and Originating Lender. The addendum to the Promissory Note addresses specific terms and conditions with respect to the Borrower's participation of their Loan in PACE Program offered by BND.

Agreement - means this Interest Buydown Agreement, as amended, supplemented, or modified from time to time.

Affiliate - means any Person (1) which directly or indirectly controls, or is controlled by, or is under common control with the Originating Lender or Borrower; (2) which directly or indirectly beneficially owns or holds five (5%) or more of any class of voting stock of the Originating Lender or Borrower; or (3) five percent (5%) or more of the voting stock of which is directly or indirectly beneficially owned or held by the Originating Lender or Borrower. The term control means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

BND Buydown Amount - means the portion of the Interest Buydown Amount to be paid by BND as set forth on the attached payment schedule labeled Exhibit A.

Borrowing Rate - means the interest rate to be paid by the Borrower as set forth on the payment schedule labeled Exhibit A. If the terms of the Note provide for a variable or adjustable rate structure, the Borrowing Rate may vary over the term of the Note, but in no event will it be less than 1.00%.

Business Day - means any day other than a Saturday, Sunday, or other day on which commercial banks in North Dakota are authorized or required to close under the laws of the State of North Dakota, unless otherwise provided for in the Note.

Buydown Documents means this Agreement, the Escrow Agreement and any related documents, attachments or schedules incorporated therein.

Community Buydown Amount - means the portion of the Interest Buydown Amount to be paid by the Community and set forth on the attached payment schedule labeled Exhibit A.

Community In-kind Commitment Amount - means the amount of "in-kind" commitment made by the Community, if any, to match the BND Buydown Amount to be paid by BND as provided by the PACE Program. The "in-kind" Community Commitment Amount is provided by the Community in lieu of its cash portion of the Interest Buydown Amount; and is a contribution towards total costs of the Borrower's project in a form acceptable to BND. The payment schedule labeled Exhibit A specifies the Community commitment amount, if any.

OFFICE USE ONLY		Return SIGNED Documents to BND
Borrower:	BRAPPER HOLDINGS LLC	
Program Option:	PACE	
Community Participation:	In-Kind Commitment	

Escrow Agent – means Bank of North Dakota acting through its Trust Department.

Escrow Agreement – means Agreement by which the payments to disburse the Interest Buydown Amount is to be administered by the Escrow Agent.

Flex PACE Program – means the program option within the PACE Program which provides an interest buydown to borrowers that do not meet the states definition of a primary sector business, but does meet other needs as determined appropriate by the Community.

Flex PACE Affordable Housing Program – means the program option within the PACE Program which provides an interest buydown to borrowers for the permanent financing of new affordable multi-family housing units within the Community.

Interest Buydown Amount – means the actual amount to be paid by the Escrow Agent on behalf of the Borrower over the life of the Note to buy down the Yield Rate to the Borrowing Rate as set forth in the payment schedule labeled Exhibit A.

The Interest Buydown Amount includes the BND Buydown Amount and the Community Buydown Amount unless all or any portion of the Community's cash portion is made in the form of an "in-kind" Community Commitment Amount, then the Interest Buydown Amount may only consist of the BND Buydown Amount. The Interest Buydown Amount shall not exceed the Interest Buydown Amount per the payment schedule labeled Exhibit A.

The Interest Buydown Amount has been based upon the Yield Rate at the time of closing, unless otherwise agreed to in writing by the Originating Lender, BND, and the Borrower. The Interest Buydown Amount shall not vary, and subject to the terms and conditions of the PACE Program it shall be paid on the basis of a set stream of payments as defined under the column entitled INTEREST EXPENSE DIFF. DUE TO BUYDOWN as listed on the payment schedule labeled Exhibit A.

Interest Rate Reduction - means each scheduled payment to be paid by Escrow Agent from Escrow Account as set forth in the payment schedule labeled Exhibit A.

Investment – Total costs of equipment, real estate and/or improvements to real property associated with the PACE loan request.

Note - may refer to a promissory note, credit agreement, loan agreement, or any other document that states the terms of the indebtedness between the Originating Lender and the Borrower.

PACE Program – means the "Partnership in Assisting Community Expansion Program" and includes loans approved under PACE Program options for PACE, Flex PACE or Flex PACE for Affordable Housing.

Participation Agreement – means the agreement between the Originating Lender and BND in connection with the Loan.

Payment Schedule - means Exhibit A which may be updated and supplemented from time to time by BND.

Person - means an individual, partnership, corporation, business trust, joint stock company, trust, unincorporated association, joint venture, governmental authority, or other entity of whatever nature.

Related Documents - means all supporting documents related to the Loan.

Yield Rate - means the interest rate on the Note which, at any point in time when there is a default, may include the default rate as that term is defined in the Note.

ARTICLE II

TERMS OF THE INTEREST RATE BUYDOWN

OFFICE USE ONLY		Return SIGNED Documents to BND
Borrower:	BRAPPER HOLDINGS LLC	
Program Option:	PACE	
Community Participation:	In-Kind Commitment	

SECTION 2.01. Interest Buydown Amount. BND and the Community agree on the terms and conditions set forth in this Agreement to buy down the interest from the Yield Rate to the Borrowing Rate for the Loan.

1. Interest Payments. BND and the Community shall make Interest Buydown Amount payments to the Escrow Agent as provided for in the attached payment schedule labeled Exhibit A.
2. Method of Payment. BND and the Community shall make each payment to the Escrow Agent as provided by the Buydown Documents no later than the date when due as defined by the Note in lawful money of the United States in immediately available funds unless otherwise expressly provided for. Whenever any payment to be made under the Buydown Documents shall be stated to be due on a Saturday, Sunday, or a public holiday, or the equivalent for banks generally under the laws of the State of North Dakota, the payment shall be made on the next succeeding Business Day.
3. Disbursement of the Interest Buydown Amount. The Escrow Agent shall disburse the Interest Buydown Amount to the Originating Lender in the amounts as set out and described in the payment schedule labeled Exhibit A subject to the Note.
4. Default by the Borrower. In the event of a default by the Borrower, as defined in the Note, or a Default as defined in the Addendum to Promissory Note Pace Program given for the Note, the Escrow Agent shall discontinue any payments required under the Buydown Documents until such time as the Default is cured.
5. Late or Partial Payments by the Borrower. If the Borrower makes a late payment or a partial payment, the Interest Rate Reduction payment will not be made and the interest rate from the period of the payment date of the payment until the payment is received will be the Yield Rate, including any default rate provided for in the Note. If the late or partial payments are paid by the Borrower, Escrow Agent will resume making Interest Buydown Amount on the next scheduled payment date, unless otherwise agreed to by BND.
6. Prepayments and Adjustment to Payment Schedule. In the event the Borrower makes a prepayment under the terms of the Note, BND may re-amortize the payment schedule labeled Exhibit A but such re-amortization shall not be effective unless received in writing by the Originating Lender fifteen (15) days prior to the next payment due date under Note. Any replacement payment schedule labeled Exhibit A received by Originating Lender shall replace the existing payment schedule with no further action or consent required by Borrower.
7. Partial Payment or Termination by the Community. In the event the Community makes a payment to the Escrow Agent which results in insufficient funding of the Community Buydown Amount or terminates its participation in PACE for the loan to the Borrower, the Community shall provide notice in writing to the Borrower, the Originating Lender and BND no less than fifteen (15) days prior to the next scheduled payment due date under the Note.

Upon receipt of notice from the Community and until such time as the deficiency is cured, the following shall occur:

- The Escrow Agent shall discontinue to make Interest Rate Reduction payments.
- To the extent the Interest Buydown Amount paid by the Escrow Agreement does not reduce the interest expense to the interest expense calculated at the Borrowing Rate then the Borrower shall remit the difference to Originating Lender.
- The Borrower shall be responsible for the entire interest payment at the Yield Rate effective on the date of the next scheduled payment. From that point forward, this Addendum shall have no force or effect and any of the rights and obligations created herein shall be terminated and the Note and Related Documents, without regard to this Addendum or the Buydown Documents, shall govern the relationship between the Originating Lender and the Borrower.

OFFICE USE ONLY		Return SIGNED Documents to BND
Borrower:	BRAPPER HOLDINGS LLC	
Program Option:	PACE	
Community Participation:	In-Kind Commitment	

8. Termination of PACE Program. In the event that funding under the PACE Program is terminated for any reason, this Agreement shall have no force or effect and any obligation of BND, the Community and the Escrow Agent to pay the Interest Buydown Amount shall cease.

ARTICLE III

REPRESENTATIONS AND WARRANTIES

SECTION 3.01. The Community represents and warrants to the Borrower and BND that:

1. Good Standing, and Due Qualification. The Community is in good standing under the laws of the State of North Dakota. The execution, delivery, and performance of this Agreement by the Community has been duly authorized by all necessary Persons.
2. Other Agreements. The Community is not a party to any indenture, loan, or credit agreement, or to any lease or other agreement or instrument, or subject to any charter or corporate restriction which could have a material adverse effect on the business, properties, assets, operations, or conditions, financial or otherwise, of the Borrower, Originating Lender or their Affiliates, or the ability of the Borrower, Originating Lender or their Affiliates to carry out the Borrower's and the Originating Lender's obligations under the Note and Related Documents. The Community and the Community's Affiliates are not in default in any respect in the performance, observance, or fulfillment of any of the obligations, covenants, or conditions contained in any agreement or instrument material to the performance of the Note and Related Documents.
3. Sufficient Funds. The Community has or will make available sufficient funds to finance the Community Buydown Amount or Community In-kind Commitment Amount. This includes pledging revenue producing mechanisms which the Community is statutorily authorized to pledge or impose. Revenue producing mechanisms include but are not limited to any bond or mill levy or other tax which may be pledged or imposed for the purpose of economic development.
4. Source of Funds. The Community Buydown Amount or Community In-kind Commitment Amount does not nor will it ever be derived directly or indirectly from a loan, grant or gift from the Borrower or the Borrower's Affiliate or a contribution from Originating Lender or Originating Lender's Affiliate which is greater than the Originating Lender or its Affiliate would normally contribute to the Community's economic development efforts. The Community Buydown Amount may be in the form of a loan. Interest may begin to accrue, however, no repayment of principal or interest on the Community loan may commence until the PACE interest buydown amount has been fully expended.
5. Litigation. There is no pending or threatened action or proceeding against or affecting the Community before any court, governmental agency, or arbitrator, which may, in any one case or in the aggregate, materially adversely affect the ability of the Community to perform its obligation under the Note and Related Documents to which it is a party.
6. No Defaults on Outstanding Judgments or Orders. The Community has satisfied all judgments, and is not in default with respect to any judgment, writ, injunction, decree, rule, or regulation or any court, arbitrator, or federal, state, municipal, or other governmental authority, commission, board, bureau, agency, or instrumentality, domestic or foreign, which materially adversely affects the ability of the Community to perform its obligation under the Note and Related Documents to which it is a party.

ARTICLE IV

AFFIRMATIVE COVENANTS

SECTION 4.01. Notice of Adverse Actions. So long as the Loan remains unpaid, all parties to this Agreement shall promptly after the commencement thereof, provide all parties notice of all actions, suits, and

OFFICE USE ONLY		Return SIGNED Documents to BND
Borrower:	BRAPPER HOLDINGS LLC	
Program Option:	PACE	
Community Participation:	In-Kind Commitment	

proceedings before any court or governmental department, commission, board, bureau, agency, or instrumentality, domestic or foreign, affecting the parties which could have a material adverse effect on the Community's ability to perform under the Note and Related Documents.

SECTION 4.02. Obligation to Resolve Disputes. It is the intent of all parties to this Agreement that conflicts or potential conflicts and circumstances or situations which arise which are not considered herein, be resolved at the most informal level possible and to the mutual benefit of each party to the extent possible.

SECTION 4.03. Program Requirements. So long as the Note is participating in the PACE Program:

1. Job Creation: The Community and the Borrower may utilize job creation or investment as the metric for the PACE interest rate buydown program. The Borrower shall meet the agreed upon job creation or minimum investment for the duration of this Agreement to receive the buydown funding. Evidence of the required job creation must be reported each year to the satisfaction of BND with up to three years to reach the agreed upon job creation level. BND is responsible for tracking compliance with this requirement so long as the Loan is participated in the PACE program.

	Minimum Investment	Jobs Created	BND Buydown
Tier One	\$750,000 to \$1,200,000	2 - 5	\$100,000
Tier Two	\$1,200,001 to \$2,200,000	6 - 10	\$200,000
Tier Three	\$2,200,001 to \$3,500,000	11 - 15	\$300,000
Tier Four	\$3,500,001 to \$4,500,000	16 - 20	\$400,000
Tier Five	\$4,500,001 +	20 +	\$500,000

2. Donations, Gifts or Loans. The Borrower has not nor will it ever make directly or indirectly a loan, grant or gift to the Originating Lender, Community, or their Affiliates, which will be used to secure, promote or otherwise influence, the Originating Lender's or Community's ability or desire to make available Loan funds under the PACE Program.

ARTICLE V

CONDITIONS PRECEDENT

SECTION 5.01. Condition Precedent to this Agreement. The obligation of BND under this Agreement is subject to the condition precedent that BND shall have received on or before the day of the Loan each of the following, in form and substance satisfactory to BND and its counsel:

1. Evidence of all Corporate Action by the Community. BND may request certified copies of all corporate action taken by the Community, including resolutions of its Board of Directors, or certified copies of the official minutes of the appropriate governing body, or the equivalent thereof, authorizing the execution, delivery, and performance of the Buydown Documents to which it is a party and each other document to be delivered pursuant to this Agreement.
2. Opinion of Counsel for the Community. A favorable opinion of counsel for the Community in substantially the form of Exhibit B and as to such other matters as BND may reasonably request. Exhibit B shall also certify the names and true signatures of the officers of the Community authorized to sign the Buydown Documents to which it is a party and each other document to be delivered by the Community under this Agreement.
3. Buydown Documents as required by the PACE Program from all parties to this Agreement.

SECTION 5.02. Notification to Originating Lender. Upon satisfaction of the conditions, BND shall notify the Originating Lender in writing that all conditions have been satisfied for the Loan's participation in the PACE Program.

ARTICLE VI

MISCELLANEOUS

OFFICE USE ONLY		Return SIGNED Documents to BND
Borrower:	BRAPPER HOLDINGS LLC	
Program Option:	PACE	
Community Participation:	In-Kind Commitment	

SECTION 6.01. Amendments, Etc. No amendment, modification, termination, or waiver of any provision, nor consent to any departure from this Agreement, shall in any event be effective unless such is in writing and signed by BND and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

SECTION 6.02. Notices, Etc. All notices and other communications provided for under this Agreement shall be in writing and shall be effective upon the earlier of (a) when actually delivered, (b) when deposited with a nationally recognized overnight courier or (c) if mailed, when deposited in the United State mail, as first class, certified or registered mail postage prepaid, directed to the applicable party at the address specified below, except that notices to BND pursuant to the provisions of Article II shall not be effective until received by BND.

Community:	CITY OF FARGO 225 4TH ST N FARGO, ND 58102
BND:	BANK OF NORTH DAKOTA PO BOX 5509 BISMARCK, ND 58506-5509 Attention: Commercial Loan Department
Borrower:	BRAPPER HOLDINGS LLC 200 4TH ST N FARGO ND 58102-4818

Any party may change its address for notices by giving formal written notice to the other parties and specifying that the purpose of the notice is to change the party's address.

SECTION 6.03. No Waiver, Remedies. No failure on BND's part to exercise, and no delay in exercising, any right, power, or remedy under any Buydown Documents shall operate as a waiver thereof; nor shall any single or partial exercise of any right under any Buydown Documents preclude any other or further exercise thereof or the exercise of any other right. The remedies provided in the Buydown Documents are cumulative and not exclusive of any remedies provided by law.

SECTION 6.04. Successors and Assigns. This Agreement may not be assigned or transferred by either party without the prior consent of BND.

SECTION 6.05. Costs, Expenses, and Attorney Fees. The Community and BND agree to indemnify each other for reasonable fees and out-of-pocket expenses, including attorney fees, in connection with the enforcement of any portion of this Agreement.

SECTION 6.06. Indemnification for Misrepresentation. The Community and BND agree to indemnify each other for any and all loss, payment and additional expense resulting from any misrepresentation or breach of warranty made herein, including any expense and legal fees that might be incurred because of any such misrepresentation or breach of warranty.

SECTION 6.07. Disclosure of Information. The Community hereby consents to the disclosure of all financial, business, and other information about the Community which BND may possess at any time to other lenders participating in the Loan.

SECTION 6.08. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of North Dakota.

SECTION 6.09. Severability of Provisions. Any provision of any Buydown Document which is prohibited, unenforceable, or not authorized in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition, unenforceability, or lack of authorization without invalidating the remaining provisions of the Buydown Documents or affecting the validity, enforceability, or legality of such provision in any other jurisdiction.

OFFICE USE ONLY		Return SIGNED Documents to BND
Borrower:	BRAPPER HOLDINGS LLC	
Program Option:	PACE	
Community Participation:	In-Kind Commitment	

SECTION 6.10. Headings. Article and Section headings in the Buydown Documents are included for the convenience of reference only and shall not constitute a part of the applicable Buydown Documents for any other purpose.

SECTION 6.11. Third Party Beneficiary. The parties acknowledge that the Borrower is an intended third party beneficiary of this agreement and, to the extent that funds are available and no determination has been made by a court of competent jurisdiction that this agreement is unenforceable, is entitled to enforce the agreement as provided by N.D.C.C. § 9-02-04.

SECTION 6.12 Document Imaging and Electronic Transactions. All parties hereby acknowledge the receipt of a copy of this Agreement and all other loan documents. BND may, on behalf of parties, create a microfilm or optical disk or other electronic image of this Agreement and any or all of the loan documents. BND may store the electronic image of this Agreement and loan documents in its electronic form and then destroy the paper original as part of BND's normal business practices, with the electronic image deemed to be an original.

Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each party represents and warrants to the other that the execution and delivery of the Agreement and the performance of such party's obligation hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such party and enforceable in accordance with its terms.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective officers duly authorized, as of the date first above written.

CITY OF FARGO

By: _____

Its: _____

BANK OF NORTH DAKOTA

By: Andrew Frost for Rodney Heit

Rodney Heit

Its: Business Banker

BRAPPER HOLDINGS LLC

By: _____

Title: _____

OFFICE USE ONLY		Return SIGNED Documents to BND
Borrower:	BRAPPER HOLDINGS LLC	
Program Option:	PACE	
Community Participation:	In-Kind Commitment	

EXHIBIT "B"
OPINION OF COUNSEL
_____, 20____

I have acted as counsel for **CITY OF FARGO** in connection with the terms and conditions of the Interest Buydown Agreement for the loan to **BRAPPER HOLDINGS LLC** dated _____.

In this capacity, I have examined the Promissory Note, the Interest Buydown Agreement, the Escrow Agreement, the schedules and attachments thereto, and such documents, certificates, and other instruments as I have deemed necessary for the purpose of this opinion. Capitalized terms used in this opinion which are defined in the Interest Buydown Agreement shall have the same meanings as in the Interest Buydown Agreement unless defined otherwise.

Based upon the foregoing, it is my opinion that:

1. The Community is a corporation duly organized, existing and in good standing under the laws of North Dakota and is qualified to transact business and is in good standing in North Dakota and, to my knowledge, is not required to be qualified as a foreign corporation in any other jurisdiction.
2. The Community has full power to execute and deliver the Interest Buydown Agreement, the Escrow Agreement and to perform its obligations under the Buydown Documents. As of the date of the Interest Buydown Agreement, the following Officers, Directors and/or Community Officials of the Community authorized to sign the Buydown Documents as follows:

_____ Name (Printed)	_____ Title
_____ Name (Printed)	_____ Title
_____ Name (Printed)	_____ Title

3. All corporate action by the Community, and all consents and approvals of any persons necessary to the validity of the Buydown Documents has been duly taken, and the Buydown Documents and such other documents do not conflict with any provisions of the charter or bylaws of the Community, or of any applicable laws or any other agreement binding the Community or its property of which I have knowledge.
4. The Interest Buydown Agreement, the Escrow Agreement, the Buydown Documents, and all other documents to be delivered under the Interest Buydown Agreement to be executed by, and each is a valid and binding obligation of, the Community, enforceable in accordance with its terms, except as limited by bankruptcy, insolvency, reorganization, moratorium, or other similar laws affecting creditors' rights generally or by general equitable principals.
5. After appropriate inquiry, I am without any knowledge of any matters contrary to the representations and warranties contained in Article III of the Interest Buydown Agreement.

BY:

(Signature)

(Typed/Printed Name)

(Firm Name/Address)

OFFICE USE ONLY		Return SIGNED Documents to BND
Borrower:	BRAPPER HOLDINGS LLC	
Program Option:	PACE	
Community Participation:	In-Kind Commitment	

ESCROW AGREEMENT PACE PROGRAM

This Escrow Agreement (the "Agreement") is made between the **BANK OF NORTH DAKOTA** acting on behalf of the PACE program ("BND"), **CITY OF FARGO** (the "Community"), and the **BANK OF NORTH DAKOTA** acting through its Trust Department as Escrow Agent (the "Escrow Agent") for the purpose of receiving and disbursing the Interest Buydown Amount in connection with the loan (the "Loan") made to **BRAPPER HOLDINGS LLC** (the "Borrower") by **BANK FORWARD** (the "Originating Lender") pursuant to a promissory note dated (the "Note").

BND, the Community and the Escrow Agent hereby agree as follows:

Section 1. Defined Terms. Capitalized terms used in this Agreement and not otherwise defined shall have the meanings given to them in the Interest Buydown Agreement. As used in this Agreement, the following terms have the following meanings (terms defined in the singular to have the same meaning when used in the plural and vice versa):

Agreement - means this Escrow Agreement, as amended, supplemented, or modified from time to time.

Borrowing Rate - means the interest rate to be paid by the Borrower after subtracting the Interest Buydown Amount from the interest expense which will accrue at the initial Yield Rate over the life of the PACE commitment as set forth on the payment schedule labeled Exhibit A. If the terms of the Note provide for a variable or adjustable rate structure, the Borrowing Rate may vary over the term of the Note depending upon the periodic adjustment of the rate index over the term of the Loan, but in no event will it be less than the minimum rate set forth in the Note.

BND Buydown Amount - means the portion of the Interest Buydown Amount to be paid by BND as set forth on the payment schedule labeled Exhibit A.

Buydown Documents - means this Agreement, the Interest Buydown Agreement, Addendum to Promissory Note PACE Program, and any related documents, attachments or schedules incorporated therein.

Community Buydown Amount - means the portion of the Interest Buydown Amount to be paid by the Community and set forth on the attached payment schedule labeled Exhibit A.

Community In-kind Commitment Amount - means the amount of "in-kind" commitment made by the Community, if any, to match the BND Buydown Amount to be paid by BND as provided by the PACE Program. The "in-kind" Community Commitment Amount is provided by the Community in lieu of its cash portion of the Interest Buydown Amount, and is a contribution towards total costs of the Borrower's project in a form acceptable to BND. The payment schedule labeled Exhibit A specifies the Community Commitment Amount, if any.

Escrow Agent - means Bank of North Dakota acting through its Trust Department.

Escrow Agreement - Agreement by which the payments to retire the Interest Buydown Amount is to be administered by the Escrow Agent.

Flex PACE Program - means the program option within the PACE Program which provides an interest buydown to borrowers that do not meet the states definition of a primary sector business but does meet other needs as determined appropriate by the Community.

Flex PACE Affordable Housing Program - means the program option within the PACE Program which provides an interest buydown to borrowers for the permanent financing of affordable multi-family housing units within the Community.

OFFICE USE ONLY		Return SIGNED Documents to BND
Borrower:	BRAPPER HOLDINGS LLC	
Program Option:	PACE	
Community Participation:	In-Kind Commitment	

Interest Buydown Amount – means the actual amount to be paid by the Escrow Agent on behalf of the Borrower over the life of the Note to buy down the Yield Rate to the Borrowing Rate as set forth in the payment schedule labeled Exhibit A.

The Interest Buydown Amount includes the BND Buydown Amount and the Community Buydown Amount unless all or any portion of the Community's cash portion is made in the form of an "in-kind" Community Commitment Amount, then the Interest Buydown Amount may only consist of the BND Buydown Amount. The Interest Buydown Amount shall not exceed the Interest Buydown Amount per the payment schedule labeled Exhibit A.

The Interest Buydown Amount has been based upon the Yield Rate at the time of closing, unless otherwise agreed to in writing by Originating Lender, BND, and the Borrower. The Interest Buydown Amount shall not vary, and subject to the terms and conditions of the PACE Program it shall be paid on the basis of a set stream of payments as defined under the column entitled INTEREST EXPENSE DIFF. DUE TO BUYDOWN as listed on the payment schedule labeled Exhibit A.

Interest Rate Reduction - means each scheduled payment to be paid by Escrow Agent from Escrow Account as set forth in the payment schedule labeled Exhibit A.

PACE Program – means the "Partnership in Assisting Community Expansion Program" and includes loans approved under PACE Program options for PACE, Flex PACE or Flex PACE for Affordable Housing.

Payment Schedule - means Exhibit A which may be updated and supplemented from time to time by BND.

Yield Rate - means the interest rate on the Note which, at any point in time when there is a default, may include the default rate as that term is defined in the Note.

Section 2. Receipt of Interest Buydown. BND and the Community agree to deliver to the Escrow Agent the amount as set out and described in the payment schedule –labeled Exhibit A in the amounts and on the dates indicated, subject to this Agreement.

Section 3. Disbursement of the Interest Buydown Amount. The Escrow Agent agrees to disburse the Interest Buydown Amount to Originating Lender in the amounts and on the dates as set out and described in the payment schedule labeled Exhibit A, subject to this Agreement.

Section 4. Notice from BND. Upon notice of receipt of Loan payment according to the terms of the Note, notice from BND, the Escrow Agent shall disburse the Interest Buydown Amount to the Originating Lender in the amounts as set out in the payment schedule labeled Exhibit A. If on the date the Loan payment is received by BND, the Escrow Agent has not received all or any part of the Community's share of the Interest Buydown Amount as indicated on the payment schedule labeled Exhibit A, the Escrow Agent shall not disburse either the BND Buydown Amount or and the Community Buydown Amount, to the Originating Lender.

In the event that all parties to this Agreement have consented that the Community will provide a Community In-Kind Commitment Amount in lieu of all or some part of its cash portion of the Interest Buydown Amount, the Escrow Agent shall disburse the Interest Buydown Amount to the Originating Lender in the amounts as set out in the payment schedule labeled Exhibit A.

Section 5. Notice of Suspension of Disbursement of Interest Buydown Amount. Upon notice by BND to the Escrow Agent that payments of the Interest Buydown Amount are to be suspended, the Escrow Agent will not make any further disbursements of the Interest Buydown Amount to the Originating Lender, until the Escrow Agent receives notice from BND, directing the Escrow Agent to resume disbursing the Interest Buydown Amount upon receipt of a notice for payment.

Section 6. Notice of Final Disbursal and Termination. Upon final Interest Rate Reduction disbursement or termination of the Interest Buydown Agreement, the Escrow Agent will disburse any remaining amounts held under this Agreement to the Community and the PACE Fund according to their respective shares of the remaining balance. This Agreement will be considered terminated upon return of funds or final Interest Rate Reduction

OFFICE USE ONLY		Return SIGNED Documents to BND
Borrower:	BRAPPER HOLDINGS LLC	
Program Option:	PACE	
Community Participation:	In-Kind Commitment	

disbursement and shall have no further duties or obligations to any party other than, upon request, to provide a final accounting of receipts and disbursements.

Section 7. Duties of Escrow Agent, Reliance on Notices. The Escrow Agent shall not be liable as Escrow Agent except for the performance of such duties as are specifically set out in this Agreement to be performed by the Escrow Agent and the Escrow Agent may conclusively rely, as to the truth of the statements expressed in any notice, in the absence of bad faith on the part of the Escrow Agent, upon notices conforming to the requirements of this Agreement. No provision of this Agreement shall be construed to relieve the Escrow Agent from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that the Escrow Agent shall at all times be protected from liability for any error or judgment made in good faith by a responsible officer or officers unless it shall be proved that the Escrow Agent was negligent in ascertaining the pertinent facts and the Escrow Agent shall at all times be protected with respect to any action taken or omitted to be taken by it in good faith and in accordance with the directions contained in a notice received by the Escrow Agent pursuant to this Agreement. The Escrow Agent shall also be protected when acting in good faith and upon advice of its counsel.

Section 8. Fees and Costs. The Escrow Agent shall be entitled to receive fees, in such amounts as it may establish from time to time, and to be reimbursed for its costs, including attorney's fees, for the performance of its duties under this Agreement.

Section 9. Notice. All notices, demands and requests to be given or made under this Agreement, if in writing, shall be properly made if sent by United States mail, postage prepaid, and addressed as follows:

Community:	CITY OF FARGO 225 4TH ST N FARGO, ND 58102
BND:	BANK OF NORTH DAKOTA, Agent PO BOX 5509 BISMARCK, ND 58506-5509 Attention: Financial Institutions Market
Escrow Agent:	BANK OF NORTH DAKOTA, Escrow Agent PO BOX 5509 BISMARCK, ND 58506-5509 Attention: Trust Department
Lender:	BANK FORWARD PO BOX 7070 FARGO ND 58106-7070

Any of the above parties may change the address listed for it at any time upon written notice of such change sent by United States mail, postage prepaid, to each of the other parties.

Section 10. Amendments. No amendment, modification, termination, or waiver of any provision, nor consent to any departure from this Agreement shall in any event be effective unless in writing and signed by all parties and then such waiver, consent or amendment shall be effective only in the specific instance and for the specific purpose for which given.

Section 11. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of North Dakota.

Section 12. Severability of Provisions. Any provision of this Agreement which is prohibited or unenforceable by law shall be deemed severable to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Agreement.

Section 13. Headings. Article and Section headings in this Agreement are for the convenience of

OFFICE USE ONLY		Return SIGNED Documents to BND
Borrower:	BRAPPER HOLDINGS LLC	
Program Option:	PACE	
Community Participation:	In-Kind Commitment	

reference only and shall not constitute a part of this Agreement for any other purpose.

Section 14. No Waiver, Remedies. No failure on the part of the Escrow Agent to exercise, and no delay in exercising, any right, power, or remedy under this Agreement shall operate as a waiver thereof; nor shall any single or partial exercise of any right under this Agreement preclude any other or further exercise thereof or the exercise of any other right. The remedies provided in this Agreement are cumulative and are not exclusive of any remedies provided by law.

Section 15. Document Imaging and Electronic Transactions. All parties hereby acknowledge the receipt of a copy of this Agreement and all other loan documents. BND may, on behalf of parties, create a microfilm or optical disk or other electronic image of this Agreement and any or all of the loan documents. BND may store the electronic image of this Agreement and loan documents in its electronic form and then destroy the paper original as part of BND's normal business practices, with the electronic image deemed to be an original.

Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each party represents and warrants to the other that the execution and delivery of the Agreement and the performance of such party's obligation hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such party and enforceable in accordance with its terms.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective officers duly authorized, as of the date first above written.

BANK OF NORTH DAKOTA, BND

Andrew Twest for Rodney Heit

Rodney Heit
Title: Business Banker

CITY OF FARGO

Title: _____

BANK OF NORTH DAKOTA, Escrow Agent

Carrie Willits

Title: ESCROW OFFICER

Please select Community's preferred billing option:

- ☐ One-Time Payment (PV)
- ☐ Annually
- ☐ Semi-Annually
- ☐ Quarterly
- ☐ Monthly

OFFICE USE ONLY		Return SIGNED Documents to BND
Borrower:	BRAPPER HOLDINGS LLC	
Program Option:	PACE	
Community Participation:	In-Kind Commitment	

**COMMUNITY PACE
INTEREST BUYDOWN AUTHORIZATION**

The **CITY OF FARGO** (the Community) has approved its participation in the PACE Program for a loan to **BRAPPER HOLDINGS LLC** (the Borrower) and has made the necessary provisions to match the BND Buydown Amount to be paid by Bank of North Dakota (BND) as required by the program.

The total PACE benefit to the Borrower and the breakdown to the Community and BND are detailed in the payment schedule labeled Exhibit A.

The Borrower's rate will be bought down approximately **2.50%** below the Yield Rate as defined in the Escrow Agreement Pace Program at the time of closing of the Loan to the Borrower, unless otherwise agreed to in writing.

The Community Authorized Representative signing this Authorization represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Authorization and that this Authorization is a valid, legal and binding on the Community and enforceable in accordance with its terms of this Authorization.

The Community shall provide an Opinion of Counsel in a form satisfactory to BND verifying the Community has taken appropriate action and has authority for its participation in the PACE Program.

Community Authorized Representative

(Please type or print name above)

Exhibit A: Brapper Holdings LLC

LOAN NUMBER	133049400001
LOAN TYPE	PACE
LEAD BANK	BANK FORWARD

NOTE: The borrower and originating lender should be aware that the fund will provide a set stream of subsidy payments (interest buydown) based upon the payment schedule below. The amount of the borrower's payment, the amortization and all other terms of the loan shall be governed by the promissory note. The balances shown here, other than the specific buydown amounts, are intended for illustrative purposes only.

Buydown Account Details

INTEREST BUYDOWN AMOUNT	\$500,000.00
BND BUYDOWN AMOUNT	\$500,000.00
COMMUNITY IN-KIND COMMITMENT	\$269,230.74
PRESENT VALUE BND	\$497,811.49
PRESENT VALUE COMMUNITY	\$0.00
CREATED DATE	1/7/2021
PRINCIPAL	\$17,000,000.00
YIELD RATE	3.5000
BORROWING RATE	1.0000
AMORTIZATION	300
PAYMENT	\$85,571.19

Loan without buydown				
#	Payment	Principal	Interest	Balance
1	\$85,571.19	\$34,335.08	\$51,236.11	\$16,965,664.92
2	\$85,571.19	\$36,088.00	\$49,483.19	\$16,929,576.92
3	\$85,571.19	\$34,547.33	\$51,023.86	\$16,895,029.59
4	\$85,571.19	\$34,651.45	\$50,919.74	\$16,860,378.14
5	\$85,571.19	\$39,673.49	\$45,897.70	\$16,820,704.65
6	\$85,571.19	\$34,875.46	\$50,695.73	\$16,785,829.19
7	\$85,571.19	\$36,612.52	\$48,958.67	\$16,749,216.67
8	\$85,571.19	\$35,090.91	\$50,480.28	\$16,714,125.76
9	\$85,571.19	\$36,821.66	\$48,749.53	\$16,677,304.10
10	\$85,571.19	\$35,307.65	\$50,263.54	\$16,641,986.45
11	\$85,571.19	\$35,414.06	\$50,157.13	\$16,606,582.39
12	\$85,571.19	\$37,135.32	\$48,435.87	\$16,569,447.07
13	\$85,571.19	\$35,632.72	\$49,938.47	\$16,533,814.35
14	\$85,571.19	\$37,347.56	\$48,223.63	\$16,496,466.79
15	\$85,571.19	\$35,852.67	\$49,718.52	\$16,450,614.12
	\$1,283,567.85	\$539,385.88	\$744,181.97	

Loan with buydown				
#	Payment	Principal	Interest	Balance
1	\$48,973.97	\$34,335.08	\$14,638.89	\$16,965,664.92
2	\$50,226.05	\$36,088.00	\$14,138.05	\$16,929,576.92
3	\$49,125.58	\$34,547.33	\$14,578.25	\$16,895,029.59
4	\$49,199.95	\$34,651.45	\$14,548.50	\$16,860,378.14
5	\$52,787.12	\$39,673.49	\$13,113.63	\$16,820,704.65
6	\$49,359.95	\$34,875.46	\$14,484.49	\$16,785,829.19
7	\$50,600.71	\$36,612.52	\$13,988.19	\$16,749,216.67
8	\$49,513.85	\$35,090.91	\$14,422.94	\$16,714,125.76
9	\$50,750.10	\$36,821.66	\$13,928.44	\$16,677,304.10
10	\$49,668.66	\$35,307.65	\$14,361.01	\$16,641,986.45
11	\$49,744.67	\$35,414.06	\$14,330.61	\$16,606,582.39
12	\$50,974.14	\$37,135.32	\$13,838.82	\$16,569,447.07
13	\$49,900.85	\$35,632.72	\$14,268.13	\$16,533,814.35
14	\$51,125.74	\$37,347.56	\$13,778.18	\$16,496,466.79
15	\$50,057.96	\$35,852.67	\$14,205.29	\$16,460,614.12
	\$752,009.30	\$639,885.88	\$212,623.42	

Interest Buydown			
#	Int. Buydown	BND (100.00%)	
1	\$36,597.22	\$36,597.22	
2	\$36,346.14	\$36,346.14	
3	\$36,445.61	\$36,445.61	
4	\$36,371.24	\$36,371.24	
5	\$32,784.07	\$32,784.07	
6	\$36,211.24	\$36,211.24	
7	\$34,970.48	\$34,970.48	
8	\$36,057.34	\$36,057.34	
9	\$34,821.09	\$34,821.09	
10	\$35,902.53	\$35,902.53	
11	\$35,826.52	\$35,826.52	
12	\$34,597.05	\$34,597.05	
13	\$35,670.34	\$35,670.34	
14	\$34,445.45	\$34,445.45	
15	\$3,954.66	\$3,954.66	
	\$500,000.00	\$500,000.00	

October 1, 2021

The Honorable Board of City Commissioners
225 4th Street N.
City of Fargo
Fargo, ND 58102

RE: Extension of unpaid leave for Todd Fugere through 1/19/22

Commissioners:

Todd Fugere, Equipment Operator III with the Street Department, is requesting an extension of unpaid leave through January 19, 2022 under City of Fargo Employment Policy 500-008 – Leave Without Pay.

I am requesting approval to extend the unpaid leave through the requested date which will provide a total of 90 days of unpaid leave.

RECOMMENDED MOTION: I/we hereby move to approve the extension of unpaid leave for Todd Fugere under City of Fargo Employment Policy 500-008 – Leave Without Pay.

Respectfully submitted,



Benjamin Dow
Director of Operations



(24)

PUBLIC WORKS/OPERATIONS

Fleet Management, Forestry,
Streets & Sewers, Watermeters,
Watermains & Hydrants
402 23rd STREET NORTH
FARGO, NORTH DAKOTA 58102
PHONE: (701) 241-1453
FAX: (701) 241-8100

October 7th, 2021

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

RE: RFP for two (2) 3 Wheeled Mechanical Street Sweeper (RFP21160)

Commissioners:

On October 4th, 2021, proposals were received for two (2) 3 Wheeled Mechanical Street Sweeper. Two proposals were submitted by two separate vendors.

One proposal met the specifications:

<u>Firm</u>	<u>Price</u>
Sanitation Products	\$462,570.00

The review committee, consisting of Ben Dow, Corey Houim, and Tanner Smedshammer, determined one proposal met the required specifications. Our recommendation is to purchase based on meeting all specifications proposed from Sanitation Products. Funding for this project is included in the 2022 Replacement Street Department Budget.

SUGGESTED MOTION:

Approve the recommendation to purchase two (2) 3 Wheeled Mechanical Sweeper from Sanitation Products for the amount of \$462,570.00.

Respectfully Submitted,

Tanner Smedshammer
Fleet Management Specialist

Request for Proposals
3 Wheeled Street Sweeper (RFP21160)
 10/11/21

Proposal Evaluation Summary

	Sanitation Products	Hardline Equipment
Body Manf Model	Elgin Pelican	Dulevo 6000
Equipment Cost	\$231,285.00	\$288,780.00
Sweepers Provided	2	2
Total	\$ 462,570.00	\$577,560.00
TRADE:	\$35,000	\$37,300
Meets Spec Delivery	Yes 90 Days	No 150 Days



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PUBLIC WORKS/OPERATIONS

Fleet Management, Forestry,
Streets & Sewers, Watermeters,
Watermains & Hydrants
402 23rd STREET NORTH
FARGO, NORTH DAKOTA 58102
PHONE: (701) 241-1453
FAX: (701) 241-8100

October 13, 2021

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

RE: RFP for Loader Mounted Snow Blower (RFP21163)

Commissioners:

On October 11th, 2021, request for proposals were received for one (1) Loader Mounted Snow Blower. Two proposals were submitted by separate vendors. Proposals met specification and are listed below.

The results are as follows:

<u>Firm</u>	<u>Total per unit</u>
Swanston Equipment	\$190,200.00
Hardline Equipment	\$325,000.00

The review committee consisting of Ben Dow and Tanner Smedshammer determined that Swanston Equipment met the specifications adequate for the City of Fargo Street Department. Price was within the expected parameters. Our recommendation is to award the RFP to Swanston Equipment. Funding for this project is included in the 2022 Replacement Street Vehicle budget.

SUGGESTED MOTION:

Approve the recommendation to purchase one Loader Mounted Snow Blower from Swanston Equipment for the total amount of \$190,200.00.

Respectfully Submitted,

Tanner Smedshammer
Fleet Management Specialist

Fargo/Moorhead

Snow Removal
Street Maintenance
Right of Way Maintenance

Sanitary & Storm
Sewer Maintenance
Street Name Sign Maintenance

Fleet Management
Meters Readings,
Installations & Maintenance

Urban Forestry
Water Service/Hydrants
& Watermain Maintenance

Request for Proposals (RFP21163)
City of Fargo - Street Department
Loader Mounted Snow Blower
 10/11/2021

Proposal Evaluation Summary

	Hardline Equipment	Swanston Equipment
MANUFACTURER	Zaugg	Larue
Model	Mobl380	D60 365HP
Blower Price:	\$333,900.00	\$194,200.00
Trade IN:	\$8,900.00	\$4,000.00
Delivery	300 Days	120 Days
Total	\$325,000.00	\$190,200.00



(26)
PUBLIC WORKS/OPERATIONS

**Fleet Management, Forestry,
Streets & Sewers, Watermeters,
Watermains & Hydrants**
402 23rd STREET NORTH
FARGO, NORTH DAKOTA 58102
PHONE: (701) 241-1453
FAX: (701) 241-8100

October 13, 2021

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

RE: RFP for Excavator (RFP21164)

Commissioners:

On October 11th, 2021, proposals were received for one (1) Excavator. Five proposals were submitted by four separate vendors.

The results were as follows:

<u>Firm</u>	<u>Price</u>
Swanston Equipment	\$102,732.80
Titan Machinery	\$110,160.00
Butler Machinery (GC)	\$113,755.00
RDO Equipment	\$130,000.00
Butler Machinery	\$171,700.00

The review committee, consisting of Paul Fiechtner and Tanner Smedshammer, determined that the low cost proposal from Swanston Equipment; Bobcat of Fargo; met all criteria. A sand bucket was also presented for an additional cost of \$7,350.00.

Our recommendation is to purchase based on the proposal from Swanston Equipment.

SUGGESTED MOTION:

Approve the recommendation to purchase one (1) Excavator with sand bucket from Swanston Equipment for the amount of \$110,082.80.

Respectfully Submitted,

Tanner Smedshammer
Fleet Management Specialist

Request for Proposals (RFP21164)
Excavator RFP Results
10/11/21

Proposal Evaluation Summary

	Swanston Equip	RDO Equip	Titan Machinery	Butler Machinery	Butler Machinery
Body Manf Model	Bobcat E145	John Deere 135G	Case CX145D	Caterpillar 315GC	Caterpillar 315
Equipment Cost	\$155,732.80	\$174,000.00	\$159,900.00	\$152,255.00	\$210,200.00
TRADE:	\$53,000.00	\$44,000.00	\$49,740.00	\$38,500.00	\$38,500.00
Total	<u>\$102,732.80</u>	<u>\$130,000.00</u>	<u>\$110,160.00</u>	<u>\$113,755.00</u>	<u>\$171,700.00</u>
36" Sand Bucket	\$7,350.00	\$8,850.00	\$8,595.00	\$8,615.00	\$8,615.00
Est. Delivery	4/1/2022	5/1/2022	7/1/2022	5/15/2022	5/15/2022
Operating Weight	37,412	33,387	33,600	35,300	35,300
Dig Depth	19'6"	20'	19'9"	19'8"	19'8"
Dig Reach	27'9"	28'4"	28'3"	28'6"	28'6"
Horse Power	115	101	102	100	110



(27)

PUBLIC WORKS/OPERATIONS

Fleet Management, Forestry,
 Streets & Sewers, Watermeters,
 Watermains & Hydrants
 402 23rd STREET NORTH
 FARGO, NORTH DAKOTA 58102
 PHONE: (701) 241-1453
 FAX: (701) 241-8100

October 13th, 2021

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

RE: Rear Load Refuse Body (RFP21165)

Commissioners:

On October 11th, 2021, proposals were received and read for one (1) Rear Load Refuse Body. Four proposals were submitted from three vendors.

The results were as follows:

<u>Firm</u>	<u>Price</u>
Sanitation Products	\$89,031.00
Northern Truck / Heil	\$112,685.00
Northern Truck / Pak-Mor	\$116,465.00
Olympic Sales	\$120,955.81

The review committee consisting of Terry Ludlum, Dave Rheault and Tanner Smedshammer, evaluated the proposals and determined the proposal from Sanitation Products met their needs. Recommendation is to award Sanitation Products. Funding for this project has been included in the 2022 Solid Waste budget.

SUGGESTED MOTION:

Approve the recommendation to purchase one (1) Rear Load Refuse Body from Sanitation Products for the total amount of \$89,031.00.

Respectfully Submitted,

Tanner Smedshammer
 Fleet Management Specialist

**Request for Proposals
Rear Load Refuse Body RFP21165**

10/11/21

Solid Waste Department
Proposal Evaluation Summary

	Sanitation Products	Northern Truck	Northern Truck	Olympic Sales
MANUFACTURER Model	Loadmaster Excel-S	PaK-Mor R300	Heil DP5000	New Way Cobra Magnum
Equipment Price	\$82,031.00	\$107,175.00	\$103,395.00	\$111,080.81
Pusher Axle	\$7,000.00	\$9,290.00	\$9,290.00	\$9,875.00
Total	<u>\$89,031.00</u>	<u>\$116,465.00</u>	<u>\$112,685.00</u>	<u>\$120,955.81</u>
Est. Delivery	150 Days	180 Days	120 Days	150 Days



(28)

PUBLIC WORKS/OPERATIONS

Fleet Management, Forestry,
 Streets & Sewers, Watermeters,
 Watermains & Hydrants
 402 23rd STREET NORTH
 FARGO, NORTH DAKOTA 58102
 PHONE: (701) 241-1453
 FAX: (701) 241-8100

October 13th, 2021

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

RE: Hook Hoist Refuse Roll Off Body (RFP21166)

Commissioners:

On October 11th, 2021, proposals were received and read for one (1) Hook Hoist Refuse Body. Two proposals were submitted from two vendors.

The results were as follows:

<u>Firm</u>	<u>Price</u>
Sanitation Products / Galbreath	\$65,253.00
Northern Truck / Swap Loader	\$74,400.00

The review committee consisting of Terry Ludlum, Dave Rheault and Tanner Smedshammer, evaluated the proposals and determined the proposal from Sanitation Products met their needs. Recommendation is to award Sanitation Products. Funding for this project has been included in the 2022 Solid Waste budget.

SUGGESTED MOTION:

Approve the recommendation to purchase one (1) Hook Hoist Refuse Body from Sanitation Products for the total amount of \$62,178.00.

Respectfully Submitted,

Tanner Smedshammer
 Fleet Management Specialist

**Request for Proposals
Hook Hoist Refuse Body-Roll Off RFP21166**

10/11/21

**Solid Waste Department
Proposal Evaluation Summary**

	Sanitation Products	Northern Truck
MANUFACTURER	Galbreath	SwapLoader
Model	U5-DPHK-200	SL-520
Total	\$65,253.00	\$74,400.00
Est. Delivery	90 Days	120 Days

(29)

MEMORANDUM

TO: City Commission
FROM: Terry Ludlum, Solid Waste Utility Director
Scott Olson, Solid Waste Utility Engineer
RE: Xcel Energy Agreements for New Landfill Scale House and Maintenance Facility – Project SW 20-01
DATE: October 13, 2021

On September 21, 2020, the Commission approved bid awards for Solid Waste Division Project No. SW20-01, which included the construction of a Scale House and Maintenance Facility at the East Landfill. The following depicts the legal address of each building:

Scale House: 950 Aggregate Industries Drive
Maintenance Facility: 4475 7th Ave N.

The attached agreements from Xcel Energy are for the hookup and future servicing of each building. The cost to extend any infrastructure and complete the hookup for the Scale House is \$430.50. There was no additional infrastructure charge for the Maintenance Building.

The cost for Scale House hookup will be financed through the Capital Improvement Budget for project SW 20-01.

Your consideration in this matter is greatly appreciated.

Recommended Motion:

Approve the attached agreements for gas service to the new Scale House and Maintenance Facility and the infrastructure charge of \$430.05.



NATURAL GAS SERVICE AGREEMENT - COMMERCIAL AND INDUSTRIAL SERVICE

Customer's Name: City of Fargo Date Requested: 9/29/2021
(Please Print)
Service Address: 950 Aggregate Industries Dr
City, State, Zip: Fargo, ND 58102

This Natural Gas Service Agreement made this 29 day of Sep 2020
between Northern States Power Company, a Minnesota corporation ("Xcel Energy"), hereinafter called
Xcel Energy and City of Fargo a ND Company with a service address
at 950 Aggregate Industries Dr hereinafter called the "Customer", engaged in the business of
commercial services

The Parties hereto agree as follows:

- 1.0 **NATURE OF SERVICE.** Xcel Energy agrees to sell and Customer agrees to purchase gas service on a firm basis at the nominal delivery pressure of psig for Customer's use solely for the operation of gas equipment now or to be installed by Customer at Customer's service address.
- 2.0 **TERM.** This Agreement shall become effective on 9/29/2021, and shall continue in effect until 10/9/2022 if not then terminated by at least 30 days prior written notice by either Party, shall continue in effect until so terminated.
- 3.0 **RATE.** Customer agrees to pay Xcel Energy's established Commercial Firm Service rate schedule (if Customer service is provided in MN) or Commercial and Industrial Firm Service rate schedule (if Customer service is provided in ND) in effect from time to time in this locality for such service. A summary of the established rate schedule now in effect is available upon request.
- 4.0 **PAYMENT OF BILLS.** All bills for service supplied by Xcel Energy in the preceding billing period are payable at Xcel Energy's office on or before the due date stated on Xcel Energy's bills to Customer. Any unpaid balance over \$10.00 is subject to a Late Payment Charge. Any payment for Aid to Construction described on Attachment A (if applicable) is due in advance of installation of gas service.
- 5.0 **TERMS AND CONDITIONS.** The service hereunder shall be supplied for Customer's use subject to the General Rules, Regulations, and Tariffs of Xcel Energy on file with the state regulatory commission in the state where the service is provided, as they now exist or may hereafter be changed. A copy of such rules and regulations is available from Xcel Energy upon request.
- 5.1 Customer hereby grants Xcel Energy any right, privilege and easement necessary to install, operate, and maintain its gas service on the property at the service address listed below.
- 5.2 Customer agrees that, prior to Xcel Energy starting work: (1) the route of Xcel Energy's installation shall be accessible to Xcel Energy's equipment; (2) all obstructions shall be removed from such route at no cost or expense to Xcel Energy; (3) ground elevation along the route shall not be above or more than four inches below the final grade. Xcel Energy agrees to contact Gopher State One Call (if service is provided to Customer in Minnesota) or North Dakota One Call (if service is provided to Customer in North Dakota) to locate third party utility facilities (phone, cable, etc) on Customer property. Xcel Energy is not responsible for any damage to Customer-owned underground facilities not exposed or located at the time service is installed.
- 5.3 Customer agrees to pay an installation cost contribution provided in Attachment A, Aid to Construction. Customer understands Customer must pay this amount before Xcel Energy will install gas service. Customer agrees to pay all additional installation costs incurred by Xcel Energy because of (1) soil conditions that impair the installation of underground facilities, such as rock formations, etc., (2) sidewalks, streets, alleys, curbing, blacktop, paving, sod or other landscaping and obstructions along the service route prior to installation of the gas service; and (3) delays caused by Customer. Xcel Energy will backfill trench with existing soil. Compaction along service route and restoration of the construction area on Customer's property is the responsibility of Customer.
- 5.4 The installation of a gas main or service may be subject to a winter construction charge if it is installed between October 1 and April 15. Customer agrees to pay this charge if Xcel Energy determines winter conditions exist when the facilities are installed. Xcel Energy will waive the winter construction charge if prior to October 1st the Customer is ready to accept gas service, executes this form, and notifies Xcel Energy in writing that the requirements of Paragraph 5.2 hereof have been fulfilled.
- 5.5 Xcel Energy will install protective barriers at Customer's expense when metering equipment is to be installed in a parking area or area of vehicular traffic.



- 5.6 The facilities installed by Xcel Energy shall be the property of Xcel Energy, and any payments made by the Customer or its contractors shall not entitle Customer or its contractors to any ownership interest or rights therein.
- 5.7 Customer agrees to maintain a minimum of 18-inch cover over all Xcel Energy facilities after installation. Customer agrees to pay the cost of relocating any portion of said facilities made to accommodate its needs or required because of alterations to the property.
- 5.8 Customer agrees to maintain sufficient space and support as designed by Xcel Energy for installation of Xcel Energy metering equipment. In addition, Customer agrees that this space shall be located a minimum of three (3) feet from electrical equipment, windows, downspouts, or air intakes as specified in the national fuel gas code, Section 2.7.2.
- 5.9 If Customer fails to use any of said natural gas service, Xcel Energy may charge Customer (i) the reasonable cost of installing the gas facilities, less any customer contribution made, or (ii) the Monthly Minimum Charge plus any applicable surcharges or taxes.
- 6.0 **ABANDONMENT; ASSIGNMENT.** Customer agrees that if service is terminated by Customer or Xcel Energy, Xcel Energy has the right to abandon its facilities in place. Customer will not assign this agreement except upon written consent of Xcel Energy, which shall not be unreasonably withheld.

Xcel Energy Representative (Print full name): Scott Hults, Mgr, Gas Business Develop

Xcel Energy Representative Signature: *Scott A. Hults* Date: 9/29/21

Customer Name (Print full name): City of Fargo

Customer Signature: _____ Date: _____

Address: 950 Aggregate Industries Dr

City, State, Zip Code: Fargo, ND 58102

Mailing Address (if different than Service Address): 200 3rd St N

Telephone: 701-241-1324

City, State, Zip Code: Fargo, ND 58102

FOR XCEL ENERGY USE

Xcel Project No: _____

Account No: _____

Rate Code: _____

Form 17-1833

NATURAL GAS SERVICE AGREEMENT COMMERCIAL AND INDUSTRIAL SERVICE ATTACHMENT A

AID TO CONSTRUCTION

\$	<u>430.50</u>	Excess main extension
\$	_____	Excess service extension
\$	_____	Winter construction charge
\$	<u>0.00</u>	Preferred location charge
\$	_____	Protective barrier charge
\$	_____	Relocation charge
\$	_____	Addition charges (explain)
\$	<u>430.50</u>	Total Amount Due

City of Fargo

Customer (Print full name) _____

Customer Signature _____

CONNECTED LOAD (CFH/HR)

Furnace/Boiler	<u>60</u>
Water Heater	_____
Other	_____

Total Load (CFH/HR) 60

FOR XCEL ENERGY USE

Customer Name: _____

Xcel Energy Work Order: _____

Rate Code: _____

Account No: _____

Form 17-1833 (4-09)

Date _____

Dear Property Owner:

Please read and confirm you understand and agree to the terms and conditions in the enclosed Natural Gas Service Agreement and this Customer Agreement Form by marking the checkbox next to each item listed below. All customer responsibilities must be completed before construction can begin. If you agree to all items below and would like us to schedule your property for natural gas service, return this document with your contract. We encourage you to make a copy for your records.

Customer Responsibilities:

- ☐ Locate and mark (paint, flag, etc.) any privately owned facilities on your property
- | | |
|---|--|
| <input type="checkbox"/> Propane lines | <input type="checkbox"/> Buried oil tank |
| <input type="checkbox"/> Invisible dog fencing | <input type="checkbox"/> Well and electric wire to well head |
| <input type="checkbox"/> Private electric wires (from house to garage, yard lights, etc.) | <input type="checkbox"/> Wire to satellite dish or other private communication lines |
| <input type="checkbox"/> Septic line including tank, lift station and drain field | <input type="checkbox"/> Underground sprinkler systems |
- ☐ Xcel Energy will coordinate public utility location through ND One Call

- ☐ Complete and return the enclosed **Natural Gas Service Agreement** (both pages).

- ☐ Complete and return this **Commercial Agreement Form** (mark each box).

Customer Understands and Agrees:

- ☐ Carefully review customers details: Name, phone number, service address and mailing address are correct (update if needed)
- ☐ Customers are responsible for the cost of converting or replacing equipment. We recommend you get two to three estimates from heating dealers.
- ☐ Restoration
- ☐ Xcel Energy will provide boulevard restoration. We are **NOT** responsible for restoration on private property. Construction crews will level any trenched ground.
- ☐ New Account and **Recurring** Charges
- ☐ Agree to pay a one-time \$15.00 account setup charge on first invoice
 - ☐ Agree to pay a recurring basic service charge of \$30.00/ monthly (meter fee)
 - ☐ Understand some cities apply an additional City Fee which is collected on your Xcel Energy invoice and reimbursed to the city

Signing and returning the Natural Gas Service Agreement and Customer Agreement Form confirms you understand all information above. Your property will be scheduled for natural gas service and you will be responsible for charges as described above.

You can either Mail or Email the agreements to the following:

Email: Sara.M.Brewster@xcelenergy.com

**Mail : Xcel Energy/Sara Brewster
2302 Great Northern Drive**

Fargo, ND 58102

**Direct questions to Sara Brewster 701-241-8622
or send an email to
Sara.M.Brewster@xcelenergy.com**



Service request informational sheet

When applying for natural gas or electric service it is important to have the following requirements met first to ensure prompt and accurate service by Xcel Energy crews.

Request information

Minimum requirements to apply for services:

- Accurate address information (cross streets, closest neighbor, fire #, etc)
- Service size needed and load information (electric amps, accurate total gas load BTUs, air conditioning tonnage)
- Service location (residential/Site sketch – right, left, on house, on garage if possible a link with map)
- Multiple meter information if needed (banked, double meter socket, meter header, house meter)
- Subdivision name, lot, block, legal description
- Building square footage
- Building setback from property line (feet)
- Date site will be ready and service needed
- Gas meter location clearly marked

NOTE: If facilities are required to be moved, lowered or raised, you may be charged

Site readiness

- Foundation is in and backfilling is complete.
- Sewer and water needs to be in prior to Xcel Energy's services being installed
- Clear a 10' path for trencher or plow from the meter to point of termination/connection
- Clear the installation route of all materials (dirt, rock, lumber, trusses, Dumpsters, propane tanks, etc)
- Site is within 4" of final grade.
- Electric meter socket is installed and Proof of Compliance or electrical inspection is filed.
- Gas Certificate of Compliance or gas inspection is filed.

Customer owned facilities

- Locate any privately owned facilities (septic systems, drain fields, sprinkler system, wells, pet control wiring, privately owned facilities, LP gas lines, etc.) Expose where practical.

Meter clearance

Electric meter

- 6' maximum
- 4' minimum
- 2" conduit or larger furnished and installed by customer

Gas Meter (Must be located on an inside wall)

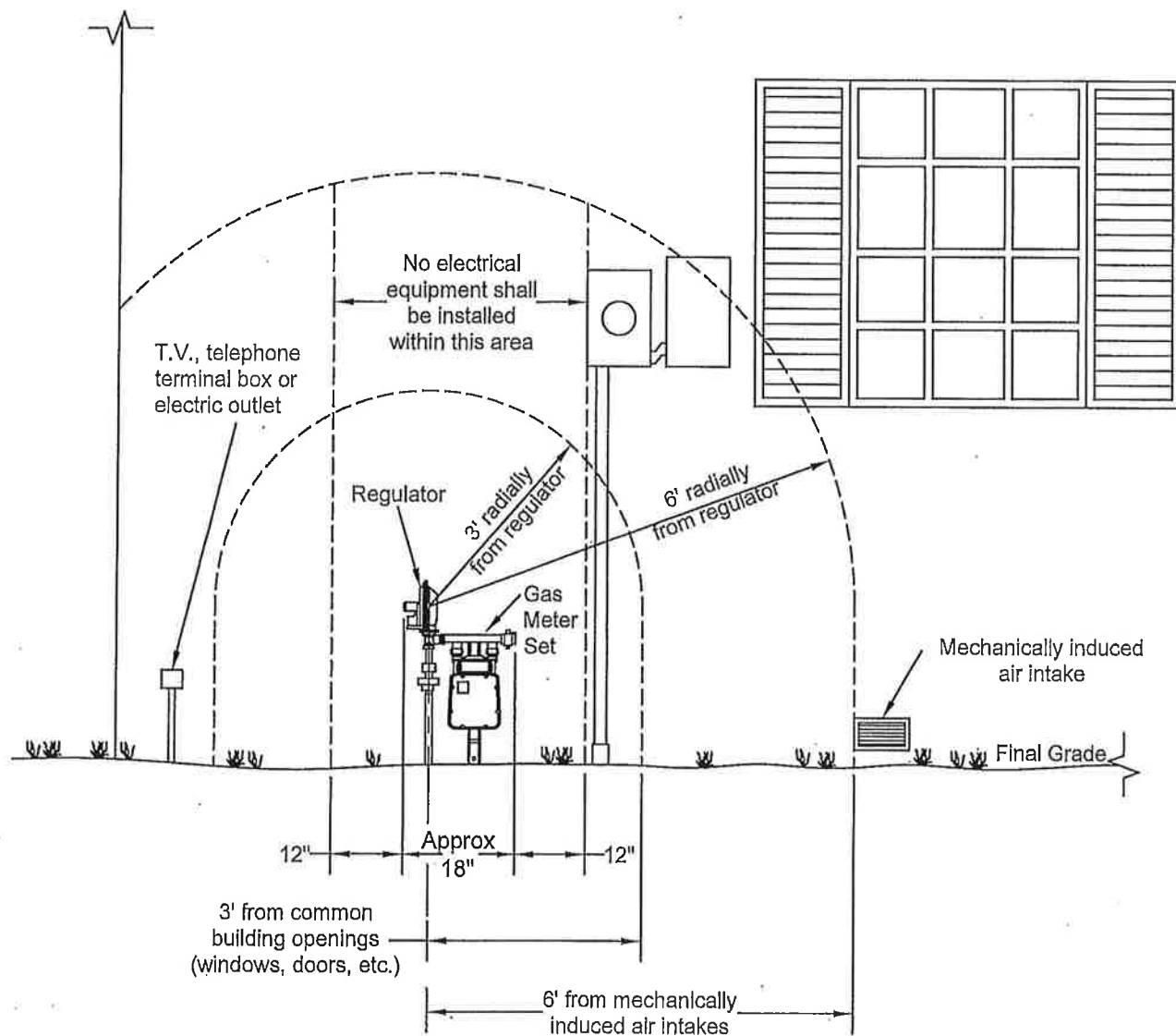
- 3' Conflict Zone (3' clearance from any of the following):
 - Doors
 - Outside water spigots
 - Windows
 - Air intakes
 - Outlets
 - Air conditioning units
 - Vents
 - Electric meter
 - Electrical equipment
- 6" above final grade
- 6' from mechanically-induced air intake

NOTE: Meters cannot be set under a deck or steps

**For additional information, please contact us at:
800.628.2121 or xcelenergy.com/Partners/Builders.**


DRAWING CR-10

CLEARANCE REQUIREMENTS FROM GAS METER



NOTES:

1. 3' minimum working clearance from non-electrical obstructions is preferred around gas meter set.
2. Disregard clearances when measuring around corners of structure.
3. See drawings SC-20 and SC-20A for ice and snow shield requirements.
4. Electric and plastic gas services within the same trench shall be separated by twelve (12) radial inches. Steel gas services shall not be installed in the same trench with an electric service and require a minimum of twelve (12) radial inches of separation.

	Issued	Replaces	Drawn by	Approved	File	STANDARD FOR ELECTRIC INSTALLATION AND USE	
	Mar-13	Jan-13	JD		I-7.1	PAGE	I-7.1



NATURAL GAS SERVICE AGREEMENT - COMMERCIAL AND INDUSTRIAL SERVICE

Customer's Name: City of Fargo Date Requested: 9/29/2021
 (Please Print)
 Service Address: 4475 7th Ave N
 City, State, Zip: Fargo, ND 58102

This Natural Gas Service Agreement made this 29 day of Sep 2020
 between Northern States Power Company, a Minnesota corporation ("Xcel Energy"), hereinafter called
 Xcel Energy and City of Fargo a ND Company with a service address
 at 4475 7th Ave N hereinafter called the "Customer", engaged in the business of
commercial services

The Parties hereto agree as follows:

- 1.0 **NATURE OF SERVICE.** Xcel Energy agrees to sell and Customer agrees to purchase gas service on a firm basis at the nominal delivery pressure of psig for Customer's use solely for the operation of gas equipment now or to be installed by Customer at Customer's service address.
- 2.0 **TERM.** This Agreement shall become effective on 9/29/2021, and shall continue in effect until 10/9/2022 if not then terminated by at least 30 days prior written notice by either Party, shall continue in effect until so terminated.
- 3.0 **RATE.** Customer agrees to pay Xcel Energy's established Commercial Firm Service rate schedule (if Customer service is provided in MN) or Commercial and Industrial Firm Service rate schedule (if Customer service is provided in ND) in effect from time to time in this locality for such service. A summary of the established rate schedule now in effect is available upon request.
- 4.0 **PAYMENT OF BILLS.** All bills for service supplied by Xcel Energy in the preceding billing period are payable at Xcel Energy's office on or before the due date stated on Xcel Energy's bills to Customer. Any unpaid balance over \$10.00 is subject to a Late Payment Charge. Any payment for Aid to Construction described on Attachment A (if applicable) is due in advance of installation of gas service.
- 5.0 **TERMS AND CONDITIONS.** The service hereunder shall be supplied for Customer's use subject to the General Rules, Regulations, and Tariffs of Xcel Energy on file with the state regulatory commission in the state where the service is provided, as they now exist or may hereafter be changed. A copy of such rules and regulations is available from Xcel Energy upon request.
- 5.1 Customer hereby grants Xcel Energy any right, privilege and easement necessary to install, operate, and maintain its gas service on the property at the service address listed below.
- 5.2 Customer agrees that, prior to Xcel Energy starting work: (1) the route of Xcel Energy's installation shall be accessible to Xcel Energy's equipment; (2) all obstructions shall be removed from such route at no cost or expense to Xcel Energy; (3) ground elevation along the route shall not be above or more than four inches below the final grade. Xcel Energy agrees to contact Gopher State One Call (if service is provided to Customer in Minnesota) or North Dakota One Call (if service is provided to Customer in North Dakota) to locate third party utility facilities (phone, cable, etc) on Customer property. Xcel Energy is not responsible for any damage to Customer-owned underground facilities not exposed or located at the time service is installed.
- 5.3 Customer agrees to pay an installation cost contribution provided in Attachment A, Aid to Construction. Customer understands Customer must pay this amount before Xcel Energy will install gas service. Customer agrees to pay all additional installation costs incurred by Xcel Energy because of (1) soil conditions that impair the installation of underground facilities, such as rock formations, etc., (2) sidewalks, streets, alleys, curbing, blacktop, paving, sod or other landscaping and obstructions along the service route prior to installation of the gas service; and (3) delays caused by Customer. Xcel Energy will backfill trench with existing soil. Compaction along service route and restoration of the construction area on Customer's property is the responsibility of Customer.
- 5.4 The installation of a gas main or service may be subject to a winter construction charge if it is installed between October 1 and April 15. Customer agrees to pay this charge if Xcel Energy determines winter conditions exist when the facilities are installed. Xcel Energy will waive the winter construction charge if prior to October 1st the Customer is ready to accept gas service, executes this form, and notifies Xcel Energy in writing that the requirements of Paragraph 5.2 hereof have been fulfilled.
- 5.5 Xcel Energy will install protective barriers at Customer's expense when metering equipment is to be installed in a parking area or area of vehicular traffic.



- 5.6 The facilities installed by Xcel Energy shall be the property of Xcel Energy, and any payments made by the Customer or its contractors shall not entitle Customer or its contractors to any ownership interest or rights therein.
- 5.7 Customer agrees to maintain a minimum of 18-inch cover over all Xcel Energy facilities after installation. Customer agrees to pay the cost of relocating any portion of said facilities made to accommodate its needs or required because of alterations to the property.
- 5.8 Customer agrees to maintain sufficient space and support as designed by Xcel Energy for installation of Xcel Energy metering equipment. In addition, Customer agrees that this space shall be located a minimum of three (3) feet from electrical equipment, windows, downspouts, or air intakes as specified in the national fuel gas code, Section 2.7.2.
- 5.9 If Customer fails to use any of said natural gas service, Xcel Energy may charge Customer (i) the reasonable cost of installing the gas facilities, less any customer contribution made, or (ii) the Monthly Minimum Charge plus any applicable surcharges or taxes.
- 6.0 **ABANDONMENT; ASSIGNMENT.** Customer agrees that if service is terminated by Customer or Xcel Energy, Xcel Energy has the right to abandon its facilities in place. Customer will not assign this agreement except upon written consent of Xcel Energy, which shall not be unreasonably withheld.

Xcel Energy Representative (Print full name): Scott Hults, Mgr, Gas Business Develop

Xcel Energy Representative Signature: *Scott A. Hults* Date: 9/29/21

Customer Name (Print full name): _____ City of Fargo

Customer Signature: _____ Date: _____

Address: 4475 7th Ave N

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FOR XCEL ENERGY USE

Xcel Project No: _____

Account No: _____

Rate Code: _____

Form 17-1833

NATURAL GAS SERVICE AGREEMENT COMMERCIAL AND INDUSTRIAL SERVICE ATTACHMENT A

AID TO CONSTRUCTION

\$ _____ Excess main extension
 \$ _____ Excess service extension
 \$ _____ Winter construction charge
 \$ 0.00 Preferred location charge
 \$ _____ Protective barrier charge
 \$ _____ Relocation charge
 \$ _____ Addition charges (explain)
 \$ 0.00 Total Amount Due

City of Fargo

Customer (Print full name) _____

Customer Signature _____

CONNECTED LOAD (CFH/HR)

Furnace/Boiler 645
 Water Heater _____
 Other _____

Total Load (CFH/HR) 645

FOR XCEL ENERGY USE

Customer Name: _____

Xcel Energy Work Order: _____

Rate Code: _____

Account No: _____

Form 17-1833 (4-09)

Date _____

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Customer Responsibilities:

- ☐ Locate and mark (paint, flag, etc.) any privately owned facilities on your property
- | | |
|---|--|
| <input type="checkbox"/> Propane lines | <input type="checkbox"/> Buried oil tank |
| <input type="checkbox"/> Invisible dog fencing | <input type="checkbox"/> Well and electric wire to well head |
| <input type="checkbox"/> Private electric wires (from house to garage, yard lights, etc.) | <input type="checkbox"/> Wire to satellite dish or other private communication lines |
| <input type="checkbox"/> Septic line including tank, lift station and drain field | <input type="checkbox"/> Underground sprinkler systems |
- ☐ Xcel Energy will coordinate public utility location through ND One Call

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- ☐ Carefully review customers details: Name, phone number, service address and mailing address are correct (update if needed)

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- ☐ Restoration
- ☐ Xcel Energy will provide boulevard restoration. We are **NOT** responsible for restoration on private property. Construction crews will level any trenched ground.

- ☐ New Account and **Recurring Charges**
- ☐ Agree to pay a one-time \$15.00 account setup charge on first invoice
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Direct questions to Sara Brewster 701-241-8622

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- Service location (residential/Site sketch – right, left, on house, on garage if possible a link with map)
- Multiple meter information if needed (banked, double meter socket, meter header, house meter)
- Subdivision name, lot, block, legal description
- Building square footage
- Building setback from property line (feet)
- Date site will be ready and service needed
- Gas meter location clearly marked

NOTE: If facilities are required to be moved, lowered or raised, you may be charged

Site readiness

- Foundation is in and backfilling is complete.
- Sewer and water needs to be in prior to Xcel Energy's services being installed
- Clear a 10' path for trencher or plow from the meter to point of termination/connection
- Clear the installation route of all materials (dirt, rock, lumber, trusses, Dumpsters, propane tanks, etc)
- Site is within 4" of final grade.
- Electric meter socket is installed and Proof of Compliance or electrical inspection is filed.
- Gas Certificate of Compliance or gas inspection is filed.

Customer owned facilities

- Locate any privately owned facilities (septic systems, drain fields, sprinkler system, wells, pet control wiring, privately owned facilities, LP gas lines, etc.) Expose where practical.

Meter clearance

Electric meter

- 6' maximum
- 4' minimum
- 2" conduit or larger furnished and installed by customer

Gas Meter (Must be located on an inside wall)

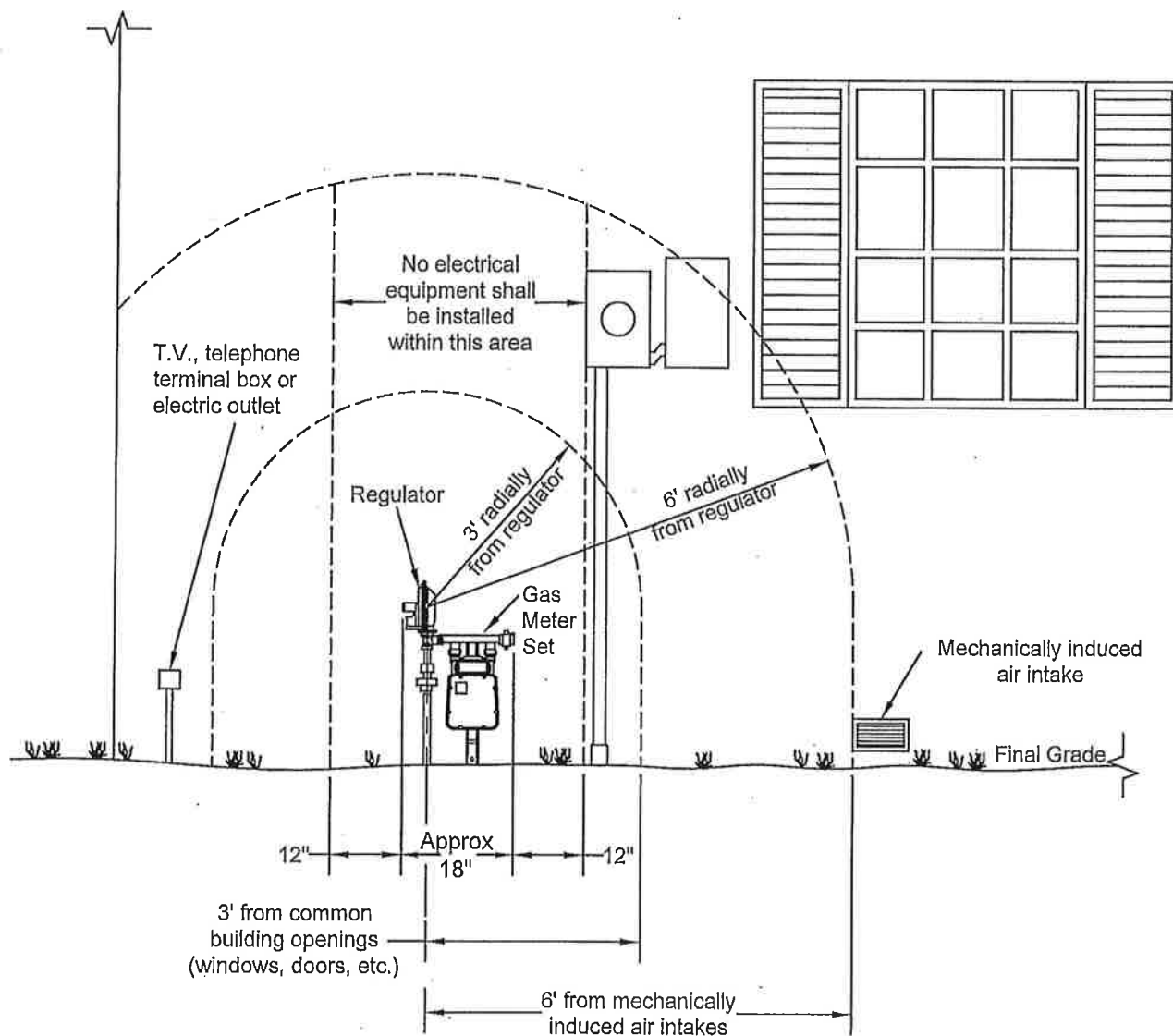
- 3' Conflict Zone (3' clearance from any of the following):
 - Doors
 - Outside water spigots
 - Windows
 - Air intakes
 - Outlets
 - Air conditioning units
 - Vents
 - Electric meter
 - Electrical equipment
- 6" above final grade
- 6' from mechanically-induced air intake

NOTE: Meters cannot be set under a deck or steps

**For additional information, please contact us at:
800.628.2121 or xcelenergy.com/Partners/Builders.**


DRAWING CR-10

CLEARANCE REQUIREMENTS FROM GAS METER



NOTES:

1. 3' minimum working clearance from non-electrical obstructions is preferred around gas meter set.
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4. Electric and plastic gas services within the same trench shall be separated by twelve (12) radial inches. Steel gas services shall not be installed in the same trench with an electric service and require a minimum of twelve (12) radial inches of separation.

 Xcel Energy	Issued	Replaces	Drawn by	Approved	File	STANDARD FOR ELECTRIC INSTALLATION AND USE
	Mar-13	Jan-13	JD		I-7.1	PAGE I-7.1

(31)

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Improvement District No. BR-22-A0

Type: Change Order #1

Location: 32nd Avenue South

Date of Hearing: 10/11/2021

RoutingDate

City Commission

10/18/2021

PWPEC File

X

Project File

Jason Leonard

The Committee reviewed the accompanying correspondence from Project Manager, Jason Leonard, for Change Order #1 in the amount of \$71,026 for additional items not included in the original scope of work.

Staff is recommending approval of Change Order #1 in the amount of \$71,026, bringing the total contract amount to \$587,342.

On a motion by Kent Costin, seconded by Steve Sprague, the Committee voted to recommend approval of Change Order #1 to Apex in the amount of \$71,026.

RECOMMENDED MOTION

Concur with recommendations of PWPEC and approve Change Order #1 in the amount of \$71,026, bringing the total contract amount to \$587,342 to Apex.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: Sales Tax & Special Assessments

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

Yes No

N/AN/AN/ACOMMITTEE

Present Yes No Unanimous

✓

Tim Mahoney, Mayor

✓✓✓

Nicole Crutchfield, Director of Planning

✓✓✓

Steve Dirksen, Fire Chief

✓✓✓

Bruce Grubb, City Administrator

✓✓✓

Ben Dow, Director of Operations

✓✓✓

Steve Sprague, City Auditor

✓✓✓

Brenda Derrig, City Engineer

✓✓✓

Kent Costin, Finance Director

✓✓✓

ATTEST:



Brenda E. Derrig, P.E.
 City Engineer

C: Kristi Olson

Memorandum

To: PWPEC
From: Jason Leonard, Project Engineer
Date: October 8, 2021
Re: Improvement District No. BR-22-A0 – Change Order #1

Background:

Improvement District No. BR-22-A0 is the Engineering Services contract with Apex Engineering Group (Apex) to complete all work items required by NDDOT and FHWA so federal funds can be used to reconstruct 32nd Avenue South between 32nd Street and the Red River. A RFP was issued and the selection of Apex was approved May 18, 2020 by the City Commission. Apex was asked to complete three work items that were not included in the original scope of work outlined in the initial RFP.

Item 1 – Storm Sewer/Catch Basin Survey

The original scope addressed more detailed design between 32nd and 22nd with the remainder of the corridor completed when plans are prepared in the future. The drainage along the corridor is limited and a detailed analysis was required to ensure water does not pond on the street during a 5 year rain event. Apex surveyed all the inverts of the pipe network between 22nd and the Red River so the model inputs were as accurate as possible. Total cost for this work is \$3,453.

Item 2 – Tree Memo

During alternative development, tree conflicts are present and Apex prepared a draft memo to address and justify the tree removals, relocations, and tree mitigation on the project. The original scope did not address a formal document on tree removal. After the draft was complete, it is apparent that this memo cannot be finalized until exact design details can be determined. Design details will be worked on in the next few months and exact information on tree removal will be presented to City Commission for approval. Total cost for this work is \$3,522.

Item 3 – H & H memo for project specific design parameters

Apex started the design for the storm sewer and to meet NDDOT requirements, an approximate pipe size of 108" would be required in addition to the existing storm sewer currently in place along the corridor. The constructability and cost of this storm sewer would make the project difficult to build and stay on budget. NDDOT requirements include a 5 year rain event and a hydraulic grade line in the trunk line at an elevation with the pipe approximately 80% full. Apex prepared a memo that was submitted to NDDOT asking for concurrence to use a 5 year design but allow the hydraulic grade line to be above the trunk line but below the roadway surface. NDDOT agreed to this design modification. Total cost for this work is \$5,668.

Item 4 – City Commission Presentation – Design Decision Discussion

During the decision making process the Fargo City Commission requested additional analysis and exhibit preparation to ensure the correct design configuration was selected. With this request APEX was required to analyze and create 10 additional exhibit for this discussion. Total cost for this work is \$20,475.

Item 5 – Additional Survey for Temporary and Permanent ROW Exhibits

To ensure accuracy of the temporary and permanent ROW exhibits, APEX survey staff collected additional field information. This task was not included within the original project scope. Total cost for this work is \$9,854.

Item 6 – Temporary and Permanent ROW Exhibits

The original project scope estimated 6 ROW parcel exhibits. As the design progressed and additional ROW was required to save the existing trees along the south side of the corridor an additional 9 ROW exhibits were required. Total cost for this work is \$7,164.

Item 7 – ROW Acquisition Documents and Procedures

The original scope did not include direct expenses necessary for the preparation of the basic data book, title work, and appraisal reports to acquire new permanent easements along the project corridor. Total cost for this work is \$20,890.

In addition, Flint accounted for their costs in Phase 3 and they completed work in Phase 1 in the amount of \$11,148. This is not additional money, just a transfer from the amount of approved in Phase 3 to Phase 1. Total out of scope additional cost of \$71,026 increases the original contract with APEX for Phase 1 from \$232,450 to \$245,093.

Recommended Motion:

Approve the additional cost of \$71,026 and the transfer of \$11,148 from Phase 3 to Phase 1

Attachments



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

Improvement District No	BR-22-A0	Change Order No	1
Project Name	Consultant Services	For	Apex Engineering Group Inc
Date Entered	10/8/2021		

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

EXPLANATION OF CHANGE: Change Order #1 – Project No. BR-22-A0

Item 1 – Storm Sewer/Catch Basin Survey

The original scope addressed more detailed design between 32nd and 22nd with the remainder of the corridor completed when plans are prepared in the future. The drainage along the corridor is limited and a detailed analysis was required to ensure water does not pond on the street during a 5 year rain event. Apex surveyed all the inverts of the pipe network between 22nd and the Red River so the model inputs were as accurate as possible. Total cost for this work is \$3,453.

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Item 6 – Temporary and Permanent ROW Exhibits

The original project scope estimated 6 ROW parcel exhibits. As the design progressed and additional ROW was required to save the existing trees along the south side of the corridor an additional 9 ROW exhibits were required. Total cost for this work is \$7164.

Item 7 – ROW Accusation Documents and Procedures

The original scope did not include direct expenses necessary for the preparation of the basic data book, title work, and appraisal reports to acquire new permanent easements along the project corridor. Total cost for this work is \$20,890.

Section	Line No	Item Description	Unit	Orig Cont Qty	Prev C/O Qty	Prev Cont Qty	Curr C/O Qty	Tot Cont Qty	Unit Price (\$)	C/O Ext Price (\$)
Consultant Plan Design Services	2	Design	EA	283,866.00	0.00	283,866.00	71,026.00	354,892.00	1.00	71,026.00
Consultant Plan Design Services Sub Total (\$)										71,026.00



CITY OF FARGO
ENGINEERING DEPARTMENT
CHANGE ORDER REPORT

Summary

Source Of Funding

Net Amount Change Order # 1 (\$)

Previous Change Orders (\$)

Original Contract Amount (\$)

Total Contract Amount (\$)

Special Assessments

71,026.00
0.00
516,316.00
587,342.00

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

CONTRACT TIME

Current Substantial
Completion Date

12/31/2020

Current Final Completion
Date

Additional Days Substantial
Completion

0.00

Additional Days Final
Completion

0.00

New Substantial
Completion Date

12/31/2020

New Final Completion
Date

Description

APPROVED

For Contractor

Apex Engineering Group

Title

Vice President

APPROVED DATE

Department Head

Mayor

Attest

10/13/21

Water | Transportation | *etc.* | *etc.*701.373.7980
4733 Amber Valley Parkway
Fargo, ND 58104

Engineering Services Agreement
Amendment #1 – Project No. BR-22-A0

Project: Amendment #1 for Phase I – Preliminary Engineering / Phase II – Design & Plan Preparation
32nd Avenue South Reconstruction – 32nd St S to University Drive
City Project No. BR-22-A0
Apex Project No. 20.103.0063

Client: City of Fargo (Engineering Department)
Attn: Jason T. Leonard, PE – Engineering Department

Background / Description of Work:

This amendment includes additional time required by Apex Engineering Group to finalize the preliminary engineering process, finalize the design of the project corridor from 32nd Street South to 22nd Street South, and to finalize the plan set from 32nd Street South to 22nd Street South.

Also, included in the addendum is additional direct costs incurred by Apex Engineering Group for the preparation of the basic data book (RM Hoefs & Associates, Inc.), title work (Red River Title Services, Inc.), and appraisal reports (RM Hoefs & Associates, Inc.) to acquire new permanent easements along the project corridor.

The additional time to finalize the preliminary engineering process, finalize the design of the project corridor from 32nd Street South to 22nd Street South, and to finalize the plan set from 32nd Street South to 22nd Street South is represented in the following attachments:

1. Attachment #1 – Scope of Services and Summary of Hours / Fee

Fee Amendment Request:

Amendment #1:

Phase I – Preliminary Engineering / Phase II – Design & Plan Preparation = **\$71,026.00****Contract Terms & Conditions:**

Apex Engineering Group, Inc. ("Consultant") hereby proposes, and the City of Fargo ("City") hereby authorizes, the above-described Amendment #1 and additional services described here in, including attachments, to be completed under the same Terms & Conditions of the original agreement signed by both parties and approved by the City of Fargo on June 23rd, 2020.

City of Fargo Authorization:

Signature: _____
Dr. Tim Mahoney

Title: Mayor

Date: _____

Consultant:

Signature: _____
Joshua C. Olson

Title: Vice President

Date: October 8, 2021

Supplemental Services Request #1
Scope of Services and Summary of Hours / Fee
Additional Work in Phase I & II: Preliminary Engineering / Design and Plan Preparation
For
32nd Avenue South Reconstruction – 32nd Street to University Drive
City of Fargo Project #BR-22-A0

Apex Engineering Group, Inc.
Client: City of Fargo

PHASE I AND II: PRELIMINARY ENGINEERING / DESIGN AND PLAN PREPARATION – SUPPLEMENTAL SERVICES

This scope of services pertains to the supplemental request for additional work on 32nd Ave South from 32nd Street to University Drive.

7.01 Preliminary Engineering – Storm Sewer / Catch Basin Field Survey:

As the H & H preliminary analysis was being completed it was determined that it would be extremely beneficial to have invert and rim elevations of the existing storm sewer manholes between 22nd St. South and University. This data was used to finalize our preliminary recommendation and final design for the storm sewer system along the project corridor. This was not part of our original scope.

- Additional Topo Survey Time (To collect field data and complete the CADD Editing of the data):
 - Survey Crew Chief: 15 hours x \$139 / hr. = \$2,085
 - 4 hrs. to gather information and prep for field work.
 - 11 hrs. in field to collect all the inverts and rim elevations.
 - Survey Technician: 11 hours x \$90 / hr. = \$990
 - 11 hrs. in field to collect all the inverts and rim elevations.
 - Senior Engineer Technician (CADD Editing) = 3 hrs. x \$126 / hr. = \$378
 - 3 hrs. to update tin and CADD files.
 - **Subtotal = \$3,453**

7.02 Preliminary Engineering – Tree Memo

During the review of the project corridor and alternative development, it was determined at our project review committee meetings that a tree memo would be put together to analysis and explain any tree impacts to the corridor. The extra step to provide a tree survey and the memo were not part of the original scope.

- Additional Tree Memo Time:
 - Senior Engineer: 10 hours x \$180 / hr. = \$1,800 – Task: Primary Memo Author
 - 2 hrs. – Coordination w/ Apex Team
 - 2 hrs. – Tree Memo outline and issue review / brain storming
 - 1 hr. – Meeting with City to discuss tree impacts & mitigation plan
 - 2 hrs. – Review of information provided by City and the Apex team.
 - 2 hrs. – Writing of Tree Memo
 - 1 hr. – QC & editing of Tree Memo

- Lead Engineer: 4 hours x \$167 / hr. = \$668 – Tasks: Site Triangle Research Review, and Impact Analysis
 - 2 hrs. – Review Site Triangle Guidelines & Recommendations; Site Triangle Calculations (11 intersections)
 - 1 hr. – Site Triangle line work & exhibit preparation; Inventory of trees impacted by site triangles.
 - 1 hr. – Meeting with City to discuss tree impacts & mitigation plan
- Graduate Engineer = 4 hrs. x \$115 / hr. = \$460 – Tasks: Exhibit Preparation, and City Utility Location Review & Impact Analysis
 - 3 hrs. – City Utility Location Review vs. Existing Trees; Depth Check of Utility Excavation; Trench Review & Impact Analysis
 - 1 hr. – Line Work; Inventory of Trees Impacted by City Utility Work.
- Engineering Technician = 6 hrs. x \$99 / hr. = \$594 – Tasks: Field Review of Trees & Exhibit Preparation
 - 3 hrs. – Field Verify Location of Trees vs. Sidewalk and Curb & Gutter; Field Verify size of trees
 - 1.5 hrs. – Review sidewalk inventory report from City and quantify percent of minimum sidewalk replacement.
 - 1.5 hrs. – Prepare exhibit showing tree proximity to sidewalk & total areas of recommended sidewalk replacement.
- **Subtotal = \$3,522**

7.03 Preliminary Engineering – H & H Memo for Project Specific Design Parameters

During our H & H preliminary review it was determined that a Tech Memo should be prepared for the NDDTO to make sure that all parties involved (Apex, City of Fargo, & NDDOT) are in agreement with what design parameters would be used for 32nd Ave South. Two separate virtual meetings were also conducted (1 with the City and NDDOT and 1 with the City only) to update / inform and communicate how we wanted to proceed with not only the project specific design parameters but how to communicate our understanding of those parameters. The extra meetings and extra Tech Memo step were not part of the original scope.

- Additional H & H Memo Time:
 - Senior Engineer: 12 hours x \$180 / hr. = \$2,160 – Task: Primary Memo Author, Meeting Prep & Attendance
 - 2.0 hrs. – COF and NDDOT meeting preparation & attendance (2 meetings)
 - 2.0 hrs. – Internal meeting to assign tasks and discuss design parameters
 - 2.0 hrs. – Review options and outlining what options to analysis
 - 1.0 hr. – H & H analysis review
 - 3.0 hrs. – Memo outline and draft version
 - 2.0 hrs. – Incorporating COF comments and updating version 2
 - Lead Engineer: 8 hours x \$167 / hr. = \$1,336 – Task: H & H analysis for multiple options, Research & Verification of Design Parameters, Meeting Prep & Attendance
 - 2 hrs. – COF and NDDOT meeting preparation & attendance (2 meetings)
 - 2 hrs. – Research and verification of design parameters
 - 2 hrs. – Review options and outline options for analysis
 - 2 hrs. – H & H analysis for multiple options
 - Design Engineer = 12 hrs. x \$115 / hr. = \$1,380 – Task: Cost analysis, H & H analysis, Research & Verification of Design Parameters, Meeting Prep. & Attendance
 - 2 hrs. – COF and NDDOT meeting preparation & attendance (2 meetings)

- 2 hrs. – Research and verification of design parameters
- 6 hrs. – H & H analysis for multiple options
- 2 hrs. – Cost Analysis multiple options
- Graduate Engineer = 8 hrs. x \$99 / hr. = \$792 – Task – Cost analysis for multiple options, exhibit preparation
 - 4 hrs. – Exhibit preparation
 - 2 hrs. – Constructability analysis of each option
 - 2 hrs. – Cost analysis for multiple options
- **Subtotal = \$5,668**

7.04 Preliminary Engineering – Exhibit Prep & Information Gathering for Commission

During the decision making process the Fargo City Commission requested additional analysis and exhibit preparation, in order that they could understand the process of how the recommended alternative was selected by City of Fargo Engineering and Apex. Apex created / modified ten (10) exhibits for review and use by engineering and for the commission meetings. Apex and the City of Fargo Engineering staff also met two (2) times to discuss the analysis and develop a plan for delivery of the exhibits. These tasks were not part of the original scope.

- Additional Exhibit Preparation Time:
 - Senior Engineer: 12 hours x \$180 / hr. = \$2,160 – Task: Meeting Prep & Attendance, Correspondence with Project Team, Exhibit Review, Information Summary for COF Powerpoint, Cost Estimate Review.
 - 4.0 hrs. – COF and Apex meeting preparation & attendance (2 meetings)
 - 2.0 hrs. – Overall correspondence with Project Team
 - 3.0 hrs. – Exhibit Review
 - 2.0 hrs. – Information summary for COF powerpoint
 - 1.0 hr. – Cost estimate review
 - Lead Engineer: 29 hours x \$167 / hr. = \$4,843 – Task: Meeting Prep & Attendance, Traffic Analysis & Review, Turn Lane Analysis and Overall Storage / Taper Review, LOS Impacts, Exhibit Preparation & Review, Information Summary for COF Powerpoint
 - 4.0 hrs. – COF and Apex meeting preparation & attendance (2 meetings)
 - 2.0 hrs. – Traffic analysis & review based on exhibits modifications
 - 2.0 hrs. – Turn lane analysis and overall storage / taper review
 - 2.0 hrs. – LOS impacts based on geometry modifications
 - 8.0 hrs. – Exhibit preparation and review
 - 11.0 hrs. – Information summary for COF powerpoint
 - Project Engineer = 74 hrs. x \$123 / hr. = \$9,102 – Task: Meeting Prep & Attendance, Research and Verification of Project Design, Exhibit Preparation, Exhibit Modifications, and Cost Review and Analysis
 - 4.0 hrs. – COF and Apex meeting preparation & attendance (2 meetings)
 - 6.0 hrs. – Research and verification of project design
 - 50.0 hrs. – Exhibit Preparation (6 Project Layout Exhibits & 4 Typical Section Layouts – 5 hrs. / Layout)
 - 10.0 hrs. – Modifications to exhibits after COF review
 - 4.0 hrs. – Cost Review & Analysis
 - Graduate Engineer = 38 hrs. x \$115 / hr. = \$4,370 – Task: Research and Verification of Project Design, Exhibit Preparation, Exhibit Modifications, Cost Review and Analysis
 - 30.0 hrs. – Exhibit Preparation (6 Project Layout Exhibits & 4 Typical Section Layouts – 5 hrs. / Layout)

- 6.0 hrs. – Modifications to exhibits after COF review
- 2.0 hrs. – Preliminary Cost Review & Analysis
- **Subtotal = \$20,475**

7.05 Design and Plan Preparation – Survey & CAD (PLSS Elements on Permanent ROW Exhibits)

Apex provided field data collection and CAD editing / drafting of the survey for PLSS elements such as property corners and section line corners. These elements were used to finalize permanent right of way exhibits. This was not part of our original scope.

- Additional Survey Time (To collect field data and complete the CADD editing of the data):
 - Senior Survey Crew Chief: 31 hours x \$146 / hr. = \$4,526
 - 4 hrs. to gather information and prep for field work.
 - 27 hrs. in field to find corners and collect data. (Three – 9 hr. days)
 - Survey Technician: 27 hours x \$90 / hr. = \$2,430
 - 27 hrs. in field to find corners and collect data. (Three – 9 hr. days)
 - Senior Engineer Technician (CADD Editing) = 23 hrs. x \$126 / hr. = \$2,898
 - 23 hrs. to create and update CADD files.
 - **Subtotal = \$9,854**

7.06 Design and Plan Preparation – ROW Exhibits

Our original scope estimated up to six (6) parcels for the preparation of legal descriptions and exhibits for this project. After final design and the direction to try and save as many mature trees as possible on the south side of 32nd Street, it was determined that Apex would prepare legal descriptions and exhibits for fifteen (15) parcels. Our original scope included 4 hours / parcel for a Lead Engineer Tech and 2 hours / parcel for a Senior Engineer. The additional nine (9) parcels were not part of the original scope.

- Senior Engineer 18 hours x \$180 / hr. = \$3,240
 - 2 hrs. x 9 parcels = 18 hrs.
- Lead Engineer Technician = 36 hrs. x \$109 / hr. = \$3,924
 - 4 hrs. x 9 parcels = 36 hrs.
- **Subtotal = \$7,164**

7.07 Design and Plan Preparation – Coordination and Direct Expenses

Our original scope did not include direct expenses necessary for the preparation of the basic data book, title work, and appraisal reports to acquire new permanent easements along the project corridor.

- Additional Coordination / Administration:
 - Senior Engineer 18 hours x \$180 / hr. = \$3,240
- Additional Direct Expenses for each task:
 - Basic Data Book (RM Hoefs & Associates, Inc.) = \$8,750
 - Title Services (Red River Title Services, Inc.) = \$1,500
 - 15 Parcels @ \$100 / parcel = \$1,500
 - Appraisal Reports (RM Hoefs & Associates, Inc.) = \$7,400
 - **Subtotal = \$20,890**

Grand Total for Supplemental #1 = \$71,026

(32)

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Improvement District No. BR-20-B1

Type: Final Balancing Change Order #2

Location: 7 Ave N, Bdwy – 2 St

Date of Hearing: 10/11/2021

RoutingDate

City Commission

10/18/2021

PWPEC File

X

Project File

Rick Larson

The Committee reviewed the accompanying correspondence from Project Manager, Rick Larson, regarding Final Balancing Change Order #2 in the amount of \$24,929.92, which reconciles the measured quantities used in the field with those estimated for the contract

Staff is recommending approval of Final Balancing Change Order #2 in the amount of \$24,929.92, bringing the total contract amount to \$2,389,414.22.

On a motion by Kent Costin, seconded by Steve Sprague, the Committee voted to recommend approval of Final Balancing Change Order #2 to Dakota Underground.

RECOMMENDED MOTION

Concur with recommendations of PWPEC and approve Final Balancing Change Order #2 in the amount of \$24,929.92 bringing the total contract amount to \$2,389,414.22 to Dakota Underground.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: Water Utility, WW Utility, Sales Tax & Special Assessments

Yes No

Developer meets City policy for payment of delinquent specials

N/A

Agreement for payment of specials required of developer

N/A

Letter of Credit required (per policy approved 5-28-13)

N/ACOMMITTEE

<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Unanimous</u>
			<u><input checked="" type="checkbox"/></u>
<u><input type="checkbox"/></u>	<u><input type="checkbox"/></u>	<u><input type="checkbox"/></u>	
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<u><input checked="" type="checkbox"/></u>	<u><input checked="" type="checkbox"/></u>	<u><input type="checkbox"/></u>	

Tim Mahoney, Mayor

Nicole Crutchfield, Director of Planning

Steve Dirksen, Fire Chief

Bruce Grubb, City Administrator

Ben Dow, Director of Operations

Steve Sprague, City Auditor

Brenda Derrig, City Engineer

Kent Costin, Finance Director

ATTEST:



Brenda E. Derrig, P.E.
City Engineer

C: Kristi Olson

Memorandum

To: Members of PWPEC
From: Rick Larson, Project Manager
Date: September 30, 2021
Re: Improvement District No. BR-20-B1 – Final Balancing Change Order #2

Background:

Attached is the Final Balancing Change Order #2, for \$24,929.92. The Contractor met the requirements of the contract and it has been accepted by the City. This FBCO reconciles the estimated quantities used in the contract with the final quantities as measured in the field.

In addition, the Contractor opened the road 20 days ahead of schedule, which qualified them for the full incentive payment of \$100,000 (Previously approved for this project). The incentive was not included in the contract and adjusts the final payment as follows:

Original Contract:	\$ 2,375,116.80
Change Order #1	\$ -10,632.50
FBCO #2:	\$ 24,929.92
Incentive:	<u>\$ 100,000.00</u>
Total Contract w/Incentive:	\$ 2,489,414.22

Recommended Motion:

Approve the Final Balancing Change Order #2 in the amount of \$24,929.92 to Dakota Underground.

Attachment
C: Tom Knakmuhs



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

Improvement District No BR-20-B1	Change Order No 2	
Project Name Water Main Replacement, Sanitary Sewer Replacement, Street Reconstruction & Incidentals		
Date Entered 9/27/2021	For Dakota Underground Co Inc	

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

EXPLANATION OF CHANGE: Final Balancing

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

Section	Line No	Item Description	Unit	Orig Cont Qty	Prev C/O Qty	Prev Cont Qty	Curr C/O Qty	Tot Cont Qty	Unit Price (\$)	C/O Ext Price (\$)
Sanitary Sewer	3	Eliminate Sewer Service	EA	2.00	0.00	2.00		1.00	1,570.00	1,570.00
	5	Bore Pipe SDR 26 - 6" Dia PVC	LF	20.00	0.00	20.00		-20.00	70.00	-1,400.00
	6	F&I Pipe w/GB SDR 26 - 6" Dia PVC	LF	133.00	0.00	133.00		-19.50	65.00	-1,267.50
	7	F&I Pipe w/GB SDR 26 - 8" Dia PVC	LF	20.00	0.00	20.00		2.00	100.00	200.00
	11	Clean Pipe All Sizes All Types	LF	806.00	0.00	806.00		-806.00	5.00	-4,030.00
Sanitary Sewer Sub Total (\$)										-4,927.50
Water Main Replacement	15	Remove Pipe - Asbestos Cement	LF	230.00	0.00	230.00		-230.00	52.00	-11,960.00
	17	F&I Fittings C153 Ductile Iron	LB	3,222.00	0.00	3,222.00		-25.00	7.85	-196.25
	18	F&I Pipe w/GB C900 DR 18 - 4" Dia PVC	LF	27.00	0.00	27.00		-10.50	87.00	-913.50
	19	F&I Pipe w/GB C900 DR 18 - 6" Dia PVC	LF	117.00	0.00	117.00		-34.50	90.00	-3,105.00
	20	F&I Pipe w/GB C900 DR 18 - 8" Dia PVC	LF	18.00	0.00	18.00		-9.00	95.00	-855.00
	21	F&I Pipe w/GB C900 DR 18 - 10" Dia PVC	LF	529.00	0.00	529.00		28.00	92.00	2,576.00
	22	F&I Pipe w/GB C900 DR 18 - 12" Dia PVC	LF	43.00	0.00	43.00		2.00	106.00	212.00
	23	F&I Pipe w/GB C900 DR 18 - 16" Dia PVC	LF	911.00	0.00	911.00		4.75	108.00	513.00
	24	F&I 1-1/4" Trench Found Rock 4" thru 12" Dia	LF	200.00	0.00	200.00		-200.00	0.01	-2.00



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

Water Main Replacement	25	F&I 1-1/4" Trench Found Rock 14" thru 24" Dia	LF	200.00	0.00	200.00	-200.00	0.00	0.01	-2.00
	26	F&I Gate Valve 4" Dia	EA	3.00	0.00	3.00	-1.00	2.00	1,300.00	-1,300.00
	27	F&I Gate Valve 6" Dia	EA	6.00	0.00	6.00	1.00	7.00	1,500.00	1,500.00
	28	F&I Gate Valve 8" Dia	EA	1.00	0.00	1.00	-1.00	0.00	1,850.00	-1,850.00
	31	Bore Pipe 1" Dia Water Service	LF	20.00	0.00	20.00	-20.00	0.00	60.00	-1,200.00
	32	F&I Pipe w/GB 1" Dia Water Service	LF	81.00	0.00	81.00	-15.00	66.00	60.00	-900.00
	33	F&I Pipe w/GB 2" Dia Water Service	LF	36.00	0.00	36.00	13.60	49.60	110.00	1,496.00
	34	Rem & Repl CS & Box 1" Dia	EA	4.00	0.00	4.00	-2.00	2.00	570.00	-1,140.00
	35	Rem & Repl CS & Box 2" Dia	EA	2.00	0.00	2.00	1.00	3.00	1,060.00	1,060.00
Water Main Replacement Sub Total (\$)										
										-16,066.75
Storm Sewer	39	Remove Manhole	EA	4.00	0.00	4.00	1.00	5.00	800.00	800.00
	40	Remove Inlet	EA	15.00	0.00	15.00	-1.00	14.00	400.00	-400.00
	41	Modify Manhole	EA	2.00	0.00	2.00	-1.00	1.00	3,200.00	-3,200.00
	43	F&I Inlet - Single Box (SBI) Reinf Conc	EA	14.00	0.00	14.00	-1.00	13.00	2,750.00	-2,750.00
	47	F&I Pipe w/GB 12" Dia Reinf Conc	LF	225.00	0.00	225.00	39.80	264.80	84.00	3,343.20
	48	F&I Pipe w/GB 15" Dia Reinf Conc	LF	408.00	0.00	408.00	-13.60	394.40	92.00	-1,251.20
	49	F&I Pipe w/GB 18" Dia Reinf Conc	LF	61.00	0.00	61.00	4.40	65.40	106.00	466.40
	50	F&I Pipe w/GB 24" Dia Reinf Conc	LF	75.00	0.00	75.00	-8.50	66.50	115.00	-977.50
	51	Connect Pipe to Exist Structure	EA	5.00	0.00	5.00	1.00	6.00	1,000.00	1,000.00
	169	* Extra-Lower ST-8	LS	0.00	0.00	0.00	1.00	1.00	382.59	382.59
Storm Sewer Sub Total (\$)										
										-2,586.51
Paving	54	Remove Pavement All Thicknesses All Types	SY	6,420.00	0.00	6,420.00	204.67	6,624.67	12.00	2,456.04
	55	Remove Curb & Gutter	LF	3,105.00	0.00	3,105.00	91.80	3,196.80	4.00	367.20
	56	Remove Driveway All Thicknesses All Types	SY	625.00	0.00	625.00	-117.31	507.69	8.00	-938.48
	57	Remove Sidewalk All Thicknesses All Types	SY	1,420.00	0.00	1,420.00	20.19	1,440.19	8.00	161.52
	58	Subgrade Preparation	SY	7,436.00	0.00	7,436.00	71.27	7,507.27	4.00	285.08
	59	F&I Woven Geotextile	SY	7,611.00	0.00	7,611.00	124.63	7,735.63	1.90	236.80



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

Paving	60	F&I Class 5 Agg - 8" Thick	SY	686.00	0.00	686.00	36.64	722.64	9.00	329.76
	61	F&I Class 5 Agg - 12" Thick	SY	6,750.00	0.00	6,750.00	34.69	6,784.69	13.00	450.97
	62	F&I Curb & Gutter Standard (Type II)	LF	3,312.00	0.00	3,312.00	25.70	3,337.70	22.00	565.40
	63	F&I Pavement 9" Thick Doweled Conc	SY	5,671.00	0.00	5,671.00	99.01	5,770.01	80.00	7,920.80
	64	F&I Edge Drain 4" Dia PVC	LF	3,075.00	0.00	3,075.00	47.30	3,122.30	7.00	331.10
	65	F&I Asphalt Cement PG 58S-34	TON	22.00	0.00	22.00	-2.63	19.37	620.00	-1,630.60
	66	F&I Aggregate for Asph Pavement FAA 43	TON	317.00	0.00	317.00	46.37	363.37	98.00	4,544.26
	67	F&I Sidewalk 4" Thick Reinf Conc	SY	1,375.00	0.00	1,375.00	93.51	1,468.51	43.00	4,020.93
	68	F&I Sidewalk 6" Thick Reinf Conc	SY	155.00	0.00	155.00	-38.16	116.84	48.00	-1,831.68
	69	F&I Det Warn Panels Cast Iron	SF	288.00	0.00	288.00	16.00	304.00	47.00	752.00
	70	F&I Driveway 6" Thick Reinf Conc	SY	146.00	0.00	146.00	288.08	434.08	50.00	14,404.00
	71	F&I Driveway 7" Thick Reinf Conc	SY	288.00	0.00	288.00	-288.00	0.00	52.00	-14,976.00
	72	F&I Impressioned 6" Thick Reinf Conc	SY	85.00	0.00	85.00	43.22	128.22	82.00	3,544.04
	73	Casting to Grade - w/Conc	EA	36.00	0.00	36.00	3.00	39.00	400.00	1,200.00
	75	GV Box to Grade - w/Conc	EA	9.00	0.00	9.00	2.00	11.00	400.00	800.00
	76	GV Box to Grade - no Conc	EA	1.00	0.00	1.00	1.00	2.00	700.00	700.00
	77	GV Box to Grade - Blvd	EA	6.00	0.00	6.00	-2.00	4.00	300.00	-600.00
	78	F&I Flat MH Cover 8" Thick Reinf Conc	EA	2.00	0.00	2.00	-2.00	0.00	1,200.00	-2,400.00
	79	Rem & Repl Casting - Floating Manhole	EA	6.00	0.00	6.00	1.00	7.00	1,500.00	1,500.00
	80	Rem & Repl Casting - Self Leveling	EA	2.00	0.00	2.00	-2.00	0.00	1,500.00	-3,000.00
	81	Rem & Repl Casting - Std Manhole	EA	4.00	0.00	4.00	-1.00	3.00	530.00	-530.00
	82	F&I Casting - Water Service	EA	2.00	0.00	2.00	-1.00	1.00	200.00	-200.00
	84	Inlet Protection - Existing Inlet	EA	36.00	0.00	36.00	-4.00	32.00	100.00	-400.00
	86	Temp Construction Entrance	EA	2.00	0.00	2.00	-1.00	1.00	800.00	-800.00
	87	Mulching Type 1 - Hydro	SY	4,500.00	0.00	4,500.00	1,132.23	5,632.23	0.35	396.28
	88	Seeding Type C	SY	4,500.00	0.00	4,500.00	1,132.23	5,632.23	2.36	2,672.06
	89	Weed Control Type B	SY	4,500.00	0.00	4,500.00	-4,500.00	0.00	0.08	-360.00



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

Paving	90	Remove Tree	EA	2.00	0.00	2.00	-1.00	1.00	600.00	-600.00
	91	Salvage Tree	EA	1.00	0.00	1.00	-1.00	0.00	630.00	-630.00
	93	F&I Conduit 2.5" Dia	LF	150.00	0.00	150.00	-30.00	120.00	10.00	-300.00
	94	Boulevard Grading	SY	4,500.00	0.00	4,500.00	-955.37	3,544.63	4.00	-3,821.48
	95	F&I Class 5 Agg - 6" Thick	SY	175.00	0.00	175.00	82.94	257.94	7.50	622.05
	170	* Extra-Business Signs	EA	0.00	0.00	0.00	1.00	1.00	495.00	495.00
	176	* Extra - 2nd Street Traffic Control	LS	0.00	0.00	0.00	1.00	1.00	984.50	984.50
Paving Sub Total (\$)										16,721.55
Street Lighting	96	Remove Street Light	EA	9.00	0.00	9.00	-1.00	8.00	195.00	-195.00
	97	Remove Base	EA	9.00	0.00	9.00	-1.00	8.00	445.00	-445.00
	99	Remove Pull Box	EA	2.00	0.00	2.00	-1.00	1.00	1,150.00	-1,150.00
	102	F&I Innerduct 1.5" Dia	LF	1,856.00	0.00	1,856.00	37.00	1,893.00	6.95	257.15
	103	F&I Conductor #6 USE Cu	LF	5,796.00	0.00	5,796.00	-489.00	5,307.00	1.75	-855.75
	171	F&I Luminaire Type A	EA	5.00	0.00	5.00	3.00	8.00	577.50	1,732.50
	Street Lighting Sub Total (\$)									-656.10
Traffic Signals	105	Remove Foundation Type IV/Combo	EA	5.00	0.00	5.00	-1.00	4.00	1,750.00	-1,750.00
	111	Remove Pull Box PVC	EA	4.00	0.00	4.00	1.00	5.00	440.00	440.00
	112	F&I Pull Box PVC	EA	12.00	0.00	12.00	2.00	14.00	1,250.00	2,500.00
	113	F&I Pull Box Polymer Conc	EA	1.00	0.00	1.00	2.00	3.00	3,640.00	7,280.00
	114	F&I Ped Push Button & Sign	EA	16.00	0.00	16.00	2.00	18.00	1,180.00	2,360.00
	115	F&I Ped Push Button Post	EA	7.00	0.00	7.00	3.00	10.00	1,220.00	3,660.00
	117	F&I Foundation Type IV/Combo	EA	6.00	0.00	6.00	-1.00	5.00	3,900.00	-3,900.00
	119	F&I Ped Head 1 Sect Countdown w/LED Mtd	EA	10.00	0.00	10.00	8.00	18.00	945.00	7,560.00
	136	F&I Signal Cable #6 RHW	LF	1,221.00	0.00	1,221.00	213.00	1,434.00	1.75	372.75
	139	F&I Conduit 2" Dia	LF	597.00	0.00	597.00	1,486.00	2,083.00	9.05	13,448.30
	140	F&I Conduit 4" Dia	LF	659.00	0.00	659.00	-9.00	650.00	10.70	-96.30
	141	F&I Fiber Optic Cable	LF	2,500.00	0.00	2,500.00	-1,300.00	1,200.00	2.15	-2,795.00
	144	F&I Detection Preformed Loop	EA	56.00	0.00	56.00	-4.00	52.00	990.00	-3,960.00



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

Traffic Signals	146	F&I Signal Standard Type V 15' High	EA	1.00	0.00	1.00	1.00	2.00	2,460.00	2,460.00
	172	* Extra-Lower 3 Utility Vaults	LS	0.00	0.00	0.00	1.00	1.00	1,603.73	1,603.73
	173	* Extra-New Vault Work	LS	0.00	0.00	0.00	1.00	1.00	1,100.00	1,100.00
	174	* Existing fiber cable we too short after need to move the splice vault.	LS	0.00	0.00	0.00	1.00	1.00	4,215.23	4,215.23
	175	* Extra-Fiber Markup	LS	0.00	0.00	0.00	1.00	1.00	229.02	229.02
Traffic Signals Sub Total (\$)										
										34,727.73
Pavement Markings	155	Obliterate Pavement Markings	SF	372.00	0.00	372.00	-372.00	0.00	5.25	-1,953.00
	156	F&I Grooved Plastic Film Message	SF	240.00	0.00	240.00	16.00	256.00	72.45	1,159.20
	157	F&I Grooved Contrast Film 7" Wide	LF	2,916.00	0.00	2,916.00	-175.00	2,741.00	12.60	-2,205.00
	158	F&I Grooved Contrast Film 11" Wide	LF	374.00	0.00	374.00	60.00	434.00	19.95	1,197.00
	159	F&I Grooved Plastic Film 16" Wide	LF	181.00	0.00	181.00	54.00	235.00	29.40	1,587.60
	161	Paint Epoxy Message	SF	144.00	0.00	144.00	-16.00	128.00	12.60	-201.60
	162	Paint Epoxy Line 4" Wide	LF	849.00	0.00	849.00	228.00	1,077.00	3.65	832.20
	163	Paint Epoxy Line 8" Wide	LF	106.00	0.00	106.00	96.00	202.00	5.65	542.40
	164	Paint Epoxy Line 16" Wide	LF	39.00	0.00	39.00	-12.00	27.00	9.50	-114.00
	165	F&I Green Pavement Markings	SF	370.00	0.00	370.00	-90.00	280.00	45.00	-4,050.00
Pavement Markings Sub Total (\$)										
										-3,205.20
Signage	166	F&I Sign Assembly & Anchor	EA	22.00	0.00	22.00	2.00	24.00	180.00	360.00
	167	F&I Diamond Grade Cubed	SF	94.45	0.00	94.45	-12.70	81.75	20.00	-254.00
	168	F&I High Intensity Prismatic	SF	81.75	0.00	81.75	12.70	94.45	21.00	266.70
	177	* Extra - Reset Church Parking Lot Sign	LS	0.00	0.00	0.00	1.00	1.00	550.00	550.00
Signage Sub Total (\$)										
										922.70
Grand Total (\$)										24,929.92

* NC Items

Summary

Source Of Funding

Net Amount Change Order # 2 (\$)

24,929.92



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

Previous Change Orders (\$)	-10,632.50
Original Contract Amount (\$)	2,375,116.80
Total Contract Amount (\$)	2,389,414.22

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

CONTRACT TIME

Current Substantial Completion Date	Current Final Completion Date	Additional Days Substantial Completion	Additional Days Final Completion	New Substantial Completion Date	New Final Completion Date
01/15/2021	05/07/2021	0.00	0.00	01/15/2021	05/07/2021

Description

APPROVED

For Contractor

Title

APPROVED DATE

Department Head

Mayor

Attest

[Signature]
Project Manager

[Signature]
10/13/21



October 13, 2021

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

Re: Approval of Negative Final Balancing Change Order #1
BN-20-H1 New Utilities and Paving in Valley View Estates

Dear Commissioners:

Attached is the Negative Final Balancing Change Order #1 in the amount of \$-695.20, which reconciles the measured quantities used in the field with those estimated for the contract. This project is funded by special assessments.

Staff is recommending approval of Negative Final Balancing Change Order #1 in the amount of \$-695.20, bringing the total contract amount to \$1,968,388.60 to Ryan Contracting.

Recommended Motion

Approve Negative Final Balancing Change Order #1 in the amount of \$-695.20, bringing the total contract amount to \$1,968,388.60 to Ryan Contracting.

Sincerely,

Brenda E. Derrig, PE
City Engineer

BED/jmg
Attachments



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

Improvement District No	BN-20-H1	Change Order No	1
Project Name	Sanitary Sewer, Water Main, Storm Sewer, Paving, Street Lights & Incidentals		
Date Entered	9/13/2021	For	Ryan Contracting

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

EXPLANATION OF CHANGE: Final Balancing

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

Section	Line No	Item Description	Unit	Orig Cont Qty	Prev C/O Qty	Prev Cont Qty	Curr C/O Qty	Tot Cont Qty	Unit Price (\$)	C/O Ext Price (\$)
Miscellaneous	4	Seeding Type C	SY	67,800.00	0.00	67,800.00	-7,321.00	60,479.00	0.30	-2,196.30
	5	Mulching Type 2 - Straw	SY	67,800.00	0.00	67,800.00	-7,321.00	60,479.00	0.10	-732.10
	8	Sediment Control Log 6" to 8" Dia	LF	225.00	0.00	225.00	-105.00	120.00	5.00	-525.00
	9	Temp Construction Entrance	EA	2.00	0.00	2.00	-1.00	1.00	800.00	-800.00
Miscellaneous Sub Total (\$)										
Sanitary Sewer	14	F&I Pipe SDR 26 - 6" Dia PVC	LF	3,035.00	0.00	3,035.00	-128.10	2,906.90	30.00	-3,843.00
	15	F&I Pipe SDR 26 - 8" Dia PVC	LF	2,160.00	0.00	2,160.00	39.50	2,199.50	40.00	1,580.00
	16	F&I Pipe SDR 35 - 10" Dia PVC	LF	380.00	0.00	380.00	-2.00	378.00	50.00	-100.00
	17	F&I Pipe SDR 35 - 12" Dia PVC	LF	180.00	0.00	180.00	-4.00	176.00	60.00	-240.00
Sanitary Sewer Sub Total (\$)										
Water Main	19	F&I Fittings C153 Ductile Iron	LB	1,183.00	0.00	1,183.00	-4.00	1,179.00	4.00	-16.00
	22	F&I Pipe C900 DR 18 - 6" Dia PVC	LF	60.00	0.00	60.00	-2.00	58.00	34.00	-68.00
	23	F&I Pipe C900 DR 18 - 8" Dia PVC	LF	2,830.00	0.00	2,830.00	-3.10	2,826.90	35.00	-108.50
	26	F&I Gate Valve 8" Dia	EA	7.00	0.00	7.00	1.00	8.00	2,300.00	2,300.00
	27	F&I Pipe 1" Dia Water Service	LF	2,645.00	0.00	2,645.00	34.00	2,679.00	20.00	680.00
Water Main Sub Total (\$)										
Storm Sewer	32	F&I 1-1/4" Trench Found Rock 27" thru 36" Dia	LF	494.00	0.00	494.00	-494.00	0.00	5.00	-2,470.00
	33	F&I 1-1/4" Trench Found Rock 42" thru 54" Dia	LF	340.00	0.00	340.00	-340.00	0.00	8.00	-2,720.00

CITY OF FARGO
ENGINEERING DEPARTMENT
CHANGE ORDER REPORT

Storm Sewer									
36	F&I Manhole 4' Dia Reinf Conc	EA	10.00	0.00	10.00	1.00	11.00	2,200.00	2,200.00
38	F&I Manhole 5' Dia Reinf Conc	EA	3.00	0.00	3.00	1.00	4.00	3,600.00	3,600.00
47	F&I Pipe 12" Dia	LF	1,475.00	0.00	1,475.00	-236.30	1,238.70	39.00	-9,215.70
48	F&I Pipe 15" Dia	LF	915.00	0.00	915.00	230.00	1,145.00	43.00	9,890.00
49	F&I Pipe 18" Dia	LF	1,135.00	0.00	1,135.00	-3.20	1,131.80	48.00	-153.60
50	F&I Pipe 36" Dia	LF	175.00	0.00	175.00	-1.00	174.00	105.00	-105.00
51	F&I Pipe 42" Dia	LF	270.00	0.00	270.00	-0.80	269.20	135.00	-108.00
52	F&I Pipe 24" Dia Reinf Conc	LF	300.00	0.00	300.00	-13.00	287.00	60.00	-780.00
53	F&I Pipe 36" Dia Reinf Conc	LF	650.00	0.00	650.00	-2.90	647.10	95.00	-275.50
54	F&I Pipe 42" Dia Reinf Conc	LF	70.00	0.00	70.00	-1.40	68.60	145.00	-203.00
56	F&I Pipe w/GB 15" Dia Reinf Conc	LF	200.00	0.00	200.00	-4.90	195.10	60.00	-294.00
58	F&I Pipe w/GB 36" Dia Reinf Conc	LF	66.00	0.00	66.00	-0.30	65.70	150.00	-45.00
60	Rem & Repl Shared Use Path 5" Thick Reinf Conc	SY	94.00	0.00	94.00	-46.50	47.50	60.00	-2,790.00
Storm Sewer Sub Total (\$)									-3,469.80
Paving									
63	Excavation	CY	1,649.00	0.00	1,649.00	1,434.00	3,083.00	5.00	7,170.00
70	F&I Curb & Gutter Mountable (Type I)	LF	5,345.00	0.00	5,345.00	33.90	5,378.90	19.50	661.05
71	F&I Curb & Gutter Standard (Type II)	LF	70.00	0.00	70.00	-9.10	60.90	40.35	-367.19
72	F&I Sidewalk 4" Thick Reinf Conc	SY	395.00	0.00	395.00	63.40	458.40	46.00	2,915.40
73	F&I Sidewalk 6" Thick Reinf Conc	SY	59.00	0.00	59.00	5.53	64.53	58.65	324.33
74	Remove Sidewalk All Thicknesses All Types	SY	115.00	0.00	115.00	0.60	115.60	10.00	6.00
75	F&I Shared Use Path 5" Thick Reinf Conc	SY	527.00	0.00	527.00	-94.82	432.18	50.65	-4,802.63
76	F&I Det Warn Panels Cast Iron	SF	154.00	0.00	154.00	-24.10	129.90	42.00	-1,012.20
77	F&I Aggregate for Asph Pavement FAA 43	TON	2,620.00	0.00	2,620.00	-28.87	2,591.13	36.65	-1,058.09
78	F&I Asphalt Cement PG 58H-34	TON	147.00	0.00	147.00	1.53	148.53	530.00	810.90
83	Seeding Type C	SY	13,500.00	0.00	13,500.00	2,273.00	15,773.00	0.35	795.55
84	Mulching Type 1 - Hydro	SY	13,500.00	0.00	13,500.00	2,273.00	15,773.00	0.45	1,022.85
Paving Sub Total (\$)									6,466.98

THE CITY OF
Fargo
FARMORE

* NC Items

Summary

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

CONTRACT TIME

Report Generated : 09/13/2021 07:04:47 PM



CITY OF FARGO
ENGINEERING DEPARTMENT
CHANGE ORDER REPORT

Description	APPROVED	APPROVED DATE
For Contractor	<i>Butter</i>	Department Head
Title	<i>Ryan Contracting Co.</i>	<i>T. COE</i>
	<i>CFD</i>	Mayor
		10/13/21
		Attest



October 14, 2021

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

**Re: Memorandum of Offer to Landowner
Permanent Easement (Street and Utility) – Improvement District #BR-22-A0**

Dear Commissioners:

Enclosed and delivered to the City Commission office is an original Memorandum of Offer to Landowner document for the acquisition of a permanent easement in association with Improvement District #BR-22-A0. Final purchase price has been reached and at this time we are requesting authorization from the Commission to proceed with the purchase. All land acquisition procedures have been followed and the City Engineer's office recommends purchase.

RECOMMENDED MOTION: I/we hereby move to approve and authorize purchase of a permanent easement from **Fargo Custard 182, LLC** in association with Improvement District #BR-22-A0 and that the Mayor is instructed to execute the Memorandum of Offer to Landowner & Easement document on behalf of the City of Fargo.

Please return the signed originals.

Respectfully submitted,

Shawn G. Bullinger
Land Acquisition Specialist

C: Jeremy Gorden
Nancy J. Morris

MEMORANDUM OF OFFER TO LANDOWNER

City of Fargo, Engineering Department

Project BR-22-A1	County Cass	Parcel(s) 5A & 5B
Landowner Fargo Custard 182 LLC		
Mailing Address PO Box 10, Lake Delton, WI 53940		

The following-described real property and/or related temporary easement areas are being acquired for project purposes:

See attached exhibit(s) to the easements accompanying this Memorandum of Offer.

I, as right of way agent for the City of Fargo, Engineering Department, am hereby authorized to offer the following amount of \$ 4,539.22 as full compensation for the fee and/or temporary taking of the foresaid parcels and all damages incidental thereto. The offer set forth has been established through one of the following, Basic Data Book, Certified Appraisal, City of Fargo Minimum Payment Policy. A breakdown of this offer is as follows:

Land	\$	
Easement and Access Control	\$	<u>4,539.22</u>
Improvements on Right of Way*	\$	
Damages to Remainder	\$	

Total Offer \$ 4,539.22

*Description of Damages to Remainder are as follows:

Owner Signature

Signature hereby constitutes acceptance of offer as presented above.

Shawn G. Bullinger

Land Acquisition Specialist, City of Fargo

Fargo City Commission has considered the offer and approves the same:

Timothy J. Mahoney

MAYOR

SIGNATURE

DATE



PERMANENT EASEMENT
(Street and Utility)

KNOW ALL MEN BY THESE PRESENTS that **FARGO CUSTARD 182, LLC**, a North Dakota limited liability company, hereinafter referred to as "Grantor", for and in consideration of the sum of One and no/100 Dollars (\$1.00) and other valuable consideration, to it in hand paid the receipt whereof is hereby acknowledged, **HEREBY GRANTS UNTO THE CITY OF FARGO, NORTH DAKOTA**, a municipal corporation, its successors and assigns, hereinafter referred to as "Grantee", a permanent and perpetual easement over, upon and in the land hereinafter described for the purpose of laying, constructing, operating, maintaining and repairing a street and all other public utilities, together with the customary appurtenances including location of any and all utilities, said parcel being more particularly described as follows:

Parcel 5A

A perpetual easement, over, under and across that part of Lot 1, Block 1, **FIRST CENTER SOUTH SECOND ADDITION** to the City of Fargo, situate in County of Cass and the State of North Dakota described as follows:

Commencing at the southwest corner of said Lot 1; thence North 87 degrees 54 minutes 27 seconds East along the south line of said Lot 1, a distance of 169.48 feet to the point of beginning; thence North 02 degrees 05 minutes 07 seconds West a distance of 8.00 feet; thence North 87 degrees 54 minutes 27 seconds East along a line that is parallel with and 8.00 feet northerly of said south line, a distance of 19.00 feet; thence North 02 degrees 05 minutes 07 seconds West along a line that is parallel with and 5.00 feet westerly of the west line of a Permanent Street and Utility Easement Document Number 939797 found in the Recorder's Office of said County of Cass, a distance of 27.00 feet; thence North 87 degrees 54 minutes 27 seconds East a distance of 5.00 feet to the west line of said Permanent Street and Utility Easement; thence South 02 degrees 05 minutes 07 seconds East along the said west line, a distance of 27.01 feet; thence South 85 degrees 05 minutes 26 seconds West along the north line of said Permanent Street and Utility Easement, a distance of 2.00 feet; thence South 02 degrees 05 minutes 07 seconds

East along the west line of said Street and Utility Easement, a distance of 7.90 feet; thence South 87 degrees 54 minutes 27 seconds West along the south line of said Lot 1, a distance of 22.00 feet to the point of beginning.

Said parcel contains 311 square feet, more or less, and is subject to existing easements of record.

Said parcel is pictorially represented on an Easement Plat attached hereto and incorporated herein by reference as Exhibit "A".

Grantor, its successors and assigns, hereby covenants to and with Grantee that Grantee's officers, contractors, agents and employees may at any and all times when necessary or convenient to do so, go over and upon said above-described parcel of land and perform any and all acts necessary or convenient to carry into effect the purpose for which the grant is made.

Grantor, its successors and assigns, further agrees that it will not disturb, injure, molest or in any manner interfere with said street and customary appurtenances including location of any and all utilities, or with material for laying, maintaining, operating or repairing the same, in, over or upon the above-described premises, and Grantor expressly warrants and states that no buildings, trees, shrubs or other obstacles of any kind shall be placed or located upon the parcel so as to interfere in any manner with the construction, operation, maintenance or repair of said street including location of any and all utilities or customary appurtenances, provided that Grantee, at its own expense, shall refill any excavation it makes and level the ground thereafter, leaving the premises in as good condition as it was prior to the time of constructing of said street and customary appurtenances was begun.

IN WITNESS WHEREOF, Grantor has set its hand and caused this instrument to be executed this 17 day of OCTOBER, 2021.

(Signatures on the following pages)

GRANTOR:

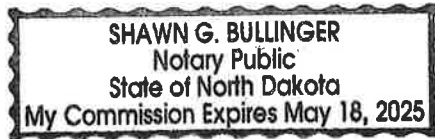
Fargo Custard 182, LLC
a North Dakota limited liability company

Ashley N
By: Ashley Nilson
Its: President

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

On this 12 day of OCTOBER 2021, before me, a notary public in and for said county and state, personally appeared ASHLEY NILSON, to me known to be the PRESIDENT of **Fargo Custard 182, LLC**, a North Dakota limited liability company, described in and who executed the within and foregoing instrument, and acknowledged to me that he/she executed the same.

(SEAL)



Shawn G. Bullinger
Notary Public
CASS County, NORTH DAKOTA

GRANTEE:

City of Fargo, a North Dakota municipal
corporation

Timothy J. Mahoney, M.D., Mayor

ATTEST

Steve Sprague, City Auditor

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

On this ____ day of _____, 2021, before me, a notary public in and for said county and state, personally appeared TIMOTHY J. MAHONEY, M.D. and STEVEN SPRAGUE, to me known to be the Mayor and City Auditor, respectively, of the City of Fargo, Cass County, North Dakota, the municipal corporation described in and that executed the within and foregoing instrument, and acknowledged to me that said municipal corporation executed the same.

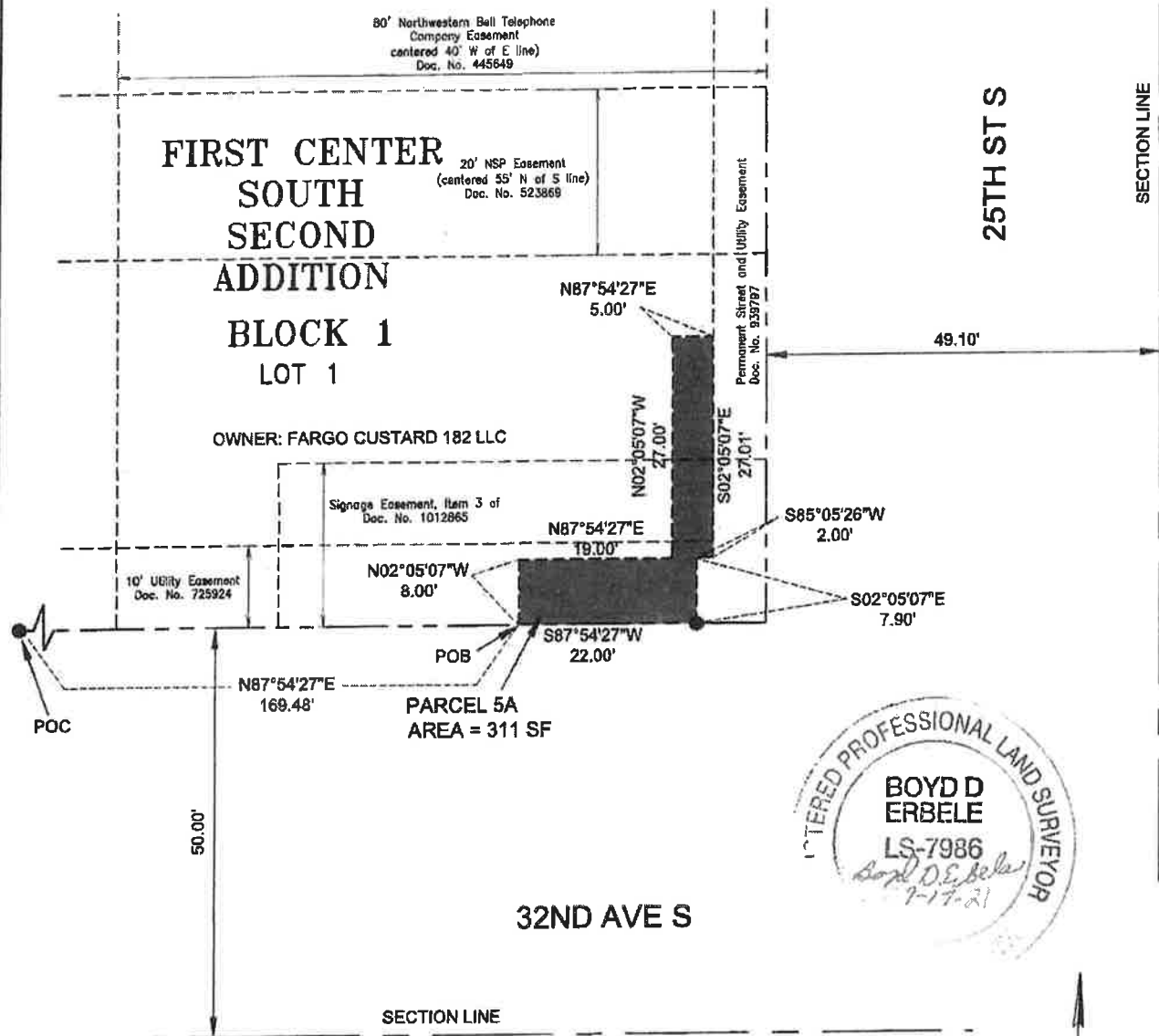
(SEAL)

Notary Public
Cass County, ND
My Commission expires:

The legal description was prepared by:
Boyd D. Erbele
Registered Land Surveyor
LS-7986
Apex Engineering Group
4733 Amber Valley Parkway S.
Fargo, ND 58104
(701) 373-7980

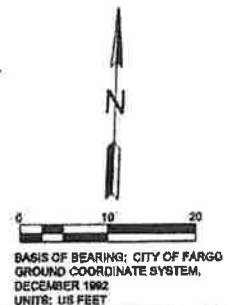
This document was prepared by:
Nancy J. Morris
Assistant City Attorney
Erik R. Johnson & Associates, Ltd.
505 Broadway N., Ste. 206
Fargo, ND 58102
(701) 280-1901
nmorris@lawfargo.com

EASEMENT EXHIBIT "A"



LEGEND

- PARCEL 5A
- P.O.C. POINT OF COMMENCEMENT
- P.O.B. POINT OF BEGINNING
- FOUND MONUMENT



Apex
Engineering Group

PERPETUAL EASEMENT - PARCEL 5A
32ND AVE S RECONSTRUCTION
FIRST CENTER SOUTH 2ND ADDITION
SECTION 23, T139N, R49W
FARGO, NORTH DAKOTA

Apex Project #: 20.103.0063
Date: 09/17/2021
Drawn By: Mike J
Checked By: Boyd E
Approved By: Boyd E

EASEMENT EXHIBIT "A"

Parcel 5A
(Perpetual Easement)

A perpetual easement, over, under and across that part of Lot 1, Block 1, FIRST CENTER SOUTH SECOND ADDITION to the City of Fargo, situate in County of Cass and the State of North Dakota described as follows:

Commencing at the southwest corner of said Lot 1; thence North 87 degrees 54 minutes 27 seconds East along the south line of said Lot 1, a distance of 169.48 feet to the point of beginning; thence North 02 degrees 05 minutes 07 seconds West a distance of 8.00 feet; thence North 87 degrees 54 minutes 27 seconds East along a line that is parallel with and 8.00 feet northerly of said south line, a distance of 19.00 feet; thence North 02 degrees 05 minutes 07 seconds West along a line that is parallel with and 5.00 feet westerly of the west line of a Permanent Street and Utility Easement Document Number 939797 found in the Recorder's Office of said County of Cass, a distance of 27.00 feet; thence North 87 degrees 54 minutes 27 seconds East a distance of 5.00 feet to the west line of said Permanent Street and Utility Easement; thence South 02 degrees 05 minutes 07 seconds East along the said west line, a distance of 27.01 feet; thence South 85 degrees 05 minutes 26 seconds West along the north line of said Permanent Street and Utility Easement, a distance of 2.00 feet; thence South 02 degrees 05 minutes 07 seconds East along the west line of said Street and Utility Easement, a distance of 7.90 feet; thence South 87 degrees 54 minutes 27 seconds West along the south line of said Lot 1, a distance of 22.00 feet to the point of beginning.

Said parcel contains 311 square feet, more or less, and is subject to existing easements of record.



CERTIFICATION

I, Boyd D. Erbele, hereby certify that I am a Licensed Land Surveyor in the State of North Dakota, that this survey was made by me or under my direction and supervision and that the survey is true and complete as shown.

Signed Boyd D. Erbele
Boyd D. Erbele
North Dakota Professional Land Surveyor
License Number LS-7986

Date 9-17-2021



PERPETUAL EASEMENT - PARCEL 5A
32ND AVE S RECONSTRUCTION
FIRST CENTER SOUTH 2ND ADDITION
SECTION 23, T139N, R49W
FARGO, NORTH DAKOTA

Apex Project #: 20.103.0063
Date: 09/17/2021
Drawn By: Mike J
Checked By: Boyd E
Approved By: Boyd E

EASEMENT
(Temporary Construction Easement)

KNOW ALL MEN BY THESE PRESENTS that **FARGO CUSTARD 182, LLC**, a North Dakota limited liability company, hereinafter referred to as "Grantor", for and in consideration of the sum of One Dollar and other valuable consideration (\$1.00), to it in hand paid the receipt whereof is hereby acknowledged, **HEREBY GRANTS UNTO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA**, a municipal corporation, its successors and assigns, hereinafter referred to as "Grantee", a temporary construction easement over, upon and in land hereinafter described for the purpose of road construction and activities appurtenant thereto, said land being more fully described, to-wit:

Parcel 5B

A temporary easement, over, under and across that part of Lot 1, Block 1, **FIRST CENTER SOUTH SECOND ADDITION** to the City of Fargo, situate in County of Cass and the State of North Dakota described as follows:

Commencing at the southwest corner of said Lot 1; thence North 87 degrees 54 minutes 27 seconds East along the south line of said Lot 1, a distance of 181.47 feet; thence North 02 degrees 05 minutes 07 seconds West, a distance of 8.00 feet to the point of beginning; thence North 02 degrees 05 minutes 07 seconds West along a line that is parallel with and 12.00 feet westerly of the west line of a Permanent Street and Utility Easement, Document Number 939797, found in the Recorder's Office of said County of Cass, a distance of 27.00 feet; thence North 87 degrees 54 minutes 27 seconds East, a distance of 7.00 feet to a point that is 5.00 feet westerly of the west line of said Permanent Street and Utility Easement; thence South 02 degrees 05 minutes 07 seconds East along a line that is parallel with and 5.00 feet westerly of said west line, a distance of 27.00 feet; thence South 87 degrees 54 minutes 27 seconds West a distance of 7.00 feet to the point of beginning.

Said parcel contains 189 square feet, more or less, and is subject to existing easements of record.

Said parcel is pictorially represented on Exhibit "A" attached hereto and incorporated herein by reference.

Grantor, its successors and assigns, hereby covenants to and with Grantee that Grantee's officers, contractors, agents and employees may at any and all times, when necessary or convenient to do so, go over and upon said above-described parcel of land and perform any and all acts necessary or convenient to carry into effect the purpose for which the grant is made.

Grantor, its successors and assigns, further agrees that it will not disturb, injure, molest or in any manner interfere with said parcel to be used for the storage of dirt and all other construction activities during the construction phase of said project and Grantor expressly warrants and states that no buildings, trees, shrubs or other obstacles of any kind shall be placed or located upon the parcel so as to interfere in any manner with the said parcel to be used for the storage of dirt and all other construction activities during the construction phase of said project, provided that Grantee, at its own expense, shall refill any excavation it makes and level the ground thereafter, leaving the premises in as good condition as it was prior to the time of storage of dirt and all other construction activities was begun.

This easement shall terminate at the completion of construction of the project, or on November 30, 2022, whichever occurs later.

IN WITNESS WHEREOF, Grantor set its hand and caused this instrument to be executed this 12 day of OCTOBER, 2021.

(Signatures on the following pages)

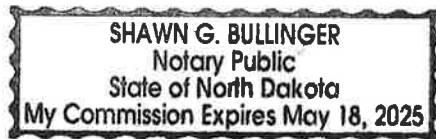
GRANTOR:

Fargo Custard 182, LLC
a North Dakota limited liability company

Ashley NO
By: Ashley Nilson
Its: President

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

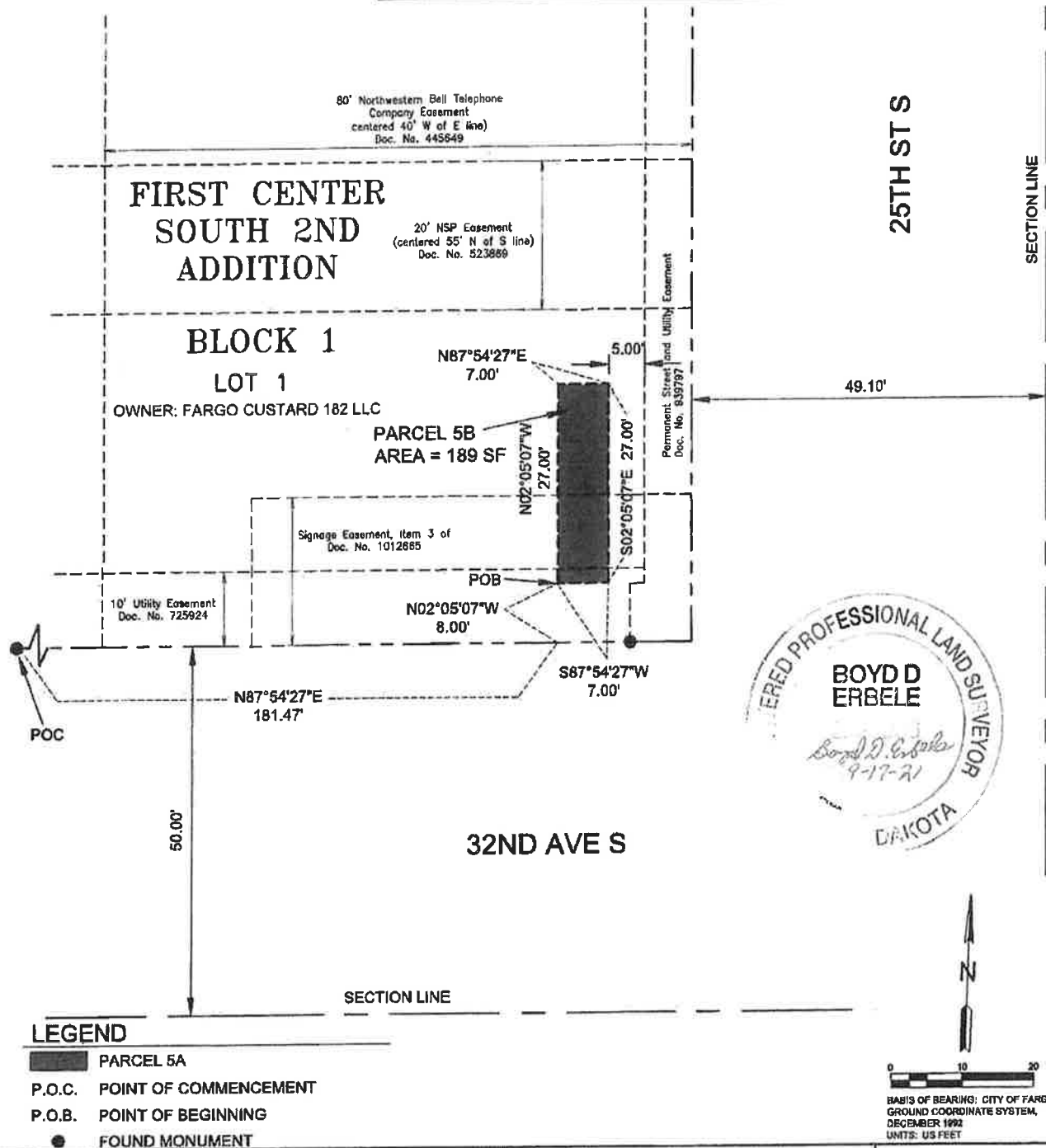
On this 12 day of OCTOBER, 2021, before me, a notary public in and for said county and state, personally appeared ASHLEY NILSON, to me known to be the PRESIDENT of **Fargo Custard 182, LLC**, a North Dakota limited liability company, described in and who executed the within and foregoing instrument, and acknowledged to me that he/she executed the same.



(SEAL)

Shawn G. Bullinger
Notary Public
CASS County, NORTH DAKOTA

EASEMENT EXHIBIT "A"



Apex
Engineering Group

TEMPORARY EASEMENT - PARCEL 5B
32ND AVE S RECONSTRUCTION
FIRST CENTER SOUTH 2ND ADDITION
SECTION 23, T139N, R49W
FARGO, NORTH DAKOTA

Apex Project #: 20.103.0063
Date: 09/17/2021
Drawn By: Mike J
Checked By: Boyd E
Approved By: Boyd E

EASEMENT EXHIBIT "A"

Parcel 5B
(Temporary Easement)

A temporary easement, over, under and across that part of Lot 1, Block 1, FIRST CENTER SOUTH SECOND ADDITION to the City of Fargo, situate in County of Cass and the State of North Dakota described as follows:

Commencing at the southwest corner of said Lot 1; thence North 87 degrees 54 minutes 27 seconds East along the south line of said Lot 1, a distance of 181.47 feet; thence North 02 degrees 05 minutes 07 seconds West, a distance of 8.00 feet to the point of beginning; thence North 02 degrees 05 minutes 07 seconds West along a line that is parallel with and 12.00 feet westerly of the west line of a Permanent Street and Utility Easement, Document Number 939797, found in the Recorder's Office of said County of Cass, a distance of 27.00 feet; thence North 87 degrees 54 minutes 27 seconds East, a distance of 7.00 feet to a point that is 5.00 feet westerly of the west line of said Permanent Street and Utility Easement; thence South 02 degrees 05 minutes 07 seconds East along a line that is parallel with and 5.00 feet westerly of said west line, a distance of 27.00 feet; thence South 87 degrees 54 minutes 27 seconds West a distance of 7.00 feet to the point of beginning.

Said parcel contains 189 square feet, more or less, and is subject to existing easements of record.



CERTIFICATION

I, Boyd D. Erbele, hereby certify that I am a Licensed Land Surveyor in the State of North Dakota, that this survey was made by me or under my direction and supervision and that the survey is true and complete as shown.

Signed Boyd D. Erbele
Boyd D. Erbele
North Dakota Professional Land Surveyor
License Number LS-7986

Date 9-17-2021



TEMPORARY EASEMENT - PARCEL 5B
32ND AVE S RECONSTRUCTION
FIRST CENTER SOUTH 2ND ADDITION
SECTION 23, T139N, R49W
FARGO, NORTH DAKOTA

Apex Project #: 20.103.0063
Date: 09/17/2021
Drawn By: Mike J
Checked By: Boyd E
Approved By: Boyd E



October 14, 2021

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

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

**Re: Memorandum of Offer to Landowner
Permanent Easement (Street and Utility) – Improvement District #BR-22-A0**

Dear Commissioners:

Enclosed and delivered to the City Commission office is an original Memorandum of Offer to Landowner document for the acquisition of a permanent easement in association with Improvement District #BR-22-A0. Final purchase price has been reached and at this time we are requesting authorization from the Commission to proceed with the purchase. All land acquisition procedures have been followed and the City Engineer's office recommends purchase.

RECOMMENDED MOTION: I/we hereby move to approve and authorize purchase of a permanent easement from **Monge Family Ltd. Partnership** in association with Improvement District #BR-22-A0 and that the Mayor is instructed to execute the Memorandum of Offer to Landowner & Easement document on behalf of the City of Fargo.

Please return the signed originals.

Respectfully submitted,

Shawn G. Bullinger
Land Acquisition Specialist

C: Jeremy Gorden
Nancy J. Morris

MEMORANDUM OF OFFER TO LANDOWNER

City of Fargo, Engineering Department

Project BR-22-A1	County Cass	Parcel(s) 4A
Landowner Monge Family LTD Partnership		
Mailing Address PO Box 1919, Fargo, ND 58107-1919		

The following-described real property and/or related temporary easement areas are being acquired for project purposes:

See attached exhibit(s) to the easements accompanying this Memorandum of Offer.

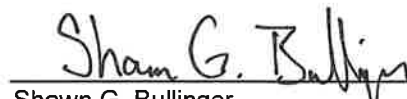
I, as right of way agent for the City of Fargo, Engineering Department, am hereby authorized to offer the following amount of \$ 7,336.00 as full compensation for the fee and/or temporary taking of the foresaid parcels and all damages incidental thereto. The offer set forth has been established through one of the following, Basic Data Book, Certified Appraisal, City of Fargo Minimum Payment Policy. A breakdown of this offer is as follows:

Land	\$	
Easement and Access Control	\$	<u>7,336.00</u>
Improvements on Right of Way*	\$	
Damages to Remainder	\$	

Total Offer \$ 7,336.00

*Description of Damages to Remainder are as follows:


 Owner Signature
 Signature hereby constitutes acceptance of offer as presented above.


 Shawn G. Bullinger
 Land Acquisition Specialist, City of Fargo

Fargo City Commission has considered the offer and approves the same:



Timothy J. Mahoney

MAYOR

SIGNATURE

DATE

PERMANENT EASEMENT
(Street and Utility)

KNOW ALL MEN BY THESE PRESENTS that **MONGE FAMILY PARTNERSHIP, LLLP**, a North Dakota limited liability limited partnership, hereinafter referred to as "Grantor", for and in consideration of the sum of One and no/100 Dollars (\$1.00) and other valuable consideration, to it in hand paid the receipt whereof is hereby acknowledged, HEREBY GRANTS UNTO THE **CITY OF FARGO, NORTH DAKOTA**, a municipal corporation, its successors and assigns, hereinafter referred to as "Grantee", a permanent and perpetual easement over, upon and in the land hereinafter described for the purpose of laying, constructing, operating, maintaining and repairing a street and all other public utilities, together with the customary appurtenances including location of any and all utilities, said parcel being more particularly described as follows:

Parcel 4A

A perpetual easement, over, under and across that part of Lot 1, Block 1, MONGE ADDITION to the City of Fargo, Cass County, North Dakota described as follows:

The North 5.00 feet of said Lot 1.

Together with the South 8.00 feet of the North 13.00 feet of the West 5.00 feet of said Lot 1.

Said parcel contains 524 square feet, more or less, and is subject to existing easements of record.

Said parcel is pictorially represented on an Easement Plat attached hereto and incorporated herein by reference as Exhibit "A".

Grantor, its successors and assigns, hereby covenants to and with Grantee that Grantee's

officers, contractors, agents and employees may at any and all times when necessary or convenient to do so, go over and upon said above-described parcel of land and perform any and all acts necessary or convenient to carry into effect the purpose for which the grant is made.

Grantor, its successors and assigns, further agrees that it will not disturb, injure, molest or in any manner interfere with said street and customary appurtenances including location of any and all utilities, or with material for laying, maintaining, operating or repairing the same, in, over or upon the above-described premises, and Grantor expressly warrants and states that no buildings, trees, shrubs or other obstacles of any kind shall be placed or located upon the parcel so as to interfere in any manner with the construction, operation, maintenance or repair of said street including location of any and all utilities or customary appurtenances, provided that Grantee, at its own expense, shall refill any excavation it makes and level the ground thereafter, leaving the premises in as good condition as it was prior to the time of constructing of said street and customary appurtenances was begun.

IN WITNESS WHEREOF, Grantor has set its hand and caused this instrument to be executed this 8 day of OCTOBER, 2021.

(Signatures on the following pages)

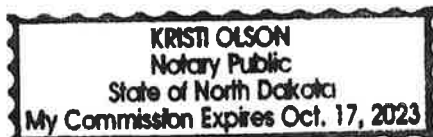
GRANTOR:

Monge Family Partnership, LLLP,
a North Dakota limited liability limited
partnership

By: Linda Monge
Its: Gen Partner

STATE OF North Dakota)
) ss.
COUNTY OF Cass)

On this 8th day of October, 2021, before me, a notary public in and for said county and state, personally appeared Linda Monge, to me known to be the General Partner of **Monge Family Partnership, LLLP**, a North Dakota limited liability limited partnership, described in and who executed the within and foregoing instrument, and acknowledged to me that he/she executed the same.



(SEAL)

Kristi Olson
Notary Public
Cass County, North Dakota

GRANTEE:

City of Fargo, a North Dakota municipal
corporation

Timothy J. Mahoney, M.D., Mayor

ATTEST

Steve Sprague, City Auditor

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

On this ____ day of _____, 2021, before me, a notary public in and for said county and state, personally appeared TIMOTHY J. MAHONEY, M.D. and STEVEN SPRAGUE, to me known to be the Mayor and City Auditor, respectively, of the City of Fargo, Cass County, North Dakota, the municipal corporation described in and that executed the within and foregoing instrument, and acknowledged to me that said municipal corporation executed the same.

(SEAL)

Notary Public
Cass County, ND
My Commission expires:

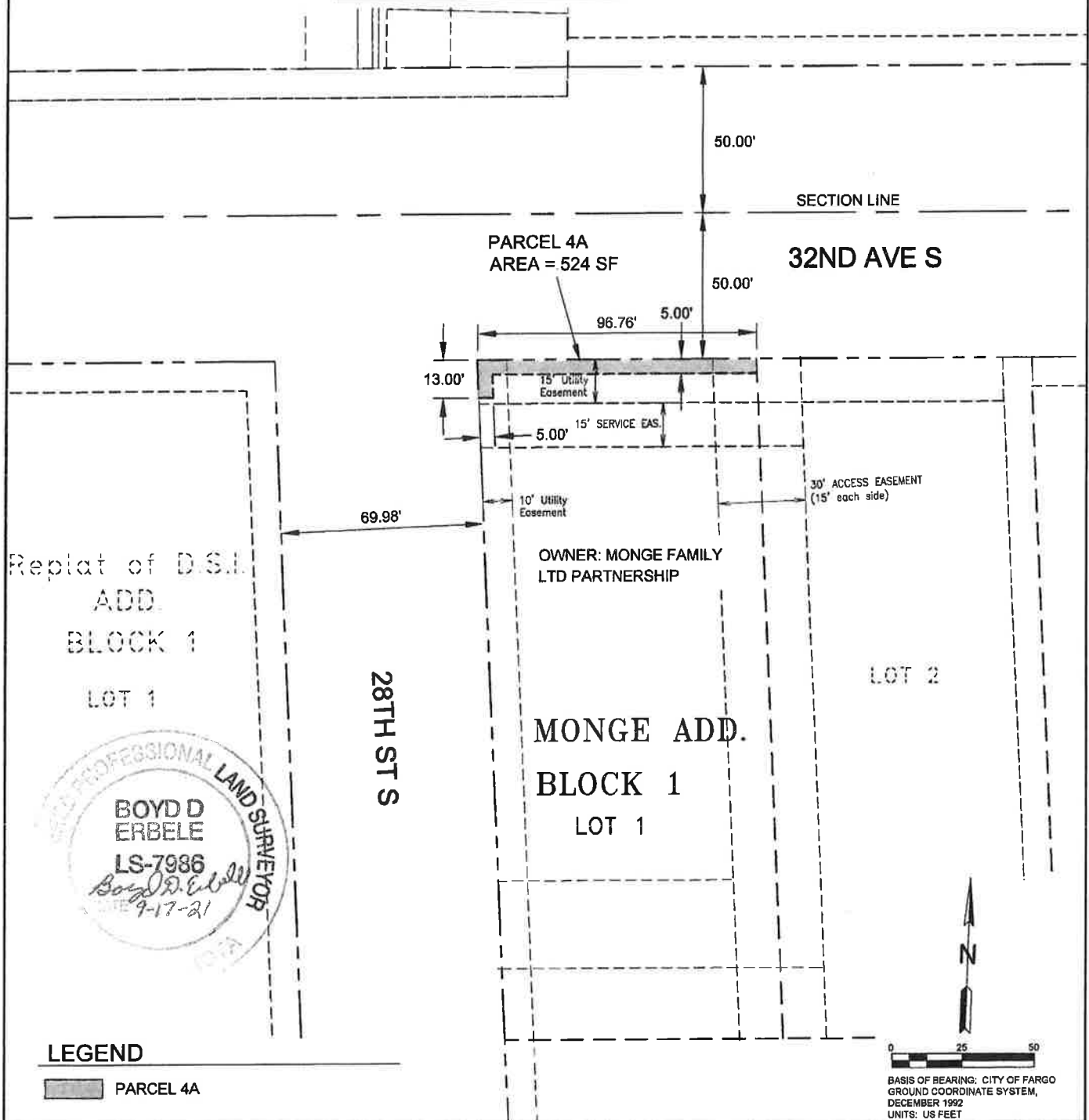
The legal description was prepared by:

Boyd D. Erbele
Registered Land Surveyor
LS-7986
Apex Engineering Group
4733 Amber Valley Parkway S.
Fargo, ND 58104
(701) 373-7980

This document was prepared by:

Nancy J. Morris
Assistant City Attorney
Erik R. Johnson & Associates, Ltd.
505 Broadway N., Ste. 206
Fargo, ND 58102
(701) 280-1901
nmorris@lawfargo.com

EASEMENT EXHIBIT "A"



Apex
Engineering Group

PERPETUAL EASEMENT - PARCEL 4A
32ND AVE S RECONSTRUCTION
LOT 1, BLOCK 1, MONGE ADDITION
SECTION 26, T139N, R49W
FARGO, NORTH DAKOTA

Apex Project #: 20.103.0063
Date: 09/17/2021
Drawn By: Mike J
Checked By: Boyd E
Approved By: Boyd E

EASEMENT EXHIBIT "A"

Parcel 4A
(Perpetual Easement)

A perpetual easement, over, under and across that part of Lot 1, Block 1, MONGE ADDITION to the City of Fargo, Cass County, North Dakota described as follows:

The North 5.00 feet of said Lot 1.

Together with the South 8.00 feet of the North 13.00 feet of the West 5.00 feet of said Lot 1.

Said parcel contains 524 square feet, more or less, and is subject to existing easements of record.



CERTIFICATION

I, Boyd D. Erbele, hereby certify that I am a Licensed Land Surveyor in the State of North Dakota, that this survey was made by me or under my direction and supervision and that the survey is true and complete as shown.

Signed Boyd D. Erbele
Boyd D. Erbele
North Dakota Professional Land Surveyor
License Number LS-7986

Date 9-17-2021



PERPETUAL EASEMENT - PARCEL 4A
32ND AVE S RECONSTRUCTION
LOT 1, BLOCK 1, MONGE ADDITION
SECTION 26, T139N, R49W
FARGO, NORTH DAKOTA

Apex Project #: 20.103.0063
Date: 09/17/2021
Drawn By: Mike J
Checked By: Boyd E
Approved By: Boyd E