

FARGO CITY COMMISSION AGENDA  
Monday, October 21, 2019 - 5:00 p.m.

Executive Session at 4:00 p.m.

Roll call.

**PLEASE NOTE:** The City of Fargo Board of City Commissioners will meet in Executive Session for the purpose of attorney consultation in the following pending matter: Kelsh v. City of Fargo, Case No. 3:18-cv-269 to discuss negotiating strategy or provide negotiating instructions to its attorney or other negotiator regarding the pending litigation. To discuss these matters in open meeting will have a negative fiscal effect on the bargaining and/or litigation position of the City. Thus, an Executive Session for said matters is authorized pursuant to North Dakota Century Code 44-04-19.1 subsections 2 and 9.

Regular Meeting at 5:00 p.m.

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

- A. Pledge of Allegiance.
- B. Roll Call.
- C. Approve Order of Agenda.
- D. Minutes (Regular Meeting, October 7, 2019).

**CONSENT AGENDA – APPROVE THE FOLLOWING:**

- 1. 2nd reading and final adoption of the following Ordinances, 1st reading 10/7/19:
  - a. Rezoning Certain Parcels of Land Lying in Agassiz Nursery Addition.
  - b. Rezoning a Certain Parcel of Land Lying in Agassiz Nursery Addition.
  - c. Relating to the Sale of Tobacco, Sale of Tobacco to Minors and Use and Possession by Minors Prohibited, and Sale of Flavored E-Liquid to Minors Prohibited.
  - d. Relating to Classification of Ordinance Violations.
  - e. Relating to the Sale of Flavored E-Liquid to Minors Prohibited.
  - f. Relating to the Authority for the Sale of Tobacco Products.
- 2. Direct the City Attorney's office to review and update existing Liquor License Ordinances related to violations in order to reflect the suggested changes as presented in the matrix.
- 3. Applications for Games of Chance:
  - a. Fargo Youth Hockey Association for a raffle on 1/28/20.
  - b. Oak Grove Parent Organization for a raffle on 11/1/19.
  - c. El Zagal Holding Company for a raffle on 2/22/20.
  - d. United Way of Cass-Clay for a raffle board on 11/6/19.
  - e. The Village Family Service Center for a raffle on 11/15/19.
  - f. Centennial PTO for bingo from 10/21/19 to 5/31/20.

- g. Heartsprings for a raffle on 12/10/19.
- h. Sadie Cameron Benefit for a raffle on 11/8/19; Public Spirited Resolution.
- 4. Amended Site Authorization for Red River Human Services Foundation at the Fargo Elks Lodge #260.
- 5. 2020 City Commission meeting schedule.
- 6. Change Order No. 1 for an increase of \$4,550.00 and a time extension to 12/1/19 for Project No. TR-19-A1.
- 7. Receive and file General Fund – Budget to Actual through September 2019 (unaudited).
- 8. Sole Source Procurement with Sun Electric, Inc. for an exterior lighting project (AFB17044).
- 9. Direct City Attorney's office to review and update Article 13-10 of the Fargo Municipal Code relating to Recreational Aquatic Facilities.
- 10. Agreement for Services with Samantha Nienow, President of Red Zest Design, Inc.
- 11. Resolution approving Plat of Prairie Tech Second Addition.
- 12. Bid award for purchase of one hydro excavation truck (RFP19154).
- 13. Bid award for a 5-year lease on one 2019 hook roll off refuse truck (RFP19092).
- 14. Authorization of staff to submit applications to the NDDEQ Volkswagen Emission Mitigation Program, as stated.
- 15. Bills.
- 16. Purchase Agreement with the Park District of the City of Fargo for a permanent street and utility easement Improvement District No. BN-17-C1.
- 17. Change Order No. 3 for an increase of \$1,815.00 for Improvement District No. AN-19-G1.
- 18. Change Order Nos. 1–13 in the total amount of \$257,202.64 for Improvement District No. PR-17-B1.
- 19. Change Order No. 4 for a time extension to 12/23/19 for Improvement District No. BN-19-J1.
- 20. Contract Amendment No. 2 with KLJ in the amount of \$56,305.00 for Improvement District No. PN-19-A0.

**REGULAR AGENDA:**

- 21. Fargo Civic Plaza, Area 1 "Sodbuster Landscape" and Presentation of Concept Design of Civic Plaza.
- 22. Public Hearings - 5:15 pm:
  - a. CONTINUE to 11/18/19 - Alley Vacation of the alley between Lot 12, Block 26 and a part of Lot 7 and all of Lots 8-12, Block 25, Roberts Second Addition (1001 NP Avenue North and 28 10th Street North); approval recommended by the Planning Commission on 7/2/19; continued from the 8/12/19 and 8/26/19 Regular Meetings.

- b. Petition requesting a Right of Way Vacation on a portion of 33rd Street South between Lots 7 through 11, Block 8, Burlington Northern I-29 South Industrial Center Addition and an unplatted portion of Section 11, Township 139 North, Range 49 West (3300 and 3420 Main Avenue); approval recommended by the Planning Commission on 9/3/19.
- c. Application filed by Casa Mexico, Inc. d/b/a Casa Mexico Mexican Restaurant for a Class "F" Alcoholic Beverage License at 4950 13th Avenue South.
- d. Special Assessments for 2018 New Construction and Reconstruction of City Ordered Sidewalks (Project No. SN-18-B).
- e. Special Assessment list for the following Improvement Districts, all having been approved by the Special Assessment Commission on 9/19/19; set the interest rate at 1% per annum over the net rate on bonds financing said projects:
  - 1. Sanitary Sewer, Water Main, Storm Sewer, Site Grading, P.C. Concrete Paving, Street Lights and Incidentals Improvement District No. BN-17-A.
  - 2. Sanitary Sewer, Water Main, Storm Sewer, Paving, Street Lights and Incidentals Improvement District No. BN-18-A.
  - 3. Sanitary Sewer, Water Main, Storm Sewer, Paving, Street Lights and Incidentals Improvement District No. BN-18-B.
  - 4. Sanitary Sewer, Water Main, Storm Sewer, Paving, Street Lights and Incidentals Improvement District No. BN-18-E.
  - 5. Storm Sewer, P.C. Concrete Paving and Incidentals Improvement District No. BN-18-G.
  - 6. Sanitary Sewer, Water Main, Storm Sewer, Concrete Curb and Gutter, Asphalt Pavement, Lighting and Incidentals Improvement District No. BN-18-J.
  - 7. Storm Sewer, P.C. Concrete Paving, Street Lights and Incidentals Improvement District No. BN-18-K.
  - 8. Sanitary Sewer, Water Main, Storm Sewer, Concrete Curb and Gutter, Asphalt Pavement, Lighting and Incidentals Improvement District No. BN-18-L.
  - 9. Water Main Replacement, Street Reconstruction and Incidentals Improvement District No. BR-16-F.
  - 10. Grading, P.C.C. Pavement, Storm Sewer, Watermain, Traffic Signals, Street Lighting, Sidewalks and Incidentals Improvement District No. BR-18-C.
  - 11. Water Main Replacement, Storm Sewer Replacement, Street Reconstruction and Incidentals Improvement District No. BR-18-E.
  - 12. Storm Sewer Lift Station Modifications and Incidentals Improvement District No. NR-17-A.
  - 13. P.C. Concrete Pavement, Storm Sewer, Sanitary Sewer, Pedestrian Box Culvert, Lift Station, Traffic Signals, Street Lighting, Sidewalk and Incidentals Improvement District No. PR-17-B.
  - 14. Bridge Modifications, Shared Use Path, Street Lighting and Incidentals Improvement District No. SN-16-B.
    - a. Receive protest.
  - 15. Shared Use Path and Incidentals Improvement District No. SN-16-C.
  - 16. Traffic Signal Improvements and Incidentals Improvement District No. TN-16-F.
  - 17. Raised Pedestrian Crossing, Radius Improvements and Incidentals Improvement District No. TN-18-A.
  - 18. Sanitary Sewer, Water Main, Storm Sewer and Incidentals Improvement District No. UN-18-B.

24. Resolution Authorizing the Issuance of Not to Exceed \$14,015,000.00 City of Fargo, ND Taxable Refunding Improvement Bonds, Series 2019B, Prescribing the Terms and Covenants Thereof, and Creating a Fund for the Payment Thereof.
25. State Water Commission request for Cost Reimbursement for FM Diversion Flood Project Costs in the amount of \$111,960.91.
26. Applications for property tax exemptions for improvements made to buildings:
  - a. Wade L. and Linn M. Webb, 2818 Lilac Lane North (3 year).
  - b. Paul A. and Amy Sjurseth, 1513 39th Avenue South (3 year).
  - c. Clayton and Juliann Kramer, 81 32nd Avenue Northeast (3 year).
  - d. John and Susan Deutsch, 220 8th Street South, Unit C1 (3 year).
  - e. Mary Jo Marty Living Trust, 2920 Southgate Drive South (5 year).
  - f. Dane J. Sypnieski, 818 25th Street North (5 year).
  - g. Red River House Buyers LLC, 817 32nd Street South (5 year).
  - h. Richard and Carlotta Bruns, 1420 7th Avenue South (5 year).
  - i. Matthew and Amanda Quintus, 1140 5th Street North (5 year).
  - j. Andrew Thill and Alexandra Vruno, 1238 2nd Street North (5 year).
  - k. Kip M. and Nancy J. Kaler, 1301 Oak Street North (5 year).
  - l. Darwin T. and Corine C. Wittmer, 3130 8th Street North (5 year).
  - m. BCH Builders LLC, 3101 Maple Street North (3 year).
  - n. Brooks C. Johnson, 85 Meadowlark Lane North (5 year).
  - o. Sherry A. Stewart, 1630 3rd Street North (5 year).
  - p. Dawn M. Grieg and Sarah A. Stensland, 821 3rd Street North (5 year).
  - q. Laurie K. Blunsom, 357 Elmwood Avenue South (5 year).
  - r. Timothy M. and Janice K. Stoa, 49 35th Avenue Northeast (5 year).
  - s. Ruth A. Weber, 2016 7th Street North (5 year).
  - t. Cari N. Lake, 3419 Maple Street North (5 year).
  - u. Lisa Olander Living Trust, 2939 Southgate Drive South (5 year).
  - v. Justin Slack, 1441 12th Avenue South (5 year).
  - w. Donald W. and Marilyn L. Hanson, 2513 9 1/2 Street North (5 year).
27. Recommendations for appointments and reappointments to the following Board and Commissions:
  - a. Historic Preservation Commission.
  - b. Planning Commission.
  - c. Board of Adjustment.

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

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



OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

ORDINANCE NO. \_\_\_\_\_



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

WHEREAS, the Fargo Planning Commission and the Board of City Commissioners of the City of Fargo have held hearings pursuant to published notice to consider the rezoning of certain parcels of land lying in Agassiz Nursery Addition to the City of Fargo, Cass County, North Dakota; and,

WHEREAS, the Fargo Planning Commission recommended approval of the rezoning request on September 3, 2019; and,

WHEREAS, the rezoning changes were approved by the City Commission on October 7, 2019,

NOW, THEREFORE,

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

Section 1. The following described property:

Lot Two (2), Block One (1), less the East 70 feet thereof of Agassiz Nursery Addition to the City of Fargo, Cass County, North Dakota;

is hereby rezoned from "LC", Limited Commercial, District to "LI", Limited Industrial, District;

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

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

ORDINANCE NO. \_\_\_\_\_

1        Section 3. This ordinance shall be in full force and effect from and after its passage and  
2 approval.  
3  
4

5        (SEAL)

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

6        Attest:  
7  
8

9        \_\_\_\_\_  
Steven Sprague, City Auditor

First Reading:  
Second Reading:  
Final Passage:

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

ORDINANCE NO. \_\_\_\_\_

16

AN ORDINANCE REZONING A CERTAIN PARCEL  
OF LAND LYING IN AGASSIZ NURSERY ADDITION  
TO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA

WHEREAS, the Fargo Planning Commission and the Board of City Commissioners of the City of Fargo have held hearings pursuant to published notice to consider the rezoning of certain parcels of land lying in Agassiz Nursery Addition to the City of Fargo, Cass County, North Dakota; and,

WHEREAS, the Fargo Planning Commission recommended approval of the rezoning request on September 3, 2019; and,

WHEREAS, the rezoning changes were approved by the City Commission on October 7, 2019,

NOW, THEREFORE,

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

Section 1. The following described property:

Lot One (1), Block One (1) of Agassiz Nursery Addition to the City of Fargo, Cass County, North Dakota;

is hereby rezoned from "SR-3", Single-Dwelling Residential, District to "P/T", Public and Institutional, District;

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

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

ORDINANCE NO. \_\_\_\_\_

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

(SEAL)

Attest:

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

\_\_\_\_\_  
Steven Sprague, City Auditor

First Reading:  
Second Reading:  
Final Passage:

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

10

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE AMENDING SECTION 10-0103 OF ARTICLE 10-01 OF CHAPTER 10  
RELATING TO THE SALE OF TOBACCO, SALE OF TOBACCO TO MINORS AND USE  
AND POSSESSION BY MINORS PROHIBITED, AND  
SALE OF FLAVORED E-LIQUID TO MINORS PROHIBITED

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 10-0103(B) of Article 10-01 of Chapter 10 of the Fargo Municipal Code is  
hereby amended to read as follows:

- B. No person shall sell or furnish to a minor, or procure for a minor, cigarettes, including clove cigarettes, cigarette papers, cigars, e-cigarettes, snuff, or tobacco products in any other form in which it may be utilized for smoking, vaping, or chewing. As used in this section, "sell" includes dispensing from a vending machine

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under the control of the vendor. It shall be a defense to this subsection if the person furnishing tobacco to a minor did so as part of a cultural or religious practice; provided, however, that in no event shall any sale or other exchange for value be lawful. A person in violation of this subsection shall be guilty of an infraction.

Section 2. Amendment.

Section 10-0103(C) of Article 10-01 of Chapter 10 of the Fargo Municipal Code is hereby amended to read as follows:

- C. No person under the age of 18 shall sell, possess, purchase, attempt to purchase, smoke, or use cigarettes, including clove cigarettes, cigars, cigarette papers, e-cigarettes, snuff, or tobacco products in any other form in which it may be utilized for smoking, vaping, or chewing.

Section 3. Amendment.

Section 10-0103(C)(4) of Article 10-01 of Chapter 10 of the Fargo Municipal Code is hereby amended to read as follows:

4. Non-criminal violation. Minors fourteen (14) years of age or older found to have violated subsection (B) or (C), above, must pay a fee of \$25 and must attend and complete within sixty (60) days of the date of offense a tobacco education program approved by the Fargo Municipal Court. ~~Minors fourteen (14) years of age or older found to have violated subsection (B), above, three times within any twelve consecutive month period may be ordered by the court to attend a tobacco cessation program instead of a tobacco education program.~~

Section 4. Penalty.

A person who willfully violates Section 10-0103(B) and Section 10-0103(C) of this Ordinance is guilty of an infraction. Every person, firm or corporation violating an ordinance which is punishable as an infraction shall be punished by a fine not to exceed \$1,000; the court to have



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ORDINANCE NO. \_\_\_\_\_



AN ORDINANCE AMENDING SECTION 1-0305(C)(3) OF ARTICLE 1-03 OF  
CHAPTER 1 OF THE FARGO MUNICIPAL CODE RELATING TO  
CLASSIFICATION OF ORDINANCE VIOLATIONS

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 1-0305(C)(3) of Article 1-03 of Chapter 1 of the Fargo Municipal Code is hereby  
amended to read as follows:

3. For a violation of the following ordinance, a fee of \$25.00.  
Section 8-0931 (child restraint devices required), section 10-0103(~~BC~~) (tobacco  
possession by minors prohibited).

## ORDINANCE NO. \_\_\_\_\_

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

Attest:

Steven Sprague, City Auditor

First Reading:  
Second Reading:  
Final Passage:

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

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power to suspend said sentence and to revoke the suspension thereof. A person who willfully  
violates Section 10-0103(C)(4) of this Ordinance is guilty of a non-criminal offense carrying a fee  
of \$25.

Section 5. Effective Date.

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

\_\_\_\_\_  
Timothy J. Mahoney, Mayor

Attest:

\_\_\_\_\_  
Steven Sprague, City Auditor

First Reading:  
Second Reading:  
Final Passage:  
Publication:

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

ORDINANCE NO. \_\_\_\_\_

(12)

AN ORDINANCE ENACTING SECTION 10-0105 OF ARTICLE 10-01 OF CHAPTER 10,  
RELATING TO THE SALE OF FLAVORED E-LIQUID TO MINORS PROHIBITED

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. Enactment.

Section 10-0105 of Article 10-01 of Chapter 10 of the Fargo Municipal Code is hereby  
enacted as follows:

10-0105. – Sale of flavored e-liquids to minors prohibited.

1. No person shall sell, offer for sale, or distribute in this city any flavored e-liquid or electronic smoking device containing flavored e-liquid to a minor.
2. "E-liquids" include the solution, liquid, or flavor agent in electronic cigarettes, which are vaporized. "E-liquids" may or may not include nicotine.

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- 1        3.    A person that violates subsection 1 and is not a manufacturer is subject to a fine of  
2           five hundred dollars (\$500) for each individual package of flavored e-liquid  
3           product or electronic smoking device containing flavored e-liquid sold or offered  
4           for sale.
- 5        4.    A person in violation of this subsection shall be guilty of an infraction and shall be  
6           fined \$500.

7        Section 2. Penalty.

8        A person who willfully violates this ordinance is guilty of an infraction. Every person, firm  
9        or corporation violating an ordinance which is punishable as an infraction shall be punished  
10       by a fine not to exceed \$1,000; the court to have power to suspend said sentence and to  
11       revoke the suspension thereof.

12       Section 3. Effective Date.

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

15       Attest:

16           \_\_\_\_\_  
17       Timothy J. Mahoney, Mayor

18       \_\_\_\_\_  
19       Steven Sprague, City Auditor

20           First Reading:  
21           Second Reading:  
22           Final Passage:  
23           Publication:

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

ORDINANCE NO. \_\_\_\_\_

(14)

AN ORDINANCE AMENDING SECTIONS 35-0101, 35-0102, 35-0103, AND 35-0105  
OF ARTICLE 35-01 OF CHAPTER 35,  
RELATING TO THE AUTHORITY FOR THE SALE OF TOBACCO PRODUCTS

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 35-0101 of Article 35-01 of Chapter 35 of the Fargo Municipal Code is amended  
to read as follows:

35-0101. - Definitions.

As used in this chapter, unless the context or subject matter otherwise requires:

1. "Cigar" means any roll of tobacco wrapped in tobacco.



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2. "Cigarette" means any roll for smoking made wholly or in part of tobacco, and encased in any material except tobacco.
3. "E-cigarettes" means any electronic oral device, such as one composed of a heating element and battery or electronic circuit, or both, which provides a vapor of nicotine or any other substances, and the use or inhalation of which simulates smoking. The term shall include any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, and e-pipe or under any other product, name, or descriptor and also includes any cartridge or other component of the device.
4. "Person" means any individual, firm, fiduciary, partnership, corporation, limited liability company, trust, or association however formed.
5. "Probationary period" is defined as a period of 12 months for a violation which is not within any period of probation already established by a violation of any of this article, which 12 months shall be defined as commencing on the date of the said first offense and shall extend for 12 consecutive months thereafter. If any subsequent offenses occur within the said 12-month period the probationary period for any such subsequent offense shall extend for either the same 12 consecutive months from the date of the first offense, as described above, or for a period of six months from the date of the subsequent offense, whichever period would expire later. For purposes of this article, an offense is deemed to have occurred when the offense is committed, and not the date of judgment or conviction.
6. "Sale" or "sell" applies to gifts, exchanges, and barter.
7. "Tobacco product" means any product that is made from or derived from tobacco, which contains nicotine or a similar substance, and is intended for human consumption or is likely to be consumed, whether smoked, heated, chewed, absorbed, vaped, dissolved, inhaled or ingested by any other means, including, but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, snus, or an electronic smoking device. Tobacco product also includes pipes and rolling papers, but does not include any product specifically approved by the U.S. Food and Drug Administration for legal sale as a tobacco cessation product and is being marketed and sold solely for that approved purpose.

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1       Section 2. Amendment.

2       Section 35-0102 of Article 35-01 of Chapter 35 of the Fargo Municipal Code is amended  
3 to read as follows:

4       35-0102 - Authority to sell tobacco, e-cigarettes, electronic cigarettes or electronic  
5 smoking devices.

6       The city of Fargo does hereby grant the authority to sell at retail tobacco, other tobacco  
7 products, e-cigarettes, electronic cigarettes or electronic smoking devices as defined in  
8 chapters 10-1001 and 35-0101, within the city to persons who have a state license under  
9 chapter 57-36 of the North Dakota Century Code. The authority to sell granted by this  
10 Article may be suspended or revoked, and administrative penalties imposed, as provided  
11 in this chapter. No mobile vendor, person or business may sell or deliver tobacco or vape  
12 products from a mobile vendor vehicle or a push cart, as defined in chapter 18-0308(J),  
13 from a motor vehicle or trailer, or from any other moveable facility.

14       Section 3. Amendment.

15       Section 35-0103 of Article 35-01 of Chapter 35 of the Fargo Municipal Code is amended  
16 to read as follows:

17       35-0103. – Suspension of authority to sell tobacco products and imposition of  
18 administrative penalties.

19       The authority granted under this chapter shall be suspended and administrative penalties  
20 imposed for violation of §§ 10-0103 or 10-0105 of the Fargo Municipal Code or North  
21 Dakota Century Code §§ 12.1-31-03 or 12.1-31-03.3 prohibiting the sale of tobacco, e-  
22 liquids and other tobacco products to minors, or for a violation of the provisions of this  
23 chapter, as follows:

- 24       A.   First offense — ~~A warning shall be given by the court that the authority to sell shall~~  
25 ~~be suspended if subsequent offense occurs within the probationary period. A \$500~~  
26 administrative penalty shall be assessed to the business.

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- 1 B. Second offense — Three-day suspension: In the event of a second offense within the  
2 probationary period, the court shall suspend the person's authority to sell tobacco, e-  
3 liquids, and tobacco products for a period of three days. A \$500 administrative  
4 penalty shall be assessed to the business if the offense involves the sale to a minor.
- 5 C. Third offense — Ten-day suspension: In the event of a third offense within the  
6 probationary period the court shall suspend the person's authority to sell tobacco, e-  
7 liquids, and tobacco products for a period of 10 days. A \$500 administrative penalty  
8 shall be assessed to the business if the offense involves the sale to a minor.
- 9 D. Subsequent offenses — Thirty-day suspension: In the event of an offense occurring  
10 after a third offense within the probationary period the court shall suspend the  
11 person's authority to sell tobacco, e-liquids, and tobacco products for a period of 30  
12 days. A \$500 administrative penalty shall be assessed to the business if the offense  
13 involves the sale to a minor.
- 14 E. Offenses during periods of suspension. In the event an offense is committed by a  
15 person while that person's authority to sell tobacco, e-liquids, or other tobacco  
16 products is under suspension, the authority granted in this article shall be suspended  
17 for a full probationary period. one year from the sale that occurred during the period  
18 of suspension.
- 19 F. One offense per 24 hours. For purposes of establishing the number of offenses  
20 committed by a person who has been granted the authority to sell tobacco, e-liquids,  
21 or tobacco products a person is deemed to have committed only one offense during  
22 any 24-hour period.

23 Section 4. Amendment.

Section 35-0105 of Article 35-01 of Chapter 35 of the Fargo Municipal Code is amended  
to read as follows:

35-0105. - Hearing for suspension or administrative penalties.

The authority granted under the provisions of this article may not be suspended, and no

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

ORDINANCE NO. \_\_\_\_\_

1 administrative penalties may be imposed, without a public hearing. In the event that the  
2 commission, or a person or committee so designated by separate resolution, intends to  
3 consider the suspension, or administrative penalties, of the authority granted in this  
4 article, the person whose authority is sought to be suspended or against whom  
5 administrative penalties are imposed, shall be notified of the commission's intention to  
6 consider the same. The notice shall specify the time and place of the suspension or  
7 administrative penalty hearing, shall describe the reason for said hearing, and shall be  
8 served upon the person whose authority is sought to be suspended, or against whom  
9 administrative penalties are sought to be imposed, in the same manner as provided by law  
10 for the service of a summons in a civil action. No suspension or administrative penalty  
11 hearing shall be held before the expiration of 15 days after the date of the service of the  
12 notice. The hearing for said suspension or administrative penalty shall be heard by the  
13 municipal court judge. A record of the hearing shall be made by electronic recording  
14 device.

15 If, upon such hearing, it appears to the municipal court judge that sufficient cause exists  
16 for the suspension of the authority, or administrative penalties, granted pursuant to this  
17 article, the municipal court judge shall make its order suspending the said authority, or  
18 imposing such administrative penalties, in accordance with the provisions of this article.  
19 The municipal court judge shall issue its findings, conclusions and order which shall be  
20 served on the person whose authority is thereby suspended or against whom  
21 administrative penalties are imposed. The order is appealable pursuant to chapter 28-34  
22 of the North Dakota Century Code.

23 Failure to pay the administrative penalty within 30 days upon which time such  
administrative penalty shall become final shall result in an immediate suspension of  
authority to sell in accordance with this Article, until such time as the administrative  
penalty has been paid in full.

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

ORDINANCE NO. \_\_\_\_\_

Section 5. Effective Date.

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

\_\_\_\_\_  
Timothy J. Mahoney, Mayor

Attest:

\_\_\_\_\_  
Steven Sprague, City Auditor

First Reading:  
Second Reading:  
Final Passage:



October 11, 2019

Board of City Commissioners  
City Hall  
Fargo, ND 58102

RE: Restructuring Liquor Ordinances Penalties

Dear Commissioners:

Several years ago, the Liquor Control Board formed a subcommittee to study license structure and penalties related to liquor ordinance violations. The subcommittee consisted of members of the Liquor Control Board, people involved in the industry and interested citizens.

Out of those subcommittee meetings came recommendations in the form of a matrix with changes in the penalty structure for liquor ordinance violations. We then created a matrix of the existing ordinance violations for comparison to the suggested changes. Using the existing ordinance matrix, we eliminated steps in order to make the ordinances and penalties effective (see attached matrix with highlighted steps we would eliminate).

We are also recommending a change in the time-frame of consecutive violations reviewed by Liquor Control. We are proposing a rolling twelve months as a time-frame for a consecutive count. Meaning, after twelve months of no violations, the consecutive count would revert to zero.

We have presented these suggested changes at Liquor Control public meetings and at our annual license-holder meeting. We have not received any negative reaction or resistance to these suggested changes. The Liquor Control Board has unanimously voted to present these recommended changes to the City Commission for consideration to direct the City Attorney's Office to draft ordinance changes needed to reflect the suggestions in this matrix.

**Recommended Motion:**

*Direct the City Attorney's Office to redraft existing Liquor License ordinances related to violations in order to reflect the suggested changes in the matrix for review by the City Commission.*

Please contact me if you have any questions or concerns.

Sincerely,



Steven Sprague, City Auditor and David Todd, Chief of Police



**Fargo Municipal Code Article 25-15: Liquor Ordinance Penalties**

---

- Criminal penalties (FMC §25-1515):
  1. Violation of §§ 25-1509 or 25-1513: Class B Misd. (\$1,500 fine, 30 days jail, or both)
  2. Violation of all other sections in Art. 25-15: Infraction (\$1,000 fine)

| FMC   | Description   | Penalty  |   |  |  |  |   |  |
|---|---|--|---|--|--|--|---|--|
| <b>\$25-1502</b><br>License Required                                      | Engaging in sale of alcohol w/o license   | \$1,000  |   |  |  |  |   |  |
| <b>\$25-1504.2</b><br>Renewal of combined food/alcohol licenses           | Licensee fails to maintain or make available records of food/alcohol ratio (i.e. failed audits)   | \$25-1512(F)   | <u>1st offense</u><br>-6 mo. prob.<br>-Sales stop 1:00 am<br>-Yearly audits next two years paid by licensee | <u>2nd offense</u><br>-30 day susp of alcohol sales only (food ok)<br>-Yearly audits next 2 years paid by licensee |  | <u>3rd offense</u><br>-Revocation of license   |   |  |
| <b>\$25-1504.3</b><br>Mandatory Meeting                                   | Licensee fails to attend regularly scheduled meeting for license renewal (w/o good cause)   | - \$500 fee & required attendance at subsequent meeting;<br>- If licensee fails to attend subsequent meeting, additional \$500 fee & must review recording of meeting before renewal date;<br>- Failure to timely comply results in non-renewal of license |   |  |  |  |   |  |
| <b>\$25-1509</b><br>Restrictions on sale, service, or dispensing alcohol  | (A) Sell, serve, dispense alcohol to person under 21; allowing person under 21 to have alcohol on licensed premises   | <u>1<sup>st</sup> off.</u><br>-\$500 (may be waived)<br>-Mand. server training<br>- No license sanction  | <u>2<sup>nd</sup> off.</u><br>-\$750<br>-No license sanction  | <u>3<sup>rd</sup> off.</u><br>-\$1,000<br>-AB, A, B:<br>1-day susp.<br>-Other classes:<br>2-day susp.              | <u>4<sup>th</sup> off.</u><br>- No monetary penalty<br>-AB, A, B:<br>3-day susp.<br>-Other classes:<br>6-day susp. | <u>5<sup>th</sup> off.</u><br>-No monetary penalty<br>-AB, A, B:<br>7-day susp.<br>-Other classes:<br>14-day susp. | <u>6<sup>th</sup> off.</u><br>-No monetary penalty<br>-AB, A, B:<br>10-day susp.<br>-Other classes:<br>20-day susp. | <u>7<sup>th</sup> off.</u><br>-No monetary penalty<br>-Rev. of license |
| <b>\$25-1509</b><br>Restrictions on sale, service, or dispensing alcohol  | (B) Allowing person under 21 to enter portion of licensed premises where alcohol sold, served, disp; allowing person under 21 to be employed in portion of premises where alcohol is sold, served, disp. (except as provided in (c) and (d)). | <u>1<sup>st</sup> off.</u><br>-\$500 (may be waived)<br>-Mand. server training<br>- No license sanction  | <u>2<sup>nd</sup> off.</u><br>-\$750<br>-No license sanction  | <u>3<sup>rd</sup> off.</u><br>-\$1,000<br>-AB, A, B:<br>1-day susp.<br>-Other classes:<br>2-day susp.              | <u>4<sup>th</sup> off.</u><br>- No monetary penalty<br>-AB, A, B:<br>3-day susp.<br>-Other classes:<br>6-day susp. | <u>5<sup>th</sup> off.</u><br>-No monetary penalty<br>-AB, A, B:<br>7-day susp.<br>-Other classes:<br>14-day susp. | <u>6<sup>th</sup> off.</u><br>-No monetary penalty<br>-AB, A, B:<br>10-day susp.<br>-Other classes:<br>20-day susp. | <u>7<sup>th</sup> off.</u><br>-No monetary penalty<br>-Rev. of license |
| <b>\$25-1509</b><br>Restrictions on sale, service, or dispensing alcohol  | (F) After hours sale, service, consumption of alcohol   | <u>1<sup>st</sup> off.</u><br>-\$500 (may be waived)<br>-Mand. server training<br>- No license sanction  | <u>2<sup>nd</sup> off.</u><br>-\$750<br>-No license sanction  | <u>3<sup>rd</sup> off.</u><br>-\$1,000<br>-AB, A, B:<br>1-day susp.<br>-Other classes:<br>2-day susp.              | <u>4<sup>th</sup> off.</u><br>- No monetary penalty<br>-AB, A, B:<br>3-day susp.<br>-Other classes:<br>6-day susp. | <u>5<sup>th</sup> off.</u><br>-No monetary penalty<br>-AB, A, B:<br>7-day susp.<br>-Other classes:<br>14-day susp. | <u>6<sup>th</sup> off.</u><br>-No monetary penalty<br>-AB, A, B:<br>10-day susp.<br>-Other classes:<br>20-day susp. | <u>7<sup>th</sup> off.</u><br>-No monetary penalty<br>-Rev. of license |
| <b>\$25-1509.1</b><br>Restrictions on sale or consumption in public place | No owner, manager, or person having control of any public place shall serve or permit alcohol to be consumed in public place  | <u>1<sup>st</sup> off.</u><br>-\$500 (may be waived)<br>-Mand. server training<br>- No license sanction  | <u>2<sup>nd</sup> off.</u><br>-\$750<br>-No license sanction  | <u>3<sup>rd</sup> off.</u><br>-\$1,000<br>-AB, A, B:<br>1-day susp.<br>-Other classes:<br>2-day susp.              | <u>4<sup>th</sup> off.</u><br>- No monetary penalty<br>-AB, A, B:<br>3-day susp.<br>-Other classes:<br>6-day susp. | <u>5<sup>th</sup> off.</u><br>-No monetary penalty<br>-AB, A, B:<br>7-day susp.<br>-Other classes:<br>14-day susp. | <u>6<sup>th</sup> off.</u><br>-No monetary penalty<br>-AB, A, B:<br>10-day susp.<br>-Other classes:<br>20-day susp. | <u>7<sup>th</sup> off.</u><br>-No monetary penalty<br>-Rev. of license |

|  |   |  |  |   |  |  |   |   |
|--|---|--|--|---|--|--|---|---|
| <b>§25-1509.2</b><br>Restrictions on sale to obviously intoxicated person      | Cannot <b>sell, serve, furnish alcohol or allow possession and consumption</b> on premises to a person who has become intoxicated and/or incapacitated by consumption | <b>§25-1512(H)</b><br>Penalties for sale to intoxicated person<br><br><i>**18-mo. period from first offense</i>  |  | <u>1<sup>st</sup> offense</u><br>-Warning<br>-Mandatory server training course w/i 30 days            | <u>2<sup>nd</sup> offense</u><br>-\$1,000<br>-AB, A, B:<br>1-day susp.<br>-Other classes:<br>2-day susp.           | <u>3<sup>rd</sup> offense</u><br>-\$2,000<br>-AB, A, B:<br>3-day susp.<br>-Other classes:<br>6-day susp.           | <u>4<sup>th</sup> offense</u><br>-\$2,000<br>-AB, A, B:<br>4-day susp.<br>-Other classes:<br>8-day susp.            | <u>5<sup>th</sup> offense</u><br>- \$2,000<br>- Possible revocation<br>-AB, A, B:<br>10-day susp.<br>- Other classes:<br>20-day susp. |
|  |   | <b>§25-1512 (I)</b><br>Penalties <b>allowing consumption</b> of intoxicated person   |  | <u>1<sup>st</sup> offense</u><br>-Warning<br>-Mandatory server training course w/i 30 days            | <u>2<sup>nd</sup> offense</u><br>-\$500  | <u>3<sup>rd</sup> offense</u><br>-\$1,000<br>-AB, A, B:<br>1-day susp.<br>-Other classes:<br>2-day susp.           | <u>4<sup>th</sup> offense</u><br>-\$1,500<br>-AB, A, B:<br>2-day susp.<br>-Other classes:<br>4-day susp.            | <u>5<sup>th</sup> offense</u><br>-\$2,000<br>-AB, A, B:<br>4-day susp.<br>-Other classes:<br>8-day susp.                              |
| <b>§25-1511</b><br>Licensed premises – Requirements for                        | Failure to meet license requirements  | <u>1<sup>st</sup> off.</u><br>-\$500 (may be waived)<br>-Mand. server training<br>- No license sanction  | <u>2<sup>nd</sup> off.</u><br>-\$750<br>-No license sanction | <u>3<sup>rd</sup> off.</u><br>-\$1,000<br>-AB, A, B:<br>1-day susp.<br>-Other classes:<br>2-day susp. | <u>4<sup>th</sup> off.</u><br>- No monetary penalty<br>-AB, A, B:<br>3-day susp.<br>-Other classes:<br>6-day susp. | <u>5<sup>th</sup> off.</u><br>-No monetary penalty<br>-AB, A, B:<br>7-day susp.<br>-Other classes:<br>14-day susp. | <u>6<sup>th</sup> off.</u><br>-No monetary penalty<br>-AB, A, B:<br>10-day susp.<br>-Other classes:<br>20-day susp. | <u>7<sup>th</sup> off.</u><br>-No monetary penalty<br>-Rev. of license  |
| <b>§25-1512</b><br>Licenses – Termination, suspension, revocation, & sanctions | <b>(B)(3)</b> License holder convicted of a felony  | - City Commission may, in its discretion, suspend or revoke license<br>- Conviction of a felony is one, among other grounds, taken in consideration (i.e. conviction of a felony is not an exclusive factor warranting suspension or revocation) |  |   |  |  |   |   |
| <b>§25-1512</b><br>Licenses – Termination, suspension, revocation, & sanctions | <b>(E)</b> Failing compliance checks conducted by FPD<br><br><i>** 1-year time period</i>   | <u>1<sup>st</sup> off.</u><br>-\$500 (may be waived)<br>-Mand. server training<br>- No license sanction  | <u>2<sup>nd</sup> off.</u><br>-\$750<br>-No license sanction | <u>3<sup>rd</sup> off.</u><br>-\$1,000<br>-AB, A, B:<br>1-day susp.<br>-Other classes:<br>2-day susp. | <u>4<sup>th</sup> off.</u><br>- No monetary penalty<br>-AB, A, B:<br>3-day susp.<br>-Other classes:<br>6-day susp. | <u>5<sup>th</sup> off.</u><br>-No monetary penalty<br>-AB, A, B:<br>7-day susp.<br>-Other classes:<br>14-day susp. | <u>6<sup>th</sup> off.</u><br>-No monetary penalty<br>-AB, A, B:<br>10-day susp.<br>-Other classes:<br>20-day susp. | <u>7<sup>th</sup> off.</u><br>-No monetary penalty<br>-Rev. of license  |
| <b>§25-1514</b><br>Inspection of licensed premises                             | Board of city commission, chief of police, or officer of health or police dept. may inspect premises at any time  | <u>1<sup>st</sup> off.</u><br>-\$500 (may be waived)<br>-Mand. server training<br>- No license sanction  | <u>2<sup>nd</sup> off.</u><br>-\$750<br>-No license sanction | <u>3<sup>rd</sup> off.</u><br>-\$1,000<br>-AB, A, B:<br>1-day susp.<br>-Other classes:<br>2-day susp. | <u>4<sup>th</sup> off.</u><br>- No monetary penalty<br>-AB, A, B:<br>3-day susp.<br>-Other classes:<br>6-day susp. | <u>5<sup>th</sup> off.</u><br>-No monetary penalty<br>-AB, A, B:<br>7-day susp.<br>-Other classes:<br>14-day susp. | <u>6<sup>th</sup> off.</u><br>-No monetary penalty<br>-AB, A, B:<br>10-day susp.<br>-Other classes:<br>20-day susp. | <u>7<sup>th</sup> off.</u><br>-No monetary penalty<br>-Rev. of license  |



**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<br><b>Fargo Youth Hockey Association</b>   | Date(s) of Activity<br>to                        | For a raffle, provide drawing date(s):<br><b>1-28-2020</b> |                          |
| Person Responsible for the Gaming Operation and Disbursement of Net Income<br><b>DAVE OKSENDAL</b>   | Title<br><b>President</b>                        | Business Phone Number<br><b>701-235-4300</b>               |                          |
| Business Address<br><b>831 17<sup>th</sup> Ave N</b>   | City<br><b>Fargo</b>                             | State<br><b>ND</b>   | Zip Code<br><b>58102</b> |
| Mailing Address (if different)   | City   | State  | Zip Code                 |
| Name of Site Where Game(s) will be Conducted<br><b>H. A. Thompson Arena</b>  | Site Address<br><b>831 17<sup>th</sup> Ave N</b> |  |                          |
| City<br><b>Fargo</b>   | State<br><b>ND</b>                               | Zip Code<br><b>58102</b>                                   | County<br><b>CASS</b>    |
| Check the Game(s) to be Conducted: * Poker, Twenty-one, and Paddlewheels may be Conducted only by a Restricted Event Permit.<br><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    | BENELLI Shotgun        | 1545                  | RAFFLE  | Cash                                   | 500                   |
| RAFFLE    | CHRISTENSEN Winchester | 1070                  | RAFFLE  | Cash                                   | 250                   |
| RAFFLE    | Cash                   | 1000                  | RAFFLE  | Cash                                   | 250                   |
| RAFFLE    | Cash                   | 750                   | RAFFLE  | APPLEBEE'S 10-\$100 GIFT CARDS         | 1000                  |
| RAFFLE    | Winchester shotgun     | 690                   | RAFFLE  | Buffalo Wild Wings 10-\$100 GIFT CARDS | 1000                  |
| RAFFLE    | Tikka Creedmoor        | 646                   | RAFFLE  | PLAY IT AGAIN 5-\$100 GIFT CARDS       | 500                   |
| RAFFLE    | Canoe Auto Start       | 600                   | RAFFLE  | DOOLITTLE'S 5-\$100 GIFT CARDS         | 500                   |
| RAFFLE    | Kimber Hand Gun        | 537                   |   |  |                       |
| RAFFLE    | Glock Hand Gun         | 482                   |   |  |                       |
|           |                        |                       | Total: (Limit \$40,000 per year)<br><b>\$ 11320</b> |  |                       |

Intended uses of gaming proceeds: Ice Rental

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<br><i>Dave Oksendal</i> | Date<br><b>10.15.19</b> | Title<br><b>Treasurer</b> | Business Phone Number<br><b>701.298.1524</b> |
|---|-------------------------|---------------------------|--|



## SFN 9338 (08/2019)

\$25.00  
10-16-19  
CASH

\* ☐ Restricted Event Permit (one event per year)

**DESCRIPTION AND RETAIL VALUE OF PRIZES TO BE AWARDED**

| Game Type | Description of Prize | Retail Value of Prize |
|-----------|----------------------|-----------------------|
| Raffle    | caning gear          | \$ 300                |
| Basket    | STEM items           | \$ 300                |
|           | NDSU Bison           | \$ 150                |
|           | Young Artists        | 250                   |
|           | puzzles              | 275                   |
|           | Ninja                | 250                   |
|           | puke                 | 75                    |
|           | Disney               | 40                    |
|           | Game Night           | 55                    |
|           | Baking               | 100                   |
|           | Lego                 | 300                   |
|           | Robots               | 200                   |

|        |                           |
|--------|---------------------------|
|        | (Limit \$40,000 per year) |
| Total: | \$ 4,065.00               |

Intended uses of gaming proceeds: Providing new items, supplies, etc for the Oak Grove Elementary Library

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<br><i>[Signature]</i> | Date<br>10-15-19 | Title<br>President | Business Phone Number<br>79-313-7112 |
|---|------------------|--------------------|--------------------------------------|



**APPLICATION FOR A LOCAL PERMIT OR CHARITY LOCAL PERMIT**  
 OFFICE OF ATTORNEY GENERAL  
 SFN 9338 (08/2016)

Application for: ☒ Local Permit      \* ☐ Charity Local Permit (one event per year)

\$25.00  
10-14-19  
V5246

|   |  |  |                          |  |                          |
|---|--|--|--------------------------|--|--------------------------|
| Name of Non-profit Organization<br><u>EL Zagal Holding Company</u>  |  | Date(s) of Activity<br><u>Feb 22nd to 2020</u> |                          | For a raffle, provide drawing date(s):<br><u>Feb 22nd 2020</u> |                          |
| Person Responsible for the Gaming Operation and Disbursement of Net Income<br><u>Michael Dow</u>  |  | Title<br><u>Potentate</u>                      |                          | Business Phone Number<br><u>701-235-7521</u>                   |                          |
| Business Address<br><u>1429 3rd ST N</u>  |  | City<br><u>Fargo</u>                           |                          | State<br><u>ND</u>   | Zip Code<br><u>58102</u> |
| Mailing Address (if different)  |  | City   |                          | State  | Zip Code                 |
| Name of Site Where Game(s) will be Conducted<br><u>EL Zagal Shrine Center</u>   |  | Site Address<br><u>1429 3rd ST N</u>           |                          |  |                          |
| City<br><u>Fargo ND 58102</u>   |  | State<br><u>ND</u>                             | Zip Code<br><u>58102</u> | County<br><u>Cass</u>  |                          |
| Check the Game(s) to be Conducted: * Poker, Twenty-one, and Paddlewheels may be Conducted only by a Charity Local Permit.<br><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    | Gun                  | 800                   |   |                      |                       |
| Raffle    | Gun                  | 700                   |   |                      |                       |
| Raffle    | Gun Safe             | 600                   |   |                      |                       |
|           |                      |                       |   |                      |                       |
| Raffles   | Meat                 | 400                   |   |                      |                       |
| Raffles   | Cash                 | 400                   |   |                      |                       |
|           |                      |                       |   |                      |                       |
| Raffles   | Guns                 | 3,000                 |   |                      |                       |
|           |                      |                       |   |                      |                       |
|           |                      |                       | Total: (Limit \$12,000 per year)<br>\$ 5900 |                      |                       |

Intended uses of gaming proceeds: Shrine Center Operations and Shriners  
Childrens Hospital Transportation Fund

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

Has the organization received a charity local permit from this or another city or county for the fiscal year July 1 through June 30? ☒ No    ☐ Yes - If "Yes," the organization does not qualify for a local permit or charity local permit.

Has the organization received a local permit from this or another city or county for the fiscal year July 1 through 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 \$12,000 per year.

|  |                           |                          |  |
|--|---------------------------|--------------------------|--|
| Signature of Organization's Top Executive Official<br><u>Michael Dow</u> | Date<br><u>10/16/2019</u> | Title<br><u>Chairman</u> | Business Phone Number<br><u>701-235-7521</u> |
|--|---------------------------|--------------------------|--|





(30)

325.00  
cc  
10-9-14

\* ☐ Restricted Event Permit (one event per year)

|  |  |  |                          |   |                          |
|--|--|--|--------------------------|---|--------------------------|
| Name of Nonprofit Organization or group of people permit is issued to<br><b>The Village Family Service Center</b>  |  | Date(s) of Activity<br><b>11-15-19 to 11-15-19</b> |                          | For a raffle, provide drawing date(s):<br><b>11-15-19</b> |                          |
| Person Responsible for the Gaming Operation and Disbursement of Net Income<br><b>Trenton Gerads</b>  |  | Title<br><b>Director</b>                           |                          | Business Phone Number<br><b>(701) 451-4966</b>            |                          |
| Business Address<br><b>1201 25th St S</b>  |  | City<br><b>Fargo</b>                               |                          | State<br><b>ND</b>  | Zip Code<br><b>58103</b> |
| Mailing Address (if different)   |  | City   |                          | State   | Zip Code                 |
| Name of Site Where Game(s) will be Conducted<br><b>Holiday Inn</b>   |  | Site Address<br><b>3803 13th Ave S</b>             |                          |   |                          |
| City<br><b>Fargo</b>   |  | State<br><b>ND</b>                                 | Zip Code<br><b>58103</b> | County<br><b>Cass</b>                                     |                          |
| 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**

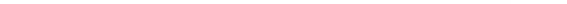
| Game Type   | Description of Prize    | Retail Value of Prize                 |
|-------------|-------------------------|---------------------------------------|
| Raffle      | Red Hawks Game Day      | \$ 700.00                             |
|             | Restaurants for a year  | \$ 1,000.00                           |
|             | Michael Kors Purse      | \$ 500.00                             |
|             | Happy Harry's Gift Card | \$ 1,000.00                           |
|             | Happy Harry's Gift Card | \$ 250.00                             |
|             | Happy Harry's Gift Card | \$ 250.00                             |
| Paddle Game | West Acres Gift Card    | \$ 500.00                             |
|             | West Acres Gift Card    | \$ 500.00                             |
|             |                         |                                       |
| Total:      |                         | (Limit \$40,000 per year)<br>\$ 4,700 |

Intended uses of gaming proceeds: All proceeds are used for providing our services to children & families with mental & behavioral health 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<br> | Date<br>10/1/19 | Title<br>Director | Business Phone Number<br>701-451-4911 |
|---|-----------------|-------------------|---------------------------------------|

(3f)

T \$25.00  
✓ 5540  
10-10-19

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### DESCRIPTION AND RETAIL VALUE OF PRIZES TO BE AWARDED

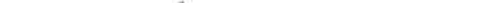
| Game Type | Description of Prize | Retail Value of Prize                |
|-----------|----------------------|--------------------------------------|
| Bingo     | Food / Drink         | \$ 200                               |
| Bingo     | Books                | \$ 200                               |
| Bingo     | Gift Cards           | \$ 500                               |
| Bingo     | Sports Gear          | \$ 200                               |
| Bingo     | Clothing             | \$ 200                               |
| Bingo     | Electronics          | \$ 400                               |
| Bingo     | Boys toys            | \$ 200                               |
| Bingo     | Girls toys           | \$ 200                               |
| Bingo     | Event tickets        | \$ 500                               |
| Total:    |                      | (Limit \$40,000 per year)<br>\$ 2600 |

Intended uses of gaming proceeds: School fundraiser, teacher grants, classroom supplies

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<br> | Date<br>10/1/19 | Title<br>Pres. and Elect | Business Phone Number<br>701 730 4040 |
|---|-----------------|--------------------------|---------------------------------------|





# 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)

309 ✓2942 10/17/19 25.00

|   |  |   |                          |
|---|--|---|--------------------------|
| Name of Nonprofit Organization or group of people permit is issued to<br><b>Heartsprings</b>    | Date(s) of Activity<br>to<br><b>12/10/19</b> | For a raffle, provide drawing date(s):<br><b>12/10/19</b> |                          |
| Person Responsible for the Gaming Operation and Disbursement of Net Income<br><b>Jan Nelson</b> | Title<br><b>Executive Director</b>           | Business Phone Number<br><b>701-261-3142</b>              |                          |
| Business Address<br><b>2010 N. Elm ST</b>   | City<br><b>Fargo</b>                         | State<br><b>ND</b>  | Zip Code<br><b>58102</b> |
| Mailing Address (if different)  | City   | State   | Zip Code                 |
| Name of Site Where Game(s) will be Conducted<br><b>Heartsprings</b>                             | Site Address<br><b>2010 N. Elm ST.</b>       |   |                          |
| City<br><b>Fargo</b>  | State<br><b>ND</b>                           | Zip Code<br><b>58102</b>                                  | County<br><b>Cass</b>    |

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

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

## DESCRIPTION AND RETAIL VALUE OF PRIZES TO BE AWARDED

| Game Type                | Description of Prize   | Retail Value of Prize | Game Type                 | Description of Prize                                   | Retail Value of Prize |
|--------------------------|--|-----------------------|---------------------------|--|-----------------------|
| Cause Box                | Leather Purse, necklace, makeup                              | 320.00                | Jazzing IT up             | Custom Purse, 46 North, wine, concordia series         | 140.00                |
| IT's All About the music | (3) glass figurines, concordia quilted Table, string Quartet | 305.00                | Corny Weekend             | 31 weekender bag, (2) quilts, wine                     | 135.00                |
| Leaves Inside & out      | Styl Leaf Blower Table Runner                                | 229.00                | Dance the Night Away      | Shoulder bag, concordia, Thai Orchid, concordia dancer | 139.00                |
| Healthy Body             | Young living oils Box  | 213.00                | Welcome Home              | Welcome Home sign                                      | 129.00                |
| I Love my Dog!           | Pet Food, Lg. tote bag, (2) sm. bags & dog blanket           | 200.00                | Eats for Everyone!        | Taste fully Simple & runner                            | 124.00                |
| OUT FOR THE NIGHT        | Wristlet purse, concordia Theatre, massage, hair care        | 180.00                | Happy Holidays            | wall hanging, runner & print                           | 110.00                |
| Bison Rule!              | Buffalo Print Flannel  | 177.00                | Movie Night               | Purse, Fargo Theatre, Wurst                            | 98.00                 |
| Craft Time               | Lg. wall hanging, tote & Prairie floor mats                  | 150.00                | Kids Snow Day             | Books, Play Doh, bank & organizer                      | 90.00                 |
| Good "Toteing"           | Lg. tote, Unglued, garnet bag                                | 143.00                |                           |  |                       |
|                          |  |                       | (Limit \$40,000 per year) |  |                       |
|                          |  |                       | Total: \$ 2,867.00        |  |                       |

Intended uses of gaming proceeds: \_\_\_\_\_

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<br><b>Jan Nelson</b> | Date<br><b>10/17/19</b> | Title<br><b>Executive Director</b> | Business Phone Number<br><b>701-261-3142</b> |
|--|-------------------------|------------------------------------|--|

3h

\$25.00  
✓ 1032  
10-16-19

\* ☐ Restricted Event Permit (one event per year)

|  |  |  |                               |  |                               |
|--|--|--|-------------------------------|--|-------------------------------|
| Name of Nonprofit Organization or group of people permit is issued to<br><b>Sadie Cameron Benefit</b>  |  | Date(s) of Activity<br><b>11/8/2019 to 11/8/2019</b> |                               | For a raffle, provide drawing date(s):<br><b>11/8/19</b> |                               |
| Person Responsible for the Gaming Operation and Disbursement of Net Income<br><b>Carrie Johnson</b>  |  | Title  |                               | Business Phone Number<br><b>(218) 329-1971</b>           |                               |
| Business Address<br><b>401 30th Ave. N. #10</b>  |  | City<br><b>Fargo</b>                                 |                               | State<br><b>ND</b>                                       | Zip Code<br><b>58102-0000</b> |
| Mailing Address (if different)   |  | City   |                               | State  | Zip Code                      |
| Name of Site Where Game(s) will be Conducted<br><b>El Zagal Shrine</b>   |  | Site Address<br><b>1429 3rd St. N.</b>               |                               |  |                               |
| City<br><b>Fargo</b>   |  | State<br><b>ND</b>                                   | Zip Code<br><b>58102-0000</b> | County<br><b>Cass</b>                                    |                               |
| Check the Game(s) to be Conducted: * Poker, Twenty-one, and Paddlewheels may be Conducted only by a Restricted Event Permit.<br><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 * |  |  |                               |  |                               |

| Game Type   | Description of Prize      | Retail Value of Prize                              |
|---|---------------------------|--|
| <b>Sadie Cameron Benefit raffle prize list – 11/8/19:</b> |                           |  |
| <u>Item:</u>  | <u>Value:</u>             |  |
| 50/50 raffle  | TBD \$1000. <sup>00</sup> |  |
| Battery operated children's ATV                           | \$90                      |  |
| Quilts  | \$200                     |  |
| Cooler  | \$190                     |  |
| Designer handbags   | \$585                     |  |
|   | <del>\$16,000</del>       |  |
|   | \$2065. <sup>00</sup>     |  |
|   | Total:                    | (Limit \$40,000 per year)<br>\$2065. <sup>00</sup> |

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<br><i>Carrie Ann Johnson</i> | Date | Title | Business Phone Number |
|--|------|-------|-----------------------|



(4)

## Amended

### GAMING SITE AUTHORIZATION

OFFICE OF ATTORNEY GENERAL  
SFN 17996 (02/2018)

G - \_\_\_\_\_ (\_\_\_\_)\_\_\_\_  
Site License Number  
(Attorney General Use Only)

Full, Legal Name of Gaming Organization **Red River Human Services Foundation**

**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 <b>Fargo Elks Lodge #260</b>   |  |                       |  |
| Street <b>3435 North Broadway</b>   | City <b>Fargo</b>                        | ZIP Code <b>58102</b> | County <b>Cass</b>                                       |
| Beginning Date(s) Authorized <b>10/1/19</b>   | Ending Date(s) Authorized <b>6/30/20</b> |                       | Number of twenty-one tables if zero, enter "0": <b>0</b> |
| Specific location where games of chance will be conducted and played at the site (required) <b>Gaming area is the entire bar ( except restrooms/office/storage areas)</b> |  |                       |  |
| If conducting <b>Raffle</b> or <b>Poker</b> activity provide date(s) or month(s) of event(s) if known   |  |                       |  |

#### RESTRICTIONS (City/County Use Only)

|   |                                 |
|---|---------------------------------|
| Days of week of gaming operations (if restricted) | Hours of gaming (if restricted) |
|---|---------------------------------|

#### ACTIVITY TO BE CONDUCTED Please check all applicable games to be conducted at site (required)

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

#### APPROVALS

|   |                      |
|---|----------------------|
| Attorney General  | Date                 |
| Signature of City/County Official   | Date <b>10/21/19</b> |
| PRINT Name and official position of person signing on behalf of city/county above<br><b>Steven Sprague/City Auditor</b> |                      |

#### 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



5

**TO: BOARD OF CITY COMMISSIONERS**  
**FROM: EXECUTIVE ASSISTANT KEMBER ANDERSON**  
**DATE: OCTOBER 7, 2019**  
**SUBJECT: MEETING SCHEDULE FOR 2020**

*KK*

I am proposing the following schedule for City Commission meetings for calendar year 2020 (please note, if a meeting day falls on a holiday, the meeting will be held on Tuesday).

January 13 and 27

February 10 and 24

March 9 and 23

April 6 and 20

May 4 and 18

June 1, 15 and 29

July 13 and 27

August 10 and 24

September 8 (Tuesday) and 21

October 5 and 19

November 2, 16 and 30

December 14 and 28

**RECOMMENDED MOTION:** To approve the 2020 City Commission meeting schedule as outlined above.



## PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Project No. TR-19-A1

Type: Change Order #1 &amp; Time Extension

Location: 45<sup>th</sup> St S at 17<sup>th</sup> Ave, 13<sup>th</sup> Ave & Page Dr

Date of Hearing: 10/14/2019

Routing

City Commission

Date

10/21/2019

PWPEC File

X

Project File

Jim Mohr

The Committee reviewed the accompanying correspondence from Project Manager, Jim Mohr, regarding Change Order #1 in the amount of \$4,550.00, for additional street lighting fixture to be replaced, along with the associated time extension to the Substantial and Final Completion Dates.

Staff is recommending approval of Change Order #1 and the time extension to the Substantial and Final Completion Dates as shown below:

| Original Completion Dates                                 | Revised This Memo  |
|---|--|
| Substantial – October 1, 2019<br>Final – November 1, 2019 | Substantial – November 1, 2019<br>Final – December 1, 2019 |

On a motion by Bruce Grubb, seconded by Kent Costin, the Committee voted to recommend approval of Change Order #1 & time extension as described above to Strata Corp.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve Change Order #1 in the amount of \$4,550.00, bringing the total contract amount to \$242,655.00, and the time extension to the Substantial and Final Completion Dates.

PROJECT FINANCING INFORMATION:Recommended source of funding for project: St Lt Utility Funds & 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

☒

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:** Jim Mohr, Project Manager  
**Date:** October 9, 2019  
**Re:** Project No. TR-19-A1 – Change Order #1 & Time Extension

---

### **Background:**

Project No. TR-19-A1 is for the replacement of street light fixtures along 45<sup>th</sup> Street South from Main Avenue to 52<sup>nd</sup> Avenue South, the replacement of signal head LED's at various locations Citywide and for the installation of flashing yellow arrows at 2 intersections.

Strata Corp. is the Prime Contractor for this project.

The City of Fargo is requesting additional street lighting fixtures to be replaced, in the amount of \$4,550.00, as well as making changes to the cabinet work for the 2 flashing yellow arrow intersections. This work will result in additional supplies to be ordered and coordinated to do the cabinet work.

### **Recommended Motion:**

Approve the Change Order in the amount of \$4,550.00 and the time extension to revise the Substantial and Final Completion Dates as shown below:

| Original Completion Dates                                 | Revised This Memo  |
|---|--|
| Substantial – October 1, 2019<br>Final – November 1, 2019 | Substantial – November 1, 2019<br>Final – December 1, 2019 |

JDM/klb  
Attachments



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

|                     |   |                        |                    |
|---------------------|---|------------------------|--------------------|
| <b>Project No</b>   | TR-19-A1  | <b>Change Order No</b> | 1                  |
| <b>Project Name</b> | Traffic Signal & Street Light Maintenance & Incidentals |                        |                    |
| <b>Date Entered</b> | 10/2/2019   | <b>For</b>             | Strata Corporation |

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:** time extension  
time extension and added street light fixtures

| 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 (\$) |
|---------------------------------------|---------|----------------------|------|---------------|--------------|---------------|--------------|--------------|-----------------|--------------------|
| Street Lighting                       | 14      | F&I Luminaire Type B | EA   | 229.00        | 0.00         | 229.00        | 7.00         | 236.00       | 650.00          | 4,550.00           |
| <b>Street Lighting Sub Total (\$)</b> |         |                      |      |               |              |               |              |              |                 | 4,550.00           |

**Summary**

**Source Of Funding**

Sales Tax Funds - Infrastructure - 420, Utility Funds - Street Lights - 528

**Net Amount Change Order # 1 (\$)**

4,550.00

**Previous Change Orders (\$)**

0.00

**Original Contract Amount (\$)**

238,105.00

**Total Contract Amount (\$)**

242,655.00

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**

10/01/2019

**Current Final Completion Date**

31.00

**Additional Days Substantial Completion**

31.00

**Additional Days Final Completion**

11/01/2019

**New Substantial Completion Date**

**New Final Completion Date**

**Description**

**APPROVED**

**APPROVED DATE**

**For Contractor**

*Strata Corporation*

*Department Head*

*1-Cell 10/16/19*

Report Generated : 10/09/2019 08:02:37 AM

Page 1 of 2

Project No : TR-19-A1



CITY OF FARGO  
ENGINEERING DEPARTMENT  
CHANGE ORDER REPORT

Title *Electrical Manager*

Mayor

Attest

⑦

**CITY OF FARGO  
GENERAL FUND - BUDGET TO ACTUAL  
THROUGH SEPTEMBER 2019  
(UNAUDITED)**

|  | <b>2019<br/>BUDGET</b> | <b>2019<br/>ACTUAL</b> | <b>VARIANCE</b>       |
|--|------------------------|------------------------|-----------------------|
| <b>REVENUES:</b>                                   |                        |                        |                       |
| Taxes  | \$ 27,895,885          | \$ 28,233,771          | \$ 337,886            |
| Licenses & Permits                                 | 3,600,675              | 3,170,777              | (429,898)             |
| Fines & Traffic Tickets                            | 1,362,613              | 1,270,709              | (91,904)              |
| Intergovernmental Revenue                          | 12,270,931             | 11,533,478             | (737,453)             |
| Charges for Services                               | 11,283,803             | 9,891,127              | (1,392,676)           |
| Interest   | 2,629,998              | 3,682,727              | 1,052,729             |
| Miscellaneous Revenue                              | 459,930                | 465,879                | 5,949                 |
| Transfers In                                       | 11,629,835             | 10,734,025             | (895,810)             |
| <b>Total Revenues</b>                              | <b>\$ 71,133,670</b>   | <b>\$ 68,982,493</b>   | <b>\$ (2,151,177)</b> |
| <b>EXPENDITURES:</b>                               |                        |                        |                       |
| City Administrator                                 | \$ 5,475,278           | \$ 5,103,059           | \$ 372,219            |
| Finance  | 5,718,609              | 5,194,653              | 523,956               |
| Planning & Development                             | 2,973,914              | 2,656,769              | 317,145               |
| Transit  | 6,272,672              | 5,715,180              | 557,492               |
| Public Works                                       | 12,888,342             | 12,580,317             | 308,025               |
| Fire Department                                    | 10,402,967             | 9,962,600              | 440,367               |
| Police   | 16,074,620             | 15,621,645             | 452,975               |
| Health   | 8,567,388              | 8,352,812              | 214,576               |
| Library  | 3,416,555              | 3,335,258              | 81,297                |
| Commission   | 498,368                | 495,704                | 2,664                 |
| Civic Center                                       | 361,509                | 364,611                | (3,102)               |
| Social Services                                    | 401,776                | 293,426                | 108,350               |
| Capital Outlay                                     | 389,304                | 233,833                | 155,471               |
| Vehicle Replacement/IT                             | 295,927                | 228,304                | 67,623                |
| Contingency  | (1,323,043)            | 4,344                  | (1,327,387)           |
| Transfers Out                                      | 3,873,894              | 3,753,894              | 120,000               |
| <b>Total Expenditures</b>                          | <b>\$ 76,288,080</b>   | <b>\$ 73,896,409</b>   | <b>\$ 2,391,671</b>   |
| <b>Excess of Revenue Over (Under) Expenditures</b> | <b>\$ (5,154,410)</b>  | <b>\$ (4,913,916)</b>  | <b>\$ 240,494</b>     |

REPORT OF ACTION  
**FINANCE COMMITTEE**

⑧

**Project:** Civic Plaza – Exterior Lighting**Type:** Art Illumination**Location:** Civic Plaza**Date of Hearing:** August 26, 2019

|                 |             |
|-----------------|-------------|
| <u>Routing</u>  | <u>Date</u> |
| City Commission | 10/21/19    |
| Project File    |             |

Mayor Mahoney submitted a proposal for exterior lighting to illuminate the Commission Chambers in conjunction with Phase 1 of the Civic Plaza landscaping and grading project. The Phase 1 work in the Civic Plaza is adjacent to the Public Library and is being completed to accommodate the placement of the Sodbuster sculpture in the fall of 2019. The Mayor was approached by members of the Arts & Culture Commission with a request to illuminate the exterior of the chambers to fully showcase the twelve existing art panels. The estimated cost for the work is \$199,000. It was suggested that funding for the work come from the 2019 budget, Fund 475.

In researching other peer cities, it is common for municipal facilities to be illuminated with color-changing lights to commemorate community events and special occasions. The exterior illumination of the chambers will complement the Civic Plaza Phase 1 landscaping and grading project.

It was suggested that the work be a piggyback, sole sourced procurement with Sun Electric, because they are currently under contract with the City and remain on-site finishing other projects. Sun Electric's knowledge of the area including as-built plans, geofoam foundations and electrical conduit placement, would save considerable dollars in discovery work and plan reviews.

**MOTION:**

On a motion by Commissioner Piepkorn, seconded by Bruce Grubb, the Finance Committee voted to approve a piggyback, sole source procurement with Sun Electric for an exterior lighting project to coincide with the completion of the Civic Plaza Phase 1 landscaping and grading project.

| <u>COMMITTEE:</u>                            | <u>Present</u> | <u>Yes</u> | <u>No</u> | <u>Unanimous</u> |
|--|----------------|------------|-----------|------------------|
|  |                |            |           | <u>X</u>         |
|  |                |            |           | Proxy            |
| Tim Mahoney, Mayor                           | X              |            |           |                  |
| Dave Piepkorn, City Commissioner             | X              |            |           |                  |
| Bruce Grubb, City Administrator              | X              |            |           |                  |
| Mike Redlinger, Assistant City Administrator | X              |            |           |                  |
| Kent Costin, Director of Finance             | X              |            |           |                  |
| Steve Sprague, City Auditor                  | X              |            |           |                  |

  
 Tim Mahoney, Finance Committee Chair



**Dr. Timothy J. Mahoney, Mayor**

Fargo City Hall

200 3rd Street North

Fargo, ND 58102

Phone 701.241.1310 | Fax: 701.476.4136

[TMahoney@FargoND.gov](mailto:TMahoney@FargoND.gov)

**TO:** Members of the Finance Committee

**FROM:** Dr. Tim Mahoney, Mayor

**DATE:** 25 August 2019

**RE:** Proposal for Exterior Illumination of City Commission Chambers

As the Fargo City Hall project concludes and we begin phase I construction of the Fargo Civic Plaza this week, I requested staff to work with our City Hall contractors to determine the feasibility and cost of illuminating the exterior three-sided facade of the City Commission Chambers with LED lights via both white and full color capabilities.

When we look to our peer benchmark communities, it is becoming common for municipal structures and facilities to be illuminated in color-changing lights. In our region, for instance, this feature was deployed on Minneapolis' I-35W bridge and it has been a resounding success. While typically illuminated in white, the color has been easily changed to commemorate events such as Breast Cancer Awareness Month or the Minnesota Gophers colors at football season kickoff. This has helped to generate community interest and support for many different causes. It also serves to continually showcase the linkage of the City with its community events.

In discussions with Bishop Land Design and members of the City Commission, it is clear that our unified intent is to create a Civic Plaza to serve as a regional epicenter. This illumination feature would be a cornerstone building block in this effort and the programming of the overall riverfront. Additionally, I have been approached by members of the Arts & Culture Commission who have requested the complete illumination of the Commission Chambers' exterior to fully showcase the facility's twelve art panels.

Since the contractors who completed the City Hall project remain assembled to finish punch list items, it would be in the City's financial interest to advance the illumination project at this time. The contractors' working knowledge of the "as built" plans, especially with geofoam and electrical conduits, would save tens of thousands of dollars in the discovery work and plan reviews needed if this project were completed in subsequent years.

Additionally, the City would be able to utilize the reduced hourly and mark-up rates afforded to it via the City Hall Building RFP process if this project were to be awarded in 2019.

I have attached renderings of the white illumination capability of the system, which would be the default option used each evening. The ability to change the white to multi-color is also included in the price and would be used for special events, proclamations and community celebrations.

The total cost of the illumination package and installation services is \$174,000. I am proposing a \$25,000 contingency line item, bringing the total project cost to \$199,000. Your favorable approval of this expenditure would be greatly appreciated. I look forward to discussing this with you.





## Sole Source and Piggyback Procurement Form

### Sole Source and Piggyback Justification for Procurement

The following information is offered for the sole source acquisition of goods or services described below. The purchase has been thoroughly researched and it has been determined that the vendor/brand is the only acceptable vendor/brand for the product or services that will fit the particular need.

Vendor Name:

Sun Electric

Estimated Dollar Amount of Purchase:

\$199,000

The project/service is required to:

Illuminate the exterior of the City Hall Commission Chambers and the art panels, in conjunction with Phase I of the Civic Plaza landscaping and grading project.

Description of features or capabilities unique to the vendor/brand being requested as related to project requirements:

Contracted (reduced) hourly rates were negotiated and agreed upon in the overall City Hall project proposal through a competitive, RFP solicitation project. Sun Electric extended these same rates for materials and labor to this project via piggyback.

As the main City Hall electrical contractor, Sun Electric possesses an expert knowledge of the "as-builts" and the geotechnical aspects of the facility. This saves the City considerable money in discovery work and plan reviews. Additionally, Sun Electric is utilizing the same subcontractor for light design as it did for the City Hall project. As a result, a sole source piggyback solicitation is being requested to ensure the project is as cost efficient as possible.

**Provide a brief description of how your investigation was conducted.** (Internet, publications, consultations) List all sources identified and investigated to determine that no other source exists for similar products capable of meeting requirements (Must be exhaustive of all sources for the commodity being purchased. \*\*)

The contractors who completed the City Hall project remain assembled to finish punch list items. It would be in the City's financial interest to utilize Sun Electric for this project due to the reduced hourly rates, the continuity of the lighting designer and reduced overhead costs.

**\*\*If all sources are not investigated a competitive solicitation must be issued.**

Provide a side-by-side comparison of the features/service of all other vendors/brands considered. (List the features or capabilities required for your project and how each vendor investigated does or does not meet those requirements. A table format is recommended)

The comparison of hourly rates and material costs was completed for the larger City Hall project via a competitive RFP process. Sun Electric was chosen as the contractor following this process. The same rates and markups are being utilized for this sole source piggyback.

Just as was completed for the larger building project, Sun Electric is competitively soliciting costs for the project fixtures to ensure the lowest pricing is realized.

If the piggyback procurement method is being used, please provide a copy of the piggyback contract.

This proposed sole source piggyback would utilize the contract generated via AFB17044 to Sun Electric.

Signature: \_\_\_\_\_

  
(Requestor)

Printed Name: Dr. Tim Mahoney

Department: Mayor's Office

Title: Mayor of the City of Fargo

Date: 25 August 2019

I, hereby, certify that this justification for other than full and open competition is accurate and complete to the best of my knowledge and belief.

TJM (Requestor initials)

9

**M E M O R A N D U M**

**TO: BOARD OF CITY COMMISSIONERS**

**FROM: GRANT LARSON *GL***  
**DIRECTOR OF ENVIRONMENTAL HEALTH**

**DATE: OCTOBER 14, 2019**

**RE: ARTICLE 13-10—RECREATIONAL AQUATIC FACILITIES**

Dear Commissioners,

The Environmental Health Division of Fargo Cass Public Health would like to revise Article 13-10, Recreational Aquatic facilities, specifically language associated with requirements for residential pools.

**Suggested Motion:** Move to task Fargo Cass Public Health to work with the City Attorney's office to review and revise existing ordinances pertaining to Article 13-10 associated with Recreational Aquatic facilities.

Please feel free to contact me with any questions or concerns, 241-1388.


Grant Larson

GL/lls  
Enclosure

10

**M E M O R A N D U M**

**TO: BOARD OF CITY COMMISSIONERS**

**FROM: DESI FLEMING**   
**DIRECTOR OF PUBLIC HEALTH**

**DATE: OCTOBER 17, 2019**

**RE: AGREEMENT FOR SERVICES WITH SAMANTHA  
NIENOW, PRESIDENT OF RED ZEST DESIGN, INC. FOR  
AN AMOUNT NOT TO EXCEED \$11,000.00**

The attached Agreement for Services with Samantha Nienow, President of Red Zest Design, Inc. for an amount not to exceed \$11,000 is for the building of two online Nutrition Training modules.

No budget adjustment is required for this contract.

**Suggested Motion:** Move to approve the Agreement for Services with Samantha Nienow, Red Zest Design, Inc.

DF/lls  
Enclosure



## AGREEMENT FOR SERVICES

**THIS AGREEMENT**, effective the 1st day of November, 2019, by and between Fargo Cass Public Health ("FCPH"); and Samantha Nienow, President of Red Zest Design, Inc.

**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 November 1st, 2019 through September 30th, 2020.
- B. **Services to be provided by independent contractor:** Build two online Nutrition training modules, which will include:
- Incorporating graphics from the "Nourishing Food & Nourishing Lives: In-Depth Training for Child Care Providers" power point presentation and recording of the face to face training.
  - Recording the audio for the training (voice-over talent will be Samantha Nienow) FCPH staff will help in writing and confirming the voice-over script.
  - Editing soft music under voice recordings.
  - Adding quizzes in each section of the course, FCPH staff will help with writing quiz questions and answers.
  - Copy editing the script and online course text (including quizzes) by a professional copy editor to make sure there are no grammar mistakes in the recorded audio or written text.
  - Testing the new online course as a student to make sure it works properly.
- The Designer, will set up these elements in the Thinkific platform and then provide full access to FCPH to change or edit the materials. The administration of the online course and management will be FCPH's responsibility. The first module projected completion date by June 15th, 2020, and the second module completed by September 30, 2020.
- C. **Reimbursement:** The contracting independent contractor shall be reimbursed \$11,000.00 for two 90 minute modules at \$5,500.00 for each online module and submit an invoice, not to exceed \$11,000.00.
- D. **Termination:** This Agreement may be terminated by either party upon the giving of thirty (30) days written notice.
- E. **Confidentiality:** The contracting independent contractor 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 shall not be deemed to be 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**

By   
Desi Fleming, Director of Public Health

Date 10/17/19

By \_\_\_\_\_  
Timothy J. Mahoney, Mayor, City of Fargo

Date \_\_\_\_\_

**CONSULTANT**

By   
Samantha Nienow Red Zest Design, Inc.  
EIN: 81-4041914

Date 10/17/2019

**OFFICE USE**

Contract Originator: Cheryl Stetz  
Division: Health Protection and Promotion  
Sub Category: Nutrition



| <b>City of Fargo<br/>Staff Report</b> |   |                       |             |
|---------------------------------------|---|-----------------------|-------------|
| <b>Title:</b>                         | <b>Prairie Tech Second Addition</b>                                 | <b>Date:</b>          | 7/9/2019    |
|                                       |   | <b>Updated:</b>       | 10/14/2019  |
| <b>Location:</b>                      | 4110 40 <sup>th</sup> Street South                                  | <b>Staff Contact:</b> | Luke Morman |
| <b>Legal Description:</b>             | Lot 2, Block 1, Prairie Tech Addition                               |                       |             |
| <b>Owner(s)/Applicant:</b>            | Heather Skari, Smile Achers LLP                                     | <b>Engineer:</b>      | Mead & Hunt |
| <b>Entitlements Requested:</b>        | Minor Subdivision (Replat of Lot 2, Block 1, Prairie Tech Addition) |                       |             |
| <b>Status:</b>                        | City Commission Public Hearing: October 21, 2019                    |                       |             |

| <b>Existing</b>  | <b>Proposed</b>                                |
|--|--|
| <b>Land Use:</b> Medical Office  | <b>Land Use:</b> No change                     |
| <b>Zoning:</b> LC, Limited Commercial  | <b>Zoning:</b> No change                       |
| <b>Uses Allowed:</b> LC – Limited Commercial. Allows colleges, community service, daycare centers of unlimited size, health care facilities, parks and open space, religious institutions, safety services, offices, off premise advertising signs, commercial parking, retail sales and service, self-service storage, vehicle repair, limited vehicle service. | <b>Uses Allowed:</b> No change                 |
| <b>Maximum Lot Coverage Allowed:</b> 55% of lot  | <b>Maximum Lot Coverage Allowed:</b> No change |

**Proposal:**

The applicant is requesting a minor subdivision, entitled **Prairie Tech Second Addition**, which is a replat of Lot 2, Block 1, Prairie Tech Addition. The subject property is located at 4110 40<sup>th</sup> Street South and is comprised of approximately 5.45 acres. The proposed subdivision will create two lots and one block. The proposed lot 1 is an existing dental office which meets all requirements of the LDC within the proposed boundaries.

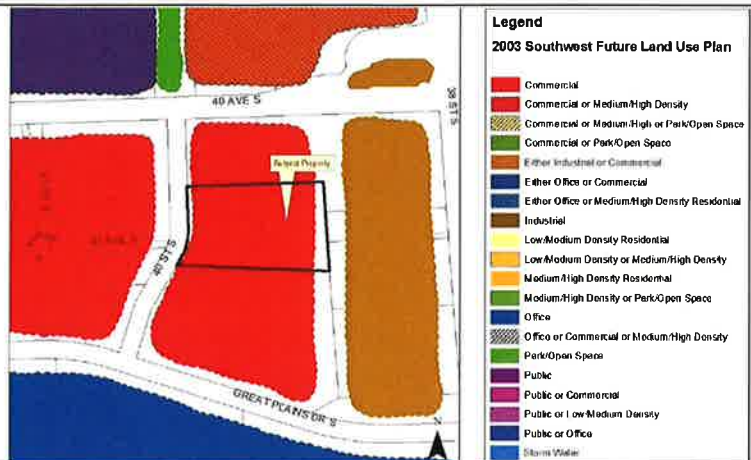
This project was reviewed by the City's Planning and Development, Engineering, Public Works, and Fire Departments ("staff"), whose comments are included in this report.

**Surrounding Land Uses and Zoning Districts:**

- North: LC, Limited Commercial, with retail, and LI, Limited Industrial, with warehouse;
- East: LI, Limited Industrial, with warehouse and office;
- South: LC, Limited Commercial, with office;
- West: LC, Limited Commercial with a CUP, with light manufacturing and vacant land.

**Area Plans:**

The subject property is located within the 2003 Southwest Future Land Use Plan. This plan indicates the subject property as being appropriate for Commercial uses.

**Schools and Parks:**

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

**Neighborhood:** The subject property is located in the Woodhaven neighborhood.

**Parks:** The subject property is less than a half mile east of Woodhaven North Park with the amenities of an ADA fishing ramp, fishing, picnic table, playground, recreational trails, and soccer field.

**Pedestrian / Bicycle:** Off-road bike facilities are located along 42 Street South, 40 Avenue South, and 36 Street South, which are a component of the metro area bikeway system.

**Staff Analysis:****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 subdivision is intended to replat the subject property into two lots to accommodate future development. In accordance with Section 20-0901.F of the LDC, notices of the proposed plat have been sent out to property owners within 300 feet of the subject property. To date, staff has not received any inquiries. Staff has reviewed this request and finds that this application complies with standards of Article 20-06 and all applicable requirements of the Land Development Code. **(Criteria Satisfied)**

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

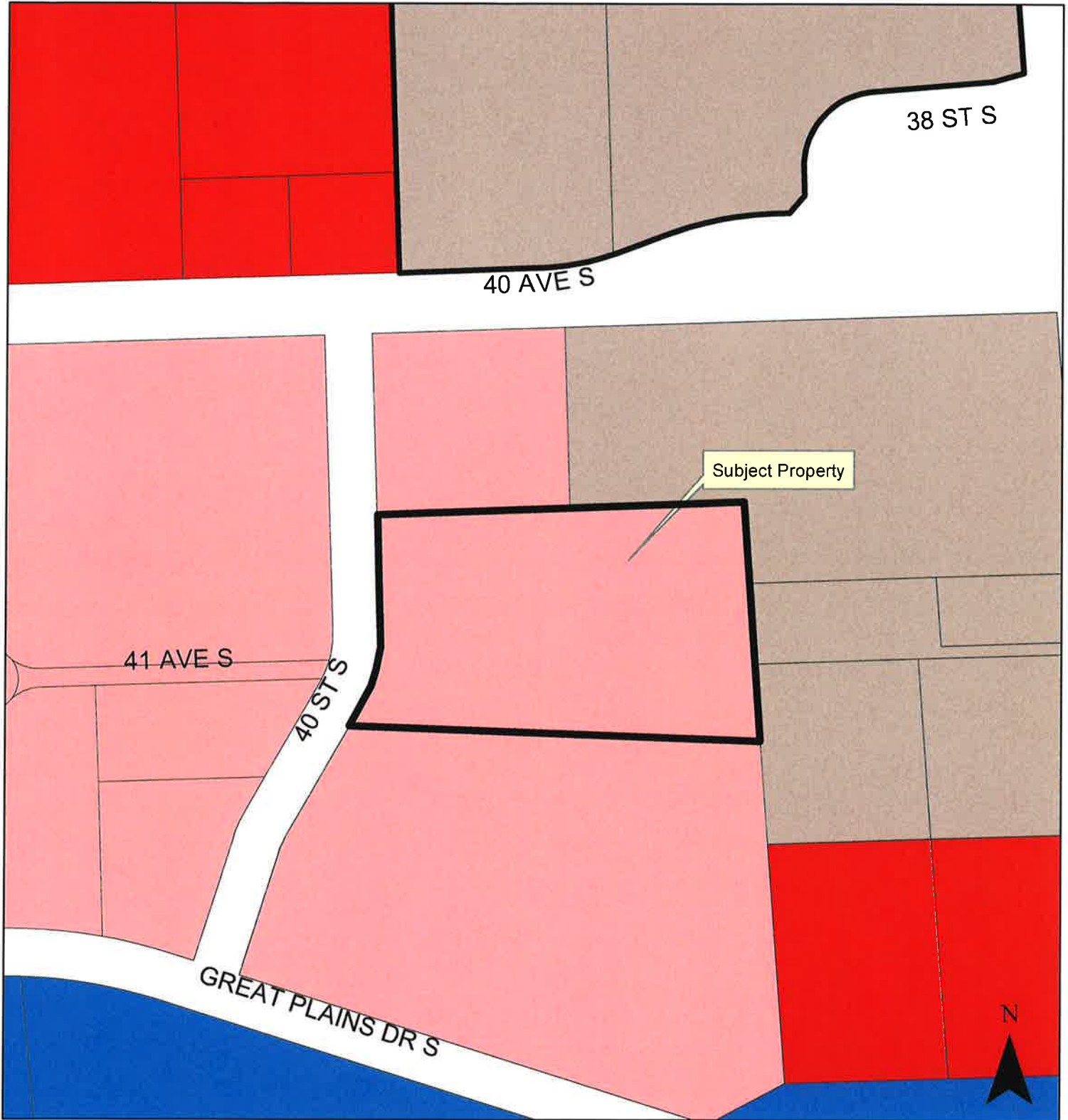
While this section of the LDC specifically addresses only major subdivision plats, staff believes it is important to note that any improvements associated with the project (both existing and proposed) are subject to special assessments. Special assessments associated with the costs of the public infrastructure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

|  |
|--|
| basis as is typical with the City of Fargo assessment principles. <b>(Criteria Satisfied)</b>  |
| <b>Staff Recommendation:</b>   |
| Suggested Motion: "To accept the findings and recommendations of the Planning Commission and staff and hereby move to approve of the proposed subdivision plat <b>Prairie Tech Second Addition</b> as outlined within the staff report, as the proposal complies with the adopted Area Plan, standards of Article 20-06, and all other applicable requirements of the Land Development Code".  |
| <b>Planning Commission Recommendation: August 6, 2019</b>  |
| On August 6, 2019, with a vote of 8 to 0, with three Commissioners absent, the Planning Commission accepted the findings and recommendations of staff and recommended approval to the City Commission of the proposed subdivision plat <b>Prairie Tech Second Addition</b> as outlined within the staff report, as the proposal complies with the adopted Area Plan, standards of Article 20-06, and all other applicable requirements of the Land Development Code. |
| <b>Attachments:</b>  |
| <ol style="list-style-type: none"> <li>1. Zoning Map</li> <li>2. Location Map</li> <li>3. Preliminary Plat</li> </ol>  |

# Plat (Minor)

## Prairie Tech Second Addition

4110 40th Street S



### Legend

|     |      |     |             |
|-----|------|-----|-------------|
| AG  | LC   | MHP | SR-2        |
| DMU | LR   | MNC | SR-3        |
| GC  | MR-1 | NO  | SR-4        |
| GO  | MR-2 | PD  | SR-5        |
|     | MR-3 | UMU | SR-6        |
|     |      |     | City Limits |

300



Fargo Planning Commission

August 6, 2019



# Plat (Minor)

## Prairie Tech Second Addition

4110 40th Street S











(12)

## PUBLIC WORKS/OPERATIONS

Fleet Management, Forestry,  
Streets & Sewers, Watermeters,  
Watermains & Hydrants  
402 23<sup>rd</sup> STREET NORTH  
FARGO, NORTH DAKOTA 58102  
PHONE: (701) 241-1453  
FAX: (701) 241-8100

October 9, 2019

The Honorable Board of City Commissioners  
City of Fargo  
225 North Fourth Street  
Fargo, ND 58102

RE: Hydro Excavation Truck (RFP19154)

Commissioners:

On September 20<sup>th</sup>, 2019, proposals were received for one (1) Hydro Excavation Truck. Four proposal were submitted by four vendors.

The results were as follows:

| <u>Firm</u>            | <u>Price</u>        |
|------------------------|---------------------|
| RDO Equipment          | \$463,800.00        |
| <b>Titan Machinery</b> | <b>\$421,950.00</b> |
| Kaiser Premier         | \$429,500.00        |
| ABM Equipment          | \$399,399.00        |

The review committee, consisted of Ben Dow, Matt Andvik, and Tanner Smedshammer. In determining the recommendation an assessment of product, functionality, service, warranty and price were all taken into account. Our recommendation is to purchase based on meeting all specifications and assessment's proposed from Titan Machinery. Funding for this project is included in the 2019 / 2020 Mains and Hydrants Budget.

SUGGESTED MOTION:

Approve the recommendation to purchase one (1) Hydro Excavation Truck from Titan Machinery for the amount of \$421,950.00.

Respectfully Submitted,

Tanner Smedshammer  
Fleet Management Specialist

**Request for Proposals (RFP19154)**  
**Hydro Excavator**  
 9/20/2019

**Proposal Evaluation Summary**

|                       | <b>ABM<br/>Equipment</b> | <b>Titan<br/>Machinery</b> | <b>Kaiser<br/>Premier</b> | <b>RDO<br/>Equipment</b> |
|-----------------------|--------------------------|----------------------------|---------------------------|--------------------------|
| Chassis Make          | Freightliner             | Freightliner               | Peterbilt                 | Freightliner             |
| Chassis Model         | 114SD                    | 114SD                      | 567                       | 114SD                    |
| Hydro Excavator Make  | VAC-CON                  | VACALL                     | KAISER PREMIER            | HI-VAC                   |
| Hydro Excavator Model | VXPD4212LH3/1100         | AE-1010                    | CV100T                    | X-13                     |
| Delivery Date         | 60-90 Days               | 150 Days                   | 90 Days                   | 120-150 Days             |
| <b>TOTAL PRICE</b>    | <b>\$399,399.00</b>      | <b>\$421,950.00</b>        | <b>\$429,500.00</b>       | <b>\$463,800.00</b>      |

(13)

October 11, 2019

The Honorable Board of City Commissioners  
City of Fargo  
225 North Fourth Street  
Fargo, ND 58102

RE: Lease contract approval for (1) 2019 Hook Roll off Refuse Truck (RFP19092)

Commissioners:

On July 15<sup>th</sup>, 2019, the Commission granted a request to purchase one (1) Hook Roll off Refuse Truck. A 5 year lease quote was requested as an additional finance tool. Two vendors submitted quotes. Kinetic Leasing provided the City of Fargo the lowest financing quote.

The review committee, consisting of Terry Ludlum and Tanner Smedshammer, is recommending an award to Kinetic Leasing for \$33,750.21 per year. A copy of lease contract #CIT6415-138 is attached for review and consideration. The complete contract is available at the commission office for viewing and signatures. Funding for this project is included in the 2019 Solid Waste Operational Budget.

SUGGESTED MOTION:

Approve (RFP19092) a 5-year municipal lease to Kinetic Leasing for the amount of \$33,750.21 per year.

Respectfully Submitted,



Tanner Smedshammer  
Fleet Management Specialist



EXHIBIT A  
EQUIPMENT

Lessee: City of Fargo  
2301 8<sup>th</sup> Ave N  
Fargo, ND 58102

Date of Lease: October 10, 2019  
Lease #: CIT6415-138

The Equipment which is the subject of the attached Lease with Option to Purchase Agreement is as follows:

| QTY. | SERIAL NO.        | DESCRIPTION  |
|------|-------------------|--|
|      |                   | <b>Vendor: Sanitation Products Inc.</b>  |
| 1    |                   | Galbreath U5-DPHK-200  |
|      |                   | <b>Vendor: Nelson International</b>  |
| 1    | 3HAEKTAT6LL360208 | 2020 International HV607-L9 330HP – Allison 3000RDS-20K Front Axle-46K Rear Axle - white |

Description of Financed Amount:

|  |              |
|--|--------------|
| Cost of above Equipment                | \$158,128.35 |
| Cost of related charges:               |              |
| Transportation                         | \$ N/A       |
| Physical Modifications (specify)       | \$ N/A       |
| Other (Specify)                        | \$ N/A       |
| Add: Sales or other tax, if applicable | \$ N/A       |
|  |              |
| Less: Trade-In                         | \$ N/A       |
|  |              |
| Net Financed Amount:                   | \$158,128.35 |

## EXHIBIT B

## SCHEDULE OF RENTAL PAYMENTS

Lessee: City of Fargo  
 2301 8<sup>th</sup> Ave N  
 Fargo, ND 58102

Date of Lease: October 10, 2019  
 Lease #: CIT6415-138

**BASE RENTAL PAYMENTS**

| <b>Rental Payment<br/>Date</b> | <b>Rental Payment<br/>Amount</b> | <b>Interest<br/>Portion</b> | <b>Principal<br/>Portion</b> | <b>Purchase Option<br/>Price *</b> |
|--------------------------------|----------------------------------|-----------------------------|------------------------------|------------------------------------|
| 11/01/2019                     | \$33,750.21                      | \$328.34                    | \$33,421.87                  | \$125,452.00                       |
| 11/01/2020                     | \$33,750.21                      | \$4,052.96                  | \$29,697.25                  | \$95,466.00                        |
| 11/01/2021                     | \$33,750.21                      | \$3,087.80                  | \$30,662.41                  | \$64,580.00                        |
| 11/01/2022                     | \$33,750.21                      | \$2,091.27                  | \$31,658.94                  | \$32,767.00                        |
| 11/01/2023                     | \$33,750.21                      | \$1,062.33                  | \$32,687.88                  | \$0.00                             |

\*After payment of Rental Payment due on such date.



www.kineticlease.com

PHONE 701.476.0221  
800.558.7337  
FAX 701.476.0277

2575 41st Street South  
Suite 1 PO Box 9785  
Fargo, ND 58106-9785

October 10, 2019

City of Fargo  
Attn: Tanner Smedshammer  
200 3<sup>rd</sup> Street North  
Fargo, ND 58102

RE: Lease with Option to Purchase Agreement No. CIT6415-138

Dear Mr. Smedshammer:

Enclosed please find the following documentation for the lease of the 2020 International

- Invoice for the first annual lease payment
- Lease with Option to Purchase Agreement No. CIT6415-138
- Exhibit A - Equipment Description
- Exhibit B - Rental Payments
- Exhibit C - Certificate of Acceptance
- Exhibit D - Resolution
- Insurance Coverage Request Letter  
Please fill in the name and address of your insurance agent where indicated. It is important that you request a certificate of insurance be forwarded to our office just as soon as possible
- Certificate of Incumbency
- Power of Attorney (Must be signed in the presence of a notary)
- Title Rider - Title Instructions
- 8038-G -- We will take care of filing this form with the IRS. Please sign originals where indicated in **blue ink**.

Please sign and seal all documents where indicated and return all of the executed documents along with a check in the amount of \$34,200.21 to my attention. Upon receipt of these signed documents Kinetic Leasing, Inc. will be able to pay the appropriate vendor(s) in a prompt manner. I can be reached at 800-558-7337 if you have any other questions pertaining to the documentation. Thank you

Sincerely,  
Kinetic Leasing, Inc.

Sutton Lauinger  
Equipment Finance Specialist

**INVOICE**

2575 41st St. S. Ste. 1  
PO Box 9785  
Fargo, ND 58106-9785  
800.558.7337

Page No. 1  
INVOICE NO. 221449  
Customer # FARG

INVOICE DATE 10/10/19 DUE DATE 11/01/19

**INVOICE TO:**

City of Fargo  
ATTN: Tanner Smedshammer  
402 23rd St N  
Fargo, ND 58102

**REMIT TO:**

Kinetic Leasing, Inc.  
P.O. Box 9785  
Fargo, ND 58106

| AGREEMENT #   | DESCRIPTION                    | FROM     | THROUGH  | AMOUNT          |
|---|--------------------------------|----------|----------|-----------------|
| Lease # CIT6415-138   | 2020 International & Galbreath |          |          |                 |
|   | Lease Payment                  | 11/01/19 | 10/31/20 | 33,750.21       |
|   | Documentation Fee              | 11/01/19 | 11/30/19 | 350.00          |
|   | Doc Fee - Title                | 11/01/19 | 11/30/19 | 100.00          |
| <b>PLEASE RETURN DUPLICATE WITH PAYMENT.</b><br>TERMS: NET CASH ON DUE DATE<br>PURSUANT TO AGREEMENT, LATE CHARGES MAY APPLY FOR PAYMENTS NOT PAID WHEN DUE.<br>PLEASE REFER TO OUR INVOICE NO. ON YOUR REMITTANCE. |                                |          |          |                 |
| Invoice Subtotal  |                                |          |          | 34,200.21       |
| Sales Tax   |                                |          |          | .00             |
|   |                                |          |          | <hr/> 34,200.21 |

**PAY THIS AMOUNT**

LEASE WITH OPTION TO PURCHASE AGREEMENT NO. CIT6415-138

Between

**KINETIC LEASING, INC.**

As Lessor

and

**CITY OF FARGO**

As Lessee

Dated as of the 10<sup>th</sup> day of October, 2019.

THIS LEASE WITH OPTION TO PURCHASE AGREEMENT dated as of this 10<sup>th</sup> day of October, 2019, (the Lease), by and between KINETIC LEASING, INC., a corporation duly organized and existing under the laws of the state of North Dakota as lessor ("Lessor") whose address is 2575 41<sup>st</sup> Street S, Suite 1, Fargo, North Dakota 58104; and City of Fargo, a political subdivision of the state of North Dakota as lessee ("Lessee"), whose address is 2301 8<sup>th</sup> Ave N, Fargo, ND 58102;

WITNESSETH:

WHEREAS, Lessee is authorized by law to acquire such items of personal property as are needed to carry out its governmental functions, and to acquire such personal property by entering into lease with option to purchase agreements; and

WHEREAS, Lessee has determined that it is necessary for it to acquire under this Lease certain items of personal property described herein as Equipment; and

WHEREAS, Lessor is willing to acquire such items of Equipment and to lease them to Lessee pursuant to this Lease;

NOW THEREFORE, in the joint and mutual exercise of their powers, and in consideration of the mutual covenants herein contained, the parties hereto recite and agree as follows:

ARTICLE I

DEFINITIONS AND EXHIBITS

Section 1.1. Definitions. Unless the context otherwise requires, the terms defined in this Section shall, for all purposes of this Lease, have the meanings herein specified.

Contractor: Each of the manufacturers or vendors from whom Lessee (or Lessor at Lessee's request) has ordered or will order or with whom Lessee (or Lessor at Lessee's request) has contracted or will contract for the manufacture, delivery and/or installation of the Equipment.

Equipment: The personal property described in the attached Exhibit A which is being leased with option to purchase by Lessee pursuant to this Lease.

Fiscal Year: The twelve month fiscal period of Lessee which commences on January 1<sup>st</sup> in every year and ends on the following December 31<sup>st</sup>.

Independent Counsel: An attorney duly admitted to the practice of law before the highest court of the State who is not a full-time employee of Lessor or Lessee.

Interest: The portion of any Rental Payment designated as and comprising interest as shown in the attached Exhibit B.

Net Proceeds: Any insurance proceeds or condemnation award, paid with respect to the Equipment, remaining after payment therefrom of all expenses incurred in the collection thereof.

Non-appropriation: The failure of City of Fargo to appropriate money for any Fiscal Year of Lessee sufficient for the continued performance of this Lease by Lessee, as evidenced by the passage of an ordinance or resolution specifically prohibiting Lessee from performing its obligations under this Lease, and from using any moneys to pay the Rental Payments due under this Lease for a designated Fiscal Year and all subsequent Fiscal Years.

Payment Date: The date upon which any Rental Payment is due and payable as provided in Exhibit B.

Permitted Encumbrances: As of any particular time: (i) liens for taxes and assessments not then delinquent, or which Lessee may, pursuant to the provisions of Section 7.3 hereof, permit to remain unpaid, (ii) this Lease and amendments hereto, (iii) Lessor's interest in the Equipment, and (iv) any mechanic's, laborer's,



materialmen's, supplier's or vendor's lien or right not filed or perfected in the manner prescribed by law, other than any lien arising through a Contractor or which Lessee may, pursuant to Article VIII hereof, permit to remain unpaid.

Principal: The portion of any Rental Payment designated as principal in the attached Exhibit B.

Purchase Option Price: With respect to the Equipment, as of the Payment Dates specified in the attached Exhibit B, the amount so designated and set forth opposite each such date in the attached Exhibit B.

Rental Payment: The payment due from Lessee to Lessor on each Payment Date during the Term of this Lease, as shown on Exhibit B.

Specifications: The bid specifications and/or purchase order pursuant to which Lessee has ordered the Equipment from a Contractor.

State: The State of North Dakota.

State and Federal Law or Laws: The Constitution and any law of the State and any charter, ordinance, rule or regulation of any agency or political subdivision of the State; and any law of the United States, and any rule or regulation of any federal agency.

Term of this Lease or Lease Term: The period during which this Lease is in effect as specified in Section 4.1.

Section 1.2. Exhibits.

The following Exhibits are attached to and by reference made a part of this Lease:

Exhibit A: A description of the Equipment being leased by Lessee pursuant to this Lease, including the serial number thereof which shall be inserted when available.

Exhibit B: A schedule indicating the date and amount of each Rental Payment coming due during the Lease Term, the amount of each Rental Payment comprising Principal and Interest, and the price at which Lessee may exercise its option to purchase Lessor's interest in the Equipment in accordance with Article X. The due date of each Rental Payment shall be inserted on Exhibit B by Lessor when available.

Exhibit C: A Certificate of Acceptance of Lessee indicating that the Equipment has been delivered and installed in accordance with the Specifications, and has been accepted by Lessee, the date on which Rental Payments shown in Exhibit B shall commence, and that certain other requirements have been met by Lessee.

Exhibit D: An opinion of counsel to Lessee as to the organization, nature and powers of Lessee; the validity, execution and delivery of this Lease and various related documents; the absence of litigation; and related matters.

Exhibit E: A form of resolution of the governing body of Lessee relating to the Lease and certain federal tax matters.

## ARTICLE II

### REPRESENTATIONS, COVENANTS AND WARRANTIES

Section 2.1. Representations, Covenants and Warranties of Lessee. Lessee represents, covenants and warrants as follows:

(a) Lessee is a political subdivision of the State, duly organized and existing under the Constitution and laws of the State.

(b) Lessee is authorized under the Constitution and laws of the State to enter into this Lease and the transactions contemplated hereby, and to perform all of its obligations hereunder.

(c) The officer of Lessee executing this Lease has been duly authorized to execute and deliver this Lease under the terms and provisions of a resolution of Lessee's governing body, or by other appropriate official action.

(d) In authorizing and executing this Lease, Lessee has complied with all public bidding and other State and Federal Laws applicable to this Lease and the acquisition of the Equipment by Lessee.

(e) Lessee will not pledge, mortgage or assign this Lease, or its duties and obligations hereunder to any other person, firm or corporation except as provided under the terms of this Lease.

(f) Lessee will use the Equipment during the Lease Term only to perform the essential governmental functions of City of Fargo.

(g) Lessee will take no action that would cause the Interest portion of the Rental Payments to become includible in gross income of the recipient for federal income tax purposes under the Internal Revenue Code of 1986 (the Code) and Treasury Regulations promulgated thereunder (the Regulations), and Lessee will take and will cause its officers, employees and agents to take all affirmative actions legally within its power necessary to ensure that the Interest portion of the Rental Payments does not become includible in gross income of the recipient for federal income tax purposes under the Code and Regulations.

(h) Upon delivery and installation of the Equipment, Lessee will provide to Lessor a completed and executed copy of the Certificate of Acceptance attached hereto as Exhibit C.

(i) Upon the execution of this Lease, Lessee will provide to Lessor an opinion of its legal counsel in the form attached hereto as Exhibit D.

(j) Lessee will submit to the Secretary of the Treasury an information reporting statement at the time and in the form required by the Code and the Regulations.

(k) Lessee will cause a resolution substantially in the form attached hereto as Exhibit E to be adopted by its governing body.

Section 2.2. Representations, Covenants and Warranties of Lessor. Lessor represents, covenants and warrants as follows:

(a) Lessor is a corporation duly organized, existing and in good standing under and by virtue of the laws of the state of North Dakota, and is duly qualified and in good standing as a foreign corporation authorized to transact business in the State; has power to enter into this Lease; is possessed of full power to own and hold real and personal property, and to lease the same; and has duly authorized the execution and delivery of this Lease.

(b) Neither the execution and delivery of this Lease, nor the fulfillment of or compliance with the terms and conditions thereof, nor the consummation of the transactions contemplated thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which Lessor is now a party or by which Lessor is bound, constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of Lessor, or upon the Equipment except Permitted Encumbrances.

### ARTICLE III

#### LEASE OF EQUIPMENT

Section 3.1. Lease. Lessor hereby leases the Equipment to Lessee, and Lessee hereby leases the Equipment from Lessor, upon the terms and conditions set forth in this Lease.

Section 3.2. Possession and Enjoyment. Lessor hereby covenants to provide Lessee during the Term of this Lease with the quiet use and enjoyment of the Equipment, and Lessee shall during the Term of this Lease peaceably and quietly have and hold and enjoy the Equipment, without suit, trouble or hindrance from Lessor, except as expressly set forth in this Lease. Lessor will, at the request of Lessee and at Lessee's cost, join in any legal action in which Lessee asserts its right to such possession and enjoyment to the extent Lessor lawfully may do so.

Section 3.3. Lessor Access to Equipment. The Lessee agrees that Lessor shall have the right at all reasonable times to examine and inspect the Equipment. Lessee further agrees that Lessor shall have such rights of access to the Equipment as may be reasonably necessary to cause the proper maintenance of the Equipment in the event of failure by Lessee to perform its obligations hereunder.

### ARTICLE IV

#### TERM OF LEASE

Section 4.1. Lease Term. This Lease shall be in effect for a Term commencing upon its date of execution and ending as provided in Section 4.5.

Section 4.2. Termination by Lessee. In the sole event of Non-appropriation, Lessee shall have the right to terminate this Lease, in whole but not in part, at the end of any Fiscal Year of Lessee, in the manner and subject to the terms specified in this Section and Section 4.4. Lessee may effect such termination by giving Lessor a written notice of termination and by paying to Lessor any Rental Payments and other amounts which are due and have not been paid at or before the end of its then current Fiscal Year. Lessee shall endeavor to give notice of termination not less than sixty (60) days prior to the end of such Fiscal Year, and shall notify Lessor of any anticipated termination. In the event of termination of this Lease as provided in this Section, Lessee shall deliver possession of the Equipment to Lessor in accordance with Section 12.3, and shall convey to Lessor or release its interest in the Equipment within ten (10) days after the termination of this Lease.

Section 4.3. Intent to Continue Lease Term; Appropriations. Lessee presently intends to continue this Lease for its entire Term and to pay all Rental Payments specified in Exhibit B. The officer of Lessee responsible for preparation of Lessee's budget shall include in the budget request for each Fiscal Year the Rental Payments to become due in such Fiscal Year, and shall use all reasonable and lawful means available to secure the appropriation of money for such Fiscal Year sufficient to pay the Rental Payments coming due therein. Lessee reasonably believes that moneys in an amount sufficient to make all such Rental Payments can and will lawfully be appropriated and made available for this purpose.

Section 4.4. Effect of Termination. Upon termination of this Lease as provided in Section 4.2, Lessee shall not be responsible for the payment of any additional Rental Payments coming due with respect to succeeding Fiscal Years, but if Lessee has not delivered possession of the Equipment to Lessor in accordance with Section 12.3 and conveyed to Lessor or released its interest in the Equipment within ten (10) days after the termination of this Lease, the termination shall nevertheless be effective, but Lessee shall be responsible for the payment of damages in an amount equal to the amount of the Rental Payments thereafter coming due under Exhibit B which are attributable to the number of days after such ten (10) day period during which Lessee fails to take such actions and for any other loss suffered by Lessor as a result of Lessee's failure to take such actions as required.

Section 4.5. Termination of Lease Term. The Term of this Lease will terminate upon the occurrence of the first of the following events:

- (a) the termination thereof by Lessee in accordance with Section 4.2;

(b) the exercise by Lessee of its option to purchase Lessor's interest in the Equipment pursuant to Article X;

(c) a default by Lessee and Lessor's election to terminate this Lease pursuant to Article XII; or

(d) the payment by Lessee of all Rental Payments and other amounts authorized or required to be paid by Lessee hereunder.

## ARTICLE V

### RENTAL PAYMENTS

Section 5.1. Rental Payments. Lessee agrees to pay Rental Payments during the Term of this Lease, in the amounts and on the dates specified in Exhibit B. All Rental Payments shall be paid to Lessor at its offices at the address specified in the first paragraph of this Lease, or to such other person or entity to which Lessor has assigned such Rental Payments as specified in Article XI, at such place as such assignee may from time to time designate by written notice to Lessee. Lessee shall pay the Rental Payments exclusively from moneys legally available therefore, in lawful money of the United States of America, to Lessor or, in the event of assignment of the right to receive Rental Payments by Lessor, to its assignee. Interest shall accrue from the first day of the calendar month in which the Certificate of Acceptance is executed.

Section 5.2. Current Expense. The obligations of Lessee under this Lease, including its obligation to pay the Rental Payments due with respect to the Equipment, in any Fiscal Year for which this Lease is in effect, shall constitute a current expense of Lessee for such Fiscal Year and shall not constitute an indebtedness of Lessee within the meaning of the Constitution and laws of the State. Nothing herein shall constitute a pledge by Lessee of any taxes or other moneys, other than moneys lawfully appropriated from time to time by or for the benefit of Lessee in the annual budget and the proceeds or Net Proceeds of the Equipment, to the payment of any Rental Payment or other amount coming due hereunder.

Section 5.3. Interest Component. A portion of each Rental Payment is paid as and represents the payment of Interest. Exhibit B sets forth the Interest component of each Rental Payment.

Section 5.4. Rental Payments to be Unconditional. Except as provided in Section 4.2, the obligation of Lessee to make Rental Payments or any other payments required hereunder shall be absolute and unconditional in all events. Notwithstanding any dispute between Lessee and Lessor or any other person, Lessee shall make all Rental Payments and other payments required hereunder when due and shall not withhold any Rental Payment or other payment pending final resolution of such dispute nor shall Lessee assert any right of set-off or counterclaim against its obligation to make such Rental Payments or other payments required under this Lease. Lessee's obligation to make Rental Payments or other payments during the Lease Term shall not be abated through accident or unforeseen circumstances. However, nothing herein shall be construed to release Lessor from the performance of its obligations hereunder; and if Lessor should fail to perform any such obligation, Lessee may institute such legal action against Lessor as Lessee may deem necessary to compel the performance of such obligation or to recover damages therefore.

## ARTICLE VI

### INSURANCE AND NEGLIGENCE

Section 6.1. Liability Insurance. Upon receipt of possession of the Equipment, Lessee shall take such measures as may be necessary to ensure that any liability for injuries to or death of any person or damage to or loss of property arising out of or in any way relating to the condition or the operation of the Equipment or any part thereof, is covered by a blanket or other general liability insurance policy maintained by Lessee. The Net Proceeds of all such insurance shall be applied toward extinguishment or satisfaction of the liability with respect to which any Net Proceeds may be paid.

Section 6.2. Property Insurance. Upon receipt of possession of the Equipment, Lessee shall have and assume the risk of loss with respect thereto. Lessee shall procure and maintain continuously in effect during the Term of this Lease, all-risk insurance, subject only to the standard exclusions contained in the policy, in such



amount as will be at least sufficient so that a claim may be made for the full replacement cost of any part thereof damaged or destroyed and to pay the applicable Purchase Option Price of the Equipment. Such insurance may be provided by a rider to an existing policy or under a separate policy. Such insurance may be written with customary deductible amounts. The Net Proceeds of insurance required by this Section shall be applied to the prompt repair, restoration or replacement of the Equipment, or to the purchase of the Equipment, as provided in Section 6.6. Any Net Proceeds not needed for those purposes shall be paid to Lessee.

Section 6.3. Worker's Compensation Insurance. If required by State law, Lessee shall carry worker's compensation insurance covering all employees on, in, near or about the Equipment, and upon request, shall furnish to Lessor certificates evidencing such coverage throughout the Term of this Lease.

Section 6.4. Requirements For All Insurance. All insurance policies (or riders) required by this Article shall be taken out and maintained with responsible insurance companies organized under the laws of one of the states of the United States and qualified to do business in the State; and shall contain a provision that the insurer shall not cancel or revise coverage thereunder without giving written notice to the insured parties at least ten (10) days before the cancellation or revision becomes effective. All insurance policies or riders required by Sections 6.1 and 6.2 shall name Lessee and Lessor as insured parties, and any insurance policy or rider required by Section 6.3 shall name Lessee as insured party. Lessee shall deposit with Lessor policies (and riders) evidencing any such insurance procured by it, or a certificate or certificates of the respective insurers stating that such insurance is in full force and effect. Before the expiration of any such policy (or rider), Lessee shall furnish to Lessor evidence that the policy has been renewed or replaced by another policy conforming to the provisions of this Article, unless such insurance is no longer obtainable in which event Lessee shall notify Lessor of this fact.

Section 6.5. Lessee's Negligence. Lessee assumes all risks and liabilities, whether or not covered by insurance, for loss or damage to the Equipment and for injury to or death of any person or damage to any property, whether such injury or death be with respect to agents or employees of Lessee or of third parties, and whether such property damage be to Lessee's property or the property of others, which is proximately caused by the negligent conduct of Lessee, its officers, employees and agents. Lessee hereby assumes responsibility for and agrees to reimburse Lessor for all liabilities, obligations, losses, damages, penalties, claims, actions, costs and expenses (including reasonable attorney's fees) of whatsoever kind and nature, imposed on, incurred by or asserted against Lessor that in any way relate to or arise out of a claim, suit or proceeding based in whole or in part upon the negligent conduct of Lessee, its officers, employees and agents, to the maximum extent permitted by law.

Section 6.6. Damage to or Destruction of Equipment. If after delivery of the Equipment to Lessee all or any part of the Equipment is lost, stolen, destroyed or damaged beyond repair, Lessee shall as soon as practicable after such event either: (i) replace the same at Lessee's sole cost and expense with equipment of equal or greater value to the Equipment immediately prior to the time of the loss occurrence, such replacement equipment to be subject to Lessor's reasonable approval, whereupon such replacement shall be substituted in this Lease by appropriate endorsement; or (ii) pay the applicable Purchase Option Price of the Equipment as set forth in Exhibit B. Lessee shall notify Lessor of which course of action it will take within fifteen (15) days after the loss occurrence. If Lessee fails or refuses to notify Lessor within the required period, Lessor may, at its option, declare the applicable Purchase Option Price of the Equipment set forth in Exhibit B immediately due and payable, and Lessee shall be obligated to pay the same. The Net Proceeds of all insurance payable with respect to the Equipment shall be available to Lessee and shall be used to discharge Lessee's obligation under this Section. On payment of the Purchase Option Price, this Lease shall terminate and Lessee thereupon shall become entitled to the Equipment AS IS, WITHOUT WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR FITNESS FOR THE USE CONTEMPLATED BY LESSEE, except that the Equipment shall not be subject to any lien or encumbrance created by or arising through Lessor.

## ARTICLE VII

### OTHER OBLIGATIONS OF LESSEE

Section 7.1. Use; Permits. Lessee shall exercise due care in the installation, use, operation and maintenance of the Equipment, and shall not install, use, operate or maintain the Equipment improperly, carelessly, in violation of any State and Federal Law or for a purpose or in a manner contrary to that contemplated by this Lease. Lessee shall obtain all permits and licenses necessary for the installation, operation, possession and use of

the Equipment. Lessee shall comply with all State and Federal Laws applicable to the installation, use, possession and operation of the Equipment, and if compliance with any such State and Federal Law requires changes or additions to be made to the Equipment, such changes or additions shall be made by Lessee at its expense.

Section 7.2. Maintenance of Equipment by Lessee. Lessee shall, at its own expense, maintain, preserve and keep the Equipment in good repair, working order and condition, and shall from time to time make all repairs and replacements necessary to keep the Equipment in such condition. Lessor shall have no responsibility for any of these repairs or replacements.

Section 7.3. Taxes, Other Governmental Charges and Utility Charges. Except as expressly limited by this Section, Lessee shall pay all taxes and other charges of any kind which are at any time lawfully assessed or levied against or with respect to the Equipment, the Rental Payments or any part thereof, or which become due during the Term of this Lease, whether assessed against Lessee or Lessor. Lessee shall also pay when due all gas, water, steam, electricity, heat, power, telephone, and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Equipment, and all special assessments and charges lawfully made by any governmental body for public improvements that may be secured by a lien on the Equipment; provided that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, Lessee shall be obligated to pay only such installments as are required to be paid during the Term of this Lease as and when the same become due. Lessee shall not be required to pay any federal, state or local income, inheritance, estate, succession, transfer, gift, franchise, gross receipts, profit, excess profit, capital stock, corporate, or other similar tax payable by Lessor, its successors or assigns, unless such tax is made in lieu of or as a substitute for any tax, assessment or charge which is the obligation of Lessee under this Section.

Lessee may, at its own expense and in its own name, in good faith contest any such taxes, assessments, utility and other charges and, in the event of any such contest, may permit the taxes, assessments, utility or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom unless Lessor shall notify Lessee that, in the opinion of Independent Counsel, by nonpayment of any such items the interest of Lessor in the Equipment will be materially endangered or the Equipment or any part thereof will be subject to loss or forfeiture, in which event Lessee shall promptly pay such taxes, assessments, utility or other charges or provide Lessor with full security against any loss which may result from nonpayment, in form satisfactory to Lessor.

Section 7.4. Advances. If Lessee shall fail to perform any of its obligations under this Article, Lessor may, but shall not be obligated to, take such action as may be necessary to cure such failure, including the advancement of money, and Lessee shall be obligated to repay all such advances on demand, with interest at the rate of 18% per annum or the maximum rate permitted by law, whichever is less, from the date of the advance to the date of repayment.

## ARTICLE VIII

### TITLE

Section 8.1. Title. During the Term of this Lease, and so long as Lessee is not in default under Article XII, legal title to the Equipment and any and all repairs, replacements, substitutions and modifications to it shall be in Lessee. Upon termination of this Lease for any of the reasons specified in Section 4.5, Clauses (a) and (c), full and unencumbered legal title to the Equipment shall pass to Lessor, and Lessee shall have no further interest therein. In either of such events, Lessee shall execute and deliver to Lessor such documents as Lessor may request to evidence the passage of legal title to the Equipment to Lessor and the termination of Lessee's interest therein, and upon request by Lessor shall deliver possession of the Equipment to Lessor in accordance with Section 12.3. Upon termination of this Lease for any of the reasons specified in Section 4.5, Clauses (b) and (d), Lessor's security or other interest in the Equipment shall terminate, and Lessor shall execute and deliver to Lessee such documents as Lessee may request to evidence the termination of Lessor's security or other interest in the Equipment.

Section 8.2. Security Interest. Lessor shall have and retain a security interest under the Uniform Commercial Code in the Equipment, the proceeds thereof and all repairs, replacements, substitutions and modifications thereto or thereof made pursuant to Section 8.5, in order to secure Lessee's payment of all Rental Payments due during the Term of this Lease and the performance of all other obligations herein to be performed by Lessee. If any portion of the Equipment shall constitute a vehicle, Lessor shall have authority, upon filing the manufacturer's certificate of origin for such Equipment, to require the notation of Lessor's security interest on any



applicable records and the certificate of title for such Equipment. Lessee will join with Lessor in executing such financing statements or other documents and will perform such acts as Lessor may request to establish and maintain a valid security interest in the Equipment. If requested by Lessor, Lessee shall conspicuously mark the Equipment with appropriate lettering, labels or tags, and maintain such markings during the Term of this Lease, so as clearly to disclose Lessor's security interest in the Equipment.

Section 8.3. Liens. During the Term of this Lease, Lessee shall not, directly or indirectly, create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to the Equipment, other than the respective rights of Lessor and Lessee as herein provided and Permitted Encumbrances. Except as expressly provided in Section 7.3 and this Article, Lessee shall promptly, at its own expense, take such action as may be necessary duly to discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim if the same shall arise at any time. Lessee shall reimburse Lessor for any expense incurred by Lessor in order to discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim.

Section 8.4. Installation of Lessee's Equipment. Lessee may at any time and from time to time, in its sole discretion and at its own expense, install other items of equipment in or upon the Equipment, which items shall be identified by tags or other symbols affixed thereto as property of Lessee. All such items so identified shall remain the sole property of Lessee, in which Lessor shall have no interest, and may be modified or removed by Lessee at any time provided that Lessee shall repair and restore any and all damage to the Equipment resulting from the installation, modification or removal of any such items. Nothing in this Lease shall prevent Lessee from purchasing items to be installed pursuant to this Section under a conditional sale or lease with option to purchase contract, or subject to a vendor's lien or security agreement, as security for the unpaid portion of the purchase price thereof, provided that no such lien or security interest shall attach to any part of the Equipment.

Section 8.5. Modification of Equipment. Lessee shall, at its own expense, have the right to make repairs to the Equipment, and to make repairs, replacements, substitutions and modifications to all or any of the parts thereof. All such work and any part or component used or installed to make a repair or as a replacement, substitution or modification, shall thereafter comprise part of the Equipment and be subject to the provisions of this Lease. Such work shall not in any way damage the Equipment or cause it to be used for purposes other than those authorized under the provisions of State and Federal Law or those contemplated by this Lease; and the Equipment, upon completion of any such work shall be of a value which is not less than the value of the Equipment immediately prior to the commencement of such work. Any property for which a replacement or substitution is made pursuant to this Section may be disposed of by Lessee in such manner and on such terms as are determined by Lessee. Lessee will not permit any mechanic's or other lien to be established or remain against the Equipment for labor or materials furnished in connection with any repair, replacement, substitution or modification made by Lessee pursuant to this Section; provided that if any such lien is established and Lessee shall first notify Lessor of Lessee's intention to do so, Lessee may in good faith contest any lien filed or established against the Equipment, and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom unless Lessor shall notify Lessee that, in the opinion of Independent Counsel, by nonpayment of any such item the interest of Lessor in the Equipment will be materially endangered or the Equipment or any part thereof will be subject to loss or forfeiture, in which event Lessee shall promptly pay and cause to be satisfied and discharged all such unpaid items or provide Lessor with full security against any such loss or forfeiture, in form satisfactory to Lessor. Lessor will cooperate fully with Lessee in any such contest, upon the request and at the expense of Lessee.

Section 8.6. Personal Property. The Equipment is and shall at all times be and remain personal property notwithstanding that the Equipment or any part thereof may be or hereafter become in any manner affixed or attached to or embedded in or permanently rested upon real property or any building thereon or attached in any manner to what is permanent by means of cement, plaster, nails, bolts, screws or otherwise.

## ARTICLE IX

### WARRANTIES

Section 9.1. Selection of Equipment. The Equipment and the Contractor have been selected by Lessee, and Lessor shall have no responsibility in connection with the selection of the Equipment, its suitability for the use intended by Lessee, the acceptance by the Contractor or its sales representative of the order submitted, or any

delay or failure by the Contractor or its sales representative to manufacture, deliver or install the Equipment for use by Lessee. Lessee authorizes Lessor to add the serial number of the Equipment to Exhibit A when available.

Section 9.2. Installation and Maintenance of Equipment. Lessor shall have no obligation to install, erect, test, inspect, service or maintain the Equipment under any circumstances, but such actions shall be the obligation of Lessee or the Contractor.

Section 9.3. Contractor's Warranties. Lessor hereby assigns to Lessee for and during the Term of this Lease, all of its interest in all Contractor's warranties and guarantees, express or implied, issued on or applicable to the Equipment, and Lessor hereby authorizes Lessee to obtain the customary services furnished in connection with such warranties and guarantees at Lessee's expense.

Section 9.4. Patent Infringement. Lessor hereby assigns to Lessee for and during the Term of this Lease all of its interest in patent indemnity protection provided by any Contractor with respect to the Equipment. Such assignment of patent indemnity protection by Lessor to Lessee shall constitute the entire liability of Lessor for any patent infringement by Equipment furnished pursuant to this Lease.

Section 9.5. Disclaimer of Warranties. THE EQUIPMENT IS DELIVERED AS IS, AND LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR FITNESS FOR THE USE CONTEMPLATED BY LESSEE OF THE EQUIPMENT, OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO THE EQUIPMENT.

## ARTICLE X

### OPTION TO PURCHASE

Section 10.1. When Available. Lessee shall have the option to purchase Lessor's interest in the Equipment on any Payment Date for the then applicable Purchase Option Price set forth in Exhibit B, but only if Lessee is not in default under this Lease, and only in the manner provided in this Article.

Section 10.2. Exercise of Option. Lessee shall give notice to Lessor of its intention to exercise its option not less than thirty (30) days prior to the Payment Date on which the option is to be exercised and shall deposit with Lessor on the date of exercise an amount equal to all Rental Payments and any other amounts then due or past due (including the Rental Payment due on the Payment Date on which the option is to be exercised) and the applicable Purchase Option Price set forth in Exhibit B. The closing shall be on the Payment Date on which the option is to be exercised at the office of Lessor.

Section 10.3. Release of Lessor's Interest. Upon exercise of the purchase option by Lessee, Lessor shall convey or release to Lessee, all of its right, title and/or interest in and to the Equipment by delivering to Lessee such documents as Lessee deems necessary for this purpose.

## ARTICLE XI

### ASSIGNMENT, SUBLEASING, MORTGAGING AND SELLING

Section 11.1. Assignment by Lessor. Lessor shall not assign its obligations under this Lease, and no purported assignment thereof shall be effective. All of Lessor's right, title and/or interest in and to this Lease, the Rental Payments and other amounts due hereunder and the Equipment may be assigned and reassigned in whole or in part to one or more assignees or subassignees by Lessor at any time, without the consent of Lessee. No such assignment shall be effective as against Lessee unless and until the assignor shall have filed with Lessee a copy or written notice thereof identifying the assignee. Lessee shall pay all Rental Payments due hereunder to or at the direction of Lessor or the assignee named in the most recent assignment or notice of assignment filed with Lessee. During the Lease Term Lessee shall keep a complete and accurate record of all such assignments. In the event Lessor assigns participations in its right, title and/or interest in and to this Lease, the Rental Payments and other amounts due hereunder and the Equipment, such participants shall be considered to be Lessor with respect to their participated shares thereof.

Section 11.2. Assignment and Subleasing by Lessee. Neither this Lease nor Lessee's interest in the Equipment may be assigned by Lessee without the written consent of Lessor. However, the Equipment may be subleased by Lessee, in whole or in part, without the consent of Lessor, subject, however, to each of the following conditions:

(i) This Lease and the obligation of Lessee to make Rental Payments hereunder, shall remain obligations of Lessee.

(ii) The sublessee shall assume the obligations of Lessee hereunder to the extent of the interest subleased.

(iii) Lessee shall, within thirty (30) days after the delivery thereof, furnish or cause to be furnished to Lessor a true and complete copy of such sublease.

(iv) No sublease by Lessee shall cause the Equipment to be used for a purpose other than a governmental function authorized under the provisions of the Constitution and laws of the State.

(v) No sublease shall cause the Interest component of the Rental Payments due with respect to the Equipment to become includible in gross income of the recipient for federal income tax purposes.

Section 11.3. Restriction on Mortgage or Sale of Equipment by Lessee. Except as provided in Section 11.2, Lessee will not mortgage, sell, assign, transfer or convey the Equipment or any portion thereof during the Term of this Lease, or remove any Equipment not constituting a vehicle from its boundaries, without the written consent of Lessor. Lessee shall not, without the written permission of Lessor, store or house any Equipment constituting a vehicle outside the corporate boundaries of Lessee.

## ARTICLE XII

### EVENTS OF DEFAULT AND REMEDIES

Section 12.1. Events of Default Defined. The following shall be "events of default" under this Lease and the terms "events of default" and "default" shall mean, whenever they are used in this Lease, with respect to the Equipment, any one or more of the following events:

(i) Failure by Lessee to pay any Rental Payment or other payment required to be paid under this Lease at the time specified herein and the continuation of said failure for a period of three (3) days after telephonic or telegraphic notice given by Lessor that the payment referred to in such notice has not been received, such telephonic or telegraphic notice to be subsequently confirmed in writing, or after written notice.

(ii) Failure by Lessee to observe and perform any covenant, condition or agreement on its part to be observed or performed, other than as referred to in Clause (i) of this Section, for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied has been given to Lessee by Lessor, unless Lessor shall agree in writing to an extension of such time prior to its expiration; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, Lessor will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by Lessee within the applicable period and diligently pursued until the default is corrected.

(iii) The filing by Lessee of a voluntary petition in bankruptcy, or failure by Lessee promptly to lift any execution, garnishment or attachment of such consequence as would impair the ability of Lessee to carry on its governmental function or adjudication of Lessee as a bankrupt, or assignment by Lessee for the benefit of creditors, or the entry by Lessee into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to Lessee in any proceedings instituted under the provisions of the Federal Bankruptcy Statute, as amended, or under any similar acts which may hereafter be enacted.

The provisions of this Section 12.1 and Section 12.2 are subject to the following limitation: if by reason of force majeure Lessee is unable in whole or in part to carry out its obligations under this Lease with respect to the Equipment, other than its obligation to pay Rental Payments with respect thereto which shall be paid when due notwithstanding the provisions of this paragraph, Lessee shall not be deemed in default during the continuance of such inability. The term "force majeure" as used herein shall mean, without limitation, the following: acts of God; strikes, lockouts or other labor disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States of America or the State or their respective departments, agencies or officials, or any civil or military authority; insurrections; riots; landslides; earthquakes; fires; storms; droughts; floods; explosions; breakage or accident to machinery, transmission pipes or canals; or any other cause or event not reasonably within the control of Lessee and not resulting from its negligence. Lessee agrees, however, to remedy with all reasonable dispatch the cause or causes preventing Lessee from carrying out its obligations under this Lease; provided that the settlement of strikes, lockouts and other labor disturbances shall be entirely within the discretion of Lessee and Lessee shall not be required to make settlement of strikes, lockouts and other labor disturbances by acceding to the demands of the opposing party or parties when such course is in the judgment of Lessee unfavorable to Lessee.

Section 12.2. Remedies on Default. Whenever any event of default referred to in Section 12.1 hereof shall have happened and be continuing with respect to the Equipment, Lessor shall have the right, at its option and without any further demand or notice, to take one or any combination of the following remedial steps:

(i) Lessor, with or without terminating this Lease may declare all Rental Payments due or to become due during the Fiscal Year in effect when the default occurs to be immediately due and payable by Lessee, whereupon such Rental Payments shall be immediately due and payable.

(ii) Lessor, with or without terminating this Lease, may repossess the Equipment by giving Lessee written notice to deliver the Equipment to Lessor, whereupon Lessee shall do so in the manner provided in Section 12.3; or in the event Lessee fails to do so within ten (10) days after receipt of such notice, Lessor may enter upon Lessee's premises where the Equipment is kept and take possession of the Equipment and charge Lessee for costs incurred in repossessing the Equipment, including reasonable attorneys' fees. Lessee hereby expressly waives any damages occasioned by such repossession. If the Equipment or any portion of it has been destroyed or damaged beyond repair, Lessee shall pay the applicable Purchase Option Price of the Equipment, as set forth in Exhibit B (less credit for Net Proceeds), to Lessor. Notwithstanding the fact that Lessor has taken possession of the Equipment, Lessee shall continue to be responsible for the Rental Payments due during the Fiscal Year then in effect. If this Lease has not been terminated, Lessor shall return the Equipment to Lessee at Lessee's expense when the event of default is cured.

(iii) If Lessor terminates this Lease and takes possession of the Equipment, Lessor shall within thirty (30) days thereafter use its best efforts to sell the Equipment or any portion thereof in a commercially reasonable manner at public or private sale in accordance with applicable State laws. Lessor shall apply the proceeds of such sale to pay the following items in the following order: (a) all costs incurred in securing possession of the Equipment; (b) all expenses incurred in completing the sale; (c) the applicable Purchase Option Price of the Equipment; and (d) the balance of any Rental Payments owed by Lessee during the Fiscal Year then in effect. Any sale proceeds remaining after the requirements of Clauses (a), (b), (c) and (d) have been met may be retained by Lessor.

(iv) If the proceeds of sale of the Equipment are not sufficient to pay the balance of any Rental Payments owed by Lessee during the Fiscal Year then in effect, Lessor may take any other remedy available at law or in equity to require Lessee to perform any of its obligations hereunder.

Section 12.3. Return of Equipment. Upon the expiration or termination of this Lease prior to the payment of all Rental Payments in accordance with Exhibit B, Lessee shall return the Equipment to Lessor in the condition, repair, appearance and working order required in Section 7.2, in the following manner as may be specified by Lessor: (i) by delivering the Equipment at Lessee's cost and expense to such place within the State as Lessor shall specify; or (ii) by loading such portions of the Equipment as are considered movable at Lessee's cost and expense, on board such carrier as Lessor shall specify and shipping the same, freight prepaid, to the place specified by Lessor. If Lessee refuses to return the Equipment in the manner designated, Lessor may repossess the Equipment and charge to Lessee the costs of such repossession or pursue any remedy described in Section 12.2.



Section 12.4. No Remedy Exclusive. No remedy conferred upon or reserved to Lessor by this Article is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof but any such right and power may be exercised from time to time and as often as may be deemed expedient by Lessor or its assignee.

Section 12.5. Agreement to Pay Attorneys' Fees and Expenses. In the event either party to this Lease should default under any of the provisions hereof and the nondefaulting party should employ attorneys and/or incur other expenses for the collection of moneys or for the enforcement of performance or observance of any obligation or agreement on the part of the defaulting party herein contained, the defaulting party agrees that it will on demand therefor pay to the nondefaulting party the reasonable fee of such attorneys and/or such other reasonable expenses so incurred by the nondefaulting party. In the event that legal proceedings relating to this Lease (but not evidencing an action by a nondefaulting party against a defaulting party) are commenced in any court or before any other tribunal of competent jurisdiction, the legal fees and other reasonable costs and expenses of the prevailing party shall be paid by the nonprevailing party on demand of the prevailing party.

Section 12.6. Late Charge. Whenever any event of default referred to in Section 12.1, Clause (i) hereof shall have happened and be continuing with respect to the Equipment, Lessor shall have the right, at its option and without any further demand or notice, to require a late payment charge for each thirty (30) day period or part thereof during which such event of default occurs equal to four percent (4%) of the delinquent amount, and Lessee shall be obligated to pay the same immediately upon receipt of Lessor's written invoice therefor; provided, however, that this Section 12.6 shall not be applicable if or to the extent that the application thereof would affect the validity of this Lease.

## ARTICLE XIII

### ADMINISTRATIVE PROVISIONS

Section 13.1. Notices. All notices, certificates, legal opinions or other communications hereunder shall be sufficiently given and shall be deemed given when delivered or deposited in the United States mail in registered form with postage fully prepaid to the addresses specified on the first page hereof; provided that Lessor and Lessee, by notice given hereunder, may designate different addresses to which subsequent notices, certificates, legal opinions or other communications will be sent.

Section 13.2. Financial Information. During the Term of this Lease, Lessee annually will provide Lessor with current financial statements, budgets, proof of appropriation for the ensuing Fiscal Year and such other financial information relating to the ability of Lessee to continue this Lease as may be requested by Lessor or its assignee.

Section 13.3. Binding Effect. This Lease shall inure to the benefit of and shall be binding upon Lessor and Lessee and their respective successors and assigns.

Section 13.4. Severability. In the event any provision of this Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 13.5. Amendments, Changes and Modifications. This Lease may be amended or any of its terms modified only by written document duly authorized, executed and delivered by Lessor and Lessee.

Section 13.6. Captions. The captions or headings in this Lease are for convenience only and in no way define, limit or describe the scope or intent of any provisions, Articles, Sections or Clauses of this Lease.

Section 13.7. Further Assurances and Corrective Instruments. Lessor and Lessee agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Equipment hereby leased or intended so to be, or for otherwise carrying out the expressed intention of this Lease.

Section 13.8. Execution in Counterparts. This Lease may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 13.9. Applicable Law. This Lease shall be governed by and construed in accordance with the laws of the State.

IN WITNESS WHEREOF, Lessor has caused this Lease to be executed in its corporate name by its duly authorized officer; and Lessee has caused this Lease to be executed in its name by its duly authorized officer, as of the date first above written.

**LESSOR: KINETIC LEASING, INC.**

**LESSEE: CITY OF FARGO**

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: Tim Mahoney / Mayor

Date: October 10, 2019

Date: October 10, 2019

**ATTEST:**

By: \_\_\_\_\_

Name/Title: Steven Sprague / City Auditor



EXHIBIT A  
EQUIPMENT

Lessee: City of Fargo  
2301 8<sup>th</sup> Ave N  
Fargo, ND 58102

Date of Lease: October 10, 2019  
Lease #: CIT6415-138

The Equipment which is the subject of the attached Lease with Option to Purchase Agreement is as follows:

| QTY. | SERIAL NO.        | DESCRIPTION  |
|------|-------------------|--|
|      |                   | <b>Vendor: Sanitation Products Inc.</b>  |
| 1    |                   | Galbreath U5-DPHK-200  |
|      |                   | <b>Vendor: Nelson International</b>  |
| 1    | 3HAEKTAT6LL360208 | 2020 International HV607-L9 330HP – Allison 3000RDS-20K Front Axle-46K Rear Axle - white |

Description of Financed Amount:

|  |              |
|--|--------------|
| Cost of above Equipment                | \$158,128.35 |
| Cost of related charges:               |              |
| Transportation                         | \$ N/A       |
| Physical Modifications (specify)       | \$ N/A       |
| Other (Specify)                        | \$ N/A       |
| Add: Sales or other tax, if applicable | \$ N/A       |
| Less: Trade-In                         | \$ N/A       |
| Net Financed Amount:                   | \$158,128.35 |

## EXHIBIT B

## SCHEDULE OF RENTAL PAYMENTS

Lessee: City of Fargo  
 2301 8<sup>th</sup> Ave N  
 Fargo, ND 58102

Date of Lease: October 10, 2019  
 Lease #: CIT6415-138

**BASE RENTAL PAYMENTS**

| <b>Rental Payment<br/>Date</b> | <b>Rental Payment<br/>Amount</b> | <b>Interest<br/>Portion</b> | <b>Principal<br/>Portion</b> | <b>Purchase Option<br/>Price *</b> |
|--------------------------------|----------------------------------|-----------------------------|------------------------------|------------------------------------|
| 11/01/2019                     | \$33,750.21                      | \$328.34                    | \$33,421.87                  | \$125,452.00                       |
| 11/01/2020                     | \$33,750.21                      | \$4,052.96                  | \$29,697.25                  | \$95,466.00                        |
| 11/01/2021                     | \$33,750.21                      | \$3,087.80                  | \$30,662.41                  | \$64,580.00                        |
| 11/01/2022                     | \$33,750.21                      | \$2,091.27                  | \$31,658.94                  | \$32,767.00                        |
| 11/01/2023                     | \$33,750.21                      | \$1,062.33                  | \$32,687.88                  | \$0.00                             |

\*After payment of Rental Payment due on such date.

EXHIBIT C

CERTIFICATE OF ACCEPTANCE

I, the undersigned, hereby certify that I am the duly qualified and acting Mayor of City of Fargo (Lessee); and, with respect to the Lease with Option to Purchase Agreement dated October 10, 2019 (Lease), by and between Lessee and Kinetic Leasing, Inc. (Lessor), that:

1. The equipment described in the Lease (the Equipment) has been delivered and installed in accordance with Lessee's Specifications (as that term is defined in the Lease) and has been accepted by Lessee.

2. The rental payments provided for on Exhibit B to the Lease (the Rental Payments) shall commence and be due and payable on November 1, 2019 and in the amounts shown on Exhibit B to the Lease.

3. Lessee has appropriated and/or taken other lawful actions necessary to provide moneys sufficient to pay all Rental Payments required to be paid under the Lease during the current fiscal year of Lessee, and such moneys will be applied in payment of all Rental Payments due and payable during such current fiscal year.

4. Lessee has obtained from a reputable insurance company qualified to do business in the state of (the State) insurance with respect to, all risks required to be covered thereby pursuant to Article VI of the Lease.

5. Lessee is exempt from all personal property taxes, and is exempt from sales and/or use taxes with respect to the Equipment and the Rental Payments.

6. During the Lease Term (as defined in the Lease) the Equipment will be used by Lessee to perform essential governmental functions. Such functions are: General Maintenance

7. There is no litigation, action, suit or proceeding pending or before any court, administrative agency, arbitrator or governmental body, that challenges the organization or existence of Lessee; the authority of Lessee or its officers or its employees to enter into the Lease; the proper authorization, approval and execution of the Lease and other documents contemplated thereby; the appropriation of moneys, or any other action taken by Lessee to provide moneys, sufficient to make Rental Payments coming due under the Lease in Lessee's current fiscal year; or the ability of Lessee otherwise to perform its obligations under the Lease and the transactions contemplated thereby.

Dated: October 10, 2019

**LESSEE: CITY OF FARGO**

By: \_\_\_\_\_

Title: Tim Mahoney / Mayor

**ATTEST:**

By: \_\_\_\_\_

Name/Title: Steven Sprague / City Auditor

EXHIBIT D

RESOLUTION RELATING TO LEASE WITH OPTION  
TO PURCHASE AGREEMENT No. CIT6415-138

BE IT RESOLVED by the governing body of City of Fargo (the Issuer), as follows:

Section 1. Recitals and Authorization. The Issuer, as lessee, has heretofore entered into a Lease with Option to Purchase Agreement #CIT6415-138 dated as of October 10, 2019 (the Lease), with Kinetic Leasing, Inc., as lessor. It is hereby determined that it is necessary and desirable and in the best interests of the Issuer to enter into the Lease for the purposes therein specified, and the execution and delivery of the Lease by the Issuer are hereby approved, ratified and confirmed.

**LESSEE: CITY OF FARGO**

By: \_\_\_\_\_

Title: Tim Mahoney / Mayor

**ATTEST:**

By: \_\_\_\_\_

Name/Title: Steven Sprague / City Auditor

## INSURANCE COVERAGE REQUIREMENT

Your lease with KINETIC LEASING, INC. requires you to maintain certain insurance coverage. In order to assist you with obtaining coverage from your insurance company, please provide us with the following agent information, as well as provide your insurance company with the requirements as shown below:

**INSURANCE AGENT DATA:**

NAME OF INSURANCE AGENT: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

PHONE #: \_\_\_\_\_ CONTACT PERSON: \_\_\_\_\_

FAX #: \_\_\_\_\_ EMAIL ADDRESS: \_\_\_\_\_

**Named Insured / Lessee:****Equipment Lease No.:**

City of Fargo

CIT6415-138

**Coverage:**All Risk Personal Property and/or  
EDP, if applicable**Certificate Holders:**Lender's Loss Payee(s) As Their InterestsMay Appear:Kinetic Leasing, Inc., and its assigns  
2575 41<sup>st</sup> Street S, Suite 1  
Fargo, ND 58104**Coverage:**

General Liability

**Certificate Holders:**Additional Insured:Kinetic Leasing, Inc., and its assigns  
2575 41<sup>st</sup> Street S, Suite 1  
Fargo, ND 58104

The Insurance Certificate should show the coverage limits and the insurance carrier's name(s) and policy number(s). Please have the Certificate of Insurance sent to Kinetic Leasing, Inc. at the address above, or email to [insurance@kineticlease.com](mailto:insurance@kineticlease.com) or fax it to us at 701-476-0277.

WE WOULD APPRECIATE YOUR AGENT INCLUDING OUR LEASE AND SCHEDULE NUMBER ON THE CERTIFICATE.

**CERTIFICATE OF INCUMBENCY**

**LEASE WITH OPTION TO PURCHASE AGREEMENT NO. CIT6415-138  
DATED AS OF OCTOBER 10, 2019**

I, Steven Sprague, do hereby certify that I am the duly elected or appointed and acting City Auditor of City of Fargo (the "Lessee"), a political subdivision duly organized and existing under the laws of the State of North Dakota and that, as of the date hereof, the individuals named below are the duly elected or appointed officers of the Lessee holding the offices set forth opposite their respective names.

| NAME / TITLE               | SIGNATURE |
|----------------------------|-----------|
| <u>Tim Mahoney / Mayor</u> | <u></u>   |
| <u></u>                    | <u></u>   |
| <u></u>                    | <u></u>   |

IN WITNESS WHEREOF, I have duly executed this certificate and affixed the seal of such entity hereto this 10<sup>th</sup> day of October, 2019.

City Auditor

(SEAL)



## POWER OF ATTORNEY

**City of Fargo** of **2301 8th Ave N, Fargo, ND 58102**, the bona fide registered owner of the following described property: **2020 International VIN - 3HAEKTAT6LL360208**, hereby irrevocably appoints **Kinetic Leasing, Inc.** with an address of **2575 41<sup>st</sup> Street South, Suite 1, Fargo, ND 58104**, or any officer thereof, as Grantor's attorney with full authority to execute and record any and all instruments, affidavits, certificates of titles, renewals, and other documents necessary to effect registration, transfer of title, application for title and to evidence Kinetic Leasing, Inc.'s security interest in the above described motor vehicle and to do such other things as may be proper pertaining to the title or licensing of the motor vehicle, in Grantor's place and stead. This Power of Attorney shall not terminate or otherwise be affected by Grantor's subsequent disability or incapacity.

### GRANTOR:

City of Fargo

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ )

) SS

COUNTY OF \_\_\_\_\_ )

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

( SEAL )

\_\_\_\_\_  
Notary Public for the State of \_\_\_\_\_

Residing at \_\_\_\_\_

My commission expires \_\_\_\_\_

**RIDER - TITLED EQUIPMENT  
TO EQUIPMENT LEASE AGREEMENT #CIT6415-138  
DATED OCTOBER 10, 2019**

This TITLED EQUIPMENT RIDER is made by and between CITY OF FARGO ("Lessee") and KINETIC LEASING, INC. ("Lessor" and "Owner").

WHEREAS, the parties wish to amend the above reference Agreement as set forth below:

You (Lessee) shall complete the physical titling of the Equipment as required by the state of your residence. **Furthermore, you shall provide such title documentation of the Equipment to us within fifteen (15) days of your receipt of such title documentation from the appropriate titling authority.** Your failure to provide us with the title documentation to the Equipment in a timely manner shall be deemed a condition of default and subject to any and all remedies available to us. Lessee further agrees to pay a month-to-month Unobtained Titling Fee of \$100 per title if the Lessor has not received the correct transferred title in Lessor's office in a timely manner.

The verification of completed titling must be emailed or faxed to Dustin Elliott with Kinetic Leasing within fifteen (15) days:

- o Email: [delliott@kineticlease.com](mailto:delliott@kineticlease.com)
- o Fax: 701-476-0277

Lienholder to be listed as:  
Kinetic Leasing, Inc.  
PO Box 9785  
Fargo, ND 58106

Except as modified herein the terms of the Lease remain the same and continue in full force and effect.

**LESSOR: KINETIC LEASING, INC.**

**LESSEE: CITY OF FARGO**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: October 10, 2019

Date: October 10, 2019

**Form 8038-G**  
(Rev. May 2010)  
Department of the Treasury  
Internal Revenue Service

# Information Return for Tax-Exempt Governmental Obligations

► Under Internal Revenue Code section 149(e)

► See separate instructions.

Caution: If the issue price is under \$100,000, use Form 8038-GC.

OMB No. 1545-0720

## Part I Reporting Authority

If Amended Return, check here ☐

|  |            |   |
|--|------------|---|
| 1 Issuer's name<br><b>City of Fargo</b>  |            | 2 Issuer's employer identification number (EIN)<br><b>45 6005069</b>      |
| 3 Number and street (or P.O. box if mail is not delivered to street address)<br><b>PO Box 2083</b>                                 | Room/suite | 4 Report number (For IRS Use Only)<br><b>3</b>                            |
| 5 City, town, or post office, state, and ZIP code<br><b>Fargo, ND 58107</b>  |            | 6 Date of issue<br><b>10/10/19</b>  |
| 7 Name of issue<br><b>CIT6415-138</b>  |            | 8 CUSIP number  |
| 9 Name and title of officer of the issuer or other person whom the IRS may call for more information<br><b>Tim Mahoney / Mayor</b> |            | 10 Telephone number of officer or other person<br><b>( 701 ) 241-1303</b> |

## Part II Type of Issue (enter the issue price) See instructions and attach schedule

|  |    |                |           |
|--|----|----------------|-----------|
| 11 Education   | 11 |                |           |
| 12 Health and hospital   | 12 |                |           |
| 13 Transportation  | 13 |                |           |
| 14 Public safety   | 14 |                |           |
| 15 Environment (including sewage bonds)  | 15 |                |           |
| 16 Housing   | 16 |                |           |
| 17 Utilities   | 17 |                |           |
| 18 Other. Describe ► <b>2020 International &amp; Galbreath U5-DPHK-200</b>                           | 18 | <b>158,128</b> | <b>35</b> |
| 19 If obligations are TANs or RANs, check only box 19a <input type="checkbox"/>                      |    |                |           |
| If obligations are BANs, check only box 19b <input type="checkbox"/>                                 |    |                |           |
| 20 If obligations are in the form of a lease or installment sale, check box <input type="checkbox"/> |    |                |           |

## Part III Description of Obligations. Complete for the entire issue for which this form is being filed.

|    | (a) Final maturity date | (b) Issue price      | (c) Stated redemption price at maturity | (d) Weighted average maturity | (e) Yield      |
|----|-------------------------|----------------------|---|-------------------------------|----------------|
| 21 | <b>11/01/2023</b>       | <b>\$ 158,128.35</b> | <b>\$ N/A</b>                           | <b>5 years</b>                | <b>3.250 %</b> |

## Part IV Uses of Proceeds of Bond Issue (including underwriters' discount)

|   |    |                |           |
|---|----|----------------|-----------|
| 22 Proceeds used for accrued interest   | 22 | <b>N/A</b>     |           |
| 23 Issue price of entire issue (enter amount from line 21, column (b))                      | 23 | <b>158,128</b> | <b>35</b> |
| 24 Proceeds used for bond issuance costs (including underwriters' discount)                 | 24 | <b>N/A</b>     |           |
| 25 Proceeds used for credit enhancement   | 25 | <b>N/A</b>     |           |
| 26 Proceeds allocated to reasonably required reserve or replacement fund                    | 26 | <b>N/A</b>     |           |
| 27 Proceeds used to currently refund prior issues   | 27 | <b>N/A</b>     |           |
| 28 Proceeds used to advance refund prior issues   | 28 | <b>N/A</b>     |           |
| 29 Total (add lines 24 through 28)  | 29 | <b>N/A</b>     |           |
| 30 Nonrefunding proceeds of the issue (subtract line 29 from line 23 and enter amount here) | 30 | <b>158,128</b> | <b>35</b> |

## Part V Description of Refunded Bonds (Complete this part only for refunding bonds.)

|  |   |            |       |
|--|---|------------|-------|
| 31 Enter the remaining weighted average maturity of the bonds to be currently refunded | ► | <b>N/A</b> | years |
| 32 Enter the remaining weighted average maturity of the bonds to be advance refunded   | ► | <b>N/A</b> | years |
| 33 Enter the last date on which the refunded bonds will be called (MM/DD/YYYY)         | ► | <b>N/A</b> |       |
| 34 Enter the date(s) the refunded bonds were issued (MM/DD/YYYY)                       | ► | <b>N/A</b> |       |

For Privacy Act and Paperwork Reduction Act Notice, see separate instructions. Cat. No. 63773S Form **8038-G** (Rev. 5-2010)

**Part VI Miscellaneous**

- |  |            |     |
|--|------------|-----|
| <b>35</b> Enter the amount of the state volume cap allocated to the issue under section 141(b)(5) . . .  | <b>35</b>  | N/A |
| <b>36a</b> Enter the amount of gross proceeds invested or to be invested in a guaranteed investment contract (GIC) (see instructions) . . .  | <b>36a</b> | N/A |
| <b>b</b> Enter the final maturity date of the GIC ▶ _____  |            |     |
| <b>37</b> Pooled financings: <b>a</b> Proceeds of this issue that are to be used to make loans to other governmental units . . .   | <b>37a</b> | N/A |
| <b>b</b> If this issue is a loan made from the proceeds of another tax-exempt issue, check box <input type="checkbox"/> and enter the name of the issuer ▶ <u>N/A</u> and the date of the issue ▶ <u>N/A</u> |            |     |
| <b>38</b> If the issuer has designated the issue under section 265(b)(3)(B)(i)(III) (small issuer exception), check box <input checked="" type="checkbox"/>  |            |     |
| <b>39</b> If the issuer has elected to pay a penalty in lieu of arbitrage rebate, check box <input type="checkbox"/>   |            |     |
| <b>40</b> If the issuer has identified a hedge, check box <input type="checkbox"/>   |            |     |

**Signature and Consent**

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. I further declare that I consent to the IRS's disclosure of the issuer's return information, as necessary to process this return, to the person that I have authorized above.

Signature of issuer's authorized representative \_\_\_\_\_ Date \_\_\_\_\_ **Tim Mahoney / Mayor**  
 Type or print name and title

**Paid Preparer's Use Only**

|  |                     |   |                              |
|--|---------------------|---|------------------------------|
| Preparer's signature ▶ _____   | Date _____          | Check if self-employed <input type="checkbox"/> | Preparer's SSN or PTIN _____ |
| Firm's name (or yours if self-employed), address, and ZIP code ▶ _____ | EIN _____           |   |                              |
|  | Phone no. ( ) _____ |   |                              |

October 17, 2019

The Honorable Board of City Commissioners  
City of Fargo  
Fargo, ND 58102

RE: NDDEQ Volkswagen Emission Mitigation Program Application

Commissioners:

In October of 2016, the United States finalized a Partial Consent Decree with Volkswagen Corporation (VW) regarding the installation and use of emission testing defeat devices in approximately 500,000 of their diesel-powered vehicles. As part of the decree, VW agreed to pay \$14.7 billion to settle the use of the devices in its vehicles. Within Appendix D of the decree, an environmental mitigation trust fund was established for the use of funding a variety of diesel emission reduction projects across the country. North Dakota's allocation of the mitigation trust is expected to be \$8,125,000 over a three-year period. On behalf of the State of North Dakota, the North Dakota Department of Environmental Quality (NDDEQ) is the designated "Beneficiary" for the state. The NDDEQ has developed a mitigation plan to provide an outline on how the trust funds may be utilized and spent within the state.

On September 9, 2019, the NDDEQ announced that applications were now being accepted for project funding from the VW Environmental Mitigation Trust. Within the NDDEQ program, nine eligible categories were developed in which application can be submitted. City staff has met and discussed possible projects and have identified two projects for which we would like to apply.

Under project category nine, the city can apply for and receive up to a 100% funding of light duty electric vehicle supply equipment installed on city owned property. Staff has evaluated possible locations and identified the new city hall parking lot as a desired location to install four 80-amp vehicle-charging stations for public use.

As part of project category one, government owned large diesel trucks that were produced between 1992 and 2009 are eligible for a 50% cost share of replacement low emission diesel powered trucks. Staff has identified that the city's 2021-vehicle replacement budget includes a 1997 Fire Department ladder truck outfitted with a pre emission diesel engine. The ladder truck falls within the application requirements due to its age and pre emission diesel.

RECOMMENDED MOTION: I/we are requesting Commission approval to authorize staff to submit applications for the stated projects to the NDDEQ VW Emission Mitigation Program.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Ben Dow', with a long horizontal flourish extending to the right.

Ben Dow  
Fargo Public Works  
Director of Operations





## **North Dakota Department of Environmental Quality Volkswagen Emission Mitigation Program Guidance**

The guidance provided in this document is based on the information and requirements of the Environmental Mitigation Trust Agreement for State Beneficiaries, filed October 2, 2017 (modified February 28, 2019), and North Dakota's mitigation plan for the Volkswagen Environmental Mitigation Trust Agreement. This document is intended to be a guide to assist in applying for Volkswagen Settlement funding. Details not addressed in this guidance document are still applicable per settlement requirements. The trust agreement document can be found at:

[https://www.vwenvironmentalmitigationtrust.com/sites/default/files/2019-04/Modified%20State%20Trust%20Agreement\\_1.pdf](https://www.vwenvironmentalmitigationtrust.com/sites/default/files/2019-04/Modified%20State%20Trust%20Agreement_1.pdf)

Information about the Volkswagen Settlement in North Dakota, as well as the State's mitigation plan, can be found at:

<https://deq.nd.gov/AQ/planning/VW.aspx>

### **Introduction**

North Dakota's allocation of the Environmental Mitigation Trust Fund for the Volkswagen Settlement is \$8,125,000. The primary goal of the settlement is to reduce NO<sub>x</sub> emissions. As the designated "Beneficiary" for the State of North Dakota, the North Dakota Department of Environmental Quality (NDDEQ) will administer a program to complete projects that reduce NO<sub>x</sub> emissions from mobile sources of air pollution. Projects will primarily include the replacement or repower of vehicles and equipment, and the installation of electric vehicle charging equipment.

The Volkswagen Settlement allows Beneficiaries (NDDEQ) to request up to one-third of their total allocation during the first year of the program, or up to two-thirds of the allocation during the first two years of the program to complete eligible mitigation projects. The Volkswagen Settlement funding was required to be included in NDDEQ's proposed budget for the 2019 North Dakota legislative session. Upon completion of the session, the Legislature determined that the NDDEQ's spending authority for the program will be \$5,399,529 over the first two years of the program. Therefore, during this first year of the program, it is anticipated that the NDDEQ will have approximately \$2,700,000 available to fund projects.

This is an annual, competitive application process. Upon being selected for project funding, applicants will enter into a contract with the NDDEQ. The contract will state the funding amount and include any additional necessary conditions. Applicants selected for funding will have two years to complete their project(s).

## Who Can Apply

Eligible applicants include government and non-government entities. For this program, government shall mean a State or local government agency (including a school district, municipality, city, county, special district, transit district, joint powers authority, or port authority, owning fleets purchased with government funds). Non-government entities include for profit businesses and non-profit organizations identified as having a tax-exempt declaration of from the Internal Revenue Service.

## Eligible Projects

Applicants may request funds from the Environmental Mitigation Trust for projects that fit into one of the eligible mitigation action categories. The goal of each eligible category is to reduce NO<sub>x</sub> emissions. As outlined in North Dakota's mitigation plan, the following eligible mitigation action categories will be eligible for funding during the first year of the program:

| Category | Eligible Mitigation Action                        |
|----------|---|
| 1        | Class 8 Eligible Large Trucks                     |
| 2        | Class 4-8 Eligible Buses                          |
| 3        | Freight Switchers                                 |
| 6        | Class 4-7 Eligible Medium Trucks                  |
| 7        | Airport Ground Support Equipment                  |
| 8        | Forklifts and Port Cargo Handling Equipment       |
| 9        | Light Duty Zero Emission Vehicle Supply Equipment |

Details of each category and the reimbursement rates associated with each project is outlined as follows:

### Category 1 – Local Freight Trucks and Port Drayage Trucks (Large Trucks)

- Repower or replacement of vehicles 33,001 pounds and larger.
- Eligible large trucks include 1992–2009 engine model year Class 8 vehicles.
- Examples include, but may not be limited to cement mixers, dump trucks, fire trucks, and large (tour type) buses.
- Long haul trucks are **not** eligible under this mitigation action.
- The replaced large truck must be scrapped.
- Replaced engines must be scrapped.
- Eligible large trucks may be repowered or replaced with any new diesel, alternate fuel, or all electric vehicle, with an engine model year in which the mitigation action occurs or one engine model year prior.
- For **non-Government owned** eligible Class 8 Local Freight Trucks, the reimbursement rates are as follows:

- i. Up to 20% of the cost of a repower with a new diesel or alternate fueled (e.g. CNG, propane, hybrid) engine, including the costs of installation of such engine
  - ii. Up to 13% of the cost of a new diesel or alternate fueled (e.g. CNG, propane, hybrid) vehicle
  - iii. Up to 38% of the cost of a repower with a new all-electric engine, including the costs of installation of such engine, and charging infrastructure associated with the new all-electric engine
  - iv. Up to 38% of the cost of a new all-electric vehicle, including charging infrastructure associated with the new all-electric vehicle
- For **non-Government owned** eligible Class 8 Drayage Trucks, the reimbursement rates are as follows:
  - i. Up to 20% of the cost of a repower with a new diesel or alternate fueled (e.g. CNG, propane, hybrid) engine, including the costs of installation of such engine
  - ii. Up to 25% of the cost of a new diesel or alternate fueled (e.g. CNG, propane, hybrid) vehicle
  - iii. Up to 38% of the cost of a repower with a new all-electric engine, including the costs of installation of such engine, and charging infrastructure associated with the new all-electric engine
  - iv. Up to 38% of the cost of a new all-electric vehicle, including charging infrastructure associated with the new all-electric vehicle
- For **Government owned** eligible Class 8 Large Trucks, the reimbursement rates are as follows:
  - i. Up to 50% of the cost of a repower with a new diesel or alternate fueled (e.g. CNG, propane, hybrid) engine, including the costs of installation of such engine
  - ii. Up to 50% of the cost of a new diesel or alternate fueled (e.g. CNG, propane, hybrid) vehicle
  - iii. Up to 50% of the cost of a repower with a new all-electric engine, including the costs of installation of such engine, and charging infrastructure associated with the new all-electric engine
  - iv. Up to 50% of the cost of a new all-electric vehicle, including charging infrastructure associated with the new all-electric vehicle

**Category 2 - Class 4–8 School Bus, Shuttle Bus, or Transit Bus (Eligible Buses)**

- Repower or replacement of Class 4–8 school, shuttle, or transit buses 14,001 pounds and larger.

- Eligible buses include those with an engine model year 2009 and older.
- The replaced bus must be scrapped.
- Replaced engines must be scrapped.
- Eligible buses may be repowered or replaced with any new diesel, alternate fuel, or all electric bus, with an engine model year in which the mitigation action occurs or one engine model year prior.
- For **non-Government owned** eligible buses, the reimbursement rates are as follows:
  - i. Up to 20% of the cost of a repower with a new diesel or alternate fueled (e.g. CNG, propane, hybrid) engine, including the costs of installation of such engine
  - ii. Up to 13% of the cost of a new diesel or alternate fueled (e.g. CNG, propane, hybrid) vehicle
  - iii. Up to 38% of the cost of a repower with a new all-electric engine, including the costs of installation of such engine, and charging infrastructure associated with the new all-electric engine
  - iv. Up to 38% of the cost of a new all-electric vehicle, including charging infrastructure associated with the new all-electric vehicle
- For **Government owned** eligible buses, and privately-owned school buses under contract with a public school district, the reimbursement rates are as follows:
  - i. Up to 50% of the cost of a repower with a new diesel or alternate fueled (e.g. CNG, propane, hybrid) engine, including the costs of installation of such engine
  - ii. Up to 50% of the cost of a new diesel or alternate fueled (e.g. CNG, propane, hybrid) vehicle
  - iii. Up to 50% of the cost of a repower with a new all-electric engine, including the costs of installation of such engine, and charging infrastructure associated with the new all-electric engine
  - iv. Up to 50% of the cost of a new all-electric vehicle, including charging infrastructure associated with the new all-electric vehicle

### Category 3- Freight Switchers

- Repower or replacement of pre-Tier 4 switcher locomotives that operate 1,000 or more hours per year.
- The replaced freight switcher must be scrapped.
- Replaced engines must be scrapped.

- Eligible freight switchers may be repowered or replaced with any new diesel, alternate fueled, or all engine(s) (including generator sets), or may be replaced with any new diesel or alternate fueled or all-electric (including generator sets) freight switcher, that is certified to meet the applicable EPA emissions standards (or other more stringent equivalent State standard) as published in the Code of Federal Regulations (CFR) for the engine model year in which the eligible freight switcher mitigation action occurs.
- For **non-Government owned** freight switchers, the reimbursement rates are as follows:
  - i. Up to 20% of the cost of a repower with a new diesel or alternate fueled (e.g. CNG, propane, hybrid) engine(s) or generator sets, including the costs of installation of such engine
  - ii. Up to 13% of the cost of a new diesel or alternate fueled (e.g. CNG, propane, hybrid) freight switcher
  - iii. Up to 38% of the cost of a repower with a new all-electric engine(s), including the costs of installation of such engine(s), and charging infrastructure associated with the new all-electric engine(s)
  - iv. Up to 38% of the cost of a new all-electric freight switcher, including charging infrastructure associated with the new all-electric freight switcher
- For **Government owned** eligible freight switchers, the reimbursement rates are as follows:
  - i. Up to 50% of the cost of a repower with a new diesel or alternate fueled (e.g. CNG, propane, hybrid) engine(s) or generator sets, including the costs of installation of such engine(s)
  - ii. Up to 50% of the cost of a new diesel or alternate fueled (e.g. CNG, propane, hybrid) freight switcher
  - iii. Up to 50% of the cost of a repower with a new all-electric engine(s), including the costs of installation of such engine(s), and charging infrastructure associated with the new all-electric engine(s)
  - iv. Up to 50% of the cost of a new all-electric freight switcher, including charging infrastructure associated with the new all-electric freight switcher

#### **Category 6 - Class 4–7 Local Freight Trucks (Medium Trucks)**

- Repower or replacement of vehicles 14,001 to 33,000 pounds
- Eligible medium trucks include 1992–2009 engine model year Class 4–7 vehicles.
- Examples include, but may not be limited, to delivery/walk in vehicles, bucket trucks, fuel delivery trucks, garbage trucks, and city transit buses.



- The replaced medium truck must be scrapped.
- Replaced engines must be scrapped.
- Eligible medium trucks may be repowered or replaced with any new diesel, alternate fuel, or all electric vehicle, with an engine model year in which the mitigation action occurs or one engine model year prior.
- For **non-Government owned** eligible medium trucks, the reimbursement rates are as follows:
  - i. Up to 20% of the cost of a repower with a new diesel or alternate fueled (e.g. CNG, propane, hybrid) engine, including the costs of installation of such engine
  - ii. Up to 13% of the cost of a new diesel or alternate fueled (e.g. CNG, propane, hybrid) vehicle
  - iii. Up to 38% of the cost of a repower with a new all-electric engine, including the costs of installation of such engine, and charging infrastructure associated with the new all-electric engine
  - iv. Up to 38% of the cost of a new all-electric vehicle, including charging infrastructure associated with the new all-electric vehicle
- For **Government owned** eligible medium trucks, the reimbursement rates are as follows:
  - i. Up to 50% of the cost of a repower with a new diesel or alternate fueled (e.g. CNG, propane, hybrid) engine, including the costs of installation of such engine
  - ii. Up to 50% of the cost of a new diesel or alternate fueled (e.g. CNG, propane, hybrid) vehicle
  - iii. Up to 50% of the cost of a repower with a new all-electric engine, including the costs of installation of such engine, and charging infrastructure associated with the new all-electric engine
  - iv. Up to 50% of the cost of a new all-electric vehicle, including charging infrastructure associated with the new all-electric vehicle

#### **Category 7 - Airport Ground Support Equipment**

- Repower or replacement of Tier 0, Tier 1, or Tier 2 diesel powered airport ground support equipment, and uncertified or certified to 3 g/bhp-hr or higher emissions, spark ignition engine power airport ground support equipment.
- The replaced airport ground support equipment must be scrapped.

- Eligible airport ground support equipment may be repowered with an all-electric engine or may be replaced with the same airport ground support equipment in an all-electric form.
- For **non-Government owned** eligible airport ground support equipment, the reimbursement rates are as follows:
  - i. Up to 38% of the cost of a repower with a new all-electric engine, including the costs of installation of such engine, and charging infrastructure associated with the new all-electric engine
  - ii. Up to 38% of the cost of a new all-electric airport ground support equipment, including charging infrastructure associated with the new all-electric ground support equipment
- For **Government owned** eligible airport ground support equipment, the reimbursement rates are as follows:
  - i. Up to 50% of the cost of a repower with a new all-electric engine, including the costs of installation of such engine, and charging infrastructure associated with the new all-electric engine
  - ii. Up to 50% of the cost of a new all-electric airport ground support equipment, including charging infrastructure associated with the new all-electric airport ground support equipment

#### **Category 8 - Forklifts and Port Cargo Handling Equipment**

- Eligible forklifts include forklifts with greater than 8,000 pounds of lift capacity.
- The replaced forklifts and port cargo handling equipment must be scrapped.
- Eligible forklifts and port cargo handling equipment may be repowered with an all-electric engine or may be replaced with the equipment in an all-electric form.
- For **non-Government owned** eligible forklifts and port cargo handling equipment, the reimbursement rates are as follows:
  - i. Up to 38% of the cost of a repower with a new all-electric engine, including the costs of installation of such engine, and charging infrastructure associated with the new all-electric engine
  - ii. Up to 38% of the cost of a new all-electric forklift or port cargo handling equipment, including charging infrastructure associated with the new all-electric forklift or port cargo handling equipment
- For **Government owned** eligible forklifts and port cargo handling equipment, the reimbursement rates are as follows:

- i. Up to 50% of the cost of a repower with a new all-electric engine, including the costs of installation of such engine, and charging infrastructure associated with the new all-electric engine
- ii. Up to 50% of the cost of a new all-electric forklift or port cargo handling equipment, including charging infrastructure associated with the new all-electric forklift or port cargo handling equipment

### **Category 9 – Light Duty Zero Emission Vehicle Supply Equipment**

Up to fifteen percent (15%) of the total allocation of Trust funds may be used on the costs necessary for, and directly connected to, the acquisition, installation, operation and maintenance of new light duty zero emission vehicle supply equipment for projects as specified below. Trust funds shall not be made available or used to purchase or rent real estate, other capital costs (e.g., construction of buildings, parking facilities, etc.) or general maintenance (i.e., maintenance other than of the Supply Equipment).

- Light duty electric vehicle supply equipment includes Level 2 or fast charging equipment (or analogous successor technologies) located in a public place, workplace, or multi-unit dwelling and is not consumer light duty electric vehicle supply equipment (i.e., not located at a private residential dwelling that is not a multi-unit dwelling).
- Light duty hydrogen fuel cell vehicle supply equipment includes hydrogen dispensing equipment capable of dispensing hydrogen at a pressure of 70 megapascals (MPa) (or analogous successor technologies) located in a public place.

Subject to the 15% limitation above, the reimbursement rates are as follows:

1. Up to 100% of the cost to purchase, install and maintain eligible light duty electric vehicle supply equipment that will be available to the public at a Government owned property.
2. Up to 80% of the cost to purchase, install and maintain eligible light duty electric vehicle supply equipment that will be available to the public at a non-Government owned property.
3. Up to 60% of the cost to purchase, install and maintain eligible light duty electric vehicle supply equipment that is available at a workplace but not to the general public.
4. Up to 60% of the cost to purchase, install and maintain eligible light duty electric vehicle supply equipment that is available at a multi-unit dwelling but not to the general public.

5. Up to 33% of the cost to purchase, install and maintain eligible light duty hydrogen fuel cell vehicle supply equipment capable of dispensing at least 250 kg/day that will be available to the public.
6. Up to 25% of the cost to purchase, install and maintain eligible light duty hydrogen fuel cell vehicle supply equipment capable of dispensing at least 100 kg/day that will be available to the public.

When requesting funds for your proposal, please state the correct amount based on the reimbursement allowed for each category.

## Scoring

The NDDEQ will utilize a competitive approach in selecting projects to be funded. Project proposals will be evaluated in terms of the goals and requirements of the settlement. The projects to be considered must fall into one of the eligible mitigation action categories and will be evaluated based upon the scoring systems outlined in the application forms.

## Scrapping Requirements

The completion of an eligible vehicle replacement and/or engine repower project requires the scrapping of an old vehicle or engine per settlement requirements. Use of funds from this program to expand an existing fleet is not allowed. Scrapping means to render inoperable and available for recycle, and, at a minimum, to specifically cut a 3-inch hole in the engine block for all engines. If any vehicles are replaced as part of an eligible project, scrapping shall also include the disabling of the chassis by cutting the vehicle's frame rails completely in half. The item being replaced shall be scrapped within 90 days of receiving the new item purchased with settlement funds. Submission of a certification of scrapping form provided by the NDDEQ will be required prior to receiving reimbursement.

## Schedule of Events

The following represents the NDDEQ's estimate of the schedule of events for implementing the program.

|                                      |                                     |
|--------------------------------------|-------------------------------------|
| Application Deadline                 | October 25, 2019, 5:00 PM           |
| Application Evaluation Process       | October-November 2019               |
| NDDEQ Notifies Applicants of Results | November-December 2019              |
| Project and Budget Period            | 2 years following the contract date |
| End Date                             | 2 years after the contract date     |

## How to Apply

Two separate applications are available on the NDDEQ's website:  
<https://deq.nd.gov/AQ/planning/VW.aspx>.

1. Vehicle Replacement or Engine Repower Projects (Project Categories 1-3 and 6-8), and
2. Light Duty Zero Emission Vehicle Supply Equipment (Project Category 9)

When filling out and submitting your application, please include all required supplemental information requested in each application. Each application will state what is required.

All applications must be received by the NDDEQ by 5:00 pm on October 25, 2019 to be considered.

Applications may be mailed to the address below:

North Dakota Department of Environmental Quality  
Air Quality Division  
918 E. Divide Ave., 2<sup>nd</sup> Floor  
Bismarck, ND 58501

Applications may also be emailed to [airquality@nd.gov](mailto:airquality@nd.gov).

If you have any questions, please contact either Keith Hinnenkamp ([khinnenk@nd.gov](mailto:khinnenk@nd.gov)) or Angie Seligman ([aseligman@nd.gov](mailto:aseligman@nd.gov)) via email or phone (701-328-5188).

### **Receiving Reimbursement**

Upon project completion, the following must be submitted to the NDDEQ to receive reimbursement:

1. Invoice for new item(s) purchased.
2. Certification of scrappage for replaced item(s) (NDDEQ will provide form).
3. Photos as follows:
  - a. Side profile of vehicle(s) being scrapped
  - b. VIN plate of the vehicle(s) being scrapped
  - c. Engine tag of the vehicle(s)/engine(s) being scrapped showing the engine serial number and EPA engine family name
  - d. Vehicle(s) chassis rails cut in half
  - e. Engine block(s) prior to hole being drilled or engine destruction
  - f. Engine block(s) after hole has been drilled or engine destruction
  - g. Photo of completed charging site (for Category 9 projects)

Photos must be submitted as jpeg files. Submit only the requested photos. Do not submit extras.



October 17, 2019

(16)

Board of City Commissioners  
City of Fargo  
225 4<sup>th</sup> Street North  
Fargo, ND 58102

**Re: Park District of the City of Fargo  
Purchase Agreement – Permanent Street and Utility Easement  
Improvement District #BN-17-C1**

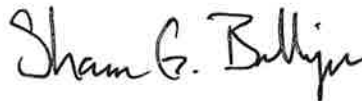
Dear Commissioners:

Enclosed and delivered to the City Commission office are (2) original Purchase Agreement documents for the acquisition of a Permanent Street and Utility Easement in association with Improvement District #BN-17-C1. Final purchase price has been reached and at this time we are requesting authorization from the Commission to proceed with the purchase. All land acquisition procedures have been followed and the City Engineer's office recommends purchase.

**RECOMMENDED MOTION:** I/we hereby move to approve and authorize purchase of a Permanent Street and Utility Easement from the Park District of the City of Fargo in association with Improvement District #BN-17-C1.

Please return the signed originals.

Respectfully submitted,



Shawn G. Bullinger  
Land Acquisition Specialist

C: Jeremy Gorden  
Nancy J. Morris

**PURCHASE AGREEMENT**

**THIS AGREEMENT**, made and entered into this 10<sup>th</sup> of October, 2019, by and between **PARK DISTRICT OF THE CITY OF FARGO**, a North Dakota political subdivision, hereinafter called "Seller", whether one or more, and the **CITY OF FARGO, NORTH DAKOTA**, a municipal corporation, hereinafter called "Buyer" or "City".

**WHEREAS**, Seller is the owner of the following described property:

A tract of land in the Northwest Quarter of Section 22, Township 139 North, Range 49 West of the Fifth Principal Meridian, City of Fargo, Cass County, North Dakota more particularly described as:

The northerly 25.00 feet of Lots 1 through 3, Block 1, ANDERSON PARK SECOND ADDITION to the City of Fargo on file as document 1411699 at the Cass County Recorder's Office; together with, the southerly 10.00 feet of the northerly 35.00 feet of the easterly 161.50 feet of said Lot 1.

Said tract contains 49,561 square feet, more or less.

Bearings based on the City of Fargo ground control system.

**WHEREAS**, Buyer desires a permanent easement for right of way and utility purposes; and

**WHEREAS**, the City and Seller have negotiated fair and just compensation for the interests in Seller's Property desired by the City; and

**WHEREAS**, upon the terms and conditions of this Agreement, Seller has agreed to grant the foregoing interests in its Property to the City.

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

1. **Permanent Easement for Street and Utility, including all appurtenances.** At Closing, which shall occur on or before December 31, 2019, Seller shall convey by Permanent Street and Utility Easement the necessary interest to the property described in the recitals above.

2. **Purchase Price.** As and for the purchase price, the City shall pay to Park District the sum of \$372,897 (Three Hundred Seventy-Two Thousand Eight Hundred Ninety-Seven Dollars).

3. **Closing and Title.** The entire Purchase Price shall be payable at closing, which shall take place on or before \_\_\_\_\_ (date). Seller shall provide City an abstract of title. City shall assure itself as to title, all costs to be borne by City. Possession of the property shall be on the date of closing.

3. **Attorney Fees.** It is understood and agreed that as part of this purchase, each of the parties shall pay their own attorney's fees.

4. **Inspection and Photographs.** Prior to Closing, Seller agrees to allow City to enter the premises and upon the land for purposes of inspection, including but not limited to soil testing, including soil borings, and all other testing means necessary to determine suitability of the property for the intended purposes.

5. **Entire Agreement.** This agreement contains the entire agreement between the parties and shall be binding on the parties, their successors and assigns.

(Signatures on following page.)

DATED this 10<sup>th</sup> day of October, 2019.

**SELLER:**

Park District of the City of Fargo

By: GA R. Stuy

Its: President

DATED this \_\_\_\_ day of \_\_\_\_\_, 2019.

**BUYER:**

City of Fargo, North Dakota

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

**ATTEST:**

\_\_\_\_\_  
Steve Sprague, Auditor

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3. **Closing and Title.** The entire Purchase Price shall be payable at closing, which shall take place on or before \_\_\_\_\_ (date). Seller shall provide City an abstract of title. City shall assure itself as to title, all costs to be borne by City. Possession of the property shall be on the date of closing.

3. **Attorney Fees.** It is understood and agreed that as part of this purchase, each of the parties shall pay their own attorney's fees.

4. **Inspection and Photographs.** Prior to Closing, Seller agrees to allow City to enter the premises and upon the land for purposes of inspection, including but not limited to soil testing, including soil borings, and all other testing means necessary to determine suitability of the property for the intended purposes.

5. **Entire Agreement.** This agreement contains the entire agreement between the parties and shall be binding on the parties, their successors and assigns.

(Signatures on following page.)



DATED this 10<sup>th</sup> day of October, 2019.

**SELLER:**

Park District of the City of Fargo

By: 

Its: President

DATED this \_\_\_\_ day of \_\_\_\_\_, 2019.

**BUYER:**

City of Fargo, North Dakota

By: \_\_\_\_\_

Timothy J. Mahoney, M.D., Mayor

**ATTEST:**

\_\_\_\_\_  
Steve Sprague, Auditor

(17)

## REPORT OF ACTION

## PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Improvement District No. AN-19-G1

Type: Change Order #3

Location: Roberts Alley, 1<sup>st</sup> - 2<sup>nd</sup> Ave N

Date of Hearing: 10/14/2019

|                 |             |
|-----------------|-------------|
| <u>Routing</u>  | <u>Date</u> |
| City Commission | 10/21/2019  |
| PWPEC File      | X           |
| Project File    | Rick Larson |

The Committee reviewed the accompanying correspondence from Project Manager, Rick Larson, for Change Order #3, in the amount of \$1,815.00, for installing pull strings into the conduits in Roberts Alley.

Staff is recommending approval of Change Order #3, in the amount of \$1,815.00, bringing the total contract amount to \$546,428.20.

On a motion by Bruce Grubb, seconded by Kent Costin, the Committee voted to recommend approval of Change Order #3 to Key Contracting.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve Change Order #3 in the amount of \$1,815.00, bringing the total contract amount to \$546,428.20.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: Utility Funds & Special Assessments

Developer meets City policy for payment of delinquent specials  
 Agreement for payment of specials required of developer  
 50% escrow deposit required

|     |    |
|-----|----|
| Yes | No |
| N/A |    |
| N/A |    |
| N/A |    |


COMMITTEE

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

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

ATTEST:

C: Kristi Olson

  
 Brenda E. Derrig, P.E.  
 City Engineer

## Memorandum

**To:** Members of PWPEC  
**From:** Rick Larson, Project Manager  
**Date:** October 8, 2019  
**Re:** Improvement District No. AN-19-G1– Change Order #3

---

### **Background:**

Improvement District #AN-19-G1 is for the reconstruction and incidentals in Roberts Alley between 1<sup>st</sup> Avenue North and 2<sup>nd</sup> Avenue North.

Key Contracting is the prime contractor.

### **Change Order #3 – Install pull string into conduits in Robert's Alley, north of 2<sup>nd</sup> Avenue North**

The added work to install the pull strings inside the conduits will make it easier to identify the run and will also assist with pulling future cables.

The total cost of Change Orders #3 is \$1,815.00, which will be paid using Sales Tax.

No extra time has been requested to perform this additional work.

### **Recommended Motion:**

Approve the above-described Change Order #3 in the amount of \$1,815.00.

RJL/klb  
Attachments

C: Brenda Derrig, City Engineer  
Thomas Knakmuhs, Assistant City Engineer



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

|                                |  |                        |                     |
|--------------------------------|--|------------------------|---------------------|
| <b>Improvement District No</b> | AN-19-G1                               | <b>Change Order No</b> | 3                   |
| <b>Project Name</b>            | PC Concrete Alley Paving & Incidentals |                        |                     |
| <b>Date Entered</b>            | 10/10/2019                             | <b>For</b>             | 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:** CO #3 - Pull String

Add pull string into added conduit north of 2nd Avenue.

| 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 (\$) |
|--|---------|-----------------------|------|---------------|--------------|---------------|--------------|--------------|-----------------|--------------------|
| Utility Conduit System                       | 38      | Extra - Street Lights | LS   | 0.00          | 0.00         | 0.00          | 1.00         | 1.00         | 1,815.00        | 1,815.00           |
| <b>Utility Conduit System Sub Total (\$)</b> |         |                       |      |               |              |               |              |              |                 | 1,815.00           |

**Summary**

**Source Of Funding** Utility Funds - Wastewater - 521

**Net Amount Change Order # 3 (\$)**

**Previous Change Orders (\$)**

**Original Contract Amount (\$)**

**Total Contract Amount (\$)**

1,815.00  
67,105.70  
477,507.50  
546,428.20

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 |
|-------------------------------------|-------------------------------|--|----------------------------------|---------------------------------|---------------------------|
| 11/01/2019                          | 09/27/2019                    | 0.00                                   | 277.00                           | 11/01/2019                      | 06/30/2020                |

**Description**

**APPROVED**

For Contractor

**APPROVED DATE**

Department Head

10/17/19



CITY OF FARGO  
ENGINEERING DEPARTMENT  
CHANGE ORDER REPORT

Title

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 # 2**

Submitted To: City of Fargo  
 Attention: Rick Larson  
 Date: 10/7/2019  
 Project: City of Fargo AN-19-G1  
 Description: **Electrical** - Blow strings into 2018 project revisions

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

| Description   | Measure  | Quantity | Unit Price  | Amount      |
|---|----------|----------|-------------|-------------|
| Electrical - Blow strings into 2018 project revisions | lump sum | 1        | \$ 1,815.00 | \$ 1,815.00 |

**\$ 1,815.00**

All materials are guaranteed as specified.

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

Dated as noted above.

Accepted on: \_\_\_\_\_

**Steve Carr**

Key Contracting, Inc.

Contact: Steve Carr

Cell (701) 371-1284





10/2/2019

Steve Carr  
Key Contracting  
Fargo. ND

Subject: Robert's Alley Change proposal

Moorhead Electric is pleased to offer this change proposal for the above project. Please feel free to contact us if you have any questions.

#### SCOPE NARRATIVE

#### **Clarifications**

- Blow strings into 2018 project revisions (from new pull boxes on south end of Block 200
- Includes string and use of air compressor
- Rodding through obstructed conduits will be extra.
- Bond is not included.

| Description | Price       |
|-------------|-------------|
| Base Price  | \$ 1,650.00 |

Respectfully Submitted,

A handwritten signature in black ink, reading "Craig Davidson".

Craig Davidson | Estimator | Direct: 701-551-1363 | Cell: 701-566-4414 | [cdavidson@moorheadelectric.com](mailto:cdavidson@moorheadelectric.com)



(18)

## PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Improvement District No. PR-17-B1 Type: Change Orders #1 - #13

Location: University Dr S, 18<sup>th</sup> – 21<sup>st</sup> Ave S Date of Hearing: 10/14/2019

Routing City Commission Date  
 PWPEC File 10/21/2019  
 Project File X  
 Jeremy Gorden

The Committee reviewed the accompanying correspondence from Division Engineer, Jeremy Gorden, related to Change Orders #1 - #13 submitted by the NDDOT for the reconstruction of University Drive South from 18<sup>th</sup> Avenue South to 21<sup>st</sup> Avenue South. The requested changes can be summarized as follows:

- Added drain tile under road and added rebar to the sidewalks.
- Added additional paving outside the project limits at the intersection of 18<sup>th</sup> Ave S.
- Added 2 ethernet switches for the north and south I-94 ramp off ramp signal cabinets.
- This change order addressed items added due to a conflict with and existing Xcel Energy gas main.
- This was for added concrete repairs outside the original scope of the project between the south ramp and Oak Manor Drive.
- This was for concrete slope protection north of the new pedestrian underpass at the north ramp.
- This item was for adding yellow epoxy to the end of the medians.
- This item was for relaying 18" concrete pipe due to watermain conflict.
- This item was for a gate in the interstate fence and for a driveway off of 19<sup>th</sup> Ave S to serve the new storm lift station for the pedestrian underpass.
- This item was for concrete pavement revisions to widen radii at 21<sup>st</sup> Ave S and at the south ramp.
- This item was for relaying concrete pipe at the north end of the project to direct storm water into a different manhole.

Staff is recommending approval of Change Orders #1 - #13 in the amount of \$257,202.64.

On a motion by Bruce Grubb, seconded by Kent Costin, the Committee voted to recommend approval of Change Orders #1 - #13.

RECOMMENDED MOTION

Concur with recommendations of PWPEC and approve Change Orders #1 - #13 in the amount of \$257,202.64.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: Fed Hwy, NDDOT, Water Utility, WW Utility, 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/A |    |
| N/A |    |
| N/A |    |

COMMITTEE

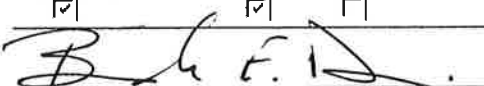
| Present                             | Yes | No | Unanimous                           |
|-------------------------------------|-----|----|-------------------------------------|
| <input checked="" type="checkbox"/> |     |    | <input checked="" type="checkbox"/> |

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

|                                     |  |                                     |                          |
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| <input checked="" type="checkbox"/> |  | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

ATTEST:

C: Kristi Olson

  
 Brenda E. Derrig, P.E.  
 City Engineer

## Memorandum

**To:** Members of PWPEC

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

**Date:** October 9, 2019

**Re:** City of Fargo Improvement District No. PR-17-B1 – Change Orders #1-13  
NDDOT Project No. NHU-8-081(039)924  
University Drive South – 18<sup>th</sup> Avenue South to 21<sup>st</sup> Avenue South

---

**Background:**

This project is being administered by the NDDOT Fargo District Office, along with members of the City of Fargo Engineering Department, and Master Construction being the Prime Contractor for the job. Thirteen (13) Change Orders have been approved by the NDDOT Construction Division and they are as follows:

- CO #1: Added drain tile under road and added rebar to the sidewalks. Increase of \$39,388.86.
- CO #2: Added additional paving outside the project limits at the intersection of 18<sup>th</sup> Ave S. Increase of \$8,447.60.
- CO #3: Added 2 ethernet switches for the north and south I-94 ramp off ramp signal cabinets. Increase of \$6,195.60.
- CO #4: This change order addressed items added due to a conflict with and existing Xcel Energy gas main. Increase of \$30,589.94.
- CO #5: This was for added concrete repairs outside the original scope of the project between the south ramp and Oak Manor Drive. Increase of \$15,331.52.
- CO #6: This was for concrete slope protection north of the new pedestrian underpass at the north ramp. Increase of \$71,873.39.
- CO #7: Increase of \$6,714.43.
- CO #8: This item was for adding yellow epoxy to the end of the medians. Increase of \$7,731.29.
- CO #9: Increase of 8,469.88.
- CO #10: This item was for relaying 18" concrete pipe due to watermain conflict. Increase of \$10,070.55.
- CO #11: This item was for a gate in the interstate fence and for a driveway off of 19<sup>th</sup> Ave S to serve the new storm lift station for the pedestrian underpass. Increase of \$18,670.72.
- CO #12: This item was for concrete pavement revisions to widen radii at 21<sup>st</sup> Ave S and at the south ramp. Increase of \$26,403.35.
- CO #13: This item was for relaying concrete pipe at the north end of the project to direct storm water into a different manhole. Increase of \$7,315.51.

Total increase of \$257,202.64 with these 13 Change Orders. Original Contract amount was \$2,838,107.30.

**Recommended Motion:**

Concur with the NDDOT Construction Division and Approve Change Orders #1 - 13 on this project.

JMG/klb

Attachment

# North Dakota Department of Transportation

## Change Order

Page 1 of 1

Change Order No: 1

Project: NHU-8-081(039)924

PCN: 21400

SubProject: 1 GRADING, SURFACING, STORM DRAIN, LIGHTING, P/ County: Cass

For: GRADING, SURFACING, STORM DRAIN, LIGHTING, PAVEMENT MAI

Contractor: MASTER CONSTRUCTION CO INC

PO BOX 788

FARGO, ND 58107-0788

Original Contract Amount:

\$2,838,107.30

Date Created: 06/11/2018

Date Approved: 07/31/2018

| Spec No                          | Code No | Item of Work                 | Unit | Original Quantity | + or - Quantity | Unit Price | Increase Amount   | Decrease Amount |
|----------------------------------|---------|------------------------------|------|-------------------|-----------------|------------|-------------------|-----------------|
| ADDED CONTRACT ITEM              |         |                              |      |                   |                 |            |                   |                 |
| PARTICIPATING (FEDERAL FUNDS)    |         |                              |      |                   |                 |            |                   |                 |
| 550                              | 380     | Pavement Reinforcement       | SY   | 0.00              | 980.00          | 4.000      | 3,920.00          |                 |
| 714                              | 9696    | EDGEDRAIN NON PERMEABLE BASE | LF   | 0.00              | 2,836.00        | 8.500      | 24,106.00         |                 |
| 750                              | 500     | Reinforcement-No. 3 Rebar    | SY   | 0.00              | 3,564.00        | 2.860      | 10,193.04         |                 |
| 750                              | 501     | Reinforcement-No. 4 Rebar    | SY   | 0.00              | 291.00          | 4.020      | 1,169.82          |                 |
| Net Increase or Decrease to Date |         | 39,388.86                    | Part | Non-Part          |                 | TOTALS     | 39,388.86         |                 |
|                                  |         |                              |      |                   |                 |            | NON-PARTICIPATING |                 |
|                                  |         |                              |      |                   |                 |            | PARTICIPATING     | 39,388.86       |

Due to This Change, the Contract Time:

IS INCREASED BY 4.0 CALENDAR DAYS.

**Classification**

Functional Design Change

**EXPLANATION OF CHANGE IN PLAN RECOMMENDED**

If the federal funds authorized in the cost participation agreement with the local agency is exceeded and federal funds are not available for this change, the local agency will assume the total cost of this change order.

This change order will provide for the installation of edge drain beneath the curb and gutter along University Drive, and reinforcement in concrete pavement, sidewalk, median, and driveway concrete per the attached plan revision. This change order will extend the final completion date by 4 calendar days, and will add 2 working days to each of the Phase 3 and Phase 4 interim completion dates given in the Proposal. See the attached documentation for explanation of change in plan.

This change order will revise Section 6 Sheet 5, and Section 8 Sheet 2.

MASTER CONSTRUCTION CO INC 07/27/2018

Prime Contractor

DATE

Jeremy Gorden

07/29/2018

County/City Official

DATE

Aaron Kelsch

07/31/2018

Project Engineer

DATE

Kevin Gorder

07/31/2018

District 8

DATE

DATE \_\_\_\_\_

# North Dakota Department of Transportation

## Change Order

Page 1 of 1

Change Order No: 3

Project: NHU-8-081(039)924

PCN: 21400

SubProject: 1 GRADING, SURFACING, STORM DRAIN, LIGHTING, P County: Cass

For: GRADING, SURFACING, STORM DRAIN, LIGHTING, PAVEMENT MAI

Contractor: MASTER CONSTRUCTION CO INC  
 PO BOX 788  
 FARGO, ND 58107-0788

Original Contract Amount:  
 \$2,838,107.30

Date Created: 08/28/2018

Date Approved: 08/31/2018

| Spec<br>No                       | Code<br>No | Item of Work    | Unit | Original<br>Quantity | + or -<br>Quantity | Unit<br>Price            | Increase<br>Amount | Decrease<br>Amount |
|----------------------------------|------------|-----------------|------|----------------------|--------------------|--------------------------|--------------------|--------------------|
| ADDED CONTRACT ITEM              |            |                 |      |                      |                    |                          |                    |                    |
| PARTICIPATING (FEDERAL FUNDS)    |            |                 |      |                      |                    |                          |                    |                    |
| 772                              | 9236       | Ethernet Switch | EA   | 0.00                 | 2.00               | 3,097.800                | 6,195.60           |                    |
| Net Increase or Decrease to Date |            |                 |      | 54,032.06            | Part               |                          |                    |                    |
|                                  |            |                 |      |                      | Non-Part           | <b>TOTALS</b>            | 6,195.60           |                    |
|                                  |            |                 |      |                      |                    | <b>NON-PARTICIPATING</b> |                    |                    |
|                                  |            |                 |      |                      |                    | <b>PARTICIPATING</b>     | 6,195.60           |                    |

Due to This Change, the Contract Time:  
 NO CHANGE.

**Classification**

Change Approved In Field by P.E.

**EXPLANATION OF CHANGE IN PLAN RECOMMENDED**

If the federal funds authorized in the cost participation agreement with the local agency is exceeded and federal funds are not available for this change, the local agency will assume the total cost of this change order.

See attached documentation for Explanation of Change in Plan.

MASTER CONSTRUCTION CO INC 08/30/2018

Prime Contractor

DATE

Jeremy Gorden

08/30/2018

County/City Official

DATE

Aaron Kelsch

08/30/2018

Project Engineer

DATE



**North Dakota Department of Transportation**  
**Change Order**

Page 1 of 2

Change Order No: 4

Project: NHU-8-081(039)924

PCN: 21400

SubProject: 1 GRADING, SURFACING, STORM DRAIN, LIGHTING, Pav County: Cass

For: GRADING, SURFACING, STORM DRAIN, LIGHTING, PAVEMENT MAINT

Contractor: MASTER CONSTRUCTION CO INC  
PO BOX 788  
FARGO, ND 58107-0788

Original Contract Amount:  
\$2,838,107.30

Date Created: 10/24/2018

Date Approved: 10/25/2018

| Spec No                           | Code No | Item of Work                               | Unit  | Original Quantity | + or - Quantity | Unit Price | Increase Amount | Decrease Amount          |
|-----------------------------------|---------|--|-------|-------------------|-----------------|------------|-----------------|--------------------------|
| ADDED CONTRACT ITEM               |         |  |       |                   |                 |            |                 |                          |
| PARTICIPATING (FEDERAL FUNDS)     |         |  |       |                   |                 |            |                 |                          |
| 202                               | 295     | REMOVAL OF OBSTRUCTIONS                    | L SUM | 0.00              | 1.00            | 576.680    | 576.68          |                          |
| 210                               | 210     | FOUNDATION FILL                            | CY    | 0.00              | 338.00          | 30.000     | 10,140.00       |                          |
| 722                               | 3496    | Reset Inlet                                | L SUM | 0.00              | 1.00            | 2,915.570  | 2,915.57        |                          |
| 724                               | 1120    | 6IN SEWER SERVICE PIPE                     | LF    | 0.00              | 34.00           | 72.400     | 2,461.60        |                          |
| NON-PARTICIPATING (FEDERAL FUNDS) |         |  |       |                   |                 |            |                 |                          |
| 724                               | 1110    | 8IN SANITARY SEWER PIPE                    | LF    | 0.00              | 32.00           | 75.000     | 2,400.00        |                          |
| INCREASE TO BID ITEM              |         |  |       |                   |                 |            |                 |                          |
| PARTICIPATING (FEDERAL FUNDS)     |         |  |       |                   |                 |            |                 |                          |
| 202                               | 136     | REMOVAL OF PAVEMENT                        | TON   | 19,416.00         | 47.90           | 14.000     | 670.60          |                          |
| 202                               | 130     | REMOVAL OF CURB & GUTTER                   | LF    | 6,171.00          | 7.00            | 8.000      | 56.00           |                          |
| 203                               | 101     | COMMON EXCAVATION-TYPE A                   | CY    | 951.00            | 338.00          | 10.000     | 3,380.00        |                          |
| 302                               | 100     | SALVAGED BASE COURSE                       | TON   | 11,015.00         | 48.99           | 18.000     | 881.82          |                          |
| 550                               | 315     | 11IN NON REINF CONCRETE PVMT CL AE-DOWELEI | SY    | 11,581.00         | 78.38           | 70.000     | 5,486.60        |                          |
| 709                               | 151     | GEOSYNTHETIC MATERIAL TYPE R1              | SY    | 15,516.00         | 80.71           | 1.500      | 121.07          |                          |
| 722                               | 1100    | MANHOLE RISER 48IN                         | LF    | 22.54             | 4.00            | 340.000    | 1,360.00        |                          |
| 748                               | 140     | CURB & GUTTER-TYPE I                       | LF    | 6,211.00          | 7.00            | 20.000     | 140.00          |                          |
| Net Increase or Decrease to Date  |         |  |       | 82,222.00         | Part            | 2,400.00   | Non-Part        | <b>TOTALS</b>            |
|                                   |         |  |       |                   |                 |            |                 | <b>NON-PARTICIPATING</b> |
|                                   |         |  |       |                   |                 |            |                 | <b>PARTICIPATING</b>     |
|                                   |         |  |       |                   |                 |            | 30,589.94       |                          |
|                                   |         |  |       |                   |                 |            | 2,400.00        |                          |
|                                   |         |  |       |                   |                 |            | 28,189.94       |                          |

Due to This Change, the Contract Time:  
IS INCREASED BY 9.5 CALENDAR DAYS.

**Classification**

Functional Design Change

**EXPLANATION OF CHANGE IN PLAN RECOMMENDED**

If the federal funds authorized in the cost participation agreement with the local agency is exceeded and federal funds are not available for this change, the local agency will assume the total cost of this change order.

This change order will address the items that caused delays to the work specified in the interim Phase 4 completion requirements given in SP 502(14). This change order will add 9.5 calendar days to the Early and Final Completion Dates, and will add 5 working days to the interim Phase 4 completion date. See the attached documentation for explanation of change in plan and additional details regarding this change order.

**North Dakota Department of Transportation  
Change Order**

Change Order No: 4

Project: NHU-8-081(039)924

PCN: 21400

SubProject: 1 GRADING, SURFACING, STORM DRAIN, LIGHTING, P, County: Cass

For: GRADING, SURFACING, STORM DRAIN, LIGHTING, PAVEMENT MAI

Contractor: MASTER CONSTRUCTION CO INC  
PO BOX 788  
FARGO, ND 58107-0788Original Contract Amount:  
\$2,838,107.30

Date Created: 10/24/2018

Date Approved: 10/25/2018

|                                   |                   |
|-----------------------------------|-------------------|
| <u>MASTER CONSTRUCTION CO INC</u> | <u>10/25/2018</u> |
| Prime Contractor                  | DATE              |
| <u>Aaron Kelsch</u>               | <u>10/25/2018</u> |
| Project Engineer                  | DATE              |

|                      |                   |
|----------------------|-------------------|
| <u>Jeremy Gorden</u> | <u>10/25/2018</u> |
| County/City Official | DATE              |
| <u>Kevin Gorder</u>  | <u>10/25/2018</u> |
| District 8           | DATE              |

# North Dakota Department of Transportation

## Change Order

Page 1 of 1

Change Order No: 5

Project: NHU-8-081(039)924

PCN: 21400

SubProject: 1 GRADING, SURFACING, STORM DRAIN, LIGHTING, P/ County: Cass

For: GRADING, SURFACING, STORM DRAIN, LIGHTING, PAVEMENT MAI

Contractor: MASTER CONSTRUCTION CO INC  
 PO BOX 788  
 FARGO, ND 58107-0788

Original Contract Amount:  
 \$2,838,107.30

Date Created: 10/25/2018

Date Approved: 10/29/2018

| Spec No                          | Code No | Item of Work                               | Unit | Original Quantity | + or - Quantity | Unit Price | Increase Amount | Decrease Amount   |
|----------------------------------|---------|--|------|-------------------|-----------------|------------|-----------------|-------------------|
| ADDED CONTRACT ITEM              |         |  |      |                   |                 |            |                 |                   |
| PARTICIPATING (FEDERAL FUNDS)    |         |  |      |                   |                 |            |                 |                   |
| 570                              | 709     | 11IN CONCRETE PAVEMENT REPAIR-FULL DEPTH-I | SY   | 0.00              | 99.06           | 154.770    | 15,331.52       |                   |
| Net Increase or Decrease to Date |         |  |      | 97,553.51         | Part            | 2,400.00   | Non-Part        | TOTALS            |
|                                  |         |  |      |                   |                 |            | 15,331.52       | NON-PARTICIPATING |
|                                  |         |  |      |                   |                 |            | 15,331.52       | PARTICIPATING     |

Due to This Change, the Contract Time:  
 IS INCREASED BY 5.0 CALENDAR DAYS.

**Classification**

Change Approved In Field by P.E.

**EXPLANATION OF CHANGE IN PLAN RECOMMENDED**

If the federal funds authorized in the cost participation agreement with the local agency is exceeded and federal funds are not available for this change, the local agency will assume the total cost of this change order.

See the attached documentation for explanation of change in plan.

MASTER CONSTRUCTION CO INC 10/25/2018  
 Prime Contractor DATE  
 Aaron Kelsch 10/29/2018  
 Project Engineer DATE

Jeremy Gorden 10/29/2018  
 County/City Official DATE  
 Kevin Gorder 10/29/2018  
 District 8 DATE

## North Dakota Department of Transportation

## Change Order

Page 1 of 1

Change Order No: 6

Project: NHU-8-081(039)924

PCN: 21400

SubProject: 1 GRADING, SURFACING, STORM DRAIN, LIGHTING, P County: Cass

For: GRADING, SURFACING, STORM DRAIN, LIGHTING, PAVEMENT MAI

Contractor: MASTER CONSTRUCTION CO INC

PO BOX 788

FARGO, ND 58107-0788

Original Contract Amount:

\$2,838,107.30

Date Created: 11/16/2018

Date Approved: 11/30/2018

| Spec<br>No                       | Code<br>No | Item of Work                                  | Unit | Original<br>Quantity | + or -<br>Quantity | Unit<br>Price | Increase<br>Amount | Decrease<br>Amount |
|----------------------------------|------------|---|------|----------------------|--------------------|---------------|--------------------|--------------------|
| ADDED CONTRACT ITEM              |            |   |      |                      |                    |               |                    |                    |
| PARTICIPATING (FEDERAL FUNDS)    |            |   |      |                      |                    |               |                    |                    |
| 258                              | 105        | Pigmented Imprinted Concrete Slope Protection | SY   | 0.00                 | 437.00             | 164.470       | 71,873.39          |                    |
| Net Increase or Decrease to Date |            |   |      | 169,426.90           | Part               | 2,400.00      | Non-Part           | TOTALS             |
|                                  |            |   |      |                      |                    |               | 71,873.39          |                    |
|                                  |            |   |      |                      |                    |               | NON-PARTICIPATING  |                    |
|                                  |            |   |      |                      |                    |               | PARTICIPATING      | 71,873.39          |

Due to This Change, the Contract Time:

IS INCREASED BY 5.0 CALENDAR DAYS.

## Classification

Functional Design Change

## EXPLANATION OF CHANGE IN PLAN RECOMMENDED

If the federal funds authorized in the cost participation agreement with the local agency is exceeded and federal funds are not available for this change, the local agency will assume the total cost of this change order.

See the attached documentation for explanation of change in plan.

MASTER CONSTRUCTION CO INC 11/19/2018  
 Prime Contractor DATE  
 Aaron Kelsch 11/27/2018  
 Project Engineer DATE  
 Wayde Swenson 11/30/2018  
 Office of Operations DATE

Jeremy Gorden 11/27/2018  
 County/City Official DATE  
 Bob Walton 11/27/2018  
 District 8 DATE

**North Dakota Department of Transportation**  
**Change Order**

Page 1 of 1

Change Order No: 7

Project: NHU-8-081(039)924

PCN: 21400

SubProject: 1 GRADING, SURFACING, STORM DRAIN, LIGHTING, P County: Cass

For: GRADING, SURFACING, STORM DRAIN, LIGHTING, PAVEMENT MAI

Contractor: MASTER CONSTRUCTION CO INC  
PO BOX 788  
FARGO, ND 58107-0788

Original Contract Amount:  
\$2,838,107.30

Date Created: 01/15/2019

Date Approved: 05/31/2019

| Spec No                          | Code No | Item of Work                    | Unit  | Original Quantity | + or - Quantity | Unit Price | Increase Amount          | Decrease Amount |
|----------------------------------|---------|---------------------------------|-------|-------------------|-----------------|------------|--------------------------|-----------------|
| ADDED CONTRACT ITEM              |         |                                 |       |                   |                 |            |                          |                 |
| PARTICIPATING (FEDERAL FUNDS)    |         |                                 |       |                   |                 |            |                          |                 |
| 714                              | 9665    | Re-compact Pipe Trench Backfill | L SUM | 0.00              | 1.00            | 1,109.850  | 1,109.85                 |                 |
| 722                              | 3495    | MODIFY INLET                    | EA    | 0.00              | 1.00            | 554.930    | 554.93                   |                 |
| 722                              | 3911    | Modify Inlet Slotted Drain      | EA    | 0.00              | 1.00            | 606.910    | 606.91                   |                 |
| INCREASE TO BID ITEM             |         |                                 |       |                   |                 |            |                          |                 |
| PARTICIPATING (FEDERAL FUNDS)    |         |                                 |       |                   |                 |            |                          |                 |
| 203                              | 101     | COMMON EXCAVATION-TYPE A        | CY    | 951.00            | 52.02           | 10.000     | 520.20                   |                 |
| 302                              | 100     | SALVAGED BASE COURSE            | TON   | 11,015.00         | 189.44          | 20.706*    | 3,922.54                 |                 |
| Net Increase or Decrease to Date |         |                                 |       | 176,141.33        | Part            | 2,400.00   | Non-Part                 | <b>TOTALS</b>   |
|                                  |         |                                 |       |                   |                 |            | <b>NON-PARTICIPATING</b> | 6,714.43        |
|                                  |         |                                 |       |                   |                 |            | <b>PARTICIPATING</b>     | 6,714.43        |

Due to This Change, the Contract Time:  
NO CHANGE.

**Classification**

Functional Design Change

**EXPLANATION OF CHANGE IN PLAN RECOMMENDED**

If the federal funds authorized in the cost participation agreement with the local agency is exceeded and federal funds are not available for this change, the local agency will assume the total cost of this change order.

See the attached documentation for Explanation of Change in Plan.

This Change Order will revise 60-3, 4, 11, 12, and 200-9, 10, 11, 21, 22, 23, and 24.

MASTER CONSTRUCTION CO INC 05/30/2019

Prime Contractor

DATE

Jeremy Gorden

05/31/2019

County/City Official

DATE

Aaron Kelsch

05/31/2019

Project Engineer

DATE

# North Dakota Department of Transportation

## Change Order

Page 1 of 1

Change Order No: 8

Project: NHU-8-081(039)924

PCN: 21400

SubProject: 1 GRADING, SURFACING, STORM DRAIN, LIGHTING, P County: Cass

For: GRADING, SURFACING, STORM DRAIN, LIGHTING, PAVEMENT MAI

Contractor: MASTER CONSTRUCTION CO INC  
 PO BOX 788  
 FARGO, ND 58107-0788

Original Contract Amount:  
 \$2,838,107.30

Date Created: 01/15/2019

Date Approved: 05/31/2019

| Spec No                          | Code No | Item of Work                  | Unit            | Original Quantity | + or - Quantity | Unit Price    | Increase Amount | Decrease Amount |
|----------------------------------|---------|-------------------------------|-----------------|-------------------|-----------------|---------------|-----------------|-----------------|
| ADDED CONTRACT ITEM              |         |                               |                 |                   |                 |               |                 |                 |
| PARTICIPATING (FEDERAL FUNDS)    |         |                               |                 |                   |                 |               |                 |                 |
| 748                              | 520     | CURB-TYPE I                   | LF              | 0.00              | 15.00           | 71.500        | 1,072.50        |                 |
| 762                              | 118     | EPOXY PVMT MK CURB TOP & FACE | LF              | 0.00              | 74.00           | 22.000        | 1,628.00        |                 |
| 762                              | 1600    | Surface Preparation Adhesive  | L SUM           | 0.00              | 1.00            | 2,474.730     | 2,474.73        |                 |
| 770                              | 4540    | RELOCATE LIGHT STANDARD       | EA              | 0.00              | 1.00            | 2,556.060     | 2,556.06        |                 |
| Net Increase or Decrease to Date |         |                               | 183,872.62 Part | 2,400.00          | Non-Part        | <b>TOTALS</b> | 7,731.29        |                 |
| <b>NON-PARTICIPATING</b>         |         |                               |                 |                   |                 |               |                 |                 |
| <b>PARTICIPATING</b>             |         |                               |                 |                   |                 |               | 7,731.29        |                 |

Due to This Change, the Contract Time:  
 NO CHANGE.

**Classification**

Functional Design Change

**EXPLANATION OF CHANGE IN PLAN RECOMMENDED**

If the federal funds authorized in the cost participation agreement with the local agency is exceeded and federal funds are not available for this change, the local agency will assume the total cost of this change order.

See the attached documentation for Explanation of Change in Plan.

MASTER CONSTRUCTION CO INC 05/24/2019

Prime Contractor

DATE

Jeremy Gorden

05/31/2019

County/City Official

DATE

Aaron Kelsch

05/31/2019

Project Engineer

DATE



# North Dakota Department of Transportation

## Change Order

Page 1 of 1

Change Order No: 9

Project: NHU-8-081(039)924

PCN: 21400

SubProject: 1 GRADING, SURFACING, STORM DRAIN, LIGHTING, P County: Cass

For: GRADING, SURFACING, STORM DRAIN, LIGHTING, PAVEMENT MAI

Contractor: MASTER CONSTRUCTION CO INC

PO BOX 788

FARGO, ND 58107-0788

Original Contract Amount:

\$2,838,107.30

Date Created: 03/15/2019

Date Approved: 05/31/2019

| Spec No                          | Code No | Item of Work               | Unit       | Original Quantity | + or - Quantity | Unit Price | Increase Amount          | Decrease Amount |
|----------------------------------|---------|----------------------------|------------|-------------------|-----------------|------------|--------------------------|-----------------|
| ADDED CONTRACT ITEM              |         |                            |            |                   |                 |            |                          |                 |
| PARTICIPATING (FEDERAL FUNDS)    |         |                            |            |                   |                 |            |                          |                 |
| 714                              | 9666    | Re-Compact Trench Backfill | L SUM      | 0.00              | 1.00            | 932.550    | 932.55                   |                 |
| 714                              | 9667    | Repair RCP                 | L SUM      | 0.00              | 1.00            | 917.330    | 917.33                   |                 |
| INCREASE TO BID ITEM             |         |                            |            |                   |                 |            |                          |                 |
| PARTICIPATING (FEDERAL FUNDS)    |         |                            |            |                   |                 |            |                          |                 |
| 203                              | 101     | COMMON EXCAVATION-TYPE A   | CY         | 951.00            | 165.50          | 10.000     | 1,655.00                 |                 |
| 210                              | 210     | FOUNDATION FILL            | CY         | 0.00              | 165.50          | 30.000     | 4,965.00                 |                 |
| Net Increase or Decrease to Date |         |                            | 192,342.50 | Part              | 2,400.00        | Non-Part   | <b>TOTALS</b>            | 8,469.88        |
|                                  |         |                            |            |                   |                 |            | <b>NON-PARTICIPATING</b> |                 |
|                                  |         |                            |            |                   |                 |            | <b>PARTICIPATING</b>     | 8,469.88        |

Due to This Change, the Contract Time:  
NO CHANGE.

**Classification**

Functional Design Change

**EXPLANATION OF CHANGE IN PLAN RECOMMENDED**

If the federal funds authorized in the cost participation agreement with the local agency is exceeded and federal funds are not available for this change, the local agency will assume the total cost of this change order.

See the attached documentation for Explanation of Change in Plan.

This Change Order will revise Section 55 Sheets 3 &amp; 4.

MASTER CONSTRUCTION CO INC 05/24/2019

Prime Contractor

DATE

Jeremy Gorden

05/31/2019

County/City Official

DATE

Aaron Kelsch

05/31/2019

Project Engineer

DATE

**North Dakota Department of Transportation**  
**Change Order**

Page 1 of 1

Change Order No: 10

Project: NHU-8-081(039)924

PCN: 21400

SubProject: 1 GRADING, SURFACING, STORM DRAIN, LIGHTING, P, County: Cass

For: GRADING, SURFACING, STORM DRAIN, LIGHTING, PAVEMENT MAINTENANCE

Contractor: MASTER CONSTRUCTION CO INC  
PO BOX 788  
FARGO, ND 58107-0788

Original Contract Amount:  
\$2,838,107.30

Date Created: 09/18/2019

Date Approved:

| Spec No                          | Code No | Item of Work   | Unit  | Original Quantity | + or - Quantity | Unit Price | Increase Amount          | Decrease Amount |
|----------------------------------|---------|----------------|-------|-------------------|-----------------|------------|--------------------------|-----------------|
| ADDED CONTRACT ITEM              |         |                |       |                   |                 |            |                          |                 |
| PARTICIPATING (FEDERAL FUNDS)    |         |                |       |                   |                 |            |                          |                 |
| 714                              | 9651    | Relay 18IN RCP | L SUM | 0.00              | 1.00            | 10,070.550 | 10,070.55                |                 |
| Net Increase or Decrease to Date |         |                |       | 202,413.05        | Part            | 2,400.00   | Non-Part                 | <b>TOTALS</b>   |
|                                  |         |                |       |                   |                 |            | 10,070.55                |                 |
|                                  |         |                |       |                   |                 |            | <b>NON-PARTICIPATING</b> |                 |
|                                  |         |                |       |                   |                 |            | <b>PARTICIPATING</b>     | 10,070.55       |

Due to This Change, the Contract Time:  
NO CHANGE.

**Classification**

Functional Design Change

**EXPLANATION OF CHANGE IN PLAN RECOMMENDED**

If the federal funds authorized in the cost participation agreement with the local agency is exceeded and federal funds are not available for this change, the local agency will assume the total cost of this change order.

See the attached documentation for Explanation of Change in Plan.

This Change Order will revise Sect. 50 Sheet 1 and Sect. 55 Sheet 2.

CONTRACTOR

DATE

( ) Approval Recommended  
PROJECT ENGINEER

( ) Approved  
DATE

CITY/COUNTY/OTHER OFFICIAL

DATE

( ) Approval Recommended  
DISTRICT ENGINEER

( ) Approved  
DATE

REPRESENTING

DATE

( ) Approval Recommended  
OFFICE OF OPERATIONS

( ) Approved  
DATE

**North Dakota Department of Transportation**  
**Change Order**

Page 1 of 1

Change Order No: 11

Project: NHU-8-081(039)924

PCN: 21400

SubProject: 1 GRADING, SURFACING, STORM DRAIN, LIGHTING, P County: Cass

For: GRADING, SURFACING, STORM DRAIN, LIGHTING, PAVEMENT MAI

Contractor: MASTER CONSTRUCTION CO INC  
PO BOX 788  
FARGO, ND 58107-0788

Original Contract Amount:  
\$2,838,107.30

Date Created: 09/18/2019

Date Approved:

| Spec No                          | Code No | Item of Work          | Unit  | Original Quantity | + or - Quantity | Unit Price | Increase Amount   | Decrease Amount |
|----------------------------------|---------|-----------------------|-------|-------------------|-----------------|------------|-------------------|-----------------|
| ADDED CONTRACT ITEM              |         |                       |       |                   |                 |            |                   |                 |
| PARTICIPATING (FEDERAL FUNDS)    |         |                       |       |                   |                 |            |                   |                 |
| 750                              | 1001    | Lift Station Driveway | L SUM | 0.00              | 1.00            | 15,194.720 | 15,194.72         |                 |
| 752                              | 2100    | VEHICLE GATE          | EA    | 0.00              | 1.00            | 3,476.000  | 3,476.00          |                 |
| Net Increase or Decrease to Date |         |                       |       | 221,083.77        | Part            | 2,400.00   | Non-Part          | TOTALS          |
|                                  |         |                       |       |                   |                 |            | 18,670.72         |                 |
|                                  |         |                       |       |                   |                 |            | NON-PARTICIPATING |                 |
|                                  |         |                       |       |                   |                 |            | PARTICIPATING     | 18,670.72       |

Due to This Change, the Contract Time:  
NO CHANGE.

**Classification**



Functional Design Change

**EXPLANATION OF CHANGE IN PLAN RECOMMENDED**

If the federal funds authorized in the cost participation agreement with the local agency is exceeded and federal funds are not available for this change, the local agency will assume the total cost of this change order.

See the attached documentation for Explanation of Change in Plan.

This Change Order will add Sect. 80 Sheet 8.

   
CONTRACTOR DATE

( ) Approval Recommended  
PROJECT ENGINEER

( ) Approved  
DATE

CITY/COUNTY/OTHER OFFICIAL DATE

( ) Approval Recommended  
DISTRICT ENGINEER

( ) Approved  
DATE

REPRESENTING DATE

( ) Approval Recommended  
OFFICE OF OPERATIONS

( ) Approved  
DATE

**North Dakota Department of Transportation**  
**Change Order**

Page 1 of 1

Change Order No: 12

Project: NHU-8-081(039)924

PCN: 21400

SubProject: 1 GRADING, SURFACING, STORM DRAIN, LIGHTING, P County: Cass

For: GRADING, SURFACING, STORM DRAIN, LIGHTING, PAVEMENT MAINT

Contractor: MASTER CONSTRUCTION CO INC  
PO BOX 788  
FARGO, ND 58107-0788

Original Contract Amount:  
\$2,838,107.30

Date Created: 09/19/2019

Date Approved:

| Spec No                          | Code No | Item of Work             | Unit  | Original Quantity | + or - Quantity | Unit Price | Increase Amount   | Decrease Amount |
|----------------------------------|---------|--------------------------|-------|-------------------|-----------------|------------|-------------------|-----------------|
| ADDED CONTRACT ITEM              |         |                          |       |                   |                 |            |                   |                 |
| PARTICIPATING (FEDERAL FUNDS)    |         |                          |       |                   |                 |            |                   |                 |
| 900                              | 12      | Turning Radius Revisions | L SUM | 0.00              | 1.00            | 26,403.350 | 26,403.35         |                 |
| Net Increase or Decrease to Date |         |                          |       | 247,487.12        | Part            | 2,400.00   | Non-Part          | TOTALS          |
|                                  |         |                          |       |                   |                 |            | 26,403.35         |                 |
|                                  |         |                          |       |                   |                 |            | NON-PARTICIPATING |                 |
|                                  |         |                          |       |                   |                 |            | PARTICIPATING     | 26,403.35       |

Due to This Change, the Contract Time:  
NO CHANGE.

**Classification**

Functional Design Change

**EXPLANATION OF CHANGE IN PLAN RECOMMENDED**

If the federal funds authorized in the cost participation agreement with the local agency is exceeded and federal funds are not available for this change, the local agency will assume the total cost of this change order.

See the attached documentation for Explanation of Change in Plan.

This Change Order will revise Section 82 Sheets 7 &amp; 8.

CONTRACTOR

DATE

( ) Approval Recommended  
PROJECT ENGINEER

( ) Approved  
DATE

CITY/COUNTY/OTHER OFFICIAL

DATE

( ) Approval Recommended  
DISTRICT ENGINEER

( ) Approved  
DATE

REPRESENTING

DATE

( ) Approval Recommended  
OFFICE OF OPERATIONS

( ) Approved  
DATE

**North Dakota Department of Transportation**  
**Change Order**

Page 1 of 1

Change Order No: 13

Project: NHU-8-081(039)924

PCN: 21400

SubProject: 1 GRADING, SURFACING, STORM DRAIN, LIGHTING, P/ County: Cass

For: GRADING, SURFACING, STORM DRAIN, LIGHTING, PAVEMENT MAI

Contractor: MASTER CONSTRUCTION CO INC  
 PO BOX 788  
 FARGO, ND 58107-0788

Original Contract Amount:  
 \$2,838,107.30

Date Created: 09/27/2019

Date Approved:

| Spec<br>No                       | Code<br>No | Item of Work                  | Unit       | Original<br>Quantity | + or -<br>Quantity | Unit<br>Price | Increase<br>Amount | Decrease<br>Amount |
|----------------------------------|------------|-------------------------------|------------|----------------------|--------------------|---------------|--------------------|--------------------|
|                                  |            | ADDED CONTRACT ITEM           |            |                      |                    |               |                    |                    |
|                                  |            | PARTICIPATING (FEDERAL FUNDS) |            |                      |                    |               |                    |                    |
| 714                              | 9652       | Relay RCP                     | L SUM      | 0.00                 | 1.00               | 7,315.510     | 7,315.51           |                    |
| Net Increase or Decrease to Date |            |                               | 254,802.63 | Part                 | 2,400.00           | Non-Part      | TOTALS             | 7,315.51           |
|                                  |            |                               |            |                      |                    |               | NON-PARTICIPATING  |                    |
|                                  |            |                               |            |                      |                    |               | PARTICIPATING      | 7,315.51           |

Due to This Change, the Contract Time:  
 NO CHANGE.

**Classification**

Functional Design Change

**EXPLANATION OF CHANGE IN PLAN RECOMMENDED**

If the federal funds authorized in the cost participation agreement with the local agency is exceeded and federal funds are not available for this change, the local agency will assume the total cost of this change order.

See the attached documentation for Explanation of Change in Plan.

This Change Order Will Revise Section 55 Sheet 4.

MASTER CONSTRUCTION CO INC 09/27/2019

Prime Contractor

DATE

Jeremy Gorden

10/03/2019

County/City Official

DATE

Aaron Kelsch

10/09/2019

Project Engineer

DATE

19

## PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Improvement District No. BN-19-J1

Type: Time Extension (CO #4)

Location: Fitzsimonds Addition

Date of Hearing: 10/14/2019

|                 |             |
|-----------------|-------------|
| <u>Routing</u>  | <u>Date</u> |
| City Commission | 10/21/2019  |
| PWPEC File      | X           |
| Project File    | Scott Olson |

The Committee reviewed the accompanying correspondence from Project Manager, Scott Olson, regarding a time extension (CO #4) requested by Fox Underground. This time extension is needed due to a street light pole delay from the Manufacturer. Fox Underground has been informed that the street light poles for the project will not be delivered until after the project completion date has passed. Due to this delay in shipment, Engineering is recommending moving the completion of the street light poles from a substantial completion item to a final completion item as well as extending the Final Completion Date to December 23, 2019.

Staff is recommending approval of the time extension (CO #4) adjusting the Final Completion Date to December 23, 2019.

On a motion by Bruce Grubb, seconded by Kent Costin, the Committee voted to recommend approval of the time extension (CO #4) as described above to Fox Underground.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve the time extension (CO #4) adjusting the Final Completion Date to December 23, 2019.

PROJECT FINANCING INFORMATION:Recommended source of funding for project: 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            |
| <u>N/A</u> | <u>      </u> |
| <u>N/A</u> | <u>      </u> |
| <u>N/A</u> | <u>      </u> |

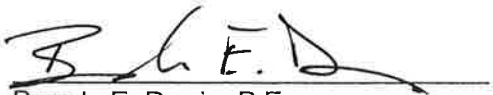
COMMITTEE

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

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

ATTEST:

C: Kristi Olson

  
 Brenda E. Derrig, P.E.  
 City Engineer



## Memorandum

**To:** Members of PWPEC  
**From:** Scott Olson, Project Engineer  
**Date:** October 10, 2019  
**Re:** Improvement District No. BN-19-J1 – Change Order #4 (Time Extension)

---

### **Background:**

Improvement District No. BN-19-J1 is for the new construction of underground utilities, concrete pavement, and street lights on 51<sup>st</sup> Avenue South.

Fox Underground is the Prime Contractor for this Improvement District.

### **Street Light Pole Delay from Manufacturer:**

Fox Underground has been informed by their supplier that the street light poles for the project will not be delivered until after the completion date has passed. Submittals for the poles were approved by the City on July 19, 2019 and were then sent from Fox Underground (or subcontractor) to the supplier on July 22, 2019. The supplier has given Fox Underground a shipping date of November 29, 2019 to December 13, 2019. Fox Underground has requested a time extension be added to the Substantial Completion Date to accommodate for this delay.

Engineering is recommending that the installation of the street light poles be removed from the Substantial Completion Date and be included in the Final Completion Date. Based on the estimated delivery date, the Final Completion Date for the installation of the street light poles will be December 23, 2019.

### **Recommended Motion:**

Approve the described Time Extension (Change Order #4) and adjust the Final Completion Date from October 15, 2019 to December 23, 2019.

SEO/klb  
Attachment

C: Thomas Knakmuhs

|                         |  |                 |                 |
|-------------------------|--|-----------------|-----------------|
| Improvement District No | BN-19-J1   | Change Order No | 4               |
| Project Name            | Sanitary Sewer, Water Main, Storm Sewer, Paving, Street Lights & Incidentals |                 |                 |
| Date Entered            | 10/8/2019  | For             | Fox Underground |

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 herein after described.

**EXPLANATION OF CHANGE:** Time Extension Request for Street Light Poles

| 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 (\$) |
|----------------------------------|---------|------------------|------|---------------|--------------|---------------|--------------|--------------|-----------------|--------------------|
| <b>Summary</b>                   |         |                  |      |               |              |               |              |              |                 |                    |
| <b>Source Of Funding</b>         |         |                  |      |               |              |               |              |              |                 |                    |
| Net Amount Change Order # 4 (\$) |         |                  |      |               |              |               |              |              |                 |                    |
| Previous Change Orders (\$)      |         |                  |      |               |              |               |              |              |                 | 28,343.28          |
| Original Contract Amount (\$)    |         |                  |      |               |              |               |              |              |                 | 636,944.49         |
| Total Contract Amount (\$)       |         |                  |      |               |              |               |              |              |                 | 665,287.77         |

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 |
|---|-------------------------------|--|----------------------------------|---------------------------------|---------------------------|
| 09/16/2019  |                               | 0.00                                   | 98.00                            | 09/16/2019                      |                           |
| <p><b>Description</b></p> <p>Fox has been informed by their supplier that the street light poles for the project won't be delivered until after the completion date has passed. The supplier has given Fox a shipping date of November 29, 2019 to December 13, 2019. Fox has requested a time extension be added to the substantial completion date to accommodate for this.</p> <p>Engineering is recommending that the installation of the street light poles be removed from the substantial completion date and be included in the final completion date. Based on the estimated delivery date the final completion date for the installation of the street light poles will be December 23, 2019.</p> |                               |  |                                  |                                 |                           |



CITY OF FARGO  
ENGINEERING DEPARTMENT  
CHANGE ORDER REPORT

APPROVED

For Contractor

Title

*Scott S. Schuch*  
Scott S. Schuch

Vice President

For Underground 10-9-19

APPROVED DATE

Department Head

Mayor

Attest

*T. C. Lee*  
10/16/19



September 13<sup>th</sup>, 2019

Scott Olson  
City of Fargo  
225 4<sup>th</sup> Street North  
Fargo, ND 58102

RE: Request for Additional time to complete street lighting

Dear Scott,

We are requesting additional time for the substantial completion of 51<sup>st</sup> Ave Fargo BN-19-J1 Sanitary Sewer, Water Main, Storm Sewer, Paving, Street Lights and Incidentals.

The submittals for street lighting were approved and sent to the electrician on Friday July 19<sup>th</sup>, 2019. In turn, the electrician forwarded the approved submittals to Border States on Monday July 22<sup>nd</sup>, 2019. Border States gave the electrician a ship date of 11/29/2019 to 12/13/2019.

We are respectfully requesting a street lighting extension for the end of December.

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Robyn Yliniemi".

Robyn Yliniemi  
Safety Coordinator  
[robyn@foxunderground.net](mailto:robyn@foxunderground.net)  
701-261-1307

## REPORT OF ACTION

(20)

## PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Improvement District No. PN-19-A0

Type: Contract Amendment #2

Location: 64th Ave S, 25th St to 45th St

Date of Hearing: 10/14/2019

RoutingDate

City Commission

10/21/2019

PWPEC File

X

Project File

Jeremy Gorden

The Committee reviewed the accompanying correspondence from Division Engineer, Jeremy Gorden, related to Contract Amendment #2 submitted by KLJ in the amount of \$56,305.00, for additional engineering analysis as requested by the NDDOT.

Staff is recommending approval of Amendment #2 in the amount of \$56,305.00, bringing the total contract amount to \$2,049,156.00. The NDDOT will be reimbursing the City for this cost.

On a motion by Bruce Grubb, seconded by Kent Costin, the Committee voted to recommend approval of the Contract Amendment #2 to KLJ.

RECOMMENDED MOTION

Concur with the recommendation of PWPEC and approve Contract Amendment #2 to KLJ in the amount of \$56,305.00, bringing the total contract amount to \$2,049,156.00.

PROJECT FINANCING INFORMATION:Recommended source of funding for project: Federal, Sales Tax & Special Assessments

Developer meets City policy for payment of delinquent specials

Yes No

N/A

Agreement for payment of specials required of developer

N/A

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

N/A

COMMITTEE

Present Yes No Unanimous

☒

Tim Mahoney, Mayor

☒☒☐

Nicole Crutchfield, Director of Planning

☒☒☐

Steve Dirksen, Fire Chief

☒☒☐

Bruce Grubb, City Administrator

☒☒☐

Ben Dow, Director of Operations

☒☒☐

Steve Sprague, City Auditor

☒☒☐

Brenda Derrig, City Engineer

☒☒☐

Kent Costin, Finance Director

☒☒☐

ATTEST:

C: Kristi Olson



Brenda E. Derrig, P.E.  
City Engineer

## Memorandum

**To:** Members of PWPEC

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

**Date:** October 9, 2019

**Re:** Improvement District No. PN-19-A0 – Amendment #2  
64<sup>th</sup> Avenue South – 25<sup>th</sup> Street to 45<sup>th</sup> Street

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### Background:

KLJ worked with the NDDOT and proposed a four span bridge for 64th Avenue South over I-29. We evaluated a two span and a four span bridge while going through a value engineering session to keep the cost of the project down. The four span was the most economical design and was reviewed by the NDDOT and approved in the Environmental Document that was completed. Last month the NDDOT reached out to us and asked that we consider going back to a two span bridge and evaluate the pier spacing for the ultimate three lane I-29 section and a collector distributor frontage road from 76th to 52nd Avenue South. KLJ has assembled the attached scope and fee and the NDDOT has agreed to pay for this engineering analysis with in-kind construction funds. Their proposed fee is \$56,305.00.

This decision by the NDDOT has impacted the progress of the design of this project at I-29. They will not be able to complete design work until this additional scope of work is complete. Upon the completion of the revised engineering analysis, we will collaborate with the NDDOT on the best path forward.

With this delay in design, our project from I-29 and points west will not be ready for an April 2020 bid. We plan on moving this portion to a November 2020 bid date. Having said that, we are also planning on breaking the project into two parts and bidding out the portion between 25<sup>th</sup> Street and 33<sup>rd</sup> Street this coming Spring and completing it by next October.

### Recommended Motion:

Approve Contract Amendment #2 with KLJ in the amount of \$56,305.00.

JMG/klb  
Attachment





3203 32nd Avenue South, Suite 201  
Fargo, ND 58103-6242  
701 232 5353  
KLJENG.COM

October 9, 2019

Jeremy Gorden  
Division Engineer - Transportation  
City of Fargo  
225 4th Street North  
Fargo, ND 58102

**Re: BN-20-C1/SU-8-984(153)156 – Bridge Type Revision Contract Amendment**

Dear Mr. Gorden:

It has been requested that KLJ complete an analysis of additional items that were not included in previous contracts. These analyses include:

- Interstate 29 Collector-Distributor Route
- Revisions to the bridge types studied in the environmental document

Please see the attached scope of services and associate fee for this additional work. We are requesting a contract amendment in the amount of \$56,305 for the requested work. Upon completion of this work, an additional contract amendment may be required pending the outcome of the analysis and final decisions.

If you have any questions or comments, please feel free to contact me at [scott.middaugh@kljeng.com](mailto:scott.middaugh@kljeng.com) or 701.271.4871.

Sincerely,

KLJ

A handwritten signature in black ink, appearing to read 'Scott Middaugh'.

Scott Middaugh  
Project Manager

Enclosure(s): Scope of Services/Fee  
Project #: 14415104  
cc:



**Appendix A  
October 2019**

**Revisions to Bridge Type/Collector-Distributor Route Analysis  
Scope of Services**

**BN-20-C1/SU-8-984(153)156  
64<sup>th</sup> Avenue South Reconstruction and I-29 Overpass from 45<sup>th</sup> Street to 25<sup>th</sup> Street**

**I. Purpose**

The CATEX for the referenced project was approved on August 12, 2019. In that document, the alternative selected for the overpass was a 4-span bridge. In September 2019, the North Dakota Department of Transportation (NDDOT) requested the bridge type be revised to a 2-span bridge that can accommodate a future collector-distributor (C-D) route along with a future I-29 expansion.

The purpose of this attachment is to describe the scope of services and responsibilities of KLJ and its subconsultants required for the analysis of the above items.

The items described above will be generated using the following formats and standards:

- MicroStation/Geopak
- NDDOT CADD Manual
- City of Fargo Standard Specifications for Construction
- NDDOT Standard Specifications for Road and Bridge Construction

**II. Assumptions**

**Project Schedule**

The analysis is scheduled to be completed prior to November of 2019.

**III. Design & Analysis**

**1. Project Management**

**Management & Coordination**

KLJ will manage the project and provide overall coordination of the work completed.

**Scoping Meetings (3 Meetings)**

KLJ has held 3 meetings with the City of Fargo and/or NDDOT to discuss the scope of the additional work.

**Project Review Committee Meetings (3 Meetings)**

BN-20-C1 – 64<sup>th</sup> Avenue South  
SU-8-984(153)164



It is anticipated that 3 review committee meetings will be required with the City of Fargo and/or NDDOT throughout the analysis.

#### **Internal Design Meetings (2 Meetings)**

The project team will meet internally to discuss design and planning issues, scheduling, progress, and upcoming work. These meetings will be held prior to the Design Review Committee meetings.

## **2. Collector-Distributor Layouts**

### **Alternative 1 – C-D Route from 76<sup>th</sup> Ave to 52<sup>nd</sup> Ave with Modifications to the 52<sup>nd</sup> Ave Interchange**

KLJ will produce a layout showing a proposed C-D route. A preliminary interchange will be designed at 64<sup>th</sup> Ave. The layout will show the modifications to the 52<sup>nd</sup> Ave interchange and I-29 to accommodate a C-D route that ties into the existing interchange.

### **Alternative 2 – C-D Route from 76<sup>th</sup> Ave to 52<sup>nd</sup> Ave without Modifications to the 52<sup>nd</sup> Ave Interchange**

KLJ will produce a layout showing a proposed C-D route that begins just north of the proposed 76<sup>th</sup> Ave interchange. A preliminary interchange will be designed at 64<sup>th</sup> Ave. The C-D will terminate at the 52<sup>nd</sup> Ave interchange.

#### **C-D Typical Section**

Typical sections will be developed for both alternatives of the C-D analysis. The typical section locations will be at interchanges, tangent sections, and the 64<sup>th</sup> Ave overpass.

#### **Overpass Bridge Analysis**

##### **Option 1: Two-span Bridge with Full Height Abutments (“MnDOT Style”)**

KLJ will prepare a conceptual bridge design using a prestressed concrete girder superstructure supported by a center pier and full height abutments. The design will consist of preliminary girder design, determining the overall size of the substructures (concrete dimensions) and determining the number of piles required for the substructures. Rebar quantities will be based on typical rebar/concrete (lbs/cy) ratios from similar projects. Deliverables will consist of a bridge layout sheet and cost estimate.

##### **Option 2: Two-span Bridge with Integral Abutments with MSE walls**

KLJ will prepare a conceptual bridge design using a prestressed concrete girder superstructure supported by a center pier and integral abutments set behind large block MSE walls. The design will consist of preliminary girder design, determining the overall size of the substructures (concrete dimensions) and determining the number of piles required for the substructures. Rebar quantities will be based on typical rebar/concrete (lbs/cy) ratios from similar projects. KLJ will also determine the required length and height of the retaining walls in front of the abutments. Deliverables will consist of a bridge layout sheet and cost estimate.

##### **Option 3: Two-span Steel Girder Bridge with Integral Abutments and No Retaining Walls**



KLJ will prepare a conceptual bridge design using a steel plate girder superstructure supported by a center pier and integral abutments set at the top of 3:1 abutment slopes. The design will consist of preliminary girder design, determining the overall size of the substructures (concrete dimensions) and determining the number of piles required for the substructures. Rebar quantities will be based on typical rebar/concrete (lbs/cy) ratios from similar projects. Deliverables will consist of a bridge layout sheet and cost estimate.

#### **Opinion of Cost**

KLJ will produce concept level opinions of cost for the C-D alternatives listed above as well as the bridge alternatives that are completed.

### **3. Excluded Items**

The following items are not included with this scope of work:

- Final plans and specifications
- Hydraulic analysis
- Geotechnical analysis
- Addendums to the CATEx

CLJ Project Name: 64th Ave Overpass

KLJ Project Number 14415104

# Project Budget



| Job Classification: |                                   | Engineer IV      | Engineer IV       | Engineer III   | Engineer I    | Structural Engineer V | Structural Engineer III | Structural Engineer II | CAD Technician II  | REIMBURSABLE          |                            | TASK TOTAL        |
|---------------------|-----------------------------------|------------------|-------------------|----------------|---------------|-----------------------|-------------------------|------------------------|--------------------|-----------------------|----------------------------|-------------------|
| Task Code           | Description                       | Wieber, Travis J | Middaugh, Scott L | Hummel, Todd J | Kelly, Sean P | Frank, Wade D         | Isley, Matt L           | Gerber, Jordan M       | Johanson, Brenda J | DIRECT LABOR Subtotal | EXPENSE <sup>1</sup> Total | Subconsultant Fee |
| 3.1                 | Project Management                | 9                | 190.00            | 190.00         | 145.00        | 100.00                | 205.00                  | 105.00                 | 90.00              | 2,105.00              | -                          | -                 |
|                     | Scoping Meetings                  | 6                | 11                | 9              | 6             |                       |                         |                        |                    | 1,150.00              | -                          | -                 |
|                     | Project Review Committee Meetings | 4                | 6                 | 6              |               |                       |                         |                        |                    | 2,770.00              | -                          | -                 |
|                     | Internal Design Meetings          | 19               | 23                | 21             |               |                       |                         |                        |                    | 11,025.00             | -                          | -                 |
| 3.11                | Collector-Distributor Analysis    | 4                | 190.00            | 190.00         | 145.00        | 100.00                | 205.00                  | 105.00                 | 90.00              | 6,000.00              | -                          | -                 |
|                     | Alternative 1                     | 4                | 6                 | 20             | 12            |                       |                         |                        |                    | 6,000.00              | -                          | -                 |
|                     | Alternative 2                     | 4                | 6                 | 20             | 12            |                       |                         |                        |                    | 6,000.00              | -                          | -                 |
|                     | C-D Typical Sections              | 2                | 2                 | 4              | 10            |                       |                         |                        |                    | 1,960.00              | -                          | -                 |
|                     | Bridge Option 1 (Full H Abut.)    |                  |                   |                |               | 4                     | 20                      | 40                     | 16                 | 9,260.00              | -                          | -                 |
|                     | Bridge Option 2 (MSR walls)       |                  |                   |                |               | 4                     | 16                      | 12                     | 16                 | 7,860.00              | -                          | -                 |
|                     | Bridge Option 3 (Steel girders)   | 2                | 4                 | 8              | 16            | 4                     | 24                      | 48                     | 12                 | 10,100.00             | -                          | -                 |
|                     | Options of Cost                   |                  |                   |                |               |                       |                         |                        |                    | 1,200.00              | -                          | -                 |
|                     |                                   | 10               | 18                | 52             | 50            | 12                    | 60                      | 120                    | 44                 | 45,280.00             | -                          | -                 |
|                     |                                   |                  |                   |                |               |                       |                         |                        |                    | 56,305.00             | -                          | -                 |
| 29                  |                                   | 41               | 73                | 50             | 120           | 44                    | 429                     |                        |                    | 56,305.00             | -                          | -                 |

<sup>1</sup> actual with an \$150 maximum (Meals \$35- Lodging \$115)  
<sup>2</sup> Includes equipment, rental/subscriptions, mileage - etc