# FARGO CITY COMMISSION AGENDA
Monday, October 5, 2020 - 5:00 p.m.

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

A. Pledge of Allegiance.

B. Roll Call.

C. Approve Order of Agenda.

D. Minutes (Regular Meeting, September 21, 2020).

**CONSENT AGENDA – APPROVE THE FOLLOWING:**

1. 1st reading of an Ordinance Relating to Junk Automobiles.

2. 2nd reading and final adoption of the following Ordinances; 1st reading, 9/21/20:
   a. Relating to Penalty.
   b. Relating to Central Business District.

3. Resolution Approving Occupational License Fees and Reinstatement Fees-Auditor's Office.

4. Site Authorizations for Games of Chance:
   a. Team Makers Club, Inc. at Big Erv's at Rose Creek (amended).
   b. Metro Sports Foundation at Mexican Village.

5. Application for Games of Chance:
   a. Ronald McDonald House Charities of the Red River Valley for a raffle on 12/11/20.
   b. FM Raise Your Spirits Inc. for a raffle and raffle board on 10/9/20.
   c. Jeremiah Program Fargo Moorhead for a raffle on 10/30/20.
   d. Fargo Angels Hockey for a raffle on 12/15/20.
   e. Fargo Youth Hockey Association for a raffle on 2/4/21.

6. Bid award for Janitorial Services at the Fargo Police Department (RFP20121).

7. Change Order No. 3 for an increase of $29,648.84 for Project No. TM-19-B1.

8. Contract Amendment No. 1 with Houston Engineering in the amount of $20,000.00 for Project No. FP-19-A0.

9. Contract Amendment No. 4 with Moore Engineering in the amount of $143,000.00 for design and $730,840.00 for construction administration for Project No. FM-16-A0.

10. Memorandum of Understanding Regarding Cass County Highway 81 with Cass County.

11. Acknowledgement and Consent to Collateral Assignment of Development Agreement with Ryan Fargo, LLC.

12. Amended and Restated Encroachment Agreement (Adjacent to Block Nine Plaza) with Block 9 Partners LLC.

13. Third Amendment to Service and Usage Agreement with Patron Solutions, LP d/b/a New Era Tickets (Paciolan).

14. Independent Auditor's Report and the City's Comprehensive Annual Financial Report for the year ending 12/31/19.

15. Notice of Grant Award from the USDA and ND Department of Health for WIC (CFDA #10.557).

16. Notice of Grant Award from the ND Department of Health and Human Services for cancer and obesity prevention in childcare (CFDA #93-898).

17. Notice of Grant Award with the ND Department of Health for regional public health network implementation (CFDA #93.991).

18. Benefit renewals, as presented, effective 1/1/21.

19. Resolution Approving Plat of 2750 Main Addition.

20. Order for Supplies or Service with the 119th Wing, North Dakota Air National Guard, as presented.

21. Sole Source Procurement with EnviroTech Services, Inc. for Ice Slicer granular ice melt (SSP20152).

22. Extension of the Agreement between Owner and Engineer for Professional Services with KLJ, Inc. for two additional years (RFP19127).

23. Bid awards for the following:
    a. rental of one wheel loader at the FARGODOME.
    b. rental of one winter dozer and rental of three wheel loaders.

24. Reject the bids for the VW Mitigation City Hall Charging Station Project and rebid in 2021.

25. Advertisement of an RFQ to select Professional Engineering Services for the Enterprise Utilities for the next 5 years.

26. Change Orders for the GTC Improvement Project:
    a. No. 3 for an increase of $623.00 for the mechanical contract.
    b. No. 3 for a decrease of $36.18 for the electrical contract.
    c. No. 3 for an increase of $5,420.00 for the general contract.

27. Resolution of Support MATBUS Transit Authority Study.

28. Change Order No. 2 for an increase of $10,475.35 for Project No. WA1862.

29. Change Order No. 2 for an increase of $9,550.00 for Project No. WA1906.

30. Change Order No. 3 for an increase of $47,300.00 for Project No. WA1906.

31. Sole source Procurement with JDP Electric, Inc. in the amount of $95,000.00 for miscellaneous water utility projects (SSP20155).

32. Sole Source Procurement with Electric Pump in the amount of $60,000.00 for parts to repair three sludge pumps (SSP20154).

33. Sole Source Procurement with Trillium Floway in the amount of $647,800.00 for four Red River Pump Station pumps (SSP20156).

34. Contract and bond for Project No. HD-19-A1.

35. Bills.

36. Cost Participation, Construction and Maintenance Agreement with the NDDOT for Improvement District No. BN-21-A1.

37. Bid award for Improvement District No. BN-20-L1.

**REGULAR AGENDA**:

38. Introduction and swearing in of Police Chief David Zibolski.

39. ***Public Input Opportunity* - PUBLIC HEARINGS - 5:15 pm:**

a. Hearing on a dangerous building located at 703 12th Street North.

b. Cedar Crest First Addition (3361 Westrac Drive); approval recommended by the Planning Commission on 9/1/20:
   1. Zoning Change from GC, General Commercial to GC, General Commercial with a PUD, Planned Unit Development Overlay.
   2. 1st reading of rezoning Ordinance.
   3. Planned Unit Development Master Land Use Plan.

c. Madelyn's Meadows Third Addition (2613, 2639, 2667, 2689, 2697, 2707, 2729, 2751, 2769, 2791, 2801, 2815, 2827, 2845, 2863, 2875, 2891, 2951 72nd Avenue South, and 7203 and 7231 30th Street South); approval recommended by the Planning Commission on 7/8/20:
   1. Zoning Change from SR-4, Single-Dwelling Residential and P/I, Public and Institutional to SR-4, Single-Dwelling Residential, P/I, Public and Institutional, and MR-1, Multi-Dwelling Residential.
   2. 1st reading of rezoning Ordinance.
   3. Plat of Madelyn's Meadows Third Addition.

d. Application filed by Aldevron, Inc. for a payment in lieu of tax exemption (PILOT) for a project located at 3001 University Drive South, which the applicant will use in the operation of remodeling an existing facility, plus a new addition, for research and development of biotechnologies and manufacturing of therapeutic products.

e. CONTINUED to 10/19/20 - Special Assessment List for Business Improvement District (BID) fees.

f. Special Assessments for 2019 New Construction City Ordered Sidewalks (Project No. SN-19-A).

g. Special Assessments for 2019 Reconstruction of City Ordered Sidewalks (Project No. SR-19-A).

h. Special Assessment list for the following Improvement Districts, all having been approved by the Special Assessment Commission on 9/2/20:

1. P.C. Concrete Alley Paving and Incidentals Improvement District No. AN-19-G.
2. Sanitary Sewer, Water Main, Storm Sewer, Paving, Street Lights and Incidentals Improvement District No. BN-17-B.
3. Sanitary Sewer, Water Main, Storm Sewer, Paving and Incidentals Improvement District No. BN-18-F.
4. Paving, Water Main, Storm Sewer, Street Lights, Sidewalk and Incidentals Improvement District No. BN-19-A.
5. Sanitary Sewer, Water Main, Storm Sewer, Paving, Street Lights and Incidentals Improvement District No. BN-19-B.
6. Sanitary Sewer, Water Main, Storm Sewer, Paving, Street Lights and Incidentals Improvement District No. BN-19-C.
7. Sanitary Sewer, Water Main, Storm Sewer, Paving, Street Lights and Incidentals Improvement District No. BN-19-E.
8. Sanitary Sewer, Water Main, Storm Sewer, Paving, Street Lights and Incidentals Improvement District No. BN-19-F.
9. Sanitary Sewer, Water Main, Storm Sewer, Paving, Street Lights and Incidentals Improvement District No. BN-19-J.
10. Paving, Sanitary Sewer, Water Main, Storm Sewer, Street Lights and Incidentals Improvement District No. BR-18-A.
11. Paving, Sanitary Sewer, Water Main, Storm Sewer, Street Lights and Incidentals Improvement District No. BR-18-B.
12. Water Main Replacement, Street Reconstruction and Incidentals Improvement District No. BR-18-F.
13. Water Main Replacement, Street Reconstruction and Incidentals Improvement District No. BR-18-G.
14. Drain Improvements and Incidentals Improvement District No. DN-18-A.
15. Flood Mitigation and Incidentals Improvement District No. FM-14-84.
16. Levy and Pond Construction and Incidentals Improvement District No. FM-17-C.
17. Storm Sewer Lift Station, Retention and Trunk Storm and Incidentals Improvement District No. NN-15-B.
18. Storm Sewer Lift Station and Retention Pond and Incidentals Improvement District No. NN-17-A.
19. Storm Sewer Lift Station and Incidentals Improvement District No. NN-18-A.
20. Broadway Interceptor and Incidentals Improvement District No. NR-17-B.
21. Storm Sewer Lift Station and Incidentals Improvement District No. NR-18-A.
22. Concrete Paving, Concrete Curb and Gutter, Asphalt Paving and Incidentals Improvement District No. PN-18-B.
23. Concrete Paving and Incidentals Improvement District No. PN-18-C.
24. Seal Coat and Incidentals Improvement District No. PR-19-E.
25. Mill and Overlay and Incidentals Improvement District No. PR-19-F.
26. Mill and Overlay and Incidentals Improvement District No. PR-19-G.
27. Street Lighting and Incidentals Improvement District No. SL-17-B.
28. Street Lighting and Incidentals Improvement District No. SL-19-B.
29. Street Lighting and Incidentals Improvement District No. SL-19-E.

30. Traffic Signal Improvements and Incidentals Improvement District No. TN-19-A.
31. Sanitary Sewer, Water Main, Storm Sewer and Incidentals Improvement District No. UN-18-C.

40. TABLE to 10/19/20 - Recommendation for approval of the 76th Avenue South Corridor Study; tabled from the 9/21/20 Regular Meeting.

41. Resolution Directing the Issuance of $[PAR] Refunding Improvement Bonds, Series 2020B and Prescribing the Terms and Covenants Therefor and Resolution Directing the Issuance of Taxable Refunding Improvement Refunding Bonds, Series 2020C, Prescribing the Terms and Covenants Thereof, and Creating a Fund for the Payment Thereof.

42. Recommendation to direct staff to prepare a Renewal Plan and TIF District for the area in the Downtown adjacent to the Red River.

43. Consideration of Mask Ordinances:
    a. Receive and file an Ordinance Relating to Face Coverings and Social Distancing to Reduce Risk of Transmission of COVID-19 Virus (without penalties).
    b. Receive and file an Ordinance Relating to Face Coverings and Social Distancing to Reduce Risk of Transmission of COVID-19 Virus (with penalties)

44. Applications for property tax exemptions for improvements made to buildings:
    a. Harry A. Ohrt RLT, 2812 27th Street South (3 year).
    b. Muriel and Joseph Richardson, 2816 27th Street South (3 year).
    c. Kamie Beeson, 1625 29th Avenue South (3 year).
    d. Curtis and Peggy Christopherson, 3114 Bohnet Boulevard North (5 year).

45. Flood Project and Acquisition Updates.
    a. Recommendation for alignments in the Oak Grove neighborhood (Project No. FM-19-F).

46. **RESIDENT COMMENTS (each Fargo resident will be offered 2.5 minutes for comment with a maximum of 30 minutes total for all resident comments).**

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.

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

AN ORDINANCE AMENDING SECTION 13-0901
OF ARTICLE 13-09 OF CHAPTER 13 OF THE FARGO MUNICIPAL CODE
RELATING TO JUNK AUTOMOBILES

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 Century 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 13-0901 of Article 13-09 of Chapter 13 of the Fargo Municipal Code is hereby amended to read as follows:

* * *

2. The term "junk automobiles" shall include, without limitation, any motor vehicle which is not licensed for use upon the highways of the state of North Dakota for a period in excess of 60 days, and shall also include, whether licensed or not, any motor vehicle which is inoperative for any reason for a period in excess of ~~60~~ 15 days; provided that there is excepted from this definition unlicensed, but operative, vehicles which are kept as the stock in trade of a regularly licensed and established new or used automobile dealer.

* * *

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Section 2. Effective Date.

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

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

Attest:

_____
Steven Sprague, City Auditor

First Reading:
Second Reading:
Final Passage:

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ORDINANCE NO. _____

AN ORDINANCE AMENDING SECTIONS 8-1701 THROUGH 8-1713 OF ARTICLE 8-17 OF CHAPTER 8, RELATING TO SNOW EMERGENCY ROUTE AND SNOW EMERGENCY DECLARATION AND SECTION 1-0305 OF ARTICLE 1-03 OF CHAPTER 1, OF THE FARGO MUNICIPAL CODE RELATING TO PENALTY

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 Century 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 purpose; 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 I. Amendment.

The Title to Article 8-17 of Chapter 8 of the Fargo Municipal Code is hereby amended to read as follows:

ARTICLE 8-17 - SNOW EMERGENCY ROUTES AND SNOW EMERGENCY DECLARATION

Section II. Amendment.

Section 8-1701 of Article 8-17 of Chapter 8 of the Fargo Municipal Code is hereby amended to read as follows:

8-1701. - Definitions.

The following definitions, in addition to those contained in § 8-0101, shall apply in the interpretation and enforcement of this article:

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1. "Mayor" is the mayor of the city of Fargo, or, in the event of the absence of the mayor, the vice-mayor, or their designee. In the event of the absence of both the mayor and the vice-mayor, the board of city commissioners shall have all authority granted by this article.

2. "Snow emergency routes" are those ~~streets~~ roadways generally traversing the entire city or a major part thereof, and are considered essential to the rapid movement of emergency vehicles and normally carry heavy traffic volumes.

3. "Snow tires" are any tires mounted on drive wheels of motor vehicles which are especially designed to give effective traction on snow, mud or ice-covered ~~streets~~ roadways by means of extra heavy duty treads with special high-traction patterns, except that no tire so defined shall be construed to be a snow tire if it is damaged or worn to the extent that its performance would be substantially impaired.

4. "Tire chains" are any metal chains mounted on drive wheel tires of motor vehicles which cross the tread of each such tire laterally in at least three different places.

5. "Snow emergency" shall mean when four (4) or more inches of snow is forecast by the National Weather Service.

Section III. Amendment.

Section 8-1702 of Article 8-17 of Chapter 8 of the Fargo Municipal Code is hereby amended to read as follows:

8-1702. - Parking or stopping on snow emergency route.

No person shall park or stop any vehicle on any roadway designated as a snow emergency route at any time between November 1 and April 15.

~~A. Whenever the mayor finds, on the basis of falling snow, sleet or freezing rain, or on the basis of a forecast by the U.S. Weather Bureau or other weather service of snow, sleet, or freezing rain that weather conditions will make it necessary that motor vehicle traffic be expedited and that parking on city streets be prohibited or restricted for snow plowing and other purposes, he shall put into effect a parking prohibition on snow emergency routes as necessary by declaring it in a manner prescribed by this ordinance.~~

~~B. Once in effect, a prohibition under this section shall remain in effect until terminated by announcement of the mayor in accordance with this ordinance, except that any street area which has become substantially clear of snow and ice from curb to curb for the length of the entire block shall be automatically excluded therefrom. While the prohibition is in effect, no person shall park or allow to remain parked any vehicle on any portion of a snow emergency route to which it applies. However, nothing in this section shall be construed to permit parking at any time or place where it is forbidden by any other provision of law.~~

Section IV. Amendment.

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Section 8-1703 of Article 8-17 of Chapter 8 of the Fargo Municipal Code is hereby amended to read as follows:

8-1703. Snow emergency declaration.

A. Whenever the mayor determines a snow emergency to exist, the mayor shall put into effect a parking prohibition on all roadways by declaring a snow emergency in a manner prescribed by this ordinance. While the prohibition is in effect, no person shall park or remain stopped any vehicle on any portion of any roadway in the city of Fargo.

B. Once in effect, a prohibition under this section shall remain in effect until terminated by announcement of the mayor in accordance with this ordinance, or until such time that the individual roadway has been cleared of snow from curb to curb for the length of the entire block. However, nothing in this section shall be construed to permit parking at any time or place where it is forbidden by any other provision of law.

Section V. Amendment.

Section 8-1704 of Article 8-17 of Chapter 8 of the Fargo Municipal Code is hereby amended to read as follows:

8-1703~~4~~. - Stalled vehicle on snow emergency route or when snow emergency declared.

Whenever a vehicle becomes stalled ~~for any reason,~~ on any part of a snow emergency route or on any roadway when a snow emergency declaration is in effect, ~~on which there is a covering of snow, sleet or ice, or on which there is a parking prohibition in effect,~~ the person operating such vehicle shall take immediate action to have the vehicle towed or pushed off the roadway ~~of such snow emergency route into the first cross-street which is not a snow emergency route~~. No person shall abandon or leave ~~his~~ a vehicle unattended in the roadway of a snow emergency route or when a snow emergency declaration is in effect, except for a period of time actually necessary to secure assistance in removing the same. ~~(regardless of whether he indicates, by raising the hood or otherwise, that the vehicle is stalled), except for the purpose of securing assistance during the actual time necessary to go to a nearby telephone or to a nearby garage, gasoline station or other place of assistance and return without delay.~~

Section VI. Amendment.

Section 8-1705 of Article 8-17 of Chapter 8 of the Fargo Municipal Code is hereby amended to read as follows:

8-1704~~5~~. - Declarations of the mayor.

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A. The mayor shall cause each declaration made ~~by him~~ pursuant to this ordinance to be publicly announced through the Cass County Alerts system, by means of broadcasts or telecasts from stations with a normal operating range covering the city, on the city of Fargo website and through city of Fargo social media accounts, news media and ~~he may cause such declaration to be further announced~~ in newspapers of general circulation, when feasible. Each announcement shall describe the action taken by the mayor including the time it became or will become effective~~;, and shall specify the streets or areas affected.~~

B. The mayor shall make or cause to be made a record of each time and date when any declaration is announced to the public in accordance with this section.

Section VII. Amendment.

Section 8-1706 of Article 8-17 of Chapter 8 of the Fargo Municipal Code is hereby amended to read as follows:

8-170~~5~~6. - Termination of ~~parking prohibition~~ snow emergency declaration by the mayor.

Whenever the mayor shall find that some or all of the conditions which give rise to ~~a parking prohibition~~ the snow emergency declaration in effect pursuant to this ordinance no longer exist, ~~he may declare the prohibition terminated, in whole or in part,~~ the mayor may terminate the snow emergency declaration in a manner prescribed by this ordinance, effective immediately upon announcement.

Section VIII. Amendment.

Section 8-1707 of Article 8-17 of Chapter 8 of the Fargo Municipal Code is hereby amended to read as follows:

8-170~~6~~7. - Provisions temporarily effective to take precedence.

Any provision of this ordinance which becomes effective by declaration of the mayor ~~or upon the occurrence of certain weather conditions shall, while temporarily in effect,~~ take precedence over other conflicting provisions of law normally in effect, except that it shall not take precedence over provisions of law relating to traffic accidents, emergency travel of authorized emergency vehicles or emergency traffic directions by a police officer.

Section VIV. Amendment.

Section 8-1708 of Article 8-17 of Chapter 8 of the Fargo Municipal Code is hereby

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8-1707~~7~~8. - Signs to mark snow emergency routes.

A. On each ~~street~~ roadway designated by resolution ~~as hereafter provided,~~ as a snow emergency route, such ~~streets~~ roadways shall be posted with appropriate signs at intervals not exceeding one every 1,320 feet. Signs posted in accordance with this section shall be distinctive and uniform in appearance and shall be plainly visible and readable to persons traveling on the ~~street or highway~~ roadway.

Section X. Amendment.

Section 8-1709 of Article 8-17 of Chapter 8 of the Fargo Municipal Code is hereby amended to read as follows:

8-1708~~9~~. - Impounding vehicles.

Any vehicle stopped on any snow emergency route or on any roadway in violation of the mayor's snow emergency declaration in violation of any of the provisions of this article may be impounded in accordance with § 8-0126 of this chapter and no person shall recover any vehicle removed pursuant to this section without first paying the cost of removal and the cost of storage. Any payments required by this section shall not be construed as a penalty so as to preclude prosecution for violation of any of the provisions of this article.

Section XI. Amendment.

Section 8-1710 of Article 8-17 of Chapter 8 of the Fargo Municipal Code is hereby amended to read as follows:

8-170~~9~~10. - Violations—Traffic citation—Complaint.

Whenever any motor vehicle is found stopped or parked contrary to the provisions of this article, the owner of such vehicle may, pursuant to § 8-0315 of this chapter, be charged with a violation of this article. Prosecution may be instituted by traffic citation or complaint in the same manner as for violation of any of the provisions of this chapter.

Section XII. Amendment.

Section 8-1711 of Article 8-17 of Chapter 8 of the Fargo Municipal Code is hereby amended to read as follows:

8-171~~0~~1. - Evidence with respect to vehicles parked or left in violation of ordinance.

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In any prosecution with regard to a vehicle parked or left in a place or in a condition in violation of any provision of this ordinance, proof that the particular vehicle described in the complaint was parked or left in violation of a provision of this ordinance, together with proof that the defendant named in the complaint was at the time the registered owner of such vehicle, shall constitute prima facie evidence that the defendant was the person who parked or left the vehicle in violation of this ordinance.

Section XIII. Amendment.

Section 8-1712 of Article 8-17 of Chapter 8 of the Fargo Municipal Code is hereby amended to read as follows:

8-1711~~2~~2. - Snow emergency routes designated.

Snow emergency routes shall be as designated by resolution of the board of city commissioners.

Section XIV. Amendment.

Section 8-1713 of Article 8-17 of Chapter 8 of the Fargo Municipal Code is hereby

amended to read as follows:

8-1712~~3~~3. - Separability.

If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions hereof.

Section XV. Amendment.

Section 1-0305 of Article 1-03 of Chapter 1 of the Fargo Municipal Code is hereby amended to read as follows:

1-0305. - Classification of ordinance violations.

A. Violations of the following ordinances are Class B misdemeanors, subject to punishment as provided in this article:

1. Section 1-0306(D) (failure to appear or post bond on a non-criminal, non-traffic offense), section 8-0305(A)(2) (fictitious registration), section 8-0305(A)(3)

(lending registration plates), section 8-0308 (reproducing operator's or driver's license or permit), section 8-0309 (driving under suspension), section 8-0310 (driving under the influence), section 8-0314 (reckless driving), section 8-0320 (driving without liability insurance - $150.00 minimum fine), section 8-0803(accidents involving damage to vehicle), section 8-0804 (duty to give information and render aid), section 8-0805 (duty upon striking fixture or other property), section 8-0809 (false reports), section 10-0101 (minor using alcohol), 10-0104 (curfew), section 10-0201 (indecent exposure), section 10-0301 (disorderly conduct), section 10-0317 (resisting police officer), section 10-0319 (incendiary devices), section 10-0320 (registration in schools), section 10-0321 (criminal mischief), section 10-0322 (harassment), section 10-0323 (simple assault), section 10-0324 (aiding and abetting), section 10-0601 (shoplifting), section 10-0602 (theft), section 10-0702 (order to disperse), section 10-0703 (tenant/owner cooperation required), section 10-1202(2) (≥½ oz. marijuana) and 10-1202(3) (under 21 in possession of marijuana), section 12-0117(C) and 12-0117(G) (potentially dangerous and dangerous dogs), section 13-0511 (removal of wastes), section 13-0513 (fee/permit for hauling waste), section 13-0529 (misuse of compost sites), article 13-13 (drug lab cleanup), chapter 17 (sewers and sewerage), article 18-09 (excavation code), section 25-1509(A) (selling alcoholic beverage to minor), section 25-1513(C) (minor misrepresenting age), and section 25-1513(D) (delivery of alcoholic beverage to minor), article 25-33 (tattoos, body art and body piercing), article 25-36 (tanning facilities).

B. Violations of all ordinances not designated in A or C of this section are infractions, subject to punishment as hereinabove provided. Any person convicted of an infraction who, within one year before commission of the infraction of which the person was convicted, has been convicted previously at least twice of the same offense classified as an infraction may be sentenced as though convicted of a class B misdemeanor. If the prosecution contends that the infraction is punishable as a class B misdemeanor, the complaint must specify the offense is a misdemeanor.

C. Violations of the following ordinances are noncriminal offenses and shall require payment of a fee as follows:

1. For a violation of the following ordinances, a fee of $5.00. Section 8-1412 (riders/passengers restricted), section 8-1413 (riding on roadway/bike paths—restrictions), section 8-1414 (operate bicycle too fast for conditions), section 8-1416 (carrying packages—restrictions), section 8-1419 (equipment on bicycles), section 8-1420 (bicycles—age restrictions).

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2. For a violation of the following ordinances, a fee of $20.00. Section 8-0113 (unlawful use of skates/coasters), section 8-0304 (registration card to be carried in the driver's compartment—inspection of card), section 8-0305(a)(1), section 8-0305(A)(4) (current registration required), section 8-0318 (operating motor vehicle on bicycle trail), section 8-0323 (license to be carried and exhibited on demand), section 8-0406 (pedestrian-control signal), section 8-0411 (alter traffic or railroad sign), section 8-0412 (display unauthorized signs, signals or marking), section 8-0707 (pedestrian crossing street where prohibited), section 8-0709(A) (pedestrian walking in roadway), section 8-0710 (pedestrian soliciting rides or business), section 8-0712 (pedestrian obstructing traffic), section 8-0901 (fail to display flag/light rear of load), section 8-0902 (improper tires), section 8-0903 (improper horn), section 8-0904 (brakes required), section 8-0905 (mirrors required), section 8-0906 (obstructed vehicle windshield/windows), section 8-0907 (windshield wipers required), 8-0908 (mufflers/exhaust system required), section 8-0909 (leaking or loose load), section 8-0910 (lights/lamps fail to conform to state law), section 8-0911 (fail to display lighted lamps), section 8-0913 (illegal spotlights), section 8-0914 (improper towing connection), section 8-0915 (reflectors/taillight required on trailer), section 8-0916 (flashing lights prohibited), section 8-0917 (illegal light on vehicle), section 8-0919(A) (riding on exterior of vehicle), section 8-0919(B) (more passengers than capacity), section 8-0919(C) (allow body to protrude from moving vehicle), section 8-0928 (modified suspension system), section 8-0929 (driving of vehicle in unsafe condition unlawful), section 8-1003(A) thru (J) and (L) thru (S) (stopping, standing, parking prohibited in specific places), section 8-1013 (improper parking/obstructing traffic), section 8-1301(A) (following fire apparatus), section 8-1301(B) (driving vehicle within block of fire apparatus), section 8-1302 (driving through parade/funeral procession), section 8-1304 (failure to obtain parade permit), section 8-1307 (opening and closing vehicle doors), section 8-1311 (improper start of parked vehicle), section 8-1317 (coasting vehicle on downgrade prohibited), section 8-1318 (littering), section 8-1320(A) (operating snowmobile under 16 or allowing when prohibited), section 8-1320(B) (operating snowmobile in restricted area), section 8-1410 (traffic laws apply to persons riding bicycles), section 8-1411 (bicyclist to obey traffic control devices), section 8-1418 (riding bicycle on sidewalks-restrictions), section 8-1422 (bicycle accidents), section 8-1902 (cruising prohibited), article 8-20 (motorized scooters).

3. For a violation of the following ordinance, a fee of $25.00. Section 10-0103(B) (tobacco possession by minors prohibited).

4. For a violation of the following ordinances a fee of $40.00. Section 8-0105 (driving wrong way on one-way street), section 8-0106 (obey

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temporary traffic sign/barrier), section 8-0303(B) (parent/guardian allow unlicensed/under 16 to drive), section 8-0303(C) (owner allowing unlicensed/under 16 to drive), section 8-0305(B) (current license required), section 8-0306 (violation of restricted license), section 8-0316 (permit unauthorized person to drive), section 8-0403 (disobey traffic control device (barricade)), section 8-0405 (traffic control signals), section 8-0407 (flashing signals), section 8-0506 (impeding traffic), article 8-06 (regulating turning movements), section 8-1010 (motor vehicle left unattended—brakes to be set, engine stopped, and keys removed), section 8-1011 (drive or park on private property), section 8-1018 (taking on or discharging passengers), section 8-1111 (vehicle required to stop at railroad crossing), section 8-1201 (following too closely), sections 8-1202 thru 8-1218(D) (general rules of the road), section 8-1301(C) (driving over fire hose), section 8-1301(D) (driving through/around barricade), section 8-1305 (driving vehicle on sidewalk), section 8-1306 (improper backing), 8-1308 (helmet required—operator/passenger), section 8-1309 (number of riders on motorcycle limited), section 8-1310 (clinging to a vehicle or allowing same), section 8-1313 (unlawful riding on vehicle), section 8-1315 (unlawful towing), section 8-1316(A) (operating motor vehicle with view obstructed by load/passengers), section 8-1316(B) (passenger obstructing driver's view), section 8-1319 (unlawful operation of motor vehicle private property), section 8-1321 (use of seat belts required), section 8-1804 (driving through school patrols), section 8-1415 (right-of-way emerging from alley or driveway), section 8-1417 (parking restriction).

5. For a violation of the following ordinances, a fee of $50.00. Section 8-0116 (failure to yield to emergency vehicle), section 8-0311 (open container), section 8-0317(B)(2) (exhibition driving), section 8-0801 (immediate notice of accident), section 8-0931 (child restraint devices required), 8-1219 (use of motor vehicle), section 10-0311(C) (panhandling within the city of Fargo).

6. For a violation of the following ordinances, a fee of $60.00. Section 8-0301 (failure to have vehicle under control), section 8-0313 (careless driving), section 8-0501 (speed-care required), section 8-0505 (special speed limitation on bridges), section 8-0409 (traffic engineer to establish and design public carrier stops and stands).

7. For a violation of the following ordinances, a fee of $100.00. Section 8-1003(K) (parking in areas reserved handicap), section 8-0702 (fail yield right-of-way pedestrian), section 8-1108(A) (disobey signal of approaching train), section 8-1108(B) (driving thru/around railroad crossing gate), section 8-1110

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(disobey railroad stop sign), section 8-1218(F) (unlawful passing of school bus), section 8-1218(G) (unlawful proceeding past bus in oncoming lane), section 10-0326 (urinating in public), section 25-1513(A) (selling/consuming alcohol in public), section 25-1513(B) (possessing/consuming alcohol in public building).

8. For a violation of the following ordinances, a fee of $120.00. Section 11-0202 (unnecessary noise prohibited), section 11-0204 (projection of sound unlawful), section 11-0205 (motorized vehicles—excessive noise), section 11-0205 Table 2(D) (motorized vehicles—compression brakes prohibited).

9. For a violation of the following ordinance, a fee of $150.00. Section 11-0814 (littering on private property).

10. For a violation of the following ordinance, a fee of $200.00. Section 8-0321 (use of a wireless communication device prohibited), section 8-0322 (distracted driving).

11. For a violation of 08-0502, a fee established as follows:

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

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| | |
|---|---|
| SPEED ZONES 55 mph or LESS: | |
| 1—5 miles over limit | 10.00 |
| 6—10 miles over limit | $10.00 plus $2.00/each mph over 5 mph over limit |
| 11—15 miles over limit | $20.00 plus $2.00/each mph over 10 mph over limit |
| 16—20 miles over limit | $30.00 plus $4.00/each mph over 15 mph over limit |
| 21—25 miles over limit | $50.00 plus $6.00/each mph over 20 mph over limit |
| 26—35 miles over limit | $80.00 plus $6.00/each mph over 25 mph over limit |
| 36—45 miles over limit | $140.00 plus $6.00/each mph over 35 mph over limit |
| 46+ miles over limit | $200.00 plus $10.00/each mph over 45 mph over limit |
| SPEED ZONES greater than 55 mph: | |
| 1—10 miles over limit | $4.00/each mph over limit |
| 11 + miles over limit | $40.00 plus $10.00/each mph over 10 mph over limit |
| SPEED ZONES greater than 65 mph: a fee of ten dollars ($10.00) for each mile per hour over the limit. | |

| | |
|---|---|
| SPEEDING IN SCHOOL ZONE with children present: | |
| 1—10 miles over limit | $80.00 |
| | $80.00 plus $2.00/each mph over 10 mph over limit |
| SPEEDING IN CONSTRUCTION ZONE — workers present and posted "Minimum fee $80.00" | |
| 1—10 miles over limit | $160.00 |
| 11+ miles over limit | $160.00 plus $4.00/each mph over 10 mph over limit |

12. The determination of the fees payable for parking violations described in article 8-10, 8-17, and section 9-0705 shall be based upon the vehicle that is found to be in violation of said article and the owner of the vehicle shall be responsible for payment of the fees.

a. With respect to ~~V~~violations in ~~downtown area~~ the central business district, as defined in section 8-0101, ~~With respect to parking violations in the downtown area, defined as an area bounded by 8th Avenue North, University Drive, 2nd Avenue south (all inclusive of such streets) and the Red River,~~ for a violation of section 8-1006, and 8-1009, the fee for such violation shall be $20.00 for the first violation associated with the vehicle within the prior six-month period, $20.00 for a second violation within six months of said first violation and $25.00 for a third violation within six months of the said second violation and $30.00 for the fourth violation within six months of the said third violation and for every subsequent violation within six months of the next-preceding violation. As to violations of 8-1006 and 8-1009, the person issuing the ticket for the parking violation is authorized to waive the fee and, instead, to issue a warning ticket, for the first said violation. At such time as a period of six months or more elapses without a parking ticket for any violation of article 8-10 having been issued for a particular vehicle, the next violation shall be treated as an initial violation.

b. Violations. With respect to parking violations other than in the ~~downtown area~~ central business district ~~as defined in section 1-0305(12)(a)~~, for a violation of section 8-1001, 8-1002, 8-1004, 8-1005, 8-1006, 8-1006.1, 8-1007, 8-1008, 8-1009, 8-1012, 8-1014 through 8-1024, the fee for such violation shall be $20.00.

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c. With respect to a parking violation as defined in section 9-0705, the fee for such violation shall be $20.00.

d. With respect to a snow emergency route or snow emergency declaration parking violation as defined in section 8-1710, the fee for such violation shall be $100.00.

~~d~~e. With respect to any parking violation, the prescribed fee must be paid within 15 days of the date it is due. The fee shall be due upon the date of issuance of the ticket or, if there is a review of the ticket, upon the date of notification after such review. In the event the prescribed fee on a parking ticket is not paid within said 15 days, the fee shall increase by $5.

Section XVI. Penalty.

A person who violates this ordinance shall be deemed to have committed a non-criminal offense and shall pay a fee of $100.00, as provided in Section 1-0305.C of the Fargo Municipal Code, as the same may be amended from time to time.

Section XVII. Effective Date.

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

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

(SEAL)

Attest:

First Reading:
Second Reading:
Final Passage:
Publication:

_____
Steven Sprague, City Auditor

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

26

AN ORDINANCE AMENDING SECTION 8-0101 AND 8-0109 OF ARTICLE 8-01 OF CHAPTER 8, SECTION 18-0308 OF ARTICLE 18-03 OF CHAPTER 18, SECTION 10-0311 OF ARTICLE 10-03 OF CHAPTER 10, AND SECTION 11-0201 OR ARTICLE 11-02 OF CHAPTER 11 OF THE FARGO MUNICIPAL CODE RELATING TO CENTRAL BUSINESS DISTRICT

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 Century 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 purpose; 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 8-0101 of Article 8-01 of Chapter 8 of the Fargo Municipal Code is hereby amended to read as follows:

8-0101. – Definitions.

* * *

5. "Central business district" shall mean all streets and portions of streets within the area described as follows: All that area bounded by ~~Fourth Street on the east, Seventh Avenue North on the north, First Avenue South on the south, and Eighth Street on the west.~~ 2nd Street North to 4th Street South, 4th Street South to 6th Avenue South, 6th Avenue South to 7th Street South, 7th Street South to 2nd Avenue South, 2nd Avenue South to South University Drive, South University Drive to 7th Avenue North, 7th Avenue North to Broadway North, Broadway North to 9th Avenue North, 9th Avenue North to 4th Street North, 4th Street North to 7th Avenue North, 7th Avenue North to 2nd Street North.

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FARGO, NORTH DAKOTA

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Section 2. Amendment.

Section 8-0109 of Article 8-01 of Chapter 8 of the Fargo Municipal Code is hereby amended to read as follows:

8-1009. – Night parking restrictions.

A. Within the central business district ~~(from the Red River west to University Drive inclusive and from 5th Avenue North [Old Great Northern tracks, presently Burlington Northern Railroad tracks] to First Avenue South, inclusive)~~, as defined in §8-0101, it shall be unlawful for any person to park any vehicle or trailer on any north-south street between the hours of 2:00 a.m. and 7:00 a.m. on Tuesdays, Thursdays, and Saturdays, or on any east-west avenue between the hours of 2:00 a.m. and 7:00 a.m. on Mondays, Wednesdays, Fridays, and Sundays. Any vehicle or trailer parked in violation of this section is hereby declared to be a public nuisance, and may be impounded by the police department.

* * *

Section 3. Amendment.

Section 18-0308 of Article 18-03 of Chapter 18 of the Fargo Municipal Code is hereby amended to read as follows:

18-0308. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this article, except where the context clearly indicates a different meaning:

A. "Central Business District" as defined in §8-0101.~~shall mean an area within the following boundaries:~~

~~1. On the north by 6th Avenue North;~~
~~2. On the east by the Red River of the North;~~
~~3. On the south by 1st Avenue South; and,~~
~~4. The westerly boundary shall be Roberts Street from 6th Avenue~~

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FARGO, NORTH DAKOTA

ORDINANCE NO. _____

~~North to 1st Avenue North, 9th Street from 1st Avenue North to Northern Pacific Avenue and 8th Street from Northern Pacific Avenue to 1st Avenue South.~~

~~5. In addition to the area defined by the foregoing boundaries the Central Business District shall include 7th and 8th Streets South, to 2nd Avenue South.~~

* * *

Section 4. Amendment.

Section 10-0311 of Article 10-03 of Chapter 10 of the Fargo Municipal Code is hereby amended to read as follows:

10-0311. - Panhandling.

A. Definitions.

1. "Aggressive Panhandling" means engaging in any conduct with the intention of intimidating another person into giving away money or goods, including but not limited to, intentionally approaching, speaking to or following a person in a manner that would cause a reasonable person to fear imminent physical injury or the imminent commission of a criminal act upon the person or upon the property in the person's immediate possession; intentionally touching another person without consent; or intentionally blocking or interfering with the free passage of a person.
2. ~~"Downtown~~ Central Business District" as defined in §8-0101.~~means the area described as follows: Beginning at the corner of Second Street and Seventh Avenue North; thence westerly along Seventh Avenue North to its intersection with Tenth Street; thence southerly along Tenth Street to its intersection with Fifth Avenue South; thence easterly along Fifth Avenue South (which becomes Sixth Avenue South as it runs along the south of Island Park) until its intersection with Fourth Street; thence northerly to its intersection with Second Street South; thence east and northerly along Second Street South to the point of beginning. The boundary line described herein shall run along the outermost edge of the rights-of-way corresponding with the streets and avenues described herein, and shall include all the right-of-way identified herein.~~

* * *

Section 5. Amendment.

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

Section 11-0201 of Article 11-02 of Chapter 11 of the Fargo Municipal Code is hereby amended to read as follows:

11-0201. – Definitions.

For purposes of this article, certain words and phrases used herein are defined as follows:

* * *

5. ~~"Downtown~~ Central ~~Business District"~~ as defined in §8-0101. ~~means the area described as follows: Beginning at the corner of Second Street and Seventh Avenue North; thence westerly along Seventh Avenue North to its intersection with Tenth Street; thence southerly along Tenth Street to its intersection with Fifth Avenue South; thence easterly along Fifth Avenue South (which becomes Sixth Avenue South as it runs along the south of Island Park) until its intersection with Fourth Street; thence northerly to its intersection with Second Street South; thence east and northerly along Second Street South to the point of beginning. The boundary line described herein shall run along the outermost edge of the rights-of-way corresponding with the streets and avenues described herein, and shall include all the right-of-way identified herein.~~

Section 6. Effective Date.

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

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

Attest:

_____
Steven Sprague, City Auditor

First Reading:
Second Reading:
Final Reading:

THE CITY OF Fargo
FAR MORE

**AUDITOR'S OFFICE**
Fargo City Hall
225 4th Street North
PO Box 2471
Fargo, ND 58108
Phone: 701.241.8108 | Fax: 701.241.8184
www.FargoND.gov

(3)

# MEMORANDUM

**TO:** BOARD OF CITY COMMISSIONERS

**FROM:** STEVE SPRAGUE
CITY AUDITOR

**DATE:** OCTOBER 5, 2020

**RE:** 2021 OCCUPATIONAL LICENSE FEE SCHEDULE

The Auditor's Office request the review and approval of the 2021 Occupational License fee schedule through resolution.

If you have questions, please contact Steve Sprague at 241-1301.

**Suggested Motion:** Move to approve the resolution approving Occupational License fee schedule and reinstatement fees for the Auditor's Office.

SS
Enclosure

Attachment "A"

**RESOLUTION APPROVING OCCUPATIONAL LICENSE FEES AND REINSTATEMENT FEES – AUDITOR'S OFFICE**

**WHEREAS,** the Board of City Commissioners is authorized to approve a schedule for application fees for Occupational licenses, and for reinstatement fees to offset the administrative and oversight costs of enforcement of the city's ordinances pursuant to the provisions of the Fargo Municipal Code; and,

**WHEREAS,** the Board of City Commissioners desires to approve a schedule of such fees.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of City Commissioners as follows:

The attached fee schedule for Occupational Licenses, and for reinstatement fees is hereby approved.

COMMISSIONER_____ introduced the foregoing resolution and moved its adoption. The motion for the adoption of the foregoing resolution was duly seconded by COMMISSIONER _____, the following were absent and not voting: _____, and the following voted against the same: _____, where upon the resolution was declared duly passed and adopted.

## 2021 OCCUPATIONAL LICENSE FEE SCHEDULE

Please note, fee revisions are listed in **bold print**.

| Type of License | 2020 Fee | 2021 Fee | Date of Issuance |
|---|---|---|---|
| Master Heating | $125.00 | $125.00 | Expires Dec 31, good for 1 year |
| Master Plumbing | $125.00 | $125.00 | Expires Dec 31, good for 1 year |
| **Journeyman Heating** | **$30.00** | **$100.00** | **Expires Dec 31, good for 3 years** |
| **Reinstatement Fee** | **$0** | **$50.00** | ***Fee will begin for any license that does not renew by expiration date, starting January 2022.** |

*Occupational licensing is moving to a new licensing software effective January 2021. Due to this change, our office believes it is appropriate to get the licensees familiar with the new system before we introduce the Reinstatement Fee.

AMENDED

# GAMING SITE AUTHORIZATION

OFFICE OF ATTORNEY GENERAL
SFN 17996 (02/2018)

4a

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

Full, Legal Name of Gaming Organization: Team Makers Club, Inc.

**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: Big Erv's at Rose Creek | | | |
| Street: 1500 E Rosecreek Parkway | City: Fargo | ZIP Code: 58104 | County: Cass |
| Beginning Date(s) Authorized: 10/5/20 | Ending Date(s) Authorized: 6/30/21 | | Number of twenty-one tables if zero, enter "0": 0 |
| Specific location where games of chance will be conducted and played at the site **(required)**: Entirebar area,excluding bathrooms and entryways | | | |
| If conducting **Raffle** or **Poker** 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)

- [X] Bingo
- [ ] **ELECTRONIC** Quick Shot Bingo
- [X] Raffles
- [ ] **ELECTRONIC** 50/50 Raffle
- [X] Pull Tab Jar
- [X] Pull Tab Dispensing Device
- [X] **ELECTRONIC** Pull Tab Device
- [ ] Club Special
- [ ] Tip Board
- [ ] Seal Board
- [ ] Punchboard
- [ ] Prize Board
- [ ] Prize Board Dispensing Device
- [ ] Sports Pools
- [X] Twenty-One
- [X] Poker
- [ ] Calcuttas
- [ ] Paddlewheels with Tickets
- [ ] Paddlewheel Table

**APPROVALS**

| | |
|---|---|
| Attorney General | Date |
| Signature of City/County Official | Date: 10/5/2020 |
| **PRINT** Name and official position of person signing on behalf of city/county above: Steve Sprague/City Auditor | |

## INSTRUCTIONS:

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

## RETURN ALL DOCUMENTS TO:

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

# GAMING SITE AUTHORIZATION

OFFICE OF ATTORNEY GENERAL
SFN 17996 (02/2018)

46

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

Full, Legal Name of Gaming Organization
Metro Sports 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 | | | |
|---|---|---|---|
| Mexican Village | | | |
| Street: 3155 45th St S | City: Fargo | ZIP Code: 58104 | County: Cass |
| Beginning Date(s) Authorized: 10/1/20 | Ending Date(s) Authorized: 6/30/21 | | Number of twenty-one tables if zero, enter "0": 0 |
| Specific location where games of chance will be conducted and played at the site **(required)**: left wall of main entrance of bar | | | |
| If conducting **Raffle** or **Poker** 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)

- [ ] Bingo
- [ ] **ELECTRONIC** Quick Shot Bingo
- [ ] Raffles
- [ ] **ELECTRONIC** 50/50 Raffle
- [ ] Pull Tab Jar
- [ ] Pull Tab Dispensing Device
- [x] **ELECTRONIC** Pull Tab Device
- [ ] Club Special
- [ ] Tip Board
- [ ] Seal Board
- [ ] Punchboard
- [ ] Prize Board
- [ ] Prize Board Dispensing Device
- [ ] Sports Pools
- [ ] Twenty-One
- [ ] Poker
- [ ] Calcuttas
- [ ] Paddlewheels with Tickets
- [ ] Paddlewheel Table

**APPROVALS**

| Attorney General | Date |
|---|---|
| | |
| **Signature of City/County Official** | **Date** |
| | 10/5/2020 |
| **PRINT** Name and official position of person signing on behalf of city/county above | |
| Steve Sprague/City Auditor | |

## INSTRUCTIONS:

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

## RETURN ALL DOCUMENTS TO:

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

(5a)

$25.00
9-28-20
CC

# 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 | Date(s) of Activity | For a raffle, provide drawing date(s): |
|---|---|---|
| Ronald Mcdonald House Charities Of The Red River Valley | | 12/11/2020 |

| Person Responsible for the Gaming Operation and Disbursement of Net Income | Title | Business Phone Number |
|---|---|---|
| Brad Bartl | Store Manager | 701-277-1494 |

| Business Address | City | State | Zip Code |
|---|---|---|---|
| 4055 13th Ave S | Fargo | ND | 58103-3305 |

| Mailing Address (if different) | City | State | Zip Code |
|---|---|---|---|
| 4757 Agassiz Xing S | Fargo | ND | 58104-8780 |

| Name of Site Where Game(s) will be Conducted | Site Address |
|---|---|
| Riddle's Jewelry | 4055 13th Ave S |

| City | State | Zip Code | County |
|---|---|---|---|
| Fargo | ND | 58103-3305 | Cass |

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 |
|---|---|---|
| Raffle | Jewelry | $500.00 |
| | | |
| | | |
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| Game Type | Description of Prize | Retail Value of Prize |
|---|---|---|
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| | | |

Total: (Limit $40,000 per year) $ 500.00

**Intended uses of gaming proceeds:** support the mission of the Ronald McDonald House Charities to keep families together and near the medical care that their critically-ill children need.

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

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

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

| Signature of Organization or Group's Top Official | Date | Title | Business Phone Number |
|---|---|---|---|
| Jill K Christopher | 9/25/2020 | Executive Director | 701-232-3980 |

56

$25.00
9-21-20
CC 6677

# APPLICATION FOR A LOCAL PERMIT OR RESTRICTED EVENT PERMIT

OFFICE OF ATTORNEY GENERAL
SFN 9338 (08/2019)

Application for: [x] Local Permit *[ ] Restricted Event Permit (one event per year)

| Name of Nonprofit Organization or group of people permit is issued to | Date(s) of Activity | For a raffle, provide drawing date(s): |
|---|---|---|
| Fm Raise Your Spirits Inc | 10/9/2020 to | 10/09/2020 |
| **Person Responsible for the Gaming Operation and Disbursement of Net Income** | **Title** | **Business Phone Number** |
| Bob Stromberg | President | (701) 361-2224 |
| **Business Address** | **City** / **State** / **Zip Code** | |
| 1417 Maple Ln | West Fargo / ND / 58078-3414 | |
| **Mailing Address (if different)** | **City** / **State** / **Zip Code** | |
| | | |
| **Name of Site Where Game(s) will be Conducted** | **Site Address** | |
| HOLIDAY INN | 3803 13th Ave South | |
| **City** / **State** / **Zip Code** / **County** | | |
| Fargo / ND / 58103-3301 / Cass | | |

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

[ ] Bingo [x] Raffle [x] 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 |
|---|---|---|
| Heads/Tails | West Acres GC | $1,000.00 |
| Raffle 1 | Top Shelf Bar | $1,250.00 |
| Raffle 2 | Tool Package | $1,500.00 |
| Raffle 3 | Grill Package | $1,000.00 |
| Raffle 4 | Wine Package | $1,000.00 |
| Raffle 5 | New Orleans Trip | $3,900.00 |
| | | |
| | | |
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| Game Type | Description of Prize | Retail Value of Prize |
|---|---|---|
| | | |
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| | | |

Total: (Limit $40,000 per year) $ 9,850.00

**Intended uses of gaming proceeds:** Proceeds generated are donated back to local non-profits in the FM area.

Does the organization presently have a state gaming license? [x] 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? [x] 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? [x] No [ ] Yes-If "Yes," indicate the total value of all prizes previously awarded: $ _____ . *This amount is part of the total prize limit of $40,000 per year.*

| Signature of Organization or Group's Top Official | Date | Title | Business Phone Number |
|---|---|---|---|
| | 9/21/2020 | President | (701) 361-2224 |

(50)

$25.00
9-22-20
CC 8030

# 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 | Date(s) of Activity | For a raffle, provide drawing date(s): |
|---|---|---|
| Jeremiah Program Fargo Moorhead | 10/30/2020 to 10/30/2020 | 10/30/2020 |

| Person Responsible for the Gaming Operation and Disbursement of Net Income | Title | Business Phone Number |
|---|---|---|
| Andrea Williams | Director | 701-552-5553 |

| Business Address | City | State | Zip Code |
|---|---|---|---|
| 3104 Fechtner Dr. | Fargo | ND | 58103 |

| Mailing Address (if different) | City | State | Zip Code |
|---|---|---|---|
| | | | |

| Name of Site Where Game(s) will be Conducted | Site Address |
|---|---|
| Holiday Inn Fargo | 380313th Ave. S |

| City | State | Zip Code | County |
|---|---|---|---|
| Fargo | ND | 58103 | Cass |

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 |
|---|---|---|
| Local Raffle | Limo Service 4 people 4 hrs | $505.00 |
| | Visa Gift Card | $200.00 |
| | | |
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| Game Type | Description of Prize | Retail Value of Prize |
|---|---|---|
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| | | |

(Limit $40,000 per year)

Total: $ 705.00

**Intended uses of gaming proceeds:** Operating funds for daycare and housing needs for Jeremiah families

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

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

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

| Signature of Organization or Group's Top Official | Date | Title | Business Phone Number |
|---|---|---|---|
| [signature] | 9/22/20 | Event Manager | 701-272-4216 |

5d

$25.00
V3819
9-23-20

# APPLICATION FOR A LOCAL PERMIT OR RESTRICTED EVENT PERMIT

OFFICE OF ATTORNEY GENERAL
SFN 9338 (08/2019)

Application for: [x] Local Permit *[ ] Restricted Event Permit (one event per year)

| Name of Nonprofit Organization or group of people permit is issued to | Date(s) of Activity | For a raffle, provide drawing date(s): |
|---|---|---|
| Fargo Angels Hockey | to | 12-15-2020 |

| Person Responsible for the Gaming Operation and Disbursement of Net Income | Title | Business Phone Number |
|---|---|---|
| Charles Hale | Board Member | (701) 799-3612 |

| Business Address | City | State | Zip Code |
|---|---|---|---|
| Po Box 3258 | Fargo | ND | 58108-0000 |

| Mailing Address (if different) | City | State | Zip Code |
|---|---|---|---|
| | | | |

| Name of Site Where Game(s) will be Conducted | Site Address |
|---|---|
| Angels Arena | 1401 5th Ave N |

| City | State | Zip Code | County |
|---|---|---|---|
| Fargo | ND | 58102-4239 | Cass |

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

[ ] Bingo [x] 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 |
|---|---|---|
| Raffle | Gun or Cash | $750.00 |
| Raffle | Gun or Cash | $700.00 |
| Raffle | Gun or Cash | $500.00 |
| Raffle | Gun or Cash | $500.00 |
| Raffle | Gun or Cash | $500.00 |
| Raffle | Gun or Cash | $400.00 |
| Raffle | Gun or Cash | $400.00 |
| Raffle | Gun or Cash | $250.00 |
| Raffle | Gun or Cash | $250.00 |

| Game Type | Description of Prize | Retail Value of Prize |
|---|---|---|
| Raffle | Gun or Cash | $250.00 |
| | | |
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Total: (Limit $40,000 per year) $ 4,500.00

**Intended uses of gaming proceeds:** Pay for operating costs associated with youth hockey program - Covering ICE FEE's

Does the organization presently have a state gaming license? [x] 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? [x] 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? [x] No [ ] Yes-If "Yes," indicate the total value of all prizes previously awarded: $ _____ . *This amount is part of the total prize limit of $40,000 per year.*

| Signature of Organization or Group's Top Official | Date | Title | Business Phone Number |
|---|---|---|---|
| Charles Hale | 9/23/2020 | Board Member | (701) 799-3612 |

(5e)

$219
10/1/20
25.00

# 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 | Date(s) of Activity | For a raffle, provide drawing date(s): |
|---|---|---|
| Fargo Youth Hockey Association | to | 2-4-2021 |

| Person Responsible for the Gaming Operation and Disbursement of Net Income | Title | Business Phone Number |
|---|---|---|
| Jennifer Thompson | President | 701-235-4300 |

| Business Address | City | State | Zip Code |
|---|---|---|---|
| 831 17th Ave N | Fargo | ND | 58102 |

| Mailing Address (if different) | City | State | Zip Code |
|---|---|---|---|
| | | | |

| Name of Site Where Game(s) will be Conducted | Site Address |
|---|---|
| H. A. Thompson Arena | 831 17th Ave N |

| City | State | Zip Code | County |
|---|---|---|---|
| Fargo | ND | 58102 | Cass |

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 |
|---|---|---|
| Raffle | Cash | 2500 |
| Raffle | Cash | 1500 |
| Raffle | Cash | 1000 |
| Raffle | Cash | 750 |
| Raffle | Cash | 500 |
| Raffle | scheels gift card | 500 |
| Raffle | Cash | 250 |
| Raffle | scheels gift card | 250 |
| Raffle | Cash | 150 |

| Game Type | Description of Prize | Retail Value of Prize |
|---|---|---|
| Raffle | Cash | 100 |
| Raffle | scheels gift card | 100 |
| Raffle | Apple Bees 10 - $100 gift cards | 1000 |
| Raffle | Buffalo Wild Wings 10 - $100 gift cards | 1000 |
| Raffle | Play it Again 10 - $100 gift cards | 1000 |
| Raffle | Porter Creek 5 - $100 gift cards | 500 |
| Raffle | Scheels 4 - $50 gift cards | 200 |
| | | |
| | | |

(Limit $40,000 per year)
Total: $ 11,300

**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 | Date | Title | Business Phone Number |
|---|---|---|---|
| [signature] | 9-30-20 | Treasurer | 701-298-1524 |

THE CITY OF Fargo
FAR MORE

(6)

Oct 5, 2020

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

RE: Contract Award for RFP20121 – Janitorial Services Fargo PD

Dear Commissioners:

Proposals were received and reviewed on July 20, 2020 in response to an RFP that was issued by the Facilities Management department for janitorial services at the PD Headquarters. Five proposals were received as shown on page 2.

The proposals were evaluated based on the following criteria:

- Cost
- Experience
- Staffing

After evaluation, we recommend Design Cleaning LLC as the preferred contractor for this service in the amount of $191,744.00 for three years.

REQUESTED MOTION: Award Design Cleaning LLC with a three year contract from August 1, 2020 to July 31, 2023 for janitorial services at the Fargo PD.

Respectfully,

Brock Morrison
Director of Facilities Management

THE CITY OF Fargo FAR MORE

## FARGO POLICE HEADQAURTERS CLEANING BID RESULTS

### 105 25TH Street North

### THREE-YEAR PRICE AND PROPOSED STAFFING

| | | | | |
|---|---|---|---|---|
| 1. | Design Cleaning LLC. | $191,744.00 | 50 | hours weekly |
| 2. | Perfection Plus Inc. | $195,660.00 | 47.75 | hours weekly |
| 3. | Osgood Cleaning Svc. | $234,000.00 | 60 | hours weekly |
| 4. | Service Master Cleaning | $355,656.00 | 85 | hours weekly |
| 5. | Allied National Services | $463,320.00 | 110 | hours weekly |

Upon approval from the Fargo City Commission on Monday, July 27th, Design Cleaning LLC will be awarded the contract for janitorial services at the Fargo PD HQ located at 105 25th Street North.

Design Cleaning proposal:

- Year 1- $5169.58 monthly $62,035.00 yearly
- Year 2- $5324.67 monthly $63,896.00 yearly
- Year 3- $5484.42 monthly $65,813.00 yearly
- Three year total = $191,744.00

This is a three-year contact starting August 1st 2020 and ending July 31st 2023.

A 60 day written notification of termination of contract can be given by either party.

We will retain all proposals for a period up to 90 days. If within the 90 days of the contract the performance expectations are not met, we will reevaluate and request updated proposals from the other contractors.

Thank you.

City of Fargo
Facilities Management

CUSTODIAL CONTRACT August 1, 2020

Fargo Police Headquarters

Located at 105 25th St. N

Reference RFP20121

Design Cleaning will provide custodial services for the above address beginning August 1, 2020 through July 31 2023.

Following the provided GENERAL CLEANING STANDARDS and BUILDING SPECIFIC REQUIERMENTS.

Billing is to be submitted monthly on the last scheduled cleaning day of that month. City of Fargo will remit payment within 30 days of receipt of invoice. Please include reference number RFP 20121 on monthly invoice.

The City of Fargo will provide hand soap, hand sanitizers, garbage liners, urinal screens and mats, baby changing liners and paper products, ext.

Design Cleaning will provide all necessary cleaning supplies and equipment to complete the daily, monthly and yearly cleaning tasks.

The carpet cleaning and window cleaning is included in the price of the contact. Design cleaning will schedule and supervise two (2) interior/exterior window cleanings once in April-May and again in Oct.-Nov. period. And one (1) entire space (all carpeted surfaces) carpet cleaning in April-May and one (1) high traffic area carpet cleaning in the Oct-Nov period. Facilities Management staff and Design cleaning will meet prior to the high traffic area cleaning to discuss areas of need.

PRICE

| | | |
|---|---|---|
| Year-1 | August 1 2020-July 31 2021 | $5,169.58 monthly $62,035.00 yearly |
| Year-2 | August 1 2021-July 31 2022 | $5,324.67 monthly $63,896.00 yearly |
| Year-3 | August 1 2022-July 31 2023 | $5,484.42 monthly $65,813.00 yearly |

THREE-YEAR CONTRACT TOTAL $191,744.00

TERM

This is a Three (3) year contract starting August 1 2020 through July 31 2023

Either party opt out of this contract with a written 60-day notice of intent.

Design Cleaning LLC. Debra Wouters Debra Wouters Date 8-05-20

City of Fargo B&G/FM Mark Fournier _____ Date 08/01/20

City of Fargo Mayor Timothy Mahoney _____ Date _____

(7)

## REPORT OF ACTION

## PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Project No. TM-19-B1 Type: Change Order #3

Location: Citywide Date of Hearing: 9/28/2020

| Routing | Date |
|---|---|
| City Commission | 10/5/2020 |
| PWPEC File | X |
| Project File | Jim Mohr |

The Committee reviewed the accompanying correspondence from Project Manager, Jim Mohr, for Change Order #3 in the amount of $29,648.84 for additional work.

Staff is recommending approval of Change Order #3 in the amount of $29,648.84, bringing the total contract amount to $507,707.34.

On a motion by Steve Sprague, seconded by Kent Costin, the Committee voted to recommend approval of Change Order #3 to Northstar Safety Inc.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve Change Order #3 in the amount of $29,648.84, bringing the total contract amount to $507,707.34 to Northstar Safety Inc.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: Sales Tax Funds

| | 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:

Brenda E. Derrig, P.E.
City Engineer

C: Kristi Olson

THE CITY OF Fargo FAR MORE

**Engineering Department**
225 4th Street North
Fargo, ND 58102
Phone: 701.241.1545 | Fax: 701.241.8101
Email feng@FargoND.gov
www.FargoND.gov

# Memorandum

**To:** Members of PWPEC

**From:** Jim Mohr, Project Manager

**Date:** September 24, 2020

**Re:** Project No. TM-19-B1 – Change Order #3
Pavement Markings & Incidentals

---

## Background:

Project No. TM-19-B1 is a Citywide pavement marking project.

Northstar Safety is the Prime Contractor on this project.

The attached Change Order #3, in the amount of $29,648.84, which increases the total contract amount to $507,707.34, is for additional work as shown on Change Order #3. A full description of the additional work can be seen on the attached Change Order.

## Recommended Motion:

Approve Change Order #3 in the amount of $29,648.84 to Northstar Safety.

JDM/klb

Attachment

THE CITY OF Fargo FAR MORE

# CITY OF FARGO
# ENGINEERING DEPARTMENT
# CHANGE ORDER REPORT

| | | | |
|---|---|---|---|
| **Project No** | TM-19-B1 | **Change Order No** | 3 |
| **Project Name** | Pavement Markings & Incidentals | | |
| **Date Entered** | 9/15/2020 | **For** | Northstar Safety Inc |

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

**EXPLANATION OF CHANGE:**

| 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 ($) | C/O Ext Price ($) |
|---|---|---|---|---|---|---|---|---|---|---|
| Pavement Markings | 1 | Paint Epoxy Line 4" Wide | LF | 23,200.00 | 17,565.00 | 40,765.00 | 3,485.00 | 44,250.00 | 1.95 | 6,795.75 |
| | 4 | Paint Epoxy Line 16" Wide | LF | 568.00 | 141.00 | 709.00 | 94.00 | 803.00 | 15.00 | 1,410.00 |
| | 5 | Paint Epoxy Line 24" Wide | LF | 526.00 | 234.00 | 760.00 | 492.00 | 1,252.00 | 13.80 | 6,789.60 |
| | 6 | Paint Epoxy Message | SF | 1,548.00 | 256.50 | 1,804.50 | 171.24 | 1,975.74 | 13.30 | 2,277.49 |
| | 11 | F&I Grooved Plastic Film 24" Wide | LF | 1,626.00 | 0.00 | 1,626.00 | 60.00 | 1,686.00 | 33.20 | 1,992.00 |
| | 19 | F&I Green Pavement Markings | SF | 0.00 | 0.00 | 0.00 | 880.00 | 880.00 | 11.80 | 10,384.00 |
| | | | | | | | | **Pavement Markings Sub Total ($)** | | 29,648.84 |

## Summary

| | |
|---|---|
| **Source Of Funding** | Sales Tax Funds - Infrastructure - 420, Traffic Engineering Funds - 101 |
| **Net Amount Change Order # 3 ($)** | 29,648.84 |
| **Previous Change Orders ($)** | 139,084.90 |
| **Original Contract Amount ($)** | 338,973.60 |
| **Total Contract Amount ($)** | 507,707.34 |

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 |
|---|---|---|---|---|---|

THE CITY OF Fargo FAR MORE

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

| | | | | | |
|---|---|---|---|---|---|
| 11/01/2019 | 06/01/2020 | 0.00 | 0.00 | 11/01/2019 | 06/01/2020 |

**Description**

**APPROVED**

For Contractor

Title

VICE PRESIDENT

**APPROVED DATE**

Department Head

9/30/2020

Mayor

Attest

**REPORT OF ACTION**

**PUBLIC WORKS PROJECTS EVALUATION COMMITTEE** (8)

Project No. FP-19-A0 Type: Contract Amendment #1

Location: 52nd – 76th Ave S & Veterans – I-29 Date of Hearing: 9/28/2020

| Routing | Date |
|---|---|
| City Commission | 10/5/2020 |
| PWPEC File | X |
| Project File | Nathan Boerboom |

The Committee reviewed a communication from Project Manager, Nathan Boerboom, related to Contract Amendment #1 submitted by Houston Engineering in the amount of $20,000.00. The Amendment is for additional soil borings.

Staff is recommending approval of Contract Amendment #1 in the amount of $20,000.00, bringing the total contract amount to $525,000.00.

On a motion by Steve Sprague, seconded by Kent Costin, the Committee voted to recommend approval of the Contract Amendment #1 to Houston Engineering.

RECOMMENDED MOTION
Concur with the recommendations of PWPEC and approve Contract Amendment #1 to Houston Engineering in the amount of $20,000.00, bringing the total contract amount to $525,000.00.

PROJECT FINANCING INFORMATION:
Recommended source of funding for project: CWSRF

| | 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:

B. h E. D.

Brenda E. Derrig, P.E.
City Engineer

THE CITY OF Fargo FAR MORE

**Engineering Department**
225 4th Street North
Fargo, ND 58102
Phone: 701.241.1545 | Fax: 701.241.8101
Email feng@FargoND.gov
www.FargoND.gov

# Memorandum

**To:** Members of PWPEC

**From:** Nathan Boerboom
Division Engineer

**Date:** September 23, 2020

**Subject:** Contract Amendment #1
Southwest Regional Stormwater Pond – Project #FP-19-A0

---

**Background:**

The above referenced project has had continued coordination with our various partners in this project, which has led to the finalization of the layout of the north pond. The next step for the project is completing the grading plan of the pond as well as the design of the storm water lift station that will be serving the pond.

Through the initial design discussions, it has been identified that we should collect some additional soil information beyond what has been collected so far. This additional information will help better identify the depth of the weaker Brenna soil layer, which is necessary to properly create the construction documents so that we minimize the risk of future change orders during construction due to changed soil conditions.

Houston Engineering has provided a proposed contract amendment of $20,000 to complete these additional soil borings. This is the first contract amendment for this project and would bring the total budget for this contract to $525,000. A full description of the work can be seen on the attached amendment submitted by Houston Engineering.

**Recommended Motion:**

Approval of Contract Amendment #1 for Project #FP-19-A0, the Southwest Regional Stormwater Pond, in the amount of $20,000.00 to Houston Engineering.

NAB/jmg
Attachment

Fargo Corporate Office 701.237.5065 701.237.5101

1401 21st Avenue North Fargo ND 58102

HoustonEngineering Inc.

ENGINEERING TASK ORDER

AMENDMENT NO. 1 – FOR ADDITIONAL ENGINEERING SERVICES

**Date:** September 23, 2020

**Project:** City of Fargo Project No. FP-19-A0
SW Regional Stormwater Pond Masterplan
HE Project No. 6059-0168

**Client:** City of Fargo
225 4th Street North
Fargo, ND 58102
Phone (701) 241-1545

**Location of Project:** City of Fargo, Cass County, North Dakota

**Description of Work:** This contract amendment is for additional Professional Engineering services necessary to develop final plans and specifications for the above referenced project. The City of Fargo previously contracted with Braun Intertec to complete 3 soil boring within the proposed project area. Due to changes in the pond layout and the depth of the weaker Brenna soil layer, we have determined that additional soil borings and material strength testing is required to accurately define the boundary between the higher strength Sherack soil layer and the weak strength Brenna soil layer.

**PHASE 2 – ENGINEERING SERVICES**

**Task 5 – Geotechnical Engineering**
HEI will subcontract with Braun Intertec to complete the additional borings and material strength testing. Two additional borings will be completed within the proposed pond area with one being located at the revised lift station location. Two additional borings will be completed along the proposed east-west drain alignment. We assume that the City of Fargo will secure access agreements for private property owners for these borings.

Estimated Task 1 Fee $20,000

**PROPOSED PROJECT FEE**
The total estimated fee for the above described scope of services amendment is **$20,000** which will increase the total budget for this Task Order to $525,000. Additional work required beyond the scope listed above will require a task order

HoustonEngineering Inc.



amendment. Houston Engineering, Inc. (with assistance from Braun Intertec, Inc.) will perform the services as outlined above. Tasks will be performed in accordance with the hourly rates outlined in our 2019-2021 Professional Engineering, Land Surveying, and Land Management Master Services Agreement.

The work outlined in this amendment will be completed in a timely manner and will commence upon receipt of a Task Order Amendment from the City of Fargo in accordance with the 2019-2021 Professional Engineering, Land Surveying, and Land Management Master Services Agreement between Owner and Consultant of Engineering Consultation Services. We anticipate the completion of all services associated with this Task Order to be December 31, 2021. We appreciate the opportunity to work with the City again and look forward to assisting you with this project.

Sincerely,

HOUSTON ENGINEERING, INC.

Michael P. Love, PE

H:\JBN\6000\6059\6059_0168 SW Pond Planning\PM\FP-19-A0 - Houston Task Order #1 - Amendment #1.docx

**REPORT OF ACTION**

**PUBLIC WORKS PROJECTS EVALUATION COMMITTEE** (9)

Project No. FM-16-A0 Type: Contract Amendment #4

Location: County Road 20 Date of Hearing: 9/28/2020

| Routing | Date |
|---|---|
| City Commission | 10/5/2020 |
| PWPEC File | X |
| Project File | Roger Kluck |

The Committee reviewed a communication from Project Manager, Roger Kluck, related to Contract Amendment #4 submitted by Moore Engineering. This Amendment is for an increase of $143,000 for Design and $730,840 for the Construction Administration. Although the original 2016 proposal for this project included an estimate for Construction Administration, this portion of the contract was not moved forward for approval since this is a very large project that has many components, which could affect the original proposal budget for the construction administration. As it was, this project was tabled in 2017 and brought back after the approval of Plan "B" under the FM Diversion that allows 37' through town on a 100-year flood event.

Staff is recommending approval of Contract Amendment #4 in the amount of $143,000 for Design and $730,840 for Construction Administration (approximately 6.3% of construction cost), bringing the total contract amount to $1,525,840.00.

On a motion by Steve Sprague, seconded by Kent Costin, the Committee voted to recommend approval of the Contract Amendment #4 to Moore Engineering.

RECOMMENDED MOTION
Concur with the recommendations of PWPEC and approve Contract Amendment #4 to Moore Engineering in the amount of $143,000 for Design and $730,840 for Construction Administration, bringing the total contract amount to $1,525,840.00.

PROJECT FINANCING INFORMATION:
Recommended source of funding for project: Flood Sales Tax

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

| COMMITTEE | Present | Yes | No | Unanimous ☑ |
|---|---|---|---|---|
| Tim Mahoney, Mayor | ☐ | ☐ | ☐ | |
| Nicole Crutchfield, Director of Planning | ☑ | ☑ | ☐ | |
| Steve Dirksen, Fire Chief | ☑ | ☑ | ☐ | |
| Bruce Grubb, City Administrator | ☑ | ☑ | ☐ | |
| Ben Dow, Director of Operations | ☑ | ☑ | ☐ | |
| Steve Sprague, City Auditor | ☑ | ☑ | ☐ | |
| Brenda Derrig, City Engineer | ☑ | ☑ | ☐ | |
| Kent Costin, Finance Director | ☑ | ☑ | ☐ | |

ATTEST:

Brenda E. Derrig, P.E.
City Engineer

THE CITY OF Fargo
FAR MORE

**Engineering Department**
225 4th Street North
Fargo, ND 58102
Phone: 701.241.1545 | Fax: 701.241.8101
Email feng@FargoND.gov
www.FargoND.gov

# Memorandum

**To:** Members of PWPEC

**From:** Roger E. Kluck, PE, CFM Storm Sewer/Floodplain

Brenda E. Derrig, City Engineer

**Date:** September 24, 2020

**Re:** Project No. FM-16-A0 – Amendment #4 - Consultant Services for Construction Administration and Inspection for the North Side Flood Mitigation Project

---

Background:

In February of 2016, Moore Engineering was selected to design and construct flood protection for the north side of Fargo, north of 40th Avenue North (County Road 20). In late 2017 design was suspended and the City reengaged Moore Engineering in late 2019. To date the following has been approved.

- Amendment #2 updated the design contract in 2019.

| | |
|---|---|
| Levee Design: | $462,000.00 |
| Lift Station Design: | $190,000.00 |
| **Total Hourly Not to Exceed:** | **$652,000.00** |

- Amendment #3 shifted budget line items between Levee and Lift Station Design but did not change the authorized amount.

During design, the City/Moore team looked at several options for the lift station control structure, dealt with five public utility crossings coordination including relocation of a portion of the ERF line bringing treated water to the Ethanol plant in Casselton, and changed the alignment of the levee at CR 81 which are explained in the attached documentation from Moore Engineering. These items were not contemplated in the original scoping request nor in Amendment #2.

Moore is asking for a design amendment that would increase the total Hourly Not to Exceed Price for Design by **$143,000**. Adjusting the total from **$652,000** to **$795,000.00**. Fargo has reviewed the request and it is reasonable.

During the selection process in 2016, both design and construction administration fees were submitted by Moore Engineering. The construction administration portion of the contract was not awarded at that time. It was our intent to bring the construction administration fees to PWPEC and City Commission for consideration once the project was designed and ready for construction, since this was a very large project with many components which could impact the original submitted fees (the original amount anticipated in 2016 was $472,000).

We have attached a detailed revised construction administration submittal based on the current plans.

| | |
|---|---|
| Revised Construction Administration (Moore Engineering) | $565,840.00 |
| Revised Construction Administration (Braun, Structural, Electrical) | $165,000.00 |
| **Total Revised Construction Administration Hourly Not to Exceed:** | **$730,840.00** |

This updated submittal adjusts their hourly rates from 2016 to 2021 and includes the additional cost to implement the federal regulations associated with the Diversion Authority's WIFIA loan requirements. Staff believes that Moore is best suited to provide the construction administration for this project. Staff believes the submitted cost for construction administration is reasonable (approximately 6.3% of construction) and recommends award to Moore due to the efficiencies they will bring to the construction administration since they are the Engineer of Record and the Levee will need to be certified.

Funding will come from the Flood Sales Tax Fund 460.

**Recommended Motion:**

Approve Amendment #4 in the amounts of $143,000 for Design and $730,840 for Construction Administration and Testing to Moore Engineering, Inc., with funding coming from the Flood Sales Tax Fund 460.

REK/klo
Attachments

C: Jody Bertrand, Division Engineer

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moore engineering, inc.

September 23, 2020

Roger Kluck
City of Fargo – Engineering Department
225 4th Street North
Fargo, ND 58102

**RE: City of Fargo Project #FM-165-A0, Cass County Area Flood Mitigation Plan Amendment 4 to Agreement For Engineering Services**

Dear Roger:

Moore Engineering respectfully requests that the City amend the "Agreement for Engineering Services" for the above referenced project. As you are aware, Moore Engineering submitted Amendment No. 3 June 17th. Amendment 3 did not alter the overall design budget, it reduced two design phases by $32,000 and increased one design phase $32,000 for a net $0 change. The detail of Amendment No. 3 is shown below:

| Phase | Phase Title | Orig. Budget | New Budget | Change |
|---|---|---|---|---|
| 112 | Engineering/Design/Plan/Specs/Bid/Utilities/Geotech | $230,000 | $262,000 | +$32,000 |
| 117 | Environmental Assessment | $36,000 | $18,000 | - $18,000 |
| 118 | Hydraulic Analysis of I-29 Storm Sewer System | $16,000 | $2,000 | - $14,000 |
| | Total | $282,000 | $282,000 | $0 |

As stated in the June 17th Amendment No. 3 letter:

*"There was some additional effort through the development of the project that was needed that exceeded the original scope. It was our hope that even with this additional effort we would be able to stay within budget. It now appears that is not possible. As a result, I plan to submit Amendment No. 4 in the coming weeks to successfully bring the design phase of this project to conclusion."*

Amendment No. 4 captures said additional effort as well as a recent levee alignment change. It is our view that this additional effort has resulted in the best possible project design outcome and provides significant value to the City. Amendment No. 4 will bring the design phase of this project to conclusion and consists of the following budget changes:

| Phase | Phase Title | Existing Budget | New Budget | Change |
|---|---|---|---|---|
| 110 | Project Administration/Progress Reports | $38,000 | $50,000 | + $12,000 |
| 112 | Engineering/Design/Plan/Specs/Bid/Utilities/Geotech | $262,000 | $375,000 | +$113,000 |
| 113 | Easement Descriptions/Legal Exhibits | $25,000 | $28,000 | + $3,000 |
| 212 | Engineering/Design/Plan/Specs/Bid/Utilities/Geotech | $88,000 | $103,000 | + $15,000 |
| | Total | $413,000 | $556,000 | $143,000 |

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The description for Amendment No. 4 related to design services is listed below:

- **West levee Redesign**

  - Original levee was intended to tie into a new CR 81 sleeper slab. Fargo requested two road raise options of 895 and 897. Fargo selected 897. Drawings were revised.
  - Road raise design was requested to not remove pavement north of 64th Ave N. Road raise high point was shifted south. Levee alignment shifted to match new CR 81 high point. Drawings were revised.
  - Fargo originally provided directions on placement of levee from 64th Ave Section line, to match similar directions for the east levee along 52nd Ave. Later, it was realized that the property east of 45th St. had been platted in the past. The right of way had been widened and a 10-foot private utility easement had been created. West of 45th St was an existing 22-foot wide sanitary forcemain. Fargo requested the levee to be shifted south so that the levee clear zone was outside the existing easements.
  - Fargo requested exhibits showing possible future ballfield locations shifted as far south as possible for discussions with the Park District.
  - Fargo requested the levee be designed with 3.5:1 slopes and a levee segment shifted north to minimize impacts to future ballfields. Drawings were revised.
  - Fargo requested the levee side slopes be changed back to 4:1 and another levee segment shifted north. Drawings were revised.
  - Levee west of CR 81 had an original design with a top elevation of 897. Fargo requested this segment have a top of 894. Fargo requested multiple levee design revisions for the segment between CR 81 and I-29. Some of these revisions were the result of Fargo's discussions with BNSF and the NDDOT. Moore's drawings were revised multiple times.
  - Due to various levee revisions, from elevations to alignments, multiple proposed levee easements were provided to Fargo.
  - Original CR 81 detour plan diverted traffic west of I-29. Fargo later requested detour plan use I-29. Drawings were revised.
  - Fargo eliminated the CR 81 road raise. Drawings were revised. CR 81 detour plan was eliminated.
  - Levee was originally requested to have a top elevation of 897. Due to freeboard requirements allowing a lower top of levee, Fargo requested the top of the west levee be lowered to 895. Drawings were revised.
  - Fargo requested various exhibits for use in discussions with the county, township, BNSF, NDDOT and Airport Authority.
  - Additional surveying was required to due road raise or levee alignment changes.
  - NDDOT required the levee within the I-29 right of way to not exceed side slopes of 10:1. Drawings were revised.
  - When alignments and elevations were changed, the design revisions included redesigns of the civil drawings, new plan and profile sheets, new inspection trench profiles, cross-section sheets, new topsoil stripping extents/limits, clear zone line updates, rewrite of easement descriptions, changes to culvert lengths, changes to gatewell concrete structural drawings and details, changes to County Road 81

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vertical curve design and tie-in drawings, change to vertical curve design for 45th street change, and recalculations of associated quantities.

- **Realignment of the West end of 64th Ave and levee at County Road 81**

  - Fargo requested a realignment of 64th Ave N, which was not part of the original scope of work. Drawings were revised.
  - Fargo provided direction to allow CR 81 pavement removal north of 64th Ave as a result of the road raise. Drawings were revised.
  - Fargo eliminated the realignment of 64th Ave N so that it could be installed in a future project. Drawings were revised.
  - The Office of State Engineer permit application was updated.
  - Summary: The City provided the original levee alignment which ran parallel to 64th Ave and tied into CR 81 at an angle. After completion of the design and civil drawings, the City requested that the tie-in of both 64th Ave and the levee be perpendicular to CR 81. This required a redesign of the west end of both the levee and 64th Ave in order to swing the angle of both alignments to the South. This work required changes to the vertical curve at CR 81, changes to the design contours and drawings, changes to plan and profile sheets for both the levee and 64th Ave, inspection trench profile changes, culvert length and location changes, and other related tasks. After the design work was complete, the realignment of 64th Ave was abandoned, but the realigned levee was kept. The easements were also kept to allow for a future realignment of 64th Ave.

- **25th Street vertical curve change**

  - Fargo emailed an example FAA 163 clearance document and requested a similar document package. Moore commenced working on the request before Fargo confirmed the request was not needed.
  - Moore recommended designing a 25th St road raise using 5% slopes and was informed that was acceptable. Fargo later requested a vertical curve design. Drawings were revised. Surface corridor on CAD had to be changed manually.
  - Changes required a vertical curve design, changes to design contours and drawings, update to plan sheets, and other related tasks.

- **West levee alignment change to follow West side of Harwood Lagoons**

  Near the conclusion of the design, it was decided to abandon the levee tie-in with CR 81 immediately South of 64th Ave in favor of turning the levee South to follow the West side of the Harwood lagoons and tying into CR 81 at the Southwest corner of the lagoons. This required additional topographic survey, design of the levee and inspection trench along the new alignment, new civil drawings and contours, addition and update of plan and profile sheets, changing location and design of gatewell No. 3 and related coordination with structural, new easement descriptions, quantity calculations and estimate of cost changes, floodplain model and report updates,

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OSE permit application amendment, changes to County MOU exhibit for CR 81, and other related items.

- **County Highway 81 Culvert Closure Improvements**

  Future operation plans were originally discussed for the County Highway 81 centerline culverts to be manually blocked during times of flooding with clay barriers or sandbags. Near the conclusion of the design, the City directed Moore to update the bid documents to include gated closures for existing centerline culverts between 40th Ave and the Harwood lagoons. This additional effort included culvert removals under County Highway 81 and related pavement removal, design of new culverts, design of pavement patches for open cut construction, updates to drawings, updates to underground utility and removal plan sheets, updates to sediment & erosion control and paving sheets, new striping plans, and creation of pavement marking sheets and other related tasks.

- **Lift station design options**

  After preliminary design efforts, Moore proposed a lift station facility to the City consisting of a single structure. The City directed Moore to develop a two structure lift station design for reasons of function and cost. Analysis and design was completed for the two structure option. Ultimately, a version of the original single structure proposal was chosen by the City. This effort required additional coordination with Fargo staff on lift station options, including a concrete dam option, preliminary layouts using CAD, additional meetings held at Fargo's engineering office, consultation with structural and geotechnical engineers and analysis of cost differences.

- **Decommissioning of existing lift station**

  Upon final design, it was determined that decommissioning of the existing Drain 10 lift station south of 40th Ave would be decommissioned with the current project. This required updated SIBs and add removal sheet. Drawings from two separate past projects were reviewed for the existing lift station and for a separate gatewell vault to detail the necessary scope of work to list on the removal sheet. Coordination of the decommissioning design with Fargo was necessary to determine the extent of the desired scope of work.

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**Listed below is a summary of cost associated with the additional design effort and enclosed is the supporting detail.**

| | |
|---|---|
| West levee redesign from 897.00 to 895.00 | $47,790 |
| Realignment of the West end of 64th Ave and levee at County Road 81 | $31,105 |
| 25th Street vertical curve change | $8,090 |
| West levee alignment change to follow West side of Harwood Lagoons | $30,425 |
| County Highway 81 Culvert Closure Improvements | $8,440 |
| Lift station design options | $14,265 |
| Decommissioning of existing lift station | $2,885 |
| **TOTAL** | **$143,000** |

**Amendment No. 4 Construction Services**

As a continuation of the project the City of Fargo has requested that Moore Engineering, Inc. provide consulting services for the construction of the project. An estimate of cost for construction services was originally provided to the City at the time of solicitation. The original estimate was based on a multitude of assumptions due to the large number of unknowns at that time. Through the course of project development a final construction plan and bid documents were ultimately developed which provide a clear picture of both the timeline and effort associated with the construction contract administration. Below is the detail of services we feel are required and timelines assumed using information provided by the contract documents.

**Oversight, Contract Administration, Progress Payment Estimates, and Reports**

The Construction services phase of this project began in September of 2020 and the project has a final completion date of July 1, 2022. In terms of contract administration, the timeline assumption is therefore 22 months (September 2020 through June 2022). Throughout this 22 month period, there will be periods of active construction and periods of no construction activity. However, an average weekly effort was estimated based on the consulting requirements needed for the successful completion of construction. This effort captures the typical contract administration tasks provided by both the lead engineer and project manager. These tasks include but are not limited to the following:

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- Correspondence and meetings as needed with the owner, contractors, sub-consultants, agencies, other government units, utility companies, landowners, and any other communication necessary for the completion of construction.
- Administration of the construction contract including preparation of progress payments, preparation of construction change orders, contractor and owner meetings and correspondence to discuss contractual requirements/disagreements, monthly construction progress reports to the City of Fargo, and all other tasks required of the engineer by the construction contract documents for the administration of the project.

We estimate the time required to complete this task will require an average of 6 hours a week from the lead engineer and 2 hours a week from the project manager over the course of the 22 month construction contract period.

**On-site Inspection & Inspection Supervision**

The Construction services phase of this project began in September of 2020 and the project has a final completion date of July 1, 2022. Throughout this 22 month period, there will be periods of active construction and periods of no construction activity. The active construction periods will require a full time Resident Project Representative (RPR) and lead inspector to assist the RPR. At this time, it is assumed that the active construction months will be October through December of 2020 and May 2021 through January 2022. It is possible that some of these assumptions could change depending on the contractor's effort. Regardless, this proposal assumes 12 months of active construction requiring a full time RPR and lead inspector to provide supervision. This effort captures the typical tasks provided by both the RPR and lead inspector. These tasks include but are not limited to the following:

- Daily observation of construction activities including documentation and reporting of all work completed.
- Correspondence with the lead engineer and City of Fargo as needed regarding all construction related activities and questions.
- Communication, coordination, and meetings with the owner, contractors, sub-consultants, agencies, other government units, utility companies, landowners, and any other communication necessary for the completion of construction.
- Assistance with administration of the construction contract including measurement of items for payment, assisting with preparation of progress payments and preparation of construction change orders, participation in contractor and owner meetings and correspondence to discuss contractual requirements/disagreements, and all other tasks required of the RPR and lead inspector by the construction contract documents for the administration of the project.

We estimate the time required to complete this task will require an average of 40 hours a week from the RPR and 8 hours a week from the lead inspector over the 12 month active construction period. Built into this estimate is the assumption that some weeks will require significantly more hours than 40 and other weeks will require fewer due to weather related events or other contractor driven circumstances.

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**Construction Topo Surveys, Quantity Calculations, Construction Staking and Layout**

The construction services phase of this project began in September of 2020 and the project has a final completion date of July 1, 2022. Throughout this 22 month period, there are specific substantial completion dates for the two major construction elements of the project; the levee and lift station. The substantial completion date for the levee is October 15, 2021 and the substantial completion date for the lift station is February 15, 2022. As a result, of these completion dates, the duration of time for topo surveys and construction staking is assumed to be 9 months. This effort captures the typical tasks provided by a survey crew, CAD technician, and engineer for collecting earthwork topo surveys, calculating earthwork quantities, and completion of construction staking.

During the course of construction, survey and drafting efforts will be required for the purpose of construction related staking, measurement of earthwork, and calculation of earthwork quantities. The City of Fargo is requiring three separate surveys and associated CAD efforts to measure quantities for the purpose of constructing the levee. One of these survey's, the existing ground survey, is already complete but may need to be supplemented with additional shots. These survey efforts are as follows:

1. Existing Ground Survey. Under this task, the topo already collected will be reviewed and supplement with additional topo/ground shots prior to the start of construction.

2. Post inspection trench fill survey. After the topsoil has been stripped, the inspection trench has been excavated, and the inspection trench has been filled, a topo survey will be completed and the volume of earthwork to fill the inspection trench will be calculated via CAD.

3. Post clay levee construction survey. After the clay levee has been constructed, a topo survey will be completed and the volume of earthwork to construct the clay levee will be calculated via CAD.

Additional spot checks for inspection trench depth and topsoil spreading will be completed by the RPR.

In addition to the surveys related to the measurement of earthwork associated with the levees, additional survey and CAD services will be required for the following

1. Construction staking

2. Road raise measurement and payment

3. Lift Station preload measurement and payment

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We estimate the time required to complete these tasks will require an average of 8 hours a week from a survey crew, 4 hours a week from a CAD technician, and 1 hour a week from an engineer over the 9 month duration of active construction dominated by earthwork.

**Proposed Cost for Construction Services**

The proposed cost for completing the construction services required for the project is summarized are follows:

| | |
|---|---|
| Shop Drawing Reviews | $4,560 |
| Utility Company Coordination | $3,040 |
| Oversight, Contract Administration, Progress Payment Estimates, and Reports | $134,640 |
| Record Drawings | $8,040 |
| Construction Topo Surveys, Quantity Calculations, Construction Staking and Layout | $96,840 |
| On-site Inspection & Inspection Supervision | $318,720 |
| Subconsultants (Geotechnical testing, structural/electrical/mechanical inspection) | $165,000 |
| **Total** | **$730,840** |

Enclosed is a spreadsheet with additional detail.

Thank you for your consideration of this amendment. It is our firm belief that these efforts resulted in the best possible project outcome and we are excited to see this project through construction and to reality.

Sincerely,
**MOORE ENGINEERING, INC.**

Chad L. Engels

Chad L. Engels, PE
Senior Project Manager

enclosures

# AMENDMENT NO. 4
# CITY OF FARGO
# ENGINEERING SERVICES AGREEMENT
# City of Fargo Project #FM-16-AO

**Project Name:** **Cass County 20 Area Flood Mitigation Project**
Fargo, North Dakota

**Scope of Work**

Add the following:

12. Additional Services. The City desired to have the engineer perform additional services throughout the design phase of the project. These additional services included the following:

    a. West levee redesign (alignment and elevation changes)
    b. Realignment of the West end of 64th Ave and levee at County Road 81
    c. 25th Street vertical curve change
    d. West levee alignment change to follow West side of Harwood Lagoons
    e. County Highway 81 culvert closure improvements
    f. Lift station design options
    g. Decommissioning of existing lift station

    A. Task Order No. 1 *Part 5. Payments to Engineer* and *Contract Amendment #2* shall be amended by increasing the *"Revised Design Phase I (Levee)"* from $462,000 to $590,000 and the *"Revised Location Phase II (Lift Station)"* from $190,000 to $205,000.

13. Construction Services. The City desires to have the engineer perform construction services for the project. After completion of the design, the construction scope of services and duration has become better defined and the original assumptions have changed. Construction service include the following:

    a. Shop drawing reviews
    b. Utility company coordination
    c. Oversight, contract administration, progress payment estimates, and reports
    d. Record drawings
    e. Construction topo surveys, quantity calculations, construction staking and layout
    f. On-site inspection & inspection supervision
    g. Sub-consultants (geotechnical testing, structural/electrical/mechanical inspection)

    A. Task Order No. 1 *Part 5. Payments to Engineer* and *Contract Amendment #2* shall be amended by deleting *"Revised Construction Admin. Phase I (Levee)"* for $297,000 from the contract, deleting *"Revised Construction Admin. Phase II (Lift Station)"* for $155,000 from the contract, and adding *"Revised Construction Administration"* for $730,840 to the contract.

The revised design and construction administration estimate shall be:

| Category of Services | Estimate |
|---|---|
| Revised Design Phase I (Levee) | $590,000 |
| Revised Location Phase II (Lift Station) | $205,000 |
| **Total Revised Design (hourly, not to exceed)** | **$795,000** |
| Revised Construction Administration | $730,840 |
| **Total Revised Construction Administration (hourly, not to exceed)** | **$730,840** |
| **TOTAL CONTRACT VALUE** | **$1,525,840** |

The additional design services for the project results in a net increase of $143,000.00 to the contract. The new construction budget results in a net increase of $278,840 to the contract. The total contract net increase is $421,840.

**IN WITNESS WHEREOF,** this amendment to the original Task Order has been executed this 24th day of September, 2020.

WITNESS: _____

MOORE ENGINEERING INC.

_____
Chad L. Engels, PE
Senior Project Manager

WITNESS: _____

CITY OF FARGO

By _____
Tim Mahoney, Mayor

REPORT OF ACTION

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE (10)

Type: Cass County MOU

Location: Cass County Highway 81 Date of Hearing: 9/28/2020

| Routing | Date |
|---|---|
| City Commission | 10/5/2020 |
| PWPEC File | X |
| Project File | Nathan Boerboom |

The Committee reviewed a communication from Division Engineer, Nathan Boerboom, regarding a Memorandum of Understanding for Cass County Highway 81 with Cass County.

The past few years has seen growth in the industrial area north of 40th Avenue North, east of I-29. Recent growth has been adjacent to Cass County Highway 81 (CR81), which is currently owned and maintained by Cass County. Continued growth will eventually lead to CR81 being annexed into the City. Once annexed, the City will be responsible for the long-term maintenance and right of way management of CR81.

A Memorandum of Understanding has been created and provides a full description of all the responsibilities, as well as three specific trigger points that will result in sections of CR81 right of way being annexed into the City.

Staff is recommending approval of the Memorandum of Understanding.

On a motion by Ben Dow, seconded by Steve Sprague, the Committee voted to recommend approval of the Memorandum of Understanding regarding Cass County Highway 81 with Cass County.

RECOMMENDED MOTION
Concur with the recommendations of PWPEC and approve the Memorandum of Understanding regarding Cass County Highway 81 with Cass County.

PROJECT FINANCING INFORMATION:
Recommended source of funding for project: N/A

| | 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:

Brenda E. Derrig, P.E.
City Engineer

THE CITY OF Fargo
FAR MORE

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Fargo, ND 58102
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Email feng@FargoND.gov
www.FargoND.gov

# Memorandum

**To:** Members of PWPEC

**From:** Nathan Boerboom, Division Engineer

**Date:** September 22, 2020

**Re:** Memorandum of Understanding with Cass County for Cass County Highway 81

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The past few years has seen continued growth in the industrial area north of 40th Avenue North, east of Interstate 29. Recently this growth has been adjacent to Cass County Highway 81 (CR81), which is owned and maintained by Cass County. It is expected that this growth will continue to occur, which will eventually lead to CR81 being annexed into the City. Once annexed, the City will be responsible for the long term maintence and right of way management of CR81.

Knowing that CR81 will eventually be turned over to the City, staff has been having discussions with the County on what responsibilities the City should take over immediately, the trigger points for CR81 to be annexed into the City, as well as the responsibilities the County will continue to complete until the right of way is annexed into the City. A quick example of these items include:

- County responsibilities
  - Road maintenance, drainage, repair and/or reconstruction
  - Snow removal north of 44th Avenue North
- City responsibilities
  - Control future access points onto CR81
  - Right of way management including approving public and private utility locations
  - Installation of street lights or traffic signals, as deemed necessary by the City
  - Snow removal south of 44th Avenue North

The attached MOU provides a full description of all the responsibilities, as well as three specific trigger points that will result in sections of CR81 right of way being annexed into the City. The specific points are:

1. Land east of CR81 from 40th Avenue North to 44th Avenue North annexed into the City
2. Land east of CR81 from 44th Avenue North to 52nd Avenue North annexed into the City
3. Land east of CR81 from 52nd Avenue North to 64th Avenue North annexed into the City

**Recommended Motion:**

Approve the Memorandum of Understanding regarding Cass County Highway 81 with Cass County.

MEMORANDUM OF UNDERSTANDING REGARDING CASS COUNTY HIGHWAY 81

This Memorandum of Understanding ("MOU") is entered into between the City of Fargo, a North Dakota municipal corporation whose address is 225 Fourth Street North, Fargo, North Dakota 58102 ("City" or "Fargo"), and Cass County, North Dakota, a North Dakota political subdivision, whose address is 211 9th Street South, Fargo, North Dakota 58103 ("Cass County").

**WHEREAS**, North Dakota Century Code § 40-05.1-6 and Article 3 of Fargo's Home Rule Charter authorizes Fargo to enter into contracts; and

**WHEREAS**, North Dakota Century Code § 11-09.1-05 and Article 2 of Cass County's Home Rule Charter authorizes the Cass County to enter into contracts; and

**WHEREAS**, Development on Fargo's north side has resulted in the need for expanded use of existing Cass County Highway 81 ("CR81") and modifications to the road to accommodate the increased traffic anticipated from such expansion; and

**WHEREAS**, Cass County currently owns and maintains CR 81, and pursuant to the terms of this MOU will allow Fargo to immediately enter into the right of way for the purposes of Right of Way Management, including but not limited to, establishing Access Control and Utility Permitting from 40th Avenue N to 64th Avenue N in accordance with the Fargo Land Development Code in existence at the time of the development; and

**WHEREAS**, City and County wish to enter into this Agreement for the purpose of establishing the parties' responsibilities with respect to CR81 as annexation of land by the City occurs adjacent to CR81, and to permit the City to exercise a greater level of responsibility and control from 40th Avenue N to 64th Avenue N prior to annexation of CR81 right of way. In anticipation of the future annexation by the City, segments of CR81 shall become right of way of the City once annexation progresses as follows: (1) east side of CR81 from 40th Avenue N to 44th Avenue N; (2) east side of CR81 from 44th Avenue N to 52nd Avenue N; and (3) east side of CR81 from 52nd Avenue N to 64th Avenue N.

**NOW THEREFORE**, in consideration of the mutual terms, covenants, conditions, and agreements contained herein, it is hereby agreed by and between the parties as follows:

1. Maintenance, Striping and Signage. The parties agree that Cass County is presently responsible for the maintenance, striping and signage of CR81. Cass County agrees it will continue to maintain CR81 to acceptable standards until such time as the east side of the roadway is annexed into the City.

2. Drainage. Cass County agrees and understands that it remains responsible for drainage maintenance associated with CR81 until such time it is annexed by the City.

3. Snow Removal. The parties agree that Cass County shall be primarily responsible for snow removal on CR81 from 44th Avenue North to 64th Avenue North, and that City shall have no responsibility for the same. The parties further understand and agree that City shall be primarily responsible for snow removal on CR81 between 40th Avenue North and 44th Avenue North, but in no event will Cass County be prevented from entering, accessing or removing snow from this stretch of CR81 in the event Cass County is able to address the snow conditions in advance of City. There shall be no remuneration for snow removal completed by either party.

4. Repair or Reconstruction. Cass County shall be responsible for contracting and paying for a concrete rehabilitation project of CR81, including a crack and seal project and an asphalt overlay in advance of annexation. However, should annexation be imminent and the City determines that urbanization of CR81 is warranted, and Cass County has not already completed the concrete rehabilitation of CR81, then Cass County agrees to cost participate in the City project to the extent that Cass County would have incurred costs to complete the concrete rehabilitation of CR81.

5. Access Control. City shall be responsible for reviewing and approving all new access points on CR 81 from 40th Avenue North to 64th Avenue North. The determination on acceptable access locations shall be made by the City in accordance with its Land Development Code. All costs associated with designing and constructing any and all new access points in the previously described segment of CR81 shall be the City's responsibility. The City shall provide completed designs to Cass County twenty (20) days in advance of bid advertisement for concurrence of the design specifications. If Cass County fails to make any timely design comments within such period, the City shall provide written notice to Cass County of such failure to respond. If Cass County fails to provide design comments within ten (10) business days following such notice from the City, the design shall be deemed to be approved. Cass County agrees to maintain the road improvements installed by City until the road is annexed by City.

6. Right of Way Management and Utility Permitting. City shall be responsible for all Right of Way Management responsibilities associated with and adjacent to CR81 from 40th Avenue North to 64th Avenue North for purposes of reviewing and approving locations of both private and public utilities. Actual permitting of private and public utilities will remain with the County until CR81 right of way becomes located within the City, at which time it will become the responsibility of the City. The County shall not approve any permits without written concurrence from the City. Any fees and costs collected by the County associated with utility permitting shall remain with the County.

7. Street Lights and Traffic Signals. Cass County agrees to permit City to design and install street lights and/or traffic signals within CR81 right of way from 40th Avenue North to 64th Avenue North and appropriate access points thereto. City shall be responsible for all installation and maintenance costs of all street lights and traffic signals installed. The locations of any street lights or traffic signals shall be at the sole discretion of the City.

8. Speed Limits. City shall have authority to establish the appropriate speed limit on CR81 from 40th Avenue North to 64th Avenue North, taking into account the anticipated development and resulting increased traffic. City shall undertake an appropriate traffic study and provide the data to Cass County for review and concurrence of the proposed speed limit modifications. Cass County agrees to provide approved speed limit signage in accordance with applicable standards.

9. Dispute Resolution.

a. Fargo and Cass County will each designate a representative who will be the party's representative with respect to any matters relating to the repair and/or maintenance of the elements identified in this MOU which may be in dispute or requiring agreement under the terms of this Agreement. Such representative may be changed from time to time. The representatives will be responsible for resolving any dispute between the parties concerning this Agreement and for the scheduling of maintenance and repairs.

b. If the designated representatives cannot agree with respect to any matter requiring agreement or with respect to any dispute concerning this Agreement, the parties will submit the matter to their respective Boards (or a committee established by the Board) to resolve the dispute.

10. Easements. Each party will grant to the other party any and all necessary easements to enable the other party to perform their obligations under the terms of this Agreement.

11. Term. The term of this Agreement will be twenty (20) years, with an expiration date of December 31, 2040. This Agreement will automatically renew for successive periods of twenty (20) years unless CR81 is annexed into the City from 40th Avenue to 64th Avenue N and this agreement is thus terminated by operation of law.

12. Release and Waiver. In consideration of the mutual promises of the parties and to the fullest extent permitted by law, each party assumes all risk of personal injury or death and property damage or loss from whatever causes arising while that party, its agents, employees or designees are conducting work pursuant to this MOU and each party releases the other party, its officers, employees, agents or designees relating to or arising out of that parties', agents, employees or designees work pursuant to this MOU, whether known or unknown, foreseen or unforeseen, liquidated, unliquidated, fixed, contingent, material or immaterial, disputed or undisputed, suspected or unsuspected, asserted or unasserted, direct or indirect, at law or in equity, from the beginning of time, and each party understands and acknowledges the significance of such release and waiver and hereby assumes full responsibility for any injuries, damages or losses that it may incur as a result of its execution of this MOU.

13. Notice. Any notice or election required or permitted to be given or served by any party to this MOU upon any other will be deemed given or served in accordance with the provisions of this MOU if said notice or election is (a) delivered personally, or (b) mailed by United States certified mail, return receipt requested, postage prepaid, and in any case properly addressed as follows:

If to Fargo:

City of Fargo
ATTN: City Auditor
Fargo City Hall
225 Fourth Street North
Fargo, ND 58102

If to Cass County:
ATTN: County Administrator
211 9th Street South
Fargo, ND 58103

Each such mailed notice or communication will be deemed to have been given on the date the same is deposited in the United States mail. Each such delivered notice or communication will be deemed to have been given upon the delivery. Any party may change its address for service of notice in the manner specified in this MOU.

14. Time is of the Essence. Time is of the essence of each provision of this entire MOU and of all the conditions thereof.

15. Entire Agreement. This MOU constitutes the entire and complete agreement between the parties and supersedes any prior oral or written agreements between the parties. It is expressly agreed that there are no verbal understandings or agreements which in any way change the terms, covenants and conditions set forth herein, and that no modification of this MOU and no waiver of any of its terms and conditions will be effective unless in writing and duly executed by the parties.

16. Amendments. No amendment, modification, or waiver of any condition, provision or term will be valid or of any effect unless made in writing signed by the party or parties to be bound, or a duly authorized representative, and specifying with particularity the extent and nature of such amendment, modification or waiver.

17. No Forbearance. The failure or delay of any party to insist on the performance of any of the terms of this MOU, or the waiver of any breach of any of the terms of this MOU, will not be construed as a waiver of those terms, and those terms will continue and remain in full force and effect as if no forbearance or waiver had occurred and will not affect the validity of this MOU, or the right to enforce each and every term of this MOU.

18. Remedies. Except as expressly and specifically stated otherwise, nothing herein will limit the remedies and rights of the parties under and pursuant to this MOU.

19. Binding Effect. All covenants, agreements, warranties and provisions of this MOU will be binding upon and inure to the benefit of the parties and their respective representatives, successors and assigns.

20. Governing Law. This MOU has been made and entered into under the laws of the State of North Dakota, and said laws will control its interpretation. Any litigation arising out of this MOU will be venued in State District Court in Cass County, North Dakota, and the parties waive any objection to venue or personal jurisdiction.

21. Rules of Construction. The parties acknowledge that they have had the opportunity to review this MOU, and that they have an equal bargaining position in this transaction. No rule of construction that would cause any ambiguity in any provision to be construed against the drafter of this document will be operative against any party to this MOU.

22. Representation. The parties, having been represented by counsel or having waived the right to counsel, have carefully read and understand the contents of this MOU, and agree they have not been influenced by any representations or statements made by any other parties.

23. Headings. Headings in this MOU are for convenience only and will not be used to interpret or construe its provisions.

(Signatures appear on the following pages)

Dated this _____ day of October, 2020.

CITY OF FARGO, NORTH DAKOTA, a municipal corporation

By:_____

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

ATTEST:

_____

Steve Sprague, City Auditor

Dated this ____ day of October, 2020.

CASS COUNTY, NORTH DAKOTA

_____

Chad M. Peterson, Board Chairman

ATTEST:

_____

Mike Montplaisir, Finance Director

THE CITY OF Fargo
FAR MORE

**Engineering Department**
225 4th Street North
Fargo, ND 58102
Phone: 701.241.1545 | Fax: 701.241.8101
Email feng@FargoND.gov
www.FargoND.gov

(11)

October 1, 2020

Honorable Board of City
Commissioners
City of Fargo
Fargo, North Dakota

Re: Acknowledgment and Consent to Collateral Assignment of Development Agreement with Ryan Fargo, LLC

Dear Commissioners:

Presented to you for approval is an Acknowledgment and Consent to Collateral Assignment of the Development Agreement dated September 8, 2020. The agreement is being requested by the Developer's lending institution to ensure that the work to be completed will be done so in accordance with City Standards and Specifications to secure its interest in the Development Property. The agreement has been reviewed with the City Attorney's office and we are recommending approval.

RECOMMENDED MOTION
Move to approve the Acknowledgment and Consent to Collateral Assignment of the Development Agreement and authorize the Mayor to sign the same.

Respectfully,

Brenda E. Derrig, P.E.
City Engineer

BED
Attachments

**ACKNOWLEDGMENT AND CONSENT TO COLLATERAL ASSIGNMENT OF DEVELOPMENT AGREEMENT**

THIS ACKNOWLEDGMENT AND CONSENT TO COLLATERAL ASSIGNMENT OF DEVELOPMENT AGREEMENT (this "Consent") by the **CITY OF FARGO**, a North Dakota municipal corporation (the "City") is dated effective as of [_____], 2020 (the "Effective Date").

1. **Acknowledgment of Assignment**. The City acknowledges that RYAN FARGO, LLC, a Delaware limited liability company ("Assignor") has, pursuant to that certain Collateral Assignment of Development Agreement dated of even date herewith (the "Assignment"), collaterally assigned all its Development Rights (as such term is defined in the Assignment) in and to the Development Agreement (as such term is defined in the Assignment) to **ACORE CAPITAL MORTGAGE, LP**, a Delaware limited partnership (together with its successors and/or assigns, "Assignee"), in its capacity as Administrative Agent for and on behalf of the Lenders from time to time party to the Loan Agreement (as such term is defined in the Assignment). All capitalized terms used and not otherwise defined in this Consent shall have the meaning ascribed to such terms in the Assignment.

2. **Consent**. The City hereby consents to Assignor's execution and delivery of the Assignment.

3. **Estoppel**. The City certifies, represents, warrants, covenants and agrees that neither the Property nor the Assignor are in default under the Development Agreement beyond any applicable cure period set forth therein, and no event has occurred which, with the giving of notice or passage of time, or both, would result in a default thereunder.

4. **Agreements**. The City hereby agrees (a) that Assignee shall have the sole and exclusive right to exercise any and all of the Developer Rights during the existence of an uncured Event of Default under, and as defined in, the Loan Agreement, and (b) that upon foreclosure by Assignee, Lender or any respective nominee thereof, or upon execution of a deed in lieu of foreclosure of the Property (or any part thereof), Assignee, Lender, such nominee, or other purchaser at a foreclosure sale, in each case, which party shall succeed to the interest of Assignor in and to the Property (each, a "Successor Developer"), shall succeed (and be entitled) to all right, title and interest of Assignor under the Development Agreement, including any benefits, incentives, infrastructure improvements and other agreements and covenants of the City accruing thereunder, and such foreclosure or other transfer of the Property to a Successor Developer shall not impair or terminate the obligations of the City under the Development Agreement.

[signature page follows]

**IN WITNESS WHEREOF**, the City has caused this Consent to be duly executed and delivered under seal as of the Effective Date.

**CITY OF FARGO,**
a North Dakota municipal corporation

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

ATTEST:

By:_____
Name: Steve Sprague
Title: City Auditor

STATE OF NORTH DAKOTA §
§
COUNTY OF CASS §

On this _____ day of _____, 2020, before me, a notary public in and for said county and state, personally appeared Timothy J. Mahoney, M.D. and Steven Sprague, to me known to be the Mayor and City Auditor, respectively, of the City of Fargo, Cass County, North Dakota, the municipal corporation described in and that executed the within and foregoing instrument, and acknowledged to me that said municipal corporation executed the same.

[S E A L]

_____
Notary Public
Cass County, ND
My Commission expires: _____

# ACKNOWLEDGMENT AND CONSENT TO COLLATERAL ASSIGNMENT OF DEVELOPMENT AGREEMENT

THIS ACKNOWLEDGMENT AND CONSENT TO COLLATERAL ASSIGNMENT OF DEVELOPMENT AGREEMENT (this "Consent") by the **CITY OF FARGO**, a North Dakota municipal corporation (the "City") is dated effective as of [_____], 2020 (the "Effective Date").

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2. **Consent**. The City hereby consents to Assignor's execution and delivery of the Assignment.

3. **Estoppel**. The City certifies, represents, warrants, covenants and agrees that neither the Property nor the Assignor are in default under the Development Agreement beyond any applicable cure period set forth therein, and no event has occurred which, with the giving of notice or passage of time, or both, would result in a default thereunder.

4. **Agreements**. The City hereby agrees (a) that Assignee shall have the sole and exclusive right to exercise any and all of the Developer Rights during the existence of an uncured Event of Default under, and as defined in, the Loan Agreement, and (b) that upon foreclosure by Assignee, Lender or any respective nominee thereof, or upon execution of a deed in lieu of foreclosure of the Property (or any part thereof), Assignee, Lender, such nominee, or other purchaser at a foreclosure sale, in each case, which party shall succeed to the interest of Assignor in and to the Property (each, a "Successor Developer"), shall succeed (and be entitled) to all right, title and interest of Assignor under the Development Agreement, including any benefits, incentives, infrastructure improvements and other agreements and covenants of the City accruing thereunder, and such foreclosure or other transfer of the Property to a Successor Developer shall not impair or terminate the obligations of the City under the Development Agreement.

[signature page follows]

**IN WITNESS WHEREOF**, the City has caused this Consent to be duly executed and delivered under seal as of the Effective Date.

**CITY OF FARGO,**
a North Dakota municipal corporation

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

ATTEST:

By:_____
Name: Steve Sprague
Title: City Auditor

STATE OF NORTH DAKOTA §
§
COUNTY OF CASS §

On this _____ day of _____, 2020, before me, a notary public in and for said county and state, personally appeared Timothy J. Mahoney, M.D. and Steven Sprague, to me known to be the Mayor and City Auditor, respectively, of the City of Fargo, Cass County, North Dakota, the municipal corporation described in and that executed the within and foregoing instrument, and acknowledged to me that said municipal corporation executed the same.

[S E A L]

_____
Notary Public
Cass County, ND
My Commission expires: _____

**Development and Assessment Agreement**
**North Industrial Addition**

This DEVELOPMENT AND ASSESSMENT AGREEMENT (this "Agreement"), is made and entered into this 31st day of August, 2020 (the "Effective Date") between RYAN FARGO, LLC, a Delaware limited liability company (together with its affiliates and their respective successors and assigns, the "Developer"), and the City of Fargo, a North Dakota municipal corporation, (the "City"). The City and the Developer are sometimes referred to herein collectively as the "Parties" and each individually as a "Party".

## RECITALS

A. Developer has the right, but is not by this Agreement obligated, to acquire certain real property consisting of approximately 107.46 acres of undeveloped land located in [Cass] County, North Dakota, as more particularly described on Exhibit A attached hereto and incorporated by reference herein (the "Development Property").

B. If Developer acquires the Development Property, it has proposed to establish on the Development Property a large-scale facility containing warehouse, storage and distribution facilities and office space (the "Project").

C. The Parties desire to incorporate their understandings and the City's assurances with respect to the Project into this Agreement

NOW, THEREFORE, in consideration of the foregoing recitals and mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and the Developer hereby agree as follows:

1. Prior to the time the Developer commences the Developer Infrastructure Improvements (as hereinafter defined), Developer shall hold all right, title and interest in and to the Development Property. Notwithstanding anything in the foregoing to the contrary, nothing in this Section 1 shall preclude the Developer from commencing work on the Developer Infrastructure Improvements pursuant to permits issued by the City or other jurisdictions exercising authority over such work prior to the time the Developer has acquired the Development Property.

2. Developer shall, at its sole cost and expense, fund installation of the following public improvements (the "Developer Infrastructure Improvements") in each case as described and depicted on Exhibit B attached hereto and incorporated by reference herein:
    a. Design and construction of a paved road and associated utilities to be known as 44th Avenue North on or before August 1, 2021, pursuant to mutually acceptable plans and specifications.

Additionally, the Developer agrees to grant an easement to the City adjacent to 37th Ave for a stormwater pipe extension from Drain 10. The location of the easement and the form of the easement agreement shall be mutually acceptable to the Developer and the City. The City agrees that the Developer Infrastructure Improvements are the Developer's sole obligations with respect to offsite infrastructure improvements and Developer shall have no other obligations with respect to the same.

3. City shall fund installation of the following public improvements (the "City Infrastructure Improvements") in each case as described and depicted on Exhibit B:
   a. Design, acquisition of required easements, and installation of a storm sewer extension from Drain 10 to the Development Property on or before August 1, 2021 pursuant to mutually acceptable plans and specifications.

   b. Design, acquisition of required easements, and installation of a watermain extension along County Road 81 from 44th Avenue North to 40th Avenue North on or before July 15, 2021 pursuant to mutually acceptable plans and specifications.

   c. Installation of street lighting along 40th Avenue North, which may be deferred by the City in the City's sole discretion.

   d. Design and construction of turn lanes and intersection improvements at (i) the intersection of 40th Avenue North and Interstate 29 in the event the same is deemed warranted by the North Dakota Department of Transportation, and (ii) the intersection of 40th Avenue North and County Road 81 in each case on or before August 1, 2021 pursuant to mutually acceptable plans and specifications.

   e. Design, acquisition of requirement easements, and construction related to widening of County Road 81, which may be deferred by the City for any reason or no reason in the City's sole discretion.

   f. Design, acquisition of requirement easements, and construction related to intersection improvements at 40th Ave North and 37th Street North, which may be deferred by the City for any reason or no reason in the City's sole discretion.

The Parties acknowledge and agree that the City may, in its reasonable discretion, fund the City Infrastructure Improvements described in Section 3a, Section 3b and Section 3c by following its Infrastructure Funding Policy. The Parties further acknowledge and agree that the City will fund the City Infrastructure Improvements described in Section 3d above by levying a special assessment against only the Development Property, and shall not be protested by the Developer. The City covenants and agrees that the completion of the City

Infrastructure Improvements and the Developer Infrastructure Improvements shall not be a condition to the issuance of a Certificate of Occupancy or equivalent thereof for the Project.

4. The Developer will directly contract for engineering and construction services for the Developer Infrastructure Improvements and will make direct payment for such services. The Developer's contractor(s) and engineer(s) must be licensed under the laws of the State of North Dakota, and otherwise be responsible bidders as reasonably determined by the City.

5. The Developer shall be responsible for compliance with all applicable City construction standards and specifications, including but not limited to compliance with the City of Fargo Requirements for Engineering Services on Public Construction Projects, dated April 2015, as modified from time to time by the City Engineering.

6. The City shall have no obligation, liability, or responsibility for any payment obligation arising from the Developer Infrastructure Improvements. In no event will the City be responsible for any payments related to the Developer Infrastructure Improvements, including payments for additional work or payments for costs occasioned by unforeseen or changed conditions encountered during the work. All work must comply with applicable provisions of the City of Fargo - Standard Specifications for Construction. The Developer shall have no obligation, liability, or responsibility for any payment obligation arising from the City Infrastructure Improvements, except as provided for herein. In no event will the Developer be responsible for any payments related to the City Infrastructure Improvements, including payments for additional work or payments for costs occasioned by unforeseen or changed conditions encountered during the work.

7. The Developer will make an Infrastructure Request for the Developer Infrastructure Improvements prior to construction. The Developer agrees that once construction of the Developer Infrastructure Improvements commences, the Developer is obligated to complete the Developer Infrastructure Improvements at the Developer's sole risk and expense.

8. The Developer agrees to furnish to the City plans for the Developer Infrastructure Improvements for review at specified intervals. The City shall review the plans for consistency and compliance with the City Standard Specifications for Construction. The City shall expedite review of all such plans and the City shall have the right to make design comments within ten (10) business days following receipt of such plans. If the City fails to make any timely design comments within such period, the

Developer shall provide written notice to the City of such failure to respond. If the City fails to provide design comments within five (5) business days following receipt of such notice from the Developer, the plans shall be deemed to be approved. Review by the City of plans for the Developer Infrastructure Improvements shall not be construed as an endorsement of the design, which is Developer's sole responsibility.

9. The Developer understands and agrees that the City shall have the right to inspect the Developer Infrastructure Improvements during construction of the same and that the City reserves the right to reject portions of the Developer Infrastructure Improvements if the same do not comply with the terms, conditions and limitations set forth in this Agreement. The City agrees to identify any deficiencies in the Developer Infrastructure Improvements in writing, and Developer agrees to correct and/or repair such deficiencies to the City's reasonable satisfaction within ninety (90) days from the City's notice of rejection, unless a longer time is agreed to in writing. City reserves the right to remedy the Developer Infrastructure Improvements deficiencies and assess the Development Property for the cost, in accordance with the terms herein.

10. City will not accept any responsibility or obligations for the Developer Infrastructure Improvements until final approval of the same by the City pursuant to the procedures detailed in Section 24 and Section 25 below. The City agrees to accept the Developer Infrastructure Improvements provided design and construction of the same are compliant with all terms, conditions and limitations set forth herein. The City shall not unreasonably withhold, delay or condition its acceptance of the Developer Infrastructure Improvements. The City agrees it will be responsible for all operation and maintenance requirements of the Developer Infrastructure Improvements and the City Infrastructure Improvements upon completion and acceptance of the same, and for all public infrastructure located in public right of way, including without limitation for sanitary sewers, water mains, storm sewer, streets, street lights, and signage upon final acceptance by the City.

11. Developer agrees to pay City 4% of the actual cost of the Developer Infrastructure Improvements as an oversight fee.

12. The City shall conduct inspections throughout the construction process to gage compliance with the City Standard Specifications for Construction. The City agrees that it shall not unreasonably interfere with the work being performed by the Developer during such inspections.

13. The Developer agrees to indemnify, release and hold harmless the City against all claims which allege that the City is liable to the claimant by reason of any injury to or

death of any person, or damage to or loss of property, arising out of or resulting from the construction of the Developer Infrastructure Improvements in the public right-of-way of 44th Avenue North to the extent caused by any negligent or wrongful act or omission of the Developer or its agents, contractors, employees or any other person or entity for whose conduct the Developer is legally responsible. Notwithstanding anything to the contrary in this Section 12, the Parties agree that the Developer shall have no obligation to indemnify the City for the negligent or intentional acts of the City or its agents, contractors, employees or any other person or entity for whose conduct the City is legally responsible.

14. Developer shall require Developer's licensed contractor to name the City as an additional insured and shall provide the City with proof of such insurance before commencing any construction activities.

15. Start of work. Developer's inspector shall notify the City Engineer no later than forty-eight (48) hours prior to the commencement of work on the Developer Infrastructure Improvements. The City shall further be notified forty-eight (48) hours in advance of the commencement of underground utilities in connection with the Developer Infrastructure Improvements, and be provided the opportunity to inspect installations prior to backfilling occurring

16. All barricades and traffic control measures installed by or on behalf of Developer in connection with the Developer Infrastructure Improvements shall comply with the latest edition of the Manual on Uniform Traffic Control Devices, http://mutcd.fhwa.dot.gov/pdfs/2009/pdf_index.htm.

17. Hours of Work. Developer shall be permitted to work twenty-four (24) hours per day, seven (7) days per week. City represents and warrants that no applicable law prevents the Developer from performing work twenty-four (24) hours per day, seven (7) days per week. Developer is cognizant of the noise level associated with construction activities, and will work to curtail especially loud construction activities before 7:00 a.m. and after 7:00 p.m.

18. Reports. Developer's Engineer reports shall be filed in the City Engineer's office bi-weekly for the portion of the Developer Infrastructure Improvements described in the report.

19. Timing and Rate of Development. The City acknowledges that as of the Effective Date, the Developer cannot predict if, when or at what rate the development of the Project will occur, which will depend upon numerous factors, including factors outside

of the control of the Developer, such as market orientation and demand, competition, availability of qualified laborers and weather conditions. Accordingly, the Developer may develop the Project in such order and at such rate and times as the Developer deems appropriate in its sole and absolute discretion, which the City agrees is consistent with the intent, purpose and understanding of the Parties. Nothing in this Agreement shall be construed to require the Company to proceed with developing the Project or any portion thereof.

20. Term. The term of this Agreement (the "Term") shall commence on the Effective Date and continue until terminated in accordance herewith. Prior to commencement of construction of the Developer Infrastructure Improvements, the Developer may at any time and for any reason terminate this Agreement automatically upon notice thereof to the City. Following commencement of construction of the Developer Infrastructure Improvements, the Developer shall not have the right to terminate this Agreement until completion of the Developer Infrastructure Improvements and acceptance of the same by the City in accordance with the terms and conditions of this Agreement.

21. Testing.
    a. Certification: Testing performed by the Developer or a testing company for the Developer shall be done under the supervision of a Registered Professional Engineer and certified by the same. Testing shall be done in accordance with appropriate ASTM: AASHTO or other recognized Standards.

    b. Test Results: Results of all field tests shall be recorded on the daily inspection report. The inspection report shall note any samples taken for laboratory tests and the location that said samples were taken and any field or visual inspections made on said samples when they were taken.

    c. Testing Requirements: Developer shall submit a proposed testing schedule to the City Engineer. The schedule shall designate the testing firm responsible for performing the necessary tests. Developer shall designate the number and types of tests necessary to ensure compliance.

22. City shall conduct a televised video inspection and report of all gravity, sanitary and storm sewer installed by the Developer in connection with the Developer Infrastructure Improvements. Paving may not commence until City accepts the underground Infrastructure Improvements.

23. City covenants and agrees that building permits can be issued while the Developer Infrastructure Improvements and the City Infrastructure Improvements are being constructed, since the site will have access from 37th Street. Utility connection from the private site to the Developer Infrastructure Improvements and the City Infrastructure Improvements, as applicable, cannot occur until such improvements have passed all testing and are fully and finally accepted by City.

24. Default. In the event of a default of this Agreement, the non-defaulting Party shall provide written notice of the default to the defaulting Party and shall specify a period of not less than fifteen (15) days during which the defaulting Party shall have the right to cure such default; provided, however, that such cure period may be extended if (i) the default cannot reasonably be cured within the cure period provided in such notice, (ii) the curing Party notifies the non-defaulting Party of such fact by no later than the end of the cure period provided in the notice, (iii) the curing Party has theretofore been diligent in pursuing the cure and (iv) the curing Party in such extension notice covenants to (and thereafter actually does) diligently pursue the cure to completion. If the defaulting Party fails to cure the default, the non-defaulting Party may either (a) terminate this Agreement and seek damages from the defaulting Party or (b) enforce this Agreement by the remedy of damages or specific performance or both. Except in the case of gross negligence, bad faith or willful misconduct, for which claims for consequential damages are expressly reserved by the Parties, each Party hereby waives all claims against the other Party for any consequential or indirect damages that may arise out of or relate to this Agreement.

25. Force Majeure. If due to the occurrence of a Force Majeure Event a Party is unable to meet any obligation hereunder, then the deadline for performing such obligation shall be automatically extended by one (1) day for each day of such Force Majeure Event; provided that such Party shall diligently and in good faith act to the extent within its power to remedy the circumstances of such Force Majeure Event affecting its performance or to complete performance in as timely a manner as is reasonably possible. For purposes of this Agreement, "Force Majeure Event" means a matter beyond the reasonable control of the Party to perform (excluding unfavorable economic conditions), including: acts of God, earthquakes, fire, floods, tornados, hurricanes and extreme weather conditions; acts of terrorism; financial and/or banking crises that limit normal extensions of credit; civil disturbances; pandemic or epidemic; discovery of hazardous materials; and acts of the United States of America or the State of North Dakota.

26. Acceptance Procedures and Requirements of Final Acceptance. Upon completion of the Developer Infrastructure Improvements, Developer shall submit a written final

inspection request, indicating substantial completion. Developer shall include as-built plans and specifications, shall note any deficiencies and indicate intended course and timing of resolution. City will schedule a final inspection. The Developer Infrastructure Improvements shall be clean and free of debris at the time of inspection. Water valve boxes, curb stops, manholes and inlets shall be exposed. The condition of paving, boulevards, street lights, signing and all other public infrastructure shall also be assessed. City Engineer, with the aid of the Street and Water Departments, will complete a listing of items requiring remedial action (punch list) noted during the inspection.

27. Inspection Report. A report shall be compiled, bound, and submitted to the City Engineer. The report shall include sequential copies of all daily reports, weekly reports, material tests, field diaries and survey notes. The report shall also include a copy of the final inspection report and indication that punch list items have been completed and accepted. City shall provide a Certificate of Acceptance letter upon final acceptance of the Infrastructure Improvements.

28. Developer shall deliver to the City all Operations and Maintenance manuals and/or Maintenance Crew Training Specifics in advance of final acceptance. The Developer may assign its rights and obligations under this Agreement to any (i) affiliate controlling, controlled by or under common control with the Developer without the City's prior consent (and upon such assignment the assigning entity shall be relieved of its covenants, commitments and obligations hereunder) or (ii) subsequent owner of all or any portion of the Development Property with the City's prior written consent, such consent not to be unreasonably withheld, conditioned or delayed. If the Developer sells the Development Property in its entirety and assigns its rights and obligations hereunder to its successor in title to the Development Property with the City's prior written consent, then the Developer shall be relieved of all of its covenants, commitments and obligations hereunder.

29. Warranty. The Developer's applicable subcontractor(s) will remain responsible for maintenance, repair, and deficiency corrections for the Developer Infrastructure Improvements during the warranty period, which shall be one year from the date of City acceptance, provided for in the Developer's contracts with the applicable subcontractor(s). Developer shall assign all such warranties to the City at the time of final acceptance.

30. Developer agrees that failure to secure acceptance from the City of the Developer Infrastructure Improvements may result in the establishment of a special assessment district pursuant to Chapter 40-22 of the North Dakota Century Code for the purpose of financing the completion of the Developer Infrastructure Improvements to the

City's approval standards. The Developer waives its right to protest the resolution of necessity for the improvements for which such resolutions are required pursuant to North Dakota Century Code section 40-22-17, and specifically consents to the construction of the improvements and to the assessment of cost thereof to the Development Property. The Developer further waives its right to protest the amount, benefit or any other assessment attribute related to the installation and construction of the Developer Infrastructure Improvements. Project costs which may be assessed against the Development Property include all costs of completing the construction of the Developer Infrastructure Improvements. The Developer expressly agrees to release the City and its officers, employees, agents, representatives and contractors from any and all liability, losses, damages, claims, demands, actions, judgments and executions arising out of or regarding the manner of creation of such special assessment district and the levying of special assessments against the Development Property.

31. Acknowledgment of Limited Access for Fire and Police. The Developer acknowledges that during the course of construction of the Developer Infrastructure Improvements, there shall be limited access to the right-of-way upon which such Developer Infrastructure Improvements will be constructed for fire and police protection services. The Developer releases the City and its officers, employees, agents and representatives from any and all liability, losses, damages, claims, demands, actions, judgments and executions arising out of or regarding such limited access.

32. Governing Law. This Agreement will be construed and enforced in accordance with North Dakota law. The parties agree any litigation arising out of this Agreement will be venued in District Court in Cass County, North Dakota, and the parties waive any objection to personal jurisdiction.

33. No Forbearance. The failure or delay of either Party to insist on the performance of any of the terms of this Agreement, or the waiver of any breach of any of the terms of this Agreement, will not be construed as a waiver of those terms, and those terms will continue and remain in full force and effect as if no forbearance or waiver had occurred and will not affect the validity of this Agreement, or the right of either Party to enforce each and every term of this Agreement.

34. Severability. If any court of competent jurisdiction finds any provision or part of this Agreement is invalid, illegal, or unenforceable, that portion will be deemed severed from this Agreement, and all remaining terms and provisions of this Agreement will

remain binding and enforceable, and the parties' obligations under this Agreement will remain binding and enforceable.

35. Time is of the Essence. Time is of the essence of all the Parties' respective obligations under this Agreement.

36. Entire Agreement. This Agreement, together with any related documents, as well as any amendments to those agreements and documents, constitutes the entire agreement between the parties regarding the matters described in this Agreement.

37. No Third-Party Beneficiaries. The only parties to this Agreement are the City and the Developer. There are no third-party beneficiaries under this Agreement, and except for assignees and successors-in-interests to either Party, this Agreement shall not be construed to benefit or be enforceable by any other party whatsoever.

38. Counterparts. This Agreement may be executed in as many counterparts as may be deemed necessary and convenient, and by the Parties in separate counterparts, each of which, when so executed, shall be deemed an original, but all such counterparts shall constitute one and the same instrument. A scanned or photocopy signature on this Agreement, any amendment hereto or any notice delivered hereunder shall have the same legal effect as an original signature.

39. Modifications. Any modifications or amendments of this Agreement must be in writing and signed by both parties to this Agreement.

**[Signature Pages Follow.]**

Developer

Dated: 9-8-2020

RYAN FARGO, LLC, a Delaware limited liability company

By: RYAN-RCS MEMBER LLC, a Delaware limited liability company

Its: Sole Member

By: RYAN COMPANIES US, INC., a Minnesota corporation

By: [signature]

Its: VP of Engineering

STATE OF ND )
) ss.
COUNTY OF Cass )

On this 8 day of September, 2020, before me, a notary public in and for said county and state, personally appeared Jared Olson, known to me to be the identical person who subscribed (his/her) name to the foregoing as VP of Ryan Companies US, Inc., a Minnesota corporation, sole member of Ryan-RCS Member LLC, a Delaware limited liability company, as the sole member of Ryan Fargo, LLC, a Delaware limited lability company, and acknowledged the execution thereof to be (his/her) voluntary act and deed and the voluntary act and deed of said company.

LINDA L. STEWART
Notary Public
State of North Dakota
My Commission Expires Aug. 18, 2023

(SEAL)

[signature]
Notary Public

City of Fargo, a North Dakota
Municipal Corporation

Dated: 9/8/20

Timothy J. Mahoney, M.D., Mayor

ATTEST:

Steve Sprague, City Auditor

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

On this 8 day of Sept, 2020, before me, a notary public in and for said county and state, personally appeared Timothy J. Mahoney, M.D. and STEVEN SPRAGUE, to me known to be the Mayor and City Auditor, respectively, of the City of Fargo, Cass County, North Dakota, the municipal corporation described in and that executed the within and foregoing instrument, and acknowledged to me that said municipal corporation executed the same.

MICHELLE R. VANYO
Notary Public
State of North Dakota
My Commission Expires Oct. 26, 2021

(SEAL)

Notary Public
Cass County, ND
My Commission expires:

# EXHIBIT "A"

## Development Property

Parcel 1:
The East Half of Section Fifteen, Township One Hundred Forty North of Range Forty-nine West of the Fifth Principal Meridian, Cass County, North Dakota, lying East of the Burlington Northern Railroad right of way; EXCEPTING therefrom the following tracts: Auditor's Lot One of the Northeast Quarter of Section Fifteen, Township One Hundred Forty North of Range Forty-nine West of the Fifth Principal Meridian, Cass County, North Dakota; (2): Auditor's Lot One of the Southeast Quarter of Section Fifteen, Township One Hundred Forty North of Range Forty-nine West of the Fifth Principal Meridian, Cass County, North Dakota; (3) The North 689 feet of the South 1524 feet of the East 632 feet of the Southeast Quarter of Section Fifteen, Township One Hundred Forty North of Range Forty-nine West of the Fifth Principal Meridian, Cass County, North Dakota; and (4) A tract of land located in the Southeast Quarter of Section Fifteen, Township One Hundred Forty North of Range Forty-nine West of the Fifth Principal Meridian, Cass County, North Dakota; described as follows: Beginning at a found iron monument at the intersection of the North right-of-way line of County Road Number 20 and the Westerly right-of-way of Highway Number 81; thence on an assumed bearing of South 87°40'14" West, along the North right-of-way line of County Road Number 20 for a distance of 205.77 feet to a found iron monument; thence North 79°13'51" West along the North line of I-29 interchange for a distance of 386.21 feet to a found iron monument; thence continuing North 79°13'51" West along said right-of-way for a distance of 152.39 feet; thence North 29°04'04" West, parallel with the Burlington Northern Railroad tracks for a distance of 1,381 feet, more or less, to a point on the Westerly right-of-way Highway Number 81; thence Southeasterly along said highway right-of-way to the point of beginning.

Parcel 2:
Auditor's Lot One of the Northeast Quarter of Section Fifteen, Township One Hundred Forty North of Range Forty-nine West of the Fifth Principal Meridian, Cass County, North Dakota:

Parcel 3:
Auditor's Lot One of the Southeast Quarter of Section Fifteen, Township One Hundred Forty North of Range Forty-nine West of the Fifth Principal Meridian, Cass County, North Dakota.

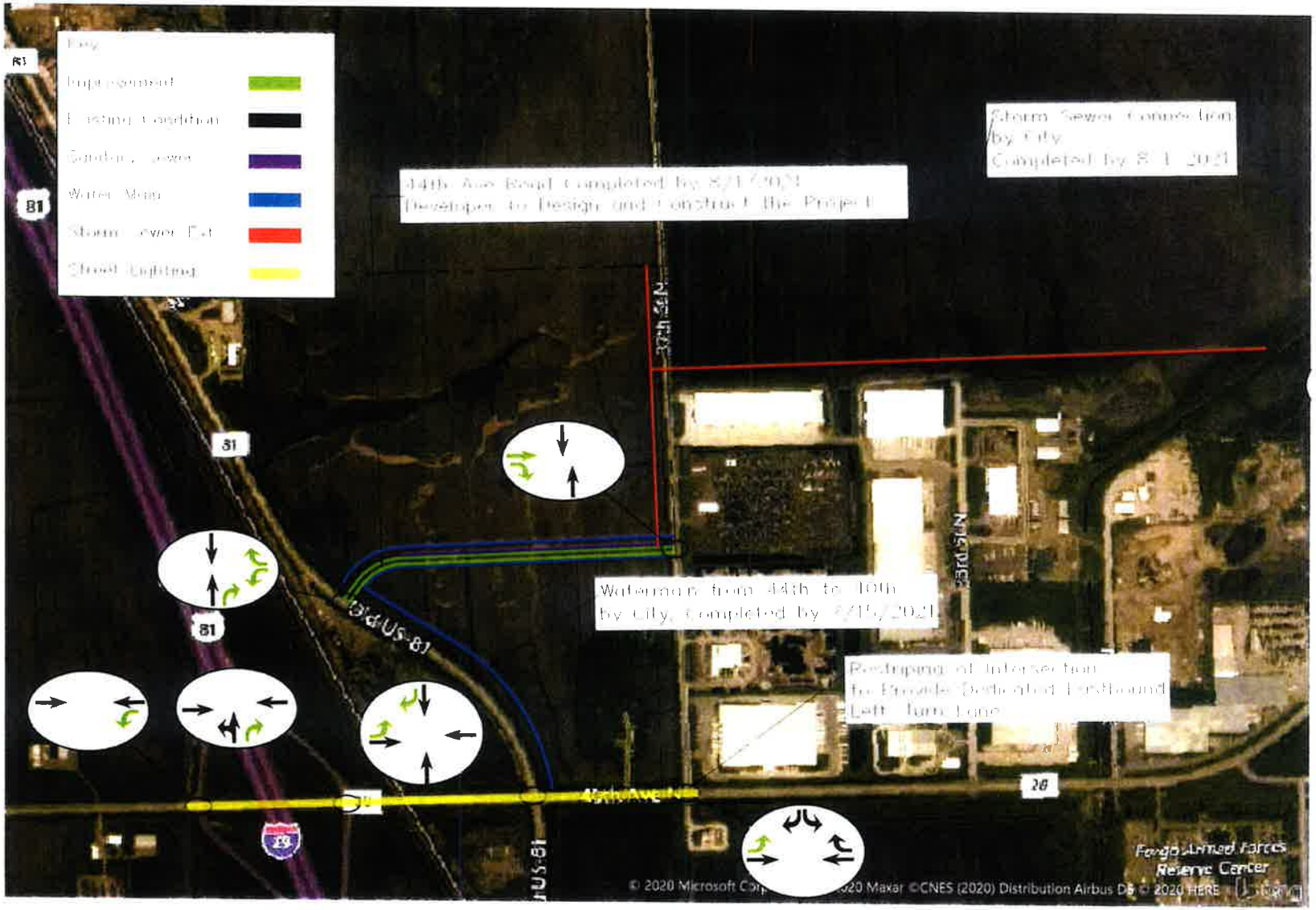
To be platted as follows:

Lot 1, Block 1, North Fargo Industrial Addition to the City of Fargo, Cass County, North Dakota

EXHIBIT "B"

Developer Infrastructure Improvements and City Infrastructure Improvements

**[Refer to the attached]**




Industrial Site - Fargo • Offsite Improvement Exhibit • 09.02.2020

**MEMORANDUM OF AGREEMENT**
**REGARDING DEVELOPMENT AGREEMENT**

**THIS IS A MEMORANDUM OF AN AGREEMENT**, made and entered by and between "Developer", and the City of Fargo, a North Dakota municipal corporation, "City", for the purpose of cooperative development of infrastructure, including installation of public improvements for ("Project") located (Legal) "Development Property", more fully described in Exhibit "A."

The parties have entered into an Agreement Regarding Addition Development and Assessments dated as of the 8 day of Sept., 2020, (hereinafter referred to as the "Agreement") concerning certain property situate in the City of Fargo, Cass County, North Dakota, more fully described in Exhibit "A" attached hereto ("Development Property").

1. As a part of said Agreement, Developer will design and construct Infrastructure Improvements in the Development Property.

2. As a further part of the Agreement, Developer agrees to assessment of the Development Property, as follows:

Developer agrees that failure to secure acceptance from City of the Infrastructure Improvements may result in the establishment of a special assessment district for the purpose of financing the completion of the Infrastructure Improvements to City's approval standards. City will levy special assessments against the Development Property to recover all costs of the Project, in accordance with Chapter 40-22 of the North Dakota Century Code. Developer waives its right to protest the resolution of necessity for the improvements for which such resolutions are required pursuant to North Dakota Century Code section 40-22-17, and specifically consents to the construction of the improvements and to the assessment of cost thereof to the Development Property. Developer further waives its right to protest the amount, benefit or any other assessment attribute related to the installation and construction of the Infrastructure Improvements. Project costs which may be assessed against the Development Property include all costs of completing the construction of the Infrastructure Improvements.

3. This Memorandum Agreement incorporates by reference all the other terms and provisions of the Agreement above-described, a copy of said Agreement being on file at the office of the City Auditor, Fargo City Hall, 225 North Fourth Street, Fargo, North Dakota.

4. The property that is the subject of the Agreement is the Development Property, above-described.

5. As provided in said Agreement, all provisions of said Agreement shall be deemed binding upon the successors and assigns of the parties hereto, including any Purchaser of any of the Development Property, in accordance with the terms thereof. Developer agrees to apprise any buyers or intended assigns of the existence and content of the Agreement.

Developer

Dated: 9-8-20

By: Dan Mueller
Its: VP of Development

STATE OF ~~NORTH DAKOTA~~ Minnesota )
) ss.
COUNTY OF ~~CASS~~ Hennepin )

On this 8th day of ~~September~~ 2020, before me, a notary public in and for said county and state, personally appeared Dan Mueller, to me known to be the persons described in and that executed the within and foregoing instrument.

(SEAL)




Notary Public
~~Cass County, ND~~
Hennepin County, MN

City of Fargo, a North Dakota
Municipal Corporation

Dated: 9/8/20

Timothy J. Mahoney, M.D., Mayor

ATTEST:

Steve Sprague, City Auditor

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

On this 8 day of Sept., 2020, before me, a notary public in and for said county and state, personally appeared Timothy J. Mahoney, M.D. and STEVEN SPRAGUE, to me known to be the Mayor and City Auditor, respectively, of the City of Fargo, Cass County, North Dakota, the municipal corporation described in and that executed the within and foregoing instrument, and acknowledged to me that said municipal corporation executed the same.

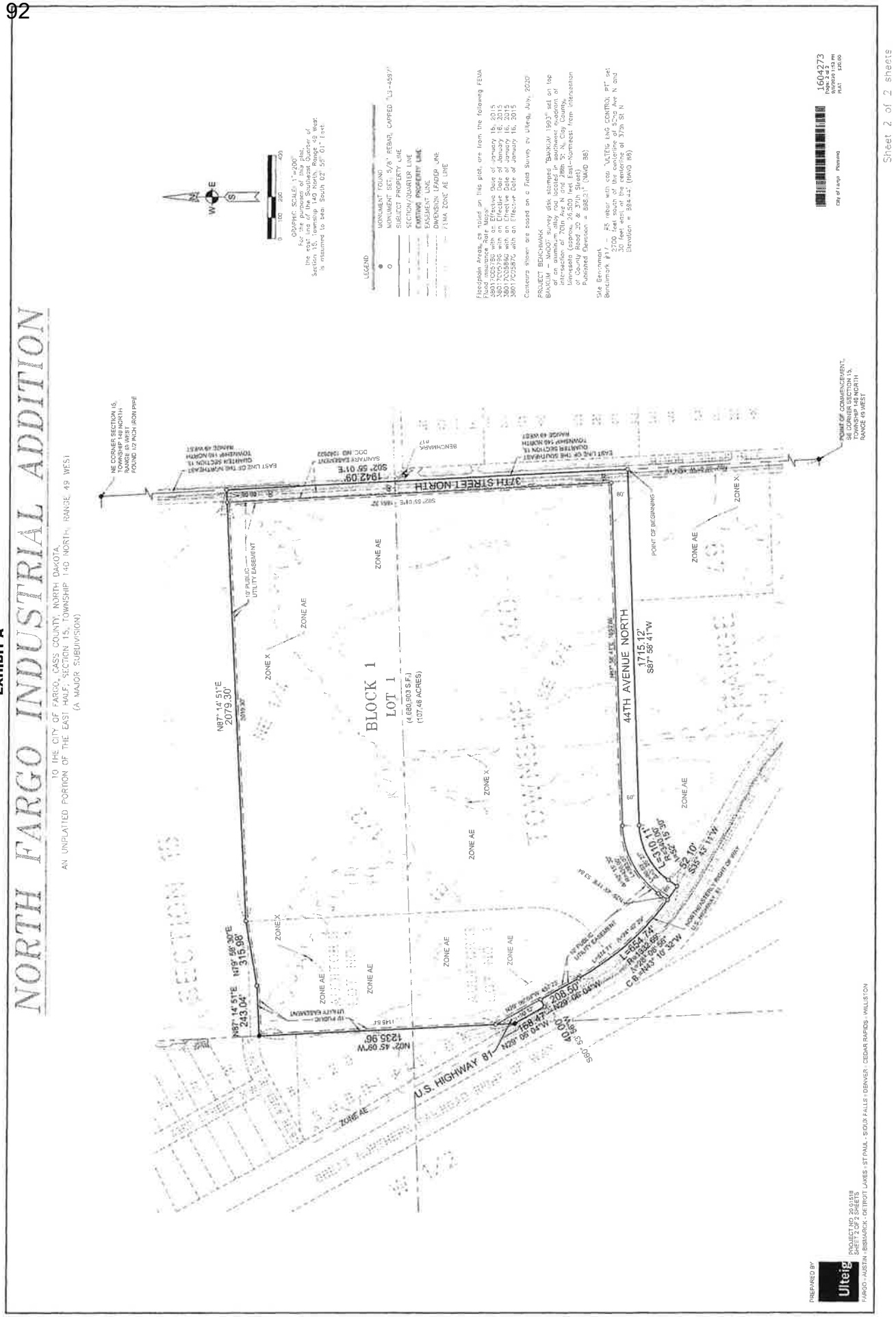
MICHELLE R. VANYO
Notary Public
State of North Dakota
My Commission Expires Oct. 26, 2021

(SEAL)

Michelle R Vanyo

Notary Public
Cass County, ND
My Commission expires:

**EXHIBIT A**


NORTH FARGO INDUSTRIAL ADDITION
TO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA,
AN UNPLATTED PORTION OF THE EAST HALF, SECTION 15, TOWNSHIP 140 NORTH, RANGE 49 WEST
(A MAJOR SUBDIVISION)
LEGEND
MONUMENT FOUND
MONUMENT SET, 5/8" REBAR, CAPPED "LS-4537"
SUBJECT PROPERTY LINE
SECTION/QUARTER LINE
EXISTING PROPERTY LINE
EASEMENT LINE
DIMENSION LEADER LINE
FEMA ZONE AE LINE
GRAPHIC SCALE: 1"=200'
For the purposes of this plat, the east line of the Southeast Quarter of Section 15, Township 140 North, Range 49 West is assumed to bear South 02° 55' 01" East
Floodplain Areas, as noted on this plat, are from the following FEMA Flood Insurance Rate Maps:
38017C0578G with an Effective Date of January 16, 2015
38017C0579G with an Effective Date of January 16, 2015
38017C0586G with an Effective Date of January 16, 2015
38017C0587G with an Effective Date of January 16, 2015
Contours shown are based on a Field Survey by Ulteig, July, 2020
PROJECT BENCHMARK
BM#10M – NDDOT Survey disk stamped "BM#10M 1993" set on top of an aluminum alloy rod located in southwest quadrant of intersection of 25th Street North and 40th Avenue North, Minnesota (approx. 26,500 feet East-Northeast from intersection of County Road 20 & 37th Street)
Published Elevation = 898.21' (NAVD 88)
Site Benchmark
Benchmark #1 – #5 rebar with cap "ULTEIG ENG CONTROL PT" set 2700 feet south of the centerline of 52nd Ave N and 30 feet east of the centerline of 37th St N
Elevation = 884.44 (NAVD 88)
1604273
Page 2 of 2
9/4/2020 1:53 PM
City of Fargo Planning
PREPARED BY
Ulteig
PROJECT NO. 20.01518
SHEET 2 OF 2 SHEETS
FARGO • AUSTIN • BISMARCK • DETROIT LAKES • ST PAUL • SIOUX FALLS • DENVER • CEDAR RAPIDS • WILLISTON
NE CORNER SECTION 15, TOWNSHIP 140 NORTH, RANGE 49 WEST FOUND 1/2 INCH IRON PIPE
EAST LINE OF THE NORTHEAST QUARTER OF SECTION 15, TOWNSHIP 140 NORTH, RANGE 49 WEST
SANITARY EASEMENT DOC. NO. 1383533
BENCHMARK #12
SOUTH LINE OF THE SOUTHEAST QUARTER OF SECTION 15, TOWNSHIP 140 NORTH, RANGE 49 WEST
POINT OF COMMENCEMENT, SE CORNER SECTION 15, TOWNSHIP 140 NORTH, RANGE 49 WEST
37TH STREET NORTH
S02° 55' 01"E 1942.09'
S02° 55' 01"E 1951.32'
POINT OF BEGINNING
10' PUBLIC UTILITY EASEMENT
N87° 14' 51"E 2079.30'
BLOCK 1
LOT 1
(4,680,903 S.F.)
(107.46 ACRES)
44TH AVENUE NORTH
S87° 58' 41"W 1715.12'
60'
ZONE AE
ZONE X
N87° 14' 51"E 243.04'
N79° 56' 30"E 315.98'
N02° 45' 09"W 1235.96'
U.S. HIGHWAY 81
N29° 06' 04"W 168.47'
208.50'
400.51'
L=554.74'
R=1932.69'
Δ=16° 26' 56"
CB=N43° 10' 32"W
L=310.11'
R=1932.69'
Δ=9° 11' 40"
CB=N33° 52' 56"W
52.10'
S35° 43' 11"W
NORTHWESTERN RIGHT OF WAY U.S. HIGHWAY 81
10' PUBLIC UTILITY EASEMENT
1145 SF

THE CITY OF Fargo
FAR MORE

(12)

**Engineering Department**
225 4th Street North
Fargo, ND 58102
Phone: 701.241.1545 | Fax: 701.241.8101
Email feng@FargoND.gov
www.FargoND.gov

October 1, 2020

Honorable Board of City
Commissioners
City of Fargo
Fargo, North Dakota

Re: Amended and Restated Encroachment Agreement with Block 9 Partners LLC

Dear Commissioners:

On September 28, 2020 the Public Works Project Evaluation Committee approved the terms of an agreement with Block 9 Partners LLC to amend and restate the current Encroachment Agreement for the Plaza. We have been working with Block 9 Partners LLC and have the majority of the agreement wording and exhibits completed with some remaining minor adjustments.

Attached you will find the ROA from PWPEC and the draft Amended and Restated Encroachment Agreement.

**RECOMMENDED MOTION:**
Approve the Amended and Restated Encroachment Agreement with Block 9 Partners LLC in substantially similar form.

Respectfully,

Brenda E. Derrig, P.E.
City Engineer

BED/klo
Attachment

# REPORT OF ACTION

## PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Type: Amended and Restated Encroachment Agreement

Location: Block 9 Plaza

Date of Hearing: 9/28/2020

| Routing | Date |
|---|---|
| City Commission | 10/5/2020 |
| PWPEC File | X |
| Project File | Kevin Gorder |

The Committee reviewed communication from Division Engineer, Kevin Gorder, regarding an Amended and Restated Encroachment Agreement for the Block 9 Plaza. The Amended Agreement reflects responsibilities in the right of way as the Plaza has had design modifications since the last agreement.

Staff is recommending approval of the Agreement for the Plaza work in the public right of way.

On a motion by Kent Costin, seconded by Tim Mahoney, the Committee voted to recommend approval of the Amended and Restated Encroachment Agreement.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve the Amended and Restated Encroachment Agreement.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: N/A

| | 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:

Brenda E. Derrig, P.E.
City Engineer

THE CITY OF Fargo
FAR MORE

**Engineering Department**
225 4th Street North
Fargo, ND 58102
Phone: 701.241.1545 | Fax: 701.241.8101
Email feng@FargoND.gov
www.FargoND.gov

# Memorandum

**To:** Members of PWPEC

**From:** Kevin Gorder, Division Engineer

**Date:** September 28, 2020

**Re:** Block 9 Plaza – Amended and Restated Encroachment Agreement

---

Engineering has been working with Block 9 in an effort to amend and restate the current Encroachment Agreement for the Plaza. We feel we are very close to reaching agreement to continue Plaza construction. Attached is a draft agreement that we will continue to fine tune in the next couple days before we send it to Commission for approval.

This amended agreement reflects responsibilities as the Plaza has had design modifications since the last agreement. A separate agreement/license will follow to address the placing of a US Bank sign in this plaza on the public right of way. Details for this sign might take some time to reach agreement and we want to get this agreement processed so construction can continue in the Plaza as winter approaches.

**Suggested motion:**
Approve this draft agreement for the Plaza work in the public right of way.

**AMENDED AND RESTATED**

**ENCROACHMENT AGREEMENT**

**(ADJACENT TO BLOCK NINE PLAZA)**

**THIS AMENDED AND RESTATED ENCROACHMENT AGREEMENT (ADJACENT TO BLOCK NINE PLAZA)** (the "Agreement"), is made and entered into as of the effective date below by and between the **CITY OF FARGO,** a North Dakota municipal corporation [hereinafter "City"] and **BLOCK 9 PARTNERS LLC, a North Dakota limited liability company** [referred to as "Owner"]

**WITNESSETH:**

**WHEREAS,** for background purposes only, and not because said agreement is integral to the interpretation or effectiveness of this Agreement, the City and Block 9 Partners LLC, a North Dakota limited liability company ("Partners") entered into a Development Agreement dated May 23, 2016, as amended [the "Development Agreement"], which contemplated the development, design and construction of the "Project" as defined in said Development Agreement, as "...the Block 9 Garage, the Plaza, the Skyway Work and the Mixed Use Project..." and in which Partners is responsible for performing, or causing others to perform, the design, development and construction of the "Project" in accordance with the Development Agreement; and,

**WHEREAS,** the plaza portion of the Project [the "Plaza"] is located on a parcel of real property described on attached Exhibit A [the "Plaza Parcel"]; and,

**WHEREAS,** the envelope for construction, use and operation of the Plaza extends into a portion of the right-of-way adjacent to the Plaza Parcel on 2nd Avenue North and Broadway Street North; and,

**WHEREAS,** City and Partners entered into that certain Encroachment Agreement (Adjacent to Block Nine Plaza) dated as of August 29, 2018, and recorded in the office of the Cass County Recorder on August 31, 2018, as Doc. No. 1546156 (the "Prior Agreement").

**WHEREAS,** to the extent said Plaza elements extend into the public right-of-way, the parties wish to enter into this Agreement memorializing the terms by which said encroachments are to be allowed, and this Agreement shall wholly, amend, restate, replace and supersede the Prior Agreement;

**NOW, THEREFORE,** in consideration of the mutual terms, covenants, and conditions contained herein, it is hereby agreed by and between the parties as follows:

1. 1. **ENCROACHMENT OF PLAZA ONTO R-O-W.** City hereby grants Owner and its successors and assigns, for the benefit of the Plaza Parcel, the right to encroach upon that part of the Broadway N. and Second Avenue N. rights-of-way described and depicted on attached Exhibit B [the "Encroachment Area"] only for the purposes of installing decorative pavers and decorative concrete, trees, landscaping beds and a storm sewer line, all as shown on attached Exhibit C, together with underground irrigation lines and associated irrigation nozzles and heads and underground electrical lines and associated electrical outlets/receptacles [the "Permitted Encroachments"]. Owner understands and agrees that no signs are currently permitted within the Encroachment Area by this Encroachment Agreement and that if (and only if) fully and finally approved by City through one or more processes provided in City's Land Development Code or through another City administrative procedure under, and subject to, the regular criteria and standards of review therefore, shall any such approved sign become a Permitted Encroachment. Owner shall provide City final design and record drawings ("as builts") in AutoCAD and pdf format by May 30, 2021. City shall engage a competent licensed Professional Engineer to create and draft record drawings if Owner has not submitted by this deadline. The costs of the licensed Professional Engineer to provide record drawings shall be billed to the Owner.

2. The rights granted by City to Owner under this Agreement are subject to the following terms and conditions.

A. A travelable sidewalk must be open at all times. There should never be an event or other obstruction that doesn't allow customary pedestrian travel. Said travel route must be compliant with the Americans with Disability Act ("ADA"), and Public Rights-of-Way Access Guidelines https://www.access-board.gov/guidelines-and-standards/streets-sidewalks/public-rights-of-way/proposed-rights-of-way-guidelines ("PROWAG") as the same is amended from time to time. The requirement to maintain compliance shall be ongoing and to the extent that changes or improvements must be incorporated into the Encroachment Area. Owner shall be responsible for such compliance, changes or

improvements, including without limitation, with respect to unallowed obstructions, the width and shape of passage route and required curb line buffers.

B. The grant of this encroachment will not be interpreted to authorize the sale or consumption of alcoholic beverages on public right of way that is otherwise prohibited by law.

C. Owner acknowledges that a portion of the Encroachment Area serves as a sidewalk for public travel and Owner will be responsible for commercially reasonable maintenance, repair, and replacement of the encroachment features, and shall be responsible for ADA and PROWAG compliance with respect any Permitted Encroachments. If repairs are not made by Owner in a timely and appropriate manner, as reasonably determined by City, City shall repair or replace the offending encroachment feature to City Standards and Specifications, and the cost thereof shall be assessed to the Plaza Parcel. City shall give Owner notice of any deficiency if the same is made known to City by report or observation, and City shall provide a reasonable time to Owner to rectify the concern. In the event of an emergency as determined by City, if repairs are not immediately accomplished by Owner, City shall repair or replace in accordance with City Standards and Specifications.

D. With respect to the removal or demolition of any sidewalk to accommodate the design, installation or repair of the Permitted Encroachments, Owner will pay all costs for such removal, demolition, design and reconstruction and Owner will also pay the reasonable out-of-pocket costs of City, if reasonably necessary, to provide supervision and oversight of such removal and replacement of the sidewalk.

E. Aesthetics. Owner shall be responsible for the aesthetic features of the Permitted Encroachments, including plantings, planters, trees, irrigation, weed eradication, removal and restoration, as well as trash removal and disposal. City shall have no responsibility for the plant materials. Complaints made to City, if any, shall be communicated to Owner and addressed by Owner in a timely and appropriate manner.

F. The owner is responsible for the installation and maintenance of the storm sewer line for the Plaza that is a Permitted Encroachment and is shown on Exhibit C. Owner is responsible for maintaining said storm sewer line from the Plaza to the existing manhole on 2nd Ave near the intersection of the alley. The manhole is labeled as "EX-M6" on Exhibit C.

G. Owner shall have sole responsibility for the electrical components of the Permitted Encroachments, including installation, locating, any and all service charges, and repair and maintenance of the receptacles. The contract with the

electrical service provider shall be in Owner's name; City shall have no responsibility for the power provided to the Plaza. Owner shall ensure no power cords are located in the pedestrian travel path.

H. Owner shall be provided a Right of Way Occupancy Permit from the City for any underground Permitted Encroachments installed in the ROW, at no cost to Owner, and Owner shall comply with any and all requirements of ND One Call with respect thereto and be responsible for all costs associated with ND One Call requirements, including but not limited to electrical, gas, irrigation water service and Fire Hydrant water service.

3. Owner will directly contract for engineering and construction services for the construction and installation of the elements of the Permitted Encroachments within the Encroachment Area. Owner will make direct payment for the services. Owner's contractor(s) and engineer (s) must be licensed under the laws of the State of North Dakota, and otherwise be responsible contractors and engineers as reasonably determined by City.

4. Owner shall be responsible for compliance with all City construction standards and specifications, including but not limited to compliance with the City of Fargo Requirements for Engineering Services on Public Construction Projects, dated April 2015, as modified by the City Engineer [the "City Standards and Specifications"]. All barricades and traffic control measures shall comply with the latest edition of the Manual on Uniform Traffic Control Devices, which can be found at http://mutcd.fhwa.dot.gov/pdfs/2009/pdf_index.htm ["MUTCD Standards and Specifications"].

5. City shall have no obligation, liability, or responsibility for the costs incurred by the Owner to complete the Owner's work under this Agreement, including, but not limited to, contractor and engineering fees. In no event will City be responsible for any payments, including payments for additional work or payments for costs occasioned by unforeseen or changed conditions encountered during the work. Nothing in this paragraph shall be interpreted or construed to limit the City's obligations as set forth in the Development Agreement.

6. Owner agrees that, after written notice and reasonable opportunity to cure, failure to properly construct, maintain, repair or replace the Permitted Encroachments may result in City restoring the Encroachment Area to City Standards and Specifications and assessing the cost to the Plaza Parcel. In such case: (a) Owner waives its right to protest the resolution of necessity for the improvements and restoration or other provisions of NDCC Chapter 40-27 as the same may be amended for which such resolutions are required pursuant to North Dakota Century Code, Section 40-22-17; (b) Owner specifically consents to the restoration of the sidewalk to City Standards and

Specifications upon termination of this Agreement; and (c) Owner further consents to the assessment of cost thereof to the Plaza Parcel and waives any right to protest the benefit or other assessment attributed to the construction. Project costs which may be assessed against the Plaza Parcel include all costs of the improvement that are authorized by North Dakota law, include; NDCC §40-23-05, such as engineering, fiscal agent's and attorney's fees for any services in connection with authorization and financing of the improvement, and all other costs as authorized by law.

7. Owner, its successors and assigns will, during any use of said public right-of-way, use due care to protect city streets, utilities and all other public property, minimize disruption to pedestrian travel in accordance with MUTCD Standards and Specifications.

8. To the extent Owner no longer occupies the Encroachment Area, Owner will remove all Permitted Encroachments and restore the City right of way to City Standards and Specifications, at Owner's cost.

9. It is understood and agreed by and between the parties that Owner, its successors and assigns, will be responsible for the repair or replacement of any public property which may be damaged or destroyed as a direct or indirect result of the use of the public right of way.

10. Owner agrees to indemnify, release and hold harmless City for any and all expenses, demands, claims or losses of any kind that may be asserted against City or sustained by City, its officers, agents and employees, its property, streets, sidewalks, or any other municipal improvements to the extent of Owner's negligence or willful misconduct in its use of the right of way permitted herein. Owner agrees to obtain a policy of insurance for public liability and property damage insurance with respect to this Agreement with coverage limits reasonably acceptable to City and that names City as an additional insured. Owner shall provide City with a certificate of insurance evidencing such insurance and coverages.

11. Owner, its successors and assigns, agree to hold the City harmless for any expenses, damages, demands, claims or losses of any kind to any of Owner's property located in the Encroachment Area occasioned by normal City operations in the right of way, including but not limited to snow removal, light maintenance, and water or sewer repairs.

12. This Agreement is personal to Owner and cannot be sold, transferred or otherwise assigned, except as provided for herein. The rights and obligations of Owner under this Agreement

shall pass to any successor or assign, and this Agreement shall continue without interruption provided (1) City has not terminated the Agreement as provided herein; (2) Owner, its successors and assigns provide Notice to City of the change in ownership; and (3) proof that the insurance required herein continues uninterrupted, from either Owner or its successors and assigns. Failure to provide such Notice or Evidence of Insurance within 30 days of such transfer may be cause for Termination of this Agreement. The parties acknowledge that pursuant to the transactions contemplated by the Development Agreement, upon completion of the Plaza, Owner will transfer the Plaza Parcel to Block 9 Plaza Owner LLC, a North Dakota limited liability company, which will in turn lease the Plaza Tract to Block 9 Plaza, a North Dakota non-profit corporation. The City, without further notice being provided to the City as provided in this Section 12, does hereby consent to and approve such transfer and lease.

13. Owner understands and agrees that City construction in the right of way may be necessary from time to time and when necessary may damage or otherwise impact the Permitted Encroachments. In such event, Owner shall be responsible for the repair or replacement of the Permitted Encroachments. City shall provide Owner Notice of the work to be completed and provide Owner a reasonable time, not less than 10 days, to repair or replace the Permitted Encroachment.

14. It is understood and agreed by and between the parties that this Agreement and permission to encroach is given subject to any statutory limitation on the authority of City to grant such permission, which may now or hereafter exist. City acknowledges that it is not aware of any existing limitations.

15. **TERMINATION OF ENCROACHMENT**. The authorization from the City allowing the encroachment onto City right-of-way should extend and continue so long as the Plaza remains on the Plaza Parcel. The provisions of this Agreement pertaining to the obligations of Owner to vacate the Encroachment Area, to restore the Encroachment Area, to allow the City to assess certain costs of restoration, et cetera, shall survive the termination of said authorization and this Agreement, itself, shall terminate only at such time as restoration of the right of way has been completed, all warranties for such work are expired and all costs to be paid by Owner have, in fact, been either paid or have been appropriately assessed against the benefitting parcel.

It is specifically understood and agreed that the City retains authority to operate and maintain existing above ground and underground municipal facilities in the Encroachment Area. The intent of this Agreement is to allow the Permitted Encroachments to remain in place for so long as the use of the Plaza Parcel remains the same. In the extraordinary event that City determines a public need for some or all of the Encroachment Area without a change in use of the Plaza Parcel, including but not

limited to the provision of public services such as street widening, storm and sanitary sewer repair and installation, water main repair and installation, sidewalk repair and installation and/or street and traffic lighting repair and installation, and the continued presence of some or all of the Permitted Encroachments is no longer practicable under the circumstances, City may, as determined by the City Commission, terminate Owner's rights, in whole or in part, under this Agreement.

16. This Agreement will be construed and enforced in accordance with North Dakota law. The parties agree any litigation arising out of this Agreement will be venued in District Court in Cass County, North Dakota, and the parties waive any objection to personal jurisdiction.

17. The failure or delay of City to insist on the performance of any of the terms of this Agreement, or the waiver of any breach of any of the terms of this Agreement, will not be construed as a waiver of those terms, and those terms will continue and remain in full force and effect as if no forbearance or waiver had occurred and will not affect the validity of this Agreement, or the right of the City to enforce each and every term of this Agreement.

18. If any court of competent jurisdiction finds any provision or part of this Agreement is invalid, illegal, or unenforceable, that portion will be deemed severed from this Agreement, and all remaining terms and provisions of this Agreement will remain binding and enforceable, and the parties' obligations under this Agreement will remain binding and enforceable.

19. This Agreement, together with any related documents, as well as any amendments to those agreements and documents, constitutes the entire agreement between the parties regarding the matters described in this Agreement. This Agreement wholly amends, restates, replaces and supersedes the Prior Agreement.

20. Any modifications or amendments of this Agreement must be in writing and signed by both parties to this Agreement.

21. It is specifically agreed between the parties that a copy of this Agreement may be recorded.

22. Owner agrees to pay a $500 processing fee, due at signing. The annual fee is waived by City.

23. **EFFECTIVE DATE.** This Agreement shall be effective as of the date and year last signed by the parties below, as reflected by the date of acknowledgement thereof.

Dated this _____ day of _____, 2020.

**BLOCK 9 PARTNERS LLC, a North Dakota Limited Liability Company**

By_____
F. Scott Neal, President

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

On this ____ day of _____, 2020, before me, a notary public in and for said county and state, personally appeared F. Scott Neal to me known to be the President of **BLOCK 9 PARTNERS LLC**, the entity described in and that executed the within and foregoing instrument, and acknowledged to me that he/she executed the same.

_____
Notary Public

(SEAL)

Dated this _____ day of _____, 2020.

CITY OF FARGO
a North Dakota municipal corporation

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

**ATTEST**:

_____
Steven Sprague, City Auditor

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

On this ____ day of _____, 2020, before me, a notary public in and for said county and state, personally appeared DR. **TIMOTHY J. MAHONEY, M.D.** and **STEVEN SPRAGUE**, to me known to be the Mayor and Auditor, respectively, of the **CITY OF FARGO,** a North Dakota municipal corporation described in and that executed the within and foregoing instrument, and acknowledged to me that said municipal corporation executed the same.

(SEAL)

_____
Notary Public
Cass County, North Dakota

## EXHIBIT A

### Legal Description of Plaza Parcel

All of Lots 1, 22, 23 and 24, Block 9, together with a portion of Lot 21, said Block 9, and a portion of the vacated alley in said Block 9, all in Keeney and Devitt's Addition to the City of Fargo, Cass County, North Dakota, and all being more particularly described as follows:

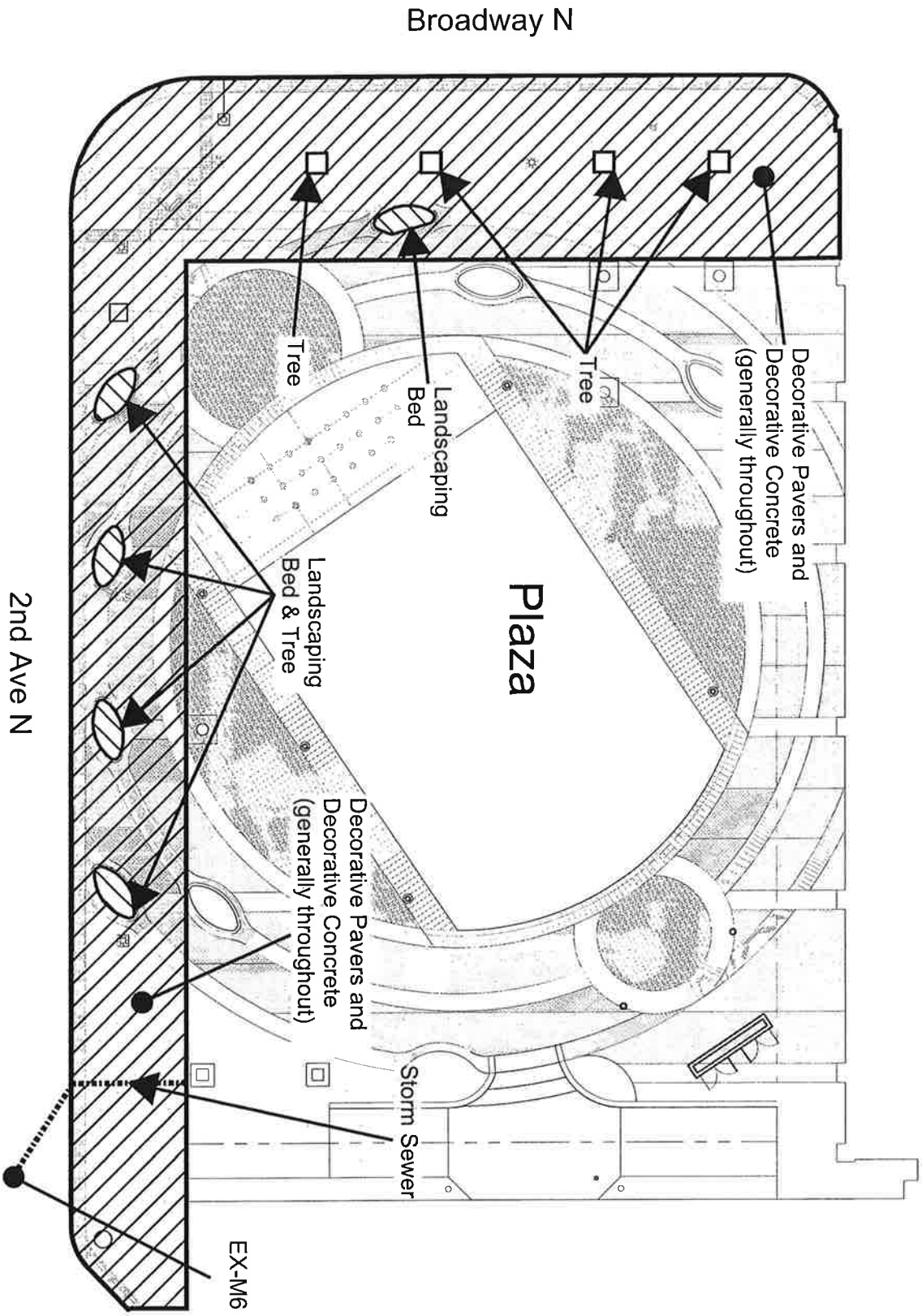
COMMENCING at the Southeast Corner of said Block 9; thence South 87°07'23" West (assumed bearing), along the southerly line of said Block 9, for a distance of 149.96 feet to the TRUE POINT OF BEGINNING; thence North 02°51'30" West for a distance of 102.31 feet; thence South 87°05'59" West for a distance of 149.97 feet to a point of intersection with the westerly line of said Block 9; thence South 02°51'30" East, along the westerly line of said Block 9, for a distance of 102.25 feet to the Southwest Corner of said Block 9; thence North 87°07'23" East, along the southerly line of said Block 9, for a distance of 149.97 feet to the TRUE POINT OF BEGINNING.

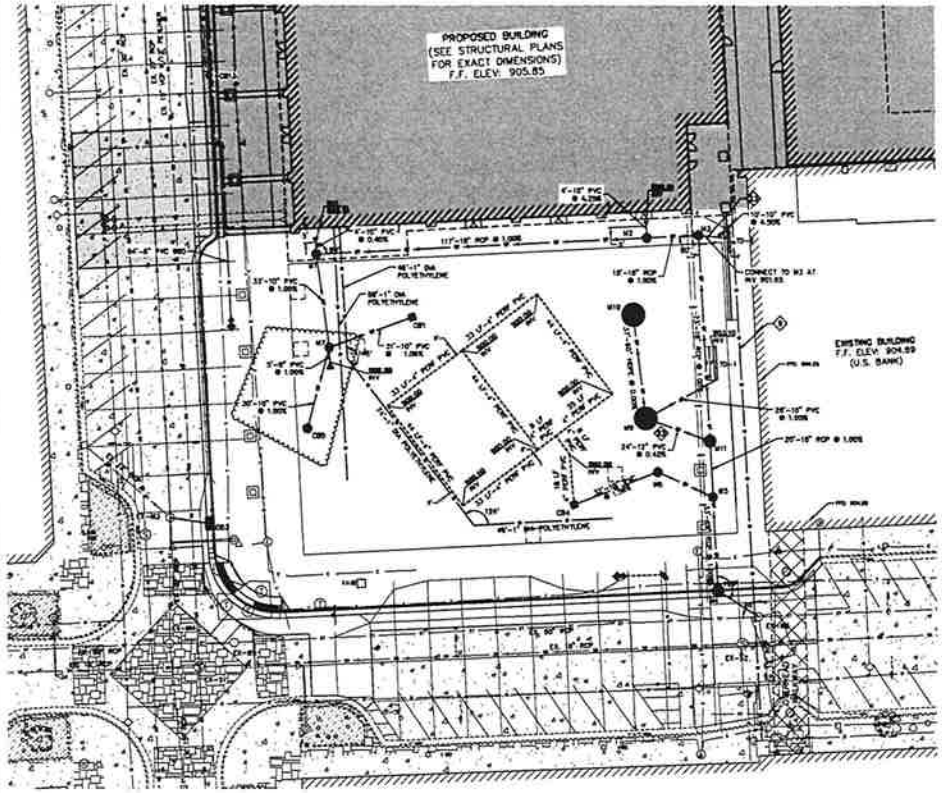
THE ABOVE LEGAL DESCRIPTION WAS OBTAINED FROM A PREVIOUSLY RECORDED DOCUMENT.

**EXHIBIT B**

Legal Description and Depiction of Encroachment Area

**EXHIBIT C**
**Drawing Showing Permitted Encroachments**


Broadway N
2nd Ave N
Plaza
Tree
Tree
Tree
Landscaping Bed
Landscaping Bed & Tree
Decorative Pavers and Decorative Concrete (generally throughout)
Decorative Pavers and Decorative Concrete (generally throughout)
Storm Sewer
EX-M6




## GENERAL NOTES:

1. All improvements within the right of way shall be constructed to the City of Fargo specifications. All improvements on site shall follow the technical specifications provided with the plan set. When an improvement overlaps between the right of way and on site, the improvement shall be constructed to the City of Fargo Specifications.
2. Any work on existing City-owned utilities shall require notification to the City by the contractor 24 hours prior to commencing work.
3. Contractor shall take the necessary precautions required to protect adjacent properties during the construction operations and shall be responsible to repair any damage within the right of way caused by development of this site.
4. All utility dimensions are to property line, center of pipe, center of structure, or back of curb unless noted. All site dimensions are to property line, back of curb, edge of walk, back of walk, and centerline of stripe unless noted. Dimensions shown on buildings are to the outermost (major) walls of buildings. For door and stoop locations and actual floor plans see structural plans.
5. Any ASTM, ASI, CASI, NDDOT, etc. standards, designations, specifications, etc. in the title shall reference the current editions of such.
6. It shall be the Contractor's responsibility to investigate all on-site conditions, such as street grades, utility locations, typical service line locations, subsurface conditions, etc.
7. Contractor shall verify with Mechanical/Architect the final location, size and invert of all building utilities (i.e. storm sewer, sanitary sewer services, and water main services). Civil Contractor shall install utilities 5' from the building unless otherwise noted.
8. Survey boundary by Houston Engineering, Inc.
9. Coordinate water service connections at new Tower Building with Mechanical and Plaza features with Architectural.

## UTILITY PLAN - SANITARY SEWER NOTES:

1. All manhole adjustments shall have all rings continuously grouted (concrete rings) or sealed (plastic or rubber rings) between each and continuously grouted on the outside (6" wide and 6" below all rings). The area between rings and casting shall be continuously grouted (i.e. casting shall be continuously supported throughout). Rubber rings shall be INFRA-RISER Multi-Purpose Rubber Composite Adjustment Riser by EJ, or equal.
2. Sanitary Casting Designations are:
   Regular: NEENAH R1733 or EJ 1205, self sealing lid, concealed pick bar, and special "SANITARY" or "SANITARY SEWER" lettering.
3. Sanitary Sewer Pipe shall meet ASTM D3034, SDR26.

## UTILITY PLAN - WATER NOTES:

1. Thrust blocks shall be installed at each bend in the pipe line that equals or exceeds 22 ½ degrees in deflection, at each tee and at each side of dead end in the line, the block shall be centered on the fitting and backed against the solid undisturbed trench back. See detail.
2. Water service pipes shown under Plaza shall be Polyethylene SDR 7. Water service pipes shall have a minimum of 7.5' of cover.

## UTILITY PLAN - STORM SEWER NOTES:

1. Unless noted specifically, "storm" pipe may be HDPE, PP, PVC, or RCP and shall comply with industry standards.
2. RCP shall meet ASTM C76 and be Class III minimum.
3. PVC shall meet ASTM D3034, SDR 35, with bell and spigot style rubber ring sealed gasket joints. Joints shall meet ASTM D3212, elastomeric joints.
4. Structure M4 shall have a low weir and an eccentric cone.
5. Storm Casting Designations are:
   CURB: Neenah R3067-V Type D Grate
   REGULAR: Neenah R1733 or EJ 1205, vented lid (plate pick-holes) & special "STORM SEWER" lettering.
   FLAT: Neenah R2588 Type C or EJ 1130 Type M.
   HIGH BACK: Neenah R3067-V or EJ 7030-M4 for M4; Neenah R3067-V3 or EJ 7030-M11 for CB3
6. Gratalle Pipe shall be Polyvinyl Chloride Sewer Pipe with solvent cemented joints as specified in ASTM 3034 with size as shown on the plans. Drainlife shall have Geotextile Sock.
7. Structure M5 is a Hydrodynamic Separator, installed under Tower Contract.
8. HDPE pipe shall be dual or triple wall, meet ASTM F2306 and AASHTO M294 and have water tight joints with gasketed spigot.
9. 12" RCP Backflow Prevention shall be Tideflex Checkmate designed for 10 feet of head.
10. Trench drains shall be Polydrain with Reinforced Heel-Proof Grate, load rate of 310 psi minimum, Hot Dipped Galvanized Steel, or, NEENAH R-4980-ex, Grey Iron, cast in place concrete per Manufacturer's Instructions or Approved Equal.
11. M1, M2, M3, M4, M5 and storm pipe between these structures are under Tower Contract.
12. TD-1 Shall be 12" in length
13. TD-2 Shall be 4" in length

UTILITY METALWORK - GENERAL
- NEW MH VAULT - BY OTHERS
- METAL BACKFLOW PREVENTER

## UTILITY LEGEND

- BENCHMARK
- EXISTING GAS LINE MARKER OR VALVE
- EXISTING POWER POLE
- EXISTING LIGHT POLE
- EXISTING GUY WIRE
- EXISTING TRAFFIC SIGNAL ARM
- EXISTING SIGN
- EXISTING CULVERT W/F.E.S.
- EXISTING CURB STOP
- EXISTING HYDRANT W/GATE VALVE
- EXISTING GATE VALVE
- EXISTING SANITARY SEWER MANHOLE
- EXISTING SANITARY SEWER CLEANOUT
- EXISTING STORM SEWER CATCH BASIN/MANHOLE
- EXISTING PLUG
- EXISTING FITTINGS
- EXISTING WATER MAIN
- EXISTING SANITARY SEWER
- EXISTING STORM SEWER
- EXISTING FORCEMAIN
- EXISTING UTILITY PEDESTAL
- EXISTING UTILITY MANHOLE

ABBREVIATIONS
C = COMMUNICATION
E = ELECTRICAL
F = FIBER OPTIC
T = TELEPHONE
TV = TELEVISION
TRANS = TRANSFORMER
U = UTILITY (UNKNOWN UTILITY)

- EXISTING UNDERGROUND TELEPHONE
- EXISTING UNDERGROUND TELEVISION
- EXISTING UNDERGROUND FIBER
- EXISTING UNDERGROUND GAS
- EXISTING UNDERGROUND ELECTRIC
- EXISTING OVERHEAD ELECTRIC
- EXISTING FENCE
- EXISTING CHAIN LINK FENCE
- EXISTING WOOD FENCE
- EXISTING TREE/TREE CLUSTER
- EXISTING CLUSTER BOX UNIT (CBU)
- EXISTING CURB AND GUTTER
- CURB AND GUTTER REMOVAL & REPLACEMENT
- REMOVE EXISTING SURFACE
- EXISTING ASPHALT SURFACE
- EXISTING CONCRETE SURFACE
- EXISTING DECORATIVE COLORED CONCRETE
- EXISTING GRAVEL SURFACE
- EXISTING SIDEWALK/MULTI-USE PATH
- EXISTING LANDSCAPING
- EXISTING RIPRAP
- EXISTING WETLANDS
- NEW CULVERT W/ F.E.S.
- NEW CURB STOP
- NEW HYDRANT W/GATE VALVE
- NEW GATE VALVE
- NEW SANITARY SEWER MANHOLE
- NEW SANITARY SEWER CLEANOUT
- NEW STORM SEWER CATCH BASIN/MANHOLE
- NEW PLUG
- NEW FITTINGS
- NEW WATER MAIN
- NEW SANITARY SEWER
- NEW STORM SEWER
- NEW FORCEMAIN
- NEW SANITARY SEWER SERVICE
- NEW WATER SERVICE W/CURB STOP
- INSULATION PER DETAIL
- NEW CURB AND GUTTER

## EXISTING STRUCTURE SCHEDULE

| | | | |
|---|---|---|---|
| EX-M3 | EX-M5 | | EX-S1 |
| RIM: 905.27 | RIM: 905.21 | | RIM: 905.59 |
| N INV: 899.97 | W INV: 883.21 | | N INV: 893.38 |
| S INV: 899.87 | E INV: 883.21 | | S INV: 893.38 |
| NE INV: 899.27 | EX-M6 | | E INV: 893.39 |
| NW INV: 900.27 | RIM: 904.44 | | W INV: 893.38 |
| EX-M4 | W'S INV: 899.04 | | EX-S2 |
| RIM: 905.54 | S INV: 897.44 | | RIM: 904.85 |
| N INV: 899.89 | W INV: 892.99 | | E INV: 893.35 |
| S INV: 899.44 | E INV: 893.99 | | W INV: 893.25 |
| W INV: 893.44 | | | |
| E INV: 893.44 | | | |

## TOWER CONTRACT NEW STRUCTURE SCHEDULE

| | | | |
|---|---|---|---|
| M1-48"ø | M3-48"ø | CB3-S81-V2 | |
| (FLAT) | (FLAT) | RIM: 904.70 | |
| RIM: 905.85 | RIM: 905.85 | INV: 900.70 | |
| N INV: 898.50 | S INV: 898.85 | | |
| S INV: 898.50 | W INV: 898.95 | | |
| E INV: 898.40 | | | |
| M2-48"ø | M4-48"ø | | |
| (FLAT) | (HIGH BACK) | | |
| RIM: 905.85 | RIM: 904.20 | | |
| N INV: 898.34 | N INV: 895.54 | | |
| E INV: 897.13 | SE INV: 895.54 | | |
| W INV: 897.23 | M5-(SEE NOTE) | | |
| S INV: 897.23 | (REGULAR) | | |
| | RIM: 905.10 | | |
| | N INV: 895.92 | | |
| | S INV: 895.92 | | |
| | W INV: 895.92 | | |

## PLAZA CONTRACT NEW STRUCTURE SCHEDULE

| | | | | |
|---|---|---|---|---|
| M6-48"ø | M9-86"ø | C81-27"ø | TD-1 | |
| (FLAT) | (REGULAR) | (FLAT) | (SEE NOTES) | |
| RIM: 905.10 | RIM: 905.43 | RIM: 905.35 | RIM: 904.10 | |
| E INV: 896.13 | N INV: 896.22 | W INV: 901.35 | S INV: 902.10 | |
| SW INV: 899.00 | NE INV: 901.82 | | | |
| M7-48"ø | SE INV: 896.22 | C84-48"ø | | |
| (FLAT) | M10-96"ø | (FLAT) | | |
| RIM: 905.33 | (REGULAR) | RIM: 905.25 | | |
| N INV: 896.83 | RIM: 903.45 | E INV: 898.30 | | |
| S INV: 896.83 | S INV: 896.22 | N INV: 900.00-4"PVC | | |
| E INV: 901.02 | | C85-27"ø | TD-2 | |
| SW INV: 901.09 | M11-48"ø | (FLAT) | (SEE NOTES) | |
| | (REGULAR) | RIM: 905.35 | RIM: 904.10 | |
| | RIM: 905.18 | NE INV: 901.35 | N INV: 902.10 | |
| | INV: 896.12 | | S INV: 903.10 | |
| | (VERIFY EXISTING INVERT AND MATCH) | | | |

## BENCHMARK LIST

ALL ELEVATIONS SHOWN ARE NAVD 88

| NO. | DESCRIPTION | LOCATION | ELEV. |
|---|---|---|---|
| 2 | SOUTHEAST FLANGE BOLT ON HYDRANT | SOUTHEAST QUADRANT OF 3RD AVENUE NORTH AND BROADWAY | 908.02 |
| 3 | SOUTHEAST FLANGE BOLT ON HYDRANT | NORTHWEST QUADRANT OF 3RD AVENUE NORTH AND 5TH STREET NORTH | 904.44 |

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C-401(P) PLAZA - EXISTING SITE CONDITIONS AND REMOVALS PLAN
C-402(P) PLAZA - SITE PLAN
C-403(P) PLAZA - UTILITY PLAN
C-404(P) PLAZA - GRADING PLAN
C-405(P) PLAZA - EROSION CONTROL PLAN-INITIAL
C-406(P) PLAZA - EROSION CONTROL PLAN-FINAL
C-501(P) PLAZA - TYPICAL DETAILS
C-502(P) PLAZA - TYPICAL DETAILS


N
W E
S
0 20
Scale in Feet

| | |
|---|---|
| PROJECT No: | 19214A |
| MANAGER: | SWI |
| REVIEWER: | SCS |
| DRAFTER: | KAS/RJK |
| DESIGNER: | SCS |


RUNDELL ERNSTBERGER ASSOCIATES
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PLANNING + CIVIL ENGINEERING
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618 E Market Street, Indianapolis, IN 46202
TE (317) 263.0127 FX (317) 263.2080
www.rundell.com


PREPARED FOR
**Block 9 Partners LLC**
**700 7th St S.**
**Fargo, ND 58103**

CONSULTANT
moore engineering, inc.
Consulting Engineering + Land Surveying

PROJECT
BID DOCUMENTS
# BLOCK 9 PLAZA
Fargo, North Dakota

| NUM | DESCRIPTION | DATE |
|---|---|---|
| 6 | STORM REVISION | 8-24-2018 |
| 5 | STORM REVISION | 8-10-2018 |
| 4 | ADDENDUM NO. 4 | 5-30-2018 |
| 3 | ADDENDUM NO. 3 | 2-6-2018 |
| 2 | SEPARATE FROM ROW DWGS. | 4-30-2018 |
| 1 | MISC. | 3-26-2018 |

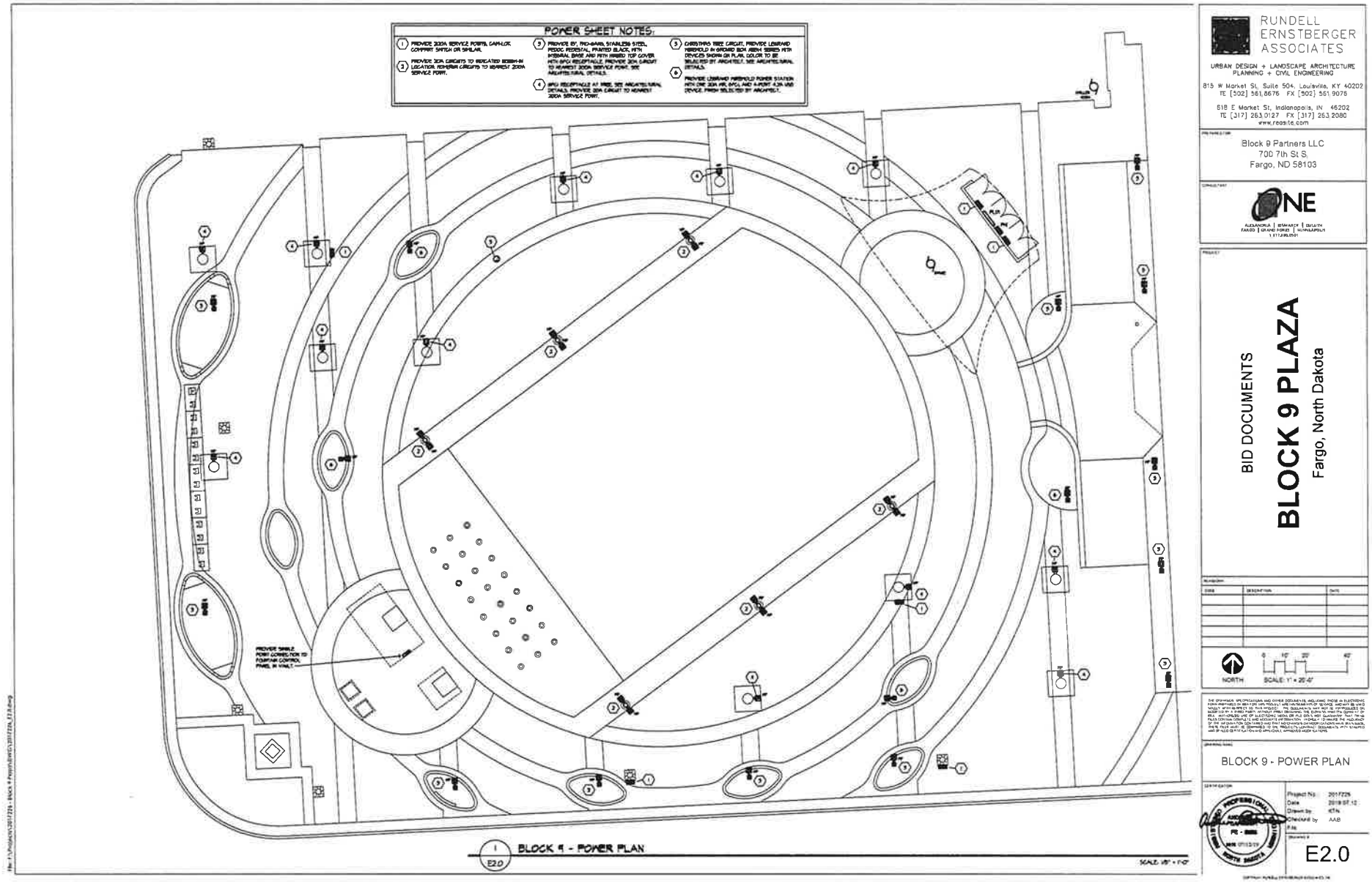
NORTH
0 10 20 40
SCALE: 1" = 20'-0"

PLAZA
UTILITY PLAN

This document was originally issued and sealed by Scott D. Sorby, Registration No. PE-9867, on 08/20/18, and the original document is stored at Moore Engineering, Inc. West Fargo, N.D.

Project No.: 15-1460
Date: 2018.07.10
Drawn By:
Checked By:
File:

C-403 (P)
CIVIL SKETCH NO. 2


POWER SHEET NOTES:
1 PROVIDE 200A SERVICE POINTS, CAM-LOK COMPANY SWITCH OR SIMILAR.
2 PROVIDE 20A CIRCUITS TO INDICATED BOSSH-IN LOCATION FOREIGN CIRCUITS TO NEAREST 200A SERVICE POINT.
3 PROVIDE 10', PAD-MARK, STAINLESS STEEL, PEDOC PEDESTAL, PAINTED BLACK, WITH INTERNAL BASE AND WITH HINGED TOP COVER WITH 6PCI RECEPTACLE. PROVIDE 20A CIRCUIT TO NEAREST 200A SERVICE POINT. SEE ARCHITECTURAL DETAILS.
4 6PCI RECEPTACLE AT TREE. SEE ARCHITECTURAL DETAILS. PROVIDE 20A CIRCUIT TO NEAREST 200A SERVICE POINT.
5 CHRISTMAS TREE CIRCUIT. PROVIDE LEGRAND WIREHOLD IN GROUND BOX ABOVE SERIES WITH DEVICES SHOWN ON PLAN. COLOR TO BE SELECTED BY ARCHITECT. SEE ARCHITECTURAL DETAILS.
6 PROVIDE LEGRAND WIREHOLD POWER STATION WITH ONE 20A WR, 6PCI, AND 4-PORT 4.2A USB DEVICE. FINISH SELECTED BY ARCHITECT.
PROVIDE SINGLE POINT CONNECTION TO FOUNTAIN CONTROL PANEL IN VAULT.
1 E2.0 BLOCK 9 - POWER PLAN
SCALE: 1/8" = 1'-0"
RUNDELL ERNSTBERGER ASSOCIATES
URBAN DESIGN + LANDSCAPE ARCHITECTURE
PLANNING + CIVIL ENGINEERING
815 W Market St, Suite 504, Louisville, KY 40202
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818 E Market St, Indianapolis, IN 46202
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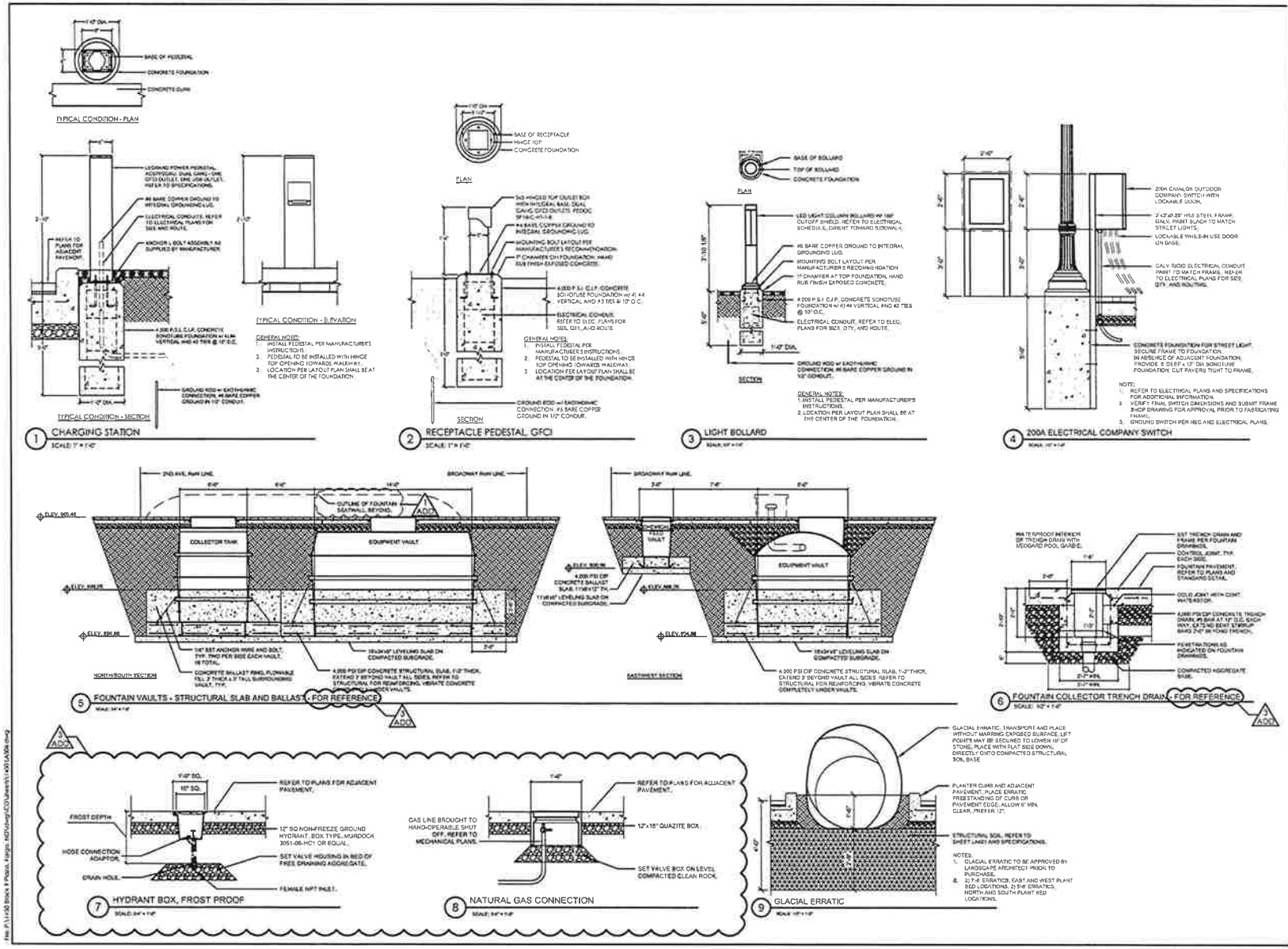
Block 9 Partners LLC
700 7th St S.
Fargo, ND 58103
ONE
ALEXANDRIA | BISMARCK | DULUTH
FARGO | GRAND FORKS | MINNEAPOLIS
BID DOCUMENTS
BLOCK 9 PLAZA
Fargo, North Dakota
NORTH
SCALE: 1" = 20'-0"
BLOCK 9 - POWER PLAN
Project No. 2017226
Date 2019.07.12
Drawn by KTN
Checked by AAB
File
E2.0

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TE (317) 263.0129 FX (317) 263.2080
www.rundell.com

Block 9 Partners LLC
700 7th St S.
Fargo, ND 58103

BID DOCUMENTS

# BLOCK 9 PLAZA

Fargo, North Dakota

| CODE | DESCRIPTION | DATE |
|---|---|---|
| ADD 1 | ADDENDUM 1 | 01.16.2020 |
| ADD 2 | ADDENDUM 2 | 02.03.2020 |

SITE DETAILS

Project No.: 18.1450
Date: 2019.07.12
Drawn by: AC/PA
Checked by: PA
File: 1450 LA506.DWG

LA506

## MECHANICAL SPECIFICATIONS:

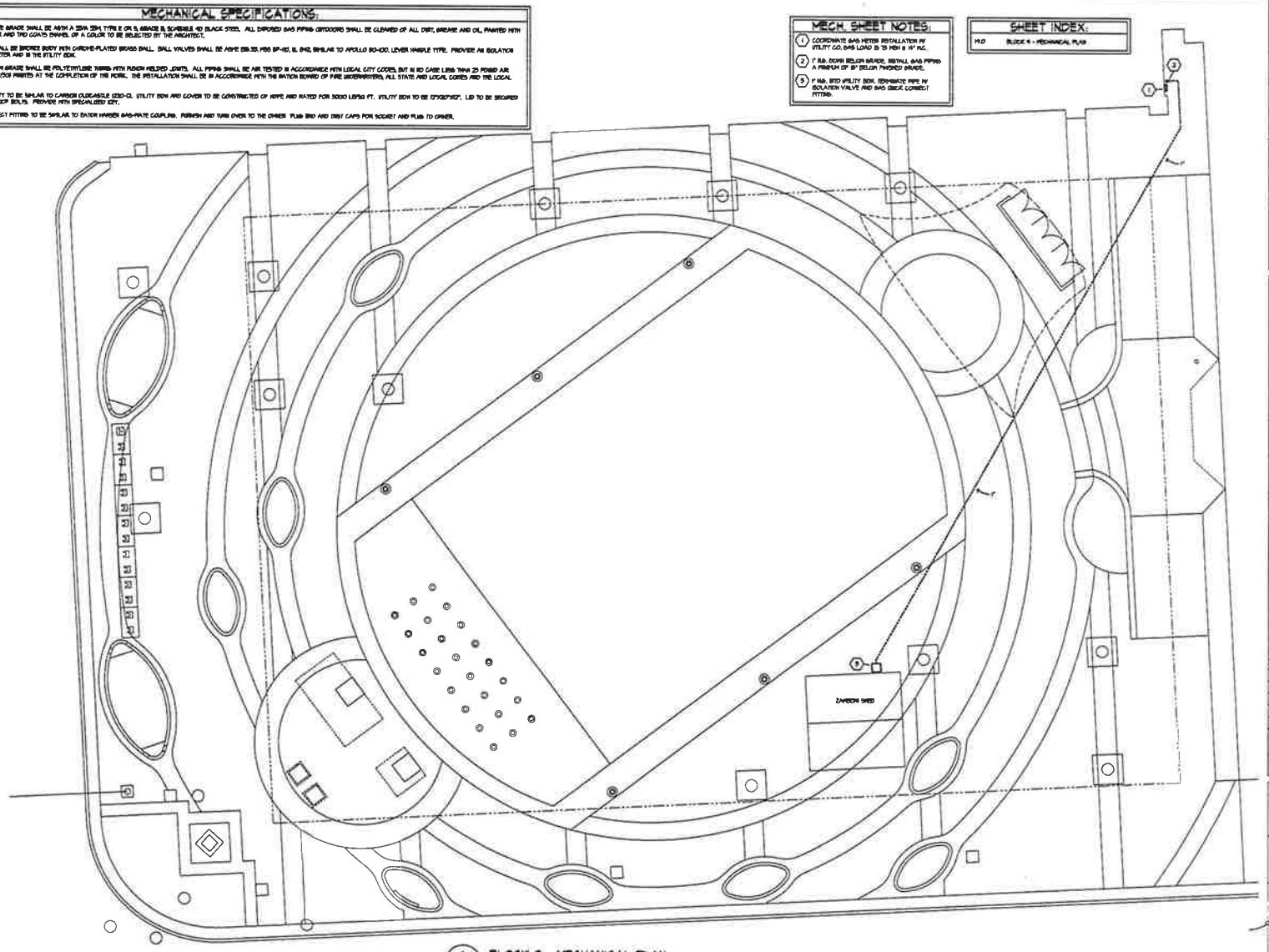
1. GAS PIPING ABOVE GRADE SHALL BE ASTM A 53/A 53M, TYPE E OR S, GRADE B, SCHEDULE 40 BLACK STEEL. ALL EXPOSED GAS PIPING OUTDOORS SHALL BE CLEANED OF ALL DIRT, GREASE AND OIL, PRIMED WITH ONE COAT PRIMER AND TWO COATS ENAMEL OF A COLOR TO BE SELECTED BY THE ARCHITECT.
2. BALL VALVES SHALL BE BRONZE BODY WITH CHROME-PLATED BRASS BALL. BALL VALVES SHALL BE ASME B16.33, MSS SP-110, UL 842, SIMILAR TO APOLLO 80-100. LEVER HANDLE TYPE. PROVIDE AN ISOLATION VALVE AT THE METER AND IN THE UTILITY BOX.
3. GAS PIPING BELOW GRADE SHALL BE POLYETHYLENE YARD WITH FUSION WELDED JOINTS. ALL PIPING SHALL BE AIR TESTED IN ACCORDANCE WITH LOCAL CITY CODES, BUT IN NO CASE LESS THAN 25 PSIGD AIR TEST FOR THIRTY (30) MINUTES AT THE COMPLETION OF THE WORK. THE INSTALLATION SHALL BE IN ACCORDANCE WITH THE RATION BOARD OF FIRE UNDERWRITERS, ALL STATE AND LOCAL CODES AND THE LOCAL GAS UTILITY.
4. UTILITY BOX UTILITY TO BE SIMILAR TO CARSON CLOSEABLE 1230-CL. UTILITY BOX AND COVER TO BE CONSTRUCTED OF HDPE AND RATED FOR 5000 LB/SQ FT. UTILITY BOX TO BE 17"X30"X12". LID TO BE SECURED WITH VANDAL PROOF BOLTS. PROVIDE WITH SPECIALIZED KEY.
5. GAS QUICK CONNECT FITTING TO BE SIMILAR TO EATON HANSEN GAS-MATE COUPLING. FURNISH AND TURN OVER TO THE OWNER PLUG END AND DUST CAPS FOR SOCKET AND PLUG TO OWNER.

## MECH. SHEET NOTES:

1. COORDINATE GAS METER INSTALLATION W/ UTILITY CO. GAS LOAD IS 75 MBH @ ¼" P.S.I.
2. 1" P.E. DOWN BELOW GRADE. INSTALL GAS PIPING A MINIMUM OF 18" BELOW FINISHED GRADE.
3. 1" M.B. STEEL UTILITY RISER. TERMINATE PIPE W/ ISOLATION VALVE AND GAS QUICK CONNECT FITTING.

## SHEET INDEX:

| | |
|---|---|
| M1.0 | BLOCK 9 - MECHANICAL PLAN |




1 M1.0 BLOCK 9 - MECHANICAL PLAN

SCALE: 1/8" = 1'-0"

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Block 9 Partners LLC
700 7th St S.
Fargo, ND 58103

ONE

BID DOCUMENTS

# BLOCK 9 PLAZA

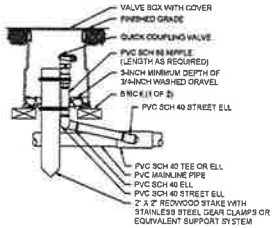
Fargo, North Dakota

NORTH SCALE: 1" = 20'-0"

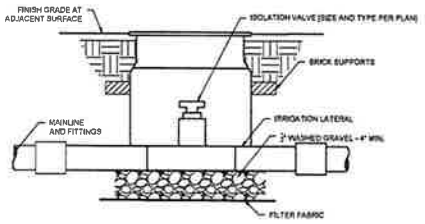
BLOCK 9 - MECHANICAL PLAN

Project No.: 2017208
Date: 2018.07.12
Drawn by: KTN
Checked by: SJH
File:

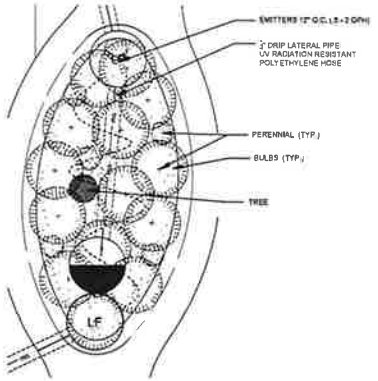
M1.0



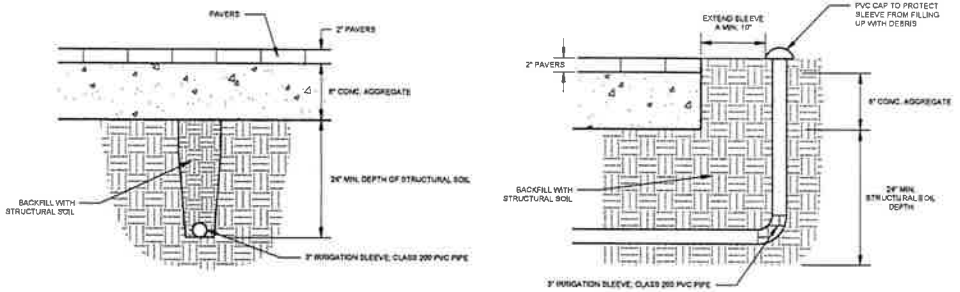

1 QUICK COUPLING
SCALE: N.T.S.



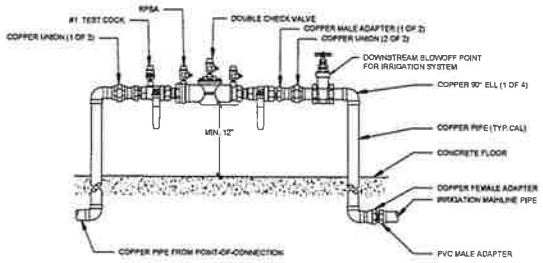

3 ISOLATION VALVE
SCALE: N.T.S.



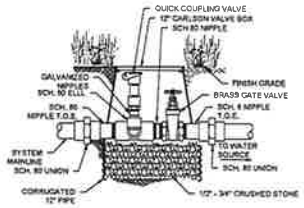

2 PIPE ROUTING & EMITTER PLACEMENT
SCALE: N.T.S.




4 IRRIGATION SLEEVE
SCALE: N.T.S.




5 BACKFLOW PREVENTER
SCALE: N.T.S.




6 WINTERIZATION ASSEMBLY
SCALE: N.T.S.

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700 7th St S,
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CONFLUENCE
LANDSCAPE ARCHITECT
CONFLUENCE
210 BROADWAY, SUITE 302, FARGO, ND 58102
PH 701.235.3990

BID DOCUMENTS

# BLOCK 9 PLAZA

Fargo, North Dakota

| ITEM | DESCRIPTION | DATE |
|---|---|---|
| 1 | ADDENDUM #1 | 5.21.2020 |

IRRIGATION DETAILS

Project No. 18.1450
Date 5.24.2020
Drawn by TC
Checked by BR
File

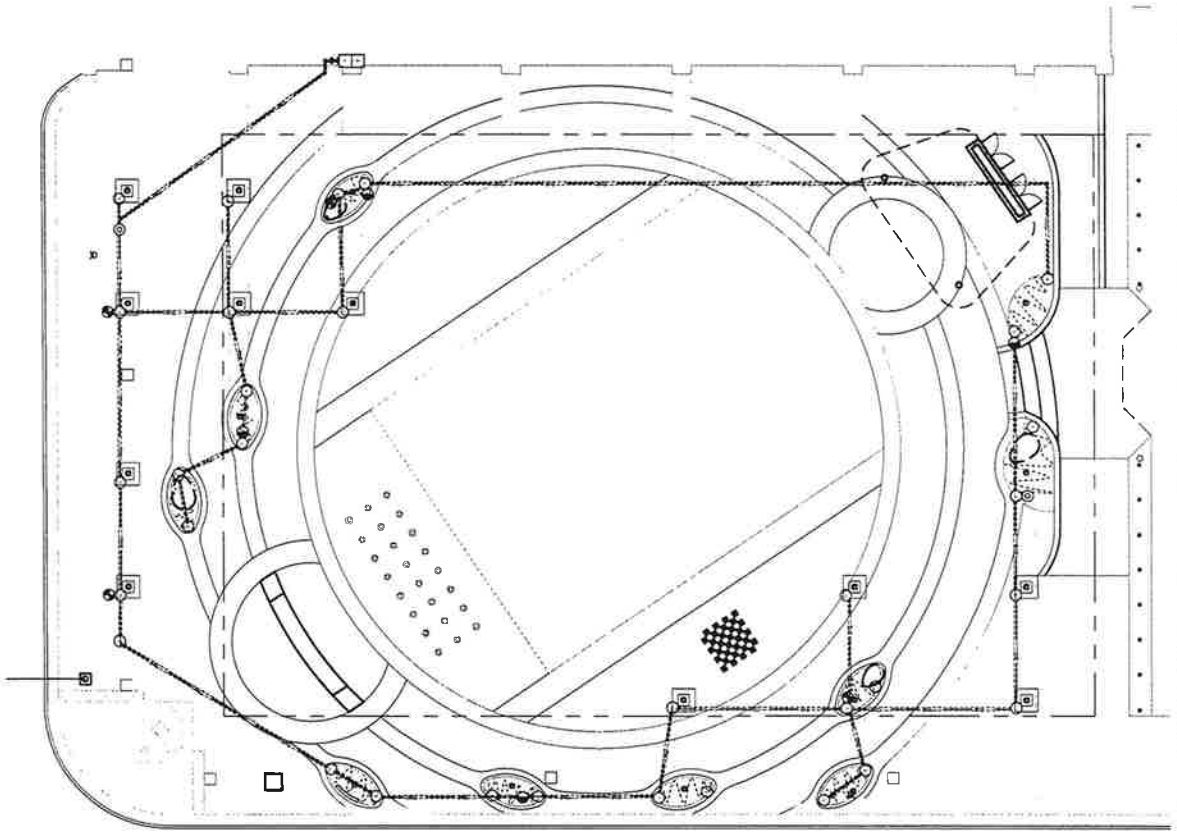
LA606

## LEGEND

| SYMBOL | DESCRIPTION |
|---|---|
| PVC — RG | IRRIGATION MAIN LINE - 2" CLASS 200 PVC PIPE (UNLESS OTHERWISE NOTED) |
| PVC — RG | IRRIGATION LATERAL LINE - 1" PVC CLASS 200 PIPE (UNLESS OTHERWISE NOTED) |
| | LOW FLOW EMITTER LINES - 1" UV RESISTANT PVC PIPE TO LOW FLOW EMITTERS - 12" O.C. (SEE DETAIL) |
| | SLEEVING - 3" PVC PIPE, CLASS 200 |
| CP | CONTROL PANEL |
| | QUICK COUPLING ASSEMBLY - SEE DETAIL 15/LA606 |
| | ESCALATOR / SHUT-OFF VALVE - SEE DETAIL 15/LA606 |
| | BACKFLOW PREVENTOR - SEE DETAIL 5/LA606 |
| LF | LOWFLOW EMITTER - SEE DETAIL 2/LA606 |
| | WINTERIZATION ASSEMBLY - SEE DETAIL 6/LA606 |
| M | WATER METER |

## IRRIGATION NOTES:

1. ALL PVC PIPE FROM SIZES THREE (3) INCHES AND ABOVE SHALL BE CLASS 200, SDR 26, UNPLASTICIZED RIGID POLYVINYLCHLORIDE (PVC) PIPE WITH INTEGRAL BELL AND RUBBER RING GASKET UNLESS OTHERWISE SPECIFIED. PIPE FROM SIZES TWO AND ONE - HALF (2 1/2) TO THREE - QUARTERS (3/4) INCH SHALL BE CLASS 200, SOLVENT WELD PVC PIPE. ONE - HALF (1/2) INCH PIPE SHALL BE CLASS 315 SOLVENT WELD PVC PIPE. ALL PIPE SHALL BE SUPPLIED IN STANDARD TWENTY (20) FOOT LENGTHS AND SHALL BE FROM ONE OF THE FOLLOWING MANUFACTURERS: POLYETHYLENE PIPE WILL NOT BE ACCEPTED UNLESS PRIOR WRITTEN APPROVAL IS OBTAINED BY THE LANDSCAPE ARCHITECT.
2. ALL PIPE THAT IS EXPOSED OR NOT BELOW GRADE SHALL BE SCHEDULE 80 PVC OR HDPE.
3. ALL MAINLINE PIPE (CL 200 PVC) SHALL HAVE A MINIMUM OF 18" COVER. ALL LATERAL AND SUB-MAIN PIPE (CLASS 200 PVC PIPE) TO HAVE A MINIMUM OF 12" OF COVER.
4. 120 VOLT AC WIRING: 120 VOLT SERVICE TO CONTROLLER SHALL CONSIST OF THREE WIRES: ONE BLACK, ONE WHITE, AND ONE GROUND. ELECTRICAL SERVICE IS TO BE PROVIDED BY THE GENERAL CONTRACTOR UNLESS OTHERWISE DIRECTED BY OWNER'S REPRESENTATIVE.
5. IRRIGATION CONTRACTOR SHALL RECORD AND SUBMIT AN 'AS-BUILT DRAWING' WHICH RECORDS ACTUAL INSTALLED CONDITIONS. THE AS-BUILT DRAWING SHALL BE SUBMITTED IN AN ELECTRONIC FORMAT. IRRIGATION CONTRACTOR SHALL SUBMIT THE AS-BUILT DRAWING TO THE OWNER'S REPRESENTATIVE AND LANDSCAPE ARCHITECT BEFORE WORK UNDER THIS CONTRACT WILL BE CONSIDERED FOR ACCEPTANCE.
6. RPZ BACKFLOW PREVENTER TO BE SUPPLIED AND INSTALLED BY THE IRRIGATION CONTRACTOR. BACKFLOW PREVENTER SHALL BE A RPZ REDUCED PRESSURE BACKFLOW ASSEMBLY TYPE, CAPABLE OF HAVING AN ADEQUATE FLOW RATE IN GALLONS PER MINUTE (GPM) WITHOUT EXCESSIVE PRESSURE LOSS, AND SHALL BE SUITABLE FOR SUPPLY PRESSURE OF UP 150 PSI.
7. QUICK COUPLING VALVES (QCVS) WILL BE USED FOR MANUAL ACCESS TO THE PRESSURIZED MAIN LINE SO THAT A HOSE CAN BE ATTACHED AND USED FOR HAND WATERING. QCVS SHALL BE CONSTRUCTED OF BRASS WITH A SPRING LOADED SEAL THAT WILL KEEP THE VALVE IN A CLOSED POSITION UNTIL THE KEY IS INSERTED INTO THE VALVE.
8. LOCATION OF SLEEVING SHALL BE COORDINATED WITH THE GENERAL CONSTRUCTION CONTRACTOR. BEND SLEEVES AROUND THE BOULDERS AND MAKE ADJUSTMENTS NECESSARY TO ACCOMMODATE EXISTING VEGETATION, UTILITIES, AND OTHER EXISTING CONDITIONS.
9. PLUG LINES IMMEDIATELY UPON INSTALLATION TO MINIMIZE INFILTRATION OF FOREIGN MATTER.



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CONFLUENCE
210 BROADWAY, SUITE 302, FARGO, ND 58102
PH 701.353.7840

BID DOCUMENTS

# BLOCK 9 PLAZA

Fargo, North Dakota

| TYPE | DESCRIPTION | DATE |
|---|---|---|
| A | ADDENDUM #1 | 3.24.2020 |

IRRIGATION PLAN

| | |
|---|---|
| Project No. | 16.1450 |
| Date: | 3.24.2020 |
| Drawn by: | TC |
| Checked by: | BR |

LA605

FARGODOME

(13)

September 24, 2020

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

Commissioners:

The Fargo Dome Authority requests your approval of the attached Third Amendment to Service and Usage Agreement with Patron Solutions, L.P., d/b/a/ New Era Tickets (Paciolan). The Amendment extends the current services and fee structure from pending expiration of December 31, 2020 through a new expiration of August 31, 2021. The extension request facilitates staff and patron ease regarding concert events which have been deferred beyond 12/31/2020 due to COVID-19. Further extensions may be requested, pending scheduling of the two remaining concerts.

In advance of the Paciolan contract expiration as of 12/31/2020, FARGODOME issued a Request for Proposal for ticketing services for FARGODOME and the Fargo Civic Center in December 2019 with the intent of a new ticketing contract for both venues, effective 1/1/2021. Prior to a bid award, COVID-19 arrived, resulting in the postponement of numerous concerts already onsale. The following concerts have been deferred to a date in 2021 or indefinitely:

Mercy Me – April 2020 to April 2021
Cher – April 2020 to an undetermined future date
Elton John – June 2020 to an undetermined future date
Maroon 5 – August 2020 to August 2021
Guns N Roses – August 2020 to August 2021

Given the volume of tickets outstanding on the Paciolan ticketing platform, we requested an extension of our current ticketing agreement in order to see these events to their show date on one ticketing platform. With PCI compliance regulations, ticket buyer payment information cannot be transferred to another ticketing company. As such, FARGODOME will need to maintain a relationship with Paciolan until these events have taken place in order to appropriately service existing customers. In the unlikely event of a cancellation, Paciolan has the ability to easily issue event-specific mass cancellations with refunds to the original purchaser's credit cards. FARGODOME will initiate another Request for Proposal for ticketing services prior to the termination of the contract extension of 8/31/2021.

At their meeting held on August 25, 2020, the Fargo Dome Authority approved the attached Third Amendment to Service Agreement.

Thank you for your consideration of this matter.

Very truly yours,

Rob Sobolik
FARGODOME General Manager

Attachment

1800 North University Drive Fargo, ND 58102
Phone: (701) 241-9100 Fax: (701) 237-0987 www.fargodome.com

GLOBAL SPECTRUM

**THIRD AMENDMENT TO**
**SERVICE AND USAGE AGREEMENT**

This Third Amendment ("Third Amendment") to that certain Service and Usage Agreement executed on January 1, 2011 ("Original Agreement"), and amended on March 30, 2015 ("First Amendment"), is entered into effective as of October 1, 2020 ("Amendment Effective Date") by and between Patron Solutions, L.P., d/b/a New Era Tickets ("NE"), and City of Fargo, acting on behalf of the Fargo Dome ("Customer"). All references to the "Agreement" in the Original Agreement or in any other document referencing the Original Agreement shall be deemed to refer to the Original Agreement, as amended from time to time. Capitalized terms not defined in this Third Amendment shall have the meanings ascribed to such terms in the Agreement. Except as amended by this Third Amendment, all other terms and conditions set forth in the Agreement shall remain in full force and effect. If there is any conflict between the terms of this Third Amendment and the other documents that constitute the Agreement, then the terms of this Third Amendment shall prevail.

**Background**

NE and Customer now desire to further amend and supplement the Agreement as specified below in order to extend the term of the Agreement to August 31, 2021.

In consideration of the foregoing and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree to amend the Agreement as follows.

**Original Agreement Amendments**

1. **Term**. The "Term" Section of the Original Agreement (Page 2 of the Original Agreement), as amended, shall be amended and restated as follows:

"Pursuant to Section III, the Initial Term (as defined herein) of the Agreement will commence on January 1, 2011 continue through August 31, 2021."

IN WITNESS WHEREOF, the parties have caused this Third Amendment to be executed and do each hereby represent that their respective signatory whose signature appears below has been and is on the Amendment Effective Date duly authorized by all necessary and appropriate corporate action to execute this Third Amendment.

| **PATRON SOLUTIONS, L.P.**<br>**DBA NEW ERA TICKETS** | | **CITY OF FARGO ACTING ON BEHALF OF**<br>**THE FARGO DOME** | |
|---|---|---|---|
| Signature: | Kim Damron<br>(Kim Damron (Sep 23, 2020 11:19 PDT) | Signature: | |
| Name: | Kimberly Damron | Name: | |
| Title: | President & CEO | Title: | |
| Date: | 09/23/20 | Date: | |

THE CITY OF Fargo
FAR MORE

**FINANCE OFFICE**
PO Box 2083
225 4th Street North
Fargo, ND 58102
Phone: 701.241.1333 | Fax: 701.476.4188
www.FargoND.gov

14

**TO:** **BOARD OF CITY COMMISSIONERS**

**FROM:** **KENT COSTIN, DIRECTOR OF FINANCE** KC

**RE:** **COMPREHENSIVE ANNUAL FINANCIAL REPORT (CAFR) AND INDEPENDENT AUDITOR'S REPORTS**

**DATE:** **SEPTEMBER 29, 2020**

The Finance Department completed the Comprehensive Annual Financial Report (CAFR) for the year ending December 31, 2019 that includes the Independent Auditor reports on our general purpose financial statements as well as all reports required by Title 2 U.S. *Code of Federal Regulations Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance) for federal grant programs. The independent auditing firm of Eide Bailly LLP, Fargo North Dakota, completed the audit. A "clean" unmodified opinion was provided reflecting adherence to financial requirements and standards which means that the City is following generally accepted accounting principles and has an appropriate level of internal controls in place to safeguard municipal assets.

There were no audit findings or recommendations for changes in our internal control structures currently in place.

I would like to express my appreciation to all Department Heads, Division Managers and employees that work with our financial systems throughout the year with a high degree of attention to detail and adherence to accounting policies and procedures.

Upon approval, this report will be submitted to the Government Finance Officers Association (GFOA) Certificate of Achievement for Excellence in Financial Reporting program for review and grading under this voluntary quality control program. We have achieved this award for the past twenty-two years.

The entire Comprehensive Annual Report is posted on the City of Fargo website for citizens and other interested parties to review. This includes the audit opinions, financial statements, statistical data and a schedule of federal financial assistance received by the City in 2019.

**Suggested Motion:**

Approve the Independent Auditor's report and the City Comprehensive Annual Financial Report for the year ending December 31, 2019.

EideBailly

CPAs & BUSINESS ADVISORS

## Independent Auditor's Report

To the Honorable Mayor
and Members of City Commission
City of Fargo, North Dakota
Fargo, North Dakota

**Report on the Financial Statements**
We have audited the accompanying financial statements of the governmental activities, the business-type activities, each major fund, and the aggregate remaining fund information of the City of Fargo, North Dakota (the City), as of and for the year ended December 31, 2019, and the related notes to the financial statements, which collectively comprise the City's basic financial statements as listed in the table of contents.

**Management's Responsibility for the Financial Statements**
Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

**Auditor's Responsibility**
Our responsibility is to express opinions on these financial statements based on our audit. We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinions.

**Opinions**

In our opinion, the financial statements referred to above present fairly, in all material respects, the respective financial position of the governmental activities, the business-type activities, each major fund, and the aggregate remaining fund information of the City as of December 31, 2019, and the respective changes in financial position and, where applicable, cash flows thereof, and the respective budgetary comparison for the General Fund for the year then ended in accordance with accounting principles generally accepted in the United States of America.

**Other Matters**

*Required Supplementary Information*

Accounting principles generally accepted in the United States of America require that the management discussion and analysis on pages 4-10, the pension information including, significant assumptions used to measure total pension liability, schedule of change in net pension liability, schedule of employer contributions, schedule of net pension liability- City of Fargo's proportionate share, and schedule of employer contributions- City of Fargo's proportionate share as presented on pages 89-92, and the OPEB information including, significant assumptions used to measure the OPEB liability, schedule of employer's share of net OPEB liability, schedule of employer contributions, as presented on page 93 be presented to supplement the basic financial statements. Such information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board, who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

*Other Information*

Our audit was conducted for the purpose of forming opinions on the financial statements that collectively comprise the City's financial statements. The introductory section, combining and individual fund statements, capital assets used in the operation of governmental funds, and statistical section are presented for purposes of additional analysis and are not a required part of the financial statements.

The combining and individual nonmajor fund statements are the responsibility of management and were derived from and relate directly to the underlying accounting and other records used to prepare the basic financial statements. Such information has been subjected to the auditing procedures applied in the audit of the basic financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the basic financial statements or to the basic financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America. In our opinion, the combining and individual fund statements and schedules are fairly stated, in all material respects, in relation to the basic financial statements as a whole.

The introductory section, capital assets used in the operation of governmental funds, and statistical section have not been subjected to the auditing procedures applied in the audit of the basic financial statements and, accordingly, we do not express an opinion or provide any assurance on them.

**Other Reporting Required by *Government Auditing Standards***

In accordance with *Government Auditing Standards*, we have also issued a report dated September 24, 2020 on our consideration of the City's internal control over financial reporting and on our tests of its compliance with certain provisions of laws, regulations, contracts, grant agreements, and other matters. The purpose of that report is to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the City's internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the City's internal control over financial reporting and compliance.

Eide Bailly LLP

Mankato, Minnesota
September 24, 2020

THE CITY OF Fargo FAR MORE

**Fargo Cass Public Health**
1240 25th Street South
Fargo, ND 58103-2367
Phone: 701.241.1360 | Fax: 701.241.1366
www.FargoCassPublicHealth.com

Public Health
Prevent. Promote. Protect.
Fargo Cass Public Health

(15)

# MEMORANDUM

**TO:** BOARD OF CITY COMMISSIONERS

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

**DATE:** SEPTEMBER 24, 2020

**RE:** NOTICE OF GRANT AWARD FROM USDA AND NORTH DAKOTA DEPARTMENT OF HEALTH FOR SUPPLEMENTAL NUTRITION PROGRAM FOR $536,825 GRANT NUMBER G19.1103, CFDA 10.557

The following Notice of Grant Award for $536,825 from the North Dakota Department of Health and the USDA for special supplemental nutritional programs for Women, Infants and Children.

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

**Suggested Motion:** Move to approve the award from North Dakota Department of Health & USDA.

DF/lls
Enclosure

# NOTICE OF GRANT AWARD

NORTH DAKOTA DEPARTMENT OF HEALTH

SFN 53771 (01-2020)

| Grant Number<br>G19.1013 | CFDA Name<br>Special Supplemental Nutrition Program for Women, Infants and Children | | CFDA Number<br>10.557 |
|---|---|---|---|
| FAIN Number | Grant Type (Check One)<br>☒ Program ☐ R&D | Grant Start Date<br>10/1/2020 | Grant End Date<br>9/30/2021 |
| Federal Award Date | Federal Awarding Agency<br>U.S. Department of Agriculture | | |

This award is not effective and expenditures related to this award should not be incurred until all parties have signed this document.

| | |
|---|---|
| Title of Project/Program<br>Women, Infant and Children (WIC) | North Dakota Department of Health (NDDoH) Project Code<br>4561 HLH5151 01 |
| Grantee Name<br>Fargo Cass Public Health - WIC | Project Director<br>Colleen Pearce |
| Address<br>1240 25th Street South | Address<br>600 East Boulevard Ave, Dept. 301 |
| City/State/ZIP Code<br>Fargo, ND 58103 | City/State/ZIP Code<br>Bismarck, ND 58505-0200 |
| Contact Name<br>Kim Vance | Contact Name<br>Colleen Pearce |
| Telephone Number<br>701-277-1455 | Telephone Number<br>701-328-2496 |
| Email Address<br>KVance@FargoND.gov | Email Address<br>cpearce@nd.gov |

| | NDDoH Cost Share | Grantee Cost Share | Total Costs |
|---|---|---|---|
| Amount Awarded | $536,825 | $0 | $536,825 |
| Previous Funds Awarded | $0 | $0 | $0 |
| Total Funds Awarded | $536,825 | $0 | $536,825 |
| Indirect Rate (Check One) | ☒ Subrecipient waived indirect costs | ☐ De minimus rate of 10% | ☐ Negotiated/Approved rate of ____ % |

Scope of Service

Grantee will make specific nutritionally desirable foods and nutrition education available for eligible pregnant women, infants and children within counties within the boundaries of the Grantee's service area in accordance with provisions of the Child Nutrition Act of 1966, 7 CFR, Part 246, FNS (and specific contract requirements noted in 246.6, see Attachment A), WIC Policy Memorandum and as detailed in the North Dakota WIC Policy and Procedure manuals. Grantee service provided, and expenditures will follow the approved plan and budget. Any major changes in the type of service delivery and training must be submitted to the State Department of Health for prior approval.

Reporting Requirements

Grantee must submit monthly expenditure reports via the Program Reporting System (PRS). Expenditure report for the period ending June 30, 2021 must be received by July 15, 2021. Final expenditure report for the period ending September 30, 2021, must be received by October 29, 2021. Reimbursement will be processed upon Department approval of state plan progress and expenditure reports.

Special Conditions

None.

This Notice of Grant Award is subject to the terms and conditions incorporated either directly or by reference in the following: (1) Requirements Addendum and Grantee Assurances for Notice of Grant Awards issued by the NDDoH as signed by Grantee for the period of July 1, 2019 to June 30, 2021 [Fiscal Services Use Only: ☒ Requirements Received; ☒ Questionnaire received] and (2) applicable State and Federal regulations.

| Evidence of Grantee's Acceptance | | Evidence of NDDoH Acceptance | |
|---|---|---|---|
| Date<br>9/29/20 | Signature<br>Desi Fleming | Date | Signature |
| Typed Name/Title of Authorized Representative<br>Desi Fleming, Director of Public Health | | Typed Name/Title of Authorized Representative<br>Colleen Pearce, Director, Division of Family Health & Nutrition | |
| Date | Signature | Date | Signature |
| Typed Name/Title of Authorized Representative<br>Timothy J. Mahoney, Mayor, City of Fargo | | Typed Name/Title of Authorized Representative<br>Brenda M. Weisz, Chief Financial Officer | |

If attachments are referenced, they must be returned with the signed award.
If you did not receive attachments as indicated, contact the Program Director identified above.

**ATTACHMENT A**

AGREEMENT ADDENDUM FOR THE OPERATION OF THE SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS AND CHILDREN (WIC)

The following is an addendum to the Notice of Grant Award signed with the North Dakota Department of Health for operation of the WIC Program.

Neither the State agency nor the local agency has an obligation to renew the agreement and expiration of an agreement is not subject to appeal. The State Agency shall provide local agencies with advance written notice of not less than 60 days of the termination of an agreement.

Local Agency Responsibilities include:

- Assuring the agency does not discriminate against person on the grounds of race, color, national origin, age, sex or disability and compiles data, maintains records and submits reports as required to permit effective enforcement of the non-discrimination laws.
- Compliance with all the fiscal and operational requirements prescribed by the State agency pursuant to 7 CFR part 3016 of the WIC Regulations. Agency service provided and expenditures made will be in accordance with the approved plan and budget.
- Assuring that the information obtained from program applicants and participants is restricted to its use and disclosure, according to WIC Regulations. Client Information can only be shared with the express written consent of the WIC participant, or the Department of Health, unless that disclosure is expressly authorized by the Notice of Grant Award, or expressly authorized by North Dakota law, yet remains in compliance with Section 246.26 of the Federal WIC Regulations.
- Assuring that WIC records shall be maintained in accordance with the Privacy Act of 1974, (Public Law 93-579), Freedom of Information Act, the Health Insurance Portability and Accountability Act of 1966 (HIPAA), and Section 246.26 of the Federal WIC Regulations.
- Maintaining complete, accurate, documented and current accounting of all Program funds received and expended.
- Maintaining on file and have available for review, audit, and evaluation all criteria used for certification, including information on the area served, income standards used and specific criteria used to determine nutritional risk.
- Ensuring the presence of a competent professional authority on staff and the capabilities necessary to perform the certification procedures.
- Provides or makes available appropriate health services to participants and informs applicants of the health services available. When health services are provided through referral, has a plan for continued efforts to make health services available to participants at the clinic or through a written agreement with health care provider.
- Prohibiting smoking in the space used to carry out the WIC Program during the time any aspect of WIC services are performed.
- Providing nutrition education services in compliance with 246.11 and FNS guidelines and instructions.
- Implementing a food delivery system prescribed by the State agency pursuant to 246.12 and approved by FNS.
- Assuring that when a health and a human service agency or when one of these and a private physician comprise a local agency, that all will meet all of the contract requirements. No program funds shall be used to reimburse the health agency or the private physician for health services provided.
- Any major changes in the type of service delivery and training must be submitted to the State WIC Director for prior approval. The guidelines outlined in the WIC Job Descriptions must be applied in the hiring of all new staff members for WIC positions.

THE CITY OF Fargo FAR MORE

**Fargo Cass Public Health**
1240 25th Street South
Fargo, ND 58103-2367
Phone: 701.241.1360 | Fax: 701.241.1366
www.FargoCassPublicHealth.com

Public Health
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Fargo Cass Public Health

16

# MEMORANDUM

**TO:** BOARD OF CITY COMMISSIONERS

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

**DATE:** SEPTEMBER 22, 2020

**RE:** NOTICE OF GRANT AWARD FROM NORTH DAKOTA DEPARTMENT OF HEALTH AND HUMAN SERVICES FOR PREVENTING CANCER AN OBESITY IN CHILD CARE $4,950 GRANT NUMBER G19.1046, CFDA 93.898

The following Notice of Grant Award for $4,950 from the North Dakota Department of Health and Human Services is for the grantee to provide ten in person trainings with licensed childcare providers in their target communities instructing about physical activity and nutrition in early childhood.

| | | |
|---|---|---|
| **2020 Revenue** | | |
| **ND Comprehensive Cancer Control** | **101-0000-331-12-58** | **$900** |
| **2020 Expense** | | |
| **Contract Services** | **101-6035-451-38-11** | **$900** |

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

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

DF/lls
Enclosure

THE CITY OF Fargo FAR MORE

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# MEMORANDUM

**TO:** BOARD OF CITY COMMISSIONERS

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

**DATE:** SEPTEMBER 22, 2020

**RE:** NOTICE OF GRANT AWARD FROM NORTH DAKOTA DEPARTMENT OF HEALTH AND HUMAN SERVICES FOR PREVENTING CANCER AN OBESITY IN CHILD CARE $4,950 GRANT NUMBER G19.1046, CFDA 93.898

The following Notice of Grant Award for $4,950 from the North Dakota Department of Health and Human Services is for the grantee to provide ten in person trainings with licensed childcare providers in their target communities instructing about physical activity and nutrition in early childhood.

| | | |
|---|---|---|
| **2021 Revenue** | | |
| **ND Comprehensive Cancer Control** | **101-0000-331-12-58** | **$4050** |
| **2021 Expense** | | |
| **Contract Services** | **101-6035-451-38-11** | **$4050** |

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

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

DF/lls
Enclosure

# NOTICE OF GRANT AWARD

NORTH DAKOTA DEPARTMENT OF HEALTH

SFN 53771 (01-2020)

| Grant Number<br>G19.1046 | CFDA Name<br>Cancer Prevention and Control Programs for State, Territorial, and Tribal Organizations | | CFDA Number<br>93.898 |
|---|---|---|---|
| FAIN Number<br>NU58DP006282 | Grant Type (Check One)<br>☒ Program ☐ R&D | Grant Start Date<br>10/1/2020 | Grant End Date<br>6/29/2021 |
| Federal Award Date<br>5/12/2020 | Federal Awarding Agency<br>Department of Health and Human Services | | |

This award is not effective and expenditures related to this award should not be incurred until all parties have signed this document.

| | |
|---|---|
| Title of Project/Program<br>Cancer and Obesity Prevention in Child Care | North Dakota Department of Health (NDDoH) Project Code<br>4521 HLH 5211 03 |
| Grantee Name<br>Fargo Cass Public Health | Project Director<br>Jesse Tran |
| Address<br>1240 25th St S | Address<br>600 East Boulevard Avenue, Dept. 301 |
| City/State/ZIP Code<br>Fargo, ND 58103 | City/State/ZIP Code<br>Bismarck, ND 58505-0200 |
| Contact Name<br>Larry Anenson | Contact Name<br>Jesse Tran |
| Telephone Number<br>701-241-8575 | Telephone Number<br>701-328-2419 |
| Email Address<br>Lanenson@fargond.gov | Email Address<br>jtran@nd.gov |

| | NDDoH Cost Share | Grantee Cost Share | Total Costs |
|---|---|---|---|
| Amount Awarded | $4,950 | $0 | $4,950 |
| Previous Funds Awarded | $0 | $0 | $0 |
| Total Funds Awarded | $4,950 | $0 | $4,950 |
| Indirect Rate (Check One) | ☒ Subrecipient waived indirect costs | ☐ De minimus rate of 10% | ☐ Negotiated/Approved rate of _____% |

Scope of Service

Grantee will conduct ten (10) in-person trainings with licensed childcare providers in their target communities utilizing an expert in physical activity, nutrition, and early childhood. Grantee will promote program services through in-person site visits, the Growing Futures Statewide Registry, and ActiveChildCare.org.

Reporting Requirements

Grantee will provide an interim written progress report of activities completed by January 29, 2021.
Grantee will provide a final written progress report of activities completed by June 29, 2021.
Grantee will submit an expenditure report at least quarterly via the Program Reporting System (PRS).
Final expenditure report for the period ending June 29, 2021, must be received by July 12, 2021.
Reimbursement will be processed upon Department approval of expenditure reports and progress reports of services completed.

Special Conditions

None.

This Notice of Grant Award is subject to the terms and conditions incorporated either directly or by reference in the following: (1) Requirements Addendum and Grantee Assurances for Notice of Grant Awards issued by the NDDoH as signed by Grantee for the period of July 1, 2019 to June 30, 2021 [Fiscal Services Use Only: ☒ Requirements Received; ☒ Questionnaire received] and (2) applicable State and Federal regulations.

| Evidence of Grantee's Acceptance | | Evidence of NDDoH Acceptance | |
|---|---|---|---|
| Date<br>9/22/20 | Signature | Date | Signature |
| Typed Name/Title of Authorized Representative<br>Desi Fleming, Public Health Director | | Typed Name/Title of Authorized Representative<br>Susan M. Mormann, Director, Division of Community and Health Systems | |
| Date | Signature | Date | Signature |
| Typed Name/Title of Authorized Representative<br>Timothy J. Mahoney, Mayor, City of Fargo | | Typed Name/Title of Authorized Representative<br>Brenda M. Weisz, Chief Financial Officer | |

If attachments are referenced, they must be returned with the signed award.
If you did not receive attachments as indicated, contact the Program Director identified above.

THE CITY OF Fargo FAR MORE

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(17)

# MEMORANDUM

**TO:** BOARD OF CITY COMMISSIONERS

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

**DATE:** SEPTEMBER 29, 2020

**RE:** CONTRACT WITH THE NORTH DAKOTA DEPARTMENT OF HEALTH FOR REGIONAL PUBLIC HEALTH NETWORK IMPLEMENTATION STRATEGIES CONTRACT NO. G19.1064 CFDA NO. 93.991 FOR $10,000

The attached grant agreement with the North Dakota Department of Health is for administrative duties related to the implementation of the Regional Public Health Network strategies for our region.

Please feel free to call me if you have any questions. No budget adjustment is required for this contract.

**Suggested Motion:** Move to approve the contract with the North Dakota Department of Health for Regional Public Health Network Implementation.

DF/lls
Enclosure

# NOTICE OF GRANT AWARD

NORTH DAKOTA DEPARTMENT OF HEALTH

SFN 53771 (01-2020)

| Grant Number | CFDA Name | | CFDA Number |
|---|---|---|---|
| G19.1064 | Preventive Health and Health Service Block Grant | | 93.991 |
| FAIN Number | Grant Type (Check One) | Grant Start Date | Grant End Date |
| NB01OT009337 | ☒ Program ☐ R&D | 10/1/2020 | 9/30/2021 |
| Federal Award Date | Federal Awarding Agency | | |
| 8/25/2020 | Centers for Disease Control and Prevention | | |

This award is not effective and expenditures related to this award should not be incurred until all parties have signed this document.

| | |
|---|---|
| Title of Project/Program<br>Regional Public Health Network Implementation | North Dakota Department of Health (NDDoH) Project Code<br>1151 HLH 3140 51 |
| Grantee Name<br>Fargo Cass Public Health | Project Director<br>Kelly Nagel |
| Address<br>1240 25th Street South | Address<br>600 East Boulevard Avenue- Dept. 301 |
| City/State/ZIP Code<br>Fargo, ND 58103 | City/State/ZIP Code<br>Bismarck, ND 58505 |
| Contact Name<br>Desi Fleming | Contact Name<br>Kelly Nagel |
| Telephone Number<br>701-241-1360 | Telephone Number<br>701-328-4596 |
| Email Address<br>dfleming@fargond.gov | Email Address<br>kjnagel@nd.gov |

| | NDDoH Cost Share | Grantee Cost Share | Total Costs |
|---|---|---|---|
| Amount Awarded | $10,000 | $0 | $10,000 |
| Previous Funds Awarded | $0 | $0 | $0 |
| Total Funds Awarded | $10,000 | $0 | $10.000 |
| Indirect Rate (Check One) | ☒ Subrecipient waived indirect costs | ☐ De minimus rate of 10% | ☐ Negotiated/Approved rate of % |

Scope of Service

Grantee will perform administrative duties related to the implementation of the Regional Public Health Network strategies. Funding will be utilized to implement strategies identified in the approved Southeast Collaborative work plan which includes required strategy(ies) addressing the following goal: Increase the proportion of local public health agencies that provide or assure comprehensive epidemiology services to support essential public health services.

Reporting Requirements

Grantee will submit quarterly expenditure and progress reports in the Department's Program Reporting System.
Expenditures for the period ending June 30, 2021 must be received by July 15, 2021.
Final expenditure and progress report for the period ending September 30, 2021 must be received by October 29, 2021.
Reimbursement will be processed upon the Department approval of expenditures and progress report.

Special Conditions

None.

This Notice of Grant Award is subject to the terms and conditions incorporated either directly or by reference in the following: (1) Requirements Addendum and Grantee Assurances for Notice of Grant Awards issued by the NDDoH as signed by Grantee for the period of July 1, 2019 to June 30, 2021 [Fiscal Services Use Only: ☒ Requirements Received; ☒ Questionnaire received] and (2) applicable State and Federal regulations.

| Evidence of Grantee's Acceptance | | Evidence of NDDoH Acceptance | |
|---|---|---|---|
| Date<br>9/29/20 | Signature<br>Desi Fleming | Date | Signature |
| Typed Name/Title of Authorized Representative<br>Desi Fleming, Public Health Director | | Typed Name/Title of Authorized Representative<br>Kelly Nagel, Director, Systems and Performance | |
| Date | Signature | Date | Signature |
| Typed Name/Title of Authorized Representative<br>Timothy J. Mahoney, Mayor, City of Fargo | | Typed Name/Title of Authorized Representative<br>Brenda M. Weisz, Chief Financial Officer | |

If attachments are referenced, they must be returned with the signed award.
If you did not receive attachments as indicated, contact the Program Director identified above.

THE CITY OF Fargo FAR MORE

**HUMAN RESOURCES DEPARTMENT**
Fargo City Hall
225 4th Street North
Fargo, ND 58102
Phone: 701.241.1321 | Fax: 701.476.6707
www.FargoND.gov

(18)

To: Board of City Commissioners

From: Jill Minette, Director of Human Resources JM

Re: Benefit Renewals

Date: October 1, 2020

We have several benefit plan renewals that will be occurring on January 1, 2021. The renewals and proposed changes are listed below:

Health Insurance

Our health insurance provider is Blue Cross Blue Shield of North Dakota (BCBSND). The proposed renewal for the BlueAccess Grandfathered Plan for 2021 includes a 19% premium increase. During the budget approval process, the City Commission approved applying only 7% of the increase to employees in 2021 with the city paying the remainder of the premium increase. This is a temporary change for 2021. The cost-sharing structure for health insurance premiums is intended to be discussed and returned to the regular funding pattern in 2022. This temporary change is intended to minimize the financial impact of the health insurance premium increase on employees since there will not be a competitive wage adjustment in 2021.

This equates to a monthly increase of $5.06 for employees enrolled in single and a monthly increase of $24.46 for employees enrolled in family coverage. The City of Fargo's increased contribution was included in the 2021 budget.

The proposed health premiums are attached. The plan design (deductibles, co-payments and out-of-pocket maximums) remains the same. A Summary of Benefit Plan Changes for Group Health Plans is attached outlining the language changes for the plan.

Dental Insurance

Our dental insurance provider is Blue Cross Blue Shield of North Dakota (BCBSND). Their proposed renewal for 2021 includes a 2% increase to premiums. The City contributes the cost of the single premium for all full-time employees (pro-rated for benefited employees scheduled less than 40 hours per week) regardless of the level of coverage elected. The 2021 premiums as well as a Summary of Benefit Plan Changes are attached.

Vision Insurance

Our vision insurance provider is currently Superior Vision. The current premiums are guaranteed through December 31, 2022.

Life Insurance

Our current life insurance provider is Mutual of Omaha. The life insurance renewal for 2021 provides no increase to employee premiums, which are paid entirely by COF employees.

Long-Term Disability (LTD) Insurance

Our current long-term disability provider is Mutual of Omaha. There is no change to the premium for 2021. The maximum monthly benefit is increasing from $10,000 to $10,500. The plan's elimination period remains 120 days. The City of Fargo pays the LTD premium of .20% of insured income entirely.

Short-Term Disability Insurance

In conjunction with BlueConnect, the benefit enrollment platform, Unum will continue to be offered as an individual short-term disability plan. The plan is voluntary and the premium will be paid entirely by participating employees. The plan has an elimination period of 14 days and a benefit period of six months at 60% of base income.

Flexible Spending Accounts

The City of Fargo will continue to offer employees the opportunity to participate in flexible benefits administered by Discovery Benefits. Participants utilize pre-tax dollars to pay for eligible health and dependent care expenses.

**RECOMMENDED MOTION: To approve the benefit renewals as outlined in this benefit renewal memo effective January 1, 2021.**

# City of Fargo
# Blue Cross Blue Shield of North Dakota (BCBSND)
# Health Insurance Premiums
# Effective January 1, 2021

| | | Active Employees | | | | | |
|---|---|---|---|---|---|---|---|
| | | BCBSND BlueAccess | | | | | |
| | | Employee Pay Period Contribution | COF Pay Period Contribution | Employee Monthly Contribution | COF Monthly Contribution | Combined Monthly Premium | Total Annual Premium |
| **Full-time 40*** | Single | $ 38.64 | $ 268.36 | $ 77.28 | $ 536.72 | $ 614.00 | $ 7,368.00 |
| 2080 annual hrs | Family | $ 186.99 | $ 555.91 | $ 373.98 | $ 1,111.82 | $ 1,485.80 | $ 17,829.60 |
| **Full-time 30-39*** | Single | $ 93.84 | $ 213.16 | $ 187.68 | $ 426.32 | $ 614.00 | $ 7,368.00 |
| 1560-2017 annual hrs | Family | $ 307.20 | $ 435.70 | $ 614.40 | $ 871.40 | $ 1,485.80 | $ 17,829.60 |
| **Part-time 20-29*** | Single | $ 138.00 | $ 169.00 | $ 276.00 | $ 338.00 | $ 614.00 | $ 7,368.00 |
| 1040-1559 annual hrs | Family | $ 427.42 | $ 315.48 | $ 854.84 | $ 630.96 | $ 1,485.80 | $ 17,829.60 |

*Premiums apply to employees who are benefit eligible as defined in COF policy.

| COBRA Rates | |
|---|---|
| | **Monthly** |
| COBRA Single | $ 626.28 |
| COBRA Family | $ 1,515.52 |

**Health Insurance is effective the 1st of the month following date of hire.**

# Summary of Benefit Plan Changes for Group Health Plans

The following information provides a brief summary of benefit plan changes effective on your group's anniversary unless the effective date is noted otherwise. This summary should not be used to determine whether health care expenses will be paid. The written benefit plan governs the benefits available. Covered services are subject to your benefit plan cost sharing amounts, unless otherwise indicated. If you have any questions regarding the amendment(s) provided to you, please contact Member Services at the address or telephone number on the back of your Member Identification Card.

This is a grandfathered Benefit Plan under the Patient Protection and Affordable Care Act (PPACA).

### Prescription Medications or Drugs and the Route of Administration

Effective January 1, 2021, language has been added to clarify benefits for certain prescription medications or drugs that are subject to a route of administration exclusion. The coverage for these prescription medications or drugs under the benefit plan is available only through medical benefits and not under the outpatient prescription medication or drug retail pharmacy benefit. To obtain a list of the various categories of prescription medications or drugs and route of administration exclusions, please visit www.BCBSND.com/members/rx-tools.

### Gambling Addiction or Nicotine Addiction Exclusion

Effective January 1, 2021, language has been removed from the Exclusions section. The counseling services for the treatment of gambling addiction or nicotine addiction exclusion has been deleted.

*Blue Cross Blue Shield of North Dakota is an independent licensee of the Blue Cross & Blue Shield Association*

# City of Fargo
## Blue Cross Blue Shield North Dakota (BCBSND) Dental Premiums
## 2021

| | Employee Pay Period Contribution | COF Pay Period Contribution | Employee Monthly Contribution | COF Monthly Contribution | Combined Monthly Premium | Total Annual Premium |
|---|---|---|---|---|---|---|
| **Full-Time Employee 40 (Scheduled Hours: 40 /week; 2080 /Year)*** | | | | | | |
| Employee Only | $0.00 | $20.85 | $0.00 | $41.70 | $41.70 | $500.40 |
| + spouse | $20.90 | $20.85 | $41.80 | $41.70 | $83.50 | $1,002.00 |
| + children | $19.85 | $20.85 | $39.70 | $41.70 | $81.40 | $976.80 |
| + spouse & children | $41.15 | $20.85 | $82.30 | $41.70 | $124.00 | $1,488.00 |
| **Full-Time Employee 30-39 (Scheduled Hours: 30-39/week; 1560-2079/year)*** | | | | | | |
| Employee Only | $5.21 | $15.64 | $10.42 | $31.28 | $41.70 | $500.40 |
| + spouse | $26.11 | $15.64 | $52.22 | $31.28 | $83.50 | $1,002.00 |
| + children | $25.06 | $15.64 | $50.12 | $31.28 | $81.40 | $976.80 |
| + spouse & children | $46.36 | $15.64 | $92.72 | $31.28 | $124.00 | $1,488.00 |
| **Part-time Employee 20-29 (Scheduled Hours 20-29/week; 1040 - 1559/year)*** | | | | | | |
| Employee Only | $10.42 | $10.43 | $20.84 | $20.86 | $41.70 | $500.40 |
| + spouse | $31.32 | $10.43 | $62.64 | $20.86 | $83.50 | $1,002.00 |
| + children | $30.27 | $10.43 | $60.54 | $20.86 | $81.40 | $976.80 |
| + spouse & children | $51.57 | $10.43 | $103.14 | $20.86 | $124.00 | $1,488.00 |

*Premiums apply to employees who are benefit eligible as defined in COF policy.

| COBRA Rates | |
|---|---|
| | **COBRA Monthly Premium** |
| COBRA Employee Only | $ 42.53 |
| COBRA + spouse | $ 85.17 |
| COBRA + children | $ 83.03 |
| COBRA + spouse & Children | $ 126.48 |

**Dental Insurance is effective the 1st of the month following date of hire.**

# Summary of Benefit Plan Changes for Group Dental Plans

The following information provides a brief summary of benefit plan changes effective on your group's anniversary unless the effective date is noted otherwise. This summary should not be used to determine whether dental care expenses will be paid. The written benefit plan governs the benefits available. Covered services are subject to your benefit plan cost sharing amounts, unless otherwise indicated. If you have any questions regarding the Schedule of Benefits provided to you, please contact Member Services at the address or telephone number on the back of your Member Identification Card.

**Dental Schedule of Benefits**

Dental benefits have expanded as certain preventive, diagnostic and palliative services will no longer apply to the benefit maximum. These services will be covered without reducing the benefit maximum when received in-network. These services include:

- Oral Evaluations
- Bitewing X-rays
- Full Mouth X-rays or Panoramic X-rays
- Occlusal Films
- Prophylaxis (Cleanings)
- Fluoride Varnish
- Topical Fluoride
- Cone Beam CT Images
- Palliative Treatment (Emergency)

*Blue Cross Blue Shield of North Dakota is an independent licensee of the Blue Cross & Blue Shield Association*

19

| City of Fargo Staff Report | | | |
|---|---|---|---|
| **Title:** | 2750 Main Addition | **Date:** | 10/1/2020 |
| **Location:** | 2750 Main Avenue, 25 27½ Street South, 66 28th Street South, and 120-124 28th Street South | **Staff Contact:** | Donald Kress, planning coordinator |
| **Legal Description:** | Portion of the Northeast Quarter of the Northeast Quarter of Section 11, Township 139 North, Range 49 West of the Fifth Principal Meridian, Cass County, North Dakota | | |
| **Owner(s)/Applicant:** | Northwestern Equipment / Neset Land Surveys | **Engineer:** | Neset Land Surveys |
| **Entitlements Requested:** | **Minor Subdivision** (Plat of a portion of the Northeast Quarter of the Northeast Quarter of Section 11, Township 139 North, Range 49 West of the Fifth Principal Meridian, Cass County, North Dakota) | | |
| **Status:** | City Commission Public Hearing: October 5, 2020 | | |

| Existing | | Proposed |
|---|---|---|
| **Land Use:** Retail, industrial service, manufacturing and production | | **Land Use:** No change |
| **Zoning:** LI, Limited Industrial | | **Zoning:** No change |
| **Uses Allowed:** LI– Limited Industrial. Allows colleges, community service, daycare centers of unlimited size, detention facilities, health care facilities, parks and open space, religious institutions, safety services, adult entertainment centers, offices, off-premise advertising, commercial parking, outdoor recreation and entertainment, retail sales and service, self-service storage, vehicle repair, limited vehicle service, industrial service, manufacturing and production, warehouse and freight movement, wholesale sales, aviation, surface transportation. | | **Uses Allowed:** No change |
| **Maximum Building Coverage Allowed:** 85% of lot | | **Maximum Building Coverage Allowed:** No change |

**Proposal:**

The applicant requests one entitlement:

- A minor subdivision, entitled **2750 Main Addition** which is a plat of a portion of the Northeast Quarter of the Northeast Quarter of Section 11, Township 139 North, Range 49 West of the Fifth Principal Meridian, Cass County, North Dakota

The property is zoned LI, Limited Industrial. No zone change is proposed. The land uses allowed in the LI zone are noted above.

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.

(continued on next page)

**Surrounding Land Uses and Zoning Districts:**

- North: GC, General Commercial; commercial uses
- East: LI, industrial uses
- South: LI, industrial uses
- West: LI, fitness center, industrial uses

**Area Plans:**

The subject property is not included within any area plans or neighborhood plans. This project is west of the area included in the 2004 Jefferson-Carl Ben Eielson Neighborhood Plan.

**Schools and Parks:**

**Schools**: The subject property is located within the Fargo School District and is served by Jefferson Elementary, Carl Ben Eielson Middle and South High schools.

**Neighborhood:** The subject property is not located within an identified neighborhood.

**Parks**: The Metro Rec Center (3110 Main Avenue) is located approximately 0.20 miles west of the subject property, and provides facilities for archery, batting cage, horseshoes, and soccer

**Pedestrian / Bicycle**: There are no bike/pedestrian trails in the adjacent public rights of way.

**Staff Analysis:**

PLAT: The subdivision will plat the unplatted property into two lots. The existing businesses—a grocery store along Main Avenue and industrial service, supply, and manufacturing businesses on the rest of the property--and structures will remain.

UTILITIES: The street access and utility connections that are in place on the current lots will remain.

ACCESS: A negative access easement is depicted on the plat to prevent direct vehicular access onto Main Avenue.

NOTE ON APPROVAL MOTION: Note that the approval motion makes the approval contingent on

1. final technical review;
2. applicant completing any required revisions of the plat; and
3. final approval of the City Engineer.

The City Commission need not take any further action once the contingent approval motion is approved. Staff will verify compliance with the contingencies and record the plat when the contingencies have been met.

**SUBDIVISION**

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

1. **Section 20-0907.B.3 of the LDC stipulates that the Planning Commission recommend approval or denial of the application, based on whether it complies with the adopted Area Plan, the standards of Article 20-06 and all other applicable requirements of the Land Development Code. Section 20-0907.B.4 of the LDC further stipulates that a Minor Subdivision Plat shall not be approved unless it is located in a zoning district that allows the proposed development and complies with the adopted Area Plan, the standards of Article 20-06 and all other applicable requirements of the Land Development Code.**
   The subject property is not located within an area plan or neighborhood plan. The properties within this plat are currently zoned LI, Limited Industrial. No zone change is proposed. In accordance with

Section 20-0901.F of the LDC, notices of the proposed plat have been sent out to property owners within 300 feet of the subject property. To date, staff has received no comments. The project has been reviewed by the city's Planning, Engineering, Public Works, Inspections, and Fire Departments. **(Criteria Satisfied)**

2. **Section 20-0907.C.4.f of the LDC stipulates that in taking action on a Final Plat, the Board of City Commissioners shall specify the terms for securing installation of public improvements to serve the subdivision.**
   While this section of the LDC specifically addresses only major subdivision plats, staff believes it is important to note that any improvements associated with the project (both existing and proposed) are subject to special assessments. Special assessments associated with the costs of the public infrastructure improvements are proposed to be spread by the front footage basis and storm sewer by the square footage basis as is typical with the City of Fargo assessment principles. **(Criteria Satisfied)**

Suggested Motion: "To accept the findings and recommendations of the Planning Commission and staff and move to approve the proposed **2750 Main Addition** subdivision plat, as presented, as the proposal complies with the Standards of Article 20-06, and all other applicable requirements of the LDC, **contingent on 1) final technical review 2 ) applicant completing any required revisions of the plat and 3) final approval of the City Engineer."**

**Planning Commission Recommendation:** August 4, 2020

On August 4, 2020, by a vote of 8-0 with one Commissioner absent and two Commission seats vacant, the Planning Commission moved to accept the findings and recommendations of staff and to recommend approval to the City Commission of the proposed **2750 Main Addition** subdivision plat, as presented, as the proposal complies with the Standards of Article 20-06, and all other applicable requirements of the LDC.

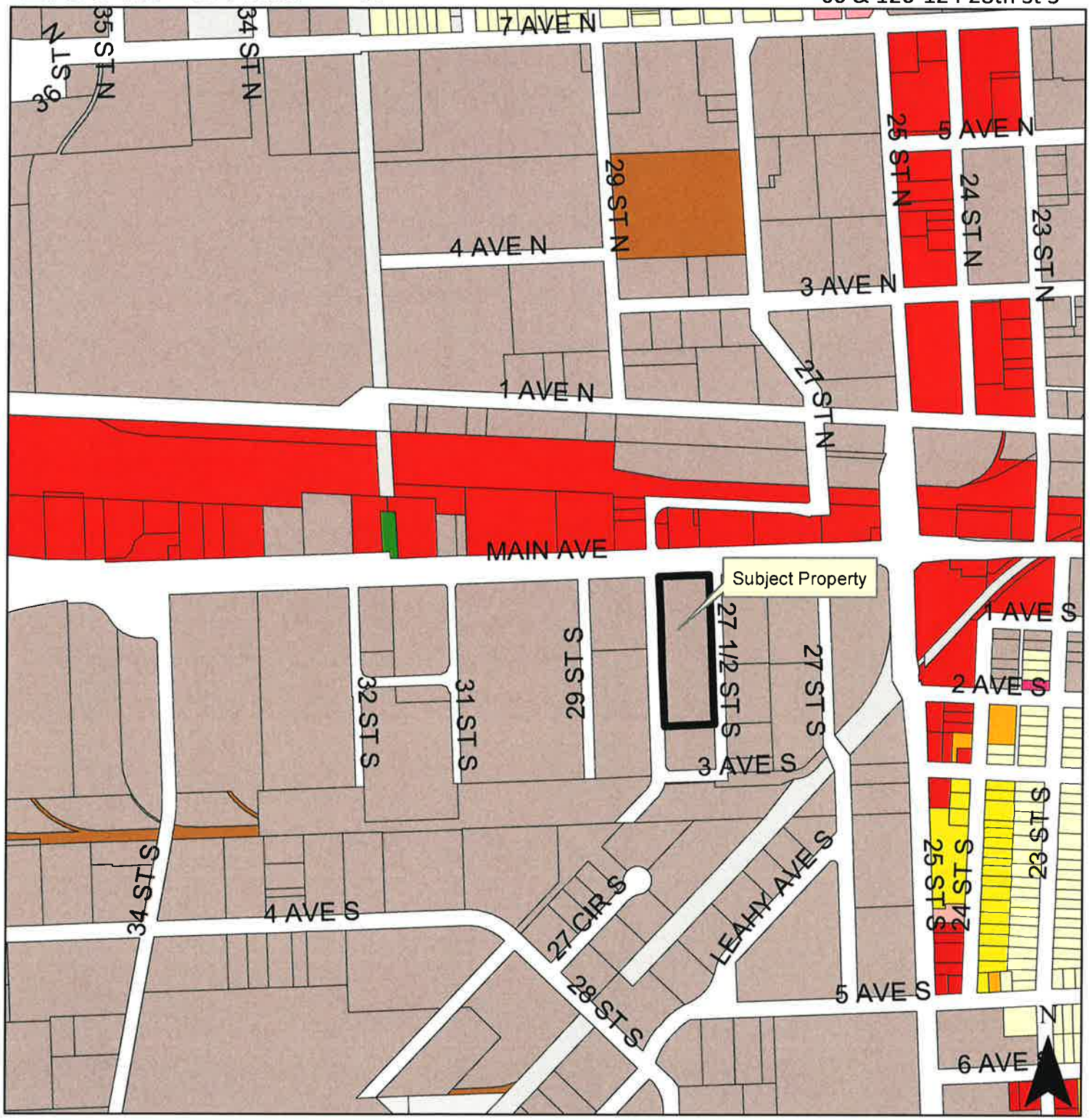
**Attachments:**

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

# Plat (Minor)

2750 Main Ave
25 27 1/2 St S
66 & 120-124 28th St S

## 2750 Main Addition




THE CITY OF Fargo FAR MORE

500 feet

**Fargo Planning Commission**
**August 4, 2020**

# Plat (Minor)

2750 Main Ave
25 27 1/2 St S
66 & 120-124 28th St S

## 2750 Main Addition



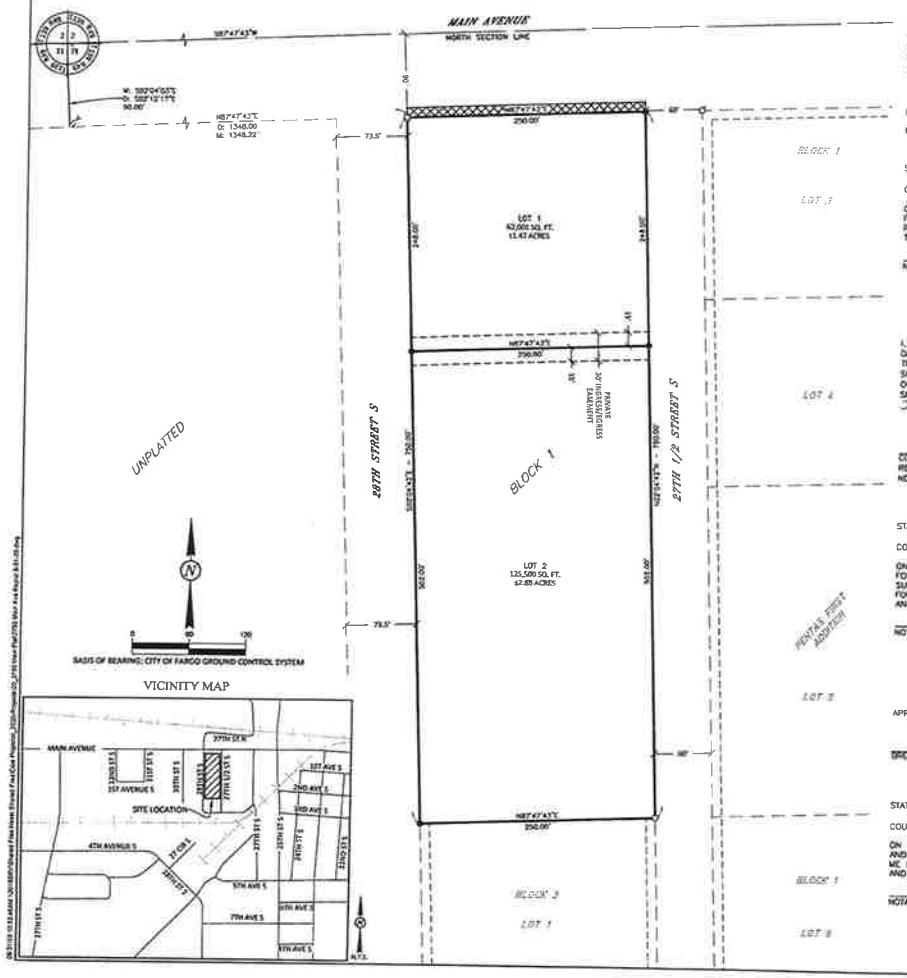

THE CITY OF Fargo FAR MORE

500 feet

**Fargo Planning Commission**
**August 4, 2020**

# 2750 MAIN ADDITION

A PLAT OF PART OF THE NE1/4 NE1/4 OF SECTION 11, TOWNSHIP 139 NORTH, RANGE 49 WEST OF THE FIFTH PRINCIPAL MERDIAN
CITY OF FARGO, COUNTY OF CASS, STATE OF NORTH DAKOTA
A MINOR SUBDIVISION




VICINITY MAP




## OWNERS' CERTIFICATE

KNOW ALL MEN BY THESE PRESENTS, NORTHWESTERN EQUIPMENT, INC, IS THE OWNER OF THE FOLLOWING DESCRIBED PROPERTY:

THAT PART OF THE NE1/4 NE1/4 IN SECTION 11, TOWNSHIP 139 NORTH OF RANGE 49 WEST OF THE FIFTH PRINCIPAL MERIDIAN, CASS COUNTY, NORTH DAKOTA DESCRIBED AS FOLLOWS: COMMENCING AT A POINT IN THE NORTH AND SOUTH CENTER LINE OF SAID SECTION 11 DISTANT 50 FEET SOUTH, MEASURED AT RIGHT ANGLES, FROM THE NORTH LINE OF SAID SECTION; THENCE EAST PARALLEL WITH THE SAID NORTH SECTION LINE A DISTANCE OF 1348 FEET TO THE TRUE POINT OF BEGINNING; THENCE SOUTH ALONG A LINE PARALLEL WITH THE NORTH AND SOUTH CENTER LINE OF SAID SECTION A DISTANCE OF 750 FEET; THENCE EAST ALONG A LINE PARALLEL WITH THE NORTH LINE OF SAID SECTION A DISTANCE OF 250 FEET; THENCE NORTH ALONG A LINE PARALLEL WITH THE NORTH AND SOUTH CENTER LINE OF SAID SECTION A DISTANCE OF 750 FEET; THENCE WEST ALONG A LINE PARALLEL WITH THE NORTH LINE OF SAID SECTION A DISTANCE OF 250 FEET TO THE TRUE POINT OF BEGINNING.

SAID OWNERS HAVE CAUSED THE ABOVE DESCRIBED TRACT OF LAND SHOWN ON THIS PLAT TO BE SURVEYED AND PLATTED AS 2750 MAIN ADDITION TO THE CITY OF FARGO. THE 30 FOOT INGRESS EGRESS EASEMENT SHOWN SHALL BE PRIVATE. SAID 2750 MAIN ADDITION CONSISTS OF TWO LOTS AND ONE BLOCK, AND CONTAINS 187,591 SQUARE FEET OR 4.30 ACRES, MORE OR LESS TOGETHER WITH EASEMENTS AND RIGHT OF WAYS OF SIGHT AND RECORD.

BY: _____
JOHN LASKEY
ITS: PRESIDENT

STATE OF North Dakota )
)SS
COUNTY OF Cass )

ON THIS 1st DAY OF September 2020, BEFORE ME, A NOTARY PUBLIC WITHIN AND FOR SAID COUNTY AND STATE, PERSONALLY APPEARED JOHN LASKEY, TO ME KNOWN TO BE THE PERSON DESCRIBED IN AND WHO EXECUTED THE FOREGOING INSTRUMENT AND ACKNOWLEDGED THAT HE EXECUTED THE SAME AS THEIR FREE ACT AND DEED.

_____
NOTARY PUBLIC

SAVANNAH KAHN
Notary Public
State of North Dakota
My Commission Expires Dec. 29, 2021

## SURVEYORS CERTIFICATE

I, COLE A. NESET, REGISTERED LAND SURVEYOR UNDER THE LAWS OF THE STATE OF NORTH DAKOTA, DO HEREBY CERTIFY THAT I HAVE SURVEYED AND PLATTED THE PROPERTY DESCRIBED ON THIS PLAT AS 2750 MAIN ADDITION; THAT THIS PLAT IS A CORRECT REPRESENTATION OF SAID SURVEY; THAT ALL DISTANCES ARE SHOWN CORRECTLY ON SAID PLAT IN FEET AND HUNDREDTHS OF A FOOT; THAT ALL MONUMENTS ARE OR WILL BE INSTALLED CORRECTLY IN THE GROUND AS SHOWN; AND THAT THE EXTERIOR BOUNDARY LINES ARE CORRECTLY DESIGNATED. DATED THIS 31st DAY OF August 2020.

_____
COLE A. NESET
REGISTERED LAND SURVEYOR
ND REG. NO. 7513

COLE A. NESET
LS - 7513
8-31-20
NORTH DAKOTA

STATE OF NORTH DAKOTA )
)SS
COUNTY OF CASS )

ON THIS 31st DAY OF August 2020, BEFORE ME, A NOTARY PUBLIC WITHIN AND FOR SAID COUNTY AND STATE, PERSONALLY APPEARED COLE A. NESET, REGISTERED LAND SURVEYOR, TO ME KNOWN TO BE THE PERSON DESCRIBED IN AND WHO EXECUTED THE FOREGOING INSTRUMENT AND ACKNOWLEDGED THAT HE EXECUTED THE SAME AS THEIR FREE ACT AND DEED.

_____
NOTARY PUBLIC

SAVANNAH KAHN
Notary Public
State of North Dakota
My Commission Expires Dec. 29, 2021

## CITY ENGINEER'S APPROVAL

APPROVED BY THE FARGO CITY ENGINEER THIS_____DAY OF_____2020.

_____
BRENDA DERRIG, CITY ENGINEER

STATE OF NORTH DAKOTA )
)SS
COUNTY OF CASS )

ON THIS_____DAY OF_____, 2020, BEFORE ME, A NOTARY PUBLIC WITHIN AND FOR SAID COUNTY AND STATE, PERSONALLY APPEARED BRENDA DERRIG, CITY ENGINEER, TO ME KNOWN TO BE THE PERSON DESCRIBED IN AND WHO EXECUTED THE FOREGOING INSTRUMENT AND ACKNOWLEDGED THAT SHE EXECUTED SAME AS THEIR FREE ACT AND DEED.

_____
NOTARY PUBLIC

## FARGO PLANNING COMMISSION APPROVAL

APPROVED BY THE CITY OF FARGO PLANNING COMMISSION THIS 4th DAY OF August 2020.

_____
JOHN GUNKELMAN, CHAIR
FARGO PLANNING COMMISSION

STATE OF NORTH DAKOTA )
)SS
COUNTY OF CASS )

ON THIS 8th DAY OF September 2020, BEFORE ME, A NOTARY PUBLIC WITHIN AND FOR SAID COUNTY AND STATE, PERSONALLY APPEARED JOHN GUNKELMAN, CHAIR, FARGO PLANNING COMMISSION, TO ME KNOWN TO BE THE PERSON DESCRIBED IN AND WHO EXECUTED THE FOREGOING INSTRUMENT AND ACKNOWLEDGED THAT HE EXECUTED THE SAME AS THEIR FREE ACT AND DEED.

_____
NOTARY PUBLIC

MIRANDA WOLF
Notary Public
State of North Dakota
My Commission Expires May 18, 2023

## FARGO CITY COMMISSION APPROVAL

APPROVED BY THE BOARD OF CITY COMMISSIONERS AND ORDERED FILED THIS_____DAY OF_____2020.

_____
TIMOTHY J. MAHONEY, MAYOR

ATTEST:

_____
STEVEN SPRAGUE, CITY AUDITOR

STATE OF NORTH DAKOTA )
)SS
COUNTY OF CASS )

ON THIS_____DAY OF_____, 2020, BEFORE ME, A NOTARY PUBLIC WITHIN AND FOR SAID COUNTY AND STATE, PERSONALLY APPEARED TIMOTHY J. MAHONEY, MAYOR, CITY OF FARGO, AND STEVEN SPRAGUE, CITY AUDITOR, CITY OF FARGO, TO ME KNOWN TO BE THE PERSONS DESCRIBED IN AND WHO EXECUTED THE FOREGOING INSTRUMENT AND ACKNOWLEDGED THAT THEY EXECUTED THE SAME AS THEIR FREE ACT AND DEED.

_____
NOTARY PUBLIC

## ALERUS FINANCIAL

MORTGAGEE LOTS 1 AND 2, BLOCK 1

ALERUS FINANCIAL
BY: _____
ITS: BUSINESS ADVISOR LEAD, BILL CARLSON

STATE OF NORTH DAKOTA )
)SS
COUNTY OF CASS )

ON THIS 31st DAY OF August 2020, BEFORE ME, A NOTARY PUBLIC WITHIN AND FOR SAID COUNTY AND STATE, PERSONALLY APPEARED Bill Carlson, TO ME KNOWN TO BE THE Business Advisor Lead OF ALERUS FINANCIAL THAT IS DESCRIBED IN AND WHO EXECUTED THE FOREGOING INSTRUMENT AND ACKNOWLEDGED THAT HE/SHE EXECUTED THE SAME ON BEHALF OF VISION BANK.

_____
NOTARY PUBLIC

CORRINE KOLPACK
Notary Public
State of North Dakota
My Commission Expires Aug. 1, 2022

NOTE:

NEGATIVE ACCESS EASEMENT, AS NOTED ON THIS PLAT, IS AN EASEMENT DEDICATED AS PART OF THE RIGHT-OF-WAY DEDICATION WHICH EASEMENT DENIES DIRECT VEHICULAR ACCESS TO A STREET OR PUBLIC WAY FROM THE LOT OR LOTS ADJACENT TO SUCH STREET OR WAY. THE NEGATIVE ACCESS EASEMENT IS NOT A STRIP OF LAND OF ANY CERTAIN WIDTH, BUT IS A LINE COTERMINOUS WITH THE BOUNDARY OF THE ADJACENT LOT OR LOTS.

LEGEND

- SECTION LINE
- EXISTING EASEMENT
- EXISTING LOT LINE
- NEW BOUNDARY LINE
- NEW EASEMENT
- MONUMENT FOUND
- MONUMENT SET
- NEGATIVE ACCESS EASEMENT
- M MEASURED
- D DEEDED

(20)

CITY OF Fargo

# Fargo Police Department

105 25th Street North, Fargo North Dakota 58102
*Ross Renner – Interim Chief of Police*

September 29, 2020

Board of City Commissioners
City Hall
Fargo, ND 58102

RE: Order for Services Agreement W50S8820A0001, 119th Wing, North Dakota Air National Guard

Dear Commissioners:

The Fargo Police Department in partnership with the West Fargo Police Department, Cass County Sheriff's Department and NDSU Police Department are renewing an agreement with the 119th Wing of the North Dakota Air National Guard. This agreement sets the parameters of use and a payment schedule for use of the Fargo Regional Law Enforcement Training Center located at 2802 N. University Dr. Fargo, ND 58102.

The North Dakota Air National Guard is invoiced for their use of the facility and payment is routed through the Auditor's Office. The payment is then deposited in a joint account for the participating agencies (governed by a board) for the upkeep and maintenance of the facilities.

Attached for your review and approval is the inter-local agreement that will need to be signed by the Mayor in order for the funds to be accepted and allocated.

**Recommended Motion:**

*Accept the terms associated with the Order for Services Agreement with the 119th Wing, North Dakota Air Guard as described within the attached agreement.*

Please contact me if you have any questions or concerns.

Sincerely,

Ross Renner
Interim Chief of Police

52.204-24 Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment

## Covered Telecommunications Equipment or Services-Representation

**Representation**. As prescribed in 4.2105(a), complete the following representation in FAR Clause 52.204-24
(d) Representation. The Offeror represents that—

(1) It □ **will,** ☑ **will not** provide covered telecommunications equipment or services to the Government in the performance of any contract, subcontract or other contractual instrument resulting from this solicitation. The Offeror shall provide the additional disclosure information required at paragraph (c)(1) of this section if the Offeror responds "will" in paragraph (d)(1) of this section; and

(2) After conducting a reasonable inquiry, for purposes of this representation, the Offeror represents that—
It □ **does,** ☑ **does not** use covered telecommunications equipment or services, or use any equipment, system, or service that uses covered telecommunications equipment or services. The Offeror shall provide the additional disclosure information required at paragraph (c)(2) of this section if the Offeror responds "does" in paragraph (d)(2) of this section.

Merchant Name City of Fargo

Merchant's Authorized Representative Mayor Dr. Tim Mahoney
(Typed Name)

Authorized Representative Signature _____

# ORDER FOR SUPPLIES OR SERVICES

PAGE 1 OF 19

| 1. CONTRACT/PURCH. ORDER/ AGREEMENT NO. | 2. DELIVERY ORDER/ CALL NO. | 3. DATE OF ORDER/CALL | 4. REQ./ PURCH. REQUEST NO. | 5. PRIORITY |
|---|---|---|---|---|
| W50S8820A0001 | | 2020 Oct 01 | | |

**6. ISSUED BY** CODE W50S88
USPFO ND 119 MISSION SUPPORT CONTRACTING
1400 32ND AVE. N
FARGO ND 58102-1051

**7. ADMINISTERED BY** CODE
SEE ITEM 6

**8. DELIVERY FOB**
☐ DEST
☒ OTHER
(See Schedule if other)

**9. CONTRACTOR** CODE 4SAG7 FACILITY 4SAG7
FARGO, CITY OF
FARGO POLICE DEPARTMENT
FARGO POLICE DEPARTMENT
222 4TH STREET N
FARGO ND 58102-4818

**10. DELIVER TO FOB POINT BY (Date)**
SEE SCHEDULE

**11. MARK IF BUSINESS IS**
☐ SMALL
☐ SMALL DISADVANTAGED
☐ WOMEN-OWNED

**12. DISCOUNT TERMS**
Net 30 Days

**13. MAIL INVOICES TO THE ADDRESS IN BLOCK**
See Terms and Conditions

**14. SHIP TO** CODE
SEE SCHEDULE

**15. PAYMENT WILL BE MADE BY** CODE F87700
DFAS DEAMS-F87700
ACCTG DISB STA NR 387700
DFAS DEAMS
27 ARKANSAS RD
LIMESTONE ME 04751-6216

**MARK ALL PACKAGES AND PAPERS WITH IDENTIFICATION NUMBERS IN BLOCKS 1 AND 2.**

**16. TYPE OF ORDER**
DELIVERY/ CALL ☐ This delivery order/call is issued on another Govt. agency or in accordance with and subject to terms and conditions of above numbered contract.
PURCHASE ☐ Reference your quote dated
Furnish the following on terms specified herein. REF:

ACCEPTANCE. THE CONTRACTOR HEREBY ACCEPTS THE OFFER REPRESENTED BY THE NUMBERED PURCHASE ORDER AS IT MAY PREVIOUSLY HAVE BEEN OR IS NOW MODIFIED, SUBJECT TO ALL OF THE TERMS AND CONDITIONS SET FORTH, AND AGREES TO PERFORM THE SAME.

| City of Fargo | | Dr. Tim Mahoney, Mayor | |
|---|---|---|---|
| NAME OF CONTRACTOR | SIGNATURE | TYPED NAME AND TITLE | DATE SIGNED (YYYYMMMDD) |

☒ If this box is marked, supplier must sign Acceptance and return the following number of copies: 1

**17. ACCOUNTING AND APPROPRIATION DATA/ LOCAL USE**

| 18. ITEM NO. | 19. SCHEDULE OF SUPPLIES/ SERVICES | 20. QUANTITY ORDERED/ ACCEPTED* | 21. UNIT | 22. UNIT PRICE | 23. AMOUNT |
|---|---|---|---|---|---|
| | SEE SCHEDULE | | | | |

* If quantity accepted by the Government is same as quantity ordered, indicate by X. If different, enter actual quantity accepted below quantity ordered and encircle.

24. UNITED STATES OF AMERICA
TEL: 701-451-2332
EMAIL: brian.erdmann@us.af.mil
BY: BRIAN L. ERDMANN, 2D LT
Brian L. Erdmann
CONTRACTING / ORDERING OFFICER

25. TOTAL
29. DIFFERENCES

26. QUANTITY IN COLUMN 20 HAS BEEN
☐ INSPECTED ☐ RECEIVED ☐ ACCEPTED, AND CONFORMS TO THE CONTRACT EXCEPT AS NOTED

DATE — SIGNATURE OF AUTHORIZED GOVT. REP.

27. SHIP NO. | 28. DO VOUCHER NO. | 30. INITIALS

☐ PARTIAL ☐ FINAL

32. PAID BY

33. AMOUNT VERIFIED CORRECT FOR

31. PAYMENT
☐ COMPLETE ☐ PARTIAL ☐ FINAL

34. CHECK NUMBER

35. BILL OF LADING NO.

36. I certify this account is correct and proper for payment.

DATE — SIGNATURE AND TITLE OF CERTIFYING OFFICER

| 37. RECEIVED AT | 38. RECEIVED BY | 39. DATE RECEIVED (YYYYMMMDD) | 40. TOTAL CONTAINERS | 41. S/R ACCOUNT NO. | 42. S/R VOUCHER NO. |
|---|---|---|---|---|---|
| | | | | | |

DD Form 1155, JAN 1998 (EG) PREVIOUS EDITION MAY BE USED.

Section B - Supplies or Services and Prices

BPA Master Dollar Limit: $75,000.00
BPA Call Limit: $1,250.00

Period of Performance: 01-Oct-2020 to 30-Sep-2025

PSC Codes:
X1JZ

FIRM FIXED PRICELIST

SUBJECT: Firm Fixed Price BPA Price List

The price for the rental/leasing of the FRLETC to the 119th WG (NDANG) shall be:

| Period of Performance | Monthly Charge | Annual Charges | BPA TOTAL |
|---|---|---|---|
| 01OCT2020–30SEP2021 | $1250.00 per mo | $15,000.00 per year | $15,000.00 |
| 01OCT2021–30SEP2022 | $1250.00 per mo | $15,000.00 per year | $15,000.00 |
| 01OCT2022–30SEP2023 | $1250.00 per mo | $15,000.00 per year | $15,000.00 |
| 01OCT2023–30SEP2024 | $1250.00 per mo | $15,000.00 per year | $15,000.00 |
| 01OCT2024–30SEP2025 | $1250.00 per mo | $15,000.00 per year | $15,000.00 |
| | | | **$75,000.00** |

Section C - Descriptions and Specifications

STATEMENT OF WORK

# STATEMENT OF WORK
# FOR
# FACILITY UTILIZATION
# OF THE
# FARGO REGIONAL LAW ENFORCEMENT TRAINING CENTER

**September 2020**

## TABLE OF CONTENTS

| | |
|---|---|
| SECTION I | Background |
| SECTION II | Scope of Work |
| SECTION III | Performance Requirements |
| SECTION IV | Government-Furnished Property and Services |
| APPENDIX A | Applicable Publications |

## STATEMENT OF WORK (SOW)

### I. BACKGROUND

1. The contractor shall, (except as specified in this Statement of Work (SOW) as government furnished property or services) provide all personnel, supervision, and any items and services necessary to utilize the Fargo Regional Law Enforcement Training Center (FRLETC) by the 119th WG, North Dakota Air National Guard for Unit Personnel Weapons Training and Live Fire Events as defined in this SOW. The Government intends to enter into a Firm Fixed Price Blanket Purchase Agreement (BPA) for services that will consist of a total Period of Performance (POP) equaling 5-years.

### II. SCOPE OF WORK

1. Contractor shall provide the following:

a. Classroom Use Description:
Use of the FRLETC classrooms on Saturday and Sunday of each 119th Wing Unit Training Assembly (UTA) from 0700 to 1900 hours. The 119 SFS will provide the FRLETC a 119th Wing UTA schedule at least six months in advance and typically one year in advance.

Use of the FRLETC classrooms would be utilized for facilitating Youth Outreach training and instruction. It would also be used to facilitate combat pistol and rifle courses of instruction. One weekend day a month from 0700 to 1900 hours would be set aside for this purpose. The 119th Base Marksmanship Team (BMT) will work with the FRLETC to schedule out at least quarterly these days and balance them against other schedules.

b. Firing Range Use Description:
Use of the FRLETC firing range for Saturday and Sunday of each 119th Wing Unit Training Assembly (UTA) from 0700 to 1900 hours. The 119th SFS will provide the FRLETC a 119th Wing UTA schedule at least six months in advance and typically one year in advance. Finally, the 119th SFS needs flexibility to utilize the range outside the Wing UTAs for real-world events or other training requirements. This flexibility will be utilized to weapons qualify Air Force personnel selected for deployment, "Just In Time" training, or other Air Force personnel requiring weapons qualification. The 119th SFS will work with the FRLETC to schedule this qualification. The 119th SFS requests up to a maximum of 40 hours a month for this purpose, or 480 hours cumulatively per year.

Use of the FRLETC firing range for one weekend day a month from 0700 to 1900 hours along with the classrooms in paragraph 1.a. The 119th BMT will work with the FRLETC to schedule out at least quarterly these days and balance them against other schedules. Additionally, the 119th BMT needs flexibility to utilize the range during the week. The 119th BMT will work with the FRLETC to schedule these needs. The 119th BMT request up to 25 hours a month for this purpose.

c. Complete Facility Use Description:
Use of the FRLETC facility for Saturday and Sunday of each 119th Wing Unit Training Assembly (UTA) from 0700 to 1900 hours. The 119th SFS will provide the FRLETC a 119th Wing UTA schedule at least six months in advance and typically one year in advance.

Use of the FRLETC facility for one weekend day a month from 0700 to 1900 hours. The 119th BMT will work with the FRLETC to schedule at least 3 months in advance.

d. Equipment Use Description:
Use of the FRLETC firing range for Saturday and Sunday of each 119th Wing Unit Training Assemblies (UTA) from 0700 to 1900 hours along with other times as shown in paragraph 1.b. above.

Use of the FRLETC firing range for one weekend day a month from 0700 to 1900 hours along with other times as shown in paragraphs above.

e. Miscellaneous Description:
During the use times outlined above, the 119th SFS, 119th BMT and/or its beneficiaries will be the sole occupant of the facility. Beneficiaries will be select youth who have been afforded the opportunity to train and shoot with the 119th BMT via the Youth Outreach Program. The Youth Outreach Program is a program outlined in NGBPAM 350-7 with the intent to provide community interaction and support through youth programs. The Youth Outreach Program helps augment and facilitate existing Boy Scout and Eagle Scout programs and provides the base an opportunity to reach potential recruits.

## III. PERFORMANCE REQUIREMENTS

1. Contractor Management. The contractor shall provide a contract manager who shall be available and responsible for the performance of the work. The name of this person, and an alternate(s), who shall act for the contractor when the manager is absent, shall be designated in writing to the NDANG Base Contracting Officer. The contract manager or alternate shall have full authority to act for the contractor on all contract matters relating to the operation of this agreement. The contract manager or alternate shall be available at all times to meet with government personnel designated by the contracting officer to discuss problem areas. The contract manager and alternate(s) must be able to read, write, speak, and understand English. The positions shall at no time be vacant.

2. Conduct. Contractor employees shall not access any area that is not pertinent or necessary to the fulfillment of their duties in accomplishing this contract. Contractor employees are to adhere to all instructions and warnings, communicated or posted, in regards to their work area and the facilities that occupy this area.

3. Inspections. Contractor performance shall be inspected by the Government appointed Quality Assurance Evaluator (QAE) for contract compliance.

a. Other Authorized Observers. Government personnel, other than QAEs and contracting officers, may observe the contractor operations. However, these personnel may not conduct quality assurance inspections, interfere with employee performance or interfere with the contract performance.

4. PERFORMANCE OBJECTIVES SUMMARY

| POS No. | Performance Objective | SOW para. | Performance Threshold |
|---|---|---|---|
| 1 | Classroom Use | II. 1 a. | 100% Scheduled Usage with no conflicts or re-scheduling by FRLETC Staff |
| 2 | Firing Range Use | II. 1 b. | 100% Scheduled Usage with no conflicts or re-scheduling by FRLETC Staff |
| 3 | Complete Facility Use | II. 1 c. | 100% Scheduled Usage with no conflicts or re-scheduling by FRLETC Staff |
| 4 | Equipment Use | II. 1 d. | 100% Scheduled Usage with no conflicts or re-scheduling by FRLETC Staff |
| 5 | Miscellaneous | II. 1 e. | 100% Scheduled Usage with no conflicts or re-scheduling by FRLETC Staff or dual scheduling with another Agency |

**IV. GOVERNMENT-FURNISHED PROPERTY AND SERVICES.** The government shall not be providing any facilities or services for this requirement.

## APPENDIX A
## APPLICABLE PUBLICATIONS

1. General. Publications that apply to the SOW are listed below. The contractor is obligated to follow those publications to the extent specified in other sections of this SOW. The contractor shall be guided by those publications to the extent necessary to accomplish requirements in this SOW.

2. Supplements, amendments and/or replacements to listed publications from any organizational level may be issued during the life of the agreement. The contractor shall implement changes and notify the Base Contracting Officer (BCO) in writing of such change. If such changes alter the magnitude of work, the contractor shall provide a proposal for a change in the agreement price to the BCO within 30 calendar days.

**DEPARTMENT OF DEFENSE and AIR FORCE PUBLICATIONS:**

| Number | Title |
|---|---|
| DoD 5500.7-R | Ethics Standards (Change 1) |
| NGBPAM 350-7 | Youth Outreach Program |

Section G - Contract Administration Data

TERMS AND CONDITIONS

**TERMS AND CONDITIONS**

**BLANKET PURCHASE AGREEMENT (BPA)**
**From the N.D. Air National Guard (NDANG)**

A Blanket Purchase Agreement (BPA) is currently established between the BPA awardee and the 119th Wing (WG), N.D. Air National Guard (hereafter NDANG) 1400 32nd Ave, N., Fargo, ND 58102-1051. This BPA serves as the NDANG's agreement for use of the Fargo Regional Law Enforcement Training Center (FRLETC) facility and equipment for Unit Training Assemblies (hereafter UTA) (also known as "Guard Drill" and "Week End Training") and when scheduled in advance for weapons training and qualifying. The terms and conditions are set forth herein. Please note that Federal Acquisition Regulation (FAR) Part 13.303-1, FAR Part 12 and DFARS Part 213.303 apply to this BPA.

**1.0 GENERAL**

**1.1 Background**

Currently the NDANG utilizes a BPA for the FRLETC, which is set to expire in September of 2020. Prior to the establishment of a BPA in October of 2010 with the City of Fargo, the use of the FRLETC had always been a mutual agreement to allow the NDANG to utilize the facility at no cost to the Government. The current BPA that is in place was not solicited, but was negotiated and awarded as a SOLE SOURCE agreement to the City of Fargo, ND. It is the intention of the NDANG to establish a new BPA with the City of Fargo as the sole contracting vehicle for the required weapons training and qualification of 119th Wing personnel to maintain World-Wide deploy-ability status of all NDANG personnel. Furthermore, it is also the intent of the NDANG that this BPA will allow for continuity, auditable material control, and streamlined billing procedures for the contractor. As identified in the current BPA, the payment method shall be the Electronic Funds Transfer (hereafter EFT).

**1.2 Service Objectives**

The objective of this agreement is to provide usage of the FRLETC and associated (authorized) services for the NDANG while achieving the best terms, conditions and pricing. Additionally the NDANG seeks to streamline invoicing, billing, payment, ordering and delivery processes and standardize reporting and analytical methods for audit and asset management.

**1.3 Scope**

The NDANG has a primary requirement for a weapons training and qualifying facility and associated support services to keep all NDANG personnel on World-Wide deployment status. UTA status may fall on any day of the month for select individuals but generally the services shall be required one (1) weekend per month for five (5) calendar years, as requested in advance, and possibly for immediate use if local, regional, national or world events require.

**2.0 BPA Authorities, Terms and Conditions**

(a) CONTRACTING OFFICER AUTHORITY: The NDANG Base Contracting Officer (hereafter BCO) is the ONLY person authorized to direct changes in any of the requirements under this BPA and notwithstanding any provisions contained elsewhere in this BPA, said authority remains solely with the BCO. In the event that the contractor effects any such unauthorized change at the direction of any person other than the BCO, implementation of such change shall be considered made without authority and solely at the risk of the contractor.

(b) CONTRACTOR'S AUTHORITY:
  (1) The contractor shall not accept any instructions issued by any person employed by the U.S. Government or otherwise, other than the BCO or the appointed Call Agent acting within the limits of his/her authority.
  (2) The contractor shall not in any way represent that he is a part of the U.S. Government or that he has any authority to contract or procure supplies under the account of the United States of America or the NDANG.

**3.0 Terms of the BPA**

The NDANG intends to establish a long term relationship with the BPA holder. The term of this BPA shall be five (5) years from date of the signature or a BPA total dollar value cap of $75,000, whichever occurs first. The BPA shall be reviewed at least annually by the 119 WG Contracting Office to assess contractor performance and to determine whether this agreement remains in the best interest of the NDANG.

**Authorized BPA Users**
Two (2) NDANG unit members will be appointed in writing as primary and alternate Call Agents for this BPA. These individuals shall be the only NDANG personnel authorized to place calls against this BPA, outside of the 119th WG Contracting Staff. No other

NDANG unit personnel are authorized to place calls against this BPA. Any member making their own reservations for use of the FRLETC shall pay for the costs incurred at their own expense (THIS EXPENSE SHALL NOT BE PAID BY THE U.S. GOVERNMENT).

**4.0 Obligation of Funds**

This BPA DOES NOT obligate any funds. Funds shall be obligated when orders are placed under this BPA by authorized NDANG personnel only.

**5.0 Pricing**

Pricing under this BPA shall be subject to the following requirements:

5.1 Contractor shall provide prices for services pursuant to this BPA. The prices are, and shall continue to be at or below any prices offered to any Department of Defense Branch or Agency (Authorized Users) purchasing services under a directly negotiated agreement with contractor with similar terms and conditions as this BPA. Prices shall also be at or below prices offered to the contractor's most favored customer(s) in addition to any discounts offered for prompt payment. Prices offered under this BPA shall be uniformly offered to all users.

5.2 Contractor shall review pricing continuously and refresh pricing to ensure that pricing remains equal to or better than the best pricing offered to any Department of Defense Branch or Agency (Authorized Users) purchasing services under a directly negotiated agreement with contractor with similar terms and conditions and at or below prices offered to the contractor's most favored customers.

5.3 For all pricing plans negotiated with the placement of this BPA, the following shall apply:

a. Pricing may decrease at any time without BCO approval.
b. Additional services may be added by the contractor at any time, upon BCO approval, provided that they do not increase the price agreed upon at the time that the BPA was entered into.
c. Price increases, addition of new pricing plans, or other changes to existing pricing plans other than specified in (a) and (b) above require written approval of the BCO.
d. Should the contractor and/or BCO not agree on pricing, this BPA shall not be used to place calls in future fiscal years.
e. Pricing Terms and Conditions are detailed in the schedule of this BPA.

**6.0 Invoice / Delivery Ticket criteria**

Invoices shall be provided for each call number placed against this BPA and shall contain the following information on a MONTHLY invoice.

a. Name and physical address of contractor as provided on their System for Award Management (S.A.M.) Registration.
b. Name of Contractor's primary point of contact, email address and telephone number
c. The appropriate BPA number (e.g., W50S88-20-A-0001)
d. BPA Call Number provided by the 119 WG (e.g., 0001, 0002, 0003, etc.)
e. Dates of billing cycle (e.g. 1 JUNE 2010 to 30 JUNE 2010)
f. Quantity, unit price, extended price less all applicable discounts offered.
i. Invoices shall be emailed to MSgt Brian Kieselbach at the following email address: brian.kieselbach@us.af.mil; or mailed to MSgt Brian Kieselbach at the following address:

119th WG/119th SFS
ATTN: MSgt Brian Kieselbach
1400 32nd Ave. North
Fargo, ND 58103

**This notification shall be made within five (5) business days after billing cycle. (Typically the final day of the month)

**7.1 Call Limitations**

a. Individual call numbers issued shall NOT exceed the current monthly price on the price list.
b. These payments shall be made via Electronic Funds Transfer.

**7.2 Individuals authorized to place orders (reservations) on this BPA**

a. Authorized Call Agents shall be identified on an appointment letter provided separately.

**8.0 Extent of Government (NDANG) Obligation**

a. Payment shall be authorized for any NDANG military personnel utilizing the FRLETC for weapons training and qualifying and if approved by the NDANG.
b. The NDANG is tax exempt from ND State, Municipal, or other taxes. Taxes shall not be included on any invoice. The ND State Tax Exempt number is E-2001. (ND State Tax Exempt certificate provided upon request)
c. The extent of the Government's (NDANG) obligation shall be limited to use of the FRLETC firing range equipment and facility ONLY.

**9.0 Payment Method**

a. Under the prompt payment Act, the US Government is set up to pay on a "NET 30 Days" term. Vendors are allowed to offer discounts; that will be reflected in their individual BPA terms & conditions. (e.g.: Net 30 days).

**Glossary**

**1) Base Contracting Officer (BCO)**
a.k.a. Contracting Officer, CO, KO = the ONLY Government official with the authority to modify, change, cancel or otherwise deviate from the contract (agreement) in any manner.

**2) Blanket Purchase Agreement (BPA)**
Agreement between the Government and a contractor

**3) Call Agent**
Government employee assigned in writing by the BCO to place calls and help administer the contract (agreement) but does not have the authority to negotiate changes to the terms and conditions nor any other part of the contract (agreement).

**4) Defense Federal Acquisition Regulation Supplement (DFARS)**
DoD Supplement to the FAR governing the implementation of this BPA

**5) Department of Defense (DoD)**
Agency under which the NDANG operates

**6) Federal Acquisition Regulation (FAR)**
Federal regulation governing the implementation of this BPA

**7) Modification (MOD)**
A written change to a contract or agreement that can be unilaterally or bilaterally agreed to by both parties

**8) North Dakota Air National Guard (NDANG)**
The organization offering this agreement
a.k.a. 119th Wing (119 WG) or Government

**9) Unit Training Assembly (UTA)**
a.k.a. Guard Drill, Guard Status, Weekend Drill Status

**10) Electronic Funds Transfer (EFT)**
Method of all payments to be used under this BPA

Section I - Contract Clauses

CLAUSES INCORPORATED BY REFERENCE

| | | |
|---|---|---|
| 52.203-8 | Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity | MAY 2014 |
| 52.203-10 | Price Or Fee Adjustment For Illegal Or Improper Activity | MAY 2014 |
| 52.203-18 | Prohibition on Contracting With Entities That Require Certain Internal Confidentiality Agreements or Statements--Representation | JAN 2017 |
| 52.204-7 | System for Award Management | OCT 2018 |
| 52.204-10 | Reporting Executive Compensation and First-Tier Subcontract Awards | JUN 2020 |
| 52.204-13 | System for Award Management Maintenance | OCT 2018 |
| 52.204-16 | Commercial and Government Entity Code Reporting | AUG 2020 |
| 52.204-18 | Commercial and Government Entity Code Maintenance | AUG 2020 |
| 52.204-19 | Incorporation by Reference of Representations and Certifications. | DEC 2014 |
| 52.204-23 | Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities. | JUL 2018 |
| 52.204-24 | Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment. | AUG 2020 |
| 52.204-25 | Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. | AUG 2020 |
| 52.209-6 | Protecting the Government's Interest When Subcontracting With Contractors Debarred, Suspended, or Proposed for Debarment | JUN 2020 |
| 52.209-10 | Prohibition on Contracting With Inverted Domestic Corporations | NOV 2015 |
| 52.212-4 | Contract Terms and Conditions--Commercial Items | OCT 2018 |
| 52.232-1 | Payments | APR 1984 |
| 52.232-39 | Unenforceability of Unauthorized Obligations | JUN 2013 |
| 52.232-40 | Providing Accelerated Payments to Small Business Subcontractors | DEC 2013 |
| 52.233-3 | Protest After Award | AUG 1996 |
| 52.233-4 | Applicable Law for Breach of Contract Claim | OCT 2004 |
| 52.249-1 | Termination For Convenience Of The Government (Fixed Price) (Short Form) | APR 1984 |
| 52.252-2 | Clauses Incorporated By Reference | FEB 1998 |
| 252.203-7000 | Requirements Relating to Compensation of Former DoD Officials | SEP 2011 |
| 252.203-7002 | Requirement to Inform Employees of Whistleblower Rights | SEP 2013 |
| 252.203-7005 | Representation Relating to Compensation of Former DoD Officials | NOV 2011 |
| 252.204-7003 | Control Of Government Personnel Work Product | APR 1992 |
| 252.204-7008 | Compliance With Safeguarding Covered Defense Information Controls | OCT 2016 |
| 252.204-7009 | Limitations on the Use or Disclosure of Third-Party Contractor Reported Cyber Incident Information | OCT 2016 |
| 252.204-7012 | Safeguarding Covered Defense Information and Cyber Incident Reporting | DEC 2019 |
| 252.204-7015 | Notice of Authorized Disclosure of Information for Litigation Support | MAY 2016 |

| | | |
|---|---|---|
| 252.225-7048 | Export-Controlled Items | JUN 2013 |
| 252.232-7003 | Electronic Submission of Payment Requests and Receiving Reports | DEC 2018 |
| 252.232-7010 | Levies on Contract Payments | DEC 2006 |
| 252.243-7001 | Pricing Of Contract Modifications | DEC 1991 |
| 252.247-7023 | Transportation of Supplies by Sea | FEB 2019 |

CLAUSES INCORPORATED BY FULL TEXT

52.212-5 CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS--COMMERCIAL ITEMS (AUG 2020)

(a) The Contractor shall comply with the following Federal Acquisition Regulation (FAR) clauses, which are incorporated in this contract by reference, to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

(1) 52.203-19, Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (JAN 2017) (section 743 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235) and its successor provisions in subsequent appropriations acts (and as extended in continuing resolutions)).

(2) 52.204-23, Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (Jul 2018) (Section 1634 of Pub. L. 115-91).

(3) 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (AUG 2020) (Section 889(a)(1)(A) of Pub. L. 115-232).

(4) 52.209-10, Prohibition on Contracting with Inverted Domestic Corporations (Nov 2015).

(5) 52.233-3, Protest After Award (AUG 1996) (31 U.S.C. 3553).

(6) 52.233-4, Applicable Law for Breach of Contract Claim (OCT 2004) (Public Laws 108-77 and 108-78 (19 U.S.C. 3805 note)).

(b) The Contractor shall comply with the FAR clauses in this paragraph (b) that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items: (Contracting Officer check as appropriate.)

___ (1) 52.203-6, Restrictions on Subcontractor Sales to the Government (JUN 2020), with Alternate I (Oct 1995) (41 U.S.C. 4704 and 10 U.S.C. 2402).

____ (2) 52.203-13, Contractor Code of Business Ethics and Conduct (JUN 2020) (41 U.S.C. 3509).

____ (3) 52.203-15, Whistleblower Protections under the American Recovery and Reinvestment Act of 2009 (JUN 2010) (Section 1553 of Pub. L. 111-5). (Applies to contracts funded by the American Recovery and Reinvestment Act of 2009.)

___ (4) 52.204-10, Reporting Executive Compensation and First-Tier Subcontract Awards (JUN 2020) (Pub. L. 109-282) (31 U.S.C. 6101 note).

___ (5) [Reserved]

___ (6) 52.204-14, Service Contract Reporting Requirements (Oct 2016) (Pub. L. 111-117, section 743 of Div. C).

___ (7) 52.204-15, Service Contract Reporting Requirements for Indefinite-Delivery Contracts (Oct 2016) (Pub. L. 111-117, section 743 of Div. C).

___ (8) 52.209-6, Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment. (JUN 2020) (31 U.S.C. 6101 note).

_____ (9) 52.209-9, Updates of Publicly Available Information Regarding Responsibility Matters (OCT 2018) (41 U.S.C. 2313).

___ (10) [Reserved]

___ (11)(i) 52.219-3, Notice of HUBZone Set-Aside or Sole-Source Award (MAR 2020) (15 U.S.C. 657a).

___ (ii) Alternate I (MAR 2020) of 52.219-3.

___ (12) (i) 52.219-4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns (MAR 2020) (if the offeror elects to waive the preference, it shall so indicate in its offer) (15 U.S.C. 657a).

___ (ii) Alternate I (MAR 2020) of 52.219-4.

___ (13) [Reserved]

___ (14)(i) 52.219-6, Notice of Total Small Business Set-Aside (MAR 2020) (15 U.S.C. 644).

___ (ii) Alternate I (MAR 2020) of 52.219-6.

___ (15)(i) 52.219-7, Notice of Partial Small Business Set-Aside (MAR 2020) (15 U.S.C. 644).

___ (ii) Alternate I (MAR 2020) of 52.219-7.

___ (16) 52.219-8, Utilization of Small Business Concerns (OCT 2018) (15 U.S.C. 637(d)(2) and (3)).

___ (17)(i) 52.219-9, Small Business Subcontracting Plan (JUN 2020) (15 U.S.C. 637(d)(4)).

___ (ii) Alternate I (NOV 2016) of 52.219-9.

___ (iii) Alternate II (NOV 2016) of 52.219-9.

___ (iv) Alternate III (JUN 2020) of 52.219-9.

___ (v) Alternate IV (JUN 2020) of 52.219-9.

___ (18) (i) 52.219-13, Notice of Set-Aside of Orders (MAR 2020) (15 U.S.C. 644(r)).

___ (ii) Alternate I (MAR 2020) of 52.219-13.

___ (19) 52.219-14, Limitations on Subcontracting (MAR 2020) (15 U.S.C. 637(a)(14)).

___ (20) 52.219-16, Liquidated Damages—Subcontracting Plan (Jan 1999) (15 U.S.C. 637(d)(4)(F)(i)).

___ (21) 52.219-27, Notice of Service-Disabled Veteran-Owned Small Business Set-Aside (MAR 2020) (15 U.S.C. 657f).

X (22) (i) 52.219-28, Post Award Small Business Program Rerepresentation (MAY 2020) (15 U.S.C. 632(a)(2)).

____ (ii) Alternate I (MAR 2020) of 52.219-28.

____ (23) 52.219-29, Notice of Set-Aside for, or Sole Source Award to, Economically Disadvantaged Women-Owned Small Business (EDWOSB) Concerns (MAR 2020) (15 U.S.C. 637(m)).

____ (24) 52.219-30, Notice of Set-Aside for, or Sole Source Award to, Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program (MAR 2020) (15 U.S.C. 637(m)).

____ (25) 52.219-32, Orders Issued Directly Under Small Business Reserves (MAR 2020) (15 U.S.C. 644(r)).

____ (26) 52.219-33, Nonmanufacturer Rule (MAR 2020) (15 U.S.C. 637(a)(17)).

X (27) 52.222-3, Convict Labor (JUN 2003) (E.O. 11755).

____(28) 52.222-19, Child Labor--Cooperation with Authorities and Remedies (JAN 2020) (E.O. 13126).

X (29) 52.222-21, Prohibition of Segregated Facilities (APR 2015).

X (30)(i) 52.222-26, Equal Opportunity (SEPT 2016) (E.O. 11246).

____ (ii) Alternate I (FEB 1999) of 52.222-26.

____ (31)(i) 52.222-35, Equal Opportunity for Veterans (JUN 2020) (38 U.S.C. 4212).

____ (ii) Alternate I (JUL 2014) of 52.222-35.

X (32)(i) 52.222-36, Equal Opportunity for Workers with Disabilities (JUN 2020) (29 U.S.C. 793).

____ (ii) Alternate I (JUL 2014) of 52.222-36.

____ (33) 52.222-37, Employment Reports on Veterans (JUN 2020) (38 U.S.C. 4212).

____ (34) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (DEC 2010) (E.O. 13496).

X (35)(i) 52.222-50, Combating Trafficking in Persons (JAN 2019) (22 U.S.C. chapter 78 and E.O. 13627).

____ (ii) Alternate I (MAR 2015) of 52.222-50 (22 U.S.C. chapter 78 and E.O. 13627).

____ (36) 52.222-54, Employment Eligibility Verification (OCT 2015). (E. O. 12989). (Not applicable to the acquisition of commercially available off-the-shelf items or certain other types of commercial items as prescribed in 22.1803.)

____ (37)(i) 52.223-9, Estimate of Percentage of Recovered Material Content for EPA–Designated Items (MAY 2008) (42 U.S.C. 6962(c)(3)(A)(ii)). (Not applicable to the acquisition of commercially available off-the-shelf items.)

____ (ii) Alternate I (MAY 2008) of 52.223-9 (42 U.S.C. 6962(i)(2)(C)). (Not applicable to the acquisition of commercially available off-the-shelf items.)

____ (38) 52.223-11, Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons (JUN 2016) (E.O. 13693).

____ (39) 52.223-12, Maintenance, Service, Repair, or Disposal of Refrigeration Equipment and Air Conditioners (JUN 2016) (E.O. 13693).

_____ (40) (i) 52.223-13, Acquisition of EPEAT® Registered Imaging Equipment (JUN 2014) (E.O.s 13423 and 13514).

_____ (ii) Alternate I (OCT 2015) of 52.223-13.

_____ (41)(i) 52.223-14, Acquisition of EPEAT® Registered Televisions (JUN 2014) (E.O.s 13423 and 13514).

_____ (ii) Alternate I (JUN 2014) of 52.223-14.

____ (42) 52.223-15, Energy Efficiency in Energy-Consuming Products (MAY 2020) (42 U.S.C. 8259b).

____ (43)(i) 52.223-16, Acquisition of EPEAT®-Registered Personal Computer Products (OCT 2015) (E.O.s 13423 and 13514).

____ (ii) Alternate I (JUN 2014) of 52.223-16.

X (44) 52.223-18, Encouraging Contractor Policies to Ban Text Messaging While Driving (JUN 2020) (E.O. 13513).

____ (45) 52.223-20, Aerosols (JUN 2016) (E.O. 13693).

____ (46) 52.223-21, Foams (JUN 2016) (E.O. 13693).

____ (47)(i) 52.224-3, Privacy Training (JAN 2017) (5 U.S.C. 552a).

____ (ii) Alternate I (JAN 2017) of 52.224-3.

____ (48) 52.225-1, Buy American--Supplies (MAY 2014) (41 U.S.C. chapter 83).

____ (49) (i) 52.225-3, Buy American--Free Trade Agreements--Israeli Trade Act (MAY 2014) (41 U.S.C. chapter 83, 19 U.S.C. 3301 note, 19 U.S.C. 2112 note, 19 U.S.C. 3805 note, 19 U.S.C. 4001 note, Pub. L. 103-182, 108-77, 108-78, 108-286, 108-302, 109-53, 109-169, 109-283, 110-138, 112-41, 112-42, and 112-43.

_____ (ii) Alternate I (MAY 2014) of 52.225-3.

X (iii) Alternate II (MAY 2014) of 52.225-3.

_____ (iv) Alternate III (MAY 2014) of 52.225-3.

____ (50) 52.225-5, Trade Agreements (OCT 2019) 19 U.S.C. 2501, et seq., 19 U.S.C. 3301 note).

X (51) 52.225-13, Restrictions on Certain Foreign Purchases (JUN 2008) (E.O.'s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).

____ (52) 52.225-26, Contractors Performing Private Security Functions Outside the United States (OCT 2016) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; 10 U.S.C. 2302 Note).

____ (53) 52.226-4, Notice of Disaster or Emergency Area Set-Aside (NOV 2007) (42 U.S.C. 5150

____ (54) 52.226-5, Restrictions on Subcontracting Outside Disaster or Emergency Area (NOV 2007) (42 U.S.C. 5150).

____ (55) 52.229-12, Tax on Certain Foreign Procurements (JUN 2020).

____ (56) 52.232-29, Terms for Financing of Purchases of Commercial Items (FEB 2002) (41 U.S.C. 4505, 10 U.S.C. 2307(f)).

____ (57) 52.232-30, Installment Payments for Commercial Items (JAN 2017) (41 U.S.C. 4505, 10 U.S.C. 2307(f)).

X (58) 52.232-33, Payment by Electronic Funds Transfer—System for Award Management (OCT 2018) (31 U.S.C. 3332).

____ (59) 52.232-34, Payment by Electronic Funds Transfer—Other than System for Award Management (JUL 2013) (31 U.S.C. 3332).

____ (60) 52.232-36, Payment by Third Party (MAY 2014) (31 U.S.C. 3332).

____ (61) 52.239-1, Privacy or Security Safeguards (AUG 1996) (5 U.S.C. 552a).

____ (62) 52.242-5, Payments to Small Business Subcontractors (JAN 2017)(15 U.S.C. 637(d)(13)).

____ (63)(i) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006) (46 U.S.C. Appx. 1241(b) and 10 U.S.C. 2631).

____ (ii) Alternate I (APR 2003) of 52.247-64.

____ (iii) Alternate II (FEB 2006) of 52.247-64.

(c) The Contractor shall comply with the FAR clauses in this paragraph (c), applicable to commercial services, that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items: (Contracting Officer check as appropriate.)

_____ (1) 52.222-41, Service Contract Labor Standards (AUG 2018) (41 U.S.C. chapter 67).

_____ (2) 52.222-42, Statement of Equivalent Rates for Federal Hires (MAY 2014) (29 U.S.C. 206 and 41 U.S.C. chapter 67).

_____ (3) 52.222-43, Fair Labor Standards Act and Service Contract Labor Standards--Price Adjustment (Multiple Year and Option Contracts) (AUG 2018) (29 U.S.C. 206 and 41 U.S.C. chapter 67).

_____ (4) 52.222-44, Fair Labor Standards Act and Service Contract Labor Standards--Price Adjustment (MAY 2014) (29 U.S.C 206 and 41 U.S.C. chapter 67).

_____ (5) 52.222-51, Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment--Requirements (MAY 2014) (41 U.S.C. chapter 67).

_____ (6) 52.222-53, Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services--Requirements (MAY 2014) (41 U.S.C. chapter 67).

_____(7) 52.222-55, Minimum Wages Under Executive Order 13658 (DEC 2015) (E.O. 13658).

_____ (8) 52.222-62, Paid Sick Leave Under Executive Order 13706 (JAN 2017) (E.O. 13706).

_____ (9) 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations (JUN 2020) (42 U.S.C. 1792).

(d) Comptroller General Examination of Record. The Contractor shall comply with the provisions of this paragraph (d) if this contract was awarded using other than sealed bid, is in excess of the simplified acquisition threshold, as

defined in FAR 2.101, on the date of award of this contract, and does not contain the clause at 52.215-2, Audit and Records--Negotiation.

(1) The Comptroller General of the United States, or an authorized representative of the Comptroller General, shall have access to and right to examine any of the Contractor's directly pertinent records involving transactions related to this contract.

(2) The Contractor shall make available at its offices at all reasonable times the records, materials, and other evidence for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in FAR Subpart 4.7, Contractor Records Retention, of the other clauses of this contract. If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement. Records relating to appeals under the disputes clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are finally resolved.

(3) As used in this clause, records include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of form. This does not require the Contractor to create or maintain any record that the Contractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e) (1) Notwithstanding the requirements of the clauses in paragraphs (a), (b), (c), and (d) of this clause, the Contractor is not required to flow down any FAR clause, other than those in this paragraph (e)(1)in a subcontract for commercial items. Unless otherwise indicated below, the extent of the flow down shall be as required by the clause—

(i) 52.203-13, Contractor Code of Business Ethics and Conduct (JUN 2020) (41 U.S.C. 3509).

(ii) 52.203-19, Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (JAN 2017) (section 743 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235) and its successor provisions in subsequent appropriations acts (and as extended in continuing resolutions)).

(iii) 52.204-23, Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (Jul 2018) (Section 1634 of Pub. L. 115-91).

(iv) 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (AUG 2020) (Section 889(a)(1)(A) of Pub. L. 115-232).

(v) 52.219-8, Utilization of Small Business Concerns (Oct 2018) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds the applicable threshold specified in FAR 19.702(a) on the date of subcontract award, the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

(vi) 52.222-21, Prohibition of Segregated Facilities (Apr 2015).

(vii) 52.222-26, Equal Opportunity (Sep 2016) (E.O. 11246).

(viii) 52.222-35, Equal Opportunity for Veterans (JUN 2020) (38 U.S.C. 4212).

(ix) 52.222-36, Equal Opportunity for Workers with Disabilities (JUN 2020) (29 U.S.C. 793).

(x) 52.222-37, Employment Reports on Veterans (JUN 2020) (38 U.S.C. 4212).

(xi) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13496). Flow down required in accordance with paragraph (f) of FAR clause 52.222-40.

(xii) 52.222-41, Service Contract Labor Standards (Aug 2018), (41 U.S.C. chapter 67).

(xiii) _____ (A) 52.222-50, Combating Trafficking in Persons (JAN 2019) (22 U.S.C. chapter 78 and E.O. 13627).

_____ (B) Alternate I (March 2, 2015) of 52.222-50 (22 U.S.C. chapter 78 and E.O. 13627).
(xiv) 52.222-51, Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment--Requirements (May 2014) (41 U.S.C. chapter 67.)

(xv) 52.222-53, Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services--Requirements (May 2014) (41 U.S.C. chapter 67)

(xvi) 52.222-54, Employment Eligibility Verification (Oct 2015) (E. O. 12989).

(xvii) 52.222-55, Minimum Wages Under Executive Order 13658 (Dec 2015) (E.O. 13658).

(xviii) 52.222-62, Paid Sick Leave Under Executive Order 13706 (Jan 2017) (E.O. 13706).

(xix) (A) 52.224-3, Privacy Training (Jan 2017) (5 U.S.C. 552a).

(B) Alternate I (Jan 2017) of 52.224-3.

(xx) 52.225-26, Contractors Performing Private Security Functions Outside the United States (Oct 2016) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; 10 U.S.C. 2302 Note).

(xxi) 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations. (JUN 2020) (42 U.S.C. 1792). Flow down required in accordance with paragraph (e) of FAR clause 52.226-6.

(xxii) 52.247-64, Preference for Privately-Owned U.S. Flag Commercial Vessels (Feb 2006) (46 U.S.C. Appx 1241(b) and 10 U.S.C. 2631). Flow down required in accordance with paragraph (d) of FAR clause 52.247-64.

(2) While not required, the Contractor may include in its subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

(End of clause)

CITY OF Fargo

**PUBLIC WORKS**
**OPERATIONS**

(21)

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

October 5, 2020

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

RE: Sole Source Purchase of Ice Slicer

Commissioners:

Throughout the world, many different variations of ice melt products have been developed and used to fight icy road surfaces. Previously, Public Works has compared a variety of different ice control products in hopes of finding a material that effectively melts and provides traction once the temperature drops below 15°. In the past, the city has used two granular products for ice control, salt that provides melting capacity to approximately 10° and a sand/salt (80/20) mixture for traction purpose when the temperatures drop below 10°. Through a side-by-side comparison of different products staff has been able to identify a product called Ice Slicer that is very effective in providing traction and melting at temperatures between 15° and -5°. Ice Slicer is an all-natural organic product that is mined exclusively by Redmond Minerals. Ice Slicer has greater melting capacity, is less corrosive, and is environmentally safer than salt.

EnviroTech Services is the national distributer and sole provider of Ice Slicer outside of Utah. Staff is requesting authorization to purchase Ice Slicer from EnviroTech Services at a cost of $183.00 per ton (as shown on the attached quote).

RECOMMENDED MOTION: Using sole source procurement (SSP20152) as provided for in the City of Fargo Purchasing Policy, I/we request a suggested motion to authorize the purchase of IceSlicer ice melt from EnviroTech Services at a price of $183.00 per ton for the 2020/2021 winter.

Respectfully submitted,

Paul Fiechtner
Services Manager
Fargo Public Works

July 23, 2020

To Whom It May Concern:

Redmond Minerals, Inc. is the manufacturer of Ice Slicer RS® granular ice melt. Envirotech Services, Inc is the national distributor for Ice Slicer and will be the sole provider of Ice Slicer RS outside of Utah through 2020-2021 winter season.

Please feel free to contact us with any questions.

Sincerely,

Doug Anderson
Redmond Minerals, Inc.

Box 219 • 6005 North 100 West • Redmond, Utah 84652
Phone: (435) 529-7402 • Customer Service: (800) 367-7258 • Fax: (435) 529-7486

ENVIROTECH
For Inquiries:
West Region: 866-802-0383
Rocky Mtn Region: 800-577-5345
Midwest Region: 800-881-5846
ESJ East: 877-664-3401

# Quotation

| Quotation Date: | Date Printed: | Expiration Date: |
|---|---|---|
| 8/20/20 | 8/20/20 | 3/31/21 |

Our Reference:
John Johansen

Customer Number:
11992

Customer RFQ Number:

Quotation Number:
S2063

Revision No:
6

Your Reference:
Paul Fiechtner

Delivery Address:
City of Fargo
200 3rd Street N.
Fargo ND 58102

Document Address:
City of Fargo
200 3rd Street N.
Fargo ND 58102

Ship Via:
Any

Terms of Delivery:
PO Direct

Salesman:
John Johansen

Delivery Terms Location:

Label Note:
Del $183 per ton, full trucks from MNCAN

Wanted Delivery Date:

Payment Terms:
30 Days Net

| Pos Del | Part No Description | Sale Qty Price Qty | Unit Unit | Price | Disc. % Planned Delivery Date | Net Amount USD |
|---|---|---|---|---|---|---|
| 1 | **1012** | 750 | ton | 183.00 | 0.00% | 137,250.00 |
| 2 | Ice Slicer RS | 750 | ton | | | |

| | | |
|---|---|---|
| **Sub Total:** | | **137,250.00** |
| **TOTAL:** | | **137,250.00** |
| **Tax Total** | **0** | |
| **Gross Total** | | **137,250.00** |

| Visit Address | Invoice Address | Phone | Fax | Bank Giro | Postal Giro | Tax Number |
|---|---|---|---|---|---|---|

CITY OF Fargo

**PUBLIC WORKS OPERATIONS**

22

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

September 21, 2020

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

RE: Authorization to extend the Public Works Master Service Agreements (MSA) with KLJ for two additional years

Commissioners:

As part of the 2019/2020 General Engineering and Consulting Services Request for Proposal (RFP), language was included that allows for the contract to be extended an additional two years following the expiration of the initial contract.

Based on Public Works experience and current ongoing projects with KLJ, staff is requesting to extend the contract under the same terms for two additional years.

RECOMMENDED MOTION: I/we hereby move based on request for proposal (RFP19127) to extend the initial 2019/2020 Public Works Master Service Agreement with KLJ for two additional years.

Respectfully submitted,

Ben Dow
Director of Public Works

# AGREEMENT
# BETWEEN OWNER AND ENGINEER
# FOR
# PROFESSIONAL SERVICES

THIS IS AN AGREEMENT effective on the 26th Day of August , 2020 ("Effective Date") between the City of Fargo, North Dakota, a municipal corporation ("Owner"), and Kadrmas, Lee & Jackson Inc. (dba KLJ) 4585 Coleman Street, Bismarck, ND 58503 ("Engineer").

From time to time Owner may request that Engineer provide professional services for Specific Projects. Each engagement will be documented by a Task Order. This Agreement sets forth the general terms and conditions which shall apply to all Task Orders duly executed under this Agreement.

Owner and Engineer further agree as follows:

## ARTICLE 1 - SERVICES OF ENGINEER

1.01 *Scope*

A. Engineer's services will be detailed in a duly executed Task Order for each Specific Project. The general format of a Task Order is shown in Attachment 1 to this Agreement. Each Task Order will indicate the specific services to be performed and deliverables to be provided. Basic and Additional Services that may be included in a Task Order are set forth in Exhibit A, "Engineer's Services."

B. This Agreement is not a commitment by Owner to Engineer to issue any Task Orders.

C. Engineer shall not be obligated to perform any prospective Task Order unless and until Owner and Engineer agree as to the particulars of the Specific Project, including the scope of Engineer's services, time for performance, Engineer's compensation, and all other appropriate matters.

1.02 *Task Order Procedure*

A. Owner and Engineer shall agree on the scope, time for performance, and basis of compensation for each Task Order. Each duly executed Task Order shall be subject to the terms and conditions of this Agreement.

B. Engineer will commence performance as set forth in the Task Order

## ARTICLE 2 - OWNER'S RESPONSIBILITIES

2.01 *General*

A. Owner shall have the responsibilities set forth herein, in Exhibit B, "Owner's Responsibilities," and in each Task Order.

B. Owner shall compensate Engineer as set forth in each Task Order, pursuant to the applicable terms of Exhibit C.

C. Owner shall be responsible for, and Engineer may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement. Engineer may use such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement.

## ARTICLE 3 - TERM; TIMES FOR RENDERING SERVICES

3.01 *Term*

A. This Agreement shall be effective and applicable to Task Orders issued hereunder for __2__ year(s) from the Effective Date of the Agreement.

3.02 *Times for Rendering Services*

A. The times for performing services or providing deliverables will be stated in each Task Order. If no times are so stated, Engineer will perform services and provide deliverables within a reasonable time.

B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's services is impaired, or Engineer's services are delayed or suspended, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.

C. If Owner authorizes changes in the scope, extent, or character of the Specific Project, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.

D. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer's performance of its services.

E. If Engineer fails, through its own fault, to complete the performance required in a Task Order within the time set forth, as duly adjusted, then Owner shall be entitled, as its sole remedy, to the recovery of direct damages, if any, resulting from such failure.

F. With respect to each Task Order, the number of Construction Contracts for Work designed or specified by Engineer upon which the Engineer's compensation has been established shall be identified in the Task Order. If the Work designed or specified by Engineer under a Task Order is to be performed or furnished under more than one prime contract, or if Engineer's services are to be separately sequenced with the work of one or more prime Contractors (such as in the case of fast tracking), then Owner and Engineer shall, prior to commencement of final design services, develop a schedule for performance of Engineer's remaining services in order to sequence and coordinate properly such services as are applicable to the work under such separate Construction Contracts. This schedule is to be prepared and included in or become an amendment to the authorizing Task Order whether or not the work under such contracts is to proceed concurrently.

## ARTICLE 4 - INVOICES AND PAYMENTS

4.01 *Invoices*

A. *Preparation and Submittal of Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices, the terms of Exhibit C, and the specific Task Order. Engineer shall submit its invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt.

4.02 *Payments*

A. *Application to Interest and Principal:* Payment will be credited first to any interest owed to Engineer and then to principal.

B. *Failure to Pay:* If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, then:

1. the compounded amount due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; and

2. Engineer may, after giving seven days written notice to Owner, suspend services under any Task Order issued until Owner has paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.

C. *Disputed Invoices:* If Owner contests an invoice, Owner may withhold only that portion so contested, and must pay the undisputed portion.

D. *Legislative Actions:* If after the Effective Date of a Task Order any governmental entity takes a legislative action that imposes sales or use taxes, fees, or charges on Engineer's services or compensation under the Task Order, then the Engineer may invoice such new taxes, fees, or charges as a Reimbursable Expense to which a factor of 1.0 shall be applied. Owner shall reimburse Engineer for the cost of such invoiced new taxes, fees, and charges; such reimbursement shall be in addition to the compensation to which Engineer is entitled under the terms of Exhibit C and the specific Task Order.

## ARTICLE 5 - OPINIONS OF COST

5.01 *Opinions of Probable Construction Cost*

A. Engineer's opinions of probable Construction Cost are to be made on the basis of Engineer's experience and qualifications and represent Engineer's estimate as an experienced and qualified professional generally familiar with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner requires greater assurance as to probable Construction Cost, Owner must employ an independent cost estimator as provided in Exhibit B.

5.02 *Designing to Construction Cost Limit: Not Used.*

5.03 *Opinions of Total Project Costs*

A. The services, if any, of Engineer with respect to Total Project Costs for a Specific Project shall be limited to assisting the Owner in collating the various cost categories which comprise Total Project Costs. Engineer assumes no responsibility for the accuracy of any opinions of Total Project Costs.

**ARTICLE 6 - GENERAL CONSIDERATIONS**

6.01 *Standards of Performance*

A. *Standard of Care:* The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with Engineer's services.

B. *Technical Accuracy:* Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct deficiencies in technical accuracy without additional compensation unless such corrective action is directly attributable to deficiencies in Owner-furnished information.

C. *Consultants:* Engineer shall serve as Owner's prime professional under each Task Order. Engineer may employ such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.

D. *Reliance on Others:* Subject to the standard of care set forth in Paragraph 6.01.A, Engineer and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.

E. *Compliance with Laws and Regulations, and Policies and Procedures:* Engineer and Owner shall comply with applicable Laws and Regulations.

1. Prior to the Effective Date of each Task Order, Owner shall provide to Engineer in writing any and all policies and procedures of Owner applicable to Engineer's performance of services under such Task Order. Engineer shall comply with such policies and procedures pursuant to the standard of care set forth in Paragraph 6.01.A, and to the extent compliance is not inconsistent with professional practice requirements.

2. Each Task Order is based on Laws and Regulations and Owner-provided written policies and procedures as of the Effective Date of such Task Order. Changes after the Effective Date to these Laws and Regulations, or to Owner-provided written policies and procedures may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation.

F. Engineer shall not be required to sign any documents, no matter by whom requested, that would result in Engineer having to certify, guarantee, or warrant the existence of conditions whose existence Engineer cannot ascertain within its services for that Specific Project. Owner agrees not

to make resolution of any dispute with Engineer or payment of any amount due to the Engineer in any way contingent upon Engineer signing any such certification.

G. The General Conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract" as prepared by the Engineers Joint Contract Documents Committee (FJCDC C-700, 2007 Edition) unless both parties mutually agree in a Task Order to use other General Conditions.

H. Engineer shall not at any time supervise, direct, control, or have authority over any contractor work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, for the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a contractor to comply with Laws and Regulations applicable to such contractor's furnishing and performing of its work.

I. Engineer neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.

J. Engineer shall not provide or have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or for enforcement of construction insurance or surety bonding requirements.

K. Engineer shall not be responsible for the acts or omissions of any Contractor, Subcontractor, or Supplier, or of any of their agents or employees or of any other persons (except Engineer's own employees and its Consultants) at a Site or otherwise furnishing or performing any of a Contractor's work; or for any decision made regarding the Contract Documents, or any application, interpretation, or clarification of the Contract Documents other than those made by Engineer.

L. While at a Site, Engineer's employees and representatives shall comply with the specific applicable requirements of Contractor's and Owner's safety programs of which Engineer has been informed in writing.

6.02 *Design without Construction Phase Services*

A. For each design performed or furnished, Engineer shall be responsible only for those Construction Phase services that have been itemized and expressly required of Engineer in the authorizing Task Order. With the exception of such expressly required services, Engineer shall have no design, shop drawing review, or other obligations during construction and Owner assumes all responsibility for the application and interpretation of the Contract Documents, contract administration, construction observation and review, and all other necessary Construction Phase engineering and professional services. Owner waives all claims against the Engineer that may be in any way connected to Construction Phase engineering or professional services except for those services that are expressly required of Engineer in the authorizing Task Order.

6.03 *Use of Documents*

A. All Documents are instruments of service in respect to a Specific Project, and Engineer shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Engineer) whether or not the Specific Project is completed. Owner shall not rely in any way on any Document unless it is in printed form, signed or sealed by the Engineer or one of its Consultants.

B. Either party to this Agreement may rely that data or information set forth on paper (also known as hard copies) that the party receives from the other party by mail, hand delivery, or facsimile, are the items that the other party intended to send. Files in electronic media format of text, data, graphics, or other types that are furnished by one party to the other are furnished only for convenience, not reliance by the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

C. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any transmittal errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files.

D. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of such documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the documents' creator.

E. Owner may make and retain copies of Documents for information and reference in connection with use on the Specific Project by Owner. Engineer grants Owner a limited license to use the Documents on the Specific Project, extensions of the Specific Project, and for related uses of the Owner, subject to receipt by Engineer of full payment for all services relating to preparation of the Documents and subject to the following limitations: (1) Owner acknowledges that such Documents are not intended or represented to be suitable for use on the Specific Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Specific Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or its Consultants; (3) Owner shall indemnify and hold harmless Engineer and Engineer's Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the Documents without written verification, completion, or adaptation by Engineer; and ( 4) such limited license to Owner shall not create any rights in third parties.

F. If Engineer at Owner's request verifies or adapts the Documents for extensions of the Specific Project or for any other purpose, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.

6.04 *Insurance*

A. At all times when any Task Order is under performance, Engineer shall procure and maintain insurance as set forth in Exhibit G, "Insurance." Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer which is applicable to a Specific Project.

B. At all times when any Task Order is under performance, Owner shall procure and maintain insurance as set forth in Exhibit G.

C. Owner shall require Contractors to purchase and maintain policies of insurance covering workers' compensation, general liability, property damage (other than to the Work itself), motor vehicle damage and injuries, and other insurance necessary to protect Owner's and Engineer's interests in the Project. Owner shall require Contractor to cause Engineer and its Consultants to be listed as additional insureds with respect to such liability and other insurance purchased and maintained by Contractors

D. Owner and Engineer shall each deliver to the other certificates of insurance evidencing the coverages indicated in Exhibit G. Such certificates shall be furnished prior to commencement of Engineer's services under any Task Order and at renewals thereafter during the life of this Agreement.

E. All policies of property insurance relating to a Specific Project shall contain provisions to the effect that Engineer's and Consultants' interests are covered and that in the event of payment of any loss or damage the insurers will have no rights of recovery against Engineer or its Consultants, or any insureds, additional insureds, or loss payees thereunder.

F. All policies of insurance shall contain a provision or endorsement that the coverage afforded will not be canceled or reduced in limits by endorsement, and that renewal will not be refused, until at least 30 days prior written notice has been given to Owner and Engineer and to each other additional insured (if any) to which a certificate of insurance has been issued.

G. Under the terms of any Task Order, or after commencement of performance of a Task Order, Owner may request that Engineer or its Consultants, at Owner's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit G. If so requested by Owner, and if commercially available, Engineer shall obtain and shall require its Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner.

6.05 *Suspension and Termination*

A. *Suspension*

1. *By Owner:* Owner may suspend a Task Order upon seven days written notice to Engineer.

2. *By Engineer:* If Engineer's services are substantially delayed through no fault of Engineer, then Engineer may, after giving seven days written notice to Owner, suspend services under a Task Order.

B. *Termination:* The obligation to provide further services under this Agreement, or under a Task Order, may be terminated:

1. For cause,

a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms of this Agreement or any Task Order through no fault of the terminating party.

b. By Engineer:

1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or

2) upon seven days written notice if the Engineer's services under a Task Order are delayed or suspended for more than 90 days for reasons beyond Engineer's control.

3) Engineer shall have no liability to Owner on account of such termination.

c. Notwithstanding the foregoing, neither this Agreement nor the Task Order will terminate under Paragraph 6.05.B.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. For convenience,

a. By Owner effective upon Engineer's receipt of notice from Owner.

C. *Effective Date of Termination:* The terminating party under Paragraph 6.05.B may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Task Order materials in orderly files.

D. *Payments Upon Termination:*

1. In the event of any termination under Paragraph 6.05, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all Reimbursable Expenses incurred through the effective date of termination. Upon making such payment, Owner shall have the limited right to the use of Documents, at Owner's sole risk, subject to the provisions of Paragraph 6.03.E.

2. In the event of termination by Owner for convenience or by Engineer for cause, Engineer shall be entitled, in addition to invoicing for those items identified in Paragraph 6.05.D.1, to invoice Owner and to payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Consultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Exhibit C.

6.06 *Controlling Law:*

A. This Agreement is to be governed by the law of the state or jurisdiction in which the Specific Project is located.

6.07 *Successors, Assigns, and Beneficiaries:*

A. Owner and Engineer each is hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 6.07.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.

B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

C. Unless expressly provided otherwise in this Agreement:

1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Contractor, Subcontractor, Supplier, other individual or entity, or to any surety for or employee of any of them.

2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.

3. The Owner agrees that the substance of the provisions of this Paragraph 6.07.C shall appear in any Contract Documents prepared for any Specific Project under this Agreement.

6.08 *Dispute Resolution:*

A. Owner and Engineer agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to invoking the procedures of Exhibit H or other provisions of this Agreement, or exercising their rights under law.

B. If the parties fail to resolve a dispute through negotiation under Paragraph 6.08.A, then either or both may invoke the procedures of Exhibit H. If Exhibit H is not included, or if no dispute resolution method is specified in Exhibit H, then the parties may exercise their rights under law.

6.09 *Environmental Condition of Site:*

A. With respect to each Task Order, Specific Project, and Site:

1. Owner has disclosed to Engineer in writing the existence of all known and suspected Asbestos, PCBs, Petroleum, Hazardous Waste, Radioactive Material, hazardous substances, and other Constituents of Concern located at or near the Site, including type, quantity, and location.

2. Owner represents to Engineer that to the best of its knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at the Site.

3. If Engineer encounters or learns of an undisclosed Constituent of Concern at the Site, then Engineer shall notify (a) Owner and (b) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.

4. It is acknowledged by both parties that Engineer's scope of services does not include any services related to Constituents of Concern. If Engineer or any other party encounters an undisclosed Constituent of Concern, or if investigative or remedial action, or other professional services, are necessary with respect to disclosed or undisclosed Constituents of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Specific Project affected thereby until Owner: (1) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the Constituents of Concern; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.

5. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under this Agreement, then the Engineer shall have the option of (a) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (b) terminating this Agreement for cause on 30 days' notice.

6. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "owner," "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

6.10 *Indemnification and Mutual Waiver*

A. *Indemnification by Engineer:* To the fullest extent permitted by law, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, members, partners, agents, consultants, and employees from reasonable costs, losses, and damages arising out of or relating to this Agreement, any Task Order, or any Specific Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants.

B. *Indemnification by Owner:* Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants as required by Laws and Regulations and to the extent required in Exhibit I, Limitations of Liability.

C. *Environmental Indemnification:* To the fullest extent permitted by law, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from and against any and all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals, and all court, arbitration, or other dispute resolution costs) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under any Site, provided that (i) any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and

(ii) nothing in this Paragraph shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.

D. *Percentage Share of Negligence:* To the fullest extent permitted by law, a party's total liability to the other party and anyone claiming by, through or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.

E. *Mutual Waiver:* To the fullest extent permitted by law, Owner and Engineer waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to a Specific Project.

6.11 *Miscellaneous Provisions*

A. *Notices:* Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by facsimile, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.

B. *Survival:* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

C. *Severability:* Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Engineer, which agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

D. *Waiver:* A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

E. *Accrual of Claims:* To the fullest extent permitted by law, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion of each particular Specific Project.

F. *Applicability to Task Orders:* The terms and conditions set forth in this Agreement apply to each Task Order as if set forth in the Task Order, unless specifically modified. In the event of conflicts between this Agreement and a Task Order, the conflicting provisions of the Task Order shall take precedence for that Task Order. The provisions of this Agreement shall be modified only by a written instrument. Such amendments shall be applicable to all Task Orders issued after the effective date of the amendment if not otherwise set forth in the amendment.

G. *Non-Exclusive Agreement:* Nothing herein shall establish an exclusive relationship between Owner and Engineer. Owner may enter into similar agreements with other professionals for the same or different types of services contemplated hereunder, and Engineer may enter into similar or different agreements with other project owners for the same or different services contemplated hereunder.

## ARTICLE 7 - DEFINITIONS

7.01 *Defined Terms*

A. Wherever used in this Agreement (including the Exhibits hereto and any Task Order) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits or Task Order, or in the following provisions:

1. *Addenda:* Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Documents.

2. *Additional Services:* Services to be performed for or furnished to Owner by Engineer in accordance with a Task Order which are not included in Basic Services for that Task Order.

3. *Agreement:* This "Agreement between Owner and Engineer for Professional Services-Task Order Edition" including those Exhibits listed in Article 8 and any duly executed Task Order.

4. *Application for Payment:* The form acceptable to Engineer which is to be used by a Contractor in requesting progress or final payments for the completion of its Work and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

5. *Asbestos:* Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.

6. *Basic Services:* Specified services to be performed for or furnished to Owner by Engineer in accordance with a Task Order.

7. *Bid:* The offer or proposal of a bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

8. *Bidding Documents:* The advertisement or invitation to Bid, instructions to bidders, the Bid form and attachments, the Bid bond, if any, the proposed Contract Documents, and all Addenda, if any.

9. *Change Order:* A document recommended by Engineer, which is signed by a Contractor and Owner to authorize an addition, deletion or revision in the Work, or an adjustment in the Contract Price or the Contract Times.

10. *Constituent of Concern:* Any substance, product, waste, or other material of any nature whatsoever (including, but not limited to, Asbestos, Petroleum, Radioactive Material, and PCBs) which is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. ("CERCLA"); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§1801 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. ("RCRA"); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et

seq.; and (g) any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.

11. *Construction Agreement:* The written instrument which is evidence of the agreement, contained in the Contract Documents, between Owner and a Contractor covering the Work.

12. *Construction Contract:* The entire and integrated written agreement between Owner and Contractor concerning the Work.

13. *Construction Cost:* The cost to Owner of those portions of an entire Specific Project designed or specified by Engineer. Construction Cost does not include costs of services of Engineer or other design professionals and consultants; cost of land or rights-of-way, or compensation for damages to properties; Owner's costs for legal, accounting, insurance counseling or auditing services; interest or financing charges incurred in connection with a Specific Project; or the cost of other services to be provided by others to Owner pursuant to Exhibit B of this Agreement. Construction Cost is one of the items comprising Total Project Costs.

14. *Consultants:* Individuals or entities having a contract with Engineer to furnish services with respect to a Specific Project as Engineer's independent professional associates, consultants, subcontractors, or vendors. The term Engineer includes Engineer's Consultants.

15. *Contract Documents:* Those items so designated in the Construction Contract, including the Drawings, Specifications, construction agreement, and general and supplementary conditions. Only printed or hard copies of the items listed in the Construction Contract are Contract Documents. Approved Shop Drawings, other Contractor submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.

16. *Contract Price:* The moneys payable by Owner to a Contractor for completion of the Work in accordance with the Contract Documents and as stated in the Construction Agreement.

17. *Contract Times:* The numbers of days or the dates stated in a Construction Agreement to: (i) achieve Substantial Completion, and (ii) complete the Work so that it is ready for final payment as evidenced by Engineer's written recommendation of final payment.

18. *Contractor:* The entity or individual with which Owner has entered into the Construction Contract.

19. *Correction Period:* The time after Substantial Completion during which a Contractor must correct, at no cost to Owner, any Defective Work, normally one year after the date of Substantial Completion or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee or specific provision of the Contract Documents.

20. *Defective:* An adjective which, when modifying the word Work, refers to Work that is unsatisfactory, faulty, or deficient, in that it does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test, or approval

referred to in the Contract Documents, or has been damaged prior to Engineer's recommendation of final payment.

21. *Documents:* Data, reports, Drawings, Specifications, Record Drawings, and other deliverables, whether in printed or electronic media format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.

22. *Drawings:* That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by a Contractor. Shop Drawings are not Drawings as so defined.

23. *Effective Date of the Construction Agreement:* The date indicated in a Construction Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Construction Agreement is signed and delivered by the last of the two parties to sign and deliver.

24. *Effective Date of the Agreement:* The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.

25. *Effective Date of the Task Order:* The date indicated in the Task Order on which it becomes effective, but if no such date is indicated, it means the date on which the Task Order is signed and delivered by the last of the two parties to sign and deliver.

26. *Engineer:* The individual or entity named as such in this Agreement.

27. *Field Order:* A written order issued by Engineer which directs minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.

28. *General Conditions:* That part of the Contract Documents which sets forth terms, conditions, and procedures that govern the Work to be performed or furnished by a Contractor with respect to a Specific Project.

29. *Hazardous Waste:* The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.

30. *Laws and Regulations; Laws or Regulations:* Any and all applicable laws, rules, regulations, ordinances, codes, standards, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

31. *Owner:* The individual or entity with which Engineer has entered into this Agreement and for which the Engineer's services are to be performed. Unless indicated otherwise, this is the same individual or entity that will enter into any construction contracts concerning the Project.

32. *PCBs:* Polychlorinated biphenyls.

33. *Petroleum:* Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds

per square inch absolute), such as fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.

34. *Project:* The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.

35. *Radioactive Materials:* Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.

36. *Record Drawings:* The Drawings as issued for construction on which Engineer, upon completion of the Work, has shown changes due to Addenda or Change Orders and other information which Engineer considers significant based on record documents furnished by Contractor to Engineer and which were annotated by Contractor to show changes made during construction.

37. *Reimbursable Expenses:* The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic and Additional Services for a Specific Project for which Owner shall pay Engineer as indicated in Exhibit C.

38. *Resident Project Representative:* The authorized representative, if any, of Engineer assigned to assist Engineer at the Site of a Specific Project during the Construction Phase. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of the RPR agreed to by Owner. The duties and responsibilities of the RPR will be as set forth in each Task Order.

39. *Samples:* Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.

40. *Shop Drawings:* All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for a Contractor and submitted by a Contractor to Engineer to illustrate some portion of the Work.

41. *Site:* Lands or areas indicated in the Contract Documents for a Specific Project as being furnished by Owner upon which the Work is to be performed, rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for use of a Contractor.

42. *Specifications:* That part of the Contract Documents prepared by Engineer consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work to be performed by a Contractor and certain administrative details applicable thereto.

43. *Specific Project:* An undertaking of Owner as set forth in a Task Order.

44. *Subcontractor:* An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at a Site.

45. *Substantial Completion:* The time at which the Work has progressed to the point where, in the opinion of Engineer, the Work is sufficiently complete, in accordance with the

Contract Documents, so that the Work can be utilized for the purposes for which it is intended.

46. *Supplementary Conditions:* That part of the Contract Documents which amends or supplements the General Conditions.

47. *Supplier:* A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or Subcontractor.

48. *Task Order:* A document executed by Owner and Engineer, including amendments if any, stating the scope of services, Engineer's compensation, times for performance of services and other relevant information for a Specific Project.

49. *Total Project Costs:* The sum of the Construction Cost, allowances for contingencies, the total costs of services of Engineer or other design professionals and consultants, cost of land, rights-of-way, or compensation for damages to properties, or Owner's costs for legal, accounting, insurance counseling, or auditing services, or interest and financing charges incurred in connection with a Specific Project, or the cost of other services to be provided by others to Owner pursuant to Exhibit B of this Agreement.

50. *Work:* The entire completed construction or the various separately identifiable parts thereof required to be provided under the Contract Documents for a Specific Project. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by those Contract Documents.

51. *Work Change Directive:* A written directive to a Contractor signed by Owner upon recommendation of the Engineer, ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change directed or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

## ARTICLE 8 - EXHIBITS AND SPECIAL PROVISIONS

8.01 *Exhibits*

Attachment 1, Task Order Form (Template)

Exhibit A, Engineer's Services

Exhibit B, Owner's Responsibilities

Exhibit C, Payments to Engineer for Services and Reimbursable Expenses

Exhibit D, Duties, Responsibilities and Limitations of Authority of Resident Project Representative

Exhibit E, Notice of Acceptability of Work

~~Exhibit F, Construction Cost Limit~~ – Not Included.

Exhibit G, Insurance

Exhibit H, Dispute Resolution

Exhibit I, Limitations on Liability

~~Exhibit J, Special Provisions~~ – Not Included.

Exhibit K, Amendment to Task Order (Form)

8.02 *Total Agreement*

A. This Agreement (together with the Exhibits identified as included above) constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument based on the format provided in Exhibit K to this Agreement, "Amendment to Task Order."

8.03 *Designated Representatives*

A. With the execution of this Agreement, Engineer and Owner shall designate specific individuals to act as Engineer's and Owner's representatives with respect to the services to be performed or furnished by Engineer and responsibilities of Owner under this Agreement. Such individuals shall have authority to transmit instructions, receive information, and render decisions relative to the Agreement on behalf of each respective party. Each Task Order shall likewise designate representatives of the two parties.

8.04 *Engineer's Certifications*

A. Engineer certifies that it has not engaged in corrupt, fraudulent, or coercive practices in competing for or in executing the Agreement. For the purposes of this Paragraph 8.04:

1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the selection process or in the Agreement execution;

2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of Owner, or (b) to deprive Owner of the benefits of free and open competition;

3. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on Page 1.

| OWNER: | ENGINEER: |
|---|---|
| By: _____ | By: Mark Anderson |
| Name: Dr. Tim Mahoney | Name: Mark Anderson |
| Title: Mayor | Title: Vice President, EPW |
| Date Signed: _____ | Engineer License or Firm's Certificate No. 061-C |
| Attest: Steve Sprague | State of: North Dakota |
| Title: City Auditor | |
| Date Signed: _____ | Date Signed: _____ |
| Address for giving notices: | Address for giving notices: |
| 225 4th Street N. | 4858 Coleman Street |
| Fargo, North Dakota | Bismarck, ND 58503 |
| 58102 | klj.legal@kljeng.com |

DESIGNATED REPRESENTATIVE
(Paragraph 8.03.A):

Ben Dow

Title: Public Works Director of Operations

Phone
Number: 701-241-1463

Email
Address: bdow@FargoND.gov

DESIGNATED REPRESENTATIVE
(Paragraph 8.03.A):

Cassie McNames

Title: Project Manager

Phone
Number: 701-241-2317

Email
Address: cassie.mcnames@kljeng.com

This is Task Order No. 1, consisting of 3 pages.

**Public Works Consulting Services Task Order No. 1**

In accordance with Paragraph 1.01 of the Agreement between Owner and Engineer for Professional Services, dated August 26, 2020 ("Agreement"), Owner and Engineer agree as follows:

1. Specific Project Data

   A. Title:_____

   B. Description:_____

2. Services of Engineer

   *[Incorporate applicable text or paragraphs from Exhibit A, Schedule of Engineer's Services -- either by Reference or by insertion here. Incorporate Exhibits D and/or F if applicable – either by reference or by insertion here. Supplement or modify as needed for this specific Task Order.]*

3. Owner's Responsibilities

   Owner shall have those responsibilities set forth in Article 2 and in Exhibit B, subject to the following:

4. Times for Rendering Services

| Phase | Completion Date |
|---|---|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

5. Payments to Engineer

   A. Owner shall pay Engineer for services rendered as follow:

| *Category of Services* | *Compensation Method* | *Lump Sum, or Estimate of Compensation for Services* |
|---|---|---|
| Basic Services:<br>Study and Report Phase | TBD | |
| Basic Services:<br>Preliminary Design Phase | TBD | |
| Basic Services:<br>Final Design Phase | TBD | |
| Basic Services:<br>Bidding or Negotiating Phase | TBD | |
| Basic Services:<br>Construction Phase | TBD | |
| Basic Services:<br>Post-Construction Phase | TBD | |
| Additional Services | TBD | |

B. The terms of payment are set forth in Article 4 of the Agreement and in Exhibit C.

1. Consultants:

   *None*

2. Other Modifications to Agreement:

   *None at the time.*

3. Attachments:

   Attachment 1 to Exhibit A-1 and Exhibit B-1

4. Documents Incorporated By Reference:

Terms and Conditions: Execution of this Task Order by Owner and Engineer shall make it subject to the terms and conditions of the Agreement (as modified above), which Agreement is incorporated by this reference. Engineer is authorized to begin performance upon its receipt of a copy of this Task Order signed by Owner.

The Effective Date of this Task Order is_____, _____.

| OWNER: | ENGINEER: |
|---|---|
| By: _____ | By: _____ |
| Name: Ben Dow | Name: Mark Anderson |
| Title: Director of Operations | Title: Vice President, EPW |
| DESIGNATED REPRESENTATIVE FOR TASK ORDER: | DESIGNATED REPRESENTATIVE FOR TASK ORDER: |
| Name: Ben Dow | Name: Cassie McNames |
| Title: Public Works Director of Operations | Title: Project Manager |
| Address: 402 23rd Street N.<br>Fargo, ND 58102 | Address: 728 East Beaton Drive, Suite 101<br>West Fargo, ND 58078 |
| Email Bdow@cityoffargo.com | Email |
| Address: _____ | Address: cassie.mcnames@kljeng.com |
| Phone Number: 701-241-1463 | Phone Number: 701-241-2317 |
| Fax: 701-241-8100 | Fax: 855-288-8055 |

This is **EXHIBIT A**, consisting of 10 pages, referred to in and part of the **Agreement between Owner and Engineer** for **Professional Services** dated August 26th, 2020.

**Engineer's Services**

## PART 1 – BASIC SERVICES

A1.01 *Study and Report Phase*

A. The Engineer shall:

1. Consult with Owner to define and clarify Owner's requirements for a Specific Project and available data.

2. Advise Owner as to the necessity of Owner's providing data or services of the types described in Exhibit B, and, if requested, assist Owner in obtaining such data and services.

3. Identify, consult with, and analyze requirements of governmental authorities having jurisdiction to approve the portions of a Specific Project designed or specified by Engineer, including but not limited to mitigating measures identified in the environmental assessment.

4. Identify and evaluate the number of alternate solutions available to Owner for a Specific Project, and, after consultation with Owner, recommend to Owner those solutions which in Engineer's judgment meet Owner's requirements for a Specific Project.

5. Prepare a report (the "Report") which will, as appropriate, contain schematic layouts, sketches and conceptual design criteria with appropriate exhibits to indicate the agreed-to requirements, considerations involved, and those alternate solutions available to Owner which Engineer recommends. The Report will be accompanied by Engineer's opinion of Total Project Costs for each solution which is so recommended for a Specific Project with each component separately itemized, including the following, which will be separately itemized:

    a. opinion of probable Construction Cost,

    b. allowances for contingencies and for the estimated total costs of design, professional, and related services provided by Engineer and,

    c. on the basis of information furnished by Owner, allowances for other items and services included within the definition of Total Project Costs.

6. Furnish the number of review copies of the Report to Owner within the time period set forth in the Task Order and review it with Owner.

7. Revise the Report in response to Owner's and other parties' comments, as appropriate, and furnish the number of final copies of the revised Report to the Owner within the time period set forth in the Task Order.

B. Engineer's services under the Study and Report Phase will be considered complete on the date when the final copies of the revised Report have been delivered to Owner.

**PART 2 - DESIGN ACTIVITIES**

A1.02 *Preliminary Design Phase*

A. Engineer shall on the basis of the above acceptance, selection, and authorization:

1. Prepare Preliminary Design Phase documents consisting of final design criteria, preliminary drawings, outline specifications and written descriptions of a Specific Project.

2. Provide necessary field surveys and topographic and utility mapping for design purposes. Utility mapping will be based upon information obtained from utility owners.

3. Advise Owner if additional reports, data, information, or services of the types described in Exhibit B are necessary and assist Owner in obtaining such reports, data, information, or services.

4. Based on the information contained in the Preliminary Design Phase documents, submit a current opinion of probable Construction Cost and any adjustments to Total Project Costs known to Engineer, which will be itemized as provided in the Study and Report Phase Services section above.

5. Furnish the Preliminary Design Phase documents to and review them with Owner.

6. Submit to Owner the number of final copies of the Preliminary Design Phase documents and revised opinion of probable Construction Cost within the time period set forth in the Task Order.

B. Engineer's services under the Preliminary Design Phase will be considered complete on the date when final copies of the Preliminary Design Phase documents have been delivered to Owner.

A1.03 *Final Design Phase*

A. Engineer shall:

1. Prepare final Drawings and Specifications indicating the scope, extent, and character of the Work to be performed and furnished by Contractor. Where appropriate, prepare Specifications in general conformance with the format of the Construction Specifications Institute.

2. Provide technical criteria, written descriptions, and design data for Owner's use in filing applications for permits from or approvals of governmental authorities having jurisdiction to review or approve the final design of a Specific Project and assist Owner in consultations with appropriate authorities.

3. Provide Owner a current opinion of probable Construction Cost and any adjustments to Total Project Costs known to Engineer, itemized as provided in the Study and Report Phase Services section above.

4. Prepare and furnish Bidding Documents for review and approval by Owner, its legal counsel, and other advisors, as appropriate, and assist Owner in the preparation of other related documents.

5. Submit the number of final copies of the Bidding Documents and a current opinion of probable Construction Cost to Owner within the time period set forth in the Task Order.

6. Prepare for, coordinate with, participate in, and respond to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering, and constructability review requested by Owner; and perform or furnish services required to revise studies, reports, Drawings, Specifications, or other Bidding Documents as a result of such review processes.

B. Engineer's services under the Final Design Phase will be considered complete on the date when the required submittals have been delivered to Owner.

**PART 3 - BIDDING AND NEGOTIATION**

A1.04 *Bidding or Negotiating Phase*

A. The Engineer shall:

1. Assist Owner in advertising for and obtaining bids or negotiating proposals for the Work and, where applicable, maintain a record of prospective bidders to whom Bidding Documents have been issued, attend pre-Bid conferences, if any, and receive and process Contractor deposits or charges for the Bidding Documents.

2. Issue Addenda as appropriate to clarify, correct, or change the Bidding Documents.

3. Consult with Owner as to the acceptability of subcontractors, suppliers, and other individuals and entities proposed by Contractor for those portions of the Work as to which such acceptability is required by the Bidding Documents.

4. Prepare additional Bidding Documents or Contract Documents for alternate bids or prices requested by Owner for the Work or a portion thereof.

5. If bidding documents require, the Engineer shall evaluate and determine the acceptability of "or equals" and substitute materials and equipment proposed by bidders, but subject to the provisions below regarding additional compensation for an excessive number of such substitute or "or equal" submittals.

6. Attend the bid opening, prepare bid tabulation sheets, and assist Owner in evaluating bids or proposals and in assembling and awarding contracts for the Work.

7. Assist Owner with bid protests, rebidding, or renegotiating contracts for construction, materials, equipment, or services.

8. Perform or provide the following additional Bidding or Negotiating Phase tasks or deliverables:

B. The Bidding or Negotiating Phase will be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective Contractors.

**PART 4 - CONSTRUCTION AND COMMISSIONING**

A1.05 *Construction Phase*

A. Engineer shall provide the following services:

1. *General Administration of Construction Contract:* Consult with Owner and act as Owner's representative as provided in the General Conditions. The extent and limitations of the duties, responsibilities and authority of Engineer as assigned in said General Conditions shall not be modified, except as Engineer may otherwise agree in writing. All of Owner's instructions to Contractor will be issued through Engineer, who shall have authority to act on behalf of Owner in dealings with Contractor to the extent provided in this Agreement and said General Conditions except as otherwise provided in writing.

2. *Resident Project Representative (RPR):* Provide the services of an RPR at the Site of the Specific Project to assist the Engineer and to provide more extensive observation of Contractor's work. Duties, responsibilities, and authority of the RPR are as set forth in the Task Order and in Exhibit D, "Duties, Responsibilities and Limitations of Authority of Resident Project Representative." The furnishing of such RPR's services will not limit, extend, or modify Engineer's responsibilities or authority except as expressly set forth in Exhibit D.

3. *Selecting Independent Testing Laboratory:* Assist Owner in the selection of an independent testing laboratory to perform the services identified in Paragraph B2.01.0.

4. *Pre-Construction Conference:* Participate in a pre-construction conference prior to commencement of Work at the Site.

5. *Schedules:* Receive, review, and determine the acceptability of any and all schedules that Contractor is required to submit to Engineer, including the Progress Schedule, Schedule of Submittals, and Schedule of Values.

6. *Baselines and Benchmarks:* As appropriate, establish baselines and benchmarks for locating the Work which in Engineer's judgment are necessary to enable Contractor to proceed.

7. *Visits to Site and Observation of Construction:* In connection with observations of Work in progress:

a. Make visits to the Site at intervals appropriate to the various stages of construction, as Engineer deems necessary, in order to observe as an experienced and qualified design professional the progress of Contractor's executed Work. Such visits and observations by Engineer, and the Resident Project Representative, if any, are not intended to be exhaustive or to extend to every aspect of the Work in progress or to involve detailed inspections of the Work in progress beyond the responsibilities specifically assigned to Engineer in the Task Order and the Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on Engineer's exercise of professional judgment as assisted by the Resident Project Representative, if any. Based on information obtained during such visits and observations,

Engineer will determine in general if the Work is proceeding in accordance with the Contract Documents, and Engineer shall keep Owner informed of the progress of the Work.

b. The purpose of Engineer's visits to, and representation by the Resident Project Representative, if any, at the Site of the Specific Project, will be to enable Engineer to better carry out the duties and responsibilities assigned to and undertaken by Engineer during the Construction Phase, and, in addition, by the exercise of Engineer's efforts as an experienced and qualified design professional, to provide for Owner a greater degree of confidence that the completed Work will conform in general to the Contract Documents and that Contractor has implemented and maintained the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents. Engineer shall not, during such visits or as a result of such observations of Contractor's work in progress, supervise, direct, or have control over the Work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by Contractor, for security or safety at the Site, for safety precautions and programs incident to Contractor's Work, or for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work. Accordingly, Engineer neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish or perform the Work in accordance with the Contract Documents.

8. *Defective Work:* Reject Work if, on the basis of Engineer's observations, Engineer believes that such Work (a) is defective under the standards set forth in the Contract Documents, (b) will not produce a completed Project that conforms to the Contract Documents or (c) will imperil the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents.

9. *Clarifications and Interpretations; Field Orders:* Issue necessary clarifications and interpretations of the Contract Documents as appropriate to the orderly completion of the Work. Such clarifications and interpretations will be consistent with the intent of and reasonably inferable from the Contract Documents. Subject to any limitations in the Contract Documents, Engineer may issue Field Orders authorizing minor variations from the requirements of the Contract Documents.

10. *Change Orders and Work Change Directives:* Recommend change orders and work change directives to Owner, as appropriate, and prepare change orders and work change directives *as* required.

11. *Shop Drawings and Samples:* Review and approve or take other appropriate action in respect to Shop Drawings and Samples and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated in the Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto. Engineer shall meet any Contractor's submittal schedule that Engineer has accepted.

12. *Substitutes and "or-equal":* Evaluate and determine the acceptability of substitute or "or equal" materials and equipment proposed by Contractor, but subject to any provisions below regarding additional compensation for evaluation of such substitute or "or equal" submittals.

13. *Inspections and Tests:* Require such special inspections or tests of the Work as deemed reasonably necessary, and receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Contract Documents. Engineer's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Contract Documents. Engineer shall be entitled to rely on the results of such tests.

14. *Disagreements between Owner and Contractor:* Render formal written decisions on all duly submitted issues relating to the acceptability of the Work or the interpretation of the requirements of the Contract Documents pertaining to the execution, performance or progress of the Work; review each duly submitted Claim by Owner or Contractor, and in writing either deny such Claim in whole or in part, approve such Claim, or decline to resolve such Claim if Engineer in its discretion concludes that to do so would be inappropriate. In rendering such decisions, Engineer shall be fair and not show partiality to Owner or Contractor and shall not be liable in connection with any decision rendered in good faith in such capacity.

15. *Applications for Payment:* Based on Engineer's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:

    a. Determine the amounts that Engineer recommends Contractor be paid. Such recommendations of payment will be in writing and will constitute Engineer's representation to Owner, based on such observations and review, that, to the best of Engineer's knowledge, information and belief: the Work has progressed to the point indicated, the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work. In the case of unit price work, Engineer's recommendations of payment will include final determinations of quantities and classifications of the Work (subject to any subsequent adjustments allowed by the Contract Documents). The responsibilities of Engineer contained in Paragraph A1.05.A.15.a are expressly subject to the limitations set forth in Paragraph A1.05.A.15.b and other express or general limitations in this Agreement and elsewhere.

    b. By recommending any payment, Engineer shall not thereby be deemed to have represented that observations made by Engineer to check the quality or quantity of the Work as it is performed and furnished have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement and the Contract Documents. Neither Engineer's review of the Work for the purposes of recommending payments nor Engineer's recommendation of any payment including final payment will impose on Engineer responsibility to supervise, direct, or control the Work in progress or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or

programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and performing the Work. It will also not impose responsibility on Engineer to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or to determine that title to any portion of the Work in progress, materials, or equipment has passed to Owner free and clear of any liens, claims, security interests, or encumbrances, or that there may not be other matters at issue between Owner and Contractor that might affect the amount that should be paid.

16. *Contractor's Completion Documents:* Receive, review and transmit to Owner maintenance and operating instructions, schedules guarantees, bonds, certificates, or other evidence of insurance not previously submitted and required by the Contract Documents, certificates of inspection, tests and approvals, Shop Drawings, Samples and other data approved as provided above, and transmit the annotated record documents which are to be assembled by Contractor in accordance with the Contract Documents to obtain final payment. The extent of such review by Engineer will be limited as provided above.

17. *Substantial Completion:* Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with Owner and Contractor, visit the Site to determine if the Work is Substantially Complete. If after considering any objections of Owner, Engineer considers the Work Substantially Complete, Engineer shall deliver a certificate of Substantial Completion to Owner and Contractor.

18. *Final Notice of Acceptability of the Work:* Conduct a final payment inspection to determine if the completed Specific Project of Contractor is acceptable so that Engineer may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, Engineer shall also provide a notice in the form attached hereto as Exhibit E ("Notice of Acceptability of Work") that the Work is acceptable (subject to the provisions of Paragraph A1.05.A.15.b) to the best of Engineer's knowledge, information, and belief and based on the extent of the services provided by Engineer under this Agreement.

19. *Defective Work:* Together with Owner, visit the Site to observe any apparent defects in the Work, assist Owner in consultations and discussions with Contractor concerning correction of any such defects, and make recommendations as to replacement or correction of Defective Work, if any.

20. *Correction Period:* Together with Owner or Owner's representative, visit the Site within one month before the end of the Correction Period to ascertain whether any portion of the Work is subject to correction.

B. *Duration of Construction Phase:* The Construction Phase will commence with the execution of the first Construction Agreement for a Specific Project or any part thereof and will terminate upon written recommendation by Engineer for final payment to Contractors. If a Specific Project involves more than one prime contract as indicated in the Task Order, Construction Phase services may be rendered at different times in respect to the separate contracts.

A1.06 *Commissioning Phase*

A. Engineer shall:

1. Assist Owner in connection with the adjusting of Specific Project equipment and systems.

2. Assist Owner in training Owner's staff to operate and maintain Specific Project equipment and systems.

3. Prepare operation and maintenance manuals.

4. Assist Owner in developing procedures for (a) control of the operation and maintenance of Specific Project equipment and systems, and (b) related record-keeping.

5. Prepare and furnish to Owner, in the format agreed to, Record Drawings showing appropriate record information based on Project annotated record documents received from Contractor.

**PART 5 - OTHER SERVICES**

A2.01 *For each Task Order, consider the inclusion of the following possible services:*

A. Engineer shall:

1. Prepare applications and supporting documents for private or governmental grants, loans or advances in connection with a Specific Project; prepare or review environmental assessments and impact statements; review and evaluate the effects on the design requirements for a Specific Project of any such statements and documents prepared by others; and assist in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of a Specific Project.

2. Provide services to make measured drawings of or to investigate existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by Owner.

3. Provide renderings or models for Owner's use.

4. Undertake investigations and studies including, but not limited to, detailed consideration of operations, maintenance and overhead expenses; the preparation of financial feasibility and cash flow studies, rate schedules, and appraisals; assist in obtaining financing for a Specific Project; evaluate processes available for licensing, and assist Owner in obtaining process licensing; detailed quantity surveys of materials, equipment and labor; and audits or inventories required in connection with construction performed by Owner.

5. In addition to baselines and benchmarks, provide more extensive construction surveys and staking to enable a Contractor to perform its work and any type of property surveys or related engineering services needed for the transfer of interests in real property; and provide other special field surveys.

6. Provide assistance in responding to the presence of any Constituent of Concern at any Site, in compliance with current Laws and Regulations.

7. Prepare to serve or serve as a consultant or witness for Owner in any litigation, arbitration or other dispute resolution process related to a Specific Project.

## PART6 - ADDITIONAL SERVICES REQUIRING AMENDMENT TO TASK ORDER

A2.02 *Additional Services Requiring an Amendment to Task Order*

A. *Advance Written Authorization Required:* During performance under a Task Order, Owner may authorize Engineer in writing to furnish or obtain from others Additional Services of the types listed below. The Task Order shall be amended to reflect the inclusion of such Additional Services. Services resulting from significant changes in the scope, extent, or character of the portions of a Specific Project designed or specified by Engineer or its design requirements including, but not limited to, changes in size, complexity, Owner's schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date of the Task Order or are due to any other causes beyond Engineer's control.

1. Services resulting from Owner's request to evaluate additional Study and Report Phase alternative solutions beyond those identified in Paragraph A.1.01.A.4.

2. Services required as a result of Owner's providing incomplete or incorrect Project information to Engineer.

3. Providing Construction Phase services beyond the Contract Times set forth in the Task Order.

4. Providing more extensive services required to enable Engineer to issue notices or certifications requested by Owner, subject to the terms of Paragraph 6.01.F of the Agreement.

5. Overtime work requiring higher than regular rates.

6. Other services proposed to be performed or furnished by Engineer not otherwise provided for in this Agreement.

B. *Advance Written Authorization Not Required:* Engineer shall advise Owner in advance that Engineer will immediately commence to perform or furnish the Additional Services of the types listed below. For such Additional Services, Engineer need not request or obtain specific advance written authorization from Owner. Engineer shall cease performing or furnishing such Additional Services upon receipt of written notice from Owner. The Task Order shall be amended to reflect the inclusion of such Additional Services.

1. Services in connection with Work Change Directives and Change Orders to reflect changes requested by Owner so as to make the compensation commensurate with the extent of the Additional Services rendered.

2. Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or-equal" items; services after the award of any Construction Contract in evaluating and determining the acceptability of a proposed substitution, whether approved or not; evaluation and determination of an excessive number of proposed "or equals" or substitutions whether proposed before or after award of the Construction Contract.

3. Services resulting from significant delays, changes, or price increases occurring as a direct or indirect result of materials, equipment, or energy shortages.

4. Additional or extended services during construction made necessary by (1) emergencies or acts of God endangering the Work (advance notice not required), (2) the presence at the site of any Constituent of Concern or items of historical or cultural significance, (3) Work damaged by fire or other cause during construction, ( 4) a significant amount of defective, neglected, or delayed work by Contractor, (5) acceleration of the progress schedule involving services beyond normal working hours, or (6) default by Contractor.

5. Services in connection with any partial utilization of any part of the Work on a Specific Project by Owner prior to Substantial Completion.

6. Reviewing a Shop Drawing more than three times, as a result of repeated inadequate submissions by Contractor.

7. While at the Site, compliance by Engineer and its staff with those terms of Owner's or Contractor's safety program enacted or provided to Engineer subsequent to the Effect Date of the Task Order that exceed those normally required of engineering personnel by federal, state, or local safety authorities for similar construction sites.

8. Evaluation of an unreasonable claim or an excessive number of claims or requests for information submitted by a Contractor or others in connection with the Work on a Specific Project.

This is **EXHIBIT B**, consisting of 3 pages, referred to in and part of the **Agreement between Owner and Engineer** for **Professional Services** dated August 26th, 2020.

**Owner's Responsibilities**

Article 2 of the Agreement is amended and supplemented to include the following responsibilities unless expressly stated otherwise in a Task Order.

A. Provide Engineer with all criteria and full information as to Owner's requirements for the Specific Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which Owner will require to be included in the Drawings and Specifications; and furnish copies of Owner's standard forms, conditions, and related documents for Engineer to include in the Bidding Documents, when applicable.

B. Furnish to Engineer any other available information pertinent to the Specific Project including reports and data relative to previous designs, or investigation at or adjacent to the Site of the Specific Project.

C. Following Engineer's assessment of initially-available Specific Project information and data and upon Engineer's request, furnish or otherwise make available such additional Specific Project related information and data as is reasonably required to enable Engineer to complete its Basic and Additional Services. Such additional information or data would generally include the following:

1. Property descriptions.

2. Zoning, deed, and other land use restrictions.

3. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.

4. Explorations and tests of subsurface conditions at or contiguous to the Site, drawings of physical conditions relating to existing surface or subsurface structures at the Site, or hydrographic surveys, with appropriate professional interpretation thereof.

5. Environmental assessments, audits, investigations and impact statements, and other relevant environmental or cultural studies as to a Specific Project, the Site and adjacent areas.

6. Data or consultations as required for a Specific Project but not otherwise identified in the Agreement, the Exhibits thereto, or the Task Order.

D. Give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of the presence at the Site of any Constituent of Concern, or of any other development that affects the scope or time of performance of Engineer's services, or any defect or nonconformance in Engineer's services, the Work, or in the performance of any Contractor.

E. Authorize Engineer to provide Additional Services as set forth in the Task Order as required.

F. Arrange for safe access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services under the Task Order.

G. Examine all alternate solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer for the Specific Project (including obtaining advice of an attorney, insurance counselor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.

H. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Specific Project designed or specified by Engineer and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the Specific Project.

I. Recognizing and acknowledging that Engineer's services and expertise do not include the following services, provide, as required for the Specific Project:

1. Accounting, bond and financial advisory, independent cost estimating, and insurance counseling services.

2. Legal services with regard to issues pertaining to the Specific Project as Owner requires, a Contractor raises, or Engineer reasonably requests.

3. Such auditing services as Owner requires to ascertain how or for what purpose a Contractor has used the moneys paid.

J. Place and pay for advertisement for Bids in appropriate publications.

K. Advise Engineer of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services in regard to the Specific Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructability review.

L. Furnish to Engineer data as to Owner's anticipated costs for services to be provided by others (including, but not limited to, accounting, bond and financial, independent cost estimating, insurance counseling and legal advice) for Owner so that Engineer may assist the Owner in collating the various cost categories which comprise Total Project Costs.

M. If Owner designates a construction manager or an individual or entity other than, or in addition to, Engineer to represent Owner at the Site, define and set forth in the Task Order the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of Engineer.

N. If more than one prime contract is to be awarded for the Work of the Specific Project designed or specified by Engineer, designate in the Task Order a person or entity to have authority and responsibility for coordinating the activities among the various prime Contractors. Define and set forth in the Task Order the duties, responsibilities, and limitations of authority of such individual or entity and the relation thereof to the duties, responsibilities, and authority of Engineer.

O. Attend the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings, and Substantial Completion and final payment visits to the Site.

P. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of Samples, materials, and equipment required by the Contract Documents, or to evaluate the performance of materials, equipment, and facilities of Owner, prior to their incorporation into the Work for the Specific Project with appropriate professional interpretation thereof.

Q. Provide Engineer with the findings and reports generated by any independent testing laboratory, if Engineer is required to review such documents.

R. Inform Engineer of any specific requirements of safety or security programs that are applicable to Engineer, as a visitor to the Site.

S. Perform or provide the following additional services:

This is **EXHIBIT C**, consisting of 3 pages, referred to in and part of the **Agreement between Owner and Engineer** for **Professional Services** dated August 26th, 2020.

**Payments to Engineer for Service and Reimbursable Expenses**

Article 2 of the Agreement is amended and supplemented to include the following agreement of the parties:

**ARTICLE 2 - OWNER'S RESPONSIBLITIES**

C2.01 *Method of Payment*

A. Owner shall pay Engineer for services in accordance with one or more of the following methods as identified in each Task Order:

1. Method A: Lump Sum

2. Method B: Standard Hourly Rates

C2.02 *Explanation of Methods*

A. Method A - Lump Sum

1. Owner shall pay Engineer a Lump Sum amount for the specified category of services.

2. The Lump Sum will include compensation for Engineer's services and services of Consultants, if any. Appropriate amounts will be incorporated in the Lump Sum to account for labor, overhead, profit, and Reimbursable Expenses.

3. The portion of the Lump Sum amount billed for Engineer's services will be based upon Engineer's estimate of the proportion of the total services actually completed during the billing period to the Lump Sum.

B. Method B - Standard Hourly Rates

1. For the specified category of services, the Owner shall pay Engineer an amount equal to the cumulative hours charged to the Specific Project by each class of Engineer's employees times Standard Hourly Rates for each applicable billing class for all services performed on the Specific Project, plus Reimbursable Expenses and Consultant's charges, if any.

2. Standard Hourly Rates include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.

3. Engineer's Reimbursable Expenses Schedule and Standard Hourly Rates are attached to this Exhibit as Appendix 1.

4. The total estimated compensation for the specified category of services shall be stated in the Task Order. This total estimated compensation will incorporate all labor at Standard Hourly Rates, Reimbursable Expenses, and Consultants' charges, if any.

5. The amounts billed will be based on the cumulative hours charged to the specified category of services on the Specific Project during the billing period by each class of Engineer's employees times Standard Hourly Rates for each applicable billing class, plus Reimbursable Expenses and Engineer's Consultant's charges, if any.

6. The Standard Hourly Rates and Reimbursable Expenses Schedule shall be adjusted annually (as of January 1st) to reflect equitable changes in the compensation payable to Engineer.

C2.03 *Reimbursable Expenses*

Costs incurred by Engineer in the performance of the Task Order in the following categories constitute Reimbursable Expenses:

A. Transportation and subsistence incidental thereto; advertisements, postage, and shipping costs; providing and maintaining field office facilities including furnishings and utilities; subsistence and transportation of Resident Project Representative and their assistants; toll telephone calls, faxes, and telegrams; and reproduction of reports, Drawings, Specifications, Bidding Documents, and similar Specific Project-related items in addition to those required under Exhibit A. If authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for computer time and the use of other highly specialized equipment. Reimbursable expenses shall be paid at rates set forth in Appendix 1 to this Exhibit C which shall be adjusted annually (as of January 1st) to reflect equitable changes in the rates.

B. The amounts payable to Engineer for Reimbursable Expenses will be the project-specific internal expenses actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to a Specific Project, as listed in the Reimbursable Expenses Schedule provided as Appendix 1 for each Task Order.

C2.04 *Serving as a Witness*

A. Unless compelled to testify by subpoena or other court order, in which case no compensation or payment shall be owed by Owner, the rate may be negotiated for services performed by Engineer's employees as an expert witness giving testimony in any litigation, arbitration, or other legal or administrative proceeding under Paragraph A.2.01.A.21. Compensation for Consultants for such services will be by reimbursement of Consultants' charges to Engineering for such services.

C2.05 *Other Provisions Concerning Payment*

A. *Extended Contract Times.* Should the Contract Times to complete the Work be extended beyond the period stated in the Task Order, payment for Engineer's services shall be continued based on the Standard Hourly Rates Method of Payment.

B. *Estimated Compensation Amounts*

1. Engineer's estimate of the amounts that will become payable for services are only estimates for planning purposes, are not binding on the parties, and are not the minimum or maximum amounts payable to Engineer under the Agreement.

2. When estimated compensation amounts have been stated in a Task Order and it subsequently becomes apparent to Engineer that a compensation amount thus estimated will be exceeded, Engineer shall give Owner written notice thereof. Promptly thereafter Owner and Engineer shall review the matter of services remaining to be performed and compensation for such services. Owner shall either agree to such compensation exceeding said estimated amount or Owner and Engineer shall agree to a reduction in the remaining services to be rendered by Engineer so that total compensation for such services will not exceed said estimated amount when such services are completed. If Engineer exceeds the estimated amount before Owner and Engineer have agreed to an increase in the compensation due Engineer or a reduction in the remaining services, the Engineer shall give written notice thereof to Owner and shall be paid for all services rendered thereafter.

This is **Appendix 1** to **EXHIBIT C**, consisting of 3 pages, referred to in and part of the **Standard Form of Agreement between Owner and Engineer** for **Professional Services** dated August 26th, 2020.

**Standard Hourly Rates and Reimbursable Expenses Schedule**

Current agreements for engineering services stipulate that the Standard Hourly Rates and Reimbursable Expenses are subject to review and adjustment per Exhibit C. Rates for reimbursable expenses will be provided with each respective Task Order.

# APPENDIX B: STANDARD HOURLY FEE SCHEDULE

| KLJ STANDARD RATES – CITY OF FARGO | | | |
|---|---|---|---|
| KLJ Staff Type | 2020 | 2021 | 2022 |
| Archaeologist I | $72.00 | $75.00 | $78.00 |
| Archaeologist II | $83.00 | $86.00 | $89.00 |
| Archaeologist III | $119.00 | $123.00 | $127.00 |
| Archaeologist IV | $145.00 | $150.00 | $155.00 |
| Archaeologist Technician | $67.00 | $69.00 | $71.00 |
| Architect I | $98.00 | $101.00 | $104.00 |
| Architect II | $109.00 | $113.00 | $117.00 |
| Architect III | $140.00 | $145.00 | $150.00 |
| Architectural Historian | $119.00 | $123.00 | $127.00 |
| CADD Technician I | $88.00 | $91.00 | $94.00 |
| CADD Technician II | $93.00 | $96.00 | $100.00 |
| CADD Technician III | $109.00 | $113.00 | $117.00 |
| CADD Technician IV | $129.00 | $134.00 | $139.00 |
| Engineer I (EIT) | $104.00 | $108.00 | $112.00 |
| Engineer II (EIT) | $120.00 | $125.00 | $130.00 |
| Engineer III (WGM/PM) | $150.00 | $155.00 | $160.00 |
| Engineer IV (Sector Leader/ Project Manager) | $195.00 | $200.00 | $205.00 |
| Engineer V – (Project Manager) | $210.00 | $215.00 | $220.00 |
| Engineer VI – (Project Manager) | $240.00 | $245.00 | $250.00 |
| Engineering Technician I | $87.00 | $90.00 | $93.00 |
| Engineering Technician II | $104.00 | $108.00 | $112.00 |
| Engineering Technician III | $124.00 | $128.00 | $132.00 |
| Engineering Technician IV | $160.00 | $166.00 | $170.00 |
| Environmental Planner I | $85.00 | $88.00 | $91.00 |
| Environmental Planner II | $98.00 | $101.00 | $104.00 |
| Environmental Planner III | $119.00 | $123.00 | $127.00 |
| Environmental Planner IV | $155.00 | $160.00 | $165.00 |
| Environmental Planner V | $195.00 | $200.00 | $205.00 |
| Environmental Technician | $78.00 | $81.00 | $84.00 |
| GIS Analyst I | $83.00 | $86.00 | $89.00 |
| GIS Analyst II | $98.00 | $101.00 | $104.00 |
| GIS Analyst III | $124.00 | $128.00 | $132.00 |
| GIS Analyst IV | $171.00 | $177.00 | $183.00 |
| GIS Technician | $72.00 | $75.00 | $78.00 |
| Government Relations Specialist I | $83.00 | $86.00 | $89.00 |
| Government Relations Specialist II | $106.00 | $110.00 | $114.00 |

| KLJ STANDARD RATES – CITY OF FARGO | | | |
|---|---|---|---|
| KLJ Staff Type | 2020 | 2021 | 2022 |
| Government Relations Manager | $120.00 | $124.00 | $132.00 |
| Hydrogeologist | $210.00 | $215.00 | $225.00 |
| Landscape Architect I | $85.00 | $88.00 | $94.00 |
| Landscape Architect II | $110.00 | $114.00 | $122.00 |
| Landscape Architect III | $130.00 | $135.00 | $145.00 |
| Landscape Architect IV | $145.00 | $150.00 | $160.00 |
| Planner I | $98.00 | $101.00 | $109.00 |
| Planner II | $142.00 | $147.00 | $156.00 |
| Planner III | $190.00 | $195.00 | $205.00 |
| Planner IV | $210.00 | $215.00 | $225.00 |
| Project Assistant I | $65.00 | $67.00 | $71.00 |
| Project Assistant II | $80.00 | $83.00 | $89.00 |
| Project Assistant III | $90.00 | $93.00 | $99.00 |
| Project Assistant IV | $105.00 | $109.00 | $117.00 |
| Project Control Specialist I | $132.00 | $137.00 | $147.00 |
| Project Control Specialist II | $146.00 | $151.00 | $160.00 |
| Project Manager | $200.00 | $205.00 | $215.00 |
| Senior Project Manager | $230.00 | $235.00 | $245.00 |
| Right-of-Way Agent I | $85.00 | $88.00 | $94.00 |
| Right-of-Way Agent II | $110.00 | $114.00 | $122.00 |
| Right-of-Way Agent III | $125.00 | $129.00 | $139.00 |
| Right-of-Way Agent IV | $154.00 | $159.00 | $170.00 |
| Safety Representative I | $100.00 | $104.00 | $112.00 |
| Safety Representative II | $120.00 | $124.00 | $132.00 |
| Safety Representative III | $160.00 | $166.00 | $176.00 |
| Structural Engineer I | $95.00 | $98.00 | $104.00 |
| Structural Engineer II | $105.00 | $109.00 | $117.00 |
| Structural Engineer III | $140.00 | $145.00 | $155.00 |
| Structural Engineer IV | $170.00 | $176.00 | $187.00 |
| Structural Engineer V | $205.00 | $210.00 | $220.00 |
| Survey Technician | $70.00 | $72.00 | $78.00 |
| Surveyor I | $85.00 | $88.00 | $94.00 |
| Surveyor II | $100.00 | $88.00 | $112.00 |
| Surveyor III | $115.00 | $119.00 | $127.00 |
| Surveyor IV | $150.00 | $155.00 | $165.00 |
| Surveyor V | $150.00 | $210.00 | $220.00 |
| Visual Designer | $105.00 | $109.00 | $117.00 |

| FOSS STANDARD RATES – CITY OF FARGO | | | |
|---|---|---|---|
| Foss Staff Type | 2019-2020 | 2020-2021 | 2021-2022 |
| Principal-In-Charge/Project Manager | $175.00 | $180.00 | $185.00 |
| Senior Project Architect | $125.00 | $128.00 | $132.00 |
| Project Architect | $95.00 | $98.00 | $100.00 |
| Intern/Drafter | $75.00 | $77.00 | $80.00 |
| Interior Designer | $105.00 | $108.00 | $112.00 |
| Cost Estimator/Specifier | $145.00 | $150.00 | $154.00 |
| Construction Inspector/Construction Manager | $100.00 | $103.00 | $106.00 |
| Clerical | $80.00 | $82.00 | $85.00 |

This is **EXHIBIT D**, consisting of 5 pages, referred to in and part of the **Agreement between Owner and Engineer** for **Professional Services** dated August 26th, 2020.

**Schedule of Duties, Responsibilities, and Limitations of Authority of Resident Project Representative**

The following duties, responsibilities, and limitations of authority may be incorporated in the Task Order for a Specific Project:

D1.01 *Resident Project Representative*

A. Engineer shall furnish a Resident Project Representative ("RPR") to assist Engineer in observing progress and quality of the Work. The RPR may provide full time representation or may provide representation to a lesser degree.

B. Through RPR's observations of Contractor's work in progress and field checks of materials and equipment, Engineer shall endeavor to provide further protection for Owner against defects and deficiencies in the Work. However, Engineer shall not, during such RPR field checks or as a result of such RPR observations of Contractor's work in progress, by the RPR, supervise, direct, or have control over Contractor's work, nor shall Engineer (including the RPR) have authority over or responsibility for the means, methods, techniques, sequences, or procedures selected or used by any contractor, for security or safety at the Site, for safety precautions and programs incident to any contractor's work in progress, or for any failure of a contractor to comply with Laws and Regulations applicable to such contractor's performing and furnishing of its work. The Engineer (including RPR) neither guarantees the performances of any contractor nor assumes responsibility for any contractor's failure to furnish and perform the Work in accordance with the Contract Documents. In addition, the specific limitations set forth in Paragraph A1.05 of Exhibit A as incorporated in the Task Order are applicable.

C. The duties and responsibilities of the RPR are limited to those of Engineer in the Agreement with the Owner and in the Contract Documents, and are further limited and described as follows:

1. *General:* RPR is Engineer's representative at the Site, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding RPR's actions.

   - RPR's dealings in matters pertaining to a Contractor's work in progress shall in general be with Engineer and Contractor.

   - RPR's dealings with Subcontractors shall only be through or with the full knowledge and approval of Contractor.

   - RPR shall generally communicate with Owner only with the knowledge of and under the direction of Engineer.

2. *Schedules:* Review the progress schedule, schedule of Shop Drawing and Sample submittals, and schedule of values prepared by a Contractor and consult with Engineer concerning acceptability.

3. *Conferences and Meetings:* Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences and other project-related meetings, and prepare and circulate copies of minutes thereof.

4. *Liaison:*

    a. Serve as Engineer's liaison with Contractor. Working principally through Contractor's authorized representative or designee, and assist in providing information regarding the intent of the Contract Documents.

    b. Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-Site operations.

    c. Assist in obtaining from Owner additional details or information, when required for proper execution of the Work.

5. *Interpretation of Contract Documents:* Report to Engineer when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by Engineer.

6. *Shop Drawings and Samples:*

    a. Record date of receipt of Samples and approved Shop Drawings.

    b. Receive Samples which are furnished at the Specific Project Site by Contractor, and notify Engineer of availability of Samples for examination.

    c. Advise Engineer and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal for which RPR believes that the submittal has not been approved by Engineer.

7. *Modifications:* Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report such suggestions, together with RPR's recommendations, to Engineer. Transmit to Contractor in writing decisions as issued by Engineer.

8. *Review of Work and Rejection of Defective Work:*

    a. Conduct on-Site observations of Contractor's work in progress to assist Engineer in determining if the Work is in general proceeding in accordance with the Contract Documents.

    b. Report to Engineer whenever RPR believes that any part of Contractor's work in progress will not produce a completed project that conforms generally to the Contract Documents or will imperil the integrity of the design concept of the completed Specific Project as a functioning whole as indicated in the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise Engineer of that part of work in progress that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.

9. *Inspections, Tests, and System Start-ups:*

   a. Consult with Engineer in advance of scheduled inspections, tests, and systems start-ups.

   b. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate Owner's personnel, and that Contractor maintains adequate records thereof.

   c. Observe, record, and report to Engineer appropriate details relative to the test procedures and systems start-ups.

   d. Accompany visiting inspectors representing public or other agencies having jurisdiction over a Specific Project, record the results of these inspections, and report to Engineer.

10. *Records:*

   a. Maintain at the Site orderly files for correspondence, reports of job conferences, reproductions of original Contract Documents including all change orders, field orders, work change directives, addenda, additional Drawings issued subsequent to the execution of the Construction Contract, Engineer's clarifications and interpretations of the Contract Documents, progress reports, Shop Drawing and Sample submittals received from and delivered to Contractor, and other Specific Project-related documents.

   b. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site, weather conditions, data relative to questions of change orders, field orders, work change directives, or changed conditions, Site visitors, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Engineer.

   c. Record names, addresses, fax numbers, e-mail addresses, web site locations and telephone numbers of all Contractors, Subcontractors, and major Suppliers of materials and equipment.

   d. Maintain records for use in preparing project documentation.

   e. Upon completion of the Work, furnish original set of all RPR Specific Project documentation to Engineer.

11. *Reports:*

   a. Furnish to Engineer periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.

   b. Draft and recommend to Engineer proposed change orders, work change directives, and Field Orders. Obtain backup material from Contractor.

   c. Furnish to Engineer and Owner copies of all inspection, test, and system startup reports.

d. Immediately notify Engineer of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, damage to property by fire or other causes, or the discovery of any Constituent of Concern.

12. *Payment Requests:*

a. Review applications for payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Engineer, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.

13. *Certificates, Operation and Maintenance Manuals:*

a. During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Specifications to be assembled and furnished by a Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to Engineer for review and forwarding to Owner prior to payment for that part of the Work.

14. *Completion:*

a. Participate in visits to the Project to assist in determining Substantial Completion, assist in the determination of Substantial Completion and the preparation of lists of items to be completed or corrected.

b. Participate in a final visit to the Project in the company of Engineer, Owner, and Contractor and prepare a final list of items to be completed and deficiencies to be remedied.

c. Observe whether all items on the final list have been completed or corrected and make recommendations to Engineer concerning acceptance and issuance of the Notice of Acceptability of the Work. (See Exhibit E).

D. Resident Project Representative shall not:

1. Authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items).

2. Exceed limitations of Engineer's authority as set forth in this Agreement.

3. Undertake any of the responsibilities of a Contractor, subcontractors, suppliers, or a Contractor's superintendent.

4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of the Contractor's work.

5. Advise on, issue directions regarding, or assume control over security safety practices, precautions and programs in connection with the activities or operations of Owner or Contractor.

6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.

7. Accept Shop Drawing or Sample submittals from anyone other than Contractor.

8. Authorize Owner to occupy a Specific Project in whole or in part.

This is **EXHIBIT E**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer** for **Professional Services** dated August 26th, 2020.

**Notice of Acceptability of Work**

PROJECT:

OWNER:

OWNER'S CONSTRUCTION CONTRACT IDENTIFICATION:

EFFECTNE DATE OF THE CONSTRUCTION AGREEMENT:

CONSTRUCTION CONTRACT DATE:

ENGINEER:

To: OWNER

And To: CONTRACTOR

From: ENGINEER

The Engineer hereby gives notice to the above Owner and Contractor that the completed Work furnished and performed by Contractor under the above Contract is acceptable, expressly subject to the provisions of the related Contract Documents and the terms and conditions set forth on the reverse side hereof.

By:_____

Title:_____

Dated:_____

(Reverse side of Notice)

## CONDITIONS OF NOTICE OF ACCEPTABILITY OF WORK

The Notice of Acceptability of Work ("Notice") on the front side of this sheet is expressly made subject to the following terms and conditions to which all persons who receive said Notice and rely thereon agree:

1. Said Notice is given with the skill and care ordinarily used by members of the engineering profession practicing under similar conditions at the same time and in the same locality.

2. Said Notice reflects and is an expression of the professional judgment of Engineer.

3. Said Notice is given as to the best of Engineer's knowledge, information, and belief as of the date hereof.

4. Said Notice is based entirely on and expressly limited by the scope of services Engineer has been employed by Owner to perform or furnish during construction of the Specific Project (including observation of the Contractor's work) under Engineer's Agreement with Owner and under the Construction Contract referenced on the reverse hereof, and applies only to facts that are within Engineer's knowledge or could reasonably have been ascertained by Engineer as a result of carrying out the responsibilities specifically assigned to Engineer under Engineer's Agreement with Owner and the Construction Contract referenced on the reverse hereof.

5. Said Notice is not a guarantee or warranty of Contractor's performance under the Construction Contract referenced on the reverse hereof nor an assumption of responsibility for any failure of Contractor to furnish and perform the Work thereunder in accordance with the Contract Documents.

This is **EXHIBIT G**, consisting of 4 pages, referred to in and part of the **Agreement between Owner and Engineer** for **Professional Services** dated August 26th, 2020.

## Insurance

Paragraph 6.04 of the Agreement is amended and supplemented to include the following agreement of the parties.

G6.04 *Insurance*

A. The limits of liability for the insurance required by Paragraphs 6.04.A and 6.04.B of the Agreement are provided on the attached certificate(s) of insurance:

This is **EXHIBIT H**, consisting of 1 pages, referred to in and part of the **Agreement between Owner and Engineer** for **Professional Services** dated August 26th, 2020.

**Dispute Resolution**

Paragraph 6.08 of the Agreement is supplemented to include the following agreement of the parties:

H6.08 *Dispute Resolution*

A. Owner and Engineer agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement, including any Task Order, or the breach thereof ("Disputes") to mediation. Owner and Engineer agree to participate in the mediation process in good faith. The process should be conducted on a confidential basis, and shall be completed within 120 days. If such mediation is unsuccessful in resolving a Dispute, then (1) the parties may mutually agree to a dispute resolution of their choice, or (2) either party may seek to have the Dispute resolved by a court of competent jurisdiction.

This is **EXHIBIT I**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer** for **Professional Services** dated August 26th, 2020.

**Limitations of Liability**

16.10.A *Limitation of Engineer's Liability*

1. *Engineer's Liability Limited to Amount of Insurance Proceeds:* Engineer shall procure and maintain insurance as required by and set forth in Exhibit G to this Agreement. Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, the total liability, in the aggregate, of Engineer and Engineer's officers, directors, members, partners, agents, employees, and Consultants, to Owner and anyone claiming by, through or under Owner for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from or in any way related to a Specific Project or Task Order, or this Agreement, from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warranty, express or implied, of Engineer or Engineer's officers, directors, partners, agents, employees, or Consultants, or any of them (hereafter "Owner's Claims"), shall not exceed the total insurance proceeds paid on behalf of or to Engineer by Engineer's insurers in settlement or satisfaction of Owner's Claims under the terms and conditions of Engineer's insurance policies applicable thereto (excluding fees, costs and expenses of investigation, claims adjustment, defense, and appeal).

2. *Exclusion of Special, Incidental, Indirect, and Consequential Damages.* To the fullest extent permitted by law, and notwithstanding any other provision in the Agreement, consistent with the terms of paragraph 6.10 the Engineer and Engineer's officers, directors, members, partners, agents, employees, or Consultants, shall not be liable to Owner or anyone claiming by, through, or under Owner for any special, incidental, indirect, or consequential damages whatsoever arising out of, resulting from, or in any way related to a Specific Project, Task Order, or this Agreement, from any cause or causes, including but not limited to any such damages caused by the negligence, professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warranty, express or implied, of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants.

3. *Agreement Not to Claim for Cost of Certain Change Orders:* Owner recognizes and expects that certain Change Orders may be required to be issued as the result in whole or part of imprecision, incompleteness, errors, omissions, ambiguities, or inconsistencies in the Drawings, Specifications, and other design documentation furnished by Engineer or in the other professional services performed or furnished by Engineer for each Task Order under this Agreement ("Covered Change Orders"). Accordingly, Owner agrees not to sue or to make any claim directly or indirectly against Engineer on the basis of professional negligence, breach of contract, or otherwise with respect to the costs of approved Covered Change Orders on a Specific Project.

4. *Indemnification by Owner:* To the fullest extent permitted by law, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death or to injury to or destruction of tangible property (other than the Work itself),

including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Owner or Owner's officers, directors, members, partners, agents, employees, consultants, or others retained by or under contract to the Owner with respect to this Agreement or to the Project.

This is **EXHIBIT K**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer** for **Professional Services** dated August 26th, 2020.

**AMENDMENT TO TAKS ORDER**

Amendment to task order No._____

1. Background Data:

   a. Effective Date of Task Order Agreement:

   b. Owner:

   c. Engineer:

   d. Specific Project:

2. Nature of Amendment

   ☐ Additional Services to be performed by Engineer

   ☐ Modifications to Services of Engineer

   ☐ Modifications to Responsibilities of Owner

   ☐ Modifications to Payment to Engineer

   ☐ Modifications to Time(s) for rendering Services

   ☐ Modifications to other terms and conditions of the Task Order

3. Description of Modifications

   Attachment 1, "Modifications"
   [List other Attachments, if any]

Owner and Engineer hereby agree to modify the above-referenced Task Order as set forth in this Amendment. All provisions of the Agreement not modified by this or previous Amendments remain in effect. The Effective Date of this Amendment is _____.

| OWNER: | ENGINEER: |
|---|---|
| By: _____ | By: _____ |
| Name: _____ | Name: _____ |
| Title: _____ | Title: _____ |
| Date Signed: _____ | Date Signed: _____ |

This is **Attachment 1**, consisting of 1 page, to Amendment No _____ , dated _____,_____: Task Order No.___.

**Modifications**

*[Include the following paragraphs that are appropriate and delete those not applicable to this amendment. Refer to paragraph numbers used in the Task Order, the Agreement, or a previous amendment for clarity with respect to the modifications to be made. Use paragraph numbers in this document for ease of reference herein and in future correspondence or amendments.]*

1. Engineer shall perform the following Additional Services:

2. The Scope of Services currently authorized to be performed by Engineer in accordance with the Task Order and previous amendments, if any, is modified as follows:

3. The responsibilities of Owner are modified as follows:

4. For the Additional Services or the modifications to services set forth above, Owner shall pay Engineer the following additional or modified compensation:

5. The schedule for rendering services is modified as follows:

6. Other portions of the Task Order (including previous amendments, if any) are modified as follows:

THE CITY OF Fargo FAR MORE

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# PUBLIC WORKS/OPERATIONS

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

October 1st, 2020

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

RE: 2020 Winter Fargodome Rental Equipment

Commissioners:

On September 21st, 2020, proposals were received for (1) Rental Wheel Loader to be used at the Fargodome. Proposals were submitted by two separate vendors for the Loader.

The results were as follows:

| Loader Firm | Monthly price per machine |
|---|---|
| General Equipment | $4,400.00 |
| RDO | $5,500.00 |

Ben Dow and I determined that both vendors met all required specifications and the proposed price was within expected parameters. Recommendation is to award General Equipment for the Rental Wheel Loader Bid.

SUGGESTED MOTION:

Approve the recommendation to rent one (1) Wheel Loader from General Equipment for the amount of $4,400.00 per month.

Respectfully Submitted,

Tanner Smedshammer
Fleet Management Specialist

# Fargo Dome 4+

## November 2nd thru March 31st 2021

| Company | General Eq | RDO |
|---|---|---|
| Make | Komatsu | John Deere |
| Model | WA380 | 644K |
| Monthly/Hours | $3,000.00 | $3,500.00 |
| Base Hours | 60 | 50 |
| Hourly Rate | $35.00 | $40.00 |
| HP | 191 | 232 |
| | | |
| 5 month rental | $15,000.00 | $17,500.00 |
| Fees | | |
| Estimated usage 100 hours. / 5 months | $7,000.00 | $10,000.00 |
| **Estimated Total Rent** | **$22,000.00** | **$27,500.00** |

| | | |
|---|---|---|
| **Per Month Rental for 100 hours of use:** | **$4,400.00** | **$5,500.00** |

THE CITY OF Fargo FAR MORE

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**PUBLIC WORKS/OPERATIONS**

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

October 1st, 2020

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

RE: 2020 Winter Street Rental Equipment

Commissioners:

On September 21st, 2020, proposals were received for one (1) Winter Rental Dozer along with (3) Rental Wheel Loader. Proposals were submitted by four vendors for the Dozer and five vendors for the Loader.

The results were as follows:

| Dozer Firm | Three Month price |
|---|---|
| Butler | $15,900.00 |
| Titan (Does not meet spec) | $ 9,840.00 |
| RDO | $48,750.00 |
| Ahern | $16,100.00 |

| Loader Firm | Monthly price per machine |
|---|---|
| Titan Machinery | $3,150.00 |
| Butler Machinery | $4,000.00 |
| General Equipment | $4,250.00 |
| RDO | $4,750.00 |
| United Rentals | $4,800.00 |

Ben Dow and I determined that all besides one vendor met all required specifications and the proposed price was within expected parameters. Recommendation is to award Butler Machinery for the Dozer Rental Bid; and Titan Machinery on the Rental Wheel Loader Bid.

SUGGESTED MOTION:

Approve the recommendation to rent one (1) Dozer from Butler for the amount of $15,900.00.
Approve the recommendation to rent three (3) Wheel Loader from Titan for the amount of $9,450.00 per month.

Respectfully Submitted,

Tanner Smedshammer
Fleet Management Specialist

# Public Works Rental Dozer

## January 4th thru March 31st 2021

| Company | Butler | Titan | Ahern | RDO |
|---|---|---|---|---|
| Make | Cat | Case | John Deere | John Deere |
| Model | D6K2-LGP | 850M | 700K | 700K |
| HP | 132 | 100 | 140 | 130 |
| Monthly/Hours | $ 3,600.00 | $ 3,280.00 | $ 4,500.00 | $ 16,250.00 |
| Base Hours | 50 | 176 | 200 | 100 |
| Hourly Rate | $ 34.00 | $ - | $ - | $ - |
| Meets Spec | Yes | No | Yes | Yes |
| **3 month rental** | **$ 10,800.00** | **$ 9,840.00** | **$ 13,500.00** | **$ 48,750.00** |
| Estimated usage 100 hr/month | $ 5,100.00 | $ - | $ - | $ - |
| Delivery Cost | | | $ 2,600.00 | |
| Estimated Total Rent | **$ 15,900.00** | **$ 9,840.00** | **$ 16,100.00** | **$ 48,750.00** |

# (3) Public Works 3yd+

## November 2nd thru March 31st 2021

| Company | Butler | Butler | General Eq | United Rentals | RDO | Titan Rentals |
|---|---|---|---|---|---|---|
| Make | Caterpillar | Caterpillar | Komatsu | Case | John Deere | Case |
| Model | 926M | 930M | WA320 | 621G | 544K | 621G |
| Monthly | $2,600.00 | $3,100.00 | $2,750.00 | $4,800.00 | $3,000.00 | $3,150.00 |
| Base Hours | 50 | 50 | 60 | 160 | 50 | 176 |
| Hourly Rate | $28.00 | $32.00 | $30.00 | $35.00 | $35.00 | $0.00 |
| JRB 416 | No | No | Yes | Yes | Yes | Yes |
| HP | 155 | 166 | 165 | 172 | 166 | 162 |
| Provide | | | 3 | 3 | 3 | 3 |
| 5 month rental | $13,000.00 | $15,500.00 | $13,750.00 | $24,000.00 | $15,000.00 | $15,750.00 |
| Estimated usage 100 hours. / 5 months | $7,000.00 | $8,000.00 | $7,500.00 | $0.00 | $8,750.00 | $0.00 |
| **Estimated Total Rent** | **$20,000.00** | **$23,500.00** | **$21,250.00** | **$24,000.00** | **$23,750.00** | **$15,750.00** |
| **Per Month Rental for 100 hours of use:** | **$4,000.00** | **$4,700.00** | **$4,250.00** | **$4,800.00** | **$4,750.00** | **$3,150.00** |

CITY OF Fargo

**PUBLIC WORKS OPERATIONS**

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

September 30, 2020

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

RE: NDDEQ VW Mitigation Charging Station Project

Commissioners:

Bids were opened at 11:30 AM on Wednesday, September 30, 2020, for the VW Mitigation City Hall Charging Station.

The bids were as follows:

| | |
|---|---|
| RBB Electric, Inc. | $105,520.00 |
| Superior Electric | $112,865.00 |
| Sun Electric, Inc. | $120,400.00 |
| Fusion Automation, Inc. | $129,872.60 |
| Engineer's Estimate | $84,250.00 |

The low bid received exceeded the engineer's estimate by 25%. We believe we will receive more favorable bids if the project is rebid in 2021 with a revised completion date.

RECOMMENDED MOTION: I/we move all bids be rejected and the project be rebid for the 2021 construction.

Respectfully submitted,

Ben Dow
Director of Public Works

728 East Beaton Drive, Suite 101
West Fargo, ND 58078-2650
701 232 5353
KLJENG.COM

October 1, 2020

Ben Dow
Director of Operations
City of Fargo
402 23rd Street North
Fargo, ND 58102

Re: EV Charging Station

Dear Mr. Dow:

Bids on the referenced project were opened on September 30, 2020. A total of five (5) bids were received. All five were opened, however, one bid was determined by the city auditor and attorney to be non-responsive as it wasn't submitted on the appropriate bid form. A complete tabulation of all bids received is attached. The apparent low bidder is RBB Electric. with a total bid of $105,520.00, which is 25% higher than the Engineer's Estimate of $84,250.

Due to the high bid prices received, KLJ recommends the City reject all bids received and rebid the project in January 2021. In talking to multiple contractors prior to opening of bids, several were unable to bid on the project due to their existing workload.

If you have any questions, please contact our office.

Sincerely,

**KLJ**

Cassie McNames

Cassie McNames, PE
Project Manager

Enclosure(s): (1) Bid Tabulation
Project #: 1904-01296
cc: File

**Bid Opening September 30, 2020 @ 11:45am**
**EV Charging Station**
**City of Fargo**

| Bidder Name | Acknowledge Addenda | | Contractor's License | Bid Bond | Lump Sum Bid Price |
|---|---|---|---|---|---|
| | #1 | #2 | | | |
| Sun Electric, Inc. | X | X | X | X | $ 120,400.00 |
| Fusion Automation Inc | X | X | X | X | $ 129,872.60 |
| Superior Electric | X | X | X | X | $ 112,865.00 |
| Fusion Electric | X | X | X | X | REJECTED, DIDN'T SUBMIT BID FORM |
| RBB Electric | X | X | X | X | $ 105,520.00 |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | Apparent Low Bid | 105,520.00 |
| | | | | **Engineer's Opinion of Cost** | $ 84,250.00 |

**TRUE TABULATION OF BIDS** Cassie Murano
**KLJ Engineering, LLC**

| | |
|---|---|
| Bids Received | 5 |
| Bids Opened | 5 |
| Bids Rejected | 1 |

CITY OF Fargo

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**Division of Solid Waste**
2301 8th Avenue North
Fargo, North Dakota 58102
Phone: 701-241-1449
Fax: 701-241-8109

September 30, 2020

**MEMORANDUM**

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**To:** Honorable Board of City Commissioners

**From:** Terry Ludlum, Solid Waste Utility Director
James Hausauer, Wastewater Utility Director
Troy Hall, Water Utility Director

**Re:** Enterprise Utilities Engineering Services Agreements – Request for Qualifications

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## Introduction

Attached, please find a Request for Qualifications (RFQ) from the Enterprise Utilities (Water, Wastewater, and Solid Waste). The Enterprise Utilities are requesting permission to advertise the attached RFQ to select Professional Engineering Services for the next five (5) years. A Report of Action (ROA) from the City of Fargo Utility Committee is also attached. The current Engineering Services Agreements (Agreements) for the Water, Wastewater and Solid Waste Utilities are due to expire on December 31, 2020. The Agreements provide outside professional engineering support to the three Utilities on an as-needed basis. The RFQ advertisement and Professional Engineering Service selection process are planned to approximately follow the schedule below:

| | |
|---|---|
| Utility Committee Approval of RFQ | August 20, 2020 |
| City Commission Approval of RFQ | October 5, 2020 |
| RFQ's Available | October 6, 2020 |
| Deadline for Questions | October 30, 2020 |
| Proposals Due | November 6, 2020 |
| Interviews (if deemed necessary) | November 16 – 20, 2020 |
| Selection of Firms | November 27, 2020 |
| Finalize Five-Year Contracts | December 4, 2020 |
| Commission Approval of Contracts | December 14, 2020 |

The following are some highlights of the Professional Engineering Services selection process for 2020:

- Enterprise Utilities to advertise a joint RFQ to cover the three (3) utilities, following the Engineering Department selection process model.
- Engineering Services Agreements (Agreements) would cover five (5) years (2021-2025).
- Intent to use same EJCDC agreement for all selected firms.

**SUGGESTED MOTION:**

Approve the Enterprise Utilities to jointly advertise a Request for Qualifications (RFQs) to select Professional Engineering Services to enter into Engineering Service Agreements (ESAs) to cover the next five (5) years.

# REPORT OF ACTION

## UTILITY COMMITTEE

Project No. NA

Type: Enterprise Utilities Engineering Service Agreements – Request For Qualifications (RFQ)

Location: Solid Waste Division - Landfill

Date of Hearing: 8/20/20

| Routing | Date |
|---|---|
| City Commission | 10/5/20 |
| Project File | |

The three enterprise Utility Directors (Jim Hausauer, Troy Hall, and Terry Ludlum) presented a request to advertise a RFQ to select Professional Engineering Services for the next five (5) years. Current agreements within the Enterprise Utilities are due to expire on December 31, 2020. The agreements would provide outside professional engineering support to the three utilities on an as-needed basis. List below are some highlights of the selection process:

- Enterprise Utilities to advertise a joint RFQ to cover the three (3) utilities, following the Engineering Department selection process.
- Engineering Service Agreements would cover five (5) years (2021-2025) with a potential extension of five (5) years.
- Intent to use same EJCDC agreement for all selected firms.
- Select one or more consultants for each category within the define Scope of Service for each Utility.

The Scope of Services include the following:

**Water Utility** – Raw Water Supply, Water Treatment Plant, Water Distribution and Pumping, Financial Services
**Wastewater Utility** – Wastewater Treatment Plant, Wastewater Collection Systems, Effluent Reuse Facility, Financial Services.
**Solid Waste Utility** – Long Term Planning and Design, Project Design, Bidding, Construction, Regulatory Compliance, Renewable Energy Management, Financial Services.

Recommendations from the selection committee will be brought back to the Commission for formal approval in December of 2020.

**MOTION:**

On a motion by Kent Costin, seconded by Brenda Derrig, the Utility Committee voted to approve of the Enterprise Utilities moving forward with the advertisement of a Request for Qualifications (RFQ) to select Professional Engineering Services to enter into agreements to cover the next (5) years..

| COMMITTEE: | Present | Yes | No | Unanimous |
|---|---|---|---|---|
| Anthony Gehrig, City Commissioner | | | | X |
| Brenda Derrig, City Engineer | X | X | | |
| Kent Costin, Director of Finance | X | X | | |
| Brian Ward, Water Plant Supt. | | | | |
| Mark Miller, Wastewater Plant Supt. | X | X | | |
| Bruce Grubb, Enterprise Director | | | | |
| Scott Liudahl, City Forester | X | X | | |
| Terry Ludlum, Solid Waste Utility Director | X | X | | |
| James Hausauer, Wastewater Util. Director | X | X | | |
| Troy Hall, Water Utility Director | X | X | | |
| Jason Halsne, Enterprise I & C Coordinator | X | X | | |
| Ben Dow, Public Works Operations Director | X | X | | |

ATTEST:

Terry Ludlum
Solid Waste Utility Director

C: Tim Mahoney, Mayor
Commissioner Preston
Commissioner Piepkorn
Commissioner Strand

THE CITY OF Fargo
FAR MORE

# Request for Qualifications

FOR

# Professional Engineering Services - Enterprise Utilities

**RFQ Submittals Due:**

**November 6, 2020**
**11:30 AM**
**Office of the City Auditor**
**c/o City Hall**
**225 4th Street N**
**Fargo, ND 58102**
**(701) 241-1545**

# CITY OF FARGO
# REQUEST FOR QUALIFICATIONS
# PROFESSIONAL ENGINEERING SERVICES – ENTERPRISE UTILITIES

The City of Fargo Enterprise Utilities are requesting qualification statements from qualified professional engineering firms to assist the City of Fargo for the years 2021-2025 (with a potential five year extension) with projects including, but not limited to:

Water Utility:

1. Raw Water Supply
2. Water Treatment Plant
3. Water Distribution and Pumping
4. Financial Services
5. Miscellaneous

Wastewater Utility:

1. Wastewater Treatment Plant
2. Wastewater Collection System and Associated Lift Stations
3. Effluent Reuse Facility
4. Financial Services

Solid Waste Utility

1. Long Term Planning and Design
2. Project Design, Bidding, and Construction
3. Regulatory Compliance
4. Renewable Energy Management
5. Financial Services

A complete RFQ package is available to download by clicking on the City's Bid Postings website: http://fargond.gov/work/bids-rfqs-rfps

Sealed RFQ Submittals will be received at:

Office of the City Auditor
C/o City Hall
225 4th Street N
Fargo, ND 58102

All RFQ submittals must be submitted by **11:30 AM, November 6, 2020**, at which time the submittals will be opened and reviewed. Late submittals cannot be accepted and will be returned unopened to the Offeror.

All RFQ submittals must be placed in an envelope securely sealed therein and labeled:
**"City of Fargo RFQ: Professional Engineering Services – Enterprise Utilities".**

The City reserves the right to reject any or all submittals or accept what is, in its judgment, the submittal(s) which is/are in the City's best interest. The City further reserves the right, in the best interests of the City, to waive any technical defects or irregularities in any/all submittals.

Discussions may be conducted with responsible Offerors whose submittals have an opportunity to be reasonably susceptible of being selected for award for purpose of classification to assure full understanding of, and responsiveness to, the solicitation requirements.

The criteria set forth in the Instructions to Offerors of Professional Services and any specific criteria listed herein may be considered in judging which submittal is in the best interest of the City. Consultants will be selected by an evaluation committee and will be based on the qualifications of the Offerors. A 20-minute presentation and a 10-minute interview in a question and answer format may be required at the discretion of the selection committee.

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Appendix A – Sample EJCDC Agreement

## I. Overview

The City of Fargo Enterprise Utilities seek the services of qualified professional engineering firms to assist with various projects for a time period of five years (with a potential five-year extension), including but not limited to the following:

Water Utility:

1. Raw Water Supply
    - A. Red River Valley Water Supply Project
    - B. Drought Water Supply Development
    - C. Drought Management Plan Update
    - D. Source Water Permitting

2. Water Treatment Plant
    - A. Water Treatment Facility Plan Updates and Improvements Planning
    - B. Lime Softening Water Treatment Plant Optimization Strategies
        - i. Softening Train Operation
        - ii. Ozone Process Operation
        - iii. Filter Operation
    - C. Membrane Water Treatment Plant Optimization Strategies
        - i. Membrane Cleaning & Operational Strategies
        - ii. Ozone and Advanced Oxidation Process (AOP) Operation
        - iii. Granular Activated Carbon (GAC) Biofiltration Operation
    - D. Pilot Scale Testing for Optimization (Ozone, Biofiltration, Reverse Osmosis, etc.)

3. Water Distribution and Pumping
    - A. Distribution System Master Plan and CIP
    - B. Distribution System Hydraulic Model Maintenance
    - C. Regional Water Delivery Planning and Capacity Development
    - D. High Service Pump Station Updates
    - E. Water Tower Reconditioning
    - F. Remote Site Bulk Water Fill Station Design & Installation

4. Financial Services
    - A. Infrastructure Master Planning and CIP
    - B. CIP Revenue Adequacy Model
    - C. Cost of Service Analysis (COSA)
    - D. Outside Water Agreements/Regionalization
    - E. DWSRF Funding/Intended Use Plan
    - F. FEMA Grant Funding Opportunities
    - G. Asset Management
    - H. Advanced Water Metering Technology Investigation and Pilot Testing

5. Miscellaneous
    - A. Residuals Facility Planning, Design, and Construction
    - B. Regulatory Program Compliance
        - i. Lead & Copper Revision Compliance
        - ii. Risk Management
        - iii. Future Regulation Preparedness
        - iv. OSHA Compliance
    - C. Water Utility Strategic Plan Development
    - D. SCADA System Support (Programming and Upgrades)
    - E. Computerized Maintenance Management Software (CMMS)

Wastewater Utility:

1. Wastewater Treatment Plant
    A. Permit, Nutrient and Regulatory Support
    B. Industrial Pretreatment Support
    C. Odor Control Master Plan
    D. Wastewater Treatment Plant Facility Plan Update
    E. East Train Rehabilitation
    F. IFAS Optimization
    G. Harwood Lagoon Decommissioning

2. Wastewater Collection System and Associated Lift Stations
    A. West Side Interceptor Modeling and Rehabilitation
    B. Collection System Hydraulic Model/Capacity Development
    C. Odor Control Planning
    D. Telemetry and SCADA Support/Master Planning
    E. Lift Station Rehabilitation
    F. Asset Management Implementation

3. Effluent Reuse Facility
    A. Future Expansion
    B. New Technologies
    C. Potential Customers
    D. Technical Support

4. Financial Services
    A. Infrastructure Master Planning and CIP
    B. CIP Revenue Adequacy Model
    C. Cost of Service Analysis (COSA)
    D. Outside Wastewater Agreements/Regionalization
    E. CWSRF Funding/Intended Use Plan
    F. FEMA Grant Funding Opportunities

Solid Waste Utility:

1. Long Term Planning and Design
    A. Permitting and Design Modification – MSW Landfill
    B. Permitting and Design Modification – Inert Landfill
    C. Former Landfill Reclamation and Reuse
    D. Facility Plan Development

2. Project Design, Bidding, and Construction
    A. Disposal Cell
    B. Leachate Collection System
    C. Final Cover System
    D. Landfill Gas Collection System
    E. Landfill Gas and CNG Utilization Projects

3. Regulatory Compliance
    A. Groundwater Monitoring Analysis and Reporting
    B. Title V Air Quality Permitting and Reporting
    C. Tier II NMOC Emission Permitting, Testing, and Reporting
    D. EPA Greenhouse Gas Analysis and Reporting
    E. Annual Financial Assurance Calculations
    F. Landfill Gas Odor Monitoring and Compliance

4. Renewable Energy Management
    A. Existing Renewable Energy Program Review and Analysis
    B. Renewable Energy Attribute Analysis
    C. Emerging Renewable Energy Program Analysis

5. Financial Services
    A. Revenue Adequacy Models
    B. Cost of Service Analysis
    C. Familiarity with Grant Funding Opportunities
    D. CWSRF Funding and Financing Opportunities

All respondents shall identify which Utility(s) and which Utility(s) categories for which they wish to be considered.

The City intends to review the submittals, select one or more consultants for each category, and enter into EJCDC agreements with the selected consultant(s) through the year 2025 (with a potential five-year extension). A sample EJCDC agreement has been attached in Appendix A. The actual agreement will be developed by the City after the consultant selection. It is the City's intent to utilize the same EJCDC agreement for all the firms.

## II. General Scope of Work

The City of Fargo Enterprise has a staff engineering position within each Utility that will be involved with designs, bids, and project management of multiple capital improvement projects. There are times when staff requires support from consultants for specialized technical assistance or during times of when we have reached the extent of our resources. The City is looking to enter into agreements with multiple consultants to allow time sensitive and specialized projects to proceed expeditiously.

The exact scope of work under any agreement will be determined during the life of the agreement on a case-by-case, as needed basis. Granting of an agreement pursuant to this RFQ does not guarantee any particular volume, level, or amount of work, nor shall any respondent who is granted an agreement pursuant to this RFQ have an exclusive or sole right to perform the work as described in this RFQ. Additionally, granting of an agreement pursuant to this RFQ may allow work to be offered by each separate Enterprise Utility. The City reserves the right to award in any fashion it, in its sole determination, decides is in its best interest.

## III. Evaluation

The following criteria will be evaluated and weighted as follows:

| Criteria: | Weight |
|---|---|
| a. Completeness, organization of proposal, and RFP adherence | 10 |
| b. Qualifications of assigned personnel | 20 |
| c. Prior pertinent staff experience | 30 |
| d. Responsiveness and locally available resources | 20 |
| e. Hourly fee schedule | 10 |
| f. Prior experience and performance with the City of Fargo | 10 |

The City reserves the right in any or all submittals, to reject, to waive any technical defects or irregularities, or to accept what is, in its judgment, the submittal(s), which is in the City's best interest.

Discussions may be conducted with responsible Offerors whose submittals are determined to be reasonably susceptible of being selected for award for purpose of classification to assure full understanding of, and responsiveness to the solicitation requirements.

The City of Fargo is an Equal Opportunity Employer.

Selection Committee

The statements of qualifications will be reviewed by the Selection Committee. The Selection Committee will include the following Enterprise Utility representatives:

Water Utility Director
Water Utility Engineer
Wastewater Utility Director
Wastewater Utility Superintendent
Solid Waste Utility Director
Solid Waste Recycling Coordinator

## IV. Submission Requirements

Offerors are to submit six copies and one electronic (PDF format) copy of the statement of qualifications. Proposals shall provide all information listed below. Late submittals cannot be accepted and will be returned unopened to the Offeror.

All submittals shall be limited to 15 pages to address items 1 through 7 below. Firms with no past record with the City will be allowed one additional page per scope of work category to demonstrate the ability to perform the work they wish to be considered for.

1. Company name, point of contact, mailing address, telephone number, and email address.
2. List of professional services for which the company would like to be considered corresponding to the categories listed in the Overview.
3. A description and history of the company, including year established, type of ownership and parent company, if any. Along with company's experience and qualifications.
4. Resumes of key personnel to be assigned to the City of Fargo projects with special emphasis on recent experience relative to the type of professional services for which the company would like to be considered.
5. Description of the company's local office workload capabilities and other resources that you have accessible.
6. 2020 fixed hourly rates and the understanding to submit annual adjusted rates during the term of the agreement.
7. List five (5) projects completed in the last three (3) years that demonstrates the company's experience with the specific work for which they would like to be considered, particularly experience with government agencies. Provide name of owner, description of project, what role the firm had with the project, name of client, address, phone number, email address and total cost of the project.

## V. Questions and Answers

All questions related to this Request for Qualifications must be submitted in writing and emailed to Troy Hall (THall@fargond.gov) for Water Utility, Jim Hausauer (JHausauer@fargond.gov) for Wastewater Utility, and Terry Ludlum (TLudlum@fargond.gov) for Solid Waste Utility . Please contact the same utility representatives for a general overview of the separate Utility should it be deemed necessary. The question period shall expire at close-of-business on the date specified in the Project Timetable below.

## VI. Project Timetable

The City reserves the right to modify the timeline if necessary.

| | |
|---|---|
| Utility Committee Approval of RFQ | August 20, 2020 |
| City Commission Approval of RFQ | October 5, 2020 |
| RFQ's Available | October 6, 2020 |
| Deadline for Questions | October 30, 2020 |
| Proposals Due | November 6, 2020 |
| Interviews (if deemed necessary) | November 16 – 20, 2020 |
| Selection of Firms | November 27, 2020 |
| Finalize Five-Year Contracts | December 4, 2020 |
| Commission Approval of Contracts | December 14, 2020 |

Discussions may be conducted with responsible Offerors whose submittals are determined to be reasonably susceptible of being selected for award for purpose of classification to assure full understanding of, and responsiveness to the solicitation requirements.

The City reserves the right to reject any or all submittals, waive any technical defects or irregularities, or accept what is, in its judgment, the submittal(s), which is in the City's best interest.

All submittals shall be in accordance with the conditions set forth herein. Late or faxed submittals will not be accepted.

# APPENDIX A

# Sample EJCDC Agreement

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated project and the controlling laws and regulations.

# AGREEMENT
# BETWEEN OWNER AND ENGINEER
# FOR PROFESSIONAL SERVICES

## TASK ORDER EDITION

Prepared by

EJCDC
ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

Issued and Published Jointly by

ACEC
AMERICAN COUNCIL OF ENGINEERING COMPANIES

ASCE
AMERICAN SOCIETY OF CIVIL ENGINEERS

National Society of Professional Engineers®

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# AGREEMENT
# BETWEEN OWNER AND ENGINEER
# FOR PROFESSIONAL SERVICES

## TASK ORDER EDITION

THIS IS AN AGREEMENT effective as of _____ ("Effective Date of the Agreement") between

_____ ("Owner") and

_____ ("Engineer").

Other terms used in this Agreement are defined in Article 7.

From time to time Owner may request that Engineer provide professional services for Specific Projects. Each engagement will be documented by a Task Order. This Agreement sets forth the general terms and conditions which shall apply to all Task Orders duly executed under this Agreement.

Owner and Engineer further agree as follows:

### ARTICLE 1 – SERVICES OF ENGINEER

1.01 *Scope*

A. Engineer's services will be detailed in a duly executed Task Order for each Specific Project. The general format of a Task Order is shown in Attachment 1 to this Agreement. Each Task Order will indicate the specific services to be performed and deliverables to be provided.

B. This Agreement is not a commitment by Owner to Engineer to issue any Task Orders.

C. Engineer shall not be obligated to perform any prospective Task Order unless and until Owner and Engineer agree as to the particulars of the Specific Project, including the scope of Engineer's services, time for performance, Engineer's compensation, and all other appropriate matters.

1.02 *Task Order Procedure*

A. Owner and Engineer shall agree on the scope, time for performance, and basis of compensation for each Task Order. With respect to the scope of Engineer's services, each specific Task Order shall either (1) be accompanied by and incorporate a customized Exhibit A, "Engineer's Services for Task Order," prepared for the Specific Project, (2) state the scope of services in the Task Order document itself, or (3) incorporate by reference all or portions of Exhibit A, "Engineer's Services for Task Order," as attached to this Agreement. Each duly executed Task Order shall be subject to the terms and conditions of this Agreement.

B. Engineer will commence performance as set forth in the Task Order.

C. Engineer shall provide, or cause to be provided, the services set forth in the Task Order.


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## ARTICLE 2 – OWNER'S RESPONSIBILITIES

2.01 *General*

A. Owner shall have the responsibilities set forth in this Agreement; in Exhibit B, "Owner's Responsibilities"; and in each Task Order.

B. Owner shall pay Engineer as set forth in each Task Order, pursuant to the applicable terms of Article 4 and Exhibit C.

C. Owner shall be responsible for all requirements and instructions that it furnishes to Engineer pursuant to this Agreement, and for the accuracy and completeness of all programs, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement; such responsibility extends to requirements, instructions, programs, reports, data, and other information furnished by Owner pursuant to any Task Order. Engineer may use and rely upon such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement, subject to any express limitations or reservations applicable to the furnished items.

D. Owner shall give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of: (1) any development that affects the scope or time of performance of Engineer's services; (2) the presence at the Site of any Constituent of Concern; or (3) any relevant, material defect or nonconformance in Engineer's services, the Work, the performance of any Constructor, or in Owner's performance of its responsibilities under this Agreement.

## ARTICLE 3 – TERM; TIMES FOR RENDERING SERVICES

3.01 *Term*

A. This Agreement shall be effective and applicable to Task Orders issued hereunder for [ ] years from the Effective Date of the Agreement.

B. The parties may extend or renew this Agreement, with or without changes, by written instrument establishing a new term.

3.02 *Times for Rendering Services*

A. The Effective Date of the Task Order and the times for completing services or providing deliverables will be stated in each Task Order. Engineer is authorized to begin rendering services under a Task Order as of the Effective Date of the Task Order.

B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's services is impaired, or Engineer's services are delayed or suspended, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.

C. If Owner authorizes changes in the scope, extent, or character of the Specific Project, or Engineer's services, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.


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D. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer's performance of its services.

E. If Engineer fails, through its own fault, to complete the performance required in a Task Order within the time set forth, as duly adjusted, then Owner shall be entitled, as its sole remedy, to the recovery of direct damages, if any, resulting from such failure.

F. With respect to each Task Order, the number of Construction Contracts for Work designed or specified by Engineer upon which the Engineer's compensation has been established shall be identified in the Task Order. If the Work designed or specified by Engineer under a Task Order is to be performed or furnished under more than one prime contract, or if Engineer's services are to be separately sequenced with the work of one or more prime Contractors (such as in the case of fast-tracking), then the Task Order will state the schedule for performance of Engineer's services in order to sequence and properly coordinate such services as are applicable to the Work under the Construction Contracts. If the Task Order does not address such sequencing and coordination, then Owner and Engineer shall jointly develop a schedule for sequencing and coordination of services prior to commencement of final design services; this schedule is to be prepared and included in or become an amendment to the authorizing Task Order whether or not the work under such contracts is to proceed concurrently.

## ARTICLE 4 – INVOICES AND PAYMENTS

4.01 *Invoices*

A. *Preparation and Submittal of Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices, the terms of Exhibit C, and the specific Task Order. Engineer shall submit its invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt.

4.02 *Payments*

A. *Application to Interest and Principal:* Payment will be credited first to any interest owed to Engineer and then to principal.

B. *Failure to Pay:* If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, then:

1. amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; and

2. Engineer may, after giving seven days written notice to Owner, suspend services under any Task Order issued until Owner has paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.

C. *Disputed Invoices:* If Owner disputes an invoice, either as to amount or entitlement, then Owner shall promptly advise Engineer in writing of the specific basis for doing so, may withhold only that portion so disputed, and must pay the undisputed portion subject to the terms of Paragraph 4.01.

D. *Sales or Use Taxes:* If after the Effective Date of a Task Order any governmental entity takes a legislative action that imposes additional sales or use taxes on Engineer's services or compensation under the Task Order, then Engineer may invoice such additional sales or use taxes for reimbursement by Owner. Owner shall reimburse Engineer for the cost of such invoiced additional sales or use taxes; such reimbursement


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shall be in addition to the compensation to which Engineer is entitled under the terms of Exhibit C and the specific Task Order.

## ARTICLE 5 – OPINIONS OF COST

5.01 *Opinions of Probable Construction Cost*

A. Engineer's opinions (if any) of probable Construction Cost are to be made on the basis of Engineer's experience, qualifications, and general familiarity with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner requires greater assurance as to probable Construction Cost, then Owner agrees to obtain an independent cost estimate.

5.02 *Designing to Construction Cost Limit*

A. If a Construction Cost limit for a Specific Project is established between Owner and Engineer in a Task Order, then such Construction Cost limit and Engineer's rights and responsibilities with respect thereto will be governed by Exhibit F, "Construction Cost Limit," which shall be attached to and incorporated in the Task Order. If no Construction Cost limit is established in a Task Order, then Exhibit F does not apply.

5.03 *Opinions of Total Project Costs*

A. The services, if any, of Engineer with respect to Total Project Costs for a Specific Project shall be limited to assisting the Owner in tabulating the various categories that comprise Total Project Costs. Engineer assumes no responsibility for the accuracy of any opinions of Total Project Costs.

## ARTICLE 6 – GENERAL CONSIDERATIONS

6.01 *Standards of Performance*

A. *Standard of Care:* The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with any services performed or furnished by Engineer.

B. *Technical Accuracy:* Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information.

C. *Consultants:* Engineer may retain such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.

D. *Reliance on Others:* Subject to the standard of care set forth in Paragraph 6.01.A, Engineer and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by


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others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.

E. *Compliance with Laws and Regulations, and Policies and Procedures*

1. Engineer and Owner shall comply with applicable Laws and Regulations.

2. Engineer shall comply with the policies, procedures, and instructions of Owner that are applicable to Engineer's performance of services under this Agreement and that Owner provides to Engineer in writing, subject to the standard of care set forth in Paragraph 6.01.A, and to the extent compliance is not inconsistent with professional practice requirements.

3. Each Task Order is based on Laws and Regulations and Owner-provided written policies and procedures as of the Effective Date of the Task Order. The following may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation:

a. changes after the Effective Date of the Task Order to Laws and Regulations;

b. the receipt by Engineer after the Effective Date of the Task Order of Owner-provided written policies and procedures;

c. changes after the Effective Date of the Task Order to Owner-provided policies or procedures.

F. Engineer shall not be required to sign any document, no matter by whom requested, that would result in Engineer having to certify, guarantee, or warrant the existence of conditions whose existence Engineer cannot ascertain within its services for that Specific Project. Owner agrees not to make resolution of any dispute with Engineer or payment of any amount due to the Engineer in any way contingent upon Engineer signing any such document.

G. The general conditions for any construction contract documents prepared hereunder are to be EJCDC® C-700 "Standard General Conditions of the Construction Contract" (2013 Edition), prepared by the Engineers Joint Contract Documents Committee, unless expressly indicated otherwise in Exhibit J or in the specific Task Order.

H. Engineer shall not at any time supervise, direct, control, or have authority over any Constructor's work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a Constructor to comply with Laws and Regulations applicable to such Constructor's furnishing and performing of its work. Engineer shall not be responsible for the acts or omissions of any Constructor.

I. Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's failure to furnish and perform the Work in accordance with the Construction Contract Documents.

J. Engineer shall not be responsible for any decision made regarding the Construction Contract Documents, or any application, interpretation, clarification, or modification of the Construction Contract Documents, other than those made by Engineer or its Consultants.


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K. Engineer is not required to provide and does not have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or for enforcement of construction insurance or surety bonding requirements.

L. Engineer's services do not include providing legal advice or representation.

M. Engineer's services do not include (1) serving as a "municipal advisor" for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission, or (2) advising Owner, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances.

N. While at a Site, Engineer, its Consultant, and their employees and representatives shall comply with the applicable requirements of Contractor's and Owner's safety programs of which Engineer has been informed in writing.

6.02 *Design Without Construction Phase Services*

A. For each design performed or furnished, Engineer shall be responsible only for those Construction Phase services that have been expressly required of Engineer in the authorizing Task Order. With the exception of such expressly required services, Engineer shall have no design, Shop Drawing review, or other obligations during construction, and Owner assumes all responsibility for the application and interpretation of the Construction Contract Documents, review and response to Contractor claims, Construction Contract administration, processing of Change Orders and submittals, revisions to the Construction Contract Documents during construction, construction observation and review, review of Contractor's payment applications, and all other necessary Construction Phase administrative, engineering, and professional services. Owner waives all claims against Engineer that may be in any way connected to Construction Phase administrative, engineering, or professional services except for those services that are expressly required of Engineer in the authorizing Task Order.

6.03 *Use of Documents*

A. All Documents are instruments of service, and Engineer shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Engineer) whether or not the Specific Project is completed.

B. If Engineer is required to prepare or furnish Drawings or Specifications under the specific Task Order, then Engineer shall deliver to Owner at least one original printed record version of such Drawings and Specifications, signed and sealed according to applicable Laws and Regulations.

C. Owner may make and retain copies of Documents for information and reference in connection with the use of the Documents on the Specific Project. Engineer grants Owner a limited license to use the Documents on the Specific Project, extensions of the Specific Project, and for related uses of the Owner, subject to receipt by Engineer of full payment due and owing for all services relating to preparation of the Documents, and subject to the following limitations: (1) Owner acknowledges that such Documents are not intended or represented to be suitable for use on the Specific Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Specific Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Engineer, as


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appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and Consultants; (3) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and its Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the Documents without written verification, completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in third parties.

D. If Engineer at Owner's request verifies the suitability of the Documents, completes them, or adapts them for extensions of the Specific Project or for any other purpose, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.

6.04 *Electronic Transmittals*

A. Owner and Engineer may transmit, and shall accept, Specific Project-related correspondence, Documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Specific Project website, in accordance with a mutually agreeable protocol.

B. If this Agreement or a Task Order does not establish protocols for electronic or digital transmittals, then Owner and Engineer shall jointly develop such protocols.

C. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

6.05 *Insurance*

A. Commencing with the Effective Date of the Agreement, Engineer shall procure and maintain insurance as set forth in Exhibit G, "Insurance." Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer that is applicable to a Specific Project.

B. Commencing with the Effective Date of the Agreement, Owner shall procure and maintain insurance as set forth in Exhibit G, "Insurance." Owner shall cause Engineer and its Consultants to be listed as additional insureds on any general liability insurance policies carried by Owner, which are applicable to the Specific Project.

C. Owner shall require Contractors to purchase and maintain policies of insurance covering workers' compensation, general liability, motor vehicle damage and injuries, and other insurance necessary to protect Owner's and Engineer's interests in the Specific Project. Owner shall require Contractor to cause Engineer and its Consultants to be listed as additional insureds with respect to such liability insurance purchased and maintained by Contractor.

D. Owner and Engineer shall each deliver to the other certificates of insurance evidencing the coverages indicated in Exhibit G. Such certificates shall be furnished promptly after the Effective Date of the Agreement and at renewals thereafter during the life of this Agreement.

E. All policies of property insurance relating to a Specific Project, including but not limited to any builder's risk policy, shall allow for waiver of subrogation rights and contain provisions to the effect that in the event of


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payment of any loss or damage the insurers will have no rights of recovery against any insured thereunder or against Engineer or its Consultants. Owner and Engineer waive all rights against each other, Contractor, the Consultants, and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by any builder's risk policy and any other property insurance relating to the Specific Project. Owner and Engineer shall take appropriate measures in other Specific Project-related contracts to secure waivers of rights consistent with those set forth in this paragraph.

F. All policies of insurance shall contain a provision or endorsement that the coverage afforded will not be canceled or reduced in limits by endorsement, and that renewal will not be refused, until at least 10 days prior written notice has been given to the primary insured. Upon receipt of such notice, the receiving party shall promptly forward a copy of the notice to the other party to this Agreement.

G. Under the terms of any Task Order, or after commencement of performance of a Task Order, Owner may request that Engineer or its Consultants, at Owner's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit G. If so requested by Owner, and if commercially available, Engineer shall obtain and shall require its Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner.

6.06 *Suspension and Termination*

A. *Suspension*

1. By Owner: Owner may suspend a Task Order for up to 90 days upon seven days written notice to Engineer.

2. By Engineer: Engineer may suspend services under a Task Order (a) if Owner has failed to pay Engineer for invoiced services and expenses, as set forth in Paragraph 4.02.B, or (b) in response to the presence of Constituents of Concern at the Site, as set forth in Paragraph 6.10.A.4.

3. A suspension on a specific Task Order, whether by Owner or Engineer, shall not affect the duty of the two parties to proceed with their obligations under other Task Orders.

B. *Termination for Cause—Task Order:* The obligation to provide further services under a specific Task Order may be terminated for cause:

1. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms of the specific Task Order or this Agreement, whose terms govern the specific Task Order, through no fault of the terminating party.

2. By Engineer:

a. upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or

b. upon seven days written notice if the Engineer's services under a Task Order are delayed or suspended for more than 90 days for reasons beyond Engineer's control, or as the result of


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the presence at the Site of undisclosed Constituents of Concern, as set forth in Paragraph 6.10.A.5.

c. Engineer shall have no liability to Owner on account of such termination.

d. Notwithstanding the foregoing, neither this Agreement nor the Task Order will terminate under Paragraph 6.06.B.1 if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

C. *Termination for Cause—Agreement:* In the case of a default by Owner in its obligation to pay Engineer for its services under more than one specific Task Order, Engineer may request immediate payment of all amounts invoiced on other Task Orders, and may invoice Owner for continued services on such Task Orders on a two-week billing cycle, with payment due within one week of an invoice. If Owner fails to make such payments, then upon seven days notice Engineer may terminate this Agreement, including Engineer's services under all Task Orders.

D. *Termination for Convenience by Owner:* Owner may terminate a Task Order or this Agreement for Owner's convenience, effective upon Engineer's receipt of notice from Owner.

E. *Effective Date of Termination:* The terminating party under Paragraphs 6.06.B, C, and D may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Task Order materials in orderly files.

F. *Payments Upon Termination:*

1. In the event of any termination under Paragraph 6.06, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with the specific Task Order and this Agreement, and for all expenses incurred through the effective date of termination, to the extent that the specific Task Order (or Task Orders) allows reimbursement for such expenses. Upon making such payment, Owner shall have the limited right to the use of Documents, at Owner's sole risk, subject to the provisions of Paragraph 6.03.

2. In the event of termination by Owner for convenience or by Engineer for cause, Engineer shall be entitled, in addition to invoicing for those items identified in Paragraph 6.06.F.1, to invoice Owner and receive payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Consultants, and other related close-out costs, using the basis of compensation for Additional Services, as indicated in the specific Task Order.


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6.07 *Controlling Law*

A. This Agreement is to be governed by the Laws and Regulations of the state in which the Specific Project is located.

***[Note to User: If necessary, modify this provision to identify a specific controlling jurisdiction if other than the state where the Specific Project is located; if multiple states are involved; or to identify controlling jurisdictions other than a state, such as a U.S. territory, commonwealth, or tribal jurisdiction/domestic dependent nation.]***

6.08 *Successors, Assigns, and Beneficiaries*

A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 6.08.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.

B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, money that is due or may become due) in this Agreement without the written consent of the other party, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

C. Unless expressly provided otherwise in this Agreement:

1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Constructor, other third-party individual or entity, or to any surety for or employee of any of them.

2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.

3. The Owner agrees that the substance of the provisions of this Paragraph 6.08.C shall appear in any Construction Contract Documents prepared for any Specific Project under this Agreement.

6.09 *Dispute Resolution*

A. Owner and Engineer agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to invoking the procedures of Exhibit H or other provisions of this Agreement, or exercising their rights at law.

B. If the parties fail to resolve a dispute through negotiation under Paragraph 6.09.A, then either or both may invoke the procedures of Exhibit H. If Exhibit H is not included, or if no dispute resolution method is specified in Exhibit H, then the parties may exercise their rights at law.


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6.10 *Environmental Condition of Site*

A. With respect to each specific Task Order, Specific Project, and Site (unless indicated otherwise in a specific Task Order):

1. Owner represents to Engineer that as of the Effective Date of the Task Order, to the best of Owner's knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at or adjacent to the Site.

2. If Engineer encounters or learns of an undisclosed Constituent of Concern at the Site, then Engineer shall notify (a) Owner and (b) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.

3. It is acknowledged by both parties that Engineer's scope of services does not include any services related to unknown or undisclosed Constituents of Concern. If Engineer or any other party encounters, uncovers, or reveals an undisclosed Constituent of Concern, then Owner shall promptly determine whether to retain a qualified expert to evaluate such condition or take any necessary corrective action.

4. If investigative or remedial action, or other professional services, are necessary with respect to undisclosed Constituents of Concern, or if investigative or remedial action beyond that reasonably contemplated is needed to address a disclosed or known Constituent of Concern, then Engineer may, at its option and without liability for consequential or any other damages, immediately suspend performance of services on the portion of the Specific Project affected thereby until such portion of the Specific Project is no longer affected.

5. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under the specific Task Order, then the Engineer shall have the option of (a) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (b) terminating the specific Task Order for cause on seven days notice.

6. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "owner," "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under a specific Task Order or this Agreement.

6.11 *Indemnification and Mutual Waiver*

A. *Indemnification by Engineer:* To the fullest extent permitted by Laws and Regulations, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, members, partners, agents, consultants, and employees from losses, damages, and judgments (including reasonable consultants' and attorneys' fees and expenses) arising from third-party claims or actions relating to this Agreement, any Task Order, or any Specific Project, provided that any such claim, action, loss, damages, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants. **This indemnification provision is subject to and limited by the provisions, if any, agreed to by Owner and Engineer in Exhibit I, "Limitations of Liability."**


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B. *Indemnification by Owner:* Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants as required by Laws and Regulations **and to the extent (if any) required in Exhibit I, Limitations of Liability.**

C. *Environmental Indemnification:* To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, costs, losses, damages, actions, and judgments (including reasonable consultants' and attorneys' fees) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under any Site, provided that (1) any such claim, cost, loss, damages, action, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (2) nothing in this Paragraph shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.

D. *No Defense Obligation:* The indemnification commitments in this Agreement do not include a defense obligation by the indemnitor unless such obligation is expressly stated.

E. *Percentage Share of Negligence*: To the fullest extent permitted by Laws and Regulations, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.

F. *Mutual Waiver*: To the fullest extent permitted by law, Owner and Engineer waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Agreement, any Task Order, or a Specific Project, from any cause or causes.

6.12 *Records Retention*

A. Engineer shall maintain on file in legible form, for a period of five years following completion or termination of its services under each Task Order, all Documents, records (including cost records), and design calculations related to Engineer's services or pertinent to Engineer's performance under the Task Order. Upon Owner's request, Engineer shall provide a copy of any such item to Owner at cost.

6.13 *Miscellaneous Provisions*

A. *Notices:* Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.

B. *Survival:* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

C. *Severability:* Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Engineer, which agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.


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D. *Waiver:* A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

E. *Accrual of Claims*: To the fullest extent permitted by Laws and Regulations, all causes of action arising under a Specific Project shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion of such Specific Project.

F. *Applicability to Task Orders:* The terms and conditions set forth in this Agreement apply to each Task Order as if set forth in the Task Order, unless specifically modified. In the event of conflicts between this Agreement and a Task Order, the conflicting provisions of the Task Order shall take precedence for that Task Order. The provisions of this Agreement shall be modified only by a written instrument. Such amendments shall be applicable to all Task Orders issued after the effective date of the amendment if not otherwise set forth in the amendment.

G. *Non-Exclusive Agreement*: Nothing herein shall establish an exclusive relationship between Owner and Engineer. Owner may enter into similar agreements with other professionals for the same or different types of services contemplated hereunder, and Engineer may enter into similar or different agreements with other project owners for the same or different services contemplated hereunder.

## ARTICLE 7 – DEFINITIONS

7.01 *Defined Terms*

A. Wherever used in this Agreement (including the Exhibits hereto and any Task Order) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits or Task Order, or in the following definitions:

1. *Addenda*—Written or graphic instruments issued prior to the opening of bids which clarify, correct, or change the bidding requirements or the proposed Construction Contract Documents.

2. *Additional Services*—Services to be performed for or furnished to Owner by Engineer in accordance with a Task Order, but which are not included in Basic Services for that Task Order.

3. *Agreement*—This written contract for professional services between Owner and Engineer, including all exhibits identified in Article 8.

4. *Application for Payment*—The form acceptable to Engineer which is to be used by a Contractor in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Construction Contract.

5. *Basic Services*—The services to be performed for or furnished to Owner by Engineer in accordance with a specific Task Order, as specified in the Task Order (but not including Additional Services performed or furnished pursuant to an amendment to the specific Task Order).

6. *Change Order*—A document which is signed by a Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Construction Contract Price or the Construction Contract Times, or other revision to the Construction Contract, issued on or after the effective date of the Construction Contract.


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7. *Change Proposal*—A written request by a Contractor, duly submitted in compliance with the procedural requirements set forth in the Construction Contract, seeking an adjustment in Construction Contract Price or Construction Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Construction Contract Documents or the acceptability of Work under the Construction Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Construction Contract.

8. *Constituent of Concern*—Asbestos, petroleum, radioactive material, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. ("CERCLA"); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5101 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. ("RCRA"); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.

9. *Construction Contract*—The entire and integrated written contract between Owner and Contractor concerning the Work.

10. *Construction Contract Documents*—Those items designated as "Contract Documents" in the Construction Contract, and which together comprise the Construction Contract.

11. *Construction Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Construction Contract Documents.

12. *Construction Contract Times*—The numbers of days or the dates by which a Contractor shall: (a) achieve milestones, if any, in the Construction Contract; (b) achieve Substantial Completion, and (c) complete the Work.

13. *Construction Cost*—The cost to Owner of the construction of those portions of an entire Specific Project designed or specified by or for Engineer under this Agreement and the specific Task Order, including construction labor, services, materials, equipment, insurance, and bonding costs, and allowances for contingencies. Construction Cost does not include costs of services of Engineer or other design professionals and consultants; cost of land or rights-of-way, or compensation for damage to property; Owner's costs for legal, accounting, insurance counseling, or auditing services; interest or financing charges incurred in connection with a Specific Project; or the cost of other services to be provided by others to Owner. Construction Cost is one of the items comprising Total Project Costs.

14. *Constructor*—Any person or entity (not including the Engineer, its employees, agents, representatives, and Consultants), performing or supporting construction activities relating to the Specific Project, including but not limited to Contractors, Subcontractors, Suppliers, Owner's work forces, utility companies, other contractors, construction managers, testing firms, shippers, and truckers, and their employees, agents, and representatives.


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15. *Consultants*—Individuals or entities having a contract with Engineer to furnish services with respect to a Specific Project as Engineer's independent professional associates, consultants, subcontractors, or vendors.

16. *Contractor*—The entity or individual with which Owner enters into a Construction Contract.

17. *Documents*—Data, reports, Drawings, Specifications, Record Drawings, building information models, civil integrated management models, and other deliverables, whether in printed or electronic media format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.

18. *Drawings*—That part of the Construction Contract Documents that graphically shows the scope, extent, and character of the Work to be performed by a Contractor.

19. *Effective Date of the Agreement*—The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.

20. *Effective Date of the Task Order*—The date indicated in the Task Order on which it becomes effective, but if no such date is indicated, it means the date on which the Task Order is signed and delivered by the last of the two parties to sign and deliver.

21. *Engineer*—The individual or entity named as such in this Agreement.

22. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Construction Contract Price or the Construction Contract Times.

23. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

24. *Owner*—The individual or entity with which Engineer has entered into this Agreement and for which Engineer's services are to be performed. Unless indicated otherwise, this is the same individual or entity that will enter into any Construction Contracts concerning Specific Projects.

25. *Record Drawings*—Drawings depicting the completed Specific Project, or a specific portion of the completed Specific Project, prepared by Engineer as an Additional Service and based solely on Contractor's record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications, as delivered to Engineer and annotated by Contractor to show changes made during construction.

26. *Resident Project Representative*—The authorized representative, if any, of Engineer assigned to assist Engineer at the Site of a Specific Project during the Construction Phase. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of the RPR. The duties and responsibilities of the RPR will be as set forth in each Task Order.

27. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.


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28. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for a Contractor and submitted by a Contractor to Engineer to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Construction Contract Documents.

29. *Site*—Lands or areas indicated in the Construction Contract Documents for a Specific Project as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for use of a Contractor.

30. *Specifications*—The part of the Construction Contract Documents that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.

31. *Specific Project*—The total specific undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the services to be performed or furnished by Engineer under a specific Task Order are a part.

32. *Subcontractor*—An individual or entity having a direct contract with a Contractor or with any other Subcontractor for the performance of a part of the Work.

33. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Construction Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.

34. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with a Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.

35. *Task Order*—A document executed by Owner and Engineer, including amendments if any, stating the scope of services, Engineer's compensation, times for performance of services and other relevant information for a Specific Project.

36. *Total Project Costs*—The total cost of planning, studying, designing, constructing, testing, commissioning, and start-up of the Specific Project, including Construction Cost and all other Specific Project labor, services, materials, equipment, insurance, and bonding costs, allowances for contingencies, the total costs of services of Engineer or other design professionals and consultants, cost of land, rights-of-way, or compensation for damages to properties, or Owner's costs for legal, accounting, insurance counseling, and auditing services, interest and financing charges incurred in connection with the Specific Project, and the cost of other services to be provided by others to Owner.

37. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Construction Contract Documents for a Specific Project. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such


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construction; and may include related services such as testing, start-up, and commissioning; all as required by such Construction Contract Documents.

38. *Work Change Directive*—A written directive to a Contractor issued on or after the effective date of the Construction Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

B. *Day:* The word "day" means a calendar day of 24 hours measured from midnight to the next midnight.

## ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS

8.01 *Suggested Form of Task Order*

A. The Suggested Form of Task Order is attached as Attachment 1, and shall be used as the basis for preparing a specific Task Order for each Specific Project under this Agreement.

8.02 *Exhibits Included:*

A. Exhibit A, Engineer's Services for Task Order. Services, tasks, and terms in Exhibit A as included with this Agreement are for reference in preparing the scope of services for specific Task Orders, and are contractually binding only to the extent expressly incorporated in a specific Task Order. ***[Note: The parties should prepare a specific, modified Exhibit A for each specific Task Order, state the scope of services for the Specific Project directly in the specific Task Order, or incorporate all or portions of Exhibit A by reference.]***

B. Exhibit B, Owner's Responsibilities. This Exhibit applies to all Task Orders. ***[Note: In Paragraph 4, "Owner's Responsibilities," of the Task Order form, Owner and Engineer may modify or supplement the terms of the Agreement's Exhibit B to suit the needs of the Specific Project.]***

C. Exhibit C, Payments to Engineer for Services and Reimbursable Expenses. The terms of Exhibit C that will be applicable to and govern compensation under a specific Task Order will be determined by the selection of compensation methods made in Paragraph 6, "Payments to Engineer," of the specific Task Order.

D. Exhibit D, Duties, Responsibilities and Limitations of Authority of Resident Project Representative. This Exhibit is not contractually binding except when expressly incorporated in a specific Task Order. ***[Note: Incorporate this Exhibit with a specific Task Order if applicable; see Paragraph 2, "Engineer's Services," of the Task Order form, and Paragraph A1.05 of Exhibit A.]***

E. Exhibit E, Notice of Acceptability of Work. Engineer shall use this Notice of Acceptability of Work form at the conclusion of construction on a Specific Project if (1) the form is expressly incorporated by reference in a specific Task Order, and Engineer's scope of services in the specific Task Order includes providing such a notice to Owner and Contractor, and (2) the Work is in fact acceptable pursuant to applicable requirements, subject to the terms of the notice.

F. Exhibit F, Construction Cost Limit. This Exhibit is contractually binding only with respect to those specific Task Orders that (1) expressly incorporate Exhibit F by reference in the Task Order, Paragraph 2, "Services of Engineer," and (2) expressly state a specific Construction Cost Limit and contingency for the Specific Project in Paragraph 2, "Services of Engineer," of the specific Task Order.


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G. Exhibit G, Insurance. This Exhibit is applicable to all Task Orders. ***[Note: Include any special insurance requirements for a specific Task Order in Paragraph 8, "Other Modifications to the Agreement and Exhibits," of the Task Order form.]***

H. Exhibit H, Dispute Resolution. This Exhibit is applicable to all Task Orders.

I. Exhibit I, Limitations of Liability. This Exhibit is applicable to all Task Orders.

J. Exhibit J, Special Provisions. This Exhibit is applicable to all Task Orders.

K. Exhibit K, Amendment to Task Order. Owner and Engineer may use this form during a Specific Project to modify the specific Task Order.

***[Note: If an exhibit is not to be included as part of the Agreement, indicate "not used" after that exhibit in the list above.]***

8.03 *Total Agreement*

A. This Agreement (together with the Exhibits included above) constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a written instrument duly executed by both parties.

B. An executed Task Order under this Agreement (including any incorporated exhibits or attachments) constitutes the entire agreement between Owner and Engineer with respect to the Specific Project, and supersedes all prior written or oral understandings. Such a Task Order may only be amended, supplemented, modified, or canceled by a written instrument duly executed by both parties. Amendments to such a Task Order should be based whenever possible on the format of Exhibit K to this Agreement.

8.04 *Designated Representatives*

A. With the execution of this Agreement, Engineer and Owner shall designate specific individuals to act as Engineer's and Owner's representatives with respect to the services to be performed or furnished by Engineer and responsibilities of Owner under this Agreement. Such individuals shall have authority to transmit instructions, receive information, and render decisions relative to this Agreement on behalf of the respective party that the individual represents. Each Task Order shall likewise designate representatives of the two parties with respect to that Task Order.

8.05 *Engineer's Certifications*

A. Engineer certifies that it has not engaged in corrupt, fraudulent, or coercive practices in competing for or in executing the Agreement. For the purposes of this Paragraph 8.05:

1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the selection process or in the Agreement execution;

2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of Owner, or (b) to deprive Owner of the benefits of free and open competition;


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3. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement.

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**IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on Page 1.**

| OWNER: | ENGINEER: |
|---|---|
| By: | By: |
| Print Name: | Print Name: |
| Title: | Title: |
| Date Signed: | Date Signed: |
| | Engineer License or Firm's Certificate No. (if required): |
| | State of: |
| Date Signed: | Date Signed: |
| Address for Owner's receipt of notices: | Address for Engineer's receipt of notices: |
| DESIGNATED REPRESENTATIVE (Paragraph 8.04): | DESIGNATED REPRESENTATIVE (Paragraph 8.04): |
| Title: | Title: |
| Phone Number: | Phone Number: |
| E-Mail Address: | E-Mail Address: |

EJCDC® E-505, Agreement Between Owner and Engineer for Professional Services – Task Order Edition.
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CITY OF Fargo

**Metropolitan Area Transit**
650 23rd Street N
Fargo, ND 58102
Phone: 701-241-8140
Fax: 701-241-8558

26a-c

October 5, 2020

Board of City Commissioners
Fargo City Hall
200 North Third Street
Fargo, ND 58102

Re: RFP 20103

Dear Commissioners:

The renovation project at the Ground Transportation Center (GTC) requires modifications. The changes are a result of unforeseen conditions regarding electrical, HVAC and general requirements discovered as construction progressed.

PR-E8 through PR-E14 result in a credit to the City of ($36.18), PR-M4 adding a drain for a net change of $623.00 and PR-GC12 through PR-GC16 are for pipe insulation, IT work, roof repairs and adding transaction trays and roller shades overlooked in the original contract for a net change of $5,420.00.

The available funding within the grants for the project will cover the proposed change amounts.

The requested motion is to approve PR-E8 – PR-E14, PR-M4 and PR-GC12 – PR-GC15 to the contracts between the City of Fargo and Rick Electric Inc. for the amount of ($36.18), the City of Fargo and Valley Service Mechanical for $623.00 and the City of Fargo and Gast Construction for $5,420.00 respectively.

Thank you.

Sincerely,

Julie Bommelman
Transit Director
City of Fargo

\Attachment

# CHANGE ORDER NO. 3

Date of Issuance: *9/24/2020*

Effective Date: *8/1/2020*

| |
|---|
| **PROJECT TITLE** |
| *Remodel (F18006)* |
| **OWNER** |
| *City of Fargo* |
| **CONTRACTOR** |
| *Gast Construction Company, Inc.* |
| **ORIGINAL CONTRACT DATE** |
| *1/31/2020* |

**THE CONTRACT DOCUMENTS ARE MODIFIED AS FOLLOWS UPON EXECUTION OF THIS CHANGE ORDER**

**1. ADDITIONS OR DELETIONS TO THE CONTRACT AND ASSOCIATED COSTS**

| Spec. No. | Item | Description of Addition or Deletion | Unit | Quantity | Unit Price | Affect On Contract Price |
|---|---|---|---|---|---|---|
| | 1 | **PR GC12 - Waste Pipe Insulation** | **LS** | 1 | **($169.00)** | **($169.00)** |
| | 2 | PR GC13 - IT Room ACT | LS | 1 | $615.00 | $615.00 |
| | 3 | **PR GC14 - Roof Leaks** | **LS** | 1 | **$3,047.00** | **$3,047.00** |
| | 4 | PR GC15 - Transaction Trays | LS | 1 | $607.00 | $607.00 |
| | 5 | **PR GC16 - Roller Shades** | **LS** | 1 | **$1,320.00** | **$1,320.00** |
| **TOTAL COST FOR THESE CONTRACT ADDITIONS OR DELETIONS** | | | | | | **$5,420.00** |

**2. JUSTIFICATION FOR ADDITIONS OR DELETIONS TO CONTRACT**

*PR GC12: Rather than install a new EIFS dropped ceiling to accommodate one run of waste piping to accommodate the new restrooms, it was decided to wrap the pipe with insulation to maximum the headroom below the pipe. PR GC13: In order to adequately cool the new IT room, an acoustical ceiling was installed to separate it from the adjacent mechanical and electrical rooms. PR GC14: A roof leak was discovered above the new dispatch room, so the City elected to have the roof reviewed and repairs made. PR GC15: The city elected to replace the stainless steel transaction trays at the ticketing counters with brushed nickel for added durability. PR GC16: Roller shades were added to the interior curtain wall for additional privacy. Refer to support documents attached.*

**3. CHANGE TO CONTRACT AMOUNT**

| | |
|---|---|
| ORIGINAL CONTRACT AMOUNT: | $1,314,340.00 |
| NET INCREASE/DECREASE FROM PREVIOUS CHANGE ORDER(S): | $185,133.71 |
| CONTRACT AMOUNT PRIOR TO THIS CHANGE ORDER: | $1,499,473.71 |
| INCREASE/DECREASE FROM THIS CHANGE ORDER: | $5,420.00 |
| **NEW CONTRACT AMOUNT INCLUDING THIS CHANGE ORDER:** | **$1,504,893.71** |

**4. CHANGE TO CONTRACT TIMES**

| | |
|---|---|
| **Original Contract Times:** | |
| Substantial Completion (Days or Date): | *10/2/2020* |
| Ready For Final Payment (Days or Date): | *10/30/2020* |
| **Contract Times from previously Approved Change Orders** | |
| Substantial Completion (Days or Date): | *8/14/2020* |
| Ready For Final Payment (Days or Date): | *8/31/2020* |
| **Contract Times will be Increased/Decreased because of this Change Order** | *No Change* |
| **Contract Times including this Change Order** | |
| Substantial Completion (Days or Date): | *9/8/2020* |
| Ready For Final Payment (Days or Date): | *9/30/2020* |

# CHANGE ORDER NO. 3

Date of Issuance: *9/24/2020*

Effective Date: *8/28/2020*

| |
|---|
| **PROJECT TITLE** |
| *Remodel (F18006)* |
| **OWNER** |
| *City of Fargo* |
| **CONTRACTOR** |
| *Valley Service Mechanical, LLC* |
| **ORIGINAL CONTRACT DATE** |
| *1/31/2020* |

**THE CONTRACT DOCUMENTS ARE MODIFIED AS FOLLOWS UPON EXECUTION OF THIS CHANGE ORDER**

**1. ADDITIONS OR DELETIONS TO THE CONTRACT AND ASSOCIATED COSTS**

| Spec. No. | Item | Description of Addition or Deletion | Unit | Quantity | Unit Price | Affect On Contract Price |
|---|---|---|---|---|---|---|
| | 1 | PR M4 - Ice Machine Drain | LS | 1 | $623.00 | $623.00 |
| | 2 | | | | | $0.00 |
| | 3 | | | | | $0.00 |
| | 4 | | | | | $0.00 |
| | 5 | | | | | $0.00 |
| **TOTAL COST FOR THESE CONTRACT ADDITIONS OR DELETIONS** | | | | | | **$623.00** |

**2. JUSTIFICATION FOR ADDITIONS OR DELETIONS TO CONTRACT**

*A drain was installed for the owner furnished ice machine and coffee maker. Refer to the supporting information attached.*

**3. CHANGE TO CONTRACT AMOUNT**

| | |
|---|---|
| ORIGINAL CONTRACT AMOUNT: | $353,537.00 |
| NET INCREASE/DECREASE FROM PREVIOUS CHANGE ORDER(S): | $766.95 |
| CONTRACT AMOUNT PRIOR TO THIS CHANGE ORDER: | $354,303.95 |
| INCREASE/DECREASE FROM THIS CHANGE ORDER: | $623.00 |
| **NEW CONTRACT AMOUNT INCLUDING THIS CHANGE ORDER:** | **$354,926.95** |

**4. CHANGE TO CONTRACT TIMES**

| | |
|---|---|
| **Original Contract Times:** | |
| Substantial Completion (Days or Date): | *10/2/2020* |
| Ready For Final Payment (Days or Date): | *10/30/2020* |
| **Contract Times from previously Approved Change Orders** | |
| Substantial Completion (Days or Date): | *8/14/2020* |
| Ready For Final Payment (Days or Date): | *8/31/2020* |
| **Contract Times will be Increased/Decreased because of this Change Order** | *Increased* |
| **Contract Times including this Change Order** | |
| Substantial Completion (Days or Date): | *9/8/2020* |
| Ready For Final Payment (Days or Date): | *9/30/2020* |

# CHANGE ORDER NO. 3

Date of Issuance: *9/24/2020*
Effective Date: *8/1/2020*

| |
|---|
| **PROJECT TITLE**<br>*Remodel (BP18006)* |
| **OWNER**<br>*City of Fargo* |
| **CONTRACTOR**<br>*Rick Electric, Inc.* |
| **ORIGINAL CONTRACT DATE**<br>*1/31/2020* |

**THE CONTRACT DOCUMENTS ARE MODIFIED AS FOLLOWS UPON EXECUTION OF THIS CHANGE ORDER**

**1. ADDITIONS OR DELETIONS TO THE CONTRACT AND ASSOCIATED COSTS**

| Spec. No. | Item | Description of Addition or Deletion | Unit | Quantity | Unit Price | Affect On Contract Price |
|---|---|---|---|---|---|---|
| | 1 | PR E6 - ACCU Credit - Return to Contractor | LS | 1 | 424.75 | $424.75 |
| | 2 | PR E8 - Basement Conduit | LS | 1 | ($444.51) | ($444.51) |
| | 3 | PR E9 - Security Camera Credit | LS | 1 | ($1,398.47) | ($1,398.47) |
| | 4 | PR E10 - IT Room Lighting | LS | 1 | $466.74 | $466.74 |
| | 5 | PR E11 - Outlet Cover | LS | 1 | $43.00 | $43.00 |
| | 6 | PR E12 - Lighting Room 172 | LS | 1 | $293.68 | $293.68 |
| | 7 | PR E13 - HDMI | LS | 1 | $945.94 | $945.94 |
| | 8 | PR E14 - Owner Supplied Furniture | LS | 1 | $1,683.69 | $1,683.69 |
| | 9 | Security Camera Replacement | LS | 1 | ($2,051.00) | ($2,051.00) |
| **TOTAL COST FOR THESE CONTRACT ADDITIONS OR DELETIONS** | | | | | | **($36.18)** |

**2. JUSTIFICATION FOR ADDITIONS OR DELETIONS TO CONTRACT**

*PR E6: This work was removed from the contract in CO #2, but was later determined to be required. Therefore, the credit issued in CO#2 has been returned to the contractor. PR E8: Work originally included in the contract that was not required due to construction coordination. PR E9: The City elected to hire a specialty contractor to preform this work and provide new cameras rather than re-use the original cameras. PR E10: An acoustical ceiling was added to the new IT room which required the lights to be hung below the new ceiling. PR E11: The plans originally called for an owner supplied electronic ticket machine. This will be installed at a future date, so a lockable cover was installed over the outlet to prevent tampering. PR E12: The layout of the owner supplied furniture varied from what was included in the construction documents. As a result, the lighting above a conference room table in office 172 had to be relocated. PR E13: An HDMI connection was added for the conference room table in office 172. PR E14: The furniture purchased by the City was not supplied with tamperproof receptacles. The electrical inspector required tamperproof receptacles to be installed. When the electrical contractor removed the existing strip security cameras from the doors, the main connection to them was cut. As a result, the camera could no longer be salvaged, and the City had to purchase new ones to replace them.*

**3. CHANGE TO CONTRACT AMOUNT**

| | |
|---|---|
| ORIGINAL CONTRACT AMOUNT: | $165,500.00 |
| NET INCREASE/DECREASE FROM PREVIOUS CHANGE ORDER(S): | $32,339.10 |
| CONTRACT AMOUNT PRIOR TO THIS CHANGE ORDER: | $197,839.10 |
| INCREASE/DECREASE FROM THIS CHANGE ORDER: | -$36.18 |
| **NEW CONTRACT AMOUNT INCLUDING THIS CHANGE ORDER:** | **$197,802.92** |

**4. CHANGE TO CONTRACT TIMES**

| | |
|---|---|
| **Original Contract Times:** | |
| Substantial Completion (Days or Date): | *10/2/2020* |
| Ready For Final Payment (Days or Date): | *10/30/2020* |
| **Contract Times from previously Approved Change Orders** | |
| Substantial Completion (Days or Date): | *8/14/2020* |
| Ready For Final Payment (Days or Date): | *8/31/2020* |
| **Contract Times will be Increased/Decreased because of this Change Order** | *Increased* |
| **Contract Times including this Change Order** | |
| Substantial Completion (Days or Date): | *9/8/2020* |
| Ready For Final Payment (Days or Date): | *9/30/2020* |

CITY OF Fargo

**Metropolitan Area Transit**
650 23rd Street N
Fargo, ND 58102
Phone: 701-241-8140
Fax: 701-241-8558

27

October 5, 2020

Board of City Commissioners
Fargo City Hall
200 North Third Street
Fargo, ND 58102

Re: RFP 20103

Dear Commissioners:

Metro COG recently undertook the task of conducting a study regarding a MATBUS Transit Authority which provides a long-range vision roadmap for the implementation of an Authority structure, while providing interim solutions to streamline leadership and governance of transit service within the region.

The MATBUS Transit Authority Study process was guided by the a two-tiered structure consisting of technical representatives (Technical Advisory Committee), as well as city leadership and elected officials (Policy Advisory Committee) representing the City of Fargo, City of Moorhead, and the City of West Fargo alongside state and federal partners.

Attached is a resolution regarding the *adoption of the MATBUS Transit Authority Study*. This will not result in any immediate organizational changes, but merely lays the groundwork for continued discussion, strategizing and coordination between local jurisdictions and state and federal partners.

Requested motion: Adopt the MATBUS Transit Authority Study via the attached resolution.

Thank you.

Sincerely,

Julie Bommelman
Transit Director
City of Fargo

\Attachment

# Resolution of Support
# MATBUS Transit Authority Study

Whereas the City of Fargo Commission is the duly elected governing body for Fargo, North Dakota and is responsible for the planning and development of a safe and functional transportation system;

Whereas, the Fargo Moorhead Metropolitan Council of Governments (Metro COG), is the Metropolitan Planning Organization (MPO) designated by the Governors of North Dakota and Minnesota to maintain the metropolitan area's transportation planning process in accordance with federal regulations;

Whereas, Metro COG has undertaken the task of conducting a study of the designation of MATBUS as a new, separate political subdivision referred to as an Authority, which would reorganize MATBUS in order to provide streamlined governance and the ability to raise local revenues for the implementation of transit services throughout the region;

Whereas, the MATBUS Transit Authority Study process was guided by the a two-tiered structure consisting of technical representatives (Technical Advisory Committee), as well as city leadership and elected officials (Policy Advisory Committee) representing the City of Fargo, City of Moorhead, and the City of West Fargo alongside state and federal partners;

Whereas, the MATBUS Transit Authority Study provides a long-range vision roadmap for the implementation of an Authority structure, while providing interim solutions to streamline leadership and governance of transit service within the region;

Whereas, adoption of the MATBUS Transit Authority Study will not result in any immediate organizational changes, but merely lays the groundwork for continued discussion, strategizing and coordination between local jurisdictions and state and federal partners;

Whereas, Metro COG has conducted this study in a comprehensive, coordinated, and continuing fashion that will improve the urban and extraterritorial transportation system as well as quality of life of the Fargo Moorhead metropolitan area;

Now, Therefore Be It Resolved, that the City of Fargo does hereby adopt the MATBUS Transit Authority Study, and agrees to use it as a tool to guide transit organizational decision-making in the months and years to come.

Approved and adopted this _____ day of _____, 2020

Attest:

By:

_____
Steve Sprague, City Auditor

_____
Dr. Timothy J. Mahoney, Mayor

REPORT OF ACTION

**UTILITY COMMITTEE**

28

Project No. WA1862

Type: WTP Near-term Ozone Improvements Change Order #2

Location: Water Treatment Plant (435 14th Avenue South)

Date of Hearing: 9/24/20

| Routing | Date |
|---|---|
| City Commission | 10/5/20 |
| Project File | |

Troy Hall, Water Utility Director, presented the attached memo, letter from Apex Engineering Group, and change order form for Project WA1862, Water Treatment Plant (WTP) Near-term Ozone Improvements. This change order is with PKG Contracting, Inc. in the amount of $10,475.35 and includes two (2) cost increase items and one (1) cost decrease item. This is a final balancing change order and will allow project close out. Details are in the attached information. This project was an outcome of the WTP Facility Plan Phase 2, completed in 2016. It is in the budget and funded through an approved State Revolving Fund (SRF) loan. With Change Order #2 items, the project is fully complete. Project WA1862 was very important for improving safety to WTP maintenance staff and to address severe corrosion issues with 23 year old ozone piping. With change order approval, the total construction cost of WA1862 would be $702,150.62.

**MOTION:**

On a motion by Jim Hausauer, seconded by Mark Miller, the Utility Committee voted to approve Change Order #2 with PKG Contracting, Inc. with a cost increase of $10,475.35 for Project WA1862.

| COMMITTEE: | Present | Yes | No | Unanimous |
|---|---|---|---|---|
| | | | | X |
| | | | | Proxy |
| Anthony Gehrig, City Commissioner | X | | | |
| Kent Costin, Director of Finance | X | | | |
| Brian Ward, Water Plant Supt. | X | | | |
| Mark Miller, Wastewater Plant Supt. | X | | | |
| Bruce Grubb, City Administrator | X | | | |
| Scott Liudahl, City Forester | X | | | |
| Terry Ludlum, Solid Waste Utility Director | X | | | |
| James Hausauer, Wastewater Util. Director | X | | | |
| Troy Hall, Water Utility Director | X | | | |
| Ben Dow, Public Works Operations Director | X | | | |
| Brenda Derrig, City Engineer | X | | | |

ATTEST:

T. B. Hall

Troy B. Hall
Water Utility Director

C: Tim Mahoney, Mayor
Commissioner Strand
Commissioner Piepkorn
Commissioner Preston

THE CITY OF Fargo FAR MORE

**Water Treatment Plant**
435 14th Avenue South
Fargo, ND 58103
Office: 701.241.1469 | Fax: 701.241.8110
www.FargoND.gov

**MEMORANDUM**
September 18, 2020

---

**To:** Utility Committee

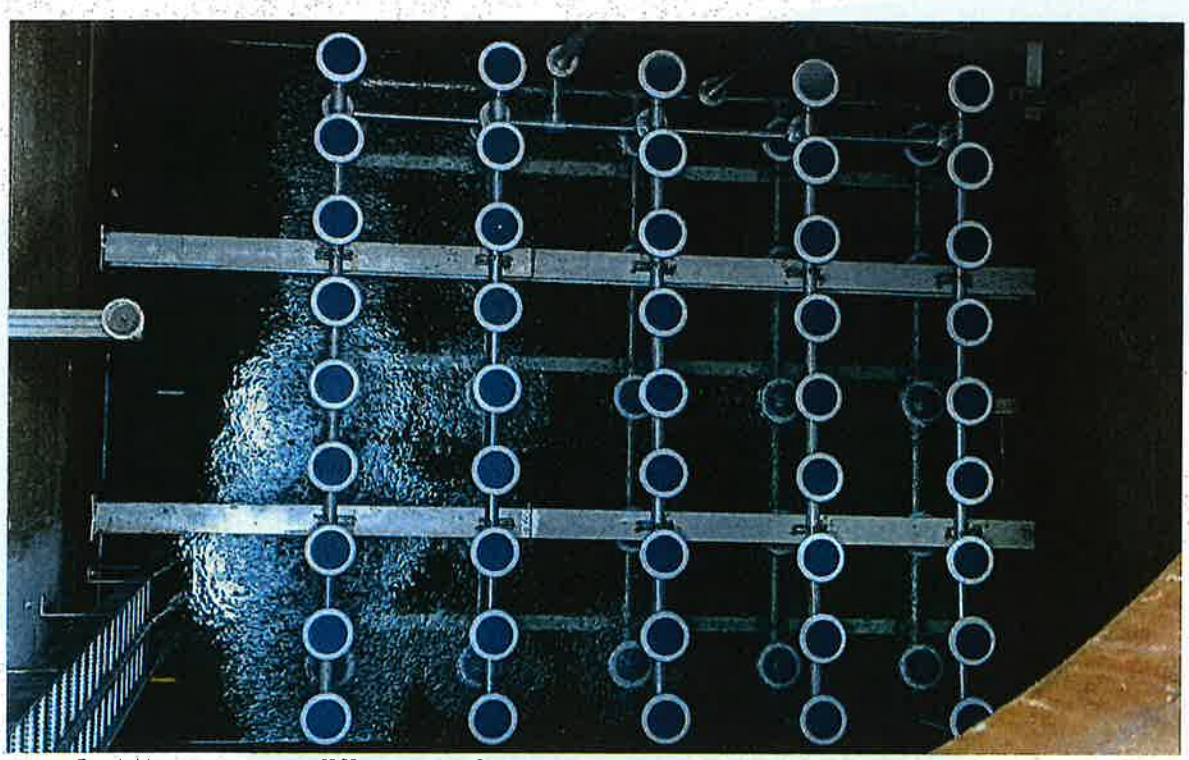
**From:** Troy B. Hall, Water Utility Director TBH

**Re:** Project WA1862 Change Order #2 – PKG Contracting
Near-term Ozone Improvements

---

## Introduction

Attached, please find a change order proposal from PKG Contracting, Inc. (PKG) for construction related to ozone system improvements in the Lime Softening Water Treatment Plant (LSWTP). This is a final balancing change order for the project. This project addressed safety concerns during ozone system maintenance and corrosion issues in the ozone contact chamber piping. There are three (3) changes recommended in this change order, totaling a cost increase of $10,475.35 or 1.6% of original contract cost. If approved, the final contract price with PKG will be $702,150.62 with an increase of 6.9% over bid price for all project changes . Project WA1862 is funded through a State Revolving Fund (SRF) loan.



**Ozone contactor diffuser testing at startup of new piping and diffuser array.**

## Background

Ozone improvements were part of the LSWTP Facility Plan – Phase 2 and are in the Water Utility Capital Improvement Plan (CIP). They were in the 2019 and 2020 budgets. Due to capacity concerns during construction, improvements were planned to immediately follow the Membrane Water Treatment Plant (MWTP) becoming operational. Construction also needed to be performed outside of peak water demand months and was, thus, completed this past winter.

There will likely be 3 to 4 phases to the overall ozone system improvements for the LSWTP. This project is phase 1, addressing immediate issues with the ozone system concerning worker safety and severe piping corrosion issues. The three changes requested under this change order are:

| No. | Item | Cost | Reason |
|---|---|---|---|
| 1 | Diffuser Grid Modifications | $19,912.06 | Improper Gas Flow |
| 2 | Reconcile Basin Cleaning Allowance | ($20,141.00) | Unused Services |
| 3 | Owner Requested Work (Not in Scope) | $10,704.29 | Not in Contract |
| | **Total** | **$10,475.35** | |

The ozone needed to be completely turned off during a portion of the construction for the safety of construction workers. This is the only time ozone has been off for an extended period of time since plant startup in 1997. This risked Taste & Odor events to Fargo customers. The Water Treatment Plants (WTPs) were strategically configured to minimize the chance of customer complaints during construction when ozone was off. Construction was completed with no customer complaints related to Taste & Odor. To comply with EPA disinfection requirements, Water Utility staff worked with the North Dakota Department of Environmental Quality (NDDEQ) to set up an alternative water disinfection strategy for the period ozone was off. This was successful and documented.

## Financial Considerations

The ozone system improvements were part of the 2019 and 2020 budget and intended to follow immediately after Membrane Water Treatment Plant (MWTP) startup. The funding for ozone improvements were approved as part of an EPA State Revolving Fund (SRF) loan that includes several water system improvements. For the ozone improvements, engineering and construction costs will be paid out of Fund 501/Division 3055 until they can be reimbursed by the NDDEQ. NDDEQ administers the SRF loan program for North Dakota.

**SUGGESTED MOTION:**

Approve Change Order #2 with PKG Contracting, Inc. in the amount of $10,475.35 for Project WA1862, Near-term ozone system improvements in the Lime Softening Water Treatment Plant.

Your consideration in this matter is greatly appreciated.

Apex Engineering Group
Water | Transportation| Municipal | Facilities

701.373.7980
4733 Amber Valley Parkway South
Fargo, ND 58104

September 4, 2020

Mr. Troy Hall
Water Utility Director
City of Fargo
435 14th Avenue South
Fargo, ND 58103

**RE: Near-term Ozone Improvements – Lime Softening Water Treatment Plant**
**City of Fargo Project No. WA1862, DWSRF Project No. 0900336-04**
**Change Order No. 02**

Troy:

Enclosed, please find Change Order No. 02 for your consideration and further processing. The Change Order consists of the following items:

- Diffuser Grid Modifications: During testing of the diffuser grids, it became apparent that some modifications were necessary to proper gas flow. In order to provide for uniform distribution of gas flow through the lowest grid of diffusers in each of the contactors, some modifications to the diffuser grid were necessary. This Change Order provides for these modifications at a cost of $19,912.06.
- Reconciliation of Contactor Cleaning Allowance: The condition of the inside of the ozone contactors was unknown, but it was believed that there would be some cleaning required as part of the work. Therefore, a cleaning allowance was included in the project bid price. This Change Order provides for the reconciliation of that allowance to reflect actual costs at a reduction in cost of $20,141.00.
- Additional Work Requested by Owner: During construction, the Owner requested several additional items of work to be performed by the Contractor. They are as follows: 1) Raise two more 48" diameter access hatches into the ozone contactor to improve operator safety and 2) Fix 8 welds on stainless steel piping to remain as supplemental air piping in the basement of the water treatment plant. This Change Order provides for that additional work at a cost of $10,704.29

The amounts appear to be reasonable and appropriate. If you have any questions or need further information, please do not hesitate to contact me.

Sincerely,

**Apex Engineering Group, Inc.**

Timothy J. Paustian, PE
Project Manager

# Change Order

**No. 2**

Date of Issuance: August 27, 2020 Effective Date: August 27, 2020

| | | |
|---|---|---|
| Project: ***Near-term Ozone Improvements*** | Owner: ***City of Fargo*** | Owner's Contract No.: ***N/A*** |
| Contract: ***Near-term Improvements*** | | Date of Contract: ***May 29, 2019*** |
| Contractor: ***PKG Contracting, Inc.*** | | Engineer's Project No.: ***19.351.0081*** |

**The Contract Documents are modified as follows upon execution of this Change Order:**

Description:

***Diffuser grid modifications, reconciliation of contactor cleaning allowance, and additional work requested by Owner.***

**Attachments (list documents supporting change):**

***Supporting documentation and information.***

| CHANGE IN CONTRACT PRICE: | CHANGE IN CONTRACT TIMES: |
|---|---|
| Original Contract Price: $ $657,069.00 | Original Contract Times: ☐ Working days ☐ Calendar days<br>Substantial completion (date): January 17, 2020<br>Ready for final payment (date): February 21, 2020 |
| ***Increase*** from previously approved Change Orders No. 1 to No. 1: $ $34,606.27 | [Increase] [Decrease] from previously approved Change Orders No. 0 to No. 0:<br>Substantial completion (days): 0<br>Ready for final payment (days): 0 |
| Contract Price prior to this Change Order: $ $691,675.27 | Contract Times prior to this Change Order:<br>Substantial completion (date): January 17, 2020<br>Ready for final payment (date): February 21, 2020 |
| **Increase** of this Change Order: $ $10,475.35 | Increase of this Change Order:<br>Substantial completion (days): 0<br>Ready for final payment (days): 0 |
| Contract Price incorporating this Change Order: $ $702,150.62 | Contract Times with all approved Change Orders:<br>Substantial completion (date): January 17, 2020<br>Ready for final payment (date): February 21, 2020 |

| RECOMMENDED: | ACCEPTED: | ACCEPTED: |
|---|---|---|
| By: _____ | By: _____ | By: _____ |
| Engineer (Authorized Signature) | Owner (Authorized Signature) | Contractor (Authorized Signature) |
| Date: 8/27/20 | Date: _____ | Date: 8-27-2020 |

# Progress Estimate

# Contractor's Application

| For (contract): | Near-Term Ozone Improvements Fargo Lime-Softening Water Treatment | Application Number: | PR No. 04 |
|---|---|---|---|
| Application Period: | 3-12-2020 Thru 3-31-2020 | Application Date: | 8-Apr-20 |

| A | | B | Work Completed | | E | F | | G |
|---|---|---|---|---|---|---|---|---|
| Item | | | C | D | | Total Completed | % | Balance to |
| Item No. | Description | Scheduled Value | From Previous Application (C + D) | This Period | Materials Presently Stored (not in C or D) | and Stored to Date (C + D + E) | (F) B | Finish (B - F) |
| | **General Items/Material Items** | | | | | | | |
| 1 | Mobilization / Demobilize | $18,000.00 | $18,000.00 | $0.00 | $0.00 | $18,000.00 | 100% | $0.00 |
| 2 | Bonds and Insurance | $12,200.00 | $12,200.00 | $0.00 | $0.00 | $12,200.00 | 100% | $0.00 |
| 3 | Cleaning Stage 3 and 4 Allowance | $25,000.00 | $0.00 | $4,859.00 | $0.00 | $4,859.00 | 19% | $20,141.00 |
| | **Pre Fab Ozone Piping and Supports** | | | | | | | |
| 4 | Drawings M-01 M-02 M-03 M-04 M-05 M-06 | $162,769.00 | $162,769.00 | $0.00 | $0.00 | $162,769.00 | 100% | $0.00 |
| | **Contact Basin #1** | | | | | | | |
| 5 | Demo Existing Ozone Piping | $5,800.00 | $5,800.00 | $0.00 | $0.00 | $5,800.00 | 100% | $0.00 |
| 6 | Modify Existing Hatch | $12,000.00 | $12,000.00 | $0.00 | $0.00 | $12,000.00 | 100% | $0.00 |
| 8 | Install New Hatch and Ladder | $24,000.00 | $24,000.00 | $0.00 | $0.00 | $24,000.00 | 100% | $0.00 |
| 9 | Install Difusser Supports | $68,000.00 | $68,000.00 | $0.00 | $0.00 | $68,000.00 | 100% | $0.00 |
| 10 | Install new Diffuser Laterals | $32,000.00 | $32,000.00 | $0.00 | $0.00 | $32,000.00 | 100% | $0.00 |
| 11 | Install New Piping to Laterals | $13,000.00 | $13,000.00 | $0.00 | $0.00 | $13,000.00 | 100% | $0.00 |
| 12 | Install Diffusers | $28,000.00 | $28,000.00 | $0.00 | $0.00 | $28,000.00 | 100% | $0.00 |
| | **Contact Basin #2** | | | | | | | |
| 13 | Demo Existing Ozone Piping | $5,800.00 | $5,800.00 | $0.00 | $0.00 | $5,800.00 | 100% | $0.00 |
| 14 | Modify Existing Hatch | $12,000.00 | $12,000.00 | $0.00 | $0.00 | $12,000.00 | 100% | $0.00 |
| 15 | Install New Hatch and Ladder | $24,000.00 | $24,000.00 | $0.00 | $0.00 | $24,000.00 | 100% | $0.00 |
| 16 | Install Diffuser Supports | $68,000.00 | $68,000.00 | $0.00 | $0.00 | $68,000.00 | 100% | $0.00 |
| 17 | Install new Diffuser Laterals | $32,000.00 | $32,000.00 | $0.00 | $0.00 | $32,000.00 | 100% | $0.00 |
| 18 | Install New Piping to Laterals | $13,000.00 | $13,000.00 | $0.00 | $0.00 | $13,000.00 | 100% | $0.00 |
| 19 | Install Diffusers | $28,000.00 | $28,000.00 | $0.00 | $0.00 | $28,000.00 | 100% | $0.00 |
| 20 | Pipe Cleaning | $63,000.00 | $63,000.00 | $0.00 | $0.00 | $63,000.00 | 100% | $0.00 |
| 21 | Electrical E-01 E-02 E-03 | $10,500.00 | $10,500.00 | $0.00 | $0.00 | $10,500.00 | 100% | $0.00 |
| 22 | Change Order #1 | $34,606.27 | $0.00 | $34,606.27 | $0.00 | $34,606.27 | 100% | $0.00 |
| | Totals | $691,675.27 | $614,069.00 | $39,465.27 | $0.00 | $671,534.27 | 97% | $20,141.00 |

PKG contracting, inc.

8/25/2020

ATTN: Tim Paustian
Apex Engineering Group
4733 Amber Valley Parkway South
Fargo, ND 58104

RE: Near-Term Ozone Improvements
Lime Softening Water Treatment Plant
City of Fargo Project No. Wa1862

SUBJECT: Diffusers Modifications

Dear Tim
Below is pricing for making modifications to Diffuser Headers Per Dave Buchholz E-Mail Dated 2-14-2020

| | | | |
|---|---|---|---|
| A.) | 1. Labor: 280 MH Per Diem $10.00 Per MH | $14,530.00 | |
| | 2. Material (including tax): | $674.00 | |
| | 3. Equipment: Welder | $175.00 | |
| | 4. 15% Fee Credit(Overhead & Profit on items A.1,2,3) | $2,306.85 | |
| | Subtotal Section A | | $17,685.85 |
| B.) | 1. Subcontractor: (see attached) | $0.00 | |
| | 2. 5% Fee (Overhead & Profit on item B.1) | $0.00 | |
| | Subtotal Section B | | $0.00 |
| C.) | Supplemental Costs: | | |
| | 1. Small Tools/Equip. & Expendables (10% of A.1) | $1,453.00 | |
| | 2. Temporary Construction Facilities (2% of Section A, B & C.1) | $382.78 | |
| | 3. Bonds & Insurance Premium (2% of Section A, B, C1., C.2) | $390.43 | |
| | Subtotal Section C | | $2,226.21 |
| | **TOTAL** | | $19,912.06 |

Should you need additional information, please do not hesitate to contact me.

Sincerely,
PKG Contracting, Inc.

Joh Gisvold, Project Manager
PKG Project 1906

Office: 701-232-3878
Fax: 701-232-3935

4301 S University Drive
Fargo, ND 58104

www.pkg-inc.com

Winning in Water

PKG contracting, inc.

8/25/2020

ATTN: Tim Paustian
Apex Engineering Group
4733 Amber Valley Parkway South
Fargo, ND 58104

RE: Near-Term Ozone Improvements
Lime Softening Water Treatment Plant
City of Fargo Project No. Wa1862
SUBJECT: Diffusers Modifications

Dear Tim
Below is pricing for making repairs to Existing Stainless Steel Pipe
Raise 2- 48" Access Hatches 2' with Stainless steel risers

| | | | |
|---|---|---|---|
| A.) | 1. Labor: 106 MH Per Diem $10.00 Per MH | $5,500.34 | |
| | 2. Material (including tax): | $2,793.00 | |
| | 3. Equipment: Welder | $175.00 | |
| | 4. 15% Fee Credit(Overhead & Profit on items A.1,2,3) | $1,270.25 | |
| | Subtotal Section A | | $9,738.59 |
| B.) | 1. Subcontractor: (see attached) | $0.00 | |
| | 2. 5% Fee (Overhead & Profit on item B.1) | $0.00 | |
| | Subtotal Section B | | $0.00 |
| C.) | Supplemental Costs: | | |
| | 1. Small Tools/Equip. & Expendables (10% of A.1) | $550.03 | |
| | 2. Temporary Construction Facilities (2% of Section A, B & C.1) | $205.77 | |
| | 3. Bonds & Insurance Premium (2% of Section A, B, C1., C.2) | $209.89 | |
| | Subtotal Section C | | $965.69 |
| | **TOTAL** | | $10,704.29 |

Should you need additional information, please do not hesitate to contact me.

Sincerely,
PKG Contracting, Inc.

Josh Gisvold, Project Manager
PKG Project 1906

Office: 701-232-3878
Fax: 701-232-3935

4301 S University Drive
Fargo, ND 58104

www.pkg-inc.com

Winning in Water

REPORT OF ACTION

**UTILITY COMMITTEE**

29

Project No. WA1906

Type: Water Tower Recondition
Tower 7 Change Order #2

Location: Water Tower 4 (I-29 & 12th Avenue North)

Date of Hearing: 9/24/20

| Routing | Date |
|---|---|
| City Commission | 10/5/20 |
| Project File | |

Troy Hall, Water Utility Director, presented the attached memo, letter from AE2S, and change order form for Project WA1906, Water Towers 4 & 7 Reconditioning. This change order is with Classic Protective Coatings in the amount of $9,550 and includes three (3) cost change items related to routing features for communication cabling. Reconditioning at Water Tower 7 is complete (other than restoration of landscaping). The contractor is now working on Water Tower 4. Water Tower Reconditioning is in the Water Utility Capital Improvement Plan (CIP). This project is funded with Infrastructure Sales Tax (Fund 450) and is in the budget. With approval of this change order for $9,550, the new contract amount with Classic Protective Coatings will be $1,585,925.

**MOTION:**

On a motion by Scott Liudahl, seconded by James Hausauer, the Utility Committee voted to approve Change Order #2 with Classic Protective Coatings at a cost increase of $9,550 for Project WA1906.

| COMMITTEE: | Present | Yes | No | Unanimous |
|---|---|---|---|---|
| | | | | X |
| | | | | Proxy |
| Anthony Gehrig, City Commissioner | X | | | |
| Kent Costin, Director of Finance | X | | | |
| Brian Ward, Water Plant Supt. | X | | | |
| Mark Miller, Wastewater Plant Supt. | X | | | |
| Bruce Grubb, City Administrator | X | | | |
| Scott Liudahl, City Forester | X | | | |
| Terry Ludlum, Solid Waste Utility Director | X | | | |
| James Hausauer, Wastewater Util. Director | X | | | |
| Troy Hall, Water Utility Director | X | | | |
| Ben Dow, Public Works Operations Director | X | | | |
| Brenda Derrig, City Engineer | X | | | |

ATTEST:

T. B. Hall

Troy B. Hall
Water Utility Director

C: Tim Mahoney, Mayor
Commissioner Strand
Commissioner Piepkorn
Commissioner Preston

THE CITY OF Fargo
FAR MORE

**Water Treatment Plant**
435 14th Avenue South
Fargo, ND 58103
Office: 701.241.1469 | Fax: 701.241.8110
www.FargoND.gov

**MEMORANDUM**
September 18, 2020

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**To:** Utility Committee

**From:** Troy B. Hall, Water Utility Director TBH

**Re:** Project WA1906 Change Order #2 – Water Towers 4 & 7 Reconditioning

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## Introduction

Attached, please find a proposed change order with Classic Protective Coatings (Project WA1906). This is a water tower reconditioning project at both Water Towers 4 & 7. Full reconditioning of water towers is anticipated to occur about every 20-30 years. Water Tower 7 reconditioning is now complete. Reconditioning work at Water Tower 4 (I-29 & 12th Ave. North) is now taking place and will be complete by the end of the construction season. Under this change order, three (3) contract changes for communications cable management features are recommended at Water Tower 4. These changes are a cost increase of $9,550. With approval of the proposed change order, the new contract price will be $1,585,925. Project WA1906 is being cash funded using Infrastructure Sales Tax (Fund 450) and is in the Water Utility budget.




**Water Tower 4 reconditioning project in the Fargo Industrial Park along I-29 & 12th Avenue North. This reconditioning project will be complete by end of this construction season.**

## Detailed Summary of Change Orders

The three (3) items considered under this change order are summarized in the following table:

| No. | Item | Cost | Reason |
|---|---|---|---|
| 1 | Three (3) cable penetrations at top of tower | $1,800.00 | Future Planning |
| 2 | Add about 30 cable brackets going up tower | $9,750.00 | Future Planning |
| 2 | Eliminate patching cable penetrations in scope | ($2,000.00) | Reduced Scope |
| | **Total – Change Order No. 2** | **$9,550.00** | |

## Plan of Financing

Water Utility staff recommends this change order be paid with Infrastructure Sales Tax (Fund 450) according to the budget line for Water Tower Reconditioning, Project WA1906.

**SUGGESTED MOTION:**

Approve Change Order No. 2 with Classic Protective Coatings in the amount of $9,550 under Project WA1906.

Your consideration in this matter is greatly appreciated.

www.ae2s.com

August 21, 2020

City of Fargo
Attn: Mr. Dan Portlock
225 4th Street North
Fargo, ND 58102

**Re: Fargo Water Tower Nos. 4 & 7 Reconditioning**
**Change Order No. 2**

Dear Mr. Portlock:

Classic Protective Coatings has requested a change order for the above-mentioned project. The change order is to include the work requested by the Owner to make various improvements at Water Tower No. 4 including adding three (3) 4" cable penetrations to the top of the access tube at the roof ($1,800.00), add approximately thirty (30) cable standoff brackets ($9,750.00), grind the tops and edges of the existing antenna mount plates (no charge), and to not have the Contractor patch any of the six (6) existing cable penetrations at the base of the tower ($2,000.00 credit).

The Substantial and Final Completion dates do not change as a result of this change order. The construction contract total, as a result of this change order, is expected to increase $9,550.00 for a total of $1,585,925.00.

Upon the City of Fargo's acceptance of Change Order No. 2, please sign and date. Return a scanned copy of the formal change order form containing all signatures to AE2S. AE2S will forward the signed copy to the contractor and will retain a copy for our records. AE2S greatly appreciates the opportunity to assist the City with construction phase services for the project. If you have any questions or need additional information, please do not hesitate to contact me.

Sincerely,

**AE2S**

Kevin Johnson, PE
Project Engineer

# Change Order

**No. 2**

Date of Issuance: 08/21/2020 Effective Date: 08/21/2020

| | | |
|---|---|---|
| Project: Fargo Water Tower Nos. 4 & 7 Reconditioning | Owner: City of Fargo, ND | Owner's Contract No.: |
| Contract: General Construction | | Date of Contract: 11/11/2019 |
| Contractor: Classic Protective Coatings, Inc. | | Engineer's Project No.: P00803-2019-013 |

**The Contract Documents are modified as follows upon execution of this Change Order:**

Description: This change order includes work requested by the Owner to incorporate several improvements at Water Tower No. 4 to 1) add three (3) roof penetrations, 2) add thirty (30) coaxial cable support brackets, 3) grind the tops and edges of the existing antenna mount plates (item 31 on Sheet C3), and 4) to not patch the six (6) cable penetrations (delete line item 32 from Sheet C3).

Attachments: Cost proposal letter as submitted by Classic Protective Coatings.

| CHANGE IN CONTRACT PRICE: | CHANGE IN CONTRACT TIMES: |
|---|---|
| Original Contract Price: | Original Contract Times: ☒ ~~Working days~~ ☐ Calendar days |
| $ 1,573,925.00 | Substantial completion (days or date): November 1, 2020 |
| | Ready for final payment (days or date): November 30, 2020 |
| [Increase] [~~Decrease~~] from previously approved Change Orders No. 1 to No. 1: | ~~[Increase] [Decrease] from previously approved Change Orders No. to No.:~~ |
| $ 2,450.00 | ~~Substantial completion (days):~~ |
| | ~~Ready for final payment (days):~~ |
| Contract Price prior to this Change Order: | Contract Times prior to this Change Order: |
| $ 1,576,375.00 | Substantial completion (days or date): November 1, 2020 |
| | Ready for final payment (days or date): November 30, 2020 |
| [Increase] [~~Decrease~~] of this Change Order: | [~~Increase~~] [~~Decrease~~] of this Change Order: |
| $ 9,550.00 | Substantial completion (days or date): NA |
| | Ready for final payment (days or date): NA |
| Contract Price incorporating this Change Order: | Contract Times with all approved Change Orders: |
| $ 1,585,925.00 | Substantial completion (days or date): November 1, 2020 |
| | Ready for final payment (days or date): November 30, 2020 |

| RECOMMENDED: | ACCEPTED: | ACCEPTED: |
|---|---|---|
| By: [signature] | By: | By: [signature] |
| Engineer (Authorized Signature) | Owner (Authorized Signature) | Contractor (Authorized Signature) |
| Date: 8-21-2020 | Date: | Date: 8-21-20 |

Classic
Protective Coatings

August 19, 2020

August 19, 2020
Advanced Engineering and Environmental Services, Inc.
Kevin Johnson, P.E.
4170 28th Avenue South
Fargo, ND 58104

CHANGE ORDER #~~4~~ 2 - Fargo ND Tower Requested Changes from the Owners

Kevin:

Classic Protective Coatings is requesting Change Order #~~4~~ 2 as follows:

1. Add three (3) 4" cable penetrations to the top of the access tube at the roof. Charge $1,800.
2. Add approximately thirty (30) separate cable standoff brackets from the base of the tank to the roof for future cable installation near the ladder where accessible at spaces of 5', the 3/16" steel plates will have three (3) 3/4" holes drilled in them. Charge $9,750.
3. #31 remove stud welded antenna mount plates from the roof. Currently the plates are not stud welded - they have previously been seal welded. We will grind the tops and edges down to make paintable. No charge.
4. #32 Do not patch any of the six (6) old cable penetrations at the base of the tower. Change ($2,000) credit.

Sincerely,

Brad Smith
Project Manager

C: Scott Kriese, KLM

N7670 State Highway 25 | Menomonie Wisconsin 54751-5928
Telephone 715-233-6267 | Facsimile 715-233-6268
www.classicprotectivecoatings.com

REPORT OF ACTION

**UTILITY COMMITTEE**

30

Project No. WA1906

Type: Water Tower Recondition
Tower 7 Change Order #3

Location: Water Tower 4 (I-29 & 12th Avenue North)

Date of Hearing: 9/24/20

| Routing | Date |
|---|---|
| City Commission | 10/5/20 |
| Project File | |

Troy Hall, Water Utility Director, presented the attached memo, letter from AE2S, and change order form for Project WA1906, Water Towers 4 & 7 Reconditioning. This change order is with Classic Protective Coatings in the amount of $47,300 to replace the riser pipe in Water Tower 4. With pipe corrosion over time, sandblasting produced actual holes in the riser pipe. The riser pipe connects piping below ground to the elevated tank. Reconditioning at Water Tower 7 is complete (other than restoration of landscaping). The contractor is nearing completion of Water Tower 4. Water Tower Reconditioning is in the Water Utility Capital Improvement Plan (CIP). This project is funded with Infrastructure Sales Tax (Fund 450) and is in the budget. With approval of this change order for $47,300, the new contract amount with Classic Protective Coatings will be $1,633,225.

**MOTION:**

On a motion by Terry Ludlum, seconded by Ben Dow, the Utility Committee voted to approve Change Order #3 with Classic Protective Coatings at a cost increase of $47,300 for Project WA1906.

| COMMITTEE: | Present | Yes | No | Unanimous |
|---|---|---|---|---|
| | | | | X |
| | | | | Proxy |
| Anthony Gehrig, City Commissioner | X | | | |
| Kent Costin, Director of Finance | X | | | |
| Brian Ward, Water Plant Supt. | X | | | |
| Mark Miller, Wastewater Plant Supt. | X | | | |
| Bruce Grubb, City Administrator | X | | | |
| Scott Liudahl, City Forester | X | | | |
| Terry Ludlum, Solid Waste Utility Director | X | | | |
| James Hausauer, Wastewater Util. Director | X | | | |
| Troy Hall, Water Utility Director | X | | | |
| Ben Dow, Public Works Operations Director | X | | | |
| Brenda Derrig, City Engineer | X | | | |

ATTEST:

T. B. Hall

Troy B. Hall
Water Utility Director

C: Tim Mahoney, Mayor
Commissioner Strand
Commissioner Piepkorn
Commissioner Preston

THE CITY OF Fargo
FAR MORE

**Water Treatment Plant**
435 14th Avenue South
Fargo, ND 58103
Office: 701.241.1469 | Fax: 701.241.8110
www.FargoND.gov

**MEMORANDUM**
September 18, 2020

---

**To:** Utility Committee

**From:** Troy B. Hall, Water Utility Director TBH

**Re:** Project WA1906 Change Order #3 – Water Towers 4 & 7 Reconditioning

---

## Introduction

Attached, please find a proposed change order with Classic Protective Coatings (Project WA1906). This is a water tower reconditioning project at both Water Towers 4 & 7. Full reconditioning of water towers is anticipated to occur about every 20-30 years. Water Tower 7 reconditioning is now complete. Reconditioning work at Water Tower 4 (I-29 & 12th Ave. North) is now taking place and will be complete by the end of the construction season. Under this change order, the riser pipe in Water Tower 4 will be replaced due to corrosion. This change is a cost increase of $47,300. With approval of the proposed change order, the new contract price will be $1,633,225. Project WA1906 is being cash funded using Infrastructure Sales Tax (Fund 450) and is in the Water Utility budget.



**Hole in Water Tower 4 riser pipe after sand blasting. Metal is thin in numerous areas of pipe.**

## Detailed Summary of Change Orders

The single item considered under this change order and rationale is summarized in the following table:

| No. | Item | Cost | Reason |
|---|---|---|---|
| 1 | Replace riser pipe in Water Tower 4 | $47,300.00 | Corrosion over time |
| | **Total – Change Order No. 3** | **$47,300.00** | |

## Plan of Financing

Water Utility staff recommends this change order be paid with Infrastructure Sales Tax (Fund 450) according to the budget line for Water Tower Reconditioning, Project WA1906.

**SUGGESTED MOTION:**

Approve Change Order No. 3 with Classic Protective Coatings in the amount of $47,300 under Project WA1906.

Your consideration in this matter is greatly appreciated.

www.ae2s.com

September 11, 2020

City of Fargo
Attn: Mr. Dan Portlock
225 4th Street North
Fargo, ND 58102

**Re: Fargo Water Tower Nos. 4 & 7 Reconditioning**
**Change Order No. 3**

Dear Mr. Portlock:

Please find attached, Change Order No. 3 for the above-mentioned project. The change order is to include the work required to remove and replace the existing 16-inch diameter steel inlet pipe with a newly coated 16-inch Schedule 40 steel inlet pipe and repair coatings that may be damaged as a result of completing the work. The 16-inch inlet pipe was not scheduled to be replaced with this project but after removing the 3-inches of insulation and aluminum jacketing that covered the inlet pipe, it was discovered that the inlet pipe had never been coated (internally or externally) and that severe corrosion existed throughout the pipe resulting in areas where the wall thickness of the pipe was minimal and near the point of leaking. Replacement of the inlet pipe at this time is recommended.

The Substantial and Final Completion dates will be increased by seven (7) days as a result of this change order to allow the Contractor additional time to complete the work after the work of the original contract is complete. The construction contract total, as a result of this change order, is expected to increase $47,300.00 for a total of $1,633,225.00.

Upon the City of Fargo's acceptance of Change Order No. 3, please sign and date. Return a scanned copy of the formal change order form containing all signatures to AE2S. AE2S will forward the signed copy to the contractor and will retain a copy for our records. AE2S greatly appreciates the opportunity to assist the City with construction phase services for the project. If you have any questions or need additional information, please do not hesitate to contact me.

Sincerely,

**AE2S**

Kevin Johnson, PE
Project Manager

# Change Order

**No. 3**

Date of Issuance: 09/10/2020 Effective Date: 09/10/2020

| | | |
|---|---|---|
| Project: Fargo Water Tower Nos. 4 & 7 Reconditioning | Owner: City of Fargo, ND | Owner's Contract No.: |
| Contract: General Construction | | Date of Contract: 11/11/2019 |
| Contractor: Classic Protective Coatings, Inc. | | Engineer's Project No.: P00803-2019-013 |

**The Contract Documents are modified as follows upon execution of this Change Order:**

Description: This change order includes work included in Work Change Directive No. 2 which includes the removal and replacement of the existing 16-inch diameter steel inlet pipe with a newly coated 16-inch Sch 40 steel inlet pipe and repair of coatings damaged by the work.

This change order will increase the contract times by increasing the dates of substantial and final completion by seven (7) days.

Attachments: Work Change Directive No. 2

| CHANGE IN CONTRACT PRICE: | CHANGE IN CONTRACT TIMES: |
|---|---|
| Original Contract Price: | Original Contract Times: ☒ ~~Working days~~ ☐ Calendar days |
| | Substantial completion (days or date): November 1, 2020 |
| $ 1,573,925.00 | Ready for final payment (days or date): November 30, 2020 |
| [Increase] [~~Decrease~~] from previously approved Change Orders No. 1 to No. 2: | ~~[Increase] [Decrease] from previously approved Change Orders No. to No.:~~ |
| | ~~Substantial completion (days):~~ |
| $ 12,000.00 | ~~Ready for final payment (days):~~ |
| Contract Price prior to this Change Order: | Contract Times prior to this Change Order: |
| | Substantial completion (days or date): November 1, 2020 |
| $ 1,585,925.00 | Ready for final payment (days or date): November 30, 2020 |
| [Increase] [~~Decrease~~] of this Change Order: | [Increase] [~~Decrease~~] of this Change Order: |
| | Substantial completion (days or date): 7 days |
| $ 47,300.00 | Ready for final payment (days or date): 7 days |
| Contract Price incorporating this Change Order: | Contract Times with all approved Change Orders: |
| | Substantial completion (days or date): November 8, 2020 |
| $ 1,633,225.00 | Ready for final payment (days or date): December 7, 2020 |

| RECOMMENDED: | ACCEPTED: | ACCEPTED: |
|---|---|---|
| By: [signature] | By: | By: Ray Witke |
| Engineer (Authorized Signature) | Owner (Authorized Signature) | Contractor (Authorized Signature) |
| Date: 9-10-2020 | Date: | Date: 9-11-20 |

**Work Change Directive** 2

| | | | |
|---|---|---|---|
| Date of Issuance: | 9/8/20 | Effective Date: | 9/8/20 |
| Owner: | City of Fargo, North Dakota | Owner's Contract No.: | |
| Contractor: | Classic Protective Coatings, Inc. | Contractor's Project No.: | |
| Engineer: | AE2S | Engineer's Project No.: | P00803-2019-013 |
| Project: | Fargo Water Tower Nos. 4 and 7 Reconditioning | Contract Name: | Contract No. 1 – General Construction |

Contractor is directed to proceed promptly with the following change(s):

Description:
This work change directive includes the work associated for the Contractor to 1) completely remove the existing corroded 16-inch steel inlet pipe, 2) shop blast and zinc prime a new 16-inch Schedule 40 steel inlet pipe, 3) install a new inlet pipe that extends from the expansion fitting flange at the base of the tower to the top penetration inside the bottom of the tank bowl, and 4) complete touch-up repairs to damaged coating surfaces after installation of the new inlet pipe. The cost increase for this Work, as provided by the Contractor on the attached proposal, is $47,300.00.

The net change in contract price as a result of this Work Change Directive No. 2 is an increase in the amount of $47,300.00.

**Purpose for Work Change Directive:**
Directive to proceed promptly with the Work described herein, prior to agreeing to changes on Contract Price and Contract Time, is issued due to: *[check one or both of the following]*

☐ Non-agreement on pricing of proposed change.

☒ Necessity to proceed for schedule or other Project reasons.

**Estimated Change in Contract Price and Contract Times (non-binding, preliminary):**

Contract Price $ $47,300.00 [increase]. [no change].

Contract Time 0 days

**Basis of estimated change in Contract Price:**

☒ Lump Sum ☐ Unit Price

☐ Cost of the Work ☐ Other

| RECOMMENDED: | AUTHORIZED BY: | RECEIVED: |
|---|---|---|
| By: | By: | By: Ray Witke |
| Engineer (Authorized Signature) | Owner (Authorized Signature) | Contractor (Authorized Signature) |
| Title: Project Manager | Title: WATER UTILITY ENGINEER | Title: President |
| Date 9/8/20 | Date: 9/10/20 | Date: 9/11/20 |

Classic
Protective Coatings

September 2, 2020

Advanced Engineering and Environmental Services, Inc.
4170 28th Avenue South
Fargo, ND 58104

ATTN: Kevin Johnson, P.E. Copy: Scott Kriese, KLM Engineering

Description: 500,000 Gallon Elevated Water Tower #4, 1214 38th Street North, Fargo, ND 58104

RE: **Proposed Change Order 3**

| | | |
|---|---|---|
| 1 | Completely remove existing 16" failing steel inlet pipe | |
| 2 | Shop blast and zinc prime new 16" Schedule 40 pipe | |
| 3 | Install new fill pipe from bottom flange at expansion joint to the top penetrate inside bottom of bowl. | |
| 4 | Touch up damaged coating surfaces, prep and prime after installation | |
| | TOTAL | $47,300.00 |

APPROVAL

By: _____ Title: WATER UTILITY ENGINEER Date: 9/10/20

If acceptable to the City of Fargo, please provide a signature above approving the start of production while the formal change order paperwork is completed.

Sincerely

Brad Smith
Project Manager

THE CITY OF Fargo
FAR MORE

(31)

**Water Treatment Plant**
435 14th Avenue South
Fargo, ND 58103
Office: 701.241.1469 | Fax: 701.241.8110
www.FargoND.gov

October 1, 2020

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

**Subject:** Sole Source with JDP Electric, Inc. for Miscellaneous Small Water Utility Projects

Dear Commissioners:

Water Utility staff is seeking approval to a Sole Source with JDP Electric, Inc. (JDP) in the estimated amount of $95,000. The attached sole source form was approved by the City of Fargo Finance Committee on September 28, 2020. Since the cumulative cost of annual services will exceed $50,000, this sole sources request needs City Commission approval per the Purchasing Policy. A sole source form for JDP was approved by the Finance Committee for $50,000 in January, 2020. However, the miscellaneous small projects such as network cabling and instrumentation wiring will exceed the originally approved amount. Most of this is minor adjustments associated with the operation of the new Membrane Water Treatment Plant (WTP).

Water Utility personnel attempts to get proposal pricing from multiple electrical contractors with projects that are estimated to exceed $25,000 and sometime less. In the past, JDP has been the low proposal price for most smaller projects. WTP staff has had difficulty getting proposals from other electrical contractors in several cases when asked to consider a project. For the small projects typically estimated at less than $10,000, JDP is a good option. JDP is very familiar with Water Utility facilities and requires less oversight/WTP staff involvement than other electrical contractors. If WTP personnel view an individual proposal from JDP not in line with the scope of work, another price is solicited from other electrical contractors.

Your consideration is greatly appreciated in this matter.

Sincerely,

T B. Hall

Troy B. Hall
Water Utility Director

**SUGGESTED MOTION:**

Approve a sole source with JDP Electric, Inc. in the estimated amount of $95,000 for cumulative electrical services with small projects.

# 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:

JDP ELECTRIC, INC.

Estimated Dollar Amount of Purchase:

$95,000 Total for Multiple Projects

The project/service is required to:

*Seek blanket coverage up to $95,000 with JDP Electric, Inc (JDP) for the total cost of several small, independent Water Utility projects. None of the individual projects would exceed $25,000. A sole source request was approved at the January 2020 Finance Committee for up to $50,000, but the annual costs for JDP services will accumulate to more than $50,000 by end of year.

*Electrical systems maintenance for the City of Fargo Water Utility

*Small electrical projects for City of Fargo Water Utility

Funding for small projects will be within the 2020 budget and coded under the appropriate accounts.

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

JDP Electric, Inc. (JDP) has won many of the recent bids or proposals for the City of Fargo Water Utility. Due to work on multiple projects, JDP electrician and staff are more familiar with the electrical systems at Water Utility facilities compared to other electrical contractors. Using JDP for smaller projects is more time efficient for Water Utility personnel since JDP electricians can work more independently.

For projects that electrical work is estimate at $25,000 or more, proposals are requests from multiple electrical contractors.

**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 recommendation for this sole source is based on work history with JDP Electric, Inc. (JDP). JDP has won many of the recent bids or proposals for the City of Fargo Water Utility. Due to work on multiple projects, JDP electrician and staff are more familiar with the electrical systems at Water Utility facilities compared to other electrical contractors. Using JDP for smaller projects is more time efficient for Water Utility personnel since JDP electricians can work more independently.

****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)

JDP Electric, Inc. (JDP) has won many of the recent bids or proposals for the City of Fargo Water Utility. Due to work on multiple projects, JDP electrician and staff are more familiar with the electrical systems at Water Utility facilities compared to other electrical contractors. Using JDP for smaller projects is more time efficient for Water Utility personnel since JDP electricians can work more independently.

For projects that electrical work is estimate at $25,000 or more, proposals are requests from multiple electrical contractors.

WTP staff have the experience to understand if a JDP Electric quote seems reasonable for the scope of work, if only one quote provided by JDP Electric. If a specific quote seems unreasonable, WTP staff will take corrective steps.

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

N/A

Signature: T B. Hall
(Requestor)

Printed Name: Troy B. Hall

Department: Water Treatment Plant

Title: Water Utility Director

Date: 9/23/2020

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.

TBH **(Requestor initials)**

THE CITY OF Fargo
FAR MORE

**Water Treatment Plant**
435 14th Avenue South
Fargo, ND 58103
Office: 701.241.1469 | Fax: 701.241.8110
www.FargoND.gov

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October 1, 2020

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

**Subject:** Sole Source with Electric Pump for Parts to Rebuild Three (3) Sludge Pumps

Dear Commissioners:

Water Utility staff is seeking approval for a Sole Source with Electric Pump to purchase parts for the rebuilding of three (3) sludge pumps. The attached sole source form was approved by the City of Fargo Finance Committee on September 28, 2020. Since the total cost of parts exceeds $50,000, this sole source request needs City Commission approval per the Purchasing Policy. The pumps are likely original to the Residuals Plant on the Water Plant campus. The residuals Plant was built in the 1970's. The pump parts are proprietary with only a single price available.

Water Utility personnel researched options for rebuilding pumps or purchasing new pumps (with same function) from different manufacturers. The rebuild option was viewed as the lowest cost means to get through the next 5-7 years. The Residual Plant – as a whole – is on the Water Utility Capital Improvement Plan (CIP) for replacement. Facility Plan work is currently underway. This sole source is viewed as the best option to get through the short-term for the sludge pumps.

Your consideration is greatly appreciated in this matter.

Sincerely,

T. B. Hall

Troy B. Hall
Water Utility Director

**SUGGESTED MOTION:**

Approve a sole source with Electric Pump in the estimated amount of $60,000.

# 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:

Electric Pump

Estimated Dollar Amount of Purchase:

$60,000

The project/service is required to:

Parts to repair three pumps at the Residuals Facility. Sludge Pumps 901, 902, and 903. Repair parts include rotor shaft, rotor bearings, gear joints, and other parts.
Example parts for each sludge pump include:
*Intermediate Bearing: $1,651, 2 each pump
*Drive Shaft: $10,121
*Gear Joint: $2,877, 2 each pump
Costs for these repair parts will be charges to General Equipment Repair budget line in the Water Treatment Operations budget (Fund 501/Division 3051). Two pumps will be repaired in 2020 and the third pump will be repaired in the 2021.

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

| |
|---|
| The sludge pumps installed at the Residuals Facility are manufactured by Netzsch. So, we have them currently installed. The parts are proprietary and can only be purchased through Electric Pump. A new Residuals Facility is in the Water Utility Capital Improvement Plan (CIP). We are looking for about 5-7 years in keeping the existing Residuals Plant operational. After investigation, repair of the existing pumps instead of buying new pumps is viewed as lowest cost option for operation over the next 5-7 years. |

**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. **)

| |
|---|
| Siginificant investigation was perform by Water Utility staff to find the best option for continued pump operation over the next 5-7 years. The purchase of new Netzsch pumps was about $150,000 to $180,000 for two (2) new pumps to replace existing pumps. Prices for new pumps from another manufacturer were attained. The cost was substantially lower, but there was concern about the reliability and maintenance associated with the other manufacturer. It was concluded that repairing the existing pumps at about $21,000 in parts was the lowest cost, best option. Water Utility maintenance personnel will perform the repairs and replace the parts. |

****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 purchase of new Netzsch pumps was about $150,000 to $180,000 for two (2) new pumps to replace existing pumps. Prices for new pumps from another manufacturer were attained. The cost was substantially lower, but there was concern about the reliability and maintenance associated with the other manufacturer. It was concluded that repairing the existing pumps at about $21,000 in parts was the lowest cost, best option. |

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

| |
|---|
| N/A |

Signature: Troy B. Hall
(Requestor)

Printed Name: Troy B. Hall

Department: Water Treatment Plant

Title: Water Utility Director

Date: 9/23/20

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.

TBH (Requestor initials)

#903 - #904



# QUOTATION

ELECTRIC PUMP

201 4th Ave SW
New Prague, MN 56071 USA

Telephone: (952)758-6600 / FAX (952)758-7778
Toll Free 1-800-536-5394

www.electricpump.com

QUOTE NUMBER: 0181339
QUOTE DATE: 8/12/2020
EXPIRE DATE: 9/14/2020

SALESPERSON: JEFF JANIKSELA
CUSTOMER NO: 2411469
QUOTED BY: MKH
NETZSCH PARTS

QUOTED TO:
CITY OF FARGO WATER
225 4TH STREET N
FARGO, ND 58102

JOB LOCATION:
CITY OF FARGO WATER DEPT
435 14TH AVENUE S
ATTN: SCOTT MILLER
FARGO, ND 58103

CONFIRM TO:
SCOTT MILLER 701-456-6705

***** QUOTE ORDER - DO NOT PAY *****

| CUSTOMER P.O. | SHIP VIA | F.O.B. | TERMS |
|---|---|---|---|
| | BEST WAY | | NET 30 DAYS |

| ITEM NUMBER | UNIT | ORDERED | SHIPPED | BACK ORDER | PRICE | AMOUNT |
|---|---|---|---|---|---|---|
| | | RE: PARTS FOR NETZSCH MODEL 2NE100A, JOB # 301-3913, MACH # 12821, 12820, 12884, 12885 | | | | |
| *580613 | EACH | 2.00 | 0.00 | 0.00 | 1,651.00 | 3,302.00 |
| | | INTERMEDIATE BEARING # 20 | | | | |
| *512313 | EACH | 1.00 | 0.00 | 0.00 | 30.00 | 30.00 |
| | | BRG RETAINER CIRCLIP # 35 | | | | |
| *516844 | EACH | 1.00 | 0.00 | 0.00 | 22.00 | 22.00 |
| | | FELT RING # 40 | | | | |
| *500128 | EACH | 8.00 | 0.00 | 0.00 | 12.00 | 96.00 |
| | | CYL HEAD SCREW # 45 | | | | |
| *514151 | EACH | 3.00 | 0.00 | 0.00 | 60.00 | 180.00 |
| | | GREASE RETAINING RING # 50 | | | | |
| *873344 | EACH | 1.00 | 0.00 | 0.00 | 10,120.00 | 10,120.00 |
| | | DRIVE SHAFT K F.PACKING # 1005 | | | | |
| *593680 | EACH | 2.00 | 0.00 | 0.00 | 18.00 | 36.00 |
| | | STUB SCREW # 7035 | | | | |
| *501137 | EACH | 2.00 | 0.00 | 0.00 | 12.00 | 24.00 |
| | | HEX NUT # 7035 | | | | |
| *877316 | EACH | 1.00 | 0.00 | 0.00 | 417.00 | 417.00 |
| | | LANTERN RING # 5035 | | | | |
| *509207 | EACH | 24.00 | 0.00 | 0.00 | 9.00 | 216.00 |
| | | CYL HEAD SCREW # 5035 | | | | |
| *516516 | EACH | 2.00 | 0.00 | 0.00 | 41.00 | 82.00 |
| | | O-RING # 8025 | | | | |
| *598930 | EACH | 2.00 | 0.00 | 0.00 | 30.00 | 60.00 |
| | | NUT # 5043 | | | | |
| *685747 | EACH | 2.00 | 0.00 | 0.00 | 2,877.00 | 5,754.00 |
| | | GEAR JOINT K # 5015 | | | | |
| *873396 | EACH | 2.00 | 0.00 | 0.00 | 257.00 | 514.00 |
| | | JOINT SEAL K-SM # 8021 | | | | |

*** Continued ***

# QUOTATION

ELECTRIC PUMP

201 4th Ave SW
New Prague, MN 56071 USA

Telephone: (952)758-6600 / FAX (952)758-7778
Toll Free 1-800-536-5394

www.electricpump.com

QUOTE NUMBER: 0181339
QUOTE DATE: 8/12/2020
EXPIRE DATE: 9/14/2020

SALESPERSON: JEFF JANIKSELA
CUSTOMER NO: 2411469
QUOTED BY: MKH
NETZSCH PARTS

QUOTED TO:
CITY OF FARGO WATER
225 4TH STREET N
FARGO, ND 58102

JOB LOCATION:
CITY OF FARGO WATER DEPT
435 14TH AVENUE S
ATTN: SCOTT MILLER
FARGO, ND 58103

CONFIRM TO:
SCOTT MILLER 701-456-6705

***** QUOTE ORDER - DO NOT PAY *****

| CUSTOMER P.O. | SHIP VIA | F.O.B. | TERMS |
|---|---|---|---|
| | BEST WAY | | NET 30 DAYS |

| ITEM NUMBER | UNIT | ORDERED | SHIPPED | BACK ORDER | PRICE | AMOUNT |
|---|---|---|---|---|---|---|

FREIGHT IS ADDITIONAL. DELIVERY IS 5-6 WEEKS

PLEASE CONTACT US WITH ANY QUESTIONS OR TO PLACE AN ORDER.

SINCERELY--MYRA HOFFMAN 952-666-1287
myrah@electricpump.com
CC: JEFF JANIKSELA 612-867-6219

Proprietary Supplier
Could not get other quotes
SSP may need to be done.
Ben

**All return goods must have written approval from Electric Pump, Inc. before returning. Credit will not be issued without written approval and if applicable there will be a Restock Fee.**

| | |
|---|---|
| Net Order: | 20,853.00 |
| Less Discount: | 0.00 |
| Freight: | 0.00 |
| Sales Tax: | 0.00 |
| **Order Total:** | 20,853.00 |

ABOVE PRICING EFFECTIVE FOR 30 DAYS

THE CITY OF Fargo FAR MORE

**Water Treatment Plant**
435 14th Avenue South
Fargo, ND 58103
Office: 701.241.1469 | Fax: 701.241.8110
www.FargoND.gov

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October 1, 2020

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

**Subject:** Sole Source and Procurement Agreement of Four (4) Trillium Floway Pumps

Dear Commissioners:

Water Utility staff is seeking approval to Sole Source and sign Procurement Agreements for four (4) Trillium Floway pumps. The cost of the four (4) pumps is $647,800 per the attached quotation. The pumps are eligible for 60 percent grant funding through the State Water Commission (SWC). The sole source was approved by the City of Fargo Finance Committee on September 28, 2020. The pumps will increase Red River Pump Station capacity to support Regional Water Service and the treatment capacity increase with the Membrane Water Treatment Plant in service.

The Red River Pump Station (RRPS) ran wide open with all pumps on for several weeks this past summer. The Water Utility has a goal to have some increased capacity by June 1, 2020. Currently, there are long lead times for pumps and other equipment. The full RRPS project includes flood protection in addition to capacity increase. The full project is expected to bid by early-2021 and includes a 75% FEMA grant for flood projection. The Procurement Agreement for the Trillium Floway pumps will be transferred to the General Contractor once the full RRPS is bid and contracts approved. It is not realistic to have increased capacity at the RRPS in summer of 2021 without pre-purchasing these pumps.

Four (4) different pump options from two (2) different pump manufactures were evaluated for the project. All prices per pump were within $7,514 of each other. The recommended Trillium Floway option is rated at 12.7 million gallons per day (MGD) and was not the high or low price. There are nine (9) Trillium Floway large capacity pumps that have been installed in Water Utility facilities for at least 23 years. None of the Trillium Floway pumps have ever needed any significant maintenance in 23 years. There have been mechanical issues with installed large capacity pumps from other manufacturers. This is a primary reason for the sole source request.

Your consideration is greatly appreciated in this matter.

Sincerely,

TB Hall

Troy B. Hall
Water Utility Director

**SUGGESTED MOTION:**

Approve a sole source and Procurement Agreement with Trillium Floway in amount of $647,800 for four (4) large-capacity pumps to improve Red River Pump Station capacity for raw water supply to the Water Treatment Plants.

# Trillium Pumps USA, Inc.

30 Sep 2020

AE2S
4170 28th
Avenue South
Fargo, ND 58104

Quotation number: 1214667
Revision:

Attn: Ryan Grubb

Project: Fargo, ND Raw Water Upgrade
Your reference:

Thank you for the opportunity to quote the above referenced project. We are pleased to provide this information for your consideration.

The following is a firm price summary for this quotation. Please see item specific pages for more details.

**FLOWAY® PUMPS**

| Item number | Service | Size | Unit Price | Unit Freight | Qty | Extended Price |
|---|---|---|---|---|---|---|
| P103-P106 | Raw Water Pumps 3,4,5, and 6 | 23TKH - 1 Stage Product Lube - Sump Pump NSF 61 | $158,150 | $ 3,800 | 4 | $647,800 |
| | | | | | Grand Total | $647,800 |

**COMMENTS:** Our quote was prepared with the following specifications:
Section 42 23 31 Vertical Turbine Pumps
Section 26 05 23 Electric Motors

Please note: Any requirements not outlined in the referenced sections above will not be the responsibility of Floway.

Our quote does not include:
- Oil, lubricants or grease
- Gauges, valves or barrel air release valves and related piping/appurtenances
- Barrel anchor bolts
- Variable frequency drives
- Control panels
- Sales tax

Section 42 23 31
2.03 B.3. - Bowl Shaft quoted 416 SS (ASTM A582 UNS S41600) in lieu of A743 CF-8M
2.03 B.7. - Bearing retainers to be fabricated steel and weld in per 2.03.D.2.e, in lieu of Ductile Iron drop in type.
2.03 B.13. - Suction Strainer quoted 316 SS, in lieu of 304 SS.
2.03.D.1.f.- Clarification: This alludes to a fresh water flush arrangement with enclosed lines haft bearings. Specification Section 2.03.B.6. states bearings are product lubricated and made of SBR. Quoted Pump will be product lubricated, therefore a fresh water flush line to the packing box is not necessary for operation.
Curve Clarification - Maximum NPSH-R is 37' at runout flow of 12,500 GPM. NPSH-A must be 3' greater than NPSH-R at that flow to prevent cavitation. Pump output should be restricted via VFD control logic if that safety margin is not available.

Section 26 05 23
1. [Clarification] 2.01.I - Motor meets 0.08 IPS only.

2. [Exception] 2.01.M - Leads are provided with a white tag/label, not marked throughout the entire length.
3. [Clarification] 2.01.P - Motors shall have stainless steel laser etched nameplate with data in accordance with NEMA MG1.
4. [Clarification] 2.01.T.1.e - Thermostats are installed in the connection end-turns of the motor winding, not embedded in the winding.

General Comments:
5. Motor shall be designed, built and tested per NEMA – MG1 standard. Exception to other standards and local codes.
6. All referenced to coordination, certification, sizing, installation, inspection, shipping, commissioning, execution, field testing, training, delivery, storage or handling to be done by others.
7. All VFD, monitors, anchor bolts, skid, foundations, relays, raceway, transmitters, controllers, baseplate, sliding rails, spare parts, wire, special tools, motor starters, coupling and/or cables are provided by others.
8. We have reviewed only motor related clauses in the specification. Compliance with rest of the specification by others.
9. Please note – Storage Fees: As per Nidec's Standard Terms and Conditions, Ordered Goods produced by Nidec in compliance with Purchase Order requirements which cannot be shipped solely due to customer missing information, such as but not limited to carrier arrangements, will be charged 10% of the P.O. value 5 business days after Nidec customer notification.

**SHIPMENT AND FREIGHT TERMS:** Shipment is quoted with freight term: Per the freight term listed in the Comments and Clarifications Section. Partial shipment allowed. Shipment & invoicing will occur upon shipment of equipment. Shipment schedules are based on factory loading at time of order. Should shipment be postponed due to project or site delays Trillium Pumps USA will invoice and hold the shipment. Shipment delays exceeding 30 days from the completed date may be subject to reasonable storage charges.

**LEADTIME: Submittal will be approximately 8 weeks after order receipt, contingent upon order acceptance within 10 business days of receipt.** Orders will be accepted subject to buyer's credit approval and subject to Trillium Pumps USA, Inc.'s Terms and Conditions of Sale.

**Shipment lead time will be approximately 22 weeks after written release to manufacture.** Shipment lead times are an estimate at time of quotation and subject to change based on quote validity.

**SCOPE OF SUPPLY:** Please note any requirements not outlined in the referenced specification sections as noted on the cover page of this quotation will not be the responsibility of Trillium Pumps USA. Any separate specifications made reference to within the noted specifications, whether in part or whole, will not be considered in this quotation.

Trillium Pumps USA, Inc. Terms and Conditions of Sale per attached will apply to this quotation. If this is not acceptable, mutually agreeable terms and conditions may be negotiated at time of order placement.

**SPECIFICATIONS:** Written request. See above listing of specifications received.

**VALIDITY:** This offer is valid for 60 days from date issued. Quoted prices will be held firm thru shipment if order is released for manufacture within 60 days from order entry date. Otherwise, a price adjustment may be applied.

In the event that Trillium Pumps USA, Inc. is successful in the tender based on this Scope Letter, please issue the formal Purchase Order to the following address:

Trillium Pumps USA, Inc.
2494 S. Railroad Ave.
Fresno, CA 93706

**PRICE:** Quoted prices will be held firm through shipment if order is released for manufacture within 60 days from order entry date, and approved for shipment within the leadtime quoted. Otherwise, a price adjustment may be applied. Price quoted is for all items purchased and shipped at one time. In the event of a partial order, we will review and adjust the freight price accordingly. Freight charges will be those in effect at time of shipment. Due to volatility in the commodities markets, Trillium Pumps USA reserves the right to add a material surcharge on pipe, plate, and other materials in line with the commodity indices. Cost surcharges must be agreed to prior to order acceptance.

**PAYMENT TERMS:** 20% upon approval of submittals; 30% upon receipt of major pump materials at factory for production (castings); 50% upon shipment and invoice

**PACKAGING:** For domestic shipment via commercial carrier. Export boxing and documentation requirements are an option with price adder.

**START-UP:** Start-up/assistance by authorized Rep. included. Invoice for start-up services will be issued when services are complete or 8 weeks from pump shipment whichever occurs first.

**QUALITY STANDARDS:** All our manufacturing locations are ISO 9001-2008 certified.

**TERMS AND CONDITIONS:** This quotation is based solely upon the terms and conditions set forth herein including attachments. They supersede and reject any conflicting terms and conditions of Purchaser. Any other terms and conditions that Purchaser may propose are subject to requotation.

We hope you find our quotation in line with your requirements. However, if you have any questions, please do not hesitate to contact us.

Sincerely,

Rick Lemon
Trillium Region 103

CC: Ed Dunn – Trillium Regional Sales Manager, Municipal
Mobile: +1 (630) 853-5479
Email: Ed.Dunn@trilliumflow.com

TRILLIUM FLOW TECHNOLOGIES

**Customer**: AE2S
**Reference**:

**Customer Technical Offer**
Trillium Pumps USA, Inc. SCORE 20.3.5

| | | | |
|---|---|---|---|
| Item number | P103-P106 | Size / Stages | 23TKH / 1 |
| Quote number | 1214667 | Nominal pump speed | 1175 rpm |
| Overall Pump Length | 43.40 ft | Condition Point | 8,820.0 USgpm @ 78.00 ft TDH |

## FLOWAY® PUMPS

| Qty | Description |
|---|---|
| 4 | *23TKH - 1 Stage Product Lube - Sump Pump NSF 61/372* |
| | **Discount code** |
| | **Pump Details** |
| | Speed Operation: Variable Speed |
| | Project Release Status: Submit For Approval |

## Bowl Assembly

| Qty | Description |
|---|---|
| 4 | **Bowl Assembly - 23TKH - 1 Stage** |
| | **Bowl Details** |
| | Bowl Connection Type: Flanged |
| | Bowl Material: Cast Iron (ASTM A48 CL 30, Epoxy Lined) [Qty. 1 per Pump] |
| | Bowl Bearings: Bismuth Tin Bronze (UNS C89835) [Qty. 1 Per Pump] |
| | Bowl Bolting Material: 304SS (ASTM F593 Gr CW1) [Qty. 32 Per Pump] |
| | **Impeller Details** |
| | Impeller Material: Aluminum Bronze (ASTM B148 Alloy 952) [Qty. 1 per Pump] |
| | Impeller Balance: ISO 1940 G6.3 (Dynamic) |
| | Impeller Connection: Double Keyed |
| | **Bowl Shaft Details** |
| | Bowl Shaft Size: 2.6875" |
| | Bowl Shaft Material: 416SS (ASTM A582 Type 416) |
| | **Wear Ring Details** |
| | Bowl Wear Rings: Aluminum Bronze (ASTM B505 Alloy 954) |
| | Impeller Wear Rings: Aluminum Bronze (ASTM B505 Alloy 952) |
| | Wear Ring Options: Pinned Wear Rings |
| | **Suction Bell Details** |
| | Suction Bell: Cast Iron (ASTM A48 CL 30) |
| | Suction Bearing: Bismuth Tin Bronze (UNS C89835) [Qty.1 per Pump] |
| | Suction Strainer: Clip On Basket |
| | Suction Strainer Material: 316SS |
| | Sand Collar Material: 416SS (ASTM A582 Type 416) |
| | **Additional Bowl Assembly Details** |
| | Nameplate (Bowl Assembly): Stainless Steel |

## Column Assembly

| Qty | Description |
|---|---|
| 4 | **Column Assembly - 18" x 39.59 ft. lg. - Flanged** |
| | **Column Details** |
| | Tapered Transition (Bottom): 23TK x 18" |
| | Column Pipe Material: Carbon Steel, Plate (ASTM A36), Pipe (ASTM A53) |

TRILLIUM FLOW TECHNOLOGIES™

**Customer**: AE2S
**Reference**:

**Customer Technical Offer**
Trillium Pumps USA, Inc. SCORE 20.3.5

## Column Assembly

| Qty | Description |
|---|---|
| | Column Size: 18" |
| | Column Pipe Thickness: Schedule STD (0.375 Inch Thick) |
| | Flange Bolt Material: 304SS Bolts (ASTM F593-Gr.CW1), Nuts (ASTM F594-Gr.CW1) |
| | **Lineshaft Details** |
| | Lineshaft Size: 1.9375" |
| | Lineshaft Lubrication: Product Lube |
| | Lineshaft Material: 416SS (ASTM A582 Type 416) |
| | Lineshaft Bearing Material: Styrene Butadiene Rubber (SBR) [Qty. 4 Per Pump] |
| | Alert: Max Chlorine Content is 5 ppm for Selected Bearing |
| | Lineshaft Coupling Material: 416SS (ASTM A582 Type 416) [Qty. 5 Per Pump] |

## Discharge Head Assembly

| Qty | Description |
|---|---|
| 4 | **Discharge Head Assembly - 20" x 24.5" - "FR" Head** |
| | **Discharge Head Details** |
| | Discharge Head Size: 20" x 24.5" |
| | Discharge Head Material: Steel, Plate (ASTM A36), Pipe (ASTM A53 Type E, Gr. B) |
| | Discharge Flange Rating: 150# |
| | Nameplate (Discharge Head): Stainless Steel |
| | **Shaft Sealing Details** |
| | Sealing Arrangement: Standard Stuffing Box |
| | Stuffing Box Material: Cast Iron (ASTM A48 Cl.30) |
| | Stuffing Box Bearing Material: Bismuth Tin Bronze (UNS C89835) |
| | **Driver Coupling Details** |
| | Driver Shaft Coupling: Threaded |
| | Driver Shaft Coupling Material: Steel (ASTM A108 Gr 1215) |
| | **Head Shaft Details** |
| | Head Shaft Material: 416SS (ASTM A582 Type 416) |
| | **Discharge Head Accessories** |
| | Miscellanous Options |
| | Drill and tap for pressure guage |

## Sole Plate

| Qty | Description |
|---|---|
| 4 | **Sole Plate** |
| | **Sole Plate Details** |
| | Sole Plate Material: Steel |
| | Soleplate Size: 42"x42"x1.50" |

## Coating

| Qty | Description |
|---|---|
| 4 | **Cleaning and Protective Coatings** |
| | **Protective Coating** |
| | Bowl Assembly: Carboguard 891 Epoxy - Exterior Only |
| | Column: Carboguard 891 Epoxy - Interior and Exterior |

TRILLIUM FLOW TECHNOLOGIES™

**Customer**: AE2S
**Reference**:

**Customer Technical Offer**
Trillium Pumps USA, Inc. SCORE 20.3.5

## Coating

| Qty | Description |
|---|---|
| | Bearing Retainer: Carboguard 891 Epoxy |
| | Discharge Head: Carboguard 891 Epoxy Coating - Interior and Exterior |
| | Soleplate: Carboguard 891 - Top Side Only |
| | Coating Options |
| | NSF Certified |
| | Coating DFT Test (Per SSPC PA-2 Level 1 Inspection Criteria) |

## Testing and Inspection

| Qty | Description |
|---|---|
| 1 | **Testing and Inspection** |
| | **Performance Testing Details** |
| | Test Acceptance Criteria: ANSI/HI 14.6 Grade 1U |
| | Test Tolerance: Flow = -0/+10%, Head = -0/+6%, Power = -0/+10%, Efficiency -0/+0% |
| | Performance Test Options |
| | Complete Unit Test With Lab Driver - 1 units |
| | Performance Test: Non-Witnessed |
| | **Hydro Testing Details** |
| | Hydrotest (Bowl Assembly): Non Witnessed (Pressure Containing Components) - 4 units |
| | Hydrotest (Discharge Head): Non Witnessed - 4 units |
| | Hydrotest (Column): Non Witnessed - 4 units |
| | **Inspection and Analysis** |
| | Analysis |
| | Torsional Rotordynamic Analysis, Stamped by Floway P.E. - 1 units |
| | Lateral and Torsional Rotordynamic Analysis, Stamped by Floway P.E. - 1 units |
| | Structural Natural Frequency Analysis (Head/Motor only), Stamped by Floway P.E. - 1 units |

## Spare Parts

| Qty | Description |
|---|---|
| 1 | **Spare parts** |
| | **Spare Parts** |
| | Spare Parts Selected |
| | Packing Rings |

## Driver

| Qty | Description |
|---|---|
| 4 | **Driver** |
| | **Motor Details** |
| | Shaft Type: Vertical Hollow Shaft |
| | Motor BD: 16.5" |
| | Motor Additional Comments |
| | Vertical HolloShaft Motor<br>WPI Enclosure<br>Random Wound<br>1.15 Service Factor on Sine Wave Power<br>Class "F" Insulation<br>VPI-2000 Insulation System |

TRILLIUM FLOW TECHNOLOGIES™

**Customer**: AE2S
**Reference**:

**Customer Technical Offer**
Trillium Pumps USA, Inc. SCORE 20.3.5

## Driver

| Qty | Description |
|---|---|
| | 3300 Ft.(1000 M) Altitude |
| | +40 C Ambient |
| | Premium Efficiency |
| | Vertical Centrifugal Pump Application |
| | 16.5 Base Diameter (Inches) |
| | Coupling Size: To Be Supplied At Order Entry |
| | Non-Reverse Ratchet |
| | 11250 Pricebook Thrust Value (lbs) |
| | 5747 lbs Customer Down Thrust |
| | 8659 lbs Customer Shutoff Thrust |
| | Inverter Duty NEMA MG1 Part 31 |
| | Variable Torque ~ 10:1 Speed Range |
| | Temperature Rise (Sine Wave): |
| | Class "F" Rise @ 1.15Service Factor (by Resistance) |
| | NEMA Design "B" KVA Code Letter G |
| | Direct-On-Line Start |
| | Continuous Duty |
| | 95.8 % NEMA Nominal Efficiency |
| | 600 % Maximum Inrush |
| | Starts Per Hour: 2 Cold/1 Hot (NEMA Standard) |
| | 30,000 Hours L-10 Bearing Life |
| | Counter CW Rotation FODE |
| | Ground Lug In Conduit Box |
| | AEGIS Ground Ring w/ Colloidal |
| | Silver Shaft Coating |
| | Insulated Bearing - Upper Bracket |
| | 115 Volt Space Heaters |
| | Special Balance ( |
| | AFBMA Number on Main Nameplate |
| | Thermostats - Normally Closed |
| | Tnemec, World Motor Gray Epoxy Paint |
| | Tnemec, Series 66, High Build Primer |
| | Nidec Standard (2-4 Mils) |
| | Short Commercial Test - Unwitnessed |
| | Driver shipping options: Shipped Directly to Customer |

## Delivery

| Qty | Description |
|---|---|
| 4 | **Discount code** |
| | **Pump Details** |
| | Factory Assembled (Unit): Sub-assembled (Bowl, Head and Column Lengths Shipped Separately as Components) |
| | **Packaging and Shipping** |
| | **Delivery Details** |
| | Packaging Options |
| | Export Boxing |

# 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:

Trillium Floway

Estimated Dollar Amount of Purchase:

$637,832

The project/service is required to:

Purchase four (4) large-capacity 12.7 million gallon per day (MGD) pumps for Red River Pump Station capacity improvements. Due to long predicted lead-times on pump orders, Water Utility staff recommends ordering the pumps ahead of project bid to achieve capacity increase by June 1, 2021. Project bidding is expected in early-2021.
State Water Commission (SWC) grant funding at 60 percent is approved for this capacity increase project, but needs to be used by June 30, 2021. Infrastructure Sales Tax (Fund 450) will be used for the local share.

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

Trillium Floway pumps are currently installed at the Fargo Red River Pump Station and also as large-capacity transfer pumps inside the water treatment plant. After about 23 years of operation, none of the nine (9) pumps have ever been pulled for mechanical repairs or other maintenance. Large-capacity pumps from other manufacturers have been problematic in other installations for the Fargo Water Utility.
For price comparison, estimated pump costs from another manufacturer were reviewed by Water Utility staff with consultant help. Trillium Floway was lower cost compared to the other manufacturer.

**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. **)

*There has been a very extensive research by Water Utility staff and consultants as to the best approach to increase the Red River Pump Station capacity. A capacity increase is needed to support regionalization water service and treatment capacity increase with the Membrane Water Treatment Plant. The pump research involved costs analysis, operational considerations, and mechanical reliability.
*For price comparison, estimated pump costs from another manufacturer were reviewed by Water Utility staff with consultant help. Trillium Floway was the lower cost compared to the other manufacturer.
*The costs to rehabilitate and renew the capacity of some existing Red River Pumps Station pumps were analyzed. The rehabilitation costs relatively close to the cost of new pumps. Under any of the capacity increase scenarios, new pumps would be needed for the project.
*Trillium Floway pumps are currently installed at the Fargo Red River Pump Station and also as large capacity transfer pumps inside the water treatment plant. After about 23 years of operation, none of the nine (9) pumps have ever been pulled for mechanical repairs or other maintenance.

****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)

For price comparison, estimated pump costs from another manufacturer were reviewed by Water Utility staff with consultant help. Trillium Floway was the lower cost compared to the other manufacturer.
Trillium Floway pumps have a proven track record for over two (2) decades with Water Utility facilities. After about 23 years of operation, none of the nine (9) pumps have ever been pulled for mechanical repairs or other maintenance. Large-capacity pumps from other manufacturers have been problematic in other installations for the Fargo Water Utility.

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

N/A

Signature: Troy B. Hall
(Requestor)

Printed Name: Troy B. Hall

Department: Water Treatment Plant

Title: Water Utility Director

Date: 9/23/20

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.

TBH **(Requestor initials)**

# REPORT OF ACTION

## PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

(36)

Improvement District No. BN-21-A1 Type: CPM Agreement with NDDOT
NDDOT Project # SU-IM-8-984(153)156

Location: 64th Avenue South – 33rd Street – 38th Street Date of Hearing: 9/28/2020

| Routing | Date |
|---|---|
| City Commission | 10/5/2020 |
| PWPEC File | X |
| Project File | Jeremy Gorden |

The Committee reviewed a communication from Transportation Division Engineer, Jeremy Gorden, regarding approval of the Cost Participation and Maintenance (CPM) Agreement with NDDOT for the construction of new concrete roadway and an overpass over 64th Avenue South. The project's funding summary is as follows:

| | |
|---|---|
| Urban Roads Program Funds | $ 9,932,907 |
| Interstate Maintenance Funds | $ 1,189,575 |
| Cass Rural Water User District | $ 393,956 |
| Street Sales Tax | $ 3,814,386 |
| Special Assessments | $ 10,063,436 |
| **Total Estimated Project Cost** | **$ 25,394,260** |

This project is set to be bid in Bismarck on Friday, November 13, and the project is scheduled to have a substantial completion date in October of 2022.

On a motion by Bruce Grubb, seconded by Kent Costin, the Committee voted to recommend approval of the Cost Participation and Maintenance Agreement.

RECOMMENDED MOTION
Concur with the recommendations of PWPEC and approve the CPM Agreement.

PROJECT FINANCING INFORMATION:
Recommended source of funding for project: NDDOT Urban Roads Program & Interstate Maintenance Funds, CRWUD, Street Sales Tax & Special Assessments

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

Brenda E. Derrig, P.E.
City Engineer

C: Kristi Olson

THE CITY OF Fargo
FAR MORE

**Engineering Department**
225 4th Street North
Fargo, ND 58102
Phone: 701.241.1545 | Fax: 701.241.8101
Email feng@FargoND.gov
www.FargoND.gov

Memo

September 24, 2020

To: PWPEC

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

Subject: Approval of Cost, Participation and Maintenance (CPM) Agreement with NDDOT for 64th Avenue South Construction Project – 33rd Street to 38th Street
City Improvement District No. BN-21-A
NDDOT Project No. SU-IM-8-984(153)156

---

Background

I have attached a CPM Agreement from the Local Government Division of the NDDOT for this project on 64th Avenue South. This project is for the construction of a new concrete roadway and an overpass over I-29. It includes new water main, sanitary sewer, storm sewer, street lighting, a grade separated pedestrian box culvert, and shared use paths.

64th Avenue South is an arterial street that services south Fargo and is located on a section line. It is a vital component to our transportation system.

Funding for the project will consist of Federal Highway Funds from the NDDOT's Urban Roads Program and Interstate Maintenance Fund, Cass Rural Water User District, Special Assessments and Sales Tax Funds (Local). The project's funding summary is as follows:

| | |
|---|---|
| Urban Roads Program Funds | $ 9,932,907 |
| Interstate Maintenance Funds | $ 1,189,575 |
| Cass Rural Water User District | $ 393,956 |
| Street Sales Tax | $ 3,814,386 |
| Special Assessments | $ 10,063,436 |
| | |
| Total Estimated Project Cost | $ 25,394,260 |

This project is set to be bid in Bismarck on Friday, November 13 and the project is scheduled to have a substantial completion date in October of 2022.

**Recommended Motion**
I recommend approval of the CPM Agreement.

Attachments

DocuSign Envelope ID: 95914E21-0D17-4FD8-8F13-29D22A06572F

NDDOT Contract No. 38201184

**North Dakota Department of Transportation**
**COST PARTICIPATION, CONSTRUCTION, AND MAINTENANCE AGREEMENT**
**LPA FEDERAL AID PROJECT**

**Federal Award Information – to be provided by NDDOT**

| | |
|---|---|
| CFDA No: 20.205 | CFDA Title: Highway Planning & Construction |
| Award Name: Federal Aid Highway Program | Awarding Fed. Agency: Federal Highway Admin |
| NDDOT Program Mgr: Marohl, Sengaroun H. | Telephone: 701-328-4449 |

**Notice to Subrecipients: Federal awards may have specific compliance requirements. If you are not aware of the specific requirements for your award, please contact your NDDOT Program Manager.**

**For NDDOT use only.** **FHWA Authorization date:**

**Project No. SU-IM-8-984(153)156** **LPA: CITY OF FARGO**
**Location: FARGO 64TH AVE S FROM 38TH ST S TO 33RD ST S**
**Type of Improvement: Grading, Aggregate Base, PCC Pavement, Hot Mix Asphalt Pavement, Underground Utilities, Box Culvert, Shared Use Path, Signing, Markings, Bridge, Street Lighting, Digital Message Sign** **Length: 0.72 MILE**

This agreement is between the state of North Dakota, acting by and through its Director of Transportation, hereinafter referred to as NDDOT, whose address is 608 East Boulevard Avenue, Bismarck, North Dakota 58505-0700, and the Local Public Agency (LPA) of City of Fargo, North Dakota, hereinafter referred to as the LPA, who agree that:

It is in the best interest of both parties to have the LPA construct and maintain this project according to the terms and conditions set forth in this agreement. NDDOT will assist the LPA with the preparation and distribution of the bid documents and include the project in a scheduled bid opening.

The LPA agrees to the terms and conditions required for this project by the Federal Highway Administration (FHWA).

NDDOT will procure federal funds for the construction of the project, pursuant to Title 23 of the United States Code.

Federal funds obligated for this project shall not exceed 80.93 percent of the total eligible project cost up to a maximum of $ 9,932,907. The balance of the project is the obligation of the LPA.

Additional Funding Clause
NDDOT to provide $1,189,575 of IM federal funds for the 64th Ave Structure over I-29. Any costs over this limited amount will be city responsibility.

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The total eligible project costs include the cost of those items shown in the engineer's detailed estimate as approved for federal funds and any project changes approved by NDDOT for the use of federal funds.

Federal funds may not be obligated by the LPA, prior to FHWA approval of the program documents for the project.

**PART I**

LPA Obligation:

1. To comply with the Disadvantaged Business Enterprise (DBE) requirements established by NDDOT for the project.

   The LPA shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any USDOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The LPA shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of USDOT-assisted contracts. NDDOT's DBE program, as required by 49 CFR Part 26 and as approved by USDOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the LPA of its failure to carry out its approved program, the USDOT may impose sanctions as provided for under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et. Seq.).

   Include the following paragraph verbatim in any subcontracts they sign relative to this project:

   > The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the solicitation, award, and administration of USDOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as NDDOT deems appropriate.

2. To comply with requirements of 23 CFR Part 633, Required Contract Provisions, and 23 CFR Part 635, Construction and Maintenance.

3. To construct the project in conformity with the construction contract, changes to the plans shall meet the requirements of 23 CFR Part 625, Design Standards for Highways and the current edition of the NDDOT's *Local Government Manual*.

4. To construct the project in conformity with the approved environmental documents and provide for the implementation of any measures mitigating the environmental impact of the project.

5. To comply with the procedures outlined in the current edition of NDDOT's *Local Government Manual*.

6. To comply with the current edition of NDDOT's *Right of Way Acquisition Procedures for Local Public Agency Federal Aid Projects*.

7. The LPA will be responsible for any consideration, avoidance, and minimization of impacts upon real property related to this project, such as changes in the grades of streets, inconvenience to property or business, and any loss of light, air, view, access, egress, drainage, support, or nuisance,

8. To comply with the requirements of Appendices A and E of the Title VI Assurances, attached and incorporated by reference herein.

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**PART II**

Contracting and Construction:

1. On behalf of the LPA, NDDOT will:

   a. Prepare the bid package, solicit proposals, and include the project in a scheduled bid opening as provided in the North Dakota Century Code, Chapter 24-02.

   b. Evaluate the bids as to the sufficiency of Disadvantaged Business Enterprise (DBE) participation and the bidder's good faith efforts in satisfying the requirements of the current edition of the DBE special provision, and 49 CFR Part 26. NDDOT shall have exclusive authority in evaluating the adequacy of DBE participation.

   c. Tabulate the bids and send to the LPA.

   d. Concur in the award of the contract, after the LPA has executed the contract, for the sole purpose of enabling the LPA to procure federal aid for the construction of the project.

2. The LPA will:

   a. Review bids to determine the lowest responsible bidder.

   b. Execute the contract.

   c. Distribute copies of the executed contract and contract bond to NDDOT.

3. During the construction of the project, the LPA will:

   a. Provide engineering services, material testing, and inspection of the work as required by the contract documents and the current editions of NDDOT's *Sampling and Testing Manual* and the *Standard Specifications for Road and Bridge Construction.*

   b. Keep all project records and documentation as required in NDDOT's current editions of the *Construction Records Manual* and the *Construction Automated Records System.*

   c. Make all records available to NDDOT and FHWA for inspection upon request. The LPA will submit all documents and records to NDDOT for review before final payment is made. NDDOT will maintain the project records for three years from the final voucher date of FHWA and then return them to the LPA.

   d. Be responsible for any changes in plan, character of work, quantities, site conditions, or any claim for extra compensation. NDDOT will review all contract adjustments to determine if the adjustments are eligible for federal aid. Federal aid shall be limited to the amount stated on page one of this agreement.

**PART III**

Post Construction:

After the project is completed the LPA agrees to:

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1. Control the length and location of curb openings for future entrances and to not permit the length of curb openings for entrances to exceed the length shown on the plans or as shown on a sketch of typical entrances for similar entrances; and prohibit the construction or use of any entrances along the project within the LPA other than those shown on the plans, without prior approval of NDDOT.

2. Prohibit double parking and diagonal parking within the limits of the project. Additional parallel parking will be allowed within the limits of the project if designed considering the effects the added parking will have on the entire traffic corridor. The design will meet the requirements of 23 CFR Part 625, Design Standards for Highways.

3. If the traffic corridor intersects a state highway, the LPA must justify to NDDOT that any new access allowed will have minimal impact to the state highway. The design will meet the requirements of 23 CFR Part 625, Design Standards for Highways.

4. Prohibit the installation of traffic signals and pedestrian beacons on or in connection with the project, including those installed at the sole cost and expense of the LPA or by others, without NDDOT approval.

5. Maintain all traffic control devices on the project according to the current edition of the *Manual on Uniform Traffic Control Devices for Streets and Highways*, as supplemented and amended.

6. Restrict the speed limit on the project at or below the maximum design speed. Any changes to the speed limit will be pursuant to North Dakota Century Code, Chapter 39-09.

7. Provide maintenance to the completed project at its own cost and expense unless otherwise noted in this paragraph. NDDOT will maintain girders spanning over I-29, bridge abutments, Piers, guardrail around the piers and slope protection. All other maintenance including snow and ice control will be city responsibility. The maintenance will be in manner satisfactory to NDDOT and FHWA.

8. Prohibit access and encroachments upon the right of way pursuant to 23 CFR Part 1.23, Rights of Way, and Part 710 Subpart D, Right of Way, Real Property Management.

**PART IV**

General:

1. NDDOT will make all contract payments on behalf of the LPA. Payment will be made upon receipt of the engineer's estimate. The LPA will reimburse NDDOT for payments made less the amount paid by FHWA. No costs will be incurred by NDDOT for the construction and maintenance of this project.

   If the LPA fails to reimburse NDDOT within 60 days after billing for funds advanced on behalf of the LPA, this document will constitute an assignment of funds now or hereafter coming into the hands of the state treasurer, which would otherwise be distributed to the LPA out of the highway tax distribution fund, NDCC 54-27-19. The state treasurer is hereby directed to pay NDDOT all such funds until the total equals the sum billed pursuant to this agreement.

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

3. No official, employee, or other person performing services for the LPA who is authorized to negotiate or approve any contract or subcontract in connection with the project shall have any financial or other personal interest in any such contract or subcontract. No officer or employee of such person retained by the LPA shall have any financial or other personal interest in any real property acquired for the project unless such interest is openly disclosed upon public records of NDDOT and of the LPA, and such officer, employee, or person has not participated in such acquisition for and in behalf of the LPA.

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4. The failure of the state to enforce any provisions of this contract shall not constitute a waiver by the state of that or any other provision.

5. Entities that receive federal funds through NDDOT may be required to obtain an audit in accordance with 2 C.F.R. Part 200, Subpart F. A copy of such audit shall be submitted to NDDOT. Entities that spend less than $750,000 of federal funds from all sources may be subject to reviews by NDDOT at its discretion. Additionally, all entities receiving federal funds through NDDOT shall certify whether a Single Audit has been completed as part of the annual Federal award process. These requirements are applicable to counties, cities, state agencies, Indian tribes, colleges, hospitals, and non-profit businesses.

6. All notices, certificates, or other communications shall be sufficiently given when delivered or mailed, postage prepaid, to the parties at the respective places of business as set forth below or at a place designated hereafter in writing by the parties.

   Local Government Engineer
   ND Department of Transportation
   608 East Boulevard Avenue
   Bismarck, ND 58505-0700

   _____
   _____
   _____
   _____

7. The LPA is advised that its signature on this contract or agreement certifies that any person associated therewith is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three years; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction on any matter involving fraud or official misconduct within the past three years.

8. This agreement constitutes the entire agreement between the parties. No waiver consent, modification or change of terms of this agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this agreement. The LPA, by the signature below of its authorized representative, hereby acknowledges that the LPA has read this agreement, understands it, and agrees to be bound by its terms and conditions.

DocuSign Envelope ID: 95914E21-0D17-4FD8-8F13-29D22A06572F

Executed by the LPA of City of Fargo, North Dakota, the date last below signed.

APPROVED:

CITY/STATES ATTORNEY (TYPE OR PRINT)

SIGNATURE

DATE

LPA of City of Fargo

*

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

SIGNATURE

* Mayor
TITLE

DATE

ATTEST:

Steve Sprague
AUDITOR (TYPE OR PRINT)

SIGNATURE

DATE

Executed by the North Dakota Department of Transportation the date last below signed.

APPROVED as to substance:

LOCAL GOVERNMENT ENGINEER (TYPE OR PRINT)

SIGNATURE

DATE

NORTH DAKOTA
DEPARTMENT OF TRANSPORTATION

DIRECTOR (TYPE OR PRINT)

SIGNATURE

DATE

*Mayor, President or Chairperson of Commission

CLA 19256 (Div. 38)
L.D. Approved 4-12-93; 9-19; C.M. 09/11/2020

DocuSign Envelope ID: 95914E21-0D17-4FD8-8F13-29D22A06572F

Project SU-IM-8-984(153)156

## CERTIFICATION OF LOCAL MATCH

It is hereby certified that the LPA of City of Fargo will provide non-federal funds, whose source is identified below, as match for the amount the LPA is obligated to pay under the terms of the attached agreement with the North Dakota Department of Transportation. The certified amount does not duplicate any federal claims for reimbursement, nor are the funds used to match other federal funds, unless expressly allowed by federal regulation.

**Non-Federal Match Funds provided by LPA.** Please designate the source(s) of funds in the LPA budget that will be used to match the federal funds obligated for this project through the North Dakota Department of Transportation.

**Source:**

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

ATTEST:

Steve Sprague
AUDITOR (TYPE OR PRINT)

SIGNATURE

DATE

APPROVED:

LPA of City of Fargo

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

SIGNATURE

* Mayor
TITLE

DATE

*Mayor, President or Chairperson of Commission

CLA 19256 (Div. 38)
L.D. Approved 4-12-93; 9-19; C.M. 09/11/2020

NDDOT North Dakota Department of Transportation

DocuSign Envelope ID: 95914E21-0D17-4FD8-8F13-29D22A06572F

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

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

1. Compliance with Regulations: The Contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, the Federal Highway Administration, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

2. Non-discrimination: The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the Contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.

4. Information and Reports: The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the Federal Highway Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the Recipient or the Federal Highway Administration as appropriate, and will set forth what efforts it has made to obtain the information.

5. Sanctions for Noncompliance: In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:

   a. withholding payments to the Contractor under the contract until the Contractor complies; and/or
   b. cancelling, terminating, or suspending a contract, in whole or in part.

6. Incorporation of Provisions: The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the Recipient or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

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

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

**Pertinent Non-Discrimination Authorities:**

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

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## Risk Management Appendix

**Routine* Service Agreements With Sovereign Entities and Political Subdivisions of the State of North Dakota:**
**Parties:** **State** – State of North Dakota, its agencies, officers and employees
**Governmental Entity** – The Governmental Entity executing the attached document, its agencies, officers and employees
**Governments** – State and Government Entity, as defined above

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

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

1) **Commercial general liability** and **automobile liability** insurance – minimum limits of liability required of the Governmental Entity are **$250,000 per person** and **$500,000 per occurrence**. The minimum limits of liability required of the State are **$250,000 per person** and **$1,000,000 per occurrence**.
2) **Workers compensation** insurance meeting all statutory limits.
3) The policies and endorsements may not be canceled or modified without **thirty (30) days prior written notice** to the undersigned State representative.

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

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

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

Subcontractor shall secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds authorized to do business in North Dakota: 1) commercial general liability; 2) automobile liability; and 3) workers compensation insurance all covering the Subcontractor for any and all claims of any nature which may in any manner arise out of or result from this agreement. The minimum limits of liability required are $250,000 per person and $1,000,000 per occurrence for commercial general liability and automobile liability coverages, and statutory limits for workers compensation. The Governments shall be endorsed on the commercial general liability policy and automobile liability policy as additional insureds. Said endorsement shall contain a "Waiver of Subrogation" waiving any right of recovery the insurance company may have against the Governments as well as provisions that the policy and/or endorsement may not be canceled or modified without thirty (30) days prior written notice to the undersigned representatives of the Governments, and that any attorney who represents the State under this policy must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under N.D.C.C. Section 54-12-08. Subcontractor's insurance coverage shall be primary (i.e., pay first) as respects any insurance, self-insurance or self-retention maintained by the Governments. Any insurance, self-insurance or self-retention maintained by the Governments shall be excess of the Contractor's insurance and the Subcontractor's insurance and shall not contribute with them. The insolvency or bankruptcy of the insured Subcontractor shall not release the insurer from payment under the policy, even when such insolvency or bankruptcy prevents the insured Subcontractor from meeting the retention limit under the policy. Any deductible amount or other obligations under the Subcontractor's policy(ies) shall be the sole responsibility of the Subcontractor. This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and be placed with insurers rated "A-" or better by A.M. Best Company, Inc. The Governments will be indemnified, saved, and held harmless to the full extent of any coverage actually secured by the Subcontractor in excess of the minimum requirements set forth above. The Government Entity that hired the Subcontractor shall be held responsible for ensuring compliance with the above requirements by all Subcontractors. The Governments reserve the right to obtain complete, certified copies of all required insurance documents, policies, or endorsements at any time.

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

RM Consulted 2007
Revised 5-09

NDDOT
North Dakota
Department of Transportation

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| DESIGN DATA - 64TH AVENUE SOUTH | | | | |
|---|---|---|---|---|
| Traffic | Average Daily | | | |
| Current 2020 | Pass: 395 | Trucks: 15 | Total: 410 | |
| Forecast 2045 | Pass: 17,250 | Trucks: 350 | Total: 17,600 | |
| Clear Zone Distance: 18' (4:1) | | Design Speed: 35 MPH | | |
| Minimum Sight Dist. for Stopping: 250 FT | | Bridges: HL-93 | | |
| Sight Dist. for No Passing Zone: 550 FT | | | | |
| Pavement Design Life: 30 (years) | | | | |

| STATE | PROJECT NO. | PCN | SECTION NO. | SHEET NO. |
|---|---|---|---|---|
| ND | SU-IM-8-984(153)156 | 21564 | 1 | 1 |

# JOB # 1
# NORTH DAKOTA
# DEPARTMENT OF TRANSPORTATION

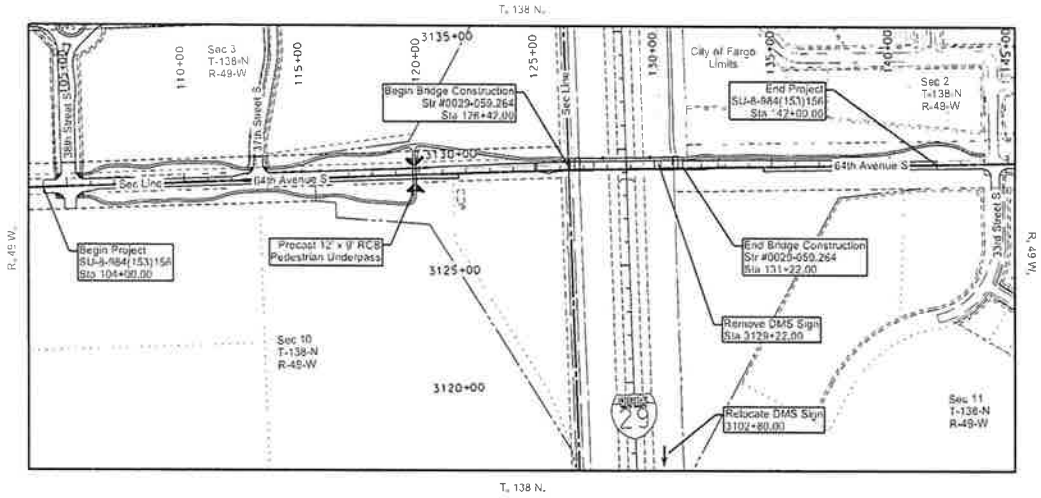
SU-IM-8-984(153)156

City of Fargo Improvement District BN-21-A1
Cass County
64th Ave S - 38th St S to 33rd St S

Grading, Aggregate Base, PCC Pavement, Hot Mix Asphalt Pavement, Underground Utilities, Box Culvert, Shared Use Path, Signing, Pavement Markings, Bridge, Street Lighting, Digital Message Sign

GOVERNING SPECIFICATIONS:
2020 Standard Specifications adopted by the North Dakota Department of Transportation and the Supplemental Specifications effective on the date the project is advertised.

| PROJECT NUMBER \ DESCRIPTION | NET MILES | GROSS MILES |
|---|---|---|
| SU-IM-8-984(153)156 | 0.720 | 0.720 |






STATE COUNTY MAP

| DESIGNER |
|---|
| Erik Gilbertson, PE |
| Josh Schroeder, PE |
| Traci K. Sletmoe, PE |
| Scott Middaugh, PE |
| Todd Hummel, PE |
| Jordan M. Gerber, PE |

CITY OF FARGO

Brenda Derrig /s/ 08/31/20

ND DEPARTMENT OF TRANSPORTATION
OFFICE OF PROJECT DEVELOPMENT

Chad Orn /s/ 09/04/20

KLJ

This document was originally issued and sealed by Scott Middaugh, Registration Number PE- 7499, on 08/26/20 and the original document is stored at the North Dakota Department of Transportation

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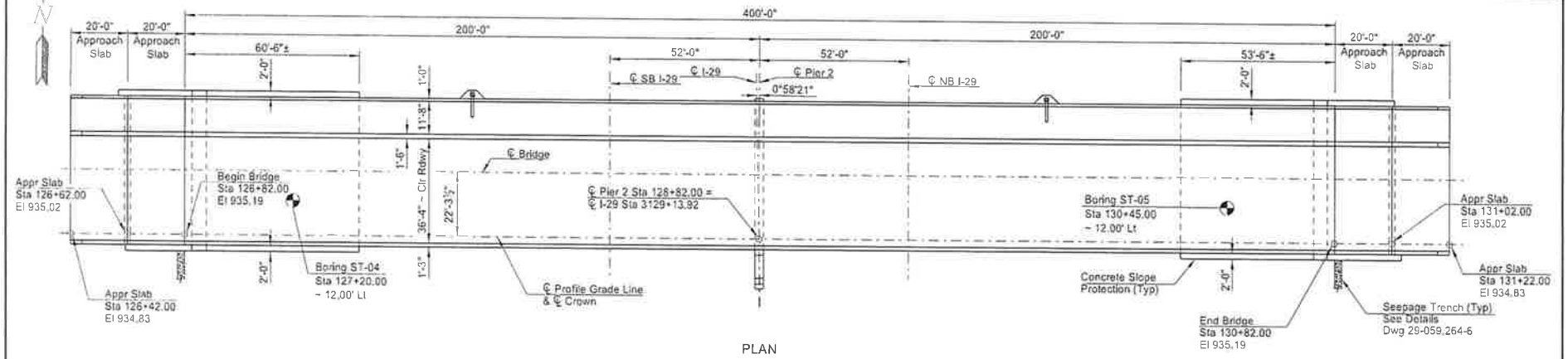
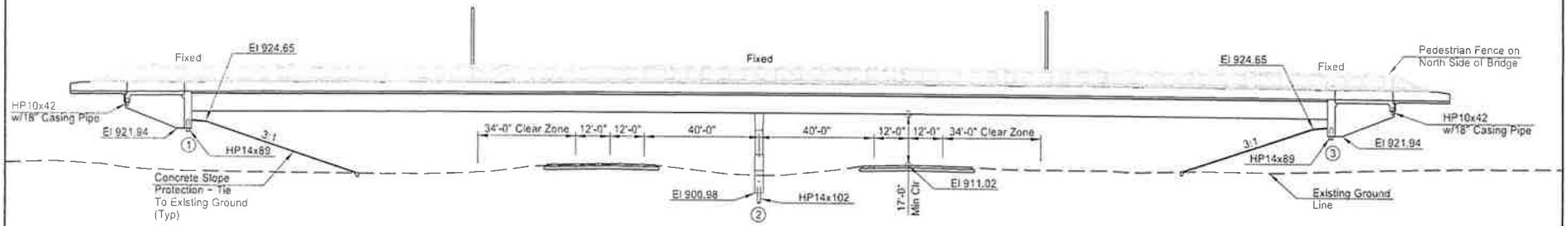
23 U.S.C. 409
NDDOT Reserves All Objections

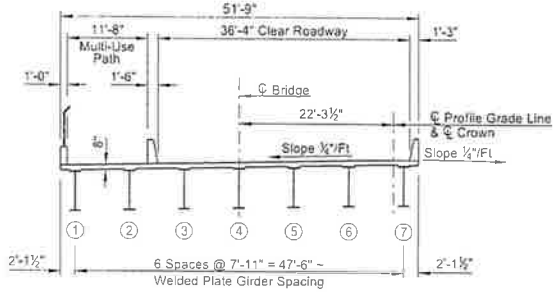
| BRIDGE CODE | | STATE | PROJECT NUMBER | SECTION NO. | SHEET NO. |
|---|---|---|---|---|---|
| X731 | | ND | SU-8-984(153)156 | 170 | 1 |



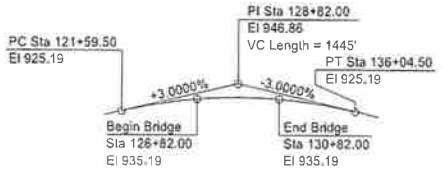

PLAN




ELEVATION




TYPICAL SECTION




VERTICAL CURVE DATA AT ℄ ROADWAY

DESIGN STRENGTHS:

f'c = 3,000 psi ~ Class AE-3 Concrete
f'c = 4,000 psi ~ Class AAE-3 Concrete
fy = 50,000 psi ~ Structural Steel
fy = 60,000 psi ~ Reinforcing Steel

Load & Resistance Factor Design

This document was originally issued and sealed by Joshua R Schroeder, Registration Number PE 5824, on 09/03/20 and the original document is stored at the North Dakota Department of Transportation

| STANDARD DRAWINGS |
|---|
| D-258-1, D-622-1, D-714-18, D-900-1 |
| F.W.S. 15 PSF |
| HL-93 DESIGN LOADING |

NORTH DAKOTA
DEPARTMENT OF TRANSPORTATION
64TH AVE SOUTH OVERPASS
CITY OF FARGO, NORTH DAKOTA

BRIDGE LAYOUT

PROJECT: SU-8-984(153)156
STATION: 3129+13.92
CASS COUNTY

09/04/20 — Jon Ketterling /s/
DATE — BRIDGE ENGINEER

9/4/2020 2:17:13 PM jordangerber K:\Projects\City\ND\Fargo\144151\04\CAD\80084156.153\Design\Plans\170\170BR_001_BRLO.dgn 20BJ001 JMG

29-059.264-1

DocuSign SECURED

## Certificate Of Completion

Envelope Id: 95914E210D174FD88F1329D22A06572F
Status: Sent
Subject: Contract #38201184: Please DocuSign: CPM agreement for Fargo 64th Ave Overpass project
Contract Number: 38201184
PCN: 21564
Source Envelope:
Document Pages: 12
Signatures: 0
Certificate Pages: 3
Initials: 0
AutoNav: Enabled
EnvelopeId Stamping: Enabled
Time Zone: (UTC-06:00) Central Time (US & Canada)

Envelope Originator:
Sengaroun Marohl
608 E Boulevard Ave
Bismarck, ND 58505
smarohl@nd.gov
IP Address: 165.234.252.245

## Record Tracking

Status: Original
9/15/2020 2:41:46 PM
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smarohl@nd.gov
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Pool: StateLocal
Storage Appliance Status: Connected
Pool: Carahsoft OBO North Dakota Department of Transportation CLOUD
Location: DocuSign

| Signer Events | Signature | Timestamp |
|---|---|---|
| Jeremy Gorden<br>JGorden@FargoND.gov<br>Security Level: Email, Account Authentication (None)<br>**Electronic Record and Signature Disclosure:**<br>Not Offered via DocuSign | | |
| Security Level: Email, Account Authentication (None)<br>**Electronic Record and Signature Disclosure:**<br>Not Offered via DocuSign | | |
| Security Level: Email, Account Authentication (None)<br>**Electronic Record and Signature Disclosure:**<br>Not Offered via DocuSign | | |
| Security Level: Email, Account Authentication (None)<br>**Electronic Record and Signature Disclosure:**<br>Not Offered via DocuSign | | |
| Sengaroun Marohl<br>smarohl@nd.gov<br>Security Level: Email, Account Authentication (None)<br>**Electronic Record and Signature Disclosure:**<br>Not Offered via DocuSign | | |

| Signer Events | Signature | Timestamp |
|---|---|---|
| Paul Benning<br>pbenning@nd.gov<br>Security Level: Email, Account Authentication (None), Authentication<br>**Electronic Record and Signature Disclosure:** Not Offered via DocuSign | | |
| Steve Salwei<br>ssalwei@nd.gov<br>Security Level: Email, Account Authentication (None), Authentication<br>**Electronic Record and Signature Disclosure:** Not Offered via DocuSign | | |
| Shannon Sauer<br>ssauer@nd.gov<br>Security Level: Email, Account Authentication (None), Authentication<br>**Electronic Record and Signature Disclosure:** Not Offered via DocuSign | | |
| Clint Morgenstern<br>cdmorgenstern@nd.gov<br>Security Level: Email, Account Authentication (None), Authentication<br>**Electronic Record and Signature Disclosure:** Not Offered via DocuSign | | |
| Ronald Henke<br>rhenke@nd.gov<br>Security Level: Email, Account Authentication (None), Authentication<br>**Electronic Record and Signature Disclosure:** Not Offered via DocuSign | | |
| Stacey Hanson<br>smhanson@nd.gov<br>Security Level: Email, Account Authentication (None), Authentication<br>**Electronic Record and Signature Disclosure:** Not Offered via DocuSign | | |

| In Person Signer Events | Signature | Timestamp |
|---|---|---|

| Editor Delivery Events | Status | Timestamp |
|---|---|---|

| Agent Delivery Events | Status | Timestamp |
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| Jeremy Gorden<br>JGorden@FargoND.gov<br>Security Level: Email, Account Authentication (None)<br>**Electronic Record and Signature Disclosure:** Not Offered via DocuSign | | Sent: 9/16/2020 9:04:18 AM<br>Viewed: 9/16/2020 10:30:36 AM |

| Intermediary Delivery Events | Status | Timestamp |
|---|---|---|

| Certified Delivery Events | Status | Timestamp |
|---|---|---|

| Carbon Copy Events | Status | Timestamp |
|---|---|---|

| Carbon Copy Events | Status | Timestamp |
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| Legal Admin<br>dotlegaladmin@nd.gov<br>Security Level: Email, Account Authentication (None)<br>**Electronic Record and Signature Disclosure:**<br>Not Offered via DocuSign | | |
| Legal Admin<br>dotlegaladmin@nd.gov<br>Security Level: Email, Account Authentication (None)<br>**Electronic Record and Signature Disclosure:**<br>Not Offered via DocuSign | | |

| Witness Events | Signature | Timestamp |
|---|---|---|

| Notary Events | Signature | Timestamp |
|---|---|---|

| Envelope Summary Events | Status | Timestamps |
|---|---|---|
| Envelope Sent | Hashed/Encrypted | 9/16/2020 9:04:18 AM |

| Payment Events | Status | Timestamps |
|---|---|---|

THE CITY OF Fargo
FAR MORE

**Engineering Department**
225 4th Street North
Fargo, ND 58102
Phone: 701.241.1545 | Fax: 701.241.8101
Email feng@FargoND.gov
www.FargoND.gov

(37)

September 30, 2020

Honorable Board of City
Commissioners
City of Fargo
Fargo, ND

Re: Improvement District No. BN-20-L1

Dear Commissioners:

Bids were opened at 11:45 AM on Wednesday, September 30, 2020, for Sanitary Sewer, Water Main, Storm Sewer, Paving & Incidentals, Improvement District No. BN-20-L1, located on 38th Street South.

The bids were as follows:

| | |
|---|---|
| Dakota Underground Co. | $6,095,877.39 |
| Northern Improvement Co. | $7,054,644.03 |
| KPH, Inc. | $7,167,959.03 |
| Sellin Brothers, Inc. | $7,496,373.00 |
| J.R. Ferche, Inc. | $7,823,660.10 |
| | |
| Engineer's Estimate | $6,451,484.75 |

The special assessment escrow is not required.

This office recommends award of the contract to Dakota Underground Co. in the amount of $6,095,877.39 as the lowest and best bid. No protests have been received.

Sincerely,

Thomas Knakmuhs, P.E.
Assistant City Engineer

TAK/klb

## ENGINEER'S STATEMENT OF ESTIMATED COST

### IMPROVEMENT DISTRICT # BN-20-L1

### Sanitary Sewer, Water Main, Storm Sewer, Paving & Incidentals

38th Street South

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

NOW THEREFORE Tom Knakmuhs, do hereby certify as follows:

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

That the following is detailed statement of the estimated cost of the job described as:
Sanitary Sewer, Water Main, Storm Sewer, Paving & Incidentals Improvement District # BN-20-L1 of the City of Fargo, North Dakota.

| Line | Description | Unit | Quantity | Unit Price ($) | Amount ($) |
|---|---|---|---|---|---|
| **Sanitary Sewer** | | | | | |
| 1 | F&I 1-1/4" Trench Found Rock 4" thru 12" Dia | LF | 4,000.00 | 0.01 | 40.00 |
| 2 | F&I Manhole 4' Dia Reinf Conc | EA | 14.00 | 3,900.00 | 54,600.00 |
| 3 | F&I Manhole 7' Dia Reinf Conc | EA | 1.00 | 9,850.00 | 9,850.00 |
| 4 | Connect Pipe to Exist Pipe | EA | 1.00 | 500.00 | 500.00 |
| 5 | F&I Pipe SDR 26 - 6" Dia PVC | LF | 1,782.00 | 27.00 | 48,114.00 |
| 6 | F&I Pipe SDR 35 - 12" Dia PVC | LF | 4,500.00 | 47.00 | 211,500.00 |
| 7 | Connect Sewer Service | EA | 34.00 | 500.00 | 17,000.00 |
| | | | | **Sanitary Sewer Total** | 341,604.00 |
| **Water Main** | | | | | |
| 8 | F&I 1-1/4" Trench Found Rock 4" thru 12" Dia | LF | 3,000.00 | 0.01 | 30.00 |
| 9 | F&I Fittings C153 Ductile Iron | LB | 5,622.00 | 7.00 | 39,354.00 |
| 10 | F&I Hydrant | EA | 8.00 | 4,500.00 | 36,000.00 |
| 11 | Relocate Hydrant | EA | 1.00 | 1,800.00 | 1,800.00 |
| 12 | F&I Pipe C900 DR 18 - 6" Dia PVC | LF | 62.00 | 28.00 | 1,736.00 |
| 13 | F&I Pipe C900 DR 18 - 8" Dia PVC | LF | 80.00 | 31.00 | 2,480.00 |
| 14 | F&I Pipe C900 DR 18 - 12" Dia PVC | LF | 4,800.00 | 41.00 | 196,800.00 |
| 15 | F&I Restr Joint Pipe C900 DR 18 - 12" Dia PVC | LF | 524.00 | 94.00 | 49,256.00 |
| 16 | F&I Pipe w/GB C900 DR 18 - 12" Dia PVC | LF | 135.00 | 70.00 | 9,450.00 |
| 17 | F&I Gate Valve 6" Dia | EA | 8.00 | 1,320.00 | 10,560.00 |
| 18 | F&I Gate Valve 12" Dia | EA | 8.00 | 3,130.00 | 25,040.00 |
| 19 | F&I Hydrant Ext. 6" High | EA | 5.00 | 700.00 | 3,500.00 |
| 20 | F&I Hydrant Ext. 12" High | EA | 5.00 | 800.00 | 4,000.00 |
| 21 | F&I Hydrant Ext. 18" High | EA | 5.00 | 940.00 | 4,700.00 |
| 22 | Connect Pipe to Exist Pipe | EA | 1.00 | 1,000.00 | 1,000.00 |
| 23 | Connect Water Service | EA | 1.00 | 5,000.00 | 5,000.00 |
| 24 | F&I Pipe 2" Dia Water Service | LF | 1,020.00 | 20.00 | 20,400.00 |
| 25 | F&I Pipe w/GB C900 DR 18 - 8" Dia PVC | LF | 110.00 | 60.00 | 6,600.00 |
| | | | | **Water Main Total** | 417,706.00 |
| **Storm Sewer** | | | | | |
| 26 | F&I 1-1/4" Trench Found Rock 4" thru 12" Dia | LF | 200.00 | 0.01 | 2.00 |
| 27 | F&I 1-1/4" Trench Found Rock 14" thru 24" Dia | LF | 1,000.00 | 0.01 | 10.00 |
| 28 | F&I 1-1/4" Trench Found Rock 27" thru 36" Dia | LF | 1,000.00 | 0.01 | 10.00 |
| 29 | F&I 1-1/4" Trench Found Rock 42" thru 54" Dia | LF | 876.00 | 0.01 | 8.76 |
| 30 | F&I Manhole 4' Dia Reinf Conc | EA | 3.00 | 2,900.00 | 8,700.00 |
| 31 | F&I Manhole 5' Dia Reinf Conc | EA | 4.00 | 4,200.00 | 16,800.00 |
| 32 | F&I Manhole 6' Dia Reinf Conc | EA | 5.00 | 5,900.00 | 29,500.00 |
| 33 | F&I Manhole 7' Dia Reinf Conc | EA | 3.00 | 8,100.00 | 24,300.00 |
| 34 | F&I Manhole Type E Reinf Conc | EA | 2.00 | 12,000.00 | 24,000.00 |
| 35 | F&I Inlet - Double Box (DBI) Reinf Conc | EA | 22.00 | 3,900.00 | 85,800.00 |
| 36 | F&I Inlet - Round (RDI) Reinf Conc | EA | 8.00 | 1,500.00 | 12,000.00 |
| 37 | Connect Pipe to Exist Structure | EA | 1.00 | 1,500.00 | 1,500.00 |
| 38 | F&I Pipe 12" Dia | LF | 470.00 | 32.00 | 15,040.00 |

## ENGINEER'S STATEMENT OF ESTIMATED COST

### IMPROVEMENT DISTRICT # BN-20-L1

### Sanitary Sewer, Water Main, Storm Sewer, Paving & Incidentals

| | | | | | |
|---|---|---|---|---|---|
| 39 | F&I Pipe 15" Dia | LF | 120.00 | 43.00 | 5,160.00 |
| 40 | F&I Pipe 18" Dia | LF | 798.00 | 42.00 | 33,516.00 |
| 41 | F&I Pipe 21" Dia | LF | 241.00 | 49.00 | 11,809.00 |
| 42 | F&I Pipe 30" Dia | LF | 603.00 | 76.00 | 45,828.00 |
| 43 | F&I Pipe 12" Dia Reinf Conc | LF | 94.00 | 38.00 | 3,572.00 |
| 44 | F&I Pipe 15" Dia Reinf Conc | LF | 10.00 | 50.00 | 500.00 |
| 45 | F&I Pipe 18" Dia Reinf Conc | LF | 13.00 | 52.00 | 676.00 |
| 46 | F&I Pipe 24" Dia Reinf Conc | LF | 180.00 | 56.00 | 10,080.00 |
| 47 | F&I Pipe 30" Dia Reinf Conc | LF | 690.00 | 76.50 | 52,785.00 |
| 48 | F&I Pipe 33" Dia Reinf Conc | LF | 442.00 | 87.00 | 38,454.00 |
| 49 | F&I Pipe 36" Dia Reinf Conc | LF | 279.00 | 97.00 | 27,063.00 |
| 50 | F&I Pipe 48" Dia Reinf Conc | LF | 393.00 | 148.00 | 58,164.00 |
| 51 | F&I Pipe 54" Dia Reinf Conc | LF | 475.00 | 185.00 | 87,875.00 |
| 52 | F&I Pipe w/GB 12" Dia Reinf Conc | LF | 68.00 | 62.00 | 4,216.00 |
| 53 | F&I Pipe w/GB 15" Dia Reinf Conc | LF | 460.00 | 52.00 | 23,920.00 |
| 54 | F&I Pipe w/GB 18" Dia Reinf Conc | LF | 16.00 | 65.00 | 1,040.00 |
| 55 | F&I Pipe w/GB 24" Dia Reinf Conc | LF | 90.00 | 86.00 | 7,740.00 |
| 56 | F&I Pipe w/GB 30" Dia Reinf Conc | LF | 275.00 | 103.00 | 28,325.00 |
| 57 | F&I Pipe w/GB 33" Dia Reinf Conc | LF | 60.00 | 112.00 | 6,720.00 |
| 58 | F&I Pipe w/GB 36" Dia Reinf Conc | LF | 94.00 | 134.00 | 12,596.00 |
| 59 | F&I Pipe w/GB 42" Dia Reinf Conc | LF | 220.00 | 142.00 | 31,240.00 |
| 60 | F&I Pipe w/GB 48" Dia Reinf Conc | LF | 32.00 | 190.00 | 6,080.00 |
| 61 | F&I Pipe w/GB 54" Dia Reinf Conc | LF | 82.00 | 235.00 | 19,270.00 |
| 62 | F&I Flared End Section 30" Dia Reinf Conc | EA | 1.00 | 1,850.00 | 1,850.00 |
| 63 | F&I Flared End Section 54" Dia Reinf Conc | EA | 1.00 | 4,200.00 | 4,200.00 |
| 64 | F&I Rip Rap Rock | CY | 500.00 | 86.00 | 43,000.00 |
| 65 | F&I Slope Protection 5" Thick Reinf Conc | SY | 135.00 | 84.00 | 11,340.00 |
| 66 | F&I Box Culvert 12'x12' Wide Reinf Conc | LF | 152.00 | 1,938.00 | 294,576.00 |
| 67 | F&I Box Culvert End Section 12'x12' Wide Reinf Conc | EA | 2.00 | 43,000.00 | 86,000.00 |
| 68 | Excavation | CY | 68,500.00 | 4.50 | 308,250.00 |
| | | | | **Storm Sewer Total** | 1,483,515.76 |
| **Paving** | | | | | |
| 69 | F&I Fence | LF | 306.00 | 79.00 | 24,174.00 |
| 70 | Clear & Grub | LS | 1.00 | 2,500.00 | 2,500.00 |
| 71 | Remove Pavement All Thicknesses All Types | SY | 600.00 | 12.00 | 7,200.00 |
| 72 | F&I Box Culvert 12'x9' Wide Reinf Conc | LF | 160.00 | 1,592.00 | 254,720.00 |
| 73 | F&I Box Culvert End Section 12'x9' Wide Reinf Conc | EA | 2.00 | 48,000.00 | 96,000.00 |
| 74 | Topsoil - Strip & Spread | LS | 1.00 | 140,000.00 | 140,000.00 |
| 75 | Excavation | CY | 15,000.00 | 4.00 | 60,000.00 |
| 76 | Subgrade Preparation | SY | 27,000.00 | 2.60 | 70,200.00 |
| 77 | Subcut | CY | 12,000.00 | 2.50 | 30,000.00 |
| 78 | F&I Woven Geotextile | SY | 27,000.00 | 1.40 | 37,800.00 |
| 79 | F&I Class 5 Agg - 12" Thick | SY | 27,000.00 | 12.20 | 329,400.00 |
| 80 | F&I Edge Drain 4" Dia PVC | LF | 9,900.00 | 6.40 | 63,360.00 |
| 81 | F&I Curb & Gutter Mountable (Type I) | LF | 425.00 | 24.00 | 10,200.00 |
| 82 | F&I Curb & Gutter Standard (Type II) | LF | 14,300.00 | 20.50 | 293,150.00 |
| 83 | Remove Curb & Gutter | LF | 175.00 | 5.00 | 875.00 |
| 84 | F&I Pavement 10" Thick Doweled Conc | SY | 20,200.00 | 69.00 | 1,393,800.00 |
| 85 | F&I Median Nose - Conc | SY | 61.50 | 195.00 | 11,992.50 |
| 86 | Rem & Repl Pavement 9" Thick Asph | SY | 100.00 | 75.00 | 7,500.00 |
| 87 | F&I Sidewalk 4" Thick Reinf Conc | SY | 1,200.00 | 39.00 | 46,800.00 |
| 88 | F&I Sidewalk 6" Thick Reinf Conc | SY | 350.00 | 48.00 | 16,800.00 |
| 89 | F&I Sidewalk 5" Thick Reinf Conc | SY | 9,000.00 | 40.00 | 360,000.00 |
| 90 | Remove Sidewalk All Thicknesses All Types | SY | 15.00 | 12.00 | 180.00 |

## ENGINEER'S STATEMENT OF ESTIMATED COST

### IMPROVEMENT DISTRICT # BN-20-L1

### Sanitary Sewer, Water Main, Storm Sewer, Paving & Incidentals

| | | | | | |
|---|---|---|---|---|---|
| 91 | F&I Impressioned 5" Thick Reinf Conc | SY | 1,000.00 | 78.00 | 78,000.00 |
| 92 | F&I Impressioned 8" Thick Reinf Conc | SY | 500.00 | 75.00 | 37,500.00 |
| 93 | F&I Det Warn Panels Cast Iron | SF | 500.00 | 52.00 | 26,000.00 |
| 94 | Casting to Grade - Blvd | EA | 34.00 | 250.00 | 8,500.00 |
| 95 | Casting to Grade - w/Conc | EA | 34.00 | 400.00 | 13,600.00 |
| 96 | GV Box to Grade - Blvd | EA | 12.00 | 200.00 | 2,400.00 |
| 97 | Mulching Type 1 - Hydro | SY | 35,000.00 | 0.37 | 12,950.00 |
| 98 | Seeding Type B | SY | 35,000.00 | 0.35 | 12,250.00 |
| 99 | Sediment Control Log 10" to 15" Dia | LF | 2,500.00 | 2.35 | 5,875.00 |
| 100 | Inlet Protection - Existing Inlet | EA | 6.00 | 150.00 | 900.00 |
| 101 | Inlet Protection - New Inlet | EA | 30.00 | 150.00 | 4,500.00 |
| 102 | Temp Construction Entrance | EA | 1.00 | 1,000.00 | 1,000.00 |
| 103 | Traffic Control - Type 2 | LS | 1.00 | 27,000.00 | 27,000.00 |
| 104 | F&I Erosion Control Blanket Type 3 | SY | 6,410.00 | 2.10 | 13,461.00 |
| | | | | Paving Total | 3,500,587.50 |
| **Street Lighting** | | | | | |
| 105 | F&I Lighting System | LS | 1.00 | 10,800.00 | 10,800.00 |
| 106 | F&I Feed Point | EA | 1.00 | 8,900.00 | 8,900.00 |
| 107 | F&I Base 7' Deep Reinf Conc | EA | 26.00 | 900.00 | 23,400.00 |
| 108 | F&I Conductor #6 USE Cu | LF | 16,497.00 | 1.60 | 26,395.20 |
| 109 | F&I Innerduct 1.5" Dia | LF | 6,135.00 | 3.60 | 22,086.00 |
| 110 | F&I Luminaire Type A | EA | 33.00 | 540.00 | 17,820.00 |
| 111 | F&I Pull Box | EA | 1.00 | 1,210.00 | 1,210.00 |
| 112 | F&I Light Standard Type A | EA | 26.00 | 1,310.00 | 34,060.00 |
| | | | | Street Lighting Total | 144,671.20 |
| **Signing** | | | | | |
| 113 | F&I Barricade Type III | EA | 6.00 | 515.00 | 3,090.00 |
| 114 | F&I Diamond Grade Cubed | SF | 98.50 | 29.40 | 2,895.90 |
| 115 | F&I High Intensity Prismatic | SF | 113.30 | 26.25 | 2,974.13 |
| 116 | F&I Sign Assembly | EA | 8.00 | 90.00 | 720.00 |
| 117 | F&I Sign Assembly & Anchor | EA | 31.00 | 90.00 | 2,790.00 |
| | | | | Signing Total | 12,470.03 |
| **Pavement Markings** | | | | | |
| 118 | Paint Epoxy Message | SF | 410.00 | 15.75 | 6,457.50 |
| 119 | F&I Grooved Plastic Film 8" Wide | LF | 440.00 | 11.70 | 5,148.00 |
| 120 | F&I Grooved Contrast Film 7" Wide | LF | 5,596.00 | 12.40 | 69,390.40 |
| 121 | F&I Methacrylate 24" Wide | LF | 440.00 | 46.00 | 20,240.00 |
| 122 | F&I Grooved Contrast Film 11" Wide | LF | 100.00 | 18.50 | 1,850.00 |
| 123 | F&I Contrast Tape Messages | SF | 524.00 | 55.50 | 29,082.00 |
| | | | | Pavement Markings Total | 132,167.90 |
| **Landscaping** | | | | | |
| 124 | Mulching Type 1 - Hydro | SY | 10,000.00 | 0.37 | 3,700.00 |
| 125 | Seeding Type B | SY | 10,000.00 | 0.35 | 3,500.00 |
| 126 | F&I Perf Tree Drain SDR 35 - 4" Dia PVC | LF | 2,365.00 | 10.00 | 23,650.00 |
| 127 | F&I Bare Root Decid Tree 2" Dia | EA | 35.00 | 560.00 | 19,600.00 |
| 128 | F&I Bullet Edging | LF | 2,550.00 | 4.90 | 12,495.00 |
| 129 | F&I Weed Barrier Geotextile | SY | 1,000.00 | 0.21 | 210.00 |
| | | | | Landscaping Total | 63,155.00 |
| | | | | **Total Construction in $** | **6,095,877.39** |
| | | | Engineering | 10.00 % | 609,587.74 |
| | | | Legal & Misc | 3.00 % | 182,876.32 |
| | | | Contingencies | 10.00 % | 609,587.74 |

**ENGINEER'S STATEMENT OF ESTIMATED COST**

**IMPROVEMENT DISTRICT # BN-20-L1**

**Sanitary Sewer, Water Main, Storm Sewer, Paving & Incidentals**

| | | |
|---|---|---|
| Administration | 4.00 % | 243,835.10 |
| Interest | 4.00 % | 243,835.10 |
| **Total Estimated Costs** | | **7,985,599.38** |
| Special Assessments | | 7,985,599.38 |
| **Unfunded Costs** | | **0.00** |

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

Date: 09/30/2020

Tom Knakmuhs

Assistant City Engineer

