

FARGO CITY COMMISSION AGENDA
Monday, October 30, 2023 - 4:00 p.m.

Executive Session at 4:00 p.m.

Roll Call.

PLEASE NOTE: The City Commission will convene at 4:00 p.m. and retire into Executive Session in the Red River Room with respect to the proposed agreement between the City and T&K Property Management LLC, the City Commission will meet in Executive Session to consult with the City's attorneys and the City's negotiators as well because there is a reasonable likelihood that civil litigation will occur relating to the project that is the subject of the proposed agreement and public discussion would have an adverse fiscal effect on the City's litigation and or bargaining position, this Executive Session is authorized by North Dakota Century Code 44-04-19.1 subsection 9.

Regular Meeting at 5:00 P.M.

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

- A. Pledge of Allegiance.
- B. Roll Call.
- C. Approve Order of Agenda.
- D. Minutes (Regular Meeting, October 16, 2023; Special Meeting, October 25, 2023).

CONSENT AGENDA – APPROVE THE FOLLOWING:

1. Amendment to Developer Agreement, Tax Increment Note (Tax Increment District 2021-02 Project) and Certificate of Completion with PS Holdings, LLC (Brewhalla).
2. Interest Buydown Agreement – PACE Program, Escrow Agreement – PACE Program and Community PACE – Interest Buydown Authorization with the Bank of ND to be received by PS Holdings, LLC from Bell Bank (Brewhalla).
3. Lease Agreement with Prairie Public Broadcasting, Inc.
4. Receive and file an Ordinance Amending Section 24-0102 of Article 24-01 of Chapter 24 of the Fargo Municipal Code Relating to the Franchise Granted to the St. Paul, Minneapolis and Manitoba Railroad Company and Its Successors.
5. 1st reading of an Ordinance Amending Section 25-1508 of Article 25-15 of Chapter 25 of the Fargo Municipal Code Relating to Alcoholic Beverages.
6. 1st reading of an Ordinance Amending Section 13-1011 of Article 13-10 of Chapter 13 of the Fargo Municipal Code Relating to Recreational Aquatic Facilities.

7. 1st reading of an Ordinance Amending Article 13-14 of Chapter 13 of the Fargo Municipal Code Relating to Hotels & Motels.
8. 2nd reading and final adoption of an Ordinance Rezoning Certain Parcels of Land Lying in Southwest Fargo Mission Second Addition to the City of Fargo, Cass County, North Dakota.
9. Findings of Fact, Conclusions and Order, and Notice of Entry of Order for property located at 924 7th Street North.
10. Applications for Games of Chance:
 - a. Oak Grove Lutheran School for a raffle board on 11/2/23.
 - b. Sts. Anne & Joachim Catholic Church for bingo on 11/12/23.
 - c. The Village Family Service Center for a raffle board on 11/17/23.
 - d. Bison Dance Team for a raffle on 12/8/23.
 - e. North Dakota State University Judging Club for a raffle on 3/4/24.
11. Receive and file the Amendment to the Franchise Agreement with Cass County Electric Cooperative adding the area annexed by the City of Fargo on 5/1/23.
12. Appointment of election workers and additional workers for the 12/5/23 Special Election as presented and the appointment of the Canvassing Board as presented.
13. Agreement for Special Improvements with County 20 Storage LLC (Improvement District No. BN-23-J1).
14. Notice of Grant Award from the ND Department of Emergency Services for the FY 2023 Homeland Security Program (CFDA #97.067).
15. Negative Final Balancing Change Order No. 1 in the amount of -\$33,791.72 for Project No. PR-23-C1.
16. Encroachment Agreement with J and R Ohnstad Family Limited Partnership (OK Tire) for property located at 2200 Main Avenue.
17. Purchase Agreement with Sanford North (Project No. FP-19-A).
18. Bid award to Dakota Underground Company in the amount of \$489,889.12 for Project No. SN-23-A1.
19. Incentive of \$150,000.00 (30 days at \$5,000.00 per day) for Improvement District No. BR-23-G1.
20. Change Order No. 3 in the amount of \$20,689.80 and 8-day time extension for Improvement District No. BR-23-F1.
21. Change Order No. 5 in the amount of \$39,858.72 for Improvement District No. BN-22-C1.
22. Change Order No. 1 in the amount of \$97,686.18 for Improvement District No. PR-23-E1.
23. Change Order No. 2 in the amount of \$26,718.14 for Improvement District No. UR-23-A1.
24. Easement (Temporary Construction Easement) and Permanent Easement (Lift Station) with Dakota Commerce Center 5 LLC (Improvement District No. BN-23-F1).

25. Bid award to KPH, Inc. in the amount of \$1,340,525.95 for Improvement District No. BR-24-E1.
26. Bid award to Master Construction Company, Inc. in the amount of \$4,897,816.25 for Improvement District No. BR-24-C1.
27. Create Improvement District No. PN-23-B.
28. Create Improvement District No. BR-24-B.
29. Bid award to Martinson Lot Maintenance and All Terrain for snow removal services from 11/1/23 through 4/30/24 (RFP23191).
30. Bid award to AP Signature Homes, LLC for the Newman Outdoor Field Exiting Improvements.
31. Contract extension with Vector Solutions until 12/31/24 (SSP17412).
32. Memorandum of Agreement with the ND Department of Emergency Services and the Fargo Fire Department for Regional Response for Hazardous Materials and Technical Rescue.
33. Notice of Grant Agreement Amendment with the ND Department of Health and Human Services for the PHEP – City Readiness Initiative (CFDA #93.069).
34. Notice of Grant Award from the ND Department of Emergency Services for the FY 2022 State and Local Cybersecurity Grant Program and related budget adjustments (CFDA #97.137).
35. Notice of Grant Award from the ND Department of Emergency Services for the FY 2023 State and Local Cybersecurity Grant Program and related budget adjustments (CFDA #97.137).
36. Piggyback purchase with Esri Small Municipal and County Government Enterprise Agreement from 1/26/24 to 1/26/27 (PBC24008).
37. Authorization for IS to hire a full-time Technical Support Desk Associate position in 2023.
38. Amendment to the Fiscal Project Sponsor Agreement - Badges of Unity with the Impact Foundation.
39. Two-Year Contract with All Terrain to provide lawn care and snow removal services at the Fargo Regional Training Center (RFQ23206).
40. Receive and file the Hate Crimes investigations for the 3rd quarter of 2023.
41. First Addendum to Landfill Use Agreement with the City of Valley City, ND.
42. Contract and bond with Excavating, Inc. for Cell 21 Waste Excavation and Construction Project No. SW 23-04 (ITB23160).
43. Bid award to GMV Syncromatics Corporation for fixed route software (RFP23214) and bid award to Via Mobility LLC for paratransit software and hardware (RFP23215).
44. Bills.

REGULAR AGENDA:

45. **RESIDENT COMMENTS** (Fargo residents will be offered 2.5 minutes for comment with a maximum of 30 minutes total for all resident comments. Residents who would like to address the Commission, whether virtually or in person, must sign-up at FargoND.gov/VirtualCommission).

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

46. **PUBLIC HEARING** - Vacation Plat of portions of 3rd Avenue North and 3rd Street North, North Dakota R-1 Urban Renewal Addition (101, 207 and 225 4th Street North; 285 1st Avenue North; 200 and 334 4th Avenue North); approval recommended by the Planning Commission on 9/7/23.
47. **PUBLIC HEARING** – Hearing on a dangerous building located at 1710 1st Avenue South.
48. **PUBLIC HEARING** – Hearing on a dangerous building located at 1208 South University Drive.
49. **PUBLIC HEARING** – Application for a Class “FA” Alcoholic Beverage License for El Agave Mexican Restaurant, LLC d/b/a El Agave Mexican Restaurant to be located at 2581 45th Street South; continued from the 10/2/23 Regular Meeting.
50. **PUBLIC HEARING** – Transfer of a Class “FA” Alcoholic Beverage License from Prairie Pasta, Inc. d/b/a Johnny Carino’s to Summit Night Club d/b/a Cairo Restaurant and Nightclub to be located at 4554 7th Avenue South; continued from the 10/2/23 Regular Meeting.
51. **PUBLIC HEARING** – Transfer of a Class “ABH Limited” Alcoholic Beverage License from KLP Lodging LLC d/b/a AmericInn Fargo to Fargo Voyage Hotel LLC d/b/a AmericInn Fargo to be located at 4325 23rd Avenue North.
52. **PUBLIC HEARING** – Transfer and ownership change of a Class “A” Alcoholic Beverage License from Irish Hospitality, LLC d/b/a Hennessy’s Irish Pub to Irish Hospitality, LLC d/b/a Double Down to be located at 3165 33rd Street South, #101.
- a. Gaming Site Authorization for Games of Chance for Fargo Angels Hockey Club at Double Down.
53. Update on the Massage Therapy Establishment Program.
- a. Adopt Resolution Establishing Massage Therapy Establishment Requirements and Fees.
- b. 1st reading of an Ordinance Amending Sections 13-1801, 13-1802, 13-1806 of Article 13-18 of Chapter 13 of the Fargo Municipal Code Relating to Massage Therapy Establishments.
- c. 1st reading of an Ordinance Amending Section 1-0305 (A)(1) of Article 1-03 of Chapter 1 of the Fargo Municipal Code Relating to Classification of Ordinance Violations.
54. Update on the North Broadway Bridge Feasibility Study.
55. Recommendation to authorize staff to publish a Request for Proposals for a City of Fargo Advanced Metering Infrastructure Project.

56. Applications for Abatement or Refund of Taxes #4546 and #4547 for property located at 4773 32nd Street South requesting a reduction in value for 2022 from \$749,400.00 to \$650,000.00 and for 2023 from \$887,600.00 to \$660,000.00.
57. Recommendation to approve the Agreement to Grant Emergency Egress Easement and Grant Option for Parking Lease with T&K Property Management LLC, as presented.
58. Fargo-Moorhead Metropolitan Area Ending Homelessness Task Force Discussion.
59. Recommendation from Commissioner Preston for changes to the Liquor License Ordinance.
60. Recommendation for appointments to the Housing and Redevelopment Authority.
61. Applications for Property Tax Exemptions for Improvements Made to Buildings:
 - a. Molly Moore, 3601 Evergreen Road North (5 years).
 - b. Michelle Mehring, 1526 9th Street North (5 years).
 - c. Matthew Mazourek, 3419 19th Street South (5 years).
 - d. Janell Schmidt, 3526 29th Street South (5 years).
 - e. James and Sharon Puppe Rev Living Trust, 114 22nd Avenue North (5 years).
 - f. Jerome and Amy Noeske, 56 16th Avenue North (5 years).
62. Liaison Commissioner Assignment Updates.

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


Minutes are available on the City of Fargo website at www.FargoND.gov/CityCommission.



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MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

FROM: JIM GILMOUR, STRATEGIC PLANNING DIRECTOR 

DATE: OCTOBER 24, 2023

RE: COMPLETION DOCUMENTS FOR BREWHALLA

PS Holdings, the developer of Brewhalla, has completed the project and complied with the terms of the development agreement. The City has inspected the project and documented all of the costs.

An amendment to the development agreement is needed to clarify the year the developer will begin to receive TIF funds and the 10 year limit of those payments.

Attached for your approval is the Amendment to the Developer Agreement, the Certificate of Completion, the Tax Increment Note and the Private Placement Memorandum.

Recommended Motion

Approve and authorize the Mayor to sign the Amendment to the Developer Agreement, the Certificate of Completion and the Tax Increment Note for PS Holdings.

**AMENDMENT TO
DEVELOPER AGREEMENT**

By and Between

CITY OF FARGO, NORTH DAKOTA

And

PS Holdings, LLC

THIS AMENDMENT TO DEVELOPER AGREEMENT (this “Agreement”) is made as of the ___ day of November, 2023, by and among the City of Fargo, North Dakota, a municipal corporation (the “City”) and PS Holdings, LLC, a North Dakota limited liability company (“Developer”).

RECITALS:

WHEREAS, Developer and City have entered into a Developer Agreement dated as of May 21, 2021 [hereinafter the “Developer Agreement”] pertaining to a project commonly known as the Brewhalla Project;

WHEREAS, the Brewhalla Project has reached the completion of construction and the City and Developer have taken such steps as contemplated in the Developer Agreement that are necessary and appropriate for the issuance by the City of a Certificate of Completion and a TIF Note; however, prior to the issuance thereof, the parties wish to amend the Developer Agreement in order to establish certain modifications to the payment to the Developer under the TIF Note and, therefore, to amend the Developer Agreement accordingly;

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

I. Certain definitions in Section 1.1 of ARTICLE I of the Developer Agreement are hereby amended to read as follows:

“Developer's Taxes” means taxes paid with respect to the portions of the Development Property and Improvements completed by the Developer for the tenth (10th) Tax Year and earlier Tax Years. Taxes for the eleventh (11th) year following the first Tax Year, or for any subsequent year, are not included as Developer’s Taxes.

“Maturity Date” means the date that is three (3) years from the Payment Date for the tenth (10th) Tax Year following the date of the issuance of the Tax Increment Note.

“Tax Year” is one of a maximum of ten (10) successive calendar years, with the first year being the year that, pursuant to this Agreement, the Tax Increment Note is issued and with the subsequent years being the nine (9) subsequent calendar years. The tenth (10th) Tax Year, therefore, is the ninth (9th) calendar year following the first said year.

II. Subsections (a) and (e) of Section 3.3 of Article III of the Developer Agreement is hereby amended to read as follows:

(a) There shall be one (1) Tax Increment Note. The amount of the Tax Increment Note shall be determined by adding the \$1,500,000.00 (or so much thereof as shall be demonstrated as set forth in Section 3.3(d)) plus a sum equal to Capitalized

Interest, for a term of ten (10) years. The Tax Increment Note shall provide for payments to be made by the City to Developer of Developer's Tax Increment received by the City from the County for the Project for the first Tax Year and for each of nine (9) subsequent Tax Years, with payments to be made annually on the Payment Dates, it being further provided that Available Tax Increment exists pertaining to the tenth (10th) or earlier Tax Years.

* * *

(e) Subject to the provisions of the Tax Increment Note, the principal of and interest on the Tax Increment Note shall in the aggregate be payable on May 15th following the date of issuance of the Tax Increment Note and on May 15th of each year thereafter until the Maturity Date, said May 15th dates being referred to herein as the "Payment Date" or collectively as the "Payment Dates". The first payment on the Tax Increment Note, to become due and payable on the first Payment Date, shall be limited to all the Available Tax Increments received to said date by the City on the Project. For all payments after said first payment on the Tax Increment Note, the amounts payable on the Tax Increment Note on each Payment Date shall be limited to the Available Tax Increments received by the City since the prior year's Payment Date. All payments made on the Tax Increment Note shall be applied first to pay accrued and unpaid interest on the Tax Increment Note and second toward payment of principal. To the extent that the Available Tax Increments are insufficient, through the Maturity Date, to pay all accrued and unpaid interest on and the principal of the Tax Increment Note, said unpaid amounts shall then cease to be any debt or obligation of the City or of the City whatsoever.

- III. The Developer Agreement is hereby amended with respect to Exhibit C, the form of the TIF Note to read as set forth on the attachment to this Amendment, also entitled "Exhibit C", incorporated as if fully set forth herein.
- IV. In all other respects the Developer Agreement shall remain in full force and effect.
- V. Effective Date. This Amendment to Developer Agreement shall be effective as of November __, 2023.

IN WITNESS WHEREOF, the Parties have executed this Amendment to Developer Agreement as of the date stated in the first paragraph of this Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;
SIGNATURE PAGES FOLLOW]

CITY OF FARGO, NORTH DAKOTA

(SEAL)

By _____
Dr. Tim Mahoney, its Mayor

ATTEST:

By _____
Steven Sprague, City Auditor

This document drafted by:

Erik R. Johnson
Assistant City Attorney
Ph: 701-371-6850

PS Holdings, LLC

By _____,
Kevin J. Bartram, President

EXHIBIT A TO AMENDMENT

None

EXHIBIT B TO AMENDMENT

None

**EXHIBIT C TO AMENDMENT
TAX INCREMENT NOTE
(ATTACHED)**

TAX INCREMENT NOTE

No. R-1

\$1,612,072.92

UNITED STATES OF AMERICA
STATE OF NORTH DAKOTA
CASS COUNTY
CITY OF FARGO

TAX INCREMENT
REVENUE NOTE OF 2023
(TAX INCREMENT DISTRICT 2021-02 PROJECT)

KNOW ALL PERSONS BY THESE PRESENTS that the City of Fargo, a North Dakota municipal corporation (the "City"), certifies that it is indebted and for value received promises to pay to PS Holdings, LLC (the "Developer"), or the registered assign, the principal sum of **One Million Six Hundred Twelve Thousand Seventy-Two and 92/100 Dollars (\$1,612,072.92)**, an amount issued in reimbursement of eligible costs paid by the Developer, unless due sooner by redemption or early payment, on the Maturity Date defined below; but only in the manner, at the times, from the sources of revenue, and to the extent hereinafter provided; and to pay interest on the unpaid principal amount of this Note at the rate of interest of **Three and one-half Percent (3.5%)** per annum, compounded annually. Interest shall accrue from the date of this Note on the amount issued and shall be computed on the basis of a 360-day year consisting of 12 30-day months. This Note is the "Tax Increment Note" (the "Note") described and defined in that certain Developer Agreement, dated as of May 17, 2021 (as the same may be amended from time to time, the "Developer Agreement"), by and between the City and PS Holdings, LLC, a North Dakota limited liability company, as the initial Developer under the Developer Agreement. Each capitalized term which is used but not otherwise defined in this Note shall have the meaning given to that term in the Developer Agreement or in the resolution authorizing the issuance of this Note. Principal and interest are payable at such address as shall be designated in writing by PS Holdings, LLC, or other registered holder of this Note, in any coin or currency of the United States of America which at the time of payment is legal tender for public and private debts.

Payment Dates. Subject to the terms hereof, the principal of and interest on this Note shall in the aggregate be payable on May 15th following the date of issuance of this Note and on May 15th of each year thereafter until the Maturity Date said May 15th dates being referred to herein as the "Payment Date" or collectively as the "Payment Dates"). Notwithstanding the previous sentence, in the event that ad valorem property taxes for the Development Property are paid in full on or before February 15th of each year, the City agrees, and the City's Finance Director is hereby authorized, to pay out the full amount of Available Tax Increments received from the County Auditor upon written request submitted by the Developer. The City's Finance Director is authorized to make such payment within the later of (a) forty (40)

days after receipt by the City of the Available Tax Increments are received by the City from the County Auditor, or (b) forty days from the date of receipt of said written request.

Payment Amounts. On each Payment Date (or, if not a business day of the City, the first business day thereafter) the City shall pay by check or draft mailed to the person that was the Registered Owner of the Note at the close of the last business day of the City preceding such Payment Date an amount as follows: (a) the first payment on the Tax Increment Note, to become due and payable on the first Payment Date, shall be limited to all the Available Tax Increments received to said date by the City on the Project and (b) for all payments after said first payment on the Tax Increment Note, the amounts payable on the Tax Increment Note on each Payment Date shall be limited to the Available Tax Increments received by the City since the prior year's Payment Date. All payments made on the Tax Increment Note shall be applied first to pay accrued and unpaid interest on the Tax Increment Note and second toward payment of principal. To the extent that the Available Tax Increments are insufficient, through the Maturity Date, to pay all accrued and unpaid interest on and the principal of the Tax Increment Note, said unpaid amounts shall then cease to be any debt or obligation of the City or of the City whatsoever. In no event shall any City be obligated to remit payment of principal in excess of the aggregate amount of the unpaid principal of the Note. The City shall have the option at any time to prepay in whole or in part the principal amount of this Note at par plus accrued interest. All payments made by the City under this Note shall be applied first to pay accrued and unpaid interest on this Note and second toward payment of principal hereof.

Redemption. In addition to the amounts of principal required to be paid by the City as hereinabove set forth, the City shall have the right to prepay on any date the entire principal amount hereof then remaining unpaid, or such lesser portion thereof as it may determine upon, in multiples of \$1,000, at par plus accrued interest. Notice of any such optional prepayment shall be given prior to the prepayment date by mailing to the registered owner of this Note a notice fixing such prepayment date and the amount of principal to be prepaid.

Available Tax Increments. "Available Tax Increments" are defined in the Developer Agreement as follows:

"Developer Tax Increments minus the reasonable and not theretofore reimbursed actual expenses incurred by the City in establishing and maintaining the TIF District, in preparing and implementing this Agreement, and in general in administering the TIF District and this Agreement and any supplements hereto and in participating in the actions or transactions contemplated thereby and hereby."

"Developer Tax Increments" are defined in the Developer Agreement as follows:

"The portion of Developer's Taxes which constitutes Tax Increments, or the portion of Tax Increments derived from Developer's Taxes."

"Tax Increments" are defined in the Developer Agreement as follows:

"Tax Increments" means those tax increments which the City shall be entitled to receive and retain, and which the City shall have actually received from Cass

County, from time to time from the TIF District pursuant to the Urban Renewal Law.”

In addition, “Developer’s Taxes” are defined in the Developer Agreement as follows:

“Developer's Taxes’ means taxes paid with respect to the portions of the Development Property and Improvements completed by the Developer for the tenth (10th) Tax Year and earlier Tax Years. Taxes for the eleventh (11th) year following the first Tax Year, or for any subsequent year, are not included as Developer’s Taxes.”

In addition, “Tax Year” is defined in the Developer Agreement as follows:

“Tax Year” is one of a maximum of ten (10) successive calendar years, with the first year being the year that, pursuant to this Agreement, the Tax Increment Note is issued and with the subsequent years being the nine (9) subsequent calendar years. The tenth (10th) Tax Year, therefore, is the ninth (9th) calendar year following the first said year.

In addition, “Maturity Date” is defined in the Developer Agreement as follows:

“Maturity Date” means the date that is three (3) years from the Payment Date for the tenth (10th) Tax Year following the date of the issuance of the Tax Increment Note.

In addition, Section 3.6 of the Developer Agreement provides as follows:

“The City receives the Tax Increments generated by the TIF District from the County. The City may use Tax Increments which are not Developer Tax Increments for any purpose permitted by law. Developer Tax Increments shall be used on any date of application for the following purposes in the following order of priority:

- (a) to make payments on the Tax Increment Note; and,
- (b) after payment of the City Development Costs and Tax Increment Note in full, to pay or reimburse redevelopment costs identified by the City and to pay other eligible expenses for other projects that may be approved for the TIF District, from time to time, by the governing body of the City.

No Payment Upon Default. No payments will be made on this Note during such time as there is an Event of Default under the Developer Agreement which has not been cured by the Developer.

Lack of Protective Covenants. The City of Fargo, North Dakota (the “City”), has not covenanted to endeavor in any fashion to cause Tax Increments to be sufficient to generate Available Tax Increments sufficient to pay this Note, nor have they covenanted to take actions under the Developer Agreement with such sufficiency as a goal.

Sufficiency of Revenues. The City makes no representation or covenant, express or implied, that the revenues described herein will be sufficient to pay, in whole or in part, the amounts which are or may otherwise become due and payable hereunder. Any amounts which have not become due and payable on this Note on or before the Maturity Date shall no longer be payable, as if this Note had ceased to be any debt or obligation of the City or of the City whatsoever.

Issuance; Purpose; Special Limited Obligation. This Note is in the aggregate principal amount of \$1,612,072.92 (the "Note"), which Note has been issued pursuant to and in full conformity with the Constitution and laws of the State of North Dakota including North Dakota Century Code Chapter 40-58, for the purpose of providing money to finance certain eligible costs within the City's Urban Renewal District 2021-02, specifically the costs identified in Section 3.3 of the Developer Agreement. The Notes are payable out of the Tax Increment Revenue Note of 2021-02 (Brewhalla Project) Fund of the City, to which have been pledged amounts representing Available Tax Increments to be received by the City from the City's 2021-02 Tax Increment District in the City. This Note is not any obligation of any kind whatsoever of any public body, except that this Note is a special and limited revenue obligation but not a general obligation of the City and is payable by the City only from the sources and subject to the qualifications and limitations stated or referenced herein. Neither the full faith and credit nor the taxing powers of the City or of the City are pledged to or available for the payment of the principal of or interest on this Note, and no property or other asset of the City or of the City, save and except the above referenced Available Tax Increments, is or shall constitute a source of payment of the City's obligations hereunder.

Limitation on Transfer. **This Note may only be transferred to a person who is (1) a successor of PS Holdings, LLC, by reorganization, merger or acquisition, (2) a member of PS Holdings, LLC, (3) to a lender of PS Holdings, LLC, as collateral for financing as permitted by the Developer Agreement, (4) a related person to such partner or successor, (5) a "qualified institutional buyer" as defined in Rule 144A promulgated under the federal Securities Act of 1933, or (6) an "accredited investor" as defined in Rule 501(a)(1), (2), (3) or (7) promulgated under the federal Securities Act of 1933. The City shall not register any transfer of this Note unless (i) a registered owner's prospective transferee delivers a representation letter in form satisfactory to the City verifying that the transferee is a "qualified institutional buyer"; or (ii) such transferee is an "accredited investor" which has delivered a representation letter in form satisfactory to the City; or (iii) the prospective transferee demonstrates to the satisfaction of the City that it is the successor, partner or related person to PS Holdings, LLC, noted above.**

Any registered owner desiring to effect a transfer shall, and does hereby, agree to indemnify the City against any liability, cost or expense (including attorneys' fees) that may result if the transfer is not so made.

Registration; Transfer. This Note shall be registered in the name of the payee on the books of the City by presenting this Note for registration to the officer of the City performing the functions of the Treasurer, who will endorse his or her name and note the date of registration opposite the name of the payee in the certificate of registration on the reverse side hereof. Thereafter this Note may be transferred to a bona fide purchaser who is a permitted transferee

only by delivery with an assignment duly executed by the registered owner or his, her or its legal representative, and the City may treat the registered owner as the person exclusively entitled to exercise all the rights and powers of an owner until this Note is presented with such assignment for registration of transfer, accompanied by assurance of the nature provided by law that the assignment is genuine and effective, and until such transfer is registered on said books and noted hereon by the Treasurer of the City.

Developer Agreement. The terms and conditions of the Developer Agreement are incorporated herein by reference and made a part hereof. The Developer Agreement may be attached to this Note, and shall be attached to this Note if the holder of this Note is any person other than PS Holdings, LLC. No payments will be made on this Note during such time as there is a Specified Event of Default under the Developer Agreement which has not been cured by the Developer.

Taxable Obligation. This Note is intended to bear interest that is included in the gross income of the owner.

IT IS HEREBY CERTIFIED AND RECITED that all acts, conditions and things required by the Constitution and laws of the State of North Dakota to be done, to happen and to be performed, precedent to and in the issuance of this Note, have been done, have happened and have been performed, in regular and due form, time and manner as required by law; and that this Note, together with all other debts of the City outstanding on the date hereof, being the date of its actual issuance and delivery, does not exceed any constitutional or statutory limitation of indebtedness.

IN WITNESS WHEREOF, the City of Fargo, Cass County, North Dakota, by its Board of City Commissioners has caused this Note to be executed on its behalf by the signature of its Mayor and attested by the signature of the City Auditor, all as of _____, 20____.

CITY OF FARGO,
a North Dakota municipal corporation

By: _____
Timothy Mahoney, its Mayor

ATTEST:

Steven Sprague, City Auditor

(SEAL)

CERTIFICATE OF REGISTRATION

The transfer of ownership of the principal amount of the attached Note may be made only by the registered owner or his, her or its legal representative last noted below.

DATE OF
REGISTRATION

REGISTERED OWNER

SIGNATURE OF
AUTHORITY'S TREASURER

PS Holdings, LLC

_____, 20____

CERTIFICATE OF COMPLETION

WHEREAS, the City of Fargo, North Dakota, a municipal corporation, (the "City") and **PS Holdings, LLC**, a North Dakota limited liability company (the "Developer") have entered into an agreement dated as of May 17, 2021; and

WHEREAS, the Developer has to the present date performed said covenants and conditions insofar as it is able in a manner deemed sufficient by the City to permit the execution and recording of this certification:

NOW, THEREFORE, this is to certify that all building construction and other physical improvements specified to be done and made by the Developer have been completed, and the above covenants and conditions in said Developer Agreement have been performed by the Developer therein, and that the Tax Increment Note, referred to in said Developer Agreement, may be issued to Developer by the City.

CITY OF FARGO, NORTH DAKOTA

By: _____
Timothy Mahoney, Mayor

Attest:

Steven Sprague, City Auditor

TAX INCREMENT NOTE

No. R-1

\$1,612,072.92

UNITED STATES OF AMERICA
STATE OF NORTH DAKOTA
CASS COUNTY
CITY OF FARGO

TAX INCREMENT
REVENUE NOTE OF 2023
(TAX INCREMENT DISTRICT 2021-02 PROJECT)

KNOW ALL PERSONS BY THESE PRESENTS that the City of Fargo, a North Dakota municipal corporation (the "City"), certifies that it is indebted and for value received promises to pay to PS Holdings, LLC (the "Developer"), or the registered assign, the principal sum of **One Million Six Hundred Twelve Thousand Seventy-Two and 92/100 Dollars (\$1,612,072.92)**, an amount issued in reimbursement of eligible costs paid by the Developer, unless due sooner by redemption or early payment, on the Maturity Date defined below; but only in the manner, at the times, from the sources of revenue, and to the extent hereinafter provided; and to pay interest on the unpaid principal amount of this Note at the rate of interest of **Three and one-half Percent (3.5%)** per annum, compounded annually. Interest shall accrue from the date of this Note on the amount issued and shall be computed on the basis of a 360-day year consisting of 12 30-day months. This Note is the "Tax Increment Note" (the "Note") described and defined in that certain Developer Agreement, dated as of May 17, 2021 (as the same may be amended from time to time, the "Developer Agreement"), by and between the City and PS Holdings, LLC, a North Dakota limited liability company, as the initial Developer under the Developer Agreement. Each capitalized term which is used but not otherwise defined in this Note shall have the meaning given to that term in the Developer Agreement or in the resolution authorizing the issuance of this Note. Principal and interest are payable at such address as shall be designated in writing by PS Holdings, LLC, or other registered holder of this Note, in any coin or currency of the United States of America which at the time of payment is legal tender for public and private debts.

Payment Dates. Subject to the terms hereof, the principal of and interest on this Note shall in the aggregate be payable on May 15th following the date of issuance of this Note and on May 15th of each year thereafter until the Maturity Date said May 15th dates being referred to herein as the "Payment Date" or collectively as the "Payment Dates"). Notwithstanding the previous sentence, in the event that ad valorem property taxes for the Development Property are paid in full on or before February 15th of each year, the City agrees, and the City's Finance Director is hereby authorized, to pay out the full amount of Available Tax Increments received from the County Auditor upon written request submitted by the Developer. The City's Finance Director is authorized to make such payment within the later of (a) forty (40)

days after receipt by the City of the Available Tax Increments are received by the City from the County Auditor, or (b) forty days from the date of receipt of said written request.

Payment Amounts. On each Payment Date (or, if not a business day of the City, the first business day thereafter) the City shall pay by check or draft mailed to the person that was the Registered Owner of the Note at the close of the last business day of the City preceding such Payment Date an amount as follows: (a) the first payment on the Tax Increment Note, to become due and payable on the first Payment Date, shall be limited to all the Available Tax Increments received to said date by the City on the Project and (b) for all payments after said first payment on the Tax Increment Note, the amounts payable on the Tax Increment Note on each Payment Date shall be limited to the Available Tax Increments received by the City since the prior year's Payment Date. All payments made on the Tax Increment Note shall be applied first to pay accrued and unpaid interest on the Tax Increment Note and second toward payment of principal. To the extent that the Available Tax Increments are insufficient, through the Maturity Date, to pay all accrued and unpaid interest on and the principal of the Tax Increment Note, said unpaid amounts shall then cease to be any debt or obligation of the City or of the City whatsoever. In no event shall any City be obligated to remit payment of principal in excess of the aggregate amount of the unpaid principal of the Note. The City shall have the option at any time to prepay in whole or in part the principal amount of this Note at par plus accrued interest. All payments made by the City under this Note shall be applied first to pay accrued and unpaid interest on this Note and second toward payment of principal hereof.

Redemption. In addition to the amounts of principal required to be paid by the City as hereinabove set forth, the City shall have the right to prepay on any date the entire principal amount hereof then remaining unpaid, or such lesser portion thereof as it may determine upon, in multiples of \$1,000, at par plus accrued interest. Notice of any such optional prepayment shall be given prior to the prepayment date by mailing to the registered owner of this Note a notice fixing such prepayment date and the amount of principal to be prepaid.

Available Tax Increments. "Available Tax Increments" are defined in the Developer Agreement as follows:

"Developer Tax Increments minus the reasonable and not theretofore reimbursed actual expenses incurred by the City in establishing and maintaining the TIF District, in preparing and implementing this Agreement, and in general in administering the TIF District and this Agreement and any supplements hereto and in participating in the actions or transactions contemplated thereby and hereby."

"Developer Tax Increments" are defined in the Developer Agreement as follows:

"The portion of Developer's Taxes which constitutes Tax Increments, or the portion of Tax Increments derived from Developer's Taxes."

"Tax Increments" are defined in the Developer Agreement as follows:

"Tax Increments" means those tax increments which the City shall be entitled to receive and retain, and which the City shall have actually received from Cass

County, from time to time from the TIF District pursuant to the Urban Renewal Law.”

In addition, “Developer’s Taxes” are defined in the Developer Agreement as follows:

“Developer's Taxes” means taxes paid with respect to the portions of the Development Property and Improvements completed by the Developer for the tenth (10th) Tax Year and earlier Tax Years. Taxes for the eleventh (11th) year following the first Tax Year, or for any subsequent year, are not included as Developer’s Taxes.”

In addition, “Tax Year” is defined in the Developer Agreement as follows:

“Tax Year” is one of a maximum of ten (10) successive calendar years, with the first year being the year that, pursuant to this Agreement, the Tax Increment Note is issued and with the subsequent years being the nine (9) subsequent calendar years. The tenth (10th) Tax Year, therefore, is the ninth (9th) calendar year following the first said year.

In addition, “Maturity Date” is defined in the Developer Agreement as follows:

“Maturity Date” means the date that is three (3) years from the Payment Date for the tenth (10th) Tax Year following the date of the issuance of the Tax Increment Note.

In addition, Section 3.6 of the Developer Agreement provides as follows:

“The City receives the Tax Increments generated by the TIF District from the County. The City may use Tax Increments which are not Developer Tax Increments for any purpose permitted by law. Developer Tax Increments shall be used on any date of application for the following purposes in the following order of priority:

- (a) to make payments on the Tax Increment Note; and,
- (b) after payment of the City Development Costs and Tax Increment Note in full, to pay or reimburse redevelopment costs identified by the City and to pay other eligible expenses for other projects that may be approved for the TIF District, from time to time, by the governing body of the City.

No Payment Upon Default. No payments will be made on this Note during such time as there is an Event of Default under the Developer Agreement which has not been cured by the Developer.

Lack of Protective Covenants. The City of Fargo, North Dakota (the "City"), has not covenanted to endeavor in any fashion to cause Tax Increments to be sufficient to generate Available Tax Increments sufficient to pay this Note, nor have they covenanted to take actions under the Developer Agreement with such sufficiency as a goal.

Sufficiency of Revenues. The City makes no representation or covenant, express or implied, that the revenues described herein will be sufficient to pay, in whole or in part, the amounts which are or may otherwise become due and payable hereunder. Any amounts which have not become due and payable on this Note on or before the Maturity Date shall no longer be payable, as if this Note had ceased to be any debt or obligation of the City or of the City whatsoever.

Issuance; Purpose; Special Limited Obligation. This Note is in the aggregate principal amount of \$1,612,072.92 (the "Note"), which Note has been issued pursuant to and in full conformity with the Constitution and laws of the State of North Dakota including North Dakota Century Code Chapter 40-58, for the purpose of providing money to finance certain eligible costs within the City's Urban Renewal District 2021-02, specifically the costs identified in Section 3.3 of the Developer Agreement. The Notes are payable out of the Tax Increment Revenue Note of 2021-02 (Brewhalla Project) Fund of the City, to which have been pledged amounts representing Available Tax Increments to be received by the City from the City's 2021-02 Tax Increment District in the City. This Note is not any obligation of any kind whatsoever of any public body, except that this Note is a special and limited revenue obligation but not a general obligation of the City and is payable by the City only from the sources and subject to the qualifications and limitations stated or referenced herein. Neither the full faith and credit nor the taxing powers of the City or of the City are pledged to or available for the payment of the principal of or interest on this Note, and no property or other asset of the City or of the City, save and except the above referenced Available Tax Increments, is or shall constitute a source of payment of the City's obligations hereunder.

Limitation on Transfer. **This Note may only be transferred to a person who is (1) a successor of PS Holdings, LLC, by reorganization, merger or acquisition, (2) a member of PS Holdings, LLC, (3) to a lender of PS Holdings, LLC, as collateral for financing as permitted by the Developer Agreement, (4) a related person to such partner or successor, (5) a "qualified institutional buyer" as defined in Rule 144A promulgated under the federal Securities Act of 1933, or (6) an "accredited investor" as defined in Rule 501(a)(1), (2), (3) or (7) promulgated under the federal Securities Act of 1933. The City shall not register any transfer of this Note unless (i) a registered owner's prospective transferee delivers a representation letter in form satisfactory to the City verifying that the transferee is a "qualified institutional buyer"; or (ii) such transferee is an "accredited investor" which has delivered a representation letter in form satisfactory to the City; or (iii) the prospective transferee demonstrates to the satisfaction of the City that it is the successor, partner or related person to PS Holdings, LLC, noted above.**

Any registered owner desiring to effect a transfer shall, and does hereby, agree to indemnify the City against any liability, cost or expense (including attorneys' fees) that may result if the transfer is not so made.

Registration; Transfer. This Note shall be registered in the name of the payee on the books of the City by presenting this Note for registration to the officer of the City performing the functions of the Treasurer, who will endorse his or her name and note the date of registration opposite the name of the payee in the certificate of registration on the reverse side hereof. Thereafter this Note may be transferred to a bona fide purchaser who is a permitted transferee

only by delivery with an assignment duly executed by the registered owner or his, her or its legal representative, and the City may treat the registered owner as the person exclusively entitled to exercise all the rights and powers of an owner until this Note is presented with such assignment for registration of transfer, accompanied by assurance of the nature provided by law that the assignment is genuine and effective, and until such transfer is registered on said books and noted hereon by the Treasurer of the City.

Developer Agreement. The terms and conditions of the Developer Agreement are incorporated herein by reference and made a part hereof. The Developer Agreement may be attached to this Note, and shall be attached to this Note if the holder of this Note is any person other than PS Holdings, LLC. No payments will be made on this Note during such time as there is a Specified Event of Default under the Developer Agreement which has not been cured by the Developer.

Taxable Obligation. This Note is intended to bear interest that is included in the gross income of the owner.

IT IS HEREBY CERTIFIED AND RECITED that all acts, conditions and things required by the Constitution and laws of the State of North Dakota to be done, to happen and to be performed, precedent to and in the issuance of this Note, have been done, have happened and have been performed, in regular and due form, time and manner as required by law; and that this Note, together with all other debts of the City outstanding on the date hereof, being the date of its actual issuance and delivery, does not exceed any constitutional or statutory limitation of indebtedness.

IN WITNESS WHEREOF, the City of Fargo, Cass County, North Dakota, by its Board of City Commissioners has caused this Note to be executed on its behalf by the signature of its Mayor and attested by the signature of the City Auditor, all as of _____, 20____.

CITY OF FARGO,
a North Dakota municipal corporation

By: _____
Timothy Mahoney, its Mayor

ATTEST:

Steven Sprague, City Auditor

(SEAL)

CERTIFICATE OF REGISTRATION

The transfer of ownership of the principal amount of the attached Note may be made only by the registered owner or his, her or its legal representative last noted below.

DATE OF
REGISTRATION

REGISTERED OWNER

SIGNATURE OF
AUTHORITY'S TREASURER

PS Holdings, LLC

_____, 20____

**PRIVATE PLACEMENT
MEMORANDUM**

Relating to

CITY OF FARGO, NORTH DAKOTA

\$One Million Six Hundred Twelve Thousand Seventy-Two and 92/100Nos Tax Increment
Revenue Note of 2023
(Brewhalla Redevelopment Project—Tax Increment District 2021-02)

Dated: _____, 2023

This Private Placement Memorandum sets forth in brief form certain information relevant to the holders of the \$1,612,072.92 Tax Increment Revenue Note of 2023 (Brewhalla Redevelopment Project) (the "Note") issued by the City of Fargo, North Dakota (the "City" or "Issuer").

GENERAL INFORMATION

Authorization. The Note is issued pursuant to a resolution adopted , when conditions are met that are set forth in a Developer Agreement dated as of May 17, 2021 (the "Development Agreement"), by and between the City and PS HOLDINGS, LLC (the "Developer"). The Note is the "Tax Increment Revenue Note" as defined in the Developer Agreement.

Consideration for the Note. The consideration for the Note is the Developer's payment of certain expenditures that are eligible public redevelopment costs of the City's Tax Increment District 2021-02 (the "Tax Increment District"). The Note is not issued for cash, but rather is issued in reimbursement of those expenditures paid by the Developer.

PAYMENT SOURCE; TAX INCREMENTS

Payment Sources for the Note; Sufficiency. The Note is payable solely and only from Tax Increments of the Tax Increment District if and as received. The Note states,

"Sufficiency of Revenues. The City makes no representation or covenant, express or implied, that the revenues described herein will be sufficient to pay, in whole or in part, the amounts which are or may otherwise become due and payable hereunder. Any amounts which have not become due and payable on this Note on or before the Maturity Date shall no longer be payable, as if this Note had ceased to be any debt or obligation of the City or of the City whatsoever."

Available Tax Increments. "Available Tax Increments" are defined in the Developer Agreement as follows:

" Available Tax Increments" means the Developer Tax Increments minus the reasonable and not theretofore reimbursed actual expenses incurred by the City in establishing and maintaining the TIF District, in preparing and implementing this

Agreement, and in general in administering the TIF District and this Agreement and any supplements hereto and in participating in the actions or transactions contemplated thereby and hereby.

Subordinate Use of Tax Increments. Section 3.6 of the Development Agreement provides an order of priority for use of tax increments that causes the Note to be subordinate to actual administrative expenses. Section 3.6 reads as follows:

“Section 3.6. Use of Tax Increments.

The City receives the Tax Increments generated by the TIF District from the County. The City may use Tax Increments which are not Developer Tax Increments for any purpose permitted by law. Developer Tax Increments shall be used on any date of application for the following purposes in the following order of priority:

- (1) to make payments on the Tax Increment Note; and
- (2) after payment of the Tax Increment Note in full, to pay or reimburse redevelopment costs identified by the City and to pay other eligible expenses for other projects that may be approved for the TIF District, from time to time, by the governing body of the City.

No Payment Upon Default. No payments will be made on the Note during such time as there is an Event of Default under the Development Assistance Agreement which has not been cured by the Developer.

Lack of Protective Covenants. The City of Fargo, North Dakota (the “City”), has not covenanted to endeavor in any fashion to cause Tax Increments to be sufficient to generate Available Tax Increments sufficient to pay the Note, nor have they covenanted to take actions under the Developer Agreement with such sufficiency as a goal. There can be no assurance that taxes collected on such Assessor’s Minimum Market Value will be sufficient to pay the Note.

Projected Tax Increments for Note. Tax increments are expected to be sufficient to pay the Note and the interest thereon in full; however, tax increments at such a level may not be achieved.

Tax Increment Risks. Tax increments are taxes received on property in a tax increment district from the increased taxable value of the property over its base value at the time that the tax increment district was created, which base value is called "original net tax capacity". There are risk factors for persons relying on tax increments to be received over time, including the following:

- (a) Incomplete Completion of the Improvements. The Tax Increment Notes are issued to encourage the development of specific Improvements in the Tax Increment District, identified in the Developer Agreement. If the contemplated Improvements were completed at a lesser level of value than originally contemplated, they would generate fewer taxes and therefore fewer tax increments than originally contemplated.

- (b) Damage or Destruction. If the Improvements are damaged or destroyed after completion, their value would be reduced, and taxes and tax increments would be reduced. Repair, restoration or replacement of the Improvements may not occur, may occur after only a substantial time delay, or may involve property with a lower value than the Improvements, all of which would reduce taxes and tax increments.
- (c) Change in Use to Tax-Exempt. The Improvements could be acquired by a party that devotes them to a use which causes the property to be exempt from real property taxation. Taxes and tax increments would then cease.
- (d) Depreciation. The Improvements could decline in value due to changes in the market for such property or due to the decline in the physical condition of the property. Lower market valuation will lead to lower taxes and lower tax increments.
- (e) Non-payment of Taxes. If the property owner does not pay property taxes, either in whole or in part, the lack of taxes received will cause a lack of tax increments. The North Dakota system of collecting delinquent property taxes is a lengthy one that could result in substantial delays in the receipt of taxes and tax increments, and there is no assurance that the full amount of delinquent taxes would be collected. Amounts distributed to taxing jurisdictions upon a sale following a tax forfeiture of the property are not tax increments.
- (f) Reductions in Taxes Levied. If property taxes are reduced due to decreased municipal levies, taxes and tax increments will be reduced. Reasons for such reduction could include lower local expenditures or changes in state aids to municipalities.
- (g) Reductions in Tax Capacity Rates. The taxable value of real property is determined by multiplying the market value of the property by a tax capacity rate. Tax capacity rates vary by certain categories of property; for example, the tax capacity rates for residential homesteads are currently less than the tax capacity rates for commercial and industrial property.
- (h) Legislation. The North Dakota Legislature has the authority to modify laws affecting real property taxes, particularly as they relate to mill levies and the overall level of taxes.
- (i) Combinations of Factors. Factors that reduce taxes and tax increments can occur in combinations that reduce tax increments further than any one factor alone.

Factors noted above present risks for the receipt of tax increments; changes in the other direction could increase taxes and tax increments.

Pay-as-You-Go Format. The Tax Increment Notes are instruments which municipalities refer to as "pay as you go" notes. Issued in reimbursement of eligible costs paid by others, such notes involve no initial cash to or from the municipality. They are issued to developers of

property improvements, the same parties who are expected to own the real property and pay the taxes. As long as the same party both owns the property and holds the note, the tax increment risks noted above to some extent cancel out economically, making the changes somewhat a "wash". For instance, if the property owner does not pay its taxes, the same party as holder of the note does not receive tax increments (because, due to non-payment of taxes, there are none). If tax capacity rates fall, leading taxes and tax increments to fall, the note holder receives fewer tax increments in payment of the note but the same person as owner of the property has "saved" a similar amount in not paying taxes. If the ownership of the real property and the note cease to be in the same party, this offsetting of tax increment risks by attendant property tax benefits is broken. Upon the initial issuance of the Note, the holder is the Developer.

TAX TREATMENT OF NOTE

No Information About Tax Treatment of Note. The Issuer does not know, and makes no representation about, the tax treatment of, or tax consequences for the Developer of, (1) the Issuer's issuance of the Note in reimbursement of public costs of redevelopment paid by the Developer, or (2) the later retention or disposition of the Note or the retention or disposition of the property whose costs were reimbursed by the issuance of the Note.

NO LEGAL OPINION

The Developer is not being provided with any opinion of bond counsel with respect to the issuance of the Note. The City's bond counsel does not ordinarily issue an opinion with respect to taxable pay-as-you-go notes.

INTEREST TAXABLE

The Note bears interest that is intended to be included in gross income of the holder.

NOT QUALIFIED TAX EXEMPT OBLIGATIONS

The City has not designated the Note as a "qualified tax exempt obligation" for purposes of Section 265(b)(3) of the federal Internal Revenue Code of 1986, as amended, relating to the ability of financial institutions to deduct from income for federal income tax purposes interest expense that is allocable to carrying and acquiring tax exempt obligations. "Qualified tax exempt obligations" are treated as acquired by the financial institution before August 8, 1986. Interest allocable to such obligations remains subject to the 20% disallowance contained in prior law. The Note is taxable and does not qualify for such designation.

NOT COMPREHENSIVE

Not Comprehensive. This Private Placement Memorandum is not intended to be a complete or comprehensive description of the Note or a complete presentation of all matters relevant to owning or holding the Note. It is intended for use with the Developer or a sophisticated investor, each of whom are encouraged to engage in such diligence reviews of matters of fact and law and inquiries as to matters of fact and law as will provide sufficient information for a business decision about ownership of the Note. The Developer to whom the

Note is originally issued will provide the City with a certificate as to making its own determinations and not relying on the City or information provided by the City.

RECEIPT AND ACKNOWLEDGEMENT

PRIVATE PLACEMENT MEMORANDUM

The undersigned does hereby acknowledge receipt of the Private Placement Memorandum delivered to the undersigned dated the ____ day of _____, 20__.

DATED: _____

PS Holdings, LLC

By _____
Kevin J. Bartram, President



City Administration
225 4th Street North
Fargo, ND 58102

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MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

FROM: JIM GILMOUR, STRATEGIC PLANNING DIRECTOR *JG*

DATE: OCTOBER 26, 2023

SUBJECT: IN-KIND COMMITMENT FOR THE BREWHALLA PROJECT

PS Holdings developed the Brewhalla project in Fargo. The City of Fargo already approved a tax increment financing note for the project, and the project has been completed. Final approval of the TIF Revenue Note is also on your agenda.

PS Holdings is applying for a buy down of their interest rate from the Bank of North Dakota. This requires community match, which can be an in-kind contribution of the tax increment financing assistance.

Attached are the agreements that the City of Fargo needs to approve and sign for the in-kind contribution of the already approved tax increment financing incentives. Fargo is not providing any cash or loan guarantees. The Bank of North Dakota will provide a much lower interest rate if this interest buy down is approved.

RECOMMENDED MOTION:

Approve agreements to provide in-kind contributions to PS Holdings for the Brewhalla project.

Attachments

OFFICE USE ONLY		Return SIGNED Documents to BND
Borrower:	PS HOLDINGS LLC	
Program Option:	Flex PACE	
Community Participation:	In-Kind Commitment	

INTEREST BUYDOWN AGREEMENT PACE PROGRAM

This Interest Buydown Agreement is made between **CITY OF FARGO** (the "Community"), and the **Bank of North Dakota** ("BND") acting on behalf of the PACE Program ("PACE") for the purpose of a buydown on the interest for the loan (the "Loan") received by **PS HOLDINGS LLC** (the "Borrower") from **BELL BANK** (the "Originating Lender") dated _____. The attached payment schedule labeled Exhibit A details the Loan amount and terms and may be modified from time to time. The Borrower, Community, and BND agree as follows:

ARTICLE I

DEFINITIONS

Section 1.01. Defined Terms. Capitalized terms used in this Agreement and not otherwise defined shall have the meanings given to them in the Note and Related Documents. As used in this Agreement, the following terms have the following meanings (terms defined in the singular to have the same meaning when used in the plural and vice versa):

Addendum to the Promissory Note – means the Addendum to the Promissory Note entered into by the Borrower and Originating Lender. The addendum to the Promissory Note addresses specific terms and conditions with respect to the Borrower's participation of their Loan in PACE Program offered by BND.

Agreement - means this Interest Buydown Agreement, as amended, supplemented, or modified from time to time.

Affiliate - means any Person (1) which directly or indirectly controls, or is controlled by, or is under common control with the Originating Lender or Borrower; (2) which directly or indirectly beneficially owns or holds five (5%) or more of any class of voting stock of the Originating Lender or Borrower; or (3) five percent (5%) or more of the voting stock of which is directly or indirectly beneficially owned or held by the Originating Lender or Borrower. The term control means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

BND Buydown Amount - means the portion of the Interest Buydown Amount to be paid by BND as set forth on the attached payment schedule labeled Exhibit A.

Borrowing Rate - means the interest rate to be paid by the Borrower as set forth on the payment schedule labeled Exhibit A. If the terms of the Note provide for a variable or adjustable rate structure, the Borrowing Rate may vary over the term of the Note, but in no event will it be less than 1.00%.

Business Day - means any day other than a Saturday, Sunday, or other day on which commercial banks in North Dakota are authorized or required to close under the laws of the State of North Dakota, unless otherwise provided for in the Note.

Buydown Documents means this Agreement, the Escrow Agreement and any related documents, attachments or schedules incorporated therein.

Community Buydown Amount - means the portion of the Interest Buydown Amount to be paid by the Community and set forth on the attached payment schedule labeled Exhibit A.

Community In-kind Commitment Amount - means the amount of "in-kind" commitment made by the Community, if any, to match the BND Buydown Amount to be paid by BND as provided by the PACE Program. The "in-kind" Community Commitment Amount is provided by the Community in lieu of its cash portion of the Interest Buydown Amount; and is a contribution towards total costs of the Borrower's project in a form acceptable to BND. The payment schedule labeled Exhibit A specifies the Community commitment amount, if any.

Escrow Agent – means Bank of North Dakota acting through its Trust Department.

OFFICE USE ONLY		Return SIGNED Documents to BND
Borrower:	PS HOLDINGS LLC	
Program Option:	Flex PACE	
Community Participation:	In-Kind Commitment	

Escrow Agreement – means Agreement by which the payments to disburse the Interest Buydown Amount is to be administered by the Escrow Agent.

Flex PACE Program – means the program option within the PACE Program which provides an interest buydown to borrowers that do not meet the states definition of a primary sector business, but does meet other needs as determined appropriate by the Community.

Flex PACE Affordable Housing Program – means the program option within the PACE Program which provides an interest buydown to borrowers for the permanent financing of new affordable multi-family housing units within the Community.

Interest Buydown Amount – means the actual amount to be paid by the Escrow Agent on behalf of the Borrower over the life of the Note to buy down the Yield Rate to the Borrowing Rate as set forth in the payment schedule labeled Exhibit A.

The Interest Buydown Amount includes the BND Buydown Amount and the Community Buydown Amount unless all or any portion of the Community's cash portion is made in the form of an "in-kind" Community Commitment Amount, then the Interest Buydown Amount may only consist of the BND Buydown Amount. The Interest Buydown Amount shall not exceed the Interest Buydown Amount per the payment schedule labeled Exhibit A.

The Interest Buydown Amount has been based upon the Yield Rate at the time of closing, unless otherwise agreed to in writing by the Originating Lender, BND, and the Borrower. The Interest Buydown Amount shall not vary, and subject to the terms and conditions of the PACE Program it shall be paid on the basis of a set stream of payments as defined under the column entitled INTEREST EXPENSE DIFF. DUE TO BUYDOWN as listed on the payment schedule labeled Exhibit A.

Interest Rate Reduction - means each scheduled payment to be paid by Escrow Agent from Escrow Account as set forth in the payment schedule labeled Exhibit A.

Investment – Total costs of equipment, real estate and/or improvements to real property associated with the PACE loan request.

Note - may refer to a promissory note, credit agreement, loan agreement, or any other document that states the terms of the indebtedness between the Originating Lender and the Borrower.

PACE Program – means the "Partnership in Assisting Community Expansion Program" and includes loans approved under PACE Program options for PACE, Flex PACE or Flex PACE for Affordable Housing.

Participation Agreement – means the agreement between the Originating Lender and BND in connection with the Loan.

Payment Schedule - means Exhibit A which may be updated and supplemented from time to time by BND.

Person - means an individual, partnership, corporation, business trust, joint stock company, trust, unincorporated association, joint venture, governmental authority, or other entity of whatever nature.

Related Documents - means all supporting documents related to the Loan.

Yield Rate - means the interest rate on the Note which, at any point in time when there is a default, may include the default rate as that term is defined in the Note.

ARTICLE II

TERMS OF THE INTEREST RATE BUYDOWN

SECTION 2.01. Interest Buydown Amount. BND and the Community agree on the terms and conditions

OFFICE USE ONLY		Return SIGNED Documents to BND
Borrower:	PS HOLDINGS LLC	
Program Option:	Flex PACE	
Community Participation:	In-Kind Commitment	

set forth in this Agreement to buy down the interest from the Yield Rate to the Borrowing Rate for the Loan.

1. Interest Payments. BND and the Community shall make Interest Buydown Amount payments to the Escrow Agent as provided for in the attached payment schedule labeled Exhibit A.
2. Method of Payment. BND and the Community shall make each payment to the Escrow Agent as provided by the Buydown Documents no later than the date when due as defined by the Note in lawful money of the United States in immediately available funds unless otherwise expressly provided for. Whenever any payment to be made under the Buydown Documents shall be stated to be due on a Saturday, Sunday, or a public holiday, or the equivalent for banks generally under the laws of the State of North Dakota, the payment shall be made on the next succeeding Business Day.
3. Disbursement of the Interest Buydown Amount. The Escrow Agent shall disburse the Interest Buydown Amount to the Originating Lender in the amounts as set out and described in the payment schedule labeled Exhibit A subject to the Note.
4. Default by the Borrower. In the event of a default by the Borrower, as defined in the Note, or a Default as defined in the Addendum to Promissory Note Pace Program given for the Note, the Escrow Agent shall discontinue any payments required under the Buydown Documents until such time as the Default is cured.
5. Late or Partial Payments by the Borrower. If the Borrower makes a late payment or a partial payment, the Interest Rate Reduction payment will not be made and the interest rate from the period of the payment date of the payment until the payment is received will be the Yield Rate, including any default rate provided for in the Note. If the late or partial payments are paid by the Borrower, Escrow Agent will resume making Interest Buydown Amount on the next scheduled payment date, unless otherwise agreed to by BND.
6. Prepayments and Adjustment to Payment Schedule. In the event the Borrower makes a prepayment under the terms of the Note, BND may re-amortize the payment schedule labeled Exhibit A but such re-amortization shall not be effective unless received in writing by the Originating Lender fifteen (15) days prior to the next payment due date under Note. Any replacement payment schedule labeled Exhibit A received by Originating Lender shall replace the existing payment schedule with no further action or consent required by Borrower.
7. Partial Payment or Termination by the Community. In the event the Community makes a payment to the Escrow Agent which results in insufficient funding of the Community Buydown Amount or terminates its participation in PACE for the loan to the Borrower, the Community shall provide notice in writing to the Borrower, the Originating Lender and BND no less than fifteen (15) days prior to the next scheduled payment due date under the Note.

Upon receipt of notice from the Community and until such time as the deficiency is cured, the following shall occur:

- The Escrow Agent shall discontinue to make Interest Rate Reduction payments.
- To the extent the Interest Buydown Amount paid by the Escrow Agreement does not reduce the interest expense to the interest expense calculated at the Borrowing Rate then the Borrower shall remit the difference to Originating Lender.
- The Borrower shall be responsible for the entire interest payment at the Yield Rate effective on the date of the next scheduled payment. From that point forward, this Addendum shall have no force or effect and any of the rights and obligations created herein shall be terminated and the Note and Related Documents, without regard to this Addendum or the Buydown Documents, shall govern the relationship between the Originating Lender and the Borrower.

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Borrower:	PS HOLDINGS LLC	
Program Option:	Flex PACE	
Community Participation:	In-Kind Commitment	

8. Termination of PACE Program. In the event that funding under the PACE Program is terminated for any reason, this Agreement shall have no force or effect and any obligation of BND, the Community and the Escrow Agent to pay the Interest Buydown Amount shall cease.

ARTICLE III

REPRESENTATIONS AND WARRANTIES

SECTION 3.01. The Community represents and warrants to the Borrower and BND that:

1. Good Standing, and Due Qualification. The Community is in good standing under the laws of the State of North Dakota. The execution, delivery, and performance of this Agreement by the Community has been duly authorized by all necessary Persons.
2. Other Agreements. The Community is not a party to any indenture, loan, or credit agreement, or to any lease or other agreement or instrument, or subject to any charter or corporate restriction which could have a material adverse effect on the business, properties, assets, operations, or conditions, financial or otherwise, of the Borrower, Originating Lender or their Affiliates, or the ability of the Borrower, Originating Lender or their Affiliates to carry out the Borrower's and the Originating Lender's obligations under the Note and Related Documents. The Community and the Community's Affiliates are not in default in any respect in the performance, observance, or fulfillment of any of the obligations, covenants, or conditions contained in any agreement or instrument material to the performance of the Note and Related Documents.
3. Sufficient Funds. The Community has or will make available sufficient funds to finance the Community Buydown Amount or Community In-kind Commitment Amount. This includes pledging revenue producing mechanisms which the Community is statutorily authorized to pledge or impose. Revenue producing mechanisms include but are not limited to any bond or mill levy or other tax which may be pledged or imposed for the purpose of economic development.
4. Source of Funds. The Community Buydown Amount or Community In-kind Commitment Amount does not nor will it ever be derived directly or indirectly from a loan, grant or gift from the Borrower or the Borrower's Affiliate or a contribution from Originating Lender or Originating Lender's Affiliate which is greater than the Originating Lender or its Affiliate would normally contribute to the Community's economic development efforts. The Community Buydown Amount may be in the form of a loan. Interest may begin to accrue, however, no repayment of principal or interest on the Community loan may commence until the PACE interest buydown amount has been fully expended.
5. Litigation. There is no pending or threatened action or proceeding against or affecting the Community before any court, governmental agency, or arbitrator, which may, in any one case or in the aggregate, materially adversely affect the ability of the Community to perform its obligation under the Note and Related Documents to which it is a party.
6. No Defaults on Outstanding Judgments or Orders. The Community has satisfied all judgments, and is not in default with respect to any judgment, writ, injunction, decree, rule, or regulation or any court, arbitrator, or federal, state, municipal, or other governmental authority, commission, board, bureau, agency, or instrumentality, domestic or foreign, which materially adversely affects the ability of the Community to perform its obligation under the Note and Related Documents to which it is a party.

ARTICLE IV

AFFIRMATIVE COVENANTS

SECTION 4.01. Notice of Adverse Actions. So long as the Loan remains unpaid, all parties to this Agreement shall promptly after the commencement thereof, provide all parties notice of all actions, suits, and proceedings before any court or governmental department, commission, board, bureau, agency, or instrumentality,

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Community Participation:	In-Kind Commitment

domestic or foreign, affecting the parties which could have a material adverse effect on the Community's ability to perform under the Note and Related Documents.

SECTION 4.02. Obligation to Resolve Disputes. It is the intent of all parties to this Agreement that conflicts or potential conflicts and circumstances or situations which arise which are not considered herein, be resolved at the most informal level possible and to the mutual benefit of each party to the extent possible.

SECTION 4.03. Program Requirements. So long as the Note is participating in the PACE Program:

1. Job Creation: - Job creation is not necessarily a requirement of the Flex PACE or Flex PACE for Affordable Housing Programs, but will be tracked for informational purposes. The Borrower will show evidence of the level of employment created and maintained in North Dakota for the duration of this Agreement. At the request of the BND, the Borrower shall complete a recipient report to verify employment levels, and such other evidence as BND may request from the Borrower.
2. Accountability Compliance. To comply with North Dakota's accountability legislation (N.D.C.C. chapter 54-60.1), the Borrower agrees to execute and deliver to the Originating Lender the accountability information release and business incentive agreement prior to or at Loan closing. BND will provide these documents to the Originating Lender prior to Loan closing for execution by the Borrower and the Originating Lender will return these documents to BND prior to or after Loan closing.

The Borrower agrees to submit to BND a recipient report on an annual basis. BND will provide the recipient report to the Originating Lender for delivery and completion by the Borrower on an annual basis. The Borrower agrees to complete the recipient report and return it to the Originating Lender for delivery back to BND. If the Borrower cannot meet the goals established in the business incentive agreement, the Interest Buydown Amount will be prorated or suspended to reflect any partial fulfillment of the job and compensation goals. BND is responsible for tracking compliance with this requirement.

3. Donations, Gifts or Loans. The Borrower has not nor will it ever make directly or indirectly a loan, grant or gift to the Originating Lender, Community, or their Affiliates, which will be used to secure, promote or otherwise influence, the Originating Lender's or Community's ability or desire to make available Loan funds under the PACE Program.

ARTICLE V

CONDITIONS PRECEDENT

SECTION 5.01. Condition Precedent to this Agreement. The obligation of BND under this Agreement is subject to the condition precedent that BND shall have received on or before the day of the Loan each of the following, in form and substance satisfactory to BND and its counsel:

1. Evidence of all Corporate Action by the Community. BND may request certified copies of all corporate action taken by the Community, including resolutions of its Board of Directors, or certified copies of the official minutes of the appropriate governing body, or the equivalent thereof, authorizing the execution, delivery, and performance of the Buydown Documents to which it is a party and each other document to be delivered pursuant to this Agreement.
2. Opinion of Counsel for the Community. A favorable opinion of counsel for the Community in substantially the form of Exhibit B and as to such other matters as BND may reasonably request. Exhibit B shall also certify the names and true signatures of the officers of the Community authorized to sign the Buydown Documents to which it is a party and each other document to be delivered by the Community under this Agreement.
3. Business Incentive Agreement and Accountability Release from the Borrower.
4. Buydown Documents as required by the PACE Program from all parties to this Agreement.

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Program Option:	Flex PACE
Community Participation:	In-Kind Commitment

SECTION 5.02. Notification to Originating Lender. Upon satisfaction of the conditions, BND shall notify the Originating Lender in writing that all conditions have been satisfied for the Loan's participation in the PACE Program.

ARTICLE VI

MISCELLANEOUS

SECTION 6.01. Amendments, Etc. No amendment, modification, termination, or waiver of any provision, nor consent to any departure from this Agreement, shall in any event be effective unless such is in writing and signed by BND and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

SECTION 6.02. Notices, Etc. All notices and other communications provided for under this Agreement shall be in writing and shall be effective upon the earlier of (a) when actually delivered, (b) when deposited with a nationally recognized overnight courier or (c) if mailed, when deposited in the United State mail, as first class, certified or registered mail postage prepaid, directed to the applicable party at the address specified below, except that notices to BND pursuant to the provisions of Article II shall not be effective until received by BND.

- Community: CITY OF FARGO
225 4TH ST N
FARGO, ND 58102

- BND: BANK OF NORTH DAKOTA
PO BOX 5509
BISMARCK, ND 58506-5509
Attention: Commercial Loan Department

- Borrower: PS HOLDINGS LLC
505 BROADWAY N STE 201
FARGO ND 58102

Any party may change its address for notices by giving formal written notice to the other parties and specifying that the purpose of the notice is to change the party's address.

SECTION 6.03. No Waiver; Remedies. No failure on BND's part to exercise, and no delay in exercising, any right, power, or remedy under any Buydown Documents shall operate as a waiver thereof; nor shall any single or partial exercise of any right under any Buydown Documents preclude any other or further exercise thereof or the exercise of any other right. The remedies provided in the Buydown Documents are cumulative and not exclusive of any remedies provided by law.

SECTION. 6.04. Successors and Assigns. This Agreement may not be assigned or transferred by either party without the prior consent of BND.

SECTION 6.05. Costs, Expenses, and Attorney Fees. The Community and BND agree to indemnify each other for reasonable fees and out-of-pocket expenses, including attorney fees, in connection with the enforcement of any portion of this Agreement.

SECTION 6.06. Indemnification for Misrepresentation. The Community and BND agree to indemnify each other for any and all loss, payment and additional expense resulting from any misrepresentation or breach of warranty made herein, including any expense and legal fees that might be incurred because of any such misrepresentation or breach of warranty.

SECTION 6.07. Disclosure of Information. The Community hereby consents to the disclosure of all financial, business, and other information about the Community which BND may possess at any time to other lenders participating in the Loan.

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Program Option:	Flex PACE	
Community Participation:	In-Kind Commitment	

SECTION 6.08. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of North Dakota.

SECTION 6.09. Severability of Provisions. Any provision of any Buydown Document which is prohibited, unenforceable, or not authorized in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition, unenforceability, or lack of authorization without invalidating the remaining provisions of the Buydown Documents or affecting the validity, enforceability, or legality of such provision in any other jurisdiction.

SECTION 6.10. Headings. Article and Section headings in the Buydown Documents are included for the convenience of reference only and shall not constitute a part of the applicable Buydown Documents for any other purpose.

SECTION 6.11. Third Party Beneficiary. The parties acknowledge that the Borrower is an intended third party beneficiary of this agreement and, to the extent that funds are available and no determination has been made by a court of competent jurisdiction that this agreement is unenforceable, is entitled to enforce the agreement as provided by N.D.C.C. § 9-02-04.

SECTION 6.12 Document Imaging and Electronic Transactions. All parties hereby acknowledge the receipt of a copy of this Agreement and all other loan documents. BND may, on behalf of parties, create a microfilm or optical disk or other electronic image of this Agreement and any or all of the loan documents. BND may store the electronic image of this Agreement and loan documents in its electronic form and then destroy the paper original as part of BND's normal business practices, with the electronic image deemed to be an original.

Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each party represents and warrants to the other that the execution and delivery of the Agreement and the performance of such party's obligation hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such party and enforceable in accordance with its terms.

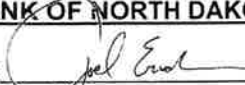
IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective officers duly authorized, as of the date first above written.

CITY OF FARGO

By: _____

Its: _____

BANK OF NORTH DAKOTA

By:  _____
 Joel B Erickson
 Its: Business Banker

PS HOLDINGS LLC

By: _____

Title: _____

OFFICE USE ONLY	Return SIGNED Documents to BND
Borrower:	PS HOLDINGS LLC
Program Option:	Flex PACE
Community Participation:	In-Kind Commitment

ESCROW AGREEMENT PACE PROGRAM

This Escrow Agreement (the "Agreement") is made between the **BANK OF NORTH DAKOTA** acting on behalf of the PACE program ("BND"), **CITY OF FARGO** (the "Community"), and the **BANK OF NORTH DAKOTA** acting through its Trust Department as Escrow Agent (the "Escrow Agent") for the purpose of receiving and disbursing the Interest Buydown Amount in connection with the loan (the "Loan") made to **PS HOLDINGS LLC** (the "Borrower") by **BELL BANK** (the "Originating Lender") pursuant to a promissory note dated _____ (the "Note").

BND, the Community and the Escrow Agent hereby agree as follows:

Section 1. Defined Terms. Capitalized terms used in this Agreement and not otherwise defined shall have the meanings given to them in the Interest Buydown Agreement. As used in this Agreement, the following terms have the following meanings (terms defined in the singular to have the same meaning when used in the plural and vice versa):

Agreement - means this Escrow Agreement, as amended, supplemented, or modified from time to time.

Borrowing Rate - means the interest rate to be paid by the Borrower after subtracting the Interest Buydown Amount from the interest expense which will accrue at the initial Yield Rate over the life of the PACE commitment as set forth on the payment schedule labeled Exhibit A. If the terms of the Note provide for a variable or adjustable rate structure, the Borrowing Rate may vary over the term of the Note depending upon the periodic adjustment of the rate index over the term of the Loan, but in no event will it be less than the minimum rate set forth in the Note.

BND Buydown Amount - means the portion of the Interest Buydown Amount to be paid by BND as set forth on the payment schedule labeled Exhibit A.

Buydown Documents – means this Agreement, the Interest Buydown Agreement, Addendum to Promissory Note PACE Program, and any related documents, attachments or schedules incorporated therein.

Community Buydown Amount - means the portion of the Interest Buydown Amount to be paid by the Community and set forth on the attached payment schedule labeled Exhibit A.

Community In-kind Commitment Amount - means the amount of "in-kind" commitment made by the Community, if any, to match the BND Buydown Amount to be paid by BND as provided by the PACE Program. The "in-kind" Community Commitment Amount is provided by the Community in lieu of its cash portion of the Interest Buydown Amount, and is a contribution towards total costs of the Borrower's project in a form acceptable to BND. The payment schedule labeled Exhibit A specifies the Community Commitment Amount, if any.

Escrow Agent – means Bank of North Dakota acting through its Trust Department.

Escrow Agreement - Agreement by which the payments to retire the Interest Buydown Amount is to be administered by the Escrow Agent.

Flex PACE Program – means the program option within the PACE Program which provides an interest buydown to borrowers that do not meet the states definition of a primary sector business but does meet other needs as determined appropriate by the Community.

Flex PACE Affordable Housing Program – means the program option within the PACE Program which provides an interest buydown to borrowers for the permanent financing of affordable multi-family housing units within the Community.

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Program Option:	Flex PACE	
Community Participation:	In-Kind Commitment	

Interest Buydown Amount – means the actual amount to be paid by the Escrow Agent on behalf of the Borrower over the life of the Note to buy down the Yield Rate to the Borrowing Rate as set forth in the payment schedule labeled Exhibit A.

The Interest Buydown Amount includes the BND Buydown Amount and the Community Buydown Amount unless all or any portion of the Community's cash portion is made in the form of an "in-kind" Community Commitment Amount, then the Interest Buydown Amount may only consist of the BND Buydown Amount. The Interest Buydown Amount shall not exceed the Interest Buydown Amount per the payment schedule labeled Exhibit A.

The Interest Buydown Amount has been based upon the Yield Rate at the time of closing, unless otherwise agreed to in writing by Originating Lender, BND, and the Borrower. The Interest Buydown Amount shall not vary, and subject to the terms and conditions of the PACE Program it shall be paid on the basis of a set stream of payments as defined under the column entitled INTEREST EXPENSE DIFF. DUE TO BUYDOWN as listed on the payment schedule labeled Exhibit A.

Interest Rate Reduction - means each scheduled payment to be paid by Escrow Agent from Escrow Account as set forth in the payment schedule labeled Exhibit A.

PACE Program – means the "Partnership in Assisting Community Expansion Program" and includes loans approved under PACE Program options for PACE, Flex PACE or Flex PACE for Affordable Housing.

Payment Schedule - means Exhibit A which may be updated and supplemented from time to time by BND.

Yield Rate - means the interest rate on the Note which, at any point in time when there is a default, may include the default rate as that term is defined in the Note.

Section 2. Receipt of Interest Buydown. BND and the Community agree to deliver to the Escrow Agent the amount as set out and described in the payment schedule –labeled Exhibit A in the amounts and on the dates indicated, subject to this Agreement.

Section 3. Disbursement of the Interest Buydown Amount. The Escrow Agent agrees to disburse the Interest Buydown Amount to Originating Lender in the amounts and on the dates as set out and described in the payment schedule labeled Exhibit A, subject to this Agreement.

Section 4. Notice from BND. Upon notice of receipt of Loan payment according to the terms of the Note, notice from BND, the Escrow Agent shall disburse the Interest Buydown Amount to the Originating Lender in the amounts as set out in the payment schedule labeled Exhibit A. If on the date the Loan payment is received by BND, the Escrow Agent has not received all or any part of the Community's share of the Interest Buydown Amount as indicated on the payment schedule labeled Exhibit A, the Escrow Agent shall not disburse either the BND Buydown Amount or and the Community Buydown Amount, to the Originating Lender.

In the event that all parties to this Agreement have consented that the Community will provide a Community In-Kind Commitment Amount in lieu of all or some part of its cash portion of the Interest Buydown Amount, the Escrow Agent shall disburse the Interest Buydown Amount to the Originating Lender in the amounts as set out in the payment schedule labeled Exhibit A.

Section 5. Notice of Suspension of Disbursement of Interest Buydown Amount. Upon notice by BND to the Escrow Agent that payments of the Interest Buydown Amount are to be suspended, the Escrow Agent will not make any further disbursements of the Interest Buydown Amount to the Originating Lender, until the Escrow Agent receives notice from BND, directing the Escrow Agent to resume disbursing the Interest Buydown Amount upon receipt of a notice for payment.

Section 6. Notice of Final Disbursal and Termination. Upon final Interest Rate Reduction disbursement or termination of the Interest Buydown Agreement, the Escrow Agent will disburse any remaining amounts held under this Agreement to the Community and the PACE Fund according to their respective shares of the remaining balance. This Agreement will be considered terminated upon return of funds or final Interest Rate Reduction

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Community Participation:	In-Kind Commitment	

disbursement and shall have no further duties or obligations to any party other than, upon request, to provide a final accounting of receipts and disbursements.

Section 7. Duties of Escrow Agent, Reliance on Notices. The Escrow Agent shall not be liable as Escrow Agent except for the performance of such duties as are specifically set out in this Agreement to be performed by the Escrow Agent and the Escrow Agent may conclusively rely, as to the truth of the statements expressed in any notice, in the absence of bad faith on the part of the Escrow Agent, upon notices conforming to the requirements of this Agreement. No provision of this Agreement shall be construed to relieve the Escrow Agent from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that the Escrow Agent shall at all times be protected from liability for any error or judgment made in good faith by a responsible officer or officers unless it shall be proved that the Escrow Agent was negligent in ascertaining the pertinent facts and the Escrow Agent shall at all times be protected with respect to any action taken or omitted to be taken by it in good faith and in accordance with the directions contained in a notice received by the Escrow Agent pursuant to this Agreement. The Escrow Agent shall also be protected when acting in good faith and upon advice of its counsel.

Section 8. Fees and Costs. The Escrow Agent shall be entitled to receive fees, in such amounts as it may establish from time to time, and to be reimbursed for its costs, including attorney's fees, for the performance of its duties under this Agreement.

Section 9. Notice. All notices, demands and requests to be given or made under this Agreement, if in writing, shall be properly made if sent by United States mail, postage prepaid, and addressed as follows:

- Community: CITY OF FARGO
225 4TH ST N
FARGO, ND 58102

- BND: BANK OF NORTH DAKOTA, Agent
PO BOX 5509
BISMARCK, ND 58506-5509
Attention: Financial Institutions Market

- Escrow Agent: BANK OF NORTH DAKOTA, Escrow Agent
PO BOX 5509
BISMARCK, ND 58506-5509
Attention: Trust Department

- Lender: BELL BANK
PO BOX 10877
FARGO ND 58106-0877

Any of the above parties may change the address listed for it at any time upon written notice of such change sent by United States mail, postage prepaid, to each of the other parties.

Section 10. Amendments. No amendment, modification, termination, or waiver of any provision, nor consent to any departure from this Agreement shall in any event be effective unless in writing and signed by all parties and then such waiver, consent or amendment shall be effective only in the specific instance and for the specific purpose for which given.

Section 11. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of North Dakota.

Section 12. Severability of Provisions. Any provision of this Agreement which is prohibited or unenforceable by law shall be deemed severable to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Agreement.

Section 13. Headings. Article and Section headings in this Agreement are for the convenience of

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Community Participation:	In-Kind Commitment	

reference only and shall not constitute a part of this Agreement for any other purpose.

Section 14. No Waiver; Remedies. No failure on the part of the Escrow Agent to exercise, and no delay in exercising, any right, power, or remedy under this Agreement shall operate as a waiver thereof; nor shall any single or partial exercise of any right under this Agreement preclude any other or further exercise thereof or the exercise of any other right. The remedies provided in this Agreement are cumulative and are not exclusive of any remedies provided by law.

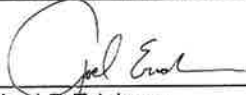
Section 15. Document Imaging and Electronic Transactions. All parties hereby acknowledge the receipt of a copy of this Agreement and all other loan documents. BND may, on behalf of parties, create a microfilm or optical disk or other electronic image of this Agreement and any or all of the loan documents. BND may store the electronic image of this Agreement and loan documents in its electronic form and then destroy the paper original as part of BND's normal business practices, with the electronic image deemed to be an original.

Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each party represents and warrants to the other that the execution and delivery of the Agreement and the performance of such party's obligation hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such party and enforceable in accordance with its terms.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective officers duly authorized, as of the date first above written.

BANK OF NORTH DAKOTA, BND

CITY OF FARGO



Joel B Erickson
Title: Business Banker

Title: _____

BANK OF NORTH DAKOTA, Escrow Agent



Title: Escrow Officer

OFFICE USE ONLY		Return SIGNED Documents to BND
Borrower:	PS HOLDINGS LLC	
Program Option:	Flex PACE	
Community Participation:	In-Kind Commitment	

**COMMUNITY PACE
INTEREST BUYDOWN AUTHORIZATION**

The **CITY OF FARGO** (the Community) has approved its participation in the PACE Program for a loan to **PS HOLDINGS LLC** (the Borrower) and has made the necessary provisions to match the BND Buydown Amount to be paid by Bank of North Dakota (BND) as required by the program.

The total PACE benefit to the Borrower and the breakdown to the Community and BND are detailed in the payment schedule labeled Exhibit A.

The Borrower's rate will be bought down approximately **2.95%** below the Yield Rate as defined in the Escrow Agreement Pace Program at the time of closing of the Loan to the Borrower, unless otherwise agreed to in writing.

The Community Authorized Representative signing this Authorization represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Authorization and that this Authorization is a valid, legal and binding on the Community and enforceable in accordance with its terms of this Authorization.

The Community shall provide an Opinion of Counsel in a form satisfactory to BND verifying the Community has taken appropriate action and has authority for its participation in the PACE Program.

Community Authorized Representative

(Please type or print name above)



October 30, 2023

To: Board of City Commissioners
Fr: Michael Redlinger, City Administrator
Re: Approve Lease Agreement with Prairie Public Broadcasting – Civic Center Offices

Prairie Public Television recently experienced a fire at their main office located at 207 5th St. N. in Downtown Fargo. As a result of the fire, Prairie Public has temporarily relocated their staff while recovery and repairs are made to their office. To assist in Prairie Public's fire recovery, the City of Fargo has vacant office space available on the skyway level of the Civic Center that can be utilized for the temporary relocation of a portion of Prairie Public's staff. It is proposed that Prairie Public be permitted to utilize the former Human Resources Office ("Suite B") in the Civic Center commencing on November 1, 2023.

The terms of the short-term lease agreement are as follows:

- **Term:** An initial 6-month term, with two 3-month options to extend the lease agreement. Either party may terminate the agreement with a 30-day written notice.
- **Rent:** \$8.00 per square foot, amounting to \$966.67 monthly in the initial 6-month term, with an escalator built into the extension options.
- **Common Area Maintenance (CAM):** \$400 per month, amounting to \$2,400 for the initial 6-month term for expenses outlined in the agreement.
- **Parking:** No on-site parking will be provided.
- **Insurance:** Public liability and casualty insurance to be maintained for the premises by the Lessee and Lessor, respectively.
- **Subletting:** No subletting of the leased premises will be permitted.

The Finance Committee considered and unanimously approved the proposed lease agreement on October 23, 2023 and recommends approval to the City Commission.

Recommended Action: Approve Lease Agreement between the City of Fargo and Prairie Public Broadcasting.

Attachment: Draft Lease Agreement – City of Fargo/Prairie Public Broadcasting

LEASE AGREEMENT

City of Fargo/Downtown Community Partnership

THIS AGREEMENT is made and entered into effective this ___ day of ___, 2023, by and between CITY OF FARGO, a North Dakota municipal corporation (hereinafter called "Lessor" or "City") and, Prairie Public Broadcasting, Inc., a North Dakota non-profit corporation (hereinafter called "Lessee" or "PBS").

RECITALS:

- A. City is the owner of real property and a building located on City-owned property commonly referred to as the Civic Memorial Auditorium, the second floor of which building is configured as office space. City desires to lease approximately 1450 square feet on the second floor of the building to PBS. The square footage will hereinafter be referred to as the "subject property" or "premises."
- B. Lessee desires to lease the subject property for use as offices.
- C. Lessor desires to lease the space to Lessee for that use.
- D. The City and PBS recognize PBS experienced a fire in its office space and that second floor office space is in close proximity to PBS's existing building and provides Skyway connectivity.

NOW, THEREFORE, in consideration of the mutual covenants, promises and agreements herein contained, the parties agree as follows:

**ARTICLE I
Premises and Terms**

Section 1.1. Leased Premises.

Lessor does hereby lease unto Lessee the following premises:

1450 square feet of space on the second floor of the Civic Memorial Auditorium building located in the 200 block of 4th Street North, in Fargo, North Dakota. A copy of the floor plan outlining PBS's leased space is attached to this agreement as Exhibit "A" and is incorporated by reference hereto.

In addition, the Leased Premises shall include shared space between Suite A, presently occupied by the city of Fargo Diversity, Equity and Inclusion personnel, and the PBS Leased Premises, hereby designated as Suite B. The shared space consists of the only restrooms available for both Suites, reserved for occupants of the Leased Premises, and not open and available to the public ("Shared Space"). Responsibilities and obligations with respect to the Shared Space will be more fully addressed in this Lease Agreement (cumulatively identified as the "Leased Premises" of "Demised Premises").

Section 1.2. Use of Premises.

The premises shall be used and occupied by PBS as office spaces and for related purposes.

Section 1.3. Term of Lease, Termination and Options to Extend Lease.

- 1.3.1. This Lease shall be for an initial term of 6 months commencing on November 1, 2023; provided, however, that if the Lessee's first month of occupancy is a partial month, shall pay a pro-rated amount of rent for said first partial month of occupancy.
- 1.3.2. This Lease may be extended by mutual agreement of the parties for no more than 2 additional 3-month terms, after which the Lease shall terminate. If Lessee fails to vacate the Leased Premises on or before December 31, 2024, Lessee agrees to pay Liquidated Damages to Lessor in the amount of \$200/day, in addition to the then current rent due and owing. References herein to "this Lease" or "this Agreement" shall be deemed to include any such extensions.
- 1.3.3. Termination. This Lease may be terminated by either party without cause upon a minimum of thirty (30) days' written notice to the other party, said termination to be effective at the end of the month in which said 30th day falls. In addition, in the event the Demised Premises becomes in need of repair that Lessor would be obligated to make under this Lease but which repair Lessor elects to not undertake, in Lessor's sole discretion, then Lessor shall promptly notify Lessee of such election and upon such notice, Lessor may terminate this Lease immediately upon notice to Lessee.

ARTICLE II

Rent and Common Area Maintenance Charges

Section 2.1. Rent.

- 2.1.1. Lessee shall pay fixed minimum rent in accordance with the following terms:

The base rent shall be \$8.00 per square foot for the subject property. Said rent shall be paid in equal monthly installments.

- 2.1.2. If Lessor and Lessee have agreed to extend this Lease, any additional months the base rent described in paragraph 2.1.1.1, above, shall be adjusted by \$500 per month, until Lessee vacates the Leased Premises.
- 2.1.3. Additional payment for common area maintenance. In addition to the minimum rent as described, Lessee covenants and agrees to pay to Lessor the sum of \$400 per month to cover the expenses borne by Lessor for common area maintenance (CAM payment). In lieu of a calculated proration of such expenses to be shared between Lessee and other tenants, the parties agree upon said stipulated sum for such expenses. These expenses

include, but are not limited to real estate taxes and special assessments, property management fees, snow removal, grounds maintenance, common area cleaning and janitorial services, sprinkling and alarm, repair, maintenance of building and fixtures (other than structural repairs which are Lessor's obligation, as stated in 3.1.1, below), repair and maintenance, water, electricity, utilities, garbage, property and liability insurance.

- 2.1.4. Fixed minimum rent and the monthly CAM payment shall be payable in advance on the first day of each month. The covenant of the Lessee to pay the base fixed minimum rent and the CAM payment are each independent of any other covenants, conditions, provisions or agreements contained in this Lease.

Section 2.2. Place of Payment.

Rent and CAM payments shall be paid to CITY OF FARGO at 225 4TH Street North, Fargo, North Dakota 58102 or such other address as Lessor may require upon written notice to Lessee.

**ARTICLE III
Improvements, Conditions and Maintenance
of the Demised Premises**

Section 3.1. Care and Repair of the Demised Premises.

3.1.1. Lessor maintenance. Subject to the Lessor's right to terminate the lease rather than undertake repairs, Lessor, at its sole expense, shall make all repairs to the structure, including the roof, of the Leased Premises (except those caused by the negligence of Lessee or by an intentional act of Lessee). However, Lessor shall not be required to make any repairs if Lessee is obligated to make them under paragraph 3.1.2 below. Lessee shall promptly notify Lessor of the necessity of any repairs of which Lessee has knowledge and for which Lessor may be responsible under this section.

3.1.2. Lessor shall be responsible for maintenance of the exterior of the building and common area, including all electric wiring and plumbing serving the common area.

3.1.3. Lessee maintenance. Lessee shall take good care of the subject property, and shall be responsible for the cost of all repairs to electric wiring, plumbing, heating and air-conditioning facilities and the fixtures, equipment and appurtenances therein except those repairs required to be made by Lessor under paragraph 3.1.1, above.

3.1.4. All damage to the Demised Premises caused by the negligence of Lessee or by an intentional act of Lessee shall be the responsibility of Lessee. All damage or injury to the Demised Premises and its fixtures, glass, appurtenances, and equipment or to the Building or its fixtures, glass, appurtenances, and equipment caused by Lessee moving property in or out of the Building or by installation or removal of furniture, fixtures, or other property, be repaired, restored, or replaced promptly by Lessee to the reasonable satisfaction of Lessor at Lessee's expense. All repairs and restorations or replacement required in connection therewith shall be of quality and class at least equal to the original work or installations and done in a good and workmanlike manner.

Section 3.2. Services and Equipment

3.2.1. Lessor services. So long as Lessee is not in default under any provision of this Lease and, subject to the Lessee's obligation to pay CAM payments pursuant to Article II, Section 2.1, Lessor, at its expense, shall:

3.2.1.1. Supply water and sewer.

3.2.1.2. Provide standard cleaning services for the Common Areas of the Building, except on Saturdays, Sundays and holidays, similar to first class office buildings in the area.

3.2.1.2. Furnish hot and cold water for drinking purposes.

3.2.2. Lessee services and expenses. Lessee shall be responsible for all cleaning of the Demised Premises, including the cost thereof.

Section 3.3. Alterations, Installation, Fixtures.

Except as hereinafter provided, Lessee shall not make any alterations, additions or improvements in or to the Demised Premises or add, disturb or in any way change the plumbing or wiring therein [hereinafter referred to as "alterations"] without the prior written consent of the Lessor. Any such approved alterations to the Demised Premises shall be made by, or under the control of, Lessor unless otherwise approved. Plans for the same must be submitted to Lessor for approval at least ten (10) days prior to the proposed date for starting these alterations. In the event alterations are required by any governmental agency by reason of the use and occupancy of the Demised Premises by Lessee (including alterations, additions, or changes required for compliance with the Americans with Disabilities Act, 42 U.S.C. Sections 12101-12213, as amended (including administrative, judicial, and legislative interpretations, rulings, and clarifications relating thereto)), Lessee shall make such alterations at its own cost and expense after first obtaining Lessor's written

approval of plans and specifications therefore and furnishing such indemnification as Lessor may reasonably require against liens, costs, damages, and expenses arising out of such alterations. Alterations or additions by Lessee must be built in compliance with all laws, ordinances and governmental regulations affecting the premises and Lessee shall warrant to Lessor that all such alterations, additions or improvements shall be in strict compliance with all relevant laws, ordinances, governmental regulations and insurance requirements. Construction of such alterations or additions shall be commenced only upon Lessee obtaining and exhibiting to Lessor the requisite approvals, licenses and permits and indemnification against liens. All alterations, installations, physical additions or improvements to the Demised Premises by Lessee shall at once become the property of Lessor and shall be surrendered to Lessor upon the termination of this Lease; provided, however, this clause shall not apply to the movable equipment or furniture owned by Lessee which may be removed by Lessee at the end of the term of this Lease if Lessee is not then in default.

Section 3.4. Signs.

No sign, lettering, picture, notice or advertisement installed on or in any part of the premises and visible from the exterior of the subject property shall be allowed. Any sign, lettering, picture, notice or advertisement installed on or in any part of the premises or visible from the exterior of the Demised Premises shall be approved by Lessor in writing prior to installation and shall be installed at Lessee's sole cost and expense. Any signs shall be maintained by the Lessee at the Lessee's sole expense and shall be anchored to and removed from the building without causing any damage to the same and in a manner approved in writing by Lessor. In the event of a violation of the foregoing by Lessee, Lessor may remove the violation without any liability and may charge the expense incurred by such removal to Lessee. At the termination or expiration of this Lease, Lessee shall cause removal of all of its signs at its expense and shall repair any damage caused by the removal of the signs if requested to do so by Lessor.

Section 3.5. Surrender of Premises.

At the end of the term of this Lease and any renewals and extensions thereof, Lessee shall surrender the Demised Premises to lessor in clean condition and in as good a condition as at the completion of the initial construction and remodeling of the Demised Premises at the start of the Lease, reasonable wear and tear excepted.

Section 3.6. Section Intentionally Deleted.

ARTICLE IV

Article Intentionally Deleted.

ARTICLE V

Article Intentionally Deleted.

ARTICLE VI

Lessor's Access to the Demised Premises

Section 6.1. Lessor's Access to Demised Premises.

The Lessee agrees to permit the Lessor and the authorized representatives of the Lessor to enter the Demised Premises at all times during usual business hours for the purpose of inspection

of the same and making any necessary repairs to the Demised Premises and performing any work therein that may be necessary to comply with any laws, ordinances, rules, regulations or requirements of any public authority or of the Board of Fire Underwriters or any similar body that the Lessor may deem necessary to prevent waste or deterioration in connection with the Demised Premises. Nothing herein shall imply any duty upon the part of the Lessor to do any such work which, under any provision of this Lease, the Lessee may be required to perform and the performance thereof by the Lessor shall not constitute a waiver of the Lessee's default in failing to perform the same. The Lessor may, during the progress of any work in the Demised Premises, keep and store upon the Demised Premises the necessary materials, tools and equipment. The Lessor shall not in any event be liable for inconvenience, annoyance, disturbance, loss of business or other damage of the Lessee by reason of making repairs or the performance of any work in the Demised Premises or on account of bringing materials, supplies and equipment into or through the Demised Premises during the course thereof and the obligations of the Lessee under this Lease shall not thereby be affected in any manner whatsoever.

Lessor reserves the right to enter upon the Demised Premises at any time in the event of an emergency and at reasonable hours to exhibit the Demised Premises to prospective purchasers or others; and to exhibit the Demised Premises to prospective lessees and to display "for rent" or similar signs on the exterior of the Building or upon the grounds of the Subject Property during the last 120 days of the term of this Lease, all without hindrance or molestation by Lessee.

ARTICLE VIII
Damage or Destruction of Leased Premises

Section 7.1. Total or Partial Destruction.

In the event of any damage or destruction to the premises by fire or other cause during the term hereof, then Lessor shall have the option of either repairing such damage or terminating the Lease, in Lessor's sole discretion, effective immediately upon written notice to Lessee.

ARTICLE VIII
Eminent Domain

Section 8.1. Eminent Domain.

In the event of any eminent domain or condemnation proceeding or private sale in lieu thereof in respect to the premises during this Lease, then this Lease may be terminated by either Lessor or Lessee, effective immediately upon 90 days' written notice to the other party.

ARTICLE IX
Insurance, Liability and Indemnity

Section 9.1. Public Liability Insurance.

Lessee shall, during the term hereof, keep in full force and effect at its expense a policy or policies of public liability insurance with respect to the Demised Premises and the business of Lessee, on terms and with companies approved in writing by Lessor, in which both Lessee and Lessor shall be covered by being named as insured parties under a general commercial liability

policy with limits of not less than \$1,000,000 per occurrence; and \$3,000,000 in the aggregate. Such policy or policies shall provide that 30 days written notice must be given to Lessor prior to cancellation thereof. Lessee shall furnish evidence satisfactory to Lessor at the time this Lease is executed that such coverage is in full force and effect.

As to the common areas, Lessor shall, during the term hereof, keep in full force and effect at its expense a general commercial liability policy or policies with limits of not less than \$1,000,000 per occurrence; and \$3,000,000 in the aggregate. Such policy or policies shall provide that 30 days written notice must be given to Lessee prior to cancellation thereof. Lessor shall furnish evidence satisfactory to Lessee at the time this Lease is executed that such coverage is in full force and effect.

Section 9.2. Casualty Insurance.

Lessor shall at all times during the term of this Lease, at its expense, maintain a policy or policies of insurance or equivalent casualty coverage with North Dakota State Fire and Tornado Fund insuring the building against loss or damage by fire, explosion or other insurable hazards, provided that Lessor shall not be obligated to insure any furniture, equipment, machinery, goods or supplies not covered by this Lease which Lessee may bring upon the Demised Premises or any additional improvements which Lessee may construct or install on the Demised Premises.

- 9.2.1. Lessee shall not carry any stock of goods or do anything in or about the Demised Premises which will in any way impair or invalidate the obligation of the insurer under any policy of insurance required by this Lease.
- 9.2.2. Lessor hereby waives and releases all claims, liabilities and causes of action against Lessee and its agents, servants and employees for loss or damage to, or destruction of the premises or any portion thereof, including the buildings and other improvements situated thereon, resulting from fire, explosion or other perils included in standard extended coverage insurance, whether caused by the negligence of any of said persons or otherwise. Likewise, Lessee hereby waives and releases all claims, liabilities and causes of action against Lessor and its agents, servants and employees for loss or damage to, or destruction of, any of the improvements, fixtures, equipment, supplies, merchandise and other property, whether that of Lessee or of others in, upon or about the premises resulting from fire, explosion or other perils included in standard extended coverage insurance, whether caused by the negligence of any of said persons or otherwise. The waiver shall remain in force whether or not the Lessor's and Lessee's insurers shall consent thereto.
- 9.2.3. In the event that the particular use(s) of the Demised Premises by Lessee causes an increase or additional charge in the premium rate for insurance carried by Lessor on the improvements of which the Demised Premises are a part, which increase or additional charge is specifically related to the particular use(s) by Lessee, Lessee shall be responsible for reimbursement to Lessor for the amount of such premium increase or additional charge. If Lessee installs any electrical equipment that overloads the power lines to the building or its wiring, Lessee shall, at its own expense, make whatever changes are necessary to comply with the requirements of

the insurance underwriter, insurance rating bureau and government authorities having jurisdiction.

Section 9.3. Covenant to Hold Harmless.

Unless the liability for damage or loss is caused by the negligence of Lessor, its agents or employees, Lessee shall hold harmless Lessor from any liability for damages to any person or property in or upon the Demised Premises and the premises, including the person and property of Lessee and its employees and all persons in the building at its or their invitation or sufferance, and from all damages resulting from Lessee's failure to perform the covenants of this Lease. All property kept, maintained or stored on the Demised Premises shall be so kept, maintained or stored at the sole risk of Lessee, Lessee agrees to pay all sums of money in respect of any labor, service, materials, supplies or equipment furnished or alleged to have been furnished to Lessee in or about the premises, and not furnished on order of Lessor, which may be secured by any mechanic's, materialmen's or other lien to be discharged at the time performance of any obligation secured thereby matures, provided that Lessee may contest such lien, but if such lien is reduced to final judgment and if such judgment or process thereon is not stayed, or if stayed and said stay expires, then and in each such event, Lessee shall forthwith pay and discharge said judgment. Lessor shall have the right to post and maintain on the Demised Premises, notice of non-responsibility under the laws of the State of North Dakota.

Section 9.4. Non-Liability of Lessor.

Subject to the terms and conditions of Article X hereof, to the extent any claim exceeds insurance coverage maintained by the Lessor, Lessor shall not be liable for any damage to property of Lessee or of others located on the premises, nor for the loss or damage to any property of Lessee or of others by theft or otherwise; nor shall Lessor be liable for any injury or damage to property resulting from fire, explosion, falling plaster, steam, gas, electricity, water, rain or snow or leaks from any part of the premises or from the pipes, appliances, or plumbing works or from the roof, street or subsurface or from any other place or by dampness or by any other cause of whatsoever nature. To the extent any claim exceeds insurance coverage maintained by the Lessor, Lessor shall not be liable for any personal injury resulting from fire, explosion, falling plaster, steam, gas, electricity, water, rain or snow or leaks from any part of the premises or from the pipes, appliances, or plumbing works or from the roof, street or subsurface or from any other place or by dampness or by any other cause of whatsoever nature. Lessor shall not be liable for any such damage caused by other Lessees or persons in the premises, occupants of adjacent property, of the building, or the public or caused by operations in construction of any private, public or quasi-public work. Lessor shall not be liable for any latent defect in the Demised Premises. All property of Lessee kept or stored on the Demised Premises shall be so kept or stored at the risk of Lessee only and Lessee shall hold Lessor harmless from any claims arising out of damage to the same, including subrogation claims by Lessee's insurance. This waiver shall not apply to any such loss resulting from (a) Lessor's failure to make a reasonable effort to repair a defect Lessor is obligated to repair under this Lease, within a reasonable time after Lessor receives notice from Lessee of any defect which creates a substantial likelihood of damages to the Premises or persons or property located therein; (b) intentional misconduct or gross negligence of Lessor; (c) loss or damage arising out of

Lessor's negligence in making alterations or repairs to the Premises; or (d) claims brought by third parties other than subsidiaries or affiliates of Lessee.

Section 9.5. Waiver of Subrogation.

The Lessor and Lessee mutually release and discharge each other from all claims and liabilities arising from or caused by any hazard covered by insurance on the leased premises or covered by insurance in connection with the property on or activities conducted on the leased property regardless of the cause of damage or loss, unless such release or discharge voids insurance coverage or causes a loss or decrease in insurance coverage.

**ARTICLE X
Assignment or Subletting**

Section 10.1. Assignment or Subletting.

Lessee agrees to use and occupy the Demised Premises throughout the entire term hereof for the purpose or purposes herein specified and for no other purposes, in the manner and to substantially the extent now intended, and shall not transfer or assign this Lease or sublet said Demised Premises, or any part thereof.

Section 10.2. Successors and Assigns.

The terms, covenants and conditions hereof shall be binding upon and inure to the successors and assigns of the parties hereto.

**ARTICLE XI
Default and Overdue Payments of Lessee**

Section 11.1.

11.1.1. In the event of any failure of Lessee to pay any rental due hereunder within ten days after the same shall be due, or any failure to perform any other of the term, condition or covenant of this Lease to be observed or performed by Lessee for more than 30 days after written notice of such failure shall have been given to Lessee, or if Lessee or an agent of Lessee shall falsify any report required to be furnished to Lessor pursuant to the terms of this Lease, or if Lessee or any guarantor of this Lease shall become bankrupt or insolvent, or file any debtor proceedings or any person shall take or have against Lessee or any guarantor of this Lease in any court pursuant to any statute either of the United States or of any state a petition in bankruptcy or insolvency for the reorganization or for the appointment of a receiver or trustee of all or a portion of Lessee's or any such guarantor's property, or if Lessee or any such guarantor makes an assignment for the benefit of creditors, or petitions for or enters into an arrangement, or if Lessee shall abandon the Demised Premises or suffer this Lease to be taken under any writ of execution, then in any such event Lessee shall be in default hereunder, and Lessor, in addition to other rights of remedies it may have, shall have the immediate right of re-entry and may remove all persons and property from the Demised Premises and such property may be removed and stored in a public warehouse or elsewhere at the cost of, and for the account of Lessee, all without service of notice or resort to legal process without being guilty of trespass, or becoming

liable for any loss or damage which may be occasioned thereby.

- 11.1.2. Should Lessor elect to re-enter the Demised Premises, as herein provided, or should it take possession of the Demised Premises pursuant to legal proceedings or pursuant to any notice provided for by law, it may terminate this Lease. Should Lessor at any time terminate this Lease for any such breach, in addition to any other remedies it may have, it may recover from Lessee all damages it may incur by reason of such breach, including the cost of recovering the Demised Premises, reasonable attorney's fees, and including the worth at the time of such termination the excess, if any, of the amount of rent and charges equivalent to rent reserved in this Lease for the remainder of the stated term over the then reasonable rental value of the Demised Premises for the remainder of the stated term, all of which amounts shall be immediately due and payable from Lessee to Lessor.
- 11.1.3. Lessor may, at its option, instead of exercising any other rights or remedies available to it in this Lease or otherwise by law, statute or equity, spend such money as is reasonably necessary to cure any default of Lessee herein and the amount so spent, and costs incurred, including attorney's fees in curing such default, shall be paid by Lessee, as additional rent, upon demand.
- 11.1.4. In the event suit shall be brought for recovery of possession of the Demised Premises, for the recovery of rent or any other amount due under the provisions of this Lease, or because of the breach of any other covenant herein contained on the part of Lessor or Lessee to be kept or performed, and a breach shall be established, the prevailing party in the suit shall be entitled to recover reasonable attorney's fees and costs incurred as a result of the litigation in addition to any amounts recoverable under this Lease. The prevailing party in the suit shall be entitled to recover interest on all damages, other than such reasonable attorney's fees and costs awarded by the court, in an amount determined by the court, and not by a jury. All damages, including such reasonable attorney's fees and costs awarded by the court, shall accrue interest at the then current legal rate for interest on judgments under North Dakota (not North Dakota) law from the date of entry of judgment.
- 11.1.5. Lessee waives any demand for possession of the Demised Premises, and any demand for payment of rent and any notice of intent to re-enter the Demised Premises, or of intent to terminate this Lease, other than the notices above provided in this Article, and waives any and every other notice or demand prescribed by any applicable statutes or laws.
- 11.1.6. No remedy herein or elsewhere in this Lease or otherwise by law, statute or equity, conferred upon or reserved to Lessor or Lessee shall be exclusive of any other remedy, but shall be cumulative, and may be exercised from time to time and as often as the occasion may arise.

Section 11.2. Overdue Payments.

All monies due under this Lease from Lessee to Lessor shall be due on demand, unless otherwise specified, and if not paid when due, shall bear interest at the rate of 1.5% per month until

paid; but in no event shall said rate of interest exceed the maximum rate of interest set by state or federal usury law.

ARTICLE XII
Certificate of Estoppel and Subordination

Section 12.1. Certificate of Estoppel.

The Lessee agrees at any time and from time to time upon not less than 10 days prior written request by the Lessor to execute, acknowledge and deliver to the Lessor a statement in writing certifying that this Lease is unmodified and in full force and effect, or if modified, in full force and effect, and stating the modifications, and the dates to which the basic rent and other charges have been paid in advance, if any, it being intended that any such statement delivered pursuant to this paragraph may be relied upon by any prospective purchaser of the fee or mortgage or assignee of any mortgagee upon the fee of the demised premises.

Section 12.2. Subordination.

Upon request of Lessor, Lessee will subordinate this Lease and its rights hereunder to the lien of any mortgage, trust deed or other instrument resulting from any method of finance and refinancing, now or hereafter in force against the land and buildings which constitute the premises, and to all advances made or hereafter to be made upon the security thereof, provided, however, that such mortgage or instrument of finance will agree that, in the event any action is taken to foreclose the lien of the mortgage, this Lease and all rights of the Lessee under its terms to use and quiet possession of the premises shall not be disturbed and shall continue in full force and effect so long as Lessee shall faithfully discharge each and every obligation on its part to be kept and performed under the terms of this Lease.

Section 12.3. Event of Sale.

In the event of the sale of the Demised Premises, Lessor shall be and hereby is relieved of all of the covenants and obligations created hereby accruing from and after the date of sale, and such sale shall result automatically in the purchaser assuming and agreeing to carry out all the covenants and obligations of Lessor herein. Notwithstanding the foregoing provisions of this section, Lessor, in the event of a sale of the Demised Premises, shall cause to be included in the agreement of purchase and sale a covenant whereby the purchaser of the Demised Premises assumes and agrees to carry out all of the covenants and obligations of Lessor herein.

ARTICLE XIII
Surrender, Holding Over and Abandonment

Section 13.1. Surrender.

On the expiration date or upon the termination hereof upon a day other than the expiration date, Lessee shall peaceably surrender the Demised Premises broom-clean in good order, condition and repair, reasonable wear and tear only excepted. On or before the expiration date or upon termination of this Lease on a day other than the expiration date, Lessee shall, at its

expense, remove all trade fixtures, personal property and equipment and signs from the Demised Premises and any property not removed shall be deemed to have been abandoned. Any damage caused in the removal of such items shall be repaired by Lessee and at its expense. All alterations, additions, improvements and fixtures (other than trade fixtures) which shall have been made or installed by Lessor or Lessee upon the Demised Premises and all floor covering so installed shall remain upon and be surrendered with the Demised Premises as a part thereof, without disturbance, molestation or injury, and without charge, at the expiration or termination of this Lease. Upon request by Lessee, Lessor and Lessee shall identify and designate such fixtures as "trade fixtures" from time to time, as such trade fixtures are installed which designation by Lessor shall not be unreasonably withheld. If the Demised Premises are not surrendered on the expiration date or the date of termination, Lessee shall indemnify Lessor against loss or liability, claims, without limitation, made by any succeeding Lessee founded on such delay. Lessee shall promptly surrender all keys for the Demised Premises to Lessor at the place then fixed for payment of rent and shall inform Lessor of combinations of any locks and safes on the Demised Premises.

Section 13.2. Holding Over.

In the event Lessee remains in possession of the Demised Premises after the expiration date of this Lease and without the execution of a new lease, it shall be deemed to be occupying the Demised Premises as a Lessee from month to month, subject to all the conditions, provisions and obligations of this Lease insofar as the same can be applicable to a month-to-month tenancy, provided, however, that the base rent required to be paid by Lessee during any holdover period shall be in the amount equal to 120% of the rent due for the last month prior to the expiration of the term of this Lease, plus any monthly CAM payments as set forth in Section 2.01 of this Lease.

Section 13.3. Abandonment.

In the event Lessee shall remove its fixtures, equipment or machinery or shall vacate the Demised premises or any part thereof prior to the expiration date of this Lease, or shall discontinue or suspend the operation of its business conducted on the Demised Premises for a period of more than 30 consecutive days (except during any time when the Demised Premises may be rendered unleaseable by reason of fire or other casualty), then in any such event Lessee shall be deemed to have abandoned the Demised Premises and Lessee shall be in default under the terms of this Lease.

**ARTICLE XIV
Rules and Regulations**

Section 14.1. Rules and Regulations.

Lessee shall observe and comply with reasonable rules and regulations as Lessor may prescribe, on written notice to Lessee, for the safety, care and cleanliness of the building and to regulate, restrict or prohibit smoking on the Subject Property.

ARTICLE XV
Mechanics' Liens

Section 15.1. Mechanics' Liens.

- 15.1.1. Lessee will not permit to be created or to remain undischarged in any lien, encumbrance or charge (arising out of any work done or materials or supplies furnished by any contractor, subcontractor, mechanic, laborer or materialmen, or any mortgage, conditional sale, security agreement or chattel mortgage, or otherwise by or for Lessee) which might be or become a lien or encumbrance or charge upon the subject premises or any portion thereof or the income and interest of Lessor in the Demised Premises or any portion thereof that might be impaired. If any lien or notice of lien on account of any alleged debt of Lessee or any notice of contract by a party engaged by Lessee or Lessee's contractor to work on the premises shall be filed against the Demised Premises or subject property or any portion thereof, Lessee shall within 10 days after demand from Lessor, cause the same to be discharged of record by payment, deposit, bond, order of a Court of competent jurisdiction or otherwise. If Lessee shall fail to cause such lien or notice of lien to be discharged within the period aforesaid, then, in addition to any other right or remedy, Lessor may, but shall not be obligated to, discharge such lien by deposit or by bonding proceedings or in any such event Lessor shall be entitled if Lessor so elects to compel the prosecution of an action for the foreclosure of any such lien by the lienor and to pay the amount of the judgment in favor of the lienor with interest, costs and allowance. Any amount so paid by Lessor and all costs and expenses, including attorney's fees, incurred by Lessor in connection therewith shall constitute additional rent payable by Lessee under the Lease and shall be paid by Lessee to Lessor on demand. Nothing herein contained shall obligate Lessor to pay or discharge any lien created by Lessee.
- 15.1.2. Lessee shall pay promptly all persons furnishing labor and materials with respect to any work performed by Lessee or Lessee's contractor in the premises. No work which Lessor permits Lessee to do shall be deemed to be for the immediate use and benefit of Lessor, so that no mechanic's or other liens should be allowed against the estate of Lessor by reason of any consent given by Lessor to Lessee to improve the premises.
- 15.1.3. Prior to the commencement of any work or the delivery of any material to the premises by a contractor, subcontractor or materialmen, Lessee shall deliver to the Lessor a recordable waiver of lien affidavit from each such contractor which waiver of lien shall provide, among other things, that the contractor waives any and all lien rights that he may have against Lessor's interest in the property or any portion thereof.
- 15.1.4. The provisions of this section shall apply with respect to Lessee's work or any other work performed on the premises at any time during the term hereof.

**ARTICLE XVI
Garbage and Rubbish Removal**

Section 16.1. Garbage and Rubbish Removal

Lessor shall be responsible for the removal of all garbage and rubbish generated from Demised Premises by the Lessee and/or Lessee's customers and clients except medical waste. With the exception of medical waste, Lessor will promptly remove all garbage and rubbish from the subject premises and will not store any of the same on the premises except for such temporary storage in dumpsters to facilitate weekly or other reasonable periodic removal.

**ARTICLE XVII
Miscellaneous**

Section 17.1. Notices.

Any notice required or permitted under this Lease shall be deemed sufficiently given or secured if sent by certified return receipt mail to Lessee at the main offices for Lessee:

Prairie Public Broadcasting, Inc.
207 North 5th Street
Fargo, ND 58102

and to Lessor by delivery to the following:

City Auditor
Fargo City Hall
225 4th Street North
Fargo, North Dakota 58102

and to:

City Administrator
Fargo City Hall
225 4th Street North
Fargo, North Dakota 58102

and either party may by like written notice at any time designate a different address to which notices shall subsequently be sent or rent to be paid.

Section 17.2. Intent of Parties.

Except as otherwise provided herein, the Lessee covenants and agrees that if it shall at any time fail to pay any such cost or expense, or fail to take out, pay for, maintain or deliver any of the insurance policies above required, or fail to make any other payment or perform any other act on its part to be made or performed as in this Lease provided, then the Lessor may, but shall not be obligated to do so, and without notice to or demand upon the Lessee and without waiving or releasing the Lessee from any obligations of the Lessee in this Lease contained, pay any such cost

or expense, effect any such insurance coverage and pay premiums therefor, and may make any other payment or perform any other act on the part of the Lessee to be made and performed as in this Lease provided, in such manner and to such extent as the Lessor may deem desirable, and in exercising any such right, to also pay all necessary and incidental costs and expenses, employ counsel and incur and pay reasonable attorney's fees. All sums so paid by Lessor and all necessary and incidental costs and expenses in connection with the performance of any such act by the Lessor, together with interest at the Contract Interest Rate from the date of making of such expenditure by Lessor, shall be deemed additional rent hereunder, and shall be payable to lessor on demand. Lessee covenants to pay any such sum or sums with interest as aforesaid and the Lessor shall have the same rights and remedies in the event of non-payment thereof by Lessee as in the case of default by Lessee in the payment of the base rent payable under this Lease.

In the event the Lessor fails to perform any covenant or obligation to be kept by Lessor under this Lease, Lessee at its option may cure the Lessor's failure to perform Lessor's covenants and obligations, having first given Lessor reasonable notice of such failure to perform, and a reasonable opportunity for Lessor to so perform. Lessee shall be entitled to an offset against future rents equal to the reasonable costs, including interest at the Contract Interest Rate from the date of payment, incurred by Lessee to complete performance of the Lessor's covenants and obligations under the Lease.

Section 17.3. Consents by Lessor.

17.3.1. Whenever provision is made under this Lease for Lessee securing the consent or approval by Lessor, such consent or approval shall only be in writing.

17.3.2. The following persons are authorized to act on behalf of Lessor/Lessee:

As to Lessor, any one or more of the following are authorized to act or make decisions:

City Administrator

As to Lessee, any on or more of the following are authorized to act or make decisions: its Executive Director.

Section 17.4. No Agency Relationship.

The Lease does not create the relationship of principal and agent or of partnership or of joint venture or of any association between Lessor and Lessee, the sole relationship between the parties being that of Lessor and Lessee.

Section 17.5. Governmental Regulations.

Lessee shall at Lessee's sole cost and expense comply with all of the requirements of all county, municipal, state, federal and other applicable governmental authorities, now in force or which may hereafter be in force, pertaining to the said premises and shall faithfully observe in the

use of the premises all municipal and county ordinances and state and federal statutes now in force or which may hereafter be in force.

Section 17.6. Waiver.

The waiver by the Lessor of any breach or default of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained. The acceptance of rent hereunder by Lessor shall not be deemed to be a waiver of any preceding breach of the Lessee of any term, covenant or condition of this Lease, regardless of Lessor's knowledge of said preceding breach at the time of acceptance of such rent. No covenant, term or condition of this Lease shall be deemed to have been waived by Lessor unless such waiver is in writing by Lessor.

Section 17.7. Force Majeure.

In the event that either party hereto shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of strikes, lockouts, labor troubles, inability to procure materials, failure of power, restrictive government laws or regulations, riots, insurrection, war or other reason of a like nature not the fault of the party delayed in performing work or doing acts required during the term of this Lease, the performance of such act shall be excused for the period of the delay. The provisions of this section shall not operate to excuse Lessee from the prompt payment of rent, additional rent or any other payments required by this Lease.

Section 17.8. Entire Agreement.

This Lease and the schedules, if any, attached hereto and forming a part hereof, constitute the entire agreement between Lessor and Lessee affecting the Demised Premises and there are no other agreements, either oral or written, between them other than are herein set forth. All negotiations, considerations, representations and understandings between the parties are incorporated herein. No subsequent alteration, amendment, change or addition to this Lease shall be binding upon Lessor or Lessee unless reduced to writing and executed in the same form and manner in which this Lease is executed.

Section 17.9. Interpretation of Lease.

Unless specifically stated herein, this Lease shall be construed and interpreted in accordance with the laws of the State of North Dakota.

Section 17.10. Time is of the Essence.

Time is of the essence of each provision in this Lease.

Section 17.11. Construction.

If any agreement, covenant or condition of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application or such agreement, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each agreement, covenant or condition of this Lease shall be valid and be enforced to the fullest extent permitted by law.

Section 17.12. Captions.

The captions are inserted only as a matter of convenience and for reference, and in no way define, limit or described the scope of this Lease nor the intent of any provision thereof.

Dated the day and year first set forth above.

LESSOR:

CITY OF FARGO,
a North Dakota municipal corporation

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

ATTEST:

Steven Sprague, City Auditor

LESSEE:

Prairie Public Broadcasting, Inc.,
a North Dakota Non-Profit Corporation

By:
Its: Executive Director



FORMER COMMISSION
CHAMBERS

SKYWAY

"SUITE B"
(FORMER HR
OFFICES)
APPROX
1,450 SF

"SUITE A"
(FORMER COMMISSION & ADMIN OFFICES)
APPROX 3,280 SF

COPIER/
KITCHEN
APPROX
315 SF

COMMON AREAS (APPROX)

COPIER/KITCHEN: 315 SF
CONFERENCE ROOM: 590 SF
RESTROOMS: 165 SF



CIVIC CENTER CITY OFFICES

Approximate Office
Space Area

DRAWN BY: CAS DATE: 11/26/2016

APPROVED BY: BED SHEET 1 OF 1

Erik R. Johnson
Assistant City Attorney - Fargo

October 18, 2023

(4)


Board of City Commissioners
City of Fargo
425 North Fourth Street
Fargo, ND 58102

Re: Proposed Ordinance Amending FMC Section 24-0102 – to exclude vacated parcel adjacent to 419 3rd Street North (Block 24, Keeney and Devitts 2nd Addition (the Riverhouse Project)) from railroad franchise (for receipt and filing)

Dear Commissioners:

Enclosed for your consideration is an ordinance that will bring the railroad franchise for the northerly BNSF tracks to conform with the Vacation Plat that you approved at your May 30, 2023, meeting. This relates to the Riverhouse Project currently under construction at 419 3rd Street North. As part of the Riverhouse Project, the City agreed to pursue vacation of the right-of-way and amendment of the railroad franchise so that the approximately forty-foot strip of land could be utilized by the project and the occupants of the Riverhouse multi-family residential project. This railroad franchise was initially granted, by 1882 ordinance, to the St. Paul, Minneapolis and Manitoba Railroad Company to install and operate two tracks over the right-of-way then known as Fourth Avenue but which was re-named Fifth Avenue decades ago. The small parcel has not been an active portion of the railroad bed for many years. The BNSF railroad has been notified both of the vacation of the parcel as well as this amendment of the franchise ordinance. The enclosed ordinance is submitted herewith for receipt and filing.

SUGGESTED MOTION: I move to receive and file An Ordinance Amending Section 24-0102 of Article 24-01 of Chapter 24 of the Fargo Municipal Code Relating to the Franchise Granted to the St. Paul, Minneapolis and Manitoba Railroad Company and Its Successors and that said ordinance be placed on the agenda for the next regularly scheduled commission meeting for first reading.

Sincerely,

Erik R. Johnson

Enclosure

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

AN ORDINANCE AMENDING SECTION 24-0102 OF ARTICLE 24-01
OF CHAPTER 24 OF THE FARGO MUNICIPAL CODE RELATING
TO THE FRANCHISE GRANTED TO THE ST. PAUL, MINNEAPOLIS
AND MANITOBA RAILROAD COMPANY AND ITS SUCCESSORS

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

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

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

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

NOW, THEREFORE,

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

Section 1. Amendment.

Section 24-0102 of Article 24-01 of Chapter 24 of the Fargo Municipal Code is hereby amended to add a paragraph to subsection 1 after the fourth unenumerated paragraph thereof as follows:

24-0102. St. Paul, Minneapolis, and Manitoba Railroad Company

1. Franchise granted July 15, 1882.

There is hereby conferred upon the St. Paul, Minneapolis, and Manitoba Railway Company, its successors and assigns, permission and authority, to maintain and operate the two railway tracks as now laid and in use by said company, upon and along Fourth Avenue from the west line of Chapin, Johnson, and Barrett's Addition to Fargo, to the east line of "F" Street in Keeney and Devitt's Addition to Fargo, and also to maintain and operate said tracks over and across the several streets of said city between the points last above named.

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

1 The city of Fargo reserves the right to enter upon all portions of said streets and
2 avenues upon or over which said tracks shall be constructed, and to make thereon such
3 excavations and do such other work thereon as may be necessary in the construction and
4 repairs of sewers, gutters, water mains, gas pipes, or other works of a public character,
5 without being liable therefor to any claim for damages, and said railway company, its
6 successors and assigns, shall afford all reasonable aid and facilities to said city in doing
7 such work, and shall protect such railroad during such work, and re-lay at their own
8 expense when such works are completed from time to time.

9 Said railroad company is also hereby granted like permission and authority to
10 construct, maintain, and operate its cars and locomotives upon and along said Fourth
11 Avenue, such additional tracks, sidetracks, and switches connecting with said two railway
12 tracks now laid, as may be necessary and convenient, for the purpose of doing business at
13 its freight yard and depot grounds in said city and of reaching such warehouses, elevators,
14 and other industries as may be created, erected, or operated along the line of said Fourth
15 Avenue and for the transaction of public business thereat.

16 The right-of-way conferred upon the said railway company by section one hereof,
17 is upon the express condition that said railway company will, whenever requested by the
18 mayor of said city so to do, reasonable time being given therefor, grade and construct
19 sufficient street crossings over the tracks of said company at Sherman and Grant Streets
20 and Sixth Avenue in said city, and will keep the same at all times open for public travel,
21 as other streets of said city, across which the tracks of said company run.

22 The right-of-way and franchise conferred upon the said railway company and its
23 successors and assigns by this section 24-0102 is hereby amended to exclude therefrom
that certain real property being approximately 0.169 acres lying adjacent to and north of
Block 24 of Keeney and Devitts 2nd Addition to the city of Fargo, as established by
Resolution of the board of city commissioners of the city of Fargo on May 30, 2023, and
recorded at the Office of the Recorder for Cass County, North Dakota, on June 2, 2023,
as document number 1690274, by which resolution the Vacation Plat, which was also
recorded at said Office on June 2, 2023, as document number 1690275, was approved.

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

Section 2. Effective Date.

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

Timothy J. Mahoney, Mayor

Attest:

Steven Sprague, City Auditor

First Reading:
Second Reading:
Final Passage:

(SEAL)

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

5

ORDINANCE NO. _____

AN ORDINANCE AMENDING SECTION 25-1508 OF ARTICLE 25-15
OF CHAPTER 25 OF THE FARGO MUNICIPAL CODE RELATING
TO ALCOHOLIC BEVERAGES

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

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

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

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

NOW, THEREFORE,

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

Section 1. Amendment.

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

* * *

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

- 6. Class C – ~~40~~13
- 23. Class W – ~~40~~13

* * * *

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

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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:

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

6

ORDINANCE NO. _____

1 AN ORDINANCE AMENDING SECTION 13-1011
2 OF ARTICLE 13-10 OF CHAPTER 13 OF THE FARGO MUNICIPAL CODE
3 RELATING TO RECREATIONAL AQUATIC FACILITIES

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

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

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

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

13 NOW, THEREFORE,

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

15 Section 1. Amendment.

16 Section 13-1011 of Article 13-10 of Chapter 13 of the Fargo Municipal Code is hereby
17 amended to read as follows:

18 13-1011. Licensing and Fees.

19 A license shall be issued after a preoperational inspection has determined that the ~~when~~
20 ~~investigation has determined that the~~ recreational aquatic facility and its method of operation will
21 conform to the requirements of this chapter. A license, once issued, is nontransferable, and shall
22 only be. ~~A license shall be valid only for the location described in the application, unless revoked~~
23 ~~for cause, for the time period indicated.~~ All licenses issued under the provisions of this article,
unless otherwise specifically provided, shall terminate on December 31 following the date of
issuance; provided, however that any license issued under the provisions of this article may, under

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1 certain circumstances, be revoked or not renewed by the director of public health. The initial
2 application for a license shall extend from the date of issuance until December 31. Thereafter, the
3 license may be renewed annually, January 1, by the director of public health. The license shall be
4 posted in a conspicuous place in the ~~Aquatic Venue~~ recreational aquatic facility.

5 Fees shall be set by resolution of the board of city commissioners and shall be sufficient to cover
6 the actual expenses of administering and enforcing this program, including the expenses of
7 inspecting. The fee for the periodic tests required in 13-1009 shall be established by resolution of
8 the board of city commissioners. Periodic inspection and testing fees shall be at the expense of the
9 ~~Aquatic Venue~~ recreational aquatic facility. Current licensees must pay, in full, any outstanding
10 inspection and testing fees prior to the annual licensing renewal period on January 1. The
11 licensee's failure to pay any outstanding fees will result in the non-renewal of the license and said
12 license shall terminate on December 31.

13 Section 2. Penalty.

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

18 Section 3. Effective Date.

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

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

23 Attest:

Steven Sprague, City Auditor

First Reading:
Second Reading:
Final Passage:
Publication:

7

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

AN ORDINANCE AMENDING ARTICLE 13-14 OF
CHAPTER 13 OF THE FARGO MUNICIPAL CODE
RELATING TO HOTELS & MOTELS

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3 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

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5 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

6
7 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

8
9 WHEREAS, the Board of City Commissioners deems it necessary and appropriate to
implement such authority by the adoption of this ordinance;

10 NOW, THEREFORE,

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

12 Section 1. Amendment.

13 Article 13-14 of Chapter 13 of the Fargo Municipal Code is hereby amended to read as
14 follows:

15 **ARTICLE 13-14 ~~HOTELS & MOTELS~~ LODGING ESTABLISHMENTS**

16 **13-1401. Definitions.**

- 17 1. "Clean" - Shall mean ~~the~~ absence of dirt, grease, rubbish, garbage, and other
18 offensive, unsightly or extraneous matter.
- 19 2. "Employee" - Shall mean ~~Any~~ person working in a ~~hotel or motel lodging~~
20 establishment including janitors, maids, porters, and other persons whose duties
include the cleaning of rooms, toilets, or other parts of the building.
- 21 3. "Good repair" - ~~The term "good repair"~~ shall mean free of corrosion, breaks,
22 cracks, chips, pitting, excessive wear and tear, leaks, obstructions, and similar
23 defects so as to constitute a good and sound condition.

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- 1 "Guest" - Shall mean an occupant of any ~~hotel or motel~~ lodging establishment.
- 2 "Guest room" -Shall mean any room used by a guest for sleeping purposes.
- 3 "Health Department" - Shall mean ~~the City of Fargo Health Department~~ Fargo
4 Cass Public Health.
- 5 "Health hazard" - Shall mean any chemical agent, source of filth, cause of
6 sickness, or condition that is a health threat to employees or guests.
- 7 "Hotel or Motel Lodging Establishment" - Shall mean a building, structure,
8 enclosure, or any part thereof used as, maintained as, advertised as, or held out to
9 be a place where sleeping accommodations are furnished to the public for a
10 charge and for periods of less than one week. The term does not include
11 residential or personal dwelling units.
- 12 "Public restroom" - Shall mean any facility that provides toilet and handwashing
13 facilities for the general public.

14 **13-1402. Application.**

15 All ~~hotels and motels~~ lodging establishments shall be subject to the requirements of this
16 article and the rules or regulations promulgated hereunder.

17 **13-1403. Rules and Regulations.**

18 13-1403.1 Regulation by Health Department.

19 The health department, and agents and employees thereof, shall have authority to regulate
20 the public health and safety in the city of Fargo concerning use, design, operation, and
21 maintenance of ~~hotels and motels~~ lodging establishments and shall have such authority to
22 adopt regulations, rules, standards and practices. Such regulations, rules, standards, and
23 practices shall be approved by the board of city commissioners, and are hereby adopted
by reference and fully incorporated herein, ~~included~~ including any amendments

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

hereinafter adopted, and shall be controlling within the jurisdiction of the ~~health department~~ city of Fargo.

13-1403.2 Health Department Approval of Construction Plans.

Before work is commenced on the construction of a ~~hotel or motel lodging establishment~~, or there is any alteration, addition, remodeling, or other improvement, the plans and specifications ~~shall have been~~ must be approved by the health department.

13-1403.3 Inspection by Health Department.

The health department may inspect or cause to be inspected all ~~hotels and motels lodging establishments~~ within the city at such times as it may deem necessary to carry out the intent of this ordinance. In the event of the failure of compliance after due notice with the rules and regulations and requirements of this ordinance, the health department shall have the power to abate or cause a suspension of use of such ~~hotel or motel lodging establishment~~ until such time the health department deems there to be no longer a menace or a hazard to health, safety or morals. Yearly inspection fees shall be established by resolution of the board of city commissioners.

13-1404. Exterior maintenance and parking.

13-1404.1 Every building, structure, or enclosure used to provide lodging accommodations for the ~~pubie~~ public shall be kept in good repair, and so maintained as to promote the health, comfort, safety, and well-being of persons accommodated.

13-1404.2 There shall be at least one parking spot provided for each lodging room in ~~the hotel or motel~~ a lodging establishment and for all staff. The parking lot and all property used in connection with the ~~hotel or motel lodging establishment~~ shall be kept free of litter and refuse. Also, the walking and driving surfaces of all exterior areas shall be surfaced with concrete or asphalt or a similar material effectively treated to facilitate maintenance and minimize dust. These surfaces shall be graded to prevent pooling. Only articles necessary for the operation and maintenance of the lodging establishment shall be stored on the premises.

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1 13-1404.3 Outside openings shall be protected against the entrance of insects and rodents
2 by tight fitting, self-closing doors, closed windows, and screening or other approved
3 means. Screen doors shall be self-closing, and screens for windows, doors, skylights,
4 intake and exhaust air ducts and other openings to the outside shall be tight fitting and
5 free of breaks or holes. Screening materials shall not be less than sixteen mesh to the
6 inch.

7 **13-1405. Restrooms and handwashing facilities.**

8 13-1405.1 All public restrooms ~~should~~ shall be provided with mechanical ventilation,
9 self-closing doors, and proper handwashing facilities. The handwashing sink shall be
10 equipped with self-dispensing soap and self-dispensing disposable towels or a hand
11 drying device providing heated air and a suitable waste receptacle. Handwashing sinks
12 shall also provide hot and cold water tempered by means of a mixing valve or
13 combination faucet. Hot water shall not exceed one hundred ~~thirty~~ twenty degrees (~~130~~
14 120°F). Any self-closing, slow closing, or metering faucet shall be designed to provide a
15 flow of water for at least fifteen seconds without the need to reactivate the faucet.

16 13-1405.2 Restroom facilities shall be conveniently located, and shall be accessible to
17 employees and ~~quests~~ guests at all times.

18 13-1405.3 Handwashing facilities, soap dispensers, hand drying devices and all related
19 fixtures shall be kept clean and in good repair.

20 13-1405.4 Walls, floors, and ceilings in restrooms shall be constructed of smooth, easily
21 cleanable materials and shall be kept clean and in good repair.

22 **13-1406. Guest rooms.**

23 13-1406.1 Walls, floors, and ceilings in guest rooms shall be constructed of smooth easily
cleanable materials and shall be kept clean and in good repair. This includes furniture,
drapes, curtains, lamp shades, carpeting and all other fixtures.

13-1406.2 All beds, bunks, cots, and other sleeping places provided for guests in ~~hotels~~
and motels lodging establishments shall be supplied with suitable pillow slips and top

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FARGO, NORTH DAKOTA

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1 sheets. All bedding including mattresses, quilts, blankets, pillows, sheets, spreads and all
2 bath linen shall be kept clean. No bedding, including mattresses, quilts, blankets, pillows,
3 bed and bath linen shall be used which are worn out or unfit for further use. Pillow slips,
4 sheets, and bath linen after being used by one guest shall be washed before they are used
5 by another guest, so a clean set being is furnished after each succeeding guest. For any
6 guest occupying a guest room for an extended period of time, a fresh set of sheets and
7 pillow slips shall be furnished at least once each week, and at least two clean towels per
8 guest each day if they are requested.

9 13-1406.3 Each ~~hotel or motel~~ lodging establishment must provide toilet, handwashing,
10 and bathing facilities for its guests. There must be a ratio of 1 toilet and bathing facility
11 for every 8 guests. These facilities must be maintained in good repair and cleaned at least
12 between stays of different guests. All toilet and bathing facilities must also be well
13 ventilated. An area is well ventilated when excessive heat, odors, fumes, vapors, smoke,
14 or condensation is reduced to a negligible level and barely perceptible to the normal
15 senses.

16 13-1406.4 All guest rooms must have a heating system able to maintain a minimum
17 temperature of 67°F.

18 13-1406.5 The doors of all guest rooms used for sleeping in any ~~hotel or motel~~ lodging
19 establishment shall be equipped with proper bolts or locks to permit the occupants to lock
20 or bolt such doors securely from within the rooms. Such bolts or locks shall be
21 constructed in a manner which will render it impossible to unbolt or unlock the door from
22 the outside.

23 **13-1407. Interior construction.**

13-1407.1\ Walls, floors, and ceilings in hallways, lobbies, and laundry rooms shall be
constructed of smooth easily cleanable materials and shall be kept clean and in good
repair.

13-1407.2 All laundry rooms and any other rooms used to store linen, cribs, roll away
beds, food, or food service equipment must shield all lights or use shatterproof bulbs.

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

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13-1408. Water supply.

13-1408.1 A safe adequate supply of potable water with both hot and cold under pressure shall be provided in all bathrooms and toilets.

13-1408.2 Guest room glasses must be single service or multi use glasses that are cleaned and sanitized between each different guest.

13-1408.3 Self-service ice provided for guests must be dispensed through the use of self-dispensing ice machines or prepackaged from an approved source. Self-service ice storage bins are not acceptable for guest use and must be kept in areas not accessible to guests. All self-dispensing ice machines shall be cleaned and sanitized internally every quarter (3 months).

13-1409. Plumbing.

All plumbing shall be properly maintained and meet all state and local plumbing codes.

13-1410. Garbage/Refuse disposal.

13-1410.1 All liquid wastes shall be disposed of in an approved public sewage system.

13-1410.2 Prior to removal, all garbage and refuse stored within the premises shall be kept in watertight, nonabsorbent receptacles which are covered with close fitting lids to prevent access to birds, rodents, and other vermin. These garbage receptacles shall be kept in good repair.

13-1410.3 All garbage, trash, and refuse shall be removed from the premises frequently to prevent nuisance and unsightly conditions, and shall be disposed of in a sanitary manner.

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

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13-1411. Miscellaneous.

1 13-1411.1 All cleaning operations must be conducted in a manner that minimizes
2 contamination of the facility. Cleaning equipment, supplies, insecticides, paints, and
3 other toxic materials must be stored properly. They may not be stored above or next to
4 linens, food, or food service equipment. All cleaners, sanitizers, and disinfectants must
5 comply with 21 CFR section 178.1010. An ingredient label and "direction for use" label
6 on each chemical being used must be readily available for reference or inspection. All
7 containers used for dispensing these chemicals must be prominently and distinctively
8 labeled for identification of contents.

9 13-1411.2 Every ~~hotel and motel~~ lodging establishment shall be constructed, maintained,
10 and equipped to prevent the entrance, harborage, or breeding of flies, roaches, bedbugs,
11 rats, mice, and all other insects and vermin. They must also have means necessary to
12 eliminate such pests such as cleaning, renovation, or fumigation. The ~~H~~health
13 ~~D~~department may order the facility to hire a licensed exterminator to exterminate pests
14 when:

- 15 A. The infestation is so extensive that it is unlikely that a nonprofessional can
16 eradicate the pests effectively.
- 17 B. The extermination method of choice can only be carried out by a licensed
18 exterminator.
- 19 C. Upon reinspection it is found that the establishment has not been brought
20 into compliance with a prior order to rid the establishment of pests.

21 Section 2. Penalty.

22 A person who willfully violates this ordinance is guilty of an infraction. Every person,
23 firm or corporation violating an ordinance which is punishable as an infraction shall be punished
by a fine not to exceed \$1000.00; the court to have power to suspend said sentence and to revoke
the suspension thereof.

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

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Section 3. Effective Date.

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

Timothy J. Mahoney, M.D., Mayor

Attest:

First Reading:
Second Reading:
Final Passage:
Publication:

Steven Sprague, City Auditor

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

8

ORDINANCE NO. _____

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

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

WHEREAS, the Fargo Planning Commission recommended approval of the rezoning request on May 2, 2023; and,

WHEREAS, the rezoning changes were approved by the City Commission on October 16, 2023,

NOW, THEREFORE,

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

Section 1. The following described property:

Lot One (1), Block One (1) of the Southwest Fargo Mission Second Addition to the City of Fargo, Cass County, North Dakota;

is hereby rezoned from "P/T", Public and Institutional, District to "GC", General Commercial with a "C-O", Conditional Overlay, District as follows:

1. The following uses are prohibited:
 - a. Detention Facilities
 - b. Adult Establishments
 - c. Off-Premise Advertising Signs
 - d. Portable Signs
 - e. Self-Service Storage
 - f. Vehicle Repair

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

- g. Industrial Service
- h. Manufacturing and Production
- i. Warehouse and Freight Movement
- j. Wholesale Sales
- k. Aviation / Surface Transportation

2. All primary buildings shall be constructed or clad with materials that are durable, economically-maintained, and of a quality that will retain their appearance over time, including but not limited to natural or synthetic stone; brick; stucco; integrally-colored, textured or glazed concrete masonry units; high-quality pre-stressed concrete systems; or glass. Natural wood or wood paneling shall not be used as a principal exterior wall material, but durable synthetic materials with the appearance of wood may be used.
3. Color schemes shall tie building elements together, relate pad buildings within the same development to each other, and shall be used to enhance the architectural form of a building.
4. All building elevations/facades greater than 150 feet in length, measured horizontally from vertical edge to vertical edge, shall incorporate wall plane projections or recesses. Each projection and/or recess shall have a depth of at least two (2) feet, and the cumulative total horizontal width of all projections and/or recesses within a façade shall equate to at least an accumulated total of twenty (20) percent of the overall horizontal length of the façade. No uninterrupted length of any façade shall exceed 150 horizontal feet.
5. Ground floor facades that face public streets shall have arcades, display windows, entry areas, awnings, or other such features along no less than sixty (60) percent of their horizontal length. If the façade facing the street is not the front, it shall include the same features and/or landscaping in scale with the façade.
6. Flat roofs and rooftop equipment, such as HVAC units, shall be concealed from public view. The average height of parapets shall not exceed one-third of the height of the supporting wall, and such parapets shall not be of a constant height for a distance of greater than 150 feet.

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

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7. Loading facilities shall not be located at the front of structures where it is difficult to adequately screen from front view. All loading and service areas shall be screened from the view of adjacent public streets through a structure and/or landscaping.
 8. Dumpsters and refuse containers shall be located at the side or rear of buildings and shall be visually screened from adjacent public right-of-way and residential. Dumpster and refuse container enclosures shall contain permanent walls on three (3) sides with the service opening not directly facing any public right-of-way or residentially zoned property unless the service opening incorporates a metal gate and/or landscaping to visually screen the dumpster or refuse container.
 9. Separate vehicular and pedestrian circulation systems shall be provided. An on-site system of pedestrian walkways shall be designed to provide direct access and connections to and between the following:
 - a. The primary entrance or entrances to each commercial building, including pad site buildings.
 - b. Any sidewalks or walkways on adjacent properties that extend to the boundaries shared with the commercial development.
 - c. Parking areas or structures that serve such primary buildings.
 - d. Connections between the on-site (internal) pedestrian walkway network and any public sidewalk system located along adjacent perimeter streets shall be provided at regular intervals along the perimeter street as appropriate to provide easy access from the public sidewalks to the interior walkway network.
 - e. Any public sidewalk system along the perimeter streets adjacent to the commercial development.
 - f. Where practical and appropriate, adjacent land uses and developments, including but not limited to residential developments, retail shopping centers, office buildings.
 10. A minimum of 4.5% of the internal surface area of the parking lot shall be landscaped. The cumulative open space (green space) of each lot shall consist of at least 15% of the lot.

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

Section 2. The following described property:

Lot Two (2), Block One (1) of the Southwest Fargo Mission Second Addition to the City of Fargo, Cass County, North Dakota;

that is currently zoned "P/I", Public and Institutional, District, will hereby retain the base zoning of "P/I", Public and Institutional, District.

Section 3. The City Auditor is hereby directed to amend the zoning map now on file in his office so as to conform with and carry out the provisions of this ordinance.

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

Timothy J. Mahoney, M.D., Mayor

(SEAL)

Attest:

Steven Sprague, City Auditor

First Reading:
Second Reading:
Final Passage:

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CITY ATTORNEY

Nancy J. Morris

ASSISTANT CITY ATTORNEYS

Ian R. McLean ▪ Alissa R. Farol ▪ William B. Wischer

9

October 26, 2023

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

RE: Dangerous Building located at 924 7th Street North, Fargo, North Dakota

Dear Commissioners,

Enclosed for your review and approval are proposed Findings of Fact, Conclusions and Order, and Notice regarding the dangerous building proceeding for the property at 924 7th Street North. At its October 16, 2023 meeting, the report presented by Shawn Ouradnik, city of Fargo Building Inspections Director, was approved by the Board. As such, the City Attorney's Office was directed to prepare the appropriate Findings of Fact, Conclusions and Order, and Notice.

Suggested Motion: I move to approve the Findings of Fact, Conclusions and Order, and Notice as presented.

Sincerely,



Alissa R. Farol Czapiewski
Assistant City Attorney

Enclosure

cc: Shawn Ouradnik, Inspections Department

FINDINGS OF FACT, CONCLUSIONS AND ORDER
of the
BOARD OF CITY COMMISSIONERS
OF THE CITY OF FARGO

Property Address: 924 7th Street North, Fargo, North Dakota

Property Owner: FM Property Pros II, LLC

A hearing was held before the Board of City Commissioners of the City of Fargo on the 16th day of October, 2023 regarding the property located at 924 7th Street North, Fargo, North Dakota. Shawn Ouradnik, city of Fargo Building Inspections Director, appeared on behalf of the city of Fargo Inspections Department and provided testimony as to the condition of the property.

The Board heard the testimony offered by the Inspections Director, considered the reports, evidence and other information presented, and hereby makes the following Findings of Fact:

FINDINGS OF FACT

1. That FM Property Pros II, LLC is the owner of the following described real property located in the City of Fargo, County of Cass, and State of North Dakota:

East One Hundred (100) Feet of Lot Five (5), Block Sixteen (16), Harwoods 2nd Addition to the city of Fargo

Street address: 924 7th Street North, Fargo, North Dakota, 58102

[hereinafter “Subject Property”].

2. That on May 30, 2023, Bill Thompson, Rental/Residential Building Inspector for the city of Fargo, inspected the Subject Property and found the building, consisting of a one-and-one-half (1 ½) story, wood-framed structure to be a dangerous building within the standards set forth in Article 21-04 of the Fargo Municipal Code and Section 111.1.5 of the International Property Maintenance Code concerning dangerous structures.

3. That the building is unsafe and dangerous in the following respects: (a) multiple windows and doors are boarded; (b) broken windows; (c) north entry door is kicked in and

unsecured; (d) evidence of squatter activity and drug paraphernalia; and (e) large amount of overgrowth around structure.

4. That the following conditions exist with respect to the Subject Property:

- a. The building is unsafe, fails to provide the amenities essential to decent living, and is unfit for human habitation; and
- b. The building is unsafe or dangerous to the health, moral safety or general welfare of the people of the City of Fargo.

5. That the information in the files of the Inspections Department stemming from the inspection of the property on or before May 30, 2023, with respect to the Subject Property is hereby accepted as true and correct.

6. That the City secured the Subject Property on both June 8, 2023, and September 14, 2023, due to squatter activity.

7. That Notice of Dangerous Building was posted on the property on or about June 2, 2023, in accordance with Municipal Code § 21-0404. The Notice of Dangerous Building informed the owner and all occupants, if any, that the “dangerous building” must be vacated and secured, and the building must be demolished, or any necessary and valid permits be obtained within thirty (30) days from the date of the notice.

CONCLUSIONS AND ORDER

Based on the foregoing Findings of Fact, the Board of City Commissioners hereby makes the following Conclusions:

1. That the building located at 924 7th Street North, Fargo, North Dakota 58102, is hereby found to be a “dangerous building.”
2. That the owner or anyone claiming to have an ownership interest in said building has not sufficiently presented cause why the “dangerous building” should not be demolished.
3. That despite being ordered that the building on the Subject Property should be demolished, or necessary and valid permits be obtained within thirty (30) days of the notice, the owner or anyone else claiming to have an ownership interest in said building has failed to do so.

IT IS HEREBY ORDERED that FM Property Pros II, LLC, or anyone else claiming an ownership interest, shall demolish the “dangerous building” and remove all building debris located at 924 7th Street North, Fargo, North Dakota by December 15, 2023.

It is further ordered that if the owner fails to demolish said “dangerous building,” the City Auditor, Building Inspector, and City Attorney are directed to act on behalf of the city of Fargo to cause the “dangerous building” to be demolished, and the cost of said demolition to be assessed against the Subject Property as provided in Section 21-0405 of the Fargo Municipal Code.

DATED this _____ day of October, 2023.

BOARD of CITY COMMISSIONERS of the CITY
OF FARGO,
a North Dakota Municipal Corporation

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

ATTEST:

Steven Sprague, City Auditor

NOTICE OF ENTRY OF ORDER

TO: FM PROPERTY PROS II, LLC AND ALL OTHER PERSONS HAVING INTEREST IN
THIS PROPERTY

RE: PROPERTY AT 924 7TH STREET NORTH, FARGO, NORTH DAKOTA 58102

YOU ARE HEREBY GIVEN NOTICE that you shall have thirty (30) days from the date of service of Findings of Fact and Conclusions and Order of the Board of City Commissioners of the City of Fargo (“Order”) upon you in which to appeal the Order to the District Court of Cass County, North Dakota, or to take such other legal action to enjoin the enforcement of this Order as you deem proper, all-in accordance with the appeal procedure set forth in Fargo Municipal Code § 21-0412. You are further given notice that the “dangerous building” on the Subject Property may be demolished by the city of Fargo at any time on or after December 15, 2023.

DATED this _____ day of October, 2023.

BOARD OF CITY COMMISSIONERS
CITY OF FARGO, a North Dakota Municipal
Corporation

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

ATTEST:

Steven Sprague, City Auditor



APPLICATION FOR A LOCAL PERMIT OR RESTRICTED EVENT PERMIT
 NORTH DAKOTA OFFICE OF ATTORNEY GENERAL
 LICENSING SECTION
 SFN 9338 (09-2021)

1000

RB 0124-23

Applying for (check one)
 Local Permit Restricted Event Permit*

Games to be Conducted Raffle by a Political or Legislative District Party

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

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

LOCAL PERMIT RAFFLES MAY NOT BE CONDUCTED ONLINE AND CREDIT CARDS MAY NOT BE USED FOR WAGERS.

Name of Organization or Group of People permit is issued to <i>Oak Grove Lutheran School</i>		Dates of Activity <i>Nov 2, 2023</i>		If raffle, provide drawing date	
Organization or Group Contact Person <i>Shellie Simonson Ulven</i>		Title or Position <i>Advancement</i>		Telephone Number <i>7196</i> <i>701.212.8324</i>	
Business Address <i>124 N. Terrace</i>		City <i>Fargo</i>		State <i>ND</i>	ZIP Code <i>58102</i>
Mailing Address (if different)		City		State	ZIP Code
Site Name (where gaming will be conducted) <i>Holiday Inn, Fargo, Great Hall</i>					
Site Address <i>3803 13th Ave S</i>		City <i>Fargo</i>		ZIP Code <i>58103</i>	County <i>Cass</i>

Description and Retail Value of Prizes to be Awarded

Game Type	Description of Prize	Retail Value of Prize
<i>Heads N Tails</i>	<i>Apple iPad Mini (6th Generation)</i>	<i>399.99</i>
<i>Heads N Tails</i>	<i>Segway Ninebot ES2 Electric Kick Scooter</i>	<i>506.27</i>
<i>Raffle Board</i>	<i>Gucci Jumbo GG Belt Bag</i>	<i>1,100.00</i>
<i>Raffle Board</i>	<i>2022 Townie Go! 7D Step-Thru Electric Bike</i>	<i>1,899.00</i>
Total (limit \$40,000 per year)		<i>3900.26</i>

Intended Uses of Gaming Proceeds
Student tuition aid and classroom supplies

Does the organization presently have a state gaming license? (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)
 Yes No

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

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

Is the organization or group a state political party or legislative district party? (If yes, the organization or group may only conduct a raffle and must complete SFN 52880 "Report on a Restricted Event Permit" within 30 days of the event. Net proceeds may be used for political purposes.)
 Yes No

Organization or Group Contact Person

Name <i>Shellie Simonson Ulven</i>	Title <i>Advancement</i>	Telephone Number <i>701.212.8324</i>	E-mail Address <i>Shellie.ulven@oakgrovelutheran.com</i>
Signature of Organization or Group's Top Official <i>[Signature]</i>		Title <i>President</i>	Date <i>10-19-2023</i>



APPLICATION FOR A LOCAL PERMIT OR RESTRICTED EVENT PERMIT

NORTH DAKOTA OFFICE OF ATTORNEY GENERAL
LICENSING SECTION
SFN 9338 (09-2021)

(Job)

B 0125-23

Applying for (check one)
 Local Permit Restricted Event Permit*

Games to be Conducted Raffle by a Political or Legislative District Party

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

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

LOCAL PERMIT RAFFLES MAY NOT BE CONDUCTED ONLINE AND CREDIT CARDS MAY NOT BE USED FOR WAGERS.

Name of Organization or Group of People permit is issued to Sts Anne & Joachim Catholic Church	Dates of Activity 11/12/2023	If raffle, provide drawing date	
Organization or Group Contact Person Jenn Hulstein	Title or Position Business Manager	Telephone Number 701-235-5757	
Business Address 5202 25th St. S	City Fargo	State ND	ZIP Code 58104
Mailing Address (if different)	City	State	ZIP Code
Site Name (where gaming will be conducted) Sts Anne & Joachim Catholic Church			
Site Address 5202 25th St. S	City Fargo	ZIP Code 58104	County Cass

Description and Retail Value of Prizes to be Awarded

Game Type	Description of Prize	Retail Value of Prize
Bingo	See Attached - Gift cards/Coupons	203.00
Total (limit \$40,000 per year)		<i>203.00</i>

Intended Uses of Gaming Proceeds
fall festival

Does the organization presently have a state gaming license? (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)
 Yes No

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

Has the organization or group received a local permit from any city or county for the fiscal year July 1-June 30? (If yes, indicate the total retail value of all prizes previously awarded)
 No Yes - Total Retail Value: (This amount is part of the total prize limit of \$40,000 per year)

Is the organization or group a state political party or legislative district party? (If yes, the organization or group may only conduct a raffle and must complete SFN 52880 "Report on a Restricted Event Permit" within 30 days of the event. Net proceeds may be used for political purposes.)
 Yes No

Organization or Group Contact Person

Name Jenn Hulstein	Title Business Manager	Telephone Number 701-235-5757	E-mail Address jhulstein@stsaai.org
Signature of Organization or Group's Top Official 		Title Business Manager	Date 10/17/23



APPLICATION FOR A LOCAL PERMIT OR RESTRICTED EVENT PERMIT

NORTH DAKOTA OFFICE OF ATTORNEY GENERAL
GAMING DIVISION
SFN 9338 (9-2023)

(Handwritten initials)

RB 0126-23

Applying for (check one)

Local Permit Restricted Event Permit*

Games to be conducted

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

*See Instruction 2 (f) on Page 2. Poker, Twenty-One, and Paddlewheels may be conducted Only with a Restricted Event Permit. Only one permit per year.
LOCAL PERMIT RAFFLES MAY NOT BE CONDUCTED ONLINE AND CREDIT CARDS MAY NOT BE USED FOR WAGERS

ORGANIZATION INFO

Name of Organization or Group The Village Family Service Center		Dates of Activity (Does not include dates for the sales of tickets) 11/17/2023	
Organization or Group Contact Person Kelly Olson	E-mail kolson@thevillagefamily.org	Telephone Number 701-451-4900	
Business Address 1201 25th St S	City Fargo	State ND	ZIP Code 58103
Mailing Address (if different) PO Box 9859	City Fargo	State ND	ZIP Code 58106

SITE INFO

Site Name The Delta by Marriott	County Cass
Site Physical Address 1635 42nd St S	City Fargo
	State ND
	ZIP Code 58103

Provide the exact date(s) & frequency of each event & type (Ex. Bingo every Friday 10/1-12/31, Raffle - 10/30, 11/30, 12/31, etc.)

Raffle boards - 11/17/2023 - One event
Heads/Tails Game - 11/17/2023 - One event

PRIZE / AWARD INFO (If More Prizes, Attach An Additional Sheet)

Game Type	Description of Prize	Exact Retail Value of Prize
Raffle Boards	Diamond Necklace, Bourbon Package, Lake Package, Wine Adventure	\$9,661
Heads/ Tails Game	Gift card and a gift basket	\$650
Total (limit \$40,000 per year)		\$ 10,311

ADDITIONAL REQUIRED INFORMATION

Intended Uses of Gaming Proceeds
Benefiting services provided by The Village Family Service Center, including behavioral health services, mentoring and other services

Does the organization presently have a state gaming license? (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)

Yes No

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

Yes No

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

No Yes - Total Retail Value. (This amount is part of the total prize limit for \$40,000 per fiscal year)

Is the organization or group a state political party or legislative district party? (If yes, the organization or group may only conduct a raffle and must complete SFN 52880 "Report on a Restricted Event Permit" within 30 days of the event. Net proceeds may be for political purposes.)

Yes No

Printed Name of Organization Group's Permit Organizer Kelly Olson	Telephone Number 701-451-4831	E-mail Address kolson@thevillagefamily.org
Signature of Organization Group's Permit Organizer <i>Kelly Olson</i>	Title CEO	Date 10-12-23



APPLICATION FOR A LOCAL PERMIT OR RESTRICTED EVENT PERMIT

NORTH DAKOTA OFFICE OF ATTORNEY GENERAL
 GAMING DIVISION
 SFN 9338 (9-2023)

100

Applying for (check one)

Local Permit Restricted Event Permit*

Games to be conducted

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

*See Instruction 2 (f) on Page 2. Poker, Twenty-One, and Paddlewheels may be conducted Only with a Restricted Event Permit. Only one permit per year.
LOCAL PERMIT RAFFLES MAY NOT BE CONDUCTED ONLINE AND CREDIT CARDS MAY NOT BE USED FOR WAGERS

ORGANIZATION INFO

Name of Organization or Group Bison Dance Team		Dates of Activity (Does not include dates for the sales of tickets) 12/8/2023	
Organization or Group Contact Person Kaylin Trosen	E-mail bdtfundraisingcommitte@gmail.com	Telephone Number 715-781-8108	
Business Address NDSU Dept 2837 P.O.Box 6050	City Fargo	State ND	ZIP Code 58108
Mailing Address (if different)	City	State	ZIP Code

SITE INFO

Site Name Fargo South High School	County Cass
Site Physical Address 1840 15th Ave S	City Fargo
	State ND
	ZIP Code 58103

Provide the exact date(s) & frequency of each event & type (Ex. Bingo every Friday 10/1-12/31, Raffle - 10/30, 11/30, 12/31, etc.)
12/8/2023

PRIZE / AWARD INFO (If More Prizes, Attach An Additional Sheet)

Game Type	Description of Prize	Exact Retail Value of Prize
50/50 Cash Raffle	Cash	Maximum value \$500
Total (limit \$40,000 per year)		\$

ADDITIONAL REQUIRED INFORMATION

Intended Uses of Gaming Proceeds

Does the organization presently have a state gaming license? (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)
 Yes No

Has the organization or group received a restricted event permit from any city or county for the fiscal year July 1 - June 30 (If yes, the organization or group does not qualify for a local permit or restricted event permit)
 Yes No

Has the organization or group received a local permit from an city or county for the fiscal year July 1 - June 30 (If yes, indicate the total retail value of all prizes previously awarded)
 No Yes - Total Retail Value: _____ (This amount is part of the total prize limit for \$40,000 per fiscal year)

Is the organization or group a state political party or legislative district party? (If yes, the organization or group may only conduct a raffle and must complete SFN 52880 "Report on a Restricted Event Permit" within 30 days of the event. Net proceeds may be for political purposes.)
 Yes No

Printed Name of Organization Group's Permit Organizer Kaylin Trosen	Telephone Number 715-781-8108	E-mail Address bdtfundraisingcommitte@gmail.com
Signature of Organization Group's Permit Organizer <i>Kaylin Trosen</i>	Title President	Date 10/21/2023



Page 96 APPLICATION FOR A LOCAL PERMIT OR RESTRICTED EVENT PERMIT

NORTH DAKOTA OFFICE OF ATTORNEY GENERAL
GAMING DIVISION
SFN 9338 (9-2023)

100

Applying for (check one)

Local Permit Restricted Event Permit*

Games to be conducted Raffle by a Political or Legislative District Party

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

*See Instruction 2 (f) on Page 2. Poker, Twenty-One, and Paddlewheels may be conducted Only with a Restricted Event Permit. Only one permit per year.

LOCAL PERMIT RAFFLES MAY NOT BE CONDUCTED ONLINE AND CREDIT CARDS MAY NOT BE USED FOR WAGERS

ORGANIZATION INFO

Name of Organization or Group: North Dakota State Univeristy Judging Club
Dates of Activity: 03/04/24
Organization or Group Contact Person: Maggie Wertish
E-mail: Maggie.wertish@ndsu.edu
Telephone Number: 507-430-0757
Business Address: 1300 Albrecht Blvd
City: Fargo
State: ND
ZIP Code: 58102

SITE INFO

Site Name: North Dakota State University
County: Cass
Site Physical Address: 1300 Albrecht Blvd
City: Fargo
State: ND
ZIP Code: 58102
Provide the exact date(s) & frequency of each event & type: 03/04/24

PRIZE / AWARD INFO (If More Prizes, Attach An Additional Sheet)

Table with 3 columns: Game Type, Description of Prize, Exact Retail Value of Prize. Row 1: Raffle, An April born Black Angus Heifer (Cattle/Animal), 1500.

ADDITIONAL REQUIRED INFORMATION

Intended Uses of Gaming Proceeds: 4-H/FFA Contests
Does the organization presently have a state gaming license? No
Has the organization or group received a restricted event permit from any city or county for the fiscal year July 1 - June 30? No
Has the organization or group received a local permit from an city or county for the fiscal year July 1 - June 30? No
Is the organization or group a state political party or legislative district party? No

Printed Name of Organization Group's Permit Organizer: Maggie Wertish
Telephone Number: 507-430-0757
E-mail Address: Maggie.wertish@ndsu.edu
Signature of Organization Group's Permit Organizer: [Signature]
Title: Co-Fundraising Chair
Date: 10/12/23

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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

MEMORANDUM

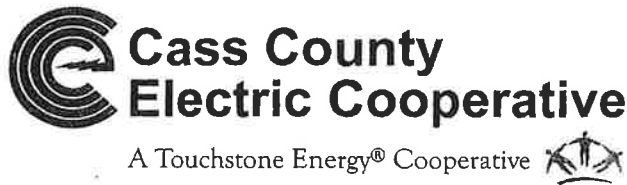
TO: Board of City Commissioners
FROM: Steven Sprague, City Auditor
SUBJECT: Cass County Electric Franchise Agreement
DATE: October 19, 2023

Pursuant to a limited franchise agreement between the City of Fargo and Cass County Electric entered into in July 1995 and amended December 2016, Cass County Electric is required to provide written notice of the intention to service areas annexed into the City of Fargo. Attached is the required notice referring to the annexation of May 1, 2023

Please receive and file the amendment to the limited franchise agreement adding the area annexed by the City of Fargo on May 1, 2023.

Recommended Motion:

Receive and file the amendment to the limited franchise agreement between the City of Fargo and Cass County Electric adding the area annexed by the City of Fargo on May 1, 2023.



May 10, 2023

Kent Costin
Director of Finance
City of Fargo
225 4th Street North
Fargo, ND 58102

<CERTIFIED MAIL>

Dear Mr. Costin,

This letter is in reference to the franchise agreement that the City of Fargo granted to Cass County Electric Cooperative, Inc. in December 2016.

In paragraph eleven (11), the agreement refers to a written notice required to add designated areas (annexed property being served by the Cooperative) to this agreement.

Please note the designated areas identified below, which are hereby identified as additional annexed areas in which Cass County Electric Cooperative Inc. will provide service to existing and new customers:

- 1) That part of the Northwest Quarter, Southwest Quarter, and Southeast Quarter of Section 15 and Northwest Quarter and Northeast Quarter of Section 22, all in Township 140 North, Range 49 West of the Fifth Principal Meridian, Cass County, North Dakota, being more fully described in the Annexation plat Document #1688513.

Said part of Sections 15 and 22 as described in the annexation plat, contains 231.70 acres more or less.

This area was annexed into the City of Fargo on May 1st, 2023, which was then recorded in the Cass County Recorder's office on May 4th, 2023, at 01:40 o'clock PM, Document No. 1688513.

Sincerely,

A handwritten signature in cursive script that reads 'Jodi Bullinger'.

Jodi Bullinger, PE
VP Engineering & Operations
Cass County Electric Cooperative

Mr. Kent Costin
May 10, 2023
Page 2

Encl (1)

Cc: Marshal Albright, CEO Cass County Electric Cooperative
Ms. Tami Norgard, Vogel Law, Attorney for Cass County Electric Cooperative, Inc.

(12)

MEMORANDUM

TO: Board of City Commissioners

FROM: Steven Sprague, City Auditor

SUBJECT: Appointment of Election Workers – ELECTION MATTERS

DATE: October 23, 2023

Fargo Municipal Code and North Dakota Century Code require the governing body to appoint the workers for elections.

The City of Fargo will hold a special election on December 5, 2023 to determine if sales tax and lodging tax should be increased to support expansion of the FargoDome including adding a convention center space. The Auditor's Office has been working to line up enough workers to adequately staff and conduct this special election. To date, approximately 80 of the anticipated 100 workers needed have been secured and are included on the list attached.

Additionally, the Auditor's Office is required to nominate a Canvassing Board to canvas the results of the election. The Canvassing Board will meet 13 days after the election, as required by State law, on December 18 at 11 a.m. in the Red River room. Fargo Municipal Code requires the Canvassing Board be comprised of; The Mayor, City Attorney, City Auditor and two Commissioners. Please appoint Tim Mahoney, Mayor, City Attorney Nancy Morris, City Auditor Steve Sprague and Commissioners, Denise Kolpack and John Strand to the Canvassing Board.

Recommended Motion:

Approve the election workers list and additional workers secured by the Auditor's Office needed for the December 5, 2023 Special Election.

Approve the Canvassing Board of Mayor Tim Mahoney, City Attorney Nancy Morris, City Auditor Steven Sprague and City Commissioners Denise Kolpack and John Strand.

2024 Election Worker Applicants

Charlotte Anderson
LoAnn J Amundson
Kyle Allen Anderson
Ronald Charles Anderson
Michelle Bennett
Michelle Bennett
Jack Bergeson
Gregory Brandt
Mike Thomas Burton
Saima Christensen
III Edwin G. Clapp
Thomas C Dolan
Lee Everett Duckworth
Maurice Dullea
Andrew I Froelich
Beth Gorder
Cheryl K Gumke
Daniel Allen Hartley
Sharon Jo Hartley
Angela C. Hedrington
Douglas Hilsen
Gevaine Lynn Hilsen
Bria Nicole Johnson
Renee Lynn Johnson
Laura Patricia Jusu
Linda Kallenbach
Dale A Knutson
Lyola L Knutson
Shirley Mae Kondelis
Patricia Anne Kotta
Ardella Larson
Eileen Lee
NEIL LITTON
Myron Paul Loberg
Teresa Ashley Jean Lovejoy
DARREL LUND
Dawn Mayo
Haley McLaughlin
Kara J. Mitchell
Kaitlin Molden
Carolyn Monzingo
Rebekah Erin Mork
Kathleen Nordness
Joan Nycklemoe-connell
Martha G Odom

Susan M Ostby
Cheryl D Peterson
Nancy A Peterson
Katherine Amy Phillips
Mary Jo Richard
Shannon Kay Rieman
Christine A Rositas
Ronald W Saeger
Teresa Saylor
Sandra Kay Schuman
Moria Shannon
Kay Skramstad
Connie F Smallarz
KJ Stearns
Elizabeth A Thelen
Mark T Thelen
Paula G Thomas
Jasmine Rose Vanderplaats
Doug Vang
Jeffrey Emil Vanyo
Luana F Vetter
Duane D WAgner
Anna Marie Welder
Pam Wheeler
David Withee
Mary T Withee
David L Wyum
Jayden Rey Younggren
Chris Rose
Carrie Clemens

13

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

MEMORANDUM

TO: Board of City Commissioners
FROM: Steven Sprague, City Auditor
SUBJECT: Agreement for Special Improvements – County 20 Storage, LLC
DATE: October 23, 2023

County 20 Storage, LLC (Robert Nelson) has requested municipal improvements in County 20 Storage Addition. Attached is the Agreement for Special Improvements relating to improvement district #BN-23-J1. County 20 Storage, LLC has executed this agreement and will provide the necessary Letter of Credit.

Recommended Motion:

Approve the agreement for special improvements between the City of Fargo and County 20 Storage, LLC for municipal improvements in County 20 Storage Addition Improvement District #BN-23-J1.

AGREEMENT FOR SPECIAL IMPROVEMENTS

THIS AGREEMENT, Made and entered into this 16 day of October, 2023, by and between THE CITY OF FARGO, a municipal corporation, hereinafter "CITY"; and County 20 Storage LLC, hereinafter "DEVELOPER",

WHEREAS, DEVELOPER has made request of CITY for Sanitary Sewer, Water Main, Asphalt Pavement and Incidentals hereinafter "Utilities", in County 20 Storage Addition, hereinafter "Development";

WHEREAS, CITY has approved the installation of Utilities in the Development with certain conditions and requirements; and

WHEREAS, CITY will create Special Improvement District Number BN-23-J1 hereinafter "SID #BN-23-J1", for the purpose of constructing said Utilities; and

WHEREAS, a promise to pay the suitable security is required of DEVELOPER by CITY in order to insure payment of special assessments which will result from said Utilities; and,

WHEREAS, DEVELOPER has agreed to pay said special assessments and to provide security therefor,

NOW, THEREFORE, It is hereby agreed by and between the parties as follows:

1. CITY agrees to create SID #BN-23-J1 for purpose of constructing Utilities in the Development, to finance the Utilities through its municipal bonding authority, and to levy special assessments against said property for the payment of the bonds sold to finance the Utilities.
2. Subsequent to the execution of this Agreement and prior to the award of a contract for construction of the Utilities, DEVELOPER agrees to furnish to CITY, cash or other security in an amount equal to 50% of the estimated costs for the construction of the Utilities (as determined by CITY); said cash or other security to be retained and utilized by CITY pursuant to this Agreement or to be returned to DEVELOPER upon satisfaction of all of the terms and conditions of this agreement as hereinafter provided. The security, other than cash, which is furnished to CITY may be certificates of deposit, negotiable instruments, or a letter of credit, provided that the form and sufficiency thereof shall be subject to the approval of CITY, and CITY may, in its sole discretion, accept or reject the form of security which is offered by DEVELOPER.
3. DEVELOPER shall have the right to cancel this agreement at any time prior to the award of a contract for construction of the Utilities; provided, that written notice of such cancellation shall be delivered to CITY at least 72 hours prior to the time scheduled for such contract award and provided further, that DEVELOPER pays to CITY, at the time of delivery of such written notice, an amount which is equal to 0.5% of the estimated costs for the construction of said Utilities (as determined by CITY) or \$1,000, whichever is greater. The parties hereto

understand and agree that CITY has incurred substantial administrative, engineering and other expenses for preparation of plans, solicitation of bids and other tasks and that the amount of such expenses would be impossible to ascertain with certainty and that the cancellation payment as hereinabove provided constitutes liquidated damages and is fair and reasonable compensation for such expenses. It is further understood and agreed that in the event that DEVELOPER cancels this agreement without making payments as hereinabove provided, CITY may draw upon the letter of credit or other security which has been furnished pursuant to paragraph 2 of this agreement for such liquidated damages.

4. DEVELOPER agrees, for and on behalf of itself and its successors and assigns, to keep all property taxes current and to pay on or before October 15th of each year, the current annual installment of special assessments and any accrued penalties on each and every unimproved lot located in the Development. It is understood and agreed that a transfer of any of said lots from DEVELOPER to third parties shall not relieve DEVELOPER of its obligation to make certain the annual installments of special assessments are paid in full as hereinabove set forth.

5. A letter of credit which is furnished as security by DEVELOPER pursuant to paragraph 2 above shall be irrevocable without the express written consent of CITY. Provided that the letter of credit may provide that it will expire 60 days after written notice is given to CITY by certified mail, return receipt requested.

6. In the event that DEVELOPER, or its successor, fails to pay on or before October 15th of each year, annual installments of special assessments and any accrued penalties as provided in paragraph 4 above, CITY may utilize the cash or other security which has been furnished to CITY or may draw upon the letter of credit, and apply said funds to pay all or part of the special assessments and accrued penalties which have been levied against said property but have not been certified for collection. Any amount remaining after payment of all uncertified special assessments may, in the discretion of CITY, be retained for future use as security and subsequently be applied toward future special assessments that are not paid when they become due as set forth in this Agreement or such remaining funds may be applied to current annual installments of special assessments. Provided, that CITY shall not utilize the cash or other security, or draw upon the letter of credit without first giving DEVELOPER ten (10) days' written notice of its intent to do so, said notice being deemed to be delivered when it is addressed to the DEVELOPER and is deposited in the regular U.S. Mail system.

7. In the event that DEVELOPER fails to pay on or before October 15th of each year, annual installments of special assessments as provided in paragraph 4 above, and if the amount of cash or other security which has been furnished to CITY is not sufficient to pay all special assessments which have been levied against said property, whether or not said assessments have been certified for collection, CITY shall have a cause of action against DEVELOPER for the remaining balance of all unpaid special assessments on all unimproved lots located in the Development.

The parties hereto understand and agree that this Agreement is made as an inducement for installation of Utilities in the Development by CITY and that the remedy provided herein is

in addition to any and all statutory remedies provided for collection of delinquent taxes and special assessments.

8. Upon improvement of all lots located in the Development, or upon payment of the entire balance of special assessments levied against said property, whether certified for collection or not, CITY shall return to DEVELOPER, any cash or other security which has been furnished to CITY, or any remaining and unused portion thereof. It is specifically understood and agreed that "improvement" means issuance of a permit for construction of a building such as a house, apartment building, office building or commercial structure or other principal building reflecting the intended use of the property.

9. The security provided in this agreement may be released or reduced by a) improvement of the lots as described in 8 above, b) payment of all certified and uncertified special assessments, c) once the balance of uncertified special assessments for all unimproved lots is less than the total amount of security provided, in which case the security may be reduced to an amount equal to the uncertified special assessment of all unimproved lots.

10. In the event of expiration of the letter of credit upon written notice as provide in paragraph 5 of this Agreement, if any lots in the Development are not improved or if all special assessments are not paid, all as set forth in paragraph 8 above, then, and in that event, CITY may draw upon the letter of credit and the proceeds thereof shall be applied first toward unpaid special assessments levied against said property which have not been certified for collection. Any amount remaining after application of funds to uncertified special assessments shall be applied to special assessments which have been certified for collection. It shall be in the sole discretion of CITY whether any remaining funds shall be applied uniformly to all unimproved lots in said development, or selectively to any particular lot or lots. If the amount of cash available from the letter of credit is not sufficient to pay all special assessments on all unimproved lots in the Development, CITY shall have a cause of action against DEVELOPER for the deficiency, all as provided in paragraph 7 hereof.

11. DEVELOPER hereby agrees to indemnify the CITY for any expenses involved in the enforcement of this Agreement, including, but not limited to, reasonable attorneys fees and costs.

12. This Agreement shall be binding upon the parties hereto and their respective successors and assigns. Transfer or conveyance of any or all of the lots in the Development shall not relieve DEVELOPER of any of its responsibility under the terms of this Agreement. This Agreement shall be deemed to be separable, and the failure of any of its terms shall not constitute failure of the remaining terms of the Agreement, and the terms and conditions of this Agreement shall be interpreted in accordance with the laws of the State of North Dakota.

Dated the day and year first above written.

THE CITY OF FARGO, a municipal corporation

By _____
Tim Mahoney, Mayor

ATTEST:

Steven Sprague, City Auditor

DEVELOPER

By 
Its _____
President



MEMORANDUM

Date: October 25, 2023

To: Board of City Commissioners

From: Brady Scribner, Emergency Manager, Fargo Fire Department

Re: Notice of Grant Award from the North Dakota Department of Emergency Services FY 2023 State Homeland Security Grant (CFDA #97.067)

Background:

The City of Fargo has been awarded grant funding from the North Dakota Department of Emergency Services (NDDDES) in the amount of \$70,000 for a security improvement project at the City of Fargo Public Safety Building. The grant application was reviewed and approved by the Board of City Commissioners via consent agenda on May 1st, 2023. There is no requirement for the City of Fargo to match any of the awarded grant funding. The awarded grant funds will be tracked with project code PDES13 and managed following City of Fargo policy.

Recommended Motion:

1. Sign and initial the North Dakota Department of Emergency Services Notice of Grant Award.
2. Approve an adjustment to the Fire Department's 2024 budget in the amount of \$70,000.
 - Account # 475-4010-510.74-13

Attachments: FY2023_Fargo_Award-Letter
FY2023_Fargo_Award-Notice

October 19, 2023

Fargo
Dr. Tim Mahoney, Mayor
225 4th St N
Fargo, ND 58102

Dear Mayor Mahoney:

Congratulations on behalf of the North Dakota Department of Emergency Services (NDDDES) Division of Homeland Security, your grant application submitted for the FY 2023 State Homeland Security Grant Program (SHSP) has been approved for award in the amount of \$70,000.

Do NOT begin any portion of your project including obligating or expending funds until the following requirements are met:

- Environmental and Historical Preservation (EHP) Review approval from DHS/FEMA. NDDDES will inform you when the EHP is approved and provide you with a copy of the DHS/FEMA approval letter for your records. Review by DHS can take several weeks. Starting your project prior to receiving approval from DHS will result in loss of funding for this project.
- FY 2023 National Cybersecurity Risk Assessment (NCSR) completion. The NCSR is located at <https://www.cisecurity.org/ms-isac/services/ncsr/>. The NCSR is required of all subrecipients. It is open from October 1 through February 28th. See the NCSR Instructions attachments in the NDDDES grants management system for additional information and instructions. Once you have completed the NCSR, upload a copy of the FY 2023 Completion Certificate to the **Project** page and send a note to drice@nd.gov so that NDDDES can document completion.
 - Failure to complete the NCSR during the timeframe noted above will result in a hold being placed on your project until the NCSR re-opens in October of the following year and is completed.

To accept the award and the terms and conditions complete the following steps **within 10 days** from the date of this letter. If you require longer than 10 days due to local administrative requirements, please notify our office.

- Step 1: Print or download the Notice of Grant Award and Special Conditions
- Step 2: Sign page 1 of the Notice of Grant Award
- Step 3: Initial all pages of the Special Conditions
- Step 4: Upload the signed Notice of Grant Award and Special Conditions pages into the NDDDES Grants System (<https://grants.des.nd.gov>) to the **Project** page. To upload a document, click on **Add Document** located toward the bottom on the **Project** page on the right. Follow the directions that pop up on your screen and click **Upload** to upload your documents.
- Step 5: Upload a copy of your jurisdiction's/entity's procurement policy to the **Project** page. (Note: A documented procurement policy is required per 2 CFR §200.318.)

Procurement Requirements

Federal 2 CFR §200.318-200.326 **Procurement Standards** as well as applicable state and local procurement laws and regulations must be followed when purchasing goods (example: equipment) and services (example: planning, training, or exercise activities).



Doug
Burgum
GOVERNOR

Major General
Alan S. Dohrmann
DIRECTOR – DEPARTMENT
OF EMERGENCY SERVICES

Darin
Hanson
DIRECTOR – DIVISION
OF HOMELAND SECURITY

Darin
Anderson
DIRECTOR – DIVISION
OF STATE RADIO

Ensuring a safe and secure homeland for all North Dakotans

Projects with an aggregate cost of \$10,000 or more must obtain a minimum of **three** quotes (each from a different vendor). Subrecipients must accept the quote from the vendor providing the lowest aggregate cost of the goods or services. Quotes must be obtained within the project period of performance. Quotes obtained prior to the project period of performance, or after the work has already been completed will not be accepted.

To aid subrecipients NDDDES has provided the [Quote \(Informal\) Request Form](#) at grants.des.nd.gov. It is recommended that subrecipients use this form or a similar jurisdiction/entity specific form when requesting quotes to ensure that all vendors are quoting on the same specifications.

Please contact our office at 701-328-8250 or at drice@nd.gov for any questions about procurement. Upon request, NDDDES prior to you accepting a quote will review the quotes for compliance with federal procurement standards and provide feedback.

NOTE: If your application included a name brand or a particular contractor/vendor, the award is **NOT** an approval of that brand name or contractor/vendor. All procurement transactions must be conducted in a manner providing full and open competition (2 CFR §200.319). Please see the *NDDDES Fiscal Requirements and Other Program Rules, Regulations, Laws, and Policies for Federal Programs* as well as the Reimbursement Processing checklist at [HSGP - grants.des.nd.gov](#) for more information on the types of documentation you will need to provide to NDDDES to show compliance.

Finally, the North Dakota State Procurement Office has cooperative purchasing contracts that can be used by eligible entities, including cities, counties, townships, public education, and tribal entities. See [CooperativePurchasing.pdf \(nd.gov\)](#) for more information. A current list of State Contracts can be found at [ND State Contracts](#). If under the column entitled CP there is a Y then it has a cooperative purchasing contract.

Project Reporting

Project status reports are required quarterly, with a final report due at closeout. Quarterly reports are due fifteen (15) days after the end of the reporting period of each quarter. Reports should show a steady progression of the project. If there is no progression during a quarter and explanation as to why the project is not progressing is required. Failure to complete the reports will result in delays to reimbursement requests being processed. Reports are completed in the grants management system at <https://grants.des.nd.gov> on the Project page under Progress Monitoring tab.

Reporting Period	Report Due Date
October 1 – December 31	due by January 15
January 1 – March 31	due by April 15
April 1 – June 30	due by July 15
July 1 – September 30	due by October 15

Please contact Karen Hilfer or Dave Rice at 701-328-8100 with any questions.

Sincerely,

Debbie LaCombe
Preparedness Chief



Doug
Burgum
GOVERNOR


Major General
Alan S. Dohrmann
DIRECTOR – DEPARTMENT
OF EMERGENCY SERVICES

Darin
Hanson
DIRECTOR – DIVISION
OF HOMELAND SECURITY

Darin
Anderson
DIRECTOR – DIVISION
OF STATE RADIO

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NOTICE OF GRANT AWARD			
Recipient Contact Name: Debbie LaCombe		Recipient Contact #: 701-328-8119	
Title of Grant Program: FY 2023 State Homeland Security Program			
Federal Award Identification Number: EMW-2023-SS-00001		Federal Award Date: September 11, 2023	
Federal Awarding Agency: U.S. Department of Homeland Security			
CFDA No. 97.067 SHSP			
Subrecipient Name and Address City of Fargo 225 4th St N Fargo, ND 58102		Subrecipient Contact Name: Brady Scribner Telephone: 701-476-4069 Email: BScribner@FargoND.gov	
Subrecipient UEL: K2QJQZVH5PM6	Grant Number: 70	County/Tribe: Cass	
Performance Period	From: October 19, 2023	Through: March 31, 2025	
Grant Amount: \$70,000.00	Subrecipient Cost Share: \$0.00	Total Project Cost: \$70,000.00	
Scope of Service: The intent of this award is to enhance the capability of the subrecipient to prevent, protect against, mitigate, respond to, and recover from acts of terrorism and other catastrophic events in accordance with the federal Notice of Funding Opportunity for this grant program, the approved application scope of work and cost line items located in the NDDes grant portal.			
Reporting Requirements: Progress reports on the status of the project must be submitted to NDDes quarterly through the NDDes grant portal. Reports are due January 15, April 15, July 15, and October 15 for the life of the grant. A final report is due with the final reimbursement request.			
Special Conditions: The above grant project is approved subject to the special conditions or limitations as indicated on the attached page. You must receive approval of EHP and must complete the FY 2023 NCSR prior to starting any portion of your project.			
Terms and Conditions: This award is subject to the terms and conditions incorporated directly or by reference in the following: <ol style="list-style-type: none"> 1) Fiscal Requirements and Other Program Rules, Regulations, Laws, and Polices for Federal Programs which can be found at https://grants/des/nd.gov/site/HSGP.cfm. 2) Applicable Federal and State laws and regulations. 3) The recipient agrees by signing this document that all allocations and use of funds under this grant will be in accordance with the Federal/State Notice of Funding Opportunity & FEMA Preparedness Grants Manual for this grant program. 			
This contract is not effective until fully executed by both parties. By signing below, you are accepting the terms and conditions of the award. Please make sure you read and understand these documents before signing. Maintain a copy of these documents in your official file for this award.			
Evidence of Subrecipient's Acceptance		Evidence of NDDes Approval	
Signature	Date		10/19/2023
Typed Name and Title of Authorized Representative Dr. Tim Mahoney Mayor		Typed Name and Title of Authorized Representative Darin Hanson Director, Division of Homeland Security	



SPECIAL CONDITIONS State Homeland Security Grant Program (SHSP)

1. DHS Standard Terms and Conditions Generally

The Fiscal Year (FY) 2023 DHS Standard Terms and Conditions apply to all new federal financial assistance awards funded in FY023. These terms and conditions flow down to subrecipients unless an award term or condition specifically indicates otherwise. The United States has the right to seek judicial enforcement of these obligations. They FY 2023 DHS Standard Terms and Conditions are at www.dhs.gov/publication/fy15-dhs-standard-terms-and-conditions.

2. Assurances, Administrative Requirements, Cost Principles, Representations and Certifications

- DHS financial assistance sub-recipients are required to follow the applicable provisions of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards located at Title 2, Code of Federal Regulations (C.F.R.) Part 200 and adopted by DHS at 2 C.F.R. Part 3002.
- By accepting this agreement, sub-recipients, and their executives, as defined in 2 C.F.R. section 170.315, certify that their policies are in accordance with OMB's guidance located at 2 C.F.R. Part 200, all applicable federal laws, and relevant Executive guidance.

3. General Acknowledgements and Assurances

All recipients, subrecipients, successors, transferees, and assignees must acknowledge and agree to comply with applicable provisions governing DHS access to records, accounts, documents, information, facilities, and staff.

- Sub-recipients must cooperate with any DHS compliance reviews or compliance investigations conducted by DHS.
- Sub-recipients must give DHS access to examine and copy records, accounts, and other documents and sources of information related to the federal financial assistance award and permit access to facilities or personnel.
- Sub-recipients must submit timely, complete, and accurate reports to the appropriate DHS officials and maintain appropriate backup documentation to support the reports.
- Sub-recipients must comply with all other special reporting, data collection, and evaluation requirements, as prescribed by law, or detailed in program guidance.

4. Acknowledgement of Federal Funding from DHS

Sub-recipients must acknowledge their use of federal funding when issuing statements, press releases, requests for proposal, bid invitations, and other documents describing projects or programs funded in whole or in part with federal funds.

5. Age Discrimination Act of 1975

Sub-recipients must comply with the requirements of the Age Discrimination Act of 1975, Public Law 94-135 (1975) (codified as amended at Title 42, U.S. Code, section 6101 et seq.), which prohibits discrimination on the basis of age in any program or activity receiving federal financial assistance.

6. Americans with Disabilities Act of 1990

Sub-recipients must comply with the requirements of Titles I, II, and III of the Americans with Disabilities Act, Pub. L. 101-336 (1990) (codified as amended at 42 U.S.C. sections 12101 - 12213), which prohibits sub-recipients from discriminating on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities.

Initial



7. Best Practices for Collection and Use of Personally Identifiable Information

Sub-recipients who collect personally identifiable information (PII) are required to have a publicly available privacy policy that describes standards on the usage and maintenance of the PII they collect. DHS defines PII as any information that permits the identity of an individual to be directly or indirectly inferred, including any information that is linked or linkable to that individual. Sub-recipients may also find the DHS Privacy Impact Assessments: Privacy Guidance and Privacy Template as useful resources respectively.

8. Civil Rights Act of 1964 - Title VI

Sub-recipients must comply with the requirements of Title VI of the Civil Rights Act of 1964 (codified as amended at 42 U.S.C. section 2000d et seq.), which provides that no person in the United States will, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. DHS implementing regulations for the Act are found at 6 C.F.R. Part 21 and 44 C.F.R. Part 7.

9. Civil Rights Act of 1968

Sub-recipients must comply with Title VIII of the Civil Rights Act of 1968, Pub. L. 90-284, as amended through Pub. L. 113-4, as implemented by the U.S. Department of Housing and Urban Development at 24 C.F.R. Part 100.

10. Copyright

Sub-recipients must affix the applicable copyright notices of 17 U.S.C. sections 401 or 402 and an acknowledgement of U.S. Government sponsorship (including the award number) to any work first produced under federal financial assistance awards.

11. Debarment and Suspension

Sub-recipients are subject to the non-procurement debarment and suspension regulations implementing Executive Orders (E.O.) 12549 and 12689, which are at 2 C.F.R. Part 180 as adopted by DHS at 2 C.F.R. Part 3002. These regulations restrict federal financial assistance awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs or activities.

12. Drug-Free Workplace Regulations

Sub-recipients must comply with drug-free workplace requirements in Subpart B of 2 C.F.R. Part 3001, which adopts the Government-wide implementation (2 C.F.R. Part 182) of Sec. 5152-5158 of the Drug-Free Workplace Act of 1988 (41 U.S.C. sections 8101-8106).

13. Duplication of Benefits

Any cost allocable to a particular federal financial assistance award provided for in 2 C.F.R. Part 200, Subpart E may not be charged to other federal financial assistance awards to overcome fund deficiencies; to avoid restrictions imposed by federal statutes, regulations, or federal financial assistance award terms and conditions; or for other reasons. However, these prohibitions would not preclude sub-recipients from shifting costs that are allowable under two or more awards in accordance with existing federal statutes, regulations, or the federal financial assistance award terms and conditions.

14. Education Amendments of 1972 (Equal Opportunity in Education Act) - Title IX

Sub-recipients must comply with the requirements of Title IX of the Education Amendments of 1972, Pub. L. 92-318 (1972) (codified as amended at 20 U.S.C. section 1681 et seq.), which provide that no person in the United States will, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving federal financial assistance. DHS implementing regulations are codified at 6 C.F.R. Part 17 and 44 C.F.R. Part 19.

Initial



15. E.O. 14074 – Advancing Effective, Accountable Policing and Criminal Justice Practices to Enhance Public Trust and Public Safety

State, Tribal, local, and territorial law enforcement agencies must comply with the requirements of section 12(c) of E.O. 14074. State, Tribal, local, and territorial law enforcement agencies are also encouraged to adopt and enforce policies consistent with E.O. 14074 to support safe and effective policing.

16. Energy Policy and Conservation Act

Sub-recipients must comply with the requirements of the Energy Policy and Conservation Act, Pub. L. 94-163 (1975) (codified as amended at 42 U.S.C. section 6201 et seq.), which contain policies relating to energy efficiency that are defined in the state energy conservation plan issued in compliance with this Act.

17. False Claims Act and Program Fraud Civil Remedies

Sub-recipients must comply with the requirements of the False Claims Act, 31 U.S.C. sections 3729-3733, which prohibit the submission of false or fraudulent claims for payment to the Federal Government. (See 31 U.S.C. sections 3801-3812, which details the administrative remedies for false claims and statements made.)

18. Federal Debt Status

All sub-recipients are required to be non-delinquent in their repayment of any federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowances, and benefit overpayments. (See OMB Circular A-129.)

19. Federal Leadership on Reducing Text Messaging while Driving

Sub-recipients are encouraged to adopt and enforce policies that ban text messaging while driving as described in E.O. 13513, including conducting initiatives described in Section 3(a) of the Order when on official government business or when performing any work for or on behalf of the Federal Government.

20. Hotel and Motel Fire Safety Act of 1990

Sub-recipients must ensure that all conference, meeting, convention, or training space funded in whole or in part with federal funds complies with the fire prevention and control guidelines of Section 6 of the Hotel and Motel Fire Safety Act of 1990, 15 U.S.C. section 2225a.

21. John S. McCain National Defense Authorization Act of Fiscal Year 2019

Sub-recipients, and their contractors and subcontractors are subject to the prohibitions described in section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232 (2018) and 2 C.F.R. sections 200.216, 200.327, 200.471, and Appendix II to 2 C.F.R. Part 200. Beginning August 13, 2020, the statute - as it applies to DHS sub-recipients, and their contractors and subcontractors - prohibits obligating or expending federal award funds on certain telecommunications and video surveillance products and contracting with certain entities for national security reasons.

22. Limited English Proficiency (Civil Rights Act of 1964 - Title VI)

Sub-recipients must comply with Title VI of the Civil Rights Act of 1964, (42 U.S.C. section 2000d et seq.) prohibition against discrimination on the basis of national origin, which requires that recipients of federal financial assistance take reasonable steps to provide meaningful access to persons with limited English proficiency (LEP) to their programs and services. For additional assistance and information regarding language access obligations, please refer to the DHS Recipient Guidance: <https://www.dhs.gov/guidance-published-help-department-supported-organizations-provide-meaningful-access-people-limited> and additional resources on <http://www.lep.gov>.

Initial



23. Lobbying Prohibitions

Sub-recipients must comply with 31 U.S.C. section 1352, which provides that none of the funds provided under a federal financial assistance award may be expended by the recipient to pay any person to influence, or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any federal action related to a federal award or contract, including any extension, continuation, renewal, amendment, or modification.

24. National Environmental Policy Act

Sub-recipients must comply with the requirements of the National Environmental Policy Act of 1969, (NEPA) Pub. L. 91-190 (1970) (codified as amended at 42 U.S.C. section 4321 et seq.) and the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA, which require sub-recipients to use all practicable means within their authority, and consistent with other essential considerations of national policy, to create and maintain conditions under which people and nature can exist in productive harmony and fulfill the social, economic, and other needs of present and future generations of Americans.

25. Nondiscrimination in Matters Pertaining to Faith-Based Organizations

It is DHS policy to ensure the equal treatment of faith-based organizations in social service programs administered or supported by DHS or its component agencies, enabling those organizations to participate in providing important social services to beneficiaries. Recipients must comply with the equal treatment policies and requirements contained in 6 C.F.R. Part 19 and other applicable statutes, regulations, and guidance governing the participation of faith-based organizations in individual DHS programs.

26. Non-Supplanting Requirement

Sub-recipients receiving federal financial assistance awards made under programs that prohibit supplanting by law must ensure that federal funds do not replace (supplant) funds that have been budgeted for the same purpose through non-federal sources.

27. Notice of Funding Opportunity Requirements

All the instructions, guidance, limitations, and other conditions set forth in the Notice of Funding Opportunity (NOFO) for this program are incorporated here by reference in the award terms and conditions. All recipients must comply with any such requirements set forth in the program NOFO.

28. Patents and Intellectual Property Rights

Sub-recipients are subject to the Bayh-Dole Act, 35 U.S.C. section 200 et seq, unless otherwise provided by law. Sub-recipients are subject to the specific requirements governing the development, reporting, and disposition of rights to inventions and patents resulting from federal financial assistance awards located at 37 C.F.R. Part 401 and the standard patent rights clause located at 37 C.F.R. section 401.14.

29. Procurement of Recovered Materials

States, political subdivisions of states (i.e., sub-recipients), and their contractors must comply with Section 6002 of the Solid Waste Disposal Act, Pub. L. 89-272 (1965), (codified as amended by the Resource Conservation and Recovery Act, 42 U.S.C. section 6962.) The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition.

Initial



30. Rehabilitation Act of 1973

Sub-recipients must comply with the requirements of Section 504 of the Rehabilitation Act of 1973, Pub. L. 93-112 (1973) (codified as amended at 29 U.S.C. section 794), which provides that no otherwise qualified handicapped individuals in the United States will, solely by reason of the handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

31. Reporting of Matters Related to Recipient Integrity and Performance

General Reporting Requirements:

If the total value of any currently active grants, cooperative agreements, and procurement contracts from all federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of this federal award, then the sub-recipients must comply with the requirements set forth in the government-wide Award Term and Condition for Recipient Integrity and Performance Matters located at 2 C.F.R. Part 200, Appendix XII, the full text of which is incorporated here by reference in the award terms and conditions.

32. Required Use of American Iron, Steel, Manufactured Products, and Construction Materials

Sub-recipients must comply with the Build America, Buy America Act (BABAA), which was enacted as part of the Infrastructure Investment and Jobs Act Sections 70901-70927, Pub. L. No. 117-58 (2021); and Executive Order 14005, Ensuring the Future is Made in All of America by All of America's Workers. See also Office of Management and Budget (OMB), Memorandum M-22-11, Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure.

33. SAFECOM

Sub-recipients receiving federal financial assistance awards made under programs that provide emergency communication equipment and its related activities must comply with the SAFECOM Guidance for Emergency Communication Grants, including provisions on technical standards that ensure and enhance interoperable communications.

34. Terrorist Financing

Sub-recipients must comply with E.O. 13224 and U.S. laws that prohibit transactions with, and the provisions of resources and support to, individuals and organizations associated with terrorism. Sub-recipients are legally responsible to ensure compliance with the Order and laws.

35. Trafficking Victims Protection Act of 2000 (TVPA)

Trafficking in Persons:

Sub-recipients must comply with the requirements of the government-wide financial assistance award term which implements Section 106 (g) of the Trafficking Victims Protection Act of 2000 (TVPA), codified as amended at 22 U.S.C. section 7104. The award term is located at 2 C.F.R. section 175.15, the full text of which is incorporated here by reference.

36. Universal Identifier and System of Award Management

Requirements for System for Award Management and Unique Entity Identifier

Sub-recipients are required to comply with the requirements set forth in the government-wide financial assistance award term regarding the System for Award Management and Universal Identifier Requirements located at 2 C.F.R. Part 25, Appendix A, the full text of which is incorporated here by reference.

37. USA PATRIOT Act of 2001

Sub-recipients must comply with requirements of Section 817 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), which amends 18 U.S.C. sections 175-175c.

Initial



38. Use of DHS Seal, Logo and Flags

Sub-recipients must obtain permission from their DHS FAO prior to using the DHS seal(s), logos, crests or reproductions of flags or likenesses of DHS agency officials, including use of the United States Coast Guard seal, logo, crests or reproductions of flags or likenesses of Coast Guard officials.

39. Whistleblower Protection Act

Sub-recipients must comply with the statutory requirements for whistleblower protections (if applicable) at 10 U.S.C section 2409, 41 U.S.C. section 4712, and 10 U.S.C. section 2324, 41 U.S.C. sections 4304 and 4310.

40. Environmental Planning and Historic Preservation (EHP) Review

DHS/FEMA funded activities that may require an Environmental Planning and Historic Preservation (EHP) review are subject to the FEMA EHP review process. This review does not address all federal, state, and local requirements. Acceptance of federal funding requires the sub-recipient to comply with all federal, state, and local laws.

DHS/FEMA is required to consider the potential impacts to natural and cultural resources of all projects funded by DHS/ FEMA grant funds, through its EHP review process, as mandated by: the National Environmental Policy Act; National Historic Preservation Act of 1966, as amended; National Flood Insurance Program regulations; and any other applicable laws and executive orders. The EHP review process must be completed before funds are released to carry out the proposed project; otherwise, DHS/FEMA may not be able to fund the project due to noncompliance with EHP laws, executive orders, regulations, and policies.

If ground disturbing activities occur during construction, applicant will monitor ground disturbance, and if any potential archeological resources are discovered the applicant will immediately cease work in that area and notify the pass-through entity, if applicable, and DHS/FEMA.

41. Applicability of DHS Standard Terms and Conditions to Tribes

The DHS Standard Terms and Conditions are a restatement of general requirements imposed upon recipients and flow down to subrecipients as a matter of law, regulation, or executive order. If the requirement does not apply to Indian tribes or there is a federal law or regulation exempting its application to Indian tribes, then the acceptance by Tribes of, or acquiescence to, DHS Standard Terms and Conditions does not change or alter its inapplicability to an Indian tribe. The execution of grant documents is not intended to change, alter, amend, or impose additional liability or responsibility upon the Tribe where it does not already exist.

42. Acceptance of Post Award Changes

In the event FEMA determines that changes are necessary to the award document after an award has been made, including changes to period of performance or terms and conditions, sub-recipients will be notified of the changes in writing. Once notification has been made, any subsequent request for funds will indicate sub-recipient acceptance of the changes to the award.

43. Disposition of Equipment Acquired Under the Federal Award

For purposes of original or replacement equipment acquired under this award by a non-state recipient or non-state subrecipients, when that equipment is no longer needed for the original project or program or for other activities currently or previously supported by a federal awarding agency, you must request instructions from FEMA to make proper disposition of the equipment pursuant to 2 C.F.R. section 200.313. State recipients and state subrecipients must follow the disposition requirements in accordance with state laws and procedures.

Initial



44. Prior Approval for Modification of Approved Budget

Before making any change to the approved budget for this award, you must request prior written approval from NDDDES. NDDDES may be required by 2 C.F.R. section 200.308 to request FEMA approval of any budget modifications.

45. National Cybersecurity Review

Sub-recipients are required to complete the Nationwide Cybersecurity Review (NCSR) to benchmark and measure their progress of improving their cybersecurity posture. The NCSR can be found at <https://www.cisecurity.org/ms-isac/services/ncsr>.

46. NDDDES Fiscal Requirements and Other Program Rules, Regulations, Laws, and Policies for Federal Programs

Sub-recipient is required to also follow the applicable provisions of the NDDDES Fiscal Requirements and Other Program Rules, Regulations, Laws, and Policies for Federal Programs as well as State or local provisions that may be stricter than Federal or State laws, regulations, or policies. This document can be found under the HSGP tab on the NDDDES Grants website at <https://grants.des.nd.gov>.

47. Reimbursements, Quarterly Status Reports, Time Extension Requests, Scope Changes, and Project Closeout

Sub-recipient must submit all reimbursement requests, quarterly reports, time extension requests, scope change requests, and project closeouts along with required documentation in the NDDDES Grants Management System at <https://grants.des.nd.gov>.

48. Un-expended Funds

At the conclusion of the period of performance as noted on the Notice of Grant Award, upon completion of the project, or withdrawal of the project by the sub-recipient; whichever comes first, unexpended funds will be de-obligated. By signing the Notice of Grant Award, the sub-recipient is authorizing NDDDES to expend the de-obligated funds on program costs.

49. Award Acceptance

The Notice of Grant Award and these Special Conditions constitute the operative document obligating and reserving the Federal funds for use by the sub-recipient. By signing the Notice of Grant Award sub-recipients is certifying acceptance of the terms and conditions of the award.

Initial

REPORT OF ACTION

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

15

Project No. PR-23-C1

Type: Negative Final Balancing Change Order #1

Location: Citywide

Date of Hearing: 10/23/2023

<u>Routing</u>	<u>Date</u>
City Commission	<u>10/30/2023</u>
PWPEC File	<u>X</u>
Project File	<u>Jason Hoogland</u>

The Committee reviewed the accompanying correspondence from Project Manager, Jason Hoogland, regarding Negative Final Balancing Change Order #1 in the amount of \$-33,791.72, which reconciles the measured quantities used in the field with those estimated for the contract.

Staff is recommending approval of Negative Final Balancing Change Order #1 in the amount of \$-33,791.72, bringing the total contract amount to \$1,215,637.62.

On a motion by Steve Dirksen, seconded by Steve Sprague, the Committee voted to recommend approval of Negative Final Balancing Change Order #1 to Asphalt Preservation Co., Inc.

RECOMMENDED MOTION

Concur with the recommendation of PWPEC and approve Negative Final Balancing Change Order #1 in the amount of \$-33,791.72, bringing the total contract amount to \$1,215,637.62 to Asphalt Preservation Co., Inc.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: Sales Tax & Special Assessments

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

COMMITTEE

	<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Unanimous</u>
Tim Mahoney, Mayor	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Nicole Crutchfield, Director of Planning	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Steve Dirksen, Fire Chief	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Brenda Derrig, Assistant City Administrator	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Ben Dow, Director of Operations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Steve Sprague, City Auditor	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Tom Knakmuhs, City Engineer	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Susan Thompson, Finance Director	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

ATTEST:

C: Kristi Olson


Tom Knakmuhs, P.E.
City Engineer

CHANGE ORDER REPORT
SEAL COAT
IMPROVEMENT DISTRICT NO. PR-23-C1
VARIOUS LOCATIONS

Change Order No 1 **Change Order Date** 10/6/2023
Contractor Asphalt Preservation Company, 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 Change Order # 1
 Reconcile all quantities

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 (\$)
Section 1	2	F&I Pavement Mix Wear Course Asph	Ton	50		50	7.79	57.79	\$700.00	\$5,453.00
	3	F&I Seal Aggregate A	SY	425318		425318	-12403.72	412914.28	\$1.32	-\$16,372.91
	4	F&I Seal Aggregate B	SY	46746		46746	5460.39	52206.39	\$1.32	\$7,207.71
	5	F&I Seal Oil	Gal	135918		135918	-18616.79	117301.21	\$1.50	-\$27,925.19
	6	Paint Epoxy Line 4" Wide	LF	4030		4030	-63	3967	\$3.30	-\$207.90
	7	Paint Epoxy Line 8" Wide	LF	624		624	-3	621	\$6.60	-\$19.80
	8	Paint Epoxy Line 16" Wide	LF	108		108	23	131	\$13.00	\$299.00
	9	Paint Epoxy Line 24" Wide	LF	562		562	-70	492	\$28.00	-\$1,960.00
	10	Paint Epoxy Message	SF	918		918	8	926	\$23.00	\$184.00
					Section 1 Sub Total				43364.43	\$1.32
Section 2	13	F&I Seal Aggregate A	SY	37855		37855	5509.43	43364.43	\$1.32	\$7,272.45
	14	F&I Seal Aggregate B	SY	57813		57813	-5654.22	52158.78	\$1.32	-\$7,463.57
	15	F&I Seal Oil	Gal	30655		30655	-1734.21	28920.79	\$1.50	-\$2,601.32
	16	Paint Epoxy Line 4" Wide	LF	9872		9872	50	9922	\$3.30	\$165.00
	17	Paint Epoxy Line 8" Wide	LF	636		636	33	669	\$6.60	\$217.80

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 (\$)
	18	Paint Epoxy Line 24" Wide	LF	318		318	70	388	\$28.00	\$1,960.00
				Section 2 Sub Total						-\$449.64

Summary.

Source Of Funding
 Net Amount Change Order # 1 (\$)
 Previous Change Orders (\$)
 Original Contract Amount (\$)
 Total Contract Amount (\$)

Sales Tax & Special Assessments
 -\$33,791.72
 \$0.00
 \$1,249,429.34
 \$1,215,637.62

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


 Asphalt Preservation Company, Inc.
 President

APPROVED

For Contractor
Title

APPROVED DATE

Department Head
Mayor
Attest



96

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Type: Encroachment Agreement

Location: 2200 Main Avenue

Date of Hearing: 10/23/2023

<u>Routing</u>	<u>Date</u>
City Commission	<u>10/30/2023</u>
PWPEC File	<u>X</u>
Project File	<u>Kevin Gorder</u>

The Committee reviewed a communication from Division Engineer, Kevin Gorder, regarding an Encroachment Agreement with OK Tire for parking around their facility while leaving space for a sidewalk around this property.

Staff is recommending to formalize this encroachment with the following stipulations:

- Insurance certificate indemnifying the City.
- Agreement expires upon sale or transfer of the property.
- Application fee for the encroachment in the amount of \$500.
- Annual fee in the amount of \$1,255.

On a motion by Steve Sprague, seconded by Brenda Derrig, the Committee voted to recommend approval of the Encroachment Agreement with OK Tire for parking around their facility at 2200 Main Avenue.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve the Encroachment Agreement with OK Tire for parking around their facility at 2200 Main Avenue.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: N/A

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

<u>Yes</u>	<u>No</u>
<u>N/A</u>	<u>N/A</u>
<u>N/A</u>	<u>N/A</u>
<u>N/A</u>	<u>N/A</u>

COMMITTEE

Tim Mahoney, Mayor
 Nicole Crutchfield, Director of Planning
 Steve Dirksen, Fire Chief
 Brenda Derrig, Assistant City Administrator
 Ben Dow, Director of Operations
 Steve Sprague, City Auditor
 Tom Knakmuhs, City Engineer
 Susan Thompson, Finance Director

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

ATTEST:


 Tom Knakmuhs, P.E.
 City Engineer

C: Kristi Olson

Memorandum

To: Members of PWPEC
From: Kevin Gorder, Division Engineer
Date: October 19, 2023
Re: Encroachment Agreement with OK Tire

Background:

Attached is an Encroachment Agreement with OK Tire at 2200 Main Ave. This encroachment agreement allows OK Tire to use part of the City Right of Way for parking around their facility while leaving space for a sidewalk around this property.

Recommendation Motion:

Approve the Encroachment Agreement with OK Tire.

KOG/jmg
Attachment

ENCROACHMENT AGREEMENT

THIS AGREEMENT, made and entered into by and between **J AND R OHNSTAD FAMILY LIMITED PARTNERSHIP**, a North Dakota Limited Partnership (the "Partnership"), and the **CITY OF FARGO**, a North Dakota municipal corporation, hereinafter referred to as "City",

WITNESSETH:

WHEREAS, the Partnership desires to encroach on a portion of a City public right of way ("PROW") to reconstruct within the PROW to accommodate private parking, bumpers to protect City sidewalk, and City sidewalk with a 2-foot protective buffer between the sidewalk and the street curb; and,

WHEREAS, the Partnership has requested permission to continue to encroach on the PROW; and,

WHEREAS, the purpose of this Encroachment Agreement ("Agreement") is to detail the parties' responsibilities with respect to the encroachment and private facilities in the PROW; and,

WHEREAS, the Partnership has agreed to execute this Agreement required by City to permit private facilities to encroach on the PROW.

NOW, THEREFORE, for good and valuable consideration hereby acknowledged, it is hereby agreed by and between the parties hereto as follows:

1. The Partnership owns all right title and interest in the property legally described as follows:

Lots 7, 8, 17 and 18, Block 3, and Lots 10, 11 and 12, Block 8, Egbert, O'Neil & Haggarts Subdivision of the Northwest Quarter of Section 12, in Township 139, North of Range 49 West of the 5th Principal Meridian, situate in the City of Fargo, Cass County, North Dakota, according to the certified plat thereof.

AND:

Lots 1, 2, 3, 4, 5, 6, 19, 20, 21, 22, 23, and 24, in Block 3 of Egbert, O'Neil & Haggarts Subdivision of the Northwest Quarter of Section 12, Township 139, North of Range 49, West of the 5th Principal Meridian, situate in the City of Fargo, County of Cass and the State of North Dakota according to the certified plat thereof and the vacated alley appurtenant thereto.

AND:

Lots 9, 10, 11 and 12, in Block 3, and the northerly 10 feet of the vacated alley between Lots 9 through 12 and Lots 13 through 16, in Egbert, O'Neil & Haggarts Subdivision of the Northwest Quarter of Section 12, in Township 139, North of Range 49, in the City of Fargo, Cass County, North Dakota, subject to an easement in favor of Cash-Way, Inc., for entry and egress over the North 10 feet of the vacated alley between Lots 9 through 12 and Lots 13 through 16 in said Block.

Subject to an easement for entry and egress over the South 10 feet of said vacated alley granted to grantor by Cash-Way, Inc. pursuant to that certain Warranty Deed recorded on March 7, 1972 as Cass County Recorder's Document No. 456347.

("Partnership Property").

2. The Partnership will be permitted to leave in place the existing paved surface on a portion of the PROW adjacent to the Partnership Property, such property legally described as follows:

That part of 23rd Street South, lying between Blocks 2 and 3, Egbert O'neil and Haggart's Subdivision, City of Fargo, Cass County, North Dakota, described as follows:

A strip of land 11.00 feet wide, lying westerly of and being coincident with the following described line:

Beginning at the southwest corner of said Block 3; thence North 02°08'58" East, along the westerly line of said Block 3, for a distance of 55.00 feet, said line there terminating.

Together with

A strip of land 13.00 feet wide, lying westerly of and being coincident with the following described line:

Commencing at the southwest corner of said Block 3; thence North 02°08'58" East, along the westerly line of said Block 3, for a distance of 55.00 feet to the true point of beginning of the line to be described; thence continue North 02°08'58" East, along the westerly line of said Block 3, for a distance of 180.50 feet, said line there terminating.

Said tract contains 2,952 square feet, more or less (the "Encroachment Area").

The Encroachment Area is more particularly depicted and described on Exhibit A, attached hereto.

3. The Partnership agrees that it will, during any use of the PROW, inspect, maintain, clean, repair and replace the paved surface, ensuring that the concrete is level and maintained to the proper grade to match the sidewalks on the adjoining properties, and provides a continuous, unobstructed and safe pedestrian travel path. The Partnership agrees to use due care to protect City streets, utilities and all other public property, to minimize disruption to pedestrian travel, in

accordance with the City's PROWAG (Public Rights-of-Way Accessibility Guidelines) for any and all activities undertaken by the Partnership on the PROW.

The Partnership shall be solely responsible for (1) snow removal; (2) sweeping and debris removal, including but not limited to gravel or other materials which may accumulate on the sidewalk and buffer; (3) ensuring proper drainage; (4) repair of any surface cracks and deterioration of the concrete surface; (5) removal of any trip hazards; and (6) any other activities necessary to ensure the safety of the traveling public.

4. Upon discontinuance of use of the PROW or removal of any of the paved surface, the Partnership shall restore and replace the PROW by installing Americans with Disabilities Act ("ADA") compliant pedestrian sidewalks in accordance with City Standards and Specifications, and shall restore the remaining portion of the PROW to greenspace, including establishment of grass, at City direction.

5. The parties hereby acknowledge and agree that City is granting the Partnership the encroachment described herein based upon the Partnership's representation and agreement to undertake construction in accordance with the "Construction Plans for OK Tire Sidewalk Relocation 2023" prepared by Houston Engineering, attached hereto as Exhibit B. Such construction must be approved by the City Engineer or designee upon completion. In the event the Partnership fails to construct in accordance with the plans, the City will give written notice and the Partnership shall have 60 days in which to undertake the necessary improvements to comply with the plans. If The Partnership fails to bring construction into compliance with the plan in the time afforded, then City may terminate this Agreement.

The Partnership may reconstruct the PROW to provide parking with bumpers and a pedestrian sidewalk with a 2-foot buffer in lieu of green space. The Partnership understands and

agrees that, as part of completion of the construction plan, it shall be responsible for the placement of concrete bumpers adjacent to the PROW to prevent vehicle traffic on the paved surface, and that the concrete bumpers must be anchored to the paved surface.

6. The parties further understand and agree that the cost of any repairs to the PROW occasioned by the permitted encroachment contemplated by this Agreement shall be the Partnership's sole responsibility, and at its sole cost.

7. In the event the Partnership fails to maintain the PROW to City's satisfaction, City agrees to notify the Partnership of the deficiencies. Except in the event of an emergency, as determined by City, the Partnership shall have 10 days in which to undertake the necessary repairs to the paved surface in the PROW. Failure to complete the repairs in a timely manner shall result in City undertaking the work. The parties understand and agree that City shall assess the costs directly to the Partnership Property following the Infrastructure Funding Policy in effect at the time of repairs. City will levy special assessments against the Partnership Property to recover all costs of such repairs, in accordance with North Dakota Century Code Chapter 40-22. The Partnership waives its right to protest the resolution of necessity for the improvements for which such resolutions are required pursuant to North Dakota Century Code § 40-22-17, and specifically consents to the construction of the improvements and to the assessment of all costs thereof to the Partnership Property. The Partnership further waives its right to protest the amount, benefit or any other assessment attribute related to the work completed by City. Project costs, which may be assessed against the Partnership's Property, include all costs of completing the project, including engineering, fiscal agent's and attorney fees, and all other costs authorized by law.

8. To the fullest extent permitted by law, the Partnership agrees to further hold the City harmless against any and all expenses, demands, claims or suits for damages or injury of any

kind that may be brought against the City, its officers, agents and employees, its property, streets, sidewalks, and any other municipal improvements arising from the Partnership's use of the PROW. The Partnership further agrees to pay any and all costs the City incurs to enforce this indemnity provision, including attorney's fees. The Partnership also agrees to secure General Liability Insurance naming the City as an additional insured in an amount not less than \$1,000,000, and shall present the certificate of insurance to the City indicating acceptance by its insurer of its obligation to defend and hold the City harmless.

9. This Agreement is personal to the Partnership and shall terminate upon sale, transfer or assignment of the Partnership Property. Subsequent owners may request permission to encroach, and enter into a separate agreement with City, which shall not be unreasonably withheld. The non-transferability of this Agreement is intended to assure the existence of the necessary insurance by the responsible party.

10. It is specifically understood and agreed that in the event City reconstructs or repairs the roadway or existing or future above or underground infrastructure adjacent to the Partnership Property, City may require removal of the paved surface from the PROW. The parties understand and agree that City shall not be responsible for repair or replacement of the paved surface in the Encroachment Area; City shall neither repair or replace the paved surface nor be responsible for any costs occasioned by the City work in the vicinity of the Encroachment Area.

11. It is further understood and agreed that within ninety (90) days' written notice from City, the Partnership shall remove the paved surface from the PROW as directed by City, allowing the City to re-take and to use the PROW. The City's request to remove, relocate, or restore the paved surface will be in the City's sole discretion, but shall not be arbitrary or without good reason.

This Agreement does not provide for the Partnership use of the PROW for a guaranteed minimum duration.

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

13. In the event the Partnership redevelops any portion of these lots, the Partnership understands and agrees that this Agreement shall terminate, and that the Partnership shall be required to remove the paved surface and comply with Fargo Municipal Code Ch. 20. The Partnership shall install ADA compliant pedestrian sidewalks in accordance with City Standards and Specifications, and shall restore the remaining portion of the PROW to greenspace, including establishment of grass, at City direction.

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

15. 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.

16. 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.

17. 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.

18. 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.

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

20. The Partnership agrees to pay City a \$500 processing fee.

21. The Partnership agrees to pay City a \$ 1,255 annual fee. City will invoice the Partnership for the fees and the fees are payable within 30 days of invoice. If payment is not received within 30 days, interest will accrue on any unpaid amounts at a rate of 1 ½% per month, until paid in full.

22. **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.

(Signatures on following pages)

Dated this ____ day of _____, 2023.

CITY OF FARGO,
a North Dakota municipal corporation

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

ATTEST:

Steven Sprague, Auditor

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

On this ____ day of _____, 2023, 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, Cass County, North Dakota, the 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
My commission expires: _____

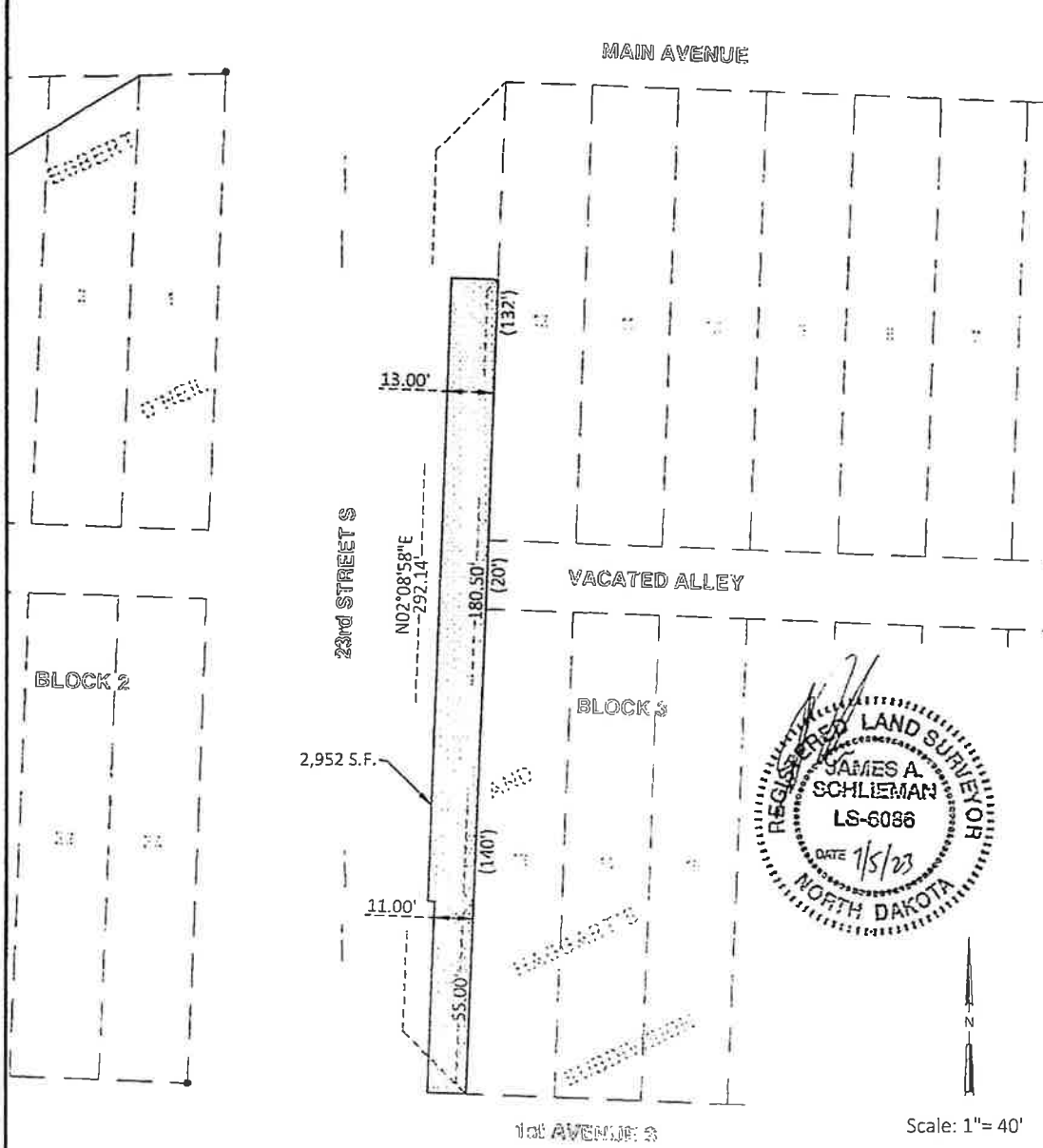
Legal Description was prepared by:
James A Schlieman, RLS
Houston Engineering
1401 21st Avenue North
Fargo, ND 58102
701-237-5065
jschlieman@houstoneng.com

This document was prepared by:
Kasey Mc Nary, Assistant City Attorney
Serkland Law Firm
10 Roberts Street
Fargo, ND 58102
701-232-8957
kmcnary@serklandlaw.com

EXHIBIT A

Houston Engineering, Inc. Exhibit of Encroachment Area

PART OF 23RD STREET SOUTH
 EGBERT O'NEIL AND HAGGART'S SUBDIVISION
 CITY OF FARGO, CASS COUNTY
 STATE OF NORTH DAKOTA



H:\UBN\7500\7587\7587-0003\CAD\Easements\7587-0003 Exhibit.dwg-Sheet 1-7/5/2023 9:40 AM-[dbuchholtz]

IRON MONUMENT FOUND	•
MEASURED BEARING	S59°27'46"E
MEASURED DISTANCE	105.00'
PLAT BEARING	(N57°00'00"W)
PLAT DISTANCE	(105.00')
ENCROACHMENT AREA	

NOTE: ALL BEARINGS GIVEN ARE
 BASED ON THE CITY OF
 FARGO GROUND COORDINATE
 SYSTEM, DECEMBER 1992.



EXHIBIT

PROJECT NO.
7587-0003

EGBERT O'NEIL AND HAGGART'S SUBDIVISION
 CITY OF FARGO, CASS CO., ND

SHEET
1 OF 2

PART OF 23RD STREET SOUTH
EGBERT O'NEIL AND HAGGART'S SUBDIVISION
CITY OF FARGO, CASS COUNTY
STATE OF NORTH DAKOTA

Description (Encroachment Agreement):

That part of 23rd Street South, lying between Blocks 2 and 3, Egbert O'neil and Haggart's Subdivision, City of Fargo, Cass County, North Dakota, described as follows:

A strip of land 11.00 feet wide, lying westerly of and being coincident with the following described line:

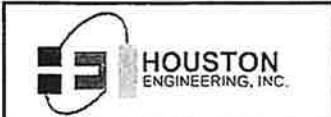
Beginning at the southwest corner of said Block 3; thence North 02°08'58" East, along the westerly line of said Block 3, for a distance of 55.00 feet, said line there terminating.

Together with

A strip of land 13.00 feet wide, lying westerly of and being coincident with the following described line:

Commencing at the southwest corner of said Block 3; thence North 02°08'58" East along the westerly line of said Block 3, for a distance of 55.00 feet to the true point of beginning of the line to be described; thence continue North 02°08'58" East, along the westerly line of said Block 3, for a distance of 180.50 feet, said line there terminating.

Said tract contains 2,952 square feet, more or less.



EXHIBIT

H:\JBM\7500\7587\587-0003\CAD\Easements\7587-0003 Exhibit.dwg-Sheet 2-7/5/2023 9:40 AM-(dbuchholz)

PROJECT NO.
7587-0003

EGBERT O'NEIL AND HAGGART'S SUBDIVISION
CITY OF FARGO, CASS CO., ND

SHEET
2 OF 2

EXHIBIT B

Construction Plans for OK Tire Sidewalk Relocation 2023

PROJECT QUANTITIES AND PAY ITEMS

NO.	ITEM	QUANTITY	UNIT
1	Remove Pavement All Thicknesses and Types	700	SY
2	Remove Curb and Gutter	136	LF
3	6" Concrete Pavement With Aggregate Base	239	SY
4	4" Reinforced Concrete Sidewalk	132	SY
5	7" Reinforced Concrete With Aggregate Base	45	SY
6	5" Colored Stamped Concrete With 4" Aggregate Base	61	SY
7	Curb and Gutter With Aggregate Base	175	LF
8	Inlet Protection	7	EA
9	Drill Seeding	280	SY
10	Hydromulch	280	SY
11	Bioroll	310	LF
12	Detectable Warning Panels	32	SF

PROJECT NOTES

1. THE GOVERNING SPECIFICATIONS FOR THIS PROJECT SHALL BE THE CITY OF FARGO STANDARD SPECIFICATIONS FOR CONSTRUCTION EXCEPT FOR PAYMENT ITEMS AND CONDITIONS.
2. ALL PAY ITEMS SHALL BE PAID FOR AT PLAN QUANTITY.
3. ITEMS NOT LISTED AS PAY ITEMS SHALL BE CONSIDERED INCIDENTAL TO OTHER PAY ITEMS.
4. STAMPED AND COLORED CONCRETE SHALL HAVE A "PINWHEEL" PATTERN AND SHALL BE COLORED WITH SOLOMON 338 LEATHER. THE CONTRACTOR SHALL SUBMIT COLOR AND PATTERN SAMPLES PRIOR TO START OF CONSTRUCTION FOR REVIEW AND APPROVAL.
5. ALL DETECTABLE WARNING PANELS SHALL BE UNCOLORED CAST IRON AND MANUFACTURED BY EAST JORDAN IRON WORKS, NEENAH FOUNDRY OR APPROVED EQUIVALENT.
6. THE CONTRACTOR SHALL PROVIDE TRAFFIC CONTROL AS NEEDED FOR CONSTRUCTION OF PROJECT.
7. AREAS CALLED OUT TO BE SEEDED SHALL BE TYPE B SEEDING WITH HYDROMULCH. SEEDING SHALL BE DONE BY DRILL SEEDING PER CITY OF FARGO STANDARD SPECIFICATIONS.
8. ALL JOINTS SHALL BE SEALED PER CITY OF FARGO STANDARD SPECIFICATIONS.

CONTRACTOR FLATWORK CERTIFICATION

The Contractor(s) performing concrete work, are required to have at least two employees with a current ACI concrete finisher technician or flatwork finisher certification, and at least one of those employees must be on-site performing quality control and guidance during all concrete forming, placement of reinforcement steel, dowel bars, and tie bars, pouring, finishing, and curing operations.

More information about the ACI Flatwork Finisher training schedule can be found by going to www.ndconcrete.com or by calling 701-223-2770.

CONCRETE SIDEWALKS AND DRIVEWAYS

All expansion material shall be 1/2 inch in thickness. All reinforcement shall be a minimum of 3/8" diameter.

Expansion Joints – The "free" end of the smooth dowel shall be coated with an approved lubricant and covered with an approved metal or plastic dowel cap or sleeve.

If uncontrolled cracking occurs, the concrete shall be completely removed to the nearest planned longitudinal and transverse joints. The removal and replacement method shall be approved by Engineer and at the Contractor's expense.

Newly placed concrete shall match the existing elevation (+/-1/8") of all adjoining concrete. Any placed concrete not properly matching elevations as deemed by the Engineer shall be removed and replaced at the contractor's expense.

Section 2300 2.5 Concrete Proportions and Properties of the City of Fargo Standard Specifications for Construction shall be deleted and replaced with the following:

Concrete proportions and properties shall conform to the requirements of Section 2100.

SIDEWALK & ADA CURB RAMP DETAILS

The Contractor shall be responsible for complying with all design standards outlined in these plans. Concrete landings shall be placed separately and installed prior to adjacent ADA ramps and/or sidewalks. Concrete landings shall have a minimum of 24 hours of cure time prior to adjacent concrete placement.

Section 2300 3.13 A.D.A. Curb Ramps, Drawing No. 5.1, Drawing No. 5.2, and Drawing No. 5.3 of the City of Fargo Standard Specifications for Construction shall be deleted and replaced with the following:

Sidewalk and ADA curb ramps shall be constructed in accordance with details shown in detail sheets of these plans.

ADA RAMP LAYOUT WORK

The boundary locations of proposed ADA ramps and the bottom of the curb transitions will be marked in the field by the Engineer. It shall be the responsibility of the Contractor to layout and construct all proposed ADA ramps in accordance with the Plans, Section 2300 of the City of Fargo Standard Specifications, and current Federal ADA Standards. The Contractor shall use competent personnel and suitable equipment for the layout work required.

The Contractor's ADA ramp layout shall include the placement of the following:

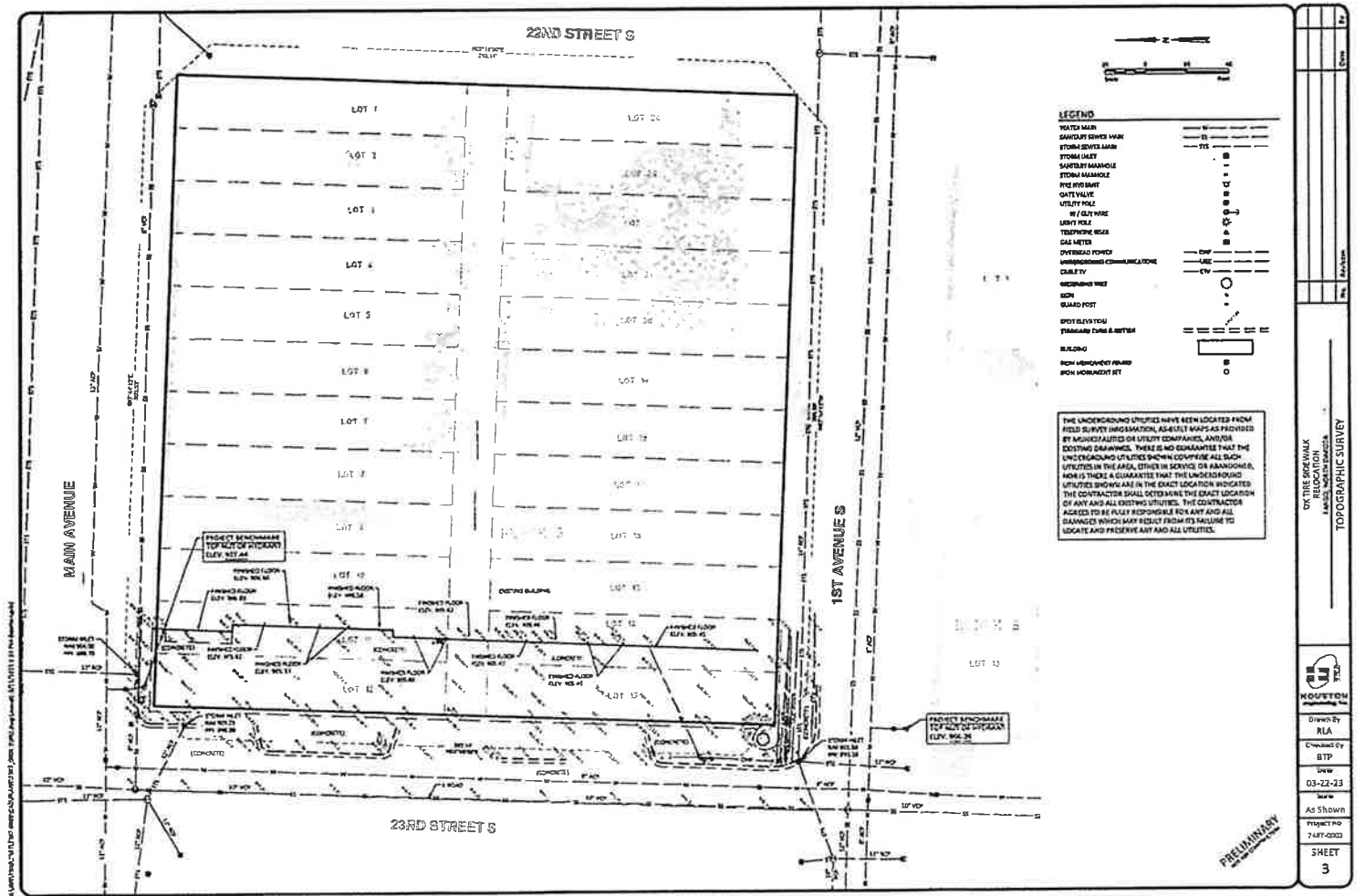
- A.Curb transitions
- B.Ramp flares
- C.Grade breaks
- D.Detectable warning panels
- E.Landing and ramp limits

If the Contractor constructs any ADA ramps that do not comply with ADA requirements or do not follow the agreed upon resolution with the Engineer, the Contractor shall be responsible for correcting the deficient ramp at Contractor's expense.

This layout work shall be incidental to sidewalk bid items.

ON-TIME SIDEWALK RELOCATION PROJECT
 QUANTITIES & PROJECT NOTES

 Houston Engineering, Inc.
 Drawn By: RLA
 Checked By: BTP
 Date: 03-22-23
 Title: As Shown
 Project No: 1487.0073
 SHEET 2

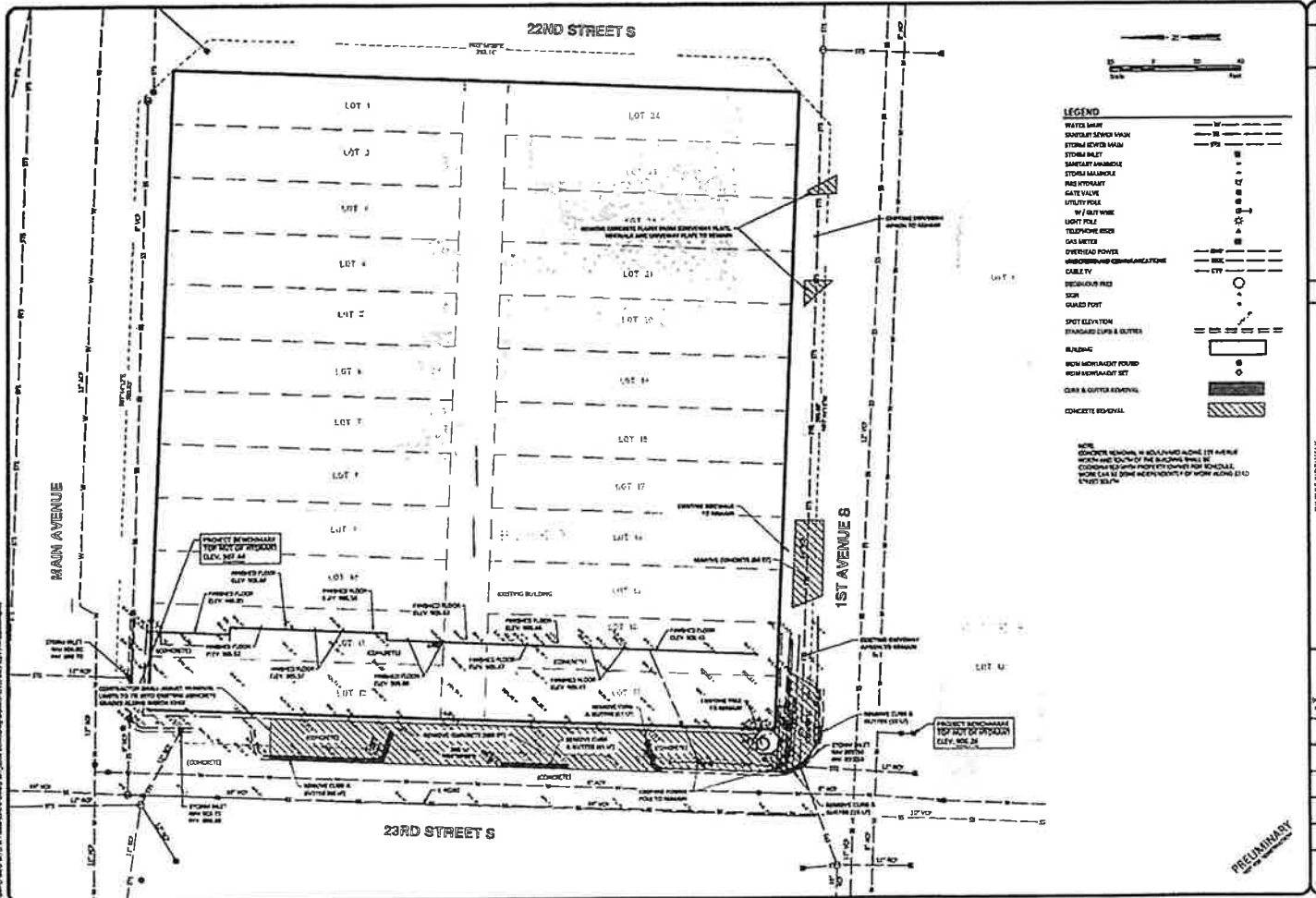


LEGEND

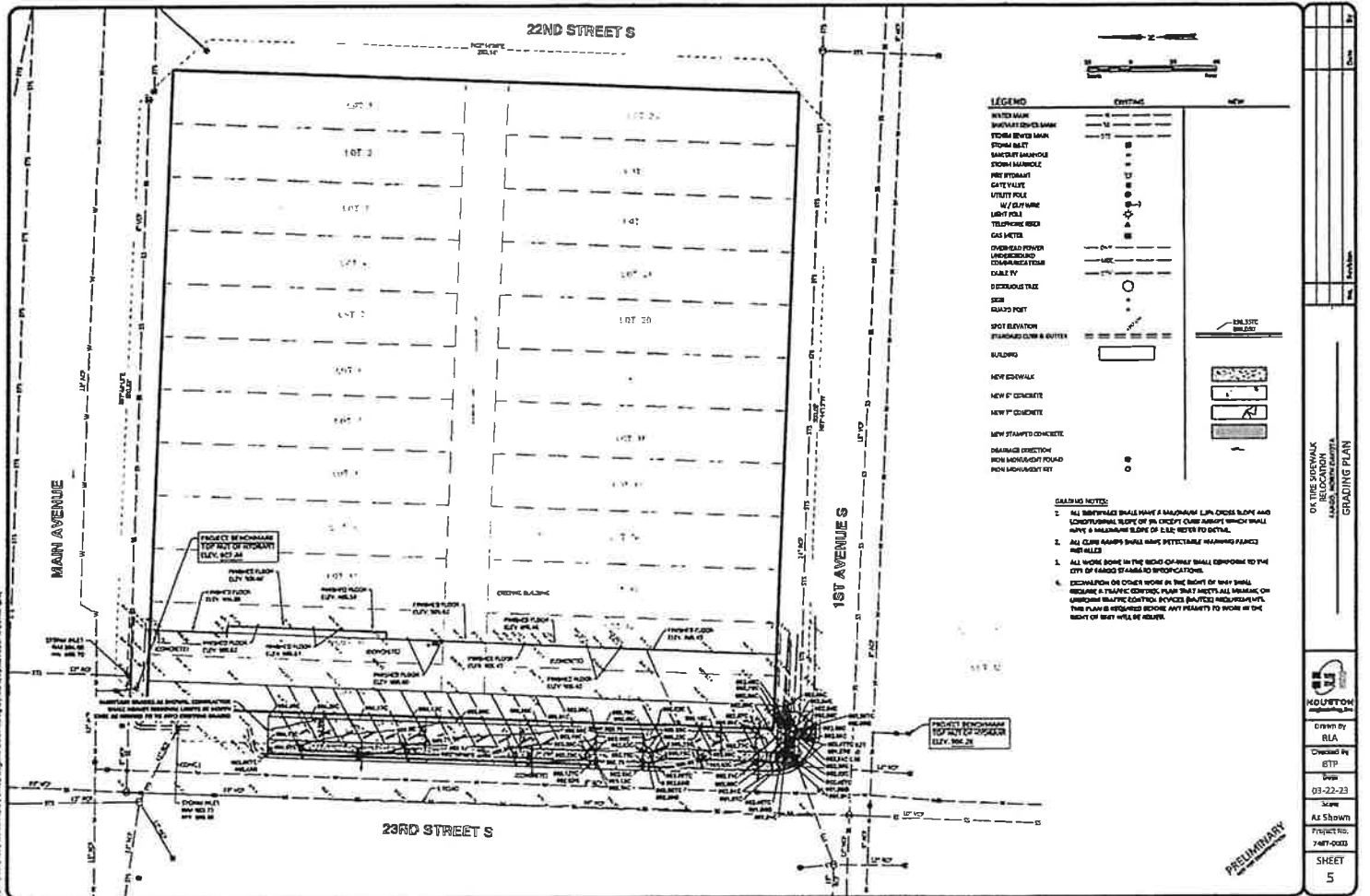
WATER MAIN	---
SEWER MAIN	---
STORM SEWER MAIN	---
STORM LIAKE	---
STORM MAIN	---
STORM MANHOLE	○
5/8" FIRE MAIN	---
4" CITY WATER	---
UTILITY POLE	○
1" / 2" CITY WATER	---
UTILITY POLE	○
TELEPHONE POLE	○
GAS METER	○
DIVERSION POWER	---
UNRECORDED COMMUNICATION	---
CABLE TV	---
REPAIRING TREE	○
SEWER	---
BLIND POST	○
SPOT ELEVATION	○
TRIMMERS CURB & SETBACK	---
BUILDING	▭
NON MONUMENT FOUND	○
NON MONUMENT SET	○

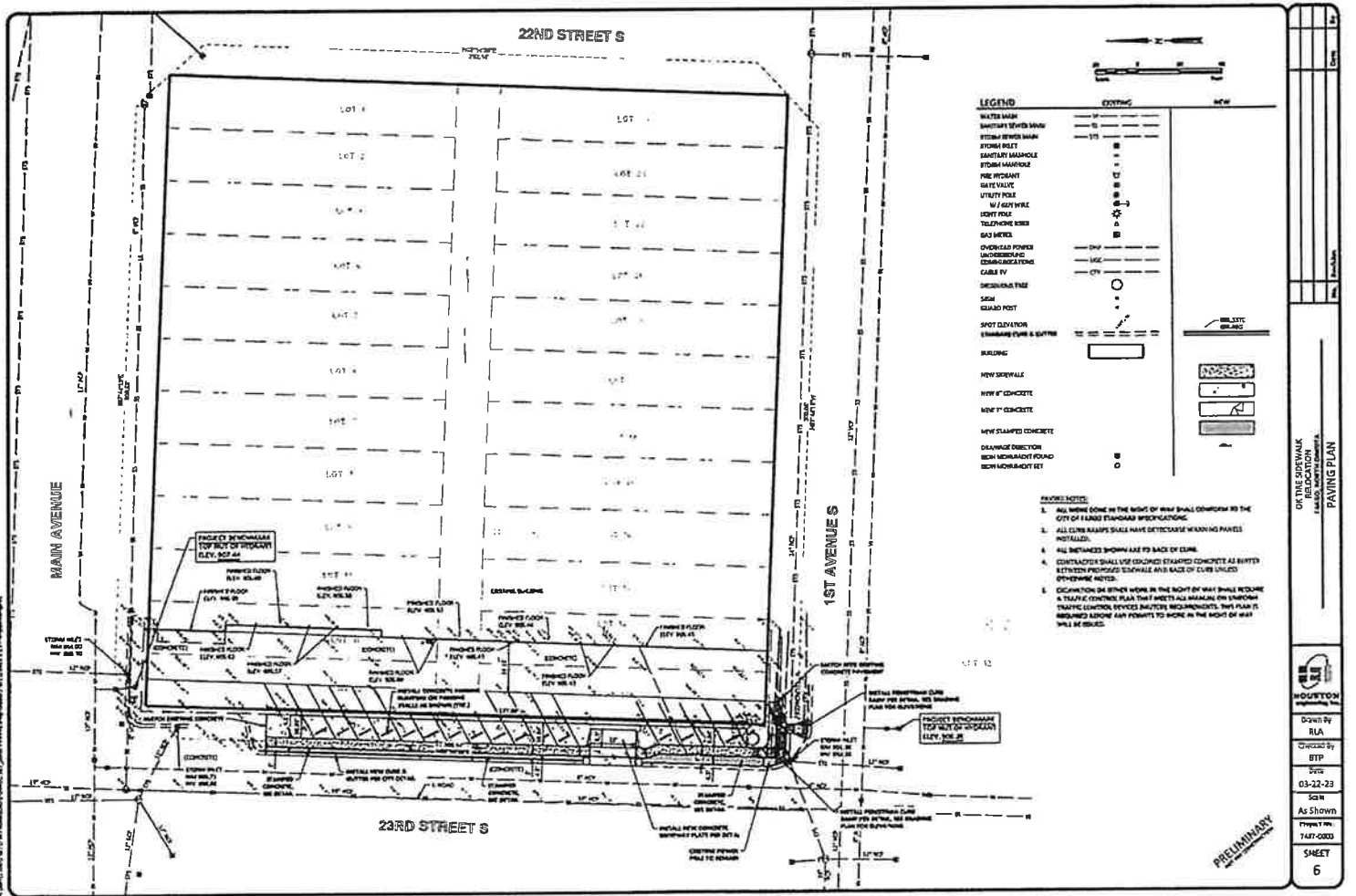
THE UNDERGROUND UTILITIES HAVE BEEN LOCATED FROM FIELD SURVEY INFORMATION, AS-BUILT MAPS AS PROVIDED BY MUNICIPALITIES OR UTILITY COMPANIES, AND/OR EXISTING DRAWINGS. THERE IS NO GUARANTEE THAT THE UNDERGROUND UTILITIES SHOWN ON THIS MAP ARE ALL SUCH UTILITIES IN THE AREA, OTHER IN SERVICE OR ABANDONED, NOR IS THERE A GUARANTEE THAT THE UNDERGROUND UTILITIES SHOWN ARE IN THE EXACT LOCATION INDICATED. THE CONTRACTOR SHALL VERIFY THE EXACT LOCATION OF ANY AND ALL EXISTING UTILITIES. THE CONTRACTOR AGREES TO BE FULLY RESPONSIBLE FOR ANY AND ALL DAMAGES WHICH MAY RESULT FROM ITS FAILURE TO LOCATE AND PRESERVE ANY AND ALL UTILITIES.

ON THE SIZE WALK
 RELOCATION
 TOPOGRAPHIC SURVEY
 HOUSTON
 03-22-23
 3



ON THE SIDEWALK RELOCATION PLAN
 HOUSTON
 PRELIMINARY





LEGEND

	EXISTING	NEW
WATER MAIN	---	---
SANITARY SEWER MAIN	---	---
STORM SEWER MAIN	---	---
STORM PILE	---	---
SANITARY MANHOLE	---	---
STORM MANHOLE	---	---
WATER VALVE	---	---
UTILITY POLE	---	---
W/ AIR WIRE	---	---
LIGHT POLE	---	---
TELEPHONE BOX	---	---
SDS BOX	---	---
OVERHEAD POWER	---	---
UNDERGROUND	---	---
COMMUNICATIONS	---	---
CABLE TV	---	---
DESIGNATED TREE	---	---
SEMA	---	---
ROAD POST	---	---
SPOT ELEVATION	---	---
TRANSFORMER & SWITCH	---	---
BUILDING	---	---
NEW SIDEWALK	---	---
NEW 8" CONCRETE	---	---
NEW 12" CONCRETE	---	---
NEW STAMPED CONCRETE	---	---
DRAWING DIMENSION	---	---
NEW REINFORCED FOUND	---	---
NEW FOUNDATION	---	---

- REVISIONS:**
1. ALL WORK DONE IN THE RIGHT OF WAY SHALL CONFORM TO THE CITY OF HOUSTON STANDARD SPECIFICATIONS.
 2. ALL CURB RAISED SHALL HAVE DETECTABLE WARNING PAVES INSTALLED.
 3. ALL INTERLOCKS SHALL BE 12" BACK OF CURB.
 4. CONTRACTOR SHALL USE CONCRETE STAMPED CONCRETE AS SHOWN BETWEEN PROPOSED SIDEWALK AND FACE OF CURB UNLESS OTHERWISE NOTED.
 5. OCCUPATION OF OTHER WORK IN THE RIGHT OF WAY SHALL INCLUDE A TRAFFIC CONTROL PLAN THAT MEETS ALL REQUIREMENTS FOR TRAFFIC CONTROL SERVICES (TRAFFIC REGULATIONS). THIS PLAN IS REQUIRED BEFORE ANY PERMITS TO WORK IN THE RIGHT OF WAY WILL BE ISSUED.

OK THE SIDEWALK RELOCATION AND PAVING PLAN
 HOUSTON
 Drawn by: RLA
 Checked by: RTP
 Date: 03-22-23
 Scale: As Shown
 Project No: 7477-0003
 SHEET 6

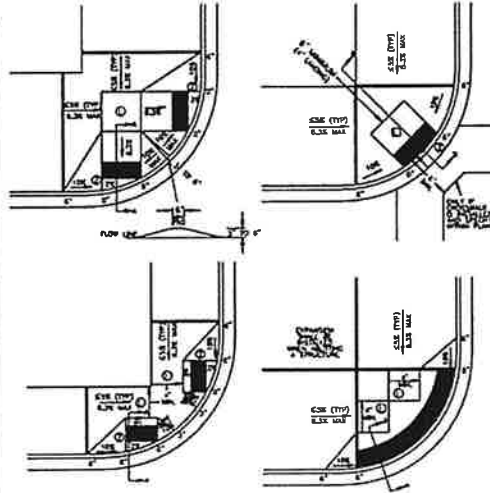
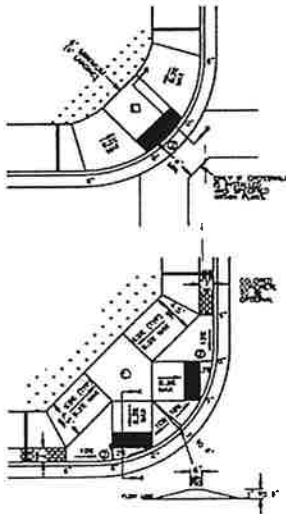
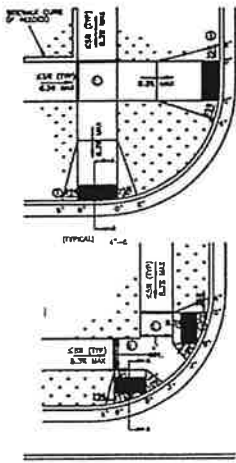
SIDEWALK RAMPS

TYPE A : CROSS BOULEVARD
 TYPE B : SIDEWALK ADJACENT TO STREET CURVE
 TYPE C : CONTINUOUS CONCRETE IN BOULEVARD
 (TYPICALLY DOWNTOWN AREA)

TYPE A

TYPE B

TYPE C

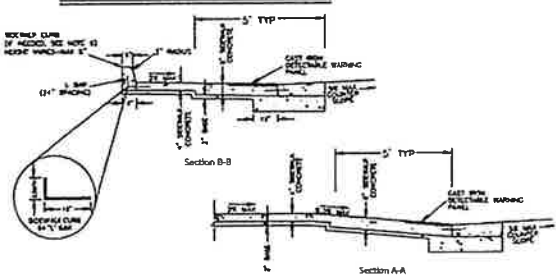
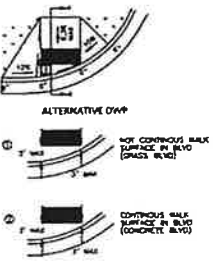


LEGEND:

[Pattern]	DETECTABLE WARNING PANEL
[Pattern]	UNPAVED C&G P&W
[Pattern]	CRACKS
[Pattern]	COLORLED BRICK CONCRETE (MIN 2")
[Pattern]	UPPER LANDING 2% MAX
[Pattern]	LOWER LANDING 2% MAX
[Symbol]	CURB HEIGHT
[Symbol]	1/2" EXPANSION (ALL EXPANSION SHALL BE SEALED WITH HOT POT)

20'-0" W/6 12'-0" W/6 10'-0" W/6 8'-0" W/6

- NOTES:
- RAMP WIDTH IS DEFINED AS THE USABLE PORTION OF THE RAMP. FOLLOWING DIMENSIONS ARE USED:
 CURB RAMP WIDTH SHOULD MATCH THE EXISTING SIDEWALK WIDTH + 4" WIDTH MINIMUM.
 RAMP WIDTH FOR SHOULDER-PATH PATHS SHOULD MATCH THE EXISTING SHOULDER USE PATH WIDTH.
 - RAMP LENGTH SHALL BE MAXIMUM OF 15'.
 - ANY PORTIONS OF SIDEWALK BETWEEN THE DETECTABLE WARNING PANELS AND THE CURB SHALL HAVE A MAX 2% LONGITUDINAL GRADE.
 - LANDINGS SHALL BE A MINIMUM OF 4' x 4' AND SHALL HAVE A MAX 2% SLOPE IN ANY DIRECTION. LANDINGS ARE DEFINED AS 2' x 3' OR LARGER.
 - DETECTABLE WARNING PANELS SHALL MATCH THE RAMP WIDTH. BRICK PANELS MAY ALSO BE USED. DETECTABLE WARNING PANELS MAY BE LOCATED WITHIN THE LOWER LANDING.
 - THE PEDESTRIAN ACCESS ROUTE SHALL BE CONTINUOUS 4" MIN WIDTH. MAX 2% CROSS SLOPE APPLIED TO ALL CONCRETE INCLUDING PANELS.
 - LANDSCAPING IS PREFERRED TO MODIFY EXISTING DRAINAGE SLOPE CHANGES AS NEEDED. IF NOT POSSIBLE, SUCH AS ADJACENT BUILDINGS, A VERTICAL CURB MAY BE USED AS SHOWN IN THE DETAIL BELOW. THE CURB WILL BE PAID FOR AT THE UNIT PRICE AND FOR THE TYPICALS - TYPE 34 PER LINEAL FOOT.
 - THE MAJORITY OF LINES SHOWN ON DETAILS INDICATE FOOT OF SETTING. CHECK CHANGES. ACTUAL JOINT LOCATIONS MAY VARY IN FIELD.
 - LONGITUDINAL SLOPE ON SIDEWALKS SHALL NOT EXCEED 3%. SIDEWALK GRAD IS ESTABLISHED BY THE ROADWAY GRAD. SIDEWALK SHALL NOT EXCEED 2% CROSS SLOPE.
 - CONCRETE LANDINGS SHALL BE PLACED SEPARATELY AND INSTALLED PRIOR TO ADJACENT ADA RAMPS AND/OR SIDEWALKS. CONCRETE LANDINGS SHALL HAVE A MINIMUM OF 24 HOURS OF CURE TIME PRIOR TO ADJACENT CONCRETE PLACEMENT.



SIDEWALK RAMP CROSS-SECTIONS

ON THESE SIDEWALK RELOCATION/REPAIR PROJECTS

HOUSTON

Drawn by: RLA

Checked by: BTP

Date: 03-22-23

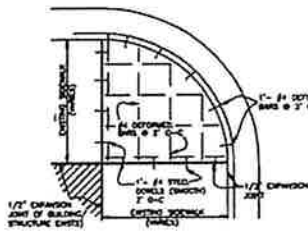
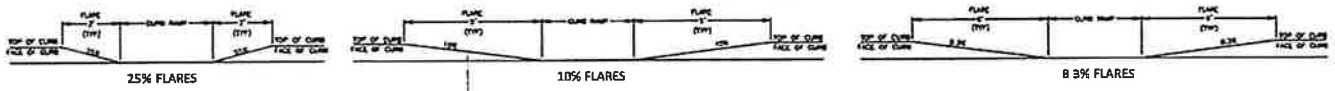
Scale: As Shown

Project No: 1747-0001

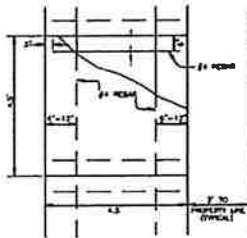
SHEET 8

PRELIMINARY

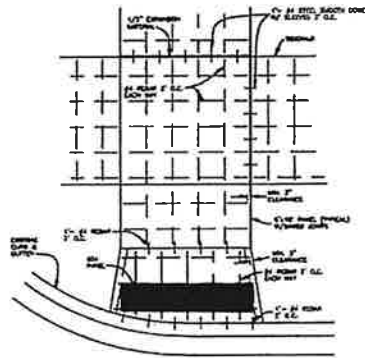
SIDEWALK/BIKETRAIL DETAILS



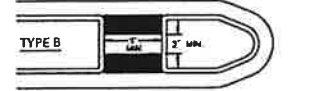
SIDEWALK REINFORCEMENT



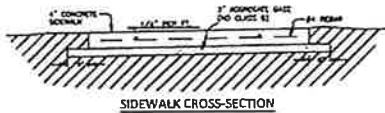
4.5' REINFORCEMENT



10' REINFORCEMENT



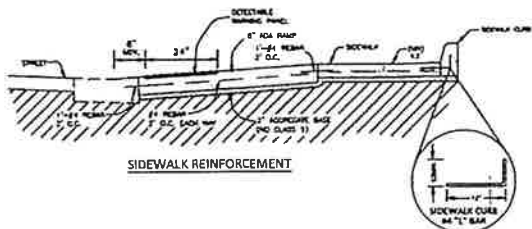
MEDIAN REFUGE ISLANDS (CUT-THROUGH)



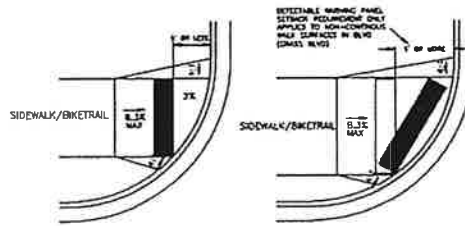
SIDEWALK CROSS-SECTION

SIDEWALK WIDTH	PANELS (12'x12')
6'	3x1
8'	4x2
10'	3x3

JOINT DIMENSION



SIDEWALK REINFORCEMENT

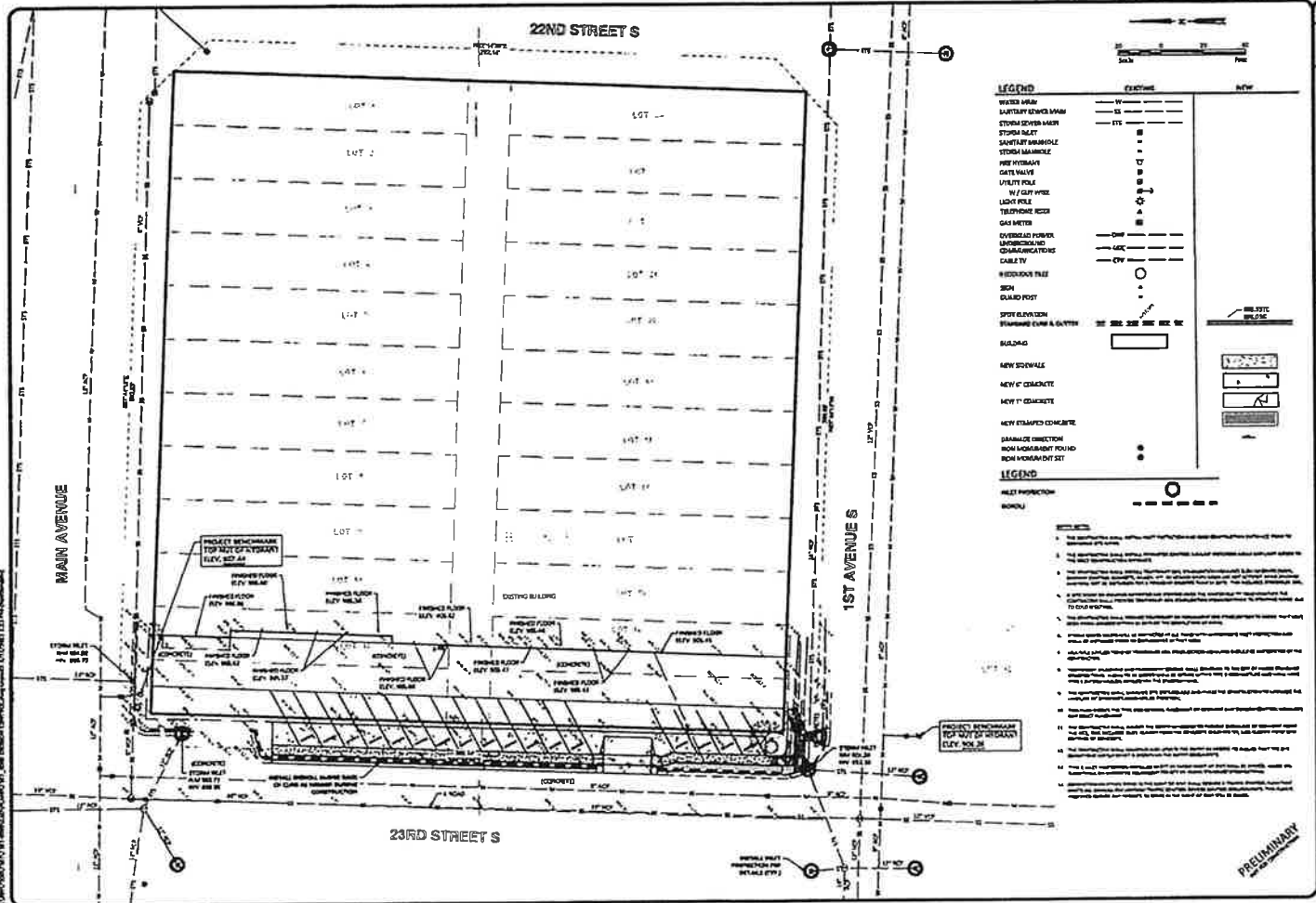


CONCRETE APRON FOR SIDEWALK/BIKETRAIL

CIVIL ENGINEERING
 REGISTRATION NO. 14000
 DETAILS 3

Drawn By: RLA
 Checked By: BIT
 Date: 03-22-23
 Scale: As Shown
 Project No: 1947-0003
 SHEET: 9

PRELIMINARY



OF THE AUSTIN AREA
 REGIONAL
 PLANNING COMMISSION
 EROSION CONTROL

HOUSTON
 Engineering, Inc.
 Drawn by
 EJA
 Checked by
 BYP
 Date
 03-22-23
 Scale
 As Shown
 Project No.
 7467-000
 SHEET
 10

(17)

October 23, 2023

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

Re: Purchase Agreement – Project #FP-19-A

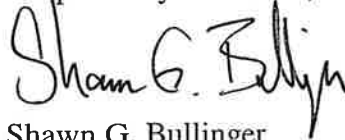
Dear Commissioners:

Enclosed and delivered to the City Commission office is an original Purchase Agreement document for the fee acquisition of property for the Southwest Metro Storm Water Master Plan in association with Project #FP-19-A. Final purchase price has been reached and at this time we are requesting authorization from the Commission to proceed with the purchase. All land acquisition procedures have been followed and the City Engineer's office recommends purchase.

RECOMMENDED MOTION: I/we hereby move to approve and authorize the fee acquisition of property for the Southwest Metro Storm Water Master Plan from Sanford North along in association with Project #FP-19-A.

Please return a copy of the signed purchase agreement.

Respectfully submitted,



Shawn G. Bullinger
Land Acquisition Specialist

C: Nathan Boerboom
Kasey McNary

PURCHASE AGREEMENT

This PURCHASE AGREEMENT is made and entered into by and between the **City of Fargo, a North Dakota municipal corporation**, 225 2nd Street North, Fargo, North Dakota 58102, as Buyer, and **Sanford North, a North Dakota nonprofit corporation**, 801 Broadway North, Fargo, North Dakota 58102, as Seller.

Seller and Buyer hereby agree as follows:

1. **Real Estate.** Seller hereby agrees to sell and Buyer hereby agrees to purchase the real estate marked in yellow consisting of approximately 43.63 acres depicted on Exhibit A for the purchase price and terms hereinafter stated the following described real property located in Cass County, North Dakota (“Property”):

That part of the Northeast Quarter of Section 9, Township 138 North, Range 49 West of the Fifth Principal Meridian, Cass County, North Dakota described as follows:

Commencing at the southeast corner of said Northeast Quarter; thence South 87 degrees 35 minutes 14 seconds West, an assumed bearing, on the south line of said Northeast Quarter, 1908.27 feet to the point of beginning; thence continuing, on said south line, South 87 degrees 35 minutes 14 seconds West, 731.31 feet to the southwest corner of said Northeast Quarter; thence North 01 degree 39 minutes 55 seconds West, on the west line of said Northeast Quarter, 2,644.43 feet to the northwest corner of said Northeast Quarter; thence North 87 degrees 30 minutes 08 seconds East, on the north line of said Northeast Quarter, 186.02 feet; thence South 01 degree 39 minutes 55 seconds East, parallel with said west line, 1,281.84 feet; thence North 87 degrees 35 minutes 14 seconds East, parallel with said south line, 540.73 feet; thence South 01 degree 39 minutes 55 seconds East, parallel with said west line, 500.29 feet; thence North 87 degrees 35 minutes 14 seconds East, parallel with said south line, 1,912.09 feet to the east line of said Northeast Quarter; thence South 01 degree 42 minutes 54 seconds East, on said east line, 350.03 feet; thence South 87 degrees 35 minutes 14 seconds West, parallel with said south line, 1,907.82 feet; thence South 01 degree 39 minutes 55 seconds East, parallel with said west line, 512.54 feet to the point of beginning.

Containing 43.63 acres, more or less.

2. **Purchase Price.** Seller and Buyer agree that the purchase price for said Property shall be equal to the product of \$1.20 multiplied by total square feet (estimated at 1,900,523 square feet) of the Property to be purchased (the “Purchase Price”), which Purchase Price is the sum of Two Million Two Hundred Eighty Thousand Six Hundred Twenty-Eight Dollars and no/100 (\$2,280,628.00). The Purchase Price is to be paid to Seller at closing in cash or certified funds and upon delivery of a Warranty Deed conveying the Property to Buyer, free and clear of all liens and encumbrances, except all covenants, conditions, restrictions, reservations of mineral rights, easements, and right of ways of record.

3. Risk of Loss. All risk of loss or damage to the Property prior to the Closing Date, including, without limitation, loss by fire, windstorm, or other casualty (collectively, a “*Casualty*”) or by condemnation, eminent domain or similar proceedings or threat thereof (collectively, a “*Taking*”), shall rest with Seller. If, prior to the Closing Date, the Property is the subject of a Casualty or Taking, Seller shall give Buyer written notice thereof and Buyer shall have the option, exercisable on or before the Closing by written notice to Seller, to elect to either: (i) renegotiate any and all terms of this Agreement; (ii) accept title to the Property without any reduction of the Purchase Price, in which event, at the Closing, Seller shall assign to Buyer (and Seller shall deliver to Buyer any monies received by Seller) any insurance or condemnation proceeds payable to Seller or its successors or assigns by reason of such Casualty or Taking; or (iii) terminate this Agreement.

In the event Buyer shall fail to exercise any such option, Buyer shall be deemed to have elected the option set forth in the foregoing clause (ii).

4. Closing Date. Closing shall take place as soon as practicable, but not later than December 31, 2023. Buyer shall take possession of the real estate on the day of Closing.

5. Default. If Buyer defaults under this Agreement, Seller shall have the right to terminate this Agreement by giving written notice thereof to Buyer. If Buyer fails to cure such default within thirty (30) days after notice of cancellation, then this Agreement will terminate, and upon such termination Seller may pursue any damages incurred. If Seller defaults under this Agreement, Buyer shall give Seller written notice of such default, and if Seller fails to cure such default within fifteen (15) days following such notice, Buyer shall have the option to elect to (i) terminate this Agreement, or (ii) pursue an action for specific performance of this Agreement.

6. Taxes and Assessments. Real estate taxes and installments of special assessments for 2023 shall be prorated between Buyer and Seller, based on the most current tax information available from the County Treasurer, as of the date of closing.

7. Abstract. Seller shall furnish Buyer at least 30 days prior to closing, a duly certified and up to date abstract of title to the Property. The Buyers shall have 10 days to examine the abstract of title and within said period of time shall promptly notify Seller of all objections thereto in writing. If the title to the Property is unmarketable, the Seller shall have a period of 30 days within which to correct title thereto to the satisfaction of Buyer. If title of the Property is unmarketable and cannot be made marketable within said period of thirty (30) days or such further time as may be extended by Buyer, Buyer at its option shall be entitled to rescission of this Agreement.

8. Warranties. Seller conveys the real estate, buildings and all personal property, if any, at the time of closing “as is” and “where is”. Buyer also acknowledges that it is taking the Property subject to all building and zoning laws, ordinances, restrictions relating to the use and improvements of premises, utility and drainage easements.

9. Closing Costs. As specifically agreed between the parties:

Seller agrees to pay the following costs and no other costs associated with the closing of this transaction:

- a. Cost of survey, if necessary;
- b. Cost of recording any instrument required to clear title including but not limited to satisfaction of prior liens and encumbrances; and
- c. Its own attorney's fees.

Buyer agrees to pay the following costs and no other costs associated with the closing of this transaction:

- a. Cost of updating abstract of title;
- b. Cost of recording the Warranty Deed;
- c. Cost of preparing this Agreement and the Warranty Deed;
- d. Cost of obtaining a Title Opinion;
- e. Its own attorney's fees; and
- f. Any closing fees.

Any closing cost not specifically enumerated herein shall be the responsibility of the party ordering such item or contracting therefor. In the special event that Buyer or Buyer's lender requires title insurance, the cost thereof shall be entirely paid by Buyer with the exception of the furnishing of a continued abstract by Seller.

10. Notice. All notices given or required to be given under this Agreement shall be in writing and sent by U.S. Certified Mail, return receipt requested, postage prepaid, or by electronic mail, read receipt requested, to the following addresses: If to Buyer, notices shall be sent to City of Fargo – Engineering Department, Attn: Shawn Bullinger, 225 4th Street North, Fargo, ND 58102, or email to SBullinger@FargoND.gov, and, if to Seller, notices shall be sent to Phillip Siek, at 801 Broadway N, Fargo, ND 58122-2183, or email to Phillip.Siek@sanfordhealth.org, with a copy to Harrison Hagg at 4800 W 57th Street, Sioux Falls, SD 57108, or email to Harrison.hagg@sanfordhealth.org. Such notices shall be deemed delivered on the day in which they were received.

11. Attorney's Fees. In the event of any litigation or arbitration proceedings between the parties in connection with this Agreement, the prevailing party shall be entitled to recover its reasonable legal fees and expenses, including any fees and expenses incurred in connection with appeals, in connection with any such proceeding.

12. Entire Agreement. This Purchase Agreement shall constitute the entire agreement between Seller and Buyer and supersedes any and all other written or oral agreements between Seller and Buyer. This Purchase Agreement may be modified only in writing signed by Seller and Buyer.

13. Binding Effect. This Purchase Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

14. Governing Law. This Purchase Agreement shall be governed by the laws of the State of North Dakota.

15. Additional Instruments and Further Assurances. The parties agree from time to time, upon written request, to execute and deliver such other instruments of transfer, assignment, and conveyance and to take such other action as either party may reasonably request to more effectively vest ownership of the Property in Buyer and to put Buyer in possession of all the Property. Both parties agree to, from time to time, execute and deliver to the other party such additional instruments and to take such additional actions as either party may reasonably request to evidence the covenants, agreements, and obligations of the parties hereunder.

16. Construction. Each party recognizes that this Agreement is a legally binding contract and acknowledges that it, he or she has had the opportunity to consult with legal counsel of choice. In any construction of the terms of this Agreement, the same shall not be construed against any party on the basis of that party being the drafter of such terms. Each party represents that they are an equal drafter of this Agreement and no ambiguity shall be construed against any party.

17. Counterparts. This Agreement may be executed in counterparts. In order to expedite the transaction contemplated herein, signatures sent by .PDF via e-mail may be used in place of original signatures on this Agreement or any other document or agreement in this transaction, other than those to be recorded in the public records. Seller and Buyer intend to be bound by the signatures on each .PDF document, are aware that the other party will rely on the .PDF signatures, and hereby waive any defenses to the enforcement of the terms of this Agreement or any other such document based on the form of signature.

18. Time. Time is of the essence of each provision of this Agreement and of all the conditions thereof.

19. Partial Invalidity. If any portion of this Agreement shall be adjudged by a court to be void or unenforceable, such portion shall be deemed severed from this Agreement and shall in no way affect the validity or enforceability of the remaining portions of this Agreement, so long as the transaction contemplated hereby may be consummated in accordance with the surviving provisions.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

SELLER:

SANFORD NORTH, a North Dakota nonprofit corporation

Date: 10/17/23

Bill Marlette

By: Bill Marlette

Its: CFO

BUYER:

**CITY OF FARGO, NORTH DAKOTA
a municipal corporation**

Date: _____

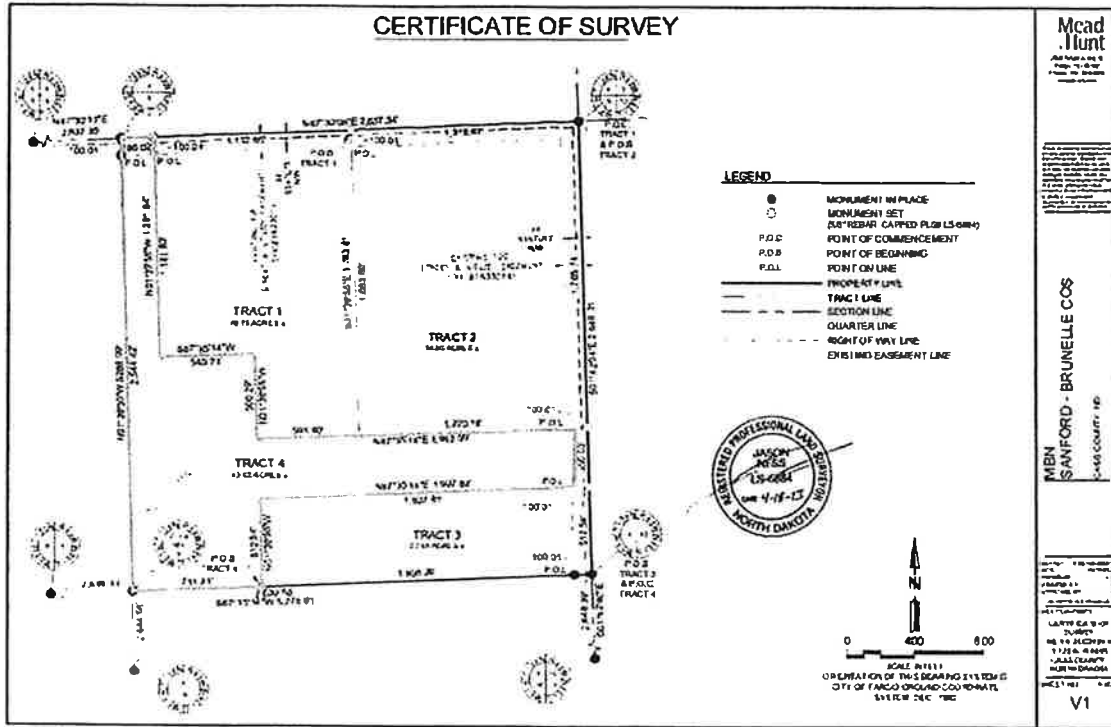
By: Dr. Timothy J. Mahoney, M.D., Mayor

ATTEST:

Steven Sprague, City Auditor

EXHIBIT A

Description of the Property





October 30, 2023

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

Re: Recommend Award to Low Bidder
Bison Village/10th Street N. Share Use Path – 32nd Ave. to 36th Ave. N.
City of Fargo Project No. SN-23-A1
NDDOT Project No. TAU-8-984(172)

Dear Commissioners:

Bids were opened by the NDDOT on Friday, October 13, 2023, for the Bison Village Share Use Path project.

The bids were as follows:

Dakota Underground Company	\$ 489,889.12
Northern Improvement Company	\$ 568,270.10
Key Contracting Inc.	\$ 570,799.00
Engineer's Estimate	\$ 423,959.00

There are no Special Assessments associated with this project. Fargo's share of this project is \$64,520.23.

Recommended Motion

Concur with low bid and recommend the NDDOT award the low bid to Dakota Underground Company in the amount of \$489,889.12 as the best bid, subject to review of the Contractor's Disadvantaged Business Enterprise Program by the NDDOT.

Sincerely,

Tom Knakmuhs, P.E.
City Engineer

Attachments

ENGINEER'S STATEMENT OF ESTIMATED COST

Shared Use Path & Incidentals

PROJECT NUMBER NO. SN-23-A1
 TAU-8-984(172)
 PCN-23238

10th Street N – 32nd Avenue to 36th Street N.

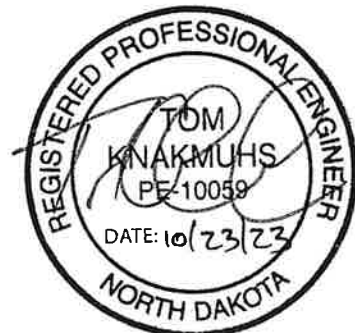
Summary of low bid by Dakota Underground Company: \$489,889.12

<u>Construction Cost</u>	\$	489,889.12
<u>Amount Federally Funded</u>	\$	396,467.26
 <u>Amount Locally Funded</u>	\$	93,421.86
Plus 10% Engineering Fee:	\$	0
Plus 4% Administration Fee:	\$	3,736.87
Plus 4% Interest Fee:	\$	3,736.87
Plus 3% Legal/Miscellaneous Fee:	\$	2,802.66
Plus 10% Contingency:	\$	9,342.19
Total Estimated Construction Cost:	\$	113,040.45
 <u>Miscellaneous Costs</u>		
Plus Lan/Easements/ROW Fee:	\$	1,000.00
Outside Construction Engineering (Estimate):	\$	15,000.00
Total Estimated Project Cost:	\$	129,040.45
 <u>Project Funding Summary</u>		
Federal TAP Funds	75.44%	\$ 396,467.26
Fargo Park District	12.28%	\$ 64,520.22
Infrastructure Sales Tax	12.28%	\$ 64,520.23

We believe this project to be cost effective.



Thomas Knakmuhs, P.E.
 City Engineer



REPORT OF ACTION

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

49

Improvement District No. BR-23-G1

Type: Incentive/Disincentive

Location: 32nd Ave S, 22nd St – 15th St

Date of Hearing: 10/23/2023

<u>Routing</u>	<u>Date</u>
City Commission	10/30/2023
PWPEC File	X
Project File	Eric Hodgson

The Committee reviewed the accompanying correspondence from Project Manager, Eric Hodgson, regarding Incentive for Improvement District No. BR-23-G1.

This project is scheduled for a bid opening of January 12, 2024 with a Substantial Completion Date of October 14, 2024 and a Final Completion Date of November 1, 2024. The project is large in scale with an estimated construction cost of nearly \$18,050,000, and a distance of approximately 0.66 miles. The project includes a full street reconstruction from 22nd Street to 15th Street and is broken down into 3 phases.

Staff is recommending approval of a \$150,000 (30 days at \$5,000.00 per day) incentive for this project.

On a motion by Ben Dow, seconded by Tim Mahoney, the Committee voted to recommend approval of the incentive for Improvement District No. BR-23-G1

RECOMMENDED MOTION

Concur with the recommendation of PWPEC and approve the incentive for Improvement District No. BR-23-G1.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: Sales Tax

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

Yes	No
N/A	
N/A	
N/A	


COMMITTEE

- Tim Mahoney, Mayor
- Nicole Crutchfield, Director of Planning
- Steve Dirksen, Fire Chief
- Brenda Derrig, Assistant City Administrator
- Ben Dow, Director of Operations
- Steve Sprague, City Auditor
- Tom Knakmuhs, City Engineer
- Susan Thompson, Finance Director

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

C: Kristi Olson


Tom Knakmuhs, P.E.
City Engineer

Memorandum

To: Members of PWPEC
From: Eric Hodgson, Civil Engineer II
Date: October 23, 2023
Re: Incentives/Disincentives Improvement District No. BR-23-G1
32nd Avenue South Reconstruction (22nd Street South to 15th Street South)

Background:

In keeping with our commitment to make recommendations regarding incentives/disincentives for projects that impact arterial roadways, I am forwarding the following project recommendation for your consideration.

The project in question is on 32nd Avenue South between 22nd Street and 15th Street, Improvement District No. BR-23-G1, Grading, Salvaged Base, PCC Pavement, Storm Sewer, Watermain, Traffic Signals, Lighting, and Shared Use Path.

This project is scheduled for a bid opening of January 12, 2024 with a substantial completion date of October 14, 2024 and a final completion date of November 1, 2024. The project is large in scale with an estimated construction cost of nearly \$18,050,000, and a distance of approximately 0.66 miles. The project includes a full street reconstruction from 22nd Street to 15th Street, and is broken down into 3 phases.

Staff believes that a \$300,000 incentive should apply to this project.

Recommended Motion:

Approve a \$300,000 incentive for Improvement District No. BR-23-G1.

EBH/jmg
Attachment:
- PSE Construction Estimate

ENGINEER'S OPINION OF COST
NDDOT TMA-SU-8-984(169) PCN 22925; CITY BR-23-G1
FARGO 32ND AVENUE SOUTH - 22ND ST TO 15TH ST
PS&E SUBMITAL 10/16/2023

SPEC	CODE	ITEM DESCRIPTION	UNIT	UNIT PRICE	TMA-SU-8-984(169)		DRAINAGE		100% CITY		TOTAL	
					QUANTITY	COST	FEDERAL 48% - CITY 52%	COST	NON-PARTICIPATING	COST	QUANTITY	COST
103	0100	CONTRACT BOND	L SUM	\$ 80,000.00	0.54	\$ 43,200.00	-	-	0.46	\$ 36,800.00	1	\$ 80,000.00
108	0001	CRITICAL PATH METHOD SCHEDULE	L SUM	\$ 15,000.00	0.54	\$ 8,100.00	-	-	0.46	\$ 6,900.00	1	\$ 15,000.00
201	0370	REMOVAL OF TREES 10IN	EA	\$ 800.00	65	\$ 52,000.00	-	-	-	-	65	\$ 52,000.00
202	0136	REMOVAL OF PAVEMENT	TON	\$ 40.00	18,612	\$ 744,480.00	-	-	-	-	18,612	\$ 744,480.00
202	0174	REMOVAL OF PIPE ALL TYPES AND SIZES	LF	\$ 60.00	2,103	\$ 126,180.00	-	-	9,385	\$ 563,100.00	11,488	\$ 689,280.00
202	0210	REMOVAL OF MANHOLES	EA	\$ 2,500.00	13	\$ 32,500.00	-	-	9	\$ 22,500.00	22	\$ 55,000.00
202	0235	REMOVAL OF CATCH BASIN	EA	\$ 700.00	40	\$ 28,000.00	-	-	-	-	40	\$ 28,000.00
203	0101	COMMON EXCAVATION-TYPE A	CY	\$ 20.00	9,880	\$ 197,600.00	-	-	-	-	9,880	\$ 197,600.00
203	0109	TOPSOIL	CY	\$ 40.00	1,658	\$ 66,320.00	-	-	-	-	1,658	\$ 66,320.00
203	0119	TOPSOIL-IMPORTED	CY	\$ 40.00	390	\$ 15,600.00	-	-	-	-	390	\$ 15,600.00
203	0138	COMMON EXCAVATION-SUBCUT	CY	\$ 25.00	1,400	\$ 35,000.00	-	-	-	-	1,400	\$ 35,000.00
216	0100	WATER	M GAL	\$ 20.00	900	\$ 18,000.00	-	-	-	-	900	\$ 18,000.00
230	0165	SUBGRADE PREPARATION-TYPE A-12IN	STA	\$ 3,500.00	35	\$ 122,500.00	-	-	-	-	35	\$ 122,500.00
251	0300	SEEDING CLASS III	ACRE	\$ 14,000.00	2.36	\$ 33,040.00	-	-	-	-	2.36	\$ 33,040.00
251	2000	TEMPORARY COVER CROP	ACRE	\$ 165.00	1.74	\$ 287.10	-	-	-	-	1.74	\$ 287.10
253	0201	HYDRAULIC MULCH	ACRE	\$ 3,000.00	4.10	\$ 12,300.00	-	-	-	-	4.10	\$ 12,300.00
261	0112	FIBER ROLLS 12IN	LF	\$ 4.50	306	\$ 1,377.00	-	-	-	-	306	\$ 1,377.00
261	0113	REMOVE FIBER ROLLS 12IN	LF	\$ 1.50	306	\$ 459.00	-	-	-	-	306	\$ 459.00
302	0101	SALVAGED BASE COURSE	CY	\$ 70.00	12507	\$ 875,490.00	-	-	-	-	12507	\$ 875,490.00
302	9970	TYPE II PIPE BEDDING	CY	\$ 35.00	500	\$ 17,500.00	-	-	-	-	500	\$ 17,500.00
430	0500	COMMERCIAL GRADE HOT MIX ASPHALT	TON	\$ 275.00	352	\$ 96,800.00	-	-	-	-	352	\$ 96,800.00
550	0910	10IN NON REINF CONCRETE PVMIT CL AE-DOWELED	SY	\$ 110.00	21,746	\$ 2,392,060.00	-	-	-	-	21,746	\$ 2,392,060.00
702	0100	MOBILIZATION	L SUM	\$ 1,500,000.00	0.54	\$ 810,000.00	-	-	0.46	\$ 690,000.00	1	\$ 1,500,000.00
704	0100	FLAGGING	MHR	\$ 50.00	2,200	\$ 110,000.00	-	-	-	-	2,200	\$ 110,000.00
704	1000	TRAFFIC CONTROL SIGNS	UNIT	\$ 4.50	3,718.00	\$ 16,731.00	-	-	-	-	3,718	\$ 16,731.00
704	1052	TYPE III BARRICADE	EA	\$ 165.00	37	\$ 6,105.00	-	-	-	-	37	\$ 6,105.00
704	1054	SIDEWALK BARRICADE	EA	\$ 120.00	8	\$ 960.00	-	-	-	-	8	\$ 960.00
704	1058	PEDESTRIAN WALKWAY	LF	\$ 40.00	200	\$ 8,000.00	-	-	-	-	200	\$ 8,000.00
704	1060	DELINEATOR DRUMS	EA	\$ 25.00	200	\$ 5,000.00	-	-	-	-	200	\$ 5,000.00
704	1067	TUBULAR MARKERS	EA	\$ 10.00	30	\$ 300.00	-	-	-	-	30	\$ 300.00
704	1072	FLEXIBLE DELINEATORS	EA	\$ 30.00	11	\$ 330.00	-	-	-	-	11	\$ 330.00
704	1087	SEQUENCING ARROW PANEL-TYPE C	EA	\$ 1,250.00	1	\$ 1,250.00	-	-	-	-	1	\$ 1,250.00
704	2108	TEMPORARY CURB RAMP	EA	\$ 600.00	6	\$ 3,600.00	-	-	-	-	6	\$ 3,600.00
704	4011	PORTABLE CHANGEABLE MESSAGE SIGN	EA	\$ 8,500.00	4	\$ 34,000.00	-	-	-	-	4	\$ 34,000.00
706	0400	FIELD OFFICE	EA	\$ 30,000.00	1	\$ 30,000.00	-	-	-	-	1	\$ 30,000.00
708	1540	INLET PROTECTION-SPECIAL	EA	\$ 225.00	99	\$ 22,275.00	-	-	-	-	99	\$ 22,275.00
708	1541	REMOVE INLET PROTECTION-SPECIAL	EA	\$ 25.00	99	\$ 2,475.00	-	-	-	-	99	\$ 2,475.00
709	0100	GEOSYNTHETIC MATERIAL TYPE G	SY	\$ 5.00	25,925	\$ 129,625.00	-	-	-	-	25,925	\$ 129,625.00
714	0210	PIPE CONC REINF 15IN CL III-STORM DRAIN	LF	\$ 160.00	-	-	618	\$ 98,880.00	-	-	618	\$ 98,880.00
714	0315	PIPE CONC REINF 18IN CL III-STORM DRAIN	LF	\$ 175.00	-	-	169	\$ 29,575.00	-	-	169	\$ 29,575.00
714	0620	PIPE CONC REINF 24IN CL III-STORM DRAIN	LF	\$ 240.00	-	-	345	\$ 82,800.00	-	-	345	\$ 82,800.00
714	0825	PIPE CONC REINF 30IN CL III-STORM DRAIN	LF	\$ 550.00	-	-	14	\$ 7,700.00	-	-	14	\$ 7,700.00
714	0910	PIPE CONC REINF 36IN CL III-STORM DRAIN	LF	\$ 625.00	-	-	51	\$ 31,875.00	-	-	51	\$ 31,875.00
714	1010	PIPE CONC REINF 42IN CL III-STORM DRAIN	LF	\$ 700.00	-	-	134	\$ 93,800.00	-	-	134	\$ 93,800.00

SPEC	CODE	ITEM DESCRIPTION	UNIT	UNIT PRICE	TMA-SU-8-984(169)		DRAINAGE		100% CITY		TOTAL		
					QUANTITY	COST	FEDERAL 48% - CITY 52%	COST	NON-PARTICIPATING	COST	QUANTITY	COST	QUANTITY
714	1512	PIPE CONC REINF 72IN CL III STORM DRAIN	LF	\$ 1,300.00	-	\$ -	3,011	\$ 3,914,300.00	-	\$ -	-	3,011	\$ 3,914,300.00
714	1611	PIPE CONC REINF 78IN CL III STORM DRAIN	LF	\$ 1,500.00	-	\$ -	317	\$ 475,500.00	-	\$ -	-	317	\$ 475,500.00
714	4169	PIPE CONDUIT 72IN-JACKED OR BORED	LF	\$ 3,000.00	-	\$ -	72	\$ 216,000.00	-	\$ -	-	72	\$ 216,000.00
714	7030	PIPE PVC 12IN	LF	\$ 160.00	-	\$ -	12	\$ 1,920.00	-	\$ -	-	12	\$ 1,920.00
714	7036	PIPE PVC 18IN	LF	\$ 1,000.00	-	\$ -	98	\$ 98,000.00	-	\$ -	-	98	\$ 98,000.00
714	7040	SANITARY SEWER SERVICE CONNECTION	EA	\$ 2,000.00	-	\$ -	-	\$ -	-	\$ 46,000.00	23	23	\$ 46,000.00
714	7048	PIPE PVC 6IN SEWER	LF	\$ 125.00	-	\$ -	-	\$ -	-	\$ 2,500.00	20	20	\$ 2,500.00
714	7050	PIPE PVC 8IN SEWER	LF	\$ 150.00	-	\$ -	-	\$ -	-	\$ 31,500.00	210	210	\$ 31,500.00
714	7150	PIPE PVC 12IN SEWER	LF	\$ 180.00	-	\$ -	-	\$ -	-	\$ 34,920.00	194	194	\$ 34,920.00
714	7168	PIPE PVC 24IN SEWER	LF	\$ 220.00	-	\$ -	-	\$ -	-	\$ 507,760.00	2,308	2,308	\$ 507,760.00
714	9680	PLUG PIPE-ALL TYPES & SIZES	EA	\$ 1,500.00	2	\$ 3,000.00	1	\$ 1,500.00	1	\$ 1,500.00	4	4	\$ 6,000.00
714	9696	EDGEDRAIN NON PERMEABLE BASE	LF	\$ 15.00	7,241	\$ 108,615.00	-	\$ -	-	\$ -	7,241	7,241	\$ 108,615.00
714	9910	FLAP GATE 18IN	EA	\$ 6,000.00	-	\$ -	1	\$ 6,000.00	-	\$ -	1	1	\$ 6,000.00
722	0080	SADDLE MANHOLE	EA	\$ 16,000.00	-	\$ -	7	\$ 112,000.00	-	\$ -	-	7	\$ 112,000.00
722	0100	MANHOLE 48IN	EA	\$ 7,350.00	-	\$ -	2	\$ 14,700.00	-	\$ -	-	2	\$ 14,700.00
722	0110	MANHOLE 60IN	EA	\$ 10,000.00	-	\$ -	2	\$ 20,000.00	-	\$ -	-	2	\$ 20,000.00
722	0120	MANHOLE 72IN	EA	\$ 17,000.00	-	\$ -	1	\$ 17,000.00	-	\$ -	-	1	\$ 17,000.00
722	0130	MANHOLE 84IN	EA	\$ 25,000.00	-	\$ -	7	\$ 175,000.00	-	\$ -	-	7	\$ 175,000.00
722	0200	MANHOLE 96IN	EA	\$ 30,000.00	-	\$ -	8	\$ 240,000.00	-	\$ -	-	8	\$ 240,000.00
722	0300	MANHOLE 108IN	EA	\$ 35,000.00	-	\$ -	3	\$ 105,000.00	-	\$ -	-	3	\$ 105,000.00
722	3300	SANITARY MANHOLE REPAIR	EA	\$ 17,400.00	-	\$ -	-	\$ -	-	\$ 174,000.00	10	10	\$ 174,000.00
722	3490	CASTING MOUNTABLE CURB-TYPE B	EA	\$ 20,000.00	-	\$ -	1	\$ 20,000.00	-	\$ -	1	1	\$ 20,000.00
722	3510	INLET-TYPE 2	EA	\$ 4,500.00	-	\$ -	16	\$ 72,000.00	-	\$ -	-	16	\$ 72,000.00
722	3520	INLET-TYPE 2 DOUBLE	EA	\$ 5,000.00	-	\$ -	11	\$ 55,000.00	-	\$ -	-	11	\$ 55,000.00
722	3701	INLET SPECIAL-TYPE 2 48IN	EA	\$ 10,000.00	-	\$ -	1	\$ 10,000.00	-	\$ -	-	1	\$ 10,000.00
722	3761	INLET SPECIAL-TYPE 2 60IN	EA	\$ 15,000.00	-	\$ -	1	\$ 15,000.00	-	\$ -	-	1	\$ 15,000.00
724	0210	FITTINGS-DUCTILE IRON	LBS	\$ 20.00	-	\$ -	-	\$ -	-	\$ -	8,127	8,127	\$ 162,540.00
724	0270	REMOVE GATE VALVE & BOX	EA	\$ 700.00	-	\$ -	-	\$ -	-	\$ -	25	25	\$ 17,500.00
724	0300	GATE VALVE & BOX 6IN	EA	\$ 2,700.00	-	\$ -	-	\$ -	-	\$ -	14	14	\$ 37,800.00
724	0310	GATE VALVE & BOX 8IN	EA	\$ 3,300.00	-	\$ -	-	\$ -	-	\$ -	1	1	\$ 3,300.00
724	0314	GATE VALVE & BOX 12IN	EA	\$ 4,000.00	-	\$ -	-	\$ -	-	\$ -	2	2	\$ 8,000.00
724	0315	GATE VALVE & BOX 10IN	EA	\$ 4,800.00	-	\$ -	-	\$ -	-	\$ -	4	4	\$ 19,200.00
724	0317	GATE VALVE & BOX 16IN	EA	\$ 17,200.00	-	\$ -	-	\$ -	-	\$ -	5	5	\$ 86,000.00
724	0410	HYDRANT-INSTALL 5IN	EA	\$ 7,900.00	-	\$ -	-	\$ -	-	\$ -	11	11	\$ 86,900.00
724	0430	REMOVE HYDRANT	EA	\$ 1,000.00	-	\$ -	-	\$ -	-	\$ -	11	11	\$ 11,000.00
724	0670	TEMPORARY WATER SERVICE	L SUM	\$ 125,000.00	-	\$ -	-	\$ -	-	\$ -	1	1	\$ 125,000.00
724	0810	WATERMAIN 6IN PVC	LF	\$ 115.00	-	\$ -	-	\$ -	-	\$ -	259	259	\$ 29,785.00
724	0830	WATERMAIN 8IN PVC	LF	\$ 130.00	-	\$ -	-	\$ -	-	\$ -	108	108	\$ 14,040.00
724	0840	WATERMAIN 10IN PVC	LF	\$ 150.00	-	\$ -	-	\$ -	-	\$ -	297	297	\$ 44,550.00
724	0850	WATERMAIN 12IN PVC	LF	\$ 180.00	-	\$ -	-	\$ -	-	\$ -	141	141	\$ 25,380.00
724	0852	WATERMAIN 16IN PVC	LF	\$ 225.00	-	\$ -	-	\$ -	-	\$ -	3,467	3,467	\$ 780,075.00
724	0955	WATER SERVICE CONNECTION 1IN	EA	\$ 1,000.00	-	\$ -	-	\$ -	-	\$ -	20	20	\$ 20,000.00
724	1524	CURED-IN-PLACE PIPE-24IN	LF	\$ 600.00	-	\$ -	-	\$ -	-	\$ -	812	812	\$ 487,200.00
744	0050	INSULATION BOARD	CF	\$ 20.00	-	\$ -	-	\$ -	-	\$ -	139	139	\$ 2,780.00
748	0140	CURB & GUTTER-TYPE I	LF	\$ 30.00	1,868	\$ 56,040.00	-	\$ -	-	\$ -	-	1,868	\$ 56,040.00
748	0190	CURB & GUTTER-TYPE I 30IN	LF	\$ 35.00	7,166	\$ 250,810.00	-	\$ -	-	\$ -	-	7,166	\$ 250,810.00
748	0520	CURB-TYPE I	LF	\$ 120.00	71	\$ 8,520.00	-	\$ -	-	\$ -	-	71	\$ 8,520.00
750	0030	PIGMENTED IMPRINTED CONCRETE	SY	\$ 165.00	434	\$ 71,610.00	-	\$ -	-	\$ -	-	434	\$ 71,610.00
750	0120	SIDEWALK CONCRETE 5IN REINF	SY	\$ 65.00	5,133	\$ 333,645.00	-	\$ -	-	\$ -	-	5,133	\$ 333,645.00

SPEC	CODE	ITEM DESCRIPTION	UNIT	UNIT PRICE	TMA-SU-8-984(169)		DRAINAGE		100% CITY		TOTAL	
					QUANTITY	COST	FEDERAL 48% - CITY 62%	COST	NON-PARTICIPATING	COST	QUANTITY	COST
750	0140	SIDEWALK CONCRETE 6IN	SY	\$ 70.00	190	\$ 13,300.00	-	-	-	-	190	\$ 13,300.00
750	0210	CONCRETE MEDIAN NOSE PAVING	SY	\$ 100.00	70	\$ 7,000.00	-	-	-	-	70	\$ 7,000.00
750	2115	DETECTABLE WARNING PANELS	SF	\$ 55.00	228	\$ 12,540.00	-	-	-	-	228	\$ 12,540.00
754	0110	FLAT SHEET FOR SIGNS-TYPE XI REFL SHEETING	SF	\$ 40.00	80	\$ 3,216.00	-	-	-	-	80	\$ 3,216.00
754	0112	FLAT SHEET FOR SIGNS-TYPE IV REFL SHEETING	SF	\$ 35.00	142	\$ 4,963.00	-	-	-	-	142	\$ 4,963.00
754	0206	STEEL GALV POSTS-TELESCOPING PERFORATED TUBE	LF	\$ 25.00	141	\$ 3,525.00	-	-	-	-	141	\$ 3,525.00
762	0112	EPOXY PVMT MK MESSAGE	SF	\$ 15.00	482	\$ 7,230.00	-	-	-	-	482	\$ 7,230.00
762	0113	EPOXY PVMT MK 4IN LINE	LF	\$ 2.50	790	\$ 1,975.00	-	-	-	-	790	\$ 1,975.00
762	0115	EPOXY PVMT MK 8IN LINE	LF	\$ 4.50	177	\$ 796.50	-	-	-	-	177	\$ 796.50
762	0122	PREFORMED PATTERNED PVMT MK-MESSAGE(GROOVED)	SF	\$ 40.00	395	\$ 15,800.00	-	-	-	-	395	\$ 15,800.00
762	0424	SHORT TERM 8IN LINE-TYPE R	LF	\$ 4.00	63	\$ 252.00	-	-	-	-	63	\$ 252.00
762	0425	SHORT TERM 16IN LINE-TYPE R	LF	\$ 8.00	22	\$ 176.00	-	-	-	-	22	\$ 176.00
762	0440	SHORT TERM MESSAGE-TYPE R	SF	\$ 35.00	140	\$ 4,900.00	-	-	-	-	140	\$ 4,900.00
762	0442	SHORT TERM MESSAGE-TYPE NR	SF	\$ 5.00	16	\$ 80.00	-	-	-	-	16	\$ 80.00
762	1305	PREFORMED PATTERNED PVMT MK 4IN LINE-GROOVED	LF	\$ 10.00	3,937	\$ 39,370.00	-	-	-	-	3,937	\$ 39,370.00
762	1307	PREFORMED PATTERNED PVMT MK 6IN LINE-GROOVED	LF	\$ 12.00	141	\$ 1,692.00	-	-	-	-	141	\$ 1,692.00
762	1309	PREFORMED PATTERNED PVMT MK 8IN LINE-GROOVED	LF	\$ 15.00	1,110	\$ 16,650.00	-	-	-	-	1,110	\$ 16,650.00
762	1317	PREFORMED PATTERNED PVMT MK 16IN LINE-GROOVED	LF	\$ 33.00	100	\$ 3,300.00	-	-	-	-	100	\$ 3,300.00
762	1325	PREFORMED PATTERNED PVMT MK 24IN LINE-GROOVED	LF	\$ 35.00	140	\$ 4,900.00	-	-	-	-	140	\$ 4,900.00
762	1344	PREF PATT PVMT MK 7IN LINE CONTRAST-GROOVED	LF	\$ 15.00	1620	\$ 24,300.00	-	-	-	-	1620	\$ 24,300.00
770	0001	LIGHTING SYSTEM	EA	\$ 250,000.00	1	\$ 250,000.00	-	-	-	-	1	\$ 250,000.00
770	4503	TEMPORARY LIGHTING SYSTEM REVISION	EA	\$ 5,000.00	1	\$ 5,000.00	-	-	-	-	1	\$ 5,000.00
770	4567	REMOVE LIGHTING SYSTEM	EA	\$ 35,000.00	1	\$ 35,000.00	-	-	-	-	1	\$ 35,000.00
772	2810	TEMPORARY TRAFFIC SIGNALS	EA	\$ 75,000.00	1	\$ 75,000.00	-	-	-	-	1	\$ 75,000.00
772	2907	REVISE TRAFFIC SIGNAL SYSTEM-SITE 2	EA	\$ 5,000.00	1	\$ 5,000.00	-	-	-	-	1	\$ 5,000.00
772	9200	IT SYSTEM	EA	\$ 75,000.00	1	\$ 75,000.00	-	-	-	-	1	\$ 75,000.00
772	9811	TRAFFIC SIGNAL SYSTEM - SITE 1	EA	\$ 300,000.00	1	\$ 300,000.00	-	-	-	-	1	\$ 300,000.00
910	0800	PIPE JOINT REPAIR	EA	\$ 7,000.00	-	-	2	\$ 14,000.00	-	-	2	\$ 14,000.00
970	0001	LANDSCAPING APPURTENANCES	L SUM	\$ 80,000.00	1	\$ 80,000.00	-	-	-	-	1	\$ 80,000.00
970	0074	WOOD MULCH	CY	\$ 150.00	35	\$ 5,250.00	-	-	-	-	35	\$ 5,250.00
970	0300	BENCH	EA	\$ 10,003.00	2	\$ 20,006.00	-	-	-	-	2	\$ 20,006.00
970	1025	REPLANT TREES	EA	\$ 750.00	11	\$ 8,250.00	-	-	-	-	11	\$ 8,250.00
970	2032	AUTUMN SPLENDOR BUCKEYE	EA	\$ 600.00	6.0	\$ 3,600.00	-	-	-	-	6	\$ 3,600.00
970	2045	AMUR CHOKECHERRY	EA	\$ 600.00	5	\$ 3,000.00	-	-	-	-	5	\$ 3,000.00
970	2050	COMMON HACKBERRY	EA	\$ 600.00	2	\$ 1,200.00	-	-	-	-	2	\$ 1,200.00
970	2150	NORTHERN ACCLAIM HONEYLOCUST	EA	\$ 600.00	5	\$ 3,000.00	-	-	-	-	5	\$ 3,000.00
970	2202	SPRING SNOW CRABAPPLE	EA	\$ 600.00	8	\$ 4,800.00	-	-	-	-	8	\$ 4,800.00
970	2330	BUR OAK	EA	\$ 600.00	3	\$ 1,800.00	-	-	-	-	3	\$ 1,800.00
970	2392	IVORY SILK LILAC	EA	\$ 600.00	14	\$ 8,400.00	-	-	-	-	14	\$ 8,400.00
970	2436	HARVEST GOLD LINDEN	EA	\$ 600.00	8	\$ 4,800.00	-	-	-	-	8	\$ 4,800.00
970	2449	ACCOLADE ELM	EA	\$ 600.00	2	\$ 1,200.00	-	-	-	-	2	\$ 1,200.00
970	2472	PRINCETON ELM	EA	\$ 600.00	9	\$ 5,400.00	-	-	-	-	9	\$ 5,400.00
970	6016	DAYLILIES-CONTAINER	EA	\$ 40.00	1,232	\$ 49,280.00	-	-	-	-	1,232	\$ 49,280.00
GRAND TOTAL:						\$ 8,042,635.60		\$ 5,908,650.00		\$ 4,098,530.00		\$ 18,049,815.60
FEDERAL FUNDS (CAPPED AT \$10,000,000):					80.93%	\$ 6,508,904.99	48.00%	\$ 2,836,152.00				\$ 9,345,056.99
CITY FUNDS:					19.07%	\$ 1,533,730.61	52.00%	\$ 3,072,498.00	100%	\$ 4,098,530.00		\$ 8,704,758.61

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

(20)

Improvement District No. BR-23-F1 Type: Change Order #3 & Time Extension
 Location: NP Ave, 10th St – 8th St Date of Hearing: 10/23/2023

<u>Routing</u>	<u>Date</u>
City Commission	<u>10/30/2023</u>
PWPEC File	<u>X</u>
Project File	<u>Rick Larson</u>

The Committee reviewed the accompanying correspondence from Project Manager, Rick Larson, related to Change Order #3 in the amount of \$20,689.80 for additional work along the associated time extension as shown below:

Original Completion Dates	Revised Previously	Revised This Memo
Phase 2 Interim – Sept. 13, 2023 Substantial – Sept. 30, 2023 - Milestone – Oct. 30, 2023 Final – June 15, 2024	Phase 2 Interim – Sept. 15, 2023 Substantial – October 2, 2023 - Milestone – Nov. 1, 2023 Final – June 15, 2024	Phase 2 Interim – Sept. 23, 2023 Substantial – October 10, 2023 (Street Light Sub. – Jan. 15, 2024) Milestone – Nov. 9, 2023 Final – June 15, 2024

Staff is recommending approval of Change Order #3 in the amount of \$20,689.80 and the time extension as described above.

On a motion by Steve Dirksen, seconded by Steve Sprague, the Committee voted to recommend approval of Change Order #3 and the time extensions to R & R Excavating.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve Change Order #3 in the amount of \$20,689.80, bringing the total contract amount to \$2,982,213.66 and the 8-day time extension to Dirt Dynamics.

PROJECT FINANCING INFORMATION:

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


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

COMMITTEE

	Present	Yes	No	Unanimous
				<u> ✓ </u>
Tim Mahoney, Mayor	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Nicole Crutchfield, Director of Planning	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Steve Dirksen, Fire Chief	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Brenda Derrig, Assistant City Administrator	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Ben Dow, Director of Operations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Steve Sprague, City Auditor	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Tom Knakmuhs, City Engineer	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Susan Thompson, Finance Director	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

ATTEST:

C: Kristi Olson


 Tom Knakmuhs, P.E.
 City Engineer

Memorandum

To: Members of PWPEC
From: Rick Larson, Project Manager
Date: October 18, 2023
Re: Improvement District No. BR-23-F1 – Change Order #3 & Time Extension

Background:

Improvement District No. BR-23-F1 is for the reconstruction of NP Avenue North (10th Street North to Robert's Street North) This project is for the replacement of the water main and services, sanitary sewer main and services, storm sewer main and inlet leads, concrete curb & gutter, sidewalk, driveways and street scape.

Change Order #3:

- 1.) The Contractor added aggregate and maintained a temporary road at 711 NP Avenue North. The total contract price adjustment for this work is \$2,022.68 and the Contractor is requesting 1 additional day be added to the contract.
- 2.) The Contractor removed and capped several existing irrigation lines that were encountered during the installation of a temporary road at 673 NP Avenue North. The total contract price adjustment for this work is \$140.25, the Contractor is not requesting any additional time for this work.
- 3.) The Contractor de-watered the basement and surrounding area at 842 NP Avenue North to prevent the subgrade from being saturated. The total contract price adjustment for this work is \$1,265.00 and the Contractor is requesting 1 additional day be added to the contract.
- 4.) The Contractor broke and removed an existing sign base and controlled density fill (CDF) that was found under the old sidewalk at 723 NP Avenue North. These items were in the grade of the new sidewalk and required removal prior to the new sidewalk being placed. The total contract price adjustment for this work is \$1,700.55 and the Contractor is requesting an additional 1/2 day be added to the contract.
- 5.) Due to the re-routing of drain tile for the landscape planters in front of 808 NP Avenue, aggregate backfill was used to prevent settlement of the future pavement here. The total contract price adjustment for this work is \$495.09 and the Contractor is requesting 1 additional day be added to the contract.

- 6.) The Contractor cored into an existing inlet to make drainage grades work in the southwest corner of NP Avenue and Robert's Street. The Contractor is not requesting any price adjustment for this work but is requesting that an additional 1/2 day be added to the contract.
- 7.) The Contractor regraded and leveled out the existing landscape rock at 711 NP Avenue North once the new sidewalk was installed here. The total contract price adjustment for this work is \$80.00, no additional time is being requested for this work.
- 8.) The Contractor was required to modify sewer structure ST-1.1 and corresponding storm sewer pipe due to private utilities being in conflict with the line and grade at this location. The Contractor is not requesting any price adjustment for this work is but is requesting 1 additional day be added to the contract.
- 9.) The Contractor was directed to use additional rebar used over the Xcel utility crossing. The total contract price adjustment for this work is \$389.23 and the Contractor is requesting an additional 1/4 day be added to the contract.
- 10.) The Contractor adjusted 7 private utility castings to grade in concrete that were not shown on the plans. The total contract price adjustment for this work is \$5,600.00 and the Contractor is requesting an additional 1/4 day be added to the contract.
- 11.) The Contractor was directed to removal and replacement 2 areas of curb & gutter that had been previously poured; this allowed for a better fit with the new ADA ramps on 7th Street. The total contract price adjustment for this work is \$975.00 and the Contractor is requesting an additional 1/2 day be added to the contract.
- 12.) The Contractor was directed to remove and replace an additional section of an alley that settled adjacent to a new driveway. Re-grading this area will prevent water from sitting behind the crossing plate of the new driveway here. The total contract price adjustment for this work is \$732.19 and the Contractor is requesting an additional 1/2 day be added to the contract.
- 13.) The Contractor was directed to use insulation and expansion under the metal edge of the 828 NP Avenue building to prevent damage to the building with future sidewalk movement due to the freeze/thaw cycles throughout the year. The total contract price adjustment for this work is \$614.90 and the Contractor is requesting an additional 1/4 day be added to the contract.
- 14.) The Contractor was directed to re-cut and remove additional pavement at 10th Street and NP Avenue to achieve a better slope for the ADA crossing here. The total contract price for this work is \$657.60 and the Contractor is requesting an additional 1/2 day be added to the contract.

- 15.) The Contractor poured a single step over the new sidewalk at 10 8th Street North. The original step was removed during the sidewalk removals. The total contract price adjustment for this work is \$412.50 and the Contractor is requesting an additional 1/2 day be added to the contract.
- 16.) The Contractor was directed to remove a narrow area of existing pavement between the new sidewalk and existing lumberyard buildings at 842 NP Avenue and install landscape fabric and rock in lieu of concrete due to future demolition plans. The total contract price adjustment for this work is \$1,892.32 and the Contractor is requesting an additional 1/4 day be added to the contract.
- 17.) Due to the manufacturer’s delay of the new street light standards, the Contractor was directed to temporarily set 6 of the old street lights on the new bases until the new street lights are installed. The total contract price adjustment for this work is \$3,300.00 and the Contractor is requesting that the substantial completion for the street lights be revised to January 15, 2024.
- 18.) The Contractor was directed to install 3 white traffic delineators on the curb for westbound traffic at Robert’s Street. The total contract price adjustment for this work is \$412.50, the Contractor is not requesting any additional time for this work.

Recommended Motion:

Approve Change Order #3 in the amount of \$20,689.80, time extension of 8 additional calendar days, and change the Street Lighting Substantial Completion to January 15, 2024.

Original Completion Dates	Revised Previously	Revised This Memo
Phase 2 Interim – Sept. 13, 2023 Substantial – Sept. 30, 2023 - Milestone – Oct. 30, 2023 Final – June 15, 2024	Phase 2 Interim – Sept. 15, 2023 Substantial – October 2, 2023 - Milestone – Nov. 1, 2023 Final – June 15, 2024	Phase 2 Interim – Sept. 23, 2023 Substantial – October 10, 2023 (Street Light Sub. – Jan. 15, 2024) Milestone – Nov. 9, 2023 Final – June 15, 2024

RJL/jmg
 Attachment



CHANGE ORDER REPORT
PAVING AND UTILITY REHAB/RECONSTRUCTION
IMPROVEMENT DISTRICT NO. BR-23-F1
ON NORTHERN PACIFIC AVENUE NORTH FROM 10TH STREET TO 8TH STREET

Change Order No 3 **Change Order Date** 10/2/2023
Contractor R & R Excavating, 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 Change Order # 3

1.) The Contractor added aggregate and maintained a temporary road at 711 N.P. Ave. N. The total contract price adjustment for this work is \$2,022.68 and the Contractor is requesting 1 additional day be added to the contract. 2.) The Contractor removed and capped several existing irrigation lines that were encountered during the installation of a temporary road at 673 NP Ave. N. The total contract price adjustment for this work is \$140.25, the Contractor is not requesting any additional time for this work. 3.) The Contractor de-watered the basement and surrounding area at 842 NP Ave. N. to prevent the subgrade from being saturated. The total contract price adjustment for this work is \$1,265.00 and the Contractor is requesting 1 additional day be added to the contract. 4.) The Contractor broke and removed an existing sign base and controlled density fill (CDF) that was found under the old sidewalk at 723 NP Ave. N. These items were in the grade of the new sidewalk and required removal prior to the new sidewalk being placed. The total contract price adjustment for this work is \$1,700.55 and the Contractor is requesting an additional 1/2 day be added to the contract. 5.) Due to the re-routing of drain tile for the landscape planters in front of 808 NP Ave. aggregate backfill was used to prevent settlement of the future pavement here. The total contract price adjustment for this work is \$495.09 and the Contractor is requesting 1 additional day be added to the contract. 6.) The Contractor cored into an existing inlet to make drainage grades work in the south west corner of NP Ave. and Robert s St. The Contractor is not requesting any price adjustment for this work is but is requesting that an additional 1/2 day be added to the contract. 7.) The Contractor regraded and leveled out the existing landscape rock at 711 NP Ave. N. once the new sidewalk was installed here. The total contract price adjustment for this work is \$80.00, no additional time is being requested for this work. 8.) The Contractor was required to modify sewer structure ST-1.1 and corresponding storm sewer pipe due to private utilities being in conflict with the line and grade at this location. The Contractor is not requesting any price adjustment for this work is but is requesting 1 additional day be added to the contract. 9.) The Contractor was directed to use additional rebar used over the Xcel utility crossing. The total contract price adjustment for this work is \$389.23 and the Contractor is requesting an additional 1/4 day be added to the contract. 10.) The Contractor adjusted 7 private utility castings to grade in concrete that were not shown on the plans. The total contract price adjustment for this work is \$5,600.00 and the Contractor is requesting an additional 1/4 day be added to the contract. 11.) The Contractor was directed to removal and replacement 2 areas of curb & gutter that had been previously poured, this allowed for a better fit with the new ADA ramps on 7th Street. The total contract price adjustment for this work is \$975.00 and the Contractor is requesting an additional 1/2 day be added to the contract. 12.) The Contractor was directed to removal and replace an additional section of an alley that settled adjacent to a new driveway. Re-grading this area will prevent water from sitting behind the crossing plate of the new driveway here. The total contract price adjustment for this work is \$732.19 and the Contractor is requesting an additional 1/2 day be added to the contract. 13.) The Contractor was

directed to use insulation and expansion under the metal edge of the 828 NP Ave building to prevent damage to the building with future sidewalk movement due to the freeze/thaw cycles throughout the year. The total contract price adjustment for this work is \$614.90 and the Contractor is requesting an additional 1/4 day be added to the contract. 14.) The Contractor was directed to re-cut and remove additional pavement at 10th St and NP Ave to achieve a better slope for the ADA crossing here. The total contract price for this work is \$657.60 and the Contractor is requesting an additional 1/2 day be added to the contract. 15.) The Contractor poured a single step over the new sidewalk at 10 8 St N. The original step was removed during the sidewalk removals. The total contract price adjustment for this work is \$412.50 and the Contractor is requesting an additional 1/2 day be added to the contract. 16.) The Contractor was directed to remove a narrow area of existing pavement between the new sidewalk and existing lumberyard buildings at 842 NP Ave and install landscape fabric and rock in lieu of concrete due to future demolition plans. The total contract price adjustment for this work is \$1,892.32 and the Contractor is requesting an additional 1/4 day be added to the contract. 17.) Due to the manufacturer's delay of the new street light standards, the Contractor was directed to temporarily set 6 of the old street lights on the new bases until the new street lights are installed. The total contract price adjustment for this work is \$3,300.00 and the Contractor is requesting that the substantial completion for the street lights be revised to January 15, 2024. 18.) The Contractor was directed to install 3 white traffic delineators on the curb for west bound traffic at Robert's St. The total contract price adjustment for this work is \$412.50, the Contractor is not requesting any additional time for this work. The Final Completion Dates on this change order reflect the Milestone Completion Dates on the Memo.

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 (\$)
Change Order 3	14	Clean Site	LS	0	0	0	1	1	\$80.00	\$80.00
	15	Temp Pumping	LS	0	0	0	1	1	\$1,265.00	\$1,265.00
	16	Remove Pavement 10" Thick All Types	SY	0	0	0	1	1	\$657.60	\$657.60
	17	Site Grading	LS	0	0	0	1	1	\$2,022.68	\$2,022.68
	18	F&I Paving Grid	SY	0	0	0	1	1	\$389.23	\$389.23
	19	Install Salvaged Gravel 12" Thick	SY	0	0	0	1	1	\$495.08	\$495.08
	20	Clean & Seal Concrete Joints	LF	0	0	0	1	1	\$614.90	\$614.90
	21	Rem & Repl Curb & Gutter	LF	0	0	0	13	13	\$75.00	\$975.00
	22	Rem & Repl Pavement 6" Thick Reinf Conc	SY	0	0	0	1	1	\$732.19	\$732.19
	23	Rem & Repl Sidewalk 5" Thick Reinf Conc	SY	0	0	0	1	1	\$412.50	\$412.50
	25	Remove Foundation All Types	EA	0	0	0	1	1	\$1,700.55	\$1,700.55
	26	F&I Flexible Delineator	EA	0	0	0	3	3	\$137.50	\$412.50

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 (\$)
	27	Relocate Street Light	EA	0		0	6	6	\$550.00	\$3,300.00
	29	Irrigation Repair	EA	0		0	1	1	\$140.25	\$140.25
	30	F&I Rock Mulch	Ton	0		0	1	1	\$1,892.32	\$1,892.32
								Change Order 3 Sub Total		\$15,089.80
Paving	77	Casting to Grade - w/Conc	EA	14		14	7	21	\$800.00	\$5,600.00
								Paving Sub Total		\$5,600.00

Summary.

Source Of Funding	Special Assessments and State Funds-Prairie Dog
Net Amount Change Order # 3 (\$)	\$20,689.80
Previous Change Orders (\$)	\$13,903.89
Original Contract Amount (\$)	\$2,947,619.97
Total Contract Amount (\$)	\$2,982,213.66

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

CONTRACT DATES

Current Substantial Completion Date	10/2/2023	Current Final Completion Date	11/1/2023
Additional Days Substantial Completion	8	Additional Days Final Completion	8
New Substantial Completion Date	10/10/2023	New Final Completion Date	11/9/2023

Interim Completion Dates

APPROVED
For Contractor
Title

[Handwritten Signature]
Project Manager
10/18/23

APPROVED DATE
Department Head
Mayor
Attest

[Handwritten Signature]

21

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Improvement District No. BN-22-C1

Type: Change Order #5

Location: 28th, 30th & 32nd Ave. N.,
42nd St. & 43rd St.

Date of Hearing: 10/23/2023

<u>Routing</u>	<u>Date</u>
City Commission	<u>10/30/2023</u>
PWPEC File	<u>X</u>
Project File	<u>Jason Leonard</u>

The Committee reviewed the accompanying correspondence from Project Manager, Jason Leonard, regarding Change Order #5 in the amount of \$39,858.72 for additional work.

Staff is recommending approval of Change Order #5 in the amount of \$39,858.72, bringing the total contract amount to \$18,806,835.04.

On a motion by Steve Dirksen, seconded by Steve Sprague, the Committee voted to recommend approval of Change Order #5 to Dakota Underground.

RECOMMENDED MOTION

Concur with the recommendation of PWPEC and approve Change Order #5 in the amount of \$39,858.72, bringing the total contract amount to \$18,806,835.04 to Dakota Underground.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: WW & Special Assessments


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

COMMITTEE

	<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Unanimous</u>
				<u> <input checked="" type="checkbox"/> </u>
Tim Mahoney, Mayor	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Nicole Crutchfield, Director of Planning	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Steve Dirksen, Fire Chief	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Brenda Derrig, Assistant City Administrator	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Ben Dow, Director of Operations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Steve Sprague, City Auditor	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Tom Knakmuhs, City Engineer	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Susan Thompson, Finance Director	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

ATTEST:

C: Kristi Olson



 Tom Knakmuhs, P.E.
 City Engineer

Memorandum

To: Members of PWPEC
From: Jason Leonard, Project Engineer
Date: October 20, 2023
Re: Improvement District No. BN-22-C1 – Change Order #5

Background:

Improvement District No. BN-22-C1 is for Sanitary Sewer, Water Main, Storm Sewer, Paving & Incidentals on 28th Avenue North, 30th Avenue North, 32nd Avenue North, 42nd Street North and 43rd Street North in the Laverne's 2nd Addition.

32nd Avenue North adjacent to the new pond between 43rd Street North and 45th Street North was a rural roadway section with ditches. Once the pond was excavated it was determined that the existing ditch should be regraded between the top of pond and 32nd Avenue North to create positive drainage and eliminate future ditch maintenance cost on the City owned pond. In addition, the Contractor completed grading work on the south and west sides of the pond between the topsoil stockpile, Cass County Drain 40 Levee, and the pond to maintain positive drainage and eliminate ponding water. All cost to complete the site grading adjacent to the newly constructed pond is \$39,858.72.

Recommended Motion:

Approve Change Order #5 in the amount of \$39,858.72 for Improvement District No. BN-22-C1.

JTL/klb
Attachment

CHANGE ORDER REPORT
NEW PAVING AND UTILITY CONSTRUCTION
IMPROVEMENT DISTRICT NO. BN-22-C1

28TH AVE N BETWEEN 41ST ST N & 45TH ST N, 30TH AVE N BETWEEN 41ST ST N &
43RD ST N, 32ND AVE N BETWEEN 41ST ST N & 42NS ST N, 42ND ST N BETWEEN
28TH AVE N & 32TH AVE N, 43RD ST N BETWEEN 28TH AVE N & 32ND AVE N

Change Order No 5 **Change Order Date** 10/20/2023
Contractor Dakota Underground Co Inc

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

EXPLANATION OF CHANGE Change Order # 5

32nd Avenue North adjacent to the new pond between 43rd Street North and 45th Street North was a rural roadway section with ditches. Once the pond was excavated it was determined that the existing ditch should be regraded between the top and pond and 32nd Avenue N to create positive drainage and eliminate future ditch maintenance cost on the City owned pond. In addition, the Contractor completed grading work on the south and west sides of the pond between the topsoil stockpile, Cass County Drain 40 Levee, and the pond to maintain positive drainage and eliminate ponding water.

Section	Line No	Item Description	Unit	Orig Cont		Prev C/O		Prev Cont		Curr C/O		Tot Cont		Unit Price (\$)	C/O Ext Price (\$)
				Qty		Qty		Qty		Qty		Qty			
Change Order 5	54	Site Grading	LS	0		0		0		0		1		\$39,858.72	\$39,858.72
Change Order 5 Sub Total													\$39,858.72	\$39,858.72	

Summary.

Source Of Funding	Special Assessment
Net Amount Change Order # 5 (\$)	\$39,858.72
Previous Change Orders (\$)	\$188,431.73
Original Contract Amount (\$)	\$18,578,544.59
Total Contract Amount (\$)	\$18,806,835.04

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

APPROVED

Jared Heller, PE

APPROVED DATE

For Contractor

Dakota Underground Company

Department Head

Title

Project Manager

Mayor

Attest

8/16/23 - 8/18/23

BN 22-C1 Description

Regrading along North 32nd Ave between Storm Lift Station and 43rd St N for positive drainage

Employee	Rate	Hours	Amount	Equipment	Rate	Hours	Amount
Marty Wokasch	\$92.25	31	\$2,859.75	(2)D6 Dozer	\$204.35	31	\$6,334.85
Benji Laudert	\$74.25	31	\$2,301.75	352 Excavator	\$230.22	31	\$7,136.82
Dennis Scott	\$78.75	31	\$2,441.25	T770 Skidsteer	\$90.49	31	\$2,805.19
Jose Perez	\$72.00	31	\$2,232.00	D5 Dozer	\$103.61	31	\$3,211.91
Nolan Niemierowicz	\$49.50	31	\$1,534.50	Pickup	\$32.72	31	\$1,014.32
Keith Kawski	\$65.25	31	\$2,022.75				
Steve Carroll	\$67.50	31	\$2,092.50				
		subtotal	\$15,484.50			Total Equipment	\$20,503.09
+ 25% profit & overhead			\$3,871.13				
		Total Labor					\$19,355.63

Material/Subs	Cost	Qty	Amount
-			\$0.00
-			\$0.00
-			
-			
-			
-			
-			
-			
-			
		subtotal	\$0.00
		+ 25% profit & overhead	\$0.00
		Total Material	\$0.00
		Total	\$39,858.72

22

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Improvement District No. PR-23-E1

Type: Change Order #1

Location: Citywide

Date of Hearing: 10/23/2023

<u>Routing</u>	<u>Date</u>
City Commission	<u>10/30/2023</u>
PWPEC File	<u>X</u>
Project File	<u>Jason Hoogland</u>

The Committee reviewed the accompanying correspondence from Project Manager, Jason Hoogland, regarding Change Order #1 in the amount of \$97,686.18 for additional work.

Staff is recommending approval of Change Order #1 in the amount of \$97,686.18, bringing the total contract amount to \$3,871,196.78.

On a motion by Steve Dirksen, seconded by Steve Sprague, the Committee voted to recommend approval of Change Order #1 to Border States Paving.

RECOMMENDED MOTION

Concur with the recommendation of PWPEC and approve Change Order #1 in the amount of \$97,686.18, bringing the total contract amount to \$3,871,196.78 to Border States Paving.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: Sales Tax & Special Assessments


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

COMMITTEE

	<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Unanimous</u>
				<u>✓</u>
Tim Mahoney, Mayor	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Nicole Crutchfield, Director of Planning	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Steve Dirksen, Fire Chief	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Brenda Derrig, Assistant City Administrator	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Ben Dow, Director of Operations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Steve Sprague, City Auditor	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Tom Knakmuhs, City Engineer	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Susan Thompson, Finance Director	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

ATTEST:

C: Kristi Olson


 Tom Knakmuhs, P.E.
 City Engineer

Memorandum

To: Members of PWPEC
From: Jason Hoogland, Project Manager
Date: October 16, 2023
Re: Improvement Dist. No. PR-23-E1 – Change Order #1

Background:

Improvement Dist. No. PR-23-E1 is a project to do a mill & overlay on asphalt streets in four areas of the City.

Border States Paving is the Prime Contractor.

Change Order #1 is for adding the following items to the project and updating quantities on the project.

- Section 3 – Repair Manhole on 31st St. S.
- Section 3 – Adjust Brick Mail Box. (paid under Special Item A)
- Section 3 – Adjust quantities to what was measured in the field.

This change order is for \$97,686.18. The original contract amount is \$3,773,510.60. With the change order, the new amount is \$3,871,196.78. This project is paid for by 50% Special Assessment and 50% City funds.

Recommended Motion:

Staff recommends approval of Change Order #1 in the amount of \$97,686.18 for Improvement District No. PR-23-E1.

Attachments



CHANGE ORDER REPORT
ASPHALT MILL & OVERLAY
IMPROVEMENT DISTRICT NO. PR-23-E1

SECTION 1 - 7TH AVE S TO 13TH AVE S BETWEEN 45TH ST S TO 52ND ST S,
SECTION 2 - 17TH AVE S TO 21ST AVE S BETWEEN 45TH ST S TO 52ND ST S,
SECTION 3 - 23RD AVE S TO 32ND AVE S BETWEEN 25TH ST S TO 36TH ST. S,
SECTION 4 - 40TH AVE S TO 46TH AVE S BETWEEN TIMBERLINE DR. S TO 36TH ST S

Change Order No 1 **Change Order Date** 10/13/2023
Contractor Border States Paving 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 Change Order # 1

Remove concrete diamond around manhole casting to lower casting. Adjust brick mail box. (Paid under Special Bid Item A) Adjust quantities to what was measured in the field.

Section	Line No	Item Description	Unit	Orig Cont Qty	Prev C/O Qty	Prev Cont Qty	Curr C/O Qty	Tot Cont Qty	Unit Price (\$)	C/O Ext Price (\$)
Section 3	47	Adjust Curb & Gutter - Mud/Sand Jack	LF	3000	3000	3000	2190	5190	\$15.80	\$34,602.00
	48	Rem & Repl Curb & Gutter	LF	2000	2000	2000	500	2500	\$72.50	\$36,250.00
	51	Adjust Driveway - Mud/Sand Jack	SF	2000	2000	2000	4844	6844	\$4.20	\$20,344.80
				Section 3 Sub Total						\$91,196.80
Change Order 1	86	Repair Manhole	EA	0	0	0	1	1	\$5,389.38	\$5,389.38
	87	Special Bid Item A	LS	0	0	0	1	1	\$1,100.00	\$1,100.00
				Change Order 1 Sub Total						\$6,489.38

Summary

Source Of Funding	sales tax and special assessments
Net Amount Change Order # 1 (\$)	\$97,686.18
Previous Change Orders (\$)	\$0.00
Original Contract Amount (\$)	\$3,773,510.60
Total Contract Amount (\$)	\$3,871,196.78

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

APPROVED
 For Contractor
 Title

Joel Pava
 Border States Paving Inc
 Area Manager

APPROVED DATE
 Department Head
 Mayor
 Attest

TRC



Change Order

Date: 10/10/2023

Change Order:

BSPI Job #: 2923

4101 32nd St. N
 Fargo, ND 58108-2586
 Phone: 701-237-4860 Fax: 701-237-0233
 www.borderstatespaving.com

Change Order For:
 PR-23-E1
 City of Fargo
 ATTN: Jason Hoogland

Discription	Unit	Quantity	Unit Price	Item Price
Manholes on 31st St - BSP Work				
Foreman/Pickup	HRS	11	\$132.00	\$1,452.00
Operator	HRS	11	\$93.50	\$1,028.50
Mini Excavator	HRS	11	\$82.50	\$907.50
Skidsteer	HRS	11	\$66.00	\$726.00
1 Ton Truck	HRS	6	38.50	\$231.50
Dump Trailer	HR	6	\$20.00	\$120.00
Mud Pumpers - Adjust Mailbox	LS	1	\$1,000.00	\$1,000.00
BSP Mark UP on Mudpumpers 10%	LS	1	\$100.00	\$100.00
Hancock Invoice	LS	1	\$739.11	\$739.11
BSP Mark UP on Hancock invoice 25%	LS	1	\$184.77	\$184.77
			Total:	\$6,489.38

Notes:
 PR-23-E1 - Manholes on 31st and Mailbox correction by mud pumpers.

Total: \$6,489.38

Acceptance:

Date: _____

Name/Title: _____

Signature: _____





Going Strong For 3 Generations!

KE: PR-23-E1

Invoice

Date	Invoice #
8-11-23	1701

Bill To

City OF Fargo

Border States
 4101 32nd St N
 Fargo, ND 58102

Terms

Pay on Completion

Description	Amount
Adjusted Mail Box at 2818 PARKVIEW CIR. Fargo curb job Border States PR-23-E1	1,000. ⁰⁰
Total Due	1,000.⁰⁰

Thank You for your business!
 Please make checks payable to Mudpumpers Mudjacking
 Mailing Address: PO Box 611 Moorhead, MN 56561



Hancock Concrete Moorhead Yard
 7063 28th Ave So
 Glyndon MN 56547
 Phone: (320) 392-5207
 Fax: (320) 392-5155

INVOICE: 1813179

Invoice Date: 8/17/2023

Page: 1

www.HancockConcrete.com

BILL TO:
 21444
 Border States Paving
 PO Box 2586
 Fargo ND 58108

SHIP TO:
 455390
 #3123 FARGO
 PICKED UP DANA L
 GLYNDON YARD
 GLYNDON MN

Load Num.	Terms	Ship Date	Entered By	Truck Driver
192519	Net 30 Days	8/17/2023		PICK-UP

Project Structure	Order # Line #	Item Description	Quantity Units	Alt. Qty. Units	Alt. Unit Price	Ext. Price
HW-081623-1 58X6 COVER	666147 2.00	M048C-05806-27E MH,48",COVER,58"X6",27"ECC	1.00 EA	1.00 EA	\$483.5500 EA	\$483.55
HW-081623-1 MASTIC	666147 3.00	84-00563 MASTIC,3/4x14.5,CS-102,BX=116' 14.5FT/RL / 70 BX PER Pallet	1.00 BX	8.00 RL	\$25.6000 RL	\$204.80

31-23
Job 33-79?
Doc
6070-6

The materials itemized in this shipment are certified to be in compliance with the applicable AASHTO and/or ASTM requirements, North Dakota Department of Transportation Specifications and the Project Plans, including the 'Buy America' provisions.

Authorized Signature and Date

Please provide your Invoice Number or Account Number on your payment. Thank you. Please note there will be a 2.09% surcharge for credit card processing. BY ACCEPTANCE OF THE GOODS TO WHICH THIS INVOICE RELATES, PURCHASER ACKNOWLEDGES AND AGREES THAT IT HAS HAD THE OPPORTUNITY TO REVIEW THOSE TERMS AND CONDITIONS OF HANCOCK CONCRETE PRODUCTS, LLC AVAILABLE ONLINE AT HANCOCKCONCRETE.COM/TERMS , AND THE PARTIES INTEND TO BE BOUND BY SUCH TERMS AND CONDITIONS, WHICH ARE HEREBY INCORPORATED BY REFERENCE. A HARD COPY OF SUCH TERMS AND CONDITIONS WILL BE PROVIDED BY HANCOCK CONCRETE PRODUCTS, LLC TO PURCHASER UPON REQUEST.	Sales Amount	USD \$688.35
	Sales Tax	\$50.76
	Total	USD \$739.11

Remit To: Hancock Concrete Products
 PO Box 744737
 Los Angeles, CA 90074-4737

REPORT OF ACTION

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

23

Improvement District No. UR-23-A1

Type: Change Order #2

Location: Citywide

Date of Hearing: 10/23/2023

<u>Routing</u>	<u>Date</u>
City Commission	<u>10/30/2023</u>
PWPEC File	<u>X</u>
Project File	<u>Roger Kluck</u>

The Committee reviewed the accompanying correspondence from Project Manager, Roger Kluck, regarding Change Order #2 in the amount of \$26,718.14 for additional work.

Staff is recommending approval of Change Order #2 in the amount of \$26,718.14, bringing the total contract amount to \$414,551.05.

On a motion by Steve Dirksen, seconded by Steve Sprague, the Committee voted to recommend approval of Change Order #2 to SJ Louis Construction.

RECOMMENDED MOTION

Concur with the recommendation of PWPEC and approve Change Order #2 in the amount of \$26,718.14, bringing the total contract amount to \$414,551.05 to SJ Louis Construction.

PROJECT FINANCING INFORMATION:

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


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

COMMITTEE

	<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Unanimous</u>
				<u>✓</u>
Tim Mahoney, Mayor	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Nicole Crutchfield, Director of Planning	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Steve Dirksen, Fire Chief	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Brenda Derrig, Assistant City Administrator	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Ben Dow, Director of Operations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Steve Sprague, City Auditor	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Tom Knakmuhs, City Engineer	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Susan Thompson, Interim Finance Director	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

ATTEST:

C: Kristi Olson


Tom Knakmuhs, P.E.
City Engineer

Memorandum

To: Members of PWPEC

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

CC: Jody Bertrand, Division Engineer;

Date: August 25, 2023

Re: Project #UR-23-A1 Utility Rehab/Reconstruction Various Sites
Change Order #2

This project was bid June, 2023 and was awarded to SJ Louis Construction, Inc. The project repaired storm sewer pipe by lining and repaired storm sewer structures. During cleaning of pipes in Area 6, pipe joints were found to be severely deteriorated and eroded and would not permit camera to pass to verify cleaning. Engineer determined these joints should be dug up and repaired prior to lining. The storm pond in Area 1 had areas disturbed during lining cleanup that required topsoil to be imported and the area re-seeded.

Engineering has reviewed the request for Change Order #2 in the amount of \$26,718.14 and believe the prices are reasonable. Funding for this project will come from the Storm Sewer Utility Fund and Special Assessments.

Recommended Motion:

Approve Change Order #2 in the amount of \$\$26,718.14 to SJ Louis Construction, Inc.

Attachment

CHANGE ORDER REPORT
UTILITY REHAB/RECONSTRUCTION
IMPROVEMENT DISTRICT NO. UR-23-A1

AREA 1 KIRSTEN LANE AREA FROM 25TH ST S TO 27 ST S. AREA 2A 14 AVE S 14
 1/2 ST S TO 15 ST S AND 14 1/2 ST S FROM 14 AVE S AND NORTH 1/2 BLOCK. AREA
 2B 14 AVE S FROM 15 ST S TO 16 ST S AND 15 ST S FROM 14 AVE S AND NORTH
 1/2 BLOCK.

Change Order No 2 **Change Order Date** 10/16/2023
Contractor SJ Louis Construction, 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 Change Order # 2

Pipe repair costs in area 2. Delete bid item 7 revised in CO 1. Topsoil and seed area in Area 1 Pond due to damage during lining.

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 (\$)
Site 1	7	F&I Pipe Liner 18" Dia Gravity CIPP	LF	80		80	-80	0	\$303.00	-\$24,240.00
	9	Seeding Type B	SY	150		150	755	905	\$8.00	\$6,040.00
				Site 1 Sub Total						-\$18,200.00
Change Order 2	22	Repair Pipe 12" Dia	EA	0		0	1	1	\$22,973.55	\$22,973.55
	23	Repair Pipe 15" Dia	EA	0		0	1	1	\$20,380.59	\$20,380.59
	24	Topsoil - Import Special	CY	0		0	17	17	\$92.00	\$1,564.00
				Change Order 2 Sub Total						\$44,918.14

Summary.

Source Of Funding	Special assessments and storm sewer utility
Net Amount Change Order # 2 (\$)	\$26,718.14
Previous Change Orders (\$)	\$29,108.91
Original Contract Amount (\$)	\$358,724.00
Total Contract Amount (\$)	\$414,551.05

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

APPROVED *Jennifer Meyers*
 For Contractor SJ Louis
 Title Project Manager

APPROVED DATE *T-10-22*
 Department Head
 Mayor
 Attest

24

October 18, 2023

Board of City Commissioners
City of Fargo
200 North Third Street
Fargo, ND 58102

Re: Permanent & Temporary Easements – Improvement District #BN-23-F1

Dear Commissioners:


Accompanying for City Commission review and approval are a Permanent Easement (Lift Station) & Temporary Construction Easement from Dakota Commerce Center 5 LLC in association with Improvement District #BN-23-F1.

RECOMMENDED MOTION:

Approve Permanent Easement & Temporary Construction Easement from Dakota Commerce Center 5 LLC.

Please return the signed originals.

Respectfully submitted,



Shawn G. Bullinger
Land Acquisition Specialist

C: Nathan Boerboom

PERMANENT EASEMENT
(Lift Station)

KNOW ALL MEN BY THESE PRESENTS that **DAKOTA COMMERCE CENTER 5 LLC**, a Delaware limited liability company, hereinafter referred to as “Grantor”, for and in consideration of the sum of One and no/100 Dollars (\$1.00) and other valuable consideration, to them in hand paid the receipt whereof is hereby acknowledged, **HEREBY GRANTS UNTO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA**, a municipal corporation, its successors and assigns, hereinafter referred to as “Grantee”, a permanent and perpetual easement over, upon and in the land hereinafter described for the purpose of constructing, operating, maintaining and repairing a sanitary sewer lift station, together with the customary appurtenances, said tracts being more particularly described as follows:

A tract of land in Lot 7, Block 1 of **DAKOTA COMMERCE CENTER NORTH ADDITION** to the City of Fargo, Cass County, North Dakota more particularly described as follows:

The northerly 60.00 feet of the southerly 70.00 feet of the westerly 60.00 feet of the easterly 70.00 feet of said Lot 7.

Said tract contains 3,600 square feet, more or less.

The easement area is pictorially represented on Exhibit A attached hereto and incorporated herein by reference.

Grantor, its successors and assigns, hereby covenant to and with Grantee that Grantee's officers, contractors, agents and employees may at any and all times when necessary or convenient to do so, go over and upon said above-described tract of land and perform any and all acts necessary or convenient to carry into effect the purpose for which the grant is made.

Grantor, its successors and assigns, further agrees that they will not disturb, injure, molest or in any manner interfere with said sanitary sewer lift station and customary appurtenances, or with material for laying, maintaining, operating or repairing the same, in, over or upon the above described premises, and Grantor expressly warrants and states that no buildings, trees or other obstacles of any kind shall be placed or located upon the tract so as to interfere in any manner with the construction, operation, maintenance or repair of said sanitary sewer lift station, including customary appurtenances, provided that Grantee, at its own expense, shall refill any excavation it makes and level the ground thereafter, leaving the premises in as good condition as it was prior to the time of constructing of said storm sewer lift station and customary appurtenances was begun.

IN WITNESS WHEREOF, Grantor has set their hands and caused this instrument to be executed this ____ day of _____, 2023.

[Signature pages to follow]

IN WITNESS WHEREOF, Grantor has set his hand and caused this instrument to be executed this 9 day of October, 2023.

GRANTOR:

DAKOTA COMMERCE CENTER 5 LLC




By: Paul Hyde
Its: President

STATE OF Minnesota)
COUNTY OF Hennepin)

On this 9th day of October, 2023, before me, a notary public in and for said county and state, personally appeared Paul Hyde to me known to be the President of **DAKOTA COMMERCE CENTER 5 LLC**, and executed the within and foregoing instrument, and acknowledged the same.

(SEAL)




Notary Public
My Commission Expires: 1/31/25

GRANTEE:

City of Fargo, North Dakota, a North Dakota
Municipal Corporation

Timothy J. Mahoney, Mayor

ATTEST:

Steve Sprague, City Auditor

STATE OF NORTH DAKOTA)
)
COUNTY OF CASS)

On this _____ day of _____, 2023, before me a notary public in and for said county and state, personally appeared Timothy J. Mahoney and Steve Sprague, known to me to be the Mayor and City Auditor, respectively, of the city of Fargo, the Grantee described in and that executed the within and foregoing instrument, and acknowledged to me that said Grantee executed the same.

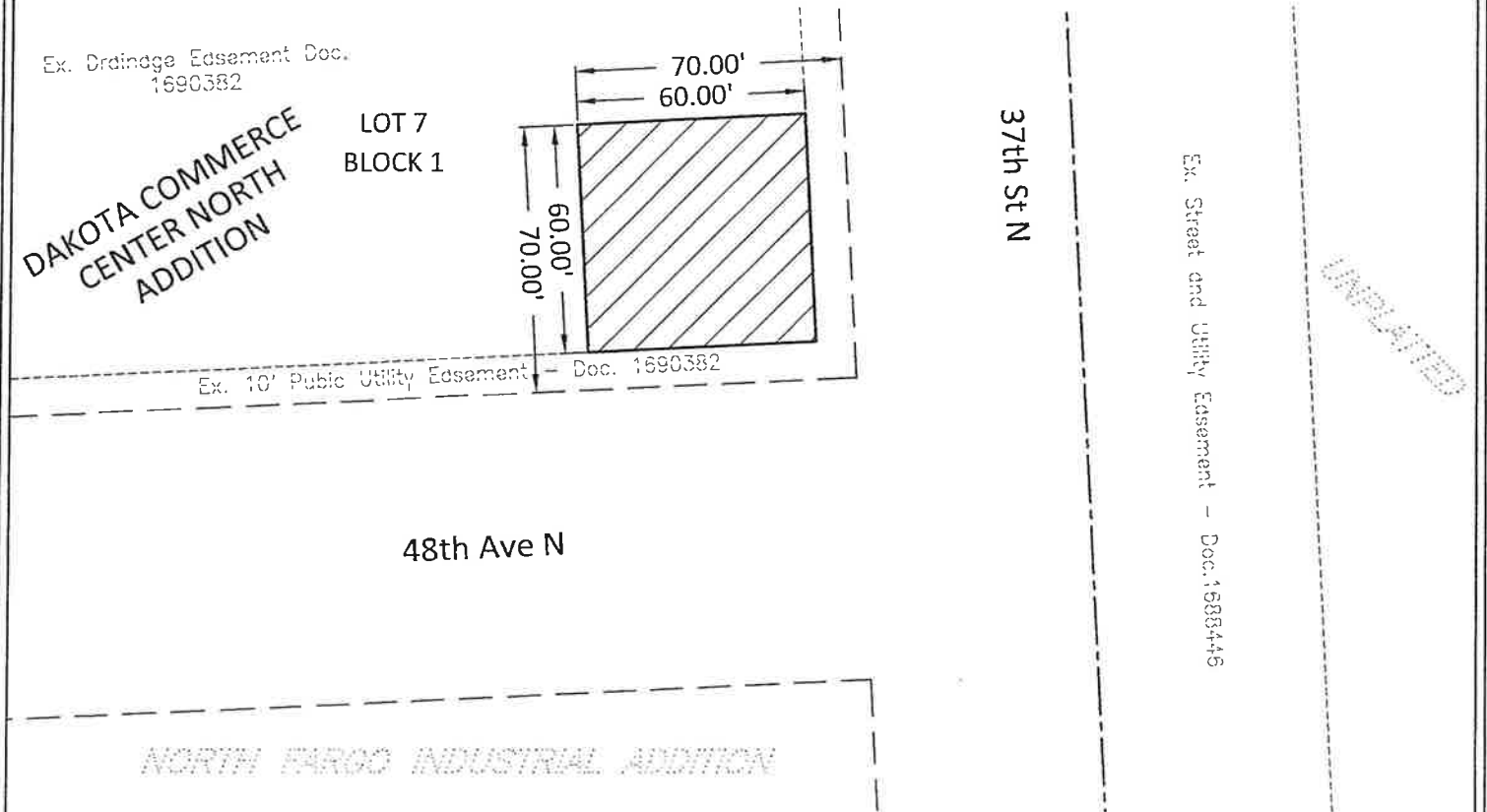
(SEAL)

Notary Public
My Commission Expires:

The legal description was prepared by:
Brent W. Wacha (LS-5068)
Professional Land Surveyor
City of Fargo – Engineering Dept.
225 4th St N
Fargo ND 58102
(701) 476-6796

This document prepared by:
Kasey D. McNary (ND# 06590)
Assistant City Attorney
SERKLAND LAW FIRM
10 Roberts Street N | PO Box 6017
Fargo, ND 58102
(701) 232-8957

EXHIBIT A

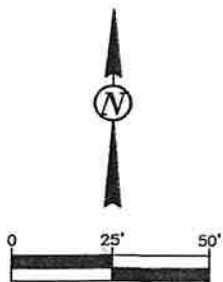


Description:

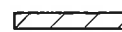



A tract of land in Lot 7, Block 1 of DAKOTA COMMERCE CENTER NORTH ADDITION to the City of Fargo, Cass County, North Dakota more particularly described as follows:

The northerly 60.00 feet of the southerly 70.00 feet of the westerly 60.00 feet of the easterly 70.00 feet of said Lot 7.

Said tract contains 3,600 square feet, more or less.



LEGEND

-  PERMANENT EASEMENT
-  EXISTING RIGHT-OF-WAY
-  EXISTING EASEMENT
-  SECTION LINE



BEARINGS BASED ON
CITY OF FARGO GROUND COORDINATE
SYSTEM, DECEMBER 1992

PERMANENT EASEMENT

LOT 7, BLOCK 1, DAKOTA COMMERCE CENTER NORTH ADDITION
CITY OF FARGO, CASS COUNTY, NORTH DAKOTA



ENGINEERING DEPT.

DRAWN BY: BWV

APPROVED BY: BWV

DATE: AUGUST 2, 2023

SHEET 1 OF 1

EASEMENT
(Temporary Construction Easement)

KNOW ALL MEN BY THESE PRESENTS that **DAKOTA COMMERCE CENTER 5 LLC**, a Delaware limited liability company, hereinafter referred to as “Grantor”, for and in consideration of the sum of One and no/100 Dollars (\$1.00) and other valuable consideration, to it in hand paid the receipt whereof is hereby acknowledged, **HEREBY GRANTS UNTO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA**, a municipal corporation, its successors and assigns, hereinafter referred to as “Grantee”, a temporary construction easement under, over, upon and in the land hereinafter described for the purpose of constructing and installing a sanitary sewer lift station, together with the customary appurtenances, together with the customary appurtenances, said tract being described as follows:

A tract of land in Lot 7, Block 1 of DAKOTA COMMERCE CENTER NORTH ADDITION to the City of Fargo, Cass County, North Dakota more particularly described as follows:

The southerly 170.00 feet of the easterly 170.00 feet of said Lot 7,

LESS

The northerly 60.00 feet of the southerly 70.00 feet of the westerly 60.00 feet of the easterly 70.00 feet of said Lot 7.

Said tract contains 25,300 square feet, more or less.

Grantor, its successors and assigns, hereby covenants to and with Grantee that Grantee’s officers, contractors, agents and employees may at any and all times when necessary or convenient

to do so, go over and upon said above-described parcel of land and perform any and all acts necessary or convenient to carry into effect the purpose for which the grant is made.

Grantor, its successors and assigns, further agree that they will not disturb, injure, molest or in any manner interfere with said parcel to be used for constructing and installing a sanitary sewer lift station and all other construction activities during the construction phase of said project, and Grantor expressly warrants and states that no buildings, trees, shrubs or other obstacles of any kind shall be placed or located upon the parcel so as to interfere in any manner with the said parcel during the construction phase. Grantee, at its own expense, shall leave the premises in as good condition as it was prior to the time construction activities began.

This Easement shall terminate on December 31, 2024, or upon completion of construction, whichever occurs later.

[Signature pages to follow]

IN WITNESS WHEREOF, Grantor has set his hand and caused this instrument to be executed this 9 day of October, 2023.

GRANTOR:

DAKOTA COMMERCE CENTER 5 LLC



By: Paul Hyde
Its: President

STATE OF Minnesota)
COUNTY OF Hennepin)

On this 9th day of October, 2023, before me, a notary public in and for said county and state, personally appeared Paul Hyde to me known to be the President of **DAKOTA COMMERCE CENTER 5 LLC**, and executed the within and foregoing instrument, and acknowledged the same.

(SEAL)



Notary Public
My Commission Expires: 1/31/25





25

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 25, 2023

Honorable Board of City
Commissioners
City of Fargo
Fargo, ND

Re: Improvement District No. BR-24-E1

Dear Commissioners:

Bids were opened at 11:45 am on Wednesday, October 25, 2023, for Paving and Utility Rehab/Reconstruction, Improvement District No. BR-24-E1, located as follows: 1st Street North from 32nd Avenue to 35th Avenue.

The bids were as follows:

KPH, Inc.	\$1,340,525.95
Master Construction Co Inc	\$1,366,655.25
Key Contracting Inc	\$1,472,745.63
Dakota Underground Co Inc	\$1,540,240.52
Border States Paving Inc	\$1,619,482.06
Engineers Estimate	\$1,344,638.60

Private financial security is not needed.

8 protests were received amounting to 27% of the Improvement District.

This office recommends that the protests be declared insufficient and the contract be awarded to KPH, Inc. in the amount of \$1,340,525.95 as the lowest and best bid.

Sincerely,

Thomas Knakmuhs, PE
City Engineer



Engineer's Statement Of Cost
Improvement District # BR-24-E1
Paving And Utility Rehab/Reconstruction

1st St. N. from 32nd Ave. to 35th Ave.

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 Thomas Knakmuhs, do hereby certify as follows:

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

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

Paving and Utility Rehab/Reconstruction Improvement District # BR-24-E1 of the City of Fargo, North Dakota.

Line	Description	Unit	Quantity	Unit Price (\$)	Amount (\$)
Sanitary Sewer					
1	Clean Pipe All Sizes All Types	LF	1,100.00	3.00	3,300.00
2	Connect Sewer Service	EA	30.00	1,000.00	30,000.00
3	F&I Pipe w/GB SDR 26 - 6" Dia PVC	LF	630.00	96.00	60,480.00
4	Bore Pipe SDR 26 - 6" Dia PVC	LF	88.00	110.00	9,680.00
5	F&I Flat MH Cover 8" Thick Reinf Conc	EA	3.00	1,650.00	4,950.00
Sanitary Sewer Total					108,410.00
Water Main					
6	Furnish Temp Water Svc	EA	30.00	700.00	21,000.00
7	Remove Pipe All Sizes All Types	LF	1,128.00	45.00	50,760.00
8	Remove Pipe Asbestos Cement	LF	1,128.00	55.00	62,040.00
9	Rem & Repl CS & Box 1" Dia	EA	30.00	950.00	28,500.00
10	Rem & Repl CS & Box 1.5" Dia	EA	3.00	1,150.00	3,450.00
11	Connect Pipe to Exist Pipe	EA	3.00	2,400.00	7,200.00
12	Connect Water Service	EA	30.00	900.00	27,000.00
13	F&I Hydrant	EA	5.00	7,000.00	35,000.00
14	F&I Hydrant Ext. 6" High	EA	1.00	1,500.00	1,500.00
15	F&I Gate Valve 6" Dia	EA	5.00	2,500.00	12,500.00
16	F&I Gate Valve 8" Dia	EA	3.00	3,300.00	9,900.00
17	F&I Fittings C153 Ductile Iron	LB	790.00	10.00	7,900.00
18	F&I 1-1/4" Trench Found Rock 4" thru 12" Dia	LF	500.00	0.01	5.00
19	F&I Pipe w/GB C900 DR 18 - 6" Dia PVC	LF	43.00	100.00	4,300.00

Line	Description	Unit	Quantity	Unit Price (\$)	Amount (\$)
20	F&I Pipe w/GB C900 DR 18 - 8" Dia PVC	LF	1,110.00	115.00	127,650.00
21	F&I Pipe w/GB C900 DR 18 - 10" Dia PVC	LF	9.00	125.00	1,125.00
22	F&I Pipe w/GB 1" Dia Water Service	LF	641.00	66.00	42,306.00
23	F&I Pipe w/GB 1.5" Dia Water Service	LF	60.00	71.00	4,260.00
24	Bore Pipe 1" Dia Water Service	LF	60.00	84.00	5,040.00
Water Main Total					451,436.00
Storm Sewer					
25	Remove Manhole	EA	1.00	1,000.00	1,000.00
26	Remove Inlet	EA	3.00	700.00	2,100.00
27	Remove Pipe All Sizes All Types	LF	46.00	25.00	1,150.00
28	Connect Pipe to Exist Pipe	EA	4.00	2,500.00	10,000.00
29	F&I Inlet - Manhole (MHI) 4' Dia Reinf Conc	EA	1.00	4,100.00	4,100.00
30	F&I Inlet - Single Box (SBI) Reinf Conc	EA	3.00	2,800.00	8,400.00
31	F&I Pipe w/GB 12" Dia Reinf Conc	LF	19.00	115.00	2,185.00
32	F&I Pipe w/GB 15" Dia Reinf Conc	LF	32.00	140.00	4,480.00
33	F&I Pipe w/GB 18" Dia Reinf Conc	LF	3.00	200.00	600.00
Storm Sewer Total					34,015.00
Paving					
34	Traffic Control - Type 1	LS	1.00	40,000.00	40,000.00
35	Stormwater Management	LS	1.00	5,500.00	5,500.00
36	Temp Construction Entrance	EA	2.00	2,850.00	5,700.00
37	Inlet Protection - New Inlet	EA	4.00	260.00	1,040.00
38	Inlet Protection - Existing Inlet	EA	6.00	215.00	1,290.00
39	Remove Pavement All Thicknesses All Types	SY	4,040.00	12.00	48,480.00
40	Remove Curb & Gutter	LF	2,260.00	9.00	20,340.00
41	Remove Sidewalk All Thicknesses All Types	SY	1,375.00	9.00	12,375.00
42	Remove Driveway All Thicknesses All Types	SY	730.00	9.00	6,570.00
43	Rem & Repl Casting - Self Leveling	EA	3.00	2,500.00	7,500.00
44	Casting to Grade - w/Conc	EA	4.00	1,800.00	7,200.00
45	Casting to Grade - no Conc	EA	3.00	300.00	900.00
46	GV Box to Grade - Blvd	EA	5.00	300.00	1,500.00
47	GV Box to Grade - no Conc	EA	3.00	800.00	2,400.00
48	F&I Casting Water Service	EA	11.00	300.00	3,300.00
49	Subgrade Preparation	SY	4,435.00	3.50	15,522.50
50	Boulevard Grading	SY	2,010.00	8.00	16,080.00

Line	Description	Unit	Quantity	Unit Price (\$)	Amount (\$)
51	F&I Woven Geotextile	SY	4,435.00	3.50	15,522.50
52	F&I Class 5 Agg - 8" Thick	SY	4,435.00	14.00	62,090.00
53	F&I Edge Drain 4" Dia PVC	LF	2,260.00	9.00	20,340.00
54	F&I Curb & Gutter Mountable (Type I)	LF	2,260.00	27.00	61,020.00
55	F&I Sidewalk 4" Thick Reinf Conc	SY	1,105.00	60.00	66,300.00
56	F&I Sidewalk 6" Thick Reinf Conc	SY	30.00	68.00	2,040.00
57	F&I Det Warn Panels Cast Iron	SF	64.00	60.00	3,840.00
58	F&I Driveway 6" Thick Reinf Conc	SY	730.00	70.00	51,100.00
59	F&I Asphalt Pavement FAA 43 w/ PG58H-34	Ton	1,375.00	105.00	144,375.00
60	Seeding Type C	SY	2,010.00	3.00	6,030.00
61	Mulching Type 1 Hydro	SY	2,010.00	3.00	6,030.00
62	Weed Control Type B	SY	2,010.00	0.10	201.00
63	Tree Protection	EA	33.00	150.00	4,950.00
64	Irrigation Repair	EA	10.00	1,000.00	10,000.00
65	Temp Mailbox	LS	1.00	3,000.00	3,000.00
66	Relocate Mailbox	EA	22.00	600.00	13,200.00
Paving Total					665,736.00

Street Lights

67	Remove Street Light	EA	6.00	860.00	5,160.00
68	Remove Base	EA	6.00	1,600.00	9,600.00
69	Remove Pull Box	EA	1.00	1,000.00	1,000.00
70	F&I Pull Box	EA	1.00	2,650.00	2,650.00
71	F&I Base 5' Deep Reinf Conc	EA	6.00	2,150.00	12,900.00
72	F&I Innerduct 1.5" Dia	LF	1,015.00	13.00	13,195.00
73	F&I Conductor #6 USE Cu	LF	3,045.00	2.75	8,373.75
74	F&I Luminaire Type A	EA	6.00	1,300.00	7,800.00
75	F&I Light Standard Type A	EA	6.00	3,200.00	19,200.00
Street Lights Total					79,878.75

Signing

76	F&I Sign Assembly & Anchor	EA	3.00	175.00	525.00
77	F&I Diamond Grade Cubed	SF	20.20	26.00	525.20
Signing Total					1,050.20
Total Construction in \$					1,340,525.95

Engineering	10.00%	134,052.60
Admin	4.00%	53,621.04
Legal	3.00%	40,215.78
Interest	4.00%	53,621.04
Contingency	5.00%	67,026.30
Total Estimated Costs		1,689,062.71
Special Assessments		362,420.08
State Funds - Other ND		960,237.06
Utility Funds - Water - 501		229,808.97
Utility Funds - Wastewater - 521		136,596.60
Unfunded Costs		0.00

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

Date: 10/25/2023



Thomas Knakmuhs

City Engineer



Residents of 1st St N. from 32nd Ave N to 35th Ave N
Improvement District No. BR-24-E

City of Fargo,
City Engineering, Special Assessment Commission,
City of Fargo Auditor
225 4 St N
Fargo ND 58102

Date: 10/11/2023

Dear City of Fargo,

Ref: Proposed 1st St North Improvements from 32nd Avenue North to 35th Avenue North Improvement District No. BR-24-E

We are writing to OBJECT to the above proposed improvements and special assessments associated with improvements. Reasons below.

1. **Negative economic impact on affected residents/property owners.**
 - City of Fargo property tax increases (some of us received proposed increase of 8+%)
 - City of Fargo utility franchise fee increases of 2%
 - City of Fargo street and traffic light fee increases 100%
 - City of Fargo forestry fee increase of 33%
 - And now funding of this project via Special Assessments at 21+% rate for property owners (per informational meeting 10/10/23 COF funding only 16% of the project)
 - Most Fargo residents have not received comparable pay increases (i.e. City of Fargo, some employees receiving only 2% Cost-of-Living Adjustment) and some are on fixed incomes so we cannot keep up with these increasing costs the City of Fargo is imposing on us.
2. **Costs of goods and services high.** Inflation rates are high and costs of goods and services are high. Now is not the time to be bidding on these large projects, when neither the residents, *nor the City of Fargo*, have the money in their budgets to accommodate such high costs.
3. **Prior projects.** All the streets around us, including 1st St. from 35th Avenue North northbound, and 32nd Avenue North, have all been repaved in the last few years. Our portion of 1st Street North (32nd Ave. N to 35th Ave. N) is the only one that was left, or forgotten. If this would have been completed at the same time as the streets around us, the cost would have been lower.

Objection Letter
Residents of 1st St N. from 32nd Ave N to 35th Ave N
Improvement District No. BR-24-E

Yours Sincerely,

Address:	3201 1 st N.
Phone number:	701 541 1709
Names:	Steve & Lolita Dorsch
Signatures:	Steve Dorsch Lolita

Address:	3226 1 st N
Phone number:	701-781-1180
Names:	Dale Denise Hudson
Signatures:	Dale Hudson Denise Hudson

Address:	3208 1 st St N
Phone number:	701-261-3673
Names:	Nick Stralicky
Signatures:	Nick Stralicky

Address:	3207 1 st St N
Phone number:	701-799-7228
Names:	Leah & Adam Froseth
Signatures:	Leah Froseth

Address:	3313 1 st St N
Phone number:	701-361-3880
Names:	Jill & Stan Schroeder
Signatures:	Jill K. Schroeder Stan Schroeder

Address:	
Phone number:	
Names:	
Signatures:	

Objection Letter

Residents of 1st St N. from 32nd Ave N to 35th Ave N
Improvement District No. BR-24-E

Address:	3202 1 st STREET N.
Phone number:	(701) 371-1179
Names:	TONY TURNER
Signatures:	Tony Turner

Address:	3307 1 st N
Phone number:	701-429-4302
Names:	Breah & Tony Wisk
Signatures:	Breah Eckel & Tony Wisk

Address:	3467 12 th St N
Phone number:	701-412-5857
Names:	John & Kathe Fugle
Signatures:	John & Kathe Fugle

Address:	
Phone number:	
Names:	
Signatures:	

Address:	
Phone number:	
Names:	
Signatures:	

Address:	
Phone number:	
Names:	
Signatures:	

(26)

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 25, 2023

Honorable Board of City
Commissioners
City of Fargo
Fargo, ND

Re: Improvement District No. BR-24-C1

Dear Commissioners:

Bids were opened at 11:45 am on Wednesday, October 25, 2023, for Paving and Utility Rehab/Reconstruction, Improvement District No. BR-24-C1, located as follows: South Woodcrest Drive North from Lilac Lane North to Willow Road North & North Woodcrest Drive North from Willow Road North to Lilac Lane North.

The bids were as follows:

Master Construction Co Inc	\$4,897,816.25
KPH, Inc.	\$5,062,776.15
Northern Improvement Co	\$5,592,981.55
Dakota Underground Co Inc	\$5,649,680.13
Engineers Estimate	\$4,890,967.80

Private financial security is not needed.

No protests were received for the overall project, however we received a protest from three property owners protesting the installation of sidewalk on the south side of the cul-de-sac of South Woodcrest Drive North. The Engineering Department has communicated to the three property owners the process, as outlined in City Ordinance, to seek a sidewalk waiver. This office recommends that the protests be declared insufficient and the contract be awarded to Master Construction Co Inc. in the amount of \$4,897,816.25 as the lowest and best bid.

Sincerely,



Thomas Knakmuhs, PE
City Engineer



Engineer's Statement Of Cost
Improvement District # BR-24-C1
Paving And Utility Rehab/Reconstruction

South Woodcrest Drive North from Lilac Lane North to Willow Road
 North & North Woodcrest Drive North from Willow Road North to
 Lilac Lane North.

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 Thomas Knakmuhs, do hereby certify as follows:

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

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

Paving and Utility Rehab/Reconstruction Improvement District # BR-24-C1 of the City of Fargo, North Dakota.

Line	Description	Unit	Quantity	Unit Price (\$)	Amount (\$)
Sanitary Sewer					
1	Remove Pipe All Sizes All Types	LF	1,150.00	10.00	11,500.00
2	F&I Pipe w/GB SDR 26 - 6" Dia PVC	LF	1,069.00	115.00	122,935.00
3	Bore Pipe SDR 26 - 6" Dia PVC	LF	80.00	100.00	8,000.00
4	Connect Sewer Service	EA	54.00	4,000.00	216,000.00
5	Clean Pipe All Sizes All Types	LF	3,041.00	4.00	12,164.00
6	Eliminate Sewer Service	EA	1.00	3,500.00	3,500.00
Sanitary Sewer Total					374,099.00
Water Main					
7	F&I Fittings C153 Ductile Iron	LB	1,921.00	15.00	28,815.00
8	F&I Hydrant	EA	9.00	6,500.00	58,500.00
9	Connect Pipe to Exist Pipe	EA	4.00	2,100.00	8,400.00
10	Remove Pipe All Sizes All Types	LF	3,059.00	10.00	30,590.00
11	Remove Pipe Asbestos Cement	LF	1,866.00	20.00	37,320.00
12	F&I Pipe w/GB C900 DR 18 - 6" Dia PVC	LF	92.00	125.00	11,500.00
13	F&I Pipe w/GB C900 DR 18 - 8" Dia PVC	LF	2,977.00	140.00	416,780.00
14	F&I Gate Valve 6" Dia	EA	9.00	1,800.00	16,200.00
15	F&I Gate Valve 8" Dia	EA	9.00	3,525.00	31,725.00
16	Bore Pipe 1" Dia Water Service	LF	324.00	77.00	24,948.00
17	F&I Pipe w/GB 1" Dia Water Service	LF	1,297.00	96.00	124,512.00
18	Rem & Repl CS & Box 1" Dia	EA	53.00	1,400.00	74,200.00

Line	Description	Unit	Quantity	Unit Price (\$)	Amount (\$)
19	Connect Water Service	EA	53.00	820.00	43,460.00
20	Furnish Temp Water Svc	EA	53.00	500.00	26,500.00
21	F&I 1-1/4" Trench Found Rock 4" thru 12" Dia	LF	500.00	10.00	5,000.00
22	F&I Casting Water Service	EA	9.00	225.00	2,025.00
Water Main Total					940,475.00
Paving					
23	Remove Pavement All Thicknesses All Types	SY	9,241.00	8.50	78,548.50
24	Subgrade Preparation	SY	11,316.00	3.00	33,948.00
25	F&I Woven Geotextile	SY	11,316.00	2.00	22,632.00
26	F&I Class 5 Agg - 8" Thick	SY	11,316.00	15.25	172,569.00
27	F&I Edge Drain 4" Dia PVC	LF	5,942.00	11.50	68,333.00
28	F&I Curb & Gutter Mountable (Type I)	LF	5,942.00	30.00	178,260.00
29	Remove Curb & Gutter	LF	5,937.00	7.75	46,011.75
30	F&I Sidewalk 4" Thick Reinf Conc	SY	2,607.00	62.00	161,634.00
31	F&I Sidewalk 6" Thick Reinf Conc	SY	46.00	68.00	3,128.00
32	Remove Sidewalk All Thicknesses All Types	SY	2,353.00	10.00	23,530.00
33	F&I Driveway 6" Thick Reinf Conc	SY	2,470.00	74.00	182,780.00
34	Remove Driveway All Thicknesses All Types	SY	2,473.00	12.00	29,676.00
35	F&I Det Warn Panels Cast Iron	SF	90.00	60.00	5,400.00
36	F&I Asphalt Pavement FAA 43 w/ PG58H-34	Ton	3,700.00	101.00	373,700.00
37	Casting to Grade - no Conc	EA	47.00	450.00	21,150.00
38	Casting to Grade - Blvd	EA	4.00	250.00	1,000.00
39	GV Box to Grade - no Conc	EA	9.00	250.00	2,250.00
40	GV Box to Grade - Blvd	EA	9.00	200.00	1,800.00
41	Boulevard Grading	SY	9,500.00	4.00	38,000.00
42	F&I Sign Assembly & Anchor	EA	3.00	125.00	375.00
43	F&I Diamond Grade Cubed	SF	37.40	25.00	935.00
44	Remove Sign Assembly	EA	3.00	20.00	60.00
45	Rem & Repl Casting - Self Leveling	EA	10.00	1,990.00	19,900.00
46	Mill / Grind Asphalt Pvmt Along Curb	LF	271.00	12.00	3,252.00
Paving Total					1,468,872.25
Miscellaneous					
47	Mobilization	LS	1.00	150,000.00	150,000.00
48	Temp Mailbox	LS	1.00	7,000.00	7,000.00
49	Relocate Mailbox	EA	43.00	550.00	23,650.00

Line	Description	Unit	Quantity	Unit Price (\$)	Amount (\$)
50	Remove Tree	EA	10.00	900.00	9,000.00
51	Mulching Type 1 Hydro	SY	4,800.00	1.70	8,160.00
52	Seeding Type C	SY	4,800.00	2.75	13,200.00
53	Weed Control Type B	SY	4,800.00	0.10	480.00
54	Stormwater Management	LS	1.00	1,000.00	1,000.00
55	Temp Construction Entrance	EA	3.00	1,200.00	3,600.00
56	Inlet Protection - New Inlet	EA	15.00	275.00	4,125.00
57	Inlet Protection - Existing Inlet	EA	9.00	225.00	2,025.00
58	Traffic Control - Type 1	LS	1.00	10,000.00	10,000.00
59	F&I Decid Tree 1.5" Dia	EA	10.00	1,000.00	10,000.00
60	Irrigation Repair	EA	30.00	925.00	27,750.00
Miscellaneous Total					269,990.00
Flood Mitigation					
61	Rem & Repl Landscaping	LS	1.00	5,500.00	5,500.00
62	Remove Landscaping	LS	1.00	3,300.00	3,300.00
63	Remove Pipe All Sizes All Types	LF	416.00	21.00	8,736.00
64	F&I Manhole 4' Dia Reinf Conc	EA	2.00	11,000.00	22,000.00
65	F&I Pipe w/GB SDR 26 - 10" Dia PVC	LF	224.00	215.00	48,160.00
66	F&I Pipe w/GB SDR 26 - 12" Dia PVC	LF	195.00	225.00	43,875.00
67	Connect Pipe to Exist Structure	EA	4.00	2,275.00	9,100.00
68	F&I 1-1/4" Trench Found Rock 4" thru 12" Dia	LF	100.00	10.00	1,000.00
69	Remove Manhole	EA	3.00	1,500.00	4,500.00
70	Remove Inlet	EA	14.00	900.00	12,600.00
71	Remove Pipe All Sizes All Types	LF	2,569.00	21.00	53,949.00
72	Remove Pavement All Thicknesses All Types	SY	250.00	15.00	3,750.00
73	F&I Class 5 Agg - 6" Thick	SY	250.00	12.50	3,125.00
74	F&I Asphalt Pavement FAA 43 w/ PG58H-34	Ton	100.00	150.00	15,000.00
75	Remove Lift Station	EA	1.00	49,500.00	49,500.00
76	Remove Outfall	EA	2.00	25,000.00	50,000.00
77	F&I Manhole 4' Dia Reinf Conc	EA	1.00	11,000.00	11,000.00
78	F&I Manhole 5' Dia Reinf Conc	EA	8.00	12,600.00	100,800.00
79	F&I Manhole 6' Dia Reinf Conc	EA	5.00	17,400.00	87,000.00
80	F&I Manhole 7' Dia Reinf Conc	EA	2.00	19,800.00	39,600.00
81	F&I Manhole Type E Reinf Conc	EA	1.00	37,500.00	37,500.00
82	F&I Tee Manhole 60"x48" Reinf Conc	EA	1.00	18,600.00	18,600.00

Line	Description	Unit	Quantity	Unit Price (\$)	Amount (\$)
83	F&I Inlet - Single Box (SBI) Reinf Conc	EA	13.00	3,300.00	42,900.00
84	Connect Pipe to Exist Pipe	EA	1.00	2,500.00	2,500.00
85	Connect Pipe to Exist Structure	EA	3.00	2,500.00	7,500.00
86	F&I Pipe w/GB 15" Dia Reinf Conc	LF	296.00	135.00	39,960.00
87	F&I Pipe w/GB 30" Dia Reinf Conc	LF	400.00	210.00	84,000.00
88	F&I Pipe w/GB 36" Dia Reinf Conc	LF	242.00	240.00	58,080.00
89	F&I Pipe w/GB 48" Dia Reinf Conc	LF	1,218.00	485.00	590,730.00
90	F&I Pipe w/GB 60" Dia Reinf Conc	LF	216.00	620.00	133,920.00
91	F&I Pipe Liner 10" Dia 6 mm CIPP	LF	159.00	140.00	22,260.00
92	Silt Curtain	LF	125.00	30.00	3,750.00
93	Topsoil - Strip	CY	50.00	10.00	500.00
94	Topsoil - Spread	CY	50.00	10.00	500.00
95	Fill - Import	CY	75.00	40.00	3,000.00
96	Inspection Trench	CY	105.00	15.00	1,575.00
97	Seeding Type C	SY	6,600.00	1.10	7,260.00
98	Weed Control Type B	SY	6,600.00	0.10	660.00
99	Mulching Type 1 Hydro	SY	6,600.00	1.10	7,260.00
100	F&I 1-1/4" Trench Found Rock 14" thru 24" Dia	LF	100.00	5.00	500.00
101	F&I 1-1/4" Trench Found Rock 27" thru 36" Dia	LF	200.00	6.00	1,200.00
102	F&I 1-1/4" Trench Found Rock 42" thru 54" Dia	LF	500.00	7.00	3,500.00
103	F&I 1-1/4" Trench Found Rock 60" Plus Dia	LF	100.00	8.00	800.00
104	F&I Repair Band 4" thru 12" Dia	EA	2.00	1,225.00	2,450.00
Flood Mitigation Total					1,643,400.00

Street Lights

105	Remove Street Light	EA	14.00	450.00	6,300.00
106	F&I Feed Point	EA	1.00	16,200.00	16,200.00
107	Remove Feed Point	EA	4.00	1,650.00	6,600.00
108	F&I Base 5' Deep Reinf Conc	EA	17.00	1,225.00	20,825.00
109	Remove Base	EA	14.00	700.00	9,800.00
110	F&I Conductor #6 USE Cu	LF	10,635.00	2.30	24,460.50
111	F&I Innerduct 1.5" Dia	LF	3,436.00	12.25	42,091.00
112	F&I Luminaire Type A	EA	17.00	375.00	6,375.00
113	F&I Pull Box	EA	4.00	3,310.00	13,240.00
114	F&I Light Standard Type A	EA	17.00	2,775.00	47,175.00
115	F&I Conductor #2 USE Cu	LF	969.00	4.00	3,876.00

Line	Description	Unit	Quantity	Unit Price (\$)	Amount (\$)
116	F&I Innerduct 2" Dia	LF	323.00	12.50	4,037.50
Street Lights Total					200,980.00
Total Construction in \$					4,897,816.25

Engineering	6.09%	298,442.63
Admin	2.44%	119,377.05
Legal	1.83%	89,532.79
Interest	2.44%	119,377.05
Contingency	6.95%	340,560.31
Misc. Costs		80,000.00
Total Estimated Costs		5,945,106.08
Utility Funds - Street Lights - 528		253,234.80
Utility Funds - Wastewater - 521		471,364.74
Utility Funds - Water - 501		930,008.65
Special Assessments		807,629.74
Sales Tax Funds - Infrastructure - 420		1,446,633.65
Sales Tax Funds - Flood Control - 460		2,036,234.50
Unfunded Costs		0.00

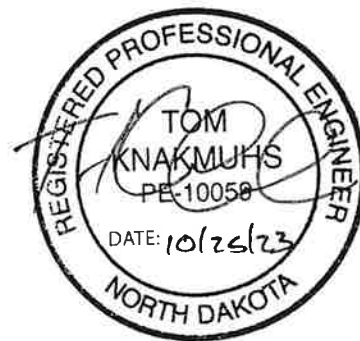
IN WITNESS THEREOF, I have hereunto set my hand and seal

Date: 10/25/2023



Thomas Knakmuhs

City Engineer



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This sheet must be completed and turned in with all City of Fargo projects. NO items will be accepted by either the City Commission Office or the City Auditor's Office without this cover sheet attached and properly filled out.

Exact, full name of improvement district as it will appear in the contract:

New Paving Construction

Improvement

District No.

PN-23-B

Call For Bids October 30, 2023

Advertise Dates November 8 & 15, 2023

Bid Opening Date January 17, 2024

Substantial Completion Date August 30, 2024

Final Completion Date September 30, 2024

N/A PWPEC Report (Part of 2023 CIP)

X Engineer's Report (Attach Copy)

X Direct City Auditor to Advertise for Bids

X Bid Quantities (Attach Copy for Auditor's Office Only)

X Notice to Property Owners (Dan Eberhardt)

N/A Supplemental Funding Language Included

Project Engineer Matthew Jennings

Phone No. (701) 241-1545

The items listed above are for use on all City projects. The additional items listed below are to be checked only when all or part of a project is to be special assessed:

X Create District (Attach Copy of Legal Description)

X Order Plans & Specifications

X Approve Plans & Specifications

X Adopt Resolution of Necessity

N/A Approve Escrow Agreement (Attach Copy for Commission Office Only)

X Assessment Map (Attach Copy for Auditor's Office Only)



**ENGINEER'S REPORT
NEW PAVING CONSTRUCTION
IMPROVEMENT DISTRICT NO. PN-23-B**

**17TH ST S BETWEEN 18TH ST S PASSED 53RD AVE S TO
DEAD END & 53RD AVE S FROM 17TH ST S TO EAST CUL-
DE-SAC**

Nature & Scope

This project is for the urbanization of a rural subdivision including the replacement of water main and the initial installation of storm sewer, asphalt pavement, curb and gutter, street lights, and sidewalks.

Purpose

To urbanize a rural subdivision that was originally constructed outside of City limits and improve the infrastructure to current standards.

Special Assessment District

All properties within the Special Assessment District will benefit from the infrastructure improvements and were determined through consideration of the longevity, consistency, and uniformity of benefiting properties within the City of Fargo. Special Assessments will be levied to each property in accordance with the City's Infrastructure Funding Policy and are subject to the approval of the Special Assessment Commission and the City Commission.

Feasibility

The estimated cost of construction is \$782,274.90. The cost breakdown is as follows:

Paving and Incidentals

Construction Cost		\$610,168.90
Fees		

Admin	4%	\$24,406.76
Contingency	5%	\$30,508.45
Engineering	10%	\$61,016.89
Interest	4%	\$24,406.76
Legal	3%	\$18,305.07

Total Estimated Cost		\$768,812.83
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Funding

Special Assessments	100.00%	\$768,812.83
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Water Main

Construction Cost		\$172,106.00
Fees		

Admin	4%	\$6,884.24
Contingency	5%	\$8,605.30
Engineering	10%	\$17,210.60
Interest	4%	\$6,884.24
Legal	3%	\$5,163.18

Total Estimated Cost		\$216,853.56
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Funding

Special Assessments	29.35%	\$63,643.93
Utility Funds - Water - 501	70.65%	\$153,209.63

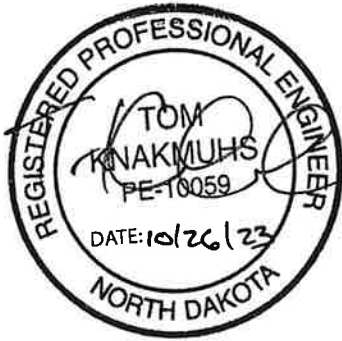
Project Funding Summary

Special Assessments	84.46%	\$832,456.76
Utility Funds - Water - 501	15.54%	\$153,209.63

Total Estimated Project Cost		\$985,666.39
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This project does not have any alternate or optional containers.

We believe this project to be cost effective.



A handwritten signature in black ink, appearing to read "T. Knakmuhs".

Thomas Knakmuhs, PE
City Engineer



**LOCATION AND COMPRISING
NEW PAVING CONSTRUCTION
IMPROVEMENT DISTRICT NO. PN-23-B**

**17TH ST S BETWEEN 18TH ST S PASSED 53RD AVE S TO
DEAD END & 53RD AVE S FROM 17TH ST S TO EAST CUL-
DE-SAC**

LOCATION:

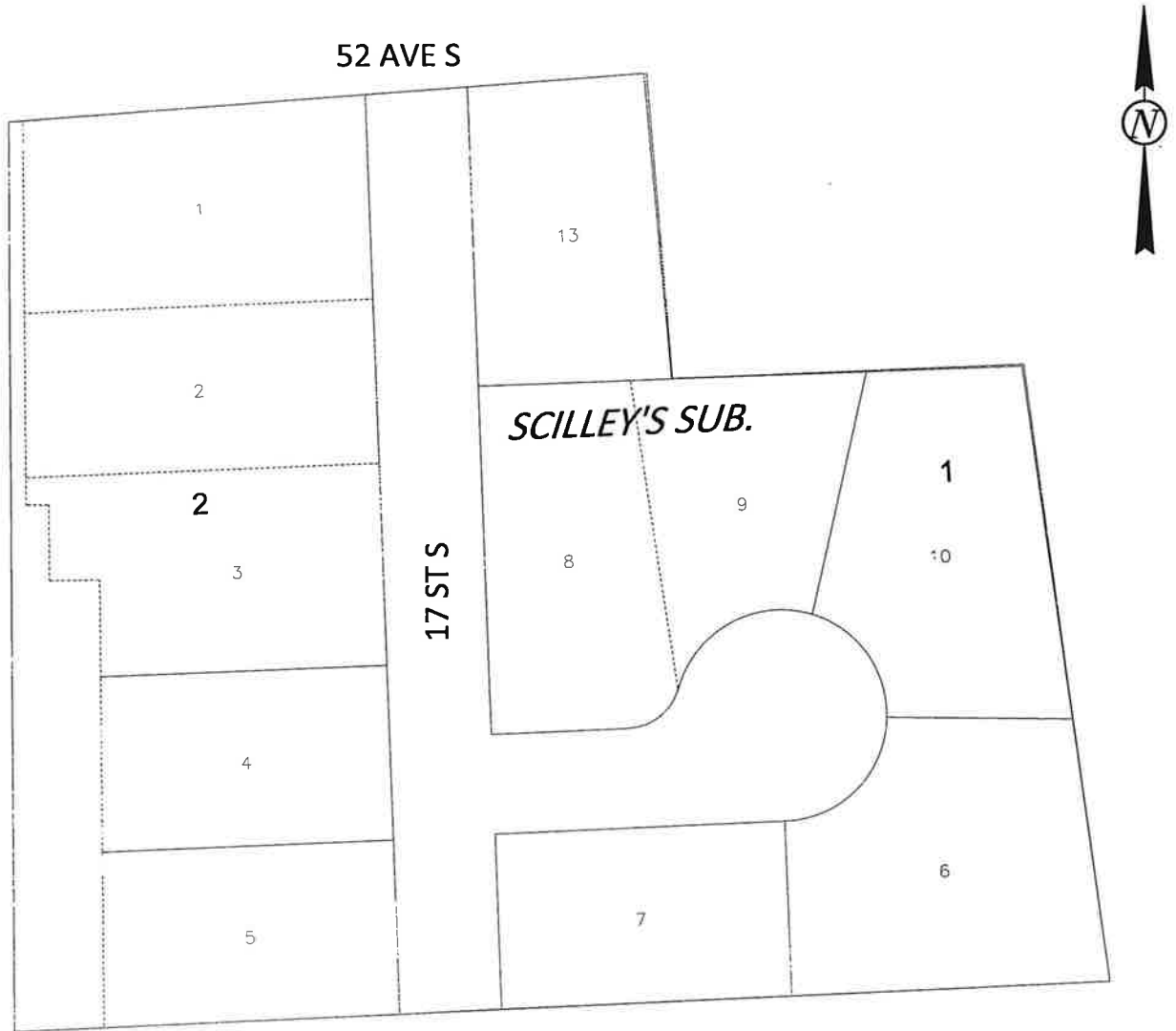
17th Street South between 18th Street South passed 53rd Avenue South to dead end & 53rd Avenue South from 17th Street South to East cul-de-sac.

COMPRISING:

Lots 1 through 5, Inclusive, Block 2, platted as Scilley's Subdivision

Lots 6 through 10, Inclusive, & Lot 13, Block 1, platted as Scilley's Subdivision

All the foregoing is located in the City of Fargo, Cass County, North Dakota.



CITY OF FARGO ENGINEERING
DEPARTMENT

LOCATION & ASSESSMENT AREA

PROJECT TITLE & INCIDENTALS

IMPROVEMENT DISTRICT NO. PN-23-B

This sheet must be completed and turned in with all City of Fargo projects. NO items will be accepted by either the City Commission Office or the City Auditor's Office without this cover sheet attached and properly filled out.

Exact, full name of improvement district as it will appear in the contract:

Paving and Utility Rehab/Reconstruction

28

Improvement
District No.

BR-24-B

Call For Bids	<u>October 30</u>	, <u>2023</u>
Advertise Dates	<u>November 8 & 15</u>	, <u>2023</u>
Bid Opening Date	<u>December 6</u>	, <u>2023</u>
Substantial Completion Date	<u>October 1</u>	, <u>2024</u>
Final Completion Date	<u>November 1</u>	, <u>2024</u>

- N/A PWPEC Report (Part of 2024 CIP)
- X Engineer's Report (Attach Copy)
- X Direct City Auditor to Advertise for Bids
- X Bid Quantities (Attach Copy for Auditor's Office Only)
- X Notice to Property Owners (Dan Eberhardt)
- N/A Supplemental Funding Language Included

Project Engineer William Bayuk

Phone No. (701) 241-1545

The items listed above are for use on all City projects. The additional items listed below are to be checked only when all or part of a project is to be special assessed:

- X Create District (Attach Copy of Legal Description)
- X Order Plans & Specifications
- X Approve Plans & Specifications
- X Adopt Resolution of Necessity
- N/A Approve Escrow Agreement (Attach Copy for Commission Office Only)
- X Assessment Map (Attach Copy for Auditor's Office Only)



ENGINEER'S REPORT
PAVING AND UTILITY REHAB/RECONSTRUCTION
IMPROVEMENT DISTRICT NO. BR-24-B
9TH ST S FROM 9TH AVE S TO 13TH AVE S, 9TH AVE S
FROM 10TH ST S TO 8TH ST S, 10TH AVE S FROM 10TH
ST S TO 9TH ST S, 11TH AVE S FROM 10TH ST S TO 8TH
ST S, 12TH AVE S FROM 10TH ST S TO 9TH ST S

Nature & Scope

This project is for the replacement of the water main, sanitary sewer services, storm inlet leads, concrete curb & gutter, asphalt pavement, and sidewalk repairs.

Purpose

The existing water main is cast iron pipe (CIP) and asbestos concrete pipe (ACP), which was installed up to 105 years ago and is being replaced with polyvinyl chloride (PVC) to minimize impacts and costs associated with breaks. The street reconstruction is necessary because the existing street section has deteriorated significantly and has exceeded its life expectancy. Reconstruction will include asphalt pavement, gravel base, curb and gutter, storm sewer inlets and leads, sanitary sewer spot repairs, driveway approaches, and sidewalk replacement. The project will be funded by a combination of City Funds (Wastewater Utility, Water Utility, and Prairie Dog) and Special Assessments to the benefiting properties. Assessments will be applied per City policy.

Special Assessment District

All properties within the Special Assessment District will benefit from the infrastructure improvements and were determined through consideration of the longevity, consistency, and uniformity of benefiting properties within the City of Fargo. Special Assessments will be levied to each property in accordance with the City's Infrastructure Funding Policy and are subject to the approval of the Special Assessment Commission and the City Commission.

Feasibility

The estimated cost of construction is \$4,959,328.40. The cost breakdown is as follows:

Paving

Construction Cost		\$2,900,380.40
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Fees

Admin	4%	\$116,015.22
Contingency	5%	\$145,019.02
Engineering	10%	\$290,038.04
Interest	4%	\$116,015.22
Legal	3%	\$87,011.41

Total Estimated Cost		\$3,654,479.31
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Funding

Special Assessments	11.86%	\$433,313.57
Utility Funds - Wastewater - 521	11.86%	\$433,313.57
State Funds - Other ND	76.29%	\$2,787,852.17

Storm Sewer

Construction Cost		\$259,120.00
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Fees

Admin	4%	\$10,364.80
Contingency	5%	\$12,956.00
Engineering	10%	\$25,912.00
Interest	4%	\$10,364.80
Legal	3%	\$7,773.60

Total Estimated Cost		\$326,491.20
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Funding

Special Assessments	50.00%	\$163,245.60
State Funds - Other ND	50.00%	\$163,245.60

Sanitary Sewer

Construction Cost		\$556,445.00
Fees		

Admin	4%	\$22,257.80
Contingency	5%	\$27,822.25
Engineering	10%	\$55,644.50
Interest	4%	\$22,257.80
Legal	3%	\$16,693.35

Total Estimated Cost		\$701,120.70
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Funding

Special Assessments	15.17%	\$106,390.23
Utility Funds - Wastewater - 521	84.83%	\$594,730.47

Water Main

Construction Cost		\$1,243,383.00
Fees		

Admin	4%	\$49,735.32
Contingency	5%	\$62,169.15
Engineering	10%	\$124,338.30
Interest	4%	\$49,735.32
Legal	3%	\$37,301.49

Total Estimated Cost		\$1,566,662.58
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Funding

Special Assessments	10.40%	\$162,933.63
Utility Funds - Water - 501	35.84%	\$561,491.58
State Funds - Other ND	53.76%	\$842,237.37

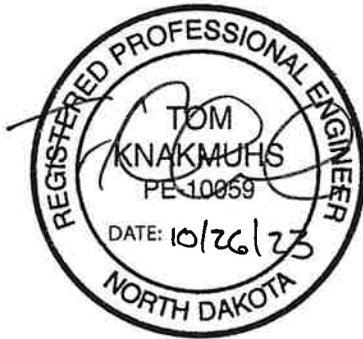
Project Funding Summary


Special Assessments	13.86%	\$865,883.03
Utility Funds - Water - 501	8.99%	\$561,491.58
Utility Funds - Wastewater - 521	16.45%	\$1,028,044.04
State Funds - Other ND	60.71%	\$3,793,335.14

Total Estimated Project Cost		\$6,248,753.79
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This project does not have any alternate or optional containers.

We believe this project to be cost effective.




Thomas Knakmuhs, PE
City Engineer



**LOCATION AND COMPRISING
PAVING AND UTILITY REHAB/RECONSTRUCTION
IMPROVEMENT DISTRICT NO. BR-24-B**

**9TH ST S FROM 9TH AVE S TO 13TH AVE S, 9TH AVE S
FROM 10TH ST S TO 8TH ST S, 10TH AVE S FROM 10TH
ST S TO 9TH ST S, 11TH AVE S FROM 10TH ST S TO 8TH
ST S, 12TH AVE S FROM 10TH ST S TO 9TH ST S**

LOCATION:

On 9th Street South from 9th Avenue South to 13th Avenue South.

On 9th Avenue South from 10th Street South to 8th Street South.

On 10th Avenue South from 10th Street South to 9th Street South.

On 11th Avenue South from 10th Street South to 8th Street South.

On 12th Avenue South from 10th Street South to 9th Street South.

COMPRISING:

Lots 1 through 3, 14 through 24, inclusive, Block AA.

Lots 1 through 17, E ½ of 18 & 19, 24, inclusive, Block BB.

Lots 1 through 15, 24, inclusive, Block GG.

Lots 1, 12 through 24, inclusive, Block HH.

Lots 1, 14 through 24, inclusive, Block PP.

Lots 2 through 16, inclusive, Block QQ.

All in Erskine's Addition.

Lots 1 through 6, 24, inclusive, Block M.

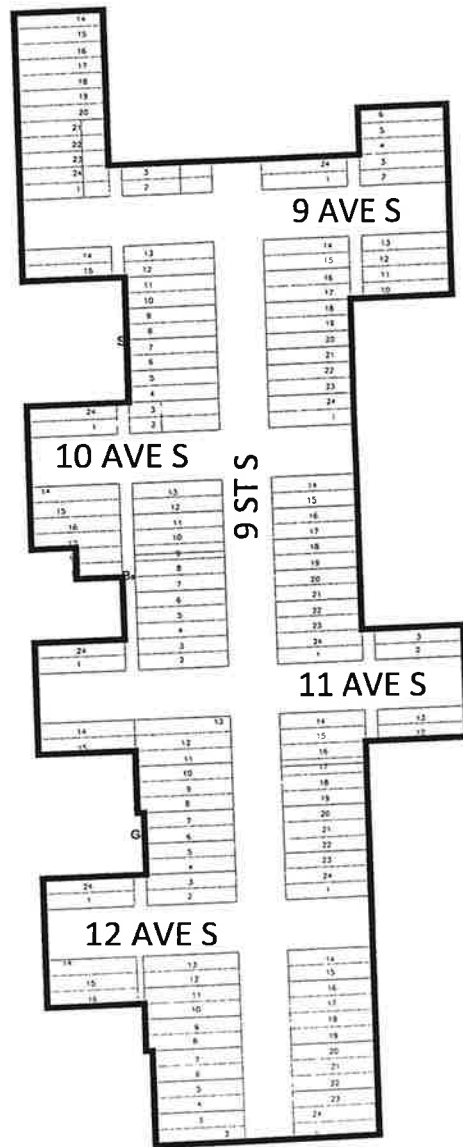
Lots 1 through 3, 14 through 24, inclusive, Block N.

Lots 1 through 15, 24, inclusive, Block S.

Lots 1, 10 through 24, inclusive, Block T.

All in Cha's A Roberts Addition.

All of the foregoing located in the City of Fargo, Cass County, North Dakota.



CITY OF FARGO ENGINEERING
DEPARTMENT

LOCATION & ASSESSMENT AREA

PROJECT TITLE & INCIDENTALS

IMPROVEMENT DISTRICT NO. BR-24-B

29

Memorandum

To: Board of City Commissioners
From: Bekki Majerus, Director of Facilities Management
Date: October 26, 2023
Re: Award Contracts with Martinson Lot Maintenance and All-Terrain (RFP23191) – Snow and Ice Removal Services

Dear Commissioners:

At the October 16, 2023 Commission meeting, the Bid Award was approved for Martinson Lot Maintenance to service downtown and Fargo Police Headquarters, and All-Terrain to service the Public Safety Building and Fargo Cass Public Health from November 1, 2023 through April 30, 2024.

Locations (see maps attached for detailed locations)

A. Downtown locations include:

1. City Hall North/West lots/ramp 225 4th St. N
2. City Center West lot/North Entrance 301 3rd Ave. N
3. Downtown Library East/West lots 101 4th St. N
4. Civic Center North lot/ramps 207 4th St. N
5. City Sidewalks Downtown (not contracted to BID)
6. Engagement Center (Old Police Station) 222 4th St. N
7. Old Public Health 401 3rd St. N
8. Municipal Court 402 NP Ave
9. Harm Reduction 510 5th St. N

B. Police Headquarters 105 25th St. S

C. Public Safety Building 4630 15th Ave N

D. Fargo Cass Public Health 1240 25th St. S

Facilities is requesting the City Commission's approval of the contracts with Martinson Lot Maintenance and All-Terrain. The agreements are attached.

Recommended Action:

Move to award the contracts with Martinson Lot Maintenance and All-Terrain for snow and ice removal services November 1, 2023 through April 30, 2024.

**Contract
Between
City of Fargo
and All Terrain**

This contract (the "contract," which includes all attached schedules), effective November 1, 2023 ("Effective Date"), is entered into by and between All Terrain (the "Vendor"), having a principal place of business at 4663 13th Ave N, Fargo, North Dakota 58102, and City of Fargo (the "City"), a North Dakota municipal corporation, having a principal place of business at 225 4th Street North, Fargo, North Dakota 58102 (each a "Party" and collectively, the "Parties").

1. TERM

The term of this Agreement will be from November 1, 2023 through April 30, 2024.

2. STATEMENT OF WORK

A Summary of all services the Vendor is able to provide under this Agreement is described in the Statement of Work form ("Statement of Work") attached hereto as Attachment A. Vendor hereby agrees to complete work pursuant to a work request, awarded bid, and/or awarded proposal. Neither this Agreement nor the Statement of Work is a commitment by the City to issue the vendor any work requests, bids or proposals. The work request, Request for Bid (RFB) or Request for Proposal (RFP) shall describe the specific scope of services for a particular project. Any services provided by the Vendor under this agreement are referred to as "Services."

3. MATERIALS

Vendor shall furnish all materials, supplies, tools, equipment, and transportation required to provide services or deliverables required under Statements of Work. Vendor shall provide all available material safety data sheets for City approval prior to use of materials.

4. LIEN WAIVER

Vendor shall submit its lien waivers and obtain and submit lien waivers from all subcontractors and material suppliers with invoices Vendor submits to City. City's obligation to pay invoices will be contingent upon receipt of applicable lien waivers.



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5. COMPENSATION

The Parties shall negotiate rates annually. Negotiated Rate Sheet ("Rate Sheet") for the current Agreement year is attached as Attachment B. Vendor shall not charge and the City will not pay for any services performed without a work request, awarded bid or awarded proposal. Except as otherwise provided, undisputed invoices shall be payable within 30 calendar days after the receipt of the invoice. Invoices shall be e-mailed to FinanceAPAR@FargoND.gov.

6. OWNERSHIP OF DOCUMENTS

Vendor's work product reimbursed by the City, including all data, documents, results, ideas, developments and inventions that Vendor conceives or uses during the course of its performance under this Agreement shall be the City's property, unless otherwise agreed.

7. INDEPENDENT CONTRACTOR

The relationship between the Parties shall, within the context of this Agreement, be that of an independent contractor and nothing in this Agreement should be construed to create a partnership, joint venture, or employer-employee relationship. The Vendor shall, at all times during the term of this Agreement, perform the duties and responsibilities herein. Neither Party is an agent of the other Party and is not authorized to make any representation contract, or contract commitment on behalf of the other Party.

8. NO CONFLICTS OF INTEREST

Vendor must disclose any actual, apparent, or potential Conflict of Interest to the City prior to execution of this Agreement if a conflict of interest arises or appear to arise during the term of this Agreement, contractor agrees to abide by any reasonable mitigation plan developed with or by the City. "Conflict of Interest" means any activity, interest, or relationship of Vendor or any of its officers, directors, affiliates, or principals that may compromise that person's ability to render impartial assistance or advice to the City or that may give rise to legal or reputational concerns or any competitive advantage unfair to the City.

9. CONFIDENTIALITY

The Vendor agrees to not, directly or indirectly, disclose, make known, divulge, publish, or communicate any confidential information to any person, firm, or corporation without consent unless that disclosure is authorized under North Dakota law.

10. INSURANCE

a. Vendor will obtain and maintain the following insurance coverage, naming the City of Fargo as an additional insured, via commercial insurance:

i. Commercial General Liability covering bodily injury and tangible property damage liability with a limit of not less than U.S. \$5,000,000 each occurrence.

ii. Workers' Compensation (or maintenance of a legally permitted and government-approved program of self-insurance) covering Vendor Personnel pursuant to applicable state workers' compensation laws for work-related injuries suffered by Vendor's Personnel, if Vendor employs Personnel;

iii. Employer's Liability with limits of not less than U.S. \$1,000,000 per accident;

iv. Automobile Liability with \$2,000,000 combined single limit per occurrence, for bodily injury and property damage combined covering owned, if Vendor owns any vehicles, non-owned, and hired vehicles, if Vendor brings vehicles on the City's premises or uses vehicles in the performance of services.

v. Limits for Commercial General Liability and Automobile Liability may be provided through a combination of primary and umbrella coverage; and

b. Vendor shall provide the City with evidence of the foregoing coverage before providing any services.

c. Vendor shall notify the City 30 days prior to cancellation or reduction in limits of any insurance required hereunder.

11. INDEMNIFICATION

Consultant agrees to indemnify and hold harmless the City, its officers, employees, insurers, and self-insurance pool, from and against all liability, claims, and demands, on account of injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with this Agreement, if such injury, loss, or damage is caused in whole or in part by, or is claimed to be caused in whole or in part by, the act, omission, error, consultant error, mistake, negligence, or other fault of the Vendor, any subcontractor of the Vendor, or any officer, employee, representative, or agent of the Consultant or of any subcontractor of the Consultant, or which arises out of any workmen's compensation claim of any employee of the Consultant or of any employee of any subcontractor of the Consultant. The Consultant agrees to investigate, handle, respond to, and to provide defense for and defend against, any such liability, claims or demands at the sole expense of the Consultant, or at the option of the City, agrees to pay the City or reimburse the City for the defense costs incurred by the City in connection with, any such liability, claims, or demands.

12. FORCE MAJEURE

Neither Party shall be liable for damages or deemed in default of this Agreement and any Statement of Work hereunder to the extent that any delay or failure in the performance of its obligations (other than the payment of money) results, without its fault or negligence, from any cause beyond its reasonable control, such as acts of God, acts of civil or military authority, embargoes, epidemics, war, riots, insurrections, fires, explosions, earthquakes, floods, adverse weather conditions, union activity, strikes or lock-outs, and changes in laws, statutes, regulations, or ordinances.

13. DISPUTE RESOLUTION

Vendor and the City will exercise good faith efforts to resolve disputes through a mutually acceptable Alternative Dispute Resolution process. Nothing prevents the Parties from pursuing litigation in the appropriate State or Federal court, located in Cass County, North Dakota

14. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the state of North Dakota.

15. ENTIRE AGREEMENT

The terms and conditions set forth herein and any Exhibit referenced herein constitute the entire understanding of the parties relating to the provision of services by Vendor to City and shall be incorporated in all Statements of Work unless otherwise so stated therein. This Agreement may be amended only by a written instrument signed by both parties.

16. ASSIGNMENT

This Agreement may not be assigned by Vendor or City without the prior written consent of the other party.

17. TERMINATION

This Agreement may be terminated by either party upon seven days written notice should the other party fail to perform in accordance with the terms hereof, provided such failure is not cured within such seven day period. City may terminate this Agreement for convenience at any time, in which event Vendor shall be compensated in accordance with the terms hereof for Services performed and reimbursable expenses incurred prior to its receipt of written notice of termination from City.



18. SEVERABILITY

Should a court of law determine that any clause or section of this Agreement is invalid, all other clauses or sections shall remain in effect.

IN WITNESS WHEREOF, City and All Terrain have caused this Agreement to be duly executed as of the date first above written.

CITY OF FARGO

VENDOR

BY _____
Dr. Timothy J. Mahoney, Mayor

BY Matt _____
Matt Lunsena

DATE: _____

DATE: 10/24/2023

ATTEST:

BY _____
Steven Sprague, City Auditor

Statement of Work

This Statement of Work is a summary of all services the Vendor is able to provide under the Contract. This Statement of Work is not a commitment by the City to issue the vendor any work requests, bids or proposals.

Vendor agrees to provide any of the following Services as requested in work requests, awarded bids or awarded requests for proposals from the City.

Removal of Snow and Ice

- Contractor shall provide all labor, tools, and equipment to safely and properly clear snow and ice.
- Snow and ice removal trigger is ½" for sidewalks and 1" for parking lots.
- Contractors will be responsible to remove snow from approaches after city plows have made snow removal passes during snow events.
- Contractors shall treat icy conditions using appropriate and industry standard chemical applications as necessary.
- Snow and ice may not be deposited or blown into the street, neighboring property, or in a place that will interfere with the vision of motorist approaching any intersection.
- Other than from adjacent sidewalks and driveways, no snow shall be placed upon the boulevards.

Timeframe

Contractors will be required to complete the snow and ice removal services of assigned properties immediately after a snowfall. If it snows all day, snow and ice removal must be done during snow and ice event.

Safety

All snow and ice removal services will be conducted in a safe manner, with care given to the safety of the general public. This includes having all equipment outfitted with the proper lighting devices so as to be visible while operating.

Property Damage

Contractors will be notified in writing of any property damage that occurs as a result of snow and ice management services. Notification will be within 48 hours of City of Fargo staff becoming aware of such property damage. Property damage includes but is not limited to damage to homeowner turf, sprinkler systems, fences, etc. as a result of snow and ice removal services. Contractor will be solely and wholly financially liable for any damaged property, as a result of negligence on the part of the contractor. The contractor will repair, to the satisfaction of the Planning Department, any damaged property in a timely manner in the spring season after the terms of this contract.

Rate Sheet

The Rates below are valid from November 1, 2023 to April 30, 2024. These rates apply to the following locations (Maps attached for reference):


Public Safety Building – 4630 15th Ave N

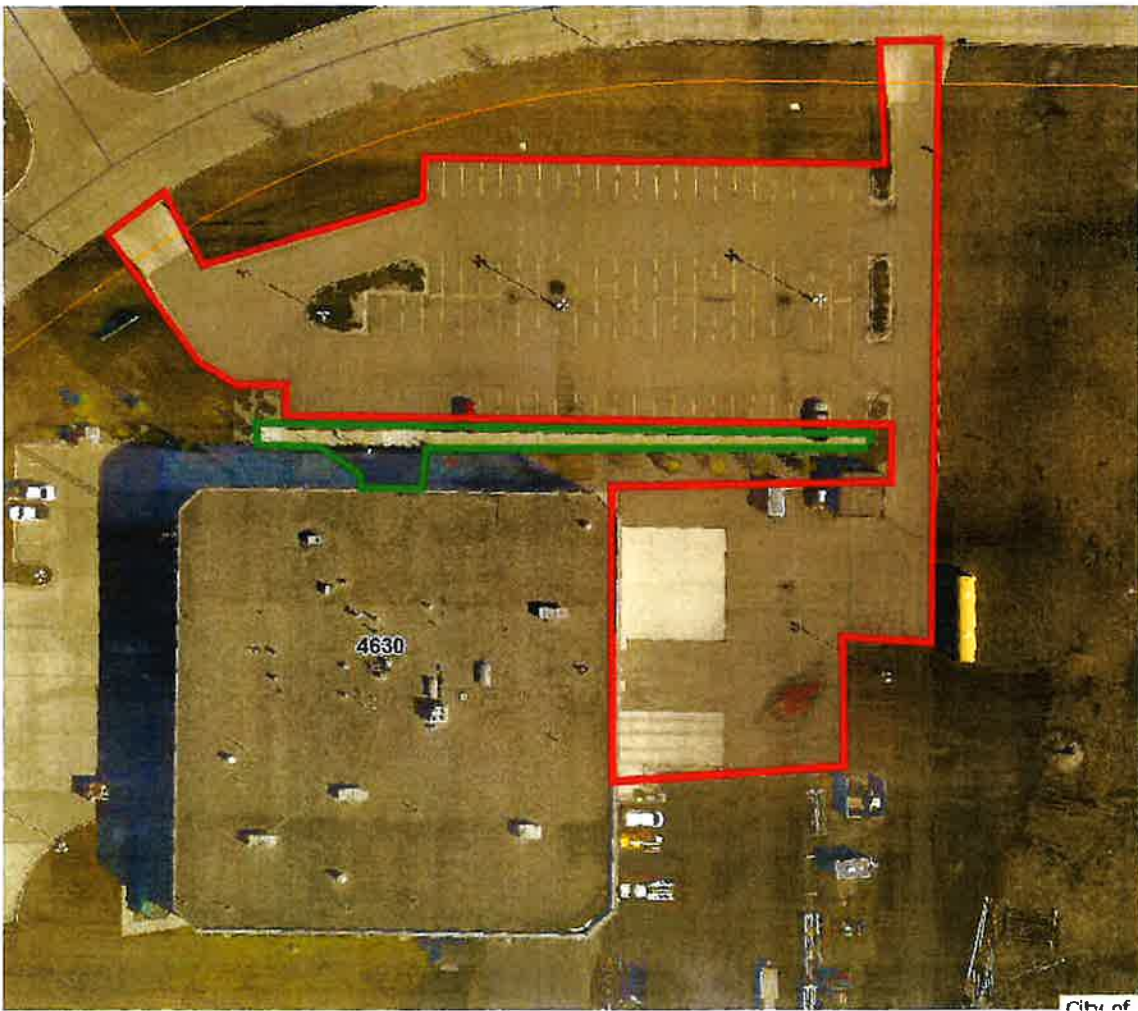
Fargo Cass Public Health – 1240 25th St S

Rates:

Description	Rate
Snow removal with pay loader	\$175.00 per hour
Snow removal with plow truck or Ventrac	\$125.00 per hour
Snow removal with Toolcat or Bobcat	\$125.00 per hour
Sand/Salt for parking lot	\$150.00 per hour
Ice Melt	\$35.00 per bag

Public Safety Building lot
Public Safety Sidewalks

-  Parking lots
-  Sidewalks



Fargo Cass Public Health

 Parking lots

 Sidewalks



**Contract
Between
City of Fargo
and Martinson Lot Maintenance**

This contract (the “contract,” which includes all attached schedules), effective November 1, 2023 (“Effective Date”), is entered into by and between Martinson Lot Maintenance (the “Vendor”), having a principal place of business at 1802 7th Ave N, Fargo, North Dakota 58102, and City of Fargo (the “City”), a North Dakota municipal corporation, having a principal place of business at 225 4th Street North, Fargo, North Dakota 58102 (each a “Party” and collectively, the “Parties”).

1. TERM

The term of this Agreement will be from November 1, 2023 through April 30, 2024.

2. STATEMENT OF WORK

A Summary of all services the Vendor is able to provide under this Agreement is described in the Statement of Work form (“Statement of Work”) attached hereto as Attachment A. Vendor hereby agrees to complete work pursuant to a work request, awarded bid, and/or awarded proposal. Neither this Agreement nor the Statement of Work is a commitment by the City to issue the vendor any work requests, bids or proposals. The work request, Request for Bid (RFB) or Request for Proposal (RFP) shall describe the specific scope of services for a particular project. Any services provided by the Vendor under this agreement are referred to as “Services.”

3. MATERIALS

Vendor shall furnish all materials, supplies, tools, equipment, and transportation required to provide services or deliverables required under Statements of Work. Vendor shall provide all available material safety data sheets for City approval prior to use of materials.

4. LIEN WAIVER

Vendor shall submit its lien waivers and obtain and submit lien waivers from all subcontractors and material suppliers with invoices Vendor submits to City. City’s obligation to pay invoices will be contingent upon receipt of applicable lien waivers.

5. COMPENSATION

The Parties shall negotiate rates annually. Negotiated Rate Sheet (“Rate Sheet”) for the current Agreement year is attached as Attachment B. Vendor shall not charge and the City will not pay for any services performed without a work request, awarded bid or awarded proposal. Except as otherwise provided, undisputed invoices shall be payable within 30 calendar days after the receipt of the invoice. Invoices shall be e-mailed to FinanceAPAR@FargoND.gov.

6. OWNERSHIP OF DOCUMENTS

Vendor’s work product reimbursed by the City, including all data, documents, results, ideas, developments and inventions that Vendor conceives or uses during the course of its performance under this Agreement shall be the City’s property, unless otherwise agreed.

7. INDEPENDENT CONTRACTOR

The relationship between the Parties shall, within the context of this Agreement, be that of an independent contractor and nothing in this Agreement should be construed to create a partnership, joint venture, or employer-employee relationship. The Vendor shall, at all times during the term of this Agreement, perform the duties and responsibilities herein. Neither Party is an agent of the other Party and is not authorized to make any representation contract, or contract commitment on behalf of the other Party.

8. NO CONFLICTS OF INTEREST

Vendor must disclose any actual, apparent, or potential Conflict of Interest to the City prior to execution of this Agreement if a conflict of interest arises or appear to arise during the term of this Agreement, contractor agrees to abide by any reasonable mitigation plan developed with or by the City. “Conflict of Interest” means any activity, interest, or relationship of Vendor or any of its officers, directors, affiliates, or principals that may compromise that person’s ability to render impartial assistance or advice to the City or that may give rise to legal or reputational concerns or any competitive advantage unfair to the City.

9. CONFIDENTIALITY

The Vendor agrees to not, directly or indirectly, disclose, make known, divulge, publish, or communicate any confidential information to any person, firm, or corporation without consent unless that disclosure is authorized under North Dakota law.

10. INSURANCE

a. Vendor will obtain and maintain the following insurance coverage, naming the City of Fargo as an additional insured, via commercial insurance:

i. Commercial General Liability covering bodily injury and tangible property damage liability with a limit of not less than U.S. \$5,000,000 each occurrence.

ii. Workers' Compensation (or maintenance of a legally permitted and government-approved program of self-insurance) covering Vendor Personnel pursuant to applicable state workers' compensation laws for work-related injuries suffered by Vendor's Personnel, if Vendor employs Personnel;

iii. Employer's Liability with limits of not less than U.S. \$1,000,000 per accident;

iv. Automobile Liability with \$2,000,000 combined single limit per occurrence, for bodily injury and property damage combined covering owned, if Vendor owns any vehicles, non-owned, and hired vehicles, if Vendor brings vehicles on the City's premises or uses vehicles in the performance of services.

v. Limits for Commercial General Liability and Automobile Liability may be provided through a combination of primary and umbrella coverage; and

b. Vendor shall provide the City with evidence of the foregoing coverage before providing any services.

c. Vendor shall notify the City 30 days prior to cancellation or reduction in limits of any insurance required hereunder.

11. INDEMNIFICATION

Consultant agrees to indemnify and hold harmless the City, its officers, employees, insurers, and self-insurance pool, from and against all liability, claims, and demands, on account of injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with this Agreement, if such injury, loss, or damage is caused in whole or in part by, or is claimed to be caused in whole or in part by, the act, omission, error, consultant error, mistake, negligence, or other fault of the Vendor, any subcontractor of the Vendor, or any officer, employee, representative, or agent of the Consultant or of any subcontractor of the Consultant, or which arises out of any workmen's compensation claim of any employee of the Consultant or of any employee of any subcontractor of the Consultant. The Consultant agrees to investigate, handle, respond to, and to provide defense for and defend against, any such liability, claims or demands at the sole expense of the Consultant, or at the option of the City, agrees to pay the City or reimburse the City for the defense costs incurred by the City in connection with, any such liability, claims, or demands.

12. FORCE MAJEURE

Neither Party shall be liable for damages or deemed in default of this Agreement and any Statement of Work hereunder to the extent that any delay or failure in the performance of its obligations (other than the payment of money) results, without its fault or negligence, from any cause beyond its reasonable control, such as acts of God, acts of civil or military authority, embargoes, epidemics, war, riots, insurrections, fires, explosions, earthquakes, floods, adverse weather conditions, union activity, strikes or lock-outs, and changes in laws, statutes, regulations, or ordinances.

13. DISPUTE RESOLUTION

Vendor and the City will exercise good faith efforts to resolve disputes through a mutually acceptable Alternative Dispute Resolution process. Nothing prevents the Parties from pursuing litigation in the appropriate State or Federal court, located in Cass County, North Dakota

14. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the state of North Dakota.

15. ENTIRE AGREEMENT

The terms and conditions set forth herein and any Exhibit referenced herein constitute the entire understanding of the parties relating to the provision of services by Vendor to City and shall be incorporated in all Statements of Work unless otherwise so stated therein. This Agreement may be amended only by a written instrument signed by both parties.

16. ASSIGNMENT

This Agreement may not be assigned by Vendor or City without the prior written consent of the other party.

17. TERMINATION

This Agreement may be terminated by either party upon seven days written notice should the other party fail to perform in accordance with the terms hereof, provided such failure is not cured within such seven day period. City may terminate this Agreement for convenience at any time, in which event Vendor shall be compensated in accordance with the terms hereof for Services performed and reimbursable expenses incurred prior to its receipt of written notice of termination from City.

18. SEVERABILITY

Should a court of law determine that any clause or section of this Agreement is invalid, all other clauses or sections shall remain in effect.

IN WITNESS WHEREOF, City and Martinson Lot Maintenance have caused this Agreement to be duly executed as of the date first above written.

CITY OF FARGO

VENDOR

BY _____
Dr. Timothy J. Mahoney, Mayor

BY *[Signature]*

DATE: _____

DATE: 10/25/23

ATTEST:

BY _____
Steven Sprague, City Auditor



Statement of Work

This Statement of Work is a summary of all services the Vendor is able to provide under the Contract. This Statement of Work is not a commitment by the City to issue the vendor any work requests, bids or proposals.

Vendor agrees to provide any of the following Services as requested in work requests, awarded bids or awarded requests for proposals from the City.

Removal of Snow and Ice

- Contractor shall provide all labor, tools, and equipment to safely and properly clear snow and ice.
- Snow and ice removal trigger is ½" for sidewalks and 1" for parking lots. The Fargo Police Headquarters has emergency exits that need to be cleared at all times. See the blue highlights on the map for reference.
- Contractors will be responsible to remove snow from approaches after city plows have made snow removal passes during snow events.
- Contractors shall treat icy conditions using appropriate and industry standard chemical applications as necessary.
- Snow and ice may not be deposited or blown into the street, neighboring property, or in a place that will interfere with the vision of motorist approaching any intersection.
- Other than from adjacent sidewalks and driveways, no snow shall be placed upon the boulevards.

Timeframe

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Safety

All snow and ice removal services will be conducted in a safe manner, with care given to the safety of the general public. This includes having all equipment outfitted with the proper lighting devices so as to be visible while operating.

Property Damage

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Rate Sheet

The Rates below are valid from November 1, 2023 to April 30, 2024.

Rates:

Downtown Locations

City Hall Campus (includes the following locations 1-4) \$2,250.00 per month

1. City Hall North/West lots/ramp 225 4th St. N
2. City Center West lot/North Entrance 301 3rd Ave. N
3. Downtown Library East/West lots 101 4th St. N
4. Civic Center North lot/ramps 207 4th St. N

City Sidewalks Downtown (see map for locations) \$740.00 per month

Engagement Center (Old Police Station) 222 4th St. N \$220.00 per month

Old Public Health 401 3rd Ave. N \$205.00 per month

Municipal Court 402 NP Ave, hauling included \$350.00 per month

*snow cannot be stored on site for any length of time, must be hauled away asap

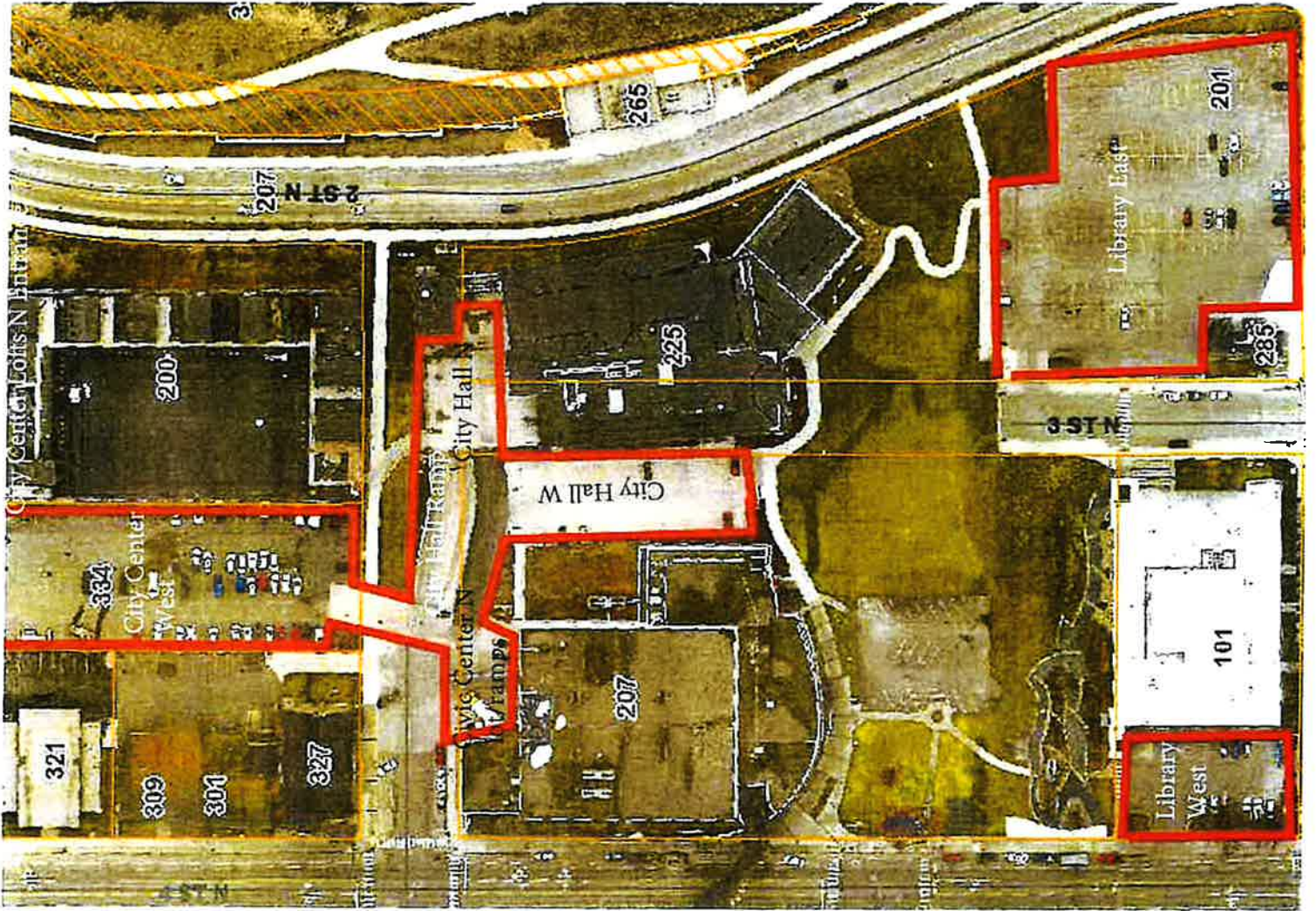
Harm Reduction 510 5th St. N \$205.00 per month

As needed items

1. Snow Hauling \$85.00 per load
2. Loader \$115.00 per hour
3. Pickup Plow \$95.00 per hour
4. Salt Mix \$375.00 per yard

Police Department Headquarters 105 25th St. S

1. Truck Plowing \$95.00 per hour
2. Salt Application \$95.00 per hour + material
3. Loader \$115.00 per hour
4. Hauling \$85.00 per load
5. Sidewalks \$54.00 per trip (includes ice melt as needed)



- City Hall North/West lots
- City Hall ramp to underground parking
- City Center Lofts West/North Entrance
- Downtown Library East/West lots
- Civic Center North lot and ramps

 Parking lots

City Sidewalks Downtown

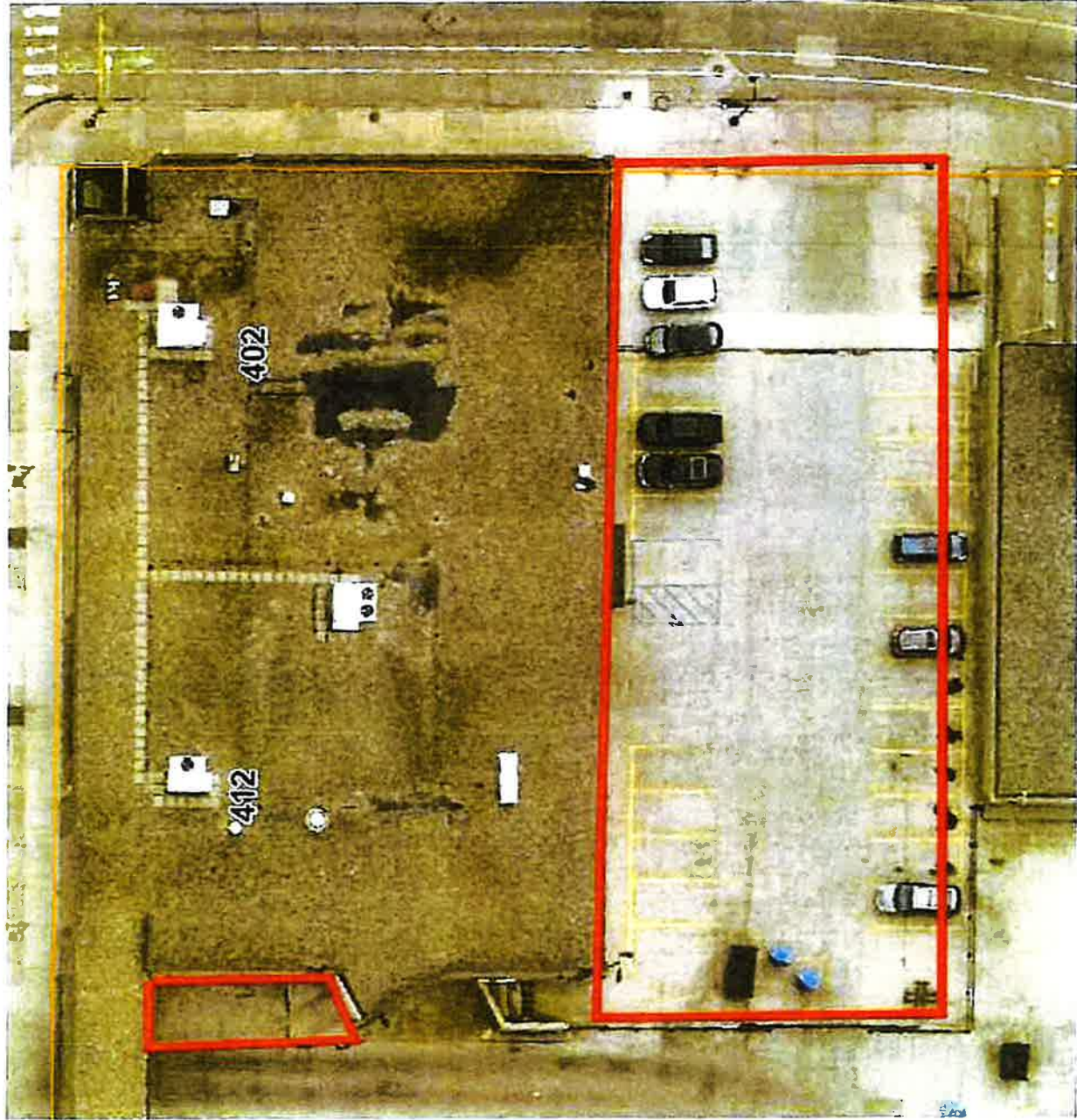
Sidewalks





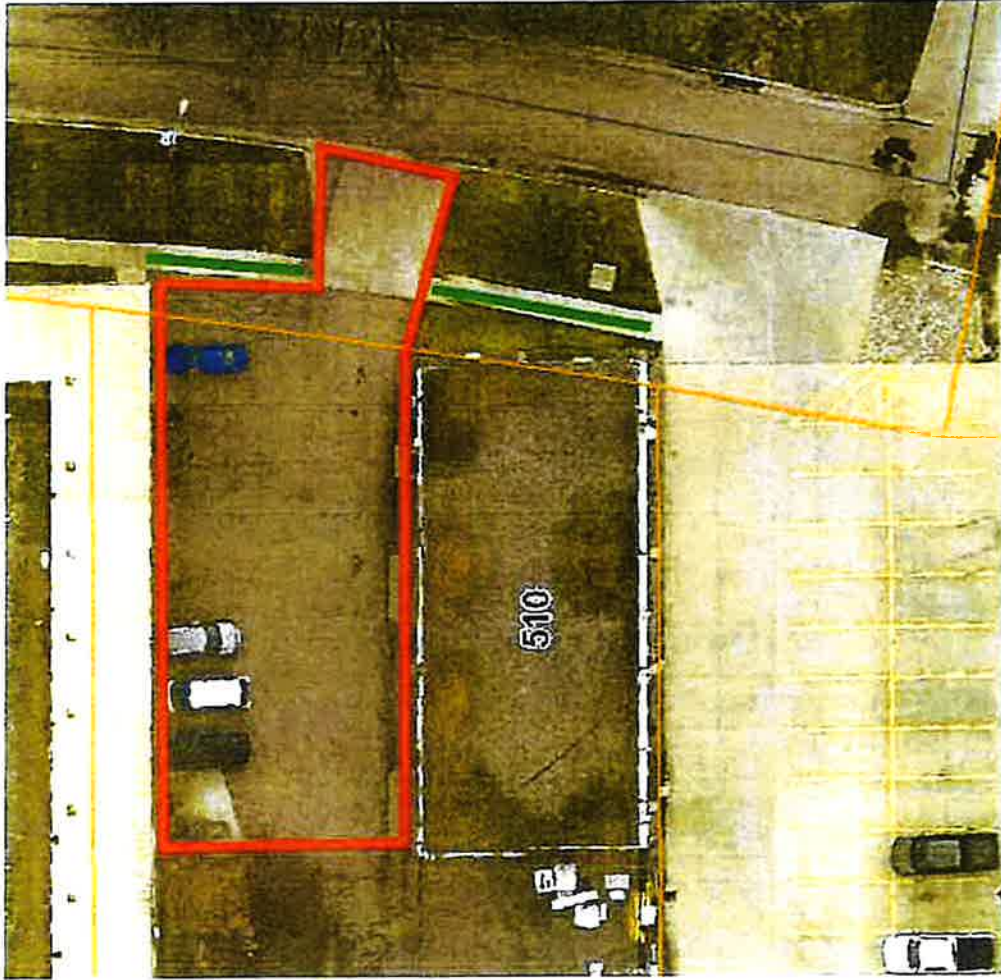
Engagement Center lot
Old Public Health lot

 Parking lots



Municipal Court

 Parking lots



Harm Reduction lot


Parking lots

Sidewalks



Police Headquarters lots
Police Headquarters Sidewalks
Police Headquarters Emergency Exits

 Parking lots

 Sidewalks

 Emergency Exits





Memorandum

To: Board of City Commissioners
From: Bekki Majerus, Director of Facilities Management
Date: October 26, 2023
Re: Bid Award and Contract for Newman Outdoor Field Exiting Project

Facilities Management has been working with RLE Architects to bid a project to make the appropriate changes to stadia exiting to the field at Newman Outdoor Field. The bids were opened on October 11, 2023 and the following bids were received:

- AP Signature Homes \$48,640.00 + \$1,500.00 Alternate
- Gast Construction \$91,160.00 + \$5,800.00 Alternate
- Meinecke-Johnson \$69,800.00 + No Alternate

RLE reviewed the bids and recommends the award to AP Signature Homes as the lowest responsible bidder. Facilities Management concurs with this recommendation.

Facilities Management is requesting the City Commission's approval of the bid award and contract with AP Signature Homes, LLC.

Attachments:

- Bid Tabulation
- Notice of Award
- Contract between the City of Fargo and AP Signature Homes, LLC

Recommended Action:

Move to approve the bid award and contract with AP Signature Homes, LLC for the Newman Outdoor Field Exiting Project.



Newman Outdoor Field - Exiting Improvements
 Fargo, North Dakota
 BID TABULATION - October 11, 2023 - 11:45 am
 Fargo City Hall
 Engineers Conference Room

CONTRACTOR	Bid Bond	Contractor's License	ADDENDA 1,2	GENERAL BASE BID	Alternate G1 Alum. vs Steel	Alternate Paint vs Galvanize	Remarks
AP Signature Homes Fargo, ND	5%	Yes	1,2	\$48,640.00	\$1,500.00	No Bid	Alt. G1 - Add
Gast Construction Co., Inc. Fargo, ND	5%	Yes	1,2	\$91,160.00	No Bid	\$5,800.00	Alt. G2 - Add
Meinecke-Johnson Co Fargo, ND	5%	Yes	1,2	\$69,800.00	No Bid	**No Bid	**Clarified clerical error in bid, intent was General Bas Bid of \$69,800.00

SECTION 00 5100

NOTICE OF AWARD

Description of Work for Prime Bid / Contract(s), including but not limited to:

Newman Outdoor Field – Exiting Improvements, 1515 15th Avenue North, Fargo, ND.

Work Scope is fully based on the Contract Documents, General Conditions of the Contract, Addenda and the executed Construction Contract between the Owner and Contractor.

Re: Newman Outdoor Field - 2023-2024 Exiting Improvements

The Owner represented by the Undersigned has considered the Bid submitted by you for the Work, summarized above, in response to its Notice and Instructions to Bidders.

Dated: October 11, 2023.

It appearing that it is to the best interest of said Owner to accept your Bid in the amount of:

Forty Eight Thousand, Six Hundred Forty dollars and no cents (\$48,640.00), including accepted Alternate G-1 Aluminum Stairs of One Thousand, Five Hundred dollars and no cents (\$1,500.00) for Contract Sum total of Fifty Thousand, One Hundred Forty Dollars and no cents (\$50,140.00), you are hereby notified that your Bid has been accepted, except as follows; None.

You are required by the "Notice and Instructions to Bidders to execute the formal Contract with The Undersigned Owner within ten (10) days from the date of the mailing of this Notice to you.

If you fail to execute said Contract within ten (10) days from the date of mailing of this Notice, said Owner will be entitled to consider all your rights arising out of the Owner's acceptance of your Bid as abandoned and to award the Work covered by your Bid to another, or to re-advertise the Work or otherwise dispose thereof as the Owner may see fit.

Dated this 31st day of October 2023.

OWNER:

BY: 
Bekki Majerus, Director of Facilities Management

ACCEPTANCE OF NOTICE

Receipt of the above Notice of Award is hereby acknowledged this _____ day of November, 2023.

AP Signature Homes LLC

By: _____
Contractor

 **AIA**® Document A101® – 2017

Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum

AGREEMENT made as of the Thirty First day of October in the year Two Thousand Twenty-Three
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status, address and other information)

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

and the Contractor:
(Name, legal status, address and other information)

AP Signature Homes, LLC
3640 Bell Blvd E
West Fargo, ND 58078

for the following Project:
(Name, location and detailed description)

Newman Outdoor Field –2023-2024 Exiting Improvements
1515 15th Avenue North
Fargo, ND 58102

The Architect:
(Name, legal status, address and other information)

R.L. Engebretson Architects Fargo LLC
901 13th Avenue East, Suite B
West Fargo, ND 58078
701-293-5735

The Owner and Contractor agree as follows.

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

The parties should complete A101@-2017, Exhibit A, Insurance and Bonds, contemporaneously with this Agreement. AIA Document A201@-2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

TABLE OF ARTICLES

- 1 THE CONTRACT DOCUMENTS
- 2 THE WORK OF THIS CONTRACT
- 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
- 4 CONTRACT SUM
- 5 PAYMENTS
- 6 DISPUTE RESOLUTION
- 7 TERMINATION OR SUSPENSION
- 8 MISCELLANEOUS PROVISIONS
- 9 ENUMERATION OF CONTRACT DOCUMENTS

EXHIBIT A INSURANCE AND BONDS

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be:

(Check one of the following boxes.)

- The date of this Agreement.
- A date set forth in a notice to proceed issued by the Owner.
- Established as follows:
(Insert a date or a means to determine the date of commencement of the Work.)

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Agreement.

§ 3.2 The Contract Time shall be measured from the date of commencement of the Work.

§ 3.3 Substantial Completion

§ 3.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work:

(Check one of the following boxes and complete the necessary information.)

Init.

Not later than () calendar days from the date of commencement of the Work.

By the following date: May 17, 2024

§ 3.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following dates:

Portion of Work	Substantial Completion Date
-----------------	-----------------------------

§ 3.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 3.3, liquidated damages, if any, shall be assessed as set forth in Section 4.5.

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor’s performance of the Contract. The Contract Sum shall be Fifty Thousand One Hundred Forty Dollars (\$ 50,140.00), subject to additions and deductions as provided in the Contract Documents.

§ 4.2 Alternates

§ 4.2.1 Alternates, if any, included in the Contract Sum:

Item	Price
G-1 Aluminum Stairs	1,500.00

§ 4.2.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement. *(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)*

Item	Price	Conditions for Acceptance
------	-------	---------------------------

§ 4.3 Allowances, if any, included in the Contract Sum: *(Identify each allowance.)*

Item	Price
------	-------

§ 4.4 Unit prices, if any: *(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)*

Item	Units and Limitations	Price per Unit (\$0.00)
------	-----------------------	-------------------------

§ 4.5 Liquidated damages, if any: *(Insert terms and conditions for liquidated damages, if any.)*

§ 4.6 Other: *(Insert provisions for bonus or other incentives, if any, that might result in a change to the Contract Sum.)*

N/A

ARTICLE 5 PAYMENTS

§ 5.1 Progress Payments

§ 5.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the 25th day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the last day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than forty-five (45) days after the Architect receives the Application for Payment.

(Federal, state or local laws may require payment within a certain period of time.)

§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.5 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 5.1.6 In accordance with AIA Document A201™–2017, General Conditions of the Contract for Construction, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 5.1.6.1 The amount of each progress payment shall first include:

- .1 That portion of the Contract Sum properly allocable to completed Work;
- .2 That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing; and
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified.

§ 5.1.6.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
- .3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017; and
- .5 Retainage withheld pursuant to Section 5.1.7.

§ 5.1.7 Retainage

§ 5.1.7.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)

Five Percent (5%)

Init.

§ 5.1.7.1.1 The following items are not subject to retainage:
(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

§ 5.1.7.2 Reduction or limitation of retainage, if any, shall be as follows:
(If the retainage established in Section 5.1.7.1 is to be modified prior to Substantial Completion of the entire Work, including modifications for Substantial Completion of portions of the Work as provided in Section 3.3.2, insert provisions for such modifications.)

§ 5.1.7.3 Except as set forth in this Section 5.1.7.3, upon Substantial Completion of the Work, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.1.7. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:
(Insert any other conditions for release of retainage upon Substantial Completion.)

§ 5.1.8 If final completion of the Work is materially delayed through no fault of the Contractor, the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A201–2017.

§ 5.1.9 Except with the Owner’s prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 5.2 Final Payment

§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract except for the Contractor’s responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 a final Certificate for Payment has been issued by the Architect.

§ 5.2.2 The Owner’s final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect’s final Certificate for Payment, or as follows:

§ 5.3 Interest

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.
(Insert rate of interest agreed upon, if any.)

%

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017, unless the parties appoint below another individual, not a party to this Agreement, to serve as the Initial Decision Maker.
(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

§ 6.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation pursuant to Article 15 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows:

(Check the appropriate box.)

- Arbitration pursuant to Section 15.4 of AIA Document A201–2017
- Litigation in a court of competent jurisdiction
- Other *(Specify)*

If the Owner and Contractor do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201–2017.

§ 7.1.1 If the Contract is terminated for the Owner’s convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Contractor a termination fee as follows:

(Insert the amount of, or method for determining, the fee, if any, payable to the Contractor following a termination for the Owner’s convenience.)

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017.

ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 The Owner’s representative:

(Name, address, email address, and other information)

Bekki Majerus
City of Fargo
225 4th Street North
Fargo, ND 58102

§ 8.3 The Contractor’s representative:

(Name, address, email address, and other information)

Andrew Pringle
AP Signature Homes LLC
3640 Bell Blvd
West Fargo, ND 58078

§ 8.4 Neither the Owner’s nor the Contractor’s representative shall be changed without ten days’ prior notice to the other party.

§ 8.5 Insurance and Bonds

§ 8.5.1 The Owner and the Contractor shall purchase and maintain insurance as set forth in AIA Document A101™–2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents.

§ 8.5.2 The Contractor shall provide bonds as set forth in AIA Document A101™–2017 Exhibit A, and elsewhere in the Contract Documents.

§ 8.6 Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

(If other than in accordance with AIA Document E203–2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)

§ 8.7 Other provisions:

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 This Agreement is comprised of the following documents:

- .1 AIA Document A101™–2017, Standard Form of Agreement Between Owner and Contractor
- .2 AIA Document A101™–2017, Exhibit A, Insurance and Bonds
- .3 AIA Document A201™–2017, General Conditions of the Contract for Construction
- .4 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:
(Insert the date of the E203-2013 incorporated into this Agreement.)

.5 Drawings

Number	Title	Date
--------	-------	------

.6 Specifications

Section	Title	Date	Pages
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.7 Addenda, if any:

Number	Date	Pages
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Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are also enumerated in this Article 9.

.8 Other Exhibits:

(Check all boxes that apply and include appropriate information identifying the exhibit where required.)

[] AIA Document E204™–2017, Sustainable Projects Exhibit, dated as indicated below:
(Insert the date of the E204-2017 incorporated into this Agreement.)

[] The Sustainability Plan:

Title	Date	Pages
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[] Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
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.9 Other documents, if any, listed below:

(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201™–2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor’s bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)

This Agreement entered into as of the day and year first written above.

OWNER *(Signature)*

Dr. Tim Mahoney Mayor
(Printed name and title)

CONTRACTOR *(Signature)*

Andrew Pringle Officer
(Printed name and title)

AIA[®] Document A101[®] – 2017 Exhibit A

Insurance and Bonds

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Contractor, dated the day of in the year
(In words, indicate day, month and year.)

for the following **PROJECT:**

(Name and location or address)

Newman Outdoor Field - Exiting Improvements
1515 15th Avenue North
Fargo, ND 58102

THE OWNER:

(Name, legal status and address)

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

THE CONTRACTOR:

(Name, legal status and address)

TABLE OF ARTICLES

- A.1 GENERAL
- A.2 OWNER'S INSURANCE
- A.3 CONTRACTOR'S INSURANCE AND BONDS
- A.4 SPECIAL TERMS AND CONDITIONS

ARTICLE A.1 GENERAL

The Owner and Contractor shall purchase and maintain insurance, and provide bonds, as set forth in this Exhibit. As used in this Exhibit, the term General Conditions refers to AIA Document A201[™]-2017, General Conditions of the Contract for Construction.

ARTICLE A.2 OWNER'S INSURANCE

§ A.2.1 General

Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this Article A.2 and, upon the Contractor's request, provide a copy of the property insurance policy or policies required by Section A.2.3. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is intended to be used in conjunction with AIA Document A201[®]-2017, General Conditions of the Contract for Construction. Article 11 of A201[®]-2017 contains additional insurance provisions.

§ A.2.2 Liability Insurance

The Owner shall be responsible for purchasing and maintaining the Owner’s usual general liability insurance.

§ A.2.3 Required Property Insurance

§ A.2.3.1 Unless this obligation is placed on the Contractor pursuant to Section A.3.3.2.1, the Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance written on a builder’s risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner’s property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section A.2.3.1.3, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.

§ A.2.3.1.1 Causes of Loss. The insurance required by this Section A.2.3.1 shall provide coverage for direct physical loss or damage, and shall not exclude the risks of fire, explosion, theft, vandalism, malicious mischief, collapse, earthquake, flood, or windstorm. The insurance shall also provide coverage for ensuing loss or resulting damage from error, omission, or deficiency in construction methods, design, specifications, workmanship, or materials. Sub-limits, if any, are as follows:

(Indicate below the cause of loss and any applicable sub-limit.)

Causes of Loss	Sub-Limit
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§ A.2.3.1.2 Specific Required Coverages. The insurance required by this Section A.2.3.1 shall provide coverage for loss or damage to falsework and other temporary structures, and to building systems from testing and startup. The insurance shall also cover debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and reasonable compensation for the Architect’s and Contractor’s services and expenses required as a result of such insured loss, including claim preparation expenses. Sub-limits, if any, are as follows:

(Indicate below type of coverage and any applicable sub-limit for specific required coverages.)

Coverage	Sub-Limit
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§ A.2.3.1.3 Unless the parties agree otherwise, upon Substantial Completion, the Owner shall continue the insurance required by Section A.2.3.1 or, if necessary, replace the insurance policy required under Section A.2.3.1 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 12.2.2 of the General Conditions.

§ A.2.3.1.4 Deductibles and Self-Insured Retentions. If the insurance required by this Section A.2.3 is subject to deductibles or self-insured retentions, the Owner shall be responsible for all loss not covered because of such deductibles or retentions.

§ A.2.3.2 Occupancy or Use Prior to Substantial Completion. The Owner’s partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ A.2.3.3 Insurance for Existing Structures

If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, "all-risks" property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage from the causes of loss identified in Section A.2.3.1, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.

§ A.2.4 Optional Extended Property Insurance.

(Paragraphs deleted)

§ A.2.4.1 Boiler and Machinery Insurance

The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

§ A.2.4.2 If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

§ A.2.4.3 Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.

§ A.2.4.4 The Owner shall purchase and maintain the insurance selected and described below.

(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. For each type of insurance selected, indicate applicable limits of coverage or other conditions in the fill point below the selected item.)

- § A.2.4.4.1 **Loss of Use, Business Interruption, and Delay in Completion Insurance**, to reimburse the Owner for loss of use of the Owner's property, or the inability to conduct normal operations due to a covered cause of loss.
- § A.2.4.4.2 **Ordinance or Law Insurance**, for the reasonable and necessary costs to satisfy the minimum requirements of the enforcement of any law or ordinance regulating the demolition, construction, repair, replacement or use of the Project.
- § A.2.4.4.3 **Expediting Cost Insurance**, for the reasonable and necessary costs for the temporary repair of damage to insured property, and to expedite the permanent repair or replacement of the damaged property.
- § A.2.4.4.4 **Extra Expense Insurance**, to provide reimbursement of the reasonable and necessary excess costs incurred during the period of restoration or repair of the damaged property that are over and above the total costs that would normally have been incurred during the same period of time had no loss or damage occurred.
- § A.2.4.4.5 **Civil Authority Insurance**, for losses or costs arising from an order of a civil authority prohibiting access to the Project, provided such order is the direct result of physical damage covered under the required property insurance.
- § A.2.4.4.6 **Ingress/Egress Insurance**, for loss due to the necessary interruption of the insured's business

due to physical prevention of ingress to, or egress from, the Project as a direct result of physical damage.

- § **A.2.4.4.7 Soft Costs Insurance**, to reimburse the Owner for costs due to the delay of completion of the Work, arising out of physical loss or damage covered by the required property insurance: including construction loan fees; leasing and marketing expenses; additional fees, including those of architects, engineers, consultants, attorneys and accountants, needed for the completion of the construction, repairs, or reconstruction; and carrying costs such as property taxes, building permits, additional interest on loans, realty taxes, and insurance premiums over and above normal expenses.
- § **A.2.4.4.8 Start-Up and Testing**, for loss due to the interruption of the insured’s business due to physical prevention of ingress to, or egress from, the Project as a direct result of physical damage.

§ A.2.5 Other Optional Insurance.

The Owner shall purchase and maintain the insurance selected below.

(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance.)

- § **A.2.5.1 Cyber Security Insurance** for loss to the Owner due to data security and privacy breach, including costs of investigating a potential or actual breach of confidential or private information. *(Indicate applicable limits of coverage or other conditions in the fill point below.)*
- § **A.2.5.2 Other Insurance** *(List below any other insurance coverage to be provided by the Owner and any applicable limits.)*

Coverage	Limits

ARTICLE A.3 CONTRACTOR’S INSURANCE AND BONDS

§ A.3.1 General

§ A.3.1.1 Certificates of Insurance. The Contractor shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article A.3 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner’s written request. An additional certificate evidencing continuation of commercial liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the periods required by Section A.3.2.1 and Section A.3.3.1. The certificates will show the Owner as an additional insured on the Contractor’s Commercial General Liability and excess or umbrella liability policy or policies.

§ A.3.1.2 Deductibles and Self-Insured Retentions. The Contractor shall disclose to the Owner any deductible or self-insured retentions applicable to any insurance required to be provided by the Contractor.

§ A.3.1.3 Additional Insured Obligations. To the fullest extent permitted by law, the Contractor shall cause the commercial general liability coverage to include (1) the Owner, the Architect, and the Architect’s consultants as additional insureds for claims caused in whole or in part by the Contractor’s negligent acts or omissions during the Contractor’s operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor’s negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner’s general liability insurance policies and shall

apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's consultants, CG 20 32 07 04.

§ A.3.2 Contractor's Required Insurance Coverage

§ A.3.2.1 The Contractor shall purchase and maintain the following types and limits of insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

(If the Contractor is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.)

§ A.3.2.1.1 Insurance required shall be written for limits specified or required by law, whichever is greater. Coverage, whether written on an occurrence or claims made basis, shall be maintained without interruption from the date of commencement of the Work until date of final payment and termination of any coverage required to be maintained after final payment and, with respect to Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

§ A.3.2.1.2 Certificates of Insurance: File Certificates of Insurance with the Prime Contractor prior to commencement of work, indicating that all insurance required by this Article is in force; such certificates to be prepared on ACORD or CICC forms. Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.4. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

§ A.3.2.1.3 If multiple prime contracts are being bid, each Prime Contractor shall include in their bid the premium on an amount equal to 100% of their bid plus all add alternates, plus 50% of this amount for other contracts including the portion of the Architect's fee in connection with any loss. The Contractor amount shall be adjusted for the difference between the premium on this estimated amount and the actual amount.

§ A.3.2.2 Commercial General Liability

§ A.3.2.2.1 Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than one million dollars (\$1,000,000) each occurrence, two million dollars (\$2,000,000) general aggregate, and two million dollars (\$2,000,000) aggregate for products-completed operations hazard, providing coverage for claims including

- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- .2 personal injury and advertising injury;
- .3 damages because of physical damage to or destruction of tangible property, including the loss of use of such property;
- .4 bodily injury or property damage arising out of completed operations;
- .5 the Contractor's indemnity obligations under Section 3.18 of the General Conditions;
- .6 operations of the Contractor;
- .7 operations of the Subcontractor (Contingent Liability);
- .8 Products/Completed Operations (to be carried for one (1) year after final completion);
- .9 Personal Injury including employees related claims;
- .10 Employees as additional insured;

- .11 Broad Form Property Damage including but not limited to hazards of explosion, collapse and underground; and
- .12 Contractual Liability.

§ A.3.2.2 The Contractor's Commercial General Liability policy under this Section A.3.2.2 shall not contain an exclusion or restriction of coverage for the following:

- .1 Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim.
- .2 Claims for property damage to the Contractor's Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a Subcontractor.
- .3 Claims for bodily injury other than to employees of the insured.
- .4 Claims for indemnity under Section 3.18 of the General Conditions arising out of injury to employees of the insured.
- .5 Claims or loss excluded under a prior work endorsement or other similar exclusionary language.
- .6 Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language.
- .7 Claims related to residential, multi-family, or other habitational projects, if the Work is to be performed on such a project.
- .8 Claims related to roofing, if the Work involves roofing.
- .9 Claims related to exterior insulation finish systems (EIFS), synthetic stucco or similar exterior coatings or surfaces, if the Work involves such coatings or surfaces.
- .10 Claims related to earth subsidence or movement, where the Work involves such hazards.
- .11 Claims related to explosion, collapse and underground hazards, where the Work involves such hazards.

§ A.3.2.3 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Contractor, with policy limits of not less than one million dollars (\$1,000,000) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles along with any other statutorily required automobile coverage.

- .1 All owned vehicles;
- .2 All non-owned vehicles; and
- .3 All hired vehicles.

§ A.3.2.4 The Contractor may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under Section A.3.2.2 and A.3.2.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

- .1 \$1,000,000 each claim;
- .2 \$2,000,000 annual aggregate; and
- .3 Umbrella Liability shall provide excess limits over and above Commercial General Liability, Employers Liability, and Comprehensive Automobile Liability limits stated in this Article.

§ A.3.2.5 Workers' Compensation at statutory limits.

§ A.3.2.6 Employers' Liability with policy limits not less than one million dollars (\$1,000,000) each accident, one million dollars (\$1,000,000) each employee, and one million dollars (\$1,000,000) policy limit.

§ A.3.2.7 Jones Act, and the Longshore & Harbor Workers' Compensation Act, as required, if the Work involves hazards arising from work on or near navigable waterways, including vessels and docks

§ A.3.2.8 If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than (\$) per claim and (\$) in the aggregate.

§ **A.3.2.9** If the Work involves the transport, dissemination, use, or release of pollutants, the Contractor shall procure Pollution Liability insurance, with policy limits of not less than (\$) per claim and (\$) in the aggregate.

§ **A.3.2.10** Coverage under Sections A.3.2.8 and A.3.2.9 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than (\$) per claim and (\$) in the aggregate.

§ **A.3.2.11** Insurance for maritime liability risks associated with the operation of a vessel, if the Work requires such activities, with policy limits of not less than (\$) per claim and (\$) in the aggregate.

§ **A.3.2.12** Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits of not less than (\$) per claim and (\$) in the aggregate.

§ **A.3.3 Contractor's Other Insurance Coverage**

§ **A.3.3.1** Insurance selected and described in this Section A.3.3 shall be purchased from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

(If the Contractor is required to maintain any of the types of insurance selected below for a duration other than the expiration of the period for correction of Work, state the duration.)

§ **A.3.3.2** The Contractor shall purchase and maintain the following types and limits of insurance in accordance with Section A.3.3.1.

(Select the types of insurance the Contractor is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. Where policy limits are provided, include the policy limit in the appropriate fill point.)

§ **A.3.3.2.1** Property insurance of the same type and scope satisfying the requirements identified in Section A.2.3, which, if selected in this section A.3.3.2.1, relieves the Owner of the responsibility to purchase and maintain such insurance except insurance required by Section A.2.3.1.3 and Section A.2.3.3. The Contractor shall comply with all obligations of the Owner under Section A.2.3 except to the extent provided below. The Contractor shall disclose to the Owner the amount of any deductible, and the Owner shall be responsible for losses within the deductible. Upon request, the Contractor shall provide the Owner with a copy of the property insurance policy or policies required. The Owner shall adjust and settle the loss with the insurer and be the trustee of the proceeds of the property insurance in accordance with Article 11 of the General Conditions unless otherwise set forth below:

(Where the Contractor's obligation to provide property insurance differs from the Owner's obligations as described under Section A.2.3, indicate such differences in the space below. Additionally, if a party other than the Owner will be responsible for adjusting and settling a loss with the insurer and acting as the trustee of the proceeds of property insurance in accordance with Article 11 of the General Conditions, indicate the responsible party below.)

§ **A.3.3.2.2 Railroad Protective Liability Insurance**, with policy limits of not less than (\$) per claim and (\$) in the aggregate, for Work within fifty (50) feet of railroad property.

§ **A.3.3.2.3 Asbestos Abatement Liability Insurance**, with policy limits of not less than (\$) per claim and (\$) in the aggregate, for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials.

§ **A.3.3.2.4** Insurance for physical damage to property while it is in storage and in transit to the construction site on an "all-risks" completed value form.

Init.

§ A.3.3.2.5 Property insurance on an "all-risks" completed value form, covering property owned by the Contractor and used on the Project, including scaffolding and other equipment.

§ A.3.3.2.6 Other Insurance
(List below any other insurance coverage to be provided by the Contractor and any applicable limits.)

Coverage	Limits
builder's risk "all-risks"	dollar value of the "work".

§ A.3.4 Performance Bond and Payment Bond

The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located, as follows:

Type	Penal Sum (\$0.00)
Payment Bond	100% of Contract Sum
Performance Bond	100% of Contract Sum

Payment and Performance Bonds shall be AIA Document A312™, Payment Bond and Performance Bond, or contain provisions identical to AIA Document A312™, current as of the date of this Agreement.

§ A.3.4.1 Upon request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

§ A.3.4.2 The Contractor shall provide and maintain a valid and enforceable bond throughout the life of the Contract and its warranty periods. Any required bond shall be subject to the Owner's approval. Fully executed copies of the bond shall be provide to the Owner and the Architect.

§ A.3.4.3 The minimum requirement for the Owner's approval of the Surety shall be that the Surety is listed by the United States Treasury Department as acceptable for bonding Federal projects and that the bond amount is within the limit set by the Treasury Department as the net limit on any single risk. There shall be no affiliating between the Contractor and the Surety Company, Agent or Agency.

§ A.3.4.4 Unless otherwise required by some other provisions of the Contract Documents for statutory requirements, the bond form shall be the A312 Performance Bond and Payment Bond, amended as set forth below in Subparagraphs A.3.4.4.1 through A.3.4.4.7:

- .1 The bond shall be amended to allow suit to be instituted against the Surety within the same time limitation applicable to the Principal as provide by law in the State where the Project is located. The AIA A312 Payment Bond shall be amended under paragraph 4.2 by the addition of the following: ".4 Nothing contained in the Paragraph 4.2 shall bar or otherwise prevent a claimant's suit if it perfects or asserts a valid claim against the Owner otherwise recoverable against this Bond."
- .2 The bond shall guarantee the Contractor will perform each and every part of the Contract, cover all guarantees called for and insure prompt payment to all persons furnishing material or labor required in prosecution of the Work under the Contract. In the event of additions to the Contract the Owner reserves the right to require evidence of additional bonding.
- .3 The Bond shall:
 - a. Provide for additions or deductions from the Work in any amount without consent of Surety;
 - b. Provide that the completion time shall not be extended by reason or alterations, additions, omissions or changes in the Work, unless agreed to at the time of the change;
 - c. Provide that no notice of the aforesaid alterations, addition, changes or omissions need be given to the Surety; and
 - d. Permit occupancy by the Owner at any time.

- .4 Final acceptance of the Work shall relieve neither the Contractor nor the Surety from their obligations under this Contract or under the bond, including, without limitation, their obligations regarding warranties of materials, equipment, installation or service.
- .5 The bond shall be subject to the terms of the Contract Documents, including the General Conditions, and such terms shall take precedence over any contrary provision of the text of the bond itself.
- .6 The Surety specifically consents to the dispute resolution process set forth in these A201 General Conditions.
- .7 If the bond is for a public project, the bond shall be subject to any statutory requirements relating to bonds on public projects in effect in the jurisdictions where the Project is located.

ARTICLE A.4 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows:

SECTION 00 4114

BID FORM

BIDS FOR: Newman Outdoor Field - Exiting Improvements
1515 15th Avenue North
Fargo, ND 58102

TO: City of Fargo
Bekki Majerus, Director of Facilities Management
225 4th Street North
Fargo, ND 58102

FROM: Name: AP SIGNATURE HOMES DBA AP BUILT
Address 3640 BEL BLVD E
City, State, Zip WEST FARGO, ND 58078
North Dakota Contractor's License 42188

TO WHOM IT MAY CONCERN:

Pursuant to and in compliance with the Invitation to Bid and the proposed Contract Documents relating to the Work including Addenda: 1,2

(List all addenda received, regardless of the number of spaces provided.)

The undersigned, having become thoroughly familiar with terms and conditions of the proposed Contract documents and with local conditions affecting the work, proposes and agrees to fully perform the work within the stated time and in strict accordance with the Contract Documents, including all labor, materials, equipment, supplies, supervision and bonds, for the sum of money stated in this Bid Form. In submitting this bid, the undersigned acknowledges agreement with the following:

1. The undersigned is a lawfully authorized agent of the Bidder.
2. Upon written Notice of Award, bidder will provide evidence of insurance coverage, and the signed, executed Agreement within the prescribed time period.
3. Upon execution of the Agreement, bidder will commence work promptly (within 10 days) upon Notice to Proceed.
4. Upon execution of the Agreement, bidder will assure that specified work will be Substantially Completed within the time and according to the provisions of these documents.

If written notice of the acceptance of this bid is mailed or delivered to the undersigned within sixty (60) days after the date of bid opening, or at any other time thereafter before it is withdrawn, the Bidder will execute all required documents in a timely manner according to these instruments.

Notice of Award, or requests for additional information may be addressed to the undersigned at the address set forth below.

Bidder agrees and attests that no unlawful discriminatory practices or segregated facilities will be permitted in the performance of the work. Under no circumstances within the bidder's control will segregation on the basis of race, color, religion, sex, or national origin be permitted.

If bidder is a corporation, indicate in the blank space to the right of the signature the legal name of the corporation, state of incorporation, and names of president and secretary; if a partnership, give name of firm and names of all individual co-partners comprising the firm, if bidder is an individual, give first and last names in full.

The bidder, being thoroughly familiar with these documents and conditions surrounding the proposed work and affecting the cost of the work, and being familiar with the Bid Documents, Contract Form, all Condition of the Contract, Drawings, Project Manual, and Addenda, hereby propose to furnish all labor,

material, coordination, equipment, and supplies to construct the following portion of the above named project in accordance with the Contract Documents, within the time set forth for the total sum of:


General Construction Base Bid:

Forty Eight Thousand Six Hundred Forty Dollars (\$ 48,640)

This proposal is made by, AD SIGNATURE HOMES NBA AB BUILT
an individual/partnership/corporation (write in applicable term), CORPORATION

_____ by the undersigned acting as authorized agent of the Bidder.

BID DATED THIS ELEVENTH DAY OF OCTOBER, 20 23

SIGNED 
ANDREW PRMBLE
(typed name of signer)

List officers or partners, (if applicable under point 6):

ANDREW PRMBLE _____

(SEAL, if by a corporation)

Alternate G-1

Amount to (select) add deduct from the Base Bid to provide 05 7100 - Aluminum Stairs.
Total sum of ONE THOUSAND FIVE HUNDRED Dollars (\$ 1,500.00)

Alternate G-2

Amount to (select) add/deduct from the Base Bid to Prime and Paint in lieu of Galvanized.
Total sum of NO BID Dollars (\$ _____)

SECTION 00 4000

BID BOND FORM

KNOW ALL PERSONS BY THESE PRESENTS:

That we, AP Signature Homes, LLC 3640 Bell Blvd E
Of the City of West Fargo, County of Cass, State of North Dakota
As Principal; and Old Republic Surety Company, a corporation authorized to act
as Surety to this bond in the State of North Dakota, are held, and firmly bound unto the City of Fargo in the
liquidating sum of 5% of bid amount Dollars,
for the payment of which sum, well and truly made, we bind ourselves, our heirs, executors,
administrators, successors, and assigns, jointly and severally by these presents.

The condition of the above obligation is such that whereas the Principal has submitted to the City of
Fargo, a sealed Proposal in writing, for the construction of Newman Outdoor Field – Exiting
Improvements.

According to documents on file with the City of Fargo, and pursuant to the true intent, meaning, and
purposes of those documents.

NOW, THEREFORE, IF EITHER a) said Proposal is rejected, or b) if said Proposal accepted and the
Contract for such work is awarded to the Principal within the time stipulated by the Documents identified
above, or within such further time as may be granted by the Principal, and the Principal executes a
contractual agreement to perform the work in accordance with the Proposal, then this obligation shall
become void. Otherwise, this bond of obligation shall remain in full force and effect; it being expressly
understood and agreed that the liability of the Surety shall, in no event, exceed the liquidating sum stated
here.

The Surety stipulates and agrees that the obligation of said Surety and bond shall be in no way impaired
nor affected by an extension by the Principal of the time within which the Owners may accept such bid,
and Surety does hereby waive notice of such extension.

IN WITNESS WHEREOF, the Principal and the Surety have hereunto set their hands and seals, and such
of them as are corporations have caused their corporate seals to be affixed and these presents to be
signed by their proper officers, the day and year first set forth here on this 11th day of
October, 2023.



Principal [Signature]

Surety Rachel A. Thurd

By Attorney In Fact - Old Republic
Surety Company

ATTEST:

NOTE: Witness to the following attestations are required for bonds supplied by all except individual proprietorships:

ACKNOWLEDGEMENT OF INDIVIDUAL or CORPORATION (as Principal):

STATE OF North Dakota
COUNTY OF Cass
On this 11th day of October in the year 2023 before me,
Stephanie Dosmann
known to me (or proved to me on oath of

_____)
to be the person who is described in and who executed the attached instrument and acknowledged to me that such instrument was lawfully executed.

(Notary Public)
(Seal)

STEPHANIE DOSMANN
NOTARY PUBLIC
STATE OF NORTH DAKOTA
MY COMMISSION EXPIRES JAN. 23, 2027

ACKNOWLEDGEMENT OF SURETY:

STATE OF North Dakota
COUNTY OF Cass
On this 11th day of October in the year 2023 before me,
Stephanie Dosmann
known to me (or proved to me on oath

_____)
to be the person described with the instrument as authorized attorney-in-fact for Old Republic Surety Company

(Seal) (Notary Public)

STEPHANIE DOSMANN
NOTARY PUBLIC
STATE OF NORTH DAKOTA
MY COMMISSION EXPIRES JAN. 23, 2027

END OF FORM

OLD REPUBLIC SURETY COMPANY

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That OLD REPUBLIC SURETY COMPANY, a Wisconsin stock insurance corporation, does make, constitute and appoint:

RACHEL A. THURS, ZACH BOSH, DEMI TWISS, OF WEST FARGO, ND

its true and lawful Attorney(s)-in-Fact, with full power and authority, for and on behalf of the company as surety, to execute and deliver and affix the seal of the company thereto (if a seal is required), bonds, undertakings, recognizances or other written obligations in the nature thereof, **(other than bail bonds, bank depository bonds, mortgage deficiency bonds, mortgage guaranty bonds, guarantees of installment paper and note guaranty bonds, self-insurance workers compensation bonds guaranteeing payment of benefits or black lung bonds),** as follows:

ALL WRITTEN INSTRUMENTS

and to bind OLD REPUBLIC SURETY COMPANY thereby, and all of the acts of said Attorneys-in-Fact, pursuant to these presents, are ratified and confirmed. This appointment is made under and by authority of the board of directors at a special meeting held on February 18, 1982. This Power of Attorney is signed and sealed by facsimile under and by the authority of the following resolutions adopted by the board of directors of the OLD REPUBLIC SURETY COMPANY on February 18, 1982.

RESOLVED that, the president, any vice-president, or assistant vice president, in conjunction with the secretary or any assistant secretary, may appoint attorneys-in-fact or agents with authority as defined or limited in the instrument evidencing the appointment in each case, for and on behalf of the company to execute and deliver and affix the seal of the company to bonds, undertakings, recognizances, and suretyship obligations of all kinds; and said officers may remove any such attorney-in-fact or agent and revoke any Power of Attorney previously granted to such person.

RESOLVED FURTHER, that any bond, undertaking, recognizance, or suretyship obligation shall be valid and binding upon the Company
(i) when signed by the president, any vice president or assistant vice president, and attested and sealed (if a seal be required) by any secretary or assistant secretary; or
(ii) when signed by the president, any vice president or assistant vice president, secretary or assistant secretary, and countersigned and sealed (if a seal be required) by a duly authorized attorney-in-fact or agent; or
(iii) when duly executed and sealed (if a seal be required) by one or more attorneys-in-fact or agents pursuant to and within the limits of the authority evidenced by the Power of Attorney issued by the company to such person or persons.

RESOLVED FURTHER, that the signature of any authorized officer and the seal of the company may be affixed by facsimile to any Power of Attorney or certification there of authorizing the execution and delivery of any bond, undertaking, recognizance, or other suretyship obligations of the company; and such signature and seal when so used shall have the same force and effect as though manually affixed.

IN WITNESS WHEREOF, OLD REPUBLIC SURETY COMPANY has caused these presents to be signed by its proper officer, and its corporate seal to be affixed this 21ST day of OCTOBER, 2021.

OLD REPUBLIC SURETY COMPANY

Karen J. Haffner

Assistant Secretary



Alan Pavlic

President

STATE OF WISCONSIN, COUNTY OF WAUKESHA-SS

On this 21ST day of OCTOBER, 2021, personally came before me, Alan Pavlic and Karen J Haffner, to me known to be the individuals and officers of the OLD REPUBLIC SURETY COMPANY who executed the above instrument, and they each acknowledged the execution of the same, and being by me duly sworn, did severally depose and say; that they are the said officers of the corporation aforesaid, and that the seal affixed to the above instrument is the seal of the corporation, and that said corporate seal and their signatures as such officers were duly affixed and subscribed to the said instrument by the authority of the board of directors of said corporation.



Kathryn R. Pearson
Notary Public

My commission expires: 9/28/2022

(Expiration of notary commission does not invalidate this instrument)

CERTIFICATE

I, the undersigned, assistant secretary of the OLD REPUBLIC SURETY COMPANY, a Wisconsin corporation, CERTIFY that the foregoing and attached Power of Attorney remains in full force and has not been revoked; and furthermore, that the Resolutions of the board of directors set forth in the Power of Attorney, are now in force.

40-6313

Signed and sealed at the City of Brookfield, WI this _____ day of _____.



Karen J. Haffner

Assistant Secretary

GREAT NORTH INS SERVICES, LLC

State of North Dakota

SECRETARY OF STATE



CONTRACTOR LICENSE

NO: 000042188

CLASS: A

The undersigned, as Secretary of State of the state of North Dakota and Registrar of Contractors, certifies that **AP Signature Homes LLC** whose address is in WEST FARGO, ND, has filed in this office proper documents for a Contractor License valid until March 1, 2024, and has complied with all requirements of North Dakota Century Code, chapter 43-07.

AP Signature Homes LLC is entitled to bid on and accept contracts as authorized by law under this license without limit as to the value of any single contract project.

Dated: January 13, 2023

A handwritten signature in black ink that reads "Michael Howe". The signature is written in a cursive style with a long horizontal stroke at the end.

Michael Howe
Secretary of State

The North Dakota Secretary of State verifies that:

AP Signature Homes LLC

is the holder of a North Dakota Class A Contractor License which is in force until March 1, 2024 unless sooner suspended or revoked as provided by NDCC 43-07.

License # 000042188

SECTION 01 0060

CONTRACTOR INFORMATION

Contractor's Contact Information:

Contractor's Name: _____ Project's Scheduled Start Date: _____

Contractor's Address: _____ Project's Scheduled Completion: _____

Office Telephone #: _____ Contractor's Scheduled Start Date: _____

Job Site Telephone #: _____ Contractor's Scheduled Completion: _____

Project Manager: _____ Notice to Proceed Start: _____

Email Address: _____ Contractor's Actual Start Date: _____

Cell Telephone #: _____ Contractor's Actual Completion: _____

Construction Superintendent: _____ Contractor Date: _____

Email Address: _____ Contract Amount: _____

Cell Telephone #: _____ Contract Retainage: _____

Scope of Work: _____ Pay Request Submittal Date: _____

_____ Pay Request Payment Date: _____

_____ Contractor's License #: _____

_____ Contractor's Federal ID #: _____

_____ Sales Tax ID #: _____

Specification Sections: _____ Insurance Company Name: _____

_____ Insurance Agency Name: _____

_____ Ins. Agency Telephone #: _____

Documents Required Before Start of Construction:

- | | |
|--|---|
| <input type="checkbox"/> Certificate of Insurance | <input type="checkbox"/> Contractor's License |
| <input type="checkbox"/> Worker's Comp Certificate | <input type="checkbox"/> Safety Program |
| <input type="checkbox"/> Hazardous Communication Program | <input type="checkbox"/> Material Data Safety Sheets (MSDS) |
| <input type="checkbox"/> _____ | <input type="checkbox"/> _____ |

Documents Required Before First Application for Payment:

- | | |
|---|--|
| <input type="checkbox"/> Signed Contract | <input type="checkbox"/> Approved Schedule of Values |
| <input type="checkbox"/> Executed Disclosure Affidavit | <input type="checkbox"/> State Sales Tax Certificate |
| <input type="checkbox"/> Performance/Payment Bond (if required) | <input type="checkbox"/> Preface Letter Signed Off Sheet |
| <input type="checkbox"/> _____ | <input type="checkbox"/> _____ |



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

TO: Board of City Commissioners
FROM: Michael Mitchell, Training and Development Coordinator
RE: Contract Extension for Vector Solutions (SSP17412)
DATE: October 30, 2023

The attached contract with Vector Solutions is for a software vendor providing a Learning Management System (LMS) for all City of Fargo employees. This project was approved on the December 4, 2017 for a five-year contract. On December 12, 2022 the City Commission approved a one year extension.

The City has been extremely pleased with the services and technical support provided by Vector Solutions during this term of the contract and would recommend a one-year extension in the amount of \$106,868.88. A contract addendum has gone through the legal review process with our City Attorney, Nancy Morris.

Suggested Motion:

Approve the recommendation for a one-year extension of a contract with Vector Solutions to end December 31, 2024.

Renewal Notice



TargetSolutions

Date Tuesday, October 17, 2023

Contract Name	Account Manager	Billing Frequency	Renewal Start Date
City of Fargo (ND)	Jackelin Maguire	Annual	12-31-2023

Quantity	Product	Description	Unit Price	Total
1,200	Vector LMS, TargetSolutions Edition Premier Membership	Training management for public entities and professionals	\$55.94	\$67,128.00
1,200	All Course Catalogs	HR & Employment Practices, OSHA & Compliance, Driving Safety, NFPA/Fire/EVO, EMS Recertification catalogs for Vector LMS, TargetSolutions Edition	\$0.00	\$0.00
5	Vector LMS, TargetSolutions Edition - Maintenance Fee	Annual maintenance of Vector LMS, TargetSolutions Edition	\$395.00	\$1,975.00
13	Municipal AEC Catalog	AEC Complete	\$220.76	\$2,869.88
1,200	Vector EHS - Professional	EHS Professional Software -Key Modules and Features	\$20.31	\$24,372.00
1	Home	Home Module	\$0.00	\$0.00
1	Hazards		\$0.00	\$0.00
1	Corrective Actions		\$0.00	\$0.00
1	Dashboard	Dashboard Module	\$0.00	\$0.00
1	Public Web Form	Public Web Forms	\$0.00	\$0.00
1	Incidents	Incidents Module	\$0.00	\$0.00
1	Inspections	Inspections Module	\$0.00	\$0.00
1,200	Employee Interface		\$0.00	\$0.00
1,200	Single Sign On / User Interface		\$0.00	\$0.00
1	Vector EHS - PROFESSIONAL Set up Fee		\$5,125.00	\$0.00
1,200	Employee Interface Set up Fee		\$0.00	\$0.00
1,200	Single Sign On Set up Fee		\$0.00	\$0.00

Grand Total: \$96,344.88

As a convenience to our customers, we are changing our billing policy effective December 1st, 2019 to send out bills 30 days in advance of your renewal.

This does not change the billing due date or the payment terms of your agreement.

Upon expiration of the Initial or any Renewal Term of your Client Agreement, access to the Services may remain active for thirty (30) days solely for purpose of Company's record keeping (the "Expiration Period"). Unless otherwise provided in your Client Agreement, any access to or usage of the Services following the Expiration Period shall be deemed Client's renewal of the Agreement under the same terms and conditions.

Renewal Notice



TargetSolutions

Date Tuesday, October 17, 2023

Contract Name	Account Manager	Billing Frequency	Renewal Start Date
City of Fargo (ND)	Jackelin Maguire	Annual	02-28-2024

Quantity	Product	Description	Unit Price	Total
125	Vector Scheduling	Vector Scheduling for web and mobile	\$83.00	\$10,375.00
1	Vector Scheduling - Maintenance Fee	Annual maintenance of Vector Scheduling	\$149.00	\$149.00

Grand Total: \$10,524.00

As a convenience to our customers, we are changing our billing policy effective December 1st, 2019 to send out bills 30 days in advance of your renewal.

This does not change the billing due date or the payment terms of your agreement.

Upon expiration of the Initial or any Renewal Term of your Client Agreement, access to the Services may remain active for thirty (30) days solely for purpose of Company's record keeping (the "Expiration Period"). Unless otherwise provided in your Client Agreement, any access to or usage of the Services following the Expiration Period shall be deemed Client's renewal of the Agreement under the same terms and conditions.

The Parties have executed this Agreement by their authorized representatives as of the last date set forth below.

Target Solutions, LLC d/b/a Vector Solutions
4890 W. Kennedy Blvd, Suite 300
Tampa, FL 33609

City of Fargo (ND)
225 4th St. N
Fargo, ND 58102

Brandi Howe

Date: _____

Timothy Mahoney, Mayor

Date: _____

CITY OF Fargo Fire Department

32

MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

FROM: FIRE CHIEF STEVE DIRKSEN

DATE: OCTOBER 26, 2023

SUBJECT: MEMORANDUM OF AGREEMENT BETWEEN THE STATE OF NORTH DAKOTA THROUGH ITS NORTH DAKOTA DEPARTMENT OF EMERGENCY SERVICES AND THE CITY OF FARGO FIRE DEPARTMENT

The Fargo Fire Department has enjoyed a close working relationship with the North Dakota Department of Emergency Services for several years. Following the events of 9/11/2001 the North Dakota Department of Emergency Services and public safety entities around the state have worked to ensure response capabilities. This included the formation of regional response areas in the state.

The Fargo Fire Department entered into an agreement with NDDES in 2009 to provide Regional Response for Hazardous Materials. In 2011 the agreement was amended for Technical Rescue Structural Collapse incidents. Through various grants the Fargo Fire Department was awarded vehicles and equipment to be used for these purposes.

NDDES and the four anchor response communities worked to update the agreement over the past year. The significant changes to the agreement addressed training, team composition, and Team notification and response.

RECOMMENDED MOTION: Approve the Memorandum of Agreement between the State of North Dakota through its North Dakota Department of Emergency Services and the City of Fargo Fire Department.



ND Department of Emergency Services

Ensuring a safe and secure homeland for all North Dakotans

North Dakota Regional Response for Hazardous Materials and Technical Rescue Memorandum of Agreement

**NORTH DAKOTA
HAZARDOUS MATERIALS
AND
TECHNICAL RESCUE
REGIONAL RESPONSE**

MEMORANDUM OF AGREEMENT

SECTION 1 DEFINITIONS

SECTION 2 PURPOSE, VISION, MISSION

SECTION 3 SCOPE

SECTION 4 AUTHORITY

SECTION 5 TEAM RESPONSE AREAS

SECTION 6 QUALIFICATIONS OF TEAM MEMBERS

SECTION 7 COMPOSITION OF TEAMS

SECTION 8 RESPONSIBILITIES OF TEAMS

SECTION 9 ESTABLISHMENT OF SUGGESTED OPERATING GUIDELINES

SECTION 10 EMERGENCY PREPLANNING

SECTION 11 EMERGENCY RESPONSE ASSISTANCE

SECTION 12 REVIEW AND EVALUATION OF RESPONSE

SECTION 13 SUPPLIES, EQUIPMENT, AND VEHICLES

SECTION 14 EMERGENCY RESPONSE CRITERIA AND DISPATCHING

SECTION 15 COST RECOVERY

SECTION 16 COORDINATING RESPONSE ACTIVITIES

SECTION 17 MUTUAL AID AGREEMENTS

SECTION 18 LIABILITY AND WORKERS' COMPENSATION COVERAGE

SECTION 19 EFFECTIVENESS

Memorandum of Agreement

This Memorandum of Agreement (MOA) is between the State of North Dakota through its North Dakota Department of Emergency Services and the City of Fargo through the Fargo Fire Department.

SECTION 1 - DEFINITIONS

The terms used in this MOA have the meanings given them in this part.

Activated by the state

"Activated by the state" means requested via the North Dakota Department of Emergency Services (NDDDES) Duty Officer system for purposes of emergency response to major hazardous materials or technical rescue incidents where life and/or property are in jeopardy. NDDDES provides 24/7, 365-day coverage through its State Radio system and Duty Officers.

Emergency Response Operations Team (EROT)

"Emergency Response Operations Team" means a regional hazardous materials operation level response team trained, equipped, and authorized to evaluate and, when possible, provide simple mitigation to a hazardous materials incident and may recommend to the local/tribal incident manager the best means of controlling the hazard after consideration of life safety concerns, environmental effects, exposure hazards, quantity and type of hazardous material, availability of resources, or other relevant factors. An EROT may serve as a Quick Response Action Team (QRAT) based on the geographical location of a hazardous materials incident.

Emergency Response Technician Team (ERTT)

"Emergency Response Technician Team" means a regional hazardous materials or technical rescue technician level response team, trained and equipped to respond to and mitigate a hazardous materials or technical rescue incident and may recommend to the local/tribal incident manager the best means of controlling the hazard or threat after consideration of life safety concerns, environmental effects, exposure hazards, quantity and type of hazardous material, availability of resources, structural stability or other relevant factors. An ERTT may serve as a Quick Reaction Assessment Team (QRAT) based on the geographic location of a hazardous materials or technical rescue incident.

Employer

"Employer" means a person or entity who employs one or more employees and includes any person or entity who has the power to hire, fire, or transfer, or who acts in the interest of, or as a representative of, an employer and includes a corporation, partnership, association, group of persons, and the state and all its political subdivisions.

Facility

"Facility" means a structure, group of structures, equipment, tank, or device that is used for one or more of the following purposes: exploring for, drilling for, producing, storing, handling, transferring, processing, or transporting oil or a hazardous substance. Facility includes a motor vehicle, rolling stock, or pipeline used for one or more of these purposes. A facility may be in, on, or under land, or in, on, or under waters of the state as defined in section.

Hazardous Material or Substance

"Hazardous material or substance" is defined as any substance or material that could adversely affect the safety of the public, handlers, or carriers during transportation and means any substance designated or listed under a. through d. below of this definition, exposure to which results or may result in adverse effects to the health or safety of humans:

- a. Any substance defined under section 101(14) of CERCLA.
- b. Any biologic agent and other disease-causing agent which after release into the environment and upon exposure, ingestion, inhalation, or assimilation into any person, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions (including malfunctions in reproduction) or physical deformations in such persons or their offspring.
- c. Any substance listed by the U.S. Department of Transportation as hazardous materials under 49 CFR 172.101 and appendices; and
- d. Hazardous waste as herein defined.

Hazardous Waste

"Hazardous waste" means a waste or combination of wastes as defined in 40 CFR 261.3 or those substances defined as hazardous wastes in 49 CFR 171.8.

Local/Tribal authority

"Local/Tribal authority" means the requesting local/tribal unit of government's public safety agency in overall command at the scene of a hazardous materials or technical rescue incident. A local/tribal authority shall designate an incident commander at the scene of any incident for which aid is requested.

Mitigation

"Mitigation" means those actions necessary to alleviate the immediate threat from a hazardous materials release or technical rescue incident.

NDDDES Duty Officer System

"NDDDES Duty Officer System" means the single answering point system. The NDDDES Duty Officer can be paged through State Radio.

North Dakota State Emergency Operations Plan (SEOP)

"North Dakota State Emergency Operations Plan" means the document that guides state agencies in their response to emergencies and disasters, in accordance with their general responsibilities.

Operations authorized by the State

"Operations authorized by the state" means activities listed in this Agreement and the suggested operating guidelines, including authorized training exercises when a team is operating outside its geographic jurisdiction.

Primary response area

"Primary response area" means the geographic portion of the state to which a team has been assigned to provide the principal response to an incident.

Quick Response Assessment Team (QRAT)

"Quick Response Assessment Team (QRAT)" means a team trained, equipped, and authorized to evaluate and, when possible, provide simple mitigation to a hazardous materials or technical rescue incident and may recommend to the local/tribal incident manager the best means of controlling the hazard or threat after consideration of life safety concerns, environmental effects, exposure hazards, quantity and type of hazardous material, availability of resources, structural stability or other relevant factors.

Regional response team program

"Regional response team program" means the system of regionally located hazardous materials and technical rescue Emergency Response Teams.

Regional team

"Regional team" means an ERTT, EROT, or QRAT that is part of the regional response team program.

Regional team representative

A "regional team representative" is the ranking regional team officer on site with a team at an incident.

Response area

"Response area" means primary or secondary response area as defined in this document.

Responsible party – Hazardous Materials

A "responsible party" is the party who is responsible for the care, custody, storage, handling, transportation or other care and control of a hazardous material or a person or party that causes the release of a hazardous material and who may be liable for the reasonable and necessary costs, including legal and administrative costs, of response to a hazardous materials incident incurred by a regional hazardous materials response team or local/tribal unit of government.

Responsible party – Technical rescue Search and Rescue

In the case of technical rescue, a "responsible party" is the party who is responsible for the care of a structure, or a person or party that causes the collapse of the structure and who may be liable for the reasonable and necessary costs, including legal and administrative costs, of response to a technical rescue incident incurred by a regional technical rescue search and rescue response team or local/tribal unit of government.

Requesting department

A "requesting department" is an agency or political subdivision that requests aid under this Agreement for an incident in its jurisdiction.

Secondary response area

"Secondary response area" means the geographic portion of the State to which a team has been assigned to provide the alternate response to an incident.

Structure

"Structure" means something built or constructed.

Technical rescue

"Technical rescue" means the loss of structural integrity of something built or constructed, such as a building, bridge, or dam that results in significant personal injury, death, or imposing major economic loss.

Suggested operating guidelines

"Suggested operating guidelines" means the written guidance covering those aspects of an emergency response that lend themselves to a general direction yet require flexibility in their application to meet the unique circumstances of each individual emergency.

SECTION 2 – PURPOSE, VISION, MISSION

The purpose of a Hazardous Materials and Technical Rescue Regional Response Team Program is to implement a statewide plan and system for responding to major hazardous materials or technical rescue incidents where life and/or property are in jeopardy. The program allows teams to assist local/tribal authorities in protecting the public, property, and the environment from the immediate effects of a hazardous materials release or technical rescue incident through the implementation of a statewide hazardous materials and technical rescue emergency response system. The system consists of several teams of technically trained personnel drawn from existing public organizations and operating under an agreement with the State of North Dakota.

2.1 – Vision of Hazardous Materials Regional Response Teams

A modified integrated Type I Chemical, Biological, or Radiological response throughout North Dakota.

2.2 – Mission of Hazardous Materials Regional Response Teams

The mission of the Hazardous Materials Regional Response Teams is to offer assistance to the citizens and visitors of the State of North Dakota from chemical, biological, or radiological releases by directly supporting local fire departments through timely response.

2.3 Vision of Technical Rescue Regional Response Teams

A modified integrated Type I Technical Rescue response throughout North Dakota.

2.3 – Mission of Technical Rescue Regional Response Teams

The mission of the Technical Rescue Regional Response Teams is to offer assistance to the citizens and visitors of the State of North Dakota from technical rescue incidents by directly support local fire department through timely response.

SECTION 3 - SCOPE

To provide direction to state, local, and tribal governments and business and industry regarding the implementation of a statewide system of regional hazardous materials and technical rescue ERTTs, EROTs and QRATs. Provisions of this section include, but are not limited to, factors to be considered in establishing the response area locations of ERTT, EROT and QRAT; requirements for designating teams in each established response area; procedures for establishing equipment requirements for each team; procedures for selecting and contracting for establishing teams; procedures for dispatching teams at the request of local/tribal governments; categories of costs to be used to establish fee schedules for reimbursing teams for costs arising from hazardous materials or technical rescue emergencies and for state recovery of response costs from the party responsible for causing a hazardous materials or technical rescue emergency; and methods of coordinating team response with other state departments and agencies, local units of government, other states, Tribal Nations and other non-public entities.

SECTION 4 - AUTHORITY

This Agreement is entered into pursuant to North Dakota Statutes to include NDCC 37-17.1, NDCC Chapter 54-40 and NDCC Title 40.

SECTION 5 -TEAM RESPONSE AREAS

5.1 – Response areas

The North Dakota Department of Emergency Services (NDDDES) in cooperation with anchor jurisdictions has established four response areas for hazardous materials and technical rescue emergency response. These response areas are:

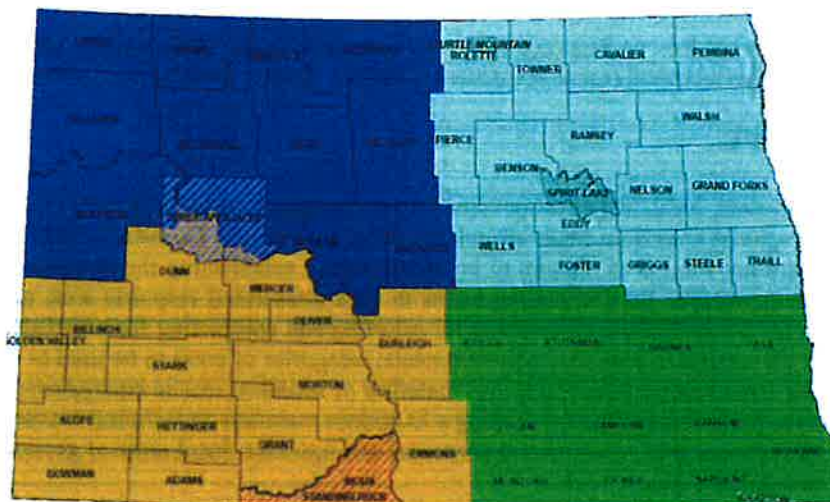
- Northeast Response Area which includes the following counties/tribes:
 - Benson County
 - Cavalier County
 - Eddy County
 - Foster County
 - Grand Forks County
 - Griggs County
 - Nelson County
 - Pembina County
 - Pierce County
 - Ramsey County
 - Rolette County
 - Steele County
 - Towner County
 - Traill County
 - Walsh County
 - Wells County
 - Spirit Lake Tribe
 - Turtle Mtn. Tribe

- Northwest Response Area which includes the following counties/tribe:
 - Bottineau County
 - Burke County
 - Divide County
 - McHenry County
 - McKenzie County
 - McLean County
 - Mountrail County
 - Renville County
 - Sheridan County
 - Ward County
 - Williams County
 - Three Affiliated Tribe

- Southeast Response Area which includes the following counties:
 - Barnes County
 - Cass County
 - Dickey County
 - Kidder County
 - LaMoure County
 - Logan County
 - McIntosh County
 - Ransom County
 - Richland County
 - Sargent County
 - Stutsman County

- Southwest Response Area which includes the following counties/tribe:
 - Adams County
 - Billings County
 - Bowman County
 - Burleigh County
 - Dunn County
 - Emmons County
 - Golden Valley County
 - Grant County
 - Hettinger County
 - Mercer County
 - Morton County
 - Oliver County
 - Sioux County
 - Slope County
 - Stark County
 - Standing Rock Tribe

Regional Response Regions



5.2 – Assigning Emergency Response Technician Team (ERTT)

Following the established response areas NDDDES will select a primary ERTT for hazardous materials or technical rescue incidents. The primary ERTT for each response area is as follows:

- Northeast Response Area ERTT: Grand Forks Fire Department
- Northwest Response Area ERTT: Minot Fire Department
- Southeast Response Area ERTT: Fargo Fire Department
- Southwest Response Area ERTT: Bismarck Fire Department

Note: Williston Fire Department may also be deployed as a Hazmat ERTT for Divide, Williams, and McKenzie Counties

5.3 – Assigning Emergency Response Operations Team (EROT)

Following the established response areas, NDDDES will select a primary EROT for each response area for hazardous materials response incidents. The primary EROT for each response area is as follows:

- Northeast Response Area EROT: Devils Lake Fire Department
- Northwest Response Area EROT: Williston Fire Department
- Southeast Response Area EROT: Jamestown Fire Department
- Southwest Response Area EROT: Dickinson Fire Department

5.4 - Serving as Quick Response Assessment Team (QRAT)

Each ERTT and EROT may also serve as a QRAT for all or a portion of its primary response area.

5.5 - Designating additional EROT and QRAT

The NDDDES may select additional EROT for a response area, as necessary to provide appropriate emergency response capability.

5.6- Statewide response

Subject to Section 8, an ERTT or EROT may be requested to respond to any response area in the State at the discretion of NDDDES.

SECTION 6 - QUALIFICATIONS OF TEAM MEMBERS

6.1 - Qualifications of all members

Each ERTT member should follow the generally accepted requirements established by the most current edition of NFPA 472, "Standard for Professional Competence of Responders to Hazardous Materials Incidents"; the Code of Federal Regulations, title 29, section 1910.120 (q); and EPA rules 40 CFR 311.

In addition, each ERTT member, should follow generally accepted requirements established in chapters 4, 5, 6, 7, 8, 11, and 12 of the most current editions of NFPA 1670, "Standard on Operations and Training for Technical Search and Rescue Incidents", and chapters 4, 5, 6, 7, 8, and 9 of NFPA 1006, "Standard for Technical Rescuer Professional Qualifications".

6.2 - Medical Monitor personnel

Medical Monitor personnel assigned to provide on-scene emergency medical support to the team must be currently certified or registered as an emergency medical technician by the North Dakota Department of Health and be in compliance with generally accepted requirements established by the most current edition of NFPA 473, "Standard for Competencies for EMS Personnel Responding to Hazardous Materials/Weapons of Mass Destruction Incidents"; as an Emergency Medical Service/Hazardous Materials/Technical Rescue Search and Rescue Level II Responder; Code of Federal Regulations, title 29, section 1910.120(q); and EPA rules 40 CFR 311.

6.3 - Continuing education requirements

Each ERTT member should successfully complete annual refresher training based on the continuing education requirements of the most current edition of NFPA 472, the Code of Federal Regulations, title 29, section 1910.120; and EPA rules 40 CFR 311. ERTT member should successfully complete annual training based on the continuing education requirements in chapters 4, 5, 6, 7, and 11 of the most current editions of NFPA 1670, "Standard on Operations and Training for Technical Search and Rescue Incidents" or the most recently published standard. The employer of each ERTT member is the authority having jurisdiction (AHJ) that will determine the training needs and requirements of the respective team members to meet applicable standards to the best of their ability.

6.4 - Team training

Each ERTT member should familiarize themselves with the suggested operating guidelines, administrative rules and operational policies and procedures of the regional response team program. Team members will complete ICS 100, ICS 200, IS 700, and IS 800 for National Incident Management System (NIMS) compliance and to reference NIMS requirements defined in Federal Emergency Management Agency (FEMA) Hazardous Materials Technician (Publication

4-509-1387), Structural Collapse Search Technician (Publication 8-509-1164) and Structural Collapse Rescue Technician (Publication 8-509-1166) position qualification requirements of the most recently published standards. The employer of each ERTT member is the authority having jurisdiction (AHJ) that will determine the training needs and requirements of the respective team members to meet applicable standards to the best of their ability.

6.5 - Reviewing training and continuing education records

Upon request by NDDDES, the employer of ERTT members will make available the hazardous materials training and continuing education records of all team members. Upon request by NDDDES, the employer of ERTT members will make available search and rescue continuing education records of all team members.

6.6 - Certifying compliance with qualification requirements

The employer of each ERTT member is certifying upon signature of this document that the team members have received training that meets the requirements set out in this section. Upon request you may be required to provide training documentation to prove certification.

6.7 - Training provided by employer

The employer of ERTT members will select training programs and instructional staff that follow the requirements of section and will provide that training to team members.

SECTION 7 - COMPOSITION OF TEAMS

7.1 - Composition of team membership

An ERTT may be composed of personnel from one or more public or nonpublic entities. Teams must designate a single point of contact for purposes of emergency dispatch, a single authority for contract administration, and the employer responsible for the employer requirements of this section.

SECTION 8 - RESPONSIBILITIES OF TEAMS

8.1 - Response at NDDDES direction

An ERTT and EROT will respond when requested by the NDDDES Response Chief, or designee, if it is determined by the responding jurisdiction that the assignment will not render the responding jurisdiction unable to appropriately respond to an incident in its jurisdiction.

8.2 - Primary responsibilities of ERTT

As its primary responsibility, an ERTT will assist local/tribal authorities by taking emergency actions necessary to protect life, property, and the environment from the effects of a major/catastrophic release of a hazardous material or technical rescue incident. These emergency actions include, but are not limited to, preventing the release, mitigating the effects of the release, and stabilizing the emergency. (Refer to Section 9)

8.3 - Primary responsibilities of EROT

As its primary responsibility, an EROT is to assist and support an ERTT by taking emergency actions necessary to protect life, property, and the environment from the effects of a major/catastrophic release of a hazardous material. (Refer to Section 9)

8.4 - Primary responsibilities of QRAT

As its primary responsibility, a QRAT will assist local/tribal authorities by taking emergency actions necessary to protect life, property, and the environment from the effects of a major/catastrophic release of a hazardous material or technical rescue incident. (Refer to Section 9)

8.5 - Prohibited actions

An ERTT, EROT and a QRAT shall not:

- Transport, store, dispose of, or perform remedial clean-up of hazardous materials, except as may be incidentally necessary to mitigate an emergency.
- Assume overall command of the hazardous materials or technical rescue emergency.

8.6 – Supplies, Equipment, and Vehicles

An ERTT, EROT, or QRAT must always have available for response, at a minimum, the equipment listed in Section 13.

8.7 – Capital Equipment

An ERTT, EROT, or QRAT is responsible for insuring all capital equipment used for response. Cost associated with capital equipment that is not insured will not be reimbursable except as noted in section 15.3. If insurance does not cover the loss of capital equipment, then NDDDES will attempt to recover from the responsible party on behalf of the responding jurisdiction that owns the capital equipment.

8.8 - Reporting and documentation

ERTT, EROT, and QRAT will submit to NDDDES, upon request, a detailed report of its response to an incident. The report must be prepared in a manner and form prescribed by NDDDES and, at a minimum, must include:

- A list of all equipment used by the ERTT, EROT, or QRAT and personnel who responded.
- A description of all emergency actions taken by the ERTT, EROT, or QRAT.
- A copy of the strategic, tactical, and/or safety documents developed by the ERTT, EROT, or QRAT during the response

If requesting reimbursement, the ERTT, EROT, and QRAT must submit Form R2: *Reimbursement Request*. If requesting reimbursement for equipment costs, labor costs, travel costs, consumables expended, or other eligible costs, then the R2 form must be accompanied by the appropriate cost form:

- Form R2-A Equipment Record
- Form R2-B Labor Record
- Form R2-C Travel Record
- Form R2-D Consumables Record
- Form R2-E Other

8.9 - Notification upon completion of response

When an ERTT, EROT or QRAT has completed its response to an incident, the team leader shall notify the NDDDES Duty Officer via State Radio at (800) 472-2121 or (701) 328-9921. Notification may also be made directly to the NDDDES Duty Officer at (701) 220-0390.

SECTION 9 - ESTABLISHMENT OF SUGGESTED OPERATING GUIDELINES

9.1 - Hazardous materials response guidelines

The North Dakota hazardous materials response teams suggested operating guidelines established jointly by the regional teams provide guidance for response actions of ERTT, EROT and QRAT.

9.2 – Initial technical rescue search and rescue guidelines

FEMA's National Urban Search and Rescue (US&R) Response System Field Operations Guide

(<http://www.fema.gov/doc/emergency/usr/usrfog3.doc>) and Rescue Field Operations Guide

(http://www.fema.gov/pdf/emergency/usr/usr_23_20080205_rdg.pdf) will be used, to the extent possible, to provide guidance for the regional technical rescue ERTT and QRAT teams for technical rescue incidents until such a time as the teams develop a North Dakota guideline.

9.3 - Review and revision

At least annually, the regional teams are responsible for review and, when necessary, revisions to the suggested operating guidelines established under section 9.1 and when relevant the suggested operating guidelines established under section 9.2.

SECTION 10 - EMERGENCY PREPLANNING

10.1 - State agency

Upon a request by the ERTT, EROT, or QRAT, NDDDES will provide hazardous materials storage information that the agency has collected from regulated facilities. This section does not apply if NDDDES is prohibited from disclosing this information by federal or state law. The ERTT, EROT, or QRAT may also access hazardous materials storage information via the ND [Hazconnect](#) (Tier II Reporting) system. The regional teams have been granted electronic access to the ND Tier II database reporting information enabling teams to access Tier II facility information for planning and response purposes.

10.2 – Local/Tribal government

Upon a request by the ERTT, EROT, or QRAT, NDDDES will request the appropriate local/tribal emergency response agency provide information necessary to support a team response to an incident. NDDDES may instruct the agency to give the information directly to the appropriate team or teams. Information that may be requested by the team includes:

- Copies of any facility preplans.
- A copy of the agency's hazardous materials emergency response plan prepared in accordance with Code of Federal Regulations, title 29, section 1910.120.
- A statement describing the agency's level of hazardous materials and technical rescue training.
- Resources available locally to support hazardous materials or technical rescue response actions; and
- Any other information reasonably needed by the teams, to include information necessary to comply with Code of Federal Regulations, title 29, sections 1910 and 1926.

This section does not apply if the local/tribal emergency response agency is prohibited from disclosing this information by federal or state law.

10.3 - Facility

Upon a request by the ERTT, EROT, or QRAT, NDDDES will coordinate with the appropriate facility to obtain required spill prevention and response plans under North Dakota law, for review by the team and the incident commander. NDDDES may instruct the facility to give the information directly to the appropriate team or teams. This section does not apply if the facility is prohibited from disclosing this information by federal or state law.

10.4 - Disseminating information to teams

NDDDES will give information collected under subparts 1 to 3 to any team listed in section 5.2 or 5.3 that requests the information, unless prohibited from disclosing this information by federal or state law. When the NDDDES gives the information collected under Section 10.3 to a team, NDDDES shall provide the facility with the name and address of each team the information has been given to. A team may not distribute the information collected under Section 10.3 without authorization of the facility from which the information was obtained, except to protect the public, property, and/or the environment during response. The regional teams have been granted electronic access to the ND Tier II database reporting information enabling teams to access Tier II facility information for planning and response purposes.

SECTION 11 - EMERGENCY RESPONSE ASSISTANCE

11.1 – Technical assistance or specialized equipment

During emergency response, if an ERTT, EROT, or QRAT needs any technical assistance or specialized equipment to respond to an incident safely and properly, the ERTT, EROT, or QRAT will make the request through the NDDDES Duty Officer directly or via State Radio.

11.2 – Bomb squads and SWAT teams

When the incident involves explosives, explosive devices, incendiary devices, or shock sensitive explosive chemical, the teams must first request assistance from a North Dakota authorized bomb squad. Response costs for Bomb squads and SWAT teams will not be reimbursed by NDDDES. Bomb squads and SWAT teams will seek reimbursement through Section 54-12-23 of the North Dakota Century Code.

SECTION 12 - REVIEW AND EVALUATION OF RESPONSE

An ERTT, EROT or QRAT will conduct a team evaluation of a response (After Action Review (AAR)) to an incident within thirty (30) days after termination of the team's response and provide a copy to NDDDES, upon request.

ERTT, EROT, and QRAT team fire chiefs or their authorized representative will meet with NDDDES at least once per year, or as needed, to review MOA, dispatch protocols, etc.

SECTION 13 - SUPPLIES, EQUIPMENT, AND VEHICLES

13.1 - ERTT

An ERTT should have access to the following general categories of supplies and equipment in suitable quantities to respond to anticipated hazardous materials or technical rescue incidents:

- Chemical reference and emergency response manuals.
- Personal protective equipment.
- Leak-control supplies and equipment.

- Radio and other forms of communications equipment.
- Computer equipment and supporting software.
- Monitoring and detection equipment.
- Spill containment supplies and equipment.
- Assorted non-sparking hand tools.
- Basic first aid supplies.
- Miscellaneous incident management and administrative supplies and equipment.
- Structural Collapse Rescue Team ([8-508-1159](#)) and Structural Collapse Search Team ([8-508-1158](#)) equipment and tools necessary for a Type 1 team.

13.2 - Equipment for EROT

An EROT should have access to the following general categories of supplies and equipment in suitable quantities to respond to anticipated hazardous materials incidents:

- Chemical reference and emergency response manuals.
- Personal protective equipment.
- Decontamination equipment.
- Radio and other forms of communications equipment.
- Computer equipment and supporting software.
- Monitoring and detection equipment.
- Spill containment supplies and equipment.
- Basic first aid supplies.
- Miscellaneous incident management and administrative supplies and equipment.

13.3 - Equipment for QRAT

A QRAT should have access to the following general categories of supplies and equipment in suitable quantities to respond to anticipated hazardous materials or technical rescue incidents:

- Chemical reference and emergency response manuals.
- Personal protective equipment.
- Radio and other forms of communications equipment.
- Computer equipment and supporting software.
- Initial Monitoring and detection equipment.
- Miscellaneous incident management and administrative supplies and equipment.

13.4 - Emergency response vehicle requirements

Emergency response vehicles used by a team must be of sufficient size and capacity to safely transport team personnel with properly stowed equipment and supplies to the scene of a hazardous materials or technical rescue incident under reasonably anticipated travel conditions.

This section shall not create an obligation for any team or its political subdivision to purchase equipment or supplies to comply with this Agreement. If a team does not have all of the equipment required by this Section, the team designation may be reassigned.

SECTION 14 - EMERGENCY RESPONSE CRITERIA AND DISPATCHING

14.1 - Emergency response

An emergency response authorized by NDDDES may include technical assistance provided by a team via telephone and other means of communication or the deployment of team personnel and equipment to the scene of a hazardous materials or technical rescue incident.

14.2 - Criteria for authorizing emergency response

Except as provided in Section 14.3 and 14.4, NDDDES will use the provisions of this section to determine whether to authorize a team response. NDDDES will authorize a team response when all the following criteria, if applicable, are met:

- There is a hazardous material(s) release or potential release from a transportation incident or fixed facility.
- The hazardous material(s) release presents an actual or potential threat to public safety or the environment.
- There is an actual or potential technical rescue where life and safety are threatened.
- Local/Tribal emergency response personnel have been dispatched, are on the scene and have made an initial assessment of the incident.
- Local/Tribal authorities have determined that the response needs of the incident exceed local/tribal capabilities.
- Local/Tribal authorities have requested a team response.

- The NDDDES Response Chief, or designee, has determined the need for a regional response following consultation by NDDDES Duty Officer with Regional Team representatives.
- NDDDES may authorize a team response when NDDDES considers the response to be necessary to protect life, property, and the environment from the effects or potential effects of a hazardous materials or technical rescue incident. NDDDES also provides discretion to the local IC to directly request a regional response team. See 14.4 for additional guidance.

14.3 - Authority to request team response

The authority to request the response of an ERTT, EROT or a QRAT resides with local/tribal authorities whose jurisdiction includes the scene of the hazardous materials or technical rescue incident.

14.4 - Procedure for requesting team

The regional team for an area may be requested directly by the Incident Commander of a jurisdiction. If this occurs, and the regional team has determined that a response is needed, the ERTT, EROT, or QRAT will notify NDDDES Duty Officer at (701) 220-0390 as soon as possible, but no later than 30 minutes following dispatch of the team. This will allow NDDDES sufficient time to forward the ND Regional Response Team Request Form (R1) to the requesting jurisdiction for signature.

An ERTT, EROT, or QRAT team may also be requested by an Incident Commander via the NDDDES Duty Officer system. The NDDDES Duty Officer will consult with the Regional Team representatives prior to deciding to dispatch an ERTT, EROT, or QRAT.

14.5 - Canceling response enroute to or during incident

A team response may be canceled enroute to an incident by the requesting jurisdiction, or by the NDDDES Response Chief, or designee, at the request of the local/tribal authority that initially requested the response. A team may be canceled enroute to or during an incident based upon needs in team's own jurisdiction. When responding team terminates response based upon needs in team's own jurisdiction, the team leader will inform the NDDDES Duty Officer.

14.6 - Terminating team response actions for safety reasons

The team may terminate response actions at an incident without direction from the incident commander when the team leader or safety officer determines that the ordered response actions would place team personnel in imminent danger. The team leader will inform the NDDDES Duty Officer when terminating a response.

14.7 - Terminating team response at conclusion of incident

A team response may be terminated at an incident upon the direction of the local/tribal incident commander, or as provided in Section 8.9. The team leader will inform the NDDDES Duty Officer when terminating response.

SECTION 15 - COST RECOVERY

15.1 - Submitting claim for team response costs

Regional teams will submit to NDDDES claims for reimbursement of reasonable and necessary costs incurred as a result of a response in the manner and form identified in Section 8.8.

15.2 - Team response costs; payment and recovery

The State will reimburse regional teams for costs of a response allowable under Section 15.3 after receipt of a properly filed claim pursuant to Section 8.8.

15.3 - Team response costs eligible for recovery

Team response costs associated with an actual response by a team may be recovered by the team from the State. Invoices and other necessary documentation supporting costs must be included with the reimbursement request. Costs eligible for recovery include:

- Team personnel salary and benefits. Reimbursement of salary and benefits costs are restricted to the time of personnel responding directly to the incident. Regular time costs may be reimbursed at the pay rate, including benefits, for the number of hours lost to the home jurisdiction for response to the incident.
- Team personnel overtime costs. The overtime rate will be defined as the rate used by the responding team's home jurisdiction to calculate the employee's pay. Fringe benefits on overtime hours are limited to Federal Insurance Contributions (FICA). Employees who are normally exempt or are exempt under the Fair Labor Standards Act (FLSA) from receiving Overtime are not eligible for overtime reimbursement except where employee's jurisdiction allows for exempt employees to receive overtime in emergencies.

- Team personnel backfill costs. If salary and benefits of responding personnel are requested, then only overtime costs of backfill personnel may be requested. If salary and benefits of responding personnel are not requested, then, reimbursement of backfill costs is restricted to expenses generated by bringing in additional personnel to fill the regularly scheduled timeslot of the individual dispatched to the regional incident. These costs are calculated by subtracting the non-overtime compensation, including fringe benefits, of the individual who was dispatched from the total costs (non-overtime and overtime compensation, including fringe benefits) paid to the individual who backfilled for the dispatched individual. Backfill reimbursement is available only for those positions that are normally backfilled by the fire department. The department may not backfill more positions than already scheduled for the shift. Employees exempt under the Fair Labor Standards Act (FLSA) or not normally backfilled by the fire department are not eligible for backfill reimbursement.
- Food and Lodging. Food cost will be reimbursed at the current State of North Dakota per diem rate. Lodging reimbursement may not exceed State rates.
- Vehicle/Equipment operating costs to include (but not limited to) mileage and/or fuel. Mileage will be reimbursed at the current State of North Dakota per mile rate.
- Cost of consumable supplies used.
- Repair or replacement of damaged equipment not to include insured equipment, vehicles, or other motorized apparatus.
- Documentable administrative costs.
- Cost of capital equipment (i.e., insured equipment, vehicles, or other motorized apparatus) destroyed during an authorized response is not eligible for reimbursement under this fund. An ERTT, EROT, or QRAT is responsible for ensuring all capital equipment used for response. NDDDES will assist responding jurisdiction in seeking compensation from the responsible party, any deductibles not covered by insurance. If insurance does not cover the loss of capital equipment, then NDDDES will attempt to recover from the responsible party on behalf of the responding jurisdiction that owns the capital equipment.

NOTE: In the event the responding team does not have the capability to purchase food, lodging, fuel, other vehicle operating costs, or consumable supplies while responding, NDDDES will issue purchase orders on behalf of the responding team.

15.4 - Costs not eligible for payment or recovery by NDDDES

NDDDES will not pay for or recover from the responsible party response costs incurred by the local/tribal jurisdiction that requested the response of a regional team.

SECTION 16 - COORDINATING RESPONSE ACTIVITIES

16.1 - Incident management system

The hazardous materials or technical rescue Group Supervisor or Branch Director shall coordinate the on-scene emergency response operations of the teams with local, state, and federal agencies, Tribal Nations, and private response organizations.

16.2 - Coordination with local/tribal authorities

A local/tribal authority will assist team operations in the authority's jurisdiction, which are necessary to the response and in keeping with local/tribal emergency operations plans, local/tribal emergency response plans, and the level of hazardous materials or technical rescue training required of the local/tribal authority.

16.3 - Coordination with state agencies

A state agency will assist team operations that is necessary to the response and is in keeping with the agency's role as identified by the Governor's Executive Order and implemented by the North Dakota SEOP. A copy of the SEOP can be obtained through the NDDDES Planning Chief.

16.4 - Coordination with responsible party

A responsible party will assist team operations that is necessary to the response, upon a request by the incident commander or team leader, in keeping with the responsible party's level of training and emergency response plans.

16.5 - Coordination with other states and federal government

The emergency response actions of the teams must be coordinated via the NDDDES Duty Officer with those of federal agencies and other states in accordance with the emergency response plans authorized by United States Code, title 42, section 9605, National Contingency Plan, as amended; United States Code, title 33, section 311(c) (2), Clean Water Act, as amended; and United States Code, title 33, section 2701, Oil Pollution Act of 1990.

16.6 - Coordination of team operations

Teams shall coordinate operations with the local/tribal authority's incident commander. The regional team representative shall be the point of contact for the local/tribal authority. The team members shall be supervised by their regional team representative.

SECTION 17 - MUTUAL AID AGREEMENTS

NDDDES may enter into mutual aid agreements with federal agencies, other states, and Tribal Nations for the purpose of supporting the hazardous materials or technical rescue response of either jurisdiction, as provided in North Dakota law.

SECTION 18 - LIABILITY AND WORKERS' COMPENSATION COVERAGE

18.1 - Workers' Compensation Coverage

Each member political subdivision or agency will be responsible for its own actions and those of its employees. Each member political subdivision or agency is responsible for complying with North Dakota's workforce safety rules. Each member political subdivision or agency should understand that workforce safety coverage does not automatically extend to volunteers. Each member political subdivision or agency may obtain workforce safety coverage for any volunteer at its discretion.

18.2 - Automobile Liability Coverage

Each member political subdivision or agency is responsible for its own actions and is responsible for complying with the motor vehicle financial responsibility laws of the State of North Dakota. Each member political subdivision or agency agrees to obtain automobile liability coverage with at least a \$250,000.00 per person and \$1,000,000.00 per occurrence combined single limit and coverage extended to owned, non-owned, and hired vehicles by a policy with an insurance company licensed to do business in North Dakota, (2) by being a qualified self-insured, or (3) by being a member of a group self-insurance association. It is the responsibility of the member locality to determine if the volunteer company has automobile liability coverage as outlined in this section.

18.3 - General Liability, Public Officials Liability, and Law Enforcement Liability:

For the purposes of North Dakota Century Code (NDCC 32-12.1 Governmental Liability) only, the employees and officers of the assisting department are deemed to be employees (NDCC 32-12.1-02(3)) of the requesting department.

SECTION 19 - EFFECTIVENESS

This Agreement shall become effective when approved and executed by the appropriate political subdivision of each party to this Agreement. This Agreement shall remain in effect between each party until participation in this Agreement is terminated by the party. Any party to this Agreement may terminate participation in this Agreement upon thirty days written notice addressed to the designated public official of each of the other signatory political subdivisions that are parties to this Agreement. This Agreement is binding on future political subdivisions boards and commissions and participating response entities unless affirmative measure have been taken to terminate the Agreement as defined herein.

In witness whereof, this Agreement has been executed and approved and is effective and operative as to each of the parties as herein provided.

CITY OF Fargo

BY: _____
Tim Mahoney

BY: _____
Michael Redlinger

ITS': Mayor

ITS'S: City Administrator

DATE: _____

DATE: _____

BY: 
Steven Dirksen

ITS': Fire Chief

DATE: 10/26/2023

STATE OF NORTH DAKOTA
North Dakota Department of Emergency Services, Division of Homeland Security

BY: _____
Darin Hanson


ITS' Director

DATE: _____



MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

FROM: DESI FLEMING 
DIRECTOR OF PUBLIC HEALTH

DATE: OCTOBER 23, 2023

**RE: NOTICE OF GRANT AWARD AMENDMENT FROM THE ND
DEPARTMENT OF HEALTH AND HUMAN SERVICES FOR THE
PHEP – CITY READINESS INITIATIVE (CRI).
NO: G23.056A CFDA: 93.069
FUNDS: \$88,027
EXPIRES: 06/30/2024**

The attached notice of grant award amendment with ND Department of Health and Human Services is for an additional \$88,027 in funds to continue the scope of service activities of the original agreement.

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

Suggested Motion:

Move to approve the NGA amendment with the ND Department of Health and Human Services.

DF/lls
Attachment



Page 299 NOTICE OF GRANT AWARD

NORTH DAKOTA DEPARTMENT OF HEALTH AND HUMAN SERVICES
SFN 53771 (04-2023)

Grant Number G23.056A	CFDA Name Public Health Emergency Preparedness (PHEP)	CFDA Number 93.069	
FAIN Number NU90TP922054	Grant Type (Check One) <input checked="" type="checkbox"/> Program <input type="checkbox"/> R&D	Grant Start Date 7/1/2023	Grant End Date 6/30/2024
Federal Award Date 6/26/2023	Federal Awarding Agency 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 PHEP – City Readiness Initiative (CRI)	North Dakota Department of Health and Human Services (NDDHHS) Project Code 6611HLH5273-11 6611HLH5274-11		
Grantee Name Fargo – Cass Public Health	Project Director Tim Wiedrich		
Address 1240 – 25 th Street South	Address 1720 Burlington Drive, Suite A		
City/State/ZIP Code Fargo, ND 58103-2367	City/State/ZIP Code Bismarck, ND 58504		
Contact Name Desi Fleming	Contact Name Juli Sickler		
Telephone Number 701-241-1380	Telephone Number 701-328-2293		
Email Address dfleming@fargond.com	Email Address jsickler@nd.gov		

	NDDHHS Cost Share	Grantee Cost Share	Total Costs
Amount Awarded	\$88,027	\$0	\$88,027
Previous Funds Awarded	\$204,000	\$0	\$204,000
Total Funds Awarded	\$292,027	\$0	\$292,027
Indirect Rate (Check One)	<input checked="" type="checkbox"/> Subrecipient waived indirect costs	<input type="checkbox"/> De minimus rate of 10%	<input type="checkbox"/> Negotiated/Approved rate of %

Scope of Service
This amendment increases the funding \$88,027 to continue the scope of service activities of the original agreement. All other scope of service elements of the original agreement remains the same.

Reporting Requirements
The reporting requirements of the original agreement remain the same.

Special Conditions
The special conditions of the original agreement remain the same. The additional PHEP EPR funding amount of \$88,027 must be expended prior to 12/31/2023. All other special conditions of the original agreement remain the same.

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 NDDHHS as signed by Grantee for the period of July 1, 2023, to June 30, 2025 [Finance Use Only: Requirements Received; Questionnaire received] and (2) applicable State and Federal regulations.

Evidence of Grantee's Acceptance		Evidence of NDDHHS Acceptance	
Date 10/23/2023	Signature <i>Desi Fleming</i>	Date	Signature
Typed Name/Title of Authorized Representative Desi Fleming, Director of Public Health		Typed Name/Title of Authorized Representative Tim Wiedrich, Director Health Response and Licensure	
Date	Signature	Date	Signature
Typed Name/Title of Authorized Representative		Typed Name/Title of Authorized Representative Sara E. Stolt Interim Commissioner	

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.



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

MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS
FROM: CHIEF INFORMATION OFFICER RON GRONNEBERG
DATE: October 26, 2023
SUBJECT: FY22 SLCGP IJA Grant Budget Adjustment Request

RECOMMENDED MOTION: Move to approve the appropriate budget adjustments to allocate the funds to the Information Services accounts.

Under the Infrastructure Investment and Jobs Act (IIJA) framework, the federal government has allocated funds to each state funds for distribution. This funding opportunity is only for unfunded cyber initiatives.

Below is a list of the approved 2023 IIJA grant requests for the City of Fargo through the FY22 State and Local Cybersecurity Grant Program managed by North Dakota Department of Emergency Services

<u>Project</u>	<u>Grant Request</u>
Firewall Replacement / Upgrade – Primary firewall lifecycle replacement	\$143,744
Firewall Replacement - lifecycle replacement of older firewall	\$9,500
Cybersecurity Training - Security training for admin staff via Pluralsight	\$7,295
Vulnerability Management Solutions / EDR Platform – expand log retention	\$9,180
Software Improvement – PAM solution ManageEngine PAM360	\$21,595
Hardware /MFA - YubiKeys - MFA expansion	\$967
Hardware / Software improvement, Multifactor authentication – BioKey MFA for OT systems	\$24,450
Software Improvement - replace KeePass with LastPass password manager	\$41,633
Firewall Replacement - lifecycle replacement of older firewall - Palo Alto, Public Internet	\$7,293
	<hr/>
	\$265,656

For the 2023 grant requests, the cost share would be \$239,090 Federal (90%), \$11,945 State (4.5%) and \$14,611 Local (5.5%). The finance Committee has approved this and the ROA is attached. The Notice of Grant Award is also attached.

Thank you,

A handwritten signature in cursive script that reads "R.M. Gronneberg". The signature is written in dark ink and has a long, sweeping horizontal stroke at the end.

Ron Gronneberg

REPORT OF ACTION
FINANCE COMMITTEE

Location: Information Services

Agenda Item: 2023/2024 Grant Requests

Presenter: Ron Gronneberg

Date of Hearing: 10/23/23

Ron Gronneberg stated that under the Infrastructure Investment and Jobs Act (IIJA) framework, the federal government had allocated funds to each state for distribution to unfunded cyber initiatives. Ron listed below the approved 2023 IIJA grant requests for the City of Fargo through the FY22 State and Local Cybersecurity Grant Program managed by the North Dakota Department of Emergency Services.

<u>Project</u>	<u>Grant Request</u>
Firewall Replacement/ Upgrade - Primary firewall lifecycle replacement	\$143,744
Firewall Replacement - lifecycle replacement of older firewall	\$9,500
Cybersecurity Training - Security training for admin staff via Pluralsight	\$7,295
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Hardware/MFA - YubiKeys - MFA expansion	\$967
Hardware/ Software improvement, Multifactor authentication-BioKey MFA for OT systems	\$24,450
Software Improvement - replace KeePass with LastPass password manager	\$41,633
Firewall Replacement - lifecycle replacement of older firewall - Palo Alto, Public Internet	\$7,293
Total	\$265,656

For the 2023 grant requests, the cost share would be \$239,090 Federal (90%), \$11,945 State (4.5%) and \$14,611 Local (5.5%).

Motion:

Approve the award from ND Department of Emergency Services for \$239,090 under CFDA #97.137 with local share of \$14,611 for 2023 and to make the appropriate budget adjustments to allocate the funds to the Information Services accounts as shown above.

Steve Sprague moved to approve, second by Dave Piepkorn and all members present voted in favor to approve the 2023 grant request.

The 2024 grant request would be substantially more at \$104,000. Steve Sprague asked if Ron could bring back, to the committee, the actual grant request for 2024 once the actual amount is verified.

Motion:

Approve the award from the ND Department of Emergency Services in the amount of \$104,000 for 2024 with the understanding that this item will be brought back to the committee with the actual amount.

Susan Thompson moved to approve, second by Steve Sprague and all members present voted in favor to approve the 2024 grant request.

<u>COMMITTEE:</u>	<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Unanimous</u>
				X
				Proxy
<u>Tim Mahoney, Mayor</u>	X	X		
<u>Dave Piepkorn, City Commission</u>	X	X		
<u>Mike Redlinger, City Administrator</u>	X	X		
<u>Brenda Derrig, Assistant City Administrator</u>	X	X		
<u>Susan Thompson, Finance Director</u>	X	X		
<u>Tanner Smedshammer, Purchasing Manager</u>	X	X		
<u>Steve Sprague, City Auditor</u>	X	X		


 Timothy Mahoney, Mayor

North Dakota Department of Emergency Services Division of Homeland Security PO Box 5511 Bismarck, ND 58506-5511 NOTICE OF GRANT AWARD	ND DHS Director: Darin Hanson PO Box 5511 Bismarck, ND 58506-5511 Recipient Contact Name: Debbie LaCombe Telephone: 328-8100
Title of Grant Program: FY 22 State and Local Cybersecurity Grant Program (SLCGP)	
Federal Award Identification Number: EMW-2022-CY-00014-S01	Federal Award Date: September 1, 2022
Federal Awarding Agency: U.S. Department of Homeland Security	
CFDA No. 97.137 State and Local Cybersecurity Grant Program	Federal Award to NDDes: \$4,847,500.00

Subrecipient Name and Address: Fargo 225 4th St N Fargo, ND 58102 Subrecipient Contact Name: Mr. Nick Lindhag Telephone: 701-476-4052 Subrecipient UEI Number: K2QJQZVH5PM6	Grant Number 57	County/Tribe Cass	
	Performance Period From: March 1, 2023		Through: November 30, 2025
Financial Information Amount of Financial Assistance	Grant Amount \$239,089.54	Subrecipient Cost Share \$26,565.50	Total Project Cost \$265,655.04

All Grant Award payments are processed upon receipt of expenditure reports unless otherwise specified in Special Conditions.

Scope of Service: The intent of NDDes in providing this award is to enhance the capability of the subrecipient to prevent, protect against, mitigate, respond to, and recover from acts of terrorism and other catastrophic events in accordance with the Guidance for this grant program and in accordance with the subrecipient's application. This award is limited to the approved budget located online in DES Grants.



Reporting Requirements: Project Status Reports on project must be submitted to NDDes on a quarterly basis through the NDDes Grants Management Software. Reports are due January 15, April 15, July 15 and October 15 for the life of the grant. A final report is due with the final reimbursement request.

Special Conditions: The above grant project is approved subject to the special conditions or limitations as indicated on the attached page.

This award is subject to the terms and conditions incorporated either directly or by reference in the following:

- 1) Fiscal Requirement and Other Program Rules, Regulations, Laws, and Policies for Federal Programs which can be found at <https://grants.des.nd.gov/site/HSGP.cfm>
- 2) Applicable Federal and State laws and regulations
- 3) The recipient agrees that all allocations and use of funds under this grant will be in accordance with the Federal/State Notice of Funding Opportunity & FEMA Preparedness Grants Manual for this grant program.

This contract is not effective until fully executed by both parties. By signing below you are accepting the terms and conditions of the award. Please make sure you read and understand these documents before signing. Maintain a copy of these documents in your official file for this award.

Evidence of Subrecipient's Acceptance		Evidence of DES Approval	
Signature 	Date 4/24/23	Signature 	Date: 3/2/2023
Typed Name and Title of Authorized Representative Timothy J. Mahoney, Mayor		Typed Name and Title of Authorized Representative Darin Hanson Director	

BUDGET ADJUSTMENT REQUEST

This form must be completed for all budget adjustments. Please include this form with any requests submitted to Finance and Commission. If the requested adjustment is a reallocation of budgeted funds within the same department, the request form can be sent directly to Finance. Please email to: Finance@fargond.gov.

*Finance should review this adjustment request form for validity before it is presented to ensure accuracy when presented to Committees. Any budget adjustments that increase expenditures **MUST** be approved by BOTH the Finance Committee & Commission to be entered.*

DEPARTMENT:	IS	
REQUESTED BY:	Ron	PROJECT NUMBER: <u>IS2301</u>
DATE PREPARED:	10/16/2023	
DESCRIPTION OF REQUEST:	2023 IIIA grant requests for the City of Fargo through the FY22 State and Local Cybersecurity Grant Program managed by North Dakota Department of Emergency Services	

REVENUE ACCOUNT NUMBER:	CURRENT BUDGET	REQUESTED ADJUSTMENT	NEW BUDGET
101-0000-331.14-50	\$ -	+ \$ 265,656	= \$ 265,656
		+ = \$	-
		+ = \$	-
		+ = \$	-
TOTAL REVENUE ADJUSTMENTS:	\$	\$ 265,656	

EXPENSE ACCOUNT NUMBER:	CURRENT BUDGET	REQUESTED ADJUSTMENT	NEW BUDGET
475-8552-510.76-35	\$ -	+ \$ 249,181	= \$ 249,181
101-0520-409.59-30	\$ 1,200	+ \$ 7,295	= \$ 8,495
101-0520-409.34-15	\$ 35,000	+ \$ 9,180	= \$ 44,180
		+ = \$	-
		+ = \$	-
		+ = \$	-
TOTAL EXPENSE ADJUSTMENTS:	\$	\$ 265,656	

PLEASE NOTE: Budget Adjustments that increase expenditures **MUST** be approved by Finance & Commission.

MONTHLY ALLOCATION (if not evenly over the remaining months of the year)					
Jan	Feb	Mar	Apr	May	June
Jul	Aug	Sep	Oct	Nov	Dec
			265,656		

The total monthly allocation **MUST** equal the Total Expense Adjustment requested above.

FINANCE DEPT USE ONLY:	
FINANCE COMMITTEE APPROVED ON:	
COMMISSION APPROVED ON:	
ENTERED BY FINANCE:	
Date:	
By:	
BA#	



35

200 Third St N
FARGO, ND 58102
PHONE: 701-476-6700
FAX: 701-241-8253

October 26, 2023

Honorable Board of
City Commissioners
City of Fargo
200 N 3rd St. S
Fargo, ND 58102

Dear Commissioners;

Under the Infrastructure Investment and Jobs Act (IIJA) framework, the Federal Government has allocated funds to each state to distribute in 2024. The grant is limited to unfunded cyber initiatives.

Below are the cyber related initiatives that we plan to include in our grant request through the FY23 State and Local Cybersecurity Grant Program under CFDA #97.137 managed by North Dakota Department of Emergency Services

	<u>Grant Request</u>
PDQ Inventory and Deploy	\$9,000
SmartDeploy	\$7,524
Firewall - Sign and Signal	\$5,830
Firewall - Water Meters Firewall	\$5,830
Firewall - BCI Firewall	\$5,830
Firewall - Fire 5	\$5,830
Switches	\$70,000
Arcmail Data Classification Appliance	\$20,000
Veeam Immutable Backup Server	\$25,000
Tyler Detect - Comprehensive Preparedness	\$50,000
Threatlocker - Servers only	\$46,080
Phosphorus.io	<u>\$420,000</u>
	\$670,924

The cost share breakdown is slightly different for the 2024 requests. Below is how the cost share would breakdown if the grant requests are fully funded:

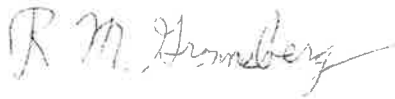
80%	Federal	\$536,739
4.50%	State	\$30,192
15.50%	Local	\$103,993

If fully funded these requests would make a substantial impact in increasing our cyber defenses and responsiveness. The Finance Committee has approved this and the ROA is attached.

Suggested Motion:

Approve staff applying for the grant funding through North Dakota Department of Emergency Services for the items listed.

Thank you.

A handwritten signature in cursive script that reads "Ron Gronneberg". The signature is written in dark ink and is positioned above the printed name and title.

Ron Gronneberg
CIO

REPORT OF ACTION
FINANCE COMMITTEE

Location: Information Services

Agenda Item: 2023/2024 Grant Requests

Presenter: Ron Gronneberg

Date of Hearing: 10/23/23

Ron Gronneberg stated that under the Infrastructure Investment and Jobs Act (IIJA) framework, the federal government had allocated funds to each state for distribution to unfunded cyber initiatives. Ron listed below the approved 2023 IIJA grant requests for the City of Fargo through the FY22 State and Local Cybersecurity Grant Program managed by the North Dakota Department of Emergency Services.

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Total	\$265,656

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Motion:

Approve the award from ND Department of Emergency Services for \$239,090 under CFDA #97.137 with local share of \$14,611 for 2023 and to make the appropriate budget adjustments to allocate the funds to the Information Services accounts as shown above.

Steve Sprague moved to approve, second by Dave Piepkorn and all members present voted in favor to approve the 2023 grant request.

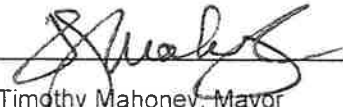
The 2024 grant request would be substantially more at \$104,000. Steve Sprague asked if Ron could bring back, to the committee, the actual grant request for 2024 once the actual amount is verified.

Motion:

Approve the award from the ND Department of Emergency Services in the amount of \$104,000 for 2024 with the understanding that this item will be brought back to the committee with the actual amount.

Susan Thompson moved to approve, second by Steve Sprague and all members present voted in favor to approve the 2024 grant request.

<u>COMMITTEE:</u>	<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Unanimous</u>
				<u>X</u>
				<u>Proxy</u>
<u>Tim Mahoney, Mayor</u>	X	X		
<u>Dave Piepkorn, City Commission</u>	X	X		
<u>Mike Redlinger, City Administrator</u>	X	X		
<u>Brenda Derrig, Assistant City Administrator</u>	X	X		
<u>Susan Thompson, Finance Director</u>	X	X		
<u>Tanner Smedshammer, Purchasing Manager</u>	X	X		
<u>Steve Sprague, City Auditor</u>	X	X		


 Timothy Mahoney, Mayor



200 Third St N
FARGO, ND 58102
PHONE: 701-476-6700
FAX: 701-241-8253

October 26, 2023

Honorable Board of
City Commissioners
City of Fargo
200 N 3rd St. S
Fargo, ND 58102

Dear Commissioners,

ESRI provides the industry leading GIS technology solutions. We have been using their products for decades. ESRI has been approved for renewals. The PBC number is PBC2408.

The ESRI Small Municipal and County Government Enterprise Agreement (SGEA) is a three-year agreement that grants the City of Fargo access to the ESRI licenses.

This contract will cost \$85,000 annually and will cover 3 years from 01/26/2024 to 01/26/2027. This is a part of the IS budget. The Finance Committee has approved this contract and the ROA is attached.

Suggested Motion:

Approve the contract with ESRI covering the 3-year term.

Thank you.

A handwritten signature in cursive script that reads "R. M. Gronneberg".

Ron Gronneberg
CIO

REPORT OF ACTION

FINANCE COMMITTEE

Location: Information Services

Agenda Item: Piggyback Purchase with ESRI

Presenter: Ron Gronneberg

Date of Hearing: 10/23/23

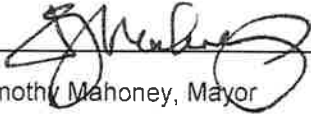
Ron Gronneberg requested to utilize the State of North Dakota Contract #105 for Environmental Systems Research Institute (ESRI) which provides Geographic Information System (GIS) technology. The agreement is for \$85,000 and would be for three years from 1/26/24 through 1/26/27.

Motion:

Approval a Piggyback request with the State of ND for GIS software.

Michael Redlinger moved to approved, second by Steve Sprague and all members present voted in favor.

<u>COMMITTEE:</u>	<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Unanimous</u>
				<u>X</u>
				<u>Proxy</u>
<u>Tim Mahoney, Mayor</u>	<u>X</u>	<u>X</u>		
<u>Dave Piepkorn, City Commission</u>	<u>X</u>	<u>X</u>		
<u>Mike Redlinger, City Administrator</u>	<u>X</u>	<u>X</u>		
<u>Brenda Derrig, Assistant City Administrator</u>	<u>X</u>	<u>X</u>		
<u>Susan Thompson, Finance Director</u>	<u>X</u>	<u>X</u>		
<u>Tanner Smedhammer, Purchasing Manager</u>	<u>X</u>	<u>X</u>		
<u>Steve Sprague, City Auditor</u>	<u>X</u>	<u>X</u>		


 Timothy Mahoney, Mayor



October 2, 2023

Mr. Daryl Masten
City of Fargo
225 4th St N
Fargo, ND 58102-4817

Dear Daryl,

The Esri Small Municipal and County Government Enterprise Agreement (SGEA) is a three-year agreement that will grant your organization access to Esri term license software. The EA will be effective on the date executed and will require a firm, three-year commitment.

Based on Esri's work with several organizations similar to yours, we know there is significant potential to apply Geographic Information System (GIS) technology in many operational and technical areas within your organization. For this reason, we believe that your organization will greatly benefit from an Enterprise Agreement (EA).

An EA will provide your organization with numerous benefits including:

- A lower cost per unit for licensed software
- Substantially reduced administrative and procurement expenses
- Complete flexibility to deploy software products when and where needed

The following business terms and conditions will apply:

- All current departments, employees, and in-house contractors of the organization will be eligible to use the software and services included in the EA.
- If your organization wishes to acquire and/or maintain any Esri software during the term of the agreement that is not included in the EA, it may do so separately at the Esri pricing that is generally available for your organization for software and maintenance.
- The organization will establish a single point of contact for orders and deliveries and will be responsible for redistribution to eligible users.
- The organization will establish a Tier 1 support center to field calls from internal users of Esri software. The organization may designate individuals as specified in the EA who may directly contact Esri for Tier 2 technical support.
- The organization will provide an annual report of installed Esri software to Esri.
- Esri software and updates that the organization is licensed to use will be automatically available for downloading.
- The fee and benefits offered in this EA proposal are contingent upon your acceptance of Esri's Small Municipal and County Government EA terms and conditions.



Environmental Systems Research Institute, Inc.
 380 New York St
 Redlands, CA 92373-8100
 Phone: (909) 793-2853
 DUNS Number: 96-313-4175 CAGE Code: 9AMS3

Quotation # Q-490899

Date: October 2, 2023

Customer # 113694 Contract # ENTERPRISE AGREEMENT

City of Fargo
 IS Dept
 225 4th St NE
 Fargo ND 58102-4817

To expedite your order, please attach a copy of this quotation to your purchase order.
 Quote is valid from 10/2/2023 To 12/31/2023

ATTENTION: Daryl Masten
 PHONE: (701) 241-8196
 EMAIL: dmasten@cityoffargo.com

Material	Qty	Term	Unit Price	Total
168180	1	Year 1 1/26/2024 – 1/25/2025	\$85,000.00	\$85,000.00
Populations of 100,001 to 125,000 Small Government Enterprise Agreement Annual Subscription				
168180	1	Year 2 1/26/2025 – 1/25/2026	\$85,000.00	\$85,000.00
Populations of 100,001 to 125,000 Small Government Enterprise Agreement Annual Subscription				
168180	1	Year 3 1/26/2026 – 1/25/2027	\$85,000.00	\$85,000.00
Populations of 100,001 to 125,000 Small Government Enterprise Agreement Annual Subscription				

Subtotal	\$255,000.00
Sales Tax	\$0.00
Estimated Shipping and Handling (2 Day Delivery)	\$0.00
Contract Price Adjust	\$0.00
Total	\$255,000.00

Esri may charge a fee to cover expenses related to any customer requirement to use a proprietary vendor management, procurement, or invoice program.

For questions contact: Jason Fetch	Email: jfetch@esri.com	Phone: 651-454-0600 x2331
<p>The items on this quotation are subject to and governed by the terms of this quotation, the most current product specific scope of use document found at https://assets.esri.com/content/dam/esrisites/media/legal/product-specific-terms-of-use/e300.pdf, and your applicable signed agreement with Esri. If no such agreement covers any item quoted, then Esri's standard terms and conditions found at https://go.esri.com/MAPS apply to your purchase of that item. If any item is quoted with a multi-year payment schedule, then unless otherwise stated in this quotation, Customer is required to make all payments without right of cancellation. Third-party data sets included in a quotation as separately licensed items will only be provided and invoiced if Esri is able to provide such data and will be subject to the applicable third-party's terms and conditions. If Esri is unable to provide any such data set, Customer will not be responsible for any further payments for the data set. US Federal government entities and US government prime contractors authorized under FAR 51.1 may purchase under the terms of Esri's GSA Federal Supply Schedule. Supplemental terms and conditions found at https://www.esri.com/en-us/legal/terms/state-supplemental apply to some US state and local government purchases. All terms of this quotation will be incorporated into and become part of any additional agreement regarding Esri's offerings. Acceptance of this quotation is limited to the terms of this quotation. Esri objects to and expressly rejects any different or additional terms contained in any purchase order, offer, or confirmation sent to or to be sent by buyer. Unless prohibited by law, the quotation information is confidential and may not be copied or released other than for the express purpose of system selection and purchase/license. The information may not be given to outside parties or used for any other purpose without consent from Esri. Delivery is FOB Origin for customers located in the USA.</p>		

FETCHJ

This offer is limited to the terms and conditions incorporated and attached herein.

Customer may accept this Agreement by signing and returning the whole Agreement with (i) the Quotation attached, (ii) a purchase order, or (iii) another document that matches the Quotation and references this Agreement ("Ordering Document"). **ADDITIONAL OR CONFLICTING TERMS IN CUSTOMER'S PURCHASE ORDER OR OTHER DOCUMENT WILL NOT APPLY, AND THE TERMS OF THIS AGREEMENT WILL GOVERN.** This Agreement is effective as of the date of Esri's receipt of an Ordering Document, unless otherwise agreed to by the parties ("Effective Date").

Term of Agreement: Three (3) years

This Agreement supersedes any previous agreements, proposals, presentations, understandings, and arrangements between the parties relating to the licensing of the Products. Except as provided in Article 4—Product Updates, no modifications can be made to this Agreement.

Accepted and Agreed:

(Customer)

By: _____
Authorized Signature

Printed Name: _____

Title: _____

Date: _____

CUSTOMER CONTACT INFORMATION

Contact: _____

Telephone: _____

Address: _____

Fax: _____

City, State, Postal Code: _____

E-mail: _____

Country: _____

Quotation Number (if applicable): _____

owned entities, either party may terminate this Agreement before any subsequent year if Customer is unable to secure funding through the legislative or governing body's approval process.

- 3.5 Follow-on Term.** If the parties enter into another agreement substantially similar to this Agreement for an additional term, the effective date of the follow-on agreement will be the day after the expiration date of this Agreement.

4.0—PRODUCT UPDATES

4.1 Future Updates. Esri reserves the right to update the list of Products in Table A—List of Products by providing written notice to Customer. Customer may continue to use all Products that have been Deployed, but support and upgrades for deleted items may not be available. As new Products are incorporated into the standard program, they will be offered to Customer via written notice for incorporation into the Products schedule at no additional charge. Customer's use of new or updated Products requires Customer to adhere to applicable additional or revised terms and conditions in the Master Agreement.

4.2 Product Life Cycle. During the Term of Agreement, some Products may be retired or may no longer be available to Deploy in the identified quantities. Maintenance will be subject to the individual Product Life Cycle Support Status and Product Life Cycle Support Policy, which can be found at <https://support.esri.com/en/other-resources/product-life-cycle>. Updates for Products in the mature and retired phases may not be available. Customer may continue to use Products already Deployed, but Customer will not be able to Deploy retired Products.

5.0—MAINTENANCE

The Fee includes standard maintenance benefits during the Term of Agreement as specified in the most current applicable Esri Maintenance and Support Program document (found at <https://www.esri.com/en-us/legal/terms/maintenance>). At Esri's sole discretion, Esri may make patches, hot fixes, or updates available for download. No Software other

than the defined Products will receive Maintenance. Customer may acquire maintenance for other Software outside this Agreement.

a. Tier 1 Support

1. Customer will provide Tier 1 Support through the Tier 1 Help Desk to all Customer's authorized users.
2. The Tier 1 Help Desk will be fully trained in the Products.
3. At a minimum, Tier 1 Support will include those activities that assist the user in resolving how-to and operational questions as well as questions on installation and troubleshooting procedures.
4. The Tier 1 Help Desk will be the initial point of contact for all questions and reporting of a Case. The Tier 1 Help Desk will obtain a full description of each reported Case and the system configuration from the user. This may include obtaining any customizations, code samples, or data involved in the Case.
5. If the Tier 1 Help Desk cannot resolve the Case, an authorized Tier 1 Help Desk individual may contact Tier 2 Support. The Tier 1 Help Desk will provide support in such a way as to minimize repeat calls and make solutions to problems available to Customer's organization.
6. Tier 1 Help Desk individuals are the only individuals authorized to contact Tier 2 Support. Customer may change the Tier 1 Help Desk individuals by written notice to Esri.

b. Tier 2 Support

1. Tier 2 Support will log the calls received from Tier 1 Help Desk.
2. Tier 2 Support will review all information collected by and received from the Tier 1 Help Desk including preliminary documented troubleshooting provided by the Tier 1 Help Desk when Tier 2 Support is required.
3. Tier 2 Support may request that Tier 1 Help Desk individuals provide verification of information, additional information, or answers to additional questions to

9.0—MERGERS, ACQUISITIONS, OR DIVESTITURES

If Customer is a commercial entity, Customer will notify Esri in writing in the event of: (i) a consolidation, merger, or reorganization of Customer with or into another corporation or entity; (ii) Customer's acquisition of another entity; or (iii) a transfer or sale of all or part of Customer's organization (subsections i, ii, and iii, collectively referred to as "**Ownership Change**"). There will be no decrease in Fee as a result of any Ownership Change.

- 9.1 If an Ownership Change increases the cumulative program count beyond the maximum level for this Agreement, Esri reserves the right to increase the Fee or terminate this Agreement and the parties will negotiate a new agreement.
- 9.2 If an Ownership Change results in transfer or sale of a portion of Customer's organization, that portion of Customer's organization will transfer the Products to Customer or uninstall, remove, and destroy all copies of the Products.
- 9.3 This Agreement may not be assigned to a successor entity as a result of an Ownership Change unless approved by Esri in writing in advance. If the assignment to the new entity is not approved, Customer will require any successor entity to uninstall, remove, and destroy the Products. This Agreement will terminate upon such Ownership Change.

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200 Third St N
FARGO, ND 58102
PHONE: 701-476-6700
FAX: 701-241-8253

October 26, 2023

Honorable Board of
City Commissioners
City of Fargo
200 N 3rd St. S
Fargo, ND 58102

Dear Commissioners;

I have just been informed that Tiffany Brandon will be leaving IS on November 9th.

Tiffany has been working part-time for 4 days a week. In the 2024 budget, an FTE position was approved to cover this position. I would like to frontload this position, so that we can fill it in November or December, rather than wait until January. It is possible to fill it part-time for that time period, but it would significantly complicate the hiring process.

With the vacancies we have had with position openings and transitions within the department, we should be covered within our present budget. The Finance Committee has approved this and the ROA is attached.

Recommended Motion:

Allow the Information Services Department to frontload the Technical Support Desk Associate position utilizing salary savings from the 2023 budget.

Thank you.

A handwritten signature in black ink that reads "R. M. Gronneberg". The signature is written in a cursive style with a long horizontal line extending to the right.

Ron Gronneberg
CIO

REPORT OF ACTION
FINANCE COMMITTEE

Location: Information Services

Agenda Item: Frontload Position in 2023

Presenter: Ron Gronneberg

Date of Hearing: 10/23/23

A front desk employee notified Ron Gronneberg that she would be leaving the IS Department on November 9, 2023.

Ron stated that this position was part time, working 4 days per week. The IS department has an approved FTE position to cover this opening in 2024, but is requesting to frontload the position before the end of the year. Ron stated that through other vacancies, the present budget would cover the expense.

MOTION:

Allow the Information Services Department to frontload the Technical Support Desk Associate position utilizing salary savings from the 2023 budget.

Steve Sprague moved to approved, second by Michael Redlinger and all members present voted in favor.

<u>COMMITTEE:</u>	<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Unanimous</u>
				<u>X</u>
				<u>Proxy</u>
<u>Tim Mahoney, Mayor</u>	<u>X</u>	<u>X</u>		
<u>Dave Piepkorn, City Commission</u>	<u>X</u>	<u>X</u>		
<u>Mike Redlinger, City Administrator</u>	<u>X</u>	<u>X</u>		
<u>Brenda Derrig, Assistant City Administrator</u>	<u>X</u>	<u>X</u>		
<u>Susan Thompson, Finance Director</u>	<u>X</u>	<u>X</u>		
<u>Tanner Smedshammer, Purchasing Manager</u>	<u>X</u>	<u>X</u>		
<u>Steve Sprague, City Auditor</u>	<u>X</u>	<u>X</u>		


 Timothy Mahoney, Mayor



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THE FARGO POLICE DEPARTMENT
CHIEF DAVID B. ZIBOLSKI
105 25th Street North
Fargo, ND 58102-4002
Main Line: 701.235.4493 | Fax: 701.297.7789
FargoPolice.com

October 24, 2023

COPY

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

RE: Amendment to Badges of Unity Fiscal Sponsor Project

Commissioners,

Since November 27, 2017, the Impact Foundation, a 501(c)(3), as part of the Dakota Medical Foundation's portfolio, has been the fiscal sponsor of the Badges of Unity project. The Badges of Unity project was set up to allow community members and/or businesses to contribute donations, specifically to the Fargo Police Department for use with youth programming and other community trust-building functions.

Through discussions with the Impact Foundation, the agreement was expanded to include the use of donated funds for police department supportive resources, which may include staff wellness, activities/events, training, equipment, and/or other department related needs that are unable to be supported by the normal budget process, except personnel. It also provides a direct conduit for many in our community who wish to donate to specific department needs and projects, such as a therapy dog, etc.

Suggested Motion

Approve the proposed edits to the existing Badges of Unity Agreement for the Fargo Police Department.

I am happy to answer any additional questions regarding this request.

Sincerely,

David B. Zibolski
Chief of Police

ORIGINAL



**FISCAL PROJECT SPONSOR AGREEMENT
Badges of Unity**

This Fiscal Sponsor Project Agreement ("Agreement"), effective as of **November 27, 2017** (the "Effective Date") is made by Impact Foundation ("Sponsor"), to operate as a fiscal sponsor of **Badges of Unity** (the "Project").

WHEREAS, Sponsor is a North Dakota nonprofit corporation located in Fargo, North Dakota, qualified as exempt from federal income tax under Section 501(a) of the Internal Revenue Code of 1986, as amended (the "Code") as an organization described in Section 501(c)(3) of the Code and classified as a public charity under Sections 509(a)(1) and 170(b)(1)(A)(vi) of the Code and formed for the purpose of supporting general health, wellness and healthcare and otherwise to improve the health of people in the Sponsor service area.

WHEREAS, the Project is a "grass-roots" program formed for the purposes of **uniting all community members, building trusting relationships with at-risk youth and partnering with others to ensure a bright future for all** and such activities within the scope of the charitable and educational purposes of Sponsor.

WHEREAS, Sponsor desires to treat the Project as a program of Sponsor for purposes of this Agreement, and is willing to receive tax-deductible charitable contributions, which, at its sole discretion, may be used for the benefit and use of implementing the purposes of the Project consistent with Sponsor's charitable and educational purposes.

WHEREAS, the Project, operating as a program of Sponsor, desires to use such funds as it may receive from Sponsor to support the purposes of the Project that are consistent with Sponsor's charitable and educational purposes.

NOW, THEREFORE, in consideration of the foregoing, and the mutual agreements contained herein, and intending to be legally bound hereby, Sponsor hereby agrees as follows:

1. **Project Activities: Advisory Board:** The Project will be involved in a number of programs, events, and activities as outlined in the application. The Project will notify Sponsor at least 45 days prior to any program, event, and activity involving community members and/or expenses; provided, however, that the Project will notify and obtain the approval of Sponsor at least 10 days prior to any program, event, and activity related to the Project, including meetings of the Project's advisory board (the "Advisory Board"). Because Sponsor's insurance shall cover programs, events, and activities of the Project, the Project shall promptly provide any information requested by Sponsor regarding any program, event, or activity of the Project to Sponsor. Unless otherwise agreed upon, all communications between the Project and Sponsor will be managed by one member of the Advisory Board and Sponsor.

The Advisory Board will advise the Sponsor of the desired use of Sponsor funds provided to the Project. Members of the Advisory Board are listed in the application, as may be amended from time to time. The Project shall maintain a current list of the names, addresses, and phone numbers of all members of the Advisory Board and provide updated copies to Sponsor. The Advisory Board of the Project shall raise funds for the Project (pursuant to the restrictions set forth in this Agreement), develop the annual budget each year, carry out the programming activities of the Project, and provide oversight required for the Project. The Project shall provide Sponsor with a copy of Advisory Board meeting minutes as

requested. **Minutes of the annual meeting of the Advisory Board that include the annual budget approval shall be submitted to Sponsor with the proposed annual budget.**

2. **Receipt of funds:** Sponsor agrees to receive charitable contributions donated to Sponsor to support Sponsor's charitable and educational purposes associated with Project.
3. **Discretion and control:** Sponsor retains sole and exclusive control and discretion over the use of all charitable contributions Sponsor receives. All of the charitable contributions received by Sponsor shall be devoted to charitable and educational purposes consistent with Sponsor's charitable and educational purposes. Any charitable contributions received by Sponsor and used by Sponsor to support the Project shall be subject to this Agreement.
4. **Acknowledgment of charitable contributions and Sponsor tax status:** Sponsor shall report all charitable contributions which it receives as contributions to Sponsor as required by law, and further agrees to acknowledge receipt of any such charitable contributions in writing to donors and to furnish evidence of its status as an exempt organization under Section 501(c)(3) of the Code to donors upon request.
5. **Protection of tax-exempt status:** The Project agrees not to budget for or use funds received from Sponsor in any way that could potentially or in fact in any way jeopardize the tax-exempt status of Sponsor. The Project agrees to comply immediately with any written or oral request by Sponsor that the Project cease any activities which could potentially or in fact in any way, in Sponsor's sole determination, jeopardize Sponsor's tax-exempt status. The Project further acknowledges and agrees that Sponsor's obligation to make funds available to the Project shall be immediately suspended in the event that, in the sole determination of Sponsor, the Project fails to comply immediately with any such request. The Project shall not alter the purposes for which any funds are to be used without the prior written consent of Sponsor. If in the sole determination of Sponsor, the Project potentially or in fact in any way jeopardizes Sponsor's legal or tax-exempt status, Sponsor retains the right to withhold, withdraw, or demand immediate return of all specified funds provided or pledged to the Project. The Project shall immediately comply with Sponsor's directions regarding the return of such specified funds provided or pledged to the Project.
6. **Use of funds:** The Project may only use funds from Sponsor consistent with Sponsor's charitable and educational purposes, applicable laws and regulations governing tax-exempt entities, and the project's budget approved by Sponsor. Sponsor may, in its sole discretion, disburse funds directly to third parties on behalf of the Project. The Project shall use any funds from Sponsor solely for legitimate expenses of the Project in furtherance of the Project's programs, events, and activities outlined in the application, as permitted in the budget approved by Sponsor or as otherwise pre-approved in writing by Sponsor. All expenses must be reasonable, necessary, and related to the charitable purposes of Sponsor and are subject to approval of Sponsor. The Project shall use no portion of any funds it receives from Sponsor to influence legislation within the meaning of Section 501(c)(3) of the Code or to participate or intervene in any political campaign on behalf of or in opposition to any candidate for public office.
7. **Administrative costs:** Sponsor will assess an annual administration fee of \$50/month in the first year and \$100/month thereafter, and as may be amended periodically by Sponsor. Should the administration fee be amended, Sponsor will provide thirty (30) days notice to Project. Sponsor shall retain in its unrestricted net assets all interest earned on bank accounts as reimbursement for administration of the account.
8. **Financial accounting and reporting:** The Project agrees to adhere to the financial and accounting policies and procedures of the Sponsor. The Project will provide a projected annual budget and supporting documentation to Sponsor for approval by August 1 of each year for the subsequent year annual budget. Sponsor must approve each budget before such budget becomes effective. The Project must obtain Sponsor approval for any variation from the approved budget. Sponsor will

maintain books and financial records for the Project in accordance with generally accepted accounting principles. The Project's revenue, including any funds the Project may receive from Sponsor, and expenses will be separately classed in the books of Sponsor. Project will provide Sponsor with any additional information requested by Sponsor regarding the finances or other aspects of the Project. The Project will be reflected on Sponsor's tax return, and Sponsor will file employment tax returns for any employees it hires related to the Project. The Project shall not establish or maintain bank accounts other than those that may be established by Sponsor.

9. Employment: Sponsor may employ individuals to further the purposes of the Project. In any such cases, such employees shall be subject to the same employment guidelines and regulations as apply to other employees of the Sponsor.
10. Project Not Agent of Sponsor: The Project is a program of Sponsor, but the Project is not authorized to enter into any legally binding agreements or obligate the Sponsor in any manner, whether related to the Project or otherwise.
11. Volunteers: The use of volunteers for the Project's programs, events, and activities may expose Sponsor to additional liability. Volunteers who provide services to, or perform services for the Project, without compensation for their time must sign a Release and Waiver of Liability for Volunteers, attached hereto as Appendix A. All such volunteer's must abide by Sponsor's policies and procedures pertaining to management of volunteers, if any.
12. Use of Name: The Project may not use the name, symbols, trademarks or service marks of Sponsor in advertising or promotional materials or otherwise without receiving the prior written approval of Sponsor. The Project must work with Sponsor to develop how the relationship will be communicated to the public. The Project is responsible for upholding the brand standards of the Sponsor.
13. Intellectual Property, Project Use of Data and Public Use Data Types: All intellectual property rights in materials produced as a result of Sponsor's grant of funds to the Project shall be solely owned by Sponsor and will be considered a "work made for hire" as defined and used in the Copyright Act of 1976, 17 USC 1 et seq. At such time as the Project incorporates and obtains its own determination letter that it is an organization described in Section 501 (c) (3) of the Code, Sponsor shall assign such materials to the Project; provided, however, upon the request of the Sponsor, the Project shall grant to Sponsor a nonexclusive, irrevocable, perpetual, royalty-free license to reproduce, publish, republish, summarize, excerpt or otherwise use, in print or electronic form, including in electronic databases or in any future form not yet discovered or implemented, any and all such materials produced in connection with the funds provided by Sponsor to the Project pursuant to this agreement.


Sponsor represents and warrants that the material produced by Sponsor under this Agreement will be original and not infringe upon any copyright or any other intellectual property right of any other person, and has not previously been published.

14. Fundraising: Upon prior written approval of Sponsor, the Project may solicit contributions on behalf of Sponsor for Sponsor's charitable and educational purposes including the purposes of the Project. The Project shall obtain prior written approval of Sponsor regarding the Project's choice of funding sources to be approached and the text of the Project's letters of inquiry, grant applications and other fundraising materials and messages. The Project shall not engage in any fundraising, grant applications, letters of inquiry or other similar fundraising activities without the prior written approval of Sponsor for each specific proposed fundraising activity. All grant agreements, pledges or other commitments with funding sources shall be executed exclusively by Sponsor at Sponsor's sole discretion. Sponsor shall be solely responsible for the processing and acknowledgment of all monies received for its charitable and educational purposes, which shall be reported as the income of Sponsor for both tax purposes and for purposes of Sponsor's financial statements.

15. Term and Termination: This Agreement shall commence on the Effective Date and be perpetual until terminated by Sponsor upon written notice to the Project. If the Project will continue to exist after Sponsor provides notice of termination, the following terms and conditions will apply. Another nonprofit corporation, which is tax-exempt under Section 501(c)(3) of the Code and is not classified as a private foundation under Section 509(a) of the Code must be willing and able to become Sponsor of the Project (the "Successor"). The Successor must be approved in writing by Sponsor by the end of the 30-day termination notice period. If a Successor is found, the balance of assets held by Sponsor for the Project, together with any other assets held or liabilities incurred by Sponsor in connection with the Project, will be transferred to the Successor at the end of the notice period or any extension thereof, subject to the approval of any third parties (including funding sources) that may be required. If the Project has formed a new organization qualified to be a Successor as set forth in this paragraph, such organization will be eligible to receive all such assets and liabilities so long as such organization has received a determination letter from the Internal Revenue Service which states the new organization is exempt from federal tax under Section 501(c)(3) of the Code no later than the end of the notice period or any extension thereof. If no Successor is found, Sponsor may allocate any funds provided or pledged to the Project and its liabilities in any manner consistent with the original purposes outlined in this Agreement, applicable tax and charitable trust laws, and other obligations, and will not be obligated to disburse any such funds to the Project.
16. Entire Agreement: This Agreement constitutes the entire description of the relationship of Sponsor and the Project. Any prior discussion or understandings regarding the relationship of Sponsor and the Project, whether written or oral, are superseded by this Agreement.
17. Amendment: No amendment or modification to this Agreement will be effective unless it is in writing and signed by a duly authorized representative of Sponsor.
18. Governing law: This Agreement will be governed and construed in accordance with the laws of the state of North Dakota without regard to its conflict of law principles. Any action arising out of or relating to this Agreement must be brought in the state of North Dakota.
19. Severability, Interpretation. In the event that any provision of this Agreement violates any applicable statute, ordinance, or rule of law in any jurisdiction that governs this Agreement, such provision shall be ineffective to the extent of such violation without invalidating any other provision of this Agreement. Any ambiguity in this Agreement shall be interpreted in such a manner to remain valid to the fullest possible extent under the law.

By signing below, Sponsor and Project execute this Agreement and agree to abide by the rules set forth in the agreement and in the Impact Fiscal Sponsor Handbook (Appendix B).

Impact Foundation

By: 
J. Patrick Traynor, President

Date: 12/20/17

By: 
Primary Fund Advisor

Date: 12-20-17

Print Name: WILLIAM S. AHLFELDT

AMENDMENT TO FUND

This amendment relates to the Badges of Unity Fiscal Sponsor Project (“Project”), established November 27, 2017, by Impact Foundation (“Impact”).

BE IT KNOWN that Impact makes the following changes to the Project as contained therein to replace the most recent paragraph 2:

Amended paragraph 2: **“WHEREAS, the Project is a “grass-roots” program formed for the purposes of fostering a safer and brighter Fargo by uniting the community through trusting relationships with the public and at-risk youth, while enhancing supportive resources for Fargo Police Department staff and such activities within the scope of the charitable and educational purposes of Sponsor. “**

All other terms and provisions of the Project shall remain in full force and effect.

Signed this 16th day of October 2023:

IMPACT FOUNDATION



Emily Jones, Development Director

10/16/23
Date



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THE FARGO POLICE DEPARTMENT
CHIEF DAVID B. ZIBOLSKI
105 25th Street North
Fargo, ND 58102-4002
Main Line: 701.235.4493 | Fax: 701.297.7789
FargoPolice.com

COPY

October 26, 2023

Board of City Commissioners
City Hall
Fargo, ND 58102

RE: Contract for Lawn Care and Snow Removal

Dear Commissioners,

The Fargo Police Department is seeking acceptance of the attached contract for lawn care services with All Terrain for continued lawn maintenance and snow removal at the Fargo Regional Training Center.

This contract is valid for two years from the effective date of November 1, 2023, with the option of two (2) one-year extensions. The annual cost of services is \$9,060.00.

Recommended Motion:

Accept the contract with All Terrain to provide the Fargo Regional Training Center with the required lawn care and snow removal services.

Sincerely,

David B. Zibolski
Chief of Police

**Contract
Between
City of Fargo
and All Terrain**

This contract (the "contract," which includes all attached schedules), effective November 1st, 2023 ("Effective Date"), is entered into by and between All Terrain (the "Vendor"), having a principal place of business at 4663 13th Ave N, Fargo, North Dakota, and City of Fargo (the "City"), a North Dakota municipal corporation, having a principal place of business at 225 4th Street North, Fargo, North Dakota 58102 (each a "Party" and collectively, the "Parties").

1. TERM

The term of this Agreement will be (2) two years from the Effective Date, with (2) optional one-year extensions.

2. STATEMENT OF WORK

A Summary of all services the Vendor is able to provide under this Agreement is described in the Statement of Work form ("Statement of Work") attached hereto as Attachment A. Vendor hereby agrees to complete work pursuant to a work request, awarded bid, and/or awarded proposal. Neither this Agreement nor the Statement of Work is a commitment by the City to issue the vendor any work requests, bids or proposals. The work request, Request for Bid (RFB) or Request for Proposal (RFP) shall describe the specific scope of services for a particular project. Any services provided by the Vendor under this agreement are referred to as "Services."

3. MATERIALS

Vendor shall furnish all materials, supplies, tools, equipment, and transportation required to provide services or deliverables required under Statements of Work. Vendor shall provide all available material safety data sheets for City approval prior to use of materials.

4. LIEN WAIVER

Vendor shall submit its lien waivers and obtain and submit lien waivers from all subcontractors, and material suppliers with invoices Vendor submits to City. City's obligation to pay invoices will be contingent upon receipt of applicable lien waivers.

5. COMPENSATION

The Parties shall negotiate rates annually. Negotiated Rate Sheet ("Rate Sheet") for the current Agreement year is attached as Attachment B. If a new rate sheet is not negotiated by December 31 for the current Agreement year, the Rate Sheet shall carry forward for the next year. Vendor



shall not charge and the City will not pay for any services performed without a work request, awarded bid or awarded proposal. Except as otherwise provided, undisputed invoices shall be payable within 30 calendar days after the receipt of the invoice. Invoices shall be e-mailed to FinanceAPAR@FargoND.gov.

6. OWNERSHIP OF DOCUMENTS

Vendor's work product reimbursed by the City, including all data, documents, results, ideas, developments and inventions that Vendor conceives or uses during the course of its performance under this Agreement shall be the City's property, unless otherwise agreed.

7. INDEPENDENT CONTRACTOR

The relationship between the Parties shall, within the context of this Agreement, be that of an independent contractor and nothing in this Agreement should be construed to create a partnership, joint venture, or employer-employee relationship. The Vendor shall, at all times during the term of this Agreement, perform the duties and responsibilities herein. Neither Party is an agent of the other Party and is not authorized to make any representation contract, or contract commitment on behalf of the other Party.

8. NO CONFLICTS OF INTEREST

Vendor must disclose any actual, apparent, or potential Conflict of Interest to the City prior to execution of this Agreement if a conflict of interest arises or appear to arise during the term of this Agreement, contractor agrees to abide by any reasonable mitigation plan developed with or by the City. "Conflict of Interest" means any activity, interest, or relationship of Vendor or any of its officers, directors, affiliates, or principals that may compromise that person's ability to render impartial assistance or advice to the City or that may give rise to legal or reputational concerns or any competitive advantage unfair to the City.

9. CONFIDENTIALITY

The Vendor agrees to not, directly or indirectly, disclose, make known, divulge, publish, or communicate any confidential information to any person, firm, or corporation without consent unless that disclosure is authorized under North Dakota law.

10. INSURANCE

a. Vendor will obtain and maintain the following insurance coverage, naming the City of Fargo as an additional insured, via commercial insurance:

i. Commercial General Liability covering bodily injury and tangible property damage liability with a limit of not less than U.S. \$5,000,000 each occurrence.

ii. Workers' Compensation (or maintenance of a legally permitted and government-approved program of self-insurance) covering Vendor Personnel pursuant to applicable state workers' compensation laws for work-related injuries suffered by Vendor's Personnel, if Vendor employs Personnel;

iii. Employer's Liability with limits of not less than U.S. \$1,000,000 per accident;

iv. Automobile Liability with \$2,000,000 combined single limit per occurrence, for bodily injury and property damage combined covering owned, if Vendor owns any vehicles, non-owned, and hired vehicles, if Vendor brings vehicles on the City's premises or uses vehicles in the performance of services.

v. Limits for Commercial General Liability and Automobile Liability may be provided through a combination of primary and umbrella coverage; and

b. Vendor shall provide the City with evidence of the foregoing coverage before providing any services.

c. Vendor shall notify the City 30 days prior to cancellation or reduction in limits of any insurance required hereunder.

11. INDEMNIFICATION

Consultant agrees to indemnify and hold harmless the City, its officers, employees, insurers, and self-insurance pool, from and against all liability, claims, and demands, on account of injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with this Agreement, if such injury, loss, or damage is caused in whole or in part by, or is claimed to be caused in whole or in part by, the act, omission, error, consultant error, mistake, negligence, or other fault of the Vendor, any subcontractor of the Vendor, or any officer, employee, representative, or agent of the Consultant or of any subcontractor of the Consultant, or which arises out of any workmen's compensation claim of any employee of the Consultant or of any employee of any subcontractor of the Consultant. The Consultant agrees to investigate, handle, respond to, and to provide defense for and defend against, any such liability, claims or demands at the sole expense of the Consultant, or at the option of the City, agrees to pay the City or reimburse the City for the defense costs incurred by the City in connection with, any such liability, claims, or demands.

12. FORCE MAJEURE

Neither Party shall be liable for damages or deemed in default of this Agreement and any Statement of Work hereunder to the extent that any delay or failure in the performance of its obligations (other than the payment of money) results, without its fault or negligence, from any cause beyond its reasonable control, such as acts of God, acts of civil or military authority, embargoes, epidemics, war, riots, insurrections, fires, explosions, earthquakes, floods, adverse

weather conditions, union activity, strikes or lock-outs, and changes in laws, statutes, regulations, or ordinances.

13. DISPUTE RESOLUTION

Vendor and the City will exercise good faith efforts to resolve disputes through a mutually acceptable Alternative Dispute Resolution process. Nothing prevents the Parties from pursuing litigation in the appropriate State or Federal court, located in Cass County, North Dakota

14. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the state of North Dakota.

15. ENTIRE AGREEMENT

The terms and conditions set forth herein and any Exhibit referenced herein constitute the entire understanding of the parties relating to the provision of services by Vendor to City and shall be incorporated in all Statements of Work unless otherwise so stated therein. This Agreement may be amended only by a written instrument signed by both parties.

16. ASSIGNMENT

This Agreement may not be assigned by Vendor or City without the prior written consent of the other party.

17. TERMINATION

This Agreement may be terminated by either party upon seven days written notice should the other party fail to perform in accordance with the terms hereof, provided such failure is not cured within such seven day period. City may terminate this Agreement for convenience at any time, in which event Vendor shall be compensated in accordance with the terms hereof for Services performed and reimbursable expenses incurred prior to its receipt of written notice of termination from City.

18. SEVERABILITY

Should a court of law determine that any clause or section of this Agreement is invalid, all other clauses or sections shall remain in effect.

IN WITNESS WHEREOF, City and All Terrain have caused this Agreement to be duly executed as of the date first above written.

CITY OF FARGO

VENDOR

BY _____
Dr. Timothy J. Mahoney, Mayor

BY Matt _____
Matt Lungenro

DATE: _____

DATE: 10/25/2023

ATTEST:

BY _____
Steven Sprague, City Auditor

PROPOSAL OF SERVICE

FM TRAINING CENTER

2802 N University Dr



ALL  TERRAIN

ABOUT ALL TERRAIN

Team Values



No hype, overselling, or empty promises. We are honest with our customers, team members, and vendors. We expect the same in return.



By cooperating, teams achieve what individuals cannot. We are committed to creating a cohesive team culture where every employee is a valued, accountable, and respected team member.



Our company is dedicated to creating a positive impact in our community. We are proud to say that we donate 3% of our total sales to causes in the Fargo/West Fargo/Moorhead Area.

100%

From call to complete, we strive to deliver our very best in all the services we provide, and we hold ourselves accountable for our results.

Team Accomplishments, Certifications + Associations

From associations to awards and certifications, we as a company want to be educated, informed, and involved in our industry.



All Terrain Fleet

We only use the highest quality equipment to perform our services. Our in-house mechanics are educated on all of the brands we use, and make sure our equipment is appropriately and regularly maintained.



We will provide grounds maintenance for your property year-round. Lawn care services will be provided from spring until the first snow fall, generally April 1st - October 31st. Snow removal will be provided from the first snow fall until the last snow fall, generally November 1st - March 31st.

YOUR MAINTENANCE PLAN WILL INCLUDE THE FOLLOWING:

SPRING CLEAN-UP

- We will visit your property in the spring to blow out leaves and debris from your landscaped beds, sweep all the sand off your boulevards, and do an initial mowing.

MOWING

- We will mow your lawn regularly to maintain a well-groomed appearance. We try to keep your mowing day consistent each week, but it may vary slightly depending on outside factors. We will line trim around objects that often include trees, fence lines, hardscapes, and landscape beds. We will line trim against any vinyl siding or fences, but cannot be held liable for damage. All clippings will be blown off hardscape areas. We will maintain the lawn at approximately 3" high, with the exact height varying by lawn type and time of year.

LAWN TREATMENTS

- We used licensed commercial applicators to apply lawn treatments to your property throughout the summer season. Each treatment consists of a nitrogen-based, phosphorus-free fertilizer, a family-friendly broadleaf weed killer, and an iron compound designed to deepen the green color of your lawn.

WEED ABATEMENT

- We will monitor all landscape beds and hardscape areas for weeds and hand-pull or spot spray as needed.

SHRUB TRIMMING

- We will trim all your shrubs to maintain appearance and health. Our shrub trimming team is led by a Master Gardener and ISA Certified Arborist so you can be assured your plants will be cared for appropriately. We will clean up and dispose of all trimmings.

SNOW REMOVAL

- We will remove snow from your driveway, front entrance, city sidewalk, and mailbox upon exceeding the trigger depth. During heavy snowfalls we may visit your property and open up the driveway areas so it is passable. Once a snow event has concluded, we will do a complete, finished product of all areas. Our team will also come back the day after completion to check the end of your driveway and mailbox area for plow ridge and clean that up if needed. Your snow removal maintenance plan does NOT include ice melting agents, hauling snow away or blowing back piles of snow, or snow removal from patios, decks, and rooftops. However, some of these exclusions can be performed for an additional fee. If snow is to be pushed onto grass areas for space reasons, we cannot be responsible for damage to the grass caused by equipment or snow storage. We also cannot be held liable for decorative items that may be buried under snow, including but not limited to rugs, vases, landscape lights, and Christmas string lights. We can repair lawn damage in the spring on a time and material basis upon request.
-

PROPOSAL TERM | Nov 1st, 2023 - Oct 31st, 2025

\$755/month

FLAT SEASONAL PRICING — ~~\$775/month~~ (\$9,060/season)

We invoice monthly and in arrears, so payment is due on the 15th of the following month.

SERVICES INCLUDED

- Spring Clean-up - includes power brooming, cutting of perennials
- Weekly Mowing
- 3 Weed Control and Fertilizer Applications
- Monthly Weed Abatement
- Shrub Trimming (once mid-season)
- Snow Removal at 1.0" trigger
 - Includes sand and salt

CUSTOMER SIGNATURE

CUSTOMER PRINTED NAME

DATE

Matt

ALL TERRAIN SIGNATURE

Matt Langone

ALL TERRAIN PRINTED NAME

10/25/2023

DATE



40

FARGO POLICE DEPARTMENT

A SAFE AND UNIFIED COMMUNITY BUILT ON TRUST, ACCOUNTABILITY AND INCLUSION

CRIMINAL INVESTIGATIONS DIVISION

MEMORANDUM

To: Chief David Zibolski

From: Lt Jared Crane *JC*

Date: 10.16.2023

RE: Update on Hate Crime Investigations for the third quarter of 2023

COPY

The following is a summary of bias and hate crime investigations that have taken place for the third quarter of 2023:

During the third quarter of 2023, there were four incidents reported in which a bias motivation was listed as a factor (one in July, one in August, and two in September). After reviewing these four cases, it was determined that none involved a motivational bias and this element should not have been listed in the report. The motivational bias has been removed from these four cases.

For the year, up to this point in 2023, there have been two reports generated showing a motivation bias; however, they do not apply to the three city hate crime ordinances.

RECEIVED
FARGO POLICE DEPARTMENT

OCT 17 2023

WILLIAM S AHLFELDT
CAPTAIN
REF: *A.C. STEFONOWICZ*

- FORWARD
- INFORMATIONAL

RECEIVED
FARGO POLICE DEPARTMENT

OCT 23 2023

TRAVIS STEFONOWICZ
ASSISTANT CHIEF OF POLICE
REF: *Chief Zibolski - FYI*



Division of Solid Waste

2301 8th Avenue North
Fargo, North Dakota 58102
Phone: 701-241-1449
Fax: 701-241-8109

(41)

October 9, 2022

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

RE: Addendum to Landfill Use Agreement with Valley City

Dear Commissioners:

The City of Valley City has been utilizing the City of Fargo Landfill for over 20 years which has resulted in positive impacts for both communities. Valley City is requesting an addendum to the current landfill use agreement dated August 14, 2013.

The addendum extends the agreement through December 31, 2024 and updates the disposal rates to be paid by Valley City as shown in the attached agreement. On a 10-year average Valley City has disposed of approximately 4,300 tons of material at the City of Fargo Landfill which at present rates (\$51/ton) generates over \$219,000 in yearly revenues.

There is mutual interest between the City of Fargo and the City of Valley City to discuss a new long-term agreement that may be implemented when this addendum expires.

Your consideration in this matter is greatly appreciated.

SUGGESTED MOTION

Approve the Addendum to Landfill Use Agreement between the City of Fargo and Valley City effective October 16, 2023.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read "S. Olson".

Scott Olson, PE
Solid Waste Utility Director

cc: Scott Anderson, Fargo Landfill
Sharon Johnson, Solid Waste Office Manager

FIRST ADDENDUM TO LANDFILL USE AGREEMENT
(City of Fargo and City of Valley City)

THIS FIRST ADDENDUM TO LANDFILL USE AGREEMENT is made and entered into this ____ day of ____, 2023, by and between the City of Fargo, a North Dakota municipal corporation, hereinafter “Fargo”, and City of Valley City, a North Dakota municipal corporation, hereinafter “Valley City”.

WHEREAS, the parties have entered into a Landfill Use Agreement dated August 14, 2013 (hereinafter the “Landfill Use Agreement”); and

WHEREAS, the Landfill Use Agreement had a term of ten years, with renewals thereafter to be by mutual agreement.

WHEREAS, Fargo and Valley City are mutually interested in discussing another long-term agreement for landfill use with updated terms. While Fargo and Valley City discuss such long-term agreement, Fargo and Valley City are desiring to extend the current Landfill Use Agreement through December 31, 2024.

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, the Landfill Use Agreement is hereby amended as follows:

Section 1. Extension of Landfill Use Agreement. Fargo and Valley City agree to extend the Landfill Use Agreement through December 31, 2024.

Section 2. Paragraph Two. Paragraph 2 is amended to read as follows: This agreement shall be limited to seven thousand (7,000) tons of the foregoing described materials per month from Valley City. There is no minimum requirement and Valley City has the right to provide its waste to other landfills.

Section 3. Paragraph Three. Paragraph 3 is amended to provide that the current rate per ton being paid by Valley City is \$51 per ton. It is understood and agreed between the parties that the fee per ton and any applicable surcharge is subject to change from time to time in the event the Fargo City Commission passes a resolution duly establishing a different fee for dumping which will apply to all like-kind users of the landfill.

Section 4. In all other respects, the Landfill Use Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this First Addendum to Landfill Use Agreement the day and year last executed below.

(The remainder of this page is left intentionally blank- Execution page to follow)

**CITY OF FARGO,
a North Dakota Municipal Corporation**

By: _____
Dr. Timothy J. Mahoney, Mayor

ATTEST:

Steve Sprague, City Auditor

**CITY OF VALLEY CITY,
a North Dakota Municipal Corporation**

By: _____
President

ATTEST:

Brenda Klein
City Auditor



Division of Solid Waste

2301 8th Avenue North
Fargo, North Dakota 58102
Phone: 701-241-1449
Fax: 701-241-8109

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October 20, 2023

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

RE: SW 23-04 Cell 21 Waste Excavation and Construction – ITB 23160
Agreement between Owner and Contractor for Construction Contract

Dear Commissioners:

On October 2, 2023, the Commission approved bid awards for Solid Waste Division Project No. SW 23-04, Cell 21 Waste Excavation and Construction with award to Excavating Inc. in the amount of \$6,165,624.20

Attached is the Agreement between Owner and Contractor for Construction Contract.

Recommended Motion:

Approve and execute the attached contract with Excavating Inc. for project SW 23-04.

Respectfully Submitted,

Scott Olson
Solid Waste Utility Director

Cc: City of Fargo Auditors Office
Randy Hanson (Stantec)
Austin Stockert (Excavating Inc)

23-1181

**AGREEMENT
BETWEEN OWNER AND CONTRACTOR
FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)**

THIS AGREEMENT is by and between City of Fargo Division of Solid Waste (“Owner”) and Excavating, Inc. (“Contractor”).

Owner and Contractor hereby agree as follows:

ARTICLE 1 – WORK

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

ARTICLE 2 – THE PROJECT

2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows:

Cell 21 Waste Excavation and Construction at the City of Fargo Landfill.

ARTICLE 3 – ENGINEER

3.01 The part of the Project that pertains to the Work has been designed by Stantec, Inc.

3.02 The Owner has retained Stantec, Inc. (“Engineer”) to act as Owner’s representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

ARTICLE 4 – CONTRACT TIMES

4.01 *Time of the Essence*

A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.02 *Contract Times: Dates*

A. The Work will be substantially completed on or before October 31, 2024, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before November 30, 2024.

4.03 *Liquidated Damages*

A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with the Contract. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay

(but not as a penalty), Contractor shall pay Owner the amount as set forth in Article 10 of the Instructions to Bidders for each day that expires after the time specified in Paragraph 4.02 above for completion.

4.04 *Special Damages*

- A. In addition to the amount provided for liquidated damages, Contractor shall reimburse Owner (1) for any fines or penalties imposed on Owner as a direct result of the Contractor's failure to attain Substantial Completion according to the Contract Times, and (2) for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Substantial Completion (as duly adjusted pursuant to the Contract), until the Work is substantially complete.
- B. After Contractor achieves Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times, Contractor shall reimburse Owner for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Work to be completed and ready for final payment (as duly adjusted pursuant to the Contract), until the Work is completed and ready for final payment.

ARTICLE 5 – CONTRACT PRICE

5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents the amounts that follow, subject to adjustment under the Contract:

- A. For all Unit Price Work, an amount equal to the sum of the extended prices (established for each separately identified item of Unit Price Work by multiplying the unit price times the actual quantity of that item). Contractor to include bid sheet form showing unit bid prices, total price, and total contract construction cost as indicated on the Bid Form (C-410) with this agreement

The extended prices for Unit Price Work set forth as of the Effective Date of the Contract are based on estimated quantities. As provided in Paragraph 13.03 of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by Engineer.

ARTICLE 6 – PAYMENT PROCEDURES

6.01 *Submittal and Processing of Payments*

- A. Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

6.02 *Progress Payments; Retainage*

- A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on or about the 20th day of each month during performance of the Work as provided in Paragraph 6.02.A.1 below, provided that such Applications for Payment have been submitted by the 5th day of that month and meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided elsewhere in the Contract.

1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract
 - a. 90 percent of Work completed (with the balance being retainage). If the Work has been 50 percent completed as determined by Engineer, and if the character and progress of the Work have been satisfactory to Owner and Engineer, then as long as the character and progress of the Work remain satisfactory to Owner and Engineer, there will be no additional retainage; and
 - b. 90 percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).
- B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 95 percent of the Work completed, less such amounts set off by Owner pursuant to Paragraph 15.01.E of the General Conditions, and less 5 percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the punch list of items to be completed or corrected prior to final payment.

6.03 *Final Payment*

- A. Upon final completion and acceptance of the Work in accordance with Paragraph 15.06 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 15.06.

ARTICLE 7 – INTEREST

- 7.01 All amounts not paid when due shall bear interest at the rate of 9 percent per annum.

ARTICLE 8 – CONTRACTOR'S REPRESENTATIONS

- 8.01 In order to induce Owner to enter into this Contract, Contractor makes the following representations:
- A. Contractor has examined and carefully studied the Contract Documents, and any data and reference items identified in the Contract Documents.
 - B. Contractor has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
 - C. Contractor is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.
 - D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings, and (2) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings.
 - E. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related

- reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (3) Contractor's safety precautions and programs.
- F. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
 - G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
 - H. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
 - I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
 - J. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

ARTICLE 9 – CONTRACT DOCUMENTS

9.01 *Contents*

- A. The Contract Documents consist of the following:
 - 1. This Agreement (pages 1 to 7, inclusive).
 - 2. Performance bond (pages 1 to 3, inclusive).
 - 3. Payment bond (pages 1 to 3, inclusive).
 - 4. Other bonds. (NA)
 - 5. General Conditions (pages 1 to 65, inclusive).
 - 6. Supplementary Conditions (pages 1 to 6, inclusive).
 - 7. Specifications as listed in the table of contents of the Project Manual.
 - 8. Drawings (not attached but incorporated by reference) consisting of 9 sheets with each sheet bearing the following general title: Cell 21 Waste Excavation and Construction.
 - 9. Exhibits to this Agreement (enumerated as follows):
 - a. Contractor's Bid (pages 1 to 12, inclusive).
 - 10. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
 - a. Notice to Proceed.
 - b. Work Change Directives.
 - c. Change Orders.

- B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 9.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in the General Conditions.

ARTICLE 10 – MISCELLANEOUS

10.01 Terms

- A. Terms used in this Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions.

10.02 Assignment of Contract

- A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and 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 the Contract Documents.

10.03 Successors and Assigns

- A. Owner and Contractor each binds itself, its successors, assigns, and legal representatives to the other party hereto, its successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

10.04 Severability

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents 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.

10.05 Contractor's Certifications

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 10.05:
 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 bidding process or in the Contract execution;
 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;

3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

APPROVED
By the Board of City Commissioners

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement.

This Agreement will be effective on _____ (which is the Effective Date of the Contract).

OWNER:

CONTRACTOR:

Excavating, Inc. - Fargo

By: _____

By: 
Austin Stockert

Title: _____

Title: Secretary/Treasurer

(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest: _____

Attest: 
Jeff Simmons

Title: _____

Title: Vice President

Address for giving notices:

Address for giving notices:

Excavating, Inc. - Fargo
651 5th Street CT NW
West Fargo, ND 58078

License No.: 57803 - Class A
(where applicable)

(If Owner is a corporation, attach evidence of authority to sign. If Owner is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Agreement.)

NOTE TO USER: Use in those states or other jurisdictions where applicable or required.

APPROVED AS TO FORM

20

CITY ATTORNEY

PERFORMANCE BOND

CONTRACTOR (name and address):
Excavating, Inc. – Fargo
651 5th St Ct. NW
West Fargo, ND 58078

SURETY (name and address of principal place of business):
Merchants National Bonding, Inc.
PO Box 14498
Des Moines, IA 50306-3498

OWNER (name and address):
City of Fargo Division of Solid Waste
2301 8th Avenue North
Fargo, North Dakota 58102

CONSTRUCTION CONTRACT

Effective Date of the Agreement:
Amount: \$6,165,624.00 - Six Million One Hundred Sixty-Five Thousand Six Hundred Twenty-four and 20/100
Description (name and location): Cell 21 Waste Excavation & Construction, SW 23-04 - City of Fargo Landfill

BOND

Bond Number: 100145548
Date (not earlier than the Effective Date of the Agreement of the Construction Contract): 10-18-23
Amount: \$6,165,624.00 - Six Million One Hundred Sixty-five Thousand Six Hundred Twenty-four and 20/100
Modifications to this Bond Form: None See Paragraph 16


Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Performance Bond to be duly executed by an authorized officer, agent, or representative.


CONTRACTOR AS PRINCIPAL

SURETY

Excavating, Inc. - Fargo (seal)
Contractor's Name and Corporate Seal

Merchants National Bonding, Inc. (seal)
Surety's Name and Corporate Seal

By: 
Signature
Austin Stockert
Print Name

By: 
Signature (attach power of attorney)
Jill Graveline
Print Name

Estimator/ Project Manager
Title

Attorney-in-Fact
Title

Attest: 
Signature

Attest: 
Signature

Client Advocate
Title

Client Advocate
Title

APPROVED AS TO FORM

20

Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.

1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

2. If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Paragraph 3.

3. If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after:

3.1 The Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor, and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within fifteen (15) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Paragraph 3.1 shall be held within twenty (20) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor, and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;

3.2 The Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and

3.3 The Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

4. Failure on the part of the Owner to comply with the notice requirement in Paragraph 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

5. When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

5.1 Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;

5.2 Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;

5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owners concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor, and with reasonable promptness under the circumstances:

5.4.1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or

5.4.2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

6. If the Surety does not proceed as provided in Paragraph 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond fifteen days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Paragraph 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

7. If the Surety elects to act under Paragraph 5.1, 5.2, or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication for:

7.1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;

7.2 additional legal, design professional, and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 5; and

7.3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

8. If the Surety elects to act under Paragraph 5.1, 5.3, or 5.4, the Surety's liability is limited to the amount of this Bond.

9. The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors, and assigns.

10. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.

11. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum periods of limitations available to sureties as a defense in the jurisdiction of the suit shall be applicable.

12. Notice to the Surety, the Owner, or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.

13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

14. Definitions

14.1 Balance of the Contract Price: The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made including allowance for the Contractor for any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

14.2 Construction Contract: The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

14.3 Contractor Default: Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

14.4 Owner Default: Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

14.5 Contract Documents: All the documents that comprise the agreement between the Owner and Contractor.

15. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

PAYMENT BOND

CONTRACTOR (name and address):

Excavating, Inc. – Fargo
651 5th St Ct. NW
West Fargo, ND 58078

SURETY (name and address of principal place of business):

Merchants National Bonding, Inc.
PO Box 14498
Des Moines, IA 50306-3498

OWNER (name and address):

City of Fargo Division of Solid Waste
2301 8th Ave N
Fargo, ND 58102

APPROVED AS TO FORM

20

CITY ATTORNEY

CONSTRUCTION CONTRACT

Effective Date of the Agreement:

Amount: \$6,165,624.20 – Six Million One Hundred Sixty-five Thousand Six Hundred Twenty-four and no/100
Description (name and location): Cell 21 Waste Excavation & Construction, SW 23-04 – City of Fargo Landfill

BOND

Bond Number: 100145548

Date (not earlier than the Effective Date of the Agreement of the Construction Contract): 10-18-23

Amount: \$6,165,624.20 – Six Million One Hundred Sixty-five Thousand Six Hundred Twenty-four and no/100

Modifications to this Bond Form: None See Paragraph 18

Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Payment Bond to be duly executed by an authorized officer, agent, or representative.

CONTRACTOR AS PRINCIPAL

SURETY

Excavating, Inc - Fargo (seal)
Contractor's Name and Corporate Seal

Merchants National Bonding, Inc. (seal)
Surety's Name and Corporate Seal

By: 
Signature

By: 
Signature (attach power of attorney)


Austin Stockert
Print Name

Jill Graveline
Print Name

Estimator/ Project Manager
Title

Attorney-in-Fact
Title

Attest: 
Signature

Attest: 
Signature

Client Advocate
Title

Client Advocate
Title

Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.

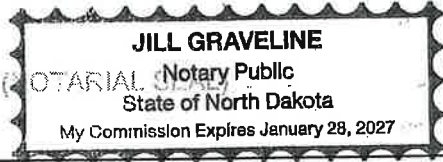
1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner to pay for labor, materials, and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.
2. If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies, and holds harmless the Owner from claims, demands, liens, or suits by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.
3. If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 13) of claims, demands, liens, or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, and tendered defense of such claims, demands, liens, or suits to the Contractor and the Surety.
4. When the Owner has satisfied the conditions in Paragraph 3, the Surety shall promptly and at the Surety's expense defend, indemnify, and hold harmless the Owner against a duly tendered claim, demand, lien, or suit.
5. The Surety's obligations to a Claimant under this Bond shall arise after the following:
 - 5.1 Claimants who do not have a direct contract with the Contractor,
 - 5.1.1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
 - 5.1.2 have sent a Claim to the Surety (at the address described in Paragraph 13).
 - 5.2 Claimants who are employed by or have a direct contract with the Contractor have sent a Claim to the Surety (at the address described in Paragraph 13).
6. If a notice of non-payment required by Paragraph 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Paragraph 5.1.1.
7. When a Claimant has satisfied the conditions of Paragraph 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:
 - 7.1 Send an answer to the Claimant, with a copy to the Owner, within forty-five (45) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and
 - 7.2 Pay or arrange for payment of any undisputed amounts.
 - 7.3 The Surety's failure to discharge its obligations under Paragraph 7.1 or 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Paragraph 7.1 or 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.
8. The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Paragraph 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.
9. Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.
10. The Surety shall not be liable to the Owner, Claimants, or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to or give notice on behalf of Claimants, or otherwise have any obligations to Claimants under this Bond.

11. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.
12. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Paragraph 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
13. Notice and Claims to the Surety, the Owner, or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.
14. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.
15. Upon requests by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.
16. **Definitions**
 - 16.1 **Claim:** A written statement by the Claimant including at a minimum:
 1. The name of the Claimant;
 2. The name of the person for whom the labor was done, or materials or equipment furnished;
 3. A copy of the agreement or purchase order pursuant to which labor, materials, or equipment was furnished for use in the performance of the Construction Contract;
 4. A brief description of the labor, materials, or equipment furnished;
 5. The date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
 - 16.2 **Claimant:** An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials, or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms of "labor, materials, or equipment" that part of the water, gas, power, light, heat, oil, gasoline, telephone service, or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials, or equipment were furnished.
 - 16.3 **Construction Contract:** The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.
 - 16.4 **Owner Default:** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.
 - 16.5 **Contract Documents:** All the documents that comprise the agreement between the Owner and Contractor.
17. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.
18. Modifications to this Bond are as follows:

ACKNOWLEDGMENT OF PRINCIPAL (CORPORATION)

State of North Dakota
County of Cass

On this 18th day of October 2023, before me personally appeared Austin Stockert known to be the Estimator/ Project Manager of the corporation that is described in and that he or she executed the within instrument, and acknowledged to me that such corporation executed the same.



Jill Graveline

ACKNOWLEDGMENT OF PRINCIPAL (INDIVIDUAL OR PARTNERSHIP)

State of _____
County of _____

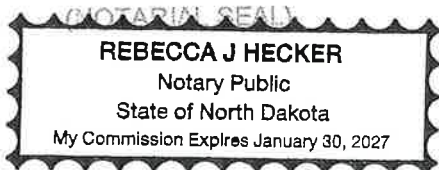
On this _____ day of _____ 20____, before me personally appeared _____ known to be the person described in and who executed the within instrument, and acknowledged to me that he/she executed the same.

(NOTARIAL SEAL)

ACKNOWLEDGMENT OF SURETY

State of North Dakota
County of Cass

On this 18th day of October 2023, before me personally appeared Jill Graveline known to be the person who is described in and whose name is subscribed to the within instrument as Attorney in Fact of Merchants National Bonding, Inc. and acknowledged to me that he or she subscribed the name of Merchants National Bonding, Inc. thereto as surety and his or her own name as Attorney in Fact.



Rebecca J Hecker

MERCHANTS BONDING COMPANY™ POWER OF ATTORNEY

Know All Persons By These Presents, that MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC., both being corporations of the State of Iowa, d/b/a Merchants National Indemnity Company (in California only) (herein collectively called the "Companies") do hereby make, constitute and appoint, individually,

Braeden Nelson; Bridget Nitz; Daniel Armbrust; Jill Graveline; Joe Olson; Rebecca Hecker; T M Crittenden; Thomas Dawson

their true and lawful Attorney(s)-in-Fact, to sign its name as surety(ies) and to execute, seal and acknowledge any and all bonds, undertakings, contracts and other written instruments in the nature thereof, on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

This Power-of-Attorney is granted and is signed and sealed by facsimile under and by authority of the following By-Laws adopted by the Board of Directors of Merchants Bonding Company (Mutual) on April 23, 2011 and amended August 14, 2015 and adopted by the Board of Directors of Merchants National Bonding, Inc., on October 16, 2015.

"The President, Secretary, Treasurer, or any Assistant Treasurer or any Assistant Secretary or any Vice President shall have power and authority to appoint Attorneys-in-Fact, and to authorize them to execute on behalf of the Company, and attach the seal of the Company thereto, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof."

"The signature of any authorized officer and the seal of the Company may be affixed by facsimile or electronic transmission to any Power of Attorney or Certification thereof authorizing the execution and delivery of any bond, undertaking, recognizance, or other suretyship obligations of the Company, and such signature and seal when so used shall have the same force and effect as though manually fixed."

In connection with obligations in favor of the Florida Department of Transportation only, it is agreed that the power and authority hereby given to the Attorney-in-Fact includes any and all consents for the release of retained percentages and/or final estimates on engineering and construction contracts required by the State of Florida Department of Transportation. It is fully understood that consenting to the State of Florida Department of Transportation making payment of the final estimate to the Contractor and/or its assignee, shall not relieve this surety company of any of its obligations under its bond.

In connection with obligations in favor of the Kentucky Department of Highways only, it is agreed that the power and authority hereby given to the Attorney-in-Fact cannot be modified or revoked unless prior written personal notice of such intent has been given to the Commissioner-Department of Highways of the Commonwealth of Kentucky at least thirty (30) days prior to the modification or revocation.

In Witness Whereof, the Companies have caused this instrument to be signed and sealed this 16th day of August, 2023.



MERCHANTS BONDING COMPANY (MUTUAL)
MERCHANTS NATIONAL BONDING, INC.
d/b/a MERCHANTS NATIONAL INDEMNITY COMPANY

By *Larry Taylor*
President

STATE OF IOWA
COUNTY OF DALLAS ss.

On this 16th day of August, 2023, before me appeared Larry Taylor, to me personally known, who being by me duly sworn did say that he is President of MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC.; and that the seals affixed to the foregoing instrument are the Corporate Seals of the Companies; and that the said instrument was signed and sealed in behalf of the Companies by authority of their respective Boards of Directors.



Kim Lee
Notary Public

(Expiration of notary's commission does not invalidate this instrument)

I, William Warner, Jr., Secretary of MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC., do hereby certify that the above and foregoing is a true and correct copy of the POWER-OF-ATTORNEY executed by said Companies, which is still in full force and effect and has not been amended or revoked.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the Companies on this 18th day of October, 2023.



William Warner Jr.
Secretary

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

10/18/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Marsh & McLennan Agency LLC 505 Broadway North, Suite 100 Fargo ND 58102	CONTACT NAME: PHONE (A/C, No, Ext): 701-237-3311 FAX (A/C, No): 701-232-4442 E-MAIL ADDRESS: <table style="width: 100%; border-collapse: collapse;"> <tr> <th style="width: 80%;">INSURER(S) AFFORDING COVERAGE</th> <th style="width: 20%;">NAIC #</th> </tr> <tr> <td>INSURER A : United Fire & Casualty Company</td> <td>13021</td> </tr> <tr> <td>INSURER B :</td> <td></td> </tr> <tr> <td>INSURER C :</td> <td></td> </tr> <tr> <td>INSURER D :</td> <td></td> </tr> <tr> <td>INSURER E :</td> <td></td> </tr> <tr> <td>INSURER F :</td> <td></td> </tr> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A : United Fire & Casualty Company	13021	INSURER B :		INSURER C :		INSURER D :		INSURER E :		INSURER F :	
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INSURER F :															
INSURED Excavating, Inc Fargo 651 5TH ST CT NW West Fargo ND 58078	EXCAVIN1														

COVERAGES CERTIFICATE NUMBER: 431959394 REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS																								
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> 500 GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC OTHER:			60472546	2/1/2023	2/1/2024	<table style="width: 100%; border-collapse: collapse;"> <tr><td>EACH OCCURRENCE</td><td style="text-align: right;">\$ 1,000,000</td></tr> <tr><td>DAMAGE TO RENTED PREMISES (Ea occurrence)</td><td style="text-align: right;">\$ 100,000</td></tr> <tr><td>MED EXP (Any one person)</td><td style="text-align: right;">\$ 5,000</td></tr> <tr><td>PERSONAL & ADV INJURY</td><td style="text-align: right;">\$ 1,000,000</td></tr> <tr><td>GENERAL AGGREGATE</td><td style="text-align: right;">\$ 2,000,000</td></tr> <tr><td>PRODUCTS - COMP/OP AGG</td><td style="text-align: right;">\$ 2,000,000</td></tr> <tr><td>ND Stop Gap</td><td style="text-align: right;">\$ 1,000,000</td></tr> <tr><td>COMBINED SINGLE LIMIT (Ea accident)</td><td style="text-align: right;">\$ 1,000,000</td></tr> <tr><td>BODILY INJURY (Per person)</td><td style="text-align: right;">\$</td></tr> <tr><td>BODILY INJURY (Per accident)</td><td style="text-align: right;">\$</td></tr> <tr><td>PROPERTY DAMAGE (Per accident)</td><td style="text-align: right;">\$</td></tr> <tr><td></td><td style="text-align: right;">\$</td></tr> </table>	EACH OCCURRENCE	\$ 1,000,000	DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 100,000	MED EXP (Any one person)	\$ 5,000	PERSONAL & ADV INJURY	\$ 1,000,000	GENERAL AGGREGATE	\$ 2,000,000	PRODUCTS - COMP/OP AGG	\$ 2,000,000	ND Stop Gap	\$ 1,000,000	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000	BODILY INJURY (Per person)	\$	BODILY INJURY (Per accident)	\$	PROPERTY DAMAGE (Per accident)	\$		\$
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A	<input checked="" type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y / N If yes, describe under DESCRIPTION OF OPERATIONS below		N / A	60472546	2/1/2023	2/1/2024	<table style="width: 100%; border-collapse: collapse;"> <tr> <td><input checked="" type="checkbox"/> PER STATUTE</td> <td><input type="checkbox"/> OTH-ER</td> <td style="text-align: right;">Minnesota</td> </tr> <tr><td>E.L. EACH ACCIDENT</td><td></td><td style="text-align: right;">\$ 1,000,000</td></tr> <tr><td>E.L. DISEASE - EA EMPLOYEE</td><td></td><td style="text-align: right;">\$ 1,000,000</td></tr> <tr><td>E.L. DISEASE - POLICY LIMIT</td><td></td><td style="text-align: right;">\$ 1,000,000</td></tr> </table>	<input checked="" type="checkbox"/> PER STATUTE	<input type="checkbox"/> OTH-ER	Minnesota	E.L. EACH ACCIDENT		\$ 1,000,000	E.L. DISEASE - EA EMPLOYEE		\$ 1,000,000	E.L. DISEASE - POLICY LIMIT		\$ 1,000,000												
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A	Inland Marine			60472546	2/1/2023	2/1/2024	<table style="width: 100%; border-collapse: collapse;"> <tr><td>Leased/Rented Equip</td><td style="text-align: right;">\$500,000</td></tr> </table>	Leased/Rented Equip	\$500,000																						
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DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
 Project No. Cell 21 Waste Excavation and Construction Project SW 23-04 Fargo, ND

CERTIFICATE HOLDER City of Fargo 225 4th St N Fargo ND 58102	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
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October 30, 2023

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

43

Re: RFP23214 and RFP23215

Commissioners:

The City of Fargo Transit Department respectfully requests approval to award two separate contracts for fixed route and paratransit scheduling and dispatch software and hardware and authorize staff to develop contracts with these vendors, upon review and approval by the City's Legal Department. The award for fixed route software and hardware (RFP23214) is to GMV Syncromatics Corporation and the award for paratransit software and hardware (RFP23215) is to Via Mobility LLC.

The State of North Dakota (ND) issued a Request for Proposal (RFP) for fixed route and paratransit scheduling and dispatch software: State RFP # 110.7-22-069. The RFP was competitively bid with the objective of awarding contracts to multiple vendors for both fixed route and paratransit products and allow Transit agencies to select vendors best suited to each agency's individual and unique needs. City of Fargo staff participated throughout the process including evaluation of proposals and award recommendations. A list of qualified vendors was developed for fixed route and paratransit products.

The State of ND awarded contracts to the following vendors: Ecolane, GMV, HBSSCC, Kevadiya, Pantonium, Passio, Shah Technologies, Stratagen Systems, Trip Masters, Trip Spark and Via Mobility.

The City of Fargo staff chose Ecolane, GMV, Passio, Trip Master and Via to further demonstrate their products and submit price proposals for consideration. Following extensive review and discussion, evaluating staff is making award recommendations to GMV Syncromatics Corporation and Via Mobility LLC, as being qualified and within the approved budget. Please note, federal grant funds will cover 80% of the cost, with the remaining 20% included in the Transit Department's approved budget.

Requested motion: Award two separate contracts (one for each City of Fargo RFP#): one contract for fixed route software and hardware to GMV Syncromatics Corporation (RFP23214) and one contract for paratransit software and hardware to Via Mobility LLC (RFP. 23215) and authorize staff to develop the contracts working with the City's Legal Department.

Thank you.

Sincerely,



Julie Bommelman
Transit Director
City of Fargo

For Schedule Information: 701-232-7500