

FARGO CITY COMMISSION AGENDA
Tuesday, September 5, 2023 - 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, August 21, 2023).

CONSENT AGENDA – APPROVE THE FOLLOWING:

- 1. Letter of Support for the Beyond Boundaries project to the ND Opportunity Fund.
- 2. Receive and file an Ordinance Amending Section 8-1321 of Article 8-13 of Chapter 8 of the Fargo Municipal Code Relating to Use of Safety Belts Required in Certain Motor Vehicles.
- 3. 2nd reading and final adoption of an Ordinance Rezoning a Certain Parcel of Land Lying in Wentz Addition to the City of Fargo, Cass County, North Dakota; 1st reading, 8/21/23.
- 4. 2nd reading and final adoption of an Ordinance Rezoning Certain Parcels of Land Lying in University South Fourth Addition to the City of Fargo, Cass County, North Dakota; 1st reading, 8/21/23.
- 5. Gaming Site Authorization for the Fargo Post 2 Baseball Club at El Zagal.
- 6. Applications for Games of Chance:
 - a. North Dakota Dental Foundation for a raffle on 9/14/23.
 - b. Dakota Medical Foundation – Henrik's Heroes for a raffle on 9/7/23.
 - c. Abou Zahr Benefit for a raffle on 9/11/23; Public Spirited Resolution.
 - d. Hope, Inc. for a raffle on 11/21/23.
 - e. North Dakota CPA Society Foundation for a raffle on 9/19/23.
 - f. United Way of Cass-Clay for a raffle and raffle board on 10/19/23 and 10/27/23.
 - g. United Way of Cass-Clay for a raffle board on 9/15/23.
 - h. Fargo Area Conservatives PAC for a raffle on 12/8/23.
 - i. North Dakota Long Term Care Association for a raffle on 9/27/23.
- 7. Direct the City Attorney to amend the Fargo Municipal Code to allow the Fargo Police Department or its designee to boot or tow for unpaid parking citations.
- 8. Appoint Commissioner Strand as the Liaison Commissioner to the Civil Service Commission.
- 9. Indemnity Agreement with the Metro Flood Diversion Authority for the Southwest Metro Regional Pond (Project No. FP-19-A).

10. ^{Page 2} Resolution ratifying the Mayoral Signature on the permanent bike trail easement and a temporary construction easement from TLofts U32 Properties, LLC (Project No. SN-23-A).
11. Change Order No. 1 in the amount of \$13,739.68 and time extension to the substantial and final completion dates to 6/15/24 and 7/15/24 for Improvement District No. BN-22-G1.
 12. Negative Final Balancing Change Order No. 4 in the amount of -\$97,573.92 for Improvement District No. BR-22-B1.
 13. Change Order No. 1 in the amount of \$29,108.91 for Improvement District No. UR-23-A1.
 14. Memorandum of Offer to Landowner for an Easement (Temporary Construction Easement) with Blue Moon Holdings, LLC (Improvement District No. BR-23-G2).
 15. Easement (Temporary Construction Easement) with Dakota Flats, LLC (Improvement District No. BR-24-A1).
 16. Change Order No. 5 in the amount of \$22,420.00 for the GTC Underground Parking Garage (AFB20017).
 17. Amendment to the Professional Services Agreement with JLG Architects in the amount of \$6,500.00 for the Fargo Police Department Master Facility Planning (RFP23078).
 18. Amendment to the Professional Services Agreement with JLG Architects in the amount of \$35,500.00 for the Fargo Public Libraries Sunshades Replacement Project (RFQ23059).
 19. Agreement with R.L. Engebretson Architects Fargo LLC for the Newman Outdoor Field exiting improvements (SSP19112).
 20. Budget adjustment in the amount of \$186,544.00 from Fund 101 to Fund 411 related to the 2023 Spring Flood emergency.
 21. Agreement with AE2S Communications for the Tobacco Media Campaign (RFP23120).
 22. Purchase of Service Agreement with the ND Department of Health and Human Services for Emergency Response Services (CFDA #93.069).
 23. Purchase of Service Agreement with The Medicine Shoppe.
 24. Purchase of Service Agreement with Southeast Human Service Center (RFP23120).
 25. Notice of Subaward from the ND Department of Environmental Quality for Abandoned Auto Program.
 26. Piggyback purchase through the Minnesota State Contract with EnviroTech Services for the purchase of an ice slicer at a cost of \$209.43 per ton (PBC23152).
 27. Bid award to Bailey Nurseries, Inc. in the amount of \$65,106.23 plus shipping for the 2024 spring tree order (RFP23151).
 28. Amendment to Contract No. 38220653 with the ND Department of Transportation.
 29. Bills.

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REGULAR AGENDA:

30. **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:**

31. **PUBLIC HEARING** – Hearing on a dangerous building located at 1449 4th Avenue South.
32. **PUBLIC HEARING** - Appeal of a Planning Commission decision on 8/1/23 to approve a Conditional Use Permit (CUP) that would allow Group Living in the SR-4, Single-Dwelling Residential zoning district on Lot 7, Block 1, Golden Valley Second Addition (2545 69th Avenue South).
33. Update on the NDSCS Career Workforce Academy.
34. Project Update for Main Avenue from University Drive to 25th Street.
35. Recommendation for appointment of the Director of Finance.
36. Recommendation to approve the Third Amendment to the Developer Agreement with Great Plains NP Holdings, LLC for the NP Parking Garage.
37. Recommendation for an extension to no later than October 30, 2023 for repairs to a Dangerous Building located at 437 23rd Street South.
38. Recommendation to approve the Agreement on Use of Opioid Settlement Funds.
39. Recommendation to approve the Ground Lease with the Red River Regional Dispatch Center for property adjacent to 4630 15th Avenue North.
40. **FARGODOME Remodeling and Conference Center Project:**
- a. Letter of Recommendation from the Fargo Dome Authority.
 - b. Recommendation to adopt a Resolution (Amendment of Home Rule Charter Lodging/Sales and Use Tax).
 - 1. Receive and file an Ordinance Enacting Article 3-24 of Chapter 3 of the Fargo Municipal Code Relating to a Lodging Tax for Fargodome Including Conference Center.
 - 2. Receive and file an Ordinance Enacting Article 3-25 of Chapter 3 of the Fargo Municipal Code Relating to a Sales Tax for Fargodome Including Conference Center.
 - c. Recommendation to adopt a Resolution (Special Election Matters – Lodging/Sales and Use Taxes).
41. 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.



(31)

Memorandum

DATE: September 5, 2023
TO: Mayor Mahoney and Board of City Commissioners
FROM: Shawn Ouradnik, Inspections Director
SUBJECT: Dangerous Building Notice and Order at 1449 4 Ave S, Fargo, ND 58103

The property owner of 1449 4 Ave S, Fargo, ND, has failed to comply with the order to either obtain a permit to repair or remove the heavily damaged structure at that location within the time allowed for that removal. In accordance with Fargo Municipal Code Article 21-0405, a hearing date is scheduled September 5, 2023.

Article 21-0406 also allows court action if that is the course the commission chooses to take.

Article 21-0412 allows any person desiring to appeal the order issued by the board of city commissioners to do so in the district court.

The recommendation is to **designate this a dangerous building, direct the City Attorney to prepare findings of fact in this matter, and order its removal on or before November 4, 2023. Please direct the appropriate staff to secure the removal of this building should the owner fail to do so.**



Property Information: Building is currently uninhabitable due to condition.

Location: 1449 4th Ave S

Owner: Lori Jill Eveland

Description: 20'x24' single-stall wood-framed detached garage structure constructed in 2016

Description of Damage:

- Extensive fire damage to structure
- Missing and broken windows
- Compromised weather proofed surfaces
- Damaged and inoperable overhead door

TimeLine of Events:

- 1/26/2023 Fire was reported at the structure
- 4/27/2023 Alerted of possible Dangerous Building, exterior inspection done
- 7/21/2023 Notice of Dangerous Building sent to owner. Building posted.
- 8/21/2023 Request for public hearing sent to commission. Public hearing set for 9/5/2023
- 8/25/2023 Notice of Dangerous Building Hearing- Order to Show Cause letter sent to owner and posted on structure
- 9/5/2023 Public hearing at Commission

Additional Information: We have spoken to the owner and addressed this on multiple occasion trying to work out a resolve without the Dangerous Building process. There has been signs of the structure being used by people who are not the property owner. We continue to have complaints come into the department about this structure and the house located on the same lot. Insurance has sent out settlement check for the repair of the damage multiple times. Taxes are current up to 2021.



Memorandum

DATE: August 21, 2023
TO: Mayor Mahoney and Board of City Commissioners
FROM: Shawn Ouradnik, Inspections Director
SUBJECT: Dangerous Building Notice and Order at 1449 4 Ave S, Fargo, ND

The property owner of 1449 4 Ave S, Fargo, ND Lori Jill Eveland has failed to comply with the order to either obtain a permit to repair or remove the heavily damaged structure at that location within the time allowed for that removal. In accordance with Fargo Municipal Code Article 21-04, it will now be necessary for you to set a date for a hearing of this order at which time the property owner will be able to appear and show cause why the building should not be removed and the costs of that removal assessed against this property.

The recommendation is **to make a motion, in accordance with FMC Article 21-04, to set 5:15 pm September 5, 2023 as the time and date for the hearing regarding the dangerous building order for the structure at 1449 4 Ave S, Fargo, ND.**



Notice of Dangerous Building Hearing – Order to Show Cause

Date: August 25, 2023

Location: 1449 4 AVE S FARGO ND 58103
Property Owner: LORI JILL EVELAND
Address of Property Owner: 1449 4 AVE S FARGO ND 58103

Inspector: Dillion Rieman
Date of Posting: 08/25/2023

Ordinance 21-0405 of the Fargo Municipal Code states:

The board of city commissioners shall:

A. Upon receipt of a report of the building inspector as provided for in § 21-0404, subsection (F) give written notice to the owner, occupant, mortgagee, lessee and all other persons having an interest in said building as shown by the records of the register of deeds of the county of Cass to appear before it on the date specified in the notice to show cause why the building or structure reported to be a “dangerous building: should not be repaired, vacated, or demolished in accordance with the statement of particulars set forth in the building inspector(s) notice provided for herein in § 21-0404, subsection (E).

B. Hold a hearing and hear such testimony as the building inspector or the owner, occupant, mortgagee, lessee or any other person having an interest in said building as shown by the records of the register of deeds of the county of Cass shall offer relative to the “dangerous building.”

A hearing regarding the dangerous building located at Address, Fargo, ND has been scheduled for, Tuesday September 5, 2023 at 5:15 PM. The hearing will take place in the City Commission Chambers, located at 225 4th Street N., Fargo, ND 58102.

Any interested person or party is encouraged to attend.

Dated on this August 25, 2023.



Shawn Ouradnik
Inspections Director

Fargo Inspections

City of Fargo
225 4th Street North
701-241-1561
701-476-6779 fax



NOTICE OF DANGEROUS BUILDING

TO: Lori Jill Eveland
1449 4 Ave S

YOU ARE HEREBY Given Notice of the following:

1. That this Notice is being given to you pursuant to Fargo Municipal Code, Article 21-04 concerning Dangerous Buildings.

2. That the building with which this Notice is concerned is commonly known as 1449 4 Ave S, and is located on that tract of land in the city of Fargo, more particularly described as follows:
Lot: 2 Block: 1 CASE PEAKE & HALLS W 36.6' OF S 11 0' OF LOT 2 BLK 1

(hereinafter referred to as "the building")

3. That an inspection was made of the building on 22 day of June, 2023 by Dillon Riemann, Building Inspector.

4. That the building inspector for the City of Fargo has found the building, consisting of a single-stall wood-framed detached garage structure to be a Dangerous Building within the standards set forth in the Fargo Municipal Code, Article 21-04, Dangerous Buildings and the International Property Maintenance Code, 2021 edition, Section 111 concerning Dangerous Structures.

5. This building has been found to be a dangerous building by the building inspector. This notice is to remain on this building until it is repaired, vacated, or demolished in accordance with the notice which has been given the owner, occupant, lessee, or mortgagee of this building and all other persons having an interest in said building as shown by the records of the register of deeds of the county of Cass. It is unlawful to remove this notice until such notice is complied with. Source: 1952 Rev. Ord. 21-0404.

6. That the owner of the building must demolish the building within 30 days from the date of this notice or obtain a permit to repair. To obtain a permit, see 'Conditions Found Statement' below.

7. That the building is unsafe and is a dangerous building in the following respects: See 'Conditions Found Statement' below.

8. The building is unsafe and constitutes a public nuisance pursuant to Fargo Municipal Code, Article 21-04 concerning Dangerous Buildings and the International Property Maintenance Code as adopted by Article 21-0101 of the Fargo Municipal Code.

9. You are further given Notice that unless the building is demolished within the time period set forth herein, the City of Fargo will take such steps as are necessary to cause said building to be demolished pursuant to Fargo Municipal Code, Article 21-04 concerning Dangerous Buildings and the International Building Code and the owner will be assessed such costs as are provided for therein.

10. Order for vacation of building. The undersigned building official has determined that the building or structure must be vacated as required by Section 111 of the International Property Maintenance Code, 2021 edition. Therefore, it is hereby ordered that the building or structure shall be vacated immediately, and remain vacated, on this 22 day of June, 2023.

11. Order to secure building. The undersigned building official has determined that the building must remain secured. Therefore, it is hereby ordered that all means of entering the building remain secured to prevent unauthorized entrance. **An inspector will continue to verify compliance.** Failure to keep the building secured will result in the City of Fargo hiring an independent contractor to secure the building. All expenses for securing the building will be assessed against the property.

12. Application for Appeal. Section 107 of the International Property Maintenance Code states that any person directly affected by a decision of the *code official* or a notice or order issued under this code shall have the right to appeal to the Board of Appeals, provided that a written application for appeal is filed within 20 days after the day the decision, notice or order was served. An application for appeal shall be based on the claim that the true intent of this code or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of this code do not fully apply, or the requirements of this code are adequately satisfied by other means.

Dated this 22 day of June, 2023.

Conditions Found Statement

On 21 day of June, 2023, Building Inspector Dillon Riemann, was present at 1449 4 Ave S, Fargo, ND to address a building maintenance inspection. The following violations were found:

- Extensive fire damage to structure
- Missing and broken windows
- Compromised weather proofed surfaces

- Damaged and inoperable overhead door
- The detached garage meets 10 out of 11 conditions of a dangerous structure

The following action must be taken:

- Provide engineering on all systems and obtain a permit to repair and make repairs by permit deadline -or-
- Demolish the structure within the deadline provided in this notice.

Dillon Riemann

Dillon Riemann
Building Inspector

S.

Shawn Ouradnik
Inspections Director

6/22/03

Date Signed

City of Fargo
225 4th St N
Fargo ND 58102

USPS CERTIFIED MAIL



9214 8901 9403 8319 9663 58

LORI JILL EVELAND
1449 4TH AVE S
FARGO ND 58103-1635



Shipment Confirmation Acceptance Notice

A. Mailer Action

Note to Mailer: The labels and volume associated to this form online, **must** match the labeled packages being presented to the USPS® employee with this form.

Shipment Date: 06/22/2023

Shipped From:

Name: CITY OF FARGO

Address: 225 4TH ST N

City: FARGO

State: ND ZIP+4® 58102

Type of Mail	Volume
Priority Mail Express®*	
Priority Mail®	0
First-Class Package Service®	
Returns	
International*	
Other	1
Total	1

*Start time for products with service guarantees will begin when mail arrives at the local Post Office™ and items receive individual processing and acceptance scans.

B. USPS Action

Note to RSS Clerk:

1. Home screen > Mailing/Shipping > More
2. Select Shipment Confirm
3. Scan or enter the barcode/label number from PS Form 5630
4. Confirm the volume count message by selecting Yes or No
5. Select Pay and End Visit to complete transaction

USPS EMPLOYEE: Please scan upon pickup or receipt of mail.
Leave form with customer or in customer's mail receptacle.

USPS SCAN AT ACCEPTANCE



9275 0901 1935 6200 0045 2655 93



Confirmation Services Certification

COMPANY INFORMATION

Company Name City of Fargo	Address (Number, street, suite no., city, state, and ZIP Code™) 225 4th St N Fargo ND 58102
<small>Mailer Identification (MID) *MID is a unique 6- or 9-digit number that identifies the mailer or the mailer's client. A conforming MID is a six-digit MID beginning with 0-8 or a nine-digit MID beginning with 9.</small>	

ELECTRONIC FILE

The electronic file submitted by the company shown above has been certified by the National Customer Support Center (NCSC) to be complete and accurate in both content and transmission and to meet the requirements as defined in Publication 199, *Intelligent Mail Package Barcode (IMpb) Implementation Guide for: Confirmation Services and Electronic Verification System (eVS) Mailers*.

Authorized NCSC Signature	Date Signed
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BARCODED LABELS

The barcoded labels printed and submitted by the company shown above have been certified by the NCSC to meet the standards and specifications as prescribed in Publication 199 and the appropriate ANSI or AIM published standards.

Authorized NCSC Signature	Date Signed
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INSTRUCTIONS FOR MAILER

Keep the original of this form in a safe place and provide a copy to your local USPS® facility if requested. Shipments included in Service Performance Measurement should submit a PS Form 3152 with each mailing. In the space below, place a GS1-128 barcode representing the Electronic File Number from the Header Record. If you cannot print the barcode, fill in the sequence numbers and check digit (the digits that follow the MID) from your Electronic File Number. This information is in the Header Record of the electronic file.

IMpb barcodes are required for all tracking numbers effective 1/27/2013. Valid Application Identifiers (AI): IMpb barcode AI "92" uses a 9-digit Mailer ID for commercial permit payment mailers. IMpb barcode "93" uses a 6-digit Mailer ID for commercial permit payment mailer. IMpb barcode "94" is used for online and meter mailers. Legacy barcode AI "91" will continue to be accepted for a limited time with an approved exception or waiver.

Place the barcode here or write the serial number and check digit of the electronic file in the spaces provided.



92750901193562000045265593

Confirmation Services Electronic File Number

**92/93	750	901193562	00004526559	3	
AI	STC	Mailer ID	Serial Number	Check Digit	
94					
AI	STC	Source Identifier	Mailer ID	Serial Number	Check Digit

**91 can be used if approved for exception.

INSTRUCTIONS FOR ACCEPTANCE EMPLOYEE

If mailings are presented under an authorized manifest mailing system, verify payment of postage and fees, where applicable, using standard sampling procedures for pieces with special services. In addition, check the barcode formatting for the following:

- Horizontal bars above and below the barcode.
- Human-readable numbers below the barcode.
- Depending on the product used, the words "USPS TRACKING #", "USPS SIGNATURE TRACKING #", "USPS CERTIFIED MAIL", or product specific found in Publication 199 based on the service type code.
- For Electronic Verification System, (eVS) or "e-VS" should be included either before or after the service banner text. For example: "eVS USPS TRACKING", "USPS TRACKING eVS", "e-VS USPS TRACKING", and "USPS TRACKING e-VS."

Date and Time of Verification	Date and Time of Mailing (if different from date of verification)
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AFFIDAVIT OF SERVICE

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

Re: Posting of Dangerous Building Notice – 1449 4 Ave S

Dillon Riemann, being first duly sworn and being of legal age, deposes and says that on the 22nd day of June 2023, he posted the attached notice upon the front of the building located at the following address:

1449 4 Ave S
Fargo, ND 58103

Dillon Riemann

Dillon Riemann

Subscribed and sworn to before me this 23 day of June 2023.

Angie Bear

Notary Public
Cass County, North Dakota

(SEAL)





PROOF OF ACCEPTANCE
(ELECTRONIC)

PRODUCED DATE: 06/24/2023

CITY OF FARGO:

The following is information for Certified Mail™/RRE item number:

9214 8901 9403 8319 9663 58

Our records indicate that this item was accepted by the USPS at:

DELIVERED LEFT WITH INDIVIDUAL FARGO,ND 58103 06/24/2023

ORIGINAL INTENDED RECIPIENT:

LORI JILL EVELAND

1449 4TH AVE S

FARGO ND 58103-1635



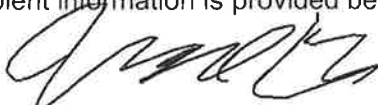
Mailer: City of Fargo

Date Produced: 06/26/2023

ConnectSuite Inc.:

The following is the delivery information for Certified Mail™/RRE item number 9214 8901 9403 8319 9663 58. Our records indicate that this item was delivered on 06/24/2023 at 02:26 p.m. in FARGO, ND 58103. The scanned image of the recipient information is provided below.

Signature of Recipient :


Lori Eveland

Address of Recipient :



Thank you for selecting the Postal Service for your mailing needs. If you require additional assistance, please contact your local post office or Postal Service representative.

Sincerely,
United States Postal Service

The customer reference number shown below is not validated or endorsed by the United States Postal Service. It is solely for customer use.

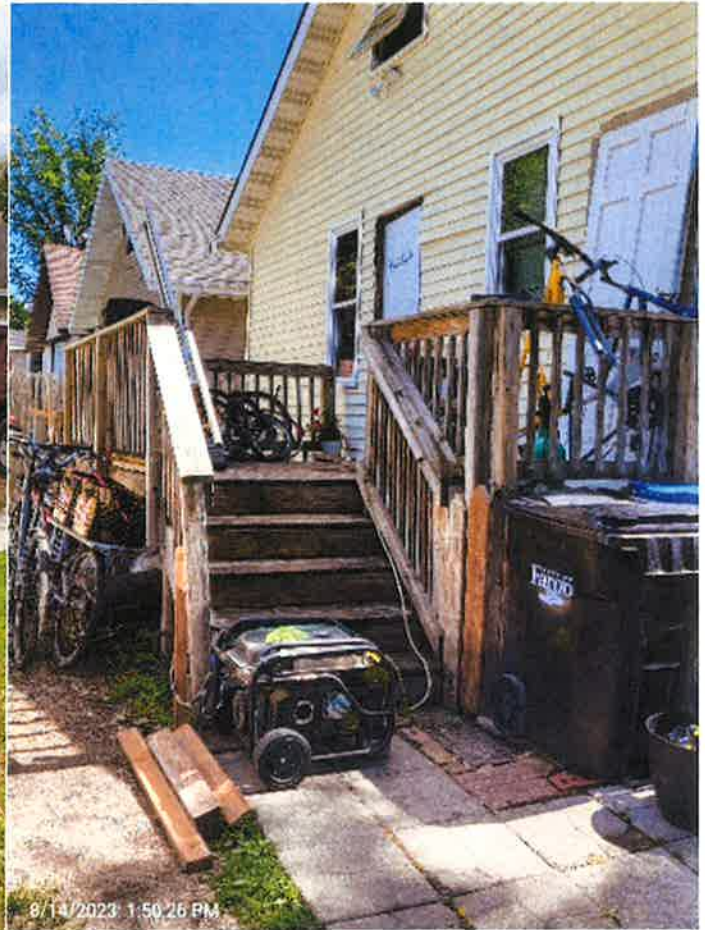
This USPS proof of delivery is linked to the customers mail piece information on file as shown below:

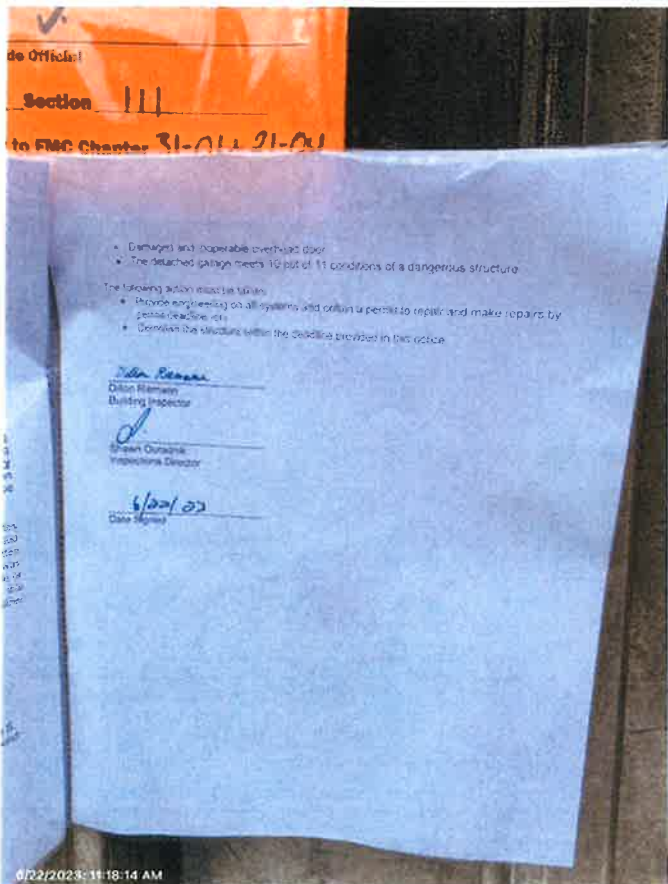
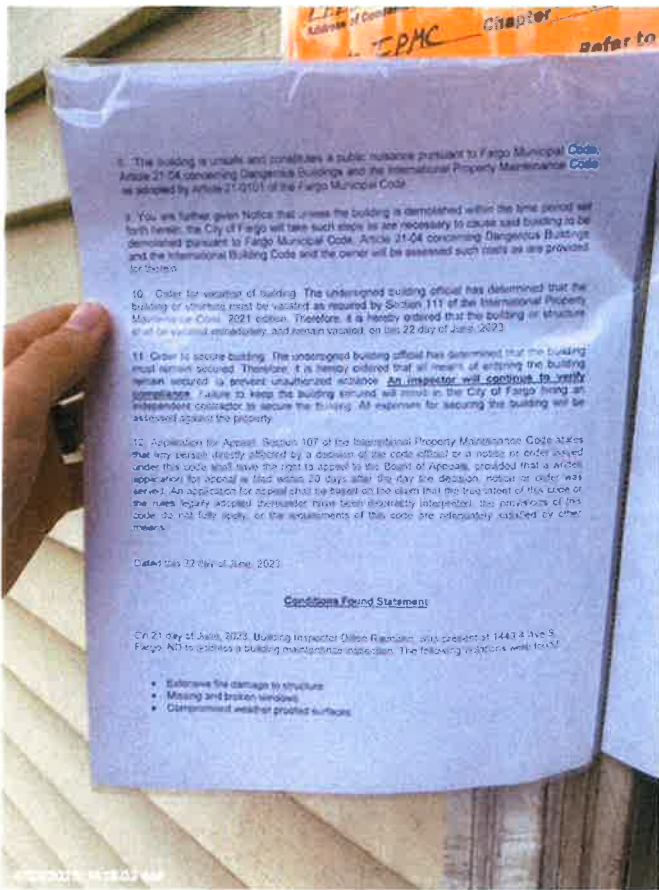
LORI JILL EVELAND
1449 4TH AVE S
FARGO ND 58103-1635

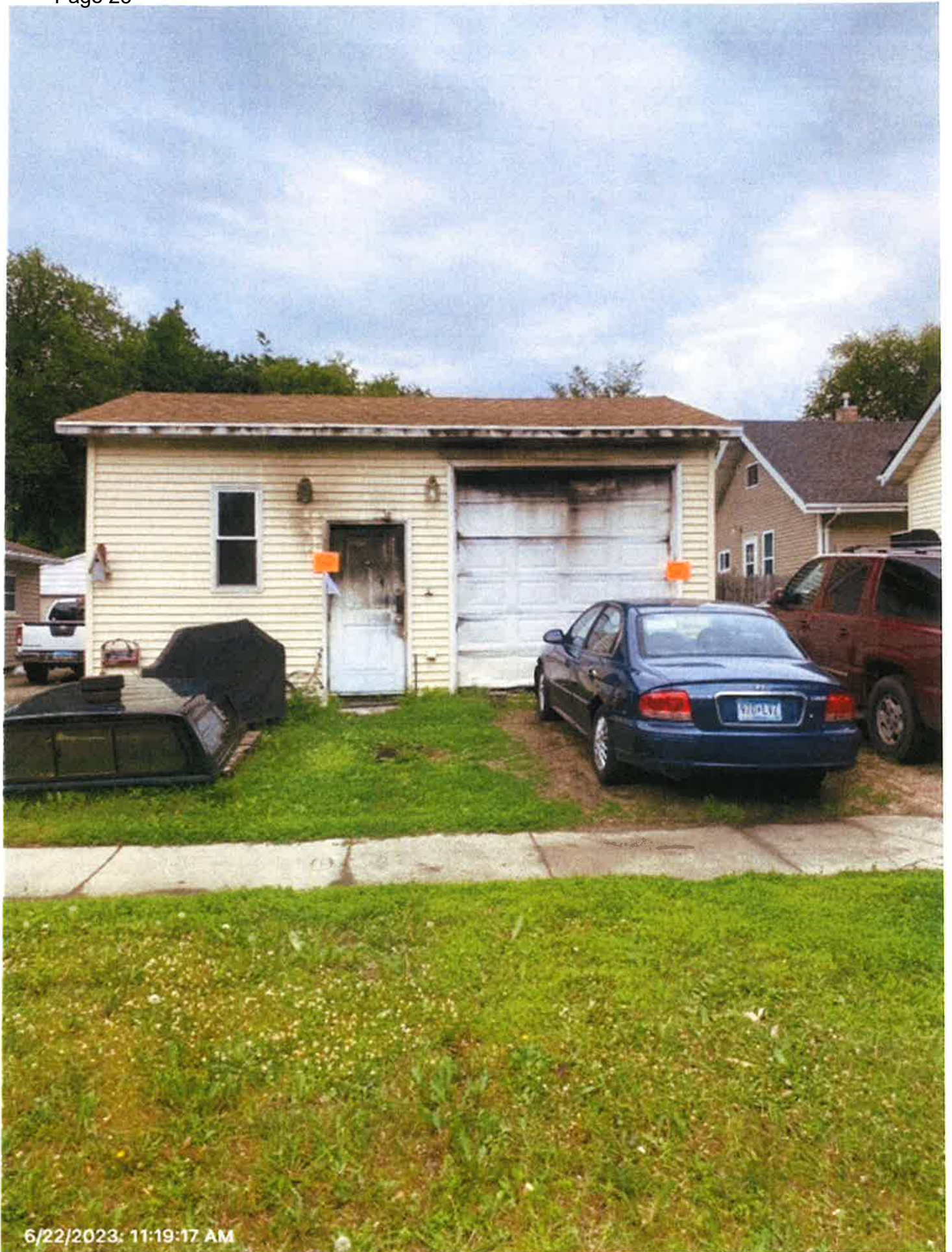
Customer Reference Number: C4278512.25562842



6/22/2023: 9:26:33 AM







quest Details

0

Request Type: Curator Details

Priority: High

Requester: [Name]

Description: [Detailed description of the request]

Submitted: May 31, 2023, 8:52 AM

Response Due Date: May 31, 2023, 8:49 AM

Completion Due Date: May 31, 2023, 8:50 AM

Address of Request: [Address]

Service Request Contact: [Name]

Name: [Name]

Email: [Email]

Phone: [Phone]

Foreign Associations: [List of associations]

orkflow

Save

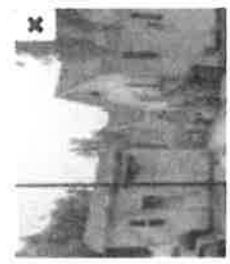
Completed

Request Details

Email Request 

Request Type: **Junk Accumulation**

Description: For the past few days, every time I drive by the house, a generator is running. I have a suspicion that they don't have power and are operating off the generator.



RackMultiport202308...

Address of Request: 1449 4th Ave S, Fargo, ND 58103, USA

Service Request Contact: Name: Emma, Email: scc@fargo.nd.gov, Phone: 701.785.2222

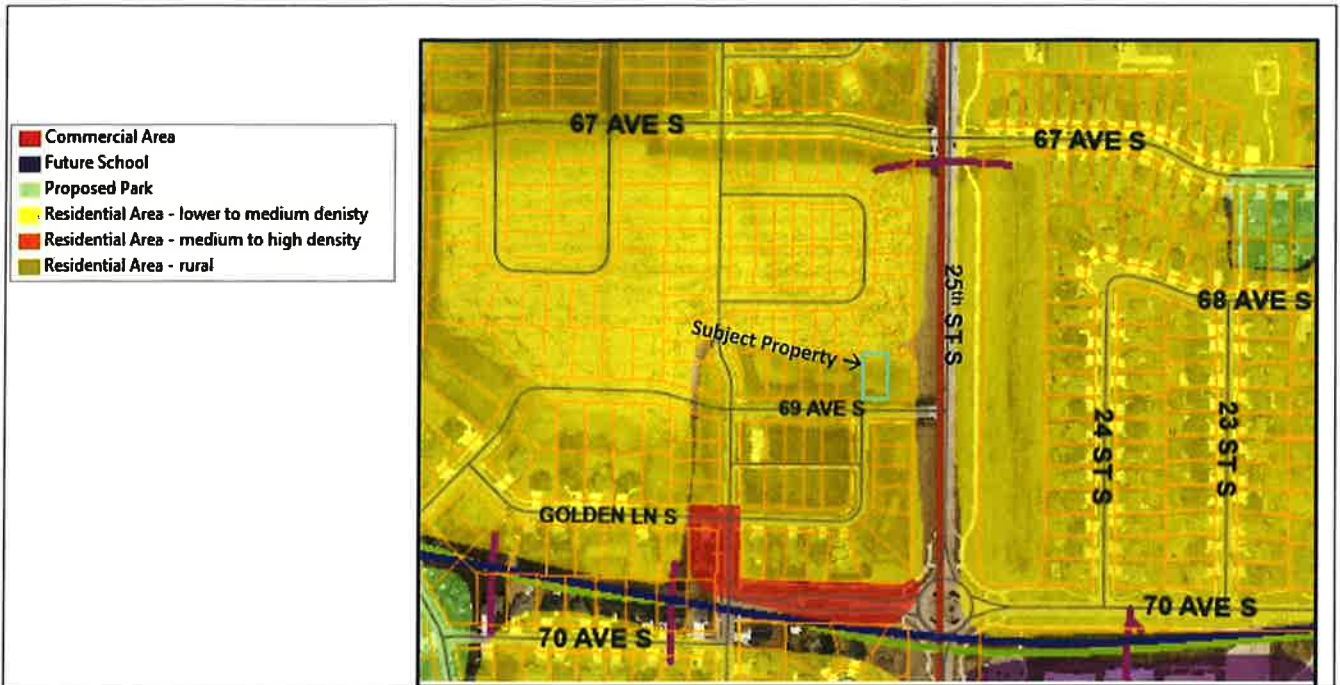
Foreign Associations: Add Foreign Association

Complete

Staff: Inspections Department

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City of Fargo Staff Report			
Title:	Golden Valley Second Addition	Date:	7/27/2023
		Update:	8/31/2023
Location:	2545 69th Avenue South	Staff Contact:	Donald Kress, planning coordinator
Legal Description:	Lot 7, Block 1, Golden Valley Second Addition		
Owner(s)/Applicant:	Jordahl Custom Homes/A Place to Call Home Care, LLC	Appellants	Theresa M. Berg; Edie Holcomb; Golden Valley Homeowners Association
Entitlements Requested:	Appeal of Conditional Use Permit (CUP) (to allow Group Living in the SR-4, Single Dwelling Residential zoning district)		
Status:	City Commission Public Hearing: September 5 th , 2023		
Existing		Proposed	
Land Use: Residential (Undeveloped)		Land Use: Residential	
Zoning: SR-4, Single-Dwelling Residential		Zoning: SR-4, Single-Dwelling Residential	
Uses Allowed: SR-4 - Single-Dwelling Residential allows detached houses, daycare centers up to 12 children, attached houses, duplexes, parks and open space, religious institutions, safety services, schools, basic utilities, certain telecommunications facilities.		Uses Allowed: No change proposed	
Maximum Density Allowed: SR-4 allows a maximum 12.1 units per acre;		Maximum Density Allowed: No change proposed	
Proposal:			
The appellants request one entitlement:			
<ol style="list-style-type: none"> 1. Appeal of Conditional Use Permit (CUP) to allow Group Living in the SR-4, Single Dwelling Residential zoning district, approved by the Planning Commission on August 1st, 2023. 			
Approval and Appeal			
The Planning Commission is the final decision maker for CUP's. Any appeal of the Planning Commission's decision goes to the City Commission. Pursuant of LDC Section 20-0903.B, appeals of final decisions must be filed within 10 days of the date of the decision.			
Surrounding Land Uses and Zoning Districts:			
<ul style="list-style-type: none"> • North: SR-4, undeveloped; platted for single-dwelling residences • East: SR-4, undeveloped; platted for single-dwelling residences; across 25th Street South: P/I, Public/Institutional with City-owned stormwater detention basin • South: SR-4 with some single-family residences • West: SR-4, undeveloped; platted for single-dwelling residences 			
Area Plans:			
The subject property is located within the 2007 Southwest Growth Plan, which designates the property for "Residential Area—Lower to Medium Density" land use. The current SR-4, Single-Dwelling Residential zoning is consistent with this land use designation. No zone change is proposed.			
(continued on next page)			



Context:

Schools: The subject property is located within the Fargo School District, specifically within the Centennial Elementary, Discovery Middle and Davies High schools.

Neighborhood: The subject property is located within the Davies neighborhood.

Parks: Golden Valley Park (6977 Golden Valley Parkway South) is approximately one-half mile west of the subject property. This park provides basketball court, grill, picnic table, playground for ages 2-5, playground for ages 5-12, and a shelter.

Pedestrian / Bicycle: There is a multi-use path across 25th Street South from the subject property.

MATBUS Route: The subject property is not located along a MATBUS route.

Staff Analysis:

At the August 1st, 2023, Planning Commission hearing, that Commission approved a conditional use permit (CUP) to allow group living in the SR-4, Single Dwelling Residential district on the property located at 2545 69th Avenue South (Lot 7, Block 1, Golden Valley Second Addition).

The appellants appealed this decision within the required time limit. Appeals of Planning Commission decisions on CUP's go to the City Commission for a new hearing, pursuant to the process stated in the Land Development Code.

BACKGROUND: AGENCY FOSTER HOME FOR ADULTS

"Agency foster home for adults" is defined in North Dakota Century Code (NDCC) Section 50-11-00.1 as "a residential home in which foster care for adults is regularly provided by professional staff trained to provide services to older adults or adults with a disability, to four or fewer adults who are not related by blood or marriage to the owner or lessee, for hire or compensation." These facilities are licensed and regulated by the North Dakota Department of Health and Human Services, based on NDCC statutes and North Dakota Administrative Code (NDAC) regulations. *Note that this report shortens the facility name to "agency adult foster home" for convenience.*

The state is required to offer individuals with disability an integrated setting and home and community based services. The Americans with Disabilities Act (ADA) requires public agencies to eliminate unnecessary segregation of persons with disabilities and provide services in the most integrated setting appropriate to the needs of the individual. The "most integrated setting" means a setting where individuals

with disabilities can fully interact with individuals who do not have disabilities and take advantage of community living. Agency adult foster homes fulfill the need for this setting.

This is the first such facility proposed in Fargo. There are seven in other cities in the state so far. Please note the attached letter from Erica Reiner of the state Department of Health and Human Services dated August 24th, 2023, which provides background on agency adult foster homes.

APPLICANT'S PROPOSAL AND THE NEED FOR A CUP FOR GROUP LIVING

The applicant, Giselle Ishimwe / A Place To Call Home, LLC, is a registered nurse. She intends to use the residence being constructed on the property as an agency adult foster home. This is a setting where a survivor of brain injury, dementia, and stroke could receive home and community-based services. Services can be provided for up to four adults, up to 24 hours per day.

The applicant is having a new residence at 2545 69th Avenue South built to house this facility. That residence is currently under construction.

A conditional use permit for group living is required to allow more than three unrelated people to reside in a single-dwelling residence, in order to be consistent with the Fargo Land Development Code.

SUMMARY OF ACTION AT THE AUGUST 1st, 2023 PLANNING COMMISSION

At the August 1st, 2023 Planning Commission hearing, that Commission heard a presentation from staff that summarized the project and clarified the definition of "agency adult foster care home" in the North Dakota Century Code.

COMMISSIONER QUESTIONS TO STAFF

In response to Commissioner questions, staff clarified that:

- If the maximum numbers of residents were only three unrelated persons instead of four, a conditional use permit for group living would not be required.
- It is staff's understanding the, due to the nature of their medical conditions, the residents will not be driving. Staff later added that parking would be addressed at a later time for this use.

APPLICANT'S TESTIMONY

Applicant Giselle Ishimwe described the project to the Commission, making the following points:

- This facility is an alternative to a nursing home.
- Care is provided 24 hours a day if necessary.
- Care staff will not live on site.
- Residents may have visits from family and other caregivers.
- Care staff would provide transportation to appointments for residents
- This facility might not be at its capacity of four residents at all times
- Caregivers are requires to have certain certifications from the state of North Dakota.
- Incidents with the residents, such as walking away from the facility, can happen. It is the caregiver's responsibility to manage the residents.

COMMISSIONER QUESTIONS TO THE APPLICANT

In response to Commissioner questions, the applicant clarified that:

- Neither she nor other caregivers will live onsite, though 24 hour care will be provided as necessary.
- The applicant and her sister will be the two caregivers to start out with; they will eventually hire others
- In relation to case managers and others visiting the site, it will be the caregiver's responsibility to provide transportation to appointments. Some visiting care staff or others would occur.
- The state of North Dakota screens all residents. It is not expected that residents will drive or have cars.

(continued on next page)

COMMISSIONER QUESTIONS ABOUT THE REVIEW PROCESS

In response to Commissioner questions about the timing of the review process for this project, particularly that the building permit and construction process seemed to have gotten ahead of the CUP process, staff and the applicant's real estate agent made the following points:

- The building permit is for the structure; the CUP is for the land use. There is nothing to stop the applicant from going forward with construction, though she does so at her own risk that the CUP for the land use might not be granted.
- If the CUP is approved, the building and fire code designation of the residence will change and certain modifications, such as fire sprinklers and some handicapped accessibility, will be required. The applicant is aware of the need for these modifications.
- The applicant first started meeting with the City in February of this year and understood that a CUP would be required for this project. The applicant applied for the CUP in June for the August Planning Commission. The building permit for the residence was granted in May and the residence has been under construction since that time.

NEIGHBORS' TESTIMONY

Five neighbors testified in opposition to the project, making the following points:

- Only two neighborhood property owners were notified of the Planning Commission hearing (see *Staff Response to Certain Comments—Notification* below for further discussion of this topic)
- The proposed project seems to be a commercial use in a residential neighborhood and as such does not fit into the neighborhood
- The residence has a two-stall garage and a short driveway and might not accommodate all vehicles related to the agency adult foster home use, especially if multiple caregiver staff members are coming and going
- Construction workers on the site described the residence to a neighbor as a "three-bedroom" residence, while the applicant states it is a "five-bedroom" residence.
- The residents should have a more sheltered environment, particularly one further away from the busy arterial street of 25th Street South (*Note: the subject property is approximately 145 feet away from the 25th Street South roadway*)
- Incidents with the residents, such as walking away from the residence and endangering themselves, can happen.
- Property appears to be a rental property in a way---the owners don't live there, and the residents are paying to live there.
- The proposed use is not a single-family use and as such does not fit with the covenants of the homeowners association
- No one from the neighborhood sent a letter in favor of the project
- The residence was built to meet the builder's quota for the year
- Emergency service access during snowstorms is challenging due to low priority for plowing 69th Avenue South—a neighbor related her personal experience.

COMMISSION DISCUSSION FOLLOWING PUBLIC HEARING

After the chair closed the public hearing, individual Commissioners commented that:

- They understand the notification process but also neighbors' concern about that process.
- Residents of this type of facility deserve to be in a great neighborhood
- Other residents of this neighborhood probably have four to six vehicles that they park in their garage, driveway, or the street and find a way to make it work
- They did not like the way the process happened and couldn't understand how it has gotten this far.
- This use is in the wrong location and will affect other lots in the area
- There is never going to be a perfect location for this use. It's always going to be a challenge to place these kind of settings somewhere without concerns.

(continued on next page)

PUBLIC COMMENTS

COMMENTS RECEIVED ON OR PRIOR TO AUGUST 1st, 2023

Staff received comment letters prior to the August 1st, 2023 Planning Commission hearing, from neighbors to the subject property and from the developer. Concerns expressed in the letters include:

- The proposed use could lower the property values of surrounding homes and could deter future home buyers in the neighborhood
- Construction in this area could create an unsafe environment for the facility residents
- Heavy winter snowstorms may make it hard for emergency vehicles to access this property.
- This use will create additional traffic.
- Potential for other businesses to request to be in this subdivision.
- The proposed land use is not consistent with the covenants for this development.

COMMENTS RECEIVED SINCE AUGUST 1st, 2023

Since the August 1st, 2023 Planning Commission hearing, staff has received two letters:

- Letter dated August 24th, 2023 from Erica Reiner at the state Department of Health and Human Services, as noted above. Her letter includes excerpts from the North Dakota Century Code.
- Letter dated August 11th, 2023 from Golden Valley Homeowners Association (HOA) Board, mainly commenting on how the proposed land use is not consistent with the covenants for this development.

Copies of comment letters and e-mails are attached. The most recent ones are first.

STAFF RESPONSE TO CERTAIN COMMENTS

- **Hearing Notification:** Property owners within a 300 foot radius of the subject property are notified. Our code does not allow us to be selective in cases where existing development is sparse. This was also noted by staff at the August 1st, 2023 Planning Commission hearing.
- **House Size:** The building plans depict three bedrooms on the main floor and two rooms in the basement equipped with escape windows and walk-in closets that meet the code requirements for bedrooms, though those rooms may be used for other things.
- **Private Covenants in Relation to the Land Development Code:** Private covenants, such as those submitted by the appellants, are separate from the LDC, and do not prohibit the Planning Commission or City Commission from granting entitlements allowed by the LDC.

The City does not enforce private covenants. It is the responsibility of the developer, homeowners, or HOA to enforce these covenants through whatever mechanism is provided in the covenants.

The City is a signatory to the Golden Valley Second Addition covenants as a consent party, as is clearly noted on the signature page, only in relation to Article V (1)(c)(i-iii), which relates to maintenance of the HOA-owned pocket park. That pocket park was replatted as Lots 6 and 7, Block 2, Golden Valley 5th Addition in 2021, zoned SR-4 for residential development.

A copy of the Golden Valley HOA covenants is attached, following the comment letters, for the Commission's reference.

- **Uses Allowed In The SR-4--Single Dwelling Residential Zone:** In addition to the uses noted on page 1 of this report that are allowed by right in the SR-4, Single Dwelling Residential zone, the following uses are allowed by conditional use permit:
 - Bed and Breakfasts
 - Group living
 - Colleges
 - Community service
 - Health care facilities
 - Certain telecommunications facilities (*some tower heights are allowed by right; others require CUP; some are prohibited*)

Thus, even though the SR-4 zone is designated as “single dwelling residential,” some non-residential and business uses are allowed in the zone by right or by CUP. The designation “single dwelling residential” in the Land Development Code does not guarantee a neighborhood composed of only detached single-dwelling residences.

- Parking: Please see finding (b) under “Conditional Use Permit Approval Criteria (Section 20-0402.E)” below.

APPEAL

APPELLANTS' REASONS FOR APPEAL

The appellants state the following reasons for opposing the CUP:

- All homes built in the neighborhood need to remain single family homes
- The proposed use will lower property values of surrounding properties
- Potential buyers of surrounding properties may be deterred from buying
- Heavy construction near the subject property may make this area unsafe for this type of facility
- A heavy snow storm may make it hard for emergency vehicles to access the subject property should an emergency arise
- The proposed use would cause a negative impact on the neighborhood quality of life
- The proposed land use is not consistent with the 2015 and 2019 covenants on this neighborhood (*a copy of these covenants, provided by the Golden Valley HOA, is attached*).

APPEAL PROCESS

Land Development Code Section 20-0909.F.1 Appeals to Board of City Commissioners—Timing
“Appeals from the action of the Planning Commission on an application for Conditional Use Permit approval may be taken to the Board of City Commissioners by filing an appeal with the City Planner.”

Section 20-0909.F.3, Action on Appeal

“The Board of City Commissioners shall consider the appealed Conditional Use decision as a new matter in a public hearing and, at the close of the public hearing, act to approve or deny the original application for Conditional Use Permit approval. The procedure and required notice shall be the same as required of the original action before the Planning Commission.”

STAFF RECOMMENDATION AND ADDITIONAL CONDITION

Staff’s recommendation remains for approval, using the findings below as originally stated in the Planning Commission staff report. To address some concerns of the neighbors and the Planning Commission, staff has recommended adding a condition which states:

- “The CUP will not become effective until the City has granted a certificate of occupancy appropriate for the group living use, and until North Dakota state requirements for agency adult foster homes have been met.”

ATTACHED PLANS

A site plan, rendering, and floor plan of the residence are attached for the Commission’s reference. Note that approval of the CUP is only an approval for the land use and is not a building permit for the residence.

Conditional Use Permit Approval Criteria (Section 20-0909.D)

1. **Does the proposed conditional use comply with all applicable provisions of the LDC and will it conform to the general intent and purpose of this LDC?**

The purpose of the LDC is to implement Fargo’s Comprehensive Plan in a way that will protect the general health, safety, and welfare of the citizens. As noted above, provisions of the LDC will apply and additional conditions will be added to insure that this project is developed in a manner that is appropriate to the context of the surrounding properties and uses. Staff finds this proposal is consistent with the purpose of the LDC, the 2007 Growth Plan, and other adopted policies of the City. **(Criteria Satisfied)**

2. **Will the proposed conditional use at the specified location contribute to and promote the welfare or convenience of the public?**

Staff believes that the location of the proposed conditional use will contribute and promote the welfare and convenience of the public. The CUP will help the applicant create a care environment in a residential setting for survivors of brain injury, dementia, and stroke. **(Criteria Satisfied)**

3. Will the proposed conditional use cause substantial injury to the value of other property in the neighborhood in which it is to be located?

Staff has no data to suggest the proposed use would cause substantial injury to the value of other property in the neighborhood. In accordance with Section 20-0901.F of the LDC, notices of the proposed use were sent out to property owners within 300 feet of the subject property. To date, Planning staff has received one comment letter, as noted above. **(Criteria Satisfied)**

4. Is the location and size of the conditional use, the nature and intensity of the operation conducted in connection with it, and the location of the site with respect to streets giving access to it such that the conditional use will not dominate the immediate neighborhood so as to prevent the development and use of the neighboring property in accordance with the applicable zoning district regulations? In considering this criteria, location, nature, and height of buildings, structures, walls, and fences on the site are to be considered, as well as the nature and extent of proposed landscaping and buffering on the site.

The proposed CUP for group living in a single-dwelling residential zone will not dominate the immediate neighborhood or prevent any other sites from being used in the manner allowed by zoning district regulations. The property will be developed to the Land Development Code standards of a single-dwelling residence. The CUP conditions requires that if the property is transferred, the new owner must apply for a new CUP if they want the group living use to continue, and that the CUP will not become effective until all local code and state licensing requirements have been met. **(Criteria Satisfied)**

5. Are adequate utility, drainage, and other such necessary facilities and services provided or will they be at the time of development?

The property has access to all necessary utilities and services. Staff is not aware of any deficiencies regarding drainage or utilities that would limit the ability of the applicant to utilize the property as proposed. Based on this information, staff finds that the adequate utility, drainage, and other such necessary facilities and services are in place. **(Criteria Satisfied)**

6. Have adequate access roads or entrances and exit drives been provided and are they designed to prevent traffic hazards and to minimize traffic congestion in public streets?

The subject property is a residential property with a driveway onto 69th Avenue South. **(Criteria Satisfied)**

Conditional Use Permit Approval Criteria (Section 20-0402.E)

a. Whether or not the dwelling unit meets all building, housing, and fire codes of the City;

The applicant is having a new residence building built, which is currently under construction. A certificate of occupancy will not be given until the residence meets all applicable codes.

(Criteria Satisfied)

b. Whether or not the property has off-street parking space for every vehicle which is owned, possessed or utilized by occupants of the building. Such parking spaces must meet all applicable standards of the City;

Based on information provided by the applicant and the state Department of Health and Human Services, as well as standard references, the City's traffic engineer has evaluated the parking requirements. From a traffic engineering perspective, a typical single family home will generate 8-10 trips per day on average. Some homes will have slightly more, some slightly less, but that number of trips per day is a standard in the traffic industry. This property, which will provide adult foster care with individuals not driving, is expected to generate the typical 8-10 trips per day, so no additional parking spaces beyond those already provided on the site would be required. **(Criteria Satisfied)**

(continued on next page)

c. The general condition of the building and whether or not it is in need of substantial repairs or renovation;

The applicant is having a new residence built, which will meet all current building, zoning, and fire codes. Additionally, the North Dakota Department of Health and Human Services has reviewed the plans for the residence. A condition is proposed to be added to the CUP that the CUP will not become effective until the City has given a certificate of occupancy and state requirements have been met.
(Criteria Satisfied)

d. Whether or not the requested occupancy is compatible with the neighborhood and will not create undue density and congestion.

The maximum number of residents is limited by state regulation to four. Only those residents approved by the state can reside on the site. Thus, the requested occupancy will not create undue density, as the density will be no greater than often found in similar single-dwelling residences.

As stated in finding (b) above, trips generated by this site would be on par with trips generated by a single-dwelling residence. Thus, the requested occupancy does not create undue congestion.
(Criteria Satisfied)

Staff Recommendation:

Suggested Motion: To accept the findings and recommendations of the Planning Commission and staff and approve the proposed conditional use permit to allow group living on Lot 7, Block 1, **Golden Valley Second Addition** as presented, as the proposal complies with the 2007 Growth Plan, Standards of Section 20-0909.D and 20-0402.E, and all other applicable requirements of the LDC, with the following conditions:

1. If the property is transferred, the new owner must apply for a new conditional use permit in order to continue the group living use.
2. The CUP will not become effective until the City has granted a certificate of occupancy appropriate for the group living use, and until North Dakota state requirements for agency adult foster homes have been met.

Planning Commission Recommendation: August 1st, 2023

At the August 1st, 2023 Planning Commission hearing, that Commission, by a vote of 5-2 with two Commissioners absent and two Commission seats vacant, moved to accept the findings and recommendations of staff and approve the proposed conditional use permit to allow group living on Lot 7, Block 1, **Golden Valley Second Addition** as presented, as the proposal complies with the 2007 Growth Plan, Standards of Section 20-0909.D, and all other applicable requirements of the LDC, with the following condition:

1. If the property is transferred, the new owner must apply for a new conditional use permit in order to continue the group living use.
(NOTE: There was only one condition in the original CUP approval)

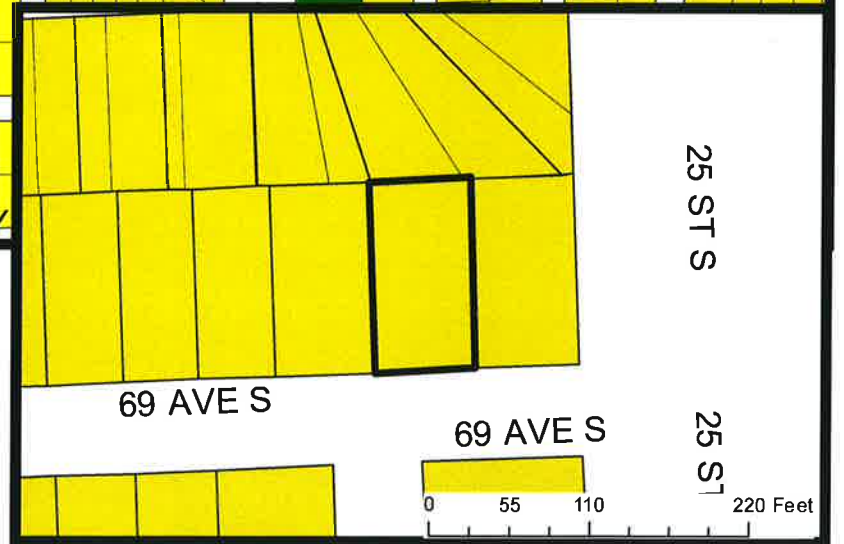
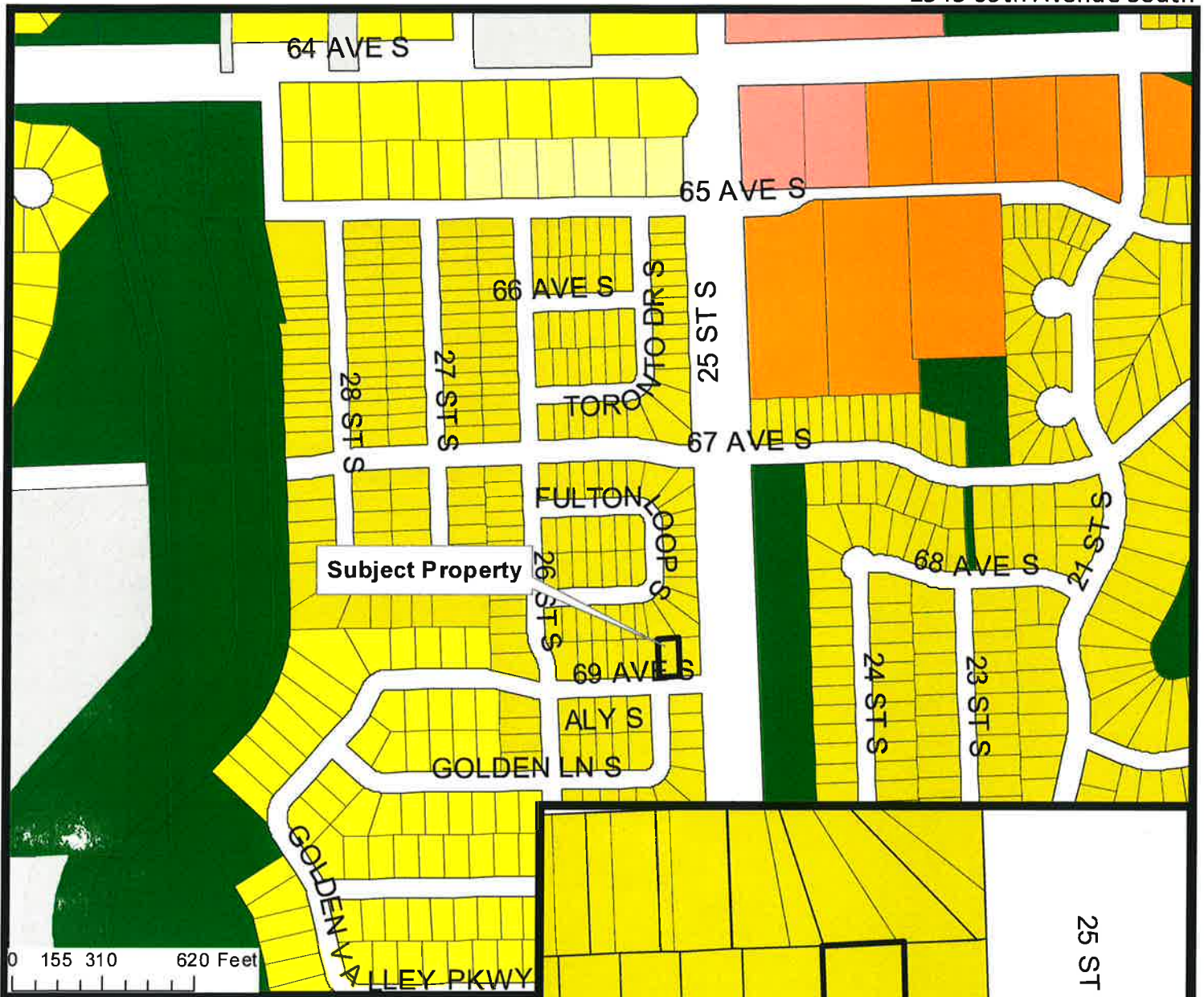
Attachments:

1. Zoning map
2. Location map
3. Site plan, rendering, floor plan
4. Comment letters
5. Covenants

Appeal of Conditional Use Permit to allow Group Living in the SR-4, Single Dwelling Residential zoning district

Golden Valley Second Addition

2545 69th Avenue South



Legend

 City Limits

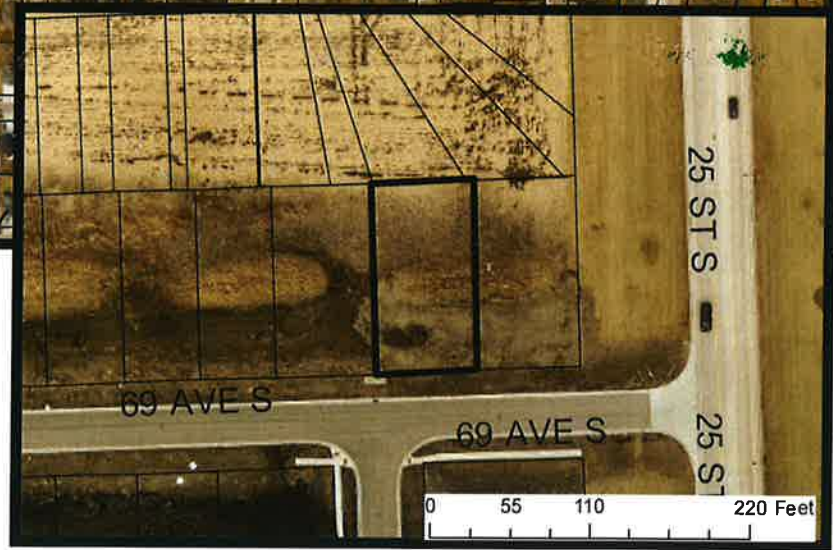
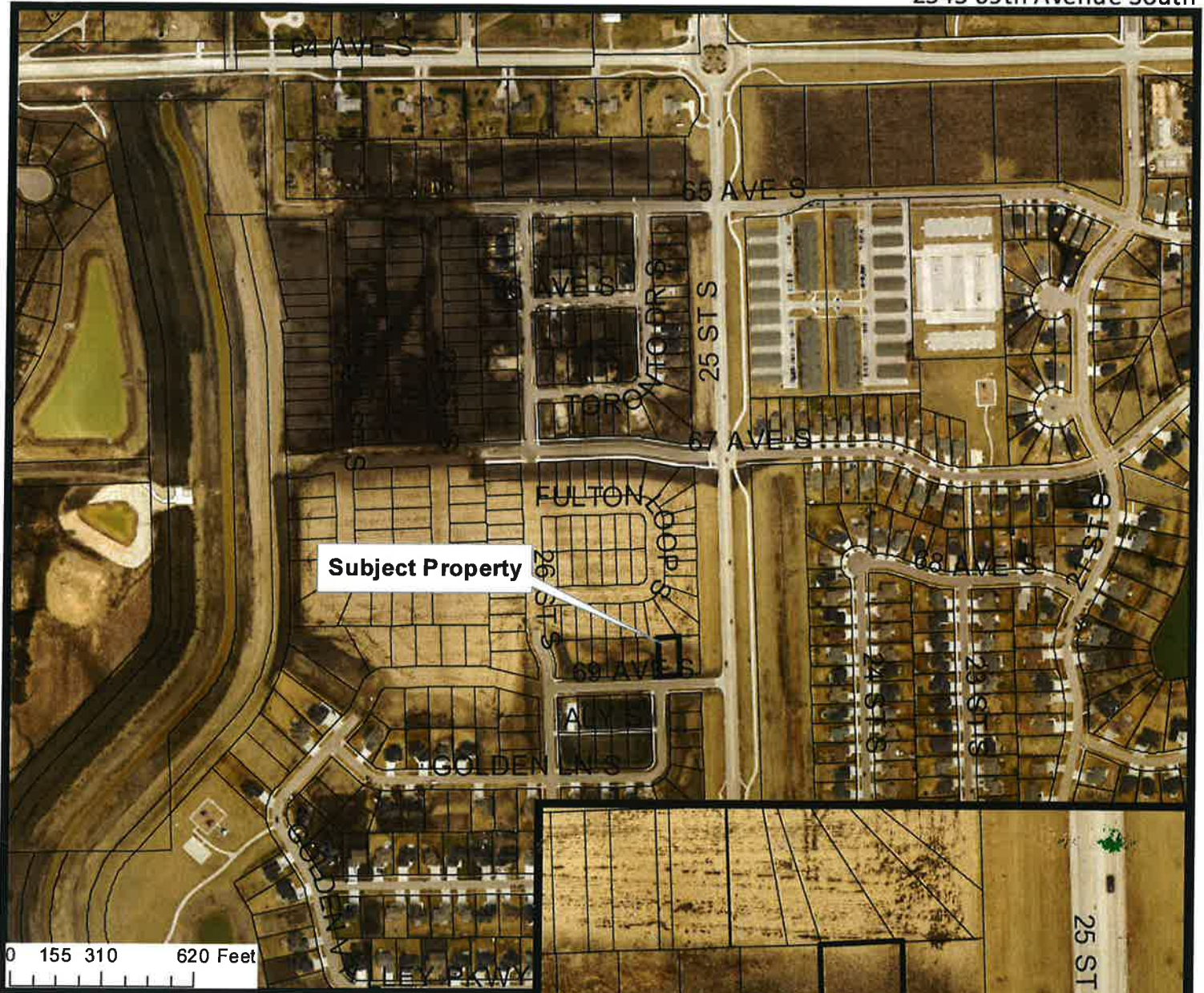


Fargo City Commission
September 5, 2023

Appeal of Conditional Use Permit to allow Group Living in the SR-4, Single Dwelling Residential zoning district

Golden Valley Second Addition

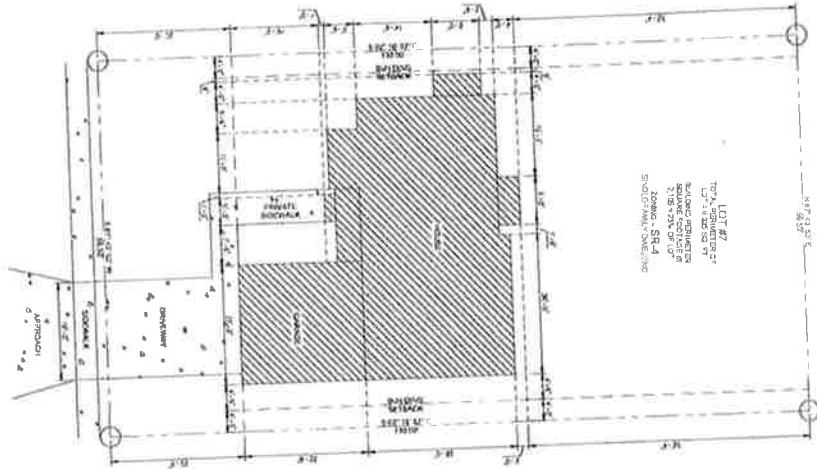
2545 69th Avenue South



Legend
City Limits



Fargo City Commission
September 5, 2023



ISHIMWE-DUSABE RESIDENCE
 GOLDEN VALLEY 2ND ADDITION
 2545 69TH AVENUE SOUTH
 LOT #7 / BLOCK #1
 CITY OF FARGO, ND 58104

SITE PLAN LAYOUT



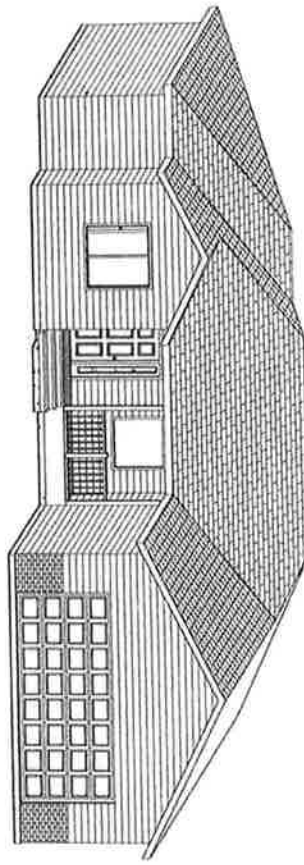
Jordahl
 Custom Homes Inc.
 2500 1st Avenue SW
 Fargo, ND 58103
 Phone: 701-234-0404
 www.jordahlhomes.com

FINAL DRAWINGS FOR
 CUSTOMER APPROVAL
 DATE:

DRAWN BY: JUSTIN K
 CHECKED BY: JORDAHL
 DATE: APR. 3, 2023
 REVISION #1
 REVISION #2
 REVISION #3
 REVISION #4
 REVISION #5

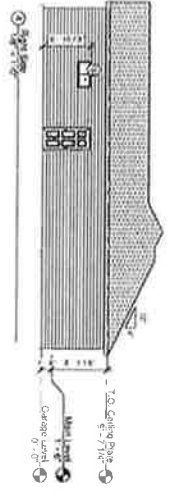
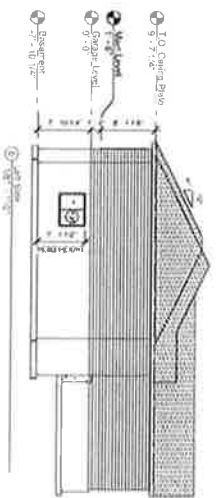
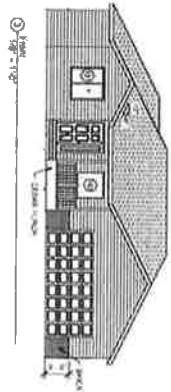
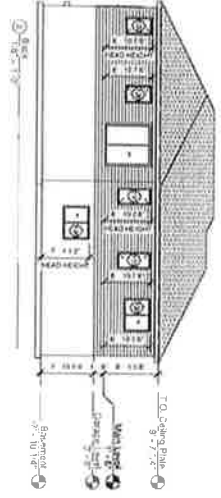
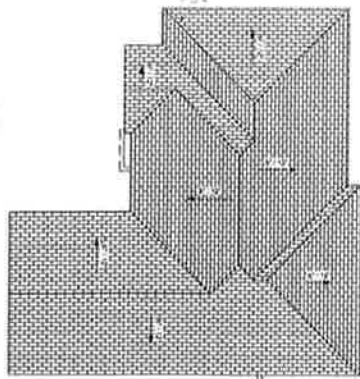
ISHIMWE-DUSABE RESIDENCE
 2545 69TH AVENUE SOUTH
 CITY OF FARGO, ND 58104
 LOT #7 / BLOCK #1
 GOLDEN VALLEY 2ND ADDITION

SHEET DESCRIPTION
 SITE PLAN
 HOUSE TYPE OR OCCUPATION
 PKG: 2 STALL
C1



DAMAGE SQUARE FOOTAGE	
LEVEL	AREA
1-2ND	67.13 SF
DAMAGE 67.13 SF	
HOUSE SQUARE FOOTAGE	
LEVEL	AREA
1-2ND	1462.92 SF
3RD	1297.04 SF
4TH	2771.64 SF
ACCOUNT 5531.60 SF	
Garage	202.48 SF
Open Area	2570.00 SF

WINDOW #	TYPE	SIZE	#
101	Common	36" x 48"	2
102	Common	36" x 48"	2
103	Fixed	48" x 48"	1
104	Fixed	48" x 48"	1
105	Sliding	60" x 48"	1
106	Sliding	60" x 48"	1
107	Sliding	60" x 48"	1
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110	Sliding	60" x 48"	1
111	Sliding	60" x 48"	1
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200	Sliding	60" x 48"	1



ISHIMWE-DUSABE RESIDENCE

2545 69TH AVENUE SOUTH
 CITY OF FARGO, ND 58104
 LOT #7 / BLOCK #1
 GOLDEN VALLEY 2ND ADDITION

DRAWN BY: [Signature]
 CHECKED BY: APR. 3, 2021
 REVISION #1
 REVISION #2
 REVISION #3
 REVISION #4
 REVISION #5

FINAL DRAWINGS FOR
 CUSTOMER APPROVAL
 DATE: [Blank]
 SCALE: [Blank]

FINAL DRAWINGS FOR
 CUSTOMER APPROVAL
 DATE: [Blank]
 SCALE: [Blank]

Jordahl
 Custom Homes Inc.
 3333 24th Avenue South
 Fargo, ND 58104
 Phone: 701-231-4444
 Fax: 701-231-4444
 www.jordahl.com

SHEET DESCRIPTION
 ELEVATIONS & ROOF PLAN
 PINE - 5' TALL
A1

Jordahl
 Custom Homes Inc.
 Custom Home Sales
 2545 S. Douglas Ave
 Fargo, ND 58104
 Phone: 701-282-2087
 Fax: 701-282-4342
 www.jordahlcustomhomes.com

FINAL DRAWINGS FOR
 CONSTRUCTION
 CUSTOMER APPROVAL

DATE:

APPROVED BY:
 DATE: APR 1, 2023

REVISION #1
 REVISION #2
 REVISION #3
 REVISION #4
 REVISION #5
 REVISION #6

2545 69TH AVENUE SOUTH
 CITY OF FARGO, ND 58104
 LOT #7, BLOCK #1
 GOLDEN VALLEY 2ND ADDITION

ISHIMWE-DUSABE RESIDENCE

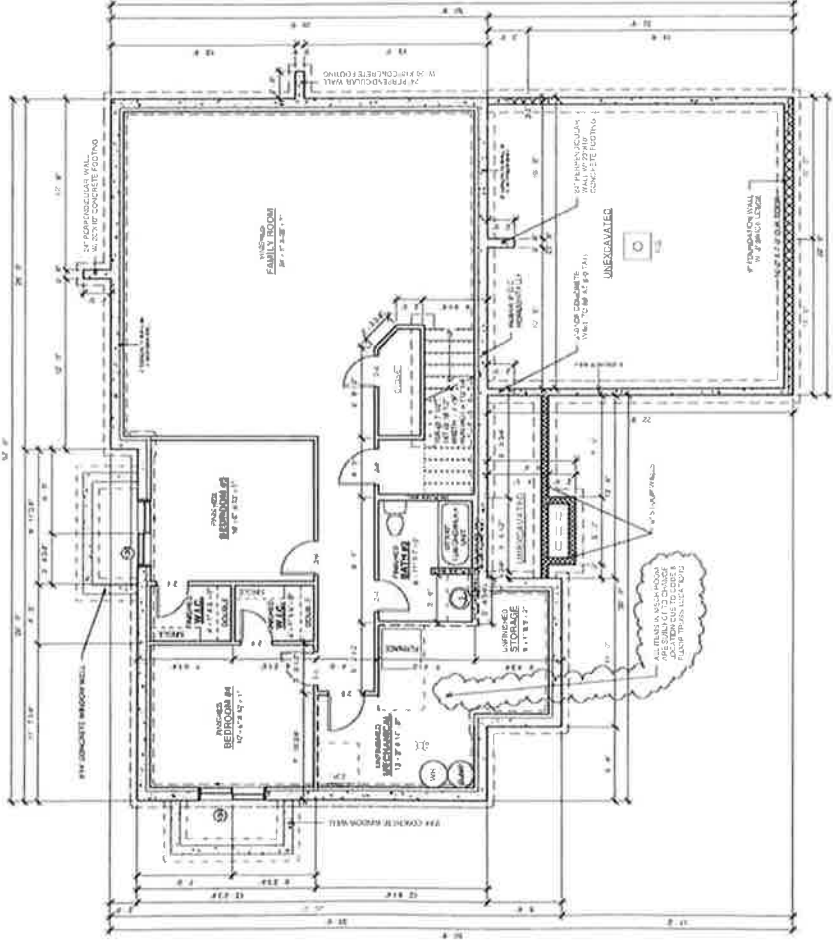
SHEET DESCRIPTION
 BASEMENT LEVEL FLOOR
 PLAN

HOUSE TOTAL SQUARE FOOTAGE
 PIVE - 2 STALL

A3

- NOTES:**
1. LANDMARKED EXISTING FOUNDATION SHALL BE REMOVED AND REPLACED WITH NEW FOUNDATION.
 2. ALL FOUNDATION SHALL BE CONCRETE ON GRADE.
 3. ALL FOUNDATION SHALL BE 12" MIN. THICK.
 4. ALL FOUNDATION SHALL BE 4" MIN. COVER.
 5. ALL FOUNDATION SHALL BE 4" MIN. COVER.
 6. ALL FOUNDATION SHALL BE 4" MIN. COVER.
 7. ALL FOUNDATION SHALL BE 4" MIN. COVER.
 8. ALL FOUNDATION SHALL BE 4" MIN. COVER.
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 19. ALL FOUNDATION SHALL BE 4" MIN. COVER.
 20. ALL FOUNDATION SHALL BE 4" MIN. COVER.

****FLOOD PROOF FOUNDATION****



CARAGE SQUARE FOOTAGE

LEVEL	AREA
GRADE	40' 00" x 30' 00"
TOTAL	1200' 00" SF

HOUSE SQUARE FOOTAGE

LEVEL	AREA
BASEMENT	1464' 00" SF
GRADE	1464' 00" SF
TOTAL	2928' 00" SF

Basement Windows

Window #	Type	Glaz.	Approx. Panel Height	#
130	Door	07' x 11"	104"	2
Grand Total				2

© 2023 Jordahl Custom Homes Inc.



August 24, 2023

To Whom it May Concern:

I am writing on behalf of the North Dakota Department of Health and Human Services Aging Services Division to clarify the definition of the Agency Foster Home setting in North Dakota per the citations below. I have also provided the ND Century Code citation regarding zoning of licensed agency foster home for adults.

N.D. Century Code 50-11-00.1 Definitions.

1. Agency foster home for adults means a residential home in which foster care for adults is regularly provided by professional staff trained to provide services to older adults or adults with a disability, to four or fewer adults who are not related by blood or marriage to the owner or lessee, for hire or compensation.

N.D. Administrative Code 75-03-21.1-01 Definitions.

3. Agency foster home for adults means a residential home in which foster care for adults is regularly provided exclusively to Medicaid waiver recipients by professional staff trained to provide services to older adults or adults with a disability, to four or fewer adults who are not related by blood or marriage to the owner or lessee, for hire or compensation.

50-11-11. Agency foster home for adults - Zoning.

Notwithstanding the provisions in chapter 11-33, 40-47, or 58-03, or any other provisions authorizing a political subdivision to establish or enforce zoning regulations, an agency foster home for adults providing community support services or residential habilitation must be considered a permitted use in a single-family or equivalent least-density residential zone.

Sincerely,

A handwritten signature in black ink that reads "Erica Reiner". The signature is written in a cursive, flowing style.

Erica Reiner
Nurse Administrator
Aging Services Division

AGING SERVICES

August 11, 2023

Fargo Planning and Development
225 4th Street North
Fargo, ND 58102

To whom it may concern:

On Tuesday, August 1, 2023, the Fargo Planning Commission granted a conditional use permit to allow Group Living in the SR-4, Single Dwelling Residential zoning district on Lot 7, Block 1, Golden Valley Second Edition. In response to this conditional use permit, the Golden Valley Homeowners Association now appeals this decision based on the following:

On November 21, 2019, the Declaration of Covenants, Conditions, Restrictions, Reservations, Easements, Liens and Charges and Statement of Addition of Golden Valley Second Edition (hereinafter "2019 Covenants") were recorded with the Cass County Recorder as document # 1574703, which is attached hereto as Exhibit A. These Covenants incorporate and subject Golden Valley Second Edition into the property described in the Declaration of Covenants, Conditions, Restrictions, Reservations, Easements, Liens and Charges (hereinafter "2015 Covenants", collectively with 2019 Covenants as "Covenants") recorded with the Cass County Recorder as document # 1436364, which is attached hereto as Exhibit B.

The Covenants define "Family" as one or more persons living in a residential building as a single housekeeping unit and shall exclude a group or groups of persons where three (3) or more persons thereof are not related by blood, adoption, or marriage. See, 2019 Covenants, page 2; see also, 2015 Covenants, Section 1.6. Based on this definition in the Covenants, the Developer intended to keep the single-family residential homes as groups of individual related by blood, adoption, or marriage and not to allow group living situations in our Homeowners Association and we as the Golden Valley Homeowners Association intend to uphold that intent for our development.

While the Fargo Planning Commission may have granted a conditional use permit, the intended use to allow Group Living in the SR-4, Single Dwelling Residential zoning district on Lot 7, Block 1, Golden Valley Second Edition violates the intent of our Covenants for the Golden Valley developments. Accordingly, the Golden Valley Homeowners Association respectfully requests the Fargo Planning Commission reconsider and deny the conditional use permit to allow Group Living in the SR-4, Single Dwelling Residential zoning district on Lot 7, Block 1, Golden Valley Second Edition as it violates our Covenants.

Thank you for your time and attention to this matter.

Sincerely,

Golden Valley Homeowners Association Board

-----Original Message-----

From: Tim Jahner

Sent: Tuesday, August 1, 2023 6:24 AM

To: Donald Kress

Subject: Group home

Recently I was made aware of the possible addition of the home in Golden Valley addition 2 that would be used as a group home.

I am writing to express my strong feelings against this.

This home is located at a main entrance into the development. By employing people, it will encourage several cars to be parked outside the home at numerous times making the entrance very congested.

Also, winter streets are difficult to clean when cars are left on the street. I can see this leading to this entrance being closed or blocked many times throughout the winter.

Also, Golden Valley is a neighborhood. It is a residential area-not a business district. She is building a house as a business. Business buildings are not part of a neighborhood.

This is a single family dwelling neighborhood. We do not need numerous people living in one house. It is to be single family houses only.

I am strongly against allowing this "business" in my neighborhood.

Thank you for your time and consideration.

Tim Jahner

From: Tim Nasheim
Sent: Tuesday, August 1, 2023 12:03 AM
To: Donald Kress
Subject: Golden Valley 2nd addition CUP

Mr. Kress,

Golden Valley 2nd has an HOA with covenants. The use described in the CUP application may be restricted by the covenants. The applicant and the planning commission should be made aware of this. It would be unfortunate for the applicant to go through the entire process up until completion of the home only to find out that the HOA will not allow the use.

Tim Nasheim

From: Pat Simmons
Sent: Monday, July 31, 2023 4:11 PM
To: Donald Kress
Subject:

Good afternoon,

My name is Patrick Simmons, I live at 6954 Golden Vly Pkwy S, Fargo, ND 58104. I am emailing to inform you that I DO NOT approve of the group home project set for 2545 69th Ave South.

The neighborhood has an HOA and the group home setting is against the agreed upon covenants for the neighborhood.

Thank you for your time and consideration.

Patrick Simmons
6954 Golden Vly Pkwy S, Fargo, ND 58104

From: Sharon Mueller
Sent: Monday, July 31, 2023 10:26 AM
To: Donald Kress
Subject: Re: Group Living Permit

Also, we just found out about this yesterday. After asking other neighbors in this 2nd addition we find out that the house next door, the house across the street from the house in question are the only houses that are lived in that got the letter. Those two owners put their houses up for sale immediately after that so they don't care anymore. The people buying those homes will be blind sided. The developers got the letter but they're just thinking about selling lots. They won't respond to your letter. We think you're taking advantage of a new development. Once the decision is made there's no going back. We don't think anyone on the board approving this would want that in their neighborhood. Please add this to my first email
Sharon Mueller

Sent from my iPhone

On Jul 31, 2023, at 9:46 AM, Sharon Mueller wrote:

We did not receive your letter dated July 14, 2023 regarding an application requesting a Conditional Use Permit to allow Group Living in the SR-4, Single Dwelling Residential zoning district on Lot 7, Block 1, Golden Valley Second Addition. A neighbor shared a copy with us.

We live at 2572 Golden Valley Ln S, Fargo. Our home is on the next street. We want to state that we ARE NOT IN FAVOR of this proposal.

We have a niece in Moorhead who lives in a group home that CCRI oversees. Even though staff is there 24 hours a day things happen. One individual has threatened staff, other individuals in the house and neighbors with a knife more than once. Another has been known to run outside naked more than once. Police know this house well. We do not want that in our neighborhood. Every situation is different and many unforeseen situations can happen.

We are out of town and unable to attend the 3:00pm meeting on August 1st. Can you please relay this email to someone involved in the hearing.

Sincerely,
Willis & Sharon Mueller

Sent from my iPhone

Fargo Planning & Development
225 4th St N
Fargo ND 58102

To Whom This May Concern,

I am writing to express my strong opposition to the Conditional Use Permit request to allow Group Living in the SR-4, Single Dwelling Residential zoning district on Lot 7, Block 1, **Golden Valley Second Addition**. Located at 2545 69th Ave S.

This is not the right neighborhood for that type of facility. All homes built in this neighborhood need to remain Single Family Homes. I fear it will bring our property values down. If one needs to sell their home, it may deter buyers from purchasing in this neighborhood.

Also, this neighborhood has heavy construction going on. The whole area behind this particular home is going to be having sewer and underground work done this fall. Doesn't seem like a very safe place for this type of facility. In the winter if there is heavy snowstorm it may be hard for emergency vehicles to access if an emergency should arise.

I respectfully insist that this conditional use permit request be denied.

Thank You

Theresa Berg

From: Jon Youness

Sent: Wednesday, April 26, 2023 4:30 PM

To: Mark Williams (Fargo Department of Planning and Development)

Subject: Golden Valley 2nd

Hey Mark!

As the Golden Valley real estate developer and homeowners' association manager, I wanted to share some concerns regarding the proposed business in our residential neighborhood.

We have spent the last 7 years working with City staff and the building community to develop the Golden Valley single family neighborhood in south Fargo. A part of this is creating an expectation for the existing residents of how this neighborhood will be built out and single family nature of the development. I worry that introducing a business could change that dynamic. Specifically, I am concerned about the additional traffic that the business could bring due to the number of workers and visitors. I also see approving the conditional use permit as a slippery slope that could lead to more businesses requesting to set up shop in our residential neighborhood. This could affect the quality of life for our residents and potentially change the unique identity of this and other neighborhoods.

I respectfully ask that you refrain from granting the conditional use permit for the business. We believe that it may not be in the best interest of our community and that it could detract from the quality of life of our residents. There are plenty of locations in the immediate vicinity that could be a better location for the proposed business. We would be happy to work with staff, the business owner, and the builder to help find a more suitable location!

Thank you for taking the time to consider our concerns.

Jonathan Youness, PE

Eagle Ridge Development

3280 Veterans Blvd – Suite 300

Fargo, ND 58104

**COVENANTS PROVIDED BY
GOLDEN VALLEY HOMEOWNERS ASSOCIATION**
(referred to in letter dated August 11, 2023 from Golden Valley Homeowners
Association Board included in this packet)

EXHIBIT A

PAGE: 1 of 8 REST 1574703
City of Fargo - Planning 10/21/2019 10:38 AM
Recorded Electronically \$65.00

(reserved for recording data)

**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS,
RESERVATIONS, EASEMENTS, LIENS AND CHARGES
AND
STATEMENT OF ADDITION
OF
GOLDEN VALLEY SECOND ADDITION**

THIS DECLARATION, is made October 2, 2019, by 76th Street Holdings, LLC, a North Dakota limited liability company, hereinafter referred to as the "Developer", who desires to provide for the preservation of the values and amenities of the property described in Article II of this Declaration, hereinafter called the "Property". To this end the Property is added to the "Property" as defined in the Declaration of Covenants, Conditions, Restrictions, Reservations, Easements, Liens and Charges recorded with the Cass County Recorder as document No. 1436364 and is further subject to the covenants, conditions, restrictions, reservations, easements, liens and charges set forth in this Declaration, each and all of which is and are for the benefit of the Property and each Owner. These covenants, conditions, restrictions, reservations, easements, liens and charges shall run with the land and shall be binding on all parties having or acquiring any right, title or interest in the properties herein described or any part thereof, and shall inure to the benefit of each Owner thereof.

NOW, THEREFORE, Developer declares:

1. That the Property is made a part of the Property described in the Declaration of Covenants, Conditions, Restrictions, Reservations, Easements, Liens and Charges recorded with the Cass County Recorder as document No. 1436364; and,
2. that the Property is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, reservations, easements, liens and charges (sometimes referred to as "covenants and restrictions") set forth in this Declaration.

ARTICLE I.

DEFINITIONS

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

1. "Association" shall mean The Golden Valley Homeowners Association, its successors and assigns.
2. "Building Plot" shall mean and consist of one or more Lots or one Lot and a portion or portions of adjacent Lots which have the same Owner.
3. "Declaration" shall mean the covenants, conditions, restrictions, reservations, easements, liens and charges set forth in this Agreement, as may from time to time be amended.
4. "Developer" shall mean and refer to 76th Street Holdings, LLC, a North Dakota limited liability company, its successors and assigns, if any successors or assigns shall acquire a majority of the undeveloped Lots for the purpose of development.
5. "Family" shall mean one or more persons living in a residential building as a single housekeeping unit and shall exclude a group or groups of persons where three (3) or more persons thereof are not related by blood, adoption, or marriage.
6. "Lot" shall mean and refer to any plot of land shown upon any recorded Plat of the Property. If a Lot as shown on the Plat or a portion thereof, is added to an adjacent Lot, then the same shall be considered as one Lot for purposes of this Declaration.
7. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Property, including contract sellers, but excluding those having an interest merely as security for the performance of an obligation.
8. "Plat" shall mean the plat of Golden Valley Second Addition to the City of Fargo.
9. "Property" shall mean that real property described more specifically in Article II of this Declaration.
10. "Review Committee" shall mean the Golden Valley Architectural Review Committee established pursuant to Article III.

ARTICLE II.

PROPERTY SUBJECT TO THIS DECLARATION

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

All property platted as Golden Valley Second Addition to the City of Fargo, Cass County, North Dakota as set forth on the Plat of Golden Valley Second Addition to the City of Fargo recorded as Document No. 1561033 with the Cass County Recorder.

all of which real property shall hereinafter be called the "Property".

ARTICLE III.

ARCHITECTURAL CONTROL

1. The Golden Valley Architectural Review Committee. The Property is subject to the architectural control requirements governed by the Golden Valley Architectural Review Committee as established by the Declaration of Covenants, Conditions, Restrictions, Reservations, Easements, Liens and Charges recorded with the Cass County Recorder as document No. 1436364.

2. Procedure for Submission of Plans and Specifications. A copy of Plans (for which receipt must be acknowledged in writing) will be submitted to the Review Committee at Teresa@Bullislaw.com. Approval or disapproval of those plans will be made in writing within fourteen (14) days after the receipt of those plans. In the event the Review Committee fails to approve or disapprove of the plans and related documents within this fourteen (14) day period, approval will not be required and the related covenants shall be deemed to have been fully met. Approval shall not be arbitrarily withheld or delayed, it being the intention of the Review Committee to grant or withhold approval for the purpose of establishing a quality, restricted residential district, free from objectionable or value-destroying features and in conformity with the governing zoning codes, building codes and other applicable regulations then in force.

ARTICLE IV.

RESTRICTIONS

In addition to the Restrictions upon use contained in the Declaration of Covenants, Conditions, Restrictions, Reservations, Easements, Liens and Charges recorded with the Cass County Recorder as document No. 1436364, the Property shall be subject to the following restrictions:

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

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

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

ARTICLE V.

THE GOLDEN VALLEY HOMEOWNERS ASSOCIATION

1. Membership in Association. Each Lot contained within the Property shall be a mandatory member of the Golden Valley Homeowners Association as described in the Declaration of Covenants, Conditions, Restrictions, Reservations, Easements, Liens and Charges recorded with the Cass County Recorder as document No. 1436364. In addition to the rules governing all Lots in the Association, the following additional rules shall govern the Lots contained within Golden Valley Second Addition:

- a. Landscape Easements. The Association shall have the right to determine the type and variety of vegetative cover, trees and grasses with the Landscape Easements described on the Plat. The Lot owners shall continuously maintain the plantings with the Landscape Easements in a manner to maintain the value and integrity of the homes contained with the Association.

- b. Block Two Alley. The Lot Owners in Block Two of the Plat shall be the only Lots responsible for the costs associated with the maintenance and upkeep of the surface of the alley serving these lots.
- c. HOA Pocket Park. The HOA Pocket Park contained within lot 5, Block 4 of the Plat shall be maintained by the Association. The Association is empowered to assess the members of the Association for all costs associated with the ownership, maintenance and upkeep of this lot including payment of property taxes and special assessment on this lot.
- i. The Developer, Lot Owners, and the Association hereby subrogate to the City of Fargo any and all powers provided by any covenants, conditions, and restrictions that have been or will be granted to the Association to assess against the Lots costs of ownership, maintenance and upkeep for the Association owned Lot or Lots, including without limitation *ad valorem* taxes, installments of special assessments or costs of abatement of nuisance
 - ii. The above subrogation provision is for the benefit of the City of Fargo only, and nothing herein shall be interpreted to require the City of Fargo to be responsible for any of the obligations of ownership, upkeep, maintenance or the payment of taxes or special assessments for the Association owned Lots.
 - iii. The Lot Owners and the Association agree that none of the foregoing powers or rights granted to the City of Fargo may be modified, cancelled or terminated without approval of the board of city commissioners of the City of Fargo and any amendment to this Declaration that abrogates any right granted therein to the City without such approval shall be void and of no force or effect.

ARTICLE VI.

GENERAL PROVISIONS

1. Enforcement. Enforcement. If any party shall violate or attempt to violate any of the covenants or restrictions contained in this Declaration, it shall be lawful for the Developer to prosecute proceedings at law or in equity against the person or persons violating or attempting to violate any such covenants or restrictions. The Developer may seek specific performance or recover money damages for such violation. At such time as the Developer has divested itself of responsibility for architectural control, any Owner may prosecute proceedings at law or in equity against the person or persons violating or attempting to violate any such covenants or restrictions.

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

3. Duration. The covenants, restrictions and conditions of this Declaration shall run with and bind the Property and shall inure to the benefit of and be enforceable by the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, devisees, successors and assigns for a term of thirty (30) years from the date this Declaration is recorded. After that time these covenants and restrictions shall be automatically extended for successive periods of ten (10) years unless an instrument signed by a majority of the then Owners has been recorded, agreeing to modify said covenants and restrictions in whole or in part.

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

5. Amendments. This Declaration of Covenants, Conditions and Restrictions may be amended by Developer until it divests itself of the responsibility for architectural control. It shall be conclusively presumed that the Developer has not divested itself of responsibility for architectural control unless there is a sworn affidavit of record so stating. After that time, this Declaration may be amended by an instrument signed by the owners of not less than seventy-five (75%) percent of the lots. Any instrument amending, modifying or canceling this Declaration must be properly filed and recorded before it shall be effective. Notwithstanding anything contained in this paragraph 5, none of the powers or rights granted to the City of Fargo under Article V may be modified, cancelled or terminated without approval of the board of city commissioners of the City of Fargo and any amendment to this Declaration that abrogates any right granted therein to the City without such approval shall be void and of no force or effect.

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

76th Street Holdings, LLC

By [Signature]
Its: President/Secretary

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

The foregoing instrument was acknowledged before me October 2, 2019 by James Bullis, the Secretary of 76th Street Holdings, LLC, a North Dakota limited liability company, on behalf of the limited liability company.



[Signature]
Notary Public

Consent Party

City of Fargo, a North Dakota municipal corporation

By: [Signature]
Timothy Mahoney, M.D., Mayor

ATTEST:

[Signature]
Steven Sprague, City Auditor

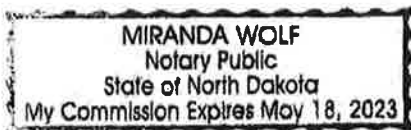


STATE OF NORTH DAKOTA)
)ss.
COUNTY OF CASS)

On October 16, 2019 before me a Notary Public, within and for said County and State, personally appeared Timothy Mahoney, M.D., and Steven Sprague, the Mayor and City Auditor, respectively, of the City of Fargo, North Dakota to me known to be the persons who executed the foregoing document and acknowledged that they executed the same as their free act and deed and for the purposes therein expressed.

(SEAL)

[Signature]
Notary Public



PAGE: 8 of 8 REST 1574703
City of Fargo - Planning 10/21/2019 10:38 AM
Recorded Electronically \$65.00

RECORDER'S OFFICE, CASS COUNTY, ND 10/21/2019 10:38 AM
I CERTIFY THAT THIS INSTRUMENT WAS FILED FOR RECORD THIS DATE.
DEBORAH A. MOELLER, COUNTY RECORDER

by *Teresa A. Kirby*, Dep. **1574703**
Recorded Electronically



EXHIBIT B



1436364
Page: 1 of 23
1/2/2015 3:55 PM
REST \$76.00

STAN RYLAND

**DECLARATION OF COVENANTS,
CONDITIONS, RESTRICTIONS, RESERVATIONS,
EASEMENTS, LIENS, AND CHARGES**

**Golden Valley Addition to the City of Fargo
Cass County, North Dakota**

Ryland Development Corporation, a North Dakota corporation, (hereinafter "Developer"), with the consent and joinder of Stanley L. Ryland and Patricia J. Ryland, whose post office address is 5834 14th Street South, Fargo, North Dakota, has established and owns the following property in Fargo, Cass County, North Dakota:

All property platted as Golden Valley Addition to the City of Fargo, Cass County, North Dakota, as set forth on the Plat of the Golden Valley Addition to the City of Fargo recorded as Document No. 1392865 with the Cass County, North Dakota, Recorder

This will hereinafter be referred to as the "Premises."

The Developer declares that the real property described as the Premises is and shall be held, transferred, sold, conveyed and occupied subject to the terms of the Covenants, Conditions, Restrictions, Reservations, Easements, Liens and Charges as set forth in this document, each and all of which are for the benefit of the Premises and each Owner.

These Covenants, Conditions, Restrictions, Reservations, Easements, Liens and Charges shall be deemed to run with the Premises when conveyed or deeded, including any part thereof, and shall be binding upon the heirs, successors and assigns of any persons to whom the Premises, or any part of the Premises, may be conveyed, in accordance with the terms of this Agreement.

Section 1. Definitions.

Section 1.1. "Architectural Control Committee" or "ACC" refers to the Developer and to any committee established by Developer to assume the duties of the Architectural Control Committee in accordance with the terms of this Declaration.



1436364

Page: 2 of 23
1/2/2015 3:55 PM
REST \$76.00

STAN RYLAND

Section 1.2. "Association" refers to the Golden Valley Homeowners Association, its successors and assigns.

Section 1.3. "Bylaws" refers to the Bylaws of Golden Valley Homeowners Association, a copy of which is attached hereto as Schedule 1.3.

Section 1.4. "Declaration" refers to the Declarations, Covenants, Conditions, Restrictions, Reservations, Liens and Charges as set forth in this Declaration, and any amendments or additions to this Declaration.

Section 1.5. "Developer" refers to Ryland Development Corporation, its successors and assigns, if any successor or assign shall acquire a majority of the undeveloped Lots for the purpose of development. Stanley L. Ryland and Patricia J. Ryland consent to and join in this Declaration.

Section 1.6. "Family" refers to one or more persons living in a residential building as a single housekeeping unit and shall exclude a group or groups of persons where three (3) or more persons thereof are not related by blood, adoption or marriage.

Section 1.7. "Fencing Easement Area" refers to the area within 12 feet of the back (non-street) side of Lots 1, 9, 10, 11, 12, 13, 14, and 15, Block 1, Golden Valley Addition, and such additional Fencing Easement Area as may be added by an Amendment or Addition to this Declaration. Included with this Easement is a right of ingress and egress over and on these Lots as necessary to construct, maintain, repair, and replace any fence or related improvements.

Section 1.8. "Irrigation Easement Area" refers to the North 10 feet of Lot 1, Block 1, Golden Valley Addition. This area is for use for pumps, valves, control systems, manifolds, water lines and such other equipment as is necessary to operate an irrigation system serving the median and/or the boulevard area. Included with this Easement is a right of ingress and egress to enter into such part of Lot 1, Block 1 as is necessary to construct, maintain, repair and replace irrigation equipment. An addition of property may result in an addition of one or more Irrigation Easement Areas.

Section 1.9. "Lot" refers to any individual Lot as established and/or assigned a number on the Plat of the Premises.

Section 1.10. "Group Mailbox Area" refers to one or more areas facing the street where multiple mailboxes for use of multiple homes will be located. The Owner on whose property the Group Mailbox is located will have the responsibility for snow



STAN RYLAND

removal on the area in front of the Group Mailbox. There is an ingress and egress easement right which accompanies the Mailbox Easement Areas for access to the group mailboxes for the purpose of installation, repair, maintenance and replacement.

Section 1.11. "Median" refers to that portion of the Right-of-Way of 70th Avenue South between 25th Street and 20th Street between the driving lanes landscaped and improved to present an attractive entrance to Golden Valley.

Section 1.12. "Owner" refers to the record Owner, whether one or more persons or entities, of a fee-simple title to any Lot or part of a Lot which is part of the Premises, including contract sellers but excluding those having an interest merely as security for the performance of an obligation.

Section 1.13. "Plat" refers to the plat of Golden Valley Addition to the City of Fargo, Cass County, North Dakota, recorded with the Cass County Recorder on July 11, 2013, as Document No. 1392865.

Section 1.14. "Premises" refers to the real property described in the plat and any additional property made subject to this Declaration by a Statement of Addition.

Section 1.15. "Property" refers to the Premises and all parts of the Premises.

Section 1.16. "Sign Easement Area" refers to that area in Golden Valley Addition to the City of Fargo described as follows:

Beginning at the Northwest corner of Lot 10, Block 1, N89°05'56"E along the north line of said Lot a distance of 142.51 feet to the point of beginning. The easement is 10 feet in width continuing east on Lot 10 to the northeast corner of Lot 10. Then N00°55'38"W a distance of 20 feet to the Northwest corner of Lot 11, Block 1. The 10-foot-wide easement continues N00°55'38"S a distance of 10 feet onto Lots 10 and 11. From the Northwest corner of Lot 11, Block 1, the 10-foot-wide easement continues S89°05'56"W a distance of 46.18 feet. Then N57°31'41"W a distance of 26.23 feet to the end of the easement.

Section 1.17. "Statement of Addition" refers to a statement of Developer filed with the Cass County Recorder adding additional property located within the Northeast quarter of Section 11, Township 138 North, Range 49 West, Cass County, North Dakota, which may be called "Golden Valley Second Addition" and/or "Golden Valley Third Addition," or by another name, to the Golden Valley Homeowners Association, and making this Additional Property subject to the terms of this Declaration, with all

STAN RYLAND

property in the Addition becoming subject to this Addition. The Statement of Addition may also contain provisions regarding easements that will apply to the newly added property and specification of restrictions that will apply to the added property.

Section 2. **Property Subject to this Declaration.** The Premises and all parts thereof is the property affected by and subject to the terms of this Declaration. Any addition of real property by Statement of Addition from Developer, upon recording of the Statement of Addition with the Cass County Recorder, will also be subject to the terms of this Declaration.

Section 3. **Term of Duration.** These Covenants will be in effect for an initial term through December 31, 2034. These Covenants shall thereafter automatically renew for successive ten (10)-year terms unless on or before the end of any such ten-year period, by vote of the Owners of 60% or more of the Lots subject to this Declaration as certified by the ACC, as evidenced by a written instrument duly recorded and signed by Owners of 60% of the Lots that said Owners declare a termination, amendment or modification of these Covenants. Such an instrument will be effective on the date of recording with the Cass County Recorder. in the event these Covenants are terminated for any reason, any and all remedies for breach of these Covenants committed or suffered prior to the termination shall remain actionable and the parties shall be bound by the terms of this Declaration for actions which occurred prior to the termination of this Declaration. Amendments and modifications may also be made as set forth in Section 30.

Section 4. **Architectural Control.** The Architectural Control Committee will operate as follows:

Section 4.1. **Establishment.** There is hereby established the Golden Valley Architectural Control Committee ("ACC"). The ACC will be comprised of the Developer until the time that residences or other buildings have been constructed and completed on all Lots comprising the Premises or until the time that the Developer decides to divest itself of responsibility for Architectural Control. The Developer retains the right to nominate one or more individuals or entities to operate as the ACC without relinquishing control. At such time as the architectural control is relinquished by the Developer, the responsibility shall be vested in a committee comprised of three (3) Owners who shall be elected by vote of all Lot Owners in the subdivision, with the Owner of each Lot having one (1) vote for each member position open on the Committee. The Committee may be established with staggered terms at the first election or at any time thereafter. The Bylaws of the Homeowners Association shall apply to the election. The elected Committee shall, at the time it is elected, adopt a meeting schedule and the rules of operation. It shall be conclusively presumed that there has been no complete



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construction upon all Lots, and that the Developer has not divested itself of responsibility for Architectural Control until there is a sworn affidavit of record from the Developer or a representative of the Developer stating that there has either been a completion of all construction on the Lots or that the Architectural Control has been passed to the Homeowners Association by the Developer.

Section 4.2. Procedures for Submission of Plans and Specifications. Two (2) copy of plans and specifications (for which receipt must be acknowledged in writing) will be submitted to the ACC for each structure to be constructed in the Premises. Approval or disapproval of those plans will be made in writing within fourteen (14) days of receipt of the plans and specifications, including all additional requested information that may be requested by the ACC. The 14-day period will not commence to run until all information requested by the ACC has been delivered to it. The plans and specifications will include front, side and rear elevations of the proposed building, building materials and exterior finish materials. In the event the ACC fails to approve or disapprove of the plans and related documents within the 14-day period, construction may commence in accordance with the submitted plans and specifications. Approval will not be arbitrarily withheld or delayed. It is the intention of the ACC to grant or withhold approval for the purpose of establishing a quality, restricted residential development free from objectionable or value-destroying features and in conformity with the governing zoning codes, building codes, these Covenants and other applicable regulations then in force. The ACC has no design responsibilities and is not responsible for determining whether the structure and Lot improvements as submitted and/or approved by the ACC will be in compliance with applicable building codes and requirements of the City of Fargo. This is the responsibility of the Owner and Owner's builder.

No building permit from the City of Fargo shall be applied for prior to approval of plans and specifications by the ACC.

Section 5. Requirements and Restrictions. The following requirements and restrictions shall apply to each Lot:

Section 5.1. No building, fence, wall, landscaping feature, pool, play structure, driveway, sidewalk or any other structure shall be commenced, erected or maintained on a Lot, nor shall any exterior addition to or change or alteration thereto be made to any building on a Lot unless and until the plans and specifications for the same have been submitted and approved in writing by the ACC or its appointed Architect from time to time, as set forth in Section 4.2 and Section 5.2.



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Section 5.2. Plans and specifications must include and indicate compliance with the following requirements:

Section 5.2.1. Two (2) complete sets of house plans must be supplied, including a site plan and elevations on each side.

Section 5.2.2. The site plan should indicate the basement outline with projections shown as dotted lines. The garage "footprint" and exterior steps, decks and/or patios shall be indicated. The site plan must clearly indicate the finished landscape grade at each corner of the building, as well as those adjacent to any unusual indentations within an elevation.

Section 5.2.3. The site plan must indicate sidewalk, walkway and driveway locations and sizes.

Section 5.2.4. The plans must show the top of the foundation or lowest opening of all residential structures within the Premises, which must not be less than 2.5 feet above the top of the curb directly in front of the structure, or to a minimum elevation set by the City of Fargo, whichever is higher.

Section 5.2.5. Accessory structures such as pools, pool houses, gazebos, utility buildings, storage buildings, additional garages, decks and play structures must be indicated on the site plan. The fact that these items must be listed is not to be an indication that there will be allowance of these structures.

Section 5.2.6. Any and all solar-heating devices or satellite dishes, TV antenna and/or radio antenna, which device must be approved as to appearance and location by the ACC to be permitted.

Section 5.2.7. Each Lot is restricted to the construction of one single-family detached residence. Residences in Block One of Golden Valley Addition may have a minimum of a two-stall garage. Residences in all other Blocks are required to have a minimum of a three-stall garage. Developer or the ACC may waive the minimum garage-stall requirement on a case-by-case basis. Detached garages are not allowed. Any detached structures must be of a design style and be constructed with the same exterior materials as the house, and be approved by the ACC.

Section 5.2.8. No lean-to, attached or unattached carport, vehicle storage building or other type of structure will be permitted except with the express written approval of the ACC. There is no plan to permit such structures.



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Section 6. **Building Guidelines.** Developer will provide written guidelines for buildings which will include the following:

Section 6.1. All driveways and car-parking areas must be concrete.

Section 6.2. No residence shall exceed two and one-half (2.5) stories in height when viewed from the street.

Section 6.3. No bi-level homes or three- or four- split-level homes are allowed. Only one-story and two-story homes, with or without a basement, are allowed except that front-to-back (but not side-to-side) three- or four-level splits are allowed on Lots in Block 1.

Section 6.4. All Residences must have a minimum of ten percent (10%) hard-surface coverage on the front (street side) of the structure. This would include brick, rock, EFIS or similar type of material approved by the ACC.

Section 6.5. No white or light-colored roofs shall be permitted unless approved by the ACC.

Section 6.6. No evaporative cooler shall be placed, installed or maintained on the roof or wall of any building or structure. All coolers, if permitted, shall be concealed.

Section 6.7. Any exterior kennel space or structure shall be shown on the plans and specifications and is subject to approval of the ACC.

Section 6.8. **No Front-Yard Fencing.** No fencing is allowed extending toward the front of a Lot (the street side) which fence extends beyond the front corners of the residence.

Section 7. **Date for Construction.** The following shall apply as the dates for construction of the principal residence:

Section 7.1. Construction of all primary structures shall be substantially completed within one (1) year after the issuance of any building permit for the structure. Landscaping shall be completed as soon as weather permits following substantial completion of the primary structure, but in any event, within twelve (12) months of the issuance of the building permit. No outside storage of building materials shall be



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permitted on any Lot after the nine-month construction period has expired. Any extensions of these time periods must be granted in writing after application to the ACC.

Section 7.2. All improvements constructed on Lots shall be new construction. No buildings or other structures shall be moved from other locations onto any Lot. Construction of improvements on any Lot must commence within five (5) years of the date of conveyance of the Lot by Developer. In the event construction of improvements does not commence within this time period, the Developer will have the option and right to purchase the Lot from the then Owner of the Lot upon payment to the owner of the Lot of 100% of the price originally paid to the Developer for that Lot. There will be no reimbursement made by Developer for payment of taxes or special assessments made by Owner. This option is available to Developer only from the fifth (5th) anniversary of the sale by Developer of that Lot through the sixth (6th) anniversary. This provision will apply to all Lots, regardless of whether recited in the conveying deed or subsequent deeds. The Owner will be responsible for weed control, mowing, and debris and trash removal from the Lot during the period of ownership.

Section 7.3. If the Developer repurchases, general real estate taxes and installments of special assessments will be prorated to the date of closing, based on the most current available tax information.

Section 8. Additional Requirements. All Lots will be subject to the following additional requirements:

Section 8.1. Land Use and Building Type. All residential Lots owned shall be used for detached single family residences. No improvement or structures whatsoever, other than a private single-family residence, other structures that may be approved by the ACC, garages as approved by the ACC, and fences approved by the ACC (all subject to the limitations set forth herein) may be erected, placed or maintained on any Lot within the Premises.

Section 9. Grading Required and Lot Drainage Control. All Lots shall be graded to the finished design grades as approved by the City of Fargo. Positive drainage is required and shall be made to divert water away from the residences and to prevent standing water and soil saturation which may be detrimental to structures and enjoyment or use of the Property.

Section 10. Fencing. All fencing provided by a builder/contractor or Owner or anyone other than the Developer shall require the approval of the ACC prior to installation. All fencing must be made of maintenance-free materials properly constructed. No chain-



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link, wood fencing and/or wrought-iron fencing will be permitted. No fence shall be constructed to extend beyond the front of the primary structure facing the front of the Lot (the street side) except on corner Lots as may be approved by the ACC. No fence shall exceed six (6) feet in height. The Owner of any Lot will be required to maintain the fence for that Lot at all times. Any development fencing (installed by Developer or Association) located within the Fencing Easement Area on a Lot shall be maintained, repaired, and replaced by the Association. Association fencing may be constructed on either or both sides of 70th Avenue South in the easement area of adjoining Lots, and may also be constructed in the easement areas along 25th Street. The Association and its contractors and agents shall have reasonable access to the fence for inspection, construction, repair, maintenance and replacement upon and across Lots upon which the Association fences are constructed.

Section 11. **Landscaping.** The front and side Lots of each property shall be sodded or seeded prior to the end of the first summer construction season that the residence is completed on a Lot. If construction of a residence is completed in the winter, it shall be sodded or seeded prior to the end of the following summer. If a property is completed in the same year, the rear lot shall be seeded or sodded within one (1) year of occupancy of the completed residence.

Section 12. **Boulevard Trees and Sidewalks.** All Lots will have such trees planted within one (1) year of the issuance of the Certificate of Occupancy as are required by the City of Fargo. This will include planting of trees on the Lot and on the boulevard in front of the Lot. Each Lot is responsible for construction of a concrete sidewalk as required by the City on the street side of the Lot. Responsibility for maintenance, repair and snow removal on these sidewalks along 70th Avenue South from 25th Street to 26th Street is that of the Association.

Section 13. **Irrigation Systems.** An irrigation system will be installed, maintained, repaired and/or replaced in the Fencing Easement Area of those Lots abutting 70th Avenue South. This irrigation system will be for the purpose of irrigating the grass areas on either side of 70th Avenue South, including all plantings in these areas. In addition, if the City of Fargo will allow an irrigation system to be constructed and maintained along 25th Street South for the purpose of irrigating the boulevard area owned by the City, the Developer and/or the Association will have the right to construct, maintain, repair and replace such irrigation system. Those Lots with Easement Areas adjoining 70th Avenue South and/or 25th Street South may have the irrigation system and equipment related thereto constructed in the Easement Area on their property. By taking title to a Lot, the Owner does grant the Association, its contractors and agents an easement for ingress and egress to the irrigation system for the purpose of construction,



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installation, maintenance, repair and replacement. The owners of the affected Lots will do nothing to adversely affect the irrigation systems. All costs related to these irrigation systems will be costs of the Association. The Association will also be responsible for all utility bills for water and/or electricity consumed as part of the irrigation system.

Section 14. **Median and Signage.** The Association shall have the cost of and responsibility for:

Section 14.1. Landscaping and maintaining the landscaping on either side of 70th Avenue South.

Section 14.2. Maintaining, repairing and/or replacing the signage located in the Signage Easement Area after initial installation of the signage by the Developer. This includes the cost of any electrical service for the Signage Area.

Section 15. **Environmental Controls.**

Section 15.1. Owners and Owner's Contractor will be responsible for the exercise of all dust-control measures and measures for environmental control including silt fences, coverings and barriers as may be required by any local, state or federal laws, regulations and/or requirements of any governmental agency for the Lot. This includes responsibility for installing sediment- and erosion-control devices, providing perimeter controls and implementing inlet-protection measures. Best Management Practices (BMP) shall be exercised by installing perimeter silt fencing to capture sediment resulting from the construction site. Nearby inlets within twenty-five (25) feet of the Lot shall be protected during construction activities. Other applicable measures shall be installed as required by the City of Fargo during construction activities to prevent sedimentation until such time as the surface cover on Owner's Lot is established. Owner and Owner's Contractor will further be obligated to fulfill all obligations under the Storm Water Protection Plan ("SWPP") or similar plan of the City of Fargo as it applies to an Owner's Lot.

Section 15.2. **Diseases and Insects.** No Owner shall permit any thing or condition to exist upon any Lot which shall induce, breed or harbor infectious plant diseases or obnoxious insects.

Section 15.3. **Antennas.** To the extent permitted by applicable law, the installation of antennas, satellite dishes or other devices to the transmission or reception of television or radio signals or any other form of electromagnetic radiation shall be subject to the prior written approval of the ACC. Therefore, no antenna, satellite, TV



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dish or other device for transmission or reception of television or radio signals shall be constructed, installed, erected, used or maintained on any Lot without the prior written approval of the ACC, unless applicable law prohibits the ACC from requiring such approval. Any such antennas must be installed in accordance with the guidelines set forth by the ACC.

Section 15.4. Trash Containers and Collection. No garbage or trash may be stored or kept on any Lot except in covered containers of a type, size and style which are approved by the ACC. All containers for garbage and trash shall be kept inside the garage or other structure located on a Lot, except that such container may be placed at the end of the driveway on garbage-collection day and placed back in the structure the same day. Containers may also be maintained outside of structures during construction periods. All rubbish, trash and garbage shall be removed from Lots and shall not be allowed to accumulate thereon. No indoor incinerator shall be kept or maintained on any Lot. All garbage or trash shall be collected by a garbage- or trash-collection service, which may be the City of Fargo, as designated by the Developer or by the ACC.

Section 15.5. Rooftop HVAC Equipment Prohibited. No heating, ventilating, air-conditioning or evaporative cooling units or equipment related thereto may be mounted, installed or maintained on the roof of any residence, garage or outbuilding so as to be visible from any neighboring property.

Section 15.6. Basketball Backboards and Hoops. No basketball hoop or backboard shall be attached to a residential unit or other building. Basketball hoops and backboards attached to a free-standing pole are permitted on a Lot and may be installed and maintained at the expense of the Lot Owner.

Section 15.7. Animals. Other than household pets kept for non-commercial uses, no animals, livestock, poultry or insects of any kind shall be raised, bred or maintained on any of the Lots. Pets must be restricted to the pet owner's Lot, must not be a nuisance and will not be allowed to stray to adjacent property.

Section 15.8. Mailboxes. No individual mailboxes will be allowed on any Lot. The location of mailboxes will be consistent with the overall development plan and subject to approval by the ACC. Group mailboxes may be located in the right-of-way area on the front side of any Lot or the side lot of a corner Lot. No delivery boxes other than mailboxes for U.S. mail will be permitted without the specific approval of the ACC. Snow removal and maintenance of the mailboxes, if not Group Mailboxes, will be the responsibility of the Lot Owner. Snow removal from in front of a Group Mailbox is the responsibility of the Lot owner for the Group Mailbox adjacent to his/her Lot. Group



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Mailboxes will be maintained by the Association. ACC reserves the right to require a specified type or types of mailboxes for each residence if Group Mailboxes are not required.

Section 15.9. Clotheslines. Clotheslines will be permitted as long as placement and design are approved by the ACC.

Section 15.10. Vehicle Parking/Storage. No commercial vehicles, motor homes, travel trailers, recreational vehicles or construction equipment shall be permitted on any Lot in the subdivision. Provided, however, motor homes, travel trailers, recreational vehicles and like vehicles may be temporarily permitted on the Lots for the purpose of loading and unloading such vehicles or for temporary visits by visitors to the Lots, not exceeding seven (7) consecutive days. Motor homes, travel trailers and like vehicles may be stored on the Lots only if they are stored within a structure and are adequately screened from public view. All motor vehicles kept on or about a property shall be currently licensed and shall be maintained in an operable condition at all times, temporary mechanical difficulties and breakdowns excepted. Mechanical work on motor vehicles must occur inside a garage or other enclosed structure, except that minor mechanical repairs and washing of vehicles may occur on the driveway.

Section 15.11. Signs and Operational Structures. No billboards or advertising signs of any kind or character shall be erected, placed, permitted or maintained on any Lot except as herein expressly permitted. A name and address sign used solely for the purpose of identification of the residence occupants may be placed on the property by its occupants, provided the sign is no more than two (2) feet square maximum, and the design of the sign is approved by the ACC prior to installation. Every Lot shall have a visible number as required by the City of Fargo. For-sale signs as commonly used by area real estate agents may be placed on the lawn for any Lot which is for sale. The sign may not exceed two feet by three feet in coverage. Only one sign per Lot is allowed. Developer may place such signs as the Developer desires on any Lot Developer has not sold or other location within the Premises, other than a built-upon Lot owned by someone other than Developer. Permanent signs identifying the area may be placed by the Developer or with the approval of the Developer. The Developer may erect, place and maintain such structures or structure as it deems necessary for the operation or identification of the Premises.

Section 15.12. Nuisance. No obnoxious or offensive trade or activity shall be carried on or upon any Lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. Such restrictions shall include, but not be limited to: using the Lot as a dumping ground for rubbish, garbage,



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trash or other waste materials; the placing thereon of unsightly piles of dirt, lumber or other materials, except during construction, and then only during the course of construction. Such restrictions shall also include not allowing noxious weeds to occur on the Lot, either during or after the construction of the home. The parking of any work vehicle larger than a one (1)-ton pickup truck in the driveway, except during construction or repair activities, is prohibited.

Section 15.13. Dirt Removal. No topsoil or excavation material may be removed from the Premises. When there occurs an excess of soil or excavation material as a result of excavation for construction or Lot grading, permission to remove that material from the Premises must be obtained from the Developer or the ACC. Developer may specify a location within the Premises for deposit of excess dirt.

Section 15.14. Appearance During Construction. All Lots are to be kept clean during construction. All garbage is to be stored out of sight. There will be regular collection of garbage and trash on the property. No garbage or trash burning is

permitted. All garbage and trash must be hauled away every fourteen (14) days or more frequently.

Section 15.15. Propane or Other Fuel Tanks. No combustible liquid or gas tanks, exposed to view from the street, will be allowed on any of the Lots.

Section 15.16. Temporary Residence. No trailer, basement, shack, garage, barn or other outbuilding erected on the Lot shall at any time be used as a residence, nor shall any residence of a temporary character be permitted.

Section 15.17. Power and Telephone Lines. For all Lots, temporary overhead distribution and service lines may be permitted until permanent underground facilities are installed. Otherwise, overhead lines are prohibited except during emergencies and repairs.

Section 15.18. Mining. No derrick or other structure designed for use in exploring for oil or natural gas shall be erected, placed or permitted upon any parts of any Lot, nor shall any oil, natural gas, petroleum, asphalt or hydrocarbon products or minerals of any kind be produced or extracted anywhere on any of the Lots. No oil drilling, oil-development operation, oil refining, quarrying or mining operations of any type shall be permitted on any Lot or any part of the properties, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted on any part of the Lots.



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Section 15.19. Basements. No basement shall be constructed for temporary residential purposes, and no basement structure shall be used for residential purposes unless and until the entire primary structure has been erected and complies with the building codes of the City of Fargo. No trailer, tent, shack, garage, barn or other outbuilding erected on any Lot at any time may be used as a residence, temporary or permanent, nor shall any structure of a temporary character be used as a residence.

Section 15.20. Mortgages. Breach of any of the foregoing Covenants, Conditions, Reservations or Restrictions shall not defeat or render invalid any lien, mortgage or deed of trust made in good faith for value as to any Lot or Lots or portions of Lots located within the Premises; but this Declaration shall be binding upon and effective against any mortgagee, Trustee or Owner, whose title or whose grantor's title is or was acquired by foreclosure, Trustee sale or otherwise.

Section 16. Easements.

Section 16.1. The easements for the installation and maintenance of utility and drainage facilities are shown on the Plat of the Premises. Within the area of the easements, no structures, plantings, fencing or other materials shall be placed, erected or permitted to remain which may damage or interfere with the installation and maintenance of utilities or which may change or alter the direction of flow of drainage channels or swales in the easement areas, or which obstruct or retard the flow of water through drainage channels or swales in the easement areas. The easement areas of each Lot and all improvements on the Lot within the easement area shall be maintained continuously by the Owner, except for improvements for which a public authority or utility company is responsible. All claims for damages, if any, arising out of the construction, maintenance and repair of utility or drainage facilities, or on account of temporary or other inconvenience caused thereby against the Developer, utility or public authority or any of its agents or employees are waived and released by the Owners, their successors and assigns. All easements are perpetual.

Section 16.2. Developer reserves the right to the change of, to the layout of, and to the discontinuance of any street, avenue, way, or easement shown on the Plat not necessary for ingress or egress to or from a Lot or the Premises, subject to the approval of the appropriate governing authority of the City of Fargo, if such approval is required.

Section 16.3. Once the installation of utilities, including electricity, gas, water, communications, sanitation, storm sewer, entertainment cables, innerduct and drainage is completed with respect to a particular Lot, the exact location of installation shall be



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established by marking and/or a written record submitted to Developer or to the City Engineer for the City of Fargo.

Section 16.4. All claims for damages, if any, arising out of the construction, maintenance, and/or repair of the utilities or on account of temporary or other inconvenience caused thereby against the Developer or against any utility company or municipality or any of their agents, employees or contractors, are hereby waived and released by the owners of the Lot by the act of acquiring a Lot. This also applies to all subsequent owners and interest holders.

Section 16.5. Easements are also created and reserved as Mailbox Easement Areas, Sign Easement Areas, Fence Easement Areas and Irrigation Easement Areas. The cost of maintaining, repairing, servicing and replacing the improvements constructed by Developers in these easement areas is the responsibility of the Association and will be part of the expenses of the Association. In addition to having the right to construct, repair, maintain and replace these improvements within the respective Easement Areas, there is also the right of ingress and egress to immediately adjacent property in a reasonable manner for these purposes.

Section 16.6. Easements are also created and reserved for those purposes as set forth in Section _____ of this Declaration dealing with Association fences and Section 13 of this Declaration dealing with Association irrigation systems. In addition to having the right to construct, repair, maintain and replace these improvements within the Easement Area, there is also the right to cross adjoining property in a reasonable manner for these purposes.

GOLDEN VALLEY ADDITION HOMEOWNERS ASSOCIATION

Section 17. **Membership in Association.** Every Owner of a Lot which is subject to the Declaration of Covenants shall be a mandatory member of the Golden Valley Homeowners Association. The foregoing is not intended to include persons or entities that hold an interest merely as security for the performance of an obligation, such as a mortgage lender. All members of the Golden Valley Addition Homeowners Association shall be governed and controlled by the Articles of Incorporation and the Bylaws of the Homeowners Association, which Bylaws may be placed of record. Each Lot will have one (1) vote on Association matters.

Section 18. **Creation of Lien and Personal Obligation and Assessments.** The Developer hereby covenants, and each Owner of any Lot by acceptance of a deed thereof, whether or not so expressed in such deed, is deemed to covenant and agree to pay the Association annual general assessments or charges, and special assessments



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for capital improvements. All assessments shall be a charge on the land (Lot) and shall be a continuing lien upon the Lot(s) against which such assessment is made. Each such assessment shall also be the personal obligation of the Owner of such Lot at the time when the assessment fell due.

Section 19. **Method of Assessment.** Upon Developer selling all of the Lots in the Project, or earlier time if selected by Developer, the Developer will turn over control of the Association to the Owners. By vote of the majority of the Owners of the Lots, with each Lot having one (1) vote, the Association shall fix the annual assessment upon the basis provided herein. Provided, however, that the annual assessment shall be sufficient to meet the obligations imposed by this Declaration. The Association shall set the date such assessment shall become due. The Association may provide for collection of assessments annually or in monthly, quarterly or semi-annual installments; provided, however, that upon default of the payment of one or more installments, the entire balance of such said assessments may be fully accelerated, at the option of the Association, to be declared due and payable in full. Until turnover of the Association by Developer, Developer will set the assessments for the Association.

Section 20. **General Assessments.** The general assessments levied by the Association shall be used exclusively to promote the improvement, maintenance and operation of the entryways into the Premises, development fencing including any medians and landscaping monuments, signage and decoration and landscaping of medians and boulevards and the roadway area leading into the Premises from 25th Street. Also included in the assessments will be the improvement, maintenance and operation of the signage, collective mailboxes, common areas, perimeter landscaping and entrance(s) into Golden Valley Addition. Each Lot, whether improved or unimproved, shall be assessed at a uniform rate, with the assessment commencing on a date and for an amount determined necessary by the Association or Developer.

Section 21. **Special Assessments for Capital Improvements.** In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable for that year and for not more than the next five (5) succeeding years for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of capital improvements located within the Premises, including common areas, entrances, parks and landscaped areas, perimeter fencing (including replacement of perimeter fencing), banners, lighting or other decorations to enhance the esthetic value of the Premises, sidewalks or any other improvements, including any fixtures or personal property relating thereto, providing that any such assessment shall have the consent of fifty-one percent (51%) of the Lots voting, in person or by proxy, at a special meeting duly called for the purpose. As long



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as Developer owns any Lot, any special assessment must be approved in writing by the Developer. Any special assessment shall be levied in equal amounts for each Lot. If the 70th Avenue Association fence or the 25th Street Association fence needs repair or replacement, the cost will be assessed equally against all Lots constituting the Premises.

Section 22. **Surplus Funds.** The Association shall not be obligated to spend in any year all the assessments and other sums received by it in such year, and may carry forward as surplus any balances remaining. The Association shall not be obligated to reduce the amount of the annual assessments in the succeeding year if a surplus exists from a prior year. The Association may carry forward from year to year such surplus as the Board of Directors of the Association, in its discretion, may determine to be desirable for the greater financial security of the Association and the accomplishment of its purposes.

Section 23. **Enforcement of Lien.** Any annual assessment and/or special assessment represents a lien against the property and is subject to the following:

Section 23.1. All delinquent assessments, together with interest thereon (at an interest rate equal to the rate charged by Cass County for delinquent real estate taxes) and costs of collection thereof, including reasonable attorneys' fees and costs, as hereinafter provided, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which such assessment is made. Each such assessment, together with interest thereon, and costs of collection shall also be the personal obligation of the person(s) who is the Owner of such Lot at the time the assessment became due.

Section 23.2. If the Association elects to claim a lien for non-payment of assessments, it shall, at any time, following a default in payment, make demand for payment to the defaulting Owner. Said demand shall state the date and amount of the delinquency. If such delinquency is not paid within thirty (30) days after delivery of such notice, the Association may elect to file a Claim of Lien against the Lot of such delinquent Owner. Such Claim of Lien shall state:

Section 23.2.1. The name of the delinquent Owner(s);

Section 23.2.2. The legal description of the Lot(s) against which the claim of lien is made;

Section 23.2.3. The amount claimed to be due and owing;



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Section 23.2.4. That the Claim of Lien is made by the Association pursuant to the terms of this Declaration;

Section 23.2.5. That the Lien claimed against the Lot(s) is an amount equal to the amount of the stated delinquency;

Section 23.2.6. Due demand has been made upon the defaulting or the delinquent Owner pursuant to this Declaration, and that such amount was not paid within 30 days after such demand.

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

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

Section 24. **Association Areas of Responsibility.** Upon establishment by Developer and Developer turning over control, but not later than the closing of sale of 100% of the Lots which are then included within the Association as the result of the recording of one or more Statements of Addition, the Association or its delegated representative shall be responsible for the maintenance and management of the signage, Group Mailboxes, Association fences, Association irrigation systems, entrance medians and perimeter landscaping and the entrance to Golden Valley and all improvements located therein, except for any part thereof which any governmental entity is maintaining or is obligated to maintain. The Board of the Association shall be the sole judge as to the appropriate maintenance of all common areas. Until the Association is established, these shall be duties of the Developer. No Owner, resident or other person shall construct or install any improvements on the common areas or alter, modify or remove any improvements situated in the common areas without the approval of the Board. No Owner, resident or



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STAN RYLAND

other person shall obstruct or interfere with the Association in performance with the Association's management of maintenance of the common areas and the improvements located thereon.

Section 25. **Lot Maintenance.** Each Owner of a Lot shall be responsible for the maintenance of his/her Lot and all buildings, residential units, landscaping, structures or other improvements situated thereon. All buildings, structures, residences, landscaping and other improvements shall at all times be kept in good condition and repair. All grass, hedges, shrubs, vines, trees and plants of any type on a Lot shall be irrigated, mowed, trimmed and cut at regular intervals so as to be maintained in a neat and attractive manner. Trees, shrubs, vines, plants and grass which dies shall be promptly removed and replaced with living foliage of like kind, unless different foliage is approved in writing by the ACC. No yard equipment, wood piles or storage areas may be maintained so as to be visible from neighboring property or streets. All Lots upon which no residential units, buildings or other structures, landscaping or other improvements have been constructed shall be maintained in a weed-free and attractive manner. This requirement shall not apply to Developer while Developer owns Lots upon which no construction has occurred.

Section 26. **Assessment of Certain Costs of Maintenance and Repair.** In the event the need for maintenance of a Lot or common area is caused by the willful or negligent act of any Owner, his family, tenants, guests or invitees, the cost of such maintenance shall be paid by such Owner to the Association upon demand. Payment of any such amount shall be secured by the assessment of a Lien, the same as any other Lien referred to in this document.

Section 27. **Improper Maintenance and Use of Lots.** In the event any portion of any Lot is so maintained as to present a public or private nuisance, or as to substantially detract from the appearance or quality of the surrounding Lots or other areas of the Premises which is substantially affected thereby or related thereto, or in the event any portion of a Lot is being used in a manner which violates this Declaration, or in the event the Owner of any Lot is failing to perform any of Owner's obligations under the Association Documents, the Board may make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto give notice to the offending Owner that unless corrective action is taken within fourteen (14) days, the Board may cause such action to be taken at said Owner's cost. If, at the expiration of said 14-day period of time, the requisite corrective action has not been taken, the Board shall be authorized and empowered to cause such action to be taken, and the costs thereof shall be paid by such Owner to the Association upon demand. Payment of such amounts shall be secured by the assessment of a Lien.



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STAN RYLAND

GENERAL PROVISIONS

Section 28. **Violations.** If any party violates or attempts to violate any of the Covenants or Restrictions contained in this Declaration, it shall be lawful for the Association or the Developer to prosecute proceedings at law or in equity against the person or persons violating or attempting to violate any such Covenant or Restriction, and either prevent him/her/it from doing so, or to recover damages for such violation, or both.

Section 29. **Right to Enforce.** Failure to enforce any of the Covenants, Conditions, Restrictions, Easements, Liens and Charges now or hereinafter imposed, pursuant to the Covenants and Restrictions should not be deemed a waiver of the right to do so thereafter, nor shall it be construed as an act of acquiescence or approval on the part of the Owners or the Association.

Section 30. **Binding Effect.** The Covenants, Restrictions and Conditions of this Declaration shall run with and bind the Premises, and shall inure to the benefit of, and be enforceable by, the Owner of any Lot, their respective legal representatives, heirs, devisees, successors and assigns, or by the Association for the time period this Declaration is in effect, as previously set forth.

Section 31. **Severability.** The invalidation of any one or more of these Covenants or Restrictions by judgment or Court order shall in no way affect any other provisions, which shall remain in force and effect.

Section 32. **Amendments by Developer.** Developer reserves the right to amend this Declaration and the Covenants set forth herein at any time through December 31, 2019. This Declaration and the Covenants set forth herein may also be amended by Developer until the Developer divests itself of responsibility for architectural control. It shall be conclusively presumed that Developer has not divested itself of responsibility for architectural control until there is a sworn statement of record from the Developer so stating recorded with the Cass County Recorder. After the recording of such sworn affidavit, this Declaration may be amended by instruments signed by the Owners of not less than 60% of the Lots then constituting the Premises. Any instrument amending, modifying or cancelling this Declaration must be promptly filed and recorded before it shall be effective. Any amendment of these Covenants by the Developer will not affect the validity of any mortgage or deed of trust and may not change the burden to any Lot or portion of a Lot without the consent of the mortgage holder for that Lot, if any. Developer or Association will cause an amendment to be recorded with the Cass



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STAN RYLAND

County Recorder. The amendment will be effective upon recording of the same with the Cass County Recorder.

Section 33. **Construction Activities.** This Declaration shall not be construed so as to unreasonably interfere with or prevent normal construction activities during the construction of improvements by any Owner (including Declarant or any major Developer or principal owner) upon property within the Project provided that when completed, such improvements shall in all ways conform to this Declaration, the Bylaws, and Rules and Regulations. Specifically, no such construction activities shall be deemed to constitute a nuisance or a violation of this Declaration by reason of noise, dust [reasonable dust control will be the responsibility of the Owner and contractor during construction], presence of vehicles or construction machinery, posting of signs or similar activities, provided that such construction is pursued to completion with reasonable diligence, is in compliance with applicable federal, state and local laws and ordinances and any Rules and Regulations adopted pursuant thereto, and conforms to usual construction practices in the area. In the event of any dispute, a temporary waiver of the applicable provision including, but not limited to, any provision prohibiting temporary structures, may be granted by the Architectural Control Committee, provided that such waiver shall be only for the reasonable period of such construction. Such waiver may, but need not, be recorded or in recordable form. No portion of the Property may be stripped of natural vegetation unless in connection with construction of improvements or installation of landscaping within such portion of the Property. If such construction or installation has not commenced within a reasonable time after the natural vegetation has been stripped, the Owner of such portion of the Property shall take appropriate steps to prevent the erosion or blowing of soil from the Property.

Section 34. **Dedicated Rights.** The Premises shall be subject to any and all rights and privileges which the City of Fargo or the County of Cass or the State of North Dakota may have acquired through dedication or the filing or recording of any maps or subdivision plats as authorized by law and provided further that no Covenants or acts performed shall be in conflict with any zoning ordinance, land use law, building code, or other applicable law of the City of Fargo, County of Cass, or State of North Dakota, but shall be in addition thereto, with the stricter requirement applying.

SIGNATURE PAGES FOLLOW.



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STAN RYLAND

DATED: 1/2/15

DEVELOPER:
Ryland Development Corporation

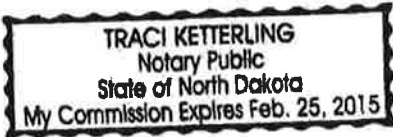
Stanley L. Ryland
Stanley L. Ryland, President

STATE OF NORTH DAKOTA)

) ss.

COUNTY OF CASS)

On this 2nd day of January, ²⁰¹⁵~~2014~~, before me, a Notary Public in and for said County and State, personally appeared Stanley L Ryland, to me known to be the President of Ryland Development Corporation, the corporation that is described in and that executed the foregoing instrument, and acknowledged before me that he and such corporation executed the same.



Traci Ketterling
Notary Public:
Stanley L. Ryland
Stanley L. Ryland, Individually

STATE OF NORTH DAKOTA)

: ss.

COUNTY OF CASS)

On this 2nd day of January, ²⁰¹⁵~~2014~~, before me personally appeared Stanley L. Ryland, known to me to be the person who is described in, and who executed the within and foregoing instrument, and severally acknowledged that he executed the same.



Traci Ketterling
Notary Public:



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REST \$76.00

STAN RYLAND

RECORDER'S OFFICE, CASS COUNTY, ND 1/2/2015 3:55 PM
I CERTIFY THAT THIS INSTRUMENT WAS FILED FOR RECORD THIS DATE.
JEWEL A. SPIES, COUNTY RECORDER

by Teresa A. Gilby, Deputy 1436364





September 5, 2023

To: Board of City Commissioners
Fr: Michael Redlinger, City Administrator
Re: NDSCS Career Workforce Academy Update & Presentation

Introduction

North Dakota State College of Science (NDSCS) leadership has been requested to provide an update to the Fargo City Commission on the Career Workforce Academy project on 64th Ave. S. in Fargo. At the September 5, 2023, City Commission meeting, the following representatives from NDSCS will be present to answer questions:

- Dr. Rod Flanigan – NDSCS President
- Dr. Lisa Karch – NDSCS VP of Academic and Student Affairs
- Dr. Denise Jonas – Director for Career and Technical Education for Cass County
- Hugh Veit – NDSCS Foundation Board Representative
- Kim Nelson – NDSCS Foundation Executive Director

City of Fargo – Career Workforce Academy Pledge

The City Commission previously pledged financial support to the Career Workforce Academy over 5 years, starting in 2021.

Pledge Amount:	Paid to Date:	Remaining:
\$1,500,000	\$900,000	\$600,000

In addition to the City of Fargo, Cass County Government and the City of West Fargo have pledged support to the project, as outlined below.

Cass County – Career Workforce Academy Pledge

Pledge Amount:	Paid to Date:	Remaining:
\$5,000,000	\$4,000,000	\$1,000,000

West Fargo – Career Workforce Academy Pledge

Pledge Amount:	Paid to Date:	Remaining:
\$600,000	\$480,000	\$120,000

Fueling Our Future: The *Fueling Our Future* initiative has pledged \$1,000,000 in support to the Career Workforce Academy.

Recommended Action: No recommended action; for informational purposes only.

Attachment: NDSCS Career Workforce Academy Background Materials & Previous City Commission Actions

July 13, 2020

32. Public Hearings - 5:15 pm:
 - a. Hearing on a dangerous building located at 717 3rd Avenue North.
 - b. Craigs Oak Grove Second Addition (505, 509 and 515 Oak Street and 2, 6 and 10 6th Avenue North); approval recommended by the Planning Commission on 6/2/20:
 1. Zoning change from MR-2, Multi-Dwelling Residential and DMU, Downtown Mixed Use to MR-2, Multi-Dwelling Residential and DMU, Downtown Mixed Use, repeal existing PUD, Planned Unit Development overlay.
 2. 1st reading of rezoning Ordinance.
 3. Plat of Craigs Oak Grove Second Addition.
 - c. Truesdell's Addition (814, 818 and 822 Oak Street North); approval recommended by the Planning Commission on 6/2/20:
 1. Zoning change from SR-3, Single-Dwelling Residential to SR-4, Single-Dwelling Residential.
 2. 1st reading of rezoning Ordinance.
33. Presentation on the NDSCS Career Workforce Academy:
 - a. Recommendation for the City of Fargo to pledge \$300,000.00 per year for 5 years to the NDSCS Career Workforce Academy project.
34. Recommendation to amend the Remodeling Tax Exempt Policy.
35. Application for a property tax exemption for improvements made to a building for James and Geraldine Flaig, 2206 8th Street North (5 year).
36. Purchase Agreements for the New Downtown Water Tower Site (Project No. WA1910).
37. Recommendations for the Fargo Police Chief Selection Committee.
38. Discussion regarding the permitting process for protests.
39. Recommendations for revisions to the Fargo Police Department Policy regarding chokeholds.

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

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

APPROVED BY THE BOARD
OF CITY COMMISSIONERS

7-13-20

Contingent on Federal grant

33



CAREER WORKFORCE ACADEMY

Secondary Early Entry • Post-Secondary • Incumbent Worker

July 8, 2020

Mayor Tim Mahoney and Fargo City Commission
City of Fargo
225 4th Street North
Fargo, ND 58102

RE: Career Workforce Academy (CWA) City of Fargo Investment Request

Dear Mayor Mahoney and Fargo City Commission:

On behalf of the public and private sector project partners who have worked diligently over the past three years, we sincerely appreciate the opportunity to provide the Fargo City Commission with a progress report and request for financial investment to leverage a time sensitive federal grant to allow the first phase of the project to begin, Spring 2021.

Public, private, and non-profit sector leaders in the area recognized there was an opportunity to take the area's workforce development to the next level by constructing a new building that will house the community college alongside several of the area's K-12 school districts' career and technical education (CTE) programs.

The first phase of the CWA will be a new 86,000 square foot facility designed to accommodate future expansion of an additional 39,000 square feet. The building is to be separated into spaces organized around the career clusters of transportation; manufacturing; health sciences; agriculture; architecture and construction; informational technology; arts and communications; and business, finance, and marketing. Skills gap analyses, conducted as part of a feasibility study in 2016, found critical deficiencies among the existing labor force. The study also asked business leaders across a range of sectors about their companies' capacity to invest in a new facility dedicated to workforce development. The results were favorable towards creating a Career Workforce Academy in Cass County.

Private contributions are aligned to match local public funds to secure a federal investment in the project. As of writing, \$17,270,000 in financial or in-kind pledges have been secured from local public and private investment. Private sector fundraising will continue for a Phase II for the project.

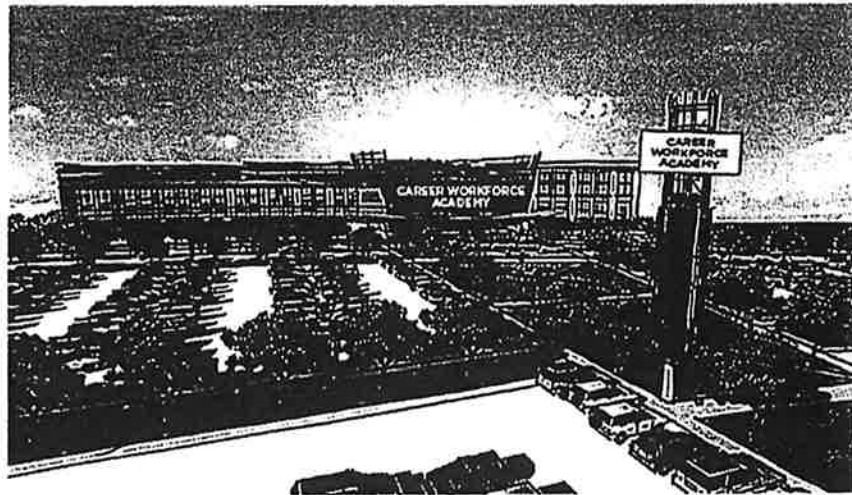
Recognizing our local support cited above, we respectfully request the City of Fargo consider a pledge of \$1,500,000 to be paid over five yearly installments beginning in 2020. On behalf of our K-12 partners, business and industry we look forward to creating a premier workforce program that will keep North Dakota competitive.

Thank you.

Sincerely,

John Richman, Ph.D.
President, NDSCS

Career Workforce Academy



July 13, 2020

City of Fargo Request

Contents of this report provide answers to project questions. Information contained in report was prepared by Central Cass Public Schools, Fargo Public Schools, North Dakota State College Science, Northern Cass Public Schools and West Fargo Public Schools.



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Dr. Tim Mahoney, Mayor and Fargo City Commissioners:

On behalf of the collaborative Career Workforce Academy project, below is a brief project overview, public funding efforts and request of a five-year pledge of \$1,500,000 from the City of Fargo, Facility information, private investors to date, student projections, Moorhead collaboration and draft partner operating agreement.

The project is designed as a public/private partnership with a \$30 million capital budget. (\$15 million private and \$15 million public). To date, \$11,470,000 has been pledged from private sources.

The academy will offer programs that will provide K-14 students, the Incumbent workforce and new American immigrants a curriculum to prepare them for successful careers. The program is also dependent on strong partnerships with business/industry leaders from the region that work together to enhance curriculum with relevant learning for successful outcome.

The project is a collaborative effort by the school districts of Fargo, West Fargo, Northern Cass, Central Cass and North Dakota State College of Science. It is designed to deliver workforce training and education that is responsive to changing employer and student needs.

This plan will expand and enhance our ability to attract, retain and grow businesses and develop opportunities for student success in the workforce.

The Career Workforce Academy will:

- Provide exposure to multiple career paths for all levels of K-14 students.
- Present more opportunities for students to sample and experiment with a variety of careers.
- Create opportunity for those interested in a technical degree.
- Create a path for incumbent workers and new Americans for a new career.
- Provide appropriate facilities and equipment for hands-on career training.
- Focus on the region's workforce and employer needs.

On behalf of the project partners, we respectfully appreciate your support and timely consideration.

John Richman, Ph.D.
NDSCS President



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Public Funding Efforts

Beginning in 2017, Career Workforce Academy education partners and local business leaders with the Greater Fargo-Moorhead Economic Development Corporation and the Fargo Moorhead West Fargo Chamber of Commerce have conducted in numerous meetings and strategy sessions that endorsed the \$30 million dollar Public/Private Partnership capital funding model.

Initially, the \$15,000,000 public K-12 funding options was explored. As a result, it was determined that K-12 school districts would not be able to fund capital construction which is largely based on demands of growth, tax base and projected state funding.

Beginning in the summer of 2018, efforts centered on securing State of North Dakota public funding. In December, 2018 \$30 million for career academies was included in Governor Doug Burgum's budget recommendation for the 2019 legislative session. In April 2019, the legislature ultimately chose not to fund the program.

In the Spring of 2019, The Chamber of Commerce of Fargo, Moorhead, West Fargo and the Greater Fargo Moorhead Economic Development Corporation through the Fueling our Future Initiative proposed to Cass County elected officials public financial support for \$15 million as an economic development project. Over the past two months, the Cass County request has emerged into a shared public request between Cass County, the City of Fargo and City of West Fargo. Further, the project will entail two phases.

Local financial support:

Secured:

Private sector pledges	\$11,470,000
Cass County	\$5,000,000
City of West Fargo	\$800,000

Requests:

Fueling the Future	\$1,000,000-July 8, 2020
City of Fargo request	<u>\$1,500,000</u> -July 13, 2020

Total Local Support \$19,770,000

City of Fargo support will secure the required local funds for the project to apply for a federal grant of \$5,000,000. The federal grant request is time sensitive with applications due by July 20, 2020 with decision expected in October, 2020. Total first phase of the project upon federal grant award, Fall 2020 will total \$24,770,000. Construction would begin in the Spring of 2021.



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List of private sector commitments secured

52 Investors \$11,470,000

BNSF Railway Foundation	Eide Bailly
Capital Credit Union	Forum Communications
Caterpillar Inc	Border States
Midco	Trail King Indus.
Ottertail Power	WCCO Belting
Scheel Steve	Accent Contracting
Scheels Foundation	Camrud Foss Concrete Construction
Eid, Gerald & Brenda	Cornerstone Specialties
Eid, Jason & Kristie	Cullen Insulation, Inc.
Home Builders Association	Dakota Construction of Fargo, Inc.
Home Builders Care Foundation	DC Consulting, LLC - Dawn Cruff
Jay Dietz Construction	Design Direction, Inc
Miller & Sons Drywall, Inc.	Designer Homes of Fargo-Moorhead
Superior Insurance	Floor to Ceiling
Swanson, Robin	Heritage Homes
Windows Plus	Hirshfield's Paint
Cargill	Kochmann Brothers Homes, Inc.
US Bank	Krueger Construction Inc
Enclave construction	Labor Masters
FM Realtors Association	Lemke Home Improvement
Home Heating, Plumbing & A/C, Inc.	Lindquist Dan Construction Inc
BC/BS of ND	Red River Drywall & Decorating Services
Butler Greg	Studio West Homes LLC
Sanford Health	The Foam Doctor's, LLC
Don Dabbert	NDSCS Foundation
EAPC Architects	Moore Engineering



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Objectives of Public-Private Partnerships

1. To ensure government services are delivered in the most economical, effective and efficient manner
2. To create opportunities for private sector to contribute to overall economic growth
3. To ensure the best interests of the public, the business sector and community are served by appropriate allocation of risks.

Why \$1,500,000 over 5 years from the City of Fargo?

Across the nation, public and private organizations have creatively engaged in various forms of partnerships for the success of their citizens and communities. Some policies and practices have been in place for decades, while others are emerging influenced by workforce demands, a desire for economic growth, or innovative grassroots leaders. Given the opportunity to leverage federal funding, the time is now to move the project forward. The following are examples of success due to county/local government influence and systemic strategies:

Business – Public - Private Sector Partnerships: Next Generation Sector Partnerships are partnerships of businesses, from the same industry and in a shared labor market region, who work with education, workforce development, economic development and community organizations to address the workforce and other competitiveness needs of the targeted industry. ([Resource](#))

Oklahoma Local Investment in Career Training – A Track Record of Success: In 1966 when Oklahoma voters approved a constitutional amendment allowing the establishment of what were then called area vocational-technical schools. One of the main goals of these schools was to provide cost-effective vocational education. The amendment allowed school districts to join together to form a vo-tech district with an independent board of education and its own locally approved tax base. The new school could then offer specialized occupational training programs that sending schools could not afford to offer, or for which they might not have enough enrollment to justify the offering. Today, 29 Career and Technology Center exist across the state of Oklahoma. ([Resource](#))

- [2019 Oklahoma County Millage](#)

Wichita - Sedgwick County – The National Center for Aviation Training (NCAT) was primarily (\$55 million) funded and built by [Sedgwick County](#) to meet aviation manufacturing workforce demand. [Wichita Area Technical College](#) (WATC) serves as the managing partner for the Center, partnering with [Wichita State University's National Institute for Aviation Research](#) (NIAR), to provide industry-driven training courses. This world-class training facility provides students the opportunity to receive hands-on, real-world training in the areas of general aviation manufacturing and aircraft and power plant mechanics. NCAT consists of three buildings: Advanced Manufacturing Technology Center (80,948 sq. ft.), the Aviation Service Center



CAREER WORKFORCE ACADEMY

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(96,243 sq. ft.) and an Assessment and Administration Center (30,435 sq. ft.) for admissions, student services and employment placement.

- 2019 Ad Valorem Tax Levies – W. S. U. Program Development – 1.5 mils
- Community Development – Technical Education – (Initial Investment)

Why New Facility?

In 2018, a comprehensive site/building search was completed by the Greater Fargo Moorhead Economic Development Corporation. Criteria used Career Workforce Academy included the following: Accessibility to major thoroughfares, proximity to majority of area high school students, real estate property, purchase price (Land cost), surrounding area use & appropriate zoning, visibility to community, acreage availability, access to utilities, 100 year flood history & any other environmental concerns, local reception, crime rate, proximity to public transportation and IT connection capability.

A total of seven options were presented. Listed below are the six building sites and one available building that were considered.

1. 1001 NP Avenue North, Fargo
2. 64th Avenue South & 45th Street, Fargo
3. 2121 43rd Street. South, Fargo
4. 52nd Street NW & 19th Avenue North, Fargo
5. West Main Avenue & I-94, West Fargo
6. 64th Avenue South & I-29, Fargo
7. Gander Mountain Facility I-94 & 45th Street, Fargo

In 2019, it was determined with the Career Academy planning committee that the 45th Street and 64th Avenue South option meet the majority of project criteria. The one existing building, Gander Mountain would have been ideal had there been enough acreage for expansion.

In addition, the Kmart facility, South University Drive, Fargo was later researched as to its availability. Local leaders contacted the real estate ownership group based in Atlanta, GA. The ownership group expressed their intentions were to redevelop the property for their own purposes.

Career Sector Pathways

The vision of the Career Workforce Academy will build the awareness of multiple career clusters to include, transportation, health sciences, manufacturing, construction trades, business, Information Technology, agriculture and arts and communication. Programs will provide the skills necessary to be career ready through experiential education, classroom training, student connection to business and industry, and career path counseling. It will present real-time opportunities and real-life experiences by responding and



CAREER WORKFORCE ACADEMY

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adapting quickly to industry demands and student interest. Success will depend on engaged student interest and on the collaboration of all stakeholders.

Career Workforce Academy Student Enrollment Projections

Within the first few years, the Career Workforce Academy (CWA) project estimates approximately 3,900 students and individuals will receive education and training experiences annually. K-12 student enrollment is expected to reach more than 3,000 students, based on 10% student enrollment data from K-12 student populations at Career Academy operations in Sioux Falls, S.D. and Bismarck, N.D. Additionally, approximately 400 NDSCS students will be enrolled in college courses along with 500 employees that will receive training through TrainND and SkillsND program offerings.

Source: The Fargo School District website stated Fargo/Moorhead metro enrollment in 2017 was 32,211.

Moorhead Career Academy Collaboration

At the inception of Career Workforce Academy discussions, local K-12 schools districts and two-year colleges were invited to the table including Central Cass, Fargo, Kindred, Northern Cass, Moorhead, and West Fargo Public Schools, along with M-State and NDSCS. Early brainstorming and planning sessions were around a vision, concept and possible strategies to move such a project forward. All organization endorsed representatives to engage in the Phase I – research and strategic planning creation in 2017-2018 and Phase II – curriculum and program review in 2018-2019. Leadership and planning meetings were shared collaboration and consensus driven!

Throughout the Career Academy development process, organizations were tasked to envision the future of education, workforce needs, and student learning. They were also challenged to innovate current practices to consider the CWA vision. Realistically, all organizations had slightly different policies, district goals, funding and state requirements, which strengthened discussions, yet also challenged each individual organization to determine their commitment, beyond collaboration, but their ability to execute a shared vision and establish a formal partnership. A CWA partnership agreement was necessary to execute strategic plan goals and set forth terms and conditions of operation for the project.

As local organizations reviewed levels of commitment toward the CWA project, Moorhead elected to advance a bond referendum to manage growing high school enrollments and space issues. Kindred chose to focus on local high school career education programs due to travel. M-State determined to continue their focus on organizational goals. The CWA group celebrates the success of these organizations and recognizes the need for lines of communication to remain open for future partnerships and cooperation for the success of all.

In response to questions around the need for a Cass County CWA (CCCWA) versus the sharing with the Moorhead CWA (MCWA):



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- Current and projected growth in regional populations, coupled with the current and projected growth of each school district, sets the stages for workforce and educational demands in Cass and Clay Counties, thus creates a demand for both the CCCWA and MCWA.
- Workforce demands persist to grow in the region, requiring training beyond high school for students, adults and new Americans.
- Following the passage of the bond referendum, Moorhead will be using their MCWA as an outlet for students (600-700) during phase 1 of their new addition, and then the phase 2 tear down and rebuild the second addition.
- Due to interest from DGF, Barnesville, and Hawley, it is likely that space at MCWA will be limited due to demands to partner with MCWA.
- At the fall M-State Advisory Committee meeting, President Brimhall communicated growth and need for additional program space and partnering with the MCWA.
- It is the vision of the CCCWA and MCWA to continue to collaborate as programs are designed to meet workforce demands, minimize duplication and explore options to share students and instructors as they serve learners in the region.

"You need to be aware of what others are doing, applaud their efforts, acknowledge their successes, and encourage them in their pursuits. When we all help one another, everybody wins." - Jim Stovall

Attachment A

FACILITY OPERATING AND CONCURRENT ENROLLMENT AGREEMENT 01-10-2020

This Agreement, made this _____ day of _____, 2020, by and between North Dakota State College of Science (NDSCS), 800 6th Street North, Wahpeton, ND 58076 ("NDSCS"), and the following: Central Cass Public Schools, 802 5th Street North, Casselton, ND 58102, Fargo Public Schools, 415 North 4th Street, Fargo, ND 58102, Northern Cass Public Schools, 16021 18th Street SE, Hunter, ND 58048, and West Fargo Public Schools, 207 Main Avenue West, West Fargo, ND 58078 ("School Districts"), with all jointly being referred to as the "Parties."

Recitals

The Parties wish to execute this agreement to create the Cass County Career Workforce Academy ("CCCWA") at: (address _____)

The founding membership of the CCCWA shall be comprised of: Fargo Public Schools, West



CAREER WORKFORCE ACADEMY

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Fargo Public Schools, Northern Cass Public Schools, Central Cass Public Schools and NDSCS. Additional members may be added upon mutual consent of founding members.

NDSCS has established an agreement with the following owner, _____, for the CCCWA to operate out of the building at [reference the site of building or the name of the building] ('Building')

The Parties by mutual agreement share certain costs and expenses of operating the CCCWA, including expenses relating to maintenance staff, maintenance, and operating costs.

Statement of Purpose

The Parties acknowledge and agree that the CCCWA Building will be used jointly by the Parties for educational purposes and that each Parties receives substantial benefits by the creation and shared use of the CCCWA.

Term of Agreement

The term of this Agreement will be for an initial period lasting at least through the construction and financing phase of the project. Then after the initial period, this agreement will renew with all Parties in five-year increments thereafter, so long as NDSCS has an agreement with the owner, _____, to utilize the building.

Facility Use

On or before July 1st of each year the Parties will meet, discuss and agree to each Parties schedule and use of the classrooms, shops and/or labs. The Parties acknowledge that each Parties use of the facility is substantially equivalent, however, notwithstanding that principle, each Parties need for space maybe renegotiated from time to time.

Financial Provisions

1. The Parties will share in the cost of operations and maintenance of the CCCWA. The Parties acknowledge the CCCWA will have operation and maintenance costs. Items upon which the cost allocation will be applied shall include, but not be limited to, the following: heat and electricity, water, sewage, rubbish removal, building insurance, ground maintenance supplies and janitorial supplies, custodian and ground maintenance salaries, IT network, and telephone expenses.
2. Cost of Operations and Maintenance Allocation Formula. The current estimated



CAREER WORKFORCE ACADEMY

Secondary Early Entry • Post-Secondary • Incumbent Worker

annual cost of operations and maintenance is \$600,000. The parties have agreed to an initial payment formula of: NDSCS - \$300,000; Fargo Public Schools - \$100,000; West Fargo Public Schools - \$100,000; Central Cass Public Schools - \$50,000; Northern Cass Public Schools - \$50,000.

3. The Parties acknowledge that the future costs of repairing the building, roof, parking lot, HVAC system, additional land acquisition, specials, etc., and establishment of a deferred maintenance fund, are part of the ongoing operating and maintenance expense that will need to be addressed three years from the date of execution of this agreement.
4. The Parties shall review the finances, and operations and maintenance allocation formula of the CCCWA on an annual basis.
5. **Tuition and Fees for Concurrent Courses.** Each School District will determine how the NDSCS college tuition and fees will be paid.

Liability Insurance Coverage

Each Parties shall purchase and at all times maintain comprehensive general liability insurance containing standard coverages against any and all injury to person or property in such amounts as it may reasonably deem necessary to provide adequate liability coverage for the general public, patrons and visitors to the CCCWA, policy and amount shall be reviewed annually by the Parties so as to maintain adequate coverage at all times.

Personal Property Insurance

Each Parties shall consider and maintain personal property insurance coverage against any and all damage to furnishings, equipment, and fixtures located with the facility. The personal property insurance coverage shall be in an amount equal to replacement value of the furnishings and equipment each owned by each Parties, which policy and amount shall be reviewed annually by Parties to maintain adequate coverage at all times.

Governing Law

This Agreement and the rights and liabilities of the Parties shall be determined in accordance with the laws of the State of North Dakota.

Captions

Captions contained in this Agreement are inserted only as a matter of convenience and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provision hereof.



CAREER WORKFORCE ACADEMY

Secondary Early Entry • Post-Secondary • Incumbent Worker

Severability

Every provision of this Agreement is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the terms or provisions within this Agreement.

Amendments to Agreement

This Agreement may be modified or supplemented at any time by the written agreement of the Parties.

Expiration or Termination of Agreement by Parties

After the initial period of this agreement has been completed, a member may terminate their participation in the CCCWA by submitting, in writing, a withdrawal resolution prior to February 1st of the year in which the termination is to be effective. All properties and physical assets will remain with CCCWA.

Re-entry after Termination

Re-entering School Districts shall be allowed to renew participation in the CCCWA based on such terms and conditions the Parties hereto may approve.

Dated this ____ day of _____, 2020

North Dakota State College of Science

By: _____ Attest: _____

Central Cass Public School District

By: _____ Attest: _____

Fargo Public School District

By: _____ Attest: _____

Northern Cass Public School District

By: _____ Attest: _____

West Fargo Public School District

By: _____ Attest: _____



CAREER WORKFORCE ACADEMY

Secondary Early Entry • Post-Secondary • Incumbent Worker



January 10, 2020

Chair Chad Peterson and Cass County Commissioners
211 9th Street S.
Fargo, ND 58103

Chairman Peterson and Cass County Commissioners:

On behalf of the Valley Prosperity Partnership (VPP) we write in support of the development of the Cass County Career Workforce Academy. The VPP is a 28-member coalition representing major business employers, joined by higher education and economic development partners, working together to advocate for and achieve common strategic economic development goals. Workforce development has been the VPP's highest priority since its establishment in 2012.

As business leaders in the Red River Valley we believe this academy will offer the training and skills most urgently needed in the region. The academy will expand career and technical education and training that focuses on career pathway programs that align with industry growth clusters with the highest potential for creating growth and shared prosperity in our region.

Led by a collaborative group of educational organizations and the North Dakota State College of Science, the Academy is a potent partnership that includes private sector companies, K-12 school districts in Cass county, and the FMWF Chamber of Commerce and the Greater Fargo-Moorhead Economic Development Corporation operating in partnership via the Fueling Our Future initiative.

As Co-Chairs of the VPP we are confident that the Cass County Career Workforce Academy will have a significant long-term impact on the availability of skilled workers not only here in Cass County but throughout the Red River Valley and beyond. We respectfully urge you to partner with the private sector, K-12 districts and NDSCS to provide the necessary capital to construct this important asset for our region.

Sincerely,

Marshal Albright

Marshal Albright

Steve J. Burian

Steve Burian

JOHN HOEVEN
NORTH DAKOTA
500 HANFILL SENATE OFFICE BUILDING
TELEPHONE (202) 224-2051
FAX (202) 224-7000

http://www.senate.gov

United States Senate

WASHINGTON, DC 20510

COMMITTEES
AGRICULTURE
APPROPRIATIONS
ENERGY AND NATURAL RESOURCES
INDIAN AFFAIRS

May 28, 2020

Ms. Angela Belden Martinez
Regional Director
Economic Development Administration
Denver Regional Office
1244 Speer Boulevard, Suite 431
Denver, CO 80204-3515

Dear Director Martinez:

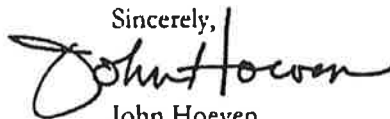
I am writing to express my support for the forthcoming application from the North Dakota State College of Science (NDSCS) for Coronavirus Aid, Relief, and Economic Security (CARES) Act funding under the Public Works and Economic Adjustment Assistance Programs (FOA: PWEAA2020). Thank you for your consideration.

North Dakota has a long record of economic expansion and diversification. We've made tremendous investments to add value to our primary industries of agriculture and energy, while also leveraging our institutions of higher education as engines of innovation. This has provided good jobs and helped establish our state as a hub of technology entrepreneurship.

The proposal from the NDSCS seeks to build on this progress by addressing local demand for skilled labor. The Career Workforce Academy is a collaboration of private businesses, career and technical education (CTE) institutions, and local school districts in Cass County. The goal of this effort is to expand access to CTE and certificate programs for students in the region, empowering them to gain college credit and certifications prior to graduation. Doing so will help students get a head start on their careers, saving them time and money, while also helping businesses attract and retain skilled employees. Partnerships like this have the potential to provide greater opportunities for our residents to lead productive, successful lives and can enable a stronger economy for years to come.

Accordingly, I hope this proposal receives your favorable consideration. Thank you for your time and attention to this important matter. Please keep me informed of the review process, and feel free to contact me with any updates or inquiries you may have.

Sincerely,



John Hoeven
U.S. Senator

10:44



State of
North Dakota
Office of the Governor

Doug Burgum
Governor

June 2017

Dear State Board of Higher Education members,

As Governor of the great state of North Dakota, I strongly endorse the Fargo/Moorhead Regional Career Academy project.

This partnership will harness the power of private sector investment and the knowledge of K-12 school districts, as well as the North Dakota State College of Science and other two-year educational institutions, combined with the community-based focus found in organizations such as the Fargo Moorhead West Fargo Chamber of Commerce, Greater Fargo/Moorhead Economic Development Corporation and the cities of Fargo and West Fargo.

The synergistic effort being made to create a regional academy focused on equipping young adults with the skills they need to achieve career readiness is remarkable.

The project's focus is one of great merit, as the benefits of career and technical training to create a more empowered workforce extend far beyond that of the individual's ability to lead a more successful and productive life.

Business and industry's commitment to cooperative educational and apprenticeship opportunities fosters growth in all areas of society, including workforce development, efficient infrastructure and healthy, vibrant communities. Growth in these areas is beneficial to all and is strongly enhanced by cooperative efforts such as the Fargo/Moorhead Regional Career Academy project. It will allow our workforce to remain competitive in a 21st century economy, and we must support these ventures.

Sincerely,

A handwritten signature in cursive script that reads "Doug Burgum".

Doug Burgum
Governor

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

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

At 5:57 the Board took a five-minute recess.

After recess: All Commissioners present. Mayor Mahoney presiding.

Five-Year Pledge Granted to the Career Workforce Academy Project Contingent Upon the Federal Grant Award Being Awarded:

North Dakota State College of Science (NDSCS) President John Richman said public and private sector project partners have worked diligently over the past three year. He outlined the request and progress in a report on the Career Workforce Academy (CWA) project. He said public, private and nonprofit leaders recognized an opportunity for an academy to take the area's workforce development to the next level by constructing a new building that will house the community college alongside several of the area's K-12 school districts' Career and Technical Education (CTE) programs. He said the first phase of the Career Workforce Academy project in Cass County is a new 86,000 square foot facility designed to accommodate future expansion of an additional 39,000 square feet. The building is to be separated into spaces organized around the career clusters of transportation; manufacturing; health sciences; agriculture; architecture and construction; informational technology; arts and communications; and business, finance and marketing. Skills gap analyses conducted as part of a feasibility study in 2016 found critical deficiencies among the existing labor force and the study also asked business leaders across a range of sectors about their companies' capacity to invest in a new facility dedicated to workforce development. The results were favorable towards creating a Career Workforce Academy in Cass County, he said, and private contributions are aligned to match local public funds to secure a federal investment in the project. He said \$17,270,000 in financial or in-kind pledges have been secured and private sector fundraising will continue for a Phase II. He said recognizing local support; he respectfully requested the City of Fargo consider a pledge of \$1,500,000 to be paid over five years in yearly installments beginning in 2020. He said he looks forward to creating a premier workforce program that will keep North Dakota competitive. He said an academy is a proven model that begins at the elementary age, where career awareness opportunities take place, continues to junior high age where career exploration and hands on opportunities would be presented, then in to high school grades and provides other opportunities. The innovative piece being planned, he stated, is that bridges into an Associates Degree or for transfer to complete a Bachelor's Degree. It is more than an academy, he said, it is a Workforce Development Center that will provide workforce training for employees needing additional skills or unemployed adults to be retrained, and beyond that to the New American program and potential other populations that are under consideration. The private sector has been asked to pledge their own money to help build this facility, he said, and they have been asked for a long-term partnership. They are needed for their expertise, to provide internships, job-shadowing experiences to students of all ages, he said. This matter is time sensitive, he said, because due to COVID-19, the Federal government has provided increased funding in the various regional Economic Development Associations (EDA). There have been extensive conversations with the

regional EDA office, he said, and the services of Lake Agassiz Regional Council have been secured to help write the grant. The grant requires a match, he said, and he believes with the approval of the Board, public funding can be completed and with the more than \$11 million already pledged from the private sector companies, there will be an extremely strong grant application to submit. He said public funding will come from Cass County, the City of West Fargo, Fueling Our Future and, hopefully, the City of Fargo.

In response to a question from Commissioner Gehrig asking whether this overlaps with other institutions in the region, Mr. Richman said there may be some duplication by demand and by need due to space needs or growth.

Dr. Denise Jonas, Director for Career and Technical Education for the Cass County Career and Technical Education Center, said work has been collaboratively as a K-12 system across the river with Moorhead for a while, along with MState and with NDSCS. She said studies included what is happening in the K-12 system and what is offered in the technical colleges or other two-year systems. One gap recognized was in agriculture, she said, and other areas such as health science.

In response to a question from Commissioner Gehrig asking whether classes in the area tech schools are all full or why is there a need to create one in Fargo, Ms. Jonas said other communities are ahead. She said Moorhead moved ahead creating an academy to alleviate problems with growing enrollment. She said she thinks there is a need and this model includes K-12, adult learners and retraining. Part of the model beyond technical training takes into consideration career development counseling, she said, as well as outreach to parents and partnerships with the business communities.

Mr. Richman said the first part of the academy is career awareness and helping students make an educated career choice.

Commissioner Piepkorn said the Board has to recognize how the world has changed in the last four months and there are concerns with the City's own finances. He said to commit to a \$1.5 million dollar pledge is a hard question to answer. There is a revolution in education, he said, and now there is even a question on whether Fargo Public Schools will be open this fall. An academy is a great concept, he said; however, the Board has to make sure to spend the City's money wisely.

Commissioner Gehrig said he agrees career exposure is important. In response to a question from Commissioner Gehrig on how it would work, particularly for younger students, Ms. Jonas said while high school students would come to the center for courses, the middle level, Grades 5-8 would come to summer academies for exposure to different trades. She said for the younger students, there are smaller opportunities; however, there is a strategy to push this in to classrooms by helping the teachers to develop resources and opportunities through their curriculum.

In response to a question from Commissioner Gehrig asking whether offering general credits that transfer would affect enrollment at NDSU, Mr. Richman said they are hearing from the private sector there is a need for general education because of the need for general entry technicians. He said NDSU is a great partner and supports, and he does not see this as a competition as it might even lead more students to higher learning.

Ms. Jonas said the hope is that a small step can lead to a long-term goal through the transition of a K-14 that could lead to an advanced degree. She said this is looking at ways to capitalize on local universities to make a strong North Dakota system and a strong Cass County system.

Commissioner Preston said she served on the School Board and understands the importance of having an integrated tech program within a school district and this sounds like this may take it to the next level. The need is difficult to measure, she said, and the culture has been so strong to get students to go to college right out of high school; however, four-year college degrees may not be the best thing for all students coming out of high school. She said she has concerns when such a large request comes up that has not been included in the budget.

Mayor Mahoney said commitments to the Core Neighborhood Plan and the Land Development Code are already in the budget and this is a new request. He said it is difficult to know what will happen in the next six months so assumptions will need to be made, such as how COVID-19 will affect the economy. He said \$300,000.00 can fit in the budget, operating and personnel are being looked at. He said the schools are in the project, the County is in it, as well as the City of West Fargo, so Fargo would be just one part. As in any budget, it is hard to find the money, he said; however, if it is a commitment the Board wants to make, the money will be found.

In response to a question from Commissioner Preston asking what would happen if the Federal grant does not come through, Mr. Richman said he agrees everyone is faced with unknowns and that decisions have to be made on what is known today. He said the additional federal funding received by the Regional EDA office will go somewhere and he believes completing this application can bring \$5 million of federal funding to help complete the design work and put a shovel in the ground in the Spring of 2021, opening the doors in the Fall of 2022. The City's investment could help secure an additional \$5 million outside federal funding coming to the region, he said.

Commissioner Gehrig said no doubt trade schools are important; however, the issue comes down to dollars and cents. He said this building will require infrastructure, specifically special assessments, and he understands the academy would pay their portion of special assessments. He said unlike West Fargo, Fargo has caps on their specials and depending on costs, they will not likely cover their entire cost so it will fall to the residents of Fargo. He said a Fargo resident will be hit multiple ways and the average citizen who may not have any benefit could be on the hook for a lot of tax dollars. Additionally, he said, he is concerned that future requests for money will be made, as such institutions do not tend to operate in the black. He said the idea is fantastic and he knows there is a demand for the trades; however, the average taxpayer will be on the hook for more than the \$1.5 million over the years due to infrastructure costs and possible future requests. He said it is not just the City; it is the County, the Schools and other funds the City puts money into.

Mayor Mahoney said the funding is a bit different, and as he understands it, the operating costs will come from the school districts. He said that the request from the City is for a donation to a Capital Fund with no intent to come back to the Commission. Any new development would follow the City's Special Assessment Policy, he said, and there is no intent to give an in-kind donation of specials assessments.

Mr. Richman said in the information shared with the Board contains a draft of an agreement that would be entered into with the various school districts that are part of the consortium. As of today, it includes Northern Cass, Central Cass, West Fargo and Fargo, he said, and other districts have expressed interest in participating once it is up and running.

In response to a question from Commissioner Strand asking about the commitment from the schools for the project, Superintendent of Fargo Public Schools Dr. Rupak Gandhi

said Fargo Public Schools is to support the ongoing operations of the building through a tuition-based agreement, and he believes the partnering K-12 institutions would do the same. He said this is not just an Academy, which implies K-12 or K-14, it really is a Workforce Development Center, so the School Districts are just one user entity. He said this is not a function of just K-12 schools, it is an opportunity to serve the students; however, it would be embedded into the services if it were a function of the schools. This Academy would fill a gap for students needing advance level courses that cannot be offered at a K-12 system and are outside the scope of what schools normally do.

In response to a question from City Attorney Erik Johnson asking whether this is a general commitment to the concept and whether there will be a final document to approve a pledge, Tony Grindberg, NDSCS Vice President of Workforce Affairs said Lake Agassiz Regional Council is writing the grant application and as he understands it from the conversations with the EDA officials, the local share must be documented. He said the decision now will add to the local share from the public entities to qualify for the \$5 million and what is needed from the local entities for the grant application is simply a reference that the commitment was made from meeting minutes.

Commissioner Piepkorn said he is not comfortable doing a multi-year commitment and is not sure that is appropriate. He said he is concerned that Fargo Schools are not financial involved, yet the City is.

Mr. Gandhi said the financial investment of the schools would not only be tuition-based agreements allowing for the operational costs of the building; they would also maximize the student's opportunities, so from an equity perspective they would provide transportation and other investments. He said K-12 is one user base and the scope of the project goes beyond that to New Americans, adult education and to employers for training as a collaborative project.

Commissioner Preston said the City involvement is also workforce development, not only K-12. She said the City is participating in the bricks and mortar and she understands the school districts are not able to do that. Adult education includes things like English as a Second Language classes, she said, making it a City accountability and benefit.

In response to a question from Commissioner Strand asking when the results of the federal grant are expected, Mr. Richman said the hope is to submit the application this week and the decisions would likely be announced in late September or early October.

In response to a question from Commissioner Strand asking whether it would be reasonable to revisit the pledge if the federal grant is not approved, Mr. Grindberg said that it would be reasonable to have a contingent agreement based on the federal grant award.

Commissioner Gehrig said this a tax increase outside the regular budget cycle. While it is a good idea, he said, how it gets built is as important as if it gets built. He said no one is saying it is not needed or that it is not important; however, a yes vote raises taxes outside of the budget cycle.

Commissioner Strand moved the City of Fargo pledge \$300,000.00 per year for 5 years to the Career Workforce Academy project beginning in 2020, contingent upon the Federal Grant being awarded.

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

Commissioners Gehrig and Piepkorn voted nay.

The motion was declared carried.



August 30, 2023

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

Re: Project Update – Main Avenue – University Drive to 25th Street
NDDOT Project No. NHU-CPU-8-010(046)938
City of Fargo Improvement District No. BR-23-A1
INFORMATIONAL ITEM

Staff and the consultant team will be providing an informational update on this important project. We plan to discuss the project timeline, design alternatives, and the path forward for the project. This discussion will be informative in nature and will bring you up to speed on the project, with no decisions expected at this meeting. We will plan on returning Monday, October 2nd with a formal recommendation on our preferred design alternative. There will be a NDDOT Management presentation meeting on Friday, October 6th where they are expected to make a decision on the project.

Representatives from Apex Engineering Group and SRF Consulting will be presenting their findings to date. There are four design alternatives to review between University Drive and 18th Street, and one to review west of 18th Street. The consultant team has done a good job of highlighting the pros and cons of each alternative. The alternatives between University Drive and 18th Street are:

1. 4-lane with building impacts
2. 4-lane with realignment and reduced building impacts
3. 4-lane with no building impacts
4. 3-lane

The one alternative between 18th Street and 25th Street is replacing the current 5-lane section with a narrower 5-lane section.

We will plan to highlight all important items regarding the project at the meeting. I look forward to the discussion.

Recommended Motion
None anticipated.

Respectfully,

Jeremy M. Gorden, PE, PTOE
Transportation Division Engineer



September 5, 2023

To: Board of City Commissioners
Fr: Michael Redlinger, City Administrator
Re: Recommendation to Appoint Susan Thompson as Director of Finance

Background: The City of Fargo recently advertised, recruited, and screened prospective candidates for the position of Director of Finance. A total of 14 applications were received for the position. Interviews were held on August 1, 2023 with three (3) candidates. Following this initial screening, two (2) candidates were invited to participate in a second interview with the City's selection committee on August 7, 2023.

Selection Committee: The selection committee formed to interview the candidates consisted of the following members:

- Dr. Timothy J. Mahoney, Mayor & Finance Department Liaison Commissioner
- Julie Bommelman, Transit Director
- Jordan Corneliusen, Finance Manager
- Brenda Derrig, Assistant City Administrator
- Dr. Terry Hogan, Director of Diversity, Equity, & Inclusion
- Jill Minette, Director of Human Resources
- Wyatt Papenfuss, Finance Manager
- Michael Redlinger, City Administrator
- Tanner Smedshammer, Purchasing Manager

Human Resources Department Facilitators

- Melissa Lura, Human Resources Manager
- Camila Van Dyke, Human Resources Manager

Following the interview process, screening of candidates, and a thorough due diligence process, I am recommending the appointment of Ms. Susan Thompson, Interim Finance Director, to the position of Director of Finance. City staff will introduce the Director of Finance-designee at the September 5, 2023 City Commission meeting and request consideration of Ms. Thompson's appointment to the position.

Recommended Action: Approve the appointment of Susan Thompson to the position of Director of Finance.

Attachment: Susan Thompson Resume

Cc: Jill Minette, Director of Human Resources
Camila Van Dyke, Human Resources Manager
Melissa Lura, Human Resources Manager

Susan J. Thompson



Financial Expertise Excellent Communicator Proven Supervisor Community Volunteer

Summary of Qualifications

Multi-talented & Highly Capable

Certified Public Accountant	Creative & Enthusiastic
Strong Financial Analysis Abilities	Dedicated, with a Strong Work Ethic
Thorough Understanding of Internal Controls	Talented Writer
Excellent Public Speaking Skills	Attentive to Detail
Experienced Staff Supervisor and Collaborator	Big picture perspective
Computer Proficient: Word, Excel, PowerPoint, MS Dynamics, FRx	

Professional Experience

Problem solver who Thrives on Challenges

Interim Director of Finance, City of Fargo June 2023 - current

New to role and department. Priorities include:

- Exceed expectations of colleagues at all levels: earn trust and respect; encourage creativity and fun.
- Educate and advise City leadership as they weigh financial decisions and establish policies.
- Aid Budget Team and senior leaders in finalizing City Budget in a balanced and timely manner.
- Foster collaboration and enthusiasm for implementation of a new multi-department ERP system.
- Continue as a resource for FARGODOME, including approval of the Remodel/Expansion project.

Director of Finance & Administration, FARGODOME/City of Fargo 1998- June 2023

- Prepared and discussed financial analysis with General Manager, Fargo Dome Authority, City of Fargo senior management, FARGODOME and City of Fargo Finance staff, and event promoters.
- Generated event settlements and profit & loss statement, with ongoing modifications for relevancy.
- Developed and presented annual \$8 million operating budget.
- Prepared year-end audit workpapers and responded to audit questions.
- Designed, implemented, and monitored appropriate control environment.
- Supervised accounting department, ticket office, payroll, and administrative office.
- Other Projects: developed financing plan, PowerPoint presentation, and script for proposed \$140 million FARGODOME Remodel and Expansion project (ongoing); prepared application, supporting documentation, and close-out processes for 2021 COVID award of \$4.7 million SBA Shuttered Venue Operators Grant; administered insurance claim on \$1 million COVID-related lost business income (2020); administered FEMA and insurance claims on \$7.5 million flood loss (2000); prepared/assessed Request for Proposal for Insurance Agent and reviewed annual renewals of property and liability insurance; prepared/assessed Request for Proposal for ticketing services and designed ticket revenue reconciliation processes; and facilitated two economic impact studies.

Significant Accomplishments:

- Implemented conversions of management structure, accounting systems, and service providers:
 - ✓ 1999: Y2K transition to Microsoft products - from Peachtree accounting software to MS Dynamics and FRx report writer; all desktop applications to MS Office Suite.
 - ✓ 2000: Ogden to Aramark – transitioned policies/procedures and corporate reports.
 - ✓ 2003: Aramark to Global Spectrum - transitioned from MS Dynamics to Global Spectrum’s MAS200 system and new chart of accounts; adopted processes to include new event-specific job-costing and onerous corporate reporting; and designed Board-specific financials to maintain consistent reporting. Conversion was a five-month project and seamless to the Fargo Dome Authority.

- ✓ 2011: Ticketmaster to Paciolan - developed new in-house ticket balancing processes.
 - ✓ 2016: Global Spectrum to City of Fargo - primarily focused on HR issues of matching staff to appropriate grade/step, benefits transition, FT/ PT hiring processes, and payroll.
 - ✓ 2016: MAS200 to MS Dynamics and FRx report writer – modified existing chart of accounts for simplicity and adjusted financial reports to provide clear and concise data.
 - ✓ 2021: Paciolan to Ticketmaster - developed new in-house balancing processes to incorporate significant new complications within the ticketing industry.
- Developed FARGODOME budget spreadsheets to capture nuances of event types such as event-specific revenues and unique expenses; designed budget presentations to educate on the budget process, revenue and expense assumptions, information sources, and industry trends.
 - Demonstrated ability to easily grasp the needs and responsibilities of other areas within the organization: interim leadership roles as marketing manager, ticket office manager, and administrative assistant. Hands-on participation in all departments: sold tickets; scanned tickets; ushered; addressed guest complaints; prepared and sold concessions; obtained Server Certification and sold alcohol; and assisted in housekeeping, event conversion, and parking.
 - Authored or edited significant documents on a regular basis. Examples include press releases for 2002 Economic Impact Study and Executive Summary for 2019 Economic Impact Study; tenant and advertising contracts and/or amendments; and FARGODOME annual reports.

Audit Officer, Community First Bankshares, Inc. (now Bank of the West) Fargo, ND 1996-1998
 Responsible for the Internal Audit Department’s annual financial review of Community First Bankshares, Inc., a \$6 billion dollar bank holding company with 150 banking locations in 10 states. Set audit scopes, hired/directed/evaluated audit staff, and prepared audit reports.

Significant Accomplishment: Facilitated transition from paper-based standard internal audit reviews to database driven, risk-based assessments of branch locations, banking services, and corporate processes.

National Bank Examiner, Comptroller of the Currency (US Treasury Dept) Fargo, ND 1990-1996
 Assessed financial condition, internal controls, compliance with laws, and management practices; wrote and presented examination conclusions; and supervised exam staff.

Significant Accomplishment: Passed commissioning exam (written knowledge test and role-playing skill assessment) on the first attempt at the minimum tenure required to take the exam (four years).

Activities & Interests

Community engaged with a Volunteer Spirit

Junior League of Fargo-Moorhead 1992-2015
 Advisor (2012), President (2003), President-Elect (2002), Finance VP (1994), Admin VP (1995)
 Chair: CHARACTER COUNTS (1997-1999), Next-to-New Sale (1997, 2002, 2005), and Reading Is Fundamental (1996); President’s Award (1994, 1998, 2011) and Volunteer of the Year (1999)

Fargo Theatre: Board Member, Treasurer, and Acting Bookkeeper 2003-2008
 Prepared detailed five-year budget and support schedules which were an integral part of a successful three-year Bush Grant totaling \$100,000 for expanded operations over three years (2008-2010).

Solid Gold Investment Club Hope Lutheran Church
 ND State Society of CPAs Industry Committee Chamber of Commerce Leadership F-M
 United Way of Cass-Clay: Women’s Leadership Committee & Community Review Committee

Education

Honors Graduate & Life-long Learner


MSU-Moorhead, Moorhead, MN BS Accounting; Business Admin concentration. Magna cum laude. IAVM Venue Management graduate.

Ongoing: Continuing Professional Education and other career-related training.

MEMORANDUM

36

TO: Fargo City Commission

FROM: Jim Gilmour, Director of Strategic Planning and Research 

DATE: August 31, 2023

SUBJECT: Extension of Agreement for NP Parking Garage

Enclosed for your consideration is a proposed Amendment to the Developer Agreement for the NP Avenue Project (602 NP Avenue) between the City and Great Plains NP Holdings, LLC. The amendment will not alter the substance of the project in any aspect—only certain deadlines will be extended. The principal extension being sought relates to the “closing” of the transactions that will deed the City-owned parking lot property and the Global Development-owned parking lot property to the Developer so that Developer can commence construction of the project. With this proposed extension, the deeding-over of the land to the Developer will move from a deadline of October 6, 2023, to April 22, 2024 (both dates being 21 days after the “Step I Contingencies Deadline” in the Developer Agreement). With that closing deadline being extended then, logically, other target dates and deadlines must be extended accordingly. For example, construction commencement is amended to May 1, 2024, and the anticipated Garage construction substantial completion date is extended accordingly, to August 1, 2025. Your attention is called to the proposed amendment for other details.

The original Developer Agreement was approved by the City Commission on November 14, 2022, with the tax increment financing component of the agreement having been approved by the parties on May 30, 2023. At the same time, certain deadlines and target dates were extended by approximately three months—into September 2023. The developer has explained that almost all design and pre-construction aspects of the project are complete or will be complete by the September deadlines; however, the developer requests the extension so that it will have additional time to receive the funding for their equity commitments. The Fargo Moorhead Community Theatre also supports the time extensions.

Other than the approximately six-month extension and related dates, the agreed-upon project remains unchanged. The maximum cost to the City for the construction of the public Parking Garage being constructed by the Developer remains the same—a guaranteed project cost of \$19,900,000. Project features remain unchanged: the Parking Garage providing between 450 to 490 parking spaces, a “Wrap” consisting of 120 to 200 apartments, approximately 2000 square feet of commercial space and a theater area of 25,000-35,000 square feet with the Fargo Moorhead Community Theatre being a required purchaser/owner of the theater unit of the project.

Representative(s) of the Developer and the Community Theatre will be present at the City Commission meeting for any comments or questions.

SUGGESTED MOTION: I move to approve the Third Amendment to Developer Agreement between the City and Great Plains NP Holdings, LLC, as presented.



August 28, 2023

FMCT Board of Directors

Daniel Damico, **President**

Mike LaMont, **Vice President**

Shelby Cochran, **Secretary**

Nicole Hjelden, **Treasurer**

Matthew Hallaway

Kirby Keller

Shelby Naser

Katie Maple

Hannah James

Executive Director

Judy Lewis

Finance Manager

Kimberly Rensvold

Community Engagement Director

Shanna Franzen

Education Director

Michaela Pytlik

City of Fargo
225 4th St N
Fargo, ND 58102

Attn: Mr. James Gilmour
Re: FMCT Update – NP Avenue Development Project

Dear Mr. Gilmour,

Thank you for allowing me once again to provide this project update on behalf of the Fargo Moorhead Community Theatre team and share our growing excitement about the Avery project.

During the last year we've accomplished some amazing things, and FMCT is committed to making this project the most beautiful theatre space in our region – through the expertise and hard work of The Kilbourne Group, ESG, Schuler Shook consulting, and FMCT, the theatre space has been thoughtfully conceived – it will be a place where everyone in our community will feel welcome and proud.

We've been working closely with the Kilbourne Group on the business details of our purchase agreement, so now, we're just waiting for the final draft from our attorneys and the terms will be settled. We're very excited and can hardly wait to make the Avery Building on NP Avenue in Downtown Fargo our new home. After speaking with the Kilbourne group about the project start date, we are aware of the extension in time they are requesting – this extension would benefit our efforts as well, so I wanted you to know that FMCT supports their request for an extension to March of 2024 and we would encourage you to please grant this request.

Thank you for your continued support of the Fargo Moorhead Community Theatre and believing in us as a valued partner. We believe that this project will benefit the entire community.

Sincerely,

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

Judy Lewis
Executive Director
Fargo Moorhead Community Theatre

Fargo Moorhead Community Theatre
PO Box 1349, Fargo, ND 58107-1349
701-235-1901 | fmct.org



Kilbourne Group
210 Broadway, Suite 300
Fargo, ND 58102
p: (701) 237-2279
e: info@kilbournegroup.com
www.kilbournegroup.com

August 21, 2023

Dear City Commission,

Kilbourne Group, FMCT, and the City of Fargo have made significant progress in the past year on the project. With all the stakeholders in this closing (City of Fargo, FMCT, Global, BNSF, NDSU, and Kilbourne Group), the closing is very complex with over 50 closing documents, and we continue to invest considerable time and money to prepare for a successful project that is well planned before we break ground.

We are requesting an extension of our development agreement for two reasons. The first is to complete the funding of our equity commitments. We have the commitments for the project equity but need additional time to have it funded. Second, with the complexity of this closing, additional time will allow us to have more details completed before we close.

Regards,

Mike Allmendinger

**THIRD AMENDMENT TO
DEVELOPER AGREEMENT**

[CITY OF FARGO and GREAT PLAINS NP HOLDINGS, LLC]

THIS AMENDMENT TO DEVELOPER AGREEMENT, dated as of September 5, 2023; is by and between the City of Fargo, a North Dakota municipal corporation (“City”), and Great Plains NP Holdings, LLC, a North Dakota Limited Liability Company (“Developer”); and provides as follows:

RECITALS:

WHEREAS, Developer and City have entered into a Development Agreement dated as of December 30, 2023 [hereinafter the “Development Agreement”] pertaining to a project commonly known as the NP Avenue Project or the “Project” and the parties entered into two amendments to the Development Agreement, the first and second amendments thereto, the effective date of each of said amendments was the 30th day of May, 2023; and,

WHEREAS, the Development Agreement contained certain contingencies for the benefit of Developer and certain contingencies for the benefit of the City and other obligations required to be performed within certain time limitations or deadlines; and,

WHEREAS, the parties wish to extend the Contingencies Deadlines and to modify, by amendment, certain other dates for the performance of certain specified obligation of one or more of the Parties; and,

WHEREAS, the parties wish to amend the Development Agreement, accordingly;

NOW, THEREFORE, in consideration of the foregoing Recitals, which are hereby incorporated into this Third 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.** The Developer’s Step I Contingencies Deadline, as set forth in Section 10.3(a) of Article 10 of the Development Agreement is hereby amended to be April 1, 2024.
- II.** The City Contingencies Deadline, as set forth in Section 10.1 of Article 10 of the Developer Agreement, is hereby amended to be April 8, 2024.
- III.** The Developer’s Step II Contingencies Deadline, as set forth in Section 10.3(b) of Article 10 of the Development Agreement, is hereby amended to be April 15, 2024.
- IV.** The Garage Work commencement date, as set forth in Subsection 4.1(d) of Article 4 of

the Development Agreement, is hereby amended to be on or about May 1, 2024.

- V. The sixth sentence of Subsection 4.1(d) of the Development Agreement provides:

“From and after all draw requests for Garage Work completed after June 1, 2024, have been processed and paid, City may, subject to the normal Change Order process, utilize all remaining City Contingency for items other than Special Conditions.”

The date in said sixth sentence shall be amended from June 1, 2024, to March 1, 2025.

- VI. The anticipated date of substantial completion for the Garage, as set forth in Section 9.1 of Article 9 of the Development Agreement, is hereby amended to be August 1, 2025.
- VII. The anticipated date of substantial completion for the Wrap, as set forth in Section 9.1 of Article 9 of the Development Agreement, is hereby amended to be June 1, 2026.
- VIII. The Master Project Schedule, Exhibit C to the Development Agreement that is referred to in Section 9.1 of Article 9 of the Development Agreement, is hereby amended by a revised such schedule labeled “Exhibit C” and attached to this Third Amendment to the Development Agreement as “Attachment A”
- IX. In all other respects the Development Agreement shall remain in full force and effect.
- X. Effective Date. This Amendment to Development Agreement shall be effective as of September 5, 2023.

IN WITNESS WHEREOF, the City and Developer have caused this Third Amendment to Developer Agreement to be executed by their duly authorized representatives.

[Execution pages to follow]

CITY OF FARGO
a North Dakota municipal corporation

(SEAL)

By _____
Timothy Mahoney, its Mayor

ATTEST:

By _____
Steven Sprague, City Auditor

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

The foregoing instrument was acknowledged before me this ____ day of _____, 2023, by Timothy Mahoney and Steven Sprague, the Mayor and City Auditor, respectively, of the City of Fargo, a North Dakota municipal corporation, on behalf of said City.

Notary Public

This document drafted by:

Erik R. Johnson
Assistant City Attorney
608 24th Ave S
Fargo, ND 58103
(701) 371-6850
ejohnson@lawfargo.com

GREAT PLAINS NP HOLDINGS, LLC

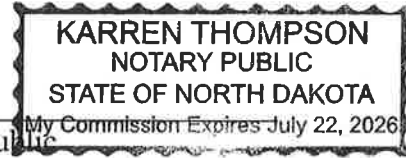
By: 

Bill Rothman

Its: Chief Financial Officer and Vice-president

STATE OF NORTH DAKOTA)
)
COUNTY OF CASS)

The foregoing instrument was acknowledged before me this 30th day of August 2023, by BILL ROTHMAN, the Chief Financial Officer and Vice-President of GREAT PLAINS NP HOLDINGS, LLC, a North Dakota limited liability company.



Notary Public

ATTACHMENT A
TO
THIRD AMENDMENT TO DEVELOPMENT AGREEMENT

Amended
Master Project Schedule
Exhibit C to Development Agreement

MASTER PROJECT SCHEDULE			
- Project Construction - Parking Garage	326d	05/01/24	07/30/25
Site Mobilization/Demo	4w	05/01/24	05/28/24
Piles	16w	05/29/24	09/17/24
Foundations	15w	07/10/24	10/22/24
Precast	16w	10/23/24	02/11/25
MEP	24w	02/12/25	07/29/25
Finishes	24w	02/12/25	07/29/25
Certificate of Occupancy	1d	07/30/25	07/30/25
- Project Construction - Mixed Use		05/01/24	05/27/26
Site Mobilization/Demo	4w	05/01/24	05/28/24
Piles	16w	05/29/24	09/17/24
Foundations	12w	07/10/24	10/01/24
Precast	6w	10/02/24	11/12/24
Framing	60w	11/13/24	01/06/26
MEP Rough-in	60w	02/05/25	03/31/26
Exteriors	40w	06/25/25	03/31/26
Finishes	60w	04/02/25	05/26/26
Certificate of Occupancy	1d	05/27/26	05/27/26



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Memorandum

DATE: September 5, 2023
TO: Mayor Mahoney and Board of City Commissioners
FROM: Shawn Ouradnik, Inspections Director
SUBJECT: Dangerous Building 437 23 St. S Fargo ND 58103

The property owner of 437 23 St. S Fargo ND, GUY THOMAS JR has requested an extension for the repair of the Dangerous Building at that address. This request is in line with section 8 of the AMENDMENT TO THE FINDINGS OF FACT, CONCLUSIONS AND ORDER. Section 8 reads as follows:

8. Thomas agrees and understands that the Property must secure a certificate of occupancy on or before September 30, 2023, unless such time is further extended in writing signed by the parties hereto at Thomas' request, such request to be made in writing to the city, detailing the reasons such extension is necessary.

The building was declared Dangerous and ordered repaired or removed by the Fargo City Commission in early August of 2022. After that order was issued, the property was sold to GUY THOMAS JR. Mr. Thomas provided the required engineering and documentation to repair the home and was granted an extension to repair the home by September 30, 2023, as evidenced by the enclosed Amendment to the Findings of Fact and Conclusions and Order. All previous Findings of Fact, Conclusions and Order, as well as the previous Amendment, will remain in full force and effect.

Mr. Thomas has worked on the building and produced acceptable results. He is requesting the extension for the following reasons:

- Issues with obtaining the supplies needed
- Procuring the needed professional contractors to complete the work.

The recommendation is **to direct the City Attorney to amend the Findings of Fact, Conclusions and Order to allow the completion of the project no later than October 30, 2023. At that time, if the work is not completed, it shall result in an administrative fine of \$50.00/day beyond the agreed upon end date, as referenced in the first Amendment to the Findings of Fact, Conclusions and Order. All previous Findings of Fact, Conclusions and Order, as well as the previous Amendment, will remain in full force and effect.**



**OFFICE OF THE
CITY ATTORNEY**

CITY ATTORNEY
Nancy J. Morris

SERKLAND LAW FIRM

10 Roberts Street North

P.O. Box 6017

Fargo, ND 58108

Phone: 701.232.8957 | Fax: 701.237.4049

ASSISTANT CITY ATTORNEYS

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

March 16, 2023

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

RE: Dangerous Building located at 437 23rd Street South, Fargo, North Dakota

Dear Commissioners,

Enclosed for your review and approval is the proposed Amendment to the Findings of Fact and Conclusions and Order regarding the dangerous building located at 437 23rd Street South. At its August 22, 2022 meeting, the Board declared the structure at the above-described property as a "dangerous building." The property was then sold to Guy Thomas on December 30, 2022 who requested the opportunity to cure the deficiencies to the dangerous building. The Board approved this request at its February 6, 2023 meeting and directed the City Attorney's Office to prepare the appropriate amendment. As such, I am remitting to you for your review and approval the proposed Amendment to the Findings of Fact and Conclusions and Order.

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

Sincerely,

Alissa R. Farol
Assistant City Attorney

Enclosure

cc: Shawn Ouradnik, Inspections Department

AMENDMENT TO
THE FINDINGS OF FACT, CONCLUSIONS AND ORDER

This **AMENDMENT**, by Agreement by and between the city of Fargo, a North Dakota municipal corporation and Guy Thomas (hereinafter “Thomas”) owner of the Property located at 437 23rd Street South, Fargo, ND 58103, hereby amends the **FINDINGS OF FACT AND CONCLUSIONS AND ORDER** of the Board of City Commissioners of the City of Fargo approved August 22, 2022, a copy of which is attached hereto and made a part hereof, as Exhibit 1, for the property located at 437 23rd Street South, Fargo, ND 58103 (hereinafter “property”).

WHEREAS, on December 30, 2022, the Property was sold to Thomas by Cascade Finding Mortgage Trust; and

WHEREAS, as the new owner, Thomas immediately sought to obtain permits to rehabilitate the Property; and

WHEREAS, Thomas’ permit requests were denied due to the Property having been designated a dangerous building, subject to demolition; and

WHEREAS, Thomas requested an extension and amendment to the dangerous building designation in order to ascertain whether rehabilitation of the Property was feasible, and if so an opportunity to rehabilitate the Property; and

WHEREAS, the Board of City Commissioners, pursuant to a recommended motion from the Inspections Director, agreed to consider such extension and amendment contingent on an agreement between City and Thomas that the property be rehabilitated on or before September 1, 2023.

NOW, THEREFORE, in consideration of the mutual promises, terms, covenants, and conditions, stated herein, the parties hereto agree as follows:

1. That on or before February 24, 2023, Thomas shall provide City a structural engineer’s report confirming the foundation of the property is able to be made structurally sound. Thomas agrees to undertake all necessary and appropriate steps identified by the structure engineers

prior to the issuance by City of any further and additional permits. Upon receipt of the structural engineer's report that the foundation of the Property is stable, Thomas may request building permits to rehabilitate the Property.

2. Thomas and his contractors may assess the Property for the sole purpose of analysis and if appropriate, foundation stabilization.

3. Thomas agrees that if permits are not secured and work commenced on or before March 30, 2023, the extension of the dangerous building finding is withdrawn and the City may proceed with the demolition of the Property, any time after March 31, 2023, with or without notice to Thomas.

4. Thomas agrees and understands that the dangerous building designation shall remain until such time as the Inspections Director determines such designation is no longer necessary, based on the amount of rehabilitation completed.

5. Thomas understands and agrees that all costs incurred by City thus far in the dangerous building process with respect to the Property are due and payable, in the amount of \$19,990, as evidenced by the invoice attached thereto as attachment 2. Thomas waives any and all objection to the assessment of the costs to the Property, and agrees all such costs are the property owner's responsibility.

6. Thomas understands and agrees that he may demolish the Property with proper permits, at his own cost, if he ultimately determines the Property cannot be rehabilitated and made code compliant, in the opinion of the Building Official, any time before March 31, 2023.

7. Thomas waives any and all claims, known or unknown, against the City, in exchange for the extension and opportunity to rehabilitate the Property which has legally been determined to be a dangerous building by the Board of City Commissioners of the city of Fargo.

8. Thomas agrees and understands that the Property must secure a certificate of occupancy on or before September 30, 2023, unless such time is further extended in writing signed by the parties hereto at Thomas' request, such request to be made in writing to the city, detailing the reasons such extension is necessary.

9. Thomas understands and agrees that failure to secure a certificate of occupancy by September 30, 2023, or within such time extension as agreed, shall result in an administrative fine of \$50.00/day beyond the agreed upon end date.

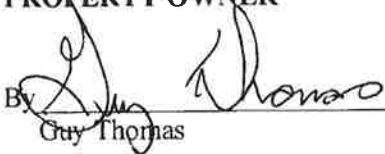
10. City agrees and understands it shall forego any further enforcement actions related to

the dangerous building designation in accordance with the terms of this Agreement and Amendment.

11. All other terms and amendments of the Findings, Conclusion and Order shall remain in full force and effect.

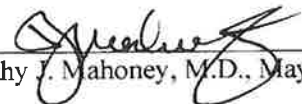
DATED this 5 day of March, 2023.

PROPERTY OWNER


By 
Guy Thomas

DATED this 20 day of March, 2023.

**BOARD of CITY COMMISSIONERS to the
CITY OF FARGO,**
a North Dakota municipal corporation

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

ATTEST:


Steven Sprague, City Auditor



Shawn Ouradnik

From: gt jr <uncleguy@hotmail.com>
Sent: Wednesday, August 30, 2023 11:53 AM
To: Shawn Ouradnik; dridmann@fargond.gov
Subject: Fwd: 437 23rd St. S








CAUTION: This email originated from an outside source. Do not click links or open attachments unless you know they are safe.

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From: gt jr <uncleguy@hotmail.com>
Date: Aug 30, 2023 11:49 AM
Subject: Fwd: 437 23rd St. S
To: SOuradnik@cityoffargond.net
Cc:

----- Forwarded message -----

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685f7.templateTenant>
Date: Aug 28, 2023 10:17 PM
Subject: 437 23rd St. S
To: SOuradnick@cityoffargond.gov
Cc: uncleguy@hotmail.com

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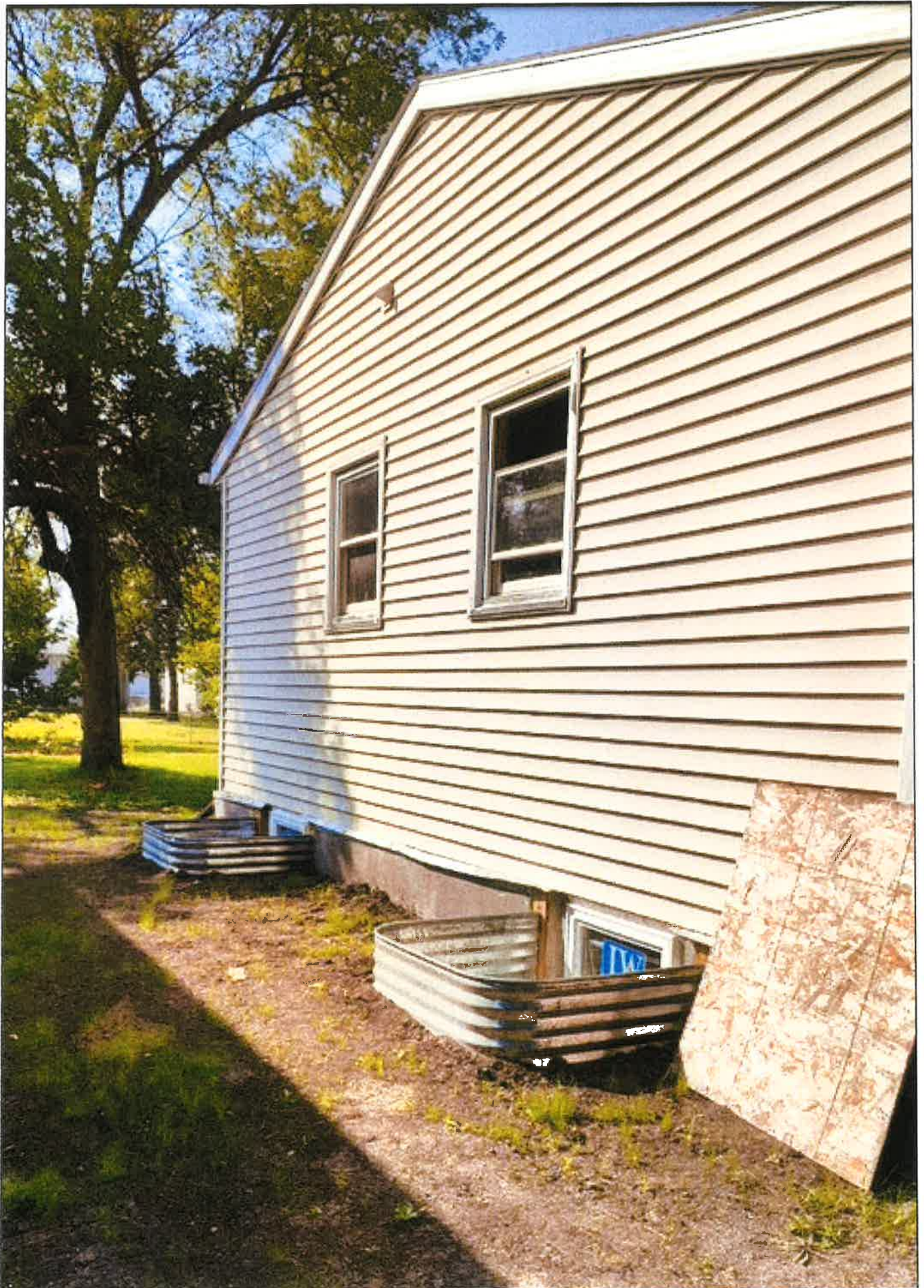
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Hello Mr. Ouradnick: I also want to address whomever is also getting this letter. This letter is pertaining to asking you and the city Commissioner's to grant me an extension on the residence or 437 23rd St .S in Fargo. I've been working diligently, as I have got trees removed all but one. I've got the basement looked at by a structural engineer! which I've given you copies of his findings. Which then i was finally was let in to see what needed done. I obtained a license and bonded foundation company , which they completed their work in a months' time once the weather cooperated. Then once the foundation was structurally safe i could obtain the permits which i needed to proceed. I removed all the left hazardous framing .Which demolition proceeded ; I hired a tree company to come remove dangerous trees ! Which from the pictures added will show the front yard is open and the back yard as well! I've got all the framing done and has been looked at! I've gotten all the electrical done which entailed a new service and wiring the whole house! Which has been inspected got a new sewer line and water line installed from being removed.. All sewer and plumbing have been completed . Which pictures added will show the plumbing , which entails drains and water lines! it's also has been inspected! So, after all this plus dealing with bad weather when started this project and waiting on legal papers from city's attorney! so got a late start! I'm having an issue with getting my mechanical finished! The Furnace and central air is in but he tinning isn't completed! M HVAC person has gotten ill But I'm still working on other things! i got insulation on the ceilings and walls on main floor which is shown in pictures! I've ordered my cabinets for kitchen, which are taking extra time! I will be hanging drywall were allowed and has been inspected! Two egress windows have been installed and inspected I'm not stopping but delays and finding the people to complete what's left has got me on a time crunch! I'm asking for an extension of time to finish this project! I'm thinking 3 months! My intention is to be completed by then! I've got a lot of money and time into this project and hope to have an affordable house either to rent or sale I've been very busy to try to complete by the deadline but with delays and finding bonded and licensed personnel has taken some extra time! I'd appreciate some more time granted ! I've added pictures to show how the house is coming along and i have the neighbor's approval for what I've done to improve this house and neighborhood! An acceptance to this time demand . would be greatly appreciated! Thank you ! Guy Thomas

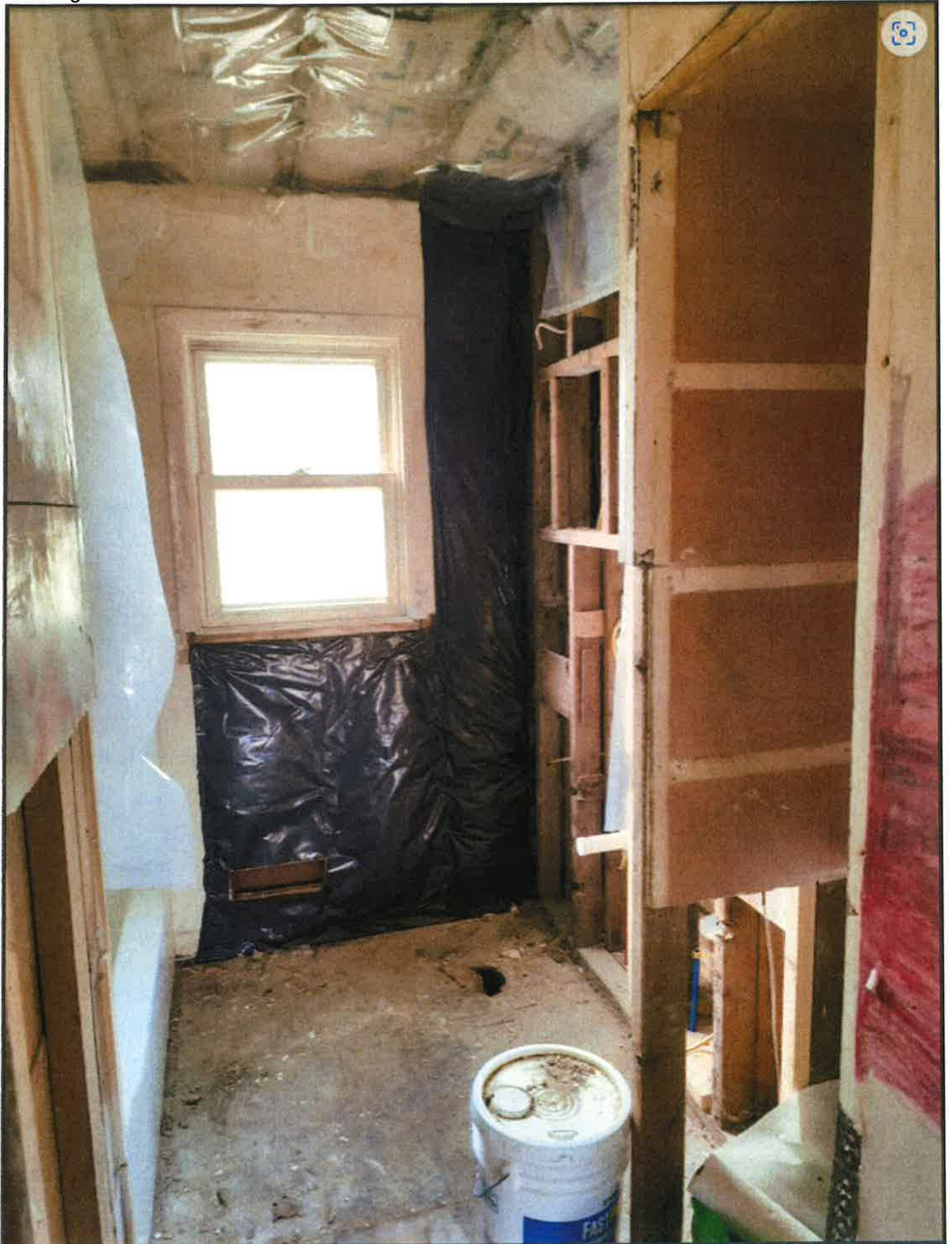




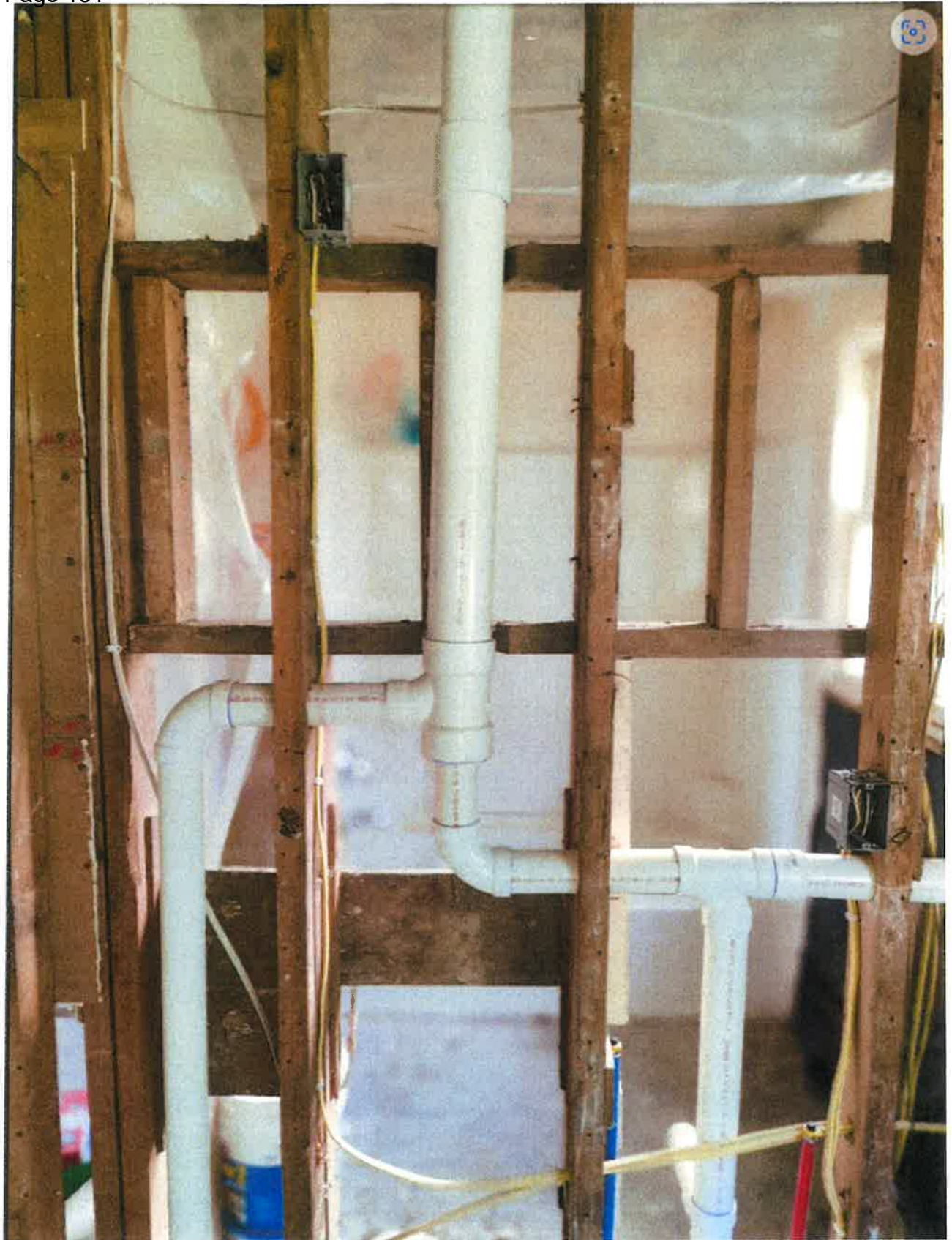












Glen Pederson

441 23rd St S
Fargo, North Dakota 58103
Phone: (931) 561-5726

▶ **Shawn Ouradnick**

Fargo Inspection
Phone:

Sir

My Name is Glen Pederson, I live a 441 23 Street S Fargo North Dakota 58103. I am writing to you in regard to Guy who has bought the house at 437 23 Street S Fargo North Dakota 58103. I have watched Guy work on the house and improve the house's appearance and the lands beautifully transformation. I even passed my own house by accident because I was going by land marks instead of my address. Everything that he has done so far has increased the beauty of the neighborhood. He still has a long way to go, and I feel that he would completely turn the house and the neighborhood around to where a young family would live in the house for years to come. Please Grant him an extension to complete the work that he has started.

Thank you for your time and everything you do for the community!

Glen Pederson
Neighbor
08/30/2023

CITY ATTORNEY

Nancy J. Morris

ASSISTANT CITY ATTORNEYS

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

38

August 31, 2023

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

RE: Agreement on Use of Opioid Settlement Funds

Dear Commissioners:

Enclosed for your approval is an Agreement on the Use of Opioid Settlement Funds between the City of Fargo, City of West Fargo, County of Cass, and Fargo Cass Public Health ("FCPH"). This Agreement provides that Fargo, West Fargo, and Cass County will provide all of the moneys they have received and will receive from opioid litigation to FCPH.

As you may recall, the City is involved in multiple lawsuits against manufacturers, distributors, sellers, and others relating to the role of these parties in contributing to the opioid crisis in Fargo (the "Opioid Litigation"). The City has settled some of their claims in the Opioid Litigation and as a result has received moneys as part of settling these claims and continues to expect to receive moneys in the future from these settlements and future settlement/or judgments. The same is true for West Fargo and Cass County. To date, the City has received \$203,226.87.

In the 2023, the North Dakota Legislature enacted North Dakota Century Code ch. 50-36 which provides that political subdivisions, such as the City, that recover moneys as a result of opioid litigation may either (1) deposit the moneys in the State of North Dakota's opioid abatement fund or (2) may retain the moneys and transfer the moneys to the public health unit that provides services to the political subdivision. FCPH is the public health unit for Fargo, West Fargo, and Cass County. As such, the City has the decision of whether to provide its settlement funds to FCPH or to the State.

The enclosed Agreement provides that Fargo, West Fargo, and Cass County are providing all of the moneys they have received to date and will receive moving forward to FCPH. The Agreement also provides the parties will collaborate and work together to ensure they comply with all applicable laws and the various settlement agreements.

I am also enclosing a copy of FCPH's plan on how it contemplates spending the opioid settlement funds received to date and moving forward.

Suggest Motion. I move to approve the Agreement on Use of Opioid Settlement Funds.

Sincerely,

A handwritten signature in black ink, appearing to read "Ian McLean", with a long horizontal flourish extending to the right.

Ian R. McLean

Assistant City Attorney

Enc.

cc: Desi Fleming – Director of Public Health at Fargo Cass Public Health

AGREEMENT ON USE OF OPIOID SETTLEMENT FUNDS

THIS AGREEMENT (“Agreement”) is made and entered into as of September 1, 2023, by and between the City of Fargo (“Fargo”), City of West Fargo (“West Fargo”), County of Cass, North Dakota (“Cass County”), and Fargo Cass Public Health (“FCPH”).

RECITALS

WHEREAS, Fargo, West Fargo, and Cass County are political subdivisions of the State of North Dakota (collectively the “Political Subdivisions”);

WHEREAS, the Political Subdivisions are plaintiffs in multiple lawsuits against manufacturers, distributors, sellers, and others relating to the role of the defendants in contributing to the opioid crisis in Fargo, West Fargo, and Cass County (the “Opioid Litigation”);

WHEREAS, the Political Subdivisions have settled some of their claims in the Opioid Litigation and continue to litigate and discuss settlement on the remainder of their claims in the Opioid Litigation. As a result, the Political Subdivisions have received moneys as part of settling various claims in the Opioid Litigation and continue to expect to receive monies in the future from these settlements and future settlements and/or judgments;

WHEREAS, North Dakota has enacted North Dakota Century Code ch. 50-36 which relates to opioid settlements. Pursuant to N.D.C.C. § 50-36-06(1), a political subdivision that recovers moneys as a result of opioid litigation may deposit the moneys in the State of North Dakota’s opioid abatement fund or may retain the moneys and transfer the moneys to the public health unit that provides services to the political subdivision;

WHEREAS, FCPH is the public health unit which provides services to the Political Subdivisions. The Political Subdivisions desire and intend to retain their moneys from the Opioid Litigation and transfer the moneys to FCPH as allowed by N.D.C.C § 50-36-06.

WHEREAS, pursuant to N.D.C.C. § 50-36-06(2), a political subdivision that recovers and retains moneys as a result of opioid litigation shall collaborate with a public health unit on the use of moneys for local programs for remediating and abating the opioid crisis. The use of moneys must be in compliance with any court-ordered restrictions (i.e., must be spent on opioid abatement).

WHEREAS, the Political Subdivisions desire and intend to collaborate with FCPH on the use of the moneys for local programs for remediating and abating the opioid crisis.

WHEREAS, pursuant to N.D.C.C. § 50-36-06(3), all political subdivisions must provide an allocation plan to the behavioral health division prior to expenditure.

WHEREAS, the Parties enter into this Agreement to fulfill their obligations pursuant to N.D.C.C. ch. 50-36 and to comply with the settlement agreements reached thus far in the Opioid Litigation.

AGREEMENT

- A. The Political Subdivisions agree that they will retain all moneys collected in the Opioid Litigation and transfer all moneys to FCPH.
- B. The Parties agree that they shall collaborate on the use of the moneys for local programs for remediating and abating the opioid crisis including collaborating on the agreed upon mitigation plan.
- C. The Parties agree that they shall work together to comply with all court-ordered restrictions and to comply with the various requirements in the settlement agreements which have been reached in the Opioid Litigation to ensure that the moneys are spent on opioid remediation and abatement. The Parties agree to work together to ensure that all reporting requirements, if any, are met.
- D. The Parties agree to provide an allocation plan to the Behavioral Health Division of the State of North Dakota's Department of Health and Human Services prior to expenditures.
- E. Term of Agreement. This Agreement shall remain in place until all the Opioid Litigation has been resolved and all moneys recovered have been collected and utilized.
- F. Jurisdiction. This Agreement shall be interpreted, construed, and enforced in all respects in accordance with the laws in force under the State of North Dakota and the Parties consent to the Courts of Cass County North Dakota as the exclusive and sole courts with jurisdiction and authority to resolve any disputes over the Agreement, its implementation or enforcement.
- G. Amendments. No amendments to this Agreement shall be effective unless in writing and signed by all Parties. The Parties agree to amend this Agreement as necessary to comply with any changes in applicable laws and regulations.

- H. Entire Agreement. The entire agreement of the parties with respect to this matter is contained in this agreement, which supersedes all oral agreements, writings, and negotiations between the parties.

(The remainder of this page is intentionally left blank – Signature pages follow)

THE CITY OF FARGO, NORTH DAKOTA,
a municipal corporation

By: _____
TIMOTHY J. MAHONEY, Mayor

ATTEST:

STEVEN SPRAGUE, City Auditor

THE CITY OF WEST FARGO, NORTH DAKOTA,
a municipal corporation

By: _____
BERNIE L. DARDIS, President of the
Board of City Commissioners

ATTEST:

Deputy City Auditor

CASS COUNTY, NORTH DAKOTA,

By: _____
CHAD PETERSON, Chair of the Board of
County Commissioners

ATTEST:

Brandy Madrigga, Finance Director

FARGO CASS PUBLIC HEALTH

By: _____
Desi Fleming, Director of Public Health

Fargo Cass



Public Health
Prevent. Promote. Protect.

Opioid Response Work Background, Opioid Settlement Funds Plan & Future Strategies Proposal

Background

Fargo Cass Public Health (FCPH) began opioid response work the summer of 2016. FCPH's substance abuse prevention coordinator was assigned to this work 20 hours per week. A city commissioner, the public health director, and health officer were also very involved in leading the response. The City of Fargo provided \$50,000 in general funds to address the opioid crisis locally, and has continued to dedicate \$50,000 annually to FCPH for this purpose. In August 2017, FCPH received an opioid response grant from the North Dakota Department of Human Services, Behavioral Health Division (BHD). FCPH has received varying amounts of opioid response funds from BHD ever since.

In November 2017, FCPH placed Narcan in all Cass county schools and provided training to school staff. In March 2018, FCPH hosted the region's first public opioid overdose response and naloxone administration training. In April 2018, FCPH hosted the region's first peer recovery coach training, and opened the Harm Reduction Center. These are just a few of many early successes in FCPH's opioid response. FCPH has been a leader in opioid response and has provided presentations, training, and technical assistance to programs throughout the country.

During the grant's most recent fiscal year- October 2021 thru September 2022- FCPH promoted prevention and anti-stigma campaigns, reduced access to prescription drugs, provided opioid overdose response and naloxone administration training, distributed naloxone, reduced barriers to treatment, operated a syringe services program, and implemented the Narcan Leave Behind Program and the ONE Program.

FCPH promoted the substance use prevention program ParentsLead.org by creating 121 social media posts reaching 20,525, participating in two booths and one news conference, and distributing 1,079 promotional materials.

An overdose prevention campaign resulted in 130 social media posts reaching 55,635, 13 news stories, production of a video, and numerous International Overdose Awareness Day activities.

A substance use disorder stigma-reduction campaign produced 58 social media posts reaching 13,809.

FCPH reduced access to prescription opioids by creating 67 medication disposal education social media posts reaching 12,520, participating in two booths at community events, and distributing 710 Deterra medication disposal bags.

FCPH conducted 63 opioid overdose response trainings, resulting in 743 individuals trained. A total of 3,797 naloxone kits with 7,594 doses were distributed. There were 1,076 reported doses of naloxone administered resulting in 553 opioid overdose reversals using naloxone from FCPH.

Nasal Narcan, a form of naloxone, is provided by FCPH to first responders including the Fargo, West Fargo, and NDSU Police Departments, the Cass County Sheriff's Office, and the Fargo and West Fargo Fire Departments. Public libraries and municipal buildings in Fargo and West Fargo, and all school

districts in Cass County have Narcan. Hundreds of other organizations have also received training and Narcan, and any organization or individual in Cass County can receive both for free. Naloxone is also distributed at the Harm Reduction Center in downtown Fargo. Most individuals receiving naloxone at the Harm Reduction Center are participants in the Syringe Services Program.

A stigma-reduction campaign for Syringe Services Programs (SSP) yielded 136 social media posts reaching 35,244. Nine presentations reaching 233 individuals educated about SSPs.

FCPH's SSP had 5,798 visits serving 976 individuals, including 368 new enrollees. Program participants received referrals, education, and supplies. Referrals were given for substance use disorder treatment, healthcare, opioid use disorder medication providers, behavioral health services, social services, shelter, food pantries, and more. Onsite testing and education for HIV and hepatitis C were provided, as well as education on harm reduction, safer sex, proper sharps disposal, and opioid overdose response and naloxone administration. The program supplied safer injection and safer sex supplies, naloxone, fentanyl testing strips, sharps disposal containers, and COVID-19 at-home tests. A total of 5,585 doses of naloxone were provided. The past two years (2021-2022), a life was saved 920 times when an opioid overdose was reversed using naloxone provided through this program. June thru September 2022, 770 fentanyl testing strips were provided. This program is only partially funded thru the BHD grant, with the City of Fargo covering the remaining costs.

To reduce barriers to treatment, FCPH provided cab rides to the Opioid Treatment Program for patients unable to afford transportation to onsite daily medication dosing. Hundreds of rides were provided each month; an average of 7 individuals received rides monthly.

FCPH implemented the Opioid & Naloxone Education (ONE) Program in April. Through this program, home health nurses screened patients with a prescription opioid and provide education, resources, and support to ensure safe opioid use. April thru September 2022, 180 clients were screened, and 16 medication lock boxes and 36 Deterra medication disposal bags were provided. Six patients received opioid misuse and overdose prevention education, and Narcan.

In July 2022, FCPH implemented the Narcan Leave Behind Program with the Fargo and West Fargo Fire Departments. At overdose scenes, firefighters leave Narcan with willing individuals, as well as links to resources like Narcan training, treatment options, and requests for additional Narcan.

This current fiscal year- October 2022 thru September 2023- FCPH is continuing activities from the previous fiscal year. There are currently three fulltime positions solely dedicated to opioid response work, with several additional staff providing support ranging from a few hours per month to several hours a week.

Opioid Settlement Funds Plan

FCPH proposes Opioid Settlement funds be used for the following mitigation plan:

1. Sponsor a community opioid response coalition beginning April 2023.
 - a. Provide staff to coordinate a community opioid response coalition.
 - b. Solicit and maintain membership from key community sectors.
 - c. Hold monthly coalition meetings.
 - d. Utilize coalition to advise/plan opioid response activities.
2. Distribute naloxone throughout the community and train on use, with a focus on high-risk groups.

- a. Provide naloxone to first responders including law enforcement agencies and fire departments.
 - b. Leave naloxone behind at scenes of overdose emergency calls.
 - c. Provide naloxone to individuals being released from treatment and incarceration.
 - d. Provide naloxone to persons who use prescription and illicit opioids.
 - e. Work with pharmacies to provide no-cost naloxone to patients who cannot afford it.
 - f. Provide naloxone to organizations that serve high-risk individuals.
 - g. Research the use of vending machines for low-barrier distribution of naloxone.
3. Maintain a comprehensive, needs-based harm reduction program for persons who use drugs.
- a. Offer harm reduction supplies including syringes, safer use supplies, wound care supplies, naloxone, fentanyl testing strips, sharps containers, and safer sex supplies.
 - b. Provide services, education and training including safer injection education, overdose response training, naloxone training, safer sex education, education on HIV, hepatitis C and STIs, rapid HIV and hepatitis C testing, immunizations, and sharps disposal.
 - c. Provide referrals to treatment, healthcare, behavioral health, housing, employment, and social services.
 - d. Explore and implement new and promising practices for harm reduction programming as funding allows.

Future Strategies Proposal

Dependent on funding and collaboration between FCPH and partnering agencies, two other opioid mitigation strategies could be implemented, including the establishment of an overdose response team, and naloxone distribution to incarcerated individuals upon release.

Drug overdose is the leading cause of death after release from prison. Data show the increased risk of overdose for those newly released from incarceration and the effectiveness of naloxone distribution to prevent it. According to the CDC, a large meta-analysis of data from several different nations found that individuals released from incarceration experience a three to eight-fold increase in the rate of overdose death in the first two weeks after release compared to weeks three through twelve following release. Further, a study conducted by the Massachusetts Department of Public Health found that individuals recently released from incarceration are 56 times more likely to overdose than members of the general public, indicating urgent need to scale up overdose prevention services for this population. Also according to the CDC, an evidence-based strategy for preventing opioid overdose is to distribute naloxone in criminal justice settings upon release.

With Cass County approval, FCPH proposes to provide opioid overdose prevention and Narcan administration training to inmates prior to release, and have jail staff distribute Narcan to inmates upon release. Naloxone distribution to inmates upon release has been successfully implemented by the ND Department of Corrections and Rehabilitation at the State Penitentiary in Bismarck, and at some county jails including in Richland County.

FCPH also proposes implementation of an overdose outreach team to prevent overdose recurrence. Overdoses and deaths from overdose are preventable, there are effective forms of treatment for substance use disorders, and recovery is possible.

This solution is currently being successfully delivered. In response to the opioid crisis, many communities have implemented overdose outreach programs to reduce overdoses and deaths from overdose. Programs like Police Assisted Addiction and Recovery Initiative (PAARI), Drug Abuse Response Teams (DART), and Quick Response Teams (QRT) include timely follow up with overdose survivors to provide resources for overdose prevention, harm reduction, treatment and recovery. Outreach is most effective 24–72 hours post overdose.

This program would greatly enhance the community’s response to drug overdose. Currently, comprehensive and coordinated response to survivors of a non-fatal overdose does not exist in Cass County. Examples of current responses include police officers advising overdose survivors to “get some help” and emergency departments treating, stabilizing and discharging them. As a result, some family and friends of persons who use drugs contact law enforcement begging to have their loved ones arrested and incarcerated so they don’t die of an overdose. The police department does not have the time or resources to provide overdose outreach and gladly welcomes assistance in this area.

This program would establish structure and resources for providing coordinated efforts among all committed stakeholders and agencies in Cass County. This includes staff dedicated to coordinate the program and provide outreach. Coordination with overdose survivors, family members, first responders, law enforcement, emergency department staff, and service providers is essential. Outreach staff will provide a number of services including training on opioid overdose response and Narcan administration; dissemination of Narcan kits for persons who use drugs, family, and friends; instruction on harm reduction practices and distribution of supplies; referral to treatment, offering peer recovery coaching; and linkage to other resources including transportation, housing, and medical care.

This program would be a multi-disciplinary, collaborative approach to addressing the needs of individuals with a history of drug misuse. Partners would include law enforcement, major healthcare systems, the opioid treatment program, treatment providers, behavioral health service providers, recovery services, and others.

FCPH would dedicate staff to coordinate the program and provide outreach. Staff will guide program planning and implementation, and convene regular stakeholder discussions to ensure continued project implementation and redirection if needed.

A trained peer recovery coach would be utilized to connect with survivors of a non-fatal overdose within 72 hours in an effort to engage the survivor in treatment and support services. The recovery coach will also provide survivors of non-fatal overdoses, and their friends and family, Narcan and training on administration, as well as support services. The project will work to provide access to detox, treatment services and medication-assisted treatment.

If feasible, implementation of naloxone distribution upon release from incarceration, and the establishment of an overdose response team would greatly enhance the community’s opioid overdose prevention efforts.

CITY OF Fargo Fire Department

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MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

FROM: FIRE CHIEF STEVE DIRKSEN, ASSISTANT CITY ATTORNEY ERIK JOHNSON

DATE: AUGUST 31, 2023

SUBJECT: RED RIVER REGIONAL DISPATCH CENTER USE OF CITY LAND

At the June 12, 2023 Commission meeting you authorized staff to work on a lease agreement with the RRRDC to facilitate construction of a new dispatch center on City of Fargo property. The work has been completed on the agreement and we present it to you for approval.

The location of the RRRDC will be located on City of Fargo owned land adjacent to the Public Safety Building at 4630 15th Ave N.

RECOMMENDED MOTION: Approve the ground lease agreement with the Red River Regional Dispatch Center to allow construction of a new dispatch center on City owned property located adjacent to 4630 15th Ave. N.

EXECUTIVE SUMMARY – GROUND LEASE

RRRDC DISPATCH CENTER SITE – CITY OF FARGO

Initial Executive Summary: August 10, 2023

Updated Executive Summary: August 24, 2023

The Fargo City Commission has approved the use of the area lying east of the Fargo Public Safety Building by the RRRDC for the new dispatch center. Erik Johnson has visited with City of Fargo staff members regarding basic terms of a long-term Ground Lease. Essential components of the draft ground lease are as follows:

- The ground lease will be a parcel two acres in size, more or less. RRRDC's architect will prepare a description of the two-acre site.
- The term of the ground lease would be 50 years but would be terminated sooner if/when the RRRDC no longer uses it as a dispatch center.
- The RRRDC would own and operate the building and improvements.
- RRRDC would pay \$1 for the entire 50-year term of the lease; however, if the Cass County 9-1-1 surcharge were discontinued and, thus, Cass County discontinued covering the cost-share for Fargo and West Fargo, then an appropriate market-based rent would be established. Similarly, in the unlikely event that the City of Fargo were no longer a member of the RRRDC joint powers entity, a market-based rent would be established.
- Terms of this Ground Lease have been revised, to accommodate comments made during the August 10th Bd of Authority meeting.
- If, during the final 25 years of the initial 50-year "Term" of the lease, the RRRDC invests substantial funds into improvements to the New Dispatch Center Building and Improvements (i.e. a sum equal to at least 50% of the then-value of the Building and Improvements), then the Lease may be extended by additional 25-years at the option of the RRRDC.
- City may not sell the land during initial 50-year term without prior consent from RRRDC.
- After 50 years, City's must offer the land for sale to the RRRDC before it markets the land to any 3rd party. Sale would be at "appraised value" as determined by pre-approved certified appraiser. City can withdraw sale if it dislikes the appraiser's value but City would do so at the penalty of being prohibited from a sale to anyone else for at least two years. If RRRDC wishes to do so, it can assign the right to buy the land to one of its member entities (i.e. Cass County, as suggested during the August 10th meeting).
- During final ten years of Lease, RRRDC has right to purchase the building and other improvements at appraised value (similar process to above).

This right to purchase cannot be assigned to a member entity, however. See Article 7. The result of such purchase of the building and other improvements would be that the RRRDC would become the owner of the land and the building (and other improvements).

- Shared use of driveway entrance off 15th Avenue and shared use of parking area for Public Safety Building . This Lease, in Article 8, describes “equitable” allocation of cost of maintenance of such shared pavements to the Lessee, the RRRDC.
-
- Upon termination of the ground lease, ownership of the building would turn-over to the City of Fargo or the City could opt to ask RRRDC to demolish the building and restore the site.
- Memorandum of Ground Lease to be prepared. Said Memorandum should specify that the Lease gives the Lessee the option to purchase the Premises before a third party could purchase it, so that such option is recorded against the Premises and, if a 3rd party purchases the Premises, the market-rate rent sum must be acknowledged and agreed between RRRDC and the 3rd party purchaser.
- Please note Drafter’s Comment beneath Section 5.3 suggesting that the Joint Powers Agreement can be amended to add the “supermajority vote” requirement for decisions by the Board of Authority of RRRDC pertaining to purchase of the land from the City of Fargo. Such amendment would require approval by city commissions/councils and county commissions of all five member entities.

GROUND LEASE

THIS GROUND LEASE (this "Lease") is entered into by and between the City of Fargo, a North Dakota municipal corporation, 425 4th Street North, Fargo, North Dakota ("Lessor" or "City"), and the Red River Regional Dispatch Center, a North Dakota and Minnesota joint powers entity and a political subdivision, 300 NP Avenue, Fargo, North Dakota, of ("Lessee" or "RRRDC").

WHEREAS, the City is the owner of certain real property situate in the City of Fargo, County of Cass and State of North Dakota, more fully described as:

Lot One (1) of Block Two (2) of Sheyenne Industrial 3rd Addition to the City of Fargo, less the south twenty-five feet thereof [VERIFY LEGAL DESCRIPTION WITH SURVEYOR/TITLE ABSTRACT],

the address for which is 4630 15th Avenue North, Fargo, North Dakota [the "City-Owned Land"] and which premises are more fully described on the drawing attached hereto as Exhibit A; and,

WHEREAS, the City is one of the political subdivisions, currently five in number, of either the State of North Dakota or the State of Minnesota that is a member entity in the RRRDC; and,

WHEREAS, it is the desire of the City and RRRDC that the RRRDC lease from the City a portion of the City-owned Land, which portion is described as:

[[Insert legal description for RRRDC Dispatch Site Property]]

referred to herein as either the "Premises," which is also depicted on said Exhibit A, and thereafter for the RRRDC to construct upon said Premises a new dispatch center facility and related improvements [the "New Dispatch Center"] and thereafter to own and operate the New Dispatch Center lying and being upon the Premises; and,

WHEREAS, the City owns and operates a fire station, commonly referred to as Fire Station No. 6 and a public safety operations center commonly referred to as the Public Safety Building, both of which are located upon the City-Owned Land lying westerly of the Premises, and, with respect to the Public Safety Building is served by two driveway approaches entering off 15th Avenue North and by a motor vehicle parking area lying north of the building; and it is the desire of the City and RRRDC that use of the eastern-most driveway and the said parking area be shared by the invitees and guests of the Public Safety Building and the Dispatch Center; and,

WHEREAS, it is the desire of the RRRDC and the City that the RRRDC lease from the City the Premises for a period of years by which the RRRDC can build a new dispatch center facility, and related improvements, on the site and thereafter to own, maintain and operate the dispatch facility;

NOW, THEREFORE, the City, as Lessor, and the RRRDC, as Lessee, hereby agree:

Article 1 Lease of Premises

- 1.1 Premises Leased. Lessor, in consideration of the rents, covenants, agreements and conditions herein set forth, hereby leases to Lessee, and Lessee hereby rents and leases from Lessor, the Premises together with all of Lessor's rights, interests, estates and appurtenances thereto, all improvements now or hereafter thereon.
- 1.2 Premises. The Premises includes the rights, interests, estates, and appurtenances leased to Lessee pursuant to Section 1.1, together with all improvements now or hereafter constructed thereon
- 1.3 Habendum. TO HAVE AND TO HOLD the Premises, together with all and singular the rights, privileges and appurtenances thereunto attaching or in anywise belonging, exclusively unto Lessee, its successors, and assigns, for the term set forth in Article 2, subject to termination as herein provided, and subject to and upon the covenants, agreements, terms, provisions and limitations herein set forth.
- 1.4 Shared Use of North Driveway and Parking Area. As a part of this Lease, Lessee shall also have right to use in common with other invitees and guests the driveway entrance and driveway thoroughfare off 15th Avenue North that serves the Public Safety Property, the area of which is depicted on the Exhibit A, and for invitees and guests of the RRRDC to be able to use northerly parking facilities on the Public Safety Property, the location of which is also depicted on Exhibit A as the "Shared Parking Area", upon the terms and conditions contained in this Lease.

Article 2 Term of the Lease

- 2.1 Term. The term of this Lease shall commence on _____ and shall continue in full force and effect so long as the Premises continue to be used as a public safety dispatch center but not to exceed a term of FIFTY (50) years, from and after the Effective Date hereof, subject to any further extension of the Lease as set forth herein.
- 2.2 Extension of Lease—Option of Lessee upon Substantial Improvement. If at any time during the final twenty-five (25) years of the initial fifty (50) year period of this Lease, the Lessee elects to make improvements to the Premises, including improvements to the building to be constructed as provided in Article 7, and the value of the improvements exceeds a sum equal to fifty-percent of the value of the Premises, not including the value of the Land, then Lessee shall be entitled to

an extension of this Lease by a term of no less than twenty-five (25) years in addition to the initial 50-year term hereof.

- 2.3 Extension of Lease by Mutual Agreement. This Lease may be extended from and after the initial Term , or any extension thereof, by mutual agreement of the parties upon such terms and for such period as may be mutually agreed in writing.

Article 3 Rent

- 3.1 Rent. As and for rental for the premises Lessee shall pay to Lessor a single payment of One and no/100 Dollars (\$1.00) for the term of this Lease; provided, however, that such rent shall be modified to a month sum to be determined by reasonable agreement of the parties based upon the market rate of industrial-zoned property in the community in either of two specified events: (1) in the event that the City's status as a member entity in the RRRDC is terminated, either voluntarily or involuntarily, or (2) in the event that the cost share for annual operational costs for the cities of West Fargo and Fargo are no longer covered by a North Dakota 9-1-1 fee collected by Cass County, as provided in Section 12.05 of the RRRDC Joint Powers Agreement and, therefore, the City of Fargo resumes paying an allocation percentage generally based upon the Metro-COG formula, or some other similar formula.

Article 4 Taxes, Utilities

- 4.1 Taxes. Lessee will pay all taxes and assessments, general and special, water and sewer charges and all other impositions, ordinary and extraordinary which may be levied, assessed or imposed upon the premises, including any buildings now or hereafter situated thereon, becoming due and payable during the term of this Lease, together with interest thereon. Lessee will pay all such taxes, assessments, charges and impositions before they become delinquent.
- 4.2 Lessor, at Lessor's option, has the right at all times during the term of this Lease to pay delinquent taxes, assessments, charges or impositions agreed to be paid by Lessee, and to discharge any tax sales, liens and claims against the premises and to redeem the premises from the same. Any amounts so paid by Lessor, and any reasonable expenses incurred therewith, will be additional rent from Lessee to Lessor with the Lessee's next payment of rent following any such payment by Lessor, together with interest thereon at a rate of twelve percent (12%) per annum, or such lesser amount as may be allowed by law, from the date of such payment until the repayment thereof by Lessee.
- 4.3 Utilities. The Lessee shall pay all charges for gas, water, electricity, light, heat and power, telephone or other communications service used and installed, and all other monthly charges. The Lessee shall indemnify the Lessor against any

liability or damages on account of the telephone or other communications service used. Except for telephone service, the Lessor shall be responsible for all connection charges made by the utility companies or governmental unit installing the utilities for the initial installation.

Article 5

Restriction on Sale of Premises and Lessee's Option to Purchase

- 5.1 **Restriction on Sale of Premises.** During the initial Term of this Lease, the Lessor shall not sell the Premises to any third party without the prior consent of the Lessee. During any extension of this Lease, Lessor shall be permitted to sell and convey the Premises, not including the building constructed thereon as provided in Article 7, to a third party; however, any such marketing or sale of the Premises shall be subject to the Lessee's option to purchase as provided below.
- 5.2 **Option to Purchase.** Before offering the Premises for sale to a third party or before accepting an offer from a third party for the purchase of the Premises by said third party, Lessor shall offer the Premises for sale to Lessee by Lessee by written notice delivered to Lessee. Thereafter, Lessee shall have sixty (60) days to accept or reject the offer by delivery of written notice to Lessor. Lessee' failure to accept or reject the offer within said period shall be considered a rejection of the offer and a forfeiture of the right to purchase the Premises and the Lessor shall be free to freely market the sale of the Premises and to sell and convey the Premises to a third-party at any time during the Term of this Lease. For purposes of this Lease a third-party shall mean any party other than the Lessor or the Lessee.
- 5.3 **If the Lessee elects to purchase the land, then the purchase price for the Premises shall be established as follows:**
 - (a) The parties will agree upon the appraisal of the land by a duly licensed North Dakota appraiser with the cost of the appraisal to be shared equally by the Lessor and Lessee.
 - (b) Upon completed appraisal report, including the appraiser's determination of the fair market value of the Premises, shall be delivered to both the Lessor and the Lessee.
 - (c) Within twenty-one (21) days of receipt of the said completed appraisal report, the Lessor may withdraw its offer of sale of the Premises by delivery of written notice of such withdrawal. Upon such withdrawal, the city may not thereafter sell or convey the Premises to any third party for a period of two years.
 - (d) The Red River Regional Dispatch Center may not assign the right to purchase the Premises from the Lessor to any third party other than to

one or more of the political subdivisions that is a member entity of the Red River Regional Dispatch Center.

- (e) If Lessor does not withdraw its offer of sale of the Premises, then a binding agreement shall be deemed to have been made and entered into by the Lessor and Lessee.
- (f) Said binding agreement for the sale of the Premises to Lessee shall also include a permanent easement for the benefit of the Lessee, and Lessee's successors and assigns, for the shared use of the driveway entrance and North Parking Area as described in Article 1, subject to the obligation of the owner of the dominant tenement to share equitably in the costs of maintenance as described in Article 8, hereof. A form of easement shall be executed by the Lessor and Lessee prior to sale of the Premises to any third party.

[Drafter's Note (to be deleted prior to execution of this Lease): Presumably, the city of Fargo would have a sense as to the appraised value prior to offering the land for sale to the Lessee (RRRDC); however, if the independent appraisal is not sufficient, in the view of the city of Fargo, then the city would be authorized to withdraw their offer, but it would do so at the penalty of not being able to sell it again for two years.]

[Drafter's Note (to be deleted prior to execution of this Lease): By separate action, presumably coordinated by RRRDC staff, it is expected that the RRRDC Joint Powers Agreement will be amended to add one item to the list of decisions that require a "supermajority;" namely, a decision that must include one vote from a Minnesota entity, one vote from a North Dakota entity, and one vote from one of the two Cass County board members. The amendment to Section 5.09 of the JPA would add subsection (j), to read as follows: "... (j) a decision by the RRRDC Authority Board either to purchase or to not purchase certain land from the City of Fargo that is subject to a certain Ground Lease between the City of Fargo, as owner and lessor, to the RRRDC, as the lessee." Please note that if for any reason such amendment to the JPA is not approved and enacted, then such decision would not require a supermajority vote but would be simply determined by a favorable majority vote of the JPA Board of Authority.]

5.4 Terms of sale and closing. Upon the exercise of this option by Lessee, the closing shall occur at a time and place to be determined by the parties. At the closing, Lessor shall deliver to Lessee a quitclaim deed free and clear of all encumbrances except this Lease, easements of record, restrictive covenants, and mineral grants and reservations of record, if any, and building and zoning laws, ordinances and state and federal regulations and Lessee shall pay to Lessor the balance of the purchase price after receiving all due credits for pro-rated taxes and special assessments and any other credit due to Lessee.

- (a) Examination of abstract. Lessor shall arrange for delivery of an updated abstract of title to Lessee and Lessee shall have the abstract of title

examined prior to closing. If title to the property is unmarketable, Lessor shall have a period of 180 days to correct the title and make it marketable.

- (b) Closing costs. It is specifically acknowledged and agreed that Lessor shall pay the following costs and no others connected with the closing of this transaction should purchase option be exercised:
 - (1) The abstract continuation cost for the initial title examination;
 - (2) The preparation of the quitclaim deed; and,
 - (3) The recordation of any instruments required to clear title including, but not limited to, satisfactions of all prior liens and encumbrances and any of Lessor's real estate commissions to be paid upon the purchase price of the property.
 - (c) Taxes and special assessments. Real estate taxes and installments for special assessments for the year prior to the year of closing and all prior years, as well as for the year in which the closing occurs (payable in the following year) shall be paid as provided in this Lease. Lessee shall pay the real estate taxes and installments for special assessments for the year subsequent to the year of closing.
 - (d) Possession. The Lessee, presumably being already in possession as a result of the Lease need not take possession thereof; however, to the extent there is any question, possession shall be delivered to Lessee on the date of closing.
 - (e) Time of the essence. Lessee acknowledges and agrees that time shall be strictly of the essence in the performance of Lessee' obligations under this agreement. The failure of Lessee to exercise its rights in the time and manner specified by this agreement shall release Lessor from any further obligation under this Article 5.
- 5.5 Term of agreement. This option shall terminate at the end of this Lease.
- 5.6 Nonassignability. This option to purchase is personal and specific to Lessee, and may not be assigned by Lessee to any third party other than a member entity of the Red River Regional Dispatch Center.
- 5.7 Execution of documents. Upon termination of this option, according to the terms hereof, Lessee agrees to execute a release of option to purchase upon request by Lessor in a form that is acceptable for recording with the recorder's office, Cass County, North Dakota.

Article 6 Lessor's Warranties and Covenants

- 6.1 Warranties and Covenants. Lessor warrants and represents to Lessee that Lessor has full right, power, and authority to enter into this Lease and own good and indefeasible fee simple title to the Premises
- 6.2 Dedications and Easements. Lessee shall have the right to review and reasonably approve any and all existing and future documents regarding declarations, development, easements, covenants, and restrictions in any way affecting the Premises, or any portion thereof.

Article 7 Construction/Ownership of Improvements

- 7.1 Construction of New Improvements. On and after the Effective Date and subject to early termination of this Lease as set forth in Section 2.4 relating to failure of the Lessee to commence construction, Lessee shall have the right, but not the obligation, from time to time and at any time, at its sole cost and risk, subject to the subsequent provisions of this Section, to construct new improvements thereon. Any improvements constructed by Lessee on the Premises shall be constructed in accordance with the following conditions:
- (a) Said improvements shall be constructed in accordance with the Construction Standards (as defined in Section 7.3). "Improvements" shall mean any buildings, structures, signage, or other improvements located upon the Premises at any time during the Term.
- 7.2 Alterations. At any time and from time to time during the Term, Lessee may perform such alteration, renovation, repair, refurbishment, and other work with regard to any Improvements as Lessee may elect ("Alterations"), provided that the same are done in accordance with the Construction Standards as set forth in Section 7.3 below.
- 7.3 Construction Standards and Liens.
- (a) Standards. Improvements and Alterations shall be performed, in accordance with the following standards ("Construction Standards"):
- (b) Construction of Improvements or Alterations shall be performed in a good and workmanlike manner in accordance with good industry practice for the type of work in question.
- (c) Construction of Improvements or Alterations shall be done in compliance with all applicable deed restrictions, building codes, ordinances and other laws or regulations of Governmental Authorities.

- (d) Lessee shall not commence construction of any Improvements or Alterations until all licenses, permits and authorizations required for such Improvements or Alterations by all Governmental Authorities having jurisdiction have been obtained.
- (e) Lessee shall have obtained and shall maintain in force and effect the insurance coverage required in Article 9 with respect to any Improvements or Alterations.
- (f) After commencement, construction of Improvements or Alterations shall be prosecuted with due diligence to completion.
- (g) Nothing herein shall relieve Lessee from the obligation to comply with all applicable federal, state and local laws including building and related code requirements.
- (h) Mechanic's and Materialmen's Liens. Lessee shall have no right, authority, or power to bind Lessor or any interest of Lessor in the Premises for any claim for labor or for material or for any other charge or expense incurred in constructing any Improvements or performing any Alterations with regard thereto, nor to render Lessor's interest in the Premises liable for any lien or right of lien for any labor, materials or other charge or expense incurred in connection therewith. Lessee shall not be considered the agent of Lessor in the construction, erection or operation of any Improvements or Alterations. If any liens or claims for labor or materials supplied or claimed to have been supplied to the Premises are filed, Lessee shall diligently pursue the release or discharge thereof, or may contest the same in good faith; provided however, if such lien remains for a period in excess of sixty (60) days, Lessee shall bond over such lien.
- (i) Lessee's Equipment. The term "Lessee's Equipment" means personal property, including furnishings, furniture, equipment, sign faces used in connection with Lessee's operations at the Premises, but shall exclude fixtures, kitchen equipment, security/access equipment and systems, and audio/visual equipment and systems.
- (j) Ownership and Removal of Lessee's Equipment. Lessee's Equipment shall be solely the property of Lessee. Within thirty business (30) days following the expiration or termination of the Term, Lessee shall have the right, but not the obligation, to remove all Lessee's Equipment from the Premises; provided, however, that Lessee shall repair any damage caused by such removal. If Lessee fails to remove all Lessee's Equipment within such thirty (30) day period, all of Lessee's Equipment remaining on the Premises shall become the property of Lessor without any credit or compensation to Lessee.

- (k) Ownership of Improvements on Premises—Lessee’s Right to Purchase Premises During Final Ten Years. During the Term including any extensions of this Lease, all Improvements including the New Dispatch Center shall be solely the property of Lessee.
- (1) During the final ten years of this Lease, including any extensions of this Lease, so long as the City of Fargo remains as the owner of the Premises, then the Lessee shall have the option to purchase the Premises, including the New Dispatch Center constructed thereon, at a market value of the Premises to be determined by independent appraisal in the manner as is described in Section 5.3 with terms of closing as described in Section 5.4, above. Such purchase right may not be assigned by RRRDC to any third party or any member entity of the RRRDC.
 - (2) If Lessee has not exercised such option during said final ten years of this Lease, including any of said extensions thereof, then upon the termination of this lease, any improvements constructed by the Lessee upon the Premises shall become the property of the Lessor. Alternatively, and at the option of the Lessor to be exercised by written notice to the Lessee within ninety days of such termination, such improvements must be removed by the Lessee from the leased premises within nine months from the date of such termination.
 - (3) With respect to the market value determination as described in subparagraph (1) of this subsection (k), it is assumed that at the time that Lessee exercises the option to purchase the Premises, the Lessee will be, at that time, the owner of the Improvements including the New Dispatch Center constructed thereon and, therefore, the market value to be determined shall be limited to the Premises without reference to the said Improvements owned by the Lessee. This assumption shall be deemed to be a condition that must be present in order for Lessee to exercise such option.

Article 8

Use, Maintenance and Repairs

- 8.1 Use. Subject to the terms and provisions hereof, Lessee shall have the right to use and enjoy the Premises for use as a public safety dispatch center.
- 8.2 Maintenance and Repairs. Lessee shall maintain and repair the Premises, including, without limitation, the interior and exterior, structural and nonstructural located within the Premises throughout the Term. Maintenance, replacement and repair of the parking areas, sidewalks and curbs the Premises, including but not limited to snow removal, lawn care, parking lot striping, lighting and

replacement costs of these improvements located on the Premises shall be the responsibility of the Lessee.

- 8.3 Maintenance and Repairs of Shared Driveway and Parking Area. With respect to the north driveway and Parking Area described in Article 1, maintenance, replacement and repair of the parking areas, sidewalks and curbs the Premises, including but not limited to snow removal, lawn care, parking lot striping, lighting and replacement costs of these improvements for the Public Safety Property parking area and driveway shall be equitably apportioned to the Shared Parking Area and the Shared Driveway and such apportioned costs shall be divided equally between the Lessor and Lessee.

Article 9 Insurance and Indemnity

9.1 Lessee's Insurance.

- (a) From and after the Effective Date and throughout the Term, Lessee shall maintain (i) commercial general liability insurance, with limits of not less than \$2,000,000.00 per occurrence for bodily injury, personal injury, death, and property damage with respect to the Premises, naming Lessor as a named insured and any mortgagee of Lessor as additional insureds, and (ii) "Basic Form" property damage insurance, including plate glass and builder's risk insurance during any period of construction, covering Lessee's personal property and all Lessee Improvements and Alterations at and to the Premises on a full replacement cost basis. Lessee shall provide Lessor a certificate evidencing proof of the foregoing insurance on or before the Effective Date and annually thereafter, and, at Lessor's request, provide Lessor access to copies of such insurance policies.
- (b) During the Term of this Lease while Lessee's Improvements and Alterations are being constructed, Lessee shall maintain or cause to be maintained worker's compensation insurance, disability and other similar insurance for all persons employed by Lessee or its contractors in connection with Lessee's Improvements and Alterations in at least minimum amounts required by statute.
- (c) Property insurance insuring the Premises and any trade fixtures or personal property located on the Premises (the "Insured Property") against loss or damage by fire and other hazards and contingencies insurable under an "all risk" form of policy in an amount not less than the actual replacement cost of the Insured Property (exclusive of foundations and excavations). The policy must include an endorsement removing any exclusion for losses occasioned by the enforcement of any ordinance or law regulating the construction, repair, demolition or condemnation of any building or structure. During the construction of the Improvements,

Lessee must maintain property insurance pursuant to a "builders risk completed value" form of policy.

9.2 Waiver of Subrogation. Lessor and Lessee agree that all policies of insurance to be kept and maintained in force by the respective parties hereto, shall, unless prohibited by law or other regulation having the effect of law, contain provisions in which the rights of subrogation against the Lessor and Lessee are waived by the insurance company or carriers insuring the Premises or any of the Improvements thereon. Lessor expressly waives any right of recovery against Lessee for damage to or loss of the building or other improvements on the Premises, which loss or damage may arise by fire or any other peril covered by any policy of insurance required to be maintained pursuant to this Lease which contains or is required to contain waiver of subrogation rights against Lessee pursuant to this Section, and Lessor shall make no claim for recovery against Lessee therefor. Lessee expressly waives any right of recovery against Lessor for damage to or loss of its fixtures, improvements, or other property located at the Premises, which damage or loss may arise by fire or any other peril covered by any policy of insurance maintained or required to be maintained pursuant to this Lease which contains or is required to contain a waiver of subrogation right against Lessor as set forth in this Section, and Lessee shall make no claim for recovery against Lessor therefor, except if such casualty or damage was caused by Lessor or any affiliate, employee, contractor, or agent of Lessor.

9.3 Lessee's Indemnity

- (a) To the extent authorized by law, Lessee agrees to indemnify, defend, and hold Lessor harmless from and against any and all direct claims asserted by third parties as the result of or arising out of: (i) Lessee's negligent use or occupancy of the Premises; or (ii) the carelessness, negligence, or improper conduct of Lessee or any of its agents, contractors, employees, or licensees.
- (b) Lessee further agrees to indemnify, defend and hold Lessor harmless from and against all direct and actual costs, damages, expenses, losses, fines, liabilities and reasonable counsel fees paid, suffered or incurred as a result of any of the above described claims or any actions or proceedings brought thereon; and in the event any action or proceeding is brought against Lessor by reason of any such claim, upon notice from Lessor, Lessee agrees to resist or defend at Lessee's expense such action or proceeding by counsel reasonably satisfactory to Lessor.
- (c) Lessee's liability under this Article 9 and this Lease extends to the acts and omissions of any subtenant of Lessee, or any agent, contractor, employee, or licensee of any such subtenant.

9.4 Lessor's Indemnity.

- (a) To the extent authorized by law, Lessor agrees to indemnify, defend, and hold Lessee harmless from and against any and all claims asserted by third parties as the result of or arising out of (i) the negligence or improper conduct of Lessor or any of its agents, contractors, employees or licensees on or about the Premises; and (ii) any conditions existing at the Premises as of the Delivery Date, including without limitation, the presence of Hazardous Materials (unless such Hazardous Materials were brought onto the Premises by Lessee).
- (b) Further, to the extent authorized by law, Lessor agrees to indemnify, defend and save Lessee harmless from and against all direct and actual costs, damages, expenses, losses, fines, liabilities and reasonable counsel fees paid, suffered or incurred as a result of any of the above described claims or any actions or proceedings brought thereon; and in case any action or proceeding is brought against Lessee by reason of any such claim, upon notice from Lessee, Lessor agrees to resist or defend at Lessor's expense such action or proceeding by counsel reasonably satisfactory to Lessee.
- (c) Lessor's liability under this Article 9 and this Lease extends to the acts and omissions of any successor of Lessor, or any agent, contractor, employee, or licensee of any such successor.

Article 10 Casualty Loss

- 10.1 Lessee's Rights. Should any Improvements be wholly or partially destroyed or damaged by fire or any other casualty insured by Lessee's Basic Form insurance policy, then Lessee shall have the right, at Lessee's sole election, to either (a) restore and reconstruct the Improvements in compliance with the Construction Standards, or (ii) terminate this Lease. If Lessee elects to terminate this Lease pursuant to this Section 10.1 at any time prior to the last five (5) Lease Years of the then-current Term, Lessee shall (i) at the request of Lessor, cause the Improvements to be razed and the Premises to be leveled, cleaned and otherwise put in good order and (ii) pay to Lessor the value of the Base Rent for the remainder of the Term, excluding any remaining Renewal Terms, discounted at a rate equal to Lessee's Base Rate (hereinafter defined) at the time of the payment. Thereafter, the parties shall have no further rights, duties, or obligations under this Lease. If Lessee elects to terminate this Lease under this Section at any time during the last five (5) Lease Years of the then-current Term, Lessee shall, at the request of Lessor, cause the Improvements to be razed and the Premises to be leveled, cleaned, and otherwise put in good order. Thereafter, the parties shall have no further rights, duties, or obligations under this Lease. If Lessee elects not to terminate this Lease under this Section, Lessee shall promptly repair, replace, restore, and reconstruct any Improvements, all in compliance with the Construction Standards. For purposes of this Section, "Base Rate" means the Wall Street Journal Prime Rate, its

successors, as its Base Rate of interest (which may not be the lowest, best, or most favorable rate of interest).

In the event that the Improvements are wholly or partially destroyed by a casualty damage not insured by Lessee's Basic Form insurance policy, then Lessee shall have the right, at Lessee's election, to either (X) restore and reconstruct the Improvements, as provided above, or (Y) terminate this Lease upon written notice to Lessor (and Lessee shall not be required to reimburse Lessor for the value of Base Rent as described in subsection (ii) above) and cause the Improvements to be razed and the land leveled, cleaned, and otherwise put in good order, and the parties shall have no further obligations to each other, except for those that specifically survive the termination of this Lease.

- 10.2 Notice of Damage. Lessee shall promptly notify Lessor of any destruction or damage to the Premises.

Article 11 Condemnation

- 11.1 Total Taking. Should the entire Premises be taken (which term, as used in this Article, shall include any conveyance in avoidance or settlement of eminent domain, condemnation, or other similar proceedings) by any Governmental Authority, corporation or other entity under the right of eminent domain, condemnation or similar right, then Lessee's right of possession under this Lease shall terminate as of the date of taking possession by the condemning authority, and the award therefor will be distributed as follows: (i) first, to the payment of all reasonable fees and expenses incurred in collecting the award, (ii) second, to Lessee in an amount equal to the unamortized cost of the Improvements (assuming that the Improvements are amortized over the Initial Term of the Lease), plus Lessee's moving and relocation expenses and (iii) the balance of the award shall be equitably apportioned between Lessor and Lessee based on the then respective fair market values of Lessor's interest in the Premises (appraised by reference to all relevant factors including the income stream derivable by Lessor under this Lease and the then present value of Lessor's reversionary interest in the entire Premises after expiration of the Initial Term or the then-current Renewal Term) and Lessee's interest in the Premises (appraised by reference to all relevant factors, including the income stream derivable by Lessee from the Premises for the remainder of the Initial Term or the then-current Renewal term). If Lessor and Lessee are unable to agree on the respective fair market values of their interest in the Premises, then, at the request of either party, the matter will be resolved by binding arbitration before a single arbitrator in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. After the determination and distribution of the condemnation award as herein provided, the Lease shall terminate, and the parties shall have no further rights, duties, or obligations under the Lease.

- 11.2 Partial Taking. Should a portion of the Premises be taken by any Governmental Authority, corporation, or other entity under the right of eminent domain, condemnation or similar right, such that (i) in Lessee's reasonable judgment, the portion of the Improvements to be taken shall make it economically impractical to use the remainder for the uses and purposes contemplated in this Lease, or (ii) the portion of the Premises or Improvements taken render Lessee's available parking spaces to be less than those required by any Governmental Authority or otherwise unsatisfactory for Lessee's business operations at the Premises, or (iii) any access deemed reasonably necessary by Lessee is taken, then this Lease shall, at the option of Lessee (exercisable by written notice to Lessor) terminate as of the date of taking of possession by the condemning authority in the same manner as if the whole of the Premises had thus been taken, and the award therefor shall be distributed as provided in Section 11.1. Should any other partial taking of the Premises occur, then this Lease shall continue in effect as to the Premises, or the remainder thereof, as the case may be. In the event of a partial taking where this Lease is not terminated, the Base Rent payable during the remainder of the Term after taking of possession by the condemning authority shall be reduced on a just and proportionate basis having due regard to the relative value and square footage of the portion of the Premises taken as compared to the remainder thereof, and taking into consideration the extent, if any, to which Lessee's use of the remainder of the Premises shall have been impaired or interfered with by reason of such partial taking. If Lessor and Lessee are unable to agree as to a just reduction in Base Rent, then, at the request of either party, the matter will be resolved by binding arbitration before a single arbitrator in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.
- 11.3 Award on Partial Taking. In the event of a partial taking where this Lease is not terminated, and as a result thereof Lessee will need to restore, repair, or refurbish the remainder of the Premises to make such remaining Premises suitable for Lessee's business operations at the Premises, then (i) the award shall first be paid to Lessee for payment of such restoration, repair, and refurbishment in accordance with the Construction Standards and (ii) the remainder shall be apportioned and paid as provided in (i) and (iii) of Section 11.1, considering the respective interests of Lessor and Lessee in the portion of the Premises taken. If a portion of the Premises is taken, and, in Lessee's reasonable business judgment, no repair or restoration work is required, then the award therefor shall be apportioned and paid as provided in (i) and (iii) of Section 11.1, considering the respective interests of Lessor and Lessee in the portion of the Premises taken.
- 11.4 Temporary Taking. If the whole or any portion of the Premises is taken for temporary use or occupancy, the Term shall not be reduced or affected, and Lessee shall continue to pay Rent in full. Except to the extent Lessee is prevented from so doing pursuant to the terms of the order of the condemning authority, Lessee shall continue to perform and observe all of the other

covenants, agreements, terms, and provisions of this Lease. In the event of any temporary taking, Lessee shall be entitled to receive the entire amount of any award therefor unless the period of temporary use or occupancy shall extend beyond the expiration of the Term, in which case, such award, after payment to Lessor therefrom for the estimated cost of restoration of the Premises to the extent that any such award is intended to compensate for damage to the Premises, shall be apportioned between Lessor and Lessee as of the day of expiration of the Term in the same ratio that the part of the entire period for such compensation is made falling before the day of expiration and that part falling after, bear to such entire period.

- 11.5 Notice of Taking, Cooperation. Lessor and Lessee shall immediately notify the other of the commencement of any eminent domain, condemnation, or other similar proceedings with regard to the Premises. Lessor and Lessee covenant and agree to fully cooperate in any condemnation, eminent domain, or similar proceeding in order to maximize the total award receivable in respect thereof. Any termination of this Lease pursuant to this Article 11 shall not affect the rights of Lessor and Lessee to any such award.

Article 12

Lessee Transfers, Encumbrances, Assignment and Subletting

- 12.1 Lessee's Right to Assign; Permitted Occupants. Lessee may not assign its rights hereunder to any other party without Lessor's prior written consent, which consent may be withheld, conditioned or delayed in Lessor's sole discretion.
- 12.2 Lessee's Right to Sublease. Lessee may not, without the prior consent of Lessor, sublease the Premises or any portion thereof without the Lessor's prior written consent. As used in this Lease the term "sublease" shall include any leases, licenses, occupancy agreements, franchise or other similar rights, agreements or arrangements of whatever nature relating to the use or occupancy of all or any portion of the Premises.
- 12.3 Mortgaging of Leasehold Estate. Lessee may, without the consent of Lessor, mortgage or otherwise encumber the Leasehold Estate (which mortgage or other encumbrance is hereinafter referred to as the "Leasehold Mortgage"). The mortgagee under the Leasehold Mortgage or the other holders of the indebtedness secured by the Leasehold Mortgage (the "Leasehold Mortgagee") shall notify Lessor (and any Fee Mortgagee, as hereinafter defined), of the execution of such Leasehold Mortgage and the name and place for service of notice upon such Leasehold Mortgagee. Upon such notification of Lessor that Lessee has entered into a Leasehold Mortgage.

Article 13

Environmental Provisions

- 13.1 Definitions

For purposes of this Lease the following terms shall have the following meanings:

- (a) "Environmental Law" or "Environmental Laws" shall mean each and every applicable federal, state, regional, county or municipal statute, ordinance, rule, regulation, order, code, directive or requirement, relating to the environment or Hazardous Material (as defined in subsection (b) below), including without limitation the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §6901 et seq.; the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. §9601 et seq.; the Federal Water Pollution and Control Act, 33 U.S.C. §1251 et seq.; the Toxic Substances Control Act, 15 U.S.C. §2601 et seq.; the Clean Air Act, 42 U.S.C. §7401 et seq.; and the Tank Laws (as defined below), now or hereafter existing, together with all successor statutes, ordinances, rules, regulations, orders, directives or requirements now or hereafter existing, and any amendments thereto, regulations promulgated thereunder, and all substitutions thereof.
- (b) "Hazardous Material" or "Hazardous Materials" shall mean (i) any waste, material or substance (whether in the form of a liquid, a solid, or a gas and whether or not airborne) which is deemed to be a pollutant or a contaminant, or to be hazardous, toxic, ignitable, reactive, infectious, explosive, corrosive, dangerous, harmful or injurious to public health or to the environment, and which is now or becomes regulated in the future by or under any Environmental Laws; (ii) petroleum; (iii) asbestos and asbestos containing materials; (iv) any polychlorinated biphenyl or formaldehyde; and (v) any radioactive material.
- (c) "Release" means depositing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing.
- (d) "Reports" means those reports and assessments more particularly described as follows: Lessor provided no Reports.
- (e) "Tank Laws" shall mean all federal, state, regional, county, or municipal environmental statutes, ordinances, rules, or regulations relating to underground storage tanks, including, without limitation, the Federal Underground Storage Law, Subtitle I of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6901 et seq., together with any amendments thereto, regulations promulgated thereunder and all substitutions thereof, and any successor legislation and regulations.
- (f) "Remediate" or "Remediation" shall mean the necessary actions to comply with applicable Environmental Law with respect to the unlawful presence of, or suspected discharge of, any Hazardous Materials. Remediation shall include, without limitation: environmental investigation, monitoring and sampling; installation, maintenance, and removal of monitoring wells;

removal, treatment, neutralization or containment of any Hazardous Material; storage of excavated materials; and installation, maintenance, storage and removal of machinery and equipment used in connection with the Remediation. Without limitation of the foregoing, Remediation shall include all action required in accordance with all applicable Environmental Laws, at no cost or expense to Lessee, including, without limitation, any long-term inspection, monitoring or maintenance costs for any engineering or institutional controls, and the obtaining by Lessor of a permanent solution and any other comparable "no further action" letters or documentation therefor required under any Environmental Laws. In connection with the foregoing, Lessor shall cooperate with Lessee (and Lessee shall cooperate with Lessor) with regard to the placement, installation, and operation of any necessary remediation systems, provided that such remediation systems and plans shall be implemented so as to not to interfere with or impair Lessee's proposed use of the Premises or construction of the Improvements by Lessee.

- 13.2 Lessor agrees to indemnify and hold Lessee, its directors, officers, stockholders, employees, agents, attorneys, consultants, contractors and its successors and assigns, harmless from and against any and all claims, losses, damages, liabilities, fines, penalties, charges, judgments, administrative orders, remediation requirements, enforcement actions of any kind, and all costs and expenses incurred in connection therewith (including, but not limited to, reasonable attorneys' fees and expenses), arising out of any material misrepresentation of Lessor contained in this Section or any breach by Lessor of its obligations under this Article.
- 13.3 If it is discovered that the Premises contain Hazardous Materials, the presence of which predates this Lease or was not introduced by Lessee, Lessor, at its sole expense, shall take all action required, including Remediation of the Premises, to comply with the covenants herein or applicable legal requirements and, in any event, shall take all action necessary under all applicable Environmental Laws (including, without limitation, any long term inspection, monitoring or maintenance costs for any engineering of institutional controls), all at no cost or expense to Lessee. Lessor's obligations shall include, without limitation, and to the extent applicable, entering into an Access Agreement with Lessee in connection with such Remediation and obtaining a permanent solution or comparable no further action letter or certification under any applicable Environmental Laws from applicable Governmental Authorities.
- 13.4 In the event that Lessee shall discover the existence of any Hazardous Materials on the Premises during the course of its construction of the Improvements or otherwise during the Term, Lessor shall be obligated to Remediate such Hazardous Materials at its sole cost and expense, in accordance with applicable Environmental Laws (including the execution of any and all waste manifests or other documents required by the applicable Governmental Authorities in connection therewith), and otherwise in a manner that will not interfere with or

impair Lessee's proposed use of the Premises or the construction of Lessee's Improvements thereon (and, notwithstanding anything contained in this Lease to the contrary, such required Remediation which delays Lessee's construction of the Improvements shall be deemed to be a Lessor Delay pursuant to Section 3.1). If, in Lessee's reasonable business judgment, it is necessary to close its business due to the presence of such Hazardous Materials or Lessor's remedial action in connection therewith, or suspend or postpone any construction activity by Lessee, all Rent shall abate during the period of such Remediation. Additionally, Lessor agrees that if Lessor has not removed all such Hazardous Materials within ten (10) days following receipt of written notice from Lessee or Lessee's environmental consultant of the existence of such Hazardous Materials, Lessee shall have the right to an abatement of Rent equal to one (1) day of Rent for each day between the date of Lessee's delivery of written notice to Lessor regarding the discovery of such Hazardous Materials and the actual date upon which the Lessor completes Remediation thereof in compliance with the terms of this Lease and all applicable Environmental Laws and provides Lessee written evidence of such completion. Without limitation of the foregoing, in the event Lessee is unable to open or operate its business or perform its alterations to initially open for business at the Premises for a period in excess of ninety (90) days as a result of Hazardous Materials not introduced to the Premises by Lessee, Lessee may terminate this Lease without further recourse to Lessor, and Lessor shall reimburse Lessee for all hard and soft costs incurred by Lessee in connection with the Premises and this Lease, including, without limitation, costs associated with the preparation of architectural and engineering plans, reports and studies, and all reasonable legal fees. Notwithstanding any other provision of this Lease, Lessee shall be responsible for removal of any underground fuel storage tank on or under the Premises and any required Remediation in connection therewith.

13.5 Lessee's Representations, Warranties and Covenants. Lessee hereby represents, warrants, and covenants that:

- (a) Lessee agrees not to knowingly allow the Release of any Hazardous Material on, onto or from the Premises that could result in a violation of any Environmental Law or in the creation of liability or obligations, including, without limitation, notification, deed recordation or remediation, under any Environmental Law.
- (b) Lessee agrees that it shall not use, handle, generate, treat, store or dispose of, or permit the use, handling, generation, treatment, storage or disposal of any Hazardous Materials (other than those types and quantities contained in normal office products and environments) in, on, under, around or above the Premises now or at any future time (except in quantities permitted by applicable laws or as required in connection with discovery of any Hazardous Materials during its demolition or construction activities permitted hereunder).

- (c) If Lessee is in breach of any of its agreements set forth in this Section, Lessee, at its sole expense, shall take all action required, including Remediation of the Premises, to comply with the covenants herein or applicable legal requirements and, in any event, shall take all action deemed necessary under all applicable Environmental Laws.
- (d) Lessee agrees to indemnify and hold Lessor, its directors, officers, stockholders, partners, joint venturers, employees, agents, attorneys, consultants, contractors and its successors and assigns, harmless from and against any and all claims, losses, damages, liabilities, fines, penalties, charges, judgments, administrative orders, remediation requirements, enforcement actions of any kind, and all costs and expenses incurred in connection therewith (including, but not limited to, reasonable attorneys' fees and expenses), arising out of any breach by Lessee of its obligations under this Section.
- (e) Notwithstanding any provision in this Lease to the contrary, Lessee shall not be responsible for, shall have no liability or obligations with respect to, and shall not be obligated to pay for or take any action with respect to (i) the existence of any Hazardous Material on the Premises which occurred or existed prior to the date of the Lease unless caused or knowingly permitted by Lessee, its agents, consultants, or contractors, (ii) the existence of any Hazardous Material on the Premises which occurred or existed after the date of the Lease unless caused or knowingly permitted by Lessee, its agents, employees, consultants, or contractors, (iii) the Release of Hazardous Materials on, onto or from the Premises unless caused or knowingly permitted by Lessee, its agents, employees, consultants, or contractors, or (iv) any violation of any Environmental Laws, unless and to the extent that such was caused or knowingly permitted by Lessee, its agents, employees, consultants, or contractors (collectively, the "Environmental Exclusions"). Notwithstanding anything herein to the contrary, in the event any Hazardous Materials are discovered on (or migrate to) the Premises which Hazardous Materials arise from any of the foregoing Environmental Exclusions, then Lessor shall be obligated to perform Remediation of such Hazardous Materials at its sole cost and expense, in accordance with applicable Environmental Laws and otherwise in a manner that will not interfere with or impair Lessee's proposed use or business operations at the Premises. In the event the presence of such Hazardous Materials is such that Lessee cannot operate at the Premises for the uses permitted hereunder, then all Rent shall abate until such time as Remediation is complete pursuant to this Article 13.

Article 14 Warranty of Peaceful Possession

- 14.1 Peaceful Possession. The Lessee, upon the payment of the rent herein reserved and upon the performance of all the terms of this Lease, shall at all times during the lease term and during any extension or renewal term peaceably and quietly enjoy the leased premises without any disturbance from the Lessor or from any other person claiming through the Lessor.

Article 15 Default and Remedies

- 15.1 Lessee Default. Each of the following shall be deemed a "Lessee Default" hereunder and a material breach of this Lease:
- (a) If Lessee fails to pay any installment of Rent as the same is due and payable and such default continues for sixty (60) days after written notice of non-payment to Lessee by Lessor.
 - (b) If Lessee fails to keep, perform or observe any of the covenants, agreements, terms or provisions contained in this Lease that are to be kept or performed by Lessee other than with respect to payment of Rent or other liquidated sums of money and thereafter Lessee fails to commence and take such steps as are necessary to remedy the same within sixty (60) days after Lessee's receipt of written notice specifying the default, or having so commenced, thereafter fails to proceed diligently to cure the same.
 - (c) If an involuntary petition is filed against Lessee under any bankruptcy or insolvency law or under the reorganization provisions of any law of like import or if a receiver of Lessee, or of all or substantially all of the property of Lessee, is appointed without acquiescence, and such petition or appointment is not discharged or stayed within sixty (60) days after the happening of such event.
 - (d) If Lessee makes an assignment of its property for the benefit of creditors or files a voluntary petition under any bankruptcy or insolvency law or seeks relief under any other law for the benefit of debtors.
- 15.2 Lessor's Remedies. Upon the occurrence of a Lessee Default beyond any applicable notice and cure period, Lessor may, at any time thereafter prior to the curing of such Lessee Default, do any one or both of the following:
- (a) Lessor may terminate this Lease by giving Lessee at least sixty (60) days' prior written notice thereof, in which event this Lease and the leasehold estate hereby created and all interest of Lessee and all parties claiming by, through or under Lessee (except for sublessees as provided in Section

12.2) shall automatically terminate upon the effective date of such notice with the same force and effect and to the same extent as if the effective date of such notice were the day originally fixed in Article 2 for the expiration of the Term. Upon the expiration of such 60-day period, Lessor, its agent, or representatives, shall have the right, without further demand or notice, to re enter and take possession of the Premises and remove all persons and property therefrom with process of law, without being deemed guilty of any manner of trespass and without prejudice to any remedies for arrears of Rent or existing breaches hereof. In the event of such termination, Lessee shall be liable to Lessor for all expenses incurred by Lessor in successfully enforcing its rights hereunder.

- (b) Notwithstanding anything contained herein to the contrary, Lessor shall never be entitled to dispossess Lessee of the Premises pursuant to any "lock out" or other nonjudicial remedy, Lessor hereby waiving its right to forcibly dispossess Lessee from the Premises, whether peaceably or otherwise, without judicial process, such that Lessor shall not be entitled to any "commercial lock-out" or any other provisions of applicable law which permit landlords to dispossess tenants from commercial properties without the benefit of judicial review.

15.3 Lessor Default. Each of the following shall be deemed a "Lessor Default" hereunder and a material breach of this Lease:

- (a) If Lessor fails to keep, perform, or observe any of the covenants, agreements, terms, or provisions contained in this Lease that are to be kept or performed by Lessor, and Lessor fails to commence and take such steps as are necessary to remedy the same within thirty (30) days after Lessor's receipt of written notice from Lessee specifying the same, or having so commenced, thereafter fails to proceed diligently to cure the same.
- (b) If an involuntary petition is filed against Lessor under any bankruptcy or insolvency law or under the reorganization provisions of any law of like import or if a receiver of Lessor, or of all or substantially all of the property of Lessor, is appointed without acquiescence, and such petition or appointment is not discharged or stayed within sixty (60) days after the happening of such event.
- (c) If Lessor makes an assignment of its property for the benefit of creditors or files a voluntary petition under any bankruptcy or insolvency law or seeks relief under any other law for the benefit of debtors.

15.4 Lessee's Remedies. Upon the occurrence of a Lessor Default beyond any notice and cure period, Lessee may, at any time thereafter prior to the curing thereof and without waiving any other rights hereunder or available to Lessee at law or in equity (Lessee's rights being cumulative), do any one or both of the following:

- (a) Lessee may perform Lessor's obligations hereunder and offset the reasonable costs and expenses incurred by Lessee in doing so, together with interest thereon at the rate of ten percent (10%) per annum from the date expended until repaid against Base Rent thereafter coming due hereunder until such costs are recouped in full by Lessee.
- (b) If a Lessor Default renders all or any portion of the Premises untenantable for those uses incidental to or customarily associated with the operation of Lessee's use as permitted hereunder for more than sixty (60) days, Lessee may, without limiting any of its other rights and remedies on account thereof, terminate this Lease, in which event Lessee shall have no further rights, duties or obligations hereunder, and Lessor shall reimburse Lessee in an amount equal to the costs of Lessee's Improvements and Alterations, amortized over the useful life thereof within thirty (30) days after Lessee's written demand therefor.

Article 16 CONTINGENCIES

16.1 Reserved.

Article 17 Replatting of the Premises

17.1 Premises to be Replatted. Lessee will file with the Department of Planning and Development of the City of Fargo an application for a replat of the Premises into two lots, or more lots as may be appropriate, establishing the Premises and the Public Safety Building Property as separately-platted lots. To the extent that the resulting lots to be platted introduce a change in the legal description of the Premises, as defined herein at Exhibit B, the parties agree that said Premises shall be revised and amended in accordance with such re-platted description and the parties agree to execute any documents necessary to effect such revision or amendment and such documents may be recorded in the Recorder's Office, Cass County, North Dakota. Lessee will be responsible for the costs associated with the platting process, including costs of filing the re-plat application with the Planning Department. The Lessor and Lessee agree to cooperate with each other regarding the application and approval process with a goal of successfully replatting the Premises; however, failure of such a replat to be finally approved and filed with the Cass County Recorder shall not be deemed a breach of this Lease by either party nor shall it cause any termination or limitation of the terms of this Lease.

Article 18 Miscellaneous

18.1 Notices. Any notice hereunder shall be in writing and shall be deemed to have been properly given when sent by (a) courier; (b) United States Certified Mail, Return Receipt Requested, postage prepaid; or (c) a nationally recognized overnight courier, shipping charges prepaid, to the addresses which follow: Notice given in accordance herewith shall be effective upon receipt at the address of the addressee, as evidenced by the executed postal receipt or other receipt for delivery. For purposes of notice the addresses of the parties hereto shall, until changed, be as follows:

Lessor: City of Fargo
Attn: City Auditor
225 North 4th Street
Fargo, ND 58102

AND

City of Fargo
Attn: Director of Facilities
225 North 4th Street
Fargo, ND 58102

Lessee: Red River Regional Dispatch Center
300 NP Avenue
Fargo, ND 58102

The parties hereto shall have the right from time to time to change their respective addresses for purposes of notice hereunder to any other location within the United States by giving a notice to such effect in accordance with the provisions of this Section.

18.2 Performance of Other Party's Obligations. If either party hereto fails to perform or observe any of its covenants, agreements or obligations hereunder for a period of thirty (30) days after notice of such failure is given by the other party, then the other party shall have the right, but not the obligation, at its sole election (but not as its exclusive remedy), to perform or observe the covenants, agreements or obligations which are asserted to have not been performed or observed at the expense of the other party, and to recover all reasonable, out-of-pocket costs or expenses incurred in connection therewith, together with interest thereon at a rate of ten percent (10%) per annum from the date expended until repaid. Notwithstanding the foregoing, if either party determines, in such party's reasonable good faith judgment that an emergency, involving imminent danger of injury or death to persons or damage to property in excess of \$100,000.00 exists

due to the other party's failure to observe or perform such party's covenants, agreements and obligations hereunder, then such party may immediately perform or observe the covenants, agreements and obligations which give rise to such emergency at the expense of the failing party. Any performance or observance by a party pursuant to this Section shall not constitute a waiver of the other party's failure to perform or observe.

- 18.3 Modification and Non-waiver. No variations, modifications or changes herein or hereof shall be binding upon any party hereto unless set forth in writing executed by both parties hereto. No waiver by either party of any breach or default of any term, condition, or provision hereof, including without limitation the acceptance by Lessor of any Rent at any time or in any manner other than as herein provided, shall be deemed a waiver of any other or subsequent breaches or defaults of any kind, character, or description under any circumstance. No waiver of any breach or default of any term, condition or provision hereof shall be implied from any action of any party, and any such waiver, to be effective, shall be set out in a written instrument signed by the waiving party.
- 18.4 Governing Law. This Lease shall be construed and enforced in accordance with the laws of the State of North Dakota.
- 18.5 Number and Gender; Caption; References. Pronouns, wherever used herein, and of whatever gender, shall include natural persons and corporations and associations of every kind and character, and the singular shall include the plural wherever and as often as may be appropriate. Article and section headings in this Lease are for convenience of reference and shall not affect the construction or interpretation of this Lease. Whenever the terms "hereof", "hereby", "herein" or words of similar import are used in this Lease they shall be construed as referring to this Lease in its entirety rather than to a particular section or provision, unless the context specifically indicates to the contrary. Any reference to a particular "Article" or "Section" shall be construed as referring to the indicated article or section of this Lease.
- 18.6 Estoppel Certificate. Lessor and Lessee shall execute and deliver to each other, within a reasonable time following written request therefor by the other party, a certificate addressed as indicated by the requesting party and stating to the best of its actual knowledge:
- (a) whether or not this Lease is in full force and effect, and if alleged that the Lease is not in full force and effect, then specifying the reasons therefor;
 - (b) whether or not this Lease has been modified or amended in any respect, and submitting copies or descriptions of such modifications or amendment;
 - (c) whether or not there are any existing defaults hereunder known to the party executing the certificate, and specifying the nature thereof;

- (d) whether or not any particular article, section or provision of this Lease has been complied with;
- (e) the date to which the Rent due pursuant to this Lease has been paid;
- (f) whether there are any offsets, counterclaims, or defenses thereto on the part of the other party; and
- (g) such other matters as may be reasonably requested.

Any such estoppel certificate may be relied upon by the party requesting it and any other person, firm, entity, or corporation to whom the same may be exhibited or delivered, and the contents of such certificate shall be binding on the party executing the same.

- 18.7 Exhibits. All exhibits and addenda attached hereto are incorporated herein for all purposes.
- 18.8 Severability. If any provision of this Lease or the application thereof to any person or circumstance shall, at any time or to any extent, be invalid or unenforceable, and the basis of the bargain between the parties hereto is not destroyed or rendered ineffective thereby, the remainder of this Lease, or the application of such provisions to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby.
- 18.9 Surrender of Premises; Holding Over. Lessee shall quit and surrender the Premises at the expiration or earlier termination of this Lease in vacant and broom clean condition, damage by eminent domain, fire and casualty, and all alterations, additions, and Improvements (excluding any Lessee's Equipment which Lessee removes from the Premises in accordance with the terms hereof) excepted.
- 18.10 Relation of Parties. It is the intention of Lessor and Lessee to hereby create the relationship of landlord and tenant, and no other relationship whatsoever is hereby created. Nothing in this Lease shall be construed to make Lessor and Lessee partners or joint venturers or to render either party hereto liable for any obligation of the other.
- 18.11 Force Majeure. Neither party shall be required to perform any term, covenant or condition of this Lease so long as such performance is delayed or prevented by Force Majeure (as hereafter defined), including, without limitation, Lessee's waiver or satisfaction of the Due Diligence Contingency, the Approvals Contingency, the Building Permit Contingency, and/or the satisfaction of the Delivery Conditions, and all time periods permitted hereunder for the performance of any such term, covenant, or condition shall be tolled on a day-for-day basis upon written notice from either party to the other of such party's inability to perform or satisfy any such term, covenant, or condition of this Lease due to a Force Majeure. For purposes hereof, a "Force Majeure" shall mean any acts of God; strike; lockout; material or labor restriction by any governmental

authority or any delays, backlogs, or slowdowns associated with the same; inability to obtain materials due to supply chain disruptions; civil riot; declared state of emergency or public health emergency or pandemic (including, without limitation, Covid-19); government mandated quarantine or travel bans; government mandated closures, disruption, breakdown, delayed production or interruption for any period of time; interruptions to transportation, or the use of equipment, labor, or materials, including, without limitation, the closure of government buildings, airports, harbors, railroads, or pipelines, or other infrastructure due to worldwide or regional pandemic or other health related event disruptions; and any other cause not reasonably within the control of such party and which by the exercise of due diligence such party is unable, wholly or in part, to prevent or overcome.

- 18.12 Entire Agreement. This Lease constitutes the entire agreement of the parties hereto with respect to its subject matter, and all prior agreements with respect thereto are merged herein. Any agreements entered into between Lessor and Lessee of even date herewith are not, however, merged herein.
- 18.13 Successors and Assigns. This Lease shall constitute a real right and covenant running with the Premises, and, subject to the provisions hereof pertaining to Lessee's rights to assign, sublet or encumber, this Lease shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Whenever a reference is made herein to either party, such reference shall include the party's successors and assigns.
- 18.14 Lessor's Joinder. Lessor agrees to join with Lessee in the execution of statutory notices of commencement and such applications for permits and licenses from any Governmental Authority as may be reasonably necessary or appropriate to effectuate the intents and purposes of this Lease, provided that no such application shall constitute an encumbrance of or with respect to the Premises, and Lessor shall not incur or become liable for any obligation as a result thereof.
- 18.15 No Third Parties Benefitted. The terms and provisions of this Lease are for the sole benefit of Lessor and Lessee, and no third party is intended to benefit herefrom.
- 18.16 Survival. Any terms and provisions of this Lease pertaining to rights, duties or liabilities extending beyond the expiration or termination of this Lease shall survive the end of the Term.
- 18.17 Time of Essence. Time is of the essence of this Lease and each and all of its provisions in which performance is a factor.
- 18.18 Holidays. If a date for performance by either party falls on a Saturday, Sunday or on a legal holiday, such date for performance shall instead be the next following business day.

- 18.19 Waiver of Jury Trial. LANDLORD AND TENANT HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER OF THEM AGAINST THE OTHER ON ANY MATTERS WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LEASE, THE RELATIONSHIP OF LANDLORD AND TENANT, TENANT'S USE OR OCCUPANCY OF THE PREMISES AND/OR ANY CLAIM OF INJURY OR DAMAGE. The waiver of trial by jury in the immediately preceding sentence is voluntarily and intentionally made by Lessor and Lessee.
- 18.20 Counterparts; Electronic Signatures. This Lease may be executed simultaneously in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The parties agree that this Lease shall be deemed validly executed and delivered by a party if a party executes this Lease by manual signature or by affixing its signature hereto by means of an electronic signature tool, application, or software (e.g., DocuSign).
- 18.21 Memorandum of Ground Lease to be Recorded. A memorandum of this Ground Lease shall be prepared in a form suitable for recording with the Office of the Recorder of Cass County, North Dakota, and either party shall be authorized to record the same with said office.
- 18.22 Effective Date. This Lease shall take effect the date last signed by the parties below [the "Effective Date"].

[Remainder of page blank – execution page to follow]

Date: _____, 2023

Lessee:

Red River Regional Dispatch Center,
a _____

By:

Its: _____

Date: _____, 2023

Lessor:

City of Fargo,
a North Dakota municipal corporation

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

ATTEST:

Steven Sprague, City Auditor

EXHIBIT A

Site Depiction including City-owned Land and Premises

[attached]

[[Drafting Note: site depiction to include references to the City-owned Land as well as the "Premises" being leased to the RRRDC and, also, to the "shared driveway entrance" and the "Shared Parking Area" as described in the Ground Lease]]

EXHIBIT B
[RESERVED]



40a-c

August 30, 2023

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

RE: FARGODOME Remodel and Conference Center Addition

Commissioners:

The Fargo Dome Authority requests your approval of our plans regarding a FARGODOME remodel and expansion, as were described at the presentation held on Tuesday, August 22, 2023.

At their meeting on Tuesday, August 29, 2023, the Fargo Dome Authority unanimously approved the following motion regarding FARGODOME and our desire for the future:

The Fargo Dome Authority recognizes the 30-year anniversary of FARGODOME which opened to the public in December 1992 and acknowledges the success and contributions of the venue. The Authority desires to posture FARGODOME for success and region-wide economic contributions for the next thirty years and beyond through an extensive remodel and a convention center addition. The Fargo Dome Authority recommends that the Fargo City Commission approve the following steps toward a FARGODOME Remodel and Conference Center Addition:

1. Approve suggested funding for this project to be a combination of existing FARGODOME Permanent Fund funds, up to \$30 Million, and proceeds from a 20-year bond issue. Said bond issue to be retired through new taxes to include a 20-year, three percent (3%) City-wide lodging tax and a 20-year, one quarter of one percent ($\frac{1}{4}$ %) City-wide general sales tax. Implementation of the proposed taxes requires a change to the City of Fargo Home Rule Charter via a City-wide special election to be held on Tuesday, December 5, 2023, and to be coordinated by City of Fargo staff and legal counsel.

SUGGESTED MOTION:

Approve the Fargo Dome Authority's concept for a FARGODOME Remodel and Conference Center Addition as described during the meeting held on Tuesday, August 22, 2023, and to approve the initial steps toward funding and construction of the project by authorizing City of Fargo staff to move forward with the necessary steps for establishing a City-wide special election on December 5, 2023, to amend the Home Rule Charter to allow for a 20-year, three percent (3%) City-wide additional lodging tax and a 20-year, one quarter of one percent (1/4%) City-wide general sales tax.

Thank you for your attendance at the presentation and your consideration of our motion.

Sincerely,



Michael Ellingson
President, Fargo Dome Authority

Erik R. Johnson
Assistant City Attorney - Fargo

August 31, 2023

Fargo City Commission
225 Fourth Street North
Fargo, ND 58102

RE: Proposed city-wide vote on Home Rule Charter Amendment: Lodging Tax and Sales Tax for Fargodome Remodeling and Conference Center Project – adopt Resolution and receive and file ordinances

Dear Commissioners:

Enclosed for your approval and adoption is a Resolution that will start the process of amending the City's home rule charter authorizing a 1/4% sales tax (e.g. 25 cents sales tax on a \$100 purchase) and a 3% lodging tax on hotel/motel rooms (in addition to the existing 3% lodging tax). Assuming the City Commission approves the Resolution, the question will be placed before the Fargo city voters in the form of a single ballot question as to whether the City's home rule charter should be amended as such.

Both the proposed lodging tax and the proposed sales tax are identical with respect to the following terms:

- Both have 20-year terms for collection—starting April 1, 2024 and ending March 31, 2044.
- Funds collected from both taxes are to be used for the same authorized purposes, as follows:
 - Proceeds to be utilized for costs associated with the remodeling of the Fargodome, with the addition of a conference center to the Fargodome, and with ongoing capital projects, maintenance, and operations of the Fargodome and functionally-related facilities including the conference center (the "Projects")
 - Proceeds are placed initially in a Fargodome improvement capital construction fund
 - Proceeds may be used to make direct payment of the costs for such construction, maintenance, and operations or may be pledged, applied or directed to amortize bonds or other obligations which may be sold to finance such costs.
 - Funds remaining after completion of the Projects and payment of related obligations will be placed in a special escrow fund to be utilized by the Fargodome Authority, with the concurrence of the governing body of the city, to provide for future capital improvements, maintenance, and operation of the Fargodome and functionally-related facilities including the conference center.
 - The two sources of tax proceeds may be combined.

- All proceeds of the two tax sources shall be utilized for the authorized purposes "...as the governing body of the city may select" and the Fargo Home Authority is authorized and encouraged to provide recommendations to the governing body of the city.

Single Ballot Question. This is a single home rule charter amendment, consisting of two parts (lodging tax and sales tax) to be approved by a single ballot question to the City voters (the City's qualified electors).

60% Majority Vote. Since the Fargo HRC requires all "sales taxes" to receive a 60% majority at a city-wide vote, even though the lodging tax is not a "sales tax" the single ballot question must receive favorable votes by 60% of the voters.

Maximum Sales Tax—Exemptions. There is a \$6.25 cap on the sales tax charged on any single transaction of one or more items. This limits the ¼% sales tax to the first \$2500 of larger transactions. The sales tax recognizes the same exemptions as the 5% state sales tax. For example, most grocery store food items are exempt from the sales tax.

City-administered Special Election. The City will be responsible for administering all aspects of the election process. The election is proposed as a special election on Tuesday, December 5, 2023. Three polling locations and poll-open hours are proposed, with paper ballots and paper polling books, to be administered by the City Auditor. These matters, along with the draft ballot question, are being presented by the City Auditor in a separate resolution of the City Commission. The proposed amendment of Fargo's home rule charter occurs pursuant to the charter's own provisions (Art. 5 of Fargo Home Rule Charter). Election matters, including matters specific to special elections, are governed by a combination of Fargo Municipal Code ordinances and North Dakota Century Code statutes.

Post-election Process. Following the December 5th special election the results of the election must be formally determined with a sequence of events as follows:

- By state law, results of the election are to be "canvassed" thirteen (13) days following the election, Monday, December 18th, and the results then certified by the City Auditor. By Fargo Home Rule Charter provision, a home rule charter amendment takes effect ten (10) days following certification of the election results and, therefore, if approved by the voters we expect the Home Rule Charter amendment to take effect on December 28th, 2023.
- We are seeking to commence collection on both the lodging and sales taxes on April 1, 2024. City sales taxes must be collected by the ND Tax Commissioner and in order for the Tax Commissioner to have time to provide notice to all retailers within the City (as well as internet sales retailers) and to establish the proper administrative protocols for a new sales tax, the City must deliver the enacted sales tax ordinance to the Tax Commissioner by December 31, 2023. As with the City's existing lodging tax, the Fargo City Auditor will be responsible for collection of the lodging tax.

- In order to deliver the enacted sales tax ordinance to the Tax Commissioner in a timely basis, we are presenting the Fargo City Commission with the implementing sales tax ordinance and the lodging tax ordinance and we are requesting that the City Commission undertake the customary preliminary steps taken with ordinances, prior to actual final passage and enactment, before the December 5th election, with "final passage" and enactment of the ordinances to occur only after the canvassing of the election votes and the certification of the result and only if the home rule charter amendment has been approved by the required 60% vote.
- There is a regular City Commission meeting scheduled for Tuesday, December 26th, 2023. By that time, the December 18th canvassing results will be known and the results certified and, therefore, if the City voters have approved the Home Rule Charter amendment, the two ordinances will be presented to the City Commission at the December 26th regular meeting for "final passage." The two ordinances are drafted to "take effect" on Friday, December 29, 2023. Thus, the ordinances will take effect after the home rule charter amendment takes effect, with collection of both taxes to commence on April 1, 2024.

As mentioned, also enclosed are the two ordinances that will be used to implement the home rule charter amendment if the amendment is approved by the voters, submitted herewith for receipt and filing. The Resolution is submitted for your approval and adoption.

SUGGESTED MOTIONS:

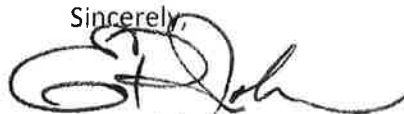
- I hereby introduce the Resolution, proposing to amend the City's Home Rule Charter authorizing the lodging tax and sales and use tax, as presented and move for its adoption.
- I move to receive and file the two proposed ordinances, as presented:

An Ordinance Enacting Article 3-24 of Chapter 3 of the Fargo Municipal Code Relating to a Lodging Tax for Fargodome Including Conference Center; and,

An Ordinance Enacting Article 3-25 of Chapter 3 of the Fargo Municipal Code Relating to a Sales Tax for Fargodome Including Conference Center;

and to place both ordinances on the agenda for the next regular meeting of the City Commission for first reading.

Sincerely,



Erik R. Johnson

Enclosures

COMMISSIONER _____ introduced the following resolution and moved its adoption:

RESOLUTION
[Amendment of Home Rule Charter – Lodging/Sales and Use Taxes]

BE IT RESOLVED BY THE BOARD OF CITY COMMISSIONERS OF THE CITY OF FARGO:

WHEREAS, the City of Fargo, Cass County, North Dakota, is a municipal corporation, organized and existing under the laws of the State of North Dakota, which has adopted a Home Rule Charter, pursuant to the authority of N.D.C.C. Chapter 40-05.1; and,

WHEREAS, pursuant to Article 34 of the City Ordinances, implementing Article 3(P)(5) of the Fargo Home Rule Charter, the City has created the Fargo Dome Authority (the “Fargodome Authority”), the members of which are appointed by the City Commission as prescribed in said Article, to construct, maintain and operate the multi-purpose dome facility known as the FargoDome; (the “Fargodome”); and

WHEREAS, pursuant to the authority of N.D.C.C. §40-05.1-07 and Article 5 of the Fargo Home Rule Charter, the Board of City Commissioners wish to propose an amendment to the Home Rule Charter of the city which would authorize the implementation of a sales, gross receipts and use tax for a period of twenty (20) years and which would also authorize the implementation of a lodging tax on hotel and motel room rentals for a period of twenty (20) years, both of which taxes (the “Taxes”) would generate proceeds to be utilized to pay or finance costs associated with the remodeling of the Fargodome, with the addition of a conference center to the Fargodome, and with ongoing capital projects, maintenance, and operation of the Fargodome and functionally-related facilities including the conference center (the “Projects”); and

NOW, THEREFORE, BE IT RESOLVED, by the Board of City Commissioners of the City of Fargo, North Dakota, as follows:

SECTION ONE. That Article 3 of the Home Rule Charter of the City of Fargo, pertaining to the list of home rule powers of the city, be amended to add paragraph V, to read as follows:

V. To establish a city lodging tax of three percent (3%) in addition to the existing three percent (3%) city lodging tax, subject to the following limitations:

1. Said lodging tax is hereby imposed upon gross receipts as defined herein, which tax shall be computed on a monthly basis by each and every hotel, motel or other accommodations located within the corporate limits of the city of Fargo. Said tax must be in addition to the state sales tax on rental accommodations provided in chapter 57-39.2 N.D.C.C.
2. The lodging tax hereby imposed shall be computed by every retailer and paid to the city of Fargo. Such computation shall be on a monthly basis and payment for each month shall be

made to the city on or before the 10th day of the following month. The payment shall be accompanied by a report indicating the amount of gross receipts for the reporting period and shall be certified by a certified public accountant or by the retailer, or managing officer thereof. The city may retain up to 3% of the total amount collected for administrative costs.

3. A lodging tax which is imposed pursuant to the authority granted herein shall extend for a period not exceeding twenty (20) years, said period to be established by the implementing ordinance.

4. The lodging taxes collected pursuant hereto, less costs of administration as provided herein, which is imposed pursuant to the authority granted herein shall be utilized for costs associated with the remodeling of the Fargodome, with the addition of a conference center to the Fargodome, and with ongoing capital projects, maintenance, and operation of the Fargodome and functionally-related facilities including the conference center (the "Projects"), said proceeds to be placed initially in a Fargodome improvement capital construction fund of the city of Fargo which, together with interest and other authorized investment earnings, shall be utilized by the city of Fargo for such purposes. Proceeds from such tax may be used to make direct payment of the costs for such construction, maintenance, and operation or may be pledged, applied or directed to amortize bonds or other obligations which may be sold to finance such costs. Interest earnings, earnings from authorized investments, or both such interest and investment earnings, on such proceeds may also be utilized for such purposes. Any funds remaining after completion of the Projects and payment of related obligations will be placed in a special escrow fund which, together with interest earnings and investment earnings, shall be utilized by the Fargodome Authority, with the concurrence of the governing body of the city, to provide for future capital improvements, maintenance, and operation of the Fargodome and functionally-related facilities including the conference center. Proceeds from such tax may be combined with proceeds from the sales, gross receipts and use tax being implemented for the same purpose. All such proceeds of a lodging tax which is imposed pursuant to the authority granted herein shall be utilized for the purposes authorized herein as the governing body of the city may select. The Fargodome Authority is hereby authorized and encouraged to provide recommendations to the governing body of the city.

5. The three percent (3%) lodging tax authorized hereby shall be imposed and collected in addition to an existing three percent (3%) city of Fargo lodging tax set forth in Article 3-13 of the Fargo Municipal Code, said existing tax having been (a) initially imposed by city ordinance as a two percent lodging tax (City of Fargo Ord. No. 2014 (June 1981)) under city home rule authority at a time when North Dakota non-home-rule cities were empowered by state statute to enact lodging taxes using state statutory authority (N.D.S.L. Ch. 429 (1981), Sec. 1 – 4) and, therefore by exclusion, the City of Fargo and other home rule charter cities could utilize home rule city powers to enact lodging taxes, and (b) subsequently expanded to the existing three percent lodging tax (City of Fargo Ord No. 2595 (1991)) also by said home rule authority.

SECTION TWO. That Article 3 of the Home Rule Charter of the City of Fargo, pertaining to the

list of home rule powers of the city, be amended to add paragraph W, to read as follows:

W. To impose a retail sales, gross receipts and use tax to be implemented by ordinance and subject to the following limitations:

1. Sales, gross receipts and uses taxed shall be limited to those which are taxed by the State of North Dakota pursuant to Chapters 57-39.2, 57-39.5, 57-39.6 and 57-40.2 of the North Dakota Century Code.

2. The amount of the tax shall not exceed one-quarter of one percent of the gross receipts and purchases which are taxed by the State of North Dakota pursuant to Chapters 57-39.2 and 57-40.2, of the North Dakota Century Code. Any patron or user paying said tax in excess of six and 25/100ths dollars on any single transaction of one or more items may obtain a credit or refund of the excess tax at the time of purchase from the vendor or request a refund of the excess tax payment by filing a request for refund, as provided by the North Dakota Century Code, upon forms provided by the North Dakota State Tax Commissioner. The tax imposed shall be computed and collected in the same manner provided by law for the collection of the state sales, gross receipts and use tax as provided in Chapters 57-39.2, 57-39.5, 57-39.6 and 57-40.2 of the North Dakota Century Code. All references to the North Dakota Century Code include amendments adopted by the North Dakota Legislative Assembly.

3. A sales, gross receipts and/or use tax which is imposed pursuant to the authority granted herein shall extend for a period not exceeding twenty (20) years, said period to be established by the implementing ordinance.

4. Proceeds of a sales, gross receipts and use tax which is imposed pursuant to the authority granted herein shall be utilized for costs associated with the remodeling of the Fargodome, with the addition of a conference center to the Fargodome, and with ongoing capital projects, maintenance, and operation of the Fargodome and functionally-related facilities including the conference center (the "Projects"), said proceeds to be placed initially in a Fargodome improvement capital construction fund of the city of Fargo which, together with interest and other authorized investment earnings, shall be utilized by the city of Fargo for such purposes. Proceeds from such tax may be used to make direct payment of the costs for such construction, maintenance, and operation or may be pledged, applied or directed to amortize bonds or other obligations which may be sold to finance such costs. Interest earnings, earnings from authorized investments, or both such interest and investment earnings, on such proceeds may also be utilized for such purposes. Any funds remaining after completion of the Projects and payment of related obligations will be placed in a special escrow fund which, together with interest earnings and investment earnings, shall be utilized by the Fargodome Authority, with the concurrence of the governing body of the city, to provide for future capital improvements, maintenance, and operation of the Fargodome and functionally-related facilities including the conference center. Proceeds from such tax may be

combined with proceeds from the lodging tax being imposed for the same purpose. All such proceeds of a sales, gross receipts and use tax which is imposed pursuant to the authority granted herein shall be utilized for the purposes authorized herein as the governing body of the city may select. The Fargodome Authority is hereby authorized and encouraged to provide recommendations to the governing body of the city.

BE IT FURTHER RESOLVED, that the above-recited proposal for a sales and use tax and for a lodging tax on hotel and motel rooms be presented to the electorate of the City of Fargo as a single amendment to the City's Home Rule Charter and, therefore, that such amendment shall not be deemed approved unless said proposed amendment has been approved by sixty (60) percent of the qualified electors voting on the question, as provided by initiated amendment Number Two to the Fargo Home Rule Charter;

BE IT FURTHER RESOLVED, By the Board of City Commissioners of the City of Fargo, North Dakota, that this Resolution be published in the official newspaper for the City of Fargo (1) within thirty (30) days of the approval hereof or (2) prior to sixty (60) days prior to the next city election, whichever is earlier.

Mayor

Attest:

City Auditor

The motion for the adoption of the foregoing resolution was duly seconded by COMMISSIONER _____, and upon roll call vote, the following voted in favor thereof: COMMISSIONERS _____.
The following were absent and not voting: _____,
and the following voted against the same: _____,
whereupon the resolution was declared duly passed and adopted.

(TO BE PUBLISHED ONCE IN THE FORUM AT LEAST SIXTY (60) DAYS PRIOR TO THE CITY ELECTION ON DECEMBER 5, 2023, AND NO LATER THAN 30 DAYS FROM APPROVAL OF RESOLUTION: PUBLISH WEDNESDAY, OCTOBER 4, 2023)

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

AN ORDINANCE ENACTING ARTICLE 3-24
OF CHAPTER 3 OF THE FARGO MUNICIPAL CODE
RELATING TO A LODGING TAX
FOR FARGODOME
INCLUDING CONFERENCE CENTER

1
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3
4 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

5
6 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

7
8 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

9
10 WHEREAS, by a vote of the electorate of the city of Fargo, the City's home rule charter having
been amended to authorize a three percent (3%) lodging tax to be imposed and collected in addition
11 to an existing three percent (3%) city of Fargo lodging tax set forth in Article 3-13 of the Fargo
Municipal Code, said existing tax having been (a) initially imposed by city ordinance as a two
12 percent lodging tax (City of Fargo Ord. No. 2014 (June 1981)) under city home rule authority at a
time when North Dakota non-home-rule cities were empowered by state statute to enact lodging
13 taxes using state statutory authority (N.D.S.L. Ch. 429 (1981), Sec. 1 – 4) and, therefore by
exclusion, the city of Fargo and other home rule charter cities could utilize home rule city powers to
14 enact lodging taxes, and (b) subsequently expanded to the existing three percent lodging tax (City of
Fargo Ord No. 2595 (1991)) also by said home rule authority; and,

15
16 WHEREAS, the Board of City Commissioners deems it necessary and appropriate to implement
such authority by the adoption of this ordinance;

17
18 NOW, THEREFORE, Be it Ordained by the Board of City Commissioners of the City of Fargo:

19 Section 1. Enactment. Article 3-24 of Chapter 3 of the Fargo Municipal Code, consisting of
Sections 3-2401 through 3-2407, is hereby enacted as follows:

20
21 3-2401. Definitions.—

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

1 1. Gross receipts - shall mean receipts of retailers for the leasing or renting of a hotel or
2 motel room or other accommodations occupied by the same natural person or persons for residential
3 housing, for periods of fewer than thirty consecutive calendar days within the corporate limits of the
4 city of Fargo.

5 2. Retailer - shall mean any person, firm or corporation in the business of leasing or
6 renting hotel, motel or other accommodations for periods of fewer than thirty consecutive calendar
7 days or one month.

8 3. Ordinance - All references to "this ordinance" shall mean the ordinance enacted by the
9 board of city commissioners of the city of Fargo and codified as Article 3-24 of the Fargo Municipal
10 Code containing enumerated sections commencing with this section 3-2401.

11 3-2402. Tax on gross receipts. -- In addition to the tax imposed pursuant to Fargo Municipal
12 Code Article 3-13, a three percent (3%) tax is hereby imposed upon gross receipts as defined herein,
13 which tax shall be computed on a monthly basis by each and every hotel, motel or other
14 accommodations located within the corporate limits of the city of Fargo. Said tax must be in addition
15 to the state sales tax on rental accommodations provided in chapter 57-39.2, N.D.C.C. Said tax shall
16 be placed in a Fargodome improvement capital construction fund of the City of Fargo which, together
17 with interest and other authorized investment earnings, shall be utilized by the city of Fargo for costs
18 associated with the remodeling of the Fargodome and with the addition to the Fargodome of a
19 conference center and with ongoing capital projects, maintenance, and operations of the
20 Fargodome and functionally-related facilities, including the conference center.

21 3-2403. Collection of tax. -- The tax hereby imposed shall be computed by every retailer and
22 paid to the city of Fargo. Such computation shall be on a monthly basis and payment for each month
23 shall be made to the city on or before the 10th day of the following month. The payment shall be
accompanied by a report indicating the amount of gross receipts for the reporting period and shall be
certified by a certified public accountant or by the retailer, or managing officer thereof. The city may
retain up to 3% of the total amount collected for administrative costs.

 3-2404. Dedication of tax proceeds. -- All fees, taxes, penalties and other charges imposed
and collected under this ordinance, less administrative costs, shall be dedicated and utilized for costs
associated with the remodeling of the Fargodome, with the addition of a conference center to the
Fargodome, and with ongoing capital projects, maintenance, and operations of the Fargodome and
functionally-related facilities including the conference center (the "Projects"), said proceeds to be
placed initially in a Fargodome improvement capital construction fund of the city of Fargo which,
together with interest and other authorized investment earnings, shall be utilized by the city of
Fargo for such purposes. Proceeds from such tax may be used to make direct payment of the costs

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

1 for such construction, maintenance, and operation or may be pledged, applied or directed to amortize
2 bonds or other obligations which may be sold to finance such costs. Interest earnings, earnings from
3 authorized investments, or both such interest and investment earnings, on such proceeds may also be
4 utilized for such purposes. Any funds remaining after completion of the Projects and payment of
5 related obligations will be placed in a special escrow fund which, together with interest earnings and
6 investment earnings, shall be utilized by the Fargodome Authority, with the concurrence of the
7 governing body of the city, to provide for future capital improvements, maintenance, and operation
8 of the Fargodome and functionally-related facilities including the conference center. Proceeds from
9 such tax may be combined with proceeds from the sales, gross receipts and use tax being implemented
10 for the same purpose. All such proceeds of a lodging tax which is imposed pursuant to the authority
11 granted herein shall be utilized for the purposes authorized herein as the governing body of the city
12 may select. The Fargodome Authority is hereby authorized and encouraged to provide
13 recommendations to the governing body of the city.

14 3-2405. Failure to comply--Penalty. -- If any retailer shall fail to make payment as required
15 by this article or to file the necessary report within the time provided, or, if upon audit, is found to
16 owe additional tax, such retailer shall be subject to a penalty of 5% of the amount of tax due, plus
17 interest of 1% of such tax for each month of delay or a fraction thereof. The board of city
18 commissioners, if satisfied that the delay was excusable, may waive all or any part of such penalty
19 and interest. Any penalty and interest paid shall be utilized in the same manner as other receipts under
20 this article.

21 3-2406. Saving clause. -- Should any section, paragraph, sentence, clause or phrase of this
22 ordinance be declared unconstitutional or invalid for any reason, the remainder of this ordinance shall
23 not be affected thereby.

3-2407. Term. -- A tax imposed by this ordinance shall extend for a period of twenty (20)
years from and after April 1, 2024, and ending on March 31, 2044.

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

Section 2. Effective Date.

This ordinance shall be in full force and effect from and after December 29, 2023.

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Timothy J. Mahoney, M.D., Mayor

(SEAL)

Attest:

Steven Sprague, City Auditor

First Reading:
Second Reading:
Final Passage:

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

AN ORDINANCE ENACTING ARTICLE 3-25
OF CHAPTER 3 OF THE FARGO MUNICIPAL CODE
RELATING TO A SALES TAX FOR FARGODOME
INCLUDING CONFERENCE CENTER

1
2
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

4
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, an amendment to the City’s Home Rule Charter has been authorized by a vote of at
least 60% of the qualified electors voting on the question, as provided by initiated amendment
Number Two to the Fargo Home Rule Charter; and

10
11 WHEREAS, the Board of City Commissioners deems it necessary and appropriate to implement
such authority by the adoption of this ordinance;

12
13 NOW, THEREFORE, Be it Ordained by the Board of City Commissioners of the City of Fargo:

14 Section 1. Enactment. Article 3-25 of Chapter 3 of the Fargo Municipal Code, consisting of
Sections 3-2501 through 3-2512, is hereby enacted as follows:

15
16 3-2501. Definitions. -- All terms defined in chapters 40-05.1, 57-39.2, 57-39.4, 57-39.5, 57-
39.6, and 57-40.2 of the North Dakota Century Code (N.D.C.C.), including any future amendments,
are adopted by reference. All references to the N.D.C.C. include amendments adopted by the North
17 Dakota Legislative Assembly. All references to “this ordinance” shall mean the ordinance enacted
by the board of city commissioners of the city of Fargo and codified as Article 3-25 of the Fargo
18 Municipal Code containing enumerated sections commencing with this section 3-2501.

19
20 3-2502. Collection and administration. -- Where not in conflict with the provisions of this
ordinance, the provisions of N.D.C.C. chapters 40-05.1, 57-39.2, 57-39.4, 57-39.5, 57-39.6, and 57-
40.2, and all administrative rules adopted by the Tax Commissioner, pertaining to the collection and
21 administration of the retail sales, use, and gross receipts tax, including provisions for liability, refund,
22

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

penalty, interest or credit, govern the administration by the North Dakota Office of State Tax Commissioner (hereinafter "Tax Commissioner") of the taxes imposed by this ordinance.

1 3-2503. Sales tax imposed. -- Subject to the provisions of N.D.C.C. § 40-05.1-06, and except
2 as otherwise provided by this ordinance, or the sales and use tax laws of the State of North Dakota, a
3 tax of one-quarter of one percent (0.25%) is imposed upon the gross receipts of retailers from all sales
at retail, including the leasing or renting of tangible personal property, within the corporate limits of
the of the city of Fargo, North Dakota.

4 3-2504. Use tax imposed. -- Subject to the provisions of N.D.C.C. § 40-05.1-06, and except
5 as otherwise provided in this ordinance, or the sales and use tax laws of the State of North Dakota, an
6 excise tax is imposed upon the storage, use, or consumption within the corporate limits of the city of
7 Fargo, North Dakota of tangible personal property purchased at retail for storage, use, or consumption
8 in this city, at the rate of one-quarter of one percent (0.25%) of the purchase price of the property. An
9 excise tax is imposed on the storage, use, or consumption within the corporate limits of the city of
Fargo, North Dakota of tangible personal property not originally purchased for storage, use, or
consumption in this city at the rate of one-quarter of one percent (0.25%) percent of the fair market
value of the property at the time it was brought into this city.

10 With respect to the purchase price of tangible personal property used by a contractor or subcontractor
11 to fulfill a contract as defined in N.D.C.C. § 57-40.2-03.3, the tax imposed by this section applies only
to bids submitted on or after the effective date of this ordinance.

12 3-2505. Gross receipts of alcoholic beverages. -- Subject to the provisions of N.D.C.C. § 40-
13 05.1-06, and except as otherwise provided in this ordinance, a gross receipts tax of one-quarter of one
14 percent (0.25%) is imposed upon all gross receipts from the sale of alcoholic beverages within the
15 city. A person who receives alcoholic beverages for storage, use, or consumption in this state is
subject to tax on storage, use, or consumption of those alcoholic beverages at the rate of one-quarter
of one percent (0.25%).

16 3-2506. Gross receipts of new farm machinery and new farm irrigation equipment. -- Subject
17 to the provisions of N.D.C.C. § 40-05.1-06, and except as otherwise provided in this ordinance, a
18 gross receipts tax of one-quarter of one percent (0.25%) is imposed upon all gross receipts from the
19 sale of new farm machinery and new farm irrigation equipment within the city. A person who
20 receives new farm machinery or new farm irrigation equipment for storage, use, or consumption in
this state is subject to tax on storage, use, or consumption of that machinery and/or equipment at the
rate of one-quarter of one percent (0.25%).

21 3-2507. Maximum tax imposed. -- Any patron or user paying a tax imposed by this ordinance
22 in excess of six and 25/100ths dollars (\$6.25) upon any single transaction of one or more items may
23

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

obtain a credit or refund of the excess tax at the time of purchase from the vendor or request a refund of the excess tax payment by filing a request for refund upon the forms provided by the Tax Commissioner.

1 3-2508. Exemptions. -- All sales, storage, use, or consumption of tangible personal property
2 which are exempt from imposition and computation of the sales or use tax of the state of North Dakota
3 are specifically exempt from the provisions of this ordinance.

4 3-2509. Dedication of tax proceeds. -- All fees, taxes, penalties and other charges imposed
5 and collected under this ordinance, less administrative costs, are hereby dedicated and shall be utilized
6 for costs associated with the remodeling of the Fargodome, with the addition of a conference center
7 to the Fargodome, and with ongoing capital projects, maintenance, and operations of the
8 Fargodome and functionally-related facilities, including the conference center (the "Projects");
9 said proceeds to be placed initially in a Fargodome improvement capital construction fund of the city
10 of Fargo which, together with interest and other authorized investment earnings, shall be utilized by
11 the city of Fargo for such purposes. Proceeds from such tax may be used to make direct payment of
12 the costs for such construction, maintenance, and operations or may be pledged, applied or directed
13 to amortize bonds or other obligations which may be sold to finance such costs. Interest earnings,
14 earnings from authorized investments, or both such interest and investment earnings, on such
15 proceeds may also be utilized for such purposes. Any funds remaining after completion of the
16 Projects and payment of related obligations will be placed in a special escrow fund which, together
17 with interest earnings and investment earnings, shall be utilized by the Fargodome Authority, with
18 the concurrence of the governing body of the city, to provide for future capital improvements,
19 maintenance, and operation of the Fargodome and functionally-related facilities including the
20 conference center. Proceeds from such tax may be combined with proceeds from the lodging tax
21 being imposed for the same purpose. All such proceeds of a sales, gross receipts and use tax which
22 is imposed pursuant to the authority granted herein shall be utilized for the purposes authorized herein
23 as the governing body of the city may select. The Fargodome Authority is hereby authorized and
encouraged to provide recommendations to the governing body of the city.

16 3-2510. Contract with state tax commissioner. -- The city auditor of the city of Fargo is
17 hereby authorized to contract with the Tax Commissioner for administration and collection of taxes
18 imposed by this ordinance. The City Auditor has all powers granted to the Tax Commissioner and in
19 the absence of a valid contract with the Tax Commissioner or failure of the Tax Commissioner to
20 perform the delegated duties, shall perform these duties in place of the Tax Commissioner.

19 3-2511. Saving clause. -- Should any section, paragraph, sentence, clause or phrase of this
20 ordinance be declared unconstitutional or invalid for any reason, the remainder of this ordinance shall
21 not be affected thereby.

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

3-2512. Term. – A tax imposed by this ordinance shall extend for a period of twenty (20) years from and after April 1, 2024, and ending on March 31, 2044.

1 Section 2. Effective Date.

2 This ordinance shall be in full force and effect from and after December 29, 2023.

3
4
5 _____
6 Timothy J. Mahoney, M.D., Mayor

7 (SEAL)

8 Attest:

9 _____
10 Steven Sprague, City Auditor

11 First Reading:
12 Second Reading:
13 Final Passage:
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MEMORANDUM

TO: Board of City Commissioners

FROM: Steven Sprague, City Auditor ^{SS}

SUBJECT: Fargodome project: special election matters

DATE: August 31, 2023

The Fargodome Authority is seeking a special election for approval of a ¼ cent sales tax and a 3% lodging tax to fund an expansion of the Fargodome. To conduct the special election the Auditor's Office is seeking approval of the date and time of the election along with the polling locations. Additionally, we are seeking approval of the use of paper poll books, paper ballots and hand counting ballots, this is due to the unavailability of the election equipment at Cass County. Finally, we seek a sufficient fund appropriation to cover the necessary expenses of the election.

- Set the date of the special election as December 5, 2023
- Set the polling locations as
 - Fargodome
 - Fargo Civic Memorial Auditorium
 - Ramada Inn (formerly Doublewood Inn)-3333 13th Avenue South
- Set the polling location hours for the election from 7 a.m. to 7 p.m.
- No early voting is being proposed; however, absentee voting will be available.
- Approve a fund transfer from the Fargodome to the General Fund for expenses necessary to conduct the election
- Approve the use of paper poll books and hand-counting paper ballots

Pursuant to state election law, the city's auditor is responsible for preparation of the ballot; however, traditionally the city auditor has sought the approval of the City Commission as to the ballot question on measures submitted for city-wide vote.

Enclosed is a resolution for your approval and adoption that has been prepared by the City Attorney's office that will set a date for the special election, identifying polling locations, approving the form of the ballot question, and approving other matters related to the administration of the special election. In due course, the City Commission will also be asked to

approve other matters related to the administration of the special election including the appointments of certain election officials and of certain canvassing board members.

Recommended motion: I move to adopt the Resolution for the Special Election as presented.

COMMISSIONER _____ introduced the following resolution and moved its adoption:

RESOLUTION
[Special Election Matters – Lodging/Sales and Use Taxes]

BE IT RESOLVED BY THE BOARD OF CITY COMMISSIONERS OF THE CITY OF FARGO:

WHEREAS, the City of Fargo, Cass County, North Dakota, is a municipal corporation, organized and existing under the laws of the State of North Dakota, which has adopted a Home Rule Charter, pursuant to the authority of N.D.C.C. Chapter 40-05.1; and,

WHEREAS, the Board of City Commissioners have proposed or will propose an amendment to the Home Rule Charter of the city which would authorize the implementation of a sales, gross receipts and use tax for a period of twenty (20) years and which would also authorize the implementation of a lodging tax on hotel and motel room rentals for a period of twenty (20) years, both of which taxes (the “Taxes”) would generate proceeds to be utilized to pay or finance costs associated with the remodeling of the Fargodome, with the addition of a conference center to the Fargodome, and with ongoing capital projects, maintenance, and operation of the Fargodome and functionally-related facilities including the conference center (the “Projects”), said proposal approved by a separate resolution; and,

WHEREAS, said proposed amendment is required to be presented to the city electorate for approval and the Board of City Commissioners wishes to establish a date for a special election to be held for such purpose, to approve the polling locations, to approve the form of ballot question to be presented to the city electorate and to authorize other matters related to the administration of said special election;

NOW, THEREFORE, BE IT RESOLVED, by the Board of City Commissioners of the City of Fargo, North Dakota, as follows:

That the proposal for an amendment to the Home Rule Charter of the city which would authorize the implementation of the Taxes, described above, be placed on a ballot at a special election to be held on December 5, 2023;

That the following form of ballot question for the proposed amendment to the Home Rule Charter of the city to be placed before the city electorate is hereby approved:

Shall the city of Fargo’s Home Rule Charter be amended to establish a one-quarter of one percent (1/4%) sales tax to extend for twenty (20) years and to establish a three percent (3%) lodging tax on hotel and motel room rentals to extend for twenty (20) years with the funds collected from such taxes utilized for costs associated with the remodeling of the Fargodome, with the addition of a conference center to the Fargodome, and with ongoing capital projects, maintenance, and operation of the Fargodome and functionally-

related facilities including the conference center, all as provided in the Notice of Proposed Fargo Home Rule Charter Amendment as published in THE FORUM on the ___ day of _____, 2023?

SHALL SUCH AMENDMENT BE APPROVED?

() YES

() NO

That the City Auditor is authorized and directed to take such action as may be necessary and appropriate for the administration of the special election;

That the following are hereby designated as the three polling places for the special election: (1) the Fargodome, (2) the Fargo Civic Memorial Auditorium, and (3) the Ramada Inn (formerly the Doublewood Inn) located at 3333 13th Avenue South, all of which are located in the City of Fargo;

That the polling places shall open on the date of the special election at 7:00 A.M. and remain open until 7:00 P.M., provided that all electors standing in line to vote at the time the polls are set to close must be allowed to vote but electors arriving after closing time may not be allowed to vote, as is provided by N.D.C.C. §16.1-01-03;

That the use of paper poll books and hand-counting of paper ballots for the special election is hereby approved;

That a fund transfer from the Fargodome to the General Fund for expenses necessary for the election to be conducted is hereby approved. hours for the special election.

Mayor

Attest:

City Auditor

The motion for the adoption of the foregoing resolution was duly seconded by COMMISSIONER _____, and upon roll call vote, the following voted in favor thereof:

COMMISSIONERS _____

The following were absent and not voting: _____

and the following voted against the same: _____

whereupon the resolution was declared duly passed and adopted.