

FARGO CITY COMMISSION AGENDA  
Tuesday, September 8, 2020 - 5:00 p.m.

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

- A. Pledge of Allegiance.
- B. Roll Call.
- C. Approve Order of Agenda.
- D. Minutes (Regular Meeting, August 24, 2020).

**CONSENT AGENDA – APPROVE THE FOLLOWING:**

- 1. Receive and file an Ordinance Relating to Central Business District.
- 2. 2nd reading and final adoption of an Ordinance Rezoning Certain Parcels of Land Lying in Northern Sheyenne Land Third Addition; 1st reading, 8/24/20.
- 3. Consent to Assignment with Tyler Technologies, Inc. and Bill of Sale with Red River Regional Dispatch Center.
- 4. Bid award for conducting a Professional Fundraising Assessment for the proposed Performance Center (RFP20065).
- 5. Amendment to Lease Agreement with the Downtown Community Partnership.
- 6. Request for Offers to Purchase City-Owned Property at 501 Main Avenue.
- 7. Applications for Games of Chance for the New Life Center for a raffle on 10/13/20.
- 8. Change Order No. 2 for an increase of \$51,362.90 and time extension to the substantial and final completion dates for Project No. UR-20-A1.
- 9. Declaration of Public Utility Easement.
- 10. Bid award for Project No. FM-16-A1.
- 11. Development and Assessment Agreement – North Industrial Addition with Ryan Fargo, LLC (Project No. VF-20-A).
- 12. Amendment (sixth) to Developer and Road Use Agreement with Block 9 Partners, LLC.
- 13. Seventh Amended Lease Agreement with North Dakota State University and the Fargo Dome Authority.
- 14. Direct the City Attorney to Amend Ordinance 13-0901.
- 15. Leave of absence request for Isabella Cody.

17. Amend the existing agreement with United Way and the Afro American Development Association (on behalf of ESHARA Partners) to increase funding by \$170,340.00 and to extend the Agreement through 12/31/20.
18. Accept the CDBG-CV allocation from HUD.
19. Resolution Approving Plat of Aldi First Addition.
20. Establishment of new hourly parking rates for Roberts Commons and Mercantile Garage, as presented.
21. Limitation of the "welcome" citations to one per vehicle and change citation verbiage to strengthen collection efforts.
22. Fargo Cass Public Health and the Harms Reduction Program to implement quarantine and isolation support to individuals in response to COVID-19, to include the temporary use of the former Police Station building for an engagement center to coordinate services.
23. Acceptance of the ND Department of Transportation Grant Funding for Seat-belt, Impaired Driving, Distracted Driving Enforcement and Education Activities and Under-age Drinking Enforcement (CFDA#20.616 and 20.600).
24. Resolution Designating the Official Snow Emergency Routes.
25. Bid award for Project No. SW20-01.
26. Solicitation of bids for the replacement and upgrade of lighting at the Metro Transit Garage.
27. ND Department of Transportation State Aid for Public Transit Agreement, Section 5310 Transit Grant Agreement for Capital Assistance Program and Section 5339 Transit Grant Agreement for Federal Transit Capital Investment.
28. Sole Source Procurement with Consolidated Water Solutions (Hydranautics) in the amount of \$161,019.78 for the reverse osmosis membranes (SSP20139).
29. Contract and bond for Project No. WA2004.
30. Bills.
31. Purchase Agreement with Back Forty LLP for permanent street right-of-way (Improvement District No. BN-21-A1).
32. Selection of Alternative D with Option 1 for the design of North University Drive (Improvement District No. BN-20-A1).
33. Exchange and LOMR Payment Agreement with Sitka Investments, LLC (Improvement District No. FM-20-C).
34. Request for infrastructure contingent upon the execution of the Special Assessment Security Agreement and Letter of Credit and to direct Engineering to begin the design (Improvement District No. BN-20-L1).

36. Contract and bond for Improvement District No. AN-20-A1.

**REGULAR AGENDA:**

37. Recommendation for appointment of the Police Chief.
38. Construction Update.
39. **\*Public Input Opportunity\* - PUBLIC HEARINGS - 5:15 pm:**
- a. WITHDRAWN – Application filed by AdShark Ventures, LLC for a property tax exemption for a project located at 5601 34th Avenue South, which the applicant will use in the operation of their operation of ecommerce services, utilizing online user-data, internet based platforms, website development and conversion rate optimization to drive sales and new customer growth; continued from the 8/24/20 Regular Meeting.
  - b. Application filed by Beyond Shelter, Inc. for a Payment in Lieu of Tax Exemption (PILOT) for a project located at 708 4th Avenue North, which the applicant will use in the operation of a 42-unit affordable rental housing for seniors.
  - c. RTFMA Addition (1326 16 1/2 Street South); approval recommended by the Planning Commission on 5/5/20:
    - 1. Zoning Change from SR-3, Single-Dwelling Residential to SR-5, Single-Dwelling Residential.
    - 2. 1st reading of rezoning Ordinance.
    - 3. Plat of RTFMA Addition.
  - d. MBA Investments Addition (1717 1st Avenue North; 112 and 202 16th Street North); approval recommended by the Planning Commission on 8/6/19:
    - 1. Zoning Change from GC, General Commercial to LI, Limited Industrial.
    - 2. 1st reading of rezoning Ordinance.
    - 3. Plat of MBA Investments Addition.
  - e. Public comment on the 2021 preliminary budget and recommended tax levies.
40. Resolution (Fargo-Moorhead Community Theatre-Island Park) approving the reconstruction and possible expansion of the Fargo-Moorhead Community Theatre.
41. Discussion on Clean-Up Week Activities:
  - a. Sole Source Procurement with Industrial Builders for assistance with Clean-Up Week Activities (SSP20141).
42. Commissioner Strand would like to discuss aerial spraying.
43. Appointments to the Human Relations Commission.
44. Recommendation to extend the Resolution Moratorium to Issue No More than Five Permits for Outdoor Sound Amplifying Equipment Use.
45. Applications for property tax exemptions for improvements made to buildings:
  - a. Zackary and Natalie Kollman, 3037 20th Street South (3 year).
  - b. Thomas and Keri Desutter, 2220 25th Avenue South (5 year).

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

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

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



1

Office of the City Attorney

City Attorney  
Erik R. Johnson

Assistant City Attorney  
Nancy J. Morris

September 3, 2020

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

**RE: Central Business District**

Dear Commissioners,

Please find attached for your review and consideration several ordinance revisions pertaining to the Central Business District, sometimes identified as the Downtown Business District. I have been working with Ben Dow, Director of Public Works, to address several ordinance revisions to the Official Snow Emergency Routes (Resolution on your agenda today as a separate item) and through that process several discrepancies were noted in the Fargo Municipal Code with respect to the name designation- sometimes referred to as Central Business District and other times the Downtown Business District, as well as inconsistencies in the area encompassed. After further review, it was determined that the Central Business District should be more specifically identified, and further that the Central Business District area should be described to include streets to the South, West and North treated similarly in order to be fully inclusive.

**SUGGESTED MOTION:** I move to receive and file the following ordinance amending sections 8-0101 and 8-0109 of Article 8-01 of Chapter 8 of the Fargo Municipal Code, section 18-0308 of Article 18-03 of Chapter 18 of the Fargo Municipal Code, section 10-0311 of Article 10-03 of Chapter 10 of the Fargo Municipal Code, and section 11-0201 of Article 11-02 of Chapter 11 of the Fargo Municipal Code relating to the Central Business District, and to place the ordinance on for first reading at the next regularly scheduled Board of City Commissioners meeting.

Please feel free to contact me if you have any questions or concerns. The map attached is for demonstrative purposes only.

Sincerely,

Nancy J. Morris  
Assistant City Attorney

NJM/al  
Enclosures





OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

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

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

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

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

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

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

NOW, THEREFORE,

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

Section 1. Amendment.

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

8-0101. - Definitions.

\* \* \*

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

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

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

1        Section 2. Amendment.

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

4        8-1009. – Night parking restrictions.

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

15        \* \* \*

16        Section 3. Amendment.

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

19        18-0308. - Definitions.

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

- 23        A. "Central Business District" as defined in §8-0101. ~~shall mean an area within the~~  
24 ~~following boundaries:~~  
25        — 1. ~~On the north by 6<sup>th</sup> Avenue North;~~  
26        — 2. ~~On the east by the Red River of the North;~~  
27        — 3. ~~On the south by 1<sup>st</sup> Avenue South; and,~~  
28        — 4. ~~The westerly boundary shall be Roberts Street from 6<sup>th</sup> Avenue~~

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

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

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

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

\* \* \*

Section 4. Amendment.

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

10-0311. - Panhandling.

A. Definitions.

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

\* \* \*

Section 5. Amendment.

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

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

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

11-0201. – Definitions.

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

\* \* \*

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

Section 6. Effective Date.

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

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

Attest:

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

First Reading:  
Second Reading:  
Final Reading:

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

2

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

1 AN ORDINANCE REZONING CERTAIN PARCELS OF LAND  
2 LYING IN NORTHERN SHEYENNE LAND THIRD ADDITION  
3 TO THE CITY OF FARGO,  
CASS COUNTY, NORTH DAKOTA

4 WHEREAS, the Fargo Planning Commission and the Board of City Commissioners of the  
5 City of Fargo have held hearings pursuant to published notice to consider the rezoning of certain  
6 parcels of land lying in Northern Sheyenne Land Third Addition to the City of Fargo, Cass County,  
North Dakota; and,

7 WHEREAS, the Fargo Planning Commission recommended approval of the rezoning  
8 request on May 5, 2020; and,

9 WHEREAS, the rezoning changes were approved by the City Commission on August 24,  
2020,

10 NOW, THEREFORE,

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

12 Section 1. The following described property:

13 All of the Northern Sheyenne Land Third Addition to the City of Fargo, Cass  
14 County, North Dakota;

15 is hereby rezoned from "GI", General Industrial, District to "LI", Limited Industrial, District.  
16

17 Section 2. The City Auditor is hereby directed to amend the zoning map now on file in his  
18 office so as to conform with and carry out the provisions of this ordinance.  
19  
20  
21  
22  
23

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

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

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

3  
4  
5  
6 (SEAL)

7 Attest:

8  
9  
10 \_\_\_\_\_  
11 Steven Sprague, City Auditor

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

First Reading:  
Second Reading:  
Final Passage:



3

Office of the City Attorney

City Attorney  
Erik R. Johnson

Assistant City Attorney  
Nancy J. Morris

September 3, 2020

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

**RE: City transfer of New World "CAD system" to Red River Regional Dispatch Center pursuant to Joint Powers Agreement**


Dear Commissioners,

Enclosed for your approval are a Consent to Assignment and a Bill of Sale that will effect a transfer to the Red River Regional Dispatch Center (RRRDC) of certain hardware, software, software licenses and related equipment of the computer-aided dispatch and records management system (CAD/RMS) installed at the RRRDC beginning in 2008. The CAD/RMS system was acquired by the city of Fargo from a company then known as "New World" using 2007 COPS Technology Grant funds obtained by the city specifically for use in the RRRDC. The RRRDC joint powers agreement (JPA) was amended in December 2008 to address the 2007 COPS grant and the acquisition of the CAD/RMS system by the city for the RRRDC. The amended JPA specified that the RRRDC would have the right to the use the CAD/RMS system during the term of the grant agreement and upon sign-off by the granting agency, the city would then "... transfer all ownership rights to said hardware, software and equipment for the sum of \$1.00 to the RRRDC for the benefit of the members of the [RRRDC]." The \$3 million grant required a local funding match of \$750,000 and RRRDC members--Fargo, Moorhead, Cass County, Clay County, and West Fargo--each contributed \$150,000 to meet the local funding match requirement. The enclosed bill of sale accomplishes this conveyance of ownership rights. The enclosed consent to assignment is necessary to memorialize the agreement by Tyler technologies, the successor to New World, to recognize existing warranties that were initially extended to the city.



**SUGGESTED MOTION:** I move to approve the transfer by bill of sale from the city of Fargo to the Red River Regional Dispatch Center and to approve the Consent to Assignment with Tyler Technologies and the Red River Regional Dispatch Center as presented.

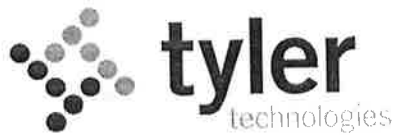
Sincerely,

A handwritten signature in black ink, appearing to read 'ERJ', with a large, stylized flourish extending from the end of the signature.

Erik R. Johnson

ERJ/lmw

Enclosures



## CONSENT TO ASSIGNMENT

This Consent to Assignment ("Consent") is made as of the last signature date set forth below ("Consent Effective Date") by and among Tyler Technologies, Inc., a corporation in good standing under the laws of Delaware, with offices at One Tyler Drive, Yarmouth, ME 04096 ("Tyler"), and the City of Fargo, with offices at 225 4th St N, Fargo, ND 58102 ("Fargo") and Red River Regional Dispatch Center, with offices at 300 Northern Pacific Ave #206, Fargo, ND 58102 ("RRRDC").

WHEREAS, Fargo selected New World Systems Corporation ("New World") to provide certain software and related services pursuant to a Standard Software License and Services Agreement effective December 30, 2008 (the "Agreement");

WHEREAS, on November 16, 2015, New World merged with and into Tyler, with Tyler being the surviving entity (the "Merger");

WHEREAS, Fargo wishes to assign to RRRDC, and RRRDC wishes to assume, the rights and obligations of Fargo under the Agreement, and Tyler is willing to consent to such assignment, subject to the terms and conditions of this Consent;

NOW, THEREFORE, in consideration of the mutual promises hereinafter contained, the parties agree as follows:

A. Tyler as Successor-in-Interest to New World.

1. Effective as of the Merger, Tyler became the successor-in-interest to New World and assumed all rights and obligations of New World under the Agreement.
2. All references in the Agreement to "New World," "NWS," or other similar naming conventions shall now be understood to refer to Tyler.
3. Until further notified by Tyler, the location of payments as set forth in the Agreement remains unchanged. Where Customer is required to provide notice under the Agreement, that notice shall be provided to:

Tyler Technologies, Inc.  
One Tyler Drive  
Yarmouth, ME 04096  
Attention: Chief Legal Officer

B. Assignment by Fargo to RRRDC

1. As of the Consent Effective Date, Fargo assigns to RRRDC all of its rights and obligations under the Agreement.
2. RRRDC acknowledges the foregoing assignment and expressly assumes, and agrees to abide by, all of the terms, conditions, obligations, and duties of Fargo under the Agreement, regardless of when the same arose or were incurred, together with all outstanding and future obligations of any kind whatsoever related thereto.
3. All references in the Agreement to "Customer" or other similar naming conventions shall now be understood to refer to RRRDC.

C. General

1. All terms and conditions of the Agreement are hereby ratified by Tyler and RRRDC, and shall remain in full force and effect as hereby amended.
2. Each party represents that the person signing on its behalf is an authorized signatory, and that by such signature, each party is bound hereby.

IN WITNESS WHEREOF, the parties hereto have executed this Consent as of the dates set forth below.

**Tyler Technologies, Inc.**

**City of Fargo, ND**

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

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

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

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

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

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_

City of Fargo

225 4th St N

Fargo, ND 58102

Attention: \_\_\_\_\_

**RRRDC Red River Regional Dispatch Center**

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

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

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

Date: \_\_\_\_\_

Address for Notices:

Red River Regional Dispatch Center

300 Northern Pacific Ave #206

Fargo, ND 58102

Attention: \_\_\_\_\_

## BILL OF SALE

Bill of Sale, dated this \_\_\_\_\_ day \_\_\_\_\_, 2019, from the **CITY OF FARGO**, a North Dakota municipal corporation ("Transferor") and the **RED RIVER REGIONAL DISPATCH CENTER** ("Transferee"), a joint powers entity created by a joint powers agreement between the cities of West Fargo and Fargo, North Dakota and Moorhead, Minnesota, the counties of Cass, North Dakota and Clay, Minnesota, said entity existing under the laws of the states of North Dakota and Minnesota.

### RECITALS

A. Transferor entered into a an agreement entitled "Standard Software License and Services Agreement with New World Systems Corporation, a Michigan Corporation dated December 19, 2008 (together with all amendments thereto, the "Agreement") whereby, among other things, Transferor agreed to transfer, convey and assign to Transferee and Transferee agreed to acquire, all of the Equipment (as that term is described in the Agreement) which, Equipment is currently described and listed on the attached Exhibit A.

B. Transferor was awarded the Fiscal Year 2007 (FY2007) COPS Technology Grant, hereinafter "the Grant," for the Fargo Metropolitan Statistical Area for the purchase of a regional CAD/RMS which, in turn was to be used, owned and administered as a regional Computer Aided Dispatch and Records Management System, hereinafter referred to as "CAD/RMS, for the benefit of the Transferee and its member entities; and,

C. The Joint Powers Agreement between the member entities of Transferor specified, at section 9 thereof, that "[a]t the end of the grant period, following the submission of the Final Program Progress (Closeout) Report, [Transferor] will transfer all ownership rights to said hardware, software and equipment for the sum of \$1.00 to the [Transferee]"; and,

D. Transferor has executed and is delivering this Bill of Sale to Transferee for the purpose of transferring, conveying and assigning the Equipment to Transferee.

E. Contemporaneously with the execution of this Bill of Sale, Transferee has paid to Transferor the consideration contemplated by and stated in the Agreement, being the sum of One and no/100 Dollars (\$1.00) and other valuable consideration.

NOW, THEREFORE, under and subject to all the terms and conditions of the Agreement and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Transferor does hereby SELL, TRANSFER, CONVEY, and ASSIGN to Transferee, all of Transferor's right, title, and interest, legal and equitable, in and to the Equipment, free and clear of all mortgages, liens, pledges, security interests, charges, encumbrances, claims, options, covenants, conditions, and restrictions of any kind or nature.

Except for the foregoing warranty of title, the Transferee acknowledges that the Equipment is otherwise sold "AS IS" with all faults and virtues, with no express or implied representations or warranties by Transferor as to physical condition or fitness for any particular purpose or of any other nature whatsoever.

The terms of the Agreement are incorporated herein by this reference. In the event of any conflict or inconsistency between the terms of the Agreement and the terms hereof, the terms of the Agreement shall control.

IN WITNESS WHEREOF, Transferor has caused this Bill of Sale to be duly executed as of the date first above written.

CITY OF FARGO,  
a North Dakota municipal corporation

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

ATTEST:

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

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

On this \_\_\_\_ day of \_\_\_\_\_, 201\_\_, before me, a notary public in and for said county and state, personally appeared TIMOTHY J. MAHONEY, M.D. and STEVEN SPRAGUE, to me known to be the Mayor and City Auditor, respectively, of the CITY OF FARGO, a North Dakota municipal corporation, described in and that executed the within and foregoing instrument, and acknowledged that said municipal corporation executed the same.

(SEAL)

\_\_\_\_\_  
Notary Public  
Cass County, ND

**EXHIBIT A**

## New World Systems Customer Software Inventory

At: 12/8/19

### Fargo, ND Police Department

SSMA term through: 4/30/29

	Development Module	Units	Contract Date	Deliver Date	Backlog
<b>Aegis Public Safety</b>					
<b><i>CAD Enterprise.NET</i></b>					
Combined LE/Fire/EMS CAD Enterprise.NET		1	12/18/15	12/30/15	0
E-911 Interface Enterprise.NET		1	12/18/15	12/30/15	0
CAD Pager Interface Enterprise.NET		1	12/18/15	12/30/15	0
CAD Auto Routing Enterprise.NET		1	12/18/15	12/30/15	0
CAD AVL Enterprise.NET		1	12/18/15	12/30/15	0
State/NCIC Interface Enterprise.NET		1	12/18/15	12/30/15	0
On-Line CAD Interface to State/NCIC		1	12/18/15	12/30/15	0
Encoder Interface Enterprise.NET		1	12/22/15	12/30/15	0
Pre-Arrival Questionnaire Interface Enterprise.NET		1	12/18/15	12/30/15	0
Pictometry Interface Enterprise.NET		1	12/18/15	12/30/15	0
Web CAD Monitor Enterprise.NET		1	12/18/15	12/30/15	0
Web CAD Monitor Enterprise.NET		1	12/22/15	12/30/15	0
NG 911 Interface Enterprise.NET		1	12/18/15	12/30/15	0
Additional Next Gen 911 Users		12	12/18/15	12/30/15	0
PulsePoint Interface Enterprise		1	12/21/17	12/29/17	0
<b><i>Law Enforcement Records Software</i></b>					
LE Records Multi-Jurisdictional Base MSP		1	12/30/08	12/31/08	26,145
LE Records Federal & State Compliance MSP		1	12/30/08	12/31/08	2,249
Field Investigations MSP		1	12/30/08	12/31/08	562
Gun Permits MSP		1	12/30/08	12/31/08	562
Case Management MSP		1	12/30/08	12/31/08	562
Alarms Tracking and Billing MSP		1	12/30/08	12/31/08	844
Activity Reporting and Scheduling MSP		1	12/30/08	12/31/08	562
Property Room Bar Coding MSP		1	12/30/08	12/31/08	563
Career Criminal Registry MSP		1	12/30/08	12/31/08	564
Orders of Protection MSP		1	12/30/08	12/31/08	843
Narcotics Management MSP		1	12/30/08	12/31/08	844
Equipment Tracking MSP		1	12/30/08	12/31/08	844
Vehicle Tracking and Maintenance MSP		1	12/30/08	12/31/08	843
Gang Tracking MSP		1	12/30/08	12/31/08	843
Animal Licensing / Tracking MSP		1	12/30/08	12/31/08	1,405
Briefing Notes Records MSP (Includes BOLOs)		1	12/30/08	12/31/08	563
<b><i>Fire Records Software</i></b>					
Fire Records Base Package MSP		1	12/30/08	12/31/08	4,217
Fire Vehicle Tracking and Maint. MSP		1	12/30/08	12/31/08	843
Fire Permits MSP		1	12/30/08	12/31/08	844
Fire Equipment Tracking and Maint. MSP		1	12/30/08	12/31/08	844
Fire Records Inventory MSP		1	12/30/08	12/31/08	843
Fire NFIRS 5.0 Electronic Reporting MSP		1	12/30/08	12/31/08	1,218
<b><i>Public Safety Interface Software</i></b>					
On-Line Wants & Warrants Interface to State/NCIC		1	12/30/08	12/31/08	796

## New World Systems Customer Software Inventory

At: 12/8/19

### Fargo, ND Police Department

SSMA term through: 4/30/29

	Development Module	Units	Contract Date	Deliver Date	Backlog
<b>Aegis Public Safety</b>					
<b>Public Safety Interface Software</b>					
On-Line Property Checks Interface to State/NCIC		1	12/30/08	12/31/08	796
VINE Interface MSP		1	12/30/08	12/31/08	656
Livescan Interface MSP		1	12/30/08	12/31/08	656
On-Line Global Subjects Interface to State/NCIC		1	12/30/08	12/31/08	797
Ticket Writer Interface MSP		1	12/30/08	12/31/08	1,640
<b>Corrections Management Software</b>					
Corrections Management Base MSP		1	12/30/08	12/31/08	5,529
Commissary Accounting MSP		1	12/30/08	12/31/08	609
Officer Equipment Tracking MSP		1	12/30/08	12/31/08	844
Corrections Compliance Federal & State Reporting		1	12/30/08	12/31/08	2,437
Bar Coding MSP		1	12/30/08	12/31/08	609
Inmate Movement Tracking Bar Coding		1	12/30/08	12/31/08	609
Grievance Tracking MSP		1	12/30/08	12/31/08	609
<b>Photo Imaging Software</b>					
Digital Imaging MSP		1	12/30/08	12/31/08	0
Public Safety Mug Shots/Line-Ups MSP		1	12/30/08	12/31/08	2,155
<b>Data Analysis/Crime Mapping/Mgt Reporting</b>					
Analysis Base With Three Applications		1	12/18/15	12/30/15	0
<b>Decision Support Software</b>					
Decision Support Base Datamart		1	12/22/15	12/30/15	0
Fire Management Data Mart		9	12/22/15	12/30/15	0
Corrections Management Dashboard		1	12/22/15	12/30/15	0
Corrections Management Data Mart		9	12/22/15	12/30/15	0
Fire Management Dashboard		1	12/22/15	12/30/15	0
LE Management Data Mart		10	12/22/15	12/30/15	0
LE Management Dashboard		1	12/22/15	12/30/15	0
CAD Enterprise Dashboard		1	12/22/15	12/30/15	
CAD Enterprise Data Mart		10	12/22/15	12/30/15	
<b>SOFTCODE</b>					
<b>Softcode</b>					
CivilServe Software		2	9/29/16	9/30/16	0
CivilServe Software		2	9/30/16	2/26/18	0
CivilServe Software		2	7/24/17		0
CivilMobile Client License		2	9/30/16	2/26/18	0
CivilServe Civil Process System		1	4/11/19		0
CivilServe Civil Process System		1	10/18/18		0

### Mobile

#### Mobile Server Software

## New World Systems Customer Software Inventory

At: 12/8/19

**Fargo, ND Police Department**

SSMA term through: 4/30/29

	Development Module	Units	Contract Date	Deliver Date	Backlog
<b>Mobile</b>					
<b>Mobile Server Software</b>					
Field Reporting Server		200	12/30/08	12/31/08	937
Field Reporting Data Merge		200	12/30/08	12/31/08	234
Base CAD/NCIC/Messaging		200	12/30/08	12/31/08	0
Mobile Upload Software		200	12/30/08	12/31/08	2,577
<b>Mobile Software on the RS6000</b>					
Base Message Switch to NCIC		200	12/30/08	12/31/08	8,481
RS/6000 State/NCIC Interface		200	12/30/08	12/31/08	0
New World CAD Interface for Aegis/MSP		200	12/30/08	12/31/08	937
AVL Interface		200	12/30/08	12/31/08	937
<b>New World Mobile Software</b>					
LE State/NCIC via Switch		1	5/21/13	5/29/13	0
LE State/NCIC via Switch		3	5/24/10	5/28/10	0
LE State/NCIC via Switch		146	12/30/08	12/31/08	1,710
LE State/NCIC via Switch		7	12/23/14	12/30/14	0
Drivers License Mag Stripe Reader Interface		1	5/21/13	5/29/13	0
Drivers License Mag Stripe Reader Interface		7	12/23/14	12/30/14	0
Drivers License Mag Stripe Reader Interface		146	12/30/08	12/31/08	684
Drivers License Mag Stripe Reader Interface		3	5/24/10	5/28/10	0
LE Field Reporting		146	12/30/08	12/31/08	3,420
LE Field Reporting		3	5/24/10	5/28/10	0
LE Field Reporting		1	5/21/13	5/29/13	0
LE Field Reporting		7	12/23/14	12/30/14	0
Mobile Upload of Field Reports		146	12/30/08	12/31/08	2,052
Mobile Upload of Field Reports		7	12/23/14	12/30/14	0
Mobile Upload of Field Reports		3	5/24/10	5/28/10	0
Mobile Upload of Field Reports		1	5/21/13	5/29/13	0
LE CAD Via Switch		146	12/30/08	12/31/08	2,566
LE CAD Via Switch		3	5/24/10	5/28/10	0
LE CAD Via Switch		1	5/21/13	5/29/13	0
LE CAD Via Switch		7	12/23/14	12/30/14	0
LE Field Reporting Compliance		3	5/24/10	5/28/10	0
LE Field Reporting Compliance		7	12/23/14	12/30/14	0
LE Field Reporting Compliance		1	5/21/13	5/29/13	0
LE Field Reporting Compliance		146	12/30/08	12/31/08	684
Fire CAD Via Switch (Messaging)		34	12/30/08	12/31/08	598
Mugshot Images Download		1	2/21/18	2/26/18	0
Mugshot Images Download		7	12/23/14	12/30/14	0
Mugshot Images Download		146	12/30/08	12/31/08	684
Mugshot Images Download		3	5/24/10	5/28/10	0
Mugshot Images Download		1	5/21/13	5/29/13	0
In Car Mapping		7	12/23/14	12/30/14	0
In Car Mapping		3	5/24/10	5/28/10	0

## New World Systems Customer Software Inventory

At: 12/8/19

**Fargo, ND Police Department**

SSMA term through: 4/30/29

	Development Module	Units	Contract Date	Deliver Date	Backlog
<b>Mobile</b>					
<b><i>New World Mobile Software</i></b>					
In Car Mapping		146	12/30/08	12/31/08	1,368
In Car Mapping		1	5/21/13	5/29/13	0
New World AVL		7	12/23/14	12/30/14	0
New World AVL		180	12/30/08	12/31/08	1,265
New World AVL		3	5/24/10	5/28/10	0
New World AVL		1	5/21/13	5/29/13	0
In-Car Routing		7	12/23/14	12/30/14	0
In-Car Routing		146	12/30/08	12/31/08	1,026
In-Car Routing		3	5/24/10	5/28/10	0
In-Car Routing		1	5/21/13	5/29/13	0
In-Car Routing		1	2/21/18	2/26/18	0
Ticket Writer Interface		56	12/30/08	12/31/08	197
Fire In Car Mapping		34	12/30/08	12/31/08	319
Field Investigation Field Reporting		1	2/21/18	2/26/18	0
Field Investigation Field Reporting		85	12/22/15	12/30/15	0
State Photo Download		66	12/22/15	12/30/15	0
State Photo Download		1	2/21/18	2/26/18	0
Fire In Car Routing		34	12/30/08	12/31/08	239
MCT Ticket Writer Interface		7	12/23/14	12/30/14	0
In Car Mapping / AVL		1	2/21/18	2/26/18	0
LE Dispatch/Messaging/State/NCIC		1	2/21/18	2/26/18	0
Drivers License Mag Stripe Reader/Barcode Reader		1	2/21/18	2/26/18	0
<b><i>Mobile Software on the 400 or MSP Server</i></b>					
AVL CAD Interface		200	12/30/08	12/31/08	937
MDT/MCT Base CAD/RMS Interface		200	12/30/08	12/31/08	797
<b>Aegis Justice Link</b>					
<b><i>Aegis Link Software</i></b>					
JL Interface Operability Engine		1	12/30/08	8/1/11	1,077
<b>Site License</b>					
<b><i>Site License</i></b>					
Site License - CAD, LERMS, Fire EMS, and		600	12/30/08	12/31/08	0
<b>Third Party ESRI Embedded Applications</b>					
<b><i>ESRI Embedded Applications - Upgrade</i></b>					
ArcGIS Runtime CAD Desktop Workstations		600	1/22/14	1/22/14	0
ArcGIS Runtime Mobile In-Car		200	1/22/14	1/22/14	0
ArcGIS Runtime Mobile In-Car		1	2/21/18	2/26/18	0
Mobile In-Car Mapping Integration		7	12/23/14	12/30/14	0
Mobile In-Car Routing Integration		7	12/23/14	12/30/14	0

## New World Systems Customer Software Inventory

At: 12/8/19

### Fargo, ND Police Department

SSMA term through: 4/30/29

	Development Module	Units	Contract Date	Deliver Date	Backlog
<b>Third Party ESRI Embedded Applications</b>					
<i><b>ESRI Embedded Applications - Upgrade</b></i>					
ArcGIS Advanced Enterprise Server Integration		1	1/22/14	1/22/14	0
<b>PSMA, Other Services</b>					
<i><b>Services</b></i>					
PSMA 40 hours		1	5/1/16		0
					100,075

## New World Systems Customer Software Inventory

At: 12/8/19

**Fargo, ND Police Department**

SSMA term through: 4/30/29

	Development Module	Units	Contract Date	Deliver Date	Backlog
<b><u>Dropped modules - no longer covered by SSMA</u></b>					
<b>Aegis Public Safety</b>					
<b>Computer Aided Dispatch (CAD)</b>					
Combined LE/Fire/EMS CAD MSP		1	12/30/08	12/31/08	
CAD Mapping MSP		1	12/30/08	12/31/08	
CAD Auto Routing MSP		1	12/30/08	12/31/08	
CAD AVL MSP		1	12/30/08	12/31/08	
Pre-Arrival Questionnaire Interface - EMD		1	6/29/12	6/29/12	
<b>Law Enforcement Records Software</b>					
Civil Paper Tracking and Receipting		1	7/5/10	7/15/10	
LE Records Inventory MSP		1	12/30/08	12/31/08	
<b>Public Safety Interface Software</b>					
State/NCIC Interface MSP		1	12/30/08	12/31/08	
On-Line CAD Interface to State/NCIC MSP		1	12/30/08	12/31/08	
Positron TDD Interface MSP		1	12/30/08	12/31/08	
E-911 Interface MSP		1	12/30/08	12/31/08	
CAD Pager Interface MSP		1	12/30/08	12/31/08	
Netclock Serial Interface MSP		1	12/30/08	12/31/08	
Pictometry Interface MSP		1	12/30/08	12/31/08	
<b>Photo Imaging Software</b>					
ID Badges MSP		1	12/30/08	12/31/08	
<b>Data Analysis/Crime Mapping/Mgt Reporting</b>					
Analysis Base With Four Applications		1	12/30/08	12/31/08	
<b>SOFTCODE</b>					
<b>Softcode</b>					
CivilMobile Client License		3	9/29/16	9/30/16	
<b>Third Party ESRI Embedded Applications</b>					
<b>ESRI Embedded Applications - New</b>					
Mobile In-Car Mapping Integration		3	5/24/10	9/20/10	
Mobile In-Car Mapping Integration		180	12/30/08	9/20/10	
Mobile In-Car Routing Integration		3	5/24/10	9/20/10	
Mobile In-Car Routing Integration		180	12/30/08	9/20/10	
ArcGIS Standard Enterprise Server Integration		1	12/30/08	12/31/08	
<b>ESRI Embedded Applications - Upgrade</b>					
ArcGIS Runtime Mobile In-Car		1	5/21/13	5/29/13	
<b>PSMA, Other Services</b>					
<b>Services</b>					
PSMA 80 hours		1	5/1/15		

**New World Systems  
Customer Software Inventory**  
At:: 12/8/19

**Fargo, ND Police Department**  
SSMA term through: 4/30/29

	Development Module	Units	Contract Date	Deliver Date	Backlog
<u>Dropped modules - no longer covered by SSMA</u>					
					0



September 8, 2020

**To: Board of City Commissioners**  
**Fr: Michael Redlinger, Assistant City Administrator**  
**Re: Approve Benefactor Group Proposal for a Professional Fundraising Assessment (Proposed Fargo Performance Center)**

On February 10, 2020, the City Commission received an update on the Performing Arts Task Force and accepted its Final Report. An electronic copy of the Final Report is located on the City of Fargo website:

[http://download.fargond.gov/0/2019\\_feasibility\\_study\\_final\\_report\\_2-10-20.pdf](http://download.fargond.gov/0/2019_feasibility_study_final_report_2-10-20.pdf)

Following acceptance of the Task Force Final Report, the City Commission approved a Request for Proposals (RFP) for a Professional Fundraising Assessment on March 9, 2020. Responses to the RFP were due on April 6, 2020, and nine (9) responsive proposals were received. An RFP Rating Team was formed to evaluate the proposals, and included Commissioner Dave Piepkorn; Kent Costin, Finance Director; Michael Redlinger, Assistant City Administrator; and Rob Remark, JLG Architects (*ex officio*).

After the initial screening of proposals, the RFP Rating Team selected three (3) firms to proceed to a second phase of the RFP process ("Phase 2"). In Phase 2, invited firms were asked to respond to additional questions about their fundraising assessment approach and to expound on the specific elements of their proposal. Virtual interviews were held on July 29, 2020 with the RFP Rating Team and Charley Johnson, Convention & Visitors Bureau; and Jeff Schatz, retired Superintendent of Fargo Public Schools (both former members of the Performing Arts Task Force).

At the conclusion of the Phase 2 interviews, the RFP Rating Team determined that Benefactor Group was the firm best suited to conduct the Professional Fundraising Assessment for the City of Fargo. The City Commission is requested to consider the recommendation of the RFP Rating Team and the Finance Committee to select the Benefactor Group proposal. The Finance Committee unanimously recommended approval of the proposal on August 31, 2020.

The cost of the Professional Fundraising Assessment will be addressed through an internal, year-end budget adjustment, as funds are not contained in the City's 2020 Operating & Capital Budget for this activity.

**Recommended Action:** Approve the Benefactor Group proposal to conduct a Professional Fundraising Assessment for the Proposed Fargo Performance Center.

Attachments: (1) August 31, 2020 Finance Committee Report of Action

(2) Request for Proposals (RFP) for a Professional Fundraising Assessment for a Proposed Fargo Performance Center & Invitation to Respond (*March 14, 2020*)

(3) RFP Rating Matrix (*April 9, 2020*)

(4) RFP Phase 2 Invitation (*May 4, 2020*)

(5) Benefactor Group Proposal, Phase 2 Response, & Letter of Agreement

**Attachment #1**

REPORT OF ACTION**FINANCE COMMITTEE****Project:** Professional Fundraising Assessment (Proposed Fargo Performance Center)**Type:** Professional Services**Location:** Proposed Fargo Performance Center**Date of Hearing:** August 31, 2020

<u>Routing</u>	<u>Date</u>
City Commission	9/8/2020
Project File	N/A

The Finance Committee received an update from City staff regarding the RFP process for a Professional Fundraising Assessment for the Proposed Fargo Performance Center. Nine (9) responsive proposals were received for the project. An RFP Rating Team was formed to evaluate the proposals, and included Commissioner Dave Piepkorn; Kent Costin, Finance Director; Michael Redlinger, Assistant City Administrator; and Rob Remark, JLG Architects (*ex officio*). Three (3) proposals were selected by the RFP Rating Team to advance to a second phase of the screening process ("Phase 2"). At the conclusion of the Phase 2 interview process, the RFP Rating Team, along with two former Performing Arts Task Force members, determined that Benefactor Group was the firm best suited to conduct the Professional Fundraising Assessment for the City of Fargo.

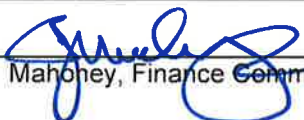
At the August 31, 2020 Finance Committee meeting, the Benefactor Group proposal was unanimously recommended to the City Commission for consideration and approval. The cost of the Professional Fundraising Assessment (\$52,750 plus expenses) will be addressed through an internal, year-end budget adjustment, as funds are not contained in the City's 2020 Operating & Capital Budget for this activity.

**MOTION:**

On a motion by Commissioner Piepkorn, seconded by Michael Redlinger, the Finance Committee voted unanimously to select the Benefactor Group proposal and recommend to the City Commission for consideration and approval on September 8, 2020.

**COMMITTEE:**

	Present	Yes	No	Unanimous
Tim Mahoney, Mayor	X			X
Dave Piepkorn, City Commissioner	X			
Bruce Grubb, City Administrator	X			
Mike Redlinger, Assistant City Administrator	X			
Kent Costin, Director of Finance	X			
Steve Sprague, City Auditor	X			

  
Tim Mahoney, Finance Committee Chair

**Attachment #2**



## **REQUEST FOR PROPOSALS (RFP) FOR A PROFESSIONAL FUNDRAISING ASSESSMENT FOR A PROPOSED FARGO PERFORMANCE CENTER**

### **Introduction**

The City of Fargo, ND, is requesting proposals from qualified firms or individuals to provide a professional fundraising assessment for the construction, operation, and maintenance of a proposed Fargo Performance Center. The proposed facility will be publicly bid, constructed, and financed. A combination of public and private funds will support construction and operation of the facility.

### **Background**

The proposed Fargo Performance Center was studied in 2018 and 2019 by a community task force comprised of elected officials, arts organizations, and the business community. The goal of the Performing Arts Task Force was to assess community interest and feasibility in constructing and operating a Fargo Performance Center. A "Market & Feasibility Study Update" was prepared in 2019 by HVS Consulting, and refreshed work performed by HVS in 2015.

The Performing Arts Task Force meeting materials, HVS Market & Feasibility Study Update, and the Performing Arts Task Force Final Report are located on the City of Fargo website:

**City of Fargo Performing Arts Task Force** (*Meeting materials, videos, and documents*):

<http://www.fargond.gov/city-government/boards-commissions/performing-arts-task-force>

**HVS Consulting Fargo Performance Center Market & Feasibility Study Update (2019):**

[http://download.fargond.gov/0/hvs\\_update\\_presentation.pdf](http://download.fargond.gov/0/hvs_update_presentation.pdf)

**Performing Arts Task Force Final Report:**

[http://download.fargond.gov/0/2019\\_feasibility\\_study\\_final\\_report\\_2-10-20.pdf](http://download.fargond.gov/0/2019_feasibility_study_final_report_2-10-20.pdf)

### **Proposal Content**

Interested firms or individuals should possess significant experience assessing the capacity and interest of private donors to support a major community capital project. Highly qualified firms or individuals will demonstrate specific knowledge of regional performance centers, operational models, and strategies to measure donor interest in the proposed building program. The proposal should communicate, in detail, the specific tactics the proposer will use to conduct the fundraising assessment, including:

- Market research and approach
- Methods to collect information, such as:
  - The number of in-person interviews
  - Telephone calls
  - Virtual meetings, email, etc.
- An estimate of the number of meetings the proposer believes are necessary to complete a comprehensive assessment.

**Evaluation Criteria**

Proposals from firms or individuals will be evaluated on previous relevant experience and reference checks; organizational approach to the fundraising assessment; and professional fees/expenses for the project. Fees and expenses should be itemized in the proposal and be consistent with the City's scope of work and schedule. The proposal should state the firm or individual's all-inclusive, fixed cost to provide the fundraising assessment.

**Project Duration**

Upon execution of a professional services agreement with the successful firm or individual, the City of Fargo wishes to commence the fundraising assessment in May 2020, with all assigned tasks completed by September 30, 2020. The successful proposer and City will jointly determine the format of a final report as the project nears completion. This final report will be delivered to the City on or before September 30, 2020 and will conclude the project.

**Due Date**

All proposals must be received by **1:00 p.m. on Monday, April 6, 2020** in the City Auditor's Office, City of Fargo, 225 4<sup>th</sup> St. N., Fargo, ND 58102. Four (4) copies of the proposals shall be marked "Proposal for a Professional Fundraising Assessment – Proposed Fargo Performance Center" shall be submitted. Proposals received after 1:00 p.m. on Monday, April 6, 2020 will be deemed non-responsive and rejected by the City of Fargo.

**The City of Fargo intends to select a firm or individual with whom to enter into a professional services agreement by April 20, 2020.**

For further information in advance of responding to this RFP, please email Michael Redlinger at: [MRedlinger@FargoND.gov](mailto:MRedlinger@FargoND.gov).

**(March 16, 2020 & March 23, 2020)**



March 14, 2020

VIA E-MAIL ONLY

The City of Fargo, North Dakota, invites you or your firm to consider a Request for Proposals (RFP) for a Professional Fundraising Assessment for a proposed Fargo Performance Center.

The proposed Fargo Performance Center was originally studied in 2015, and a community task force revisited this feasibility analysis in 2018 and 2019. Comprised of elected officials, arts organizations, and the business community, the City's Performing Arts Task Force provided valuable insight regarding community interest to construct and operate a new performance center. The final report of the Task Force was received by the Fargo City Commission on February 10, 2020.

The purpose of the Professional Fundraising Assessment will be to study, in greater detail, the capacity and interest of private donors to support a Fargo Performance Center. It is anticipated the Fargo Performance Center will be publicly bid, constructed, and financed. Public and private funds will combine to support construction and operational costs of the facility. Private funding will be a major component of the proposed project, and a robust assessment will therefore be crucial to determine financial feasibility and guide future decision making.

To assist you or your firm, the City of Fargo has compiled background documents, studies, and the final report of the Performing Arts Task Force for your review prior to submitting a proposal. This material provides an overview of the City's goals and objectives, and will assist proposers in developing a thoughtful and responsive submission. The proposal content requirements, due date, and other instructions are outlined in the RFP, a copy of which is attached for your convenience.

The City of Fargo appreciates your interest in the RFP. For further information in advance of responding to the RFP, please email Michael Redlinger, Assistant City Administrator, at [MRedlinger@FargoND.gov](mailto:MRedlinger@FargoND.gov).

Sincerely,

THE CITY OF FARGO,  
NORTH DAKOTA

Michael J. Redlinger  
Assistant City Administrator

**Attachment #3**



## REQUEST FOR PROPOSALS (RFP) FOR A PROFESSIONAL FUNDRAISING ASSESSMENT FOR A PROPOSED FARGO PERFORMANCE CENTER

### *RFP Rating Matrix*

*April 9, 2020*

**Overview:** The City of Fargo RFP Rating Team will utilize numerical points, as well as written comments, to evaluate the Professional Fundraising Assessment proposals. 9 proposals were received by the RFP deadline, and 1 proposal was deemed nonresponsive, as it arrived after the deadline.

**Rating Team:** Commissioner Dave Piepkorn  
Kent Costin, Finance Director  
Michael Redlinger, Assistant City Administrator  
Rob Remark, JLG Architects (*ex officio*)

**Matrix:** The 0-3 rating scale below will be used to rate each proposal in the areas of:

- Previous relevant experience;
- Overall organizational approach to the fundraising assessment;
- Market research and approach;
- Methods to collect information;
- Estimate of the number of meetings to complete a comprehensive assessment; and
- Professional fees/expenses

The RFP Rating Team will assign a value of 0, 1, 2, or 3 in each of these areas, and the total number of points will be tallied for each proposal.

### ***Understanding the Project (3 point maximum)***

Value	Explanation
0	Not addressed; no value to project
1	Limited applicability
2	Some applicability
3	Substantial or complete applicability

**Selection:** After the RFP Rating Team has reviewed and rated the proposals, a virtual meeting will be held the week of April 20, 2020 to review final results, written comments, and recommend a path forward to the City Commission.

**Attachment #4**



May 4, 2020

VIA E-MAIL ONLY

Ms. Catherine Fynes  
Benefactor Group

Email: [cathy@benefactorgroup.com](mailto:cathy@benefactorgroup.com)

**RE: City of Fargo Professional Fundraising Assessment RFP – Phase 2**

Ms. Fynes:

Thank you for the recent conversation regarding the City of Fargo's Request for Proposals (RFP) for a Professional Fundraising Assessment for a Proposed Fargo Performance Center. On behalf of the City, I want to thank you for submitting a thoughtful proposal and participating in the next phase of the selection process.

As we discussed, the City of Fargo is presenting an additional set of questions for the three (3) proposer teams. Please review and respond to the questions below by Friday, May 22 at 4:30 p.m. CDT. Your responses can be emailed to my attention at [MRedlinger@FargoND.gov](mailto:MRedlinger@FargoND.gov).

**Professional Fundraising Assessment RFP – Phase 2 Finalist Questions**

1. Please provide your firm's assessment of the Owner's preparedness to:
  - A. Conduct the Professional Fundraising Assessment.
  - B. If fundraising feasibility exists, to conduct a capital campaign for the proposed Performing Arts Center.

What additional organization, or background, should the Owner assemble prior to the launch of tasks "A" or "B" above?

2. Should the Owner select your firm to perform the fundraising assessment, how does the firm intend to conduct the work in the current COVID-19 health pandemic?

Given this reality, is it your firm's opinion the assessment work should proceed at this time? Or be delayed? If the latter, how long of a delay?

3. Please provide a high-level "SWOT" analysis of the proposed project. What is your firm's assessment of the Owner's strengths, weaknesses, opportunities, threats, and ability to complete the Professional Fundraising Assessment?

4. Please provide any additional detail you wish to submit regarding your proposed professional fees and expenses by task.

We wish you and yours good health during the ongoing COVID-19 pandemic. Please email Michael Redlinger, Assistant City Administrator, with any questions you have at [MRedlinger@FargoND.gov](mailto:MRedlinger@FargoND.gov). We look forward to your response.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael J. Redlinger".

THE CITY OF FARGO,  
NORTH DAKOTA

Michael J. Redlinger  
Assistant City Administrator





## Proposal: Fundraising Assessment

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April 2020

*Prepared for:*



*Prepared by:*



**Benefactor Group**  
450 South Front Street  
Columbus, OH 43215  
(614) 437-3000  
[www.benefactorgroup.com](http://www.benefactorgroup.com)

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## ***Our Understanding***

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The City of Fargo has made significant investments in assessing the feasibility of a performance center. With significant population and employment growth, civic leaders believe there will be a demand and support for potential touring concerts and theatrical productions. The construction of a new performance venue will provide performing arts groups in the greater Fargo metropolitan area a modern, state-of-the-art venue. Further, based on studies commissioned by the city, civic leaders believe a state-of-the-art performance venue will attract the area's younger, more affluent, and highly educated residents to attend high-end performances.

The current facility can be configured to host sporting events, consumer shows, meetings, social events, and concerts, but it lacks staging capabilities to host touring Broadway performances, opera, symphony and other fine arts performances. Many professional performances require larger stages, stage wings, fly lofts that accommodate rigging, catwalks, and other systems.

The project calls for demolishing the current facility and building a new Fargo Performance Center. The proposed 115,000 square foot performance center will serve local arts groups and community activities as well as a variety of national theatrical productions and concerts. To realize this vision, a private and public partnership will build and operate the Fargo Performance Center.

With marketing and feasibility studies completed by HVS Consulting, the City of Fargo is seeking a fundraising consulting firm to assess the community's philanthropic capacity to support the ambitious plan to construct and operate the new Fargo Performance Center.

A fundraising assessment will guide the civic leaders in making strategic decisions about a possible fundraising campaign. (How much can be raised? When should it begin? Who can give and lead? What tactics will be most effective?). The study will also provide an important opportunity to engage arts donors and other stakeholders in your process, increasing the likelihood that they will support your vision.

Benefactor Group will be honored to help the City of Fargo plan for a successful outcome of their vision.

## ***Our Approach***

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Successful fundraising is built on a foundation that includes the following essential elements. Our fundraising assessment is built to evaluate each element.

1. **A highly regarded institution** that has earned the respect of visitors, stakeholders, and the community for exceptional programming, services, and prudent administration.
2. **A compelling case for support** that describes fundraising goals as sound philanthropic investments that will appeal to prospective donors.
3. **Generous leadership gifts** that account for 65% or more of the goal and inspire generosity from others.
4. **Committed leaders** who will devote their time and talent to achieve the fundraising results.
5. **Ample philanthropic potential** within your prospect pool.
6. **Sufficient staffing, technology, and infrastructure** to carry out the appropriate fundraising tactics.



Benefactor Group's methodology includes both qualitative and quantitative methods to address those six key areas. The result of the assessment will include the following outcomes.

**Strategy.** We will counsel city leaders as they weigh the merits of a campaign for philanthropic support for the new Fargo Performance Center .

**Assessment.** This assessment begins by writing a preliminary case for support and assembling a Study Task Force that will provide leadership. We will work with Assistant City Administrator Michael Redlinger to identify the right people to interview and to include in the focus groups. We complete the process by performing an exhaustive analysis, then preparing and presenting the study report and campaign recommendations.

**Regional Philanthropic Scan.** We will conduct an analysis of the philanthropic potential of the region using data from "How America Gives," iWave and other data sources. We will construct a Charitable Giving Profile that will help inform the findings and recommendations.

**Coaching and Support.** Next to listening, coaching is the most important thing we do. We haven't done our job until your team is prepared to do theirs—today and in the future. We will devote time to coach and advise throughout this process.

Following is the process, described in detail, that we will follow to assess the likelihood of strong philanthropic support for a new performance center.

### **Phase I: Project Launch**

#### **Kickoff**

To begin the project, Benefactor Group will work with you on the following tasks.

- Request a variety of documents including the recent market and feasibility studies by HVS Consulting, operating *pro formas* and proposed operating budgets, lists of individuals who have participated in the studies, and other relevant information.
- Become well acquainted with the vision city leaders and other stakeholders have for a performance center and what it means to the region.
- Facilitate an orientation and kickoff meeting.

Our objective is to become thoroughly familiar with the plans and the city's culture and appetite for an enhanced performing venue, while determining who the City of Fargo has been positioned with to realize the vision.

#### **Preliminary Case for Support**

A crucial aspect of the initial phase will be to create a preliminary case for support. Benefactor Group will work with Mr. Redlinger to develop a succinct document that provides a powerful articulation of the goals for the proposed Fargo Performance Center and the return on philanthropic investment. Mr. Redlinger (and others at his discretion) will review a draft of the document and provide feedback to Benefactor Group; we will make two revisions to the document. It will be shared with the Task Force (see below) during the initial meeting.

The preliminary case for support offers compelling arguments for completing the campaign vision with a sense of urgency. It will serve as the basis of conversation between Benefactor Group consultants and your supporters during the confidential interviews and group discussions described below.



### **Table of Gifts**

We will create a table of gifts to share with study participants to illustrate the typical range of gifts for a project of your size and gauge their level of engagement. While we understand that a final determination of the goal has not been established, it has been suggested that a range of \$15 million to \$25 million may be appropriate for initial testing.

### **Task Force**

Many of our clients elect to form a Study Task Force to guide campaign planning activities. The Task Force consists of a small number of members (five to seven) from city government, the arts community, and other key community stakeholders. During the assessment process, the Task Force will be asked to convene (in person, via conference call, or videoconference) three times and to provide advice and insight. The involvement of these leaders will help ensure the process stays on course, will bolster credibility and ownership of the final product, and may facilitate eventual fundraising.

At the first meeting Task Force members will:

- affirm the project timeline;
- affirm the preliminary case for support;
- review and refine the list of names of those who will be invited to participate in an interview and groups for the focused discussions; and
- may be asked to assist in securing key appointments as necessary.

The Task Force will come together a second time, most likely by conference call or Zoom meeting, to receive a project update.

The Task Force will gather a third and final time to respond to the final report before it goes to Mayor Mahoney and the City Commission.

## **Phase II: Discovery**

### **Individual Interviews**

Benefactor Group will work with Mr. Redlinger to identify 50 to 60 potential candidates who will be important to engage during the fundraising assessment. The Task Force will review and refine the list at their first meeting. We aim to speak with those whose involvement can contribute to the proposed vision's success. To that end, we will seek approximately 35 interviews with representatives of the following groups.

- Civic Leaders
- Corporations and Foundations
- Arts, Music, and Theater Leaders
- Key Community Stakeholders
- Arts Philanthropists

Each prospective interviewee will receive the preliminary case for support and an invitation (by letter or email) to participate in the study. We will work with Mr. Redlinger to schedule in-person interviews; we will conduct telephone/videoconference interviews when schedules (or travel restrictions due to the current national health crisis) preclude personal meetings. These confidential conversations are usually 45 to 60 minutes long.

Through the interviews, we will seek to:

- Assess the philanthropic appeal of the proposed fundraising goals as described in the preliminary case for support.



- Evaluate the likelihood of attracting strong campaign leaders and leadership gifts.
- Identify external factors such as philanthropic competition and the general economic climate that may affect the timing and strategy of a fundraising effort.

Note: we can typically conduct an average of four interviews per consultant per day. We likely will send two consultants at a time to conduct interviews over multiple days. To accommodate an optimal 35 interviews, we will mutually identify up to 10 days (i.e., the number of interviews divided by four, plus extra time for flexibility) to conduct *in-person* interviews. Any interviews that cannot be scheduled within the 10 days can be conducted by telephone (at no additional fee) or can be conducted in person for an additional fee of \$1,800 per day (with up to five interviews occurring on each additional day). Additional in-person interviews will be scheduled with the prior consent of the City of Fargo.

(We remain flexible to conducting the interviews and facilitating the discussion groups and will mutually decide the likelihood of conducting this discovery in person as the national health situation becomes clearer over the next few months.)

### **Group Discussions**

Benefactor Group recognizes the City of Fargo has been deliberate in including diverse voices in the two previous market and feasibility studies. To complement this community engagement, we recommend two group discussions with individuals who have a strong affinity for arts and culture. Benefactor Group will work with you to organize the discussions with groups such as:

- Traditional arts supporters
- Educators
- Individuals who did not participate in individual interviews

We will prepare a letter of invitation, develop the questionnaire for distribution at the conclusion of the group discussions, and facilitate the conversations. These discussions can be scheduled during the time consultants are onsite conducting interviews. The information gathered through these discussions will complement the individual interviews and inform our recommendations.

### **Phase III: Analysis and Report**

#### **Analysis.**

Once all interviews and group discussions have been completed, Benefactor Group consultants will analyze the data gathered during discovery. We gather quantitative information—data, statistics, and responses to yes-no and multiple-choice questions on our questionnaire. We also collect qualitative information—stories, anecdotes, and the answers to open-ended questions from the interviews and group discussions. We enter the quantitative data into a common source that allows us to collate and cross tabulate the information. We will also add the qualitative information from our interviews and discussions and perform text analysis of this information.



### **Benefactor Team Analysis**

Benefactor Group brings our team to every project, even those that are not on the project team—at no additional cost to our clients. Our consulting team and colleagues review and interpret all the data, bringing their individual perspectives and experience to the analysis. We also compare the information we've gathered to industry standards and best practices. In light of the data, we look closely at your mission and fundraising goals and as a team we formulate our recommendations. While we are applying a variety of analytic techniques, our analysis goes well beyond “number crunching” to give you the benefit of our experienced judgment and collective expertise.

### **Philanthropic Profiling**

We will do an analysis that compares total giving in the region and sector (i.e., Arts/Culture) giving in Cass County and adjacent counties. We will develop a Charitable Philanthropic Giving Profile of the region to arts and culture. Further, we will screen those individuals who self-identify as possible donors to determine indications of philanthropic capacity and affinity. All of this data will be compared to the philanthropic giving profile, current fundraising trends, economic conditions, and our study findings to develop the philanthropic recommendation and strategies to achieve the recommendation.

### **Report and Presentation**

Our final deliverable is a comprehensive report of findings and recommendations that includes the following.

- **Executive Summary**—a concise synopsis of the report.
- **Method**—documentation of the study process, including the timeframe, tasks accomplished, and the individuals we engaged on your behalf.
- **Findings**—analysis of the data we gathered to assess the likelihood of a successful campaign, interpretation of the interviews to evaluate support for your fundraising objectives, and potential leadership and leadership giving for a campaign; we will include selected quotes, without attribution, that represent comments made during the discovery interviews.
- **Recommendations**—our advice, based on the findings, and our suggested strategies for such elements as campaign leadership recruitment, timing, fundraising goal, and the resources needed to guide and manage a campaign.

In a separate document, we will provide the names of those who were recommended as candidates for leadership gifts. We will also list the suggested volunteer leaders and volunteers in order to help identify a campaign chair or co-chairs and volunteers who will fulfill campaign responsibilities.

### **Presentation**

Benefactor Group will present findings and recommendations in three stages.

First, we will present a preliminary report to your key staff leaders and the Task Force. It will allow your leadership team to delve into the findings, ask questions, and make comments about the recommendations.

The primary objectives of this preview process include the following.

- Empower your leaders with facts and findings that substantiate the recommendations
- Allow for minor modifications or edits to the preliminary document



- Promote leadership buy-in to the campaign strategy

Second, we present the final report to Mayor Mahoney and the City Commission. We typically make this a summary of the findings and recommendations as a PowerPoint presentation.

Finally, we will provide the comprehensive final documentation.

### *Coaching, Support, and Oversight*

Next to listening, coaching is the most important thing we do. We haven't done our job until your team is prepared to do theirs—today, and in the future.

Throughout the process, Benefactor Group will devote time to coach and advise you. In addition to coordinating recurring project status meetings with Mr. Redlinger to provide planned, proactive communication, we will also ensure time for unplanned, open-ended strategy discussions reacting to current situations.

### *Expectations and Responsibilities*

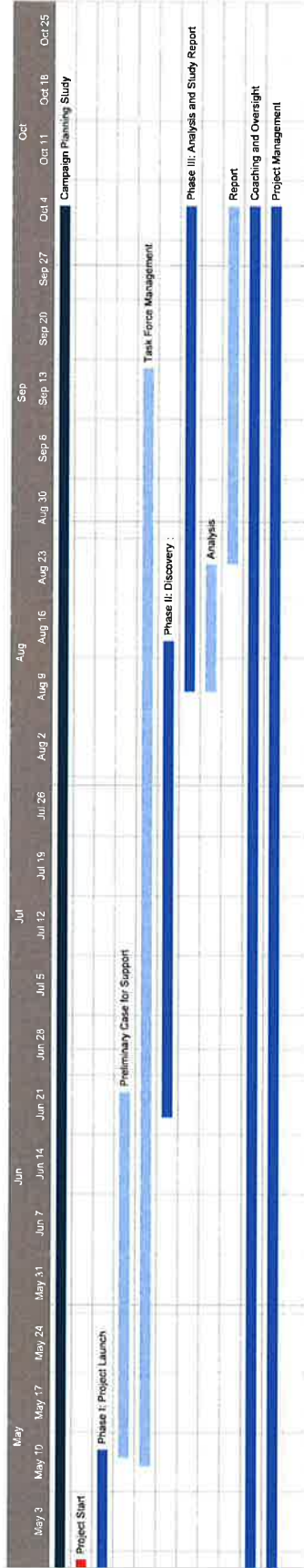
During the fundraising assessment, we will ask you to:

- gather a variety of documents and data to help us learn more about the culture of the city and the philanthropic community;
- meet with us to provide advice and insights on your plans for the future;
- identify and cultivate members to serve on the Task Force;
- assist with scheduling of meetings with the Task Force;
- compile a list of prospective individual interviewees for the feasibility study to review with the Task Force; before interviews begin, provide a brief background on each one based on the guidelines we provide;
- schedule the individual interviews for which we will provide guidance and templates;
- produce invitations and send to prospective interviewees and discussion group participants;
- secure logistics (times and locations) for focus group discussions;
- be available for bi-weekly check-ins about the progress of the study; and,
- follow up with each interviewee to thank him/her for their participation and share next steps outlined in the final report.



### Sample Timeline

As stated in the RFP, the proposed timeline for the assessment is May through September 2020. This timeline reaches slightly beyond the September 30 for final production time of the report; it likely will be adjusted before the actual start date.





## Fees and Expenses

### Fees

Services/Deliverables	Fee
<b>Phase I: Project Launch &amp; Discovery</b> <ul style="list-style-type: none"> <li>• Orientation &amp; Kickoff</li> <li>• Feasibility Study Task Force</li> <li>• Preliminary Case for Support and Gift Chart</li> </ul>	\$9,750
<b>Phase II: Discovery</b> <ul style="list-style-type: none"> <li>• Confidential Interviews</li> <li>• Two Group Discussions</li> </ul>	\$21,000
<b>Phase III: Campaign Analysis and Study Report</b> <ul style="list-style-type: none"> <li>• iWave Analysis and Profile</li> <li>• Benefactor Group Team Analysis</li> <li>• Study Report (including suggested leaders and donors)</li> </ul>	\$14,000
<b>Coaching and Oversight</b>	\$4,000
<b>Project Management</b>	\$4,000
<b>Total</b>	<b>\$ 52,750</b>

In addition to the fees outlined, each invoice from Benefactor Group will include a 2% administrative fee, covering standard expenses such as photocopying, telephone, office supplies, software and research subscriptions, and other direct administrative expenses.

### Expenses

Estimated travel expenses to conduct project launch, conduct interviews and facilitate discussion groups, and final presentation of the report to the City Commission.

Onsite Visits	Air/Ground Transportation	Hotel/Meals	Total
Initial meeting with task force/ internal review <b>for one consultant</b>	Round-trip airfare @ \$400 Car rental \$75/day	One room for one night @ \$200/night Meals at \$75/day	\$750
2 visits for 3 days each for interviews and focus groups <b>for two consultants</b>	Round-trip airfare @ \$400 each Car rental \$75/day	Two rooms for four nights @ \$200/night Meals at \$75/pp/day	\$4,100
Presentation to the board by <b>one consultant</b>	Round-trip airfare @ \$400 Car rental \$75/day	One room for one night @ \$200/night Meals at \$75/day	\$750
<b>Total:</b>	<b>\$3,000</b>	<b>\$2,600</b>	<b>\$5,600</b>



## Experience and Capability

In two decades, Benefactor Group has worked with nearly 400 different nonprofit organizations. We have won a reputation for innovative consulting that builds the capacity of nonprofit organizations; develops leadership; and plans and supports capital, endowment, and comprehensive campaigns. We've conducted studies and guided campaigns that have created new museums, expanded landmark institutions, and built endowments to ensure sustainability. Historically, more than 95% of our clients have met—or exceeded—their fundraising goals.

In just the past two years, Benefactor Group has designed and implemented two dozen fundraising studies with organizations of all sizes and complexity in arts, culture and humanities; health and human services; education; conservation, civic affairs; and faith communities. We provided campaign consulting and coaching services to more than 20 organizations during that time. Our clients have broken ground or cut ribbons on new buildings, concluded successful campaigns, and celebrated landmark gifts.

Our work—and our values—are rooted in America's heartland. Clients in the upper Midwest have included Winona State University, House of Hope Presbyterian Church, **Plains Art Museum**, Temple Israel, Science Center Iowa, and Grand Rapids Art Museum. And our principal and founder, Laura MacDonald, has family ties to Fargo and North Dakota.

Our staff of 15 professionals includes members of the Association of Fundraising Professionals (AFP), Partnership for Philanthropic Planning, Giving USA Foundation Board, Society for Human Resource Management, Alliance for Nonprofit Management, and American Alliance of Museums. Our staff includes award winners, national thought leaders, and published authors. *Benefactor Group has been certified as a Women's Business Enterprise.*

We serve clients at home and around the world like:





### Our services



#### Capital Campaigns

- Planning Studies
- Campaign Planning
- Case for Support
- Coaching and Management



#### Leadership and Search

- Governance Assessments
- Board Retreats
- Executive Transition
- Succession Planning
- Recruitment and Search



#### Annual Fundraising

- Development Assessments
- Annual Fundraising Plans
- Staff Retreats
- Membership Programs
- Mid-level Giving Programs
- Major Gifts Programs



#### Endowment Building

- Endowment Planning
- Endowment Building
- Planned Giving Programs



#### Strategic Planning

- Core Purpose and Mission
- Strategic Objectives
- Strategic Measures
- Ongoing Monitoring



#### Nonprofit Technology

- System Selections
- Project Management
- Process Improvement
- Using Data and Metrics

### Why choose Benefactor Group?

**Nonprofit organizations are our passion.** We take seriously our commitment to *serve those who serve the common good.*®

**We have worked with municipal and federal agencies.** Many of our projects include some form of public-private partnership. We have worked with several public (state) universities and community colleges.

We have guided successful campaigns with public libraries in municipalities in Ohio and Tennessee. We were retained by Hamilton County (OH) to study the role of public funding in the restoration of the Cincinnati Museum Center. Our work in Horry County (SC) launched the campaign for a new county museum. We worked with six municipalities in northeast Florida to create the private Beaches Museum and History Park. We advised the Montana Historical Society, the Ohio History Connection, the City of Colorado Springs, and the YWCA Columbus as they pursued private gifts to complement state funding and tax credits.

**Our size is a strength.** Our boutique firm of 15 people gives each client access to diverse expertise *and* one-on-one support. We have the capacity to put our firm's principals at the helm of your planning process while engaging senior consultants and experienced project managers to guide it.

**Benefactor Group is a member of *The Giving Institute*,** a select consortium of the nation's premiere philanthropic service firms who adhere to the highest performance and ethical standards. We contribute to the field through our work with *Giving USA*, the most authoritative report on giving in America, researched by the Lilly Family School of Philanthropy at Indiana University. **Laura MacDonald, our Principal and Founder, currently serves as Vice Chair of the Giving USA Foundation.**

**Benefactor Group builds strong relationships** through meaningful and frequent communication, and by providing clients with the tools and skills to succeed. We believe in creating a culture of inspired philanthropy.



**Our diverse experiences** as fundraisers, executive-level staff, accomplished writers, strategists, technologists, and thought leaders in the field of philanthropy give us the depth of knowledge required to guide you through this transformational project. Our work with similar organizations informs both our process and our method, tailored to the needs of the City of Fargo. Each member of our team is a specialist, and the entire team brings its collective insight to bear on recommendations and planning with clients like you.

## *Our Team*

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Every project is assigned a team that consists of a team leader who will be your primary contact, a project manager, a writer, and at least two additional senior consultants. The firm's principal and founder, Laura MacDonald, is the chief strategist and plays an active role in every project. Prior to establishing Benefactor Group, Laura was chief development officer at The Ohio State University's Wexner Center for the Arts where she helped the organization secure its largest-ever corporate sponsorship and foundation grant and highest membership. During her tenure, she also served as a senior development officer in the university's \$1.2 billion capital campaign. Laura is frequently sought out by national publications and news organizations such as the *Wall Street Journal*, the *Chronicle of Philanthropy*, and others for her analysis and expertise including her recent advice to nonprofits during the COVID-19 crisis.

Each member of the consulting team has a designated responsibility to ensure a successful outcome. All consultants have extensive experience in interviewing, analysis, composition, and strategy development. The team assignment will be made when the agreement is awarded. To learn more about Benefactor Group consultants, please refer to our website: [www.benefactorgroup.com](http://www.benefactorgroup.com).

## *References*

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### **Pikes Peak — America's Mountain**

#### *Campaign Planning Study and Campaign*

In 2016, Benefactor Group was selected by the City of Colorado Springs to assess the feasibility of the city launching a public/private partnership to fund a new Summit Complex at the top of Pikes Peak. The study explored the potential for private philanthropic support to construct this new \$60 million complex for an American treasure that had no past giving history or donor records.

After successfully navigating the study process through interviews with leaders from the region and thoughtful analysis of Pikes Peak's then-perceived value, both locally and nationally, Benefactor Group provided an encouraging final report to the city's Mayor and Summit Complex Task Force. Subsequently, Benefactor Group was retained to move forward with providing the counsel necessary for the \$15+ million campaign in private support for the new Summit Complex that will complement the \$45 million committed by the city. Benefactor Group was retained to provide hands-on campaign management of their campaign which has secured more than \$12 million to date.

Sandy Elliott, CPPB

Parks Operations Administrator, Pikes Peak—America's Mountain  
719-385-7705

[sandy.elliott@coloradosprings.gov](mailto:sandy.elliott@coloradosprings.gov)



### **Marathon Performing Arts Center**

#### *Fundraising Assessment & Capital Campaign*

With the closing of a school in the heart of downtown Findlay, Ohio, the community's largest performance space was facing the wrecking ball. Leaders of the local community foundation and arts organizations engaged Benefactor Group to examine the feasibility of raising funds to renovate the auditorium and create a community performing arts center. When the study was completed, the firm was engaged further to establish a new 501(c)(3) organization, manage recruitment of volunteer leadership and a founding board of directors, search for initial staff, and launch a capital/endowment fundraising campaign totaling \$15 million.

Sources of funding for this project include a mixture of individual gifts (60%), support from corporations/companies (33%), government grants (5%), and foundations (2%).

Katherine Kreuchauf, President  
The Findlay-Hancock County Community Foundation  
419-425-1100  
[kkreuchauf@community-foundation.com](mailto:kkreuchauf@community-foundation.com)

### **Hamilton County Board of Commissioners and Cincinnati Museum Center**

#### *Performance Review*

In 2013, the Hamilton County Board of County Commissioners hired Benefactor Group to conduct a performance review of the Cincinnati Museum Center (CMC). Located in the historic train station, Union Terminal, CMC houses world-class history, science, and children's museums and an Omnimax theater. In partnership with a regional accounting firm, Benefactor Group provided the following services:

- analyzed compliance with the terms of its current agreement with Hamilton County;
- conducted a comprehensive financial analysis, including historic trends and projections for the future;
- provided a comparison of CMC operations with similar institutions that receive county funding;
- evaluated CMC's fiscal sustainability at Union Terminal;
- reviewed CMC's strategic plan for the next levy period; and
- made recommendations for revenue enhancements, endowment building, and future contractual conditions between CMC and Hamilton County.

Benefactor Group presented a comprehensive report to the Hamilton County Board of Commissioners. The commissioners approved a levy request pending the Museum Center's creation of a restoration plan for the publicly owned Union Terminal building.

Doug McDonald, CEO (retired)  
513-708-2000  
[doug@NGOgro.com](mailto:doug@NGOgro.com)

### **Victoria Theatre Association**

#### *Feasibility Study & Campaign Consulting*

The Victoria Theatre Association (VTA) recently concluded an endowment campaign to strengthen its long-term stability and, because of its success, was featured on the front page of the *Chronicle of Philanthropy* in December 2015.



VTA has helped sustain the vitality of downtown Dayton, Ohio, despite the departure of several of the region's major employers. As the owner and operator of the city's premier performing arts facilities—the Schuster Performing Arts Center, the historic Victoria Theatre, and the Metropolitan Arts Center—VTA recognized a responsibility to maintain the facilities for the benefit of future generations. Benefactor Group was retained to conduct a feasibility study and provide campaign consulting as the organization raised funds to double the endowment, update technology, and fund major deferred maintenance. Even though the community faces daunting challenges—including tragic shootings and tornado damage—philanthropic leaders have embraced the role of the arts in the region's quality of life and in economic and workforce development.

Ricia Ballas, Vice President-Development  
937-228-7591, ext. 3028  
[ricia.ballas@victoriatheatre.com](mailto:ricia.ballas@victoriatheatre.com)



## ***Fargo Performance Center***

### **Responses to Questions**

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To: Michael J. Redlinger, Assistant City Administrator, City of Fargo  
From: Laura MacDonald, Principal & Founder, Benefactor Group  
Catherine Fynes, Senior Consultant, Benefactor Group  
Date: May 22, 2020  
Re: Professional Fundraising Assessment—Phase 2

Thank you for the opportunity to continue our conversation about the community's vision for a Fargo Performance Center. We are pleased that we are under consideration for this project.

Following are answers to the questions provided in the May 4, 2020, letter. Please feel free to contact us if you have any further questions or clarification about our answers below. We welcome an opportunity to meet with the selection committee at an appropriate time.

#### **1. Please provide your firm's assessment of the Owner's preparedness to:**

##### **A. Conduct the Professional Fundraising Assessment.**

We view ourselves as your partner to conduct a fundraising assessment. We come prepared with the necessary tools to gather the information: a preliminary case for support, a gift chart, and the questionnaire to guide the conversation.

We will rely upon the City of Fargo to help us by

- providing background materials including the marketing studies, budget, and other materials that will help us understand the role of the Performance Center in strengthening the region's economy, culture, and educational resources; and
- offering local knowledge and staff resources to:
  - identify candidates and recruit a study task force
  - prepare a list of prospective individual stakeholders, businesses, and foundations to participate in the study (we will provide guidelines to assist you)
  - reach out to key influencers to encourage their participation in the study
  - assist in logistics of scheduling interviews, group discussions, task force meetings, and report presentations.

Based on our conversations, we are confident that you have the capacity to provide this support.

##### **B. If fundraising feasibility exists, to conduct a capital campaign for the proposed Performing Arts Center.**

The results of the fundraising assessment will determine the capacity of the City of Fargo to implement a capital campaign.



The study will provide information you need to make good decisions: should you proceed with a campaign? What strategies will be most effective? How much can you expect to raise? Who is most likely to support the campaign and what would motivate their gifts? Beyond this information, the study should also yield an intangible—yet invaluable—result: strengthened relationships with prospective supporters. Hopefully, the results of the study give you the green light to go forward with a campaign. Or maybe the study will suggest that you still have some work to do to prepare for a campaign. Either way, Benefactor Group will provide you with a path forward to help you realize your vision for a Performing Arts Center.

**2. Should the Owner select your firm to perform the fundraising assessment, how does the firm intend to conduct the work in the current COVID-19 health pandemic? Given this reality, is it your firm's opinion the assessment work should proceed at this time? Or be delayed? If the latter, how long of a delay?**

Benefactor Group is currently moving forward with three fundraising assessments. In each case, we consulted with the client to carefully weigh the merits of proceeding—or delaying—and concluded that the time was right to move forward.

Much of our initial work can be performed remotely if necessary, including research and drafting of the preliminary case for support, convening the task force virtually, and project management. We will rely on you to provide documents, identify subject-matter experts who can be consulted by phone, and provide technical support for virtual meeting platforms (or we can provide our professional Zoom platform if preferred).

Once these tasks are completed (mid-Summer), we will consult with you to determine the possibility of conducting interviews and group discussions in person or via phone and videoconference. Should we find that the social and economic disruptions have become more severe, this will provide a natural point to pause. In the current environment, however, we have found that philanthropists and corporate/civic leaders are accessible, amenable to phone/video interviews, and prepared to reflect thoughtfully on community investments.

Philanthropy has remained resilient during past crises, such as 9/11 and the Great Recession. Recent studies have confirmed that individual donors and foundation executives remain committed to charitable giving. While organizations may need to adapt messages and tactics in light of the current disruptions, many of our clients have continued to engage donors and raise funds successfully.

**3. Please provide a high-level "SWOT" analysis of the proposed project. What is your firm's assessment of the Owner's strengths, weaknesses, opportunities, threats, and ability to complete the Professional Fundraising Assessment?**

The fundraising assessment will provide more detailed analysis of the proposed project and the City's "SWOT." However, based on our previous experience in the community, early conversations, and a review of recent news reports about the project, our initial thoughts about strengths, weaknesses, opportunities, and threats include the following.



**Strengths:**

- The city's persistence and the task force's commitment to the Performing Arts Center and its benefits for local and regional community members.
- The diligence of conducting a follow-up marketing study to affirm the region's continued desire for a Performing Arts Center.
- The strength of the support by the city commission (4-1) to move forward with the study and the recent campaign success of North Dakota State University.
- A strong arts culture.
- The willingness to overcome the obstacles presented by COVID-19.
- The region has fared well during economic disruptions in 2008-2010 and today.
- Collaboration of business and community leaders, creating a consensus regional agenda: *Fueling Our Future*.
- City leaders, across party lines, are willing to assist with opening doors to stakeholders.

**Potential Weaknesses:**

- Lack of dedicated human resources to provide support to the consultants to implement the process for producing invitations, scheduling, and logistics, etc.
- Lack of a data base of individual donors; a clearly identifiable corps of loyal supporters.
- Insufficient donor data to conduct data modeling.
- Some constituents may question the merits of a project that is dependent on large gatherings until state health advisories are relaxed.

**Possible Opportunities:**

- Public support for the construction of the Performing Arts Center as consistently demonstrated by broad surveys and the comments/actions of city leaders.
- Market studies show that the regional population continues to grow; high median household income; the retention of college graduates; and a favorable entertainment spending index and a high number of theater tickets sold.
- The eventual resolution of the health risks is likely to result in economic growth. Data suggests that rising equity markets will often inspire philanthropic growth rates much more aggressively than declining markets will bring them down. By taking steps now to prepare for recovery, the project will be poised to leverage the favorable giving environment to come.

**Possible Threats:**

- The continued uncertainty of COVID-19 may present logistical challenges. The resulting economic disruptions may limit the willingness of potential donors to provide specific guidance on the likelihood or magnitude of their potential financial support.



- Community priorities may shift as society emerges into a “new normal.” This may result in weakened support—or even opposition—among some potential constituencies.

**4. Please provide any additional detail you wish to submit regarding your proposed professional fees and expenses by task.**

Benefactor Group fees are determined by our estimate of the time we expect it will take to complete each of the tasks in a project. We use the project management tool, *Smartsheet*. The tool tracks project progress in real time. We can adjust the timeline to accurately reflect progress, identify upcoming tasks, and address lagging activities.

We value transparency. The table below captures the entire project timeline, each task and its duration, and fees for the project. The timeline presented in the proposal is a high-level view of the same information. The timeline will be updated when a mutual decision is agreed upon to begin our engagement.



Task Name	Duration	Start	Finish	Cost
<b>Professional Fundraising Assessment</b>	<b>111d</b>	<b>05/01/20</b>	<b>10/07/20</b>	<b>\$52,750.00</b>
Project Start	0	05/01/20	05/01/20	
<b>Phase I: Project Launch</b>	<b>10d</b>	<b>05/01/20</b>	<b>05/14/20</b>	<b>\$2,250.00</b>
<b>Orientation &amp; Kickoff</b>	<b>10d</b>	<b>05/01/20</b>	<b>05/14/20</b>	<b>\$2,250.00</b>
Internal kickoff	4d	05/01/20	05/06/20	\$1,000.00
Orientation meeting	5d	05/07/20	05/13/20	\$1,000.00
Table of gifts	10d	05/01/20	05/14/20	\$250.00
<b>Preliminary Case for Support</b>	<b>30d</b>	<b>05/14/20</b>	<b>06/25/20</b>	<b>\$5,000.00</b>
Case for support discovery	5d	05/14/20	05/20/20	\$1,000.00
Draft pre-case v.1	5d	05/21/20	05/28/20	\$2,500.00
Client reviews pre-case v.1	5d	05/29/20	06/04/20	
Draft pre-case v.2	5d	06/05/20	06/11/20	\$1,000.00
Client/Task Force reviews pre-case v.2	5d	06/12/20	06/18/20	
Finalize pre-case	5d	06/19/20	06/25/20	\$500.00
<b>Task Force Management</b>	<b>90d</b>	<b>05/13/20</b>	<b>09/18/20</b>	<b>\$2,500.00</b>
Identify and recruit task force	23d	05/13/20	06/15/20	\$1,000.00
Kickoff meeting	6d	06/23/20	06/30/20	\$500.00
Task force meeting #2	1d	08/10/20	08/10/20	\$500.00
Task force meeting #3	1d	09/18/20	09/18/20	\$500.00
<b>Phase II: Discovery</b>	<b>39d</b>	<b>06/23/20</b>	<b>08/17/20</b>	<b>\$21,000.00</b>
<b>Focus Groups</b>	<b>39d</b>	<b>06/23/20</b>	<b>08/17/20</b>	<b>\$2,750.00</b>
Determine groups	2w	06/23/20	07/07/20	\$500.00
Draft and send invitation	5d	07/08/20	07/14/20	\$500.00
Schedule and conduct	5w	07/14/20	08/17/20	\$1,750.00
<b>Interviews</b>	<b>35d</b>	<b>06/23/20</b>	<b>08/11/20</b>	<b>\$18,250.00</b>
Determine interviewees	2w	06/23/20	07/07/20	\$500.00
Draft and send letters of invitation	5d	07/08/20	07/14/20	\$250.00
Schedule and conduct up to 35 interviews	4w	07/15/20	08/11/20	\$17,500.00
<b>Phase III: Analysis and Assessment Report</b>	<b>39d</b>	<b>08/12/20</b>	<b>10/07/20</b>	<b>\$14,000.00</b>
<b>Analysis</b>	<b>11d</b>	<b>08/12/20</b>	<b>08/26/20</b>	<b>\$7,000.00</b>
Collect and prepare data	1d	08/12/20	08/12/20	\$1,000.00
Data analysis	5d	08/13/20	08/19/20	\$1,000.00
Team Analysis Session	5d	08/20/20	08/26/20	\$4,000.00
Philanthropic Profile	2d	08/13/20	08/14/20	\$1,000.00
<b>Report</b>	<b>28d</b>	<b>08/27/20</b>	<b>10/07/20</b>	<b>\$7,000.00</b>
Report draft	2w	08/27/20	09/10/20	\$4,000.00
Revise and finalize written report	1w	09/11/20	09/17/20	\$1,000.00
Present report	1d	09/30/20	09/30/20	\$2,000.00
Deliver final written report	0	10/07/20	10/07/20	
<b>Coaching and Support</b>	<b>111d</b>	<b>05/01/20</b>	<b>10/07/20</b>	<b>\$4,000.00</b>
<b>Project Management</b>	<b>111d</b>	<b>05/01/20</b>	<b>10/07/20</b>	<b>\$4,000.00</b>



August 19, 2020

Michael Redlinger  
Assistant City Administrator  
City of Fargo  
Fargo City Hall  
225 4<sup>th</sup> Street North  
Fargo, ND 58102

Email: [MRedlinger@FargoND.gov](mailto:MRedlinger@FargoND.gov)

Dear Michael:

We are pleased to present this letter of agreement (LOA) which describes the scope of services Benefactor Group will provide to the City of Fargo relevant to the fundraising assessment for a performance center.

## **Summary of Services and Deliverables**

### Services

- Request/review relevant materials
- Facilitate an orientation and kick-off meeting with the study task force; facilitate subsequent meetings with task force during the process
- Prepare a preliminary case for support, review with client representative/task force, and perform two rounds of revisions; use with study participants
- Prepare study tools to include letters of invitation, questionnaires, discussion guides, and Table of Gifts
- Assist with the selection of study participants
- Conduct up to 35 interviews
- Facilitate two focus group discussions
- Prepare philanthropic profile of region's support to arts and culture
- Analyze and interpret all the qualitative and quantitative discovery data
- Draft a report of findings and recommendations
- Present the report, first to key staff and task force, and make any refinements
- Present the final report to Mayor Mahoney and the City Commission (or other designees)
- Provide coaching, support, and oversight during study development

### Expectations and Responsibilities of Client

During the fundraising assessment, we will ask you to:

- gather a variety of documents and data to help us learn more about the culture of the city and the philanthropic community;

*Serving those who serve the community*

Benefactor Group  
450 South Front Street  
Columbus, Ohio 43215 USA

614.437.3000  
614.437.3001

[www.benefactorgroup.com](http://www.benefactorgroup.com)





- meet with us to provide advice and insights on your plans for the future;
- identify and cultivate members to serve on the task force;
- assist with scheduling of meetings with the task force;
- compile a list of prospective individual interviewees for the feasibility study to review with the task force; before interviews begin, provide a brief background on each one based on the guidelines we provide;
- schedule the individual interviews for which we will provide guidance and templates;
- produce invitations and send to prospective interviewees and discussion group participants;
- secure logistics (times and locations) for focus group discussions;
- be available for bi-weekly check-ins about the progress of the study; and
- follow up with each interviewee to thank him/her for their participation and share next steps outlined in the final report.

## **Fees & Expenses**

### Fee

The fee for the fundraising assessment as described above is \$52,750.

### Expenses

We anticipate incurring expenses of approximately \$2,200 to serve as your fundraising counsel. These expenses include registering with the Secretary of State of North Dakota; appointing a resident agent to receive notices; the premium to secure a \$20,000 surety bond as required by the state; and attorney fees.

If there's an opportunity to conduct interviews, focus groups, and the report to the City Commission in person, we will invoice those travel expenses at cost. At this time, we estimate those costs will not exceed \$5,600, including air fare, ground transportation, and hotel and meals for four visits by consultants.

In addition to our fundraising fee, each invoice from Benefactor Group will include a 2% administrative fee covering standard expenses such as research and software subscriptions, communication and project management technology, photocopying, telephone, office supplies, and other direct administrative expenses. All invoices are payable within 30 days.

The fundraising assessment fee will be invoiced in four installments:


- An initial installment of one-fourth of the study fee and the related registration fees will be invoiced upon acceptance of this agreement.
- The remaining balance will be invoiced in three equal monthly installments on October 8, November 8, and December 8.





If the project description and payment terms meet with your approval, please sign a copy of this letter below and return to Benefactor Group ([cassandra@benefactorgroup.com](mailto:cassandra@benefactorgroup.com)).

Sincerely,

  
Laura MacDonald, CFRE  
Principal & Founder

Accepted for City of Fargo by:

---

Signature

Date





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September 8, 2020

**To: Board of City Commissioners**  
**Fr: Michael Redlinger, Assistant City Administrator**  
**Re: Amendment to Downtown Community Partnership (DCP) Lease Agreement – Civic Center Offices**

Earlier this year, the Downtown Community Partnership (DCP) notified the City of Fargo that due to the COVID-19 pandemic, it would not be able to meet monthly rent and common area maintenance (CAM) obligations for its leased Civic Center office. The Finance Committee expressed an interest in working with the DCP to restructure the lease agreement to allow time for the organization to recover lost revenues and stabilize operations.

On August 31, 2020, the Finance Committee received a report from City staff and discussed a proposed amendment to the DCP lease agreement. The Finance Committee unanimously recommended approval of the lease amendment to the City Commission.

The salient points of the amendment are as follows:

- Defers April-December 2020 rent and CAM payments to 2021. A calculation for accrued interest costs on the unpaid rent through December 31, 2020 is attached.
- Extends the term of the lease by one (1) year, to expire on December 31, 2021. This extension is consistent with an option contained in the original lease agreement.

The DCP's President and Board of Directors supports this request to amend the lease agreement between the parties.

**Recommended Action:** On the recommendation of the Finance Committee, I move to approve the lease agreement amendment between the City of Fargo and Downtown Community Partnership.

Attachment: Proposed Lease Agreement Amendment – City of Fargo/Downtown Community Partnership

## REPORT OF ACTION

## FINANCE COMMITTEE

**Project:** Amendment to Downtown Community Partnership (DCP) Lease Agreement – Civic Center Offices

**Type:** Lease Agreement (Amendment)

**Location:** Civic Center

**Date of Hearing:** August 31, 2020

<u>Routing</u>	<u>Date</u>
City Commission	9/8/2020
Project File	N/A

The Finance Committee received an update from City staff regarding the impact of the COVID-19 pandemic on the Downtown Community Partnership's operating revenues and ability to make lease and common area maintenance (CAM) payments for its Civic Center offices. The DCP requests a deferral of April – December 2020 lease and CAM payments to allow time for the DCP to stabilize operating revenues and expenses. Deferred 2020 payments, as well as new 2021 payments, will be made in 2021. The DCP also requests the City execute a one (1) year option contained in the original lease agreement to extend the lease term through December 31, 2021.

The Finance Committee discussed the request and unanimously approved the deferral arrangement, as well as the request to extend lease term through December 31, 2021. City staff and the City Attorney will finalize the lease amendment for City Commission and DCP Board of Directors approval.

**MOTION:**

On a motion by Costin, seconded by Redlinger, the Finance Committee unanimously approved the proposed amendment to the DCP lease agreement and recommends the City Commission consider and approve the amendment at its September 8, 2020 meeting.

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

Tim Mahoney, Finance Committee Chair

**AMENDMENT TO LEASE AGREEMENT**  
City of Fargo/Downtown Community Partnership

**THIS is an Amendment** a Lease Agreement (the "Lease Agreement") made and entered into effective the 3rd day of December, 2018, by and between CITY OF FARGO, a North Dakota municipal corporation (hereinafter called "Lessor" or "City") and Downtown Community Partnership, a North Dakota non-profit corporation (hereinafter called "Lessee" or "DCP") (this amendment referred to herein as the "Amendment").

**RECITALS:**

- A. The subject of the Lease Agreement was, and is, that certain real property and building located on City-owned property commonly referred to as the Civic Memorial Auditorium, the second floor of which building is configured as office space. The demised square footage being referred to in the Lease Agreement and this Amendment as the "subject property," "premises" or "demised premises."
- B. As a result of consequences related to the impacts upon DCP caused by the COVID-19 pandemic, the monthly rent and common area maintenance (CAM) expense owed by DCP for the months of April through the date hereof has remained unpaid by DCP and DCP and the City wish to defer said payments and other monthly rent and CAM through year-end December 2020, said rent and CAM to then be paid during the year 2021 and, in addition, the DCP wishes to exercise its option under the Lease Agreement to extend the Lease Agreement for an additional term of one year.
- B. The parties wish to enter into this Amendment to memorialize the arrangements for payment of the said deferred rental and CAM payments and for the exercise of the option by DCP and, therefore, for the extended use of the demised premises.

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

- 1. The parties acknowledge and agree that monthly rent and CAM payments under the Lease Agreement is owed by DCP to the City for the month of April 2020 and for each month thereafter to the effective date hereof.
- 2. Exercise of One-Year Option by DCP. The parties acknowledge and agree that, by this Amendment, DCP has exercised its option under the Lease Agreement to extend the term of the lease for one (1) additional term of one year and the City hereby agrees to such extension; therefore, the term of the Lease Agreement is deemed to be extended through December 31, 2021, in accordance with the Lease Agreement, subject to the rent, including common area maintenance payments, and repayment of the said deferred rent as set forth below.
- 3. Rent - Common Area Maintenance. The sum of fixed minimum rent to be paid by DCP to the City, as set forth in Section 2.1 of the Lease Agreement shall be revised as follows:

3.1 The base rent during the year 2021 shall remain at \$906.25 per month for the 1450 square feet of the demised premises as provided in the Lease Agreement.

3.2 The common area maintenance (CAM) payment shall also remain during the year 2021 at the sum of \$362.50 per month, as provided in the Lease Agreement.

4. Rent Deferral. DCP is hereby granted by the City a deferral of the obligation to pay monthly rent and CAM payments for the months of April 2020 through December 2020, said rent to be subsequently paid as set forth in this Amendment, and that non-payment of rent by DCP for said deferral period is hereby deemed to not be an act of default of the Lease Agreement so long as the terms, including obligations to make timely payments, of this Lease Agreement are met.

4.1. Said deferred rent and CAM payments amounts from the due date—the 1<sup>st</sup> of each month—for said amounts, combined with interest at an annualized rate of 3.0%, based upon a 360-day year, will **accrue to an amount owed by DCP to the City of \$11,563.39 through December 31, 2020**, as reflected on Exhibit A, hereto.

4.2. Deferred rent and CAM payments, with said interest accrual to be capitalized as of December 31, 2020, shall be paid **commencing January 1, 2021, in the amount of \$1000**, and thereafter in **eleven equal monthly payments of \$974.77**, also with interest accruing at an annualized rate of interest of 3.0%, based upon a 360-day year, payable on the 1<sup>st</sup> of January, 2021, and payable in the same amount on the first of each month thereafter for twelve months, in accordance with the amortization schedule attached hereto as Exhibit B. The full unpaid amount shall become due and payable December 31, 2021.

5. In all other respects, the terms of the Lease Agreement shall remain in full force and effect.

6. Effective Date. This agreement shall take effect upon the date last signed below.

(Remainder of Page Intentionally Left Blank)

**LESSOR:**

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

---

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

**ATTEST:**

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Steven Sprague, City Auditor

**LESSEE:**

**Downtown Community Partnership,**  
a North Dakota Non-Profit Corporation

---

By: Melissa Brandt  
Its: Executive Director

EXHIBIT A  
TO  
CITY OF FARGO/DCP  
LOAN AMORTIZATION

Rent Payment date due	No. days to Dec 31, 2020	Rent/CAM Amt	Rate of Interest	Daily interest accrual on Monthly Rent/CAM Amt (360-day year)	Interest accum thru Dec 31, 2020	Accumulated Interest on unpaid Rent/CAM Amt
	12/31/2020					
4/1/2020	274	\$ 1,268.75	3.0%	\$ 0.10573	\$ 28.97	
5/1/2020	244	\$ 1,268.75		\$ 0.10573	\$ 25.80	
6/1/2020	213	\$ 1,268.75		\$ 0.10573	\$ 22.52	
7/1/2020	183	\$ 1,268.75		\$ 0.10573	\$ 19.35	
8/1/2020	152	\$ 1,268.75		\$ 0.10573	\$ 16.07	
9/1/2020	121	\$ 1,268.75		\$ 0.10573	\$ 12.79	
10/1/2020	91	\$ 1,268.75		\$ 0.10573	\$ 9.62	
11/1/2020	60	\$ 1,268.75		\$ 0.10573	\$ 6.34	
12/1/2020	30	\$ 1,268.75		\$ 0.10573	\$ 3.17	
<b>Total</b>		<b>\$ 11,418.75</b>		<b>\$ 144.64</b>	<b>\$ 11,563.39</b>	

## EXHIBIT B -- to Amendment of Lease Agreement

## Simple Loan Calculator

## Enter values

Loan amount	\$ 10,563.39
Annual interest rate	3.00%
Loan period in years	1
Start date of loan	1/1/2021

This amount is the accumulated deferred payments from 2020 with interest, accumulating to the sum of \$11,563.39, then reduced by the Jan 1, 2021, payment of \$1,000. The monthly payments commencing Feb 1, 2021 will be \$974.77.

Monthly payment	\$ 974.77
Number of payments	11
Total interest	\$ 159.11
Total cost of loan	\$ 10,722.50

No.	Payment Date	Beginning Balance	Payment	Principal	Interest	Ending Balance
1	2/1/2021	\$ 10,563.39	\$ 974.77	\$ 948.36	\$ 26.41	\$ 9,615.03
2	3/1/2021	\$ 9,615.03	\$ 974.77	\$ 950.74	\$ 24.04	\$ 8,664.29
3	4/1/2021	\$ 8,664.29	\$ 974.77	\$ 953.11	\$ 21.66	\$ 7,711.18
4	5/1/2021	\$ 7,711.18	\$ 974.77	\$ 955.49	\$ 19.28	\$ 6,755.68
5	6/1/2021	\$ 6,755.68	\$ 974.77	\$ 957.88	\$ 16.89	\$ 5,797.80
6	7/1/2021	\$ 5,797.80	\$ 974.77	\$ 960.28	\$ 14.49	\$ 4,837.52
7	8/1/2021	\$ 4,837.52	\$ 974.77	\$ 962.68	\$ 12.09	\$ 3,874.84
8	9/1/2021	\$ 3,874.84	\$ 974.77	\$ 965.09	\$ 9.69	\$ 2,909.76
9	10/1/2021	\$ 2,909.76	\$ 974.77	\$ 967.50	\$ 7.27	\$ 1,942.26
10	11/1/2021	\$ 1,942.26	\$ 974.77	\$ 969.92	\$ 4.86	\$ 972.34
11	12/1/2021	\$ 972.34	\$ 974.77	\$ 972.34	\$ 2.43	\$ 0.00



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MEMORANDUM

**TO: BOARD OF CITY COMMISSIONERS**  
**FROM: JIM GILMOUR, STRATEGIC PLANNING DIRECTOR**  
**DATE: SEPTEMBER 2, 2020**  
**SUBJECT: SALE OF MAIN AVENUE PARKING LOT**

A handwritten signature in blue ink, appearing to be "JG", is located to the right of the "FROM:" line.

The financing plan for the Mercantile Parking Garage included selling the Main Avenue Parking Lot at 501 Main Avenue.

The Main Avenue lot is located on the northeast corner of Main Avenue and Broadway. It was acquired by the City in 2001 from BNSF railroad. It has 77 parking spaces. The Island Park Ramp has sufficient parking to meet the needs of the immediate area.

There is interest in development of the lot, especially with the reconstruction of Main Avenue now complete.

The request for offers includes the requirement to develop the lot and a minimum purchase price of \$500,000. The Request for Offers and proposed terms are attached for your review.

Recommended Motion

Approve the advertising for offers on the Main Avenue Parking Lot.

**REQUEST FOR OFFERS**  
**TO PURCHASE CITY-OWNED PROPERTY**  
**Disposition of 501 Main Avenue, Fargo**  
*September 9, 2020*

The City of Fargo is seeking offers to purchase City-owned property at 501 Main Avenue. Offers must include a preliminary proposal for future land use. Preference to offers showing highest and best use of the property may be given priority over the highest offer received. Acceptance of offer is subject to the conditional approval of the City Commission, negotiation of terms of an agreement by which the successful offer and the City will be bound and final approval of said agreement by the City Commission. No offer less than \$500,000 will be accepted. **Offers are due November 2, 2020.** The offer accepted will be for the proposal that most effectively addresses minimum development requirements.

**BACKGROUND**

The City of Fargo owns a parking lot at 501 Main Avenue. The land was purchase from the BNSF railroad for use as a parking lot. The parking lot isn't needed with adequate space available in the Island Park Ramp across the street.

**PROPOSED REDEVELOPMENT OF SITE MUST INCLUDE:**

- Construction of a building of at least four stories in height.
- Commercial or offices on the first floor.
- Floors above the first floor may be offices or housing.
- Be consistent with the character of adjacent properties, especially the property to the east.

**DESCRIPTION OF SUBJECT PROPERTY**

- Address: 501 Main Avenue
- Property Description: The property includes land owned by the City and land that is licensed from the railroad. Property excluded is land used for right-of way and will not be included in the purchase.
- Zoning: DMU. The City of Fargo Land Development Code establishes development standards.
- Incentives: The property is located in the Renaissance Zone. Incentives will be limited to those allowed by the Renaissance Zone program.
- Opportunity Zone: The property is located in a federal Opportunity Zone.
- Current Use: Surface parking lot.
- Subdivision of property: The City will work with the purchaser of the property to plat the property prior to the purchase.

## **SUBMISSION REQUIREMENTS**

All offers must be **received by November 2, 2020 at 4:00 p.m.** Any offers received after that time will be rejected. Submit offers containing the required information, along with a signed copy of this request to:

Auditor's Office  
225 4th Street North, Fargo, ND 58102  
Attn: Jim Gilmour  
Re: Disposition of 501 Main Avenue

The following information must be provided about the purchaser:

- Name and mailing address

The following information must be provided about the preliminary proposal unless noted optional:

- Project description
- Timeline
- Proposed project budget
- Preliminary plans (Minimal preparation suggested – concept and diagrammatic only)
  - Schematic drawings - site plan, floor plan, elevations of the proposed structure
  - Proposed access, parking and construction staging

## **EVALUATION OF PROPOSALS**

The City reserves the right, in its sole discretion, to reject any and all proposals or accept any proposal in whole or in part. The City will evaluate proposals based on the following criteria:

- Project's consistency with downtown plans
- Proposer's ability to complete the project
- The amount of the offer

## **OFFER**

The minimum offer accepted must be equal to or more than \$500,000 and meet the requirements to develop the property.



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

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

Name of Nonprofit Organization or group of people permit is issued to <u>New Life Center</u>	Date(s) of Activity <u>10/13/20 to 10/13/20</u>	For a raffle, provide drawing date(s): <u>10/13/20</u>	
Person Responsible for the Gaming Operation and Disbursement of Net Income <u>Deb Watne</u>	Title <u>Dev. Director</u>	Business Phone Number <u>701-235-4453</u>	
Business Address <u>1902 3rd Ave N</u>	City <u>Fargo</u>	State <u>ND</u>	Zip Code <u>58102</u>
Mailing Address (if different)	City	State	Zip Code
Name of Site Where Game(s) will be Conducted <u>Delta Hotel</u>	Site Address <u>1635 42nd St. SW</u>		
City <u>Fargo</u>	State <u>ND</u>	Zip Code <u>58103</u>	County <u>Cass</u>
Check the Game(s) to be Conducted: * Poker, Twenty-one, and Paddlewheels may be Conducted only by a Restricted Event Permit. <input type="checkbox"/> Bingo <input checked="" type="checkbox"/> Raffle <input type="checkbox"/> Raffle Board <input type="checkbox"/> Calendar Raffle <input type="checkbox"/> Sports Pool <input type="checkbox"/> Poker * <input type="checkbox"/> Twenty-one * <input type="checkbox"/> Paddlewheels *			

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

Game Type	Description of Prize	Retail Value of Prize	Game Type	Description of Prize	Retail Value of Prize
Paddle Raffle	Baseball tjersey	\$150			
Paddle Raffle	Redhawks Tickets	\$2,500			
Raffle	Baseball tjersey (virtual)	\$150			
Total:					(Limit \$40,000 per year) \$2,800

Intended uses of gaming proceeds: Basic needs of men staying at New Life Center including shelter, food, clothing, recovery services, and more.

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

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

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

Signature of Organization or Group's Top Official <u>Deb Watne</u>	Date <u>8/26/20</u>	Title <u>Dev. Director</u>	Business Phone Number <u>701-235-4453</u>
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## REPORT OF ACTION

## PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Project No. UR-20-A1

Type: Change Order #2 &amp; Time Extension

Location: 14<sup>th</sup> - 16<sup>th</sup> Ave S & 33<sup>rd</sup> - 35<sup>th</sup> St

Date of Hearing: 8/31/2020

RoutingDate

City Commission

9/8/2020

PWPEC File

X

Project File

Roger Kluck

The Committee reviewed the accompanying correspondence from Project Manager, Roger Kluck, for Change Order #2 in the amount of \$51,362.90, bringing the total contract amount to \$728,039.60, for additional work, along with the associated time extension to the Substantial and Final Completion Dates.

Staff is recommending approval of Change Order #2 and the time extension adjusting the Substantial Completion Date to October 2, 2020 and the Final Completion Date to October 23, 2020.

On a motion by Steve Sprague, seconded by Bruce Grubb, the Committee voted to recommend approval of Change Order #2 and the time extension as described above to Dirt Dynamics.

RECOMMENDED MOTION

Concur with recommendations of PWPEC and approve Change Order #2 in the amount of \$51,362.90, bringing the total contract amount to \$728,039.60 and the associated time extension to the Substantial and Final Completion Dates.

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

Developer meets City policy for payment of delinquent specials

Yes NoN/A

Agreement for payment of specials required of developer

N/A

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

N/ACOMMITTEEPresent Yes No Unanimous☒

Tim Mahoney, Mayor

☒☒☐

Nicole Crutchfield, Director of Planning

☒☒☐

Donald Kress

Steve Dirksen, Fire Chief

☒☒☐

Bruce Grubb, City Administrator

☒☒☐

Ben Dow, Director of Operations

☒☒☐

Steve Sprague, City Auditor

☒☒☐

Brenda Derrig, City Engineer

☒☒☐

Kent Costin, Finance Director

☒☒☐

ATTEST:



Brenda E. Derrig, P.E.

Assistant City Engineer

C: Kristi Olson

## Memorandum

**To:** PWPEC

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

**CC:** Jody Bertrand, Division Engineer; Tom Knakmuhs, Assistant City Engineer,

**Date:** August 19, 2020

**Re:** Project #UR-20-A1 Storm Sewer Repairs & Incidentals Change Order #2 & Time Extension

---

Project UR-19-A1 was bid on March 4, 2020. The project began July 14, 2020. This summer Public Works identified two storm sewer areas needing repair on 20<sup>th</sup> Street south of 14<sup>th</sup> Avenue South. Most of the work items are covered by bid items. The added work equates to \$42,262.90 and extends the contract substantial completion date to October 2, 2020 and the final completion date to October 23, 2020. The repair cost will be paid for out of the Storm Sewer Utility-524.

The price increase is reasonable and Engineering recommends approval.

**Recommended Motion**

Approve Change Order #2 in the amount of \$51,362.90 and time extension.



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

Improvement District No	UR-20-A1	Change Order No	2
Project Name	Storm Sewer Repairs & Incidentals		
Date Entered	8/19/2020	For	Dirt Dynamics

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

**EXPLANATION OF CHANGE:** Section A Added two repair sites

Section A was added to include 2 new repair sites on 20th Street south of 14th Avenue south

Section	Line No	Item Description	Unit	Orig Cont Qty	Prev C/O Qty	Prev Cont Qty	Curr C/O Qty	Tot Cont Qty	Unit Price (\$)	C/O Ext Price (\$)
Section A	112	Boulevard Grading	SY	0.00	0.00	0.00	0.00	70.00	8.00	560.00
	113	Seeding Type C	SY	0.00	0.00	0.00	0.00	70.00	1.65	115.50
	114	Mulching Type 1 - Hydro	SY	0.00	0.00	0.00	0.00	70.00	1.65	115.50
	115	Rem & Repl Curb & Gutter	LF	0.00	0.00	0.00	0.00	52.00	55.00	2,860.00
	116	Rem & Repl Pavement 9" Thick Reinf Conc	SY	0.00	0.00	0.00	0.00	70.00	65.00	4,550.00
	117	Rem & Repl Casting - Inlet	EA	0.00	0.00	0.00	0.00	4.00	758.00	3,032.00
	118	Mobilization	LS	0.00	0.00	0.00	0.00	1.00	3,500.00	3,500.00
	119	F&I Inlet - Single Box (SBI) Reinf Conc	EA	0.00	0.00	0.00	0.00	3.00	5,400.00	16,200.00
	120	F&I Pipe 12" Dia Reinf Conc	LF	0.00	0.00	0.00	0.00	65.00	55.90	3,633.50
	121	Casting to Grade - w/Conc	EA	0.00	0.00	0.00	0.00	4.00	1,000.00	4,000.00
Section B	122	Remove Pipe All Sizes All Types	LF	0.00	0.00	0.00	0.00	65.00	16.00	1,040.00
	123	Rem & Repl Driveway 6" Thick Reinf Conc	SY	0.00	0.00	0.00	0.00	30.00	55.00	1,650.00
	124	F&I Pipe 15" Dia Reinf Conc	LF	0.00	0.00	0.00	0.00	16.00	62.90	1,006.40
	125	Repair Pipe 18" Dia	EA	0.00	0.00	0.00	0.00	2.00		
<b>Section A Sub Total (\$)</b>										42,262.90
<b>Section B Sub Total (\$)</b>										9,100.00



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

**Summary**

Source Of Funding Utility Funds - Stormwater - 524

Net Amount Change Order # 2 (\$)

Previous Change Orders (\$)

Original Contract Amount (\$)

Total Contract Amount (\$)

51,362.90  
-12,714.40  
689,391.10  
728,039.60

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

**CONTRACT TIME**

Current Substantial Completion Date	Current Final Completion Date	Additional Days Substantial Completion	Additional Days Final Completion	New Substantial Completion Date	New Final Completion Date
09/04/2020	12/31/2019	28.00	297.00	10/02/2020	10/23/2020

**Description** 2 repair sites were added on CO 1 adding 7 days each and 2 repair sites were added on CO 2 adding 7 days each for a total of 28 days

**APPROVED**

*Wap*

For Contractor

Title

*estm*

**APPROVED DATE**

Department Head

*[Signature]*

Mayor

9/2/2020

Attest

## REPORT OF ACTION

(9)

## PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Type: Dedication of Utility Easement

Location: 3212 40<sup>th</sup> Avenue North

Date of Hearing: 8/31/2020

<u>Routing</u>	<u>Date</u>
City Commission	9/8/2020
PWPEC File	X
Project File	Shawn Bullinger

The Committee reviewed a communication from Shawn Bullinger, regarding the need for a public utility easement across a portion of City owned property located at 3212 40<sup>th</sup> Avenue North.

Staff is recommending dedication of a public utility easement along the northwesterly 10 feet of the property located at 3212 40<sup>th</sup> Avenue North.

On a motion by Ben Dow, seconded by Steve Sprague, the Committee voted to recommend approval of the easement.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve the easement.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: N/A

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

Yes	No
	N/A
	N/A
	N/A

COMMITTEE

Tim Mahoney, Mayor  
 Nicole Crutchfield, Director of Planning  
 Steve Dirksen, Fire Chief  
 Bruce Grubb, City Administrator  
 Ben Dow, Director of Operations  
 Steve Sprague, City Auditor  
 Brenda Derrig, City Engineer  
 Kent Costin, Finance Director

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

ATTEST:

C: Kristi Olson

  
 Brenda E. Derrig, P.E.  
 City Engineer



**Engineering Department**  
225 4<sup>th</sup> Street North  
Fargo, ND 58102  
Phone: 701.241.1545 | Fax: 701.241.8101  
Email [feng@FargoND.gov](mailto:feng@FargoND.gov)  
[www.FargoND.gov](http://www.FargoND.gov)

## Memorandum

**To:** Members of PWPEC  
**From:** Shawn G. Bullinger, Land Acquisition Specialist  
**Date:** August 31, 2020  
**Re:** Public Utility Easement across City property – 3212 40<sup>th</sup> Avenue North

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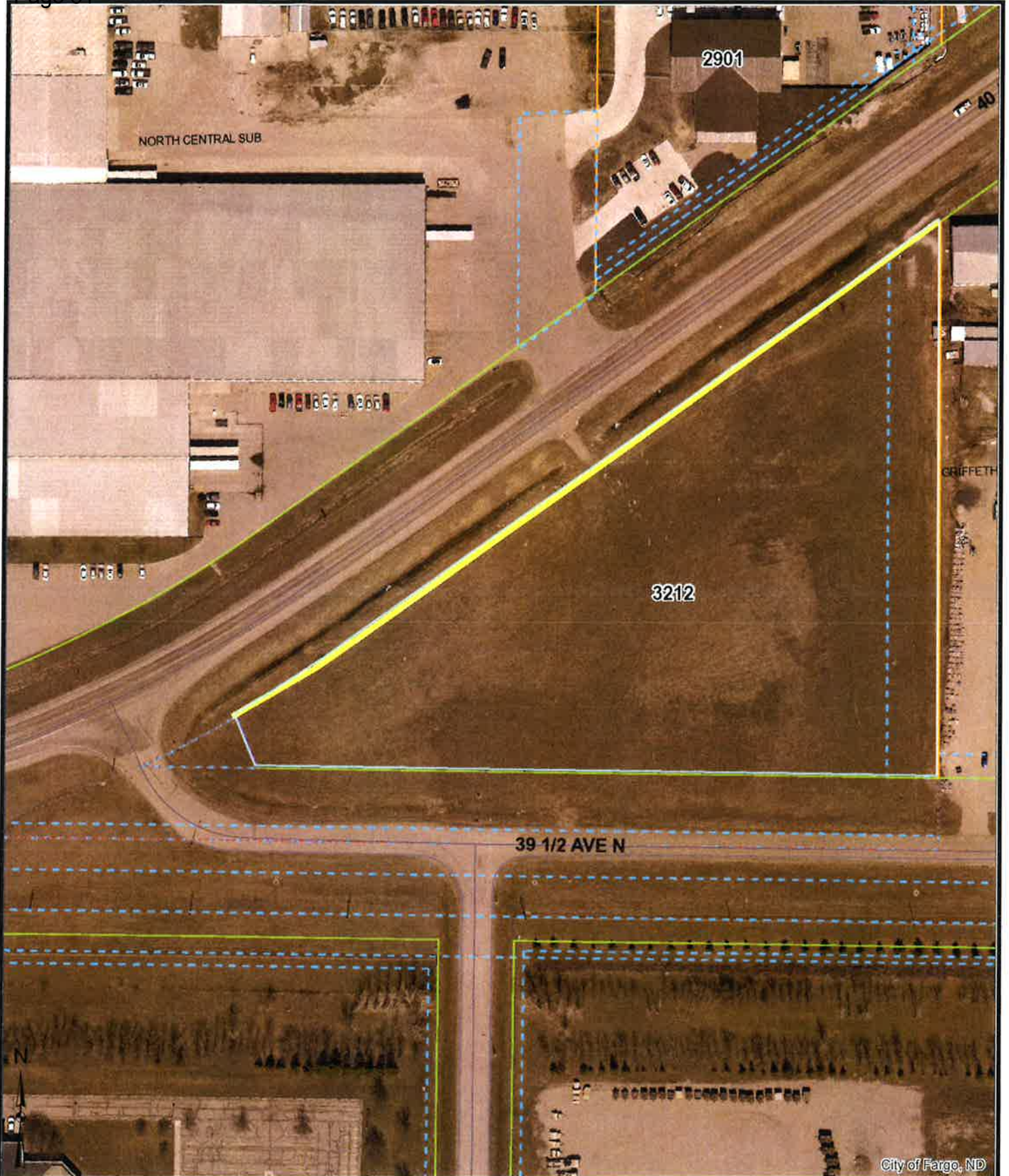
Engineering staff has identified the need for a public utility easement across a portion of City owned property located at 3212 40<sup>th</sup> Avenue North. I have attached a map showing the location of the proposed public utility easement for reference.

### Recommended Motion:

Staff is recommending to move forward with dedication of a public utility easement along the northwesterly 10 feet of the property located at 3212 40<sup>th</sup> Avenue North.

Attachment

C: Brenda Derrig



City of Fargo, ND

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

## 3212 40th Ave N - City Property

1:2,257

8/31/2020 12:04:22 PM

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

THE CITY OF  
**Fargo**  
FAR MORE

**DECLARATION OF PUBLIC UTILITY EASEMENT**

The city of Fargo, a North Dakota municipal corporation, (the "Declarant"), is the owner of certain real property located in the city of Fargo, County of Cass, State of North Dakota, described as:

A tract of land in the Southeast Quarter of Section 14, Township 140 North, Range 49 West of the Fifth Principal Meridian, City of Fargo, Cass County, North Dakota described as follows:

The Declarant does hereby dedicate, grant and convey to the city of Fargo, a North Dakota municipal corporation, a portion of such property for a permanent public utility easement, such property being more fully described as follows:

The northwesterly 10 feet of Auditor's Lot 1, on record as Document 685682 at the Cass County Recorder's Office, lying northeasterly of a Permanent Easement described in Document 693011. on record at the Cass County Recorder's Office.

Said tract contains 8948 square feet, more or less.

**IN WITNESS WHEREOF**, Declarant has set its hand and caused this instrument to be executed this \_\_\_\_ day of \_\_\_\_\_, 2020.

City of Fargo, a North Dakota Municipal  
Corporation

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

ATTEST

\_\_\_\_\_  
Steven Sprague

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

On this \_\_\_\_ day of \_\_\_\_\_, 2020, before me, a notary public in and for said  
county and state, personally appeared **Dr. Timothy J. Mahoney, M.D. and Steven  
Sprague**, to me known to be the Mayor and Auditor, respectively, of the City of Fargo,  
described in and who have executed the within and foregoing instrument, and  
acknowledged to me that they executed the same.

(SEAL)

\_\_\_\_\_  
Notary Public  
Cass County, North Dakota

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

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

(10)

September 2, 2020

Honorable Board of City  
Commissioners  
City of Fargo  
Fargo, ND

Re: Project No. FM-16-A1

Dear Commissioners:

Bids were opened at 11:30 AM on Wednesday, September 2, 2020, for North Side Flood Risk Management Levee, Project No. FM-16-A1, located on Cass County Highway 81 near 64<sup>th</sup> Avenue North, to University Drive near 46<sup>th</sup> Avenue North.

The prime bids were as follows:

Key Contracting, Inc.	\$ 9,211,536.30
Meyer Contracting, Inc.	\$ 9,536,660.08
Industrial Builders, Inc.	\$10,806,985.37
Park Construction Company	\$10,825,311.70
R.J. Zavoral & Sons, Inc.	\$11,849,230.50

Original Engineer's Estimate	\$ 8,659,724.50
------------------------------	-----------------

For the bidding and advertising of this project, the North Dakota Century Code Section 48-01.2-06 was utilized due to the engineer's estimated construction costs. The estimated electrical portion of project was anticipated to be greater than the 25% of the \$200,000 contract threshold. This requires bidding alternates for the general and electrical portions of this project. One electrical bid from Northern Valley Electric was received for an amount of \$271,500. No general contractor bids were submitted to allow for a combined bid with the one received electrical bid to allow for a low bid comparison.

The special assessment escrow is not required.

This office recommends award of the contract to Key Contracting, Inc. in the amount of \$9,211,536.30 as the lowest and best bid.

Sincerely,



Tom Knakmuhs  
Assistant City Engineer

TAK/klb

**ENGINEER'S STATEMENT OF ESTIMATED COST****PROJECT # FM-16-A1****North Side Flood Risk Management Levee**

Cass County Hwy 81 near 64th Ave N to University Dr near 46th Ave N

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

NOW THEREFORE Tom Knakmuhs, do hereby certify as follows:

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

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

North Side Flood Risk Management Levee Project # FM-16-A1 of the City of Fargo, North Dakota.

Line Description	Unit	Quantity	Unit Price (\$)	Amount (\$)
<b>Erosion and Sediment Control</b>				
1 Sediment Control Log 6" to 8" Dia	LF	1,245.00	2.20	2,739.00
2 Silt Fence - Standard	LF	6,900.00	2.20	15,180.00
3 Stormwater Management	LS	1.00	20,600.00	20,600.00
4 Temp Construction Entrance	EA	2.00	3,500.00	7,000.00
5 Concrete Washout Area	EA	1.00	3,200.00	3,200.00
6 F&I Slope Protection 5" Thick Reinf Conc	SY	2,660.00	72.00	191,520.00
7 F&I Erosion Control Blanket Type 3	SY	5,280.00	2.20	11,616.00
<b>Erosion and Sediment Control Total</b>				<b>251,855.00</b>
<b>Sanitary Sewer</b>				
8 F&I Force Main 6" Dia	LF	160.00	85.00	13,600.00
9 F&I Force Main 10" Dia	LF	114.00	95.00	10,830.00
10 Remove Pipe All Sizes All Types	LF	443.00	30.00	13,290.00
11 Connect Pipe to Exist Pipe	EA	8.00	1,650.00	13,200.00
12 F&I Valve 6" Dia	EA	4.00	2,110.00	8,440.00
13 F&I Valve 10" Dia	EA	4.00	3,610.00	14,440.00
<b>Sanitary Sewer Total</b>				<b>73,800.00</b>
<b>Water Main</b>				
14 F&I Pipe C900 DR 18 - 10" Dia PVC	LF	55.00	110.00	6,050.00
15 F&I Pipe C900 DR 18 - 12" Dia PVC	LF	486.00	81.00	39,366.00
16 F&I Gate Valve 10" Dia	EA	2.00	3,610.00	7,220.00
17 F&I Fittings Ductile Iron	LB	491.00	30.00	14,730.00
18 Remove Pipe All Sizes All Types	LF	541.00	30.00	16,230.00
19 Connect Pipe to Exist Pipe	EA	4.00	1,650.00	6,600.00
<b>Water Main Total</b>				<b>90,196.00</b>
<b>Pavement</b>				
20 F&I Geogrid - Subgrade Reinf	SY	2,400.00	8.00	19,200.00
21 F&I NonWoven Geotextile	SY	4,140.00	2.00	8,280.00
22 F&I Class 5 Agg - 12" Thick	SY	2,310.00	14.00	32,340.00
23 F&I Pavement 8" Thick Reinf Conc	SY	712.00	72.00	51,264.00
24 F&I Pavement 8" Thick Doweled Conc	SY	98.00	88.00	8,624.00
25 Remove Pavement All Thicknesses Asph	SY	132.00	12.00	1,584.00
26 F&I Class 13 Agg - 12" Thick	SY	4,900.00	13.00	63,700.00
27 F&I Traffic Surface Gravel	TON	4,562.00	32.00	145,984.00
28 Paint Epoxy Line 4" Wide	LF	345.00	5.00	1,725.00
29 F&I Sidewalk 4" Thick Reinf Conc	SY	145.00	72.00	10,440.00
30 F&I Sidewalk 6" Thick Reinf Conc	SY	210.00	76.00	15,960.00
31 Remove Sidewalk All Thicknesses All Types	SY	210.00	12.00	2,520.00
32 Remove Pavement 9" Thick Conc	SY	225.00	18.00	4,050.00
33 F&I Pavement 9" Thick Reinf Conc	SY	225.00	88.00	19,800.00

**ENGINEER'S STATEMENT OF ESTIMATED COST**

PROJECT # FM-16-A1

**North Side Flood Risk Management Levee**

				<b>Pavement Total</b>	<b>385,471.00</b>
<b>Miscellaneous</b>					
34 Fill - Import Special	CY	3,330.00	27.00		89,910.00
35 Grade Roadway	LF	20,200.00	3.50		70,700.00
36 Traffic Control - Type 2	LS	1.00	26,000.00		26,000.00
37 F&I Fence	LF	160.00	155.00		24,800.00
38 F&I Fence Maintenance Free	LF	2,220.00	19.50		43,290.00
39 F&I Pre-Fabricated Vertical Drains	LF	61,072.00	2.50		152,680.00
40 F&I Settlement Plates	LS	1.00	5,500.00		5,500.00
41 F&I Swing Gate	EA	1.00	6,000.00		6,000.00
42 Mobilization	LS	1.00	266,000.00		266,000.00
				<b>Miscellaneous Total</b>	<b>684,880.00</b>
<b>Flood Mitigation</b>					
43 Topsoil - Spread	CY	48,460.00	3.00		145,380.00
44 Topsoil - Strip	CY	50,550.00	3.00		151,650.00
45 Excavation	CY	13,922.00	4.50		62,649.00
46 Fill - Import	CY	93,317.00	11.00		1,026,487.00
47 Mulching Type 2 - Straw	SY	168,900.00	0.10		16,890.00
48 Seeding Type A	SY	145,380.00	0.10		14,538.00
49 Weed Control Type B	SY	145,380.00	0.20		29,076.00
50 Inspection Trench	CY	27,665.00	5.50		152,157.50
51 F&I Sleeper Slab	LS	1.00	24,000.00		24,000.00
52 Embankment	CY	13,922.00	4.40		61,256.80
				<b>Flood Mitigation Total</b>	<b>1,684,084.30</b>
<b>Storm Sewer - Electrical</b>					
53 F&I Lift Station Pumps & Controls	LS	1.00	599,000.00		599,000.00
				<b>Storm Sewer - Electrical Total</b>	<b>599,000.00</b>
<b>Storm Sewer</b>					
54 F&I Gatewell	EA	3.00	140,000.00		420,000.00
55 F&I Lift Station	LS	1.00	3,450,000.00		3,450,000.00
56 Modify Lift Station	EA	1.00	20,800.00		20,800.00
57 F&I Pipe 12" Dia Reinf Conc	LF	38.00	75.00		2,850.00
58 F&I Pipe 15" Dia Reinf Conc	LF	33.00	85.00		2,805.00
59 F&I Pipe 24" Dia Reinf Conc	LF	355.00	75.00		26,625.00
60 F&I Pipe 30" Dia Reinf Conc	LF	291.00	120.00		34,920.00
61 F&I Pipe 48" Dia Reinf Conc	LF	65.00	300.00		19,500.00
62 F&I Sluice Gate 12" Dia Stainless Steel	EA	1.00	4,530.00		4,530.00
63 F&I Sluice Gate 15" Dia Stainless Steel	EA	1.00	4,616.00		4,616.00
64 F&I Sluice Gate 24" Dia Stainless Steel	EA	4.00	4,800.00		19,200.00
65 F&I Sluice Gate 30" Dia Stainless Steel	EA	2.00	5,200.00		10,400.00
66 F&I Pipe 30" Dia Corr Steel	LF	604.00	54.00		32,616.00
67 Remove Pipe All Sizes All Types	LF	550.00	30.00		16,500.00
68 F&I Pipe 120" Dia Corr Steel	LF	1,188.00	350.00		415,800.00
69 F&I Box Culvert 13'x10' Wide Reinf Conc	LF	414.00	1,540.00		637,560.00
70 F&I Box Culvert End Section 13'x10' Wide Reinf Conc	EA	4.00	29,500.00		118,000.00
71 F&I Flap Gate 30" Dia Cast Iron	EA	4.00	4,748.00		18,992.00
72 F&I Rip Rap Rock	CY	700.00	175.00		122,500.00
73 Remove Rip Rap Rock	LS	1.00	5,500.00		5,500.00
74 F&I Flared End Section 12" Dia Reinf Conc	EA	1.00	1,200.00		1,200.00
75 F&I Flared End Section 15" Dia Reinf Conc	EA	1.00	1,500.00		1,500.00
76 F&I Flared End Section 24" Dia Reinf Conc	EA	6.00	2,400.00		14,400.00
77 F&I Flared End Section 30" Dia Reinf Conc	EA	5.00	3,200.00		16,000.00

ENGINEER'S STATEMENT OF ESTIMATED COST

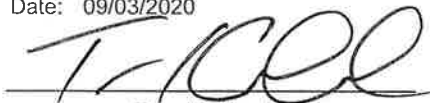
PROJECT # FM-16-A1

North Side Flood Risk Management Levee

78 F&I Flared End Section 48" Dia Reinf Conc	EA	2.00	6,200.00	12,400.00
79 F&I Sluice Gate 36" Dia Stainless Steel	EA	2.00	6,518.00	13,036.00
<b>Storm Sewer Total</b>				5,442,250.00
<b>Total Construction in \$</b>				<b>9,211,536.30</b>
Engineering		4.00 %		368,461.45
Contingencies		10.00 %		921,153.63
Administration		4.00 %		368,461.45
Outside Engineering		11.98 %		1,103,542.05
Other Services		4.61 %		424,651.82
<b>Total Estimated Costs</b>				<b>12,397,806.71</b>
Sales Tax Funds - Flood Control - 460				12,397,806.71
<b>Unfunded Costs</b>				<b>0.00</b>

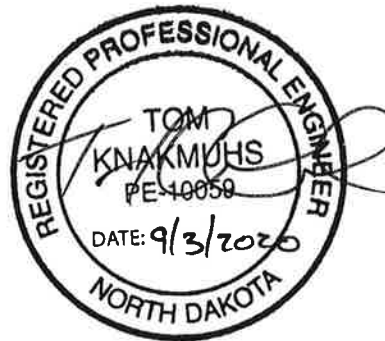
IN WITNESS THEREOF, I have hereunto set my hand and seal

Date: 09/03/2020



Tom Knakmuhs

Assistant City Engineer



## REPORT OF ACTION

11

## PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Project No. VF-20-A

Type: North Fargo Industrial Addition Developer's Agreement

Location: North Fargo Industrial Addition Date of Hearing: 8/31/2020

Routing

City Commission

Date9/8/2020

PWPEC File

X

Project File

Nathan Boerboom

The Committee reviewed the attached draft of a Developer's Agreement for the private construction of the development known as North Fargo Industrial Addition. Staff is seeking approval to carry this document forward after review and acceptance by the Developer for Commission approval. This would be contingent upon there being no material changes to the Agreement with the Developer's review.

The Developer is requesting the ability to work 24 hours 7 days a week as needed due to weather conditions and to meet their deadline. Approval of this agreement permits them to work the requested schedule.

Staff is recommending approval of the Developers Agreement and offsite improvements.

On a motion by Bruce Grubb, seconded by Tim Mahoney, the Committee voted to recommend approval of the Developer's Agreement for North Fargo Industrial Addition infrastructure and offsite improvements.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve the North Fargo Industrial Addition Developer's Agreement.

PROJECT FINANCING INFORMATION:Recommended source of funding for project: Special Assessments

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

Yes	No
N/A	
N/A	
N/A	

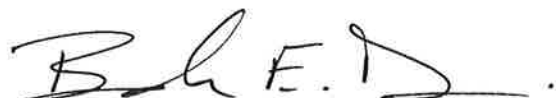
COMMITTEE

Tim Mahoney, Mayor  
 Nicole Crutchfield, Director of Planning  
 Steve Dirksen, Fire Chief  
 Bruce Grubb, City Administrator  
 Ben Dow, Director of Operations  
 Steve Sprague, City Auditor  
 Brenda Derrig, City Engineer  
 Kent Costin, Finance Director

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

ATTEST:

C: Kristi Olson

  
 Brenda E. Derrig, P.E.  
 City Engineer

## Memorandum

**To:** Members of PWPEC  
**From:** Brenda Derrig, City Engineer  
**Date:** August 27, 2020  
**Re:** Developers Agreement for North Fargo Industrial Addition

---

### Background:

On August 17<sup>th</sup>, PWPEC approved the request from Ryan Companies to construct the 44<sup>th</sup> Avenue infrastructure privately. Staff have been working with Ryan Companies on a Developers Agreement to support that request along with their need for potential offsite improvements. We have a draft agreement but have not added the offsite improvement needs, which Ryan Companies and the City are still evaluating and are summarized below.

City designing and Constructing:

- a. Storm Sewer Extension from Drain 10 to the Site and 44<sup>th</sup> Avenue completed by late Summer 2021
- b. Water main extension along County Road 81 from 44<sup>th</sup> Avenue to 40<sup>th</sup> Avenue by August 1<sup>st</sup>, 2021
- c. Offsite turn lanes and intersection improvements on 40<sup>th</sup> Avenue North at I-29, County 81, and 37<sup>th</sup> Street North by August 1<sup>st</sup> 2021
- d. Street Lighting on 40<sup>th</sup> Avenue for a future City project
- e. Future widening of County 81 with City project

Ryan Companies US, Inc. Designing and Constructing and Responsibilities:

- a. Complete the 44<sup>th</sup> Avenue North By August 1<sup>st</sup>
- b. Install the right hand turn lanes into the site and 44<sup>th</sup> Avenue from County Road 81 by August 1<sup>st</sup>
- c. Provide an easement adjacent to 37<sup>th</sup> Avenue for the storm water pipe extension from Drain 10

Attached you will find a draft Developer's Agreement. We are currently completing review of the document with the Developer but need to keep it moving so the appropriate approvals can be completed to keep their project moving.

### Recommended Motion:

Approve the Developer's Agreement for North Fargo Industrial Addition Infrastructure and offsite improvements.



8/14/20

Brenda E. Derring, PE - City Engineer  
City of Fargo  
225 4<sup>th</sup> Street North  
Fargo, ND 58102

**RE: Fargo Industrial North – Requests of Offsite Improvements**

Dear Brenda Derring,

Due to change in the project schedule and some additional information in the draft traffic report, we are requesting changes from our July 26<sup>th</sup> letter for the City improvements.

We would like to design and construct 44<sup>th</sup> Ave North. We will also extend the watermain from 44<sup>th</sup> Ave North to 40<sup>th</sup> Ave North along County Road 81. These improvements will be designed and constructed to the City's Standards. The improvements will be completed by August 1<sup>st</sup> and then turned over to the City.

We are requesting the City construct the other necessary improvements for this project. These would include the improvements identified in the Draft Traffic Study, dated August 11, 2020, and other improvements the City deems necessary. Attached is an Offsite Improvement Exhibit highlighting the improvements. We would like to have these improvements completed by August 1<sup>st</sup>, 2020.

We look forward to working with you and the City's staff on these improvements.

Sincerely,

A handwritten signature in dark ink that reads "Dan Mueller". The signature is fluid and cursive, with the first name "Dan" and last name "Mueller" clearly distinguishable.

Dan Mueller – VP Development

CC: Mark Williams – Assistant Planning Director City of Fargo  
Chris Johnson - Sr. Project Manager – Ryan Companies  
Jared Olson – VP of Site Design – Ryan Companies

Ryan Companies US, Inc.  
533 South Third Street, Suite 100  
Minneapolis, MN 55415

p: 612-492-4000  
ryancompanies.com

F:\Projects\City of Fargo\...

**Development and Assessment Agreement  
North Industrial Addition**

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

**RECITALS**

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

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

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

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

1. Prior to the time the Developer commences the Developer Infrastructure Improvements (as hereinafter defined), Developer shall hold all right, title and interest in and to the Development Property. Notwithstanding anything in the foregoing to the contrary, nothing in this Section 1 shall preclude the Developer from commencing work on the Developer Infrastructure Improvements pursuant to permits issued by the City or other jurisdictions exercising authority over such work prior to the time the Developer has acquired the Development Property.
2. Developer shall, at its sole cost and expense, fund installation of the following public improvements (the "Developer Infrastructure Improvements") in each case as described and depicted on Exhibit B attached hereto and incorporated by reference herein:
  - a. Design and construction of a paved road and associated utilities to be known as 44<sup>th</sup> Avenue North on or before August 1, 2021, pursuant to mutually acceptable plans and specifications.

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

3. City shall fund installation of the following public improvements (the "City Infrastructure Improvements") in each case as described and depicted on Exhibit B:
  - a. Design, acquisition of required easements, and installation of a storm sewer extension from Drain 10 to the Development Property on or before August 1, 2021 pursuant to mutually acceptable plans and specifications.
  - b. Design, acquisition of required easements, and installation of a watermain extension along County Road 81 from 44<sup>th</sup> Avenue North to 40<sup>th</sup> Avenue North on or before July 15, 2021 pursuant to mutually acceptable plans and specifications.
  - c. Installation of street lighting along 40<sup>th</sup> Avenue North, which may be deferred by the City in the City's sole discretion.
  - d. Design and construction of turn lanes and intersection improvements at (i) the intersection of 40<sup>th</sup> Avenue North and Interstate 29 in the event the same is deemed warranted by the North Dakota Department of Transportation, and (ii) the intersection of 40<sup>th</sup> Avenue North and County Road 81 in each case on or before August 1, 2021 pursuant to mutually acceptable plans and specifications.
  - e. Design, acquisition of requirement easements, and construction related to widening of County Road 81, which may be deferred by the City for any reason or no reason in the City's sole discretion.
  - f. Design, acquisition of requirement easements, and construction related to intersection improvements at 40<sup>th</sup> Ave North and 37<sup>th</sup> Street North, which may be deferred by the City for any reason or no reason in the City's sole discretion.

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

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

4. The Developer will directly contract for engineering and construction services for the Developer Infrastructure Improvements and will make direct payment for such services. The Developer's contractor(s) and engineer(s) must be licensed under the laws of the State of North Dakota, and otherwise be responsible bidders as reasonably determined by the City.
5. The Developer shall be responsible for compliance with all applicable City construction standards and specifications, including but not limited to compliance with the City of Fargo Requirements for Engineering Services on Public Construction Projects, dated April 2015, as modified from time to time by the City Engineering.
6. The City shall have no obligation, liability, or responsibility for any payment obligation arising from the Developer Infrastructure Improvements. In no event will the City be responsible for any payments related to the Developer Infrastructure Improvements, including payments for additional work or payments for costs occasioned by unforeseen or changed conditions encountered during the work. All work must comply with applicable provisions of the City of Fargo - Standard Specifications for Construction. The Developer shall have no obligation, liability, or responsibility for any payment obligation arising from the City Infrastructure Improvements, except as provided for herein. In no event will the Developer be responsible for any payments related to the City Infrastructure Improvements, including payments for additional work or payments for costs occasioned by unforeseen or changed conditions encountered during the work.
7. The Developer will make an Infrastructure Request for the Developer Infrastructure Improvements prior to construction. The Developer agrees that once construction of the Developer Infrastructure Improvements commences, the Developer is obligated to complete the Developer Infrastructure Improvements at the Developer's sole risk and expense.
8. The Developer agrees to furnish to the City plans for the Developer Infrastructure Improvements for review at specified intervals. The City shall review the plans for consistency and compliance with the City Standard Specifications for Construction. The City shall expedite review of all such plans and the City shall have the right to make design comments within ten (10) business days following receipt of such plans. If the City fails to make any timely design comments within such period, the

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

9. The Developer understands and agrees that the City shall have the right to inspect the Developer Infrastructure Improvements during construction of the same and that the City reserves the right to reject portions of the Developer Infrastructure Improvements if the same do not comply with the terms, conditions and limitations set forth in this Agreement. The City agrees to identify any deficiencies in the Developer Infrastructure Improvements in writing, and Developer agrees to correct and/or repair such deficiencies to the City's reasonable satisfaction within ninety (90) days from the City's notice of rejection, unless a longer time is agreed to in writing. City reserves the right to remedy the Developer Infrastructure Improvements deficiencies and assess the Development Property for the cost, in accordance with the terms herein.
10. City will not accept any responsibility or obligations for the Developer Infrastructure Improvements until final approval of the same by the City pursuant to the procedures detailed in Section 24 and Section 25 below. The City agrees to accept the Developer Infrastructure Improvements provided design and construction of the same are compliant with all terms, conditions and limitations set forth herein. The City shall not unreasonably withhold, delay or condition its acceptance of the Developer Infrastructure Improvements. The City agrees it will be responsible for all operation and maintenance requirements of the Developer Infrastructure Improvements and the City Infrastructure Improvements upon completion and acceptance of the same, and for all public infrastructure located in public right of way, including without limitation for sanitary sewers, water mains, storm sewer, streets, street lights, and signage upon final acceptance by the City.
11. Developer agrees to pay City 4% of the actual cost of the Developer Infrastructure Improvements as an oversight fee.
12. The City shall conduct inspections throughout the construction process to gage compliance with the City Standard Specifications for Construction. The City agrees that it shall not unreasonably interfere with the work being performed by the Developer during such inspections.
13. The Developer agrees to indemnify, release and hold harmless the City against all claims which allege that the City is liable to the claimant by reason of any injury to or

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

14. Developer shall require Developer's licensed contractor to name the City as an additional insured and shall provide the City with proof of such insurance before commencing any construction activities.
15. Start of work. Developer's inspector shall notify the City Engineer no later than forty-eight (48) hours prior to the commencement of work on the Developer Infrastructure Improvements. The City shall further be notified forty-eight (48) hours in advance of the commencement of underground utilities in connection with the Developer Infrastructure Improvements, and be provided the opportunity to inspect installations prior to backfilling occurring
16. All barricades and traffic control measures installed by or on behalf of Developer in connection with the Developer Infrastructure Improvements shall comply with the latest edition of the Manual on Uniform Traffic Control Devices. [http://mutcd.fhwa.dot.gov/pdfs/2009/pdf\\_index.htm](http://mutcd.fhwa.dot.gov/pdfs/2009/pdf_index.htm).
17. Hours of Work. Developer shall be permitted to work twenty-four (24) hours per day, seven (7) days per week. City represents and warrants that no applicable law prevents the Developer from performing work twenty-four (24) hours per day, seven (7) days per week. Developer is cognizant of the noise level associated with construction activities, and will work to curtail especially loud construction activities before 7:00 a.m. and after 7:00 p.m.
18. Reports. Developer's Engineer reports shall be filed in the City Engineer's office bi-weekly for the portion of the Developer Infrastructure Improvements described in the report.
19. Timing and Rate of Development. The City acknowledges that as of the Effective Date, the Developer cannot predict if, when or at what rate the development of the Project will occur, which will depend upon numerous factors, including factors outside

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

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

21. Testing.

- a. Certification: Testing performed by the Developer or a testing company for the Developer shall be done under the supervision of a Registered Professional Engineer and certified by the same. Testing shall be done in accordance with appropriate ASTM; AASHTO or other recognized Standards.
- b. Test Results: Results of all field tests shall be recorded on the daily inspection report. The inspection report shall note any samples taken for laboratory tests and the location that said samples were taken and any field or visual inspections made on said samples when they were taken.
- c. Testing Requirements: Developer shall submit a proposed testing schedule to the City Engineer. The schedule shall designate the testing firm responsible for performing the necessary tests. Developer shall designate the number and types of tests necessary to ensure compliance.

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

23. City covenants and agrees that building permits can be issued while the Developer Infrastructure Improvements and the City Infrastructure Improvements are being constructed, since the site will have access from 37<sup>th</sup> Street. Utility connection from the private site to the Developer Infrastructure Improvements and the City Infrastructure Improvements, as applicable, cannot occur until such improvements have passed all testing and are fully and finally accepted by City.
24. Default. In the event of a default of this Agreement, the non-defaulting Party shall provide written notice of the default to the defaulting Party and shall specify a period of not less than fifteen (15) days during which the defaulting Party shall have the right to cure such default; provided, however, that such cure period may be extended if (i) the default cannot reasonably be cured within the cure period provided in such notice, (ii) the curing Party notifies the non-defaulting Party of such fact by no later than the end of the cure period provided in the notice, (iii) the curing Party has theretofore been diligent in pursuing the cure and (iv) the curing Party in such extension notice covenants to (and thereafter actually does) diligently pursue the cure to completion. If the defaulting Party fails to cure the default, the non-defaulting Party may either (a) terminate this Agreement and seek damages from the defaulting Party or (b) enforce this Agreement by the remedy of damages or specific performance or both. Except in the case of gross negligence, bad faith or willful misconduct, for which claims for consequential damages are expressly reserved by the Parties, each Party hereby waives all claims against the other Party for any consequential or indirect damages that may arise out of or relate to this Agreement.
25. Force Majeure. If due to the occurrence of a Force Majeure Event a Party is unable to meet any obligation hereunder, then the deadline for performing such obligation shall be automatically extended by one (1) day for each day of such Force Majeure Event; provided that such Party shall diligently and in good faith act to the extent within its power to remedy the circumstances of such Force Majeure Event affecting its performance or to complete performance in as timely a manner as is reasonably possible. For purposes of this Agreement, "Force Majeure Event" means a matter beyond the reasonable control of the Party to perform (excluding unfavorable economic conditions), including: acts of God, earthquakes, fire, floods, tornados, hurricanes and extreme weather conditions; acts of terrorism; financial and/or banking crises that limit normal extensions of credit; civil disturbances; pandemic or epidemic; discovery of hazardous materials; and acts of the United States of America or the State of North Dakota.
26. Acceptance Procedures and Requirements of Final Acceptance. Upon completion of the Developer Infrastructure Improvements, Developer shall submit a written final

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

27. Inspection Report. A report shall be compiled, bound, and submitted to the City Engineer. The report shall include sequential copies of all daily reports, weekly reports, material tests, field diaries and survey notes. The report shall also include a copy of the final inspection report and indication that punch list items have been completed and accepted. City shall provide a Certificate of Acceptance letter upon final acceptance of the Infrastructure Improvements.
28. Developer shall deliver to the City all Operations and Maintenance manuals and/or Maintenance Crew Training Specifics in advance of final acceptance. The Developer may assign its rights and obligations under this Agreement to any (i) affiliate controlling, controlled by or under common control with the Developer without the City's prior consent (and upon such assignment the assigning entity shall be relieved of its covenants, commitments and obligations hereunder) or (ii) subsequent owner of all or any portion of the Development Property with the City's prior written consent, such consent not to be unreasonably withheld, conditioned or delayed. If the Developer sells the Development Property in its entirety and assigns its rights and obligations hereunder to its successor in title to the Development Property with the City's prior written consent, then the Developer shall be relieved of all of its covenants, commitments and obligations hereunder.
29. Warranty. The Developer's applicable subcontractor(s) will remain responsible for maintenance, repair, and deficiency corrections for the Developer Infrastructure Improvements during the warranty period, which shall be one year from the date of City acceptance, provided for in the Developer's contracts with the applicable subcontractor(s). Developer shall assign all such warranties to the City at the time of final acceptance.
30. Developer agrees that failure to secure acceptance from the City of the Developer Infrastructure Improvements may result in the establishment of a special assessment district pursuant to Chapter 40-22 of the North Dakota Century Code for the purpose of financing the completion of the Developer Infrastructure Improvements to the

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

31. Acknowledgment of Limited Access for Fire and Police. The Developer acknowledges that during the course of construction of the Developer Infrastructure Improvements, there shall be limited access to the right-of-way upon which such Developer Infrastructure Improvements will be constructed for fire and police protection services. The Developer releases the City and its officers, employees, agents and representatives from any and all liability, losses, damages, claims, demands, actions, judgments and executions arising out of or regarding such limited access.
32. Governing Law. This Agreement will be construed and enforced in accordance with North Dakota law. The parties agree any litigation arising out of this Agreement will be venued in District Court in Cass County, North Dakota, and the parties waive any objection to personal jurisdiction.
33. No Forbearance. The failure or delay of either Party to insist on the performance of any of the terms of this Agreement, or the waiver of any breach of any of the terms of this Agreement, will not be construed as a waiver of those terms, and those terms will continue and remain in full force and effect as if no forbearance or waiver had occurred and will not affect the validity of this Agreement, or the right of either Party to enforce each and every term of this Agreement.
34. Severability. If any court of competent jurisdiction finds any provision or part of this Agreement is invalid, illegal, or unenforceable, that portion will be deemed severed from this Agreement, and all remaining terms and provisions of this Agreement will

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

35. Time is of the Essence. Time is of the essence of all the Parties' respective obligations under this Agreement.
36. Entire Agreement. This Agreement, together with any related documents, as well as any amendments to those agreements and documents, constitutes the entire agreement between the parties regarding the matters described in this Agreement.
37. No Third-Party Beneficiaries. The only parties to this Agreement are the City and the Developer. There are no third-party beneficiaries under this Agreement, and except for assignees and successors-in-interests to either Party, this Agreement shall not be construed to benefit or be enforceable by any other party whatsoever.
38. Counterparts. This Agreement may be executed in as many counterparts as may be deemed necessary and convenient, and by the Parties in separate counterparts, each of which, when so executed, shall be deemed an original, but all such counterparts shall constitute one and the same instrument. A scanned or photocopy signature on this Agreement, any amendment hereto or any notice delivered hereunder shall have the same legal effect as an original signature.
39. Modifications. Any modifications or amendments of this Agreement must be in writing and signed by both parties to this Agreement.

**[Signature Pages Follow.]**

Developer

Dated: \_\_\_\_\_

RYAN FARGO, LLC, a Delaware limited liability company

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

Its: Sole Member

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

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

Its: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

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

\_\_\_\_\_  
Notary Public

(SEAL)

City of Fargo, a North Dakota  
Municipal Corporation

Dated: \_\_\_\_\_

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

ATTEST:

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

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

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

\_\_\_\_\_  
Notary Public  
Cass County, ND  
My Commission expires:

(SEAL)

EXHIBIT "A"

Development Property

Parcel 1:

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

Parcel 2:

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

Parcel 3:

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

To be platted as follows:

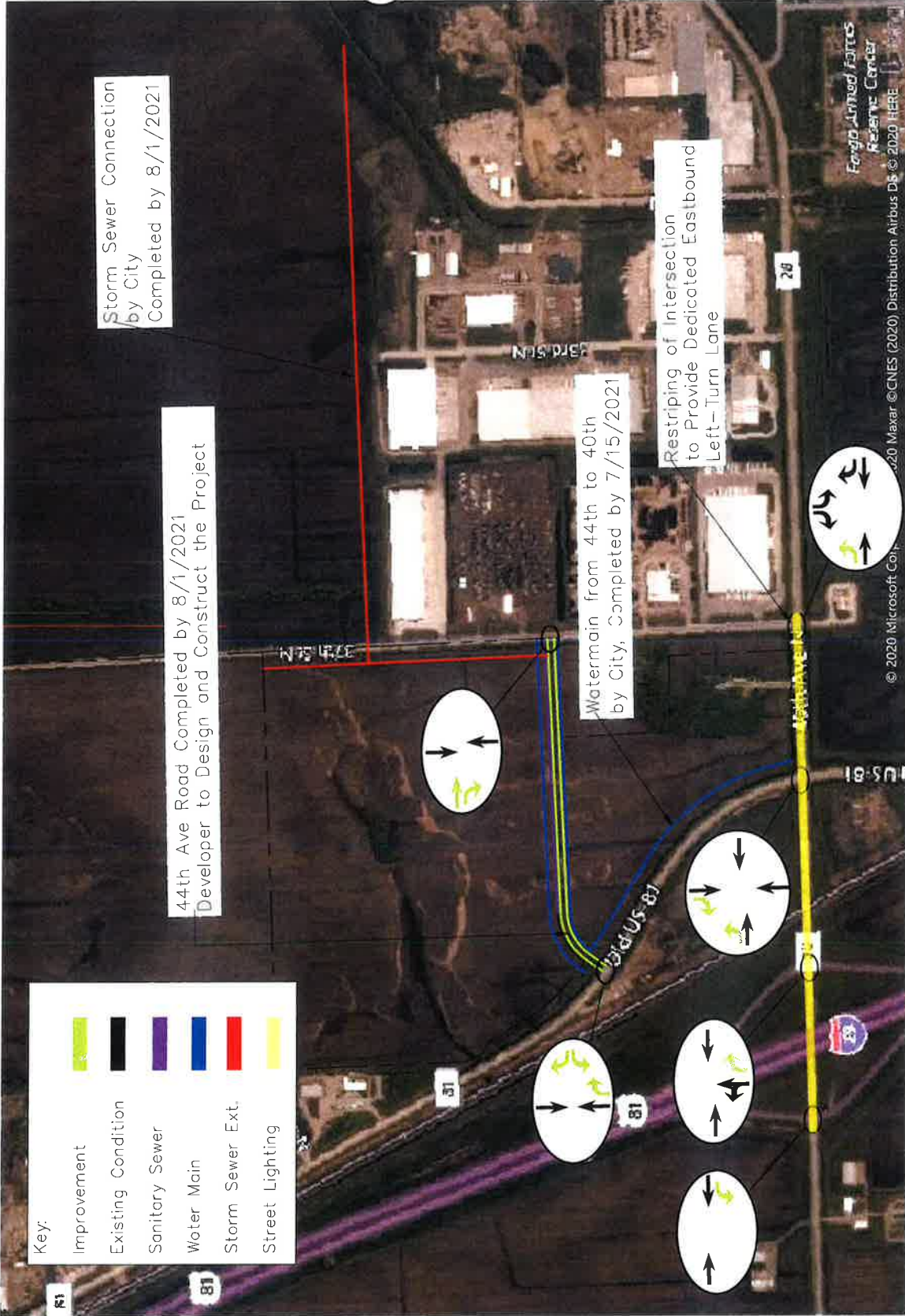
Lot 1, Block 1, North Fargo Industrial Addition to the City of Fargo, Cass County, North Dakota

EXHIBIT "B"

Developer Infrastructure Improvements and City Infrastructure Improvements

**[Refer to the attached]**

Exhibit B



To Be Completed by the City, Intersections on 40th Ave:

- Turn Lane
- Improvements on I-29 Intersections -Future Project
- Turn Lane
- Improvements on Co. Rd. 81
- Intersections by 8/1/2021
- Turn Lane
- Improvements on 37th St. N
- Future Project

Street Lighting by City - Future Project

County Road 81 shoulder widening by City - Future Project

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

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

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

1. As a part of said Agreement, Developer will design and construct Infrastructure Improvements in the Development Property.
2. As a further part of the Agreement, Developer agrees to assessment of the Development Property, as follows:

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

3. This Memorandum Agreement incorporates by reference all the other terms and provisions of the Agreement above-described, a copy of said Agreement being on file at the office of the City Auditor, Fargo City Hall, 225 North Fourth Street, Fargo, North Dakota.
4. The property that is the subject of the Agreement is the Development Property, above-described.
5. As provided in said Agreement, all provisions of said Agreement shall be deemed binding upon the successors and assigns of the parties hereto, including any Purchaser of any of the Development Property, in accordance with the terms thereof. Developer agrees to apprise any buyers or intended assigns of the existence and content of the Agreement.

Developer

Dated: \_\_\_\_\_

\_\_\_\_\_

By:

Its:

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

On this \_\_\_\_ day of \_\_\_\_\_, 2020, before me, a notary public in and for said county and state, personally appeared \_\_\_\_\_, to me known to be the persons described in and that executed the within and foregoing instrument.

(SEAL)

\_\_\_\_\_  
Notary Public  
Cass County, ND

City of Fargo, a North Dakota  
Municipal Corporation

Dated: \_\_\_\_\_

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

ATTEST:

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

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

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

\_\_\_\_\_  
Notary Public  
Cass County, ND  
My Commission expires:

(SEAL)

City of Fargo Engineering Letterhead

(Date)

Developer \_\_\_\_\_

Address

Pursuant to the terms of the \_\_\_\_\_ Development and Assessment Agreement dated \_\_\_\_\_ (date), this letter constitutes notice of the City of Fargo's final acceptance of the Infrastructure Improvements. The contractor's warranty shall be assigned to the city of Fargo.

Signed City Engineer or Designee

## PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

(12)

Type: Block 9 Developer and Road Use Agreement Amendment No. 6

Location: Block 9 – Broadway btwn 2<sup>nd</sup> & 3<sup>rd</sup> Avenue

Date of Hearing: 8/31/2020

<u>Routing</u>	<u>Date</u>
City Commission	9/8/2020
PWPEC File	X
Project File	Kristy Schmidt

The Committee reviewed a communication from Civil Engineer, Kristy Schmidt, regarding a request received from Kilbourne Group for closures of sidewalks and completion of work in the City's Right of Way associated with the Block 9 Plaza as follows:

- Completion of sidewalk on Broadway (east side between 2<sup>nd</sup> and 3<sup>rd</sup> Avenue North), expected to be complete and opened by September 28, 2020
- Completion of sidewalk on 3<sup>rd</sup> Avenue (south side between Broadway and 5<sup>th</sup> Street), expected to be complete and opened by September 28, 2020
- Completion of sidewalk on 2<sup>nd</sup> Avenue (north side between Broadway and 5<sup>th</sup> Street), expected to be complete and opened by October 31, 2020

Work to begin September 1, 2020.

On a motion by Tim Mahoney, seconded by Ben Dow, the Committee voted to recommend approval of Amendment No. 6 to the Developer and Road Use Agreement for Block 9.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve Amendment No. 6 to the Developer and Road Use Agreement with Kilbourne Group for Block 9.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: N/A

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

Yes	No
N/A	
N/A	
N/A	

COMMITTEE

Tim Mahoney, Mayor  
 Nicole Crutchfield, Director of Planning  
 Steve Dirksen, Fire Chief  
 Bruce Grubb, City Administrator  
 Ben Dow, Director of Operations  
 Steve Sprague, City Auditor  
 Brenda Derrig, City Engineer  
 Kent Costin, Finance Director

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

ATTEST:

  
 Brenda E. Derrig, P.E.  
 City Engineer

C: Kristi Olson



**Engineering Department**  
225 4<sup>th</sup> Street North  
Fargo, ND 58102  
Phone: 701.241.1545 | Fax: 701.241.8101  
Email [feng@FargoND.gov](mailto:feng@FargoND.gov)  
[www.FargoND.gov](http://www.FargoND.gov)

## Memorandum

**To:** Members of PWPEC  
**From:** Kristy Schmidt, Project Engineer  
**Date:** August 31, 2020  
**Re:** Amendment to Block 9 Developer and Road Use Agreement

---

### **Background:**

We have received a request for closures of sidewalks and completion of work in the City's ROW associated with the Block 9 and the Plaza. They are as follows:

- Completion of sidewalk on Broadway (east side between 2<sup>nd</sup> and 3<sup>rd</sup> Avenue North) is expected to be complete and opened by September 28, 2020.
- Completion of sidewalk on 3<sup>rd</sup> Avenue (south side between Broadway and 5<sup>th</sup> Street) is expected to be complete and opened by September 28, 2020.
- Completion of sidewalk on 2<sup>nd</sup> Avenue (north side between Broadway and 5<sup>th</sup> Street) is expected to be complete and opened by October 31, 2020.

They are asking to begin this work tomorrow, September 1.

Staff is recommending approving the Amendment to the Block 9 Developer and Road Use Agreement to allow closures of sidewalk on Broadway and sidewalks on 2<sup>nd</sup> and 3<sup>rd</sup> Avenue to remain closed as mentioned above and allow this work to begin tomorrow.

### **Recommended Motion:**

Approve sidewalk work as an amendment to Developer and Road Use Agreement for Block 9.

Attachment

C: Mike Bratton, McGough

ID	Task Name	Task Mod	Duration	Start	Finish	0, '20	Sep 6, '20	Sep 13, '20	Sep 20, '20
						T   W   T   F   S	S   M   T   W   T   F   S	S   M   T   W   T   F   S	S   M   T   W   T   F   S
1	Broadway Sidewalk Shut Down		20 days	Tue 9/1/20	Mon 9/28/20				
2	Close Sidewalk		1 day	Tue 9/1/20	Tue 9/1/20				
3	Demo Temp Sidewalk		2 days	Tue 9/1/20	Wed 9/2/20				
4	Handicap Domes		2 days	Thu 9/3/20	Fri 9/4/20				
5	Handicap Van Drop Off		4 days	Mon 9/7/20	Thu 9/10/20				
6	Plaza/Broadway Sidewalk		6 days	Fri 9/11/20	Fri 9/18/20				
7	Rowlock Pavers		5 days	Wed 9/16/20	Tue 9/22/20				
8	Landscaping		4 days	Thu 9/17/20	Tue 9/22/20				
9	Punch List		3 days	Wed 9/23/20	Fri 9/25/20				
10	Open Sidewalk		1 day	Mon 9/28/20	Mon 9/28/20				

Project: Broadway Shut Down

Date: Fri 8/28/20

Task

Split

Milestone

Summary

Project Summary

Inactive Task

Inactive Milestone

Inactive Summary

Manual Task

Duration-only

Manual Summary Rollup

Manual Summary

Start-only

Finish-only

External Tasks

External Milestone

Deadline

Progress

Manual Progress

Page 1

## Kristy Schmidt

---

**From:** Mike Bratton <mike.bratton@mcgough.com>  
**Sent:** Monday, August 31, 2020 8:25 AM  
**To:** Kristy Schmidt  
**Cc:** Keith Leier; Oliver Finneman; Jordan Piatz; Tanner Anderson; Shiloh Becher; Mike Zimney  
**Subject:** RE: Broadway Sidewalk Closure

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

Kristy,

Also, please note the following for 3<sup>rd</sup> Ave. and 2<sup>nd</sup> Ave. sidewalk openings.

3<sup>rd</sup> – We are waiting for a design decision to finish the sidewalk. When we get this answer, we can open the sidewalk in 2 weeks.

2<sup>nd</sup> – We are pouring the Plaza concrete starting on the north and working our way out onto 2<sup>nd</sup> Ave. We are scheduled to be poured out by the end of October. We could open the ROW sidewalk at that point.

Please let me know if these dates work. If not, we can meet and discuss other options.  
Thank you again for bringing this forward to the meeting today.

**Mike Bratton** | Senior Superintendent Field Operations  
701.639.6282 office | 701.866.4202 cell  
630 1<sup>st</sup> Ave N, Suite 4, Fargo, ND 58102  
[www.mcgough.com](http://www.mcgough.com)



**From:** Mike Bratton  
**Sent:** Friday, August 28, 2020 4:13 PM  
**To:** Kristy Schmidt <KSchmidt@FargoND.gov>  
**Cc:** Keith Leier <keith@kilbournegroup.com>; Oliver Finneman <oliver.finneman@mcgough.com>; Jordan Piatz <jordan.piatz@mcgough.com>; Tanner Anderson <tanner.anderson@mcgough.com>; Shiloh Becher <shiloh.becher@mcgough.com>; Mike Zimney <zimney@kilbournegroup.com>  
**Subject:** Broadway Sidewalk Closure

Kristy,

Please find the ROW drawings requesting Broadway Sidewalk/Parking Closure for your meeting on Monday. I have requested to start the closure on Tuesday 9/1/20 to expedite the completion of this work. We appreciate you taking this to the meeting and requesting approval for us.  
Let me know if you need anything else from us.

**Amendment (sixth) to Developer and Road Use Agreement**

This Amendment (sixth) amends the Developer and Road Use Agreement dated July 11, 2018, as previously amended. Paragraph #2 shall be amended to include the attachment hereto, identified at Exhibit "A". Upon approval and acceptance of the City Plans by the City Engineer, Block 9 Partners, LLC may begin work in the right of way.

Further, the parties agree that Block 9 Partners, LLC shall engage a competent licensed Engineer and Surveyor to survey, inspect and approve the project element constructed, or reconstructed, in the city right of way to certify compliance with City Standards and Specifications, including presentation of all necessary testing required for acceptance of the right of way upon completion of the construction activity on the Development Property.

Owner shall be required to meet the deadlines for completion as stated in Exhibit "A" attached herein. Failure to meet a deadline shall result in a penalty of \$500 per day. Multiple penalties may accrue concurrently if deadlines are not met. Owner shall be billed the penalty as it accrues.

Owner shall provide City with record drawings in AutoCAD and pdf format by December 31, 2020. City shall engage a competent licensed Professional Engineer to create and draft record drawings if Owner has not submitted by this deadline. The costs of the licensed Professional Engineer to provide record drawings shall be billed to the Owner.

All other terms and conditions of the Developer and Road Use Agreement as amended shall remain in full force and effect.

Dated this 3<sup>rd</sup> day of SEPTEMBER, 2020.

Block 9 Partners, LLC, a North Dakota Limited Liability Company

  
Mike Almendinger, Vice President

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

On this 3<sup>rd</sup> day of September, 2020, before me personally appeared Mike Allmendinger, Vice President of Block 9 Partners, LLC, described in, and that executed the foregoing instrument, and acknowledged to me that such nonprofit corporation executed the same.



Patty Arett  
Notary Public

Dated this \_\_\_\_ day of \_\_\_\_\_, 2020.

City of Fargo, a North Dakota municipal  
corporation

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

ATTEST

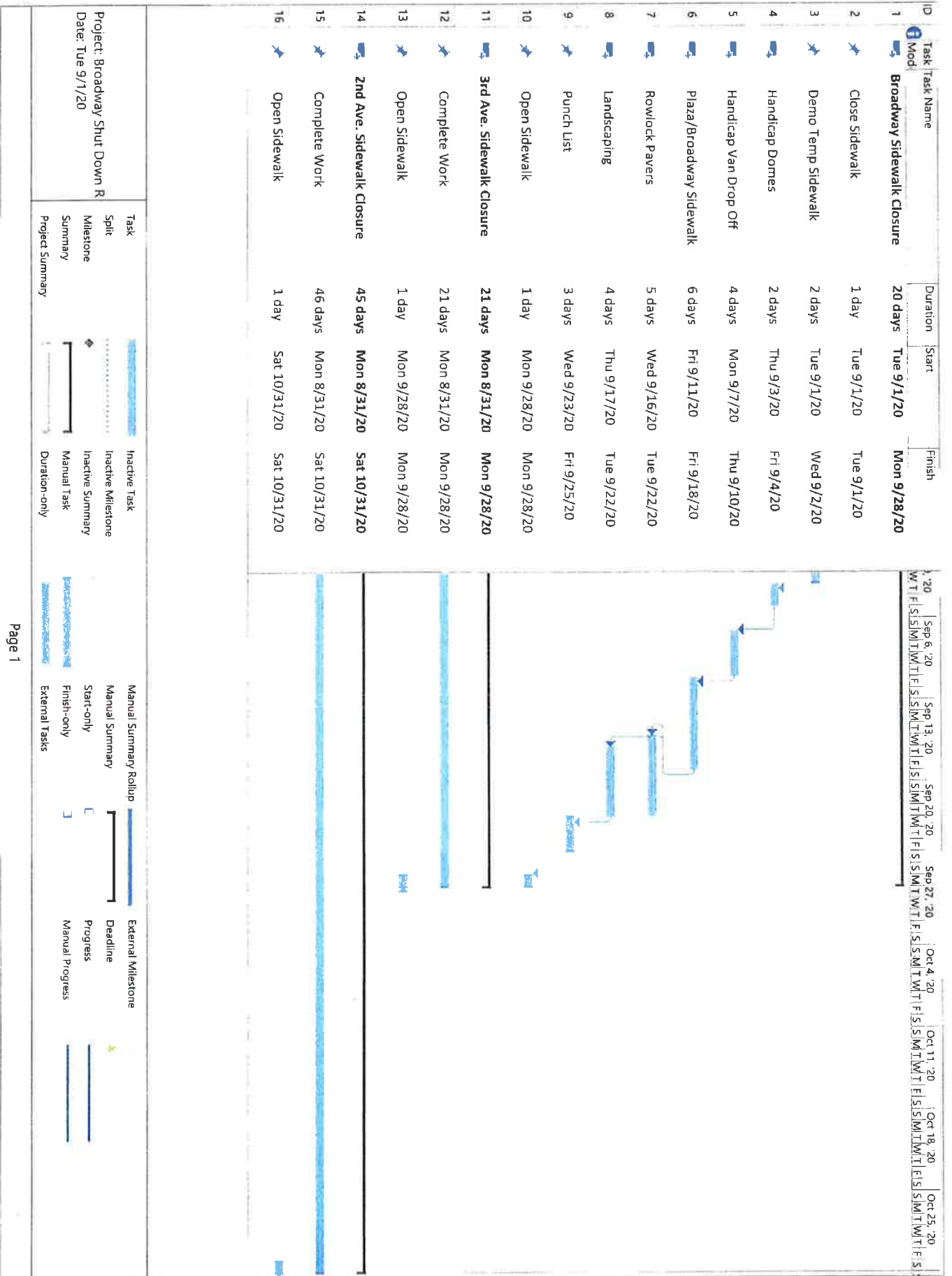
\_\_\_\_\_  
Steve Sprague, City Auditor

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

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

\_\_\_\_\_  
Notary Public  
Cass County, ND  
My Commission expires:

EXHIBIT A





(13)

August 26, 2020

Fargo City Commission  
225 4<sup>th</sup> Street North  
Fargo, ND 58102

Commissioners:

The Fargo Dome Authority requests your approval of the Seventh Amended Lease Agreement between North Dakota State University and Fargo Dome Authority. The agreement has a one year term running through June 30, 2021, and was negotiated by representatives from the Fargo Dome Authority, FARGODOME management and North Dakota State University.

The Fargo Dome Authority approved this contract at their regularly scheduled meeting on August 25, 2020.

Requested Motion: To approve the Seventh Amended Lease Agreement between the Fargo Dome Authority and North Dakota State University as presented.

Thank you for your consideration of this matter.

Very truly yours,

Rob Sobolik  
General Manager, FARGODOME

Attachment

**SEVENTH AMENDED  
LEASE AGREEMENT  
NORTH DAKOTA STATE UNIVERSITY  
FARGO DOME AUTHORITY**

Draft v1

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**SEVENTH AMENDED  
LEASE AGREEMENT  
NORTH DAKOTA STATE UNIVERSITY  
FARGO DOME AUTHORITY**

**THIS LEASE AGREEMENT** (hereinafter, this "Agreement"), is dated and effective as of this the 1<sup>st</sup> day of July, 2020, by and between the City of Fargo, a municipal corporation of the State of North Dakota, acting by and through its Fargo Dome Authority (hereinafter, "Authority"), a duly constituted authority existing under and by virtue of Ordinance Nos. 2437, 2506 and 2510 of the City of Fargo, North Dakota, and the North Dakota State Board of Higher Education and North Dakota State University (hereinafter, "NDSU").

**WHEREAS**, the State Board of Higher Education of the State of North Dakota and NDSU leased certain real property to the City of Fargo for a period of ninety-nine (99) years by a Lease Agreement dated December 15, 1989 (the "Ground Lease") for the purpose of constructing and operating the FARGODOME (hereinafter the "Dome"); and

**WHEREAS**, the terms of the Ground Lease were intended to adequately compensate NDSU for the use of such land, without jeopardizing the financial success of the Dome, and commit NDSU to substantial use of the completed Dome; and

**WHEREAS**, the Authority and NDSU entered into a Lease Agreement dated July 1, 1993, providing for the terms and conditions for use of the Dome by NDSU and amending and replacing Section V, Numbers 2 and 3 of the Ground Lease (the "First Operating Lease"); and

**WHEREAS**, the Authority and NDSU entered into a Second Amended Lease Agreement dated July 1, 1998, providing for the terms and conditions for use of the Dome by NDSU and amending and replacing the First Operating Lease (the "Second Operating Lease"); and

**WHEREAS**, the Authority and NDSU entered into a Third Amended Lease Agreement dated July 1, 2002, providing for the terms and conditions for use of the Dome by NDSU and amending and replacing the Second Operating Lease (the "Third Operating Lease"); and

**WHEREAS**, the Authority and NDSU entered into a Fourth Amended Lease Agreement dated July 1, 2007, providing for the terms and conditions for use of the Dome by NDSU and amending and replacing the Third Operating Lease (the "Fourth Operating Lease"); and

**WHEREAS**, the Authority and NDSU entered into a Fifth Amended Lease Agreement dated July 1, 2012, providing for the terms and conditions for use of the Dome by NDSU and amending and replacing the Fourth Operating Lease (the "Fifth Operating Lease"); and

**WHEREAS**, the Authority and NDSU entered into a Sixth Amended Lease Agreement dated July 1, 2017, providing for the terms and conditions for use of the Dome by NDSU and amending and replacing the Fifth Operating Lease (the "Sixth Operating Lease"; and

**WHEREAS**, NDSU and the Authority have reached an agreement on certain disputed amounts claimed by NDSU under Section VI(3) of the Ground Lease; and

**WHEREAS**, the Authority and NDSU desire to modify their agreement for the use of the Dome by NDSU, to further modify the Ground Lease and to reflect the resolution of all disputed amounts as provided in this Agreement;

**NOW, THEREFORE**, in consideration of the mutual covenants and promises set forth herein, the Authority and NDSU do hereby agree that this Agreement and the following terms and conditions shall serve to replace the Sixth Amended Lease, provided; however, that the repeal of Section IV(3) and replacement of Section V, 2 and 3 of the Ground Lease remain as an integral part of this Seventh Amended Lease. Furthermore, the repeal of Section IV(3) of the Ground Lease as referenced in the Third Amended Lease and the reduced rates for the Sponsorship Package referred to in Section 5.A., remain as being, and are, in full settlement and release by NDSU of all disputed amounts claimed by NDSU. All other provisions of the Ground Lease, unless inconsistent with this Agreement, shall remain in full force and effect. If the provisions of the Ground Lease and this Agreement conflict, the provisions of this Agreement shall control.

**1. DEFINITIONS.**

**"Football set-up" (Exhibit A)** shall be defined as the entire main floor area, including the permanent seating as specified in Exhibit A and the DOME ticketing manifest, meeting rooms 201-204, the public area of the concourse, two temporary concourse level novelty stands, the area of the east press boxes necessary for the media to cover the event, the east side home team locker rooms and the west side visiting team locker rooms and star dressing rooms.

**"Basketball set-up" (Exhibit B)** shall be defined as the north end of the main arena floor set up in the basketball configuration with the seating as specified in Exhibit B. This configuration also includes DOME ticketing manifest for basketball, meeting rooms 201-204, the north end concourse public areas, a temporary north end novelty stand, the west side visiting team locker room and the east side home team locker room, if needed.

**"Speaker set-up" (Exhibit C)** shall be defined as the south end of the main floor, set up in the Arena Concert Configuration with the permanent seating as specified in Exhibit C, with the number of portable floor chairs and their location to be mutually agreed upon and meeting rooms 201-204.

***"Other set-ups"*** shall be defined as any set-ups or arrangements not herein described as shall be mutually agreed upon by both the Authority and NDSU.

***"Lease Year"*** shall be defined as a consecutive twelve (12) month period beginning on July 1 and ending on June 30.

***"Non-revenue events"*** shall be defined as NDSU events where no admission is charged, no fee is taken or no collection is made from event patrons. Examples of eligible non-revenue NDSU events include commencement exercises, student orientation, homecoming celebrations, alumni functions or other types of events which are mutually agreed upon.

***"Total Event Days"*** shall be defined as the sum of Priority Dates, Non-Priority Scheduled Events, and Non-Priority Non-Football Athletic Practices.

***"Advertising Inventory"*** means the proposed agreements with advertisers at the FARGODOME.

***"Suite Inventory"*** means the proposed annual agreements with suiteholders for any of the private suites at FARGODOME;

***"Advertising and Suite Revenue"*** means for each Contract Year, all payments made in cash with respect to the Advertising Inventory, except the following:

- (a) Payment for naming rights to FARGODOME sold by the Authority;
- (b) Payment received from an entity for "branding or naming" rights for a specific FARGODOME event configuration used for the performance of certain events, excluding NDSU football games, i.e. "Gate City Bank Theatre";
- (c) Payments made for the event rental of any suites not currently under an annual lease contract, or the sub-lease of a suite as provided for in an existing suiteholder agreement between the Authority and suiteholder;
- (d) Payments for printed advertising in FARGODOME bathrooms;
- (e) Payments for printed advertising in event programs;
- (f) Payments with respect to advertising in any new or expanded facility adjacent to FARGODOME and related parking facilities;
- (g) Sponsorships of co-promoted events at FARGODOME, such as "Happy Harry's Ribfest".

***"Direct Costs"*** means, for each Contract Year, all expenses incurred by FARGODOME in connection with the sale of the Advertising Inventory and the Suite Inventory and the operation and maintenance of the Display Equipment including, but not limited to (i) service contracts, (ii) repair and maintenance expenses, (iii) fees and commissions paid to any third party sales consultant, (iv) costs incurred in fulfilling any

advertising or suite contract, and (v) other mutually agreed upon expenses; but excluding general allocated administrative expenses.

*"Display Equipment"* means (i) the arena end board LED display panels, (ii) the arena corner LED display panels, (iii) the arena vomitory LED display panels, (iv) the concourse, lobby and restroom television and video displays, (v) the outdoor marquee, (vi) related equipment and software; and (vii) any replacements or additions made by the Authority from time to time.

*"City"* means the City of Fargo, a North Dakota municipal corporation.

2. **LEASED AREA.** The Authority hereby grants NDSU the right to occupy and use only the areas of the DOME for the various events as defined in Section 1 above. NDSU's use of the DOME for any configurations not covered herein shall be defined and mutually agreed to by NDSU and the Authority. No other areas shall be occupied by NDSU except as is provided in the Lease – Locker Room Project—Fargodome/NDSU dated October 10, 2005, as amended by the Supplement to Lease (Locker Room Project—Fargodome/NDSU) dated May 22, 2006, as the same may be amended or further supplemented from time to time, or unless authorized in writing. The Authority reserves the sole right to rent or use all areas of the DOME not assigned herein to NDSU during the Lease Period. The Authority shall inform NDSU when the Authority plans to use, uses or leases other areas of the DOME during the Lease Period.

3. **LEASE PERIOD.** The Lease Period for each of the primary types of usage shall be as follows:

A. ***Athletic events.*** A period of time beginning no more than four (4) hours before the starting time of the event and ending two (2) hours after the ending time of the event, unless additional time period are mutually agreed upon in writing. NDSU shall have use of the DOME beginning at 8:00 a.m. on days of football games, provided that the start of NDSU's use of the DOME on days of football games is subject to change based on the time that the turf and football field equipment is installed and ready. The Authority may, with the consent of NDSU, lease all or a portion of the Leased Area to another party during the Lease Period and the Authority shall pay NDSU twenty-five percent (25%) of the rent received.

B. ***Speakers/Graduations.*** A period of time beginning no more than four (4) hours before the starting time of the event and ending one (1) hour after the ending time of the event unless additional time periods are mutually agreed upon in writing.

NDSU's use of the DOME in excess of the times stated above shall only be allowed if the Authority has the time available. Such time used in excess of the times stated above may result in NDSU paying an overtime charge.

The Lease Period for any other type of usage shall be defined and mutually agreed to by NDSU and the Authority.

4. **TERM.** NDSU shall have the right to rent the DOME for a maximum of fifty-five (55) Total Event Days per Lease Year during the one (1) year period beginning July 1, 2020, and ending on June 30, 2021. Unless earlier terminated, this Agreement shall expire on June 30, 2021, unless extended in writing by the parties.

5. **RENT AND REVENUE SHARING.** NDSU agrees to pay the Authority for use of the DOME during the term of this Agreement the following annual rental fees:

July 1, 2020 - June 30, 2021      \$165,000

These rental fees shall be paid to the Authority in ten (10) equal monthly installments, on or before the 15<sup>th</sup> of each month in the month it is due from September to June of each Lease Year.

A. **Sponsorship Package.** NDSU shall sponsor a scoreboard, video and suite package (Suite is in Section 34, East side of the DOME), the terms and conditions of which are set forth in the Fargodome Signage Advertising Agreement between NDSU and the Authority dated July 1, 2020. The amounts payable under the Fargodome Signage Advertising Agreement are intended to be as full settlement and release by NDSU of the disputed amounts owed by the City of Fargo as supplementary rent pursuant to Subsection IV(3) of the Ground Lease, which Subsection is hereby repealed.

B. **Advertising and Suite Revenue.** The Authority and NDSU hereby agree to jointly and cooperatively market and sell the Advertising Inventory and Suite Inventory. FARGODOME will take the lead role in servicing the Advertising Inventory and Suite Inventory and the NDSU Athletic Department will assist in servicing the Advertising Inventory and Suite Inventory as needed and required.

The Authority shall be solely responsible for the payment of all costs incurred in connection with the planning, designing, acquisition, installation, operation and maintenance of the Display Equipment. NDSU shall have no right, title or interest in the Display Equipment. The Authority shall pay all Direct Costs as and when the same shall become due and payable.

The Authority and NDSU agree that the Advertising and Suite Revenue collected each Contract Year shall be allocated as follows:

(a) First, to the payment of Direct Costs;

- (b) Any remaining Advertising and Suite Revenue shall be divided 80% to the Authority and 20% to NDSU.

Advertising and Suite Revenues shall be distributed in quarterly installments following the end of each calendar quarter based on Advertising and Suite Revenue and Direct Costs accrued during such quarter with any Contract Year adjustments to be made in the final payment after the end of each Contract year. In the event the Direct Costs exceed the Advertising and Suite Revenue during any Contract Year, the Authority and the City shall be solely responsible for the payment of such Direct Costs. Any such deficit shall be carried forward to subsequent Contract Years and reimbursed, together with interest on the amount advanced, before making any distributions pursuant to subsection (b) above. The Authority shall be responsible for the collection of all Advertising and Suite Revenue and the payment and amortization of all Direct Costs and will provide an accounting to NDSU of such Advertising and Suite Revenues and Direct Costs within one hundred twenty (120) days after the end of each Contract Year.

The Authority and NDSU will mutually determine the final terms and conditions of the Advertising Inventory and Suite Inventory. The Advertising Inventory and Suite Inventory shall be between the Authority and the respective advertiser or suiteholder. NDSU shall incur no rights or liabilities with respect to the Advertising Inventory or Suite Inventory (except for the FARGODOME Signage Advertising Agreement between the Authority and NDSU dated July 1, 2020). For NDSU events, the Authority and NDSU will mutually agree upon the advertising of any brand names in FARGODOME and will mutually review and approve the displays and messages used within FARGODOME. The Authority reserves the right to prohibit the advertising of any brand names in FARGODOME and to review and approve the displays and messages used within FARGODOME for non-NDSU events.

**C. Concessions.** NDSU shall receive fifteen percent (15%) of the gross receipts, after payment of applicable taxes, from the Authority's sale of concessions food and beverage items at NDSU's events until NDSU realizes \$30,000 in concessions revenue per year. After NDSU realizes \$30,000 in concessions revenue, NDSU shall receive ten percent (10%) of the gross receipts (after payment of applicable taxes) from the Authority's concessions revenue in excess of the revenue attributable to the \$30,000 per year NDSU realizes. Concessions revenues shall not include revenues related to suite catering.

The Authority shall prepare a report of the concessions sales on a monthly basis, with said report showing the sales net of applicable taxes and the amount due NDSU. This report must be received by NDSU no later than ten (10) days following the month for which the report applies. Payment to NDSU from these concessions revenues will accompany said monthly report.

**D. Parking.** Except as provided in Section 12.B. hereof, NDSU shall not share in any parking revenue from the Authority's parking operations. The Authority shall have the sole right to operate the parking facilities on the DOME premises, including the establishment and collection of parking fees.

**E. Novelties.** The Authority shall receive fifteen percent (15%) of all novelty sales, after payment of applicable taxes, at NDSU regular season athletic events. The Authority shall receive 7.5% of novelty sales during post-season tournament events. A complete report of these novelty sales shall be furnished to the Authority no later than ten (10) days after the end of each month in which NDSU had events along with any payments due to the Authority.

**F. Ticket Income.** The Authority shall receive a facility user fee of \$.50 per paid ticket on all season and single game paid tickets for any NDSU football game, including post season playoff football games. NDSU shall retain all other revenue from ticket sales and shall conduct and be totally responsible for all ticket distribution for NDSU events covered by this Agreement. NDSU shall have access to the ticket windows on the East side main entrance and the West side ticket office to sell their event tickets. Such access shall only be on the event day, with the time of the use to be mutually agreed upon.

**6. ITEMS INCLUDED IN RENTAL FEE.** The aforementioned rental fee includes lighting, heat or air conditioning, water and the sound system as installed and standard cleaning services normally provided after each event, but only in normal and reasonable amounts. Amounts required in excess of normal and reasonable amounts may result in an additional cost to NDSU. The rental shall also include those equipment items so noted below for the various configurations. The Authority hereby agrees to provide and pay for an operator for all Dome video advertising systems, concourse display systems, and the exterior electronic marquee (excluding game-specific personnel such as scoreboard operators and live video production personnel).

**Football.** Rental fee includes the football field set-up for the actual game with the turf, goal posts, netting, field wall padding, player benches, down markers and first down chains, scoreboards and 25 second clock and coaches headsets. NDSU shall provide all other football related equipment and staffing required for the operation of a football game.

**Basketball.** Rental fee includes the moveable riser set-up on the north end for the game, the portable risers set in the basketball configuration, the basketball court, the basketball goals, the scorers table and the portion of the north side press box necessary for the media to cover the game.

**7. ITEMS NOT INCLUDED IN RENTAL FEE:** All equipment, staffing and services for the event which are not included herein as being provided in the rental fee shall be provided by the Authority at NDSU's sole expense per the Authority's published

Equipment, Staffing and Services rate schedule. These items may include, but are not necessarily limited to:

- Event staffing
- License fees
- Sound system operator
- Live video production personnel
- Equipment set-up and removal
- Equipment rental items
- Special hook-ups for electrical and utility services
- Food, beverage and catering services
- Advertising, marketing and publicity costs
- Ticketing costs
- Other equipment, staffing or services costs

NDSU hereby agrees to provide and pay for an operator for the scoreboard scoring system.

The Authority shall provide all event staff personnel for the football games and NDSU shall pay the published labor billing rates, at the time of the event, for all event staff (including part-time event, custodial and live video production staff) and actual billings of third party vendors including police, medical and fire personnel per game for providing event staff. Staffing will be set at levels in the best interest of public safety and mutually agreeable by the Authority and NDSU.

Upon request by NDSU, the Authority shall furnish NDSU with a projection of event expenses for all NDSU events.

**8. SCHEDULING AND EVENT TYPE RIGHTS GRANTED TO NDSU.**

- A.** Total Event Days: NDSU shall have the right to rent the DOME for a maximum of fifty-five (55) total event days per Lease Year.
- i. If NDSU fails to use all of the fifty-five (55) total event days during the Lease Year, the unused dates shall not carry forward to future Lease Years except that if NDSU is bumped from any of its Non-Priority Event Dates during the last six (6) months of a Lease Year, NDSU can carry over up to three (3) dates into the following Lease Year.
  - ii. NDSU's athletic playoff dates which are held will count towards the fifty-five (55) total event days, except that if NDSU does not use the playoff date and the Authority is able to schedule another revenue producing event, NDSU shall not be charged for that playoff date as a use date.

**B. Priority Dates:** Of the fifty-five (55) total event days, NDSU shall have the right to a priority in scheduling for a maximum of twelve (12) NDSU events per year. In order to have priority in scheduling these dates, NDSU must notify the Authority no less than three (3) years in advance of the desired date(s).

**C. Non-Priority Non-Football Athletic Practices:** Of the fifty-five (55) total event days, NDSU's use of ten (10) event days will be limited to non-football athletic practices to be scheduled around the Authority's event schedule. The Authority retains the option to re-schedule athletic practices if an event opportunity arises. NDSU will be responsible the costs associated with practices, including security staffing and field installation, if required.

**D. Non-Priority Event Dates:** Of the fifty five (55) total event days, NDSU's access to the remaining thirty-three (33) days shall be on a first come, first served basis, just as the access that is granted to other lessees. NDSU must comply with the Authority's requirements and procedures for the leasing, booking, and use of the DOME for these events, including the Authority's protection period requirements for similar events and other event definitions set solely by the Authority.

**E. NDSU's use of the DOME for Priority Dates and Non-Priority Event Dates shall be limited as such:**

- i. NDSU must use five (5) of the Priority Dates and/or Non-Priority Event Dates in the months of July and August.
- ii. Events will be limited only to NDSU athletic events, amateur athletic events/NCAA athletic events, NDSU or Tri-College sponsored job/career fairs, and non-revenue producing NDSU sponsored events.
- iii. Unless waived in writing by the Authority, NDSU shall not use the DOME for any of the following types of events:
  1. Official high school activity association sponsored or sanctioned events, unless these games are a part of NDSU's football/basketball game day.
  2. Professional sports events of any type.
  3. Trade or consumer shows of any type. A job/career fair shall not be considered a trade or consumer show.
  4. Family entertainment events of any type.
  5. Concert events.
- iv. Practices: As addressed in Section 8.C., NDSU is required to use ten (10) days for non-football athletic practices. NDSU shall be able to use their remaining 45 (forty-five) days of Priority Dates and Non-Priority Event Dates for football or non-football athletic practices, but the Authority reserves the right to eliminate the practice day in favor of an event the Authority schedules into the DOME. If the Authority schedules an event which results in NDSU having to incur the expense of installing and/or

removing the football field set-up for practice, the Authority shall attempt to have the field installation and removal expense paid by the event. If the Authority is unsuccessful in getting the event to pay this expense, then the payment of the expense shall be mutually agreed upon by the Authority and NDSU. The amount of the field installation and removal shall be mutually agreed upon by NDSU and the Authority. Athletic game practice days also count as one of the use dates, except that football practice dates shall count as one-half of a use date. NDSU shall have the option of paying an additional fee for use of the DOME for practices instead of having the practice date count against their use dates. The practice rental fee shall be \$250 per hour measured from one-half hour before the practice until one-half hour after the practice ends.

NDSU shall not incur any additional expenses of the football field set-up for use on non-game days if the field is already in place. However, if the field must be set-up for practice days or other non-game day use, NDSU shall be responsible for paying all costs incurred by the Authority for setting up the football configuration.

NDSU further agrees to reimburse the Authority for any cleaning or staffing expenses the Authority incurs as a result of NDSU's use of the DOME for practice days.

If the Authority has no events between the specified practice date and the game date, and the Authority shall incur no additional expense by placing the field down in time for the practice date, then the Authority shall place the field down for the practice and game and NDSU shall not incur any additional expense. If there is no DOME event between home football game dates, NDSU shall not be charged for, nor shall any credit be given to NDSU, for any set-up costs.

**F.** NDSU agrees not to give, sell or sublease any of their use dates to any party or potential lessee of the Authority who could have otherwise leased the DOME directly from the Authority.

**G.** NDSU shall be allowed to schedule and present any of the prohibited events listed herein as long as NDSU rents the DOME under a separate lease agreement outside of the terms and fees stipulated in this Agreement.

**H.** It is desired that the Authority and NDSU develop the type of working relationship whereby the parties communicate freely with the other so as to work collaboratively and avoid conflict in this and all other areas relative to this Lease Agreement. The Authority shall follow its own policies relative to first come, first served basis in the event NDSU and the Authority want to schedule a similar or competitive event. The Authority reserves the right to schedule another event

at the same time as an NDSU event only if the other event does not interfere with the NDSU event.

I. The Authority shall also assume all responsibility for keeping records on the number of dates scheduled and used in a Lease Year. The Authority shall have the responsibility and obligation to notify NDSU when NDSU has scheduled all of their fifty-five (55) total event days in a Lease Year. NDSU shall pay the Authority for all dates used in excess of the fifty-five (55) total event days herein described at rates solely established by the Authority and covered by a separate lease agreement.

9. **DEFAULT.** The Authority has the right to cancel this Agreement if NDSU fails to pay the required rentals and expenses or otherwise materially breaches this Agreement and does not cure such material breach within fourteen (14) days after receiving written notice stating the material breach. Failure to indemnify the Authority pursuant to the provisions of Section 16 or failure to provide liability insurance, if required, in accordance with Section 45, shall be a material breach. This remedy is not exclusive and the Authority may, at its discretion, pursue any appropriate remedy.

NDSU shall have the right to cancel this Agreement if the Authority fails to pay any required funds due NDSU or otherwise materially breaches this Agreement and does not cure such material breach within fourteen (14) days after receiving written notice stating the material breach.

10. **FINANCIAL SETTLEMENT/EVENT EXPENSES.** The Authority shall prepare and present a settlement report to NDSU on a per event basis which shall show the expenses from the event payable to the Authority from NDSU, with payment of such expenses due to the Authority. If NDSU and the Authority cannot agree on the financial settlement for an event, then NDSU's Vice-President for Business Affairs and the Authority's President shall be the arbitrators to make final and binding decision regarding the disputed NDSU event.

11. **COMPLIMENTARY TICKET.** NDSU shall provide Authority with a mutually agreed upon number of complimentary tickets to each NDSU ticketed event in locations mutually agreeable to NDSU and the Authority.

12. **PARKING.**

A. ***FARGODOME Event Parking.*** Except as provided in subsection B below, the Authority shall have the sole right and responsibility to manage and control all of the DOME parking lot areas, control all ingress and egress areas and collect and retain all parking revenues from vehicles using the DOME parking facilities.

B. ***NDSU's Use of FARGODOME Parking Lot Areas.*** NDSU shall have the right to use Lot C (the Southeast DOME parking lot), Lot D (the South DOME parking lot) and Lot E (the Southwest Dome parking lot) in accordance

with the terms of an annual Fargodome-NDSU Parking Agreement originating July 30, 2002, and renewing annually. NDSU's use of any other Authority parking areas may only be done with prior written approval from the Authority except as provided below:

1. NDSU Team Makers shall have the right use parking lots E& F (the west DOME parking lots) for all NDSU home football games in accordance with the terms of an annual FARGODOME-NDSU Team Makers Parking Agreement originating August 1, 2012, and renewing annually.

2. NDSU employees or faculty working at the Sanford Health Athletic Complex (hereinafter "SHAC"), or other persons attending SHAC events or going to SHAC during regular business hours, may park in Lot C or Lot B, at no charge, unless the Authority has an event at the DOME and is charging a parking fee for use of the lot. On those occasions, SHAC attendees must pay the regular parking fee in order to park in the DOME lot, and the Authority shall retain all such revenue. At no time shall NDSU collect, receive or retain any parking revenue from vehicles parked on the Authority's parking lots unless otherwise agreed to in writing by the Parties. NDSU must notify the Authority in writing regarding the dates and times when a SHAC event is scheduled to take place which will require NDSU's use of the Authority's parking lot.

3. The Authority and NDSU shall designate three hundred-fifty (350) parking spaces in a good location as a VIP parking area for NDSU's use during NDSU football games. Persons using these spaces shall be responsible for paying the Authority for use of the spaces, and/or NDSU may buy-out these spaces for football games at the prevailing per-car parking rate.

4. The Authority hereby agrees that parking in the Authority lots shall be provided free of charge to patrons when NDSU has a non-revenue event, as defined herein, at the DOME. NDSU shall be responsible for the payment of any staffing expenses or other expenses incurred by the Authority for providing this free event parking.

5. NDSU shall be allocated twenty-five (25) parking spaces free of charge for its staff parking on days of its events in Lot A.

13. **CONCESSIONS.** The Authority shall retain all rights to concession sales, including, but not necessarily limited to, all food and beverage products, vending items and checkroom services except as herein agreed upon. No outside food and beverages will be allowed in the DOME. All food and beverages, with the exception of catering services, are provided by the Authority's authorized concessionaire.

14. **FREE SAMPLES.** Neither NDSU nor any of NDSU's attendees may sell or give away any samples of food, beverages or any product deemed by the Authority to be in competition with items sold or distributed by the Authority without prior written approval of the Authority. NDSU, on behalf of its advertisers and sponsors, shall be permitted to give away samples as long as NDSU obtains prior written approval from the Authority and does hereby agree to pay the additional cleaning costs, both inside the DOME and outside the DOME, and assumes all responsibility and liability for damages or injuries which may be incurred from the giveaway items.

15. **ALCOHOLIC BEVERAGES.**

- A. No alcoholic beverages shall be served at any NDSU athletic event or non-revenue producing NDSU event unless mutually agreed upon in writing by NDSU and the Authority; provided that the Authority may serve alcohol in the second floor meeting rooms if the leasing of those rooms is not associated in any manner with the NDSU event.
- B. The Authority reserves the right to serve a nonalcoholic beer product at any NDSU event.
- C. With regards to tailgating in FARGODOME parking lots, pursuant to the standards established by a joint task force of NDSU Athletics, the Fargo Police Department, and the DOME, consumption of alcohol during tailgating will be allowed at NDSU football games in accordance with the Rules and Regulations set forth by said task force or as modified by said task force at a future date, in accordance with terms agreeable to task force participants.

16. **STORAGE.** NDSU shall have the use of approximately 1,000 square feet of temporary storage space in the DOME during the football season for the storage of athletic or band equipment. NDSU shall further have the use of the novelty storage room areas on the concourse level, except that NDSU shall be required to remove all their novelty items when another event requires the use of this novelty sales area. The Authority shall provide alternative storage areas for use by NDSU for the storage of said novelty items when the novelty storage area is not available. The Authority assumes no responsibility or liability whatsoever for the safety or security of any items NDSU chooses to store at the DOME.

17. **INDEMNIFICATION.** To the extent permitted under North Dakota law and subject to available appropriations, NDSU shall keep, defend, indemnify and hold harmless, the City of Fargo, the Authority and the management company, and all its officers, agents and employees and each of them, from and against any and all costs, liability, damage or expense, including legal fees and costs, claimed by anyone by reason of injury or damage to person or property directly or indirectly arising out of the leasing and use of the DOME under the terms of this Agreement, except to the extent that the injuries or damage resulting in such claims, costs, liability, damage or expense, including legal fees and costs, are the result of the City's, the Authority's, or the management company's negligence or fault. Nothing, herein shall preclude NDSU from asserting against third parties any defenses to liability it may have under North Dakota law. Each

party hereto shall give the other prompt and timely notice of a claim or suit instituted within its knowledge that in any way, directly or indirectly, contingently or otherwise affects or might affect the other party. Notwithstanding the duty of NDSU to defend, indemnify and hold harmless the City of Fargo, the Authority and the management company as hereinabove provided, the City of Fargo, the Authority and the management company shall each have the right, but not the obligation, to participate in the defense of any claim or action to the extent of its own interest, at its own expense. In the event available appropriations are insufficient to indemnify and satisfy claims against NDSU arising hereunder, NDSU agrees to include in its budget request an appropriation fully sufficient to satisfy such claims. Should the Governor of the State of North Dakota not include in the executive budget for any reason the amount requested pursuant to the preceding sentence, NDSU shall request The North Dakota State Board of Higher Education to independently request that the Legislative Assembly amend the executive budget to include such amounts. NDSU, to the extent permitted by North Dakota law and subject to the available appropriations, shall agree to assume, defend, indemnify, protect and hold the Authority, the City of Fargo and the management company, harmless against any and all claims, damages, or liability resulting directly or indirectly from NDSU's use of the Authority's parking lot areas, except to the extent that the injuries or damage resulting in such claims, costs, liability, damage or expense, including legal fees and costs, are the result of the City's, the Authority's, or the management company's negligence or fault. NDSU further agrees to pay any and all claims or costs which may be made or incurred due to NDSU's use of the DOME parking lot areas. Nothing herein shall preclude NDSU from asserting against third parties any defenses to liability it may have under North Dakota law.

**18. INSURANCE.** NDSU will obtain insurance that meets the following criteria:

**A.** Such insurance shall be provided by a comprehensive general liability form of policy including the broad form liability extended coverage, with a combined single limit of at least \$250,000 per person and \$1,000,000 per occurrence.

**B.** NDSU shall also provide necessary Workers Compensation insurance for NDSU's employees.

**C.** NDSU shall further furnish comprehensive automobile liability insurance coverage as shall protect NDSU against claims for damages from bodily injury, including wrongful death and property damage which may arise from the operations of any owned, hired or non-owned automobiles used by or for NDSU in any capacity with respect to the performance of Agreement in the amount of \$500,000 per occurrence.

**D.** The insurance must be written by an insurance company licensed to do business in the State of North Dakota and have an A.M. Best rating of A+ or higher, or the alternative, provide coverage through the North Dakota Risk

Management Fund. NDSU shall provide proof of such insurance coverage to the City and the Authority. If NDSU fails to provide the aforementioned insurance, the Authority shall have the right to either obtain the required insurance with the premium to be paid by NDSU or to terminate this Agreement.

19. **FORCE MAJEURE.** In the event the DOME or any portion thereof shall be destroyed or damaged by fire or other calamity so as to prevent the use of the premises for the purposes and during the periods specified herein, or if the premises cannot be so used because of strikes, acts of God, national emergency or other causes beyond the control of the Authority, then this Lease Agreement shall terminate and NDSU hereby waives any claim against the Authority for damages by reason of such termination except that any unearned portion of the rental fee due hereunder shall abate or be refunded by the Authority to NDSU.

20. **BROADCAST RIGHTS.** NDSU shall retain all rights for Internet streaming and radio and television broadcasting of athletic events and shall be allowed to stream and broadcast athletic events from the DOME at no additional expense, except that NDSU shall pay the Authority for the Authority's out of pocket expenses, including labor and utilities, incurred as a result of the broadcasts or streaming, if these expenses are not paid by the broadcast company.

21. **PUBLIC SAFETY.** NDSU shall at all times conduct the event in full regard for public safety and will abide by all regulations as required by local authorities and the Authority. The Authority shall have the right to interrupt or terminate any event when in the sole judgement of the Authority, it is necessary in the interest of protecting the safety of the public. Whenever possible, the Authority shall confer with NDSU before any such termination. If a termination or interruption occurs, NDSU hereby agrees to waive any claims for damages against the Authority.

Any rigging or hanging of items from the DOME ceiling or roof must be done by approved DOME personnel. No other persons will be permitted to access the DOME roof or catwalk areas.

Any explosives, pyrotechnics or similar materials must be approved by the Authority and local, state and federal officials.

Any vehicle displayed inside the DOME must have the battery cables disconnected, the gas tank either taped shut or locked and may contain no more than one-fourth of a tank of fuel.

22. **EVACUATION.** The Authority shall have the sole right to determine when and if it is necessary to evacuate the DOME for whatever reason. If such evacuation occurs and results in cancellation of the event, NDSU hereby waives any claims for damages against the Authority. In the event such an evacuation occurs, the Authority and NDSU will settle the expenses for the event in a reasonable manner. NDSU will not be charged for that event day as a use date.

23. **OBSTRUCTIONS.** NDSU agrees to keep all portions of sidewalks, entries, doors, passages, vestibules, hallways, corridors, stairways, passageways, concessions stands and all areas of public access unobstructed at all times.

24. **HAZARDOUS MATERIALS.** NDSU agrees not bring onto the premises any material or equipment which could constitute a hazard to property or persons.

25. **FARGODOME SOUND AND LIGHT EQUIPMENT.** Any connection or operation of DOME sound or light equipment will be done only by Authority personnel.

26. **MOTORIZED EQUIPMENT.** All DOME motorized equipment must be operated by authorized Authority employees.

27. **UTILITY REQUIREMENTS.** All utility requirements for the event must be ordered from the Authority. Said utility order must specify whether, and if necessary for the event, in what quantity the following utilities will be needed: electrical, water, compressed air, telephone, gas, drain and cable television.

28. **OPENING OF DOORS.** The Authority reserves the right to open the doors when the Authority deems it necessary to safely and orderly move the public into the DOME. The Authority may cancel any event preparations in order to safely move the public into the DOME.

29. **ADMISSIONS.** All DOME patrons shall be prohibited from bringing food and beverages, bottles, cans, containers, alcoholic beverages, projectiles, weapons, items which may be used as weapons, incendiary devices or any controlled or illegal substances into the DOME or onto the DOME premises.

The Authority reserves the right to conduct a reasonable search of all persons and their possessions prior to entry.

Re-entry on ticket stub is not permitted.

Glitter, confetti, lighter than air or helium balloons are not permitted inside the DOME.

No animals will be permitted in the DOME unless the animal is part of the show or exhibit, or if the animal is used by a physically disabled individual, and only if the animal is on a leash, in a pen or in a caged area.

30. **OBJECTIONABLE PERSONS.** The Authority reserves the right to eject or cause to be ejected from the DOME premises any persons causing a danger to person or property, or a breach of the peace or other disorderly conduct or who otherwise violates FARGODOME rules and regulations.

31. **ACCESS.** The Authority shall have the right to a reasonable access of any and all areas of the DOME occupied by NDSU.

32. **AUTHORITY CONTROL.** The Authority shall at all times maintain control of the DOME and shall be the sole administrator of its rules and regulations relative to its operation of the DOME.

33. **LICENSES.** NDSU shall pay, obtain and be responsible for any and all taxes, licenses or permits required for use of the DOME, and shall relieve the Authority from any responsibility for acquiring or paying for such taxes, licenses or permits.

34. **COPYRIGHT.** NDSU shall assume all responsibility for procuring and paying for the use of any copyrights, trademarks or other materials used in the event. To the extent permitted under North Dakota law and subject to available appropriations, NDSU further agrees to save and hold harmless the Authority from any costs or claims arising from any copyright violations, including copyright or trademark violations resulting from the advertising signs sold or displayed by NDSU.

35. **ANNOUNCEMENTS.** The Authority reserves the right to make announcements in the interest of public safety, to provide information to attendees or to announce upcoming events at the DOME.

36. **ADVERTISING/PUBLICITY.**

A. ***FARGODOME Trademark.*** The name "FARGODOME" and the FARGODOME logo are trademarked. Unauthorized use of either is strictly prohibited. NDSU shall have the right to use both the logo and the FARGODOME name only in the promotion and advertising of the events covered by this Agreement. No other use of the name FARGODOME or the FARGODOME logo will be permitted by NDSU without prior written approval from the Authority.

***North Dakota State University Trademark.*** The name "North Dakota State University" and the "Bison Logo" are trademarked. Unauthorized use of either is strictly prohibited. The Authority shall have the right to use both the logo and the North Dakota State University name only in the promotion and advertising of the events covered by this Agreement. No other use of the name "North Dakota State University" or the "Bison Logo" will be permitted by the Authority without prior written approval from NDSU.

B. ***FARGODOME Advertising.*** NDSU shall have the right to advertise and publicize the events covered under this Agreement at no cost on the Authority's electronic display equipment. The Authority and NDSU shall mutually agree on the times when these messages shall run and the content of these messages. The Authority hereby grants NDSU permission to advertise their corporate game sponsor(s) and announcements related to NDSU on the interior electronic message centers and on temporary signs

as mutually agreed upon. NDSU shall be responsible for removing all temporary signs and banners immediately after an NDSU related event. If the Authority removes the banners and/or signs, NDSU shall be responsible for payment of all expenses related to the removal. Other than the aforementioned permission for NDSU events, the Authority Reserves all rights to advertising, electronic display equipment messages, temporary signage and banners in their entirety for non-NDSU related events.

**C. Blocking/Covering FARGODOME Signs.** The DOME's permanent signs, graphics or displays must not be visibly blocked in any manner, nor may temporary signs or decorations be attached to permanent building graphics.

**37. SOLICITATION.** No solicitation, distribution or sale of any products, services, advertising or publicity materials or flyers of any type shall be permitted on the DOME premises without obtaining prior written approval from the Authority.

**38. EVENT CONTENT.** To the extent allowed by applicable law, the Authority reserves the right to approve the content of the event, to cancel an event in progress or to have questionable portions of the event removed if such portions contain materials which are illegal or patently offensive in nature.

**39. DEFACEMENTS.** NDSU shall not injure, mar, nor in any manner deface the DOME or any equipment contained therein, and shall not cause or permit anything to be done whereby the premises or equipment therein shall be in any manner injured, marred or defaced. NDSU further will not drive or permit to be driven, nails, hooks, tacks or screws into any part of the DOME, or any equipment contained therein, and will not make or allow to be made any alterations of any kind to the DOME or any equipment contained therein and will not affix or permit to be affixed by adhesives, any signs, posters, notices or graphics of any description without written consent of the Authority. NDSU agrees that if the DOME is damaged by NDSU, its event patrons, guests or any person admitted to the premises as a result of the NDSU event, then NDSU shall pay the Authority upon demand such sums as shall be necessary to restore the premises to their original condition, ordinary wear and tear excepted.

**40. COMPLIANCE WITH LAW.** NDSU agrees that it will comply with all applicable federal, state and local laws, rules, regulations and/or ordinances.

**41. CIVIL RIGHTS/ADA.** NDSU and the Authority hereby agree that they will not illegally discriminate against any persons relative to admission, services or privileges offered to or enjoyed by the general public. NDSU agrees that it will not illegally discriminate against any person relative to hiring and employment practices for any NDSU event involving NDSU staffing. NDSU further agrees to comply and cooperate with the Authority relative to requirements stipulated in the Americans with Disabilities Act (ADA). The Authority shall pay for any alterations to the DOME required under ADA.

42. **ASSIGNMENT.** This Agreement shall not be assigned, transferred or otherwise encumbered by NDSU without the express written approval of the Authority.

43. **SEVERABILITY.** If any of the provisions contained herein shall for any reasons be held to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not affect any other provisions contained herein.

43. **ENTIRE AGREEMENT.** No alterations, variations, additions, addendums, representations or agreements to the terms of this Agreement shall be valid unless stated in writing, signed by both NDSU and the Authority, and made a part of this Agreement. This Agreement and all such written addendums shall supersede any and all oral representations or agreements.

45. **AUTHORITY AND JURISDICTION.** Any privilege, right or pre-eminence of authority not herein defined or clearly expressed shall be construed in accordance with the laws of the state of North Dakota, and any action herein must be brought in the District Court for Cass County, North Dakota. All matters not authorized expressly by the terms of this Agreement shall be reserved to the discretion of the Authority.

*(Remainder of this page intentionally left blank.)*



PRESIDENT, FARGO DOME AUTHORITY

DATE: 8-25-2020



ATTEST: SECRETARY, FARGO DOME AUTHORITY

DATE: 8-25-20

MAYOR, CITY OF FARGO

DATE: \_\_\_\_\_

ATTEST: CITY AUDITOR

DATE: \_\_\_\_\_



PRESIDENT, NORTH DAKOTA STATE UNIVERSITY

DATE: 6-30-20



ATTEST: NORTH DAKOTA STATE UNIVERSITY  
VICE-PRESIDENT FOR FINANCE AND ADMINISTRATION

DATE: 6/30/2020

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## Memorandum

DATE: 9/3/2020  
TO: Mayor Mahoney and Board of City Commissioners  
FROM: Bruce Taralson, Inspections Director *BT*  
SUBJECT: Proposed Amendment to Ordinance 13-0901

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Dear Commissioners:

**Enclosed please find a proposed amendment of Ordinance 13-0901.**

The Inspections Department has noted issues of unlicensed and inoperative vehicles that currently appear in **Ordinance 13-0901 - Definitions:**

- The Inspections Department is proposing a reduced period of time for **inoperative vehicles**. This reduction of time will assist the inspectors in enforcing the ordinance when addressing a complaint against a citizen who is illegally operating an auto repair business in a residential neighborhood. Allowing 60 days to remedy this type of situation allows time for completion of repair and/or sale of vehicles. During the 60-day allowance, the Inspections Department receives multiple complaints therefore creating multiple letters and re-inspections to occur. A 15-day allowance will provide for necessary mail time and a faster turn-around time for enforcement.
- Granting a 60-day time period for re-licensing or removing an **unlicensed vehicle** is acceptable to the Inspections Department. Expired tabs are visible immediately at the time of initial inspection, therefore giving the inspector a clear start date for enforcement.

As always, Inspectors will use discretion when working with citizens displaying issues beyond their control. An inspector may allow for more time to remedy a situation.

### **RECOMMENDED MOTION:**

I move to direct the City Attorney to draft an ordinance amending Section 13-0901 of the Fargo Municipal Code as presented.

• **13-0901. - Definitions.**

[SHARE LINK TO SECTION PRINT SECTION DOWNLOAD \(DOCX\) OF SECTIONS](#)  
[EMAIL SECTION COMPARE VERSIONS](#)

The following words or terms when used herein shall be deemed to have the meanings set forth below:

1. The term "junk" shall include, without limitation, trash, rubbish, parts of machinery or motor vehicles, unused furniture, stoves, refrigerators, or other appliances, remnants of wood, metal, or any other castoff material of any kind, whether or not the same could be put to any reasonable use.
2. The term "junk automobiles" shall include, without limitation, any motor vehicle which is not licensed for use upon the highways of the state of North Dakota for a period in excess of 60 days, and shall also include, whether licensed or not, any motor vehicle which is inoperative for any reason for a period in excess of ~~15~~ 60 days; provided that there is excepted from this definition unlicensed, but operative, vehicles which are kept as the stock in trade of a regularly licensed and established new or used automobile dealer.
3. The term "abandoned vehicle" shall include, without limitation, any vehicle which has remained on private property for a period of 48 continuous hours, or more, without the consent of the owner or occupant of the property, or for a period of 48 continuous hours or more after the consent of the owner or occupant has been revoked.
4. The term "blighted structure" shall include, without limitation, any dwelling, garage, or outbuilding, or any factory, shop, store, warehouse or any other structure or part of a structure which, because of fire, wind, or other natural disaster, or physical deterioration, is no longer habitable as a dwelling, nor useful for the purpose for which it may have been intended.
5. The term "building materials" shall include, without limitation, lumber, bricks, concrete or cinder blocks, plumbing materials, electric wiring or equipment, heating ducts or equipment, shingles, mortar, concrete, or cement, nails, screws, or any other materials used in constructing any structure.
6. The term "person" shall include all natural persons, firms, co-partnerships, corporations, and all associations of natural persons, incorporated or unincorporated, whether acting by themselves, or by a servant, agent or employee. All persons who violate any of the provisions of this ordinance, whether as owner, occupant, lessee, agent, servant or employee shall, except as herein otherwise provided, be equally liable as principals.

7.

The terms "trash" and "rubbish" shall include any and all forms of debris and waste material not herein otherwise classified.

Source: 1230 (1966), 2538 (1990).



(15)

September 8th, 2020

To: Fargo City Commission

From: Timothy S. Dirks, MLIS, MPA  
Director  
Fargo Public Library

TS

Library Associate I Isabella Cody is going on a leave of absence for a period of twelve weeks. This request is because her position is part-time and is not eligible for FMLA due to not meeting the minimum hours requirement for FMLA.

**Recommended motion:**

I/We hereby move to approve the leave of absence requested for Library Associate I Isabella Cody.



(16)

MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

FROM: TIM DIRKS, LIBRARY DIRECTOR

A handwritten signature in dark ink, appearing to be "TD" or "Dirks", written over the printed name.

DATE: AUGUST 21, 2020

RE: FARGO PARKS DISTRICT FOUNDATION MATCHING GRANT PROGRAM AGREEMENT

The attached Fargo Parks District Foundation Matching Grant Program Agreement is for constructing a StoryWalk® on Park District property in 2020. This grant will pay up to 50% of the total project cost. The total project estimated cost is \$8,526.80. The library's share will be approximately \$4,263.40. The library will pay up front for the total project and be reimbursed within 45 days by the Park District, per the agreement.

No budget adjustment is required. Please feel free to call me at 701-241-1493 if you need additional information.

**Suggested Motion:** Move to approve the Fargo Parks District Foundation Matching Grant Agreement for the Fargo Public Library.

TD/LW

Enclosure

**Fargo Park District Foundation  
Matching Grant Program  
Agreement**

Agreement made this 18<sup>th</sup> day of August 2020 between:

Fargo Public Library  
(Hereafter called the Project Manager)  
and  
Fargo Park District Foundation  
(Hereafter called the Park District)

The project plans are for constructing a StoryWalk on Park District property in 2020

This agreement is will provide funding in the amount of \$4,263.40 from the Park District, if all estimated costs are met. This agreement does not bind, in any way, the Park District to pay any other expenditure beyond the amount specified.

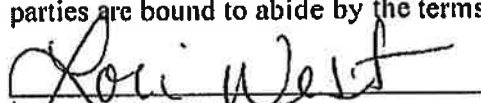
**Responsibilities of the Project Manager:**

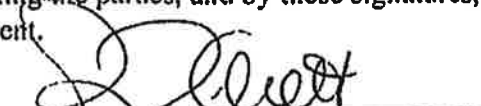
- Project Manager will manage the project and must incur costs before receiving funds from the Park District.
- Maintain financial accounts, documents, and records that shall be available to the Park District.
- All significant deviations from the project proposal by the Project Manager must be submitted in writing to the Park District for approval.
- Project must be completed in 2020; otherwise Park District funding shall be lost.
- The Project Manager shall be responsible for full indemnification of the District and will hold the District harmless from any and all claims as a result of the project's management and maintenance of this matching grant project.
- The Project Manager certifies that funds received from the Park District shall not be used in any way to exclude anyone from participating in, deny anyone the benefits of, or otherwise subject anyone to discrimination on the basis of race, color, national origin, age, gender or disability.

**Responsibilities of the Park District:**

- Park District must make payment to the Project Manager within 45 days of receipt of the bill.

The undersigned attests to be the legal agent representing the parties, and by these signatures, the parties are bound to abide by the terms of this agreement.

  
Fargo Public Library  
Date 8-20-2020

  
Fargo Park District Foundation  
Date 8-20-20

## **Fargo Park District Foundation Matching Grant Program**

*The Fargo Park District Foundation Matching Grant Program is intended to encourage partnerships between the Fargo Park District Foundation and organizations throughout the community by providing means to sponsor projects with the Fargo Park District. The purpose of the program is to advance recreational opportunities in the City of Fargo.*

**WHO CAN APPLY:** Associations, organizations, clubs, or individuals in the Fargo Park District who are interested in applying for a grant to sponsor a project may apply. Projects must be facility improvements and may include the purchase of recreation equipment.

**SCHOOL DISTRICT PROPERTY:** Projects on Fargo or West Fargo School District property must have a letter of support from the respective School District. Projects on School District property must have a three-way dollar for dollar match with the School District, School PTO and Fargo Park District.

**APPLICATION OBTAINED AT:** Applications can be obtained at the Fargo Park District offices at the Depot, 701 Main Avenue Fargo, ND 58103 or by emailing a request to [foundation@fargoparks.com](mailto:foundation@fargoparks.com).

**APPLICATION DEADLINES:** Applications are accepted twice per year. Applications must be received by 5:00 pm on January 1 and July 1. If these dates fall on a weekend, applications will be accepted until 5:00 the following Monday.

**FUNDS AVAILABLE:** The Fargo Park Board shall determine how many funds, if any, will be available each budget year for matching funds and may change or make exceptions to the amount at any time.

**APPLICATION REVIEW/INTERVIEW:** Applications will be reviewed by the Fargo Park District Foundation Board and staff who will make recommendations to the Fargo Park Board for final approval

**APPLICATION APPROVAL/DENIAL:** Letters will be sent to all applicants, indicating the approval or denial of grant money. For those approved, an agreement will be sent to the successful project sponsors, which states the provisions of the grant funds.

**FUNDING:** Projects will be funded at no more than 50 percent of the total estimated cost, or up to a maximum of \$15,000, whichever is less. The Matching Grant Program provides a dollar-for-dollar match. The program does not consider matching funds for projects with in-kind expenses. The Fargo Park Board, at its discretion, may approve funding proposals of more than \$15,000. The minimum project size for this program is \$2,500.

**SCHOOL PROJECT FUNDING:** Projects on School District property will be funded up to 33 1/3 % or \$15,000, whichever is less.

**PROJECT SPONSOR CERTIFICATION:** The project sponsor must certify that they have the necessary funds for their share of the total estimated project's cost.

**GREATEST CONSIDERATION:** Projects that will receive the greatest consideration are as follows:

- Projects that fit into the Fargo Park District's strategic plan, mission and vision.
- Projects that serve a wide variety of people or large number of people, rather than to projects serving a limited group.
- Projects that can be used throughout the year – more than one season.
- Projects that have a developmental plan approved or reviewed by Fargo Park District.
- Projects that are on Park District property.
- Projects with limited operational maintenance costs over an extended time period.
- Playground projects must comply with current playground standards and guidelines. Playgrounds that include a ramp with an accessible route will receive the highest consideration.

**NO CONSIDERATION:** Projects that will **NOT** receive consideration for funding:

- Projects on private property as fixed improvements that are not open to the public.
- Personnel, operations, consultants.
- Projects that have begun before grant approval.
- Projects that use in-kind expenses as a match for grant application.
- Any clothing or uniforms.

**PROJECT COMPLETION:** The approved projects must be completed in the year they are awarded unless other arrangements have been made.

**INITIAL PROJECT REVIEW:** Prior to submission and deadline, **Brian Arett, Foundation Director**, must be contacted at **701-356-1420** to conduct an initial project review to make sure project meets minimum specifications.

**RECOGNITION OF MATCHING GRANT:** The approved projects shall have a recognition plaque, dedication, or some other recognition signifying the project is part of the Fargo Park District Foundation Matching Grant Program.

**ADMINISTRATION AND ACCOUNTING:** Administration and accounting procedures are determined by agreement with approved parties. All approved projects on Park District property must follow Park District purchasing guidelines, local ordinances, and state laws. Upon completion of the projects on Park District property, Fargo Park District assumes ownership of the improvement or equipment, unless other arrangements are agreed upon.

# 2020 MATCHING GRANT APPLICATION

APPLICATION DEADLINE: 5:00 PM ON JANUARY 1 AND JULY 1

COMPLETE AND RETURN TO:

Fargo Park District Foundation • Attn: Brian Arett  
701 Main Avenue • Fargo, ND 58103 • (701) 356-1420  
barett@fargoparks.com

1. DATE OF APPLICATION: 7-1-2020

2. APPLICANT: Fargo Public Library

CONTACT PERSON: Lori West IF SCHOOL, PRINCIPAL'S NAME: \_\_\_\_\_

ADDRESS: 2801 32nd Avenue South CITY: Fargo

STATE/ZIP: 58103 TELEPHONE NUMBER: (H) 701-476-5977 (C) 701-541-0462

EMAIL ADDRESS: LWest@fargolibrary.org

3. PROJECT TITLE: StoryWalk

4. ESTIMATED PROJECT START DATE: 08/01/2020 COMPLETION DATE: 09/15/20

5. DESCRIPTION OF PROPOSED PROJECT (INCLUDE LOCATION AND SITE MAPS WHERE APPLICABLE): \_\_\_\_\_

Location: Milwaukee Trail or Urban Plains Park, starting near a playground area and approximately a half mile long, along a paved trail. A StoryWalk features a picturebook, displayed page by page onto weather-resistant sign posts, spaced out to encourage movement, enjoyment of the outdoors, and literacy skills.

6. JUSTIFICATION FOR PROJECT: We believe that a StoryWalk compliments the Fargo Park District's mission of improving the lifestyle of the community by encouraging literacy, outside activity, and intergenerational togetherness. The project would serve all ages, but be targeted at children and families. By choosing a park with paved trails and close to homes and apartments, the StoryWalk is more easily accessible to families without cars and those using wheelchairs, or with other mobility considerations. The StoryWalk posts and signs would be installed permanently, for use in all seasons. The featured book could be changed out seasonally, or bi-annually to reflect the season, or other relevant content. With current COVID19 concerns, we feel that now is an opportune time to move forward in partnership with the Fargo Park District on a StoryWalk in the Fargo community, as the project lends itself naturally to social distancing.

ESTIMATED NUMBER OF PEOPLE BENEFITED: Hundreds, over time thousands

7. ESTIMATED AGE CATEGORIES BENEFITED: Infants to Senior Citizens
8. TOTAL ESTIMATED PROJECT COST (INCLUDE ANY PRICE QUOTES OR COST ESTIMATES RECEIVED):  
\$6,226.80 without installation (if Park District provides installation services) or \$8,526.80 with installation provided by Custom Graphics
9. ASSISTANCE REQUESTED: \$3,113.40 (Park District install) or \$4,263.40 (Custom Graphics install)  
 APPLICANT'S CONTRIBUTION: \$3,113.40 (Park District install) or \$4,263.40 (Custom Graphics install)
10. OTHER SOURCES OF ASSISTANCE (NAME, TYPE, AMOUNT): Our contribution would come from the Fargo Public Library and/or The Friends of the Fargo Public Library (a separate 501c3 organization), Monetary, \$3,113.40 (Park District install) or \$4,263.40 (Custom Graphics install).
11. BY SIGNING OR TYPING MY NAME BELOW, I HEREBY CERTIFY THAT FUNDS IN THE AMOUNT OF (AT LEAST 50 PERCENT OF TOTAL ESTIMATED COSTS) ARE AVAILABLE FOR THE ABOVE STATED PROJECT. \$3,113.40 (Park District install) or \$4,263.40 (Custom Graphics install)

SIGNATURE: Lori West

TITLE: Branch Services Manager

DATE: 7-1-2020

### PROJECT COST ESTIMATES

PROJECT ITEM	UNITS	ESTIMATED COST
Sign Frames (Barking Dog)	21	\$4,846.80
Sign Posts (Custom Graphics)	20	\$1380
Installation (Custom Graphics)	20	\$2300
TOTAL:		\$6,226.80 without installation, \$8,526.80 with installation

### APPLICATION CHECKLIST

- ☐ Initial project review with Facilities and Programs Directors
- ☐ Application completed
- ☐ Project sponsor certification of funds available

#### SCHOOL PROJECTS:

- ☐ Letter of approval from School District
- ☐ Letter of approval from school principal

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

**TO: BOARD OF CITY COMMISSIONERS**

**FROM: NICOLE CRUTCHFIELD, PLANNING DIRECTOR** *NC*

**DATE: SEPTEMBER 3, 2020**

**RE: ESHARA CONTRACT AMENDMENT, RED RIVER COVID-19 TASK FORCE**

In June, the Red River COVID-19 Task Force's education and awareness and quarantine support subcommittee, through the City of Fargo's State COVID-19 Grant allocation, has contracted with the ESHARA Partners (Ethnic-Self-Help Alliance for Refugee Assistance). Since June 1, ESHARA has been providing family assistance, translation services, education, and case management to New American households directly and indirectly affected by COVID-19 and for people who might not have access to mainstream communications or supportive resources. ESHARA Partners have Community Response Team members who cover several languages and ethnicities, including Somali, Swahili, Dinka, Arabic, Nepali, and Kurdish. They have directly served hundreds of clients survive the pandemic.

In order to continue this partnership and extend the contract through December 31, 2020, ESHARA Partners is seeking an increase of \$170,340 to the original agreement.

**Recommendation:**

Approve amending the existing agreement between the City of Fargo, the United Way, and the Afro American Development Association (on behalf of ESHARA Partners) to increase funding by \$170,340 and extend the agreement through December 31, 2020.

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

**TO: BOARD OF CITY COMMISSIONERS**

**FROM: NICOLE CRUTCHFIELD, PLANNING DIRECTOR**  
**TIA BRASETH, COMMUNITY DEVELOPMENT PLANNING COORDINATOR TB**

**DATE: SEPTEMBER 1, 2020**

**RE: CARES ACT FUNDING AWARD - COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM (CDBG-CV) ROUND 1**

The City of Fargo has received a special allocation from the U.S. Department of Housing and Urban Development to be used to prevent, prepare for, and respond to the coronavirus (COVID-19). This allocation was authorized by the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) to respond to growing effects of this historic public health crisis. Fargo will receive \$464,253 in the form of Community Development Block Grant (CDBG-CV) funds (CFDA #14.218 – grant number B-20-MW-38-0001). These funds will support activities providing assistance to homeless, low and moderate income, and special needs populations.

**RECOMMENDED MOTION:** Accept the Community Development Block Grant (CDBG-CV) allocation to the City of Fargo from the U.S. Department of Housing and Urban Development.

**Funding Approval/Agreement**

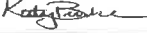
Title I of the Housing and Community  
Development Act (Public Law 930383)  
HI-00515R of 20515R

U.S. Department of Housing and Urban Development  
Office of Community Planning and Development  
Community Development Block Grant Program

OMB Approval No. 2506-0193  
exp 5/31/2018

1. Name of Grantee (as shown in item 5 of Standard Form 424) Fargo	3a. Grantee's 9-digit Tax ID Number 456002069	3b. Grantee's 9-digit DUNS Number 070265871
2. Grantee's Complete Address (as shown in item 5 of Standard Form 424) 200 North 3Rd Street Fargo, ND 58102-0000	4. Date use of funds may begin 08/31/2020	
	5a. Project/Grant No. 1 B-20-MW-38-0001	6a. Amount Approved \$464,253
	5b. Project/Grant No. 2	6b. Amount Approved

**Grant Agreement:** This Grant Agreement between the Department of Housing and Urban Development (HUD) and the above named Grantee is made pursuant to the authority of Title I of the Housing and Community Development Act of 1974, as amended, (42 USC 5301 et seq.). The Grantee's submissions for Title I assistance, the HUD regulations at 24 CFR Part 570 (as now in effect and as may be amended from time to time), and this Funding Approval, including any special conditions, constitute part of the Agreement. Subject to the provisions of this Grant Agreement, HUD will make the funding assistance specified here available to the Grantee upon execution of the Agreement by the parties. The funding assistance specified in the Funding Approval may be used to pay costs incurred after the date specified in item 4 above provided the activities to which such costs are related are carried out in compliance with all applicable requirements. Pre-agreement costs may not be paid with funding assistance specified here unless they are authorized in HUD regulations or approved by waiver and listed in the special conditions to the Funding Approval. The Grantee agrees to assume all of the responsibilities for environmental review, decision making, and actions, as specified and required in regulations issued by the Secretary pursuant to Section 104(g) of Title I and published in 24 CFR Part 58. The Grantee further acknowledges its responsibility for adherence to the Agreement by sub-recipient entities to which it makes funding assistance hereunder available.

U.S. Department of Housing and Urban Development (By Name) Katy Burke		Grantee Name (Contractual Organization) Fargo (City Of Fargo, C/O City Audit)	
Title CPD Director		Title	
Signature  X	Date (mm/dd/yyyy) 08/31/2020	Signature X	Date (mm/dd/yyyy)
7. Category of Title I Assistance for this Funding Action:  Entitlement, Sec 106(b)		8. Special Conditions (check one) <input type="checkbox"/> None <input checked="" type="checkbox"/> Attached 9a. Date HUD Received Submission 08/27/2020 9b. Date Grantee Notified 08/31/2020 9c. Date of Start of Program Year 05/01/2020 10. check one <input checked="" type="checkbox"/> a. Orig. Funding Approval <input type="checkbox"/> b. Amendment Amendment Number	
11. Amount of Community Development Block Grant		FY (2020)	
a. Funds Reserved for this Grantee		\$464,253	
b. Funds now being Approved			
c. Reservation to be Cancelled (11a minus 11b)			
12a. Amount of Loan Guarantee Commitment now being Approved N/A		12b. Name and complete Address of Public Agency City Of Fargo, C/O City Audit 200 North 3Rd Street Fargo, ND 58102-0000	
<b>Loan Guarantee Acceptance Provisions for Designated Agencies:</b> The public agency hereby accepts the Grant Agreement executed by the Department of Housing and Urban Development on the above date with respect to the above grant number(s) as Grantee designated to receive loan guarantee assistance, and agrees to comply with the terms and conditions of the Agreement, applicable regulations, and other requirements of HUD now or hereafter in effect, pertaining to the assistance provided it.		12c. Name of Authorized Official for Designated Public Agency N/A	
		Title	
		Signature X	

**HUD Accounting use Only**

Batch	TAC	Program	Y	A	Reg	Area	Document No.	Project Number	Category	Amount	Effective Date (mm/dd/yyyy)	F
	153											
	176											
			Y					Project Number		Amount		
			Y					Project Number		Amount		
Date Entered PAS (mm/dd/yyyy)		Date Entered LOCCS (mm/dd/yyyy)		Batch Number		Transaction Code		Entered By		Verified By		

## Additional CDBG-CV Requirements

In addition to the terms and conditions in the Funding Approval/Agreement, the following requirements apply to Grantees receiving CDBG-CV funds in accordance with the Coronavirus Aid, Relief and Economic Security Act (CARES Act) (Pub. L. 116-136).

- 1) The Grantee agrees to comply with the requirements in the CARES Act that apply to CDBG-CV grants and must use the CDBG-CV grant funds to prevent, prepare for and respond to coronavirus.
- 2) The grantee agrees to comply with the requirements of the Housing and Community Development Act of 1974 (42 USC 5301 et seq.) and implementing regulations at 24 CFR part 570, as now in effect and as may be amended from time to time, and as modified by the rules, waivers and alternative requirements published by HUD from time to time. Rules, waivers and alternative requirements of Federal Register notices applicable to CDBG-CV grants are hereby incorporated into and made a part of the grant agreement.
- 3) The Grantee may use CDBG-CV funds as reimbursement for previously incurred costs, provided that those costs are allowable and consistent with the CARES Act's purpose to prevent, prepare for and respond to coronavirus.
- 4) The grantee agrees to establish and maintain adequate procedures to prevent any duplication of benefits as required by section 312 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5155), as amended by section 1210 of the Disaster Recovery Reform Act of 2018 (division D of Public Law 115-254; 132 Stat. 3442).
- 5) The period of performance for the funding assistance specified in the Funding Approval/Agreement ("Funding Assistance") shall be six years. It shall begin on the date specified in item 4 in the Funding Approval/Agreement and shall end six years later, on the month and day specified in item 4. The Grantee shall not incur any obligations to be paid with the Funding Assistance after this period of performance.
- 6) The Recipient shall attach a schedule of its indirect cost rate(s) in the format set forth below to the executed Funding Approval/Agreement that is returned to HUD. The Recipient shall provide HUD with a revised schedule when any change is made to the rate(s) described in the schedule. The schedule and any revisions HUD receives from the Recipient shall be incorporated herein and made a part of this Funding Approval/Agreement, provided that the rate(s) described comply with 2 CFR part 200, subpart E.

<u>Administering Department/Agency</u>	<u>Indirect cost rate</u>	<u>Direct Cost Base</u>
_____	_____ %	_____
_____	_____ %	_____
_____	_____ %	_____
_____	_____ %	_____
_____	_____ %	_____

**Instructions:** The Recipient must identify each agency or department of the Recipient that will carry out activities under the grant, the indirect cost rate applicable to each department/agency

(including if the de minimis rate is used per 2 CFR §200.414(f)), and the type of direct cost base to which the rate will be applied (for example, Modified Total Direct Costs (MTDC)). Do not include indirect cost rates for subrecipients.

- 7) In addition to the conditions contained in the Funding Approval/Agreement (form HUD 7082), the grantee shall comply with requirements established by the Office of Management and Budget (OMB) concerning the Dun and Bradstreet Data Universal Numbering System (DUNS); the System for Award Management (SAM.gov.); the Federal Funding Accountability and Transparency Act as provided in 2 CFR part 25, Universal Identifier and General Contractor Registration; and 2 CFR part 170, Reporting Subaward and Executive Compensation Information.
- 8) The grantee shall ensure that no CDBG-CV funds are used to support any Federal, State, or local projects that seek to use the power of eminent domain, unless eminent domain is employed only for a public use. For the purposes of this requirement, public use shall not be construed to include economic development that primarily benefits private entities. Any use of funds for mass transit, railroad, airport, seaport or highway projects as well as utility projects which benefit or serve the general public (including energy-related, communication-related, water-related and wastewater-related infrastructure), other structures designated for use by the general public or which have other common-carrier or public-utility functions that serve the general public and are subject to regulation and oversight by the government, and projects for the removal of an immediate threat to public health and safety or brownfield as defined in the Small Business Liability Relief and Brownfields Revitalization Act (Public Law 107-118) shall be considered a public use for purposes of eminent domain.
- 9) The Grantee or unit of general local government that directly or indirectly receives CDBG-CV funds may not sell, trade, or otherwise transfer all or any such portion of such funds to another such entity in exchange for any other funds, credits or non-Federal considerations, but must use such funds for activities eligible under title I of the Act.
- 10) E.O. 12372-Special Contract Condition - Notwithstanding any other provision of this agreement, no funds provided under this agreement may be obligated or expended for the planning or construction of water or sewer facilities until receipt of written notification from HUD of the release of funds on completion of the review procedures required under Executive Order (E.O.) 12372, Intergovernmental Review of Federal Programs, and HUD's implementing regulations at 24 CFR Part 52. The recipient shall also complete the review procedures required under E.O. 12372 and 24 CFR Part 52 and receive written notification from HUD of the release of funds before obligating or expending any funds provided under this agreement for any new or revised activity for the planning or construction of water or sewer facilities not previously reviewed under E.O. 12372 and implementing regulations.
- 11) CDBG-CV funds may not be provided to a for-profit entity pursuant to section 105(a)(17) of the Act unless such activity or project has been evaluated and selected in accordance with Appendix A to 24 CFR 570 - "Guidelines and Objectives for Evaluating Project Costs and Financial Requirements." (Source – This condition is included as requirement on the use of fiscal year 2020 CDBG funds by the Community Development Fund heading, Department of Housing and Urban Development Appropriations Act, 2020, Public Law 116-94, and is made applicable to this grant by the CARES Act).

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City of Fargo Staff Report			
<b>Title:</b>	Aldi First Addition	<b>Date:</b>	4/29/2020
		<b>Updated:</b>	9/3/2020
<b>Location:</b>	4303 and 4305 13th Avenue South	<b>Staff Contact:</b>	Donald Kress, planning coordinator
<b>Legal Description:</b>	Part of Lot 1, Block A, Replat of Part of Village West Second Addition to the City of Fargo, Cass County, North Dakota		
<b>Owner(s)/Applicant:</b>	Fargo Enterprises/Nathan G. Anderson	<b>Engineer:</b>	Nile
<b>Entitlements Requested:</b>	<b>Minor Subdivision</b> (Replat of a part of Lot 1, Block A, Replat of Part of Village West Second Addition to the City of Fargo, Cass County, North Dakota)		
<b>Status:</b>	City Commission Public Hearing: September 8, 2020		
<b>Existing</b>		<b>Proposed</b>	
<b>Land Use:</b> Retail		<b>Land Use:</b> No change	
<b>Zoning:</b> GC, General Commercial		<b>Zoning:</b> No change	
<b>Uses Allowed:</b> GC – General Commercial. Allows colleges, community service, daycare centers of unlimited size, detention facilities, health care facilities, parks and open space, religious institutions, safety services, adult entertainment centers, offices, off-premise advertising, commercial parking, outdoor recreation and entertainment, retail sales and service, self storage, vehicle repair, limited vehicle service, aviation, surface transportation, and major entertainment events.		<b>Uses Allowed:</b> No change	
<b>Maximum Building Coverage Allowed:</b> 85%		<b>Maximum Building Coverage Allowed:</b> No change	

<b>Proposal:</b>
<p>The applicant requests one entitlement:</p> <ol style="list-style-type: none"> <li>1. A minor subdivision, entitled <b>Aldi First Addition</b> which is a replat of a part of Lot 1, Block A, Replat of Part of Village West Second Addition to the City of Fargo, Cass County, North Dakota.</li> </ol> <p>This project was reviewed by the City's Planning and Development, Engineering, Public Works, and Fire Departments ("staff"), whose comments are included in this report.</p> <p><b>Surrounding Land Uses and Zoning Districts:</b></p> <ul style="list-style-type: none"> <li>• North: GC with retail uses; MR-3, Multi-Dwelling Residential with apartment uses</li> <li>• East: (across 43<sup>rd</sup> Street South) GC with retail uses</li> <li>• South: (across 13<sup>th</sup> Avenue South) GC with retail uses</li> <li>• West: GC with retail uses</li> </ul> <p><b>Area Plans:</b></p> <p>The subject property is not included within any area plans or neighborhood plans.</p> <p><b>Schools and Parks:</b></p> <p><b>Schools:</b> The subject property is located within the West Fargo School District and is served Eastwood Elementary, Cheney Middle and West Fargo High schools.</p> <p><b>Neighborhood:</b> The subject property is located within the Village West neighborhood.</p>

**Parks:** Village West Park and Dog Park (4415 9th Avenue Circle South) is located approximately 0.50 mile east of the subject property and offers the amenities of multi-purpose field; picnic tables; playgrounds for ages 5-12; recreational trails; skate park; soccer field; dog park; basketball courts

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

**Staff Analysis:**

The plat will replat the existing lots into two lots, so that each retail store is on its own lot.

The street access and utility connections that are in place on the current lots will not change.

**SUBDIVISION**

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

1. **Section 20-0907.B.3 of the LDC stipulates that the Planning Commission recommend approval or denial of the application, based on whether it complies with the adopted Area Plan, the standards of Article 20-06 and all other applicable requirements of the Land Development Code. Section 20-0907.B.4 of the LDC further stipulates that a Minor Subdivision Plat shall not be approved unless it is located in a zoning district that allows the proposed development and complies with the adopted Area Plan, the standards of Article 20-06 and all other applicable requirements of the Land Development Code.**

The subject property is not located within an area plan. All of the properties within this plat are currently zoned GC, General Commercial. No zone change is proposed. In accordance with Section 20-0901.F of the LDC, notices of the proposed plat have been sent out to property owners within 300 feet of the subject property. To date, staff has received two phone calls from the public regarding this property. The callers had no objection. The project has been reviewed by the city's Planning, Engineering, Public Works, Inspections, and Fire Departments. **(Criteria Satisfied)**

2. **Section 20-0907.C.4.f of the LDC stipulates that in taking action on a Final Plat, the Board of City Commissioners shall specify the terms for securing installation of public improvements to serve the subdivision.**

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

**Suggested Motion:** "To accept the findings and recommendations of the Planning Commission and staff and move to approve the proposed **Aldi First Addition** subdivision plat, as presented, as the proposal complies with the Standards of Article 20-06, and all other applicable requirements of the LDC."

**Planning Commission Recommendation:** May 5, 2020

On May 5, 2020, by a vote of 9-0 with one Commissioner absent and one Commission seat vacant, the Planning Commission moved to accept the findings and recommendations of staff and moved to recommend approval to the City Commission of the proposed **Aldi First Addition** subdivision plat, as presented, as the proposal complies with the Standards of Article 20-06, and all other applicable requirements of the LDC."

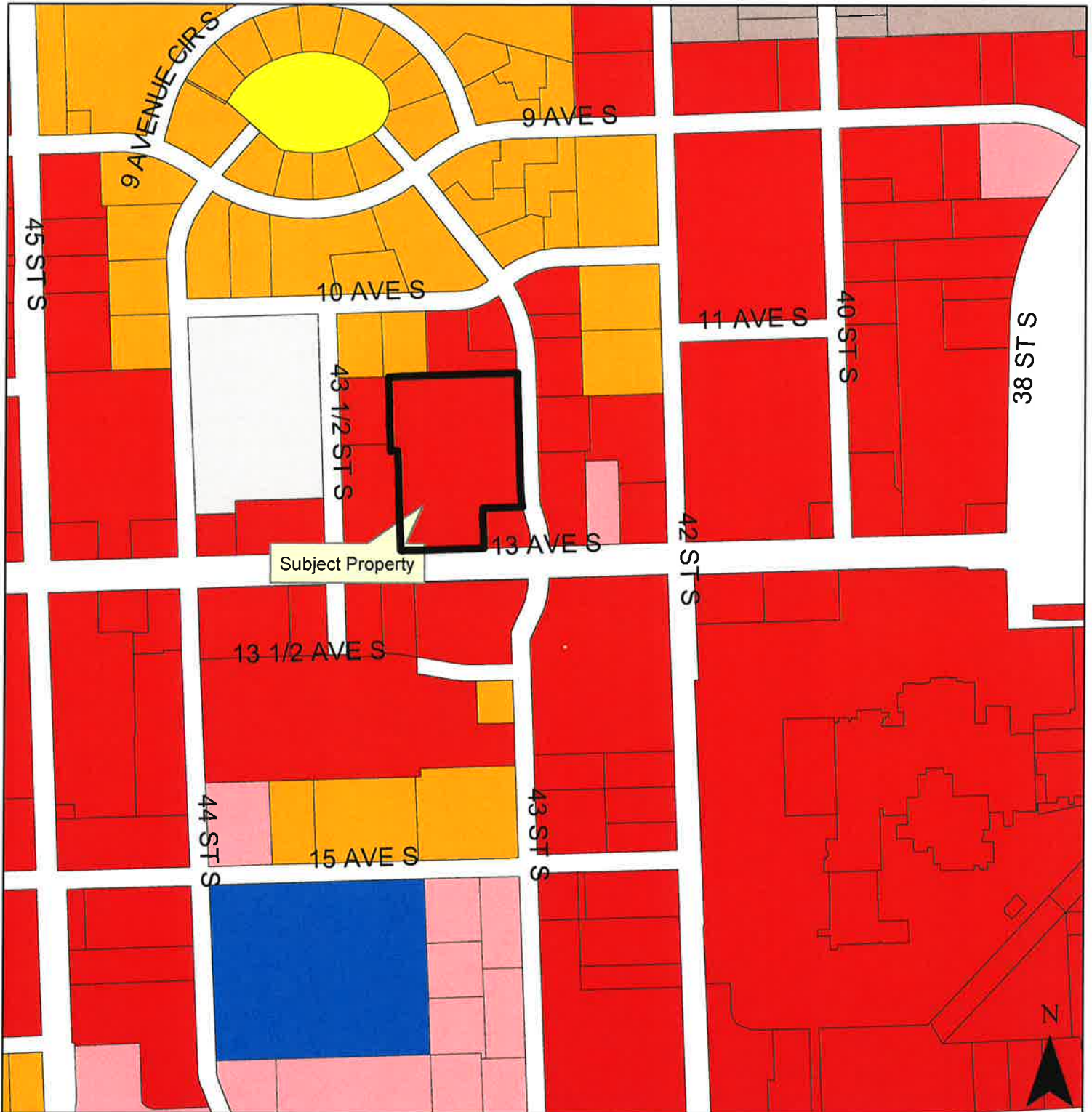
**Attachments:**

1. Zoning Map
2. Location Map
3. Preliminary Plat

# Plat (Minor)

## Aldi First Addition

4303 & 4305 13th Ave S



### Legend

AG	DMU	LC	MHP	SR-2
GO	GO	MR-1	NC	SR-3
GO	GO	MR-2	NO	SR-4
GO	GO	MR-3	P/I	SR-5
GO	GO	MR-3	UML	City Limits

500

Feet

Fargo Planning Commission

April 7, 2020

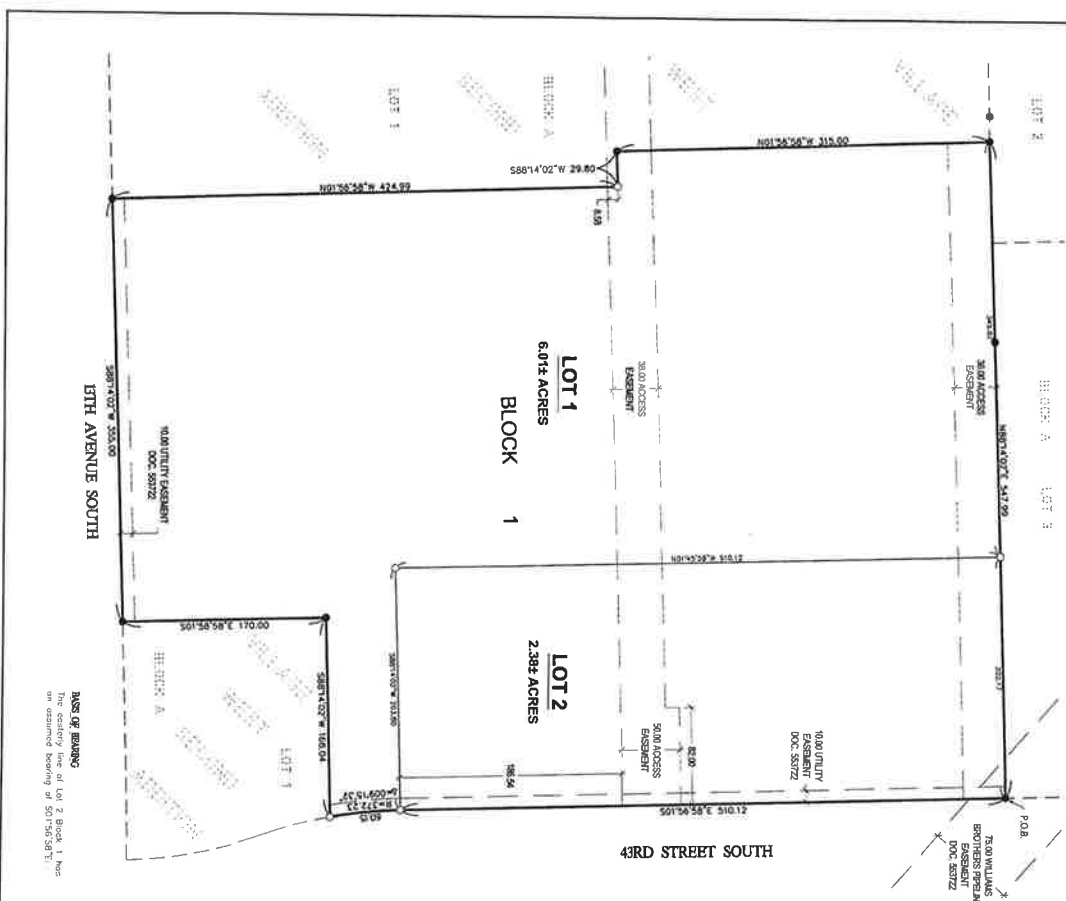
## Plat (Minor)

### Aldi First Addition

4303 & 4305 13th Ave S



**ALDI FIRST ADDITION**  
A REPLAT PART OF LOT 1, BLOCK A  
REPLAT OF PART OF VILLAGE WEST SECOND ADDITION  
CITY OF FARGO, CASS COUNTY, NORTH DAKOTA  
(A MINOR SUBDIVISION)



## CERTIFICATE

[illegible][illegible][illegible][illegible]

**LEGEND**

- IDENTITIES FOUND SURVEY MONITORING
- IDENTITIES NOT REBORN SET AND MARKED LS-904
- IDENTITIES SQUADRON LINE
- IDENTITIES ALLOWED LOT LINE
- IDENTITIES BAPTIST LINE
- POINT OF BEGINNING

P.O.B.

100

FARGO CITY ENGINEERS' APPROVAL  
This plan in the City of Fargo is hereby approved this \_\_\_\_\_ Day of \_\_\_\_\_ 2020.

Issued to: Person	
Issued by: Engineer	
State of North Dakota	
Quantity of Cost	355
Date: <u>July 21, 1906</u>	
<p>and their personally executed license to dig, acting City Engineer and I, the undersigned, have examined the same and have concluded the foregoing instrument and acknowledged that the same was signed and sealed by the person to whom the same is hereunto attested.</p>	

Notary Public, Cass County, ND \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**PARRO CITY COMMISSION APPROVAL**

This act in the City of Fargo is hereby approved this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
 Timothy J. Mononey, Mayor  
 Mayor

\_\_\_\_\_  
 Steven Wagoner  
 City Auditor

South of North Florida )  
County of Collier )SS  
}

to be the person described in and who executed the foregoing instrument, and acknowledged that he executed same as his free act and deed.

My Commission Expires: \_\_\_\_\_

This Act is the City of Fairfax is hereby approved this 5<sup>th</sup> day of May 2020.

Report Commission  
Chetana Farud Planning Commission  
Office of North Dakota

On the \_\_\_\_\_ day of \_\_\_\_\_, 2020, before me, a Notary Public within and for said county and state, personally appeared John Christopher Christman, Food Products Commission Inc.

Horry Public Case County MD

11

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7101 Main Avenue  
Fargo, ND 58103  
(701) 293-1250

(65) 227-0644

**NORTH DAKOTA**  
770 Main Avenue  
Fargo ND 58103  
701/785-2200  
**MINNESOTA**  
381 East Hennepin Avenue  
Suite 200 Minneapolis MN 55401  
(612) 227-6644

(20)

**MEMORANDUM**

**TO:** Fargo City Commission

**FROM:** Maggie Squyer, Assistant Planner *ms*

**DATE:** September 3, 2020

**SUBJECT:** Hourly Parking Rates for Downtown Garages

At the August 27, 2020 Parking Commission meeting, the Parking Commission voted to set the hourly rate of parking at the Mercantile Garage at \$1.50 per hour, up to \$8.00 per day. The Parking Commission also voted to revoke the two-hour free parking period at Roberts Commons garage and begin charging \$1.50 per hour on a trial basis; beginning when the Mercantile Garage comes on-line (anticipated date is November 1).

**Recommendation:** Accept the findings and recommendations of the Parking Commission and establish new hourly parking rates for Roberts Commons and Mercantile Garage, as specified below.

**Roberts Commons**

217 Roberts Street North

**Monthly Rate:** \$106.00

**Daily Rate:**

\$1.50 / Hour

\$8.00 All-Day

Lost Ticket Fee: \$8.00

Free evenings 5 PM – 8 AM & Weekends

**Mercantile Garage**

410 5<sup>th</sup> Street North

**Monthly Rate:** \$106.00

**Daily Rate:**

\$1.50 / Hour

\$8.00 All-Day

Lost Ticket Fee: \$8.00

Free evenings 5 PM – 8 AM & Weekends

(21)

**MEMORANDUM**

**TO:** Fargo City Commission

**FROM:** Maggie Squyer, Assistant Planner *ms*

**DATE:** September 3, 2020

**SUBJECT:** Change in Citation and Collection Process

At the August 27, 2020 Parking Commission meeting, the Parking Commission voted to modify the existing system of citing and collecting fines for parking violations in the Downtown area as managed by Interstate Parking. Two changes were proposed:

1. Limit "Welcome" citations to one per vehicle

First-time violators receive a "Welcome" citation and their vehicle information is entered into the electronic citation system (Passport). If the individual receives no additional citations within six months, Interstate Parking deletes the driver's information from the system. Currently, several downtown residents and employees will receive a "Welcome" citation every six months and call Interstate Parking to confirm his or her record is "clean", taking advantage of the free warning. To mitigate this problem, the Parking Commission voted to eliminate the six-month grace period, limiting "Welcome" citations to one per vehicle.

2. Change citation verbiage to strengthen collection efforts

Each year, about 4,000 citations (around \$80,000) go uncollected. The citation management company (Passport) issues two letters for collection, but discontinued additional collection efforts three years ago when the cost for these additional efforts exceeded the return. At the request of Interstate Parking, the Parking Commission voted to approve a change in verbiage on each citation that allows for an additional \$50.00 service fee for unpaid citations, which would allow Interstate Parking to employ collection efforts from a third-party specialist.

**Recommendation:** Accept the findings and recommendations of the Parking Commission and limit "Welcome" citations to one per vehicle and change citation verbiage to strengthen collection efforts.

**TO: BOARD OF CITY COMMISSIONERS**

**FROM: NICOLE CRUTCHFIELD, PLANNING DIRECTOR**  
**JAN ELIASSEN, DIRECTOR OF HARM REDUCTION PROGRAMS**

**DATE: SEPTEMBER 2, 2020**

**RE: TEMPORARY USE OF FORMER DOWNTOWN POLICE BUILDING FOR  
COVID-19 QUARANTINE - ISOLATION SUPPORT AND ENGAGEMENT  
CENTER**

As a response to COVID-19 this fall and winter, staff estimates an increased need for quarantine and isolation for people who may temporarily not have housing. In order to provide a coordinated response for our community shelters, we are seeking the ability to set up a quarantine and isolation space at the former police department building. This activity will replace the previous state run shelter that Fargo Cass Public Health helped coordinate and staff.

Funding to support this activity is allocated from Red River COVID-19 Task Force, State of North Dakota grant. The City Planning Department administers this portion of the funds, but Fargo Cass Public Health staff will coordinate staffing and operation efforts.

Based on the resources needed to support this activity, we estimate that the Harms Reduction Department will coordinate amongst SE Human Services, Cass County Social Services, and other partners to support a daytime drop in-center. This activity will serve as an engagement center to allow for service providers and community partners to support people who may not have housing or need additional assistance, especially this winter or during the outbreak of the pandemic. This activity is estimated to be temporary at this location and provides an opportunity to try new coordination with relatively low investment and risk. This activity is supported as an initiative defined in the Downtown In-Focus plan based on stakeholder and community input in 2018 and 2019. However due to the pandemic the gaps that were identified in this plan have come to a heightened priority as evidenced on the testimony provided two weeks ago at the August 24<sup>th</sup> City Commission meeting.

More details about budget and resource needs will be further defined once staff and community partners have an ability to further understand space and service needs. At this point in time, it is estimated an allocation of \$200,000 is needed to begin operations to include staffing and minor improvements in the building.

**Recommendation:**

Approve Fargo Cass Public Health and Harms Reduction Program to implement quarantine and isolation support of individuals in response to COVID-19, to include an engagement center to coordinate services.



## FARGO POLICE DEPARTMENT

105 25th Street North, Fargo, North Dakota 58102

(23)

August 31, 2020

Board of City Commissioners  
City Hall  
Fargo, ND 58102

RE: Acceptance of North Dakota Department of Transportation Grant Funding for Seat-Belt, Impaired Driving, Distracted Driving Enforcement and Education Activities and Under-aged Drinking Enforcement (CFDA #20.616 and 20.600).

Dear Commissioners:

The North Dakota Department of Transportation is again offering to provide Fargo Police Department with grant funding for the purpose of conducting seatbelt, impaired driving, distracted driving, and under-aged drinking enforcement and education activities. The funding made available through the National Highway Traffic Safety Administration (NHTSA) is intended to reimburse the police department for overtime expenses associated with having officers work extra hours towards conducting the enforcement and education activities.

The DOT is making a total of \$73,000 in grant money available to the Police Department, \$22,000 of which is intended for impaired driving enforcement and \$7,000 of which is intended for impaired driving media campaigns. Of the remaining grant funding, \$14,000 is to be used for seatbelt enforcement, \$10,000 for underage drinking enforcement, \$10,000 for speed enforcement, and \$10,000 for distracted driving enforcement. There is no requirement for the City of Fargo to match any of the grant funding provided.

**Recommended Motion:**

*Sign the North Dakota Department of Transportation Traffic Safety Contract, accept the grant funding in the amount of \$63,000 and adjust Police Department's budget line items as follows:*

- *Occupant Protection: Account # 101-5045-411-11-01 – PD11 in the amount of \$14,000*
- *Underage Drinking Account # 101-5045-411-11-01 – PD12 in the amount of \$10,000*
- *Impaired Driving Account # 101-5045-411-11-01 – PD31 in the amount of \$22,000*
- *DUI Media Campaign Account # 101-5045-411-34-20 – PD31 in the amount of \$7,000*
- *Distracted Driving Account # 101-5045-411-11-01 – PD37 in the amount of \$10,000*
- *Speed Enforcement Account# 101-5045-411-11-01 – PD36 in the amount of \$10,000*

Please contact me if you have any questions regarding the grant funding or the police department's budget adjustment request.

Sincerely,

Ross Renner  
Interim Chief of Police

Cc: Kent Costin, Finance Director

ADMINISTRATION  
Phone: 701-241-1427  
Fax: 701-297-7789

INVESTIGATIONS  
Phone: 701-241-1405  
Fax 701-241-1407

RECORDS  
Phone: 701-241-1420  
Fax: 701-241-8272

NON EMERGENCY  
Phone: 701-235-4493

September 2, 2020

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

**RE: Resolution Designating Official Snow Emergency Routes**

Commissioners:

As part of Article 8-17 of the city municipal code, the City's Official Snow Emergency Routes must be designated by resolution of the City Commission.

In preparation for the 2020/2021 winter, Public Works staff has reviewed and updated the enclosed Official Snow Emergency Route Map to account for areas of growth within the city.

At this time, we are asking the Commission to approve the enclosed resolution designating the Official Snow Emergency Routes.

**RECOMMENDED MOTION:** I/we hereby move to approve the attached resolution designating the Official Snow Emergency Routes.

Respectfully submitted,

Ben Dow  
Fargo Public Works  
Director of Operations

Commissioner \_\_\_\_\_ moved for the adoption of the following:

**RESOLUTION**

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

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

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

WHEREAS, Article 3(G) of the Home Rule Charter of the City of Fargo, North Dakota grants the City of Fargo power to provide for the adoption, amendment, and repeal of ordinances and resolutions, and regulations to carry out its governmental and proprietary powers and to provide for public health, safety, morals, and welfare, and penalties for a violation thereof; and

WHEREAS, the Board of City Commissioners, Fargo, North Dakota, pursuant to authority granted to it under Home Rule, has adopted and approved an ordinance to establish such rules and regulations as are necessary to establish snow emergency routes in the City of Fargo; and

WHEREAS, Section 8-1711 of the Fargo Municipal Code provides that the snow emergency routes shall be established by resolution of the Board of City Commissioners.

NOW, THEREFORE, BE IT RESOLVED, By the Board of City Commissioners of the City of Fargo, North Dakota:

Snow emergency routes in the City of Fargo are established as shown  
on the Official Snow Emergency Route Map (Revised August 2020)  
attached hereto and incorporated herein.

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 \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_. The following were absent and not voting: \_\_\_\_\_, and the following voted against the same: \_\_\_\_\_, whereupon the resolution was declared duly passed and adopted.

C E R T I F I C A T E

I, Steven Sprague, the duly appointed, qualified, and acting City Auditor of the City of Fargo, North Dakota,

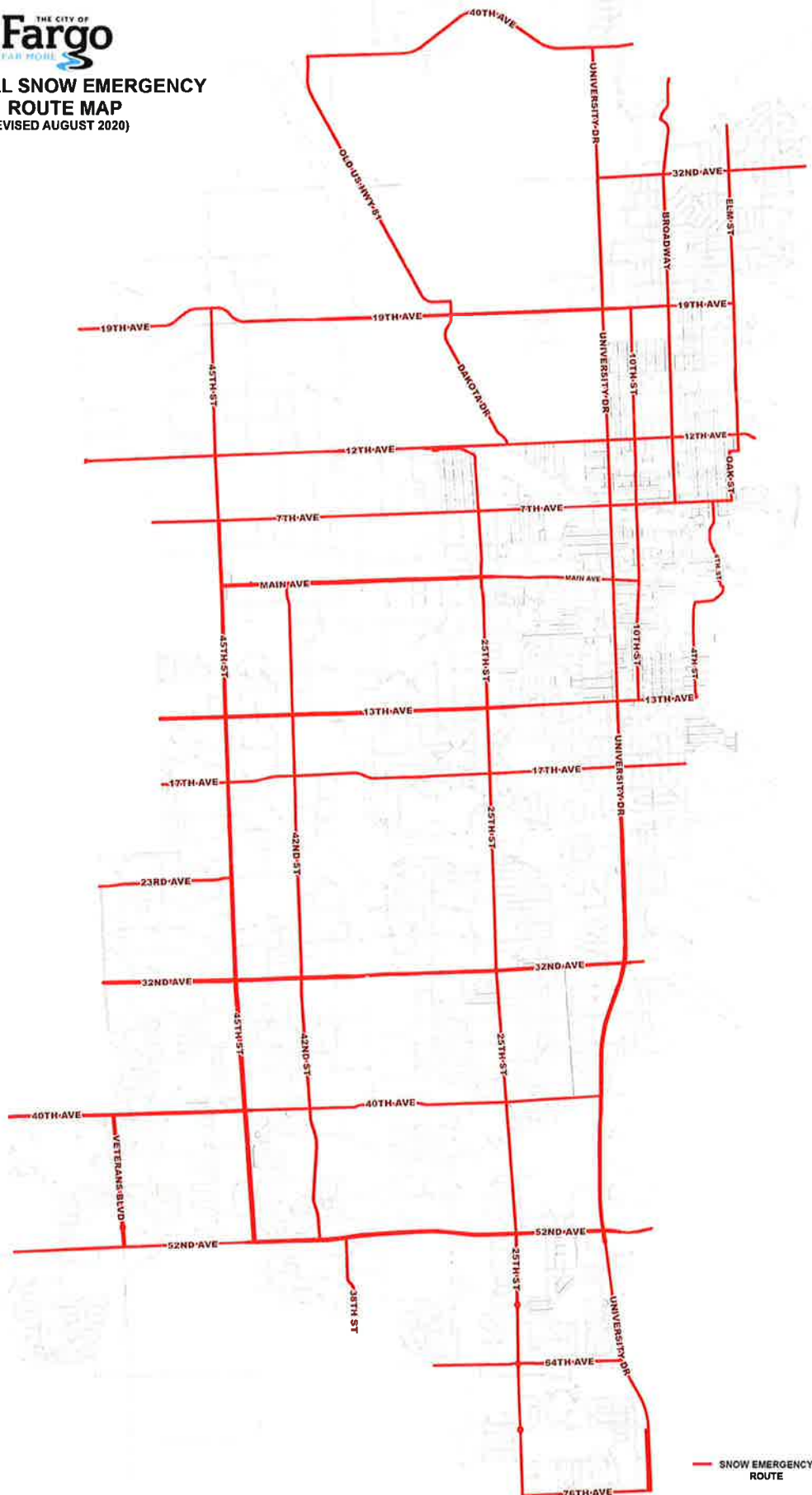
DO HEREBY CERTIFY:

That the foregoing is a full, true, and correct copy of the original Resolution and the whole thereof, including the Official Snow Emergency Route Map, which Resolution was duly adopted by the Board of City Commissioners of the City of Fargo, North Dakota, at the meeting of the Board held \_\_\_\_\_, 2020; and

That such Resolution and Official Snow Emergency Route are now a part of the permanent records of the City of Fargo, as filed in the office of the City Auditor.

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

THE CITY OF  
**Fargo**  
N.D.  
**OFFICIAL SNOW EMERGENCY  
ROUTE MAP**  
(REVISED AUGUST 2020)





## Division of Solid Waste

2301 8<sup>th</sup> Avenue North  
 Fargo, North Dakota 58102  
 Phone: 701-241-1449  
 Fax: 701-241-8109

25

September 2, 2020

Honorable Board of City Commissioners  
 City of Fargo  
 Fargo, North Dakota 58102

RE: Project SW20-01

Dear Commissioners:

Bids were opened at 11:45 AM, on Wednesday, September 2, 2020, for the Landfill Scales and Maintenance Facility Project SW20-01. Separate bids were requested for each contractor's prime (Civil, General, Mechanical, and Electrical Construction). Please note the attached bid tabulation sheet which details the Civil Construction bids, the other three primes were submitted as a lump sum. Bid totals for each prime are as follow:

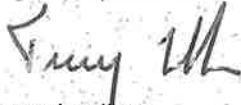
CIVIL CONSTRUCTION	BID AMOUNT			
Excavating, Inc. – Fargo	\$1,667,745.40		TF Powers Construction	\$2,058,100.00
Northern Improvement Co.	\$1,959,204.00			
GENERAL CONSTRUCTION	BID AMOUNT			
Roers' Construction	\$810,000.00		Meinecke-Johnson Company	\$907,000.00
TF Powers Construction	\$818,000.00		Diversified Contractors, Inc.	\$918,000.00
Gast Construction Co., Inc.	\$876,500.00		Meridian Commercial Construction	\$961,717.00
MECHANICAL CONSTRUCTION	BID AMOUNT			
Dakota Plains Mechanical	\$160,900.00		Air Mechanical, Inc.	\$209,500.00
Manning Mechanical, Inc.	\$198,000.00		Peterson Mechanical, Inc.	\$216,800.00
All American Plumbing & Heating	\$203,497.00		Mission Mechanical, Inc.	\$229,428.00
Sheyenne Mechanical	\$206,000.00			
ELECTRICAL CONSTRUCTION	BID AMOUNT			
Superior Electric	\$224,059.00		Rieger, Borgen, Benson Electric	\$267,000.00
JDP Electric, Inc.	\$250,300.00		Sun Electric, Inc.	\$279,000.00
Rickard Electric, Inc.	\$262,000.00		Dakota Electric Const. Co. Inc.	\$307,000.00

This office recommends award of the following as the lowest and best bid: Civil Construction contract to Excavating Inc. for \$1,667,745.00; General Construction contract to Roers' Construction for \$810,000.00; Mechanical Construction contract to Dakota Plains Mechanical for \$160,900; and Electrical Construction contract to Superior Electric for \$224,059.00. Total project cost would be \$2,860,000, please note that the *Engineer's Estimate* (based on similar recent projects) for this project was \$2,500,000.00. Funding for construction of Project SW20-01 has been provided for in the 2020 Solid Waste Division budget.

**SUGGESTED MOTION:**

Accept the bids from Excavating Inc., Roers' Construction, Dakota Plains Mechanical, and Superior Electric, in the amounts as shown for the Landfill Scales and Maintenance Facility Project SW20-01, and to authorize Solid Waste staff to move forward with the development of formal contracts with each prime contractor.

Respectfully Submitted,



Terry Ludlum  
Solid Waste Utility Director

Attachment

cc: Bruce Grubb, City Administrator  
Jill Pagel, Auditors Office  
Paul Hanson, Landfill Supervisor  
Randy Hanson, Wenck Associates  
Richard Moorhead, Stone Group Architects

Project Name		City of Fargo Landfill Scalehouse and Maintenance Facility							
Type		Civil Site Construction							
Description		Bid Tabulation 9/02/2020							
Line	Description	Quantity	Unit	Excavating Inc.		Northern Improvement		TF Powers	
				Unit Price	Total	Unit Price	Total	Unit Price	Total
MISCELLANEOUS									
1	Field Engineering	1.00	LS	\$26,300.00	\$26,300.00	\$30,000.00	\$30,000.00	\$102,766.00	\$102,766.00
2	Topsoil - Strip	1.00	LS	\$5,600.00	\$5,600.00	\$110,000.00	\$110,000.00	\$71,400.00	\$71,400.00
3	Common Excavation	3560.00	CY	\$4.95	\$17,622.00	\$13.00	\$46,280.00	\$18.00	\$64,080.00
4	Embankment	850.00	CY	\$6.85	\$5,822.50	\$7.25	\$6,162.50	\$19.00	\$16,150.00
5	Inlet Protection - Existing Inlet	6.00	EA	\$181.50	\$1,089.00	\$181.50	\$1,089.00	\$174.00	\$1,044.00
6	Inlet Protection - New Inlet	4.00	EA	\$220.00	\$880.00	\$220.00	\$880.00	\$210.00	\$840.00
7	Silt Fence	975.00	LF	\$2.50	\$2,437.50	\$2.48	\$2,418.00	\$3.00	\$2,925.00
8	Sediment Control Log 6" to 8" Dia	350.00	LF	\$2.20	\$770.00	\$2.20	\$770.00	\$3.00	\$1,050.00
9	Temp Construction Entrance	2.00	EA	\$2,500.00	\$5,000.00	\$1,725.00	\$3,450.00	\$5,250.00	\$10,500.00
10	Stormwater Management	1.00	LS	\$3,000.00	\$3,000.00	\$11,300.00	\$11,300.00	\$5,000.00	\$5,000.00
11	Waste Excavation (replaced with onsite fill)	1300.00	CY	\$9.15	\$11,895.00	\$26.20	\$34,060.00	\$34.00	\$44,200.00
12	Traffic Control - Minor	1.00	LS	\$1,485.00	\$1,485.00	\$2,685.00	\$2,685.00	\$5,000.00	\$5,000.00
13	Scales and Scale Pit	3.00	LS	\$194,725.00	\$584,175.00	\$190,000.00	\$570,000.00	\$185,600.00	\$556,800.00
MISCELLANEOUS SUB TOTAL				\$666,076.00		\$819,084.50		\$674,635.00	
SANITARY SEWER		Quantity	Unit	Unit Price	Total	Unit Price	Total	Unit Price	Total
14	Connect Pipe to Exist Pipe	2.00	EA	\$1756.15	\$3,512.30	\$522.50	\$1,045.00	\$500.00	\$1,000.00
15	F&I Pipe SCH 40 - 6" Dia PVC	575.00	LF	\$35.20	\$20,240.00	\$35.20	\$20,240.00	\$34.00	\$19,550.00
16	F&I Sewer Cleanout	4.00	EA	\$808.50	\$3,234.00	\$808.50	\$3,234.00	\$772.00	\$3,088.00
17	Connect Sewer Service to Building Service	2.00	EA	\$605.00	\$1,210.00	\$605.00	\$1,210.00	\$580.00	\$1,160.00
SANITARY SEWER SUB TOTAL				\$26,196.30		\$25,728.00		\$24,798.00	
WATER MAIN		Quantity	Unit	Unit Price	Total	Unit Price	Total	Unit Price	Total
18	Connect Pipe to Exist Pipe	3.00	EA	\$5,720.00	\$17,160.00	\$5,720.00	\$17,160.00	\$5,480.00	\$16,380.00
19	Bore 2" Dia. Water Service	270.00	LF	\$61.00	\$16,470.00	\$60.50	\$16,335.00	\$58.00	\$15,660.00
20	F&I Pipe 2" Dia Water Service	1,095.00	LF	\$24.20	\$26,499.00	\$24.20	\$26,499.00	\$24.00	\$26,280.00
21	F&I CS & Box 2" Dia	3.00	EA	\$1012.00	\$3,036.00	\$1,012.00	\$3,036.00	\$866.00	\$2,898.00
WATER MAIN SUB TOTAL				\$63,165.00		\$63,030.00		\$61,218.00	
STORM SEWER		Quantity	Unit	Unit Price	Total	Unit Price	Total	Unit Price	Total
22	Temp Pumping	1.00	LS	\$20,000.00	\$20,000.00	\$5,500.00	\$5,500.00	\$5,250.00	\$5,250.00
23	Connect Pipe to Existing Structure	2.00	EA	\$1,045.00	\$2,090.00	\$1,045.00	\$2,090.00	\$998.00	\$1,996.00
24	F&I Manhole 4' Dia Reinf Conc	3.00	EA	\$4,840.00	\$14,520.00	\$4,840.00	\$14,520.00	\$4,620.00	\$13,860.00
25	F&I Outlet Control Structure	2.00	EA	\$13,200.00	\$26,400.00	\$13,200.00	\$26,400.00	\$12,600.00	\$25,200.00
26	Sediment Collection System	1.00	LS	\$23,320.00	\$23,320.00	\$5,500.00	\$5,500.00	\$5,250.00	\$5,250.00
27	F&I Inlet - Round (RDI) Reinf Conc	3.00	EA	\$2,420.00	\$7,260.00	\$2,420.00	\$7,260.00	\$2,310.00	\$6,930.00
28	F&I Pipe 12" Dia, Reinf Conc	84.00	LF	\$46.20	\$3,880.80	\$46.20	\$3,880.80	\$45.00	\$3,780.00
29	F&I Pipe 15" Dia Reinf Conc	214.00	LF	\$55.00	\$11,770.00	\$55.00	\$11,770.00	\$53.00	\$11,342.00
30	F&I Pipe 18" Dia Reinf Conc	87.00	LF	\$68.20	\$5,933.40	\$68.20	\$5,933.40	\$66.00	\$5,742.00
31	F&I Pipe 30" Dia Reinf Conc	139.00	LF	\$106.70	\$14,831.30	\$106.70	\$14,831.30	\$102.00	\$14,178.00
32	F&I Flared End Section 12" Dia Reinf Conc	2.00	EA	\$1,870.00	\$3,740.00	\$1,870.00	\$3,740.00	\$1,785.00	\$3,570.00
33	F&I Flared End Section 15" Dia Reinf Conc	1.00	EA	\$2,150.50	\$2,150.50	\$2,150.50	\$2,150.50	\$2,053.00	\$2,053.00
34	F&I Rip Rap Rock	12.00	CY	\$165.00	\$1,980.00	\$181.50	\$2,178.00	\$174.00	\$2,088.00
35	F&I 6 " PVC Drainline with Cleanout	620.00	LF	\$61.60	\$38,192.00	\$61.60	\$38,192.00	\$59.00	\$36,580.00
STORM SEWER SUB TOTAL				\$178,068.00		\$143,946.00		\$137,819.00	
PAVING		Quantity	Unit	Unit Price	Total	Unit Price	Total	Unit Price	Total
36	Excavation	600.00	CY	\$5.15	\$3,090.00	\$13.00	\$7,800.00	\$18.00	\$10,800.00
37	Pavement Removal	115.00	SY	\$21.25	\$2,443.75	\$25.00	\$2,875.00	\$13.00	\$1,495.00
38	Controlled Fill	5,960.00	CY	\$4.45	\$26,522.00	\$7.25	\$43,210.00	\$17.00	\$101,320.00
39	Subcut	900.00	CY	\$5.95	\$5,355.00	\$8.50	\$7,650.00	\$16.00	\$14,400.00
40	Subgrade Preparation	9,751.00	SY	\$2.50	\$24,377.50	\$1.60	\$15,601.60	\$3.00	\$29,253.00
41	F&I Woven Geotextile	9,751.00	SY	\$2.15	\$20,964.65	\$1.90	\$18,526.90	\$12.00	\$117,012.00
42	F&I Class 5 Agg - 8" Thick	9,420.00	SY	\$8.75	\$82,425.00	\$10.60	\$99,852.00	\$14.25	\$134,235.00
43	Remove Curb & Gutter	40.00	LF	\$24.00	\$960.00	\$15.40	\$616.00	\$20.00	\$800.00
44	F&I Curb & Gutter Standard (Type II)	40.00	LF	\$33.00	\$1,320.00	\$70.00	\$2,800.00	\$32.00	\$1,280.00
45	F&I Sidewalk 4" Thick Reinf Conc	65.00	SY	\$68.30	\$4,439.50	\$65.00	\$4,225.00	\$66.00	\$4,290.00
46	PCC Pavement (8 inch)	5,902.00	SY	\$62.65	\$369,780.30	\$63.50	\$492,817.00	\$61.50	\$362,973.00
47	F&I Aggregate for Asph Pavement FAA 43	1,512.00	TON	\$54.95	\$83,084.40	\$75.50	\$114,156.00	\$53.00	\$80,136.00
48	F&I Asphalt Cement PG 58H-34	88.00	TON	\$671.00	\$59,048.00	\$540.00	\$47,520.00	\$641.00	\$56,408.00
49	Grading to Grade	2.00	EA	\$350.00	\$700.00	\$1,500.00	\$3,000.00	\$300.00	\$600.00
PAVING SUB TOTAL				\$684,480.10		\$660,649.50		\$615,002.00	
Landscaping		Quantity	Unit	Unit Price	Total	Unit Price	Total	Unit Price	Total
50	Project Landscaping	1.00	LS	\$49,750.00	\$49,750.00	\$46,755.00	\$46,755.00	\$44,628.00	\$44,628.00
LANDSCAPING SUB TOTAL				\$49,750.00		\$46,755.00		\$44,628.00	
BID TOTAL				\$1,667,745.40		\$1,659,204.00		\$2,058,100.00	



FORMALLY DBA  
**IMAGE**  
 group  
 ARCHITECTURE & INTERIORS

September 2, 2020

City of Fargo  
 Landfill Scale and Maintenance Facility  
 Fargo, North Dakota SGA 201004/Solid Waste Project SW20-01

**Bid Tab – Civil Construction (Estimate - \$1,394,119)**

<u>Contractor</u>	<u>Addenda</u>	<u>Bid Bond</u>	<u>Bid Amount</u>
Excavating, Inc.	X	X	\$1,667,745.40
Northern Improvement Company	X	X	\$1,959,204.00
TF Powers Construction Co.	X	X	\$2,058,100.00



FORMALLY DBA

**IMAGE**  
 group  
 ARCHITECTURE & INTERIORS

September 2, 2020

City of Fargo  
 Landfill Scale and Maintenance Facility  
 Fargo, North Dakota SGA 201004/Solid Waste Project SW20-01

**Bid Tab – General Construction (Estimate - \$702,500)**

<u>Contractor</u>	<u>Addenda</u>	<u>Bid Bond</u>	<u>Bid Amount</u>
Diversified Contractors, Inc.	X	X	\$918,800
Gast Construction Co., Inc.	X	X	\$876,500
Meinecke-Johnson Company	X	X	\$907,000
Meridian Commercial Construction, LLC	X	X	\$961,717
TF Powers Construction Co.	X	X	\$818,000
Roers' Construction Inc.	X	X	\$810,000





FORMALLY DBA  
**IMAGE**  
 group  
 ARCHITECTURE & INTERIORS

September 2, 2020

City of Fargo  
 Landfill Scale and Maintenance Facility  
 Fargo, North Dakota SGA 201004/Solid Waste Project SW20-01

**Bid Tab – Mechanical Construction (Estimate - \$171,300)**

<u>Contractor</u>	<u>Addenda</u>	<u>Bid Bond</u>	<u>Bid Amount</u>
Air Mechanical, Inc.	X	X	\$209,500
American Plumbing & Heating	X	X	\$203,497
Dakota Plains Mechanical	X	X	\$160,900
Manning Mechanical	X	X	\$198,000
Mission Mechanical	X	X	\$229,428
Peterson Mechanical, Inc.	X	X	\$216,800
Sheyenne Mechanical	X	X	\$206,000





FORMALLY DBA  
**IMAGE**  
group  
ARCHITECTURE & INTERIORS

September 2, 2020

City of Fargo  
Landfill Scale and Maintenance Facility  
Fargo, North Dakota SGA 201004/Solid Waste Project SW20-01

**Bid Tab -- Electrical Construction (Estimate - \$227,200)**

Contractor	Addenda	Bid Bond	Bid Amount
Dakota Electric Construction Co., Inc.	X	X	\$307,000
JDP Electric, Inc.	X	X	\$250,300
Rickard Electric, Inc.	X	X	\$262,000
Rieger Borgen Benson Electric	X	X	\$267,000
Sun Electric, Inc.	X	X	\$279,000
Superior Electric	X	X	\$224,059

403 Center Avenue Suite 300  
Moorhead, MN 56560

office 218.233.2062

stonegrouparchitects.com



**STONE GROUP**  
ARCHITECTS

September 8, 2020

(26)

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

Dear Commissioners:

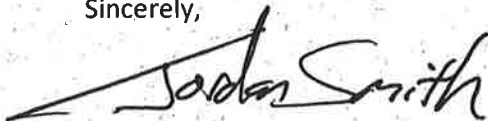
The City of Fargo Transit Department is requesting bids for the replacement and upgrade of lighting fixtures at the Metro Transit Garage. NDDOT awarded \$67,000 in capital grant funds to replace current light fixtures with more efficient LED lighting fixtures. This project will be cost shared with the City of Moorhead. City of Moorhead has a budget of \$33,000 for a total project budget of \$100,000.

The project is funded by NDDOT grant contract number 38190961 which was presented to and approved by the City of Fargo Commission on May 22<sup>nd</sup>, 2019.

Local share for this project was included in Transit's 2020 budget.

The requested motion is to authorize the Invitation for Bids to upgrade the lighting fixtures at the Metro Transit Garage.

Sincerely,



Jordan Smith  
Transit Fleet and Facilities Manager

27

September 9, 2020

Board of City Commissioners  
City Hall - 225 4<sup>th</sup> St N  
Fargo, ND 58102

Dear Commissioners:

On May 3, 2020 the Fargo City Commission authorized the approval of grant applications, local share and grant execution to the State of North Dakota (see attached).

The resulting contracts received from the North Dakota Department of Transportation (NDDOT) Transit Division are attached. The local match has been included in Transit's budget.

The grants include capital discretionary (1) \$694,160 in 5339 CDFA No. 20.526 for miscellaneous equipment and repair of portions of the facility; (2) \$82,912 for the Mobility Manager in 5310 CFDA No. 20.513 funds; and (3) \$386,865 for State Aid. The Transit Department will utilize our State Aid for funding a local share of \$194,268 for grants (1) and (2), the remaining State Aid of \$192,597 can be used for other additional Transit related expenses.

The contract awards will have a profound impact on our community's transit system and the transportation options we offer our residents and visitors. These awards will fund the Mobility Management position and vastly improve our ability to address the critical need to get equipment purchases/repairs on a regular schedule.

***The requested motion is to approve the attached contracts with NDDOT.***

Thank you.



Julie Bommelman  
Transit Director  
City of Fargo  
701.476.6737

/enc



May 3, 2020

Board of City Commissioners  
City Hall - 225 4<sup>th</sup> St N  
Fargo, ND 58102

Dear Commissioners:

The State of North Dakota has made \$10.5M available in grant funding for public transportation (transit). The grant opportunity is for capital discretionary 5339 CDFA No. 20.526 and 5310 CFDA No. 20.513 funds (for bus and bus facilities by the Federal Transit Administration (FTA) and administered by the NDDOT). The Transit Department will utilize our State Aid for funding a local share of \$500,000 (the federal share of the project is \$2,000,000), therefore there is no request for local share.

These grants would have a profound impact on our community's transit system and the transportation options we offer our residents. There is a critical need for support equipment and replacement of overhead door detection system as well as capital repairs. In addition, we included a request for an upgrade to our internal communications/file share software and the Mobility Manager position.

The Transit Development Plan identified the need to upgrade and rehab equipment, and the Federal Transit Administration has implemented a requirement to have and follow a Transit Asset Management Plan which outlines equipment maintenance and lifecycle requirements.

The requested motion is to approve the grant applications, and, upon successful receipt of funds, approve the grant execution. Thank you.

Sincerely,



Julie Bommelman

City of Fargo Transit Director  
701-476-6737

[jbommelman@cityoffargo.com](mailto:jbommelman@cityoffargo.com)

**North Dakota Department of Transportation  
STATE AID FOR PUBLIC TRANSIT AGREEMENT**

This agreement is between the state of North Dakota, acting by and through its Director of Transportation, hereinafter referred to as NDDOT, whose address is 608 East Boulevard Avenue, Bismarck, North Dakota 58505-0700, and City of Fargo, a Political Subdivision, hereinafter referred to as the Contractor, whose address is 650 23<sup>rd</sup> Street North, Fargo, ND 58102.

WHEREAS, House Bill 1337 (NDCC 39-04.2) of the 1989 State Legislature established a Public Transportation Fund to provide state aid funds to political subdivisions and nonprofit corporations for the purpose of assisting in establishing and operating public transit systems and service in the state; and

WHEREAS, the Director of NDDOT has the responsibility of developing the transit program guidelines and administering the Public Transportation Fund; and

WHEREAS, the Contractor desires to receive the available state aid funds to assist in providing needed public transit services in the service area;

NOW, THEREFORE, IT IS AGREED:

**I.**

For the period of July 1, 2020, through June 30, 2021, the Contractor shall undertake and provide the transit services as described in the Contractor's application for state aid transit funds, which is on file with the NDDOT.

**II.**

**Costs.** NDDOT shall reimburse the Contractor for providing the transportation services, not to exceed \$386,865, provided costs are incurred in accordance with NDDOT program guidelines. (Copy of which will be provided upon request.) Requests for reimbursements will be allowed to be submitted to NDDOT quarterly. The final request for reimbursement must be submitted by close of business on the fifth (5<sup>th</sup>) business day following the termination date of this agreement.

**III.**

**Purchase and Disposal of Project Equipment.** The purchase and disposition of all project vehicles or equipment financed in whole or in part with state aid transit funds shall be undertaken by the Contractor in accordance with the state Office of Management and Budget regulations and NDDOT purchasing manual, copies of which will be provided upon request.

**IV.**

**Assignments.** The Contractor shall not assign nor transfer the Contractor's interests or duties under this agreement without the express written consent of the state.

**V.**

**Subcontracting.** The Contractor shall not assign any portion of the work under this agreement, execute any contract, or obligate itself in any manner with a third party with respect to its rights and responsibilities to this



agreement without written consent of NDDOT. Any agreement with a subcontractor does not create a contractual relationship between the NDDOT and the subcontractor.

## VI.

**Merger and Waiver.** This agreement constitutes the entire agreement between the parties. No waiver consent, modification or change of terms of this agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification, or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this agreement. The Contractor, by the signature below of its authorized representative, hereby acknowledges that the Contractor has read this agreement, understands it, and agrees to be bound by its terms and conditions.

## VII.

**Records and Reports.** The Contractor shall complete and submit all forms and reports as required by NDDOT. The Contractor shall also maintain supporting documentation for all costs charged to the project. All accounting documents shall be clearly identified, readily accessible, and where possible, kept separate and apart from all other such documents. All project records and documents shall be kept by the Contractor for three years after the termination date of this agreement.

## VIII.

**Audit.** Entities that receive federal funds through NDDOT may be required to obtain an audit in accordance with 2 C.F.R. Part 200, Subpart F. A copy of such audit shall be submitted to NDDOT. Entities that spend less than \$750,000 of federal funds from all sources may be subject to reviews by NDDOT at its discretion. Additionally, all entities receiving federal funds through NDDOT shall certify whether a Single Audit has been completed as part of the annual Federal award process. These requirements are applicable to counties, cities, state agencies, Indian tribes, colleges, hospitals, and non-profit businesses.

## IX.

**Amendments.** The terms of this agreement shall not be waived, altered, modified, supplemented, or amended in any manner whatsoever, except by written instrument signed by both parties.

## X.

**Equipment Use.** The Contractor agrees that the project vehicles or equipment funded with state aid transit funds shall be used solely for providing public transit services in accordance with NDDOT program guidelines. Such vehicles or equipment shall be used for the duration of useful life. If any project vehicles or equipment are not used in this manner or are withdrawn from service before the end of useful life, the Contractor shall immediately notify NDDOT. The Contractor agrees that the vehicles or equipment shall not be used for charter service or exclusively for school busing.

## XI.

**Insurance.** The Contractor shall maintain insurance coverage on the project vehicle(s) in an amount adequate to protect the fair market value of the vehicles throughout the duration of this agreement.

## XII.



**Termination.** The contract may be terminated by mutual consent of both parties, or by either party upon 30 days notice, in writing and delivered by certified mail or in person.

**XIII.**

**Nondiscrimination – Compliance with Laws.** The Contractor agrees to comply with all applicable laws and rules, including, but not limited to, those relating to nondiscrimination, accessibility, and civil rights.

**XIV.**

**Risk Management.** The Risk Management Appendix, attached, is hereby incorporated into and made a part of this agreement.

EXECUTED the date last below signed.

WITNESS:

Steve Sprague, City Auditor  
NAME (TYPE OR PRINT)

SIGNATURE

CONTRACTOR:

Dr. Timothy J Mahoney  
NAME (TYPE OR PRINT)

SIGNATURE

MAYOR  
TITLE

DATE

APPROVED as to substance by:

LOCAL GOVERNMENT ENGINEER (TYPE OR PRINT)

SIGNATURE

DATE

NORTH DAKOTA  
DEPARTMENT OF TRANSPORTATION

DIRECTOR (TYPE OR PRINT)

SIGNATURE

DATE

CLA 3338 (Div. 38)  
L.D. Approved 5-3-90; 8-15



NORTH  
**Dakota** | Transportation  
Be Legendary.™

August 10, 2020

Julie Bommelman  
 Fargo Metro Area Transit  
 650 23<sup>rd</sup> St N  
 Fargo, ND 58102

Congratulations. Fargo Metro Area Transit will be receiving State Aid funding to provide transit services. Enclosed is the Contract Agreement and funding breakdown per county for your agency.

Cass County	\$386,865
-------------	-----------

In order to begin the funding process, please:

1. Complete the contractor and witness information in DocuSign.
2. Have your organization's president or chairman digitally sign and date the agreement (under Contractor)—this signature **must be an authorized signatory** for your project. Please also submit a proof of authorization to sign if it is not the president or chairperson of your agency.
3. Finish the DocuSign process to send to the witness for signature.
4. Have a witness sign and date the agreement (under Witness) and upload proof of insurance in the form of **Confirmation of Coverage OR Certificate of Insurance for automobiles and premises/commercial**, if it is required. This is required for all Non-Profit and For-Profit agencies.
5. Upon completion of executing all documents, finish the DocuSign process and the contract documents will return to NDDOT for processing.

If you have any questions or need assistance, please contact Connie Nelson at (701) 328-3720 or [conelson@nd.gov](mailto:conelson@nd.gov).

Sincerely,



Becky Hanson  
Transit Program Manager

Cc: Dan Farnsworth, Transportation Planner  
Kevin Hanson, Chairman, Metro Area Transit Board

## Certification for Contracts, Grants, Loans, and Cooperative Agreements

(To be submitted with each bid or offer exceeding \$100,000)

The undersigned [Contractor] certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, et seq.)]

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The Contractor, City of Fargo, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, et seq., apply to this certification and disclosure, if any.

DR. Timothy J Mahoney Signature of Contractor's Authorized Official

MAYOR, City of FARGO Name and Title of Contractor's Authorized Official

\_\_\_\_ Date

## Risk Management Appendix

**Routine\* Transit Agreements With Sovereign Entities and Political Subdivisions of the State of North Dakota:****Parties:** **State** – State of North Dakota, its agencies, officers and employees**Governmental Entity** – The Governmental Entity executing the attached document, its agencies, officers and employees**Governments** – State and Government Entity, as defined above

Each party agrees to assume its own liability for any and all claims of any nature including all costs, expenses and attorney's fees which may in any manner result from or arise out of this agreement.

Each party shall secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds, authorized to do business in North Dakota, the following insurance coverages:

- 1) **Commercial general liability and automobile liability** insurance – minimum limits of liability required of the Governmental Entity are **\$250,000 per person and \$500,000 per occurrence**. The minimum limits of liability required of the State are **\$250,000 per person and \$1,000,000 per occurrence**.
- 2) **Workers compensation** insurance meeting all statutory limits.
- 3) The policies and endorsements may not be canceled or modified without **thirty (30) days prior written notice** to the undersigned State representative.

**The State reserves the right to obtain complete, certified copies of all required insurance documents, policies, or endorsements at any time.**

Each party that hires subcontractors shall require any non-public subcontractors, prior to commencement of work set out under an agreement between that party and the non-public subcontractor, to:

Defend, indemnify, and hold harmless the Governments, their agencies, officers and employees, from and against claims based on the vicarious liability of the Governments or its agents, but not against claims based on the Government's contributory negligence, comparative and/or contributory negligence or fault, sole negligence, or intentional misconduct. The legal defense provided by the Subcontractor to the Governments under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for the Governments is necessary. Subcontractor also agrees to defend, indemnify, and hold the Governments harmless for all costs, expenses and attorneys' fees incurred if the Governments prevail in an action against the Subcontractor in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this agreement.

Subcontractor shall secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds authorized to do business in North Dakota: 1) commercial general liability; 2) automobile liability; and 3) workers compensation insurance all covering the Subcontractor for any and all claims of any nature which may in any manner arise out of or result from this agreement. The minimum limits of liability required are \$250,000 per person and \$1,000,000 per occurrence for commercial general liability and automobile liability coverages, and statutory limits for workers compensation. The Governments shall be endorsed on the commercial general liability policy and automobile liability policy as additional insureds. The Governments shall have all the benefits, rights and coverages of an additional insured under these policies that shall not be limited to the minimum limits of insurance required by this agreement or by the contractual indemnity obligations of the Contractor. Said endorsement shall contain a "Waiver of Subrogation" waiving any right of recovery the insurance company may have against the Governments as well as provisions that the policy and/or endorsement may not be canceled or modified without thirty (30) days prior written notice to the undersigned representatives of the Governments, and that any attorney who represents the State under this policy must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under N.D.C.C. Section 54-12-08. Subcontractor's insurance coverage shall be primary (i.e., pay first) as respects any insurance, self-insurance or self-retention maintained by the Governments. Any insurance, self-insurance or self-retention maintained by the Governments shall be excess of the Contractor's insurance and the Subcontractor's insurance and shall not contribute with them. The insolvency or bankruptcy of the insured Subcontractor shall not release the insurer from payment under the policy, even when such insolvency or bankruptcy prevents the insured Subcontractor from meeting the retention limit under the policy. Any deductible amount or other obligations under the Subcontractor's policy(ies) shall be the sole responsibility of the Subcontractor. This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and be placed with insurers rated "A-" or better by A.M. Best Company, Inc. The Governments will be indemnified, saved, and held harmless to the full extent of any coverage actually secured by the Subcontractor in excess of the minimum requirements set forth above. The Government Entity that hired the Subcontractor shall be held responsible for ensuring compliance with the above requirements by all Subcontractors. The Governments reserve the right to obtain complete, certified copies of all required insurance documents, policies, or endorsements at any time.

\*See *North Dakota Risk Management Manual*, section 5.1 for discussion of "unique" and "routine" agreements.

RM Consulted 2007  
Revised 11-19



**Certificate Of Completion**

Envelope Id: A4CACBEFAE564E37853930E6D0FDC151

Status: Sent

Subject: Contract #38201123: Please DocuSign: State Aid for Public Transit Agreement

Contract Number: 38201123

PCN:

Source Envelope:

Document Pages: 6

Signatures: 0

Certificate Pages: 3

Initials: 0

AutoNav: Enabled

EnvelopeId Stamping: Enabled

Time Zone: (UTC-06:00) Central Time (US &amp; Canada)

Envelope Originator:

Connie Nelson

608 E Boulevard Ave

Bismarck, ND 58505

conelson@nd.gov

IP Address: 165.234.252.245

**Record Tracking**

Status: Original

8/19/2020 2:24:56 PM

Security Appliance Status: Connected

Storage Appliance Status: Connected

Holder: Connie Nelson

conelson@nd.gov

Location: DocuSign

Pool: StateLocal

Pool: Carahsoft OBO North Dakota Department of Transportation CLOUD

Location: DocuSign

**Signer Events****Signature****Timestamp**Security Level: Email, Account Authentication  
(None)**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSignSecurity Level: Email, Account Authentication  
(None)**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Paul Benning

pbenning@nd.gov

Security Level: Email, Account Authentication  
(None)**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Steve Salwei

ssalwei@nd.gov

Security Level: Email, Account Authentication  
(None)**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Shannon Sauer

ssauer@nd.gov

Security Level: Email, Account Authentication  
(None)**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Clint Morgentstern

cdmorgentstern@nd.gov

Security Level: Email, Account Authentication  
(None)

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Ronald Henke

rhenke@nd.gov

Security Level: Email, Account Authentication  
(None), Access Code

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

**Signature**

**Timestamp**

**In Person Signer Events**

**Signature**

**Timestamp**

**Editor Delivery Events**

**Status**

**Timestamp**

**Agent Delivery Events**

**Status**

**Timestamp**

Julie Bommelman

jbommelman@cityoffargo.com

Security Level: Email, Account Authentication  
(None)

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

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Viewed: 8/19/2020 4:27:41 PM

**Intermediary Delivery Events**

**Status**

**Timestamp**

**Certified Delivery Events**

**Status**

**Timestamp**

Becky Hanson

bhanson@nd.gov

Carahsoft OBO North Dakota Department of  
Transportation CLOUD

Security Level: Email, Account Authentication  
(None)

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Using IP Address: 165.234.252.245

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Connie Nelson

conelson@nd.gov

Security Level: Email, Account Authentication  
(None)

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

**Carbon Copy Events**

**Status**

**Timestamp**

Legal Admin

dotlegaladmin@nd.gov

Security Level: Email, Account Authentication  
(None)

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Legal Admin

dotlegaladmin@nd.gov

Security Level: Email, Account Authentication  
(None)

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Page 187  
Witness Events

Signature

Timestamp

Notary Events

Signature

Timestamp

Envelope Summary Events

Status

Timestamps

Envelope Sent

Hashed/Encrypted

8/19/2020 3:41:52 PM

Payment Events

Status

Timestamps

**North Dakota Department of Transportation  
SECTION 5339 TRANSIT GRANT AGREEMENT**

**Federal Award Information – To be provided by NDDOT**

CFDA No.: 20.526

CFDA Title: Federal Transit Capital Investment

Award Name: Federal Transit Capital Investment Grants Awarding Fed. Agency: FTA

NDDOT Program Mgr.: Hanson, Becky Telephone: 701-328-2542

**DUNS No.:** 070265871**Federal Aid Identification No. (FAIN):**

**Notice to Subrecipients:** Federal awards may have specific compliance requirements. If you are not aware of the specific requirements for your award, please contact your NDDOT Program Manager.

This contract is between the state of North Dakota, acting by and through its Director of Transportation, hereinafter referred to as NDDOT, whose address is 608 East Boulevard Avenue, Bismarck, North Dakota 58505-0700, and City of Fargo, a Political Subdivision, hereinafter referred to as the Contractor, whose address is 650 23<sup>rd</sup> Street North, Fargo, ND 58102.

WHEREAS, Section 5339 of the Fixing America's Surface Transportation (FAST) Act, provides for grants for the specific purpose of assisting in financing capital projects that will benefit the country's transit projects.

WHEREAS, the Governor of the state of North Dakota, in accordance with a request by the Federal Transit Administration (FTA), has designated NDDOT to evaluate and select projects and to coordinate the grant applications; and

WHEREAS, NDDOT and the Contractor desire to secure and utilize grant funds to finance capital projects such as rolling stock, equipment, facility construction, and/or capital improvements that will benefit transit projects that serve the state of North Dakota; now

THEREFORE, in consideration of the mutual interests herein set forth, NDDOT and the Contractor agree as follows:

**Section 1. Purpose of Agreement.** The purpose of this agreement is to provide grant funds to finance rolling stock, equipment, facility construction and/or other capital improvements, hereinafter referred to as the project. The grant amount is \$694,160.

**Section 2. Project Obligation.** The Contractor shall undertake and complete the project as described in the attached Project Description and Budget (Attachment A), and as described in the Contractor's approved grant application, on file with NDDOT.

**Section 3. Period of Performance.** This agreement shall begin on July 1, 2020, and terminate on December 31, 2021.



**Section 4. Project Participation.** Participation in the project costs shall be as indicated in the attached Project Description and Budget. The Contractor will provide sufficient non-federal funds which together with the grant will pay the project costs. In the event that the actual project costs are less than what is shown in the project budget or if a rebate is given, this reduction in cost shall be applied to the Contractor and NDDOT in proportion to the participation rates of each.

**Section 5. Property.** All purchases, property management, and property disposition shall be made in accordance with State and Federal requirements, copies of which will be provided by NDDOT on request.

**Section 6. Purchase of Project Assets.** The purchase of all project asset financed, in whole or in part, pursuant to this agreement shall be undertaken by the Contractor in accordance with NDDOT's procurement procedures and Federal regulations.

**Section 7. Use of Project Assets.** The Contractor agrees that the project asset shall be used for providing transportation service in accordance with the project description in the grant application. Such asset shall be used for the duration of its useful life. If any project asset is not used in this manner or is withdrawn from service before the end of its useful life, the Contractor shall immediately notify NDDOT of that condition.

**Section 8. Amendment.** Any change in this agreement shall be in writing and agreed upon by both parties.

**Section 9. Subcontracting.** The Contractor shall not assign any portion of the work under this agreement, execute any contract, or obligate itself in any manner with a third party with respect to its rights and responsibilities to this agreement without written consent of NDDOT. Any agreement with a subcontractor does not create a contractual relationship between the NDDOT and the subcontractor.

**Section 10. Subcontract Provisions.** The Contractor shall include in all subcontracts entered into, pursuant to this agreement, all of the above-required sections. In addition, the following statement of financial assistance shall be included in any advertisement or invitation to bid for any procurement under this agreement:

"This contract is subject to a financial assistance contract between the state of North Dakota and the USDOT."

**Section 11. Assignments.** Unless authorized in writing by NDDOT, the Contractor shall not assign any portion of the work or asset and vehicles under this agreement; execute any contract, amendment, or change order thereto; or obligate in any manner with a third party with respect to rights and responsibilities under this agreement.

**Section 12. Records and Reports.**

- a. The Contractor shall submit project operational data and information as requested by NDDOT.
- b. The Contractor shall also submit financial statements, data, records, contracts, and other documents related to the project as requested by NDDOT.
- c. All charges to the project account shall be supported by executed invoices, contracts, or vouchers showing the nature of the charges. All checks, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to the project shall be clearly identified; readily accessible; and, to the extent feasible, kept separate and apart from all other such documents.



- d. The Contractor shall maintain all accounting and project records NDDOT may require. Such records shall be made available to NDDOT and the federal government for inspection and audit during the agreement term and for three years after the date of final payment, unless any litigation, claim, or audit is started before the expiration of the three years, in which case the records shall be retained until such action is satisfied.

**Section 13. Audit and Inspection.** The Contractor shall permit NDDOT, the comptroller general of the United States, and the secretary of the US Department of Transportation or their authorized representatives to inspect all vehicles, facilities, and assets used by the Contractor as part of the project and all relevant project data and records. Entities that receive federal funds through NDDOT may be required to obtain an audit in accordance with 2 C.F.R. Part 200, Subpart F. A copy of such audit shall be submitted to NDDOT. Entities that spend less than \$750,000 of federal funds from all sources may be subject to reviews by NDDOT at its discretion. Additionally, all entities receiving federal funds through NDDOT shall certify whether a Single Audit has been completed as part of the annual Federal award process. These requirements are applicable to counties, cities, state agencies, Indian tribes, colleges, hospitals, and non-profit businesses.

**Section 14. Termination.** NDDOT reserves the right, with or without cause, to terminate this agreement by written notice. In the event of termination without cause, NDDOT will reimburse the Contractor for costs incurred prior to the termination date without further liability.

**Section 15. Action Upon Termination.** The Contractor agrees to dispose of the project assets in accordance with NDDOT's program policy, copies of which will be made available by NDDOT upon request.

**Section 16. Contract Changes.** All modifications of this agreement shall be made in writing and agreed upon by both parties.

**Section 17. Prohibited Interest.** No member, officer, or employee of the Contractor during his tenure or for one year thereafter shall have any personal interest, direct or indirect, in this contract or the proceeds thereof.

**Section 18. Other Provisions.** The Contractor acknowledges the following provisions and agrees to cooperate with NDDOT in abiding by them: See Attachment B and complete required forms.

Safety Jurisdiction. FTA's authority in the area of transit safety is set forth in section 22 of the Federal Transit Act Amendments of 1991. Under this section, FTA may withhold further financial assistance from any private nonprofit or for-profit agency recipient who fails to correct any condition which FTA believes "creates a serious hazard of death or injury."

**Section 19. Statement of Financial Assistance.** This contract is subject to a financial assistance contract between the state of North Dakota and the USDOT.

**Section 20. Applicable Law.** Indemnity. Contractor shall comply with all applicable federal, state, and local laws, rules, and ordinances at all times in the performance of this agreement and conduct its activities so as not to endanger any person or property.

**Section 21. Federal Changes.** Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the FTA Master Agreement (from FTA MA (26) dated October 1, 2019) between purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.



**Section 22. Disputes.** FTA Cir. 4220.1F. Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of NDDOT Director. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Director. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Director shall be binding upon the Contractor, and the Contractor shall abide by the decision.

**Performance During Dispute** - Unless otherwise directed by NDDOT, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

**Section 23. Merger and Waiver.** This agreement constitutes the entire agreement between the parties. No waiver, consent, modification or change of terms of this agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification, or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this agreement. Contractor, by the signature below of its authorized representative, hereby acknowledges that the Contractor has read this agreement, understands it, and agrees to be bound by its terms and conditions.

**Section 24. Conflicts of Interest.** No official or employee of a state or any other governmental instrumentality who is authorized in their official capacity to negotiate, make, accept, or approve, or to take part in negotiating, making, accepting or approving any contract or subcontract in connection with a project shall have, directly or indirectly, any financial or other personal interest in any such contract or subcontract. No engineer, attorney, appraiser, inspector or other person performing services for a state or a governmental instrumentality in connection with a project shall have, directly or indirectly, a financial or other personal interest, other than their employment or retention by a state or other governmental instrumentality, in an contract or subcontract in connection with such project. No officer or employee of such person retained by a state or other governmental instrumentality shall have, directly or indirectly, any financial or other personal interest in any real property acquired for a project unless such interest is openly disclosed upon the public records of NDDOT and of such other governmental instrumentality, and such officer, employee, or person has not participated in such acquisition for and in behalf of the state.

**Section 25. No Obligation by the Federal Government.** The purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the federal government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the federal government, the federal government is not a party to this contract and shall not be subject to any obligations or liabilities to the purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

The Contractor agrees to include the above clause in each subcontract financed in whole or in part with federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

**Section 26. Insurance.** The Contractor shall maintain insurance coverage on the project asset in an amount adequate to protect the fair market value of the asset throughout the duration of this agreement.

**Section 27. Incorporation of Federal Transit Administration (FTA) Terms** - The preceding provisions include, in part, certain Standard Terms and Conditions required by USDOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by USDOT, as set forth in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any NDDOT requests which would cause NDDOT to be in violation of the FTA terms and conditions.



**Section 28. Risk Management.** The Risk Management Appendix, attached, is hereby incorporated and made a part of this agreement.

EXECUTED the date last below signed.

WITNESS:

STEVE SPRAGUE, City Auditor  
NAME (TYPE OR PRINT)

SIGNATURE

CONTRACTOR:

DR. Timothy J Mahoney  
NAME (TYPE OR PRINT)

SIGNATURE

MAYOR  
TITLE

DATE

WITNESS:

NAME (TYPE OR PRINT)

SIGNATURE

NORTH DAKOTA  
DEPARTMENT OF TRANSPORTATION

DIRECTOR (TYPE OR PRINT)

SIGNATURE

DATE

APPROVED as to substance by:

LOCAL GOVERNMENT ENGINEER (TYPE OR PRINT)

SIGNATURE

DATE

CLA 1073 (Div. 38)  
L.D. Approved 9-8-08, 7-20



**CERTIFICATION OF LOCAL MATCH**

It is hereby certified that CITY OF FARGO will provide non-federal funds, unless expressly allowed by federal regulation to use federal funds as match. The source of the non-federal funds is identified below, as match for the amount the Transit Provider is obligated to pay under the terms of the attached agreement with the North Dakota Department of Transportation. The certified amount does not duplicate any federal claims for reimbursement, nor are the funds used to match other federal funds, unless expressly allowed by federal regulation.

**Non-Federal Match Funds provided for Transit Provider.** Please designate the source(s) of funds that will be used to match the federal funds obligated for this grant through the North Dakota Department of Transportation.

Source:

general fund, advertising, State Aid

Executed at FARGO, North Dakota, the last date below signed.

WITNESS:

STEVE SPRAGUE, City Auditor  
SIGNATURE

DATE

APPROVED:

DR. Timothy J. MAHONEY  
NAME (TYPE OR PRINT)

SIGNATURE

\* MAYOR  
TITLE

DATE

\*Director or President of Transit Board

CLA 1073 (Div. 38)  
L.D. Approved 9-8-08, 6-20





August 10, 2020

Julie Bommelman  
Fargo Metro Area Transit  
650 23<sup>rd</sup> St N  
Fargo, ND 58102

FY2021 – Section 5339 Bus & Bus Facilities Grant, CFDA No. 20.526

Thank you for submitting a 5339 grant application for capital needs. We are pleased to inform you we are able to provide capital funding for your transit agency. The award amount is \$694,160 to fund miscellaneous equipment in shop area including 2 new hoists and bus terminal renovations. Please see Attachment A for the funding breakdown.

Once the contract is signed, you may request approval to begin procuring these items. The required Federal/State procurement process must be followed to bid and purchase the miscellaneous equipment items including 2 new hoists, and prior to bidding and starting any of the bus terminal renovations. The Transit Section must be contacted for approval prior to beginning the procurement process and throughout the whole process.

In order to begin the funding process, please:

1. Complete the contractor and witness information in DocuSign.
2. Have your organization's president or chairman digitally sign and date the agreement (under Contractor)—this signature **must be an authorized signatory** for your project. Please also submit a proof of authorization to sign if it is not the president or chairperson of your agency.
3. Finish the DocuSign process to send to the witness for signature.
4. Have a witness sign and date the agreement (under Witness) and upload proof of insurance in the form of **Confirmation of Coverage OR Certificate of Insurance for automobiles and premises/commercial**, if it is required. This is required for all Non-Profit and For-Profit agencies.
5. Upon completion of executing all documents, finish the DocuSign process and the contract documents will return to NDDOT for processing.

Page 195  
2021 Section 5339  
August 10, 2020  
Page 2

If you have any questions or need assistance, please contact Connie Nelson at (701) 328-3720 or [conelson@nd.gov](mailto:conelson@nd.gov).

Sincerely,



Becky Hanson  
Transit Program Manager

Cc: Kevin Hanson, Board Chair  
Dan Farnsworth, Fargo/Moorhead COG  
Enclosures

Attachment A

Project Name

City of Fargo

SFY 2021 (July 1, 2020 - December 31, 2021)

	Local Match Percentage	Funding Source	TOTAL Federal Share	Local Share	Total
<b>Funding Category</b>					
<b>Purchase Miscellaneous Equipment</b>	<b>20</b>	<b>5339</b>	<b>\$344,160</b>	<b>\$86,040</b>	<b>\$430,200</b>
<b>Rehab/Renovate -- Bus Terminal</b>	<b>20</b>	<b>5339</b>	<b>\$350,000</b>	<b>\$87,500</b>	<b>\$437,500</b>
<b>TOTALS</b>			<b>\$694,160</b>	<b>\$173,540</b>	<b>\$867,700</b>

Notice to Subrecipients: Each Federal program is governed by different regulations. Federal awards have specific compliance requirements. If you are not aware of the specific requirements for your award, please contact your NDDOT Program Manager.

CFDA Title	CFDA No.	Title 49 USC Chapter 53 Section	Award Name
Capital Assistance Program	CFDA No 20.526	<b>5339</b>	Bus and Bus Facilities Formula
Section 5339 provides for capital grants to private nonprofit corporations and associations for the specific purpose of assisting them in providing mass transportation.			

**Fly America Requirements** – Applicability – all contracts involving transportation of persons or property, by air between the U.S. and/or places outside the U.S. These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).

Contractor shall comply with 49 USC 40118 (the “Fly America” Act) in accordance with General Services Administration regulations 41 CFR 301-10, stating that recipients and subrecipients of Federal funds and their contractors are required to use US Flag air carriers for US Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a US flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. Contractor shall include the requirements of this section in all subcontracts that may involve international air transportation.

**Buy America Requirements** – Applicability – Construction Contracts and Acquisition of Goods or Rolling Stock (valued at more than \$150,000).

Contractor shall comply with 49 USC 5323(j) and 49 CFR 661, stating that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include software, microcomputer equipment and small purchases (currently less than \$150,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are stated at 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock must be manufactured in the US and have a minimum 60% domestic content for FY2016 and FY2017, a minimum 65% domestic content for FY2018 and FY2019 and a minimum 70% domestic content for FY2020 and beyond. A bidder or offeror shall submit appropriate Buy America certification to the recipient with all bids on FTA-funded contracts, except those subject to a general waiver. Proposals not accompanied by a completed Buy America certification shall be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

**Cargo Preference** - Use of US-Flag Vessels – Applicability – Contracts involving equipment, materials or commodities which may be transported by ocean vessels. These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000). Contractor shall: a. use privately owned US-Flag commercial vessels to ship at least 50% of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for US flag commercial vessels; b. furnish within 20 working days following the loading date of shipments originating within the US or within 30 working days following the loading date of shipments originating outside the US, a legible copy of a rated, "on-board" commercial bill-of-lading in English for each shipment of cargo described herein to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the recipient (through contractor in the case of a subcontractor's bill-of-lading.) c. include these requirements in all subcontracts issued pursuant to this contract when the subcontract involves the transport of equipment, material, or commodities by ocean vessel.

**Seismic Safety** – Applicability – Construction of new buildings or additions to existing buildings. These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000). Contractor agrees that any new building or addition to an existing building shall be designed and constructed in accordance with the standards required in USDOT Seismic Safety Regulations 49 CFR 41 and shall certify compliance to the extent required by the regulation. Contractor shall also ensure that all work performed under this contract, including work performed by subcontractors, complies with the standards required by 49 CFR 41 and the certification of compliance issued on the project.

Page 198 **Energy Conservation** – Applicability – All Contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000) Contractor shall comply with mandatory standards and policies relating to energy efficiency, stated in the state energy conservation plan issued in compliance with the Energy Policy & Conservation Act.

**Clean Water** – Applicability – All Contracts and Subcontracts over \$150,000. Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq. Contractor shall report each violation to the recipient and understands and agrees that the recipient shall, in turn, report each violation as required to FTA and the appropriate EPA Regional Office. Contractor shall include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with FTA assistance.

**Lobbying** – Applicability - Construction/Architectural and Engineering/Acquisition of Rolling Stock/Professional Service Contract/Operational Service Contract/Turnkey contracts over \$100,000. Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] - Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

**Access to Records and Reports** – Applicability – As shown below. These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000). The following access to records requirements apply to this Contract:

- 1) Where the purchaser is not a State but a local government and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 18.36(i), contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives access to any books, documents, papers and contractor records which are pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor shall also, pursuant to 49 CFR 633.17, provide authorized FTA representatives, including any PMO contractor, access to contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)1, which is receiving FTA assistance through the programs described at 49 USC 5307, 5309 or 5311.
- 2) Where the purchaser is a State and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 633.17, contractor shall provide the purchaser, authorized FTA representatives, including any PMO Contractor, access to contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)1, which receives FTA assistance through the programs described at 49 USC 5307, 5309 or 5311. By definition, a capital project excludes contracts of less than the simplified acquisition threshold currently set at \$250,000.
- 3) Where the purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 19.48, contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives, access to any books, documents, papers and record of the contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
- 4) Where a purchaser which is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 USC 5325(a) enters into a contract for a capital project or improvement (defined at 49 USC 5302(a)1)

Page 199 through other than competitive bidding, contractor shall make available records related to the contract to the purchaser, the Secretary of USDOT and the US Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

- 5) Contractor shall permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- 6) Contractor shall maintain all books, records, accounts and reports required under this contract for a period of not less than three (3) years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case contractor agrees to maintain same until the recipient, FTA Administrator, US Comptroller General, or any of their authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Re: 49 CFR 18.39(i)(11).

FTA does not require the inclusion of these requirements in subcontracts.

**Federal Changes** – Applicability – All Contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000). Contractor shall comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the recipient and FTA, as they may be amended or promulgated from time to time during the term of the contract. Contractor's failure to comply shall constitute a material breach of the contract.

**Bonding Requirements** – Applicability – For those construction or facility improvement contracts or subcontracts exceeding \$250,000, FTA may accept the bonding policy and requirements of the recipient, provided that they meet the minimum requirements for construction contracts as follows:

- a. A bid guarantee from each bidder equivalent to five (5) percent of the bid price. The "bid guarantees" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.
- b. A performance bond on the part to the Contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
- c. A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment, as required by law, of all persons supplying labor and material in the execution of the work provided for in the contract. Payment bond amounts required from Contractors are as follows:
  - (1) 50% of the contract price if the contract price is not more than \$1 million;
  - (2) 40% of the contract price if the contract price is more than \$1 million but not more than \$5 million;
  - or
  - (3) \$2.5 million if the contract price is more than \$5 million.
- d. A cash deposit, certified check or other negotiable instrument may be accepted by a grantee in lieu of performance and payment bonds, provided the grantee has established a procedure to assure that the interest of FTA is adequately protected. An irrevocable letter of credit would also satisfy the requirement for a bond.

#### **Bid Bond Requirements (Construction)**

- (a) Bid Security - A Bid Bond must be issued by a fully qualified surety company acceptable to (Recipient) and listed as a company currently authorized under 31 CFR, Part 223 as possessing a Certificate of Authority as described thereunder.

- (b) Rights Reserved - In submitting this Bid, it is understood and agreed by bidder that the right is reserved by (Recipient) to reject any and all bids, or part of any bid, and it is agreed that the Bid may not be withdrawn for a period of [ninety (90)] days subsequent to the opening of bids, without the written consent of (Recipient).

It is also understood and agreed that if the undersigned bidder should withdraw any part or all of his bid within [ninety (90)] days after the bid opening without the written consent of (Recipient), shall refuse or be unable to enter into this Contract, as provided above, or refuse or be unable to furnish adequate and acceptable Performance Bonds and Labor and Material Payments Bonds, as provided above, or refuse or be unable to furnish adequate and acceptable insurance, as provided above, he shall forfeit his bid security to the extent of (Recipient's) damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security therefor.

It is further understood and agreed that to the extent the defaulting bidder's Bid Bond, Certified Check, Cashier's Check, Treasurer's Check, and/or Official Bank Check (excluding any income generated thereby which has been retained by (Recipient) as provided in [Item x "Bid Security" of the Instructions to Bidders]) shall prove inadequate to fully recompense (Recipient) for the damages occasioned by default, then the undersigned bidder agrees to indemnify (Recipient) and pay over to (Recipient) the difference between the bid security and (Recipient's) total damages, so as to make (Recipient) whole.

The undersigned understands that any material alteration of any of the above or any of the material contained on this form, other than that requested, will render the bid unresponsive. Performance and Payment Bonding Requirements (Construction).

The Contractor shall be required to obtain performance and payment bonds as follows:

(a) Performance bonds

1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the (Recipient) determines that a lesser amount would be adequate for the protection of the (Recipient).
2. The (Recipient) may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The (Recipient) may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(b) Payment bonds

1. The penal amount of the payment bonds shall equal:
  - (i) Fifty percent of the contract price if the contract price is not more than \$1 million.
  - (ii) Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
  - (iii) Two and one half million if the contract price is more than \$5 million.
2. If the original contract price is \$5 million or less, the (Recipient) may require additional protection as required by subparagraph 1 if the contract price is increased.

Performance and Payment Bonding Requirements (Non-Construction)

The Contractor may be required to obtain performance and payment bonds when necessary to protect the (Recipient's) interest.

Page 201(a) The following situations may warrant a performance bond:

1. (Recipient) property or funds are to be provided to the contractor for use in performing the contract or as partial compensation (as in retention of salvaged material).
2. A contractor sells assets to or merges with another concern, and the (Recipient), after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable.
3. Substantial progress payments are made before delivery of end items starts.
4. Contracts are for dismantling, demolition, or removal of improvements.

(b) When it is determined that a performance bond is required, the Contractor shall be required to obtain performance bonds as follows:

1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the (Recipient) determines that a lesser amount would be adequate for the protection of the (Recipient).
2. The (Recipient) may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The (Recipient) may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(c) A payment bond is required only when a performance bond is required, and if the use of payment bond is in the (Recipient's) interest.

(d) When it is determined that a payment bond is required, the Contractor shall be required to obtain payment bonds as follows:

1. The penal amount of payment bonds shall equal:
  - (i) Fifty percent of the contract price if the contract price is not more than \$1 million;
  - (ii) Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
  - (iii) Two and one half million if the contract price is increased.

#### Advance Payment Bonding Requirements

The Contractor may be required to obtain an advance payment bond if the contract contains an advance payment provision and a performance bond is not furnished. The (recipient) shall determine the amount of the advance payment bond necessary to protect the (Recipient).

#### Patent Infringement Bonding Requirements (Patent Indemnity)

The Contractor may be required to obtain a patent indemnity bond if a performance bond is not furnished and the financial responsibility of the Contractor is unknown or doubtful. The (recipient) shall determine the amount of the patent indemnity to protect the (Recipient).

#### Warranty of the Work and Maintenance Bonds

1. The Contractor warrants to (Recipient), the Architect and/or Engineer that all materials and equipment furnished under this Contract will be of highest quality and new unless otherwise specified by (Recipient), free from faults and defects and in conformance with the Contract Documents. All work not so conforming to these standards shall be considered defective. If required by the [Project Manager], the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.
2. The Work furnished must be of first quality and the workmanship must be the best obtainable in the various trades. The Work must be of safe, substantial and durable construction in all respects. The Contractor hereby guarantees the Work against defective materials or faulty workmanship for a

Page 202 minimum period of one (1) year after Final Payment by (Recipient) and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to (Recipient). As additional security for these guarantees, the Contractor shall, prior to the release of Final Payment [as provided in Item X below], furnish separate Maintenance (or Guarantee) Bonds in form acceptable to (Recipient) written by the same corporate surety that provides the Performance Bond and Labor and Material Payment Bond for this Contract. These bonds shall secure the Contractor's obligation to replace or repair defective materials and faulty workmanship for a minimum period of one (1) year after Final Payment and shall be written in an amount equal to ONE HUNDRED PERCENT (100%) of the CONTRACT SUM, as adjusted (if at all).

**Clean Air** – Applicability – All contracts over \$150,000. 1) Contractor shall comply with all applicable standards, orders or regulations pursuant to the Clean Air Act, 42 USC 7401 et seq. Contractor shall report each violation to the recipient and understands and agrees that the recipient will, in turn, report each violation as required to FTA and the appropriate EPA Regional Office. 2) Contractor shall include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with FTA assistance.

**Recycled Products** – Applicability – All contracts for items designated by the EPA, when the purchaser or contractor procures \$10,000 or more of one of these items during the current or previous fiscal year using Federal funds. The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

**Davis-Bacon and Copeland Anti-Kickback Acts** – Applicability -Construction contracts and subcontracts, including actual construction, alteration and/or repair, including decorating and painting, over \$2,000.

**(1) Minimum wages** - (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. (ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the

classification requested is not performed by a classification in the wage determination; and (2) The classification is utilized in the area by the construction industry; and (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and (4) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed. (B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary. (C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary. (D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification. (iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof. (iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (v)(A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met: (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and (2) The classification is utilized in the area by the construction industry; and (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination. (B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary. (C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary. (D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

Page 204 Withholding - The recipient shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the grantee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records - (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the recipient for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. (B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following: (1) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete; (2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3; (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract. (C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section. (D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code. (iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration

Page 205 the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees - (i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved. (ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved. (iii) Equal

Page 208 employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements - The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts - The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination: debarment - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of Eligibility - (i) By entering into this contract, contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1). (ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1). (iii) The penalty for making false statements is prescribed in 18 USC 1001.

#### **Contract Work Hours & Safety Standards Act** – Applicability – Contracts over \$250,000

- (1) Overtime requirements - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.
- (2) Violation; liability for unpaid wages; liquidated damages - In the event of any violation of the clause set forth in para. (1) of this section, contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in para. (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in para. (1) of this section.
- (3) Withholding for unpaid wages and liquidated damages - the recipient shall upon its own action or upon written request of USDOL withhold or cause to be withheld, from any moneys payable on account of

work performed by contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours & Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in para. (2) of this section.

- (4) Subcontracts - Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. Prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

**No Government Obligation to Third Parties** - Applicability – All contracts except micro- purchases (\$10,000 or less, except for construction contracts over \$2,000).

- (1) The recipient and contractor acknowledge and agree that, notwithstanding any concurrence by the US Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the US Government, the US Government is not a party to this contract and shall not be subject to any obligations or liabilities to the recipient, the contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
- (2) Contractor agrees to include the above clause in each subcontract financed in whole or in part with FTA assistance. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

**Program Fraud and False or Fraudulent Statements or Related Acts** – Applicability – All contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).

- (1) Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC 3801 et seq. and USDOT regulations, "Program Fraud Civil Remedies," 49 CFR 31, apply to its actions pertaining to this project. Upon execution of the underlying contract, contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification, the US Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act (1986) on contractor to the extent the US Government deems appropriate.
- (2) If contractor makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification to the US Government under a contract connected with a project that is financed in whole or in part with FTA assistance under the authority of 49 USC 5307, the Government reserves the right to impose the penalties of 18 USC 1001 and 49 USC 5307(n)(1) on contractor, to the extent the US Government deems appropriate.
- (3) Contractor shall include the above two clauses in each subcontract financed in whole or in part with FTA assistance. The clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

**Termination** – Applicability – All Contracts over \$10,000, except contracts with nonprofit organizations and institutions of higher learning, where the threshold is \$250,000.

- a. Termination for Convenience (General Provision) the recipient may terminate this contract, in whole or in part, at any time by written notice to contractor when it is in the recipient's best interest. Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time

Page 208 of termination. Contractor shall promptly submit its termination claim to the recipient. If contractor is in possession of any of the recipient's property, contractor shall account for same, and dispose of it as the recipient directs.

- b. Termination for Default [Breach or Cause] (General Provision) If contractor does not deliver items in accordance with the contract delivery schedule, or, if the contract is for services, and contractor fails to perform in the manner called for in the contract, or if contractor fails to comply with any other provisions of the contract, the recipient may terminate this contract for default. Termination shall be effected by serving a notice of termination to contractor setting forth the manner in which contractor is in default. Contractor shall only be paid the contract price for supplies delivered and accepted, or for services performed in accordance with the manner of performance set forth in the contract. If it is later determined by the recipient that contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of contractor, the recipient, after setting up a new delivery or performance schedule, may allow contractor to continue work, or treat the termination as a termination for convenience.
- c. Opportunity to Cure (General Provision) the recipient in its sole discretion may, in the case of a termination for breach or default, allow contractor an appropriately short period of time in which to cure the defect. In such case, the notice of termination shall state the time period in which cure is permitted and other appropriate conditions. If contractor fails to remedy to the recipient's satisfaction the breach or default or any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by contractor or written notice from the recipient setting forth the nature of said breach or default, the recipient shall have the right to terminate the Contract without any further obligation to contractor. Any such termination for default shall not in any way operate to preclude the recipient from also pursuing all available remedies against contractor and its sureties for said breach or default.
- d. Waiver of Remedies for any Breach In the event that the recipient elects to waive its remedies for any breach by contractor of any covenant, term or condition of this Contract, such waiver by the recipient shall not limit its remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.
- e. Termination for Convenience (Professional or Transit Service Contracts) the recipient, by written notice, may terminate this contract, in whole or in part, when it is in the recipient's interest. If the contract is terminated, the recipient shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.
- f. Termination for Default (Supplies and Service) If contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the contractor fails to comply with any other provisions of this contract, the recipient may terminate this contract for default. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature of default. Contractor shall only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract. If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.
- g. Termination for Default (Transportation Services). If contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if contractor fails to comply with any other provisions of this contract, the recipient may terminate this contract for default. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature of default. Contractor shall only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract. If this contract is terminated while contractor has possession of the recipient goods, contractor shall, as directed by the recipient, protect and preserve the goods until surrendered to the recipient or its agent.

Page 209 Contractor and the recipient shall agree on payment for the preservation and protection of goods. Failure to agree on an amount shall be resolved under the Dispute clause. If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.

- h. Termination for Default (Construction) If contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified, or any extension, or fails to complete the work within this time, or if contractor fails to comply with any other provisions of this contract, the recipient may terminate this contract for default. the recipient shall terminate by delivering to contractor a notice of termination specifying the nature of default. In this event, the recipient may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. Contractor and its sureties shall be liable for any damage to the recipient resulting from contractor's refusal or failure to complete the work within specified time, whether or not contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the recipient in completing the work.

Contractor's right to proceed shall not be terminated nor shall contractor be charged with damages under this clause if:

1. Delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of contractor. Examples of such causes include: acts of God, acts of the recipient, acts of another contractor in the performance of a contract with the recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and
2. Contractor, within 10 days from the beginning of any delay, notifies the recipient in writing of the causes of delay. If in the recipient's judgment, delay is excusable, the time for completing the work shall be extended. The recipient's judgment shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

If, after termination of contractor's right to proceed, it is determined that contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if termination had been issued for the recipient's convenience.

- i. Termination for Convenience or Default (Architect & Engineering) the recipient may terminate this contract in whole or in part, for the recipient's convenience or because of contractor's failure to fulfill contract obligations. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature, extent, and effective date of termination. Upon receipt of the notice, contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the recipient all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. If termination is for the recipient's convenience, it shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services. If termination is for contractor's failure to fulfill contract obligations, the recipient may complete the work by contract or otherwise and contractor shall be liable for any additional cost incurred by the recipient.

If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.

- j. Termination for Convenience or Default (Cost-Type Contracts) the recipient may terminate this contract, or any portion of it, by serving a notice of termination on contractor. The notice shall state whether termination is for convenience of the recipient or for default of contractor. If termination is

Page 210 for default, the notice shall state the manner in which contractor has failed to perform the requirements of the contract. Contractor shall account for any property in its possession paid for from funds received from the recipient, or property supplied to contractor by the recipient. If termination is for default, the recipient may fix the fee, if the contract provides for a fee, to be paid to contractor in proportion to the value, if any, of work performed up to the time of termination. Contractor shall promptly submit its termination claim to the recipient and the parties shall negotiate the termination settlement to be paid to contractor. If termination is for the recipient's convenience, contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a notice of termination for default, the recipient determines that contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of contractor, the recipient, after setting up a new work schedule, may allow contractor to continue work, or treat the termination as a termination for convenience.

**Government-wide Debarment and Suspension (Nonprocurement)** – Applicability – Contracts over \$25,000. The Recipient agrees to the following: (1) It will comply with the requirements of 2 C.F.R. part 180, subpart C, as adopted and supplemented by U.S. DOT regulations at 2 C.F.R. part 1200, which include the following: (a) It will not enter into any arrangement to participate in the development or implementation of the Project with any Third Party Participant that is debarred or suspended except as authorized by: 1 U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, 2 U.S. OMB, "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180, including any amendments thereto, and 3 Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note, (b) It will review the U.S. GSA "System for Award Management," <https://www.sam.gov>, if required by U.S. DOT regulations, 2 C.F.R. part 1200, and (c) It will include, and require each of its Third Party Participants to include, a similar provision in each lower tier covered transaction, ensuring that each lower tier Third Party Participant: 1 Will comply with Federal debarment and suspension requirements, and 2 Reviews the "System for Award Management" at <https://www.sam.gov>, if necessary to comply with U.S. DOT regulations, 2 C.F.R. part 1200, and (2) If the Recipient suspends, debars, or takes any similar action against a Third Party Participant or individual, the Recipient will provide immediate written notice to the: (a) FTA Regional Counsel for the Region in which the Recipient is located or implements the Project, (b) FTA Project Manager if the Project is administered by an FTA Headquarters Office, or (c) FTA Chief Counsel,

**Contracts Involving Federal Privacy Act Requirements** – Applicability - When a grantee maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply to all contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).

The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

- (1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.
- (2) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance

**Civil Rights Requirements**– Applicability – All contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000). The following requirements apply to the underlying contract:

The Recipient understands and agrees that it must comply with applicable Federal civil rights laws and regulations, and follow applicable Federal guidance, except as the Federal Government determines otherwise in writing. Therefore, unless a Recipient or Program, including an Indian Tribe or the Tribal Transit Program, is specifically exempted from a civil rights statute, FTA requires compliance with that civil rights statute, including compliance with equity in service:

- a. **Nondiscrimination in Federal Public Transportation Programs.** The Recipient agrees to, and assures that each Third Party Participant will, comply with Federal transit law, 49 U.S.C. § 5332 (FTA's "Nondiscrimination" statute): (1) FTA's "Nondiscrimination" statute prohibits discrimination on the basis of: (a) Race, (b) Color, (c) Religion, (d) National origin, (e) Sex, (f) Disability, (g) Age, or (h) Gender identity and (2) The FTA "Nondiscrimination" statute's prohibition against discrimination includes: (a) Exclusion from participation, (b) Denial of program benefits, or (c) Discrimination, including discrimination in employment or business opportunity, (3) Except as FTA determines otherwise in writing: (a) General. Follow: 1 The most recent edition of FTA Circular 4702.1, "Title VI Requirements and Guidelines for Federal Transit Administration Recipients," to the extent consistent with applicable Federal laws, regulations, and guidance, and 2 Other applicable Federal guidance that may be issued, but (b) Exception for the Tribal Transit Program. FTA does not require an Indian Tribe to comply with FTA program-specific guidelines for Title VI when administering its projects funded under the Tribal Transit Program,
- b. **Nondiscrimination – Title VI of the Civil Rights Act.** The Recipient agrees to, and assures that each Third Party Participant will: (1) Prohibit discrimination based on: (a) Race, (b) Color, or (c) National origin, (2) Comply with: (a) Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d et seq., (b) U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964," 49 C.F.R. part 21, and (c) Federal transit law, specifically 49 U.S.C. § 5332, as stated in the preceding section a, and (3) Except as FTA determines otherwise in writing, follow: (a) The most recent edition of FTA Circular 4702.1, "Title VI and Title VI-Dependent Guidelines for Federal Transit Administration Recipients," to the extent consistent with applicable Federal laws, regulations, and guidance. (b) U.S. DOJ, "Guidelines for the enforcement of Title VI, Civil Rights Act of 1964," 28 C.F.R. § 50.3, and (c) Other applicable Federal guidance that may be issued,
- c. **Equal Employment Opportunity.** (1) **Federal Requirements and Guidance.** The Recipient agrees to, and assures that each Third Party Participant will, prohibit discrimination on the basis of race, color, religion, sex, or national origin, and: (a) Comply with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq., (b) Facilitate compliance with Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246, Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note, (c) Comply with Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a, and (d) Comply with FTA Circular 4704.1 other applicable EEO laws and regulations, as provided in Federal guidance, including laws and regulations prohibiting discrimination on the basis of disability, except as the Federal Government determines otherwise in writing, (2) **General.** The Recipient agrees to: (a) Ensure that applicants for employment are employed and employees are treated during employment without discrimination on the basis of their: 1 Race, 2 Color, 3 Religion, 4 Sex, 5 Disability, 6 Age, or 7 National origin, (b) Take affirmative action that includes, but is not limited to: 1 Recruitment advertising, 2 Recruitment, 3 Employment, 4 Rates of pay, 5 Other forms of compensation, 6 Selection for training, including apprenticeship, 7 Upgrading, 8 Transfers, 9 Demotions, 10 Layoffs, and 11 Terminations, but (b) Indian Tribe. Title VII of the Civil Rights Act of 1964, as amended, exempts Indian Tribes under the definition of "Employer". (3) **Equal**

- Page 212 Employment Opportunity Requirements for Construction Activities. In addition to the foregoing, when undertaking "construction" as recognized by the U.S. Department of Labor (U.S. DOL), the Recipient agrees to comply, and assures the compliance of each Third Party Participant, with: (a) U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and (b) Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246, Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note,
- d. Disadvantaged Business Enterprise. To the extent authorized by applicable Federal law, the Recipient agrees to facilitate, and assures that each Third-Party Participant will facilitate, participation by small business concerns owned and controlled by socially and economically disadvantaged individuals, also referred to as "Disadvantaged Business Enterprises" (DBEs), in the Project as follows: 1) Requirements. The Recipient agrees to comply with: (a) Section 1101(b) of Map-21, 23 U.S.C. § 101 note, (b) U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 C.F.R. part 26, and (c) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a, (2) Assurance. As required by 49 C.F.R. § 26.13(a), (b) DBE Program Requirements. Recipients receiving planning, capital and/or operating assistance that will award prime third-party contracts exceeding \$250,000 in a Federal fiscal year must: 1 Have a DBE program meeting the requirements of 49 C.F.R. part 26, 2 Implement a DBE program approved by FTA, and 3 Establish an annual DBE participation goal, (c) Special Requirements for a Transit Vehicle Manufacturer. The Recipient understands and agrees that each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, must certify that it has complied with the requirements of 49 C.F.R. part 26, (d) the Recipient provides assurance that: The Recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 C.F.R. part 26. The Recipient shall take all necessary and reasonable steps under 49 C.F.R. part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The Recipient's DBE program, as required by 49 C.F.R. part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under 49 C.F.R. part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. § 1001 and/or the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. § 3801 et seq., (2) Exception for the Tribal Transit Program. FTA exempts Indian tribes from the Disadvantaged Business Enterprise regulations at 49 C.F.R. part 26 under Map-21 and previous legislation,
  - e. Nondiscrimination on the Basis of Sex. The Recipient agrees to comply with Federal prohibitions against discrimination on the basis of sex, including: (1) Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq., (2) U.S. DOT regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. part 25, and (3) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a,
  - f. Nondiscrimination on the Basis of Age. The Recipient agrees to comply with Federal prohibitions against discrimination on the basis of age, including: (1) The Age Discrimination in Employment Act (ADEA), 29 U.S.C. §§ 621 – 634, which prohibits discrimination on the basis of age, (2) U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, which implements the ADEA, (3) The Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., which prohibits discrimination against individuals on the basis of age in the administration of programs or activities receiving Federal funds, (4) U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, which implements the Age Discrimination Act of 1975, and (5) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a,

- g. **Nondiscrimination on the Basis of Disability.** The Recipient agrees to comply with the following Federal prohibitions pertaining to discrimination against seniors or individuals with disabilities: (1) Federal laws, including: (a) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in the administration of federally funded programs or activities, (b) The Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101 et seq., which requires that accessible facilities and services be made available to individuals with disabilities, 1 General. Titles I, II, and III of the ADA apply to FTA Recipients, but 2 Indian Tribes. While Titles II and III of the ADA apply to Indian Tribes, Title I of the ADA exempts Indian Tribes from the definition of "employer," (c) The Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities, (d) Federal transit law, specifically 49 U.S.C. § 5332, which now includes disability as a prohibited basis for discrimination, and (e) Other applicable laws and amendments pertaining to access for elderly individuals or individuals with disabilities, (2) Federal regulations, including: (a) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. part 37, (b) U.S. DOT regulations, "Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. part 27, (c) U.S. DOT regulations, "Transportation for Individuals with Disabilities: Passenger Vessels," 49 C.F.R. part 39, (d) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) and U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. part 1192 and 49 C.F.R. part 38, (e) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. part 35, (f) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. part 36, (g) U.S. EEOC, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. part 1630, (h) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities," 47 C.F.R. part 64, Subpart F, (i) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. part 1194, and (j) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. part 609, and (3) Other applicable Federal civil rights and nondiscrimination guidance,
- h. **Drug or Alcohol Abuse - Confidentiality and Other Civil Rights Protections.** The Recipient agrees to comply with the confidentiality and civil rights protections of: (1) The Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. § 1101 et seq., (2) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. § 4541 et seq., and (3) The Public Health Service Act, as amended, 42 U.S.C. §§ 290dd – 290dd-2,
- i. **Access to Services for People with Limited English Proficiency.** Except as the Federal Government determines otherwise in writing, the Recipient agrees to promote accessibility of public transportation services to people whose understanding of English is limited by following:
  - 1) Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," August 11, 2000, 42 U.S.C. § 2000d-1 note, and (2) U.S. DOT Notice, "DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficiency (LEP) Persons," 70 Fed. Reg. 74087, December 14, 2005,
- j. **Other Nondiscrimination Laws.** Except as the Federal Government determines otherwise in writing, the Recipient agrees to: (1) Comply with other applicable Federal nondiscrimination laws and regulations, and (2) Follow Federal guidance prohibiting discrimination.
- k. **Remedies.** Remedies for failure to comply with applicable Federal Civil Rights laws and Federal regulations may be enforced as provided in those Federal laws or Federal regulations.

**Breaches and Dispute Resolution** – Applicability – All contracts over \$250,000. Disputes arising in the performance of this contract which are not resolved by agreement of the parties shall be decided in writing by the recipient's authorized representative. This decision shall be final and conclusive unless within ten days from the date of receipt of its copy, contractor mails or otherwise furnishes a written appeal to the recipient's CEO. In connection with such appeal, contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the recipient's CEO shall be binding upon contractor and contractor shall abide by the decision. FTA has a vested interest in the settlement of any violation of Federal law including the False Claims Act, 31 U.S.C. § 3729.

**Performance During Dispute** - Unless otherwise directed by the recipient, contractor shall continue performance under this contract while matters in dispute are being resolved.

**Claims for Damages** - Should either party to the contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within ten days after the first observance of such injury or damage.

**Remedies** - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the recipient and contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the residing State.

**Rights and Remedies** - Duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the recipient or contractor shall constitute a waiver of any right or duty afforded any of them under the contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

**Disadvantaged Business Enterprise (DBE)** – Applicability – Contracts over \$10,000 awarded on the basis of a bid or proposal offering to use DBEs.

- a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The recipient's overall goal for DBE participation is listed elsewhere. If a separate contract goal for DBE participation has been established for this procurement, it is listed elsewhere.
- b. The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the municipal corporation deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).
- c. If a separate contract goal has been established, Bidders/offers are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53.
- d. If no separate contract goal has been established, the successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.
- e. The contractor is required to pay its subcontractors performing work related to this contract for

Page 215 satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the recipient. In addition, the contractor may not hold retainage from its subcontractors or must return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed or must return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by the recipient and contractor's receipt of the partial retainage payment related to the subcontractor's work.

- f. The contractor must promptly notify the recipient whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the recipient.

**Prompt Payment** – Applicability – All contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contract receives from the Recipient. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Recipient. This clause applies to both DBE and non-DBE subcontracts.

**Incorporation of Federal Transit Administration (FTA) Terms** – Applicability – All contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).

The preceding provisions include, in part, certain Standard Terms & Conditions required by USDOT, whether or not expressly stated in the preceding contract provisions. All USDOT- required contractual provisions, as stated in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The contractor shall not perform any act, fail to perform any act, or refuse to comply with any request that would cause the recipient to be in violation of FTA terms and conditions.

#### **Other Federal Requirements:**

**Full and Open Competition** – In accordance with 49 U.S.C. § 5325(h) all procurement transactions shall be conducted in a manner that provides full and open competition.

**Prohibition Against Exclusionary or Discriminatory Specifications** – Apart from inconsistent requirements imposed by Federal statute or regulations, the contractor shall comply with the requirements of 49 USC 5323(h)(2) by refraining from using any FTA assistance to support procurements using exclusionary or discriminatory specifications.

**Conformance with ITS National Architecture** – Contractor shall conform, to the extent applicable, to the National Intelligent Transportation Standards architecture as required by SAFETEA-LU Section 5307(c), 23 U.S.C. Section 512 note and follow the provisions of FTA Notice, "FTA National Architecture Policy on Transit Projects," 66 Fed. Reg. 1455 et seq., January 8, 2001, and any other implementing directives FTA may issue at a later date, except to the extent FTA determines otherwise in writing.

**Access Requirements for Persons with Disabilities** – Contractor shall comply with 49 USC 5301(d), stating Federal policy that the elderly and persons with disabilities have the same rights as other persons to use mass transportation services and facilities and that special efforts shall be made in planning and

Page 216 Designing those services and facilities to implement that policy.

Contractor shall also comply with all applicable requirements of Sec. 504 of the Rehabilitation Act (1973), as amended, 29 USC 794, which prohibits discrimination on the basis of handicaps, and the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments thereto.

**Notification of Federal Participation** – To the extent required by law, in the announcement of any third party contract award for goods and services (including construction services) having an aggregate value of \$500,000 or more, contractor shall specify the amount of Federal assistance to be used in financing that acquisition of goods and services and to express that amount of Federal assistance as a percentage of the total cost of the third party contract.

**Interest of Members or Delegates to Congress** - No members of, or delegates to, the US Congress shall be admitted to any share or part of this contract nor to any benefit arising therefrom.

**Ineligible Contractors and Subcontractors** - Any name appearing upon the Comptroller General's list of ineligible contractors for federally-assisted contracts shall be ineligible to act as a subcontractor for contractor pursuant to this contract. If contractor is on the Comptroller General's list of ineligible contractors for federally financed or assisted construction, the recipient shall cancel, terminate or suspend this contract.

**Other Contract Requirements** - To the extent not inconsistent with the foregoing Federal requirements, this contract shall also include those standard clauses attached hereto, and shall comply with the recipient's Procurement Guidelines, available upon request from the recipient.

**Compliance with Federal Regulations** - Any contract entered pursuant to this solicitation shall contain the following provisions: All USDOT-required contractual provisions, as set forth in FTA Circular 4220.1F, are incorporated by reference. Anything to the contrary herein notwithstanding, FTA mandated terms shall control in the event of a conflict with other provisions contained in this Agreement. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any grantee request that would cause the recipient to be in violation of FTA terms and conditions. Contractor shall comply with all applicable FTA regulations, policies, procedures and directives, including, without limitation, those listed directly or incorporated by reference in the Master Agreement between the recipient and FTA, as may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

**Real Property** - Any contract entered into shall contain the following provisions: Contractor shall at all times comply with all applicable statutes and USDOT regulations, policies, procedures and directives governing the acquisition, use and disposal of real property, including, but not limited to, 49 CFR 18.31-18.34, 49 CFR 19.30-19.37, 49 CFR Part 24, 49 CFR 5326 as amended by Map-21, 49 CFR part 18 or 19, 49 USC 5334, applicable FTA Circular 5010, and FTA Master Agreement, as they may be amended or promulgated during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

**Access to Services for Persons with Limited English Proficiency** - To the extent applicable and except to the extent that FTA determines otherwise in writing, the Recipient agrees to comply with the policies of Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d 1 note, and with the provisions of U.S. DOT Notice, "DOT Guidance to Recipients on Special Language Services to Limited English Proficient (LEP) Beneficiaries," 70 Fed. Reg. 74087, December 14, 2005.

**Environmental Justice** - Except as the Federal Government determines otherwise in writing, the Recipient agrees to promote environmental justice by following: (1) Executive Order No. 12898, "Federal

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 217. "Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," February 11, 1994, 42 U.S.C. § 4321 note, as well as facilitating compliance with that Executive Order, and (2) DOT Order 5610.2, "Department of Transportation Actions To Address Environmental Justice in Minority Populations and Low-Income Populations," 62 Fed. Reg. 18377, April 15, 1997, and (3) The most recent and applicable edition of FTA Circular 4703.1, "Environmental Justice Policy Guidance for Federal Transit Administration Recipients," August 15, 2012, to the extent consistent with applicable Federal laws, regulations, and guidance,

**Environmental Protections** – Compliance is required with any applicable Federal laws imposing environmental and resource conservation requirements for the project. Some, but not all, of the major Federal laws that may affect the project include: the National Environmental Policy Act of 1969; the Clean Air Act; the Resource Conservation and Recovery Act; the comprehensive Environmental response, Compensation and Liability Act; as well as environmental provisions with Title 23 U.S.C., and 49 U.C. chapter 53. The U.S. EPA, FHWA and other federal agencies may issue other federal regulations and directives that may affect the project. Compliance is required with any applicable Federal laws and regulations in effect now or that become effective in the future.

**Geographic Information and Related Spatial Data** – Any project activities involving spatial data or geographic information systems activities financed with Federal assistance are required to be consistent with the National Spatial Data Infrastructure promulgated by the Federal Geographic Data Committee, except to the extent that FTA determines otherwise in writing.

**Geographic Preference** – All project activities must be advertised without geographic preference, (except in A/E under certain circumstances, preference for hiring veterans on transit construction projects and geographic-based hiring preferences as proposes to be amended in 2 CFR Part 1201 ).

**Organizational Conflicts of Interest** – The Recipient agrees that it will not enter into a procurement that involves a real or apparent organizational conflict of interest described as follows: (1) When It Occurs. An organizational conflict of interest occurs when the Project work, without appropriate restrictions on certain future activities, results in an unfair competitive advantage: (a) To that Third Party Participant or another Third Party Participant performing the Project work, and (b) That impairs that Third Party Participant's objectivity in performing the Project work, or (2) Other. An organizational conflict of interest may involve other situations resulting in fundamentally unfair competitive conditions, (3) Disclosure Requirements. Consistent with FTA policies, the Recipient must disclose to FTA, and each of its Subrecipients must disclose to the Recipient: (a) Any instances of organizational conflict of interest, or (b) Violations of federal criminal law, involving fraud, bribery, or gratuity violations potentially affecting the federal award, and (4) Failure to Disclose. Failure to make required disclosures can result in remedies for noncompliance, including debarment or suspension.

#### **Federal Single Audit Requirements for State Administered Federally Aid Funded Projects**

Non-Federal entities that expend \$750,000 or more in a year in Federal awards from all sources are required to comply with the Federal Single Audit Act provisions contained in U.S. Office of Management and Budget (OMB) Circular No. A 133, "Audits of States, Local Governments, and Non Profit Organizations" (replaced with 2 CFR Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" effective December 26, 2014 as applicable). Non-Federal entities that expend Federal awards from a single source may provide a program specific audit, as defined in the Circular. Non Federal entities that expend less than the amount above in a year in Federal awards from all sources are exempt from Federal audit requirements for that year, except as noted in Sec. 215 (a) of OMB Circular A-133 Subpart B--Audits, records must be available for review or audit by appropriate officials of the cognizant Federal agency the New York State Department of Transportation, the New York State Comptrollers Office and the U.S. Governmental Accountability Office (GAO). Non Federal entities are required to submit a copy of all audits, as described above, within 30 days of issuance of audit report, but no later than 9 months after the end of the entity's fiscal year, to the New York State Department of Transportation, Contract Audit Bureau, 50 Wolf Road, Albany, NY 12232. Unless a time extension has been

Page 218 created by the cognizant Federal Agency and has been filed with the New York State Department of Transportation's Contract Audit Bureau, failure to comply with the requirements of OMB Circular A-133 may result in suspension or termination of Federal award payments.

**Veterans Preference** – As provided by 49 U.S.C. § 5325(k), to the extent practicable, the Recipient agrees and assures that each of its Subrecipients:

- (1) Will give a hiring preference to veterans, as defined in 5 U.S.C. § 2108, who have the skills and abilities required to perform construction work required under a third party contract in connection with a Capital Project supported with federal assistance appropriated or made available for 49 U.S.C. chapter 53, and
- (2) Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

**Safe Operation of Motor Vehicles**

- a. **Seat Belt Use.** The Recipient agrees to implement Executive Order No. 13043, "Increasing Seat Belt Use in the United States," April 16, 1997, 23 U.S.C. § 402 note, (62 Fed. Reg. 19217), by:
  - (1) Adopting and promoting on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles, and
  - (2) Including a "Seat Belt Use" provision in each third-party agreement related to the Award.
- b. **Distracted Driving, Including Text Messaging While Driving.** The Recipient agrees to comply with:
  - (1) Executive Order No. 13513, "Federal Leadership on Reducing Text Messaging While Driving," October 1, 2009, 23 U.S.C. § 402 note, (74 Fed. Reg. 51225),
  - (2) U.S. DOT Order 3902.10, "Text Messaging While Driving," December 30, 2009, and
  - (3) The following U.S. DOT Special Provision pertaining to Distracted Driving:
    - (a) **Safety.** The Recipient agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Recipient owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the Award, or when performing any work for or on behalf of the Award,
    - (b) **Recipient Size.** The Recipient agrees to conduct workplace safety initiatives in a manner commensurate with its size, such as establishing new rules and programs to prohibit text messaging while driving, re-evaluating the existing programs to prohibit text messaging while driving, and providing education, awareness, and other outreach to employees about the safety risks associated with texting while driving, and
    - (c) **Extension of Provision.** The Recipient agrees to include the preceding Special Provision of section 34.b(3)(a) – (b) of this Master Agreement in its third party agreements, and encourage its Third Party Participants to comply with this Special Provision, and include this Special Provision in each third party subagreement at each tier supported with federal assistance.

**Catalog of Federal Domestic Assistance (CFDA) Identification Number** – The municipal project sponsor is required to identify in its accounts all Federal awards received and expended, and the Federal programs under which they were received. Federal program and award identification shall include, as applicable, the CFDA title and number, award number and year, name of the Federal agency, and name of the pass-through entity.

**The CFDA number for the Federal Transit Administration** – Nonurbanized Area Formula (Section 5311) is 20.509. A Recipient covered by the Single Audit Act Amendments of 1996 and OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations," (replaced with 2 CFR Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" effective December 26, 2014 as applicable) agrees to separately identify the expenditures for Federal awards

Page 219  
under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by OMB Circular A-133. The Recipient agrees to accomplish this by identifying expenditures for Federal awards made under Recovery Act separately on the SEFA, and as separate rows under Item 9 of Part III on the SF-SAC by CFDA number, and inclusion of the prefix "ARRA" in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF-SAC.

**Instructions for Certification:** By signing and submitting this bid or proposal, the prospective lower tier participant is providing the signed certification set out below.

1. It will comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 CFR part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 CFR part 180,
2. To the best of its knowledge and belief, that its Principals and Subrecipients at the first tier:
  - a. Are eligible to participate in covered transactions of any Federal department or agency and are not presently:
    1. Debarred
    2. Suspended
    3. Proposed for debarment
    4. Declared ineligible
    5. Voluntarily excluded
    6. Disqualified
  - b. Its management has not within a three-year period preceding its latest application or proposal been convicted of or had a civil judgment rendered against any of them for:
    1. Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction, or contract under a public transaction,
    2. Violation of any Federal or State antitrust statute, or
    3. Proposed for debarment commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making any false statement, or receiving stolen property
  - c. It is not presently indicted for, or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses listed in the preceding subsection 2.b of this Certification,
  - d. It has not had one or more public transactions (Federal, State, or local) terminated for cause or default within a three-year period preceding this Certification,
  - e. If, at a later time, it receives any information that contradicts the statements of subsections 2.a – 2.d above, it will promptly provide that information to FTA,
  - f. It will treat each lower tier contract or lower tier subcontract under its Project as a covered lower tier contract for purposes of 2 CFR part 1200 and 2 CFR part 180 if it:
    1. Equals or exceeds \$25,000,
    2. Is for audit services, or
    3. Requires the consent of a Federal official, and
  - g. It will require that each covered lower tier contractor and subcontractor:
    1. Comply and facilitate compliance with the Federal requirements of 2 CFR parts 180 and 1200, and
    2. Assure that each lower tier participant in its Project is not presently declared by any Federal department or agency to be:
      - a. Debarred from participation in its federally funded Project,
      - b. Suspended from participation in its federally funded Project,
      - c. Proposed for debarment from participation in its federally funded Project,
      - d. Declared ineligible to participate in its federally funded Project,
      - e. Voluntarily excluded from participation in its federally funded Project, or
      - f. Disqualified from participation in its federally funded Project, and
3. It will provide a written explanation as indicated on a page attached in FTA's TrAMS-Web or the Signature Page if it or any of its principals, including any of its first tier Subrecipients or its Third Party Participants at a lower tier, is unable to certify compliance with the preceding statements in this Certification Group.

### **Certification**

Contractor

CITY OF FARGO

Signature of Authorized Official

Date

Name and Title of Contractor's Authorized Official

TIMOTHY J. NAHONEY, MAYOR

**BUY AMERICA CERTIFICATION**  
**(STEEL OR MANUFACTURED PRODUCTS)**  
**[61 FR 6302, Feb. 16, 1996, as amended at 74 FR 30239, June 25, 2009]**

General Requirement (as stated in 49 CFR 661.5)

- a. Except as provided in 49 CFR 661.7 and 49 CFR 661.11, no funds may be obligated by FTA for a grantee project unless all iron, steel, and manufactured products used in the project are produced in the United States.
- b. All steel and iron manufacturing processes must take place in the United States, except metallurgical processes involving refinement of steel additives.
- c. The steel and iron requirements apply to all construction materials made primarily of steel or iron and used in infrastructure projects such as, transit or maintenance facilities, rail lines, and bridges. These items include, but are not limited to, structural steel or iron, steel or iron beams and columns, running rail and contact rail. These requirements do not apply to steel or iron used as components or subcomponents of other manufactured products or rolling stock, or to bimetallic power rail incorporating steel or iron components.
- d. For a manufactured product to be considered produced in the United States:
  1. All of the manufacturing processes for the product must take place in the United States; and
  2. All of the components of the product must be of U.S. origin. A component is considered of U.S. origin if it is manufactured in the United States, regardless of the origin of its subcomponents.

If steel, iron, or manufactured products (as defined in 49 CFR 661.3 and 661.5) are being procured, the appropriate certificate as set forth below shall be completed and submitted by each bidder or offeror in accordance with the requirement contained in 49 CFR 661.13(b).

**Certificate of Compliance with Buy America Requirements**

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(1), and the applicable regulations in 49 CFR part 661.

Company CITY OF FARGO  
 Name DR. TIMOTHY J. MAHONEY Title MAYOR  
 Signature \_\_\_\_\_ Date \_\_\_\_/\_\_\_\_/\_\_\_\_

**Certificate of Non-Compliance with Buy America Steel or Manufactured Products**

**Requirements** The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j), but it may qualify for an exception to the requirement pursuant to 49 U.S.C. 5323(j)(2), as amended, and the applicable regulations in 49 C.F.R. 661.7.

Company \_\_\_\_\_  
 Name \_\_\_\_\_ Title \_\_\_\_\_  
 Signature \_\_\_\_\_ Date \_\_\_\_/\_\_\_\_/\_\_\_\_

## Certification for Contracts, Grants, Loans, and Cooperative Agreements

(To be submitted with each bid or offer exceeding \$100,000)

The undersigned [Contractor] certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, et seq.)]
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The Contractor, CITY OF FARGO, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, et seq., apply to this certification and disclosure, if any.

\_\_\_\_\_  
Signature of Contractor's Authorized Official

DR. TIMOTHY J. MAHONEY, MAYOR Name and Title of Contractor's Authorized Official

\_\_\_\_\_  
Date

## Risk Management Appendix

**Routine\* Transit Agreements With Sovereign Entities and Political Subdivisions of the State of North Dakota:****Parties:** **State** – State of North Dakota, its agencies, officers and employees**Governmental Entity** – The Governmental Entity executing the attached document, its agencies, officers and employees**Governments** – State and Government Entity, as defined above

Each party agrees to assume its own liability for any and all claims of any nature including all costs, expenses and attorney's fees which may in any manner result from or arise out of this agreement.

Each party shall secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds, authorized to do business in North Dakota, the following insurance coverages:

- 1) **Commercial general liability and automobile liability** insurance – minimum limits of liability required of the Governmental Entity are **\$250,000 per person and \$500,000 per occurrence**. The minimum limits of liability required of the State are **\$250,000 per person and \$1,000,000 per occurrence**.
- 2) **Workers compensation** insurance meeting all statutory limits.
- 3) The policies and endorsements may not be canceled or modified without **thirty (30) days prior written notice** to the undersigned State representative.

**The State reserves the right to obtain complete, certified copies of all required insurance documents, policies, or endorsements at any time.**

Each party that hires subcontractors shall require any non-public subcontractors, prior to commencement of work set out under an agreement between that party and the non-public subcontractor, to:

Defend, indemnify, and hold harmless the Governments, their agencies, officers and employees, from and against claims based on the vicarious liability of the Governments or its agents, but not against claims based on the Government's contributory negligence, comparative and/or contributory negligence or fault, sole negligence, or intentional misconduct. The legal defense provided by the Subcontractor to the Governments under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for the Governments is necessary. Subcontractor also agrees to defend, indemnify, and hold the Governments harmless for all costs, expenses and attorneys' fees incurred if the Governments prevail in an action against the Subcontractor in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this agreement.

Subcontractor shall secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds authorized to do business in North Dakota: 1) commercial general liability; 2) automobile liability; and 3) workers compensation insurance all covering the Subcontractor for any and all claims of any nature which may in any manner arise out of or result from this agreement. The minimum limits of liability required are \$250,000 per person and \$1,000,000 per occurrence for commercial general liability and automobile liability coverages, and statutory limits for workers compensation. The Governments shall be endorsed on the commercial general liability policy and automobile liability policy as additional insureds. The Governments shall have all the benefits, rights and coverages of an additional insured under these policies that shall not be limited to the minimum limits of insurance required by this agreement or by the contractual indemnity obligations of the Contractor. Said endorsement shall contain a "Waiver of Subrogation" waiving any right of recovery the insurance company may have against the Governments as well as provisions that the policy and/or endorsement may not be canceled or modified without thirty (30) days prior written notice to the undersigned representatives of the Governments, and that any attorney who represents the State under this policy must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under N.D.C.C. Section 54-12-08. Subcontractor's insurance coverage shall be primary (i.e., pay first) as respects any insurance, self-insurance or self-retention maintained by the Governments. Any insurance, self-insurance or self-retention maintained by the Governments shall be excess of the Contractor's insurance and the Subcontractor's insurance and shall not contribute with them. The insolvency or bankruptcy of the insured Subcontractor shall not release the insurer from payment under the policy, even when such insolvency or bankruptcy prevents the insured Subcontractor from meeting the retention limit under the policy. Any deductible amount or other obligations under the Subcontractor's policy(ies) shall be the sole responsibility of the Subcontractor. This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and be placed with insurers rated "A-" or better by A.M. Best Company, Inc. The Governments will be indemnified, saved, and held harmless to the full extent of any coverage actually secured by the Subcontractor in excess of the minimum requirements set forth above. The Government Entity that hired the Subcontractor shall be held responsible for ensuring compliance with the above requirements by all Subcontractors. The Governments reserve the right to obtain complete, certified copies of all required insurance documents, policies, or endorsements at any time.

\*See *North Dakota Risk Management Manual*, section 5.1 for discussion of "unique" and "routine" agreements.

RM Consulted 2007  
Revised 11-19



**Certificate Of Completion**

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Status: Sent

Subject: Contract #38201125: Please DocuSign: Section 5339 Transit Grant Agreement

Contract Number: 38201125

PCN:

Source Envelope:

Document Pages: 36

Signatures: 0

Certificate Pages: 3

Initials: 0

AutoNav: Enabled

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Time Zone: (UTC-06:00) Central Time (US &amp; Canada)

Envelope Originator:

Connie Nelson

608 E Boulevard Ave

Bismarck, ND 58505

conelson@nd.gov

IP Address: 165.234.252.245

**Record Tracking**

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Holder: Connie Nelson

conelson@nd.gov

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Pool: Carahsoft OBO North Dakota Department of Location: DocuSign

Transportation CLOUD

**Signer Events****Signature****Timestamp**Security Level: Email, Account Authentication  
(None)**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

Security Level: Email, Account Authentication  
(None)**Electronic Record and Signature Disclosure:**

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(None)**Electronic Record and Signature Disclosure:**

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Steve Salwei

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Security Level: Email, Account Authentication  
(None)**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

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(None)**Electronic Record and Signature Disclosure:**

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Not Offered via DocuSign

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Not Offered via DocuSign

Laurie Martin

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Security Level: Email, Account Authentication  
(None)

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

**In Person Signer Events**

**Signature**

**Timestamp**

**Editor Delivery Events**

**Status**

**Timestamp**

**Agent Delivery Events**

**Status**

**Timestamp**

Julie Bommelman

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Security Level: Email, Account Authentication  
(None)

**Electronic Record and Signature Disclosure:**  
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**Intermediary Delivery Events**

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**Timestamp**

**Certified Delivery Events**

**Status**

**Timestamp**

Becky Hanson

bhanson@nd.gov

Carahsoft OBO North Dakota Department of  
Transportation CLOUD

Security Level: Email, Account Authentication  
(None)

**Electronic Record and Signature Disclosure:**  
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Connie Nelson

conelson@nd.gov

Security Level: Email, Account Authentication  
(None)

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

**Carbon Copy Events**

**Status**

**Timestamp**

Legal Admin

dotlegaladmin@nd.gov

Security Level: Email, Account Authentication  
(None)

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

**Carbon Copy Events**

Legal Admin

dotlegaladmin@nd.gov

Security Level: Email, Account Authentication  
(None)

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

**Status**

**Timestamp**

**Witness Events**

**Signature**

**Timestamp**

**Notary Events**

**Signature**

**Timestamp**

**Envelope Summary Events**

**Status**

**Timestamps**

Envelope Sent

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8/19/2020 3:42:30 PM

**Payment Events**

**Status**

**Timestamps**

**North Dakota Department of Transportation  
SECTION 5310 TRANSIT GRANT AGREEMENT**

**Federal Award Information – To be provided by NDDOT**

CFDA No.: 20.513

CFDA Title: Capital Assistance Program

Award Name: Elderly &amp; Persons with Disabilities Program Awarding Fed. Agency: FTA

NDDOT Program Mgr.: Hanson, Becky Telephone: 701-328-2542

**DUNS No.:** 070265871**Federal Aid Identification No. (FAIN):** ND-2020-008

**Notice to Subrecipients:** Federal awards may have specific compliance requirements. If you are not aware of the specific requirements for your award, please contact your NDDOT Program Manager.

This contract is between the state of North Dakota, acting by and through its Director of Transportation, hereinafter referred to as NDDOT, whose address is 608 East Boulevard Avenue, Bismarck, North Dakota 58505-0700, and City of Fargo, a Political Subdivision, hereinafter referred to as the Contractor, whose address is 650 23<sup>rd</sup> Street North, Fargo, ND 58102.

WHEREAS, Section 5310 of the Fixing America's Surface Transportation (FAST) Act, provides for capital grants to private nonprofit corporations and associations for the specific purpose of assisting them in providing transportation services meeting the special needs of older adults and people with disabilities for whom mass transportation services are unavailable, insufficient, or inappropriate; and

WHEREAS, the Governor of the state of North Dakota, in accordance with a request by the Federal Transit Administration (FTA), has designated NDDOT to evaluate and select projects and to coordinate the grant applications; and

WHEREAS, NDDOT and the Contractor desire to secure and utilize grant funds for the transportation needs of older adults and citizens with disabilities of the state of North Dakota; now

THEREFORE, in consideration of the mutual interests herein set forth, NDDOT and the Contractor agree as follows:

**Section 1. Purpose of Agreement.** The purpose of this agreement is to provide grant funds for traditional and non-traditional operating and capital expenses used in providing transportation services for the older persons and persons with disabilities, hereinafter referred to as the project. The grant amount is \$82,912.

**Section 2. Project Obligation.** The Contractor shall undertake and complete the project(s) as described in the attached Project Description and Budget (Attachment A), and as described in the Contractor's approved grant application, on file with NDDOT.

**Section 3. Property.** All purchases, property management, and property disposition shall be made in accordance with State and Federal requirements, copies of which will be provided by NDDOT on request.



**Section 4. Period of Performance.** The Contractor shall commence, carry on, and complete purchase of the described project(s) with all practicable dispatch, in a sound, economical, and efficient manner. This agreement shall begin upon execution of this agreement by both parties and terminate on June 30, 2021.

**Section 5. Project Participation.** Participation in the project costs shall be as indicated in the attached Project Description and Budget. The Contractor will provide sufficient non-federal funds which together with the grant will pay the project costs. In the event that the actual project costs are less than what is shown in the project budget or if a rebate is given, this reduction in cost shall be applied to the Contractor and NDDOT in proportion to the participation rates of each.

**Section 6. Purchase of Project Assets.** The purchase of all project assets financed, in whole or in part, pursuant to this agreement shall be undertaken by the Contractor in accordance with NDDOT's procurement procedures and Federal regulations.

**Section 7. Use of Project Assets.** The Contractor agrees that the project asset shall be used for providing transportation service in accordance with the project description in the grant application. Such asset shall be used for the duration of its useful life. If any project asset is not used in this manner or is withdrawn from service before the end of its useful life, the Contractor shall immediately notify NDDOT of that condition.

**Section 8. Amendment.** Any change in this agreement shall be in writing and agreed upon by both parties.

**Section 9. Subcontracting.** The Contractor shall not assign any portion of the work under this agreement, execute any contract, or obligate itself in any manner with a third party with respect to its rights and responsibilities to this agreement without written consent of NDDOT. Any agreement with a subcontractor does not create a contractual relationship between the NDDOT and the subcontractor.

**Section 10. Subcontract Provisions.** The Contractor shall include in all subcontracts entered into, pursuant to this agreement, all of the above-required sections. In addition, the following statement of financial assistance shall be included in any advertisement or invitation to bid for any procurement under this agreement:

"This contract is subject to a financial assistance contract between the state of North Dakota and the USDOT."

**Section 11. Assignments.** Unless authorized in writing by NDDOT, the Contractor shall not assign any portion of the work or assets and vehicles under this agreement; execute any contract, amendment, or change order thereto; or obligate in any manner with a third party with respect to rights and responsibilities under this agreement.

**Section 12. Records and Reports.**

- a. The Contractor shall submit project operational data and information as requested by NDDOT.
- b. The Contractor shall also submit financial statements, data, records, contracts, and other documents related to the project as requested by NDDOT.
- c. All charges to the project account shall be supported by executed invoices, contracts, or vouchers showing the nature of the charges. All checks, invoices, contracts, vouchers, orders, or other



accounting documents pertaining in whole or in part to the project shall be clearly identified; readily accessible; and, to the extent feasible, kept separate and apart from all other such documents.

- d. The Contractor shall maintain all accounting and project records NDDOT may require. Such records shall be made available to NDDOT and the federal government for inspection and audit during the agreement term and for three years after the date of final payment, unless any litigation, claim, or audit is started before the expiration of the three years, in which case the records shall be retained until such action is satisfied.

**Section 13. Audit and Inspection.** The Contractor shall permit NDDOT, the comptroller general of the United States, and the secretary of the US Department of Transportation or their authorized representatives to inspect all vehicles, facilities, and assets used by the Contractor as part of the project and all relevant project data and records. Entities that receive federal funds through NDDOT may be required to obtain an audit in accordance with 2 C.F.R. Part 200, Subpart F. A copy of such audit shall be submitted to NDDOT. Entities that spend less than \$750,000 of federal funds from all sources may be subject to reviews by NDDOT at its discretion. Additionally, all entities receiving federal funds through NDDOT shall certify whether a Single Audit has been completed as part of the annual Federal award process. These requirements are applicable to counties, cities, state agencies, Indian tribes, colleges, hospitals, and non-profit businesses.

**Section 14. Termination.** NDDOT reserves the right, with or without cause, to terminate this agreement by written notice. In the event of termination without cause, NDDOT will reimburse the Contractor for costs incurred prior to the termination date without further liability.

**Section 15. Action Upon Termination.** The Contractor agrees to dispose of the project asset in accordance with NDDOT's program policy, copies of which will be made available by NDDOT upon request.

**Section 16. Contract Changes.** All modifications of this agreement shall be made in writing and agreed upon by both parties.

**Section 17. Prohibited Interest.** No member, officer, or employee of the Contractor during his tenure or for one year thereafter shall have any personal interest, direct or indirect, in this contract or the proceeds thereof.

**Section 18. No Obligation by the Federal Government.** The purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the federal government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the federal government, the federal government is not a party to this contract and shall not be subject to any obligations or liabilities to the purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

The Contractor agrees to include the above clause in each subcontract financed in whole or in part with federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

**Section 19. Other Provisions.** The Contractor acknowledges the following provisions and agrees to cooperate with NDDOT in abiding by them: See Attachment B and complete required forms.

Safety Jurisdiction. FTA's authority in the area of transit safety is set forth in section 22 of the Federal Transit Act Amendments of 1991. Under this section, FTA may withhold further financial assistance from



any private nonprofit or for-profit agency recipient who fails to correct any condition which FTA believes "creates a serious hazard of death or injury."

**Section 20. Statement of Financial Assistance.** This contract is subject to a financial assistance contract between the state of North Dakota and the USDOT.

**Section 21. Applicable Law.** Indemnity. Contractor shall comply with all applicable federal, state, and local laws, rules, and ordinances at all times in the performance of this agreement and conduct its activities so as not to endanger any person or property.

**Section 22. Federal Changes.** Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the FTA Master Agreement (from FTA MA (26) dated October 1, 2019) between purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

**Section 23. Disputes.** FTA Cir. 4220.1F. Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of NDDOT Director. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Director. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Director shall be binding upon the Contractor, and the Contractor shall abide by the decision.

**Performance During Dispute** - Unless otherwise directed by NDDOT, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

**Section 24. Merger and Waiver.** This agreement constitutes the entire agreement between the parties. No waiver, consent, modification or change of terms of this agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification, or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this agreement. Contractor, by the signature below of its authorized representative, hereby acknowledges that the Contractor has read this agreement, understands it, and agrees to be bound by its terms and conditions.

**Section 25. Conflicts of Interest.** No official or employee of a state or any other governmental instrumentality who is authorized in their official capacity to negotiate, make, accept, or approve, or to take part in negotiating, making, accepting or approving any contract or subcontract in connection with a project shall have, directly or indirectly, any financial or other personal interest in any such contract or subcontract. No engineer, attorney, appraiser, inspector or other person performing services for a state or a governmental instrumentality in connection with a project shall have, directly or indirectly, a financial or other personal interest, other than their employment or retention by a state or other governmental instrumentality, in an contract or subcontract in connection with such project. No officer or employee of such person retained by a state or other governmental instrumentality shall have, directly or indirectly, any financial or other personal interest in any real property acquired for a project unless such interest is openly disclosed upon the public records of NDDOT and of such other governmental instrumentality, and such officer, employee, or person has not participated in such acquisition for and in behalf of the state.

**Section 26. Insurance.** The Contractor shall maintain insurance coverage on the project asset in an amount adequate to protect the fair market value of the asset throughout the duration of this agreement.



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**Section 27. Incorporation of Federal Transit Administration (FTA) Terms** - The preceding provisions include, in part, certain Standard Terms and Conditions required by USDOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by USDOT, as set forth in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any NDDOT requests which would cause NDDOT to be in violation of the FTA terms and conditions.

**Section 28. Risk Management.** The Risk Management Appendix, attached, is hereby incorporated and made a part of this agreement.

EXECUTED the date last below signed.

WITNESS:

STEVE SPRAGUE, City Auditor  
NAME (TYPE OR PRINT)

SIGNATURE

CONTRACTOR:

DR. Timothy J. MAHONEY  
NAME (TYPE OR PRINT)

SIGNATURE

MAYOR  
TITLE

DATE

WITNESS:

NAME (TYPE OR PRINT)

SIGNATURE

NORTH DAKOTA  
DEPARTMENT OF TRANSPORTATION

DIRECTOR (TYPE OR PRINT)

SIGNATURE

DATE

APPROVED as to substance by:

LOCAL GOVERNMENT ENGINEER (TYPE OR PRINT)

SIGNATURE

DATE

CLA 17014 (Div. 38)  
L.D. Approved 7-17-89; 7-20



**CERTIFICATION OF LOCAL MATCH**

It is hereby certified that City of Fargo will provide non-federal funds, unless expressly allowed by federal regulation to use federal funds as match. The source of the non-federal funds is identified below, as match for the amount the Transit Provider is obligated to pay under the terms of the attached agreement with the North Dakota Department of Transportation. The certified amount does not duplicate any federal claims for reimbursement, nor are the funds used to match other federal funds, unless expressly allowed by federal regulation.

**Non-Federal Match Funds provided for Transit Provider.** Please designate the source(s) of funds that will be used to match the federal funds obligated for this grant through the North Dakota Department of Transportation.

**Source:**

general fund, advertising, state aid

Executed at \_\_\_\_\_, North Dakota, the last date below signed.

**WITNESS:**

**APPROVED:**

SIGNATURE

NAME (TYPE OR PRINT)

DATE

SIGNATURE

\*

TITLE

DATE

\*Director or President of Transit Board

CLA 17014 (Div. 38)  
L.D. Approved 7-17-89; 6-20



NORTH  
**Dakota** | Transportation  
Be Legendary.™

August 10, 2020

Julie Bommelman  
 Fargo Metro Area Transit  
 650 23<sup>rd</sup> St N  
 Fargo, ND 58102

FY 2021 – Section 5310 Enhanced Mobility of Seniors and Individuals with Disabilities Grant, CFDA No. 20.513

Thank you for submitting a 5310 grant application and we are pleased to inform you that we are able to provide funding for your transit agency. The award amount is \$82,912. Please see Attachment A for the funding breakdown.

In order to begin the funding process, please:

1. Complete the contractor and witness information in DocuSign.
2. Have your organization's president or chairman digitally sign and date the agreement (under Contractor)—this signature ***must be an authorized signatory*** for your project. Please also submit a proof of authorization to sign if it is not the president or chairperson of your agency.
3. Finish the DocuSign process to send to the witness for signature.
4. Have a witness sign and date the agreement (under Witness) and upload proof of insurance in the form of Confirmation of Coverage OR Certificate of Insurance for automobiles and premises/commercial, if it is required. This is required for all Non-Profit and For-Profit agencies.
5. Upon completion of executing all documents, finish the DocuSign process and the contract documents will return to NDDOT for processing.

If you have any questions or need assistance, please contact Connie Nelson at (701) 328-3720 or [conelson@nd.gov](mailto:conelson@nd.gov).

Sincerely,



Becky Hanson  
Transit Program Manager

Cc: Kevin Hanson, Board Chair  
Dan Farnsworth, Fargo/Moorhead COG  
Enclosure

Attachment A

**Project Name** City of Fargo  
SFY 2021 (July 1, 2020 - June 30, 2021)

	Local Match Percentage	Funding Source Section	TOTAL Federal Share	Local Share	Total
<b>Funding Category</b>					
<b>Capital - Mobility Manager</b>	<b>20</b>	<b>5310</b>	<b>\$82,912</b>	<b>\$20,728</b>	<b>\$103,640</b>
<b>TOTALS</b>			<b>\$82,912</b>	<b>\$20,728</b>	<b>\$103,640</b>

Notice to Subrecipients: Each Federal program is governed by different regulations. Federal awards have specific compliance requirements. If you are not aware of the specific requirements for your award, please contact your NDDOT Program Manager.

CFDA Title	CFDA No.	Title 49 USC Chapter 53 Section	Award Name
Capital Assistance Program	CFDA No 20.513	<b>5310</b>	Elderly and Persons with Disabilities Program
Section 5310 provides for capital grants to private nonprofit corporations and associations for the specific purpose of assisting them in providing transportation services meeting the special needs of elderly and disabled persons for whom mass transportation services are unavailable, insufficient, or inappropriate			

## **Attachment B – Federal Clauses – Operations and Management under \$150,000**

**Fly America Requirements** – Applicability – all contracts involving transportation of persons or property, by air between the U.S. and/or places outside the U.S. These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).

Contractor shall comply with 49 USC 40118 (the “Fly America” Act) in accordance with General Services Administration regulations 41 CFR 301-10, stating that recipients and subrecipients of Federal funds and their contractors are required to use US Flag air carriers for US Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a US flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. Contractor shall include the requirements of this section in all subcontracts that may involve international air transportation.

**Charter Bus Requirements** – Applicability – Operational Service Contracts. These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).

Contractor shall comply with 49 USC 5323(d) and (g) and 49 CFR 604, which state that recipients and subrecipients of FTA assistance may provide charter service for transportation projects that uses equipment or facilities acquired with Federal assistance authorized under the Federal transit laws (except as permitted by 49 CFR 604.2), or under 23 U.S.C. 133 or 142, only in compliance with those laws and FTA regulations, “Charter Service,” 49 CFR part 604, the terms and conditions of which are incorporated herein by reference.

**School Bus Requirements** – School Bus Requirements – Applicability – Operational Service Contracts. These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000). Pursuant to 69 USC 5323(f) or (g) as amended by MAP-21, 23 USC 133, 23 USC 142, and 49 CFR 605, recipients and subrecipients of FTA assistance shall not engage in school bus operations exclusively for transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and subrecipients shall not use federally funded equipment, vehicles, or facilities. Violations. If a Recipient or any Third-Party Participant that has operated school bus service in violation of FTA’s School Bus laws and regulations, FTA may: (1) Require the Recipient or Third-Party Participant to take such remedial measures as FTA considers appropriate, or (2) Bar the Recipient or Third Party Participant from receiving Federal transit funds.

**Energy Conservation** – Applicability – All Contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000) Contractor shall comply with mandatory standards and policies relating to energy efficiency, stated in the state energy conservation plan issued in compliance with the Energy Policy & Conservation Act.

**Lobbying** – Applicability - Construction/Architectural and Engineering/Acquisition of Rolling Stock/Professional Service Contract/Operational Service Contract/Turnkey contracts over \$100,000. Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] - Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part

20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

**Access to Records and Reports**– Applicability – As shown below. These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000). The following access to records requirements apply to this Contract:

- 1) Where the purchaser is not a State but a local government and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 18.36(i), contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives access to any books, documents, papers and contractor records which are pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor shall also, pursuant to 49 CFR 633.17, provide authorized FTA representatives, including any PMO contractor, access to contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)1, which is receiving FTA assistance through the programs described at 49 USC 5307, 5309 or 5311.
- 2) Where the purchaser is a State and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 633.17, contractor shall provide the purchaser, authorized FTA representatives, including any PMO Contractor, access to contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)1, which receives FTA assistance through the programs described at 49 USC 5307, 5309 or 5311. By definition, a capital project excludes contracts of less than the simplified acquisition threshold currently set at \$250,000.
- 3) Where the purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 19.48, contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives, access to any books, documents, papers and record of the contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
- 4) Where a purchaser which is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 USC 5325(a) enters into a contract for a capital project or improvement (defined at 49 USC 5302(a)1) through other than competitive bidding, contractor shall make available records related to the contract to the purchaser, the Secretary of USDOT and the US Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
- 5) Contractor shall permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- 6) Contractor shall maintain all books, records, accounts and reports required under this contract for a period of not less than three (3) years after the date of termination or

expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case contractor agrees to maintain same until the recipient, FTA Administrator, US Comptroller General, or any of their authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Re: 49 CFR 18.39(i)(11).

FTA does not require the inclusion of these requirements in subcontracts.

**Federal Changes** – Applicability – All Contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000). Contractor shall comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the recipient and FTA, as they may be amended or promulgated from time to time during the term of the contract. Contractor's failure to comply shall constitute a material breach of the contract.

**Recycled Products** – Applicability – All contracts for items designated by the EPA, when the purchaser or contractor procures \$10,000 or more of one of these items during the current or previous fiscal year using Federal funds. The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

**No Government Obligation to Third Parties** - Applicability – All contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).

- (1) The recipient and contractor acknowledge and agree that, notwithstanding any concurrence by the US Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the US Government, the US Government is not a party to this contract and shall not be subject to any obligations or liabilities to the recipient, the contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
- (2) Contractor agrees to include the above clause in each subcontract financed in whole or in part with FTA assistance. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

**Program Fraud and False or Fraudulent Statements or Related Acts** – Applicability – All contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).

- (1) Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC 3801 et seq. and USDOT regulations, "Program Fraud Civil Remedies," 49 CFR 31, apply to its actions pertaining to this project. Upon execution of the underlying contract, contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification, the US Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act (1986) on contractor to the extent the US Government deems appropriate.

- (2) If contractor makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification to the US Government under a contract connected with a project that is financed in whole or in part with FTA assistance under the authority of 49 USC 5307, the Government reserves the right to impose the penalties of 18 USC 1001 and 49 USC 5307(n)(1) on contractor, to the extent the US Government deems appropriate.
- (3) Contractor shall include the above two clauses in each subcontract financed in whole or in part with FTA assistance. The clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

**Termination** – Applicability – All Contracts over \$10,000, except contracts with nonprofit organizations and institutions of higher learning, where the threshold is \$250,000.

- a. Termination for Convenience (General Provision) the recipient may terminate this contract, in whole or in part, at any time by written notice to contractor when it is in the recipient's best interest. Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. Contractor shall promptly submit its termination claim to the recipient. If contractor is in possession of any of the recipient's property, contractor shall account for same, and dispose of it as the recipient directs.
- b. Termination for Default [Breach or Cause] (General Provision) If contractor does not deliver items in accordance with the contract delivery schedule, or, if the contract is for services, and contractor fails to perform in the manner called for in the contract, or if contractor fails to comply with any other provisions of the contract, the recipient may terminate this contract for default. Termination shall be effected by serving a notice of termination to contractor setting forth the manner in which contractor is in default. Contractor shall only be paid the contract price for supplies delivered and accepted, or for services performed in accordance with the manner of performance set forth in the contract. If it is later determined by the recipient that contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of contractor, the recipient, after setting up a new delivery or performance schedule, may allow contractor to continue work, or treat the termination as a termination for convenience.
- c. Opportunity to Cure (General Provision) the recipient in its sole discretion may, in the case of a termination for breach or default, allow contractor an appropriately short period of time in which to cure the defect. In such case, the notice of termination shall state the time period in which cure is permitted and other appropriate conditions. If contractor fails to remedy to the recipient's satisfaction the breach or default or any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by contractor or written notice from the recipient setting forth the nature of said breach or default, the recipient shall have the right to terminate the Contract without any further obligation to contractor. Any such termination for default shall not in any way operate to preclude the recipient from also pursuing all available remedies against contractor and its sureties for said breach or default.
- d. Waiver of Remedies for any Breach In the event that the recipient elects to waive its remedies for any breach by contractor of any covenant, term or condition of this Contract, such waiver by the recipient shall not limit its remedies for any succeeding breach of that

or of any other term, covenant, or condition of this Contract.

- e. Termination for Convenience (Professional or Transit Service Contracts) the recipient, by written notice, may terminate this contract, in whole or in part, when it is in the recipient's interest. If the contract is terminated, the recipient shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.
- f. Termination for Default (Supplies and Service) If contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the contractor fails to comply with any other provisions of this contract, the recipient may terminate this contract for default. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature of default. Contractor shall only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract. If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.
- g. Termination for Default (Transportation Services). If contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if contractor fails to comply with any other provisions of this contract, the recipient may terminate this contract for default. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature of default. Contractor shall only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract. If this contract is terminated while contractor has possession of the recipient goods, contractor shall, as directed by the recipient, protect and preserve the goods until surrendered to the recipient or its agent. Contractor and the recipient shall agree on payment for the preservation and protection of goods. Failure to agree on an amount shall be resolved under the Dispute clause. If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.
- h. Termination for Default (Construction) If contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified, or any extension, or fails to complete the work within this time, or if contractor fails to comply with any other provisions of this contract, the recipient may terminate this contract for default. the recipient shall terminate by delivering to contractor a notice of termination specifying the nature of default. In this event, the recipient may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. Contractor and its sureties shall be liable for any damage to the recipient resulting from contractor's refusal or failure to complete the work within specified time, whether or not contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the recipient in completing the work.

Contractor's right to proceed shall not be terminated nor shall contractor be charged with damages under this clause if:

1. Delay in completing the work arises from unforeseeable causes beyond the control and

without the fault or negligence of contractor. Examples of such causes include: acts of God, acts of the recipient, acts of another contractor in the performance of a contract with the recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and

2. Contractor, within 10 days from the beginning of any delay, notifies the recipient in writing of the causes of delay. If in the recipient's judgment, delay is excusable, the time for completing the work shall be extended. The recipient's judgment shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

If, after termination of contractor's right to proceed, it is determined that contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if termination had been issued for the recipient's convenience.

- i. Termination for Convenience or Default (Architect & Engineering) the recipient may terminate this contract in whole or in part, for the recipient's convenience or because of contractor's failure to fulfill contract obligations. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature, extent, and effective date of termination. Upon receipt of the notice, contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the recipient all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. If termination is for the recipient's convenience, it shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services. If termination is for contractor's failure to fulfill contract obligations, the recipient may complete the work by contract or otherwise and contractor shall be liable for any additional cost incurred by the recipient.

If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.

- j. Termination for Convenience or Default (Cost-Type Contracts) the recipient may terminate this contract, or any portion of it, by serving a notice of termination on contractor. The notice shall state whether termination is for convenience of the recipient or for default of contractor. If termination is for default, the notice shall state the manner in which contractor has failed to perform the requirements of the contract. Contractor shall account for any property in its possession paid for from funds received from the recipient, or property supplied to contractor by the recipient. If termination is for default, the recipient may fix the fee, if the contract provides for a fee, to be paid to contractor in proportion to the value, if any, of work performed up to the time of termination. Contractor shall promptly submit its termination claim to the recipient and the parties shall negotiate the termination settlement to be paid to contractor. If termination is for the recipient's convenience, contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a notice of termination for default, the recipient determines that contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of contractor, the recipient, after setting up a new work schedule, may allow contractor to continue work, or treat the termination as a

termination for convenience.

**Government-wide Debarment and Suspension (Nonprocurement)** – Applicability – Contracts over \$25,000. The Recipient agrees to the following: (1) It will comply with the requirements of 2 C.F.R. part 180, subpart C, as adopted and supplemented by U.S. DOT regulations at 2 C.F.R. part 1200, which include the following: (a) It will not enter into any arrangement to participate in the development or implementation of the Project with any Third Party Participant that is debarred or suspended except as authorized by: 1 U.S. DOT regulations, “Nonprocurement Suspension and Debarment,” 2 C.F.R. part 1200, 2 U.S. OMB, “Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” 2 C.F.R. part 180, including any amendments thereto, and 3 Executive Orders Nos. 12549 and 12689, “Debarment and Suspension,” 31 U.S.C. § 6101 note, (b) It will review the U.S. GSA “System for Award Management,” <https://www.sam.gov>, if required by U.S. DOT regulations, 2 C.F.R. part 1200, and (c) It will include, and require each of its Third Party Participants to include, a similar provision in each lower tier covered transaction, ensuring that each lower tier Third Party Participant: 1 Will comply with Federal debarment and suspension requirements, and 2 Reviews the “System for Award Management” at <https://www.sam.gov>, if necessary to comply with U.S. DOT regulations, 2 C.F.R. part 1200, and (2) If the Recipient suspends, debars, or takes any similar action against a Third Party Participant or individual, the Recipient will provide immediate written notice to the: (a) FTA Regional Counsel for the Region in which the Recipient is located or implements the Project, (b) FTA Project Manager if the Project is administered by an FTA Headquarters Office, or (c) FTA Chief Counsel,

**Contracts Involving Federal Privacy Act Requirements** – Applicability - When a grantee maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply to all contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).

The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

- (1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.
- (2) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

**Civil Rights Requirements**– Applicability – All contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000). The following requirements apply to the underlying contract:

The Recipient understands and agrees that it must comply with applicable Federal civil rights laws and regulations, and follow applicable Federal guidance, except as the Federal Government

determines otherwise in writing. Therefore, unless a Recipient or Program, including an Indian Tribe or the Tribal Transit Program, is specifically exempted from a civil rights statute, FTA requires compliance with that civil rights statute, including compliance with equity in service:

- a. Nondiscrimination in Federal Public Transportation Programs. The Recipient agrees to, and assures that each Third Party Participant will, comply with Federal transit law, 49 U.S.C. § 5332 (FTA's "Nondiscrimination" statute): (1) FTA's "Nondiscrimination" statute prohibits discrimination on the basis of: (a) Race, (b) Color, (c) Religion, (d) National origin, (e) Sex, (f) Disability, (g) Age, or (h) Gender identity and (2) The FTA "Nondiscrimination" statute's prohibition against discrimination includes: (a) Exclusion from participation, (b) Denial of program benefits, or (c) Discrimination, including discrimination in employment or business opportunity, (3) Except as FTA determines otherwise in writing: (a) General. Follow: 1 The most recent edition of FTA Circular 4702.1, "Title VI Requirements and Guidelines for Federal Transit Administration Recipients," to the extent consistent with applicable Federal laws, regulations, and guidance, and 2 Other applicable Federal guidance that may be issued, but (b) Exception for the Tribal Transit Program. FTA does not require an Indian Tribe to comply with FTA program-specific guidelines for Title VI when administering its projects funded under the Tribal Transit Program,
- b. Nondiscrimination – Title VI of the Civil Rights Act. The Recipient agrees to, and assures that each Third Party Participant will: (1) Prohibit discrimination based on: (a) Race, (b) Color, or (c) National origin, (2) Comply with: (a) Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d et seq., (b) U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964," 49 C.F.R. part 21, and (c) Federal transit law, specifically 49 U.S.C. § 5332, as stated in the preceding section a, and (3) Except as FTA determines otherwise in writing, follow: (a) The most recent edition of FTA Circular 4702.1, "Title VI and Title VI-Dependent Guidelines for Federal Transit Administration Recipients," to the extent consistent with applicable Federal laws, regulations, and guidance. (b) U.S. DOJ, "Guidelines for the enforcement of Title VI, Civil Rights Act of 1964," 28 C.F.R. § 50.3, and (c) Other applicable Federal guidance that may be issued,
- c. Equal Employment Opportunity. (1) Federal Requirements and Guidance. The Recipient agrees to, and assures that each Third Party Participant will, prohibit discrimination on the basis of race, color, religion, sex, or national origin, and: (a) Comply with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq., (b) Facilitate compliance with Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246, Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note, (c) Comply with Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a, and (d) Comply with FTA Circular 4704.1 other applicable EEO laws and regulations, as provided in Federal guidance, including laws and regulations prohibiting discrimination on the basis of disability, except as the Federal Government determines otherwise in writing, (2) General. The Recipient agrees to: (a) Ensure that applicants for employment are employed and employees are treated during employment without discrimination on the basis of their: 1 Race, 2 Color, 3 Religion, 4 Sex, 5 Disability, 6 Age, or 7 National origin, (b) Take affirmative action that includes, but is not limited to: 1 Recruitment advertising, 2 Recruitment, 3 Employment, 4 Rates of pay, 5 Other forms of compensation, 6 Selection for training, including apprenticeship, 7 Upgrading, 8

Transfers, 9 Demotions, 10 Layoffs, and 11 Terminations, but (b) Indian Tribe. Title VII of the Civil Rights Act of 1964, as amended, exempts Indian Tribes under the definition of "Employer". (3) Equal Employment Opportunity Requirements for Construction Activities. In addition to the foregoing, when undertaking "construction" as recognized by the U.S. Department of Labor (U.S. DOL), the Recipient agrees to comply, and assures the compliance of each Third Party Participant, with: (a) U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and (b) Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246, Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note,

- d. Disadvantaged Business Enterprise. To the extent authorized by applicable Federal law, the Recipient agrees to facilitate, and assures that each Third-Party Participant will facilitate, participation by small business concerns owned and controlled by socially and economically disadvantaged individuals, also referred to as "Disadvantaged Business Enterprises" (DBEs), in the Project as follows: 1) Requirements. The Recipient agrees to comply with: (a) Section 1101(b) of Map-21, 23 U.S.C. § 101 note, (b) U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 C.F.R. part 26, and (c) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a, (2) Assurance. As required by 49 C.F.R. § 26.13(a), (b) DBE Program Requirements. Recipients receiving planning, capital and/or operating assistance that will award prime third-party contracts exceeding \$250,000 in a Federal fiscal year must: 1 Have a DBE program meeting the requirements of 49 C.F.R. part 26, 2 Implement a DBE program approved by FTA, and 3 Establish an annual DBE participation goal, (c) Special Requirements for a Transit Vehicle Manufacturer. The Recipient understands and agrees that each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, must certify that it has complied with the requirements of 49 C.F.R. part 26, (d) the Recipient provides assurance that: The Recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 C.F.R. part 26. The Recipient shall take all necessary and reasonable steps under 49 C.F.R. part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The Recipient's DBE program, as required by 49 C.F.R. part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under 49 C.F.R. part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. § 1001 and/or the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. § 3801 et seq., (2) Exception for the Tribal Transit Program. FTA exempts Indian tribes from the Disadvantaged Business Enterprise regulations at 49 C.F.R. part 26 under Map-21 and previous legislation,
- e. Nondiscrimination on the Basis of Sex. The Recipient agrees to comply with Federal prohibitions against discrimination on the basis of sex, including: (1) Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq., (2) U.S. DOT regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. part 25, and (3) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a,

- f. Nondiscrimination on the Basis of Age. The Recipient agrees to comply with Federal prohibitions against discrimination on the basis of age, including: (1) The Age Discrimination in Employment Act (ADEA), 29 U.S.C. §§ 621 – 634, which prohibits discrimination on the basis of age, (2) U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, “Age Discrimination in Employment Act,” 29 C.F.R. part 1625, which implements the ADEA, (3) The Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., which prohibits discrimination against individuals on the basis of age in the administration of programs or activities receiving Federal funds, (4) U.S. Health and Human Services regulations, “Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance,” 45 C.F.R. part 90, which implements the Age Discrimination Act of 1975, and (5) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a,
- g. Nondiscrimination on the Basis of Disability. The Recipient agrees to comply with the following Federal prohibitions pertaining to discrimination against seniors or individuals with disabilities: (1) Federal laws, including: (a) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in the administration of federally funded programs or activities, (b) The Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101 et seq., which requires that accessible facilities and services be made available to individuals with disabilities, 1 General. Titles I, II, and III of the ADA apply to FTA Recipients, but 2 Indian Tribes. While Titles II and III of the ADA apply to Indian Tribes, Title I of the ADA exempts Indian Tribes from the definition of “employer,” (c) The Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities, (d) Federal transit law, specifically 49 U.S.C. § 5332, which now includes disability as a prohibited basis for discrimination, and (e) Other applicable laws and amendments pertaining to access for elderly individuals or individuals with disabilities, (2) Federal regulations, including: (a) U.S. DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 C.F.R. part 37, (b) U.S. DOT regulations, “Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance,” 49 C.F.R. part 27, (c) U.S. DOT regulations, “Transportation for Individuals with Disabilities: Passenger Vessels,” 49 C.F.R. part 39, (d) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) and U.S. DOT regulations, “Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles,” 36 C.F.R. part 1192 and 49 C.F.R. part 38, (e) U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability in State and Local Government Services,” 28 C.F.R. part 35, (f) U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities,” 28 C.F.R. part 36, (g) U.S. EEOC, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 C.F.R. part 1630, (h) U.S. Federal Communications Commission regulations, “Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities,” 47 C.F.R. part 64, Subpart F, (i) U.S. ATBCB regulations, “Electronic and Information Technology Accessibility Standards,” 36 C.F.R. part 1194, and (j) FTA regulations, “Transportation for Elderly and Handicapped Persons,” 49 C.F.R. part 609, and (3) Other applicable Federal civil rights and nondiscrimination guidance,
- h. Drug or Alcohol Abuse - Confidentiality and Other Civil Rights Protections. The

Recipient agrees to comply with the confidentiality and civil rights protections of: (1) The Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. § 1101 et seq., (2) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. § 4541 et seq., and (3) The Public Health Service Act, as amended, 42 U.S.C. §§ 290dd – 290dd-2,

- i. Access to Services for People with Limited English Proficiency. Except as the Federal Government determines otherwise in writing, the Recipient agrees to promote accessibility of public transportation services to people whose understanding of English is limited by following:
  - 1) Executive Order No. 13166, “Improving Access to Services for Persons with Limited English Proficiency,” August 11, 2000, 42 U.S.C. § 2000d-1 note, and (2) U.S. DOT Notice, “DOT Policy Guidance Concerning Recipients’ Responsibilities to Limited English Proficiency (LEP) Persons,” 70 Fed. Reg. 74087, December 14, 2005,
- j. Other Nondiscrimination Laws. Except as the Federal Government determines otherwise in writing, the Recipient agrees to: (1) Comply with other applicable Federal nondiscrimination laws and regulations, and (2) Follow Federal guidance prohibiting discrimination.
- k. Remedies. Remedies for failure to comply with applicable Federal Civil Rights laws and Federal regulations may be enforced as provided in those Federal laws or Federal regulations.

**Transit Employee Protective Provisions** – Applicability – Contracts for transit operations except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).

Public Transportation Employee Protective Arrangements. The Recipient agrees that 49 U.S.C. § 5333(b) requires employee protective arrangements to be in place as a condition of award of FTA assistance made available or appropriated for FTA programs involving public transportation operations. U.S. DOL recognizes the following categories of arrangements: (1) U.S. DOL Certification. When its Project involves public transportation operations and is financed with funding made available or appropriated for 49 U.S.C. §§ 5307, 5309, 5312, 5337, or 5339, as amended by Map-21, or former 49 U.S.C. §§ 5308, 5309, 5312, or other provisions of law as required by the Federal Government, U.S. DOL must provide a Certification of employee protective arrangements before FTA may provide financial assistance for the Project. Therefore, the Recipient understands and agrees, and assures that any Third Party Participant providing public transportation operations will agree, that: (a) It must carry out the Project as provided in its U.S. DOL Certification, which contains the terms and conditions that U.S. DOL has determined to be fair and equitable to protect the interests of any employees affected by the Project, (b) It must comply with 49 U.S.C. § 5333(b), and any future amendments thereto, (c) It will follow the U.S. DOL guidelines, “Guidelines, Section 5333(b), Federal Transit Law,” 29 C.F.R. part 215, except as U.S. DOL determines otherwise in writing, (d) It must comply with the terms and conditions of the U.S. DOL certification of public transportation employee protective arrangements for the Project, which certification is dated as identified on the Underlying Agreement, including: 1 Alternative comparable arrangements U.S. DOL has specified for the Project, 2 Any revisions U.S. DOL has specified for the Project, or 3 Both, and (e) It must comply with the following documents and provisions incorporated by reference in and made part of the Underlying Agreement for the Project: 1 The U.S. DOL certification of public transportation employee protective arrangements for the Project, which certification is dated as

identified on the Underlying Agreement, 2 The documents cited in that U.S. DOL certification for the Project, 3 Any alternative comparable arrangements that U.S. DOL has specified for the Project, and 4 Any revisions that U.S. DOL has specified for the Project, (2) Special Warranty. When its Project involves public transportation operations, and is financed with funding made available or appropriated for 49 U.S.C. § 5311, as amended by Map-21, for former 49 U.S.C. § 5311 in effect in FY 2012, or a previous fiscal year, or for section 3038 of TEA-21, as amended by section 3039 of SAFETEA-LU, U.S. DOL will provide a Special Warranty for those projects, including projects under the Tribal Transit Program. Therefore, the Recipient understands and agrees, and assures that any Third-Party Participant providing public transportation operations will agree, that: (a) It must comply with Federal transit laws, specifically 49 U.S.C. § 5333(b), (b) Follow the U.S. DOL guidelines, "Guidelines, Section 5333(b), Federal Transit Law," 29 C.F.R. part 215, except as U.S. DOL determines otherwise in writing, (c) It will comply with the U.S. DOL Special Warranty for its Project that is most current on the date when it executed the Underlying Agreement, and documents cited therein, including: 1 Any alternative comparable arrangements U.S. DOL has specified for the Project, 2 Any revisions U.S. DOL has specified for the Project, or 3 Both, and (d) It will comply with the following documents and provisions incorporated by reference in and made part of the Underlying Agreement: 1 The U.S. DOL Special Warranty for its Project, 2 Documents cited in that Special Warranty, 3 Alternative comparable arrangements U.S. DOL specifies for the Project, and 4 Any revisions that U.S. DOL has specified for the Project, and (3) Special Arrangements for 49 U.S.C. § 5310 Projects. The Recipient understands and agrees, and assures that any Third-Party Participant providing public transportation operations will agree, that although pursuant to 49 U.S.C. § 5310, and former 49 U.S.C. §§ 5310 or 5317, FTA has determined that it was not "necessary or appropriate" to apply the conditions of 49 U.S.C. § 5333(b) to Subrecipients participating in the program to provide public transportation for seniors (elderly individuals) and individuals with disabilities, FTA reserves the right to make the following exceptions: (a) FTA will make case-by-case determinations of the applicability of 49 U.S.C. § 5333(b) for all transfers of funding authorized under title 23, United States Code (flex funds), and (b) FTA reserves the right to make other exceptions as it deems appropriate.

**Disadvantaged Business Enterprise (DBE)** – Applicability – Contracts over \$10,000 awarded on the basis of a bid or proposal offering to use DBEs.

- a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The recipient's overall goal for DBE participation is listed elsewhere. If a separate contract goal for DBE participation has been established for this procurement, it is listed elsewhere.
- b. The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the municipal corporation deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).
- c. If a separate contract goal has been established, Bidders/offerors are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53.

- d. If no separate contract goal has been established, the successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.
- e. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the recipient. In addition, the contractor may not hold retainage from its subcontractors or must return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed or must return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by the recipient and contractor's receipt of the partial retainage payment related to the subcontractor's work.
- f. The contractor must promptly notify the recipient whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the recipient.

**Prompt Payment** – Applicability – All contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contract receives from the Recipient. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Recipient. This clause applies to both DBE and non-DBE subcontracts.

**Incorporation of Federal Transit Administration (FTA) Terms** – Applicability – All contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).

The preceding provisions include, in part, certain Standard Terms & Conditions required by USDOT, whether or not expressly stated in the preceding contract provisions. All USDOT-required contractual provisions, as stated in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The contractor shall not perform any act, fail to perform any act, or refuse to comply with any request that would cause the recipient to be in violation of FTA terms and conditions.

**Drug & Alcohol Abuse and Testing** – Applicability – Operational service contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).

The Contractor agrees to comply with the following Federal substance abuse regulations: a. Drug-Free Workplace. U.S. DOT regulations, "Drug-Free Workplace Requirements (Grants)," 49 C.F.R. Part 32, that implements the Drug-Free Workplace Act of 1988 as amended, 41

U.S.C. §§ 8103 et seq., and 2 CFR part 182, b. Alcohol Misuse and Prohibited Drug Use. FTA Regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 USC 5331, as amended by Map-21, 49 CFR part 40, 49 USC chapter 53, 49 CFR Part 655, to the extent applicable.

**Other Federal Requirements:**

**Full and Open Competition** – In accordance with 49 U.S.C. § 5325(h) all procurement transactions shall be conducted in a manner that provides full and open competition.

**Prohibition Against Exclusionary or Discriminatory Specifications** – Apart from inconsistent requirements imposed by Federal statute or regulations, the contractor shall comply with the requirements of 49 USC 5323(h)(2) by refraining from using any FTA assistance to support procurements using exclusionary or discriminatory specifications.

**Conformance with ITS National Architecture** – Contractor shall conform, to the extent applicable, to the National Intelligent Transportation Standards architecture as required by SAFETEA-LU Section 5307(c), 23 U.S.C. Section 512 note and follow the provisions of FTA Notice, "FTA National Architecture Policy on Transit Projects," 66 Fed. Reg. 1455 et seq., January 8, 2001, and any other implementing directives FTA may issue at a later date, except to the extent FTA determines otherwise in writing.

**Access Requirements for Persons with Disabilities** – Contractor shall comply with 49 USC 5301(d), stating Federal policy that the elderly and persons with disabilities have the same rights as other persons to use mass transportation services and facilities and that special efforts shall be made in planning and designing those services and facilities to implement that policy. Contractor shall also comply with all applicable requirements of Sec. 504 of the Rehabilitation Act (1973), as amended, 29 USC 794, which prohibits discrimination on the basis of handicaps, and the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments thereto.

**Notification of Federal Participation** – To the extent required by law, in the announcement of any third party contract award for goods and services (including construction services) having an aggregate value of \$500,000 or more, contractor shall specify the amount of Federal assistance to be used in financing that acquisition of goods and services and to express that amount of Federal assistance as a percentage of the total cost of the third party contract.

**Interest of Members or Delegates to Congress** - No members of, or delegates to, the US Congress shall be admitted to any share or part of this contract nor to any benefit arising therefrom.

**Ineligible Contractors and Subcontractors** - Any name appearing upon the Comptroller General's list of ineligible contractors for federally-assisted contracts shall be ineligible to act as a subcontractor for contractor pursuant to this contract. If contractor is on the Comptroller General's list of ineligible contractors for federally financed or assisted construction, the recipient shall cancel, terminate or suspend this contract.

**Other Contract Requirements** - To the extent not inconsistent with the foregoing Federal requirements, this contract shall also include those standard clauses attached hereto, and shall comply with the recipient's Procurement Guidelines, available upon request from the recipient.

**Compliance with Federal Regulations** - Any contract entered pursuant to this solicitation shall contain the following provisions: All USDOT-required contractual provisions, as set forth in FTA Circular 4220.1F, are incorporated by reference. Anything to the contrary herein notwithstanding, FTA mandated terms shall control in the event of a conflict with other provisions contained in this Agreement. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any grantee request that would cause the recipient to be in violation of FTA terms and conditions. Contractor shall comply with all applicable FTA regulations, policies, procedures and directives, including, without limitation, those listed directly or incorporated by reference in the Master Agreement between the recipient and FTA, as may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

**Real Property** - Any contract entered into shall contain the following provisions: Contractor shall at all times comply with all applicable statutes and USDOT regulations, policies, procedures and directives governing the acquisition, use and disposal of real property, including, but not limited to, 49 CFR 18.31-18.34, 49 CFR 19.30-19.37, 49 CFR Part 24, 49 CFR 5326 as amended by Map-21, 49 CFR part 18 or 19, 49 USC 5334, applicable FTA Circular 5010, and FTA Master Agreement, as they may be amended or promulgated during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

**Access to Services for Persons with Limited English Proficiency** - To the extent applicable and except to the extent that FTA determines otherwise in writing, the Recipient agrees to comply with the policies of Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d 1 note, and with the provisions of U.S. DOT Notice, "DOT Guidance to Recipients on Special Language Services to Limited English Proficient (LEP) Beneficiaries," 70 Fed. Reg. 74087, December 14, 2005.

**Environmental Justice** - Except as the Federal Government determines otherwise in writing, the Recipient agrees to promote environmental justice by following: (1) Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," February 11, 1994, 42 U.S.C. § 4321 note, as well as facilitating compliance with that Executive Order, and (2) DOT Order 5610.2, "Department of Transportation Actions To Address Environmental Justice in Minority Populations and Low-Income Populations," 62 Fed. Reg. 18377, April 15, 1997, and (3) The most recent and applicable edition of FTA Circular 4703.1, "Environmental Justice Policy Guidance for Federal Transit Administration Recipients," August 15, 2012, to the extent consistent with applicable Federal laws, regulations, and guidance,

**Environmental Protections** - Compliance is required with any applicable Federal laws imposing environmental and resource conservation requirements for the project. Some, but not all, of the major Federal laws that may affect the project include: the National Environmental Policy Act of 1969; the Clean Air Act; the Resource Conservation and Recovery Act; the comprehensive Environmental response, Compensation and Liability Act; as well as environmental provisions with Title 23 U.S.C., and 49 U.C. chapter 53. The U.S. EPA, FHWA and other federal agencies may issue other federal regulations and directives that may affect the project. Compliance is required with any applicable Federal laws and regulations in effect now or that become effective in the future.

**Geographic Information and Related Spatial Data** - Any project activities involving spatial data or geographic information systems activities financed with Federal assistance are required to

be consistent with the National Spatial Data Infrastructure promulgated by the Federal Geographic Data Committee, except to the extent that FTA determines otherwise in writing.

**Geographic Preference** – All project activities must be advertised without geographic preference, (except in A/E under certain circumstances, preference for hiring veterans on transit construction projects and geographic-based hiring preferences as proposes to be amended in 2 CFR Part 1201 ).

**Organizational Conflicts of Interest** – The Recipient agrees that it will not enter into a procurement that involves a real or apparent organizational conflict of interest described as follows: (1) When It Occurs. An organizational conflict of interest occurs when the Project work, without appropriate restrictions on certain future activities, results in an unfair competitive advantage: (a) To that Third Party Participant or another Third Party Participant performing the Project work, and (b) That impairs that Third Party Participant's objectivity in performing the Project work, or (2) Other. An organizational conflict of interest may involve other situations resulting in fundamentally unfair competitive conditions, (3) Disclosure Requirements. Consistent with FTA policies, the Recipient must disclose to FTA, and each of its Subrecipients must disclose to the Recipient: (a) Any instances of organizational conflict of interest, or (b) Violations of federal criminal law, involving fraud, bribery, or gratuity violations potentially affecting the federal award, and (4) Failure to Disclose. Failure to make required disclosures can result in remedies for noncompliance, including debarment or suspension.

**Federal Single Audit Requirements** - For State Administered Federally Aid Funded Projects Only Non Federal entities that expend \$750,000 or more in a year in Federal awards from all sources are required to comply with the Federal Single Audit Act provisions contained in U.S. Office of Management and Budget (OMB) Circular No. A 133, "Audits of States, Local Governments, and Non Profit Organizations" (replaced with 2 CFR Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" effective December 26, 2014 as applicable). Non-Federal entities that expend Federal awards from a single source may provide a program specific audit, as defined in the Circular. Non Federal entities that expend less than the amount above in a year in Federal awards from all sources are exempt from Federal audit requirements for that year, except as noted in Sec. 215 (a) of OMB Circular A-133 Subpart B--Audits, records must be available for review or audit by appropriate officials of the cognizant Federal agency the New York State Department of Transportation, the New York State Comptrollers Office and the U.S. Governmental Accountability Office (GAO). Non Federal entities are required to submit a copy of all audits, as described above, within 30 days of issuance of audit report, but no later than 9 months after the end of the entity's fiscal year, to the New York State Department of Transportation, Contract Audit Bureau, 50 Wolf Road, Albany, NY 12232. Unless a time extension has been granted by the cognizant Federal Agency and has been filed with the New York State Department of Transportation's Contract Audit Bureau, failure to comply with the requirements of OMB Circular A-133 may result in suspension or termination of Federal award payments.

**Veterans Preference** – As provided by 49 U.S.C. § 5325(k), to the extent practicable, the Recipient agrees and assures that each of its Subrecipients:

- (1) Will give a hiring preference to veterans, as defined in 5 U.S.C. § 2108, who have the skills and abilities required to perform construction work required under a third party contract in connection with a Capital Project supported with federal assistance appropriated or made available for 49 U.S.C. chapter 53, and
- (2) Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an

individual with a disability, or a former employee.

### **Safe Operation of Motor Vehicles**

- a. **Seat Belt Use.** The Recipient agrees to implement Executive Order No. 13043, "Increasing Seat Belt Use in the United States," April 16, 1997, 23 U.S.C. § 402 note, (62 Fed. Reg. 19217), by:
  - (1) Adopting and promoting on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles, and
  - (2) Including a "Seat Belt Use" provision in each third-party agreement related to the Award.
- b. **Distracted Driving, Including Text Messaging While Driving.** The Recipient agrees to comply with:
  - (1) Executive Order No. 13513, "Federal Leadership on Reducing Text Messaging While Driving," October 1, 2009, 23 U.S.C. § 402 note, (74 Fed. Reg. 51225),
  - (2) U.S. DOT Order 3902.10, "Text Messaging While Driving," December 30, 2009, and
  - (3) The following U.S. DOT Special Provision pertaining to Distracted Driving:
    - (a) **Safety.** The Recipient agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Recipient owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the Award, or when performing any work for or on behalf of the Award,
    - (b) **Recipient Size.** The Recipient agrees to conduct workplace safety initiatives in a manner commensurate with its size, such as establishing new rules and programs to prohibit text messaging while driving, re-evaluating the existing programs to prohibit text messaging while driving, and providing education, awareness, and other outreach to employees about the safety risks associated with texting while driving, and
    - (c) **Extension of Provision.** The Recipient agrees to include the preceding Special Provision of section 34.b(3)(a) – (b) of this Master Agreement in its third party agreements, and encourage its Third Party Participants to comply with this Special Provision, and include this Special Provision in each third party subagreement at each tier supported with federal assistance.

**Catalog of Federal Domestic Assistance (CFDA) Identification Number** – The municipal project sponsor is required to identify in its accounts all Federal awards received and expended, and the Federal programs under which they were received. Federal program and award identification shall include, as applicable, the CFDA title and number, award number and year, name of the Federal agency, and name of the pass-through entity.

**The CFDA number for the Federal Transit Administration** – Nonurbanized Area Formula (Section 5311) is 20.509. A Recipient covered by the Single Audit Act Amendments of 1996 and OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations," (replaced with 2 CFR Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" effective December 26, 2014 as applicable) agrees to separately identify the expenditures for Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by OMB Circular A-133. The Recipient agrees to accomplish this by identifying expenditures for Federal awards made under Recovery Act separately on the SEFA, and as separate rows under Item 9 of Part III on the SF-SAC by CFDA number, and inclusion of the prefix "ARRA" in

Page 252

identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF-SAC.

## Federal Certifications

**GOVERNMENT-WIDE DEBARMENT AND SUSPENSION  
(NONPROCUREMENT)**

**Instructions for Certification:** By signing and submitting this bid or proposal, the prospective lower tier participant is providing the signed certification set out below.

1. It will comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 CFR part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 CFR part 180,
2. To the best of its knowledge and belief, that its Principals and Subrecipients at the first tier:
  - a. Are eligible to participate in covered transactions of any Federal department or agency and are not presently:
    1. Debarred
    2. Suspended
    3. Proposed for debarment
    4. Declared ineligible
    5. Voluntarily excluded
    6. Disqualified
  - b. Its management has not within a three-year period preceding its latest application or proposal been convicted of or had a civil judgment rendered against any of them for:
    1. Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction, or contract under a public transaction,
    2. Violation of any Federal or State antitrust statute, or
    3. Proposed for debarment commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making any false statement, or receiving stolen property
  - c. It is not presently indicted for, or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses listed in the preceding subsection 2.b of this Certification,
  - d. It has not had one or more public transactions (Federal, State, or local) terminated for cause or default within a three-year period preceding this Certification,
  - e. If, at a later time, it receives any information that contradicts the statements of subsections 2.a – 2.d above, it will promptly provide that information to FTA,
  - f. It will treat each lower tier contract or lower tier subcontract under its Project as a covered lower tier contract for purposes of 2 CFR part 1200 and 2 CFR part 180 if it:
    1. Equals or exceeds \$25,000,
    2. Is for audit services, or
    3. Requires the consent of a Federal official, and
  - g. It will require that each covered lower tier contractor and subcontractor:
    1. Comply and facilitate compliance with the Federal requirements of 2 CFR parts 180 and 1200, and
    2. Assure that each lower tier participant in its Project is not presently declared by any Federal department or agency to be:
      - a. Debarred from participation in its federally funded Project,
      - b. Suspended from participation in its federally funded Project,
      - c. Proposed for debarment from participation in its federally funded Project,
      - d. Declared ineligible to participate in its federally funded Project,
      - e. Voluntarily excluded from participation in its federally funded Project, or
      - f. Disqualified from participation in its federally funded Project, and
3. It will provide a written explanation as indicated on a page attached in FTA's TrAMS-Web or the Signature Page if it or any of its principals, including any of its first tier Subrecipients or its Third Party Participants at a lower tier, is unable to certify compliance with the preceding statements in this Certification Group.

**Certification**

Contractor

CITY OF FARGO

Signature of Authorized Official

Date   /  /  

Name and Title of Contractor's Authorized Official

DR. TIMOTHY J. MAHONEY, Mayor

**Routine\* Transit Agreements With Sovereign Entities and Political Subdivisions of the State of North Dakota:****Parties:** **State** – State of North Dakota, its agencies, officers and employees**Governmental Entity** – The Governmental Entity executing the attached document, its agencies, officers and employees**Governments** – State and Government Entity, as defined above

Each party agrees to assume its own liability for any and all claims of any nature including all costs, expenses and attorney's fees which may in any manner result from or arise out of this agreement.

Each party shall secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds, authorized to do business in North Dakota, the following insurance coverages:

- 1) **Commercial general liability and automobile liability** insurance – minimum limits of liability required of the Governmental Entity are **\$250,000 per person** and **\$500,000 per occurrence**. The minimum limits of liability required of the State are **\$250,000 per person** and **\$1,000,000 per occurrence**.
- 2) **Workers compensation** insurance meeting all statutory limits.
- 3) The policies and endorsements may not be canceled or modified without **thirty (30) days prior written notice** to the undersigned State representative.

**The State reserves the right to obtain complete, certified copies of all required insurance documents, policies, or endorsements at any time.**

Each party that hires subcontractors shall require any non-public subcontractors, prior to commencement of work set out under an agreement between that party and the non-public subcontractor, to:

Defend, indemnify, and hold harmless the Governments, their agencies, officers and employees, from and against claims based on the vicarious liability of the Governments or its agents, but not against claims based on the Government's contributory negligence, comparative and/or contributory negligence or fault, sole negligence, or intentional misconduct. The legal defense provided by the Subcontractor to the Governments under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for the Governments is necessary. Subcontractor also agrees to defend, indemnify, and hold the Governments harmless for all costs, expenses and attorneys' fees incurred if the Governments prevail in an action against the Subcontractor in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this agreement.

Subcontractor shall secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds authorized to do business in North Dakota: 1) commercial general liability; 2) automobile liability; and 3) workers compensation insurance all covering the Subcontractor for any and all claims of any nature which may in any manner arise out of or result from this agreement. The minimum limits of liability required are \$250,000 per person and \$1,000,000 per occurrence for commercial general liability and automobile liability coverages, and statutory limits for workers compensation. The Governments shall be endorsed on the commercial general liability policy and automobile liability policy as additional insureds. The Governments shall have all the benefits, rights and coverages of an additional insured under these policies that shall not be limited to the minimum limits of insurance required by this agreement or by the contractual indemnity obligations of the Contractor. Said endorsement shall contain a "Waiver of Subrogation" waiving any right of recovery the insurance company may have against the Governments as well as provisions that the policy and/or endorsement may not be canceled or modified without thirty (30) days prior written notice to the undersigned representatives of the Governments, and that any attorney who represents the State under this policy must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under N.D.C.C. Section 54-12-08. Subcontractor's insurance coverage shall be primary (i.e., pay first) as respects any insurance, self-insurance or self-retention maintained by the Governments. Any insurance, self-insurance or self-retention maintained by the Governments shall be excess of the Contractor's insurance and the Subcontractor's insurance and shall not contribute with them. The insolvency or bankruptcy of the insured Subcontractor shall not release the insurer from payment under the policy, even when such insolvency or bankruptcy prevents the insured Subcontractor from meeting the retention limit under the policy. Any deductible amount or other obligations under the Subcontractor's policy(ies) shall be the sole responsibility of the Subcontractor. This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and be placed with insurers rated "A-" or better by A.M. Best Company, Inc. The Governments will be indemnified, saved, and held harmless to the full extent of any coverage actually secured by the Subcontractor in excess of the minimum requirements set forth above. The Government Entity that hired the Subcontractor shall be held responsible for ensuring compliance with the above requirements by all Subcontractors. The Governments reserve the right to obtain complete, certified copies of all required insurance documents, policies, or endorsements at any time.

\*See *North Dakota Risk Management Manual*, section 5.1 for discussion of "unique" and "routine" agreements.

RM Consulted 2007  
Revised 11-19



**Certificate Of Completion**

Envelope Id: 9F9B0023CE8245EFB9B1B474BF87DA36

Status: Sent

Subject: Contract #38201124: Please DocuSign: Section 5310 Transit Grant Agreement

Contract Number: 38201124

PCN:

Source Envelope:

Document Pages: 28

Signatures: 0

Certificate Pages: 3

Initials: 0

AutoNav: Enabled

EnvelopeId Stamping: Enabled

Time Zone: (UTC-06:00) Central Time (US &amp; Canada)

Envelope Originator:

Connie Nelson

608 E Boulevard Ave

Bismarck, ND 58505

conelson@nd.gov

IP Address: 165.234.252.245

**Record Tracking**

Status: Original

8/19/2020 2:45:01 PM

Security Appliance Status: Connected

Storage Appliance Status: Connected

Holder: Connie Nelson

conelson@nd.gov

Pool: StateLocal

Pool: Carahsoft OBO North Dakota Department of

Transportation CLOUD

Location: DocuSign

Location: DocuSign

**Signer Events****Signature****Timestamp**Security Level: Email, Account Authentication  
(None)**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

Security Level: Email, Account Authentication  
(None)**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

Paul Benning

pbenning@nd.gov

Security Level: Email, Account Authentication  
(None)**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

Steve Salwei

ssalwei@nd.gov

Security Level: Email, Account Authentication  
(None)**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

Shannon Sauer

ssauer@nd.gov

Security Level: Email, Account Authentication  
(None)**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

**Signer Events**

Clint Morgenstern

cdmorgenstern@nd.gov

Security Level: Email, Account Authentication  
(None)**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Ronald Henke

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Security Level: Email, Account Authentication  
(None), Access Code**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Laurie Martin

lmartin@nd.gov

Security Level: Email, Account Authentication  
(None)**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign**Signature****Timestamp****In Person Signer Events****Signature****Timestamp****Editor Delivery Events****Status****Timestamp****Agent Delivery Events****Status****Timestamp**

Julie Bommelman

jbommelman@cityoffargo.com

Security Level: Email, Account Authentication  
(None)**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Sent: 8/19/2020 3:42:13 PM

Viewed: 8/19/2020 4:29:57 PM

**Intermediary Delivery Events****Status****Timestamp****Certified Delivery Events****Status****Timestamp**

Becky Hanson

bhanson@nd.gov

Carahsoft OBO North Dakota Department of  
Transportation CLOUDSecurity Level: Email, Account Authentication  
(None)**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign**VIEWED**

Using IP Address: 165.234.252.245

Sent: 8/19/2020 3:15:45 PM

Viewed: 8/19/2020 3:42:12 PM

Connie Nelson

conelson@nd.gov

Security Level: Email, Account Authentication  
(None)**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign**Carbon Copy Events****Status****Timestamp**

Legal Admin

dotlegaladmin@nd.gov

Security Level: Email, Account Authentication  
(None)**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

**Carbon Copy Events**

Page 257

Legal Admin

dotlegaladmin@nd.gov

Security Level: Email, Account Authentication  
(None)

**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

**Status**

**Timestamp**

**Witness Events**

**Signature**

**Timestamp**

**Notary Events**

**Signature**

**Timestamp**

**Envelope Summary Events**

**Status**

**Timestamps**

Envelope Sent

Hashed/Encrypted

8/19/2020 3:42:13 PM

**Payment Events**

**Status**

**Timestamps**

September 8, 2020

28

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

**RE: Sole Source Procurement – Consolidated Water Solutions (Hydranautics)  
Effluent Reuse Facility – Reverse Osmosis Membrane Replacement**

Dear Commissioners:

The Regional Water Reclamation Facility (RWRF) operates an Effluent Reuse Facility (ERF) that treats secondary effluent to reverse osmosis quality water for use at the Tharaldson Ethanol Plant in Casselton, ND. The ERF treats and provides (sells) close to a million gallons of water a day that would ordinarily be discharged into the Red River. This facility was put on line in the fall of 2008 and has produced/sold over 4 billion gallons of reclaimed water.

One of the critical components of the treatment process is the reverse osmosis (RO) membranes. The RO membranes are essentially the “final step” in the filtration process and are exposed to a rigorous cleaning regimen. The RO membranes are a critical component of the treatment process, as a failure of one of the skids would result in potentially contaminated water to be pumped to the ethanol plant, thus not meeting the standards in the three way agreement between the City of Fargo, Tharaldson Ethanol, and Cass Rural Water.

The original membranes have been in service for close to twelve years, but recently there has been some slight excursions with one of the analytical criteria. The agreement states that the chloride levels be less than 10.0 ppm, but the ERF/RO membranes are starting to produce levels slightly higher than the limit. While this is not creating current issues for the ethanol plant, it would be prudent to have a supply of replacement RO membranes on hand to ensure that there will not be a gap in water production.

Hydranautics was the original supplier of the current membranes, and have had great success with them. The Water Reclamation Utility would like to sole source procure the replacement RO membranes in an effort to obtain known quality, performance and sizing for our current reverse osmosis system. The cost of 360 membranes @ \$440.00 each = \$158,400 (plus shipping @ \$2,619.78) for a total price of \$161,019.78.

This purchase has been approved by the Finance Committee with funding from the 2020 Wastewater Rehab & Renewal Sales Tax Fund 455 (which has a placeholder of \$364,000 for ERF Infrastructure. (WW2001)).

**Recommended Motion**

Approve sole source procurement with Consolidated Water Solutions (Hydranautics) in the amount of \$161,019.78 for the purchase and shipping of 360 reverse osmosis membranes.

Respectfully Submitted,



Jim Hausauer  
Water Reclamation Utility Director

## MEMORANDUM

August 31, 2020

---

**To:** Finance Committee  
**From:** Jim Hausauer, Water Reclamation Utility Director *JAH*  
**Re:** Sole Source Procurement- Consolidated Water Solutions (Hydranautics)  
Effluent Reuse Facility –Reverse Osmosis Membrane Replacement

---

### Background

The Regional Water Reclamation Facility (RWRF) operates an Effluent Reuse Facility (ERF) that treats secondary effluent to reverse osmosis quality water for use at the Tharaldson Ethanol Plant in Casselton, ND. The ERF treats and provides (sells) close to a million gallons of water a day that would ordinarily be discharged into the Red River. This facility was put on line in the fall of '08 and has produced/sold over 4 billion gallons of reclaimed water.

One of the critical components of the treatment process is the reverse osmosis (RO) skid/membranes. The RO membranes are essentially the "final step" in the filtration process and are exposed to a constant and rigorous cleaning regimen. Essentially the RO membranes are one of the most critical component of the treatment process, as a failure of one of the skids would result in potentially contaminated water to be pumped to the ethanol plant, thus not meeting the standards in the three way agreement between the City of Fargo, Tharaldson Ethanol, and Cass Rural Water.

### Request/Financing

The warranty on the original RO membranes was three years. As mentioned earlier, the RO membranes were installed in the fall of '08 and have produced over 4 billion gallons of water. By having the original membranes in service for close to twelve years, we feel that we have received incredible value. The list of analytical parameters have been met consistently for the last 12 years.

Recently there has been some slight excursions with one of the analytical criteria. The agreement with Tharaldson states that the chloride levels be less than 10.0 ppm. The ERF/RO membranes are starting to produce levels slightly higher than the limit. While this is not creating current issues for the ethanol plant, we feel that it would be prudent to have a supply of replacement RO membranes on hand to ensure that there will not be a gap in water production. (FYI ....Attached you will find a comment re: membrane shelf life)

Hydranautics was the original supplier of the current membranes, and as we have had great success with them, we would like to sole source replacement membranes in an effort to obtain known quality and ensure proper sizing for our current reverse osmosis system. The cost of 360 membranes @ \$440.00 each = \$158,400 (plus shipping @ \$2,619.78) for a total price of \$161,019.78.

Funding for this purchase will come from the 2020 Wastewater Rehab & Renewal Sales Tax Fund 455 which has a placeholder of \$364,000 for ERF Infrastructure. (WW2001)

### Recommended Motion

Approve a sole source procurement with Consolidated Water Solutions (Hydranautics) in the amount of \$161,019.78 for the purchase and shipping of 360 reverse osmosis membranes.

# City of Fargo

## Summary of Wastewater Projects

### Sales Tax and Rate Funded

Project Number	Project Description	Fund	Project Type	Project Budget	Year to Date Activity	Life To Date Activity	Project Balance	Active Record Code
999900	CAPITAL PRJ CLEARING ACCT	455	Wastewater Sales Tax	0.00		228,626.74	-228,626.74	A
BN17A1	SSWMS/TPSL&I 19av/45-57 st	455	Wastewater Sales Tax	11,261,067.00		387,980.61	10,873,086.39	
WW1402	WWTP Flood Protection	455	Wastewater Sales Tax	4,820,000.00	623,247.46	4,830,525.53	-10,525.53	
WW1701	PhaseII Expansion PER	455	Wastewater Sales Tax	0.00	44,415.00	759,799.31	-759,799.31	
WW1705	HORACE/WF METER VAULT	521	Rate Funded	143,766,825.00	5,403,327.17	44,618,293.58	99,148,531.42	
		455	Wastewater Sales Tax	851,100.00	86,086.76	120,245.77	730,854.23	
WW1707	Wastewater Plant Levee	521	Rate Funded		308,364.01	869,510.09	-18,410.09	
WW1708	ERF SKID MEMBRANES	455	Wastewater Sales Tax	4,500,000.00	3,308.75	93,692.93	4,406,307.07	
WW1902	SW FARGO INFRA PLANNING	455	Wastewater Sales Tax	738,900.00	770,381.44	770,381.44	-31,481.44	
WW1904	LIFT 24 & 32 IMPROVEMENTS	455	Wastewater Sales Tax	58,300.00		103,275.90	-44,975.90	
WW2001	WWTF R&R FUND (ERF INFRA)	455	Wastewater Sales Tax	838,500.00		836,281.17	2,218.83	
WW2002	LIFT STATION R&R #19 & 23	455	Wastewater Sales Tax	349,000.00		19,682.00	329,318.00	
WW2004	EFFLUENT FORCE MAIN IMPR	455	Wastewater Sales Tax	442,000.00		0.00	442,000.00	
WW2051	LS LARGE WEAR ITEMS	521	Rate Funded	50,000.00		0.00	50,000.00	
WW9999	CLEARING ACCT-SALES TAX	455	Wastewater Sales Tax	120,000.00	0.00	25,090.15	94,909.85	
WWBRI	BRIARWOOD	523	Wastewater Sales Tax	0.00	0.00	3,500,457.96	-3,500,457.96	
WWCOL	COLLECTIONS	521	Rate Funded		0.00	1,969.75	-1,969.75	
WWECG	WW ENTERPRISE CONTROL SYS	521	Rate Funded		1,264.01	856,970.74	-856,970.74	
WWFRO	FRONTIER	523	Rate Funded			44,750.17	-44,750.17	
WWHOB	HARWOOD - BROOKTREE	521	Rate Funded		0.00	1,714.20	-1,714.20	
WWHOC	HORACE CONNECTION	521	Rate Funded		4.70	2,874.89	-2,874.89	
WWHWP	HIGHLAND PARK	521	Rate Funded		0.00	0.00	0.00	
WWIPP	IPP	521	Rate Funded		0.00	2,525.28	-2,525.28	
WWLS	LAKE SHURE	521	Rate Funded		151.76	88,894.27	-88,894.27	
WWNR	NORTH RIVER	523	Rate Funded		1.56	439.81	-439.81	
WWOPR	OPERATIONS	521	Rate Funded		6.02	901.90	-901.90	
WWOXB	OXBOW	521	Rate Funded		2,754.84	1,620,885.40	-1,620,885.40	
WWPR	PRAIRIE ROSE	523	Rate Funded		0.00	1,633.27	-1,633.27	
WWRA	REILES ACRES	521	Rate Funded		0.00	82.73	-82.73	
WWRH	ROUND HILL	521	Rate Funded		1.56	2,657.71	-2,657.71	
		523	Rate Funded		0.00	909.26	-909.26	
WWRUR	SE CASS RURAL	523	Rate Funded			77.37	-77.37	
WWWFC	WEST FARGO CONNECTION	521	Rate Funded		0.00	6,125.04	-6,125.04	
					0.00	0.00	0.00	

10100 J St  
Omaha, NE 68127



## Quotation Memorandum

**To:** Jeff Hoff – City of Fargo, ND  
**From:** Craig Granlund  
Consolidated Water Solutions  
**Date:** August 20, 2020  
**Re:** Quotation

---

Jeff,

Thank you for the opportunity to provide you with a quotation for RO membranes. See below for pricing.

Below please find our quotation:

Item	QTY	LEAD TIME	PRICE EACH
ESPA2-LD	360	In Stock	\$440

Terms: Net 30 Days  
FOB: Oceanside, CA

If you have any questions, please don't hesitate to call. All lead times are subject to change and exclusive of freight transit time.

Best Regards,

Craig Granlund  
VP, New Business Development  
Consolidated Water Solutions



## Quotation Memorandum

**To:** Jeff Hoff – City of Fargo, ND  
**From:** Craig Granlund  
Consolidated Water Solutions  
**Date:** August 21, 2020  
**Re:** Quotation

---

Jeff,

Thank you for the opportunity to provide you with a quotation for RO membranes. See below for pricing.

Below please find our quotation:

Item	QTY	LEAD TIME	PRICE EACH
ESPA2-LD	360	In Stock	\$440
Freight	360	-	\$2619.78 for entire shipment

Terms: Net 30 Days

FOB: Oceanside, CA Freight quote as of today 8/21/20 is \$2619.78

If you have any questions, please don't hesitate to call. All lead times are subject to change and exclusive of freight transit time.

Best Regards,

Craig Granlund  
VP, New Business Development  
Consolidated Water Solutions

**James Hausauer**

---

**From:** Jeff J Hoff  
**Sent:** Friday, August 21, 2020 11:37 AM  
**To:** James Hausauer  
**Subject:** FW: City of Fargo ESPA2-LD  
**Attachments:** City of Fargo ND ESPA2-LD Quote 08.21.20.docx

**From:** Craig Granlund <craig@consolidatedh2o.com>  
**Sent:** Friday, August 21, 2020 11:18 AM  
**To:** Jeff J Hoff <jhoff@FargoND.gov>  
**Cc:** Duane Miller <DMiller@consolidatedh2o.com>; Kirstie Liermann <kliermann@consolidatedh2o.com>  
**Subject:** RE: City of Fargo ESPA2-LD

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

Jeff, attached is the quote with the freight added in as a line item. It is \$2619.78 for the entire 360 element shipment.

You also asked about shelf life and here is my explanation on that. The RO elements are non-biodegradable plastic filters so they do not have a shelf life like a perishable food item would. I have seen many RO elements that have been stored for 10 years or more get loaded and start up like new. Several membrane companies have say that there is a shelf life of 18 – 36 months, but if they are stored in a cool location and the bags are kept intact they can last much longer than that. The worse case is that the bag is torn and then there can be some algae or bio growth on the element – this does not damage them as it can be cleaned off with a membrane cleaning before startup.

Hope this helps.

**Craig Granlund**

*VP, New Business Development*

Consolidated Water Solutions  
Phone: 402.697.7800 x 108  
Mobile: 612.810.6940  
Email: [craig@consolidatedh2o.com](mailto:craig@consolidatedh2o.com)

**From:** Jeff J Hoff <jhoff@FargoND.gov>  
**Sent:** Thursday, August 20, 2020 8:34 PM  
**To:** Craig Granlund <craig@consolidatedh2o.com>  
**Subject:** Re: City of Fargo ESPA2-LD

**Caution:** This email originated from outside the organization. Do not click links or attachments unless you recognize the sender and know the content is safe

Craig,

We are tax exempt. If there is a fee on the credit card we will work on getting a po for this.



## Sole Source and Piggyback Procurement Form

### Sole Source and Piggyback Justification for Procurement

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

Vendor Name:

Consolidated Water Solutions (Hydranautics)

Estimated Dollar Amount of Purchase:

\$161,019.78

Is this procurement funded by a federal grant?

No

If yes, you must attach a document from the grant agency approving this procurement as a sole source.

The project/service is required to:

The Regional Water Reclamation Facility (RWRF) operates an Effluent Reuse Facility (ERF) that treats secondary effluent to reverse osmosis quality water for use at the Tharaldson Ethanol Plant in Casselton, ND. The ERF treats and provides (sells) close to a million gallons of water a day that would ordinarily be discharged into the Red River. This facility was put on line in the fall of '08 and has produced/sold over 4 billion gallons of reclaimed water.

One of the critical components of the treatment process is the reverse osmosis (RO) skid/membranes. The RO membranes are essentially the "final step" in the filtration process and are exposed to a constant and rigorous cleaning regimen. Essentially the RO membranes are one of the most critical component of the treatment process, as a failure of one of the skids would result in potentially contaminated water to be pumped to the ethanol plant, thus not meeting the standards in the three way agreement between the City of Fargo, Tharaldson Ethanol, and Cass Rural Water.

Recently there has been some slight excursions with one of the analytical criteria. The agreement with Tharaldson states that the chloride levels be less than 10.0 ppm. The ERF/RO membranes are starting to produce levels slightly higher than the limit. While this is not creating current issues for the ethanol plant, we feel that it would be prudent to have a supply of replacement RO membranes on hand to ensure that there will not be a gap in water production.

Page 265 Description of features or capabilities unique to the vendor/brand being requested as related to project requirements:

Other brands/vendors do produce reverse osmosis membranes, but Hydranautics was the original supplier of the current RO membranes. We have had great success with Hydranautics, and would like to sole source replacement membranes in an effort to obtain known proven quality, performance and ensure proper sizing for our current reverse osmosis system.

The warranty on the original RO membranes was three years. As mentioned earlier, the RO membranes were installed in the fall of '08 and have produced over 4 billion gallons of water. By having the original membranes in service for close to twelve years, we feel that we have received incredible value. The list of analytical parameters have been met consistently for the last 12 years.

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

The fact that the RO skid system is over 12 years old, by purchasing membranes from the original vendor (Hydranautics) we can be assured that the membranes purchased will fit/work in our system. Many of the other vendors have "next generation" membranes and may not work like the original. Other vendors have membranes that are made of potentially slightly different non biodegradable plastics. This may result in not performing in a manner in which we expect and could result in lower quality water produced, or a different cleaning regimen which will increase labor and chemical costs.

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

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

Other brands/vendors do produce reverse osmosis membrane, but Hydranautics was the original supplier of the RO current membranes. We have had great success with Hydranautics, and would like to sole source replacement membranes in an effort to obtain known proven quality, performance and ensure proper sizing for our current reverse osmosis system.

The warranty on the original RO membranes was three years. As mentioned earlier, the RO membranes were installed in the fall of '08 and have produced over 4 billion gallons of water. By having the original membranes in service for close to twelve years, we feel that we have received incredible value. The list of analytical parameters have been met consistently for the last 12 years. Other vendors have membranes that are made of potentially slightly different non biodegradable plastics. This may result in not performing in a manner in which we expect and could result in lower quality water produced, or a different cleaning regimen which will increase labor and chemical costs.

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

N/A

Funding for this purchase will come from the 2020 Wastewater Rehab & Renewal Sales Tax Fund 455 which has a placeholder of \$364,000 for ERF Infrastructure. (WW2001).

Signature: \_\_\_\_\_  
(Requestor)

Printed Name: James Hausauer

Department: Regional Water Reclamation Utility

Title: Utility Director

Date: 8/27/2020

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

JH \_\_\_\_\_  
(Requestor initials)

August 31, 2020

31

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

**Re: Purchase Agreement – ROW  
Improvement District #BN-21-A1**

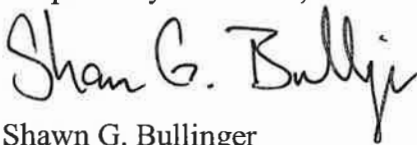
Dear Commissioners:

Enclosed and delivered to the City Commission office is an original Purchase Agreement document for the acquisition of Permanent Street Right-of-Way in association with Improvement District #BN-21-A1. Final purchase price has been reached and at this time we are requesting authorization from the Commission to proceed with the purchase. All land acquisition procedures have been followed and the City Engineer's office recommends purchase.

RECOMMENDED MOTION: I/we hereby move to approve and authorize the purchase of Permanent Street Right-of-Way from Back Forty LLP in association with Improvement District #BN-21-A1.

Please return a copy of the signed original.

Respectfully submitted,



Shawn G. Bullinger  
Land Acquisition Specialist

C: Jeremy Gorden  
Brenda Derrig  
Nancy J. Morris

**PURCHASE AGREEMENT**

**Project No. BN-21-A1**

THIS AGREEMENT is made effective the 27<sup>th</sup> day of August, 2020, by and between:

**BACK FORTY LLP**  
4140 36<sup>th</sup> Avenue South  
Fargo, North Dakota 58104  
(hereinafter, "Seller" or "Back Forty")

and

**CITY OF FARGO**  
225 4<sup>th</sup> Street North  
Fargo, North Dakota 58102  
(hereinafter, "Buyer" or "City")

**RECITATIONS:**

- A. Back Forty is the owner of property in south Fargo in the unplatted Northeast Quarter of Section 10, Township 138 North of Range 49 West of the Fifth Principal Meridian. This property is further described in Exhibit A attached hereto. This will be referred to as the "Property" or "Subject Property."
- B. The City anticipates the need for land for roads, utilities and interchanges.
- C. The City has informed Back Forty that it will use its power of Eminent Domain to obtain the Property from Back Forty.
- D. In response to the threat of the use of condemnation or Eminent Domain powers by the City, Back Forty has agreed to sell the required Property to the City.
- E. Back Forty intends to have this qualify as a section 1033 exchange based on the threat of condemnation by a government agency, the City.
- F. The parties desire to set forth their agreement for the sale of the Property by Seller under the threat of condemnation to the City.

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

Section 1. **Recitations.** The Recitations set forth above are hereby incorporated into this Agreement.

Section 2. **Subject Matter.** The subject matter of this Agreement is the Property, which is unimproved real property.

There is no personal property that is involved.

Section 3. **Agreement to Convey, Purchase Price and Payment Terms.** Seller agrees to sell and convey and Buyer agrees to buy the Subject Property. The Purchase Price is four hundred thousand dollars (\$400,000.00). The Purchase Price will be paid in full at Closing, which will occur as soon as necessary title work has been completed.

Section 4. **Closing and Possession.** Closing on this purchase shall occur as soon as possible following completion of the updating of the abstract, performance of the necessary title work, drafting of the documents required for Closing and setting of a Closing Date at a time available at The Title Company, Fargo, North Dakota. The goal of the parties is to Close this transaction as quickly as reasonably possible. The "Closing Date" and/or "Date of Closing" may be extended if necessary for title work or title issues.

Section 4.1. Buyer will provide Seller with notice as soon as the necessary title work has been completed and the Closing Date set. The goal is to have this Closed prior to September 25, 2020.

Section 4.2. Possession will be delivered by Seller to Buyer on the Closing Date.

Section 5. **Platting.** At such time as Seller, its successor and assigns, does any platting of any of Seller's adjacent property to that identified herein, Seller will include in the platting the entire parcel to be dedicated as right-of-way, contiguous to the platted parcel or not, being purchased by the City pursuant to this Agreement. As long as the area being purchased by the City from Seller for use as street and utility right-of-way is reflected on the plat by Back Forty, its successors and assigns, as right of way, the City agrees it will execute the plat as required of all owners of platted property.

Section 5.1. The obligations established by this Section 5 will survive the closing of this purchase agreement.

Section 5.2. The parties agree that either party may request the other to execute a Memorandum of Agreement to memorialize the obligation set forth in paragraph 5 in a form suitable for recording and further that the Memorandum of Agreement may be recorded against the Seller's property by either party.

Section 5.3. The parties agree that the obligations of Section 5 will run with the land and be binding upon the parties and their successors and assigns, including the Seller's successors and assigns as to the adjacent property.

Section 6. **Proration of Taxes.** Taxes and installments of special assessments for the year of closing shall be prorated between the parties to the date of closing based upon current total true value as calculated by the County of Cass, ND, as of the date of

closing. Prior year taxes and assessments must be paid by Seller in advance of closing. Seller shall be responsible for payment of all general real estate taxes and installments of special assessments for the Property prorated to the Date of Closing.

Section 7. **Seller's Representations, Warranties and Covenants**. In as much as this is a transaction brought about by the threat of exercise of eminent domain powers by the City, the Seller is making no representations, warranties or covenants with respect to the Subject Property, except for those warranties which will be set forth in the Warranty Deed provided by Seller.

Section 8. **Conveyance by Warranty Deed**. Seller will convey the Subject Property by Warranty Deed, subject only to the following:

Section 8.1. Easements of Record;

Section 8.2. Prior Reservations of Mineral Interests; and

Section 8.3. Any restrictions of record acceptable to Buyer.

Section 9. **Risk of Loss**. In as much as the Subject Property is unimproved real property, neither party bears any risk of loss for damage to the Subject Property.

Section 10. **Title and Examination**.

Section 10.1. **Fee Simple Title**. Seller's fee simple title to the Property shall be subject only to restrictions, easements and reservations of record as set forth in Section 8.

Section 10.2. **Abstract**. Seller shall loan to Buyer an Abstract of Title, which will be updated to a recent date at Seller's expense to include property searches covering bankruptcies and state and federal judgments and liens. Buyer will have a period of fifteen (15) business days following delivery of the updated abstract within which to examine title. Any objection to the status of title must be made in writing within that 15-day period. If, after examination, title is not insurable or free of defects and cannot be made so by Buyer within sixty (60) days after notice containing a written statement of defects, then at Buyer's option, the parties will sign a cancellation of this Purchase Agreement. However, Buyer may waive defects and elect to purchase the Property subject to defects in title. Upon completion of the title opinion for Buyer, the abstract will be returned to Seller. Seller will lend the abstract to Buyer again at the time of platting if necessary for an updated title opinion. The abstract will be returned to Seller.

Section 11. **Real Estate Commissions**. Each party represents that it has not used a real estate agent and is not obligated to pay a commission to any party on this sale. If either party has created an obligation with a real estate agent, that party will be obligated to pay the real estate agent the commission due.

Section 12. **Costs of Closing**. The costs of Closing will be paid as follows:

Section 12.1. ***Seller*** will be responsible for the following costs:

- Providing an updated abstract (loaned abstract);
- Recording of any mortgage releases;
- Preparation and recording of any documents necessary to deal with any title defects;
- Costs of clearing any title defects.

Section 12.2. ***Buyer*** will be responsible for the following costs:

- Examination of abstract of title and obtaining of title opinion or title insurance;
- Preparation and recording fees for Warranty Deed. Buyer will take title as follows: City of Fargo, a North Dakota municipal corporation and
- Costs of any Closing agent.

Section 13. **Notices**. All notices, demands and any and all other communications which may be or are required to be given to or made by either party to the other in connection with this Agreement shall be in writing and shall be deemed to have been properly given if delivered by hand, sent by registered or certified mail, return receipt requested, or sent by recognized overnight courier service to the addresses set out below or to such other addresses as may be specified by written notice and delivered in accordance herewith, or to an email address supplied by a party, or to such other numbers as may be specified by written notice and delivered in accordance herewith.

Section 13.1. Notice given by registered or certified mail, return receipt requested, will be recognized as being given as of the day following the date of deposit with the United States Postal Service, postage prepaid.

Section 13.2. Notice given by recognized overnight courier service will be deemed to have been given as of the day following the date of delivery by sender to the overnight courier service.

Section 13.3. Notice given by email shall be deemed given on the date the email is sent, if sent on a Business Day. If not sent on a Business Day, notice will be considered given on the next following Business Day. A copy of any notice by email shall be followed by the same notice given by First-Class Mail on the same date as the email.

Section 13.4. Any notice by personal delivery shall be deemed given on the date of the personal delivery.

Section 13.5. Any notice to **Seller** shall go to:

Back Forty LLP  
4140 36<sup>th</sup> Ave S  
Fargo, ND 58104  
Email: [jkern@genequip.com](mailto:jkern@genequip.com)

**with a copy (not constituting notice) to:**

John V. Boulger  
Wold Johnson, P.C.  
500 2<sup>nd</sup> Ave N, Ste. 400  
PO Box 1680  
Fargo, ND 58107  
Email: [jboulger@woldlaw.com](mailto:jboulger@woldlaw.com)

Section 13.6. Any notice to **Buyer** shall go to:

City of Fargo  
225 4<sup>th</sup> St N  
Fargo, ND 58102  
Email: \_\_\_\_\_

**with a copy (not constituting notice) to:**

Nancy Morris, Assistant City Attorney – Fargo  
505 Broadway, Ste. 206  
Fargo, ND 58102  
Email: [nmorris@lawfargo.com](mailto:nmorris@lawfargo.com)

Section 14. **Construction.**

Section 14.1. It is agreed between the parties that time is of the essence in each provision of this Agreement.

Section 14.2. This Agreement represents the entire agreement between the parties regarding the subject matter herein and may be amended only by a writing signed by the parties.

Section 14.3. Failure to exercise any right or remedy available under this Agreement at any time shall not be considered to be a waiver or release of the right to exercise that right or remedy.

Section 14.4. This Agreement and all rights and obligations hereunder, including matters of construction, validity and performance, shall be governed by the laws of the State of North Dakota.

Section 14.5. If any part of this Agreement shall be adjudged invalid, the remainder shall not be invalidated. Any part of any Section found to be invalid shall not invalidate the remaining part of said Section, and the invalid Section may be reformed to be valid and enforceable to the extent allowed by law.

Section 14.6. If and to the extent that applicable law confers any rights or imposes any duties inconsistent with or in addition to any other provisions of this Agreement, the affected Section shall be considered amended to conform thereto.

Section 14.7. Words and phrases herein, including any acknowledgement hereof, if any, shall be construed as the singular or plural and as masculine, feminine, or neuter gender, according to context.

Section 14.8. References to "including" are deemed to be followed by "without limitation." The words "and" and "or" mean, and are used in the inclusive sense of "and/or." References to agreements, documents, guarantees and similar agreements and instruments shall be deemed to refer as well to all schedules, exhibits, addenda, attachments and amendments thereto.

Section 14.9. Headings and titles of Sections are for convenience only. The wording of each Section shall govern over its heading.

Section 14.10. This Agreement will be binding on the parties, their administrators, successors and assigns.

Section 14.11. This contract may be executed by the parties in separate parts with the signature of each party to a copy of the contract, even if not the same copy, constituting the creation of a binding contract between the parties.

Section 14.12. The signing of any documents and the transmission of the signature by facsimile machine or electronically, such as by PDF file or by other electronic means, will be considered to be sufficient execution, and each party agrees that the other party may rely on their signature, whether an original or reproduced by facsimile machine, photocopier or electronically.

Section 14.13. Exercise of any right will not be considered to be an election of remedy or the exclusive remedy of a party.

Section 14.14. This Agreement will be interpreted in a fair and neutral manner without favoring one party over the other. No provision of this Agreement will be interpreted for or against any party because the provision was drafted by that party or its legal representative.

Section 14.15. All parties hereto have been fully involved in the negotiation and drafting of this Agreement. Accordingly, the parties hereto agree that any rule of construction of contracts resolving any ambiguities against the drafting party will be inapplicable to this Agreement.

Section 14.16. The parties agree to engage in fair dealing with each other at all times, and agree to deal with each other only in good faith.

Section 14.17. The obligations under this Agreement will remain in effect regardless of additional documents signed by the parties. These obligations will not be considered merged into additional or later documents, except by express written agreement that a merger is occurring.

Section 14.18. The Recitations to this Agreement shall be construed as a material and enforceable part of this Agreement for all purposes, and shall in no event be considered prefatory language or mere surplus.

Section 14.19. All parties are skilled and experienced business professionals, and all have contributed to the negotiation and drafting of this Agreement. As a result, in no event may any adverse construction of this Agreement be attributed to any party as the drafting party.

Section 14.20. All Exhibits and Schedules attached hereto are incorporated herein by reference and made a part of this Agreement as if fully set forth herein.

Section 14.21. There are no third-party beneficiaries to this Agreement. This Agreement is intended only to benefit the parties to this Agreement.

Section 15. **1033 Transaction**. Buyer and Seller both acknowledge that this sale by Seller is a result of the threat of the exercise of the powers of condemnation/eminent domain by the City. City agrees it will, if requested, reasonably cooperate with the Seller (at no cost or liability to the City) in effecting a Section 1033 exchange as allowed by Internal Revenue Code Section 1033. Seller does hereby name The Title Company, Fargo, North Dakota, as its Qualified Intermediary, if elected by Seller, to receive all funds at Closing which would have otherwise gone to Seller.

**IN WITNESS WHEREOF**, the parties have hereunto set their hands the day and year first above written.

Dated: 8-27, 2020.

**SELLER:**

**BACK FORTY LLP**



By: Brent C. Dietrich  
Its: Managing Partner

Dated: \_\_\_\_\_, 2020.

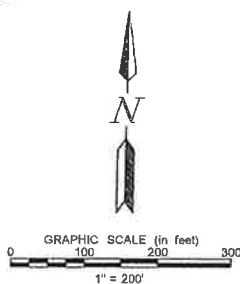
**BUYER:**

**CITY OF FARGO, a North Dakota  
Municipal Corporation**

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

**ATTEST:**

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



 Permanent Street & Utility Easement

 Permanent Right of Way

**64TH AVENUE SOUTH RECONSTRUCTION**  
CITY OF FARGO



PERM. R/W  
BACK FORTY LLP  
PART OF NE1/4 SEC. 10  
64-0000-01070-070

MA	CO	14415104
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2/24/2020

8:14:33 AM

jmath@ndrecr.com

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## EXHIBIT "A"

Page 2 of 2

## Unplatted NE ¼ 10-138-49 Tract A

## Permanent Street and Utility Easement

A 100-foot wide permanent street and utility easement located in an un-platted tract of land in the Northeast Quarter of Section 10, Township 138 North, Range 49 West of the Fifth Principal Meridian, County of Cass, State of North Dakota, of which a portion of the un-platted tract of land is known as "Tract A" in Document No. 1437216, of record at the Cass County Recorder's Office, described more particularly as follows:

Commencing at the northeast corner of said Section 10; thence South 87 degrees 56 minutes 22 seconds West, along the north line of said Northeast Quarter, a distance of 493.16 feet to the northeast corner of said "Tract A"; thence continuing South 87 degrees 56 minutes 22 seconds West, along said north line of the Northeast Quarter, which is also the north line of said "Tract A", a distance of 586.46 feet to the Point of Beginning; thence South 02 degrees 03 minutes 38 seconds East, a distance of 100.00 feet; thence South 87 degrees 56 minutes 22 seconds West, along a line parallel with and 100-foot distant southerly of said north line of the Northeast Quarter, a distance of 238.69 feet to the west line of said "Tract A", which is also the east line of a tract of land described in Document No. 1407662, of record at the Cass County Recorder's Office; thence North 01 degrees 57 minutes 55 seconds West, along said west line of "Tract A" and the east line of said tract of land described in Document No. 1407662, a distance of 100.00 feet to the north line of the Northeast Quarter; thence North 87 degrees 56 minutes 22 seconds East, along the north line of the Northeast Quarter, a distance of 238.53 feet to the Point of Beginning.

Said easement area is shown as the shaded area on "Exhibit A" and contains 23,861 square feet, more or less, and is subject to any easements or rights of way previously recorded.

The legal description was prepared by Matthew M. Anderson, ND LS-27104, KLJ 3203 32<sup>nd</sup> Avenue South, Suite 201, Fargo, ND 58103.

## Permanent Right of Way

A permanent right of way located in a portion of the Northeast Quarter of Section 10, Township 138 North, Range 49 West of the Fifth Principal Meridian, County of Cass, State of North Dakota, in which a tract of land known as "Tract A" in Document No. 1437216, of record at the Cass County Recorder's Office, described more particularly as follows:

Commencing at the northeast corner of said Section 10; thence South 87 degrees 56 minutes 22 seconds West, along the north line of said Northeast Quarter, a distance of 493.16 feet to the northeast corner of said "Tract A"; thence South 02 degrees 03 minutes 47 seconds East, along the easterly line of said "Tract A", a distance of 290.00 feet; thence South 31 degrees 45 minutes 52 seconds East, along said easterly line of "Tract A", a distance of 676.40 feet; thence southeasterly along said easterly line of "Tract A" and along a tangential curve concave to the west having a radius of 1200.00 feet through a central angle of 16 degrees 14 minutes 51 seconds for an arc distance of 340.29 feet to the westerly right of way line of the 33-foot statutory road easement; thence North 32 degrees 08 minutes 02 seconds West, a distance of 1129.01 feet; thence North 86 degrees 03 minutes 38 seconds West, a distance of 399.50 feet; thence North 02 degrees 03 minutes 38 seconds West, a distance of 65.36 feet; thence North 86 degrees 03 minutes 38 seconds West, a distance of 83.78 feet to a point 100-foot distant southerly of said north line of the Northeast Quarter; thence North 02 degrees 03 minutes 38 seconds West, a distance of 100.00 feet to a point on the north line of the Northeast Quarter; thence North 87 degrees 56 minutes 22 seconds East, along the north line of the Northeast Quarter, a distance of 586.47 feet to the Point of Beginning.

Said easement area is shown as the shaded area on "Exhibit A" and contains 162,612 square feet, more or less, and is subject to any easements or rights of way previously recorded.

The legal description was prepared by Matthew M. Anderson, ND LS-27104, KLJ 3203 32<sup>nd</sup> Avenue South, Suite 201, Fargo, ND 58103.

SURVEYORS CERTIFICATE

I hereby certify that this survey, plan or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of North Dakota.



Matthew M. Anderson, North Dakota # LS-27104

2/24/20  
Date64TH AVENUE SOUTH RECONSTRUCTION  
CITY OF FARGO

PERM. R/W  
BACK FORTY LLP  
PART OF NE1/4 SEC. 10  
64-0000-01070-070

MA	CO	14415104
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## PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

(32)

Improvement District No. BN-20-A1

Type: Design Decision

Location: N University Dr (32<sup>nd</sup> Ave N to 40<sup>th</sup> Ave N)

Date of Hearing: 8/31/2020

RoutingDate

City Commission

9/8/2020

PWPEC File

X

Project File

Jeremy Gorden

The Committee reviewed a communication from Division Engineer, Jeremy Gorden, regarding the design of North University Drive

We came up with three build alternatives for the project.

- Alternative B is a 2-lane roadway, with the shared use path along the airport fence utilizing a new street and utility easement, estimated construction cost \$7.27M.
- Alternative C is a 3-lane roadway, with the shared use path along the airport fence utilizing a new street and utility easement, estimated construction cost \$7.42M.
- Alternative D is a 2-lane roadway, with the shared use path located within the existing street right of way and not needing a new street and utility easement, estimated construction cost of \$7M. The boulevard will be 7' between the road and shared use path.

Along with two options for the intersection of 40<sup>th</sup> Avenue North and North University Drive:

- Option 1 – All Way Stop
- Option 2 - Roundabout

The FAA will not allow a new easement along the airport property so the only option is to select Alternative D. Staff is recommending Alternative D, with Option 1 as the preferred design for this project.

On a motion by Steve Sprague, seconded by Brenda Derrig, the Committee voted to recommend selection of Alternative D with Option 1.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and select Alternative D with Option 1 for the design of North University Drive.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: N/A

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

Yes No

N/AN/AN/ACOMMITTEE

Tim Mahoney, Mayor

Nicole Crutchfield, Director of Planning

Steve Dirksen, Fire Chief

Bruce Grubb, City Administrator

Ben Dow, Director of Operations

Steve Sprague, City Auditor

Brenda Derrig, City Engineer

Kent Costin, Finance Director

Present

Yes

No

Unanimous

☒☒☒☐☒☒☐☒☒☐☒☒☐☒☒☐☒☒☐☒☒☐☒☒☐

Donald Kress

ATTEST:



Brenda E. Derrig, P.E.  
City Engineer

## Memorandum

**To:** Members of PWPEC

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

**Date:** August 27, 2020

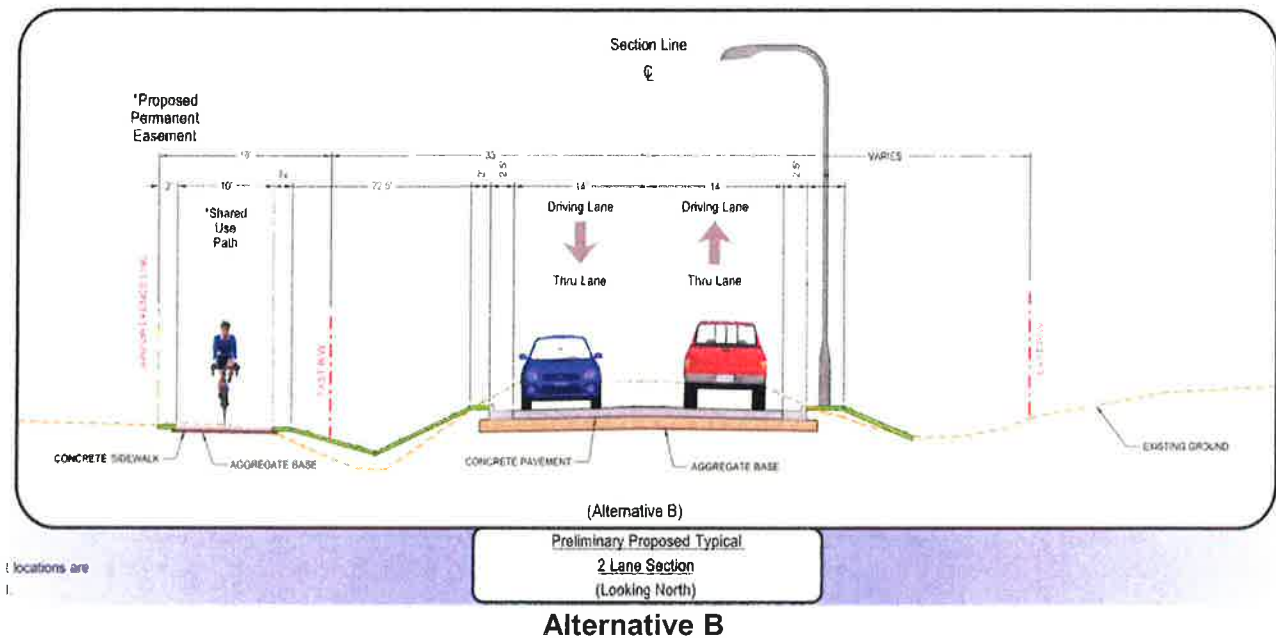
**Re:** Design Decision for North University Drive Construction Project  
City of Fargo Improvement District No. BN-20-A1  
North University Drive – 32<sup>nd</sup> Avenue North to 40<sup>th</sup> Avenue North (Co Rd 20)

This project has been in the works since 2015 when we requested and were awarded \$4.5M in federal highway funds. The project is a mile in length and runs alongside the NE corner of the Fargo International Airport. We hired Apex Engineering two years ago to complete the environmental document and earlier this year we amended their contract to include final design. In the two years we have been working on the environmental doc, we have also been in contact with the FAA regarding the project. It was not until recently that we had a breakthrough with them as to what they were going to allow to occur with regards to this construction project. This project runs through one of the airports RPZ's, or Runway Protection Zones. The zones are on the ends of their runways. I have shown the project below and the yellow area shown is the RPZ for the east-west runway near the Jet Center. In a perfect world, FAA would like nothing in these zones, but they know that is not reality. The currently roadway runs right through the middle of the RPZ.

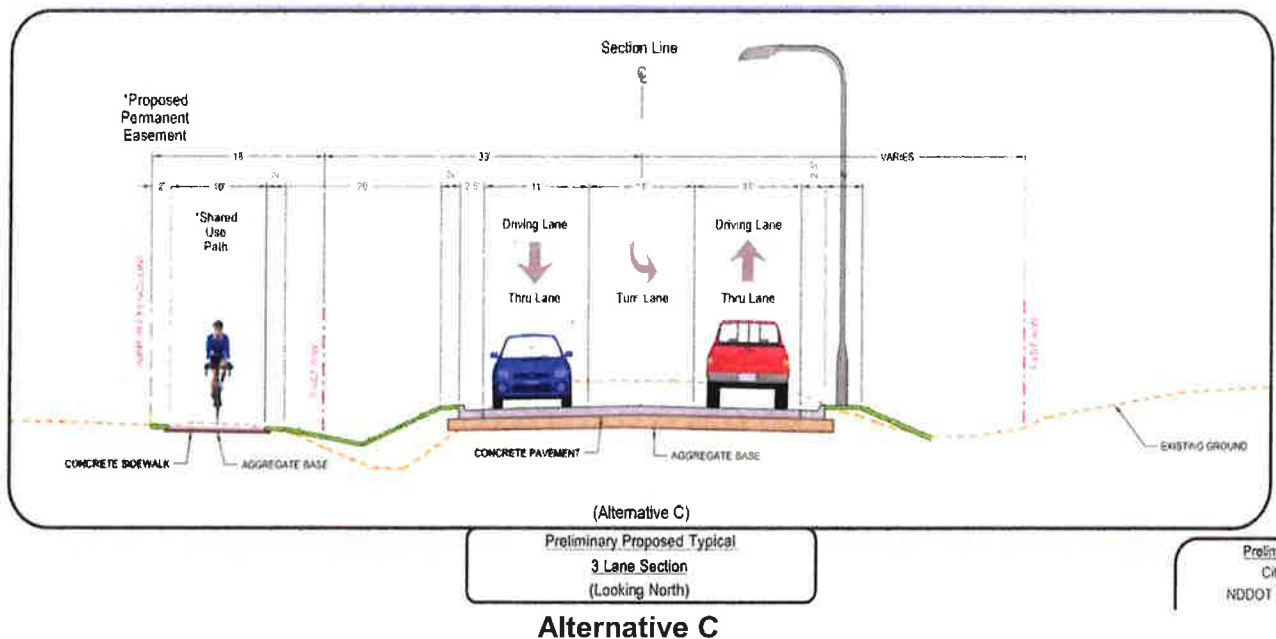


## Runway Protection Zone

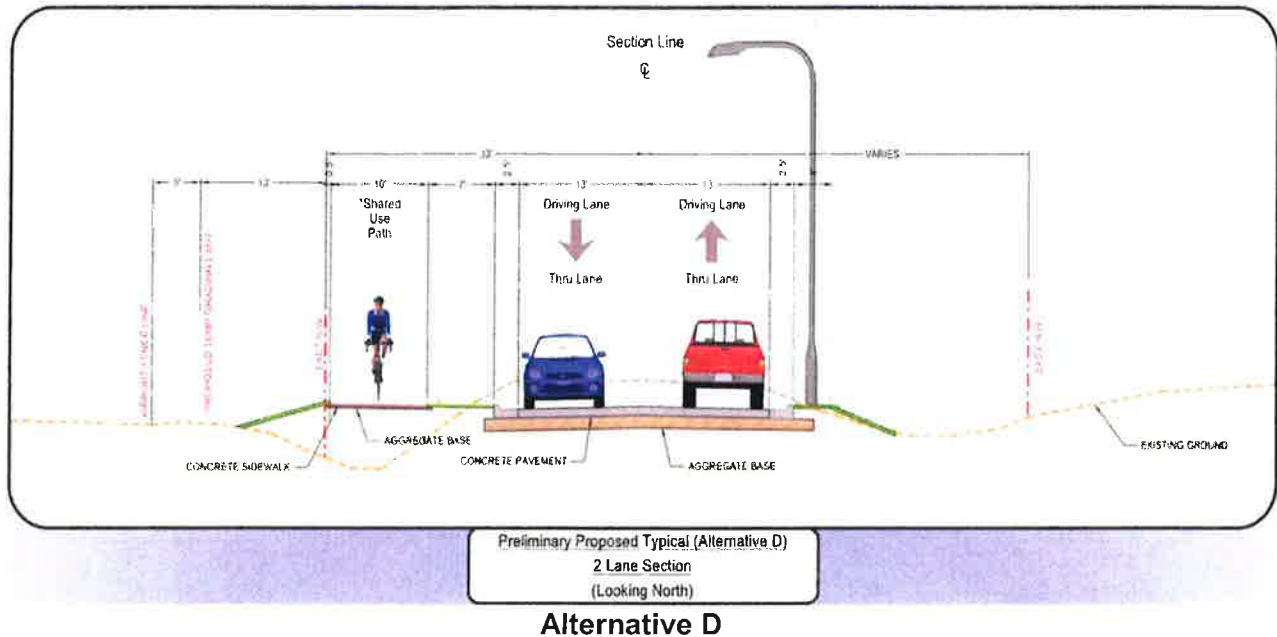
We came up with three build alternatives for the project. Alternative B is a 2-lane roadway, with the shared use path along the airport fence utilizing a new street & utility easement, estimated construction cost \$7.27M.



Alternative C is a 3-lane roadway, with the shared use path along the airport fence utilizing a new street & utility easement, estimated construction cost \$7.42M.



Alternative D is a 2-lane roadway, with the shared use path located within the existing street right-of-way and not needing a new street & utility easement, estimated construction cost \$7M. It is worth noting that boulevard will be 7' between the road and shared use path.



It turns out the FAA will not allow a new easement along the airport property, so we only have the last alternative to construct.

I have attached the relevant portions of the environmental document and the 'City Decision' page for this project. The Engineering Department is recommending the following for consideration to PWPEC and to forward on to the City Commission for review and approval:

On Question 1, do we concur with the project concepts proposed, we recommend 'Yes.'

On Question 2, which alternative should proceed, we recommend the selection of Alternative D for the alternative to construct. This alternative is a 2-lane concrete roadway with curb & gutter, and a 10' shared use path on the west side of the roadway. The estimated cost for this alternative is \$7M.

On Question 3, which option should proceed for the design of the 40<sup>th</sup> Avenue N intersection, we recommend keeping the All-Way Stop control.

### **Recommended Motion**

Select Alternative D, with Option 1 as the preferred design for this project.

Attachment

**DRAFT DOCUMENTED CATEX**

# **NEW/RECONSTRUCTION**

**Project No.**  
SU-8-984(165)

**PCN**  
22292

## **Fargo North University Drive Reconstruction**

32<sup>nd</sup> Avenue N to 40<sup>th</sup> Avenue N

Fargo, North Dakota

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Prepared by

CITY OF FARGO  
FARGO, ND

CITY ENGINEER  
BRENDA E. DERRIG, PE

Principal Author: Apex Engineering Group, Inc.  
Environmental Reviewer: Kent Leben, NDDOT Local Government Division  
March 2020

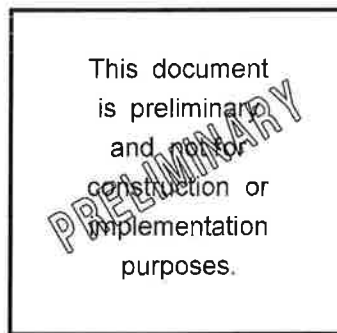
**SU-8-984(165)  
North University Drive**

32<sup>nd</sup> Avenue N to 40<sup>th</sup> Avenue N

Fargo, ND

***CERTIFICATION***

I hereby certify that this report was prepared by me or under my direct supervision and that I am a duly registered professional engineer under the laws of the State of North Dakota. This document was originally issued and sealed by James R. Mickelson, Registration number PE-27412 on MM/DD/YY and the original document is stored at the North Dakota Department of Transportation.



\_\_\_\_\_  
James R. Mickelson, P.E.

\_\_\_\_\_  
Date

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## **Appendices**

Appendix A	Solicitation of Views
Appendix B	Endangered Species Act
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Appendix D	Additional Attachments – FIRM Map, Noise Determination
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Appendix F	Preliminary Cost Estimates
Appendix G	Comments from the Draft Documented CATEX

## **Supporting Documents**

Scoping Worksheet  
Public Involvement Report  
Aquatic Resources Delineation Report  
Traffic Operations Report  
Cultural Resources Report

## A. Project Description

Highway: North University Drive  
 District: Fargo District  
 Limits: 32<sup>nd</sup> Ave N to 40<sup>th</sup> Ave N  
 Associated Project PCN(s) and Description(s): 22292

**Figure 1 – Project Location Map**



**Table 1 - Traffic Data**

	North University Dr Segment	Year	Totals
Current	40 <sup>th</sup> Ave N to 36 <sup>th</sup> Ave N	2015	3,800
Forecast		2040	4,800
Current	36 <sup>th</sup> Ave N to 32 <sup>nd</sup> Ave N	2015	4,900
Forecast		2040	5,700

**B. Project Schedule**

Project: SU-8-984(165)  
 Plans Complete: November 2020  
 Bid Opening: February 2021

**C. Purpose of Project**

- The roadway pavement has reached its expected design life and needs to be replaced to bring the roadway section and underground infrastructure up to current City standards. Pedestrians and cyclists do not have a designated off-street accessible route between 32<sup>nd</sup> Ave N and 40<sup>th</sup> Ave N to connect the existing sidewalk facilities in the southwest corner of 32<sup>nd</sup> Ave N and the northwest corner of 40<sup>th</sup> Ave N or to the larger city path network. Should a pedestrian or cyclist choose to travel on North University Drive, it currently puts both the drivers and pedestrians/cyclists in a potentially hazardous situation given the lack of shoulder. The steeper in-slopes and no shoulder are potentially unsafe conditions for the traveling public should they veer off the roadway. Additional watermain will be installed to address redundancy gaps in the City watermain system. Storm sewer trunk line and curb inlets will be installed to urbanize stormwater collection along this corridor.

**D. Need for Project**Existing Conditions and Deficiencies

- Pavement – This stretch of road has been overlaid for ride quality most recently in 2011. The pavement is currently at a PCI range of 41-60, which puts it in the failing category. This contributes to longitudinal cracking, transverse cracking, and rutting seen currently on the road.
- Roadway Capacity and Operations – As it stands today this road is built on a section line that has only 33' of statutory ROW on each side of the section line. The road is currently a two-lane road with no turn lanes, except for a short 120' left and right turn lane at 32<sup>nd</sup> Ave N. The two driving lanes are 12' wide each with no designated shoulder and in-slopes steeper than a 3:1. The existing speed limit is 40 mph.
- Underground Utilities – No existing storm sewer system and no existing water main system redundancy.

- **Non-Motorized User Access** – Pedestrians have a dedicated off-street path between 32<sup>nd</sup> Ave N and the south entrance of Riviera Heights Mobile Home Park on the east side of North University Drive, but do not have a designated off-street sidewalk or path between the Riviera south entrance and 40<sup>th</sup> Ave N.
- **Lighting System** – Current lights are on wooden poles spaced approximately 230' apart in the east ditch bottom.

### E. Scope of Work

2020-2023 STIP:	\$4,500,000 Federal
	<u>\$1,500,000 Local</u>
	\$6,000,000 Total

2018 Scoping Worksheet: \$6,000,000

2020 Documented CATEX: **\$8,400,000 to \$9,800,000**  
*\* Right of way costs and private utility relocation costs are not included.*

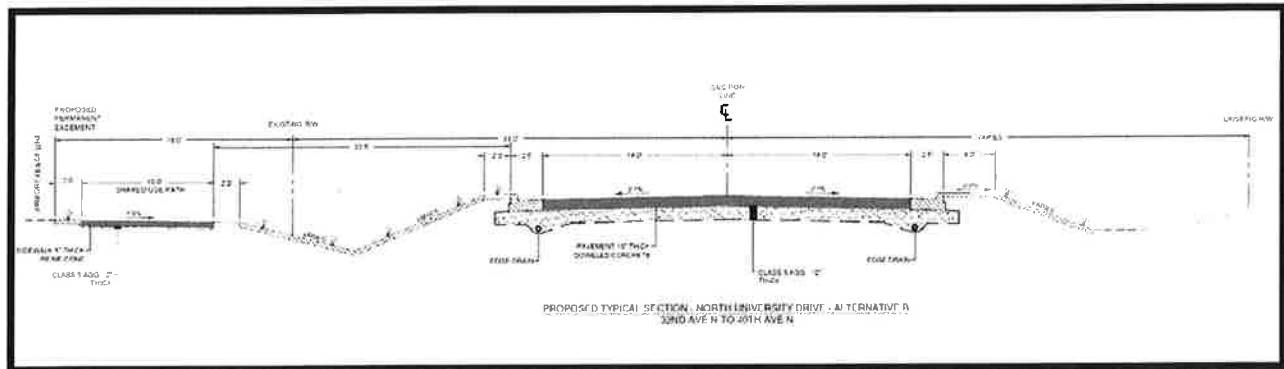
## F. Description of Alternatives

a. Alternative A: No Build

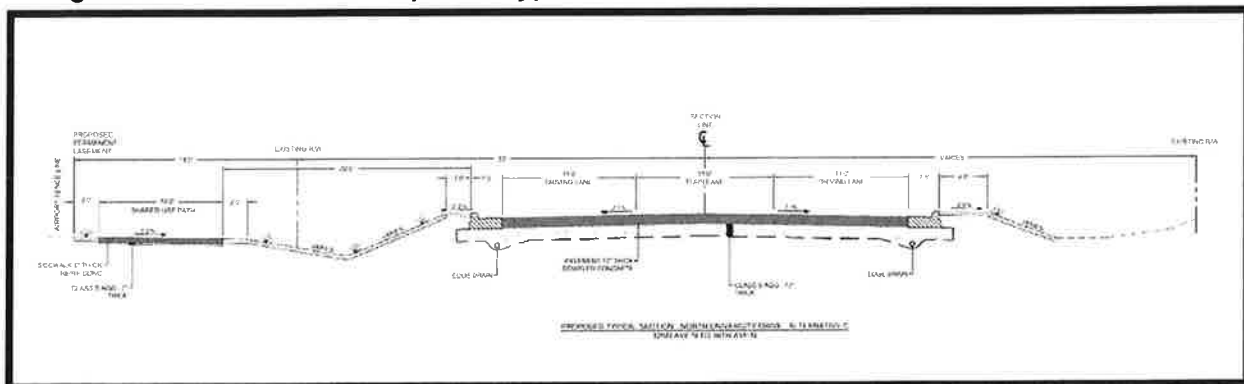
- (Estimated Cost \$0)
- This is the non-preferred alternative as it does not address any of the project's needs

b. Alternative B

- (Estimated Cost \$8,000,000)
- 32' wide concrete pavement including gutter pan
- 2 – 14' wide thru lanes plus 2' gutter pan each side
- 10' wide shared use path running 2' offset from the existing west airport fence line for most of the roadway (requires new permanent easement from Airport)
- Pedestrian crosswalks east-west across North University Drive at the intersections of Monte Carlo Dr N and 36th Ave N to allow the Riviera Heights Mobile Home Park and Trollwood Neighborhoods to access the shared use path on the west side of North University Drive
- Includes southbound left turn lane and right turn lane at 32<sup>nd</sup> Ave N. Does not include southbound left turn lanes for 36th Ave N and Riviera Heights Mobile Home Park entrances
- New Traffic Signal System at 32<sup>nd</sup> Ave N
- New lighting on the eastern boulevard of roadway with FAA compliant shielding
- New storm sewer trunk line
- New watermain
- New 6' sidewalk on north side of 36<sup>th</sup> Ave N, from North University Drive to a point approximately 800' east

**Figure 3 – Alternative B Proposed Typical Sections****c. Alternative C**

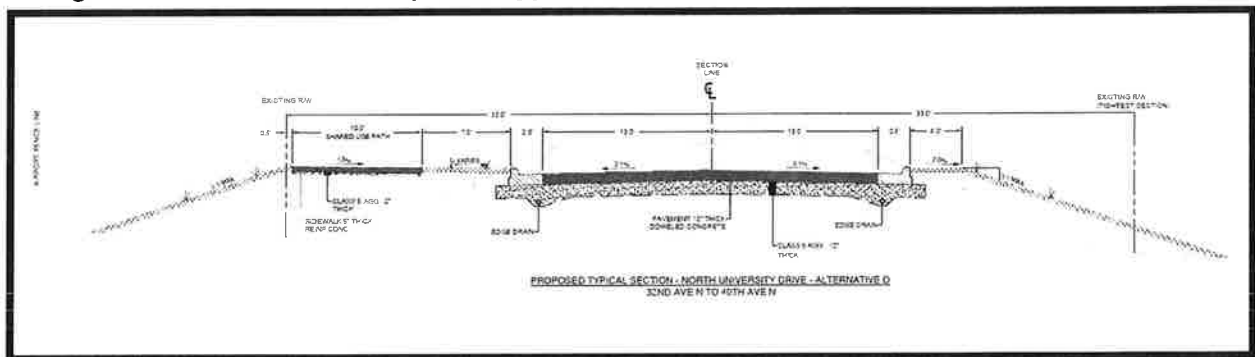
- (Estimated Cost \$8,100,000)
- 37' wide concrete pavement including gutter pan from 32nd Ave N to just north of 36th Ave
- 2 – 11' wide Thru Lanes, 1-11' Centered Southbound Left Turn Lane plus 2' gutter pan each side
  - Future traffic projections show that this turn lane will help minimize southbound queuing for traffic entering east side streets, by removing the turning traffic from the through traffic lane.
- 10' wide shared use path running adjacent to the existing west airport fence line for most of the roadway (requires new permanent easement from airport)
- Alternative C and Alternative B are the same proposed 2-Lane Section north of 36th Ave N
- New Traffic Signal System at 32<sup>nd</sup> Ave N
- New lighting on the eastern boulevard of roadway with FAA compliant shielding
- New storm sewer trunk line
- New watermain
- New 6' sidewalk on north side of 36<sup>th</sup> Ave N, from North University Drive to a point approximately 800' east

**Figure 4 – Alternative C Proposed Typical Sections**

d. Alternative D

- (Estimated Cost \$7,600,000.00)
- 30' wide concrete pavement including gutter pan
- 2 – 13' wide Thru Lanes plus 2' gutter pan each side
- 10' wide shared use path on the west side, 7' behind back of curb, contained within the existing right of way
  - Construction work beyond the right of way would be for grading purposes only (temporary grading easement would be proposed).
- New Traffic Signal System at 32<sup>nd</sup> Ave N
- New lighting on the eastern boulevard of roadway with FAA compliant shielding
- New storm sewer trunk line
- New watermain
- New 6' sidewalk on north side of 36<sup>th</sup> Ave N, from North University Drive to a point approximately 800' east

**Figure 5 – Alternative D Proposed Typical Sections**

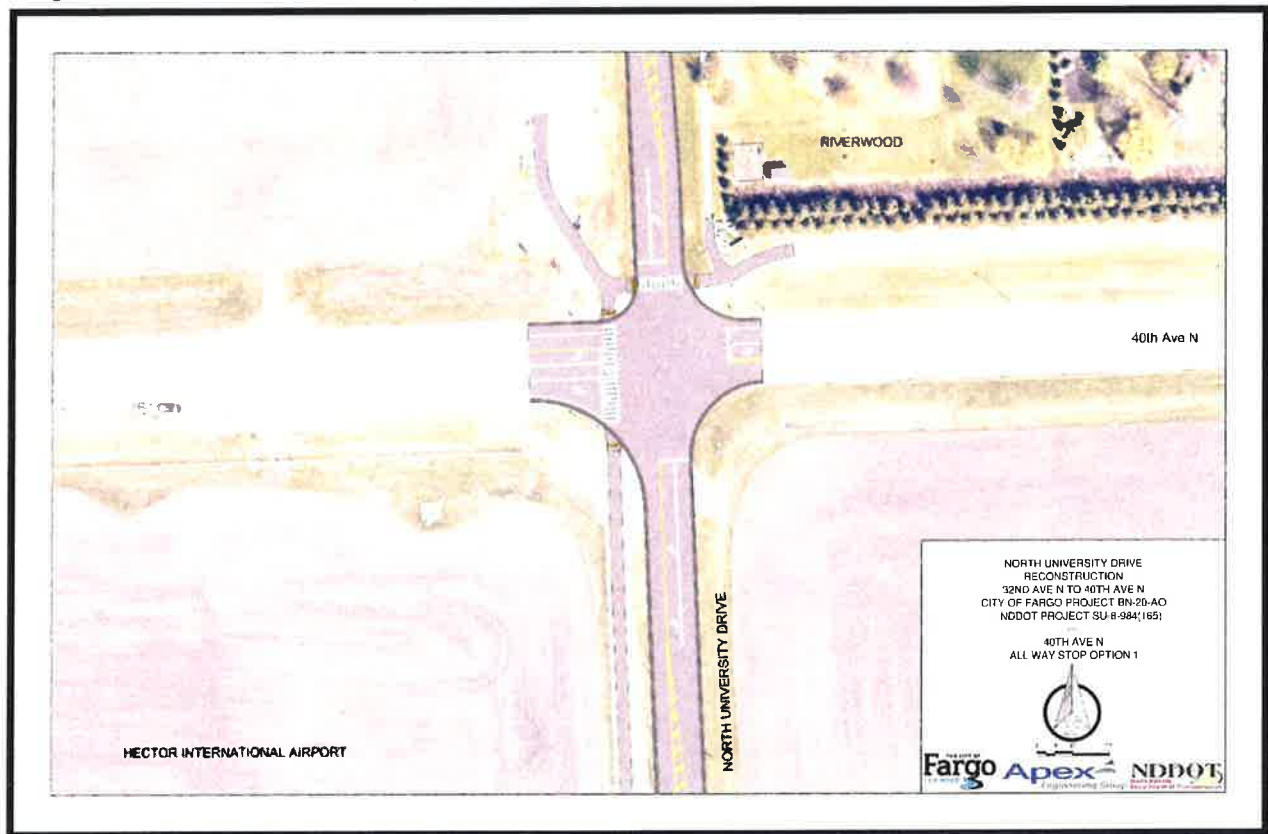


e. Optional Work Items

Option 1: All Way Stop at 40<sup>th</sup> Ave N & North University Drive

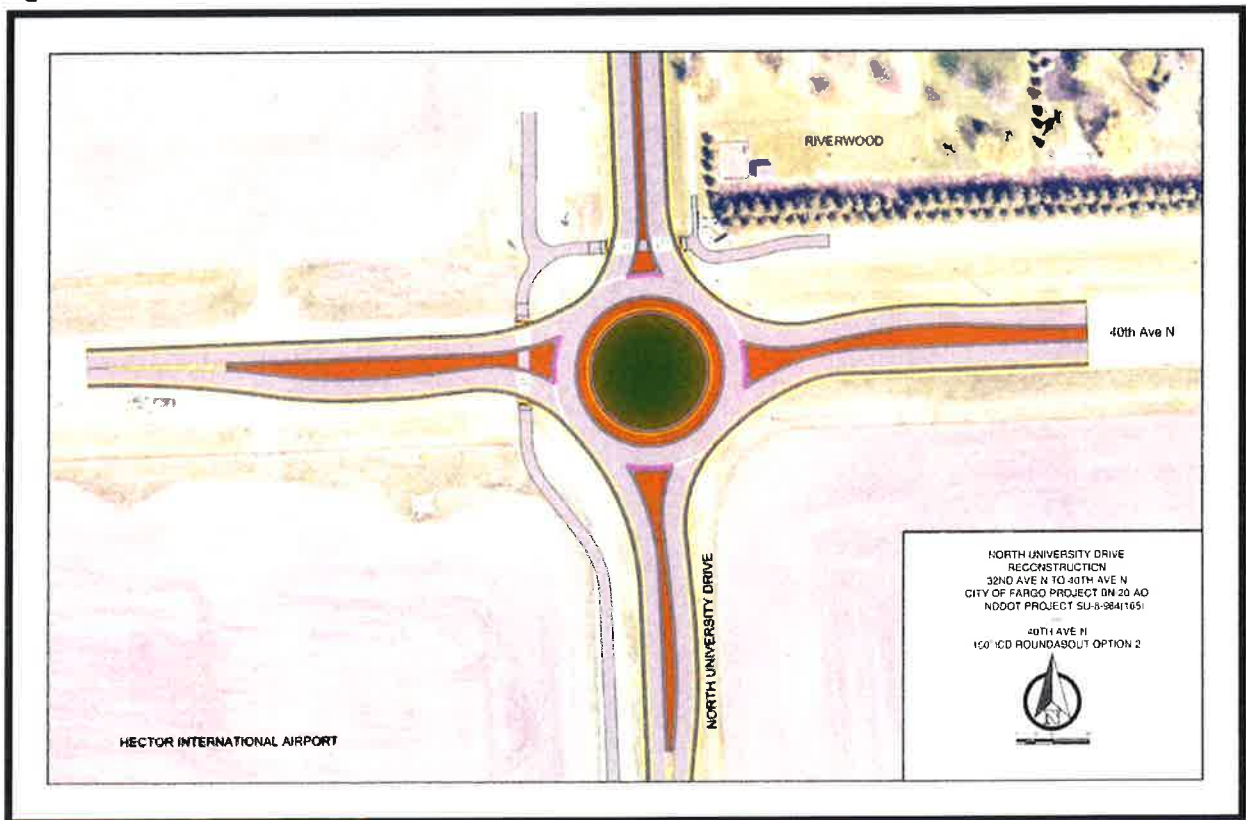
- (Estimated Cost \$800,000.00)
- Addition of Northbound left turn lane as recommended by Traffic Operations Report
- Eastbound and westbound lane configurations will remain the same as existing (EB left turn lane, thru, and right turn lanes; WB left turn and thru-right turn lanes). Current turn lane lengths exceed the recommendation of the Traffic Operations Report
- Addition of southbound left turn lane to match offsets of additional northbound left turn lane
- Shared use path connectivity between Riverwood development north of 40<sup>th</sup> Ave N
- Pedestrian crossings on the north and west side of the intersection of 40<sup>th</sup> Ave N and North University Drive

**Figure 6 – 40<sup>th</sup> Ave N – All Way Stop Layout**



**Option 2: Roundabout at 40th Ave N & North University Drive**

- (Estimated Cost \$800,000.00)
- Four-legged roundabout with 160' inscribed circle diameter
- Center of roundabout is shifted 20 feet south of the center of the existing intersection, to avoid impacts to neighborhood sign and utilities in the NE corner of the intersection
- 18 feet wide circulating lane width
- 17 feet wide truck apron
- WB-67 design vehicle
- Shared use path connectivity between Riverwood development north of 40<sup>th</sup> Ave N
- Pedestrian crossings on the north and west side of roundabout
- Significantly reduced intersection traffic conflict points
- Additional lighting for roundabout intersection

Figure 7 – 40<sup>th</sup> Ave N – Roundabout Layout

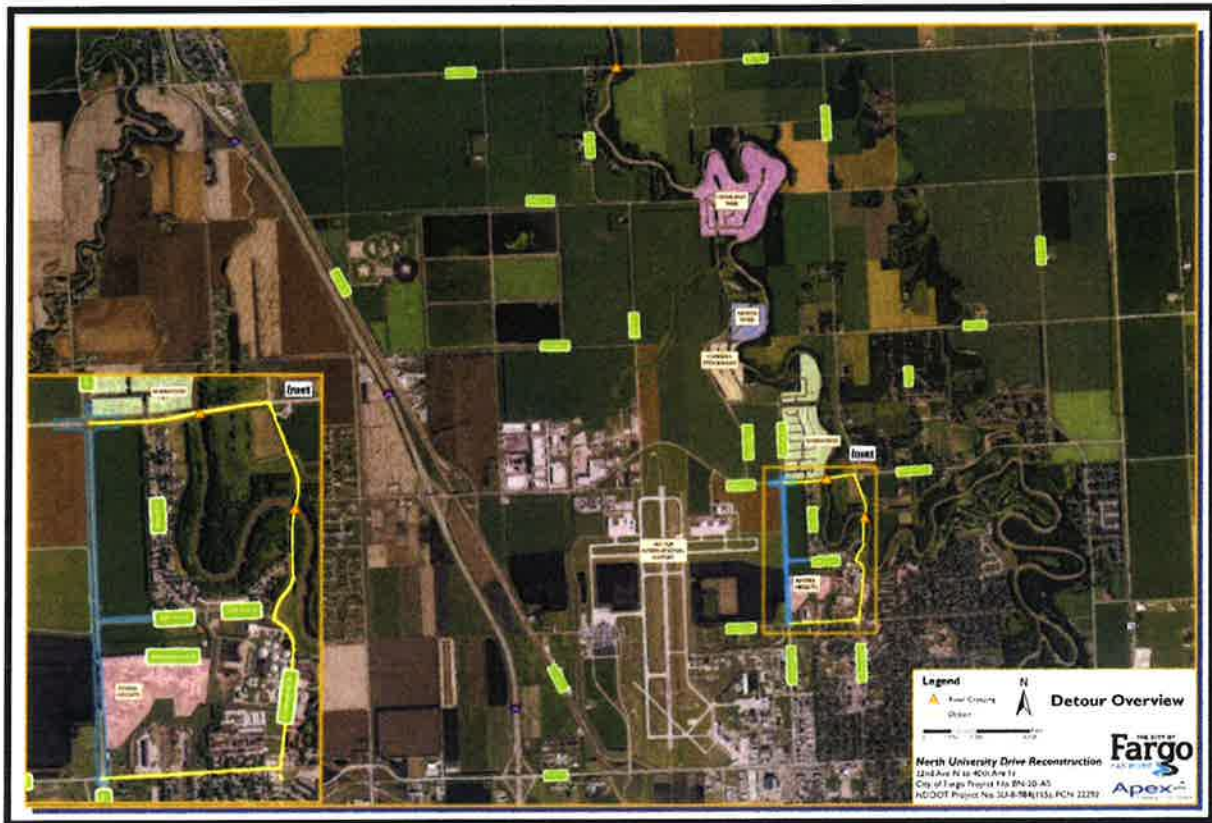
f. Traffic Control Work Zone Safety and Mobility

This project is not designated as a significant project due to it not being on the urban regional system. The work zone traffic control plan for this project will be summarized within the environmental document, in accordance with the process outlined in the Work Zone Safety and Mobility Program for non-significant projects.

g. Work Zone Traffic Control

North University Drive will be closed to through traffic during construction and detoured along North Broadway from 32nd Avenue N to 40th Avenue North. Intersections of 40th Ave N and 32nd Ave N will not be allowed to be closed at the same time to minimize the length of the detour for North University Drive. Pedestrians will have access to the Riviera Heights Mobile home park via existing sidewalk from 32nd Ave N on the east side of North University Drive. This sidewalk will be open to the maximum extent possible but there will be a short period of time during construction of the east leg of 32nd Ave N, where access will be limited. Accommodations will be made for heavier truck traffic to detour north of 40th Ave N, via Hwy 75 to I-29, during the intersection improvements of the 40th Ave N and North University Drive Intersection due to the load limitation on the North Broadway bridge over the Red River.

Figure 8 – North University Detour Route



#### h. Maintenance Responsibility Discussion

The City of Fargo will retain ownership and maintenance of North University Drive from 32<sup>nd</sup> Avenue North to 40<sup>th</sup> Avenue North.

#### i. Summary of Engineering Issues

- Alternative B, C, & D propose a shared use path on the west side of North University Drive to connect 40<sup>th</sup> Ave N to 32<sup>nd</sup> Ave N pedestrian traffic. Alternative B&C shared use path location provides a greater offset from the roadway (24-26 feet) than does Alternative D (7 feet). A greater ditch offset will allow for additional snow storage and additional separation from traffic lanes for pedestrian and cyclists using the facility.
- Alternative C includes a southbound left turn lane into Riviera Heights Mobile Home Park and 36<sup>th</sup> Avenue North. This would separate left-turning traffic from the thru traffic lane. However, it would require permanent easement from the airport authority. Based on conversations with the Airport and FAA, it is unlikely that an easement would be granted for this as it lies within the Runway Protection Zone (RPZ). Therefore, the Traffic Operations Report did not recommend the southbound left turn lane at 36<sup>th</sup> Ave N. However, it has been included in Alternative C at the City's request.

- North University Drive is part of the Hector International Runway Protection zone of east/west runway 9/27. The profile of all alternatives is lowered in this location to keep grading impacts within the airport fence line and maintain or lower elevations of the new roadway in comparison to the existing conditions.
- Alternative B, C, & D include a storm sewer collection system and a watermain distribution system. The storm sewer system will collect drainage from the proposed roadway and the west ditch section of alternatives B&C. The watermain installation will provide connectivity and redundancy to the watermain systems in place at 40<sup>th</sup> and 32<sup>nd</sup> Avenue N as well as supply fire hydrants along North University Drive.
- There currently is an existing temporary traffic signal system at 32<sup>nd</sup> Ave N. Traffic signal warrant #2 is met in this project's traffic operations report and thus a permanent signal at this location is warranted and recommended to maintain a LOS B in 2040 as stated in the Traffic Operations Report. A roundabout was considered as alternative for this intersection in the Traffic Operations Report but not recommended due to geometric constraints including a storm sewer gate well in the northeast corner of the intersection.
- 40<sup>th</sup> Avenue North intersection is being currently operated under an all-way stop condition. A traffic signal warrant analysis was done, and no warrants were met. The all way stop condition in 2018 had an overall LOS B in the PM which is projected to be overall LOS C in 2040. This is an acceptable LOS; additional turn lanes and increased turn lane lengths would improve the intersection LOS. A roundabout would operate at a LOS B in the PM of 2040 and would reduce crash severity by reducing conflict points & moderating traffic speeds. The roundabout is the recommended intersection improvement in the traffic operations report.

#### j. Summary of Environmental Issues

##### Wetlands:

- Six wetland areas encompassing a total of 0.98 Acre, were identified and delineated within the project area. Two natural wetlands identified as riverine wetlands flow east under University Drive and are part of Cass County Drain #3 which is operated and maintained by the Southeast Cass Water Resource District (SECWRD). Four wetlands were classified as constructed wetlands within the intersection of 40<sup>th</sup> Ave N and North University Drive. These wetlands are the result of construction and maintenance of the roadway and are contained in the road ditch. A preliminary wetland jurisdictional determination was issued by the US Army Corps of Engineers (USACE) on 02/06/2019 and amended on 03/17/2020; NWO-2019-00141-BIS.
- Alternatives B&C have a total of 0.04 Acre permanent impacts (fill/drain) and 0.01 temporary impacts to natural jurisdictional wetland 1a and no impacts to wetland 1b.
- Alternative D has a total of 0.03 Acre of permanent impacts (fill/drain) and 0.02 temporary impacts to natural jurisdictional wetland 1a and no impacts to wetland 1b.
- Option 1 has no permanent impacts and 0.04 Acre temporary impacts to constructed non-jurisdictional wetlands 2, 3, 4a, and 4b.

- Option 2 has 0.05 Acre permanent impacts and 0.08 Acre temporary impacts to constructed non-jurisdictional wetlands 2, 3, 4a, and 4b.
- During the design phase, design features such as a steeper foreslope outside of the clear zone will be considered to minimize impacts to the wetlands. It is expected that unavoidable impacts to natural jurisdictional wetland 1a will be mitigated at an EO11990 bank, such as Vollrath 15/21.
- Wetland Impacts for Wetland 2, 3, 4a, and 4b are not included in the wetland impact tables for Alternative B, C, & D as these wetlands are outside of the Alternative limits.
- Wetland Impacts for Wetland 1a & 1b are not included in wetland impact tables for Options 1 & 2 as these wetlands are outside of the Option limits.

#### Section 4(f)

- There are three Section 4(f) properties within the project area;
  - Yunker Farm – (Not Impacted)
  - North Broadway Park (Not Impacted)
  - Riverwood Park (Temporary Occupancy of Path)
- Riverwood park path will require temporary occupancy to connect the path to the proposed path on the west side of North University Drive. A Temporary Occupancy Concurrence Request was sent to the Fargo Parks District and concurrence was received on 02/11/2020. Refer to Appendix E for additional details.

**Table 2 - Right of Way Summary**

Alternatives	Temporary ROW Needed	Permanent ROW Needed	US Fish & Wildlife Property Interest?	US Forest Service Property Interest?
Alternative A	0.0 Acres	0.0 Acres	No	No
Alternative B	0.83 Acres	1.99 Acres	No	No
Alternative C	0.83 Acres	1.99 Acres	No	No
Alternative D	2.01 Acres	0.29 Acres	No	No
Option 1 – All Way Stop – Alt B&C*	0.22 Acres	0.20 Acres	No	No
Option 1 – All Way Stop – Alt D*	0.22 Acres	0.16 Acres	No	No
Option 2 – Roundabout Alt B&C*	0.22 Acres	0.42 Acres	No	No
Option 2 – Roundabout Alt D*	0.33 Acres	0.28 Acres	No	No

\*Option 1 and 2 ROW needs vary slightly depending upon chosen alternative B, C, & D.

**Table 3 – Summary of Estimated Costs**

<b>Alternatives</b>	<b>SU-8-984(165) Federal Aid Eligible</b>	<b>Drainage</b>	<b>City of Fargo Only</b>	<b>Total Cost</b>
<b>Alternative A</b> No Build	\$0	\$0	\$0	\$0
<b>Alternative B</b> 32' Wide Concrete Section – 2 Thru Lanes	\$4,400,000	\$2,600,000	\$1,000,000	\$8,000,000
<b>Alternative C</b> 37' Wide Concrete Section, 2 Thru Lanes – 1 Center Turn Lane	\$4,500,000	\$2,600,000	\$1,000,000	\$8,100,000
<b>Alternative D</b> 30' Wide Concrete Section – 2 Thru Lanes	\$4,100,000	\$2,500,000	\$1,000,000	\$7,600,000
<b>Option 1</b> All Way Stop at 40 <sup>th</sup> Ave N	\$700,000	\$100,000	-----	\$800,000
<b>Option 2</b> Roundabout at 40 <sup>th</sup> Ave N	\$1,400,000	\$300,000	-----	\$1,700,000

1. Estimated costs include an additional 15% for engineering and 5% for contingencies.

2. Right of way costs and private utility relocation costs are not included in the estimates.

**G. Comments from the Documented CATEX**

- Please refer to Appendix G for comments on the Draft Documented CATEX

**H. Public Concerns / Need for Public Input**

Solicitation of views letters were sent to various local, state, and federal agencies with interests within or adjacent to the project area on November 5<sup>th</sup>, 2018. Solicitation of views letters and responses can be found in Appendix A. One public input meeting was conducted for this project, on February 26, 2019 at the Fargodome. A summary of comments received and responses is found below.

**Table 4 – Summary of Comments/Responses**

<b>Topic</b>	<b>Comments</b>	<b>Responses</b>
<b>Roundabout (14)</b>	<p>1. Comments regarding the dislike and/or support of the roundabout. There were 5 in favor, 7 against, and 2 general comments on the roundabout.</p> <p>2. Comments regarding the potential for higher delays waiting for breaks in traffic flow.</p> <p>3. Comments regarding if roundabouts are going to present safety concerns for pedestrians/bikes.</p>	<p>1. We appreciate the feedback from the different design options and each opinion will be considered before final design is completed.</p> <p>2. Roundabouts are designed to try and maximize traffic flow with minimal delays.</p> <p>3. Roundabouts eliminate a significant number of conflict points between vehicles and pedestrians as well as reducing speeds.</p>

Roundabout (14)	<p>4. Comments regarding the impacts on existing houses/signs</p> <p>5. Comment regarding how snow is removed from the roundabout</p> <p>6. Comments regarding the ability of large trucks/equipment to maneuver the roundabout.</p> <p>7. Comment regarding the trend of removing roundabouts</p>	<p>4. The current design was made to avoid all existing houses/signs in the impact area of the roundabout.</p> <p>5. There have been hundreds of roundabouts installed in wintry climates and the public works departments have learned the most efficient ways to remove snow from these areas.</p> <p>6. The roundabout was designed with a large truck in mind, we will look at these larger vehicles before final design is submitted.</p> <p>7. In our area we could not find any records of city/state/federal removing roundabouts.</p>
Specials/Cost (6)	<p>1. Comments regarding who would be getting specials and how much they would cost and if a roundabout would increase these costs.</p>	<p>1. All assessments will conform to the City of Fargo Funding Policy, within this policy it explains that specials are a fixed cost and they will not change with or without the addition of a roundabout.</p>
Bike Path (6)	<p>1. Comments regarding the support of the new bike path. All 6 comments about the bike path were in support.</p> <p>2. Comments regarding the width of the bike path and that there should be an electronic signal for the path at street crossings.</p>	<p>1 &amp; 2. We appreciate the feedback from the different design options and each opinion will be considered before final design is completed.</p>
Project Scope (6)	<p>1. Comment regarding if the project could be bid as an asphalt alternative.</p> <p>2. A comment regarding why the proposed will not be a 4 – lane roadway.</p> <p>3. A comment in support of leaving the roadway a 2 – lane section.</p> <p>4. Comments regarding the wish to leave the stop sign or to go to a signalized intersection.</p>	<p>1. The current plan is for a concrete pavement section. We will bring your proposal forward to the City for their consideration at the next project meeting.</p> <p>2. The traffic analysis did not show a need for a 4 – lane section.</p> <p>3. We appreciate the feedback from the different design options and each opinion will be considered before final design is completed.</p> <p>4. The traffic count does not warrant for a signalized intersection. The idea of leaving the stop sign will be analyzed further before final design is submitted.</p>

Project Scope (6)	5. Comments regarding the lowering of the road and snow drifting/flooding concerns.	5. The road grade is lowering; however, the grade will not be lower than the surrounding ground to avoid flooding/drifting.
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Table 5 – Comparison of Alternatives

Alternative / Option	Advantages	Disadvantages
<b>Alternative A</b> No Build	<ul style="list-style-type: none"> <li>• Lowest initial cost</li> <li>• No Environmental impacts</li> <li>• Hector International Runway Protection Zone does not need to be analyzed</li> </ul>	<ul style="list-style-type: none"> <li>• Does not meet any of the project's purpose or need</li> </ul>
<b>Alternative B</b> Concrete 2-Lane (32' Wide Including C&G Pan)	<ul style="list-style-type: none"> <li>• Provides 30-year pavement design</li> <li>• New 10' wide shared use path connecting 32<sup>nd</sup> Ave N to 40<sup>th</sup> Ave N</li> <li>• Curb ramp and lighting updates</li> <li>• Wider path separation, additional snow storage, and drainage in west ditch</li> <li>• Includes long term storm sewer collection system and watermain distribution system</li> <li>• New Traffic Signal system at 32<sup>nd</sup> Ave N</li> </ul>	<ul style="list-style-type: none"> <li>• Does not include southbound left turn lane into Riviera Heights Mobile Home Park and 36<sup>th</sup> Ave N (however, this was not recommended in the Traffic Operations Report)</li> <li>• Requires more right of way to be acquired than Alternative D</li> <li>• Wetland impacts to Riverine Wetland #1a: Permanent Impact = .04 Acres Temporary Impact = .01 Acres</li> </ul>
<b>Alternative C</b> 3-Lane (37' Wide Including C&G Pan) (32 <sup>nd</sup> Ave N to 36 <sup>th</sup> Ave N)	<ul style="list-style-type: none"> <li>• Provides 30-year pavement design</li> <li>• New 10' wide shared use path connecting 32<sup>nd</sup> Ave N to 40<sup>th</sup> Ave N</li> <li>• Curb ramp and lighting updates</li> <li>• Wider path separation, additional snow storage, and drainage in west ditch</li> <li>• Includes long term storm sewer collection system and watermain distribution system</li> <li>• Southbound left turn lane for Riviera Heights Mobile Home Park and 36<sup>th</sup> Ave N</li> <li>• New Traffic Signal system at 32<sup>nd</sup> Ave N</li> </ul>	<ul style="list-style-type: none"> <li>• Highest initial cost of all alternatives</li> <li>• Requires more right of way to be acquired than Alternative D</li> <li>• Wetland impacts to Riverine Wetland #1a: Permanent Impact = .04 Acres Temporary Impact = .01 Acres</li> </ul>

<p><b>Alternative D</b> 2 Lane (30' wide including C&amp;G Pan)</p>	<ul style="list-style-type: none"> <li>• Provides 30-year pavement design</li> <li>• New 10' wide shared use path connecting 32<sup>nd</sup> Ave N to 40<sup>th</sup> Ave N</li> <li>• Curb ramp and lighting updates</li> <li>• Includes long term storm sewer collection system and watermain distribution system</li> <li>• The proposed roadway elements are contained within the existing right of way</li> <li>• Smallest right of way need</li> <li>• New Traffic Signal system at 32<sup>nd</sup> Ave N</li> </ul>	<ul style="list-style-type: none"> <li>• Narrower sidewalk separation</li> <li>• No area for snow storage and drainage in west boulevard</li> <li>• Wetland impacts to Riverine Wetland #1a: Permanent Impact = .03 Acres Temporary Impact = .02 Acres</li> <li>• Does not include southbound left turn lane into Riviera Heights Mobile Home Park and 36<sup>th</sup> Ave N (however, this was not recommended in the Traffic Operations Report)</li> </ul>
<p><b>Option 1: All Way Stop @ 40<sup>th</sup> Ave N</b> (Included in Base Cost of Alternatives)</p>	<ul style="list-style-type: none"> <li>• Lower initial cost than Option 2</li> <li>• Includes northbound left turn lane at 40<sup>th</sup> Ave N</li> <li>• Less right of way needs than Option 2</li> <li>• Shared Use Path connection across 40<sup>th</sup> Ave N</li> </ul>	<ul style="list-style-type: none"> <li>• Higher chance of severe crashes and less vehicle conflict points than Option 2</li> <li>• Level of Service C worse than Option 2 with Level of Service B in 2040</li> </ul>
<p><b>Option 2: Roundabout @ 40<sup>th</sup> Ave N</b></p>	<ul style="list-style-type: none"> <li>• Less chance of severe crashes than Option 1 and less vehicle conflict points</li> <li>• Moderate vehicles speed by requiring vehicles to slow down</li> <li>• Level of Service B better than Option 1 with Level of Service C in 2040</li> <li>• Shared Use Path connection across 40<sup>th</sup> Ave N</li> </ul>	<ul style="list-style-type: none"> <li>• Higher initial cost than Option 1</li> <li>• More right of way needs than Option 1</li> </ul>

I. City Decisions

1. Do you concur with the project concepts as proposed?

\_\_\_\_\_ Yes

\_\_\_\_\_ No

2. Which alternative should proceed with the project?

\_\_\_\_\_ Alternative A: No-Build Alternative

\_\_\_\_\_ Alternative B: 2-Lane (32') Section with Path Outside ROW

\_\_\_\_\_ Alternative C: 3-Lane (37') Section with Path Outside ROW

\_\_\_\_\_ Alternative D: 2-Lane (30') Section with Path Inside ROW

**\* Proceed to Question #3 if Alternative B, C, or D is selected.**

3. Which option should proceed with the project for improvements at the 40<sup>th</sup> Ave N intersection?

\_\_\_\_\_ Option 1: All Way Stop at 40<sup>th</sup> Ave N & North University Drive

\_\_\_\_\_ Option 2: Roundabout at 40<sup>th</sup> Ave N & North University Drive

Amendments/Comments for Project No. SU-8-984(165):

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

\_\_\_\_\_  
Date

## REPORT OF ACTION

## PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

(33)

Improvement District No. FM-20-C

Type: Exchange and LOMR Payment Agreement

Location: Drain #53 (Madelyn Meadows)

Date of Hearing: 8/31/2020

RoutingDate

City Commission

9/8/2020

PWPEC File

X

Project File

Jody Bertrand

The Committee reviewed a communication from Division Engineer, Jody Bertrand, regarding an Exchange and LOMR Payment Agreement with SITKA Investments, LLC for work completed under City Project No. FM-20-C1 either for LOMR-F operations or for clay material stockpiling.

Effective January 1, 2020, the current 2020 Fargo Infrastructure Funding Policy states the following revisions to the LOMR (Letter of Map Revisions) requirements; LOMR to be completed prior to Improvement Project or as part of Improvement Project. All costs for LOMR shall be paid for by Developer. No LOMR costs will be special assessed. The Developer will prepay the estimated cost, which will be held by the City with funds being withdrawn as construction payments are disbursed.

The LOMR Payment Agreement is to be used for all LOMR requested to be part of the City of Fargo Improvement Projects.

Staff is seeking approval of the Exchange and LOMR Payment Agreement with SITKA Investments LLC.

On a motion by Bruce Grubb, seconded by Kent Costin, the Committee voted to recommend approval of the Exchange and LOMR Payment Agreement with SITKA Investments, LLC for work to be completed under City Project No. FM-20-C1.

RECOMMENDED MOTION

Concur with PWPEC recommendation and approve the Exchange and LOMR Payment Agreement with SITKA Investments, LLC.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: N/A

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

Yes No

N/AN/AN/ACOMMITTEE

Present Yes No Unanimous

☒

Tim Mahoney, Mayor

☒☒☐

Nicole Crutchfield, Director of Planning

☒☒☐

Steve Dirksen, Fire Chief

☒☒☐

Bruce Grubb, City Administrator

☒☒☐

Ben Dow, Director of Operations

☒☒☐

Steve Sprague, City Auditor

☒☒☐

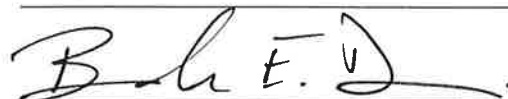
Brenda Derrig, City Engineer

☒☒☐

Kent Costin, Finance Director

☒☒☐

ATTEST:



Brenda E. Derrig, P.E.  
City Engineer

## Memorandum

**To:** Members of PWPEC  
**From:** Jody Bertrand, Division Engineer  
**Date:** August 31, 2020  
**Re:** Exchange and LOMR Payment Agreement – Drain #53 Improvements;  
Madelyn Meadows Area

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### Background:

In the fall of 2019, the City started discussions with Southeast Cass Water Resource District to widen and lower the drain bottom for newly developing areas south of 64<sup>th</sup> Avenue and west of 25<sup>th</sup> Street South. To provide flood protection material for additional levee segments required to develop, the drain profile was lowered to the greatest extent possible, controlled by existing allowable grades in the drain to the north. Through the project development it was determined that 50% of the project cost was for drain improvements and would be paid for by SE Cass WRD and the other 50% for the levee construction would be a City cost to be special assessed to the benefitting properties. Entering the plan design phase, the Developer on the east side of Drain #53 proposed to deed parcels on the west and east side of the drain if material could be over excavated through those parcels and be allowed to be paid for by them to complete LOMR-F requirements of future developable land on the east side of the drain. It has been calculated the amount to be removed for the over excavation of the deeded lots will be around 42,000 cy of clay material. An Agreement has been compiled by the City Attorney's Office outlining the terms of the process. The SE Cass WRD project bidding documents will have two alternates for the Developer to select after bids have been received. The first alternative for the Developer is to pay for the actual placement and compaction of the material to complete their LOMR-F requirements. The second alternative is for material to be stockpiled on the Developer's site for future use under his own separate contract. If selected, the cost for stockpiling will also be a developer cost. Prior to bid award, the Developer shall provide for payment of the work to be completed under either alternative #1 or #2. Prepayment will be obtained by the City based on estimated quantities in the contract. The Developer will prepay the estimated cost, which will be held by the City with funds being withdrawn as construction payments are disbursed.

### Recommended Motion:

Approve an Exchange and LOMR Payment Agreement with SITKA Investments, LLC for work to be completed under City Project No. FM-20-C1 for either LOMR-F operations or for clay material stockpiling.

**Exchange and LOMR Payment Agreement**

**THIS AGREEMENT**, by and between City of Fargo, a North Dakota Municipal Corporation ("Fargo" or "City") and Sitka Investments, LLC, a North Dakota Limited Liability Company ("Developer").

**WHEREAS**, Developer is developing Madelyn's Meadows Third Addition ("Property"), located in the City; and

**WHEREAS**, Developer has retained the services of a professional engineer licensed in the state of North Dakota to design, engineer and develop a Letter of Map Revision ("LOMR") plan for the Property; and

**WHEREAS**, Southeast Cass Water Resource District, a North Dakota political subdivision ("District"), owns and operates Cass County Drain No. 53 ("Drain 53"), a legal assessment drain under Chapter 61-16.1 of the North Dakota Century Code; and

**WHEREAS**, the District has concluded certain drainage improvements are necessary to Drain 53 upstream of 64<sup>th</sup> Avenue South, within the boundaries of Fargo; and

**WHEREAS**, the District and Fargo have identified certain flood protection improvements to be constructed in conjunction with the Drain 53 improvement project, known as City Project #FM-20-C1; and

**WHEREAS**, the District and Fargo have entered into a Joint Powers Agreement Regarding Drain 53 Improvement Project No. 2019-01, and a First Amendment thereto, wherein the District and Fargo agree that Fargo shall secure the necessary land for the projects contemplated therein, obviating the need for the District to acquire necessary drain right of way for the Drain Project; and

**WHEREAS**, Developer is the Owner of certain property necessary for the Drain 53 Improvement Project and the City flood protection project; and

**WHEREAS**, Developer intends to convey additional property to Fargo in exchange for clay material to be used for fill in the Property, in accordance with the terms herein; and

**WHEREAS**, Developer requested that District include the Property LOMR in the contract to be bid and contracted by the District for the Drain Improvement and City flood protection improvements as an alternate bid item; and

**WHEREAS**, City Special Assessment Policy specifically provides that any and all LOMR

work to be completed for a new development may not be special assessed by the City as a cost of the City project; and

**WHEREAS**, City is willing to include the LOMR work in its City contract under certain terms and conditions.

**NOW, THEREFORE**, for good and valuable consideration hereby acknowledged, Developer and City agree as follows:

1. **Subject Matter.** The subject matter of this agreement is the real estate described as follows:

That part of the South Half of the North Half of the Southeast Quarter and that part of the North Half of the South Half of said Southeast Quarter, all in Section 11, Township 138 North, Range 49 West of the Fifth Principal Meridian, Cass County, North Dakota, described as follows:

Commencing at a found iron monument which designates the southwest corner of said Southeast Quarter; thence North 02 degrees 09 minutes 40 seconds West on an assumed bearing along the west line of said Southeast Quarter for a distance of 1986.12 feet to the northwest corner of said South Half of the North Half of the Southeast Quarter; thence North 89 degrees 05 minutes 36 seconds East along the north line of said South Half of the North Half of the Southeast Quarter for a distance of 131.64 feet to the point of beginning; thence South 10 degrees 56 minutes 47 seconds East for a distance of 333.19 feet; thence 78.71 feet southerly on a tangential curve concave to the west, having a radius of 75.00 feet and a central angle of 60 degrees 07 minutes 36 seconds; thence South 49 degrees 10 minutes 49 seconds West for a distance of 98.47 feet; thence 107.62 feet southwesterly on a tangential curve concave to the southeast, having a radius of 675.00 feet and a central angle of 09 degrees 08 minutes 05 seconds to the west line of said Southeast Quarter; thence South 02 degrees 09 minutes 40 seconds East along the west line of said Southeast Quarter for a distance of 146.95 feet to the westerly line of Cass County Drain No. 53 according to Quit Claim Deed Document No. 1287139, recorded January 29, 2010, on file and of record in the office of the Recorder, said County; thence North 48 degrees 56 minutes 18 seconds East along the westerly line of said Cass County Drain No. 53 for a distance of 240.68 feet; thence 250.19 feet northerly, continuing along the westerly line of said Cass County Drain No. 53 on a tangential curve concave to the west, having a radius of 236.48 feet and a central angle of 60 degrees 37 minutes 00 seconds; thence North 11 degrees 40 minutes 42 seconds West continuing along the westerly line of said Cass County Drain No. 53 for a distance of 309.42 feet to the north line of said South Half of the North Half of the Southeast Quarter; thence South 89 degrees 05 minutes 36 seconds West along the north line of said South Half of the North Half of the Southeast Quarter for a distance of 89.28 feet to the point of beginning.

AND

That part of the South Half of the North Half of the Southeast Quarter of Section 11, Township 138 North, Range 49 West of the Fifth Principal Meridian, Cass County, North Dakota, described as follows:

Commencing at a found iron monument which designates the southwest corner of said

Southeast Quarter; thence North 02 degrees 09 minutes 40 seconds West on an assumed bearing along the west line of said Southeast Quarter for a distance of 1448.79 feet to the point of beginning; thence continuing North 02 degrees 09 minutes 40 seconds West along the west line of said Southeast Quarter for a distance of 537.33 feet to the northwest corner of said South Half of the North Half of the Southeast Quarter; thence North 89 degrees 05 minutes 36 seconds East along the north line of said South Half of the North Half of the Southeast Quarter for a distance of 131.64 feet; thence South 10 degrees 56 minutes 47 seconds East for a distance of 333.19 feet; thence 78.71 feet southerly on a tangential curve concave to the west, having a radius of 75.00 feet and a central angle of 60 degrees 07 minutes 36 seconds; thence South 49 degrees 10 minutes 49 seconds West for a distance of 98.47 feet; thence 107.62 feet southwesterly on a tangential curve concave to the southeast, having a radius of 675.00 feet and a central angle of 09 degrees 08 minutes 05 seconds to the point of beginning.

AND

That part of the North Half of the South Half of the Southeast Quarter of Section 11, Township 138 North, Range 49 West of the Fifth Principal Meridian, Cass County, North Dakota, described as follows:

Commencing at a found iron monument which designates the southwest corner of said Southeast Quarter; thence North 02 degrees 09 minutes 40 seconds West on an assumed bearing along the west line of said Southeast Quarter for a distance of 1149.33 feet to the easterly line of Cass County Drain No. 53 according to Quit Claim Deed Document No. 1287139, recorded January 29, 2010, on file and of record in the office of the Recorder, said County; thence 94.67 feet northeasterly along the easterly line of said Cass County Drain No. 53 on a non-tangential curve concave to the southeast, having a radius of 236.48 feet, a central angle of 22 degrees 56 minutes 12 seconds and a chord bearing of North 37 degrees 28 minutes 12 seconds East; thence North 48 degrees 56 minutes 18 seconds East, tangent to said curve and continuing along the easterly line of said Cass County Drain No. 53 for a distance of 91.85 feet to the south line of MADELYN'S MEADOWS FIRST ADDITION, according to the recorded plat thereof, on file and of record in the office of said Recorder; thence North 89 degrees 05 minutes 47 seconds East along the south line of said MADELYN'S MEADOWS FIRST ADDITION for a distance of 193.83 feet to the point of beginning; thence South 48 degrees 56 minutes 18 seconds West for a distance of 239.99 feet; thence 101.18 feet southwesterly on a tangential curve concave to the southeast, having a radius of 111.48 feet and a central angle of 52 degrees 00 minutes 00 seconds; thence South 03 degrees 03 minutes 42 seconds East for a distance of 116.10 feet; thence 267.95 feet southerly on a tangential curve concave to the west, having a radius of 556.97 feet and a central angle of 27 degrees 33 minutes 51 seconds to the south line of said North Half of the South Half of the Southeast Quarter; thence North 89 degrees 04 minutes 55 seconds East along the south line of said North Half of the South Half of the Southeast Quarter for a distance of 135.35 feet to a point on a line 175.00 feet easterly of, as measured at a right angle to and parallel with the west line of said Southeast Quarter; thence North 02 degrees 09 minutes 40 seconds West along said parallel line for a distance of 337.09 feet; thence 291.22 feet northeasterly on a tangential curve concave to the southeast, having a radius of 325.00 feet and a central angle of 51 degrees 20 minutes 29 seconds; thence North 49 degrees 10 minutes 49 seconds East for a distance of 41.57 feet to the south line of said MADELYN'S MEADOWS FIRST ADDITION, thence South 89 degrees 05 minutes 47 seconds West along the south line of said MADELYN'S

MEADOWS FIRST ADDITION for a distance of 4.19 feet to the point of beginning.

AND

That part of the North Half of the South Half of the Southeast Quarter of Section 11, Township 138 North, Range 49 West of the Fifth Principal Meridian, Cass County, North Dakota, described as follows:

Commencing at a found iron monument which designates the southwest corner of said Southeast Quarter; thence North 02 degrees 09 minutes 40 seconds West on an assumed bearing along the west line of said Southeast Quarter for a distance of 662.04 feet to the southwest corner of said North Half of the South Half of the Southeast Quarter, the point of beginning; thence continuing North 02 degrees 09 minutes 40 seconds West along the west line of said Southeast Quarter for a distance of 487.29 feet to the easterly line of Cass County Drain No. 53 according to Quit Claim Deed Document No. 1287139, recorded January 29, 2010, on file and of record in the office of the Recorder, said County; thence 94.67 feet northeasterly along the easterly line of said Cass County Drain No. 53 on a non-tangential curve concave to the southeast, having a radius of 236.48 feet, a central angle of 22 degrees 56 minutes 12 seconds and a chord bearing of North 37 degrees 28 minutes 12 seconds East; thence North 48 degrees 56 minutes 18 seconds East, tangent to said curve and continuing along the easterly line of said Cass County Drain No. 53 for a distance of 91.85 feet to the south line of MADELYN'S MEADOWS FIRST ADDITION, according to the recorded plat thereof, on file and of record in the office of said Recorder; thence North 89 degrees 05 minutes 47 seconds East along the south line of said MADELYN'S MEADOWS FIRST ADDITION for a distance of 193.83 feet; thence South 48 degrees 56 minutes 18 seconds West for a distance of 239.99 feet; thence 101.18 feet southwesterly on a tangential curve concave to the southeast, having a radius of 111.48 feet and a central angle of 52 degrees 00 minutes 00 seconds; thence South 03 degrees 03 minutes 42 seconds East for a distance of 116.10 feet; thence 267.95 feet southerly on a tangential curve concave to the west, having a radius of 556.97 feet and a central angle of 27 degrees 33 minutes 51 seconds to the south line of said North Half of the South Half of the Southeast Quarter; thence South 89 degrees 04 minutes 55 seconds West along the south line of said North Half of the South Half of the Southeast Quarter for a distance of 39.69 feet to the point of beginning.

AND

That part of Lot 12, Block 3, MADELYN'S MEADOWS FIRST ADDITION, according to the recorded plat thereof, on file and of record in the office of the Recorder, Cass County, North Dakota, described as follows:

Beginning at the northwest corner of said Lot 12; thence North 89 degrees 05 minutes 27 seconds East on a record bearing along the north line of said Lot 12 for a distance of 39.40 feet; thence South 10 degrees 56 minutes 58 seconds East for a distance of 271.24 feet; thence 446.00 feet southerly on a tangential curve concave to the west, having a radius of 425.00 feet and a central angle of 60 degrees 07 minutes 36 seconds; thence South 49 degrees 10 minutes 38 seconds West for a distance of 56.90 feet to the south line of said Lot 12; thence South 89 degrees 05 minutes 36 seconds West along the south line of said Lot 12 for a distance of 7.63 feet to the southwest corner of said Lot 12; thence North 49

degrees 06 minutes 22 seconds East along the westerly line of said Lot 12 for a distance of 3.33 feet; thence 488.23 feet northerly continuing along the westerly line of said Lot 12 on a tangential curve concave to the west, having a radius of 461.48 feet and a central angle of 60 degrees 37 minutes 00 seconds; thence North 11 degrees 30 minutes 38 seconds West continuing along the westerly line of said Lot 12 for a distance of 267.60 feet to the point of beginning.

All situate in the City of Fargo, County of Cass, State of North Dakota, as depicted in Exhibits 1 through 5 attached hereto (collectively "Subject Property").

2. In exchange for the conveyance of the Subject Property, Developer shall receive the additional clay material from the land conveyed, as well as the clay materials from adjacent property purchased by City, described as follows:

That part of the North Half of the North Half of the Southeast Quarter of Section 11, Township 138 North, Range 49 West of the Fifth Principal Meridian, Cass County, North Dakota, described as follows:

Commencing at a found iron monument which designates the southwest corner of said Southeast Quarter; thence North 02 degrees 09 minutes 40 seconds West on an assumed bearing along the west line of said Southeast Quarter for a distance of 1986.12 feet to the southwest corner of said North Half of the North Half of the Southeast Quarter; thence North 89 degrees 05 minutes 36 seconds East along the south line of said North Half of the North Half of the Southeast Quarter for a distance of 131.64 feet to the point of beginning; thence North 10 degrees 56 minutes 47 seconds West for a distance of 324.38 feet; thence 347.44 feet northerly on a tangential curve concave to the east, having a radius of 675.00 feet and a central angle of 29 degrees 29 minutes 29 seconds to the north line of said Southeast Quarter; thence North 89 degrees 05 minutes 56 seconds East along the north line of said Southeast Quarter for a distance of 98.28 feet to the westerly line of Cass County Drain No. 53 according to Quit Claim Deed Document No. 1287139, recorded January 29, 2010, on file and of record in the office of the Recorder, said County; thence 366.39 feet southerly along the westerly line of said Cass County Drain No. 53 on a non-tangential curve concave to the east, having a radius of 622.96 feet, a central angle of 33 degrees 41 minutes 55 seconds and a chord bearing of South 05 degrees 10 minutes 16 seconds West; thence South 11 degrees 40 minutes 42 seconds East, tangent to said curve, continuing along the westerly line of said Cass County Drain No. 53 for a distance of 308.18 feet to the south line of said North Half of the North Half of the Southeast Quarter; thence South 89 degrees 05 minutes 36 seconds West along the south line of said North Half of the North Half of the Southeast Quarter for a distance of 89.28 feet to the point of beginning.

AND

That part of the North Half of the North Half of the Southeast Quarter of Section 11, Township 138 North, Range 49 West of the Fifth Principal Meridian, Cass County, North Dakota, described as follows:

Commencing at a found iron monument which designates the southwest corner of said Southeast Quarter; thence North 02 degrees 09 minutes 40 seconds West on an assumed bearing along the west line of said Southeast Quarter for a distance of 1986.12 feet to the southwest corner of said North Half of the North Half of the Southeast Quarter, the point of beginning; thence North 89 degrees 05 minutes 36 seconds East along the south line of said North Half of the North Half of the Southeast Quarter for a distance of 131.64 feet; thence North 10 degrees 56 minutes 47 seconds West for a distance of 324.38 feet; thence 347.44 feet northerly on a tangential curve concave to the east, having a radius of 675.00 feet and a central angle of 29 degrees 29 minutes 29 seconds to the north line of said Southeast Quarter; thence South 89 degrees 05 minutes 56 seconds West along the north line of said Southeast Quarter for a distance of 117.77 feet to the northwest corner of said Southeast Quarter; thence South 02 degrees 09 minutes 40 seconds East along the west line of said Southeast Quarter for a distance of 662.04 feet to the point of beginning.

3. Abstract. Developer shall furnish City an Owners and Encumbrances Report showing good and marketable title in Developer free and clear of all liens and encumbrances (other than those that will be handled at closing). City shall pay all costs associated with closing, including deed preparation and recordation.

4. Taxes and Utilities. Taxes and installments of special assessments for the year of closing shall be prorated between the parties to the date of closing based upon current total true value as calculated by the County of Cass, ND, as of the date of closing. Prior year taxes and assessments must be paid by Developer in advance of closing.

5. Closing Date and Transfer of Possession. Closing shall take place as soon as possible. City shall take possession of the real estate on the day of closing.

6. Warranty. Developer will convey the Subject Property by Warranty Deed.

7. Developer understands and agrees it is responsible for all costs associated with the LOMR work to be completed on the Property.

8. Developer shall contract directly with a licensed professional engineer in North Dakota to design, develop and engineer the LOMR plan for the Property ("LOMR Engineer").

9. District shall include the Developer's LOMR Engineer's design specifications in the Construction Contract to be bid by District.

10. Developer's LOMR Engineer shall be responsible for acceptance of the LOMR work completed by District's contractor.

11. Developer shall deposit the amount of the LOMR Bid Alternative for the LOMR work with the City upon acceptance of the bid alternative, but not later than the Bid Award

Recommendation. ("Developer Deposit").

12. City shall provide monthly billing reports for the LOMR work completed in accordance with the contract specifications.

13. City shall withdraw from the Developer's deposit the amount of the monthly report at the time the report is provided to the Developer.

14. City will provide a final billing statement at the completion and acceptance of the LOMR work.

15. City shall withdraw from the Developer Deposit the full cost of all LOMR work. Any balance in the Developer Deposit amount will be promptly returned to the Developer. Any shortage at the time of final billing statement shall be paid by Developer to City not more than 30 days from the date of the final billing statement. Failure to make timely payment of the contracted LOMR work shall be cause for denial of any and all building permits in the Development.

16. The failure or delay of either party to insist on the timely performance of any of the terms of this Easement, or the waiver of any particular breach of any of the terms of this Easement, at any time, will not be construed as a continuing waiver of those terms or any subsequent breach, and all terms will continue and remain in full force and effect as if no forbearance or waiver had occurred.

17. This Agreement will be construed and enforced in accordance with North Dakota law.

18. This Agreement will be construed as if prepared by both parties.

19. If any court of competent jurisdiction finds any provision or part of this Agreement is invalid, illegal, or unenforceable, that portion will be deemed severed from this Agreement, and all remaining terms and provisions of this Agreement will remain binding and enforceable; the parties will reconvene negotiations to arrive, in good faith, at an agreement as to matters remaining undetermined as a result of any finding by a court of competent jurisdiction that any provision or part of this Agreement is invalid, illegal, or unenforceable.

20. This Agreement, together with any amendments, constitutes the entire agreement between the parties regarding the matters described in this Agreement, and this Agreement supersedes all other previous oral or written agreements between the parties.

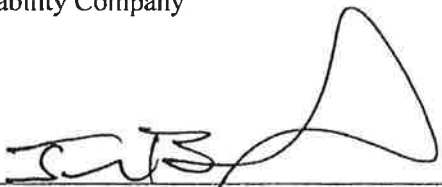
21. Neither party may transfer or assign this Agreement, or any rights or obligations under this Agreement, without the express written consent of the other party.

22. The covenants, terms, conditions, provisions, and undertakings in this Easement, or in any amendment, will be binding upon the parties' heirs, successors, and permitted assigns.

23. Any modifications or amendments of this Agreement must be in writing and signed by the City and the Developer.

DATED this 24 day of August, 2020.

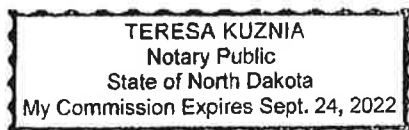
Sitka Investments, LLC, a North Dakota Limited Liability Company

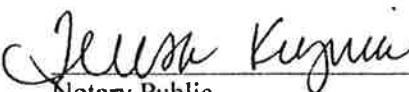
  
\_\_\_\_\_  
James R. Bullis, President

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

On this 24 day of August, 2020, before me, a notary public in and for said county and state, personally appeared James Bullis, to me known to be the President of Sitka Investments LLC, described in and who executed the within and foregoing instrument, and acknowledged to me that he/she executed the same.

(SEAL)



  
\_\_\_\_\_  
Notary Public  
Cass County, ND

DATED this \_\_\_\_ day of \_\_\_\_\_, 2020.

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

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

ATTEST:

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

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

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

(SEAL)

\_\_\_\_\_  
Notary Public  
Cass County, ND

## PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

(34)

Improvement District No. BN-20-L1 Type: Infrastructure Request

Location: 37<sup>th</sup> Street & 63<sup>rd</sup> Avenue South  
(Sanford Addition) Date of Hearing: 8/31/2020

<u>Routing</u>	<u>Date</u>
City Commission	9/8/2020
PWPEC File	X
Project File	Jason Leonard

The Committee reviewed a communication from Project Engineer, Jason Leonard, regarding an infrastructure request for 37<sup>th</sup> Street and 63<sup>rd</sup> Avenue South, Sanford Addition, requested by Sanford, Developer.

Engineering staff has reviewed the requirements for infrastructure requests and the Developer has met five of the seven requirements. The Developer will work with the Auditor regarding the execution of the Special Assessment Security Agreement and Letter of Credit.

Staff is recommending approval of the infrastructure request contingent upon meeting the execution of the formal infrastructure request, procurement of the Right to Enter Agreement, Special Assessment Security Agreement and Letter of Credit.

On a motion by Kent Costin, seconded by Ben Dow, the Committee voted to recommend approval of the infrastructure request contingent upon the execution of the formal request, procurement of the Right to Enter Agreement, Special Assessment Security Agreement and Letter of Credit and direct Engineering to design and bid.

RECOMMENDED MOTION

Approve the request for infrastructure contingent upon execution of the Special Assessment Agreement and Letter of Credit and direct Engineering to start design.

PROJECT FINANCING INFORMATION:Recommended source of funding for project: Special Assessments

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

Yes	No
N/A	
N/A	
N/A	

COMMITTEE

Tim Mahoney, Mayor  
Nicole Crutchfield, Director of Planning  
Steve Dirksen, Fire Chief  
Bruce Grubb, City Administrator  
Ben Dow, Director of Operations  
Steve Sprague, City Auditor  
Brenda Derrig, City Engineer  
Kent Costin, Finance Director

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

ATTEST:

C: Kristi Olson

  
Brenda E. Derrig, P.E.  
City Engineer

## Memorandum

**To:** Members of PWPEC  
**From:** Jason Leonard, Project Engineer  
**Date:** August 28, 2020  
**Re:** Utility and Paving Infrastructure Request for 37<sup>th</sup> Street South and 63<sup>rd</sup> Avenue South – Sanford Addition

---

### **Background:**

Attached you will find the Sanford Addition Plat showing the future request from the Developer, Sanford, requesting infrastructure improvements for the following:

- 37<sup>th</sup> Street South from 63<sup>rd</sup> to 64<sup>th</sup> Avenue
- 63<sup>rd</sup> Avenue South from 37<sup>th</sup> Street west to the quarter line

The Developer is in process of the infrastructure request for the development of future Sanford Sports Complex. We have received the request verbally by the Developer and are still waiting on the formal letter request. The improvement district will not be bid until the request is formally received.

In addition, 38<sup>th</sup> Street South will be constructed with this infrastructure request between 58<sup>th</sup> and 64<sup>th</sup> Avenue South. 38<sup>th</sup> Street South is an arterial roadway that will be 100% special assessed per the current City of Fargo Special Assessment Policy.

We have reviewed the requirements for infrastructure requests and the remaining items are as follows:

- The Developer in coordination with the City is working on annexation and platting of the parcel. The Developer is granting the City a right to enter agreement for infrastructure installation.
- The Developer will work with the Auditor regarding the execution of the Special Assessment Security Agreement and Letter of Credit.

City staff will incorporate this infrastructure request into the Engineering Capital Improvement Plan. This project will be 100% special assessed to the benefiting properties.

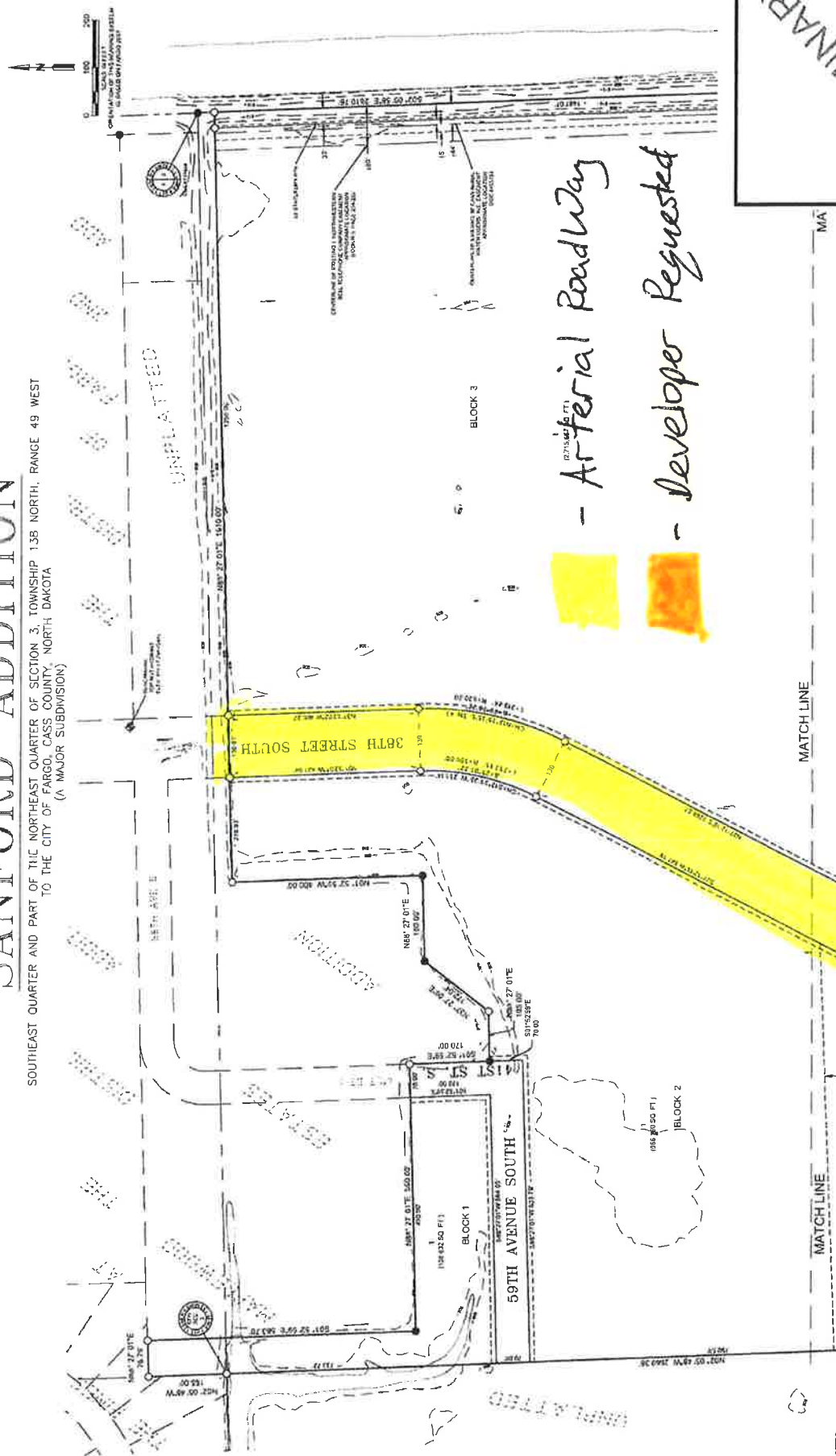
### **Recommended Motion:**

Approve the request for utilities and paving contingent upon meeting the execution of the formal infrastructure request, procurement of the Right to Enter Agreement, Special Assessment Security Agreement and Letter of Credit and direct Engineering to design and bid.

Attachment

# SANFORD ADDITION

SOUTHEAST QUARTER AND PART OF THE NORTHEAST QUARTER OF SECTION 3, TOWNSHIP 138 NORTH, RANGE 49 WEST  
TO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA  
(A MAJOR SUBDIVISION)



## LEGEND

BOUNDARY LINE	---
NEGATIVE ACCESS EASEMENT	---
EXISTING EASEMENT LINE	---
NEW LOT EASEMENT	---
PLAT BOUNDARY	---
MAJOR CONTOUR	---
MINOR CONTOUR	---

**Mead & Hunt**  
MEAD & HUNT, INC.  
4255 700th Ave SW  
FARGO, ND 58103  
701-785-8430  
mead@mead-hunt.com

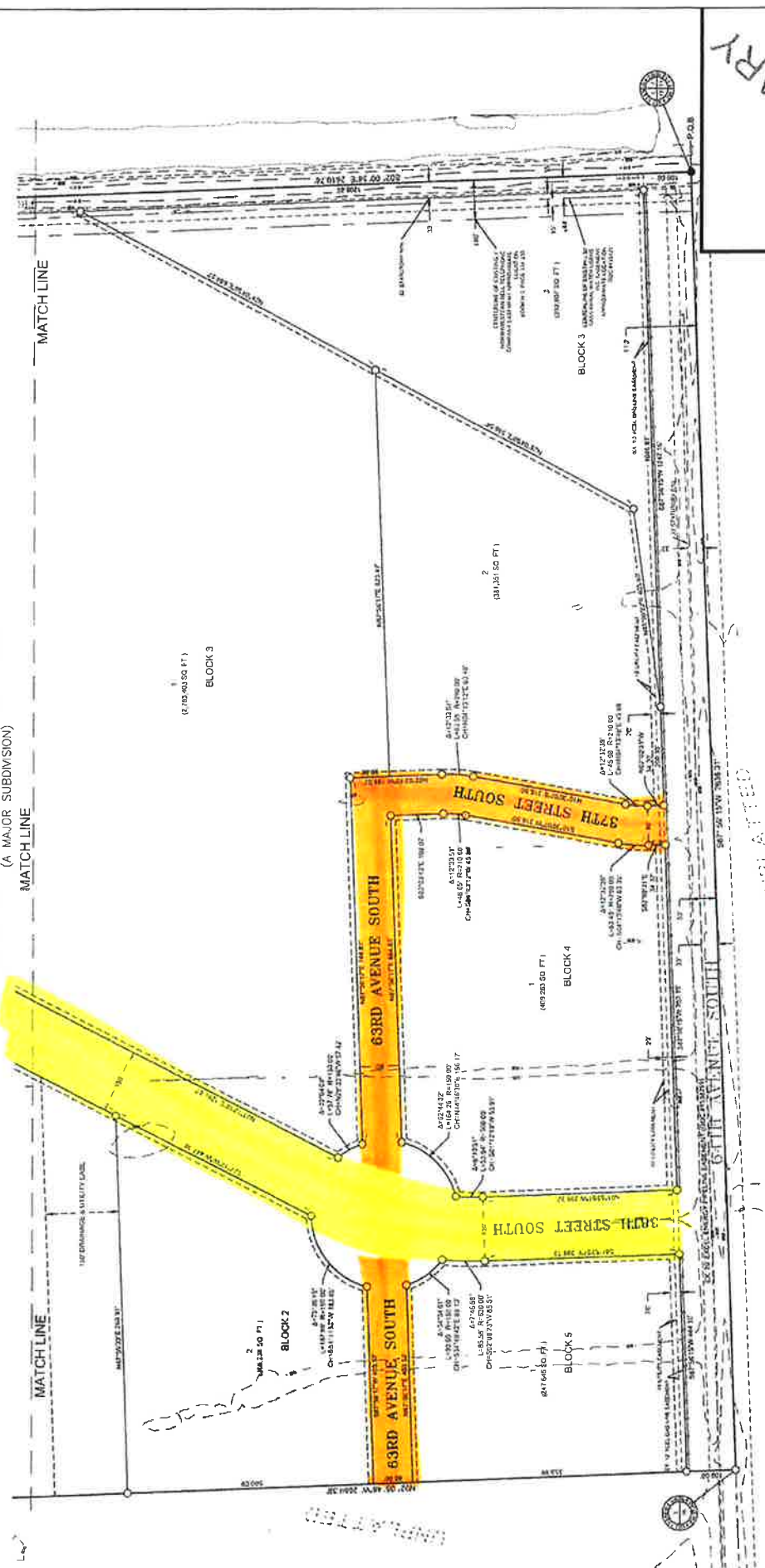
## NOTES

- GROUND DISTANCES ARE SHOWN AND ARE IN TERMS OF U.S. SURVEY FEET
- UTILITY EASEMENTS ARE 10' WIDE ALONG AND ADJACENT TO ALL STREET RIGHT-OF-WAYS AND REAR PROPERTY LINES AS SHOWN UNLESS OTHERWISE NOTED
- PART OF THIS PLAT FALLS IN FLOODPLAIN ZONE X-F. ACCORDING TO THE FEMA FIRM MAPS 58107P000 AND 58107P000 BOTH WITH AN EFFECTIVE DATE 11/16/2015. THE BASE FLOOD ELEVATION IN THIS AREA IS 905.7' (NAVD83) ACCORDING TO FEMA. CONTOUR INFORMATION SHOWN IS DERIVED FROM FIELD SURVEY CONDUCTED NOV. 12, 2016
- BENCHMARK TYP NOT HYDANT LOCATED IN THE NORTHWEST QUADRANT OF THE INTERSECTION OF 58TH AVENUE SOUTH AND 36TH STREET SOUTH. ELEVATION = 910.57' (NAVD83)
- NEGATIVE ACCESS EASEMENT, AS NOTED ON THE PLAT OF SANFORD ADDITION, IS AN EASEMENT DEDICATED AS PART OF THE RIGHT-OF-WAY DEDICATION WHICH EASEMENT DENIES DIRECT VEHICULAR ACCESS TO A STREET OF PUBLIC WAY FROM THE LOT OR LOTS ADJACENT TO SUCH STREET OR WAY. THE NEGATIVE ACCESS EASEMENT IS NOT A STRIP OF LAND OR ANY CERTAIN WIDTH, BUT IS A LINE CONTINUOUS WITH THE BOUNDARY OF THE ADJACENT LOT OR LOTS.

PRELIMINARY

# SANFORD ADDITION

SOUTHEAST QUARTER AND PART OF THE NORTHEAST QUARTER OF SECTION 3, TOWNSHIP 138 NORTH, RANGE 49 WEST  
TO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA  
(A MAJOR SUBDIVISION)



NOTES:

- UTILITY EASEMENTS ARE SHOWN AND ARE IN TERMS OF U S SURVEY FEET  
PART OF THIS PLAT FALLS IN FLOOD PRONE AREA ACCORDING TO THE FEMA FIRM MAPS 38017C7RM6G AND 38017C9R2G7H WITH AN EFFECTIVE DATE 1/16/2015 -  
THE BASE FLOOD ELEVATION IN THIS AREA IS 105' ( NAVD83) ACCORDING TO FEMA. CONTOUR INFORMATION SHOWN IS DERIVED FROM FIELD SURVEY CONDUCTED NOV. 12, 2018
- BENCHMARK TOP NUT HYDRANT LOCATED IN THE NORTHWEST QUADRANT OF THE INTERSECTION OF 58TH AVENUE SOUTH AND 38TH STREET SOUTH. ELEVATION = 910.67' (NAVD83)
- NEGATIVE ASSESSMENT AS NOTED ON THE PLAT OF SANFORD ADDITION, IS AN EASEMENT DEDICATED AS PART OF THE RIGHT-OF-WAY DEDICATION WHICH ENCOMPASSES THE ENTIRE EASTERN BOUNDARY OF THE TRACT. THE PURPOSE OF THE EASEMENT IS TO PROVIDE ACCESS TO THE TRACT FOR THE NEGATIVE ACCESS EASEMENT SITUATED ACROSS THE TRACT, BUT JUST LINE COUNTERMURALS WITH THE BOUNDARY OF THE JOINTLY OWNED LOT.

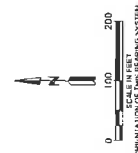
## LEGEND

IMPROVEMENTS IN PLACE  
SET MONUMENT (38" CAPPED  
NEGATIVE ACCESS EASEMENT  
EXISTING PROPERTY LINE  
EXISTING EASEMENT LINE  
NEW LOT LINE  
NEW BLOCK LINE  
PLAT BOUNDARY  
NEW EASEMENT LINE  
MAJOR CONTOUR  
MINOR CONTOUR

Mead Hunt

Phone: 701-586-8450  
meadhunt.com

Project No  
4289700-181901



PRELIMINARY

September 2<sup>nd</sup>, 2020

**Re: 37<sup>th</sup> St & 63<sup>rd</sup> Ave – Request for Improvements**

Brenda –

We are requesting improvements to be made to facilitate the construction of the Sports Complex building. Our understanding is that we do not need to request improvements for 38<sup>th</sup> St as that is being initiated by the City of Fargo.

Improvements requested:

- 37<sup>th</sup> Street South from 63<sup>rd</sup> to 64<sup>th</sup> Avenue
- 63<sup>rd</sup> Avenue South from 37<sup>th</sup> Street west to the quarter line

Thank you for your consideration.

Sincerely,



**Mike Erickson**  
Executive Director  
Sanford Health

COVER SHEET  
CITY OF FARGO PROJECTS

(35)

This sheet must be completed and turned in with all City of Fargo projects. NO items will be accepted by either the City Commission Office or the City Auditor's Office without this cover sheet attached and properly filled out.

Exact, full name of Improvement District as it will appear in the Contract:

Sanitary Sewer, Water Main, Storm Sewer, Paving & Incidentals

Improvement District No. BN-20-L

Call For Bids September 7, 2020

Advertise Dates September 16 & 23, 2020

Bid Opening Date September 30, 2020

Substantial Completion Date September 1, 2021

Final Completion Date October 1, 2021

X PWPEC Report (Attach Copy)

X Engineer's Report (Attach Copy)

X Direct City Auditor to Advertise for Bids

X Bid Quantities (Attach Copy for Auditor's Office Only)

X Notice to Property Owners (Dan Eberhardt)

Project Engineer Jason Leonard

Phone No. (701) 241-1555

The items listed above are for use on all City projects. The additional items listed below are to be checked only when all or part of a project is to be special assessed:

X Create District (Attach Copy of Legal Description)

X Order Plans & Specifications

X Approve Plans & Specifications

X Adopt Resolution of Necessity

N/A Approve Escrow Agreement (Attach Copy for Commission Office Only)

X Assessment Map (Attach Copy for Auditor's Office Only)

## PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Improvement District No. BN-20-L1 Type: Infrastructure Request

Location: 37<sup>th</sup> Street & 63<sup>rd</sup> Avenue South Date of Hearing: 8/31/2020  
(Sanford Addition)

<u>Routing</u>	<u>Date</u>
City Commission	9/8/2020
PWPEC File	X
Project File	Jason Leonard

The Committee reviewed a communication from Project Engineer, Jason Leonard, regarding an infrastructure request for 37<sup>th</sup> Street and 63<sup>rd</sup> Avenue South, Sanford Addition, requested by Sanford, Developer.

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RECOMMENDED MOTION

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PROJECT FINANCING INFORMATION:Recommended source of funding for project: Special Assessments

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

Yes	No
<input checked="" type="checkbox"/>	<input type="checkbox"/>
N/A	
<input checked="" type="checkbox"/>	<input type="checkbox"/>
N/A	
<input checked="" type="checkbox"/>	<input type="checkbox"/>
N/A	


COMMITTEE

Tim Mahoney, Mayor  
 Nicole Crutchfield, Director of Planning  
 Steve Dirksen, Fire Chief  
 Bruce Grubb, City Administrator  
 Ben Dow, Director of Operations  
 Steve Sprague, City Auditor  
 Brenda Derrig, City Engineer  
 Kent Costin, Finance Director

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

ATTEST:

C: Kristi Olson

  
 Brenda E. Derrig, P.E.  
 City Engineer

## ENGINEER'S REPORT

## SANITARY SEWER, WATER MAIN, STORM SEWER, PAVING &amp; INCIDENTALS

## IMPROVEMENT DISTRICT NO. BN-20-L

**Nature & Scope**

This project is for the new construction of underground utilities, concrete pavement and incidentals on 37<sup>th</sup> Street South, 38<sup>th</sup> Street South and 63<sup>rd</sup> Avenue South.

**Purpose**

This project will provide the infrastructure along 38<sup>th</sup> Street South proposed arterial urban street section, 37<sup>th</sup> Street South and 63<sup>rd</sup> Avenue South to allow for development of the land as requested by the adjacent property owners.

The project will be funded by Special Assessments to the benefiting properties. Assessments will be applied per City policy.

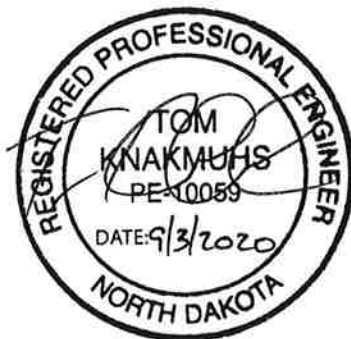
**Feasibility**


The estimated cost of construction is \$6,451,484.75. The cost breakdown is as follows:

<b>Underground &amp; Paving Costs</b>	\$ 6,451,484.75
Plus 10% Engineering Fee:	\$ 645,148.48
Plus 4% Administration Fee:	\$ 258,059.39
Plus 3% Legal Fee:	\$ 193,544.54
Plus 4% Interest Fee:	\$ 258,059.39
Plus 10% Contingency:	\$ 645,148.48
<b>Total Estimated Underground &amp; Paving Cost:</b>	<b>\$ 8,451,445.02</b>
 <b>Underground &amp; Paving Amount Special Assessed:</b>	 <b>\$ 8,451,445.02</b>

<b>Project Funding Summary</b>		
Special Assessments	100.00%	\$ 8,451,445.02
<b>Total Estimated Project Cost</b>		<b>\$ 8,451,445.02</b>

We believe this project to be cost effective.



  
 Tom Knakmuhs, P.E.  
 Assistant City Engineer

CITY OF FARGO  
ENGINEERING DEPARTMENT

LOCATION AND COMPRISING

SANITARY SEWER, WATER MAIN, STORM SEWER, PAVING & INCIDENTALS

IMPROVEMENT DISTRICT NO. BN-20-L

**LOCATION:**

On 37<sup>th</sup> Street South from 63<sup>rd</sup> Avenue South to 64<sup>th</sup> Avenue South.

On 38<sup>th</sup> Street South from 58<sup>th</sup> Avenue South to 64<sup>th</sup> Avenue South.

On 63<sup>th</sup> Avenue South from 37<sup>th</sup> Street South to 38<sup>th</sup> Street South.

**COMPRISING:**

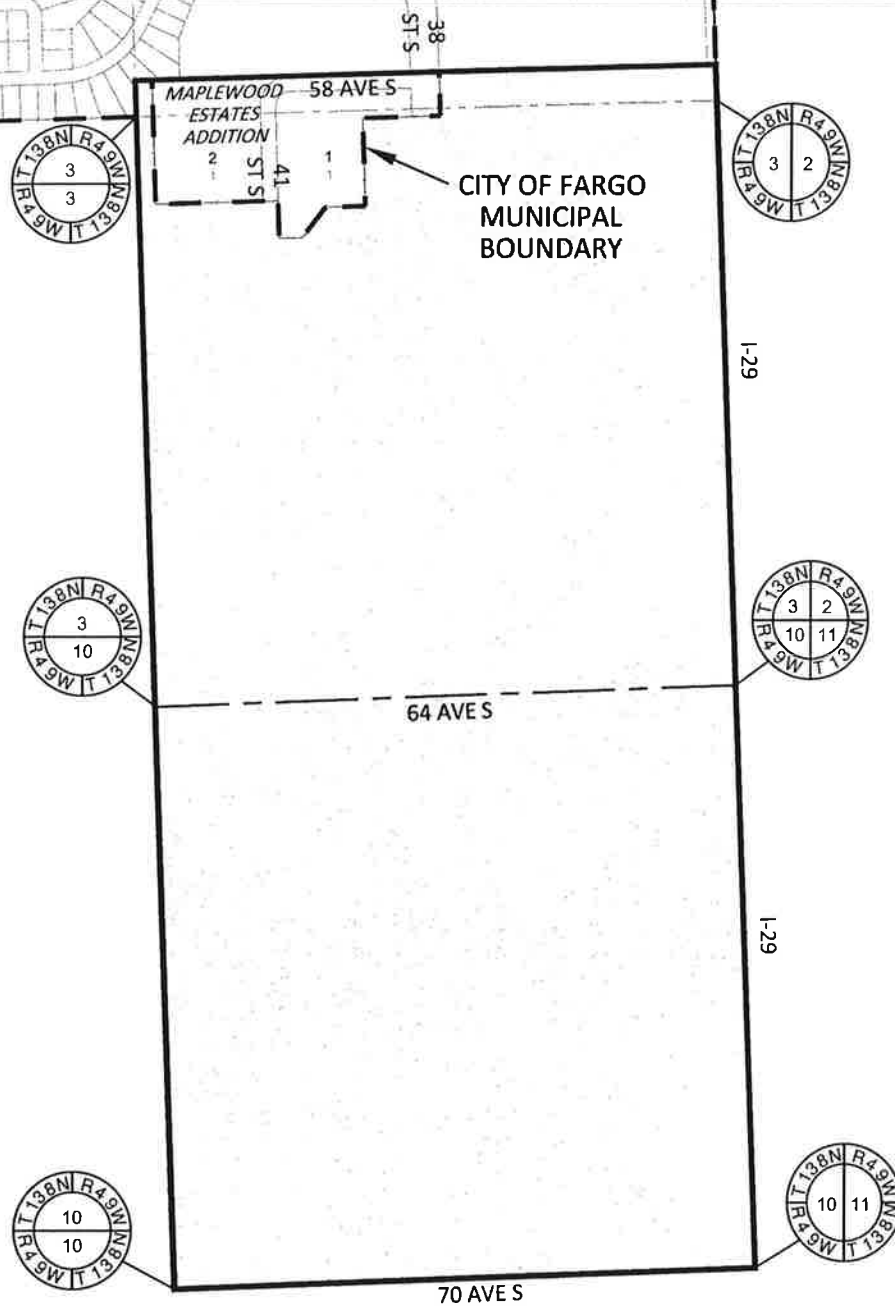
Bounded on the north at the ½ Section lines of Section 3, Township 138 North, Range 49 West.

Bounded on the south at the ½ Section line of Section 10, Township 138 North, Range 49 West.

Bounded on the west at the ½ Section line of Section 3 and Section 11, Township 138 North, Range 49 West.

Bounded on the east at west section line of Section 2 and Section 11, Township 138 North, Range 49 West.

All of the foregoing is located in the City of Fargo, Cass County, North Dakota and its Extra-Territorial Area.



FUTURE BENEFITING AREA OUTSIDE CITY LIMITS

CITY OF FARGO ENGINEERING  
DEPARTMENT

LOCATION & ASSESSMENT AREA

SANITARY SEWER, WATER MAIN, STORM SEWER,  
PAVING & INCIDENTALS

IMPROVEMENT DISTRICT NO. BN-20-L