

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

- A. Pledge of Allegiance.
- B. Roll Call.
- C. Approve Order of Agenda.
- D. Minutes (Regular Meeting, November 2, 2020).

CONSENT AGENDA – APPROVE THE FOLLOWING:

- 1. 1st reading of an Ordinance Relating to the Human Relations Commission.
- 2. 2nd reading and final adoption of the following Ordinances; 1st reading, 11/2/20:
 - a. Rezoning Certain Parcels of Land Lying in Touchmark Addition.
 - b. Relating to Animal Boarding Facilities.
 - c. Pertaining to the Occupancy of Emergency Shelters in Certain Non-residential Structures.
 - d. Excluding a Certain Parcel of Land Lying in Part of Government Lot 4 of Section 5, Township 138 North, Range 49 West.
- 3. Extension of the Alcoholic Beverage Licenses until 6/30/21 for Lucy's North China Cuisine, Nail Deluxe, VIP Room and Fargo Billiards and Gastropub.
- 4. Emergency Paid Leave Temporary Employee Policy.
- 5. Negative Final Balancing Change Order No. 1 in the amount of -\$3,637.64 for Project No. PR-20-A1.
- 6. Negative Final Balancing Change Order No. 5 in the amount of -\$0.94 for Project No. TM-19-B1.
- 7. Contract Amendment No. 2 with Houston Engineering for Project No. FM-19-B0.
- 8. Partial Release of Water Pipeline Easements with Municipal Airport Authority of the City of Fargo, ND (Project No. FM-16-A).
- 9. Receive and file Financial Status Report Year to Date through 10/31/20 for major operating funds (unaudited).
- 10. Receive and file General Fund – Budget to Actual through October 2020 (unaudited).
- 11. Bid award for Fourier-Transform Infrared Spectroscopy Hazardous Materials Monitor (RFP20158).

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12. Notice of Grant Award from the ND Department of Environmental Quality for Abandoned Auto Program.
 13. Set November 30, 2020 at 5:15 p.m. as the date and time for a hearing on a dangerous building at 1714 5th Avenue South.
 14. Bid award for one articulated wheel loader (RFP20162).
 15. Bid award for one, three wheeled mechanical street sweeper (RFP20163).
 16. Bid award for two automated side-load refuse trucks (RFP21005).
 17. Bid award for one hook hoist refuse body (RFP21006).
 18. Bid award for one articulated landfill wheel loader (RFP21007).
 19. Bid award for one, three wheeled mechanical street sweeper (RFP21008).
 20. Release of vehicle titles to Valley Senior Services and relinquish any City interest in the vehicles, as presented.
 21. Bid awards for supplying chemicals to the water reclamation utility for 2021.
 22. Bid award for supplying chemicals to the Water Treatment Plant for 2021 (AFB21010).
 23. Bid advertisement for the South Regional Water Connection Phase 2 (Project No. WA2012).
 24. Contracts and bonds for Project No. WA1863 (electrical and general construction).
 25. Bills.
 26. Create Improvement District No. BN-20-M.

REGULAR AGENDA:

27. Construction Update.
28. ***Public Input Opportunity* - PUBLIC HEARINGS - 5:15 pm:**
 - a. Amendments to the 2019 Action Plan Community Development Block Grant (CDBG)/HOME Program.
 1. Resolution Approving Amendments to the Community Development Block Grant (CDBG)/HOME 2019 Action Plan
29. Recommendation for the Pre-Disaster Mitigation Program Subgrant Agreement.
30. Request for Tax Increment Financing (TIF) for the redevelopment of the Anderson Park softball complex.
31. Applications for property tax exemptions for improvements made to buildings:
 - a. Osama and Brenna Naseer, 2677 Meadow Creek Circle South (3 year).
 - b. Brooke and Dustin Clark, 408 28th Avenue North (5 year).
32. COVID-19 Update:
 - a. Review of possible measures for individuals and businesses.

RESIDENT COMMENTS - Suspended until further notice due to the City of Fargo COVID-19 operational status (Orange-High Risk).

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.



MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

FROM: TIA BRASETH, COMMUNITY DEVELOPMENT PLANNING COORDINATOR *TB*

DATE: NOVEMBER 9, 2020

RE: PUBLIC HEARING & APPROVAL OF PROPOSED AMENDMENTS TO COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG)/HOME INVESTMENT PARTNERSHIPS 2019 ANNUAL ACTION PLAN

The Department of Planning & Development is considering COVID-related amendments to its 2019 Annual Action Plan, most recently approved by City Commission on August 24, 2020. An additional allocation of funding has been released for COVID-related response as part of the CARES Act and must be included in the plan. The City Commission is asked to hold a public hearing and then consider the following Community Development Block Grant (CDBG) actions:

Summary of Proposed Amendments to 2019 Annual Action Plan:

- 1. Allocation Increase – Amend into 2019 Annual Action Plan – CDBG CV 3rd Round**
Adding \$580,116 to 2019 Annual Action Plan Resources to support COVID-related response and prevention efforts as part of the CARES Act.
- 2. Add Activity – Operational Support for Homeless Prevention, Diversion, & Emergency Housing Assistance** *National Objective: Low-Mod Clientele Benefit [24 CFR Part 570.208(a)(2)]. CDBG Matrix Code: 03T Operating Costs of Homeless/Aids Patient Programs. Eligibility 24 CFR Part 570.201(e).*

Homeless Prevention and Diversion Efforts

- SouthEastern North Dakota Community Action Agency (SENDCAA) - \$140,000
- Presentation Partners in Housing - \$140,000

Housing Navigators for Gladys Ray Shelter

- Presentation Partners in Housing - \$150,000

Several people have been impacted by the COVID-19 pandemic, particularly those who have low income. Many jobs were lost and in some cases, housing was lost. Keeping people housed, rapidly re-housing, or housing people who are currently homeless instantly provides a safe place for quarantine isolation and social distancing. Ultimately, this response reduces the spread of COVID-19 and keeps the community's hospitals from being inundated.

- 3. Add Activity – Family HealthCare** *National Objective: Low-Mod Clientele Benefit [24 CFR Part 570.208(a)(2)]. CDBG Matrix Code: 03T Operating Costs of Homeless/Aids Patient Programs. Eligibility 24 CFR Part 570.201(e).*

Utilize \$31,580 for the Mobile Homeless Health Services Outreach Program. This mobile unit provides COVID-19 testing for the homeless population around the community.



4. **Add Activity – High Plains Fair Housing Center:** *National Objective: Low-Mod Clientele Benefit [24 CFR Part 570.208(a)(2)]. CDBG Matrix Code: 05K Tenant/Landlord Counseling. Eligibility 24 CFR Part 570.201(e), 24 CFR Part 570.482(c)(2)..*

Utilize \$20,000 for eviction prevention efforts. This response reduces the spread of COVID-19 and keeps the community's hospitals from being inundated by keeping individuals housed.

5. **Add Activity – Planning and Administration** *CDBG Matrix Code: 21A General Program Administration. Eligibility 24 CFR Part 570.206.*

Utilize \$98,536 as staff support for planning, implementation, reporting, and monitoring of CDBG-CV resources.

The proposed amendments are in compliance with federal regulations for the Department of Housing and Urban Development (HUD) CDBG program. The following actions were completed as required by the City of Fargo's Citizen Participation Plan:

Public Advertisement Published	November 11, 2020
5-Day Public Comment Period Begins	November 12, 2020
Provided Information to the Community Development Committee	November 12, 2020
5-Day Public Comment Period Ends	November 16, 2020
Public Hearing and Final City Commission Consideration	November 16, 2020

No public comments were received. Each proposed amendment is detailed in the attached public notice. Once approved, the amendment will be submitted to HUD for approval.

Recommended Motion: Approve proposed amendments to CDBG/HOME 2019 Annual Action Plan.



**Notice of Public Hearing & Public Comment Period
Amendments to 2019 Action Plan
Community Development Block Grant (CDBG) Program**

The City of Fargo is considering COVID-related amendments to its 2019 Action Plan, previously approved by City Commission on August 24, 2020. An additional allocation of funding has been released for COVID-related response as part of the CARES Act and must be included in the plan. These proposed amendments are considered substantial amendments and must go through a citizen participation process. The details and timeline for this process are outlined below. Upon City Commission action on November 16, 2020, a recommendation regarding these amendments will be forwarded to HUD for their consideration and approval.

5-Day Public Comment Period: November 12 - 16, 2020

Send written comments or phone: City of Fargo
Planning and Development Department
Attn: Community Development Planning Coordinator
225 4th Street North, Fargo ND 58102
701.476.4144

Electronic Comments: Planning@FargoND.gov

**Public Hearing and Final
City Commission Consideration:** Monday, November 16, 2020 - 5:15 p.m.
Fargo City Commission Chambers
225 4th Street North, Fargo ND 58102

Summary of Proposed Amendments to 2019 Annual Action Plan:

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Utilize \$98,536 as staff support for planning, implementation, reporting, and monitoring of CDBG-CV resources.

Comments & Suggestions

Comments and suggestions from the public are encouraged through a public comment period and/or at the public hearing. The existing plans are available online at www.fargond.gov/planninganddevelopment/plansandstudies or by request through the Planning and Development Department. See contact information below.

The City of Fargo, in an effort to exercise the Centers for Disease Control and Prevention guidelines pertaining to social distancing and gatherings, is encouraging all stakeholders in the Community Development Block Grant and HOME Programs to participate in the public comment period remotely. Comments submitted by email or telephone are preferred. Email: Planning@FargoND.gov, Telephone: 701-476-4144.

City Hall Commission Chambers are accessible and can accommodate persons with disabilities. Alternative formats of this information or reasonable accommodations for persons with hearing loss, vision loss, disabilities or limited English proficiency, including the availability of interpretation and translation services, will be made upon request (a 48 hour notice is required). Anyone who requires these services or an auxiliary aid to fully participate should contact the Planning and Development Department at 701.241.1474/ Planning@FargoND.gov, or the City of Fargo's Section 504/ADA Coordinator Brock Morrison at 701.298.6966 to arrange for services. To access TDD/Relay service dial 701.241.8258. In accordance with Federal regulations and City of Fargo policies, the City of Fargo provides services without regard to race, color, national origin, sex, disability, age, familial status, religion, marital status, veteran status, sexual orientation, gender identity, public assistance, domestic violence, lawful activity, or condition protected by applicable federal and state laws. The City is an equal employment/equal housing opportunity agency.



**RESOLUTION APPROVING AMENDMENTS TO THE
COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG)/HOME 2019 ACTION PLAN**

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

WHEREAS, the City of Fargo receives Community Development Block Grant (CDBG)/HOME funds from United States Department of Housing and Urban Development (HUD); and

WHEREAS, in compliance with federal regulations, the City of Fargo has amended its CDBG/HOME 2019 Action Plan to make available housing and community development resources that primarily address the needs of low to moderate income persons in Fargo; and

WHEREAS, the City of Fargo has conducted a required citizen participation process including a draft publication of the amendments, a public hearing, and a 5-day public comment period as temporarily allowed through HUD waivers related to COVID-19.

NOW, THEREFORE, BE IT RESOLVED by the City Commission of the City of Fargo, North Dakota that the Mayor is herein authorized and directed to submit the amended plans to HUD and enter into and execute contracts and other documents as necessary to effectuate activities identified in the revised plan.

CERTIFICATE

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

I, Timothy J. Mahoney, the duly elected, qualified and acting Mayor of the City of Fargo, North Dakota; and

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 approving the amendments to the City of Fargo's 2019 Action Plan for the Community Development Block Grant (CDBG) & HOME programs as described in the foregoing Resolution; 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 November 16, 2020 at which Regular Meeting all members present voted in favor of the adoption of the Resolution; and

That such Resolution is now a part of the permanent records of the City of Fargo, as such records are now filed in the office of the City Auditor.

(SEAL)

Timothy J. Mahoney,
Mayor of the City of Fargo, North Dakota

ATTEST:

Steven Sprague, City Auditor

On this ____ day of _____, 2020, before me, _____, a Notary Public in and for Cass County, in the State of North Dakota, personally appeared Timothy J. Mahoney, known to me to be the Mayor of the City of Fargo, North Dakota, and Steven Sprague, City Auditor of the City of Fargo, a municipal corporation under the laws of the State of North Dakota, and they acknowledged to me that they executed the foregoing instrument.

Notary Public, Cass County, North Dakota

**Water Treatment Plant**

435 14th Avenue South

Fargo, ND 58103

Office: 701.241.1469 | Fax: 701.241.8110

www.FargoND.gov

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November 12, 2020

Honorable Board of City Commissioners
City of Fargo
225 4th Street North
Fargo, ND 58012

Subject: Pre-Disaster Mitigation Program Subgrant Agreement

Dear Commissioners:

Water Utility Staff is seeking approval for the Pre-Disaster Mitigation Program Subgrant Agreement (PDM). The PDM agreement is a 75% FEMA cost-share grant that will go towards needed flood protection at the Red River Pump Station. The total project cost is \$5.8 million and the PDM grant is in the amount up to \$3.565 million dollars. The remaining 25% local share will be paid through a State Water Commission grant which has awarded up to a 60% grant on the local share.

The Red River Pump Station provides raw water to both Water Treatment Plants and is a vital asset in providing drinking water to the City of Fargo and regional customers. In addition to the flood protection, the pump station capacity will be upgraded which will allow us to utilize more water from the Red River.

The Pre-Disaster Mitigation Program Subgrant Agreement is attached.

Your consideration is greatly appreciated in this matter.

Sincerely,

Dan Portlock
Water Utility Engineer

SUGGESTED MOTION:

Approve the Pre-Disaster Mitigation Program Subgrant Agreement.



STATE OF NORTH DAKOTA
DEPARTMENT OF EMERGENCY SERVICES

DOUG BURGUM

Governor

Major General Alan Dohrmann

Director – Department of Emergency Services

Cody Schulz

Director - Division of Homeland Security

CFDA Title and Number: Non-Disaster Grants – Pre-Disaster Mitigation Program, 97.047

Non-Disaster Grant Fiscal Year: 2018

Subrecipient: City of Fargo

Project Number: PDMC-PJ-08-ND-2018-001 – 2018 Fargo Pump Station Flood Mitigation

**Pre-Disaster Mitigation Program Subgrant Agreement
for
FY 2018 Non-Disaster Grant Awards**

This Agreement is between the State of North Dakota, Department of Emergency Services (Grantee) and, the undersigned state agency, political subdivision of the state, or federally recognized Tribal Nation or authorized tribal organization (Subgrantee). This Agreement is based on the existence of the following facts and conditions:

- A. WHEREAS, on May 22, 2020, the Federal Emergency Management Agency (FEMA) obligated project funding under Application Number PDMC -08-ND-2018; and
- B. WHEREAS, the Grantee represents that it is fully qualified and eligible to receive these grant funds to provide the services identified herein and agrees to comply with all the requirements of this Agreement; and
- C. WHEREAS, the Subgrantee has submitted an application, which is incorporated herein by reference, to the Grantee setting forth a list of activities (herein referred to individually as "Project"). The Grantee and FEMA have approved the Project along with any exceptions that have been made prior to signing of this agreement.
- D. WHEREAS, Subgrantee has the legal authority to accept mitigation funds and shall provide all necessary financial and managerial resources to meet the terms and conditions of receiving federal and state mitigation funds.

NOW, THEREFORE, the Grantee and Subgrantee, based upon the existence of the foregoing conditions, do further agree to the following:

ARTICLE I. Definitions. As used in this Agreement, the following terms shall have the following meanings unless another meaning is specified elsewhere:

- A. "Eligible activities" are those activities authorized in the FEMA-State Agreement, and in the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93-288, as amended, 42 U.S.C §§ 5121-5207 (Stafford Act); in accordance with 44 CFR § 206.44; and applicable policies of the FEMA.
- B. "Articles of Agreement" is the agreement electronically signed between the FEMA and the State of North Dakota, for projects awarded through the FY 2018 PDM Program. The Recipient and Subrecipient must abide by the Federal award terms and conditions set forth in the Articles of Agreement.

ARTICLE II. Applicable Law. The parties agree to all the conditions, obligations, and duties imposed by the FEMA-State Agreement and all applicable state and federal legal requirements including, without any limitation on the generality of the foregoing, the requirements of Title 44 of the Code of Federal Regulations (CFR) Part(s) 13, 80, and 206, and the policies of the FEMA. The Subgrantee further agrees to comply with the Statement of Assurances attached hereto as Attachment B.

ARTICLE III. Funding and Insurance. Grantee shall provide funds to the Subgrantee for eligible activities for the project approved by the Grantee and the FEMA, as specified in Attachment A – Approved Project Data. The federal allowable costs shall be determined as per 44 CFR Part(s) 13 and 206, which shall be up to seventy-five percent of all eligible costs.

- A. The approved project documentation shall be transmitted to Subgrantee, and shall state the cumulative funding allowed, the scope of the eligible project, and the costs eligible under this Agreement. Amendments may obligate or deobligate funding, thereby amending the total funding for the project. The approved project documentation shall document the total eligible costs and the total federal share of those costs, which shall be seventy-five percent of all eligible costs. Contingent upon an appropriation by the State Legislature, the Grantee may provide some portion of any nonfederal share for some sub grantees. As a condition of receipt of the federal funding, the Subgrantee agrees to provide any nonfederal share not paid by the Grantee.
- B. If the Subgrantee is required to repay the Grantee funds already disbursed by the Grantee, the Subgrantee will have 60 days to reimburse the full amount. If Subgrantee has not reimbursed the grantee the full amount within the 60 days, the Grantee will have all the rights and remedies available to them by law; including, but not limited to, the withhold of future fund disbursement to off-set amount due to Grantee.
- C. As a further condition to funding under this Agreement, the Subgrantee agrees to procure insurance sufficient for the type or types of hazards for which the disaster was declared to cover any and all projects to be funded under this Agreement where insurance is available and reasonable. Subgrantee shall provide Grantee with a certificate of such insurance as a condition to funding under this Agreement.

ARTICLE IV. Duplication of Benefits Prohibition. Subgrantee may not receive funding under this Agreement to pay for damage covered by insurance, nor may Subgrantee receive any other duplicate benefits under this Agreement.

- A. Without delay, Subgrantee shall advise Grantee of any insurance coverage for the damage identified on the applicable project application and of any entitlement to compensation or indemnification from such insurance. All such duplicate benefits are "ineligible costs"

which the Subgrantee shall reimburse to the Grantee without delay. The Subgrantee shall also reimburse the Grantee if the Subgrantee receives any duplicate benefits from any other source for any damage identified on the applicable project application for which Subgrantee has received payment from Grantee.

- B. In the event that Grantee should determine that Subgrantee has received duplicate benefits, by its execution of this Agreement the Subgrantee gives Grantee the authority to set off the sum of any such duplicate benefits by withholding it from any other funds otherwise due and owing to Subgrantee, or to use such remedies available at law or equity to the repayment of said sums to Grantee.

ARTICLE V. Compliance with Environmental, Planning and Permitting Laws. Subgrantee shall be responsible for the implementation and completion of the approved projects described in Attachment A – Approved Project Data, in a manner acceptable to Grantee, and in accordance with applicable legal requirements. The contract documents for any project undertaken by Subgrantee, and any land use permitted by or engaged in by Subgrantee, shall be consistent with the local ordinances and State law. Subgrantee shall ensure that any development or development order complies with all applicable planning, permitting and building requirements. Subgrantee shall engage such competent, properly licensed engineering, building, and other technical and professional assistance at all project sites as may be needed to ensure that the project complies with the contract documents.

ARTICLE VI. Subgrantee Risk Assessment. As required by 2 CFR § 200.331 NDDDES will complete a Financial Assistance Recipient Risk Assessment rating form for every subgrantee receiving an award to evaluate their potential risk of non-compliance. Subgrantees will be evaluated on factors such as their prior experience with the same or similar subawards, results of previous audits including whether or not they received a Single Audit and the extent to which the same or similar subaward has been audited as a major program; if they have new personnel or new or substantially changed systems, and the extent and results of Federal awarding agency monitoring.

A Risk Assessment will be completed immediately prior to executing this Subgrant Agreement. All new and existing active subgrantees will be rated upon new disaster and program funding opportunities. The Business Manager will work with the State Hazard Mitigation Officer (SHMO) or assigned staff, to jointly complete the risk assessment and score subgrantees, as applicable. Results of the Risk Assessment may result in the imposition of specific conditions as allowed in 2 CFR § 200.207, and will be identified within Attachment D of this Subgrant Agreement.

Every January, or as needed, NDDDES will re-evaluate all subgrantee Risk Assessments. Based on overall compliance with project requirements and any issues noticed therein, an updated Financial Assistance Recipient Risk Assessment will be completed and subgrantees can be upgraded or removed from low, medium or high risk status. If a subgrantee is non-compliant with the additional requirements of a subaward due to being considered high risk, the subaward and all federal and state monies can be deobligated at the request of NDDDES. Upon deobligation due to non-compliance, a subgrantee will be considered high risk in perpetuity.

ARTICLE VII. Required Documentation, Reviews, and Inspections. Subgrantee shall create and maintain documentation of work performed and costs incurred sufficient to permit a formal audit comporting with ordinary, customary and prudent public accounting requirements. Upon the failure of Subgrantee to create and maintain such documentation, Grantee may terminate further funding under this Agreement, and Subgrantee shall reimburse to Grantee (within 60 days) all payments disbursed earlier to Subgrantee, together with any and all accrued interest.

To ensure all State and Federal Standards are met, Grantee will conduct a physical inspection of all non-plan projects before a project is started and again before the project is closed.

Throughout the life of an approved project, Grantee will undertake a number of project monitoring activities to ensure successful completion of projects. Grantee will monitor and evaluate project accomplishments and adherence to the project work schedule. Through the review of Subgrantee quarterly reports mitigation staff will attempt to identify any potential problems in grant performance. If problems or concerns exist Grantee will contact Subgrantee to further research potential issues. Technical administration or program assistance may be offered or coordinated if required. In addition, mitigation staff will contact Subgrantee on an as needed basis to provide project management support and to aid in the successful completion and closeout of projects. If a project has not been completed and closed within 120 days of the project's period of performance Grantee will send a letter to the applicant that details project deadlines, includes instructions for project closeout, and gives instructions and deadlines for requesting a time extension if necessary.

For all projects, Subgrantee shall certify that: the project was completed in accordance with FEMA approvals; all required and allowable funds have been paid; all reported costs were incurred in the performance of eligible work; work was completed in compliance with the provisions of the FEMA-State Agreement; payments for the project were made in accordance with the existing requirements of Federal and State laws and regulations; no further requests for funding will be made; and there are no pending bills.

As required by 44 CFR Part 80.14 (d), for all acquisition and relocation projects, every 3 years the Subgrantee (in coordination with any current successor in interest) through the grantee, shall submit to the FEMA Regional Administrator a report certifying that the Subgrantee has inspected the property within the month preceding the report, and that the property continues to be maintained consistent with the provisions of 44 CFR Part 80, the property conveyance and the grant award.

ARTICLE VIII. Cost Sharing. The federal share of the eligible costs specified in Attachment A – Approved Project Data, under this Agreement shall be up to seventy five (75) percent of such costs, and the nonfederal share shall be the remaining amount. Payment of a specified portion of the nonfederal share of such costs is contingent upon a potential future State appropriation defining the apportionment of the nonfederal share. Subgrantee commits to meet any local matching funds required for successful project completion. Further, at the time of project application, Subgrantee must provide Grantee with a Resolution of Commitment from its authorized governing body. Subgrantee also certifies that any matching funds borne by the Subgrantee will come from a nonfederal source as required by 44 CFR § 13.24.

ARTICLE IX. Payment of Costs. Grantee shall disburse the eligible costs to Subgrantee in accordance with the following procedures:

- A. Following the receipt of a project reimbursement request (including supporting documentation in the way of invoices, contracts, force account labor and equipment schedules, and cancelled checks or vouchers), a payment will be issued for any funding that is eligible to be paid to the Subgrantee, as it becomes available. Payment authorizations shall be calculated in accordance with the federal/non-federal cost share, and on the terms and conditions set forth in the FEMA/State Agreement and this agreement. Authorization for payment will include documentation to substantiate the amount of the authorization.
- B. Grantee may advance funds under this Agreement to Subgrantee up to 90 percent of the 75 percent federal share for projects other than Acquisition/Relocation/Elevation projects. Upon completion of the project, submission of the summary of documentation (cancelled checks, warrants, certified transaction reports, etc.) and final approval by FEMA, the

remaining 10 percent share of the federal share and the appropriate state share will be paid. For Acquisition/Relocation/Elevations projects, all conditions for advances listed above shall apply except that the grantee may advance 100 percent of the federal share rather than 90 percent. Subgrantee must meet the following conditions to be eligible for an advance of funds:

1. Subgrantee shall certify to Grantee that Subgrantee has procedures in place to ensure that funds are disbursed to project vendors, contractors, and subcontractors without unnecessary delay;
 2. Subgrantee shall submit to Grantee the budget supporting the request;
 3. Subgrantee shall submit a statement justifying the advance and the proposed use of the funds and specifying the amount of funds requested; and
 4. Subgrantee shall pay over to Grantee any interest earned on advances for remittance to the FEMA as often as practicable, but not later than ten (10) business days after the close of each calendar quarter.
- C. Grantee may, in its discretion, withhold its portion of the nonfederal share of funding under this Agreement from Subgrantee if Grantee has reason to expect a subsequent unfavorable determination by the FEMA that a previous disbursement of funds under this Agreement was improper.

ARTICLE X. Final Payment. Grantee shall disburse the final payment to Subgrantee upon the performance of the following conditions:

- A. Subgrantee shall have completed the project to the satisfaction of the Grantee;
- B. Subgrantee shall have submitted the documentation specified in Articles VI and VIII of this Agreement;
- C. Grantee shall have performed the final inspection;
- D. Subgrantee shall have requested final reimbursement.
- E. Subgrantee shall have requested project closeout by letter

ARTICLE XI. Records Maintenance. The funding of eligible costs under this Agreement and the performance of all other conditions shall be subject to the following requirements, in addition to such other and further requirements as may be imposed by operation of law:

- A. The "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," as codified in 44 Code of Federal Regulations Part 13, as amended.
- B. Office of Management and Budget Circular No. A-87, "Cost Principles for State and Local Governments," as amended.
- C. Office of Management and Budget Circular No. A-110, "Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations," as amended.
- D. Office of Management and Budget Circular No. A-122, "Cost Principles for Non-Profit Organizations," as amended.
- E. Subgrantee shall retain sufficient records to show its compliance with the terms of this Agreement, as well as the compliance of all subcontractors or consultants paid from funds under this Agreement for a period of three years from the date of formal notification from the Grantee that FEMA has officially closed the disaster program. The Subgrantee shall allow the Grantee or its designee, the Comptroller General of the United States, FEMA, and the North Dakota State Auditor's Office, access to records upon request. The three year period may be extended for the following exceptions:
 1. If any litigation, claim or audit is started before the three year period expires, and extend beyond the three year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.

2. Records for the disposition of non-expendable personal property valued at \$5,000 or more at the time it is acquired shall be retained for five years after final disposition.
 3. Records relating to real property acquired shall be retained for five years after the closing on the transfer of title.
- F. The Subgrantee shall maintain all records for the Subgrantee and for all subcontractors or consultants to be paid from funds provided under this Agreement, including documentation of all program costs, in a form sufficient to determine compliance with the requirements and objectives under this Agreement and all other applicable laws and regulations.
- G. The Subgrantee, its employees or agents, including all subcontractors or consultants to be paid from funds provided under this Agreement, shall allow access to its records at reasonable times to the Grantee, its employees, and agents. "Reasonable" shall ordinarily mean during normal business hours of 8:00 a.m. to 5:00 p.m., local time, on Monday through Friday. "Agents" shall include, but not be limited to, auditors retained by the Grantee.

ARTICLE XII. Reimbursement of Funds. If upon final inspection, final audit, or other review by Grantee, the FEMA or other authority determines that the disbursements to Subgrantee under this Agreement exceed the eligible costs, Subgrantee shall reimburse to Grantee the sum by which the total disbursements exceed the eligible costs within sixty (60) days from the date Subgrantee is notified of such determination. If Subgrantee has not reimbursed the grantee the full amount within the 60 days, the Grantee will have all the rights and remedies available to them by law; including, but not limited to, the withhold of future fund disbursement to off-set amount due to Grantee.

ARTICLE XIII. Repayment by Subgrantee. All refunds or repayments due to the Grantee under this Agreement are to be made payable to the order of "North Dakota Department of Emergency Services" and mailed directly to the following address: **PO Box 5511, Bismarck, ND, 58506.**

ARTICLE XIV. Audit.

- A. The Subgrantee agrees to maintain financial procedures and support documents, in accordance with generally accepted accounting principles, to account for the receipt and expenditure of funds under this Agreement.
- B. These records shall be available at all reasonable times for inspection, review, or audit by state personnel and other personnel duly authorized by the Grantee. "Reasonable" shall be construed according to circumstances, but ordinarily shall mean normal business hours of 8:00 a.m. to 5:00 p.m., local time, Monday through Friday.
- C. The Subgrantee shall also provide the Grantee or its designee with the records, reports or financial statements upon request for the purposes of auditing and monitoring the funds awarded under this Agreement.
- D. If a Subgrantee is a state or local government or a non-profits organization as defined in OMB Circular A-133, as revised, and if the Subgrantee expends \$500,000 or more, then the Subgrantee shall have a single or program specific audit conducted which meets the requirements of the Single Audit Act of 1984, 31 U.S.C. ss. 7501-7507, OMB Circular A-133 Part .200 for the purposes of auditing and monitoring the funds awarded under this Agreement. In connection with the aforementioned audit requirement, the Subgrantee shall fulfill for auditee responsibilities as provided in Subpart C of OMB Circular A-133, as revised.
- E. If the Subgrantee spends less than \$500,000 in federal awards in its fiscal year, an audit conducted in accordance with the provision of OMB Circular A-133, as revised, is not required. In the event the Subgrantee expends less than \$500,000 in federal awards in its

fiscal year and chooses to have an audit conducted in accordance with OMB Circular A-133 Part .200, as revised, the cost of the audit must be paid from nonfederal funds.

- F. In the event the audit shows that the entire funds disbursed hereunder, or any portion thereof, were not spent in accordance with the conditions of this Agreement, the Subgrantee shall be held liable for reimbursement to the Grantee of all funds not spent in accordance with these applicable regulations and Agreement provisions within sixty (60) days after the Grantee has notified the Subgrantee of such non-compliance.
- G. If required, the audit is due nine (9) months after the end of the fiscal year of Subgrantee.
- H. If audit is conducted as required by subsection D. above, the Subgrantee shall submit the data collection form and one copy of the reporting package to the Federal Audit Clearinghouse at the following address: **Federal Audit Clearinghouse, Bureau of the Census, 1201 East 10th Street, Jeffersonville, IN 47132**. If the audit documents any finding or questioned costs, Subgrantee shall submit a copy of the reporting package to the State at the following address:

ND Department of Emergency Services
PO Box 5511
Bismarek ND 58506

ARTICLE XV. Noncompliance. If the Subgrantee violates this Agreement or any legislation, regulation, statute, rule or other legal requirement applicable to the performance of this Agreement, the Grantee may withhold any disbursement otherwise due Subgrantee for the project with respect to which the violation has occurred until the violation is cured or has otherwise come to final resolution. If the violation is not cured, Grantee may terminate this Agreement and invoke its remedies under the Agreement as per the Articles of this Agreement.

ARTICLE XVI. Nondiscrimination by Contractors. Pursuant to 44 CFR Parts 7 and 16, and 44 CFR Part 206.36, the Subgrantee shall undertake an active program of nondiscrimination in its administration of disaster assistance under this Agreement. Subgrantee shall also be subject to the requirements in the General Services Administrative Consolidated List of Debarred, Suspended and Ineligible Contractors, in accordance with 44 CFR Part 17.

ARTICLE XVII. Modification. A modification extending the time for completion of a project and any other modification shall be in writing. Modifications to any project to be funded under this Agreement may be requested by Subgrantee through Grantee, but the approval of any such modifications shall reside in the sole discretion of the FEMA. Any approved modification to a project shall be noted in an amendment to the project and in any amendment to this Agreement. If otherwise allowed under this Agreement, any extension shall be in writing and shall be subject to the same terms and conditions as those set out in the initial Agreement.

ARTICLE XVIII. Period of Performance (POP). The POP is the period of time during which the Grantee is expected to complete all grant activities and to incur and expend approved funds. The POP begins on the date that the grant is awarded and ends no later than 36 months from the award of the final subgrant under the grant. The POP termination date is established by the subgrant with the latest completion date.

FEMA will not establish activity completion timeframes for individual subgrants. Grantees are responsible for ensuring that all approved activities are completed by the end of the grant POP.

ARTICLE XIX. Contracts with Others. If the Subgrantee contracts with any other contractor or vendor for performance of all or any portion of the work required under this Agreement, the Subgrantee shall incorporate into its contract with such contractor or vendor an indemnification

clause holding Grantee and Subgrantee harmless from liability to third parties for claims asserted under such contract. The Subgrantee shall also document in the quarterly report the subcontractor's progress in performing its work under this Agreement.

ARTICLE XX. Termination. Either of the parties may terminate this Agreement by notice in writing. Such termination shall take effect thirty (30) days after the date of such notice. Such termination shall not affect the rights, interests, duties or responsibilities of either of the parties or any allowable costs that have accrued as of the date of the notice of termination.

ARTICLE XXI. Liability. Grantee assumes no liability to third parties in connection with this agreement. The Subgrantee shall be solely responsible to any and all contractors, vendors, and other parties with whom it contracts in performing this Agreement. Unless the Subgrantee is a political subdivision under NDCC 32-12.2-13, the Subgrantee shall defend, indemnify and hold harmless Grantee from claims asserted by third parties in connection with the performance of this Agreement. Contractors hired by a Subgrantee, including political subdivisions, shall be required to agree in writing to defend, indemnify and hold the State of North Dakota harmless for any claims arising out the contractor's or any subcontractor's performance under the agreement. For the purposes of this Agreement, the Grantee and Subgrantee agree that neither one is an employee or agent of the other, but that each one stands as an independent entity in relation to one another. Nothing in this Agreement shall be construed as a waiver by the Grantee or Subgrantee of any legal immunity, nor shall anything in this Agreement be construed as consent by either of the parties to be sued by third parties in connection with any matter arising from the performance of this Agreement. Subgrantee represents to the best of its knowledge any hazardous substances at its projected site or sites are present in quantities within statutory and regulatory limitations, and do not require remedial action under any federal, state or local legal requirements concerning such substances, Subgrantee further represents that the presence of any such substance or any condition at the site caused by the presence of any such substance shall be addressed in accordance with all applicable legal requirements.

ARTICLE XXII. Reports. Subgrantee shall provide Quarterly Reports to Grantee using forms provided by the Grantee for each specific project. The first Quarterly Report shall be due at such time as Subgrantee is notified. All subsequent Quarterly Reports shall be due no later than fifteen (15) days after each calendar quarter through final inspection. Quarterly Reports shall indicate the anticipated completion date for each project, together with any other circumstances that may affect the completion date, the scope of work, the project costs, or any other factors that may affect compliance with this Agreement. Interim inspections may be scheduled by Subgrantee before the final inspection and may be required by Grantee based on information supplied in the Quarterly Reports. Grantee may require additional reports as needed, and Subgrantee shall provide any additional reports requested by Grantee as soon as practicable.

ARTICLE XXIII. Monitoring. The Subgrantee shall monitor its performance under this Agreement, as well as that of its subcontractors, Subgrantees and consultants who are paid from funds provided under this Agreement, to ensure that performance under this Agreement are achieved and satisfactorily performed and in compliance with applicable state and federal laws and rules.

In addition to reviews of audits conducted in accordance with OMB Circular A-133, as revised, monitoring procedures may include, but not be limited to, on-site visits by Grantee staff, limited scope audits as defined by OMB Circular A-133, as revised, and/or other procedures. By entering into this Agreement, the Subgrantee agrees to comply and cooperate with all monitoring procedures/processes deemed appropriate by the Grantee. In the event that the Grantee determines

that a limited scope audit of the Subgrantee is appropriate, the Subgrantee agrees to comply with any additional instructions provided by the Grantee to the Subgrantee regarding such audit. The Subgrantee further agrees to comply and cooperate with any inspections, reviews, investigations or audits deemed necessary by the Comptroller or Auditor General. In addition, the Grantee will monitor the performance and financial management by the Subgrantee throughout the contract term to ensure timely completion of all tasks.

ARTICLE XXIV. Mandated Conditions. Subgrantee agrees to the following conditions:

- A. The performance and obligation of Grantee to pay under this Agreement is contingent upon an annual appropriation by the Legislature.
- B. Bills for fees or other compensation for services or expenses must be submitted in detail sufficient for a proper pre-audit and post-audit.
- C. Grantee may unilaterally terminate this Agreement for refusal by the Subgrantee or its contractors or subcontractors to allow public access to all documents, papers, letters or other material that are made or received by Subgrantee or its contractors and subcontractors in connection with this Agreement.
- D. Subgrantee agrees that no funds or other resources received from the Grantee disbursed to it under this Agreement will be used directly or indirectly to influence legislation or any other official action by the North Dakota Legislature or any state agency.
- E. Subgrantee certifies that it possesses the legal authority to receive the funds under this Agreement and that it's governing body (if applicable) has authorized the execution and acceptance of this Agreement. The Subgrantee also certifies that the undersigned person has the authority to legally execute and bind Subgrantee to the terms of this Agreement.
- F. Subgrantee agrees that responsibility for compliance with this Agreement rests with Subgrantee, and further agrees that noncompliance with this Agreement shall be cause for the rescission, suspension or termination of funding under this Agreement, and may affect eligibility for funding under future Subgrantee Agreements.
- G. The Grantee will not intentionally award publicly-funded contracts to any contractor who knowingly employs unauthorized alien workers, constituting a violation of the employment provisions contained in 8 U.S.C. Section 1324a(e) [Section 274A(e) of the Immigration and Nationality Act ("INA")]. The Department shall consider the employment by any contractor of unauthorized aliens a violation of Section 274A (e) of the INA. Such violation by the Subgrantee of the employment provisions contained in Section 274A (e) of the INA shall be grounds for unilateral cancellation of this Agreement by the Department.
- H. A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime or on the discriminatory vendor list may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with a public entity, and may not transact business with any public entity in excess of Category Two for a period of 36 months from the date of being placed on the convicted vendor list or on the discriminatory vendor list.
- I. The Subgrantee agrees to comply with the Americans With Disabilities Act (Public Law 101-336, 42 U.S.C. Section 12101 et seq.), if applicable, which prohibits discrimination by public and private entities on the basis of disability in the areas of employment, public accommodations, transportation, State and local government services, and in telecommunications.
- J. With respect to any Subgrantee which is not a local government or state agency, and which receives funds under this Agreement from the federal government, by signing this

Agreement, the Subgrantee certifies, to the best of its knowledge and belief, that it and its principals:

1. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by a federal department or agency;
2. have not, within a five-year period preceding this proposal been convicted of or had a civil judgment rendered against them for:
 - a) the 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 public transaction.
 - b) violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.
 - c) have not within a five-year period preceding this Agreement had one or more public transactions (federal, state or local) terminated for cause or default.

Where the Subgrantee is unable to certify to any of the statements in this certification, such Subgrantee shall attach an explanation to this Agreement. In addition, the Subgrantee shall submit to the Grantee (by email or facsimile) the completed "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion" for each prospective subcontractor which Subgrantee intends to fund under this Agreement. See Attachment C. Such form must be received by the Grantee prior to the Subgrantee entering into a contract with any prospective subcontractor.

- K. The validity of this Agreement is subject to the truth and accuracy of all the information, representations, and materials submitted or provided by the Subgrantee in this Agreement, in any subsequent submission or response to Grantee request, or in any submission or response to fulfill the requirements of this Agreement, and such information, representations, and materials are incorporated by reference. The lack of accuracy thereof or any material changes shall, at the option of the Department and with thirty (30) days written notice to the Subgrantee, cause the termination of this Agreement and the release of the Grantee from all its obligations to the Subgrantee.
- L. This Agreement shall be construed under the laws of the State of North Dakota, and venue for any actions arising out of this Agreement shall lie in Burleigh County. If any provision hereof is in conflict with any applicable statute or rule, or is otherwise unenforceable, then such provision shall be deemed null and void to the extent of such conflict, and shall be deemed severable, but shall not invalidate any other provision of this Agreement.
- M. The Subgrantee certifies, by its signature to this Agreement, that to the best of his or her knowledge and belief:
 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 any 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 influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with 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.

3. The undersigned shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements) and that all sub grantees 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 Section 1352, Title 31, U.S. Code. 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.
- O. All unmanufactured and manufactured articles, materials and supplies which are acquired for public use under this Agreement have been produced in the United States as required 41 U.S.C. 10a, unless it would not be in the public interest or unreasonable in cost.

ARTICLE XXV. Term. This Agreement shall take effect upon its execution by both parties, and shall terminate upon approval of closeout by the FEMA, unless terminated earlier as specified elsewhere in this Agreement. Subgrantee shall commence project(s) specified by this Agreement without delay.

ARTICLE XXVI. Events of Default, Remedies, and Termination.

1. Upon the occurrence of any one or more of the following events, all obligations of Grantee to disburse further funds under this Agreement shall terminate at the option of Grantee. Notwithstanding the preceding sentence, Grantee may at its option continue to make payments or portions of payments after the occurrence of any one or more such events without waiving the right to exercise such remedies and without incurring liability for further payment. Grantee may at its option terminate this Agreement and any and all funding under this Agreement upon the occurrence of any one or more of the following:
 1. Any representation by Subgrantee in this Agreement is inaccurate or incomplete in any material respect, or Subgrantee has breached any condition of this Agreement with Grantee and has not cured in timely fashion or is unable or unwilling to meet its obligations under this Agreement.
 2. Subgrantee suffers any material adverse change in its financial condition while this Agreement is in effect, as compared to its financial condition as represented in any reports or other documents submitted to Grantee, if Subgrantee has not cured the condition within thirty (30) days after notice in writing from Grantee.
 3. Any reports required by this Agreement have not been submitted to Grantee or have been submitted with inaccurate, incomplete, or inadequate information.
 4. The monies necessary to fund this Agreement are unavailable due to any failure to appropriate or other action or inaction by the State Legislature, Congress or Office of Management and Budget.
2. Upon the occurrence of any one or more of the foregoing events, Grantee may at its option give notice in writing to Subgrantee to cure its failure of performance if such failure may be cured. Upon the failure of Subgrantee to cure, Grantee may exercise any one or more of the following remedies:
 1. Terminate this Agreement upon not less than fifteen (15) days' notice of such termination by certified letter to the Subgrantee, such notice to take effect when delivered to Subgrantee;
 2. Commence a legal action for the judicial enforcement of this Agreement;
 3. Withhold the disbursement of any payment or any portion of a payment otherwise due and payable under this agreement or any other agreement with Subgrantee; and

4. Take any other remedial actions that may otherwise be available under law.
3. Grantee may terminate this Agreement for any misrepresentation of material fact, for failure or nonperformance of any Agreement condition or obligation, or for noncompliance with any applicable legal requirement.
4. Any deobligation of funds or other determination by the FEMA shall be addressed in accordance with the regulations of that Agency.
5. Upon the rescission, suspension or termination of this Agreement, the Subgrantee shall refund to Grantee all funds disbursed to Subgrantee under this Agreement.
6. The venue of any action or proceeding by either Grantee or Subgrantee for enforcement of this Agreement or for adjudication rights, interest, or duties of the parties to it shall lie in South Central District Court, Burleigh County, North Dakota.
7. Notwithstanding anything to the contrary elsewhere in this Agreement, the rescission, suspension or termination of this Agreement by Grantee shall not relieve Subgrantee of liability to Grantee for the restitution of funds advanced to Subgrantee under this Agreement, and Grantee may set off any such funds by withholding future disbursements otherwise due Subgrantee under this Agreement or any other Agreement until such time as the exact amount of restitution due Grantee from Subgrantee is determined. In the event the FEMA should deobligate funds formerly allowed under this Agreement or under any other Agreement funded by the Agency and administered by Grantee, then Subgrantee shall immediately repay such funds to Grantee. If the Subgrantee fails to repay any such funds, then Grantee may recover the same from funding otherwise due Subgrantee.

ARTICLE XXVII. Attachments.

- A. All attachments to this Agreement are incorporated into this Agreement by reference as if set out fully in the text of the Agreement itself.
- B. In the event of any inconsistencies between the language of this Agreement and the Attachments to it if any, the language of the Attachments shall be controlling, but only to the extent of such inconsistencies.

Note: All other grant administrative and electronic forms will be provided by Grantee as necessary or posted on the North Dakota Department of Emergency Services website: <http://www.nd.gov/des/>.

ARTICLE XXVIII. Notice and Contact. All notices under this Agreement shall be in writing and shall be delivered by email, by facsimile, by hand, or by letter to the following respective addresses:

Grantee:

Justin Messner, Disaster Recovery Chief
Department of Emergency Services
PO Box 5511
Bismarck ND 58506
Email: jmessner@nd.gov

Subgrantee:

Troy Hall
Fargo Water Utility Director
435 14th Avenue South
Fargo, ND 58103
Email: thall@fargond.gov

ARTICLE XXIX. Designation of Agent. Subgrantee hereby designates the following agents to execute any Request for Advance or Reimbursement, certification, or other necessary documentation:

Primary Agent

Alternate Agent

Name and Title

Name and Title

Phone Number

Phone Number

E-mail

E-mail

**STATE OF NORTH DAKOTA
DEPARTMENT OF EMERGENCY SERVICES**

SIGNATURE PAGE

**HAZARD MITIGATION GRANT PROGRAM SUBGRANT AGREEMENT
FOR
FY 2018 NON-DISASTER GRANT AWARDS**

IN WITNESS HEREOF, the Grantee and Subgrantee have executed this Agreement:

FOR THE SUBGRANTEE:

Name and Title

Signature

Date

Federal Employer Identification Number (FEIN): _____

DUNS Number: _____

**STATE OF NORTH DAKOTA
DEPARTMENT OF EMERGENCY SERVICES**

SIGNATURE PAGE

**HAZARD MITIGATION GRANT PROGRAM SUBGRANT AGREEMENT
FOR
FY 2018 NON-DISASTER GRANT AWARDS**

IN WITNESS WHEREOF, the Grantee and Subgrantee have executed this Agreement:

FOR THE GRANTEE:

DEPARTMENT OF EMERGENCY SERVICES



Justin Messner – Disaster Recovery Chief

10/1/2020

Date

ATTACHMENT A

Approved Project Data

CFDA Title and Number: Disaster Grants – Pre-Disaster Mitigation Program, 97.047

Non-Disaster Grant Fiscal Year: 2018

Subrecipient: City of Fargo

Project Number: PDMC-PL-08-ND-2018-001

Project Cost: 100% - \$4,753,290.00

Federal Funding: 75% - \$3,564,967.50

Local Funding: 25% - \$1,188,322.50

Work Schedule: 22 May 2020 – 1 April 2022

Scope of Work:

Project generally include three components: (1) construction of a floodwall through the Red River Pump Station completing a gap in permanent flood protection in the area protecting nearby flood-prone areas of the City including the Water Treatment Plant; (2) raising the operating floor, extending and protecting existing pumps, and relocation of electrical equipment to the dry side of the floodwall. Thus, the scope of work is to extend the floodwall along the west side of the existing Red River Pump Station. Because the Red River Pump Station would be isolated to the river-side of the floodwall, modifications to the existing facility would be required to reroute the pump station discharge pipe over the top of the floodwall and to raise critical equipment above the design flood elevation (DFE) to allow for the facility to be operated in a flood scenario.

Project's location is at the City's water treatment plant, 435 14th Avenue South Fargo, ND 58103. The City of Fargo is located in eastern Cass County, North Dakota, and is the county seat. The City is located along the Red River of the North, which forms the border between North Dakota and Minnesota. US Interstate 29 and US Interstate 94 intersect at Fargo creating a hub of commerce for the region.

The engineers for this project (AE2S) will complete a final design including plans and specifications for the proposed project which will then be put out for competitive bid complying with all applicable local, state, and federal procurement regulations. A contractor will be chosen in accordance with applicable regulations and bid laws. The chosen contractor will construct the project per the approved scope of work following the engineers' plans and specs. Project managers will monitor the project to ensure that contractor takes into consideration all environmental conditions required for this project and to validate that the project is constructed in compliance with the design requirements. Project managers will also work with the City of Fargo to ensure a successful project start-up and a smooth transition into full-time operation. When the work is finished, the City of Fargo will work with the state to reimburse all eligible project costs and close the project on the state and federal levels.

Work Schedule:

Environmental Permitting	2 Months
Project Design and Engineering	3 Months
Project Bidding, Award, and Contractor Negotiations	2 Months
Construction	13 Months
Project Closeout	3 Months
Total:	23 Months

Cost Estimate:

Mobilization	Construction and Project Improvement	1.00	Each	\$ 105,000.00	\$ 105,000.00
General Conditions and Contracts	Administrative Expense	436.00	Day	\$ 275.00	\$ 119,900.00
Existing Roof, Piping, and Electrical Demolition	Demolition and Removal	275.00	Hour	\$ 350.00	\$ 96,250.00
Floodwall Through Structure	Construction and Project Improvement	235.00	Linear Foot	\$ 3,350.00	\$ 787,250.00
Removable Floodwall Across Driveway	Construction and Project Improvement	24.00	Linear Foot	\$ 3,900.00	\$ 93,600.00
New Addition Mat Slab	Construction and Project Improvement	36.00	Cubic Yard	\$ 700.00	\$ 25,200.00
New Addition Concrete Walls	Construction and Project Improvement	17.00	Cubic Yard	\$ 900.00	\$ 15,300.00
New Addition Elevated Slab (Electrical Room)	Construction and Project Improvement	32.00	Cubic Yard	\$ 1,200.00	\$ 38,400.00
Existing Structure CMU Wall Raise and Door Fill-In	Construction and Project Improvement	425.00	Square Foot	\$ 30.00	\$ 12,750.00
New Addition CMU Walls (with Brick Finish)	Construction and Project Improvement	1,565.00	Square Foot	\$ 30.00	\$ 46,950.00
New Addition CMU Walls (Electrical Room)	Construction and Project Improvement	550.00	Square Foot	\$ 30.00	\$ 16,500.00
Miscellaneous Structure and Architectural	Miscellaneous	1.00	Each	\$ 7,800.00	\$ 7,800.00
Roof Deck Panels and Trusses - Existing Structure	Construction and Project Improvement	4,300.00	Square Foot	\$ 25.00	\$ 107,500.00

Roof Deck Panels and Trusses - New Addition	Construction and Project Improvement	2,080.00	Square Foot	\$ 30.00	\$ 62,400.00
Roof Hatch (Pump Access)	Equipment	7.00	Each	\$ 9,500.00	\$ 66,500.00
Grating and Guardrailing	Construction and Project Improvement	2,715.00	Square Foot	\$ 120.00	\$ 325,800.00
Grating Support System	Construction and Project Improvement	4.20	Ton	\$ 14,000.00	\$ 58,800.00
Aluminum Stairs	Construction and Project Improvement	36.00	Foot	\$ 525.00	\$ 18,900.00
Miscellaneous Metal Fabrications	Construction and Project Improvement	1.00	Each	\$ 15,000.00	\$ 15,000.00
Thermal and Moisture Protection	Construction and Project Improvement	1.00	Each	\$ 79,000.00	\$ 79,000.00
Openings (Doors, Frames, Windows)	Construction and Project Improvement	1.00	Each	\$ 79,000.00	\$ 79,000.00
Doors, Frames, and Windows	Equipment	10.00	Each	\$ 6,350.00	\$ 63,500.00
Plumbing	Construction and Project Improvement	1.00	Each	\$ 12,500.00	\$ 12,500.00
Heating, Ventilation, and Air Conditioning (HVAC)	Equipment	3,190.00	Square Foot	\$ 25.00	\$ 79,750.00
New Transformer Concrete Pads	Construction and Project Improvement	30.00	Cubic Yard	\$ 700.00	\$ 21,000.00
New Transformers, Vaults, and Switch Gear	Equipment	1.00	Each	\$ 545,000.00	\$ 545,000.00
Network Rack and Control Panel	Equipment	1.00	Each	\$ 182,000.00	\$ 182,000.00
75 Horsepower Pump Variable Frequency Drive (VFD)	Equipment	1.00	Each	\$ 45,500.00	\$ 45,500.00
125 Horsepower Pump Variable Frequency Drive (VFD)	Equipment	3.00	Each	\$ 52,000.00	\$ 156,000.00

75 Horsepower Pump Variable Frequency Drive (VFD)	Equipment	1.00	Each	\$ 45,500.00	\$ 45,500.00
Building Evacuation and Backfill	Construction and Project Improvement	75.00	Cubic Yard	\$ 700.00	\$ 52,500.00
Concrete Sidewalk (6-inch)	Construction and Project Improvement	50.00	Square Yard	\$ 165.00	\$ 8,250.00
Finished Grading, Restoration, and Misc. Site Work	Construction and Project Improvement	1.00	Each	\$ 15,000.00	\$ 15,000.00
42-inch Ductile Iron Site Piping and Fittings	Construction and Project Improvement	25.00	Linear Foot	\$ 1,050.00	\$ 26,250.00
Piping/Utility Relocates and 42-inch Tie-In	Construction and Project Improvement	4.00	Each	\$ 12,000.00	\$ 48,000.00
Process Piping Fittings, Connections, and Supports	Construction and Project Improvement	32.00	Each	\$ 5,100.00	\$ 163,200.00
Existing Pump Ext. Base Mods, and Refurb	Equipment	1.00	Each	\$ 20,000.00	\$ 20,000.00
Existing Pump Ext., Base Mods, and Refurbs	Equipment	2.00	Each	\$ 20,000.00	\$ 40,000.00
Existing Pump Ext. Base Mods, and Refurb	Equipment	1.00	Each	\$ 20,000.00	\$ 20,000.00
Existing Pump Ext. Base Mods, and Refurb	Equipment	1.00	Each	\$ 20,000.00	\$ 20,000.00
Geotechnical Services	Other Architectural Engineering Basic Fees	1.00	Each	\$ 30,000.00	\$ 30,000.00
Project Management	Administrative Expense	406.00	Day	\$ 520.00	\$ 211,120.00
Engineering	Architectural Engineering Basic Fees	1.00	Each	\$ 583,420.00	\$ 583,420.00
Contingency (5% of Construction)	Contingencies	1.00	Each	\$ 187,000.00	\$ 187,000.00
Total Cost					\$ 4,753,290.00

Other Conditions:

The applicant is responsible for coordinating with the City of Fargo, Inspections and Floodplain Administrator at 701-241-1545 or bwtaralson@cityoffargo.com, to obtain a Floodplain Development Permit. The floodplain permit should be inclusive of the Belmont Levee project, as the Belmont Levee Project and the proposed FEMA Red River Pump Station Flood Protection Project are connected actions in order to provide the necessary flood protection in the project area. All required permits should be maintained as part of the permanent record and provided at project closeout.

Source of Condition: Executive Order 11988 – Flood Plains

The City shall survey the project areas within 5-7 days prior to the initiation of construction activities, to determine if suitable Bald/Golden eagle habitat and/or nesting activity are present within or near the proposed project area. Specific attention should be given to those sites that are located within ½ mile or within sight of large water bodies. If active nesting sites are identified during the survey or throughout project construction, the project proponent shall cease construction, maintain a sufficient buffer around active nests to avoid disturbing breeding activities, and notify USFWS and FEMA. With approval from USFWS, work may resume with appropriate buffer zones being maintained, and/or seasonal work restrictions may be required per the National Bald Eagle Management Guidelines and USFWS. The National Bald Eagle Management Guidelines can be found at the following link: <https://www.fws.gov/northeast/ecologicalservices/pdf/NationalBaldEagleManagementGuidelines.pdf>

Source of Condition: Bald and Golden Eagle Protection Act

If the project results in the discharge of dredged or fill material into wetlands or other waterways, the City shall consult with USACE regulatory office in Bismarck, ND to determine final project requirement. The City is responsible for obtaining any needed permits and verifying and complying with all permit requirements, including wetland mitigation, any permit conditions, pre-construction notification requirements, and regional conditions as provided by the Army Corps of Engineers. The City is responsible for implementing, monitoring, and maintaining all Best Management Practices (BMPs) and Pre-Construction Notification (PCN) conditions of applicable NWP. This is to include any requirements per the North Dakota Department of Health-Division of Water Quality 401 Water Quality Certification for Clean Water Act permits.

Source of Condition: Clean Water Act

The proposed project may require removal of vegetation. However, the underlying purpose of the proposed activity will not result in a take as defined in the Migratory Bird Treaty Act. To avoid impacts to migratory birds and raptors, it is recommended that vegetation be removed outside the nesting/fledging period. If work must occur during the nesting season, it is recommended that the project area be inspected for active bird nests prior to start of construction.

Source of Condition: Migratory Bird Treaty

All borrow material and/or rip rap must come from a ND SHPO approved source. If the applicant chooses to use a borrow source that is not NDDOT Certified and/or from an existing stockpile, the following must occur prior to digging:

1. State Historical Preservation Office (SHPO) approval including completion and FEMA approval of required archeological surveys.
2. The applicant shall notify the FEMA Regional Environmental Officer if any listed species or designated critical habitat might be affected or is in the vicinity of the project, and shall not begin work until notified by the FEMA Regional Environmental Officer that the requirements of the Endangered Species Act have been satisfied.
3. Applicant is required to coordinate borrow pit locations with the USFWS Wetland District Manager to avoid project impacts to easements or public lands.
4. Applicant is responsible for ensuring that no borrow pit activity occurs in Waters of the United States, wetlands or a river listed on the Nationwide Rivers Inventory (NRI). Borrow pit activity occurring in a floodplain must not affect pre-existing hydrological profiles. If activities occur in prime farmland ground disturbance must be temporary, one time use, and no permanent loss of farmland may occur.

Source of Condition: National Historic Preservation Act

1. The Office of the State Engineer (OSE) Engineering and Permitting Section reviewed the project location and determined that the project may require a construction permit for the construction of a dike or flood wall. The City must complete a construction permit application and return to the OSE for review. For further information, the City should contact the OSE Engineering and Permitting Section at 701-328-2752.
2. The Water Appropriations Division of the Office of the State Engineer (OSE) reviewed the project for conditional or temporary permits required for water appropriation. If surface water or groundwater will be diverted for construction of the project, a water permit will be required per North Dakota Century Code (NDCC) § 61-04-02. Please consult with the Water Appropriations Division of the Office of the State Engineer (OSE) if you have any questions regarding this permit at 701-328-2754 or waterpermits@nd.gov.
3. Care is to be taken during demolition activity near any water of the state to minimize adverse effects on a water body. This includes minimal disturbance of stream beds and banks to prevent excess siltation, and the replacement and revegetation of any disturbed area as soon as possible after work has been completed. Caution must also be taken to prevent spills of oil and grease that may reach the receiving water from equipment maintenance, and/or the handling of fuels on the site. Guidelines for minimizing degradation to waterways during construction are attached to the letter.
4. Projects disturbing one or more acres are required to have a permit to discharge storm water runoff until the site is stabilized by the reestablishment of vegetation or other permanent cover. Further information on the storm water permit may be obtained from the Department's website or by calling the Division of Water Quality (701-328-5210). Check with the local officials to be sure any local storm water management considerations are addressed.
5. The project is located within the city of Fargo's Source Water Protection Area (SWPA). This SWPA utilizes the Red River as a water source. Care should be taken to avoid spills of any materials that may have an adverse effect on water quality within the Red River: All spills must be immediately reported to the NDDOH and appropriate remedial actions performed

6. All necessary measures must be taken to minimize the disturbance of any asbestos containing material and to prevent any asbestos fiber release episodes. Any facility that is to be renovated or demolished must be inspected for asbestos. Notification of the NDDOH Division of Air Quality is required before any demolition. Removal of any friable asbestos-containing material must be accomplished in accordance with section 33-15-13-02 of the North Dakota air pollution control rules.

7. Applicant shall comply with proper construction practices and environmental disturbance requirements as outlined in the NDDOH letter dated 10/17/2017.

Source of Condition: State Water and Soils Laws

The applicant must comply with any project conditions related to the construction of the Belmont levee identified in the EIS for the F-M Diversion or by other federal and state regulatory agencies.

Source of Condition: NEPA Determination

Standard Conditions:

Any change to the approved scope of work will require re-evaluation for compliance with NEPA and other Laws and Executive Orders.

This review does not address all federal, state and local requirements. Acceptance of federal funding requires recipient to comply with all federal, state and local laws. Failure to obtain all appropriate federal, state and local environmental permits and clearances may jeopardize federal funding.

If ground disturbing activities occur during construction, applicant will monitor ground disturbance and if any potential archeological resources are discovered, will immediately cease construction in that area and notify the State and FEMA.

ATTACHMENT B

Statement of Assurances

To the extent the following provisions apply to this Agreement, the Subgrantee agrees to comply with the following:

1. Contract Work Hours and Safety Standards Act of 1962, 40 U.S.C. 327 et seq., requiring that mechanics and laborers (including watchmen and guards) employed on federally assisted contracts be paid wages of not less than one and one-half times their basic wage rates for all hours worked in excess of forty hours in a workweek.
2. Federal Fair Labor Standards Act, 29 U.S.C. Section 201 et seq., requiring that covered employees be paid at least the minimum prescribed wage, and also that they be paid one and one-half times their basic wage rates for all hours worked in excess of the prescribed work-week.
3. Title VI of the Civil Rights Act of 1964 (P.L. 88-352), and the regulations issued pursuant thereto, which provides that no person in the United States shall on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Subgrantee receives federal financial assistance and will immediately take any measures necessary to effectuate this assurance. If any real property or structure thereon is provided or improved with the aid of federal financial assistance extended to the Subgrantee, this assurance shall obligate the Subgrantee, or in the case of any transfer of such property, any transferee, for the period during which the real property or structure is used for a purpose for which the federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits.
4. Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975, as amended (42 U.S.C.: 6101-6107) which prohibits discrimination on the basis of age or with respect to otherwise qualified handicapped individuals as provided in Section 504 of the Rehabilitation Act of 1973.
5. Executive Order 11246 as amended by Executive Orders 11375 and 12086, and the regulations issued pursuant thereto, which provide that no person shall be discriminated against on the basis of race, color, religion, sex or national origin in all phases of employment during the performance of federal or federally assisted construction contracts; affirmative action to insure fair treatment in employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff/termination, rates of pay or other forms of compensation; and election for training and apprenticeship.
6. It will comply with the Anti-Kickback Act of 1986, 41 U.S.C. Section 51 which outlaws and prescribes penalties for "kickbacks" of wages in federally financed or assisted construction activities.
7. It will comply with the provisions of 18 USC 594, 598, 600-605 (further known as the Hatch Act) which limits the political activities of employees.
8. It will comply with the flood insurance purchase and other requirements of the Flood Disaster Protection Act of 1973 as amended, 42 USC 4002-4107, including requirements regarding the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any federal financial assistance for construction or acquisition purposes for use in any area having special flood hazards. The phrase "Federal financial assistance" includes any form of loan, grant, guaranty, insurance payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect federal assistance.
9. It will require every building or facility (other than a privately owned residential structure) designed, constructed, or altered with funds provided under this Agreement to comply with

the "Uniform Federal Accessibility Standards," (AS) which is Appendix A to 41 CFR Section 101-19.6 for general type buildings and Appendix A to 24 CFR Part 40 for residential structures. The Subgrantee will be responsible for conducting inspections to ensure compliance with these specifications by the contractor.

10. It will, in connection with its performance of environmental assessments under the National Environmental Policy Act of 1969, comply with Section 106 of the National Historic Preservation Act of 1966 (U.S.C. 470), Executive Order 11593, 24 CFR Part 800, and the Preservation of Archaeological and Historical Data Act of 1966 (16 U.S.C. 469a-1, et seq.) by:
 - a) Consulting with the State Historic Preservation Office to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects (see 36 CFR Section 800.8) by the proposed activity.
 - b) Complying with all requirements established by the state to avoid or mitigate adverse effects upon such properties.
 - c) When any of Subgrantee's projects funded under this Agreement may affect a historic property, as defined in 36 CFR 800. (2)(e), the FEMA may require Subgrantee to review the eligible scope of work in consultation with the State Historic Preservation Office (SHPO) and suggest methods of repair or construction that will conform with the recommended approaches set out in the "Secretary of Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings 1992 (Standards), the Secretary of the Interior's Guidelines for Archeological Documentation (Guidelines) (48 Federal Register 44734-37)," or any other applicable Secretary of Interior standards. If FEMA determines that the eligible scope of work will not conform with the Standards, Subgrantee agrees to participate in consultations to develop, and, after execution by all parties, to abide by, a written agreement that establishes mitigation and recondition measures, including but not limited to, impacts to archeological sites, and the salvage, storage, and reuse of any significant architectural features that may otherwise be demolished.
 - d) Subgrantee agrees to notify FEMA and the Grantee if any project funded under this Agreement will involve ground disturbing activities, including, but not limited to: subsurface disturbance; removal of trees; excavation for footings and foundations; and installation of utilities (such as water, sewer, storm drains, electrical, gas, leach lines and septic tanks) except where these activities are restricted solely to areas previously disturbed by the installation, replacement or maintenance of such utilities. FEMA will request the SHPO's opinion on the potential that archeological properties may be present and be affected by such activities. The SHPO will advise Subgrantee on any feasible steps to be accomplished to avoid any National Register eligible archeological property or will make recommendations for the development of a treatment plan for the recovery of archeological data from the property. If Subgrantee is unable to avoid the archeological property, develop, in consultation with the SHPO, a treatment plan consistent with the Guidelines and take into account the Advisory Council on Historic Preservation (Council) publication "Treatment of Archeological Properties." Subgrantee shall forward information regarding the treatment plan to FEMA, the SHPO and the Council for review. If the SHPO and the Council do not object within 15 calendar days of receipt of the treatment plan, FEMA may direct Subgrantee to implement the treatment plan. If either the Council or the SHPO object, Subgrantee shall not proceed with the project until the objection is resolved.

- e) Subgrantee shall notify the Grantee and FEMA as soon as practicable: (i) of any changes in the approved scope of work for a National Register eligible or listed property; (ii) of all changes to a project that may result in a supplemental DSR or modify an HMGP project for a National Register eligible or listed property; (iii) if it appears that a project funded under this Agreement will affect a previously unidentified property that may be eligible for inclusion in the National Register or affect a known historic property in an unanticipated manner. Subgrantee acknowledges that FEMA may require Subgrantee to stop construction in the vicinity of the discovery of a previously unidentified property that may be eligible for inclusion in the National Register or upon learning that construction may affect a known historic property in an unanticipated manner. Subgrantee further acknowledges that FEMA may require Subgrantee to take all reasonable measures to avoid or minimize harm to such property until FEMA concludes consultation with the SHPO. Subgrantee also acknowledges that FEMA will require, and Subgrantee shall comply with, modifications to the project scope of work necessary to implement recommendations to address the project and the property.
 - f) Subgrantee acknowledges that, unless FEMA specifically stipulates otherwise, it shall not receive funding for projects when, with intent to avoid the requirements of the NHPA, Subgrantee intentionally and significantly adversely affects a historic property, or having the legal power to prevent it, allowed such significant adverse effect to occur.
11. It will comply with Title IX of the Education Amendments of 1972, as amended (20 U.S.C.: 1681-1683 and 1685 - 1686) which prohibits discrimination on the basis of sex.
 12. It will comply with the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, (42 U.S.C. 4521-45-94) relating to nondiscrimination on the basis of alcohol abuse or alcoholism.
 13. It will comply with 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records.
 14. It will comply with Lead-Based Paint Poison Prevention Act (42 U.S.C.: 4821 et seq.) which prohibits the use of lead based paint in construction of rehabilitation or residential structures.
 15. It will comply with the Energy Policy and Conservation Act (P.L. 94-163; 42 U.S.C. 6201-6422), and the provisions of the state Energy Conservation Plan adopted pursuant thereto.
 16. It will comply with the Laboratory Animal Welfare Act of 1966, 7 U.S.C. 2131-2159, pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by an award of assistance under this agreement.
 17. It will comply with Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 2000c and 42 3601-3619, as amended, relating to non-discrimination in the sale, rental, or financing of housing, and Title VI of the Civil Rights Act of 1964 (P.L. 88-352), which prohibits discrimination on the basis of race, color or nation origin.
 18. It will comply with the Clean Air Act of 1955, as amended, 42 U.S.C. 7401-7642.
 19. It will comply with the Clean Water Act of 1977, as amended, 42 U.S.C. 7419-7626.
 20. It will comply with the Endangered Species Act of 1973, 16 U.S.C. 1531-1544.
 21. It will comply with the Intergovernmental Personnel Act of 1970, 42 U.S.C. 4728-4763.
 22. It will assist the awarding agency in assuring compliance with the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 270.
 23. It will comply with environmental standards which may be prescribed pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4321-4347.
 24. It will assist the awarding agency in assuring compliance with the Preservation of Archeological and Historical Preservation Act of 1966, 16 U.S.C. 469a, et seq.

25. It will comply with the Rehabilitation Act of 1973, Section 504, 29 U.S.C. 794, regarding non-discrimination.
26. It will comply with the environmental standards, which may be prescribed pursuant to the Safe Drinking Water Act of 1974, 42 U.S.C. 300f-300j, regarding the protection of underground water sources.
27. It will comply with the requirements of Titles II and III of the Uniform Relocation Assistance and Property Acquisition Policies Act of 1970, 42 U.S.C. 4621-4638, which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of federal or federally assisted programs.
28. It will comply with the Wild and Scenic Rivers Act of 1968, 16 U.S.C. 1271-1287, related to protecting components or potential components of the national wild and scenic rivers system.
29. It will comply with the following Executive Orders: EO 11514 (NEPA); EO 11738 (violating facilities); EO 11988 (Floodplain Management); EO 11990 (Wetlands); and EO 12898 (Environmental Justice).
30. It will comply with the Coastal Barrier Resources Act of 1977, 16 U.S.C. 3510.
31. It will assure project consistency with the approved state program developed under the Coastal Zone Management Act of 1972, 16 U.S.C. 1451-1464.
32. It will comply with the Fish and Wildlife Coordination Act of 1958; 16 U.S.C. 661-666.
33. With respect to demolition activities, it will:
 - a) Create and make available documentation sufficient to demonstrate that the Subgrantee and its demolition contractor have sufficient manpower and equipment to comply with the obligations as outlined in this Agreement.
 - b) Return the property to its natural state as though no improvements had ever been contained thereon.
 - c) Furnish documentation of all qualified personnel, licenses and all equipment necessary to inspect buildings located in Subgrantee's jurisdiction to detect the presence of asbestos and lead in accordance with requirements of the U.S. Environmental Protection Agency, the State health authority and the county health authority.
 - d) Provide documentation of the inspection results for each structure to indicate: safety hazards present; health hazards present; and/or hazardous materials present.
 - e) Provide supervision over contractors or employees employed by Subgrantee to remove asbestos and lead from demolished or otherwise applicable structures.
 - f) Leave the demolished site clean, level and free of debris.
 - g) Notify the Grantee promptly of any unusual existing condition which hampers the contractors work.
 - h) Obtain all required permits.
 - i) Provide addresses and marked maps for each site where water wells and septic tanks are to be closed along with the number of wells and septic tanks located on each site. Provide documentation of closures.
 - j) Comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Public Law 94-163).
 - k) Comply with all applicable standards, orders, or requirements issued under Section 112 and 306 of the Clean Air Act (42 U.S.C. 1857 (h), Section 508 of the Clean Water Act (33 U.S. 1368), Executive Order 11738, and the U.S. Environmental Protection Agency regulations (40 CFR Part 15 and 61). This clause shall be added to any subcontracts.
 - l) Provide documentation of public notices for demolition activities.

ATTACHMENT C
Certification Regarding
Debarment, Suspension, Ineligibility
and
Voluntary Exclusion

Subcontractor Covered Transactions:

1. The prospective subcontractor of the Subgrantee certifies, by submission of this document, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.
2. Where the Subgrantee's subcontractor is unable to certify to the above statement, the prospective subcontractor shall attach an explanation to this form.

SUBCONTRACTOR:

Name of Company

Street Address

City, State, Zip

Federal Employer Identification Number (FEIN)

By: _____
Signature Date

Subgrantee's Name

Grantee Agreement Number

ATTACHMENT D

Risk Assessment Conditions

Per Article VI of this contract, NDDES is required to complete a Financial Assistance Risk Assessment rating form for every subgrantee receiving an award to evaluate their potential risk of non-compliance. Subgrantees will be evaluated on factors such as their prior experience with the same or similar subawards, results of previous audits including whether or not they received a Single Audit and the extent to which the same or similar subaward has been audited as a major program; if they have new personnel or new or substantially changed systems, and the extent and results of Federal awarding agency monitoring. Results of the Risk Assessment may result in the imposition of specific conditions, as allowed in 2 CFR § 200.207, and contained within this attachment.

Based upon the Risk Assessment completed for 2020, the City of Fargo has received a score of 7 and has been determined to be a Low Risk based upon the above mentioned criteria.

The specific conditions for a subgrantee determined to be Low Risk are the following:

- Subgrantees identified as Low Risk have no further conditions and may continue with their projects as approved by FEMA. This must include the completion of all project specific conditions, to include environmental requirements and/or permitting, placed upon individual projects by FEMA at the time of award or amendment. **Subgrantees that fail to comply with project specific conditions could potentially jeopardize their current and future federal funding.**


Every January, or as needed, NDDES will re-evaluate all subgrantee Risk Assessments. Based on overall compliance with project requirements and any issues noticed therein, an updated Financial Assistance Recipient Risk Assessment will be completed and subgrantees can be upgraded or removed from low, medium or high risk status. If a subgrantee is non-compliant with the additional requirements of a subaward due to being considered high risk, the subaward and all federal and state monies can be deobligated at the request of NDDES. Upon deobligation due to non-compliance, a subgrantee will be considered high risk in perpetuity.



(30)

MEMORANDUM

TO: FARGO CITY COMMISSION

FROM: JIM GILMOUR, STRATEGIC PLANNING DIRECTOR 

DATE: NOVEMBER 12, 2020

SUBJECT: REQUEST FOR TAX INCREMENT FINANCING

The City of Fargo received a request for Tax Increment Financing (TIF) for redevelopment of a portion of the Anderson Park softball complex. A copy of the request is attached.

This site is owned by the Fargo Park District, which has decided to sell four of the softball fields and surface parking along 45th Street. EPIC Companies would purchase the site and develop this portion of Anderson Park.

This request for a Development Plan and TIF District is different than others approved by the City of Fargo. There are no challenges in providing infrastructure and there are no blighted conditions or site limitations. Instead, activities funded by TIF funds would be public benefits of park facilities, structured parking and public housing.

Fargo TIF policy calls for mixed-use developments to meet at least seven of 11 objectives. This project meets six of the objectives and possibly three others, depending on the specific commercial tenants. The criteria are on an attachment.

Fargo TIF policy calls for the City Commission to review the request to determine if staff should proceed to work with the developer on a renewal plan and forward an application to the City financial advisers for review.

Suggested motion: Authorize staff to submit a TIF application to the financial adviser for review, prepare a Renewal Plan and a Development Agreement for redevelopment of the Anderson Park softball fields.

Attachments

Downtown or Mixed Use (Mixed use is commercial/housing in the same development.)
Projects should meet at least seven of the 11 objectives listed below:

(Yes) • The development is served by existing infrastructure of the development or will upgrade the infrastructure to meet the needs of the development.

(Yes) • The project is compatible with the adjacent area or the future land use in the area.

(Yes) • Sidewalks, bike trails or a transit stop within 4 blocks of the housing development.

(Yes) • There is an adequate parking and access plan, preferably with shared parking by the different land uses.

(Possibly) • The development is expected to contain some primary sector business or jobs.

(Yes) • The development will include some public spaces or public art.

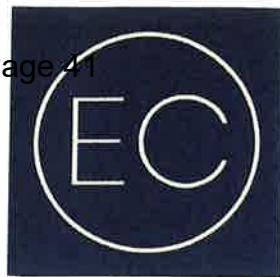
(No) • The project cleans up brownfield conditions.

(No) • The project eliminates blighted conditions or substandard buildings, or replaces surface parking.

(Yes) • The project will create significant growth in the tax base on the site.

(Possibly) • The project is expected to encourage additional development on adjacent sites.

(Possibly) • The project contains businesses that will provide needed services or goods used by adjacent land uses.



EPIC Companies

EPICCompaniesND.com

745 31st Ave. E Suite 105

West Fargo, ND 58078

701.866.1006

EOLA Draft TIF Proposal By EPIC Companies

Purpose: EPIC Companies, in conjunction with the Fargo Park District, is pursuing a TIF district that will enhance the lives of Fargo community and the surrounding area. This project will also help transform the 45 acre park area into a regional youth baseball complex, expand parking for hockey, curling, baseball, and the zoo along with an attraction and amenity to enhance these community facilities with youth, art, and recreation. This TIF will also include funding of approximately \$2,000,000 for senior affordable housing.

Amount: Approximately \$20,000,000 over three phases.

Terms: 80% of taxable value for 25 years for each phase.

Taxable Value: In excess of \$150,000,000 over 5 years.

TIF District: One district, but TIF's would be implemented over phases.

Phasing of Bonds: Three phases

1. Develop four acre public park - \$5m to \$7m.
 2. Create further public amenities for Park District and its users - \$5m to \$7m.
 3. Public parking ramp - \$7m to \$9m.
- Note: Each phase will allocate approximately \$700,000 to affordable housing.

Process: BND underwrites each phase until buildings certificate of occupancy for that phase, city sells bond to take out BND, transfers ownership to Fargo Park District or other designee.

Items TIF funds would be used for:

- Four acre park and one acre water feature for public use.
- Parking ramp for public use and FREE.
- Youth facilities / amenities for public use.
- \$2.0m designated for Fargo Housing Authority for senior affordable housing at EOLA.
- \$500k designated for the Red River Zoo to help enhance the surrounding area as a collective regional destination.

Editorial: The common question asked, "Would this happen without the TIF?", the answer is NO. Sure, there would be approximately \$80,000,000 to \$100,000,000 of buildings, but not the \$150,000,000 plus that could be built around a public amenity as proposed. There would be no public parking ramp to support the community assets described above, there would be no \$2,000,000 designated for affordable housing and the public park would represent much more of a neighborhood amenity instead of a *regional attraction* that will enhance the current 45 acre Fargo Park District land.

Bank of ND has already contacted EPIC Companies unsolicited about helping do the process described above and has set allocation aside for this community project if needed. This project and process is very similar to The Lights in West Fargo.

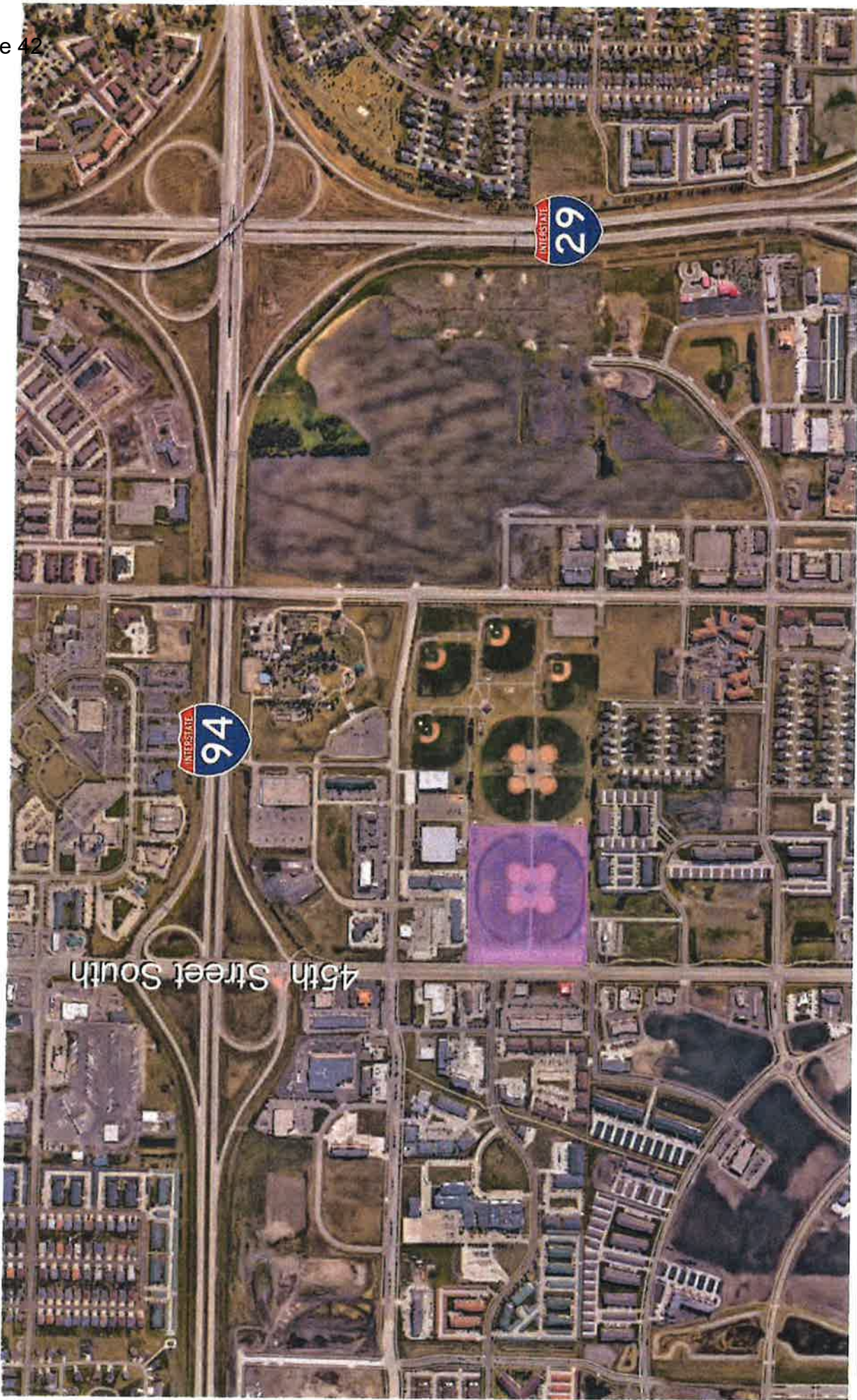
The Ask: EPIC Companies, along with the Fargo Park District, and others benefiting from this community TIF, ask that the committee approve moving forward with city of Fargo staff to create a TIF package that can be presented to a process that will be potentially voted on by the full city commission.

Supplemental Information: EPIC Companies is planning on building \$150,000,000 of mixed use buildings of condo's, apartments, and commercial space. Attached you will find supplemental information showing a current layout. EPIC will be starting construction on approximately \$50,000,000 of buildings next summer. See attachments please.

Todd Berning

Todd Berning
Board of Directors

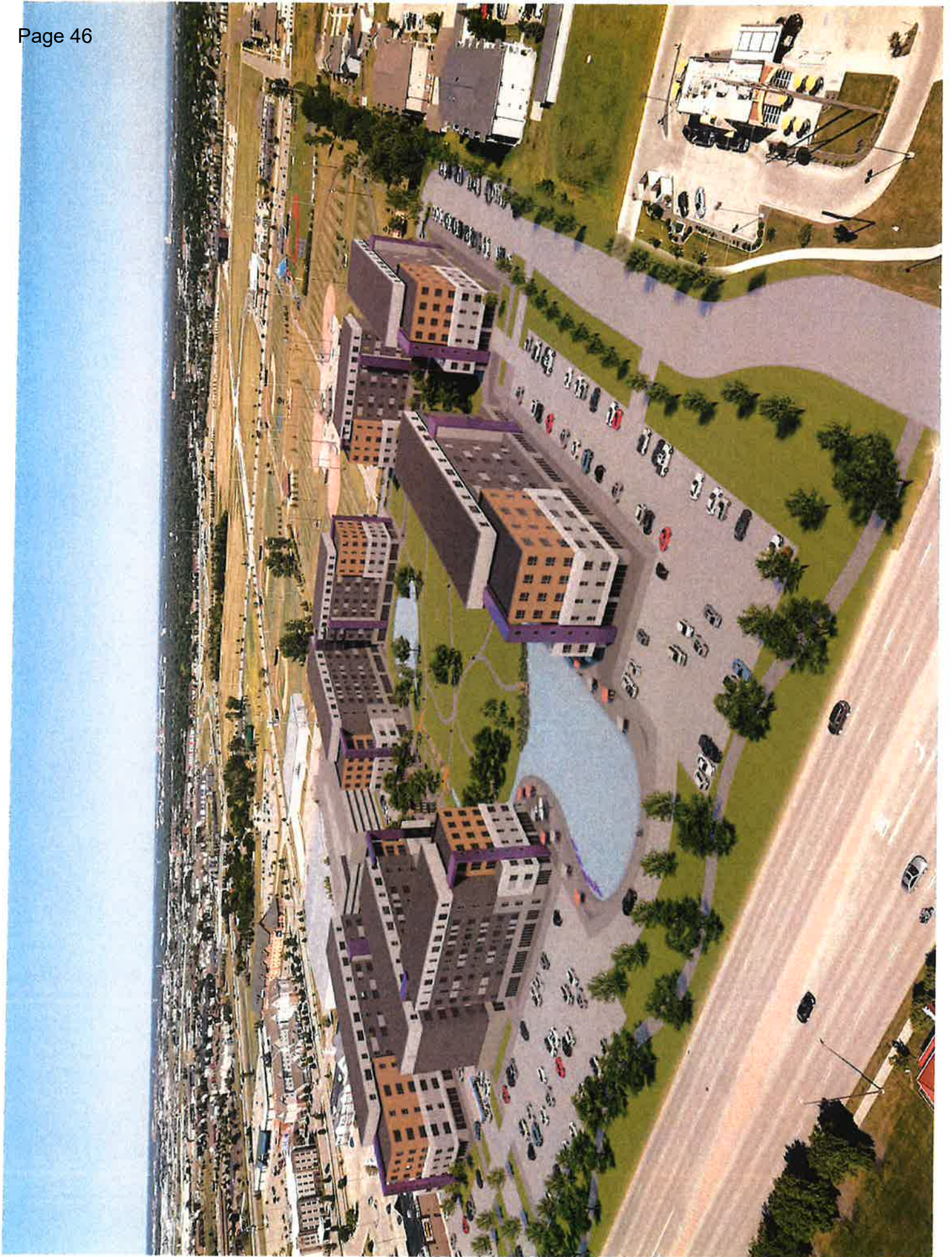


























November 9, 2020

Fargo City Commission
Fargo City Hall
225 4th Street North
Fargo, ND 58102

Commissioners:

I am writing to express my general support for the EOLA project proposed by Epic Companies, in partnership with the Fargo Park District, at the site of Anderson Park in south Fargo. Any new, public amenities enhance the image and usefulness of the city for visitors.

I understand that EPIC and the Park District are proposing a TIF District to help pay for this project. While I leave it to the City to decide what financial role it should play, my support for the TIF would hinge on two things: the inclusion of at least one, and possibly two more baseball fields at the adjacent Tharaldson Baseball Complex site, and using a portion of the TIF proceeds to provide multi-year financial support for the Red River Zoo.

Additional baseball fields would set the stage for more tournaments. More tournaments mean more visitors to our community, and our FMCVB Sports Team is excited about expanding their work with local youth baseball groups and the Park District on that possibility. The tournament action would also lead to more visitor use of the other amenities at the site, including The Red River Zoo. The Zoo is an established amenity, sits on Park District land directly north of the proposed development, and will provide a walkable source of entertainment for those who live in the development and visit the facility for tournaments.

Thank you in advance for supporting projects that make the quality of life better for people who live here and for our visitors. If you have any questions, feel free to contact me by email (charley@fargomoorhead.org), or by phone. 701-365-4567 (office) or 701-371-9911 (mobile).

Sincerely,

A handwritten signature in black ink, appearing to read "Charley Johnson".

Charley Johnson
President/CEO

**Fargo-Moorhead
Convention & Visitors Bureau**

2001 44th St S
Fargo ND 58103

800 • 235 • 7654
701 • 282 • 3653
(fax) 701 • 282 • 4366

info@fargomoorhead.org
www.fargomoorhead.org



To: Fargo City Commission

Date: November 9, 2020

From: Dave Leker

CC: Jim Gilmour, Todd Berning

RE: EOLA TIF Proposal

The Fargo Park District is excited to be collaborating with EPIC Companies, to create a TIF district, that will help energize a regional sports complex in south Fargo. This destination venue will add a new unique public park to existing skating and curling facilities, regional zoo and redeveloped baseball complex. An additional public component of the TIF district, includes a parking ramp, free to the public, that can be used to service the adjacent public amenities.

The vision is to leverage increase value of this property to create a Fargo Park District managed public facility for the metro area that compliments other city amenities.

The Park District is asking the City Commission to allow city staff to work further on creating a model that is acceptable to everyone – the City, the Park District, and EPIC Companies.

Thank you,

Dave Leker
Executive Director
Fargo Park District



EOLA Park Amenities

Year-Round	Indoor
<ul style="list-style-type: none"> Flat Grass Areas Walking Trails Seating Areas in Park Pond Island(s) Bridge(s) Interactive Art / Features Art Sculptures Playground(s) Fire Pits Patio Areas that co-mingle park / private Senior Activities Connectivity with Baseball / SW Arena 	<ul style="list-style-type: none"> Wi-Fi Power Connectivity Shopping Dining Maintenance Area for shop / lawncare / Storage Pavillion / Gazebo
Summer	Winter
<ul style="list-style-type: none"> Botanical Garden Fountain Feature Splash Park Fishing Water Bikes Band Shell Basketball, Baseball, Pickleball Greenway 	<ul style="list-style-type: none"> Cross Country Ski Trail Skating Loop Warming House Hockey Ski, Sled, Skate, Snowshoe Rentals



3/a

November 2, 2020

Board of City Commissioners
City Hall
Fargo, ND 58102

Dear Commissioners:

Chapter 57-02.2 of the North Dakota Century Code provides for a property tax exemption for certain types of improvements made to existing buildings.

I have attached a copy of an application for real estate tax exemption of building improvements for the property at 2677 Meadow Creek Cir s as submitted by Osama & Brenna Naseer. A description of the property involved, types of improvements to be made, and assessment information are indicated on the application.

It is my opinion that the value of some of the improvements, referred to in the application, qualifies for the exemption. This exemption would be for the years 2021, 2022 & 2023.

The estimated annual tax revenue lost by granting the exemption, based upon the estimated cost of the improvements, would be about \$1,315 with the City of Fargo's share being \$225.

Sincerely,

A handwritten signature in cursive script, appearing to read "Mike Splonskowski".

Mike Splonskowski
City Assessor

bsb
attachment

**Application For Property Tax Exemption For Improvements
To Commercial And Residential Buildings**

North Dakota Century Code ch. 57-02.2
(File with the local city or township assessor)

Property Identification

1. Name of Property Owner	<u>Osama & Brenna Nasser</u>			Phone No.	<u>701-367-8292</u>
2. Address of Property	<u>2677 Meadow Creek Cir S</u>				
City	<u>FARGO</u>	State	<u>ND</u>	Zip Code	<u>58104</u>
3. Legal description of the property for which the exemption is being claimed.	<u>Lot 23, Block 1, Meadow Creek</u>				
4. Parcel Number	<u>01-1895-00231</u>	Residential	<input checked="" type="checkbox"/>	Commercial	<input type="checkbox"/>
				Central Business District	<input type="checkbox"/>
5. Mailing Address of Property Owner	<u>2677 Meadow Creek Cir S</u>				
City	<u>Fargo</u>	State	<u>ND</u>	Zip Code	<u>58104</u>

Description Of Improvements For Exemption

6. Describe the type of renovating, remodeling or alteration made to the building for which the exemption is being claimed (attach additional sheets if necessary).	<u>Demo of Kitchen - new Kitchen - removal of wall to open up space - new gas fireplace - new flooring - remodel of powder room</u>
7. Building Permit No.	<u>2002-0165-REN</u>
8. Year Built	<u>1994</u>
9. Date of Commencement of making the improvement	<u>March 2020 - July 2020</u>
10. Estimated market value of property before improvement	<u>\$ 550,000</u>
11. Cost of making the improvement (all labor, material and overhead)	<u>\$ 100,000</u>
12. Estimated market value of property after improvement	<u>\$ 650,000</u>

Applicant's Certification and Signature

13. I certify that the above information is correct to the best of my knowledge and I apply for this exemption.	
Applicant's Signature	<u>B. Nasser</u>
Date	<u>10/30/20</u>

Assessor's Determination

14. The local assessor finds that the improvements in this application has <input type="checkbox"/> has not <input type="checkbox"/> met the qualifications for exemption for the following reason(s):
Assessor's Signature _____ Date _____

Action of Governing Body

15. Action taken on this application by local governing board of the county or city: Denied <input type="checkbox"/> Approved <input type="checkbox"/>
Approval subject to the following conditions: _____
Chairman of Governing Body _____ Date _____



316

October 30, 2020

Board of City Commissioners
City Hall
Fargo, ND 58102

Dear Commissioners:

Chapter 57-02.2 of the North Dakota Century Code provides for a property tax exemption for certain types of improvements made to existing buildings.

I have attached a copy of an application for real estate tax exemption of building improvements for the property at 408 28 Ave N as submitted by Brooke & Dustin Clark. A description of the property involved, types of improvements to be made, and assessment information are indicated on the application.

It is my opinion that the value of some of the improvements, referred to in the application, qualifies for the exemption. This exemption would be for the years 2021, 2022, 2023, 2024 & 2025.

The estimated annual tax revenue lost by granting the exemption, based upon the estimated cost of the improvements, would be about \$1,380 with the City of Fargo's share being \$235.

Sincerely,

A handwritten signature in cursive script, appearing to read "Mike Splonskowski".

Mike Splonskowski
City Assessor

bsb
attachment

**Application For Property Tax Exemption For Improvements
To Commercial And Residential Buildings**

North Dakota Century Code ch. 57-02.2
(File with the local city or township assessor)

Property Identification

1. Name of Property Owner	Brooke & Dustin Clark		Phone No.	701-866-1769
2. Address of Property	408 28th Ave N			
City	FARGO	State	ND	Zip Code 58102
3. Legal description of the property for which the exemption is being claimed.				
4. Parcel Number	01-0720-00012-000	Residential <input checked="" type="checkbox"/>	Commercial <input type="checkbox"/>	Central Business District <input type="checkbox"/>
5. Mailing Address of Property Owner	408 28th Ave N			
City	Fargo	State	ND	Zip Code 58102

Description Of Improvements For Exemption

6. Describe the type of renovating, remodeling or alteration made to the building for which the exemption is being claimed (attach additional sheets if necessary).	adding an addition to the back of the house. will be adding a master suite and dining room, new windows on main floor, new siding, new shingles	
7. Building Permit No.	20060947	8. Year Built 1976
9. Date of Commencement of making the improvement	August 2020	
10. Estimated market value of property before improvement	\$	\$205,000
11. Cost of making the improvement (all labor, material and overhead)	\$	\$105,000
12. Estimated market value of property after improvement	\$	\$350,000

Applicant's Certification and Signature

13. I certify that the above information is correct to the best of my knowledge and I apply for this exemption.	
Applicant's Signature	Brooke E. Clark <small>Digitally signed by Brooke E. Clark Date: 2020.10.29 15:17:27 -05'00'</small>
	Date 10/29/2020

Assessor's Determination

14. The local assessor finds that the improvements in this application has <input type="checkbox"/> has not <input type="checkbox"/> met the qualifications for exemption for the following reason(s):
Assessor's Signature _____ Date _____

Action of Governing Body

15. Action taken on this application by local governing board of the county or city: Denied <input type="checkbox"/> Approved <input type="checkbox"/>
Approval subject to the following conditions:
Chairman of Governing Body _____ Date _____

Submit Via Email