FARGO CITY COMMISSION AGENDA
Monday, October 19, 2020 - 5:00 p.m.

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

A. Pledge of Allegiance.

B. Roll Call.

C. Approve Order of Agenda.

D. Minutes (Regular Meeting, October 5, 2020).

CONSENT AGENDA – APPROVE THE FOLLOWING:

1. 2nd reading and final adoption of the following Ordinances; 1st reading, 10/5/20:
   a. Relating to Junk Automobiles.
   b. Rezoning Certain Parcels of Land Lying in Madelyn's Meadows Third Addition.
   c. Rezoning Certain Parcels of Land Lying in Cedar Crest First Addition.

2. Findings of Fact, Order and Notice of Entry Order for property at 703 12th Street North.

3. Receive and file Notice of Appeal from a Decision of a Local Governing Body filed by NorthStar Hospitality, LLC d/b/a SouthTown PourHouse.

4. Receive and file the Summons and Complaint relating to Tyler Patel vs. City of Fargo, et. al.

5. Applications for Games of Chance:
   a. NDSU Judging Club for a raffle on 3/3/21.
   b. Red River Raiders Marine Corps League Det. No. 1453 for a raffle on 11/7/20.

6. Receive and file Financial Status Report Year-to-Date through 9/30/20 for major operating funds (unaudited).

7. Receive and file General Fund-Budget to Actual through September 2020 (unaudited).

8. State Water Commission request for cost reimbursement for the FM Metro Area Flood Risk Management Project for costs totaling $544,675.95.

9. Public Assistance Grant Program Subgrant Agreement for FEMA-4553-DR with the ND Department of Emergency Services.

10. Property Use Agreement with Faith Journey Lutheran Church.

11. Addendum to Provision of Nursing Services for the Northern Cass School District.

12. Requirements for Boarding Facilities, Animal Boarding Program Inspection Report and Animal Boarding Facility License Application.
    a. Receive and file an Ordinance Relating to Animal Boarding Facilities.

13. Declaration of No Build Easement with EPIC Gateway, LLC.

14. Adopt Resolutions Approving the following Plats:
    a. Urban Plains by Brandt Fifth Addition.
    b. Bentley Place Third Addition.

15. Resolution Approving Written Agreement for the Elliott Place Activity HOME Investment Partnership Program Funds and Owner Agreement between the City and Fargo Elliott Place Four, LLP HOME Investment Partnership New Construction at 4462 30th Avenue South.

16. Notice of Grant Award with the ND Department of Emergency Services – Division of Homeland Security for the FY20 State Homeland Security Grant for the purchase of updated ballistic body armor (CFDA #97.067).

17. Snow removal equipment services contracts with Glacier Snow Management, Turf Tamers, Industrial Builders and Master Construction for 2020-2021 winter (RFP20148).

18. Bid award for West Acres road repairs.

19. Settlement and Release Agreement with Black & Veatch regarding heating system issues in the membrane at the Water Treatment Plant.

20. Contract Amendment No. 2 with Houston Engineering in the amount of $255,000.00 for Project No. FM-19-F0.

21. Contract Amendment No. 2 with Braun Intertec in the amount of $105,852.00 for Project No. FM-19-H0.

22. Change Order No. 3 for a time extension to 10/9/20 for Project No. UR-20-A1.

23. Access Agreement with Park District of the City of Fargo (Project No. FM-19-F).

24. Access Agreement with Oak Grove Lutheran School (Project No. FM-19-F).

25. Private utility relocation payments to Consolidated Communications, Cass County Electric and Century Link for Project No. FM-16-A1.

26. Easement (Storm Sewer and Outfall) with Station 3700 Apartments, LLC.

27. Declaration of Easement (Amended) (Levee) in association with Project No. FM-16-A.

28. Encroachment Agreement with Northland Educators Federal Credit Union.

29. Variance Acknowledgement and Liability Waiver for property located at 3201 33rd Street South.

30. Contract and bond for Project No. SW20-01.

31. Bills.

32. Contract Amendment No. 2 with Stantec in the amount of $7,515.00 for Improvement District No. TR-18-B0.

33. Change Order No. 11 to modify the contract language for full incentive for Improvement District No. BR-19-A1.

34. Change Order No. 1 for an increase of $12,151.53 and a time extension to 10/26/20 for Improvement District No. BN-20-K1.

35. Private utility relocation payment to Xcel Energy in the amount of $72,491.30 for Improvement District No. BN-21-A1.

36. Incentive/Disincentive option for a portion of 7th Avenue North from University Drive to Broadway (Improvement District No. BR-21-A1).

REGULAR AGENDA:

37. Red River Valley COVID-19 Task Force update.

38. Receive and file an Ordinance Relating to the Human Relations Commission.

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

    a. CONTINUE to 11/2/20 – Petition filed for exclusion of property located at 5218 68th Street South in part of Government Lot 4 of Section 5, Township 138 North, Range 49 West, of the Fifth Principal Meridian, Cass County, North Dakota.

    b. Annexation of property located at 7269 25th Street South in the North Half of the South Half of the Southeast Quarter of Section 11, Township 138 North, Range 49 West of the Fifth Principal Meridian, Cass County, North Dakota.
        1. First reading of annexation Ordinance.

    c. Special Assessment List for Business Improvement District (BID) fees; continued from the 10/5/20 Regular Meeting.

40. Recommendation from the Finance Committee on Improvement District No. BN-19-A.

41. Recommendation to extend the Resolution Extending the Moratorium Pertaining to the Retail Sale of Alcoholic Beverages to January 11, 2021.

42. Recommendation for approval of the 76th Avenue South Corridor Study; tabled from the 9/21/20 and 10/5/20 Regular Meetings.

43. Resolution of Support MATBUS Transit Authority Study.

44. Discussion on hourly parking rate options for ROCO and Mercantile parking ramps.

45. Applications for property tax exemptions for improvements made to buildings:
    a. Keith and Wanda Fischer, 3019 Bohnet Boulevard North (3 year).
    b. Alice Dosland Life Estate, 3014 9th Street North (5 year).
    c. Karla Wohlers, 3013 Edgewood Drive North (5 year).
    d. Mary Steussy, 301 20th Avenue North (5 year).

46. Commissioner Strand would like to discuss the recently approved Snow Emergency Declaration Ordinance that goes into effect 11/1/20.

47. Appointments to the Historic Preservation Commission.

48. **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.

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

1a

ORDINANCE NO. _____

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

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

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

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

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

NOW, THEREFORE,

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

Section 1. Amendment.

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

* * *

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

* * *

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

Section 2. Effective Date.

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

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

Attest:

_____
Steven Sprague, City Auditor

First Reading:
Second Reading:
Final Passage:

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

16

AN ORDINANCE REZONING CERTAIN PARCELS OF LAND
LYING IN MADELYN'S MEADOWS THIRD ADDITION
TO THE CITY OF FARGO,
CASS COUNTY, NORTH DAKOTA

WHEREAS, the Fargo Planning Commission and the Board of City Commissioners of the City of Fargo have held hearings pursuant to published notice to consider the rezoning of certain parcels of land lying in Madelyn's Meadows Third Addition to the City of Fargo, Cass County, North Dakota; and,

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

WHEREAS, the rezoning changes were approved by the City Commission on October 5, 2020,

NOW, THEREFORE,

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

Section 1. The following described property:

Lots Three (3) through Nineteen (19), Block One (1) of Madelyn's Meadows Third Addition to the City of Fargo, Cass County, North Dakota,

will retain the existing zoning of "SR-4", Single-Dwelling Residential, District,

Section 2. The following described property:

Lot Two (2), Block One (1) of Madelyn's Meadows Third Addition to the City of Fargo, Cass County, North Dakota,

will retain the existing zoning of "P/I", Public and Institutional, District,

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

Section 3. The following described property:

Lot One (1), Block One (1) of Madelyn's Meadows Third Addition to the City of Fargo, Cass County, North Dakota,

is hereby rezoned from "P/I", Public and Institutional, District, to "MR-1", Multi-Dwelling Residential, District.

Section 4. The City Auditor is hereby directed to amend the zoning map now on file in his office so as to conform with and carry out the provisions of this ordinance.

Section 5. This ordinance shall be in full force and effect from and after its passage and approval.

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

(SEAL)

Attest:

_____
Steven Sprague, City Auditor

First Reading:
Second Reading:
Final Passage:

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

10

AN ORDINANCE REZONING CERTAIN PARCELS OF LAND
LYING IN CEDAR CREST FIRST ADDITION
TO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA

WHEREAS, the Fargo Planning Commission and the Board of City Commissioners of the City of Fargo have held hearings pursuant to published notice to consider a zoning map amendment of certain parcels of land lying in Cedar Crest First Addition to the City of Fargo, Cass County, North Dakota; and,

WHEREAS, the Fargo Planning Commission recommended approval of the request for the planned unit development overlay and the master land use plan for development of the subject property, on September 1, 2020; and

WHEREAS, the Planned Unit Development Overlay and the Master Land Use Plan for development, were approved by the City Commission on October 5, 2020; and,

NOW, THEREFORE,

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

Section 1. The following described property:

Lot One (1), Block One (1), Cedar Crest First Addition to the city of Fargo, Cass County, North Dakota,

is rezoned from "GC", General Commercial, District to "GC", General Commercial, District with a Planned Unit Development Overlay:

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

	Current LDC Development Standards for GC, General Commercial	**PUD Modifications to General Commercial Development Standards**
Allowed Uses	colleges, community service, daycare centers of unlimited size, detention facilities, health care facilities, parks and open space, religious institutions, safety services, adult entertainment centers, offices, off-premise advertising, commercial parking, outdoor recreation and entertainment, retail sales and service, self-storage, vehicle repair, limited vehicle service, aviation, surface transportation, and major entertainment events.	*Add as an allowed use: Household Living*
Residential Density	GC has no prescribed density	*38 units per acre*
Parking-Residential-Multi-dwelling	2.25 spaces per unit	*Reduce spaces to 1.25 spaces per unit*

In all other respects, development on said property shall be subject to the development standards for the underlying zoning district.

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

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

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

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

(SEAL)

Attest:

_____
Steven Sprague, City Auditor

First Reading:
Second Reading:
Final Passage:

THE CITY OF Fargo FAR MORE

Office of the City Attorney

City Attorney
Erik R. Johnson

Assistant City Attorney
Nancy J. Morris

October 15, 2020

2

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

RE: Dangerous Building located at 703 12th Street North, Fargo, North Dakota

Dear Commissioners,

Enclosed for your review and approval are proposed Findings of Fact and an Order regarding the dangerous building proceeding for the property at 703 12th Street North. At its October 5th, 2020 meeting, the report presented by Bruce Taralson, city of Fargo Building Official, was approved by the Board. As such, the City Attorney's Office was directed to prepare the appropriate Findings of Fact, Order, and Notice.

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

Sincerely,

Alissa R. Farol
Assistant City Attorney

Enclosure

cc: Bruce Taralson, Inspections Department

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

Property Address: 703 12th Street North, Fargo, North Dakota

Owner: James Peter Sabo and William F. Rakowski

A hearing was held before the Board of City Commissioners of the City of Fargo on the 5th day of October, 2020 regarding property located at 703 12th Street North, Fargo, North Dakota. Bruce Taralson, Building Official, appeared on behalf of the city of Fargo Inspections Department and provided testimony as to the condition of the property. James Peter Sabo, an owner of the property, appeared and provided testimony. Andrew Buck, a neighboring resident, also appeared and provided testimony.

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

FINDINGS OF FACT

1. That James Peter Sabo and William F. Rakowski, are the owners of the following described real property located in the City of Fargo, County of Cass and State of North Dakota:

South Forty-Five (45) feet of North Ninety-One (91) feet of Lot One (1), Block Six (6), Harwood's Addition to the city of Fargo

The street address for which is: 703 12th Street North, Fargo, North Dakota, 58102.

2. That the subject property is vacant.

3. That on July 27th, 2020, Bill Thompson, Building Inspector for the city of Fargo, inspected the property and found the building, consisting of a single story, wood-framed structure to be a dangerous building within the standards set forth in Article 21-04 of the Fargo Municipal Code

and Section 108.1.5 of the International Property Maintenance Code concerning dangerous structures.

4. That on August 13th, 2020, James Haley, Deputy Assessor for the city of Fargo, performed an inspection on the property and determined that the estimated cost to repair the property would exceed fifty percent (50%) of the building value as established by the Fargo Assessment Department.

5. That the building is unsafe and is a dangerous building in the following respects: (a) fire damage to the front of house; (b) multiple broken windows and others boarded up; (c) front and side entries are unsecured; (d) graffiti present on the building; (e) east addition roof has large sag with missing shingles; (f) fascia/soffit has rotten and missing areas; (g) electrical service is disconnected; and (h) front steps are not code compliant.

6. Further, the City Commission finds that the following conditions exist with respect to the subject property:

a. The structure has been damaged or deteriorated for more than fifty percent (50%) of its original value;

b. The building is unsafe, fails to provide the amenities essential to decent living, and is unfit for human habitation; and

c. The building it is unsafe or dangerous to the health, moral safety or general welfare of the people of the city of Fargo.

7. That the information in the files of the Inspection Department and the City Assessor's Office stemming from various inspections of the property on or before July 27th, 2020 and August 13th, 2020, with respect to the subject property is hereby accepted as true and correct.

8. That the building located at 703 12th Street North, Fargo, North Dakota 58102, is hereby found to be a "dangerous building."

9. Notice of Dangerous Building was posted on the property on or about August 24th, 2020, in accordance with Municipal Code § 21-0404. The Notice of Dangerous Building informed the owner and all occupants, if any, that the "dangerous building" must be vacated and the building demolished within 30 days from the date of the notice.

10. The owners have not sufficiently presented cause why the "dangerous building" should not be demolished.

11. Despite being ordered that the building on the subject property should be demolished or necessary permits be obtained within 30 days of the notice, the owners have failed to do so.

12. That Inspections Department may secure the removal of this building if the owner fails to comply with city ordinances and demolish the property within 30 days from the date of service of the Order.

13. Any cost of demolition shall be assessed against the subject property in accordance with Fargo Municipal Code §21-0405(E).

ORDER

Based on the foregoing Findings of Fact, it is hereby ORDERED that James Pete Sabo, William F. Rakowski, or anyone else claiming an ownership interest, shall demolish the "dangerous building" located at 703 12th Street North, Fargo, North Dakota within 30 days from the date of service of this Order.

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

DATED this _____ day of October, 2020.

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

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

ATTEST:

_____
Steven Sprague, City Auditor

NOTICE OF ENTRY OF ORDER

TO: JAMES PETE SABO, WILLIAM F. RAKOWSKI, AND ALL OTHER PERSONS HAVING INTEREST IN THIS PROPERTY

RE: PROPERTY AT 703 12TH STREET NORTH, FARGO, NORTH DAKOTA 58102

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

DATED this _____ day of October, 2020.

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

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

ATTEST:

_____
Steven Sprague, City Auditor

THE CITY OF Fargo FAR MORE

Office of the City Attorney

City Attorney
Erik R. Johnson

Assistant City Attorney
Nancy J. Morris

October 9, 2020

3

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

RE: Northstar Hospitality, LLC, d/b/a SouthTown PourHouse vs. Board of City Commissioners, City of Fargo, North Dakota

Dear Commissioners,

Please find attached for receive and file a Notice of Appeal from a Decision of a Local Governing Body Pursuant to N.D.C.C. § 28-34-01 in the Northstar Hospitality, LLC, d/b/a SouthTown PourHouse vs. Board of City Commissioners, City of Fargo, North Dakota litigation matter.

SUGGESTED MOTION: I move to receive and file the following Notice of Appeal from a Decision of a Local Governing Body Pursuant to N.D.C.C. § 28-34-01 relating to Northstar Hospitality, LLC, d/b/a SouthTown PourHouse vs. Board of City Commissioners, City of Fargo, North Dakota.

Please feel free to contact me if you have any questions or concerns.

Sincerely,

Nancy J. Morris
Assistant City Attorney

NJM/al
Enclosures

STATE OF NORTH DAKOTA

COUNTY OF CASS

IN DISTRICT COURT

EAST CENTRAL JUDICIAL DISTRICT

Northstar Hospitality, LLC, d/b/a SouthTown PourHouse, Appellant, v. Board of City Commissioners, City of Fargo, North Dakota, Appellee.	Case No. **NOTICE OF APPEAL FROM A DECISION OF A LOCAL GOVERNING BODY PURSUANT TO N.D.C.C. § 28-34-01**

[¶1] PLEASE TAKE NOTICE that, pursuant to North Dakota Century Code section 28-34-01, Appellant, Northstar Hospitality, LLC, d/b/a SouthTown PourHouse, hereby appeals the Board of City Commissioners, City of Fargo, North Dakota's ("City Commission") August 24, 2020 Findings, Conclusions and Order, finding Appellant in violation of Fargo Municipal Code section 25-1506(J) and imposing the penalty set forth in Fargo Municipal Code section 25-1512(F). A true and correct copy of the City Commission's Findings, Conclusions and Order is annexed hereto as **Exhibit A**. Appellant admitted service of the Findings, Conclusions and Order on August 27, 2020.

[¶2] Appellant appeals on the following specifications of error:

1. The City Commission's finding that inclusion of Duane's pizza sales in the food sales requirement of the Class FA license held by Appellant is not in compliance with the license terms was arbitrary, capricious, or unreasonable.

2. There is no substantial evidence to support the City Commission's finding that inclusion of Duane's pizza sales in the food sales requirement of the Class FA license held by Appellant is not in compliance with the license terms.

3. The City Commission's finding that Appellant failed to meet the required food to alcohol ratio required by its Class FA license was arbitrary, capricious, or unreasonable.

4. There is no substantial evidence to support the City Commission's finding that Appellant failed to meet the required food to alcohol ratio required by its Class FA license.

5. The City Commission's finding that Appellant is in violation of Fargo Municipal Code section 25-1506(J) was arbitrary, capricious, or unreasonable.

6. There is no substantial evidence to support the City Commission's finding that Appellant is in violation of Fargo Municipal Code section 25-1506(J).

7. The City Commission's decision to impose the penalty set forth in Fargo Municipal Code section 25-1512(F) was arbitrary, capricious, or unreasonable.

8. There is no substantial evidence to support the City Commission's decision to impose the penalty set forth in Fargo Municipal Code section 25-1512(F).

9. The City Commission's actions and decisions were arbitrary, oppressive, and unreasonable, and application of its methods and policies was unfair, unjust and inequitable.

10. Appellant reserves the right to supplement its objections and bases for appeal noted herein.

Dated this 17th day of September, 2020.

VOGEL LAW FIRM

BY: Brent J. Edison (#04181)

James M. Cailao (#07086)
218 NP Avenue
PO Box 1389
Fargo, ND 58107-1389
701.237.6983

Email: bedison@vogellaw.com
jcailao@vogellaw.com
ATTORNEYS FOR APPELLANT NORTHSTAR HOSPITALITY, LLC, D/B/A SOUTHTOWN POURHOUSE

4175273.1

THE CITY OF Fargo FAR MORE

Office of the City Attorney

City Attorney
Erik R. Johnson

Assistant City Attorney
Nancy J. Morris

October 9, 2020

4

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

RE: Tyler Patel vs. City of Fargo, et al.

Dear Commissioners,

Please find attached for receive and file a Summons and Complaint in the Tyler Patel vs. City of Fargo, et al. litigation matter.

SUGGESTED MOTION: I move to receive and file the following Summons and Complaint relating to Tyler Patel vs. City of Fargo, et al.

Please feel free to contact me if you have any questions or concerns.

Sincerely,

Nancy J. Morris
Assistant City Attorney

NJM/al
Enclosures

Local AO 440 (Rev. 8/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of North Dakota

Tyler Patel,

OCT 8 2020

4:15 pm

Plaintiff

v.

Civil Action No. 3:20-cv-180

Jon Novacek, individually and in his official capacity as a Fargo police officer; Travis Moser, individually and in his official capacity as a Fargo police officer; and City of Fargo, a municipal corporation.

Defendant

SUMMONS IN A CIVIL ACTION

To: Above Named Defendant(s)

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Joshua A. Newville
323 Washington Ave. N., #200
Minneapolis, Minnesota 55401
P: 612.349.2743

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ROBERT ANSLEY, CLERK OF COURT

Date: October 2, 2020

A. Pamela Bloomquist-Burman, Deputy Clerk

Signature of Clerk or Deputy Clerk

UNITED STATES DISTRICT COURT
DISTRICT OF NORTH DAKOTA

Tyler Patel,

Plaintiff,

v.

Jon Novacek, individually and in his official capacity as a Fargo police officer;

Travis Moser, individually and in his official capacity as a Fargo police officer; and

City of Fargo, a municipal corporation,

Defendants.

Case No. _____
Case Type: Civil Rights / § 1983

COMPLAINT

(WITH JURY DEMAND)

INTRODUCTION

1. Tyler Patel is a 27-year-old man with bipolar disorder. On October 2, 2019, he was living in an assistive housing facility for adults with mental illness. When employees began to worry that Mr. Patel was experiencing a mental health crisis and may harm himself, they called 911 to seek help in ensuring his safety.

2. Emergency personnel responded—including fire, medical, and law enforcement officials. The first two were Fargo Police Officers Jon Novacek and Travis Moser. They knew Mr. Patel, and knew of his mental illness. Within seconds of arriving, they drew their weapons and tried to mace Mr. Patel—who was

unarmed and had not committed any crime. Shortly thereafter, Ofc. Novacek shot at Mr. Patel with a pepper ball gun. When he missed, Mr. Patel briefly retreated into a vestibule. Minutes later, after a dozen officers responded and surrounded Mr. Patel, they ordered him out of the doorway. Mr. Patel complied and stepped out with his hands in the air. Officers yelled conflicting commands—including for him to get down on the ground. When Mr. Patel dropped his arms to his sides and stood motionless for six seconds, officers shot him in the face with a pepper ball. Mr. Patel collapsed to the ground. Fargo police then arrested him, jailed him, and tried prosecuting him with felony charges. Mr. Patel is now blind in one eye.

3. There is a documented misperception among police officers that individuals with mental illness are more prone to violence.[1] As happened here, this mistaken belief causes officers to approach a person more aggressively than necessary, contributing to the disproportionate injury and death of people with mental illness during arrest.[2] Likewise, individuals in the throes of a mental health

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[1] Jennifer Fischer, The Americans with Disabilities Act: Correcting Discrimination of Persons with Mental Disabilities in the Arrest, Post-Arrest, and Pretrial Processes, 23 LAW & INEQ. 157, 169–172 (2005) (citing Amy Watson et al., Police Officers' Attitudes Toward and Decisions About Persons with Mental Illness, 55 PSYCHIATRIC SERVS. 49, 52 (2004)).

[2] Id

crisis may not precisely and immediately follow police commands—a characteristic that is often a symptom of their disability.[3] Too frequently, this response causes officers to attempt to physically restrain the person,[4] thus escalating the situation and creating an exigency.

4. Roughly ten percent of police calls involve a person with mental illness,[5] and such individuals are seven times more likely to be arrested than the general population.[6] A widespread misperception that "persons with a mental illness are

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[3] See, e.g., City & County of San Francisco v. Sheehan, 135 S. Ct. 1765, 1770–71 (2015).

[4] See id.

[5] See Michael Avery, Unreasonable Seizures of Unreasonable People: Defining the Totality of Circumstances Relevant to Assessing the Police Use of Force Against Emotionally Disturbed People, 34 COLUM. HUM. RTS. L. REV. 261, 262–65 (2003); Randy Borum et al., Police Perspectives on Responding to Mentally Ill People in Crisis: Perceptions of Program Effectiveness, 16 BEHAV. SCI. & L. 393, 393–94 (1998); Doris A. Fuller et al., Overlooked in the Undercounted: The Role of Mental Illness in Fatal Law Enforcement Encounters, TREATMENT ADVOC. CTR. 1, 1 (2015), http://www.treatmentadvocacycenter.org/storage/documents/overlooked-in-the-undercounted.pdf [https://perma.cc/5QTG-86MF] ("[I]ndividuals with severe mental illness generate no less than 1 in 10 calls for police service.").

[6] See Fischer, supra note 1, at 165–66 (citing Jeffrey Draine et al., Role of Social Disadvantage in Crime, Joblessness, and Homelessness Among Persons with Serious Mental Illness, 53 PSYCHIATRIC SERVS. 565, 566 (2002)); Linda Teplin, Criminalizing Mental Disorder: The Comparative Arrest Rate of the Mentally Ill, 39 AM. PSYCHOLOGIST 794, 794 (1984) ("[F]or similar offenses, mentally disordered citizens had a significantly greater chance of being arrested than non-mentally disordered persons."); see also Borum et al., supra note 5, at 394 ("[M]ost people with severe mental illness will experience at least one arrest and many will be arrested more than once.").

more prone to violence,"[7] and inadequate police training, among other factors, result in this comparatively high arrest rate.[8] These arrests can and do lead to heartbreaking outcomes. Because the law requires that our police do more to avoid these results, Mr. Patel now sues for redress.

5. This is a civil rights action pursuant to the Fourth Amendment of the United States Constitution, 42 U.S.C. § 1983, the Americans with Disabilities Act, § 12101, et seq, and North Dakota common law. As described above and more fully alleged herein, the police defendants unlawfully battered Mr. Patel, violated his right to be free from excessive force, failed to accommodate his mental health disability, and intentionally and negligently caused him injury and damages.

JURISDICTION AND VENUE

6. Plaintiff bases his claims, in part, on 42 U.S.C. §§ 1983 and 121101, *et seq*. This Court has federal question subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343, and supplemental jurisdiction over Plaintiff's state law tort claims.

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[7] Fischer, supra note 1, at 169–71; Sheehan, 793 F.3d 1009, 1009 (9th Cir. 2015) (mem.).

[8] Id., at 165–74.

7. Venue in this Court is appropriate pursuant to 28 U.S.C § 1391, as the Defendants are citizens of this State and District. Further, the unlawful practices alleged herein occurred within the City of Fargo, Cass County, North Dakota.

PARTIES

8. Plaintiff Tyler Patel is an adult resident and domiciliary of North Dakota.

9. Defendant City of Fargo is a political subdivision of the State of North Dakota and employs Defendants Novacek and Moser.

10. Defendant Jon Novacek was and still is a police officer for the City of Fargo in the Fargo Police Department. Defendant Novacek is also an adult resident and domiciliary of this State and District. This Complaint brings causes of action against Defendant Novacek in both his individual and official capacities. Plaintiff alleges that Defendants City of Fargo and Travis Moser are responsible for the negligent training, supervision, and discipline of Defendant Novacek.

11. Defendant Travis Moser was and still is a police sergeant for the City of Fargo in the Fargo Police Department. Defendant Moser is also an adult resident and domiciliary of this State and District. This Complaint brings causes of action against Defendant Moser in both his individual and official capacities. As a supervisory sergeant for the Fargo Police Department, Defendant Moser has the power to make and enforce customs, policies, practices, training and/or discipline of other

Defendants, including Defendant Novacek. Plaintiff alleges that Defendant City of Fargo is responsible for the negligent training, supervision, and discipline of Defendant Moser.

12. Each of the Defendants was wrongful, negligent, or otherwise responsible in some manner for the events and happenings described herein, and proximately caused injuries and damages to Plaintiff. Plaintiff may amend and name further such police defendants as this matter progresses.

13. The acts and omissions of the Defendants were pursuant to the actual customs policies, practices, and procedures of the Fargo Police Department. Defendants were agents, servants, employees, partners, joint venturers, co-conspirators, and/or alter egos of other Defendants and/or the Fargo Police Department, and in doing the things herein alleged, were acting within the course and scope of those relationships. Defendants gave consent, aid, and assistance to the other Defendants and Fargo police officers, and ratified and/or authorized the acts or omissions of other Defendants as alleged herein, except as may be otherwise specifically alleged. At all material times, each Defendant was jointly engaged in tortious activity, resulting in the deprivation of Plaintiff's constitutional rights and other harm.

14. At all times relevant herein, Defendants acted under color of state law and in the scope of their duties, as within the meaning of 42 U.S.C. § 1983, *et seq.*

15. This Complaint may be pled in the alternative pursuant to Fed. R. Civ. P. 8(d)(2).

GENERAL ALLEGATIONS

16. Plaintiff Tyler Patel was born and raised in Anchorage, Alaska.

17. At age 12, Patel was diagnosed with bi-polar 1 disorder. Individuals affected by bipolar 1 disorder suffer from cycling between severe depression and episodes of mania—which are periods of abnormally elevated or irritable mood and high energy, accompanied by behavior that disrupts normal life.

18. In part to seek better treatment resources, Patel and his mother moved from Alaska to North Dakota when Patel was approximately 20-years-old.

19. Patel continued to struggle with his bipolar 1 disorder into early adulthood. Suffering from serious and cyclic episodes of depression and mania, Patel had periodic and sometimes ongoing suicidal ideation.

20. On October 2, 2019, Patel was suffering from a mental health crisis while living at the Dacotah Foundation's Alternative Care Services—a short-term residential facility at 1322 Gateway Drive in Fargo that offers 16 crisis beds for adults with mental illness and/or chemical dependency as an alternative to hospitalization.

21. On that date, a Dacotah employee called 911 to report that Patel may have cut himself and that he may be suicidal.

22. The Dacotah employee did not indicate that Patel was in any way a danger to third parties. For example, the employee did not report that Patel had directly or indirectly threatened anyone. Nor did the employee report that Patel had a weapon, or that he had threatened use of a weapon against any third party. Rather, the Dacotah employee called to report concern for Patel's well-being.

23. Emergency services responded, including fire and medical personnel, and at least ten Defendant police officers.

24. As the first two Defendant officers arrived on scene, multiple people (including Dacotah staff), accompanied Patel to the door, trying to help him outside to meet emergency responders.

25. From the outset, the Defendant officers failed to make any effort to deal with Patel in any manner indicative of proper mental health crisis training.

26. Although Patel was bleeding and uneasy—deep in the throes of a mental health crisis, he never threatened any of the individuals who were trying to help him.

27. Nor did Patel have a weapon.

28. Nevertheless, the first two Defendant officers immediately escalated the situation by ordering those people back inside, leaving Patel alone to face the officers.

29. Patel did not say that he had a weapon, and he did present or otherwise signal that he had possession of a weapon.

30. Within seconds, the officers trained their weapons on Patel.

31. Patel had difficulty grasping the situation and understanding what the officers were saying to him.

32. Within thirty seconds, Defendant Novacek tried pepper-spraying Patel, who was still unarmed and confused.

33. Patel retreated into the building's vestibule. Again, he did not threaten or harm anyone, and he did not say that he had a weapon. Rather, Patel simply tried to comprehend what was happening.

34. As he did so, one of the officers radioed that Patel did not have anything in his hand. Even though Patel never said he had a weapon, the officer suggested that Patel was pretending to have a gun.

35. As several more Defendant officers arrived on scene, they ran into the parking lot and pointed weapons at Patel.

36. Another armed officer set a post in the building, on the other side of the vestibule.

37. Despite having secured the scene, the Defendant officers did not take the time to deescalate the situation. Instead, they continued to yell contradictory commands at Patel from behind drawn weapons.

38. The officers' conduct, all on top of Patel's already dazed and confused mental state—caused Patel to be even further frightened and overwhelmed.

39. Still, Patel again opened the vestibule door, slowly and tentatively, and continued trying to talk to the officers and make sense of the situation.

40. No objectively reasonable officer could conclude that Patel was turning violent towards officers or other third parties.

41. Nevertheless, Defendant Novacek attempted to shoot Patel with a pepper ball gun, without so much as a warning that he would do so. The shot barely missed Patel, instead hitting the doorway above him.

42. There was no reasonable need for such high-level use of force.

43. At the time Defendant Novacek first fired the pepper ball gun at Patel, Patel had not threatened anyone. He had done nothing to warrant such a forceful response.

44. At the time Defendant Novacek first fired the pepper ball gun at Patel, Patel was unarmed and clearly did not have a weapon. He was cornered in a vestibule, surrounded by police, and was obviously confused and frightened.

45. Trying to shoot Patel with a pepper ball gun at that moment was a level of force grossly disproportionate to the situation. Indeed, it was excessive and further exacerbated Patel's state of mental crisis and confusion, again causing Patel to flee into the vestibule.

46. Defendant officers then continued yelling at Patel. One yelled that they were there to help, while others ordered him to come out of the vestibule with his hands in the air.

47. Patel, still trying to make sense of the situation, complied and exited the vestibule again a short while later, with his hands in the air.

48. Patel stepped out to face more than one dozen armed officers.

49. As he stepped out, officers spoke over top of each other, despite one commenting that only one of them should talk at a time.

50. For seven seconds, Patel stood with his hands in the air.

51. As officers gave conflicting commands, including for Patel to get down on the ground, Patel dropped his arms to his sides.

52. Patel did not reach for his waistband.

53. He did not reach in his pockets.

54. He did not obscure his hands in any way.

55. For six seconds, Patel stood completely frozen.

56. He did not attempt to flee or otherwise resist arrest.

57. He did not advance towards officers.

58. He did not threaten anyone.

59. As, Defendant Moser yelled, "On your knees…," and before Patel could respond, Moser ordered Novacek, "Let him have it!"

60. At that moment, as Patel still stood motionless, Defendant Novacek shot him repeatedly with the pepper ball gun, striking Patel in the face and in the chest.

61. Defendant Novacek intended to strike Patel.

62. Patel collapsed to the ground.

63. Patel suffered extreme pain and serious injury.

64. At the time that Defendant Novacek shot Patel, it was blatantly apparent that Patel was not holding a weapon.

65. At the time that Defendant Novacek shot Patel, it was blatantly apparent that Patel was not reaching for a weapon.

66. At the time that Defendant Novacek shot Patel, it was not objectively reasonable for Defendants to conclude that Patel was attempting to retrieve a weapon so as to use it on police or third parties.

67. At the time that Defendant Novacek shot Patel, it was blatantly apparent that Patel was not attempting to flee or fight with officers.

68. Simply put, when Defendant Moser ordered to shoot Patel, and when Defendant Novacek complied and did so, it was not objectively reasonable for either Defendant to conclude that they had any lawful basis to use such force against Patel.

69. Defendants' effort to subdue Patel with force was excessive, unreasonable, and grossly disproportionate to the situation—one in which Defendants had instead been called upon to *help* him.

70. Defendants cannot justify using the serious force of a projectile weapon against a mentally-ill person that had threatened nobody but himself.

71. None of the Defendant officers meaningfully intervened as Defendants Novacek and Moser used unlawful and excessive force on Patel.

72. Defendants tried to subsequently justify the use of force by repeatedly stating that Patel said that he possessed a handgun, and that officers felt that Patel was a threat to them or others in the building. Defendants and Fargo officers and administrators repeated these refrains to on-scene witnesses (prior to taking their official statements), to the media, to other on-scene officers, to Patel, to Patel's family, to Patel's attorneys, to use of force investigators, and more. Further, Defendants and Fargo officers and investigators consulted each other and arrived at a shared version of events prior to completing interviews and finalizing the use of force investigation. For example, the use of force investigation appears to contain identical and near-

identical language to describe the officers' purported fears of deadly threat. Far from any semblance of a legitimate, probative investigation into the reasonableness of the use of force exerted against Patel, the use of force investigation seems to merely have been an effort to justify the shooting and secure qualified immunity in any potential civil action.

73. Long before Defendant Novacek shot Patel, it was clearly established that it is unlawful for police to use such serious force on a non-threatening, non-fleeing, non-resisting individual who was not suspected of a serious crime, was not threatening anyone, was no longer resisting arrest, and was 15–25 feet away from law enforcement.

74. Defendants' actions and omissions were some combination or all of: intentional, wanton, willful, shocking to the conscience, reckless, malicious, deliberately indifferent to Patel's rights, done with actual malice, grossly negligent, negligent, and objectively unreasonable.

75. As a direct and proximate result of each of Defendants' acts and/or omissions, Patel sustained (and continues to sustain) injury and damages, including but not limited to: excessive force, hospital and medical expenses, pain, suffering, permanent injury, permanent blindness, mutilation, severe emotional distress and trauma, monetary damages, and violation of constitutional rights—all damages and

penalties recoverable pursuant to 42 U.S.C. §§ 1983 and 1988, and otherwise allowed under North Dakota and United States statutes, codes, and common law.

76. As a direct and proximate result of the Defendants' acts and/or omissions, Patel has suffered, and continues to suffer, extreme physical and emotional injury to be further determined at trial.

COUNT 1:

EXCESSIVE FORCE

42 U.S.C. § 1983 – THE FOURTH AMENDMENT

(As to Defendants Novacek and Moser)

77. Plaintiff incorporates the allegations set forth in each of the preceding and subsequent paragraphs as if fully set forth herein and throughout.

78. Title 42 U.S.C. § 1983 prohibits, *inter alia*, state actors from depriving persons of any rights, privileges, or immunities secured by the United States Constitution, including the right to be free from unreasonable searches and seizures and excessive force, as guaranteed by the Fourth Amendment and incorporated through the Fourteenth Amendment. This right and the state of the relevant law, as described above, was clearly established in October 2019. Additionally, it was clearly established that:

a. An officer can be liable for an unreasonable seizure under the Fourth Amendment if he fails to intervene to prevent the unconstitutional use of excessive force by another officer.

b. Officers are liable for injuries proximately caused by their constitutional torts.

c. An officer's wrongdoing need only be a substantial factor in producing the plaintiff's injuries to qualify as a proximate cause; it need not be the sole cause.

d. An officer's use of force must be objectively reasonable in light of the facts and circumstances confronting the officer.

79. In violation of the Fourth Amendment and 42 U.S.C. § 1983, Defendants deprived Plaintiff of his right to be free from excessive force when they used unreasonable force against him that caused him injury and damages, and when they failed to intervene to prevent one or more of these injuries by another officer.

80. As a direct and proximate result of Defendants' actions, Plaintiff has been injured, suffering severe physical, mental and emotional pain, short- and long-term physical and emotional injury, unlawful seizure, excessive force, dignitary harm, discomfort, embarrassment, humiliation, fear, anxiety, apprehension, sleeplessness, a generally diminished sense of personal and family safety, increased fear of law

enforcement, attorneys' fees, medical care and insurance fees, the costs of bringing suit, and more.

81. Defendants, as a result of their illegal behavior, are liable to Plaintiff for the above-mentioned injuries, as well as punitive damages.

82. Total damages suffered by Plaintiff are to be further determined at trial.

COUNT 2:

FAILURE TO ACCOMMODATE

AMERICANS WITH DISABILITIES ACT

(As to all Defendants)

83. Plaintiff incorporates the allegations set forth in each of the preceding and subsequent paragraphs as if fully set forth herein and throughout.

84. Title II of the Americans with Disabilities Act provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132.

85. A Department of Justice regulation implementing Title II of the ADA states that "a public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the

modifications would fundamentally alter the nature of the service, program, or activity." 28 C.F.R. § 35.130(b)(7).

86. The requirement to reasonably accommodate individuals with disabilities applies to police officers and departments in the course of arresting individuals with disabilities.

87. Plaintiff was a qualified individual with a mental health disability on October 2, 2019, as he suffered from bipolar 1 disorder and depression to the point of suicidal ideation, and he was also experiencing a mental health crisis, each of which substantially limited his ability to concentrate, communicate, and comprehend. Defendants knew Plaintiff was such a qualified individual both because of information provided to them by callers, through personal experiences and knowledge of Plaintiff, and through direct observations of Plaintiff after arriving at the scene.

88. Defendants discriminated against Plaintiff by failing to provide a reasonable accommodation in the course of dealing with him. Defendants failed to adjust their tactics to account for Plaintiff's mental illness. The situation had been controlled sufficiently to afford the officers an opportunity to wait for support and to employ less confrontational tactics. Defendants should have engaged in non-threatening communications with Plaintiff, used the passage of time to defuse the

situation in a nonviolent manner, allowed trained crisis intervention specialists to negotiate his peaceful surrender, removed a number of weapons from the scene to avoid frightening or overwhelming him, designated a single individual to communicate with him to avoid miscommunication or confusion, and taken greater care to deescalate the situation rather than to escalate it. Additional accommodations may also have been available to Defendants that would have accomplished the goal of detaining Plaintiff and defusing the situation without incident.

89. As a direct and proximate result of Defendants' actions, Plaintiff has been injured, suffering severe physical, mental and emotional pain, short- and long-term physical and emotional injury, unlawful seizure, excessive force, dignitary harm, discomfort, embarrassment, humiliation, fear, anxiety, apprehension, sleeplessness, a generally diminished sense of personal and family safety, increased fear of law enforcement, attorneys' fees, medical care and insurance fees, the costs of bringing suit, and more.

90. Defendants' conduct that violated Title II of the ADA also violated Plaintiff's Fourth and Fourteenth Amendment rights, subjecting Plaintiff to excessive force and failing to afford Plaintiff equal protection of the laws despite his status as someone with a mental health disability.

91. Defendants, as a result of their illegal behavior, are liable to Plaintiff for the above-mentioned injuries, as well as punitive damages.

92. Total damages suffered by Plaintiff are to be further determined at trial.

COUNT 3

SUPERVISORY AND ENTITY LIABILITY

MONELL

(As to Defendants Moser and City of Fargo)

93. Plaintiff incorporates the allegations set forth in each of the preceding and subsequent paragraphs as if fully set forth herein and throughout.

94. The unconstitutional actions and/or omissions of Defendants Novacek, Moser, and other officers employed by and acting on behalf of Defendant City of Fargo, on information and belief, were pursuant to the following customs, policies, practices, and/or procedures of the Fargo Police Department, stated in the alternative, which were directed, encouraged, allowed, and/or ratified by policymaking officers of Fargo Police Department:

a. To use or tolerate the use of excessive and/or unjustified force;

b. Failing to call for trained backup and escalating a situation that not did warrant escalation;

c. To fail to use appropriate and generally accepted law enforcement procedures in handling citizens with mental health disabilities and/or who are experiencing a mental health crisis.

d. To use or tolerate inadequate, deficient, and improper procedures for handling, investigating, and reviewing complaints of officer misconduct.

e. Policy of failing to discipline poorly performing officers;

f. Tolerating recurring, documented instances of violent treatment of people who come in contact with the police, through both the intentional use of excessive force and/or through negligent actions;

g. Failing to maintain a process for identifying and deterring unconstitutional conduct;

h. Failing to maintain a process for receiving, handling, adjudicating, and announcing the disposition of complaints alleging misconduct or violation of rules, or the excessive use of force;

i. Failing to have a complete set of modern and meaningful policies, practices, or training procedures that effectively prevent the excessive use of force;

j. Failing to supervise and train officers in association with the use of force;

k. Failing to supervise and train officers in association with the use of force against persons with mental health disabilities;

l. Failing to supervise and train officers in association with the use of force against persons experiencing mental health crises;

m. Being deliberately indifferent to the Constitutional rights of persons with whom the police come into contact;

n. Failing to correct continuing patterns of misbehavior that revealed through lawsuits, citizen complaints, media report, and increasing uses of force.

95. Defendants City of Fargo and Moser failed to properly train, hire, instruct, monitor, supervise, evaluate, investigate, intervene, and discipline Defendants Moser, Novacek, and other Fargo Police Department personnel, with deliberate indifference to Plaintiff's constitutional rights, which were thereby violated as described above.

96. The unconstitutional actions and/or omissions of Defendants Novacek, Moser, and other City of Fargo Police Department personnel, as described above, were approved, tolerated, and/or ratified by policy-making officials of the City of

Fargo Police Department. Plaintiff is informed and believes, and thereupon alleges, the details of this incident have been revealed to the authorized policy makers within the Fargo Police Department, and that such policy makers have direct knowledge of the fact that the pepper ball shooting of Plaintiff was not justified, but rather represented an unconstitutional display of unreasonable and excessive force. Notwithstanding this knowledge, the authorized policy makers within the Fargo Police Department approved Defendants' use of force, and the basis of that use of force. By so doing, the authorized policy makers within the Fargo Police Department have shown affirmative agreement with the individual Defendant officers' actions, and have ratified the unconstitutional acts of the individual Defendants.

97. The aforementioned customs, policies, practices, and procedures, the failures to adequately train, evaluate, investigate, intervene, and discipline, as well as the unconstitutional orders, approvals, ratification and toleration or wrongful conduct by Defendants City of Fargo and Moser were a moving force and/or proximate cause of the deprivations of Plaintiff's clearly-established and well-settled constitutional rights in violation of 42 USC § 1983, as set forth above.

98. Defendants subjected Plaintiff to their wrongful conduct, depriving Plaintiff of rights described herein, knowingly, maliciously, and with conscious and

reckless disregard for whether the rights and safety of Plaintiff and others would be violated by their acts and/or omissions.

99. As a direct and proximate result of the unconstitutional actions, omissions, customs, policies, practices, and procedures of Defendants City of Fargo and Moser, Plaintiff has been injured, suffering severe physical, mental and emotional pain, short- and long-term physical and emotional injury, unlawful seizure, excessive force, dignitary harm, discomfort, embarrassment, humiliation, fear, anxiety, apprehension, sleeplessness, a generally diminished sense of personal and family safety, increased fear of law enforcement, attorneys' fees, medical care and insurance fees, the costs of bringing suit, and more.

100. Defendants, as a result of their illegal behavior, are liable to Plaintiff for the above-mentioned injuries, as well as punitive damages.

101. Total damages suffered by Plaintiff are to be further determined at trial.

COUNT 4:

NEGLIGENCE

NORTH DAKOTA COMMON LAW

(As to all Defendants)

102. Plaintiff incorporates the allegations set forth in each of the preceding and subsequent paragraphs as if fully set forth herein and throughout.

103. Each Defendant owed Plaintiff the duty to act with due care in the execution and enforcement of any right, law, or legal obligation.

104. Each Defendant owed Plaintiff the duty to act with reasonable care.

105. The general duties of reasonable care and due care owed to Plaintiff by each Defendant include, but are not limited to:

a. to refrain from using excessive and/or unreasonable force against Plaintiff;

b. to refrain from unreasonably creating the situation where force, especially excessive force, is used;

c. to refrain from abusing the authority granted to Defendants by law;

d. to refrain from violating Plaintiff's rights guaranteed by the United States Constitution, the laws of North Dakota, and as otherwise protected by law.

106. Additionally, these general duties of reasonable care and due care owed to Plaintiff by Defendants City of Fargo and Moser include but are not limited to the following specific obligations

a. to properly and adequately train, evaluate, investigate, intervene, and discipline their employees, agents, and/or law enforcement officers to

ensure that those employees/agents/officers act at all times in the public interest and in conformance with law;

b. to make, enforce, and at all times act in conformance with policies and customs that are lawful and protective of individual rights, including Plaintiff's;

c. to refrain from making, enforcing, and/or tolerating the wrongful policies and customs set forth above.

107. Defendants, by their acts and omissions, breached each and every one of the aforementioned duties owed to Plaintiff.

108. As a direct and proximate result of Defendants' actions and omissions, Plaintiff has been injured, suffering severe physical, mental and emotional pain, short- and long-term physical and emotional injury, unlawful seizure, excessive force, dignitary harm, discomfort, embarrassment, humiliation, fear, anxiety, apprehension, sleeplessness, a generally diminished sense of personal and family safety, increased fear of law enforcement, attorneys' fees, medical care and insurance fees, the costs of bringing suit, and more.

109. Defendants, as a result of their illegal behavior, are liable to Plaintiff for the above-mentioned injuries, as well as punitive damages.

110. Total damages suffered by Plaintiff are to be further determined at trial.

COUNT 5:

BATTERY

NORTH DAKOTA COMMON LAW

(As to Defendants Novacek and Moser)

111. Plaintiff incorporates the allegations set forth in each of the preceding and subsequent paragraphs as if fully set forth herein and throughout.

112. Pursuant to common law, Defendants Novacek and Moser are liable to Plaintiff for battery for shooting Plaintiff with a pepper ball gun.

113. Defendants intended to cause harmful or offensive touching, and lacked consent for the intended contact.

114. Defendants willfully intended to cause unlawful use of force and violence upon Plaintiff, resulting in harmful and offensive contact.

115. As a direct and proximate result of Defendants' battery, Plaintiff sustained—and continues to sustain—injury and damages. Plaintiff is entitled to relief as set forth herein.

116. Defendants Novacek and Moser, as a result of their illegal behavior, are liable to Plaintiff for the above-mentioned injuries, as well as punitive damages.

117. Total damages suffered by Plaintiff are to be further determined at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that this Court:

Enter a judgment in favor of Plaintiff and against Defendants:

1. An order granting Plaintiff joint and severable judgments against Defendants;
2. An order granting Plaintiff compensatory damages in such amount as the jury may determine;
3. An order granting Plaintiff punitive damages in such amount as the jury may determine;
4. An order granting Plaintiff injunctive and declaratory relief against Defendants, whereby the Defendants are temporarily and permanently enjoined and restrained from any further illegal action against Plaintiff.
5. An order for Defendants to pay Plaintiff's costs, interest and attorneys' fees, as allowed under Title 42 U.S.C. § 1988.
6. An order for Defendants to pay any and all further relief available, such as any relief this Court may consider equitable or appropriate.

Plaintiff demands a jury trial.

Dated: October 2, 2020

MADIA LAW LLC

/s/Joshua A. Newville
Joshua A. Newville

323 Washington Ave. N., #200
Minneapolis, Minnesota 55401
P: 612.349.2743 | F: 612.235.3357
Email: newville@madialaw.com
Attorney for Plaintiff

$25.00
#2571
10-5-20

APPLICATION FOR A LOCAL PERMIT OR RESTRICTED EVENT PERMIT

OFFICE OF ATTORNEY GENERAL
SFN 9338 (08/2019)

59

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

Name of Nonprofit Organization or group of people permit is issued to NDSU Judging Club	Date(s) of Activity to	For a raffle, provide drawing date(s): 3/03/2021	
Person Responsible for the Gaming Operation and Disbursement of Net Income Sean Nichols	Title President	Business Phone Number 701-652-5450	
Business Address 1420 Bolley Dr.	City Fargo	State ND	Zip Code 58105
Mailing Address (if different) c/o NDSU Student Government PO Box 6050 Dept. 2837	City Fargo	State ND	Zip Code 58108-6050
Name of Site Where Game(s) will be Conducted NDSU Sheppard Arena	Site Address 1350 Albrecht Blvd.		
City Fargo	State ND	Zip Code 58105	County Cass

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

[ ] Bingo [x] Raffle [ ] Raffle Board [ ] Calendar Raffle [ ] Sports Pool [ ] Poker * [ ] Twenty-one * [ ] Paddlewheels *

DESCRIPTION AND RETAIL VALUE OF PRIZES TO BE AWARDED

Game Type	Description of Prize	Retail Value of Prize
Heifer Raffle	Red Angus Heifer	$1000

Game Type	Description of Prize	Retail Value of Prize

Total: (Limit $40,000 per year) $ 1000

Intended uses of gaming proceeds: Proceeds will go towards travel expenses for judging teams.

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

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

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

Signature of Organization or Group's Top Official	Date	Title	Business Phone Number
Sean Nichols	9/29/20	President	(701) 652-5450

V 3061
25.00
10/14/20

APPLICATION FOR A LOCAL PERMIT OR RESTRICTED EVENT PERMIT

OFFICE OF ATTORNEY GENERAL
SFN 9338 (08/2019)

SB

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

Name of Nonprofit Organization or group of people permit is issued to	Date(s) of Activity		For a raffle, provide drawing date(s):
Red River Raiders Marine Corps League Det. #1453	to		11/07/2020
Person Responsible for the Gaming Operation and Disbursement of Net Income	Title		Business Phone Number
Robbie Grande	Jr. Vice Comm		(701) 371-2655
Business Address	City	State	Zip Code
16674 37th St Se	West Fargo	ND	58078-6704
Mailing Address (if different)	City	State	Zip Code
Name of Site Where Game(s) will be Conducted	Site Address		
Hilton Garden Inn	4351 17th Ave S		
City	State	Zip Code	County
Fargo	ND	58103-3538	Cass

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

☐ Bingo ☒ Raffle ☐ Raffle Board ☐ Calendar Raffle ☐ Sports Pool ☐ Poker * ☐ Twenty-one * ☐ Paddlewheels *

DESCRIPTION AND RETAIL VALUE OF PRIZES TO BE AWARDED

Game Type	Description of Prize	Retail Value of Prize
Raffle	Quilt	$600.00
Raffle	Bill's GS Cert.	$300.00
Raffle	KaBar/Display	$250.00
Raffle	Color Street	$100.00
Raffle	HGI Hotel Cert.	$125.00
Raffle	CreativeUncorked	$50.00
Raffle	USMC Print	$40.00
Raffle	Twins Print	$40.00
Raffle	Bottle opener X2	$80.00

Game Type	Description of Prize	Retail Value of Prize
Raffle	John & Wayne	$50.00
Raffle	Range Pass X8	$320.00
Raffle	Pocket knive X8	$160.00
Raffle	Speed loader X2	$100.00

Total: $ 2,215.00 (Limit $40,000 per year)

Intended uses of gaming proceeds: Supporting the RR Raiders MCL detachments mission serving area veterans.

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

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

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

Signature of Organization or Group's Top Official	Date	Title	Business Phone Number
	10/9/2020	Jr Vice Commendant	(701) 371-2655

CITY OF FARGO, NORTH DAKOTA
MAJOR OPERATING FUNDS FINANCIAL STATUS REPORT
YEAR TO DATE THROUGH 9/30/2020
BUDGET TO ACTUAL (Unaudited)

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REVENUES:	Budget	Actual	Variance	Variance Percentage	Notes
General Fund	**$ 82,958,000**	**$ 81,757,000**	**$ (1,201,000)**	**-1.4%**	
Enterprise Funds:					
Water	18,369,000	17,445,000	(924,000)	-5.0%	
Solid Waste	13,332,000	12,649,000	(683,000)	-5.1%	
Wastewater	10,085,000	9,559,000	(526,000)	-5.2%	
Forestry	1,691,000	1,706,000	15,000	0.9%	
Street Lighting	2,514,000	2,515,000	1,000	0.0%	
Storm Sewer	2,134,000	2,166,000	32,000	1.5%	
Vector Control	539,000	538,000	(1,000)	-0.2%	
Total Enterprise Funds	**48,664,000**	**46,578,000**	**(2,086,000)**	**-4.3%**	
Total Operating Funds	**$ 131,622,000**	**$ 128,335,000**	**$ (3,287,000)**	**-2.5%**	

EXPENDITURES:	Budget	Actual	Variance	Variance Percentage	Notes
General Fund	**$ 77,653,000**	**$ 76,161,000**	**$ 1,492,000**	**1.9%**	
Enterprise Funds:					
Water	22,027,000	22,626,000	(599,000)	-2.7%	
Solid Waste	13,624,000	11,399,000	2,225,000	16.3%	
Wastewater	13,337,000	12,201,000	1,136,000	8.5%	
Forestry	1,988,000	1,967,000	21,000	1.1%	
Street Lighting	2,658,000	2,561,000	97,000	3.6%	
Storm Sewer	2,256,000	1,935,000	321,000	14.2%	
Vector Control	571,000	471,000	100,000	17.5%	
Total Enterprise Funds	**56,461,000**	**53,160,000**	**3,301,000**	**5.8%**	
Total Operating Funds	**$ 134,114,000**	**$ 129,321,000**	**$ 4,793,000**	**3.6%**	

Reporting Basis: Approved Budget

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CITY OF FARGO
GENERAL FUND - BUDGET TO ACTUAL
THROUGH SEPTEMBER 2020
(UNAUDITED)

	2020 BUDGET	2020 ACTUAL	VARIANCE
REVENUES:			
Taxes	$ 31,227,873	$ 31,133,566	$ (94,307)
Licenses & Permits	3,788,015	4,255,673	467,658
Fines & Traffic Tickets	1,341,607	1,006,482	(335,125)
Intergovernmental Revenue	21,051,147	22,101,266	1,050,119
Charges for Services	11,709,695	8,856,453	(2,853,242)
Interest	2,287,494	3,302,403	1,014,909
Miscellaneous Revenue	1,350,128	586,316	(763,812)
Transfers In	10,202,491	10,515,264	312,773
Total Revenues	**$ 82,958,450**	**$ 81,757,423**	**$ (1,201,027)**
EXPENDITURES:			
City Administrator	$ 5,798,018	$ 5,443,889	$ 354,129
Finance	6,023,235	5,137,362	885,873
Planning & Development	3,290,107	3,128,425	161,682
Transit	6,471,978	5,623,033	848,945
Public Works	12,460,609	12,658,915	(198,306)
Fire Department	10,732,514	10,426,178	306,336
Police	17,164,763	17,072,363	92,400
Health	8,730,904	8,623,402	107,502
Library	3,559,185	3,443,471	115,714
Commission	536,132	471,336	64,796
Civic Center	306,398	266,578	39,820
Social Services	340,026	133,530	206,496
Capital Outlay	290,090	127,217	162,873
Vehicle Replacement/IT	235,850	208,802	27,048
Contingency	(1,457,347)	195,912	(1,653,259)
Transfers Out	3,170,308	3,200,848	(30,540)
Total Expenditures	**$ 77,652,770**	**$ 76,161,261**	**$ 1,491,509**
Excess of Revenue Over (Under) Expenditures	**$ 5,305,680**	**$ 5,596,162**	**$ 290,482**

THE CITY OF Fargo FAR MORE

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

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TO: BOARD OF CITY COMMISSIONERS

FROM: KENT COSTIN, DIRECTOR OF FINANCE KAC

RE: STATE WATER COMMISSION COST REIMBURSEMENT APPROVAL

DATE: October 6, 2020

The existing legislation in place for State Water Commission funding related to the Fargo-Moorhead Metropolitan Area Flood Risk Management Project requires that the Fargo City Commission, Cass County Commission, and the Cass Water Resource Board approve all payment reimbursement requests prior to their submission and ultimate payment.

The attached reimbursement request has been prepared by Finance staff and is ready for processing. Your approval of the request for funds is hereby requested as required.

Suggested Motion:

Approve a State Water Commission request for cost reimbursement for Fargo-Moorhead Metropolitan Area Flood Risk Management Project costs totaling $544,675.95.

THE CITY OF Fargo FAR MORE

FINANCE OFFICE
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Fargo, ND 58102
Phone: 701.241.1333 | Fax: 701.476.4188
www.FargoND.gov

October 6, 2020

Garland Erbele, P.E.
North Dakota State Water Commission
900 East Boulevard Avenue, Dept 770
Bismarck, ND 58505-0850

Dear Garland,

The Metro Flood Diversion Authority is submitting eligible costs for reimbursement request #107 pursuant to the terms and conditions of House Bill 1020 for costs incurred from August 1, 2020 to August 31, 2020 on the Fargo-Moorhead Metropolitan Area Flood Risk Management Project. These costs are summarized in the attached cost summaries and are supported by detailed disbursement records included within this submission.

The total amount of the claim for reimbursement is $544,675.95.

State Funds Available	Amount Spent Previous Request	Amount Spent This Period	State Cost Share	Reimbursement Request This Period	Balance of State Funds
$310,500,000	**$228,450,560.26**	**$1,089,351.90**	**50%**	**$544,675.95**	**$81,504,763.79**

Project Narrative, this request:

Project Number	Project Description
V02801	Final Retainage Payout for WP 42A.2, 2nd Street North Pump Station
V02825	Pay Application #14 for WP42E – 2nd St S and Main Ave Flood Mitigation
V06301	Utility relocation for Diversion Channel
V06801	Building Permit Application Fee – Wild Rice River Control Structure

We certify that $91,908,419 has been expended on the acquisition of homes and that these costs are eligible for the local matching share requirements of SB 2020. Records relating to these costs are on file with the City of Fargo in the Office of the City Auditor.

The City of Fargo, Cass County Commission, and the Cass County Joint Water Resource Board have approved our request for funds as required in SB 2020. Copies of their approval letters are included.

If you have any questions relating to our request, please contact me directly.

Sincerely,

Kent Costin

Kent Costin
Director of Finance, City of Fargo
Metro Flood Diversion Authority

Required Local Approvals:

_____
City of Fargo

_____
Cass County Commission

_____
Cass County Joint Water Resource Dist.

FM Metropolitan Area Flood Risk Management Project
Summary of Cash Disbursements Eligible for SWC Funding
August 2020

Account Number	Check Date	Check Number	Vendor_Name	Transaction Amount	Expense_Description	Project Number	Project_Description
790-0000-206.10-00	8/20/2020	305858	INDUSTRIAL BUILDERS INC	217,091.25	RETAINAGE PO #174145	V02801	2ND ST NORTH PUMP STATION
790-0000-206.10-00	9/3/2020	306119	INDUSTRIAL BUILDERS INC	429,285.00	Retainage PO 202332	V02825	2ND ST S FLOOD MITIGATION
790-0000-206.10-00	9/3/2020	306119	INDUSTRIAL BUILDERS INC	(7,659.73)	CITY OF FARGO SHARE	V02825	2ND ST S FLOOD MITIGATION
			Total Retainage	**638,716.52**			
790-7950-429.38-99	8/27/2020	306046	PLEASANT TOWNSHIP (PERMITS)	5,000.00	PLEASANT TOWNSHIP APPLICA	V06801	WILD RICE STUC-BLDG PRMT
			Total ND Construction - Other Services	**5,000.00**			
790-7950-429.73-52	9/3/2020	306119	INDUSTRIAL BUILDERS INC	407,261.36	PAY #14-2 ST & MAIN AVE	V02825	2ND ST S FLOOD MITIGATION
790-7950-429.73-52	9/3/2020	306119	INDUSTRIAL BUILDERS INC	(20,331.31)	CITY OF FARGO SHARE	V02825	2ND ST S FLOOD MITIGATION
			Total ND Construction - Flood Control	**386,930.05**			
790-7950-429.73-70	8/6/2020	305626	NUSTAR PIPELINE OPERATING PTR, L.P.	58,705.33	PIPELINE RELOCATION	V06301	CHANNEL UTILITY RELOCATN
			Total ND Construction - Utility Relocations	**58,705.33**			
			Total Expense for Period	**1,089,351.90**			

THE CITY OF Fargo FAR MORE

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www.FargoND.gov

9

TO: BOARD OF CITY COMMISSIONERS

FROM: KENT COSTIN, DIRECTOR OF FINANCE KC

RE: NORTH DAKOTA DEPARTMENT OF EMERGENCY SERVICES PUBLIC ASSISTANCE GRANT AGREEMENT FOR FEMA-4553-DR, CFDA No. 97.036

DATE: SEPTEMBER 29, 2020

A grant agreement from the North Dakota Department of Emergency Services is attached for your review and approval. Execution of this grant agreement will allow us to submit our spring flood expenditures for reimbursement pursuant to the grant cost share formula.

Suggested Motion:

Approve a public assistance agreement with the North Dakota Department of Emergency Services for FEMA event 4553-DR.

NORTH Dakota | Emergency Services
Be Legendary.™

September 23, 2020

City of Fargo
Attn: Kent Costin, Director of Finance
225 4th St N
Fargo, ND 58102

RE: Public Assistance Subgrant Agreement for FEMA-4553-DR

Dear Kent:

Enclosed please find the North Dakota Department of Emergency Services (NDDES) Public Assistance Subgrant Agreement for FEMA-4553-DR. This agreement articulates the roles and responsibilities of NDDES and your entity.

Please review this document carefully and provide the required information on pages 14 and 16. This document should be signed by your entity's Chief Elected Officer or in the case of non-governmental entities, an executive with the authority to enter into contracts. Please keep a copy for your records. Given the situation with COVID-19 and people working from home please email pages 14 and 16 to Nadine Jundt @ najundt@nd.gov. She will have page 15 signed by Justin Messner and emailed back to you for your records. Grant funding will **not** be provided until this agreement is received and the information verified.

If you should have any questions regarding the Public Assistance Grant Program, please contact Randy Reimer at (701) 328-8262.

Sincerely,

Justin Messner
Disaster Recovery Chief
ND Department of Emergency Services

Enclosures: Public Assistance Subgrant Agreement for FEMA-4553-DR

STATE OF NORTH DAKOTA
DEPARTMENT OF EMERGENCY SERVICES

DOUG BURGUM
Governor

Major General Alan S. Dohrmann
Director – Department of Emergency Services

Cody Schulz
Director - Division of Homeland Security

Justin Messner
Disaster Recovery Chief

CFDA Title and Number: Disaster Grants – Public Assistance, 97.036
Disaster Declaration Number: FEMA-4553-DR
Subrecipient: City of Fargo

Public Assistance Grant Program Subgrant Agreement for FEMA-4553-DR

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

A. WHEREAS, President Donald Trump issued a major disaster declaration (FEMA-4553-DR) for the State of North Dakota. The declaration authorized Public Assistance, as well as federal monies under the Hazard Mitigation Grant Program for counties designated eligible in the Federal Emergency Management Agency (FEMA)-State Agreement; 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, pursuant to the North Dakota Disaster Act of 1985 as amended, the Grantee has authority to administer federal financial assistance from the FEMA consequent to a presidential declaration of disaster.
D. WHEREAS, Subrecipient has the legal authority to accept public assistance funds and shall provide all necessary financial and managerial resources to meet the terms and conditions of receiving federal and state public assistance funds.

NOW, THEREFORE, the Grantee and Subrecipient, 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. "FEMA-State Agreement" is the agreement between the FEMA and the State of North Dakota, for a presidential major disaster declaration designated FEMA-4553-DR.

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 2 of the Code of Federal Regulations (CFR) Part 200, 44 CFR Part(s) 13 and 206, and the policies of the FEMA. The Subrecipient further agrees to comply with the Statement of Assurances attached hereto as Attachment A.

ARTICLE III. Funding and Insurance. Grantee shall provide funds to the Subrecipient for eligible activities for the projects approved by the Grantee and the FEMA, as specified in the approved Project Worksheets. The federal allowable costs shall be determined as per 2 CFR Part 200, which shall be seventy-five percent of all eligible costs unless a higher percentage is approved.

A. The approved Project Worksheets shall be transmitted to Subrecipient, and shall state the cumulative funding allowed, the scope of the eligible project, and the costs eligible under this Agreement. Project Worksheets may obligate or deobligate funding, thereby amending the total funding for the project. The approved Project Worksheets shall document the total eligible costs and the total federal share of those costs, which shall be seventy-five percent of all eligible costs, unless a higher percentage is approved. Contingent upon an appropriation by the State Legislature, the Grantee may provide some portion of any nonfederal share for some subrecipients. As a condition of receipt of the federal funding, the Subrecipient agrees to provide any nonfederal share not paid by the Grantee.
B. If the Subrecipient is required to repay the Grantee funds already disbursed by the Grantee, the Subrecipient will have 60 days to reimburse the full amount. If Subrecipient 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 Subrecipient 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. Subrecipient shall provide Grantee with a certificate of such insurance as a condition to funding under this Agreement.

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

A. Without delay, Subrecipient shall advise Grantee of any insurance coverage for the damage identified on the applicable Project Worksheets and of any entitlement to compensation or indemnification from such insurance. All such duplicate benefits are "ineligible costs" which the Subrecipient shall reimburse to the Grantee without delay. The Subrecipient shall also reimburse the Grantee if the Subrecipient receives any duplicate benefits from any other source for any damage identified on the applicable Project Worksheets for which Subrecipient has received payment from Grantee.

B. In the event that Grantee should determine that Subrecipient has received duplicate benefits, by its execution of this Agreement the Subrecipient 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 Subrecipient, 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. Subrecipient shall be responsible for the implementation and completion of the approved projects described in the Project Worksheets in a manner acceptable to Grantee, and in accordance with applicable legal requirements. The contract documents for any project undertaken by Subrecipient, and any land use permitted by or engaged in by Subrecipient, shall be consistent with the local ordinances and State law. Subrecipient shall ensure that any development or development order complies with all applicable planning, permitting and building requirements. Subrecipient 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. Subrecipient Risk Assessment. As required by 2 CFR § 200.331 NDDES will complete a Financial Assistance Recipient Risk Assessment rating form for every subrecipient receiving an award to evaluate their potential risk of non-compliance. Subrecipients 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 subrecipients will be rated upon new disaster and program funding opportunities. The Business Manager will work with the Public Assistance Officer (PAO), or assigned staff, to jointly complete the risk assessment and score subrecipients, 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 B of this Subgrant Agreement.

Every January, or as needed, NDDES will re-evaluate all subrecipient 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 subrecipients can be upgraded or removed from low, medium or high risk status. If a subrecipient 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 subrecipient will be considered high risk in perpetuity.

ARTICLE VII. Required Documentation, Reviews, and Inspections. Subrecipient 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 Subrecipient to create and maintain such documentation, Grantee may terminate further funding under this Agreement, and Subrecipient shall reimburse to Grantee (within 60 days) all payments disbursed earlier to Subrecipient, together with any and all accrued interest.

A. For all Small Projects and in accordance with the NDDES Public Assistance Small Project Monitoring Policy, Grantee will inspect Small Projects by random selection. After inspection Subrecipient shall submit a signed "Public Assistance Small Project Funding Certification".
B. For all Large Projects, Grantee will conduct final inspections to ensure that all work has been performed within the scope of work specified on the Project Worksheets. Costs not within the approved scope of work shall not be reimbursed.
C. Subrecipient shall submit the following documentation for Large Projects (the Large Project threshold for this declaration is $131,100).
    1. a request for reimbursement;
    2. a summary of documentation, which shall be supported by original documents such as contract documents, invoices, purchase orders, change orders, and proof of payment;
    3. a request for project closeout;

ARTICLE VIII. Cost Sharing. The federal share of the eligible costs specified in the Project Worksheets under this Agreement shall be seventy five (75) percent of such costs, unless a higher percentage is approved, and the nonfederal share shall be the remaining amount. Payment of all or 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. Subrecipient commits to meet any local matching funds required for successful project completion. Subrecipient also certifies that any matching funds borne by the Subrecipient will come from a nonfederal source as required by 2 CFR 200.306

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

A. Grantee shall disburse the federal and nonfederal shares of the eligible costs for Small Projects to Subrecipient as soon as practicable after execution of this Agreement and formal notification by FEMA of its approval of the pertinent Project Worksheet.
B. Grantee shall reimburse Subrecipient for ninety percent of the federal share of the eligible costs for Large Projects as soon as practicable after Subrecipient has delivered the following documents to Grantee:
    1. a Request for Reimbursement
    2. a summary of documentation, which shall be supported by original documents such as contract documents, invoices, purchase orders, change orders, and proof of payment;
    3. Certification that the reported costs were incurred in the performance of eligible work.
C. Grantee may advance funds under this Agreement to Subrecipient not exceeding the federal share if Subrecipient meets the following conditions:
    1. Subrecipient shall certify to Grantee that Subrecipient has procedures in place to ensure that funds are disbursed to project vendors, contractors, and subcontractors without unnecessary delay;

2. Subrecipient shall submit to Grantee the budget supporting the request;
3. Subrecipient shall submit a statement justifying the advance and the proposed use of the funds and specifying the amount of funds requested; and
4. Subrecipient 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.

D. Grantee may, in its discretion, pay some or its entire portion of the nonfederal share when the NDDES Director, Division of Homeland Security, authorizes such payments.

E. Grantee may, in its discretion, withhold its portion of the nonfederal share of funding under this Agreement from Subrecipient if Grantee has reason to expect a subsequent unfavorable determination by the FEMA that a previous disbursement of funds under this Agreement was improper.

Memorandum of Agreement Between County and Township. In order for a County to assume legal authority to act as the subrecipient on behalf of a Township for the administration of the federal Public Assistance (PA) Program following a Presidential Disaster Declaration, there must be a completed Memorandum of Agreement between the two jurisdictions on file with NDDES.

No payment of Federal or state funds will be made to a county on behalf of a township until a completed Memorandum of Agreement is submitted to NDDES.

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

A. Subrecipient shall have requested final reimbursement;
B. Subrecipient shall have submitted the documentation specified in Articles VII and VIX of this Agreement;
C. Subrecipient shall have completed the project to the satisfaction of the Grantee;
D. In the case of Large Projects, the Grantee shall have performed the final inspection; or
E. In the case of Small Projects, the NDDES Small Project Monitoring Team shall have performed a compliance review; and
F. When necessary, FEMA Closeout shall be completed.

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 2 Code of Federal Regulations Part 200, 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. Subrecipient 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 Subrecipient 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 Subrecipient shall maintain all records for the Subrecipient 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 Subrecipient, 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 Subrecipient under this Agreement exceed the eligible costs, Subrecipient shall reimburse to Grantee the sum by which the total disbursements exceed the eligible costs within sixty (60) days from the date Subrecipient is notified of such determination. If Subrecipient 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 Subrecipient. 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 Subrecipient 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 Subrecipient 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 Subrecipient is a state or local government or a non-profits organization as defined in OMB Circular A-133, as revised, and if the Subrecipient expends $500,000 or more, then the Subrecipient 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 Subrecipient shall fulfill for auditee responsibilities as provided in Subpart C of OMB Circular A-133, as revised.

E. If the Subrecipient 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 Subrecipient 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 revise, 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 Subrecipient 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 Subrecipient of such non-compliance.

G. If required, the audit is due nine (9) months after the end of the fiscal year of Subrecipient.

H. If audit is conducted as required by subsection D. above, the Subrecipient 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, Subrecipient shall submit a copy of the reporting package to the State at the following address:

ND Department of Emergency Services
PO Box 5511
Bismarck ND 58506

ARTICLE XV. Noncompliance. If the Subrecipient 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 Subrecipient 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 Subrecipient shall undertake an active program of nondiscrimination in its administration of disaster assistance under this Agreement. Subrecipient 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 the project and any other modification shall be in writing and shall take effect only upon execution by both parties. Modifications to any Project Worksheet to be funded under this Agreement may be requested by Subrecipient through Grantee, but the approval of any such modifications shall reside in the sole discretion of the Federal Emergency Management Agency. Any approved modification to a Project Worksheet shall be noted in an additional Project Worksheet version for 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. Time for Performance. Subject to any modification extending the time for the performance of this Agreement approved by Grantee or the FEMA, the time for the performance of emergency work shall be six (6) months from the date of the Presidential Declaration. The time for the performance of permanent work shall be eighteen (18) months from the date of the Presidential Declaration. The time for the performance of this Agreement may be extended for cause by Grantee. Extensions shall not be approved for delays caused by lack of cost-share funding. If any extension request is denied, Subrecipient shall be reimbursed for eligible project costs incurred up to the latest approved date for timely completion. Failure to complete any project will be adequate cause for the termination of funding for that project.

ARTICLE XIX. Contracts with Others. If the Subrecipient contracts with any other contractor or vendor for performance of all or any portion of the work required under this Agreement, the Subrecipient shall incorporate into its contract with such contractor or vendor an indemnification clause holding Grantee and Subrecipient harmless from liability to third parties for claims asserted under such contract.

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 Subrecipient shall be solely responsible to any and all contractors, vendors, and other parties with whom it contracts in performing this Agreement. Unless the Subrecipient is a political subdivision under NDCC 32-12.2-13, the Subrecipient 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 Subrecipient, 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 Subrecipient 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 Subrecipient 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. Subrecipient 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, Subrecipient 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. Grantee is required to submit a Large Project Quarterly Report to FEMA for Large Projects for which a FEMA Large Project Closeout has not been completed. The progress report will include: the status of the project, such as "in design" or "percentage of construction completed"; time extensions granted, if any; a projected completion date; the amount of expenditures and amount of payment for each project; and any problems or circumstances that could delay the project or result in noncompliance with the conditions of the FEMA approval. When the FEMA Large Project Closeout for each large project is complete, the project may be dropped from the report. Periodically, Grantee may request information or reports from the Subrecipient for inclusion in the Large Project Quarterly Report. Subrecipient is required to provide

information or reports as soon as practicable after requested. Interim inspections may be scheduled by Subrecipient before the final inspection, and may be required by Grantee. Grantee may require additional reports as needed, and Subrecipient shall provide any additional reports requested by Grantee as soon as practicable.

ARTICLE XXIII. Monitoring. The Subrecipient shall monitor its performance under this Agreement, as well as that of its subcontractors, Subrecipients 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 Subrecipient 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 Subrecipient is appropriate, the Subrecipient agrees to comply with any additional instructions provided by the Grantee to the Subrecipient regarding such audit. The Subrecipient 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 Subrecipient throughout the contract term to ensure timely completion of all tasks.

ARTICLE XXIV. Mandated Conditions. Subrecipient 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 Subrecipient or its contractors or subcontractors to allow public access to all documents, papers, letters or other material, that are made or received by Subrecipient or its contractors and subcontractors in connection with this Agreement.
D. Subrecipient 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. Subrecipient 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 Subrecipient also certifies that the undersigned person has the authority to legally execute and bind Subrecipient to the terms of this Agreement.
F. Subrecipient agrees that responsibility for compliance with this Agreement rests with Subrecipient, 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 Subrecipient 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 Subrecipient 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 Subrecipient 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 Subrecipient 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 Subrecipient 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 Subrecipient is unable to certify to any of the statements in this certification, such Subrecipient shall attach an explanation to this Agreement. In addition, the Subrecipient shall submit to the Grantee (by email or facsimile) the completed "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion" for each prospective subcontractor which Subrecipient intends to fund under this Agreement. See Attachment B. Such form must be received by the Grantee prior to the Subrecipient 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 Subrecipient 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 Subrecipient, cause the termination of this Agreement and the release of the Grantee from all its obligations to the Subrecipient.

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 Subrecipient 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. Subrecipient shall commence approved project(s) specified by this Agreement without delay.

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

A. 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 Subrecipient in this Agreement is inaccurate or incomplete in any material respect, or Subrecipient 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. Subrecipient 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 Subrecipient 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.

B. Upon the occurrence of any one or more of the foregoing events, Grantee may at its option give notice in writing to Subrecipient to cure its failure of performance if such failure may be cured. Upon the failure of Subrecipient 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 Subrecipient, such notice to take effect when delivered to Subrecipient;
   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 Subrecipient; and
   4. Take any other remedial actions that may otherwise be available under law.

C. 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.

D. Any deobligation of funds or other determination by the FEMA shall be addressed in accordance with the regulations of that Agency.

E. Upon the rescission, suspension or termination of this Agreement, the Subrecipient shall refund to Grantee all funds disbursed to Subrecipient under this Agreement.

F. The venue of any action or proceeding by either Grantee or Subrecipient 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.

G. Notwithstanding anything to the contrary elsewhere in this Agreement, the rescission, suspension or termination of this Agreement by Grantee shall not relieve Subrecipient of liability to Grantee for the restitution of funds advanced to Subrecipient under this Agreement, and Grantee may set off any such funds by withholding future disbursements otherwise due Subrecipient under this Agreement or any other Agreement until such time as the exact amount of restitution due Grantee from Subrecipient 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 Subrecipient shall immediately repay such funds to Grantee. If the Subrecipient fails to repay any such funds, then Grantee may recover the same from funding otherwise due Subrecipient.

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

Subrecipient:
City of Fargo
Kent Costin, Director of Finance
225 4th St N
Fargo, ND58102
Email: kcostin@fargond.gov

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

Primary Agent	Alternate Agent
Kent Costin, Finance Director Name and Title	Jamie Bullock, Grants Accountant Name and Title
701-241-8158 Phone Number	701-241-1358 Phone Number
Kcostin@fargond.gov E-mail	jbullock@fargond.gov E-mail

STATE OF NORTH DAKOTA
DEPARTMENT OF EMERGENCY SERVICES

SIGNATURE PAGE

PUBLIC ASSISTANCE GRANT PROGRAM SUBGRANT AGREEMENT
FOR
(FEMA-4553-DR)

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

FOR THE GRANTEE:

DEPARTMENT OF EMERGENCY SERVICES

_____

Justin Messner – Disaster Recovery Chief Date

STATE OF NORTH DAKOTA
DEPARTMENT OF EMERGENCY SERVICES

SIGNATURE PAGE

PUBLIC ASSISTANCE GRANT PROGRAM SUBGRANT AGREEMENT
FOR
(FEMA-4553-DR)

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

FOR THE SUBRECIPIENT:

Kent Costin, Finance Director
Name and Title

Kent Costin 9/29/2020
Signature Date

Federal Employer Identification Number (FEIN): 45-6002069

DUNS Number: 07-026-5871

ATTACHMENT A

Statement of Assurances

To the extent the following provisions apply to this Agreement, the Subrecipient 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 work week.
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, (including limited English proficiency per Executive Order 13166) be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Subrecipient 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 Subrecipient, this assurance shall obligate the Subrecipient, 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 Subrecipient 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 Subrecipient's projects funded under this Agreement may affect a historic property, as defined in 36 CFR 800. (2)(e), the FEMA may require Subrecipient 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, Subrecipient 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) Subrecipient 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 Subrecipient 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 Subrecipient 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." Subrecipient 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 Subrecipient to implement the treatment plan. If either the Council or the SHPO object, Subrecipient shall not proceed with the project until the objection is resolved.

e) Subrecipient 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. Subrecipient acknowledges that FEMA may require Subrecipient 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. Subrecipient further acknowledges that FEMA may require Subrecipient to take all reasonable measures to avoid or minimize harm to such property until FEMA concludes consultation with the SHPO. Subrecipient also acknowledges that FEMA will require, and Subrecipient shall comply with, modifications to the project scope of work necessary to implement recommendations to address the project and the property.

f) Subrecipient acknowledges that, unless FEMA specifically stipulates otherwise, it shall not receive funding for projects when, with intent to avoid the requirements of the NHPA, Subrecipient intentionally and significantly adversely affects a historic property, or having the legal power to prevent it, allowed such significant adverse affect 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 Subrecipient 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 Subrecipient'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 Subrecipient 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 B

Risk Assessment Conditions

Per Article VI of this contract, NDDES is required to complete a Financial Assistance Risk Assessment rating form for every subrecipient receiving an award to evaluate their potential risk of non-compliance. Subrecipients 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 DR-4553-ND, 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 subrecipient determined to be Low Risk are the following:

- Subrecipients 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. **Subrecipients 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 subrecipient 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 subrecipients can be upgraded or removed from low, medium or high risk status. If a subrecipient 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 subrecipient will be considered high risk in perpetuity.

ATTACHMENT C

Certification Regarding
Debarment, Suspension, Ineligibility
and
Voluntary Exclusion

Subcontractor Covered Transactions:

1. The prospective subcontractor of the Subrecipient 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 Subrecipient'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

_____
Subrecipient's Name

_____
Grantee Agreement Number

THE CITY OF Fargo FAR MORE

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Fargo, ND 58103-2367
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10

MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

FROM: DESI FLEMING
DIRECTOR OF PUBLIC HEALTH

DATE: SEPTEMBER 30, 2020

RE: CONTRACT WITH FAITH JOURNEY LUTHERAN CHURCH

The attached contract is for the use of Journey in Faith south campus at 650 40th Ave S, West Fargo. Faith Journey Lutheran Church has contracted with Fargo Cass Public Health to provide their south campus until December 31, 2020 for a total of $8850 per month.

There are no budget adjustments for this contract.

Suggested Motion:
Move to approve the contract with Faith Journey Lutheran Church

DF/lls
Enclosures

Faith✝Journey Lutheran Church

So transformed by God's abundant grace, we rejoice together in Christ-centered life, love and service
"Equip • Connect • Empower"

PROPERTY USE AGREEMENT and RELEASE FORM for Faith✝Journey Lutheran Church, West Fargo, ND

Name of Organization: **Fargo Cass Public Health**
Responsible Person: Melissa Perala
Address: 1240 25th St S, Fargo, ND 58103
Contact Person's Name: Melissa Perala
Day Phone: 701-241-1392 Fax: 701-298-6929 Cell Phone: 701-412-3107
Email: mperala@fargond.gov
Organization's Purpose: Public Health

NOTE: Rental fee (see "Proposal"): $8850 per month beginning October 1, 2020 through December 31, 2020. Cleaning and snow removal are NOT included, but can be further negotiated into this agreement if desired by renter and Faith+Journey Lutheran Church. This agreement is renewable on a month to month basis at the end of the initial term. In addition, this agreement can be terminated by either party with 30 days notice (including during the initial term).

Date(s) Requested: **10/1/20—12/31/20**
Event Start Time: n/a Event End Time: n/a
Amount of time needed prior to event for preparation: n/a
Amount of time needed after event for clean-up: n/a
Frequency: ____One Time Only ____Weekly ____Monthly ____Other
Which day of the week:
____Mon ____Tue ____Wed ____Thu ____Fri ____Sat ____Sun

General Information

Describe *IN DETAIL* the type of event you would like to bring to our facility.
Covid-19 Testing

Unless specific exception to this rule has been granted by the Property Team, outside groups using church property or facilities may not charge a fee or receive monetary remuneration for products or services rendered on church property.

Anticipated number of participants: n/a

Is your group a Nonprofit 501(c)(3) organization? Yes: _____ No: _____

Nonprofit Tax ID Number: _____

Will food or drink be consumed? Yes: n/a No: n/a

~~**Room(s) Requested at Downtown Campus (127 2nd Ave E):**~~ **N/A**
~~____Worship Center~~ ~~____Full Fellowship Hall~~
~~____Kitchen~~ ~~____1/2 Fellowship Hall~~ ~~____East Half~~ ~~____West Half~~
~~____Conference Room~~ ~~____Fireside Library (Restrooms not ADA accessible from this room.)~~
~~____Single Classroom~~ ~~____Double Classroom~~
~~____Gathering Center (lower level, East wing) This area is not ADA accessible.~~
~~____Total Life Center (old Sanctuary, upper level, East wing) This area is not ADA accessible.~~

THE CITY OF Fargo FAR MORE

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11

MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

FROM: DESI FLEMING
DIRECTOR OF PUBLIC HEALTH

DATE: OCTOBER 12, 2020

RE: CONTRACT AMENDMENT FOR NORTHERN CASS SCHOOL DISTRICT FOR ADDITIONAL SCHOOL NURSING HOURS FOR $3,740.00

The attached amendment to the contract with Northern Cass School for $3,740 are for additional nursing services for the 2020-2021 school year.

No budget adjustments are required for these contracts.

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

Suggested Motion: Move to approve the school contracts for nursing services for the coming school year.

DF/lls
Enclosures

ADDENDUM TO PROVISION OF NURSING SERVICES FOR THE NORTHERN CASS PUBLIC SCHOOL DISTRICT

This document is in reference to a contract agreement for the school year 2020-2021 between the Northern Cass Public School District and Fargo Cass Public Health.

May it be known that the undersigned parties, for good consideration, do hereby agree to make the following change and/or addition that is outlined below. Addendum changes will be in effect starting August 10, 2020.

Northern Cass Public School district is requesting an increase in the extra hours for school nursing hours to be used before the school session begins. These hours are related to increased activity for COVID 19 plans. Therefore, Northern Cass Public School District agrees to pay the additional time at 100% (salary plus benefits). The RN hourly rate will be $46.75 for eighty hours or an additional total of $3740.00.

The total Northern Cass Public School District contract will be as follows:

Current contract for nursing services	$46,746.05
Plus the additional eighty hours at 100 % or	$3740.00

Grand Total for Northern Cass Public School District for the 2020 2021 school year is **$50,486.05**

No other terms or conditions of the above mentioned contract shall be negated or changed as a result of this here stated addendum.

Provider- Fargo Cass Public Health

Desi Fleming

Director of Public Health Desi Fleming

10/12/20

Date

District-Northern Cass Public Schools

Signature Agency Representative

Superintendent

Title

8-10-20

Date

Mayor, City of Fargo Timothy J. Mahoney

Date

THE CITY OF Fargo FAR MORE

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129

MEMORANDUM

TO: **BOARD OF CITY COMMISSIONERS**

FROM: **Grant Larson**
Director of Environmental Health
Fargo Cass Public Health

DATE: **October 14, 2020**

RE: **Animal Boarding Program**

Dear Commissioners,

Due to growth in the animal boarding industry and potential public health concerns raised by the zoological diseases, the Environmental Division, in conjunction with the Fargo Police Department, have finalized requirements for the Animal Boarding Program. At its October 7, 2019 meeting, the Board of City Commissioners directed Fargo Cass Public Health to work with the City Attorney's Office to revise or draft a new ordinance pertaining to the regulation of animal boarding facilities. As such, I have enclosed a copy of the Animal Boarding Program requirements, Inspection Report, Ordinance, and City of Fargo license application for your consideration.

Suggested Motion: I move to approve the Animal Boarding Program requirements, Inspection Report, and associated City of Fargo license application as presented, and move to receive and file an ordinance enacting Article 13-16 of Chapter 13 of the Fargo Municipal Code relating to Animal Boarding Facilities and to place the ordinance on for first reading at the next regularly-scheduled city commission meeting.

Please feel free to contact me with any questions or concerns, 241.1388.

Grant Larson

Public Health
Prevent. Promote. Protect.

Fargo Cass Public Health

Requirements for Boarding Facilities

Fargo Cass Public Health
1240 25th Street South
Fargo, ND 58103

REQUIREMENTS FOR BOARDING FACILITIES

Individual Sections

1 - Definitions
2 - General Facility Maintenance
3 - Animal Care and Handling
4 - Veterinary Care
5 - General Housing Requirements for Boarding facilities
6 - Ambient Conditions
7 - Vaccinations
8 - Recordkeeping

Section 1 - Definitions

The following terms used in these requirements shall be defined as:

1.1. "ADEQUATE EXERCISE" or "EXERCISE" means the opportunity for the animal to move sufficiently to maintain normal muscle tone and mass for the age, species, size, and condition of the animal.

1.2. "BOARDING FACILITY" means an establishment, excluding private residences, operating for profit, where animals are kept, congregated, and/or housed, for a specific period, with the sole purpose of providing shelter and care of animals in return for a fee. This does not include the temporary use of kennels by veterinarians, grooming establishments, or municipal run pounds.

1.3. "BOARDING OPERATOR" or "OPERATOR OF A BOARDING FACILITY" means any individual, firm, corporation, partnership, other business unit, society, association or other legal entity, or public or private institution which maintains, owns, or operates a Boarding facility.

1.4. "PRIMARY ENCLOSURE" means any structure used to house an animal or animals, in a limited amount of space, where the animal or animals reside until they are picked up by their owner(s).

1.5. "DISINFECT" means to make physically clean by removing excrement, other waste material, dirt and trash, and utilizing an effective disinfectant to sanitize non-porous surfaces.

1.6. "TRANSMISSIBLE or INFECTIOUS" means capability of a disease to pass from one animal to another.

1.7. "VETERINARY TREATMENT" means treatment by or on the order of a licensed veterinarian.

Section 2 - General Facility Maintenance

Each boarding owner/operator shall be responsible for:

2.1. Maintaining good physical repair of the facility.

2.2. Ensuring the facilities surfaces, including walls and floors, are constructed in a manner that permits them to be readily maintained, cleaned, and disinfected.

2.3. Evenly distributing light, by natural or artificial means, in a manner that permits routine care and maintenance of the animals.

2.4. Providing and managing an adequate means for garbage disposal, which minimizes vermin infestation, odors, and disease.

2.5. Isolating any animal showing signs of an infectious or transmissible disease.

2.6. Separating grooming service operations from the primary boarding enclosures, animal food storage, and isolation areas intended to house or board sick animals.

Section 3 - Animal Care and Handling

3.1. The boarding owner, operator, or staff must be present at least once daily, regardless of whether the facility is open, to provide general care, maintenance, and to ensure adequate exercise of the animals in the custody of the Boarding facility.

3.2. Boarding owner, operators, or staff must ensure that:
   a. Each animal is handled in a manner, which will not cause discomfort, physical harm, or undue stress to that animal.
   b. Each animal is observed at regular intervals, in order to recognize and evaluate general symptoms of sickness, injury, or abnormal behavior.

3.3. The boarding owner, operator, or staff must ensure the following items associated with food and water:
   a. Clean, potable water, in sufficient quantity, is provided to satisfy the animal's needs and accessible at all times. Snow or ice is not an adequate water source.
   b. Food is provided to each animal at least once during a twenty-four (24) hour period unless otherwise specified by the animal's owner.
   c. Each animal has sufficient number and size of food and water receptacles and each container has an adequate amount of food and water. Bowls, dishes, and other containers used for the feeding and watering of animals must be cleaned and disinfected daily, or as often as necessary to maintain them free from contamination including excrement or urine. Water and food receptacles must be so located as to minimize their potential contamination.

3.4. The boarding owner, operator, or staff must ensure the following items associated with proper sanitation:
   a. Animals are removed from their primary enclosures when water or a disinfectant is used for cleaning.
   b. Excreta is removed from each enclosure and properly disposed of at least once daily. The enclosures must be cleaned and disinfected as often as necessary to prevent cross-contamination of the animals, prevent disease hazards, and reduce odors.
   d. Cages, rooms, and pens that contain any animal must be thoroughly washed and sanitized each day, as well as after each occupancy.
   e. Utilize effective cleaning agents and disinfectants according to the manufactures recommendations.

Section 4 - Veterinary Care

4.1. In the case of medical emergencies, or as advised by a veterinarian, or instructed by the owner, veterinary care will be immediately provided for animals in the custody of the boarding facility, to prevent suffering and prevent disease transmission.

Section 5 - General Housing Requirements for Boarding facilities

5.1. Confinement areas must be of sufficient size to allow each animal to fully turn around, stand, sit, and lie in a comfortable, normal position.

5.2. The confinement area must be constructed to prevent injury to the animal.

5.3 Interior confinement surfaces must be constructed and maintained so they can be disinfected, which includes non-absorbent, smooth, and cleanable.

5.4 Confinement areas shall not be stacked on top of each other without an impervious layer in between the kennels, cages, etc.

5.5. Animals housed in the same primary confinement area:
   a. Must be maintained in a compatible group
   b. Any animal exhibiting a vicious disposition must be housed separately
   c. Females in estrus must not be confined in the same confinement area with males.

5.6. Animals in the custody of the Boarding facility shall be kept clean and dry unless species-specific requirements dictate an aquatic or semi-aquatic environment.

5.7. Animals shall be carefully monitored and will not be left unsupervised using chains or tethering.

5.8. Food and bedding shall be stored in facilities, which adequately protects them, against infestation and/or contamination by vermin.

5.9. Perishable food and medical supplies shall be stored, in refrigerated units, that protects them from cross contamination and stored separately from human food or supplies.

5.10. Boarding facilities shall provide washrooms, basins, and/or sinks to allow staff access to maintain personal cleanliness.

5.11 Boarding facilities must provide hot and cold running water, germicidal soap, and disposable towels for each washroom, basin, and/or sink.

5.12. Any pest infestations shall be handled by a licensed pest control company.

5.13. Boarding facilities may provide, in-house, treatment for individual or specific flea infestations utilizing effective products specifically for animals.

5.14. Ensure general housing areas have adequate drainage to allow for thorough cleaning and disinfecting.

Section 6 - Ambient Conditions

6.1. Boarding facilities will maintain an indoor, ambient, temperature between 50 and 85 degrees Fahrenheit.

6.2. Boarding facilities must be adequately ventilated to minimize drafts, odors, and/or moisture condensation.

Section 7 - Vaccinations

7.1. The following vaccinations are required:

a. Rabies (for dogs and cats over 16 weeks of age)
b. Parvo/Distemper (for dogs over 6 weeks of age)
c. Bordetella (for dogs over 4 weeks of age)
d. Follow veterinary recommendations for other species vaccinations, such as ferrets, rabbits, gerbils, etc.

Section 8 - Recordkeeping

8.1. Vaccination records must by readily available and maintained, onsite, for a minimum of two (2) years.

Fargo Cass Public Health
1240 25th Street South
Fargo, ND 58103-2367
Phone 701.476.6729
www.FargoCassPublicHealth.com

Animal Boarding Program Inspection Report

Facility Name	Person in Charge:
Address:	Date:
E-mail:	Phone Number:

INSPECTION ITEMS	COMPLIANT	NON-COMPLIANT	NOT APPLICABLE
GENERAL FACILITY MAINTENANCE			
Maintained in good physical repair			
Interior building surfaces constructed to be cleaned, maintained, and disinfected			
Light evenly distributed			
Garbage disposal – management			
Isolation of animals			
Separation of grooming services from primary boarding enclosures			
ANIMAL CARE AND HANDLING			
Boarding operator or staff present at least once daily			
Animals are handled properly			
Animals observed at regular intervals			
Clean potable water accessible at all times			
Food provided at least once during 24 hour period			
Bowls & dishes used for feeding and water sufficient in number and disinfected daily			
Animals removed when cleaning primary enclosures			
Excreta is removed at least once a day			
Enclosures cleaned and sanitized at least once day and after each occupancy			
Effective disinfectants used according to manufacturer's recommendations			
VETERINARY CARE			
Veterinary care is immediately provided for animals when necessary			

INSPECTION ITEMS	COMPLIANT	NON-COMPLIANT	NOT APPLICABLE
GENERAL HOUSING REQUIREMENTS			
Confinement areas are sufficient size			
Confinement areas are constructed to prevent injury to the animal			
Confinement surfaces constructed of non-absorbent, smooth, cleanable material			
Individual kennels/cages have an impervious layer between if they are stacked			
Animals housed in the same primary confinement area must be maintained and monitored			
Animals kept clean and dry			
Animals are carefully monitored; chains and tethering while unsupervised not allowed			
Food and bedding stored in the facility – protected			
Food and medical supplies refrigerated if required - kept separately from human food or supplies			
Washrooms, basins, and/or sinks provided for staff to maintain cleanliness			
Hot & Cold running water, germicidal soap, and disposable towels at each washroom, basin, and/or sink			
Pest infestations handled by a licensed pest control company			
In house flea treatments; follow manufacturer instructions			
Adequate drainage in general housing areas			
AMBIENT CONDITIONS			
Facility maintains indoor ambient temperature between 50 and 80 degrees Fahrenheit			
Adequate ventilation installed			
VACCINATIONS			
Required vaccinations; Rabies, Parvo/Distemper, Bordetella			
RECORDKEEPING			
Records kept for a minimum of 2 years			

Notes:_____

_____

_____

_____

_____

_____

_____

_____

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ANIMAL BOARDING FACILITY LICENSE APPLICATION

NAME OF ESTABLISHMENT:________________________________

ESTABLISHMENT ADDRESS:________________________________

OWNER/OPERATOR:________________________________

MAILING ADDRESS:________________________________

PHONE:________________ EMAIL:____________________

Annual License Fee..$100.00

Fees are payable prior to January 1st of each year and are effective through December 31st

The undersigned is familiar with the "Requirements for Pet Stores" and further attests the facility for which application is made will be operated in compliance with ordinances and the above-mentioned document.

Date:__________ Signature:________________________

Print Name:________________________

(Please do not write below this line)

- -

The foregoing application is hereby approved and it is recommended that a license be issued, subject to the following provisions:

____

Approved by:________________________ Date:____________
(EHP or REHS)

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

AN ORDINANCE ENACTING ARTICLE 13-16 OF CHAPTER 13
OF THE FARGO MUNICIPAL CODE RELATING TO
ANIMAL BOARDING FACILITIES

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

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

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

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

NOW, THEREFORE,

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

Section 1. Enactment.

Article 13-16 of the Fargo Municipal Code is hereby enacted as follows:

ARTICLE 13-16 – BOARDING FACILITIES

Section 13-1601. Definitions.

As used in this ordinance, unless the context otherwise indicates, the following definitions apply:

1. "Boarding Facility" means any establishment, excluding private residences, operating for profit, where animals are kept, congregated, and/or housed, for a specific period, with the sole purpose of providing shelter and care of animals in return for a fee. A "Boarding Facility" does not include the temporary use of kennels by veterinarians, grooming establishments, or municipal pounds.

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

2. "Boarding Operator" or "Operator of a Boarding Facility" means any individual, firm, corporation, partnership, other business unit, society, association or other legal entity, or public or private institution which maintains, owns, or operates a boarding facility.

3. "Public Health Department" means Fargo Cass Public Health or any representative thereof.

Section 13-1602. Operation of a Boarding Facility—license required.

It shall be unlawful to operate a boarding facility without a license issued by the public health department.

Section 13-1603. Application; fee.

A boarding operator shall submit an application for a license to the public health department on a form provided by the public health department along with payment of a required license fee. License fees and fees for renewal thereof shall be established by resolution of the board of city commissioners. The application must include the name and complete mailing address and street address of the boarding facility along with any other information reasonably required by the public health department for the administration of this section.

Section 13-1604. License to operate boarding facility issued annually.

The license hereof shall be issued annually, January 1, by the public health department after a passed inspection. All licenses under the provisions of this article, unless otherwise specifically provided, shall terminate on December 31 following the date of issuance. License renewal notices will be mailed by the city auditor's office effective January 1 of each year and shall expire on December 31 of said year.

Section 13-1605. Regulation, inspection and enforcement.

The public health department is authorized to promulgate regulations creating minimum standards for boarding facilities, which regulations may be enforced by the public health department. In order to provide for the public health and safety, the public health department shall have authority to regulate and enforce the provisions stated herein concerning the use, operation, and maintenance of boarding facilities within the jurisdiction

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

of such department. The public health department shall have the authority to enter upon the premises of the boarding facility and inspect the facility as often as necessary to confirm compliance with the provisions of this article. In the event of a failure to comply with the provisions of this article, after due notice thereof, the public health department shall have the power to abate or cause a suspension of the use of the boarding facility license until such time as the same is, in the opinion of the public health department, no longer a hazard to public health or safety.

Section 13-1606. Display of license—license nontransferable.

A license issued pursuant to this article shall be displayed in a conspicuous location in the boarding facility for which the license is issued. A license issued pursuant to this article is non-transferable.

Section 13-1607. Appeals.

Any person aggrieved by a decision of the health department or one of its officials including without limitation an order or denial of an order or by the denial of a license, may appeal such decision by filing a notice of appeal with the director of public health. Appeals of final decisions made pursuant to the procedures of this article must be filed within 10 days of the date of the decision. Said appeal must be in writing and shall be submitted to the director of public health. The board of city commissioners shall consider the appealed decision as a new matter in a public hearing and, at the close of the public hearing, act to affirm or reverse the original decision.

Section 2. Penalty.

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

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

Section 3. Effective Date.

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

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

Attest:

First Reading:
Second Reading:
Final Passage:
Publication:

_____
Steven Sprague, City Auditor

City of Fargo Inspections
225 Fourth Street North
Fargo, North Dakota 58102
Phone: 701-241-1561
Fax: 701-476-6779

(13)

Memorandum

To: Mayor Mahoney and the Board of City Commissioners

From: Bruce Taralson, Inspections Director

CC: City Attorney, Erik Johnson

Date: October 15, 2020

RE: EPIC Gateway, LLC No-build Easement

Enclosed is a declaration of a no build easement which the land owner wishes to establish in order to be in compliance with the *International Building Code*.

Suggested Motion: I move to approve the Declaration of No-Build Easement with EPIC Gateway, LLC as presented.

DECLARATION OF NO BUILD EASEMENT

RECITALS

WHEREAS, EPIC Gateway, LLC, a North Dakota limited liability company ("Declarant") is the owner of the following described real property situate in the City of Fargo, County of Cass and the State of North Dakota:

Lot 2, Block, Block 1, EPIC Gateway Addition, City of Fargo, Cass County, North Dakota (hereinafter "Property")

WHEREAS, Declarant further desires to establish a No Build Easement on the portion of the Property as outlined in Exhibit A and legally described in Exhibit B (hereinafter "No Build Area"), which is attached hereto and incorporated herein by reference.

WHEREAS, the Property lies within the jurisdiction of the City of Fargo, North Dakota (hereinafter "City").

WHEREAS, Declarant, in order to be in compliance with the City of Fargo Building Codes which requires thirty (30') foot clear area (hereinafter called the "Yard") as defined in the International Building Code, is relying on the No Build Area to constitute a portion of the Yard.

WHEREAS, Declarant has agreed to record this agreement to provide record notice of the terms of this agreement, and to bind subsequent transferees of the Property (hereinafter "Lot Owners") to the terms of this agreement.

NOW THEREFORE, in accordance with the terms and conditions of this Agreement, Declarant and the City of Fargo declare as follows:

AGREEMENT

I. **NO BUILD EASEMENT.** A No Build Easement exists on the portion of the Property as further legally described in Exhibit A. Terms of said easement are as follows:

a. **Easement Created.** No new or additional above or below ground permanent structure, including a dwelling unit, garage, shed or any other above or below ground building or structure, or eaves or other projections, shall be erected, constructed, placed or maintained upon any portion of the No Build Area. However, this provision shall not prohibit Declarant or its successors in title from placing fencing, tables or seating on the No Build Area.

b. **Term of Easement.** The No Build Easement shall be perpetual and run with the Property.

c. **Maintenance.** It is the duty and obligation of the owner of the Property to maintain the No Build Area.

d. **Enforcement**. The City is hereby granted the power to enforce the requirements of this agreement as if it were a party thereto, which powers of enforcement shall be in addition to all other legal and equitable remedies available to the City, including refusal to issue building permits for any building or structure which would violate the terms hereof.

II. **MISCELLANEOUS PROVISIONS**

a. **Indemnity.** The Lot Owners shall indemnify and hold each of the other Lot Owners hereto harmless from and against any damages, injuries, claims, suits, liabilities, costs, expenses, or the like, including, without limitation, reasonable attorneys' fees and costs (whether or not any legal proceedings are commenced) arising out of or in any way related to the Lot Owners' use of the easement granted herein or use thereof by any Lot Owner's agents, guests, invitees or contractors.

b. **Duration of Agreement.** The easements granted herein shall run with the land until such time as the easements granted herein may be terminated, extended or amended by the recording of an appropriate document in the office of the County Recorder of Cass County, North Dakota, which document must be executed by the then owner of the Property.

c. **Amendment.** This Declaration shall not be amended, revoked or altered without the written consent of the City, which has entered into this agreement as a secondary party and which, by signature of the mayor

endorsed thereon, is intended to be recorded with the Cass County Recorder, it being understood however that the International Building Code is amended to eliminate the Yard requirement or if the building or any replacement of such building does not require the establishment of a no-build easement area, such as the Yard in this instance, the Declarant shall seek the consent of the City to terminate this agreement if all other building, fire and land use regulations are satisfied.

d. **Severability.** All rights, powers and remedies provided herein may be exercised only to the extent that the exercise thereof does not violate any then applicable law and shall be limited to the extent necessary to render the covenants herein valid and enforceable. If any term, provision, covenant or agreement contained herein or the application thereof to any person, entity or circumstance shall be held to be invalid, illegal or unenforceable, the validity of the remaining terms, provisions, covenants or agreements or the application of such term, provision, covenant or agreement to persons, entities or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby.

e. **Binding Effect.** This Declaration shall inure to the benefit of, and be binding upon the undersigned, future Lot Owners, and their respective successors and assigns in title.

f. **Covenants Run with the Land.** All the terms and provisions hereof are and shall be deemed to run with the property described herein and shall burden and benefit such property as described herein and, with respect to such property, each Lot Owner, the holders or owners of any mortgage, indenture, deed of trust or deed to secure debt encumbering any of such property, any purchaser at a foreclosure sale, any other person or entity acquiring any right, title or interest in such property and their respective heirs, executors, administrators, representatives, successors and assigns.

g. **Governing Law.** The provisions of this Declaration shall be governed by the laws of the State of North Dakota. Any court proceeding or litigation arising out of or pertaining to this Easement shall be venued in North Dakota state district court in Cass County, North Dakota.

h. **Entire Agreement.** This Declaration contains the entire agreement and there are no oral understandings or agreements other than those set out herein.

IN WITNESS WHEREOF, the Declarant has executed this Easement as of this 30th day of September, 2020.

EPIC Gateway, LLC, Declarant

By:_____
Todd Berning, President

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

The foregoing instrument was acknowledged before me on this 30th day of September, 2020, by Todd Berning, the President of EPIC Gateway, LLC, a North Dakota limited liability company, on behalf of the company.

(SEAL)

KYLE PENDER
Notary Public
State of North Dakota
My Commission Expires Jan. 16, 2021

Notary Public
Expires: Jan. 16, 2021

CONSENT OF CITY OF FARGO:

The City of Fargo does hereby consent and approve the terms of this agreement.

CITY OF FARGO

By:_____
Dr. Tim Mahoney, its Mayor

ATTEST:

_____
Steven Sprague, City Auditor

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

The foregoing instrument was acknowledged before me on this ____ day of _____, 2020, by Dr. Tim Mahoney and Steven Sprague, to me known to be the Mayor and City Auditor, respectively, of the City of Fargo, Cass County, North Dakota, the municipal corporation described in and that executed the within and foregoing instrument, and acknowledged to me that said municipal corporation executed the same.

(S E A L)

_____
Notary Public
Expires:

This document was prepared by:

Kyle G. Pender
Montgomery & Pender, P.C.
P.O. Box 9199
Fargo, ND 58106-9199
Phone: (701) 281-8001
Email: kyle@mplawnd.com

14a

City of Fargo Staff Report			
Title:	Urban Plains by Brandt Fifth Addition	**Date:** **Update:**	04/29/2020 10/13/2020
Location:	2867 55th Street South	**Staff Contact:**	Kylie Bagley
Legal Description:	Lot 1, Block 2, Urban Plains by Brandt Third Addition		
Owner(s)/Applicant:	Urban Plains Land Company, LLC	**Engineer:**	Houston Engineering, Inc.
Entitlements Requested:	**Minor Subdivision** (Replat of Lot 1, Block 2, Urban Plains by Brandt Third Addition to the City of Fargo, Cass County, North Dakota) ~~and a **Conditional Use Permit** for household living in the LC, Limited Commercial, zoning district.~~		
Status:	City Commission Public Hearing: October 19, 2020		

Existing	Proposed
Land Use: Vacant	**Land Use:** Commercial
Zoning: LC, Limited Commercial with C-O, Conditional Overlay	**Zoning:** No Change
Uses Allowed: Allows colleges, community service, daycare centers of unlimited size, health care facilities, parks and open space, religious institutions, safety services, offices, off premise advertising signs, commercial parking, retail sales and service, ~~self-service storage, vehicle repair, limited vehicle service~~.	**Uses Allowed:** No Change CUP to allow household living
Maximum Lot Coverage Allowed: Maximum 55% building coverage	**Maximum Lot Coverage Allowed:** Maximum 55% building coverage and a maximum 24 dwelling units per acre

Proposal:

The applicant is seeking City approval of a minor subdivision plat entitled *Urban Plains by Brandt Fifth Addition*, which would replat one existing lots into five new lots. The subject property encompasses approximately 9.58 acres. The applicant is also seeking approval of a conditional use permit to allow household living in the LC, Limited Commercial, zoning district. The Conditional Use Permit was approved by the Planning Commission on May 5, 2020 and does not require City Commission approval.

According to the applicant, the intent of this application is to continue the Uptown and Main Development that is to the north of the subject property. The applicant is proposing 5 new lots with a 30' private street which will connect to the private street to the north, across 28th Ave S. The applicant is also proposing an apartment building which will have walk up ground floor units along 55th Street South as well as commercial development along Veterans Blvd.

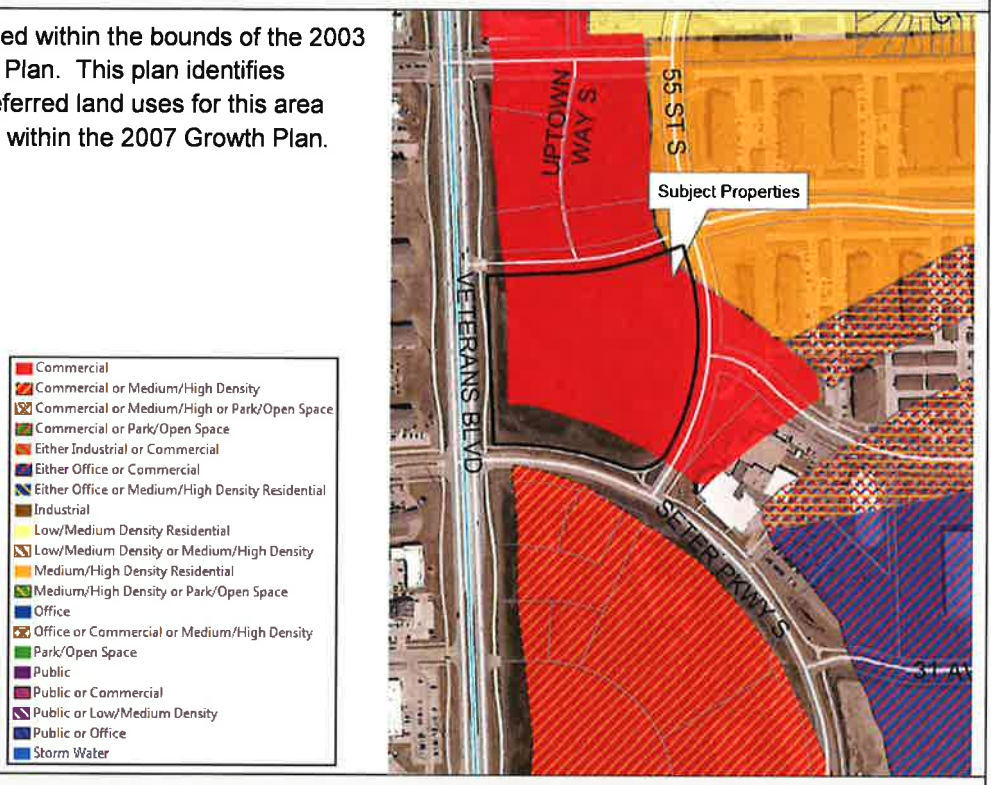
This project was reviewed by the City's Planning and Development, Engineering, Public Works, and Fire Departments ("staff"), whose comments are included in this report.

Surrounding Land Uses and Zoning Districts:

- North: LC, Limited Commercial with mixed-uses (multi-dwelling residential and retail sales & services)
- East: LC, Limited Commercial with mixed-uses (multi-dwelling residential and retail sales & services)
- South: LC, Limited Commercial with vacant land
- West: Across Veterans Boulevard, City of West Fargo with multi-dwelling residential and retail sales & service land uses.

Area Plans:

The subject property is located within the bounds of the 2003 Southwest Future Land Use Plan. This plan identifies "Commercial" use as the preferred land uses for this area and is included by reference within the 2007 Growth Plan.



Schools and Parks:

Schools: The subject property is located within the West Fargo School District and is served by Independence Elementary, Liberty Middle and Sheyenne High schools.

Neighborhood: The subject property is located in the Urban Plains Neighborhood.

Parks: Urban Plains Park (5050 30th Avenue S) is located approximately 0.3 miles east of the subject property and offers playground amenities and picnic shelters.

Pedestrian / Bicycle: There are off-road bike facilities located along Veterans Boulevard and Seter Parkway South. Both facilities are components of the metro area bikeways system.

Staff Analysis:

Minor Subdivision

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

1. **Section 20-0907.B.3 of the LDC stipulates that the Planning Commission recommend approval or denial of the application, based on whether it complies with the adopted Area Plan, the standards of Article 20-06 and all other applicable requirements of the Land Development Code. Section 20-0907.B.4 of the LDC further stipulates that a Minor Subdivision Plat shall not be approved unless it is located in a zoning district that allows the proposed development and complies with the adopted Area Plan, the standards of Article 20-06 and all other applicable requirements of the Land Development Code.**
   This subdivision is intended to adjust the layout of one legal lot by replatting one existing lot into five new lots. The proposed use is consistent with the existing zoning. In accordance with Section 20-0901.F of the LDC, notices of the proposed plat have been sent out to property owners within 300 feet of the subject property. To date, staff has received no comments regarding this application. Staff has reviewed this

request and finds that this application complies with standards of Article 20-06 and all applicable requirements of the Land Development Code. **(Criteria Satisfied)**

2. **Section 20-907.C.4.f of the LDC stipulates that in taking action on a Final Plat, the Board of City Commissioners shall specify the terms for securing installation of public improvements to serve the subdivision.**
   While this section of the LDC specifically addresses only major subdivision plats, staff believes it is important to note that any improvements associated with the project (both existing and proposed) are subject to special assessments. Special assessments associated with the costs of the public infrastructure improvements are proposed to be spread by the front footage basis and storm sewer by the square footage basis as is typical with the City of Fargo assessment principals. **(Criteria Satisfied)**

Conditional Use Permit Approval Criteria (Section 20-0909.D)
The following is a list of criteria that must be determined satisfied in order for a Conditional Use Permit to be approved:

1. **Does the proposed conditional use comply with all applicable provisions of the LDC and will it conform to the general intent and purpose of this LDC?**
   The purpose of the LDC is to implement Fargo's Comprehensive Plan in a way that will protect the general health, safety, and welfare of the citizens. Promoting infill development is a key initiative in the Comprehensive Plan. Table 20-0401 of the LDC states that household living is allowed in the LC zoning district with a conditional use permit. The CUP is for household living, and with the zoning district of LC with the CUP, the property could be built as residential, commercial, or a combination. Staff finds this proposal is consistent with the purpose of the LDC, the Go2030 Comprehensive Plan, and other adopted policies of the City.
   (Criteria Satisfied)

2. **Will the proposed conditional use at the specified location contribute to and promote the welfare or convenience of the public?**
   Staff finds that this proposed conditional use permit to allow for residential use to be located within this area will contribute to and promote the welfare of the public.
   (Criteria Satisfied)

3. **Will the proposed conditional use cause substantial injury to the value of other property in the neighborhood in which it is to be located?**
   Staff has no data to suggest that the proposed use would cause substantial injury to the value of other property in the neighborhood. In accordance with Section 20-0901.F of the LDC, notices of the proposed use were sent out to property owners within 300 feet of the subject property. To date, staff has received no inquires of calls, walk-ins and emails, with no noted concern.
   (Criteria Satisfied)

4. **Is the location and size of the conditional use, the nature and intensity of the operation conducted in connection with it, and the location of the site with respect to streets giving access to it such that the conditional use will not dominate the immediate neighborhood so as to prevent the development and use of the neighboring property in accordance with the applicable zoning district regulations? In considering this criteria, location, nature, and height of buildings, structures, walls, and fences on the site are to be considered, as well as the nature and extent of proposed landscaping and buffering on the site.**
   Staff finds that the proposed conditional use permit to allow household living should not dominate the immediate neighborhood or prevent any other sites from being used due to the fact that there are multiple multi-dwelling units in the surrounding are, staff finds that the proposed conditional use permit meets this criterion.
   (Criteria Satisfied)

5. **Are adequate utility, drainage, and other such necessary facilities and services provided or will they**

be at the time of development?
The subject property is located within an area of the City that is largely developed with public infrastructure. Staff is not aware of any deficiencies regarding drainage or utilities that would limit the ability of the petitioner to utilize the property as proposed. In addition, the requested CUP has been reviewed by staff from other applicable departments and no concerns have been raised. Based on this information, staff finds that adequate utility, drainage, and other such necessary facilities and services are in place.
(Criteria Satisfied)

6. **Have adequate access roads or entrances and exit drives been provided and are they designed to prevent traffic hazards and to minimize traffic congestion in public streets?**
The subject property has vehicular access to 55th Street South, 28th Avenue South and Seter Parkway South, which connect to Veterans Blvd. The Engineering Department has had an opportunity to review the proposal and no comments or concerns have been forthcoming to indicate that there is a deficiency with the access roads or entrances and exit drives. To that end, staff finds that the proposed conditional use will not create traffic hazards or traffic congestion in the public streets.
(Criteria Satisfied)

Recommended Conditions:

1) The maximum residential density shall be a maximum of 24 units per acre

Update:
The Conditional Use Permit was approved by the Planning Commission on May 5, 2020 and does not require City Commission approval.

Staff Recommendation:

Suggested Motion: "To accept the findings and recommendations of the Planning Commission and staff and move to approve the proposed plat of the **Urban Plains by Brandt Fifth Addition**, as the proposal complies with the Go2030 Fargo Comprehensive Plan, 2001 Growth Plan (as amended), Standards of Article 20-06, and all other applicable requirements of the LDC."

Planning Commission Recommendation: May 5, 2020

At the May 5, 2020, Planning Commission hearing, the Commission, by a vote of 9-0 with one Commissioner absent and one seat vacant, moved to accept the findings and recommendations of staff and recommended approval to the City Commission of the proposed 1) Urban Plains by Brandt Fifth Addition subdivision plat as presented and 2) to approve a Conditional Use Permit for household living on the basis that it satisfactorily complies with the 2007 Growth Plan, Standards of Article 20-06, the Go2030 Fargo Comprehensive Plan, Section 20-0909.D (1-6) and all other applicable requirements of the LDC, with the following conditions:

1) The maximum residential density shall be a maximum of 24 units per acre

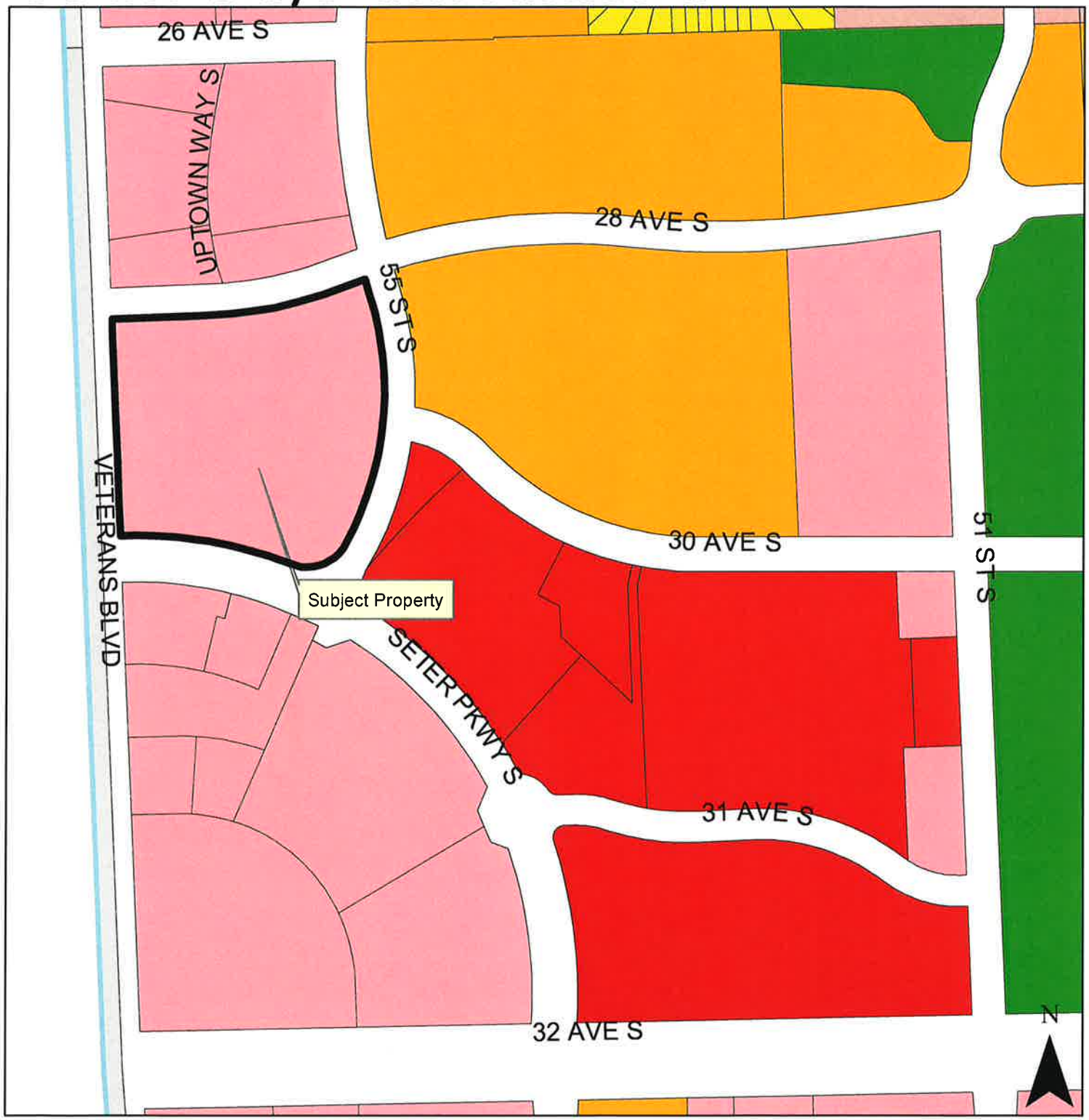
Attachments:

1. Zoning Map
2. Location Map
3. Preliminary Subdivision Plat

Plat (Minor) & Conditional Use Permit

Urban Plains by Brandt Fifth Addition

2867 55th St S



THE CITY OF Fargo FAR MORE

Legend

AG, LC, MHP, SR-2, DMU, LI, NC, SR-3, GC, MR-1, NO, SR-4, GI, MR-2, P/I, SR-5, GO, MR-3, UMU, City Limits

300 Feet

Fargo Planning Commission
May 5, 2020

Plat (Minor) & Conditional Use Permit

Urban Plains by Brandt Fifth Addition

2867 55th St S

THE CITY OF Fargo FAR MORE

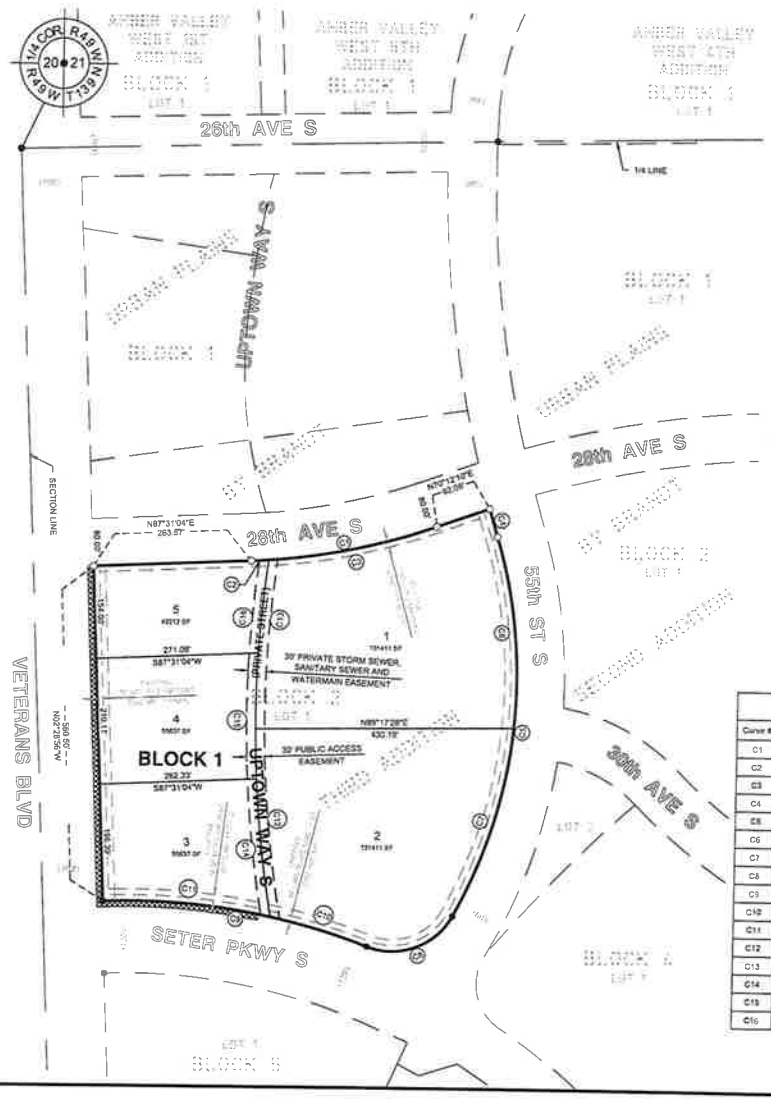
300 Feet

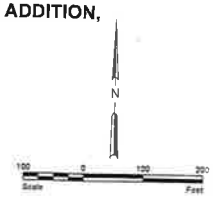
Fargo Planning Commission
May 5, 2020

URBAN PLAINS BY BRANDT FIFTH ADDITION

A MINOR SUBDIVISION

BEING A REPLAT OF LOT 1, BLOCK 2, URBAN PLAINS BY BRANDT THIRD ADDITION, TO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA





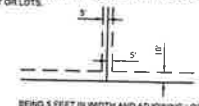
LEGEND

IRON MONUMENT FOUND	●
1/2" I.D. PIPE SET	○
MEASURED BEARING	N00°00'00"E
PLAT BEARING	(N00°00'00"E)
MEASURED DISTANCE	100.00'
PLAT DISTANCE	(100.00')
PLAT BOUNDARY	
LOT LINE	
UTILITY EASEMENT	
EXISTING LOT LINE	
EXISTING UTILITY EASEMENT	
NEGATIVE ACCESS EASEMENT	

BEARINGS SHOWN ARE BASED ON THE CITY OF FARGO HORIZONTAL DATUM

NOTE:

NEGATIVE ACCESS EASEMENT: AS NOTED ON THIS PLAT, IS AN EASEMENT DEDICATED AS PART OF THE RIGHT-OF-WAY DEDICATION WHICH EASEMENT DENIES DIRECT VEHICULAR ACCESS TO A STREET OR PUBLIC WAY FROM THE LOT OR LOTS ADJACENT TO SUCH STREET OR WAY. THE NEGATIVE ACCESS EASEMENT IS NOT A STRIP OF LAND OF ANY CERTAIN WIDTH, BUT IS A LINE COTERMINOUS WITH THE BOUNDARY OF THE ADJACENT LOT OR LOTS.



BEING 5 FEET IN WIDTH AND ADJOINING LOT LINES, AND 10 FEET IN WIDTH AND ADJOINING RIGHT-OF-WAY LINES, UNLESS OTHERWISE INDICATED ON THE PLAT.

UTILITY EASEMENTS ARE SHOWN THUS

Curve Table

Curve #	Length	Radius	Delta	Chord Direction	Chord Length
C1	314.29	1040.00	17°18'54"	N78°51'37"E	313.10
C2	28.88	1040.00	1°34'48"	N86°43'40"E	28.88
C3	289.61	1040.00	15°44'06"	N75°36'13"E	284.72
C4	48.08	2062.64	1°21'48"	S10°39'26"E	48.08
C5	655.79	820.00	45°49'18"	S05°34'25"W	638.43
C6	322.45	820.00	22°31'50"	S20°24'18"E	320.38
C7	333.34	820.00	23°17'28"	S18°50'28"W	331.08
C8	155.59	115.00	83°30'05"	S69°44'07"W	151.65
C9	451.85	1100.22	23°31'13"	N80°46'27"W	448.48
C10	169.27	1100.22	8°48'54"	N73°25'18"W	169.10
C11	282.39	1100.22	14°42'19"	N85°10'54"W	281.63
C12	317.58	1934.20	9°24'27"	S85°24'45"E	317.23
C13	281.84	1934.20	8°20'34"	S03°27'45"W	281.35
C14	232.94	1934.20	6°54'09"	S00°39'59"E	232.79
C15	210.40	1934.20	6°13'57"	S00°06'58"E	210.30
C16	155.88	1934.20	4°37'03"	S05°19'30"W	155.84

OWNER'S CERTIFICATE:

KNOW ALL PERSONS BY THESE PRESENTS: That Urban Plains Land Company LLC, a North Dakota limited liability company, is the owner and proprietor of Lot 1, Block 2, Urban Plains By Brandt Third Addition, all situated in the City of Fargo, Cass County, North Dakota.

Said tract contains 9.580 acres, more or less.

And that said party has caused the same to be surveyed and platted as **URBAN PLAINS BY BRANDT FIFTH ADDITION** to the City of Fargo, Cass County, North Dakota, and does hereby dedicate to the public, for public use, the 30' wide access easement shown on the plat. Said party also hereby dedicates, to the owners of Lots 1-5, Block 1, a private 30' wide easement for storm sewer, sanitary sewer and watermain purposes, as shown on the plat.

OWNER:
Urban Plains Land Company, LLC
(Lot 1, Block 2)

Ace A. Brandt, President

State of _____)
) ss
County of _____)

On this _____ day of _____, 20____ before me personally appeared Ace A. Brandt, President of Urban Plains Land Company, LLC, a North Dakota limited liability company, known to me to be the person who is described in and who executed the within instrument and acknowledged to me that he executed the same on behalf of said limited liability company.

Notary Public: _____

SURVEYOR'S CERTIFICATE AND ACKNOWLEDGEMENT:

I, James A. Schlieman, Professional Land Surveyor under the laws of the State of North Dakota, do hereby certify that this plat is a true and correct representation of the survey of said subdivision; that the monuments for the guidance of future surveys have been located or placed in the ground as shown.

Dated this _____ day of _____ 20____.

James A. Schlieman, Professional Land Surveyor No. 8095

State of North Dakota)
) ss
County of Cass)

On this _____ day of _____, 20____ before me personally appeared James A. Schlieman, Professional Land Surveyor, known to me to be the person who is described in and who executed the within instrument and acknowledged to me that he executed the same as his free act and deed.

Notary Public: _____

CITY ENGINEER'S APPROVAL:

Approved by the Fargo City Engineer this _____ day of _____ 20____.

Brenda E. Derrig, City Engineer

State of North Dakota)
) ss
County of Cass)

On this _____ day of _____, 20____ before me personally appeared Brenda E. Derrig, Fargo City Engineer, known to me to be the person who is described in and who executed the within instrument and acknowledged to me that she executed the same as her free act and deed.

Notary Public: _____

FARGO PLANNING COMMISSION APPROVAL:

Approved by the City of Fargo Planning Commission this _____ day of _____ 20____.

John Gunkelman, Chair
Fargo Planning Commission

State of North Dakota)
) ss
County of Cass)

On this _____ day of _____, 20____ before me personally appeared John Gunkelman, Chair, Fargo Planning Commission, known to me to be the person who is described in and who executed the within instrument and acknowledged to me that he executed the same on behalf of the Fargo Planning Commission.

Notary Public: _____

FARGO CITY COMMISSION APPROVAL:

Approved by the Board of City Commissioners and ordered filed this _____ day of _____ 20____.

Timothy J. Mahoney, Mayor

Attest: _____
Steven Sprague, City Auditor

State of North Dakota)
) ss
County of Cass)

On this _____ day of _____, 20____ before me personally appeared Timothy J. Mahoney, Mayor, City of Fargo; and Steven Sprague, City Auditor, City of Fargo, known to me to be the persons who are described in and who executed the within instrument and acknowledged to me that they executed the same on behalf of the City of Fargo.

Notary Public: _____

Project No. 7489-0072

Houston Engineering Inc.
Phone: 701.237.5065

H:\JB\7400\7489\7489_0072\CAD\Plat\FIFE PLAT UP by Brandt 5th Addition dwg Layout1,3/16/2020 4:11 PM (jstroud)

14b

City of Fargo Staff Report			
Title:	Bentley Place Third Addition	**Date:** **Update:**	9/30/2020 10/15/2020
Location:	3240 Veterans Boulevard	**Staff Contact:**	Donald Kress, planning coordinator
Legal Description:	Lot 1, Block 1, Bentley Place Second Addition to the City of Fargo, Cass County, North Dakota		
Owner(s)/Applicant:	Brandt Crossing, LLC/Blake Carlson	**Engineer:**	Bolton & Menk
Entitlements Requested:	**Minor Subdivision** (Replat of Lot 1, Block 1, Bentley Place Second Addition to the City of Fargo, Cass County, North Dakota)		
Status:	City Commission Public Hearing: October 19, 2020		

Existing	Proposed
Land Use: Undeveloped	**Land Use:** Commercial development proposed
Zoning: LC, Limited Commercial with Conditional Overlay (Ord. 4900)	**Zoning:** No change
Uses Allowed: LC – Limited Commercial. Allows colleges, community service, daycare centers of unlimited size, health care facilities, parks and open space, religious institutions, safety services, offices, ~~off premise advertising signs~~, commercial parking, retail sales and service, self service storage, ~~vehicle repair~~, limited vehicle service. (*Note: uses that are lined through are prohibited by the conditional overlay*)	**Uses Allowed:** No change
Maximum Building Coverage: 55% of total lot area	**Maximum Building Coverage:** No change

Proposal:

The applicant requests one entitlement:

1. A minor subdivision, entitled **Bentley Place Third Addition** which is a replat of Lot 1, Block 1, Bentley Place Second Addition to the City of Fargo, Cass County, North Dakota

The property is zoned LC, Limited Commercial, with Conditional Overlay (Ord. 4900). The Conditional Overlay prescribes design standards and limits some uses. No zone change is proposed. The Conditional Overlay will continue in effect following the subdivision. The uses allowed in the LC zone are noted above.

This project was reviewed by the City's Planning and Development, Engineering, Public Works, and Fire Departments ("staff"), whose comments are included in this report.

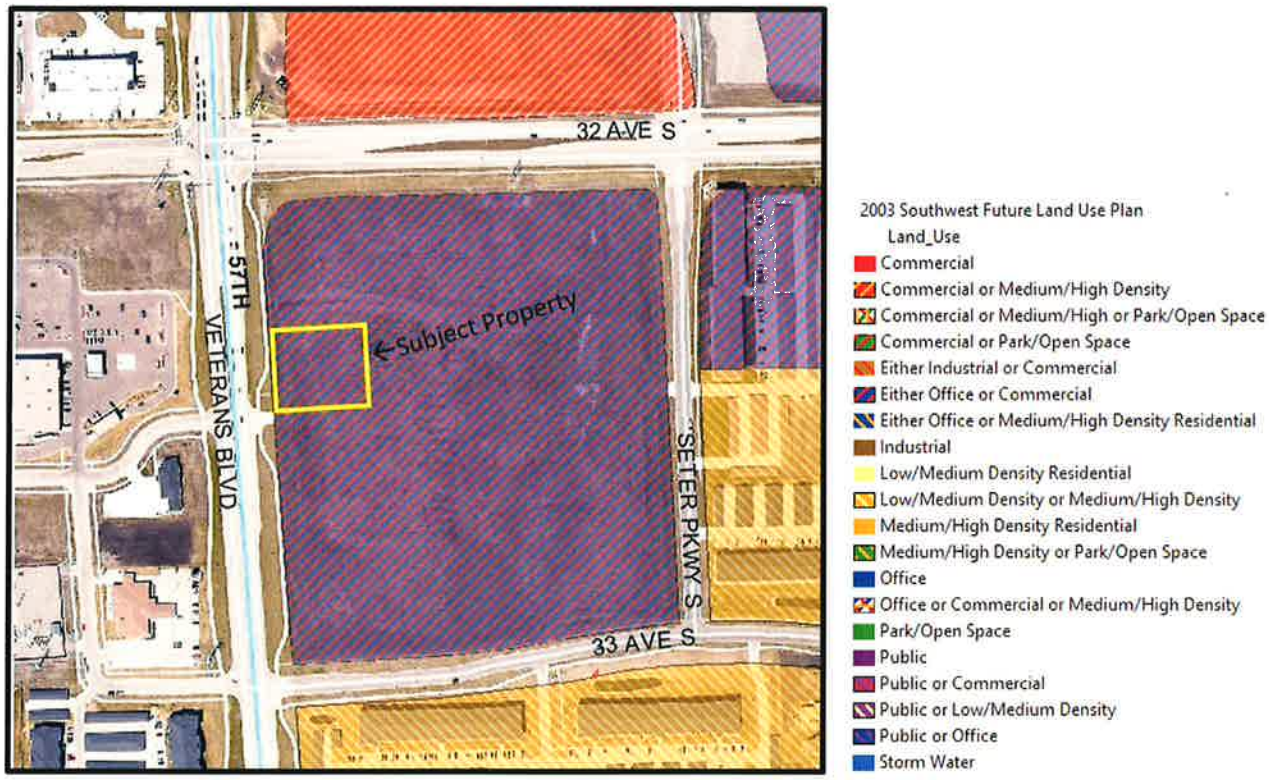
Surrounding Land Uses and Zoning Districts:

- North: LC with a C-O, Conditional Overlay (Ord. 4900); office and commercial
- East: LC, with a PUD, Planned Unit Development ; undeveloped

- South: LC with a C-O, Conditional Overlay (Ord. 4900); office
- West: Across Veterans Boulevard—City of West Fargo, Commercial Development

Area Plans:

The subject property was originally part of the Southwest Area Plan as designated within the Urban Fringe and Extraterritorial Area of the City of Fargo land use plan adopted in 2001. This area was most recently updated in 2010 which shows the subject property as being appropriate for Office or Commercial uses.



Schools and Parks:

Neighborhood: The subject property is located within the Brandt Crossing neighborhood.

Schools: The subject property is located within the bounds of the West Fargo School District, specifically Independence Elementary, Liberty Junior High and Sheyenne High Schools.

Parks: The subject property is located approximately a quarter-mile from Urban Plains Park (3020 51 Street South) and Brandt Crossing Park (5009 33 Avenue South), providing amenities of bike rentals, playgrounds, trails, shelters and shelter rental, basketball courts, and a dog park.

Pedestrian / Bicycle: A shared use trail is located along Veterans Boulevard, which connects to the metro area trail system.

Staff Analysis:

The plat will replat the existing lot into two lots. The street access and utility connections that are in place on the current lots will not change. This property has no direct access to Veterans Boulevard. Access is provided through easements on the south and east sides of the property that were created with the Bentley Place First Addition plat in 2017.

SUBDIVISION

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

1. **Section 20-0907.B.3 of the LDC stipulates that the Planning Commission recommend approval or denial of the application, based on whether it complies with the adopted Area Plan, the standards of Article 20-06 and all other applicable requirements of the Land Development Code. Section 20-0907.B.4 of the LDC further stipulates that a Minor Subdivision Plat shall not be approved unless it is located in a zoning district that allows the proposed development and complies with the adopted Area Plan, the standards of Article 20-06 and all other applicable requirements of the Land Development Code.**
   The subject property is located within the 2001 Southwest Future Land Use Plan, which designates it as for "Either Office or Commercial" land use. The property within this plat is currently zoned LC, Limited Commercial. No zone change is proposed. In accordance with Section 20-0901.F of the LDC, notices of the proposed plat have been sent out to property owners within 300 feet of the subject property. To date, staff has received one inquiry from a neighboring business. The project has been reviewed by the city's Planning, Engineering, Public Works, Inspections, and Fire Departments. **(Criteria Satisfied)**

2. **Section 20-0907.C.4.f of the LDC stipulates that in taking action on a Final Plat, the Board of City Commissioners shall specify the terms for securing installation of public improvements to serve the subdivision.**
   While this section of the LDC specifically addresses only major subdivision plats, staff believes it is important to note that any improvements associated with the project (both existing and proposed) are subject to special assessments. Special assessments associated with the costs of the public infrastructure improvements are proposed to be spread by the front footage basis and storm sewer by the square footage basis as is typical with the City of Fargo assessment principles. **(Criteria Satisfied)**

Suggested Motion: "To accept the findings and recommendations of the Planning Commission and staff and move to approve the proposed **Bentley Place Third Addition** subdivision plat, as presented, as the proposal complies with the Standards of Article 20-06 and all other applicable requirements of the LDC."

Planning Commission Recommendation: October 6, 2020

At the October 6, 2020 Planning Commission, by a vote of 7-0 with two Commissioners absent and two Commission seats vacant, the Planning Commission moved to accept the findings and recommendations of staff and recommended approval to the City Commission of the proposed Bentley Place Third Addition subdivision plat, as presented, as the proposal complies with the Standards of Article 20-06 and all other applicable requirements of the LDC.

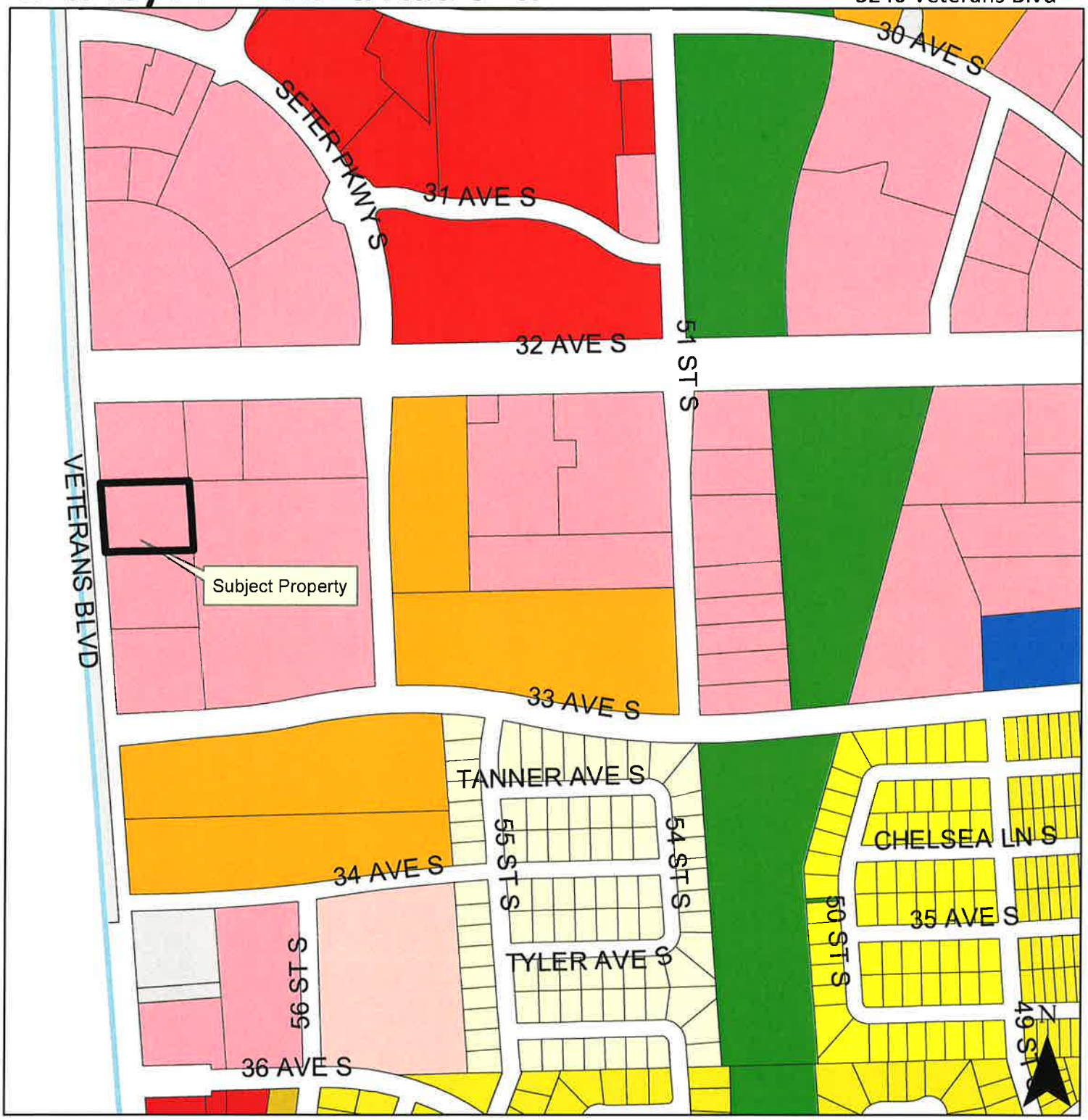
Attachments:

1. Zoning Map
2. Location Map
3. Preliminary Plat

Plat (Minor)

Bentley Place Third Addition

3240 Veterans Blvd



THE CITY OF Fargo FAR MORE

Legend

AG, DMU, GC, GL, GO, LC, LI, MR-1, MR-2, MR-3, MHP, NC, NO, P/I, UMU, SR-2, SR-3, SR-4, SR-5, City Limits

500 feet

Fargo Planning Commission
October 6, 2020

Plat (Minor)

Bentley Place Third Addition

3240 Veterans Blvd

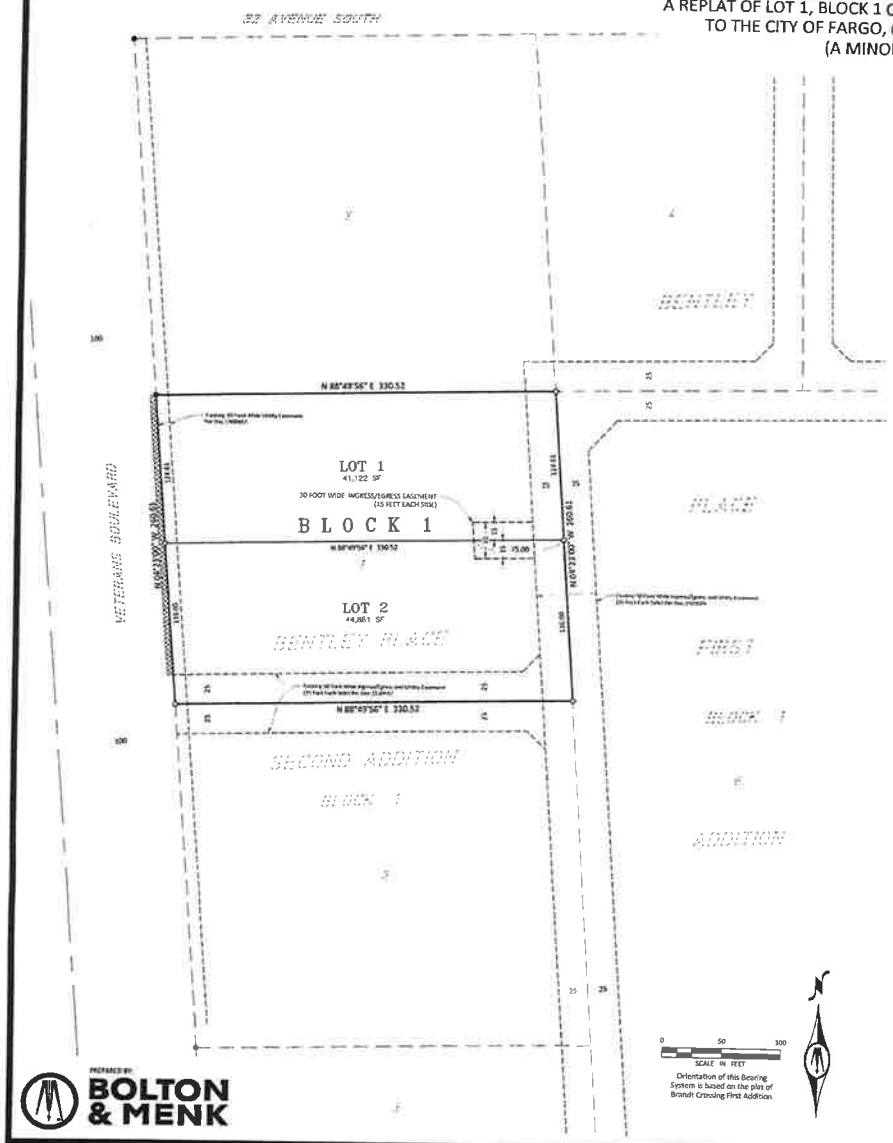
THE CITY OF Fargo FAR MORE

500 feet

Fargo Planning Commission
October 6, 2020

BENTLEY PLACE THIRD ADDITION

A REPLAT OF LOT 1, BLOCK 1 OF BENTLEY PLACE SECOND ADDITION
TO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA
(A MINOR SUBDIVISION)



PREPARED BY: BOLTON & MENK

OWNERS DESCRIPTION AND DEDICATION

KNOW ALL MEN BY THESE PRESENTS, That Brandt Crossing, LLC, a North Dakota limited liability company as owner of a parcel of land located in that part of the Northwest Quarter of Section 28, Township 139 North, Range 49 West of the Fifth Principal Meridian, Cass County, North Dakota, being more particularly described as follows:

Lot 1, Block 1, of BENTLEY PLACE SECOND ADDITION to the City of Fargo, according to the plat thereof on file and of record, Cass County, North Dakota.

Said parcel contains 86,003 square feet of land, more or less and is subject to all easements, restrictions, reservations and rights of way of record, if any.

Said owner has caused the above described parcel of land to be surveyed and platted as "BENTLEY PLACE THIRD ADDITION" to the City of Fargo, Cass County, North Dakota and do hereby dedicate to the public for public use the 30 foot wide ingress/egress easement as shown on this plat for the purpose so stated.

OWNER: Brandt Crossing LLC

By: Kevin Christianson, President

State of North Dakota
County of Cass } SS

On this 1st day of October, in the year 2020 before me, a notary public within and for said County and State, personally appeared Kevin Christianson, President, Brandt Crossing, LLC, known to me to be the person who is described in and who executed the within instrument, and acknowledged to me that he executed the same on behalf of Brandt Crossing, LLC.

Wendi Lawson
Notary Public

WENDI LAWSON
Notary Public
State of North Dakota
My Commission Expires May 17, 2024

MORTGAGEE: Cornerstone Bank

By: Jim Hambrick, Senior Vice President

State of North Dakota
County of Cass } SS

On this 3rd day of October, 2020, before me, a notary public within and for said County and State, personally appeared Jim Hambrick, Senior Vice President, Cornerstone Bank, known to me to be the person who is described in and who executed the within instrument, and acknowledged to me that he executed the same on behalf of Cornerstone Bank.

Wendi Lawson
Notary Public

WENDI LAWSON
Notary Public
State of North Dakota
My Commission Expires May 17, 2024

SURVEYOR'S CERTIFICATE AND ACKNOWLEDGEMENT

I, Gregg Streeing, Registered Professional Land Surveyor under the laws of the State of North Dakota, do hereby certify that this plat is a correct representation of the survey, that all distances shown are correct and that the monuments for the guidance of future surveys have been located or placed in the ground as shown, and that the outside boundary lines are correctly designated on the plat.

Gregg Streeing, Registered Professional Land Surveyor
North Dakota License Number LS-6701

Date: 9/30/20

State of North Dakota
County of Cass } SS

On this 30th day of SEPTEMBER, 2020, before me, a notary public within and for said County and State, personally appeared Gregg Streeing, Registered Professional Land Surveyor, known to me to be the person who is described in and who executed the within instrument, and acknowledged to me that he executed the same.

Jeff Oelinger
Notary Public

JEFF OELINGER
Notary Public
State of North Dakota
My Commission Expires May 20, 2022

CITY OF FARGO ENGINEERING DEPARTMENT APPROVAL

Approved by City Engineer this ____ day of _____, 2020.

Brenda E. Derrig, City Engineer

State of North Dakota
County of Cass } SS

On this ____ day of _____, in the year 2020 before me, a notary public within and for said County and State, personally appeared Brenda E. Derrig, City Engineer known to me to be the person who is described in and who executed the within instrument, and acknowledged to me that she executed the same as City Engineer for the City of Fargo.

Notary Public

LEGEND

- 5/8"x18" REBAR MONUMENT SET, CAP MARKED BY LIC. NO. LS-6701
- MONUMENT FOUND, 5/8" REBAR
- SUBJECT PROPERTY LINE
- EXISTING PROPERTY LINE
- EASEMENT LINE
- SECTION LINE
- EXISTING NEGATIVE ACCESS EASEMENT PER DOC#[illegible]

CITY OF FARGO PLANNING COMMISSION APPROVAL

Approved by the City of Fargo Planning Commission this 6th day of October 2020.

John Gunkelman, Planning Commission Chair

State of North Dakota
County of Cass } SS

On this 6th day of October, in the year 2020 before me, a notary public within and for said County and State, personally appeared John Gunkelman, Planning Commission Chair, known to me to be the person who is described in and who executed the within instrument, and acknowledged to me that he executed the same on behalf of the Fargo Planning Commission.

Miranda Wolf
Notary Public

MIRANDA WOLF
Notary Public
State of North Dakota
My Commission Expires Mar 13, 2022

FARGO CITY COMMISSION APPROVAL

Approved by the Board of City Commissioners and ordered filed this _____ day of _____, 2020.

Timothy J. Mahoney, Mayor

Attest: _____
Steven Sprague, City Auditor

State of North Dakota
County of Cass } SS

On this ____ day of _____, in the year 2020 before me, a notary public within and for said County and State, personally appeared Timothy J. Mahoney, Mayor, and Steven Sprague, City Auditor known to me to be the persons who are described in and who executed the within instrument, and acknowledged to me that they executed the same on behalf of the City of Fargo.

Notary Public

THE CITY OF Fargo FAR MORE

Planning & Development
225 4th Street North
Fargo, ND 58102
Office: 701.241.1474 | Fax: 701.241.1526
Email: planning@FargoND.gov
www.FargoND.gov

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MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

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

DATE: OCTOBER 15, 2020

RE: APPROVE AGREEMENT BETWEEN THE CITY OF FARGO AND FARGO ELLIOTT PLACE FOUR, GP, LLLP FOR NEW CONSTRUCTION AT 4462 30 AVE S (HOME GRANT FUNDS)

On June 15, 2020, the City Commission approved amendments to the 2019 Annual Action Plan, which included identification of the activity described to the public and City Commission as:

> Project site/activities/budget identified – 4462 30 Ave South – "Elliott Place" – Fargo Housing & Redevelopment Authority. Activities include construction of a multifamily senior rental housing complex consisting of two buildings in partnership with Fargo Housing and Redevelopment Authority.

As part of the federal program, there are incremental steps throughout the process in order to comply with federal regulations. At this time, staff is seeking authorization for the Mayor to execute the agreement, which the City Attorney has thoroughly reviewed. Upon its execution, the City will commit HOME funds to be used on a reimbursement basis during construction of the 52-unit, affordable senior rental housing building at 4462 30 Ave S.

Recommended Motion: Authorize the Mayor to execute a contractual agreement with Fargo Elliott Place Four, LLLP, a Fargo Housing and Redevelopment Authority partnership, in order to commit HOME funds for the construction of a new affordable multifamily residential building.

EQUAL HOUSING OPPORTUNITY

RESOLUTION APPROVING
WRITTEN AGREEMENT FOR THE ELLIOTT PLACE ACTIVITY
HOME INVESTMENT PARTNERSHIP PROGRAM FUNDS

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

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

WHEREAS, such funds are primarily made available to address housing and community development needs of people with low to moderate income; and

WHEREAS, in compliance with federal regulations and citizen participation requirements, the City of Fargo previously approved the Elliott Place activity to fund the construction of an affordable senior multifamily residential rental building under the 2019 Annual Action Plan;

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 execute an agreement between the City of Fargo and Fargo Elliott Place Four, GP, LLLP, a Fargo Housing and Redevelopment Authority partnership, and other documents as necessary to effectuate activities related to the Elliott Place HOME activity.

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 agreement between the City of Fargo and Fargo Elliott Place Four, GP, LLLP for the Elliott Place HOME activity, 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 October 5, 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

OWNER AGREEMENT
Between the City of Fargo and Fargo Elliott Place Four, LLLP

HOME Investment Partnership (HOME)
New Construction – 4462 30th Avenue South

This OWNER AGREEMENT ("**Agreement**") is made and entered into this _____ day of _____, 2020 ("**Effective Date**"), by and between the City of Fargo, a North Dakota municipal corporation ("**City**"); and Fargo Elliott Place Four, LLLP, a North Dakota limited liability limited partnership ("**Project Owner**"). (The City and Project Owner shall be cumulatively referred to herein as the "**Parties**" and separately as a "**Party**").

WHEREAS, the City is a participating jurisdiction under the HOME Investment Partnerships Program ("**HOME**" or "**HOME Program**"), a program with the goal of expanding the supply of decent, safe, sanitary, and affordable housing for those of very low-income and low-income; and

WHEREAS, the City requested applications for projects to utilize HOME funds to develop housing to be affordable to low income households and Project Owner submitted an application for the project referenced in this Agreement; and

WHEREAS, the City and Project Owner desire to enter into this Agreement in order to memorialize certain agreements pertaining to the Project (as defined below), and their respective rights, duties and obligations relative thereto, all upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the promises and the mutual representations, warranties, and covenants herein contained, the Parties hereby agree as follows:

Section 1 ***Statement of Work.***
The Project Owner shall construct the project as described in the following statement of work.

A. Project Site. The Project is located at 4462 30th Avenue South (Parcel #01-6900-00550-000) ("**Project Site**" or "**Property**") and is to be constructed upon a 65-year ground leasehold interest of the Project Owner in the following-described property:

Lot Three, in Block Two, of Calico Prairie Addition to the City of Fargo, situate in the County of Cass and the State of North Dakota [TBD]

Project Owner, as tenant, will enter into a sixty-five (65) year Ground Lease, with The Housing and Redevelopment Authority of the City of Fargo, a North Dakota public body corporate, as landlord, for the property described above. Project Owner must furnish the City with an executed ground lease and recorded memorandum or short form of ground lease prior to the disbursement of any HOME funds under this Agreement.

B. Pro Forma and Budget. The total estimated development cost is $[11,630,073] [Pending final budget]. Project Owner's budget is attached as Exhibit "C." Sources and Uses is attached as Exhibit "D."

Project Owner shall promptly notify the City of any material changes to the pro forma, including but not limited to material increases in project costs, change orders, the receipt or availability of additional sources of funds not previously disclosed, and material changes in projections of revenue or operating expenses. The City must review changes to the pro forma and reserves the right to reduce its HOME commitment, modify the number of HOME-assisted units, or require Project Owner to contribute additional funds needed to complete the project if the changes to the pro forma are material and result in either the over-subsidization or under-funding of the project based on a City underwriting analysis.

C. Use of HOME Funds. The Project Owner shall develop and construct an affordable multifamily rental building to be occupied by low-income (80% or less Area Median Income or "AMI") seniors ages 55 and older. The Project will result in the construction of one (1) three-story building with fifty-two (52) apartment units with an underground parking facility. HOME funds are only being disbursed to Fargo Elliott Place Four, LLLP.

D. HOME-assisted Units. **Three (3)** units in the Project shall be designated as HOME-assisted units. The unit mix shall consist of:

a. **Two (2)** one-bedroom units
b. **One (1)** two-bedroom unit

All **three (3)** HOME-assisted units are hereby designated as **floating** HOME units. Project Owner shall provide the apartment numbers of each HOME-assisted unit to the City no later than the time of initial occupancy. For purposes of this Agreement a "HOME-assisted unit" is deemed to be a dwelling unit within the Project that is required to meet the income and rent restrictions of the HOME program and other terms of this Agreement.

E. Minimum Number of Low HOME Rent Units. As the Project does not consist of five or more HOME-assisted units, 24 CFR 92.252 does not apply. All **three (3)** units shall be **High HOME** units.

F. Davis-Bacon Labor Standards. As the Project does not consist of twelve (12) or more HOME-assisted units, the Davis-Bacon Act (40 U.S.C. 3141) does not apply as it relates to the funds covered under this agreement.

G. Property Standards. As a new construction activity, Project Owner shall construct the Project to the following property standards to ensure the housing is safe, sanitary, and in good repair.

a. State and local codes, ordinances, and zoning.

b. HUD's Housing Quality Standards ("**HQS**"), as set forth in 24 CFR 982.401.

c. Accessibility. The housing must meet the federal accessibility requirements of:

i. 24 CFR Part 8 (HUD's implementing regulations of Section 504 of the Rehabilitation Act of 1973)

ii. 28 CFR Parts 35 (Department of Justice's implementing regulations of Subtitle A of Title II of the Americans with Disabilities Act of 1990, as amended by the ADA Amendments Act of 2008)
iii. 28 CFR Part 36 (Department of Justice's implementing regulations of Subtitle A of Title III of the Americans with Disabilities Act of 1990, as amended by the ADA Amendments Act of 2008)
iv. The design and construction standards of the Fair Housing Act.
v. Architectural Barriers Act of 1968
vi. Uniform Federal Accessibility Standard ("UFAS").

d. Physical and Sensory Units. As the Project consists of fifty-two (52) units, a minimum of three (3) units must be physically accessible and a minimum number of one (1) unit must be accessible for tenants with sensory impairments, as mandated by 24 CFR 8.22(b).

e. Broadband infrastructure. As a new construction housing project which consists of four (4) or more rental units, the construction must include installation of broadband infrastructure, as defined in 24 CFR 5.100.

H. Schedule for Completion of Work. Construction of the Project must begin within twelve (12) months of the Effective Date of this Agreement. The Project must be complete and occupied within four (4) years of the Effective Date of this Agreement. Failure to complete and occupy the project within four (4) years will require repayment of all HOME funds invested.

Project Owner shall expend all HOME Funds by December 31, 2022. The construction schedule is included as Exhibit "H."

I. Environmental Review. The City has completed an Environmental Assessment of the Project Site and obtained Authority to Use Grant Funds from HUD.

a. Mitigation. As part of this Environmental Assessment, mitigation is required.

i. Flood plain. The Project Site is located within the 100 year flood plain. As a condition of Final Disbursement (defined in Section 5-B), Project Owner shall obtain a Letter of Map Revision ("LOMR") from FEMA. If a LOMR is not obtained or denied by FEMA, the Project Owner shall purchase flood insurance prior to Final Disbursement and maintained throughout the Affordability Period.

J. The Project. The statement of work, as set forth in this Section 1, shall be referred to herein as the "**Project**."

Section 2 ***City to Advance HOME Funds.***

A. Amount of HOME Funds. The City will advance and remit to Project Owner the maximum sum of **FOUR HUNDRED THOUSAND and 00/100 DOLLARS ($400,000.00)** ("**HOME Funds**") under terms and conditions set forth below.

B. Source of HOME Funds. The HOME Funds are from the City's HOME Investment Partnership allocation of:

Program Year 2019: $454,741.00 awarded to the City of Fargo on August 13, 2019; Federal Award Identification Number M-19-MC-38-0220, CFDA 14.239, DUNS 07-026-5871.

C. Form and Terms of Assistance. The City will advance the HOME Funds in the form of a loan to Project Owner. The Term of the HOME loan will commence at execution of the Leasehold Mortgage and Promissory Note and continue for a term of twenty (20) years.

The HOME loan will carry 0% interest (provided there is no default). Payment is deferred for the life of the loan of twenty (20) years from the date of the promissory note, with any remaining principal due at that time. The HOME Loan may be prepaid at any time by the Project Owner without penalty, however pursuant to 24 CFR 92.252(e)(1)(i), repayment of the HOME Loan prior to the end of the Affordability Period will not result in the termination of the Affordability Period.

a. Loan Instruments and Security. The HOME Loan must be evidenced by a promissory note ("**Note**") and secured by a mortgage of the Projection Owner's leasehold interest in the Property ("**Mortgage**"), an assignment of rents and leases ("**Assignment of Rents and Leases**"), and appropriate UCC financing statements ("**Financing Statements**"). It is understood and agreed that the Mortgage will be a second mortgage, meaning that it is intended to be subordinate in time and interest to a mortgage issued by the Project Owner to PNC Bank, National Association.

Together, this Agreement, Note, the Mortgage, the Assignment of Rents and Leases, and the Declaration of Land Use Restrictive Agreement, described in Section 3.G., below, shall constitute the "**Loan Documents.**"

b. Title Insurance. Prior to the making of any advance of funds under the loan by the City, the Project Owner shall provide a title insurance policy insuring the Property in standard ALTA form issued by a title company authorized to do business in the State of North Dakota and acceptable to the City. The name of the insured shall be the City of Fargo, a North Dakota municipal corporation. The policy shall show leasehold title to the Property, subject only to such exceptions as the City may approve, shall be in the full amount of the City's loan, shall contain a comprehensive coverage endorsement and other such endorsements as the City may require and shall insure that the mortgage constitutes a valid second-position lien on the Property, and that the Property is free of all liens, encumbrances, restrictions, or other matters of any kind whatsoever, with only such exceptions from coverage as are satisfactory to the City.

c. Ownership Entity. The Project Owner agrees that no sale or transfer of the Property will be made without the prior written consent of the City, except as permitted under the Mortgage. Transfers of partnership interests as permitted under the Partnership Agreement shall not require City consent or approval.

D. HOME Subsidy Limit. Upon Project Completion, the per-unit subsidy invested in the Project's HOME-assisted units shall not be less than $1,000 or more than the maximum HUD limit. As of the Effective Date of this Agreement, the maximum subsidy limit per HOME-assisted unit is:

- $175,782 for a 1-bedroom unit
- $213,718 for a 2-bedroom unit

E. Other Funds. The Housing and Redevelopment Authority of the City of Fargo, the member and manager of Fargo Elliott Place Four GP, LLC, the General Partner of Fargo Elliott Place Four, LLLP, received $500,000.00 in Community Development Block Grant funds through a Subrecipient Agreement dated December 6, 2016 for the acquisition of the Property.

The Project will receive funds from the following sources:

- 2020 Allocation Plan 4% Low Income Housing Tax Credits through the North Dakota Housing Finance Agency (NDHFA)
- 2019 National Housing Trust Fund through the NDHFA
- 2019 Housing Incentive Fund through the NDHFA
- Project-Based Vouchers from the Department of Housing and Urban Development
- Construction and permanent financing through PNC Bank

Section 3 HOME Program Requirements.

As a recipient of HOME funds, Project Owner shall comply with all federal laws and regulations, now or in the future as amended listed in Exhibit "E." In addition, acceptance of HOME funds requires compliance with specific HUD regulations further described in this section.

A. Affirmative Marketing. As the Project does not consist of five (5) or more HOME-assisted units, the Affirmative Marketing requirements do not apply.

B. Violence Against Women Act ("**VAWA**"). Project Owner shall comply with the HUD implementing regulations of the Violence Against Women Act at 24 CFR 92.359 and 24 CFR 5.2005 throughout the Affordability Period as defined in Section 6 Paragraph A.

a. "Notice of Occupancy Rights Under the Violence Against Women Act." This notice must be provided when an application for a HOME-assisted unit is denied or approved or with any eviction notification. Project Owner must use Form HUD-5380.

b. VAWA Lease Addendum. The lease for any HOME-assisted unit must incorporate the VAWA Lease Addendum required under 24 CFR 92.359(e).

c. Emergency Transfer Plan. Project Owner shall follow the City's Emergency Transfer Plan for victims of domestic violence, dating violence, sexual assault, or stalking under VAWA. The Project Owner has been provided a copy of the City's policy.

d. Bifurcation of Lease. If a family living in a HOME-assisted rental unit separates under 24 CFR 5.2009(a), the remaining tenant(s) may remain in the HOME-assisted unit.

C. Displacement, Relocation, and Acquisition. Project Owner shall take all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of the Project. Project Owner shall comply with appropriate relocation and real property acquisition requirements as provided in 24 CFR 92.353.

This Project will be constructed on vacant land and will not result in displacement.

D. Conflict of Interest. The following parties may not occupy a HOME-assisted affordable housing unit in the Project during the Affordability period:

a. The Project owner, developer, or sponsor;

b. Any officer, employee, agent, elected or appointed official or consultant of the owner, developer, or sponsor;

c. Any immediate family member of an officer, employee, agent, elected or appointed official, or consultant of the owner, developer, or sponsor.

E. Equal Access. As the Project is considered housing assisted by HUD, it shall be made available without regard to actual or perceived sexual orientation, gender identity, or marital status pursuant to 24 CFR 5.105(a)(2).

F. Religious Activities and Faith-Based Organizations. Faith-based organizations are eligible, on the same basis as any other organization, to participate in HUD programs and activities. Project Owner is not a faith-based organization. Nevertheless, Project Owner is prohibited from using the Federal financial assistance received to support or engage in any explicitly religious activities such as, but not limited to, worship, religious instruction, or proselytization, or in any other manner prohibited by law.

G. Land Use Restrictive Agreement. Project Owner shall execute a Land Use Restrictive Agreement ("LURA") upon completion of the Project and the marking of the Project as complete in HUD's disbursement and information system, and the City is hereby authorized to record the LURA against the Project Owner's leasehold interest in the Property at the office of the Cass County Recorder. Said LURA shall be substantially in conformance with the form of LURA attached as Exhibit "A."

H. Historic Preservation. Project Owner shall require its contractors or subcontractors to stop construction if ground disturbance related to this Project results in the discovery of any bones, artifacts, foundations, or other indications of past human occupation and notify both the State Historic Preservation Office and the City immediately.

Section 4 Project Owner Responsibilities During the Award Period.

The following section describes the responsibilities of Project Owner after the Effective Date of this Agreement and before the commencement of the Affordability Period. Project Owner shall comply with the below provisions.

A. Report During the Development Phase. Project Owner shall report not less than quarterly on progress toward commencement of construction. Quarterly reports will be due on the 15th of the month following the end of the previous quarter. Project Owner shall submit this report regardless of whether a disbursement is requested from the City. "Report" shall mean a format determined acceptable to the City and may consist of conference calls and/or brief written reports.

B. Report During Construction. Once construction commences, Project Owner shall report on construction progress on a monthly basis. "Report" shall mean a format determined acceptable to the City and may consist of conference calls, brief written reports, and/or copying the City on draw requests. If a draw request is not made during the month, the City reserves the right to request a verbal or written progress report or conduct a site visit.

C. Request Disbursements During Construction. Project Owner shall make disbursement requests for HOME Funds from the City during construction no more frequently than monthly and no less frequently than quarterly; unless otherwise authorized by the City in writing. Disbursement requests must meet the criteria described in Section 5(A) "Disbursement." Project Owner shall use the template "HOME Disbursement Request" form attached as Exhibit "F."

D. Report During Lease-Up. For any HOME-assisted unit leased in a calendar month, Project Owner shall submit the City's "HOME Benefit Form" by the 7th of the next month. If no units were leased, Project Owner shall inform the City by the same date.

Section 5 City Responsibilities During the Award Period.

The following section describes the responsibilities of the City after the Effective Date of this Agreement and before the commencement of the Affordability Period.

A. Disbursement. The City shall remit funds upon receiving a disbursement request from Project Owner, provided that:

a. Funds are needed for payment of HOME-eligible costs. The amount of each request must be limited to the amount needed.

b. Project Owner has not already made a disbursement request during the calendar month (unless an exception has been granted in writing by the City).

c. Project Owner is not in material default under the terms of this Agreement or of any of the Loan Documents, and no event shall exist, which by notice, passage of time, or otherwise would constitute an event of default under this Agreement.

d. The Project shall not have been materially damaged by fire or other casualty.

e. Project Owner has provided documentation of direct costs, such as invoices or receipts, which the Project Owner certifies are true and correct copies of payments due for an activity covered by this Agreement and made in accordance with the Statement of Work.

f. After inspection of the Project and review and approval of the work performed, the City has approved the disbursement request.

B. Retainage. All disbursement requests will be made in full as provided hereunder except that the final ten percent (10%) of HOME Funds, will be retained by the City without interest accrual, and be paid as a Final Disbursement upon the City's receipt of all project closeout items listed in the City of Fargo's HOME Project Completion Policy.

C. Project Completion Inspection. To ensure the Project meets the Property Standards, the City shall conduct an HQS inspection prior to occupancy. This inspection and all corrective or remedial actions must be completed before the City will issue the Final Disbursement and mark the Project complete in HUD's disbursement and information system.

Section 6 Owner Responsibilities During the Affordability Period.

The following section describes the responsibilities of the Project Owner during the Affordability Period. Project Owner shall comply with the below provisions.

A. Affordability Period. The Project Owner must comply with all HOME regulations, throughout the Affordability Period, as defined herein.

As a new construction rental project, the Affordability Period is twenty (20) years commencing with the Project Completion Date.

a. Project Completion Date. The "**Project Completion Date**" shall be as defined in 24 CFR §92.2 when: all necessary title transfer requirements and construction work have been performed; the project complies with the requirements of this part (including the property standards under §92.251); the final drawdown of HOME funds has been disbursed for the project; and the project completion information has been entered into the disbursement and information system established by HUD; provided, however, that the term "Project Completion Date" may be deemed to be a different such date in accordance with particular federal regulations, as the same may be modified from time to time. Regardless of when the LURA (substantially similar to Exhibit "A") is executed and recorded, the first day of the Affordability Period shall be the Project Completion Date as defined above.

i. Six Month Deadline for Leasing HOME Units. If within six (6) months of the Project Completion Date, one hundred percent (100%) of the HOME units are not rented to qualified households, the Project Owner shall submit to the City a marketing and outreach plan detailing how it will lease the remaining HOME units before the eighteen month deadline described in the following subparagraph.

ii. Eighteen Month Deadline for Leasing HOME Units. If within eighteen (18) months of the Project Completion Date, one hundred percent (100%) of the HOME units are not rented to qualified households, the Project Owner must repay the City the amount of HOME funds invested in that housing unit, defined as the final per-unit subsidy for that HOME-assisted unit.

b. Enforcement of Affordability Period. Pursuant to 24 CFR 92.252(e)(1)(i), the affordability requirements remain in force regardless of the term of any loan or mortgage, repayment of the HOME investment, or transfer of ownership documented, and are enforced via the LURA on the assisted property. The LURA will terminate at the end of the Affordability Period, and upon request, the City will execute a release of the LURA after the end of the Affordability Period.

B. Qualified Tenants. During the Affordability Period, HOME-Assisted Units must be occupied by tenants that are eligible as low-income as determined by HUD.

a. Tenant Selection. Project Owner shall adopt and follow written tenant selection policies. The policy must be submitted to the City for approval prior to the marketing of units to ensure compliance with 24 CFR 92.253(d).

i. Tenant Selection Preference. Project Owner is hereby authorized to limit tenant eligibility to the elderly.

b. Tenant Income Limits. Income-eligible households are defined as households having incomes at the time the tenant moves into the HOME-assisted Unit (hereinafter such time referred to as "**move-in**") at or below a certain amount of area median income ("**AMI**") based on household size.

For **High HOME Units**; a household must be at or below 60% AMI at **move-in**. For **Low HOME Units**; a household must be at or below 50% AMI at **move-in**. There are no Low HOME units in this project.

AMI is adjusted annually by HUD. As of the Effective Date of this Agreement, income limits can be found online at www.hudexchange.info/programs/home/home-income-limits/.

c. Tenant Income Verification. Income verification is the Project Owner's responsibility. The City uses the definition of annual income as defined at 24 CFR 5.609.

i. Initial Income Certification. Project Owner shall determine a household's initial eligibility for a HOME-assisted unit by anticipating a household's income over the next twelve (12) months using two months of source documents.

ii. Annual Income Self-Certification. After a household's Initial Income Certification, Project Owner shall obtain on an annual basis a written statement from the household stating its anticipated annual income and household size over the next twelve (12) months. No source documentation is required for annual self-certifications.

1. Exception. Every sixth (6th) year of the Project's Affordability Period, Project Owner shall collect and examine two months of source documents for all HOME-assisted units.

d. Over-Income Tenants. If at recertification a household is over the income limit for the HOME-assisted unit, the Project Owner may not evict a household; refuse to renew a household's lease; or force a household to move buildings, projects, or units. Project Owner shall immediately contact the City regarding over-income tenants for guidance on how to obtain compliance.

C. Affordable Rents. HOME-assisted units must be rented at affordable rental rates as described below.

a. Rent Limits. The monthly rent plus utility allowance for a HOME-Assisted unit may not be higher than the maximum HOME rent limits set annually by HUD. As of the Effective Date of this Agreement, HOME rent limits may be found online at:

www.hudexchange.info/programs/home/home-rent-limits/.

b. Initial Rent Limit. All three (3) of HOME-assisted units in this Project are subject to High HOME rents and zero (0) units are subject to Low HOME rents. Table 6C sets the Initial HOME Rents for the Project. Regardless of future HUD adjustments as reflected online at the above-described web page, the HOME rents for this project are not required to be lower than the limits established in this table.

As of the Effective Date of this Agreement, the 2020 HOME Rent Limits were in effect and are listed as follows:

Table 6C: HUD HOME 2020 Rent Limits		
	1 Bedroom	2 Bedroom
High HOME Rent	$676	$834

c. Rent Increases. On an annual basis, the Project Owner shall submit to the City its proposed HOME rent structure for the coming year. The City will reasonably approve or disapprove the proposed rents. The City will approve new HOME rents provided the rent plus applicable utility allowance (see paragraph d below) does not exceed the HUD HOME Rent Limit (or paragraph b above, if applicable).

If a rent increase is approved by the City, rent increases for HOME-assisted units are subject to the provisions of outstanding leases. At a minimum, the owner must provide tenants in HOME-assisted units not less than thirty (30) days prior written notice before implementing any increases in rents.

d. Utility Allowances. Project Owner must deduct utility allowances from the published Rent Limits. Utility allowances for initial tenants will be determined before leasing begins by the Project Owner using HUD's Utility Schedule Modeler or other approved method by HUD as outlined in *HOMEfires Vol. 13 No. 2, May 2016*. This schedule must be submitted to the City for approval.

Project Owner shall update Utility Allowances annually and submit them to the City for approval.

e. Fees. Project Owner may not charge fees not customarily charged in rental housing. Project Owner may charge reasonable application fees to prospective tenants. Project Owner shall be permitted to charge parking fees only if such fees are customary for rental housing projects in the neighborhood. Project Owner may charge fees for services such as bus transportation or meals, as long as such services are voluntary.

Project Owner shall submit a Fee Schedule prior to Project Completion for review and approval by the City, and annually thereafter.

f. Federal or State Project Based Rental Subsidy. Notwithstanding anything to the contrary contained herein, pursuant to 24 CFR 92.252(b)(2), if a HOME-assisted unit receives Federal or State project-based rental subsidy and the very low-income family pays as a contribution to ward rent not more than 30 percent of the households adjusted income, then the maximum rent (i.e., tenant contribution plus project-based rental subsidy) is the rent allowable under the Federal or State project-based rental subsidy program.

D. Tenant Leases. Project Owner shall maintain a written lease with tenants of HOME-assisted units which meets the following standards.

a. Lease Length. The written lease must be for an initial period of not less than one (1) year, unless by mutual agreement between the tenant and the owner a shorter period is specified.

b. VAWA Lease Addendum. The lease must incorporate the VAWA lease term/addendum required pursuant to 24 CFR 92.359(e).

c. Prohibited Lease Terms. The lease may not contain any of the federally-prohibited lease terms set forth in 24 CFR 92.253(b).

d. Termination of Tenancy. To terminate or refuse to renew tenancy, the Project Owner shall serve written notice upon the tenant specifying the grounds for the action at least 30 days before the termination of tenancy.

An owner may not terminate the tenancy or refuse to renew the lease of a tenant of rental housing assisted with HOME funds except as permitted under 24 CFR 92.253(c).

E. Property Standards. Project Owner shall maintain the Project so housing is in a safe and sanitary condition, and is in good repair in conformance with the following standards (collectively the "**Property Standards**").

a. **HQS** as defined in 24 CFR 982.401. It is agreed that the City may modify or replace the HQS with another standard as directed by HUD without requiring an amendment to this Agreement.

b. State and Local Codes. The Project shall be in compliance with all state and local codes, ordinances, and zoning.

c. Lead-Based Paint. As a new construction project, lead-based paint is not a concern.

F. Reporting. Project Owner shall maintain complete and organized records. This section sets forth the manner by which the Project Owner shall maintain records and report to the City on an annual basis.

a. Project Records. Representatives of the City, HUD, the Comptroller General of the United States, or their designees may examine any records or information accumulated relating to this Agreement. Project Owner shall maintain administrative and financial records as required by 24 CFR 92.508.

b. Record Retention. All Project Records must be retained until five years after the end of the Affordability Period.

If any litigation, claim, negotiation, audit, monitoring, inspection or other action has been started before the expiration of the required record retention period, records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the required period, whichever is later.

c. Annual Report. Project Owner shall provide the following to the City on an annual basis on the previous calendar year's activities. The City shall annually notify the Project Owner of the specific documents required and deadlines for submission:

i. Occupancy Report. A list of each HOME-assisted unit with information about the household. Project Owner shall use a City-provided form.

ii. Financial Report. Project Owner shall demonstrate the financial condition and continued financial viability of the Project. A list of these reports can be found in the City's HOME Policies and Procedures manual.

Section 7 ***City Responsibilities During the Affordability Period***. The following describes the responsibilities of the City during the Affordability Period.

A. Annual File Monitoring. Upon reasonable advance written notice to the Project Owner, the City shall conduct, and Project Owner shall allow, monitoring reviews on an annual basis to verify Project Owner is complying with all HOME rules and regulations. There are two types of such monitoring reviews:

a. On-Site File Monitoring Reviews. An on-site review shall consist of a review of Project Records related to the previous calendar year. A representative of the City shall conduct an on-site monitoring review of the Project on the following schedule.

i. Once within twelve (12) months of Project Completion.

ii. Once every three (3) years thereafter.

The City reserves the right to conduct more frequent on-site monitoring reviews of Project Records as are reasonably necessary to ensure compliance hereunder.

b. Desk Review of Project Records. During years when an on-site file monitoring is not required, the City shall examine copies of records and tenant files to ensure the Project Owner is in compliance with the HOME program.

B. Annual Property Standards Monitoring. The City shall verify Project Owner is maintaining Property Standards, as follows:

a. On-Site Property Standards Inspection. Upon reasonable advance written notice, the City building inspector shall conduct, and Project Owner shall allow, an on-site property inspection of HOME-assisted units on the following schedule.

i. Once within twelve (12) months of Project Completion.

ii. Once every three (3) years thereafter assuming no health and safety deficiencies have been identified. Health and safety deficiencies will result in annual inspections for three (3) years.

b. Property Standards Certification. In years when an on-site Property Standards inspection is not required, Project Owner shall certify to the City that each building and all HOME-assisted units associated with the Project are suitable for occupancy under the Property Standards set forth in this Agreement.

C. Yearly Updates to Tenant Income and Rent Limits. The City shall inform the Project Owner on an annual basis in writing of changes to the Tenant Income Limits and HOME Rent Limits when released by HUD.

D. Annual Approval. The City shall review and approve the rent structure and utility allowance for HOME-assisted units.

Section 8 Enforcement.

A. Default. The following shall constitute an event of default by Project Owner under this Agreement and subject to remedy if not corrected within the identified Corrective Action Period (Subsection B, below).

a. Failure to maintain the Project or HOME-assisted Units in accordance with the Property Standards;

b. Failure to meet the Affordability Requirements during the Affordability Period;

c. Failure to comply with HOME Program regulations, fair housing laws, and other federal requirements;

d. Any event of fraud, material misrepresentation, gross negligence, or willful misconduct in the execution or performance of this Agreement or in its application for participation in the HOME Program.

e. Use of funds for activities or uses that are not HOME-eligible costs.

f. Any other material breach of the terms and conditions of this Agreement by the Project Owner or any of its Employees, Contractors, or Agents.

B. Corrective Action Period. In the event of default by Project Owner, Project Owner shall have thirty (30) days from the receipt of written notice by the City to initiate corrective action. Such thirty (30) day period shall be extended as the City deems necessary in City's reasonable discretion, in the event that:

a. Project Owner has initiated and is diligently pursuing a cure to the reasonable satisfaction of the City, or;

b. The action to cure the default reasonably requires more than thirty (30) days.

C. Remedies. If Project Owner fails to cure the default, the City shall have the following remedies:

a. The City may terminate this Agreement.

b. Upon written demand by the City, the Project Owner shall remit payment to the City of all HOME Funds advanced by the City under this Agreement.

c. The City may withhold any further payments to be made under this Agreement until such time as Project Owner's breach has been cured to the satisfaction of the City.

d. The City may require the use of, or change in, professional property management.

e. The City may apply to any appropriate court, State or Federal, for such other relief as may be appropriate and allowed by law.

f. Enter upon the Property and take possession thereof, together with the Project then in the course of construction, and proceed either in its own name or in the name of the Project Owner, as the attorney-in-fact of the Project Owner (which authority is coupled with an interest and is irrevocable by the Project Owner), to complete or cause to be completed the Project, at the cost and expense of the Project Owner.

g. Pursue the appointment of a receiver to collect rents and profits or take possession of the Project.

h. Declare immediately due and payable all unpaid principal, accrued interest, and annual fees on the Note, together with all sums payable thereunder and the same shall thereupon be immediately due and payable without presentment of any other demand, protest, or notice of dishonor or any other notice of any kind, all of which are hereby expressly waived.

i. Apply sanctions set forth in 24 CFR Part 92, if determined by the City to be applicable.

Any delay by the City in exercising any right or remedy provided herein or otherwise afforded by law or equity shall not be a waiver of or preclude the exercise of such remedy. All such rights and remedies shall be distinct and cumulative and may be exercised singly, serially (in any order), or concurrently, and as often as therefore arises.

The limited partner of the Project Owner shall have the right, but not the obligation to cure any event of default of Project Owner hereunder and such cure shall be deemed to have been made by the Project Owner.

Section 9 General Provisions.

A. Duration of Agreement. This Agreement shall be effective upon the Effective Date and shall remain in effect for the duration of the Affordability Period of twenty (20) years.

B. Assignability. This Agreement will not be assigned or transferred by the Project Owner without the prior written consent of the City. Notwithstanding the foregoing or anything to the contrary set forth herein, interests in the Project Owner may be transferred without consent or restriction.

C. Independence of Project Owner. Nothing contained in this Agreement nor the relationship of the Project Owner to other parties, shall make or be construed to make the Project Owner, or any of the Project Owner's agents or employees, the agents or employees of the City. The Project Owner shall be solely and entirely responsible for its acts and the acts of its agents, employees, and subcontractors.

D. Assurances. The Project Owner shall use HOME Funds for the purposes authorized by the Fargo City Commission. The Project Owner shall comply with the assurances, attached as Exhibit "E" and made a part of this Agreement, which are required by the Department of Housing and Urban Development for all HOME projects.

E. Conflict of Interest. While the conflict of interest provisions in 24 CFR 92.356 do not technically apply to the Owner's procurement of goods and services associated with the development or operation of the Project, the Owner agrees to notify the City in writing and see the City's approval prior to entering into any contract with any entity owned in whole or in part by a covered person or an entity owned or controlled in whole or in part by the Owner, the General Partner, any of the underlying individual owners of the General Partner, or any of the Guarantors. The City will review the proposed contract to ensure that the contractor is qualified and that the costs are reasonable. Approval of an identity of interest contract will be in the City's sole discretion.

Notwithstanding, the City initially acknowledges and approves the Owner's use of The Housing and Redevelopment Authority of the City of Fargo as the property manager for the Project. The City also acknowledges and approves The Housing and Redevelopment Authority of the City of Fargo's role as the manager of the General Partner and Developer, and as the Land Lessor,

F. License and Insurance Requirements. Project Owner shall comply with all applicable licensing requirements and associated business regulations, whether federal, state, or local. Project Owner shall purchase and maintain the policies listed in Exhibit "G.".

G. Severability. If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

H. Headings. The headings of the sections and paragraphs in this Agreement are for convenience only and do not affect the meanings or interpretation of the contents.

I. Amendments. Except as set forth in this Agreement, the Agreement and Loan Documents may only be modified or amended by written instrument signed by all the parties hereto.

Notwithstanding any terms within this Agreement, in the event that (i) HUD imposes new or modified requirements on existing HOME-assisted projects through regulation, administrative notice, publication, or other notice or (ii) HUD specifically identifies violations of HOME program requirements pertaining to this Agreement or the Project, Project Owner shall comply with any new or modified requirements to ensure the Project remains in or is brought into compliance with such requirements. Project Owner further agrees to execute an amendment to modify the terms of this Agreement in such manner as necessary to reflect and implement new HOME requirements or correct identified deficiencies. The City shall provide not less than thirty (30) days' notice to the Project Owner of any such modifications.

J. Indemnification and Hold Harmless. Project Owner agrees to indemnify and hold harmless the City and any of its officers, employees, contractors, consultants, representatives, agents, and assigns from and against any and all liability, damages, penalties, judgments, or claims of whatever nature arising from injury to person(s) or property resulting from the intentional or grossly negligent acts or omissions of the Project Owner, or the Project Owner's contractors, successors, or assigns in connection with the work on the Property, and the Project Owner will, at the Project Owner's own cost and expense, defend any and all suits or actions (just or unjust) which may be brought against the City or in which the City may be joined with other parties upon any such matter or claim(s). This agreement to indemnify and hold harmless will include indemnity against all costs, expenses, and liabilities, including but not limited to any repayment obligation to HUD incurred by the City under 24 CFR 92.503(b), any reasonable attorney fees, reasonably incurred in or in connection with any such claims or proceedings brought thereof, and other costs and expenses incident to monitoring, remedial actions, proceedings, or investigations and the defense of any claim, arising out of, resulting from, or related to, and to pay the City or its successor in interest, on demand, the full amount of any sum which the City or its successor has paid or becomes obligated to pay on account of:

a. Any material misrepresentation, omission, or the breach of any representation or warranty of the Project Owner.

b. Any failure of the Project Owner to materially perform or observe or cause to be performed or observed any term, provision, covenant, or agreement to be performed or observed by the Project Owner, or after assumption, by a subsequent to the Project Owner.

c. Any claims, assessments, or liabilities for charges, penalties, liens, taxes, or deficiencies arising from or relating to the use and operation by the Project Owner, or after an assumption, the Project Owner's successors to the Property or Project.

d. The manufacture, generation, storage, use, treatment, transportation, or disposal of solid waste, or any toxic or hazardous materials, substances, or pollutants either directly or indirectly by the Project Owner or any of their past or present affiliates on the Project Site described in Section 1, which occurs prior to possession passing from Project Owner pursuant to a Sheriff's Deed upon completion of a foreclosure or upon acceptance of a Deed in Lieu of Foreclosure.

This indemnification provision will survive the termination of this Agreement and any subsequent agreements of the parties contemplated herein. Notwithstanding anything to the contrary contained herein, the Project Owner's obligation hereunder shall not apply to the extent such liability, damages, penalties, judgments, or claims of whatever nature arising from injury to person(s) or property, are a result of the acts or omissions of the City and the City shall indemnify and hold harmless the Project Owner and any of their officers, employees, contractors, consultants, representatives, agents, and assigns from and against any and all liability, damages, penalties, judgments, or claims of whatever nature arising from injury to person(s) or property resulting from the intentional or grossly negligent acts or omissions of the City or any of its officers, employees, contractors, consultants, representatives, agents, and assigns.

Except for the indemnification obligations set forth above, neither the Project Owner nor any of its partners shall have any personal liability for the payment of Indebtedness or the performance of any obligations of the Project Owner hereunder or under the Note or other Loan Documents. In any action to realize upon any security furnished under any instrument now or hereafter securing the Indebtedness evidenced any of the Loan Documents or to collect any amounts payable thereunder, neither the Project Owner nor any partner of the Project Owner or any partner, officer, director, employee or agent of any partner of the Project Owner shall have any personal liability for the repayment of the Indebtedness and no judgment for the repayment of the Mortgage or the Note or interest thereon, if any, or any other sums due under the Mortgage or the Note or for damages for failure to perform any obligations owed to the City hereunder will be enforced solely against Mortgaged Property (as that term is defined in the Mortgage).

K. Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the parties hereto and the permitted successors and assigns of the parties. The Project Owner may not assign its interests or obligations under this Agreement without the prior written consent of the City.

L. Form of Notices; Addresses. Except for notices of default issued pursuant to Section 8 of this Agreement, all notices, requests, consents, or other communications required under this Agreement shall be in writing and shall be deemed to have been properly given if served

personally or if sent by United States mail or overnight delivery service to the Parties as follows (or at such other address as a Party may from time to time designate by notice given pursuant to this Section):

To: Project Owner

Fargo Elliott Place Four, LLLP
325 N. Broadway
Fargo, North Dakota 58102

with a copy to:

c/o PNC Real Estate
121 S.W. Morrison Street, Suite 1300
Portland, Oregon 97204
Attention: Fund Manager

To: City

City of Fargo
Department of Planning and Development
Attn: HOME Program
225 4th Street North
Fargo, ND 58102

With respect to notices of default issued pursuant to Section 8 of this Agreement, all such notices shall be in writing and shall be deemed to have been properly given if served personally or if sent by United States registered or certified mail or overnight delivery service to the Parties at the same address as above (or at such other address as a Party may from time to time designate by notice given pursuant to this Section).

Each notice shall be deemed given and received on the date delivered if served personally or, if sent by United States mail or by overnight delivery service, then the day so sent to the address of the respective Party, as provided in this Section, postage pre-paid. Notices sent by a Party's counsel shall be deemed notices sent by such Party.

a. Calculation of Time. Unless otherwise stated, all references to "day" or "days" shall mean calendar days. If any time period set forth in this Agreement expires on other than a Business Day, such period shall be extended to and through the next succeeding Business Day.

M. Receipt of Manual: The person executing this Agreement on behalf of **Project Owner** hereby certifies that **Project Owner** has been provided with the City of Fargo's HOME Manual for Rental Projects. Project Owner shall provide this document to its selected property manager and to the successors of said manager.

Project Owner Representative initials here: _____

N. Venue. In the event of a dispute or litigation arising out of this Agreement, it is understood and agreed that this Agreement was executed and performed in Cass County, North Dakota. Therefore, this Agreement shall be construed and interpreted in accordance with North Dakota law. Any lawsuit shall be brought in state or federal court in North Dakota and venued in Cass County, North Dakota.

O. Memorandum of Agreement. Simultaneous with the execution of this Agreement, the Parties will execute a Memorandum of Agreement in recordable format, substantially in the form attached as Exhibit "B", hereto, and any of the Parties are authorized to record said instrument against the Property at the Office of the Cass County Recorder.

P. Entire Agreement. This Agreement, Sections 1 through 9, together with Exhibits "A" – "H" and Land Use Restrictive Agreement, and proposal and application for participation in the program submitted by Project Owner, which are specifically incorporated herein, represent the entire agreement between the parties and supersede all prior representations, negotiations, or agreements whether written or oral.

(Signature Page to Follow)

SIGNED THE ____ DAY OF _____, 20___.

FARGO ELLIOTT PLACE FOUR, LLLP, a North Dakota Limited liability limited partnership

By: Fargo Elliott Place Four GP, LLC,
A North Dakota Limited Liability Company
Its: general partner

By: The Housing and Redevelopment Authority of the City of Fargo, a public body, corporate and politic
Its: member and manager

_____

G. Matthew Pike
Its: Executive Director

Federal ID # _____

DUNS # _____

SIGNED THE ____ DAY OF _____, 20___.

CITY OF FARGO, a North Dakota municipal corporation

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

ATTEST:

_____

Steven Sprague, City Auditor

EXHIBIT "A"

LAND USE RESTRICTIVE AGREEMENT (LURA)

DECLARATION OF LAND USE RESTRICTIVE AGREEMENT
(MULTIPLE FAMILY)

FARGO HOME PROGRAM

THIS "Declaration of Land Use Restrictive Agreement" (this "Declaration") is declared and established as of the _____ day of _____, 20_____ by Fargo Elliott Place Four, LLLP, a North Dakota limited liability limited partnership ("Project Owner"), whose address is 325 Broadway; Fargo, ND 58102.

WITNESSETH:

WHEREAS; Project Owner holds a sixty-five year leasehold interest in that certain of land located in Cass County, North Dakota, legally described as follows: [TBD}

Lot Three, in Block Two, of Calico Prairie Addition to the City of Fargo, situate in the County of Cass and the State of North Dakota.

(hereinafter "Subject Property") the street address for which is 4462 30th Avenue South, Fargo, ND 58104.

WHEREAS; Project Owner constructed upon the Subject Property an affordable residential housing development of 52 senior housing units (the "Elliott Place Four Project").

WHEREAS; Project Owner applied to the City of Fargo, a North Dakota municipal corporation (the "City") for a loan ("HOME Loan"), made available by funds received from the US Department of Housing and Urban Development (HUD), (said Funds hereinafter collectively referred to as the "HOME Funds"), provided through the provisions of the National Affordable Housing Act of 1990, HOME Investment Partnership Program, and pursuant to all federal rules, regulations and policies promulgated thereunder (herein said act, program, rules, regulations and policies collectively referred to as the "HOME Program"), which HOME Program is being administered by the Department of Planning and Development of the City; and

WHEREAS; the HOME Program, as adopted by City, requires that this Declaration be executed, delivered, and recorded with the County Recorder for the county at which said Elliott Place Four Project is located in order to create certain covenants running with the leasehold interest in the Subject Property for the purpose of enforcing certain requirements which regulate and restrict the use, occupancy and transfer of the Subject Property as set forth herein; and

WHEREAS; the City and Project Owner entered into an Owner Agreement for the provision of 2019 HOME Funds setting forth terms by which the Project Owner will receive the proceeds of the HOME Loan (the "Owner Agreement"), and conditions and obligations of the Project Owner for receiving such loan proceeds;

NOW, THEREFORE, in consideration of the above recitals and the following mutual covenants and agreements, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is hereby declared:

SECTION 1 - RECORDING AND FILING

Upon execution and delivery of this Declaration by the Project Owner, the City may cause this Declaration and all amendments hereto to be recorded at the Office of the County Recorder in Cass County, North Dakota, and shall pay all fees and charges incurred in connection therewith. Upon recording, the City shall immediately transmit to Project Owner an executed and certified copy of the original of the recorded Declaration, showing the date, book and page of recordation.

SECTION 2 – HOME COMPLIANCE DEFINITIONS

A. The Project Owner, at this place, confirms that the "Term" or "Affordability Period" is twenty (20) years under the HOME Program, and will commence on [DATE], and terminate on [DATE]. The commencement date represents the Project Completion Date, as that term is defined in the Owner Agreement, and terminate on the date that is twenty (20) years after.

B. High HOME Rent and Low HOME Rent: High HOME Rent and Low HOME Rent shall refer to the HOME Rent Limit categories which are published annually by HUD. HOME rent limits are currently available at https://www.hudexchange.info/programs/home/home-rent-limits/.

SECTION 3 - COVENANTS TO RUN WITH THE LAND

Project Owner intends, declares and covenants, on behalf of Project Owner and all future owners and operators of the Project during the Term, that this Declaration and the covenants and restrictions set forth herein which regulate and restrict the use, occupancy and transfer of the Subject Property shall be and are covenants running with the Subject Property, binding upon the Project Owner's successors in title and all subsequent owners and operators of the Subject Property, and are not merely personal covenants of the Project Owner, and shall bind the Project Owner, and the benefit shall inure to the City and any past, present or prospective tenants of the Project, and the City's respective successors and assigns during the Term hereof. The Project Owner agrees that any and all requirements of the laws of the State of North Dakota to be satisfied in order for the provisions of this Declaration to constitute deed restrictions and covenants running with the land shall be deemed to have been satisfied in full, and that any requirements or privileges of estate are intended to be satisfied, or in the alternative, that an equitable servitude has been created to insure that these restrictions run with the land. For the Term hereof, every contract, deed or other instrument hereinafter executed, encumbering or conveying the Project or any portion thereof shall expressly provide that such Agreement is subject to this Declaration, provided however, that covenants contained

herein shall survive and be effective regardless of whether such document provides that such instrument is subject to this Declaration.

SECTION 4 - REPRESENTATIONS, FURTHER COVENANTS AND WARRANTIES OF THE PROJECT OWNER

(A) Project Owner is a limited liability limited partnership, duly organized under the laws of the State of North Dakota (the "State"), and is qualified to transact business under the laws of the State. Project Owner has the power and authority to own its properties and assets and to carry on its business as now being conducted, and has the full legal right, power and authority to execute and deliver this Declaration.

(B) There is no action, suit or proceeding at law or in equity or by or before any governmental instrumentality or other agency now pending, or, to the knowledge of the Project Owner, threatened against or affecting it, or any of its properties or rights, which, if adversely determined, would materially impair its right to carry on business substantially as now conducted (and as now contemplated by the Declaration) or would materially adversely affect its financial condition.

(C) The Project Owner agrees to comply fully with the requirements of the HOME Program as it may from time to time be amended or modified at 24 CFR Part 92.

SECTION 5 - RENTAL LIMITATIONS AND RESTRICTIONS.

HOME Restrictions: HOME rents as outlined in the Agreement shall apply to a total of three (3) units for not less than the Term. All three (3) units are designated as "floating" HOME units. The three (3) units shall consist of two (2) one-bedroom units and one (1) two-bedroom units. Three (3) units are subject to high HOME rents and zero (0) units are subject to Low HOME rents. High and Low HOME rents are published on an annual basis by HUD. Rents can be adjusted on an annual basis in accordance with rents published by HUD. Rent increases are subject to the written approval of the City of Fargo and the provisions of tenant leases. For High HOME Units; a household must be at or below 60% AMI at move-in. For Low HOME Units; a household must be at or below 50% AMI at move-in. There are no Low HOME units in this project.

SECTION 6 - TERMINATION.

The Elliott Place Four Project will remain affordable as provided herein, for not less than the Term, without regard to the term of any loan or mortgage, repayment of the HOME investment, or the transfer of ownership, except that upon foreclosure or transfer in lieu of foreclosure, this Declaration and the covenants and restrictions set forth herein shall terminate. However, if at any time following the transfer by foreclosure or transfer in lieu of foreclosure,

but still during the Term the Project Owner of record prior to the foreclosure or transfer in lieu of foreclosure, or any newly formed entity that includes the former Project Owner, or those with whom the former Project Owner has or had family or business ties, obtains an ownership interest in the Project, the period of affordability shall be revived according to its original Term. Nothwithstanding anything to the contrary contained herein, at the conclusion of the Term, so long as Project Owner has maintained and managed the Elliott Place Four Project in compliance with Project Owner's obligations hereunder, the City shall issue an unconditional release and termination of this Declaration.

SECTION 7 - DEFAULT.

(A) Enforcement and Remedies. If Project Owner defaults in the performance of any of its obligations under this Declaration or breaches any covenant, declaration or restriction set forth herein or in the Owner Agreement (to the extent such Project Owner is required comply with such covenant, declaration or restriction in such Owner Agreement), and if such default remains uncured for a period of ninety (90) days after notice thereof is given by City, City shall be entitled to apply to any court having jurisdiction of the subject matter for specific performance of the Declaration, for an injunction against any violation of the Declaration, for the appointment of a receiver to take over and operate the Elliott Place Four Project in accordance with the terms of this Declaration, or for such other relief as may be appropriate, it being acknowledged that the beneficiaries of Project Owner's obligations hereunder cannot be adequately compensated by monetary damages in the event of Project Owner default. City shall be entitled to all its reasonable costs in any such judicial action in which City shall prevail. The limited partner of the Project Owner shall have the right, but not the obligation to cure any event of default of Project Owner hereunder and such cure shall be deemed to have been made by the Project Owner.

(B) Remedies Cumulative. Each right, power and remedy of City provided for in this Declaration, now or hereafter existing at law or in equity by statute, or otherwise shall be cumulative and concurrent and shall be in addition to every other right, power, or remedy provided for in this Declaration, or hereafter existing at law or in equity or by statute, or otherwise, and the exercise or beginning of the exercise by City of any one or more of the rights, powers or remedies provided for in this Declaration or now or hereafter existing at law, in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by City of any or all such other rights, powers or remedies.

SECTION 8 - MISCELLANEOUS.

(A) Additional Documents. The Project Owner shall submit any other information, documents or certifications requested by the City which City deems reasonably necessary to substantiate the Project Owner's continuing compliance with the HOME program.

(B) Severability. The invalidity of any clause, part or provision of this Declaration shall not affect the validity of the remaining portions thereof.

(C) Notices. All notices to be given pursuant to this Declaration shall be in writing and shall be deemed given when mailed by certified or registered mail, return receipt requested, to the parties hereto at the addresses shown in the Owner Agreement, or to such other place as a party may from time to time designate in writing to the other(s).

(D) Applicable Laws. This Declaration is governed by the laws of the State of North Dakota.

(E) Assignment or Transfer. Project Owner may not assign or otherwise transfer or delegate any right or duty without the express written consent of City; provided that nothing contained herein shall restrict transfers of partnership interests in the Project Owner.

(F) Waivers. This Declaration may not be waived, altered, modified, supplemented, or amended, in any manner, except by written agreement signed by both parties.

(G) Compliance. Project Owner agrees to comply with all applicable laws, rules, regulations, and policies, including but not limited to those relating to non-discrimination, accessibility and civil rights. Project Owner agrees to timely file all recommended reports, make required payroll deductions, and timely pay all taxes and premium owed, including but not limited to sales and use taxes and unemployment compensation and workers compensation premiums. Project Owner shall have and keep current at all times during the term of this Declaration all licenses and permits required by law. The duties imposed by this paragraph are in addition to, and do not supplant, the duties imposed by 24 CFR part 92.

(H) Indemnity. Project Owner shall comply with all applicable federal, state, and local laws, rules, and ordinances at all times in the performance of this Declaration, and shall conduct its activities so as not to endanger any person or property. Project Owner agrees to indemnify, save, and hold harmless the City, its agents, officers, and employees, from any and all claims of any nature, including costs, expenses, and reasonable attorneys' fees which may in any matter arise out of or result from this Declaration except claims resulting from or arising out of the City's acts or failure to act.

(I) Insurance. Project Owner shall secure liability and property damage insurance and furnish a certificate of insurance or other satisfactory proof of such coverage. The policy may not be canceled without prior written notice to City. The insurance policy does not define or limit Project Owner's duty to indemnify City under Section 8 (H).

(J) Modification and Incorporation. No waiver, consent, modification, or change of any term of this Declaration is effective unless in writing and signed by both parties. There are no understandings, declarations or representations, oral or written, not specified within the Grant Agreements and the accompanying documents. The provisions of the Grant Agreements are hereby incorporated by reference into this Declaration, as fully as if set forth and in detail herein.

Signature Page Follows on Page 6 of 6

IN WITNESS WHEREOF, the Project Owner has caused this Declaration to be signed by its duly authorized representatives, as of the day and year first above written.

FARGO ELLIOTT PLACE FOUR, LLLP
a North Dakota Limited Liability Limited Partnership

By: Fargo Elliott Place Four GP, LLC
Its: General Partner

By: The Housing and Redevelopment Authority of the City of Fargo, a public body, corporate and politic,

its Manager and Member

By: _____
Matthew Pike, Executive Director

STATE OF NORTH DAKOTA)
) SS
COUNTY OF CASS)

On this _____ day of _____, 20_____, before me, _____, the undersigned Notary Public, personally appeared Matthew Pike, Executive Director of The Housing and Redevelopment Authority of the City of Fargo, the manager of Fargo Elliott Place Four GP, LLC, the general partner of Fargo Elliott Place Four, LLLP, on behalf of said limited liability limited partnership and who acknowledged that he executed this Declaration.

Notary Public
(Seal)

Notary Name:_____

EXHIBIT "B"

MEMORANDUM OF AGREEMENT

MEMORANDUM OF
AGREEMENT

Between the City of Fargo and Fargo Elliott Place Four, LLLP

HOME Investment Partnership (HOME)
New Construction – 4462 30th Avenue South

This Memorandum of Agreement ("**Memorandum of Agreement**") is made this _____ day of _____, 2020, by and between the City of Fargo, a North Dakota municipal corporation ("**City**"); and Fargo Elliott Place Four, LLLP, a North Dakota limited liability limited partnership ("**Project Owner**"). (The City and Project Owner shall be cumulatively referred to herein as the "**Parties**" and separately as a "**Party**").

WHEREAS, the parties have entered into an OWNER AGREEMENT concerning that certain real property lying in Cass County, North Dakota, said property more particularly described as follows: [TBD}

> **Lot Three, in Block Two, of Calico Prairie Addition to the City of Fargo, situate in the County of Cass and the State of North Dakota;**

and,

WHEREAS, as part of said Owner Agreement, the City provided the land upon which the Project, as defined therein, was to be constructed and operated; and,

WHEREAS, said agreement further contains the following provision, among others, at section 3.H:

> H. Land Use Restrictive Agreement. Project Owner shall execute a Land Use Restrictive Agreement ("LURA") upon completion of the Project and the marking of the Project as complete in HUD's disbursement and information system, and the City is hereby authorized to record the LURA against the Property at the office of the Cass County Recorder. Said LURA shall be substantially in conformance with the form of LURA attached as Exhibit "A."

This Memorandum of Agreement incorporates all the other terms and provisions of the OWNER AGREEMENT between the parties the effective date of which is the ___day of _____, 2020, a copy of said agreement being on file at the office of the City Auditor, Fargo City Hall, 225 North Fourth Street, Fargo, North Dakota.

As provided in said OWNER AGREEMENT, all provisions of said agreement shall be deemed to be covenants running with the land and shall be binding upon the heirs, executors, administrators, assigns, designees and successors in interest of the parties.

(Signature Pages Follow)

IN WITNESS WHEREOF, the parties have hereunto executed this Memorandum of Agreement the day and year first above written.

FARGO ELLIOTT PLACE FOUR, LLLP
a North Dakota Limited Liability Limited Partnership

By: Fargo Elliott Place Four GP, LLLC
Its: General Partner

By: The Housing and Redevelopment Authority of the City of Fargo, a public body, corporate and politic,

its Manager and Member

By: _____
Matthew Pike, Executive Director

STATE OF NORTH DAKOTA)
) SS
COUNTY OF CASS)

On this _____ day of _____, 2020, before me, _____, the undersigned Notary Public, personally appeared Matthew Pike of The Housing and Redevelopment Authority of the City of Fargo, as Manager of Fargo Elliott Place Four GP, LLC, as General Partner of Fargo Elliott Place Four, LLLP, on behalf of said limited liability limited partnership and who acknowledged that he executed this instrument.

Notary Public
(Seal)

Notary Name:_____

IN WITNESS WHEREOF, the parties have hereunto executed this Memorandum of Agreement the day and year first above written.

CITY OF FARGO,
a North Dakota municipal corporation

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

Attest:

_____
Steven Sprague, City Auditor

STATE OF NORTH DAKOTA)
) SS
COUNTY OF CASS)

On this _____ day of _____, 2020, before me, _____, the undersigned Notary Public, personally appeared TIMOTHY J. MAHONEY, M.D., and STEVEN SPRAGUE, known to me to be the Mayor and City Auditor of the City of Fargo, a North Dakota municipal corporation, on behalf of said municipal corporation and who acknowledged that they executed this instrument.

Notary Public
(Seal)

Notary Name:_____

EXHIBIT "C"

Developer's Budget

EXHIBIT "D"

Project Sources and Uses

EXHIBIT "E"

Federal Assurances

Assurances

Other Applicable Federal Requirements

A. This contract will be conducted and administered in compliance with:

1. Title VI of the Civil Rights Acts of 1964 (Pub. L. 88-352) and implementing regulations issued at 24 CFR Part 1;

2. Title VIII of the Civil Rights Act of 1966 (Pub. L 90-284), as amended; and the grantee will administer all programs and activities related to housing and community development in a manner to affirmatively further fair housing;

3. Section 109 of the Housing and Community Development Act of 1974, as amended, and the regulations issued pursuant thereto;

4. Section 3 of the Housing and Urban Development Act of 1968, as amended;

5. Executive Order 11246, as amended by Executive Order 11375 and 12086, and implementing regulations issued at 41 CFR Chapter 60;

6. Executive Order 11063, as amended by Executive Order 12259, and implementing regulations at 24 CFR Part 107;

7. Section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112), as amended, and implementing regulations when published for effect;

8. The Age Discrimination Act of 1975 (Pub. L. 94-135), as amended, and implementing regulations when published for effect;

9. The relocation requirements of Title II and the acquisition requirements of Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, and the implementing regulations at 24 CFR Part 42;

10. Executive Order 11988 relating to the evaluation of flood hazards and Executive Order 11288 relating to the prevention, control and abatement of water pollution;

11. The flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234);

12. The Uniform Administrative requirements, set forth in 24 C.F.R. Part 570.502, and 24 C.F.R. 84, and the requirements of 2 C.F.R. Part 230, Cost Principles for Non-Profit Organizations (OMB Circular A-122) as they relate to the acceptance and use of Federal funds under this federally assisted program, including but not limited to the regulations pertaining to inventions, reporting and patent rights, and copyrights;

13. The Clean Air Act (42 U.S.C. 7401 et. seq);

14. HUD environmental standards (24 C.F.R. Part 51, Environmental Criteria and Standards (44 FR 40860-40866, July 12, 1979);

15. The Safe Drinking Water Act of 1974 (42 U.S.C. 201, 300(f) et. seq., and 21 U.S.C. 349), as amended;

16. The Endangered Species Act of 1973 (16 U.S.C. 1531 et. seq.) as amended;

17. The Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et. seq.), as amended;

18. The Reservoir Salvage Act of 1960 (16 U.S.C. 469 et. seq.), as amended by the Archeological and Historical Preservation Action of 1974;

19. Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 et. seq.), as amended;

20. Executive Order 11990, Protection of Wetlands, May 24, 1977 (42 FR 26961 et. seq.);

21. The lead based paint requirements of 24 C.F.R. Part 35 issued pursuant to the Lead Based Paint Poisoning Prevention Act (42 U.S.C. 4801 et. seq.);

22. The National Historic Preservation Act of 1966 (16 U.S.C. 470 et. seq.) as amended;

23. Executive Order 11593, Protection and Enhancement of the cultural Environment, may 13, 1971 (36 F.R. 8921 et. seq.);

24. The Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented in the Department of Labor regulations (29 C.F.R., Part 3);

25. The Davis Bacon Act (40 U.S.C. 276a-276a-5; 40 USC 327 and 40 USC 276c) as supplemented by the Department of Labor regulations (29 C.F.R., Part 5); Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330), as supplemented by the Department of Labor regulations (29 CFR, Part 5), and the attached Federal Labor Standards Provisions.

26. Debarment and suspension; Drug-Free Workplace. HUD and its recipients and subrecipients shall comply with the non-procurement debarment and suspension common rule implementing E.O.s 12549 and 12689, "Debarment and Suspension," at 24 CFR part 24, Subsection 84.13. This common rule restricts sub-awards and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in Federal assistance programs or activities. HUD and its recipients and subrecipients shall comply with the certification requirements of the Drug-Free Workplace Act of 1988 (42 U.S.C. 701), as set forth at 24 CFR part 24, subpart F.

B. The Recipient certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the Recipient, 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 appropriate 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 Recipient shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all Recipients 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.

EXHIBIT "F"

Disbursement Request Form

EXHIBIT "G"

Insurance Requirements

The Project Owner shall keep and maintain the following insurance coverages:

A. Workers Compensation Insurance. The Project Owner shall maintain workers compensation insurance with the following limits or with the minimum limits required by law, if greater:

Coverage A: Statutory
Coverage B:

$1,000,000	Bodily injury by accident	Each accident
$1,000,000	Bodily injury by disease	Policy limit
$1,000,000	Bodily injury by disease	Each employee

B. General Liability Insurance. The Project Owner shall maintain general liability insurance with coverage to include: Premises/Operations, Completed Operations and Contractual Liability (to cover the indemnification provision in Section 9-J of this Agreement). Limits of coverage shall not be less than:

$2,000,000 per occurrence
$5,000,000 aggregate

C. Automobile Insurance. The Project Owner shall maintain automobile liability insurance to include all owned autos (private passenger and other than private passenger), hired, and non-owned vehicles. Limits of coverage shall not be less than:

$2,000,000 per occurrence

D. In addition to the named policies in A-C above, Project Owner shall cause its General Contractor to provide and maintain, at all times during the process of building the Project and from time to time at the request of the City furnish the City with proof of payment of premiums on:

a. Builder's Risk insurance, written on the so-called "Builder's Risk Completed Value Basis," in an amount equal to one hundred percent (100%) of the insurable value of the Project at the date of completion, and with coverage available on the so-called "all risk" form of policy (the Project Owner and the City's interest shall be protected in accordance with a loss payable clause in form and content satisfactory to the City.

b. Comprehensive general liability insurance, with the City as a named insured, including coverages for operations, contingent liability (operations of subcontractors), completed operations, and contractual liability insurance, with limits (i) against bodily injury of not less than $1,000,000 and (ii) against property damage of not less than replacement cost (to accomplish the required limits, an umbrella excess liability policy may be used).

c. Workers compensation insurance, with statutory coverage.

E. Evidence of Insurance. The above insurance shall be maintained in companies lawfully authorized to do business in the State of North Dakota and which are reasonably acceptable to the City. Project Owner shall furnish City with certificates reflecting such insurance (ACORD form or equivalent) to be in force as long as this Agreement remains in effect, naming the City as an

additional insured, and providing that said insurance will not be canceled or its limits reduced by endorsement without at least 30 days prior written notice to the City.

EXHIBIT "H"

Construction Schedule

20340297v4

PROMISSORY NOTE

HOME INVESTMENT PARTNERSHIP PROGRAM **[DATE]**

FOR VALUE RECEIVED, the undersigned, **Fargo Elliott Place Four, LLLP**, a North Dakota limited liability limited partnership, (the "**Borrower**") promises to pay the principal sum of Four Hundred Thousand dollars and 00/100 Cents ($400,000.00), or such lesser amount as has been funded by Note Holder as described below, to the order of the City of Fargo, a municipal corporation (the "**Note Holder**"), bearing interest on the unpaid principal balance at a rate of Zero percent (0.00%) per annum, payable as follows:

> Deferred payment for the life of the loan of twenty (20) years from the execution of this Promissory Note, with any remaining principal balance due upon the twentieth anniversary of the date hereof.

The Note Holder will provide to the Borrower the sum of **$400,000.00** in the aggregate, to be funded according to the following:

> The Borrower may request a draw of available loan proceeds at any time provided by Section 5 of the Owner Agreement dated as of the date hereof, by and between Borrower and Note Holder (the "Loan Agreement") incorporated in the Note Holder's financial award to the Borrower.

The Borrower shall have the right to prepay the entire principal sum hereof, or any part of the principal sum without penalty. However, repayment of the HOME Loan prior to the end of the Affordability Period will not result in the termination of the Affordability Period, pursuant to Section 2.C of the Owner Agreement dated as of the date hereof.

All payments received from Borrower shall be applied to the payment of any outstanding principal.

All payments shall be payable in the form of a check or other lawful money of the United States of America at such place as the Note Holder may designate in writing.

The term of the HOME Loan will commence at execution of the Leasehold Mortgage and Note and continue for a term of twenty (20) years. The twenty (20) year Period of Affordability will commence at project completion as outlined in 24 CFR 92.2 and Section 6 of the Loan Agreement, which will require that construction be complete, all HOME funds to have been disbursed by City and drawn from the US Treasury, and required completion data has been entered in HUD's IDIS system.

All notices (and copies thereof) required to be given to the Borrower and its limited partner under this Promissory Note shall be given at the addresses set forth in the Loan Agreement. All notices and payments to be given to the Note Holder shall be given at the address set forth in the Loan Agreement.

Except as herein before provided, the makers of this Promissory Note and all other persons who may become liable for the payment do hereby severally waive presentment and demand for payment, notice of non-payment protest and notice of protest and any and all lack of diligence or delays in collection which may occur. The Note Holder may rearrange, adjust and extend the times and amounts of payments of this Promissory Note by written notice, in its sole discretion.

Neither this Promissory Note nor the responsibilities, obligations or benefits of the Loan Agreement, may be sold, assigned, transferred or otherwise encumbered by the Borrower, without the express written consent of the Note Holder.

Notwithstanding anything to the contrary contained here, neither the Borrower nor any of its partners shall have any personal liability for the payment of Indebtedness or the performance of any obligations of the Borrower hereunder or under the other Loan Documents. In any action to realize upon any security furnished under any instrument now or hereafter securing the Indebtedness evidenced any of the Loan Documents or to collect any amounts payable thereunder, neither the Borrower nor any partners of the Borrower or any partner, officer, director, employee or agent of any partner of the Borrower shall have any personal liability for the repayment of the Indebtedness and no judgment for the repayment of the Mortgage or this Note or interest thereon, if any, or any other sums due under the Mortgage or this Note or for damages for failure to perform any obligations owed to the Note Holder hereunder will be enforced solely against Mortgaged Property (as that term is defined in the Mortgage).

IN WITNESS WHEREOF, this Promissory Note has been executed by the duly authorized representative of Fargo Elliott Place Four, LLLP on the date set forth above.

Fargo Elliott Place Four, LLLP, a North Dakota limited liability limited partnership

By: Fargo Elliott Place Four GP, LLC
Its: General Partner

By: The Housing and Redevelopment Authority of the City of Fargo, a public body, corporate and politic,

its Manager and Member

By: _____
Matthew Pike, Executive Director

STATE OF NORTH DAKOTA)
:SS
COUNTY OF _____)

On this _____ day of _____, 2020, before me, the undersigned Notary Public, personally appeared G. Matthew Pike, who acknowledged himself to be the Executive Director of The Housing and Redevelopment Authority of the City of Fargo, and the manager of the Fargo Elliott Place Four GP, LLC, the general partner of Fargo Elliott Place Four, LLLP, that he, as such, being authorized so to do, executed the foregoing instrument for the purpose therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

_____

(SEAL) Notary Public, State of North Dakota

My Commission Expires:_____

20340295v2

ASSIGNMENT OF RENTS AND LEASES

HOME INVESTMENT PARTNERSHIPS PROGRAM

THIS ASSIGNMENT OF RENTS AND LEASES is made this ____ day of _____, 2020, by Fargo Elliott Place Four, LLLP, a North Dakota limited liability limited partnership (hereinafter referred to as "Borrower"), to the City of Fargo, a municipal corporation (hereinafter referred to as "the City").

WITNESSETH:

WHEREAS, the Borrower has executed and delivered to City its Promissory Note dated [DATE], in the principal amount Four Hundred Thousand dollars and 00/100 Cents ($400,000.00). As used herein, the term "Note" shall include the Promissory Note as now drawn and as from time to time amended, as well as any and all Promissory Notes from time to time issued to evidence all or any part of the indebtedness evidenced by the Promissory Note; and

WHEREAS, to secure payment of the Note, the Borrower has executed and delivered to the City a Leasehold Mortgage - Security Agreement, and Fixture Filing dated [DATE] (the "Mortgage"), covering, inter alia, real estate situated in the County of Cass, State of North Dakota, described on Exhibit A attached hereto and the buildings, improvements and fixtures now or hereafter located thereon. The Mortgage may from time to time be amended or replaced to reflect amendments to or replacements of the Note. The real estate and fixtures covered by the Mortgage are hereinafter referred to as the "Mortgaged Premises;" and

WHEREAS, the City, as a condition to granting the loan evidenced by the Note, has required the execution of this Assignment.

NOW THEREFORE, in consideration of the Mortgaged Premises and in further consideration of the sum of One Dollar paid by the City to the Borrower, the receipt of which is hereby acknowledged, the Borrower does hereby presently grant, transfer and assign to the City all of the rights, title and interest of the Borrower in and to (i) any and all present and future leases or tenancies, whether written or oral, covering or affecting any or all of the Mortgaged Premises or all or any part of any present or future improvements located on the Mortgaged Premises, together with any and all extensions, modifications and renewals thereof (all of which are hereinafter collectively referred to as the "Leases" and singularly referred to as "Lease") and (ii) all rents, issues, profits and other payments of every kind due or payable and to become due or payable to the Borrower, by virtue of the Leases, or otherwise due or payable or to become due or payable to the Borrower as the result of any use, possession, or occupancy of any portion or portions of the Mortgaged Premises (all of which are hereinafter collectively referred to as "Rentals"), whether the Rentals accrue before or after foreclosure of the Mortgage, or during any period of redemption thereof, for the purpose of securing:

1. Payment of all indebtedness evidenced by the Note and all other sums, including, without limitation, additional advances by the City, secured by the Mortgage, whether or not such indebtedness exceeds the principal amount initially evidenced by the Note and secured by the Mortgage; and

2. Performance, payment and discharge of each and every obligation, covenant and agreement of the Borrower contained herein or in the Mortgage or the Note; and

3. Payment of all sums required for the operation, management and maintenance of the Mortgaged Premises.

A. TO PROTECT THE SECURITY OF THIS ASSIGNMENT, THE BORROWER AGREES AS FOLLOWS:

1. To abide faithfully by, perform and discharge each and every obligation, covenant and agreement which the Borrower is now, or hereafter becomes, liable to observe or perform under any Lease, at the sole cost and expense of the Borrower; to give prompt written notice to the City of any notice of material default on the part of the Borrower or received by the Borrower from a tenant under any Lease; and at the sole cost and expense of the Borrower, to enforce or to the best of its ability, secure the performance of each and every obligation, covenant, condition and agreement to be performed by each tenant under the Leases; and where such action would have a material adverse effect on Borrower, not to modify, extend or in any way alter the terms of any Lease or accept a surrender thereof without the written consent of the City, which shall not be unreasonably withheld; not to waive, excuse, condone or

in any manner release or discharge a tenant or lessee under any Lease of or from the obligations, covenants, conditions and agreements to be performed by the tenant or lessee, including but not limited to the obligations to pay the rental called for under each Lease in the manner and at the time specified therein.

2. At the Borrower's sole cost and expense, to appear in and defend any action or proceedings arising under, growing out of or in the manner connected with any Lease or the obligations, duties or liabilities of the Borrower or any tenant or obligor thereunder, and to pay all costs and expenses of the City, including reasonable attorneys' fees as allowed by statute, in any such action or proceedings in which the City may appear or with respect to which it may incur costs.

3. Should the Borrower fail to (i) materially perform its obligations under any Lease, (ii) require performance by any tenant under any Lease, (iii) appear in or defend any action arising under any Lease, or (iv) otherwise to perform its obligations hereunder, then the City, but without obligation to do so and without notice to or demand on the Borrower and without releasing the Borrower from any obligations hereof, may take such action as the City may deem expedient and proper to remedy such failure and to protect the security hereof. The City's powers under this Section A.3 include specifically, without limiting its general powers: (i) the right to appear in and defend any action or proceeding purporting to affect the security hereof or the right or powers of the City, (ii) the right to perform and discharge each and every obligation, covenant and agreement of the Borrower contained in the Leases, and (iii) the right to pay necessary costs and expenses, employ counsel, and pay reasonable attorneys' fees in the exercise of any of the powers granted to the City under this Assignment. The Borrower hereby grants the City an irrevocable power of attorney to perform all of the acts do all things provided for in this Section A.3 and in Sections B.5 and C.2 as the Borrower's agent and in the Borrower's name.

4. To pay immediately upon demand all sums expended by the City under the authority hereof, together with interest thereon at the rate then in effect for the Note, and the same shall be added to the said indebtedness and shall be secured hereby and by the Mortgage.

B. THE BORROWER HEREBY COVENANTS AND WARRANTS TO THE CITY THAT:

1. The Borrower has not executed any prior assignment of its right, title and interest in any Lease or in any of the Rentals, has not otherwise encumbered any of the Leases or Rentals, except as otherwise described as a Permitted Exception in the Mortgage, and will not hereafter transfer or assign or in any manner encumber any of the Leases or Rentals without the prior written consent of City, which shall not be unreasonably withheld.

2. Except for any prior Permitted Exceptions, the Borrower has not performed any act or executed any instrument and is not bound by any law, charter, or agreement which might prevent the City from exercising any of its powers or rights under any of the terms and conditions hereof, or which would limit the City in such exercise.

3. The Borrower will not collect or accept any Rentals for the use or occupancy of the Mortgaged Premises for more than one month in advance. Security deposits shall not be deemed Rentals for the purpose of this paragraph, but shall be used solely for their intended purpose.

4. The Borrower will transfer and assign to the City, upon written notice by the City, any and all specific Leases which the City reasonably requests. Such transfer or assignment by the Borrower shall be upon the same or substantially the same terms and conditions as are herein contained, and the Borrower will properly file or record such assignments, at the Borrower's expense, if so requested by the City.

5. The Borrower will at all times deposit all security deposits in a separate trust account established for that purpose, and shall make withdrawals from this account solely for purposes of (i) remedying a tenant's default in the payment of any Rental or of other funds due to the Borrower pursuant to a Lease, (ii) restoring the relevant tenant's space or premises to their condition at the commencement of the tenancy, ordinary wear and tear excepted, and/or returning security deposits, deposited in the account, to the respective tenants. Upon or at any time after the existence of a default under the Note or Mortgage, that remains uncured beyond all applicable cure periods, or in the performance of any obligation, covenant or agreement herein contained, the City may draw upon the account for one or more of the purposes set forth in clause (i) and (ii) above or to return security deposits, to discharge any legal obligation it may have.

C. IT IS MUTUALLY AGREED THAT:

1. So long as there exists no uncured default under the Note or the Mortgage or in the performance of any obligation, covenant, or agreement herein contained, the Borrower shall have the right to collect, but not more than one month in advance, all Rentals, and to retain, use and enjoy the same; provided, however, that after the City has begun to collect Rentals hereunder during any period of an uncured default under the Note or the Mortgage or any of the Loan Documents, whether personally or through a receiver, it may, at its option, continue to do so notwithstanding the fact that any or all events of default are cured.

2. Upon or at any time after the existence of a default that remains uncured beyond any applicable cure periods under the Note, the Mortgage, the HOME Loan Agreement dated even herewith by and between the Borrower and City, the Declaration of Land Use Restrictive Agreement dated even herewith by the Borrower (the Loan Documents) or in the performance of any obligation, covenant or agreement herein contained, and until such default, obligation, covenant, or agreement is otherwise cured or remedied, City may, at its option, upon prior written notice, either in person or by agent, with or without bringing any action or proceedings, or by a receiver to be appointed by a court, enter upon, take possession of, manage and operate the Mortgaged Premises or any part thereof; make, enforce, modify, and accept the surrender of Leases; and do any acts which the City deems proper to protect the security hereof, and either with or without taking possession of the Mortgaged Premises, in its own name, sue for or otherwise collect and receive all Rentals, including those past due and unpaid, and apply the same, less costs and expenses of operation and collections, including reasonable attorneys' fees allowed by statute, upon any indebtedness secured hereby, and in such order as the City may determine. Upon or at any time after the existence of a default under the Loan Documents, that remains uncured beyond any applicable cure periods, or in the performance of any obligation, covenant or agreement herein contained, and until such default, obligation, covenant, or agreement is otherwise cured or remedied, City is hereby granted and given full power and authority to pay out of the rents and other revenues received, all reasonable costs incurred, including but not limited to all services of all employees, including their equipment; to pay all interest on the principal sum of the Note now due and unpaid and hereafter to become due and all of the principal sum of said Note now due and unpaid or hereafter to become due,

and all taxes and assessments now due and unpaid and which may hereafter become due in a charge or lien upon said Mortgaged Premises (the "Project"); to construct, or to finish construction on, the project located on the Mortgaged Premises, and to pay all expenses now due or hereafter to become due because of the construction of the Project, and to do all other acts necessary and proper for the construction of the Project; to employ an agent or agents, building contractors, and other people necessary to the construction or management of the Mortgaged Premises, and to pay the reasonable value of their services out of the rents and revenues received; to act exclusively and solely in the place and stead of the Borrower and to have all powers of the Borrower for purposes aforesaid. The Borrower hereby consents to the appointment of a receiver upon application by the City, without any showing of waste of the Mortgaged Premises, inadequacy of the Mortgaged Premises as security or insolvency of the Borrower or any other party liable for payment of the indebtedness secured hereby. The Borrower also consents to entry of mandatory injunction requiring it to give effect to this Assignment. The entering upon and taking possession of the Mortgaged Premises, the collection of the Rentals and the application thereof as aforesaid, shall not cure or waive any default or waive, modify, or affect notice of default under the Note or the Mortgage or invalidate any act done pursuant to such notice. The City may, without entering into possession or pursuing any other remedy provided in this Assignment or at law or equity or in conjunction with such possession or pursuance of such other remedy, give notice to any or all tenants under the Leases authorizing and directing such persons to pay Rentals directly to the City. Such notice may be given in either the City's or the Borrower's name, and the Borrower will join in giving such notice if requested to do so by the City. If a tenant receives such a notice and makes payment pursuant thereto, it shall be conclusively presumed, as between the Borrower and such tenant, that the tenant is entitled to make such payment to the City, and that such payment constitutes payment of Rentals under the Lease in question.

3. The City shall not be obligated to perform or discharge nor does it hereby undertake to perform or discharge any obligation, duty or liability under any Lease, or under or by reason of this Assignment, and the Borrower shall and does hereby agree to indemnify the City against and hold it harmless of and from any and all liability, loss or damage which it may or might incur under any Lease or under or by reason of this Assignment (including, without limitation, any liability under other statute, ordinance, rule or regulation) and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligation or undertaking on its part to perform or discharge any of the terms, covenants or agreements contained in any Lease, or by reason of exercise of any of its rights or remedies hereunder is provided, however, that such indemnification shall not extend to losses arising from recklessness or gross negligence of the City or its employees or agents; should the City incur any such liability, loss, or damage under any Lease or under or by reason of this Assignment, or in the defense against any such claims or demands, the amount thereof, including costs, expenses and reasonable attorneys' fees as allowed by statute, together with interest thereon at the rate then in effect for the Note, shall be secured hereby and by the Mortgage, and the Borrower shall reimburse the City therefore immediately upon demand.

4. Upon the payment in full of all indebtedness secured hereby, this Assignment shall become null and be void and of no effect, but the affidavit of any officer of the City stating that a part of said indebtedness remains unpaid shall be and constitute conclusive evidence of the validity, effectiveness, and continuing force of this Assignment, and any person may and is hereby authorized to rely thereon.

5. All rights, powers and remedies provided herein shall be cumulative and in addition all other rights and remedies granted by law and may be exercised only to the extent that the exercise thereof does not violate any applicable law and are intended to be limited to the extent necessary so that they will not render this Assignment invalid, unenforceable or not entitled to be recorded, registered, or filed under any applicable law. If any term of this Assignment shall be held to be invalid, illegal or unenforceable, the validity of other terms hereof shall in no way be affected thereby.

6. This Assignment applies to, inures to the benefits of, and binds all parties hereto and their respective heirs, legal representative, successor and assigns.

7. Any delay by the City in exercising any right, remedy or power described or referred to in this Assignment shall neither be a waiver of nor preclude the exercise of such right or remedy. All such rights, remedies and powers shall be distinct and cumulative and may be exercised singly and serially (in any order) or concurrently and as often as the occasion therefore arises.

8. This Assignment is given as security in addition to the security of the Mortgage, and not as a part of the security of the Mortgage. All rights and remedies herein conferred may be exercised whether or not foreclosure proceedings are pending under the Mortgage. The City shall not be required to resort first to the security of this Assignment or of the Mortgage before resorting to the security of the other, and the City may exercise the security hereof and of the Mortgage concurrently or independently and in any order or preference.

9. Nothing in this instrument shall prejudice or be construed or prejudice the right of City to commence and prosecute, or to prevent City from commencing and prosecuting any action which it may deem advisable or which it may be entitled to commence and prosecute under any other agreements with Borrower, or to prejudice any other rights of City; nor shall this instrument be construed to waive any defaults now existing or which may occur under any agreement with Borrower; nor shall this instrument be construed as granting a forbearance or extension of time of payment.

IN WITNESS WHEREOF, the Borrower has caused this Assignment to be duly executed as of the date and year first above written.

Fargo Elliott Place Four, LLLP, a North Dakota limited liability limited partnership

By: Fargo Elliott Place Four, GP, LLC
Its: General Partner

By: The Housing and Redevelopment Authority of the City of Fargo, a public body, corporate and politic,
its Manager and Member

By: _____
Matthew Pike, Executive Director

STATE OF NORTH DAKOTA)
:SS
COUNTY OF _____)

On this _____ day of _____, 2020, before me, the undersigned Notary Public, personally appeared G. Matthew Pike, who acknowledged himself to be the Executive Director of The Housing and Redevelopment Authority of the City of Fargo, the manager of Fargo Elliott Place Four GP, LLC, the general partner of Fargo Elliott Place Four, LLLP, that he, as such, being authorized so to do, executed the foregoing instrument for the purpose therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

_____

(SEAL) Notary Public, State of North Dakota

My Commission Expires:_____

EXHIBIT A

LEGAL DESCRIPTION

[TBD]

20340291v2

LEASEHOLD MORTGAGE -
SECURITY AGREEMENT, AND FIXTURE FILING

HOME INVESTMENT PARTNERSHIPS PROGRAM

THIS MORTGAGE - SECURITY AGREEMENT, AND FIXTURE FILING (such document hereafter referred to as "Mortgage") is made this ____ day of _____, 2020, by Fargo Elliott Place Four, LLLP a limited liability limited partnership organized and existing under the laws of the State of North Dakota, whose address is 325 Broadway, Fargo, ND 58102, and whose taxpayer identification number is 61-1961530 (hereinafter referred to as "Borrower"), to the City of Fargo, a municipal corporation, (hereinafter referred to as "the City").

WITNESSETH, that, in consideration of the sum of Four Hundred Thousand Dollars and 00/100 Cents ($400,000.00), in hand paid to the Borrower, and for other good and valuable consideration, the receipt and sufficiency of which sum and consideration is hereby acknowledged, the Borrower does hereby mortgage, bargain, sell and grant a security interest in and convey unto the City, its successors and assigns, forever, a leasehold interest in all the tract(s) or parcel(s) of land (hereinafter referred to as "Land") located in the County of Cass and State of North Dakota, described in Exhibit A attached hereto and by this reference made a part hereof;

TOGETHER WITH (i) all the buildings, structures and other improvements now or hereafter erected on the Land, and (ii) all building materials, supplies and equipment now or hereafter located on the Land and suitable or intended to be incorporated or installed in any building, structure or other improvement erected or to be erected on the Land; and (iii) all lighting, heating, ventilating, air conditioning, sprinkling and plumbing fixtures, water and power systems, engines and machinery, boilers, ranges, ovens, dishwashers, carpeting, mirrors, mantels, furnaces, oil burners, elevators and motors, refrigeration, electrical equipment, storm and screen windows, doors, awnings and shades and all other fixtures of every description now or hereafter found or used upon or appurtenant to the Land or any improvement thereon; and (iv) all carpeting, drapes, curtains, furniture, furnishings, appliances, maintenance equipment and other personal property of the Borrower now or hereafter installed or placed in or about, or used in connection with the use, operation or maintenance of, the Land or any building, structure or other improvement or fixture; and (v) all additions, accessions, increases, parts, fittings, accessories, replacements, substitutions, betterments, repairs and proceeds of or to any or all of the foregoing; and (vi) all hereditaments, easements, appurtenances, rents, issues, profits, proceeds, royalties and mineral, oil and gas rights and all other interests now and hereafter pertaining to the Land or any improvement or fixture thereon (all of the foregoing, together with the Land, are hereinafter referred to as "Mortgaged Property");

TO HAVE AND TO HOLD the Mortgaged Property unto the City, its successors and assigns, forever.

PROVIDED, NONETHELESS, that if the Borrower (i) shall pay to the City, which sum shall be due and payable on the maturity date of [20 YEARS AFTER EXECUTED AGMT], if not sooner paid, the sum of Four Hundred Thousand dollars and 00/100 Cents ($400,000.00), premium, if any, and interest thereon, in accordance with the terms of that certain Promissory Note (hereinafter referred to as "Note") of Borrower of even date herewith payable, to the order of the City, and (ii) shall also pay all other sums, with interest thereon, as may be payable by the Borrower to the City in accordance with this Mortgage or the payment of which may now or hereafter be secured by this Mortgage (the indebtedness evidenced by the Note, or any instrument issued in substitution therefore or in renewal or as a refinancing thereof, and all such other sums, are hereinafter collectively referred to as "Indebtedness"), and (iii) shall also keep and perform all covenants and warranties herein contained on the part of the Borrower to be kept and performed, then this Mortgage shall be null and void and the rights hereby granted shall cease and terminate; otherwise this Mortgage shall be and remain in full force and effect.

The Borrower warrants and covenants that the Borrower is lawfully seized in leasehold estate of the Mortgaged Property which is real property and is the absolute owner of the Mortgaged Property which is personal property; that the Borrower has the right and power to mortgage and convey the Mortgaged Property; that the Mortgaged Property is free from all liens, security interests and encumbrances, except as follows: See Exhibit B (collectively, "Permitted Exceptions")

Borrower further warrants and covenants that it shall quietly enjoy and possess the Mortgaged Property; that the Borrower will warrant and defend the title to the Mortgaged Property against all claims, whether now existing or hereafter arising; and that all buildings, improvements and fixtures now or hereafter located on the Land are, or will be, located entirely within the boundaries of the Land. The foregoing warranties shall survive foreclosure of this Mortgage and shall run with the Land.

THE PARTIES AGREE THAT THE PROVISIONS OF THE SIXTY DAY REDEMPTION MORTGAGE ACT, N.D.C.C. CH. 32-19, GOVERN THIS MORTGAGE.

The Borrower further covenants and agrees as follows:

1. PAYMENT OF INDEBTEDNESS AND COMPLIANCE WITH OTHER AGREEMENTS. The Borrower will pay promptly when due the principal of the Note, prepayment charges, if any, provided in the Note and all other Indebtedness, at the stated maturity date or dates, or earlier in the event of acceleration. The Borrower will promptly and faithfully observe all of its obligations and will permit or suffer no default or event of default to occur, under this Mortgage, the Note secured hereby, of even date herewith, between Borrower and City, or that certain Declaration of Land Use Restrictive Agreement, filed and of record in the office of the Register of Deeds, in and for Cass County, North Dakota, or under that certain Assignment of Rents and Leases, of even date herewith, between Borrower and City, and any other agreement now in effect or hereafter made between the Borrower and the City with respect to the transaction evidenced by the Note and this Mortgage. The provisions of the Note and the agreements itemized in this paragraph 1 are hereby incorporated by reference into this Mortgage, as fully as if set forth at length and in detail herein.

2. COMPLIANCE WITH LAWS. The improvements made and to be made upon the Land above described and together with all plans and specifications comply with all municipal ordinances and with all rules of the applicable fire rating or inspection organization, bureau, association or office which are now or may hereafter become applicable.

3. USE OF MORTGAGED PROPERTY. Borrower plans to use the Mortgaged Property for the following purpose: Multifamily rental housing project for very-low and low-income seniors over the age of fifty-five.

Borrower will not permit or suffer the use of any of the Mortgaged Property for any purpose other than the use for which the same is intended at the time of execution of this Mortgage which purpose shall be set forth above. The Borrower will keep the buildings and other improvements now or hereafter erected on the Land in good repair and condition, ordinary depreciation excepted. The Borrower will not commit or permit waste, will not permit the Mortgaged Property to become or be operated as a nuisance, and will not alter the design or structural character of any building now or hereafter erected on the Land without the prior written consent of the City, which consent shall not be unreasonably withheld, conditioned, or delayed, will not do any act or thing which would unduly impair or depreciate the value of the Mortgaged Property, and will not abandon the Mortgaged Property. Following the expiration of all applicable notice and cure periods, in the event of the failure of the Borrower to keep the buildings or other improvements in good repair, the City may make such repairs at Borrower's expense as in City's reasonable discretion it may deem necessary for the proper preservation thereof, and any and all sums paid for such repairs shall bear interest from the date of payment at the rate specified in the Note, shall be due and payable on demand, and shall be fully secured by this Mortgage. The Borrower will not remove from the Land any fixtures or personal property included in the Mortgaged Property unless the same is immediately replaced with like property, also subject to the lien and security interest of this Mortgage, of at least equal value and utility. Borrower shall notify City of such replacements within 10 business days of the making of such replacement. The Borrower will comply with all present and future laws, ordinances,

regulations and requirements of any governmental body applicable to the Mortgaged Property and to the occupancy and operation thereof.

4. BORROWER'S DUTY TO PAY TAXES. The Borrower will pay, before a fine or penalty might attach for nonpayment thereof, all taxes and assessments and all other charges whatsoever levied upon or assessed, place or made against the Mortgaged Property provided, that any such taxes, assessments, charges or claims need not be paid so long as Borrower is contesting such payment in good faith by appropriate proceedings which avoid foreclosure of liens securing such items and provided further that Borrower has furnished to City such security and/or assurances as are acceptable to City in order to protect the priority of the lien of the Mortgage. Borrower and City agree that, notwithstanding the foregoing, special assessments on the Land arising out of improvements made thereon in connection with the development of the same will be paid by Borrower when due and payable, and will be Permitted Exceptions so long as the same are not delinquent. The Borrower will, upon written request by the City, promptly deliver to the City any receipts for the payment of such taxes, assessments and other charges.

5. BORROWER'S DUTY TO PAY UTILITIES. The Borrower will pay or cause to be paid all charges made by utility companies, public or private, for electricity, gas, heat, water, or sewer furnished to or used in connection with the Mortgaged Property and, upon written request by the City, will promptly deliver to the City receipts for the payment of such charges.

6. INSURANCE. During construction and throughout the term of this Agreement, Borrower will maintain the insurance coverages as required by City in the Owner Agreement by and between the Borrower the City, dated on or about the date hereof (the "Loan Agreement"). Current City insurance requirements have been provided to the Borrower. City may update the required insurance coverages from time to time, at its discretion, and shall provide notice to Borrower upon the adoption of any changes. The coverage required at any time shall be those terms included in City's most currently adopted policies and procedures.

In the event of loss, the Borrower shall give prompt notice by mail to the insurance carrier and City, and City may make proof of loss, if not made promptly by the Borrower. Subject to prior Permitted Exceptions recorded against the Property, City is hereby authorized in the event of loss to compromise and settle all loss claims on said policy on such terms as it deems appropriate. Borrower shall promptly furnish to City a copy of any proof of loss given to the insurance carrier.

If the Mortgaged Property, or any part thereof, shall be damaged by fire or other insured hazard, the amounts paid by any insurance company shall be paid to City, to the extent of the Indebtedness then remaining unpaid, and, at the option of City, all or any part of such amount may be applied in reduction of the Indebtedness or released for the repairing or rebuilding of the Mortgaged Property. If in City's determination restoration is financially feasible and no uncured event of default has occurred or is continuing hereunder, any insurance proceeds shall first be applied to such restoration. All policies of insurance and any and all refunds of unearned premiums are hereby assigned to City as additional security for the payment of the Indebtedness. In event of foreclosure of the Mortgaged Property, all right, title and interest of Borrower in and to any insurance policies then in force shall pass to the purchaser on foreclosure.

7. NO SALE OR LEASE. It is hereby expressly agreed by Borrower that Borrower shall not sell, lease, or otherwise encumber (except for the Permitted Exceptions) the Mortgaged Property without the express written consent of City, by its Authorized Officer, which consent shall not be unreasonably withheld, conditioned, or delayed, and which consent will be given in cases of:

(a) Receipt of a prepayment of the Note in conformity with the prepayment requirements of the City as set forth in said Note;

(b) Grant of easements, licenses or rights-of-way over, under or upon the Mortgaged Property which, in the opinion of the City, do not destroy or diminish its usefulness for the purpose intended;

(c) Lease of the Mortgaged Property or a part thereof to a third party for the purpose of operation of a housing development, provided that the proposed lessee is approved by City and such lease is permitted by law and is subordinate to and subject to all of the terms, provisions and limitations of this Mortgage;

(d) Sale or exchange of a portion of the Mortgaged Property on which no building or structure is situated and which in the City's reasonable opinion is not needed for operation of the Mortgaged Property, provided that the sales price thereof shall be approved by the City and the proceeds thereof shall be paid to the City and applied in reduction of the Indebtedness;

(e) Sale to another eligible Borrower, approved by the City, who assumes all obligations of the original Borrower under the Mortgage and accompanying documents, in which case the City may, in its sole discretion, release the original Borrower; or

(f) Borrower and City agree that none of the following shall be treated as sales, leases, or encumbrances of the Mortgaged Property pursuant to this paragraph 7: (i) leases of housing units in the Mortgaged Property to tenants in the ordinary course of business, (ii) any encumbrances described in the Permitted Exceptions, and (iii) transfers of limited partner partnership interests in Borrower.

If the Mortgaged Property is sold without the express prior written consent of the City, the outstanding principal balance may, at the option of the City, be declared immediately due and payable upon sixty (60) days written notice to the Borrower.

City agrees that it will release from the lien of this Mortgage those portions of the real estate encumbered by this Mortgage which are not functionally related to the operation of Borrower's HOME multifamily rental housing project for very-low and low-income seniors over the age of fifty-five so long as the following conditions are met:

(i) This Mortgage and the Note secured hereby are not in default.

(ii) The Borrower shall provide City with an architect's certification that such land proposed to be released from the lien of this Mortgage is not functionally related to or beneficial to the

operation of Borrower's HOME multifamily rental housing project for very-low and low-income seniors over the age of fifty-five.

(iii) City in its reasonable discretion determines that the release of such property will not have a material adverse affect on Borrower's ability to repay the Note.

8. LIENS. The Borrower will not, without the prior written consent of the City, grant or create any mortgage lien or consensual security interest on the Mortgaged Property other than the lien and security interest of this Mortgage and the Permitted Exceptions. The Borrower will keep the Mortgaged Property free from all liens, except the lien described in the Permitted Exceptions hereto, whether superior or subordinate to this Mortgage, and upon written demand of the City will promptly pay and procure the release of any lien, whether arising prior or subsequent to the execution of this Mortgage, which, in any way, may, in the reasonable judgment of the City, impair the security of this Mortgage, but the Borrower need not discharge any such lien so long as the Borrower shall agree to pay the obligation secured by such lien in a manner acceptable to the City or shall, in good faith, contest such lien by appropriate legal proceedings effective to prevent the enforcement of the lien and the loss of any of the Mortgaged Property.

9. CITY'S OPTION TO PAY. In the event of Borrower's failure to pay any sums provided for in this Mortgage, the City, at its option, may pay the charge before the same becomes delinquent or subject to interest or penalties. All sums paid by the City and any sums which the City may advance shall be added to the Indebtedness and shall bear interest from the date of payment by City at the rate specified in the Note and shall be due and payable on demand.

10. PROTECTION OF CITY'S SECURITY. If the Borrower fails to perform any of the covenants and agreements contained in this Mortgage or if any action or proceeding is commenced which does or may adversely and materially affect the Mortgaged Property or the interest of the Borrower or City therein, or the title of the Borrower thereto, then the City, at the City's option, and without waiving other remedies, may perform such covenants and agreements, defend against and/or investigate such action or proceeding, and take such other action as the City deems necessary to protect the City's interest. The Borrower irrevocably authorizes and empowers the City to enter upon the Mortgaged Property as the Borrower's agent and, in the Borrower's name or otherwise, to perform any and all covenants and agreements to be performed by the Borrower as herein provided. The City shall, at its option, be subrogated to any encumbrance, lien, claim or demand, and to all the rights and securities for the payment thereof, paid or discharged with the principal sum secured hereby or by the City under the provisions hereof, and any such subrogation rights shall be additional and cumulative security for this Mortgage. Nothing contained in this paragraph shall require the City to incur any expense or do any action hereunder, and the City shall not be liable to the Borrower for any damages or claims arising out of action taken by the City pursuant to this Section 10. Any amounts disbursed or incurred by the City pursuant to this Section 10, including, but not limited to, reasonable attorneys' fees as allowed by statute, with interest thereon at the rate provided in the Note, shall become additional Indebtedness of the Borrower, payable upon demand, and shall be secured by this Mortgage.

11. CONDEMNATION. Subject to prior permitted exceptions recorded against the Property, the Borrower hereby irrevocably assigns to City any award or payment which becomes payable by reason of any taking of the Mortgaged Property, or any part thereof, either temporarily or permanently, in or by

condemnation or other eminent domain proceedings or by reason of sale under threat thereof, or in anticipation of the exercise of the right of condemnation or other eminent domain proceedings.

The Borrower will file and prosecute in good faith and with due diligence that which would otherwise be its claim in any such award or payment and subject to prior permitted exceptions recorded against the Property will cause the same to be collected and paid over to City, and the Borrower irrevocable authorizes and empowers City, in the name of the Borrower or otherwise, to file, prosecute, settle or compromise any such claim and to collect, receipt for and retain the same.

The proceeds of the award of payment may, after deducting all reasonable costs and expenses that may have been incurred by City in the collection thereof, at the reasonable discretion of City, be released to the Borrower, applied to restoration of the Mortgaged Property or applied in reduction of the Indebtedness secured hereby. If in City's determination restoration is financially feasible and no uncured event of default has occurred or is continuing, any condemnation proceeds shall first be applied to such restoration.

In the event of a default hereunder, that remains uncured beyond any applicable cure period, under the HOME Agreement or any other Loan Document, City may apply insurance and condemnation proceeds to the reduction of the Indebtedness secured hereby in any manner selected by the City but, unless otherwise agreed by City in writing, no application of such proceeds to the Indebtedness, or to other obligations secured by the Loan Documents (as described in Section 17), or any of them, shall delay, reduce, alter or otherwise affect any regularly scheduled payment with respect to the Indebtedness, or any such other obligations.

12. REAMORTIZATION. At the option of the Borrower, the Indebtedness may be reamortized on terms acceptable to the City if (i) a partial prepayment results from an award in condemnation in accordance with provisions of paragraph 11 hereof, or from an insurance payment made in accordance with provisions of paragraph 6 hereof, and (ii) there is a resulting loss of income from the Mortgaged Property.

13. INSPECTION. The City, or its agents, may at all reasonable times during business hours and upon seven (7) days prior written notice enter upon the Mortgaged Property for the purposes of inspection. The City shall have no duty to make such inspection and shall not be liable to the Borrower or any person in possession if it makes such inspection. The City, or its agents, shall also have the right, at all reasonable times during business hours and upon seven (7) days prior written notice, to examine the books and records of the Borrower pertaining to the Mortgaged Property and to make extracts therefrom and copies thereof.

14. NO DISCRIMINATION. So long as this Mortgage and the Note secured hereby are held by the City, Borrower will not execute or file for record any instrument which imposes a restriction upon the sale or occupancy of the Mortgaged Property on the basis of race, creed, color, religion, sex, handicap or familial status.

15. SECURITY INTEREST. This Mortgage shall constitute a Security Agreement with respect to (and the Borrower hereby grants the City a security interest in) all of Borrower's equipment, inventory, fixtures,

accounts, deposit accounts, contract rights, investment property, documents, instruments, chattel paper, and general intangibles (including payment intangibles) relating to the Mortgaged Property, excluding however the operating reserve required to be funded under Borrower's Amended and Restated Agreement of Limited Liability Limited Partnership dated on or about the date hereof, whether any of the foregoing is now owned or hereafter acquired, and all accessions or attachments thereto, and all products and proceeds thereof. Certain of the foregoing property is or will become "fixtures" (as that term is defined in the Uniform Commercial Code) on the Land, and this Mortgage, upon being filed for record in the real estate records of the county wherein such fixtures are situated, shall operate also as a financing statement filed as a fixture filing in accordance with the applicable provisions of the Uniform Commercial Code upon the property that is or may become fixtures. The Borrower hereby authorizes City to file any and all financing statements covering such personal property and fixtures (in a form satisfactory to the City) which the City may reasonably consider necessary or appropriate to perfect its interest. Borrower agrees to execute any such financing statements as City may request. The Borrower will pay to the City, on demand, the amount of any and all costs and expenses (including reasonable attorneys' fees and legal expenses) paid or incurred by the City in connection with the exercise of any right or remedy referred to in paragraph 18 hereof.

16. PREPAYMENT. The Note provides that any prepayment of the Note does not reduce the "Affordability Period", as defined in the Declaration of Land Use Restrictive Agreement of even date herewith.

17. EVENTS OF DEFAULT. Each of the following occurrences shall constitute an event of default hereunder (herein called an "Event of Default"):

(a) The Borrower shall fail to pay the Note in accordance with its terms or shall fail duly to perform or observe any of its covenants or commitments contained in this Mortgage or the Note secured hereby, or that certain Loan Agreement, of even date herewith, between Borrower and City, or that certain Declaration of Land Use Restrictive Agreement, filed and of record in the office of the Register of Deeds, in and for Cass County, North Dakota, or under that certain Assignment of Rents and Leases, of even date herewith, between Borrower and City, and any other agreement now in effect or hereafter made between the Borrower and the City with respect to the transaction evidenced by the Note and this Mortgage or in any other agreement incorporated herein (collectively, the Loan Documents), and such failure shall continue for sixty (60) calendar days (or with respect to other agreements incorporated herein, such failure shall not be cured within the number of days specified therein after receipts of written Notice of such default as required under the Loan Agreement);

(b) A responsible title insurance company shall fail duly to issue a policy or commitment for a policy of title insurance to or for the benefit of the City, free from exceptions (other than Permitted Exceptions) for mechanics' and materialmen's liens and other exceptions not previously approved by the City, insuring this Mortgage to be a valid second lien (subject only to those Permitted Exceptions previously enumerated herein) on the Land and related real property interests and the Mortgaged Property in an amount not less than the stated principal amount of the Note; or, if issued, any such policy or commitment shall be repudiated or revoked or shall not be duly performed;

(c) Any warranty of title made by the Borrower in this Mortgage shall be breached or broken and is not cured within thirty (30) days, after receipt of written Notice of such default as required under the Loan Agreement, or longer if borrower is diligently working to cure;

(d) Any representation or warranty made by the Borrower in any of the agreements identified or referred to in paragraph 1 or in any financial statements or reports submitted to the City by or on behalf of the Borrower shall prove false or materially misleading at the time such representation or warranty was made;

(e) The Borrower shall become insolvent, however defined; shall be dissolved; shall commit an act of bankruptcy under the United States Bankruptcy Act (as now or hereafter amended); shall file or have filed against it, voluntarily or involuntarily, a petition in bankruptcy or for reorganization or for the adoption of an arrangement under the United States Bankruptcy Act (as now or hereafter amended); shall make an assignment for the benefit of creditors; shall procure, permit or suffer, voluntarily or involuntarily, the appointment of a receiver or trustee to take charge of any of the Mortgaged Property or any other properties owned by it; or shall have initiated against itself, voluntarily or involuntarily, any act, process or proceeding under any insolvency law or other statute or law providing for the modification or adjustment of the rights of creditors. However, if any of the involuntary actions described in this subsection 17(e) occur, such action will only be an event of default if it is not dismissed within 90 days; or

(f) The Borrower shall fail to comply with the additional covenants of paragraph 25 hereof after receipts of written Notice of such default as required under the Loan Agreement.

(g) The limited partners of Borrower shall have the right, but not the obligation, to cure any default hereunder and such cure shall be deemed to have been made by Borrower.

18. ACCELERATION; FORECLOSURE. Upon the occurrence of any Event of Default that is not cured within the applicable cure period to the written satisfaction of the City, the City may, at its option, upon thirty days' notice to the Borrower, exercise one or more of the following rights and remedies available to it:

(a) The City may declare immediately due and payable all Indebtedness secured by this Mortgage, and the same shall thereupon be immediately due and payable, without notice or demand; and

(b) The City shall have, and may exercise with respect to all personal property and fixtures which are part of the Mortgaged Property, all the rights and remedies accorded upon default to a secured party under the Uniform Commercial Code, as in effect in the State of North Dakota. If notice to the Borrower of intended disposition of such property is required by law in a particular instance, such notice shall be deemed reasonable, if given (in the manner specified in paragraph 20) at least twenty (20) calendar days prior to the date of intended disposition; and

(c) The City may (and is hereby authorized and empowered to) foreclose this Mortgage by action or advertisement, pursuant to the statutes of the State of North Dakota, power being expressly granted to sell the Mortgaged Property at public auction (with the option being granted to the City to set forth conditions to such sale including covenants of the Borrower contained herein or documents referred to herein relating to the use of the Mortgaged Property) and convey the same to the purchaser in leasehold estate (with or without such conditions or restrictive covenants) and, out of the proceeds arising from such sale, to pay all Indebtedness secured hereby with interest, and all legal costs and charges of such foreclosure and attorneys' fees as permitted by statute, which costs, charges and fees the Borrower agrees to pay.

19. FORBEARANCE NOT A WAIVER: RIGHTS AND REMEDIES CUMULATIVE. Any delay by the City in exercising any right or remedy provided herein or otherwise afforded by law or equity shall not be a waiver of or preclude the exercise of such right or remedy. All such rights and remedies shall be distinct and cumulative and may be exercised singly, serially (in any order) or concurrently, and as often as the occasion therefore arises. The City's taking action pursuant to Section 3, 11, or 12, or receiving proceeds, awards or damages pursuant to Section 6 or 12, shall not impair any right or remedy available to the City under Section 22.

20. NOTICES. Except as otherwise provided herein, whenever any approval or notice on behalf of the City is required under this Mortgage or whenever any action on behalf of the City is required or permitted, the Executive Director of the City shall have the power and right to approve, give notice or act on behalf of the City. Any notice from the City to the Borrower under this Mortgage shall be deemed to have been given by the City and received by the Borrower, when mailed by certified mail by the City to the Borrower at the following address:

Fargo Elliott Place Four, LLLP
325 N. Broadway
Fargo, North Dakota 58102

With a copy to:

c/o PNC Real Estate
121 S.W. Morrison Street, Suite 1300
Portland, Oregon 97204
Attention: Fund Manager

or at such other address as the Borrower may designate to the City, by certified mail received by the City at 225 4th Street North, Fargo, ND 58102, or such other address as the City may designate by written notice. City agrees to send courtesy copies of any notices of default sent to Borrower to the limited partners of Borrower.

21. GOVERNING LAW; SEVERABILITY. This Mortgage shall be governed by the laws of the State of North Dakota. In the event that any provision or clause of this Mortgage conflicts with applicable law,

such conflict shall not affect any other provision of this Mortgage which can be given effect without the conflicting provisions, and to this end, the provisions of the Mortgage are declared to be severable.

22. MISCELLANEOUS RIGHTS OF City. The City may at any time and from time to time, without notice, release any person liable for the payment of any Indebtedness, extend the time or agree to alter the terms of payment of any Indebtedness, release any property securing any Indebtedness, consent to the making of any plat or map of the Mortgaged Property or the creation of any easement thereon on any covenants restricting use or occupancy thereof, or agree to alter or amend the terms of this Mortgage in any way, all without in any way affecting the liability of any person (other than the person so released) or the validity or priority of this Mortgage (except as it covers property so released). Any personal property remaining upon the Mortgaged Property, after the Mortgaged Property has been possessed or occupied by the City or its agent following foreclosure of this Mortgage, or under any deed in lieu of foreclosure, shall be conclusively presumed to have been abandoned by the Borrower, and Borrower covenants that Borrower will upon written request of City execute a warranty bill of sale transferring title to such personal property to City.

23. OTHER DEBT. This Mortgage shall also secure, and the Indebtedness shall also include, all other advances heretofore or at any time hereafter made to the Borrower by the City and all other indebtedness of every type and description now or hereafter owed to the City by the Borrower, unless (in the case of any such advance or indebtedness) the City has otherwise agreed in writing. The City shall not be obligated to make any such advance or to permit or suffer the creation of any such indebtedness.

24. EXCULPATION. The covenant of the Borrower to pay principal, interest and premium, if any, is included in the Note secured hereby for the purpose of establishing and continuing the existence of the Indebtedness; it is a condition of said covenant that in the event of default under the terms hereof, the City shall take no action against the Borrower except such as may be necessary to subject to the satisfaction of the Indebtedness the Mortgaged Property; provided that nothing in said condition and no action so taken shall operate to impair an obligation of the Borrower under the Regulatory Agreement referred to herein. Neither the Borrower nor any of its partners shall have any personal liability for the payment of Indebtedness or the performance of any obligations of the Borrower hereunder or under the Note or other Loan Documents. In any action to realize upon any security furnished under any instrument now or hereafter securing the Indebtedness evidenced by this Mortgage or the Note or to collect any amounts payable hereunder, neither the Borrower nor any partner of the Borrower or any partner, officer, director, employee or agent of any partner of the Borrower shall have any personal liability for the repayment of the Indebtedness and no judgment for the repayment of this Mortgage or the Note or interest thereon, if any, or any other sums due under this Mortgage or the Note or for damages for failure to perform any obligations owed to the City hereunder will be enforced solely against Mortgaged Property.

25. ADDITIONAL COVENANTS. The Borrower further covenants and agrees that:

(a) Borrower will not cause or permit the placement of any of the following named possible pollutants or hazardous materials upon the Mortgaged Property described on the attached Exhibit A, in violation of applicable law, and further covenants, that if during the mortgage term other substances are determined to be hazardous or toxic that such additional items will

not be placed upon the Mortgaged Property described on Exhibit A, in violation of applicable law:

(i) Asbestos,
(ii) Fiberglass, other than insulation
(iii) Urea Formaldehyde foam insulation,
(iv) Transformers or other equipment which contain dielectric fluid containing polychlorinated biphenyls, and
(v) Other chemicals, material, substances or pollutants, exposure to which is limited or regulated or which is under question for health and safety reasons by the state or appropriate federal regulatory agency and judicial authority.

(b) Borrower hereby agrees to reimburse, indemnify and save and hold the City and its successors and assigns harmless from and against any damage, liability, loss, penalty, charge, cost or deficiency, including but not limited to reasonable attorney's fees, and other costs and expenses incident to monitoring, remedial actions, proceedings or investigations and the defense of any claim, arising out of, resulting from or related to, and to pay to City or its successor in interest, on demand, the full amount of any sum which City or its successor has paid or becomes obligated to pay on account of:

(i) Any material misrepresentation, omission or the breach of any representation or warranty of the Borrower under this Mortgage or the Note, or any of the documents described in paragraph 1 hereof, all of which shall survive the issuance of the Note;

(ii) Any failure of the Borrower to fully perform or observe or cause to be performed or observed any term, provision, covenant or agreement to be performed or observed by the Borrower, or after an assumption, by the subsequent Borrower pursuant to this Mortgage or the Note;

(iii) Any claims, assessments, or liabilities for charges, penalties, liens, taxes or deficiencies arising from or relating to the use and operation by the Borrower, or after an assumption, Borrower successors to the Mortgaged Property; or

(iv) The manufacture, generation, storage, use, treatment, transportation or disposal of solid waste, or any toxic or hazardous materials, substances or pollutants either directly or indirectly by the Borrower or any of their past or present affiliates on the Mortgaged Property described on Exhibit A, which occurs prior to possession passing from the Borrower pursuant to a Sheriff's Deed upon completion of a foreclosure or upon acceptance of a Deed in Lieu of Foreclosure. All indemnification provisions contained in this document, and in this paragraph shall survive the discharge of this Mortgage.

26. SUCCESSIONS AND ASSIGNS BOUND; NUMBER; GENDER; JOINT AND SEVERAL LIABILITY CAPTIONS. The covenants and agreements contained herein shall bind, and the rights conferred hereby shall inure to the benefit of the respective heirs, legal representatives, successors and assigns of the City and the Borrower. Whenever used, the singular number shall include the plural, and the plural the singular; and the use of any gender shall apply to all genders. All covenants and agreements of the

Borrower shall be joint and several. The captions and headings of the paragraphs of this Mortgage are for convenience only and are not to be used to interpret or define the provisions hereof.

27. Borrower and City agree to execute and deliver any instruments in writing necessary to carry out any agreement, term, condition or assurance in this Mortgage whenever occasion shall arise and reasonable request for such instruments shall be made.

28. EXTENDED LOW-INCOME HOUSING COMMITMENT. The lien of this Mortgage shall be subordinate to any extended low-income housing commitment (as such term is defined in Section 42(h)(6)(B) of the Internal Revenue Code) (the "Extended Use Agreement") recorded against the Mortgaged Property; provided that such Extended Use Agreement, by its terms, must terminate upon foreclosure under this Mortgage or upon a transfer of the Mortgaged Property by instrument in lieu of foreclosure, in accordance with Section 42(h)(6)(E) of the Internal Revenue Code. Without limiting the foregoing, this Mortgage shall be subject to the requirements of Section 42(h)(6)(E)(ii) of the Internal Revenue Code.

29. GENERAL PARTNER CHANGE. The withdrawal, removal, and/or replacement of the general partner of Borrower pursuant to the terms of the Partnership Agreement shall not, in and of itself, constitute a default under any of the Loan Documents, and any such actions shall not, in and of themselves, result in acceleration of the maturity of the Loan; provided that any substitute general partner shall be named only with prior, written notice to City; and provided further that any such substitute general partner shall be reasonably acceptable to City and be selected with reasonable promptness (notwithstanding the foregoing, a replacement general partner who is an affiliate of the investor limited partner of the Borrower shall not require the approval of the City). City shall not charge a transfer fee in connection with such permitted transfers; however, City shall be entitled to be reimbursed by Borrower for actual out of pocket costs and expenses related thereto, including without limitation, the reasonable fees and expenses of City's counsel.

IN WITNESS WHEREOF, the Borrower has duly executed this Mortgage the day and year first above written.

Fargo Elliott Place Four, LLLP, a North Dakota limited liability limited partnership

By: Fargo Elliott Place Four GP, LLC
Its: General Partner

By: The Housing and Redevelopment Authority of the City of Fargo, a public body, corporate and politic,
its Manager and Member

By: _____
Matthew Pike, Executive Director

STATE OF NORTH DAKOTA)
:SS
COUNTY OF _____)

On this _____ day of _____, 2020, before me, the undersigned Notary Public, personally appeared G. Matthew Pike, who acknowledged himself to be the Chief Executive Officer of The Housing and Redevelopment Authority of the City of Fargo, and the manager of Fargo Elliott Place Four GP, LLC, the general partner of Fargo Elliott Place Four, LLLP, that he, as such, being authorized so to do, executed the foregoing instrument for the purpose therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

_____

(SEAL) Notary Public, State of North Dakota

My Commission Expires:_____

EXHIBIT A

LEGAL DESCRIPTION

Lot Three (3), Block Two (2), Calico Prairie Addition to the City of Fargo.

EXHIBIT B

PERMITTED EXCEPTIONS

1. [TBD]

20340293v4

THE CITY OF Fargo FAR MORE

CITY OF FARGO POLICE DEPARTMENT

Chief David B. Zibolski

105 25th Street North, Fargo, North Dakota 58102
Office: 701-241-1400 Fax: 701-297-7789
www.fargopolice.com

16

October 19, 2020

Board of City Commissioners
City Hall
Fargo, ND 58102

RE: Acceptance of North Dakota Department of Emergency Services FY 2020 State Homeland Security Grant (CFDA # 97.067)

Dear commissioners:

The Fargo Police Department has been awarded a grant from the North Dakota Department of Emergency Service in the amount of $176,000.00. There is no requirement for the City of Fargo to match any of the grant funding provided.

The Fargo Police Department/Red River Valley SWAT team has been awarded grant funding for the purchase of updated ballistic body armor. Updated ballistic body armor will support core capabilities of protection, response, prevention, mitigation and recovery to a terrorist attack by providing ballistic protection while tactical operators respond to critical incidents.

Recommended Motion:

Sign the North Dakota department of Emergency Service Notice of Grant Award. Accept and approve the grant funding in the amount of $176,000 and adjust the Police Department's 2021 budget line as follows:

- ***Account # 101-5045-411.74-10 Project Code PDES11***

Please contact me if you have any questions regarding the grant funding or the police department's budget adjustment request.

Sincerely,

P.P.

David B. Zibolski
Chief of Police

North Dakota Department of Emergency Services Division of Homeland Security PO Box 5511 Bismarck, ND 58506-5511 **NOTICE OF GRANT AWARD**	**ND DHS Director:** Cody Schulz PO Box 5511 Bismarck, ND 58506-5511 **Recipient Contact Name:** Debbie LaCombe Telephone: 328-8100
Title of Grant Program: FY 20 State Homeland Security Grant Program	
Federal Award Identification Number: EMW-2020-SS-00073	**Federal Award Date:** September 1, 2020
Federal Awarding Agency: U.S. Department of Homeland Security	
CFDA No. 97.067 Homeland Security Grant Program	**Federal Award to NDDES:** $5,930,146.00

Subrecipient Name and Address: Fargo Police Dept-RRV SWAT 105 25th St N Fargo, ND 58102 **Subrecipient Contact Name:** Mr. Michael Sanden Telephone: 701-526-8081 Subrecipient DUNS Number: 176384915	**Grant Number** 46	**County/Tribe** Cass	
	Performance Period From: September 1, 2020		Through: December 31, 2021

Financial Information	**Grant Amount**	**Subrecipient Cost Share**	**Total Project Cost**
Amount of Financial Assistance	$176,000.00		$176,000.00

All Grant Award payments are processed upon receipt of expenditure reports unless otherwise specified in Special Conditions.

Scope of Service: The intent of NDDES in providing this award is to enhance the capability of the subrecipient to prevent, protect against, mitigate, respond to, and recover from acts of terrorism and other catastrophic events in accordance with the Guidance for this grant program and in accordance with the subrecipient's application. This award is limited to the approved budget located online in DES Grants.

Reporting Requirements: Project Status Reports on project must be submitted to NDDES on a quarterly basis through the NDDES Grants Management Software. Reports are due January 15, April 15, July 15 and October 15 for the life of the grant. A final report is due with the final reimbursement request.

Special Conditions: The above grant project is approved subject to the special conditions or limitations as indicated on the attached page.

This award is subject to the terms and conditions incorporated either directly or by reference in the following:

1) Fiscal Requirement and Other Program Rules, Regulations, Laws, and Policies for Federal Programs which can be found at https://grants.des.nd.gov/site/HSGP.cfm
2) Applicable Federal and State laws and regulations
3) The recipient agrees that all allocations and use of funds under this grant will be in accordance with the Federal/State Notice of Funding Opportunity & FEMA Preparedness Grants Manual for this grant program.

This contract is not effective until fully executed by both parties. By signing below you are accepting the terms and conditions of the award. Please make sure you read and understand these documents before signing. Maintain a copy of these documents in your official file for this award.

Evidence of Subrecipient's Acceptance		**Evidence of DES Approval**	
Signature	Date	Signature	Date: 10/6/2020
Typed Name and Title of Authorized Representative		**Typed Name and Title of Authorized Representative** Cody Schulz Director	

SPECIAL CONDITIONS

1. No Federal funds will be disbursed to the sub-recipient until a signed grant award document has been signed and uploaded to the online DES Grants software program.

2. This award document constitutes the operative document obligating and reserving the Federal funds for use by the sub-recipient in execution of the award. The sub-recipient should affirm its timely utilization of the award by signing the award document within 10 days from the date of the award.

3. The sub-recipient will follow their approved cost lines and will request prior written approval from NDDES for any budget revisions. Budget revisions will only be allowed for items or services already on the approved budget (increase/decrease in quantity or cost).

4. The sub-recipient shall be reimbursed only upon receipt of a Reimbursement Request with supporting documentation (i.e., invoices and proof of payment, quotes) for the allowable equipment, planning, training, and exercise items. Request must be submitted online through the DES Grants software program.

5. Any deviation of the Scope of Service and expenditure of funds on items not in the approved cost lines, without prior written NDDES approval, will result in grant funds requested being denied.

6. At the conclusion of the period of performance, unexpended funds will be de-obligated. By signing the Notice of Grant Award, the sub-recipient is authorizing NDDES to reallocate and/or expend the de-obligated funds on program costs.

7. Sub-recipient is required to follow the applicable provisions of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards located at Title 2, Code of Federal Regulations (CFR) Part 200.

8. Sub-recipient must ensure that federal funds do not replace (supplant) funds that have been budgeted for the same purpose through non-federal sources.

9. Sub-recipient must comply with the requirements of the National Environmental Policy Act (NEPA) and the Council on the Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA.

10. Sub-recipient must comply with the requirements of Title VI of the Civil Rights Act of 1964 (codified as amended at 42 U.S.C. Section 2000d et seq.), which provides that no person in the United States will, on the grounds of race, color or national origin, be excluded from participation in, be denied the benefits of or be subjected to discrimination under any programs or activity receiving federal assistance.

_____

Initial

CITY OF Fargo

PUBLIC WORKS
OPERATIONS

Fleet Management, Forestry,
Streets & Sewers,
Watermains & Hydrants
402 23rd STREET NORTH
FARGO, NORTH DAKOTA 58102
PHONE: (701) 241-1453
FAX: (701) 241-8100

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October 14, 2020

The Honorable Board of City Commissioners
225 4th Street N.
City of Fargo
Fargo, ND 58102

RE: Authorization to contract with Glacier Snow Management, Turf Tamers, Industrial Builders, and Master Construction for Snow Removal Equipment Services for the 2020-2021 Winter.

Commissioners:

Proposals were received and opened on September 30, 2020, in response to a Request for Proposal (RFP20148) issued by Public Works for "Snow Removal Equipment Services". A total of five (5) sealed responses were received (see attached bid tab).

The proposals were evaluated on:

- Experience
- Cost
- Specifications

At this time, staff has confirmed that the proposals met the "Experience" and "Specifications" requirement of the RFP. Based on lowest bid price and the anticipated need of the department, Public Works staff is making a recommendation to contract with the following:

- Glacier Snow Management (Loader with Snow Blower, Mountain Groomer)
- Turf Tamers (Loader with Snow Blower, Wheel Loader with Bucket)
- Industrial Builders (Wheel Loader with Bucket)
- Master Construction (Dozer, Wheel Loader with Bucket)

RECOMMENDED MOTION: I/we hereby move to contract with Glacier Snow Management, Turf Tamers, Industrial Builders, and Master Construction for Snow Removal Equipment Services for the 2020-2021 Winter.

Respectfully submitted,

Paul Fiechtner
Services Manager
Fargo Public Works

2020-2021 Snow Removal Equipment RFP Bid Tab (RFP20148)

Supplier	Snow Blower with Loader	Price	Dozer	Price	Mountain Groomer	Price	Wheel Loader with 4+ Yd Bucket	Price
Glacier Snow Management	Cat938M 2019 Snowblast M8000MB 2019 JD 624L 2020 Snowblast T8000MB 2012	$350.00 $350.00			2004 BR350 14' Blade 2011 Bison X 355HP 17' Blade	$168.00 $173.00		
Turf Tamers	(2) M8000MD 240HP	$350.00					(3) 938K w/ 5.5 CY Bucket w/snow tires DL280-5 w/5.5 CY Bucket w/snow tires	$180.00 $180.00
Sundre Sand & Gravel					(2) BR350 17' Blade (Minimum 100 Hr Rental)	$265.00		
Industrial Builders			Dozer Dozer	$220.00 $220.00	Mountain Groomer	$225.00	Wheel Loader w/4+ Yd Bucket Wheel Loader w/4+ Yd Bucket	$170.00 $170.00
Master Construction			D6K Cat Dozer (132HP) D6K Cat Dozer (149HP) D6T LGP Cat Dozer (145HP) D85 Komatsu Dozer (240HP)	$155.00 $165.00 $165.00 $180.00			JD 624L Loader 4 CY Bucket JD 644K Loader 4.5 CY Bucket JD 724K Loader 5.5 CY Bucket	$145.00 $155.00 $175.00

CITY OF Fargo

Metropolitan Area Transit
650 23rd Street N
Fargo, ND 58102
Phone: 701-241-8140
Fax: 701-241-8558

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October 19, 2020

Board of City Commissioners
Fargo City Hall
200 North Third Street
Fargo, ND 58102

Dear Commissioners:

The City of Fargo Transit Department recently issued a request for proposals (RFP) for repairs to the West Acres road. The RFP was published for two (2) weeks in the Legal section of the Fargo Forum and on our website. One proposal was received from Northern Improvement Company. The bid (attached) is within the project budget and requested specifications.

Requested motion: Award the West Acres Road Repairs to Northern Improvement Company per the attached bid.

Thank you.

Sincerely,

Julie Bommelman

Julie Bommelman
Transit Director
City of Fargo

\Attachment

BID SHEET

Item No	Item Description	Unit	Quantity	Unit Price
1	Concrete Sawing/Site Prep	~~LF~~ SF	5,832	$ 1.65
2	Compacted Recycled Crushed Concrete	SF	5,832	2.05
3	Compacted Asphalt	SF	5,832	5.15

TOTAL PER SF: $ 8.85

TOTAL: $ 51,613.20

THE CITY OF Fargo FAR MORE

Water Treatment Plant
435 14th Avenue South
Fargo, ND 58103
Office: 701.241.1469 | Fax: 701.241.8110
www.FargoND.gov

October 15, 2020

19

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

Subject: Settlement and Release Agreement with Black & Veatch

Dear Commissioners:

Water Utility staff is seeking approval for a Settlement and Release Agreement with Black & Veatch (B&V). If approved, the Water Utility will receive a contribution of $262,770 from B&V toward heating system improvements in the Membrane Water Treatment Plant (MWTP).

During startup of the MWTP in the winter of 2018-2019, it was noticed that some building areas were cold and in need of heating improvement. B&V and Water Treatment Plant (WTP) staff worked together to remedy the heating issues. For the final solutions, there were ideas incorporated from both B&V and WTP staff. The heating improvements were implemented for the winter of 2019-2020 with a noticeable temperature increase in the previously cold areas.

In good faith, B&V has offered to provide a financial contribution of $262,770 to help with the MWTP heating improvements. To receive the financial assistance, the Settlement and Release Agreement needs to be approved by the City Commission. For this agreement, the financial calculations were intended to make the final heating system cost – to the City of Fargo – approximate a MWTP initial bid price for a heating system that adequately heated all needed areas. The final settlement is viewed as fair and reasonable by Water Utility personnel. Once the B&V financial contribution is receive, the MWTP project will be closed out as finished.

Your consideration is greatly appreciated in this matter.

Sincerely,

Troy B. Hall
Water Utility Director

SUGGESTED MOTION:

Approve Settlement and Release Agreement with Black & Veatch to receive a financial contribution to help resolve heating system issues in the Membrane Water Treatment Plant.

REPORT OF ACTION

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Project No. FM-19-F0 Type: Amendment #2

Location: Oak Grove Date of Hearing: 10/12/2020

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Routing	Date
City Commission	10/19/2020
PWPEC File	X
Project File	Nathan Boerboom

The Committee reviewed the accompanying correspondence from Division Engineer, Nathan Boerboom, regarding Amendment #2 in the amount of $255,000.00, for additional for additional work including project administration, geotechnical investigation, meeting with the public and landowners, and design and plan preparation.

Staff is recommending approval of Amendment #2 in the amount of $255,000.00, bringing the total contract amount to $419,000.00.

On a motion by Bruce Grubb, seconded by Kent Costin, the Committee voted to recommend approval of Amendment #2 to Houston Engineering.

RECOMMENDED MOTION
Concur with the recommendation of PWPEC and approve Amendment #2 in the amount of $255,000.00, bringing the total contract amount to $419,000.00 to Houston Engineering.

PROJECT FINANCING INFORMATION:
Recommended source of funding for project: Flood Sales Tax (460)

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

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

ATTEST:

Brenda E. Derrig, P.E.
City Engineer

C: Kristi Olson

THE CITY OF Fargo FAR MORE

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

Memorandum

To: Members of PWPEC

From: Nathan Boerboom
Division Engineer

Date: October 7, 2020

Subject: Contract Amendment #2
Oak Grove Area Flood Mitigation – Project #FM-19-F0

Recently the City Commission approved a revised flood mitigation project alignment for the Oak Grove neighborhood that will meet FEMA accreditation standards and allow the protected area behind the project to be removed from the Special Flood Hazard Area upon completion of the Fargo-Moorhead Metro Diversion Project. This revised alignment modifies the original scope of work that the City created for the initial RFP of this project. Due to this change of scope, Houston Engineering has submitted a contract amendment to complete design work necessary for the revised project alignment, which now includes the design of concrete floodwall, removable floodwall closures, sheet pile floodwall and earthen levee.

The following are brief descriptions of the additional work that is necessary for completing the design of this revised alignment. Full descriptions of the tasks can be seen on the attached Professional Services amendment submitted by Houston Engineering.

- Task 1 – Project Administration – Amendment of $20,000
  - Amendment is for additional management costs to complete the design of the project.
- Task 2 – Preliminary Survey – No change
- Task 3 – Preliminary Engineering – No change
- Task 4 – Geotechnical Investigation – Amendment of $22,000
  - Amendment is for additional soil data collection and analysis necessary for the design of the project.
- Task 5 – Meeting with Public & Landowners –Amendment of $15,000
  - Amendment is for additional coordination with the affected property owners within the project extents.
- Task 6 – Design and Plan Preparation – Amendment $198,000
  - Amendment is for the change in scope of the original project design to now include design of concrete floodwall, removable floodwall closures, sheet pile floodwall, storm sewer gatewell and earthen levee.

Recommended Motion:

Approval of Contract Amendment #2 for FM-19-F0, the Oak Grove Area Flood Mitigation in the amount of $255,000.00 to Houston Engineering.

Fargo Corporate Office 701.237.5065 701.237.5101

1401 21st Avenue North Fargo ND 58102

HoustonEngineering Inc.

PROFESSIONAL SERVICES

AMENDMENT NO. 2 - FOR ADDITIONAL ENGINEERING SERVICES

Project: City of Fargo Project FM-19-F0
Oak Grove Area Flood Mitigation
HE Project No. 6059-0167

Client: City of Fargo
225 4th Street N.
Fargo, ND 58102
Phone (701) 241-1545
Attn: Nathan Boerboom, Division Engineer

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

Description of Work: This contract amendment is for additional Professional Engineering services to assist the City of Fargo with multiple tasks that represent modifications to the original scope of the project. These additional Professional Engineering services include project administration, geotechnical investigation, meeting with the public and landowners, and design and plan preparation for a comprehensive flood mitigation project around the Oak Grove School campus. This project will consist of 3 earth levee segments, 2 concrete floodwall segments, 3 removable floodwall closures, and a sheet pile floodwall. The preliminary project alignment is shown on the attached exhibit. A detailed description of each task amendment is provided in the following sections.

Task 1 – Project Administration (Amendment)

This task amendment is being requested to cover the additional administration costs associated with the revised project alignment and scope. This task includes coordination with City staff, coordinating design, ensuring the project is completed on schedule and budget, providing technical direction and coordination to the design team, coordinate and review deliverables, and coordinate right-of-way and easement acquisitions.

Task 1 Budget Amendment $20,000

Task 4 – Geotechnical Investigation (Amendment)

The revised project alignment now includes levee and floodwall along the east and north sides of the Oak Grove school. The revised alignment also now includes a gatewell structure to handle interior drainage on the project. As a result, 5 additional borings are being proposed to assist in the design of the project. Our geotechnical subconsultant, Braun Intertec, will complete the required soil borings and material strength testing necessary for the design of the project. Additional slope stability analyses will be completed to ensure the project meets FEMA Accreditation requirements. HEI will develop the existing and design cross sections necessary to complete the required slope stability analyses. This task amendment will also include a risk assessment for portions of the project to determine if riverbank armoring is warranted in those areas of the project in close proximity of the river's edge.

Task 4 Budget Amendment $22,000

Task 5 – Meeting with Public and Landowners (Amendment)

This task amendment is being requested to cover coordination with the Fargo Park District, Oak Grove School, and the homeowner at 73 South Terrace North. The Oak Grove School has indicated that they will be completing an expansion project at the school. The proposed project alignment will require close coordination with the school to ensure it does not interfere with the proposed expansion and also provides adequate access to the football field north of the school. A portion of the project is located on Park District property at Oak Grove Park. Coordination with the Fargo Park District is necessary to ensure tree impact and impacts to park facilities are minimized as much as possible. One property remains along the southern portion of the project alignment. The proposed project will go around this property to the south and will require close coordination with the homeowner.

Task 5 Budget Amendment $15,000

Task 6 – Design and Plan Preparation (Amendment)

This task amendment is being requested do the substantial change in the project scope. The original project design consisted of an earth levee segment and road raise that tied into the existing Oak Grove School floodwall. The revised project alignment includes approx. 800 lineal feet of concrete floodwall, approx. 700 lineal feet of sheet pile floodwall, 3 removable floodwall closures, and cast in place gatewell structure and approx. 600 lineal feet of additional earth levee. HEI will complete detailed design of the revised project. This includes structural design of concrete floodwalls, sheet pile floodwall, removable floodwall closures, and one gatewell structure. Design submittals will be provided at 60%, 90% and 100%.

HoustonEngineering Inc.

Construction plans, specification, and right-of-way/easement documents will also be completed under this amended task. HEI will assist the City during the bidding process by answering questions from bidders, completing addenda as needed, and reviewing bids for contract conformance.

Task 6 Budget Amendment $198,000

Basis of Proposal: This amendment covers the additional services as described above.

Fee: The total requested budget amendment for the above described amended tasks is **$255,000**. Additional work required beyond the scope listed above will be billed at our current hourly rates.

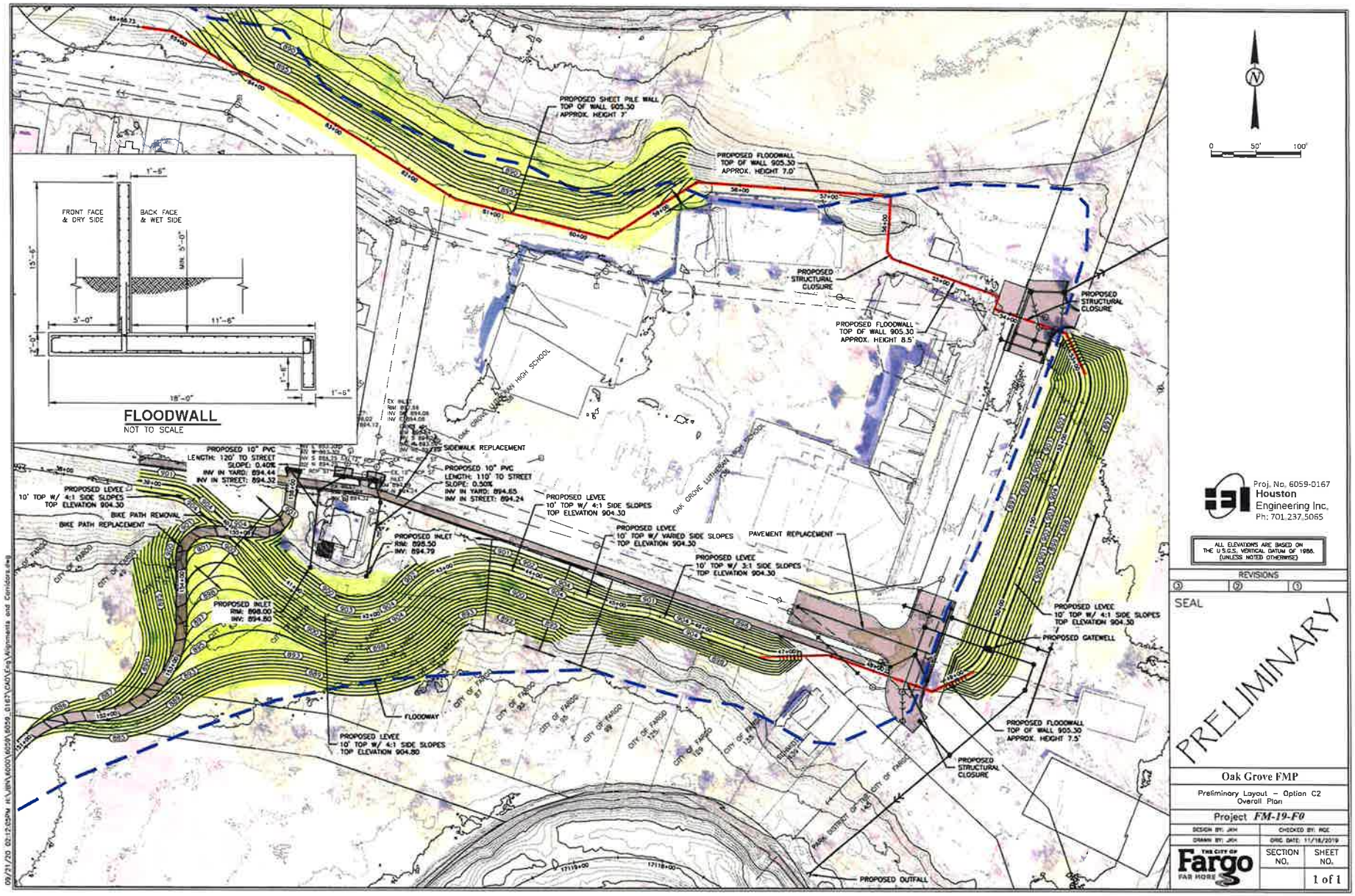
Conditions: The work outlined in this amendment will be performed in accordance with the Agreement for Professional Services for City Project # FM-19-F0 dated May 6, 2019.

Upon receipt of written acceptance of this amendment, Houston Engineering, Inc. will begin performing the work outlined above.

HOUSTON ENGINEERING, INC.

Michael P. Love, PE
Project Manager

H:\JBN\6000\6059\6059_0167\PM\FM-19-F0 Prof Services Agreement - Amendment No. 2 10-6-2020.docx


FLOODWALL
NOT TO SCALE
FRONT FACE & DRY SIDE
BACK FACE & WET SIDE
MIN. 5'-0"
1'-6"
13'-6"
3'-0"
11'-6"
2'-0"
1'-6"
18'-0"
1'-6"
PROPOSED SHEET PILE WALL TOP OF WALL 905.30 APPROX. HEIGHT 3'
PROPOSED FLOODWALL TOP OF WALL 905.30 APPROX. HEIGHT 7.0'
PROPOSED FLOODWALL TOP OF WALL 905.30 APPROX. HEIGHT 8.5'
PROPOSED FLOODWALL TOP OF WALL 905.30 APPROX. HEIGHT 7.5'
PROPOSED STRUCTURAL CLOSURE
PROPOSED STRUCTURAL CLOSURE
PROPOSED STRUCTURAL CLOSURE
PROPOSED 10" PVC LENGTH: 120' TO STREET SLOPE: 0.40% INV IN YARD: 894.44 INV IN STREET: 894.32
PROPOSED 10" PVC LENGTH: 110' TO STREET SLOPE: 0.50% INV IN YARD: 894.65 INV IN STREET: 894.24
PROPOSED LEVEE 10' TOP W/ 4:1 SIDE SLOPES TOP ELEVATION 904.30
PROPOSED LEVEE 10' TOP W/ 4:1 SIDE SLOPES TOP ELEVATION 904.30
BIKE PATH REMOVAL
BIKE PATH REPLACEMENT
SIDEWALK REPLACEMENT
PROPOSED INLET RIM: 898.50 INV: 894.79
PROPOSED INLET RIM: 898.00 INV: 894.80
PROPOSED LEVEE 10' TOP W/ VARIED SIDE SLOPES TOP ELEVATION 904.30
PROPOSED LEVEE 10' TOP W/ 3:1 SIDE SLOPES TOP ELEVATION 904.30
PAVEMENT REPLACEMENT
PROPOSED LEVEE 10' TOP W/ 4:1 SIDE SLOPES TOP ELEVATION 904.30
PROPOSED GATEWELL
PROPOSED LEVEE 10' TOP W/ 4:1 SIDE SLOPES TOP ELEVATION 904.30
FLOODWAY
PROPOSED OUTFALL
OAK GROVE LUTHERAN HIGH SCHOOL
CITY OF FARGO
PARK DISTRICT OF THE CITY OF FARGO
0 50' 100'
Proj. No. 6059-0167
Houston Engineering Inc.
Ph: 701.237.5065
ALL ELEVATIONS ARE BASED ON THE U.S.G.S. VERTICAL DATUM OF 1986. (UNLESS NOTED OTHERWISE)
REVISIONS
SEAL
PRELIMINARY
Oak Grove FMP
Preliminary Layout – Option C2
Overall Plan
Project FM-19-F0
DESIGN BY: JKH
CHECKED BY: RGE
DRAWN BY: JKH
ORIG. DATE: 11/18/2019
THE CITY OF Fargo FAR MORE
SECTION NO.
SHEET NO.
1 of 1
09/21/20 02:12:05PM H:\JBN\6000\6059\6059_0167\CAD\Eng\Alignments and Corridors.dwg

REPORT OF ACTION

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Project No. FM-19-H0 Type: Amendment #2

Location: University Dr, north of 52nd Ave S Date of Hearing: 10/12/2020

21

Routing	Date
City Commission	10/19/2020
PWPEC File	X
Project File	Roger Kluck

The Committee reviewed the accompanying correspondence from Project Engineer, Roger Kluck, regarding Amendment #2 in the amount of $105,852.00. The existing project is for the floodwall monitoring along University Drive South immediately north of 52nd Avenue South. This amendment is for the soils investigation along 52nd Avenue, which acts as a levee, east of University Drive South.

Staff is recommending approval of Amendment #2 in the amount of $105,852.00, bringing the total contract amount to $167,963.00.

On a motion by Bruce Grubb, seconded by Kent Costin, the Committee voted to recommend approval of Amendment #2 to Braun Intertec.

RECOMMENDED MOTION
Concur with the recommendations of PWPEC and approve Contract Amendment #2 to Braun Intertec in the amount of $105,852.00, bringing the total contract amount to $167,963.00.

PROJECT FINANCING INFORMATION:
Recommended source of funding for project: Flood Sales Tax (460)

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

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

ATTEST:

Brenda E. Derrig, P.E.
City Engineer

C: Kristi Olson

THE CITY OF Fargo FAR MORE

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

Memorandum

To: Members of PWPEC

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

Date: October 7, 2020

Re: Project No. FM-19-H0 – Amendment #2 - South University Floodwall Settlement Update

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Background:

As previously discussed with PWPEC, staff has been working with various Engineering Consultants to review the unanticipated settlement that has occurred along the floodwall adjacent to University Drive South. Upon completion of the review, this group of Engineering Consultants developed a report providing several repair options for the floodwall, as well as, a determination that the current condition of the floodwall would be able to handle a flood prior to the completion of any repairs. Because of these findings and the estimated cost of repairs, it has been determined that repair of this floodwall does not need to happen immediately, but instead will be programmed in a future year's Capital Improvements Plan. In the interim, staff is recommending to complete a project next summer that would place riprap along the outside meander of the river at these failure points, as well as, continue to monitor these ground movements to make certain riverbank conditions are not further deteriorating.

To assist in this monitoring, Engineering has worked with Braun Intertec to develop a scope and budget for monitoring of the floodwall and riverbank area through 2024. Braun has presented a Contract Amendment of $46,662.00 for this monitoring.

However, since the receipt of the Amendment from Braun, Engineering received word from Public Works that there is a possible settlement also occurring on the north lane of 52nd Avenue South east of University Drive. Since this notification, Engineering has met with Braun to review this possible settlement and determined that further geotechnical investigation along 52nd Avenue South was warranted. Therefore, Engineering also asked Braun to prepare a proposal to investigate this newly identified settlement.

The Amendment proposed by Braun for this additional investigation and long term monitoring along 52nd Avenue South is $59,190.00. The work proposed by Braun for this investigation includes site visits, original design reviews, soil borings, inclinometer installation and reading, and stability analyses.

A full description of work to be completed by Braun is included in the attached Amendments.

Engineering believes that on-going monitoring of the floodwall is needed and that an investigation along 52nd Avenue South should occur.

Engineering also believes the proposals are reasonable and recommends authorization of the work.

Recommended Motion:

Approve the Contract Amendment for Project No. FM-19-H0 of $105,852.00 to the Braun Intertec for the floodwall monitoring along University Drive South and 52nd Avenue South and the soils investigation along 52nd Avenue east of University Drive South.

REK/klb

This is Amended Task Order No. 2, consisting of 3 pages. Amendment No. 2

Task Order # 2

In accordance with paragraph 1.1 of the Task Order Agreement Between Owner and Engineer For Master Professional Services, dated February 14, 2019 ("Agreement"), Owner and Engineer agree as follows:

1. **Specific Project Data**

   A. Title: Geotechnical Evaluation of floodwall and sidewalk movement on University near 52nd Ave South FM-19-H0

   B. Description: This Task Order is for investigative services for determining extent of failure and potential repairs for sidewalks, floodwall, and incidentals.

2. **Services of Engineer**

   Services to be completed by the Engineer are as specified in the proposal submitted by Braun Intertec dated January 15, 2020. Proposal is attachment A of this task order.

3. **Owner's Responsibilities**

   Owner shall have those responsibilities set forth in Master Professional Services Agreement dated February 14, 2019.

4. **Times for Rendering Services**

Phase	Completion Date
Geotechnical Services	November 1, 2024

5. **Payments to Engineer**

A. Owner shall pay Engineer for services rendered as follows:

Category of Services	*Compensation Method*	*Lump Sum, or Estimate of Compensation for Services*
Basic Services: ***AMENDED*** *Monitoring of floodwall & river bank*	***Hourly Not to Exceed***	**$46,662.00**
Geotechnical investigation of river bank	***Hourly Not to Exceed***	***$59,190.00***
Total		***$105,852.00***

B. The terms of payment are set forth in Article 3 of the Master Services Agreement.

6. **Consultants: N/A**

7. **Other Modifications to Agreement:**

[Supplement or modify Agreement and Exhibits, if appropriate.]

8. **Attachments:**

Attachment A – Proposal submitted by Braun Intertec on October 1, 2020 and October 8, 2020

9. **Documents Incorporated By Reference: N/A**

Approval Requirements

$15,000 or less – City Engineer **$15,001 - $150,000 – PWPEC** **Over $150,000 – PWPEC & Commission**

Terms and Conditions: Execution of this Task Order by Owner and Engineer shall make it subject to the terms and conditions of the Agreement (as modified above), which Agreement is incorporated by this reference. Engineer is authorized to begin performance upon its receipt of a copy of this Task Order signed by Owner.

The Effective Date of this Amended Task Order is October 19, 2020.

OWNER:	ENGINEER:
By:	By:
Name: Timothy J. Mahoney	Name: Ezra Ballinger, PE
Title: Mayor	Title: Business Unit Leader, Senior Engineer
DESIGNATED REPRESENTATIVE FOR TASK ORDER:	DESIGNATED REPRESENTATIVE FOR TASK ORDER:
Name: Roger E. Kluck, PE, CFM	Name: Chuck Hubbard, PE
Title: Engineer II Storm Sewer/Floodplain	Title: Technical Leader, Principal Engineer/Geologist
Address: 225 4th St N, Fargo ND 58102	Address: 526 10th Street NE, West Fargo, ND
E-Mail Address: rkluck@FargoND.gov	E-Mail Address: chubbard@braunintertec.com
Phone: 701-241-1537	Phone: 307.757.7954
Fax: 701-241-8101	Fax: 701-232-7817

BRAUN INTERTEC
The Science You Build On.

Braun Intertec Corporation
526 10th Street NE, Suite 300
P.O. Box 485
West Fargo, ND 58078

Phone: 701.232.8701
Fax: 701.232.7817
Web: braunintertec.com

October 8, 2020

Proposal QTB124975

Mr. Roger Kluck
City of Fargo
225 4th Street North
Fargo, ND 58102

Re: Proposal for Geotechnical Monitoring
University Drive Floodwall and 52nd Avenue Slope
University Drive and 52nd Avenue South
Fargo, North Dakota

Dear Mr. Kluck:

Braun Intertec Corporation respectfully submits this proposal to monitor ground movements associated with bank instability impacting the University Drive floodwall and 52nd Avenue slope both north and east from the intersection with University Drive of 52nd Avenue South in Fargo.

Background

This proposal supports information and recommendations provided in a January 23, 2020, Geotechnical Evaluation Report, and March 26, 2020, Addendum 1, we previously issued for the project. Those documents qualified several alternatives for stabilizing the floodwall based partly on data obtained from slope inclinometer casings installed upslope and downslope from the floodwall.

We also have been requested to prepare a proposal for evaluation of sliding occurring on the north side of 52nd Avenue South east of University Drive. This proposal includes monitoring of that area as well.

Purpose

The purpose of our services will be to gather additional slope inclinometer casing data so that the City of Fargo can track and qualify continued ground movements as they pursue a design, funding, and a contract for a preferred floodwall and/or slope stabilization alternative. We understand the City will complement our work with their own field inspections and floodwall/slide observations/measurements.

Scope of Services

The City of Fargo requested we assume slope inclinometer casing data will be collected for the balance of 2020, and for four additional years. Braun Intertec recommended, and the City agreed, that our firm would make two trips to the project site within the remainder of 2020 to collect slope inclinometer casing data, and then make three trips per year thereafter to collect data.

We will process and submit the data gathered upon each trip to the City of Fargo electronically, and follow up with a year-end report that contains the sum of that year's data (along with previous data).

AA/EOE

While on site during each trip to collect slope inclinometer casing data, we will perform our own visual observations of floodwall and bank conditions, and report those conditions, along with changes in those conditions over time to the City of Fargo.

We will coordinate our trips with the City of Fargo but anticipate trips during the months of March, July, and November.

Fees

Fees associated with our proposed scope of services are provided in the attached Project Proposal. Fees for services to be provided in years 2020 and 2021 are consistent with our current contract rates with the City of Fargo. Fees for services to be provided in years 2022, 2023, and 2024, include an anticipated three percent increase in rates per year.

Staff hours and equipment/vehicle units in the Project Proposal reflect two trips and associated data processing/reporting over the remainder of 2020, and three trips and associated processing/reporting in 2021 and beyond.

General Remarks

We will be happy to meet with you to discuss our proposed scope of services further and clarify the various scope components.

We appreciate the opportunity to present this proposal to you. Please sign and return a copy to us in its entirety.

We based the proposed fee on the scope of services described and the assumptions that you will authorize our services within 30 days and that others will not delay us beyond our proposed schedule.

As noted, we will provide our services under the terms of our current Master Service Agreement with the City of Fargo.

To have questions answered or schedule a time to meet and discuss our approach to this project further, please contact Charles Hubbard at 307.757.7954, or Ezra Ballinger at 701.205.2515.

Sincerely,

BRAUN INTERTEC CORPORATION

Charles D. Hubbard, PE
Technical Leader, Principal Engineer/Geologist

Ezra Ballinger, PE
Business Unit Leader, Senior Engineer

Attachments:
Project Proposal

The proposal is accepted, and you are authorized to proceed.

Authorizer's Firm

Authorizer's Signature

Authorizer's Name (please print or type)

Authorizer's Title

Date

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Project Proposal

QTB124975

University Drive and 52nd Avenue South Monitoring

Client:

City of Fargo
Roger Kluck
225 4th Street North
Fargo, ND 58102
(701) 241-1333

Work Site Address:

University Drive and 52nd Avenue South
Fargo, ND

Service Description:

Geotechnical Monitoring

	Description	Quantity	Units	Unit Price	Extension
Phase 1	**2020 Geotechnical Monitoring**				
Activity 1.1	**Monitoring Personnel and Equipment**				**$6,374.00**
118	**Staff Engineer**	16.00	Hour	133.00	$2,128.00
128	**Senior Engineer**	8.00	Hour	181.00	$1,448.00
130	**Principal Engineer**	8.00	Hour	213.00	$1,704.00
4911	**Slope Inclinometer Rental**	4.00	Each	95.00	$380.00
138	**Project Assistant**	2.00	Hour	91.00	$182.00
125	**Project Control Specialist**	4.00	Hour	133.00	$532.00
				Phase 1 Total:	**$6,374.00**
Phase 2	**2021 Geotechnical Monitoring**				
Activity 2.1	**Monitoring Personnel and Equipment**				**$9,752.00**
122	**Staff Engineer**	24.00	Hour	141.00	$3,384.00
166	**Senior Engineer**	12.00	Hour	193.00	$2,316.00
167	**Principal Engineer**	12.00	Hour	226.00	$2,712.00
1303	**Slope Inclinometer Rental**	6.00	Each	101.00	$606.00
138	**Project Assistant**	2.00	Hour	93.00	$186.00
125	**Project Control Specialist**	4.00	Hour	137.00	$548.00
				Phase 2 Total:	**$9,752.00**
Phase 3	**2022 Geotechnical Monitoring**				
Activity 3.1	**Monitoring Personnel and Equipment**				**$10,112.00**
164	**Staff Engineer**	24.00	Hour	141.00	$3,384.00
190	**Senior Engineer**	12.00	Hour	193.00	$2,316.00
180	**Principal Engineer**	12.00	Hour	226.00	$2,712.00
5271	**Slope Inclinometer Rental**	6.00	Each	101.00	$606.00
138	**Project Assistant**	2.00	Hour	141.00	$282.00
125	**Project Control Specialist**	4.00	Hour	203.00	$812.00
				Phase 3 Total:	**$10,112.00**
Phase 4	**2023 Geotechnical Monitoring**				
Activity 4.1	**Monitoring Personnel and Equipment**				**$10,066.00**
262	**Staff Engineer**	24.00	Hour	145.00	$3,480.00
265	**Senior Engineer**	12.00	Hour	199.00	$2,388.00
289	**Principal Engineer**	12.00	Hour	233.00	$2,796.00
1399	**Slope Inclinometer Rental**	6.00	Each	104.00	$624.00
138	**Project Assistant**	2.00	Hour	99.00	$198.00

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Project Proposal

QTB124975

University Drive and 52nd Avenue South Monitoring

125	**Project Control Specialist**	4.00	Hour	145.00	$580.00
				Phase 4 Total:	**$10,066.00**
Phase 5	**2024 Geotechnical Monitoring**				
Activity 5.1	**Monitoring Personnel and Equipment**				**$10,358.00**
365	**Staff Engineer**	24.00	Hour	149.00	$3,576.00
367	**Senior Engineer**	12.00	Hour	205.00	$2,460.00
368	**Principal Engineer**	12.00	Hour	240.00	$2,880.00
1079	**Slope Inclinometer Rental**	6.00	Each	107.00	$642.00
125	**Project Control Specialist**	4.00	Hour	149.00	$596.00
138	**Project Assistant**	2.00	Hour	102.00	$204.00
				Phase 5 Total:	**$10,358.00**

Proposal Total:	**$46,662.00**

BRAUN INTERTEC
The Science You Build On.

Braun Intertec Corporation
526 10th Street NE, Suite 300
P.O. Box 485
West Fargo, ND 58078

Phone: 701.232.8701
Fax: 701.232.7817
Web: braunintertec.com

October 1, 2020

Proposal B1906381.01

Roger E. Kluck, PE, CFM
City of Fargo
200 N 3rd Street
Fargo, ND 58102

Re: Proposal for a Geotechnical Evaluation
52nd Avenue South Embankment
52nd Avenue South, east of University Drive South
Fargo, North Dakota

Dear Mr. Kluck:

Braun Intertec Corporation respectfully submits this proposal to complete a geotechnical evaluation for the 52nd Avenue South embankment.

Our Understanding of Project

Per our conversations with you and a meeting on site, the embankment along the north side of 52nd Avenue South, just east of University Drive South, appears to have experienced new, or renewed, ground movement related to river bank instability. Cracking, subsidence, and translation of the ground extend up to approximately 25 feet into the road between points approximately 250 and 400 feet east of University Drive South.

Braun Intertec published a Geotechnical Evaluation Report addressing the 52nd Avenue South embankment and the nearby University Drive South floodwall on October 16, 2008, under Project FA0801315. That report was amended by a Plan Review and Final Slope Stability Analysis published on August 21, 2009. Between the two reports, the 52nd Avenue South embankment was found to be compliant with governing slope stability factors of safety. Our August 2009 report, however, recommend bank armor along portions of the river bank in the vicinity of 52nd Avenue South, designed and applied based on the provisions of US Army Corps of Engineers (USACE) Engineering Manual EM 1110-2-1601, *Hydraulic Design of Flood Control Channels*, Change 1 ENG 4794-R 30 Jun 94. We do not have information confirming the nature, extent, or application of bank armor in the area.

The current limits of embankment instability extend farther upslope than apparent in 2009, suggesting that the current conditions represent the remobilization and expansion of an historic failure. We have seen this phenomenon at other locations after cycles of wet and dry years with corresponding pronounced fluctuations in channel water levels, the nearby University Drive South floodwall being the most recent example.

Purpose

The purpose of our geotechnical evaluation will be to characterize the 52nd Avenue South embankment as it currently exists, exploring the geometric and geotechnical factors contributing to its failed state, and developing recommendations for its stabilization.

Scope of Services

The following tasks are proposed to help achieve the stated purpose. If unfavorable or unforeseen conditions are encountered at any point during the completion of the tasks that lead us to recommend an expanded scope of services, we will contact you to discuss the conditions before resuming work.

Site Reconnaissance and Document Review

We have completed a site reconnaissance under your accompaniment. Currently we are gathering historic documents for further review to confirm our understanding of the changes that construction of the project brought about.

We request that the City provide copies of the project plans and specifications for review as well, and engage a civil consultant to survey the area and develop a plan that shows features associated with the unstable condition, including ground, sidewalk and pavement cracks, and grade and structure subsidence and translation (undamaged structures whose alignment or plumb has been compromised should also be identified).

We would also like to select one or more cross sections for surveying, including bathymetric survey, so that we can compare changes not only in the geometry of the exposed grades but also changes in river channel bathymetry since post publication of our August 2009 report.

Site Access, Staking and Utility Clearance

We have budgeted for an all-terrain rig to access prospective exploration locations, though if we are able to access those locations with a truck-mounted rig, we will do so. We will stake prospective subsurface exploration locations prior to mobilizing our drill rig. We request that the City survey the as-drilled locations and provide their coordinates and elevations to us.

Prior to drilling, we will contact North Dakota One Call and arrange for notification to the appropriate utility vendors to mark and clear the exploration locations of public underground utilities. You, or your authorized representative, are responsible to notify us before we begin our work of the presence and location of any underground objects or private utilities that are not the responsibility of public agencies.

Penetration Test Borings
We propose to drill four standard penetration test borings. Two of those borings will be located at higher elevations, closer to the road, and extended to a nominal depth of 50 feet. The remaining two will be located at lower elevations, closer to the river bank, and extended to a depth of 75 feet.

Standard penetration tests will be performed at 2 ½-foot vertical intervals to the 50-foot sample depth, and at 5-foot intervals at greater depths.

We have made provisions to obtain 12 thin-walled tube samples for laboratory testing.

If groundwater is encountered, the depth where it is observed will be recorded on our boring logs.

Instrumentation Installation and Monitoring
Within each of the completed boreholes, we will install 2.75-inch diameter grooved slope inclinometer casing, finished with a steel protective top and locking cover. Our budget includes provisions for gathering casing orientation and displacement data once upon installation to establish baseline orientations, and at five more occasions to track casing displacement, for a total of six trips.

Borehole Abandonment
The annulus around the slope inclinometer casings will be sealed with neat cement grout.

Installation of the slope inclinometer casings and subsequent grouting will prevent us from disposing of auger boring cuttings in the completed boreholes. Unless otherwise directed, we intend to thin-spread the cuttings around the boreholes. If cuttings cannot be thin-spread, they will be containerized and left on site. Off-site disposal of the cuttings can be performed for an additional fee.

Over time, subsidence of borehole backfill may occur, requiring surface grades to be re-leveled or concrete patches to be replaced. Braun Intertec is not assuming responsibility for re-leveling or re-patching subsequent to initial backfilling.

Our drilling activities may also impact the vegetation and may rut the surface to access boring locations. Restoration of vegetation and turf is not part of our scope of services.

Sample Review and Laboratory Testing
Material samples retrieved from the borings will be returned to our laboratory, where they will be visually classified and logged by a geotechnical engineer in general accordance with ASTM D2487. To help classify the materials encountered and estimate/measure the engineering properties necessary for our analyses, we have budgeted to perform the following laboratory tests:

- *(48) Moisture content tests (ASTM D2216).*
- *(12) Moisture content and unit weight determinations.*
- *(24) Atterberg limits tests (ASTM D4318).*
- *(4) Consolidated-undrained (CU) triaxial shear strength tests (ASTM D2850).*

It is our intention to only perform laboratory tests that will be necessary to our analyses. If after review of the soils it is our opinion that portions of the above schedule would not be cost-beneficial to the project, we will reduce the schedule and we will not charge for tests that are not performed. Conversely, if after review it appears that additional testing would provide potential cost-benefits to the project, we will request authorization for the additional testing through a Change Order.

Analytical Modeling

We will analyze the 52nd Avenue South embankment in its current, failed state to calibrate our material parameters and establish a basis for qualifying and developing recommendations for stabilization alternatives. Our analyses will be performed with GeoStudio suite of computer programs by Geo-Slope, International. GeoStudio contains finite element seepage, deformation and stability programs that allow the dynamic aspects of structure loading to be studied on a transient basis, so that both short- and long-term seepage, settlement and stability interests can be evaluated.

We anticipate analyzing at least one but no more than two cross sections, with one oriented perpendicular to the road at the apparent apex of the ground movement limits.

Reporting

Data obtained from our document review, our field and laboratory programs, and our analytical modeling, will be summarized in a report that includes:

- A sketch showing project features, exploration locations, and analytical cross sections.
- Logs of the borings.
- A summary of current site, and subsurface geologic conditions.
- Slope inclinometer casing graphs plotting cumulative and incremental casing displacement.
- The results of our stability analyses.
- An opinion regarding the feasibility of stabilization alternatives qualified through analysis.
- Recommendations for the design and application of one or more stabilization alternatives.

One electronic copy of our report will be submitted to you upon completion. At your request, hard copies of our report can be provided for you and other project team members. If you anticipate that hard copies will be needed, please request them prior to the report being completed so we can prepare a copy list for the recipients and distribute the reports expediently.

Cost

We will furnish the services described in this proposal for an estimated fee of $59,190. Our services will be charged on a cost-plus (time and materials) basis. A Project Proposal itemizing the hours or units associated with our proposed scope of services is attached.

Our work may extend over multiple invoicing periods. As such, for work that is performed during the course of each invoicing period, we will submit partial progress invoices.

Schedule

We have a drill rig scheduled to mobilize the week of October 5, 2020. We anticipate the field work will take four days to complete. Sample classification, laboratory testing, engineering analyses and report preparation will likely take an additional 6 to 8 weeks depending largely on how soon movement is revealed by our slope inclinometer casings. We will pass along results, however, as they are obtained and reviewed.

If our proposed scope of services cannot be completed according to this schedule due to circumstances beyond our control, we may need to revise this proposal prior to completing the remaining tasks.

General Remarks

We will be happy to meet with you to discuss our proposed scope of services further and clarify the various scope components.

We appreciate the opportunity to present this proposal to you. ***Please sign and return a copy to us in its entirety.***

The proposed fee is based on the scope of services described and the assumptions that our services will be authorized within 30 days and that others will not delay us beyond our proposed schedule.

Our services will be provided under the terms of the Master Professional Services Agreement between the City of Fargo and Braun Intertec Corporation dated February 14, 2019.

To have questions answered or schedule a time to meet and discuss our approach to this project further, please call Charles Hubbard at 307.757.7954.

Sincerely,

BRAUN INTERTEC CORPORATION

Charles D. Hubbard, PE
Technical Leader, Principal Engineer/Geologist

Ezra Ballinger, PE
Business Unit Manager, Senior Engineer

Attachments:
Project Proposal

The proposal is accepted, and you are authorized to proceed.

Authorizer's Firm

Authorizer's Signature

Authorizer's Name (please print or type)

Authorizer's Title

Date

BRAUN INTERTEC
The Science You Build On.

Project Proposal

QTB127809

52nd Avenue South Embankment

Client:

City of Fargo
Roger Kluck
225 4th Street North
Fargo, ND 58102
(701) 241-1333

Work Site Address:

52nd Avenue South at Universitry Drive South
Fargo, ND

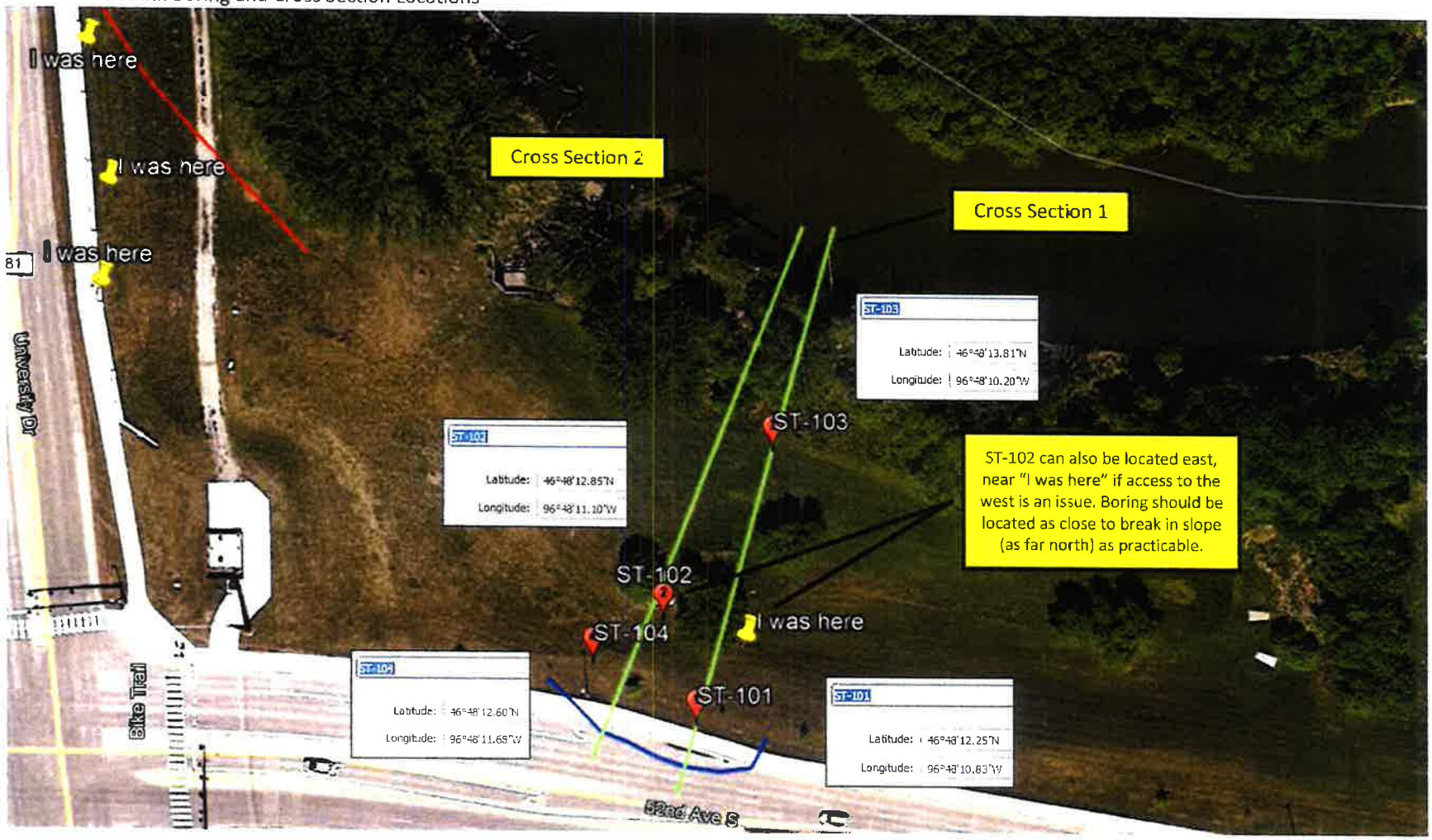
Service Description:

Geotechnical Evaluation

	Description	Quantity	Units	Unit Price	Extension
Phase 1	**Geotechnical Evaluation**				
Activity 1.1	**Drilling and Instrumentation**				**$25,192.00**
9100	Flotation Tire Drill Rig and Crew, per hour	40.00	Each	330.00	$13,200.00
9732	Grout with neat cement, materials per foot	250.00	Each	9.00	$2,250.00
9706	Piezometer or well casing - 2" PVC, per foot	250.00	Each	26.00	$6,500.00
9748	Protective casing with locking cover, each	4.00	Each	550.00	$2,200.00
205	Site layout and utility clearance	4.00	Hour	115.00	$460.00
118	Staff Engineer	4.00	Hour	133.00	$532.00
1871	GEO Trip Charge	1.00	Each	50.00	$50.00
Activity 1.2	**Instrumentation Monitoring**				**$8,910.00**
118	Staff Engineer	36.00	Hour	133.00	$4,788.00
126	Project Engineer	12.00	Hour	162.00	$1,944.00
130	Principal Engineer	6.00	Hour	213.00	$1,278.00
4911	Slope Inclinometer Rental	6.00	Each	100.00	$600.00
1871	GEO Trip Charge	6.00	Each	50.00	$300.00
Activity 1.3	**Laboratory Testing**				**$9,368.00**
1152	Moisture content, per sample	48.00	Each	19.00	$912.00
1154	Density of Soil Specimens, per sample	12.00	Each	33.00	$396.00
1156	Atterberg Limits LL and PL, Single-Point, per sample	24.00	Each	105.00	$2,520.00
1208	Consolidated-Undrained Triax Testing with Pore Pressure Measurements, per sample	4.00	Each	1,385.00	$5,540.00
Activity 1.4	**Engineering Analysis, Management and Reporting**				**$15,720.00**
118	Staff Engineer	12.00	Hour	133.00	$1,596.00
130	Principal Engineer	60.00	Hour	213.00	$12,780.00
125	Project Control Specialist	6.00	Hour	133.00	$798.00
138	Project Assistant	6.00	Hour	91.00	$546.00
				Phase 1 Total:	**$59,190.00**

Proposal Total:	**$59,190.00**

52nd Avenue South Boring and Cross Section Locations



Survey Request: We request that the City provide copies of the project plans and specifications for review as well, and engage a civil consultant to survey the area and develop a plan that shows features associated with the unstable condition, including ground, sidewalk and pavement cracks, and grade and structure subsidence and translation (undamaged structures whose alignment or plumb has been compromised should also be identified).

We would also like to select one or more cross sections for surveying, including bathymetric survey, so that we can compare changes not only in the geometry of the exposed grades but also changes in river channel bathymetry since post publication of our August 2009 report.

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REPORT OF ACTION

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Project No. UR-20-A1

Type: Change Order #3 (Time Extension)

Location: 14th - 16th Ave S & 33rd – 35th St

Date of Hearing: 10/12/2020

Routing	Date
City Commission	10/19/2020
PWPEC File	X
Project File	Roger Kluck

The Committee reviewed the accompanying correspondence from Project Manager, Roger Kluck, regarding a time extension (Change Order #3) requested by Dirt Dynamics for additional work.

Staff is recommending approval of the time extension (Change Order #3) adjusting the Substantial Completion Date from October 2, 2020 to October 9, 2020. The Final Completion Date will remain October 23, 2020.

On a motion by Bruce Grubb, seconded by Kent Costin, the Committee voted to recommend approval of the time extension (Change Order #3) as described above to Dirt Dynamics.

RECOMMENDED MOTION

Concur with the recommendation of PWPEC and approve (Change Order #3) a time extension to the Substantial Completion Date to Dirt Dynamics.

PROJECT FINANCING INFORMATION:

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

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

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

ATTEST:

Brenda E. Derrig, P.E.
Assistant City Engineer

C: Kristi Olson

THE CITY OF Fargo FAR MORE

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

Memorandum

To: PWPEC

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

CC: Jody Bertrand, Division Engineer

Date: October 5, 2020

Re: Project #UR-20-A1 Storm Sewer Repairs & Incidentals
Change Order #3 Time Extension

Background:

Project UR-20-A1 was bid on March 4, 2020. The project began July 14, 2020. Change Order #2 added repair areas on 20th Street, south of 14th Avenue South. During these repairs, seven more days were needed to complete the repairs beyond what was requested in CO #2. This is a no-cost change order that extends the contract substantial completion date to October 9, 2020, but the final completion date of October 23, 2020 will remain the same.

The time extension is reasonable and Engineering recommends approval.

Recommended Motion:
Approve Change Order #3 for a 7-day time extension.

REK/jmg

THE CITY OF Fargo FAR MORE

CITY OF FARGO
ENGINEERING DEPARTMENT
CHANGE ORDER REPORT

Improvement District No	UR-20-A1	**Change Order No**	3
Project Name	Storm Sewer Repairs & Incidentals		
Date Entered	10/5/2020	**For**	Dirt Dynamics

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

EXPLANATION OF CHANGE: Time Extension

The change order repair work took a week longer than planned to coordinate road closures and driveway closures

Section	Line No	Item Description	Unit	Orig Cont Qty	Prev C/O Qty	Prev Cont Qty	Curr C/O Qty	Tot Cont Qty	Unit Price ($)	C/O Ext Price ($)

Summary

Source Of Funding	
Net Amount Change Order # 3 ($)	
Previous Change Orders ($)	38,648.50
Original Contract Amount ($)	689,391.10
Total Contract Amount ($)	728,039.60

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

CONTRACT TIME

Current Substantial Completion Date	Current Final Completion Date	Additional Days Substantial Completion	Additional Days Final Completion	New Substantial Completion Date	New Final Completion Date
10/02/2020	10/23/2020	7.00	0.00	10/09/2020	10/23/2020

Description

APPROVED

For Contractor

Title estimator

APPROVED DATE

Department Head

Mayor 10/14/2020

THE CITY OF Fargo FAR MORE

CITY OF FARGO
ENGINEERING DEPARTMENT
CHANGE ORDER REPORT

Attest

THE CITY OF Fargo FAR MORE

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

23

October 7, 2020

Board of City Commissioners
City of Fargo
200 North Third Street
Fargo, ND 58102

Re: Access Agreement – Field Survey
Flood Mitigation Project #FM-19-F

Dear Commissioners:

Accompanying for City Commission review and approval is an Access Agreement with the Park District of the City of Fargo in association with Flood Mitigation Project #FM-19-F.

Oak Grove Park – Park District of the City of Fargo

RECOMMENDED MOTION:
Approve Access Agreement with the Park District of the City of Fargo.

Please return a copy of the signed original.

Respectfully submitted,

Shawn G. Bullinger
Land Acquisition Specialist

C: Nathan Boerboom

ACCESS AGREEMENT

THIS AGREEMENT, made and entered into this 7 day of OCTOBER 2020, by and between **THE CITY OF FARGO, NORTH DAKOTA,** a municipal corporation, referred to as "City", and the undersigned, referred to as "Owner(s)".

1. City requires access to Owner's property to facilitate field surveys, soil testing, and parcel review to facilitate flood mitigation efforts.

2. Owner is the fee simple Owner of the property or otherwise has authority to enter into this Agreement.

3. Owner agrees to allow City's employees, officers, agents, representatives, and contractors to enter upon and access to Owner's property for the purpose of conducting parcel review, soil sample boring and other miscellaneous soil testing procedures, field surveys, staking and visual observation.

4. City's right to access the property begins immediately and will continue until November 30, 2020.

5. City agrees that no property damage will be caused by the access and that the property will be returned to its original condition as nearly practicable if modified in any way.

6. City agrees to indemnify and hold Owner harmless from any and all claims, demands, suits or losses that may result from City's negligence on the property arising out of this agreement.

PROPERTY ADDRESS:

101 Maple St. N.
Oak Grove Park.

OWNER(s):

Fargo Park District.
David L. Buck

THE CITY OF FARGO, NORTH DAKOTA
a municipal corporation

Timothy J. Mahoney, M.D., Mayor

THE CITY OF Fargo FAR MORE

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

October 7, 2020

24

Board of City Commissioners
City of Fargo
200 North Third Street
Fargo, ND 58102

Re: Access Agreement – Field Survey
Flood Mitigation Project #FM-19-F

Dear Commissioners:

Accompanying for City Commission review and approval is an Access Agreement with Oak Grove Lutheran School in association with Flood Mitigation Project #FM-19-F.

124 N Terrace N - Oak Grove Lutheran School

RECOMMENDED MOTION:
Approve Access Agreement with Oak Grove Lutheran School.

Please return a copy of the signed original.

Respectfully submitted,

Shawn G. Bullinger
Land Acquisition Specialist

C: Nathan Boerboom

ACCESS AGREEMENT

THIS AGREEMENT, made and entered into this 6 day of October 2020, by and between **THE CITY OF FARGO, NORTH DAKOTA,** a municipal corporation, referred to as "City", and the undersigned, referred to as "Owner(s)".

1. City requires access to Owner's property to facilitate field surveys, soil testing, and parcel review to facilitate flood mitigation efforts.

2. Owner is the fee simple Owner of the property or otherwise has authority to enter into this Agreement.

3. Owner agrees to allow City's employees, officers, agents, representatives, and contractors to enter upon and access to Owner's property for the purpose of conducting parcel review, soil sample boring and other miscellaneous soil testing procedures, field surveys, staking and visual observation.

4. City's right to access the property begins immediately and will continue until November 30, ~~2019~~ 2021.

5. City agrees that no property damage will be caused by the access and that the property will be returned to its original condition as nearly practicable if modified in any way.

6. City agrees to indemnify and hold Owner harmless from any and all claims, demands, suits or losses that may result from City's negligence on the property arising out of this agreement.

PROPERTY ADDRESS:

124 N. Terrace N, Fargo, ND 58102

OWNER(s):

Oak Grove Lutheran School

Michael A. Slette, President

10/6/20

THE CITY OF FARGO, NORTH DAKOTA
a municipal corporation

Timothy J. Mahoney, M.D., Mayor

REPORT OF ACTION

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Project No. FM-16-A1 Type: Private Utility Relocation

Location: 45th Street & 64th Avenue North Date of Hearing: 10/12/2020

25

Routing	Date
City Commission	10/19/2020
PWPEC File	X
Project File	Roger Kluck

The Committee reviewed a communication from Project Engineer, Roger Kluck, regarding Consolidated Communications (CCI), Cass County Electric (CCEC), and Century Link utilities needing to be lowered for the levee construction.

The estimates for utility relocations are as follows:

- CCI **- $12,798.89**
- CCEC **- $5,000.00**
- Century Link **- $54,754.81**

Staff is seeking approval to pay CCI $12,798.89, CCEC $5,000.00, and Century Link $54,754.81 based on preliminary estimates for lowering of private utilities.

On a motion by Bruce Grubb, seconded by Kent Costin, the Committee voted to recommend approval of the estimated payments to CCI in the amount of $12,798.89, CCEC in the amount $5,000.00, and Century Link in the amount of $54,754.81 for the lowering of private utilities.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve the estimated payments to CCI in the amount of $12,798.89, CCEC in the amount $5,000.00, and Century Link in the amount of $54,754.81 for the lowering of private utilities.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: Flood Sales Tax

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

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

ATTEST:

Brenda E. Derrig, P.E.
City Engineer

C: Kristi Olson

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

Memorandum

To: Members of PWPEC

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

Date: October 8, 2020

Re: Project No. FM-16-A1 North Side Flood Risk Management Levee - Consolidated Communications Fiber Lowering and Cass County Electric for Line Lowering

---

Background:

The project was advertised in August 2020 and the project was awarded to Key Contracting in September 2020. The project is underway and in order to build the flood control levee, several utilities will need to be lowered. Consolidated Communications, Inc. lies in a private utility easement on the east side of CR 81 and will need to be lowered for the levee tie in to the County Road. Cass County Electric lies within a private utility easement on the east side of CR 31 and will need to be lowered for the levee construction.

The attached cost information is from CCI for $12,798.89.

The attached cost information is from Cass County Electric for $5,000.00.

Funding for this project will come from the Flood Sales Tax Fund 460. Engineering has reviewed the proposals and feel they are reasonable and in line with other similar work.

Recommended Motion:

Approve payment of $12,798.89 to Consolidated Communications and $5,000.00 to Cass County Electric for the lowering of existing private utility lines to facilitate construction of the new flood control levee.

REK/klb
Attachment

C: Jody Bertrand, Division Engineer
Nathan Boerboom, Division Engineer

Cass County Electric Cooperative
Your Touchstone Energy® Partner

4100 32nd Avenue SW
Fargo ND 58104

Aid To Construction Estimate

DATE: 10/7/2020

Prepared By:	
Brent Hodgson	
Work #	701-356-4481
Cell #	701-367-6550
WO#	75309
Map Location	070-131-0000

TO:	City of Fargo Roger Kluck
Phone	
Mobile	701-361-5354

MEMBER/CONTRACTOR ITEMS TO BE COMPLETED PRIOR TO CONSTRUCTION

Signed Aid to Construction

Lower cables along the East side of County 31 for FM-16-A1 Levee project North Fargo

ITEMIZED ESTIMATE: TIME AND MATERIALS	Qty	Cost	ATC Allowance	ATC Req'd
lower existing cables for levee project				$5,000
Other				
Other				
			Total Estimated Aid to Construction Cost	**$5,000.00**
			Total Amount to be paid prior to Construction	

Terms and Conditions : This is a good-faith estimate, valid for 30 days, and pending the successful acquisition of all necessary easements and permits to complete the work. It's possible the scope of the job as outlined above could change slightly due to unforeseen weather, soil, or other issues that might arise, which would result in additional charges, not to exceed the maximum contingency allowance percentage. Lead times for materials may be up to 12 weeks or more, and materials will not be ordered until the estimate is accepted.

By signing below, I hereby accept and agree to the terms and conditions of this estimate. I agree to pay the estimated aid to construction as detailed above, and authorize Cass County Electric to proceed with the work proposed.

ACCEPTED BY

DATE

Roger Kluck

From: Brent Hodgson <bhodgson@kwh.com>
Sent: Wednesday, October 7, 2020 10:52 AM
To: Roger Kluck
Subject: North Fargo levee
Attachments: ATC ESTIMATE .pdf

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

Hi Roger
Attached is an aid to construction estimate for the North Levee project.

Brent

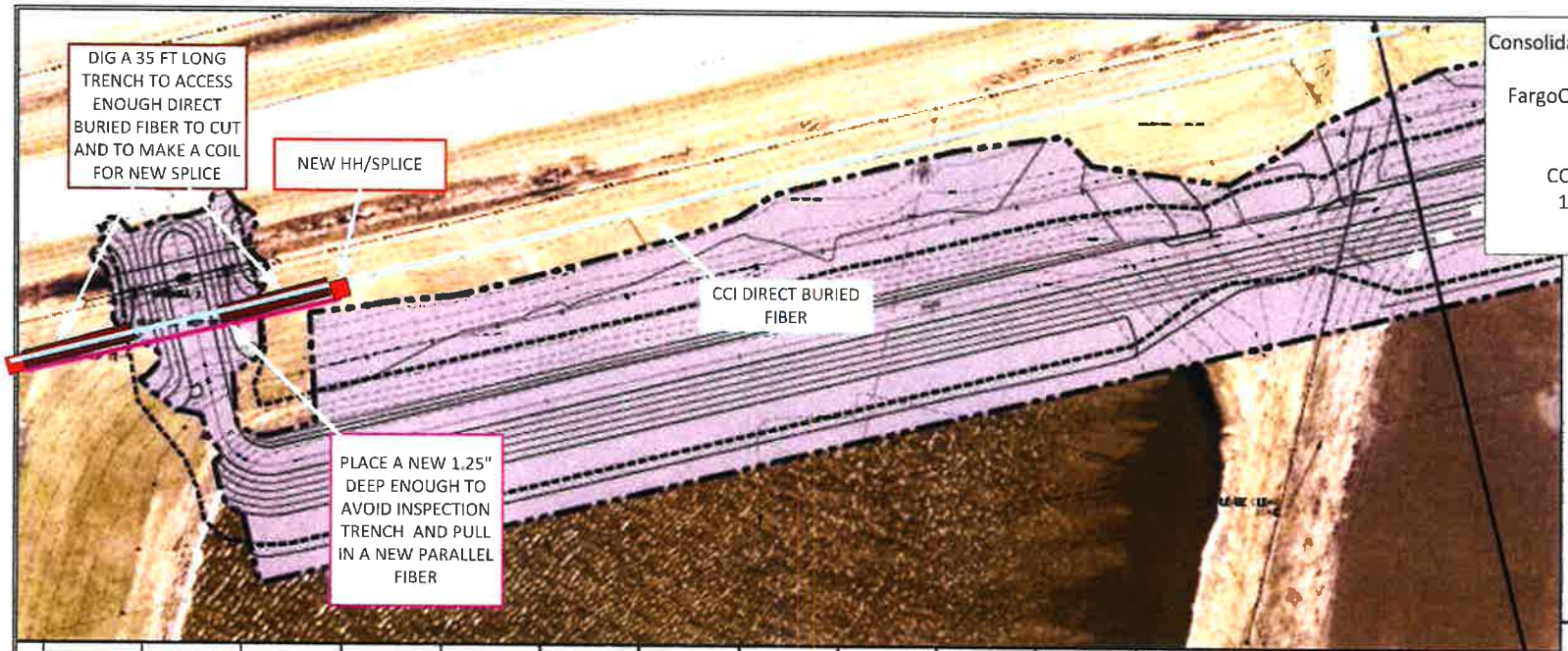
Cass County Electric Cooperative

Brent Hodgson
Design and Construction Supervisor
P: 701-356-4462
E: bhodgson@kwh.com | CassCountyElectric.com

CCEC CONFIDENTIALITY NOTICE: This email message, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, copy, use, disclosure, or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message.

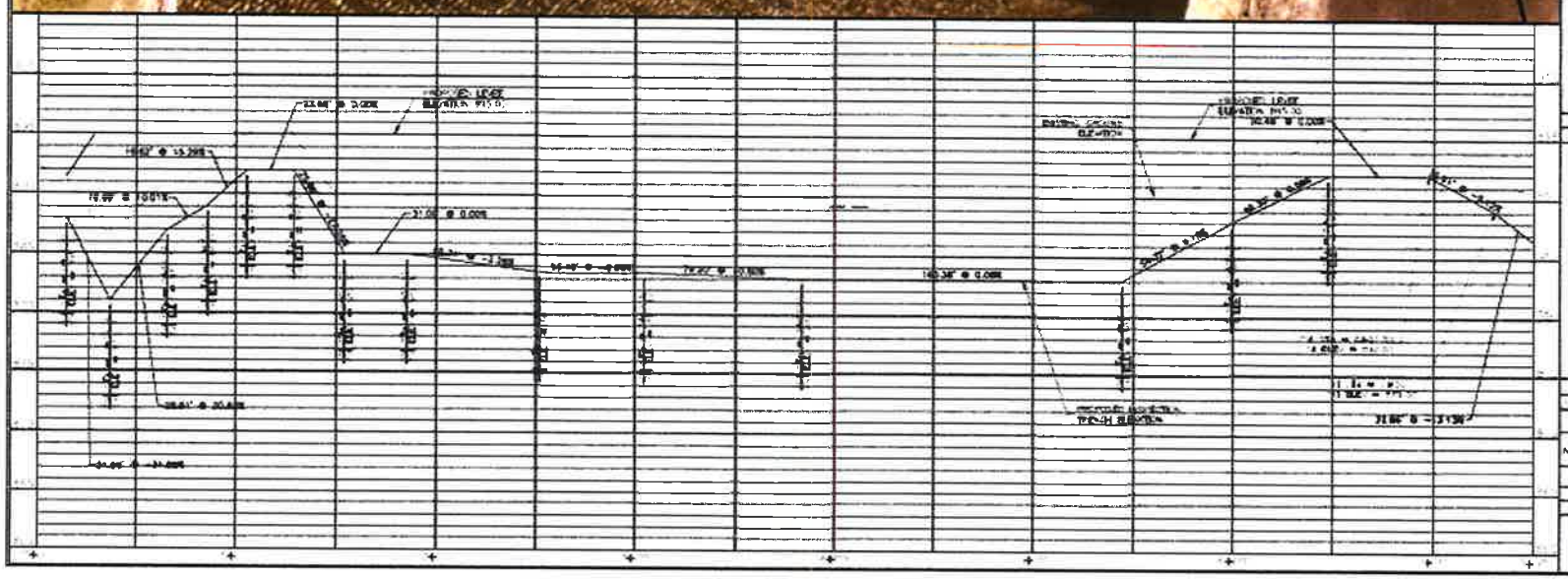
CONSOLIDATED COMMUNICATIONS
CONSTRUCTION ESITMATE FOR 19189A FM-16-A1

Labor & Materials Cost for ICB Quotes (Taxes/Fees Added)	
Total Material Costs	$2,008.14
Materials Tax	$752.85
Total Materials cost for ICB	**$2,760.99**
Total Contractor Labor	$6,762.50
Permitting/Engineering Fees	$0.00
CCI Engineering/Splicing	$3,090.00
Additional Internal CCI labor fees	$185.40
Total Labor cost for ICB	**$10,037.90**
Total Project Cost for ICB	**$12,798.89**



Consolidated Communications Inc
Rob Thomas
FargoOSP@Consolidated.com
701-356-6032

CCI Fiber Re-route for
19189A FM-16-A1
Fargo ND



moore engineering, inc.

E-L

95% SUBMITTAL

PLAN & PROFILE - WEST LEVEE

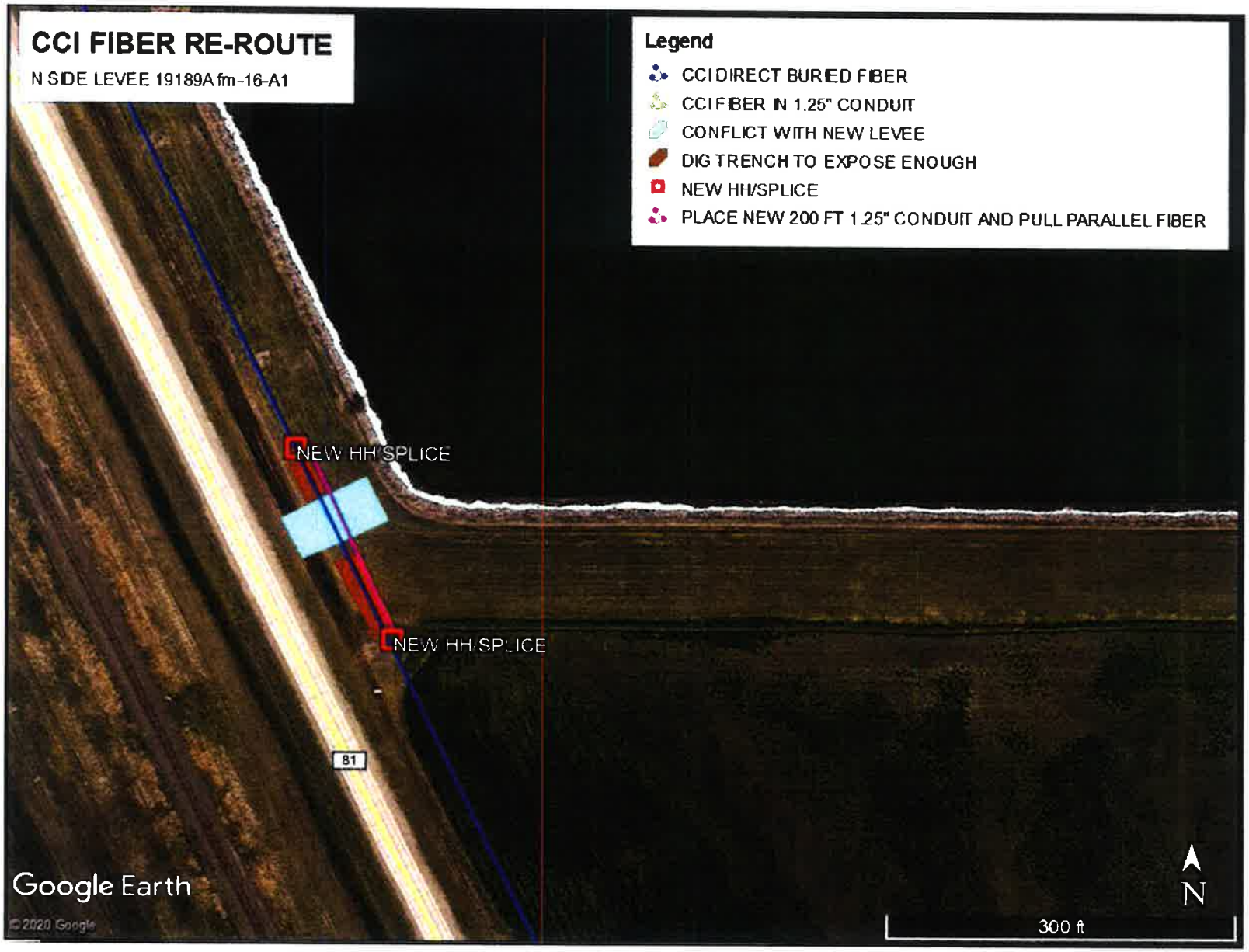
NORTH SIDE FLOOD RISK MANAGEMENT LEVEE

Project No. FM-16-A1

Fargo

SECTION NO. 070

SHEET NO. 15


CCI FIBER RE-ROUTE
N SIDE LEVEE 19189A fm-16-A1
Legend
CCI DIRECT BURIED FIBER
CCI FIBER IN 1.25" CONDUIT
CONFLICT WITH NEW LEVEE
DIG TRENCH TO EXPOSE ENOUGH
NEW HH/SPLICE
PLACE NEW 200 FT 1.25" CONDUIT AND PULL PARALLEL FIBER
NEW HH SPLICE
NEW HH SPLICE
81
Google Earth
© 2020 Google
N
300 ft

Brenda Derrig

Subject: FW: CenturyLink Special Construction quote of Old CO Rd 31 Levee Fargo, ND

October 12, 2020

City of Fargo
Roger E. Kluck

File #: 62353

Dear Mr. Kluck,

We have received information from the CenturyLink field Engineering for the Fargo, ND area, Charles Grummons, indicating that you have requested CenturyLink to relocate cable facilities on Old Co Rd 31 in Fargo, ND. Work will consist of placing 600 feet of 144 fiber cable and 540 feet of copper cable in an armored conduit under a new levee. Placement will require a pit and plowing. Existing services will be cut to the new facilities. All splicing and testing activities will be completed. This work falls into the excess construction category which is billable back to the customer.

Before we can begin construction, it will be necessary for you to agree to the following terms for facility relocation. Your cost for this relocation will be $54,754.81 which includes $6,315.56 for material and $48,439.25 for labor.

Specific questions on the actual construction, construction requirements or the construction timeframe will need to be directed to Charles Grummons at (701) 241-3141.

CenturyLink is not legally authorized to break costs down any further than the labor and material totals that are currently provided. Labor costs include all time for Municipality permitting, construction crews, general contractors and all CenturyLink internal teams involved in designing and turning up the service, which is confidential pursuant to our Contracts. The ability to recover these costs are driven and supported by the North Dakota State Tariffs are located at http://www.centurylink.com/tariffs/nd_qc_ens_c_no_2.pdf, (Section 4).

Please be aware that this quote is valid for 30 days under North Dakota State Tariffs.

If you would like to proceed, please contact me to have a work proposal forwarded to you from the Resource Allocation Group in Littleton, CO.

PLEASE NOTE the work proposal will need to be signed and returned with a check or signed purchase order document before the work can begin.

Thank you,

Donna Olson
CenturyLink – Special Construction
(O) 763-435-2199
(E) donna.olson@CenturyLink.com

REPORT OF ACTION

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Type: Easement Agreements

Location: 3700 42nd Street South

Date of Hearing: 10/12/2020

26

Routing	Date
City Commission	10/19/2020
PWPEC File	X
Project File	Jody Bertrand

The Committee reviewed the accompanying correspondence from Division Engineer, Jody Bertrand, regarding Easement Agreements to discharge directly into the City of Fargo regional detention pond located immediately east of, and adjacent to, 3700 42nd Street South.

The Property Owner recently submitted an application to construct an additional apartment building (3704 42nd Street South). The Property Owner has requested to continue discharging site stormwater directly into the regional pond. Engineering supports this request and desires to formalize the agreement.

The Owner has agreed to install vortex separators and to slow the discharge through small on-site detention basins prior to discharge into the regional pond.

Staff is recommending approval of the Storm Sewer and Outfall Easements for 3700 & 3704 42nd Street South.

On a motion by Bruce Grubb, seconded by Steve Sprague, the committee voted to recommend approval of the Storm Sewer and Outfall Easement Agreements for 3700 & 3704 42nd Street South.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve the Storm Sewer and Outfall Easement Agreements for 3700 & 3704 42nd Street South.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: N/A

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

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

ATTEST:

Brenda E. Derrig, P.E.
City Engineer

THE CITY OF Fargo
FAR MORE

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

Memorandum

To: Members of PWPEC

From: Jody Bertrand, Division Engineer

Date: October 2, 2020

Re: Approval of Direct Stormwater Outfall to Regional Detention Pond
3700 42nd Street South

I am requesting the Public Works Projects Evaluation Committee (PWPEC) approve for the Mayor's signature, the following two documents (attached):

1. Easement (Storm Sewer and Outfall) - North Site Outfall
2. Easement (Storm Sewer and Outfall) - South Site Outfall

The subject address consists of an apartment building and associated site improvements. Stormwater from the site is currently discharged directly into the City of Fargo regional detention pond located immediately east of, and adjacent to, the subject property (ref GIS picture titled "Direct Discharge – 3700 42 St S").

The owner of the property recently submitted an application to construct an additional apartment building on the subject property (3704 42nd Street South). Included in the project is considerable sitework, including a modernization of the site stormwater collection system. The property owner has also requested to continue discharging site stormwater directly into the regional pond.

The Engineering Department supports this request and desires to formalize the direct discharge arrangement with proper documentation. The direct discharge request is supported because it allows for discharge of stormwater directly into the detention pond without the need to be transported via the City stormwater system.

The owner has agreed to (1) remove particulates and trash from the water, prior to discharge into the regional pond, with vortex separators, and (2) to slow the discharge somewhat through the construction of small on-site detention basins (ref attached Sheet C-4 "Utility Plan").

I support the signing of the attached agreements.

Recommended Motion
Approve the two Storm Sewer and Outfall Easements for 3700 & 3704 42nd Street South.

Attachments:
Easement (Storm Sewer and Outfall), North Outfall
Easement (Storm Sewer and Outfall), South Outfall
GIS Picture, "Direct Discharge – 3700 42 St S"
Plan Sheet C-4, utility Plan, for 3704 42 St S

EASEMENT
(Storm Sewer and Outfall)

KNOW ALL MEN BY THESE PRESENTS that **THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA,** a municipal corporation, hereinafter referred to as "Grantor", "City" or "Fargo", for and in consideration of the sum of One and no/100 Dollars ($1.00) and other valuable consideration, to it in hand paid the receipt of whereof is hereby acknowledged, **HEREBY GRANTS UNTO STATION 3700 APARTMENTS, LLC,** a North Dakota limited liability company, its successors and assigns, hereinafter referred to as "Grantee", an easement over, upon and in the land hereinafter described for the purpose of construction, operating, maintaining and repairing a storm sewer, together with the customary appurtenances, including a rip rap outfall to the city of Fargo existing retention pond on Fargo's property, said tract being more particularly described as follows, and as depicted on Exhibit A hereto:

> Commencing at the northeasterly corner of Lot 2, Block 1 of 42ND STREET ADDITION; thence S04°30'28"E along the easterly line of said Lot 2 a distance of 6.24 feet to the Point of Beginning; thence N88°05'48"E a distance of 35.00 feet; thence S04°30'28"E parallel to the easterly line of said Lot 2 a distance of 10.01 feet; thence S88°05'48"W a distance of 35.00 feet to the easterly line of said Lot 2; thence N04°30'28"W along the easterly line of said Lot 2 a distance of 10.01 feet to the Point of Beginning. Said Easement contains 350 square feet.

Grantor, its successors and assigns, hereby covenant to and with Grantee that Grantee's officers, contractors, and employees, may at any and all times when necessary or convenient to do so, go over and upon above-described tract of land and perform any and all acts necessary or convenient to carry into effect the purpose for which the grant is made.

Grantor, its successors and assigns, further agrees that it will not disturb, injure, molest or in any manner interfere with said storm sewer and customary appurtenances, or with material for laying, maintaining, operating or repairing the same in, over or upon the above-described premises, and Grantor expressly warrants and states that no buildings or other obstacles of any kind shall be placed or located upon the tract so as to interfere in any manner with the construction, operation, maintenance or repair of said storm sewer including customary appurtenances, provided that Grantee, at its own expense, shall refill any excavation it makes and level the ground thereafter, leaving the premises in as good condition as it was prior to the time of constructing of said storm sewer and customary appurtenances was begun.

Grantee further understands and agrees that the maintenance of the storm sewer, outfall and customary appurtenances is Grantee's sole responsibility, at Grantee's sole cost. Failure to maintain the storm sewer, outfall and appurtenances to acceptable City standards, or repair any degradation to the retention pond caused by the storm sewer and outfall, shall result in termination of this easement, at City discretion. Further, should the City discontinue the use of the retention pond, or the use of the City property change for any reason, City may terminate this easement upon 30 days' notice to Grantee.

IN WITNESS WHEREOF, Grantor has set its hand and caused this instrument to be executed this ___day of _____,2020.

GRANTOR:
City of Fargo, a North Dakota Municipal Corporation

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

Attest:

_____
Steve Sprague, City Auditor

STATE OF NORTH DAKOTA)
) ss
COUNTY OF CASS)

On this ___ day of _____, 2020, before me, a notary public in and for said county and state, personally appeared Dr. Timothy J. Mahoney, M.D., and Steve Sprague, the Mayor and City Auditor respectively of the City of Fargo, a North Dakota Municipal Corporation, to me known to be the persons described in and who executed the within and foregoing instrument, and acknowledged to me that he/she executed the same.

_____
Notary Public
My Commission Expires:

(SEAL)

IN WITNESS WHEREOF, Grantee has set its hand and caused this instrument to be executed this ___day of _____,2020.

GRANTEE:

Station 3700 Apartments, LLC, A North Dakota Limited Liability Company

By:
Its:

STATE OF North Dakota)
) ss.
County of Cass)

On this 5th day of October,2020, before me, a notary public in and for said county and State, personally appeared Richard A. Berg, the Partner of Station 3700 Apartments, L.L.C. to me known to be the persons described in and who executed the within and foregoing instrument, and acknowledged to me that he/she executed the same.

AUDRIANA WENGER
Notary Public
State of North Dakota
My Commission Expires Nov. 3, 2020

(SEAL)

Notary Public
Cass County, North Dakota

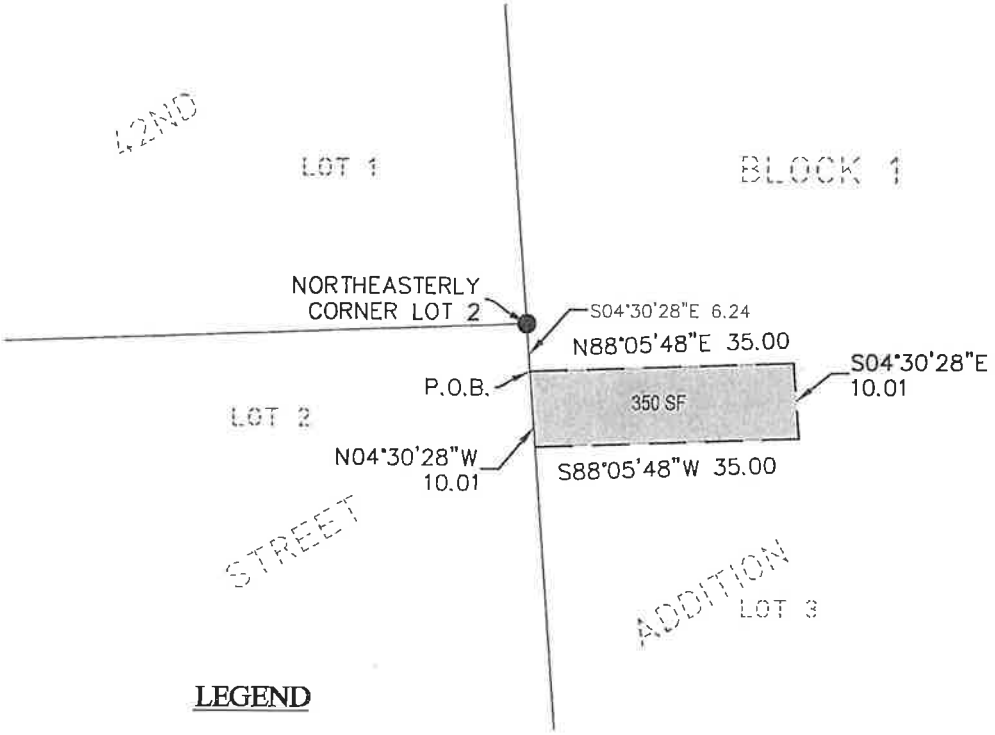
The legal description was prepared by:
Nathan G. Anderson, RLS
Nile, Inc.
700 Main Avenue
Fargo, ND 58103
701-293-1350
nate.anderson@wearenile.com

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

Exhibit A

EASEMENT EXHIBIT

STORM WATER EASEMENT
PART OF LOT 3, BLOCK 1 OF 42ND STREET ADDITION
CITY OF FARGO, COUNTY OF CASS, STATE OF NORTH DAKOTA



LEGEND

P.O.B.	POINT OF BEGINNING
●	DENOTES PROPERTY CORNER
———	DENOTES PROPERTY LINE
— — — —	DENOTES EASEMENT LINE

DESCRIPTION

An easement for the construction and maintenance of a storm water discharge pipe described as follows:

Commencing at the northeasterly corner of Lot 2, Block 1 of 42ND STREET ADDITION; thence S04°30'28"E along the easterly line of said Lot 2 a distance of 6.24 feet to the Point of Beginning; thence N88°05'48"E a distance of 35.00 feet; thence S04°30'28"E parallel to the easterly line of said Lot 2 a distance of 10.01 feet; thence S88°05'48"W a distance of 35.00 feet to the easterly line of said Lot 2; thence N04°30'28"W a long the easterly line of said Lot 2 a distance of 10.01 feet to the Point of Beginning. Said Easement contains 350 square feet.

N

0' 10' 20'
0" 1"

NILE PROJECT #18036

SURVEYOR'S CERTIFICATE AND ACKNOWLEDGEMENT:

I, Nathan G. Anderson, do hereby certify that the survey, plan or report was prepared by me or under my direct supervision and that I am a duly registered land surveyor under the laws of the State of North Dakota.

Dated this 20TH day of MARCH, 2020.

Nathan G. Anderson, Professional Land Surveyor
North Dakota Registration No. LS-8064

REGISTERED PROFESSIONAL LAND SURVEYOR
NATHAN G. ANDERSON
LS - 8064
DATE 3/20/20
NORTH DAKOTA

NILE
NORTH DAKOTA
700 Main Avenue
Fargo, ND 58103
(701) 293-1350
MINNESOTA
381 East Kellogg Boulevard
Saint Paul, MN 55101
(651) 227-0644
WE ARE NILE.COM

EASEMENT
(Storm Sewer and Outfall)

KNOW ALL MEN BY THESE PRESENTS that **THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA,** a municipal corporation, hereinafter referred to as "Grantor", "City" or "Fargo", for and in consideration of the sum of One and no/100 Dollars ($1.00) and other valuable consideration, to it in hand paid the receipt of whereof is hereby acknowledged, **HEREBY GRANTS UNTO STATION 3700 APARTMENTS, LLC,** a North Dakota limited liability company, its successors and assigns, hereinafter referred to as "Grantee", an easement over, upon and in the land hereinafter described for the purpose of construction, operating, maintaining and repairing a storm sewer, together with the customary appurtenances, including a rip rap outfall to the city of Fargo existing retention pond on Fargo's property, said tract being more particularly described as follows, and as depicted on Exhibit A hereto:

> Commencing at the northeasterly corner of Lot 2, Block 1 of 42ND STREET ADDITION; thence S04°30'28"E along the easterly line of said Lot 2 a distance of 372.76 feet to the Point of Beginning; thence N85°29'32"E a distance of 42.00 feet; thence S04°30'28"E parallel to said easterly line of Lot 2 a distance of 10.00 feet; thence S85°29'32"W a distance of 42.00 feet to the easterly line of said Lot 2; thence N04°30'28"W along the easterly line of said Lot 2 a distance of 10.00 feet to the Point of Beginning. Said easement contains 423 square feet.

Grantor, its successors and assigns, hereby covenant to and with Grantee that Grantee's officers, contractors, and employees, may at any and all times when necessary or convenient to do so, go over and upon above-described tract of land and perform any and all acts necessary or convenient to carry into effect the purpose for which the grant is made.

Grantor, its successors and assigns, further agrees that it will not disturb, injure, molest or in any manner interfere with said storm sewer and customary appurtenances, or with material for laying, maintaining, operating or repairing the same in, over or upon the above-described premises, and Grantor expressly warrants and states that no buildings or other obstacles of any kind shall be placed or located upon the tract so as to interfere in any manner with the construction, operation, maintenance or repair of said storm sewer including customary appurtenances, provided that Grantee, at its own expense, shall refill any excavation it makes and level the ground thereafter, leaving the premises in as good condition as it was prior to the time of constructing of said storm sewer and customary appurtenances was begun.

Grantee further understands and agrees that the maintenance of the storm sewer, outfall and customary appurtenances is Grantee's sole responsibility, at Grantee's sole cost. Failure to maintain the storm sewer, outfall and appurtenances to acceptable City standards, or repair any degradation to the retention pond caused by the storm sewer and outfall, shall result in termination of this easement, at City discretion. Further, should the City discontinue the use of the retention pond, or the use of the City property change for any reason, City may terminate this easement upon 30 days' notice to Grantee.

IN WITNESS WHEREOF, Grantor has set its hand and caused this instrument to be executed this ___day of _____,2020.

GRANTOR:
City of Fargo, a North Dakota Municipal Corporation

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

Attest:

_____
Steve Sprague, City Auditor

STATE OF NORTH DAKOTA)
) ss
COUNTY OF CASS)

On this ___ day of _____, 2020, before me, a notary public in and for said county and state, personally appeared Dr. Timothy J. Mahoney, M.D., and Steve Sprague, the Mayor and City Auditor respectively of the City of Fargo, a North Dakota Municipal Corporation, to me known to be the persons described in and who executed the within and foregoing instrument, and acknowledged to me that he/she executed the same.

_____
Notary Public
My Commission Expires:

(SEAL)

IN WITNESS WHEREOF, Grantee has set its hand and caused this instrument to be executed this ___day of _____,2020.

GRANTEE:

Station 3700 Apartments, LLC, A North Dakota Limited Liability Company

By:
Its:

STATE OF North Dakota)
) ss.
County of Cass)

On this 5th day of October, 2020, before me, a notary public in and for said county and State, personally appeared ~~Rick~~ Richard A. Berg, the Partner of Station 3700 Apartments, L.L.C. to me known to be the persons described in and who executed the within and foregoing instrument, and acknowledged to me that he/she executed the same.

AUDRIANA WENGER
Notary Public
State of North Dakota
My Commission Expires Nov. 3, 2020

Notary Public
Cass County, North Dakota

(SEAL)

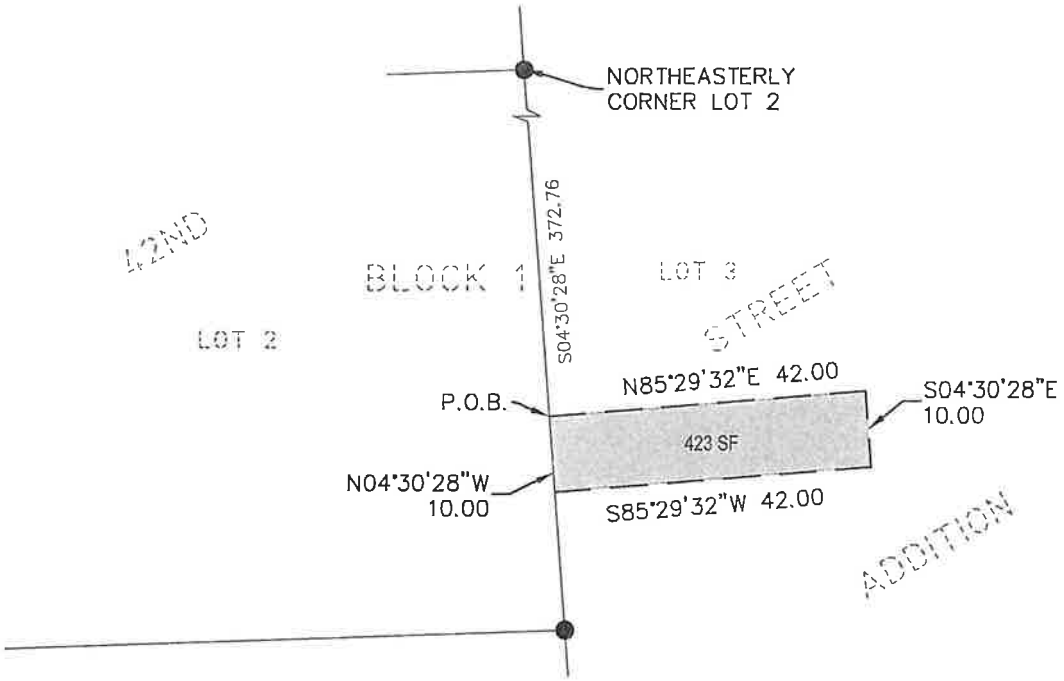
The legal description was prepared by:
Nathan G. Anderson, RLS
Nile, Inc.
700 Main Avenue
Fargo, ND 58103
701-293-1350
nate.anderson@wearenile.com

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

Exhibit A

EASEMENT EXHIBIT

SOUTH STORM WATER EASEMENT
PART OF LOT 3, BLOCK 1 OF 42ND STREET ADDITION
CITY OF FARGO, COUNTY OF CASS, STATE OF NORTH DAKOTA



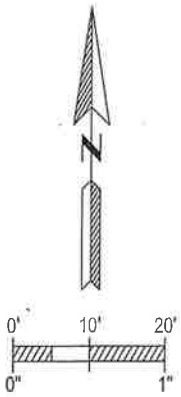
LEGEND

P.O.B.	POINT OF BEGINNING
●	DENOTES PROPERTY CORNER
———	DENOTES PROPERTY LINE
— — — —	DENOTES EASEMENT LINE

DESCRIPTION

An easement for the construction and maintenance of a storm water discharge pipe described as follows:

Commencing at the northeasterly corner of Lot 2, Block 1 of 42ND STREET ADDITION; thence S04°30'28"E along the easterly line of said Lot 2 a distance of 372.76 feet to the Point of Beginning; thence N85°29'32"E a distance of 42.00 feet; thence S04°30'28"E parallel to said easterly line of Lot 2 a distance of 10.00 feet; thence S85°29'32"W a distance of 42.00 feet to the easterly line of said Lot 2; thence N04°30'28"W along the easterly line of said Lot 2 a distance of 10.00 feet to the Point of Beginning. Said easement contains 423 square feet.



NILE PROJECT #18036

SURVEYOR'S CERTIFICATE AND ACKNOWLEDGEMENT:

I, Nathan G. Anderson, do hereby certify that the survey, plan or report was prepared by me or under my direct supervision and that I am a duly registered land surveyor under the laws of the State of North Dakota.

Dated this 1ST day of OCTOBER, 2020.

Nathan G. Anderson, Professional Land Surveyor
North Dakota Registration No. LS-8064

REGISTERED PROFESSIONAL LAND SURVEYOR
NATHAN G. ANDERSON
LS - 8064
DATE 10/01/2020
NORTH DAKOTA

NILE
NORTH DAKOTA
700 Main Avenue
Fargo, ND 58103
(701) 293-1350
MINNESOTA
381 East Kellogg Boulevard
Saint Paul, MN 55101
(651) 227-0644
WE ARE NILE.COM

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

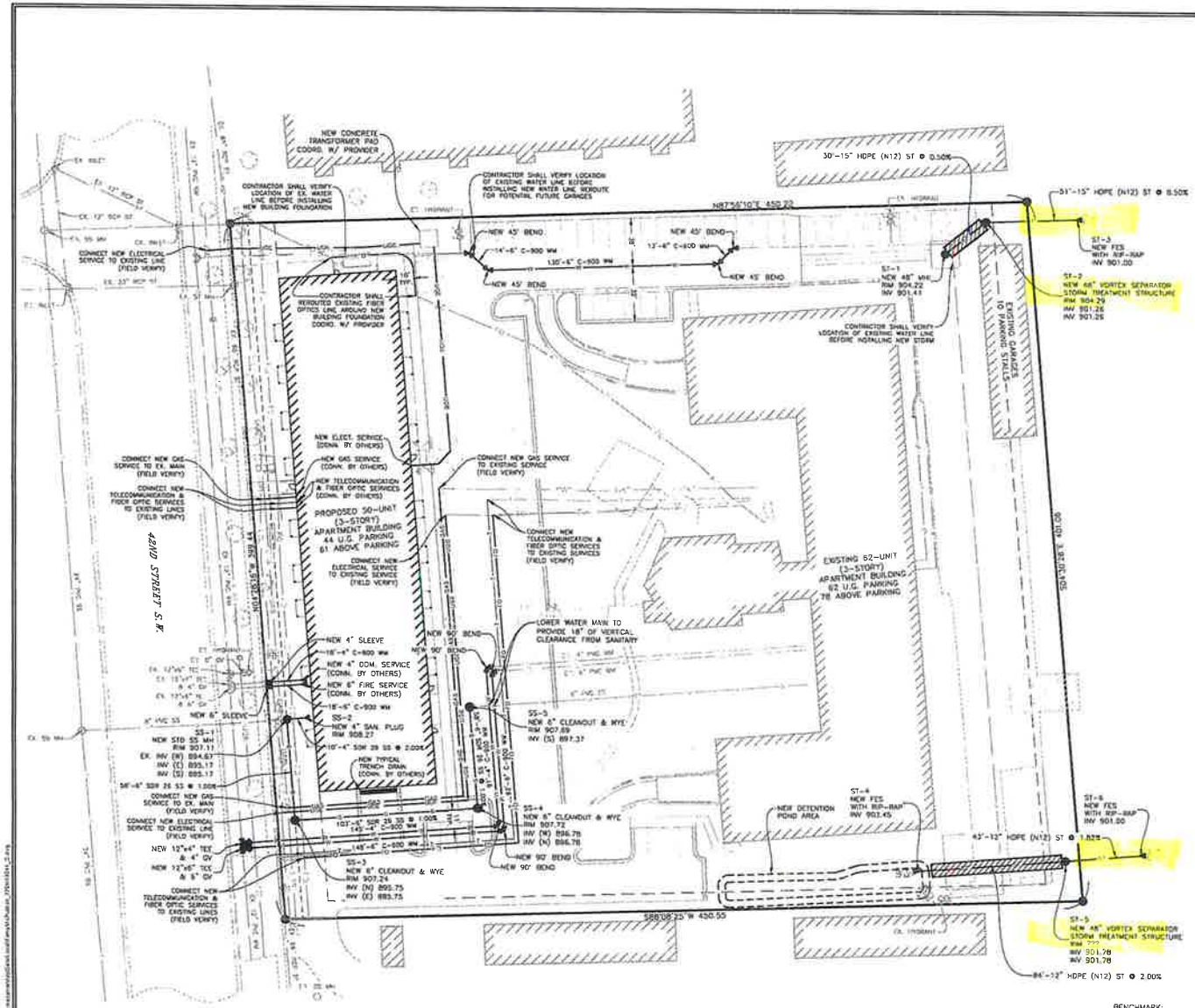
Direct Discharge - 3700 42 St S

1:2,257

7/21/2020 10:02:46 AM

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

THE CITY OF Fargo FAR MORE



ESTIMATED WATER QUANTITIES		
ITEM	QUANTITY	UNIT
4" C-900 WM	254	LF
6" C-900 WM	413	LF
4" 90° BEND	2	EA
6" 45° BEND	4	EA
6" 90° BEND	2	EA
12"x4" TEE	1	EA
12"x6" TEE	1	EA
4" GATE VALVE	1	EA
6" GATE VALVE	1	EA
4" SLEEVE CONNECTION	1	EA
6" SLEEVE CONNECTION	1	EA
CONNECTION TO EXISTING 12" WM	2	EA

ESTIMATED SANITARY QUANTITIES		
ITEM	QUANTITY	UNIT
4" SDR-26 SANITARY SERVICE PIPE	10	LF
6" SDR-26 SANITARY SERVICE PIPE	220	LF
6" CLEANOUT	3	EA
6" WYE	3	EA
SANITARY MANHOLE	1	EA
CONNECT TO EXISTING	1	EA

ESTIMATED STORM QUANTITIES		
ITEM	QUANTITY	UNIT
12" HDPE (N12) PIPE	127	LF
15" HDPE (N12) PIPE	81	LF
48" MANHOLE INLET	1	EA
CAST IN PLACE TRENCH DRAIN	20	LF
FLARED END SECTION - 12"	2	EA
FLARED END SECTION - 15"	1	EA
48" VORTEX SEPARATOR TREATMENT STRUCTURE	2	EA

- PIPE BORE AREAS

NOTES:
1. CONTRACTOR SHALL COORDINATE WITH THE CITY OF FARGO MAINS AND HYDRANTS DEPARTMENT FOR ALL WET-TAPPING OPERATIONS.
2. SANITARY SERVICE FROM BUILDING TO MAIN SHALL BE 4" PVC SDR-26 @ 1% MIN. SLOPE.
3. ALL CLEANOUTS 5' FROM BUILDING SHALL BE 4" AND PER DETAIL.
4. STANDARD MANHOLES TO HAVE EJIW 1020 FRAMES WITH TYPE A ROUND COVER OR APPROVED EQUAL.
5. ALL HDPE STORM SEWER SHALL BE ADS OR PRINSCO N12 OR APPROVED EQUAL.
6. STANDARD MANHOLES TO HAVE EJIW 1020 FRAMES WITH TYPE A ROUND COVER OR APPROVED EQUAL.
7. INLET AND STANDARD MANHOLE INLET SHALL HAVE EJIW 1020 FRAMES WITH TYPE M GRATE OR APPROVED EQUAL.
8. TRENCH DRAIN SHALL BE CONCRETE AND A MIN. SLOPE OF 0.50% ALONG THE BOTTOM AND FIT GRATE NEENAH R-4999-CC OR APPROVED EQUAL.
9. TRENCH DRAIN REINFORCING SHALL BE PER DETAIL OR PRECAST. IF PRECAST, CONTRACTOR SHALL SUBMIT SHOP DRAWING TO ENGINEER FOR REVIEW AND APPROVAL TO ENSURE MINIMUM FLOW CAPACITY IS MET.
10. SEE ARCHITECTURAL FOR SPLASH BLOCKS AT ROOF DRAIN OVERFLOW LOCATIONS.
11. WQS STRUCTURE TO BE ADS, BARRACUDA HIGH-PERFORMANCE VORTEX HYDRODYNAMIC SEPARATOR OR APPROVED EQUAL.

BENCHMARK:
THE TOP NUT OF THE EXISTING HYDRANT LOCATED AT THE NORTHEAST CORNER OF THE SITE.
ELEVATION = 908.89'

ELEVATION AND LOCATION ARE BASED ON THE CITY OF FARGO BASE STATION.

BASIS OF BEARING:
THE WESTERLY LINE OF LOT 2, BLOCK 1, 42ND STREET ADDITION IS ASSUMED TO BEAR N04°28'16"W.

N

0 30 60

CALL BEFORE YOU DIG
NORTH DAKOTA
(UTILITIES UNDERGROUND LOCATION SERVICE)
1-800-795-0555

LOWRY
ENGINEERING
1111 WESTRAC DRIVE - SUITE 108
FARGO NORTH DAKOTA 58103

REVISIONS

STATION 3700 APARTMENTS
3704 42ND ST. S
FARGO, ND 58104

PE-7442
12/23/19
NORTH DAKOTA

LE JOB #	19041
PROJECT DATE	09/18/2020
CHECKED BY	JML
DRAWN BY	DMM
APPROVED BY	JML
SHEET	4 OF 11

C-4

THE CITY OF Fargo FAR MORE

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

October 13, 2020

27

Board of City Commissioners
City of Fargo
200 North Third Street
Fargo, ND 58102

Dear Commissioners:

Accompanying for the City Commission review and approval is an Amended Declaration of Easement document for City property, as described in the enclosed document, the declaration amends a previously approved Declaration of Easement for levee purposes associated with Project #FM-16-A.

Amended Declaration of Easement (Levee)

RECOMMENDED MOTION:
Approve the Amended Declaration of Easement document in association with Project #FM-16-A.

Please return the signed original.

Respectfully submitted,

Shawn G. Bullinger
Land Acquisition Specialist

C: Roger Kluck
Nancy Morris

Attachments

DECLARATION OF EASEMENT (AMENDED)
(Levee)

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

> That part of Auditor's Lot No. 1 of the Northeast Quarter of Section 9, Township 140 North, Range 49 West of the Fifth Principal Meridian, Cass County, North Dakota.

This Declaration amends and revises the Declaration of Easement dated June 29, 2020 and recorded on July 8, 2020 as Document No. 1596888 in the Cass County Recorder's Office.

Declarant does hereby amend the declaration as to the following described property for a permanent levee easement:

> That part of Auditor's Lot No. 1 of the Northeast Quarter of Section 9, Township 140 North, Range 49 West of the Fifth Principal Meridian, Cass County, North Dakota, described as follows:
>
> Commencing at a found iron monument which designates the northeast corner of said Northeast Quarter; thence South 03 degrees 03 minutes 07 seconds East on an assumed bearing along the east line of said Northeast Quarter for a distance of 65.00 feet to a point on a line which is 65.00 feet southerly of, as measured at a right angle to and parallel with the north line of said Northeast Quarter, said point is the point of beginning; thence South 87 degrees 14 minutes 34 seconds West

along said parallel line for a distance of 1169.55 feet; thence 233.46 feet westerly on a tangential curve concave to the south, having a radius of 508.00 feet and a central angle of 26 degrees 19 minutes 55 seconds; thence South 60 degrees 54 minutes 39 seconds West for a distance of 63.70 feet to the northeasterly right of way line of Cass County Highway No. 81, also being the westerly line of said Auditor's Lot No. 1; thence South 29 degrees 05 minutes 21 seconds East along said northeasterly right of way line and along the westerly line of said Auditor's Lot No. 1 for a distance of 1156.60 feet to the southwest corner of said Auditor's Lot No. 1; thence North 87 degrees 23 minutes 24 seconds East along the south line of said Auditor's Lot No. 1 for a distance of 173.16 feet to a point on a line which is 155.00 feet northeasterly of, as measured at a right angle to and parallel with the northeasterly right of way line of said Cass County Highway No. 81, also being the westerly line of said Auditor's Lot No. 1; thence North 29 degrees 05 minutes 21 seconds West along said parallel line for a distance of 1126.93 feet to a point on a line which is 173.00 feet southerly of, as measured at a right angle to and parallel with the north line of said Northeast Quarter; thence North 87 degrees 14 minutes 34 seconds East along said parallel line for a distance of 1266.21 feet to the east line of said Northeast Quarter; thence North 03 degrees 03 minutes 07 seconds West along said east line for a distance of 108.00 feet to the point of beginning.

Containing 7.43 acres, more or less, and is subject to all easements, restrictions, reservations and rights of way of record, if any.

Said property is pictorially represented on an Easement Plat attached hereto and incorporated herein by reference as Exhibit "A".

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

(Signatures on Following Page)

City of Fargo, a North Dakota Municipal Corporation

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

ATTEST

_____
Steven Sprague

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

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

_____
Notary Public
Cass County, North Dakota

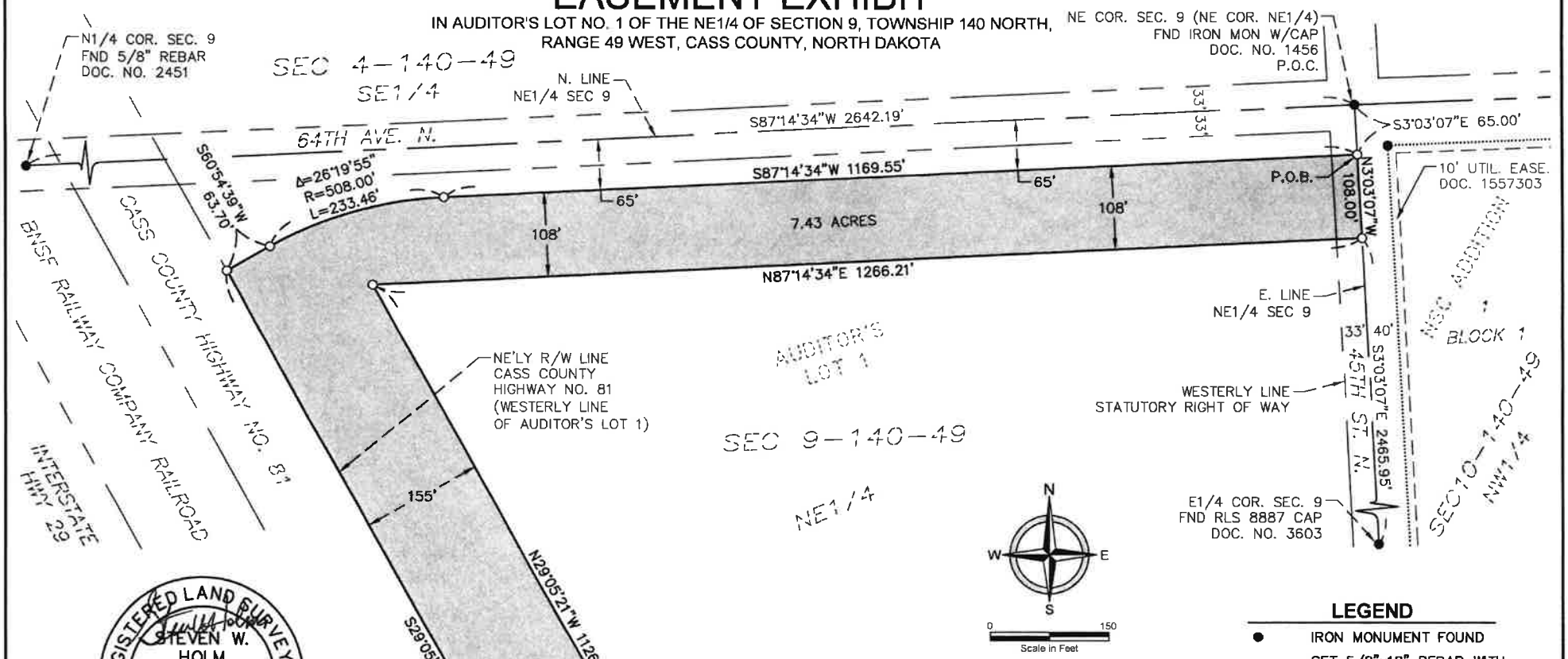
(SEAL)

The legal description was prepared by:
Moore Engineering, Inc.
925 10th Avenue East
West Fargo, ND 58078
(701) 282-4692

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

EASEMENT EXHIBIT

IN AUDITOR'S LOT NO. 1 OF THE NE1/4 OF SECTION 9, TOWNSHIP 140 NORTH, RANGE 49 WEST, CASS COUNTY, NORTH DAKOTA



BASIS OF BEARINGS: THE EAST LINE OF THE NE1/4 OF SECTION 9 HAS AN ASSUMED BEARING OF S03°03'07"E.

LEGEND

●	IRON MONUMENT FOUND
○	SET 5/8"x18" REBAR WITH YELLOW PLASTIC CAP #6571
P.O.B.	POINT OF BEGINNING
P.O.C.	POINT OF COMMENCEMENT

NOTE:
MOORE ENGINEERING INC., HAS MADE NO INVESTIGATION OR INDEPENDENT SEARCH FOR EASEMENTS OF RECORD, ENCUMBRANCES, OWNERSHIP TITLE EVIDENCE, OR ANY OTHER FACTS THAT AN ACCURATE AND CURRENT TITLE SEARCH MAY DISCLOSE.

PAGE 1 OF 2

Levee Easement Exhibit

In Auditor's Lot No. 1 of the NE1/4 of Sec. 9-140-49
Cass County, North Dakota

PROJECT No.	19189A-213
DATE:	7.21.20
REVISED:	-
DRAWN BY:	SWH
CHECKED BY:	CDH

moore engineering, inc.

FILE LOCATION: R:\Civil 3D Projects\19189A\SURVEY\DRAWINGS\SEC 9 EASEMENTS\19189A SEC 9 NE QTR - LEVEE EASE - REVISED

EASEMENT EXHIBIT

IN AUDITOR'S LOT NO. 1 OF THE NE1/4 OF SECTION 9, TOWNSHIP 140 NORTH, RANGE 49 WEST, CASS COUNTY, NORTH DAKOTA

PERMANENT EASEMENT DESCRIPTION

That part of Auditor's Lot No. 1 of the Northeast Quarter of Section 9, Township 140 North, Range 49 West of the Fifth Principal Meridian, Cass County, North Dakota, described as follows:

Commencing at a found iron monument which designates the northeast corner of said Northeast Quarter; thence South 03 degrees 03 minutes 07 seconds East on an assumed bearing along the east line of said Northeast Quarter for a distance of 65.00 feet to a point on a line which is 65.00 feet southerly of, as measured at a right angle to and parallel with the north line of said Northeast Quarter, said point is the point of beginning; thence South 87 degrees 14 minutes 34 seconds West along said parallel line for a distance of 1169.55 feet; thence 233.46 feet westerly on a tangential curve concave to the south, having a radius of 508.00 feet and a central angle of 26 degrees 19 minutes 55 seconds; thence South 60 degrees 54 minutes 39 seconds West for a distance of 63.70 feet to the northeasterly right of way line of Cass County Highway No. 81, also being the westerly line of said Auditor's Lot No. 1; thence South 29 degrees 05 minutes 21 seconds East along said northeasterly right of way line and along the westerly line of said Auditor's Lot No. 1 for a distance of 1156.60 feet to the southwest corner of said Auditor's Lot No. 1; thence North 87 degrees 23 minutes 24 seconds East along the south line of said Auditor's Lot No. 1 for a distance of 173.16 feet to a point on a line which is 155.00 feet northeasterly of, as measured at a right angle to and parallel with the northeasterly right of way line of said Cass County Highway No. 81, also being the westerly line of said Auditor's Lot No. 1; thence North 29 degrees 05 minutes 21 seconds West along said parallel line for a distance of 1126.93 feet to a point on a line which is 173.00 feet southerly of, as measured at a right angle to and parallel with the north line of said Northeast Quarter; thence North 87 degrees 14 minutes 34 seconds East along said parallel line for a distance of 1266.21 feet to the east line of said Northeast Quarter; thence North 03 degrees 03 minutes 07 seconds West along said east line for a distance of 108.00 feet to the point of beginning.

Containing 7.43 acres, more or less, and is subject to all easements, restrictions, reservations and rights of way of record, if any.

CERTIFICATION

I hereby certify that this survey, plan, or report was prepared by me or under my direct supervision and that I am a duly Registered Land Surveyor under the laws of the State of North Dakota.

Steven W. Holm, R.L.S.
N.D. License No. LS-6571

Date: 9-29-2020

REGISTERED LAND SURVEYOR
STEVEN W. HOLM
LS-6571
DATE 9-29-2020
NORTH DAKOTA

State of North Dakota)
County of Cass)

On this 29th day of September, 2020, before me, a Notary Public in and for said county and state, personally appeared Steven W. Holm, Registered Land Surveyor, known to me to be the person described in and who executed the foregoing certificate and acknowledged to me that he executed the same as his free act and deed.

MARA L. SOMMERFELD
Notary Public
State of North Dakota
My Commission Expires Dec. 7, 2021

Notary Public, Cass County, North Dakota

Levee Easement Exhibit
In Auditor's Lot No. 1 of the NE1/4 of Sec. 9-140-49
Cass County, North Dakota

PROJECT No.	19189A-213
DATE:	7.21.20
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FILE LOCATION: R:\Civil 3D Projects\19189A\SURVEY\DRAWINGS\SEC 9 EASEMENTS\19189A SEC 9 NE QTR - LEVEE EASE - REVISED

REPORT OF ACTION

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Type: Encroachment

Location: 1401 12th Avenue North

Date of Hearing: 10/12/2020

Routing	Date
City Commission	10/19/2020
PWPEC File	X
Project File	Kristy Schmidt

28

The Committee reviewed a communication from Civil Engineer, Kristy Schmidt, regarding an encroachment at 1404 12th Avenue North for a paved landscaping concrete surface between the sidewalk and the property/ROW line.

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

- Hold the City harmless against any and all expenses, demands, claims or losses sustained by the City by use of the public right of way by the Encroacher.
- Will be responsible for paying all costs above and beyond those the City would have incurred to return the area to a vegetated surface in association with future improvement districts.
- Application fee for the encroachment in the amount of $500.
- Agreement expires upon sale or transfer of the property.

On a motion by Bruce Grubb, seconded by Ben Dow, the Committee voted to recommend approval of the Encroachment Agreement contingent upon $500 application fee, Annual Fee, Certificate of Insurance, and attorney review.

RECOMMENDED MOTION
Concur with the recommendations of PWPEC and approve the Encroachment Agreement.

PROJECT FINANCING INFORMATION:
Recommended source of funding for project: None

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

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

ATTEST:

Brenda E. Derrig, P.E.
City Engineer

C: Kristi Olson

THE CITY OF Fargo FAR MORE

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

Memorandum

To: Members of PWPEC

From: Kristy Schmidt, CE II

Date: October 7, 2020

Re: Encroachment Agreement for Federal Credit Union at 1404 12th Avenue North

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Background:

We have received a site plan for a new building at 1404 12th Avenue North. They are requesting to encroach with a paved landscaping concrete surface between the sidewalk and the property/ROW line. In the attached map, you will find the area of encroachment and the Encroachment Agreement.

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

- Hold the City harmless against any and all expenses, demands, claims or losses sustained by the City by use of the public right of way by the Encroacher.
- Will be responsible for paying all costs above and beyond those the City would have incurred to return the area to a vegetated surface in association with future improvement districts.
- Application fee for the encroachment in the amount of $500.
- Agreement expires upon sale or transfer of the property.

Recommended Motion:

Approve the existing Encroachment Agreement at 1404 12th Avenue North contingent upon the Owner to meet the above criteria.

KLS/klb
Attachment

C: Mitch Abrahamsen, Rhet Architecture

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

1404 12th Ave N Encroachment

1:564	10/7/2020 2:58:46 PM

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

THE CITY OF Fargo FAR MORE

ENCROACHMENT AGREEMENT

THIS AGREEMENT, made and entered into by and between **NORTHLAND EDUCATORS FEDERAL CREDIT UNION** ("hereinafter referred to as Northland Educators") a Federal Credit Union organized under the laws of the United States, and **THE CITY OF FARGO, NORTH DAKOTA**, a North Dakota municipal corporation, hereinafter referred to as "City",

WITNESSETH:

WHEREAS, Northland Educators desires to encroach on a portion of right-of-way adjacent to Lots 10 and 11 of Block 14, Kirkham's 2nd Addition, in Fargo, North Dakota owned by the City; and,

WHEREAS, the purpose of such encroachment is to allow Northland Educators to install a concrete plaza for the benefit of Northland Educators (hereinafter "Plaza Encroachment"); and,

WHEREAS, Northland Educators has requested permission to encroach on the portion of the right-of-way shown in Exhibit "A", which exhibit is attached hereto and incorporated herein by reference, thus allowing it to utilize City right-of-way for such purposes; and,

WHEREAS, the Public Works Projects Evaluation Committee has approved such encroachment; and,

WHEREAS, the Board of City Commissioners of the City of Fargo has approved such encroachment; and,

WHEREAS, Northland Educators has agreed to execute this Agreement required by City to permit encroachments on public right-of-way

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

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

Lots Ten and Eleven, Block 14, Kirkham's Second Addition to the City of Fargo, situate in the County of Cass and the State of North Dakota

("Development Property").

2. Northland Educators will be permitted to encroach and use a portion of the right-of-way as follows:

A tract of land situated in the 12th Avenue North right-of-way and adjacent to Lot Eleven of Kirkham's Second Addition to the City of Fargo, Cass County, North Dakota more particularly described as follows:

TRACT 1 DESCRIPTION
Commencing at the northwest corner of said Lot Eleven; thence North 87 degrees 33 minutes 11 seconds East, along the south right-of-way line of 12th Avenue North as dedicated in Kirkham's Second Addition to the City Fargo and recorded in Book A of Plats on Page 16B, for a distance of 18.00 feet to the point of beginning; thence North 02 degrees 26 minutes 49 seconds West, 7.00 feet; thence North 87 degrees 33 minutes 11 seconds East, 65.00 feet; thence South 02 degrees 26 minutes 49 seconds East, 7.00 feet to said south right-of-way line; thence South 87 degrees 33 minutes 11 seconds West along said south right-of-way line, 65.00 feet to the point of beginning.
Said tract contains 455 square feet, more or less.

Said encroachment is more particularly described and indicated in attached Exhibit "A" showing the property involved and the location of the Plaza Encroachment. Exhibit "A" is attached hereto and incorporated herein by reference.

3. It is the intent of this Agreement that Northland Educators may utilize City right-of-way for the purpose stated herein.

4. Northland Educators agrees that it will, during any use of said public right-of-way, use due care to protect city streets, utilities and all other public property, minimize disruption to pedestrian travel, in accordance with MUTCD Standards and Specifications; and that upon discontinuance of use, Northland Educators will restore and replace all public property to its vegetated surface. The parties further understand and agree that the cost of any repairs to the public right of way occasioned by the Plaza Encroachment permitted herewith shall be Owner's sole financial responsibility, and further understand and agree that the costs thereof shall be assessed directly to the Development Property following the Infrastructure Funding Policy in effect at the time of repairs (the "Project"). City will levy special assessments against the Development Property to recover all costs of the Project, in accordance with N.D.C.C. Chapter 40-22. Developer waives its right to protest the resolution of necessity for the improvements for which such resolutions are required pursuant to North Dakota Century Code section 40-22-17, and specifically consents to the construction of the improvements and to the assessment of all costs thereof to the Development Property. Developer further waives its right to protest the amount, benefit or any other assessment attribute related to the work completed by City. Project costs, which may be assessed against the Development Property, include all costs of completing the project, including engineering, fiscal agent's and attorney fees, and all other costs authorized by law.

5. Northland Educators shall be solely responsible for the inspection, repair and maintenance of the Plaza Encroachment during the period of time the Plaza Encroachment remains in the City right-of-way.

6. To the fullest extent permitted by law, Northland Educators agrees to further hold the City harmless against any and all expenses, demands, claims or suits for damages or injury of any kind that may be brought against the City, its officers, agents and employees, its property, streets, sidewalks, and any other municipal improvements arising from Northland Educators' Plaza Encroachment area by reason of the use of the public right-of-way as aforesaid. Northland Educators further agrees to pay any and all costs the City incurs to enforce this indemnity provision, including attorney's fees. Northland Educators also agrees to provide to City a certificate of insurance, naming the City as an insured and indicating acceptance by its insurer of its obligation to defend and hold the City harmless as hereinabove stated.

7. This Agreement is personal to Northland Educators and shall terminate upon sale, transfer or assignment. Subsequent owners may request permission to encroach, and enter into a separate agreement with City. City shall not withhold permission to encroach under the terms herein without due cause. The non-transferability of this Agreement is intended to assure the existence of the necessary insurance by the responsible party.

8. It is understood and agreed by and between the parties that this Agreement and permission to encroach is given subject to any limitation on the authority of City to grant such permission, which may now or hereafter exist.

9. It is specifically understood and agreed that the City retains authority to operate and maintain existing above ground and underground municipal facilities in the encroachment area. It is further understood and agreed that within ninety (90) days' written notice from the City, Northland

Educators shall remove the Plaza Encroachment as directed by City, allowing the City to re-take and to use the public rights-of-way. In the case of an emergency, as determined by City, the City may request the work be done immediately or the City will remove the Plaza Encroachment, complete the emergency work, and restore the encroachment area with topsoil and seed with grass. Northland Educators will be allowed to restore the Plaza Encroachment by and at their expense after emergency repairs have been completed. The City's request to remove, relocate, or restore the Plaza Encroachment will be in the City's sole discretion, but shall not be arbitrary or without reason.

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

11. Northland Educators agrees to pay City a $500 processing fee.

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

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

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

15. If any court of competent jurisdiction finds any provision or part of this Agreement is invalid, illegal, or unenforceable, that portion will be deemed severed from

this Agreement, and all remaining terms and provisions of this Agreement will remain binding and enforceable, and the parties' obligations under this Agreement will remain binding and enforceable.

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

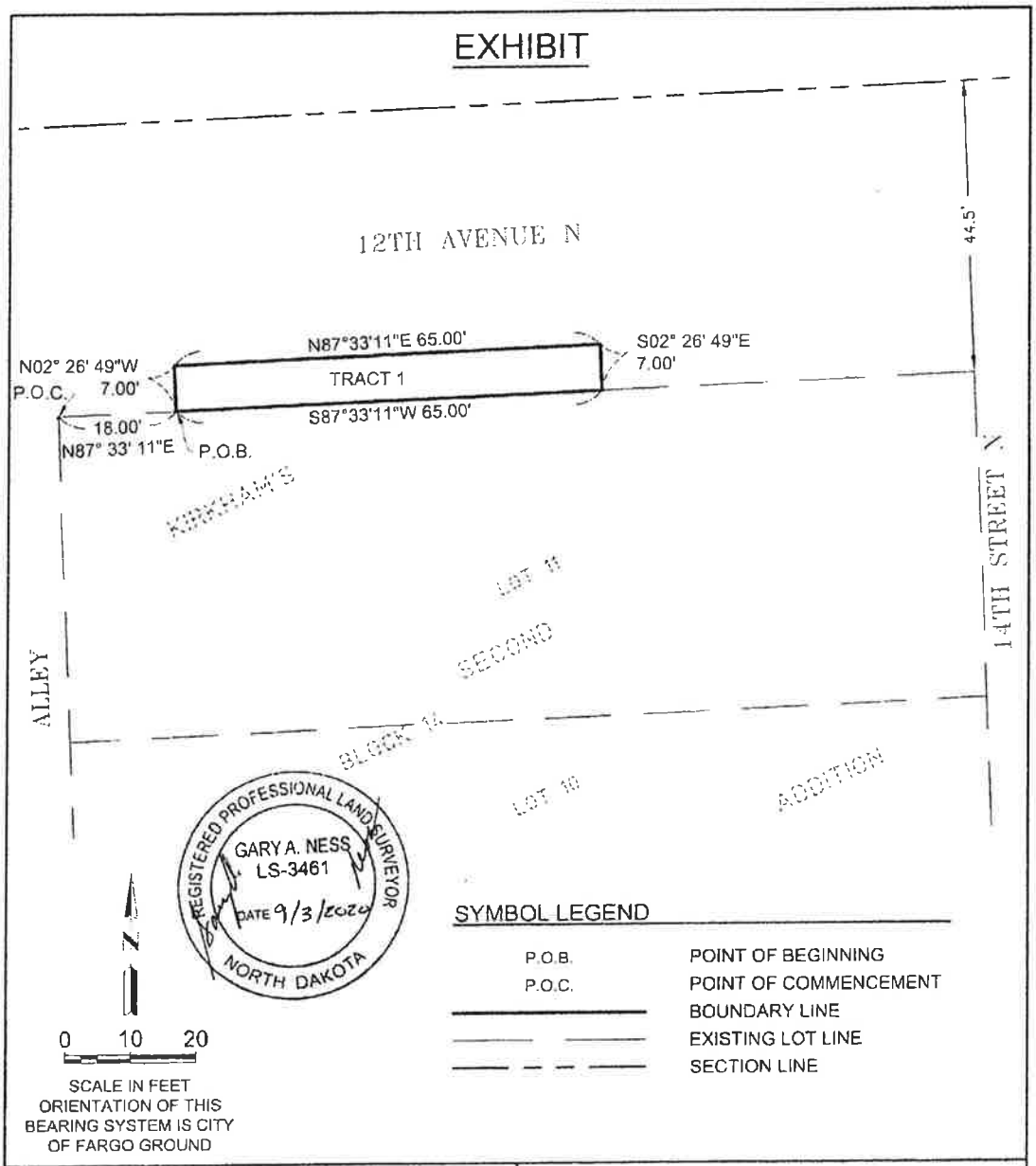
17. Any modifications or amendments of this Agreement must be in writing and signed by both parties to this Agreement.

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

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

(Signatures on following pages)

EXHIBIT



SCALE IN FEET
ORIENTATION OF THIS
BEARING SYSTEM IS CITY
OF FARGO GROUND

SYMBOL LEGEND

P.O.B.	POINT OF BEGINNING
P.O.C.	POINT OF COMMENCEMENT
———	BOUNDARY LINE
——— ———	EXISTING LOT LINE
— — —	SECTION LINE

Mead & Hunt

8 Seventh Street N
Fargo, ND 58102
Phone: 701-566-6450
meadhunt.com

Drawn By: LSJ
Checked By: GAN
Approved By: GAN

MBN ENGINEERING
ENCROACHMENT EXHIBIT
12TH AVENUE N
FARGO, NORTH DAKOTA

M&H NO.: 4289700-201340.01 DATE: 9-3-2020
DWG NAME: 201340 EXHIBIT.dwg SHEETS: 2 OF 2

THE CITY OF Fargo FAR MORE

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

Memorandum

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To: City Commission

From: Bruce Taralson, Floodplain Administrator B.

Date: 10/19/2020

Re: Variance Acknowledgement and Liability Waiver

Background:

The City was contacted during the site plan process to review the proposed building expansion at 3201 33rd Street. The new proposed structure footprint was identified as being in the FEMA 1 percent chance flood plain. The FEMA and State elevation requirements are met for the finish floor and adjacent grade elevations next to the building. Due to the surrounding parcel elevations, the 15' elevation from the structure is below the FEMA required elevation by 0.6' on the south side of the building. Upon review of the specific site constraints, City staff recommended approval to the Board of Adjustments. Approval was obtained at the August 25th, 2020 BOA meeting. Specific construction criteria is outlined in the staff report and is included in the variance waiver document pertaining to new mechanical/electrical equipment elevations, non-basement construction and LOMR-F requirements.

The Variance Acknowledgement and Liability Waiver and the City Staff report is attached for your review.

Recommended Motion:

To authorize the City of Fargo Mayor to sign the Variance Acknowledgement and Liability Waiver for the property located at 3201 33rd Street South.

BT/jmg
Attachments

VARIANCE ACKNOWLEDGEMENT AND LIABILITY WAIVER

This Agreement, made by and between 3201 Landlord, LLC, doing business as St. Sophies , a North Dakota limited liability company and the city of Fargo, a North Dakota municipal corporation ("City") is for the purpose of granting a variance to the City Floodproofing Code and Waiver of Liability.

WHEREAS, The undersigned has requested a waiver of the elevation requirements of the City Floodproofing Construction Requirements, which establishes requirements for building elevations for the issuance of a building permit for the proposed construction located at:

Lot 2, Block 1, Davron 1st Addition to the city of Fargo, County of Cass, State of North Dakota

(street address: 3201 33rd Street South, Fargo, ND 58103).

The City Floodproofing Construction Requirements are found here:

http://download.cityoffargo.com/0/floodproof_construction_requirements_-_revised_april_2015.pdf

WHEREAS, On August 25, 2020, the Fargo Board of Adjustments approved the elevation variance request contingent upon certain construction requirements; and

WHEREAS, As a condition of the elevation variance, St. Sophie's shall waive any liability against the city of Fargo; and

WHEREAS, As further and additional conditions, St Sophie's agrees that the building addition will be constructed in such a manner that all electrical and mechanical shall be located

above the FEMA 1% chance base flood elevation plus 2 feet; and that the building addition will be constructed without a basement.

NOW THEREFORE, for good and valuable consideration hereby acknowledged, the parties agree as follows:

1. St. Sophie's is granted a variance from the City of Fargo Floodproof Construction Requirements, revised April 2015, so long as all conditions of construction are met, including:

   (a) All new electrical and mechanical equipment shall be placed above the FEMA 1% chance base flood elevation plus 2 feet;
   (b) The building addition area shall be raised and approved through the FEMA LOMR-F process; and
   (c) The building addition will be constructed without a basement.

2. St. Sophie's hereby waives any and all liability against City, and agrees to indemnify and hold City harmless from any all claims asserted as a result of the waiver granted herein. St Sophie's understands and agrees that City shall not be liable for, and City does not accept any liability for the proposed structure along with any other features constructed and/or installed within this property.

3. The property owner accepts all liability with respect to the improvements completed on this property, for itself, its successors and assigns.

(Signatures on Following Pages)

Dated this 1st day of October, 2020.

3201 Landlord, LLC, d/b/a St Sophie's, a North Dakota Limited Liability Company

By: _____
Its President + CEO
Emmet M. Kenney Jr.
Printed Name

STATE OF ND)
) ss.
COUNTY OF Cass)

On this 1st day of October 2020, before me, a notary public in and for said county and state, personally appeared Emmet Kenney to me known to be the President/CEO of St. Sophie's described in and who executed the within and foregoing instrument, and acknowledged to me that he/she executed the same.

Kathy Wenger
Notary Public
Cass County, ND

(SEAL) KATHY WENGER
Notary Public
State of North Dakota
My Commission Expires Sept. 28, 2022

Dated this _____ day of _____, 2020.

CITY OF FARGO, a NORTH DAKOTA municipal corporation

By_____
Timothy J. Mahoney M.D., Mayor

ATTEST:

_____
Steven Sprague, City Auditor

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

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

(SEAL)

_____
Notary Public
Cass County, North Dakota
My Commission expires:

CITY OF FARGO - Board of Adjustment
Variance Staff Report

Item No: 2.b	**Date:** August 18, 2020
Address: 3201 33rd Street South	
Legal Description: Lot 2, Block 1, Davron First Addition	
Owner(s)/Applicants: St Sophie's LLC/Brian Pattengale (Houston Engineering)	
Reason For Request: To construct an addition to an existing building that would have a lowest opening and fill elevations below what would otherwise be required by the City's Floodproofing Code.	
Zoning District: LC: Limited Commercial	
Status: Board of Adjustment Public Hearing: August 25, 2020	

Floodproofing Code Standards		Proposed Structure	
Elevations:		**Elevations:**	
Lowest opening:	FEMA BFE plus 2' (BFE 904.7 plus 2.0' = 906.7')	**Lowest opening:**	905.9 (0.8' below required 906.7)
Adjacent fill:	FEMA BFE plus 0.7' (BFE 904.7 plus 0.7' = 905.4')	**Adjacent fill:**	**905.7** (0.3' above required 905.4)
Fill within 15':	At or above FEMA BFE (BFE 904.7')	**Fill within 15':**	904.1 (below required elevation)

Background:
The applicant has proposed to construct an addition onto an existing medical office building. The proposed addition would have a lowest opening and fill grade within 15 feet of the building below the elevations that are required by the City's Floodproofing Code. The property and proposed building addition are within the 41-foot water surface elevation inundation area (WSEIA) and the proposed addition is also within the FEMA-designated Special Flood Hazard Area (100-year floodplain). At this location, the FEMA base floodplain elevation (BFE) is 904.7 feet and the 41-foot WSEIA is at an elevation of 905.8 feet. The 41' WSEIA was developed for new construction and is not used for additions to existing structures. As such, the WSEIA elevation standards are not applicable to the proposed building addition. This proposed addition is within the FEMA Special Flood Hazard Area, however, and the Floodproofing Code requirements are as follows:

1. The lowest opening in a building is required to be at or above an elevation that is 2 feet above the FEMA BFE elevation. (904.7-foot FEMA BFE elevation plus 2 feet = 906.7')
2. The fill adjacent to the building is required to be at or above an elevation that is 0.7 feet above the FEMA BFE elevation. (904.7-foot FEMA BFE elevation plus 0.7 feet = 905.4')
3. The fill within 15 feet of the building must be at or above the FEMA BFE (904.7')

The lowest opening of the proposed structure would be at an elevation of 905.9 feet, which is 0.8 feet lower than what is required for the lowest opening elevation (BFE+2'). Additionally, the fill adjacent to the building would be at an elevation of 905.7 feet, which is 0.3 feet higher than required. Lastly, the fill within 15 feet of the building would be 904.1 feet, which is 0.6 feet lower than required. Accordingly, the applicant is requesting a variance in order to construct an addition to an existing building that would have a lowest opening and fill within 15 feet of the building at elevations below what would otherwise be required by the City's Floodproofing Code.

According to the applicant, the proposed variance is necessary to construct the building addition so as to have the same finished floor elevation as the existing building, which was constructed prior to the City's current floodproofing elevation requirements. Additional details are provided by the applicant within the attached application materials.

Codes Background:
The rationale behind the development of the City's 41-foot WSEIA is in anticipation for future increases to the FEMA Special Flood Hazard Area (1% annual chance/100-year flood plain). While mapping flood elevations as part of the FM Diversion Feasibility Study, it was found by the Army Corps of Engineers that the hydrology used by FEMA to establish the Special Flood Hazard Area was obsolete. It was based on a study that did not include in the period of record for the Red River events after 1979. It is the practice of FEMA to review communities every 5 years to determine if a new map is warranted. Based on information contained in the FM Diversion Feasibility Study of Fargo which accounts for recent flood events, including the flood of record in 2009, the information on updated hydrology and hydraulics is readily available and FEMA will have cause to remap Fargo. When this update occurs, it is anticipated FEMA will raise the elevation of the Special Flood Hazard Area, resulting in additional areas of the City being located within this flood plain and subject to additional flood insurance requirements or increases. As such, the purpose of the 41-foot WSEIA is to prevent non-floodproof construction within areas that will potentially be located within Special Flood Hazard Area in the future. It should also be noted that the state rules require elevation on fill to the BFE +1 foot. In an attempt to keep **new** construction compliant with this state requirement into the future, we are requiring the additional 1.2 feet.

The determination was made during the development of the 41' WSEIA that additions to existing structures would only be required to adhere to the FEMA elevation requirements if the existing structure and/or the proposed addition is within the FEMA 1% chance flood zone. If the structure and addition are only identified in the 41' WESIA area, the addition may match the finish floor elevation of the original structure.

Another caveat of floodproofing and protection has to do with localized flooding versus flooding from the Red River. Many areas of the City are at risk of flooding due to the stormwater infrastructure not being able to handle significant rainfall events. In this aspect the City's floodproofing requirements and policies are intended for emergency protection from both the Red River and from overland flooding or storm sewer overflows.

Criteria for Approval:
The Floodproofing Code was enacted by reference within Article 21-06 (Flood Plain Management) of the Fargo Municipal Code. Appeals from Article 21-06 are heard and decided upon by the Board of Adjustment as outlined within Section 21-0603 of the Municipal Code.

§21-0603.G.5 of the Municipal Code states that, *In determining appeals or requests for variances, the board of adjustment shall consider all technical evaluations, all relevant factors, standards specified in other sections of this ordinance, and:*

a. *The danger that materials may be swept onto other lands to the injury of others;*
b. *The danger to life and property due to flooding or erosion damage;*
c. *The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owners;*
d. *The importance of the services provided by the proposed facility to the community;*
e. *The necessity to the facility of a waterfront location, where applicable;*
f. *The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;*
g. *The compatibility of the proposed use with the existing and anticipated development;*
h. *The relationship of the proposed use to the comprehensive plan and floodplain management program or that area;*

i. *The safety of access to the property in times of flood for ordinary and emergency vehicles;*

j. *The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and,*

k. *The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, streets and bridges.*

§21-0603.H.1 of the Municipal Code includes additional considerations for variances:

1. *Variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base level, providing items (a-k) in subsection (G)(5) above have been fully considered. As the lot size increases beyond the one-half acre, the technical justifications required for issuing the variance increases.*
2. *Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or any state or local inventory or register of historic places without regard to the procedures set forth in the remainder of this section.*
3. *Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.*
4. *Variances shall be issued only upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.*
5. *Variances shall be issued only upon:*
   a. *A showing of good and sufficient cause;*
   b. *A determination that failure to grant the variance would result in exceptional hardship to the applicant; and*
   c. *A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.*
6. *Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk from the reduced lowest floor elevation.*

Staff Analysis:

a. The danger that materials may be swept onto other lands to the injury of others;
Minimal probability

b. The danger to life and property due to flooding or erosion damage;
Minimal probability

c. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owners;
Minimal probability

d. The importance of the services provided by the proposed facility to the community;
The facility provides psychiatric care services to the community. In a flood situation, it would not be important to the critical stability of the city infrastructure.

e. The necessity to the facility of a waterfront location, where applicable;
Not applicable. The proposed improvement is not in the MDZS or the LDZS river setback zones.

f. **The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;**
The proposed use would be allowed by-right within the UMU (University Mixed-Use), NO (Neighborhood Office), NC (Neighborhood Commercial), GO (General Office), LC (Limited Commercial), DMU (Downtown Mixed-Use), GC (General Commercial), and LI (Limited Industrial) zoning districts. There are vacant properties outside of the 41-foot WSEIA and 100-year floodplain within these zoning districts. However, an alternative location would not allow for continued use of the existing building.

g. **The compatibility of the proposed use with the existing and anticipated development;**
There is no proposed change in use. The use is compatible with existing and anticipated development at this location.

h. **The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;**
No inconsistencies have been identified in relation to the comprehensive plan. Floodplain management is related to the City's floodproofing policies as part of the FEMA BFE and the 41' WSEIA elevation requirements.

i. **The safety of access to the property in times of flood for ordinary and emergency vehicles;**
Access may be questionable as servicing roadways may become inundated during storm sewer overflows or heavy rainfall events. The applicant will need to understand this potential risk as staff has no data to suggest that the requested variance would result in an increased or decreased safety of access.

j. **The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and,**
Staff has no data to confirm the effects of flooding as a result of overland flooding or storm sewer overflows.

k. **The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, streets and bridges.**
Costs associated with government services during or after flood conditions will not change due to this variance.

Since this is a variance request to Article 21-06 (Flood Plain Management) related to floodproof construction, the Zoning Administrator defers to the Building Official/Flood Plain Administrator as well as the City Engineer for current and future floodplain management. This application was reviewed by the City's Planning and Development, Engineering, and Building Inspections Departments ("staff"), whose comments are included in this report.

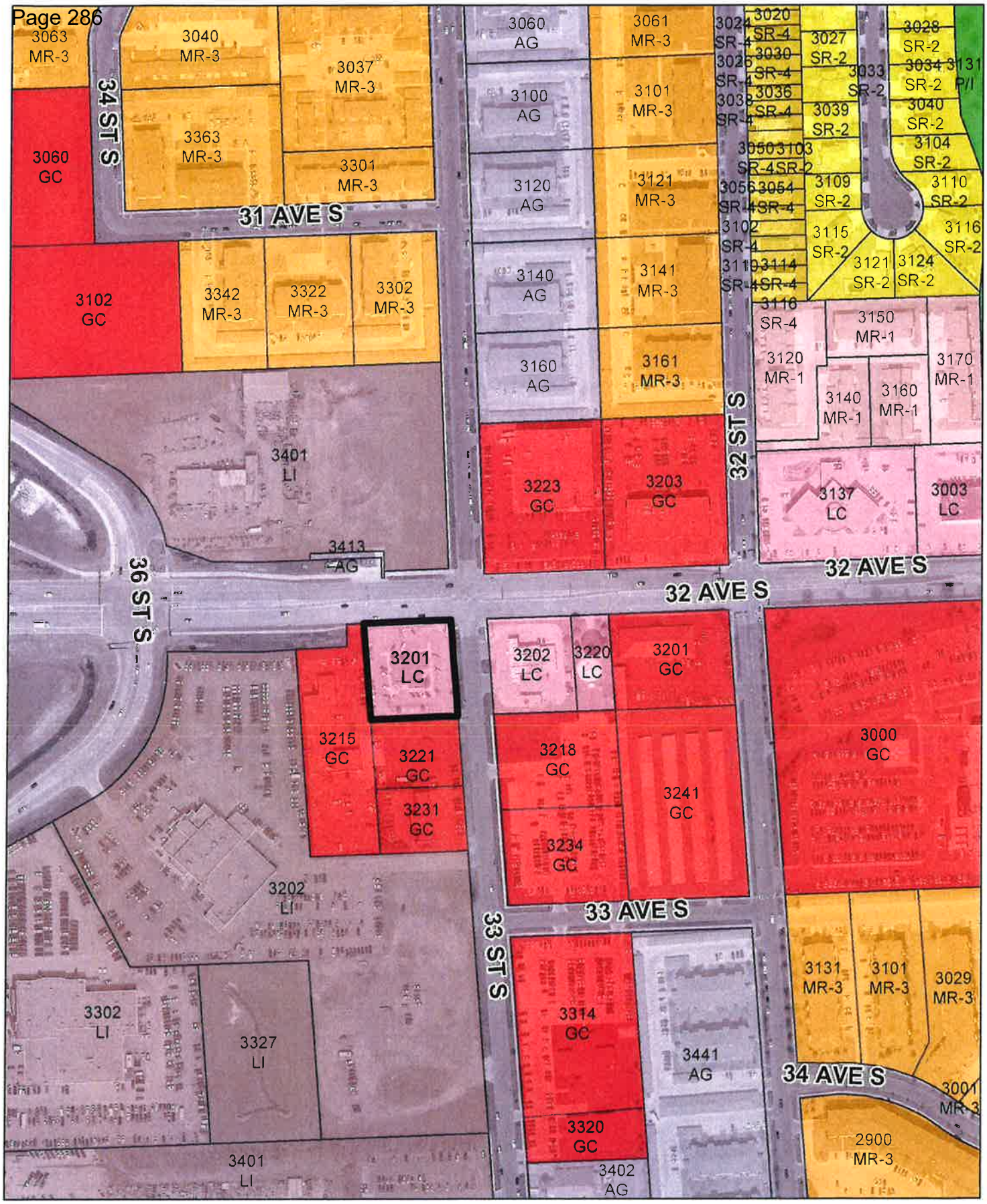
Staff finds that the proposed variance is somewhat unique in that the proposed variance would violate elevation standards established by the City of Fargo, specifically the Special Flood Hazard Area (100-year floodplain) established by FEMA and Fargo 2' minimum freeboard requirement. The City of Fargo has worked with FEMA to secure an exemption to federal standards in order to allow the construction of basements when properly floodproofed. While the option for variance exists to provide relief from floodproofing requirements in situations resulting in hardship, the City has been warned by FEMA that abuse of the variance provision could result in a loss of the current city-wide basement exemption that

FEMA has granted the City of Fargo. Staff feels that this variance will not affect the City of Fargo's basement exemption due to the minimal variance required.

Ultimately, staff is in support this request for variance. Staff finds that with the elevating of the proposed building addition footprint to be constructed above the FEMA BFE and meeting the state requirement of BFE plus 1 foot, the structure is reasonably safe from flooding.

Staff recommends that any granting of a variance be conditioned upon the applicant agreeing to a waiver of liability against the City. Engineering staff would work with the City Attorney's Office to draft an acknowledgment form that would outline the owner's decision to not follow the City's floodproof construction requirements. The purpose of this document would be to provide additional protection to the City from unforeseen issues that may arise as a result of the variance.

Staff Recommendation: "To accept the findings of staff and hereby approve the requested variance on the basis that the review considerations of Section 21-0603 have been satisfied, with the condition that the applicant sign and submit a waiver of liability against the City."



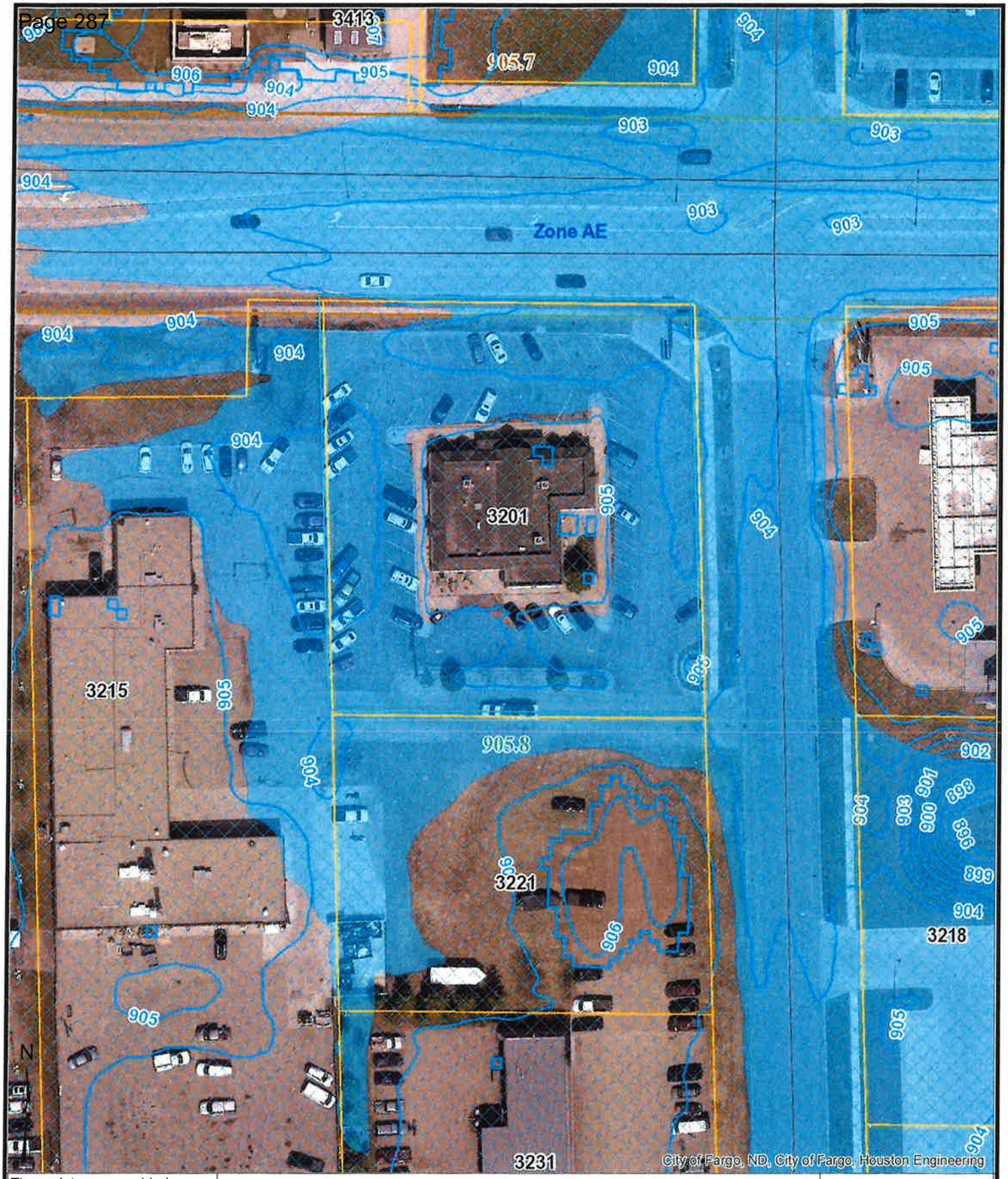
THE CITY OF Fargo FAR MORE

AG	LC	MHP	SR-1
DMU	LI	NCI	SR-2
GC	MR-1	NO	SR-3
GI	MR-2	P/I	SR-4
GO	MR-3	UMU	SR-5

3201 33rd Street S

0 170 340 Feet

N



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

FEMA Special Flood Hazard Area & 41' WS

1:1,128	8/19/2020 1:24:50 PM

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

THE CITY OF Fargo FAR MORE

CITY OF Fargo

PLANNING AND DEVELOPMENT
200 Third Street North
Fargo, North Dakota 58102
Phone: (701) 241-1474
Fax: (701) 241-1526
E-Mail: planning@cityoffargo.com
www.cityoffargo.com

FLOOD PLAIN MANAGEMENT VARIANCE APPLICATION (§21-0603)

The Board of Adjustment is authorized to grant variances from the Flood Plain Management requirements of Article 21-06 of the Fargo Municipal Code, pursuant to the considerations and standards of Section 21-0603.

Please contact the Fargo Department of Planning and Development to schedule a pre-application meeting prior to submitting this application.

The following must accompany this application form:

a. Site plan illustrating existing and proposed buildings, property lines, and other applicable information relevant to the requested variance.
b. Building plans illustrating information relevant to the requested variance.
c. Application fee.

Property Owner Information	**Representation Information** *(primary contact)*
Name (*printed*): St. Sophie's LLC Dr. Emmet Kenney	Name (*printed*): Brian T. Pattengale
	Company Houston Engineering, Inc.
Address: 3201 33rd St s, Fargo ND, 58104	Address: 1401 21st Ave N, Fargo ND 58102
Primary Phone: 701 365 4488	Primary Phone: 701 499 2071
Alternative Phone:	Alternative Phone: 701 237 5065
	Fax: 701 237 5101
Email: dr.kenney@st-sophies.com	Email: bpattengale@houstoneng.com
	☐ Same as property owner

Location of property for which variance is being requested:	
Address:	3201 33rd Street s
Zoning District:	LC Limited Commercial
Legal Description:	Lot 2, Block 1 of Davron First Addition

Acknowledgement – I hereby acknowledge that I have familiarized myself with the rules and regulations to the preparation of this submittal and that the foregoing information is true and complete to the best of my knowledge. I, the undersigned, do hereby petition the Board of Adjustment of the City of Fargo, North Dakota, to take such action as may be required by law of the City of Fargo to grant a variance pursuant to Section 21-0603 of the Fargo Municipal Code.

Owner (*Signature*): _____ Date: _____

Representative (Signature) Brian T Pattengale Date: 7/20/2020

Note: *A nonrefundable application fee of $185.00 must be accompanied with the application at time of submittal.*

Office Use Only		
Date Filed: 7-20-2020	Planning Contact: _____	Nonrefundable Fee $185.00 Ck #045972

Houston Engineering, Inc.
1401 21st Ave. N.
Fargo, ND 58102-1814

CITY OF Fargo

PLANNING AND DEVELOPMENT
200 Third Street North
Fargo, North Dakota 58102
Phone: (701) 241-1474
Fax: (701) 241-1526
E-Mail: planning@cityoffargo.com
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b. Building plans illustrating information relevant to the requested variance.
c. Application fee.

Property Owner Information	**Representation Information** *(primary contact)*
Name (*printed*): 3201 Landlord, LLC Dr. Emmet Kenney	Name (*printed*): Brian T. Pattengale
	Company Houston Engineering, Inc.
Address: 3201 33rd St s, Fargo ND, 58104	Address: 1401 21st Ave N, Fargo ND 58102
Primary Phone: 701 365 4488	Primary Phone: 701 499 2071
Alternative Phone:	Alternative Phone: 701 237 5065
	Fax: 701 237 5101
Email: dr.kenney@st-sophies.com	Email: bpattengale@houstoneng.com
	☐ Same as property owner

Location of property for which variance is being requested:

Address:	3201 33rd Street s
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Owner (*Signature*): [signature] Date: 7/27/20

Representative (Signature) Date:

***Note:** A nonrefundable application fee of $185.00 must be accompanied with the application at time of submittal.*

Office Use Only

Date Filed:_____ Planning Contact:_____ Nonrefundable Fee $185.00:_____

Proposed Variance Information:
(Attach additional pages, if needed)

Please list all Flood Plain Management standards for which you are seeking a variance (e.g. elevation of lowest opening, fill adjacent to building, floodproof construction standards).

See Attached Document

Please describe difference between the standard(s) and the proposed variation (e.g. The standard would require a lowest opening elevation of 901.5 ft. and my project would propose a lowest opening elevation of 900.7 ft.).

See Attached Document

Please explain your project, describing why you are requesting a variance and why you believe a variance is justified. Along with your project description, please include a site plan/diagram with dimensions.

See Attached Document

Please explain how failure to grant the variance would result in exceptional hardship.

See Attached Document

Considerations for Approval:

Please explain how your requested variance satisfies the following considerations, pursuant to Section 21-0603 of the Fargo Municipal Code: (Attach additional pages, if needed.)

a. The danger that materials may be swept onto other lands to the injury of others;
See Attached Document

b. The danger to life and property due to flooding or erosion damage;
See Attached Document

c. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owners;
See Attached Document

d. The importance of the services provided by the proposed facility to the community;
See Attached Document

e. The necessity to the facility of a waterfront location, where applicable;
See Attached Document

f. The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
See Attached Document

g. The compatibility of the proposed use with the existing and anticipated development;
See Attached Document

h. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;

See Attached Document

i. The safety of access to the property in times of flood for ordinary and emergency vehicles;

See Attached Document

j. The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and,

See Attached Document

k. The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, streets and bridges.

See Attached Document

St. Sophies
3201 33rd Street S
Fargo, ND 58104

Proposed Variance Information

Please List all Flood Plain Management Standards for which you are seeking a variance:

Elevation of lowest opening, fill adjacent to building, fill 15' from building at or above Base Flood Elevation

Please describe difference between the standard(s) and the proposed variation:

The Standard for Lowest opening elevation of 41' Water surface elevation inundation area (WSEIA) plus 1.2' or Base Flood Elevation of plus 2' which ever is higher. The 41' WSEIA is 905.80 for the area and require a low opening elevation of 907.00. The proposed project would provide a low opening of 905.90.

The Standard for Fill adjacent to building is required to be 41' WSEIA plus 0.7'. The 41' WSEIA is 905.80 for the area and require fill at 906.50. The proposed project would provide grade adjacent to the building of 905.70.

The Standard for fill 15' from the building shall be at FEMA BFE. Current BFE per panel 0779G is 905. The proposed variance would eliminate this requirement.

Please explain your project, describing whe you are requesting a variance and why you believe a variance is justified. Along with your project description, please include a site plan/diagram with dimensions.

The proposed project is an addition to the existing building and remodel of the existing structure to provide additional exam rooms and provider space to the existing facility. The existing structure was constructed prior to the current Flood Plain Management Standards and Floodproofing requirements. The existing structure is not located within the current effective FEMA Floodplain and the existing finished floor elevation of the structure was surveyed to be above the 41' WSEIA.

The variance to the standards is justified as the addition to the building will be at the same finished floor elevation of the existing structure which places it above the both the FEMA BFE and 41' WSEIA. The addition will all be designed for a LOMR-F to be completed after its construction removing it from the FEMA Floodplain. The new addition would be reasonably safe from the effect of river based flood event.

Please explain how failure to grant the variance would result in exceptional hardship:

Failure to grant the variance would require that the addition be constructed at an elevation 1.1' above the current finished floor elevation of the building. The difference in elevation would not allow the addition to have the connectivity with the existing building or meet the requirements of the ADA for access. The elevation difference of the addition and finished floor would be too great to manage and the addition could not be constructed. Without the variance the facility cannot be expanded and would require relocation of the facility to another location or complete demolition and reconstruction of the existing building to allow for expansion of the building.

Consideration for Approval

Please explain how you request variance satisfies the flowing consideration, pursuant to Section 21-0603 of the Fargo Municipal Code:

a. **The danger that materials may be swept onto other land to the injury of others;**
The project location is located approximately 2 miles from the river channel. Floodwater velocities are likely to be minimal and flooding is most like due to intrusion of the floodwater to the storm sewer system. As such there is little if any danger that materials may be swept onto other lands.

b. **The Danger to life and property due to flooding or erosion damage;**
Property is located within the City of Fargo's flood protection perimeter and is a nonresidential structure. Should flooding occur due to river based flooding sufficient time would be available to evacuate the building occupants. Erosion damage would not be anticipated due to the distance from the river channel and likely low velocities of any floodwater. The existing building and proposed addition would be located above both the FEMA BFE and 41' WSEIA and would be minimally susceptible to flood damage.

c. **The susceptibility of the proposed facility and its contents to flood damage and the effects of such damage on the individual owners;**
The existing building and proposed addition would not be located in the FEMA Floodplain and above the 41' WSEIA. Based on this building should be minimally susceptible to flood damage. Note the existing building is not located within the FEMA Floodplain and the addition would have a LOMR-F completed after its construction.

d. **The importance of the services provided by the proposed facility to the community;**
The Facility provides psychiatric care for the Fargo Moorhead area.

e. **The necessity to the facility of a waterfront location, where applicable;**
Not applicable, facility does not need waterfront location and is not located on the waterfront.

f. **The availability of alternative location for the posed use which are not subject to flooding or erosion damage;**
The 41' WSEIA affects a large portion of the City including many developed areas. As the many developed areas of the City were constructed prior to the implementation of the floodproof construction requirements many sites do not fully comply with the requirements. As the proposed variance is for an addition to the existing building alternative locations would require construction of a new facility or complete remodel of an existing facility. Alternative locations on the site are not available as it would require demolition and reconstruction of the existing building to bring the site into compliance with regulations and requirements.

g. **The compatibility of the proposed use with the existing and anticipated development;**
Proposed addition is an expanse of the current use. Area is zoned limited commercial and surrounding properties are a mix of commercial uses. Addition would be compatible with current zoning and the surrounding uses.

h. **The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;**
Proposed addition meets current land use standards for the area.

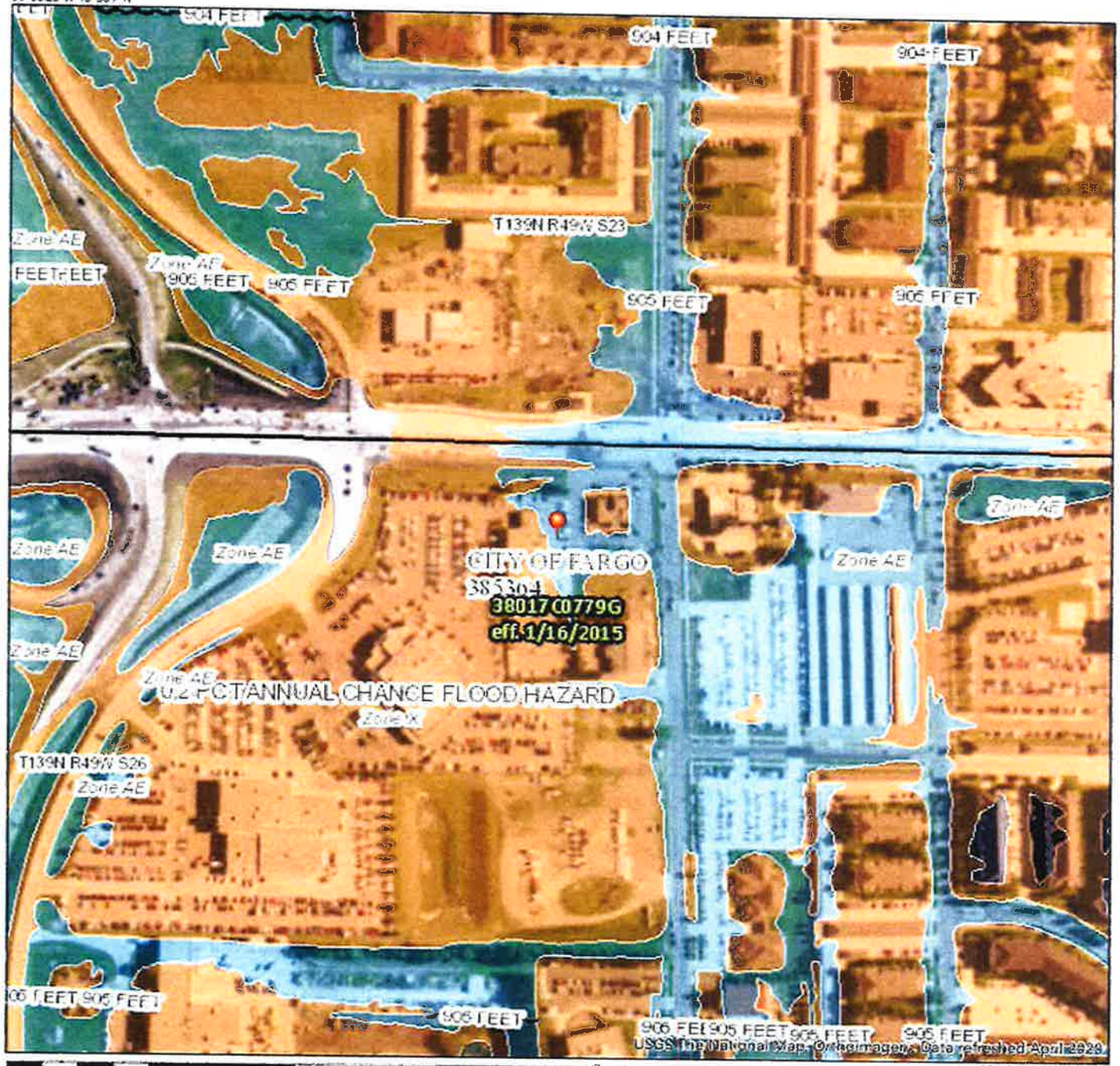
i. **The safety of access to the property in times of flood for ordinary and emergency vehicles.**
The property is located behind the City of Fargo lines of flood protection and access to the site during flood events is not expected to be impacted. Should a breach of the flood protection measures occur site has access via I-29and 32nd Ave. Floodwater depths for a 100-yr river flood event on site would be less than 12" in depth.

j. **The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site;**
Bases on the 41' WSEIA elevation for the property the depths of floodwater in adjacent streets would be approximately 1' to 2'. As the floodwaters are due to intrusion of the river to the storm sewer velocity of the floodwaters would be minimal if any. As the site is located behind the City of Fargo Line of flood protection, the duration, rate of rise, and sediment transport are unknown. Without City Flood protection the duration and rate of rise is anticipated to be similar to typical flood events for the area. Wave action is not anticipated at the site.

k. **The cost of providing government services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, streets and bridges.**
The existing city and public infrastructure adjacent to the project are existing and do not meet the current eelevation standards for floodproof contruction. Construction of the project and granting of the variance should not affect any cost to provide service during or after flood conditions. The proposed addition does not require additional sewer or water services be provided the building.

National Flood Hazard Layer FIRMette

96°50'21"W 46°50'7"N



96°49'44"W 46°49'43"N

0 250 500 1,000 1,500 2,000 Feet

1:6,000

Legend

SEE FIS REPORT FOR DETAILED LEGEND AND INDEX MAP FOR FIRM PANEL LAYOUT

SPECIAL FLOOD HAZARD AREAS
- Without Base Flood Elevation (BFE) Zone A, V, A99
- With BFE or Depth Zone AE, AO, AH, VE, AR
- Regulatory Floodway

OTHER AREAS OF FLOOD HAZARD
- 0.2% Annual Chance Flood Hazard, Area of 1% annual chance flood with average depth less than one foot or with drainage areas of less than one square mile Zone X
- Future Conditions 1% Annual Chance Flood Hazard Zone X
- Area with Reduced Flood Risk due to Levee. See Notes. Zone X
- Area with Flood Risk due to Levee Zone D

OTHER AREAS
- NO SCREEN Area of Minimal Flood Hazard Zone X
- Effective LOMRs
- Area of Undetermined Flood Hazard Zone D

GENERAL STRUCTURES
- Channel, Culvert, or Storm Sewer
- Levee, Dike, or Floodwall

OTHER FEATURES
- 20.2 Cross Sections with 1% Annual Chance
- 17.5 Water Surface Elevation
- Coastal Transect
- 513 Base Flood Elevation Line (BFE)
- Limit of Study
- Jurisdiction Boundary
- Coastal Transect Baseline
- Profile Baseline
- Hydrographic Feature

MAP PANELS
- Digital Data Available
- No Digital Data Available
- Unmapped

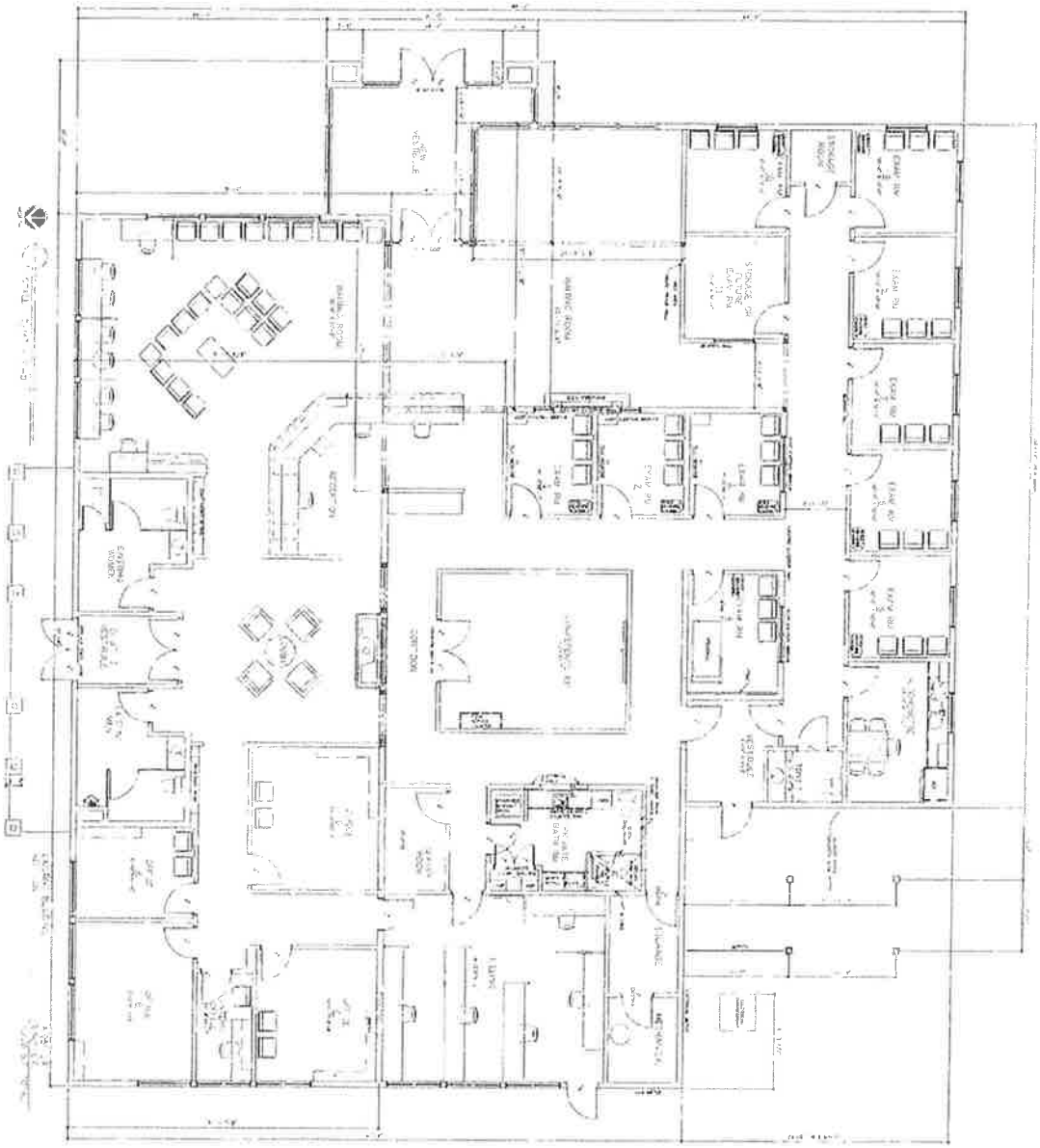
N

The pin displayed on the map is an approximate point selected by the user and does not represent an authoritative property location.

This map complies with FEMA's standards for the use of digital flood maps if it is not void as described below. The basemap shown complies with FEMA's basemap accuracy standards

The flood hazard information is derived directly from the authoritative NFHL web services provided by FEMA. This map was exported on 7/20/2020 at 2:42 PM and does not reflect changes or amendments subsequent to this date and time. The NFHL and effective information may change or become superseded by new data over time.

This map image is void if the one or more of the following map elements do not appear: basemap imagery, flood zone labels, legend, scale bar, map creation date, community identifiers, FIRM panel number, and FIRM effective date. Map images for unmapped and unmodernized areas cannot be used for regulatory purposes.



SCHMIT BROTHERS CONSTRUCTION, INC.

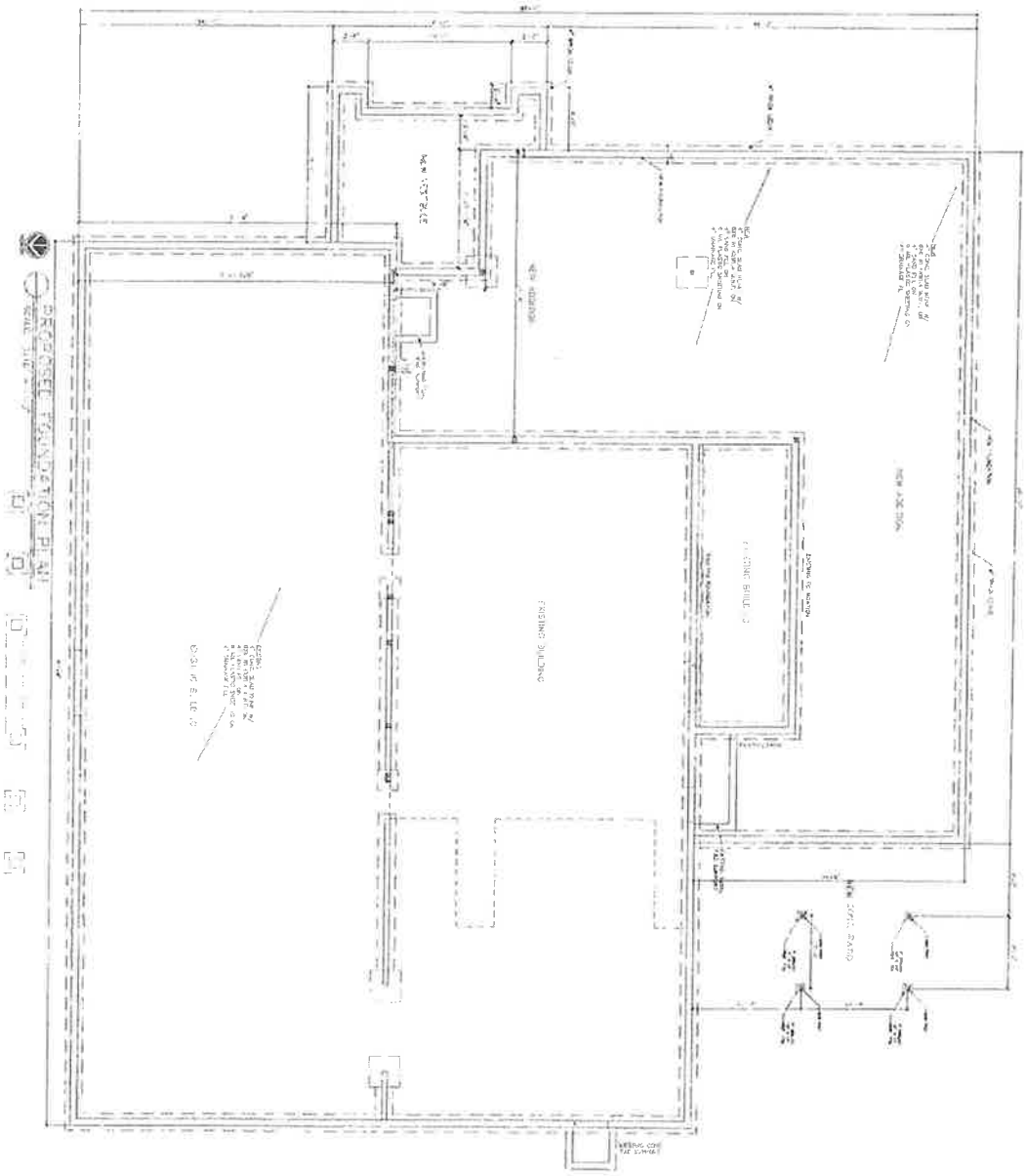
2516 17th St N
FARGO ND 58102
PHONE 701.237.1979
FAX 701.237.7458

St Sophie's
3137 32nd Ave S
Fargo, ND

Addition

Drawn By: AJM

Date: 4.16.2020



SCHMIT BROTHERS CONSTRUCTION, INC.

2518 12th St N.
Fargo ND 58102
PHONE 701.237.1979
FAX 701.237.7358

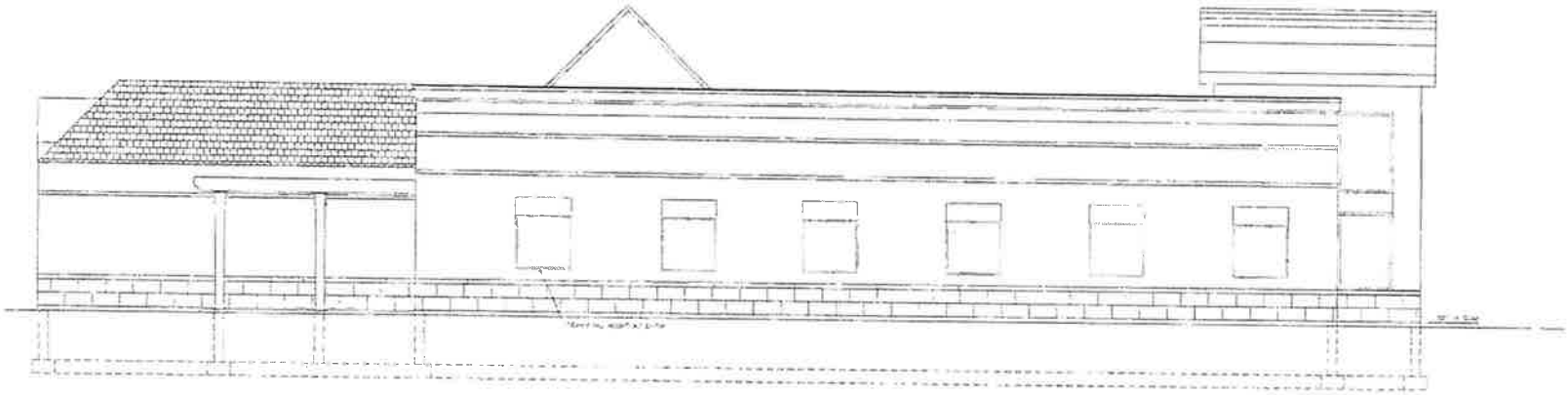
St Sophie's
3137 32nd Ave S
Fargo, ND

Addition

Drawn By: AJM

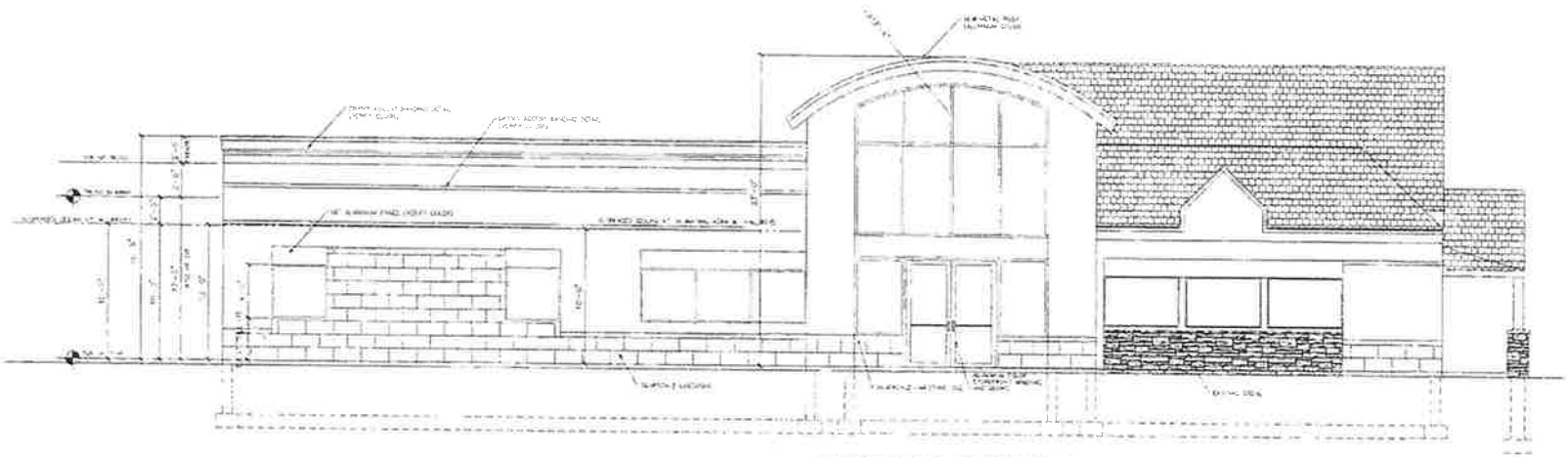
Date: 3.10.2020

SCHMIT
BROTHERS
CONSTRUCTION,INC.
St Sophie's
3137 32nd Ave S
Fargo, ND
Addition
Drawn By: AJM
Date: 3.10.2020
32nd AVENUE S.W.
32nd STREET S.W.
SCALE: 1/16" = 1'-0"
N
E
S
W



SOUTH SIDE ELEVATION

SCALE 1/4 = 1'-0"



EAST SIDE ELEVATION

SCALE 1/4 = 1'-0"

SCHMIT BROTHERS CONSTRUCTION, INC.

St Sophie's
3137 32nd Ave S
Fargo ND

Addition

Drawn By: A.M.

Date: 4/2/20

NORTH SIDE ELEVATION
SCALE: 1/4" = 1'-0"

WEST SIDE ELEVATION
SCALE: 1/4" = 1'-0"

Addition

Date: 4.1.2020

Drawn By: AJM

St Sophie's
3157 32nd Ave S
Fargo, ND

SCHMIT BROTHERS CONSTRUCTION, INC.

SCHMIT BROTHERS
CONSTRUCTION, INC.
2515 12th St N
PARGO, ND 58102
PHONE 701.282.1919
FAX 701.292.7059
St Sophie's
3137 32nd Ave S
Fargo, ND
Addition
Date 7.10.2020
Drawn By: AJM
Sheet Number
LEGEND DESCRIPTIONS
SITE DATA
34th STREET S.W
N
W
E
S

32

REPORT OF ACTION

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Improvement District No. TR-18-B0

Type: Contract Amendment #2

Location: 7th Ave & 16th St N

Date of Hearing: 10/12/2020

Routing	Date
City Commission	10/19/2020
PWPEC File	X
Project File	Jeremy Gorden

The Committee reviewed the accompanying correspondence from Division Engineer, Jeremy Gorden, regarding Contract Amendment #2, submitted by Stantec, in the amount of $7,515.00. This Amendment is for additional work related to "Affirmation of Existing Quiet Zones".

Staff is recommending approval of Contract Amendment #2 in the amount of $7,515.00, bringing the total contract amount to $104 023.00.

On a motion by Bruce Grubb, seconded by Kent Costin, the Committee voted to recommend approval of Contract Amendment #2 to Stantec.

RECOMMENDED MOTION

Concur with recommendations of PWPEC and approve Amendment #2 in the amount of $7,515.00, bringing the total contract amount to $104,023.00 to Stantec.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: Infrastructure Sales Tax

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

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

ATTEST:

Brenda E. Derrig, P.E
City Engineer

C: Kristi Olson

THE CITY OF Fargo FAR MORE

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

Memorandum

To: Members of PWPEC

From: Jeremy M. Gorden, PE, PTOE
Division Engineer - Transportation

Date: October 7, 2020

Subject: Amendment #2 to Professional Services Agreement with Stantec Consulting Services for "Affirmation of Existing Quiet Zones"
Improvement District No. TR-18-B0
Quiet Zones at 7th Avenue North and 16th Street North

I am requesting approval of proposed Amendment #2 to the subject project. The cost of the proposed amendment is $7,515.00. The amendment is for the additional work required for the "Affirmation of Existing Quiet Zones" through the City of Fargo. This "Affirmation" is outside the original scope of work for the subject project and is a 2.5 - 3 year requirement to affirm all existing quiet zone related safety features are still in place and functioning as designed. During the course of design of the subject project it was determined the existing quiet zone affirmations were due, leading to this request.

Attached, for your review, are (1) an October 2 letter from Stantec requesting the modification, and (2) a Stantec "Professional Services Agreement Change Order" for the proposed modification.

The proposed Amendment #2 in the amount of $7,515.00, and will bring the total contract value to $104,028.00.

Recommended Motion
Approve Amendment #2 with Stantec Consulting Services in the amount of $7,515.00.

Stantec Consulting Services Inc.
2632 47th Street South, Suite 103
Fargo, ND 58104-8571

Stantec

October 2, 2020
File: 193804260

Attention: Ron Solberg, City of Fargo, Civil Engineer II
225 4th Street North
Fargo, ND 58102

Dear Mr. Solberg,

Reference: Change Order No. 2 for the Affirmation of Existing Quiet Zones along the KO and Prosper Subdivisions.

BACKGROUND

Pursuant to 49 CFR Part 222, The City of Fargo, ND (The City), in cooperation with the City of Moorhead, MN, submitted an application for the establishment of a Quiet Zone on two separate railroad lines. The F-M Metropolitan quiet zone consists of 20 rail crossings, and extends from 14th St in Moorhead along the Burlington Northern Santa Fe (BNSF) KO Subdivision (Approximately 2 miles) through each city's downtown, to 8th St in Fargo; and from 14th St in Moorhead along the BNSF Prosper Subdivision (approximately 2 miles) to 7th St in Fargo. The existing quiet zone uses a combination of SSMs, ASMs and closures. According to 49 CFR Part 222.47, quiet zones which do not have a supplementary safety measure at each public crossing must affirm in writing every 2 ½ to 3 years to the Associate Administrator that all SSMs and ASMs implemented within the Quiet Zone continue to perform to the requirements specified in the rule and the terms of the Quiet Zone approval.

During the proposed quiet zone (7th Avenue & 16th Street North, City of Fargo) process, it was discovered that The City was due to submit affirmations letters for the existing (F-M) Metropolitan quiet zone.

SCOPE OF SERVICES

Change Order 2 – Task 1 – F-M Metropolitan Quiet Zone Affirmation

The purpose of Change Order 2 – Task 1, is for Stantec to develop the Affirmation packet and submit to the FRA. To complete the request, the following will need to be compiled and completed for submittal to FRA:

- Stantec will complete an updated US DOT Crossing Inventory Form and submit to FRA with updated traffic and train counts per crossing. = 10 Hours

Reference: Change Order No. 2 for the Affirmation of Existing Quiet Zones along the KO and Prosper Subdivisions.

- City of Fargo to gather traffic data at each open crossing and submit to Stantec along with the traffic count report for the completion of the Crossing Inventory updates.
- Stantec to gather rail crossing data, update the crossing inventory and coordinate submission of the updated inventories with NDDOT, MnDOT, and BNSF.

- Stantec will run FRA's quiet zone calculator for each crossing with the updated traffic and train counts to ensure SSMs and ASMs are performing as intended and the Quiet Zone Risk index is below the Nationwide Significant Risk Threshold and the Risk Index with Horns. = 10 Hours.
- Stantec will conduct a site visit at each crossing to affirm that all signage, SSMs and ASMs and crossing closures implemented within the Quiet Zone are in serviceable shape and continue to perform to the requirements specified in the rule and the terms of the Quiet Zone approval. = 10 Hours
- Affirmation letter: = 5 Hours
  - The City of Fargo to place affirmation letter on City of Fargo letterhead and obtain proper signatures from City of Fargo officials.
  - Stantec to send Affirmation letter via certified mail to the following entities: All Railroads operating over the public highway-rail grade crossings within the quiet zone; the highway or traffic control or law enforcement authority having jurisdiction over vehicular traffic at grade crossings within the quiet zone; the state agency responsible for highway and road safety; the state agency responsible for grade crossing safety and the Associate Administrator for Safety with FRA.
- Additional project management, coordination and follow up with the City of Fargo, BNSF and FRA during the completion and FRA review of the document. = 10 Hours

Change Order 2 – Task 1 will be completed in 45 hours.

DELIVERABLES

- Updated USDOT crossing inventories.
- Updated FRA Quiet Zone calculator results.

Reference: Change Order No. 2 for the Affirmation of Existing Quiet Zones along the KO and Prosper Subdivisions.

- Completed Affirmation letter on City of Fargo letterhead, sent to the recipients listed above.

PERIOD OF PERFORMANCE

The affirmation letters do not impact the completion of the 7th Avenue & 16th Street North, City of Fargo quiet zone and a such will not result in an extension of that project. Pending City and Railroad response, contract completion date December 31, 2020.

COMPENSATION

Stantec will complete the proposed scope of work as a "Time and Expenses" budget of up to $7,515.00. The following amounts represent the total cost to complete each task under Change Order No. 2.

Task 1 – F-M Metropolitan Quiet Zone Affirmation =	$7,515.00
Total =	$7,515.00

Sincerely,

Stantec Consulting Services, Inc.

Dylan Brown PE
Associate, Project Manger
Mobile: 701-566-6014
Dylan.Brown@stantec.com

Stantec

PROFESSIONAL SERVICES AGREEMENT CHANGE ORDER

Change Order # 2 Date 2 October 2020

"Stantec" Stantec Consulting Services Inc.

Stantec Project # 193804260

2632 47th Street South
Fargo, ND 58104-8571
Ph: (701) 566-6014
email: Dylan.Brown@stantec.com

Client City of Fargo

Client Project # TR-18-B0

225 4th Street North
Fargo, ND 58102
Ph: (701) 241-8582
email: rsolberg@fargond.gov

Project Name and Location: Affirmation of existing Fargo-Moorhead Metropolitan quiet zone. From 14th St in Moorhead, MN to 8th St in Fargo, ND.

In accordance with the original Professional Services Agreement dated 30 April 2018 and Change Orders thereto, the Agreement changes as detailed below are hereby authorized.

	Total fees this Change Order				$7,515.00	
	Original agreement amount				$73,500.00	
	Change Order Number		1		$23,008.00	
	Total Agreement				**$104,028.00**	

Effect on Schedule: The schedule of the original project scope will not be affected. This additional work is estimated to be completed by December 31st, 2020, pending response times of the Railroad.

Payments shall be made in accordance with the original agreement terms. All other items and conditions of the original Agreement shall remain in full force and effect.

Stantec Consulting Services Inc.

Dylan Brown, Project Manager
Print Name and Title

Signature

Date Signed: 10/15/20

City of Fargo

Print Name and Title

Signature

Date Signed:

33

REPORT OF ACTION

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Improvement District No. BR-19-A1 Type: Change Order #11

Location: Main Ave, Broadway to University Dr Date of Hearing: 10/12/2020

Routing	Date
City Commission	10/19/2020
PWPEC File	X
Project File	Scott Olson

The Committee reviewed communication from Project Engineer, Scott Olson, regarding Change Order #11, a request to modify the contract language for full incentive.

This Change Order is for formal modification to the contract language for full incentive as approved by PWPEC on September 14, 2020 to read:

> If all work needed to open the roadway safely to the traveling public, with exception of DMS Sign, HAWK, removals of control box, and pedestrian signs on the project is completed on or before October 16, 2020 an incentive payment of $10,000 per calendar day for each day before October 16 that all work is complete. The maximum incentive payment for all work completed on or before October 16, 2020 will be $400,000. Holidays and Sundays will be counted as calendar days for application of the incentive.

On a motion by Bruce Grubb, seconded by Kent Costin, the Committee voted to recommend approval of Change Order #11 and the modifications to the contract language as specified above.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve Change Order #11 and the modifications to the contract language.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: Infrastructure Sales Tax Funds

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

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

ATTEST:

Brenda E. Derrig, P.E.
City Engineer

THE CITY OF Fargo FAR MORE

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

Memorandum

To: Members of PWPEC

From: Scott Olson, Project Manager

Date: October 8, 2020

Re: Improvement District No. BR-19-A1 – Change Order #11

Background:

Improvement District No. BR-19-A1 is a cost participating project between the North Dakota Department of Transportation and the City of Fargo for the reconstruction of Main Avenue from Broadway to University Drive. Portions of this project including the water main, sanitary sewer, and the landscaping structural soil are 100% City funds.

Dakota Underground is the prime contractor.

Change Order #11 – Request to Modify Contract Language for Full Incentive

This Change Order is for formal modification to the contract language for full incentive as approved by PWPEC on September 14, 2020 to read:

> If all work needed to open the roadway safely to the traveling public, with exception of DMS Sign, HAWK, removals of control box, and pedestrian signs on the project is completed on or before October 16, 2020 an incentive payment of $10,000 per calendar day for each day before October 16 that all work is complete. The maximum incentive payment for all work completed on or before October 16, 2020 will be $400,000. Holidays and Sundays will be counted as calendar days for application of the incentive.

There is no other change associated with this Change Order.

Recommended Motion:

Approve Change Order #11 for Improvement District BR-19-A1.

SEO/klb
Attachment

C: Thomas Knakmuhs

REPORT OF ACTION

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Improvement District No. BR-19-A1 Type: Contract Language Modification for Incentive

Location: Main Ave, Broadway to University Dr Date of Hearing: 9/14/2020

Routing	Date
City Commission	9/21/2020
PWPEC File	X
Project File	Scott Olson

The Committee reviewed communication from Project Engineer, Scott Olson, regarding a request to modify the contract language for incentive.

Dakota is requesting that they be credited with the full incentive, while minor items remained past the target date, the roadway is 100% functional. The remaining items have been completed. Engineering staff is in agreement with Dakota's request and recommends modifying the contract language as follows:

> If all work needed to open the roadway safely to the traveling public, with exception of DMS Sign, HAWK, removals of control box, and pedestrian signs on the project is completed on or before October 16, 2020 an incentive payment of $10,000 per calendar day for each day before and including October 16 that all work is complete. The maximum incentive payment for all work completed on or before October 16, 2020 will be $400,000. Holidays and Sundays will be counted as calendar days for application of the incentive.

On a motion by Bruce Grubb, seconded by Kent Costin, the Committee voted to recommend approval of the modifications to the contract language as specified above.

RECOMMENDED MOTION
Concur with the recommendations of PWPEC and approve the modifications to the contract language.

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

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

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

ATTEST:

Brenda E. Derrig, P.E.
City Engineer

THE CITY OF Fargo FAR MORE

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

Memorandum

To: Members of PWPEC

From: Scott Olson, Project Engineer

Date: September 11, 2020

Re: Improvement District #BR-19-A1 – Request to Modify the Contract Language for Full Incentive

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Background:
Improvement District BR-19-A1 is a cost participating project between the North Dakota Department of Transportation and the City of Fargo for the reconstruction of Main Avenue from Broadway to University Drive.

Dakota Underground (Dakota) is the prime contractor.

As described to PWPEC at the previous meeting, there were two separate incentives approved by PWPEC on August 19, 2019. The first was for $5,000 per day, up to a maximum incentive of $100,000, for the portion from Broadway to 8th Street. Dakota Underground earned the full $100,000 in incentive for this portion by completing the phase more than 20 days ahead of schedule. The second incentive is for $10,000 per day, up to a maximum incentive of $400,000, for completing the entire project prior to October 16, 2020. The target completion date to receive full incentive is September 6, 2020. The current contract language for the overall project incentive reads as such:

> If all work on the project is completed on or before October 16, 2020 an incentive payment of $10,000 per calendar day for each day before, and including October 16, that all work is complete. The maximum incentive payment for all work completed on or before October 16, 2020 will be $400,000. Holidays and Sundays will be counted as calendar days for application of the incentive.
>
> Any changes in the work, including but not limited to changed conditions, added items of work, increased quantities, or increased calendar days will not result in adjustments to either incentive date, or other incentive stipulations. The elimination of work items, decreases in quantities, or changes resulting in a reduction of the scope of work may result in the incentive date being moved to an earlier date, and changes to the incentive stipulations.

The roadway was fully updated to traffic on the evening of September 5, 2020.

After the last PWPEC meeting, Dakota was notified by a crucial subcontractor that employees had tested positive for Covid-19, and that other employees on the Main Avenue project will be quarantined pending individual test results. Once the subcontractor was able to recommence the work they had lost approximately three days of productivity. Once Dakota completed the bulk of the contract work they opened the roadway on the target day, as the outstanding items to be completed by the subcontractor can be completed under traffic. These outstanding items include:

- Dynamic Message Sign (DMS) final connection and start-up
- High-Intensity Activated Crosswalk Beacon (HAWK) System install and start-up at crosswalk east of 10th Street Bridge
- Remove old control box at northwest corner of Main Avenue and University Drive
- Pedestrian crossing signs west of 7th Street

These items were expected and have been completed as of today, September 10, 2020. Dakota is requesting that they be credited with the full incentive because, while minor items remained past the target date, the roadway is 100% functional. The HAWK System and the DMS Boards are a new feature to Main Avenue, so not a "necessity" and the removal of the old control box at Main Avenue and University is an item that can be done at any time. Had the Covid-19 infection not happened this work was scheduled (and expected) to be completed between Tuesday and Friday of last week. The pedestrian crossing signs are extra items that were requested by the DOT the morning of September 8.

Engineering staff is in agreement with Dakota's request and support that the contract language be modified to read that all work needed to open the roadway safely to the traveling public must be completed to receive the incentive, this excludes the DMS sign, HAWK, removal of a control box and pedestrian crossing signs.

Recommended Motion:
Approve Engineering staff recommendation to modify the contract language:
If all work *needed to open the roadway safely to the traveling public, with exception of DMS Sign, HAWK, removal of control box, and pedestrian signs* on the project is completed on or before October 16, 2020 an incentive payment of $10,000 per calendar day for each day before and including October 16 that all work is complete. The maximum incentive payment for all work completed on or before October 16, 2020 will be $400,000. Holidays and Sundays will be counted as calendar days for application of the incentive.

Attachments

C: Thomas Knakmuhs
Brenda Derrig

Bob Nelson

From: Kelsch, Aaron W. <akelsch@nd.gov>
Sent: Wednesday, September 9, 2020 8:37 AM
To: Bob Nelson; Pederson, Kyle; Jared Heller; Casey Aakre
Cc: James Mickelson; jrick@fargond.gov
Subject: Relocate University Drive Fiber Pull Box

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

There was some discussion yesterday about relocating the existing fiber optic pull box that is sticking out of the ground near the old signal cabinet in the NW quadrant of University Drive and Main Ave. We would like to have this replaced with the newer style splice vault that is being used on the project to fit the splice cases and allow for future expansion. We would also like this moved to the west to where the existing grade is flatter. We can keep track of time and materials to complete this extra work and pay for it that way if that works for everyone.

Thanks,

Aaron Kelsch
Transportation Project Manager
NDDOT – Fargo District
503 38th St S
Fargo, ND 58103
(701) 799-1249
akelsch@nd.gov

DAKOTA
UNDERGROUND CO
MUNICIPAL AND HEAVY CONTRACTORS
4001 15 Avenue N. W. • Fargo, ND 58102 • Phone (701) 282-9753 • Fax (701) 282-0016

September 10, 2020

Scott Olson
City of Fargo Engineering
City Hall
Fargo, ND

Re: CPU-NHU-8-010(041)939 -- PCN 21170 -- Delay due to COVID-19

Scott

Early last week, one of our key subcontractors, Moorhead Electric, learned that a few of their employees tested positive for the COVID-19 virus. To get a handle on their situation and to prevent the potential spread of the virus, Moorhead Electric's management chose to have all of their employees cease working on projects and immediately get tested. We were notified of this decision at 7:30 PM on Tuesday 9/1/20. While we were deeply disappointed with this decision, we understand it was the right thing to do under the current pandemic we are dealing with.

MEI's employees were tested on Wednesday morning 9/2/20. Once an employee received a negative test report, they were allowed to return to work. Because of this protocol, MEI was not available to finish their work on our Main Avenue project from Wednesday through Thursday of last week. (They did have a foreman from an out of town project that performed some work on Thursday afternoon.) Workmen began getting their negative test results back during the day on Friday, and began to return to work during the day; had three people by noon Friday and added workmen as test results came back negative through Saturday.

The date for achieving the maximum incentive on this project was the end of day September 6th, or midnight last Sunday night. All essential work items necessary to provide a safe roadway for the traveling public and pedestrians were completed by Friday afternoon on September 4th. These included; pavement marking, permanent signing, street lighting, seeding, tree/shrub plantings, and traffic signals with pedestrian push button crosswalks at all signalized

intersections. Traffic control devices were removed and the project was fully opened to traffic on Friday evening, 9/4/20.

Items of contract work that were not completed by Sunday evening were:

Startup/programming the DMS message boards. Daktronics was originally scheduled to arrive on site mid last week but were cancelled due to Moorhead Electric's situation with no employees available at that time. They were rescheduled for Tuesday, 9/8.

The HAWK pedestrian crosswalk signal system. This crosswalk is located midblock between 9th and 10th Street. This crosswalk did not exist prior to this project, and with McDonalds closed, it is currently not being used by many pedestrians. For these reasons, MEI was directed to use their limited resources to complete the street lighting and pedestrian push button at the 8th Street intersection (push button was held up due to the delay in the SW corner of 8th Street with the foundation repairs to 1 – 8th Street).

Removal of the out of service signal control cabinet and base located in the NW corner of University Drive and Main. This area is out of the sidewalk, north of the storm water lift station. Again, since this area does not interrupt any pedestrian movement, it was not prioritized due to MEI's limited labor staff last week. Also, the City has requested that an existing quazite vault be relocated to the spot where the old control once stood. So, it was decided to complete both tasks at the same time.

We contend that these work items would have been completed last week if not for the loss of MEI's crew for over two days due to the COVID-19 virus. We fully opened the project for the safe use by the public two days earlier than the full incentive required. For these reasons we request exceptions be made for the outstanding work items that were delayed due to the COVID-19 virus.

Thank you for your consideration.

Sincerely,

Dakota Underground Company

Bob Nelson

North Dakota Department of Transportation
Change Order

Change Order No: 11
SubProject: 3 CITY WATER AND SANITARY SEWER

Project: CPU-NHU-8-010(041)939 PCN: 21170
County: Cass

For: PORTLAND CEMENT CONCRETE PAVEMENT, CURB & GUTTER, ST

Contractor: DAKOTA UNDERGROUND COMPANY
4001 15TH AVE N
FARGO, ND 58102-2832

Original Contract Amount:
$11,514,801.74

Date Created: 10/05/2020 Date Approved:

Spec No	Code No	Item of Work	Unit	Original Quantity	+ or - Quantity	Unit Price	Increase Amount	Decrease Amount
Net Increase or Decrease to Date			35,807.68	Part	43,031.36	Non-Part	TOTALS	
						NON-PARTICIPITING		
						PARTICIPATING		

Due to This Change, the Contract Time:
NO CHANGE.

Classification

Administrative Change

EXPLANATION OF CHANGE IN PLAN RECOMMENDED

If the federal funds authorized in the cost participation agreement with the local agency is exceeded and federal funds are not available for this change, the local agency will assume the total cost of this change order.

This change order will modify the requirements for earning incentive for early completion of the project from what is given in the third paragraph of SP 922(14) Contract Time for Completion-Incentive to the following: "If all work needed to open the roadway safely to the traveling public, with exception of DMS Sign, HAWK, removal of control box, and pedestrian signs on the project is completed on or before October 16,2020 an incentive payment of $10,000 per calendar day for each day before and including October 16 that all work is complete. The maximum incentive payment for all work completed on or before October 16, 2020 will be $400,000. Holidays and Sundays will be counted as calendar days for application of the incentive."

See the attached documentation for the contractor's request and the City of Fargo's recommendation to modify the contract language.

Bob Nelson 10/5/2020
CONTRACTOR DATE

( ) Approval Recommended ( ) Approved
PROJECT ENGINEER DATE

CITY/COUNTY/OTHER OFFICIAL DATE

( ) Approval Recommended ( ) Approved
DISTRICT ENGINEER DATE

REPRESENTING DATE

( ) Approval Recommended ( ) Approved
OFFICE OF OPERATIONS DATE

REPORT OF ACTION

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

34

Improvement District No. BN-20-K1

Type: Change Order #1 & Time Extension

Location: Golden Valley 4th Addition

Date of Hearing: 10/12/2020

Routing	Date
City Commission	10/19/2020
PWPEC File	X
Project File	Jason Leonard

The Committee reviewed the accompanying correspondence from Project Manager, Jason Leonard, for Change Order #1 in the amount of $12,151.53, bringing the total contract amount to $2,691,361.53, for additional work, along with the associated time extension as described below:

Original Completion Dates	Revised This Memo
Interim – October 1, 2020 Substantial – October 15, 2020	Interim – October 5, 2020 Substantial – October 26, 2020

Staff is recommending approval of Change Order #1 and the associated time extension.

On a motion by Bruce Grubb, seconded by Kent Costin, the Committee voted to recommend approval of Change Order #1 and the time extension as described above to Ryan Contracting.

RECOMMENDED MOTION

Concur with recommendations of PWPEC and approve Change Order #1 in the amount of $12,151.53, bringing the total contract amount to $2,691,361.53 and the associated time extension to Ryan Contracting.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: Special Assessments

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

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

ATTEST:

Brenda E. Derrig, P.E.
City Engineer

C: Kristi Olson

THE CITY OF Fargo FAR MORE

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

Memorandum

To: PWPEC

From: Jason Leonard, Project Engineer

Date: October 8, 2020

Re: Improvement District No. BN-20-K1 – Change Order #1 and Time Extension

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Background:

Improvement District No. BN-20-K1 is for Sanitary Sewer, Water Main, Storm Sewer, Paving, Street Lights and Site Grading & Incidentals on 65th Avenue South, 66th Avenue South, 67th Avenue South, 26th Street South, and Toronto Drive South in the Golden Valley 4th Addition.

Ryan Contracting is the Prime Contractor for this project.

After the installation and videoing of the 21" storm sewer on 65th Avenue South, the existing storm sewer stub from 25th Street South had severe settlement near the existing sanitary sewer crossing. In order for the newly installed pipe to function properly, the Contractor repaired the sag in the pipe. The cost to repair the pipe was $6,281.72 and 1 working day time extension to the Interim Completion Date.

During the final grading of the storm sewer along Cass County Drain 53 it was determined that an additional rear yard inlet was required to drain the storm water runoff. The Contractor installed 16 LF of 12" PVC pipe and an RDI catch basin for a cost of $5,869.81 and 1 additional working day time extension to the Interim Completion Date.

Weather delay time extension. For the duration of the contract from June 2020 to August 2020, it was anticipated that 9 calendar days were going to be lost due to weather. The actual days lost due to weather on Improvement District No. BN-20-F1 was 5 calendar days. No additional calendar days will be added to the Final and Substantial Completion Dates for rain delays.

Recommended Motion:

Approve Change Order #1 in the amount of $12,151.53 and the time extension to the Interim and Substantial Completion Dates as shown below:

Original Completion Dates	Revised This Memo
Interim – October 1, 2020 **Substantial – October 15, 2020**	**Interim – October 5, 2020** **Substantial – October 26, 2020**

JTL/klb

Attachments

THE CITY OF Fargo FAR MORE

CITY OF FARGO
ENGINEERING DEPARTMENT
CHANGE ORDER REPORT

Improvement District No BN-20-K1 **Change Order No** 1

Project Name Sanitary Sewer, Water Main, Storm Sewer, Paving, Site Grading, Street Lights & Incidentals

Date Entered 10/8/2020 **For** Ryan Contracting

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

EXPLANATION OF CHANGE: Change Order #1 - Time Extension

After the installation and videoing of the 21" storm sewer on 65th Avenue South, the existing storm sewer stub from 25th Street South had severe settlement near the existing sanitary sewer crossing. In order for the newly installed pipe to function properly the Contractor repaired the sag in the pipe. The cost to repair the pipe was $6,281.72.

During the final grading of the storm sewer along Cass County Drain 53 it was determined that an additional rear yard inlet was required to drain the storm water runoff. The Contractor installed 16 LF of 12" PVC pipe and an RDI catch basin for a cost of $5,869.81.

Section	Line No	Item Description	Unit	Orig Cont Qty	Prev C/O Qty	Prev Cont Qty	Curr C/O Qty	Tot Cont Qty	Unit Price ($)	C/O Ext Price ($)
Storm Sewer	34	F&I Inlet - Round (RDI) Reinf Conc	EA	15.00	0.00	15.00	1.00	16.00	1,600.00	1,600.00
	38	F&I Pipe 21" Dia Reinf Conc	LF	201.00	0.00	201.00	16.00	217.00	53.00	848.00
	46	F&I Pipe 12" Dia	LF	1,362.00	0.00	1,362.00	16.00	1,378.00	39.00	624.00
	100	Extra - StormSewers	LS	0.00	0.00	0.00	1.00	1.00	7,579.53	7,579.53
	101	Connect Pipe to Exist Structure	EA	0.00	0.00	0.00	1.00	1.00	1,500.00	1,500.00
									Storm Sewer Sub Total ($)	12,151.53

Summary

Source Of Funding	Special Assessments
Net Amount Change Order # 1 ($)	12,151.53
Previous Change Orders ($)	0.00
Original Contract Amount ($)	2,679,210.00
Total Contract Amount ($)	2,691,361.53

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

CONTRACT TIME

THE CITY OF Fargo FAR MORE

CITY OF FARGO
ENGINEERING DEPARTMENT
CHANGE ORDER REPORT

Current Substantial Completion Date	Current Final Completion Date	Additional Days Substantial Completion	Additional Days Final Completion	New Substantial Completion Date	New Final Completion Date
10/15/2020		11.00	0.00	10/26/2020	

Description

1 Working Day added to the Interim Completion Date to repair sag in the pipe

1 Working Day added to the Interim Completion Date to add the RDI and Pipe

In the LOMR plans the existing clay stockpile on block 6 within the Golden Valley 4th Addition was intended to be used for the LOMR fill of the lots. Miscommunication of the ownership of the existing clay pile between the Developer and the previous land owner delayed the availability of the fill by 6 working days. The Contractor has agreed to extend the substantial completion date for the LOMR work and no additional days to the final completion date

APPROVED 10/9/2020

For Contractor Beth Tatge *Beth Tatge*

Title CFO

APPROVED DATE

Department Head

Mayor 10/14/2020

Attest

RYAN CONTRACTING

October 7, 2020

Sent Via: Email

City of Fargo
Attn: Jason Leonard
200 North 3rd Street
Fargo, ND 58102

RE: **FARGO BN-20-K1**
Fargo, ND (RCC #1113)

Dear Jason:

Please take this letter as our formal request for an extension of time to complete the above referenced project.

We performed additional work that was not on the plans. This additional work caused us delay in completing the contract work. We are requesting an extension of 4 days to our completion date. Invoice number 1113-20-1 in the amount of $5,869.81 included cutting into existing storm manhole, added a catch basin, poured an invert and backfilled. Invoice number 1113-20-2 in the amount of $6,281.72 included fixing a sag in the existing 21" RCP over an existing sewer ditch, installed rock, poured cement collars and backfilled.

Thank you for your time on this matter. If you have any questions or comments, please do not hesitate to contact us.

Sincerely,

Beth R. Tatge
CFO/Secretary

BRT

Enclosures

26480 France Ave • P.O. Box 246 • Elko New Market, Minnesota 55020 • 952-894-3200 • Fax: 952-894-3207

Time & Material Cost Report

INVOICE 1113-20-1

RYAN CONTRACTING

Billing Date 10/7/2020

PO Box 246; 26350 France Ave., Elko, MN 55020 (952)894-3200

Project # & Name: Fargo BN-20-K1
Project Owner: City of Fargo
Bill To: City of Fargo

Description of Work: Cut into existing storm manhole and put in a catch basin, pour invert and backfill

Due Upon Receipt; 1.5% per month

Date of work Performed: October 1, 2020
Worksheet # 9313.00

Description	*Unit*	*Rate*	*Units*	*Extension*
LABOR				
Supt.	HR	$130.00	0.00	$0.00
Foreman	HR	$116.00	2.00	$232.00
Foreman OT	HR	$174.00	1.00	$174.00
Laborer	HR	$97.00	6.00	$582.00
Laborer OT	HR	$145.50	3.00	$436.50
Operator	HR	$103.00	4.00	$412.00
Operator OT	HR	$154.50	2.00	$309.00
EQUIPMENT				
400 Komatsu Exc	HR	$115.00	3.00	$345.00
950 Loader	HR	$88.00	3.00	$264.00
D6 Dozer	HR	$120.00	0.00	$0.00
Saw	HR	$110.00	1.00	$110.00
Bobcat	HR	$70.00	3.00	$210.00
	HR	$0.00	0.00	$0.00
SUBTOTAL L & E				$3,074.50
MATERIALS & MISC.				
12" SDR 35 Pipe	LF	$8.48	16.00	$135.68
12" Sand Collar	EA	$150.69	2.00	$301.38
Casting & Rings	EA	$398.45	1.00	$398.45
36"x27" CB and Base	EA	$1,501.88	1.00	$1,501.88
Concerete	CY	$246.10	1.00	$246.10
Sand	CY	$15.13	14.00	$211.82
SUBTOTAL MISC.				$2,795.31

Subtotal		$5,869.81
	0.00%	$0.00
Subtotal		$5,869.81
Total Amount Due		**$5,869.81**

After you have had a chance to review this request please call with any questions or concerns. Otherwise, we would greatly appreciate payment for the amount requested as soon as possible or added to our current pay estimate.

Respectfully submitted,
Ryan Contracting Co.

Beth R. Tatge
CFO

Time & Material Cost Report

INVOICE 1113-20-2

RYAN CONTRACTING

Billing Date 10/7/2020

PO Box 246; 26350 France Ave., Elko, MN 55020 (952)894-3200

Project # & Name: Fargo BN-20-K1
Project Owner: City of Fargo
Bill To: City of Fargo

Description of Work: Fix sag in existing 21" RCP over existing sewer ditch, cut pipe, install rock, pour cement collars, backfill
Inspector thought it would be 32 feet had us order 4 pipe only used 2 - restocking charge for returned pipe.

Due Upon Receipt; 1.5% per month

Date of work Performed: 10/1/20 & 10/2/20
Worksheet # 9320.00

Description	*Unit*	*Rate*	*Units*	*Extension*
LABOR				
Supt.	HR	$130.00	0.00	$0.00
Foreman	HR	$116.00	1.00	$116.00
Foreman OT	HR	$174.00	2.00	$348.00
Laborer	HR	$97.00	3.00	$291.00
Laborer OT	HR	$145.50	6.00	$873.00
Operator	HR	$103.00	4.00	$412.00
Operator OT	HR	$154.50	4.00	$618.00
EQUIPMENT				
400 Komatsu Exc	HR	$115.00	4.00	$460.00
950 Loader	HR	$88.00	3.00	$264.00
650 Dozer	HR	$110.00	2.00	$220.00
Saw	HR	$110.00	1.00	$110.00
Bobcat	HR	$70.00	3.00	$210.00
Compactor	HR	$77.00	2.00	$154.00
SUBTOTAL L & E				$4,076.00
MATERIALS & MISC.				
21" RCP	LF	$40.48	16.00	$647.68
Concrete	CY	$246.10	4.00	$984.40
1.5" Rock	CY	$15.13	28.00	$423.64
Restocking Charge	LS	$150.00	1.00	$150.00
		$0.00	0.00	$0.00
		$0.00	0.00	$0.00
SUBTOTAL MISC.				$2,205.72

Subtotal		$6,281.72
	0.00%	$0.00
Subtotal		$6,281.72
Total Amount Due		**$6,281.72**

After you have had a chance to review this request please call with any questions or concerns. Otherwise, we would greatly appreciate payment for the amount requested as soon as possible or added to our current pay estimate.

Respectfully submitted,
Ryan Contracting Co.

Beth R. Tatge
CFO

REPORT OF ACTION

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

35

Improvement District No. BN-21-A1 Type: Private Utility Relocation

Location: 64th Ave S from 33rd St – 38th St Date of Hearing: 10/12/2020

Routing	Date
City Commission	10/19/2020
PWPEC File	X
Project File	Jason Leonard

The Committee reviewed a communication from Project Engineer, Jason Leonard, regarding the relocation of Xcel Energy gas utility. Improvement District No. BN-21-A1 is for the new construction of urban roadway with an overpass at Interstate 29. This described work will require the relocation of private utilities contained in an existing utility easement along the corridor.

The following cost estimate from Xcel Energy:

- Xcel Energy **- $72,491.30**

Staff is seeking approval to pay Xcel Energy $72,491.30 for their utility relocation.

On a motion by Bruce Grubb, seconded by Ben Dow, the Committee voted to approve the estimated payment of $72,491.30 to Xcel Energy for the relocation of their gas utility.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve the estimated payment of $72,491.30 to Xcel Energy based on provided preliminary estimate for the relocation of their gas utility.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: Fed. Funds, Sales Tax & Special Assessments

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

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

ATTEST:

Brenda E. Derrig, PE
City Engineer

C: Kristi Olson

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

Memorandum

To: Members of PWPEC

From: Jason Leonard, Project Engineer

Date: October 1, 2020

Re: Improvement District No. BN-21-A1 – Private Utility Relocation

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Background:

Improvement District No. BN-21-A1 is for new construction of paving and incidentals on 64th Avenue South from 33rd Street South to 38th Street South. As part of this project, we will upgrade 64th Avenue South (33rd Street South to 38th Street South) from a section line minimum maintenance gravel roadway section to a 3-lane urban concrete street section with an overpass at Interstate 29. This described work will require the relocation of an Xcel Energy private utility line contained in the existing utility easement along the corridor.

The following cost estimate from Xcel Energy:

- Xcel Energy - **$72,491.30**

Attached for your review is KLJ's Xcel Energy relocation reimbursement recommendation and the relocation map. If the associated cost estimate is approved to relocate the utility in conflict, an agreement between the City of Fargo and Xcel Energy will be created to move forward with the relocation of the utilities.

Recommended Motion:

Approve estimated payment of $72,491.30 to Xcel Energy based on provided preliminary estimates for the relocation of the above-mentioned utility.

JTL/jmg
Attachments

C: Scott Middaugh

3203 32nd Avenue South, Suite 201
Fargo, ND 58103-6242
701 232 5353
KLJENG.COM

September 29, 2020

Jason Leonard
City of Fargo
225 4th Street North
Fargo, ND 58104

Re: BN-21-A1/SU-IM-8-984(153)156 – Xcel Energy Relocation Reimbursement

Dear Mr. Leonard:

KLJ has been coordinating with Xcel Energy throughout the design and plan preparation process on the referenced project. The project will require Xcel to relocate an existing gas lines that runs north/south along the existing frontage road west of I-29. It will also require a relocation of an existing line running east/west along the north side of 64th Avenue west of I-29.

The existing north/south line is not located within an easement, therefore no reimbursement is recommended. The existing east/west line is located in an easement, therefore KLJ recommends reimbursement for that relocation and any relocation associated with that line. Xcel has provided an estimated cost of $72,491.30 for the relocation of their reimbursement eligible facilities, which KLJ concurs with. Please see the attached invoice and relocation route.

If you have any questions or comments, please feel free to contact me at 701.271.4871 or scott.middaugh@kljeng.com.

Sincerely,

KLJ

Scott Middaugh
Project Manager

Enclosure(s): Xcel Costs/Relocation Route
Project #: 14415104
cc: none

REPORT OF ACTION

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

36

Improvement District No. BR-21-A1 Type: Incentive/Disincentive

Location: 7th Avenue North, University - Broadway Date of Hearing: 10/12/2020

Routing	Date
City Commission	10/19/2020
PWPEC File	X
Project File	Rick Larson

The Committee reviewed a communication from Project Manager, Rick Larson, regarding incentives/disincentives for Improvement District No. BR-21-A1.

Due to the impact to the traveling public, Staff is recommending to incentivize the portion of the 7th Avenue North project. Staff recommends an incentive of $3,500/day for up to 30 days ahead of the 150-day completion for a total possible incentive of $105,000.

On a motion by Steve Sprague, seconded by Tim Mahoney, the Committee voted to recommend approval of an incentive of $3,500/day for a maximum of 30 days for a total incentive of $105,000 for the project.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve an incentive of $3,500/day for a maximum of 30 days for a total incentive of $105,000 for the project.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: State Funds, Utility Funds & Special Assessments

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

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

ATTEST:

Brenda E. Derrig, P.E.
City Engineer

THE CITY OF
Fargo
FAR MORE

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

October 7, 2020

To: Members of PWPEC

From: Rick Larson, Project Manager

Subject: Incentive/Disincentive for Improvement District No. BR-21-A

Background

In keeping with our commitment to make recommendations regarding incentives/disincentives for projects that impact arterial roadways, I am forwarding the following project recommendation for your consideration.

The project in question, BR-21-A is a Water Main Replacement, Street Reconstruction & Incidentals Project on 7th Avenue North from University Drive to Broadway. This project is scheduled for a bid opening of January 20, 2021 with a substantial completion date of September 25, 2021.

Due to the impact to the traveling public, staff is recommending to incentivize the overall 7th Avenue North project. Staff recommends an incentive of $3,500/day for up to 30 whole days ahead of the 150-day completion for a total possible incentive of $105,000. Staff does not recommend a disincentive for the project.

Recommended Motion

Approve an incentive of $3,500/day for a maximum of 30 days (Up to $105,000).

RJL/jmg