

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, September 19, 2022).

CONSENT AGENDA – APPROVE THE FOLLOWING:

- 1. Receive and file an Ordinance Relating to the International Building Code (Child Care Facility Bathtub/Shower Requirements).
- 2. 1st reading of an Ordinance Relating to Impounded Animals-Procedure for Impounding.
- 3. 2nd reading and final adoption of an Ordinance Relating to Wildlife Management Program-Regulations.
- 4. Findings of Fact, Conclusions and Order and Notice of Entry of Order for property at 924 5th Street South.
- 5. Applications for Games of Chance:
 - a. NDSU Saddle and Sirloin for a raffle board on 11/2/22.
 - b. Becky Atkins Benefit/DMF for a raffle on 11/10/22; Public Spirited Resolution.
 - c. Fargo Angels Hockey Club for a calendar raffle from 1/1/23 through 1/31/23 (daily).
 - d. United Way of Cass-Clay for a raffle on 10/31/22.
 - e. United Way of Cass-Clay for a raffle board on 10/20/22.
 - f. Project Pink for a raffle on 10/13/22.
- 6. Third Amendment to Lease Agreement with Downtown Community Partnership.
- 7. Second Amendment to Service Agreement with Granicus, LLC.
- 8. Change Order No. 3 in the amount of \$6,782.31 for Project No. UR-21-A1.
- 9. Rejection of bids for Project No. FM-21-A1.
- 10. Additional funds for the Mercantile PD Substation and Interstate Parking Offices build out in the amount of \$59,373.00.
- 11. Bid award and contract for PD Headquarters Media Room expansion (RFP22106).
- 12. Contract Amendment with EAPC for the remodeling of Fire Station No. 2 and construction of Fire Station No. 8 (RFQ22059).

- Page 2¹³.
13. Agreement for Services with Fargo-Moorhead Metropolitan Council of Governments.
 14. Notice of Grant Award with the ND Department of Health and Human Services for Community Coalition (CFDA #93.991).
 15. Notice of Grant Award Amendment with the ND Department of Health and Human Services for the WIC program (CFDA #10.557).
 16. Amendment to the Agreement for Services with Annie Wood.
 17. Agreement for Services with AE2S Communications
 18. Increase the vacation maximum accrual carryover to 320 hours and a one-time vacation payout based on the proposed tiered system.
 19. Dental Insurance renewal effective 1/1/23.
 20. Set October 17, 2022 at 5:15 p.m. as the date and time for a hearing on a dangerous building at 509 21st Street North.
 21. Resolutions Approving the following Plats:
 - a. Simonson Companies Third Addition.
 - b. Timber Parkway Eighth Addition.
 - c. Timber Parkway Ninth Addition.
 - d. Craigs 16th Street Addition.
 - e. Peterson Second Addition.
 22. Receive and file the August 2022 Traffic Enforcement Efforts.
 23. ND Department of Transportation Traffic Safety Contract for Click It or Ticket, Speed Enforcement, Distracted Driving Enforcement, Alcohol Enforcement, Underage Enforcement and Media (CFDA #s 20.616 and 20.600) and Agreement for Participation in the ND Highway Safety Plan.
 24. Bid award for the Fargo Police Department Indoor Firearms Range Upgrade (RFP22100).
 25. Third Addendum to Sewer Agreement with the City of Reile's Acres.
 26. Contract with Ambassador Cleaning for Custodial Services at the Ground Transportation Center and Metro Transit Garage (RFP22167).
 27. Bid advertisement for Project No. WA2158.
 28. Sole Source Procurement with Ovivo USA, LLC in the amount of \$653,800.00 for Project No. WA2152.
 29. Change Order No. 1 in the amount of \$1,125.00 for Project No. WA2005.
 30. Bills.
 31. Change Order No. 3 in the amount of \$85,025.01 for Improvement District No. BN-22-A1.
 32. Negative Final Balancing Change Order No. 1 in the amount of -\$16,657.35 for Improvement District No. BN-21-B1.

- Page 33.
33. North Dakota Department of Transportation Cost Participation, Construction and Maintenance Agreement LPA Federal Aid Project (Improvement District No. BN-23-A1).
 34. Permanent Easement (Sanitary Sewer) with the ND State Board of Higher Education on Behalf of North Dakota State University Agriculture and Applied Science (Improvement District No. BN-22-C1).
 35. Create Improvement District No. BN-23-A.
 36. Contract and bond for Improvement District No. BN-22-C1.

REGULAR AGENDA:

37. **RESIDENT COMMENTS (Fargo residents will be offered 2.5 minutes for comment with a maximum of 30 minutes total for all resident comments. Residents who would like to address the Commission, whether virtually or in person, must sign-up at FargoND.gov/VirtualCommission).**
38. ***Public Input Opportunity* - PUBLIC HEARINGS - 5:15 pm:**
 - a. CONTINUED to 10/17/22 - Special Assessment List for Business Improvement District (BID) fees.
 - b. CONTINUED TO 10/17/22 - Special Assessment of unpaid utility bills.
 - c. Hearing on a dangerous building located at 2315 2nd Avenue South; continued from the 9/6/22 Regular Meeting.
 - d. Hearing on a dangerous building located at 714 12th Street North.
 - e. Application for a Class "FA" Alcoholic Beverage License for Puerto Vallarta LLC d/b/a Puerto Vallarta to be located at 4323 45th Street South, Suite 101.
 - f. Application filed by Roosevelt Family Lofts, LLC for a Payment in Lieu of Tax Exemption (PILOT) for a project to be located at 711 10th Avenue North which the applicant will use for market rate multi-family housing and property management services; continued from the 8/22/22, 9/6/22 and 9/19/22 Regular Meetings.
39. Presentation of alternatives for the property located at 1458 South River Road South.
40. Request to acquire 714 12th Street North.
41. Recommendation for 2nd reading and final adoption of an Ordinance Relating to Use and Care of Streets and Sidewalks.
42. Downtown Updates from the Downtown Community Partnership.
43. Downtown Safety Update.
44. Request from the Downtown Neighborhood Association to provide input/feedback on issues in Downtown.
45. Adopt the 2023 City of Fargo budget and proposed tax levies.

- Page 46. Applications for Property Tax Exemptions for Improvements Made to Buildings:
- a. Andrew and Katie Doeden, 2913 Peterson Parkway North (5 year).
 - b. Roger Buerkle and Laurie Vangsness, 3738 15th Street South (5 year).
 - c. C/D PKP Properties LLC, 1106 4th Avenue South (5 year).

47. Recommendation for appointments to the Human Rights Commission.

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

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

CITY ATTORNEY

Nancy J. Morris

ASSISTANT CITY ATTORNEYS

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

①

September 29, 2022

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

**RE: An Ordinance Amending Section 21-0102 Relating to Child Day Care Facility
Bathtub/Shower Requirements**

Dear Commissioners,

Enclosed for your approval is an ordinance amending Section 21-0102 of the Fargo Municipal Code relating to child day care facility bathtub/shower requirements. As you may recall, at its September 6th, 2022 meeting, the Board of City Commissioners directed the City Attorney's Office to amend city ordinance to exempt child day care facilities from bathtub/shower requirements found in the 2021 International Building Code (which is adopted by reference in Chapter 21 of the Fargo Municipal Code). As such, I am remitting to you for your approval, an ordinance amending Section 21-0102 of the Fargo Municipal Code.

Suggested Motion: I move to receive and file an ordinance amending Section 21-0102 of Chapter 21 of the Fargo Municipal Code relating to child care facility bathtub/shower requirements and to place the ordinance on for first reading at the next regularly-scheduled city commission meeting.

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

Sincerely,



Alissa R. Farol
Assistant City Attorney

Enc.

cc: Shawn Ouradnik, Inspections Director

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

AN ORDINANCE AMENDING SECTION 21-0102
OF CHAPTER 21 OF THE FARGO MUNICIPAL CODE
RELATING TO THE INTERNATIONAL BUILDING CODE

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

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

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

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

NOW, THEREFORE,

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

Section 1. Amendment.

Section 21-0102 of Chapter 21 of the Fargo Municipal Code is hereby amended to read as follows:

Table 2902.1 is hereby amended to read as follows:

No.	Classification	Description	Minimum Number of Required Plumbing Fixtures				
			Water Closets	Lavatories	Bathtubs/ Showers	Drinking Fountains	Other
5	Institutional	Adult day care and child day care	1 per 15	1 per 15	1 <u>*child day cares are exempt from this requirement.</u>	1 per 100	1 service sink

(Balance of table remains unchanged.)

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

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Section 2. Effective Date.

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

(SEAL)

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

2

ORDINANCE NO. _____

AN ORDINANCE AMENDING SECTION 12-0106
OF ARTICLE 12-01 OF CHAPTER 12 OF THE FARGO MUNICIPAL CODE
RELATING TO IMPOUNDED ANIMALS - PROCEDURE FOR IMPOUNDING.

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

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

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

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

NOW, THEREFORE,

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

Section 1. Amendment.

12-0106. - Impounded animals - procedure for impounding.

~~It shall be the duty of e~~Every police officer ~~or any~~ and other persons designated by the board of city commissioners ~~to~~ may apprehend any dog or cat found running at large contrary to the provisions of this article and ~~to~~ may impound such dog or cat in the city pound, if one is maintained, or other suitable place selected by the chief of police for the impounding of animals. The poundmaster or designated pound representative, upon receiving any dog or cat, shall make a complete registry, entering the breed, color, and sex of such dog or cat and whether licensed for the current year. If licensed, he shall enter the name and address of the owner and the number of the license tag. ~~Licensed animals shall be separated from unlicensed~~

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OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

animals.
Section 2. Effective Date.

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

Dr. Timothy J. Mahoney, Mayor

Attest:

Steven Sprague, City Auditor

First Reading:
Second Reading:
Final Passage:
Publication

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OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

3

ORDINANCE NO. _____

AN ORDINANCE AMENDING SECTIONS 12-0406 AND 12-0408 AND REPEALING
SECTIONS 12-0402, 12-0405, 12-0407 AND 12-0408 OF ARTICLE 12-04 OF
CHAPTER 12 OF THE FARGO MUNICIPAL CODE
RELATING TO WILDLIFE MANAGEMENT PROGRAM-REGULATIONS

1
2 WHEREAS, the electorate of the City of Fargo has adopted a home rule charter in accordance
3 with Chapter 40-05.1 of the North Dakota Century Code; and

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

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

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

11 NOW, THEREFORE,

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

13 Section 1. Amendment.

14 Section 12-0401 of Article 12-04 of Chapter 12 of the Fargo Municipal Code is hereby
15 amended as follows:

16 **12-0401. – City Wildlife Management Program.**

17 The board of city commissioners deems it necessary and appropriate to establish a
18 Wildlife Management Program within the city limits of Fargo. Through this program, the city
19 may authorize persons to use an archery device for purposes of meeting the goals of the
20 program. The board of city commissioners shall have authority to adopt such rules and
21 regulations as are necessary to implement the Wildlife Management Program.

22 Section 2. Repeal.

23 Section 12-0402 of Article 12-04 of Chapter 12 of the Fargo Municipal Code is hereby
repealed in its entirety.

Section 3. Repeal.

Section 12-0404 of Article 12-04 of Chapter 12 of the Fargo Municipal Code is hereby
repealed in its entirety.

Section 4. Repeal.

Section 12-0405 of Article 12-04 of Chapter 12 of the Fargo Municipal Code is hereby
repealed in its entirety.

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

Section 5. Amendment.

Section 12-0406 of Article 12-04 of Chapter 12 of the Fargo Municipal Code is hereby amended as follows:

1 **12-0406. Rules and regulations of participation.**

2 A. Eligibility for participation in the Wildlife Management Program is limited to persons
3 eighteen years of age or older is governed by applicable North Dakota Game and Fish
4 regulations.

5 B. ~~Any person participating in the Wildlife Management Program shall:~~

6 1. ~~Pass an archery safety and program training course, to include a proficiency test;~~

7 2. ~~Apply for and obtain a city of Fargo permit to participate in the program and pay~~
8 ~~any related fee;~~

9 3. ~~Obtain a North Dakota Game and Fish Department special archery license and~~
10 ~~tag;~~

11 4. ~~Obtain written permission from the landowner prior to entering upon private~~
12 ~~property and carry proof of such written authorization;~~

13 5. ~~Permanently mark all arrows in his or her possession with the participant's last~~
14 ~~name and city of Fargo permit number;~~

15 6. ~~Comply with any rules and regulations governing the Wildlife Management~~
16 ~~Program;~~

17 7. ~~Comply with all other applicable archery rules and regulations issued by the North~~
18 ~~Dakota Game and Fish Department; and~~

19 8. ~~Follow all North Dakota Game and Fish Department guidelines regarding field~~
20 ~~dressing and processing of the animal.~~

21 C. ~~Nothing in this article shall authorize the parking or standing of vehicles on private~~
22 ~~property without the consent of the property owner or the parking or standing of any~~
23 ~~vehicles in violation of the Fargo Municipal Code.~~

Section 6. Repeal.

Section 12-0407 of Article 12-04 of Chapter 12 of the Fargo Municipal Code is hereby repealed in its entirety.

Section 7. Repeal.

Section 12-0408 of Article 12-04 of Chapter 12 of the Fargo Municipal Code is hereby repealed in its entirety.

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

Section 8. Amendment.

Section 12-0409 of Article 12-04 of Chapter 12 of the Fargo Municipal Code is hereby amended as follows:

12-0409. Penalty for violations.

Any person, entity, or group of individuals who violate any provision of this article, other than the unlawful carrying, possession, or discharge of a weapon as described in section 10-0304, or who fail to follow any related rules or regulations, shall be charged with an infraction, punishable by a fine not to exceed ~~\$500.00~~1,000.00.

Section 7. Effective Date.

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

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

Attest:

Steven Sprague, City Auditor

First Reading:
Second Reading:
Final Passage:
Publication:

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CITY ATTORNEY

Nancy J. Morris

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ASSISTANT CITY ATTORNEYS

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

September 29, 2022

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

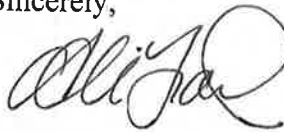
RE: Dangerous Building located at 924 5th Street South, Fargo, North Dakota

Dear Commissioners,

Enclosed for your review and approval are proposed Findings of Fact, Conclusions and Order, and Notice regarding the dangerous building proceeding for the property at 924 5th Street South. At its September 19, 2022 meeting, the report presented by Shawn Ouradnik, city of Fargo Inspections Director, was approved by the Board. As such, the City Attorney's Office was directed to prepare the appropriate Findings of Fact, Conclusions and Order, and Notice.

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

Sincerely,



Alissa R. Farol
Assistant City Attorney

Enclosure

cc: Shawn Ouradnik, Inspections Department

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

Property Address: 924 5th Street South, Fargo, North Dakota

Property Owner: Danial Curtis

A hearing was held before the Board of City Commissioners of the City of Fargo on the 19th day of September, 2022 regarding the property located at 924 5th Street South, Fargo, North Dakota. Shawn Ouradnik, city of Fargo Building Inspections Director, appeared on behalf of the city of Fargo Inspections Department and provided testimony as to the condition of the property. The property owner, Danial Curtis, did not appear. Several neighbors of the property additionally appeared and provided testimony.

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

FINDINGS OF FACT

1. That Danial Curtis is the owner of the following described real property located in the City of Fargo, County of Cass and State of North Dakota:

Lot Eleven (11), Block Three (3) of Woodruffs Addition to the city of Fargo

Street address: 924 5th Street South, Fargo, North Dakota, 58103

[hereinafter "Subject Property"].

2. That on July 26, 2022, Laura Langdahl, Code Enforcement Inspector to the city of Fargo, inspected the Subject Property and found the building, consisting of a two-story, wood-framed structure and a detached two-stall garage to be a dangerous building within the standards set forth in Article 21-04 of the Fargo Municipal Code and Section 111.1.5 of the International Property Maintenance Code concerning dangerous structures.

3. That the main residence on the Subject Property is uninhabitable, unsafe and is a dangerous building in the following respects: (a) unpermitted wiring and damage to a majority of electrical fixtures and outlets on all levels of the interior of the home; (b) exposed wiring and open electrical boxes in multiple rooms of the interior of the home; (c) accumulation of trash, rubbish, and junk in the interior of the home, including combustible liquids and materials in close proximity to exposed wires; (d) plumbing system is damaged and disconnected on all levels of the home; (e) garden hose is substituted for plumbing in the main level bathroom; (f) standing water on the floor of multiple rooms and on all levels of the home; (g) water damage to the ceiling in the kitchen of the main level; (h) multiple broken windows on all levels of the home and all windows are missing screens; (i) completely missing windows in basement; (j) evidence of fire damage in multiple areas of the home; (k) unvented, wall mounted heating element upstairs; (l) large beam on second floor shows evidence of water damage and lack of maintenance; (m) holes in fire barrier and sheetrock on all levels; (n) electrical cords running across and into standing water in basement; (o) evidence of shifting and settling of the foundation; (p) stairs to basement are leaning and uneven; and (q) large excavated hole in the yard.

4. That the garage structure is uninhabitable, unsafe and is a dangerous building in the following respects: (a) unpermitted wiring and damage to the majority of electrical fixtures and outlets in the whole structure; (b) exposed wiring and open electrical boxes; (c) accumulation of trash, rubbish, and junk inside of the garage; (d) appliances left out as junk in the alley on the east side of the garage; (e) large dent and damage to the foundation of the garage; and (f) bulge in the foundation on north facing wall of garage.

5. That the buildings on the Subject Property are uninhabitable, as detailed in Section 3 and 4, but continue to be occupied by the property owner and an unknown number of occupants.

6. That on August 26, 2022, James Haley, Deputy Assessor to the city of Fargo, inspected interior and exterior photographs of the residence and detached garage and determined that the estimated cost to repair the buildings would exceed fifty percent (50%) of the building values as established by the Fargo Assessment Department.

7. That the following conditions exist with respect to the Subject Property:
 - a. The structures have been damaged or deteriorated for more than fifty percent (50%) of their original value;
 - b. The buildings are unsafe, fail to provide the amenities essential to decent living, and are unfit for human habitation; and
 - c. The buildings are unsafe or dangerous to the health, moral safety or general welfare of the people of the City of Fargo.

8. That the information in the files of the Inspection Department stemming from various inspections of the property on or before July 26, 2022 in respect to the Subject Property is hereby accepted as true and correct.

9. That Notice of Dangerous Building was posted on the property on or about July 26, 2022, in accordance with Municipal Code § 21-0404. The Notice of Dangerous Building informed the owner and all occupants, if any, that the “dangerous buildings” must be vacated and remain vacated, and the buildings must be demolished within 30 days from the date of the notice. The notice also ordered that the buildings be secured by July 29, 2022 and remain secured to prevent any unauthorized entrance.

10. That the property owner and an unknown number of occupants have failed to vacate the buildings since July 26, 2022, and have failed to keep the buildings secured since July 29, 2022. On August 17, 2022, the city of Fargo erected a temporary fence around the property in an attempt to secure the buildings and deter any occupants from re-entry. The owner and an unknown number of occupants continue to enter the dangerous buildings despite having been ordered not to do so.

CONCLUSIONS AND ORDER

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

1. That the buildings located at 924 5th Street South, Fargo, North Dakota 58103, are hereby found to be “dangerous buildings.”
2. That the owner or anyone claiming to have an ownership interest in said buildings have not sufficiently presented cause why the “dangerous buildings” should not be demolished.
3. That despite being ordered that the buildings on the Subject Property should be demolished or necessary and valid permits be obtained within 30 days of the notice, the owner or anyone else claiming to have an ownership interest in said buildings have failed to do so.

IT IS HEREBY ORDERED that Danial Curtis or anyone else claiming an ownership interest, shall demolish the “dangerous buildings” located at 924 5th Street South, Fargo, North Dakota by November 18, 2022.

It is further ordered that if the owner fails to demolish said “dangerous buildings,” the City Auditor, Building Inspector and City Attorney are directed to act on behalf of the city of Fargo to cause the “dangerous buildings” 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, 2022.

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: DANIAL CURTIS AND ALL OTHER PERSONS HAVING INTEREST IN THIS
PROPERTY

RE: PROPERTY AT 924 5TH STREET SOUTH, FARGO, NORTH DAKOTA 58103

YOU ARE HEREBY GIVEN NOTICE that you shall have 30 days from the date of service of Findings of Fact and Conclusions and Order of the Board of City Commissioners of the City of Fargo (“Order”) upon you in which to appeal the Order to the District Court of Cass County, North Dakota, or to take such other legal action to enjoin the enforcement of this Order as you deem proper, all in accordance with the appeal procedure set forth in Fargo Municipal Code § 21-0412. You are further given notice that the “dangerous buildings” on the Subject Property may be demolished by the city of Fargo at any time on or after November 18, 2022.

DATED this _____ day of October, 2022.

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

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

ATTEST:

Steven Sprague, City Auditor



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

50

\$25.00
 Cass

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

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

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

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

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

Name of Organization or Group of People permit is issued to NDSU Saddle and Sirloin		Dates of Activity		If raffle, provide drawing date 11/02/2022	
Organization or Group Contact Person Emma Honeyman		Title or Position		Telephone Number 701-690-1191	
Business Address Hultz Hall 1300 Albrecht Blvd		City Fargo		State ND	ZIP Code 58105
Mailing Address (if different) Dept. of Animal Sciences Dept 7630, PO Box 6050		City Fargo		State ND	ZIP Code 58108-6050
Site Name (where gaming will be conducted) Shepperd Arena					
Site Address 1350 Albrecht Blvd		City Fargo		ZIP Code 58102	County Cass

Description and Retail Value of Prizes to be Awarded

Game Type	Description of Prize	Retail Value of Prize
Raffle Board	Cash	10,000
Total (limit \$40,000 per year)		10,000

Intended Uses of Gaming Proceeds
 Benefit for Conner Erickson Family

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

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

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

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

Organization or Group Contact Person

Name Emma Honeyman	Title	Telephone Number 701-690-1161	E-mail Address Emma.Honeyman@ndsu.edu
Signature of Organization or Group's Top Official <i>Caleb Hancock</i>		Title President	Date 9/19/2022



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

(56)

25.00
 CC
 9/27/22

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

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

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

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

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

Name of Organization or Group of People permit is issued to Becky Atkins Benefit/ DMF	Dates of Activity 11/10/2022	If raffle, provide drawing date 11/10/2022	
Organization or Group Contact Person Michael Dow	Title or Position Chairman	Telephone Number 7017305456	
Business Address 1429 3RD St N	City Fargo	State ND	ZIP Code 58102
Mailing Address (if different) 1706 1ST ST N	City Fargo	State ND	ZIP Code 58102
Site Name (where gaming will be conducted) El Zagal Shrine Center			
Site Address 1429 3RD St N	City Fargo	ZIP Code 58102	County Cass

Description and Retail Value of Prizes to be Awarded

Game Type	Description of Prize	Retail Value of Prize
Cash Raffles	10@ \$100, 10@ \$250, 10@ \$500 and 2@ \$1,000.	\$10,500
Gun Raffles	2@ \$900	\$1,800
Gun Raffles	2@ 1,000	\$2,000
Total (limit \$40,000 per year)		\$14,300

Intended Uses of Gaming Proceeds
 Defraying Medical Costs

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

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

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

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

Organization or Group Contact Person

Name Michael Dow	Title Chairman	Telephone Number 701-730-5456	E-mail Address mwdow@msn.com
Signature of Organization or Group's Top Official <i>Michael Dow</i>		Title Chairman	Date 09/27/2022



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

(50)

25.00
 CC
 9/27/20

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

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

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

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

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

Name of Organization or Group of People permit is issued to Fargo Angels Hockey Club	Dates of Activity	If raffle, provide drawing date 1/1/23-1/31/23 (Daily)	
Organization or Group Contact Person Brady Butenhoff	Title or Position Member	Telephone Number 701-212-3256	
Business Address PO Box 3258	City Fargo	State ND	ZIP Code 58108
Mailing Address (if different)	City	State	ZIP Code
Site Name (where gaming will be conducted) Angels Arena			
Site Address 1401 5th Ave N	City Fargo	ZIP Code 58102	County Cass

Description and Retail Value of Prizes to be Awarded

Game Type	Description of Prize	Retail Value of Prize
Raffle	Cash- Monday thru Saturday - \$50/Day	\$1300
Raffle	Cash- Sunday January 1, 8, 15, 22 - \$100/Day	\$400
Raffle	Cash- Sunday January 29th - \$300	\$300
	Total (limit \$40,000 per year)	\$2000

Intended Uses of Gaming Proceeds
 Pay for hockey equipment and ice rental

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

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

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

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

Organization or Group Contact Person

Name Brady Butenhoff	Title Member	Telephone Number 701-212-3256	E-mail Address Brady Butenhoff@yahoo.com
Signature of Organization or Group's Top Official Brady Butenhoff		Title Member	Date 9/27/28



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

5d

\$25.00
 cc
 9-28-22

Applying for (check one)

Local Permit Restricted Event Permit*

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

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

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

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

Name of Organization or Group of People permit is issued to United Way of Cass-Clay		Dates of Activity 10/24 10/28/22		If raffle, provide drawing date 10/31/22	
Organization or Group Contact Person Bella Lien		Title or Position Resource Development Mngr		Telephone Number 7015324612	
Business Address 4351 23rd Ave S		City Fargo		State ND	ZIP Code 58104
Mailing Address (if different)		City		State	ZIP Code
Site Name (where gaming will be conducted) Wanzek Construction					
Site Address 4850 32nd Ave S		City Fargo		ZIP Code ND	County 58104

Description and Retail Value of Prizes to be Awarded

Game Type	Description of Prize	Retail Value of Prize
Raffle	Grill package	295
Raffle	Hunting Package	560
Raffle	Recreation Package	125
Raffle	Tailgating package	1230
Total (limit \$40,000 per year)		2430

Intended Uses of Gaming Proceeds

Funds to helping fund programs for kids in poverty in Cass/Clay counties

Does the organization presently have a state gaming license? (If yes, the organization is not eligible for a local permit or restricted event permit and should call the Office of Attorney General at 1-800-326-9240)

Yes No

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

Yes No

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

No Yes - Total Retail Value: \$300.00 (This amount is part of the total prize limit of \$40,000 per year)

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

Yes No

Organization or Group Contact Person

Name Bella Lien	Title Resource Development Mngr	Telephone Number 7015324612	E-mail Address bliem@unitedwaycassclay.org
Signature of Organization or Group's Top Official <i>Bella Lien</i>		Title President & CEO	Date 9/28/2022



APPLICATION FOR A LOCAL PERMIT OR RESTRICTED EVENT PERMIT

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

50

CC
25.00
9/28/20

Applying for (check one)

Local Permit Restricted Event Permit*

Games to be Conducted

Raffle by a Political or Legislative District Party

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

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

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

Name of Organization or Group of People permit is issued to <u>United Way of Cass - Clay</u>		Dates of Activity <u>10/20/2022</u>		If raffle, provide drawing date <u>10/20/2022</u>	
Organization or Group Contact Person <u>Erica Johnson</u>		Title or Position <u>Senior Community Eng. Manager</u>		Telephone Number <u>701-237-5050</u>	
Business Address <u>4351 23rd Ave S</u>		City <u>Fargo</u>		State <u>ND</u>	ZIP Code <u>58104</u>
Mailing Address (if different) <u>PO Box 1609</u>		City <u>Fargo</u>		State <u>ND</u>	ZIP Code <u>58107-1609</u>
Site Name (where gaming will be conducted) <u>Delta Hotels Marriott</u>					
Site Address <u>1635 42nd St. SW</u>		City <u>Fargo</u>		ZIP Code <u>58103</u>	County <u>Cass</u>

Description and Retail Value of Prizes to be Awarded

Game Type	Description of Prize	Retail Value of Prize
Raffle Board	House of Colour - Color Analysis for 2	\$450.00
Raffle Board	Chef's Table for 6 people (food + bev.)	\$1,500.00
Raffle Board	Chloe Black Woody Bte Bag	\$1,790
Raffle Board	Louis Vuitton Clutch	\$1,600
Raffle Board	Vikings Tickets (4)	\$700
Total (limit \$40,000 per year)		\$6,100.00

Intended Uses of Gaming Proceeds

Does the organization presently have a state gaming license? (If yes, the organization is not eligible for a local permit or restricted event permit and should call the Office of Attorney General at 1-800-326-9240)

Yes No

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

Yes No

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

No Yes - Total Retail Value: 300.00 (This amount is part of the total prize limit of \$40,000 per year)

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

Yes No

Organization or Group Contact Person

Name <u>Erica Johnson</u>	Title <u>Senior Community Engagement Manager</u>	Telephone Number <u>701-237-5050</u>	E-mail Address <u>ejohnson@unitedwaycassclay.org</u>
Signature of Organization or Group's Top Official <u>[Signature]</u>		Title <u>Pres - CEO</u>	Date <u>9/26/2022</u>



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

5f

CC
 25.00
 9/29/22

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

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

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

Poker, Twenty-One, and Paddlewheels may be conducted Only with a Restricted Event Permit. Only one permit allowed per year.
LOCAL PERMIT RAFFLES MAY NOT BE CONDUCTED ONLINE AND CREDIT CARDS MAY NOT BE USED FOR WAGERS.

Name of Organization or Group of People permit is issued to PROJECT PINK		Dates of Activity 10/13/2022		If raffle, provide drawing date 10/13/2022	
Organization or Group Contact Person CHRIS MYRVOLD		Title or Position PRESIDENT		Telephone Number 701-306-776	
Business Address 3350 35th Ave S		City FARGO		State ND	ZIP Code 58104
Mailing Address (if different) N/A		City		State	ZIP Code
Site Name (where gaming will be conducted) 701 EATERIES					
Site Address 701 N UNIVERSITY DR		City FARGO		ZIP Code 58102	County CASS

Description and Retail Value of Prizes to be Awarded

Game Type	Description of Prize	Retail Value of Prize
RAFFLE	BLACKSTONE AND ACCESSORY PACKAGE	\$750
RAFFLE	NECKLACE	\$3000
Total (limit \$40,000 per year)		\$3750

Intended Uses of Gaming Proceeds
 100% of profits raised at Bras Off Broadway will provide direct support to local cancer patients by assisting with transportation costs.

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

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

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

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

Organization or Group Contact Person

Name Julie Kunka	Title Volunteer	Telephone Number 701-238-3204	E-mail Address tnjkunka@gmail.com
Signature of Organization or Group's Top Official <i>Chris Myrvold</i>		Title President	Date 9/27/2022

**AUDITOR'S OFFICE**

Fargo City Hall
225 4th Street North
PO Box 2471
Fargo, ND 58108
Phone: 701.241.8108 | Fax: 701.241.8184
www.FargoND.gov

October 1, 2022

To: Board of City Commissioners
Fr: Steven Sprague, City Auditor
Re: Downtown Community Partnership (DCP) Lease Agreement Amendment #3 – Civic Center Offices

The Downtown Community Partnership (DCP) currently leases office space from the City of Fargo in the Fargo Civic Center. The current lease agreement expires on December 31, 2022, and the DCP desires to extend the agreement for an additional one-year period (January 1, 2023 – December 31, 2023).

On September 4, 2020, the City and DCP executed an Amendment to the Lease Agreement ("Amendment #1") that restructured the monthly lease rate and common area maintenance (CAM) charge to collect deferred rent due to the COVID-19 pandemic. At this time, the DCP is current on all payments owed to the City and is in good standing.

Proposed Term

It is proposed that the current lease agreement be extended through December 31, 2023. The monthly lease rate in 2023 will be \$924.38, and the monthly CAM charge will be \$369.75. The Finance Committee approved Lease Agreement Amendment #3 on August 29, 2022, and the DCP approved on September 26, 2022 (attached).

Suggested Motion: Approve Lease Agreement Amendment #3 between the City of Fargo and Downtown Community Partnership.

Attachment: August 29, 2022 Finance Committee Report of Action
Lease Agreement Amendment #3 – City of Fargo/Downtown Community Partnership

THIRD AMENDMENT TO LEASE AGREEMENT

City of Fargo/Downtown Community Partnership

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

RECITALS:

- A. The subject of the Lease Agreement was, and is, that certain real property and building located on City-owned property commonly referred to as the Civic Memorial Auditorium, the second floor of which building is configured as office space. The demised square footage being referred to in the Lease Agreement and this Amendment as the "subject property," "premises" or "demised premises."
- B. The parties entered into an Amendment to the Lease Agreement on or about September 4, 2020, by which DCP exercised an option to extend the lease for a period of one year, ending year-end 2021, the parties agreed on December 13, 2021 to a one year extension for the period ending December 31, 2022 and the parties now wish to further amend the Lease Agreement to extend the lease for an additional one-year period ending December 31, 2023.

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

1. Extension of Lease for One year. The term of the Lease Agreement is hereby deemed to be extended through December 31, 2023, subject to the rent, including common area maintenance payments, and repayment of the said deferred rent as set forth below.
3. Rent - Common Area Maintenance. The sum of fixed minimum rent to be paid by DCP to the City, as set forth in Section 2.1 of the Lease Agreement shall be revised as follows:
 - 3.1 The base rent during the year 2023 shall be \$924.38 per month for the 1450 square feet of the demised premises as provided in the Lease Agreement.
 - 3.2 The common area maintenance (CAM) payment shall also remain during the year 2023 at the sum of \$369.75 per month, as provided in the Lease Agreement.
2. In all other respects, the terms of the Lease Agreement shall remain in full force and effect.
3. Effective Date. This agreement shall take effect upon the date last signed below.

(Remainder of Page Intentionally Left Blank)

Dated: _____

LESSOR:

CITY OF FARGO,
a North Dakota municipal corporation

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

ATTEST:

Steven Sprague, City Auditor

Dated: 9-26-22

LESSEE:

Downtown Community Partnership,
a North Dakota Non-Profit Corporation



By: Cindy Graffeo
Its: Executive Director



7

Executive Assistant Kember Anderson
Fargo City Hall
225 4th Street North
Fargo, ND 58102-4817
Phone: 701.241.8572 | Fax: 701.476.4136
Email: KAnderson@FargoND.gov
www.FargoND.gov

MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

FROM: EXECUTIVE ASSISTANT KEMBER ANDERSON

DATE: OCTOBER 3, 2022

SUBJECT: AMENDMENT TO SERVICE AGREEMENT WITH GRANICUS, LLC

Recently the City of Fargo approved the purchase of Agenda and Meeting Management Software from Granicus, LLC.

Granicus integrates with several of the Cities current software systems, one of which is Municode, who hosts our library of Ordinances. This integration will help in the ability to search for Ordinances within the Granicus system versus having two separate systems.

The Amendment is attached for your consideration.

RECOMMENDED MOTION: To approve the Second Amendment to the Granicus Service Agreement with Granicus, LLC.



408 Saint Peter Street, Suite 600
Saint Paul, MN 55102
United States

Amendment
Prepared for
Fargo ND

Second Amendment to the Granicus Service Agreement between Granicus, LLC and Fargo ND

This Second Amendment to the Granicus, LLC Service Agreement is effective on the date this document is signed and entered into by and between Granicus, LLC, a Minnesota Limited Liability Company d/b/a Granicus (hereinafter referred to as "Granicus"), and Fargo ND (hereinafter referred to as "Client"), with reference to the

WHEREAS, the Client and Granicus entered into an Agreement effective 04/04/2022 (the "Agreement"); and

WHEREAS, in addition to Client's existing solution, Client wishes to add certain products and services as detailed in Q-226727, which is attached as Exhibit A and incorporated herein by reference; and

NOW, THEREFORE, in consideration of the premises, the parties intend that the Agreement be amended as follows:

1. Compensation shall be amended to include the fees detailed in Exhibit A. Exhibit A is exclusive of applicable state, local, and federal taxes, which, if any, will be included in the invoice. It is the responsibility of the Client to provide applicable exemption certificate(s).
2. Except as amended by this Second Amendment, all other terms and conditions of the Agreement shall remain in full force and effect.
3. In the event of any inconsistency between the provisions of this Second Amendment and the documents comprising the Agreement, the provisions of this Second Amendment shall prevail.

IN WITNESS WHEREOF, the parties have caused this Second Amendment to be executed by their duly authorized representatives.

Agreement and Acceptance

By signing this document, the undersigned certifies they have authority to enter the agreement. The undersigned also understands the services and terms.

Fargo ND

Signature: _____

Name: _____

Title: _____

Date: _____

Attest: _____

Granicus

Signature: _____

Name: _____

Title: _____

Date: _____



408 Saint Peter Street, Suite 600
Saint Paul, MN 55102
United States

THIS IS NOT AN INVOICE

Exhibit A
Prepared for
Fargo ND

Exhibit A

ORDER DETAILS

Prepared By: Adam Nieder
Phone: \
Email: adam.nieder@granicus.com
Order #: Q-226727
Prepared On: 08/31/2022
Expires On: 10/25/2022

ORDER TERMS

Currency: USD
Payment Terms: Net 30 (Payments for subscriptions are due at the beginning of the period of performance.)
Current Billing Term
End Date: 04/03/2023

Order #: Q-226727
Prepared: 08/31/2022



PRICING SUMMARY

The pricing and terms within this Proposal are specific to the products and volumes contained within this Proposal.

One-Time Fees			
Solution	Billing Frequency	Quantity/Unit	One-Time Fee
Legistar - Add-On - MuniCode Integration - Setup	Upon Delivery	1 Each	\$0.00
SUBTOTAL:			\$0.00
New Subscription Fees			
Solution	Billing Frequency	Quantity/Unit	Annual Fee
Legistar Add-On - MuniCode Integration	Annual	1 Each	\$3,000.00
SUBTOTAL:			\$3,000.00

- Please note, annual fees for new subscriptions will be prorated to align to Client's then-current billing term. Exceptions include Recurring Captioning Services, SMS, and Targeted Messages.

PRODUCT DESCRIPTIONS

Solution	Description
Legistar Add-On - MuniCode Integration	Legistar Add-On - MuniCode Integration is for the Legistar\MuniCode integration which allows a user on InSite to search Legistar and MCC information simulataneously via a federated search. Searching on a key word will return results from both systems.

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REPORT OF ACTION

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Project No. UR-21-A1

Type: Change Order #3

Location: Citywide

Date of Hearing: 9/26/2022

<u>Routing</u>	<u>Date</u>
City Commission	10/3/2022
PWPEC File	X
Project File	Roger Kluck

The Committee reviewed the accompanying correspondence from Project Manager, Roger Kluck, related to Change Order #3 in the amount of \$6,782.31 for additional work.

Staff is recommending approval of Change Order #3 in the amount of \$6,782.31, bringing the total contract amount to \$162,035.31.

On a motion by Tim Mahoney, seconded by Steve Sprague, the Committee voted to recommend approval of Change Order #3 in the amount of \$6,782.31 to Northern Improvement.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve Change Order #3 in the amount of \$6,782.31 bringing the total contract amount to \$162,035.31 to Northern Improvement.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: Storm Sewer Utility

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

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

COMMITTEE

Tim Mahoney, Mayor
 Nicole Crutchfield, Director of Planning
 Steve Dirksen, Fire Chief
 Michael Redlinger, Interim City Administrator
 Ben Dow, Director of Operations
 Steve Sprague, City Auditor
 Brenda Derrig, City Engineer
 Terri Gayhart, Finance Director

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

ATTEST:

C: Kristi Olson

B. E. Derrig

Brenda E. Derrig, P.E.
City Engineer

Memorandum

To: Members of PWPEC

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

CC: Jody Bertrand, Division Engineer;

Date: September 22, 2022

Re: Project #UR-21-A1 Storm Sewer Repairs & Incidentals
Change Order #3

The project was advertised in February 2022, the project was awarded to Northern Improvement, and construction is underway.

When we were working on the Site 1 east slope repair we found an area of waste materials that may have contributed to the slide. It was determined in consultation with our geotechnical engineer that the waste material should be removed and re-placed. The Contractor has submitted a cost of \$6,782.31. Engineering feels the cost is reasonable and recommends approval.

Funding for this project will come from the Storm Sewer Utility.

Recommended Motion:

Approve Change Order #3 in the amount of \$6,782.31 to Northern Improvement.

Attachment



**CHANGE ORDER REPORT
STORM SEWER REPAIRS & INCIDENTALS
PROJECT NO. UR-21-A1
VARIOUS LOCATIONS**

Change Order No **3** Change Order Date **9/22/2022**
 Contractor **Northern Improvement Co**

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

EXPLANATION OF CHANGE Change Order # 3

During excavation of the slope failure within the Site 1 pond we encountered 45 cy of waste fill that was removed and hauled off site. The Contractor imported clay to replace the waste material and was directed to add clay to reduce the slope within the repair area to prevent future slides. The survey of the imported clay was 224.52 cy.

Section	Line No	Item Description	Unit	Orig Cont Qty	Prev C/O Qty	Prev Cont Qty	Curr C/O Qty	Tot Cont Qty	Unit Price (\$)	C/O Ext Price (\$)
Change Order 3	19	Fill - Import	CY	0	0	0	44.99	44.99	\$21.00	\$944.79
	20	Fill - Haul	CY	0	0	0	224.52	224.52	\$26.00	\$5,837.52
Change Order 3 Sub Total										\$6,782.31

Summary

Source Of Funding

Net Amount Change Order # 3 (\$)
 Previous Change Orders (\$)
 Original Contract Amount (\$)
 Total Contract Amount (\$)

storm sewer fund
 \$6,782.31
 \$13,331.00
 \$141,922.00
 \$162,035.31

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

APPROVED

For Contractor 
 Title VICE PRESIDENT

APPROVED DATE

Department Head

Mayor

Attest





HOME OFFICE
 FARGO, NORTH DAKOTA
 4000 12th Avenue N W
 58105-2846
 P.O. Box 2846
 Phone 701-277-1225
 Fax 701-277-1516

OFFICE AT
 BISMARCK, NORTH DAKOTA
 56502-1254
 P.O. Box 1254
 Phone 701-223-8685
 Fax 701-224-0937

OFFICE AT
 DICKINSON, NORTH DAKOTA
 58602-1035
 P.O. Box 1035
 Phone 701-226-5197
 Fax 701-225-0207

NORTHERN IMPROVEMENT COMPANY

Thomas McCormick, President/CEO
Steve McCormick, Executive Vice-President

DATE: 9/15/2022

TO: City of Fargo Engineering

RE: UR-21-A1
 Change Order 3 - Roer's Pond

Northern Improvement Company is requesting that additional compensation be paid base on the following:

Description	Qty.	Unit	Unit Price	Price
Excavation - Haul	44.99	CY	\$21.00	\$944.79
Import Fill	224.52	CY	\$26.00	<u>\$5,837.52</u>
			Total:	\$6,782.31

Respectfully Submitted,
 NORTHERN IMPROVEMENT COMPANY

Scott Pederson
 Estimator/Project Manager

(9)

September 28, 2022

Honorable Board of City
Commissioners
City of Fargo
Fargo, ND

Re: Project No. FM-21-A1

Dear Commissioners:

Bids were opened at 11:45 AM on Wednesday, September 28, 2022, for Flood Risk Management, Project No. FM-21-A1, located on University Drive South and 52nd Avenue South.

The bids were as follows:

Industrial Builders	\$3,098,935.50
Engineer's Estimate	\$2,199,297.25

The special assessment escrow is not required.

The low bid received exceeded the engineer's estimate by 40.91%. We recommend that all bids be rejected.

Sincerely,



Thomas Knakmuhs
Assistant City Engineer

TAK/klb



10

Facilities Department
225 4th Street North
Fargo, ND 58102
Phone: 701.298.6966
Email B&Gdept@fargoND.gov
www.FargoND.gov

Memorandum

To: Board of City Commissioners
From: Bekki Majerus, Director of Facilities Management
Date: October 3, 2022
Re: Additional PD Substation/Interstate Build Out Costs: Electrical, Low Voltage, Security

Dear Commissioners:

At the June 27, 2022 Commission meeting, the Commissioners approved the reallocation of funds from project PB0059: Mercantile Parking Ramp to Project BP0064: PD Substation and Interstate Parking Office Buildout. The funds in the account at that time were \$615,675.54. \$439,080.00 was encumbered for project management, design and construction. At the July 25, 2022 Finance and Commission meetings, the purchase of furniture for the spaces were approved in the amount of \$51,908.24, leaving a balance of \$124,687.30.

On September 26th, the Finance Committee approved the quotes totaling \$59,373.00 from that fund for electrical, low voltage and security costs for Project BP0064. Approval to use these additional funds will keep the project on schedule to be completed by October 31, 2022.

Recommended Motion:

Approve the additional funds to be used for Project BP0064: PD Substation and Interstate Parking Office build out costs in the amount of \$59,373.00.

REPORT OF ACTION

FINANCE COMMITTEE

Project No. PD Substation/Interstate Parking Office (BP0064) Type: Construction

Location: Mercantile Building 511, 515 4th Ave N

Date of Hearing: September 26, 2022

<u>Routing</u>	<u>Date</u>
City Commission	October 3, 2022

Background

At the June 27, 2022 Commission meeting, the Commissioners approved the reallocation of funds from project PB0059: Mercantile Parking Ramp to Project BP0064: PD Substation and Interstate Parking Office Buildout. The funds in the account at that time were \$615,675.54. \$439,080.00 was encumbered for project management, design and construction. At the July 25, 2022 Finance and Commission meetings, the purchase of furniture for the spaces were approved in the amount of \$51,908.24, leaving a balance of \$124,687.30.

Request

Facilities presented the costs for electrical and low voltage for the furniture as well as security costs for the Mercantile PD Substation and Interstate Parking spaces.

• Sun Electric, Inc: (AFB17044)	\$10,000.00
• ABT Data Technologies, Inc. (PBC16105)	\$30,060.00
• Johnson Controls (SSP22083)	\$12,995.00
• High Point Networks, LLC	\$ 6,318.00
Total	\$59,373.00

Facilities recommended approving the quotes received in order to proceed with the final phase of the buildout and keep the project on schedule to be completed by October 31, 2022.

Suggested Motion:

On a motion from Steve Sprague, seconded by Michael Redlinger, the Finance Committee voted to approve the quotes received and proceed with the remainder of the PD Substation/Interstate Parking buildout.



Facilities Department
225 4th Street North
Fargo, ND 58102
Phone: 701.298.6966
Email B&Gdept@fargoND.gov
www.FargoND.gov

Memorandum

To: Board of City Commissioners
From: Bekki Majerus, Director of Facilities Management
Date: October 3, 2022
Re: Bid Award for Police Department Headquarters Media Room Expansion (BP2201)

Dear Commissioners:

On August 10, 2022, Facilities Management issued a Request for Proposal (RFP) for the remodel of the Police Headquarters Media Room. Upon the closing of the RFP, one sealed response was received.

The bid was opened on September 20, 2022. The bid provided the required information and met the following bid criteria:

- Previous work experience
- Proposed work plan
- Fee schedule

Based on the review of this criteria, we recommend award of the project to Border Construction, LLC.

Recommended Action:

Award the contract for the Police Department Headquarters Media Room Expansion to Border Construction, LLC.

ATTACHMENT A

**City of Fargo
Fee Proposal Form**

Police Department Headquarters Media Room Expansion

Company: Border Construction, LLC

Bid Price: \$153,230.00
(One Hundred Fifty-Three Thousand Two Hundred and Thirty Dollars)

Hourly Rate: Carpenter: \$65.00
Laborer :\$45.00

Signature: 
Tom Jarvis

Title: President

Date: 09/13/22



4321 14th Ave N
 Fargo, North Dakota 58102
 p: 701.478.3113 f: 701.478.3133
 ND# 57847A

Project: Fargo Police Department Headquarters Media Room Expansion

RE: Previous Work Experience

We believe that every project is an opportunity to succeed: in design, quality, schedule and budget. We pride ourselves on completing each project with knowledge, care and great communication. With over 80 years of collective experience and a proven track record of delivering high-level projects, as a company and as individuals, we are driven by the idea that good enough is never good enough. We build, grow, develop and conduct our business with integrity and a commitment to living up to our word – whatever it takes. We bring principled leadership in our respective disciplines and work closely with our clients to provide seamless service from inception to completion. Throughout the entire construction process, you will be working directly with the owners of Border Construction, ensuring that the project will always be in the hands of those who are truly vested in ensuring a successful outcome.

Team Experience:

• **Tom Jarvis – President, Project Manager**

Founding member of Border Construction, bringing over 18 years of construction experience. Tom is responsible for overall business development, client relations and company financials. He is also responsible for leading the design-build process, reviewing proposals and executing contracts. During the construction process, his responsibilities include managing subcontractors, meeting with owners, cost analysis, budget and project schedule. Tom has extensive experience in managing complete building remodels, which include; Carilion Memorial Hospital, NASIC, Eisenhower Executive Office Building, Columbia Mall Plaza, No Bull Smokehouse, Sterling Management and Border Bank.

• **Dave Bartell – Vice President, Estimator**

Founding member of Border Construction, bringing over 25 years of construction experience. Prior to starting Border Construction, Dave was the Vice President and Senior Estimator for another large construction/development company in Fargo. Dave is responsible for providing pre-construction input, bidding out projects, job-cost, oversight of value-engineering, as well as establishing all final construction documents, budgets and schedules for Border Construction.

• **Chris Lizakowski – Project Superintendent**

Chris is responsible for the daily management of the construction site and the completion of assigned job projects on schedule and within budget. He supervises all field personnel, coordinates material delivery and storage, coordinates subcontractors and monitors the construction documents and specifications to see that they are completed accurately. Chris has over 38 years of hands-on experience. He worked as a foreman and finish carpenter at Industrial Builders for over 25 years until he joined our team at Border Construction in August 2020. He is focused, reliable, professional and motivated to satisfy clients with exceptional work.

Years in Business: 5

Examples of Similar Projects Completed:

Project Name	Address	Owner	Architect	Contract Amount
Sterling Management Office	4340 18 th Ave S Fargo, ND 58103	Sterling Properties, LLP	Wild CRG	\$3,228,856
NDSU – Hastings Hall	1320 Bolley Drive Fargo, ND 58105	North Dakota State University	Shultz & Associates	\$2,091,512
Valley Veterinary Hospital Remodel	3210 Main Ave Fargo, ND 58103	Valley Veterinary Hospital	Animal Arts	\$1,467,066
Border Bank Branch Remodel	3203 32 nd Ave S Fargo, ND 58103	Border Bank	Wild CRG	\$1,320,000
The Village Family Service Center Remodel	2701 12 th Ave S Fargo, ND 58103	The Village Family Service Center	BarnHaus	\$474,015

YWCA Emergency Shelter - 2nd Flr Remodel	3000 S University Dr Fargo, ND 58103	YWCA	Shultz & Associates	\$250,021
MN State Bookstore -- Fergus Falls	MState - Fergus Falls Campus	MState	YHR	\$185,800
MN State Dental Lab -- Moorhead	MState - Moorhead Campus	MState	YHR	\$175,000

B. Proposed Work Plan

ID	Task Name	Duration	Start	Finish
1	Fargo PD Media Rm Expansion	55 days	Mon 10/17/22	Fri 12/30/22
2	Demo - Walls, ACT, Floor, Granite	8 days	Mon 10/17/22	Wed 10/26/22
3	Frame Walls/Soffit	5 days	Wed 10/26/22	Tue 11/1/22
4	Electrical In-Wall Rough-In	4 days	Fri 11/4/22	Wed 11/9/22
5	Mech Rough-In	5 days	Thu 11/10/22	Wed 11/16/22
6	Insulate Walls - RC Channel	2 days	Thu 11/10/22	Fri 11/11/22
7	Cut Concrete - Install Floor Box	3 days	Wed 11/2/22	Fri 11/4/22
8	Hang Sheetrock	4 days	Mon 11/14/22	Thu 11/17/22
9	Install Alum Door Frame	5 days	Fri 11/18/22	Thu 11/24/22
10	Tape/Finish	8 days	Fri 11/18/22	Tue 11/29/22
11	Paint	3 days	Wed 11/30/22	Fri 12/2/22
12	ACT Grid	3 days	Mon 12/5/22	Wed 12/7/22
13	Mech/Elec Trim Out	5 days	Thu 12/8/22	Wed 12/14/22
14	Install Ceiling Tile	1 day	Thu 12/15/22	Thu 12/15/22
15	Flooring Install	4 days	Fri 12/16/22	Wed 12/21/22
16	Install Casework	3 days	Thu 12/22/22	Mon 12/26/22
17	Install Door/Hardware/Glazing	3 days	Tue 12/27/22	Thu 12/29/22
18	Final Cleaning	1 day	Fri 12/30/22	Fri 12/30/22

2022
 11/14/17/20/23/26/29 1 4 7 10/13/16/19/22/25/28 1 4 7 10/13/16/19/22/25/28/31 3 6 9 12/15/18/21/24/27
 November 2022 December 2022 January 2023
 Fargo PD Media Rm

Task Inactive Summary

Split Milestone Summary Manual Task

Project Summary Manual Summary Rollup

Inactive Task Start-only

Inactive Milestone Finish-only

External Tasks External Milestone

Deadline Critical

Critical Split Progress

Manual Progress

Project: Fargo PD Media Rm Ex
 Date: Tue 9/13/22

Project: PD HQ Media Room Expansion 2022
Budget: \$100,000

Bid Opening Date: September 20, 2022

Number of Addendums: 3

Company	License	Bond	Acknowledge Addenda	Bid Amount	Remarks
Border Construction, LLC	57847	N/A	Y	153,230.00	

Recommendation: Following changes to the scope, the Architect's Estimate was \$134,000.00. The bid came in at 14% over the Architect's Estimate. It is recommended to accept Border Construction's bid.



North Dakota Workforce
Safety & Insurance

Bryan Klipfel
Director

Border Construction LLC
4321 14th Ave N
Fargo ND 58102-2809

August 19, 2022

Account Information Employer account number: 1501183
Issue date: 08/19/2022
Expiration date: 12/14/2022

Certificate of Payment

Reason For Notice Workforce Safety & Insurance (WSI) certifies Border Construction LLC has North Dakota workers' compensation coverage from 10/01/2021 to 09/30/2022. Employees of Border Construction LLC are entitled to apply for WSI benefits.

Required Action Employers must post this Certificate of Payment in a conspicuous manner at the workplace. A penalty of \$250 may apply for failure to comply with this requirement. See North Dakota Century Code § 65-04-04.

Additional Information Coverage under this certificate extends to employers for their North Dakota exposure. Limited coverage may be extended for temporary and/or incidental exposure outside of North Dakota.

WSI may revoke the Certificate of Payment for failure to make required premium payments.

For More Information Contact customer service at 800-777-5033 or 701-328-3800 with questions.

Class	Classification Description
5410F 8747	Bldg Const-Inclu Concrete Work Professional/Business Reps

Sincerely,

Barry Schumacher
Chief of Employer Services

PL5

State of North Dakota SECRETARY OF STATE



CONTRACTOR LICENSE

NO: 57847

CLASS: A

The undersigned, as Secretary of State of the state of North Dakota and Registrar of Contractors, certifies that **BORDER CONSTRUCTION, LLC** whose address is in FARGO, ND, has filed in this office proper documents for a Contractor License valid until March 1, 2023, and has complied with all requirements of North Dakota Century Code, chapter 43-07.

BORDER CONSTRUCTION, LLC is entitled to bid on and accept contracts as authorized by law under this license without limit as to the value of any single contract project.

Dated: February 17, 2022

A handwritten signature in cursive script, reading "Alvin A. Jaeger".

Alvin A. Jaeger
Secretary of State

The North Dakota Secretary of State verifies that:

BORDER CONSTRUCTION, LLC

is the holder of a North Dakota Class A Contractor License which is in force until March 1, 2023 unless sooner suspended or revoked as provided by NDCC 43-07.

License # 57847



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
9/28/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Dawson Insurance, a Marsh & McLennan Agency LLC company 505 Broadway North, Suite 100 Fargo ND 58102	CONTACT NAME: Joni Alfson PHONE (A/C, No, Ext): 701-237-3311 FAX (A/C, No): 701-232-4442 E-MAIL ADDRESS: joni.alfson@marshmma.com														
INSURED Border Construction, LLC 4321 14th Ave N Fargo ND 58102	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="text-align: center;">INSURER(S) AFFORDING COVERAGE</th> <th style="text-align: center;">NAIC #</th> </tr> <tr> <td>INSURER A : Secura Insurance, A Mutual Company</td> <td style="text-align: center;">22543</td> </tr> <tr> <td>INSURER B :</td> <td></td> </tr> <tr> <td>INSURER C :</td> <td></td> </tr> <tr> <td>INSURER D :</td> <td></td> </tr> <tr> <td>INSURER E :</td> <td></td> </tr> <tr> <td>INSURER F :</td> <td></td> </tr> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A : Secura Insurance, A Mutual Company	22543	INSURER B :		INSURER C :		INSURER D :		INSURER E :		INSURER F :	
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INSURER C :															
INSURER D :															
INSURER E :															
INSURER F :															

COVERAGES **CERTIFICATE NUMBER: 893413624** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS												
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> 500 GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	Y	CP3291671	8/15/2022	8/15/2023	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COM/OP AGG \$ 2,000,000 \$												
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> NON-OWNED AUTOS <input type="checkbox"/> HIRED AUTOS		A3291672	8/15/2022	8/15/2023	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$												
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 10,000		CU3291673	8/15/2022	8/15/2023	EACH OCCURRENCE \$ 2,000,000 AGGREGATE \$ 2,000,000 \$												
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A			<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 15%;">PER STATUTE</td> <td style="width: 15%;">OTH-ER</td> <td style="width: 70%;"></td> </tr> <tr> <td colspan="2">E.L. EACH ACCIDENT</td> <td>\$</td> </tr> <tr> <td colspan="2">E.L. DISEASE - EA EMPLOYEE</td> <td>\$</td> </tr> <tr> <td colspan="2">E.L. DISEASE - POLICY LIMIT</td> <td>\$</td> </tr> </table>	PER STATUTE	OTH-ER		E.L. EACH ACCIDENT		\$	E.L. DISEASE - EA EMPLOYEE		\$	E.L. DISEASE - POLICY LIMIT		\$
PER STATUTE	OTH-ER																	
E.L. EACH ACCIDENT		\$																
E.L. DISEASE - EA EMPLOYEE		\$																
E.L. DISEASE - POLICY LIMIT		\$																
A	Builders Risk		CP3291671	8/15/2022	8/15/2023	Location \$750,000 Temporary Storage \$100,000 Transit \$100,000												

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
 Project: Fargo Police Department Media Room Expansion - 105 25 th Street North, Fargo, North Dakota 58102
 Project No. 2216
 As respects the General Liability, additional insured status applies to the City of Fargo when required by written contract.

CERTIFICATE HOLDER City of Fargo 225 4th Street North Fargo ND 58102	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
--	--

AIA® Document A101® – 2017

Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum

AGREEMENT made as of the Twenty-sixth day of September in the year Two Thousand Twenty-two
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status, address and other information)

City of Fargo
225 4th St. N.,
Fargo, North Dakota 58107-1066

and the Contractor:
(Name, legal status, address and other information)

Border Construction LLC
4321 14th Avenue North
Fargo, North Dakota 58102

for the following Project:
(Name, location and detailed description)

Fargo Police Department Media Room Expansion
105 25th Street North
Fargo, North Dakota 58102
Project No. 2216

The Architect:
(Name, legal status, address and other information)

WildCRG, Ltd.
500 2nd Avenue North Suite 514
Fargo, North Dakota 58102

The Owner and Contractor agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

The parties should complete A101®-2017, Exhibit A, Insurance and Bonds, contemporaneously with this Agreement. AIA Document A201®-2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

Init.

TABLE OF ARTICLES

- 1 THE CONTRACT DOCUMENTS
- 2 THE WORK OF THIS CONTRACT
- 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
- 4 CONTRACT SUM
- 5 PAYMENTS
- 6 DISPUTE RESOLUTION
- 7 TERMINATION OR SUSPENSION
- 8 MISCELLANEOUS PROVISIONS
- 9 ENUMERATION OF CONTRACT DOCUMENTS

EXHIBIT A INSURANCE AND BONDS

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be:

(Check one of the following boxes.)

- The date of this Agreement.
- A date set forth in a notice to proceed issued by the Owner.
- Established as follows:
(Insert a date or a means to determine the date of commencement of the Work.)

October 17, 2022

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Agreement.

§ 3.2 The Contract Time shall be measured from the date of commencement of the Work.

§ 3.3 Substantial Completion

§ 3.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work:

(Check one of the following boxes and complete the necessary information.)

Init.

Not later than () calendar days from the date of commencement of the Work.

By the following date: December 31, 2022

§ 3.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following dates:

Portion of Work	Substantial Completion Date
-----------------	-----------------------------

§ 3.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 3.3, liquidated damages, if any, shall be assessed as set forth in Section 4.5.

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be One Hundred Fifty-three Thousand Two Hundred Thirty Dollars and Zero Cents (\$ 153,230.00), subject to additions and deductions as provided in the Contract Documents.

§ 4.2 Alternates

§ 4.2.1 Alternates, if any, included in the Contract Sum:

Item	Price
N/A	

§ 4.2.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement. *(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)*

Item	Price	Conditions for Acceptance
N/A		

§ 4.3 Allowances, if any, included in the Contract Sum: *(Identify each allowance.)*

Item	Price
N/A	

§ 4.4 Unit prices, if any:

(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit (\$0.00)
N/A		

§ 4.5 Liquidated damages, if any:

(Insert terms and conditions for liquidated damages, if any.)

N/A

§ 4.6 Other:

(Insert provisions for bonus or other incentives, if any, that might result in a change to the Contract Sum.)

N/A

Init.

ARTICLE 5 PAYMENTS

§ 5.1 Progress Payments

§ 5.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the first day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the first non-holiday weekday of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than 60 () days after the Architect receives the Application for Payment.

(Federal, state or local laws may require payment within a certain period of time.)

§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.5 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 5.1.6 In accordance with AIA Document A201™–2017, General Conditions of the Contract for Construction, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 5.1.6.1 The amount of each progress payment shall first include:

- .1 That portion of the Contract Sum properly allocable to completed Work;
- .2 That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing; and
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified.

§ 5.1.6.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
- .3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017; and
- .5 Retainage withheld pursuant to Section 5.1.7.

§ 5.1.7 Retainage

§ 5.1.7.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)

Ten Percent (10%)

Init.

§ 5.1.7.1.1 The following items are not subject to retainage:
(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

None

§ 5.1.7.2 Reduction or limitation of retainage, if any, shall be as follows:
(If the retainage established in Section 5.1.7.1 is to be modified prior to Substantial Completion of the entire Work, including modifications for Substantial Completion of portions of the Work as provided in Section 3.3.2, insert provisions for such modifications.)

N/A

§ 5.1.7.3 Except as set forth in this Section 5.1.7.3, upon Substantial Completion of the Work, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.1.7. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

(Insert any other conditions for release of retainage upon Substantial Completion.)

Submit retainage application separately

§ 5.1.8 If final completion of the Work is materially delayed through no fault of the Contractor, the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A201–2017.

§ 5.1.9 Except with the Owner’s prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 5.2 Final Payment

§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract except for the Contractor’s responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 a final Certificate for Payment has been issued by the Architect.

§ 5.2.2 The Owner’s final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect’s final Certificate for Payment, or as follows:

§ 5.3 Interest

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.
(Insert rate of interest agreed upon, if any.)

%

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017, unless the parties appoint below another individual, not a party to this Agreement, to serve as the Initial Decision Maker.
(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

Init.

§ 6.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation pursuant to Article 15 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows:
(Check the appropriate box.)

- Arbitration pursuant to Section 15.4 of AIA Document A201–2017
- Litigation in a Cass County District Court, State of North Dakota
- Other *(Specify)*

If the Owner and Contractor do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in Cass County District Court, State of North Dakota.

ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201–2017.

§ 7.1.1 If the Contract is terminated for the Owner’s convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Contractor a termination fee as follows:
(Insert the amount of, or method for determining, the fee, if any, payable to the Contractor following a termination for the Owner’s convenience.)

The reasonable value of the work provided by the Contractor at the time of termination

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017.

ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 The Owner’s representative:
(Name, address, email address, and other information)

Bekki Majerus
The City of Fargo
Director of Facilities Management
Bmajerus@fargoND.gov

§ 8.3 The Contractor’s representative:
(Name, address, email address, and other information)

Tom Jarvis
Border Construction LLC
4321 14th Avenue North
Fargo, North Dakota 58102

init.

§ 8.4 Neither the Owner's nor the Contractor's representative shall be changed without ten days' prior notice to the other party.

§ 8.5 Insurance and Bonds

§ 8.5.1 The Owner and the Contractor shall purchase and maintain insurance as set forth in AIA Document A101™-2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents.

§ 8.5.2 The Contractor shall provide bonds as set forth in AIA Document A101™-2017 Exhibit A, and elsewhere in the Contract Documents.

§ 8.6 Notice in electronic format, pursuant to Article 1 of AIA Document A201-2017, may be given in accordance with AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

(If other than in accordance with AIA Document E203-2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)

§ 8.7 Other provisions:

N/A

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 This Agreement is comprised of the following documents:

- .1 AIA Document A101™-2017, Standard Form of Agreement Between Owner and Contractor
- .2 AIA Document A101™-2017, Exhibit A, Insurance and Bonds
- .3 AIA Document A201™-2017, General Conditions of the Contract for Construction
- .4 AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:

(Insert the date of the E203-2013 incorporated into this Agreement.)

September 26, 2022

- .5 Drawings

Index of Drawings

Cover: Code Research, Demolition Plan, Demolition Reflected Ceiling Plan

Architectural: A3.0 Floor Plan, Interior Wall Types, Finish Schedule Legend, Door Frame Type Schedule, Interior Elevations, Details

Mechanical: M1 Mechanical Demo Plan, Layout Plan, General Notes & Keynotes

Electrical: E1 Electrical Demo Plan, General Demo Notes & Keynotes, Lighting Plan, General Electrical Notes, Power & Systems Plan, Power & Systems General Notes & Keynotes

- .6 Specifications

Section	Title	Date	Pages
---------	-------	------	-------

- .7 Addenda, if any:

Number	Date	Pages
Addendum No. 1	August 24, 2022	4

Addendum No. 2

September 2, 2022

3

(Paragraphs deleted)

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are also enumerated in this Article 9.

8 Other Exhibits:

(Check all boxes that apply and include appropriate information identifying the exhibit where required.)

[] AIA Document E204™-2017, Sustainable Projects Exhibit, dated as indicated below: (Insert the date of the E204-2017 incorporated into this Agreement.)

[] The Sustainability Plan:

Title	Date	Pages
-------	------	-------

[] Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
----------	-------	------	-------

9 Other documents, if any, listed below:

(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201™-2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)

This Agreement entered into as of the day and year first written above.

OWNER (Signature)

Timothy Mahoney, Mayor
(Printed name and title)

CONTRACTOR (Signature)

Tom Jarvis, President
(Printed name and title)

Steve Sprague/City Auditor

init

AIA Document A101® – 2017 Exhibit A

Insurance and Bonds

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Contractor, dated the Twenty-sixth day of September in the year Two Thousand Twenty-two

(In words, indicate day, month and year.)

for the following **PROJECT**:

(Name and location or address)

Fargo Police Department Media Room Expansion
105 25th Street North
Fargo, North Dakota 58102
Project No. 2216

THE OWNER:

(Name, legal status and address)

City of Fargo
225 4th St. N.,
Fargo, North Dakota 58107-1066

THE CONTRACTOR:

(Name, legal status and address)

Border Construction LLC
4321 14th Avenue North
Fargo, North Dakota 58102

TABLE OF ARTICLES

- A.1 GENERAL**
- A.2 OWNER'S INSURANCE**
- A.3 CONTRACTOR'S INSURANCE AND BONDS**
- A.4 SPECIAL TERMS AND CONDITIONS**

ARTICLE A.1 GENERAL

The Owner and Contractor shall purchase and maintain insurance, and provide bonds, as set forth in this Exhibit. As used in this Exhibit, the term General Conditions refers to AIA Document A201™–2017, General Conditions of the Contract for Construction.

ARTICLE A.2 OWNER'S INSURANCE

§ A.2.1 General

Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this Article A.2 and, upon the Contractor's request, provide a copy of the property insurance policy or policies required by Section

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is intended to be used in conjunction with AIA Document A201®–2017, General Conditions of the Contract for Construction. Article 11 of A201®–2017 contains additional insurance provisions.

Init.

A.2.3. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.

§ A.2.2 Liability Insurance

The Owner shall be responsible for purchasing and maintaining the Owner's usual general liability insurance.

§ A.2.3 Required Property Insurance

§ A.2.3.1 Unless this obligation is placed on the Contractor pursuant to Section A.3.3.2.1, the Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance written on a builder's risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section A.2.3.1.3, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.

§ A.2.3.1.1 Causes of Loss. The insurance required by this Section A.2.3.1 shall provide coverage for direct physical loss or damage, and shall not exclude the risks of fire, explosion, theft, vandalism, malicious mischief, collapse, earthquake, flood, or windstorm. The insurance shall also provide coverage for ensuing loss or resulting damage from error, omission, or deficiency in construction methods, design, specifications, workmanship, or materials. Sub-limits, if any, are as follows:

(Indicate below the cause of loss and any applicable sub-limit.)

Causes of Loss	Sub-Limit
----------------	-----------

§ A.2.3.1.2 Specific Required Coverages. The insurance required by this Section A.2.3.1 shall provide coverage for loss or damage to falsework and other temporary structures, and to building systems from testing and startup. The insurance shall also cover debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and reasonable compensation for the Architect's and Contractor's services and expenses required as a result of such insured loss, including claim preparation expenses. Sub-limits, if any, are as follows:

(Indicate below type of coverage and any applicable sub-limit for specific required coverages.)

Coverage	Sub-Limit
----------	-----------

§ A.2.3.1.3 Unless the parties agree otherwise, upon Substantial Completion, the Owner shall continue the insurance required by Section A.2.3.1 or, if necessary, replace the insurance policy required under Section A.2.3.1 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 12.2.2 of the General Conditions.

§ A.2.3.1.4 Deductibles and Self-Insured Retentions. If the insurance required by this Section A.2.3 is subject to deductibles or self-insured retentions, the Owner shall be responsible for all loss not covered because of such deductibles or retentions.

§ A.2.3.2 Occupancy or Use Prior to Substantial Completion. The Owner's occupancy or use of any completed or partially completed portion of the Work prior to Substantial Completion shall not commence until the insurance company or companies providing the insurance under Section A.2.3.1 have consented in writing to the continuance of coverage. The Owner and the Contractor shall take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance, unless they agree otherwise in writing.

§ A.2.3.3 Insurance for Existing Structures

If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 12.2.2 of

Init.

the General Conditions, "all-risks" property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage from the causes of loss identified in Section A.2.3.1, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.

§ A.2.4 Optional Extended Property Insurance.

The Owner shall purchase and maintain the insurance selected and described below.

(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. For each type of insurance selected, indicate applicable limits of coverage or other conditions in the fill point below the selected item.)

- § A.2.4.1 Loss of Use, Business Interruption, and Delay in Completion Insurance**, to reimburse the Owner for loss of use of the Owner's property, or the inability to conduct normal operations due to a covered cause of loss.

- § A.2.4.2 Ordinance or Law Insurance**, for the reasonable and necessary costs to satisfy the minimum requirements of the enforcement of any law or ordinance regulating the demolition, construction, repair, replacement or use of the Project.

- § A.2.4.3 Expediting Cost Insurance**, for the reasonable and necessary costs for the temporary repair of damage to insured property, and to expedite the permanent repair or replacement of the damaged property.

- § A.2.4.4 Extra Expense Insurance**, to provide reimbursement of the reasonable and necessary excess costs incurred during the period of restoration or repair of the damaged property that are over and above the total costs that would normally have been incurred during the same period of time had no loss or damage occurred.

- § A.2.4.5 Civil Authority Insurance**, for losses or costs arising from an order of a civil authority prohibiting access to the Project, provided such order is the direct result of physical damage covered under the required property insurance.

- § A.2.4.6 Ingress/Egress Insurance**, for loss due to the necessary interruption of the insured's business due to physical prevention of ingress to, or egress from, the Project as a direct result of physical damage.

- § A.2.4.7 Soft Costs Insurance**, to reimburse the Owner for costs due to the delay of completion of the Work, arising out of physical loss or damage covered by the required property insurance: including construction loan fees; leasing and marketing expenses; additional fees, including those of architects, engineers, consultants, attorneys and accountants, needed for the completion of the construction, repairs, or reconstruction; and carrying costs such as property taxes, building permits, additional interest on loans, realty taxes, and insurance premiums over and above normal expenses.

Init.

§ A.2.5 Other Optional Insurance.

The Owner shall purchase and maintain the insurance selected below.

(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance.)

§ A.2.5.1 Cyber Security Insurance for loss to the Owner due to data security and privacy breach, including costs of investigating a potential or actual breach of confidential or private information. *(Indicate applicable limits of coverage or other conditions in the fill point below.)*

§ A.2.5.2 Other Insurance
(List below any other insurance coverage to be provided by the Owner and any applicable limits.)

Coverage	Limits
-----------------	---------------

ARTICLE A.3 CONTRACTOR'S INSURANCE AND BONDS

§ A.3.1 General

§ A.3.1.1 Certificates of Insurance. The Contractor shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article A.3 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of commercial liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the periods required by Section A.3.2.1 and Section A.3.3.1. The certificates will show the Owner as an additional insured on the Contractor's Commercial General Liability and excess or umbrella liability policy or policies.

§ A.3.1.2 Deductibles and Self-Insured Retentions. The Contractor shall disclose to the Owner any deductible or self-insured retentions applicable to any insurance required to be provided by the Contractor.

§ A.3.1.3 Additional Insured Obligations. To the fullest extent permitted by law, the Contractor shall cause the commercial general liability coverage to include (1) the Owner, the Architect, and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's consultants, CG 20 32 07 04.

§ A.3.2 Contractor's Required Insurance Coverage

§ A.3.2.1 The Contractor shall purchase and maintain the following types and limits of insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:
(If the Contractor is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.)

§ A.3.2.2 Commercial General Liability

§ A.3.2.2.1 Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than one million dollars (\$ 1,000,000.00) each occurrence, one million dollars (\$ 1,000,000.00) general aggregate, and one million dollars (\$ 1,000,000.00) aggregate for products-completed operations hazard, providing coverage for claims including

Init.

- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- .2 personal injury and advertising injury;
- .3 damages because of physical damage to or destruction of tangible property, including the loss of use of such property;
- .4 bodily injury or property damage arising out of completed operations; and
- .5 the Contractor's indemnity obligations under Section 3.18 of the General Conditions.

§ A.3.2.2.2 The Contractor's Commercial General Liability policy under this Section A.3.2.2 shall not contain an exclusion or restriction of coverage for the following:

- .1 Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim.
- .2 Claims for property damage to the Contractor's Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a Subcontractor.
- .3 Claims for bodily injury other than to employees of the insured.
- .4 Claims for indemnity under Section 3.18 of the General Conditions arising out of injury to employees of the insured.
- .5 Claims or loss excluded under a prior work endorsement or other similar exclusionary language.
- .6 Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language.
- .7 Claims related to residential, multi-family, or other habitational projects, if the Work is to be performed on such a project.
- .8 Claims related to roofing, if the Work involves roofing.
- .9 Claims related to exterior insulation finish systems (EIFS), synthetic stucco or similar exterior coatings or surfaces, if the Work involves such coatings or surfaces.
- .10 Claims related to earth subsidence or movement, where the Work involves such hazards.
- .11 Claims related to explosion, collapse and underground hazards, where the Work involves such hazards.

§ A.3.2.3 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Contractor, with policy limits of not less than one million dollars (\$ 1,000,000.00) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles along with any other statutorily required automobile coverage.

§ A.3.2.4 The Contractor may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under Section A.3.2.2 and A.3.2.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ A.3.2.5 Workers' Compensation at statutory limits.

§ A.3.2.6 Employers' Liability with policy limits not less than (\$) each accident, (\$) each employee, and (\$) policy limit.

§ A.3.2.7 Jones Act, and the Longshore & Harbor Workers' Compensation Act, as required, if the Work involves hazards arising from work on or near navigable waterways, including vessels and docks

§ A.3.2.8 If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than one million dollars (\$ 1,000,000.00) per claim and one million dollars (\$ 1,000,000.00) in the aggregate.

§ A.3.2.9 If the Work involves the transport, dissemination, use, or release of pollutants, the Contractor shall procure Pollution Liability insurance, with policy limits of not less than (\$) per claim and (\$) in the aggregate.

Init.

§ A.3.2.10 Coverage under Sections A.3.2.8 and A.3.2.9 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than (\$) per claim and (\$) in the aggregate.

§ A.3.2.11 Insurance for maritime liability risks associated with the operation of a vessel, if the Work requires such activities, with policy limits of not less than (\$) per claim and (\$) in the aggregate.

§ A.3.2.12 Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits of not less than (\$) per claim and (\$) in the aggregate.

§ A.3.3 Contractor's Other Insurance Coverage

§ A.3.3.1 Insurance selected and described in this Section A.3.3 shall be purchased from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

(If the Contractor is required to maintain any of the types of insurance selected below for a duration other than the expiration of the period for correction of Work, state the duration.)

§ A.3.3.2 The Contractor shall purchase and maintain the following types and limits of insurance in accordance with Section A.3.3.1.

(Select the types of insurance the Contractor is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. Where policy limits are provided, include the policy limit in the appropriate fill point.)

§ A.3.3.2.1 Property insurance of the same type and scope satisfying the requirements identified in Section A.2.3, which, if selected in this section A.3.3.2.1, relieves the Owner of the responsibility to purchase and maintain such insurance except insurance required by Section A.2.3.1.3 and Section A.2.3.3. The Contractor shall comply with all obligations of the Owner under Section A.2.3 except to the extent provided below. The Contractor shall disclose to the Owner the amount of any deductible, and the Owner shall be responsible for losses within the deductible. Upon request, the Contractor shall provide the Owner with a copy of the property insurance policy or policies required. The Owner shall adjust and settle the loss with the insurer and be the trustee of the proceeds of the property insurance in accordance with Article 11 of the General Conditions unless otherwise set forth below:

(Where the Contractor's obligation to provide property insurance differs from the Owner's obligations as described under Section A.2.3, indicate such differences in the space below. Additionally, if a party other than the Owner will be responsible for adjusting and settling a loss with the insurer and acting as the trustee of the proceeds of property insurance in accordance with Article 11 of the General Conditions, indicate the responsible party below.)

§ A.3.3.2.2 Railroad Protective Liability Insurance, with policy limits of not less than (\$) per claim and (\$) in the aggregate, for Work within fifty (50) feet of railroad property.

§ A.3.3.2.3 Asbestos Abatement Liability Insurance, with policy limits of not less than (\$) per claim and (\$) in the aggregate, for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials.

§ A.3.3.2.4 Insurance for physical damage to property while it is in storage and in transit to the construction site on an "all-risks" completed value form.

§ A.3.3.2.5 Property insurance on an "all-risks" completed value form, covering property owned by the Contractor and used on the Project, including scaffolding and other equipment.

Init.

§ A.3.3.2.6 Other Insurance

(List below any other insurance coverage to be provided by the Contractor and any applicable limits.)

Coverage

Limits

§ A.3.4 Performance Bond and Payment Bond

The Contractor shall provide surety bonds, from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located, as follows:

(Specify type and penal sum of bonds.)

Type	Penal Sum (\$0.00)
Payment Bond	
Performance Bond	

Payment and Performance Bonds shall be AIA Document A312™, Payment Bond and Performance Bond, or contain provisions identical to AIA Document A312™, current as of the date of this Agreement.

ARTICLE A.4 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows:

Init.

AIA Document A201[®] – 2007

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

Fargo Police Department Media Room Expansion
105 25th Street North
Fargo, North Dakota 58102
Project No. 2216

THE OWNER:

(Name, legal status and address)

City of Fargo
225 4th St. N.,
Fargo, North Dakota 58107-1066

THE ARCHITECT:

(Name, legal status and address)

WildCRG, Ltd.
500 2nd Avenue North Suite 514
Fargo, North Dakota 58102

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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User Notes:

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14 TERMINATION OR SUSPENSION OF THE CONTRACT

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User Notes:

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS

§ 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding requirements.

§ 1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

§ 1.1.3 THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 THE PROJECT

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by separate contractors.

§ 1.1.5 THE DRAWINGS

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

§ 1.1.6 THE SPECIFICATIONS

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 INSTRUMENTS OF SERVICE

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 INITIAL DECISION MAKER

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2.

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

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§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.3 CAPITALIZATION

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 INTERPRETATION

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants.

§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

ARTICLE 2 OWNER

§ 2.1 GENERAL

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.1.2 The Owner shall furnish to the Contractor within thirty days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the

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portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.2 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.2.3 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.2.4 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.2.5 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

ARTICLE 3 CONTRACTOR

§ 3.1 GENERAL

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

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§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.4 LABOR AND MATERIALS

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

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§ 3.4.2 Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 3.5 WARRANTY

The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.6 TAXES

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.7 PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 **Concealed or Unknown Conditions.** If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall

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continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 ALLOWANCES

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 Allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 Whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 SUPERINTENDENT

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the name and qualifications of a proposed superintendent. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to the proposed superintendent or (2) that the Architect requires additional time to review. Failure of the Architect to reply within the 14 day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

§ 3.10.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect's approval. The Architect's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required

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submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop

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Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

§ 3.13 USE OF SITE

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.14 CUTTING AND PATCHING

§ 3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

§ 3.15 CLEANING UP

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 ACCESS TO WORK

The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located.

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

§ 3.18 INDEMNIFICATION

§ 3.18.1 To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a

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party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE 4 ARCHITECT

§ 4.1 GENERAL

§ 4.1.1 The Owner shall retain an architect lawfully licensed to practice architecture or an entity lawfully practicing architecture in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 4.1.2 Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Contractor and Architect. Consent shall not be unreasonably withheld.

§ 4.1.3 If the employment of the Architect is terminated, the Owner shall employ a successor architect as to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§ 4.2 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed.

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However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 DEFINITIONS

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

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§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that the Architect requires additional time for review. Failure of the Owner or Architect to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 5.3 SUBCONTRACTUAL RELATIONS

By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

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§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

§ 6.2 MUTUAL RESPONSIBILITY

§ 6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

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§ 6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 GENERAL

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and Architect; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

§ 7.2 CHANGE ORDERS

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.7.

§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 7.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

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§ 7.3.6 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

- .1 Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .5 Additional costs of supervision and field office personnel directly attributable to the change.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 MINOR CHANGES IN THE WORK

The Architect has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor.

ARTICLE 8 TIME

§ 8.1 DEFINITIONS

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

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§ 8.2 PROGRESS AND COMPLETION

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control; or by delay authorized by the Owner pending mediation and arbitration; or by other causes that the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 CONTRACT SUM

The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.2 SCHEDULE OF VALUES

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Architect, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon

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compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.3 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the

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Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment.

§ 9.6 PROGRESS PAYMENTS

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor no later than seven days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

§ 9.6.5 Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.7 FAILURE OF PAYMENT

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

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§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract

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Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents; or
- .3 terms of special warranties required by the Contract Documents.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 SAFETY OF PERSONS AND PROPERTY

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in

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whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 HAZARDOUS MATERIALS

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.

§ 10.3.3 N/A

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

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§ 10.4 EMERGENCIES

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 CONTRACTOR'S LIABILITY INSURANCE

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 Claims for damages insured by usual personal injury liability coverage;
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations; and
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Architect and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

§ 11.2 OWNER'S LIABILITY INSURANCE

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

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§ 11.3 PROPERTY INSURANCE

§ 11.3.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

§ 11.3.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.

§ 11.3.1.2 If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance that will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

§ 11.3.1.3 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.

§ 11.3.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

§ 11.3.1.5 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ 11.3.2 BOILER AND MACHINERY INSURANCE

The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

(Paragraphs deleted)

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.

§ 11.4.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 UNCOVERING OF WORK

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

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§ 12.3 ACCEPTANCE OF NONCONFORMING WORK

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

The Contract shall be governed by the law of the place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

§ 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

§ 13.3 WRITTEN NOTICE

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

§ 13.4 RIGHTS AND REMEDIES

§ 13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 13.4.2 No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing.

§ 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

§ 13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by

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such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense.

§ 13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.5.5 If the Architect is to observe tests, inspections or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.6 INTEREST

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

§ 13.7 TIME LIMITS ON CLAIMS

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CONTRACTOR

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon thirty days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

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§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the above reasons exist, the Owner, upon certification by the Initial Decision Maker that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

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ARTICLE 15 CLAIMS AND DISPUTES**§ 15.1 CLAIMS****§ 15.1.1 DEFINITION**

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 15.1.2 NOTICE OF CLAIMS

Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

§ 15.1.4 CLAIMS FOR ADDITIONAL COST

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.5 CLAIMS FOR ADDITIONAL TIME

§ 15.1.5.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.5.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

(Paragraphs deleted)

§ 15.2 INITIAL DECISION

§ 15.2.1 Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

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(1330005101)

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 15.3 MEDIATION

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.6 shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 15.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.4 ARBITRATION

(Paragraphs deleted)

§ 15.4.4 CONSOLIDATION OR JOINDER

§ 15.4.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

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§ 15.4.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Contractor under this Agreement.

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AIA[®] Document E203[™] – 2013

Building Information Modeling and Digital Data Exhibit

This Exhibit dated the Twenty-sixth day of September in the year Two Thousand Twenty-two is incorporated into the agreement (the "Agreement") between the Parties for the following Project:

(Name and location or address of the Project)

City of Fargo
225 4th St. N.,
Fargo, North Dakota 58107-1066
Project No.: 2216

TABLE OF ARTICLES

- 1 GENERAL PROVISIONS**
- 2 TRANSMISSION AND OWNERSHIP OF DIGITAL DATA**
- 3 DIGITAL DATA PROTOCOLS**
- 4 OTHER TERMS AND CONDITIONS**

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 This Exhibit provides for the establishment of protocols for the development, use, transmission, and exchange of Digital Data for the Project. If Building Information Modeling will be utilized, this Exhibit also provides for the establishment of the protocols necessary to implement the use of Building Information Modeling on the Project, including protocols that establish the expected Level of Development for Model Elements at various milestones of the Project, and the associated Authorized Uses of the Building Information Models.

§ 1.2 The Parties agree to incorporate this Exhibit into their agreements with any other Project Participants that may develop or make use of Digital Data on the Project. Prior to transmitting or allowing access to Digital Data, a Party may require any Project Participant to provide reasonable evidence that it has incorporated this Exhibit into its agreement for the Project, and agreed to the most recent Project specific versions of AIA Document G201[™]-2013, Project Digital Data Protocol Form and AIA Document G202[™]-2013, Project Building Information Modeling Protocol Form.

§ 1.2.1 The Parties agree that each of the Project Participants utilizing Digital Data on the Project is an intended third party beneficiary of the Section 1.2 obligation to incorporate this Exhibit into agreements with other Project Participants, and any rights and defenses associated with the enforcement of that obligation. This Exhibit does not create any third-party beneficiary rights other than those expressly identified in this Section 1.2.1.

§ 1.3 Adjustments to the Agreement

§ 1.3.1 If a Party believes that protocols established pursuant to Sections 3.2 or 4.5, and memorialized in AIA Documents G201-2013 and G202-2013, will result in a change in the Party's scope of work or services warranting an adjustment in compensation, contract sum, schedule or contract time, the Party shall notify the other Party. Failure to provide notice as required in this Section 1.3 shall result in a Party's waiver of any claims for

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is intended to be incorporated into an agreement between the parties and used in conjunction with AIA Documents G201[™]-2013, Project Digital Data Protocol Form, and G202[™]-2013, Building Information Modeling Protocol Form. It is anticipated that other Project Participants will incorporate a project specific E203-2013 into their agreements, and that the Parties and other Project Participants will set forth the agreed-upon protocols in AIA Documents G201-2013 and G202-2013.

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adjustments in compensation, contract sum, schedule or contract time as a result of the established protocols.

§ 1.3.2 Upon such notice, the Parties shall discuss and negotiate revisions to the protocols or discuss and negotiate any adjustments in compensation, contract sum, schedule or contract time in accordance with the terms of the Agreement.

§ 1.3.3 Notice required under this Section 1.3 shall be provided within thirty days of receipt of the protocols, unless otherwise indicated below:

(If the Parties require a notice period other than thirty days from receipt of the protocols, indicate the notice period below.)

§ 1.4 Definitions

§ 1.4.1 **Building Information Model.** A Building Information Model is a digital representation of the Project, or a portion of the Project, and is referred to in this Exhibit as the "Model," which term may be used herein to describe a Model Element, a single model or multiple models used in the aggregate, as well as other data sets identified in AIA Document G202–2013, Project Building Information Modeling Protocol Form.

§ 1.4.2 **Building Information Modeling.** Building Information Modeling or Modeling means the process used to create the Model.

§ 1.4.3 **Model Element.** A Model Element is a portion of the Model representing a component, system or assembly within a building or building site.

§ 1.4.4 **Level of Development.** The Level of Development (LOD) describes the minimum dimensional, spatial, quantitative, qualitative, and other data included in a Model Element to support the Authorized Uses associated with such LOD.

§ 1.4.5 **Authorized Uses.** The term "Authorized Uses" refers to the permitted uses of Digital Data authorized in the Digital Data and/or Building Information Modeling protocols established pursuant to the terms of this Exhibit.

§ 1.4.6 **Model Element Author.** The Model Element Author is the entity (or individual) responsible for managing and coordinating the development of a specific Model Element to the LOD required for an identified Project milestone, regardless of who is responsible for providing the content in the Model Element. Model Element Authors are to be identified in Section 3.3, Model Element Table, of AIA Document G202–2013.

§ 1.4.7 **Digital Data.** Digital Data is information, including communications, drawings, specifications and designs, created or stored for the Project in digital form. Unless otherwise stated, the term Digital Data includes the Model.

§ 1.4.8 **Confidential Digital Data.** Confidential Digital Data is Digital Data containing confidential or business proprietary information that the transmitting party designates and clearly marks as "confidential."

§ 1.4.9 **Written or In Writing.** In addition to any definition in the Agreement to which this Exhibit is attached, for purposes of this Exhibit and the Agreement, "written" or "in writing" shall mean any communication prepared and sent using a transmission method set forth in this Exhibit, or the protocols developed pursuant to this Exhibit, that permits the recipient to print the communication.

§ 1.4.10 **Written Notice.** In addition to any terms in the Agreement to which this Exhibit is attached, for purposes of this Exhibit and the Agreement, "written notice" shall be deemed to have been duly served if transmitted electronically to an address provided in this Exhibit or the Agreement using a transmission method set forth in this Exhibit that permits the recipient to print the communication.

§ 1.4.11 **Party and Parties.** The terms "Party" and "Parties" refer to the signing parties to the Agreement.

§ 1.4.12 **Project Participant.** A Project Participant is an entity (or individual) providing services, work, equipment or materials on the Project and includes the Parties.

ARTICLE 2 TRANSMISSION AND OWNERSHIP OF DIGITAL DATA

§ 2.1 The transmission of Digital Data constitutes a warranty by the Party transmitting Digital Data to the Party receiving Digital Data that the transmitting Party is the copyright owner of the Digital Data, or otherwise has

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permission to transmit the Digital Data for its use on the Project in accordance with the Authorized Uses of Digital Data established pursuant to the terms of this Exhibit.

§ 2.2 If a Party transmits Confidential Digital Data, the transmission of such Confidential Digital Data constitutes a warranty to the Party receiving such Confidential Digital Data that the transmitting Party is authorized to transmit the Confidential Digital Data. If a Party receives Confidential Digital Data, the receiving Party shall keep the Confidential Digital Data strictly confidential and shall not disclose it to any other person or entity except as set forth in Section 2.2.1.

§ 2.2.1 The receiving Party may disclose Confidential Digital Data as required by law or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity. The receiving Party may also disclose the Confidential Digital Data to its employees, consultants or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of Confidential Digital Data as set forth in this Exhibit.

§ 2.3 By transmitting Digital Data, the transmitting Party does not convey any ownership right in the Digital Data or in the software used to generate the Digital Data. Unless otherwise granted in a separate license, the receiving Party's right to use, modify, or further transmit Digital Data is specifically limited to designing, constructing, using, maintaining, altering and adding to the Project consistent with the terms of this Exhibit, and nothing contained in this Exhibit conveys any other right to use the Digital Data.

§ 2.4 Where a provision in this Article 2 conflicts with a provision in the Agreement into which this Exhibit is incorporated, the provision in this Article 2 shall prevail.

ARTICLE 3 DIGITAL DATA PROTOCOLS

§ 3.1 Anticipated Types of Digital Data. The anticipated types of Digital Data to be used on the Project are as follows: *(Indicate below the information on the Project that shall be created and shared in a digital format. If the Parties indicate that Building Information Modeling will be utilized on the Project, the Parties shall also complete Article 4.)*

Anticipated Digital Data	Applicability to the Project <i>(Indicate Applicable or Not Applicable)</i>	Location of Detailed Description <i>(Section 3.1.1 below or in an attachment to this exhibit and identified below)</i>
Project Agreements and Modifications	Not Applicable	
Project communications	Applicable	
Architect's pre-construction submittals	Applicable	
Contract Documents	Not Applicable	
Contractor's submittals	Applicable	
Subcontractor's submittals	Applicable	
Modifications	Applicable	
Project payment documents	Applicable	
Notices and claims	Not Applicable	
Building Information Modeling	Not Applicable	

(Row deleted)

§ 3.1.1 Insert a detailed description of the anticipated Digital Data identified in Section 3.1, if not further described in an attachment to this Exhibit.

Documents included, but not exclusive to, are as follows: Bids or proposals, everyday email communications, shop drawings, requests for payment/invoices, proposals for changes.

§ 3.2 As soon as practical following execution of the Agreement, the Parties shall further describe the uses of Digital Data, and establish necessary protocols governing the transmission and Authorized Uses of Digital Data, in consultation with the other Project Participants that are expected to utilize Digital Data on the Project.

§ 3.2.1 Unless another Project Participant is identified below, the Architect shall prepare and distribute to the other Project Participants Digital Data protocols for review, revision and approval.

(If a Project Participant other than the Architect shall be responsible for preparing draft and final Digital Data protocols, identify that Project Participant.)

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§ 3.2.2 The agreed upon Digital Data protocols shall be set forth in AIA Document G201–2013 and each Project Participant shall memorialize their agreement in writing to such Digital Data protocols.

§ 3.2.3 The Parties, together with the other Project Participants, shall review and, if necessary, revise the Digital Data protocols at appropriate intervals as required by the conditions of the Project.

§ 3.3 The Parties shall transmit, use, store and archive Digital Data in accordance with the Digital Data protocols set forth in the latest version of AIA Document G201–2013 agreed to by the Project Participants.

§ 3.4 Unauthorized Use

§ 3.4.1 Prior to Establishment of Digital Data Protocols

If a Party receives Digital Data prior to the agreement to, and documentation of, the Digital Data protocols in AIA Document G201–2013, that Party is not authorized to use or rely on the Digital Data. Any use of, or reliance on, such Digital Data is at that Party’s sole risk and without liability to the other Party and its contractors, consultants, agents and employees.

§ 3.4.2 Following Establishment of Digital Data Protocols

Following agreement to, and documentation of, the Digital Data protocols in AIA Document G201–2013, if a Party uses Digital Data inconsistent with the Authorized Uses identified in the Digital Data protocols, that use shall be at the sole risk of the Party using the Digital Data.

§ 3.5 Digital Data Management

§ 3.5.1 Centralized electronic document management system use on the Project shall be:

(Check the appropriate box. If the Parties do not check one of the boxes below, the default selection shall be that the Parties will not utilize a centralized electronic document management system on the Project.)

The Parties intend to use a centralized electronic document management system on the Project.

The Parties do not intend to use a centralized electronic document management system on the Project.

§ 3.5.2 If the Project Participants intend to utilize a centralized electronic document management system on the Project, the Project Participants identified in Section 3.5.3 shall be responsible for managing and maintaining such system. The Project Participants responsible for managing and maintaining the centralized electronic document management system shall facilitate the establishment of protocols for transmission, use, storage and archiving of the centralized Digital Data and assist the Project Participants identified in Section 3.2.1 above in preparing Digital Data protocols. Upon agreement to, and documentation of, the Digital Data protocols in AIA Document G201–2013, the Project Participants identified in Section 3.5.3 shall manage and maintain the centralized electronic document management system consistent with the management protocols set forth in the latest version of G201–2013 approved by the Project Participants.

§ 3.5.3 Unless responsibility is assigned to another Project Participant, the Architect shall be responsible for managing and maintaining the centralized electronic document management system. If the responsibility for management and maintenance will be assigned to another Project Participant at an identified Project milestone, indicate below the Project Participant who shall assume that responsibility, and the Project milestone.

(Identify the Project Participant responsible for management and maintenance only if the Parties intend to utilize a centralized electronic document management system on the Project.)

Responsible Project Participant	Project Milestone
---------------------------------	-------------------

(Paragraphs deleted)

ARTICLE 4 OTHER TERMS AND CONDITIONS

(Paragraphs deleted)

Other terms and conditions related to the transmission and use of Digital Data are as follows:

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Memorandum

To: Board of City Commissioners
From: Bekki Majerus, Director of Facilities Management
Date: October 3, 2022
Re: Bid Award for Police Department Headquarters Media Room Expansion (BP2201)

Dear Commissioners:

On August 10, 2022, Facilities Management issued a Request for Proposal (RFP) for the remodel of the Police Headquarters Media Room. Upon the closing of the RFP, one sealed response was received.

The bid was opened on September 20, 2022. The bid provided the required information and met the following bid criteria:

- Previous work experience
- Proposed work plan
- Fee schedule

Based on the review of this criteria, we recommend award of the project to Border Construction, LLC.

Recommended Action:

Award the contract for the Police Department Headquarters Media Room Expansion to Border Construction, LLC.

ATTACHMENT A

**City of Fargo
Fee Proposal Form**

Police Department Headquarters Media Room Expansion

Company: Border Construction, LLC

Bid Price: \$153,230.00
(One Hundred Fifty-Three Thousand Two Hundred and Thirty Dollars)

Hourly Rate: Carpenter: \$65.00
Laborer: \$45.00

Signature: 
Tom Jarvis

Title: President

Date: 09/13/22

Project: Fargo Police Department Headquarters Media Room Expansion
RE: Previous Work Experience

We believe that every project is an opportunity to succeed: in design, quality, schedule and budget. We pride ourselves on completing each project with knowledge, care and great communication. With over 80 years of collective experience and a proven track record of delivering high-level projects, as a company and as individuals, we are driven by the idea that good enough is never good enough. We build, grow, develop and conduct our business with integrity and a commitment to living up to our word – whatever it takes. We bring principled leadership in our respective disciplines and work closely with our clients to provide seamless service from inception to completion. Throughout the entire construction process, you will be working directly with the owners of Border Construction, ensuring that the project will always be in the hands of those who are truly vested in ensuring a successful outcome.

Team Experience:

- **Tom Jarvis – President, Project Manager**

Founding member of Border Construction, bringing over 18 years of construction experience. Tom is responsible for overall business development, client relations and company financials. He is also responsible for leading the design-build process, reviewing proposals and executing contracts. During the construction process, his responsibilities include managing subcontractors, meeting with owners, cost analysis, budget and project schedule. Tom has extensive experience in managing complete building remodels, which include; Carilion Memorial Hospital, NASIC, Eisenhower Executive Office Building, Columbia Mall Plaza, No Bull Smokehouse, Sterling Management and Border Bank.

- **Dave Bartell – Vice President, Estimator**

Founding member of Border Construction, bringing over 25 years of construction experience. Prior to starting Border Construction, Dave was the Vice President and Senior Estimator for another large construction/development company in Fargo. Dave is responsible for providing pre-construction input, bidding out projects, job-cost, oversight of value-engineering, as well as establishing all final construction documents, budgets and schedules for Border Construction.

- **Chris Lizakowski – Project Superintendent**

Chris is responsible for the daily management of the construction site and the completion of assigned job projects on schedule and within budget. He supervises all field personnel, coordinates material delivery and storage, coordinates subcontractors and monitors the construction documents and specifications to see that they are completed accurately. Chris has over 38 years of hands-on experience. He worked as a foreman and finish carpenter at Industrial Builders for over 25 years until he joined our team at Border Construction in August 2020. He is focused, reliable, professional and motivated to satisfy clients with exceptional work.

Years in Business: 5
Examples of Similar Projects Completed:

Project Name	Address	Owner	Architect	Contract Amount
Sterling Management Office	4340 18 th Ave S Fargo, ND 58103	Sterling Properties, LLP	Wild CRG	\$3,228,856
NDSU – Hastings Hall	1320 Bolley Drive Fargo, ND 58105	North Dakota State University	Shultz & Associates	\$2,091,512
Valley Veterinary Hospital Remodel	3210 Main Ave Fargo, ND 58103	Valley Veterinary Hospital	Animal Arts	\$1,467,066
Border Bank Branch Remodel	3203 32 nd Ave S Fargo, ND 58103	Border Bank	Wild CRG	\$1,320,000
The Village Family Service Center Remodel	2701 12 th Ave S Fargo, ND 58103	The Village Family Service Center	BarnHaus	\$474,015

YWCA Emergency Shelter - 2nd Flr Remodel	3000 S University Dr Fargo, ND 58103	YWCA	Shultz & Associates	\$250,021
MN State Bookstore – Fergus Falls	MState - Fergus Falls Campus	MState	YHR	\$185,800
MN State Dental Lab – Moorhead	MState - Moorhead Campus	MState	YHR	\$175,000

B. Proposed Work Plan

ID	Task Name	Duration	Start	Finish	2022	November 2022	December 2022	January 2023
1	Fargo PD Media Rm Expansion	55 days	Mon 10/17/22	Fri 12/30/22	11/14/22	20/23/26/29	1/4/7/10/13/16/19/22/25/28	1/4/7/10/13/16/19/22/25/28/31/3
2	Demo - Walls, ACT, Floor, Granite	8 days	Mon 10/17/22	Wed 10/26/22				
3	Frame Walls/Soffit	5 days	Wed 10/26/22	Tue 11/1/22				
4	Electrical In-Wall Rough-In	4 days	Fri 11/4/22	Wed 11/9/22				
5	Mech Rough-In	5 days	Thu 11/10/22	Wed 11/16/22				
6	Insulate Walls - RC Channel	2 days	Thu 11/10/22	Fri 11/11/22				
7	Cut Concrete - Install Floor Box	3 days	Wed 11/2/22	Fri 11/4/22				
8	Hang Sheetrock	4 days	Mon 11/14/22	Thu 11/17/22				
9	Install Alum Door Frame	5 days	Fri 11/18/22	Thu 11/24/22				
10	Tape/Finish	8 days	Fri 11/18/22	Tue 11/29/22				
11	Paint	3 days	Wed 11/30/22	Fri 12/2/22				
12	ACT Grid	3 days	Mon 12/5/22	Wed 12/7/22				
13	Mech/Elec Trim Out	5 days	Thu 12/8/22	Wed 12/14/22				
14	Install Ceiling Tile	1 day	Thu 12/15/22	Thu 12/15/22				
15	Flooring Install	4 days	Fri 12/16/22	Wed 12/21/22				
16	Install Casework	3 days	Thu 12/22/22	Mon 12/26/22				
17	Install Door/Hardware/Glazing	3 days	Tue 12/27/22	Thu 12/29/22				
18	Final Cleaning	1 day	Fri 12/30/22	Fri 12/30/22				

Project: Fargo PD Media Rm Ex
Date: Tue 9/13/22

Task Split Milestone Summary Project Summary Inactive Task Inactive Milestone

Inactive Summary Manual Task Duration-only Manual Summary Rollup Start-only Finish-only

External Tasks External Milestone Deadline Critical Critical Split Progress Manual Progress

Project: PD HQ Media Room Expansion 2022

Budget: \$100,000

Bid Opening Date: September 20, 2022

Number of Addendums: 3

Company	License	Bond	Acknowledge Addenda	Bid Amount	Remarks
Border Construction, LLC	57847	N/A	Y	153,230.00	

Recommendation: Following changes to the scope, the Architect's Estimate was \$134,000.00. The bid came in at 14% over the Architect's Estimate. It is recommended to accept Border Construction's bid.



**North Dakota Workforce
Safety & Insurance**

Bryan Klipfel
Director

Border Construction LLC
4321 14th Ave N
Fargo ND 58102-2809

August 19, 2022

Account Information Employer account number: 1501183
Issue date: 08/19/2022
Expiration date: 12/14/2022

Certificate of Payment

Reason For Notice Workforce Safety & Insurance (WSI) certifies Border Construction LLC has North Dakota workers' compensation coverage from 10/01/2021 to 09/30/2022. Employees of Border Construction LLC are entitled to apply for WSI benefits.

Required Action Employers must post this Certificate of Payment in a conspicuous manner at the workplace. A penalty of \$250 may apply for failure to comply with this requirement. See North Dakota Century Code § 65-04-04.

Additional Information Coverage under this certificate extends to employers for their North Dakota exposure. Limited coverage may be extended for temporary and/or incidental exposure outside of North Dakota.

WSI may revoke the Certificate of Payment for failure to make required premium payments.

For More Information Contact customer service at 800-777-5033 or 701-328-3800 with questions.

Class	Classification Description
5410F 8747	Bldg Const-Inclu Concrete Work Professional/Business Reps

Sincerely,

Barry Schumacher
Chief of Employer Services

PL5

State of North Dakota

SECRETARY OF STATE



CONTRACTOR LICENSE

NO: 57847

CLASS: A

The undersigned, as Secretary of State of the state of North Dakota and Registrar of Contractors, certifies that **BORDER CONSTRUCTION, LLC** whose address is in FARGO, ND, has filed in this office proper documents for a Contractor License valid until March 1, 2023, and has complied with all requirements of North Dakota Century Code, chapter 43-07.

BORDER CONSTRUCTION, LLC is entitled to bid on and accept contracts as authorized by law under this license without limit as to the value of any single contract project.

Dated: February 17, 2022

A handwritten signature in cursive script, reading "Alvin A. Jaeger".

Alvin A. Jaeger
Secretary of State

The North Dakota Secretary of State verifies that:

BORDER CONSTRUCTION, LLC

is the holder of a North Dakota Class A Contractor License which is in force until March 1, 2023 unless sooner suspended or revoked as provided by NDCC 43-07.

License # 57847

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
 9/28/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Dawson Insurance, a Marsh & McLennan Agency LLC company 505 Broadway North, Suite 100 Fargo ND 58102	CONTACT NAME: Joni Alfson PHONE (A/C, No, Ext): 701-237-3311 FAX (A/C, No): 701-232-4442 E-MAIL ADDRESS: joni.alfson@marshmma.com														
INSURED Border Construction, LLC 4321 14th Ave N Fargo ND 58102	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="text-align: center;">INSURER(S) AFFORDING COVERAGE</th> <th style="text-align: center;">NAIC #</th> </tr> <tr> <td>INSURER A : Secura Insurance, A Mutual Company</td> <td style="text-align: center;">22543</td> </tr> <tr> <td>INSURER B :</td> <td></td> </tr> <tr> <td>INSURER C :</td> <td></td> </tr> <tr> <td>INSURER D :</td> <td></td> </tr> <tr> <td>INSURER E :</td> <td></td> </tr> <tr> <td>INSURER F :</td> <td></td> </tr> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A : Secura Insurance, A Mutual Company	22543	INSURER B :		INSURER C :		INSURER D :		INSURER E :		INSURER F :	
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INSURER B :															
INSURER C :															
INSURER D :															
INSURER E :															
INSURER F :															

COVERAGES **CERTIFICATE NUMBER: 893413624** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.


INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS														
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> 500 GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	Y		CP3291671	8/15/2022	8/15/2023	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td>EACH OCCURRENCE</td><td style="text-align: right;">\$ 1,000,000</td></tr> <tr><td>DAMAGE TO RENTED PREMISES (Ea occurrence)</td><td style="text-align: right;">\$ 100,000</td></tr> <tr><td>MED EXP (Any one person)</td><td style="text-align: right;">\$ 10,000</td></tr> <tr><td>PERSONAL & ADV INJURY</td><td style="text-align: right;">\$ 1,000,000</td></tr> <tr><td>GENERAL AGGREGATE</td><td style="text-align: right;">\$ 2,000,000</td></tr> <tr><td>PRODUCTS - COMP/OP AGG</td><td style="text-align: right;">\$ 2,000,000</td></tr> <tr><td></td><td style="text-align: right;">\$</td></tr> </table>	EACH OCCURRENCE	\$ 1,000,000	DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 100,000	MED EXP (Any one person)	\$ 10,000	PERSONAL & ADV INJURY	\$ 1,000,000	GENERAL AGGREGATE	\$ 2,000,000	PRODUCTS - COMP/OP AGG	\$ 2,000,000		\$
EACH OCCURRENCE	\$ 1,000,000																				
DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 100,000																				
MED EXP (Any one person)	\$ 10,000																				
PERSONAL & ADV INJURY	\$ 1,000,000																				
GENERAL AGGREGATE	\$ 2,000,000																				
PRODUCTS - COMP/OP AGG	\$ 2,000,000																				
	\$																				
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS			A3291672	8/15/2022	8/15/2023	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td>COMBINED SINGLE LIMIT (Ea accident)</td><td style="text-align: right;">\$ 1,000,000</td></tr> <tr><td>BODILY INJURY (Per person)</td><td style="text-align: right;">\$</td></tr> <tr><td>BODILY INJURY (Per accident)</td><td style="text-align: right;">\$</td></tr> <tr><td>PROPERTY DAMAGE (Per accident)</td><td style="text-align: right;">\$</td></tr> <tr><td></td><td style="text-align: right;">\$</td></tr> </table>	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000	BODILY INJURY (Per person)	\$	BODILY INJURY (Per accident)	\$	PROPERTY DAMAGE (Per accident)	\$		\$				
COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000																				
BODILY INJURY (Per person)	\$																				
BODILY INJURY (Per accident)	\$																				
PROPERTY DAMAGE (Per accident)	\$																				
	\$																				
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000			CU3291673	8/15/2022	8/15/2023	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td>EACH OCCURRENCE</td><td style="text-align: right;">\$ 2,000,000</td></tr> <tr><td>AGGREGATE</td><td style="text-align: right;">\$ 2,000,000</td></tr> <tr><td></td><td style="text-align: right;">\$</td></tr> </table>	EACH OCCURRENCE	\$ 2,000,000	AGGREGATE	\$ 2,000,000		\$								
EACH OCCURRENCE	\$ 2,000,000																				
AGGREGATE	\$ 2,000,000																				
	\$																				
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A				<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="text-align: center;">PER STATUTE</td> <td style="text-align: center;">OTH-ER</td> <td></td> </tr> <tr><td>E.L. EACH ACCIDENT</td><td></td><td style="text-align: right;">\$</td></tr> <tr><td>E.L. DISEASE - EA EMPLOYEE</td><td></td><td style="text-align: right;">\$</td></tr> <tr><td>E.L. DISEASE - POLICY LIMIT</td><td></td><td style="text-align: right;">\$</td></tr> </table>	PER STATUTE	OTH-ER		E.L. EACH ACCIDENT		\$	E.L. DISEASE - EA EMPLOYEE		\$	E.L. DISEASE - POLICY LIMIT		\$		
PER STATUTE	OTH-ER																				
E.L. EACH ACCIDENT		\$																			
E.L. DISEASE - EA EMPLOYEE		\$																			
E.L. DISEASE - POLICY LIMIT		\$																			
A	Builders Risk			CP3291671	8/15/2022	8/15/2023	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td>Location</td><td style="text-align: right;">\$750,000</td></tr> <tr><td>Temporary Storage</td><td style="text-align: right;">\$100,000</td></tr> <tr><td>Transit</td><td style="text-align: right;">\$100,000</td></tr> </table>	Location	\$750,000	Temporary Storage	\$100,000	Transit	\$100,000								
Location	\$750,000																				
Temporary Storage	\$100,000																				
Transit	\$100,000																				

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
 Project: Fargo Police Department Media Room Expansion - 105 25 th Street North, Fargo, North Dakota 58102
 Project No. 2216

As respects the General Liability, additional insured status applies to the City of Fargo when required by written contract.

CERTIFICATE HOLDER

CANCELLATION

City of Fargo 225 4th Street North Fargo ND 58102	<p>SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.</p> <p>AUTHORIZED REPRESENTATIVE</p> 
---	--

AIA® Document A101® – 2017

Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum

AGREEMENT made as of the Twenty-sixth day of September in the year Two Thousand Twenty-two
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status, address and other information)

City of Fargo
225 4th St. N.,
Fargo, North Dakota 58107-1066

and the Contractor:
(Name, legal status, address and other information)

Border Construction LLC
4321 14th Avenue North
Fargo, North Dakota 58102

for the following Project:
(Name, location and detailed description)

Fargo Police Department Media Room Expansion
105 25th Street North
Fargo, North Dakota 58102
Project No. 2216

The Architect:
(Name, legal status, address and other information)

WildCRG, Ltd.
500 2nd Avenue North Suite 514
Fargo, North Dakota 58102

The Owner and Contractor agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

The parties should complete A101®-2017, Exhibit A, Insurance and Bonds, contemporaneously with this Agreement. AIA Document A201®-2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

Init.

TABLE OF ARTICLES

- 1 THE CONTRACT DOCUMENTS**
- 2 THE WORK OF THIS CONTRACT**
- 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION**
- 4 CONTRACT SUM**
- 5 PAYMENTS**
- 6 DISPUTE RESOLUTION**
- 7 TERMINATION OR SUSPENSION**
- 8 MISCELLANEOUS PROVISIONS**
- 9 ENUMERATION OF CONTRACT DOCUMENTS**

EXHIBIT A INSURANCE AND BONDS

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be:

(Check one of the following boxes.)

- The date of this Agreement.
- A date set forth in a notice to proceed issued by the Owner.
- Established as follows:
(Insert a date or a means to determine the date of commencement of the Work.)

October 17, 2022

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Agreement.

§ 3.2 The Contract Time shall be measured from the date of commencement of the Work.

§ 3.3 Substantial Completion

§ 3.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work:

(Check one of the following boxes and complete the necessary information.)

Init.

Not later than () calendar days from the date of commencement of the Work.

By the following date: December 31, 2022

§ 3.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following dates:

Portion of Work	Substantial Completion Date
-----------------	-----------------------------

§ 3.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 3.3, liquidated damages, if any, shall be assessed as set forth in Section 4.5.

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be One Hundred Fifty-three Thousand Two Hundred Thirty Dollars and Zero Cents (\$ 153,230.00), subject to additions and deductions as provided in the Contract Documents.

§ 4.2 Alternates

§ 4.2.1 Alternates, if any, included in the Contract Sum:

Item	Price
N/A	

§ 4.2.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement. (Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)

Item	Price	Conditions for Acceptance
N/A		

§ 4.3 Allowances, if any, included in the Contract Sum: (Identify each allowance.)

Item	Price
N/A	

§ 4.4 Unit prices, if any:

(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit (\$0.00)
N/A		

§ 4.5 Liquidated damages, if any:

(Insert terms and conditions for liquidated damages, if any.)

N/A

§ 4.6 Other:

(Insert provisions for bonus or other incentives, if any, that might result in a change to the Contract Sum.)

N/A

Init.

ARTICLE 5 PAYMENTS

§ 5.1 Progress Payments

§ 5.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the first day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the first non-holiday weekday of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than 60 () days after the Architect receives the Application for Payment.

(Federal, state or local laws may require payment within a certain period of time.)

§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.5 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 5.1.6 In accordance with AIA Document A201™-2017, General Conditions of the Contract for Construction, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 5.1.6.1 The amount of each progress payment shall first include:

- .1 That portion of the Contract Sum properly allocable to completed Work;
- .2 That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing; and
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified.

§ 5.1.6.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201-2017;
- .3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201-2017; and
- .5 Retainage withheld pursuant to Section 5.1.7.

§ 5.1.7 Retainage

§ 5.1.7.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)

Ten Percent (10%)

Init.

§ 5.1.7.1.1 The following items are not subject to retainage:
(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

None

§ 5.1.7.2 Reduction or limitation of retainage, if any, shall be as follows:
(If the retainage established in Section 5.1.7.1 is to be modified prior to Substantial Completion of the entire Work, including modifications for Substantial Completion of portions of the Work as provided in Section 3.3.2, insert provisions for such modifications.)

N/A

§ 5.1.7.3 Except as set forth in this Section 5.1.7.3, upon Substantial Completion of the Work, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.1.7. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:
(Insert any other conditions for release of retainage upon Substantial Completion.)

Submit retainage application separately

§ 5.1.8 If final completion of the Work is materially delayed through no fault of the Contractor, the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A201–2017.

§ 5.1.9 Except with the Owner’s prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 5.2 Final Payment

§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract except for the Contractor’s responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 a final Certificate for Payment has been issued by the Architect.

§ 5.2.2 The Owner’s final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect’s final Certificate for Payment, or as follows:

§ 5.3 Interest

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.
(Insert rate of interest agreed upon, if any.)

%

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017, unless the parties appoint below another individual, not a party to this Agreement, to serve as the Initial Decision Maker.
(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

Init.

§ 6.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation pursuant to Article 15 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows:

(Check the appropriate box.)

Arbitration pursuant to Section 15.4 of AIA Document A201–2017

Litigation in a Cass County District Court, State of North Dakota

Other *(Specify)*

If the Owner and Contractor do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in Cass County District Court, State of North Dakota.

ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201–2017.

§ 7.1.1 If the Contract is terminated for the Owner’s convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Contractor a termination fee as follows:

(Insert the amount of, or method for determining, the fee, if any, payable to the Contractor following a termination for the Owner’s convenience.)

The reasonable value of the work provided by the Contractor at the time of termination

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017.

ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 The Owner’s representative:

(Name, address, email address, and other information)

Bekki Majerus
The City of Fargo
Director of Facilities Management
Bmajerus@fargoND.gov

§ 8.3 The Contractor’s representative:

(Name, address, email address, and other information)

Tom Jarvis
Border Construction LLC
4321 14th Avenue North
Fargo, North Dakota 58102

Init.

§ 8.4 Neither the Owner's nor the Contractor's representative shall be changed without ten days' prior notice to the other party.

§ 8.5 Insurance and Bonds

§ 8.5.1 The Owner and the Contractor shall purchase and maintain insurance as set forth in AIA Document A101™-2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents.

§ 8.5.2 The Contractor shall provide bonds as set forth in AIA Document A101™-2017 Exhibit A, and elsewhere in the Contract Documents.

§ 8.6 Notice in electronic format, pursuant to Article 1 of AIA Document A201-2017, may be given in accordance with AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

(If other than in accordance with AIA Document E203-2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)

§ 8.7 Other provisions:

N/A

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 This Agreement is comprised of the following documents:

- .1 AIA Document A101™-2017, Standard Form of Agreement Between Owner and Contractor
- .2 AIA Document A101™-2017, Exhibit A, Insurance and Bonds
- .3 AIA Document A201™-2017, General Conditions of the Contract for Construction
- .4 AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:

(Insert the date of the E203-2013 incorporated into this Agreement.)

September 26, 2022 .

- .5 Drawings

Index of Drawings

Cover: Code Research, Demolition Plan, Demolition Reflected Ceiling Plan

Architectural: A3.0 Floor Plan, Interior Wall Types, Finish Schedule Legend, Door Frame Type Schedule, Interior Elevations, Details

Mechanical: M1 Mechanical Demo Plan, Layout Plan, General Notes & Keynotes

Electrical: E1 Electrical Demo Plan, General Demo Notes & Keynotes, Lighting Plan, General Electrical Notes, Power & Systems Plan, Power & Systems General Notes & Keynotes

- .6 Specifications

Section	Title	Date	Pages
---------	-------	------	-------

- .7 Addenda, if any:

Number	Date	Pages
Addendum No. 1	August 24, 2022	4

Addendum No. 2

September 2, 2022

3

(Paragraphs deleted)

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are also enumerated in this Article 9.

.8 Other Exhibits:

(Check all boxes that apply and include appropriate information identifying the exhibit where required.)

AIA Document E204™-2017, Sustainable Projects Exhibit, dated as indicated below:
(Insert the date of the E204-2017 incorporated into this Agreement.)

The Sustainability Plan:

Title	Date	Pages
-------	------	-------

Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
----------	-------	------	-------

.9 Other documents, if any, listed below:

(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201™-2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)

This Agreement entered into as of the day and year first written above.

OWNER (Signature)

Timothy Mahoney, Mayor
(Printed name and title)

CONTRACTOR (Signature)

Tom Jarvis, President
(Printed name and title)

Steve Sprague/City Auditor

Init.

AIA Document A101[®] – 2017 Exhibit A

Insurance and Bonds

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Contractor, dated the Twenty-sixth day of September in the year Two Thousand Twenty-two
(In words, indicate day, month and year.)

for the following **PROJECT**:
(Name and location or address)

Fargo Police Department Media Room Expansion
105 25th Street North
Fargo, North Dakota 58102
Project No. 2216

THE OWNER:
(Name, legal status and address)

City of Fargo
225 4th St. N.,
Fargo, North Dakota 58107-1066

THE CONTRACTOR:
(Name, legal status and address)

Border Construction LLC
4321 14th Avenue North
Fargo, North Dakota 58102

TABLE OF ARTICLES

- A.1 GENERAL**
- A.2 OWNER'S INSURANCE**
- A.3 CONTRACTOR'S INSURANCE AND BONDS**
- A.4 SPECIAL TERMS AND CONDITIONS**

ARTICLE A.1 GENERAL

The Owner and Contractor shall purchase and maintain insurance, and provide bonds, as set forth in this Exhibit. As used in this Exhibit, the term General Conditions refers to AIA Document A201[™]-2017, General Conditions of the Contract for Construction.

ARTICLE A.2 OWNER'S INSURANCE

§ A.2.1 General

Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this Article A.2 and, upon the Contractor's request, provide a copy of the property insurance policy or policies required by Section

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is intended to be used in conjunction with AIA Document A201[®]-2017, General Conditions of the Contract for Construction. Article 11 of A201[®]-2017 contains additional insurance provisions.

Init.

A.2.3. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.

§ A.2.2 Liability Insurance

The Owner shall be responsible for purchasing and maintaining the Owner's usual general liability insurance.

§ A.2.3 Required Property Insurance

§ A.2.3.1 Unless this obligation is placed on the Contractor pursuant to Section A.3.3.2.1, the Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance written on a builder's risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section A.2.3.1.3, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.

§ A.2.3.1.1 Causes of Loss. The insurance required by this Section A.2.3.1 shall provide coverage for direct physical loss or damage, and shall not exclude the risks of fire, explosion, theft, vandalism, malicious mischief, collapse, earthquake, flood, or windstorm. The insurance shall also provide coverage for ensuing loss or resulting damage from error, omission, or deficiency in construction methods, design, specifications, workmanship, or materials. Sub-limits, if any, are as follows:

(Indicate below the cause of loss and any applicable sub-limit.)

Causes of Loss	Sub-Limit
----------------	-----------

§ A.2.3.1.2 Specific Required Coverages. The insurance required by this Section A.2.3.1 shall provide coverage for loss or damage to falsework and other temporary structures, and to building systems from testing and startup. The insurance shall also cover debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and reasonable compensation for the Architect's and Contractor's services and expenses required as a result of such insured loss, including claim preparation expenses. Sub-limits, if any, are as follows:

(Indicate below type of coverage and any applicable sub-limit for specific required coverages.)

Coverage	Sub-Limit
----------	-----------

§ A.2.3.1.3 Unless the parties agree otherwise, upon Substantial Completion, the Owner shall continue the insurance required by Section A.2.3.1 or, if necessary, replace the insurance policy required under Section A.2.3.1 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 12.2.2 of the General Conditions.

§ A.2.3.1.4 Deductibles and Self-Insured Retentions. If the insurance required by this Section A.2.3 is subject to deductibles or self-insured retentions, the Owner shall be responsible for all loss not covered because of such deductibles or retentions.

§ A.2.3.2 Occupancy or Use Prior to Substantial Completion. The Owner's occupancy or use of any completed or partially completed portion of the Work prior to Substantial Completion shall not commence until the insurance company or companies providing the insurance under Section A.2.3.1 have consented in writing to the continuance of coverage. The Owner and the Contractor shall take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance, unless they agree otherwise in writing.

§ A.2.3.3 Insurance for Existing Structures

If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 12.2.2 of

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the General Conditions, "all-risks" property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage from the causes of loss identified in Section A.2.3.1, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.

§ A.2.4 Optional Extended Property Insurance.

The Owner shall purchase and maintain the insurance selected and described below.

(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. For each type of insurance selected, indicate applicable limits of coverage or other conditions in the fill point below the selected item.)

- § A.2.4.1 Loss of Use, Business Interruption, and Delay in Completion Insurance**, to reimburse the Owner for loss of use of the Owner's property, or the inability to conduct normal operations due to a covered cause of loss.

- § A.2.4.2 Ordinance or Law Insurance**, for the reasonable and necessary costs to satisfy the minimum requirements of the enforcement of any law or ordinance regulating the demolition, construction, repair, replacement or use of the Project.

- § A.2.4.3 Expediting Cost Insurance**, for the reasonable and necessary costs for the temporary repair of damage to insured property, and to expedite the permanent repair or replacement of the damaged property.

- § A.2.4.4 Extra Expense Insurance**, to provide reimbursement of the reasonable and necessary excess costs incurred during the period of restoration or repair of the damaged property that are over and above the total costs that would normally have been incurred during the same period of time had no loss or damage occurred.

- § A.2.4.5 Civil Authority Insurance**, for losses or costs arising from an order of a civil authority prohibiting access to the Project, provided such order is the direct result of physical damage covered under the required property insurance.

- § A.2.4.6 Ingress/Egress Insurance**, for loss due to the necessary interruption of the insured's business due to physical prevention of ingress to, or egress from, the Project as a direct result of physical damage.

- § A.2.4.7 Soft Costs Insurance**, to reimburse the Owner for costs due to the delay of completion of the Work, arising out of physical loss or damage covered by the required property insurance: including construction loan fees; leasing and marketing expenses; additional fees, including those of architects, engineers, consultants, attorneys and accountants, needed for the completion of the construction, repairs, or reconstruction; and carrying costs such as property taxes, building permits, additional interest on loans, realty taxes, and insurance premiums over and above normal expenses.

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§ A.2.5 Other Optional Insurance.

The Owner shall purchase and maintain the insurance selected below.

(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance.)

§ A.2.5.1 Cyber Security Insurance for loss to the Owner due to data security and privacy breach, including costs of investigating a potential or actual breach of confidential or private information. *(Indicate applicable limits of coverage or other conditions in the fill point below.)*

§ A.2.5.2 Other Insurance
(List below any other insurance coverage to be provided by the Owner and any applicable limits.)

Coverage	Limits
----------	--------

ARTICLE A.3 CONTRACTOR'S INSURANCE AND BONDS

§ A.3.1 General

§ A.3.1.1 Certificates of Insurance. The Contractor shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article A.3 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of commercial liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the periods required by Section A.3.2.1 and Section A.3.3.1. The certificates will show the Owner as an additional insured on the Contractor's Commercial General Liability and excess or umbrella liability policy or policies.

§ A.3.1.2 Deductibles and Self-Insured Retentions. The Contractor shall disclose to the Owner any deductible or self-insured retentions applicable to any insurance required to be provided by the Contractor.

§ A.3.1.3 Additional Insured Obligations. To the fullest extent permitted by law, the Contractor shall cause the commercial general liability coverage to include (1) the Owner, the Architect, and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's consultants, CG 20 32 07 04.

§ A.3.2 Contractor's Required Insurance Coverage

§ A.3.2.1 The Contractor shall purchase and maintain the following types and limits of insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:
(If the Contractor is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.)

§ A.3.2.2 Commercial General Liability

§ A.3.2.2.1 Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than one million dollars (\$ 1,000,000.00) each occurrence, one million dollars (\$ 1,000,000.00) general aggregate, and one million dollars (\$ 1,000,000.00) aggregate for products-completed operations hazard, providing coverage for claims including

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- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- .2 personal injury and advertising injury;
- .3 damages because of physical damage to or destruction of tangible property, including the loss of use of such property;
- .4 bodily injury or property damage arising out of completed operations; and
- .5 the Contractor's indemnity obligations under Section 3.18 of the General Conditions.

§ A.3.2.2.2 The Contractor's Commercial General Liability policy under this Section A.3.2.2 shall not contain an exclusion or restriction of coverage for the following:

- .1 Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim.
- .2 Claims for property damage to the Contractor's Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a Subcontractor.
- .3 Claims for bodily injury other than to employees of the insured.
- .4 Claims for indemnity under Section 3.18 of the General Conditions arising out of injury to employees of the insured.
- .5 Claims or loss excluded under a prior work endorsement or other similar exclusionary language.
- .6 Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language.
- .7 Claims related to residential, multi-family, or other habitational projects, if the Work is to be performed on such a project.
- .8 Claims related to roofing, if the Work involves roofing.
- .9 Claims related to exterior insulation finish systems (EIFS), synthetic stucco or similar exterior coatings or surfaces, if the Work involves such coatings or surfaces.
- .10 Claims related to earth subsidence or movement, where the Work involves such hazards.
- .11 Claims related to explosion, collapse and underground hazards, where the Work involves such hazards.

§ A.3.2.3 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Contractor, with policy limits of not less than one million dollars (\$ 1,000,000.00) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles along with any other statutorily required automobile coverage.

§ A.3.2.4 The Contractor may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under Section A.3.2.2 and A.3.2.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ A.3.2.5 Workers' Compensation at statutory limits.

§ A.3.2.6 Employers' Liability with policy limits not less than (\$) each accident, (\$) each employee, and (\$) policy limit.

§ A.3.2.7 Jones Act, and the Longshore & Harbor Workers' Compensation Act, as required, if the Work involves hazards arising from work on or near navigable waterways, including vessels and docks

§ A.3.2.8 If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than one million dollars (\$ 1,000,000.00) per claim and one million dollars (\$ 1,000,000.00) in the aggregate.

§ A.3.2.9 If the Work involves the transport, dissemination, use, or release of pollutants, the Contractor shall procure Pollution Liability insurance, with policy limits of not less than (\$) per claim and (\$) in the aggregate.

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§ A.3.2.10 Coverage under Sections A.3.2.8 and A.3.2.9 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than (\$) per claim and (\$) in the aggregate.

§ A.3.2.11 Insurance for maritime liability risks associated with the operation of a vessel, if the Work requires such activities, with policy limits of not less than (\$) per claim and (\$) in the aggregate.

§ A.3.2.12 Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits of not less than (\$) per claim and (\$) in the aggregate.

§ A.3.3 Contractor's Other Insurance Coverage

§ A.3.3.1 Insurance selected and described in this Section A.3.3 shall be purchased from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

(If the Contractor is required to maintain any of the types of insurance selected below for a duration other than the expiration of the period for correction of Work, state the duration.)

§ A.3.3.2 The Contractor shall purchase and maintain the following types and limits of insurance in accordance with Section A.3.3.1.

(Select the types of insurance the Contractor is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. Where policy limits are provided, include the policy limit in the appropriate fill point.)

§ A.3.3.2.1 Property insurance of the same type and scope satisfying the requirements identified in Section A.2.3, which, if selected in this section A.3.3.2.1, relieves the Owner of the responsibility to purchase and maintain such insurance except insurance required by Section A.2.3.1.3 and Section A.2.3.3. The Contractor shall comply with all obligations of the Owner under Section A.2.3 except to the extent provided below. The Contractor shall disclose to the Owner the amount of any deductible, and the Owner shall be responsible for losses within the deductible. Upon request, the Contractor shall provide the Owner with a copy of the property insurance policy or policies required. The Owner shall adjust and settle the loss with the insurer and be the trustee of the proceeds of the property insurance in accordance with Article 11 of the General Conditions unless otherwise set forth below:

(Where the Contractor's obligation to provide property insurance differs from the Owner's obligations as described under Section A.2.3, indicate such differences in the space below. Additionally, if a party other than the Owner will be responsible for adjusting and settling a loss with the insurer and acting as the trustee of the proceeds of property insurance in accordance with Article 11 of the General Conditions, indicate the responsible party below.)

§ A.3.3.2.2 Railroad Protective Liability Insurance, with policy limits of not less than (\$) per claim and (\$) in the aggregate, for Work within fifty (50) feet of railroad property.

§ A.3.3.2.3 Asbestos Abatement Liability Insurance, with policy limits of not less than (\$) per claim and (\$) in the aggregate, for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials.

§ A.3.3.2.4 Insurance for physical damage to property while it is in storage and in transit to the construction site on an "all-risks" completed value form.

§ A.3.3.2.5 Property insurance on an "all-risks" completed value form, covering property owned by the Contractor and used on the Project, including scaffolding and other equipment.

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[] § A.3.3.2.6 Other Insurance

(List below any other insurance coverage to be provided by the Contractor and any applicable limits.)

Coverage	Limits
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§ A.3.4 Performance Bond and Payment Bond

The Contractor shall provide surety bonds, from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located, as follows:

(Specify type and penal sum of bonds.)

Type	Penal Sum (\$0.00)
— Payment Bond —	
— Performance Bond —	

Payment and Performance Bonds shall be AIA Document A312™, Payment Bond and Performance Bond, or contain provisions identical to AIA Document A312™, current as of the date of this Agreement.

ARTICLE A.4 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows:

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AIA® Document A201® – 2007

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

Fargo Police Department Media Room Expansion
105 25th Street North
Fargo, North Dakota 58102
Project No. 2216

THE OWNER:

(Name, legal status and address)

City of Fargo
225 4th St. N.,
Fargo, North Dakota 58107-1066

THE ARCHITECT:

(Name, legal status and address)

WildCRG, Ltd.
500 2nd Avenue North Suite 514
Fargo, North Dakota 58102

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS

§ 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding requirements.

§ 1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

§ 1.1.3 THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 THE PROJECT

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by separate contractors.

§ 1.1.5 THE DRAWINGS

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

§ 1.1.6 THE SPECIFICATIONS

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 INSTRUMENTS OF SERVICE

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 INITIAL DECISION MAKER

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2.

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

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§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.3 CAPITALIZATION

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 INTERPRETATION

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants.

§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

ARTICLE 2 OWNER

§ 2.1 GENERAL

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.1.2 The Owner shall furnish to the Contractor within thirty days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the

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portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.2 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.2.3 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.2.4 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.2.5 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

ARTICLE 3 CONTRACTOR

§ 3.1 GENERAL

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

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§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.4 LABOR AND MATERIALS

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

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§ 3.4.2 Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 3.5 WARRANTY

The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.6 TAXES

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.7 PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 **Concealed or Unknown Conditions.** If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall

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continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 ALLOWANCES

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 Allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 Whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 SUPERINTENDENT

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the name and qualifications of a proposed superintendent. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to the proposed superintendent or (2) that the Architect requires additional time to review. Failure of the Architect to reply within the 14 day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

§ 3.10.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect's approval. The Architect's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required

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submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop

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Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

§ 3.13 USE OF SITE

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.14 CUTTING AND PATCHING

§ 3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

§ 3.15 CLEANING UP

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 ACCESS TO WORK

The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located.

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

§ 3.18 INDEMNIFICATION

§ 3.18.1 To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a

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party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE 4 ARCHITECT

§ 4.1 GENERAL

§ 4.1.1 The Owner shall retain an architect lawfully licensed to practice architecture or an entity lawfully practicing architecture in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 4.1.2 Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Contractor and Architect. Consent shall not be unreasonably withheld.

§ 4.1.3 If the employment of the Architect is terminated, the Owner shall employ a successor architect as to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§ 4.2 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed.

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However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 DEFINITIONS

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

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§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that the Architect requires additional time for review. Failure of the Owner or Architect to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 5.3 SUBCONTRACTUAL RELATIONS

By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

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§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

§ 6.2 MUTUAL RESPONSIBILITY

§ 6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

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§ 6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 GENERAL

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and Architect; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

§ 7.2 CHANGE ORDERS

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.7.

§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 7.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

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§ 7.3.6 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

- .1 Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .5 Additional costs of supervision and field office personnel directly attributable to the change.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 MINOR CHANGES IN THE WORK

The Architect has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor.

ARTICLE 8 TIME

§ 8.1 DEFINITIONS

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 PROGRESS AND COMPLETION

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control; or by delay authorized by the Owner pending mediation and arbitration; or by other causes that the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 CONTRACT SUM

The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.2 SCHEDULE OF VALUES

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Architect, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon

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compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.3 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the

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Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment.

§ 9.6 PROGRESS PAYMENTS

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor no later than seven days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

§ 9.6.5 Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.7 FAILURE OF PAYMENT

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

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§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract

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Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents; or
- .3 terms of special warranties required by the Contract Documents.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 SAFETY OF PERSONS AND PROPERTY

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in

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whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 HAZARDOUS MATERIALS

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.

§ 10.3.3 N/A

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

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§ 10.4 EMERGENCIES

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS**§ 11.1 CONTRACTOR'S LIABILITY INSURANCE**

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 Claims for damages insured by usual personal injury liability coverage;
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations; and
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Architect and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

§ 11.2 OWNER'S LIABILITY INSURANCE

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

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§ 11.3 PROPERTY INSURANCE

§ 11.3.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

§ 11.3.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.

§ 11.3.1.2 If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance that will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

§ 11.3.1.3 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.

§ 11.3.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

§ 11.3.1.5 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ 11.3.2 BOILER AND MACHINERY INSURANCE

The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

(Paragraphs deleted)

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.

§ 11.4.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

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ARTICLE 12 UNCOVERING AND CORRECTION OF WORK**§ 12.1 UNCOVERING OF WORK**

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

§ 12.2 CORRECTION OF WORK**§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION**

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

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§ 12.3 ACCEPTANCE OF NONCONFORMING WORK

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

The Contract shall be governed by the law of the place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

§ 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

§ 13.3 WRITTEN NOTICE

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

§ 13.4 RIGHTS AND REMEDIES

§ 13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 13.4.2 No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing.

§ 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

§ 13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by

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such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense.

§ 13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.5.5 If the Architect is to observe tests, inspections or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.6 INTEREST

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

§ 13.7 TIME LIMITS ON CLAIMS

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CONTRACTOR

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon thirty days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

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§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the above reasons exist, the Owner, upon certification by the Initial Decision Maker that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

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ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 CLAIMS

§ 15.1.1 DEFINITION

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 15.1.2 NOTICE OF CLAIMS

Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

§ 15.1.4 CLAIMS FOR ADDITIONAL COST

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.5 CLAIMS FOR ADDITIONAL TIME

§ 15.1.5.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.5.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

(Paragraphs deleted)

§ 15.2 INITIAL DECISION

§ 15.2.1 Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

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§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 15.3 MEDIATION

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.6 shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 15.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.4 ARBITRATION

(Paragraphs deleted)

§ 15.4.4 CONSOLIDATION OR JOINDER

§ 15.4.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

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§ 15.4.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Contractor under this Agreement.

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AIA[®] Document E203™ – 2013

Building Information Modeling and Digital Data Exhibit

This Exhibit dated the Twenty-sixth day of September in the year Two Thousand Twenty-two is incorporated into the agreement (the "Agreement") between the Parties for the following Project:

(Name and location or address of the Project)

City of Fargo
225 4th St. N.,
Fargo, North Dakota 58107-1066
Project No.: 2216

TABLE OF ARTICLES

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| 1 | GENERAL PROVISIONS |
| 2 | TRANSMISSION AND OWNERSHIP OF DIGITAL DATA |
| 3 | DIGITAL DATA PROTOCOLS |
| 4 | OTHER TERMS AND CONDITIONS |

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 This Exhibit provides for the establishment of protocols for the development, use, transmission, and exchange of Digital Data for the Project. If Building Information Modeling will be utilized, this Exhibit also provides for the establishment of the protocols necessary to implement the use of Building Information Modeling on the Project, including protocols that establish the expected Level of Development for Model Elements at various milestones of the Project, and the associated Authorized Uses of the Building Information Models.

§ 1.2 The Parties agree to incorporate this Exhibit into their agreements with any other Project Participants that may develop or make use of Digital Data on the Project. Prior to transmitting or allowing access to Digital Data, a Party may require any Project Participant to provide reasonable evidence that it has incorporated this Exhibit into its agreement for the Project, and agreed to the most recent Project specific versions of AIA Document G201™–2013, Project Digital Data Protocol Form and AIA Document G202™–2013, Project Building Information Modeling Protocol Form.

§ 1.2.1 The Parties agree that each of the Project Participants utilizing Digital Data on the Project is an intended third party beneficiary of the Section 1.2 obligation to incorporate this Exhibit into agreements with other Project Participants, and any rights and defenses associated with the enforcement of that obligation. This Exhibit does not create any third-party beneficiary rights other than those expressly identified in this Section 1.2.1.

§ 1.3 Adjustments to the Agreement

§ 1.3.1 If a Party believes that protocols established pursuant to Sections 3.2 or 4.5, and memorialized in AIA Documents G201–2013 and G202–2013, will result in a change in the Party's scope of work or services warranting an adjustment in compensation, contract sum, schedule or contract time, the Party shall notify the other Party. Failure to provide notice as required in this Section 1.3 shall result in a Party's waiver of any claims for

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is intended to be incorporated into an agreement between the parties and used in conjunction with AIA Documents G201™–2013, Project Digital Data Protocol Form, and G202™–2013, Building Information Modeling Protocol Form. It is anticipated that other Project Participants will incorporate a project specific E203–2013 into their agreements, and that the Parties and other Project Participants will set forth the agreed-upon protocols in AIA Documents G201–2013 and G202–2013.

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adjustments in compensation, contract sum, schedule or contract time as a result of the established protocols.

§ 1.3.2 Upon such notice, the Parties shall discuss and negotiate revisions to the protocols or discuss and negotiate any adjustments in compensation, contract sum, schedule or contract time in accordance with the terms of the Agreement.

§ 1.3.3 Notice required under this Section 1.3 shall be provided within thirty days of receipt of the protocols, unless otherwise indicated below:

(If the Parties require a notice period other than thirty days from receipt of the protocols, indicate the notice period below.)

§ 1.4 Definitions

§ 1.4.1 **Building Information Model.** A Building Information Model is a digital representation of the Project, or a portion of the Project, and is referred to in this Exhibit as the "Model," which term may be used herein to describe a Model Element, a single model or multiple models used in the aggregate, as well as other data sets identified in AIA Document G202–2013, Project Building Information Modeling Protocol Form.

§ 1.4.2 **Building Information Modeling.** Building Information Modeling or Modeling means the process used to create the Model.

§ 1.4.3 **Model Element.** A Model Element is a portion of the Model representing a component, system or assembly within a building or building site.

§ 1.4.4 **Level of Development.** The Level of Development (LOD) describes the minimum dimensional, spatial, quantitative, qualitative, and other data included in a Model Element to support the Authorized Uses associated with such LOD.

§ 1.4.5 **Authorized Uses.** The term "Authorized Uses" refers to the permitted uses of Digital Data authorized in the Digital Data and/or Building Information Modeling protocols established pursuant to the terms of this Exhibit.

§ 1.4.6 **Model Element Author.** The Model Element Author is the entity (or individual) responsible for managing and coordinating the development of a specific Model Element to the LOD required for an identified Project milestone, regardless of who is responsible for providing the content in the Model Element. Model Element Authors are to be identified in Section 3.3, Model Element Table, of AIA Document G202–2013.

§ 1.4.7 **Digital Data.** Digital Data is information, including communications, drawings, specifications and designs, created or stored for the Project in digital form. Unless otherwise stated, the term Digital Data includes the Model.

§ 1.4.8 **Confidential Digital Data.** Confidential Digital Data is Digital Data containing confidential or business proprietary information that the transmitting party designates and clearly marks as "confidential."

§ 1.4.9 **Written or In Writing.** In addition to any definition in the Agreement to which this Exhibit is attached, for purposes of this Exhibit and the Agreement, "written" or "in writing" shall mean any communication prepared and sent using a transmission method set forth in this Exhibit, or the protocols developed pursuant to this Exhibit, that permits the recipient to print the communication.

§ 1.4.10 **Written Notice.** In addition to any terms in the Agreement to which this Exhibit is attached, for purposes of this Exhibit and the Agreement, "written notice" shall be deemed to have been duly served if transmitted electronically to an address provided in this Exhibit or the Agreement using a transmission method set forth in this Exhibit that permits the recipient to print the communication.

§ 1.4.11 **Party and Parties.** The terms "Party" and "Parties" refer to the signing parties to the Agreement.

§ 1.4.12 **Project Participant.** A Project Participant is an entity (or individual) providing services, work, equipment or materials on the Project and includes the Parties.

ARTICLE 2 TRANSMISSION AND OWNERSHIP OF DIGITAL DATA

§ 2.1 The transmission of Digital Data constitutes a warranty by the Party transmitting Digital Data to the Party receiving Digital Data that the transmitting Party is the copyright owner of the Digital Data, or otherwise has

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permission to transmit the Digital Data for its use on the Project in accordance with the Authorized Uses of Digital Data established pursuant to the terms of this Exhibit.

§ 2.2 If a Party transmits Confidential Digital Data, the transmission of such Confidential Digital Data constitutes a warranty to the Party receiving such Confidential Digital Data that the transmitting Party is authorized to transmit the Confidential Digital Data. If a Party receives Confidential Digital Data, the receiving Party shall keep the Confidential Digital Data strictly confidential and shall not disclose it to any other person or entity except as set forth in Section 2.2.1.

§ 2.2.1 The receiving Party may disclose Confidential Digital Data as required by law or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity. The receiving Party may also disclose the Confidential Digital Data to its employees, consultants or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of Confidential Digital Data as set forth in this Exhibit.

§ 2.3 By transmitting Digital Data, the transmitting Party does not convey any ownership right in the Digital Data or in the software used to generate the Digital Data. Unless otherwise granted in a separate license, the receiving Party's right to use, modify, or further transmit Digital Data is specifically limited to designing, constructing, using, maintaining, altering and adding to the Project consistent with the terms of this Exhibit, and nothing contained in this Exhibit conveys any other right to use the Digital Data.

§ 2.4 Where a provision in this Article 2 conflicts with a provision in the Agreement into which this Exhibit is incorporated, the provision in this Article 2 shall prevail.

ARTICLE 3 DIGITAL DATA PROTOCOLS

§ 3.1 **Anticipated Types of Digital Data.** The anticipated types of Digital Data to be used on the Project are as follows: *(Indicate below the information on the Project that shall be created and shared in a digital format. If the Parties indicate that Building Information Modeling will be utilized on the Project, the Parties shall also complete Article 4.)*

Anticipated Digital Data	Applicability to the Project <i>(Indicate Applicable or Not Applicable)</i>	Location of Detailed Description <i>(Section 3.1.1 below or in an attachment to this exhibit and identified below)</i>
Project Agreements and Modifications	Not Applicable	
Project communications	Applicable	
Architect's pre-construction submittals	Applicable	
Contract Documents	Not Applicable	
Contractor's submittals	Applicable	
Subcontractor's submittals	Applicable	
Modifications	Applicable	
Project payment documents	Applicable	
Notices and claims	Not Applicable	
Building Information Modeling	Not Applicable	

(Row deleted)

§ 3.1.1 Insert a detailed description of the anticipated Digital Data identified in Section 3.1, if not further described in an attachment to this Exhibit.

Documents included, but not exclusive to, are as follows: Bids or proposals, everyday email communications, shop drawings, requests for payment/invoices, proposals for changes.

§ 3.2 As soon as practical following execution of the Agreement, the Parties shall further describe the uses of Digital Data, and establish necessary protocols governing the transmission and Authorized Uses of Digital Data, in consultation with the other Project Participants that are expected to utilize Digital Data on the Project.

§ 3.2.1 Unless another Project Participant is identified below, the Architect shall prepare and distribute to the other Project Participants Digital Data protocols for review, revision and approval.

(If a Project Participant other than the Architect shall be responsible for preparing draft and final Digital Data protocols, identify that Project Participant.)

init.

§ 3.2.2 The agreed upon Digital Data protocols shall be set forth in AIA Document G201–2013 and each Project Participant shall memorialize their agreement in writing to such Digital Data protocols.

§ 3.2.3 The Parties, together with the other Project Participants, shall review and, if necessary, revise the Digital Data protocols at appropriate intervals as required by the conditions of the Project.

§ 3.3 The Parties shall transmit, use, store and archive Digital Data in accordance with the Digital Data protocols set forth in the latest version of AIA Document G201–2013 agreed to by the Project Participants.

§ 3.4 Unauthorized Use

§ 3.4.1 Prior to Establishment of Digital Data Protocols

If a Party receives Digital Data prior to the agreement to, and documentation of, the Digital Data protocols in AIA Document G201–2013, that Party is not authorized to use or rely on the Digital Data. Any use of, or reliance on, such Digital Data is at that Party’s sole risk and without liability to the other Party and its contractors, consultants, agents and employees.

§ 3.4.2 Following Establishment of Digital Data Protocols

Following agreement to, and documentation of, the Digital Data protocols in AIA Document G201–2013, if a Party uses Digital Data inconsistent with the Authorized Uses identified in the Digital Data protocols, that use shall be at the sole risk of the Party using the Digital Data.

§ 3.5 Digital Data Management

§ 3.5.1 Centralized electronic document management system use on the Project shall be:

(Check the appropriate box. If the Parties do not check one of the boxes below, the default selection shall be that the Parties will not utilize a centralized electronic document management system on the Project.)

The Parties intend to use a centralized electronic document management system on the Project.

The Parties do not intend to use a centralized electronic document management system on the Project.

§ 3.5.2 If the Project Participants intend to utilize a centralized electronic document management system on the Project, the Project Participants identified in Section 3.5.3 shall be responsible for managing and maintaining such system. The Project Participants responsible for managing and maintaining the centralized electronic document management system shall facilitate the establishment of protocols for transmission, use, storage and archiving of the centralized Digital Data and assist the Project Participants identified in Section 3.2.1 above in preparing Digital Data protocols. Upon agreement to, and documentation of, the Digital Data protocols in AIA Document G201–2013, the Project Participants identified in Section 3.5.3 shall manage and maintain the centralized electronic document management system consistent with the management protocols set forth in the latest version of G201–2013 approved by the Project Participants.

§ 3.5.3 Unless responsibility is assigned to another Project Participant, the Architect shall be responsible for managing and maintaining the centralized electronic document management system. If the responsibility for management and maintenance will be assigned to another Project Participant at an identified Project milestone, indicate below the Project Participant who shall assume that responsibility, and the Project milestone.

(Identify the Project Participant responsible for management and maintenance only if the Parties intend to utilize a centralized electronic document management system on the Project.)

Responsible Project Participant	Project Milestone
---------------------------------	-------------------

(Paragraphs deleted)

ARTICLE 4 OTHER TERMS AND CONDITIONS

(Paragraphs deleted)

Other terms and conditions related to the transmission and use of Digital Data are as follows:

Init.

<u>COMMITTEE:</u>	<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Unanimous</u>
				<u>X</u>
				<u>Proxy</u>
Tim Mahoney, Mayor	<u>X</u>			
Dave Piepkorn, City Commissioner	<u>X</u>			
Mike Redlinger, Interim City Administrator	<u>X</u>			
Terri Gayhart, Director of Finance	<u>X</u>			
Steve Sprague, City Auditor	<u>X</u>			

Tim Mahoney, Mayor
Finance Committee Chair

CITY OF Fargo Fire Department

12

MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

FROM: FIRE CHIEF STEVE DIRKSEN

DATE: SEPTEMBER 29, 2022

SUBJECT: AMENDMENT #1 TO ARCHITECTURAL CONTRACT WITH EAPC

At the June 27, 2022 Commission Meeting the Fargo City Commission approved authorizing a contract with EAPC for architectural services for the construction of Fire Station 8 and an addition to Fire Station 2. In August, I was contacted by EAPC to inform me there was a calculation error in the contract that was favorable to the City.

The error was in the Base Fee Percentage used by EAPC for the work they would complete for Station 8. The original contract stated that the base fee was 8.5%. EAPC's fee structure policy, for a project of this size, indicates a base fee of 7.5%. This results in a savings of \$23,000 from the original contract.

RECOMMENDED MOTION: To approve the contract amendment between the City of Fargo and EAPC for the remodel of Fire Station 2 and construction of Fire Station 8.



539 Bielenberg Drive, Suite 115, St. Paul, MN 55125 | TELE 612.552.4600

September 27, 2022

Fargo Fire Department
Attn: Steve Dirksen
637 Northern Pacific Ave #4916,
Fargo, ND 58102

Subj: Fargo Fire Stations 2 & 8

Re: Compensation Adjustment
20222800

Dear Steve:

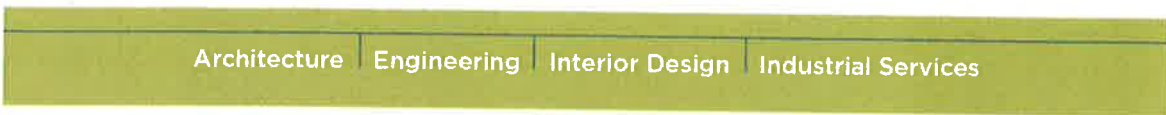
As we have previously discussed, there was an error in our calculations for the fees on the Fire Stations 2 & 8 projects where the fee was calculated at a lower total construction value than was intended. This led the fee for Station No. 8 to be calculated at 8.5% of the anticipated construction value instead of the 7.25% as would be appropriate.

We have attached a revised contract Exhibit A indicating the appropriate changes. This change should not have any impact on prior invoicing by our firm. It will be reflected in any future billings.

If you have any questions on this matter, you can contact either me or Alan Dostert.

Sincerely,
Michael Clark, AIA

Director Public Safety Design
EAPC



539 Bielenberg Drive, Suite 115, St. Paul, MN 55125 | TELE 612.552.4600

Exhibit 'A' Fee Summary
Fargo Fire Stations #2 and #8
5/31/2022 (Revised 9/27/2022)

The following fee summary is based upon our understanding of the project to date:
 Full Service A/E Design Services for Architectural, Structural, Mechanical, Electrical, and Civil Engineering.
 Project Delivery to be thru Standard Design, Bid, Build - Three Prime Contracts.
 Construction Budget Station #2: \$ 350,000.00 *
 Construction Budget Station #8: \$ 5,200,000.00 *
 * to be adjusted by actual bids/construction costs

A. Base Design Percentage (From the EAPC Fee Curve).

Base Fee Percentage	Station #2	9.50%	
	Station #8	8.50%	7.25%

B. Design Fee Break Down

Typical EAPC Breakdown	Standard Scope
Schematic Design	15%
Design Development	20%
Construction Documents	40%
Bidding/Negotiation	5%
Construction Administration	20%
	<u>100%</u>

C. Final Fee as a Percent of Construction

Station #2	9.50%	\$ 33,250.00	
Station #8	7.25%	<u>\$ 377,000.00</u>	\$ 410,250.00

EAPC Proposes the Following ~~(approx 12% reduction)~~ **\$ 400,000.00**

D. Reimbursables

Geotech Survey/Soil borings (By Others)	\$ 3,000.00	not Included
Site Suvey (By Others)	\$ 3,500.00	not Included
3D Digital Rendering (allowance - optional)	\$ 2,500.00	
Photocopies/Prints, Etc. (allowance)**	\$ 250.00	
Postage/Misc. Office Expense (allowance)**	\$ 250.00	
	<u>\$ 3,000.00</u>	

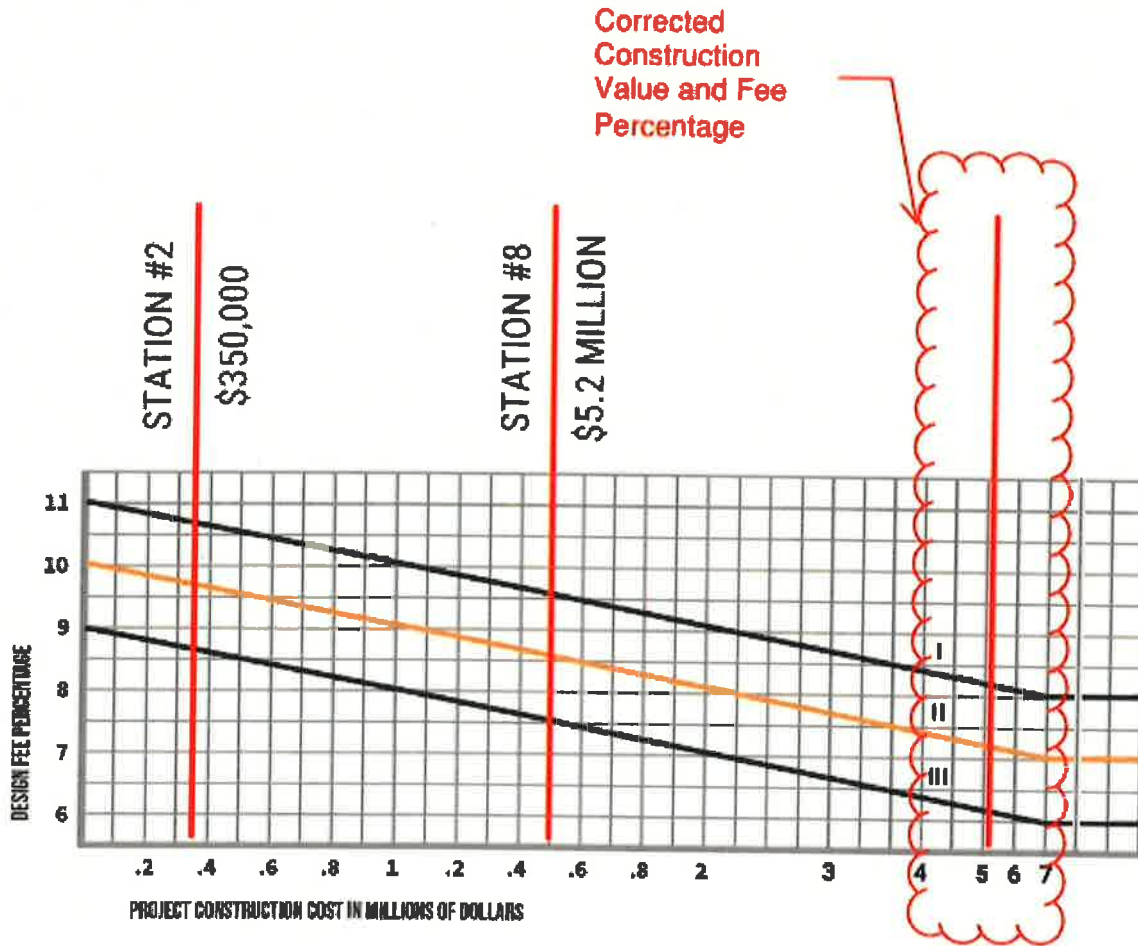
Costs to be billed on actual basis plus 10% not to exceed \$500.00 **\$ 403,000.00

TOTAL PROJECT FEES/EXPENSES

EAPC Architects Engineers 112 North Roberts Street
 Prepared by: Suite 300
 Alan D. Dostert, AIA, President/CEO Fargo, North Dakota 58102
adostert@eapc.net
 Modified by:
 Michael Clark, AIA, Director Public Safety Design
Michael.Clark@eapc.net



Exhibit 'A' Part Two, Fee Curve




13



MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

FROM: DESI FLEMING 
DIRECTOR OF PUBLIC HEALTH

DATE: SEPTEMBER 19, 2022

RE: AGREEMENT FOR FARGO-MOORHEAD METROPOLITAN COUNCIL OF GOVERNMENTS TO WORK WITH CASS CLAY FOOD PARTNERS STEERING COMMITTEE TO IMPLEMENT AND CONDUCT THE CASS CLAY FOOD COMMISSION MEETINGS, PROVIDE GUIDANCE AND OVERSEE METROPOLITAN FOOD SYSTEMS PLAN UPDATES. MAXIMUM OF \$6,000

The attached agreement for services with Metro-Cog is to work with Cass Clay Food Partners Steering Committee.

No budget adjustments.

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

Suggested Motion: Move to approve the agreement with Metro-Cog.

DF/lls
Attachment



AGREEMENT FOR SERVICES



THIS AGREEMENT, effective the 1st day of October 2022, by and between Fargo Cass Public Health ("FCPH"); and Fargo-Moorhead Metropolitan Council of Governments (Independent Contracting Consultant).

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

- A. **Term of Agreement:** The parties entered into a written agreement for the period of October 1, 2022, through May 31, 2023.
- B. **Services to be provided by independent contractor:** Independent contractor will work closely with the Cass Clay Food Partners Steering Committee to implement and conduct the Cass Clay Food Commission meetings (minimum 4x/year) according to the Joint Powers Agreement guidelines; continue to provide guidance and administrative support for the Commission (keep minutes, compile, and send out agenda packets, arrange room and technology for meetings, etc.). Oversee the Metropolitan Food Systems Plan updates and network with local jurisdictions to incorporate food systems in city/county comprehensive and land development plans. Additional activities include education, resource development and collaboration, emergency planning (pandemic and food access related), community engagement and awareness. Coalition building and collaboration advisement on how to ensure residents have equitable access to safe, nutritious, and affordable foods.
- C. **Reimbursement:** The independent contracting consultant shall be reimbursed a maximum of \$6000 for services and will submit an invoice to Fargo Cass Public Health before May 31, 2023.
- D. **Termination:** This Agreement may be terminated by either party upon the giving of thirty (30) days written notice.
- E. **Confidentiality:** The independent contracting consultant agrees to not, directly or indirectly, disclose, make known, divulge, publish, or communicate any individually identifiable health information or other confidential information to any person, firm or corporation without consent unless that disclosure is authorized under North Dakota law.

Special Considerations:

- A. It is understood and agreed that the relationship created by this Agreement shall be that of independent contractor and contractee that shall not be deemed to be an employee of Fargo Cass Public Health for any other purpose.
- B. This service agreement shall be governed by the laws of the State of North Dakota. I hereby certify that the above assurances and provisions of service have been reviewed and our agency has agreed upon the conditions as set forth.
- C. It is understood any forms or paperwork required by Fargo Cass Public Health and the City of Fargo to receive payment for services will be completed as needed.
- D. Services including printing and other miscellaneous costs may be discussed and agreed to by the parties as needed.

In Witness thereof, this purchase of service agreement has been executed between the Consultant and Fargo Cass Public Health on the date-executed below.

Fargo Cass Public Health

By Desi Fleming
Desi Fleming, Director of Public Health

Date 9/20/2022

By _____
Timothy, J. Mahoney, Mayor, City of Fargo

Date _____

FM Metropolitan Council of Governments

By Cindy Gray
Cindy Gray (Sep 19, 2022 11:46 CDT)
Cindy Gray, Executive Director

Date September 19, 2022






MetroCOG agreement HPP23

Final Audit Report

2022-09-19

Created:	2022-09-19
By:	Lori Sall (lsall@FargoND.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAACOUWWVILofyy-NM3VHmlTpZ8NKpwTk12

"MetroCOG agreement HPP23" History


-  Document created by Lori Sall (lsall@FargoND.gov)
2022-09-19 - 4:43:47 PM GMT
-  Document emailed to gray@fmmetrocog.org for signature
2022-09-19 - 4:44:01 PM GMT
-  Email viewed by gray@fmmetrocog.org
2022-09-19 - 4:45:05 PM GMT
-  Signer gray@fmmetrocog.org entered name at signing as Cindy Gray
2022-09-19 - 4:46:04 PM GMT
-  Document e-signed by Cindy Gray (gray@fmmetrocog.org)
Signature Date: 2022-09-19 - 4:46:05 PM GMT - Time Source: server
-  Agreement completed.
2022-09-19 - 4:46:05 PM GMT



(14)

MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

FROM: DESI FLEMING 
DIRECTOR OF PUBLIC HEALTH

DATE: SEPTEMBER 29, 2022

RE: NOTICE OF GRANT AWARD FOR COMMUNITY COALITION TO ASSIST FCPH WITH ADDRESSING PUBLIC HEALTH GAPS IN THE FARGO COMMUNITY.
AWARD: \$50,000 NO. G21.1118 CFDA NO. 93.991

The attached Notice of Grant Award with the North Dakota Department of Health for community coalition work to address public health gaps such as access to food, physical activity, and nutrition.

No budget adjustment is required for this contract.

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

Suggested Motion: Move to approve the acceptance of the award from the North Dakota Department of Health.

DF/lls
Attachment



NOTICE OF GRANT AWARD

NORTH DAKOTA DEPARTMENT OF HEALTH AND HUMAN SERVICES
SFN 53771 (09-2022)

Grant Number G21.1118	CFDA Name Preventive Health and Health Services Block Grant	CFDA Number 93.991
FAIN Number NB01OT009270	Grant Type (Check One) <input checked="" type="checkbox"/> Program <input type="checkbox"/> R&D	Grant Start Date 10/1/2022
Federal Award Date 8/31/2022	Federal Awarding Agency Centers for Disease Control and Prevention	Grant End Date 9/30/2023

This award is not effective and expenditures related to this award should not be incurred until all parties have signed this document.

Title of Project/Program Community Coalition	North Dakota Department of Health and Human Services (NDDHHS) Project Code: 4531 HLH 5142 31
Grantee Name Fargo Cass Public Health	Project Director Brianna Monahan
Address 1240 25 th Street South	Address 600 East Boulevard Ave., Dept. 325
City/State/ZIP Code Fargo, ND 58103-2367	City/State/ZIP Code Bismarck, ND 58505-0250
Contact Name Larry Anenson	Contact Name Brianna Monahan
Telephone Number 701-241-8575	Telephone Number 701-328-2698
Email Address lanenson@fargond.gov	Email Address bmonahan@nd.gov

	NDDHHS Cost Share	Grantee Cost Share	Total Costs
Amount Awarded	\$50,000	\$0	\$50,000
Previous Funds Awarded	\$0	\$0	\$0
Total Funds Awarded	\$50,000	\$0	\$50,000
Indirect Rate (Check One)	<input checked="" type="checkbox"/> Subrecipient waived indirect costs	<input type="checkbox"/> De minimus rate of 10%	<input type="checkbox"/> Negotiated/Approved rate of %

Scope of Service
Grantee will utilize funds to address public health gaps in the Fargo community including access to food, physical activity, nutrition, and/or other health indicators as determined by the most recent community needs assessments. Grantee will participate in community stakeholder meetings for the Fargo health policy projects as a subject matter expert and serve as a community point of contact for community strategic planning. Grantee will support the coordination and implementation of strategies as identified by the coalition.

Reporting Requirements
Grantee must submit reimbursement requests via the Program Reporting System (PRS).
Grantee will submit a report on activities and event participation with each reimbursement request.
Reimbursement for the period ending June 30, 2023 must be received by July 14, 2023.
Reimbursement for the period ending September 30, 2023 must be received by October 31, 2023.
Reimbursement will be processed upon Department approval of expenditures and reports.

Special Conditions
Funds may not be used for reimbursement or purchasing of food and/or beverages.
This Notice of Grant Award is subject to the terms and conditions incorporated either directly or by reference in the following: (1) Requirements Addendum and Grantee Assurances for Notice of Grant Awards issued by the NDDHHS as signed by Grantee for the period of July 1, 2021 to June 30, 2023 [Finance Use Only: Requirements Received; Questionnaire received] and (2) applicable State and Federal regulations.

Evidence of Grantee's Acceptance		Evidence of NDDHHS Acceptance	
Date	Signature	Date	Signature
9/29/2022	<i>Desi Fleming</i>		
Typed Name/Title of Authorized Representative Desi Fleming, Director of Public Health		Typed Name/Title of Authorized Representative Susan Mormann, Unit Director, Health Promotion & Chronic Disease Prevention	
Date	Signature	Date	Signature
Typed Name/Title of Authorized Representative Timothy J. Mahoney, Mayor, City of Fargo		Typed Name/Title of Authorized Representative Dirk D. Wilke, J.D., M.B.A., Executive Director of Public Health	

If attachments are referenced, they must be returned with the signed award.
If you did not receive attachments as indicated, contact the Program Director identified above.



Fargo Cass Public Health
1240 25th Street South
Fargo, ND 58103-2367
Phone: 701.241.1360 | Fax: 701.298.6929
www.FargoCassPublicHealth.com

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Fargo Cass



Public Health
Prevent. Promote. Protect.

MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS
FROM: DESI FLEMING *DF*
DIRECTOR OF PUBLIC HEALTH
DATE: SEPTEMBER 28, 2022
RE: NOTICE OF GRANT AWARD AMENDMENT FROM USDA AND NORTH DAKOTA DEPARTMENT OF HEALTH SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS AND CHILDREN, GRANT NUMBER G21.1024, CFDA 10.557

The following Notice of Grant Award amendment is to fund the Women, Infant and Children services located at Fargo Cass Public Health. This program assists in making specific nutritionally desirable foods and nutrition education available for eligible pregnant women, infants and children within our region.

No budget adjustment are necessary.

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

Suggested Motion: Move to approve the award from North Dakota Department of Health & USDA.

DF/lls
Attachment



NOTICE OF GRANT AWARD

NORTH DAKOTA DEPARTMENT OF HEALTH AND HUMAN SERVICES
SFN 53771 (09-2022)

Grant Number G21.1024	CFDA Name Special Supplemental Nutrition Program for Women, Infants and Children	CFDA Number 10.557
FAIN Number	Grant Type (Check One) <input checked="" type="checkbox"/> Program <input type="checkbox"/> R&D	Grant Start Date 10/1/2022
Federal Award Date	Federal Awarding Agency U.S. Department of Agriculture	Grant End Date 9/30/2023

This award is not effective and expenditures related to this award should not be incurred until all parties have signed this document.

Title of Project/Program Women, Infant and Children (WIC)	North Dakota Department of Health and Human Services (NDDHHS) Project Code 4551 HLH 5153 01
Grantee Name Fargo Cass Public Health	Project Director Amanda Varriano
Address 1240 25 th St S	Address 600 East Boulevard Ave, Dept. 325
City/State/ZIP Code Fargo, ND 58103	City/State/ZIP Code Bismarck, ND 58505-0250
Contact Name: Kim Vance	Contact Name: Amanda Varriano
Telephone Number: 701-277-1455	Telephone Number: 701-328-2496
Email Address: kvance@fargoND.com	Email Address: alvarriano@nd.gov

	NDDHHS Cost Share	Grantee Cost Share	Total Costs
Amount Awarded	\$554,000	\$0	\$554,000
Previous Funds Awarded	\$0	\$0	\$0
Total Funds Awarded	\$554,000	\$0	\$554,000
Indirect Rate (Check One)	<input checked="" type="checkbox"/> Subrecipient waived indirect costs	<input type="checkbox"/> De minimus rate of 10%	<input type="checkbox"/> Negotiated/Approved rate of %

Scope of Service

Grantee will make specific nutritionally desirable foods and nutrition education available for eligible pregnant women, infants and children within counties within the boundaries of the Grantee's service area in accordance with provisions of the Child Nutrition Act of 1966, 7 CFR, Part 246, FNS (and specific contract requirements noted in 246.6, see Attachment A), the Assurance of Civil Rights Compliance (see Attachment B), the WIC Policy Memorandum, and as detailed in the North Dakota WIC Policy and Procedure manuals. Grantee service provided, and expenditures will follow the approved plan and budget. Any major changes in the type of service delivery and training must be submitted to the State Department of Health and Human Services for prior approval.

Reporting Requirements

Grantee must submit monthly expenditure reports via the Program Reporting System (PRS). Expenditure report for the period ending June 30, 2023, must be received by July 14, 2023. Final expenditure report for the period ending September 30, 2023, must be received by October 31, 2023. Reimbursement will be processed upon Department approval of state plan progress and expenditure reports.

Special Conditions

None.

This Notice of Grant Award is subject to the terms and conditions incorporated either directly or by reference in the following: (1) Requirements Addendum and Grantee Assurances for Notice of Grant Awards issued by the NDDHHS as signed by Grantee for the period of July 1, 2021 to June 30, 2023 [Finance Use Only: Requirements Received; Questionnaire received] and (2) applicable State and Federal regulations.

Evidence of Grantee's Acceptance		Evidence of NDDHHS Acceptance	
Date	Signature	Date	Signature
9/28/2022	<i>Desi Fleming</i>		
Typed Name/Title of Authorized Representative Desi Fleming, Director of Public Health		Typed Name/Title of Authorized Representative Deanna Askew, Unit Director Family Health & Wellness	
Date	Signature	Date	Signature
Typed Name/Title of Authorized Representative Timothy J. Mahoney, Mayor, City of Fargo		Typed Name/Title of Authorized Representative Dirk D. Wilke, J.D., M.B.A., Executive Director of Public Health	

If attachments are referenced, they must be returned with the signed award.
If you did not receive attachments as indicated, contact the Program Director identified above.

G21.1024
Fargo Cass Public Health
Attachment A

AGREEMENT ADDENDUM FOR THE OPERATION OF THE SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS AND CHILDREN (WIC)

The following is an addendum to the Notice of Grant Award signed with the North Dakota Department of Health and Human Services for operation of the WIC Program.

Neither the State agency nor the local agency has an obligation to renew the agreement and expiration of an agreement is not subject to appeal. The State Agency shall provide local agencies with advance written notice of not less than 60 days of the termination of an agreement.

Local Agency Responsibilities include:

- Assuring the agency does not discriminate against person on the grounds of race, color, national origin, age, sex or disability and compiles data, maintains records and submits reports as required to permit effective enforcement of the non-discrimination laws.
- Compliance with all the fiscal and operational requirements prescribed by the State agency pursuant to 7 CFR part 3016 of the WIC Regulations. Agency service provided and expenditures made will be in accordance with the approved plan and budget.
- Assuring that the information obtained from program applicants and participants is restricted to its use and disclosure, according to WIC Regulations. Client Information can only be shared with the express written consent of the WIC participant, or the Department of Health and Human Services, unless that disclosure is expressly authorized by the Notice of Grant Award, or expressly authorized by North Dakota law, yet remains in compliance with Section 246.26 of the Federal WIC Regulations.
- Assuring that WIC records shall be maintained in accordance with the Privacy Act of 1974, (Public Law 93-579), Freedom of Information Act, the Health Insurance Portability and Accountability Act of 1966 (HIPAA), and Section 246.26 of the Federal WIC Regulations.
- Maintaining complete, accurate, documented and current accounting of all Program funds received and expended.
- Maintaining on file and have available for review, audit, and evaluation all criteria used for certification, including information on the area served, income standards used and specific criteria used to determine nutritional risk.
- Ensuring the presence of a competent professional authority on staff and the capabilities necessary to perform the certification procedures.
- Provides or makes available appropriate health services to participants and informs applicants of the health services available. When health services are provided through referral, has a plan for continued efforts to make health services available to participants at the clinic or through a written agreement with health care provider.
- Prohibiting smoking in the space used to carry out the WIC Program during the time any aspect of WIC services are performed.
- Providing nutrition education services in compliance with 246.11 and FNS guidelines and instructions.
- Implementing a food delivery system prescribed by the State agency pursuant to 246.12 and approved by FNS.
- Assuring that when a health and a human service agency or when one of these and a private physician comprise a local agency, that all will meet all of the contract requirements. No program funds shall be used to reimburse the health agency or the private physician for health services provided.
- Any major changes in the type of service delivery and training must be submitted to the State WIC Director for prior approval. The guidelines outlined in the WIC Job Descriptions must be applied in the hiring of all new staff members for WIC positions.

G21.1024
Fargo Cass Public Health
Attachment B

AGREEMENT ADDENDUM FOR THE OPERATION OF THE SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS AND CHILDREN (WIC)

The following is an addendum to the Notice of Grant Award signed with the North Dakota Department of Health and Human Services for operation of the WIC Program.

Assurance of Civil Rights Compliance

The Grantee hereby agrees that it will comply with the Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.), Title II and Title III of the Americans With Disabilities Act (ADA) of 1990 as amended by the ADA Amendment Act of 2008 (42 U.S.C. 12131-12189) as implemented by Department of Justice regulations at (28 CFR Parts 35 and 36); Executive Order 13166, "Improving Access to Services for Person with Limited English Proficiency." (August 11, 2000), all provision required by the implementing regulations of the U.S. Department of Agriculture (7 CFR Part 15 et seq), and FNS directives and guidelines to the affect that no person shall, on the ground of race, color, national origin, age, sex, or disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity for which the Grantee receives Federal financial assistance from FNS; and hereby gives assurance that it will immediately take measures necessary to effectuate this agreement.

By providing this assurance, the Grantee agrees to compile data, maintain records and submit records and report as required to permit effective enforcement of the nondiscrimination laws, and to permit the U.S. Department of Agriculture and the North Dakota Department of Health and Human Services personnel during normal working hours to review and copy such records, books and accounts, access such facilities, and interview such personnel as needed to ascertain compliance with the non-discrimination laws. If there are any violation of this assurance, the U.S. Department of Agriculture and the North Dakota Department of Health and Human Services shall have the right to seek judicial enforcement of this assurance.

This assurance is given in consideration of and for the purpose of obtaining any and all Federal financial assistance, grants, and loans of Federal funds, reimbursable expenditures, grant, or donation of Federal property and interest in property, the detail of Federal personnel, the sale and lease of, and permission to use Federal property or interest in such property or the furnishing of services without consideration or at nominal consideration, or at a consideration that is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale, lease, or furnishing of services to the recipient, or any improvements made with Federal financial assistance extended to the Program applicant by USDA. This includes any Federal agreement, arrangement, or other contract that has as one of its purposes the provision of cash assistance for the purchase of food, and cash assistance for the purchase or rental of food service equipment or any other financial assistance extended in reliance on the representations and agreements made in this assurance.



Fargo Cass Public Health
1240 25th Street South
Fargo, ND 58103-2367
Phone: 701.241.1360 | Fax: 701.298.6929
www.FargoCassPublicHealth.com

Fargo Cass




Public Health
Prevent. Promote. Protect.

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MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

FROM: DESI FLEMING 
DIRECTOR OF PUBLIC HEALTH

DATE: SEPTEMBER 28, 2022

RE: AMENDMENT TO THE AGREEMENT FOR SERVICES WITH ANNIE WOOD FOR CASS CLAY FOOD ACTION NETWORK MEETINGS FOR A MAXIMUM OF \$1,500

The attached Agreement for Services with Annie Wood is) for a total of \$1,500 for assistance on presentation creation connected with the Cass Clay Food Action Network.

No budget adjustment is required for this contract.

Suggested Motion: Move to approve the Agreement for Services with Annie Wood.

DF/lls
Attachment



AGREEMENT FOR SERVICES



THIS AGREEMENT, effective the 1st day of October 2022, by and between Fargo Cass Public Health ("FCPH"); and Annie Wood (Independent Contracting Consultant).

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

- A. Term of Agreement:** The parties entered into a written agreement for the period of October 1, 2022, through March 31, 2023.
- B. Services to be provided by independent contractor:** The independent contracting consultant will work closely with the Cass Clay Food Partners and the Cass Clay Food Action Network Project Manager to council First Fridays event presenters on presentation creation and effective ways to "share their story." Assist with implementation of the First Fridays events as needed. Services will be provided for 6 events.
- C. Reimbursement:** The independent contracting consultant shall be reimbursed at a rate of \$250/event with a maximum of \$1,500 for services and will submit an invoice before March 31, 2023.
- D. Termination:** This Agreement may be terminated by either party upon the giving of thirty (30) days written notice.
- E. Confidentiality:** The independent contracting consultant agrees to not, directly, or indirectly, disclose, make known, divulge, publish, or communicate any individually identifiable health information or other confidential information to any person, firm or corporation without consent unless that disclosure is authorized under North Dakota law.

Special Considerations:

- A.** It is understood and agreed that the relationship created by this Agreement shall be that of independent contractor and contractee that shall not be deemed to be an employee of Fargo Cass Public Health for any other purpose.
- B.** This service agreement shall be governed by the laws of the State of North Dakota. I hereby certify that the above assurances and provisions of service have been reviewed and our agency has agreed upon the conditions as set forth.
- C.** It is understood any forms or paperwork required by Fargo Cass Public Health and the City of Fargo to receive payment for services will be completed as needed.
- D.** Services including printing and other miscellaneous costs may be discussed and agreed to by the parties as needed.

In Witness thereof, this purchase of service agreement has been executed between the Consultant and Fargo Cass Public Health on the date-executed below.

FARGO CASS PUBLIC HEALTH

Annie Wood, Independent Contractor

By Desi Fleming
Desi Fleming, Director of Public Health

By Annie Wood
Annie Wood (Sep 28, 2022 15:36 CDT)
Annie Wood, Independent Contractor

Date 9/28/2022

Date 09/28/2022

By _____
Timothy, J. Mahoney, Mayor, City of Fargo

Date _____

Contract Originator: Michelle Draxten







Annie Wood Cass Clay Food HPP22-23

Final Audit Report

2022-09-28

Created:	2022-09-28
By:	Lori Sall (lsall@FargoND.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABApuDEmPB_RpUsqYDb6dRwVsxg6YPBECD

"Annie Wood Cass Clay Food HPP22-23" History


-  Document created by Lori Sall (lsall@FargoND.gov)
2022-09-28 - 7:52:17 PM GMT
-  Document emailed to anniefwood@gmail.com for signature
2022-09-28 - 7:52:29 PM GMT
-  Email viewed by anniefwood@gmail.com
2022-09-28 - 8:36:12 PM GMT
-  Signer anniefwood@gmail.com entered name at signing as Annie Wood
2022-09-28 - 8:36:50 PM GMT
-  Document e-signed by Annie Wood (anniefwood@gmail.com)
Signature Date: 2022-09-28 - 8:36:51 PM GMT - Time Source: server
-  Agreement completed.
2022-09-28 - 8:36:51 PM GMT



17

M E M O R A N D U M

TO: BOARD OF CITY COMMISSIONERS

FROM: DESI FLEMING 
DIRECTOR OF PUBLIC HEALTH

DATE: SEPTEMBER 28, 2022

**RE0: AGREEMENT FOR SERVICES WITH AE2S
COMMUNICATIONS FOR FCPH AND THEIR TOBACCO
NICOTINE CESSATION CAMPAIGN NOT TO EXCEED
\$65,000. SSP222151**

The attached Contract Agreement with AE2S Communications is to provide communications and engagement support services for our tobacco and nicotine cessation campaign.

No budget adjustment is required for this contract.

Suggested Motion: Move to approve the Contract Agreement with AE2S Communications.

DF/lls
Attachment



September 26, 2022

Dr. Larry Anenson & Annabel DuFault
Fargo Cass Public Health
1240 25th Street S
Fargo, ND 58103

RE: 2023 Tobacco / Nicotine Cessation Campaign

Dear Larry and Annabel:

AE2S Communications is pleased to have the opportunity to continue working with Fargo Cass Public Health to educate about the dangers of tobacco and nicotine usage. We're excited and energized to help you educate the public tobacco through the grant period ending in June 2023. We endeavor to help you build on your current campaign's success by strengthening and expanding your messaging and reach.

Our team will continue to work closely with Fargo Cass Public Health and monitor public sentiment to ensure we continue to provide anti-nicotine messaging that connects with the intended audiences in the most effective ways.

We offer the following scope of services:

Scope of Services

AE2S Communications (AE2S) proposes to work with Fargo Cass Public Health (CLIENT) to provide communications and engagement support services for the period of October 10, 2022 through June 30, 2023. This Agreement sets forth the terms and conditions under which the CLIENT and AE2S shall be governed regarding the Assignment.

Scope:

- Amplify and continue to develop campaign materials that address tobacco and nicotine usage in Cass County.
- Provide content development and graphic design services for owned media such as the Fargo Cass Public Health website and social media, as well as content and advertisements for earned and paid media.
- Place and monitor paid advertising.
- Provide communications strategies, content development and other assistance as needed for Fargo Cass Public Health tobacco education initiatives.

Fees

AE2S proposes to render professional services under this Agreement on an hourly basis in accordance with the Scope and Fee attached as Exhibit A. This contract includes \$15,094 for labor and \$49,906 for media buys and expenses. This contract is not to exceed \$65,000 without written authorization from CLIENT, which includes reimbursement for all project related expenses and paid media.

As a reminder, our contract is hourly to a max which means you will be charged only for the hours worked.

Scope and Fee Table

Please see Exhibit A

RE: 2022 Tobacco Cessation Campaign
September 26, 2022
Page 2 of 3

Additional Services

Services resulting from significant changes in the general scope, extent, or character of the Assignment are not included as a part of the general Scope of Services. If authorized in writing by the CLIENT, AE2S will provide services beyond the scope of this Agreement on an hourly basis in accordance with the Hourly Fee Schedule attached as Exhibit C.

CLIENT'S Responsibilities

CLIENT shall do the following in a timely manner, so as not to delay the services of AE2S:

1. Designate a person to act as CLIENT's representative with respect to the services to be rendered under this Agreement. Such person shall have complete authority to transmit instructions, receive information, and interpret and define CLIENT's policies and decisions with respect to services for the Assignment
2. Provide relevant information and content regarding requirements for the Assignment. AE2S shall be entitled to use and rely upon all information provided by CLIENT or others in performing AE2S's services under this Agreement.
3. CLIENT shall, so long as AE2S is not in default, promptly pay AE2S for such professional services as have been performed satisfactorily hereunder in accordance with the fee schedule set forth herein.

CLIENT shall bear all costs incident to compliance with its responsibilities pursuant to this section.

Standard Terms and Conditions

Standard terms and conditions of this Agreement between CLIENT and AE2S are specified in Exhibit B.

Performance Schedule

Timetables and deliverables will be in conjunction with CLIENT goals for the ASSIGNMENT. Labor fees have been estimated based on the grant period ending in June of 2022.

Contract Documents

The Contract Documents consist of the following:

1. This Agreement;
2. Exhibit A – Scope and Fee Table;
3. Exhibit B – Standard Terms and Conditions;
4. Exhibit C – Labor Rate and Reimbursable Expense Schedule; and
5. Any duly executed amendments.

There are no Contract Documents other than those listed above.

RE: 2022 Tobacco Cessation Campaign
September 26, 2022
Page 3 of 3

If this Agreement sets forth your understanding of our agreement, including the scope of work desired, fees, terms, and conditions, please sign both this original and the enclosed copy in the space provided. Please retain the original for your files and return the copy to AE2S. Thank you for the opportunity to assist in this project and we look forward to working with you.

Sincerely,




Heather Syverson
AE2S Communications Project Manager



Ryan Grubb
Fargo AE2S Operations Manager

CLIENT

Accepted this _____ day of _____, 2021

By:  _____
Desi Fleming, Director of Public Health

Date: 9/28/2022

By: _____
Timothy J. Mahoney, Mayor, City of Fargo

Date: _____



Heather Zack Altiziah Cody
 Syverson Otteson Swenson Schuler
 Project Graphic Graphic Digital
 Manager Designer Design Storyteller

Budget Budget Advertising Total
 Hours Labor Costs Costs Budgeted

Task 1: Project Management, Collaboration, and Reporting										
1.1	Client communications/team meetings/project management	10	5	5	5	25	\$	2,930	\$	2,930
1.2	Ad planning, placement, reporting	18				18	\$	2,358	\$	49,906
TOTAL FOR TASK 1		28	5	5	5	43	\$	5,288	\$	49,906
										55,194

Task 2: Graphic Design										
2.1	Graphic design	3	20	20	20	24	\$	5,109	\$	5,109
TOTAL FOR TASK 2		3	20	20	20	24	\$	5,109	\$	5,109

Task 3: Videography										
3.1	Videography/Animation/editing	4	0	0	8	12	\$	1,308	\$	1,308
TOTAL FOR TASK 3		4	0	0	8	12	\$	1,308	\$	1,308

Task 4: Content Creation										
4.1	Website	6	5	5	3	19	\$	2,079	\$	2,079
4.2	Social media	10				10	\$	1,310	\$	1,310
TOTAL FOR TASK 4		16	5	5	3	29	\$	3,389	\$	5,965

TOTAL PROJECT HOURS/EXPENSES		6550	3390	3390	1764	\$	15,094	\$	49,906	\$	65,000
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This is EXHIBIT B, consisting of 2 pages, referred to in and part of the Agreement between CLIENT and AE2S for Services dated September 26, 2022.

Standard Terms and Conditions

The Agreement is supplemented to include the following terms and conditions:

1. **TERM.** This Agreement shall commence on the Effective Date.
2. **SCOPE OF SERVICES**
 - 2.1.1 CONSULTANT will devote the required amount of time necessary to perform the Services for CLIENT as stated herein. CONSULTANT will have discretion in selecting the dates and times it performs the Services giving due regard to the requirements of the project and schedule of CLIENT.
 - 2.1.2 CLIENT will provide CONSULTANT with materials and information necessary to perform the scope of services proposed.
 - 2.1.3 The relationship between CLIENT and CONSULTANT created by this Agreement is that of independent contractor, and CONSULTANT is not and shall not be deemed to be an employee of CLIENT for any purpose.
3. **INVOICES AND PAYMENTS.** CONSULTANT will invoice CLIENT for time and reimbursable expenses monthly. Payments to CONSULTANT will be made within 30 days of CLIENT's receipt of an invoice documenting the services performed by CONSULTANT. If CLIENT fails to make any payment due AE2S for services and expenses within 30 days, the amounts due AE2S will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day. In addition, AE2S may, after giving seven days written notice to CLIENT, suspend services under this Agreement until AE2S has been paid in full all amounts due for services, expenses, and other related charges.
4. **TERMINATION**
 - 4.1 If, for any reason, either party fails to fulfill in a timely and proper manner its obligations under this Agreement, or if either party shall violate any of the covenants, agreements, or stipulations of this Agreement, the first party shall thereupon have the right to terminate the Agreement by giving written notice to the other party of such termination and specifying the effective date thereof. This Agreement may be terminated by either party ("the Terminating Party") upon a breach by the other party ("the Breaching Party") of any representation or obligation imposed hereby, provided that Terminating Party has given written notice of the breach to the Breaching Party and such breach has not been cured within ten (10) days of the date of such notice.
 - 4.2 Either party may terminate this Agreement at any time without cause by giving at least 30 days' notice in writing to the other party.
 - 4.3 If the Agreement is terminated as provided herein, CONSULTANT will be paid for the time provided and expenses incurred up to the termination date.
5. **STANDARD OF CARE.** CONSULTANT shall exercise the same degree of care, skill, and diligence in the performance of the Services as is provided by a professional of like experience, knowledge and resources, under similar circumstances.
6. **EXCLUSION OR SPECIAL INCIDENTAL, INDIRECT, AND CONSEQUENTIAL DAMAGES.** To the fullest extent permitted by law, and notwithstanding any other provision in the Agreement, AE2S and AE2S's officers, directors, partners, employees, agents, and Consultants, or any of them, shall not be liable to CLIENT or anyone claiming by, through, or under CLIENT for any special, incidental, indirect, or consequential damages whatsoever arising out of, resulting from, or in any way related to a Specific Project, Task Order, or this Agreement, from any cause or causes, including but not limited to any such damages caused by the negligence, professional errors or omissions, strict liability, breach of contract or warranties, express or implied, of AE2S or AE2S's officers, directors, partners, employees, agents, or AE2S's Consultants, or any of them.
7. **LIMIT OF LIABILITY.** To the fullest extent permitted by law, notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of AE2S and AE2S's officers, directors, partners, employees, agents, and AE2S's Consultants, and any of them, to CLIENT and anyone claiming by, through, or under CLIENT for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from or in any way related to the Project or the Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability or breach of contract, or warranty express or implied of AE2S or AE2S's officers, directors, partners, employees, agents, or AE2S's Consultants, or any of them, shall not exceed total compensation received by AE2S as part of this agreement.
8. **CONFIDENTIALITY.** All of reports, information, and data, prepared or assembled by CONSULTANT under this Agreement are confidential and CONSULTANT agrees that they shall not be made available to any individual or organization without the prior written approval of CLIENT.
9. **COPYRIGHT.** No printed or digitally designed documents produced in whole or in part under this Agreement shall be the subject of an application for copyright by or on behalf of CONSULTANT.

10. COMPLETE AGREEMENT. This Agreement with its exhibit, attached, constitutes the complete agreement and sets forth the entire understanding and agreement of the parties as to the subject matter of this Agreement and supersedes all prior discussions and understandings in respect to the subject of this Agreement, whether written or oral.
11. MODIFICATION. No modification, termination, or attempted waiver of this Agreement, or any provision thereof, shall be valid unless in writing and signed by the party against whom the same is sought to be enforced.
12. BINDING EFFECT. This Agreement shall be binding on, and shall inure to the benefit of the parties and their respective successors in interest.
13. NOTICES. All notices given under this Agreement shall be in writing, addressed to the parties as set forth on page 1.
14. GOVERNING LAW. This Agreement shall be governed by the laws of the State of North Dakota.
15. EXECUTED IN COUNTERPARTS. This Agreement may be executed in counterparts, each of which together will constitute one and the same instrument. Delivery of an executed counterpart of this Agreement shall constitute effective delivery of this Agreement. Each Party agrees that the delivery of the Agreement by facsimile or electronic mail shall have the same force and effect as delivery of original signature and that each Party may use such facsimile or electronic mail signatures as evidence of the execution and delivery of the Agreement by the Parties to the same extent that an original signature could be used.


**A
E
S
COMMUNICATIONS**
Labor Rates*

Administrative 1	\$61.00
Administrative 2	\$74.00
Administrative 3	\$89.00

Communications Specialist 1	\$98.00
Communications Specialist 2	\$113.00
Communications Specialist 3	\$131.00
Communications Specialist 4	\$158.00
Communications Specialist 5	\$173.00

Construction Services 1	\$118.00
Construction Services 2	\$145.00
Construction Services 3	\$160.00
Construction Services 4	\$180.00
Construction Services 5	\$198.00

Engineering Assistant 1	\$77.00
Engineering Assistant 2	\$92.00
Engineering Assistant 3	\$116.00
Engineer 1	\$125.00
Engineer 2	\$148.00
Engineer 3	\$177.00
Engineer 4	\$203.00
Engineer 5	\$215.00

Engineering Technician 1	\$75.00
Engineering Technician 2	\$96.00
Engineering Technician 3	\$117.00
Engineering Technician 4	\$131.00
Engineering Technician 5	\$149.00

Financial Analyst 1	\$104.00
Financial Analyst 2	\$118.00
Financial Analyst 3	\$142.00
Financial Analyst 4	\$155.00
Financial Analyst 5	\$172.00

GIS Specialist 1	\$98.00
GIS Specialist 2	\$118.00
GIS Specialist 3	\$139.00
GIS Specialist 4	\$155.00
GIS Specialist 5	\$173.00

I&C Assistant	\$98.00
I&C Technician	\$138.00
I&C Sr. Technician	\$160.00
I&C Specialist	\$183.00
I&C Senior Specialist	\$194.00
I&C Manager	\$203.00

IT 1	\$117.00
IT 2	\$159.00
IT 3	\$190.00

Land Surveyor Assistant	\$90.00
Land Surveyor 1	\$108.00
Land Surveyor 2	\$129.00
Land Surveyor 3	\$145.00
Land Surveyor 4	\$160.00
Land Surveyor 5	\$177.00

Operations Specialist 1	\$93.00
Operations Specialist 2	\$113.00
Operations Specialist 3	\$140.00
Operations Specialist 4	\$158.00
Operations Specialist 5	\$184.00

Project Coordinator 1	\$109.00
Project Coordinator 2	\$121.00
Project Coordinator 3	\$132.00
Project Coordinator 4	\$148.00
Project Coordinator 5	\$167.00

Project Manager 1	\$188.00
Project Manager 2	\$206.00
Project Manager 3	\$227.00

Sr. Designer 1	\$165.00
Sr. Designer 2	\$183.00
Sr. Designer 3	\$194.00

Sr. Financial Analyst 1	\$194.00
Sr. Financial Analyst 2	\$212.00
Sr. Financial Analyst 3	\$231.00

Sr. Project Manager 1	\$243.00
Sr. Project Manager 2	\$254.00
Sr. Project Manager 3	\$265.00

Technical Expert 1	\$320.00
Technical Expert 2	Negotiable

Reimbursable Expense Rates

Transportation	\$0.65/mile
Survey Vehicle	\$0.85/mile
Laser Printouts/Photocopies	\$0.30/copy
Plotter Printouts	\$1.00/s.f.
UAS - Photo/Video Grade	\$100.00/day
UAS – Survey	\$50.00/day
Total Station – Robotic	\$35.00/hour
Mapping GPS	\$25.00/hour
Fast Static/RTK GPS	\$50.00/hour
All-Terrain Vehicle/Boat	\$100.00/day
Cellular Modem	\$75.00/month
Web Hosting	\$26.00/month
Legal Services Reimbursement	\$250.00/hour
Outside Services	cost *1.15
Geotechnical Services	cost *1.30
Out of Pocket Expenses	cost*1.15
Rental Car	cost*1.20
Project Specific Equipment	Negotiable

* Position titles are for labor rate grade purposes only.

These rates are subject to adjustment each year on January 1.

18

To: Board of City Commissioners
From: Jill Minette, Director of Human Resources *JM*
Date: September 29, 2022
Re: Vacation Maximum Carryover and Payout

Over the last two years, we have temporarily increased the vacation maximum carryover amount from 256 hours (508.5 for fire suppression) annually to 296 hours (556.5 hours for fire suppression) due to the impact of the pandemic on the ability for employees to utilize their vacation. Even with the temporary increase to the maximum carryover, we still have a number of employees with balances that exceed the maximum. As of mid-August, we had 187 employees with a vacation balance in excess of 256 hours, 111 employees with a balance in excess of 296 hours, and 61 employees with a balance in excess of 320 hours. For many employees, these excess hours are either due to the effects of the pandemic or more recently due to the effects of staffing shortages in various departments.

I am recommending a change to the vacation policy to increase the vacation carryover maximum from 256 hours (508.5 for fire suppression) to 320 hours (576 for fire suppression). This essentially provides for an additional 1.6 weeks of vacation to be carried over each year.

I am proposing a one-time vacation payout in order to lower the excess balances in accordance with the proposed carryover maximum of 320 hours per year and to allow for better management of vacation balances in 2023 and future years.

Additionally, this one-time **optional** vacation payout would allow all employees with a balance of 40 hours or greater to access additional dollars to support their personal budgets that have likely been impacted by inflation, higher gas prices, etc. If approved, the employees would elect the number of hours to be paid out based on a tiered system and would receive a check in November or December of this year, prior to the application of the 2023 wage adjustment. The attached table shows the proposed vacation payout method.

The vacation payout is entirely optional; however, employees who have vacation hours in excess of 320 on December 31, 2022 will lose those hours if they do not either use the hours or opt to have them paid. While accrued vacation hours are already reported as a liability to the City of Fargo, there is a one-time budget impact of the proposed vacation payout. The potential cost is \$1,425,396 if all eligible employees were to opt for the highest-level payout (based on mid-August balances).

If approved, the message to employees would reinforce the one-time nature of this payout due to the impact of the pandemic and staffing levels. As always, we would continue to encourage the utilization of vacation and the necessity for managers and employees to plan throughout the year for vacation usage in 2023.

Thank you for your consideration of the proposed policy change for the vacation carryover maximum as well as the potential one-time payout of vacation based on a tiered schedule.

RECOMMENDED MOTION:

To approve increasing the annual maximum vacation carryover to 320 hours (576 for fire suppression) within the regular vacation policy and to approve a one-time vacation payout based on the proposed tiered system.

Tiers	Vacation Balance As of November 6	Payout Options
Tier 1	320 +	Hours in excess of 320 plus the payout option in Tier 2, 3 or 4 *Balance must be reduced to 320 on December 31, 2022 to avoid loss of vacation hours
Tier 2	200 - 319	60 hours (1.5 weeks) <u>or</u> the payout option in Tier 3 or 4
Tier 3	100 - 199	40 hours (1 week) <u>or</u> the payout option in Tier 4
Tier 4	40 - 99	16 hours (2 days)

Fire Suppression

Tiers	Vacation Balance As of November 6	Payout Options
Tier 1	576 +	Hours in excess of 576 plus the payout option in Tier 2, 3 or 4 *Balance must be reduced to 576 on December 31, 2022 to avoid loss of vacation hours
Tier 2	280 - 575	84 hours (1.5 weeks) <u>or</u> the payout option in Tier 3 or 4
Tier 3	140 - 279	56 hours (1 week) <u>or</u> the payout option in Tier 4
Tier 4	56 - 139	48 hours (2 days)

19

HUMAN RESOURCES DEPARTMENT

Fargo City Hall
225 4th Street North
Fargo, ND 58102
Phone: 701.241.1321 | Fax: 701.476.6707
www.FargoND.gov

To: Board of City Commissioners
From: Jill Minette, Director of Human Resources *JM*
Re: Dental Insurance Renewal
Date: September 29, 2022

All of our benefit renewals were approved during the last City Commission Meeting with the exception of the dental insurance. We received the renewal information for 2023 from Blue Cross Blue Shield of North Dakota (BCBSND).

The dental premiums for 2023 will be reduced by 3.1% (3.2% for a family coverage). The City contributes the cost of the single premium for all full-time employees (pro-rated for benefited employees scheduled less than 40 hours per week) regardless of the level of coverage elected. The 2023 dental premiums are attached. Full-time employees with family coverage will be experience a \$2.80 per month premium reduction.

RECOMMENDED MOTION: To approve the dental insurance renewal effective January 1, 2023.

City of Fargo Blue Cross Blue Shield North Dakota (BCBSND) Dental Premiums 2023

	Employee Pay Period Contribution	COF Pay Period Contribution	Employee Monthly Contribution	COF Monthly Contribution	Combined Monthly Premium	Total Annual Premium
Full-Time Employee 40 (Scheduled Hours: 40 /week; 2080 /Year)*						
Employee Only	\$0.00	\$21.55	\$0.00	\$43.10	\$43.10	\$517.20
+ spouse	\$21.55	\$21.55	\$43.10	\$43.10	\$86.20	\$1,034.40
+ children	\$20.50	\$21.55	\$41.00	\$43.10	\$84.10	\$1,009.20
+ spouse & children	\$42.45	\$21.55	\$84.90	\$43.10	\$128.00	\$1,536.00
Full-Time Employee 30-39 (Scheduled Hours: 30-39/week; 1560-2079/year)*						
Employee Only	\$5.38	\$16.17	\$10.76	\$32.34	\$43.10	\$517.20
+ spouse	\$26.93	\$16.17	\$53.86	\$32.34	\$86.20	\$1,034.40
+ children	\$25.88	\$16.17	\$51.76	\$32.34	\$84.10	\$1,009.20
+ spouse & children	\$47.83	\$16.17	\$95.66	\$32.34	\$128.00	\$1,536.00
Part-time Employee 20-29 (Scheduled Hours 20-29/week; 1040 - 1559/year)*						
Employee Only	\$10.77	\$10.78	\$21.54	\$21.56	\$43.10	\$517.20
+ spouse	\$32.32	\$10.78	\$64.64	\$21.56	\$86.20	\$1,034.40
+ children	\$31.27	\$10.78	\$62.54	\$21.56	\$84.10	\$1,009.20
+ spouse & children	\$53.22	\$10.78	\$106.44	\$21.56	\$128.00	\$1,536.00

*Premiums apply to employees who are benefit eligible as defined in COF policy.

COBRA Rates	
	COBRA Monthly Premium
COBRA Employee Only	\$ 43.96
COBRA + spouse	\$ 87.92
COBRA + children	\$ 85.78
COBRA + spouse & Children	\$ 130.56

Dental Insurance is effective the 1st of the month following date of hire.



(20)

Fargo Inspections

City of Fargo
225 Fourth Street North
701-241-1561
Fax: 701-476-6779

MEMORANDUM

TO: Board of City Commissioners
FROM: Inspections Director Shawn Ouradnik
DATE: September 27, 2022
SUBJECT: Set a Public Hearing Date for Property at 509 21st Street North

The property owner of 509 21st Street North, Fargo has failed to comply with the order to either obtain a permit to repair or remove the heavily damaged structure at that location within the time allowed for that removal. In accordance with Fargo Municipal Code Article 21-0405, a hearing date is being requested for Monday, October 17, 2022.

RECOMMENDED MOTION: To set Monday, October 17, 2022 at 5:15 p.m. as the date and time for a Public Hearing for the property located at 509 21st Street North, Fargo.

21a

City of Fargo Staff Report			
Title:	Simonson Companies Third Addition	Date:	7-26-2022
		Update:	9-29-2022
Location:	3863 53rd Avenue South	Staff Contact:	Luke Morman, Planner
Legal Description:	Lot 4, Block 1, Simonson Companies Second Addition		
Owner(s)/Applicant:	Simonson Companies, LLC / Chris Mack	Engineer:	Neset Land Surveys
Entitlements Requested:	Minor Subdivision (Replat of Lot 4, Block 1, Simonson Companies Second Addition)		
Status:	City Commission Public Hearing: October 3, 2022		

Existing	Proposed
Land Use: Undeveloped	Land Use: Limited Commercial uses
Zoning: LC, Limited Commercial with a Conditional Overlay	Zoning: Unchanged
Uses Allowed: Allows colleges, community service, daycare centers of unlimited size, health care facilities, parks and open areas, religious institutions, safety services, basic utilities, offices, off-premise advertising , commercial parking, retail sales and service, self-storage, vehicle repair , limited vehicle service, and certain telecommunication facilities. Conditional Overlay No. 5370 also prohibits detention facilities, adult entertainment centers, portable signs, industrial service, manufacturing and production, warehouse and freight movement, and aviation/surface transportation.	Uses Allowed: Unchanged
Maximum Lot Coverage Allowed: Maximum 55% building coverage	Maximum Lot Coverage Allowed: Unchanged

Proposal:
<p>The applicant is seeking approval of a minor subdivision located at 3863 53rd Avenue South. The request is to replat the existing lot into a two lot minor subdivision entitled Simonson Companies Third Addition.</p> <p>This project was reviewed by the City's Planning and Development, Engineering, Public Works, and Fire Departments ("staff"), whose comments are included in this report.</p> <p>Surrounding Land Uses and Zoning Districts:</p> <ul style="list-style-type: none"> • North: Across 52nd Ave S, GC, General Commercial, office. • East: LC, Limited Commercial, undeveloped. • South: LC, Limited Commercial, undeveloped. • West: LC, Limited Commercial; retail sales and service.

Area Plans:

According to the 2007 Growth Plan, the subject property is designated as "Commercial." The current LC, Limited Commercial zoning is consistent with this land use designation.



Legend		
Land Use		
Low Med Res	Low Med Res or Parkland	Office
Low Med Res or Med High Res	Med High Res	Parkland
	Commercial	Public and Inst
		Tier 1 Northwest Area Plan
		Industrial Area
		Agricultural Research
		Commercial Area
		Residential Area - medium to high density
		Residential Area - lower to medium density
		Proposed Park
		Future School

Context:

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

Neighborhood: The subject property is located within The District neighborhood.

Parks: The Pines Park is within a quarter mile to the southwest of the subject property. This park provides a basketball court, grills, picnic tables, playgrounds for ages 2-5 and 5-12, recreational trails, and a shelter.

Pedestrian / Bicycle: There are ten foot wide tails along 52nd Avenue South, eight foot wide tails along 53rd Avenue South, eight foot wide trails on the west sides of 42nd Street South and 38th Street South, and shared-use paths within The Pines Park that connect to the metro area trail system.

Bus Route: There are no bus routes within a quarter mile of the subject property.

Staff Analysis:

Minor Subdivision

Due to an existing negative access easement, the subject property does not directly access from a public street. However, there are sufficient access easements to provide access to and from the site.

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 replat one existing lot into two new lots. The properties within this plat are currently zoned GC, General Commercial, and no 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 and responded to one inquiry about the 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)

Staff Recommendation:

Suggested Motion: "To accept the findings and recommendations of Planning Commission and staff and move to approve the proposed subdivision plat, **Simonson Companies Third Addition** as outlined within the staff report, as the proposal complies with the 2007 Growth Plan, standards of Section 20-0907.B & C, standards of Article 20-06, and all other applicable requirements of the Land Development Code."

Planning Commission Recommendation: August 2, 2022

At the August 2nd, 2022 Planning Commission hearing, by a vote of 6-0 with three commissioners absent and two Commission seats vacant, the Planning Commission moved to accept the findings and recommendations of staff and hereby recommended approval to the City Commission the proposed subdivision plat, **Simonson Companies Third Addition** as outlined within the staff report, as the proposal complies with the 2007 Growth Plan, standards of Section 20-0907.B & C, standards of Article 20-06, and all other applicable requirements of the Land Development Code."

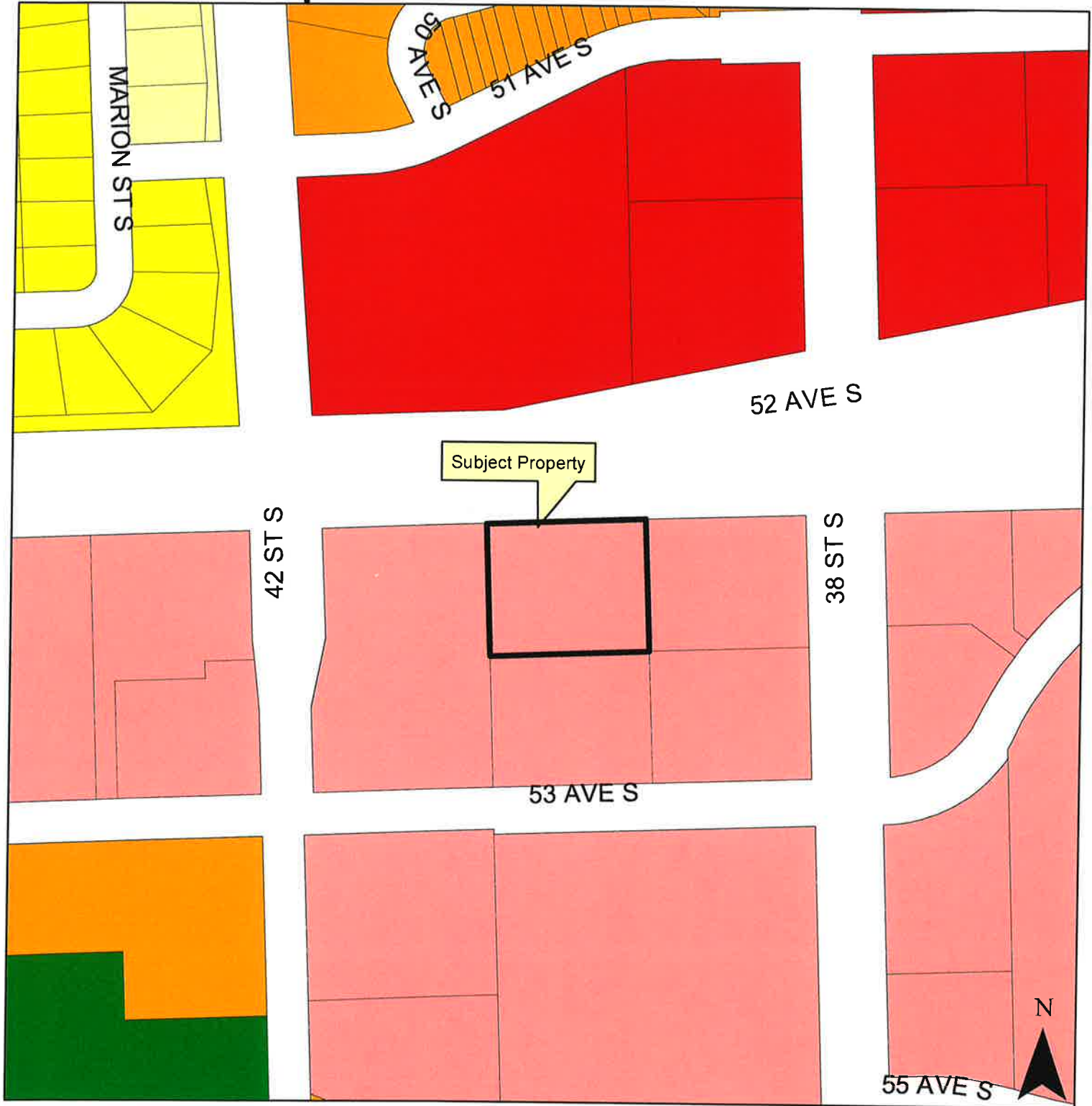
Attachments:

1. Zoning map
2. Location map
3. Preliminary plat

Plat (Minor)

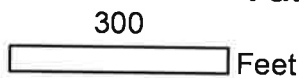
Simonson Companies Third Addition

3863 53rd Avenue S



Legend

AG	DMU	GC	GO	LC	MRR-1	MRR-2	MRR-3	MHP	NZC	DT	UMU	City Limits
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Fargo Planning Commission
August 2, 2022

Plat (Minor)

Simonson Companies Third Addition

3863 53rd Avenue S



216

City of Fargo Staff Report			
Title:	Timber Parkway Eighth Addition	Date:	7-26-2022
		Update:	9-29-2022
Location:	5056 and 5160 Charles Way South	Staff Contact:	Luke Morman, Planner
Legal Description:	Lots 1 and 2, Block 1, Timber Parkway Seventh Addition		
Owner(s)/Applicant:	PLC Investments, LLC / Landform Professional Services, LLC	Engineer:	AE2S
Entitlements Requested:	Minor Subdivision (Replat of Lots 1 and 2, Block 1, Timber Parkway Seventh Addition)		
Status:	City Commission Public Hearing: October 3, 2022		

Existing	Proposed
Land Use: Undeveloped	Land Use: Unchanged and restaurant
Zoning: GC, General Commercial, with a C-O, Conditional Overlay	Zoning: Unchanged
Uses Allowed: Allows colleges, community service, daycare centers of unlimited size, detention facilities , health care facilities, parks and open areas, religious institutions, safety services, adult entertainment centers , basic utilities, offices, off-premise advertising, commercial parking, outdoor recreation and entertainment, retail sales and service, self-storage, vehicle repair , limited vehicle service, and certain telecommunication facilities. Conditional Overlay No. 4908 prohibits certain uses.	Uses Allowed: Unchanged
Maximum Lot Coverage Allowed: Maximum 85% building coverage	Maximum Lot Coverage Allowed: Unchanged

Proposal:

The applicant is seeking approval of a minor subdivision located at 5056 and 5160 Charles Way South. The request is to remove a portion of the existing negative access easement along Jacks Way South, with the proposed minor subdivision entitled Timber Parkway Eighth Addition. The plat does not alter the lot dimensions or property lines.

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:

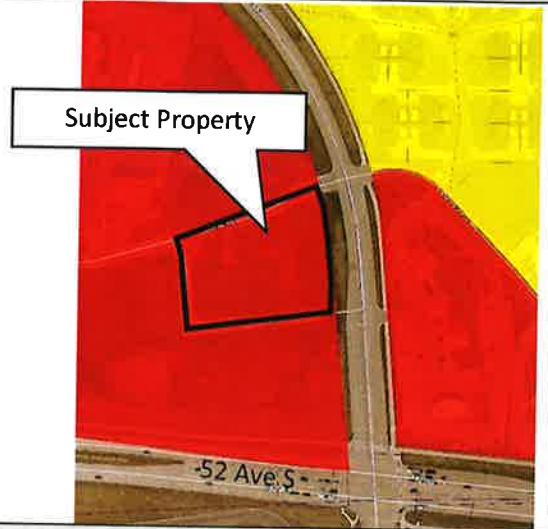
- North: GC, General Commercial, undeveloped.
- East: Across Timber Pkwy S, GC, General Commercial, with retail sales and service.
- South: GC, General Commercial, undeveloped.
- West: GC, General Commercial; undeveloped.

Area Plans:

According to the 2001 Growth Plan, the subject property is designated as "Commercial." The current GC, General Commercial zoning is consistent with this land use designation.

2001 Growth Plan Legend

	Low Med Res or Med High Res
	Low Med Res or Parkland
	Commercial or Office
	Commercial
	Low Med Res
	Med High Res or Office
	Med High Res
	Office
	Parkland
	Public and Institutional



Context:

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

Neighborhood: The subject property is located within Centennial neighborhood.

Parks: Timber Creek Park is within a quarter mile to the north of the subject property. This park provides a basketball court, grills, picnic tables, playgrounds for ages 2-5 and 5-12, recreational trails, and a shelter.

Pedestrian / Bicycle: There are ten foot wide tails along 52nd Avenue South and along the east sides of Timber Parkway South and 31st Street South. There are eight foot wide tails along 32nd Street South and shared-use paths within Timber Creek Park that connect to the metro area trail system.

Bus Route: There are no bus routes within a quarter mile of the subject property.

Staff Analysis:

Minor Subdivision

The applicant provided a traffic study to analyze traffic effects of this development, including the removal of the negative access easement along Jacks Way South. The City's Traffic Engineer has reviewed this document and has been in communication with the applicant to mitigate any negative traffic impacts. These impacts will be reviewed during the building permit review process.

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

- 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 remove a portion of the existing negative access easement along Jacks Way South. The properties within this plat are currently zoned GC, General Commercial, with a Conditional Overlay, and no 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 no inquiries about the 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)

Staff Recommendation:

Suggested Motion: "To accept the findings and recommendations of the Planning Commission and staff and move to approve the proposed subdivision plat, **Timber Parkway Eighth Addition** as outlined within the staff report, as the proposal complies with the 2001 Growth Plan, standards of Section 20-0907.B & C, standards of Article 20-06, and all other applicable requirements of the Land Development Code."

Planning Commission Recommendation: August 2, 2022

At the August 2nd, 2022 Planning Commission hearing, by a vote of 5-0 with three commissioners absent, two Commission seats vacant, and one commissioner recusing his vote, the Planning Commission moved to accept the findings and recommendations of staff and recommended approval to the City Commission the proposed subdivision plat, **Timber Parkway Eighth Addition** as outlined within the staff report, as the proposal complies with the 2001 Growth Plan, standards of Section 20-0907.B & C, standards of Article 20-06, and all other applicable requirements of the Land Development Code.

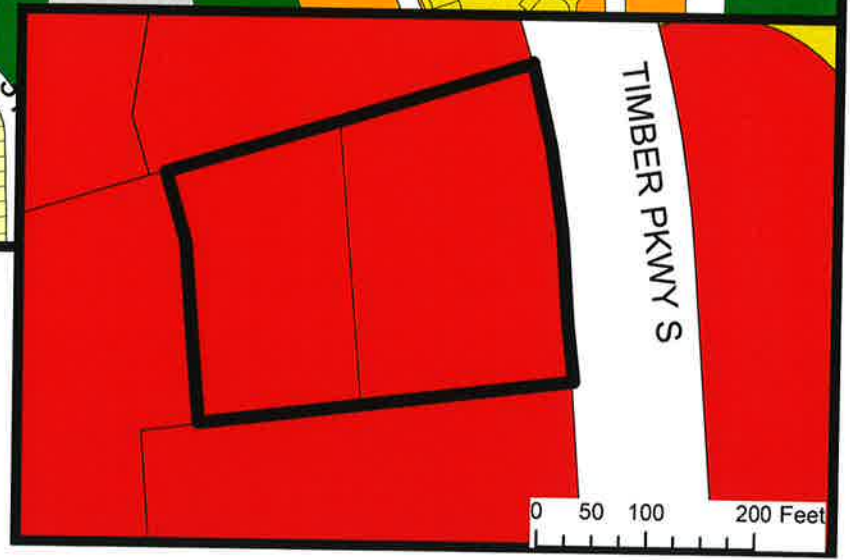
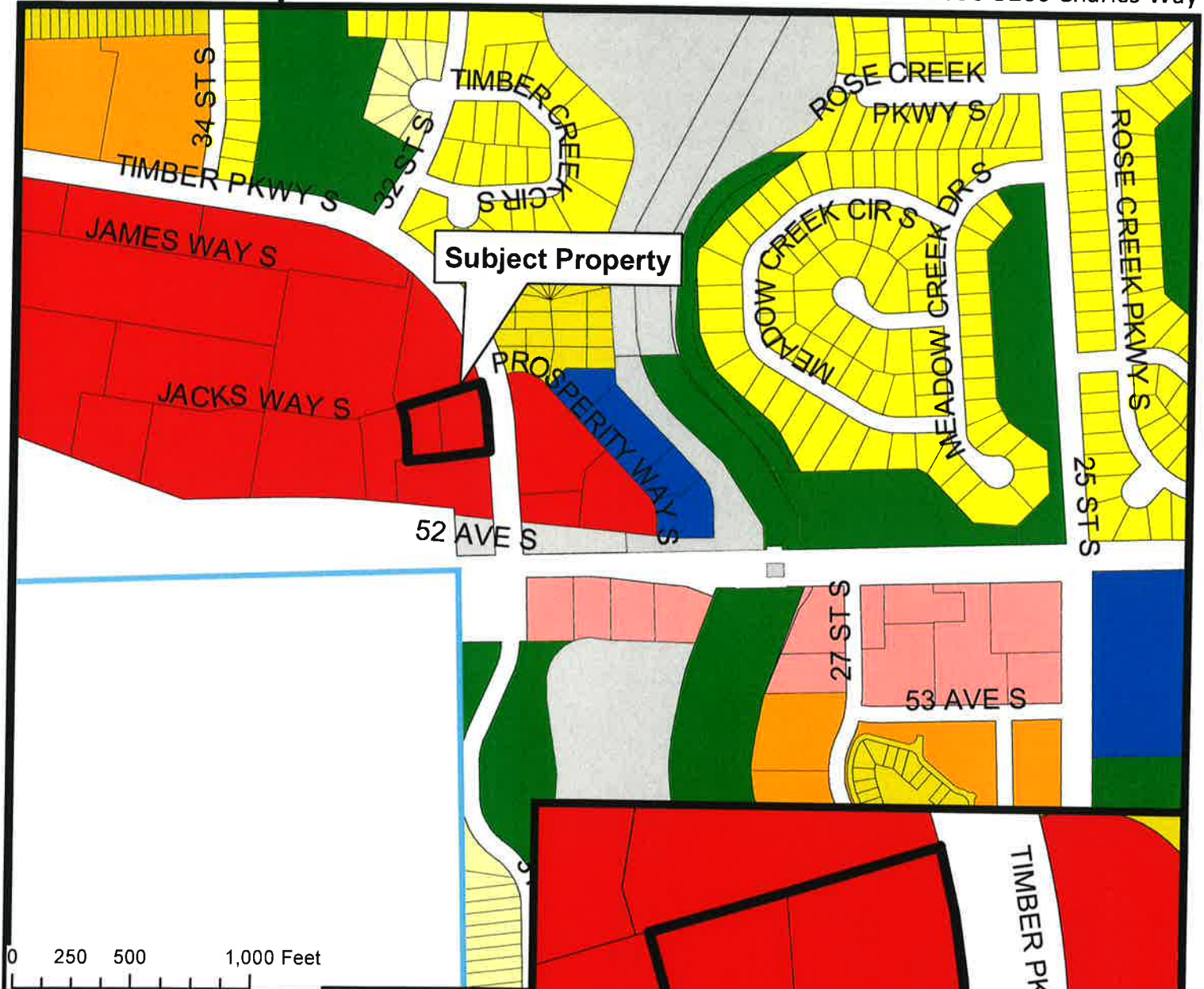
Attachments:

1. Zoning map
2. Location map
3. Preliminary plat

Plat (minor)

Timber Parkway 8th Addition

5056-5160 Charles Way



N

Legend

	AG		LC		MHP		C-1
	DMU		M		NOC		C-2
	GC		MR-1		P		C-3
	GO		MR-2		UMU		C-4
			MR-3				City Limits

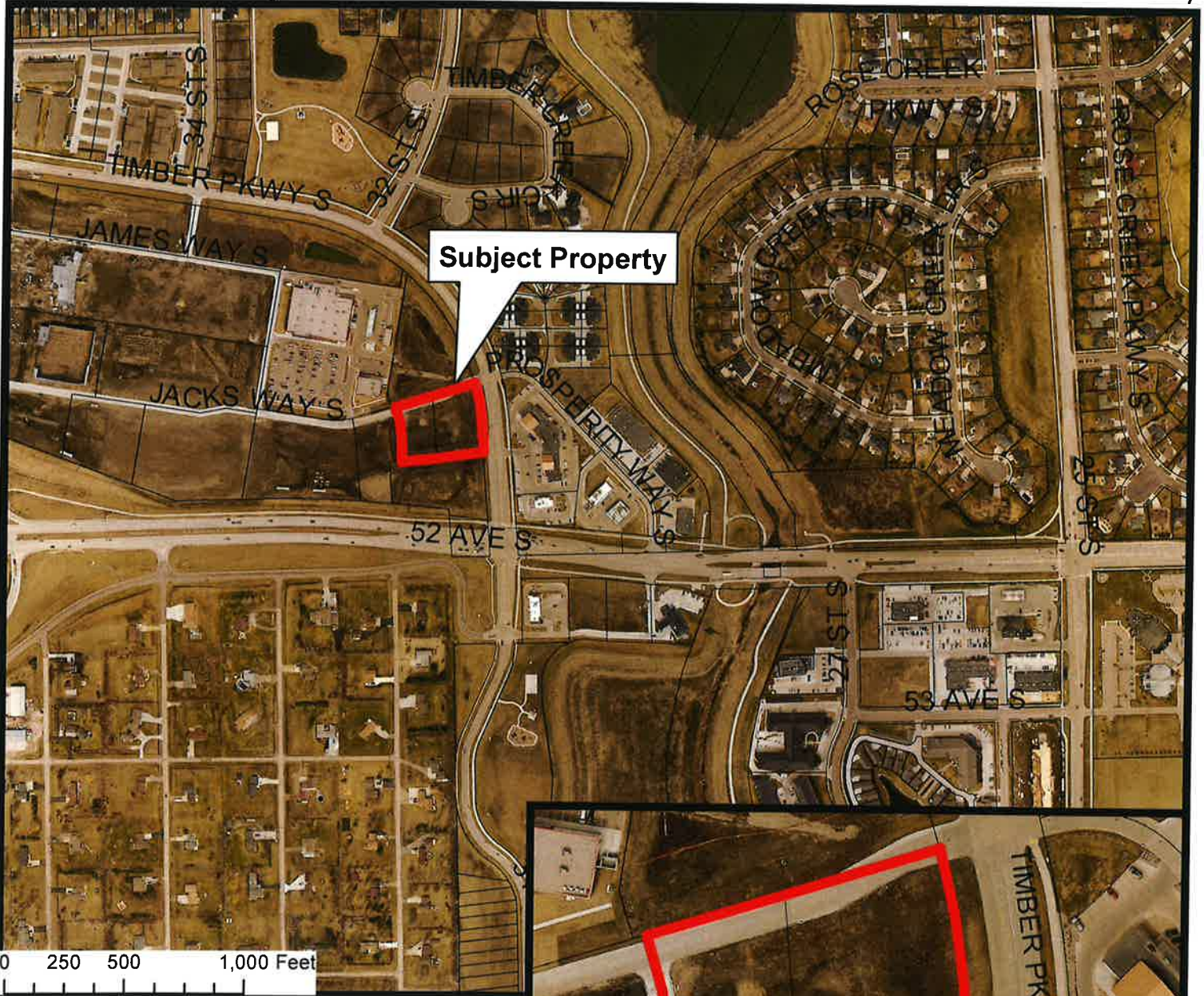


Fargo Planning Commission
August 2, 2022

Plat (minor)

Timber Parkway 8th Addition

5056-5160 Charles Way



21c

City of Fargo Staff Report			
Title:	Timber Parkway Ninth Addition	Date:	8/31/2022
		Updated:	9/29/2022
Location:	3439 and 3471 James Way South	Staff Contact:	Donald Kress, current planning coordinator
Legal Description:	Lot 1 and a portion of Lot 3, Block 1, Timber Parkway Fourth Addition		
Owner(s)/Applicant:	PLC Investments, LLC; Dabbert Custom Homes / Christianson Companies—Chris Mack	Engineer:	Bolton & Menk
Entitlements Requested:	Minor Subdivision (replat of Lot 1 and a portion of Lot 3, Block 1, Timber Parkway Fourth Addition)		
Status:	City Commission Public Hearing: October 3rd, 2022		
Existing		Proposed	
Land Use: Undeveloped		Land Use: Commercial	
Zoning: GC, General Commercial with a conditional overlay Ordinance No. 5266		Zoning: No change	
<p>Uses Allowed: Allows colleges, community service, daycare centers of unlimited size, detention facilities, health care facilities, parks and open areas, religious institutions, safety services, adult entertainment centers, basic utilities, offices, off-premise advertising, commercial parking, outdoor recreation and entertainment, retail sales and service (EXCEPT sales and leasing of consumer vehicles, including passenger vehicles, light/medium trucks and other recreational vehicles that includes outdoor storage/display/sales), self storage, vehicle repair, limited vehicle service, and certain telecommunication facilities.</p> <p>Conditional Overlay No. 5266 prohibits certain uses, as noted above, as well as the conditional uses of industrial service, manufacturing and production; warehouse and freight movement (excluding furniture/appliance stores), wholesale sales, and aviation/surface transportation</p>		<p>Uses Allowed: No change. Conditional overlay carries through to the replatted properties.</p>	
Maximum Lot Coverage Allowed: 85%		Maximum Lot Coverage Allowed: No change	
Proposal:			
<p>The applicant request one entitlement: A minor subdivision, to be known as Timber Parkway Ninth Addition, a replat of Lot 1 and a portion of Lot 3, Block 1, Timber Parkway Fourth Addition.</p> <p>The subject property is located at 3439 and 3471 James Way South, a private drive, and encompasses approximately 4.21 acres.</p> <p>This project was reviewed by the City's Planning and Development, Engineering, Public Works, and Fire Departments ("staff"), whose comments are included in this report.</p>			

Surrounding Land Uses and Zoning Districts:

- North: MR-3, Multi-Dwelling Residential, with multi-dwelling residential buildings
- East: GC, General Commercial with conditional overlay; undeveloped
- South: GC, with conditional overlay; commercial development (golf)
- West: GC, with conditional overlay; stormwater detention basin

Area Plans:

The subject property is included in the 2001 Growth Plan—South Remainder. This plan designates the subject property as “Commercial.” The current GC, General Commercial zoning is consistent with this land use designation. No zone change is proposed.



2001 Growth Plan Legend

- Low Med Res or Med High Res
- Low Med Res or Parkland
- Commercial or Office
- Commercial
- Low Med Res
- Med High Res or Office
- Med High Res
- Office
- Parkland
- Public and Inst

Context

Neighborhood: The subject property is included in the Centennial neighborhood.

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

Parks: Timber Creek Park is northeast across Timber Parkway from the subject property. This park provides a basketball court, grills, picnic tables, playgrounds for ages 2-5 and 5-12, recreational trails, and a shelter.

Pedestrian / Bicycle: There’s a 10-foot wide shared use path on the north side of Timber Parkway that connects to the metro area trail system,.

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

Staff Analysis:

MINOR SUBDIVISION: The subdivision divides Lot 1 and a portion of Lot 3, Block 1 of Timber Parkway Fourth Addition into three individual lots for commercial development.

EXISTING LANDSCAPE EASEMENT: The northerly edge of the property is bordered by a 50 foot wide landscape easement, which was created as part of Timber Creek First Addition in 2014. This landscape easement remains in place on this plat.

ADDITIONAL ACCESS EASEMENT: This plat creates a shared access easement along the lot line between proposed Lots 2 and 3. This easement provides access from James Way. It does not connect to or provide access from Timber Creek Parkway.

EXISTING CONDITIONAL OVERLAY: The existing conditional overlay, Ordinance No. 5266, carries over onto this subdivision.

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 current zoning is GC, General Commercial with a conditional overlay. No zone change is proposed. The conditional overlay will carry through to the replatted properties. 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, Planning staff has received and responded to one inquiry. 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)**

Staff Recommendation:

Suggested Motion: "To accept the findings and recommendations of the Planning Commission and staff and move to approve the proposed plat of **Timber Parkway Ninth Addition**, as outlined in the staff report, on the basis that it complies with the 2001 Growth Plan—South Remainder, Standards of Article 20-06, Section 20-0907.B. and C of the LDC and all other applicable requirements of the LDC."

Planning Commission Recommendation: September 8th, 2022

At the September 8th, 2022, Planning Commission hearing, that Commission, by a vote of 5-0 with four Commissioners absent and two Commission seats vacant, moved to accept the findings and recommendations of staff and recommended approval to the City Commission of the proposed plat of **Timber Parkway Ninth Addition**, as outlined in the staff report, on the basis that it complies with the 2001 Growth Plan—South Remainder, Standards of Article 20-06, Section 20-0907.B. and C of the LDC and all other applicable requirements of the LDC

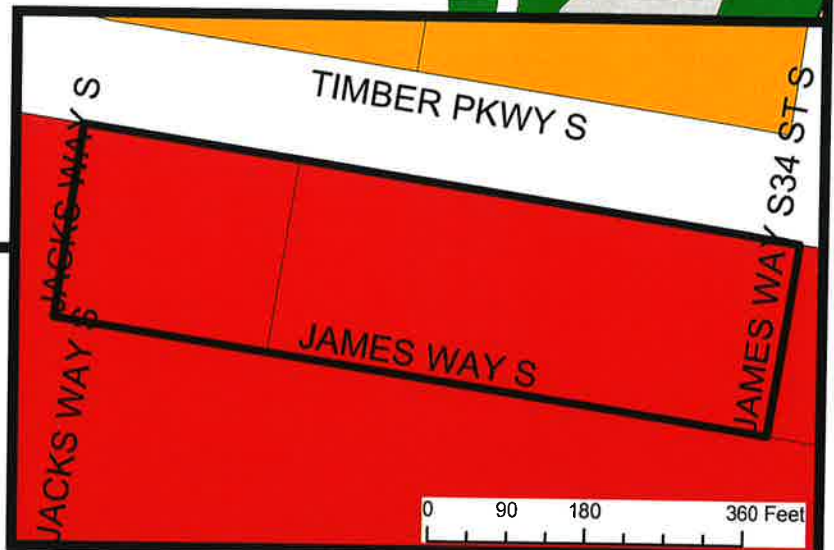
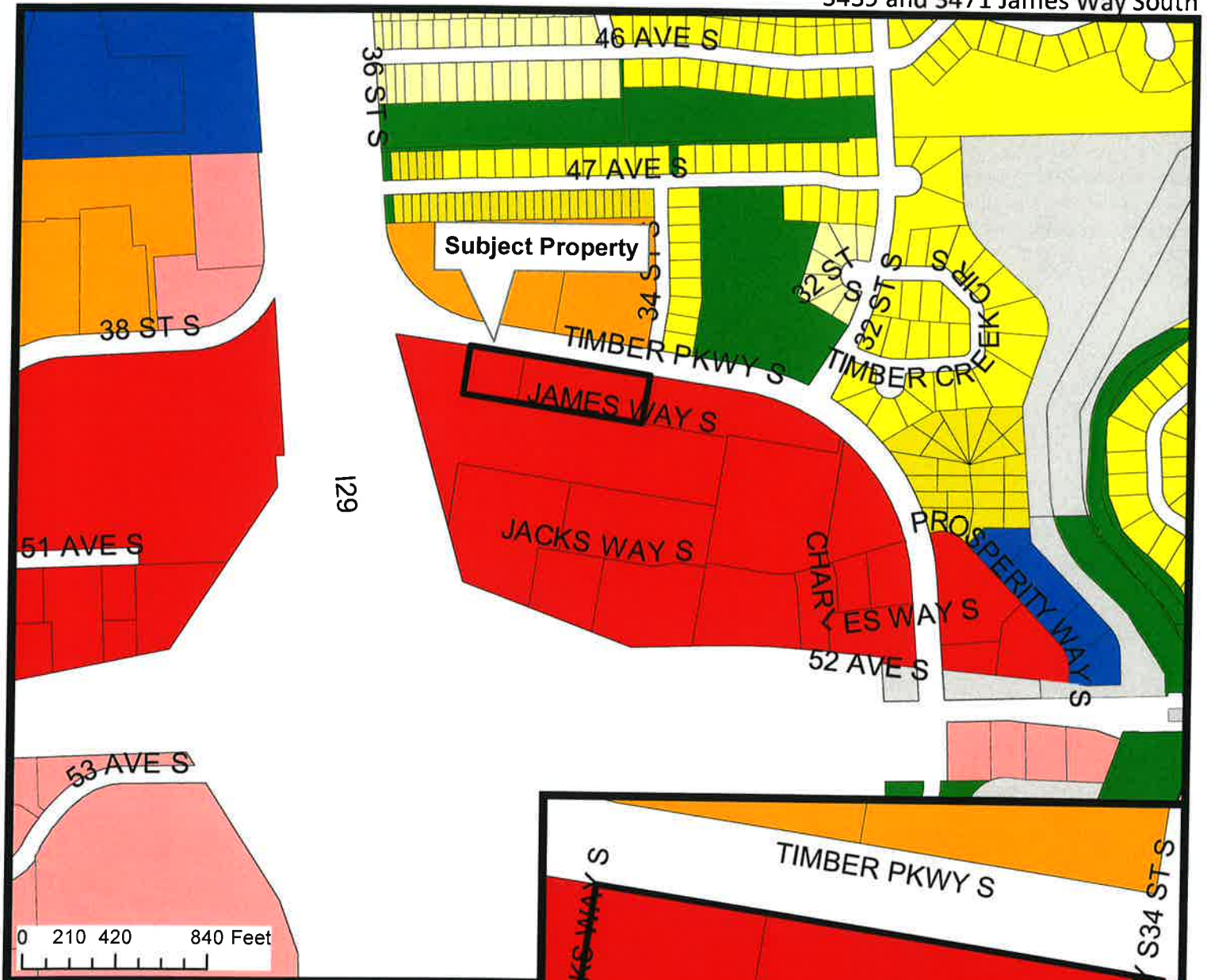
Attachments:

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

Plat (minor)

Timber Parkway Ninth Addition

3439 and 3471 James Way South



Legend

AG	DMU	LC	MHP
GG	CC	MR-1	DMU
GO	MR-2	MR-3	UMU
City Limits			

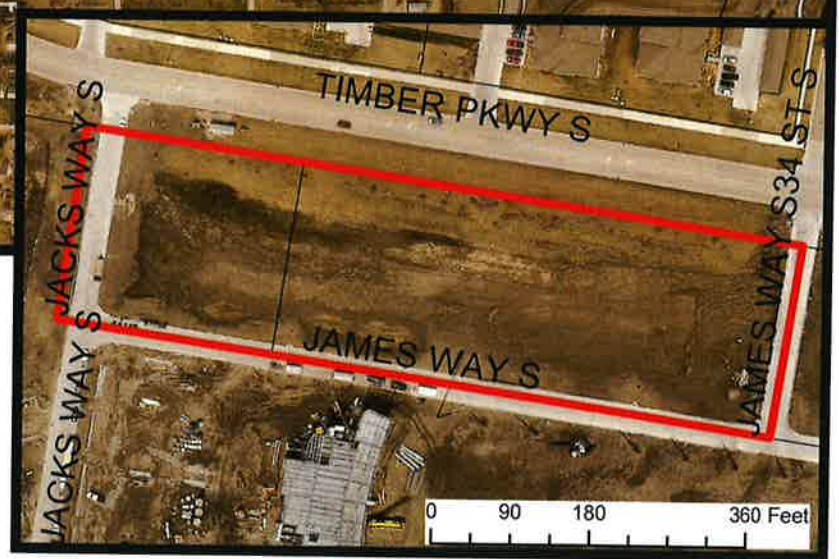


Fargo Planning Commission
September 8, 2022

Plat (minor)

Timber Parkway Ninth Addition

3439 and 3471 James Way South



21d

City of Fargo Staff Report			
Title:	Craigs 16th Street Addition	Date:	7/28/2022
		Update:	9/29/2022
Location:	202 16 th Street North	Staff Contact:	Brad Garcia, Planner
Legal Description:	Lot 3, Block 1, MBA Investments Addition, to the City of Fargo, Cass County, North Dakota		
Owner(s)/Applicant:	Momentum Properties LLC / Jesse Craig	Engineer:	KLJ Engineering
Entitlements Requested:	Minor Subdivision (Replat of Lot 3, Block 1, MBA Investments Addition, to the City of Fargo, Cass County, North Dakota)		
Status:	City Commission Public Hearing: October 3rd, 2022		

Existing	Proposed
Land Use: Undeveloped	Land Use: Commercial
Zoning: GC, General Commercial	Zoning: No change proposed
Uses Allowed: GC – General Commercial. Allows colleges, community service, daycare centers of unlimited size, detention facilities, health care facilities, parks and open space, religious institutions, safety services, adult entertainment centers, offices, off-premise advertising, commercial parking, outdoor recreation and entertainment, retail sales and service, self storage, vehicle repair, limited vehicle service, basic utilities, telecommunications structures	Uses Allowed: No change proposed
Maximum Lot Coverage Allowed: 85%	Maximum Lot Coverage Allowed: 85%

Proposal:

The applicant is seeking approval of a minor subdivision to accommodate future business development of the subject property. Currently the property does not have any development is primarily used as outdoor storage. The proposed minor subdivision, entitled **Craigs 16th Street Addition**, would replat the subject property into two lots. Both lots of the proposed plat are intended for commercial development. The proposed plat contains approximately .93 acres.

The plat adds a public utility easement along 16th Street North.

The current zoning is GC, General Commercial. No zone change is proposed

Surrounding Land Uses and Zoning Districts:

- North: GC; Warehouse / Auto Repair
- East: GC, Construction Company
- South: GC; Warehouse
- West: GC; Warehouse / Storage

Area Plans:

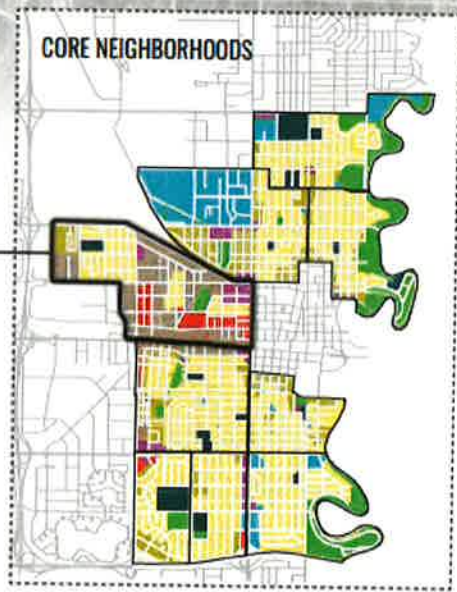
The subject property is located within the 2021 Core Neighborhoods Plan. This plan designates the subject property as Commercial use. The existing GC, General Commercial zoning is consistent with this land use designation. No change from the GC zoning is proposed.



**MADISON / UNICORN PARK
FUTURE
LAND USE MAP**

- | | |
|-------------------------------------|-----------------------------------|
| Single-Family Residential | Industrial/Warehousing |
| Multi-Family Residential | Park, Open Space and Trails |
| Institutional | Commercial |
| Schools with recreational amenities | Mixed Use Neighborhood Commercial |

For full descriptions of these land use categories, see page 45 of the Core Neighborhoods Master Plan



Context:

Schools: The subject property is located within the Fargo School District and is served by Madison Elementary, Ben Franklin and North High schools.

Neighborhood: The subject property is located in the Madison neighborhood

Parks: Unicorn Park (1603 3 Avenue North) is located approximately 300 feet to the north of the subject property and provides basketball, grill, multi-purpose field, playground, and picnic table amenities.

Pedestrian / Bicycle: There are no trails adjacent to the subject property.

Transit: Route 17 (Matbus) serves this area along 3rd Ave N, providing service to GTC, Madison Elementary, YWCA Daycare, Metro Transit Garage (MTG), New Life Center, Centre, Inc., University Manor

Staff Analysis:

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.

Minor 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 current zoning is GC, General Commercial. No zone change is proposed. In accordance with Section 20-0901.F of the LDC, notices of the proposed plat have been sent out to property owners within 300 feet of the subject property. To date, Planning staff has received no comments or inquiries. 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)**

Staff Recommendation:

Suggested Motion: "To accept the findings and recommendations of the Planning Commission and staff, and move to approve the proposed Craig's 16th Street Addition subdivision plat as presented; as the proposal complies with the 2021 Core Neighborhoods Plan, Standards of Article 20-06, and Section 20-0907.B. and C of the LDC and all other applicable requirements of the LDC.

Planning Commission Recommendation: August 2nd, 2022

At the August 2nd, 2022 Planning Commission hearing, that Commission, by a vote of 6-0 with three Commissioners absent and two Commission seats vacant, moved to accept the findings and

recommendations of staff and recommended approval to the City Commission of the proposed plat of Craig's 16th Street Addition on the basis that it satisfactorily complies with the 2021 Core Neighborhoods Plan, the Standards of Article 20-06, Section 20-0907.B&C of the Land Development Code and all other applicable requirements of the Land Development Code.

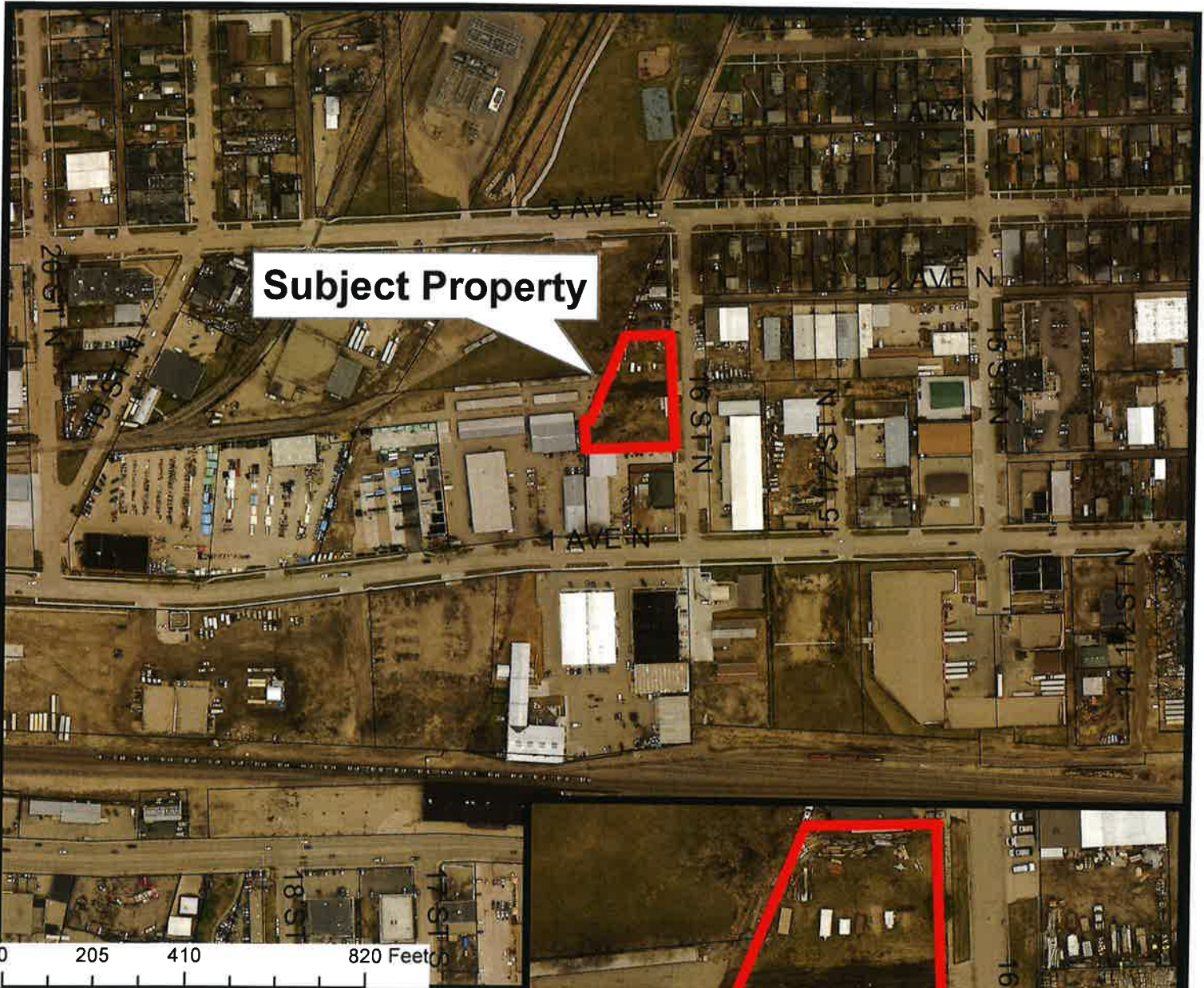
Attachments:

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

Plat (minor)

Craigs 16th Street Addition

202 16 St N

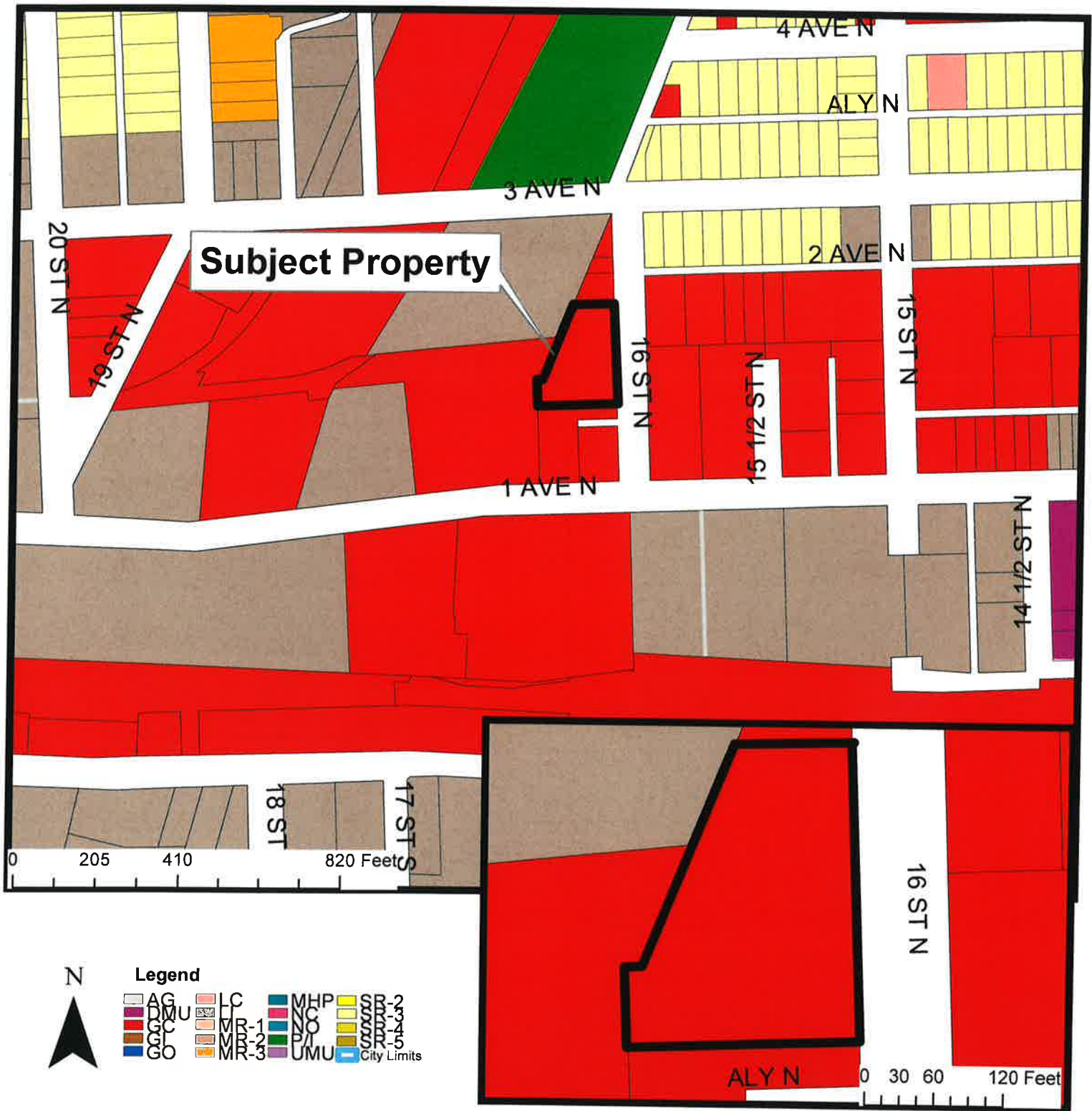


Fargo Planning Commission
August 2, 2022

Plat (minor)

Craigs 16th Street Addition

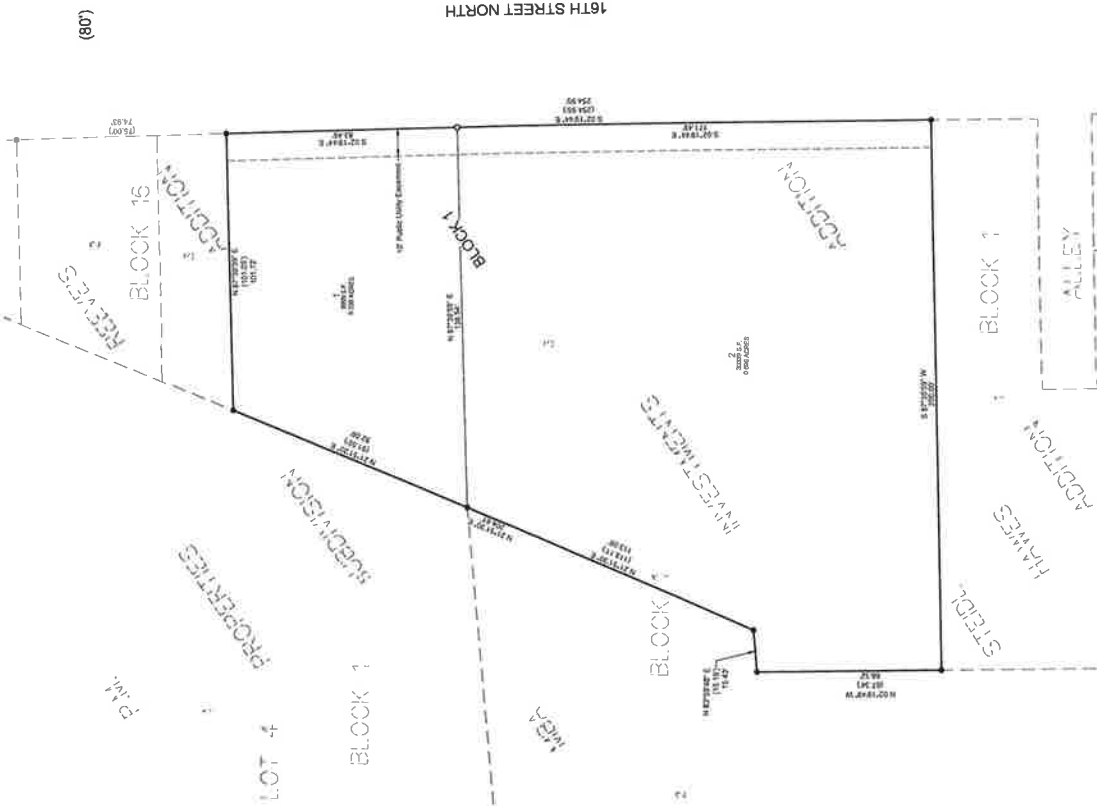
202 16 St N



Fargo Planning Commission
August 2, 2022

A MINOR SUBDIVISION PLAT OF CRAIGS 16TH STREET ADDITION

A REPLAT OF LOT 3, BLOCK 1, OF MBA INVESTMENTS ADDITION TO THE CITY OF FARGO, NORTH DAKOTA, CASS COUNTY, NORTH DAKOTA



OWNER
 MONUMENTAL INVESTMENTS, LLC
 1405 1ST AVE N
 WEST FARGO, ND 58079
 PH: 701.232.1329
 www.sprng.com

ENGINEER/SURVEYOR
 SPRING SURVEYING & CONSULTING, INC.
 309 22ND AVENUE E SUITE 100
 WEST FARGO, ND 58079
 PH: 701.232.1329
 www.sprng.com

LEGEND

	EASEMENT
	NEW SHARED ACCESS EASEMENT LINE
	NEW PRIVATE UTILITY EASEMENT LINE
	EXISTING SHARED ACCESS EASEMENT LINE
	EXISTING PRIVATE UTILITY EASEMENT LINE
	ADJACENT LOT LINE
	LOTTERY BOUNDARY
	1/4 LINE
	NEGATIVE ACCESS LINE
	BUILDING CONTROL LINE

(BY)

306.42'	RECORD DISTANCE
N 87°02'07" E	MEASURED DISTANCE
N 87°02'07" E	RECORD BEARING
N 87°02'07" E	MEASURED BEARING

NOTE: THE CITY OF FARGO HAS A RECORDING CONTROL. VERIFY VERTICAL DATUM, U.S. SURVEY FEET.



21e

City of Fargo Staff Report			
Title:	Peterson Second Addition	Date: Updated:	7/27/3022 9/29/2022
Location:	302 29th Street North	Staff Contact:	Donald Kress
Legal Description:	Portion of Lots 1, 2, 3, and 4 and the East 47.5 Feet of Lot 5, Block 2, Schultz & Lindsay's 1 st Addition		
Owner(s)/Applicant:	Qwest Corporation / Apex Engineering—Barry Glienke	Engineer:	Apex Engineering
Entitlements Requested:	Minor Subdivision (replat of a portion of Lots 1, 2, 3, and 4 and the East 47.5 Feet of Lot 5, Block 2, Schultz & Lindsay's 1 st Addition)		
Status:	City Commission Public Hearing: October 3 rd , 2022		
Existing		Proposed	
Land Use: Industrial and undeveloped		Land Use: Industrial	
Zoning: LI, Limited Industrial		Zoning: No change	
Uses Allowed: LI allows colleges, community service, daycare centers of unlimited size, detention facilities, health care facilities, parks and open space, religious institutions, safety services, adult entertainment centers, offices, off-premise advertising, commercial parking, outdoor recreation and entertainment, retail sales and service, self storage, vehicle repair, limited vehicle service, industrial service, manufacturing and production, warehouse and freight movement, wholesale sales, aviation, surface transportation, basic utilities, certain telecommunications facilities		Uses Allowed: No change	
Maximum Lot Coverage Allowed: 85%		Maximum Lot Coverage Allowed: No change	
Proposal:			
<p>The applicant request one entitlement: A minor subdivision, to be known as Peterson Second Addition, a replat of a portion of Lots 1, 2, 3, and 4 and the East 47.5 Feet of Lot 5, Block 2, Schultz & Lindsay's 1st Addition</p> <p>The subject property is located at 302 29th Street North and encompasses approximately 4.01 acres.</p> <p>This project was reviewed by the City's Planning and Development, Engineering, Public Works, and Fire Departments ("staff"), whose comments are included in this report.</p> <p>Surrounding Land Uses and Zoning Districts:</p> <ul style="list-style-type: none"> • North: LI, Limited Industrial, with manufacturing and production uses • East: LI, Limited Industrial, with industrial supply • South: LI, Limited Industrial, with industrial service and vocational training; • West: LI, Limited Industrial, with manufacturing and production uses 			
Area Plans:			
The subject property is not covered by a growth plan or neighborhood plan			

Context

Neighborhood: The subject property is not included in a designated neighborhood.

Schools: The subject property is located within the Fargo School District and is served by Madison Elementary, Ben Franklin Middle, and Fargo North High schools.

Parks: Unicorn Park (1603 3rd Avenue North) is located approximately a mile east of the subject property. Unicorn Park provides basketball, grill, multipurpose field, playground, and picnic table amenities.

Pedestrian / Bicycle: There are no sidewalks or bike facilities in this area.

MATBUS Routes: The subject property is not located along a MATBUS route. The nearest stop is at 29th Street and 7th Avenue North (Route 17), over one-quarter mile north of the subject property.

Staff Analysis:

MINOR SUBDIVISION The subdivision combines all or part of five existing platted lots into two lots. Access will be from 29th Street North and from 4th Avenue North.

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 current zoning is LI, Limited Industrial. 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, Planning staff has received no comments or inquiries. 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)**

Staff Recommendation:

Suggested Motion: "To accept the findings and recommendations of the Planning Commission and staff and move to approve the proposed plat of **Peterson Second Addition** on the basis that it satisfactorily complies with the Standards of Article 20-06, and Section 20-0907.B. and C of the LDC and all other applicable requirements of the LDC."

Planning Commission Recommendation: August 2nd, 2022

At the August 2nd, 2022 Planning Commission, that Commission, by a vote of 6-0 with three Commissioners absent and two Commission seats vacant, moved to accept the findings and recommendations of staff and recommended approval to the City Commission of the proposed plat of **Peterson Second Addition** on the basis that it satisfactorily complies with the Standards of Article 20-06, and Section 20-0907.B. and C of the LDC and all other applicable requirements of the LDC.

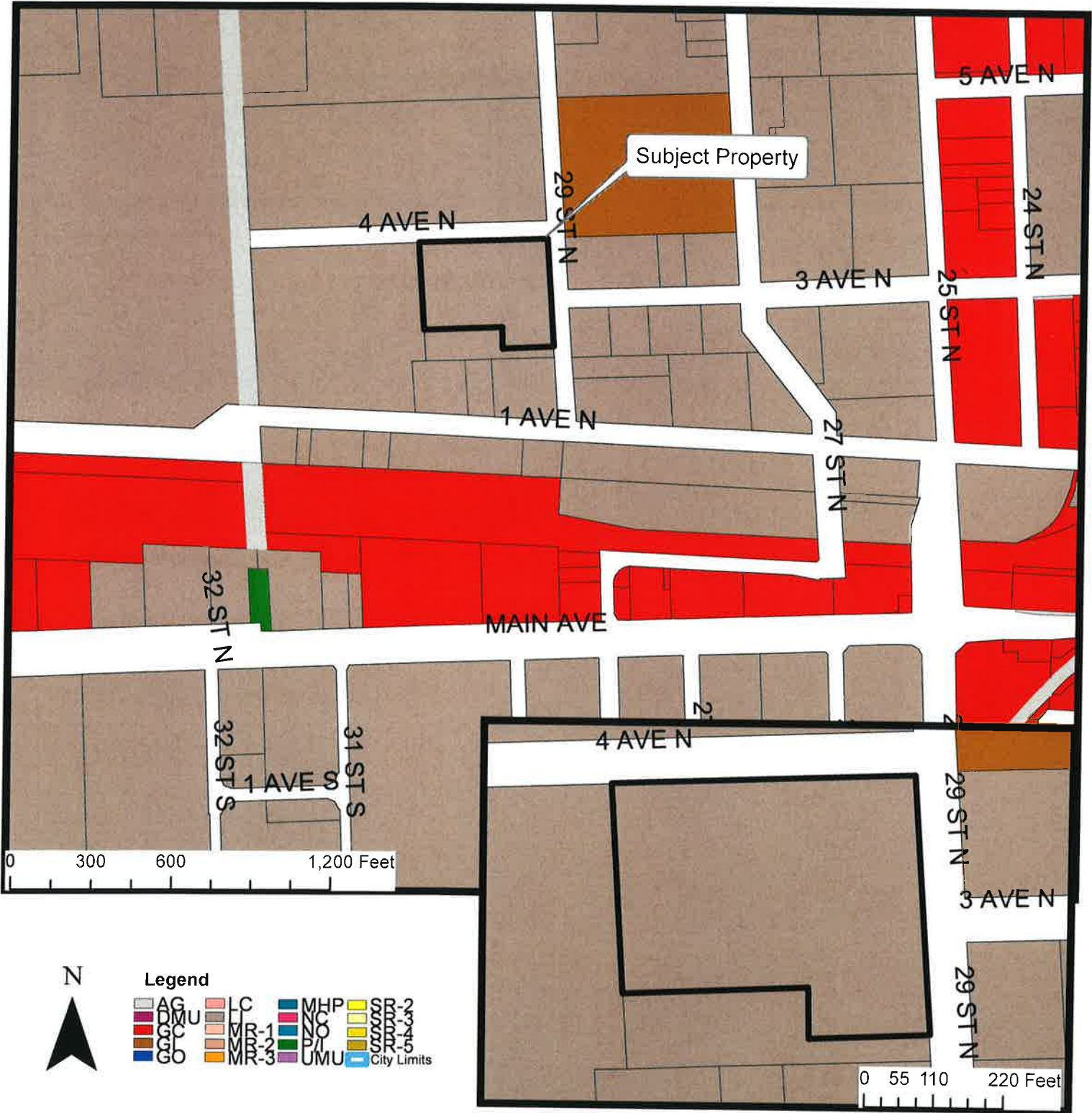
Attachments:

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

Plat (minor)

Peterson Second Addition

302 29th Street N

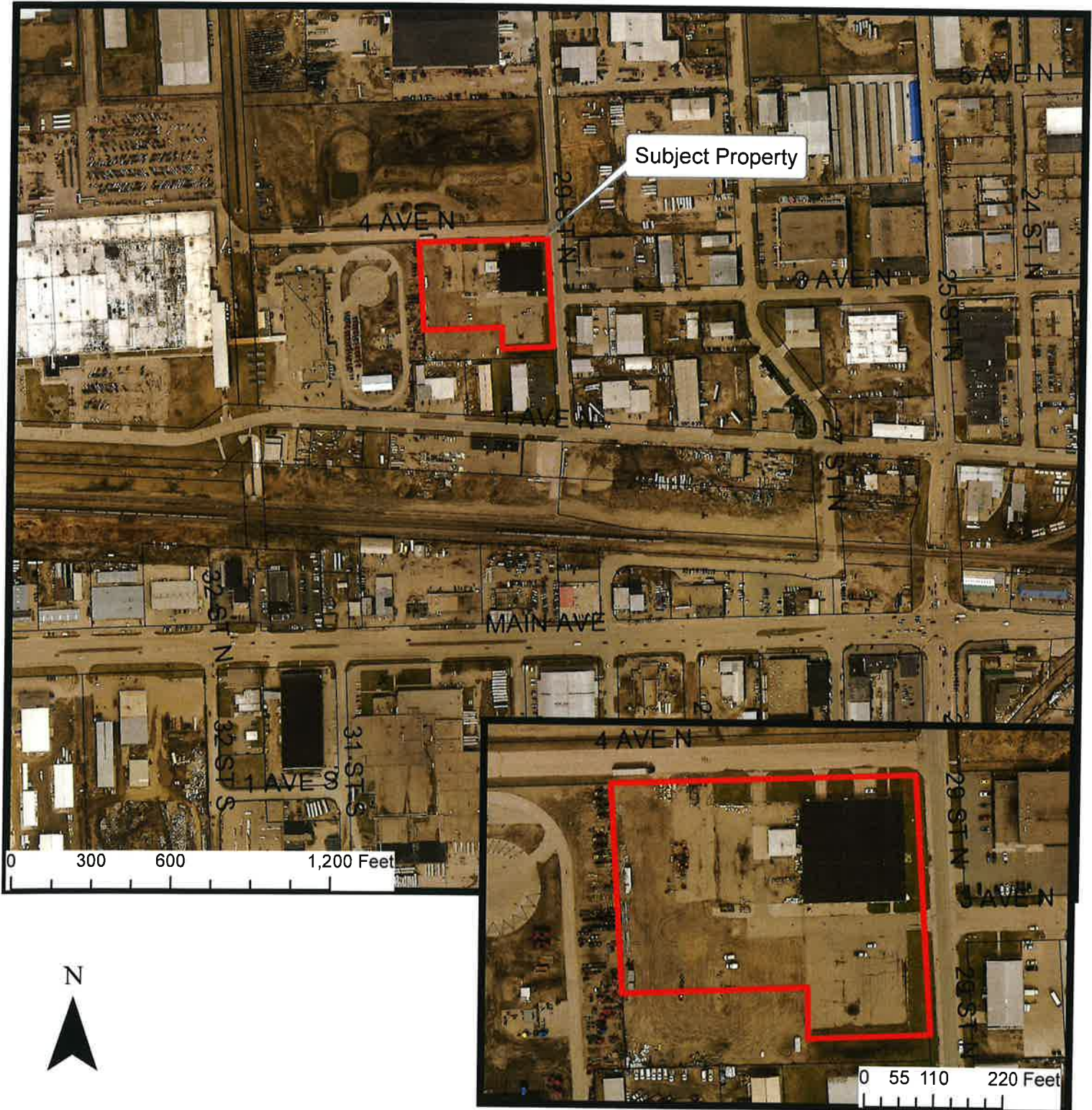


Fargo Planning Commission
August 2, 2022

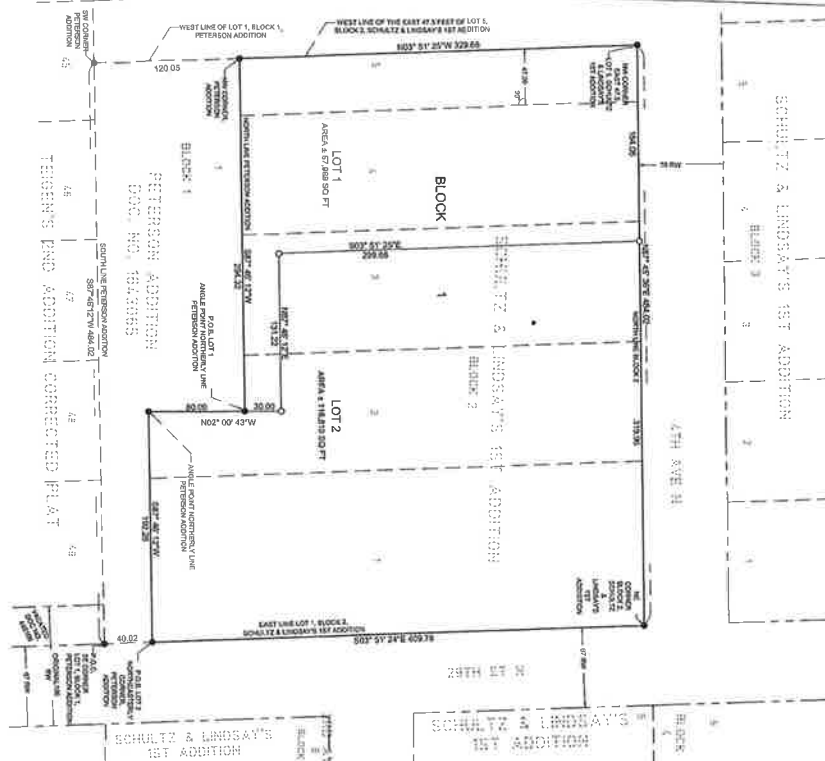
Plat (minor)

Peterson Second Addition

302 29th Street N



PETERSON SECOND ADDITION
(A REPLAT OF A PORTION OF LOTS 1, 2, 3, 4 AND THE EAST 47.5 FEET OF LOT 5, OF BLOCK 2 OF
SCHULTZ & LINDSAY'S 1ST ADDITION TO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA)
(A MINOR SUBDIVISION)



OWNERS DESCRIPTION, ACCEPTANCE AND DEDICATION

WHEREAS the undersigned, TRISTAN PETERSON, a Colorado Corporation, does hereby accept and dedicate to the City of Fargo, North Dakota, the following described portion of land:

Block 1, Lots 1, 2, 3, 4 and the east 47.5 feet of Lot 5, of Block 2 of Schultz & Lindsay's 1st Addition to the City of Fargo, Cass County, North Dakota, containing the area shown on the attached plat and map, and subject to the easements and covenants shown thereon, and the same to be known as the Peterson Second Addition.

LOT 1 DESCRIPTION

A portion of Lot 1, 2 and the east 47.5 feet of Lot 5, Block 2 of Schultz & Lindsay's 1st Addition to the City of Fargo, Cass County, North Dakota, containing the area shown on the attached plat and map, and subject to the easements and covenants shown thereon, and the same to be known as the Peterson Second Addition.

LOT 2 DESCRIPTION

A portion of Lot 2, and Lot 3, Block 1, of Schultz & Lindsay's 1st Addition to the City of Fargo, Cass County, North Dakota, containing the area shown on the attached plat and map, and subject to the easements and covenants shown thereon, and the same to be known as the Peterson Second Addition.

SURVEYOR'S CERTIFICATE AND ACKNOWLEDGEMENT

I, Tristan Peterson, Professional Land Surveyor under the laws of the State of North Dakota do hereby certify that the above described plat and map are a true and correct representation of the survey of said subdivision and all distances shown on said plat are correct; that the same have been approved by the Board of Surveyors hereinafter named and duly filed in the office of the State Surveyor.

Tristan Peterson
 State of North Dakota
 County of Cass

CITY AND COUNTY OF BISMARCK

On this 20th day of September, 2021, before me, a Notary Public with and for said County and said State, personally appeared Tristan Peterson, Vice President of said City and County, and he acknowledged to me that he is the duly authorized officer of said City and County and that he executed the foregoing instrument and acknowledged to me that the contents of said instrument are true and correct.

Tristan Peterson
 Notary Public

CITY OF FARGO ENGINEERING DEPARTMENT APPROVAL

Approved by the City Engineer this 20 day of September, 2021.

Brian E. Doring, PE, City Engineer
 STATE OF NORTH DAKOTA
 COUNTY OF CASS

CITY OF FARGO PLANNING COMMISSION APPROVAL

Approved by the City of Fargo Planning Commission this 20 day of September, 2021.

Brian E. Doring, PE, City Engineer
 STATE OF NORTH DAKOTA
 COUNTY OF CASS

CITY OF FARGO CITY COMMISSION APPROVAL

Approved by the Board of City Commissioners and ordered that this 20 day of September, 2021.

Tristan Peterson
 State of North Dakota
 County of Cass

STATE OF NORTH DAKOTA

On this 20th day of September, 2021, before me, a Notary Public with and for said County and said State, personally appeared Tristan Peterson, Vice President of said City and County, and he acknowledged to me that he is the duly authorized officer of said City and County and that he executed the foregoing instrument and acknowledged to me that the contents of said instrument are true and correct.

Tristan Peterson
 Notary Public

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FARGO POLICE DEPARTMENT

A SAFE AND UNIFIED COMMUNITY BUILT ON TRUST, ACCOUNTABILITY AND INCLUSION

NEIGHBORHOOD SERVICES DIVISION

MEMORANDUM

COPY

SEP 24 2022
✓ FILE - TRAFFIC NB

✓cc: P. SWIFT - FUR 10/3 COMMISSION

To: Chief David Zibolski

From: Captain Chris Helmick

Date: 09.15.2022

RE: August 2022 Traffic Enforcement Efforts

During the month of August, Neighborhood Services continued to emphasize increased traffic enforcement in key areas around the city. In particular, officers paid special attention to the offenses of speeding, racing, and noise. Grant funding from the ND Department of Transportation was used for overtime traffic details, with the focus on seatbelt usage and impaired driving. Shift Commanders also designated times where staffing allowed officers to be assigned solely to traffic enforcement. In addition, officers were encouraged to do more traffic enforcement throughout the month. Officers often had to be pulled from traffic details, however, to help with calls for service.

The following is a summary of the month's activity:

Areas of Focus: officers concentrated their efforts on major traffic corridors around the city including:

- 19th Ave N
- 12th Ave N
- 10th St N
- South University Dr
- 45th St S
- 32nd Ave S
- 52nd Ave S

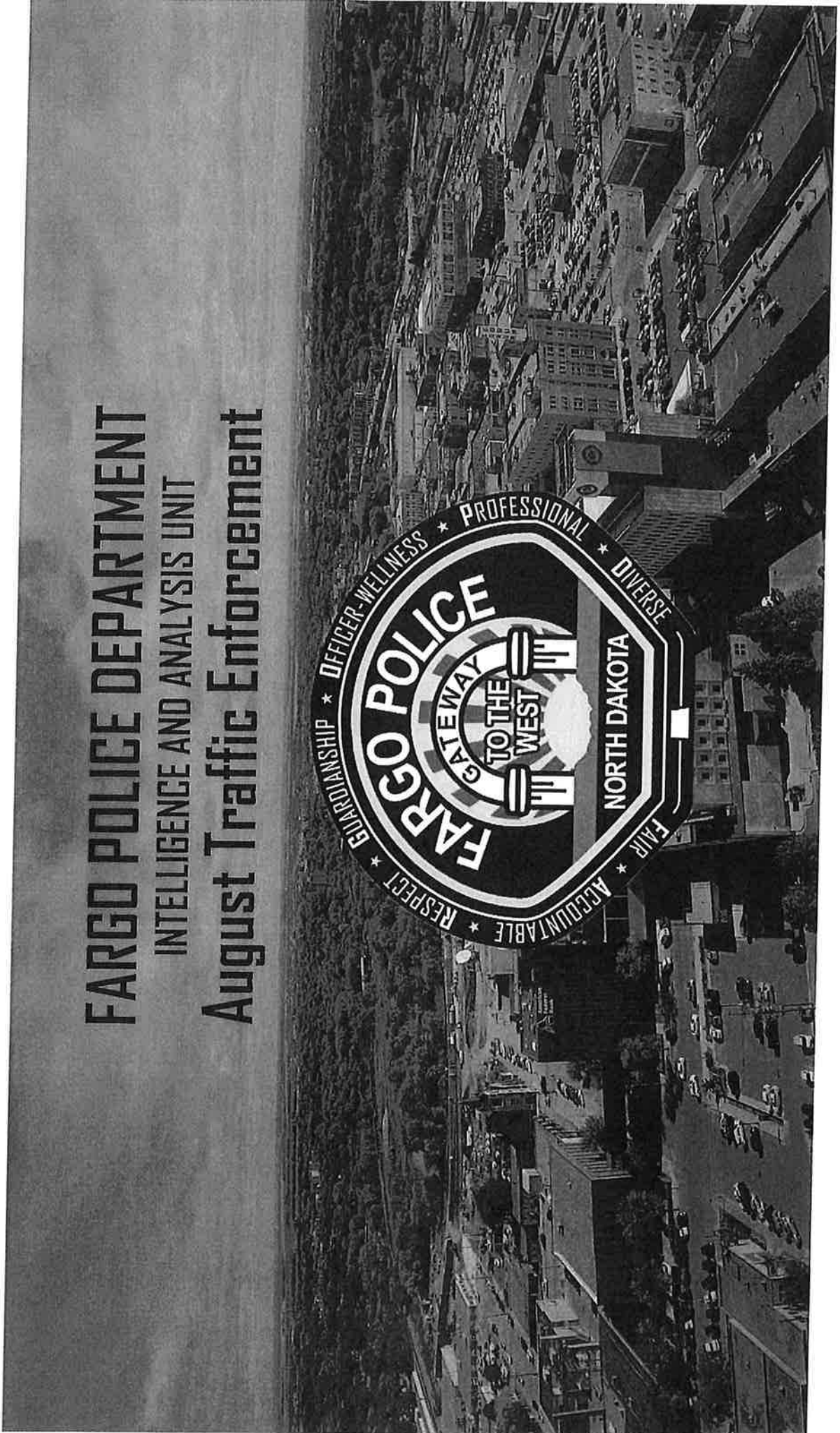
Total number of traffic stops in August 2022: 698 (727 in July 2022; 615 in August 2021; 13% increase over last year.)

Number of traffic citations for August 2022: 628 (600 in July 2022; 645 in August 2021; 3% decrease over last year.)

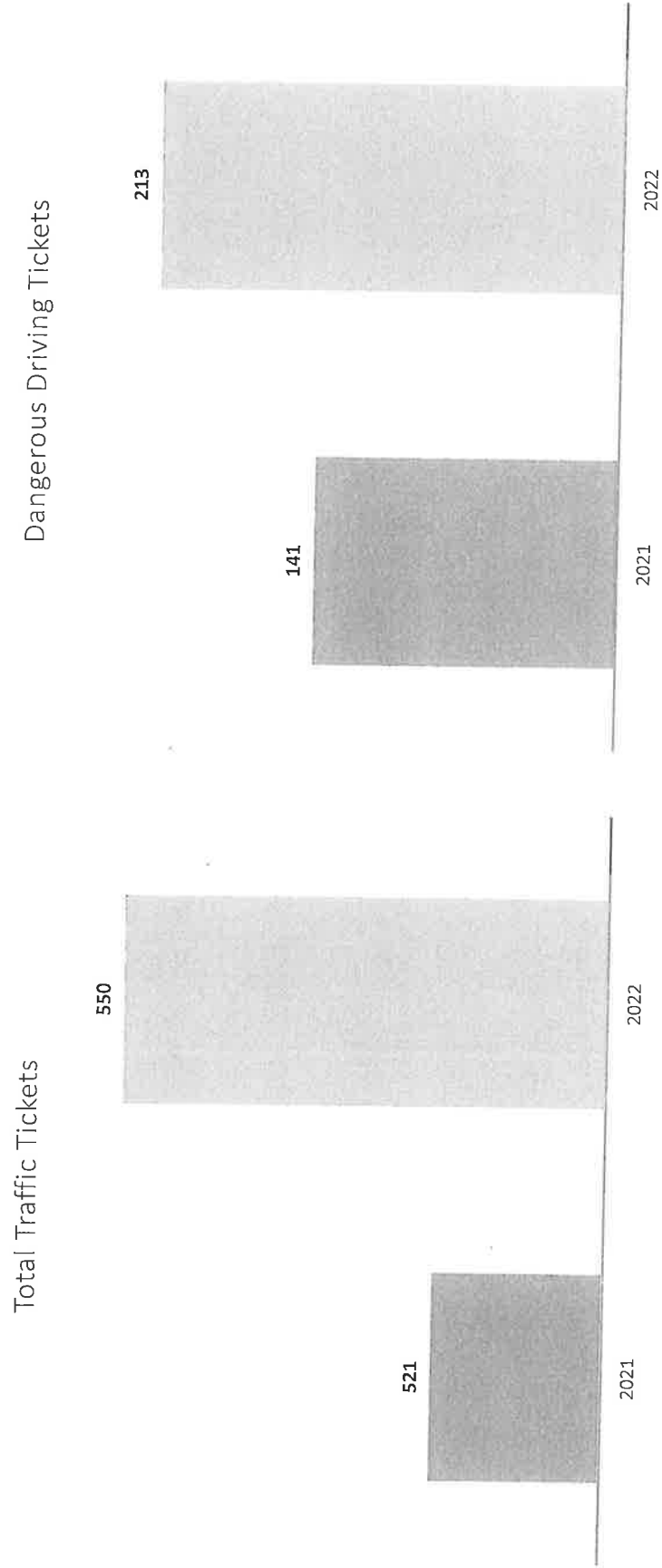
• Speeding:	208 (181 in July 2022; 129 in August 2021; 61% increase over last year)
• Exhibition Driving	2
• Careless Driving	1
• Racing	0
• Reckless Driving	0

Additional data compiled by IAU for the month of August is attached to this memo.

FARGO POLICE DEPARTMENT
INTELLIGENCE AND ANALYSIS UNIT
August Traffic Enforcement



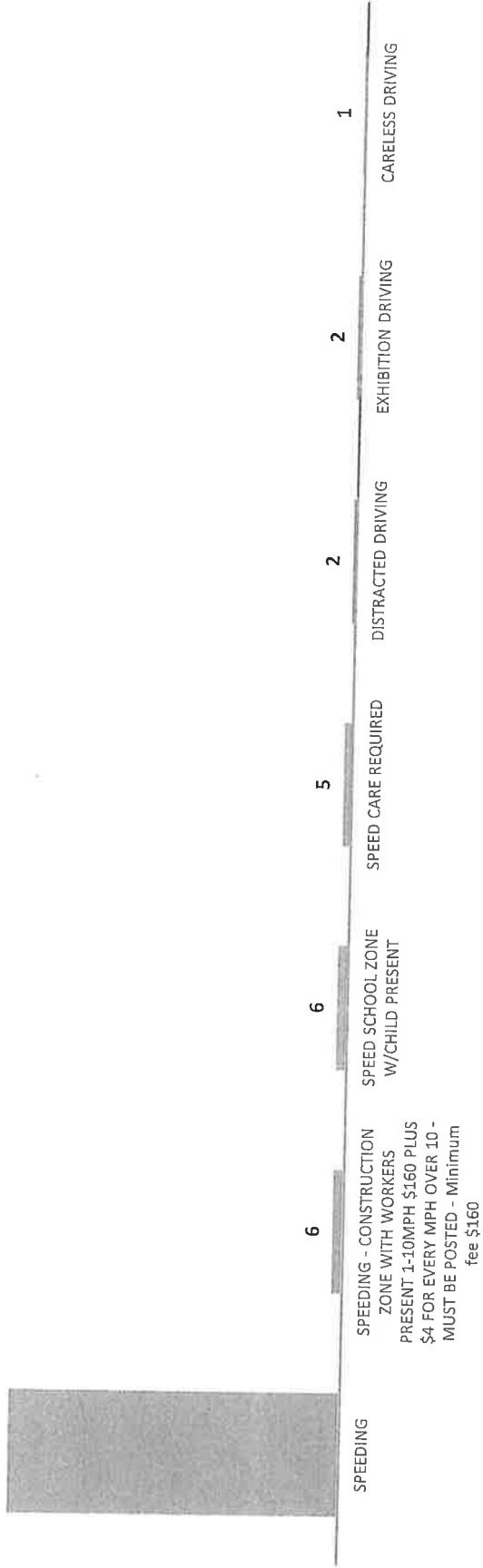
Traffic Tickets August



Dangerous Driving Ticket Comparison August

Dangerous Driving

191



SPEEDING - CONSTRUCTION ZONE WITH WORKERS PRESENT 1-10MPH \$160 PLUS \$4 FOR EVERY MPH OVER 10 - MUST BE POSTED - Minimum fee \$160



FARGO POLICE DEPARTMENT ★ INTELLIGENCE AND ANALYSIS UNIT

Dangerous Driving August Times

TOD	Sun	Mon	Tue	Wed	Thu	Fri	Sat
00							
01							
02			1				
03		1					
04			1				
05		1					
06		1					
07		2					
08		1					
09		1					
10		1					
11		1					
12							
13		2					
14							
15		1					
16							
17							
18		1					
19							
20							
21							
22		3					
23							
Grand Total	15	16	22	119	21	14	6



FARGO POLICE DEPARTMENT * INTELLIGENCE AND ANALYSIS UNIT

Location of Dangerous Driving Tickets YTD 2022



FARGO POLICE DEPARTMENT * INTELLIGENCE AND ANALYSIS UNIT

Dangerous Driving YTD Times

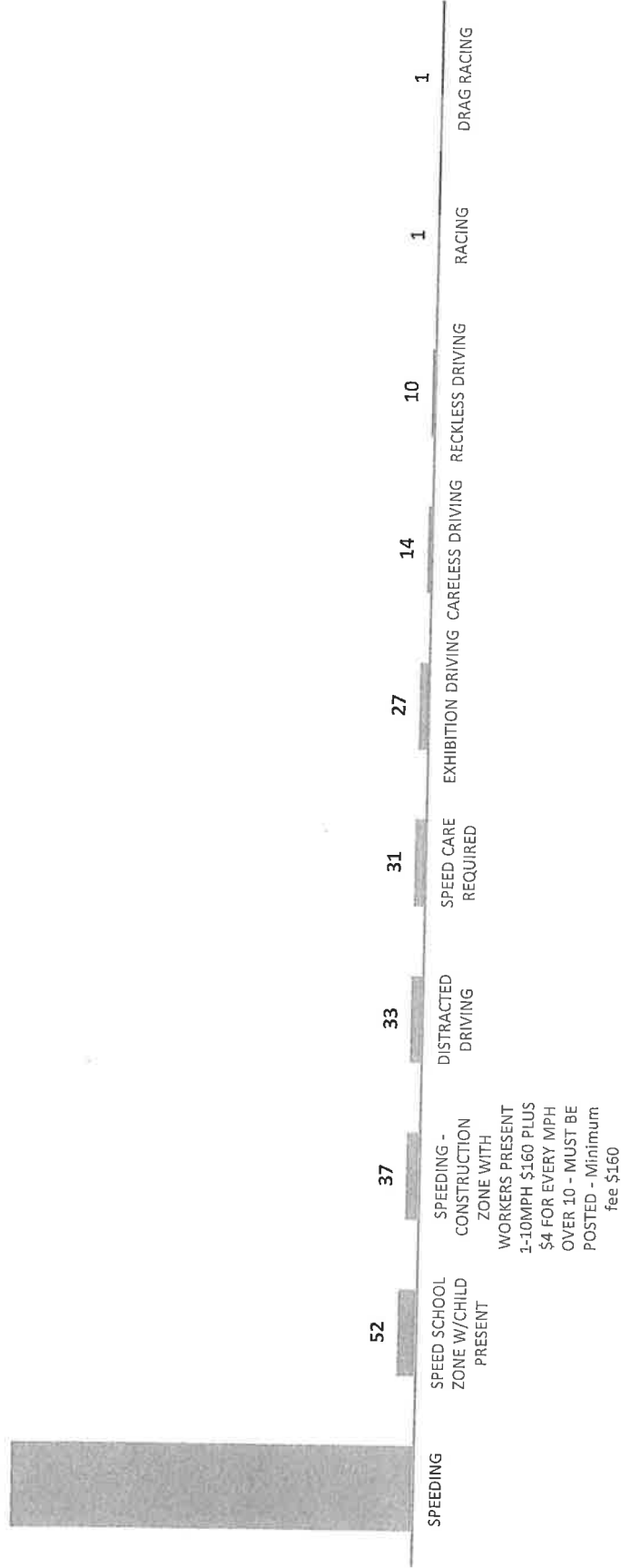
TOD	Mon	Tue	Wed	Thu	Fri	Sat
00	12	3	6	12	6	9
01		1		3		2
02		2	3			
03		2	1	3		1
04		3	1	3		2
05		2	2	5		2
06		2	5	6		
07		4	15	3	2	1
08		8	6	45	9	4
09		10	11	39	11	3
10		10	9	42	16	3
11		7	11	28	7	3
12		9	11	38	7	6
13		18	19	43	11	7
14		16	17	41	11	8
15		6	3	11	3	4
16		10	7	10	4	7
17		11	4	14	3	9
18		9	1	22	6	9
19		12	4	24	6	10
20		7	6	12	2	8
21		2	3	5	6	8
22		8	7	21	8	14
23		6	7	25	5	20
Grand Tot	175	156	494	146	137	127



FARGO POLICE DEPARTMENT * INTELLIGENCE AND ANALYSIS UNIT

Dangerous Driving YTD

1134



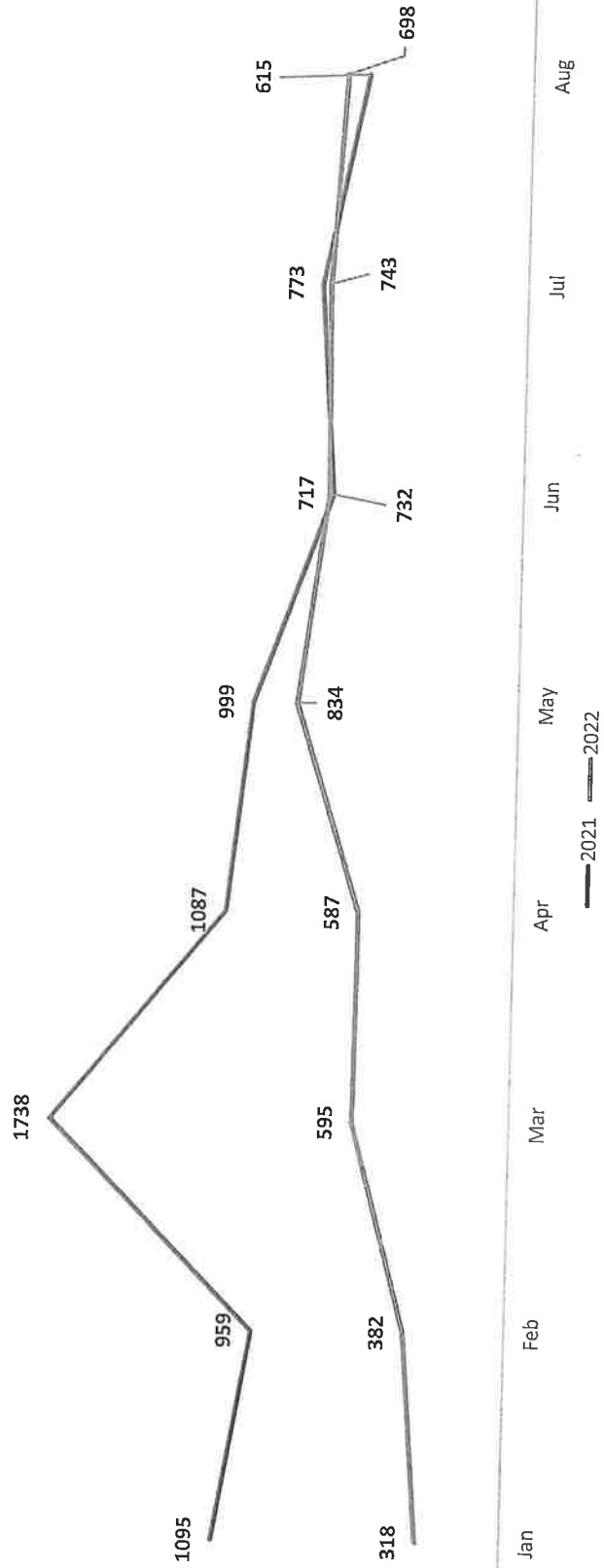
WORKERS PRESENT
 1-10MPH \$160 PLUS
 \$4 FOR EVERY MPH
 OVER 10 - MUST BE
 POSTED - Minimum
 fee \$160



FARGO POLICE DEPARTMENT ★ INTELLIGENCE AND ANALYSIS UNIT

Traffic Stop Comparison

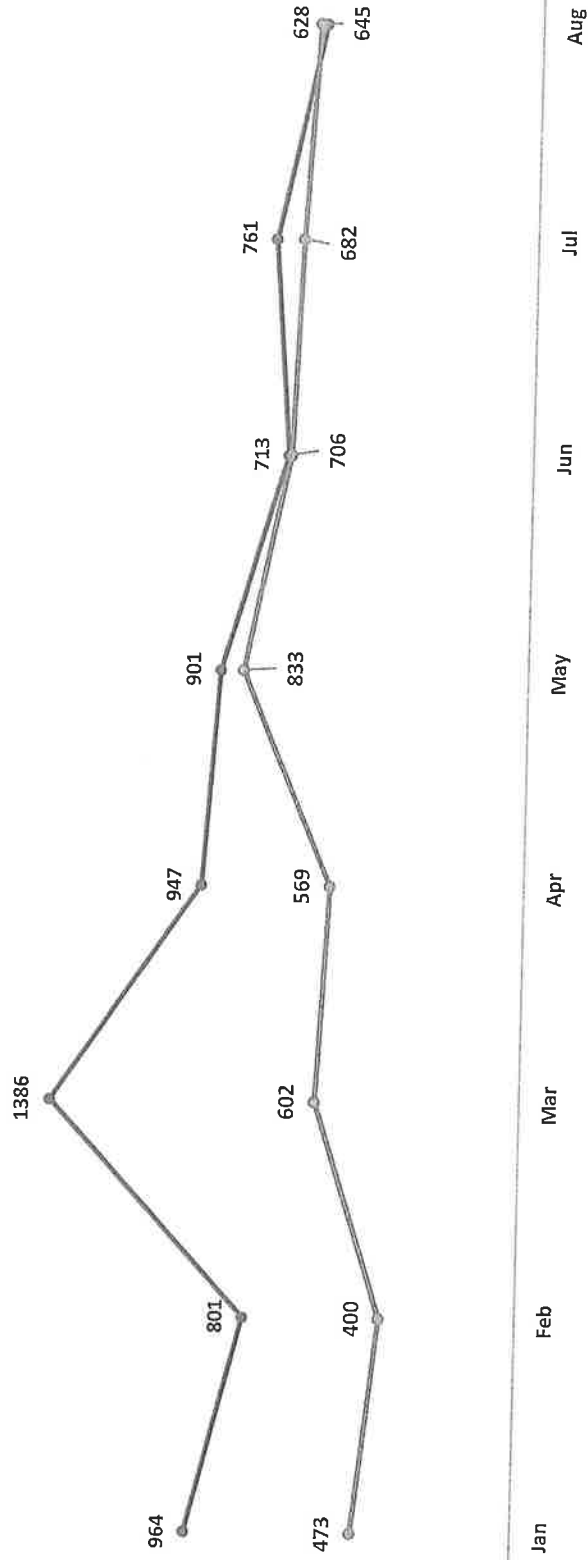
YTD Comparison



FARGO POLICE DEPARTMENT ★ INTELLIGENCE AND ANALYSIS UNIT

Traffic Citations Comparison

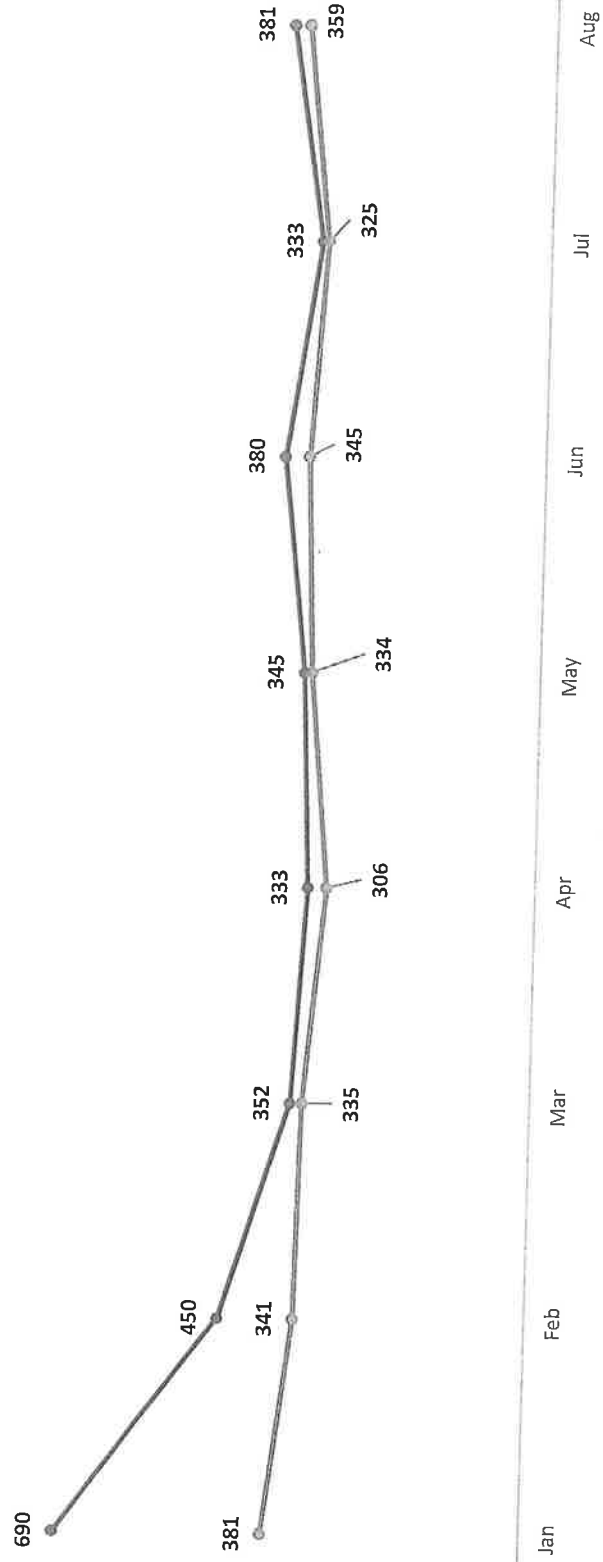
YTD Comparison



FARGO POLICE DEPARTMENT ★ INTELLIGENCE AND ANALYSIS UNIT

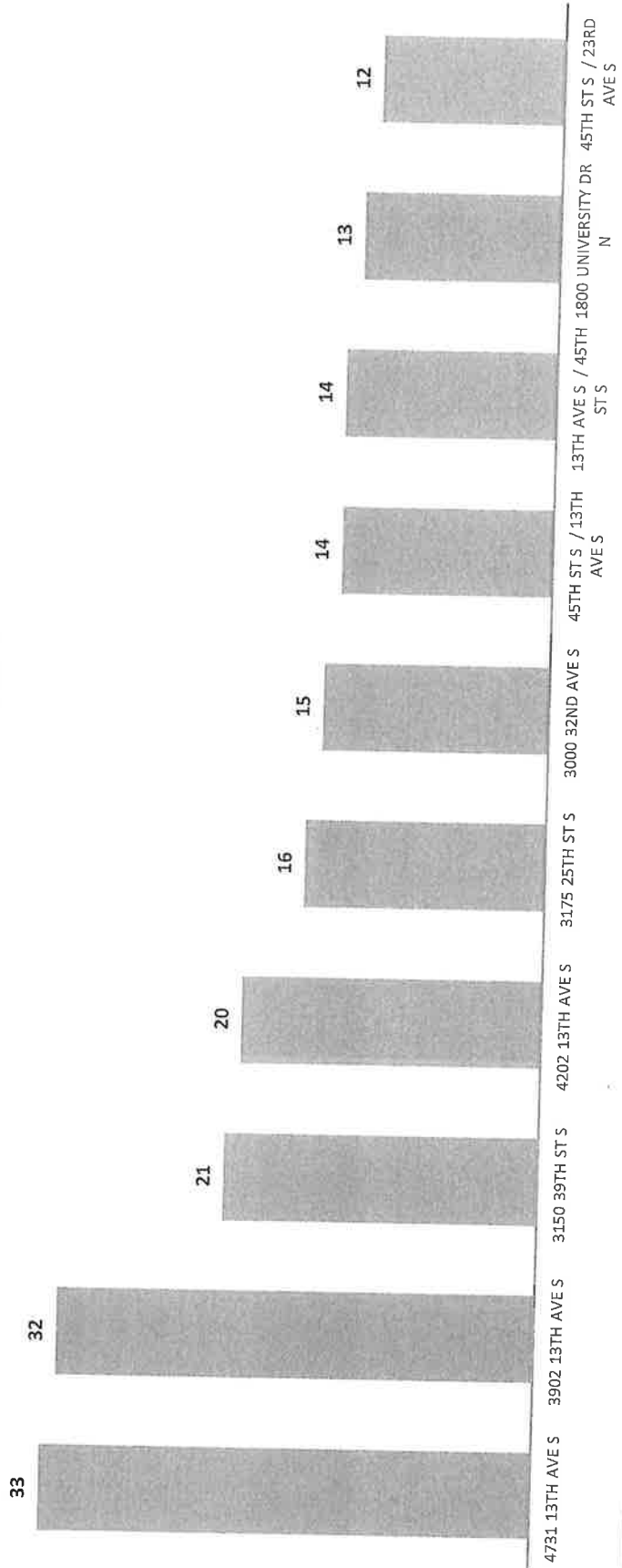
Crashes YTD

Crashes YTD



2022 YTD Crash Locations

Top 10 Crash Locations



FARGO POLICE DEPARTMENT ★ INTELLIGENCE AND ANALYSIS UNIT



23

FARGO POLICE DEPARTMENT
CHIEF DAVID B. ZIBOLSKI
105 25th Street North
Fargo, ND 58102-4002
Main Line: 701.235.4493 | Fax: 701.297.7789
FargoPolice.com

September 23, 2022

Board of City Commissioners
City Hall
Fargo, ND 58102

COPY

RE: Acceptance of North Dakota Department of Transportation Grant Funding for Occupant Protection, Impaired Driving, Distracted Driving Enforcement, Speed Enforcement and Underage Drinking Enforcement and Education Activities (CFDA #20.616 and 20.600).

Dear Commissioners:

The North Dakota Department of Transportation is again offering to provide Fargo Police Department with grant funding for the purpose of conducting occupant protection, impaired driving, distracted driving, speed enforcement and underage drinking enforcement and education activities. The funding made available through the National Highway Traffic Safety Administration (NHTSA) is intended to reimburse the police department for overtime expenses associated with having officers work extra hours towards conducting the enforcement and education activities.

The DOT is making a total of \$63,000 in grant money available to the Police Department, \$17,500 of which is intended for impaired driving enforcement and \$7,000 of which is intended for impaired driving media campaigns. Of the remaining grant funding, \$12,000 is to be used for occupant protection enforcement, \$8,500 for underage drinking enforcement, \$10,000 for speed enforcement, and \$8,000 for distracted driving enforcement. There is no requirement for the City of Fargo to match any of the grant funding provided.

Recommended Motion:

Sign the North Dakota Department of Transportation Traffic Safety Contract, accept the grant funding in the amount of \$63,000 and adjust Police Department's budget line items as follows:

- *Occupant Protection: Account # 101-5045-411-11-01 – PD11 in the amount of \$12,000*
- *Underage Drinking Account # 101-5045-411-11-01 – PD12 in the amount of \$8,500*
- *Impaired Driving Account # 101-5045-411-11-01 – PD31 in the amount of \$17,500*
- *DUI Media Campaign Account # 101-5045-411-34-20 – PD31 in the amount of \$7,000*
- *Distracted Driving Account # 101-5045-411-11-01 – PD37 in the amount of \$8,000*
- *Speed Enforcement Account# 101-5045-411-11-01 – PD36 in the amount of \$10,000*

Please contact me if you have any questions regarding the grant funding or the police department's budget adjustment request.

Sincerely,

David B. Zibolski
Chief of Police

Cc: Terri Gayhart, Finance Director



Fargo Police Department

Memorandum

To: Chief David Zibolski

From: Kathy Lormis

Date: September 23, 2022

RE: Acceptance of North Dakota Department of Transportation Grant Funding

We have applied for North Dakota Department of Transportation Grant Funding for the fiscal year of 10/1/22 – 9/30/23. We have applied for these grants each year.

The Fargo Police Department has been offered funding in following areas:

- Occupant Protection-Seatbelt Enforcement: Award amount is \$12,000
- Underage Drinking Enforcement: Award amount is \$8,500
- Impaired Driving Enforcement: Award amount is \$17,500
- DUI Media Campaign: Award amount is \$7,000
- Distracted Driving Enforcement: Award amount is \$8,000
- Speed Enforcement: Award amount is \$10,000

The DOT is making a total of \$63,000 in grant money available to the Police Department. There is no requirement for the City of Fargo to match any of the grant funding provided.

Attached please find the letter to the Board of City Commissioners and NDDOT Awarded Contract. Please submit the letter and award for Commission review/approval.

Respectfully,

Kathy Lormis
Payroll and Procurement Assistant

RECEIVED
FARGO POLICE DEPARTMENT
SEP 26 2022
TRAVIS STEFONOWICZ
ASSISTANT CHIEF OF POLICE
REF: Conwr

FARGO POLICE DEPARTMENT
SEP 27 2022
Approved for Comm 10/3

cc: five

MEMO: Ronald J. Henke
Interim Director

FROM: Sheila Kitzan
Highway Safety Division

DATE: September 15, 2022

SUBJECT: Contract Explanation

The purpose of this contract is to provide funding to the Fargo Police Department to participate in the NHTSA funded statewide law enforcement overtime programs.

The total contract budget is \$63,000.

The contact person is Sheila Kitzan (328-2402).

12/slk
Attachment

NDDOT Contract No. 12221346
 Project No. PHSPOP2305-05-08,
 PHSPSC2307-04-08, PHSPID2310-02-07,
 PHSPID2310-12-02, PHSPDD2311-02-05, &
 PHSPID2310-03-02

**North Dakota Department of Transportation
 TRAFFIC SAFETY CONTRACT**

Federal Award and Subrecipient Information

Subrecipient Name: City of Fargo
Subrecipient UEI No.: K2QJQZVH5PM6
Applicant Agency: Fargo Police Department

NDDOT Program Manager: Kelly Aberle
NDDOT PM Telephone: 701-328-2658
NDDOT PM Email: kaberle@nd.gov

ALN No.: 20.600 & 20.616

ALN Title: State and Community Highway Safety & National Priority Safety Programs

Federal Agency Telephone: 720-963-3100
Federal Agency Email: NHTSA.region8@dot.gov

Awarding Federal Agency: National Highway Traffic Safety Administration
Federal Agency Contact Information: Gina Espinosa-Salcedo

AWARD NAME: Click It or Ticket, Speed Enforcement, and Distracted Driving Enforcement
FAIN No.: 69A37521300004020NDO
FAIN No.: 69A37522300004020NDO

Federal Award Date: October 1, 2022

Total Federal Award Amount: \$2,204,737.50
Total Federal Award Amount: \$2,832,068.62

AWARD NAME: Alcohol Enforcement, Underage Enforcement, and Media
FAIN No.: 69A3752230000405DNDM

Federal Award Date: October 1, 2022

Total Federal Award Amount: \$1,342,771.50

Budget Start Date: October 1, 2022
Performance Start Date: October 1, 2022
Indirect Cost Rate:

Budget End Date: September 30, 2023
Performance End Date: September 30, 2023
Research & Development Award: No

Notice to Subrecipients: Federal awards may have specific compliance requirements. If you are not aware of the specific requirements for your award, please contact your NDDOT Program Manager.

This contract is between the state of North Dakota, acting by and through its Director of Transportation, hereinafter referred to as NDDOT, whose address is 608 East Boulevard Avenue, Bismarck, North Dakota 58505-0700, and Fargo Police Department, hereinafter referred to as the Contractor, whose address is 105 25th Street North, Fargo, North Dakota 58102.

WHEREAS, NDDOT has been delegated the responsibility to administer the state's Annual Highway Safety Plan as authorized in Section 54-07-05 of the North Dakota Century Code; and

WHEREAS, the Contractor requests participation in the state's Annual Highway Safety Plan;

THEREFORE, in consideration of the mutual promises herein set forth, NDDOT and the Contractor agree:

I.

The Contractor shall perform the project(s) set forth in Appendix A, a copy of which is attached hereto and made a part hereof.



The Contractor shall comply with the provisions of Appendix B, a copy of which is attached hereto and made a part hereof.

II.

The term of this contract shall begin October 1, 2022, and shall end September 30, 2023.

III.

NDDOT shall reimburse the Contractor for costs incurred under the terms of this contract, not to exceed \$63,000. Reimbursement of all costs under this contract is contingent on federal participation. Expenses incurred by the Contractor for travel, meals, and lodging, shall be reimbursed according to applicable state rates. Allowable costs are covered under 2 CFR Part 200. All requests for reimbursement must be submitted to NDDOT within 45 days of the termination date of this contract.

IV.

Equipment acquired under this agreement for use in highway safety program areas shall be used and kept in operation for highway safety purposes by the Contractor; or the Contractor, by formal agreement with appropriate officials of a political subdivision or State agency, shall cause such equipment to be used and kept in operation for highway safety purposes. (Reference: 23 CFR 1200.31 and 2 CFR Part 200)

V.

Appendices A and E of the Title VI Assurances, attached, are hereby incorporated into and made a part of this agreement.

VI.

The Contractor agrees to cooperate with NDDOT in meeting its commitments and goals with regard to the maximum utilization of disadvantaged business enterprises and will use its best efforts to ensure that disadvantaged business enterprises shall have the maximum practicable opportunity to compete for subcontract work under this agreement. The Contractor shall comply with requirements of 49 CFR Part 26.

VII

The Contractor shall ensure that no qualified individual with a disability, as defined in 29 USC 794 and 49 CFR Part 27 shall, solely by reason of this disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives benefits from the assistance under this agreement.

VIII.

Grants or services that generate revenues as a result of funding through the National Highway Traffic Safety Administration (NHTSA) must be reported. Written notification of the source and amount of such income must be made to the NDDOT at the earliest opportunity. A separate account must be maintained for the collection, expenditure, and disposition of program income. Program income generated shall be used to further the objectives of the grant or service or reduce current grant or service costs. Records shall be maintained in accordance with state and federal guidelines.



IX.

The Contractor certifies that it will comply with the retention and access requirements for records established by 2 CFR Part 200. The required records and documentation relating to the grant and/or subcontract shall be retained for a minimum of three years after the starting date of the retention period as defined in 2 CFR Part 200. The NDDOT or their authorized representative shall have the right of access to any books, documents, papers, or other records of grantees, contractors, or subcontractors which are pertinent to the grant and/or contract, in order to make audits, examinations, excerpts and transcripts. The right of access is not limited by the required retention period and shall last as long as the records are retained.

The Contractor will comply with all applicable state, local, and federal procurement procedures and will maintain a financial management system that complies with the minimum requirements of 2 CFR Part 200.

X.

The Contractor must have a seat belt use policy, a drug and alcohol driving policy, and a distracted driving/texting policy in place before requesting reimbursement for any work completed under this agreement. The NDDOT's Safety Division's program managers will locate and review the policies during scheduled on-site monitoring visits, if applicable. Absence of any policy may result in the NDDOT withholding payment until said policy is in place.

All contracted personnel are required to wear seat belts and obey traffic laws while on official business of this project.

XI.

Termination:

- a. This contract may be terminated by mutual consent of both parties, or by either party, upon 30 days' notice in writing or delivered by certified mail or in person.
- b. In addition, NDDOT may terminate this contract effective upon delivery of written notice to the contractor, or at such later date as may be established by NDDOT, under any of the following conditions:
 - i. NDDOT funding from federal, state, or other sources is not obtained and continued at levels sufficient to allow for purchase of the indicated quantity of services. The contract may be modified by agreement of the parties in writing to accommodate a reduction in funds.
 - ii. If federal or state regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this contract or are no longer eligible for the funding proposed for payments authorized by this contract.
 - iii. If any license or certificate required by law or regulation to be held by the contractor to provide the services required by the contract is for any reason denied, revoked, or not renewed.

Any such termination of this contract under (i), (ii), or (iii) above shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination.
- c. NDDOT, by written notice to the contractor, may terminate the whole or any part of this agreement:
 - i. If the Contractor fails to provide services called for by this contract within the time specified herein or any extension thereof; or



- ii. If the Contractor fails to perform any of the other provisions of this contract, or so fails to pursue the work as to endanger performance of this contract in accordance with its terms, and after receipt of written notice from NDDOT, fails to correct such failures within ten days or such longer period as NDDOT may authorize.

XII.

The Contractor shall not assign any portion of the work under this agreement, execute any contract, or obligate itself in any manner with a third party with respect to its rights and responsibilities to this agreement without written consent of NDDOT. Any agreement with a subcontractor does not create a contractual relationship between the NDDOT and the subcontractor.

XIII.

The Contractor agrees that NDDOT and NHTSA, or their designated representative(s), shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this agreement. The Contractor agrees to maintain such records for possible audit for a minimum of three years after final payment, unless a longer period of records retention is stipulated. The Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interview of any employees who might reasonably have information related to such records. Further, the Contractor agrees to include a similar right of the state to audit records and interview staff in any subcontract related to the performance of this agreement.

Audits must be in accordance with 2 CFR Part 200, Subpart F. The Contractor shall submit copies of audits covering the term of this agreement to NDDOT. This requirement is applicable to counties, cities, state agencies, Indian tribes, colleges, hospitals, and nonprofit businesses.

XIV.

This agreement constitutes the entire agreement between the parties. No waiver, consent, modification, or change of terms of this agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification, or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this agreement. The Contractor, by the signature below of its authorized representative, hereby acknowledges that the Contractor has read this agreement, understands it, and agrees to be bound by its terms and conditions.

XV.

The Risk Management Appendix, attached, is hereby incorporated into and made a part of this agreement.

XVI.

The Contractor is advised that his or her signature on this contract certifies that the company or any person associated therewith is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three years; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction on any matter involving fraud or official misconduct within the past three years.



XVII.

The Contractor shall not assign nor transfer the Contractor's interest in this agreement without the express written consent of the state.

XVIII.

The provisions of this agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and assigns.

XIX.

The failure of the state to enforce any provisions of this contract shall not constitute a waiver by the state of that or any other provision.

XX.

All notices, certificates, or other communications shall be sufficiently given when delivered or mailed, postage prepaid, to the parties at their respective places of business as previously set forth.

XXI.

No official or employee of a state or any other governmental instrumentality who is authorized in his official capacity to negotiate, make, accept, or approve, or to take part in negotiating, making, accepting, or approving any contract or subcontract in connection with a project shall have, directly or indirectly, any financial or other personal interest in any such contract or subcontract. No engineer, attorney, appraiser, inspector, or other person performing services for a state or a governmental instrumentality in connection with a project shall have, directly or indirectly, a financial or other personal interest, other than his employment or retention by a state or other governmental instrumentality, in any contract or subcontract in connection with such project. No officer or employee of such person retained by a state or other governmental instrumentality shall have, directly or indirectly, any financial or other personal interest in any real property acquired for a project unless such interest is openly disclosed upon the public records of NDDOT and of such other governmental instrumentality, and such officer, employee, or person has not participated in such acquisition for and in behalf of the state.

XXII.

All work products and copyrights of the contract which result from this contract are the exclusive property of NDDOT, with an unlimited license for use by the federal government and its assignees without charge.



EXECUTED the date last below signed.

WITNESS:

Kember Anderson

NAME (TYPE OR PRINT)
DocuSigned by:

Kember Anderson

SIGNATURE #7512402C6489...

CONTRACTOR:

City of Fargo

NAME (TYPE OR PRINT)
DocuSigned by:

[Signature]

SIGNATURE #7E592E9A2D4EF...

Mayor of Fargo

TITLE

9/23/2022

DATE

To be signed by **Owner; Partner; Corp. Pres., Vice Pres., or other authorized Corp. Officer.** (If signed by other authorized Corp. Officer, please attach copy of Power of Attorney or other documentation showing authority to sign.)

WITNESS:

Lauren M. Martin

NAME (TYPE OR PRINT)
DocuSigned by:

Lauren M. Martin

SIGNATURE #02B31E9048E429...

NORTH DAKOTA
DEPARTMENT OF TRANSPORTATION

Robin R. Rehborg

For the DIRECTOR (TYPE OR PRINT)
DocuSigned by:

Robin R. Rehborg

SIGNATURE #EAD24CA52FBB4A8...

9/27/2022

DATE

DS
SS

ATTORNEY GENERAL

APPROVED as to Execution

DocuSigned by:

Clint Morgenstern

9/23/2022 DFD408...

Special Asst Attorney General

APPROVED as to substance by:

Karin Mongeon

SAFETY DIVISION DIRECTOR (TYPE OR PRINT)
DocuSigned by:

Karin Mongeon

SIGNATURE #7E95C33DD4FA...

9/23/2022

DATE

CLA 16870 (Div. 12)
L.D. Approved 7-17-89; 8-22



**NORTH DAKOTA DEPARTMENT OF TRANSPORTATION
APPENDIX A OF THE TITLE VI ASSURANCES**

During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the Contractor) agrees as follows:

1. Compliance with Regulations: The Contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, the Federal Highway Administration, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. Non-discrimination: The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the Contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. Information and Reports: The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the Federal Highway Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the Recipient or the Federal Highway Administration as appropriate, and will set forth what efforts it has made to obtain the information.
5. Sanctions for Noncompliance: In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
 - a. withholding payments to the Contractor under the contract until the Contractor complies; and/or
 - b. cancelling, terminating, or suspending a contract, in whole or in part.
6. Incorporation of Provisions: The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the Recipient or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.



**NORTH DAKOTA DEPARTMENT OF TRANSPORTATION
APPENDIX E OF THE TITLE VI ASSURANCES**

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the Contractor) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 *et seq.*).



Routine* Service Agreements with Sovereign Entities and Political Subdivisions of the State of North Dakota:**Parties:** **State** – State of North Dakota, its agencies, officers and employees**Governmental Entity** – The Governmental Entity executing the attached document, its agencies, officers and employees**Governments** – State and Government Entity, as defined above

Each party agrees to assume its own liability for any and all claims of any nature including all costs, expenses and attorney's fees which may in any manner result from or arise out of this agreement.

Each party shall secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds, authorized to do business in North Dakota, the following insurance coverages:

- 1) **Commercial general liability and automobile liability insurance** – minimum limits of liability required of the Governmental Entity are **\$375,000 per person and \$1,000,000 per occurrence**. The minimum limits of liability required of the State are **\$375,000 per person and \$1,000,000 per occurrence**.
- 2) **Workers compensation insurance** meeting all statutory limits.
- 3) The policies and endorsements may not be canceled or modified without **thirty (30) days prior written notice** to the undersigned State representative.

The State reserves the right to obtain complete, certified copies of all required insurance documents, policies, or endorsements at any time.

Each party that hires subcontractors shall require any non-public subcontractors, prior to commencement of work set out under an agreement between that party and the non-public subcontractor, to:

Defend, indemnify, and hold harmless the Governments, its agencies, officers and employees, from and against claims based on the vicarious liability of the Governments or its agents, but not against claims based on the Government's contributory negligence, comparative and/or contributory negligence or fault, sole negligence, or intentional misconduct. The legal defense provided by the Subcontractor to the Governments under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for the Governments is necessary. Subcontractor also agrees to defend, indemnify, and hold the Governments harmless for all costs, expenses and attorneys' fees incurred if the Governments prevail in an action against Subcontractor in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this agreement.

Subcontractor shall secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds authorized to do business in North Dakota: 1) commercial general liability; 2) automobile liability; and 3) workers compensation insurance all covering the Subcontractor for any and all claims of any nature which may in any manner arise out of or result from this agreement. The minimum limits of liability required are **\$375,000 per person and \$1,000,000 per occurrence for commercial general liability and automobile liability coverages**, and statutory limits for workers compensation. The Governments shall be endorsed on the commercial general liability policy and automobile liability policy as additional insureds. The Governments shall have all the benefits, rights and coverages of an additional insured under these policies that shall not be limited to the minimum limits of insurance required by this agreement or by the contractual indemnity obligations of the Contractor. Said endorsement shall contain a "Waiver of Subrogation" waiving any right of recovery the insurance company may have against the Governments as well as provisions that the policy and/or endorsement may not be canceled or modified without thirty (30) days prior written notice to the undersigned representatives of the Governments, and that any attorney who represents the State under this policy must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under N.D.C.C. Section 54-12-08. Subcontractor's insurance coverage shall be primary (i.e., pay first) as respects any insurance, self-insurance or self-retention maintained by the Governments. Any insurance, self-insurance or self-retention maintained by the Governments shall be excess of the Contractor's insurance and the Subcontractor's insurance and shall not contribute with them. The insolvency or bankruptcy of the insured Subcontractor shall not release the insurer from payment under the policy, even when such insolvency or bankruptcy prevents the insured Subcontractor from meeting the retention limit under the policy. Any deductible amount or other obligations under the Subcontractor's policy(ies) shall be the sole responsibility of the Subcontractor. This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and be placed with insurers rated "A-" or better by A.M. Best Company, Inc. The Governments will be indemnified, saved, and held harmless to the full extent of any coverage actually secured by the Subcontractor in excess of the minimum requirements set forth above. The Government Entity that hired the Subcontractor shall be held responsible for ensuring compliance with the above requirements by all Subcontractors. The Governments reserve the right to obtain complete, certified copies of all required insurance documents, policies, or endorsements at any time.

*See *North Dakota Risk Management Manual*, section 5.1 for discussion of "unique" and "routine" agreements.

RM Consulted 2007
Revised 07-22



AGREEMENT FOR PARTICIPATION IN THE NORTH DAKOTA HIGHWAY SAFETY PLAN

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Attachment 1 – Enforcement Overtime Calendar for FFY 2023

BACKGROUND

The North Dakota Department of Transportation’s (NDDOT) Highway Safety Division administers the North Dakota Vision Zero initiative to reduce motor vehicle crash fatalities and serious injuries to zero. The Highway Safety Division receives and provides state and federal funding to local entities to assist the NDDOT to achieve the traffic safety goals identified in the Vision Zero Plan and the annual Highway Safety Plan. This contract will assist in achieving the following plan goals to:

- Decrease the number of alcohol and/or drug related crashes.
- Decrease the number of speed related crashes.
- Decrease the number of distracted driving related crashes.
- Increase seat belt use to decrease the severity of injuries and trauma sustained in crashes.
- Increase the public’s knowledge and understanding of roadway safety and strategies.

The purpose of this contract is to provide funding to the **Fargo Police Department** (hereinafter referred to as the Contractor) to develop and place media ads for enhancement of impaired driving campaigns and participate in the statewide enforcement programs listed below:

OCCUPANT PROTECTION (OP) ENFORCEMENT SCOPE OF WORK

PROJECT NO. PHSP0P2305-05-08

The *Click It or Ticket (CIOT)* enforcement campaign exists to increase OP use for both adults and children through heightened enforcement of OP laws in the state. The campaign's success is built upon the strategy that education, along with highly visible and consistent enforcement, is an effective means to change driver behavior and increase OP use.

Participating law enforcement agencies are required to work overtime during scheduled CIOT campaigns to achieve high visibility within their jurisdictions to deter motorists from driving or riding in a motor vehicle without the appropriate use of an OP device (i.e., seat belt or child passenger safety seat).

The Contractor is encouraged to use speed as a trigger violation to stop vehicles for seat belt and child passenger safety seat compliance.

The Contractor may only work during the scheduled CIOT enforcement periods as identified in Attachment 1. The Contractor may not work outside the scheduled periods.

During each identified enforcement period, the Contractor must:

- Conduct a minimum of two shifts (no minimum number of hours per shift) per high visibility enforcement period within corridors and at times (including nighttime) where the occurrence of unbelted serious injury and fatal crashes is greatest. When possible, the Highway Safety Division will coordinate with the Contractor to determine these locations based on North Dakota (ND) crash data.
- Issue Citations – **not warnings** – for failure or improper use of an OP device. This is to assure the integrity of the *CIOT* message to the public. Each stop is an opportunity to educate the public on taking personal responsibility on driving behaviors and safety measures.
- Ensure that all officers working the overtime grant funding for OP have completed the Traffic Occupant Protection Strategies (TOPS) training. The Contractor must provide verification of the completed training upon request by the Highway Safety Division for each officer conducting overtime enforcement through the grant.
- Coordinate with the Highway Safety Division to complete earned media requirements (pre- and post-news releases).
- Submit an electronic enforcement log sheet for participating officers by the date indicated in the schedule, "Enforcement Log Due Date." *The report will include: (1) number of enforcement hours, (2) dates and times of enforcement, (3) number and type of citations issued, and (4) number of enforcement contacts/stops made.*
- Submit a reimbursement voucher by the date indicated in the schedule, "Reimbursement Voucher Due Date."
- Work with other area law enforcement within the region to conduct multi-agency enforcement efforts to maximize the visibility of law enforcement during the *CIOT* enforcement period.

IMPAIRED DRIVING (ID) ENFORCEMENT SCOPE OF WORK

PROJECT NO. PHSPID2310-02-07

The *Drive Sober or Get Pulled Over (DSOGPO)* enforcement campaign exists to deter ID through heightened enforcement of ID laws in the state. The campaign's success is built upon the strategy that education, along with highly visible and consistent enforcement, is an effective means to change driver behavior.

The Contractor is required to work during the scheduled ID enforcement periods as outlined in Attachment 1. The Contractor may conduct additional enforcement activity beyond the required regional calendar events within their jurisdiction, if the budget allows, and if the Contractor can justify the purpose of additional enforcement. The Contractor must notify the Highway Safety Division of the additional enforcement activity prior to conducting the additional enforcement activity.

During each identified enforcement period of the contract period, the Contractor must:

- Conduct a minimum of two shifts (no minimum number of hours per shift) per enforcement period, except for the National Labor Day *Drive Sober or Get Pulled Over* campaign.
- Conduct a minimum of four shifts (no minimum number of hours per shift) during the dates identified as the National Labor Day *Drive Sober or Get Pulled Over* campaign.
- Ensure that officers working the ID grant have been SFST (Standardized Field Sobriety Testing) certified and have attended a SFST refresher or ARIDE course at least once every five years. The Contractor must provide verification of the completed training upon request by the Highway Safety Division for each officer conducting overtime enforcement through the grant.
- Determine the best enforcement strategy (e.g., sobriety checkpoints vs. saturation patrols, time of day, locations, etc.) that will most effectively deter ID within the Contractor's jurisdiction. Data indicates this would typically be at night on weekends and holidays, or during special community events justifying the need for additional traffic enforcement. Some jurisdictions may have varying times based on demographics (e.g., college communities).
- Conduct high visibility enforcement within corridors and times where the occurrence of injury and death from ID is greatest. When possible, the Highway Safety Division will coordinate with the Contractor to determine these locations based on ND crash data.
- Coordinate with the Highway Safety Division to complete earned media requirements (pre- and post-news releases).
- Submit an electronic enforcement log sheet for participating officers by the date indicated in the schedule, "Enforcement Log Due Date." *The report will include: (1) number of enforcement hours, (2) dates and times of enforcement, (3) number and type of citations issued, and (4) number of enforcement contacts/stops made.*
- Submit a reimbursement voucher by the date indicated in the schedule, "Reimbursement Voucher Due Date."
- Work with other area law enforcement within the region to conduct multi-agency enforcement efforts to maximize the visibility of law enforcement during the ID enforcement period.

UNDERAGE DRINKING (UA) ENFORCEMENT SCOPE OF WORK

PROJECT NO. PHSPID2310-12-02

The underage drinking (UA) enforcement program supports and enhances efforts by law enforcement to reduce the availability of alcohol to minors. Tragic social consequences can result when youth use alcohol, including traffic injuries and fatalities. The objective of the program is to prohibit the sale and consumption of alcoholic beverages to minors. (For the purpose of this solicitation, "minors" are defined as individuals under the age of 21.)

*Please note that funds for operations may be utilized to cover the costs of overtime for officers, stipends for underage buyers, and direct expenses for server training (printing, postage, and other approved direct expenses). **These funds may not be used for food or refreshment.***

Activities under this program are for Non-Saturation events only. The Contractor is required to work two (2) scheduled UA enforcement periods chosen by your agency and relay plans to the Highway Safety Division. The Contractor may conduct additional non-saturation enforcement activity beyond the two (2) scheduled required calendar events within their jurisdiction, if the budget allows, and if the Contractor can justify the purpose of additional non-saturation enforcement. The Contractor must notify the Highway Safety Division of the additional non-saturation enforcement activity before conducting the additional non-saturation enforcement activity.

Qualifying Non-Saturation Events include:

The following types of enforcement activities will be reported as a non-saturation event in the Law Enforcement Web Reporting (LEWR) online report system.

- **Compliance Checks** — Compliance Checks must utilize an underage buyer working under the direction of a law enforcement agency. The underage buyer enters a licensed liquor establishment and attempts to purchase alcoholic beverages. This operation may be conducted at on-premises sites (bars, restaurants, clubs, etc.) and off-premises businesses (convenience stores, grocery stores, gas stations, etc.).
- **Shoulder Tap** – Shoulder tap activities must involve an underage buyer working under the direction of a law enforcement agency. The underage buyer will approach an individual who is about to enter an off-sale establishment and ask them to purchase alcohol for them from an off-sale establishment.
- **Server Training** — Training provided to servers, sellers, and consumers of alcohol to prevent intoxication, drunk driving, and UA.
- **Controlled Party Dispersal** — Controlled Party Dispersal goes hand in hand with Party Prevention Patrols. If patrol personnel encounter an UA party, the officer calls for backup and then uses proper party dispersal protocol as set out by the Pacific Institute for Research and Evaluation (PIRE) document *A Practical Guide to Preventing and Dispersing Underage Drinking Parties*.
- **Evidence-Based Alcohol Prevention Educational Presentations** –Evidence-based curricula have been proven to be effective in reducing underage drinking and driving. Examples of evidence-based programs include but are not limited to Lifeskills Training, Positive Action, and D.A.R.E. (Drug Abuse Resistance Education) Costs eligible for reimbursement are the purchase or printing of teaching guides, and workbooks for students. Please contact the Highway Safety Division Program Manager, to

determine if officer time is eligible for reimbursement (regular time is not reimbursable). Promotional items are not an allowable expense.

During each fiscal year of the contract, the Contractor must:

- Conduct a minimum of two (no minimum number of hours per shift) **planned** non-saturation events. Provide the Highway Safety Division a calendar of scheduled events for the fiscal year that identifies the type of events to be conducted and when. *The calendar of events must be provided to the Highway Safety Division by October 1.*
- Determine the best enforcement strategy (e.g., shoulder tap, server training or compliance checks, etc.) that will most effectively deter underage access and consumption of alcohol within the Contractor's jurisdiction.
- Coordinate with the Highway Safety Division to complete earned media requirements (pre- and post-news releases).
- Submit an electronic enforcement log sheet for participating officers within five days after completing the event.
- For Evidence-based activities documentation of actual curricula expenses need to be supported by an invoice when submitting a voucher for reimbursement. A separate paper voucher will be provided to you from the Highway Safety Division.
- Submit a reimbursement voucher by within 45 days after completing the event.

DISTRACTED DRIVING (DD) ENFORCEMENT OF WORK

PROJECT NO. PHSPDD2311-02-05

The distracted driving (DD) enforcement campaign exists to decrease the use of handheld electronic devices and other activities that are a distraction or cause inattentiveness by the driver through heightened enforcement of DD laws in the state. The campaign's success is built upon the strategy that education, along with heightened and consistent enforcement, is an effective means to change driver behavior and decrease crashes caused by driver distraction.

Participating law enforcement agencies are required to work overtime during scheduled DD campaigns to achieve heightened enforcement within their jurisdictions by enforcing the ban on all cell phone use by minors (under the age of 18) and activities by all drivers which cause inattentiveness resulting in traffic violations.

The Contractor is required to work during the scheduled DD enforcement periods as identified in Attachment 1. The Contractor may conduct additional enforcement activity beyond the required events within their jurisdiction, if the budget allows, and if the Contractor can justify the purpose of additional enforcement. The Contractor must notify the Highway Safety Division of the additional enforcement activity prior to conducting the additional enforcement activity.

During each identified enforcement period, the Contractor must:

- Conduct a minimum of two shifts (no minimum number of hours per shift) per DD enforcement period.
- Determine the best enforcement strategy that will efficiently use available resources and conduct heightened enforcement within corridors and at times where the occurrence of DD and electronic device usage is most prevalent.
- Issue Citations – **not warnings** – when observing a driver violating North Dakota’s DD law. This is to assure the integrity of the DD message to the public. Each stop is an opportunity to educate the public on taking personal responsibility for their driving behaviors.
- Coordinate with the Highway Safety Division to complete earned media requirements (pre- and post-news releases).
- Submit an electronic enforcement log sheet for participating officers by the date indicated in the schedule, “Enforcement Log Due Date.” *The report will include: (1) number of enforcement hours, (2) dates and times of enforcement, (3) number and type of citations issued, and (4) number of enforcement contacts/stops made.*
- Submit a reimbursement voucher by the date indicated in the schedule, “Reimbursement Voucher Due Date.”
- Work with other area law enforcement within the region to conduct multi-agency enforcement efforts to maximize the heightened enforcement of DD laws during the enforcement period.

SPEED (SC) ENFORCEMENT SCOPE OF WORK

PROJECT NO. PHSPSC2307-04-08

The speed (SC) enforcement campaign exists to decrease speed violations through heightened enforcement of speeding laws in the state. The campaign’s success is built upon the strategy that education, along with highly visible and consistent enforcement, is an effective means to change driver behavior and decrease excessive speed.

Participating law enforcement agencies are required to work overtime during scheduled Speed campaigns to achieve high visibility within their jurisdictions to deter motorists from driving above the posted speed limits.

The Contractor may **only** work during the scheduled Speed enforcement periods as identified in Attachment 1. The Contractor may not work outside the scheduled period.

During each identified enforcement period, the Contractor must:

- Conduct a minimum of two shifts (no minimum number of hours per shift) per high visibility enforcement period within corridors and at times (including nighttime) where the occurrence of highest number of speed-related serious injury and fatal crashes is greatest. When possible, the Highway Safety Division will coordinate with the Contractor to determine these locations based on North Dakota (ND) crash data.

- Issue Citations – **not warnings** – for driving above the posted speed limits. This is to assure the integrity of the *Obey the Sign or Pay the Fine* message to the public. Each stop is an opportunity to educate the public on taking personal responsibility in driving behaviors and safety measures.
- Coordinate with the Highway Safety Division to complete earned media requirements (pre- and post-news releases).
- Submit an electronic enforcement log sheet for participating officers by the date indicated in the schedule, "Enforcement Log Due Date." *The report will include: (1) number of enforcement hours, (2) dates and times of enforcement, (3) number and type of citations issued, and (4) number of enforcement contacts/stops made.*
- Submit a reimbursement voucher by the date indicated in the schedule, "Reimbursement Voucher Due Date."
- Work with other area law enforcement within the region to conduct multi-agency enforcement efforts to maximize the heightened enforcement of speeding laws during the enforcement period.

MEDIA SCOPE OF WORK

PROJECT NO. PHSPID2310-03-02

The Contractor will be responsible for the development and placement of media ads for the enhancement of impaired driving campaigns to specifically target the city of Fargo population. The Contractor must:

- Receive approval from the Highway Safety Division before placement/distribution of any media materials using NDDOT funds.
- Meet closed captioning requirements for any ads developed for television.

The Contractor will track and report frequency and coverage of media message.

Reporting

A detailed progress report and voucher will be submitted to the Highway Safety Division within 45 days after the end of the month in which expenses occurred. A voucher format will be provided by the Highway Safety Division. The progress report must include:

1. The timeline of the project.
2. The total amount of funds spent on the project.
3. An outline of what portion of the project the DOT funds were attributed to.

The Contractor must maintain copies of the media placement affidavits on file.

REPORTING AND AUDIT REPORTING/ALL PROJECTS

Reporting

The Contractor must submit the enforcement logs and reimbursement voucher(s) to the Highway Safety Division per the schedule referenced in the previous enforcement sections. Late reports may result in a delay in processing or a reduction in payment.

The Contractor must retain for a minimum of three years, copies of timesheets, payroll, agency work schedules, and any other supporting documentation.

An enforcement contact is defined as one traffic stop, which may include multiple enforcement actions with the occupants of a motor vehicle while conducting overtime enforcement under contract with NDDOT.

Because the enforcement programs are statewide efforts, participation by each contracted entity is critical to the success of the campaigns. If the Contractor is unable to fulfill any portion of the contractual scope of work, they must contact the Highway Safety Division immediately.

Audit Reporting

A non-federal entity that expends \$750,000 or more during the non-federal entity's fiscal year in federal awards must have a single or program-specific audit conducted for that year in accordance with the provisions of 2 CFR 200, Subpart F. A financial audit is sufficient if the non-federal entity expends less than \$750,000.

NDDOT RESPONSIBILITIES, REIMBURSEMENT, AND OTHER REQUIREMENTS/ALL PROJECTS

NDDOT Responsibilities

This Scope of Work will be monitored by the NDDOT's Program Manager. Oversight will include, but will not be limited to, **desktop and on-site** monitoring of program finances, operations, and performance. This will include identification and written notification of issues and/or concerns that could significantly affect the program's performance and outcomes to agents of the contracting agency in the community.

Based on federal grant requirements, NDDOT may revise the enforcement dates shown in Attachment 1. The Contractor will be notified by email and will receive a revised Attachment 1 that will identify the revised enforcement dates and due dates of enforcement logs and reimbursement vouchers.

Reimbursement

This contract will reimburse allowable expenses up to each project's total budget for costs incurred through completion of the scope of work and/or at the direction of the program manager. The Highway Safety Division reserves the right to deny payment for unallowable expenses identified in the applicable cost principles. Overtime wages will be reimbursed at the agency-approved overtime rate and mileage, if applicable, will be reimbursed at the state-approved rate.

At the close of the state fiscal year, which is June 30, enforcement logs and reimbursement vouchers must be submitted no later than July 15 for any services or purchases that took place on or before June 30. Vouchers received after July 15 may not be reimbursed. Please note: only equipment that has been received by June 30 is affected by this due date.

The final reports/vouchers for all projects are due no later than November 14, 2023. ***Vouchers received after November 14, 2023, will not be reimbursed.***

Other Requirements

In accordance with 23 CFR Part 1300 Appendix C, the Contractor, as a representative of its political subdivision, requests the benefit of the NDDOT Highway Safety Division coordination of paid media and marketing to capitalize on the high visibility enforcement and education model necessary to change driver behavior. The NDDOT Highway Safety Division will coordinate paid and earned media statewide to complement the enforcement initiative outlined in this project agreement. The outreach may include the following: TV spots, radio spots, online ads, billboards, print ads, press releases, posters, flyers, and/or outreach events. These efforts will include local jurisdictions and will be coordinated statewide. By signing the contract, the Contractor signifies his/her understanding of the outreach component of the mobilization and approves the use of these educational techniques within his/her jurisdiction.

The Contractor is encouraged to follow the guidelines for vehicular pursuits issued by the International Association of Chiefs of Police that are currently in effect.

The Contractor shall not use the funds for supplanting also known as general costs of government. *Funds for programs and services provided through this grant are intended to supplement, **not supplant**, other state or local funding sources.* Supplanting is defined as replacing routine and/or existing state or local expenditures with the use of federal grant funds and/or using federal grant funds for costs of activities that constitute general expenses required to carry out the overall responsibilities of state, local, or federally-recognized Indian tribal governments.

Written and verbal warnings are not encouraged under any of the grant programs.

The Contractor is encouraged to use the E-Citation module within TraCS Web while conducting overtime enforcement activities through NDDOT grant funded programs. The Highway Safety Division will monitor enforcement activities in TraCS. Upon request, those issuing paper citations or electronic citations in another program will be required to submit copies of citations to the Highway Safety Division.

BUDGETS

OCCUPANT PROTECTION (OP) ENFORCEMENT BUDGET

PROJECT NO. PHSPOP2305-05-08 / CFDA NO. 20.600

DIRECT COSTS

Overtime wages		\$12,000
Mileage		<u>\$ 0</u>
PROJECT TOTAL		<u>\$12,000</u>

Participation

Federal	100%	\$12,000
State	-	
Local	-	

IMPAIRED DRIVING (ID) ENFORCEMENT BUDGET

PROJECT NO. PHSPID2310-02-07 / CFDA NO. 20.616

DIRECT COSTS

Overtime wages		\$17,500
Mileage		<u>\$ 0</u>
PROJECT TOTAL		<u>\$17,500</u>

Participation

Federal	100%	\$17,500
State	-	
Local	-	

*UNDERAGE DRINKING (UA) ENFORCEMENT BUDGET***PROJECT NO. PHSPID2310-12-02 / CFDA NO. 20.616****DIRECT COSTS**

Overtime wages		\$ 8,500
Educational Resources		\$ 0
PROJECT TOTAL		<u>\$ 8,500</u>

Participation

Federal	100%	\$ 8,500
State	-	
Local	-	

*DISTRACTED DRIVING (DD) ENFORCEMENT BUDGET***PROJECT NO. PHSPDD2311-02-05 / CFDA NO. 20.600****DIRECT COSTS**

Overtime wages		\$ 8,000
Mileage		\$ 0
PROJECT TOTAL		<u>\$ 8,000</u>

Participation

Federal	100%	\$ 8,000
State	-	
Local	-	

*SPEED (SC) ENFORCEMENT BUDGET***PROJECT NO. PHSPSC2307-04-08 / CFDA NO. 20.600****DIRECT COSTS**

Overtime wages		\$10,000
Mileage		\$ 0
PROJECT TOTAL		<u>\$10,000</u>

Participation

Federal	100%	\$10,000
State	-	
Local	-	

MEDIA BUDGET

PROJECT NO. PHSPID2310-03-02 / CFDA NO. 20.616

DIRECT COSTS

Media \$7,000

PROJECT TOTAL \$7,000

Participation

Federal 100% \$7,000

State -

Local -

OCCUPANT PROTECTION (OP) ENFORCEMENT DATES

Enforcement Dates	Enforcement Log Due Date	Reimbursement Voucher Due Date
November 1 - December 15, 2022	12/20/2022	1/31/2023
*May 22 - June 4, 2023	6/9/2023	7/7/2023
July 1 – July 31, 2023	8/5/2023	9/15/2023

*May 22 – June 4, 2023, is the National "Click It or Ticket" (CIOT) Campaign

Participating agencies are required to conduct a minimum of two (2) shifts per enforcement period.

Contractor may not work any other dates for the occupant protection campaign.

Please refer to the Contract for the full Scope of Work.

IMPAIRED DRIVING (ID) ENFORCEMENT DATES

Enforcement Dates	Enforcement Log Due Date	Reimbursement Voucher Due Date
*December 14, 2022 – January 31, 2023	2/6/2023	3/20/2023
March 1 – March 31, 2023	4/6/2023	5/18/2023
**August 18 – September 4, 2023	9/9/2023	10/20/2023

*December 14, 2022 – January 1, 2023, is the National "Drive Sober or Get Pulled Over" (DSOGPO) Campaign. ND extends the enforcement campaign until January 31, 2023

August 18 – September 4, 2023, is the National "Drive Sober or Get Pulled Over" Campaign. **This DSOGPO campaign requires a minimum of four (4) shifts to be worked.

Participating agencies are required to conduct a minimum of two (2) shifts per enforcement period.

Please refer to the Contract for the full Scope of Work.

SPEED (SP) ENFORCEMENT DATES

Enforcement Dates	Enforcement Log Due Date	Reimbursement Voucher Due Date
April 21 – May 21, 2023	5/26/2023	6/30/2023
August 1 – 17, 2023	8/22/2023	9/22/2023

Participating agencies are required to conduct a minimum of two (2) shifts per enforcement period.

Contractor may not work any other dates for the speed enforcement campaign.

Please refer to the Contract for the full Scope of Work.

DISTRACTED DRIVING (DD) ENFORCEMENT DATES

Enforcement Dates	Enforcement Log Due Date	Reimbursement Voucher Due Date
*April 1 – 30, 2023	5/5/2023	6/9/2023
September 1 – 30, 2023	10/5/2023	10/31/2023

*April 1 – 30, 2023 coincides with the National Distracted Driving Awareness Month campaign.

Participating agencies are required to conduct a minimum of two (2) shifts per enforcement period.

Please refer to the Contract for the full Scope of Work.

Appendix A to Part 1300 – Certifications and Assurances for Fiscal Year 2022 Highway Safety Grants (23 U.S.C. Chapter 4; Sec. 1906, Pub. L. 109-59, As Amended By Sec. 4011, Pub. L. 114-94)

[Each fiscal year, the Governor's Representative for Highway Safety must sign these Certifications and Assurances affirming that the State complies with all requirements, including applicable Federal statutes and regulations, that are in effect during the grant period. Requirements that also apply to subrecipients are noted under the applicable caption.]

State: North Dakota

Fiscal Year: 2023

By submitting an application for Federal grant funds under 23 U.S.C. Chapter 4 or Section 1906, the State Highway Safety Office acknowledges and agrees to the following conditions and requirements. In my capacity as the Governor's Representative for Highway Safety, I hereby provide the following Certifications and Assurances:

GENERAL REQUIREMENTS

The State will comply with applicable statutes and regulations, including but not limited to:

- 23 U.S.C. Chapter 4 – Highway Safety Act of 1966, as amended
- Sec. 1906, Pub. L. 109-59, as amended by Sec. 4011, Pub. L. 114-94
- 23 CFR part 1300 – Uniform Procedures for State Highway Safety Grant Programs
- 2 CFR part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
- 2 CFR part 1201 – Department of Transportation, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

INTERGOVERNMENTAL REVIEW OF FEDERAL PROGRAMS

The State has submitted appropriate documentation for review to the single point of contact designated by the Governor to review Federal programs, as required by Executive Order 12372 (Intergovernmental Review of Federal Programs).

FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT (FFATA)

The State will comply with FFATA guidance, OMB Guidance on FFATA Subaward and Executive Compensation Reporting, August 27, 2010, (https://www.fsrs.gov/documents/OMB_Guidance_on_FFATA_Subaward_and_Executive_Compensation_Reporting_08272010.pdf) by reporting to FSRS.gov for each sub-grant awarded:

- Name of the entity receiving the award;
- Amount of the award;

- Information on the award including transaction type, funding agency, the North American Industry Classification System code or Catalog of Federal Domestic Assistance number (where applicable), program source;
- Location of the entity receiving the award and the primary location of performance under the award, including the city, State, congressional district, and country; and an award title descriptive of the purpose of each funding action;
- A Unique Entity identifier;
- The names and total compensation of the five most highly compensated officers of the entity if:
 - (i) the entity in the preceding fiscal year received—
 - (I) 80 percent or more of its annual gross revenues in Federal awards;
 - (II) \$25,000,000 or more in annual gross revenues from Federal awards; and
 - (ii) the public does not have access to information about the compensation of the senior executives of the entity through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986;
- Other relevant information specified by OMB guidance.

NONDISCRIMINATION

(applies to subrecipients as well as States)

The State highway safety agency will comply with all Federal statutes and implementing regulations relating to nondiscrimination ("Federal Nondiscrimination Authorities"). These include but are not limited to:

- **Title VI of the Civil Rights Act of 1964** (42 U.S.C. 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin) and 49 CFR part 21;
- **The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970**, (42 U.S.C. 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- **Federal-Aid Highway Act of 1973**, (23 U.S.C. 324 *et seq.*), and **Title IX of the Education Amendments of 1972**, as amended (20 U.S.C. 1681-1683 and 1685-1686) (prohibit discrimination on the basis of sex);
- **Section 504 of the Rehabilitation Act of 1973**, (29 U.S.C. 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability) and 49 CFR part 27;
- **The Age Discrimination Act of 1975**, as amended, (42 U.S.C. 6101 *et seq.*), (prohibits discrimination on the basis of age);
- **The Civil Rights Restoration Act of 1987**, (Pub. L. 100-209), (broadens scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal aid recipients, subrecipients and contractors, whether such programs or activities are Federally-funded or not);
- **Titles II and III of the Americans with Disabilities Act** (42 U.S.C. 12131-12189) (prohibits discrimination on the basis of disability in the operation of public entities,

- public and private transportation systems, places of public accommodation, and certain testing) and 49 CFR parts 37 and 38;
- **Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations** (prevents discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations); and
 - **Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency** (guards against Title VI national origin discrimination/discrimination because of limited English proficiency (LEP) by ensuring that funding recipients take reasonable steps to ensure that LEP persons have meaningful access to programs (70 FR 74087-74100).

The State highway safety agency—

- Will take all measures necessary to ensure that no person in the United States shall, on the grounds of race, color, national origin, disability, sex, age, limited English proficiency, or membership in any other class protected by Federal Nondiscrimination Authorities, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any of its programs or activities, so long as any portion of the program is Federally-assisted;
- Will administer the program in a manner that reasonably ensures that any of its subrecipients, contractors, subcontractors, and consultants receiving Federal financial assistance under this program will comply with all requirements of the Non-Discrimination Authorities identified in this Assurance;
- Agrees to comply (and require its subrecipients, contractors, subcontractors, and consultants to comply) with all applicable provisions of law or regulation governing US DOT's or NHTSA's access to records, accounts, documents, information, facilities, and staff, and to cooperate and comply with any program or compliance reviews, and/or complaint investigations conducted by US DOT or NHTSA under any Federal Nondiscrimination Authority;
- Acknowledges that the United States has a right to seek judicial enforcement with regard to any matter arising under these Non-Discrimination Authorities and this Assurance;
- Agrees to insert in all contracts and funding agreements with other State or private entities the following clause:

“During the performance of this contract/funding agreement, the contractor/funding recipient agrees—

 - a. To comply with all Federal nondiscrimination laws and regulations, as may be amended from time to time;

- b. Not to participate directly or indirectly in the discrimination prohibited by any Federal non-discrimination law or regulation, as set forth in appendix B of 49 CFR part 21 and herein;
- c. To permit access to its books, records, accounts, other sources of information, and its facilities as required by the State highway safety office, US DOT or NHTSA;
- d. That, in event a contractor/funding recipient fails to comply with any nondiscrimination provisions in this contract/funding agreement, the State highway safety agency will have the right to impose such contract/agreement sanctions as it or NHTSA determine are appropriate, including but not limited to withholding payments to the contractor/funding recipient under the contract/agreement until the contractor/funding recipient complies; and/or cancelling, terminating, or suspending a contract or funding agreement, in whole or in part; and
- e. To insert this clause, including paragraphs (a) through (e), in every subcontract and subagreement and in every solicitation for a subcontract or sub-agreement, that receives Federal funds under this program.

THE DRUG-FREE WORKPLACE ACT OF 1988 (41 U.S.C. 8103)

The State will provide a drug-free workplace by:

- a. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
- b. Establishing a drug-free awareness program to inform employees about:
 - 1. The dangers of drug abuse in the workplace;
 - 2. The grantee's policy of maintaining a drug-free workplace;
 - 3. Any available drug counseling, rehabilitation, and employee assistance programs;
 - 4. The penalties that may be imposed upon employees for drug violations occurring in the workplace;
 - 5. Making it a requirement that each employee engaged in the performance of the grant be given a copy of the statement required by paragraph (a);
- c. Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will –
 - 1. Abide by the terms of the statement;
 - 2. Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;
- d. Notifying the agency within ten days after receiving notice under subparagraph (c)(2) from an employee or otherwise receiving actual notice of such conviction;

- e. Taking one of the following actions, within 30 days of receiving notice under subparagraph (c)(2), with respect to any employee who is so convicted –
 1. Taking appropriate personnel action against such an employee, up to and including termination;
 2. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;
- f. Making a good faith effort to continue to maintain a drug-free workplace through implementation of all of the paragraphs above.

POLITICAL ACTIVITY (HATCH ACT)
(applies to subrecipients as well as States)

The State will comply with provisions of the Hatch Act (5 U.S.C. 1501-1508), which limits the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

CERTIFICATION REGARDING FEDERAL LOBBYING
(applies to subrecipients as well as States)

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of 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-award at all tiers (including subcontracts, subgrants, and contracts under grant, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 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.

RESTRICTION ON STATE LOBBYING

(applies to subrecipients as well as States)

None of the funds under this program will be used for any activity specifically designed to urge or influence a State or local legislator to favor or oppose the adoption of any specific legislative proposal pending before any State or local legislative body. Such activities include both direct and indirect (e.g., "grassroots") lobbying activities, with one exception. This does not preclude a State official whose salary is supported with NHTSA funds from engaging in direct communications with State or local legislative officials, in accordance with customary State practice, even if such communications urge legislative officials to favor or oppose the adoption of a specific pending legislative proposal.

CERTIFICATION REGARDING DEBARMENT AND SUSPENSION

(applies to subrecipients as well as States)

Instructions for Primary Tier Participant Certification (States)

1. By signing and submitting this proposal, the prospective primary tier participant is providing the certification set out below and agrees to comply with the requirements of 2 CFR parts 180 and 1200.
2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective primary tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary tier participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default or may pursue suspension or debarment.
4. The prospective primary tier participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary tier participant learns its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms *covered transaction*, *civil judgment*, *debarment*, *suspension*, *ineligible*, *participant*, *person*, *principal*, and *voluntarily excluded*, as used in this clause, are defined in 2 CFR parts 180 and 1200. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.
6. The prospective primary tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
7. The prospective primary tier participant further agrees by submitting this proposal that it will include the clause titled "Instructions for Lower Tier Participant Certification" including the "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions and will require lower tier participants to comply with 2 CFR parts 180 and 1200.
8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any prospective lower tier participants, each participant may, but is not required to, check the System for Award Management Exclusions website (<https://www.sam.gov/>).
9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal government, the department or agency may terminate the transaction for cause or default.

Certification Regarding Debarment, Suspension, and Other Responsibility Matters-Primary Tier Covered Transactions

- (1) The prospective primary tier participant certifies to the best of its knowledge and belief, that it and its principals:
- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;
 - (b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; 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) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or Local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
 - (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

(2) Where the prospective primary tier participant is unable to certify to any of the Statements in this certification, such prospective participant shall attach an explanation to this proposal.

Instructions for Lower Tier Participant Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below and agrees to comply with the requirements of 2 CFR parts 180 and 1200.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms *covered transaction*, *civil judgment*, *debarment*, *suspension*, *ineligible*, *participant*, *person*, *principal*, and *voluntarily excluded*, as used in this clause, are defined in 2 CFR parts 180 and 1200. You may contact the person to whom this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Instructions for Lower Tier Participant Certification" including the "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions and will require lower tier participants to comply with 2 CFR parts 180 and 1200.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any prospective lower tier participants, each participant may, but is not required to, check the System for Award Management Exclusions website (<https://www.sam.gov/>).
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.
2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

BUY AMERICA ACT**(applies to subrecipients as well as States)**

The State and each subrecipient will comply with the Buy America requirement (23 U.S.C. 313) when purchasing items using Federal funds. Buy America requires a State, or subrecipient, to purchase with Federal funds only steel, iron and manufactured products produced in the United States, unless the Secretary of Transportation determines that such domestically produced items would be inconsistent with the public interest, that such materials are not reasonably available and of a satisfactory quality, or that inclusion of domestic materials will increase the cost of the overall project contract by more than 25 percent. In order to use Federal funds to purchase foreign produced items, the State must submit a waiver request that provides an adequate basis and justification for approval by the Secretary of Transportation.

PROHIBITION ON USING GRANT FUNDS TO CHECK FOR HELMET USAGE**(applies to subrecipients as well as States)**

The State and each subrecipient will not use 23 U.S.C. Chapter 4 grant funds for programs to check helmet usage or to create checkpoints that specifically target motorcyclists.

POLICY ON SEAT BELT USE

In accordance with Executive Order 13043, Increasing Seat Belt Use in the United States, dated April 16, 1997, the Grantee is encouraged to adopt and enforce on-the-job seat belt use policies and programs for its employees when operating company-owned, rented, or personally-owned vehicles. The National Highway Traffic Safety Administration (NHTSA) is responsible for providing leadership and guidance in support of this Presidential initiative. For information and resources on traffic safety programs and policies for employers, please contact the Network of Employers for Traffic Safety (NETS), a public-private partnership dedicated to improving the traffic safety practices of employers and employees. You can download information on seat belt programs, costs of motor vehicle crashes to employers, and other traffic safety initiatives at www.trafficsafety.org. The NHTSA website (www.nhtsa.gov) also provides information on statistics, campaigns, and program evaluations and references.

POLICY ON BANNING TEXT MESSAGING WHILE DRIVING

In accordance with Executive Order 13513, Federal Leadership On Reducing Text Messaging While Driving, and DOT Order 3902.10, Text Messaging While Driving, States are encouraged to adopt and enforce workplace safety policies to decrease crashes caused by distracted driving, including policies to ban text messaging while driving company-owned or rented vehicles, Government-owned, leased or rented vehicles, or privately-owned vehicles when on official Government business or when performing any work on or behalf of the Government. States are also encouraged to conduct workplace safety initiatives in a manner commensurate with the size of the business, such as establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving, and education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

SECTION 402 REQUIREMENTS

1. To the best of my personal knowledge, the information submitted in the Highway Safety Plan in support of the State's application for a grant under 23 U.S.C. 402 is accurate and complete.
2. The Governor is the responsible official for the administration of the State highway safety program, by appointing a Governor's Representative for Highway Safety who shall be responsible for a State highway safety agency that has adequate powers and is suitably equipped and organized (as evidenced by appropriate oversight procedures governing such areas as procurement, financial administration, and the use, management, and disposition of equipment) to carry out the program. (23 U.S.C. 402(b)(1)(A))
3. The political subdivisions of this State are authorized, as part of the State highway safety program, to carry out within their jurisdictions local highway safety programs which have been approved by the Governor and are in accordance with the uniform guidelines promulgated by the Secretary of Transportation. (23 U.S.C. 402(b)(1)(B))
4. At least 40 percent of all Federal funds apportioned to this State under 23 U.S.C. 402 for this fiscal year will be expended by or for the benefit of political subdivisions of the State in carrying out local highway safety programs (23 U.S.C. 402(b)(1)(C)) or 95 percent by and for the benefit of Indian tribes (23 U.S.C. 402(h)(2)), unless this requirement is waived in writing. (This provision is not applicable to the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.)
5. The State's highway safety program provides adequate and reasonable access for the safe and convenient movement of physically handicapped persons, including those in wheelchairs, across curbs constructed or replaced on or after July 1, 1976, at all pedestrian crosswalks. (23 U.S.C. 402(b)(1)(D))
6. The State will provide for an evidenced-based traffic safety enforcement program to prevent traffic violations, crashes, and crash fatalities and injuries in areas most at risk for such incidents. (23 U.S.C. 402(b)(1)(E))
7. The State will implement activities in support of national highway safety goals to reduce motor vehicle related fatalities that also reflect the primary data-related crash factors within the State, as identified by the State highway safety planning process, including:
 - Participation in the National high-visibility law enforcement mobilizations as identified annually in the NHTSA Communications Calendar, including not less than 3 mobilization campaigns in each fiscal year to –
 - Reduce alcohol-impaired or drug-impaired operation of motor vehicles; and
 - Increase use of seat belts by occupants of motor vehicles;
 - Sustained enforcement of statutes addressing impaired driving, occupant protection, and driving in excess of posted speed limits;

- An annual Statewide seat belt use survey in accordance with 23 CFR part 1340 for the measurement of State seat belt use rates, except for the Secretary of Interior on behalf of Indian tribes;
 - Development of Statewide data systems to provide timely and effective data analysis to support allocation of highway safety resources;
 - Coordination of Highway Safety Plan, data collection, and information systems with the State strategic highway safety plan, as defined in 23 U.S.C. 148(a). (23 U.S.C. 402(b)(1)(F))
8. The State will actively encourage all relevant law enforcement agencies in the State to follow the guidelines established for vehicular pursuits issued by the International Association of Chiefs of Police that are currently in effect. (23 U.S.C. 402(j))
9. The State will not expend Section 402 funds to carry out a program to purchase, operate, or maintain an automated traffic enforcement system. (23 U.S.C. 402(c)(4))

I understand that my statements in support of the State's application for Federal grant funds are statements upon which the Federal Government will rely in determining qualification for grant funds, and that knowing misstatements may be subject to civil or criminal penalties under 18 U.S.C. 1001. I sign these Certifications and Assurances based on personal knowledge, and after appropriate inquiry.



6/28/22

Signature Governor's Representative for Highway Safety

Date

William T. Panos

Printed name of Governor's Representative for Highway Safety

Certificate Of Completion

Envelope Id: 212C49451BE04681A2E043CD4DB17A26
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Contract Number: 12221346
PCN:
Source Envelope:
Document Pages: 38
Certificate Pages: 4
AutoNav: Enabled
Envelopeld Stamping: Enabled
Time Zone: (UTC-06:00) Central Time (US & Canada)

Status: Completed

Signatures: 6
Initials: 1

Envelope Originator:
Sheila Kitzan
608 E Boulevard Ave
Bismarck, ND 58505
skitzan@nd.gov
IP Address: 165.234.92.5

Record Tracking

Status: Original
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Security Appliance Status: Connected
Storage Appliance Status: Connected

Holder: Sheila Kitzan
skitzan@nd.gov
Pool: StateLocal
Pool: Carahsoft OBO North Dakota Department of
Transportation CLOUD

Location: DocuSign
Location: DocuSign

Signer Events

Shannon Sauer
ssauer@nd.gov
Security Level: Email, Account Authentication
(None), Authentication

Signature



Signature Adoption: Pre-selected Style
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Phone: +1 701-426-9825

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Tim Mahoney
tmahoney@fargond.gov
Mayor of Fargo
City of Fargo
Security Level: Email, Account Authentication
(None)

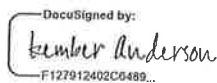


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Kember Anderson
KAnderson@fargond.gov
Mayor
City of Fargo
Security Level: Email, Account Authentication
(None)



Signature Adoption: Pre-selected Style
Using IP Address: 165.234.250.1

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Electronic Record and Signature Disclosure:
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Page 293
Signer Events

Karin Mongeon
kamongeon@nd.gov
Security Level: Email, Account Authentication
(None), Authentication

Signature

DocuSigned by:
Karin Mongeon
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Signature Adoption: Pre-selected Style
Using IP Address: 165.234.252.245

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Phone: +1 701-202-8024

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Clint Morgenstern
cdmorgenstern@nd.gov
Clint Morgenstern - SAAG
Security Level: Email, Account Authentication
(None), Authentication

DocuSigned by:
Clint Morgenstern
74C101681DFD40B...

Signature Adoption: Pre-selected Style
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Phone: +1 701-213-0588

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Robin R. Rehborg
rrehborg@nd.gov
Deputy Director for Driver Safety
Security Level: Email, Account Authentication
(None), Authentication

DocuSigned by:
Robin R. Rehborg
EAD24CA52FBB4A8...

Signature Adoption: Pre-selected Style
Using IP Address: 165.234.252.245

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Phone: +1 701-202-6178

Electronic Record and Signature Disclosure:
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Laureen M. Martin
lmartin@nd.gov
Security Level: Email, Account Authentication
(None), Authentication

DocuSigned by:
Laureen M. Martin
402B91E9048E429...

Signature Adoption: Pre-selected Style
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Authentication Details

Signer Events

Signature

Timestamp

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Performed: 9/27/2022 9:45:11 AM
Phone: +1 701-426-3251

Electronic Record and Signature Disclosure:
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In Person Signer Events

Signature

Timestamp

Editor Delivery Events

Status

Timestamp

Sheila Kitzan
skitzan@nd.gov
North Dakota Highway Patrol
Security Level: Email, Account Authentication
(None)

VIEWED

Using IP Address: 165.234.252.245

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Completed: 9/23/2022 12:45:56 AM

Electronic Record and Signature Disclosure:
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Agent Delivery Events

Status

Timestamp

Kathy Lormis
KLormis@FargoND.gov
Security Level: Email, Account Authentication
(None)

VIEWED

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Electronic Record and Signature Disclosure:
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Intermediary Delivery Events

Status

Timestamp

Certified Delivery Events

Status

Timestamp

Sheila Kitzan
skitzan@nd.gov
North Dakota Highway Patrol
Security Level: Email, Account Authentication
(None)

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Carbon Copy Events

Status

Timestamp

DOT Legal Admin
dotlegaladmin@nd.gov
Security Level: Email, Account Authentication
(None)

COPIED

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Electronic Record and Signature Disclosure:
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DOT Legal Admin
dotlegaladmin@nd.gov
Security Level: Email, Account Authentication
(None)

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Electronic Record and Signature Disclosure:
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Page 295
Carbon Copy Events

Steve Sprague
ssprague@fargond.gov
Security Level: Email, Account Authentication
(None)

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Kelly Aberle
kaberle@nd.gov
Security Level: Email, Account Authentication
(None)

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Witness Events

Notary Events

Envelope Summary Events

Envelope Sent
Certified Delivered
Signing Complete
Completed

Payment Events

Status

COPIED

COPIED

Signature

Signature

Status

Hashed/Encrypted
Security Checked
Security Checked
Security Checked

Status

Timestamp

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Timestamp

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9/27/2022 9:45:28 AM
9/27/2022 9:45:34 AM

Timestamps



24

FARGO POLICE DEPARTMENT
CHIEF DAVID B. ZIBOLSKI
105 25th Street North
Fargo, ND 58102-4002
Main Line: 701.235.4493 | Fax: 701.297.7789
FargoPolice.com

September 27, 2022

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

Re: Vendor Selection Firearms Range Upgrade

COPY

Dear Commissioners,

On May 2, 2022, the City Commission approved the Department's request to publish a request for proposal (RFP) to upgrade our indoor firearms range system. The Finance Committee approved the Department's request at the April 25, 2022 Finance Committee meeting. We were approved to use funds from the LETC's city cash pool account (208-0000-104-00-00) to pay for the upgrade. At the time of the request, the account had a balance of \$349,242.

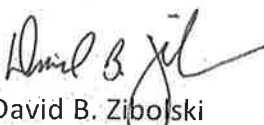
The RFP was released in early August and the Department received two vendor submissions from Action Targets and InVersis. The submissions were reviewed and evaluated per the scoring criteria in the RFP.

The RFP's base proposal called for the target system, shooting stalls, and services (removal, clean up, and disposal). The alternate proposal called for the replacement of the safety/sound baffles and services (removal, clean up, and disposal). InVersis submitted a second alternate in their proposal for the annual hardware maintenance and support. Action Target included their annual maintenance and support as part of their base proposal. The Department will forgo the safety baffle upgrade alternate due to financial considerations.

Motion: To approve the Fargo Police Department's recommendation to select the InVersis' base proposal of \$249,970.61 and alternate 2 proposal of \$8,800 as an upgrade to the indoor firearms range utilizing funds in the Law Enforcement Training Center cash pool account.

Please feel free to contact me with any questions or concerns you may have relative to this request.

Respectfully,


David B. Zibolski
Chief of Police



FARGO POLICE DEPARTMENT

A SAFE AND UNIFIED COMMUNITY BUILT ON TRUST, ACCOUNTABILITY AND INCLUSION

PROFESSIONAL STANDARDS DIVISION

MEMORANDUM

To: Chief Zibolski

From: Deputy Chief Anderson

Date: 09.21.2022

RE: RFP 22-100 Indoor Shooting Range Upgrade Selection

RECEIVED
FARGO POLICE DEPARTMENT

SEP 21 2022

TRAVIS STEFONOWICZ
ASSISTANT CHIEF OF POLICE
REF: Chief Zibolski - Concurrence/Rec
Letter to Commission (DC Anderson prep'd)

We published a request for proposals (RFP) soliciting vendor submissions to upgrade our existing indoor shooting range on August 3, 2022. On September 1, we received two vendor proposals:

- Action Target
- InVersis

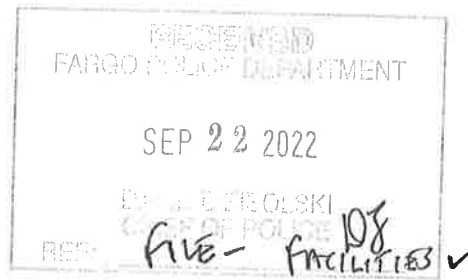
Each proposal met the requirements specified in the RFP and were accepted as valid proposals. Chief Vandal (NDSU PD), Sgt. Berger, and I scored each proposal for technical merit (40%), price (40%), and vendor expertise (20%).

	Action Target			Total	Base Price	Alternate	Alternate	Total
	Technical-40	Price-40	Expertise-20					
					\$298,000	\$200,000	NA	\$498,000
Chief Vandal	40	20	15	75				
DC Anderson	40	30	15	85				
Sgt. Berger	30	30	15	75				
			Average	78.33333				
	InVersis			Total	Base Price	Alternate	Alternate	Total
	Technical-40	Price-40	Expertise-20					
					\$249,970.61	\$101,846.35	\$8,800	\$360,616.96
Chief Vandal	40	40	20	100				
DC Anderson	40	40	18	98				
Sgt. Berger	35	35	20	90				
			Average	96				

The base proposal called for the target system, shooting stalls, and services (removal, clean up, and disposal). The alternate proposal called for the replacement of the safety/sound baffles and services (removal, clean up, and disposal). InVersis submitted a second alternate in their proposal for the annual hardware maintenance and support. Action Target included their annual maintenance and support as part of their base proposal.

Recommendation: Based on the scoring criteria we recommend the Inversis base proposal with the maintenance alternate totaling \$258,770.61.

We will use funds from the LETC's cash pool account (208-0000-104-00-00) to pay for the upgrade. When the request for proposals was submitted to the City Commission in late April 2022, the cash pool account had a balance of \$349,242.



REPORT OF ACTION

25

FINANCE COMMITTEE

Project: N/A

Type: Third Addendum to Sewer Agreement

Location: Reiles Acres Sewer Agreement

Date of Hearing: 9-26-2022

<u>Routing</u>	<u>Date</u>
City Commission	<u>10-3-2022</u>
Project File	<u> </u>

Jim Hausauer, Water Reclamation Utility Director, presented attached memo describing a proposed Third Addendum to Sewer Agreement with the City of Reiles Acres. In 1998, the Cities of Fargo and Reiles Acres entered into an agreement in which Fargo would provide sewer services for the residents of Reiles Acres. The original agreement included the construction of a 6" force main that extends from the Reiles Acres corporate lime to a 36" collector sewer on 19th Avenue North in Fargo. This 6" force main was upsized by the City of Fargo for potential future growth in this area. The agreement allowed for up to 300 service connections with Fargo Water Reclamation (WRF) staff providing operation and maintenance (O/M) of Reiles Acres one lift station.

The agreement has had two previous addendums to include:

- *Addendum #1 (2003) - Added an additional lift station (2) for the WRF staff to provide O/M.
- *Addendum #2 (2016) - Added an additional lift station (3) for the WRF staff to provide O/M.
 - Reduced the Reiles Acres surcharge to \$9.35 per household.
 - Eliminate Fargo's responsibility to pump Reiles Acres septic tanks.
 - Keep 45th Street language separate from the sewer agreement.
 - ET, Zoning & Annexation language to coincide with the sewer agreement.

Third Addendum

The Third Addendum to Sewer Agreement will include:

- 1). An additional 4th (fourth) sanitary lift station for WRF staff to provide O/M. Historically it has been common practice to include newly constructed lift stations to the original agreements of our outside users
- 2). A pipeline capacity/ownership exchange. Reiles Acres will transfer ownership of a 6" force main located on 52nd Ave North/west of and crossing I-29 (Reiles Acres will no longer need this force main and will benefit Fargo). In exchange for the upsized capacity of the 8" force main that that extends south along 45th Street to the 19th Ave. N sewer collector (Fargo will no longer need this capacity & will benefit Reiles Acres).
- 3). This addendum will also increase the number of service connections. The original agreement allowed for 300 users/connections. Reiles Acres would like to increase that by an additional 300 connections due to growth and a proposed new development to the north.

Attached is a map of the new service area and the pipelines associated with this addendum. The total # of future connections in this development will exceed the number of allowable users (300) spelled out in the original agreement and will be increased by 300 with this addendum. Note: the new rate & surcharge revenue at full buildout of the new develop alone will exceed ~\$111,000/year.

MOTION:

On a motion by Steve Sprague, seconded by Mike Redlinger, the Finance Committee voted to approve the Third Addendum to Sewer Agreement with the City of Reiles Acres.

REPORT OF ACTION

UTILITY COMMITTEE

Project: N/A

Type: Third Addendum to Sewer Agreement

Location: Reiles Acres Sewer Agreement

Date of Hearing: 9-13-2022

<u>Routing</u>	<u>Date</u>
City Commission	<u>10-3-2022</u>
Project File	<u> </u>

Jim Hausauer, Water Reclamation Utility Director, presented attached memo describing a proposed Third Addendum to Sewer Agreement with the City of Reiles Acres. In 1998, the Cities of Fargo and Reiles Acres entered into an agreement in which Fargo would provide sewer services for the residents of Reiles Acres. The original agreement included the construction of a 6" force main that extends from the Reles Acres corporate lime to a 36" collector sewer on 19th Avenue North in Fargo. This 6" force main was upsized by the City of Fargo for potential future growth in this area. The agreement allowed for up to 300 service connections with Fargo Water Reclamation (WRF) staff providing operation and maintenance (O/M) of Reiles Acres one lift station.

The agreement has had two previous addendums to include:

- *Addendum #1 (2003) - Added an additional lift station (2) for the WRF staff to provide O/M.
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- Reduced the Reiles Acres surcharge to \$9.35 per household.
- Eliminate Fargo's responsibility to pump Reiles Acres septic tanks.
- Keep 45th Street language separate from the sewer agreement.
- ET, Zoning & Annexation language to coincide with the sewer agreement.

Third Addendum

The Third Addendum to Sewer Agreement will include:

- 1). An additional 4th (fourth) sanitary lift station for WRF staff to provide O/M. Historically it has been common practice to include newly constructed lift stations to the original agreements of our outside users
- 2). A pipeline capacity/ownership exchange. Reiles Acres will transfer ownership of a 6" force main located on 52nd Ave North/west of and crossing I-29 (Reiles Acres will no longer need this force main and will benefit Fargo). In exchange for the upsized capacity of the 8" force main that that extends south along 45th Street to the 19th Ave. N sewer collector (Fargo will no longer need this capacity & will benefit Reiles Acres).
- 3). This addendum will also increase the number of service connections. The original agreement allowed for 300 users/connections. Reiles Acres would like to increase that by an additional 300 connections due to growth and a proposed new development to the north.

Attached is a map of the new service area and the pipelines associated with this addendum. The total # of future connections in this development will exceed the number of allowable users (300) spelled out in the original agreement and will be increased by 300 with this addendum. Note: the new rate & surcharge revenue at full buildout of the new develop alone will exceed ~\$111,000/year.

MOTION:

On a motion by Troy Hall, seconded by Terry Ludlum the Utility Committee voted to approve the Third Addendum to Sewer Agreement with the City of Reiles Acres.

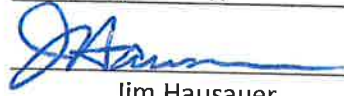
COMMITTEE:

Present Yes No Unanimous X

X
Proxy

Denise Kolpack, City Commissioner	X	X		
Terri Gayhart, Director of Finance				
Brian Ward, Water Plant Supt.	X	X		
Mark Miller, Water Reclamation Plant Supt.	X	X		
Bruce Grubb, Temp. PT City Administrator	X	X		
Scott Liudahl, City Forester	X	X		
Terry Ludlum, Solid Waste Utility Director	X	X		
Jim Hausauer, Water Reclamation Utility Dir.	X	X		
Troy Hall, Water Utility Director	X	X		
Ben Dow, Public Works Operations Director	X	X		
Brenda Derrig, City Engineer	X	X		
Dan Portlock, Water Utility Engineer	X	X		
Scott Olson, Solid Waste Utility Engineer	X	X		

ATTEST:



Jim Hausauer
Water Reclamation Utility Director

- C: Mayor Mahoney
- Commissioner Strand
- Commissioner Piepkorn
- Commissioner Preston

THIRD ADDENDUM TO SEWER AGREEMENT

(City of Fargo and City of Reile's Acres)

THIS THIRD ADDENDUM TO SEWER AGREEMENT is made and entered into this ____ day of ____, 2022, by and between the City of Fargo, a North Dakota municipal corporation, hereinafter "Fargo", and City of Reile's Acres, a North Dakota municipal corporation, hereinafter "Reile's Acres".

WHEREAS, the parties have entered into a Sewer Agreement dated March 23, 1998 (hereinafter the "Sewer Agreement"); and

WHEREAS, the parties have entered into an Addendum to Sewer Agreement dated April 30, 2003 (hereinafter the "First Addendum"); and

WHEREAS, the parties have entered into a Second Addendum to Sewer Agreement dated May 9, 2016 (hereinafter the "Second Addendum"); and

WHEREAS, since the 2016 Second Addendum, Reile's Acres desires to construct an additional lift station which will be the fourth total sanitary lift station which provides services to, or for the benefit of, Reile's Acres and, in addition, the parties wish to modify the arrangements for routine and non-routine maintenance of this additional lift station along with the pre-existing three lift stations contemplated in the Sewer Agreement as amended by the First and Second Addendum;

WHEREAS, the original Sewer Agreement provided a maximum number of 300 total properties could be served pursuant to the Sewer Agreement. Reile's Acres desires to increase the maximum of total properties which can be served pursuant to the Sewer Agreement to 600 properties;

WHEREAS, there is a six-inch force main located on 52nd Avenue North/West of and crossing Interstate 29 which was constructed by Reile's Acres. This portion of six-inch force main is presently owned by Reile's Acres. In addition, the City of Fargo has upsized capacity of an 8-inch force main that extends south along 45th street to the 19th Ave. N. sewer collector. The City of Fargo has determined it no longer needs the upsized capacity and desires to allow Reile's Acres the right to the entire 8 inch force main capacity in return for ownership and rights to the 6 inch force main adjected to 52nd Ave N. as fully described in Exhibit "C."

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, the Sewer Agreement as amended by the Addendum and Second Addendum is hereby further amended as follows:

Section One. Paragraph 4 of the Sewer Agreement , as amended by Paragraph 1 of the Addendum and Paragraph 1 of the Second Addendum is hereby amended to read as follows:

4. Fargo shall be responsible for the operation, maintenance, and repair of the force main connection with the 36 inch collector sewer as referred to in paragraph 1 in the agreement, and as reflected in "Exhibit B" attached hereto and incorporated herein by reference. Fargo shall also be responsible for the operation and routine maintenance of Reile's Acres existing life stations (#50,

#52, and #55) as well as the newest lift station (#____). Such operation and routine maintenance shall include, but is not limited to, and is subject to the limitation hereinafter set forth:

- A. Regular inspection and maintenance of the lift stations (4)
- B. Eliminate the septic tank pumping requirements by the City of Fargo. Reile's Acres will be responsible for septic tank pumping.
- C. Payment of electric operation cost of the lift stations (4)
- D. Maintenance of a 24-hour high level radio alarm system and lift station telemetry.

For the purposes of this agreement, routine maintenance of Reile's Acres lift stations as described in subparts A, C, and D above shall be defined as maintenance not exceeding (*for the four lift stations*) \$5,000 annually. Any cost over said amount shall be Reile's Acres responsibility. Reile's Acres shall be responsible for any capital improvements as well as major repairs to its lift stations (4) including, but not limited to, replacement of pumps. If necessary, however, Reile's Acres shall bring the lift stations up to an acceptable (to Fargo) operating condition prior to the agreement approval.

Section 2. Paragraphs 2 and 7 of the Sewer Agreement is hereby amended to read as follows:

2. The entire cost of installation of said six-inch force main, including engineering and contingencies, will be Reiles Acre's. The cost of installation shall include, but is not limited to, lift station telemetry. In addition, Reiles Acres shall pay Fargo four (4) percent of the construction amount as an oversight fee. In the event Fargo's engineering staff is selected, Fargo will charge normal engineering charges (ten (10) percent of all construction costs) and the four (4) percent oversight fee will be waived. In the event Fargo should desire to increase the size of the force main from six inches, in order to provide capacity for further sewage hook-ups outside Reiles Acre's city limits, any and all costs incurred to increase the pipe size, including but not limited to increased pipe costs, engineering, and oversight fees, shall be borne by Fargo. Provided, however, any hookups Fargo allows outside of Reiles Acres' city limits shall not interfere with the 600 home capacity granted to Reiles Acres as described in paragraph 7 below.

7. Fargo will submit a bill to Reiles Acres for all properties being furnished sewer services which number in total 70+. Payment will be due within thirty (30) days after the billing, after which time Fargo may add interest to the charges at a rate of 10 percent per annum, unless Fargo establishes a rate of interest to charge its own residents for delinquent sewer bills, in which case the rate set for the City of Fargo residents will be the interest rate assessed under this agreement. Reiles Acres shall have responsibilities of billing and collecting from its residents or properties served. The parties agree that only properties included at this time within Reiles Acres' corporate limits, as well as additional properties (in the event Reiles Acres' corporate limits are extended), are covered by this agreement. In any event, the total number of properties served under this Agreement shall not exceed 600. Reiles Acres agrees to notify Fargo intended hook-up of any additional properties at least thirty (30) days prior to issuing a certificate of occupancy for such additional property or properties.

Section 3. Paragraph 1 of the Sewer Agreement is hereby amended to read as follows:

1. Fargo will construct a six-inch force main from its existing lines to the corporate limits of Reiles Acres on a route mutually agreed to by the parties. It is presently intended that the six-inch force main will begin at 45th Street and 35th Avenue North and will go under 45th Street (bore under asphalt), thence proceed south along 45th Street to 19th Avenue North. The line would then be installed east along the north side of 19th Avenue North to the sanitary sewer manhole on the 36 inch collector sewer one half mile east of 45th Street. The route as finally determined shall be shown on Exhibit "A" attached hereto and incorporated herein by reference.

The parties agree that beginning on the effective date of the Third Addendum to Sewer Agreement, Reile's Acres will transfer any ownership it has regarding a six-inch force main located at or around 52nd Avenue North/West of and crossing Interstate 29 as depicted on Exhibit "C" to Fargo. Fargo has upsized capacity of a 6 inch force main to an 8 inch force main capacity that extends south along 45th street to the 19th Ave. N. sewer collector as depicted on Exhibit "C". In exchange for Reile's Acres transferring ownership regarding the 6 inch force main described above to Fargo, Fargo will allow Reile's Acres rights to use all of the 8 inch force main extending along 45th street to the 19th Ave. N. sewer collector.

Section 4. In all other respects, the Sewer Agreement, as modified by the Addendum and Second Addendum, shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Third Addendum to Sewer Agreement the day and year last executed below.

CITY OF FARGO,
a North Dakota Municipal Corporation

By: _____
Dr. Timothy J. Mahoney, Mayor

ATTEST:

Steve Sprague, City Auditor

CITY OF REILE'S ACRES,
a North Dakota Municipal Corporation

By: _____
_____, Mayor

ATTEST:

_____, City Auditor

MEMORANDUM

To: Finance Committee
From: Jim Hausauer, Water Reclamation Utility Director *JH*
Date: September 26, 2022
Subject: Third Addendum to the Reiles Acres Sewer Agreement

Background

In 1998, the Cities of Fargo and Reiles Acres entered into an agreement in which Fargo would provide sewer services for the residents of Reiles Acres. The original agreement included the construction of a 6" force main that extends from the corporate limits of Reiles Acres that begins on 45th Street and 35th Avenue North and proceeds south to a 36" collector sewer on 19th Avenue North. This 6" force main was upsized by the City of Fargo for potential future growth in this area. The agreement allowed for up to 300 service connections with Fargo Water Reclamation (WRF) staff providing operation and maintenance (O/M) of Reiles Acres one lift station. The agreement has had two previous addendums to include:

*Addendum #1 (2003) - Added an additional lift station (2) for the WRF staff to provide O/M.

*Addendum #2 (2016) - Added an additional lift station (3) for the WRF staff to provide O/M.

-Reduced the Reiles Acres surcharge to \$9.35 per household.

-Eliminate Fargo's responsibility to pump Reiles Acres septic tanks.

-Keep 45th Street language separate from the sewer agreement.

-ET, Zoning & Annexation language to coincide with the sewer agreement.

Third Addendum

Attached you will find a request for the Third Addendum to Lease of Rights to Sewer System to include:

1). *An additional 4th (fourth) sanitary lift station for WRF staff to provide O/M (Exhibit A). Historically it has been common practice to include newly constructed lift stations to the original agreements of our outside users.*

2). *A pipeline capacity/ownership exchange. Reiles Acres will transfer ownership of a 6" force main located on 52nd Ave North/west of and crossing I-29 (Exhibit B) (Reiles Acres will no longer need this force main and will benefit Fargo). In exchange for the upsized capacity of the 8" force main that that extends south along 45th Street to the 19th Ave. N sewer collector (Exhibit C) (Fargo will no longer need this capacity & will benefit Reiles Acres).*


3). *This addendum will also increase the number of service connections. The original agreement allowed for 300 users/connections. Reiles Acres would like to increase that by an additional 300 connections due to growth and a proposed new development to the north (Exhibit A).*

Attached is a map of the new service area and the pipelines associated with this addendum. The total # of future connections in this development will exceed the number of allowable users (300) spelled out in the original agreement and will be increased by 300 with this addendum. Note: the new rate & surcharge revenue at full buildout of the new develop alone will exceed ~\$111,000/year.

Recommended Motion

Approve attached "Third Addendum to Lease of Rights to Sewer System" to the original Reiles Acres Sewer Agreement.

MEMORANDUM

To: Utility Committee
From: Jim Hausauer, Water Reclamation Utility Director 
Date: September 13, 2022
Subject: Third Addendum to the Reiles Acres Sewer Agreement

Background

In 1998, the Cities of Fargo and Reiles Acres entered into an agreement in which Fargo would provide sewer services for the residents of Reiles Acres. The original agreement included the construction of a 6" force main that extends from the corporate limits of Reiles Acres that begins on 45th Street and 35th Avenue North and proceeds south to a 36" collector sewer on 19th Avenue North. This 6" force main was upsized by the City of Fargo for potential future growth in this area. The agreement allowed for up to 300 service connections with Fargo Water Reclamation (WRF) staff providing operation and maintenance (O/M) of Reiles Acres one lift station. The agreement has had two previous addendums to include:

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-Eliminate Fargo's responsibility to pump Reiles Acres septic tanks.

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-ET, Zoning & Annexation language to coincide with the sewer agreement.

Third Addendum

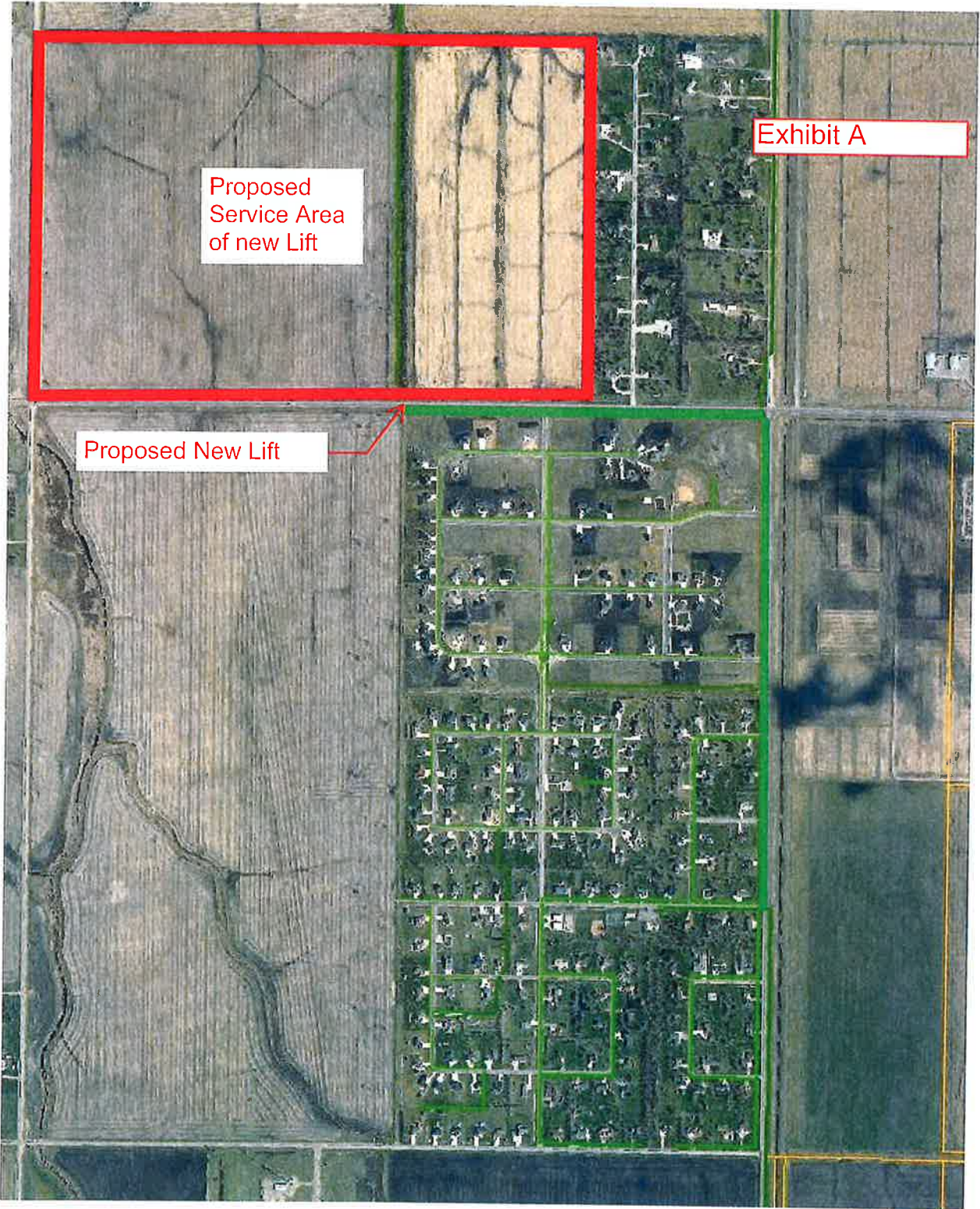
Attached you will find a request for the Third Addendum to Lease of Rights to Sewer System to include:

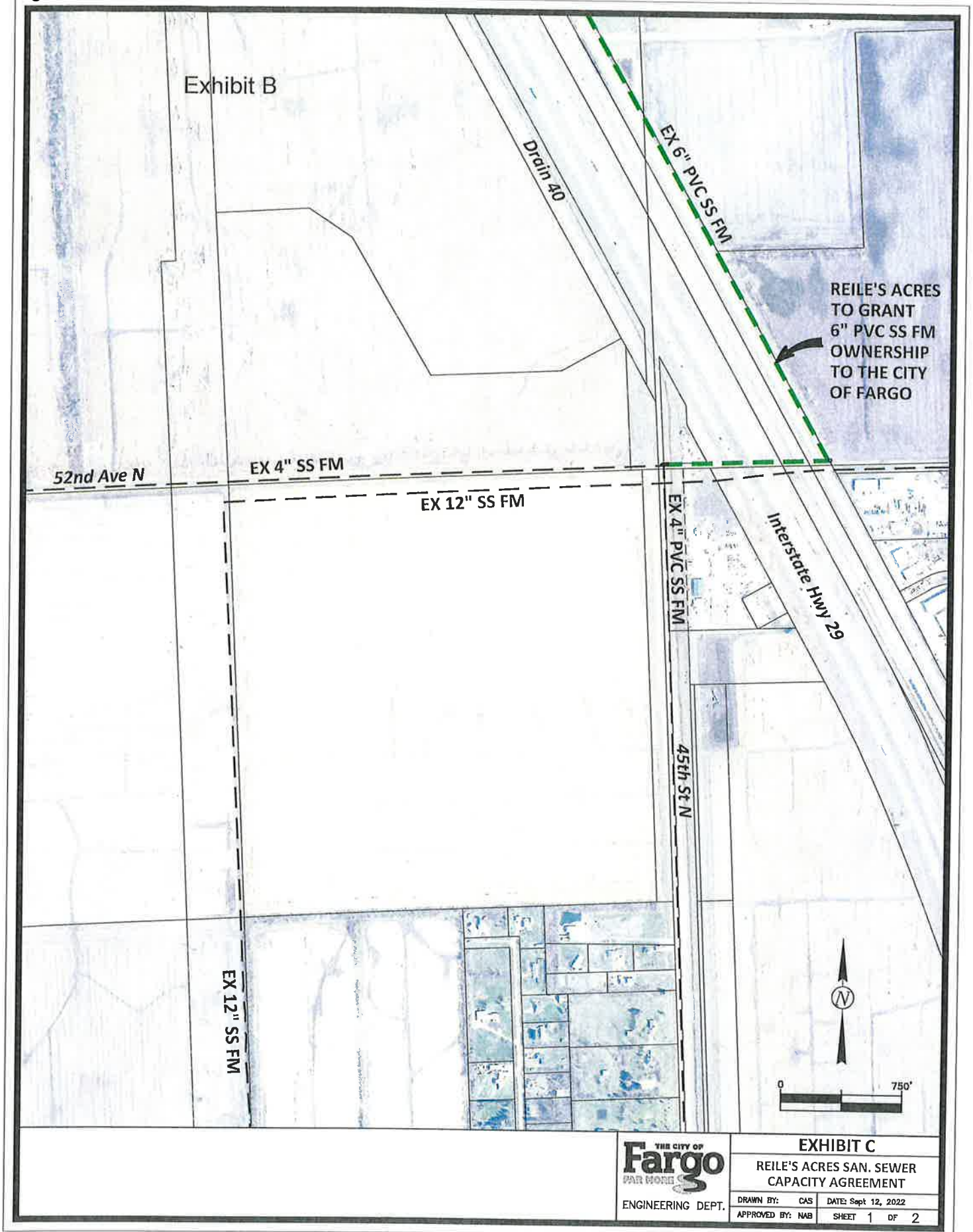
- 1). An additional 4th (fourth) sanitary lift station for WRF staff to provide O/M. Historically it has been common practice to include newly constructed lift stations to the original agreements of our outside users.
- 2). A pipeline capacity/ownership exchange. Reiles Acres will transfer ownership of a 6" force main located on 52nd Ave North/west of and crossing I-29 (Reiles Acres will no longer need this force main and will benefit Fargo). In exchange for the upsized capacity of the 8" force main that that extends south along 45th Street to the 19th Ave. N sewer collector (Fargo will no longer need this capacity & will benefit Reiles Acres).
- 3). This addendum will also increase the number of service connections. The original agreement allowed for 300 users/connections. Reiles Acres would like to increase that by an additional 300 connections due to growth and a proposed new development to the north.

Attached is a map of the new service area and the pipelines associated with this addendum. The total # of future connections in this development will exceed the number of allowable users (300) spelled out in the original agreement and will be increased by 300 with this addendum. Note: the new rate & surcharge revenue at full buildout of the new develop alone will exceed ~\$111,000/year.

Recommended Motion

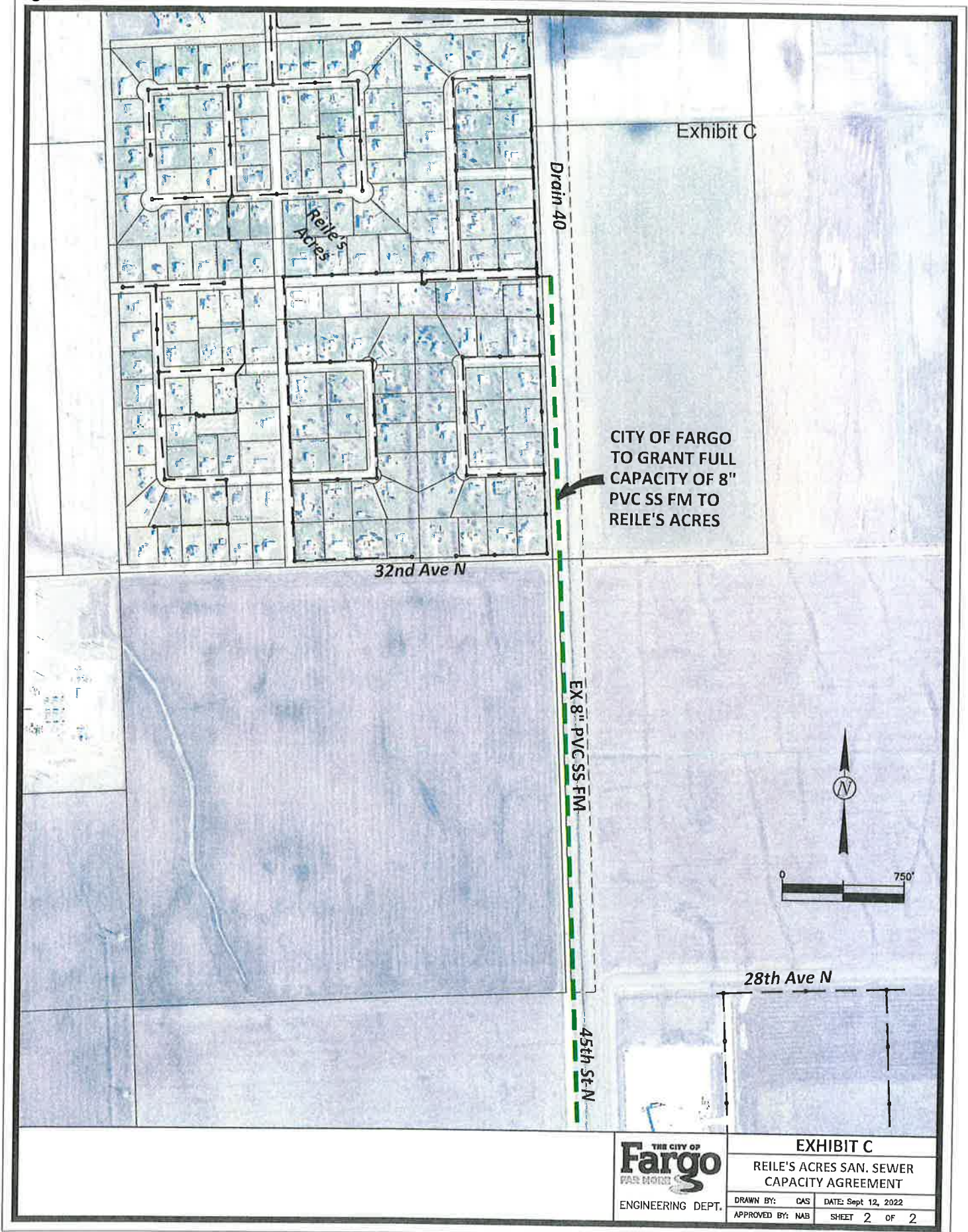
Approve attached "Third Addendum to Lease of Rights to Sewer System" to the original Reiles Acres Sewer Agreement.





THE CITY OF
Fargo
FOR MORE
ENGINEERING DEPT.

EXHIBIT C
REILE'S ACRES SAN. SEWER
CAPACITY AGREEMENT
DRAWN BY: CAS DATE: Sept 12, 2022
APPROVED BY: NAB SHEET 1 OF 2



CITY OF FARGO
TO GRANT FULL
CAPACITY OF 8"
PVC SS FM TO
REILE'S ACRES

THE CITY OF
Fargo
FAR MORE
ENGINEERING DEPT.

EXHIBIT C	
REILE'S ACRES SAN. SEWER CAPACITY AGREEMENT	
DRAWN BY: CAS	DATE: Sept 12, 2022
APPROVED BY: NAB	SHEET 2 OF 2

Entity	Sewer Agreement	Septic Tanks	Fargo Rate	Monthly O & M	Monthly Capital	Sewer Connec-
Highland Park	Nov 78 with Fargo		\$21.50	100%		101
Amber Plains	Aug 96 with Fargo		\$21.50	\$9.35		11
Reiles Acres	Mar 98 with Fargo		\$21.50	\$9.35		260
Oxbow	May 05 with Fargo		\$21.50	\$15.10		193
Round Hill	May 11 with Fargo		\$21.50	\$9.35		13
Harwood (Brooktree)	March 09 with Fargo		\$21.50	\$9.35	\$2.00	321
Lake Shure	Aug 2010 with Fargo		\$21.50	\$9.35	\$2.00	33
<u>SE Cass Original</u>	Aug 89 with Fargo		\$21.50	\$9.35		
Frontier	Feb 90 with SE Cass & Fargo	78	\$21.50	\$9.35	\$3.15	85
North River	Feb 90 with SE Cass & Fargo		\$21.50	\$9.35	\$3.15	19
Prairie Rose	Feb 90 with SE Cass & Fargo	18	\$21.50	\$9.35	\$3.15	21
Briarwood	Mar 90 with SE Cass & Fargo		\$21.50	\$9.35	\$3.15	18
<u>SE Cass Subdivisions</u>			\$21.50	\$9.35	\$3.15	171
Selkirk Settlement	SE Cass		\$21.50	\$9.35	\$3.15	
South Haven Sub.	SE Cass	22	\$21.50	\$9.35	\$3.15	
Chrisan Estates	SE Cass	7	\$21.50	\$9.35	\$3.15	
Chrisan Glen Sub.	SE Cass	5	\$21.50	\$9.35	\$3.15	
Melbys/Grandbergs Sub.	SE Cass	38	\$21.50	\$9.35	\$3.15	
Forest River Sub.	SE Cass		\$21.50	\$9.35	\$3.15	
Rural Area #1	SE Cass		\$21.50	\$9.35	\$3.15	
Heritage Hills Sub.	SE Cass		\$21.50	\$9.35	\$3.15	
Wild Rice	July 94 with SE Cass & Fargo		\$21.50	\$9.35	\$3.15	
<u>North 81 Agreements</u>						
Gibb Realty, Routledge	Jan 05 with Fargo		\$21.50	\$0.00		2
Horvick, Oye, Kerbaugh	Jan 05 with Fargo		\$21.50	\$0.00		3
<u>Volumetric</u>						
West Fargo	July 2017 with Fargo		\$3.00/1000	\$0.00		
Horace	May 2017 with Fargo		\$3.00/1000	\$0.00		

26

September 29, 2022

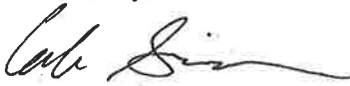
City Commission
225 N 4th Street N
Fargo, ND 58102

SUBJECT: Resolution to Award a Three-Year Contract with Optional Two-Year Extension for Ground Transportation Center and Metro Transit Garage Custodial Services to Ambassador Cleaning.

RECCOMENDATION: It is respectfully requested that they Mayor and Commission award a three-year contract with an optional two-year extension for Ground Transportation Center and Metro Transit Garage custodial services to Ambassador Cleaning and authorize the Mayor and City Administrator to enter into and execute a contract.

BACKGROUND/KEY POINTS: Fargo's contract for Ground Transportation Center and Metro Transit Garage custodial services has expired. Fargo and Moorhead published a joint Request for Proposals (RFP) for custodial services. One complete proposal was received and reviewed. Both Cities will enter into a single contract with the awarded contractor.

Submitted By:



Cole Swingen, Assistant Transit Director – Operations

CONTRACT
Between the City of Fargo, North Dakota and
Ambassador Cleaning for
GROUND TRANSPORTATION CENTER & METRO TRANSIT GARAGE
CUSTODIAL SERVICES
October 10, 2022 through October 9, 2027

THIS CONTRACT, is made this 3rd day of October, 2022, by and between the City of Fargo, North Dakota, hereinafter referred to as the "City", and Ambassador Cleaning, hereinafter referred to as the "Contractor".

WHEREAS, the City is in need of custodial services for the Ground Transportation Center (GTC) and the Metro Transit Garage (MTG) and the Contractor agrees to provide such services according to the terms of this Contract; and

WHEREAS, The Federal Transit Administration may be providing federal operating assistance for this project in an estimated expected amount not to exceed 50 percent; the Catalog of Federal Domestic Assistance (CFDA) number is 20.507; and

WHEREAS, the City and the Contractor wish to set forth the procedures, conditions and agreements between the parties; and

NOW THEREFORE, BE IT AGREED between the City and the Contractor:

1. THE WORK

The work under this contract will include custodial services for the GTC and the MTG. Tasks will include a variety of janitorial service tasks as specified in the proposal (Exhibit A) signed by the Contractor and hereto attached and hereby made a part of this Contract (the "Proposal"), said work to be done and performed in accordance with the Specifications on file in the office of the City which Specifications are hereby made a part of this Contract.

2. TERM

The Contractor covenants and agrees that it will commence and continue the work during the period from October 10, 2022, through October 9, 2025, with an optional two-year written renewal agreed to by both parties of October 10, 2025 through October 9, 2027, and will have completed the work in every aspect to the satisfaction and approval of the City.

3. MATERIALS

The Contractor hereby agrees to furnish all materials (except such as are to be furnished by the City), all necessary tools and equipment, and to do and perform all the work and labor, for the price and compensation set forth and specified in the proposal signed by the Contractor.

4. PRICE

The City agrees to pay and the Contractor agrees to receive and accept payment in accordance with the prices proposed for the unit items as set forth in the conformed copy of the Proposal hereto attached, which prices shall conform to those in the accepted Proposal. Payments will be made as provided in the Specifications.

5. ATTACHMENTS

The Contract consists of the following component parts, all of which are fully a part of this Contract as if herein set out verbatim, or if not attached, as if hereto attached, to wit:

1. Advertisement for Proposals dated April 21, 2022
2. Request for Proposals Scope of Work Ground Transportation Center & Metro Transit Garage Custodial Services dated April 28, 2022
3. All Addendums and Attachments identified in the Request for Proposal (not specified below)
4. Contractor Price Proposal Summary dated May 26, 2022
5. This Contract
6. Federal Contract Clauses
7. Debarment and Suspension Certification (signed by Contractor)
8. Lobbying Certification (signed by Contractor)

6. STATE AND FEDERAL FUNDING

It is understood that the validity of this Contract between the City and the Contractor is contingent upon the receipt by the City of State and Federal funding for the operating deficit of the transit system during the time period specified herein. It is further understood that any reduction or loss of State or Federal funding for the operations of the transit system shall be cause for the City, upon thirty (30) days written notification to the Contractor, to terminate this Contract.

7. MODIFICATIONS

Both parties will abide by all provisions set out within and agreed upon and detailed within the Proposal, Specifications and all Attachments. Any changes to the provisions of this Contract must be made with a written document that is signed by both parties.

8. COMPLIANCE WITH LAWS AND REGULATIONS

The Contractor, by submission of its Proposal, assures the City that it will comply with, and be bound by, all applicable federal, state, and local laws, rules, and ordinances.

9. TERMINATION PROVISIONS

- a) The City reserves the right to terminate this agreement for cause by written notices to the Contractor. Cause for termination will be documented failure(s) of the Contractor to provide services in the quantity and/or quality required by the agreement. Contractor will, within ten (10) days, correct the failure or present the City with a plan to correct the failure. In the event Contractor does not correct failure or complete its plan to correct failure, then the City may terminate this agreement by notifying Contractor of date of termination. Said termination shall not diminish the City of Fargo's rights under law or equity.
- b) This Contract may be terminated for cause by either party upon seven (7) days' written notice in the event of substantial failure to perform through no fault of the terminating party.
- c) In the event of any termination, City of Fargo shall pay the agreed rate only for services delivered up to the date of termination. City of Fargo has no obligation to Contractor, of any kind, after the date of termination.

10. EQUAL OPPORTUNITY

The Contractor, as a recipient of City funds, must not discriminate against any worker, employee, applicant, or any member of the public because of race, color, sex, gender, sexual orientation, religion, age, marital status, national origin, veteran's status, physical or mental disability or perceived disability, public assistance status, or other criteria protected by law.

11. INDEMNIFICATION

The Contractor will hold harmless, indemnify and defend the City from any and all claims arising out of or in any way related to the work under this Contract. Said indemnification will include, inter alia, attorneys' fees, damages, whether punitive, economic or compensatory, and costs and disbursements. However, this paragraph will not apply to suits against the City arising out of the City's negligence or intentional acts, or those of its employees, agents or designees.

12. LICENSURE & INSURANCE

The Contractor must be properly licensed to do business in Fargo during the entire term of this Contract. The Contractor must maintain the appropriate Worker's Compensation and Employer's Liability Insurance and must annually provide the City with a Certificate of Liability Insurance describing the limits of coverage and naming the City of Fargo as an additional insured party. By signing this Contract, the Contractor certifies that it will maintain the specified coverage during the entire term of the Contract. Any Cancellation Policy statement must read: "Should any of the above described policies be canceled or modified before the expiration date thereof, the issuing company will mail forty-five (45) calendar days written notice to the certificate holder named as the additional insured, but shall impose no obligation or liability of any kind upon the company, its agents, or representatives."

13. GOVERNING LAW.

This Contract has been made and entered into under the laws of the State of North Dakota, and said laws will control its interpretation. The parties agree the venue for any litigation arising out of this Contract will be in state District Court within Cass County, North Dakota, and the parties waive any objection to personal jurisdiction.

14. SUBCONTRACTORS

Subcontractors are not permitted under this Contract.

The date of commencement of the Contractor's performance shall be the date of signature by the City of Fargo, North Dakota authorized personnel or October 10, 2022, whichever event occurs later.

CITY OF FARGO

Dated: _____

By _____
Timothy J. Mahoney, Mayor

Dated: _____

Attest _____
Steve Sprague, Auditor

CONTRACTOR
AMBASSADOR CLEANING.

Dated: _____

By _____
Ned Halilovic, Owner

Ambassador Cleaning

Section I:

Response to Request for Proposal

To provide contract cleaning services for Ground Transportation Center &
Metro Transit Garage

650 23rd Street N. (502 NP Avenue)

Fargo, ND 58102

RFP Number:

Submitted to:

Julie Bommelman

Submitted by:

**Nedžad Halilovic, President
Ambassador Cleaning Inc.**

Executive Summary

Ambassador Cleaning Inc. is pleased to offer our bid to provide contract cleaning services for Ground Transportation Center (GTC) and Metro Transit Garage (MTG). We have been providing outstanding, cost-efficient cleaning services to the Fargo-Moorhead area for over 21 years and have an exceptional track record of meeting and exceeding customer wants and demands. Our current client base includes Scheel's All Sports, Scheel's Corporate, Sanford Hospital, BSE, Bell Bank's Properties, PRG Properties, CNH Industrial, Kilbourne Group properties, Ulteig and Moore Engineering and many others. Our tireless work ethic, abundance of resources and experience, and ability to meet the unique needs of each of our clients have made us a local favorite and garnered strong recommendations from many of the businesses we service, as well as three Chamber Choice awards from the F-M Chamber of Commerce. We are equipped to address any cleaning job including, but not limited to, vacuuming, carpet cleaning, general cleaning, hard surface floor maintenance, trash and garbage removal, recycling, and handling hazardous material. As a local company, we are on call 24-hours a day with a staff of 50 hard-working individuals, most of which have over 5 years of janitorial experience.

Ambassador Cleaning Inc. is a company that has been built from the ground up, with a foundation of hard work, honesty, reliability, and skill. We are more than prepared to meet any and all of the specifications that the contract with GTC and MTG demands and excited to have the opportunity to work with a city company of such stature and respectability.

I. Company Information, Corporate Background

Ambassador Cleaning Inc.
102 W Beaton Drive
West Fargo, ND 58078

PO Box 368
Fargo, ND 58107

www.ambassadorcleaning.com

Primary contact:

Ned Halilovic
Office: 701-412-4776
Cell: 701-491-2908
E-mail: ned@ambassadorcleaning.com

Secondary contact:

Mirela Halilovic
Office: 701-412-4776
Cell: 701-491-3137
E-mail: mirela@ambassadorcleaning.com

Ambassador Cleaning Inc. began with a contract for the cleaning services of one Restaurant, Timberlodge Steakhouse, and grew to become a full janitorial company through positive word of mouth and community involvement. Owner Ned Halilovic in 2007 eventually purchased a franchise company, Rainbow Restoration and Cleaning, which is certified to do a WATER, FIRE, SMOKE restoration. Also, Rainbow specialized in mold, trauma, COVID-19, and hard surface and carpet cleaning. Ambassador Cleaning continues to grow and gain satisfied clients, establishing the company as a fixture in the Fargo-Moorhead area.

Ambassador is an incorporated company established on August 1, 2001, and is licensed to operate in North Dakota, Minnesota, and South Dakota.

Insurance: Ambassador Cleaning Inc. is currently insured by Bell Insurance for up to five-million dollars, but is willing to adjust this as the contract demands.

(After award of contract we will add GTC and MTG to certificate holder per your request)

II. Financial Stability

Ambassador cleaning began with a single \$1,000/month account and has exponentially over the 21 years grow to operation of \$3.5 million per year. Ambassador Cleaning is also currently debt free.

(Financial details available per request.)

III. Corporate Experience and References

In the last 21 years Ambassador Cleaning has provided janitorial services for some of the area's leading businesses including Scheel's All Sports, Scheel's Corporate, Sanford Hospital, CNH Industrial, Bell Bank's, and many other respectful names of our community.

Ned Halilovic also owns Rainbow Cleaning and Restoration, which may be sub-contracted to. Any additional sub-contractors will be managed as follows:

- a. A project office will be established to effectively support the needs of the sub-contractor.
- b. Effective channels of communication will be clearly defined and established.
- c. A Statement of Work will be developed jointly by the team which will clearly define all services, responsibilities, authorities, deliverables, and content of the sub-contractor, as well as all constraints, including scheduling and budget.
- d. Each sub-contractor will have requirements for quality clearly identified in the Statement of Work, including the requirement to allow independent quality inspections of materials and processes.

Most of Ambassador Cleaning's employees have over 5 years of janitorial experience. Many employees are certified to do flood and fire restorations and are trained in industrial spills and trauma situations. They have done numerous jobs of floor stripping and waxing as well as carpet cleaning and general maintenance. Ambassador is equipped with ample resources to address any janitorial situation.

IV. Project Management Team, Organization and Staffing

A janitors with 5 years of janitorial experience will operate as a cleaning technician and work between the hours of 5pm – 1am M-F and either Saturday or Sunday. The account supervisor will be responsible for weekly visits and operations, making sure jobs are being executed with utmost quality and efficiency. Our staff is large enough to provide back up if the need arises.

Our philosophy is simple: Always satisfy the customer. We do this through hard work, punctuality, thoroughness, and keeping an open line of communication with our clients. We have developed a series of specialized inspection and performance reports that are provided to you on a regular basis to keep you informed. We are always happy to oblige all of your needs and suggestions.

Our professionally skilled team leaders, lead persons, supervisors, and management personnel constantly monitor and inspect our work to ensure quality results. We have developed our own in-house training programs using special audio-visual materials, classroom instruction, workbooks, and practical hands-on demonstration programs that prepare our people to perform their duties in a skilled, professional manner.

V. Quality Management Program

Ambassador Cleaning is in the process of implementing a Quality Management Program. Management prides itself in taking immediate and serious action if any problems arise. Employees responsible are first given a warning and, if the problem continues, replaced.

(MSDS sheets available per request)

VI. Management Information Systems and Reports

Tenant complaints and service requests are kept on file and reviewed several times per week to be sure that problems are addressed promptly and satisfactorily.

VII. Cost Controls and Accountability

Ambassador Cleaning employees are trained and equipped to perform their duties effectively and cost efficiently, within the parameters outlined in our price quotes. Any out-of-scope work will be billed at \$55/hour with minimum of 2 hour. Strip and wax services at \$1.00/sq. ft. and carpet cleaning \$0.28/sq. ft. A net 30 day pay term is acceptable.

With a staff of around 50 employees, we can guarantee that any absences will be covered, and replacements can be made as necessary. Our employee turn-over rate is very low, as most of our staff has been with us for over 5 years.

Action is constantly being taken to implement cost reduction and efficiency and any suggestions by our clients are welcomed.

VIII. Partnering

Our approach to partnering goes back to our philosophy: Satisfy the customer. We are at your service and will do whatever it takes to cover your needs, including, but certainly not limited to, all those responsibilities covered in the contract. The Customer's responsibility is simply to communicate its needs. Ambassador Cleaning is only local at this time but is willing and eager to expand into other areas of the continent.

Ambassador Inc.
 PO Box 368
 Fargo, ND 58107 US
 +1 7014124776
 ned@ambassadorcleaning.com
 www.ambassadorcleaning.com

Ambassador Cleaning

ADDRESS

Metro Transit Garage (MTG)
 650 23rd Street N
 Fargo, ND 58102 USA

SHIP TO

Metro Transit Garage (MTG)
 650 23rd Street N
 Fargo, ND 58102 USA

Estimate 1477

DATE 05/23/2022

ACTIVITY	QTY	RATE	AMOUNT
Commercial Cleaning Metro Transit Garage Commercial Cleaning 6 x week Carpet Cleaning 2 x year Strip and Wax 1 x year Deep Scrub Tile and Wax 1 year	1	2,850.00	2,850.00
Commercial Cleaning Ground Transportation Center (GTC) Commercial Cleaning 6 x week Carpet Cleaning 1 x year Power wash bathrooms 1 x month	1	3,200.00	3,200.00
SUBTOTAL			6,050.00
TAX			0.00
TOTAL			\$6,050.00

Accepted By

Accepted Date

SERVICE SCHEDULE – GROUND TRANSPORTATION CENTER (GTC):

For each item the frequency of the task at the Ground Transportation Center has been identified below:

Services	Daily	Monthly	Quarterly	Twice Yearly	Annually
General Cleaning	X				
Clean Floors	X				
Disinfect	X				
Prepare Floors	X				
Remove Trash	X				
Recycle Designated Items	X				
Clean Stairs	X				
Stripping & Refinish Hard Surface Floors					X
Re-Wax Hard Surface Floors					X
Spray Buff Hard Surface Floors	X				
Shampoo Carpets				X	
Spot Shampoo Carpet in Traffic Wear Areas	X				
Machine Scrub Rest Rooms		X			
Service Rest Rooms and Rest Room Lounges	X				
Clean Drinking Fountains	X				
Restore Furniture to Standard Arrangement	X				
Clean Interior Building & Furnishing Surfaces	X				
Clean Entrance Glass	X				
Perform Routine Attention to Rooms	X				
Report Maintenance Items	X				
Clean Janitorial Closets/Storage	X				
Power Wash Restrooms		X			
Sweep Stairwell	X				
Vacuum Elevator	x				
TOTAL					

Note: The detailed information and estimates are not considered binding to the City of Fargo in the award of this contract.

SERVICE SCHEDULE -- METRO TRANSIT GARAGE:

For each item the frequency of the task at the Metro Transit Garage has been identified below:

Services	Daily	Monthly	Quarterly	Twice Yearly	Annually
General Cleaning	X				
Clean Floors	X				
Disinfect	X				
Prepare Floors	X				
Remove Trash	X				
Recycle Designated Items	X				
Clean Stairs	X				
Stripping & Refinish Hard Surface Floors					
Re-Wax Hard Surface Floors					X
Spray Buff Hard Surface Floors	X				X
Shampoo Carpets				X	
Spot Shampoo Carpet in Traffic Wear Areas	X				
Machine Scrub Rest Rooms, Locker Rooms, & Showers		X			
Service Rest Rooms and Rest Room Lounges		X			
Clean Drinking Fountains	X				
Restore Furniture to Standard Arrangement	X				
Clean Interior Building & Furnishing Surfaces	X				
Clean Entrance Glass	X				
Perform Routine Attention to Rooms	X				
Report Maintenance Items	X				
Clean Janitorial Closets/Storage	X				
TOTAL	X				

Note: The detailed information and estimates are not considered binding to the City of Fargo in the award of this contract.

**PROPOSAL FOR
CUSTODIAL SERVICES
GROUND TRANSPORTATION CENTER
& METRO TRANSIT GARAGE
CITY OF FARGO - TRANSIT OFFICE**

BID PROPOSAL FORM

Sealed proposals must be received by the City of Fargo, ND, by 2:00 p.m. Central Daylight Time on, May 26, 2022, in the Metro Transit Garage, 650 23rd Street North, Fargo, ND 58102.

If additional space is needed, additional sheets may be attached to this form, which must be clearly referenced back to the specific section addressed, for example "1.7-List of Owners and/or Officers of the Organization."

Is your firm or could your firm be certified as a Disadvantaged Business Enterprise (owned and controlled 51% or more by a woman or minority)? Yes No

SECTION 1. FIRM DATA/QUALIFICATIONS

- 1.1 Firm's Name: AMBASSADOR CLEANING
- 1.2 Firm's Address: 102 W. BEATON DR SUITE 200
WEST FARGO, ND 58078
- 1.3 Firm's Phone Number: 701-492-4776
- 1.4 Contact Person (Name & Title): NED HALILOVIC PRESIDENT
- 1.5 Contact Email and Phone Number: neda@ambassadorcleaning.com 701-491-2908
- 1.6 Legal Status of Organization: CORPORATION
(i.e. corporation, non-profit, partnership, sole proprietorship, other)
- 1.7 Date Firm Started Business: July of 2001
- 1.8 List Owners and/or Officers of the Organization:
NEDZAD HALILOVIC, PRESIDENT
MIRELA HALILOVIC, V. PRESIDENT
- 1.9 Description of Organization: Provide a brief description of the major business functions, history and organization structure of the responding organization.
Please see my response to Request for Proposal

1.10 Service References: Provide references from clients for which the respondent organization has provided similar service during the past five (5) years using the forms attached labeled "1.10 - Service References."

1.11 Subcontractors: Provide names, addresses, telephone numbers and role of proposed subcontractors; specify if the firm is a DBE/SBE or not. If more space is needed, attach and label as "1.11 - Subcontractors Information."

Please see my response to Request for Proposal

1.12 Has respondent, or any officer or partner of respondent, failed to complete a contract? If yes, explain.

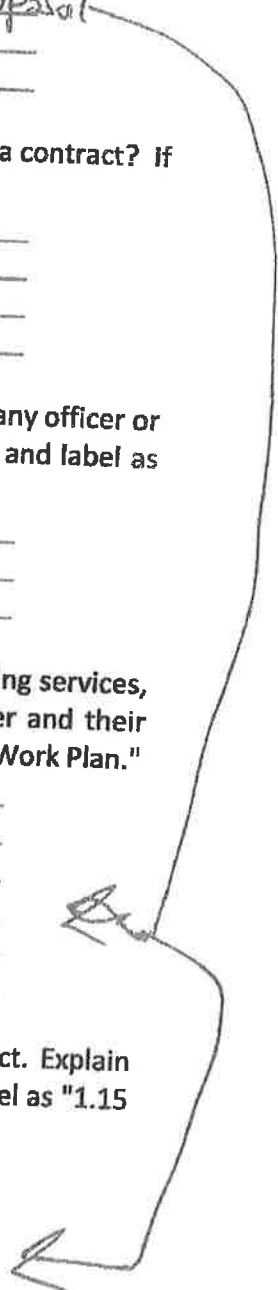
NO

1.13 Pending Litigation: Is any litigation current or pending against respondent or any officer or partner of respondent? If yes, give details. If more space is needed, attach and label as "1.13 - Pending Litigation."

NO

1.14 Describe your firm's strategy and timeline for completing the custodial cleaning services, including personnel resources and equipment. Identify the project manager and their work experience. If more space is needed, attach and label as "1.14 -Service Work Plan."

1.15 Briefly indicate why you consider your firm to be the best to perform this contract. Explain your cleaning approach and methods. If more space is needed, attach and label as "1.15 - Respondent Organization's Ability to Perform Contract."



SECTION 2: INSURANCE

2.1 Insurance: Attach and label 3.2 – Insurance either: 1) Certificates of insurance for the prescribed coverage; or 2) A letter from a reputable insurance agent stating intent to provide insurance for the prescribed coverage.

SECTION 3: BID PROPOSAL & SUPPORTING DATA

3.1 Cost Summary/Bid Price: Based upon the service requirements as detailed in this RFP, complete the tables below:

BID PRICE:

	Ground Transportation Center (GTC)	Metro Transit Garage
Price per month 2022	\$3200	\$2850
Number of months 2022	7	7
2022 Total	\$22,400 ✓	\$19,950
Price per month 2023	\$3300	\$2840
Number of months 2023	12	12
2023 Total	\$39,600 ✓	\$35,280
Price per month 2024	\$3,400	\$3,030
Number of months 2024	12	12
2024 Total	40,800 ✓	\$36,360
Price per month 2025	\$3,500	\$3120
Number of months 2025	12	12
2025 Total	\$42,000 ✓	\$37,440
Price per month 2026	\$3,600	\$3,210
Number of months 2026	12	12
2026 Total	\$43,200 ✓	\$38,520
Price per month 2027	\$3,780	\$3,300
Number of months 2027	5	5
2027 Total	\$18,900	\$39,600
CONTRACT TOTAL	\$206,900	\$207,150

Average number of monthly and annual work hours:

	Ground Transportation Center (GTC)	Metro Transit Garage
Average work hours/month 2022	84	80
Number of months 2022	7	7
2022 Total	588	560
Average work hours/month 2023	96	80
Number of months 2023	12	12
2023 Total	1152	960
Average work hours/month 2024	96	80
Number of months 2024	12	12
2024 Total	1152	960
Average work hours/month 2025	96	80
Number of months 2025	12	12
2025 Total	1152	960
Average work hours/month 2026	96	80
Number of months 2026	12	12
2026 Total	1152	960
Average work hours/month 2027	96	80
Number of months 2027	5	5
2027 Total	480	400
AVG ANNUAL WORK HRS	5676 - 5776	5360 - 5400

Note: The detailed information and estimates are not considered binding to the City of Fargo in the award of this contract.

3.2 Optional Services/Bid Price: Describe any optional and/or innovative services which you offer for consideration, as well as any minimum requirements you wish to exceed. Provide a detailed budget for these optional services on the attached form labeled "3.2-Optional Services/Bid Price."

SECTION 4: COVENANT AGAINST CONTINGENT FEES

The Proposer has () has not () employed any company or person (other than a full-time, bona fide employee working solely for the Proposer) to solicit or secure this Contract and has () has not ()

ADDENDUM #1
REQUEST FOR PROPOSALS
GROUND TRANSPORTATION CENTER & METRO TRANSIT GARAGE
CUSTODIAL SERVICES

Issued May 20, 2022

The following clarifications are provided to assist all proposers in making an adequate interpretation of the provisions of the RFP:

- The Pre-Bid Conference minutes are attached to this addendum.

- **RFP Page 10, Protests to FTA:**
Sections 6.0 – 6.2.3 have been removed from the RFP to clarify that the FTA's involvement in bid protests is limited. The Uniform Guidance, as adopted by DOT, no longer includes the language in 49 C.F.R. §18.36(b)(12) that provided for a direct appeal to FTA of a recipient's final decision on a bid protest.

- **Service Schedule – Ground Transportation Center (GTC), Mid-Day Restroom Cleaning:**
Please complete a separate "bid price" and "average number of monthly and annual work hours tables" for a mid-day GTC restroom cleaning and include it in your sealed price proposal. The mid-day restroom cleaning will be required to be done between 11:00 a.m. and 2:00 p.m. each day. The mid-day restroom cleaning will be considered an option, meaning that the City may elect not to include it in the final contract. The separate bid price table can be found in the Addendum 1 5.20.22 – Custodial Bid Price & Avg Wrk Hours spreadsheet.

This spreadsheet can also be used to submit the "bid price" and "average number of monthly and annual work hours" tables for the services requested in the Ground Transportation Center & Metro Transit Garage RFP in place of the table that was included in the initial RFP.

MINUTES

**PRE-BID CONFERENCE
REQUEST FOR PROPOSALS
GROUND TRANSPORTATION & METRO TRANSIT GARAGE CUSTODIAL SERVICES
CITIES OF FARGO AND MOORHEAD**

**THURSDAY, MAY 12, 2022 - 8:30 AM
METRO TRANSIT GARAGE
650 23RD ST N, FARGO, ND 58102**

1. Introductions

Introductions were made of all persons present at the meeting.

- Mesud Hero, Diamond Shine Cleaning
- Al Char, Osgood Services
- Julie Bommelman, Fargo Transit Director, MATBUS
- Cole Swingen, Fargo Assistant Transit Director – Operations, MATBUS
- Luke Grittner, Fargo Transit Planner, MATBUS
- Floyd Coppel, Building Maintenance Technician II, MATBUS

Swingen opened the online meeting in Teams. No attendees were present online and the connection was closed.

2. Review Scope of Work & Contractor Selection Criteria (Page 15-24, Page 6)

Bommelman went through the scope of work and explained that the contractors must be able to supply the materials listed under the Materials and Supplies section. Bommelman also stated that the contractors must be able to meet the insurance requirements listed. Bommelman explained the schedule requirements, stating that the cleaning is to be done after business hours. Bommelman directed the contractors the Evaluation Criteria section, and stated that the lowest bid may not be the selected bid, the selection also takes previous experience and quality into account.

3. Forms to be Submitted with Proposal (Page 2)

- Federal Clauses and Certifications
- Debarment & Suspension Certification
- Lobbying Certification

Bommelman spoke about the submission of proposals and what is expected of the contractor. She explained that the written proposal should be in a separate sealed envelope from the price proposal.

The two certifications in Appendix B-1 and B-2 must be signed and submitted with the proposal.

Bommelman told the attendees that their business must be registered with SAM.gov prior to entering into a contract. Sam.gov is the registration site for businesses working with the federal government or federal grantees.

Bommelman also explained that if a proposal is received and it does not include the proper forms, it will be considered non-responsive and will not be considered.

4. Projected Schedule (Pages 4-5)

- Proposals are due May 26, 2022 at 650 23rd St N, Fargo, 2:00 pm CDT
- Contract begins/work commences August 8, 2022

Bommelman explained that there is an opportunity for pre-bid protests, if the contractor believes that something has been done unfairly.

5. There have been no written requests for clarifications and modifications (were due May 5, 2022)

6.

Questions and Answers

- Char asked will the floor stripping will be done before August when the new contract goes into effect.
 - Swingen stated that the floors will not be stripped before the new contract goes into effect.
- Hero asked who supplies the chemicals.
 - Bommelman stated that City will supply them.
- Hero asked if the City will supply the floor scrubber at the GTC.
 - Bommelman stated that the City will supply the floor scrubber.

BID PRICE:

	Ground Transportation Center (GTC)	Metro Transit Garage (MTG)
Price Per Month 2022	\$1500	
Number of Months 2022		7
2022 Total	10,080	7
Price Per Month 2023	\$1500	
Number of Months 2023		12
2023 Total	\$18,000	12
Price Per Month 2024	1600	
Number of Months 2024	\$1600	12
2024 Total	\$19,200	12
Price Per Month 2025	\$1600	
Number of Months 2025		12
2025 Total	\$19,200	12
Price Per Month 2026	\$1,650	
Number of Months 2026		12
2026 Total	\$19,800	12
Price Per Month 2027	\$1700	
Number of Months 2027		12
2027 Total	\$20,400	12
CONTRACT TOTAL	\$106,680	

paid or agreed to pay any company or person (other than a full-time, bona fide employee working solely for the Proposer) any fee, commission, percentage, or brokerage fee contingent upon or resulting from the award of this Contract; and agrees to furnish information relating to the above, as requested by the Contract Administrator.

SECTION 5: ACKNOWLEDGMENT OF ADDENDA

The undersigned acknowledges receipt of the following addenda to the RFP solicitation:

Addendum No.	<u>1 (DAY PORTER)</u>	Dated	<u>5/23/22</u>
Addendum No.	_____	Dated	_____
Addendum No.	_____	Dated	_____
Addendum No.	_____	Dated	_____
Addendum No.	_____	Dated	_____
Addendum No.	_____	Dated	_____
Addendum No.	_____	Dated	_____
Addendum No.	_____	Dated	_____

Failure to acknowledge receipt of all addenda may cause the proposal to be considered non-responsive, which will require rejection of proposal.

SECTION 6: PROPOSER CERTIFICATION STATEMENT

The rate charged includes all equipment and materials used by the contractor. There can be no additional charges. The price quoted will be effective until August 8, 2025. Thirty days' notice of any rate changes shall be submitted to the City of Fargo Transit Director.

I do hereby agree to adhere to the specifications in performance under any contract awarded from this bid.

The undersigned certifies that he/she is legally authorized by the Proposer to make the statements and representations contained in this document and represents and warrants that the foregoing information is true and accurate to the best of his knowledge and intends that the City of Fargo, North Dakota, rely thereon in evaluating the Proposer.

PROPOSER'S NAME: NED HALILOVIC

DATE OF SIGNING: 5/23/22

SIGNATURE BY: [Signature]

TITLE: PRESIDENT

NOTARY: Damen Murillo / [Signature]

NOTARY SEAL:



1.10 - SERVICE REFERENCES

Firm Name: CNH
Street: 3401 1st N.
City, State, Zip Code: FARGO, ND 58102
Contract Person: ERIC SUNBY
Telephone Number: (701) 318-9853
Length of Service: from 2010 to PRESENT

Please describe the services respondent provided to this organization by checking as many of the following as apply:

We provide janitorial service 7 days per week for CNH
We have support janitor on staff 2 shifts AM + PM.
Recycling Program throughout the plant.
Fork lift operator, garbage compound operator, Floor scrubbing inside
the plant.
Striping + waxing floors, Carpet cleaning, Emergency Services.
Our staff at CNH Fargo is about 7 Full time and 2 PT.

NOTE: Include completed References Release

REFERENCE(S) RELEASE

For valuable consideration, I hereby confer on the City of Fargo the absolute and irrevocable right and permission to check and verify the references and financial institution information received.

I hereby release and discharge the City of Fargo from all and any claims and demands ensuing from or in connection with the use of the information, including all claims for libel and invasion of privacy.

This authorization and release shall inure to the benefit of the legal representatives, licensees and assigns of the City of Fargo as well as the person(s) from whom they received the information. I hereby affirm that I am the correct representative of the company listed below and have the right to provide the information. I have read the foregoing and fully understand the contents hereof. This release shall be binding upon my heirs, legal representatives and assigns.

Date: 5/23/22

Signed: [Signature]

Title: PRESIDENT

Company Name: AMBASSADOR CLEANING

Address: ~~102~~ 102 W BEATON DR SUITE 200

City: WEST FARGO

State/Zip: ND 58078

Phone: 701-491-2908

**EVALUATION FORM
GROUND TRANSPORTATION CENTER & METRO TRANSIT GARAGE
CUSTODIAL SERVICES**

Evaluator's Name _____

Date _____

Company Name _____

Technical and Price Evaluation

Description	Maximum Points	Score
Approach and Work Plan	25	
Qualifications and References	25	
Experience	20	
* Price	30	
TOTAL	100	

*** Price Evaluation:** The lowest proposed price will receive 30 points. The other proposers will receive points in direct proportion to the lowest price. For example, if the lowest total cost is \$60,000 and someone bid \$66,000, they would receive 27 points ($6,000/60,000 = 10\%$, $100\% - 10\% = 90\%$, $90\% \times 30 = 27$ points)

**CERTIFICATION REGARDING DEBARMENT,
SUSPENSION & OTHER RESPONSIBILITY MATTERS**

The proposer certifies to the best of its knowledge and belief, and that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
2. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; 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;
3. Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State or Local) with commission of any of the offenses enumerated in paragraph (2) of this certification;
4. Have not, within a three-year period preceding this application/proposal/contract, had one or more public transactions (Federal, State, Local) terminated for cause or default.

THE PARTICIPANT, CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 31 U.S.C. 3801 ET SEQ ARE APPLICABLE THERETO.

NED HAVILOVIC
Name

AMBASSADOR CLEANING
Company Name

5/23/22
Date

**CERTIFICATION
OF
RESTRICTIONS ON LOBBYING**

I, NED HALILOVIC, hereby certify on behalf of AMBASSADOR INC. that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of 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, and officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contact, grant, loan, or cooperative agreement the undersigned shall complete and submit Standard Form-111 "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-grant, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is material representation of fact upon which reliance is 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.

Executed this 23 day of May 2022

By: 

This contract may be funded up to 50% through an operating grant from the Federal Transit Administration, catalog of Federal Domestic Assistance (CFDA) #20.507. As such, all applicable federal clauses and regulations apply.



1. **No Government Obligation to Third Parties:** *Applies to all third-party contracts that are federally funded.*

- a. The Agency and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Agency, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
- b. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.



2. **Access to Records and Reports:** *Applies to all contracts funded in whole or in part with FTA funds.*

- a. **Record Retention.** The Contractor will retain and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third-party agreements of any type, and supporting materials related to those records.
- b. **Retention Period.** The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.
- c. **Access to Records.** The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this contract as reasonably may be required.

- d. Access to the Sites of Performance. The Contractor agrees to permit FTA and its contractors access to the sites of performance under this contract as reasonably may be required.



3. Federal Changes: *Applies to all contracts.*

The Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the Agency and FTA, and they may be amended or promulgated from time to time during the term of this contract. The Contractor's failure to so comply shall constitute a material breach of this contract.



4. Civil Rights and Equal Opportunity: *Applies to all contracts.*

The Agency is an Equal Opportunity Employer. As such, the Agency agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, the Agency agrees to comply with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications. Under this Agreement, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

- a. Nondiscrimination. In accordance with Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- b. Race, Color, Religion, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e et seq., and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In

addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

- c. Age. In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
- d. Disabilities. In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.



5. **Incorporation of FTA Terms:** *Applies to all contracts.*

The preceding provision includes, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1 as amended, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Agency requests which would cause the Agency to be in violation of the FTA terms and conditions.



6. **Energy Conservation:** *Applies to all contracts. The Recipient agrees to, and assures that its subrecipients, if any, will comply with the mandatory energy standards and policies of its state energy conservation plans under the Energy Policy and Conservation Act, as amended, 42 U.S.C. § 6201 et seq., and perform an energy assessment for any building constructed, reconstructed, or modified with federal assistance as required under FTA regulations, 'Requirements/or Energy Assessments,' 49 C.F.R. part 622, subpart C.*

The Contractor shall recognize 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 (42 USC Section 6321 et seq).



7. **Veterans Employment:** *Applies to capital projects, to the extent practicable*

As provided by 49 U.S.C. § 5325(k): a. To the extent practicable, the Contractor agrees that it:

- a. Will give a hiring preference to veterans (as defined in 5 U.S.C. § 2108), who have the skills and abilities required to perform construction work required under a third-party contract in connection with a capital project supported with funds made available or appropriated for 49 U.S.C. chapter 53, and
- b. Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee, and

The Contractor also assures that its sub-recipients will:

- a. Will give a hiring preference to veterans (as defined in 5 U.S.C. § 2108), who have the skills and abilities required to perform construction work required under a third-party contract in connection with a capital project supported with funds made available or appropriated for 49 U.S.C. chapter 53, to the extent practicable, and
- b. Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.



8. **Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment:** *Applies to all contracts.*

The Contractor is prohibited from obligating or expending federal funds to:

- a. Procure or obtain
- b. Extend or renew a contract to procure or obtain; or
- c. Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, "covered telecommunications equipment or services" is:

- i. Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities)
 - ii. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
 - iii. Telecommunications or video surveillance services provided by such entities or using such equipment.
- d. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

The Contractor shall not provide covered telecommunications equipment or services in the performance of this contract.



9. **Termination Provisions:** *Applies to all contracts over \$10,000.*

Termination for Convenience (General Provision): The Agency may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Agency's best interest. The Contractor shall be paid its costs, including contract closeout costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the Agency to be paid the Contractor. If the Contractor has any property in its possession belonging to the Agency, the Contractor will account for the same, and dispose of it in the manner Agency directs.

Termination for Default [Breach or Cause] (General Provision): If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the Agency may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by the Agency that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the Agency, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.5

Opportunity to Cure (General Provision): The Agency in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions

If Contractor fails to remedy to the Agency's satisfaction the breach or default or any of the terms, covenants, or conditions of this contract within ten [10] days after receipt by Contractor or written notice from the Agency setting forth the nature of said breach or default, the Agency shall have the right to terminate the contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude the Agency from also pursuing all available remedies against Contractor and its sureties for said breach or default.

Waiver of Remedies for any Breach: In the event that the Agency elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this contract, such waiver by the Agency shall not limit the Agency's remedies for any succeeding breach of that or of any other term, covenant, or condition of this contract.

This termination clause extends to all third-party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.



10. **Debarment, Suspension, Ineligibility and Voluntary Exclusion:** *Applies to contracts in an amount expected to equal or exceed \$25,000 or a contract award at any tier for a federally required audit (irrespective of the contract amount) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. part 180. Recipients, contractors, and subcontractors (at any level) that enter into covered transactions are required to verify that the entity (as well as its principals and affiliates) with which they propose to contract or subcontract is not excluded or disqualified. This is done by: (a) checking the SAM exclusions; (b) collecting a certification from that person; or (c) adding a clause or condition to the contract or subcontract.*

The Contractor shall comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

- a. Debarred from participation in any federally assisted Award;

- b. Suspended from participation in any federally assisted Award;
- c. Proposed for debarment from participation in any federally assisted Award;
- d. Declared ineligible to participate in any federally assisted Award;
- e. Voluntarily excluded from participation in any federally assisted Award; or
- f. Disqualified from participation in any federally assisted Award.

By signing and submitting its bid or proposal, the Bidder or Proposer certifies as follows: The certification in this clause is a material representation of fact relied upon by the Agency. If it is later determined by the Agency that the Bidder or Proposer knowingly rendered an erroneous certification, in addition to remedies available to the Agency, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Bidder or Proposer agrees to comply with the requirements of 2 C.F.R. part 1 80, subpart C, as supplemented by 2 C.F.R. part 1 200, while this offer is valid and throughout the period of any contract that may arise from this offer. The Bidder or Proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.



11. Notice to FTA and U.S. DOT Inspector General of Information Related to Fraud, Waste, Abuse, or Other Legal Matters : *Applies to all contracts exceeding \$25,000.*

If a current or prospective legal matter that may affect the Federal Government emerges, the Contractor must promptly notify City Utilities, which will promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which City Utilities is located. The Contractor must include an equivalent provision in its subagreements at every tier, for any agreement that is a "covered transaction" according to 2 C.F.R. §§ 180.220 and 1200.220.

The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.

Matters that may affect the Federal Government include, but are not limited to, the Federal Government's interests in the Award, the accompanying Underlying Agreement between the FTA and City Utilities, and any Amendments thereto, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements.

Additional Notice to U.S. DOT Inspector General. The Contractor must promptly notify the Agency, which will promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Agency is located, if the Contractor has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729, et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. This responsibility occurs whether the project is subject to this agreement or another agreement with the Agency involving a principal, officer, employee, agent, or Third-Party Participant of the Contractor. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Contractor. In this paragraph, "promptly" means to refer information without delay and without change. This notification provision applies to all divisions of the Contractor, including divisions tasked with law enforcement or investigatory functions.



12. **Lobbying Restrictions:** *Applies to all contracts and subcontracts of \$100,000 or more at any tier under a Federal grant. 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 agreement, the payor must complete and submit the Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.*

49 C.F.R. part 20, Appendices A and B provide specific language for inclusion in FTA funded third party contracts as follows:

The undersigned certifies (Note: A separate certification will be required to be signed if the contract meets this criteria), to the best of his or her knowledge and belief, that:

- a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- b. 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.

- c. 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 subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 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.



- 13. **Buy America:** *Applies to projects that involve the purchase of more than \$150,000 of iron, steel, manufactured goods, or rolling stock to be delivered to the recipient to be used in an FTA assisted project.*

The Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. part 661, which provide that Federal funds may not be obligated unless all steel, iron, and manufactured products used in FTA funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. § 661.11.



- 14. **Clean Air Act and the Federal Water Pollution Control Act:** *Applies to all contracts exceeding \$150,000.*

The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq and the Federal Water Pollution Control Act as amended, 33 U.S.C. § 1251-1388. The Contractor agrees to report each violation to the Agency and understands and agrees that the Agency will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq . The Contractor agrees to report each violation to the Agency and understands and agrees that the Agency will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

The Contractor also agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.



15. **Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate:** *Applies to all contracts in excess of the Simplified Acquisition Threshold (currently set at \$250,000) and those contracts shall contain administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms and provide for such sanctions and penalties as appropriate.*

- a. Disputes will be presented in writing to the appropriate Agency personnel - in Fargo, the Fargo Transit Director, in Moorhead, the Moorhead Transit Manager. Agency personnel and the Contractor will attempt to resolve any dispute arising in the performance of the contract.

Fargo: If the Transit Director and Contractor cannot resolve the dispute, the issue will be presented in writing to the Fargo City Administrator within ten [10] working days of dispute. If the dispute cannot be resolved by the City Administrator, it will be submitted in writing within ten [10] working days of the Fargo City Administrator's decision to the Fargo City Commission - it is the sole responsibility of the Contractor to schedule a hearing with the Fargo City Commission. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position at the hearing.

Moorhead: If the Transit Manager and Contractor cannot resolve the dispute, the issue will be presented in writing to the Moorhead City Manager within ten [10] working days of the dispute. If the dispute cannot be resolved by the City Manager, it will be submitted in writing within ten [10] working days of the Moorhead City Manager's decision to the Moorhead City Council - it is the sole responsibility of the Contractor to schedule a hearing with the Moorhead City Council. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position at the hearing.

The decision of the Fargo City Commission or Moorhead City Council shall be binding upon the Contractor and the Contractor shall abide by the decision.

- b. Unless otherwise directed by the Cities of Fargo/Moorhead, the Contractor shall continue performance under this contract while matters in dispute are being resolved.

- c. Should either party to the contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury of damage.
- d. Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the Cities of Fargo and/or Moorhead and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the applicable state.



16. Cargo Preference: *Applies to all contracts involving equipment, materials, or commodities that may be transported by ocean vessels.*

The Contractor agrees:

- a. to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;
- b. to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading.); and
- c. to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.



17. Fly America: *Applies to the transportation of persons or property, by air, between a place in the U.S. and a place outside the U.S., or between places outside the U.S., when the FTA will participate in the costs of such air transportation.*

Definitions. As used in this clause—

"International air transportation" means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.

"United States" means the 50 States, the District of Columbia, and outlying areas.

"U.S.-flag air carrier" means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

- a. When Federal funds are used to fund travel, Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires contractors, recipients, and others use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.
- b. If available, the Contractor, in performing work under this contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.
- c. In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a statement on vouchers involving such transportation essentially as follows:

Statement of Unavailability of U.S.-Flag Air Carriers

International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons. See FAR§ 47.403. [State reasons]:

(End of statement)

The Contractor shall include the substance of this clause, including this paragraph (e), in each subcontract or purchase under this contract that may involve international air transportation.



18. **Davis-Bacon Act and Copeland Act – Prevailing Wage and Anti-Kickback:**

Applies to all FTA funded contracts for all prime construction, alteration or repair contracts in excess of \$2,000. The recipient will ensure that each third-party contractor complies with all federal laws, regulations, and requirements, including:

a. **Prevailing Wage Requirements**

- i. *Federal transit laws, specifically 49 U.S.C. § 5333(a), (FTA's "Davis-Bacon Related Act");*
- ii. *The Davis-Bacon Act, 40 USC. §§ 3141-3144, 3146, and 3147; and*
- iii. *U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. part 5.*

b. **"Anti-Kickback" Prohibitions**

- i. *Section 1 of the Copeland "Anti-Kickback" Act, as amended, 18 U.S.C. § 874;*
- ii. *Section 2 of the Copeland "Anti-Kickback" Act, as amended, 40 USC. § 3145; and*
- iii. *US. DOL regulations, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States," 29 C.F.R. part 3.*

For all prime construction, alteration or repair contracts in excess of \$2,000 awarded by FTA, the Contractor shall comply with the Davis-Bacon Act and the Copeland "Anti-Kickback" Act. Under 49 U.S.C. § 5333(a), prevailing wage protections apply to laborers and mechanics employed on FTA assisted construction, alteration, or repair projects. The Contractor will comply with the Davis-Bacon Act, 40 U.S.C. §§ 3141-3144, and 3146-3148 as supplemented by DOL regulations at 29 C.F.R. part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction." In accordance with the statute, the Contractor shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, the Contractor agrees to pay wages not less than once a week. The Contractor shall also comply with the Copeland "Anti-Kickback" Act (40 U.S.C. § 3145), as supplemented by DOL regulations at 29 C.F.R. part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States." The Contractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.



19. Contract Work Hours & Safety Standards Act: *Applies to all FTA funded contracts in excess of \$100,000 that involve the employment of mechanics or laborers. Certain employee protections apply to all FTA funded contracts with particular emphasis on construction related projects. The recipient will ensure that each third-party contractor complies with all federal laws, regulations, and requirements, including:*

a. **Contract Work Hours and Safety Standards**

i. *Contract Work Hours and Safety Standards Act, as amended, 40 USC. §§ 3701- 3708; and supplemented by Department of Labor (DOL) regulations, 29 C.F.R. part 5; and A-38*

ii. *U.S. DOL regulations, "Safety and Health Regulations for Construction," 29 C.F.R. part 1926.*

b. **For Construction Contracts:**

i. *For all contracts in excess of \$100,000 that involve the employment of mechanics or laborers, the Contractor shall comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701-3708), as supplemented by the DOL regulations at 29 C.F.R. part 5. Under 40 U.S.C. § 3702 of the Act, the Contractor shall compute the wages of every mechanic and laborer, including watchmen and guards, on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or to contracts for transportation or transmission of intelligence.*

ii. *In the event of any violation of the clause set forth herein, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, the Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of this clause in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by this clause.*

iii. *The FTA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other*

Federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in this section.

- iv. The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this agreement.

c. For Awards Not Involving Construction:

- i. The Contractor shall comply with all federal laws, regulations, and requirements providing wage and hour protections for non-construction employees, in accordance with 40 U.S.C. § 3702, Contract Work Hours and Safety Standards Act, and other relevant parts of that Act, 40 U.S.C. § 3701 et seq., and U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. part 5.
- ii. The Contractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three (3) years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.
- iii. Such records maintained under this paragraph shall be made available by the Contractor for inspection, copying, or transcription by authorized representatives of the FTA and the Department of Labor, and the Contractor will permit such representatives to interview employees during working hours on the job.



20. Bonding: *The Common Grant Rules require bonds for all construction contracts exceeding the simplified acquisition threshold (exceeding \$150,000. Minnesota State Statute 574.26 limit is \$100,000) unless FTA determines that other arrangements adequately protect the Federal interest. FTA's bonding policies are as follows:*

- a. A bid guarantee from each bidder equivalent to five [5] percent of the bid price. The "bid guarantees" shall consist of a firm commitment such as a bid bond,

certifies check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

- b. A performance bond on the part to the Contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
- c. A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment, as required by law, of all persons supplying labor and material in the execution of the work provided for in the contract. Payment bond amounts required from Contractors are as follows:
 - i. 50% of the contract price if the contract price is not more than \$1 million;
 - ii. 40% of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
 - iii. \$2.5 million if the contract price is more than \$5 million.
- d. A cash deposit, certified check or other negotiable instrument may be accepted by a grantee in lieu of performance and payment bonds, provided the grantee has established a procedure to assure that the interest of FTA is adequately protected. An irrevocable letter of credit would also satisfy the requirement for a bond. Bid Bond Requirements (Construction)

Bid Security - A Bid Bond must be issued by a fully qualified surety company acceptable to the Agency and listed as a company currently authorized under 31 CFR, Part 223 as possessing a Certificate of Authority as described thereunder.

Rights Reserved - In submitting this Bid, it is understood and agreed by bidder that the right is reserved by the Agency to reject any and all bids, or part of any bid, and it is agreed that the Bid may not be withdrawn for a period of ninety [90] days subsequent to the opening of bids, without the written consent of the Agency.

It is also understood and agreed that if the undersigned bidder should withdraw any part or all of his bid within ninety [90] days after the bid opening without the written consent of the Agency, shall refuse or be unable to enter into this contract, as provided above, or refuse or be unable to furnish adequate and acceptable Performance Bonds and Labor and Material Payments Bonds, as provided above, or refuse or be unable to furnish adequate and acceptable insurance, as provided above, he shall forfeit his bid security to the extent of the Agency's damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security therefor.

It is further understood and agreed that to the extent the defaulting Bidder's Bid Bond, Certified Check, Cashier's Check, Treasurer's Check, and/or Official Bank Check (excluding any income generated thereby which has been retained by the Agency as provided in [Item x "Bid Security" of the Instructions to Bidders]) shall prove inadequate to fully recompense the Agency for the damages occasioned by default, then the

undersigned bidder agrees to indemnify the Agency and pay over to the Agency the difference between the bid security and the Agency's total damages, so as to make the Agency whole.

The undersigned understands that any material alteration of any of the above or any of the material contained on this form, other than that requested, will render the bid unresponsive. Performance and Payment Bonding Requirements (Construction)

The Contractor shall be required to obtain performance and payment bonds as follows:

Performance bonds

- a. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the Agency determines that a lesser amount would be adequate for the protection of the Agency.
- b. The Agency may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The Agency may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

Payment bonds

- a. The penal amount of the payment bonds shall equal:
 - i. Fifty percent of the contract price if the contract price is not more than \$1 million.
 - ii. Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million;
 - iii. Two and one half million if the contract price is more than \$5 million.
- b. If the original contract price is \$5 million or less, the Agency may require additional protection as required by subparagraph 1 if the contract price is increased.

Performance and Payment Bonding Requirements (Non-Construction)

The Contractor may be required to obtain performance and payment bonds when necessary to protect the Agency's interest.

The following situations may warrant a performance bond:

- a. The Agency's property or funds are to be provided to the contractor for use in performing the contract or as partial compensation (as in retention of salvaged material).
- b. A contractor sells assets to or merges with another concern, and the Agency, after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable.

- c. Substantial progress payments are made before delivery of end items starts.
- d. Contracts are for dismantling, demolition, or removal of improvements.

When it is determined that a performance bond is required, the Contractor shall be required to obtain performance bonds as follows:

- a. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the Agency determines that a lesser amount would be adequate for the protection of the Agency.
- b. The Agency may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price.
The Agency may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.
- c. A payment bond is required only when a performance bond is required, and if the use of payment bond is in the Agency's interest.
- d. When it is determined that a payment bond is required, the Contractor shall be required to obtain payment bonds as follows:

The penal amount of payment bonds shall equal:

- I. Fifty percent of the contract price if the contract price is not more than \$1 million;
- II. Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
- III. Two and one half million if the contract price is increased.

Advance Payment Bonding Requirements

The Contractor may be required to obtain an advance payment bond if the contract contains an advance payment provision and a performance bond is not furnished. The Agency shall determine the amount of the advance payment bond necessary to protect the Agency.

Patent Infringement Bonding Requirements (Patent Indemnity)

The Contractor may be required to obtain a patent indemnity bond if a performance bond is not furnished, and the financial responsibility of the Contractor is unknown or doubtful. The Agency shall determine the amount of the patent indemnity to protect the Agency.

Warranty of the Work and Maintenance Bonds

The Contractor warrants to the Agency, the architect and/or engineer that all materials and equipment furnished under this contract will be of highest quality and new unless otherwise specified by the Agency, free from faults and defects and in conformance with the contract documents. All work not so conforming to these standards shall be

considered defective. If required by the project manager, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

The work furnished must be of first quality and the workmanship must be the best obtainable in the various trades. The work must be of safe, substantial and durable construction in all respects. The Contractor hereby guarantees the work against defective materials or faulty workmanship for a minimum period of one [1] year after final payment by the Agency and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to the Agency. As additional security for these guarantees, the Contractor shall, prior to the release of final payment, furnish separate maintenance (or guarantee) bonds in form acceptable to the Agency written by the same corporate surety that provides the performance bond and labor and material payment bond for this contract. These bonds shall secure the Contractor's obligation to replace or repair defective materials and faulty workmanship for a minimum period of one [1] year after final payment and shall be written in an amount equal to ONE HUNDRED PERCENT [100%] of the CONTRACT SUM, as adjusted (if at all).

21. **EEO:** *Applies to all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3*

All Firms will be required to follow Federal Equal Employment Opportunity (EEO) policies. The Agency will affirmatively assure that on any project constructed pursuant to this advertisement, equal employment opportunity will be offered to all persons without regard to race, color, creed, religion, national origin, sex, and marital status, status with regard to public assistance, membership or activity in a local commission, disability, sexual orientation, or age.

22. **Seismic Safety:** *Applies only to contracts for the construction of new buildings or additions to existing buildings.*

The Contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation (DOT) Seismic Safety Regulations 49 C.F.R. part 41 and will certify to compliance to the extent required by the regulation. The Contractor also agrees to ensure that all work performed under this contract, including work performed by a subcontractor, is in compliance with the standards required by the Seismic Safety regulations and the certification of compliance issued on the project.

23. **Transit Employee Protective Arrangements:** *Applies to each contract for transit operations performed by employees of a Contractor recognized by FTA to be a transit operator.*

The Contractor agrees to comply with the following employee protective arrangements of 49 U.S.C. § 5333(b):

- a. U.S. DOL Certification. Under this contract or any amendments thereto that involve public transportation operations that are supported with federal assistance, a certification issued by U.S. DOL is a condition of the contract.
- b. Special Warranty. When the contract involves public transportation operations and is supported with federal assistance appropriated or made available for 49 U.S.C. § 5311, U.S. DOL will provide a special warranty for its award, including its award of federal assistance under the Tribal Transit Program. The U.S. DOL special warranty is a condition of the contract.
- c. Special Arrangements. The conditions of 49 U.S.C. § 5333(b) do not apply to Contractors providing public transportation operations pursuant to 49 U.S.C. § 5310. FTA reserves the right to make case-by-case determinations of the applicability of 49 U.S.C. § 5333(b) for all transfers of funding authorized under title 23, United States Code (flex funds), and make other exceptions as it deems appropriate, and, in those instances, any special arrangements required by FTA will be incorporated herein as required.



24. Charter Service Operations: *Applies to contracts for operating public transportation service.*

The Contractor agrees to comply with 49 U.S.C. 5323(d), 5323(r), and 49 C.F.R. part 604, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except as permitted under:

- a. Federal transit laws, specifically 49 U.S.C. § 5323(d);
- b. FTA regulations, "Charter Service," 49 C.F.R. part 604;
- c. Any other federal Charter Service regulations; or
- d. Federal guidance, except as FTA determines otherwise in writing.

The Contractor agrees that if it engages in a pattern of violations of FTA's Charter Service regulations, FTA may require corrective measures or impose remedies on it. These corrective measures and remedies may include:

- a. Barring it or any subcontractor operating public transportation under its award that has provided prohibited charter service from receiving federal assistance from FTA;

- b. Withholding an amount of federal assistance as provided by Appendix D to part 604 of FTA 's Charter Service regulations; or
- c. Any other appropriate remedy that may apply.

The Contractor should also include the substance of this clause in each subcontract that may involve operating public transit services.



25. School Bus Service Operations: *Applies to contracts for operating public transportation service.*

The Contractor agrees to comply with 49 U.S.C. 5323(f), and 49 C.F.R. part 604, and not engage in school bus operations using federally funded equipment or facilities in competition with private operators of school buses, except as permitted under:

- a. Federal transit laws, specifically 49 U.S.C. § 5323(f);
- b. FTA regulations, "School Bus Operations," 49 C.F.R. part 605;
- c. Any other Federal School Bus regulations; or
- d. Federal guidance, except as FTA determines otherwise in writing.

If the Contractor violates this school bus agreement, FTA may:

- a. Bar the Contractor from receiving Federal assistance for public transportation; or
- b. Require the Contractor to take such remedial measures as FTA considers appropriate.

When operating exclusive school bus service under an allowable exemption, the Contractor may not use federally funded equipment, vehicles, or facilities.

The Contractor should include the substance of this clause in each subcontract or purchase under this contract that may operate public transportation services.



26. Substance Abuse Requirements: Drug & Alcohol Testing: *Applies to third party contractors who perform safety-sensitive functions. Contractors must comply with FTA 's substance abuse management program under 49 C.F.R. part 655, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations." Under 49 C.F.R. § 655.4, Safety-sensitive function means any of the following duties, when performed by employees of recipients, subrecipients, operators, or contractors:*

- a. Operating a revenue service vehicle, including when not in revenue service;

- b. *Operating a non-revenue service vehicle, when required to be operated by a holder of a Commercial Driver's License;*
- c. *Controlling dispatch or movement of a revenue service vehicle;*
- d. *Maintaining (including repairs, overhaul and rebuilding) a revenue service vehicle or equipment used in revenue service. This section does not apply to the following: an employer who receives funding under 49 U.S.C. § 5307 or § 5309, is in an area less than 200,000 in population, and contracts or such services; or an employer who receives funding under 49 USC § 5311 and contracts out such services.*
- e. *Carrying a firearm for security purposes.*

Additionally, third-party contractors providing testing services involving the performance of safety sensitive activities must also comply with 49 C.F.R. part 40, "Procedures for Transportation Workplace Drug and Alcohol Testing Programs."

The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 C.F.R. part 655, produce any documentation necessary to establish its compliance with part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of North Dakota and/or Minnesota, or the Cities of Fargo/Moorhead, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 C.F.R. part 655 and review the testing process. The Contractor agrees further to certify annually its compliance with part 655 before February 1 and to submit the Management Information System (MIS) reports before February 1 to the City of Moorhead Transit Manager and City of Fargo Transit Director. To certify compliance, the Contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.



27. Rights to Inventions Made Under a Contract or Agreement: *Applies when entering into a contract (or subcontract) with a small business firm or nonprofit organization for the performance of experimental, developmental, or research work under the FTA award. The recipient or subrecipient must comply with the requirements of 37 C.F.R. part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements, "and any implementing regulations issued by the awarding agency. Except in the case of an "other agreement" in which the Federal Government has agreed to take more limited rights, the Federal Government is entitled to a non-exclusive, royalty free license to use the resulting invention, or patent the invention for Federal Government purposes. The FTA has the right to:*

- a. *Obtain, reproduce, publish, or otherwise use the data produced under a Federal award; and*
- b. *Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.*

Intellectual Property Rights: This project is funded through a Federal award with FTA for experimental, developmental, or research work purposes. As such, certain Patent Rights and Data Rights apply to all subject data first produced in the performance of this contract. The Contractor shall grant the Agency intellectual property access and licenses deemed necessary for the work performed under this Agreement and in accordance with the requirements of 37 C.F.R. part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by FTA or U.S. DOT. The terms of an intellectual property agreement and software license rights will be finalized prior to execution of this agreement and shall, at a minimum, include the following restrictions: Except for its own internal use, the Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Contractor authorize others to do so, without the written consent of FTA, until such time as FTA may have either released or approved the release of such data to the public. This restriction on publication, however, does not apply to any contract with an academic institution. For purposes of this agreement, the term "subject data" means recorded information whether or not copyrighted, and that is delivered or specified to be delivered as required by the contract. Examples of "subject data" include, but are not limited to computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information, but do not include financial reports, cost analyses, or other similar information used for performance or administration of the contract.

- a. The Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for "Federal Government Purposes," any subject data or copyright described below. For "Federal Government Purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.
 - i. Any subject data developed under the contract, whether or not a copyright has been obtained; and
 - ii. Any rights of copyright purchased by the Contractor using Federal assistance in whole or in part by the FTA.
- b. Unless FTA determines otherwise, the Contractor performing experimental, developmental, or research work required as part of this contract agrees to permit FTA to make available to the public, either FTA 's license in the copyright to any subject data developed in the course of the contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of this contract, is not completed for any reason whatsoever, all data

developed under the contract shall become subject data as defined herein and shall be delivered as the Federal Government may direct.

- c. Unless prohibited by state law, upon request by the Federal Government, the Contractor agrees to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. The Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.
- d. Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.
- e. Data developed by the Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract is exempt from the requirements herein, provided that the Contractor identifies those data in writing at the time of delivery of the contract work.
- f. The Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance.



28. Disadvantaged and Small Business Enterprise (DBEs): *Applies to FTA recipients receiving planning, capital and/or operating assistance that will award prime contracts (excluding transit vehicle purchases) exceeding \$250,000 in FTA funds in a Federal fiscal year.*

For all DOT-assisted contracts, each FTA recipient must include assurances that third party contractors will comply with the DBE program requirements of 49 C.F.R. part 26, when applicable. The following contract clause is required in all DOT-assisted prime and subcontracts:

The Contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 C.F.R. part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- a. Withholding monthly progress payments;
- b. Assessing sanctions;
- c. Liquidated damages; and/or
- d. Disqualifying the Contractor from future bidding as non-responsible. 49 C.F.R. § 26.13(b).

In connection with the performance of this service, the Contractor will cooperate with the Agency in the utilization of disadvantaged business enterprises including women-owned business enterprises for the duration of the contract and will use its best efforts to ensure that disadvantaged business enterprises have the maximum practicable opportunity to compete for subcontract work. In order to ensure that a fair proportion of the purchases of supplies and services is placed with disadvantaged business enterprises, the Contractor agrees to take affirmative action to identify disadvantaged business firms, solicit bids or quotations from them for supplies and services related to this proposal.

The Contractor agrees to meet any goals established by Agency for purchases pertaining to this contract to the best of the Contractor's ability and will provide the Agency with the necessary certification and records for reporting purposes. When the majority of the contract is labor, which is not a contracting opportunity, DBE goals will not be set but Contractors are encouraged to use DBE businesses.

The Contractor will be required to report its DBE participation obtained through race neutral means throughout the period of performance.

The contractor must promptly notify the Agency whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the Agency.

Fostering Small Business Participation

The Agency has established a small business element to its DBE program, pursuant to 49 CFR 26.39. This program aims to provide opportunities and foster small business enterprises (SBE)/participation in contracting with the Agency. This program is race and gender-neutral, however SBEs can also count towards DBE goals.



29. Prompt Payment and Return of Retainage: *Applies to all contracts.*

Recipients must establish a contract clause to require prime Contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days (payment required within 10 days or paying interest at 1 ½ percent per Minnesota State Statute 4 71.425 subd. 4a) from receipt of each payment the recipient makes to the prime contractor. 49 C.F.R. § 26.29(a). Finally, for contracts with defined DBE contract goals, each FTA recipient must include in each prime contract a provision stating that the Contractor shall utilize the specific DBEs listed unless the Contractor obtains the recipient's written consent; and that, unless the recipient's consent is provided, the Contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE. 49 C.F.R. § 26.53(f) (1).



30. 6002 of the Solid Waste Disposal Act: *Applies to all contracts for items designated by the EPA, when the purchaser or contractor procures \$10,000 or more of one of these items during the fiscal year or has procured \$10,000 or more of such items in the previous fiscal year, using Federal funds. These regulations apply to all procurement actions involving items designated by the EPA, where the procuring agency purchases \$10,000 or more of one of these items in a fiscal year, or when the cost of such items purchased during the previous fiscal year was \$10,000.*

The Contractor agrees to comply with all the requirements of Section 6002 of the Solid Waste Disposal Act, as amended (42 U.S.C. 6962) by the Resource Conservation and Recovery Act (RCRA), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.



31. Americans with Disabilities Act Access (ADA): *Applies to all contracts.*

The Contractor agrees to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC § 12101 et seq.; section 504 of the Rehabilitation Act of 1973, as amended, 29 USC § 794; 49 USC § 5301(d); and any implementing requirements FTA may issue. These regulations provide that no handicapped individual, solely by reason of his or her handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity included in or resulting from this agreement.

In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112 and section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Contractor agrees that it will comply with the requirements of U.S. Department of Transportation regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 CFR Part 37; and U.S. Department of Transportation regulations, "Americans with Disabilities Accessibility Specifications for Transportation Vehicles," 36 CFR Part 1192 and 49 CFR Part 38, pertaining to facilities and equipment to be used in

public transportation. In addition, the Contractor agrees to comply with the requirements of 49 U.S.C. § 5301 (d) which expresses the Federal policy that the elderly and persons with disabilities have the same right as other persons to use mass transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly persons and persons with disabilities. The Contractor also agrees to comply with any implementing requirements FTA may issue.

The Contractor understands that it is required to include this Article in all subcontracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Agency deems appropriate.



32. Assignability Clause: *Applies to all contracts.*

Procurements through assignments: Neither the Agency nor the Contractor shall assign or transfer any of its rights or obligations hereunder without the prior written consent of the other.



33. Program Fraud & False or Fraudulent Statements & Related Acts: *Applies to all third-party contracts that are federally funded.*

- a. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.
- b. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(1) on the Contractor, to the extent the Federal Government deems appropriate.

- c. The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

34. Bus Testing: *Applies only to the purchase or lease of any new bus model, or any bus model with a major change in configuration or components to be acquired or leased with funds obligated by FTA. Recipients are responsible for determining whether a vehicle to be acquired requires full or partial testing or has already satisfied the bus testing requirements by achieving a passing test score in accordance with 49 C.F.R. part 665. Recipients must certify compliance with FTA 's bus testing requirements in all grant applications for FTA funding for bus procurements.*

The Contractor [Manufacturer] agrees to comply with the Bus Testing requirements under 49 U.S.C. 5318(e) and FT A's implementing regulation at 49 C.F.R. part 665 to ensure that the requisite testing is performed for all new bus models or any bus model with a major change in configuration or components, and that the bus model has achieved a passing score. Upon completion of the testing, the contractor shall obtain a copy of the bus testing reports from the operator of the testing facility and make that report(s) publicly available prior to final acceptance of the first vehicle by the recipient.

35. Pre-Award and Post-Delivery Audits of Rolling Stock Purchases: *Applies to the purchase of revenue service rolling stock with FTA funds and must comply with the pre-award and post-delivery audit requirements set forth in 49 U.S.C. 5323(111) and supplemented by 49 C.F.R. part 663.*

The Contractor agrees to comply with 49 U.S.C. § 5323(m) and FTA's implementing regulation at 49 C.F.R. part 663. The Contractor shall comply with the Buy America certification(s) submitted with its proposal/bid. The Contractor agrees to participate and cooperate in any pre-award and post-delivery audits performed pursuant to 49 C.F.R. part 663 and related FTA guidance

36. Safe Operation of Motor Vehicles: *Applies to all federally funded third party contracts.*

Seat Belt Use

The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles. The terms "company-owned" and "company-leased" refer to vehicles owned or leased either by the Contractor or Agency.

Distracted Driving

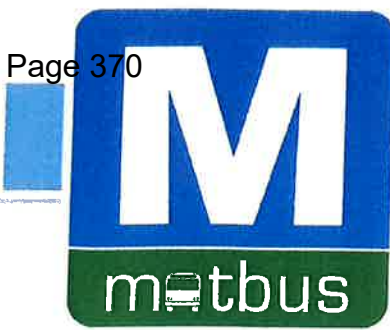
The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this agreement.

Vendor Registration for MATBUS (Cities of Fargo, ND, & Moorhead, MN)

1 Name of Business: AMBASSADOR CLEANING
 2 Business Street Address: 102 W BEATON XR. SUITE 200
 3 Business Mailing Address: _____
 4 City, State, ZIP: WEST FARGO, ND 58078
 5 Business Website: www.ambassadorcleaning.com
 6 Business Telephone: 701-412-4776
 7 Contact Person: NED HALILOVIC
 8 Contact Person Title: PRESIDENT
 9 Contact Person Email: ned@ambassadorcleaning.com
 10 Contact Person Telephone: 701-491-2908
 11 Business DUNs Number: _____

- 12 Is this firm a certified Disadvantaged Business Enterprise in the State of North or State of Minnesota?
- 13 Is this firm a certified Small Business with the U.S. Small Business Administration?
- 14 Has your business registered with the System for Award Management @ www.sam.gov? Note: This is required prior to contracting with MATBUS.
- 15 If a North Dakota business, has your business registered as a vendor with the Secretary of State @ <https://sos.nd.gov/business/vendors>?
- 16 Have you read the MATBUS Federal Clauses?
- 17 Does your firm agree to comply with the applicable Federal Clauses when doing business with MATBUS and the Cities of Fargo and Moorhead?

	Yes	No
12		<input checked="" type="checkbox"/>
13	<input checked="" type="checkbox"/>	
14	<input checked="" type="checkbox"/>	
15	<input checked="" type="checkbox"/>	
16	<input checked="" type="checkbox"/>	
17	<input checked="" type="checkbox"/>	



650 23rd Street North, Fargo, North Dakota 58102 | p. 701-241-8140 | www.matbus.com

REQUEST FOR PROPOSALS
GROUND TRANSPORTATION CENTER & METRO TRANSIT GARAGE CUSTODIAL SERVICES
CITIES OF FARGO AND MOORHEAD

Date Issued: April 21, 2022

SUMMARY

The City of Fargo, North Dakota, Transit Department, requests proposals from qualified parties for custodial services until 2:00 p.m. central daylight time (CDT) on **Thursday, May 26, 2022**. Proposals received after the specified date/time will be considered late proposals and will not be opened or considered for award. The City shall award the successful bidder a three-year contract with optional two-year renewal (08-2022 to 08-2027) for custodial services at the Ground Transportation Center (502 NP Avenue) and the Metro Transit Garage (650 23rd St N).

- Bidder will submit one (1) original, five (5) hard copies and one (1) electronic version in PDF format supplied on a USB flash drive, or by email to the 2 contacts listed below.
- Bids shall be submitted by May 26, 2022 at 2:00 p.m. (CDT) in **2 separate sealed envelopes (one containing the RFP response and one containing the pricing)** to:

Julie Bommelman, Transit Director **and** Lori Van Beek, Transit Manager
 Metro Transit Garage, 650 23rd St N, Fargo, ND 58102

Contact Information:

Bommelman: (701) 476-6737 or JBommelman@matbus.com
 Van Beek: (701) 476-6686 or LVanBeek@matbus.com

- Bids shall clearly reflect the title "Proposal for Custodial Services of Ground Transportation Center and Metro Transit Garage" and the **proposer's name**.

Expenses incurred in developing and submitting a proposal are borne entirely by proposer. Proposers will not include any such expenses as part of the price proposed in response to this document.

This procurement will be funded up to 50% through a Federal Transit Administration operating grant, Catalog of Federal Domestic Assistance (CFDA) #20.507.

All proposers are notified that disadvantaged and women-owned business enterprises are encouraged to submit responses to this request. The City of Fargo will ensure that respondents

to this request will not be discriminated against based on sex, race, color, creed or national origin in consideration of an award.

All proposers will be required to certify that they are not on the Comptroller General's list of ineligible contractors.

The City reserves the right to reject any and all bids and to waive any informalities, irregularities or technicalities in the bidding.

The following documents must be signed and returned with your proposal in order for it to be considered responsive:

- Response to RFP: one (1) original, five (5) hard copies, and one (1) electronic version in .pdf format supplied on a USB Flash Drive, or via email to the "Contact Information" points of contact on page 2,
- Price Proposal: one (1) original in a separately sealed envelope,
- Statement of Qualifications and References,
- Signed Authorization Form to contact references,
- Bid Form
- Certification Regarding Debarment,
- Certification of Restrictions on Lobbying

**SPECIFICATIONS FOR CUSTODIAL
MAINTENANCE OF GROUND TRANSPORTATION CENTER (GTC)
AND METRO TRANSIT GARAGE (MTG)
CITY OF FARGO -TRANSIT OFFICE**

The Proposer will furnish labor, materials, and equipment necessary to provide contract custodial services to the Ground Transportation Center (GTC) at 502 NP Ave, Fargo ND and the Metro Transit Garage (MTG) at 650 23rd St N, Fargo ND for the period from August 8, 2022 to August 7, 2025 in accordance with the following specifications:

SCOPE OF SERVICES

The Proposer shall furnish only the materials specified under the Materials and Supplies section of this proposal. The Contractor shall provide the janitorial services required for the buildings specified hereunder to start on August 8, 2022.

TERMS OF SERVICES

The term of the services shall be for the period of August 8, 2022 through August 7, 2025 with an optional two-year renewal of August 8 2025 through August 7, 2027 with the janitorial services hereunder to start on August 8, 2022.

SCHEDULE

April 21	Cities release RFP document; publish advertisement, notify private sector.
May 5	Deadline for proposer's submittal of written request for clarification or modification of the RFP.
May 12	Cities' response to written request for clarification or modification of the RFP.
May 19 COB	Deadline for proposer's submittal of written bid protests regarding the solicitation (RFP).
May 26	Deadline for receipt of sealed proposals by 2:00 p.m. CDT in the Metro Transit Garage, 650 23 rd Street North, Fargo, North Dakota 58102.
May 26 – June 9	Cities' review and evaluate proposals, interview finalists.
June 16	Deadline for proposer's submittal of written pre-award bid protests.
June 27	Moorhead City Council award of contract and notice to proceed issued, contingent upon Fargo City Commission approval.

June 27	Fargo City Commission award of contract and notice to proceed issued, contingent upon Moorhead City Council approval.
July 5 COB	Deadline for proposer's submittal of written post-award protests.
July 12	Cities' response to post-award protests.
July 19	Deadline for proposer's submittal of written appeal of post-award decision to appropriate City governing board.
July 19 – July 25	Hold hearing of appeal of post-award decision with Fargo City Commission and Moorhead City Council.
July 26	Cities' final written determination on appeal issued. All decisions regarding protests shall be considered final.
August 8	Successful proposer commences service.

SCHEDULED HOURS OF SERVICE

The Contractor shall provide to the Transit Office at 650 23rd St N, Fargo, ND 58102 prior to the commencement of work under this contract a schedule of hours the Contractor intends to implement in servicing the resulting contract. The work must be performed **after** the regular business hours of the GTC and MTG Monday through Saturday of each week; also on-call within two hours of requested service. Regular business hours of the GTC are 6:15 am to 11:15 pm M-F/7:15 am to 11:15 pm Saturday; regular business hours of the MTG are 7:45 am to 4:30 pm M-F – please note the shop portion of the MTG operates 5:30 am to 1:00 am M-Sat.

Changes to this schedule must be submitted to the Transit Office at 650 23rd St N, Fargo ND and may be implemented only upon written approval.

STAFFING AND EQUIPMENT

The Contractor shall maintain a sufficient work force to adequately serve the requirements of the resulting contract. With this proposal, the Proposer shall indicate the number of monthly and yearly work hours at each location he/she intends to provide for this contract. The Contractor must also managerial staff located in the Fargo/Moorhead area to address any concerns that the Proposer has in a timely manner.

COMMUNICATIONS

In addition to a telephone number, the contractor shall be required to provide the City with an email address which will be checked at least once per 24-hour period. The City will utilize this address to alert the contractor of specific cleaning tasks, problems, etc.

CONTRACTOR FACILITIES

The City shall provide, without cost to the Contractor, a janitorial closet for storage of equipment and supplies at each location.

FAILURE TO PERFORM REQUIRED SERVICES

The City will give the Contractor written notice of work deficiencies. Notification of deficiencies will be given on a timely basis. The City will allow the Contractor to correct the deficiency without penalty during the next scheduled work shift or at a time mutually agreed unless the work deficiency is a continuation. Repeated instances of non-performance by the Contractor will be grounds for termination of the contract.

PAYMENT INVOICE AND CHECKLIST

Invoices for service performed may be submitted to the City of Fargo Transit Office at 650 23rd St N, Fargo, ND 58102 by the 10th day of each calendar month following the last scheduled working day of the previous calendar month. Payments by the City of Fargo to the Contractor for services rendered shall be made monthly, as promptly as possible, and with the City's regular payment process.

The Contractor shall complete and submit each month, together with the Contractor's monthly invoice, a checklist certifying that the requirements of the specifications applicable within the month have been completed in a satisfactory manner.

The Contractor shall develop the form of the monthly checklist before the work of the contract shall have commenced. The City of Fargo Transit Office shall approve the checklist prior to the start of work.

CONTRACTOR CONFORMANCE WITH SAFE PRACTICES

Contractor will conform with all Federal, State and Local laws and ordinances and regulations. The Contractor shall agree to indemnify and save harmless the City of Fargo from any loss or liability, including attorney's fees caused by Contractor's failure to do so.

EXTRAORDINARY COST CHANGES

In the event the Contractor's costs are affected by extraordinary events such as riots, strikes, picketing, boycott, acts of God, or any other unforeseen events, the parties agree to negotiate for reasonable adjustments.

INSURANCE COVERAGE

If the Contractor does not currently meet the insurance requirements listed below, the Contractor shall submit a letter from a reputable insurance agent stating intent to provide insurance for the prescribed coverage with their proposal. The Contractor shall furnish within fifteen (15) days after contract award evidence of insurance providing coverage for all services provided for the duration of the contract and shall include the following: \$1,000,000 Comprehensive General Liability coverage. Also, the Contractor shall be required to maintain this insurance in force until the project is completed and accepted. In addition, the Contractor shall name the City of Fargo as additional named insured to said policies with regard to the services and products being provided; the City of Moorhead will be named as additional insured to said policies for the Metro Transit Garage as they own 1/3 of that facility. The policies shall state that the insurance company will give the City of Fargo and the City of Moorhead thirty (30) days written notice prior to cancellation of this policy.

DAMAGE TO CITY OWNED FACILITIES

If the City finds required repairs, which, in its opinion are the direct result of the use of inferior equipment, products, or workmanship, the contractor shall promptly place in satisfactory condition, make restitution, or replace all damaged items and correct all defects.

EVALUATION CRITERIA

The City of Fargo will review all proposals for completeness. Those proposals found incomplete or failing to address the needs of the City as stated herein will not be evaluated. Those proposals furnished complete with all required documentation will be evaluated. Proposers are urged to initially submit their best offer. An award (if any) will be made to that proposer whose proposal is deemed most advantageous to, and in the best interest of, the city and the general public – this may not be the lowest price. The evaluation criteria are as follows:

Approach and Work Plan	25 pts
Qualifications and References	25 pts
Previous Experience	20 pts
Price	<u>30 pts</u>
Total	100 pts

Proposals may be modified or withdrawn by written or email notice received by the Cities prior to the exact hour and date specified for receipt of proposals. A proposal may also be withdrawn in person by a proposer or an authorized representative prior to the proposal deadline; provided the proposer's identity is made known and he or she signs a receipt for the proposal.

Workers' Compensation

The Contractor shall be required to obtain and keep in force during the terms of operation covered by this proposal North Dakota and/or Minnesota Worker's Compensation and Employer Liability Insurance and applicable Unemployment Insurance, all as provided more fully below. Certificates evidencing the required insurance will be furnished to the Cities prior to commencing any work under this contract. If the Contractor does not currently meet the requirements listed below, the Contractor shall submit a letter from a reputable insurance agent stating intent to provide insurance for the prescribed coverage.

North Dakota and/or Minnesota Worker's Compensation and Employer Liability Insurance at the limits established by the States of North Dakota and Minnesota. Deductible and Self Insured retainers, if any, shall be identified in the Bidder's proposal. All deductible payments are the responsibility of Contractor.

Each policy of insurance shall contain the following clauses: "It is agreed that these policies shall not be canceled nor the coverage reduced until thirty (30) days after the City of Fargo/City of Moorhead shall have received written notice of such cancellation or reduction by certified mail."

Contractor will provide the City of Fargo and City of Moorhead documentation proving insurance coverage, in the form of a Certificate of Insurance, within fifteen (15) days of notice

of contract award or ten (10) days before commencing maintenance service, whichever occurs first.

ELIGIBILITY FOR AWARD

In order for a proposer to be eligible for award of the Contract, the proposal must be responsive to the Request for Proposals; and the City must be able to determine that the proposer is responsible to perform the Contract satisfactorily.

Responsive proposals are those complying with all material aspects of the Request for Proposals. Proposals which do not comply with all the terms and conditions of the Request for Proposals will be rejected as non-responsive.

Responsible proposers at a minimum must:

- Have adequate financial resources or the ability to obtain such resources as required during the performance of the Contract;
- Have a satisfactory record of past performance;
- Have necessary management and technical capability to perform;
- Be qualified as an established firm regularly engaged in the type of business to perform the Contract required by this Request for Proposals;
- Be otherwise qualified and eligible to receive an award under applicable federal, state, county, or municipal laws and regulations; and
- Certify that it is not on the U.S. Comptroller General’s list of ineligible contractors – signing and submitting the proposal is so certifying.
- Be registered with the State of North Dakota (Attachment 2)

RESERVATION OF RIGHTS

The City of Fargo expressly reserves the right to:

- Reject or cancel any or all proposals;
- Waive any defect, irregularity or informality in any proposal or proposal procedure;
- Waive as an informality, minor deviations from specifications at a lower price than other proposals meeting all aspects of the specifications if it is determined that total cost is lower and the overall function is improved or not impaired;
- Extend the proposal due date;
- Reissue a Request for Proposals;
- Procure any item or services by other means;
- The City reserves the right to retain all proposals submitted. The selection or rejection of a proposal does not affect this right; and
- The City reserve the right to negotiate a Contract with the proposer having the best evaluation as determined by the evaluation team. No award will be made automatically based upon the lowest price or based solely on the proposal submitted. The City additionally reserves the right to suspend negotiations with the first proposer should it not progress in a manner satisfactory to the City and commence negotiations with the next best rated proposer.

ADDENDA, REQUESTS FOR MODIFICATION OR CLARIFICATION, PROTEST PROCEDURES

Addenda: In the event that it becomes necessary to revise any part of this RFP, or if additional information is necessary to enable the Proposer to make an adequate interpretation of the provisions of this RFP, a written addendum to the RFP will be provided to each prospective

proposer by mail or e-mail. Receipt of all addenda must be acknowledged by each prospective proposer as requested on the Bid Proposal Form; acknowledgements for email receipt of addenda will be done by recipient sending an email acknowledgement. Oral instructions by the City of Fargo/City of Moorhead representatives are not binding.

Request for Modification or Clarification: Requests for clarification or modification of this RFP must be in writing. The City must receive any such request by **COB May 5, 2022**. Any request must be accompanied by all relevant information supporting the request for modification, interpretation, clarification or amendment of this solicitation.

Inquiries about Fargo-Moorhead Transit services and the Request for Proposal shall be directed to:

Julie Bommelman
Transit Director
City of Fargo
650 23rd Street North
Fargo, ND 58102
TEL: (701) 476-6737
FAX: (701) 241-8558
jbommelman@matbus.com

or

Lori Van Beek
Transit Manager
City of Moorhead
650 23rd Street North
Fargo, ND 58102
TEL: (701) 476-6686
FAX: (701) 241-8558
lvanbeek@matbus.com

APPLICABLE STATE AND LOCAL CLAUSES:

1. Confidentiality of Proposal Information

Each proposal and supporting documents must be submitted in or under cover of a sealed envelope to provide confidentiality of the proposal information prior to the proposal opening.

Financial information required to be submitted with proposals to establish financial responsibility; cost/price proposals; and other financial data, such as overhead rates, etc. shall be handled as confidential data to the extent allowed under applicable law, including Minnesota Government Data Practices Act, M. S. Chapter 13, and utilized on a "need-to-know" basis for proposal evaluation. Such information shall be treated as confidential to the extent allowed under North Dakota's open records law, Chapter 44-04, N.D.C.C. (specifically, N.D.C.C. § 44-04-18.4).

2. Accuracy of Proposal

Each proposal is publicly opened and the name of bidder is made part of the public record. Therefore, it is necessary that any and all information presented is accurate and/or will be that by which the respondent will complete the contract.

3. Proposals Binding

All proposals submitted in accordance with the terms and conditions of the proposal shall be binding upon the bidder for ninety (90) calendar days after the proposal opening.

4. Disclaimer of Liability
The City of Fargo will not hold harmless or indemnify any contractor for any liability whatsoever.
5. Hold Harmless
The City of Fargo will be held harmless and free from any and all liability, claims, or expenses whatsoever incurred by, or on behalf of, any person or organization responding to this request for bid.
6. Law Governing
All contractual agreements shall be subject to, governed by, and construed according to the laws of the State of North Dakota.
7. Conditional Proposals
Conditional proposals are subject to rejection in whole or in part.
8. Subletting of Contract
The contract that will be derived from this request for proposal shall not be sublet except with the written consent of the City of Fargo. No such consent shall be construed as making the City of Fargo a party to such subcontract, or subjecting the City of Fargo to liability of any kind to any subcontractor. No subcontract shall, under any circumstances, relieve the Contractor of his liability and obligation under his contract, and all transactions with the City of Fargo must be through the General Contractor.
9. Assignment/Transfer of Interests
There shall be no assignment/transfer of interests or delegation of Contractor's rights, duties or responsibilities of Contractor under the contract derived from this RFP without the prior written approval of the City of Fargo.
10. Severability
In the event any provision of the contract is declared or determined to be unlawful, invalid or unconstitutional, such declaration shall not affect, in any manner, the legality of the remaining provisions of the contract and each provision of the contract will be and is deemed to be separate and severable from each other provision.
11. Regulatory Requirements
The Contractor shall comply with all Federal, State, and local licensing, training, testing and/or regulatory requirements (including permits) for the provision of the transit custodial services.

The successful Contractor shall be appropriately licensed for the work required as a result of the contract. The cost for any required licenses or permits shall be the responsibility of the Contractor. Contractor is liable for any and all taxes due as a result of the contract.

12. Responsible Firms
Nothing herein is intended to exclude any responsible firm or in any way restrain or restrict competition. On the contrary, all responsible firms are encouraged to submit proposals.
13. Reserved Rights
The City of Fargo reserves the right to accept or reject any or all of the bids submitted, waive informalities and technicalities and negotiate any or all elements of the proposals.
14. Publication, Reproduction and Use of Material
No custom material produced in whole or in part under the Contract shall be subject to copyright in the United States or in any country. The City of Fargo and Federal Transit Administration shall have authority to publish, disclose, distribute and otherwise use, in whole or in part, any custom material prepared under any contract resulting from this RFP.
15. Waiver
By submission of its proposal, the Proposer represents and warrants that it has sufficiently informed itself in all matters affecting the performance of work or the furnishing of the labor services, supplies, materials, or equipment and facilities called for in the solicitation; that it has checked its proposal for errors and omissions; that the prices stated in its proposal are correct and as intended by it; and, are a complete and correct statement of its prices for performing the labor, services, supplies, materials or equipment and facilities required by the Contract Documents. The Proposer waives any claim for the return of its proposal security if, on account of errors or omissions claimed to have been made by it in its proposal or for any other reason it should refuse or fail to execute the contract.
16. Independent Price Determination
The Proposer certifies that he/she has not colluded, conspired, connived, or agreed, directly or indirectly, with any Proposer or person to put in a sham proposal or to refrain from proposing, and further, that he has not in any manner, directly or indirectly sought by agreement, collusion, communication, or conference, with any person, to fix the proposal amount herein or any other Proposer, or to fix any overhead, profit, or cost element of said proposal amount, or that of any other Proposer, or to secure any advantage against City of Fargo or any person interested in the proposed contract.
17. Prohibited Interest
No administrator or employee of the City of Fargo and no member of its governing body shall participate in selection or in the award or administration of a contract if a conflict of interest real or apparent would be involved.

No member or delegate to the North Dakota Legislature or to the Congress of the United States shall be admitted to any share or part of the Agreement or any benefit arising therefrom.

APPLICABLE FEDERAL CLAUSES: Refer to Federal Clauses Attachment.

PROTEST PROCEDURES

1.0 **General:** Protests will be accepted from prospective bidders or offerors whose direct economic interest would be affected by the award of a contract or by failure to award a contract. The Fargo Transit Director will consider all protests or objections filed in a timely manner regarding the award of a contract, whether submitted before or after award. All protests shall be in writing and shall be supported by sufficient information to enable the protest to be considered. A protest will not be considered if it is insufficiently supported or it is not received within the time limits specified herein. Protest submissions should be concise, logically arranged, and clearly state the ground for the protest. Protests must include at least the following information:

- Name, address, and telephone number of protestor.
- Identification of the solicitation or bid.
- A detailed statement of the legal and factual grounds of the protest, including copies of relevant documents.
- A statement as to what relief is requested.

Protests should be sent via certified mail to:

**Julie Bommelman, Transit Director
And Lori Van Beek, Transit Manager
650 23rd St N
Fargo, ND 58102**

Protests must be filed with the City of Fargo in accordance with our procedures and time requirements. The protest to the City of Fargo must be complete and contain all the issues that the protestor believes relevant. The City of Fargo will respond to each substantive issue raised in the protest. Failure to include an issue in the protest to the City of Fargo will preclude raising the issue to FTA, if the protest is appealed to that agency. Following an adverse decision by Metro Area Transit, protestor may file a protest with FTA under certain limited circumstances listed in paragraph 6.0.

On occasion, when considered appropriate by the City Administrator, an informal conference on the merits of the protest with all interested parties may be held.

2.0 **Protests Before Award**

2.1 **Solicitation Phase:** Protests concerning the solicitation must be submitted in writing five (5) working days prior to bid opening date for receipt of proposals. If the written protest is not received by the time specified, award may be made in the normal manner unless the Transit Director, upon investigation, finds that remedial action is required. Oral protests not followed up by a written protest will be disregarded.

Notice of a protest and the basis therefore will be given to all potential bidders or offerors.

- 2.2 Pre-Award Phase: When a protest against the making of an award is received after receipt of bids or proposals but prior to award, the Transit Director may determine to withhold the award pending disposition of the protest. The City of Fargo will provide a written response to each material issue raised in the written protest. Notice of a protest as well as the City of Fargo's response will be provided to bidders/proposers who responded to the solicitation and are in line for the award of a contract.

Where a written protest against the making of an award is received in the time specified, award will not be made prior to five (5) working days after resolution of the protest unless the City of Fargo determines that:

- The items to be procured are urgently required;
- Delivery or performance will be unduly delayed by failure to make award promptly; or,
- Failure to make award will otherwise cause undue harm to the City or the Federal Government.

If award is made, the Transit Director will document the file to explain the need for an award and will give written notice of the decision to proceed with the award to the protestor and, appropriate, to others concerned.

- 3.0 Protests After Award: A protest received not later than close of business (COB) ten (10) working days after award shall be reviewed by the Transit Director and the Legal Department. The contractor will, in any event, be furnished with the notice of protest and the basis therefore. When it appears likely that an award may be invalidated and a delay in receiving the supplies or services is not prejudicial to the City of Fargo's interest, the Transit Director may consider a mutual agreement with the contractor to suspend performance on a no-cost basis.

- 4.0 Determination of Interested Party: An interested party is an actual prospective bidder or offeror whose direct economic interest would be affected by award of a contract or failure to award a contract. This definition specifically excludes subcontractors and suppliers.

- 4.1 The ability to qualify as an actual or prospective bidder/proposer ends when the bid/proposal period ends.
- 4.2 The offer received from the protestor must be technically responsive.
- 4.3 The protestor must be the next in line to receive the award if the protested issues prevail.
- 4.4 If not next in line, the protestor must successfully challenge all intervening offers to establish next in line status.

- 5.0 **Appeals:** Appeals must be sent in writing to the Fargo City Commission within five (5) working days after receipt of the determination by the Transit Director. The Fargo City Commission will schedule a hearing where the appellant may be heard. The Fargo City Commission will issue the City of Fargo final written determination within ten (10) working days after receipt.

The decision of the Commission is **final** and **no further appeals** may be made.

- 6.0 **Protests to FTA:** Under certain limited circumstances, an interested party may protest to FTA the award of a contract pursuant to an FTA grant. FTA's review of any protest will be limited to alleged failure of the City of Fargo to have or follow its written protest procedures or alleged failure to review a complaint or protest.

6.1 Time for Filing

- 6.1.1 Protestors shall file a protest with FTA Region VIII office not later than five (5) working days of the date the protestor knew or should have known of the violation. Protests should be addressed to:

**U.S. Department of Transportation
Federal Transit Administration, Region VIII
1961 Stout Street, Suite 13301
Denver, CO 80294-3007**

- 6.1.2 Violations of Federal law or regulation will be handled by the compliant process stated within the law or regulation.

6.2 Submission of Protest to FTA

- 6.2.1 A protestor must exhaust all administrative remedies with the City of Fargo before pursuing a protest to FTA.

- 6.2.2 Protests to FTA should be sent to the FTA Regional or Headquarters Office. A concurrent copy of the protest must be sent to Metro Area Transit.

- 6.2.3 The protest filed with FTA shall:

- Include the name and address of the protestor.
- Identify the City of Fargo and the number of the contract solicitation.
- Contain a statement of the grounds for the protest and any supporting documentation. This should detail the alleged failure of the City of Fargo to have or follow its protest procedures or the alleged failure to review a complaint or protest.
- Include a copy of the local protest filed with the City of Fargo and a copy of the City of Fargo's decision, if any.

- 6.3 Other Remedies: Contractors may seek remedy in the North Dakota state courts, as applicable, if they desire to do so.

INDEPENDENT CONTRACTOR STATUS

The Contract is engaged as an independent contractor and will be responsible for any Federal or State taxes applicable to this contract and for complying with the requirements of all Federal and State laws pertaining to income tax withholding, unemployment insurance and other insurance applicable and necessary for its employees.

Employees of the Contractor will not be eligible for any Federal Social Security, State Worker's Compensation, unemployment insurance or public employee's retirement systems benefits by the City of Fargo under this contract.

CITY REPRESENTATIVES

The City of Fargo will provide personnel at its expense to perform as coordinators and inspectors. These personnel will have the responsibility of advising the Contractor's representative of day to day changes in city scheduling and for coordinating for special access, special cleaning, security and related matters. These personnel will also conduct continuing inspections to ensure performance with the specifications of this contract, and will accompany the Contractor's representative during all formal inspections required under this contract.

SUPERVISION

The Contractor will be responsible for the direct daily supervision of the janitorial personnel through its designated representative at the premises to which the contract applies. Such representative will be available at reasonable times to report to and confer with agents of the City with respect to services, but not less often than weekly. It is the Contractor's responsibility to provide adequate supervision to guarantee that the specifications are met and that the scope of work outlined in this contract is provided to the City. The telephone number of the reasonable supervisor will be provided to the City for daily and emergency or non-routine services.

The representative of the City and the representative of the Contractor will make monthly inspections of the premises to identify and variations from the standards or specifications. Any such variations will be corrected.

KEYS/FOBS AND BUILDING SECURITY AND PRESCRIBED CONDUCT

The City will provide the Contractor with two sets of keys/fobs to permit the Contractor to carry out responsibilities of the contract. (In emergency situations, special arrangements may be negotiated with the City of Fargo Transit Office).

Any keys/fobs lost or misplaced by the Contractor's employees will be replaced by the City at a charge to the Contractor covering cost of replacement. If keys are lost which lead to a requirement to change locks in any area of the City's facility, the Contractor will reimburse the City for the cost of such lock changes and replacement keys.

The Contractor or his/her representatives will not duplicate any City keys issued to the Contractor. The Contractor will counsel his/her employees against such duplication.

The Contractor will be responsible that the Contractor's employees do not disturb papers on desks or on other office furnishings, and that they do not open drawers of furnishings and cabinetry.

Further, the Contractor's employees will not provide access to any person to any space in the City buildings without prior authorization from the City's representatives.

Employees for the Contractor will not be assisted or accompanied by non-employees during their work shift.

The City has specific policies applying to the use of City telephones for personal use. The Contractor will be expected to ensure that his/her employees observe these policies. Unauthorized telephone usage which can be directly attributed to an employee of the Contractor will be the responsibility of the Contractor for payment of any costs incurred by the City for such unauthorized use.

Violations of these proscriptions by any of the Contractor's employees will require immediate remedy by the Contractor.

FOUND ITEMS

Items found by the Contractor's janitorial staff will be reported to and/or given to respective supervisors immediately for appropriate handling. Such items to be tagged with information specifying the date, time, room, and the name of the individual who found the item.

TECHNICAL SPECIFICATIONS

The following contract service standards describe a variety of janitorial service tasks which are required under this contract. Because the services recur many times throughout the buildings to be serviced, references elsewhere shall be the generic task and frequency of service. In addition, certain specialized areas are described which require special attention or have special staffing requirements.

The Contractor will assume the standard services as set forth in the contract will apply unless exceptions are specifically noted. Further, the expectations of the City are described fully in the contract services standards and may be only referenced elsewhere in the schedules of services.

1. Daily

The term "daily" means six (6) days per week, Monday through Saturday.

2. General Cleaning

The term "general cleaning" means remove trash; recycle designated items; clean floors; dust, wash, spot clean, vacuum, shampoo interior building surfaces and hard-surfaced and upholstered furnishings; clean interior glass; and remove graffiti.

3. Clean Floors

The term "clean floors" means sweep, dust, mop, wet mop, spot clean and vacuum. These areas include elevators. Spills, stains, and soil not removed by dry cleaning methods, will be removed by the application of detergent from a well wrung damp mop. DISINFECT. Replace furnishings only after the floor is completely dry. After wet

mopping, the floors will have a uniform appearance with no streaks, film, swirl marks, detergent residues, mop strings, or other evidence of soil. There will be no splash marks or mop streaks left on furniture, walls, baseboards, etc. Remove such splashing or marking immediately. Entrance mats are located in the interior building entrances. If vacuuming does not remove the affected soil, sweep with a stiff broom to remove. Remove mats and replace after cleaning and after surface is dry.

4. **Disinfect**

The term "disinfect" means clean with an approved germicidal disinfectant.

5. **Prepare Floors**

The term "prepare floors" means sweep, dust mop, wet mop, or vacuum (or by use of other prescribed tools) to remove litter, i.e., paper, tape, gum, rubber bands, paper clips, spills, stains, and other dust and debris from all surfaces including all accessible areas such as around furnishings, behind doors, corners, etc. After wet mopping, the floor will have a uniform appearance with no streaks, film, swirl marks, detergent residue, mop strings, or other evidence of soil. There will be no splash marks left on furnishings, baseboards, etc. Any splash marks will be removed immediately. Replace mats when floor is completely dry. Treat all stain areas with an approved spot cleaning solution according to the manufacturer's instructions. After cleaning, brush the nap in one direction. Dust hand railings, ledges, grilles, fire apparatus, doors, lights, radiators, etc. Flights include the landings and stairs on steps between landings. Metal surfaces of anti-skid stair nosing will be free of dust, dirt, gum, spillage, etc. Lo-profile Disco Tread rubber anti-slip stair casing will be free of dust, dirt, gum spillage, etc.

6. **Remove Trash**

Empty all waste receptacles and other trash containers each night and return to their assigned locations. Do not remove other items not marked "trash". Remove all waste from trash receptacles and empty into a designated trash dumpster or receptacle in a manner as to prevent the adjacent area from becoming littered. Damp wipe exteriors of waste baskets and trash receptacles to remove evident soil. Remove soil from the interior of waste baskets and trash receptacles to restore containers to a sanitary condition. DISINFECT CONTAINERS. Replace plastic liners in receptacles when obviously soiled or torn.

7. **Recycle Designated Items**

Empty all recycling containers each night and return to their original locations. All paper is to be bagged and tied and deposited into a designated receptacle.

8. **Empty Exterior Ashtrays**

This section left intentionally blank.

9. **Clean Stairs**

PREPARE FLOORS.

10. **Stripping and Refinish Hard Surface Floors**

STRIPPING is the complete removal, without damage to the floor surface, of all finish and/or sealer from all visible floor surfaces and from those floor surfaces which can be

exposed by the removal of non-fixed furnishings.

Stripping also includes the complete removal of all marks, scuffs, stains, except in cases in which there is damage to the floor surfaces. Where stripping chemicals are used, the areas will be rinsed to completely remove any traces of the solution. The PH of the floor surface will be brought to neutral (PH or 7) after stripping, by rinsing with a mild acid base detergent. Stripping solution will be wiped off immediately from baseboards and other non-fixed items in the area. During the stripping process, care will be taken to avoid flooding of the immediate floor or adjacent spaces with either the stripping solution or the rinse so as to prevent damage to the tile and its bond, to the subfloor and/or to floor surfaces/coverings in adjacent spaces.

REFINISH by applying two coats of seal; followed by applying at least two coats of metal interlock polymer floor finish. Only every other coat will be applied all the way to the baseboard. The alternating coat will be applied so as to leave a 12" border around the area. The coats will be thin and evenly applied. After the finish has dried, the appearance will be uniform with no visible streaks, swirls, etc. Upon completion, no floor solutions/finish will be on the baseboards and/or other fixed equipment in the area.

11. Re-Wax Hard Surface Floors

PREPARE FLOORS. If there are black marks, marks from chair glides, embedded soil in the finish, the floor will be partially stripped by machine scrubbing. Partial stripping is the removal of only one to two layers (coats) of floor finish. One uniform thin coat of metal cross link polymer floor finish will be applied. A one tile border, next to the walls will not be re-coated. After the finish has dried, the appearance will be uniform with no visible streaks, swirls, etc. Remove all stripping or detergent solution from the baseboards, doors or other non-floor surfaces and in adjacent spaces.

12. Spray Buff Hard Surface Floors

The same preparatory steps are to be taken as in the paragraph above with the additional step, if necessary, that chairs, trash receptacles, and other movable items will be moved where necessary to spray buff underneath. Dust mop following spray buffing. A coat of metal link polymer finish will be applied. In application, a one-and-a-half tile boarder around the room will not be coated. After the finish has dried, the appearance will be uniform with no visible streaks, swirls, etc. Remove all spray buff solution and floor finish from the baseboards, furniture, trash receptacles, etc.

13. Shampoo Carpets

PREPARE FLOORS. Pre-spot all spots, stains, etc. with an approved spotting agent. Shampoo or extracts carpet as required. After shampooing, the carpet will be dry and will have a uniform appearance. All soil, stains, spots, and chemical cleaning agent will be removed. Apply 3M Carpet Protector or approved equal following extraction. Interim spray clean carpets utilizing carpet pad in heavy traffic areas. Contractor will use 3M carpet care products or approved equal. Care will be exercised if using a wet solution method to prevent saturating the carpet with excess solution. When extraction method is required, vacuum carpet after the carpet is completely dry to give the carpet a uniform appearance. Any carpet extracted will be completely dry by morning. Furniture

with metal glides or any other rustable metal surface must not come in contact with damp carpets. Return furniture to assigned location following proper air dry.

14. Spot Shampoo Carpet in Traffic Wear Areas

PREPARE FLOORS. Prior to shampooing, pre-spot carpet with an approved spotting agent. The carpet will be shampooed by the spin pad method. After cleaning, the carpet will be dry, have a uniform appearance, with all soil, stains, and spots removed. Care will be exercised if using a wet solution method to prevent saturating the carpet with excess solution. Return furniture to assigned location following proper air dry.

15. Machine Scrub Rest Rooms, Locker Rooms, and Showers

PREPARE FLOORS. Apply approved cleaning solution compatible with type of surface, and allow to stand before scrubbing the surface with a floor buffer equipped with a scrubbing pad. Deep cleaning to be performed in a manner to remove heavy stains, mildew, and mineral deposits from the surface. After scrubbing, the surface will be rinsed thoroughly to remove all remaining cleaning. After cleaning, the floor and grout will have a uniform appearance free from film, mineral deposits, corrosion stains, etc. Area not accessible with the buffer will be manually scrubbed with an abrasive pad. No sealer will be applied to floor surfaces upon completion of machine scrubbing.

16. Service Rest Rooms and Rest Room Lounges

CLEAN MIRRORS. Remove soil, streaks, film, etc. from the surface of mirrors with a damp cloth or sponge and polish dry. Clean mirror frames, shelves, and other adjacent areas and fixtures.

Refill Paper Products Dispensers

- Re-supply all paper towel dispensers to the proper level. Single fold paper towels will be interlocked with remaining towels in the cabinet. Utilize the reserve roll feature in paper roll towel cabinets. The new (reserve) roll is to be placed in the cabinet so that it will feed automatically when the existing roll is consumed.
- Toilet tissue dispensers hold two rolls; replace consumed rolls.
- Remove sanitary disposal bags and replace with new bags.
- Wipe and disinfect dispensers and adjacent surfaces.
- Check all devices for proper operation after filling; inoperable devices will be reported to the Ground Transportation Center (GTC) Office daily.
- Do not leave extra supplies in rest room areas.

Refill Soap Dispensers

Fill soap dispensers to within ½" of the top with proper dilution of soap. Disinfect. Check all devices after filling for proper operation; inoperable devices will be reported to the GTC Office daily.

Clean And Disinfect Sinks

Completely clean and disinfect all exposed surfaces of sinks. Use only non-abrasive cleaner on all exposed hardware. Cleaning includes drying and polishing. After cleaning, the fixture will present a clean and bright appearance and will be free of all visible soil, streaks, smudges, corrosion, cleaning agents, residue, etc. Inoperable or broken fixtures will be reported immediately to the GTC Office. The special set of

sponges, cloths, brushes, etc. used for cleaning toilets and urinals will not be used for cleaning any other portion of rest room facilities.

Clean And Disinfect Toilets And Urinals

Completely clean and disinfect all exposed surfaces of toilets and urinals. Use only non-abrasive cleaner on all exposed hardware. Cleaning includes drying and polishing. All foreign material will be removed from the urinal drain trap. A special set of sponges, cloths, scouring pads, and brushes will be maintained and used only for cleaning toilets and urinals. All fixtures, including metal work, will present a clean and bright appearance and will be free of all visible soil, streaks, smudges, corrosion, cleaning agents, rings, lint, residue, etc. Stopped up toilets will be plunged to free any obstruction. When the obstruction cannot be dislodged, it will be reported immediately to the GTC Office.

De-Scale Toilets, Urinals, Sinks, And Drinking Fountains

Remove scale, scum, mineral deposits, corrosion, rust stains, etc. from the interior/exterior of all fixtures.

Spot Clean Walls, Partitions, Doors And Remove Graffiti

Clean and disinfect the partition walls, partition doors, walls, surrounding urinals and toilets, and other fixtures and accessories including privacy screens. Wipe the surface dry using a clean cloth. ***All graffiti will be removed by an approved cleaner.***

Clean Floor Drains

Remove all deposits including hair, mop strings, scum, etc. from the grate and neck of the drain. After wet mopping the floor, empty the remaining germicidal disinfectant into the floor drain; this will both disinfect the drain and seal the trap. After cleaning, the drain and grate will be free of odors and deposits.

Mop And Disinfect Floor

PREPARE FLOORS. DISINFECT. Dispose of the remaining disinfectant solution by pouring it into the floor drain.

Scrub Shower Walls (MTG only)

Completely clean and disinfect all walls and floor surfaces. Remove all stains, spots, rust stains, mildew, corrosion and mineral deposits from the walls, partitions, grout and floor. Wipe all fixtures dry with a clean cloth to provide a clean and bright appearance. Shower and privacy curtains will be left in the full closed position to allow for complete air dry.

17. Clean Drinking Fountains

Remove all obvious soil, streaks, smudges, etc. from drinking fountains and the entire cabinet. Disinfect all porcelain and polished metal surfaces including the orifice and drain. Stainless steel will be polished with an appropriate cleaner. Those with cup dispensers will be re-supplied to the proper level nightly.

18. Restore Furniture To Standard Arrangement

In the process of normal daily room use, furniture is often displaced from its standards

arrangement. Also in several areas, furniture must be moved to perform various cleaning tasks. Upon completion of the cleaning tasks, the furniture will be arranged in the original pattern.

19. **Clean Interior Building And Furnishing Surfaces**
Remove dust, lint, dry soil cobwebs, and debris from all vertical and horizontal surfaces. Spot clean or wash soil from washable building and furnishing surfaces, including glass, with an approved cleaner. Dust, vacuum, or spot clean ceiling and wall vents and air grilles, including the surface areas adjacent to them. Vacuum, spot clean, or shampoo upholstered furniture. Dust, sweep, and wash all doors, door frames, threshold plates, and automatic door foot treads (mats).
20. **Clean Entrance Glass**
Clean both sides of entry door glass and entry doors for uniform appearance free of all smudges, fingerprints, stains, streaks, lint, etc. Remove all paper and tape from surfaces.
21. **Perform Routine Attention To Rooms**
After performing janitorial tasks in any area, attention must be paid to the following details:
 - Straighten venetian blinds or draperies
 - Close and lock all windows
 - Turn off lights as appropriate
 - Lock and close doors as scheduled
22. **Report Maintenance Items**
Any items requiring maintenance repair shall be reported to the GTC or MTG Office. Emergency repairs such as broken pipes, floods, roof leaks, etc. shall be reported immediately to the Fargo Police Department or the GTC Office.
23. **Clean Janitorial Closets/Storage**
All assigned janitorial spaces must be kept clean and neat at all times. Janitorial supplies are to be placed in proper order as they arrive, discarding all used containers, papers, etc. Label containers indicating contents and dilution.
24. **Power Wash Restrooms at GTC**
The walls and floors of the men's and women's restrooms at the GTC are concrete, and the stool partitions are industrial grade, graffiti resistant. It has become necessary to power wash the public areas of the restrooms.
25. **Sweep Stairwell**
Use a broom, brush, or mop to remove dirt, soil, and other debris from the west stairwell.
26. **Vacuum Elevator**
Vacuum and spot clean the elevator floor. Remove all obvious soil, streaks, smudges, etc. from the walls, the internal number panel, and external call buttons.

**CUSTODIAL SERVICE CONTRACT
GROUND TRANSPORTATION CENTER (GTC) and
METRO TRANSIT GARAGE (MTG)
TECHNICAL SPECIFICATIONS
BUILDING CLEANING SCHEDULE**

The Contactor shall provide the City of Fargo representatives with a written schedule of specific dates and times designated in the Building Cleaning Schedule for monthly, quarterly, twice yearly, and annual service. Such dates and times are subject to approval of the City of Fargo representative.

The cleaning schedule will be adhered to by the Contractor. The Contractor will inform and coordinate start times with the City representative.

The Contractor shall provide janitorial service six (6) days per week. The Contractor will arrange the work schedule to keep to a minimum disruption to the normal functions of the building. Contractor's employees will not be allowed in the dispatch area of the Ground Transportation Center (GTC) for any reason prior to the close of business due to the money handling responsibilities of the dispatchers.

The Contractor is encouraged to submit to the GTC Office changes in janitorial services or methods of service which shall be beneficial to the City, either in an opportunity to reduce the costs of service, or to improve the quality or quantity of service. Acceptance of such suggested changes shall not become effective until approved in writing by the City.

SCHEDULE REQUIREMENTS

The City anticipates that the general janitorial services required within this agreement shall generally be carried out six (6) days per week, **after** regular business hours of the GTC. The City of Fargo expects the Contractor will have sufficient and responsible personnel on the premises of the City during each of those hours.

The Contractor will train and assign employees to specific areas. Such assignments shall be considered permanent except in emergency situations or by written consent of the City representative. Assignment rosters will be updated to provide the City with an accurate and current listing of all janitorial personnel by date, shift, building, and space assignment.

Work under this agreement which is to be performed on other than a daily or weekly basis shall be subject to written schedule and for such services to be provided by the Contractor to the GTC Office within 15 calendar days of the commencement of work under this agreement.

The Contractor is not required to perform general services under this agreement on those holidays on which the City is formally closed. Those holidays are:

- New Year's Day
- Memorial Day
- 4th of July
- Labor Day
- Thanksgiving Day

- Christmas Day

Schedules for holidays should be coordinated with the GTC Office at least 10 calendar days before the holiday.

The Contractor may, with the prior written consent of the City, perform work at reduced levels at such time as when the Contractor is required to observe holidays other than those listed above. Requests for reductions in service shall be submitted to the GTC Office at least 10 days in advance of the dates for which reduced service levels are anticipated.

SECURITY AND CONSERVATION

It is the policy of the City of Fargo that janitorial services shall be performed in a manner which enhances the security of buildings and facilities within buildings by unlocking only that space in which work is to be performed and securing all doors to that space upon completion of janitorial tasks. Additionally, janitorial services are to be performed in an energy conservative manner by utilizing only such lighting as is necessary to comply with public safety requirements. Following completion of custodial tasks, lights will be turned off as appropriate for specific areas.

MATERIALS AND SUPPLIES

The City of Fargo will provide the following supplies for use at the Ground Transportation Center and Metro Transit Garage:

- Hand soap (liquid, powder, or bar)
- Paper towels
- Toilet paper
- Deodorizer
- Waste baskets and torpedo cans and liners
- Cloth towels
- Supplies for sanitary dispensers
- Lamps and bulbs
- Entrance mats
- Sanitary napkin disposal bags
- Garbage liners
- Glass cleaner

Contractor will furnish the following items for this contract at the Ground Transportation Center and Metro Transit Garage:

- Buffer/scrubber
- Buffer pads/scrubber pads
- Stripper
- Wax
- Disinfectants

- Scrub brushes
- Sanitary gloves
- Metal polish
- Vacuum
- Vacuum bags
- Buckets
- Power washer

SERVICE SCHEDULE – GROUND TRANSPORTATION CENTER (GTC):

For each item the frequency of the task at the Ground Transportation Center has been identified below:

Services	Daily	Monthly	Quarterly	Twice Yearly	Annually
General Cleaning	X				
Clean Floors	X				
Disinfect	X				
Prepare Floors	X				
Remove Trash	X				
Recycle Designated Items	X				
Clean Stairs	X				
Stripping & Refinish Hard Surface Floors					X
Re-Wax Hard Surface Floors					X
Spray Buff Hard Surface Floors	X				
Shampoo Carpets				X	
Spot Shampoo Carpet in Traffic Wear Areas	X				
Machine Scrub Rest Rooms		X			
Service Rest Rooms and Rest Room Lounges	X				
Clean Drinking Fountains	X				
Restore Furniture to Standard Arrangement	X				
Clean Interior Building & Furnishing Surfaces	X				
Clean Entrance Glass	X				
Perform Routine Attention to Rooms	X				
Report Maintenance Items	X				
Clean Janitorial Closets/Storage	X				
Power Wash Restrooms		X			
Sweep Stairwell	X				
Vacuum Elevator	x				
TOTAL					

Note: The detailed information and estimates are not considered binding to the City of Fargo in the award of this contract.

SERVICE SCHEDULE – METRO TRANSIT GARAGE:

For each item the frequency of the task at the Metro Transit Garage has been identified below:

Services	Daily	Monthly	Quarterly	Twice Yearly	Annually
General Cleaning	X				
Clean Floors	X				
Disinfect	X				
Prepare Floors	X				
Remove Trash	X				
Recycle Designated Items	X				
Clean Stairs	X				
Stripping & Refinish Hard Surface Floors					X
Re-Wax Hard Surface Floors					X
Spray Buff Hard Surface Floors	X				
Shampoo Carpets				X	
Spot Shampoo Carpet in Traffic Wear Areas	X				
Machine Scrub Rest Rooms, Locker Rooms, & Showers		X			
Service Rest Rooms and Rest Room Lounges		X			
Clean Drinking Fountains	X				
Restore Furniture to Standard Arrangement	X				
Clean Interior Building & Furnishing Surfaces	X				
Clean Entrance Glass	X				
Perform Routine Attention to Rooms	X				
Report Maintenance Items	X				
Clean Janitorial Closets/Storage	X				
TOTAL	X				

Note: The detailed information and estimates are not considered binding to the City of Fargo in the award of this contract.

**PROPOSAL FOR
CUSTODIAL SERVICES
GROUND TRANSPORTATION CENTER
& METRO TRANSIT GARAGE
CITY OF FARGO - TRANSIT OFFICE**

BID PROPOSAL FORM

Sealed proposals must be received by the City of Fargo, ND, by 2:00 p.m. Central Daylight Time on, May 26, 2022, in the Metro Transit Garage, 650 23rd Street North, Fargo, ND 58102.

If additional space is needed, additional sheets may be attached to this form, which must be clearly referenced back to the specific section addressed, for example "1.7-List of Owners and/or Officers of the Organization."

Is your firm or could your firm be certified as a Disadvantaged Business Enterprise (owned and controlled 51% or more by a woman or minority)? Yes No

SECTION 1. FIRM DATA/QUALIFICATIONS

- 1.1 Firm's Name: _____
- 1.2 Firm's Address: _____

- 1.3 Firm's Phone Number: _____
- 1.4 Contact Person (Name & Title): _____
- 1.5 Contact Email and Phone Number: _____
- 1.6 Legal Status of Organization: _____
(i.e. corporation, non-profit, partnership, sole proprietorship, other)
- 1.7 Date Firm Started Business: _____
- 1.8 List Owners and/or Officers of the Organization:

- 1.9 Description of Organization: Provide a brief description of the major business functions, history and organization structure of the responding organization.

1.10 Service References: Provide references from clients for which the respondent organization has provided similar service during the past five (5) years using the forms attached labeled "1.10 - Service References."

1.11 Subcontractors: Provide names, addresses, telephone numbers and role of proposed subcontractors; specify if the firm is a DBE/SBE or not. If more space is needed, attach and label as "1.11 – Subcontractors Information."

1.12 Has respondent, or any officer or partner of respondent, failed to complete a contract? If yes, explain.

1.13 Pending Litigation: Is any litigation current or pending against respondent or any officer or partner of respondent? If yes, give details. If more space is needed, attach and label as "1.13 – Pending Litigation."

1.14 Describe your firm's strategy and timeline for completing the custodial cleaning services, including personnel resources and equipment. Identify the project manager and their work experience. If more space is needed, attach and label as "1.14 –Service Work Plan."

1.15 Briefly indicate why you consider your firm to be the best to perform this contract. Explain your cleaning approach and methods. If more space is needed, attach and label as "1.15 – Respondent Organization's Ability to Perform Contract."

SECTION 2: INSURANCE

2.1 Insurance: Attach and label 3.2 – Insurance either: 1) Certificates of insurance for the prescribed coverage; or 2) A letter from a reputable insurance agent stating intent to provide insurance for the prescribed coverage.

SECTION 3: BID PROPOSAL & SUPPORTING DATA

3.1 Cost Summary/Bid Price: Based upon the service requirements as detailed in this RFP, complete the tables below:

BID PRICE:

	Ground Transportation Center (GTC)	Metro Transit Garage
Price per month 2022		
Number of months 2022	7	7
2022 Total		
Price per month 2023		
Number of months 2023	12	12
2023 Total		
Price per month 2024		
Number of months 2024	12	12
2024 Total		
Price per month 2025		
Number of months 2025	12	12
2025 Total		
Price per month 2026		
Number of months 2026	12	12
2026 Total		
Price per month 2027		
Number of months 2027	5	5
2027 Total		
CONTRACT TOTAL		

Average number of monthly and annual work hours:

	Ground Transportation Center (GTC)	Metro Transit Garage
Average work hours/month 2022		
Number of months 2022	7	7
2022 Total		
Average work hours/month 2023		
Number of months 2023	12	12
2023 Total		
Average work hours/month 2024		
Number of months 2024	12	12
2024 Total		
Average work hours/month 2025		
Number of months 2025	12	12
2025 Total		
Average work hours/month 2026		
Number of months 2026	12	12
2026 Total		
Average work hours/month 2027		
Number of months 2027	5	5
2027 Total		
AVG ANNUAL WORK HRS		

Note: The detailed information and estimates are not considered binding to the City of Fargo in the award of this contract.

3.2 Optional Services/Bid Price: Describe any optional and/or innovative services which you offer for consideration, as well as any minimum requirements you wish to exceed. Provide a detailed budget for these optional services on the attached form labeled "3.2-Optional Services/Bid Price."

SECTION 4: COVENANT AGAINST CONTINGENT FEES

The Proposer has () has not () employed any company or person (other than a full-time, bona fide employee working solely for the Proposer) to solicit or secure this Contract and has () has not ()

paid or agreed to pay any company or person (other than a full-time, bona fide employee working solely for the Proposer) any fee, commission, percentage, or brokerage fee contingent upon or resulting from the award of this Contract; and agrees to furnish information relating to the above, as requested by the Contract Administrator.

SECTION 5: ACKNOWLEDGMENT OF ADDENDA

The undersigned acknowledges receipt of the following addenda to the RFP solicitation:

Addendum No. _____	Dated _____
Addendum No. _____	Dated _____
Addendum No. _____	Dated _____
Addendum No. _____	Dated _____
Addendum No. _____	Dated _____
Addendum No. _____	Dated _____
Addendum No. _____	Dated _____
Addendum No. _____	Dated _____

Failure to acknowledge receipt of all addenda may cause the proposal to be considered non-responsive, which will require rejection of proposal.

SECTION 6: PROPOSER CERTIFICATION STATEMENT

The rate charged includes all equipment and materials used by the contractor. There can be no additional charges. The price quoted will be effective until August 8, 2025. Thirty days' notice of any rate changes shall be submitted to the City of Fargo Transit Director.

I do hereby agree to adhere to the specifications in performance under any contract awarded from this bid.

The undersigned certifies that he/she is legally authorized by the Proposer to make the statements and representations contained in this document and represents and warrants that the foregoing information is true and accurate to the best of his knowledge and intends that the City of Fargo, North Dakota, rely thereon in evaluating the Proposer.

PROPOSER'S NAME: _____

DATE OF SIGNING: _____

SIGNATURE BY: _____

TITLE: _____

NOTARY: _____

NOTARY SEAL:

1.10 - SERVICE REFERENCES

Firm Name: _____
Street: _____
City, State, Zip Code: _____
Contract Person: _____
Telephone Number: (____) _____
Length of Service: from _____ to _____

Please describe the services respondent provided to this organization by checking as many of the following as apply:

NOTE: Include completed References Release

REFERENCE(S) RELEASE

For valuable consideration, I hereby confer on the City of Fargo the absolute and irrevocable right and permission to check and verify the references and financial institution information received.

I hereby release and discharge the City of Fargo from all and any claims and demands ensuing from or in connection with the use of the information, including all claims for libel and invasion of privacy.

This authorization and release shall inure to the benefit or the legal representatives, licensees and assigns of the City of Fargo as well as the person(s) from whom they received the information. I hereby affirm that I am the correct representative of the company listed below and have the right to provide the information. I have read the foregoing and fully understand the contents hereof. This release shall be binding upon my heirs, legal representatives and assigns.

Date: _____

Signed: _____

Title: _____

Company Name: _____

Address: _____

City: _____

State/Zip: _____

Phone: _____

**EVALUATION FORM
GROUND TRANSPORTATION CENTER & METRO TRANSIT GARAGE
CUSTODIAL SERVICES**

Evaluator's Name _____

Date _____

Company Name _____

Technical and Price Evaluation

Description	Maximum Points	Score
Approach and Work Plan	25	
Qualifications and References	25	
Experience	20	
* Price	30	
TOTAL	100	

* *Price Evaluation:* The lowest proposed price will receive 30 points. The other proposers will receive points in direct proportion to the lowest price. For example, if the lowest total cost is \$60,000 and someone bid \$66,000, they would receive 27 points ($6,000/60,000 = 10\%$, $100\% - 10\% = 90\%$, $90\% \times 30 = 27$ points)

**CERTIFICATION REGARDING DEBARMENT,
SUSPENSION & OTHER RESPONSIBILITY MATTERS**

The proposer certifies to the best of its knowledge and belief, and that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
2. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; 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;
3. Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State or Local) with commission of any of the offenses enumerated in paragraph (2) of this certification;
4. Have not, within a three-year period preceding this application/proposal/contract, had one or more public transactions (Federal, State, Local) terminated for cause or default.

THE PARTICIPANT, CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 31 U.S.C. 3801 ET SEQ ARE APPLICABLE THERETO.

Name

Company Name

Date

**CERTIFICATION
OF
RESTRICTIONS ON LOBBYING**

I, _____, hereby certify on behalf of _____ that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of 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, and officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contact, grant, loan, or cooperative agreement the undersigned shall complete and submit Standard Form-111 "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-grant, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is material representation of fact upon which reliance is 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.

Executed this _____ day of _____.

By: _____

This contract may be funded up to 50% through an operating grant from the Federal Transit Administration, catalog of Federal Domestic Assistance (CFDA) #20.507. As such, all applicable federal clauses and regulations apply.



1. **No Government Obligation to Third Parties:** *Applies to all third-party contracts that are federally funded.*

- a. The Agency and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Agency, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
- b. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.



2. **Access to Records and Reports:** *Applies to all contracts funded in whole or in part with FTA funds.*

- a. **Record Retention.** The Contractor will retain and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third-party agreements of any type, and supporting materials related to those records.
- b. **Retention Period.** The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.
- c. **Access to Records.** The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this contract as reasonably may be required.

- d. Access to the Sites of Performance. The Contractor agrees to permit FTA and its contractors access to the sites of performance under this contract as reasonably may be required.



3. **Federal Changes:** *Applies to all contracts.*

The Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the Agency and FTA, and they may be amended or promulgated from time to time during the term of this contract. The Contractor's failure to so comply shall constitute a material breach of this contract.



4. **Civil Rights and Equal Opportunity:** *Applies to all contracts.*

The Agency is an Equal Opportunity Employer. As such, the Agency agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, the Agency agrees to comply with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications. Under this Agreement, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

- a. Nondiscrimination. In accordance with Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- b. Race, Color, Religion, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e et seq., and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In

addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

- c. Age. In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
- d. Disabilities. In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.



5. **Incorporation of FTA Terms:** *Applies to all contracts.*

The preceding provision includes, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1 as amended, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Agency requests which would cause the Agency to be in violation of the FTA terms and conditions.



6. **Energy Conservation:** *Applies to all contracts. The Recipient agrees to, and assures that its subrecipients, if any, will comply with the mandatory energy standards and policies of its state energy conservation plans under the Energy Policy and Conservation Act, as amended, 42 U.S.C. § 6201 et seq., and perform an energy assessment for any building constructed, reconstructed, or modified with federal assistance as required under FTA regulations, 'Requirements/or Energy Assessments,' 49 C.F.R. part 622, subpart C.*

The Contractor shall recognize 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 (42 USC Section 6321 et seq).



7. **Veterans Employment:** *Applies to capital projects, to the extent practicable*

As provided by 49 U.S.C. § 5325(k): a. To the extent practicable, the Contractor agrees that it:

- a. Will give a hiring preference to veterans (as defined in 5 U.S.C. § 2108), who have the skills and abilities required to perform construction work required under a third-party contract in connection with a capital project supported with funds made available or appropriated for 49 U.S.C. chapter 53, and
- b. Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee, and

The Contractor also assures that its sub-recipients will:

- a. Will give a hiring preference to veterans (as defined in 5 U.S.C. § 2108), who have the skills and abilities required to perform construction work required under a third-party contract in connection with a capital project supported with funds made available or appropriated for 49 U.S.C. chapter 53, to the extent practicable, and
- b. Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.



8. **Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment:** *Applies to all contracts.*

The Contractor is prohibited from obligating or expending federal funds to:

- a. Procure or obtain
- b. Extend or renew a contract to procure or obtain; or
- c. Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, "covered telecommunications equipment or services" is:

- i. Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities)
 - ii. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
 - iii. Telecommunications or video surveillance services provided by such entities or using such equipment.
- d. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

The Contractor shall not provide covered telecommunications equipment or services in the performance of this contract.



9. **Termination Provisions:** *Applies to all contracts over \$10,000.*

Termination for Convenience (General Provision): The Agency may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Agency's best interest. The Contractor shall be paid its costs, including contract closeout costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the Agency to be paid the Contractor. If the Contractor has any property in its possession belonging to the Agency, the Contractor will account for the same, and dispose of it in the manner Agency directs.

Termination for Default [Breach or Cause] (General Provision): If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the Agency may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by the Agency that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the Agency, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.5

Opportunity to Cure (General Provision): The Agency in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions

If Contractor fails to remedy to the Agency's satisfaction the breach or default or any of the terms, covenants, or conditions of this contract within ten [10] days after receipt by Contractor or written notice from the Agency setting forth the nature of said breach or default, the Agency shall have the right to terminate the contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude the Agency from also pursuing all available remedies against Contractor and its sureties for said breach or default.

Waiver of Remedies for any Breach: In the event that the Agency elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this contract, such waiver by the Agency shall not limit the Agency's remedies for any succeeding breach of that or of any other term, covenant, or condition of this contract.

This termination clause extends to all third-party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.



10. **Debarment, Suspension, Ineligibility and Voluntary Exclusion:** *Applies to contracts in an amount expected to equal or exceed \$25,000 or a contract award at any tier for a federally required audit (irrespective of the contract amount) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. part 180. Recipients, contractors, and subcontractors (at any level) that enter into covered transactions are required to verify that the entity (as well as its principals and affiliates) with which they propose to contract or subcontract is not excluded or disqualified. This is done by: (a) checking the SAM exclusions; (b) collecting a certification from that person; or (c) adding a clause or condition to the contract or subcontract.*

The Contractor shall comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

- a. Debarred from participation in any federally assisted Award;

- b. Suspended from participation in any federally assisted Award;
- c. Proposed for debarment from participation in any federally assisted Award;
- d. Declared ineligible to participate in any federally assisted Award;
- e. Voluntarily excluded from participation in any federally assisted Award; or
- f. Disqualified from participation in any federally assisted Award.

By signing and submitting its bid or proposal, the Bidder or Proposer certifies as follows: The certification in this clause is a material representation of fact relied upon by the Agency. If it is later determined by the Agency that the Bidder or Proposer knowingly rendered an erroneous certification, in addition to remedies available to the Agency, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Bidder or Proposer agrees to comply with the requirements of 2 C.F.R. part I 80, subpart C, as supplemented by 2 C.F.R. part I 200, while this offer is valid and throughout the period of any contract that may arise from this offer. The Bidder or Proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.



11. **Notice to FTA and U.S. DOT Inspector General of Information Related to Fraud, Waste, Abuse, or Other Legal Matters** : *Applies to all contracts exceeding \$25,000.*

If a current or prospective legal matter that may affect the Federal Government emerges, the Contractor must promptly notify City Utilities, which will promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which City Utilities is located. The Contractor must include an equivalent provision in its subagreements at every tier, for any agreement that is a "covered transaction" according to 2 C.F.R. §§ 180.220 and 1200.220.

The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.

Matters that may affect the Federal Government include, but are not limited to, the Federal Government's interests in the Award, the accompanying Underlying Agreement between the FTA and City Utilities, and any Amendments thereto, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements.

Additional Notice to U.S. DOT Inspector General. The Contractor must promptly notify the Agency, which will promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Agency is located, if the Contractor has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729, et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. This responsibility occurs whether the project is subject to this agreement or another agreement with the Agency involving a principal, officer, employee, agent, or Third-Party Participant of the Contractor. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Contractor. In this paragraph, "promptly" means to refer information without delay and without change. This notification provision applies to all divisions of the Contractor, including divisions tasked with law enforcement or investigatory functions.



12. **Lobbying Restrictions:** *Applies to all contracts and subcontracts of \$100,000 or more at any tier under a Federal grant. 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 agreement, the payor must complete and submit the Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.*

49 C.F.R. part 20, Appendices A and B provide specific language for inclusion in FTA funded third party contracts as follows:

The undersigned certifies (Note: A separate certification will be required to be signed if the contract meets this criteria), to the best of his or her knowledge and belief, that:

- a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- b. 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.

- c. 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 subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 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.

- 13. **Buy America:** *Applies to projects that involve the purchase of more than \$150,000 of iron, steel, manufactured goods, or rolling stock to be delivered to the recipient to be used in an FTA assisted project.*

The Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. part 661, which provide that Federal funds may not be obligated unless all steel, iron, and manufactured products used in FTA funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. § 661.11.

- 14. **Clean Air Act and the Federal Water Pollution Control Act:** *Applies to all contracts exceeding \$150,000.*

The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq and the Federal Water Pollution Control Act as amended, 33 U.S.C. § 1251-1388. The Contractor agrees to report each violation to the Agency and understands and agrees that the Agency will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the Agency and understands and agrees that the Agency will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

The Contractor also agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.



15. **Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate:** *Applies to all contracts in excess of the Simplified Acquisition Threshold (currently set at \$250,000) and those contracts shall contain administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms and provide for such sanctions and penalties as appropriate.*

- a. Disputes will be presented in writing to the appropriate Agency personnel - in Fargo, the Fargo Transit Director, in Moorhead, the Moorhead Transit Manager. Agency personnel and the Contractor will attempt to resolve any dispute arising in the performance of the contract.

Fargo: If the Transit Director and Contractor cannot resolve the dispute, the issue will be presented in writing to the Fargo City Administrator within ten [10] working days of dispute. If the dispute cannot be resolved by the City Administrator, it will be submitted in writing within ten [10] working days of the Fargo City Administrator's decision to the Fargo City Commission - it is the sole responsibility of the Contractor to schedule a hearing with the Fargo City Commission. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position at the hearing.

Moorhead: If the Transit Manager and Contractor cannot resolve the dispute, the issue will be presented in writing to the Moorhead City Manager within ten [10] working days of the dispute. If the dispute cannot be resolved by the City Manager, it will be submitted in writing within ten [10] working days of the Moorhead City Manager's decision to the Moorhead City Council - it is the sole responsibility of the Contractor to schedule a hearing with the Moorhead City Council. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position at the hearing.

The decision of the Fargo City Commission or Moorhead City Council shall be binding upon the Contractor and the Contractor shall abide by the decision.

- b. Unless otherwise directed by the Cities of Fargo/Moorhead, the Contractor shall continue performance under this contract while matters in dispute are being resolved.

- c. Should either party to the contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury of damage.
- d. Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the Cities of Fargo and/or Moorhead and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the applicable state.



16. **Cargo Preference:** *Applies to all contracts involving equipment, materials, or commodities that may be transported by ocean vessels.*

The Contractor agrees:

- a. to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;
- b. to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading.); and
- c. to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.



17. **Fly America:** *Applies to the transportation of persons or property, by air, between a place in the U.S. and a place outside the U.S., or between places outside the U.S., when the FTA will participate in the costs of such air transportation.*

Definitions. As used in this clause—

"International air transportation" means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.

"United States" means the 50 States, the District of Columbia, and outlying areas.

"U.S.-flag air carrier" means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

- a. When Federal funds are used to fund travel, Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires contractors, recipients, and others use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.
- b. If available, the Contractor, in performing work under this contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.
- c. In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a statement on vouchers involving such transportation essentially as follows:

Statement of Unavailability of U.S.-Flag Air Carriers

International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons. See FAR§ 47.403. [State reasons]:

(End of statement)

The Contractor shall include the substance of this clause, including this paragraph (e), in each subcontract or purchase under this contract that may involve international air transportation.

18. **Davis-Bacon Act and Copeland Act – Prevailing Wage and Anti-Kickback:**

Applies to all FTA funded contracts for all prime construction, alteration or repair contracts in excess of \$2,000. The recipient will ensure that each third-party contractor complies with all federal laws, regulations, and requirements, including:

a. **Prevailing Wage Requirements**

- i. *Federal transit laws, specifically 49 U.S.C. § 5333(a), (FTA 's 'Davis-Bacon Related Act');*
- ii. *The Davis-Bacon Act, 40 USC. §§ 3141-3144, 3146, and 3147; and*
- iii. *U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. part 5.*

b. **"Anti-Kickback" Prohibitions**

- i. *Section 1 of the Copeland "Anti-Kickback" Act, as amended, 18 U.S.C. § 874;*
- ii. *Section 2 of the Copeland "Anti-Kickback" Act, as amended, 40 USC. § 3145; and*
- iii. *US. DOL regulations, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States," 29 C.F.R. part 3.*

For all prime construction, alteration or repair contracts in excess of \$2,000 awarded by FTA, the Contractor shall comply with the Davis-Bacon Act and the Copeland "Anti-Kickback" Act. Under 49 U.S.C. § 5333(a), prevailing wage protections apply to laborers and mechanics employed on FTA assisted construction, alteration, or repair projects. The Contractor will comply with the Davis-Bacon Act, 40 U.S.C. §§ 3141-3144, and 3146-3148 as supplemented by DOL regulations at 29 C.F.R. part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction." In accordance with the statute, the Contractor shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, the Contractor agrees to pay wages not less than once a week. The Contractor shall also comply with the Copeland "Anti-Kickback" Act (40 U.S.C. § 3145), as supplemented by DOL regulations at 29 C.F.R. part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States." The Contractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.



19. **Contract Work Hours & Safety Standards Act:** *Applies to all FTA funded contracts in excess of \$100,000 that involve the employment of mechanics or laborers. Certain employee protections apply to all FTA funded contracts with particular emphasis on construction related projects. The recipient will ensure that each third-party contractor complies with all federal laws, regulations, and requirements, including:*
- a. *Contract Work Hours and Safety Standards*
 - i. *Contract Work Hours and Safety Standards Act, as amended, 40 USC §§ 3701- 3708; and supplemented by Department of Labor (DOL) regulations, 29 C.F.R. part 5; and A-38*
 - ii. *U.S. DOL regulations, "Safety and Health Regulations for Construction," 29 C.F.R. part 1926.*
 - b. **For Construction Contracts:**
 - i. For all contracts in excess of \$100,000 that involve the employment of mechanics or laborers, the Contractor shall comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701-3708), as supplemented by the DOL regulations at 29 C.F.R. part 5. Under 40 U.S.C. § 3702 of the Act, the Contractor shall compute the wages of every mechanic and laborer, including watchmen and guards, on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or to contracts for transportation or transmission of intelligence.
 - ii. In the event of any violation of the clause set forth herein, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, the Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of this clause in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by this clause.
 - iii. The FTA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other

Federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in this section.

- iv. The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this agreement.

c. **For Awards Not Involving Construction:**

- i. The Contractor shall comply with all federal laws, regulations, and requirements providing wage and hour protections for non-construction employees, in accordance with 40 U.S.C. § 3702, Contract Work Hours and Safety Standards Act, and other relevant parts of that Act, 40 U.S.C. § 3701 et seq., and U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. part 5.
- ii. The Contractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three (3) years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.
- iii. Such records maintained under this paragraph shall be made available by the Contractor for inspection, copying, or transcription by authorized representatives of the FTA and the Department of Labor, and the Contractor will permit such representatives to interview employees during working hours on the job.



20. **Bonding:** *The Common Grant Rules require bonds for all construction contracts exceeding the simplified acquisition threshold (exceeding \$150,000. Minnesota State Statute 574.26 limit is \$100,000) unless FTA determines that other arrangements adequately protect the Federal interest. FTA's bonding policies are as follows:*

- a. A bid guarantee from each bidder equivalent to five [5] percent of the bid price. The "bid guarantees" shall consist of a firm commitment such as a bid bond,

certifies check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

- b. A performance bond on the part to the Contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
- c. A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment, as required by law, of all persons supplying labor and material in the execution of the work provided for in the contract. Payment bond amounts required from Contractors are as follows:
 - i. 50% of the contract price if the contract price is not more than \$1 million;
 - ii. 40% of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
 - iii. \$2.5 million if the contract price is more than \$5 million.
- d. A cash deposit, certified check or other negotiable instrument may be accepted by a grantee in lieu of performance and payment bonds, provided the grantee has established a procedure to assure that the interest of FTA is adequately protected. An irrevocable letter of credit would also satisfy the requirement for a bond. Bid Bond Requirements (Construction)

Bid Security - A Bid Bond must be issued by a fully qualified surety company acceptable to the Agency and listed as a company currently authorized under 31 CFR, Part 223 as possessing a Certificate of Authority as described thereunder.

Rights Reserved - In submitting this Bid, it is understood and agreed by bidder that the right is reserved by the Agency to reject any and all bids, or part of any bid, and it is agreed that the Bid may not be withdrawn for a period of ninety [90] days subsequent to the opening of bids, without the written consent of the Agency.

It is also understood and agreed that if the undersigned bidder should withdraw any part or all of his bid within ninety [90] days after the bid opening without the written consent of the Agency, shall refuse or be unable to enter into this contract, as provided above, or refuse or be unable to furnish adequate and acceptable Performance Bonds and Labor and Material Payments Bonds, as provided above, or refuse or be unable to furnish adequate and acceptable insurance, as provided above, he shall forfeit his bid security to the extent of the Agency's damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security therefor.

It is further understood and agreed that to the extent the defaulting Bidder's Bid Bond, Certified Check, Cashier's Check, Treasurer's Check, and/or Official Bank Check (excluding any income generated thereby which has been retained by the Agency as provided in [Item x "Bid Security" of the Instructions to Bidders]) shall prove inadequate to fully recompense the Agency for the damages occasioned by default, then the

undersigned bidder agrees to indemnify the Agency and pay over to the Agency the difference between the bid security and the Agency's total damages, so as to make the Agency whole.

The undersigned understands that any material alteration of any of the above or any of the material contained on this form, other than that requested, will render the bid unresponsive. Performance and Payment Bonding Requirements (Construction)

The Contractor shall be required to obtain performance and payment bonds as follows:

Performance bonds

- a. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the Agency determines that a lesser amount would be adequate for the protection of the Agency.
- b. The Agency may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The Agency may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

Payment bonds

- a. The penal amount of the payment bonds shall equal:
 - i. Fifty percent of the contract price if the contract price is not more than \$1 million.
 - ii. Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million;
 - iii. Two and one half million if the contract price is more than \$5 million.
- b. If the original contract price is \$5 million or less, the Agency may require additional protection as required by subparagraph 1 if the contract price is increased.

Performance and Payment Bonding Requirements (Non-Construction)

The Contractor may be required to obtain performance and payment bonds when necessary to protect the Agency's interest.

The following situations may warrant a performance bond:

- a. The Agency's property or funds are to be provided to the contractor for use in performing the contract or as partial compensation (as in retention of salvaged material).
- b. A contractor sells assets to or merges with another concern, and the Agency, after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable.

- c. Substantial progress payments are made before delivery of end items starts.
- d. Contracts are for dismantling, demolition, or removal of improvements.

When it is determined that a performance bond is required, the Contractor shall be required to obtain performance bonds as follows:

- a. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the Agency determines that a lesser amount would be adequate for the protection of the Agency.
- b. The Agency may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price.
The Agency may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.
- c. A payment bond is required only when a performance bond is required, and if the use of payment bond is in the Agency's interest.
- d. When it is determined that a payment bond is required, the Contractor shall be required to obtain payment bonds as follows:

The penal amount of payment bonds shall equal:

- I. Fifty percent of the contract price if the contract price is not more than \$1 million;
- II. Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
- III. Two and one half million if the contract price is increased.

Advance Payment Bonding Requirements

The Contractor may be required to obtain an advance payment bond if the contract contains an advance payment provision and a performance bond is not furnished. The Agency shall determine the amount of the advance payment bond necessary to protect the Agency.

Patent Infringement Bonding Requirements (Patent Indemnity)

The Contractor may be required to obtain a patent indemnity bond if a performance bond is not furnished, and the financial responsibility of the Contractor is unknown or doubtful. The Agency shall determine the amount of the patent indemnity to protect the Agency.

Warranty of the Work and Maintenance Bonds

The Contractor warrants to the Agency, the architect and/or engineer that all materials and equipment furnished under this contract will be of highest quality and new unless otherwise specified by the Agency, free from faults and defects and in conformance with the contract documents. All work not so conforming to these standards shall be

considered defective. If required by the project manager, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

The work furnished must be of first quality and the workmanship must be the best obtainable in the various trades. The work must be of safe, substantial and durable construction in all respects. The Contractor hereby guarantees the work against defective materials or faulty workmanship for a minimum period of one [1] year after final payment by the Agency and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to the Agency. As additional security for these guarantees, the Contractor shall, prior to the release of final payment, furnish separate maintenance (or guarantee) bonds in form acceptable to the Agency written by the same corporate surety that provides the performance bond and labor and material payment bond for this contract. These bonds shall secure the Contractor's obligation to replace or repair defective materials and faulty workmanship for a minimum period of one [1] year after final payment and shall be written in an amount equal to ONE HUNDRED PERCENT [100%] of the CONTRACT SUM, as adjusted (if at all).

21. **EEO:** *Applies to all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3*

All Firms will be required to follow Federal Equal Employment Opportunity (EEO) policies. The Agency will affirmatively assure that on any project constructed pursuant to this advertisement, equal employment opportunity will be offered to all persons without regard to race, color, creed, religion, national origin, sex, and marital status, status with regard to public assistance, membership or activity in a local commission, disability, sexual orientation, or age.

22. **Seismic Safety:** *Applies only to contracts for the construction of new buildings or additions to existing buildings.*

The Contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation (DOT) Seismic Safety Regulations 49 C.F.R. part 41 and will certify to compliance to the extent required by the regulation. The Contractor also agrees to ensure that all work performed under this contract, including work performed by a subcontractor, is in compliance with the standards required by the Seismic Safety regulations and the certification of compliance issued on the project.

23. **Transit Employee Protective Arrangements:** *Applies to each contract for transit operations performed by employees of a Contractor recognized by FTA to be a transit operator.*

The Contractor agrees to comply with the following employee protective arrangements of 49 U.S.C. § 5333(b):

- a. U.S. DOL Certification. Under this contract or any amendments thereto that involve public transportation operations that are supported with federal assistance, a certification issued by U.S. DOL is a condition of the contract.
- b. Special Warranty. When the contract involves public transportation operations and is supported with federal assistance appropriated or made available for 49 U.S.C. § 5311, U.S. DOL will provide a special warranty for its award, including its award of federal assistance under the Tribal Transit Program. The U.S. DOL special warranty is a condition of the contract.
- c. Special Arrangements. The conditions of 49 U.S.C. § 5333(b) do not apply to Contractors providing public transportation operations pursuant to 49 U.S.C. § 5310. FTA reserves the right to make case-by-case determinations of the applicability of 49 U.S.C. § 5333(b) for all transfers of funding authorized under title 23, United States Code (flex funds), and make other exceptions as it deems appropriate, and, in those instances, any special arrangements required by FTA will be incorporated herein as required.



24. Charter Service Operations: *Applies to contracts for operating public transportation service.*

The Contractor agrees to comply with 49 U.S.C. 5323(d), 5323(r), and 49 C.F.R. part 604, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except as permitted under:

- a. Federal transit laws, specifically 49 U.S.C. § 5323(d);
- b. FTA regulations, "Charter Service," 49 C.F.R. part 604;
- c. Any other federal Charter Service regulations; or
- d. Federal guidance, except as FTA determines otherwise in writing.

The Contractor agrees that if it engages in a pattern of violations of FTA's Charter Service regulations, FTA may require corrective measures or impose remedies on it. These corrective measures and remedies may include:

- a. Barring it or any subcontractor operating public transportation under its award that has provided prohibited charter service from receiving federal assistance from FTA;

- b. Withholding an amount of federal assistance as provided by Appendix D to part 604 of FTA 's Charter Service regulations; or
- c. Any other appropriate remedy that may apply.

The Contractor should also include the substance of this clause in each subcontract that may involve operating public transit services.



25. School Bus Service Operations: *Applies to contracts for operating public transportation service.*

The Contractor agrees to comply with 49 U.S.C. 5323(f), and 49 C.F.R. part 604, and not engage in school bus operations using federally funded equipment or facilities in competition with private operators of school buses, except as permitted under:

- a. Federal transit laws, specifically 49 U.S.C. § 5323(f);
- b. FTA regulations, "School Bus Operations," 49 C.F.R. part 605;
- c. Any other Federal School Bus regulations; or
- d. Federal guidance, except as FTA determines otherwise in writing.

If the Contractor violates this school bus agreement, FTA may:

- a. Bar the Contractor from receiving Federal assistance for public transportation; or
- b. Require the Contractor to take such remedial measures as FTA considers appropriate.

When operating exclusive school bus service under an allowable exemption, the Contractor may not use federally funded equipment, vehicles, or facilities.

The Contractor should include the substance of this clause in each subcontract or purchase under this contract that may operate public transportation services.



26. Substance Abuse Requirements: Drug & Alcohol Testing: *Applies to third party contractors who perform safety-sensitive functions. Contractors must comply with FTA 's substance abuse management program under 49 C.F.R. part 655, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations." Under 49 C.F.R. § 655.4, Safety-sensitive function means any of the following duties, when performed by employees of recipients, subrecipients, operators, or contractors:*

- a. Operating a revenue service vehicle, including when not in revenue service;

- b. *Operating a non-revenue service vehicle, when required to be operated by a holder of a Commercial Driver's License;*
- c. *Controlling dispatch or movement of a revenue service vehicle;*
- d. *Maintaining (including repairs, overhaul and rebuilding) a revenue service vehicle or equipment used in revenue service. This section does not apply to the following: an employer who receives funding under 49 U.S.C. § 5307 or § 5309, is in an area less than 200,000 in population, and contracts or such services; or an employer who receives funding under 49 USC § 5311 and contracts out such services.*
- e. *Carrying a firearm for security purposes.*

Additionally, third-party contractors providing testing services involving the performance of safety sensitive activities must also comply with 49 C.F.R. part 40, "Procedures for Transportation Workplace Drug and Alcohol Testing Programs."

The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 C.F.R. part 655, produce any documentation necessary to establish its compliance with part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of North Dakota and/or Minnesota, or the Cities of Fargo/Moorhead, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 C.F.R. part 655 and review the testing process. The Contractor agrees further to certify annually its compliance with part 655 before February 1 and to submit the Management Information System (MIS) reports before February 1 to the City of Moorhead Transit Manager and City of Fargo Transit Director. To certify compliance, the Contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.



27. Rights to Inventions Made Under a Contract or Agreement: *Applies when entering into a contract (or subcontract) with a small business firm or nonprofit organization for the performance of experimental, developmental, or research work under the FTA award. The recipient or subrecipient must comply with the requirements of 37 C.F.R. part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements, "and any implementing regulations issued by the awarding agency. Except in the case of an "other agreement" in which the Federal Government has agreed to take more limited rights, the Federal Government is entitled to a non-exclusive, royalty free license to use the resulting invention, or patent the invention for Federal Government purposes. The FTA has the right to:*

- a. *Obtain, reproduce, publish, or otherwise use the data produced under a Federal award; and*
- b. *Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.*

Intellectual Property Rights: This project is funded through a Federal award with FTA for experimental, developmental, or research work purposes. As such, certain Patent Rights and Data Rights apply to all subject data first produced in the performance of this contract. The Contractor shall grant the Agency intellectual property access and licenses deemed necessary for the work performed under this Agreement and in accordance with the requirements of 37 C.F.R. part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by FTA or U.S. DOT. The terms of an intellectual property agreement and software license rights will be finalized prior to execution of this agreement and shall, at a minimum, include the following restrictions: Except for its own internal use, the Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Contractor authorize others to do so, without the written consent of FTA, until such time as FTA may have either released or approved the release of such data to the public. This restriction on publication, however, does not apply to any contract with an academic institution. For purposes of this agreement, the term "subject data" means recorded information whether or not copyrighted, and that is delivered or specified to be delivered as required by the contract. Examples of "subject data" include, but are not limited to computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information, but do not include financial reports, cost analyses, or other similar information used for performance or administration of the contract.

- a. The Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for "Federal Government Purposes," any subject data or copyright described below. For "Federal Government Purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.
 - i. Any subject data developed under the contract, whether or not a copyright has been obtained; and
 - ii. Any rights of copyright purchased by the Contractor using Federal assistance in whole or in part by the FTA.
- b. Unless FTA determines otherwise, the Contractor performing experimental, developmental, or research work required as part of this contract agrees to permit FTA to make available to the public, either FTA 's license in the copyright to any subject data developed in the course of the contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of this contract, is not completed for any reason whatsoever, all data

developed under the contract shall become subject data as defined herein and shall be delivered as the Federal Government may direct.

- c. Unless prohibited by state law, upon request by the Federal Government, the Contractor agrees to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. The Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.
- d. Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.
- e. Data developed by the Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract is exempt from the requirements herein, provided that the Contractor identifies those data in writing at the time of delivery of the contract work.
- f. The Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance.



28. Disadvantaged and Small Business Enterprise (DBEs): *Applies to FTA recipients receiving planning, capital and/or operating assistance that will award prime contracts (excluding transit vehicle purchases) exceeding \$250,000 in FTA funds in a Federal fiscal year.*

For all DOT-assisted contracts, each FTA recipient must include assurances that third party contractors will comply with the DBE program requirements of 49 C.F.R. part 26, when applicable. The following contract clause is required in all DOT-assisted prime and subcontracts:

The Contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 C.F.R. part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- a. Withholding monthly progress payments;
- b. Assessing sanctions;
- c. Liquidated damages; and/or
- d. Disqualifying the Contractor from future bidding as non-responsible. 49 C.F.R. § 26.13(b).

In connection with the performance of this service, the Contractor will cooperate with the Agency in the utilization of disadvantaged business enterprises including women-owned business enterprises for the duration of the contract and will use its best efforts to ensure that disadvantaged business enterprises have the maximum practicable opportunity to compete for subcontract work. In order to ensure that a fair proportion of the purchases of supplies and services is placed with disadvantaged business enterprises, the Contractor agrees to take affirmative action to identify disadvantaged business firms, solicit bids or quotations from them for supplies and services related to this proposal.

The Contractor agrees to meet any goals established by Agency for purchases pertaining to this contract to the best of the Contractor's ability and will provide the Agency with the necessary certification and records for reporting purposes. When the majority of the contract is labor, which is not a contracting opportunity, DBE goals will not be set but Contractors are encouraged to use DBE businesses.

The Contractor will be required to report its DBE participation obtained through race neutral means throughout the period of performance.

The contractor must promptly notify the Agency whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the Agency.

Fostering Small Business Participation

The Agency has established a small business element to its DBE program, pursuant to 49 CFR 26.39. This program aims to provide opportunities and foster small business enterprises (SBE)/participation in contracting with the Agency. This program is race and gender-neutral, however SBEs can also count towards DBE goals.



29. Prompt Payment and Return of Retainage: *Applies to all contracts.*

Recipients must establish a contract clause to require prime Contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days (payment required within 10 days or paying interest at 1 ½ percent per Minnesota State Statute 4 71.425 subd. 4a) from receipt of each payment the recipient makes to the prime contractor. 49 C.F.R. § 26.29(a). Finally, for contracts with defined DBE contract goals, each FTA recipient must include in each prime contract a provision stating that the Contractor shall utilize the specific DBEs listed unless the Contractor obtains the recipient's written consent; and that, unless the recipient's consent is provided, the Contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE. 49 C.F.R. § 26.53(f) (1).



30. 6002 of the Solid Waste Disposal Act: *Applies to all contracts for items designated by the EPA, when the purchaser or contractor procures \$10,000 or more of one of these items during the fiscal year or has procured \$10,000 or more of such items in the previous fiscal year, using Federal funds. These regulations apply to all procurement actions involving items designated by the EPA, where the procuring agency purchases \$10,000 or more of one of these items in a fiscal year, or when the cost of such items purchased during the previous fiscal year was \$10,000.*

The Contractor agrees to comply with all the requirements of Section 6002 of the Solid Waste Disposal Act, as amended (42 U.S.C. 6962) by the Resource Conservation and Recovery Act (RCRA), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.



31. Americans with Disabilities Act Access (ADA): *Applies to all contracts.*

The Contractor agrees to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC § 12101 et seq.; section 504 of the Rehabilitation Act of 1973, as amended, 29 USC § 794; 49 USC § 5301(d); and any implementing requirements FTA may issue. These regulations provide that no handicapped individual, solely by reason of his or her handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity included in or resulting from this agreement.

In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112 and section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Contractor agrees that it will comply with the requirements of U.S. Department of Transportation regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 CFR Part 37; and U.S. Department of Transportation regulations, "Americans with Disabilities Accessibility Specifications for Transportation Vehicles," 36 CFR Part 1192 and 49 CFR Part 38, pertaining to facilities and equipment to be used in

public transportation. In addition, the Contractor agrees to comply with the requirements of 49 U.S.C. § 5301 (d) which expresses the Federal policy that the elderly and persons with disabilities have the same right as other persons to use mass transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly persons and persons with disabilities. The Contractor also agrees to comply with any implementing requirements FTA may issue.

The Contractor understands that it is required to include this Article in all subcontracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Agency deems appropriate.



32. Assignability Clause: *Applies to all contracts.*

Procurements through assignments: Neither the Agency nor the Contractor shall assign or transfer any of its rights or obligations hereunder without the prior written consent of the other.



33. Program Fraud & False or Fraudulent Statements & Related Acts: *Applies to all third-party contracts that are federally funded.*

- a. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.
- b. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(1) on the Contractor, to the extent the Federal Government deems appropriate.

- c. The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.



- 34. Bus Testing:** *Applies only to the purchase or lease of any new bus model, or any bus model with a major change in configuration or components to be acquired or leased with funds obligated by FTA. Recipients are responsible for determining whether a vehicle to be acquired requires full or partial testing or has already satisfied the bus testing requirements by achieving a passing test score in accordance with 49 C.F.R. part 665. Recipients must certify compliance with FTA 's bus testing requirements in all grant applications for FTA funding for bus procurements.*

The Contractor [Manufacturer] agrees to comply with the Bus Testing requirements under 49 U.S.C. 5318(e) and FT A's implementing regulation at 49 C.F.R. part 665 to ensure that the requisite testing is performed for all new bus models or any bus model with a major change in configuration or components, and that the bus model has achieved a passing score. Upon completion of the testing, the contractor shall obtain a copy of the bus testing reports from the operator of the testing facility and make that report(s) publicly available prior to final acceptance of the first vehicle by the recipient.



- 35. Pre-Award and Post-Delivery Audits of Rolling Stock Purchases:** *Applies to the purchase of revenue service rolling stock with FTA funds and must comply with the pre-award and post-delivery audit requirements set forth in 49 U.S.C. 5323(111) and supplemented by 49 C.F.R. part 663.*

The Contractor agrees to comply with 49 U.S.C. § 5323(m) and FTA's implementing regulation at 49 C.F.R. part 663. The Contractor shall comply with the Buy America certification(s) submitted with its proposal/bid. The Contractor agrees to participate and cooperate in any pre-award and post-delivery audits performed pursuant to 49 C.F.R. part 663 and related FTA guidance



- 36. Safe Operation of Motor Vehicles:** *Applies to all federally funded third party contracts.*

Seat Belt Use

The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles. The terms "company-owned" and "company-leased" refer to vehicles owned or leased either by the Contractor or Agency.

Distracted Driving

The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this agreement.

ADDENDUM #1
REQUEST FOR PROPOSALS
GROUND TRANSPORTATION CENTER & METRO TRANSIT GARAGE
CUSTODIAL SERVICES

Issued May 20, 2022

The following clarifications are provided to assist all proposers in making an adequate interpretation of the provisions of the RFP:

- The Pre-Bid Conference minutes are attached to this addendum.

- ***RFP Page 10, Protests to FTA:***
Sections 6.0 – 6.2.3 have been removed from the RFP to clarify that the FTA's involvement in bid protests is limited. The Uniform Guidance, as adopted by DOT, no longer includes the language in 49 C.F.R. §18.36(b)(12) that provided for a direct appeal to FTA of a recipient's final decision on a bid protest.

- ***Service Schedule – Ground Transportation Center (GTC), Mid-Day Restroom Cleaning:***
Please complete a separate "bid price" and "average number of monthly and annual work hours tables" for a mid-day GTC restroom cleaning and include it in your sealed price proposal. The mid-day restroom cleaning will be required to be done between 11:00 a.m. and 2:00 p.m. each day. The mid-day restroom cleaning will be considered an option, meaning that the City may elect not to include it in the final contract. The separate bid price table can be found in the Addendum 1 5.20.22 – Custodial Bid Price & Avg Wrk Hours spreadsheet.

This spreadsheet can also be used to submit the "bid price" and "average number of monthly and annual work hours" tables for the services requested in the Ground Transportation Center & Metro Transit Garage RFP in place of the table that was included in the initial RFP.

MINUTES

**PRE-BID CONFERENCE
REQUEST FOR PROPOSALS
GROUND TRANSPORTATION & METRO TRANSIT GARAGE CUSTODIAL SERVICES
CITIES OF FARGO AND MOORHEAD**

**THURSDAY, MAY 12, 2022 - 8:30 AM
METRO TRANSIT GARAGE
650 23RD ST N, FARGO, ND 58102**

1. Introductions

Introductions were made of all persons present at the meeting.

- Mesud Hero, Diamond Shine Cleaning
- Al Char, Osgood Services
- Julie Bommelman, Fargo Transit Director, MATBUS
- Cole Swingen, Fargo Assistant Transit Director – Operations, MATBUS
- Luke Grittner, Fargo Transit Planner, MATBUS
- Floyd Coppel, Building Maintenance Technician II, MATBUS

Swingen opened the online meeting in Teams. No attendees were present online and the connection was closed.

2. Review Scope of Work & Contractor Selection Criteria (Page 15-24, Page 6)

Bommelman went through the scope of work and explained that the contractors must be able to supply the materials listed under the Materials and Supplies section. Bommelman also stated that the contractors must be able to meet the insurance requirements listed. Bommelman explained the schedule requirements, stating that the cleaning is to be done after business hours. Bommelman directed the contractors the Evaluation Criteria section, and stated that the lowest bid may not be the selected bid, the selection also takes previous experience and quality into account.

3. Forms to be Submitted with Proposal (Page 2)

- Federal Clauses and Certifications
- Debarment & Suspension Certification
- Lobbying Certification

Bommelman spoke about the submission of proposals and what is expected of the contractor. She explained that the written proposal should be in a separate sealed envelope from the price proposal.

The two certifications in Appendix B-1 and B-2 must be signed and submitted with the proposal.

Bommelman told the attendees that their business must be registered with SAM.gov prior to entering into a contract. Sam.gov is the registration site for businesses working with the federal government or federal grantees.

Bommelman also explained that if a proposal is received and it does not include the proper forms, it will be considered non-responsive and will not be considered.

4. Projected Schedule (Pages 4-5)

- Proposals are due May 26, 2022 at 650 23rd St N, Fargo, 2:00 pm CDT
- Contract begins/work commences August 8, 2022

Bommelman explained that there is an opportunity for pre-bid protests, if the contractor believes that something has been done unfairly.

5. There have been no written requests for clarifications and modifications (were due May 5, 2022)

6.

Questions and Answers

- Char asked will the floor stripping will be done before August when the new contract goes into effect.
 - Swingen stated that the floors will not be stripped before the new contract goes into effect.
- Hero asked who supplies the chemicals.
 - Bommelman stated that City will supply them.
- Hero asked if the City will supply the floor scrubber at the GTC.
 - Bommelman stated that the City will supply the floor scrubber.

BID PRICE:

	Ground Transportation Center (GTC)	Metro Transit Garage (MTG)
Price Per Month 2022		
Number of Months 2022	7	7
2022 Total		
Price Per Month 2023		
Number of Months 2023	12	12
2023 Total		
Price Per Month 2024		
Number of Months 2024	12	12
2024 Total		
Price Per Month 2025		
Number of Months 2025	12	12
2025 Total		
Price Per Month 2026		
Number of Months 2026	12	12
2026 Total		
Price Per Month 2027		
Number of Months 2027	12	12
2027 Total		
CONTRACT TOTAL		

Average Number of Monthly & Annual Work Hours

	Ground Transportation Center (GTC)	Metro Transit Garage (MTG)
Average Work Hours/Month 2022		
Number of Months 2022	7	7
2022 Total		
Average Work Hours/Month 2023		
Number of Months 2023	12	12
2023 Total		
Average Work Hours/Month 2024		
Number of Months 2024	12	12
2024 Total		
Average Work Hours/Month 2025		
Number of Months 2025	12	12
2025 Total		
Average Work Hours/Month 2026		
Number of Months 2026	12	12
2026 Total		
Average Work Hours/Month 2027		
Number of Months 2027	12	12
2027 Total		
AVG ANNUAL WORK HRS		

Note: The detailed information and estimates are not considered binding to the City of Fargo in the award of this contract.



Water Treatment Plant
435 14th Avenue South
Fargo, ND 58103
Office: 701.241.1469 | Fax: 701.241.8110
www.FargoND.gov

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September 29, 2022

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

Subject: Advertisement for Bid – Project WA2158 – Regional Emergency Water Supply Lift Station

Dear Commissioners:

Water Utility staff is seeking approval for advertising bidding of Project WA2158: Regional Emergency Water Supply Lift Station and Pipeline. A draft bid advertisement is attached. The project location is 52nd Avenue South at the Sheyenne River. This project is critical to convey Sheyenne River water to the Water Treatment Plant under drought conditions and will be very important for the Red River Valley Water Supply Project (RRVWSP), once constructed. The project will include the following major components:

- Control Vault construction to route Sheyenne River water to two different pump stations.
- Lift Station construction to pump Sheyenne River water to a storm/raw water pond.
- Inlet and discharge piping for lift station to transfer Sheyenne River water to the storm/raw water pond.

Project bidding is expected to take place later this fall. This project is funded through a low-interest State Revolving Fund (SRF) loan with the State of North Dakota. This project is on the 20-year Capital Improvement Plan (CIP) for the Water Utility.

Your consideration is greatly appreciated in this matter.

Sincerely,



Troy B. Hall
Water Utility Director

SUGGESTED MOTION:

Approve the Advertisement for Bid of Project WA2158, Regional Emergency Water Supply Lift Station and Pipeline.



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Water Treatment Plant
435 14th Avenue South
Fargo, ND 58103
Office: 701.241.1469 | Fax: 701.241.8110
www.FargoND.gov

September 29, 2022

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

Subject: Sole Source Request – Project WA2152 – Lime Softening Basin Rehabilitation

Dear Commissioners:

Water Utility staff is seeking approval of a sole source request for Ovivo USA, LCC (Ovivo) for equipment to rehabilitate three (3) softening trains in the 1997 Lime Softening Water Treatment Plant (LSWTP). This sole source request was approved by the Finance Committee on May 31, 2022, and the Utility Committee on June 6, 2022. The equipment proposal from Ovivo is in the amount of \$653,800. Part of the Ovivo proposal is to fabricate equipment that will improve employee safety for future softening basin maintenance.

The overall WA2152, Lime Softening Basin Rehabilitation, is to rehabilitate water softening train systems that have been in continuous service for nearly 25 years. Costs for the overall Project WA2152, including the Ovivo equipment, are within a low-interest State Revolving Fund (SRF) loan. This project is on the 20-year Capital Improvement Plan (CIP) for the Water Utility and recommended in a 2017 Facility Plan by AE2S and Black & Veatch.

Project WA2152 is now being advertised for bidding, but was on hold this summer awaiting EPA guidance for SRF loan requirements. EPA released the guidance information on September 2, 2022, and now the project can move forward. Project WA2152 has an anticipated completion date in the spring of 2024. Regarding the Ovivo sole source request, the following documents are attached to this cover letter:

- Utility Committee Report-Of-Action (ROA) on June 9, 2022.
- Sole Source Request form submitted to the Finance Committee on May 31, 2022.
- Black & Veatch letter to the North Dakota Department of Environmental Quality (DEQ) explaining the sole source justification.
- Ovivo proposal cover page and associated proposal price.

Your consideration is greatly appreciated in this matter.

Sincerely,



Troy B. Hall
Water Utility Director

SUGGESTED MOTION:

Approve sole source request with Ovivo USA, LLC for equipment to rehabilitate water softening trains under Project WA2152, Lime Softening Basin Rehabilitation.

REPORT OF ACTION
UTILITY COMMITTEE

Project No. WA2152

Type: Primary Softening Basin Rehabilitation Project

Location: Water Treatment Plant (435 14th Avenue South)

Date of Hearing: 6/9/2022

<u>Routing</u>	<u>Date</u>
City Commission	TBD
Project File	


Troy Hall, Water Utility Director, presented the attached memo regarding a sole source request for softening basin equipment for Project WA2152, Lime Softening Basin Rehabilitation. This sole source request was also approved by the Finance Committee on May 31, 2022. This project is funded through a low-interest State Revolving Fund (SRF) loan and is in the 20-year Capital Improvement Plan. The equipment provided – mechanical drives for large softening basin mixers and fabricated drums with personnel safety access hatches – is from the original equipment provider in the 1997 Lime Softening Water Treatment Plant. After significant consultant review, this best option for the project.

MOTION:

On a motion by Ben Dow, seconded by Jim Hausauer, the Utility Committee voted to approve the sole request with Ovivo for Project WA2152 equipment in the amount of \$653,800.

<u>COMMITTEE:</u>	<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Unanimous</u>
				<u>X</u>
				<u>Proxy</u>
Anthony Gehrig, City Commissioner				
Terri Gayhart, Director of Finance	X			
Brian Ward, Water Plant Supt.	X			
Mark Miller, Wastewater Plant Supt.	X			
Bruce Grubb, City Administrator	X			
Scott Liudahl, City Forester	X			
Terry Ludlum, Solid Waste Utility Director	X			
James Hausauer, Wastewater Util. Director	X			
Troy Hall, Water Utility Director	X			
Ben Dow, Public Works Operations Director	X			
Brenda Derrig, City Engineer	X			
Dan Portlock, Water Utility Engineer	X			
Scott Olson, Solid Waste Utility Engineer				

ATTEST:



 Troy B. Hall
 Water Utility Director

C: Tim Mahoney, Mayor
 Commissioner Strand
 Commissioner Piepkorn
 Commissioner Preston

MEMORANDUM
June 3, 2022

To: Utility Committee

From: Troy B. Hall, Water Utility Director *TBH*

Re: Project WA2152 – Softening Basin Rehabilitation – Sole Source Request – Drive Units & Safety Hatch System

Water Utility personnel are seeking approval of the attached Sole Source Request with Ovivo to provide new mixer drives and fabricate a safety access hatch system for Project WA2152, Softening Basin Rehabilitation. This Sole Source Request was approved by the Finance Committee on May 31, 2022. The mixer drives are original to the 1997 Lime Softening Water Treatment Plant (LSWTP) and in need of replacement. The Ovivo proposal shows 'Confidential' and the proposal will be described more in detail at the Utility Committee meeting and not attached to the agenda.

After review by WTP staff and consultants, Ovivo was the best option for the project. Ovivo is the original manufacturer (under a different company name) of the mechanical equipment and drive units in the LSWTP softening basins. Under the proposal, Ovivo will also fabricate drums with access hatches for safer annual maintenance, if this request is approved. WTP staff and consultants have a goal to complete rehabilitation in the three (3) primary softening basins next winter before the summer of 2023. With long lead times for delivery, the drives are recommended to be ordered now.



Picture of heavy-duty drive unit for a softening basin mixer in the 1997 Lime Softening Water Treatment Plant (LSWTP). These drives are 25-year old and original to the LSWTP. The drives will be replaced with new ones in project WA2152.

Project WA2152 will be funded through a low-interest State Revolving Fund (SRF) loan that has already been approved by the State of North Dakota Public Finance Authority (PFA). The Ovivo proposal price is \$653,800 and has been thoroughly reviewed and negotiated by consulting engineers.

Financial Considerations

The primary softening basin rehabilitation project in the 1997 Lime Softening Water Treatment Plant is intended to be funded through an approved Drinking Water State Revolving Fund (SRF) loan. The drive and safety hatch system procurement will be funded under this loan. The softening basin rehabilitation project is in the 20-year Capital Improvement Plan (CIP) for the Water Utility and a 2022 budget line.

SUGGESTED MOTION:

Approve a sole source request with Ovivo in the amount of \$653,800 to procure mixer drives and a safety access hatch system for Project WA2152, Softening Basin Rehabilitation.

Your consideration in this matter is greatly appreciated.



Sole Source and Piggyback Procurement Form

Sole Source and Piggyback Justification for Procurement

The following information is offered for the sole source acquisition of goods or services described below. The purchase has been thoroughly researched and it has been determined that the vendor/brand is the only acceptable vendor/brand for the product or services that will fit the particular need.

Vendor Name:

Ovivo

Estimated Dollar Amount of Purchase:

\$653,800

The project/service is required to:

The sole source is required to select Ovivo as the manufacturer of equipment for Project WA2152, Softening Basin Rehabilitation. No direct payments from the City of Fargo to Ovivo will be made. However, the sole source documentation is needed for our regulators under the project State Revolving Fund (SRF) loan program. Ovivo (under another company name) is the original manufacturer of softening basin equipment installed in the 1997 Lime Softening Water Treatment Plant (LSWTP). After review by consulting engineers, Ovivo is the best choice to provide new drive units for the large softening basin mixers and to fabricate a basin component to provide added employee safety.

Project WA2152 is to be loan funded under an approved SRF loan. The project is in the 2022 budget and in the Water Utility 20-year Capital Improvement Plan (CIP).

Description of features or capabilities unique to the vendor/brand being requested as related to project requirements:

Ovivo (under another company name) is the original manufacturer of softening basin equipment installed in the 1997 Lime Softening Water Treatment Plant (LSWTP). After review by consulting engineers, Ovivo is the best choice to provide new drive units for the large softening basin mixers and to fabricate a basin component to provide added employee safety.

Provide a brief description of how your investigation was conducted. (Internet, publications, consultations) List all sources identified and investigated to determine that no other source exists for similar products capable of meeting requirements (Must be exhaustive of all sources for the commodity being purchased. **)

The investigation was conducted Water Utility staff and consulting engineers through a significant engineering effort with cost and technical analysis. Ovivo (under another company name) is the original manufacturer of softening basin equipment installed in the 1997 Lime Softening Water Treatment Plant (LSWTP). After review by consulting engineers, Ovivo is the best choice to provide new drive units for the large softening basin mixers and to fabricate a basin component to provide added employee safety.

****If all sources are not investigated a competitive solicitation must be issued.**

Provide a side-by-side comparison of the features/service of all other vendors/brands considered. (List the features or capabilities required for your project and how each vendor investigated does or does not meet those requirements. A table format is recommended)

The investigation was conducted Water Utility staff and consulting engineers through a significant engineering effort with cost and technical analysis. Ovivo (under another company name) is the original manufacturer of softening basin equipment installed in the 1997 Lime Softening Water Treatment Plant (LSWTP). After review by consulting engineers, Ovivo is the best choice to provide new drive units for the large softening mixers and fabricate a basin component to provide added employee safety.

If the piggyback procurement method is being used, please provide a copy of the piggyback contract.

N/A

Signature: Troy B. Hall
(Requestor)

Printed Name: Troy B. Hall

Department: Water Treatment Plant

Title: Water Utility Director

Date: 5/26/2022

I, hereby, certify that this justification for other than full and open competition is accurate and complete to the best of my knowledge and belief.

TBH (Requestor initials)



June 21st, 2022

North Dakota Department of Environmental Quality
Division of Municipal Facilities
4201 Normandy Street
Bismarck, ND 58503-1324

B&V Project 409905
B&V File 51.5001

Letter No. 1

Attention: Bryan Schmitt, EIT

Subject: Fargo Lime Softening Water Treatment Plant – Primary Clarifier Drive Replacement

Dear Mr. Schmitt,

This letter is to provide professional engineer recommendation on the upcoming clarifier combination drive replacement for the Primary Softening Basin Rehab project currently in design for the City of Fargo.

Black & Veatch was the original designer for the Lime Softening Water Treatment Plant (LSWTP) that was constructed from 1993-1997. The processes of the LSWTP included pretreatment, primary and secondary softening, ozonation, and filtration. The original design of the Primary Softening units included Solids Contact Clarifier (SCC) units to aid in the mixing, flocculation, and settling of lime solids to remove hardness in the water. Each combination drive includes a solids collection rake arm drive (1 hp) and a larger turbine drive (25 hp) to power a mixing turbine which aids in the mixing and recycling of lime solids.

The OEM (Original Equipment Manufacturer) for the clarifier drive unit was Eimco, which is now part of Ovivo USA, LLC. There are six total clarifier combination drive units – one unit each in the three primary basins (which are the scope of this project) and one unit each in the three secondary basins (which will be addressed in a future project). The Primary SCCs have been in service since the startup of the LSWTP and have undergone some minor maintenance activities to repair coatings on the carbon steel surfaces. No major rehabilitation has been completed on the drive units due to the invasive nature of removal of the drive.

Black & Veatch provided master plan estimated service life (ESL) for a clarifier combination drive to be in the 30-year range, but this duration is highly dependent on service. The City of Fargo has done a good job maintaining these drives but have noted they are starting to experience some oil seal leaks on some of the drives. Due to the age and increasing maintenance of the drives, the AE2S and Black & Veatch team recommended drive rehabilitation or replacement in the 2017 Facility Plan. In 2022, the City of Fargo retained the AE2S/Black & Veatch team to design the LSWTP Primary Softening Rehab Project to replace the aging clarifier drives and provide replacement or rehabilitation of the components in the basin. Under the scope of this rehabilitation project, we evaluated the replacement options of the SCC combination drives and it was ultimately recommended to purchase three new drives and send the existing drives back for rehabilitation for future installation in the secondary clarifiers. For this project, the City will only be replacing the three combination drives in the primary basins.

The clarifier combination drive replacement will entail a direct replacement of the clarifier drive from the original 1997 LSWTP project. The replacement will require an exact match of equipment to ensure bolt hole pattern match, mating flanges/connections, torque limits, and control of system. For these reasons, Black & Veatch is recommending a direct replacement of this gear with exact make/model of drive units coming from Ovivo USA, who now owns Eimco, the original OEM. All design parameters have been examined and are consistent with original parameters from the 1997 LSWTP Project. Ovivo is also able to receive the existing combination drives in their shop and provide complete rehabilitation/overhaul services on the drives for future use at the Fargo LSWTP. The proposal would also include a new turbine drum as this component will need to be demolished to access connection points to remove old combination drive and install new combination drive.

For these reasons, Black & Veatch is recommending the City of Fargo enter into a replacement proposal with Ovivo USA, LLC for the direct replacement of the three C40PHT/C54P combination drives to start submittal review, reserve production timelines, and finalize existing drive rehabilitation scope. Black & Veatch is also recommending including the proposal in the Project Bid Documents and assigning the proposal to the lowest responsible Bidder/Contractor.

If you have any questions/comments regarding the attached information, don't hesitate to reach out to Bo Johnston at 952-896-0704.

Sincerely,

Black & Veatch



Adam J. Markos, PE
Black & Veatch Project Manager



Robert W. (Bo) Johnston
Sr. Engineering Manager

RWJ

Enclosure(s): Proposed Ovivo USA, LLC Scope

cc: Troy Hall, City of Fargo – Water Utility Director
Dan Portlock, City of Fargo – Water Utility Engineer
Richard Wagner, AE2S – AE2S Project Manager
File



PROPOSAL
Q2022325-DK Rev 2
MAY 12, 2022

FARGO WTP
FARGO, ND
(3) PRIMARY CLARIFIER UPGRADES

PREPARED FOR

Troy Hall
Water Utility Director
City of Fargo
(701) 476-6741

AREA REPRESENTATIVE

Great Northern Environmental
Matt Fritze
MFritze@gnenv.com
(952) 239-2264 c

PREPARED BY

Douglas King
Phone (801) 824-0975 c
dking@ovivo.com



Ovivo USA, LLC
4246 Riverboat Road – Suite 300
Salt Lake City, Utah 84123-2583

PRICING

ITEM	SPECIFICATION SECTION	EQUIPMENT	ESTIMATED SHIP DATE*	PRICE
1	N/A	(3) New Combo Drive Units-complete, (2) Re-Builds of Existing Combo Drive Units & (1) Engineering Lot for (3) New Turbine Drums w/ (2) manway access in each.	See Below	\$653,800.00 USD

Proposal details are listed as 'CONFIDENTIAL'.

REPORT OF ACTION

UTILITY COMMITTEE

29

Project No. WA2005

Type: Red River Pump Station Capacity & Flood Protection

Location: Water Treatment Plant (435 14th Avenue South)

Date of Hearing: 9/13/2022

<u>Routing</u>	<u>Date</u>
City Commission	<u>10/3/2022</u>
Project File	<u> </u>

Dan Portlock, Water Utility Engineer, presented the attached AE2S letter and change order form for Project WA2005, Red River Pump Station Improvements. Approval of this change order with Dakota Plains Mechanical will be a cost increase of \$1,125.00. This will be Change Order No. 1 under Contract No. 2 (mechanical construction) for the project. The change order is to relocate a water hose connection for fire protection to the building. This is due to a fence to be installed around an air conditioner for cooling of electrical equipment. If approved the new contract price for Dakota Plains Mechanical will be \$246,675. This project is funded through Infrastructure Sales Tax (Fund 450) for the local portion. However, grants (cost-shares) through FEMA and the North Dakota State Water Commission have been applied to the overall project as well.

MOTION:

On a motion by Ben Dow, seconded by Jim Hausauer, the Utility Committee voted to approve the change order with Dakota Plains Mechanical for Project WA2005 resulting in a cost increase of \$1,125.00.

<u>COMMITTEE:</u>	<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Unanimous</u>
				<u>X</u>
				<u>Proxy</u>
Denise Kolpack, City Commissioner	<u>X</u>			
Terri Gayhart, Director of Finance				
Brian Ward, Water Plant Supt.	<u>X</u>			
Mark Miller, Wastewater Plant Supt.	<u>X</u>			
Bruce Grubb, City Administrator	<u>X</u>			
Scott Liudahl, City Forester	<u>X</u>			
Terry Ludlum, Solid Waste Utility Director	<u>X</u>			
James Hausauer, Wastewater Util. Director	<u>X</u>			
Troy Hall, Water Utility Director	<u>X</u>			
Ben Dow, Public Works Operations Director	<u>X</u>			
Brenda Derrig, City Engineer	<u>X</u>			
Dan Portlock, Water Utility Engineer	<u>X</u>			
Scott Olson, Solid Waste Utility Engineer	<u>X</u>			

Troy B. Hall

ATTEST:

Troy B. Hall
Water Utility Director

C: Tim Mahoney, Mayor
Commissioner Strand
Commissioner Piepkorn
Commissioner Preston



Water Treatment Plant
435 14th Avenue South
Fargo, ND 58103
Office: 701.241.1469 | Fax: 701.241.8110
www.FargoND.gov

MEMORANDUM
September 9th, 2022

To: Utility Committee
From: Dan Portlock, Water Utility Engineer
Re: WA2005 Change order No. 1 to Contract No. 2 – Mechanical Construction Fargo Red River Pump Station Improvements

Attached, please find change order No. 1 to Contract No. 2 for project WA2005, Fargo Red River Pump Station Improvements. This change order has a total cost increase of \$1,125.00.

There is a security fence that is being installed this fall around an outdoor condensing unit on the North side of the building. Once the fence is installed, the existing exterior fire department water hose connection will be located inside the fence making access difficult in the event of an emergency. The fire department connection needs to be relocated from the north side of the building to an accessible location on the West side of the building.

Plan of Financing

This project will be funded through the Fargo Red River Pump Station Improvements project (WA2005). Project WA2005 is funded through Infrastructure Sales Tax (Fund 450). Grants from FEMA and the North Dakota State Water Commission (SWC) have also been applied to this project.

SUGGESTED MOTION:

Approve Change Order No. 1 to Contract No. 2 as a cost increase of \$1,125.00 for WA2005, Red River Pump Station Improvements.

Your consideration in this matter is greatly appreciated.

Date of Issuance: 8/5/2022	Effective Date: 8/5/2022
Owner: City of Fargo	Owner's Contract No.: WA2005
Contractor: Dakota Plains Mechanical	Contractor's Project No.:
Engineer: AE2S / B&V	Engineer's Project No.: P00803-2016-055
Project: Fargo Red River Pump Station Improvements	Contract Name: Mechanical Construction

The Contract is modified as follows upon execution of this Change Order:

Description: A security fence around the outdoor condensing unit on the north side of the building is being added to the project. Once this fence is installed, the existing exterior fire department water hose connection located on the exterior wall of the north side of the building will be located inside the fence making access difficult in the event of an emergency. Thus, the fire department connection needs to be relocated from the north side of the building to an accessible location on the west side of the building.

Attachments: Dakota Plains Mechanical cost proposal, photo with markups.

CHANGE IN CONTRACT PRICE	CHANGE IN CONTRACT TIMES
Original Contract Price: \$ <u>245,550.00</u>	Original Contract Times: Substantial Completion: _____ Ready for Final Payment: _____ days or dates
[[Increase] [Decrease] from previously approved Change Orders No. ___ to No. ___: \$ _____	[[Increase] [Decrease] from previously approved Change Orders No. ___ to No. ___: Substantial Completion: _____ Ready for Final Payment: _____ days
Contract Price prior to this Change Order: \$ <u>245,550.00</u>	Contract Times prior to this Change Order: Substantial Completion: _____ Ready for Final Payment: _____ days or dates
[[Increase] [Decrease] of this Change Order: \$ <u>1,125.00</u>	[[Increase] [Decrease] of this Change Order: Substantial Completion: _____ Ready for Final Payment: _____ days or dates
Contract Price Incorporating this Change Order: \$ <u>246,675.00</u>	Contract Times with all approved Change Orders: Substantial Completion: _____ Ready for Final Payment: _____ days or dates

RECOMMENDED: By: <u>Matt Rude</u> Engineer (if required)	ACCEPTED: By: _____ Owner (Authorized Signature)	ACCEPTED: By: <u>Kyle Jorissen</u> Contractor (Authorized Signature)
Title: <u>Project Engineer</u>	Title: _____	Title: _____
Date: <u>8/5/2022</u>	Date: _____	Date: <u>8/25/22</u>

Approved by Funding Agency (if applicable)

By: _____ Date: _____
Title: _____



Proposal

To: Marisha@AE2S

Date: 8/05/2022

Site: Red River Pump Station Fargo, ND

Description: Fire Sprinkler contractor to relocate outside fire department connection to accommodate security fence installation.

Total Cost Change-ADD \$1,125.00

Signature: _____

Submitted by: Kyle Jorissen

kyle@dakotaplainsmech.com

Cell 701-367-7134

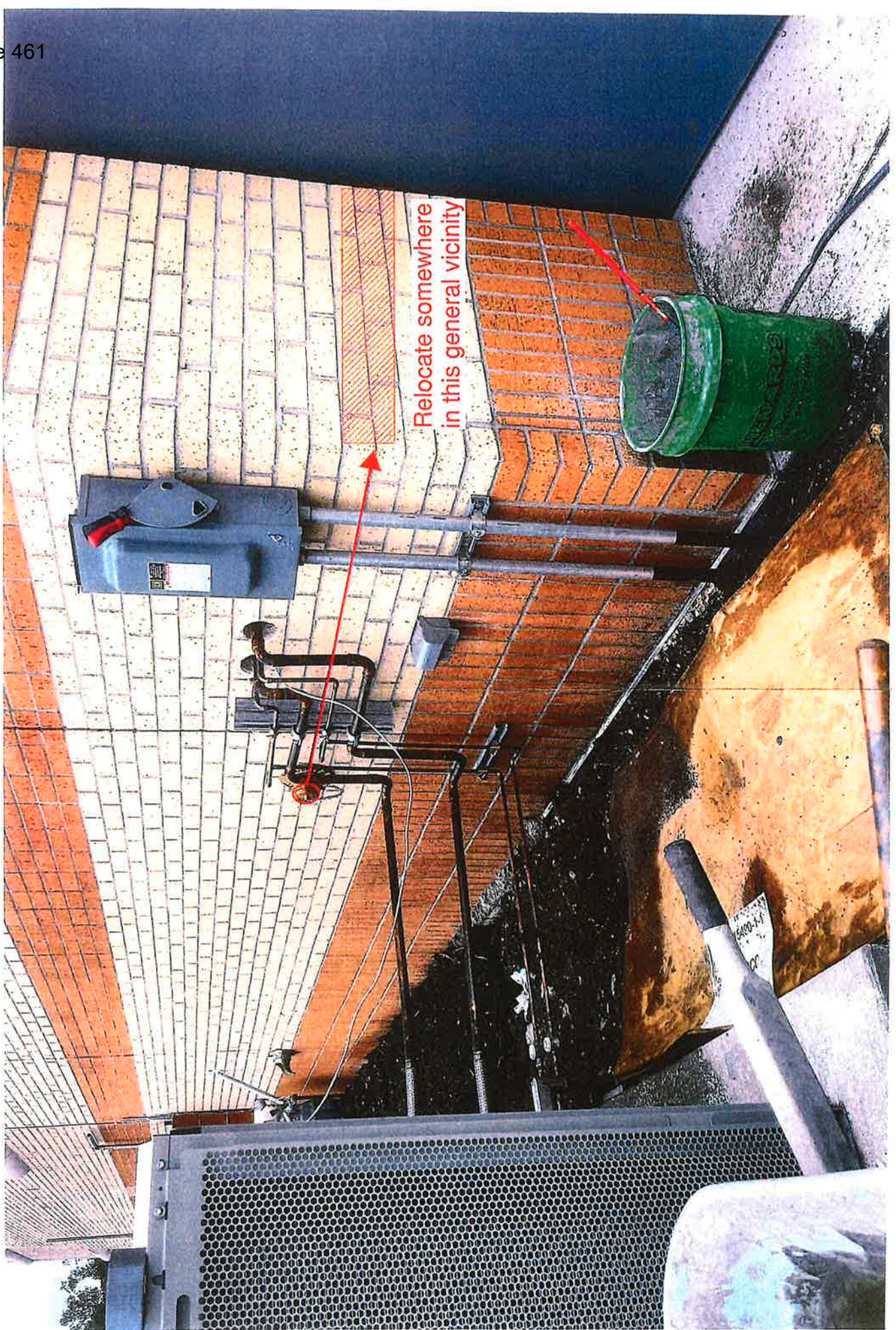
Thank You

Dakota Plains Mechanical

315 27th Circle South

Fargo, ND 58103

701-205-4840



Relocate somewhere
in this general vicinity

5400-14
DC

31

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Improvement District No. BN-22-A1

Type: Change Order #3

Location: 45th St S, 43rd St S, 54th Ave S,
56th Ave S & 64th Ave S

Date of Hearing: 9/26/2022

<u>Routing</u>	<u>Date</u>
City Commission	<u>10/3/2022</u>
PWPEC File	<u>X</u>
Project File	<u>Jason Leonard</u>

The Committee reviewed the accompanying correspondence from Project Manager, Jason Leonard, related to Change Order #3 in the amount of \$85,025.01. This change order is for additional work needed to restore seven existing sanitary sewer manholes, north of the new sewer line.

Staff is recommending approval of Change Order #3 in the amount of \$85,025.01, bringing the total contract amount to \$12,396,178.60.

On a motion by Tim Mahoney, seconded by Steve Sprague, the Committee voted to recommend approval of Change Order #3 in the amount of \$85,025.01 to Dakota Underground.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve Change Order #3 in the amount of \$85,025.01 bringing the total contract amount to \$12,396,178.60 to Dakota Underground.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: Water Utility, Sanitary Utility, Cass Rural Water, Sales Tax & Special Assessments

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

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


COMMITTEE

- Tim Mahoney, Mayor
- Nicole Crutchfield, Director of Planning
- Steve Dirksen, Fire Chief
- Michael Redlinger, Interim City Administrator
- Ben Dow, Director of Operations
- Steve Sprague, City Auditor
- Brenda Derrig, City Engineer
- Terri Gayhart, Finance Director

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

ATTEST:

C: Kristi Olson


Brenda E. Derrig, P.E.
City Engineer

Memorandum

To: Members of PWPEC
From: Jason Leonard, Project Manager
Date: September 21, 2022
Re: Improvement District No. BN-22-A1 – Change Order # 3

Background:

Improvement District No. BN-22-A1 will install underground utilities, asphalt & concrete paving, and incidentals on 43rd Street South (900' section just south of 64th Avenue South), 45th Street South (between 52nd Avenue South and 64th Avenue South), 54th Avenue South (between 44th Street South and 45th Street South), 56th Avenue South (between 44th Street South and 45th Street South), 64th Avenue South (between 38th Street South and 45th Street South) changing the sections of roadways from minimum maintenance section line roadway or green field development areas to an urban 3-lane concrete roadway section, 2-lane rural asphalt roadway section and urban asphalt section. The project will be funded with Special Assessments (City of Fargo & Cass Rural Water User District), Street Sales Tax, Waste Water Utility Fund and Water Utility Fund.

In an effort to preserve the existing sanitary sewer manhole infrastructure along 45th Street South installed in 2013, the plans and specifications included surface coatings for the seven existing structures. As the project has progressed, the existing structures have deteriorated to a point that they also need to be restored, in addition to the surface coatings. The Prime Contractor was made aware of the issue and submitted a proposed manhole restoration plan at a cost of \$85,025.01 to restore all seven manholes. Engineering Staff researched similar manhole rehab cost options and feels this is a good price to complete the proposed work. This Change Order will be funded with Waste Water Utility Funds.

Recommended Motion:

Approve Change Order #3 in the amount of \$85,025.01.

JTL/klb
Attachments



CHANGE ORDER REPORT
NEW PAVING AND UTILITY CONSTRUCTION
IMPROVEMENT DISTRICT NO. BN-22-A1
45TH ST S, 43RD ST S, 54TH AVE S, 56TH AVE S, 64TH AVE S

Change Order No 3 **Change Order Date** 9/22/2022
Contractor Dakota Underground Co Inc

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

EXPLANATION OF CHANGE Change Order # 3

In efforts to preserve the existing sanitary sewer manhole infrastructure along 45th Street South the plans and specifications include surface coatings for the seven existing structures. As the project has progress the City of Fargo maintenance staff recommend that additional measures were required for the existing sanitary sewer manhole. The prime contractor was made aware of the issue and submitted a proposed manhole restoration plan at a cost of \$85,025 to restore all 7 manhole. Engineering staff research similar manhole rehab cost options and feels this is a good price to complete the proposed work. This change order will be funded with Waste Water Utility Funds.

Section	Line No	Item Description	Unit	Orig Qty	Prevo Qty	Prevo C/O Qty	Curr Qty	Curr C/O Qty	Tot Qty	Unit Price (\$)	C/O Ext Price (\$)
Change Order 3	32	Repair Manhole - Complete Rehab	EA	0	0	0	7	7	7	\$12,146.43	\$85,025.01
Change Order 3 Sub Total										\$85,025.01	

Summary.

Source Of Funding

Net Amount Change Order # 3 (\$)

Previous Change Orders (\$)

Original Contract Amount (\$)

Total Contract Amount (\$)

Special Assessment, Water Utility Fund, Sanitary Utility Fund, City Sales Tax, Cass Rural Water

\$85,025.01

\$635,186.00

\$11,675,967.59

\$12,396,178.60

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

APPROVED

For Contractor

Title

Jared Heller, PE

Dakota Underground Company

Project Manager

APPROVED DATE

Department Head

Mayor

Attest



From: bthul@thulspecialtycontracting.com
To: Jared Heller
Cc: atbul@thulspecialtycontracting.com
Subject: RE: FW: 45th ST MANHOLES
Date: Monday, September 19, 2022 12:22:40 PM
Attachments: [image001.png](#)
[Raven-755-TDS.pdf](#)

Jared

Please see this proposal for surface restoration of 7 Existing Sanitary Manholes.
Mobilization, equipment Labor and materials to provide the following.

1. Flow control
2. Surface preparation using high pressure water blast
3. Debris removal
4. Spin Cast Raven 755 Fiber Reinforced, High Strength, Restoration Mortar to restore deteriorated concrete.
5. Trowel and finish restoration mortar to accept Raven 405 Epoxy Corrosion Barrier.

Thul Specialty Contracting will provide the above: 7-Manholes @\$11,500.00/Each

I have attached the product data sheet for Raven 755 Restoration Mortar. Please contact me with questions or concerns.

Thank you.

Bob Thul
Thul Specialty Contracting, Inc.
PO Box 322
8985 Odean Ave. NE
Elk River, MN 55330
O-763 576 8790
C-612 669 5007
F-763 576 8799
bthul@thulspecialtycontracting.com

Total Subcontractor Amount = \$80,500
GC 10% on \$10,000 = \$1,000
GC 5% on \$70,500 = \$3,525
Total Change Order = \$85,025

On 09/19/2022 10:42 AM CDT Jared Heller <jared@dakotaunderground.net> wrote:

Project is not open yet and they are in the ditch.

Jared Heller, PE

Project Manager

Dakota Underground Company

4001 15th Avenue N

Fargo, ND 58102

Office: 701.282.9753

Direct:701.781.6894

Cell: 701.306.7523

From: bthul@thulspecialtycontracting.com <bthul@thulspecialtycontracting.com>
Sent: Monday, September 19, 2022 10:41 AM
To: Jared Heller <jared@dakotaunderground.net>
Subject: Re: FW: 45th ST MANHOLES

Jared

Do you have traffic control covered for this work??

Thanks

Bob Thul
Thul Specialty Contracting, Inc.
PO Box 322

8985 Odean Ave. NE
Elk River, MN 55330
O-763 576 8790
C-612 669 5007
F-763 576 8799

bthul@thulspecialtycontracting.com

On 09/06/2022 10:26 AM CDT Jared Heller <jared@dakotaunderground.net> wrote:

Bob an Andy-

Here is the video that the City sent for the existing manholes.

Thanks

Jared Heller, PE
Project Manager
Dakota Underground Company
4001 15th Avenue N
Fargo, ND 58102
Office: 701.282.9753
Direct:701.781.6894
Cell: 701.306.7523

From: Jason Leonard <JLeonard@FargoND.gov>
Sent: Friday, September 2, 2022 12:22 PM
To: Jared Heller <jared@dakotaunderground.net>; Bob Nelson
<bobert@dakotaundergroundco.onmicrosoft.com>
Cc: Dana Debele <DDebele@FargoND.gov>
Subject: FW: 45th ST MANHOLES

Good Afternoon Jared and Bob,

Please see Dana's PDF and the videos can be found on the link below.

<https://fileshare.fargond.gov/index.php/s/naG3CHvyB4j8sMX>

Thank You

Jason T Leonard, PE
Civil Engineer II
City of Fargo - Engineering Department
Office: (701)241-1555
Cell: (701)730-6680
jleonard@cityoffargo.com

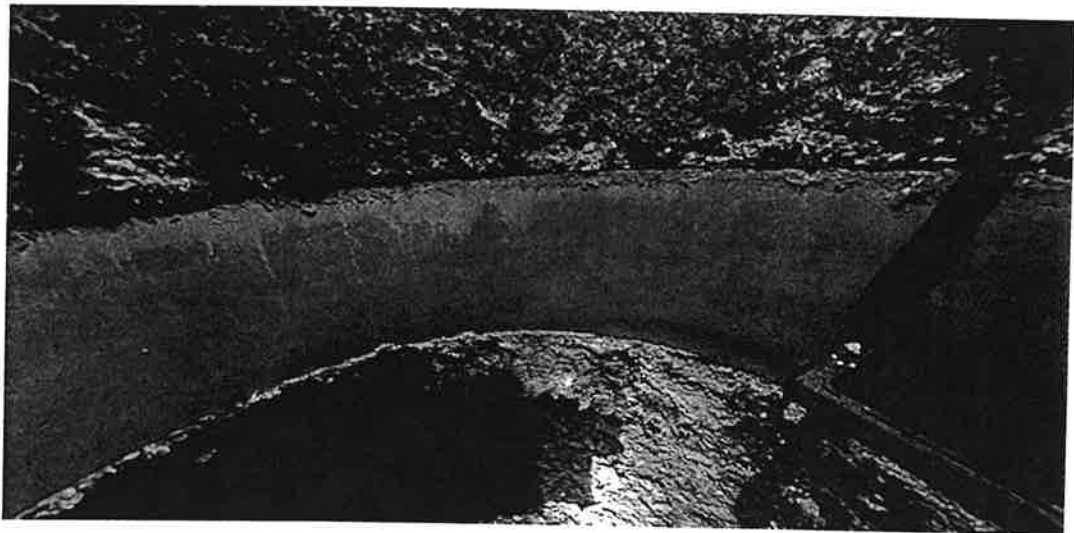
From: Dana Debele <DDebele@FargoND.gov>
Sent: Friday, September 02, 2022 10:53 AM
To: Jason Leonard <JLeonard@FargoND.gov>
Subject: 45th ST MANHOLES

Hello Jason,

We went out yesterday and televised the manholes that we could access on 45th St. S. I attached a map that shows the ones we have done and the ones that are buried. I put all the videos in

"I:\Engineering\45 ST S (52 AVE TO 56 AVE S) MANHOLE VIDEO" folder.

The best way to view these videos is to download **GoPro VR Player 3.0.5 (64Bit)** player, this has the best quality. You can also view them with the VLC media player but I've found that the quality isn't the best. When you watch the videos you can click and drag on the video to move the camera around.



Dana Debele
City of Fargo
701-541-2922

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Improvement District No. BN-21-B1 Type: Negative Final Balancing Change Order #1

Location: Between 73rd & 74th Ave S, west of 25th St S Date of Hearing: 9/26/2022

<u>Routing</u>	<u>Date</u>
City Commission	10/3/2022
PWPEC File	X
Project File	Jason Satterlund

The Committee reviewed the accompanying correspondence from Project Manager, Jason Satterlund, for Negative Final Balancing Change Order #1 in the amount of -\$16,657.35, which reconciles the measured quantities used in the field with those estimated for the contract.

Staff is recommending approval of Negative Final Balancing Change Order #1 in the amount of -\$16,657.35, bringing the total contract amount to \$2,783,111.31.

On a motion by Tim Mahoney, seconded by Steve Sprague, the Committee voted to recommend approval of Negative Final Balancing Change Order #1 to Dirt Dynamics.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve Negative Final Balancing Change Order #1 in the amount of -\$16,657.35, bringing the total contract amount to \$2,783,111.31 to Dirt Dynamics.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: Cass Rural WUD 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	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Nicole Crutchfield, Director of Planning	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Steve Dirksen, Fire Chief	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Michael Redlinger, Interim City Administrator	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Ben Dow, Director of Operations	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Paul Fiechtner
Steve Sprague, City Auditor	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Brenda Derrig, City Engineer	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Terri Gayhart, Finance Director	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

ATTEST:

Brenda E. Derrig, P.E. City Engineer

C: Kristi Olson



CHANGE ORDER REPORT
NEW PAVING AND UTILITY CONSTRUCTION
IMPROVEMENT DISTRICT NO. BN-21-B1
BETWEEN 73RD AVE S & 74TH AVE S - WEST OF 25TH ST S

Change Order No 1 Change Order Date 9/12/2022
 Contractor 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 Change Order # 1

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 (\$)
Miscellaneous	1	Mulching Type 2 Straw	SY	110100	0	110100	-21224	88876	\$0.15	-\$3,183.60
	2	Seeding Type C	SY	111660	0	110100	-77701	32399	\$0.26	-\$20,202.26
								Miscellaneous Sub Total		-\$23,385.86
Sanitary Sewer	15	F&I Pipe SDR 26 - 6" Dia PVC	LF	5585	0	5585	-164	5421	\$23.00	-\$3,772.00
	16	F&I Pipe SDR 26 - 8" Dia PVC	LF	1810	0	1810	-3	1807	\$34.00	-\$102.00
	17	F&I Pipe SDR 35 - 10" Dia PVC	LF	2700	0	2700	-2	2698	\$38.00	-\$76.00
								Sanitary Sewer Sub Total		-\$3,950.00
Cass Rural Water	24	F&I Fittings C153 Ductile Iron	LB	1834	0	1834	-61	1773	\$5.80	-\$353.80
	29	F&I Pipe C900 DR 18 - 8" Dia PVC	LF	4661	0	4661	-72	4589	\$31.00	-\$2,232.00
	32	F&I Pipe 1" Dia Water Service	LF	4914	0	4914	-2	4912	\$14.00	-\$28.00
								Cass Rural Water Sub Total		-\$2,613.80
Storm Sewer	46	F&I Pipe 12" Dia	LF	2519	0	2519	199	2718	\$27.00	\$5,373.00
	47	F&I Pipe 15" Dia	LF	1658	0	1658	61	1719	\$38.00	\$2,318.00

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 (\$)
	48	F&I Pipe 18" Dia	LF	1203	0	1203	-42	1161	\$41.00	-\$1,722.00
	50	F&I Pipe 24" Dia Polypropylene	LF	66	0	66	-6	60	\$56.00	-\$336.00
	51	F&I Pipe 27" Dia	LF	630	0	630	-118	512	\$68.00	-\$8,024.00
	57	Remove Pipe All Sizes All Types	LF	174	0	174	-10	164	\$8.00	-\$80.00
	58	Rem & Repl Pavement 8" Thick Asph	SY	70	0	70	5	75	\$75.00	\$375.00
Paving	60	Excavation	CY	17654	0	17654	76	17730	\$4.65	\$353.40
	66	Remove Curb & Gutter	LF	150	0	150	-25	125	\$8.00	-\$200.00
	67	F&I Curb & Gutter Mountable (Type I)	LF	8860	0	8860	35.91	8895.91	\$18.15	\$651.77
	68	F&I Sidewalk 4" Thick Reinf Conc	SY	810	0	810	7.05	817.05	\$56.10	\$395.51
	69	F&I Sidewalk 6" Thick Reinf Conc	SY	70	0	70	-5.18	64.82	\$71.50	-\$370.37
	70	F&I Shared Use Path 5" Thick Reinf Conc	SY	155	0	155	-43.81	111.19	\$75.90	-\$3,325.18
	71	F&I Shared Use Path 6" Thick Reinf Conc	SY	48	0	48	19.26	67.26	\$71.50	\$1,377.09
	72	F&I Det Warn Panels Cast Iron	SF	224	0	224	14	238	\$42.35	\$592.90
	73	Remove Sidewalk All Thicknesses All Types	SY	212	0	212	-4	208	\$9.00	-\$36.00
	75	F&I Asphalt Pavement FAA 43 w/ PG58H-34	Ton	4669	0	4669	213.8	4882.8	\$66.00	\$14,110.80
	80	Mulching Type 1 Hydro	SY	16416	0	16416	2223	18639	\$0.40	\$889.20
	81	Seeding Type C	SY	94117	0	16416	-1560	14856	\$0.35	-\$546.00
								Paving Sub Total	\$13,893.11	

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 (\$)
Signing	82	F&I Diamond Grade Cubed	SF	54.3	0	54.3	35	89.3	\$24.00	\$840.00
	83	F&I High Intensity Prismatic	SF	47.3	0	47.3	-4.5	42.8	\$20.00	-\$90.00
	84	F&I Sign Assembly	EA	10	0	10	4	14	\$93.50	\$374.00
	85	F&I Sign Assembly & Anchor	EA	21	0	21	-5	16	\$99.00	-\$495.00
	86	Relocate Sign Assembly	EA	4	0	4	1	5	\$220.00	\$220.00
								Signing Sub Total		
Street Lights	88	F&I Conductor #6 USE Cu	LF	12882	0	12882	-28	12854	\$2.31	-\$64.68
	89	F&I Innerduct 1.5" Dia	LF	4112	0	4112	-56	4056	\$5.77	-\$323.12
	91	F&I Pull Box	EA	4	0	4	1	5	\$1,034.00	\$1,034.00
							Street Lights Sub Total			\$646.20

Summary

Source Of Funding

Net Amount Change Order # 1 (\$)

Previous Change Orders (\$)

Original Contract Amount (\$)

Total Contract Amount (\$)

Special Assessments & Cass Rural WUD Funds

-\$16,657.35

\$0.00

\$2,799,768.66

\$2,783,111.31

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

APPROVED

For Contractor

Title

W. J. ...
Estimator

APPROVED DATE

Department Head

Mayor

Attest

T. Cole

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

33

Improvement District No.: BN-23-A1 Type: Cost Participation and Maintenance Agreement
NDDOT Project No. SU-TMA-8-984(170) PCN 23036

Location: 52nd Ave S, 63rd St to Sheyenne St Date of Hearing: 9/26/2022

Table with 2 columns: Routing, Date. Rows include City Commission, PWPEC File, and Project File.

The Committee reviewed the accompanying correspondence from Civil Engineer, Eric Hodgson, regarding a Cost Participation and Maintenance Agreement (CPM) with NDDOT for a project located at 52nd Avenue South from 63rd Street to Sheyenne Street.

The City of Fargo will be taking the lead on this project for the local entities and will need to enter into a CPM Agreement with the NDDOT. The local entities, the City of West Fargo, Cass County and the City of Fargo will enter into a similar agreement that will be brought forward later.

Funding for this project will be Federal, State, and local funds. Local funding will be shared between the City of Fargo, City of West Fargo, and Cass County.

On a motion by Nicole Crutchfield, seconded by Steve Sprague, the Committee voted to recommend approval of the CPM Agreement with the NDDOT.

RECOMMENDED MOTION

Concur with recommendations of PWPEC and approve the CPM Agreement with the NDDOT.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: Federal, State, Sales Tax, Utility Funds & Special Assessments

Table with 2 columns: Yes, No. Rows include Developer meets City policy for payment of delinquent specials, Agreement for payment of specials required of developer, Letter of Credit required (per policy approved 5-28-13).

COMMITTEE

Table with 4 columns: Present, Yes, No, Unanimous. Lists committee members and their voting status.

ATTEST:

Handwritten signature of 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: Eric Hodgson, Civil Engineer II
Date: September 26, 2022
Re: 52nd Avenue South Reconstruction (52nd Avenue South from 63rd Street to Sheyenne Street)
(Improvement District No. BN-23-A1)

Background:

The upcoming 52nd Avenue reconstruction project has Federal, State, and local funds. Local funding will be shared between the City of Fargo, the City of West Fargo, and Cass County. Because of the different funding sources, Cost Participation and Construction and Maintenance Agreements are needed between the parties involved.

The City of Fargo is taking the lead on this project for the local entities, so on behalf of the local entities, we will enter into a Cost Participation, and Construction and Maintenance Agreement with the NDDOT. The City of West Fargo and Cass County will enter into similar agreements with the City of Fargo.

Attached to this memo is the proposed contract agreements between the City of Fargo and the NDDOT. Additionally, attached is the proposed draft contract agreements between the City of Fargo and the City of West Fargo and Cass County.

Recommended Motion:

Approve the Cost Participation, and Construction and Maintenance Agreements between all parties involved for Improvement District No. BN-23-A1.

EBH/jmg
Attachments

MEMO TO: Jen Turnbow
Deputy Director for Planning

FROM: Marohl, Sengaroun H., 328-4449
Local Government Division

DATE: 09/07/2022

SUBJECT: Cost Participation, Construction and Maintenance Agreement for Project
SU-TMA-8-984(170) PCN 23036

This contract is a Cost Participation, Construction and Maintenance (CPM) agreement with City of Fargo on 52nd Ave S (Sheyenne St - 63rd St) project.

Contract # 38221292

- The type of work is Grading, Salvaged Base, PCC Pavement, HMA, Storm Drain, Lighting, Signals, Marking, Signing, Shared Use Path, Sidewalk, Bridge and Watermain.
- The SU federal funds is limited to \$5,000,000 and TMA federal funds is limited to \$4,000,000.
- Any costs over the above limited amount will be City responsibility.
- No one time changes on the standard agreement template.

38/sm

Contract routing:
Seng Marohl - Contract Owner
Stacey Hanson
Paul Benning
Shannon Sauer
Brenda Derrig - Fargo City Engineer
City of Fargo Officials
Seng Marohl
Legal
Jen Turnbow
Stacey Hanson

NDDOT Contract No. 38221292

**North Dakota Department of Transportation
COST PARTICIPATION, CONSTRUCTION, AND MAINTENANCE AGREEMENT
LPA FEDERAL AID PROJECT**

Federal Award Information – to be provided by NDDOT

CFDA No: 20.205

CFDA Title: Highway Planning & Construction

Award Name: Federal Aid Highway Program

Awarding Fed. Agency: Federal Highway Admin

NDDOT Program Mgr: Marohl, Sengaroun

Telephone: 701-328-4449

Notice to Subrecipients: Federal awards may have specific compliance requirements. If you are not aware of the specific requirements for your award, please contact your NDDOT Program Manager.

For NDDOT use only.

FHWA Authorization date:

Project No. SU-TMA-8-984(170)

LPA: CITY OF FARGO

Location: FARGO 52ND AVE S FROM SHEYENNE ST TO 63RD ST

Type of Improvement: GRADING, SALVAGED BASE, PCC PAVEMENT, HMA, STORM DRAIN, LIGHTING, SIGNALS, MARKING, SIGNING, SHARED USE PATH, REINF CONCRETE SIDEWALK, BRIDGE, WATERMAIN

Length: 0.607 MILE

This agreement is between the state of North Dakota, acting by and through its Director of Transportation, hereinafter referred to as NDDOT, whose address is 608 East Boulevard Avenue, Bismarck, North Dakota 58505-0700, and the Local Public Agency (LPA) of City of Fargo, North Dakota, hereinafter referred to as the LPA, who agree that:

It is in the best interest of both parties to have the LPA construct and maintain this project according to the terms and conditions set forth in this agreement. NDDOT will assist the LPA with the preparation and distribution of the bid documents and include the project in a scheduled bid opening.

The LPA agrees to the terms and conditions required for this project by the Federal Highway Administration (FHWA).

NDDOT will procure federal funds for the construction of the project, pursuant to Title 23 of the United States Code.

Federal funds obligated for this project shall not exceed 80.93 percent of the total eligible project cost up to a maximum of \$5,000,000 SU funds and \$4,000,000 TMA funds. The balance of the project is the obligation of the LPA.

Additional Funding Clause

SU funds is 2022 funds and TMA is 2023 funds.



The total eligible project costs include the cost of those items shown in the engineer's detailed estimate as approved for federal funds and any project changes approved by NDDOT for the use of federal funds.

Federal funds may not be obligated by the LPA, prior to FHWA approval of the program documents for the project.

PART I

LPA Obligation:

1. To comply with the Disadvantaged Business Enterprise (DBE) requirements established by NDDOT for the project.

The LPA shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any USDOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The LPA shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of USDOT-assisted contracts. NDDOT's DBE program, as required by 49 CFR Part 26 and as approved by USDOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the LPA of its failure to carry out its approved program, the USDOT may impose sanctions as provided for under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et. Seq.).

Include the following paragraph verbatim in any subcontracts they sign relative to this project:

The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the solicitation, award, and administration of USDOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as NDDOT deems appropriate.

2. To comply with requirements of 23 CFR Part 633, Required Contract Provisions, and 23 CFR Part 635, Construction and Maintenance.
3. To construct the project in conformity with the construction contract, changes to the plans shall meet the requirements of 23 CFR Part 625, Design Standards for Highways and the current edition of the NDDOT's *Local Government Manual*.
4. To construct the project in conformity with the approved environmental documents and provide for the implementation of any measures mitigating the environmental impact of the project.
5. To comply with the procedures outlined in the current edition of NDDOT's *Local Government Manual*.
6. To comply with the current edition of NDDOT's *Right of Way Acquisition Procedures for Local Public Agency Federal Aid Projects*.
7. The LPA will be responsible for any consideration, avoidance, and minimization of impacts upon real property related to this project, such as changes in the grades of streets, inconvenience to property or business, and any loss of light, air, view, access, egress, drainage, support, or nuisance,
8. To comply with the requirements of Appendices A and E of the Title VI Assurances, attached and incorporated by reference herein.



PART II

Contracting and Construction:

1. On behalf of the LPA, NDDOT will:
 - a. Prepare the bid package, solicit proposals, and include the project in a scheduled bid opening as provided in the North Dakota Century Code, Chapter 24-02.
 - b. Evaluate the bids as to the sufficiency of Disadvantaged Business Enterprise (DBE) participation and the bidder's good faith efforts in satisfying the requirements of the current edition of the DBE special provision, and 49 CFR Part 26. NDDOT shall have exclusive authority in evaluating the adequacy of DBE participation.
 - c. Tabulate the bids and send to the LPA.
 - d. Concur in the award of the contract, after the LPA has executed the contract, for the sole purpose of enabling the LPA to procure federal aid for the construction of the project.
2. The LPA will:
 - a. Review bids to determine the lowest responsible bidder.
 - b. Execute the contract.
 - c. Distribute copies of the executed contract and contract bond to NDDOT.
3. During the construction of the project, the LPA will:
 - a. Provide engineering services, material testing, and inspection of the work as required by the contract documents and the current editions of NDDOT's *Sampling and Testing Manual* and the *Standard Specifications for Road and Bridge Construction*.
 - b. Keep all project records and documentation as required in NDDOT's current editions of the *Construction Records Manual* and the *Construction Automated Records System*.
 - c. Make all records available to NDDOT and FHWA for inspection upon request. The LPA will submit all documents and records to NDDOT for review before final payment is made. NDDOT will maintain the project records for three years from the final voucher date of FHWA and then return them to the LPA.
 - d. Be responsible for any changes in plan, character of work, quantities, site conditions, or any claim for extra compensation. NDDOT will review all contract adjustments to determine if the adjustments are eligible for federal aid. Federal aid shall be limited to the amount stated on page one of this agreement.

PART III

Post Construction:

After the project is completed the LPA agrees to:



1. Control the length and location of curb openings for future entrances and to not permit the length of curb openings for entrances to exceed the length shown on the plans or as shown on a sketch of typical entrances for similar entrances; and prohibit the construction or use of any entrances along the project within the LPA other than those shown on the plans, without prior approval of NDDOT.
2. Prohibit double parking and diagonal parking within the limits of the project. Additional parallel parking will be allowed within the limits of the project if designed considering the effects the added parking will have on the entire traffic corridor. The design will meet the requirements of 23 CFR Part 625, Design Standards for Highways.
3. If the traffic corridor intersects a state highway, the LPA must justify to NDDOT that any new access allowed will have minimal impact to the state highway. The design will meet the requirements of 23 CFR Part 625, Design Standards for Highways.
4. Prohibit the installation of traffic signals and pedestrian beacons on or in connection with the project, including those installed at the sole cost and expense of the LPA or by others, without NDDOT approval.
5. Maintain all traffic control devices on the project according to the current edition of the *Manual on Uniform Traffic Control Devices for Streets and Highways*, as supplemented and amended.
6. Restrict the speed limit on the project at or below the maximum design speed. Any changes to the speed limit will be pursuant to North Dakota Century Code, Chapter 39-09.
7. Provide maintenance to the completed project at its own cost and expense.
8. Prohibit access and encroachments upon the right of way pursuant to 23 CFR Part 1.23, Rights of Way, and Part 710 Subpart D, Right of Way, Real Property Management.

PART IV

General:

1. NDDOT will make all contract payments on behalf of the LPA. Payment will be made upon receipt of the engineer's estimate. The LPA will reimburse NDDOT for payments made less the amount paid by FHWA. No costs will be incurred by NDDOT for the construction and maintenance of this project.

If the LPA fails to reimburse NDDOT within 60 days after billing for funds advanced on behalf of the LPA, this document will constitute an assignment of funds now or hereafter coming into the hands of the state treasurer, which would otherwise be distributed to the LPA out of the highway tax distribution fund, NDCC 54-27-19. The state treasurer is hereby directed to pay NDDOT all such funds until the total equals the sum billed pursuant to this agreement.

2. The Risk Management Appendix, attached, is hereby incorporated and made a part of this agreement.
3. No official, employee, or other person performing services for the LPA who is authorized to negotiate or approve any contract or subcontract in connection with the project shall have any financial or other personal interest in any such contract or subcontract. No officer or employee of such person retained by the LPA shall have any financial or other personal interest in any real property acquired for the project unless such interest is openly disclosed upon public records of NDDOT and of the LPA, and such officer, employee, or person has not participated in such acquisition for and in behalf of the LPA.
4. The failure of the state to enforce any provisions of this contract shall not constitute a waiver by the state of that or any other provision.



5. Entities that receive federal funds through NDDOT may be required to obtain an audit in accordance with 2 C.F.R. Part 200, Subpart F. A copy of such audit shall be submitted to NDDOT. Entities that spend less than \$750,000 of federal funds from all sources may be subject to reviews by NDDOT at its discretion. Additionally, all entities receiving federal funds through NDDOT shall certify whether a Single Audit has been completed as part of the annual Federal award process. These requirements are applicable to counties, cities, state agencies, Indian tribes, colleges, hospitals, and non-profit businesses.
6. All notices, certificates, or other communications shall be sufficiently given when delivered or mailed, postage prepaid, to the parties at the respective places of business as set forth below or at a place designated hereafter in writing by the parties.

Local Government Engineer
ND Department of Transportation
608 East Boulevard Avenue
Bismarck, ND 58505-0700

7. The LPA is advised that its signature on this contract or agreement certifies that any person associated therewith is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three years; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction on any matter involving fraud or official misconduct within the past three years.
8. This agreement constitutes the entire agreement between the parties. No waiver consent, modification or change of terms of this agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this agreement. The LPA, by the signature below of its authorized representative, hereby acknowledges that the LPA has read this agreement, understands it, and agrees to be bound by its terms and conditions.



Executed by the LPA of City of Fargo, North Dakota, the date last below signed.

APPROVED:

LPA/STATES ATTORNEY (TYPE OR PRINT)

SIGNATURE

DATE

LPA of City of Fargo

*

Dr. Timothy J. Mahoney
NAME (TYPE OR PRINT)

SIGNATURE

* Mayor
TITLE

DATE

ATTEST:

Steve Sprague
AUDITOR (TYPE OR PRINT)

SIGNATURE

DATE

Executed by the North Dakota Department of Transportation the date last below signed.

APPROVED as to substance:

DS
St

Paul Benning
LOCAL GOVERNMENT ENGINEER (TYPE OR PRINT)

DocuSigned by:
Paul Benning
SIGNATURE
A411FB17506247A

9/7/2022
DATE

NORTH DAKOTA
DEPARTMENT OF TRANSPORTATION

DIRECTOR (TYPE OR PRINT)

SIGNATURE

DATE

*Mayor, President or Chairperson of Commission

CLA 19256 (Div. 38)
L.D. Approved 4-12-93; 9-19



CERTIFICATION OF LOCAL MATCH

It is hereby certified that the LPA of City of Fargo will provide non-federal funds, whose source is identified below, as match for the amount the LPA is obligated to pay under the terms of the attached agreement with the North Dakota Department of Transportation. The certified amount does not duplicate any federal claims for reimbursement, nor are the funds used to match other federal funds, unless expressly allowed by federal regulation.

Non-Federal Match Funds provided by LPA. Please designate the source(s) of funds in the LPA budget that will be used to match the federal funds obligated for this project through the North Dakota Department of Transportation.

Source:

Executed at Fargo, North Dakota, the last date below signed.

ATTEST:

Steve Sprague
AUDITOR (TYPE OR PRINT)

SIGNATURE

DATE

APPROVED:

LPA of City of Fargo

Dr. Timothy J. Mahoney
NAME (TYPE OR PRINT)

SIGNATURE

* Mayor
TITLE

DATE

*Mayor, President or Chairperson of Commission

CLA 19256 (Div. 38)
L.D. Approved 4-12-93; 9-19



**NORTH DAKOTA DEPARTMENT OF TRANSPORTATION
APPENDIX A OF THE TITLE VI ASSURANCES**

During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the Contractor) agrees as follows:

1. Compliance with Regulations: The Contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, the Federal Highway Administration, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. Non-discrimination: The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the Contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. Information and Reports: The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the Federal Highway Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the Recipient or the Federal Highway Administration as appropriate, and will set forth what efforts it has made to obtain the information.
5. Sanctions for Noncompliance: In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
 - a. withholding payments to the Contractor under the contract until the Contractor complies; and/or
 - b. cancelling, terminating, or suspending a contract, in whole or in part.
6. Incorporation of Provisions: The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the Recipient or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.



**NORTH DAKOTA DEPARTMENT OF TRANSPORTATION
APPENDIX E OF THE TITLE VI ASSURANCES**

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the Contractor) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.P.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 *et seq.*).



Risk Management Appendix

Routine* Service Agreements with Sovereign Entities and Political Subdivisions of the State of North Dakota:

Parties: **State** – State of North Dakota, its agencies, officers and employees

Governmental Entity – The Governmental Entity executing the attached document, its agencies, officers and employees

Governments – State and Government Entity, as defined above

Each party agrees to assume its own liability for any and all claims of any nature including all costs, expenses and attorney's fees which may in any manner result from or arise out of this agreement.

Each party shall secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds, authorized to do business in North Dakota, the following insurance coverages:

- 1) **Commercial general liability and automobile liability** insurance – minimum limits of liability required of the Governmental Entity are **\$375,000 per person and \$1,000,000 per occurrence**. The minimum limits of liability required of the State are **\$375,000 per person and \$1,000,000 per occurrence**.
- 2) **Workers compensation** insurance meeting all statutory limits.
- 3) The policies and endorsements may not be canceled or modified without **thirty (30) days prior written notice** to the undersigned State representative.

The State reserves the right to obtain complete, certified copies of all required insurance documents, policies, or endorsements at any time.

Each party that hires subcontractors shall require any non-public subcontractors, prior to commencement of work set out under an agreement between that party and the non-public subcontractor, to:

Defend, indemnify, and hold harmless the Governments, its agencies, officers and employees, from and against claims based on the vicarious liability of the Governments or its agents, but not against claims based on the Government's contributory negligence, comparative and/or contributory negligence or fault, sole negligence, or intentional misconduct. The legal defense provided by the Subcontractor to the Governments under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for the Governments is necessary. Subcontractor also agrees to defend, indemnify, and hold the Governments harmless for all costs, expenses and attorneys' fees incurred if the Governments prevail in an action against Subcontractor in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this agreement.

Subcontractor shall secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds authorized to do business in North Dakota: 1) commercial general liability; 2) automobile liability; and 3) workers compensation insurance all covering the Subcontractor for any and all claims of any nature which may in any manner arise out of or result from this agreement. The minimum limits of liability required are \$375,000 per person and \$1,000,000 per occurrence for commercial general liability and automobile liability coverages, and statutory limits for workers compensation. The Governments shall be endorsed on the commercial general liability policy and automobile liability policy as additional insureds. The Governments shall have all the benefits, rights and coverages of an additional insured under these policies that shall not be limited to the minimum limits of insurance required by this agreement or by the contractual indemnity obligations of the Contractor. Said endorsement shall contain a "Waiver of Subrogation" waiving any right of recovery the insurance company may have against the Governments as well as provisions that the policy and/or endorsement may not be canceled or modified without thirty (30) days prior written notice to the undersigned representatives of the Governments, and that any attorney who represents the State under this policy must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under N.D.C.C. Section 54-12-08. Subcontractor's insurance coverage shall be primary (i.e., pay first) as respects any insurance, self-insurance or self-retention maintained by the Governments. Any insurance, self-insurance or self-retention maintained by the Governments shall be excess of the Contractor's insurance and the Subcontractor's insurance and shall not contribute with them. The insolvency or bankruptcy of the insured Subcontractor shall not release the insurer from payment under the policy, even when such insolvency or bankruptcy prevents the insured Subcontractor from meeting the retention limit under the policy. Any deductible amount or other obligations under the Subcontractor's policy(ies) shall be the sole responsibility of the Subcontractor. This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and be placed with insurers rated "A-" or better by A.M. Best Company, Inc. The Governments will be indemnified, saved, and held harmless to the full extent of any coverage actually secured by the Subcontractor in excess of the minimum requirements set forth above. The Government Entity that hired the Subcontractor shall be held responsible for ensuring compliance with the above requirements by all Subcontractors. The Governments reserve the right to obtain complete, certified copies of all required insurance documents, policies, or endorsements at any time.

*See *North Dakota Risk Management Manual*, section 5.1 for discussion of "unique" and "routine" agreements.

RM Consulted 2007
Revised 07-22



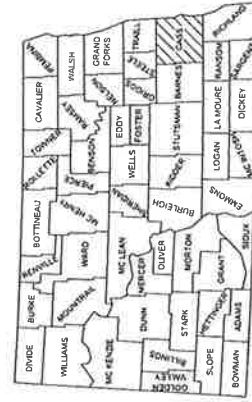
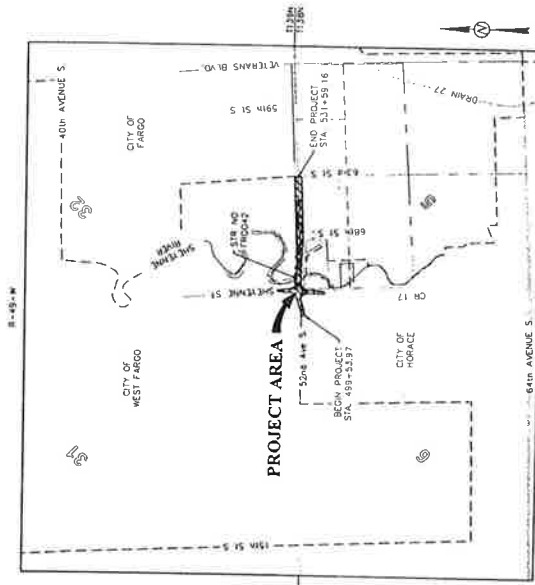
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DESIGN DATA		
Average Daily		
Current 2015	Pass: 11,365	Trucks: 475
Forecast 2040	Pass: 19,775	Trucks: 825
Clear Zone Distance: 28 FT		Design Speed: 45 MPH
Minimum Sight Dist. for Stopping: 360 FT		Bridges: HL-93
Limited Access Control		
Pavement Design Life: 30 YEARS		
Design Accumulated One-way Rigid ESALS: N/A		

NORTH DAKOTA
DEPARTMENT OF TRANSPORTATION

SU-TMA-8-984(170)
BN-23-A1
CASS COUNTY
52nd AVE S

SHEYENNE ST/COUNTY ROAD 17 TO WEST OF 63RD ST
GRADING, SALVAGED BASE, PCC PAVEMENT, HMA, STORM DRAIN,
LIGHTING, SIGNALS, PAVEMENT MARKING, SIGNING, SHARED USE PATH,
REINF CONCRETE SIDEWALK, BRIDGE, AND WATER MAIN



STATE COUNTY MAP

DESIGNERS	
Wes Keller	PE
Josiah Erickson	
Gunner Cowing	
Derek Kayser	

STATE	PROJECT NO.	PCN	SECTION NO.	SHEET NO.
ND	SU-TMA-8-984(170)	2.3036	001	1

GOVERNING SPECIFICATIONS	
Standard Specifications	11/1/2022
Supplemental Specifications	NONE

PROJECT NUMBER | DESCRIPTION | NET MILES | GROSS MILES
SU-TMA-8-984(170) | 0.607 | 0.607

Date Published and Adopted by the North Dakota Department of Transportation



Prof. No. 6059-0158
Houston
Engineering Inc.
Ph: 701.237.5065

I hereby certify that the attached plans were prepared by me or under my direct supervision and that I am a duly registered professional engineer under the laws of the state of ND.

APPROVED DATE: 8/31/2022
HOUSTON ENGINEERING INC



8/31/2022

APPROVED DATE: 9/1/2022
Bob E. Day
FARGO CITY ENGINEER

DRAFT AGREEMENT
52nd Avenue S Reconstruction

THIS AGREEMENT, made and entered into this _____ day of _____, 2022 (the "Effective Date"), by and between the City of Fargo, the City of West Fargo, and Cass County (the "Project Partners"). This Agreement outlines the mutually developed responsibilities between the Project Partners regarding the reconstruction of 52nd Avenue South (aka Cass County Highway 6) between 63rd Street South and County Road 17 (Sheyenne Street) (the "Project").

WHEREAS, Cass County Highway 6 is currently owned and maintained by Cass County from County Rd 17 east to Interstate 29, a distance of two miles; and

WHEREAS, funding formulas for distribution of the State Highway Distribution Funds and Federal highway funds in North Dakota are based on the premise that county highways have traditionally been turned over to the larger cities as the land adjacent to the highways is annexed; and

WHEREAS, these formulas are population based, resulting in increased city funding and decreased county funding as annexations take place; and

WHEREAS, counties have no authority to levy special assessments for highway improvements within an incorporated area; and

WHEREAS, the 2022-2025 Metropolitan Transportation Improvement Program (TIP) includes the Project; and

WHEREAS, the Project Partners agree elements of project development will be cooperatively developed in coordination with the NDDOT as follows; and

WHEREAS, the Project Partners agree that the Project will be developed through a project steering committee composed of the Project Partners, and NDDOT; and

WHEREAS, the Project Partners agree that the construction for the Project will be administered through the use of an engineering consulting firm (the "Construction Administration Consultant") procured through a publicly advertised "Request for Proposal"; and

WHEREAS, the Project Partners agree that ownership of the project corridor, also known as Cass County Highway 6, will transfer upon completion of the reconstruction project; and

WHEREAS, the estimated total cost of the Project is \$19,664,845; and

WHEREAS, the Project will be funded partially with Federal funds provided by the North Dakota Department of Transportation (NDDOT) through the Surface Transportation Program (STP), in the amount of \$9,000,000; and

WHEREAS, the Project Partners agree to split the remaining Project costs, the non-Federal share, according to the terms of this Agreement; and

WHEREAS, the Project Partners are interested in working in a cooperative manner to undertake the Project pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. Purpose. This Agreement is made pursuant to N.D.C.C. § 54-40-1, which authorizes the joint and cooperative exercise of power common to the contracting parties. The intent of this Agreement is to increase efficiencies with respect to the Project, and to prevent delays with respect to the scheduling of work for the Project. This Agreement does not create a separate political subdivision.
2. Term. The term of this Agreement is for ten (10) years beginning on the Effective Date of this Agreement and ending ten (10) years after the Effective Date (the "Original Term"). Thereafter, this Agreement will automatically be extended by one (1) additional ten (10) year term, unless either party gives written notice to the other party a minimum of ninety (90) days prior to the expiration of the Original Term. The parties by mutual agreement may terminate this Agreement at any time or extend this Agreement for additional terms.
3. Process. The City of Fargo will work cooperatively with the City of West Fargo and Cass County to refine the recommended alternative for construction during environmental documentation phase and prior to completion of design plans. The City of Fargo will be the lead agency for the Project.
4. Procedures. Fargo will undertake the Project pursuant to and in accordance with Chapter 40-22 of the North Dakota Century Code. Fargo will be responsible for inspection, review and observation of work performed on the Project.
5. Transfer of Ownership and Maintenance Responsibility. The City of West Fargo will assume ownership of Cass County Highway 6 from the intersection with County Rd 17 (Sheyenne Street), east to the centerline of the Sheyenne River, and the City of Fargo will assume ownership of Cass County Highway 6 from the centerline of the Sheyenne River east to Interstate 29. The transfer of all ownership, liability and maintenance responsibility will occur upon the substantial completion of the Project.
6. Apportionment of Costs related to the Project. The Project will be partially funded with Federal funds provided by the North Dakota Department of Transportation (NDDOT) through the Surface Transportation Program (STP), along with a non-Federal share of contributions from the Project Partners. The Project Partners agree to split the non-Federal share of the Project as follows:

Estimate of Total Project Costs

1. **Estimated Construction Cost** \$ 17,649,972
(Included in this cost is a 20% inflation markup, a 10% construction contingency, a 4% Fargo administration fee, 4% Fargo interest fee, and 3% Fargo legal/miscellaneous fee)

Bridge Portion (excluding City of Fargo Water Plant Gates on Bridge Structure)

Local funding breakouts: 25% WF, 25% Fargo, 50% Cass County

Federal Funds	\$ 4,450,310
Estimated Fargo local share	\$ 797,787
Estimated West Fargo local share	\$ 797,787
Estimated Cass County local share	<u>\$ 1,595,575</u>
Total	\$ 7,641,460

Roadway west of Bridge (including roundabout modifications)

Local funding breakouts: 50% WF, 50% Cass County

Federal Funds	\$ 1,025,242
Estimated West Fargo local share	\$ 551,372
Estimated Cass County local share	<u>\$ 183,790</u>
Total	\$ 1,760,405

Roadway east of Bridge

Local funding breakouts: 40% Fargo, 40% WF, 20% Cass County

Federal Funds	\$ 3,524,447
Estimated Fargo local share	\$ 1,010,899
Estimated West Fargo local share	\$ 1,010,899
Estimated Cass County local share	<u>\$ 505,449</u>
Total	\$ 6,051,697

City of Fargo Water Plant Gates on Bridge Portion

Local funding breakouts: 100% Fargo

Federal Funds	\$ 0
Estimated Fargo local share	<u>\$ 2,156,151</u>
Total	\$ 2,156,151

City of Fargo Watermain on east Portion

Local funding breakouts: 100% Fargo

Federal Funds	\$ 0
Estimated Fargo local share	<u>\$ 40,256</u>
Total	\$ 40,256

2. **Estimated Cost for NEPA, Preliminary and Final Engineering Design, Construction Administration Services, Right of Way, and Utility Relocations**

Overall project funding breakouts: 46% Fargo, 27% West Fargo, 27% Cass County

Estimated Fargo local share	\$ 926,841
Estimated West Fargo local share	\$ 544,015
Estimated Cass County local share	<u>\$ 544,015</u>
Total	\$ 2,014,873

Summation of Total Project Costs (1+2)

Federal Funds	\$ 9,000,000
Estimated Fargo local share	\$ 4,931,937
Estimated West Fargo local share	\$ 2,904,075
Estimated Cass County local share	<u>\$ 2,828,831</u>
Total	\$ 19,664,843

7. Project Costs. Each of the Project Partners will be responsible for obtaining financing for its own portion of the costs of the Project, as set forth above. This responsibility includes any and all costs related to creation of any special assessment district and bonding related to the Project.
8. Cass County Contribution. Cass County will contribute a total of \$2,828,831 to the Project based on estimated construction cost. Actual number will be re-evaluated after the project has been bid. Payment will be made as follows: Cass County will submit a check for half of the total amount due to the City of Fargo on or before October 1, 2023. The remaining amount will be paid to the City of Fargo on or before October 1, 2024.
9. Processing of Pay Requests and Change Orders. The Construction Administration Consultant will approve contractor payments from the NDDOT. The NDDOT will then invoice the City of Fargo for the local share of the contractor payments. The City of Fargo will invoice the City of West Fargo the contractor expenses incurred in the responsible bid items.
10. Final Punch List. The City of West Fargo and the City of Fargo will coordinate with respect to developing a final punch list.
11. Right of Way. This project acquired both temporary construction easements and permanent right of way; as such, each party will be responsible for acquisition of right of way within that party's jurisdiction. The costs of acquiring property will be the sole responsibility of the party responsible for the property acquisition.
12. No Stacking of Claims Permitted. For the purposes of N.D.C.C. § 32-12.1-03 the employees and officers of a party are deemed to be employees of that party. Under no circumstances shall a party, irrespective of whether it may have waived the limit on liability set forth in N.D.C.C. § 32-12.1-03, be required to pay on behalf of itself or the other party, any amounts in excess of the limits on liability established in N.D.C.C. § 32-12.1-03 applicable to any one party. The limits of

liability for some or all of the parties may not be added together to determine the maximum amount of liability for each party.

13. Waiver of Jury Trial/Venue/Selection. FARGO AND WEST FARGO HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHTS EITHER MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY ACTION, PROCEEDING, COUNTERCLAIM OR DEFENSE BASED ON THIS CONTRACT, OR IN ARISING OUT OF, UNDER OR IN ANY CONNECTION WITH THIS CONTRACT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO RELATING TO THIS CONTRACT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR FARGO AND WEST FARGO ENTERING INTO THIS CONTRACT. THE PARTIES STIPULATE AND AGREE THAT THE DISTRICT COURT OF CASS COUNTY, NORTH DAKOTA, SHALL BE THE SOLE AND EXCLUSIVE VENUE FOR ANY LAWSUIT PERTAINING TO THIS CONTRACT AND CONSENT TO THE PERSONAL JURISDICTION IN SAID COURT IN THE EVENT OF ANY SUCH LAWSUIT.
14. Merger Clause. This Agreement constitutes the entire agreement by and between the parties, and any other prior representations or agreements are deemed merged herein, and those not specified herein do not represent any agreements or promises or covenants or representations on the part of either party hereto.
15. Previous Agreements Superseded. This Agreement supersedes any previous agreement between any of the parties hereto regarding the items addressed herein.
16. Written Amendment Required. No amendment, modification, or waiver of any condition, provision or term will be valid or of any effect unless made in writing signed by the party or parties to be bound, or a duly authorized representative, and specifying with particularity the extent and nature of such amendment, modification or waiver. Any waiver by any party of any default of another party will not affect or impair any right arising from any subsequent default. Except as expressly and specifically stated otherwise, nothing herein will limit the remedies and rights of the parties thereto under and pursuant to this Agreement.
17. Grammatical Construction. Whenever the singular number is used herein, the same includes the plural where appropriate, and the words of any gender include any other genders where appropriate.
18. Default. Upon the occurrence of any non-performance of any party's obligations under this Agreement which has not been cured within thirty (30) days after notice to the breaching party, a non-breaching party may take any one or more of the following remedial steps: (a) terminate this Agreement; (b) suspend the non-breaching party's performance under this Agreement until it receives assurances from the breaching party satisfactory to the non-breaching party that the breaching party will cure such Event of Default and perform its obligations under

this Agreement; (c) commence legal or administrative proceedings for the collection of any amounts due hereunder or the enforcement of any covenant, agreement or obligation of the breaching party.

19. Severability Clause. Each provision, section, sentence, clause, phrase, and word of this Agreement is intended to be severable. If any provision, section, sentence, clause, phrase, and word hereof is held by a court with jurisdiction to be illegal or invalid for any reason whatsoever, such illegality or invalidity will not affect the validity of the remainder of this Agreement.
20. Force Majeure. No party will be liable to any other party during any period in which its performance is delayed or prevented, in whole or in part, by circumstance beyond its reasonable control. Circumstances include, but are not limited to, the following: act of God (e.g., flood, earthquake, wind), fire, war, act of a public enemy or terrorist, act of sabotage, strike or other labor dispute, riot, misadventure of the sea, inability to secure materials and/or transportation, or a restriction imposed by legislation, an order or a rule or regulation of a governmental entity. If such a circumstance occurs, the party claiming the delay must undertake reasonable action to notify the other party of the same.
21. Notice. All notices, certificates or other communications required under this Agreement will be deemed sufficiently given when delivered or deposited in the United States mail in certified form with postage fully prepaid and addressed as follows:

If to West Fargo:	City Administrator City of West Fargo 800 4 th Avenue East West Fargo, ND 58078
If to Fargo:	City Administrator City of Fargo 200 3 rd Street N Fargo, ND 58104
If to Cass County:	County Administrator Cass County P.O. Box 2806 Fargo, North Dakota 58108-2806
22. Agreement Binding on Successors. This Agreement will be binding upon and inure to the benefit of the parties hereto and their respective personal representatives, successors and assigns.
23. North Dakota Law Applies. This Agreement will be controlled by the laws of the State of North Dakota.
24. Execution in Counterparts. This Agreement may be executed in counterparts with each Project Partner having a fully-executed counterpart.

CITY OF FARGO, NORTH DAKOTA

BY: _____ Date: _____
Dr. Timothy J. Mahoney, M.D.
Mayor

ATTEST: _____ Date: _____
Steven Sprague
Auditor

CITY OF WEST FARGO, NORTH DAKOTA

BY: _____ Date: _____
Bernie Dardis
President of the Board of
City Commissioners

ATTEST: _____ Date: _____
Tina Fisk
City Administrator

COUNTY OF CASS

BY: _____ Date: _____
Chad M. Peterson
Commissioner

ATTEST: _____ Date: _____
Robert Wilson
Administrator

34

September 28, 2022

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

**Re: North Dakota State Board of Higher Education on Behalf of NDSU
Sanitary Sewer Easement - Improvement District #BN-22-C1**

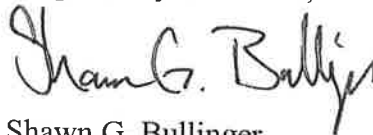
Dear Commissioners:

Enclosed and delivered to the City Commission office are (4 duplicate) original Sanitary Sewer Easement(s) in association with Improvement District #BN-22-C1. An agreement has been reached and at this time, we are requesting approval of the terms of the Sanitary Sewer Easement. The Sanitary Sewer Easement has been reviewed and the City Engineer's office recommends approval.

RECOMMENDED MOTION: I/we hereby move to approve and accept the Sanitary Sewer Easement from North Dakota State Board of Higher Education on Behalf of North Dakota State University of Agriculture and Applied Science in association with Improvement District #BN-22-C1 and that the Mayor be instructed to execute the same on behalf of the City of Fargo.

Please return the signed originals

Respectfully submitted,



Shawn G. Bullinger
Land Acquisition Specialist

C: Kasey McNary
Nathan Boerboom

PERMANENT EASEMENT
(Sanitary Sewer)

KNOW ALL MEN BY THESE PRESENTS that the **STATE OF NORTH DAKOTA**, and the **NORTH DAKOTA STATE BOARD OF HIGHER EDUCATION ON BEHALF OF NORTH DAKOTA STATE UNIVERSITY OF AGRICULTURE AND APPLIED SCIENCE**, hereinafter referred to as "Grantor", for and in consideration of the sum of One and no/100 Dollars (\$1.00) and other valuable consideration, to them in hand paid the receipt whereof is hereby acknowledged, **HEREBY GRANTS UNTO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA**, a municipal corporation, its successors and assigns, hereinafter referred to as "Grantee", a 99 year easement over, upon and in the land hereinafter described for the purpose of constructing, operating, maintaining and repairing a sanitary sewer, together with the customary appurtenances, said tract being more particularly described as follows (and depicted on Exhibit A attached hereto):

A 50.00 foot wide strip of land in Lot 2, Block 1 of NDSU WEST ADDITION to the City of Fargo, on file as document 1474053 at the Cass County Recorder's Office, Cass County, North Dakota centered on the following described line:

Commencing at the southeast corner of Lot 4, Block 4 of LAVERNE'S SECOND ADDITION to the City of Fargo, on file as document 1669995 at said Cass County Recorder's Office; thence South 02°20'07" East, on the east line of said LAVERNE'S SECOND ADDITION, said east line also being the west line of said NDSU WEST ADDITION, a distance of 15.00 feet to the point of beginning; thence North 87°53'51" East a distance of 125.00 feet to the east line of an existing 50.00 foot wide right-of-

way easement on file as document 1266490 at said Cass County Recorder's Office and there terminating.

Sidelines of said strip shall be lengthened or shortened so as to terminate on the east line of said LAVERNE'S SECOND ADDITION on the west and on the east line of said 50.00 foot wide right-of-way easement document 1266490 on the east.

Said strip contains 6,250 square feet, more or less.

Grantor, their successors and assigns, hereby covenants to and with Grantee that Grantee's officers, contractors, agents and employees may at any and all times when necessary or convenient to do so, go over and upon said above-described 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, their successors and assigns, further agree that they will not disturb, injure, molest or in any manner interfere with said sanitary 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, trees or other obstacles of any kind shall be placed or located upon the tract so as to interfere in any manner with the construction, operation, maintenance or repair of said sanitary sewer 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 sanitary sewer and customary appurtenances was begun.

[Signature pages to follow]

IN WITNESS WHEREOF, Grantor has set his hand and caused this instrument to be executed this ____ day of _____, 20 ____.

GRANTOR:

THE STATE OF NORTH DAKOTA

By: Doug Burgum, Governor

ATTEST:

STATE OF NORTH DAKOTA)
)
COUNTY OF BURLEIGH)

The foregoing instrument was acknowledged before me, this ____ day of _____, 2022 by Doug Burgum, Governor of the State of North Dakota.
(See N.D.C.C. § 47-19-14.5 et seq.)

By: Alvin A. Jaeger, Secretary of State

**NORTH DAKOTA STATE
UNIVERSITY OF AGRICULTURE
AND APPLIED, SCIENCE**

By: David J. Cook, President

ATTEST:

Bruce A. Bollinger, Vice President for
Finance & Administration

STATE OF NORTH DAKOTA)
)
COUNTY OF CASS)

On this _____ day of _____, 2022, before me, a notary public in and for said county and state, personally appeared David J. Cook and Bruce A. Bollinger to me known to be the President and Vice President for Finance and Administration, respectively, of NORTH DAKOTA STATE UNIVERSITY OF AGRICULTURE AND APPLIED SCIENCE, and that they executed the within and foregoing instrument, and acknowledged to me that they executed the same.

(SEAL)

Notary Public
My Commission Expires: _____

GRANTEE

City of Fargo, North Dakota, a North Dakota Municipal Corporation

Timothy J. Mahoney, Mayor

ATTEST:

Steve Sprague, City Auditor

STATE OF NORTH DAKOTA)
)
COUNTY OF CASS)

On this _____ day of _____, 2022, before me a notary public in and for said county and state, personally appeared Timothy J. Mahoney and Steve Sprague, known to me to be the Mayor and City Auditor, respectively of the city of Fargo, the Grantee described in and that executed the within and foregoing instrument, and acknowledged to me that said Grantee executed the same.

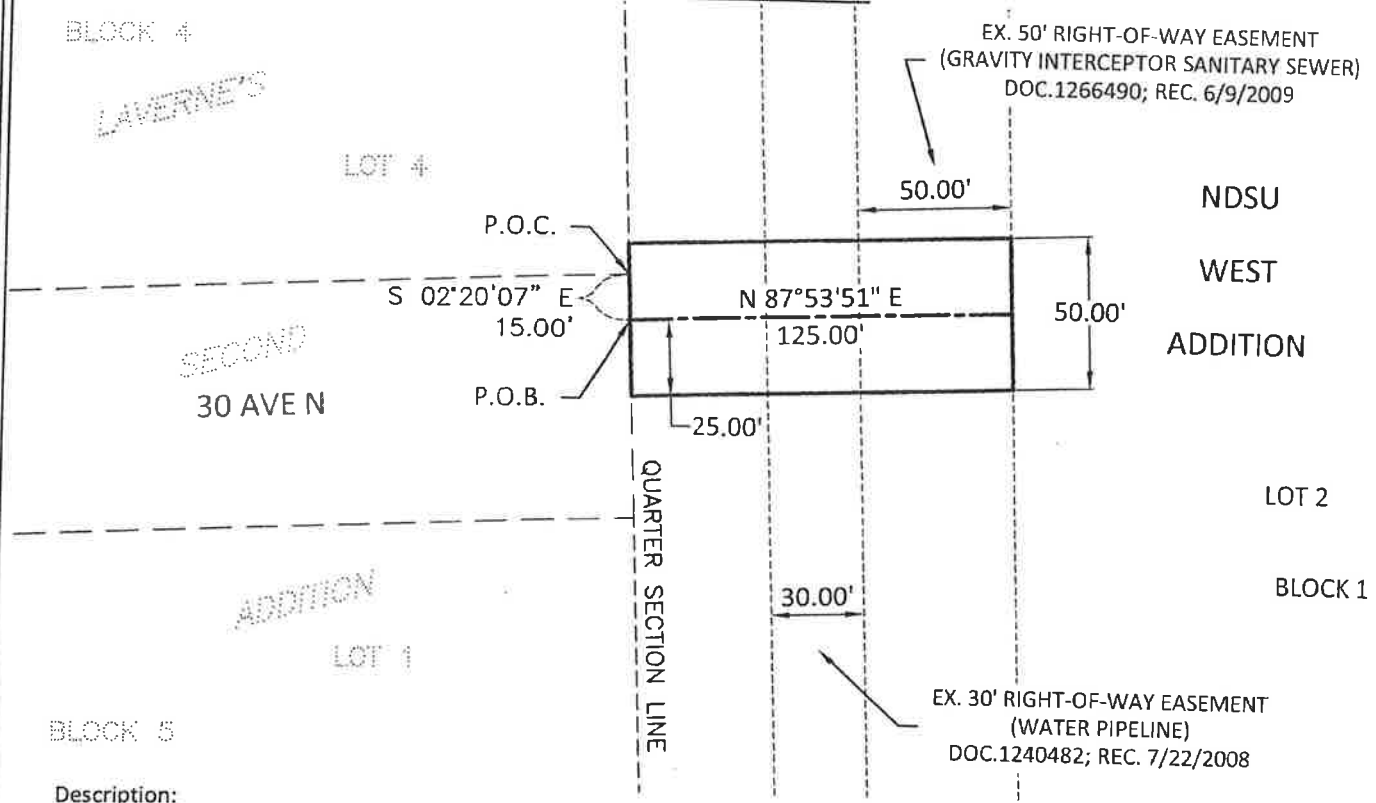
(SEAL)

Notary Public
My Commission Expires: _____

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

This document prepared by:
Kasey D. McNary
Assistant City Attorney
SERKLAND LAW FIRM
10 Roberts Street
Fargo, ND 58102
(701) 232-8957
kmcnary@serklandlaw.com

EXHIBIT A



Description:

A 50.00 foot wide strip of land in Lot 2, Block 1 of NDSU WEST ADDITION to the City of Fargo, on file as document 1474053 at the Cass County Recorder's Office, Cass County, North Dakota centered on the following described line:

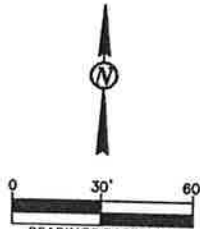
Commencing at the southeast corner of Lot 4, Block 4 of LAVERNE'S SECOND ADDITION to the City of Fargo, on file as document 1669995 at said Cass County Recorder's Office; thence South 02°20'07" East, on the east line of said LAVERNE'S SECOND ADDITION, said east line also being the west line of said NDSU WEST ADDITION, a distance of 15.00 feet to the point of beginning; thence North 87°53'51" East a distance of 125.00 feet to the east line of an existing 50.00 foot wide right-of-way easement on file as document 1266490 at said Cass County Recorder's Office and there terminating.

Sidelines of said strip shall be lengthened or shortened so as to terminate on the east line of said LAVERNE'S SECOND ADDITION on the west and on the east line of said 50.00 foot wide right-of-way easement document 1266490 on the east.

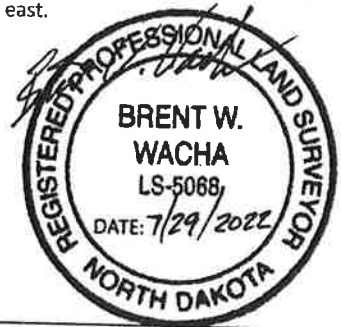
Said strip contains 6,250 square feet, more or less.

LEGEND

- NEW EASEMENT
- RIGHT-OF-WAY
- LOT LINE
- EXISTING EASEMENT



BEARINGS BASED ON
CITY OF FARGO GROUND CONTROL SYSTEM,
DECEMBER 1992



PERMANENT EASEMENT

LOT 2, BLOCK 1, NDSU WEST ADDITION,
CITY OF FARGO, CASS COUNTY, NORTH DAKOTA



ENGINEERING DEPT.

DRAWN BY: BWW

APPROVED BY: BWW

DATE: JULY 29, 2022

SHEET 1 OF 1

35

COVER SHEET
CITY OF FARGO PROJECTS

This sheet must be completed and turned in with all City of Fargo projects. NO items will be accepted by either the City Commission Office or the City Auditor's Office without this cover sheet attached and properly filled out.

Exact, full name of Improvement District as it will appear in the Contract:

New Paving and Utility Construction

Improvement District No. BN-23-A

Call For Bids	<u>October 3</u>	, <u>2022</u>
Advertise Dates	<u>October 12 & 19</u>	, <u>2022</u>
Bid Opening Date	<u>November 18 (NDDOT)</u>	, <u>2022</u>
Substantial Completion Date	<u>September 15</u>	, <u>2024</u>
Final Completion Date	<u>October 15</u>	, <u>2024</u>

- N/A PWPEC Report (Part of 2023 CIP)
- X Engineer's Report (Attach Copy)
- N/A Direct City Auditor to Advertise for Bids (to be bid by NDDOT)
- N/A Bid Quantities (Attach Copy for Auditor's Office Only)
- X Notice to Property Owners (Dan Eberhardt)

Project Engineer Eric Hodgson

Phone No. 701-241-8582

The items listed above are for use on all City projects. The additional items listed below are to be checked only when all or part of a project is to be special assessed:

- X Create District (Attach Copy of Legal Description)
- X Order Plans & Specifications
- X Approve Plans & Specifications
- X Adopt Resolution of Necessity
- N/A Approve Escrow Agreement (Attach Copy for Commission Office Only)
- X Assessment Map (Attach Copy for Auditor's Office Only)

ENGINEER'S REPORT
 NEW PAVING AND UTILITY CONSTRUCTION
 IMPROVEMENT DISTRICT NO. BN-23-A

Nature & Scope

This project is being completed in partnership with the City of Fargo, the City of West Fargo, and Cass County and will urbanize 52nd Avenue South (Sheyenne Street/County Road 17 to west of 63rd Street South) from a rural asphalt roadway section to a divided urban concrete street section with curb and gutter, storm sewer, bridge over the Sheyenne River and pedestrian systems.

Purpose

This project will urbanize the existing roadway and install necessary infrastructure for the continued growth of the City of Fargo, West Fargo, and Cass County. The new bridge over the Sheyenne River will include features necessary for the operation of the water intake structure just south of the new bridge. This project will also install important pedestrian upgrades along the corridor and make improvements to the roundabout at the intersection of Sheyenne St/County Road 17 and 52nd Avenue South.

The project will be funded by a combination of Federal Funds, City of Fargo Infrastructure Sales Tax, funds from the City of West Fargo, funds from Cass County, and Special Assessments to the benefiting properties. Special Assessments will be applied per City policy.

Feasibility

The estimated cost of construction is \$ 16,148,736.95. The cost breakdown is as follows:

Project area west of the bridge		\$ 1,632,814.99
Amount Federally Funded		\$ 1,025,242.33
Amount Locally Funded		\$ 607,572.66
Plus 4% Administration Fee:		\$ 24,302.91
Plus 3% Legal Fee:		\$ 18,227.18
Plus 4% Interest Fee:		\$ 24,302.91
Plus 10% Contingency:		\$ 60,757.27
Total Estimated Cost:		\$ 735,162.92
City of Fargo:	0.00%	\$ -
City of West Fargo:	75.00%	\$ 551,372.19
Cass County:	25.00%	\$ 183,790.73

Bridge structure (not including water intake portion)		\$	7,087,624.80
Amount Federally Funded		\$	4,450,310.06
Amount Locally Funded		\$	2,637,314.74
Plus 4% Administration Fee:		\$	105,492.59
Plus 3% Legal Fee:		\$	79,119.44
Plus 4% Interest Fee:		\$	105,492.59
Plus 10% Contingency:		\$	263,731.47
Total Estimated Cost:		\$	3,191,150.83
City of Fargo:	25.00%	\$	797,787.71
City of West Fargo:	25.00%	\$	797,787.71
Cass County:	50.00%	\$	1,595,575.42

Water intake portion of the bridge structure		\$	1,781,943.60
Amount Federally Funded		\$	-
Amount Locally Funded		\$	1,781,943.60
Plus 4% Administration Fee:		\$	71,277.74
Plus 3% Legal Fee:		\$	53,458.31
Plus 4% Interest Fee:		\$	71,277.74
Plus 10% Contingency:		\$	178,194.36
Total Estimated Cost:		\$	2,156,151.76
City of Fargo:	100.00%	\$	2,156,151.76
City of West Fargo:	0.00%	\$	-
Cass County:	0.00%	\$	-

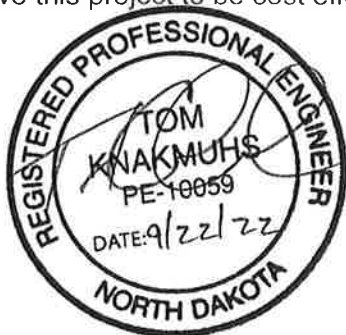
Water Mains		\$	33,270.00
Amount Federally Funded		\$	-
Amount Locally Funded		\$	33,270.00
Plus 4% Administration Fee:		\$	1,330.80
Plus 3% Legal Fee:		\$	998.10
Plus 4% Interest Fee:		\$	1,330.80
Plus 10% Contingency:		\$	3,327.00
Total Estimated Cost:		\$	40,256.70
City of Fargo:	100.00%	\$	40,256.70
City of West Fargo:	0.00%	\$	-
Cass County:	0.00%	\$	-

Project area east of the bridge		\$	5,613,083.56
Amount Federally Funded		\$	3,524,447.60
Amount Locally Funded		\$	2,088,635.95
Plus 4% Administration Fee:		\$	83,545.44
Plus 3% Legal Fee:		\$	62,659.08
Plus 4% Interest Fee:		\$	83,545.44
Plus 10% Contingency:		\$	208,863.60
Total Estimated Cost:		\$	2,527,249.50
City of Fargo:	40.00%	\$	1,010,899.80
City of West Fargo:	40.00%	\$	1,010,899.80
Cass County:	20.00%	\$	505,449.90

Miscellaneous Costs			
Right-of-Way and Easements:		\$	250,000.00
Utility Relocation		\$	150,000.00
Outside Engineering:		\$	1,679,825.00
Incentive		\$	-
Total Miscellaneous Costs:		\$	2,079,825.00
City of Fargo:		\$	956,719.50
City of West Fargo:		\$	561,552.75
Cass County:		\$	561,552.75
Federal Funds:		\$	-

Project Funding Summary			
Special Assessments - City of Fargo	11.02%	\$	2,174,857.22
Special Assessments - Cass Rural Water	0.20%	\$	40,256.70
Special Assessments - Water Utility	10.93%	\$	2,156,151.76
City of Fargo - Infrastructure Sales Tax	2.99%	\$	590,549.78
City of West Fargo	14.81%	\$	2,921,612.45
Cass County	14.43%	\$	2,846,368.80
Federal Funds	45.62%	\$	9,000,000.00
Total Estimated Project Cost		\$	19,729,796.71

We believe this project to be cost effective.



Tom Knakmuhs
 Tom Knakmuhs, P.E.
 Assistant City Engineer

CITY OF FARGO
ENGINEERING DEPARTMENT
LOCATION & COMPRISING
NEW PAVING AND UTILITY CONSTRUCTION
IMPROVEMENT DISTRICT NO. BN-23-A

LOCATION:

On 52nd Avenue South from 63rd Street to the Sheyenne River.

COMPRISING:

Deer Creek Addition Block 1, Lot 1 through Lot 7, and Lot 10 through Lot 38.
Deer Creek Addition Block 2, Lot 1 through Lot 11.
Deer Creek Addition Block 3, Lot 1 through Lot 9.
Deer Creek Addition Block 4, Lot 1 through Lot 31.
Deer Creek Addition Block 5, Lot 1 through Lot 7, and Lot 12 through 22.
Deer Creek Addition Block 6, Lot 1 through Lot 13.
Deer Creek Addition Block 7, Lot 1 through Lot 14.
Deer Creek Addition Block 9, Lot 1 through Lot 23.
Deer Creek Addition Block 10, Lot 1 through Lot 32.
Deer Creek Addition Block 24, Lot 15 through Lot 33.

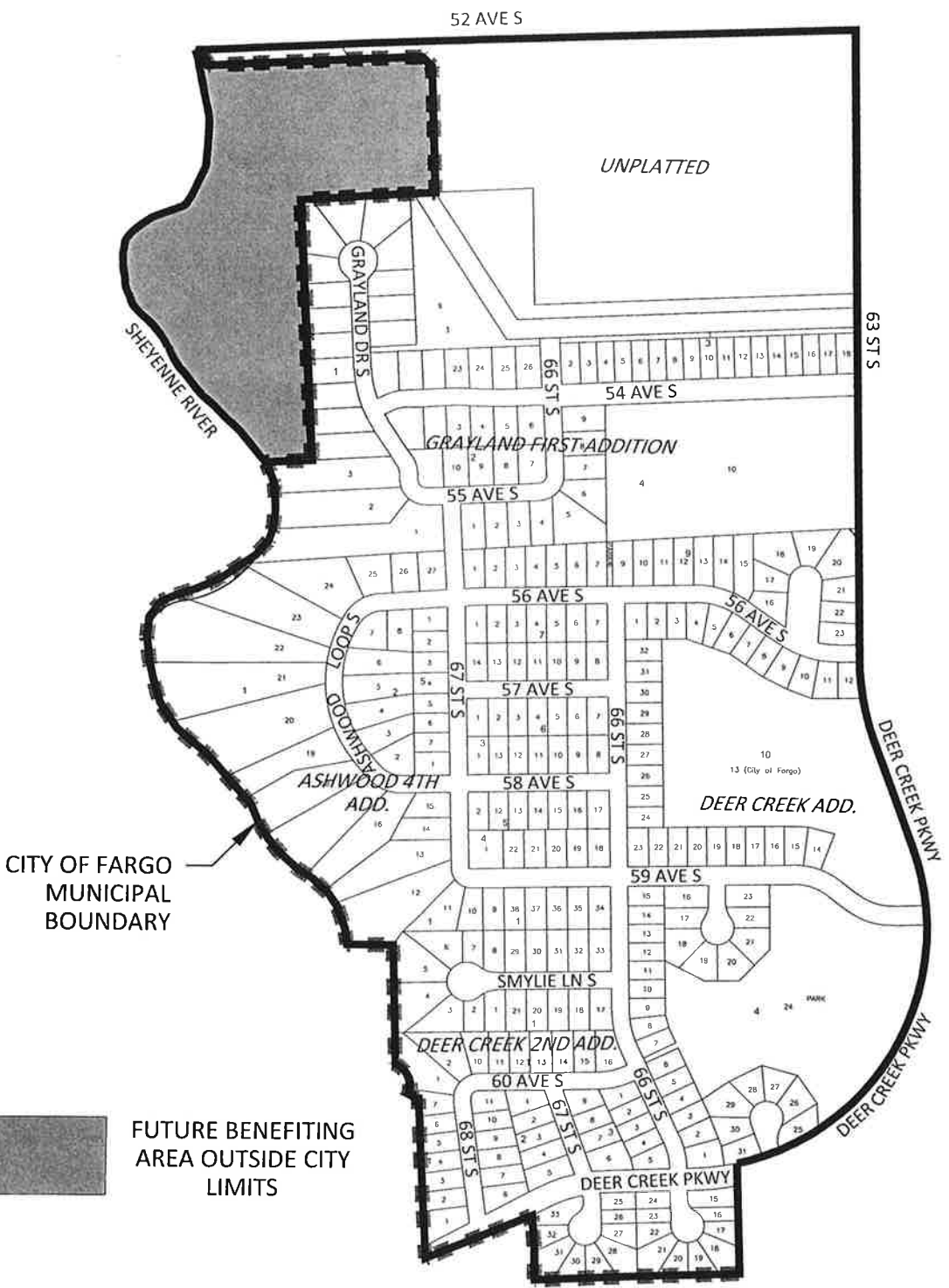
Ashwood 4th Addition, Block 1, Lot 1 through Lot 27.
Ashwood 4th Addition, Block 2, Lot 1 through Lot 8.
Ashwood 4th Addition, Block 3, Lot 1.
Ashwood 4th Addition, Block 4, Lot 1 and Lot 2.

Deer Creek 2nd Addition Block 1, Lot 1 and Lot 2.

Grayland 1st Addition Block 1, Lot 1 through Lot 26.
Grayland 1st Addition Block 2, Lot 1 through Lot 11.
Grayland 1st Addition Block 3, Lot 2 through Lot 18.
Grayland 1st Addition Block 4, Lot 1 through Lot 10.

All unplatted land located east of the Sheyenne River in the northwest quadrant of Section 5, Township 138N, Range 49W.

All of the foregoing is located in the Annexed or ET area of the City of Fargo, Cass County, North Dakota.



CITY OF FARGO
MUNICIPAL
BOUNDARY

 FUTURE BENEFITING
AREA OUTSIDE CITY
LIMITS

CITY OF FARGO ENGINEERING
DEPARTMENT

LOCATION & ASSESSMENT AREA

NEW PAVING AND UTILITY CONSTRUCTION

IMPROVEMENT DISTRICT NO. BN-23-A