EDIC MEETING
Tuesday, April 25, 2023 – 1:00 p.m.
City Commission Chambers, Fargo City Hall

AGENDA

1. **Approve Tax Exempt Review Committee Meeting Minutes of 1/24/2023**
   a. January 24, 2023 [Page 1-2]

2. **Corvent Property Tax Exemption Application**
   a. Application[Page 3-7]
   b. Business Incentive Agreement [Page 8-10]
   c. Incentive Points Analysis [Page 11]

3. **NP Apartments** [Page 12-27]

4. **HB 1215** [Page 28-37]

5. **Discuss Public/Private Partnership Policy** [Page 38]

ECONOMIC AND DEVELOPMENT INCENTIVE COMMITTEE
Fargo, North Dakota

Regular Meeting **Tuesday, January 24, 2023**

The January meeting of the Economic and Development Incentive Committee of the City of Fargo, North Dakota was held in the City Commission Room at City Hall at 1:00 p.m., Tuesday, January 24, 2023.

The committee members present or absent are:

Members Present: Dave Piepkorn, John Cosgriff, Jon Eisert, Lucas Paper and Mayor Mahoney

Members Absent: Jim Buus and Jessica Ebeling

Others Present: Jackie Gapp and Levi Bachmeier

Commissioner Piepkorn called the meeting to order at 1:00 p.m.

Minutes Approved

A motion was made by John Cosgriff to approve the minutes from July 26, 2022 and November 22, 2022. Jon Eisert seconded. Motion carries.

TIF on old Herberger's building at West Acres

- Not actively working on the project
- Interest and building costs
- Information only – no action/motion

Update on sale of 401 3rd Ave North

- Withdrawing proposal
- Interest rate and building costs
- Up to Commission to see what should happen with RPF: Reissue RFP or start from scratch?

TIF on South University Mixed Use Project – 1600 block of South University

- Remove houses on west side of block
- 13,000 sq. ft. commercial main level
- 127 apartments above
- Matt Schnackenberg, PFM, Minneapolis Office
- Commissioner Piepkorn asked what the current property tax is for the block. Mike Splonskowski said the current taxes start at $37,000 and would be estimated as $452,000 upon completion of the project.

- John Cosgriff asked if the project doesn't happen does everything stay in place. Existing taxes stay the same throughout these projects.

Motion to approve tax exemption was made by Lucas Paper. Jon Eisert seconded. Motion carries.

The meeting was adjourned at 1:26pm.

Application For Property Tax Incentives For New or Expanding Businesses

N.D.C.C. Chapter 40-57.1

Project Operator's Application To Fargo
City or County

File with the City Auditor for a project located within a city; County Auditor for locations outside of city limits.

A representative of each affected school district and township is included as a non-voting member in the negotiations and deliberation of this application.

This application is a public record

Identification Of Project Operator

1. Name of project operator of new or expanding business Corvent Medical, Inc.
2. Address of project 400 45 ST S, Suite 400
   City Fargo County Cass
3. Mailing address of project operator 1805 NDSU Research Park Drive N, Suite 118
   City Fargo State ND Zip 58102
4. Type of ownership of project
   - ☐ Partnership
   - ☐ Subchapter S corporation
   - ☐ Individual proprietorship
   - ☑ Corporation
   - ☐ Cooperative
   - ☐ Limited liability company
5. Federal Identification No. or Social Security No. [redacted]
6. North Dakota Sales and Use Tax Permit No. [redacted]
7. If a corporation, specify the state and date of incorporation Delaware - March 30, 2020
8. Name and title of individual to contact Travis Murphy, CFO
   Mailing address 1805 NDSU Research Park Drive N, Suite 118
   City, State, Zip Fargo, ND 58102 Phone No. (612) 670-3871

Project Operator's Application For Tax Incentives

9. Indicate the tax incentives applied for and terms. Be specific.

   ☑ **Property Tax Exemption**
   5 Number of years
   100% Percent of exemption

   ☐ **Payments In Lieu of Taxes**
   ______ Beginning year ______ Ending year
   ______ Amount of annual payments (attach schedule if payments will vary)

10. Which of the following would better describe the project for which this application is being made:
    - ☑ New business project
    - ☐ Expansion of a existing business project

Description of Project Property

11. Legal description of project real property

Lot: 2 Block: 1 45TH STREET PARK 5TH LT 2 BLK 1 **4-17-17 PLATTED FRM 01-3500-51941-000, 51943-0 01, 01-7060-00101-000, 00105-000 & 01-8408-00031-0 00 PER PLAT DOC#1499102

12. Will the project property be owned or leased by the project operator? ☐ Owned ☑ Leased

If the answer to 12 is leased, will the benefit of any incentive granted accrue to the project operator?
☑ Yes ☐ No

If the property will be leased, attach a copy of the lease or other agreement establishing the project operator's benefits.

13. Will the project be located in a new structure or an existing facility? ☐ New construction ☑ Existing facility

If existing facility, when was it constructed? 2005

If new construction, complete the following:

a. Estimated date of commencement of construction of the project covered by this application N/A

b. Description of project to be constructed including size, type and quality of construction
N/A

c. Projected number of construction employees during the project construction N/A

14. Approximate date of commencement of this project's operations July 1, 2023

15. Estimated market value of the property used <u>for this project</u>:

a. Land .... $ 1,236,000

b. Existing buildings and structures for which an exemption is claimed .... $ 1,201,560

c. Newly constructed buildings and structures when completed .... $ N/A

d. Total .... $ 2,437,560

e. Machinery and equipment .... $ 388,000

16. Estimate taxable valuation of the property eligible for exemption by multiplying the market values by 5 percent:

a. Land (not eligible) .... [redacted]

b. Eligible existing buildings and structures .... $ 60,078

c. Newly constructed buildings and structures when completed .... $ N/A

d. Total taxable valuation of property eligible for exemption (Add lines b and c) .... $ 60,078

e. Enter the consolidated mill rate for the appropriate taxing district 283.22

f. Annual amount of the tax exemption (Line d multiplied by line e) .... $ 17015.3

Description of Project Business

Note: "project" means a newly established business or the expansion portion of an existing business. Do not include any established part of an existing business.

17. Type of business to be engaged in:

- ☐ Ag processing
- ☑ Manufacturing
- ☐ Retailing
- ☐ Wholesaling
- ☑ Warehousing
- ☐ Services

18. Describe in detail the activities to be engaged in by the project operator, including a description of any products to be manufactured, produced, assembled or stored (attach additional sheets if necessary).

Space will be used primarily for the manufacturing of medical ventilators and warehousing ventilators and accessories used with the ventilators. Space will also be used for product testing, customer service, general and administrative.

19. Indicate the type of machinery and equipment that will be installed

Air handling and humidity control for clean manufacturing environment, production equipment used in electronics and mechanical assembly, receiving and completed product inspection equipment, lab benches. material movement/handling equipment

20. For the project only, indicate the projected annual revenue, expense, and net income (before tax) from either the new business or the expansion itself for each year of the requested exemption.

Year *(12 mo. periods)*	New/Expansion Project only Year 1	New/Expansion Project only Year 2	New/Expansion Project only Year 3	New/Expansion Project only Year 4	New/Expansion Project only Year 5
Annual revenue	510,000	17,376,000	49,104,000	98,023,000	197,898,00(
Annual expense	11,815,000	26,210,000	43,102,000	87,274,000	164,833,00(
Net income	-11,305,00(	-8834,000	6,002,000	10,749,000	33,065,000

21. Projected number and salary of persons to be employed by the project for the first five years:

Current positions & positions added the initial year of project

# Current Positions		New Positions Under $13.00	New Positions $13.01-$15.00	New Positions $15.01-$20.00	New Positions $20.01-$28.00	New Positions $28.01-$35.00	New Positions Over $35.00
8					7	1	15

Year		(Before project)	Year 1	Year 2	Year 3	Year 4	Year 5
No. of Employees	(1)	5	17	27	38	56	73
	(2)	3	6	7	8	9	10
Estimated payroll	(1)	896,000	1,577,44:	2,640,68'	3,705,43[illegible]	4,776,43[illegible]	5,807,43[illegible]
	(2)	78,000	156,000	182,000	208,000	234,000	260,000

(1) - full time
(2) - part time

Previous Business Activity

22. Is the project operator succeeding someone else in this or a similar business? ☐ Yes ☑ No

23. Has the project operator conducted this business at this or any other location either in or outside of the state?

☑ Yes ☐ No

24. Has the project operator or any officers of the project received any prior property tax incentives? ☐ Yes ☑ No

If the answer to 22, 23, or 24 is yes, give details including locations, dates, and name of former business (attach additional sheets if necessary).

____

____

Business Competition

25. Is any similar business being conducted by other operators in the municipality? ☐ Yes ☑ No

If YES, give name and location of competing business or businesses

____

____

Percentage of Gross Revenue Received Where Underlying Business Has ANY Local Competition %

Property Tax Liability Disclosure Statement

26. Does the project operator own real property in North Dakota which has delinquent property tax levied against it? ☐ Yes ☑ No

27. Does the project operator own a greater than 50% interest in a business that has delinquent property tax levied against any of its North Dakota real property? ☐ Yes ☑ No

If the answer to 26 or 27 is Yes, list and explain

____

____

Use Only When Reapplying

28. The project operator is reapplying for property tax incentives for the following reason(s):

☐ To present additional facts or circumstances which were not presented at the time of the original application

☐ To request continuation of the present property tax incentives because the project has:

☐ moved to a new location

☐ had a change in project operation or additional capital investment of more than twenty percent

☐ had a change in project operators

☐ To request an additional annual exemption for the year of ______ on structures owned by a governmental entity and leased to the project operator. (See N.D.C.C. § 40-57.1-04.1)

Notice to Competitors of Hearing

Prior to the hearing, the applicant must present to the governing body of the county or city a copy of the affidavit of publication giving notice to competitors unless the municipality has otherwise determined there are no competitors.

I, Travis Murphy, do hereby certify that the answers to the above questions and all of the information contained in this application, including attachments hereto, are true and correct to the best of my knowledge and belief and that no relevant fact pertaining to the ownership or operation of the project has been omitted.

DocuSigned by:

Travis Murphy

Signature	Title	Date
Travis Murphy	CFO	3/27/2023

Signer Name: Travis Murphy
Signing Reason: I approve this document
Signing Time: 3/28/2023 | 12:07:50 PM PDT
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PRIVACY ACT NOTIFICATION

In compliance with the Privacy Act of 1974, disclosure of a social security number or Federal Employer Identification Number (FEIN) on this form is required under N.D.C.C. §§ 40-57.1-03, 40-57.1-07, and 57-01-15, and will be used for tax reporting, identification, and administration of North Dakota tax laws. Disclosure is mandatory. Failure to provide the social security number or FEIN may delay or prevent the processing of this form.

Certification of Governing Body (To be completed by the Auditor of the City or County)

The municipality shall, after granting any property tax incentives, certify the findings to the State Tax Commissioner and Director of Tax Equalization by submitting a copy of the project operator's application with the attachments. The governing body, on the _____ day of _________________, 20____, granted the following:

☐ **Property Tax Exemption**

_______ Number of years

_______ Percent of exemption

☐ **Payments in lieu of taxes**

_______ Beginning year _______ Ending year

_______ Amount of annual payments (Attach schedule if payments will vary)

____
Auditor

Business Incentive Agreement

1. In fulfillment of the requirements of N.D.C.C. § 54-60.1-03, Grantor and Recipient enter into this Business Incentive Agreement.

Grantor

Name: City of Fargo	
Address: 225 4th Street North Fargo, ND 58102	

Recipient

Name: Corvent Medical, Inc.	
Address: 1805 NDSU Research Park Drive N Suite 118 Fargo, ND 58102	
Contact Person: Travis Murphy	E-mail Address: tmurphy@corventmedical.com
Recipient Parent Company (If applicable)	
Business Type (NAICS Code): 339112	
Location of Recipient Prior to Receiving Incentive (If different)	

2. Description of project.

Corvent is relocating operations from Southern California to Fargo, North Dakota and will configuring space for product development, testing, manufacturing and warehousing. Quality control, regulatory, finance, administration and customer support will also be relocated to Fargo, ND. It is expected that total headcount will grow to 73 FT and 10PTemployees within 5 years, generating payroll of ~ 6,070,000 per year.

3. Grantor(s) agrees to provide recipient with a business incentive described as follows:

3.a. Is this incentive tax increment financing? ☐ Yes ☒ No
If yes, describe the type of district:

4. The business incentive will be provided on ________________________.
This date is the benefit date.

5. The public purpose(s) of the business incentive are:

☐ Assisting community development
☒ Directly create employment opportunities
☐ Job retention
☐ Increase tax base
☒ Indirectly increase employment opportunities
☒ Other Diversify Fargo's Economic Base

6. Value of Business Incentive: $ 85,076

7. Recipient currently employs 5 people, located in Fargo, ND.

8. In return for the business incentive, Recipient shall, within two years create: 27
Number of full-time equivalent jobs

$47.00 + $9.40 = $56.40
Average hourly wage + Benefits per hour value = Average hourly compensation

9. The Recipient shall continue operations in the jurisdiction in which the business incentive was issued for five years or more after the benefit date.

10. Recipient shall file a recipient report with the Grantor, as described in N.D.C.C. § 54-60.1-05 annually on or before March 1st of each year for two years, beginning in 2007, following the benefit date or until the goals of paragraph 8 are met, whichever is later.

10.a. Grantor shall mail the recipient a warning letter if no report is received by March 8th. Recipient shall file the progress report within 14 days of the postmarked date of the warning letter.

10.b. If a recipient report is not received within 14 days of the warning letter, Recipient agrees to pay to Grantor a $100 penalty for each subsequent day until the report is filed. The maximum penalty under this section may not exceed $1,000.

11. Recipient shall pay back the value of the incentive to the Grantor, prorated to reflect any partial fulfillment of the job and compensation goals, if, after two years, the job and compensation goals listed in paragraph 8 are not met.

11.a. Paragraph 11 does not apply if the job and compensation goals were not met as a result of an act of God or terrorism.

12. This business incentive agreement shall only be modified or extended by the Grantor pursuant to N.D.C.C. § 54-60.1-04.

13. If the terms of this business incentive agreement are not met, Recipient shall not receive a business incentive from any grantor for five years from the date of failure or until a recipient satisfies the repayment obligation.

14. The Recipient has disclosed, in attachment "A" of this agreement, all additional financial assistance received from state or political subdivision Grantors for this project since inception.

15. By signing this agreement, Recipient verifies that it has not failed to meet the terms of any business incentive agreement in the last five years.

Dated this ____________ day of ________________________, 20____.

Grantor: _________________________________ on behalf of ____________________________

Dated this 28th day of March, 20 23.

Recipient: DocuSigned by: Travis Murphy on behalf of Corvent Medical, Inc.

Signer Name: Travis Murphy
Signing Reason: I approve this document
Signing Time: 3/28/2023 | 12:11:55 PM PDT
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Exemption Evaluation Calculator 2020			**146.8**			**146.8**
Corvent Medical Inc			**Points**			**Points**
Project Type Code (Ctrl-C to view)		5	**38.0**		5	**38.0**
Current Number Of Employees	**Year 1**	8		**Year 3**	8	
Hourly Salary Without Benefits	**# Jobs**			**# Jobs**		
Under $13.00						
$13.01-$15.00						
$15.01-$20.00						
$20.01-$28.00	7	Pts. For # Jobs->	**25.0**	14	Pts. For # Jobs->	**25.0**
$28.01-$35.00	1	Pts. For $ Jobs->	**23.8**	2	Pts. For $ Jobs->	**23.8**
Over $35.00	15			30		
TOTAL # OF JOBS CREATED	**23**			**46**		
% GI w/ Local Competition (not downtown)			**25.0**		0%	**25.0**
Value of Proposed Buildings		$ 1,201,560	**20.0**		$ 1,201,560	**20.0**
Downtown Location (Y/N)		N	**0.0**		N	**0.0**
Exemption Needed (Y/N)					0	
Startup Firm (Y/N)		y	**15.0**		y	**15.0**
Has Const Started or Has Bldg Been Occupied If Existing (Y/N)		n	**0.0**		n	**0.0**
Number of Years (Exemption)		5			5	
Company Safety Experience Rating			**0.0**		0	**0.0**
RECOMMENDATION IS TO		**APPROVE**			**APPROVE**	
Description		Tech Research			Tech Research	
Estimated New Annual Payroll		$1,539,200			$3,078,400	
Estimated Annual Real Estate Tax		$17,015			$17,015	
Estimated PV of Exemption		$73,667			$73,667	
Payroll / PV of Exemption		20.9			41.8	
Property Value / # of Jobs		$ 52,242			$ 26,121	
Total Value Of Benefit		$ 85,076			$ 85,076	

THE CITY OF Fargo FAR MORE

City Administration
225 4th Street North
Fargo, ND 58102

MEMORANDUM

TO: **Economic Development Incentive Committee**

FROM: **Jim Gilmour, Director of Strategic Planning and Research**

DATE: **April 17, 2023**

SUBJECT: **636 NP Avenue TIF Request**

The City of received a request for Tax Increment Financing assistance for redevelopment in the 600 Block of NP Avenue. The City Commission entered into a development agreement for a public private partnership on this site that would include ~167 apartments, a parking garage and the community theater. The estimated development cost of the apartments is $35 million.

That agreement enabled the apartment developer to apply for incentives including Renaissance Zone and tax increment financing not to exceed 5 years. The application and the financial review are attached. The Tax Increment Financing request is for $1,831,613.

The report from the City's financial adviser, PFM, states, "The base scenario without assistance along with the sensitivity analyses demonstrates the project would unlikely be feasible without assistance."

Recommended Motion
Recommend approval of the request for Tax Increment Financing to the Fargo City Commission.

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

January 27, 2023

Jim Gilmour
Director of Strategic Planning & Research
City of Fargo
225 4th Street North
Fargo, North Dakota 58102

Dear Mr. Gilmour:

Please find this application for Tax Increment Financing for the NP Avenue mixed use parking garage located at 602/636 NP Ave N.

1. **Project Summary**

   Six story private development includes +/- 2,500sf of ground floor retail, +/- 3,000sf of amenity space, +/- 168 market rate apartments units – together all known as the "mixed use program", and +/- 30,000sf of ground floor theater space, and +/- 465 stall parking garage. The TIF application is for the mixed-use program of the project only and does not include the theater space or parking garage.

   Location – 602/636 NP Ave N
   Schedule – 26-month construction starting in summer of 2023 and opening fall of 2025

2. **Contact Information**

   Mike Allmendinger
   210 Broadway, Suite 300
   Fargo, ND 58102
   701.237.2279
   mike@kilbournegroup.com

   Owner – Great Plains NP Holdings, LLC
   Developer – Kilbourne Group

3. **Project Program**

   Commercial - +/- 2,500sf *(mixed use program, included in TIF application)*
   Apartments - +/- 168 units *(mixed use program, included in TIF application)*
   Unit mix – Studio 44% | 1B 38% | 2B 12% | 3B 6%
   Theater - +/- 30,000sf
   Parking - +/- 465 stalls | 6 level precast garage

4. **Project Financials**

Total Project Cost – $35.4MM (mixed-use program only)
TIF Assistance – $1,831,613
Eligible Costs

- Land – $761,000
- Site Preparation/Environmental – $770,689
- Public Improvements – $299,924

We are excited at the opportunity to partner with the City on this project and the significant positive impact this project will have for this area of downtown. Please let me know if there is additional information needed.

Sincerely,

Mike Allmendinger
President
Enclosures

1 T1.3 **LEVEL 1 PLAN**
1" = 30'-0"

2 TL3 LEVEL 2 PLAN
1" = 30'-0"

3 T1.3 **TYPICAL RESIDENTIAL LEVEL PLAN (LEVELS 3-6)**
1" = 30'-0"

City of Fargo, North Dakota

Renaissance Zone & Tax Increment Financing Program

"But-For" Report

602/636 NP Avenue

April 14, 2023

Table of Contents

Purpose

The purpose of this report is to establish and determine the allowable value of the tax increment financing (TIF) for 602/636 NP Ave., a development by Kilbourne Group (the "Developer").

PFM first reviewed the application to ensure that appropriate assumptions regarding property value, rent, condo sales, vacancy, expenses, and debt were used by the Developer. Based on those assumptions, PFM projected a 10-year cash flow, calculating an internal rate of return ("IRR"). We also made sure the Developer followed the City of Fargo's (the "City") Economic Development Incentives Policies and Guidelines (the "Policy") including the allowable costs and the Developer's calculations for determining the amount of allowable subsidy financing. The following report details PFM's analysis and conclusions concerning the viability of the proposed project without the subsidy.

Project

The project being proposed by the Developer includes the development of a 168-unit rental apartment building located at 602/636 NP Ave N.

The Developer estimates the construction will be completed in late 2025 with occupancy immediately following. The Developer has requested TIF assistance in the amount of $1,831,613 to complete the project.

TIF Assistance Request

The Developer is requesting assistance in the form of tax increment financing under the City's Tax Increment Financing Policy. The Policy provides public assistance to a development through tax increment financing for private development. The Developer is asking for a 5-year Renaissance Zone PILOT followed by a 5-year TIF exemption. The Policy states a 100% exemption on the increased value of the improvements for the first five years.

Eligible TIF Expenditures

Land	761,000
Site Preparation/Environmental	770.689
Public Improvements	299,924
Total Eligible TIF Expenditures	**$1,831,613**

The Policy limits the TIF assistance to 15% of hard construction costs, including the costs of acquisition. Based on total hard construction costs of $35,400,000 the Developer can receive up to $5,310,000. The Developer is requesting $1,831,613, which is below the maximum allowed.

Land Cost

The Developer states the purchase price to acquire the property for the project is $1,328,000. Land acquisition is reimbursable under the Policy. The Developer is requesting to be reimbursed $761,000 for the land acquisition which complies with the Policy.

The Policy states that the maximum eligible land costs to be recouped by the Developer should be limited to the lesser of:

1.) **The total acquisition cost for the property, provided that the acquisition cost is no more than 150% of the assessor's market value of the property.** The Developer's cost to acquire the property is $1,328,000. The assessor's market value for the property totals $505,000. The eligible amount for reimbursement is 150% of $931,000 which totals $757,500.

2.) **The difference between what was paid by the Developer for the property less the assessor's market value for the land (as opposed to land and buildings).** The current assessor's land value is $505,000. Based on an acquisition price of $1,328,000 the maximum reimbursement is $823,000.

The lesser of the two tests detailed above is $757,500. The requested reimbursement amount for land acquisition of $761,000 is slightly higher than the amount allowed under the Policy.

Term

The Policy states the length of the term will be limited to 15 years or less. The Developer is requesting a total of a 10-year term with TIF payout in years 6 - 10.

TIF Estimate

PFM estimates that $2,296,996 of TIF will be generated over years 6 - 10 assuming a 2% market growth rate. Based on a discount rate of 5%, the present value of the estimated TIF cash flow is $1,407,507 for years 6 to 10 of the project when the TIF would be in effect. This is less than the total eligible TIF expenditures.

Project Financing

The Developer is investing 30% equity, or $10,626,271, and will be privately financing $24,794,633. The Developer is additionally requesting annual TIF assistance in the total amount of $1,831,613 as well as Renaissance Zone PILOT payments. The private financing is estimated to be a 30-year loan with an estimated interest rate of 6.5% resulting in an annual principal and interest payment of $1,898,710. The Developer anticipates refinancing the construction loan after two years of occupancy. The refinancing loan is estimated to be a 30-year loan with an estimated interest rate of 5.5% resulting in an annual principal and interest payment of $2,145,349. The application states the project will be completed by the late 2025.

Return Analysis

In calculating the internal rate of return, PFM first analyzed the Developer's assumptions including expected monthly rent, vacancy rate, and operating expenses. The Developer is proposing rents of $1,153 for a studio unit, $1,466 for a one-bedroom unit, $2,166 for a two-bedroom unit and $2,984 for a three-bedroom unit. The Developer has proposed a reasonable amount for rent for the current market and location. Annual estimates of operating expenses for the 168-unit rental development were provided, as follows; Administrative Costs - $184,148, Marketing - $23,437, Repairs and Maintenance Costs - $105,466, Utilities - $36,830, Real Estate Taxes - $434,403 (without public assistance), Insurance Costs - $26,785, and Management Fees - $75,333. The total expenses are approximately 41% of gross operating income after stabilization.

The second step in determining the internal rate of return is to determine the earned incremental value of the property over a 10-year period. That value, along with the net operating income cash flows, was used to calculate the internal rate of return. PFM determined that without public assistance the Developer would have about a 10.12% internal rate of return based on a 10-year internal rate of return. The Developer would have about a 12.73% internal rate for 10 years if it received the public assistance. A reasonable rate of return for the proposed project is 10% - 15%.

Another measure of feasibility and project viability is the debt coverage ratio. PFM has projected a maximum debt coverage ratio in Year 9 of 1.02x without assistance, with a Year 6 coverage of 0.91x. If the City provided assistance to the project the maximum debt coverage is projected to be 1.23x in Year 9, with a Year 6 coverage of 1.11x.

Using PFM's "without assistance" cash flow as the base scenario, PFM ran sensitivity analyses in order to determine if the project would be likely to occur without public assistance. For the first sensitivity analysis, PFM analyzed how much project funds would have to decrease in order to produce a reasonable debt coverage ratio. We also looked at how much the rental rates would have to fluctuate in order to achieve a reasonable debt coverage. Lastly, we looked at a combination of the two scenarios. For the sensitivity analyses, we assumed a reasonable debt coverage ratio of 1.20x by year 9.

Sensitivity Scenario 1 – Project Costs

The project would have to be reduced by $4,804,363 or 13.5% in order for the project to become viable without assistance. This reduces the amount to be financed from $24,794,633 to $19,990,270 and reduces the annual payment from $1,898,710 to $1,530,804 for the loan. It is unlikely that a reduction in project costs of this magnitude would occur at this stage in the development.

Sensitivity Scenario 2 – Rental Rates

In order for the project to be viable without public assistance, the apartment rental rates would have to increase by 10.9%. PFM believes this is a high increase to the Developer's proposed rents. This increases annual rental revenue from $3,047,386 to $3,379,296. PFM believes the current proposed rents are reasonable rental rates and does not believe an increase this large would occur.

Sensitivity Scenario 3 – Combination of Project Costs and Rental Rates

The final scenario looks at both a reduction of project costs and an increase in apartment rental rates. The analysis showed that project costs would have to be reduced by $2,479,463 or 7.0% and rental rates would have to increase by about 5.3%. Either of these events could occur but may be unlikely to occur together.

The above scenarios show the circumstances in which the project would become viable without public assistance. PFM has determined that the project is unlikely to occur "but-for" the public assistance.

Conclusion

The Developer will bear all the risk involved with the project. The Developer is dependent on a number of factors before and after the project is completed, including project costs, occupancy of the buildings, the rental market, and monthly expenses. The base scenario without assistance along with the sensitivity analyses demonstrates that the project would be unlikely to be feasible without assistance.

PFM has calculated that with public assistance, and based on the assumptions outlined in this report, a 10-year internal rate of return is estimated to be 12.73%. In addition, the coverage ratio in Year 9 is estimated to be 1.23x. The estimated internal rate of return is appropriate given the risk level for this type of project. Based on the information provided to PFM, the calculated internal rate of return and the coverage requirements, PFM concludes the project would not be feasible without public assistance.

THE CITY OF Fargo FAR MORE

City Administration
225 4th Street North
Fargo, ND 58102

MEMORANDUM

TO: **Economic Development Incentives Committee**

FROM: **Jim Gilmour, Director of Strategic Planning and Research**

DATE: **April 17, 2023**

SUBJECT: **Business Incentive Agreements**

The ND Legislature has repealed the requirement for Business Incentive Agreements. I have attached a copy of HB 1215, which repealed the requirement for paperwork reduction purposes and the section of the law that was repealed.

The City may continue to monitor economic development projects, but will no longer have to submit reports to the ND State Commerce Department.

No action is needed at this time.

Sixty-eighth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 3, 2023

HOUSE BILL NO. 1215
(Representative Nathe)

AN ACT to amend and reenact subsection 7 of section 6-08.1-02, section 10-30.5-13, subsection 1 of section 17-05-13, and sections 54-17.7-13 and 54-63.1-05 of the North Dakota Century Code, relating to the filing of business incentive reports; and to repeal chapter 54-60.1 of the North Dakota Century Code, relating to business incentives, agreements, and reports administered by the department of commerce.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 7 of section 6-08.1-02 of the North Dakota Century Code is amended and reenacted as follows:

7. The release by the industrial commission, in its capacity as the managing body of the Bank of North Dakota, of the following:

   a. The name of any person who has obtained approval for direct or indirect financing or security, including a loan guarantee or a letter of credit, through the Bank of North Dakota primarily for purposes other than personal, family, or household purposes.

   b. The amount of any financing or security referenced in subdivision a.

   c. The amount of any net writeoff or loan forgiveness associated with the financing or security referenced in subdivision a which the industrial commission determines is uncollectible.

   d. The program under which any financing or security referenced in subdivision a was made.

   ~~e. Recipient reports and grantor reports as required under chapter 54-60.1.~~

SECTION 2. AMENDMENT. Section 10-30.5-13 of the North Dakota Century Code is amended and reenacted as follows:

10-30.5-13. Small business technology investment program.

1. The corporation shall administer a small business technology investment program that provides matching investments to startup technology-based businesses.

2. The following provisions apply to small business technology investments:

   a. A qualified applicant:

      ~~(1) Must be a North Dakota business that is at the startup stage;~~

      (2) Must be a primary sector business in the technology field; and

      (3) Shall meet underwriting guidelines established by the corporation.

   b. Before the corporation distributes funds under this section, the recipient shall provide the corporation with detailed documentation of the availability of two dollars of angel fund investment matching funds for each dollar of state funds distributed under this section. The matching funds must be cash, must come from a North Dakota angel fund certified under section 57-38-01.26, and may not be an in-kind asset.

3. An investment under this section may not exceed fifty thousand dollars. Eligible use of the investment funds include developing a proof of concept. A recipient may not receive more than one award under this section.

~~4. An investment under this section is not a business incentive under chapter 54-60.1.~~

SECTION 3. AMENDMENT. Subsection 1 of section 17-05-13 of the North Dakota Century Code is amended and reenacted as follows:

1. The authority shall deliver a written report on its activities to the legislative council each biennium. ~~Notwithstanding chapter 54-60.1, the~~The authority shall provide an annual report to the industrial commission detailing activities and expenditures incurred during the preceding year.

SECTION 4. AMENDMENT. Section 54-17.7-13 of the North Dakota Century Code is amended and reenacted as follows:

54-17.7-13. Reporting requirements.

The authority shall deliver a written report on its activities to the legislative council each biennium. The ~~authority is not subject to the requirements of chapter 54-60.1, but to ensure public accountability, the~~ authority shall provide an annual report to the industrial commission detailing activities and expenditures incurred during the preceding year.

SECTION 5. AMENDMENT. Section 54-63.1-05 of the North Dakota Century Code is amended and reenacted as follows:

54-63.1-05. Clean sustainable energy program - Powers and duties of the commission.

1. The commission is granted all the powers necessary to carry out the purposes of this chapter, including the power to:

    a. Provide grants, loans, or other forms of financial assistance to qualified entities for the research, demonstration, development, and commercialization of projects, processes, activities, and technologies that reduce environmental impacts and use energy sources derived from within the state. Other forms of financial assistance include venture capital investments and interest rate buydowns. The commission must require an entity to provide assurance of financial and other types of support that demonstrate a commitment to the project, process, activity, or technology. The commission may develop policies for the approval of loans or loan guarantees issued from the clean sustainable energy fund.

    b. Enter into contracts or agreements to carry out the purposes of this chapter, including contracting for the administration of the program.

    c. Keep accurate records of all financial transactions performed under this chapter.

    d. Cooperate with any private, local, state, or national organization to make contracts and agreements for programs that advance the mission of the program.

    e. Accept loan repayments, donations, grants, contributions, or gifts from any public or private source to carry out the purposes of this chapter, which must be deposited in the clean sustainable energy fund.

    f. Make guidelines necessary to carry out the purposes of this chapter, including guidelines relating to the ownership of intellectual property.

    g. Borrow from the Bank of North Dakota, as authorized by the legislative assembly, to make loans or loan guarantees under a loan program or loan guarantee program developed by the clean sustainable energy authority.

2. The commission may acquire, purchase, hold, use, lease, license, sell, transfer, or dispose of any interest in an asset necessary for clean sustainable energy technology development to facilitate the production, transportation, distribution, or delivery of clean energy commodities produced in the state as a purchases of last resort.

3. The commission shall provide administrative support to the authority for the operation of the program, including the preparation of forms, review of applications, and ongoing review of any contracts. The commission may contract with a public or private entity to provide technical assistance necessary to implement the purposes of this chapter.

~~4. The commission is not subject to the reporting requirements under chapter 54-60.1.~~

SECTION 6. REPEAL. Chapter 54-60.1 of the North Dakota Century Code is repealed.

Speaker of the House	President of the Senate
Chief Clerk of the House	Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-eighth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1215.

House Vote:	Yeas 85	Nays 6	Absent 3
Senate Vote:	Yeas 46	Nays 1	Absent 0

Chief Clerk of the House

Received by the Governor at ________M. on ____________________________________, 2023.

Approved at ________M. on ____, 2023.

Governor

Filed in this office this ___________day of ______________________________________, 2023,

at ________ o'clock ________M.

Secretary of State

CHAPTER 54-60.1
BUSINESS INCENTIVES, AGREEMENTS, AND REPORTS

54-60.1-01. Definitions.
As used in this chapter, unless the context otherwise requires:

1. "Benefit date" means the date on which the recipient receives the business incentive. If the business incentive involves the purchase, lease, or donation of physical equipment, the benefit date is the date when the recipient puts the equipment into service. If the business incentive is for improvements to property, the benefit date is the earlier of either when the improvements are finished for the entire project or when a business occupies the property. If a business occupies the property and the business incentive grantor expects that other businesses will also occupy the same property, the grantor may assign a separate benefit date for each subsequent business when that subsequent business first occupies the property.
2. "Business incentive" means a state or political subdivision direct cash transfer, loan, or equity investment; contribution of property or infrastructure; reduction or deferral of any tax or any fee; guarantee of any payment under any loan, lease, or other obligation; or preferential use of government facilities given to a business. To be considered a business incentive, the total assistance in all forms must be valued at twenty-five thousand dollars or more committed within a year. Unless specifically provided otherwise, the term does not include:
   a. Assistance that is generally available to all businesses or to a general class of similar businesses, such as a line of business, size, or similar criteria.
   b. Incentives resulting from Bank of North Dakota programs unless the incentive requires job creation to fulfill a requirement of the incentive.
   c. Public improvements to buildings or lands owned by the state or political subdivision which serve a public purpose and do not principally benefit a single business or defined group of businesses at the time the improvements are made.
   d. Assistance provided for the sole purpose of renovating old or decaying building stock or bringing such building stock up to code and assistance provided for designated historic preservation districts, provided that the assistance does not exceed seventy-five percent of the total cost.
   e. Assistance to provide job-readiness and training services if the sole purpose of the assistance is to provide those services.
   f. Assistance for housing.
   g. Assistance for pollution control or abatement.
   h. Assistance for energy conservation.
   i. Tax reductions resulting from conformity with federal tax law.
   j. Benefits derived from regulation.
   k. Indirect benefits derived from assistance to educational institutions.
   l. Assistance for a collaboration between a North Dakota institution of higher education and a business.
   m. Redevelopment if the recipient's investment in the purchase of the site and in site preparation is seventy percent or more of the assessor's current year's estimated market value.
   n. General changes in tax increment financing law and other general tax law changes of a principally technical nature.
   o. Federal assistance provided through the state or a political subdivision until the assistance has been repaid to, and reinvested by, the state or political subdivision.
   p. Federal or state assistance for the lignite research, development, and marketing program under chapter 54-17.5.
   q. Federal or state assistance for the oil and gas research, development, and marketing program under chapter 54-17.6.
   r. Federal or state assistance for the renewable energy program under chapter 54-63.

3. "Compensation" means the value of an employee's:
   a. Earnings, including wages, salary, bonus, and commissions; and
   b. Benefits, including:
      (1) Health, disability, life, and retirement benefits or insurance premium paid by the employer;
      (2) An employee's share of payroll taxes paid by the employer; and
      (3) Other fringe benefits such as housing allowance and transportation expenses.
4. "Department" means the department of commerce.
5. "Grantor" means the state or any political subdivision that directly or indirectly grants a business incentive to a recipient.
6. "Political subdivision" means a unit of local government in this state which has direct or indirect authority to grant a business incentive. The term includes any authority, agency, special district, or entity created by, authorized by, under the jurisdiction of, or contracting with a political subdivision.
7. "Public purpose" includes assisting community development, increasing the tax base, directly creating employment opportunities, or indirectly creating employment opportunities through increased economic activity. Job retention is only a public purpose in cases in which job loss is specific and demonstrable.
8. "Recipient" means any individual or business entity that receives a business incentive.
9. "State" means any North Dakota state government agency that has the authority to directly or indirectly award business incentives.

54-60.1-02. Scope - Public purpose - Notice.

1. The application of this chapter is limited to business incentives provided by grantors to recipients, unless otherwise provided.
2. A grantor may not grant a business incentive to a recipient unless that business incentive meets a public purpose.
3. A state business incentive in the form of a direct cash transfer that is not a structured grant under state or federal law must be structured as a loan, a forgivable loan, or as a preferred share that includes provisions for surrender.
4. A political subdivision business incentive in the form of a cash transfer of money may be structured as a loan, a forgivable loan, or as a preferred share that includes provisions for surrender.

54-60.1-03. Business incentive agreement.

1. A recipient must enter a business incentive agreement with each grantor of a business incentive. The grantor and the recipient shall sign the agreement.
2. If a business incentive benefits more than one recipient, the grantor shall assign a proportion of the business incentive to each recipient that signs a business incentive agreement. The proportion assessed to each recipient must reflect a reasonable estimate of the recipient's share of the total benefits of the project.
3. A business incentive agreement must include:
   a. A description of the business incentive, including the value of the business incentive, which may be the amount of the incentive, the fair market value of the property conveyed to the recipient, or the fair market value of other in-kind benefits provided to the recipient; the type of incentive; and the type of district if the incentive is tax increment financing.
   b. A statement of the public purposes of the business incentive.
   c. Goals for the business incentive. The goals must include the number of jobs to be created and the average compensation of the new jobs created. The information on average compensation must include identification of the average benefits and the average earnings to be provided by the employer on all jobs to be created or retained in association with the incentive. The job and average compensation goals may include separate goals for the number of part-time or full-time jobs to be created or, in cases in which potential job loss is specific and demonstrable,

goals for the number of jobs to be retained. In addition to other specific goal timeframes, the job and average compensation goals must contain specific goals to be attained within two years of the benefit date.

d. A description of the financial obligation of the recipient if the goals are not met. This financial obligation must include an exception for any unmet goal that results from an act of God or terrorism.

e. A commitment by the recipient to continue operations in the jurisdiction in which the business incentive is used for five years or more after the benefit date.

f. The name and address of the parent company of the recipient, if any.

g. A list of all financial assistance by all grantors for the project.

h. The recipient's obligation if the recipient does not fulfill the business incentive agreement.

54-60.1-04. Failure to meet goals - Modification of goals.

1. At a minimum, the financial obligation provision of a business incentive agreement must require a recipient that fails to meet business incentive agreement goals to pay back to the grantor the assistance, prorated to reflect any partial fulfillment of goals. A grantor may extend for up to one year the period for meeting the business incentive agreement goals if the grantor determines that circumstances have made it impossible for the recipient to achieve the required goals. A grantor may extend the period for meeting business incentive agreement goals by another additional year by documenting in writing the reason for the extension and attaching a copy of the documentation to the grantor's next annual report. Notwithstanding the five-year commitment in the business incentive agreement, a grantor may authorize a recipient to move from the jurisdiction in which the business incentive is used within the five-year period after the benefit date if, after a public hearing, the grantor approves the recipient's request to move. If after extending the period for achieving the goals of the business incentive agreement for two years a grantor determines that a business incentive agreement goal of creation or retention of jobs has changed and justifies a decrease, after a public hearing, the grantor may decrease the job goals in the agreement to a lesser number or to zero and may adjust the average compensation goals to reflect changed circumstances. Justification for decreasing job goals may include that other public benefits adequately offset the failure to meet the initial job goals.
2. A recipient that fails to meet the terms of a business incentive agreement may not receive a business incentive from any grantor for a period of five years from the date of failure or until a recipient satisfies the repayment obligation under this section, whichever occurs first. For purposes of this subsection, if the recipient is an individual, the disqualification attaches to the individual and if the recipient is a business entity, the disqualification attaches to the business and to each owner or shareholder of twenty percent or more of the business.

54-60.1-05. State grantor recipient reports.

1. The department shall create state grantor recipient report forms that include:

   a. The name and address of the recipient;

   b. The type, public purpose, and value of the business incentive;

   c. The number of new jobs to be created or retained in association with the business incentive;

   d. The average compensation of all jobs to be created or retained in association with the business incentive, including identification of the average benefits and the average earnings provided by the employer on all jobs created or retained in association with the business incentive;

   e. The date the job and average compensation goals are expected to be reached;

   f. A statement of goals identified in the business incentive agreement and an update on achievement of these goals, including the actual number of jobs created or retained and the average compensation of jobs created or retained at that point, including identification of the average benefits actually provided and the average earnings actually provided by the employer on all jobs created or retained;

g. The location of the recipient prior to receiving the business incentive;

h. The name and address of the parent corporation of the recipient, if any;

i. A list of business incentives by all grantors for the project; and

j. Other information the department and grantor may request.

2. Each state grantor shall use recipient report forms created by the department to monitor the progress by each state grantor recipient in achieving business incentive agreement goals. At a minimum, each of these recipients shall provide the state grantor with an annual recipient report for two years following the benefit date or until the goals are met, whichever is later. If the business incentive agreement goals are not met, the state grantor recipient shall continue to provide recipient reports to the state grantor until the incentive is repaid. A state grantor shall file with the department a copy of each completed recipient report.

3. Before sixty days after the anniversary of the benefit date, a state grantor recipient shall file with the state grantor the recipient report for the previous twelve months. If a state grantor recipient fails to file a recipient report before the sixtieth day after the anniversary of the benefit date, the state grantor shall mail the recipient a warning letter. If a noncompliant state grantor recipient fails to file the recipient report within fourteen days of the postmarked date of the warning letter, the recipient shall pay to the state grantor a penalty of one hundred dollars for each subsequent day until the report is filed. The maximum penalty under this section may not exceed one thousand dollars.

54-60.1-06. State grantor reports.

Before April 1, 2007, and each April first thereafter, each state agency that has granted a business incentive within the last five calendar years shall file an annual state grantor report with the department. The department shall create the state grantor report form required under this section. A state grantor report must include a list of all recipients, each recipient's business incentive agreement goals, and a report on each recipient's progress toward the goals. If the department does not receive a state grantor report before May first, the department shall issue a warning letter to the noncompliant grantor. If the department has not received a state grantor report from the noncompliant grantor before June first, that noncompliant grantor may not award any business incentive until the past-due grantor report is filed with the department.

54-60.1-07. Compilation and summary - Report to legislative council.

1. Beginning in 2007 and annually thereafter, the department shall publish a compilation and summary of the results of the state grantor reports for the previous calendar year. Beginning in 2007 and annually thereafter, the department of commerce shall file the reports of the state grantors and the compilation and summary with the legislative council. The department shall organize the compilation and summary so that useful comparisons across time periods and across grantors can be made. The department may add other information to the compilation and summary as deemed necessary to evaluate business incentives.

2. The compilation and summary must include:

   a. The number of jobs targeted to be created or retained by each recipient receiving a business incentive in that year.

   b. The number of jobs achieved in comparison to the jobs targeted for each business year by year.

   c. The average compensation of jobs targeted to be created or retained by each recipient that year, including identification of the average benefits and average earnings to be provided by the employer for these jobs.

   d. The average compensation of jobs created or retained compared to the targeted average compensation for each business year by year.

   e. A distribution of business incentives by type of business and by public purpose.

f. The percentage of business incentives that reached goals within two, three, four, and five years from the benefit date.
g. The percentage of business incentives that did not meet goals and that did not receive repayment.

54-60.1-08. Political subdivision grantor annual reports.

1. A political subdivision shall maintain records of business incentives provided to recipients.
2. Before April 1, 2007, and each April first thereafter, each political subdivision that granted a business incentive during the previous calendar year shall prepare an annual political subdivision grantor report. This annual report must include:
   a. The names of the businesses receiving business incentives during that year;
   b. The number of jobs expected to be created or retained by each business as a result of the business incentives;
   c. The average compensation expected to be provided by the employer for the jobs expected to be created or retained as a result of the business incentives, including identification of the average benefits and average earnings to be provided by the employer for these jobs; and
   d. The total dollar value of all business incentives provided by the political subdivision during that year.

54-60.1-09. Appropriation requests.

A state agency may not request an appropriation for the purpose of providing a business incentive in the form of a direct cash transfer unless the agency includes with the request a statement of the expected benefits associated with the direct cash transfer.

Public Private Partnerships (P3) Policy

Public Private Partnerships (P3) may include the creation of a Tax Increment Financing District. The P3 developments incentivize private development by funding public infrastructure and/or financially assisting a developer. Absent this public infrastructure and/or developer assistance, the private development would not otherwise occur.

There is no "standard" type of public private partnership. Each P3 will be unique. There will be unique area and site conditions, unique needs for public infrastructure, and unique private developments.

PROCESS:

The process for public private partnerships will begin with discussions between city officials, private landowners, and development groups. Typically, there will be a difficult to develop site, and a need for public infrastructure and/or developer assistance to make development financially feasible and physically possible.

The Economic Development Incentives Committee will do the first review of the P3 concept. The Committee will make a recommendation to the City Commission either to proceed with the development of a Renewal Plan, or to recommend that the City not participate in the P3 concept. The P3 concept review will examine whether the development is consistent with city plans, if it provides a community benefit and if the public assistance is essential to *any* private development.

RENEWAL PLAN DEVELOPMENT

City staff will develop the Renewal Plan. The Planning, Administration, Engineering and Finance Departments will all participate in the preparation process. Legal counsel will review the plan and write development agreements. Financial advisors will review financial assumptions and recommend the reasonability of assistance to private developers and the financing plan for public facilities.

RENEWAL PLAN IMPLEMENTATION:

The City will implement activities included in the Renewal Plan. This will include:

- Overseeing the installation of public infrastructure;
- Monitor developer compliance with terms of agreements;
- Collection and distribution of tax increment funds and/or other public funds;
- Monitoring and reporting on the results of the plan implementation.